

REPORT

And

DETERMINATION

Under

SECTION 24C

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

CHIEF EXECUTIVE AND SENIOR EXECUTIVE SERVICES

12 October 2011

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## CHIEF EXECUTIVE SERVICE AND SENIOR EXECUTIVE SERVICE <sup>1</sup>

1. Mr Alex Smith AO resigned as the Statutory and Other Offices Remuneration Tribunal effective from 30 June 2011. The Governor, pursuant to section 6(2) of the Statutory and Other Offices Remuneration Act 1975 (the Act), appointed Ms Helen Wright as the new Tribunal for a term of three years from 12 July 2011.
2. The 2011 annual review has been conducted against the background of a significant legislative change which impacts on the Tribunal's ability to determine remuneration increases for office holders. This matter will be discussed in detail below.

### **Section 1: Background**

3. 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.
4. 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.

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

## **The 2010 Review**

5. The Tribunal's 2010 annual determination dated 29 October 2010 provided for a 4 per cent increase for each SES officer, subject to satisfactory performance.
  
6. As part of this review the Tribunal looked at the history of the SES since its creation in 1989. The Tribunal also looked at the conditions of SES employment since that time and compared remuneration increases with similar classifications in other jurisdictions and with Senior Officers.
  
7. The Tribunal concluded that there had been erosion in the conditions of employment and remuneration relativities for the SES since its creation in 1989. In addition, the Tribunal concluded that this erosion was worsened because of the reduction in SES numbers over this time (nearly 60 per cent). Also, the Tribunal was 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.
  
8. On that basis the Tribunal could not accept the Government's recommendation of an increase of 2.5 per cent. The Tribunal determined that an increase of 4 per cent would ensure that there would be no further erosion of SES remuneration vis-à-vis the Public Service generally and Senior Officers in particular.

## Section 2: Submissions

### Government submission

9. The Government's Submission recommends that the Tribunal approve an increase of 2.5 per cent for the SES. This recommendation is consistent with NSW Wages Policy and reflects the NSW Government's intent, pursuant to section 6AA of the SOOR Act and the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011*.
10. As in previous years the Government submission continues to argue for the need for wage restraint. While the Australian and NSW economies continue to weather the economic downturn better than many of their global counterparts, particularly the United States and the majority of the European countries, there is a need to achieve the expenditure commitments and key savings initiatives required to deliver the Government's priorities, particularly in the area of infrastructure.
11. For the 2011-12 year, Treasury is forecasting a revised budget surplus of \$204m. The budget result is lower than previously expected and reflects that expense growth has continued to exceed revenue growth. The forward estimates have also been revised to reflect a move away from the predicted modest budget surplus to a large and growing budget deficit from 2012-13. Treasury has advised that the Government is committed to the objective of maintaining fiscal results that are fiscally sustainable in the medium and long term. A key part of the strategy of the Government in securing medium and long-run fiscal sustainability is to control expenses growth. The Wages Policy is an example of such restraint.

12. The submission also makes the following comment about the challenges facing the SES over the coming year:

*“The task at hand for Chief and Senior Executive Services Officers in the NSW public sector over the upcoming year is leading the integration of department’s business services and operations; and engaging with and delivering citizen-centric services, while at the same time delivering the major reforms contained in NSW 2021... All this needs to be achieved in a tight budgetary environment.”*

13. The Government submission recommends that there be no change to the structure or quantum of recruitment and/or retention allowances. Noting that:

*“the fiscal conditions that were in place at the time these Allowances were introduced and subsequently reviewed no longer apply.”*

14. The Government submission has also responded to the Tribunal’s concerns in relation to salary compression between the SES and Senior Officers. The submission advises that a review of these matters, in particular the structure of the CES/SES and the Police SES, will be a priority for the NSW Public Service Commission.

### **Section 3                      2011 Tribunal Review**

#### **Amendments to the Statutory and Other Offices Remuneration Act 1975.**

15. On 27 June 2011, the Parliament passed amendments to the SOOR Act to apply the same government public sector wages cap that binds the Industrial Relations Commission to the determination of the remuneration for Ministers and other members of Parliament, local councillors, statutory officers, public sector executives and hospital visiting medical officers.

16. For the SOOR Act the amendments provide for the addition of a new section, Section 6AA.

***“6AA Tribunal to give effect to declared government policy on remuneration for public sector staff***

(1) *This section applies to the following determinations of the Tribunal:*

- (a) *the determination under Part 3 of any alteration in the remuneration to be paid to office holders,*
- (b) *the determination under Part 3A of any alteration in the remuneration packages for executive office holders.*

*This section does not apply to determinations relating to judicial officers (within the meaning of the Judicial Officers Act 1986) or to determinations relating to any office while held by a specified person.*

(2) *In making a determination to which this section applies, the Tribunal is to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to under section 146C of the Industrial Relations Act 1996 when making or varying awards or orders relating to the conditions of employment of public sector employees.”*

17. Section 146C of the IR Act provides

***“...146C Commission to give effect to certain aspects of government policy on public sector employment***

(1) *The Commission must, when making or varying any award or order, give effect to any policy on conditions of employment of public sector employees:*

- (a) *that is declared by the regulations to be an aspect of government policy that is required to be given effect to by the Commission, and*
- (b) *that applies to the matter to which the award or order relates.*

(2) *Any such regulation may declare a policy by setting out the policy in the regulation or by adopting a policy set out in a relevant document referred to in the regulation.”*

18. The current policy on wages pursuant to section 146C (1)(a) of the IR Act is articulated in the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011. Clause 6 of the Regulation provides;

“...Other policies

(1) *The following policies are also declared, but are subject to compliance with the declared paramount policies:*

- (a) *Public sector employees may be awarded increases in remuneration or other conditions of employment that do not increase employee-related costs by more than 2.5% per annum.*
- (b) *Increases in remuneration or other conditions of employment that increase employee-related costs by more than 2.5% per annum can be awarded, but only if sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs. For this purpose:*
  - (i) *whether relevant savings have been achieved is to be determined by agreement of the relevant parties or, in the absence of agreement, by the Commission, and*
  - (ii) *increases may be awarded before the relevant savings have been achieved, but are not payable until they are achieved, and*
  - (iii) *the full savings are not required to be awarded as increases in remuneration or other conditions of employment.*
- (c) *For the purposes of achieving employee-related cost savings, existing conditions of employment of the kind but in excess of the guaranteed minimum conditions of employment may only be reduced with the agreement of the relevant parties in the proceedings.”*

19. Accordingly the Tribunal, when making a determination, must now apply the same public sector wages cap that binds the Industrial Relations Commission when making decisions relating to public sector wages. The effect of the Regulation is that public sector wages cannot increase by more than 2.5 per cent. Any increases beyond 2.5 per cent per annum can be awarded by the Industrial Relations Commission but subject to the requirement that:

*“...sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs.”*

20. This intent was confirmed by the Hon. Greg Pearce (Minister for Finance and Services, and Minister for the Illawarra) in the Minister’s Second reading Speech: Legislative Council, *Parliamentary Debates* (Hansard), 22 June 2011 at p. 3101 on the amendments to the Act where he stated;

*“This bill will extend the Government's public sector wages policy to elected officials, State parliamentarians and local mayors and councillors, senior executives in the public service and statutory office holders. The Government's public sector wages policy is about delivering fair wage increases to hardworking public servants. It is also about ensuring that the State budget can be brought under control. This legislation means that we can get on with the business of delivering the infrastructure and services which this State needs and which its people deserve. Last week this Parliament passed the Industrial Relations Amendment (Public Sector Conditions of Employment) Bill 2011. That legislation requires the Industrial Relations Commission to give effect to the Government's wages policy when making decisions relating to public sector salaries. The reasons that bill was necessary are the very same reasons that it is now appropriate to extend the policy to other office holders who are paid from the public purse. If the policy is good enough for public servants it is certainly also good enough for senior executives and for elected officials. That is why, for the first time, the Government's wages policy will be formally extended to apply to elected officials and senior bureaucrats.*

*... Finally, schedule 3 to the bill extends the policy to determinations of executive remuneration made by the Statutory and Other Offices Remuneration Tribunal, SOORT. This means that the Government's wages policy will apply to the Chief Executive Service, the Senior Executive Service and statutory office holders whose remuneration is determined by the Statutory and Other Offices Remuneration Tribunal Act. The Statutory and Other Offices Remuneration Tribunal will be required to apply the policy when determining the salary bands for each Senior Executive Service [SES] level. As with other public servants, any increase above 2.5 per cent will be payable only where productivity savings have been achieved. To pass on any increase the tribunal will need to be satisfied that these savings have been achieved and are attributable, at least in part, to the category of officers concerned. Of course, this does not mean that any individual Senior Executive Service officer will automatically receive the tribunal determined increase. Individual officers will continue to be paid having regard to their*

*individual performance. High-performing Senior Executive Service officers may receive increases beyond 2.5 per cent provided that any increase is within the Statutory and Other Offices Remuneration Tribunal approved band. Poorly performing Senior Executive Service officers may receive less than 2.5 per cent or no increase at all.”*

21. The intent of Parliament is clear. The 2.5 per cent pay increase cap is to apply to the Chief and Senior Executive Service. The effect of the amendments to the Act is to remove the Tribunal’s discretion to determine any increase beyond 2.5 per cent unless there are sufficient employee related cost savings to meet the additional employee related costs.
22. The legislation came into effect in July 2011. The Tribunal understands that the validity of the legislation is currently before the Industrial Relations Commission and that the Commission has held hearings and has reserved its decision. Further, if the legislation remains in place it will fall on the Tribunal to ascertain whether sufficient employee-related cost savings increases have been achieved. The Tribunal will need to develop a robust methodology to make such assessments.
23. Unlike other public sector employees, the SES is not an employee group which can achieve collective employee related savings. In previous years when the Tribunal has awarded increases in excess of the wage policy of 2.5 per cent these increases have been awarded on the basis that it is the SES, as leaders in the sector, who are responsible for driving savings outcomes.
24. The Tribunal will seek advice and assistance from the Government in developing a methodology to assist in the assessment of employee-related cost savings that will be sufficiently robust for the Tribunal to be satisfied as to the quantum of employee-related cost savings that have been achieved, and which may justify an increase beyond 2.5 per cent where appropriate, and also how widely or narrowly the cost savings should be attributed within any given group.

## **Recruitment Allowance and Retention Allowance**

25. There will be no increase in the minimum and maximum rates of the Recruitment Allowance and the Retention Allowance. The conditions governing the provision of these allowances have been amended however to reflect the expected change in the approval authority. Under the current arrangements the Director General of the Department of Premier and Cabinet is responsible for approving the provision of Recruitment Allowances and Retention Allowances. It is anticipated that the responsibility for executive services and administering SES policy will be transferred to the Public Service Commission. Until that occurs it is appropriate for the Director General of the Department of Premier and Cabinet to continue to be the approval authority. The approval authority would then transfer to the Public Service Commission following the commencement of the Commission.

### **Section 4: Conclusion**

20. The Tribunal after considering the views of the Assessors and having regard to provisions of section 6AA of the Act, determines an increase of 2.5 per cent for all SES officers, effective on and from 1 October 2011.

21. 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)

**Helen Wright**

Dated: 12 October 2011

**DETERMINATIONS OF THE REMUNERATION PACKAGES OF THE CHIEF EXECUTIVE SERVICE AND SENIOR EXECUTIVE SERVICE EFFECTIVE ON AND FROM 1 OCTOBER 2011.**

**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	\$402,151	to	\$464,600
Remuneration Level 7	\$320,651	to	\$402,150
Remuneration Level 6	\$285,301	to	\$320,650
Remuneration Level 5	\$247,301	to	\$285,300
Remuneration Level 4	\$226,851	to	\$247,300
Remuneration Level 3	\$199,701	to	\$226,850
Remuneration Level 2	\$186,201	to	\$199,700
Remuneration Level 1	\$159,000	to	\$186,200

**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. When the responsibility SES policy transfers to the Public Service Commission the Public Service Commissioner will be the appropriate approval authority. 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 2011**

**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. When the responsibility SES policy transfers to the Public Service Commission the Public Service Commissioner will be the appropriate approval authority.

**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	\$293,900	to	\$360,000
Remuneration Level 5	\$292,650	to	\$346,850
Remuneration Level 4	\$287,600	to	\$333,850
Remuneration Level 3	\$274,450	to	\$318,500
Remuneration Level 2	\$257,550	to	\$298,900
Remuneration Level 1	\$237,550	to	\$272,750

**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	\$206,800	to	\$239,950
Remuneration Level 1	\$190,100	to	\$218,150

**The Statutory and Other Offices  
Remuneration Tribunal**

(signed)

Helen Wright  
Dated: 12 October 2011