

**Public Service
Senior
Executives**

Annual
Determination

*Report and determination under
section 240 of the Statutory and
Other Offices Remuneration Act
1975*

**15 July
2016**

Public Service Senior Executives

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Section 1

Background

Legislative Framework

1. The *Government Sector Employment Act 2013* (the GSE Act) commenced on 24 February 2014. The GSE Act introduced a new structure and employment arrangements for senior executives. Senior executives employed under the GSE Act are referred to as Public Service Senior Executives (PSSEs).
2. Upon commencement, the GSE Act amended the *Statutory and Other Offices Remuneration Act 1975* (the SOOR Act) to provide for the Tribunal to determine annual remuneration packages for the PSSEs.
3. Under section 35 of the GSE Act the Premier (as the Minister administering the GSE Act) determines the bands in which senior executives are to be employed:

35 Minister may determine bands in which senior executives to be employed

- (1) *The Minister may from time to time determine the bands in which Public Service senior executives are to be employed (the **senior executive bands determination**).*
 - (2) *The senior executive bands determination may deal with matters related to bands.*
 - (3) *The Minister may amend or repeal the senior executive bands determination by a further determination.*
 - (4) *Before making, amending or repealing the senior executive bands determination, the Minister is to obtain the advice of the Commissioner.*
 - (5) *The senior executive bands determination (including any amendment or repeal) is to be published on the NSW legislation website and takes effect on the date it is so published or on any later specified date.*
4. The SOOR Act provides for the Tribunal to make the initial and then annual determinations in respect of the remuneration package applicable to each band.
 5. The SOOR Act provides for the annual determinations of Part 3B remuneration packages for PSSEs in the following terms:

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240 Annual determinations

The Tribunal is required to make, in each year, a determination of remuneration packages for senior executives as on and from 1 July in that year.

Government Wages Policy

6. In determining remuneration for the PSSEs the Tribunal is required pursuant to section 6AA of the SOOR Act to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission (IRC) is required to give effect to under section 146C of the *Industrial Relations Act 1996* (the IR Act) when making or varying awards or orders relating to the conditions of employment of public sector employees.
7. The current policy on wages pursuant to section 146(1)(a) of the IR Act is specified in the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014 (the IR Regulation) which was made on 24 June 2014. The effect of the IR Regulation is that public sector wages cannot increase by more than 2.5 per cent. Any increase beyond 2.5 per cent can only be awarded if sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs.

2015 Annual Determination

8. The Tribunal's 2015 annual determination for the PSSEs dated 25 June 2015 provided for a 2.5 per cent increase for each PSSE officer.
9. The increase also applied to those determinations made pursuant to section 24P which "altered" a band remuneration package, other than those determinations where the Tribunal determined that the general increase taking effect from 1 July 2015 would not apply.

Section 2

Special Determinations

10. The Tribunal has made one special determination since the making of the 2015 annual determination. On 30 March 2016, the Tribunal determined pursuant to section 24P of the SOOR Act to alter the range of remuneration packages for Band 4 PSSEs to provide Mr Michael Coutts-Trotter in the role of Secretary, Department of Family and Community Services with a remuneration package of \$528,372 per annum plus a discretionary remuneration range of up to 12 per cent in addition to the base amount.
11. Special determinations are published on the [NSW Remuneration Tribunals](#) website.

Section 3

Government Submission

12. The Secretary NSW Treasury provided the Government submission to the Tribunal on 11 July 2016. The Government submission provides an overview of the State's recent economic performance and makes a recommendation in respect of the quantum of the increase to apply to the SES. Extracts appear below.

Employee expenses

- *The combination of government initiatives, spanning 2011 to the present, including the NSW Public Sector Wages Policy, the Labour Expense Cap, and the revised Managing Excess Employees Policy, have driven employee expenses growth to historic lows.*
- *Average growth in employee expenses for the eight years before 2011-12 was 6.3 per cent while the eight years from 2011-12 growth is expected to be 4.2 per cent, a fall of 2.1 per cent driven by the current Government's initiatives. This has allowed the Government to maintain*

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sustainable expense growth whilst providing funding for increases in front line staff.

- *Employee-related expenses are estimated to increase by 3.9 per cent over the budget and forward estimates. This is primarily driven by an increase in frontline employee numbers for the delivery of key services in education, health and other community services.”*

Economic analysis and the State’s budget

- *Economic growth in New South Wales is expected to continue at an above-trend pace over the next two years, despite downward revisions to the outlook for both the global and national economies since the 2015-16 Half-Yearly Review (HYR). Gross State Product (GSP) growth is forecast to pick up to 3 percent in 2016-17, unchanged from the HYR forecast. In 2017-18, GSP growth is forecast to moderate to 2¼ per cent. The projections for 2018-19 and 2019-20 are for trend growth. The estimate of trend GSP growth has been revised down to 2½ per cent from 2¾ per cent a year.*
- *The 2016-17 Budget was delivered in accordance with the Government’s economic and fiscal strategy that continues to support the maintenance of the State’s triple-A credit rating, and ensures that State finances and services are sustainable over the long term.*
- *The 2016-17 Budget projects a solid fiscal outlook for New South Wales, with surpluses estimated in 2015-16 and across the forward estimates. The 2015-16 budget result is forecast to be a surplus of \$3,409 million. A surplus of \$3,713 million is expected for 2016-17, and surpluses of \$1,326 million, \$1,382 million and \$1,613 million are expected for 2017-18, 2018-19 and 2019-20, respectively.*
- *Keeping expense growth below long run average revenue growth is key to strengthening the fiscal position. The Government is committed to keeping annual expense growth below long term average revenue*

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growth of 5.6 per cent, consistent with the requirements of the Fiscal Responsibility Act 2012.

Government's submitted increase

13. The Government submits that the Tribunal should approve an increase of 2.5 per cent from 1 July 2016, on the basis that it is consistent with the NSW Wages Policy and reflects the NSW Government's intent, pursuant to section 6AA of the SOOR Act and the IR Regulation.

Premier's directions

14. On 1 June 2016 and 14 June 2016, the Tribunal received correspondence from the Premier, the Hon Mike Baird MP, requesting that in the making of the 2016 annual determination of remuneration packages for PSSEs, the Tribunal determine a different remuneration package for Ms Elizabeth Koff in the role of Secretary, Ministry of Health (MoH) and Mr Mark Scott in the role of Secretary, Department of Education (DoE).

Section 4

2016 Annual Determination

Secretary Remuneration

15. The Tribunal notes that it is the Premier's preference that Departmental Secretaries in NSW receive a competitive remuneration package with a discretionary performance based component. This model provides flexibility for remuneration movement over time if the persons appointed to these roles exceed performance expectations, as assessed by the Premier.
16. Secretaries are employed in Band 4 to which a remuneration range applies. The Tribunal notes that a number of Secretaries are receiving remuneration above the maximum of the range for that Band, which has been facilitated by the making of

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determinations which alter the Band for those senior executives specified in such determinations. If this trend is to continue it may be appropriate to review the range of remuneration available within Band 4.

17. The Premier has requested that the Secretary, MoH and Secretary, DoE receive remuneration commensurate with that provided to other Secretary roles, being a package which exceeds the maximum of PSSE Band 4.
18. In determining the appropriate remuneration for the two Secretary roles the Tribunal, at the request of the Premier, has had regard to their roles and responsibilities and the remuneration provided to similar roles in NSW and other jurisdictions.

Secretary, Ministry of Health (MoH)

19. The Ministry of Health is the system manager for the largest healthcare system in Australia comprising statutory organisations including 17 Local Health Districts and Specialty Networks, the Ambulance Service of NSW and significant shared service businesses (collectively known as NSW Health). The Ministry also undertakes a significant role as regulator including of private hospitals, the supply and administration of drugs and other therapeutic substances, smoking and tobacco related activities and other activities carrying significant risks to public health.
20. The Secretary, MoH provides strategic leadership, direction and regulation of NSW Health with primary powers and responsibilities under the *Health Administration Act 1982* and *Health Services Act 1997* (the HS Act) to fulfil the Ministry's key functions of public health system manager, regulation and public health protection. This role provides expert and independent advice to the Premier and portfolio Ministers on strategies and policies to further the objectives of the Government for delivery of the comprehensive, balanced and coordinated health services to promote, protect, develop, maintain and improve the health and wellbeing of the people of New South Wales.

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21. The Tribunal is of the view that the remuneration package for Ms Koff in the role of Secretary, MoH will be \$541,600 per annum. In addition to this base amount a discretionary remuneration range of up to 12 per cent will apply.
22. Consistent with the Premier's request, and in accordance with section 24R of the SOOR Act, this determination is personal to Ms Koff and is not a determination that applies to the office of Secretary, MoH or to future appointments to the role.

Secretary, Department of Education (DoE)

23. The Department of Education serves the community by leading the provision of world-class education and protects young children by regulating preschool and long day care providers. The Department is one of the largest organisations and employers in Australia, and manages an annual budget that accounts for approximately one quarter of the State's total budget.
24. The Secretary, DoE provides strategic leadership to the Department and executive agencies, related to the Department, drives Departmental performance and provides expert and independent advice to the portfolio Ministers, to ensure effective delivery of the government's policy objectives in relation to education and Aboriginal affairs within NSW.
25. The Tribunal is of the view that the remuneration package for Mr Scott in the role of Secretary, DoE will be \$560,000 per annum. In addition to this base amount a discretionary remuneration range of up to 12 per cent will apply.
26. Consistent with the Premier's request, and in accordance with section 24R of the SOOR Act, this determination is personal to Mr Scott and is not a determination that applies to the office of Secretary, DoE or to future appointments to the role.

Amendments to the SOOR Act

27. On 1 July 2016 the *Government Sector Employment Legislation Amendment Act 2016* (the GSELA Act) amended Part 3B of the SOOR Act to provide the Tribunal with greater flexibility to determine different remuneration arrangements for PSSEs. The

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amended provisions will extend the determinations to Health, Police and Transport executives once the relevant amendments in Schedules 2 - 4 of the GSELA Act commence.

Section 24R of the SOOR Act

28. With effect from 1 July 2016 Part 3B, section 24R of the SOOR Act has been amended to ensure the Tribunal has the flexibility to determine appropriate remuneration arrangements in different circumstances.
29. Under the current arrangements the Tribunal can only provide a different (or specific) remuneration package to a particular executive 'named' in the determination, which has limited the capacity of the Tribunal with respect to PSSEs. In some cases, it is appropriate, due to competitive market pressures, for an office or a role in a particular band or a particular person assigned to a role to have a remuneration package that is above the general remuneration range for the band. The SOOR Act has been amended to provide for these changes in the following terms:

24R General provisions relating to determinations

- (1) *In making a determination, the Tribunal:*
- (a) *is to fix, as the remuneration package, any amount that is within a specified range of amounts, and*
 - (b) *is to fix a single remuneration package for all senior executives employed in a specified band, and*
 - (c) *may provide that a different remuneration package applies in the case of particular senior executives named in the determination (but only if the Minister has requested the Tribunal to do so), and*
 - (d) *may increase, reduce or not change any remuneration package.*
- (2) *A remuneration package determined by the Tribunal may not be less than the remuneration package which the Tribunal considers appropriate for a clerk (grade 12) in the Public Service with general administrative duties.*

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- (3) Despite subsection (1), the Tribunal may, in making a determination, fix a remuneration package:*
- (a) for a particular senior executive named in the determination, or*
 - (b) for a particular role, office or position specified in the determination, or*
 - (c) for a particular class of senior executives specified in the determination,*
- that is higher than the remuneration range otherwise determined by the Tribunal for the band in which a senior executive to whom the determination relates is or is to be employed (but only if the Minister has directed the Tribunal to do so).*
- (4) For the purposes of the government sector senior executive employment legislation, any such higher remuneration package is taken to be within the remuneration range for the band in which the senior executive concerned is employed.*
- (5) The Tribunal may make a determination that applies in relation to a particular role, office or position even though no person is assigned to the role, or holds the office or position, for the time being.*

Alignment of executive employment

30. Amendments to the HS Act, *Police Act 1990* and *Transport Administration Act 1988* will commence on 1 January 2017 (unless a different commencement date is proclaimed before then) to align the employment arrangements for executives. Except as otherwise provided in the amended provisions, senior executives in the Public Service, NSW Health Service, Transport Service and NSW Police Force will be employed in one of the four Bands and will receive a remuneration package within the range applicable for the band.
31. Where market or other factors require, mechanisms will exist for executives to receive higher remuneration. In such cases, the Tribunal may make a determination fixing remuneration above the range for the relevant Band where directed to do so by the Premier. Alternatively, the Police Commissioner and Health and Transport

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Secretaries will be able to determine a higher remuneration package for a senior executive or class of senior executives, provided this is in accordance with parameters agreed with the Public Service Commissioner.

General Increase

32. The Tribunal, after considering the views of the Assessors and having regard to the provisions of section 6AA of the SOOR Act, determines an increase of 2.5 per cent for the remuneration package ranges for PSSEs bands, effective on and from 1 July 2016. The new rates are as set out in Determination No. 1.
33. The 2.5 per cent increase also applies to those determinations made pursuant to section 24P which “altered” a band remuneration package.

The Statutory and Other Offices Remuneration Tribunal

(Signed)

Richard Grellman AM

Dated: 15 July 2016

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Section 5

Determination No.1-Remuneration Package Ranges for the PSSEs

The Tribunal determines that the remuneration package ranges for Public Sector Senior Executive Bands effective on and from 1 July 2016 shall be:

| Band | Per annum range | | |
|-----------------------------------|-----------------|----|-----------|
| Band 4 - Secretary level | \$452,251 | to | \$522,500 |
| Band 3 - Deputy Secretary level | \$320,901 | to | \$452,250 |
| Band 2 - Executive Director level | \$255,051 | to | \$320,900 |
| Band 1 - Director level | \$178,850 | to | \$255,050 |

| Band | Different remuneration packages that apply to the particular senior executives named |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Band 4 - Secretary level | Mr Blair Comley, Secretary, Department of Premier and Cabinet: \$598,800 per annum plus a discretionary remuneration range of up to 12 per cent in addition to the base remuneration. |
| | Mr Robert Whitfield, Secretary of the NSW Treasury: \$563,750 per annum plus a discretionary remuneration range of up to 12 per cent in addition to the base remuneration. |
| | Mr Mark Scott, Secretary, Department of Education: \$560,000 per annum plus a discretionary remuneration range of up to 12 per cent in addition to the base remuneration. |
| | Mr Michael Coutts-Trotter, Secretary, Department of Family and Community Services: \$541,600 per annum plus a discretionary remuneration range of up to 12 per cent in addition to the base remuneration. |
| | Ms Elizabeth Koff, Secretary, Ministry of Health: \$541,600 per annum plus a discretionary remuneration range of up to 12 per cent in addition to the base remuneration. |
| | Mr Martin Hoffman, Secretary, Department of Finance, Services and Innovation: \$507,350 per annum plus a discretionary remuneration range of up to 12 per cent in addition to the base remuneration. |
| | Mr Tim Reardon, Secretary, Transport for NSW: \$507,350 per annum plus a discretionary remuneration range of up to 12 per cent in addition to the base remuneration. |
| | Mr Simon Smith, Secretary, Department of Industry, Skills and Regional Development: \$507,350 per annum plus a discretionary remuneration range of up to 12 per cent in addition to the base remuneration. |
| Band 3 - Deputy Secretary level | Mr Craig van der Laan, Chief Executive Officer, Barangaroo Delivery Authority: \$579,150 per annum plus a discretionary remuneration range of 12 per cent in addition to the base remuneration. |

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| Band | Different remuneration packages that apply to the particular senior executives named |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------|
| Band 2 - Executive Director level | Ms Denise Dawson, Chief Financial Officer, Department of Family and Community Services: \$357,200 per annum. |
| | Mr Stephen Loquet, Chief Information Officer, Department of Education- \$351,800 per annum. |

The Statutory and Other Offices Remuneration Tribunal

(Signed)

Richard Grellman AM

Dated: 15 July 2016