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OFFICIAL NOTICES

REPORT

and

DETERMINATION

under

SECTION 24N

of the

STATUTORY AND OTHER OFFICES REMUNERATION ACT 1975

Initial Determination of Remuneration Packages for
Public Service senior executives employed under the
Government Sector Employment Act 2013

3 February 2014

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NSW PUBLIC SERVICE SENIOR EXECUTIVES

SECTION 1

Introduction

1. The Government Sector Employment Act 2013 (the GSE Act) will commence operation on 24 February 2014. The GSE Act introduces a new structure and employment arrangements for all NSW Public Service senior executives (PSSEs).
2. Under section 35 of the GSE Act the Premier, the Hon Barry O'Farrell MP, (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.*

3. Upon commencement, the GSE Act will amend the Statutory and Other Offices Remuneration Act 1975 (SOOR Act) to provide for the Tribunal to make the initial and annual determinations in respect of the remuneration package applicable to each band.
4. Under the new Part 3B of the SOOR Act, section 24N (Initial Determinations) requires the Tribunal to make an initial determination of the remuneration package in respect of a prospective band in which PSSEs may be employed under the GSE Act, which band has been notified to the Tribunal by the Premier:

24N Initial determinations

- (1) *The Tribunal is required to make, as soon as practicable after the commencement of this Part, a determination of the remuneration package for each band in which senior executives may be employed under the Government Sector Employment Act 2013.*
- (2) *The Tribunal may make a determination under this section in respect of a prospective band in which senior executives may be employed that is notified to the Tribunal by the Minister.*

5. Part 3B of the SOOR Act will also provide for the Tribunal to make an annual determination:

24O 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.

6. The SOOR Act, as amended, outlines those matters to be taken into consideration by the Tribunal in making its determinations. Section 24Q provides that the Premier may notify the Tribunal of matters which the Tribunal should take into consideration when making determinations of the remuneration packages for senior executives and the Tribunal must take into consideration any such matters.

24Q Matters to be taken into consideration by Tribunal

- (1) *The Minister or the Commissioner may notify the Tribunal of matters which the Tribunal should take into consideration when making determinations of the remuneration packages for senior executives.*
- (2) *In making a determination, the Tribunal must take into consideration any such matters and such other matters as the Tribunal thinks fit.*

7. The Premier has written to the Tribunal advising that a draft determination, pursuant to section 35 of the GSE Act, has now been made. The Premier has requested that the Tribunal make an initial determination pursuant to section 24N of the SOOR Act, as amended by the GSE Act.

8. The Tribunal is advised that section 26 of the Interpretation Act 1987 enables the Premier to determine the senior executive bands and the Tribunal to determine the remuneration for each band before the GSE Act and its amendments to the SOOR Act commence:

26 Exercise of certain powers between enactment and commencement of Acts and making and commencement of instruments

- (1) *If an Act (in this section referred to as the Act concerned) that does not commence on its enactment would, had it commenced:*
 - (a) *confer a power, or*
 - (b) *amend some other Act in such a manner that the other Act, as amended, would confer a power, that must or may be exercised by the making of an instrument of a legislative or administrative character, then:*
 - (c) *such an instrument may be made, and*

- (d) any thing may be done for the purpose of enabling such an instrument to be made or of bringing such an instrument into effect,
before the Act concerned commences, as if the Act concerned had commenced.
- (2) A provision of an instrument made by virtue of subsection (1) shall take effect:
- (a) on the day on which the Act concerned commences, or
(b) on the day on which the provision would have taken effect had the Act concerned commenced when the instrument was made,
whichever is the later.
9. On that basis, the Premier's band determination, the amendments to the SOOR Act and the Tribunal's initial remuneration determination will take effect following commencement of the GSE Act, being 24 February 2014, and the initial determination will be effective for the period 24 February to 30 June 2014.

SECTION 2

Government Submission

10. The Government submission provides background and context for the initial determination:
- "The GSE Act creates a single executive structure across the Public Service, with common employment arrangements. It replaces the existing Chief Executive Service, eight-level Senior Executive Service, and award-based Senior Officer structure and equivalents, with the Public Service senior executive...
Transition to the new arrangements is expected to take place over three years from the commencement of the Act... The transitional provisions allow for existing employees to be no worse off financially at the point of transition if placed in a role of equivalent value to the one they occupied under the PSEM Act arrangements. The practicality and ease of the transition will be greatly assisted if remuneration rates remain the same, at least initially, for work of comparable value...
The Public Service Commission is presently undertaking a review of remuneration across the NSW public sector. This review has arisen following a recommendation from the 2012 NSW Commission of Audit.... Preliminary information suggests some disparity between roles of equivalent work value, militating against important GSE Act principles such as equity and mobility. The Review's outcomes will be presented to the Government for its consideration prior to the NSW Government submission to the Tribunal for the year 2014-15.
Given the complexity of transition to new structural arrangements and the issues to be addressed by the Public Service Commission's Remuneration Review, it is the Government's position that initial remuneration rates for executive roles under the GSE Act for the remainder of the year 2013-14 should be the same as recently determined by the Tribunal for executive positions under the PSEM Act for the year 2013-14."*
11. The Draft Government Sector Employment (Senior Executive Bands) Determination 2014, made under section 35 of the GSE Act, determines the remuneration bands in which Public Service senior executives are to be employed:
- 3 Public Service senior executive bands**
- For the purposes of the Government Sector Employment Act 2013, the Public Service senior executive bands are as follows:*
- BAND 4 – Secretary level*
BAND 3 – Deputy Secretary level
BAND 2 – Executive Director level
BAND 1 – Director level
12. The Government has recommended initial remuneration ranges for Bands 1 to 4 of the draft determination equivalent to those of Senior Executive Service (SES) levels 1 to 8, having regard to the work value ranges:

Public Service Senior Executive (GSE Act)			Senior Executive Service (PSEM Act)		
Bands	Work value	Remuneration	Bands	Work value	Remuneration
Band 4	2550-3550	\$422,501 – \$488,100	SES 8	2550-3550	\$422,501 – \$488,100
Band 3	1475-2549	\$299,751 – \$422,500	SES 7	2000-2549	\$336,851 – \$422,500
			SES 6	1475-1999	\$299,751 – \$336,850
Band 2	990-1474	\$238,301 – \$299,750	SES 5	1165-1474	\$259,851 – \$299,750
			SES 4	990-1164	\$238,301 – \$259,850
Band 1	670-989	\$167,100 – \$238,300	SES 3	850-989	\$209,801 – \$238,300
			SES 2	750-849	\$195,601 – \$209,800
			SES 1	670-749	\$167,100 – \$195,600

13. A determination by the Tribunal, as recommended by the Government submission, will maintain the status quo.
14. The Government submission has also advised that the existing recruitment and retention allowances should not form part of the initial determination for PSSEs employed under the GSE Act. The new executive arrangements will provide for a different approach to market-based recruitment allowances.

SECTION 3

Initial Determination

15. The Tribunal, having regard to the prospective bands in which senior executives may be employed that have been notified to the Tribunal, the Government submission, and after considering the views of the Assessors, has determined that the remuneration ranges for the Public Service senior executive bands will be equivalent, based on corresponding work value ranges, to those determined for the SES Levels 1 to 8 in the Tribunal's determination of 27 September 2013.
16. The Tribunal's initial determination of remuneration packages for Public Sector senior executives employed under the GSE Act, pursuant to section 24N of the SOOR Act, is as set out in Determination No 1.
17. Part 3B, section 24V (1) (a) of the SOOR Act (Operation of determinations) provides that the initial determination of the Tribunal comes into force when it is made. However section 26 of the Interpretation Act 1987 operates to empower the Tribunal to make the initial determination prior to commencement of the GSE Act, and prevents the determination having effect prior to the commencement of the GSE Act. On that basis the initial determination will take effect from 24 February 2014 and will operate up to 30 June 2014.
18. The Tribunal will make an annual determination in respect of the remuneration packages that apply to the new bands, to take effect from 1 July 2014. Clause 7 of Schedule 6 of the GSE Act, upon commencement, will amend section 13 of the SOOR Act to change the commencement date of the Tribunal's annual determinations from 1 October to 1 July. Section 17 of the SOOR Act will also be amended to allow the Tribunal to commence its inquiries on 1 January instead of 1 April.
19. The Tribunal will also continue, during the Senior Executive transition period (referred to as the Senior Executive Implementation period), to make an annual determination under Part 3A of the SOOR Act for transitioned SES officers to whom the former senior executive provisions continue to apply.

Dated: 3 February 2014.

HELEN WRIGHT,
The Statutory and Other Offices Remuneration Tribunal

DETERMINATION OF THE REMUNERATION PACKAGES OF THE PUBLIC SECTOR SENIOR EXECUTIVES ON AND FROM 24 FEBRUARY 2014

Determination No. 1 – Initial Determination (pursuant to section 24N of the Statutory and Other Offices Remuneration Act 1975).

With effect from 24 February 2014 the remuneration package ranges for Public Service senior executives shall be:

<i>Band</i>	<i>Per annum range</i>		
Band 4 – Secretary level	\$422,501	to	\$488,100
Band 3 – Deputy Secretary level	\$299,751	to	\$422,500
Band 2 – Executive Director level	\$238,301	to	\$299,750
Band 1 – Director level	\$167,100	to	\$238,300

Dated: 3 February 2014.

HELEN WRIGHT,
The Statutory and Other Offices Remuneration Tribunal

By Authority

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