

REPORT

And

DETERMINATION

Under

SECTION 24C

of the

STATUTORY AND OTHER OFFICES
REMUNERATION ACT, 1975

CHIEF EXECUTIVE AND SENIOR EXECUTIVE SERVICES

29 October 2010

www.remtribunals.nsw.gov.au

CHIEF EXECUTIVE SERVICE AND SENIOR EXECUTIVE SERVICE ¹

Mr Chris Raper resigned as the Statutory and Other Offices Remuneration Tribunal effective from 15 February 2010. The Governor, pursuant to section 6(2) of the Statutory and Other Offices Remuneration Act 1975 (the Act), appointed Mr Alex Smith AM as the new Tribunal for a term of three years from 29 March 2010.

Section 7(1(a) of the Act provides that the Director General of the Department of Premier and Cabinet is an Assessor appointed to assist the Tribunal. Section 7(4) of the Act provides that the Director General may appoint a deputy to act in his place as the Assessor. The Director General has decided that he does not require a deputy and will be personally performing the role of Assessor to the Tribunal.

Section 1: Background

1. Section 24C of the Statutory and Other Offices Remuneration Act 1975 (the Act) provides for the Tribunal to determine annual remuneration packages for the SES to take effect on and from 1 October in that year.
2. The SES was introduced in the NSW public sector in 1989. The key features of the SES are:
 - conditions of employment being fixed by contract
 - individual performance agreements
 - provision for performance pay based on performance assessment
 - remuneration packages expressed as total cost of employment.
3. This Group also comprises office holders who elect to receive, and the Minister approves, access to remuneration packaging arrangements identical to the SES. These office holders, referred to collectively as 11A Office Holders, have historically been listed in the Reports and Determinations for the Chief Executive Service and Senior Executive

¹ Unless otherwise stated, the Chief Executive Service and Senior Executive Service are referred collectively in this Report and Determination as SES.

Service (SES). The Tribunal considers that these office holders are more appropriately listed within the Public Office Holder Group, given the statutory nature of their appointment.

4. The Senior Officer (SO) classification was introduced in December 1996. The work value of SO Levels (1-3) mirrors that of SES Levels (1-3) with lower rates of remuneration for SOs intended to recognise tenured employment and payments made by the Government in respect of superannuation and leave loading. Senior Officers will be discussed further below.

The 2009 Review

5. The Tribunal's 2009 annual determination dated 2 November 2009 provided for a 3 per cent increase for each SES officer, subject to satisfactory performance.

Section 2: Submissions

Government submission

6. The Government's Submission continues to argue for ongoing savings to achieve Government priorities. The economic outlook for NSW is more optimistic, as the Australian and NSW economies have performed better than expected during the global financial crisis.
7. The Submission notes that the Budget for 2009-10 was returned to surplus after an original forecast of a \$990 million deficit for the year. This turnaround is explained as growth in revenue exceeding expenses.
8. For the 2010-11 year, Treasury is forecasting a surplus of \$773 million and over the 4 year forward estimate period surpluses, as noted by the

Treasurer, are expected to total \$3.15 billion or an average annual surplus of around \$800 million per year.

9. The NSW Government Wages Policy remains in place. The thrust of this policy is to maintain the real wage improvements previously achieved by limiting increases to 2.5 per cent. Increases beyond 2.5 per cent are to be offset by employee related savings. The Government Submission notes that major salary outcomes approved for Award and Enterprise Agreement based staff since the Tribunal's 2009 Annual Determination have all required employee related savings to offset any increases beyond 2.5 per cent.

10. The Government submission also notes that the Better Services and Value Plan announced in the 2009-10 Budget is designed to assist agencies in meeting their efficiency dividends and savings under the Government's wages policy.

11. The Submission has again referred to Government initiatives that have impacted upon the structure and operations of the SES in NSW. These included the SES reduction strategy (where 20 percent or 171 SES positions were abolished) and the creation of the super Departments. The Submission notes that the SES reductions were completed in July 2009 and that the agency amalgamations are now complete and that,

"...The task at hand is to achieve post-amalgamation integration of departments' business operations and services.

The CES and SES are continuing to play an integral leadership role in achieving the goals of these reforms."

12. The Government Submission has also provided details of SES remuneration increases from other States. The submission notes that both Victoria and Queensland provided increases totalling 3 per cent and 2.5 per cent respectively were provided. The Submission notes that in Victoria, SES officers are also eligible for performance pay up to 17

percent of the officer's total remuneration package. In Western Australia SES remuneration was increased by 5.2 per cent from 1 April 2010.

The Government Submission notes that the SES

"...now have responsibility for leading the post-amalgamation integration of departments' business operations and services; implementing the programs underpinning the Better Services and Value Plan; and continuing to deliver the major reforms contained in the State Plan."

13. The Government submission has also provided a general comment on recruitment and retention into the SES. The Submission points out that

"...With the exception of skill shortages in certain key areas such as legal, infrastructure, financial and information and communications technology, the attraction and retention of suitably qualified executives will not present a significant problem in the short to medium term."

14. The Government has recommended to the Tribunal that increases for the SES be limited to 2.5 per cent. The Government submits that this recommendation is in line with the wages policy and demonstrates the Government's commitment to wage restraint. It also acknowledges the key role the CES and SES will play in leading and driving the Government's reform agenda over the next 12 months.

Recruitment Allowance and Retention Allowance

15. The Government submission recommends that there be no increase in the minimum and maximum rates of Recruitment and Retention Allowance.

Treasury Forecasts

16. For the 2010-11 year, Treasury is forecasting a surplus of \$773 million and over the 4 year forward estimate period surpluses, as noted by the Treasurer, are expected to total \$3.15 billion or an average annual surplus of around \$800 million per year.

17. Treasury is more optimistic about economic outcomes for 2010-11 and 2011-12. Treasury expects NSW economic output GSP (Gross State Product) to,

“...accelerate to an above trend pace of 3 per cent in 2010-11 and 3½ percent in 2011-12.”

18. State Final Demand (SFD) is an important indicator of economic activity. SFD reflects the level of spending in the community by the private and public sectors based on the consumption of goods and services and capital investment. Again the estimates provided by Treasury show an optimistic outcome as well. The Treasury submission further notes

“...State Final Demand is expected to grow at an above trend rate of 3 ½ per cent in 2010-11 and 2011-12.”

19. Treasury forecasts that inflation for each the next two years will be 2¾ percent and wage movements as reflected by the Wage Price Index will be 3½ percent in 2010-11 and 3¾ percent in 2011-12. While these are only forecasts and there are a range of factors that can impact on the actual outcomes, the Tribunal notes that based on Treasury information available at this time, the NSW economy is expected to expand over the next two years.

Section 3: 2010 Tribunal Review

It has been 21 years since the establishment of the SES in NSW. The Tribunal considers it an opportune time to review the changes that have occurred over this time to ensure that remuneration and conditions are still appropriate to ensure the SES are able to meet the challenges ahead.

History of the SES

20. The SES was introduced as a means of providing greater accountability and performance at the highest level of public administration in NSW. It was introduced in 1989 by the Coalition Government and the amendments to the Public Sector Management Act 1988 reflected the Coalition's policy to systematically review and reform senior public sector management in NSW. It was clear that the new SES would lead and drive the Government's reform agenda.

The Minister, in his Second Reading Speech stated,

"...These new arrangements for senior management in the public sector will ensure that there is a fully productive relationship between it and the Government.....The provisions of the bills and the administrative arrangements associated with them will assist in achieving a more rigorous, performance based approach to management in the public sector."

And further

"...the measures included in the Bills are aimed at raising the overall standard of general management in the public sector and securing continuing productivity increases in the public sector...They will enable senior managers in the public sector to realise their full potential. There will be greater recognition and reward for skill and merit."

21. The SES arrangements were underpinned by contract employment, market based remuneration and rigorous annual performance assessment.

22. Tenure of employment had been a feature of public service remuneration to that point. Employment terms and conditions for public servants were contained within the Public Service Act and related Regulations. The introduction of non tenured employment for the new SES removed the protections contained within the statute. Contracts were for fixed terms of up to five years and to ensure a safety net for public servants who transferred across to the SES, the amendments to the Act contained provisions preserving the rights of incumbent officers to return to the public sector if the contract was terminated or not renewed. This was known as the Right of Return which SES officers could elect to pay from their remuneration packages.

23. Remuneration for SES officers was also innovative for the public service. Until then, remuneration for public servants, as it is today, was expressed as a salary. All employer on costs are additional and not reflected in the stated salary. SES remuneration on the other hand was expressed as a total cost of employment. In other words all employer related on costs eg employer contribution to superannuation and leave loading were included within the expressed remuneration amount. For public servants in the old defined benefits superannuation schemes the employer on cost was considerably higher and continues to be much higher than the current superannuation guarantee levy of 9 percent. Remuneration levels were increased to compensate for these additional costs but also for the fact that SES officers had lost tenure.

24. To ensure their performance SES officers were required to prepare an annual performance agreement and to undertake rigorous performance reviews against those agreements. Annual remuneration increases depended on favourable performance reviews.

25. In respect of market based remuneration movements it was clear that the public service could never match the increases provided to private sector CEOs and executives. Despite this, the Government's submissions continued to provide private sector remuneration movements for consideration by the Tribunal.

26. In its 1995 review, the Tribunal questioned the validity of this comparison and sought from the Government figures to show the level of attraction from the private sector to the ranks of the SES. In its 1996 Report, the Tribunal noted the following;

"...While again advising that competitiveness with the private market continues to erode the Government has noted that only 6 percent of SES officers have been recruited from the private sector. In 1990 the figure was 5 percent. This has led the Government to conclude that; "...comparison to the private sector might once have been valid, however, the reality is that only 6% of the current SES officers were recruited from the private sector." The Government added;

"...the 1996 Government's approach to executive remuneration will be away from market related comparisons. This is a direct result of issues raised by the Tribunal in its 1995 Determination."

27. Private sector remuneration movements no longer feature as a matter for consideration by the Tribunal when determining remuneration increases for the SES.

28. The Government set the overall SES remuneration structure but provided that the Statutory and Other Offices Remuneration Tribunal determine the minimum and maximum rate for each level.

29. In summary, the SES in NSW can be characterised as follows;

- classified into eight remuneration levels
- minimum and maximum of each remuneration level determined by the Tribunal

- conditions of employment contained in the contract of employment
- remuneration packages expressed as total cost of employment
- each officer is required to enter into an individual performance agreement with the Minister (in the case of the CEO) or the CEO (in the case of an SES officer)
- provision for annual increase in remuneration based on performance assessment.

30. Given the importance of the SES to the Government and the public sector the Tribunal has undertaken a review of SES remuneration and conditions to establish whether remuneration has maintained relativities with increases both across the NSW public sector and with SES peers in the federal and other state jurisdictions.

SES NUMBERS

31. When the SES was established in 1989, there were approximately 1400 SES officers. Many if not all of these officers were former public servants whose positions had been abolished and created as SES positions.

32. In March 1995, the incoming Labor Government inherited 1434 SES positions and consistent with its pre election commitment reduced the number of SES positions by approximately a third. At the time of the Tribunal's 1996 determination there were 985 CES/SES officers. As at 30 June 2008, there were 853 SES positions. A reduction of 581 positions since 1995 and a reduction of over 800 positions since 1989.

33. In October 2008, the then Premier, the Hon Nathan Rees MP, made a commitment to further reduce SES numbers by 20 percent (171 positions). The decision to reduce the SES by 20 percent was expected to save, approximately \$120 million over 4 years which would be redirected to frontline services. The Government's target of reducing 171 positions was completed by 30 June 2009.

34. As at 1 July 2010, there were 708 SES positions. This represents a reduction in SES numbers, of nearly 60 percent of its original number. Given the size of the NSW Public Sector is approaching 300,000 employees this is a very small percentage. In 1996, the Tribunal noted,

...that the SES comprise less than 1,000 of the State's 227,000 employees ie a very small proportion."

SES Conditions of Employment

35. As noted above, the SES conditions of employment were governed by their employment contracts. Because the SES had lost tenure, compensation provisions introduced in 1989 for removal from office and early termination of the appointment provided for compensation up to a maximum of 12 months. Compensation determinations were to be made and continue to be made by this Tribunal. Those officers who had elected to take a Right of Return in their contracts were able to choose whether to accept compensation or return to the public sector albeit in a lower graded position.

36. In 1995 the Act was amended in two ways which directly impacted the conditions of employment for the SES. In its 1996 Report, the Tribunal noted

"...The Public Sector Management (Amendment) Act 1995, was proclaimed on 13 October 1995. The Amendment Act together with Government policies introduced in the last twelve months gave effect to the Government's reform agenda for the Public Sector generally and the SES in particular.

Changes that have occurred either through legislation or policy include, removal of right of return option for new SES officers to the Public Sector; the abolition of salary maintenance for existing SES officers who exercise the right of return to the public sector, as well as the reduction of SES numbers by one third."

Further in the Report it was noted that;

“...When the new Government came to office in 1995 it put in place legislation and policies to give effect to its commitment for the reform of the SES. Principal among these was the reduction of the SES by one third. The Tribunal has been advised that currently there are 985 CES/SES officers compared with 1240 in March 1995 - a reduction of over 25 percent. Other reforms include those outlined in paragraph 22 above.

The reforms have led to a situation where some of the conditions of employment for the SES have been eroded. The SES numbers have been significantly reduced which has placed a greater burden on those remaining to implement the Government’s policies as well as the general management of the business of Government.”

37. These observations led the Tribunal to recommend, and the Government to adopt, the principle of performance pay for SES officers. Performance pay was introduced by the Tribunal in 1998. In 2000 the Government removed the availability of performance pay for SES officers.

38. In addition, the Act was also amended at this time to reduce the amount of compensation that the Tribunal could determine. The Amendment reduced the amount of compensation payable to an SES officer for dismissal or non reappointment, from a maximum of 52 weeks remuneration to a maximum compensation of 38 weeks remuneration. One other reform that occurred in 1996 concerns the introduction of the Senior Officer Classification. More will be said on this below.

39. It should also be noted that since 2004, the taxation benefits from remuneration packaging were largely nullified with the Australian Government’s changes to the Fringe Benefits Tax legislation. The Government however has extended (award based) employee benefits such as parental leave and maternity leave to the SES in recognition of the need to balance work and family commitments.

Senior Officers

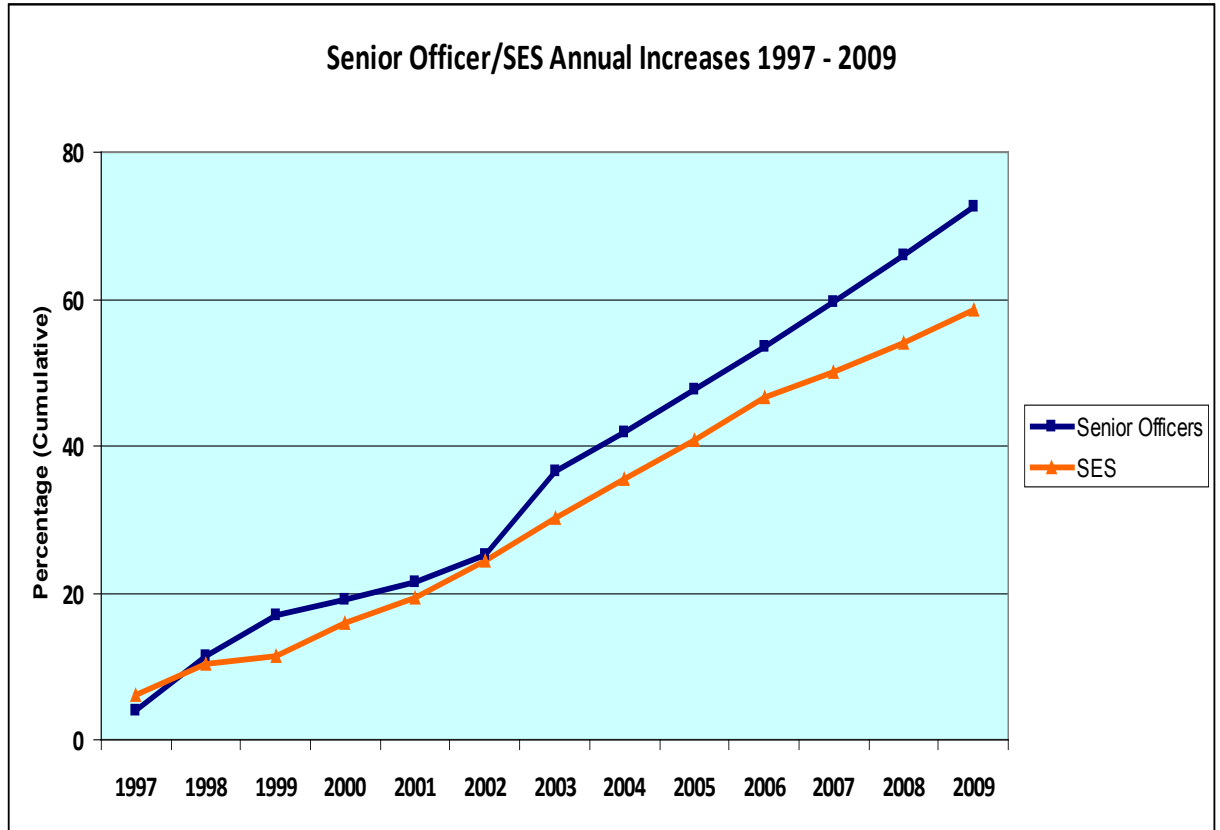
40. The Senior Officer Classification was introduced in December 1996 to provide additional capacity for agencies to recognise work value of non SES positions. The Senior Officer structure is salary based, and provides for three grades. Each grade has the equivalent work value of the lowest three levels of the SES.

41. Care must be taken in comparing remuneration since the SES remuneration is expressed as a total cost of employment whereas Senior Officers receive benefits in addition to salary, eg. employer contributions to superannuation. Other benefits enjoyed by Senior Officers include tenure, award based employment conditions including flexi time, salary sacrifice arrangements for employer and employee contributions to superannuation and motor vehicles. In addition, Senior Officers are not subject to the rigorous performance based appraisal required by the Act for SES officers. Finally Senior Officers have access to voluntary redundancy provisions providing payouts of up to 52 weeks whereas the maximum compensation available to SES officers cannot exceed 38 weeks.

42. The increase in Senior Officer positions over those for the SES are shown in the attached table. Figures provided by the Government in 1999, three years after the creation of the Senior Officer Classification and current figures clearly demonstrate this preference.

Grade	1999 SO	1999 SES	2010 SO	2010 SES
SO 1/SES 1	206	208	665	16
SO 2/SES 2	56	306	408	100
SO 3/SES 3	9	182	139	174
TOTAL	271	696	1,212	290

**Comparison of SES and SO maximum remuneration rate movements
1999 - 2009**



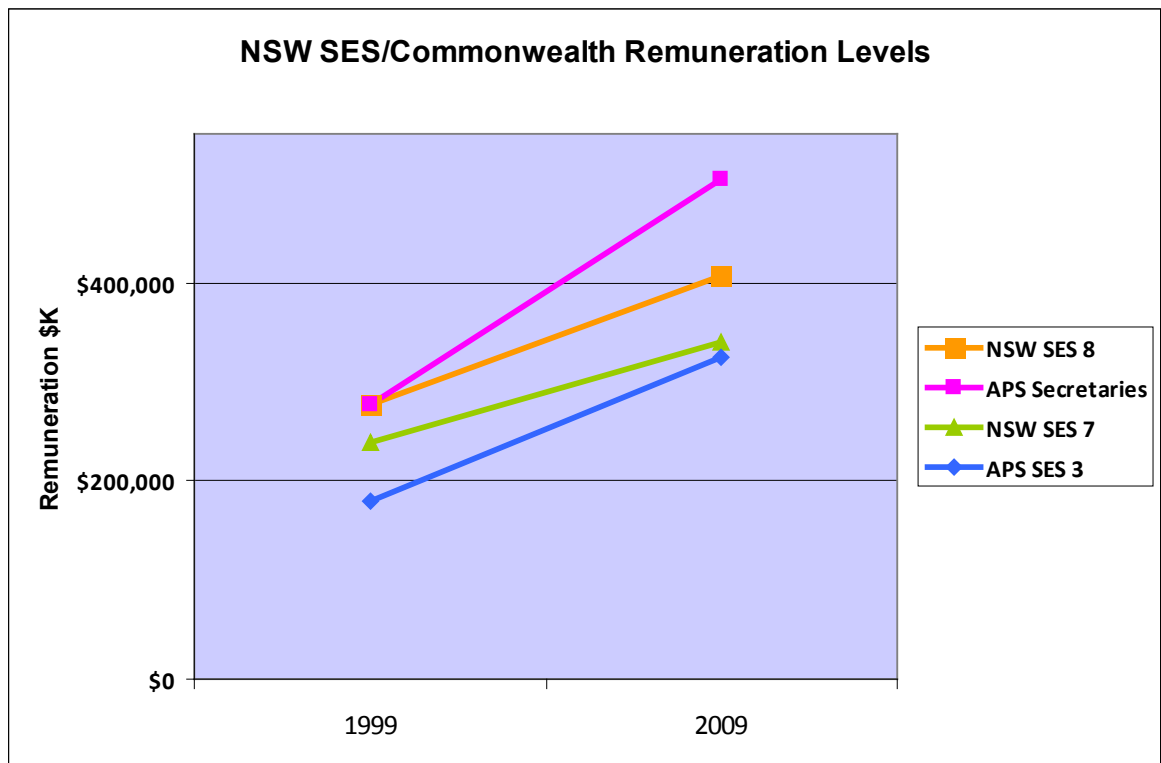
43. As the graph above shows, remuneration increases for the Senior Officers have generally been greater than those for the SES and since 2007 the difference in remuneration increases is expanding in favour of Senior Officers. The attached Table shows the increase disparity since 2007.

Year	SES	Senior Officers
2007	2.50%	4.00%
2008	2.50%	4.00%
2009	3.00%	4.00%
2010		4.00%
TOTAL	8.0%	16.0%

44. The Tribunal notes that increases for Senior Officers beyond 2.5 percent must be consistent with the Government's Wages Policy funded from efficiency dividends. The Tribunal also notes that the delivery of these efficiency dividends is the responsibility of the SES. Furthermore, while it can be argued that the NSW public service also employs a larger number of Senior Officers, it is almost exclusively to the SES that the Government relies on for the leadership, direction and drive to implement the Government's reform agenda.

45. Given that the SOs have received the additional annual pay increases arising from delivering sufficient efficiencies under the Government's Wages Policy and given that the SES have driven those efficiencies, then it stands to reason that the SES have achieved sufficient efficiencies to warrant remuneration increases beyond 2.5 per cent.

46. Nor are the movements in remuneration any more favourable when SES increases are compared with their peers in the Commonwealth.



47. The above graph shows that in the last 10 years, remuneration levels for Federal Secretaries who are the CEOs of Federal Agencies have far outstripped increases for their NSW counterparts (SES Level 8).
48. What is also informative is the narrowing of the gap between SES 7 and APS SES 3 remuneration during this time. This is considered important because most future CEOs/Secretaries of Government agencies would be expected to be drawn from this pool of officers. The Tribunal considers this situation could potentially lead to a loss of talent from the NSW public sector to the Commonwealth public sector. There is some evidence that this has already occurred. Remuneration of course is not the only determiner in making choices of whether to live and work in Sydney or Canberra but it is an important one given the increasingly mobile nature of the workforce.

Vic and QLD

49. A similar situation emerges when comparing equivalent grades in Victoria and Queensland. Cross jurisdictional analysis of executive remuneration in Victoria and Queensland compared with the equivalent NSW SES levels during the period 1999 to 2009 demonstrates that NSW SES levels have not moved at the same pace as other jurisdictions.

SUMMATION

50. This review underscores the erosion of conditions of employment and remuneration relativities that have occurred to the SES since its establishment in 1989. This situation is exacerbated when one considers that the number of SES officers has decreased by nearly 60 percent in the intervening period. What has remained consistent over this period is the *raison d'être* for the SES. The Government, in its submission to this Tribunal continues to make the point that;

“...The CES and SES are continuing to play an integral leadership role in achieving the goals of the [Government’s] reforms.”

51. Based on the above, the Tribunal cannot accept the Government’s recommendation of an increase of 2.5 percent. The Tribunal in this determination considers that an increase of 4 percent would ensure that there is no further erosion of SES remuneration *vis-à-vis* the Public Service generally and Senior Officers in particular. This increase is also lower than that provided to judicial officers and Members of Parliament in 2010.
52. This Tribunal is of the view that the SES has made and continues to achieve efficiency dividends from its leadership of the public sector and in driving the Government’s reform agenda.

Recruitment Allowance and Retention Allowance

53. The Recruitment and Retention Allowances were introduced in 1996 to address the difficulties the Government was experiencing in recruiting and retaining SES officers with specialist skills, following the abolition of the specialist market rates the previous year. The Allowances were last varied in 2008 and are reviewed annually to maintain their continued relevance for the purpose for which they were introduced.
54. The Tribunal has reviewed the levels of Recruitment and Retention Allowances and considers that no change is required at this time. The Tribunal will review the Allowance as part of the 2011 annual review, particularly in light of the Government’s comment of skill shortages in some specialist areas.

Section 4: Conclusion

55. The Tribunal after considering the views of the Assessors and having regard to key economic indicators, including award based increases determines an increase of 4 per cent for all SES officers, effective on and from 1 October 2010.

56. Payment of the increase is subject to certification of an officer's satisfactory performance by the officer's CEO or in the case of CEOs the relevant Minister.

The Statutory and Other Offices Remuneration Tribunal

(signed)

Alex Smith
Dated: 29 October 2010

DETERMINATIONS OF THE REMUNERATION PACKAGES OF THE CHIEF EXECUTIVE SERVICE AND SENIOR EXECUTIVE SERVICE EFFECTIVE ON AND FROM 1 OCTOBER 2010.

Determination No 1.

The remuneration package ranges for executive office holders shall be:

<u>CES/SES</u>	<u>Per annum range</u>		
Remuneration Level 8	\$392,351	to	\$453,250
Remuneration Level 7	\$312,851	to	\$392,350
Remuneration Level 6	\$278,351	to	\$312,850
Remuneration Level 5	\$241,251	to	\$278,350
Remuneration Level 4	\$221,301	to	\$241,250
Remuneration Level 3	\$194,851	to	\$221,300
Remuneration Level 2	\$181,651	to	\$194,850
Remuneration Level 1	\$155,100	to	\$181,650

Determination No 2 - Recruitment Allowance

To the remuneration package amounts determined above there may be added a Recruitment Allowance up to the maximum for each level as set out hereunder, subject to the approval of the Director General of the Department of Premier and Cabinet. The Allowance will apply for new SES offices and appointment renewals, where it has been established that a specific skill is necessary for recruitment purposes and the performance of the duties of the position.

Officers in receipt of a Recruitment Allowance are not eligible for payment of a Retention Allowance.

<u>CES/SES</u>		<u>Maximum Allowance</u>
Levels 7 and 8	up to	\$43,000
Levels 5 and 6	up to	\$30,000
Levels 3 and 4	up to	\$23,000
Levels 1 and 2	up to	\$19,000

DETERMINATIONS OF THE REMUNERATION PACKAGES OF THE CHIEF EXECUTIVE SERVICE AND SENIOR EXECUTIVE SERVICE EFFECTIVE ON AND FROM 1 OCTOBER 2010

Determination No 3 - Retention Allowance

SES Officers shall be eligible for a Retention Allowance up to the maximum for each level as set out hereunder. The Allowance will apply on and from the date of approval by the Director General of the Department of Premier and Cabinet and will accrue on an annual basis or part thereof and the total amount will be payable upon the completion of the term of appointment.

Officers in receipt of a Retention Allowance are not eligible for payment of a Recruitment Allowance.

<u>CES/SES</u>		<u>Maximum Allowance</u>
Levels 7 and 8	up to	\$43,000
Levels 5 and 6	up to	\$30,000
Levels 3 and 4	up to	\$23,000
Levels 1 and 2	up to	\$19,000

Determination No 4.

The Tribunal determines that the remuneration package ranges for offices identified as requiring specialist medical skills shall be:

<u>Specialist Medical Skills</u>	<u>Per Annum range</u>		
Remuneration Level 6	\$286,750	to	\$351,200
Remuneration Level 5	\$285,500	to	\$338,400
Remuneration Level 4	\$280,600	to	\$325,700
Remuneration Level 3	\$267,750	to	\$310,750
Remuneration Level 2	\$251,250	to	\$291,600
Remuneration Level 1	\$231,750	to	\$266,100

Determination No 5.

The Tribunal further determines that the remuneration package ranges for offices identified as requiring general medical skills shall be:

<u>General Medical Skills</u>	<u>Per annum range</u>		
Remuneration Level 2	\$201,750	to	\$234,100
Remuneration Level 1	\$185,450	to	\$212,850

**The Statutory and Other Offices
Remuneration Tribunal**

(signed)

Alex Smith
Dated: 29 October 2010