

## **Part 2: SES Research Report**

---

**(prepared by the University of Technology)**

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## **1. Summary Of The Research**

### **1.1 Introduction**

This Performance Audit Report, prepared by the University of Technology, Sydney (UTS) on behalf of The Audit Office of New South Wales (NSW), is a study of the NSW Senior Executive Service (SES).

As specified by The Audit Office of NSW, the main focus of the research is on:

- the NSW SES model and the extent to which this model is consistent with the principles of a Westminster system of public service.

In this context, it was not the intention of the Performance Audit to propose a return to a public administration model from which Westminster principles were originally derived. Rather the Performance Audit has sought to use these broadly based Westminster principles and to redefine them in the context of an economic rationalist, managerialist construct, as the prevailing paradigm of public management. They are referred to in the research as NeoWestminster principles. It is also noted that the study is largely focused on the fundamental principles underpinning SES models and systems rather than on day-to-day operational issues.

Primarily, three research methods have been applied, as follows:

- Literature and Document Review
- Survey Design, Distribution and Analysis
- Interviews with NSW Senior Executives (SEs), former NSW SES and NSW public service officers below SES.

The scope of the research, which was defined by The Audit Office of NSW within specified Terms of Reference, required the UTS researchers to:

- identify what minimum essential features are necessary in the public sector working environment to facilitate the capacity of the SES to serve the public interest.

For the purpose of the research, 'SES' is used as a generic term which encompasses both the Chief Executive Service and the Senior Executive Service levels of the NSW SES.

## 1.2 Findings

Overall, the evidence from the Performance Audit suggests that the current model of the NSW SES is a hybrid system. This system has developed in a unique way relevant to the history, traditions and shifts that have occurred in the political, parliamentary and bureaucratic public sector arenas of NSW over a number of years, including the predating of the commencement of the SES in 1989. In broad terms, Westminster principles have shaped the parliamentary and bureaucratic systems existing within NSW. At the time the NSW SES was established, major changes in the bureaucratic system were taking place with the implementation of well-defined managerialist policies consistent with ideas of business management. Conceptually, the formal NSW SES model shares much in common with formal SESs in other key polities (OECD 1997; SES Literature Review 1998). However, to a considerable extent, in practice, the evidence indicates that the NSW SES also encompasses aspects of a more politicised Washington style SES model.

In practice, two streams of influence operate as part of the model of the NSW SES (Table 3.4.5). These are:

- first, a formally defined, and conceptually rational stream of influence which encompasses, for example, the legislation, systems, structures, processes, policies and codes of conduct of the NSW SES.

Typical aspects of this stream of influence include:

- stated and formal objectives of the SES
- fixed term employment contracts
- performance management and review systems
- flexible remuneration packages
- incentive programs
- professional development programs
- mobility programs.

Formal professional relationships, roles and decision rules are prescribed within the rational NSW SES system, supported by written guidelines and advice. The formal NSW SES system may operate as intended, or may be overwhelmed by another stream of political influence.

- second, a sometimes, dominant, flexible, political stream which is characterised by informality, personal relationships, power behaviours, political patronage and *ad hoc* decision making processes which are often aligned and responsive to political imperatives and key electoral issues. The key actors in this highly dynamic environment where it applies are:
  - Ministers
  - CEOs
  - (to a lesser extent) Ministerial Advisers, (comprising part of an alternative, politically located bureaucracy)
  - (also to a lesser degree) some SEs and NSW public servants.

The exchanges between the key actors may be direct or indirect, harmonious or conflictual, overt or covert and may be resolved on the basis of political expediency related to personal and political power. Decision rules and role definitions are imprecise and ever changing. This stream of influence may not apply consistently or right across the NSW public sector, at any given time, and will vary depending upon particular circumstances and relationships.

Typical aspects of this stream of influence include:

- some partisan decisions by government about the capacity and loyalty of individual CEOs, and other SEs
- which may result in removal from office and early termination of employment, with
- resultant uncertainty about security of formal SES contracts for CEOs and SEs
- a high level of contestability in the policy advising arena in some areas
- similar political behaviours may be replicated in the bureaucratic environment of the NSW public sector, especially between some CEOs and other SEs
- perceptions of some SEs and Officers in the SES feeder group that the NSW SES is politicised, and that
- membership of the NSW SES involves too high a level of employment risk.

On an executive performance spectrum (Table 7.2.1), which ranges from informal-political to formal-bureaucratic (NSW SES), the point at which optimal executive performance is likely to occur will usually be different for the primary actors, namely Ministers and SEs. As the evidence indicates, this dissonance between points of optimal performance for the respective actors occurs, largely, because of different priorities, value sets and the driving forces which are meant to determine performance for each group. Furthermore, it is unlikely that these fundamental differences between the actors can be

reconciled to create a common point of optimal executive performance. Rather, for the NSW SES to work effectively, it would seem that the formal systems, decision rules and protocols need to encompass an explicit recognition of this situation.

In summary, the most critical findings of the research relate to these issues for NSW SES:

- 1.2.1 the insecurity of current employment contract arrangements
- 1.2.2 uncertain compensation entitlements, in the case of early termination of employment for other than poor performance
- 1.2.3 the formal SES performance management system sometimes fails to moderate performance largely due to the informal influences in the political and bureaucratic environments
- 1.2.4 the erosion of incentives
- 1.2.5 some subjective appointment, promotion and termination decisions
- 1.2.6 limited programs for professional development
- 1.2.7 limited opportunity for mobility
- 1.2.8 the apparent incapacity of formal codes of conduct and ethics for the NSW SES always to moderate SES behaviour at a consistently acceptable level
- 1.2.9 the uncertainty about which set of values (political or managerialist) actually drive performance in the NSW SES
- 1.2.10 the perceived general failure of lateral appointments from the private sector as a main objective of the NSW SES
- 1.2.11 the managerialist interpretation of merit which fails to recognise or encompass the political competence that SES require, at least in some parts of the NSW SES
- 1.2.12 the inadequacy of the market based system for SES job evaluation, in some instances, especially the policy advisory role
- 1.2.13 breakdown of Ministerial-CEO relations and how they are managed
- 1.2.14 the increasingly contestable policy advisory roles in which key SES actors operate
- 1.2.15 the perceived incapacity of the PEO, as an institution, to act, consistently, as an independent arbiter of the NSW SES
- 1.2.16 some SES' concerns about the apparent politicisation of the NSW SES by Government and opposition politicians
- 1.2.17 some officers in the SES feeder group's concerns about the current unattractiveness of SES employment (SES Literature Review 1998; SES Survey 1998; SES Interviews 1998; 7.3 Summary of Findings, this Performance Audit Report).

As this Performance Audit Report (Section 6) indicates, the NSW SES model as it currently operates, is not consistent with the redefined principles of a NeoWestminster system of public service, which takes account of the prevailing public sector paradigm encompassing concepts of managerialism. The NeoWestminster principles that are identified include:

- expert, professional and responsive (non partisan) senior executives
- transparency of decision making (especially partisan decisions by government)
- security of SES contract
- fair promotional opportunities in accordance with SES guidelines
- defined central processes of personnel management of the SES (such as those currently resided over by the PEO)
- clear policies and procedures for appointment, advancement and termination
- clear delineation of responsibilities between the key strategic actors at political and bureaucratic levels
- accountability to the polity through well defined parliamentary and SES procedures
- a strong commitment to public service (Section 6, this Performance Audit Report).

Currently, the NSW SES in practice fails the test to some extent on all of these principles (Section 6).

### **1.3 Proposals**

How to address these findings from the SES Literature Review (1998), the SES Survey (1998), the SES Interviews (1998) and the examination of Westminster Principles (Section 6) is clearly problematic. While this research can make a number of broad proposals it is considered that the specific details might best be developed by the NSW Government and the Premier's Department (as the NSW public sector organisation with current responsibility for the stewardship of the SES). It is also noted that coincidentally and as a result of the Performance Audit processes, some initiatives to enhance the formal system on the NSW SES are already underway. Additionally, an appointed task force of representative CEOs and SEs from across the sector may have a valuable contribution to make to the process of reform. Whatever form the reform processes of the NSW SES take, it is recommended that:

- the changes be encompassed in an integrated form (for example an electronic version of an ‘Executive Handbook’) which clarifies the legal framework, roles, decision rules, standards and processes relating not just to the NSW SES but to the political arena as well (and which can be updated regularly), related to executive performance
- the revised NSW SES system act as the foundation Senior Executive Service performance standards which are assessed in terms of continuing practice, by a proposed independent reviewing authority reporting to the NSW Parliament annually.

The basic challenge in addressing the critical issues and making the proposals is to:

- determine to what extent rational systemic reform can be achieved, given that the NSW SES operates in a highly contestable, dynamic and political environment from which the SES cannot realistically be divorced or protected entirely.

As a starting point for making a number of proposals which address the specific issues identified throughout this Performance Audit Report, a general review of the NSW SES using the NeoWestminster principles as a broad framework for analysis is also suggested in the following terms:

- Review and enhance the NSW SES both in concept and practice so that NeoWestminster principles can apply as a set of values designed to guide performance systems and professional relationships in the NSW SES.

While many issues are considered throughout this Performance Audit Report, proposals for the most identified issues are proposed, in relation to the following critical areas (Section 7.5, this Performance Audit Report):

*SES Employment Contracts*

- Develop the SES Employment Contract so that it is a meaningful document with appropriate force in law.

*Compensation in the case of early termination of employment for other than poor performance*

- Include termination entitlements of SES officers on the Employment Contract, at the time the contract is entered into, so that SES members are aware of their entitlements should the contract be terminated early for other than poor performance.

Conditions which protect both the employee and the employer need to apply.

(A formula, similar to the one developed in British Columbia Canada and reported by the Auditor General (SES Literature Review 1998) might provide some guidance in this direction.)

#### *Formal SES Performance Management System*

- Reinststate the defined formal processes of the NSW SES Performance Management System (modified if necessary) as the primary means of performance assessment and review.
- Monitor the application of the Performance System to the NSW SES, through an annual independent process of review by an identified SES Statutory Reviewing Officer reporting to the NSW Parliament.

#### *Incentives*

- Canvass with SES members and other key actors, including SOORT, to determine what kind of coordinated and comprehensive incentive program may be offered to SES. (This might encompass performance pay but would need to be more broadly based including salary packages, staff development entitlements and mobility programs. Incentives [and perhaps disincentives] need to be well articulated to SES or prospective SES.)

#### *Appointment, Promotion and Termination Decisions*

- Recognise that selection criteria for the NSW SES beyond managerialist competence, as appropriate, need to acknowledge the political environment in which some CEO/SES positions operate.
- Implement a formal review and accountability process, centrally monitored, which provides checks and balances against subjective decision making processes in the bureaucratic and political arenas.
- Make the nature of any political decisions, in this area, public and transparent.

### *Professional Development*

- Devise and implement a more formalised and continuing professional development program for members of the SES. (This might include programs related to high level strategic decision making and the kind of competencies SEs now require to perform eg globalisation, contract management, partnerships with the private sector, public governance.)

### *Mobility*

- Establish a more formalised mobility program for those members of the NSW SES who consider secondment and other opportunities for learning and professional development to be important for their continuing performance enhancement.

### *Formal Codes of Conduct and Ethics*

- Continue to reinforce the importance of ethical and professional behaviour of the SES through central agency and independent statutory review. (However, unless ethical behaviour is rewarded in some direct way through the formal systems of the NSW SES, behaviour consistent with the formal Code of Conduct and Ethics may continue to be an unrealistic expectation – see Section 7.6.)

### *Lateral Appointments from the Private Sector*

- Delete any statements relating to the NSW SES which indicate that lateral appointments from the private sector are a key objective of the SES. Merit (redefined see 7.5.14) needs to be the main determinant of appointment.

### *Merit*

- Redefine Merit, as appropriate (especially for central and budget sector agencies), to recognise the importance of political acumen and leadership competencies as essential requirements for the SES, beyond the managerialist competencies already specified. (This may also include high level strategic capability as a generic competence.)

### *SES Job Evaluation*

- Establish a system of job evaluation which better reflects the nature of the public sector in those areas of the NSW public sector which are not consistent with the traditional private sector market model which is currently used.

### *Ministerial-CEO Relations*

- Require some statutory or other formalised and reviewed process of political-bureaucratic mediation before removal from office of a CEO by a Minister can take place.

(In making this proposal it is accepted that the Government needs to be free to act in its own as well as the public interest. Realistically, the formal system of the SES cannot be made watertight so that political action, rather than poor performance, will not motivate removal from office. However, some basic protocols need to be established which avoid the politicisation of these processes and apparent unreasonable assertions of power, on a SES systems standard, by ministers over their CEOs.)

### *Remuneration and Power*

- Examine and address, if appropriate, any issues of differential salaries between CEOs and Ministers especially in budget funded organisations.
- Recognise that different parts of the NSW public sector operate on diverse managerial bases.
- Assess CEO/SES salaries using a public service-political model rather than private sector-management model (the analogy does not stand up in real terms in the inner budget sector – the CEO has limited autonomy and is subject to the Minister's control).
- (One possibility might be to) Reduce inner budget sector CEO base salaries, but factor in consistent and safeguarded compensation or incentives related to level of risk, inadequacy of current contract conditions, for example.
- Institute a formal performance pay scheme not determined by individual ministers or CEOs but in a more independent forum run by a reconstituted PEO, or similar body (in cooperation with SOORT).
- Recognise that there are 2 levels of executive bureaucracy including the SES and Ministerial advisers and that processes, decision rules and standards of performance in this environment need to be more explicitly defined and transparent to a considerable extent.

*Policy Advice*

- Clarify the respective roles of the key actors in the political-bureaucratic environment, especially relating to the value of non partisan advice.

*The Public Employment Office*

- Locate the PEO as an institution and key position away from the Premier's Department (so that any incumbent does not hold the dual roles of PEO and the head of the public service, regardless of the merit of any individual person in this position).

(The PEO may need to be an independent statutory appointment accountable to Parliament for public employment issues, especially senior executive matters.)

- Designate an independent officer (in one of the reviewing agencies eg Auditor-General, Ombudsman, ICAC) with statutory responsibility to Parliament as the SES Statutory Reviewing Officer (or similar title) who has the power to review decisions made in relation to the SES where Officers perceive that due process in accordance with stated rules, regulation and policies has not been followed. (It is proposed that the 'SES Statutory Reviewing Officer' make an annual report to Parliament on the SES.)

(If the PEO is not made an independent statutory position.)

*Succession Planning*

- Canvass with NSW Public Service Officers in the SES feeder group what they consider to be the minimum requirements for entry into the NSW SES and respond accordingly

## 1.4 Conclusion

For the formal NSW SES system to function at an acceptable managerial standard, the NSW Government, in the first instance, would need to make a purposive and transparent commitment to the support of the formal NSW SES systems, beyond what currently operates. From a bureaucratic efficiency point of view it is obviously in any government's interest to support and develop the NSW SES so that it can perform with a high level strategic and operational capability.

From an electoral perspective, however, formal bureaucratic systems of the NSW Public Service, including the SES, will inevitably conflict with the business of politics, which seems to be the case in NSW currently and during the last decade, at least. While it might be possible to find some kind of acceptable strategic equilibrium between partisan and nonpartisan and formal and informal processes (Table 7.2.1), the evidence would suggest that, as a starting point, Government needs to make a commitment to one of two broad and opposing options.

- Government makes a public and transparent commitment to the enhancement of public sector management in NSW. In practice, Government reflects the rhetoric of bureaucratic independence in consistent action carried out within formal SES legislation, decision rules and protocols on the basis of due process and natural justice and in the public interest.

### OR

- Government is sensitive to the electorate and as such requires flexibility and informality in its dealings with the SES but indicates publicly when the SES acts as a political, bureaucratic arm of Government, so that expectations of the NSW SES and other Public Service Officers are realistic.

In this case, the decision rules relating to critical issues such as standards of performance, removal from office and salary maintenance need to be consistently stated and applied in a transparent way related to the level of SES employment risk.

In either case, certain decision rules, both formal and informal relating to the NSW SES need to be addressed as part of a continuing process of reform (SES Literature Review 1998; SES Survey 1998; SES Interviews 1998; this Performance Audit Report).

## **2. Background to the Performance Audit**

### **2.1 Introduction**

This Performance Audit of the New South Wales (NSW) Senior Executive Service (SES) has been undertaken on behalf of The Audit Office of New South Wales by the University of Technology, Sydney (UTS). A multi-disciplinary research team, under the executive leadership of the Dean, Faculty of Business, and supported by the Vice-Chancellor, Deputy Vice-Chancellor, Administration and an expert panel from UTS, completed the research. As specified by The Audit Office of NSW, the main focus of the research was on:

- the NSW SES model and the extent to which this model is consistent with the principles of a Westminster system of public service.

Westminster principles are outlined more fully in Section 6 of this report. It was also not the intention of the Performance Audit to propose a return to a public administration model from which Westminster principles were originally derived. Rather the Performance Audit has sought to use these broadly based Westminster principles and to redefine them in the context of an economic rationalist, managerialist construct, as the prevailing paradigm of public management. The research has also considered relevant contextual evidence from wider sources and jurisdictions beyond Westminster systems, as the SES Literature Review (1998) indicates.

This Performance Audit Report, prepared by the University of Technology, Sydney (UTS) on behalf of The Audit Office of New South Wales (NSW), is a study of the NSW Senior Executive Service (SES).

### **2.2 Terms of Reference**

The scope of the research was defined by The Audit Office of NSW within specified Terms of Reference as follows:

- identify what minimum essential features are necessary in the public sector working environment to facilitate the capacity of the SES to serve the public interest.

### **2.3 Definitions**

For the purpose of this research, 'SES' is used as a generic term which encompasses both the Chief Executive Service and the Senior Executive Service levels of the NSW SES. Senior Executive(s) (SE(s)) is a term used broadly to include all members of the NSW SES, although Chief Executive Officer(s) (CEO(s)) may be used to denote the head of a government organisation, where relevant. More generally, Public Sector Executive Accountability Systems (PSEASs) is a term used to describe the systems, structures and processes which encompass senior executive performance in any public sector (usually prior to the formal establishment of senior executive services, specifically so called).

### **2.4 Methodology**

The Methodology was designed by UTS and accepted by The Audit Office of NSW as part of contractual arrangements. The research, as conducted, included the application of qualitative and quantitative research methods through triangulation which is the use of three different methods of data collection and analysis. Validity and reliability of the research were established through the research design and the collection, analysis and interpretation of data and evidence (Goetz and LeCompte 1984 cited in Merriam 1988; Merriam 1988; Eisenhardt 1989; Yin 1989).

The three basic research approaches (which are outlined in more detail in the relevant sections) are as follows:

- Literature and Document Review (public sector executive performance accountability systems, primarily in Anglo-American polities including the NSW SES)
- Survey Design, Distribution and Analysis (sent to all NSW SES Band 2 and above and a random sample of NSW SES Band 1)
- Interviews with NSW Senior Executives (SEs), former NSW SEs and NSW public service officers below SES.

Therefore, secondary evidence already available in the public domain, or available within the NSW public sector, has been balanced with primary evidence obtained through survey and interview processes. Statistical evidence obtained through survey processes, such as frequency of response has been analysed but also compared and contrasted with the richness of first person descriptive accounts obtained from interviews (Merriam 1988; Yin 1989).

From a qualitative research perspective, where research approaches and ideas may evolve and change over time, it is noted that the

Premier's Department of New South Wales has been aware of this Performance Audit since inception. Along with its own evaluation of the SES and as some negative issues have been raised through the Performance Audit research the Premier's Department has attempted to address some of these issues by policy revision. This Audit Report, therefore, as far as possible or is known, acknowledges the continuing work of the Premier's Department in this regard.

### **3. SES Literature Review (Summary)**

#### **3.1 Introduction**

A comprehensive Literature (and Document) Review (1998) (Volume Two) has been undertaken as part of this research. (Several interviews were also conducted with key academics and practitioners in other countries to elaborate further on specific issues of executive performance outlined in the Literature). The SES Literature Review has examined executive accountability systems, mostly in Anglo-American polities, from historical and more contemporary perspectives. Specifically, the structures, conditions, systems, values, practices of executive accountability systems and formalised Senior Executive Services (SESs), especially in the United Kingdom (UK), the United States of America (USA), Canada, New Zealand, Europe, Japan, Malaysia, and Australia, including a focus on New South Wales (NSW), have been analysed. This was to determine the systemic and non systemic features which influence practice, and to identify basic SES models. The Summary highlights only some of the many complex issues which are covered in the full SES Literature Review (1998) (Volume Two). For convenience, the list of References from the SES Literature Review (1998) is included in Section 8 of this report (along with the additional references specific to this summary).

### 3.2 Public Service Executive Accountability Systems

Taking an historical perspective, four broad public service systems (Table 3.2.1) including executive accountability arrangements, are apparent, over the years, in Anglo-American polities. These systems can be seen to be relevant to the development of formalised SESs, as executive accountability sub systems, during the last decade, or two, including the SES in NSW. While these broad systems are segmented and specifically identified conceptually for the purpose of this research, it is noted that systems do not operate in their purely rational or theoretical form. It is likely that features which are conceptually attributed to particular systems at any given time will in practice be not so clear. However, these systems provide the basic parameters, decision rules and role definitions in which executive accountability is formally and informally mediated. Therefore, the overriding principles, especially the differentiating factors of specific systems are used to form the basis of analysis for this research.

The Early Patronage System (EPS) (a term used for the purpose of this research), as the descriptor implies was the original formalised system in which executive accountability structures, in crude form, existed in the public service, especially in the UK, and to a lesser degree in the USA. Acceptance into the elite most senior levels was based on high social standing, nepotism and aristocratic patronage. High social standing in the UK situation was defined usually by birthright while in the USA it could relate to achieved or acquired social position. Under these circumstances, the system was considered to be corrupt and to promote incompetence. While there may be a tenuous link between the EPS and modern and formalised SESs, the evidence from this research suggests that there has been a continuing shift towards a neopatronage [not necessarily corrupt] system of executive accountability in Anglo polities since about the mid 1980s. This trend particularly emphasises the impact of political partisanship and resultant patronage at political and bureaucratic levels (SES Literature Review 1998).

As more sophisticated political, parliamentary and bureaucratic systems developed in Anglo-American countries, from about the mid 1800s, so the importance of social standing and related personal connections was gradually replaced with more formalised and professional systems. Sets of bureaucratic principles, or standards, to a large extent, were established to define the entry, promotional and performance requirements and processes, ostensibly on the initial basis of merit. While requiring a specified formal tertiary qualification to enter the executive stream, as merit qualification, appointment to the highest public service positions required career

long learning in public service which indicated that seniority and experience were important.

The Westminster-Whitehall System (WeWS) of the UK, (proposed by Northcote and Trevelyn in 1853), and the Washington System (WaS) of the USA, shared many bureaucratic features in common. Both were based on Weberian concepts of bureaucracy. However, a fundamental differentiating factor, especially at the senior executive management level, related to the degree of partisanship or non partisanship institutionalised within each system. On the one hand, the WeWS and systems derived from the Westminster-Whitehall tradition, such as Australia, New Zealand and Canada, valued non partisanship.

**Table 3.2.1 Public Service Executive Accountability Systems in Anglo American Polities**

<b>SYSTEMS</b>	<b>SOME BASIC PRINCIPLES AND VALUES</b>	<b>MAJOR PERIODS OF RELEVANCE</b>
Early Patronage System (EPS)	<ul style="list-style-type: none"> <li>⇒ elite social class</li> <li>⇒ aristocratic patronage</li> <li>⇒ no formal qualifications</li> </ul>	to about mid 1800s
Westminster-Whitehall System (WeWS)	<ul style="list-style-type: none"> <li>⇒ career service</li> <li>⇒ security of tenure</li> <li>⇒ social class elite</li> <li>⇒ non partisan bureaucracy</li> <li>⇒ liberal arts qualification</li> <li>⇒ appointment on merit</li> <li>⇒ independent policy advice</li> <li>⇒ administrative competence</li> <li>⇒ accountability systems</li> <li>⇒ hierarchical grades</li> <li>⇒ ministerial responsibility</li> </ul>	mid 1800s to late 1970s
Washington System (WaS)	<ul style="list-style-type: none"> <li>⇒ career civil service, and</li> <li>⇒ political appointees</li> <li>⇒ formally partisan at the top</li> <li>⇒ bureaucratic elite have social standing</li> <li>⇒ entry by political education, or patronage</li> <li>⇒ accountable to the President</li> </ul>	1800s - present
Economic Rationalist-Managerialist System (ERMS) (provides opportunities for a neo-patronage system?)	<ul style="list-style-type: none"> <li>⇒ rational model in concept</li> <li>⇒ neoclassical economic theory portrays bureaucrats as budget maximising actors</li> <li>⇒ principal-agent theory and managerialism indicate the need for formalised performance management systems</li> <li>⇒ based on market economy</li> <li>⇒ reduced role and size of the state</li> <li>⇒ public sector as a business</li> <li>⇒ increased role of ministerial policy advisers</li> <li>⇒ contestable policy arena</li> </ul>	late 1970s, early 1980s in the UK and the USA; mid 1980s to - present, including other Anglo polities

Sources: SES Literature Review 1998

This meant, conceptually (Table 3.2.1), that a head of a government department in a WeWS style system was:

- largely anonymous
- could serve any government of the day
- would provide non partisan policy advice without fear or favour, and
- enjoyed permanent tenure.

In the WeWS structure, therefore, a professional, independent career public service, with independent centralised recruitment and appointment structures, in principle, operated to serve the public interest. On the other hand, while such a structure and system were also reflected in the WaS, a parallel stream of political appointees who were clearly partisan and who usually changed with each incoming government and with no permanent tenure was encompassed in the formal bureaucratic system.

Lord Fulton's Review Committee of 1966-1968 (SES Literature Review 1998), which examined the WeWS, in the UK while endorsing the Northcote-Trevelyn blueprint also noted that the Whitehall system was relevant to the nineteenth century and had not kept pace with the contemporary needs of an expanded and complex civil service. On this basis, the Committee made substantial recommendations for change. Of particular note was the limited opening up of the civil service to outside recruitment at the senior levels and the appointment of Senior Policy Advisers to Ministers. These Policy Adviser positions were to be created within bureaucratic structures, such as within departments, with equivalent status and rank as Permanent Secretaries. Such a proposed parallel arrangement of executive management within the bureaucracy required segmented accountability channels to be defined. In this case, Senior Policy Advisers were to have mainly partisan responsibilities with Permanent Secretaries accepting the primary organisational management accountability. The potential for contradiction and confusion was apparent.

However, the fundamental principles of the WeWS, including nonpartisanship, were reconfirmed within this and other subsequent public service reviews in the UK until the late 1970s. Nevertheless, formal evolutionary changes there and in other Anglo polities have inevitably increased systemic vulnerabilities leaving the way open for a gradual informal trend towards more partisan practices, like those encompassed, more formally, in the WaS. However, whether more partisan leanings are actually against the public interest, in terms of the common good of the community or electorate, is difficult to determine (Gray 1994). Partisanship, including partisan policy

advice, may still mean that the public policy developed and enacted is in the public interest. Nevertheless, the WeWS structures including centralised and independent recruitment and appointment processes, as well, as the stated principles of a Westminster system, such as ministerial responsibility, have, over the years, to some extent mediated the full embrace of partisan practices.

### *3.2.1 Political and Bureaucratic Power Relationships*

In the WeWS model, as Aucoin (1995; SES Literature Review 1998) argues, the principles underpinning the bureaucratic system create a conceptual and practical tension between the notions of partisan political activities of ministers and supposedly non partisan bureaucratic processes of Chief Executive Officers (CEOs), within an hierarchical structure where the minister has the greater legitimate power (Table 3.2.2). This suggests that even a formalised non partisan bureaucratic system will be subjected in various ways, and at different times, to partisan influences, albeit in a less formalised way. Two quite distinctive sets of values drive executive performance in each domain (Table 3.2.2). The conceptual delineation between the political and bureaucratic domains, in practice, will almost inevitably result in some kind of role conflict between ministers and CEOs, especially if professional relationships are strained.

Therefore, within the hierarchy of authority, a critical variable for public sector executive performance, evident in both the WeWS and the WaS, is power, especially power relationships in terms of the complex dynamics of formal and informal systemic practices. In a formal sense, government, as the elected body of the democratic polity, has power over its public bureaucracy (Table 3.2.2). However, the SES Literature Review (1998) suggests that conflicts frequently arise in relation to power, especially for incoming governments when they perceive that the assumed power of the public bureaucracy is too high, relative to their own legitimate power. Individual power relationships, in this context of change, can be highly significant.

**Table 3.2.2 Traditional and Conceptual Hierarchy of Authority in Westminster-Whitehall Executive Accountability Systems**

Domain	Authority and Driving Values
Political	Ministers, as elected officials, have power over public service CEOs Driven by: ⇒ electoral priorities, including responsiveness to the electorate and reelection ⇒ partisan activities ⇒ public policy making relating to portfolio responsibility ⇒ notion of ministerial responsibility
Public Service Bureaucratic	CEOs, as appointed officials, are accountable to the minister for the administration of their organisations Driven by: ⇒ organisational priorities related to implementing the government's policy agenda ⇒ nonpartisan activities ⇒ independent and neutral advice to the minister ⇒ public anonymity ⇒ security of permanent tenure ⇒ public interest

Source: SES Literature Review 1998

In the American WaS the legitimate power of elected politicians to bestow favours on political supporters through formal systems of bureaucratic patronage creates tensions for career public servants. Yet, the process is basically overt and formally systematised. When systemic vulnerabilities allow bureaucratic patronage from the political arena to operate in more WeWS-style bureaucracies, such practice is likely to be informal and, perhaps, more covert.

However, according to the SES Literature Review (1998), power issues are not confined to governmental-bureaucratic relationships. Power, as an important variable which can impact upon the formal systems also applies to the bureaucratic environment, where bureaucratic politics can be played out in a similar way to the political arena. This may be in spite of the formal systemic structures which are designed to reduce the likelihood of more informal, personalised and political bureaucratic power struggles. Yet some opportunity for patronage on an informal basis will inevitably arise. In this sense, the formalised systems which moderate or guide bureaucratic behaviours are, in practice, not necessarily forceful enough to require rational compliance. Consistent with the evidence covered in the SES Literature Review (1998), such a claim is an acknowledgment that all public bureaucracies always concern power, even when formalised systems appear to be working quite well.

### 3.2.3 *The Impact of the Economic Rationalist-Managerialist Paradigm*

The relationship between governments and their bureaucracies as an issue addressed in neoclassical economic thinking, through the public choice perspective, began to influence governments, significantly, in the UK and the USA in the late 1970s and early 1980s. Amongst a range of claims about how a government should operate, an Economic Rationalist-Managerialist System (ERMS) was established as the framework for major policy decision making and management. In the paradigm shift, these leading governments largely rejected Keynesian economic notions of a mixed economy and full employment, as a broad conceptual basis for strategic policy making, even though some redistributive practices of governments continued. Instead, governments chose to support the neoclassical economic ideas, such as public choice, involving increasing marketisation and a lesser governmental role in the economy. Many other polities, especially Anglo polities, including Australia, were to adopt these ideas in various ways. While, purportedly, there were numerous factors, especially economic problems, which led to the paradigm shift to an ERMS in Anglo-American polities, these governments' general growing dissatisfaction with the perceived power of public bureaucracies, particularly at the senior elite level and at a time of serious economic downturn also was, reportedly, a major catalyst for public service change.

For public sectors, early adopting governments of ERMS, supposedly, were influenced by principal-agent concepts as primary principles of neoclassical ideas to guide executive performance. In this sense, ERMS, as a broad conceptual model, provides governments with formal frameworks of control. In agency theory, senior public bureaucrats are portrayed as self-interested budget maximising actors. In effect, it is assumed that these senior bureaucrats, such as CEOs, are actually driven by issues of power and resource accumulation rather than more altruistic motivations such as commitment to public service. In the political-bureaucratic arena, CEOs, effectively, compete among themselves to gain as large a share of scarce resources, as is possible. For inner budget sector organisations increasing the organisational budget is a primary objective (SES Literature Review 1998).

Whether this has been the situation in practice, in the Australian setting, is perhaps debatable. Nevertheless, the conceptual argument encompassed in agency theory (or theory of the firm), suggests that the principal, in this case a government, needs to develop executive structures that provide incentives for (or even compel) their administrative elite, as agents, to act in governments' interests. Ministers (or their equivalents), as the political principals, through these formal frameworks involving the articulation of predetermined goals and reward for good performance tie their agents, CEOs and the bureaucratic elite, into contract arrangements and/or performance agreements. Such performance contract arrangements are supported in the managerialist dimension of ERMS which assumes that private sector corporate and managerialist practices are part of an exemplary model for the public sector. The idea of fixed term contracts at the senior executive level, therefore, offers governments more flexible mechanisms for recruiting, appointing and promoting their most senior staff. As opposed to life long tenure in the former employment arrangements, contracts give governments more direct control over executive staffing decisions. In this less secure employment setting, the capacity of the formal system to withstand informal political pressure, inevitably, will be tested.

Managerialism in the public sector in Anglo-American polities certainly predates the shift towards economic neoclassicism in government policy, but such adoption has strongly reinforced a managerialist approach. While it is not possible to establish exact cause and effect in relation to these streams of influence it is apparent that governments have certainly moved towards a discrete contract and performance management model of executive accountability (SES Literature Review 1998).

In this context, as in the case of NSW and several other states of Australia, some governments may use a business, corporation, or market, model as a metaphor to define structures and processes in the public service under ERMS. As principals, governments may see themselves as the corporations' boards (or holding companies). The most senior bureaucrats, as CEOs, then become the corporate managers of the subsidiary companies, with clear responsibilities back to governments, as the holding companies. One of the problems of this analogy, and related practice, is that it assumes that politicians are competent managers and/or willing to take on such a role. Role delineation between the minister as manager, rather than political actor, and the CEO also as manager becomes less clear. Ministers, will undoubtedly operate as both political and managerial actors, at any given time, creating some potential for domain and role confusion and use of both formalised and informal systems and practices. CEOs' roles may be equally confused (SES Literature Review 1998).

As Campbell and Wilson (1995: 62-63; SES Literature Review 1998) argue, there were examples under Thatcher's period of government when CEOs in the higher civil service were being increasingly drawn into political manoeuvring for the government's short term gains. This meant that some bureaucrats were required, or expected, to apply political tactics, including deception, to the point where such behaviours could be unconstitutional. The policy role of the higher level bureaucrats was also purposively devalued when there were frequent instances of 'well intentioned policy advice and warnings' from the civil service being rejected and regarded as 'obstructionism or negativism'. There were official complaints from the high level career bureaucrats that they were being coerced into crossing way beyond the long established boundary of non partisanship, as defined within the WeWS.

Clegg (1989: 216), in a comprehensive theoretical and critical examination of issues related to power, contends that neo classical economic theory which conceptually presupposes that there can be a perfect market and exchange model is simply unrealistic. The rationally stated substance of the ERMS model does not sustain arguments about practice:

Adherence to a reality principle requires the abandonment of these limiting assumptions ... Consideration of power requires consideration of imperfect exchanges under imperfect market conditions.

Clegg's (1989) ideas on power strongly support a view that rewards for certain actions and behaviours by agents, required by the principals, can be achieved through both formal and informal power structures. Therefore, parallel systems of exchange, reward and relationships operate as a matter of course. While the formal system may promote constancy of action and process, the informal system can support implicitly institutionalised power relationships, defining of channels that facilitate the potentially less frequent incidences of power exchanges.

While the Westminster parliamentary system remains virtually intact in Anglo countries, the evidence suggests that public bureaucratic structures, systems, processes and practices in traditional Westminster systems have moved more towards a formalised and informal system of politicisation and patronage. Undoubtedly, some evidence of increasing informal politicisation was apparent before the advent of ERMS but the paradigm shift seems formally to have supported rather than retarded these processes. While this may have been an unintended consequence of the implementation of ERMS approaches, a number of trends in the direction of greater potential politicisation are apparent. These include but are not confined to:

- sometimes antagonistic power relationships between governments and their executive bureaucrats
- more open political appointments at the top of the public service facilitated by the decentralising of some lower level appointment processes
- loss of tenure at the top in some jurisdictions, including contract employment arrangements
- the increase in the size of alternative bureaucratic structures, such as ministerial offices and ministerial consultants
- the resultant increasingly contestable policy environment
- the demonising of governments and their public services in the media, including the increasing public profile of public sector CEOs as spokespersons and promoters of government policy (SES Literature Review 1998).

Transitional practices within changing systems, such as the shift from the predominantly WeWS to an ERMS, can also create problems when some of the systemic values and principles within each system are so clearly opposed. A primary example of this in the adoption of the ERM model, is the conceptual and practical devaluing of the Westminster principle of a life long career and learning in public service as the major prerequisite for appointment to executive levels. While there may be a legitimate and positive conceptual purpose, removing security of tenure and endorsing contract employment arrangements, in practice, there is also a potential for systemic vulnerability to arise. Effectively, the formal systems are insufficiently resistant to withstand more informal, power-behavioural and partisan actions, thus jeopardising the capacity of the system to perform, rationally, as intended.

It is evident from the SES Literature Review (1998), overall, that formalised and rational public service systems, including institutional frameworks, encompassing executive structures and accountability mechanisms, whatever their origins, have serious limitations.

While, for example, Westminster principles, especially those relating to public service neutrality, have been held up as ideals for the Australian setting, the evidence suggests that there has usually been some gap between the principles in concept and practice. System compromise is seen as an almost inevitable consequence of operating in a political environment where two clear and often conflicting objectives relating to the public and political interests operate. As the evidence indicates, informal political, bureaucratic and individual power-behavioural dynamics will be pertinent to varying degrees, at any given time. Therefore, there is a continuing tension and conflict between the values and forces of an endorsed formal system versus the informal, political processes. Rationality as well as power are two interrelated, dominant and critical variables. This situation also applies to wider issues of power. As Sturges (1993; SES Literature Review 1998) argues one of the main difficulties of managing in the public interest is to determine which public interest is being served, on what occasion, and context of representation.

This lack of systemic safeguards, undoubtedly, provides opportunities for unreasonable and personalised interventions in the rational, bureaucratic processes. That is not to say that the opportunities are always acted upon. However, the rational systems can be used, to mask more covert, inappropriate and personalised power-behaviours. On the other hand, certain systemic features of a formal model, as in the case of Westminster principles while they continue to exist, to some extent, can mitigate against such individualised power-behavioural factors at the bureaucratic or political levels.

### **3.3 The New South Wales Public Service**

The NSW public service, as an Anglo-derived public service, has developed distinctively but, largely, on the basis of the Westminster-Whitehall system. Like other public service environments it has been the subject of many review processes over the years, with extensive programs of systemic, institutional and practical improvements. Various managerialist initiatives pre-date and post-date the advent of the ERM model in NSW. Such initiatives were exemplified in the 1970s during reform processes stimulated by Wilenksi's review of the public service under the Wran Labor Government's period in office, and in the late 1980s under the Greiner-led Liberal-National Party Coalition Government. A number of trends can be identified that

indicate a move away from Westminster principles as guiding values of public service management, often with wider relevance beyond NSW (SES Literature Review 1998).

First, as the roles of politicians and public service managers have changed and become more challenging over the years, (even though the political system in NSW has remained fundamentally the same), increasing tensions, contradictions and lack of clarity about the roles of politicians as elected officials versus the roles of appointed executive public service officers, as in other public services, have been apparent. In spite of the Westminster principle of delineation, practice in NSW has created continuing dilemmas in political and public sector arenas. The policy development, policy advisory and policy implementation roles, especially, cannot easily be segmented between the political and public sector environments.

Second, in terms of public service neutrality, the evidence suggests that there has been a gradual politicisation of the NSW Public Service at the top levels, at least, since the 1970s. To a significant extent, this has undermined the integrity of some Westminster principles, in practice. As one example, Alaba (1994; SES Literature Review 1998) indicates that issues pertinent to governments' perceptions, about the assumed rather the legitimate power of the bureaucracy, may influence political actions by the government of the day. If a government perceives that their bureaucracy has assumed an unacceptable level of power, then a government may adopt more political ways of achieving bureaucratic compliance and responsiveness. This will be consistent with government's needs, but not necessarily in accordance with any formalised, bureaucratic accountability systems. In this sense, politicians may adopt political-managerial roles while public service executives may adopt managerial-political roles, sometimes, to the point where role delineation, in action, cannot easily be determined. Political needs are also not easy to define given a continuing tension between electoral imperatives and the public interest.

However, as Alaba (1994; SES Literature Review 1998) cautions, politicisation in NSW can take many forms and may not always have a negative value. As another example, Alaba (1994; SES Literature Review 1998) indicates that there was politicisation of public service policy advisory roles during the Wran government, in that the people appointed to a special unit in the Premier's Department were considered to be partisan and powerful. Alaba (1994) points out that the government's apparent need for politically sensitive and responsive key policy advisers was considered in the context of their competence, as well as their partisanship. Yet, in a political environment, for whatever reasons, it is apparent that such

appointments may be seen or portrayed as just partisan by a range of key stakeholders, with the issue of competence being overlooked. Thus, the complex dynamics involved in public service and political cultures, such as in NSW, may mean that folklore about such issues becomes as important as facts in influencing perceptions and behaviours.

Third, in keeping with trends in other polities, the role of ministerial advisers outside the direct public service bureaucratic structure can be seen to have changed, particularly, during the Wran era. The trend which was continued and strengthened by Premier Greiner. As Laffin (1995: 80-81; SES Literature Review 1998) argues:

Greiner had fully endorsed the use of [political] advisers from becoming the creatures of their departments ... heads had to learn with young, often inexperienced, advisers who had little regard for the niceties of the bureaucratic hierarchy and communication.

The institutionalisation of this somewhat controversial policy advisory stream, more in line with the Washington system, created tensions.

On the one hand, some CEOs could see the advisers' role as positive in that ministerial needs and intentions could be better articulated to CEOs and the advisers could provide political advice, thus, distancing CEOs from the political environment. On the other hand, CEOs were concerned that ministerial advisers made direct contact with subordinate departmental officers involved in policy advice without the knowledge of the CEOs. This situation complicated the managerial and policy advisory roles of CEOs and departments. Laffin (1995; SES Literature Review 1998), however, speculates that the situation relating to ministerial advisers was relieved after a couple of years. This occurred when the politically aligned ministerial advisers were replaced with more experienced public servants, on secondment (which is contrary to reported OECD (1997; SES Literature Review 1998) practice, as outlined below).

Fourth, there has been a trend away from the Westminster principle supporting the role of an independent employing and personnel authority. This principle has been increasingly compromised through public service institutional change processes. With the drawn out demise of the NSW Public Service Board during the 1980s, as in other polities, the authority for personnel matters has been institutionally located more closely to the centre of the public service, even under the Premier's direct portfolio responsibilities and control. Seemingly, this change has been related to the tendency for more political appointments at the top of the NSW public service. However, some personnel functions have been decentralised and devolved to

departments which gives the CEO far more power to make employment decisions, but often without central checks and balances.

Overall, the SES Literature Review (1998) suggests that NSW like any other polity has developed its own operating systems of executive accountability within both formalised and informal frameworks. NSW has been subjected to a range of more universal trends in executive management which challenge a number of Westminster principles. The, apparently, unintended consequences of formal system design and practice have allowed the fundamental positive principles of the system to be challenged by more power-behavioural dynamics and informal practices. The mix of the two influences at any given time will, likely, determine the level of functionality or dysfunctionality, but this may be a matter of perspective. However, such aspects are difficult to test and may only really be assessed with extensive empirical research. Nevertheless, the individual perspectives and experiences recorded in studies like Alaba's (1994), Halligan and Power (1991) Painter and Laffin (1995) and now this research (SES Literature Review 1998; SES Survey 1998; SES Interviews 1998), reinforce suppositions that traditional Westminster principles have not been the dominant driving values of NSW public service executive performance in addressing the public interest, for quite some time.

### **3.4 Senior Executive Services**

Specific and formalised executive accountability sub systems, often referred to in broad terms as senior executive services, have been instituted within the general context of reform related to governments' adoption of ERMS in Anglo-American polities. These SESs vary in shape and form (Tables 3.4.1- 3.4.6) (SES Literature Review 1998). It is also noted, that in the case of the USA, the establishment of a formal SES in 1979 just predated the obvious adoption of an ERMS approach once Reagan had been appointed President in early 1980. However, the concepts encompassed in neoclassical economic thinking and managerialism had been apparent in the USA for many years gaining increasing acceptance over time. Nevertheless, the idea of a discrete super elite cadre at the top of the public service (often including an intellectual elite at the centre of the public service) has, to some extent, been reinforced conceptually and in practice during the continuing implementation of the ERMS in Anglo-American polities, in its various forms.

Such SES sub-systems are generally in accord with the principles supported within the ERM paradigm, such as the rejection of permanent tenure contrary to Westminster principles, in favour of contract employment and the adoption of formal performance management requirements. However, practical shifts to contract

employment arrangements may not exactly coincide with the initial adoption of ERM systems. Legitimate authority is given to the SES, as a professional, leadership group of the public service, through formal accountability systems, using devices such as legislation, policy, and dedicated SES structures. Administrative Law, which applies more broadly to the public service, also functions within closely related but jurisdictionally separate institutions to check the use of legitimate or assumed bureaucratic authority related to the public interest, especially at SES level.

**Table 3.4.1 Elite Bureaucratic Career Executive Model**

<b>Criteria</b>	<b>Characteristics</b>
Recruitment	Early entry into career public service based on 'elite' qualifications and merit (possibly by exam)
Basic Principle(s)	⇒ Career long learning, experience and tenure ⇒ Non partisan policy advice and generic managerial, and/or specialist capability
Promotion	⇒ Based on staged exams (and later merit criteria in some polities)
Executive appointment	⇒ Successful completion of an 'executive' exam ⇒ Candidate politically acceptable to government
Evident in:	⇒ Westminster-Whitehall systems, Japanese, Malaysian systems

Source: SES Literature Review (1998)

**Table 3.4.2 Rational-Managerial Executive Model**

Criteria	Characteristics
Executive Appointment	Lateral recruitment into the SES from the public, private, or not for profit sectors
Basic Principle(s)	<ul style="list-style-type: none"> <li>⇒ Fixed term contract employment</li> <li>⇒ Performance agreements</li> <li>⇒ Reward based on agreed performance criteria</li> <li>⇒ Generic managerial, and/or specialist capability</li> <li>⇒ Non partisan, independent advice on policy issues to the Minister/Government</li> </ul>
Promotion	⇒ Merit (reinforcing previous practice but possibly using different and defined criteria related to managerialist competencies)
Evident in:	⇒ Conceptual framework of NSW SES but not necessarily in practice (see Table 3.4.4)

Source: SES Literature Review (1998)

**Table 3.4.3 Formal Managerial-Political Executive Model**

Criteria	
Executive Appointment	<p><u>Stream 1.</u> Lateral recruitment into the SES from the public, private or not for profit sectors</p> <p><u>Stream 2.</u> Political appointment based on patronage as a result of some kind of 'service' to a governing political party</p>
Basic Principle(s)	<ul style="list-style-type: none"> <li>⇒ Continuing and Fixed term contract employment</li> <li>⇒ Non partisan and generic managerial, and/or specialist capability (from civil service or other non partisan background appointees)</li> <li>⇒ Partisan policy advice from political appointees</li> </ul>
Promotion	⇒ Merit and/or political patronage
Evident in:	⇒ Washington system, UK Executive Agencies

Source: SES Literature Review (1998)

**Table 3.4.5 Informal Managerial-Political Power Relationships (NeoPatronage) Executive Model**

Criteria	Characteristics
Executive Appointment	<p><u>Stream 1.</u> Lateral recruitment into the SES from the public, private or not for profit sector based on merit</p> <p><u>Stream 2.</u> Political appointments (overt and covert)</p> <p><u>Stream 3.</u> Parallel stream of politically appointed partisan ministerial advisers outside the formal SES structure but with comparable salary and status, and likely more direct power (overt and covert)</p>
Basic Principle(s)	<p><u>Formal rational framework</u> indicating a politically value neutral system based on merit and reward for the achievement of agreed performance criteria</p> <ul style="list-style-type: none"> <li>⇒ Fixed term contract employment</li> <li>⇒ Generic managerial, and/or specialist capability</li> <li>⇒ Independent policy advice</li> <li>⇒ Bound by Codes of Conduct</li> </ul> <p><u>Informal Power Relationships</u> which may be unstated and covert with less predictable impact and frequency involving, in part:</p> <ul style="list-style-type: none"> <li>⇒ Intra-bureaucratic power relations</li> <li>⇒ Ministerial advisers-bureaucratic power relations (ministerial advisers rather than CEOs give policy advice)</li> <li>⇒ Ministerial-bureaucratic power relations</li> <li>⇒ Potential for partisan policy advice from partisan appointees, and non politically endorsed CEOs concerned about job retention, or non partisan advice results in conflict with Minister and/or removal from office</li> <li>⇒ Behaviours determined by patronage and power issues within the broad limits set by the formal system</li> </ul>
Promotion	<ul style="list-style-type: none"> <li>⇒ Merit criteria (within the formal system)</li> <li>⇒ Political patronage (within the political power-relationships frame)</li> <li>⇒ Potential for formal system to be used for political purposes so that appointment which is political appears to be based on merit</li> <li>⇒ Contracts can be terminated by government for other than poor performance</li> </ul>
Evident in:	<ul style="list-style-type: none"> <li>⇒ NSW SES, APS and Victoria may mirror this model in practice with varying degrees of politicisation, in spite of more formalised SES systems which have been established in those polities, consistent with Table 3.4.2</li> </ul>

Source: SES Literature Review (1998)

Kingdom (1991; SES Literature Review 1998) notes that formal system vulnerabilities, such as within an SES, exist because governments have the power to influence a range of administrative and legal appointments and processes. This may involve formal and informal relationships which are usually forged on the basis of membership of political parties, personal ties, networks and social links, in whatever form. In this sense, legitimate authority structures may be susceptible and unlikely to accommodate such fluid arrangements and influences. Implicit and/or explicit ethical and moral principles and policy, rather than formalised law, therefore, may be the only influences which will mediate against the inappropriate use of power, on a formal systems standard. Yet practical considerations for members of the SES, like the need to survive in a sector that is constantly under threat of downsizing, may be sufficient to ensure that ethical and moral considerations will be compromised.

The requirement for public sector executive managers to enhance the electability of a government is, as Ostry (1986 cited in Wanna, O'Faircheallaigh and Weller 1992; SES Literature Review 1998) argues, a usually unstated performance expectation of executive performance. To pretend that any other situation exists, according to Wanna et al (1992) is to not understand the nature of the relationship between ministers and their public service executive managers. If such implicit performance obligations relating to electability and the need to enhance the image of the government to its electorate are understood and accepted as important, then other, more formally stated, goals may, in reality, have diminished priority from time to time.

Furthermore, internal public sector, bureaucratic power struggles, as well as power relationships between the political and public service environments (especially for the political and managerial elites), are, according to the SES Literature Review (1998) not necessarily reduced through the introduction of SESs. On the contrary, the systemic and structural changes relating to the implementation of SESs may increase politicisation and patronage through systemic vulnerability, especially involving contractual and other individual performance arrangements.

Formal SES systems also vary from deliberately partisan (USA) to formally non partisan (Australia, NSW and Victoria) and involve employment conditions ranging from specific term contracts (NSW and Victoria) to an assumption of continuing tenure. In the Canadian literature (SES Literature Review 1998), for example, strong concerns are expressed about the impact of potential fixed term contracts on the level of politicisation. However, as the OECD (1997; SES Literature Review 1998) indicates in a selective survey of some national

governments' senior public services, including discrete SESs, fixed term contracts are not unusual (8 out of 13 countries). It is also noted that governments in most countries (15 out of 17) have discretionary powers to terminate, or recommend the termination of SES members or senior public servants for reasons other than poor performance, including loss of trust and confidence, and organisational restructuring. The degree of senior executive turnover for political reasons when the government changes varies from polity to polity with the USA, France and Sweden having the highest number. In this report (OECD 1997), the national governments of Australia, Canada and Switzerland, are regarded as less likely to exercise significant political influence with SES staff. For the most part, senior public servants are not eligible to serve as ministerial staff members (OECD 1997).

While the reliability of the information in this (descriptive rather than analytical) report (OECD 1997) is in question, due to obvious inconsistencies and omissions in the data some basic comparative information is available. Some other details of note from the report (1997) include:

- three major senior executive systems operate
- closed career systems (Belgium, France and Japan)
- open competition systems (Nordic countries, Netherlands, Australia, New Zealand, the UK and the USA)
- partisan streams of recruitment (USA, France, Sweden, Finland one designated position only)
- most SES recruits into national SESs are from the national public service
- recruitment processes are largely decentralised, a minority of countries having standard selection criteria (Anglo-American polities and Finland)
- standard competencies and criteria for selection relate to managerial, leadership and personal attributes (but do not include political acumen or responsiveness to the government of the day)
- some countries (6) have flexible remuneration arrangements (including Australia and New Zealand)
- succession planning for most senior positions is rarely practised, although fast track streaming does occur through additional personal development programs in the UK, and the USA

- formalised professional training and development programs rarely operate
- formalised mobility programs also rarely operate although some countries are strengthening, or are wanting to strengthen, mobility programs
- most countries had some kind of formalised performance appraisal and/or management systems (countries with formal SESs were most likely to have a formal performance management system)
- the formal systems are rarely used to address poor performance.

Further to the OECD (1997) report, which focuses on the formal, rational, and systematised aspects of the senior executive levels, including, SESs, the SES Literature Review (1998) suggests that, in some Anglo-American polities including Australia, there has been a continuing politicisation (from blatant [UK] to less obvious [Canada], depending upon the formal frameworks, and governments of the day), even in polities with a Westminster tradition. This may include a political view that policy advising is basically a partisan activity which may reside with ministerial advisers rather than Senior Executives (SEs) of departments.

Such changing ideas about policy advice were exemplified in the first formal SES, in the USA, following the enactment of the 1978 Civil Service Reform Act (CSRA) which formally merged senior career civil servants and political appointees into a unified Senior Executive Service (SES). This was a controversial decision by the Carter administration in terms of whether the two streams of appointees could be integrated, in practice, into one executive group. Conflicts between political appointees and career civil servants were seen to be inevitable. As one way of addressing this concern it was suggested that political appointees be given the policy responsibility and that career officials have administrative/managerial responsibility. In this sense, there was little difference in the intention of the WeWS Fulton Review (1968) in Britain and the CSRA in the USA.

Currently the US SES offers comprehensive executive development programs, has a performance appraisal and performance pay system, and mobility programs. SES staff can be removed with one day's notice from their positions for reasons other than poor performance. In the UK where the formal SES (Senior Civil Service) was not established until 1996, appointments to the SES can be made by exception rather than merit for short-term appointments up to five years and for secondments (Civil Service Commissioners'

Recruitment Code 1996; SES Literature Review 1998). This suggests that a new set of values away from Westminster principles, are basically driving executive performance schemes.

The extent to which a new set of democratic, professional and organisational values are motivating performance in SES structures is a major theme, especially in the Canadian literature (Canadian Centre for Management Development (CCMD) 1996; Bourgault and Carroll 1997; SES Literature Review 1998). The CCMD (1996: 4) study indicates that in terms of values and ethics 'a choice between partisan and non-partisan public service' does not necessarily involve 'a choice between right and wrong'. The study (1996) found that four sets of values could be identified in the public service: ethical; democratic; professional; and people values. It was also noted that Westminster 'concepts of ministerial responsibility and the anonymous public service' were under threat and were, perhaps, 'no longer appropriate' in an evolving system. While optimism about the way values may develop was expressed in the study there was some recognition of the negative impact of partisan political processes on public service values and ethics.

How values and ethical parameters might be defined within the current economic rationalist-managerialist construct is still at issue given that much of the theory is based, conceptually, on assumptions about the self interested behaviour of public sector managers and the need to prescribe performance through contract arrangements and incentives. What actually provides the best form of support of SES officers is also discussed without resolution. However, in the Canadian study the development of special operating agencies (SOAs), modelled on the Executive Agencies in the UK, has created some, often public, conflict about the roles of ministers and CEOs. In one case in Canada, 'a former chief executive is suing a minister, mainly ... because of differences about what the agreement between them allowed' (CCMD 1996: 16).

Furthermore, the study (CCMD 1996: 18) reports perceptions of public servants especially below executive level that suggests that the over willingness of senior executives to serve an incoming government may to some extent compromise the public good by their reluctance to speak 'truth to power'. Downsizing exercises by government, both in that they occurred at all and especially the way they occurred, seemingly undermined the worth of the public service. Such exercises were also viewed as an often inappropriate use of power by the government. This challenged basic principles of public service and broke some kind of 'moral contract' about security of tenure which had existed previously (CCMD 1996: 23).

Some of the difficulties relating to contract employment are evidenced in the province of British Columbia (BC). A review by the Auditor General of BC indicates that early termination of employment, related to severance pay, is at issue. While the review concludes that severance payments have not been overly excessive, with the exception of some government business enterprises (GBEs), over a six years' period '\$13.7 million was paid to 87 senior executives as compensation in lieu of notice' (Auditor General of British Columbia 1996/1997: 6, 1997). In Canadian dollars the average separation payment for departments (ministries in Canada), for the years 1990 to 1995 amounted to 15 months of equivalent gross salary and benefits (\$133,250). For GBEs the average was equivalent to 16.3 months of gross salary and benefits.

However, in some cases severance payments amounted to as much as 36 months. According to the report, court rulings have indicated that each case needs to be based on individual factors such as: 'age, years of service, position, and potential for other employment'. A common (law) standard has been that 24 months equivalent to gross salary and benefits, except in extreme exceptional circumstances, should be the absolute maximum of severance pay. The average for ministries of 'months paid to years of service' was 1.3 salary months received for each year of service, with GBEs averaging 1.5 (Auditor General of British Columbia 1996/1997: 8, 1997).

The Auditor General also cites the findings of a Commission set up in 1992 to consider human resource management issues in the public service. 'The Commission found that previous government attempts to inject greater accountability into public sector human resource management had been unsuccessful and that accountability for major public expenditures was poorly established between government and the bodies authorised to manage human resources' (Auditor General of British Columbia 1996/1997: 9), indicating the need for better compensation guidelines and standards in terms of full accountability. Severance payments also need to take account of the possibility of 'double dipping' where the terminated employee finds subsequent employment somewhere else in the public service. However, this was not found to have occurred in the review process (Auditor General of British Columbia 1996/1997: 10). Nevertheless, any agreement should cover such a contingency with a proviso that severance payment be reduced if the terminated employee is re-employed in the public sector.

While cautious in tone, a report by Schick (1996; SES Literature Review) on the New Zealand SES clearly indicates the potential for problems in the relationship between the CEO, a Minister and ministerial advisers. Defined systemic relationships within the SES, especially between ministers (and/or their staff) as executive managers and CEOs of public sector organisations, can potentially cause severe conflict when there is significant difference of management approach. However, in New Zealand the formal split between CEOs' responsibility for outputs and the Government's responsibility for outcomes does define the respective roles in some precise way. In other parts of the SES Literature Review (1998), the problems and tensions related to directive relationships from central to operating agencies are also noted. This suggests that power and control issues related to SESs require far more attention. Furthermore, Pollitt (1993) argues that it is difficult to correlate, in a rational way, the worth of an SES system with enhanced public sector performance.

### **3.5 Australia**

In the broad Australian public service setting, which is clearly modelled on the Westminster system (Table 3.5.1) the development of discrete SESs since the 1980s has largely been consistent with the USA and New Zealand approaches. As the OECD (1997) report indicates, there has been some consistency of conceptual thinking in Anglo-American formalised SESs at a national level. Hede (1991), reporting on two studies into the Victorian SES as the first SES in Australia, indicates that SES officers had a relatively high level of satisfaction with the structure and processes of the SES and were motivated to perform. The SES of the Australian Public Service (APS) was based to a considerable extent on the USA SES but was driven by managerialist rather than partisan values. This involved a shift in emphasis from policy advising and administrative capacity developed over many years as part of professional learning to a focus on managerial competence. The APS SES developed as a combination of the career and managerialist approaches and did not initially embrace fixed term contract employment, unlike Victoria and NSW (SES Literature Review 1998).

The recent proposed changes to the APS SES (Public Service Bill 1997) support fixed term contracts and the termination of employment of CEOs by the Prime Minister, for any reason, following a report from the Public Service Commissioner. SES officers may be offered an incentive to retire within a set period, also for any reason. While the espoused values of the APS in this proposed Act (Public Service Bill 1997) support apoliticisation and high ethical standards the opportunities for politicisation in appointments are apparent. The Victorian SES also uses fixed term contracts which can be terminated

for reasons other than poor performance, including departmental restructuring. While a right of return to the public service exists for SES officers this does not imply indefinite employment (Office of the Public Service Commissioner 1998).

**Table 3.5.1 Australian System of Public Service Executive Accountability**

<p>Australian System</p>	<p>⇒ originally Westminster-Whitehall model                  ⇒ increasingly moving towards Washington values                  ⇒ was a career public service now more contestable                  ⇒ service elite                  ⇒ formerly security of tenure now a shift to contract employment and downsizing                  ⇒ was entry by technical expertise now may also be political                  ⇒ appointment by merit or politics                  ⇒ ministerial responsibility                  ⇒ 1970s shift towards WaS obvious                  ⇒ more partisan and politicised                  ⇒ ministerial policy advisers</p>	<p>1850s - present</p>
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Source: SES Literature Review (1998)

Other issues which have been the subject of debate in recent months relating to the APS SES include:

- concerns about the terminations and appointments of CEOs at the change of federal government in 1996
- a recognition that such decisions reflect the current transitional state of the public sector environment, which has been evolving over many years
- the existence of conflicting models which depict CEOs as ‘instruments of the government, and the public service as an institution both answerable to the government but ... separate from it’
- speculation about how far government will move the public sector towards a more politically ‘responsive’ model of public governance in terms of the roles of CEOs’
- ‘loss of tenure for CEOs requires adherence to a set of values which support high standards of public administration and include a career element it’

- fixed term employment has created some ‘insecurity’ and ‘uncertainty’ for CEOs
- contracts are ‘notional’ and ‘rhetorical rather than real’
- ‘termination of employment should never simply be the minister’s prerogative ...’
- ‘pay and conditions are ... seen as grossly inadequate for the loss of tenure and the responsibilities of CEOs (Podger 1997: 11; SES Literature Review 1998)
- ‘secretaries denied that increased insecurity had undermined their capacity to give frank and fearless advice ...’ (related to perceptions that ‘ministers’ were no longer receiving frank and fearless advice ... which cannot be proved ‘one way or another’) (Weller and Wanna 1997: 22; SES Literature Review 1998)
- ‘the introduction of fixed terms has made the pool of possible secretaries either think twice about the benefits of promotion or look much earlier at the prospects of private sector employment’ (Weller and Wanna 1997: 13; SES Literature Review 1998).

### **3.6 The NSW SES**

#### *3.6.1 Establishing the NSW SES*

The NSW SES was introduced in October 1989 at a time when a clear managerialist, and arguably an economic rationalist, agenda was being implemented by the Greiner government who had promoted the corporation analogy, at least initially. Conceptually, the structure of the NSW SES broadly accords with the principles espoused in the ERM paradigm, especially relating to formal performance management processes and the adoption of contract employment arrangements. As Laffin (1995: 82) asserts, '[t]he SES has meant that life in the senior reaches of the bureaucracy has become more precarious'. In the first six years of the SES, '330 SES officers were shifted out of the service'. This, seemingly, has established a precedent in which individuals at SES level are perceived, in a pejorative way, as highly dispensable. This has brought negative attention, especially through the media, to the worth of the SES. Decisions to dispense with services do not necessarily relate to the formal performance management systems or the capacity of individual executives, especially CEOs, to perform.

The establishment of the NSW SES was facilitated by an SES Unit within the Greiner-created Office of Public Management within the Premier's Department after a fairly lengthy process of research and review of other systems. The SES was created as a discrete executive body, largely removed from the NSW public service. In this direction, decisions relating to SES appointments, retirements, terminations, removals from office, disciplinary, and remuneration conditions and decisions were no longer covered by industrial relations legislation applying to the rest of the NSW public service (Public Sector Management [PSM] Act 1988 - Sect 42J). Officers moving from the NSW public service into the SES could, at a cost, opt to include a right of return to that service, in their first employment contracts, and some kind of salary maintenance obligation was offered in the event of termination of employment for other than 'misbehaviour' (PSM Act 1988 - Sect 42R,Q). Compensation orders up to thirty eight weeks equivalent salary could be made by the Statutory and Other Offices Remuneration Tribunal (SOORT) (PSM 1988 - Sect 42S). The SES was also structurally divided into levels and bands through a process of job evaluation, based on the private sector employment market, and carried out by private consultants (MBA Project 1991).

As the SES' Unit's promotional and Background Overheads (undated) indicate the primary objectives of the NSW SES which was established in legislation (PSM Act 1988) was to:

- change the culture to a rigorous performance-based senior public sector
- provide rewards and sanctions based on performance
- secure productivity increases from the public sector
- increase opportunities for lateral recruitment and mobility
- enhance management skills'.

The 'Key Features' were:

- term appointments - five years renegotiable
- formal review of performance annually
- Industrial Commission and existing awards excluded, common law rights were maintained, grievance mediation mechanism was available
- fully funded superannuation scheme
- rewards and sanctions based on performance
- formal job evaluation
- total employment cost package
- market related remuneration determined by tribunal
- flexible benefits.

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Individual performance of SES officers was to be judged by individual departments through the setting up of organisational Performance Management Systems (PMSs) which were to be reviewed by an Executive Performance Management Accreditation Committee (EPMAC) comprised of external experts, representatives of the Chief Executive Service (CES) and key senior executives from central agencies (NSW Premiers Department SES Unit 1991: 19).

Aspects of performance which were to be covered in these PMSs were:

- corporate mission
- corporate objectives
- system objectives
- performance management principles - the relationship between corporate planning, budgeting and performance management
- incorporation of EEO and EAPS
- training and development.

### *3.6.2 Reviewing the First Years of the NSW SES*

By late 1990, after a year of operation a private consulting firm conducted a review of the SES which Halligan and Power (1991:144) claim indicated problems within the NSW SES in its application. Criticisms were also made by Gleeson the former Head of the Premier's Department under Wran and briefly Greiner. According to Halligan and Power (1991: 144), Gleeson expressed several concerns including: the excessive numbers of officers in the SES; the fact that many SES officers were being paid 'market prices' for doing the same job that they had done within the NSW public service; many of the jobs could not really be equated to positions in the private sector executive labour market; and, that increasing the level of remuneration did not necessarily achieve better public service performance. Criticisms from one of Greiner's ministers about across the board pay rises for the SES, regardless of performance, through the SOORT, were also noted.

Halligan and Power (1991: 144) contend that the private consulting firm's review of the NSW was part of a 'mounting criticism', but examination of the Cooper's and Lybrand (1990-1991) review suggests that there were both positive and negative aspects of the SES. As the report (Coopers and Lybrand: 1990: 2) indicates there was a positive response that:

may reflect the sometimes wishful thinking or perhaps the vested interests of Interviewees in the success of the SES and the improved performance of their agencies.

While a survey indicated a high level of satisfaction with the SES amongst SES officers, a series of interviews conducted with CEOs, chairpersons of NSW public service boards of management, and Ministers, indicated some dissatisfaction about the ministerial role. This particularly related to what CEOs perceived to be ministerial interference in managerial issues. While such ministerial interventions into bureaucratic management are clearly in accordance with the principles of the ERMS, especially agency theory, this was regarded by respondents as a major negative. It was also recognised that the relationship between Ministers and their CEOs in terms of independent advice was critically important. In this context, some ministers were reluctant to formalise performance arrangements in the agreement required within the SES. The short term resolution of political issues was seen as more important (Coopers and Lybrand 1990: 6).

Nevertheless; there was general agreement that the objectives in establishing the SES were to:

- improve management and agency performance;
- abolish tenure for senior managers and emphasise merit;
- create an executive code of responsibility based on performance;
- achieve greater accountability;
- ensure regular performance reviews at both a CEO and SES manager level;
- provide sanctions for poor performance;
- create opportunities to put the best people in key positions;
- provide appropriate rewards and recognition of worth;
- help recruit skilled managers to the public sector and retain good performance; and
- help change the public sector culture to one based more on commercial management principles, rather than the traditional bureaucratic ethos (Coopers and Lybrand 1990: 4).

However, ministers were not as positive as CEOs. Also there were perceptions that it was not possible to establish cause and effect between the implementation of the SES and improved performance (Coopers and Lybrand 1990: 7). This is consistent with Pollitt's (1993) observations about the US federal SES. However, the SES was perceived to present a positive and professional image to the public in relation to the government's broader micro-economic reform and public service reform agenda. Lamond (1990: 505) on the other hand, in his evaluation of the SES following the 1991 election when the Greiner government was returned with a narrow margin, indicated that the SES was characterised in public by the Labor opposition as a luxurious, 'fat cat' cadre. This suggests that this image was portrayed

for party political reasons rather than as a statement of fact. However, in promoting such a negative view of the NSW SES, it is almost inevitable that the long-term and consistent public view of public service incompetence will be reinforced.

However, it was perceived that the SES had developed its own professional positive culture. CEOs were reported to have identified the elements of the new culture and attitude as:

- getting on with the job, showing initiative and a "can do" attitude;
- acceptance of measurement of personal and agency performance;
- a willingness to take risks;
- discipline in terms of outcomes, time frames and customer needs;
- acceptance of the removal of tenure; and
- working harder and smarter as the norm (Coopers and Lybrand 1990: 9).

The ability to apply managerial tools, such as business and corporate planning, were seen to enhance the level of satisfaction for SES officers (Coopers and Lybrand 1990: 7-8, 10-11). In spite of this, skills deficits were identified in the areas of strategic management and change, financial management and marketing. There was also some evidence of officer stress relating to the changed conditions (Coopers and Lybrand 1990: 5) which, similarly, is consistent with Renfrow's (1995) findings in the APS SES. The operation of the SES was also regarded, by some, to have widened the gap between the elite SES and the next levels of the public service, the SES feeder group, where the skills and attitudes required for entry into the SES were seriously lacking.

Generally, performance of the SES was seen to vary depending upon the specific capabilities of CEOs. Issues related to: strategic opportunity taking; vision and drive, (including similar ministerial attributes); the size and complexity of the organisation, and, commercial 'focus' (Coopers and Lybrand 1990: 11). Some inflexibilities of the system were noted. These included: rigid, sometimes centralised, processes for advertising positions; changing the SES structure; deciding on appropriate salary levels; and 'rewarding good performance' (Coopers and Lybrand 1990: 12). Some interviewees also believed that the 'job evaluation system could be, and was, manipulated, and therefore in time means would be found to overvalue positions' (Coopers and Lybrand 1990: 13-14). It was, similarly, perceived that 'old boy networks' were influential in the selection process.

For inner budget agencies the 'majority of Ministers and CEOs' considered 'that private sector appointments would probably not succeed at the highest SES levels'.

Reasons for this included:

- lack of understanding of the processes of government, custom and practice, policy issues, and the constraints and sensitivities operating at senior government levels;
- inability to deal with a wide-ranging constituency;
- having to manage in a less flexible environment than the private sector;
- inexperience in managing a relationship with a Minister (Coopers and Lybrand 1990: 15).

In this context, the costs related to the early termination of a contract needed to be taken into account (Coopers and Lybrand 1995: 17). The Code of Conduct that was introduced with the SES was not considered to serve a significant purpose in moderating professional behaviours.

Performance management processes, as a part of the formal SES system, were regarded positively by CEOs as their primary management tool to guide change and to enhance communication. About half of the Ministers were less positive, claiming:

- some managers were only motivated by financial incentives and sanctions;
- agreements were vague, pro forma, too detailed, motherhood statements and lists of activities not outputs; and
- that other mechanisms (action list, meetings, briefings, on-going contact with CEOs) provided a better means of monitoring on-going performance (Coopers and Lybrand 1990: 18).

However, it was noted by the CEOs that developing performance indicators was time consuming and required specific expertise, often not available within the particular agency. The rational and rigid nature of the performance management system with 'changing political priorities' also did not work so well (Coopers and Lybrand 1990: 19).

In assessing the results of the SES survey (1991: Executive Summary, 35) (with a 77% response rate of all CES and SES officers) it was apparent that the survey data produced more positive responses than the responses from the Interviewees, although women were less positive than men. While there were references to some of the issues outlined above, three major issues relating to the success of the SES emerged. Performance was seen to be inhibited by:

- excessive controls from central agencies
- Ministerial involvement in management decision making
- social responsibilities of government being neglected as a result of the emphasis on commercial management.

In terms of the early review of the NSW SES, both strengths and weaknesses are apparent. However, the weaknesses, overall, are consistent with many of the concerns expressed about the potential for increasing politicisation of the SES, the difficulty of the relationships between CEOs and their ministers, and the fact that the SES might not, of itself, achieve major enhanced results for government. While the NSW SES can be seen to be far more in accord with the ERMS (and the WaS) as far as competing rational and political forces are concerned, there is clearly some lingering wish to preserve some of the fundamental principles of the Westminster tradition. Yet the situation is complex and will basically require the government of the day to indicate, openly, beyond rhetoric, the kind of executive management system it requires, or expects. In this way some of the ambiguity about principle and practice, which has been evident to varying degrees in all the PSEAS, analysed so far, might be better resolved.

As Laffin (1995) notes the existence of the SES has increased the opportunities for ministerial intervention. Previously, security of tenure seemed to be equated with the capacity to provide independent policy advice to a minister. With the introduction of contract arrangements within the NSW SES the willingness to provide such advice has been compromised. This especially refers to the effective practice of ministers appointing their CEOs. The need for ministers to have 'confidence' (Laffin 1995: 83) in their appointees is raised but not defined. Whether confidence equates to professional competence in terms of the formal requirements of the NSW SES is yet to be tested, but there is likely to be a gap between competence defined at ministerial and bureaucratic levels.

Nevertheless, Laffin (1995) asserts that appointments, effectively, made by ministers to the SES are not necessarily just partisan. In Greiner's case the managerialist agenda of the government had significant bipartisan political support. The need for change, especially at the top of the public service, was endorsed by many key executive public servants. Again, with the previous government in NSW, like the Wran government, there appeared to be a conjunction between competence and partisanship. While acknowledging, according to anecdotal accounts, that there have been positive outcomes in terms of the management role of the SES, Laffin (1995) also argues that ministers have been less likely to be bound by formal protocols and conventions after the establishment of the SES. However, some boundaries, in terms of partisanship, did apply as ministers reportedly did not want to go to the extremes of the Washington system, where all the levels at the top of the public service change with each incoming government.

Significantly, the failure of lateral SES appointees from the private sector into the top levels of the inner budget sector of the NSW public service also indicates that, consistent with managerialist (as opposed to Westminster) principles, generic management skills do not act as the main basis for merit. There clearly are different managerial requirements between the sectors especially relating to the need for political acumen in the public service environment. However, to what extent, political astuteness of CEOs might compromise their capacity to provide independent advice within the formal SES framework is unclear. As the evaluation of the NSW SES indicates (Coopers and Lybrand 1990, 1991), CEOs were concerned about ministerial interference in the CEO role. Ministers, on the other hand, as Laffin (1995; also see Coopers and Lybrand 1991) suggests, found the formal SES system restrictive and wanted less formal more responsive processes of performance arranged on an individual relationship basis.

### *3.6.3 More Recent Evaluation of the NSW SES*

Undoubtedly, the introduction of the NSW SES has not provided a reasonably fail-safe formal framework in which executive performance can take place in the public interest. On the contrary, a series of systemic vulnerabilities, including contract employment, and reliance on generic managerial skills as indicators of professional merit and expertise, provide extended opportunities for system compromise. Ministers' wills have, seemingly, prevailed in facilitating the operation of the SES on a less formal basis. With increasing informality, in real performance terms, there are insufficient formal checks and balances which mediate behaviours, especially political and power motivated ones. The issue of how executive competence is determined in practice is also in doubt. If the

public reports to date, of CEO dismissal in NSW, especially recent ones, are any indication, competence on a ministerial standard may well relate to CEOs' capacities to develop viable but personalised working relationships with their Ministers (SES Literature Review 1998).

The evidence, in fact, supports a claim that behaviours and protocols within the NSW SES are largely based on unstated, informal conventions, in spite of any existing formal frameworks or codes of conduct. Conventions, in this context are clearly ill-defined and relate to individual perceptions and interpretations about executive performance at the political and bureaucratic levels. On a bureaucratic standard, performance may be judged more in line with established formal performance management systems of the SES, but not necessarily. On a political standard less clear performance criteria apply. Both positive and negative outcomes of convention application are, therefore, relevant. To what extent ethical and professional standards and considerations, such as those outlined by reviewing agencies including the Independent Commission Against Corruption (ICAC), the Ombudsman or the Auditor-General, and strengthening of formal codes of conduct can influence more positive behaviours, in line with formal structures, is uncertain. Yet, there is clearly, a danger that the balance between the extremes of informal convention application on a power-political standard and ethically acceptable performance of public service executives, on a formal systemic standard, in the public interest is going to be tenuous at best.

As ICAC investigations (1992; 1996); Hansard Reports (see References); and various media reports (see References) (SES Literature Review 1998) indicate, in addition to the literature already covered in this summary, many issues relating to the management of the NSW SES and ministerial and bureaucratic relationships have been aired in the public domain. These have included:

- political appointments to CEO positions ('jobs for the boys') (NSW Hansard 4 June 1996: 2419)
- stated government intentions to reduce the NSW SES by 400 positions (from 1500)
- removal from office of CEOs and other SES members at the direction of Ministers and through organisational restructuring to eliminate positions
- issues relating to the conduct of SES officers being raised in Parliament for political gain (eg questioning apparently legitimate overseas travel)
- the incapacity of some lateral appointees to the SES from the private sector to function in the SES at an acceptable level

- political views (especially ministerial views) that CEO/SES salaries were too high relative to ministerial salaries
- a political view that a CEO had too much power relative to the minister
- evidence of a relationship breakdown between a Minister and CEO with no attempt made by the Minister to mediate a resolution other than removal from office
- relationships between Ministers and CEOs can be defined on the basis of the personal relationships as perceived by the ministers related to trust and confidence on a ministerial rather than formal SES systemic performance standard
- whether the abolition of salary maintenance and the pre-existing right of return provisions constituted a breach of contract
- Government questioning whether an employment contract actually exists for the SES (NSW Hansard 26 September 1996: 4655)
- issues relating to the SES continue to be raised for political purposes. 'Given the Premier's promise to increase the number of senior women in the New South Wales public service, how does the Minister for Women explain the sacking of five female chief executive officers in the past 12 months, three of whom the Minister sacked?' (Hansard 1998 28 April: 14). The Minister also makes her role clear. 'As Minister I call the shots' (Hansard 1998 28 April: 15).

What NSW Hansard (see References; SES Literature Review 1998) and other sources in the SES Literature Review (1998) further reveal is that an alternative high level partisan bureaucracy in NSW, as a developing trend, has been actively supported by the Government. This locates the NSW SES in an increasingly contestable arena on a range of issues traditionally involving public service advice. While the Government has declined to nominate, in full detail in Parliament, the extent of this alternative bureaucracy, the limited records reveal that the numbers of partisan appointments could be significant. Three streams of appointment make up this alternative partisan high level bureaucracy:

- Ministerial Officers (staff in each Ministerial Office on average about 10-12)
- appointees to boards and ministerial committees (numbers not revealed in Parliamentary records)
- consultants engaged by Ministers (numbers not revealed in Parliamentary records).

While some issues of corporate public sector governance, in relation to boards of management, are covered in the NSW Auditor-General's Report (Audit Office of NSW 1997), it appears that this alternative

partisan bureaucracy is not bound, formally and systemically, by similar kinds of decision rules, role definitions and ethical standards, as boards or the SES, in terms of accountability. Even within a formal system, the capacity of the SES structures to mediate behaviours, consistently, in compliance with such arrangements, is in question. Therefore, the absence of clear and transparent formal systems moderating the actions of an alternative more partisan bureaucracy is likely to lead to individual and inconsistent interpretations and responses. Unless there is some clarification of the roles of this partisan bureaucracy vis-a-vis the SES, and boards, it would seem that such developments will only serve to confuse, rather than to resolve, the respective roles. However, one issue is made clear in the amended Code of Conduct and Ethics (Premier's Department NSW 1998). The responsibility for policy is outlined by the Premier '... the advocacy role of Government policy is a Ministerial responsibility, officers should not be asked to canvass, interpret or express opinions on policy issues' (Premier's Department NSW 1998: Volume Two).

The ICAC's (1996) findings relating to the hearing of the matters surrounding the removal of office of the Director General of a NSW Government Department also raise a series of issues. Unlike the early ICAC (1992) report on a proposed SES appointment, deemed questionable, the Assistant Commissioner (ICAC 1996) later took a different view of acceptable standards of conduct within the NSW SES and public service. In relation to the actions surrounding the removal from office taken by two senior (but not SES) officers in the Public Employment Office (PEO), which was more formally established under the current Government, the Assistant Commissioner (ICAC 1996: 82) argued that the officers were bound, as senior officers, to 'discharge [their] duties in a way which is congruent with established or approved systems' and was consistent with the 'ethical constraints imposed by the NSW code of conduct for public servants'. This was regardless of any political pressure that might have been applied to these non SES officers by SES officers and actors in the political arena, a behaviour which was seen as inappropriate, but not illegal, by the previous ICAC (1992) investigation on an unrelated SES appointment matter.

Further evidence from the ICAC (1996) strongly indicates that the existing legal, systemic and ethical parameters in which decisions relating to the possible dismissal of a CEO within the CES/SES should be considered, were compromised by informal power political issues. At the time, the unethical and questionably illegal and non-systemic behaviours of SES and non-SES officers were, seemingly, seen by them as the appropriate response to ministerial demands and pressures. Loyalty to the Government of the day, rather than adherence to formally defined systemic parameters in the public interest, was apparently seen by these officers as more forceful and perhaps more rewarding in a direct way.

As indicated above, the idea of a PEO, included in the PSM Act 1988, was specifically reinforced under the Public Sector Management (PSM) Amendment Act 1995 and by the current Government. In the amended legislation it is evident that the PEO was intended to act as the guiding central body in relation to the SES with considerable authority (PSM Amendment Act: 49D a-h), rather than largely delegating its powers to Departmental Heads (PSM Act 1988).

A number of recommendations related to enhancing the performance of the SES, especially in terms of the role of the PEO, were also made as a result of this ICAC (1996: 113-123) investigation. These include:

- maintaining the confidence of the public in the 'integrity of government'
- public officials acting at all times 'as trustees of the public interest'
- codes of conduct existing which mediate and direct the professional actions of public officials
- the existence of meaningful position descriptions
- job evaluation systems are used rationally rather than politically
- clear and transparent documentation of critical decision making processes exist
- appropriate and systemic procedures be instituted (by Premier's Department) for briefing CEOs and other key actors when a CEO position is downgraded.

The ICAC recommendations are meritorious from a systemic perspective and on a rational actor and public accountability standard. However, they deny the reality of the political environment, which has been well covered in the SES Literature Review (1998). As the early review of the NSW SES (Coopers and Lybrand 1991) indicates, Ministers were unwilling to be constrained by the formal SES system. Nason (1996) also reports that the Government indicated that they intended to ignore any ICAC findings which challenged ministerial powers to determine SES appointments and salary levels.

Whether Nason's (1996) account was true or not, such public airing of issues and practices seriously questions the integrity of the system and key individuals. Such statements also suggest that political power will take precedence over the formal SES system. This does little to present a positive image to either the NSW public service, other members of the SES, or the public. In this sense, a rational actor approach to reform may receive limited commitment from the Government of the day for political rather than bureaucratic reasons. How this dissonance of standards might be resolved is certainly crucial. It will depend to a significant extent on political will to support the professionalism of the SES. The capacity of the PEO to act in accordance with certain standards of nonpartisanship, professionalism and integrity will also be important.

Almost inevitably, the ICAC investigation (1996) will, in some way, have reduced the confidence that the rest of the SES might have had in the capacity of the PEO, located within or close to the Premier's Department, to operate in the public interest rather than the political interest. The public interest is a matter also taken up in guidelines developed by the NSW Ombudsman (1997: 2). 'In the performance of their official functions and duties, public officials must act in the public interest, for the common good'. How the public interest might actually be served through the PEO is still ill defined.

As more recent evidence confirms, there is a current proposal for further amending the Public Sector Management Act 1988 through the Public Sector Amendment Bill (NSW Hansard 3 June 1998: 1).

Supporting 'the Government's pre-election undertaking to revive and improve public administration in New South Wales. The Government is committed to restoring the principles of an independent non-political public service in New South Wales and to ensuring that the community receives value for money and quality service from its public sector bodies and employees'. The proposed amendments are:

- ministers' staff and 'other political office holders [to be confirmed] as a special class of temporary public service employees'
- 'appointment of certain long-term departmental temporary employees to permanent public service positions'
- 'extend the power of the Public Employment Office to make determinations with respect to the remuneration, conditions and benefits of public servants'
- 'departmental heads are responsible for the equitable management of staff of their departments' (NSW Hansard 3 June 1998: 1).

The 'D-G of the Premier's Department [as the Public Employment Officer] [is given] the power to employ staff who work for political

office holders' (NSW Hansard 3 June 1998: 2) on a contract basis not covered by the Industrial Relations Commission. The Bill also acknowledges that the majority of appointees come from outside the public service. They are to be appointed for the life of the Government but the D-G of Premier's Department has discretion to extend or to dispense with the services of these staff for any given reason. Power will also accrue to the PEO 'to set salaries, wages and other remuneration, but the Bill is silent on the issue of any separation or redundancy payments' (NSW Hansard 3 June 1998: 2).

'This Bill represents the Government's continuing commitment to the achievement of our goal to create a world class public sector in New South Wales' (NSW Hansard 3 June 1998: 3). What is not clear from the Bill is how the standard for a world class public sector might be assessed and applied. The positive rhetoric offered at the first reading of the Bill is inconsistent with the evidence about the apparent politicisation of the NSW SES and the issues of power and influence between Ministers and their CEOs, especially reported in other Hansard records (see NSW Hansard References; SES Literature Review 1998). World class in this context seems more consistent with a Washington standard than it does with a system which supports traditional Westminster principles.

By increasing the power of the PEO, also in the person of the Director-General of the Premier's Department, there is obvious potential for conflict of interest on behalf of that office holder as an agent of Government, as the principal. In cases where there are serious differences of judgment or opinion over employment issues, the person in the PEO position may face a dilemma in terms of where decision making allegiances lie. Notwithstanding the declared neutrality or capability of any incumbent in this position, others, especially CEOs and SES members, will undoubtedly perceive this position to be political if any incidents occur that seem to disadvantage members of the SES. The primary allegiance of the position holder will be seen to be to the Government of the day rather than a commitment to ensuring due process, natural justice or managing in the public interest based on a nonpartisan standard. However, if this were a declared political position then the D-G can act as the agent of the Government with far less ambiguity. Nevertheless, were this Bill to become law some kind of additional independent statutory review process seems necessary to confirm that decisions made are in the interest of CEOs and SES members, and ultimately in the public interest as well (NSW Hansard 3 June 1998: 1-3).

### 3.7 Conclusion

The SES Literature Review (1998) has highlighted a number of vulnerabilities (Table 3.7.1), which have been apparent in executive accountability systems, especially those based on Westminster-Whitehall traditions, and now evidenced in the NSW SES. While the political systems in Anglo polities have remained fundamentally Westminster, in the bureaucracy there has been a slow shift away from the application of Westminster principles to practices more in line with the Washington System of executive accountability. The formalisation of senior executive services including the NSW SES has created a series of additional tensions between the political and public service arenas and within bureaucratic environments, especially related to the increasingly complex informal power relationships and alternative partisan bureaucracies. These trends away from Westminster principles (Table 3.7.2) have seemingly exacerbated the systemic vulnerabilities (Table 3.7.1), as outlined below.

**Table 3.7.1 Systemic Vulnerabilities in the NSW SES**

<b>Systemic Issues</b>	<b>Vulnerabilities</b>
Contract employment arrangements	<p>⇒ extensive powers available to the Government for removal from office of CEOs (and SEs in practice?) for reasons other than poor performance</p> <p>⇒ according to Government, the SES employment contract may have no force in law</p> <p>⇒ extensive powers are also available to CEOs to remove SEs for reasons other than poor performance</p>
Formal SES system	<p>⇒ a formalised alternative, competitive and growing ministerial political bureaucracy exists which mitigates against the capacity of the SES system to define roles and formal decision rules</p> <p>⇒ policy and managerial arenas for CEOs are increasingly contestable</p>
Codes of conduct and professional ethics	<p>⇒ informal conventions and power relationships significantly define behaviours at the political and bureaucratic levels, rather than official codes of conduct or professional ethics</p>
Formal central control and monitoring of the SES by the PEO	<p>⇒ adverse findings in the ICAC (1996) has to some extent discredited the central monitoring structures of the NSW SES</p>

Source: SES Literature Review (1998)

While it cannot be argued that the introduction of the SES in NSW has directly led to the rejection of Westminster principles within the formal executive accountability sub system, quite fundamental systemic, structural and practical changes, as elsewhere, have provided increased opportunities for politicisation of the NSW SES and the NSW public service. As the evidence suggests, there are sufficient tensions in the operation of the SES to the point where power, behavioural, and informal relationships may be as important as any formal systems. To what extent this is a negative or positive in terms of public sector executive management may be a matter of perspective.

**Table 3.7.2 Trends in Executive Accountability Systems**

<b>Westminster Principles</b>	<b>Current (NSW) SES Principles</b>
lifelong career tenure	<ul style="list-style-type: none"> <li>⇒ fixed-term contract employment</li> <li>⇒ termination of employment for poor performance</li> <li>⇒ removal of office for political reasons other than poor performance</li> <li>⇒ termination of employment for public service reasons other than poor performance including organisational restructuring</li> <li>⇒ limited or no right of return to the public service in the event of removal from SES office for reasons other than poor performance</li> </ul>
independent centralised employment office	<ul style="list-style-type: none"> <li>⇒ decentralised employment processes</li> <li>⇒ direct ministerial appointments</li> <li>⇒ apparently politicised centralised PEO</li> </ul>
anonymous public servants	<ul style="list-style-type: none"> <li>⇒ high public profile of CEOs and other SEs</li> <li>⇒ CEOs' dismissals the subject of considerable media interest</li> </ul>
independent policy advice to Ministers	⇒ policy advising occurs in an increasingly contestable arena, including the participation of ministerial advisers
tertiary qualifications and career learning in public service	generic managerial and leadership skills
ministerial responsibility	CEO responsibility
fixed salary relevant to grade	flexible remuneration arrangements including the possibility of performance pay

Source: SES Literature Review 1998

As the Literature indicates (1998), politicisation can have both a positive and negative value. If processes of politicisation entice, attract or coerce NSW SES officers into acting in the political interest, such as supporting party political purposes like election processes, or responding to media criticism on the basis of government's rhetoric, then the public interest is not being directly served. If, on the other hand, politicisation involves the use of informal arrangements outside the formalised, systemic structures to develop policy in the public interest, then the motivation related to the political behaviours is less clear.

However, as the formal structures of the NSW SES are created or amended by parliamentary legislative processes, mostly through initiatives of the government of the day, the government would seem to have a moral and ethical obligation to support, beyond tokenism, the formal values explicit in such systems and to abide by these rules as the elected stewards of the public interest. Politicisation which devalues the formal SES structure, even if it ultimately serves the public interest, will, inevitably, undermine the capacity of the SES to perform. Espoused public sector performance values such as merit, equity, and professionalism if replaced in practice by patronage, power and politicisation can only have a negative impact upon public sector performance.

Ideally, the same duty of care applies to appointed SES members themselves, as stewards of the public good through effective management, in terms of standards related to their own performance. It is, therefore, morally and ethically incumbent upon SES officers to support the formalised structures of the SES, rather than to involve themselves in bureaucratic politics and power political plays, if this is the case. If the formalised structures are not working to serve the public interest then it is the responsibility of SES members, especially CEOs, to do what they can to facilitate the necessary changes.

The SES Literature Review (1998) suggests, from a realist point of view, that the impact of power and politics in the political and bureaucratic environments, wherever located, will continue to have effects regardless of the formal systems that are in place. In this context, the evidence adduced in the SES Literature Review (1998) strongly indicates that the capacity of the existing formal SES system in NSW to moderate processes, actions, performance and behaviours that are ethical and in the public interest is in considerable doubt. CEOs and other members of the SES are driven by two value sets, each of which has different, if not competing ideals. One relates to the supposedly value neutral formalised bureaucratic system of SES control and moderation. The other relates to the value laden partisan environment in which democratic politics are played out.

Consequently, the complexity of issues relating to accountability (to whom?), encompassing the formal instruments of the NSW SES and the public service more generally, and which include Administrative Law, SES Contracts, Codes of Conduct and less tangible values such as motivation, loyalty, trust, confidence, integrity are identified without practical resolution. While Pollitt (1993) and Coopers and Lybrand (1990, 1991) assert that it is not possible to relate enhanced public sector management to the existence of an executive system, in this case the SES in NSW, NSW SES members, who participated in the first review survey (Coopers and Lybrand 1990; SES Literature Review 1998), indicated that the NSW SES had enhanced managerial practice and provided a motivational framework in which executive performance could take place. The issue now is whether that confidence continues to exist.

## **4. SES Survey Results (Summary)**

### **4.1 Introduction**

To enhance understanding of pertinent issues related to the NSW SES, beyond those already reported in the SES Literature Review (1998; Volume Two) and Summary of the SES Literature Review (Section 3 this Report), a comprehensive SES Survey (Volume Two) was designed, developed, distributed and analysed as part of the research methodology. Particularly, the SES Survey sought to examine issues related to the formal systems of the NSW SES and the more informal practices of executive bureaucratic and political management which may have developed since the introduction of the formal NSW SES, as they are operating, or are perceived to be operating. This section of the Performance Audit Report, therefore, outlines details of Survey design, development, distribution and analysis.

### **4.2 SES Survey Design, Development and Distribution**

The SES Survey instrument (Volume Two) was developed through an iterative process involving linking the findings of the SES Literature Review (1998) to Survey design. Apart from perusing relevant NSW SES documents, preliminary discussions and interviews were undertaken with international researchers and practitioners working in the area as well as current and former members of the New South Wales SES. Specifically, the Survey was intended to test the views of serving members of the NSW SES about a range of issues which were highlighted through the preliminary development of the SES Literature Review (1998) and the preliminary interviews. A number of current SES members were also requested to test draft Surveys and

to provide comments. The researchers took account of these comments in developing the final version of the Survey.

The final SES Survey was divided into a number of sections, as follows:

1. Objectives, Roles and Authority of the NSW SES
2. Recruitment, Selection, Promotion and Retention
3. Performance
4. Policy Development and Advice
5. Incentives
6. Accountability and Responsiveness
7. Satisfaction and Enhancement
8. Demographic and Additional Information.

As part of the quantitative statistical methodology applied to Survey design, most sections required multiple responses to questions using a scale (1-7), with 1 representing 'not at all', 4 being 'neutral' and 7 indicating 'completely'. Where questions were 'not applicable', 'n/a' was a possible, additional category of response. It was intended that SES Survey recipients be asked, in terms of their own experience, to indicate their views on the scale (1-7), or indicate 'n/a', as relevant. Other questions required Survey recipients to nominate a specific response within a number of situational options. These questions specifically applied to areas such as demographic and other basic profile details. Comments at the end of each section of the Survey were also invited.

The Survey was distributed during November 1997 to a total of five hundred and sixty one (561) SES members using the NSW Government's SES database as at April 1997.

Surveys were sent to:

- all CES/SES members on Level 2 or above (several names were removed from the distribution list where it was known that the person was no longer in the SES).
- a random sample (one in six SES members extracted from the alphabetical listing) of SES officers on Level 1.

### 4.3 SES Survey Analysis

Two hundred and one (201) completed SES Surveys (36% of total distributed) were returned to the researchers for analysis. This number did not include Surveys that were returned, not filled out (19), due to SES members no longer being in positions indicated by the SES database, or one (1) not returned but where the recipient indicated, by letter, a reluctance to complete the Survey because of perceived concerns about several questions (total of 20 = 3.6%).

Analysis of the SES Survey has primarily been undertaken using statistical analysis software (SPSS). Analysis of the full data including the range, frequency, percentage and response rates (out of 100%) for each question using the scale 1-7 has been completed (Volume Two) but is not shown in such detail in this Performance Audit Report. However, using selected analysis of the responses to the Survey, some quite detailed summary information is provided.

For the purpose of this Summary, responses have been grouped together into four broad categories representing different points on the 7-point scale (negative responses [-] = 1-3 on the scale, neutral = 4 on the scale, positive responses [+] = 5-7 on the scale) as indicated. For the most part, the positive (+) responses, as aggregated (5-7 on the scale), are the most generally reported in this Summary. Rounded percentages are also used. Some disaggregated percentages in certain questions do not add up to one hundred per cent (100%). Missing percentages usually represent non responses, as indicated in the more comprehensive results (Volume Two). Only the most pertinent details (especially majority categories) are indicated for some demographic and profile data. It is also noted that in this Summary, the order of reporting is not necessarily the same as that used in the SES Survey instrument. In particular, the demographic data are reported first, whereas in the SES Survey the section was last.

Some illustrative comments made by respondents are recorded in this Summary at the end of each relevant section, but, generally, only a small number of respondents (about 14%) took the opportunity to comment beyond the basic questions. Comments that were made were predominantly negative.

### 4.4 Demographic Information

Demographic information which would broadly categorise the SES by Band/level: gender; age; position; time in current position; primary function and location; education; professional qualifications; service or sector from which SE was recruited; size of the organisation; primary organisational type/function; and, direct reporting

responsibility; was requested. While full anonymity of respondents had been assured in writing by the UTS researchers the quality and details of these data were significantly lacking. This particularly applied to SES Band (68 (34%) blank responses out of the 201 analysed Surveys) and SES Level (112 blank responses) 56%).

A number of interpretations can be made from these blank responses. In several cases, respondents who had declined to complete all the demographic details indicated their concern, in writing on the Survey form, about possible identification from the requested demographic data. Implicit in the wider lack of detail, therefore, is, seemingly, a largely unexpressed anxiety, perhaps, about reporting perceived negative aspects of the NSW SES and being personally identified. This, in some instances, as reported, seems pertinent to perceptions about a current negative relationship of the SES with Government and the possibility of punitive action should individual views become known.

A small part of the demographic information about the NSW SES elicited from the Survey, therefore, is not completely representative or necessarily reliable. This has meant that correlations, that is identifying the SES Bands and Levels with expressed negative concerns about specific aspects of SES performance, have not been undertaken. However, the Survey does provide a comprehensive guide to performance of the NSW SES, as reported by respondents.

The Demographic Data provide a profile of respondent SEs in the NSW SES (Table 4.4.1). Only the major categories of data are presented in this Table (4.4.1). The gender imbalance amongst SEs is noted and may require some further consideration by the PEO in terms of gender representation in the NSW public sector overall. Otherwise, the data are not particularly controversial or unexpected.

**Table 4.4.1 Profile Information of Senior Executives in the NSW SES who responded to the Survey**

CEOs		18%
SEs		80%
male	79%	female 19%
aged between		
35 - 49 years		51%
50-65 years		45%
SEs' primary functions:		
Management		39%
Policy		11%
Direct Service Delivery		10%
the majority of SEs (67%) are located at:		
a Head Office in the city		
SEs hold postgraduate educational qualifications (55%), some with professional qualifications, mostly in:		
business		17%
('soft') sciences		13%
engineering		10%
SEs were appointed to the SES from:		
the NSW public service		71%
the private sector		11%
other Australian public service		10%
SEs are from:		
inner budget sector public service organisations		45%
partly commercial/partly public service organisations		14%
mostly or fully commercial organisations		10%
central agencies		10%
SEs have direct contact with Ministers:		
weekly		28%
monthly		26%
SEs work in organisations with:		
over 500 employees		64%

Source: SES Survey (1998)

Note: Where data does not total 100% for any item, data are "other" and/or missing.

## 4.5 Objectives, Role and Authority of the SES

### 4.5.1 SES Objectives

Respondents were largely positive (Table 4.5.1a) about eight of the thirteen stated SES objectives elicited from documented material related to the establishment of the NSW SES and the Coopers and Lybrand Research (1990, 1991; SES Literature Review 1998). However, given that responses relating to good performers being retained (55%) and commercial management principles implemented (52%) were considerably less positive some review of the issues surrounding the lack of attainment or relevance of these SES objectives seems indicated.

**Table 4.5.1a Stated objectives of the NSW SES**

	+%
accountability for specified outcomes	90
high level management skills	83
a high level of public sector productivity	82
regular performance reviews	75
recruitment and promotions on merit	71
rigorous performance based culture	70
good performers retained	55
commercial management principles implemented	52

Source: SES Survey (1998)

More equivocation and negativism is evident with other SES objectives (Table 4.5.1b). However, it was not within the brief of the researchers to test the relevance of these objectives. Nevertheless, these latter responses highlight an apparent urgent need to review the current worth or dysfunction of these perceived less positive objectives and/or to determine why SES management practice is not achieving the intended results in these areas.

This applies to the originally stated objectives relating to sanctions based on performance (47%), outside lateral recruitment (45%), professional development (43%), reward systems (29%) and mobility (23%), which were seen as essential elements of a well functioning NSW SES.

**Table 4.5.1b Stated objectives of the NSW SES (cont)**

	+%
sanctions including dismissal based on performance	47
outside lateral recruitment	45
advanced management training and development	43
appropriate rewards for performance	29
mobility of SES officers	23

Source: SES Survey (1998)

#### 4.5.2 Roles of the SES

SEs perceive that their most critical role is to provide high level advice to Government (92%) (Table 4.5.2). They also consider that directing and guiding the implementation of Government policy (87%), providing executive leadership to the rest of the public service (86%), advising and shaping high level technical and specialised services for Government (86%) and providing value for money services and programs (84%) are also important. Less importantly, but nevertheless significantly, SEs (68%) further perceive that they are accountable to the electorate, through the NSW Parliament for the management of the State's resources.

Just under half of the respondents (45%) indicate that being aware of electoral imperatives and responsive to political agendas in a partisan way is important. This suggests that NSW SEs have to be politically astute and sensitive actors in the political-ministerial interface. In this context, the notion of independent technical bureaucratic advice as a separate, differentiated and valued stream of policy advice (87%) seems to exist with more partisan processes (45%), to an extent. Parallel roles, one relating to the formal requirements and expectations of the SES and another defined by informal political processes, seem to operate together at times. Undoubtedly, there are increasing opportunities for politicisation and compromise away from the formal SES system, even if those informal processes only operate for less than half the time of the more formal processes. In these circumstances the likelihood of SEs giving partisan policy advice rather than independent advice increases.

**Table 4.5.2 Factors SEs take into account when considering their SES role**

	+%
<b>SES members:</b>	
have advanced intellectual capacity to provide high level advice to Government	92
are responsible for directing and guiding the implementation of Government policy	87
provide executive leadership to the NSW Public Service	86
advise Government and shape high level, technical and specialised services	86
are responsible for maximising Government's return on investment in terms of value for money services and programs	84
provide key, neutral policy advice to Government	77
act as the primary policy advocates disseminating Government's agenda	73
are accountable to the electorate through the NSW Parliament for the management of the State's resources	68
are aware of electoral imperatives and are responsive to political agendas in a partisan way	45

Source: SES Survey 1998

#### 4.5.3 SES Authority

SEs perceive that they are guided most by legislation (86%) in deriving their authority to act. Formal delegations (83%) and their own sense of professionalism (83%) are equally significant (Table 4.5.3). A formal code of conduct is only perceived by less than half the respondents (44%) to guide or moderate SES performance.

While not regarded as highly authoritative, almost 40 per cent of respondents do perceive that ministerial advisers have reasonable authority to guide SES performance. This response indicates that an alternative partisan bureaucracy in NSW does have a degree of relative authority in some areas of the public sector.

**Table 4.5.3 Sources of SES authority**

	+%
statutes	86
formal delegations	83
own sense of professionalism	83
working relationships with more senior people	79
Boards where applicable (n/a =50%)	70
formal SES code of conduct	44
Informal authority from ministerial advisers	38

Source: SES Survey (1998)

#### 4.5.4 People who influence strategic policy and decision making

Ministerial advisers within the relevant portfolio area are seen to be fairly influential in the strategic policy and decision making arenas (63%), although not nearly as significant as the organisation's CEO (92%), portfolio minister (85%) or other SEs within the organisation (70%) (Table 4.5.4). Nevertheless, it is apparent that there are a range of potentially competitive actors in strategic policy making arenas. The media (18%) are not perceived to be an important force.

**Table 4.5.4 Influential strategic policy and decision makers**

	+%
organisational CEO	92
portfolio minister	85
other SEs within the organisation	70
ministerial advisers within the portfolio area	63
boards (where applicable)	63
other ministers or members of the government	49
relevant interest groups	45
organisations with statutory accountability responsibilities (ICAC, Ombudsman, Auditor-General)	44
ad hoc or issue specific inquiries eg Royal Commissions	42
CEOs or SES members outside the organisation	33
the electorate	31
parliamentarians	28
individual public servants below SES	20
the media	18

Source: SES Survey (1998)

#### 4.5.5 Comments

For the most part, the 'Comments' for this section of the Survey is not filled in by most respondents (about only 14% of respondents commented). However, some of the comments that are made suggest:

- a bias within the SES towards a 'metropolitan perspective', with country areas not always considered, especially in terms of mobility
- inappropriate levels of involvement in departmental matters by ministers and ministerial advisers which 'fosters staff going round the back door direct to minister's staff to second guess departmental advice'
- 'appointment of CEOs is subjective'
- 'the intellectual and advisory capacity of the SES is ... somewhat circumscribed by political parameters and operational imperatives.'

## 4.6 Recruitment, Selection, Promotion and Retention

### 4.6.1 Recruitment

It is perceived by respondents that recruitment processes are largely carried out in accordance with NSW SES system requirements in that positions are advertised (85%), selection occurs on the basis of merit (80%) and formal and neutral selection committees are convened (80%) (Table 4.6.1). This still leaves a deficit in appropriate formal responses. Just over a quarter of respondents (27%) indicate that selection processes may be based on subjective rather than objective criteria. If this is representative of NSW public sector perceptions, more widely, it is apparent that SES recruitment processes are seen to be impacted to some degree by non-systemic recruitment decisions.

What is not clear from the SES Survey results is the extent to which the application of subjective recruitment criteria actually represents Government's preferences (but where government is not obviously or directly seen to be involved in the recruitment process), or bureaucratic action within the SES. However, when Government is perceived to be directly involved (5%), the responses indicate that political appointees recruited to the SES are at a relatively low level. Nevertheless, these results suggest that recruitment processes need review so that the system is, and is perceived to be, more open and transparent and operates in accordance with the predetermined formal rules governing recruitment.

**Table 4.6.1 The extent that certain factors impact upon recruitment processes**

	+%
SES position are always advertised	85
selection is on merit	80
formal and neutral selection committees are convened	80
selection is based on subjective criteria	27
appointed without interviewing but acting in position	11
appointed by government	5

Source: SES Survey (1998)

#### 4.6.2 Merit

The responses which define 'merit' in the SES (Table 4.6.2) indicate a primary focus on managerialist competencies (92%) within a framework of public sector accountability. Only slightly less important are the associated political and policy competencies. Political acumen (78%) rates highly enough as a criterion of merit to indicate that managerial competencies need to be considered alongside more politically directed competencies. Willingness to provide independent policy advice to the minister (65%), while relevant to a significant number of respondents, is seen as a less important criterion of merit than managerialist and more politically sensitive attributes. In practice, few respondents (22%) consider that experience in the private sector is particularly relevant to merit. This response is consistent with the finding (Table 4.5.1b) in relation to the stated SES Objective, pertinent to outside lateral appointments.

Overall, these findings suggest that merit in the NSW SES needs to be more realistically defined, in a formal way, through essential criteria which encompass managerialist, leadership and more politically sensitive competencies. That is not to say that nonpartisan principles should be compromised. Such changes to the definition of merit would need to be reflected in all formal recruitment, selection, termination and performance management processes. Furthermore, the meaning of the 'public interest' was implicit, rather than stated, in the Survey. While it can be assumed that most, if not all SEs, would have their own positive interpretations, as indicated by the overall range of Survey responses, 'public interest' may need to be made explicit if 'merit' is to be redefined.

**Table 4.6.2 The meaning of 'merit' in recruitment and appointment processes**

	+%
managerial competence	92
organisational leadership capability	89
capacity to bring about organisational change	86
capacity to manage in accordance with the laws and principles of public sector accountability	82
professional, technical and/or scientific skills	79
high level political acumen	78
high level understanding of the role of government	72
capacity to serve the public interest	71
high level of knowledge of relevant ministerial portfolio	69
strategic knowledge of public sector reform processes	69
willingness to provide independent advice to minister	65
knowledge of intergovernmental relations	56
management and leadership experience in the private sector	22

Source: SES Survey (1998)

#### 4.6.3 Promotion

While it is perceived by respondents that, once in the SES, promotional opportunities are widely available (82%), there is a reasonable amount of questioning about the objective nature (72%) of related processes (Table 4.6.3). Achievement of objective performance standards, as outlined in a performance agreement (64%), is not, necessarily, seen to relate to promotional opportunities. Political factors, such as political affiliation (31%), and bureaucratic patronage (26%) to a relatively significant degree are both considered to impact upon promotional prospects.

This would seem to be an undesirable and untenable situation if the integrity of the formal NSW SES system is to be maintained. It is not suggested that political or bureaucratic patronage can be eliminated entirely but rather that the SES system is transparent enough and sufficient checks and balances exist to reduce the likelihood of extensive system manipulation and dysfunction where insufficient accountability mechanisms exist. Political appointees, ideally, need to be identified as such.

**Table 4.6.3 Factors related to promotional prospects**

	+%
able to apply for all relevant promotional positions	82
promotional opportunities are based on objective criteria	72
achievement of performance agreement goals	64
political issues such as political affiliation	31
bureaucratic patronage such as favouritism	26

Source: SES Survey (1998)

#### 4.6.4 *Involuntary Termination of Employment*

Responses indicate that early involuntary termination of employment occurs mostly for reasons other than poor performance assessed through formal NSW SES performance management systems (Table 4.6.4). The perceived significance of factors relating to termination through: organisational restructuring (76%); downsizing (67%); poor performance as stated in a Performance Agreement (57%); incompatibility with an influential person (51%); and, contrary political affiliations (38%) and perceived poor performance regardless of any Performance Agreement (37%); provides evidence which indicates that the majority of decisions about termination occur outside the formal SES performance management system. The fact that perceptions about performance regardless of any Performance Agreement (37%) are seen as less important than performance tested through a formal Agreement (57%) also suggests that both formal and informal performance appraisal systems are operating in practice in the NSW SES.

As outlined above (4.6.3), the informal factors that are perceived to relate to promotional opportunities will also inevitably impact upon decisions about the involuntary termination of employment. Overall, the apparent level of informality in the NSW SES in relation to this performance assessment area seems unacceptable on any formal systemic SES standard. As reported, the formal system will be effectively dysfunctional.

**Table 4.6.4 Factors relevant to early, involuntary termination of SES employment**

	+%
SES position abolished in organisational restructuring	76
retrenchment at a time of downsizing	67
poor performance tested on a formal Performance Agreement	57
apparent incompatibility with an influential person	51
perceived contrary political affiliations	38
perceived poor performance regardless of any Performance Agreement	37

Source: SES Survey (1998)

#### 4.6.5 *Comments*

Again, comments were not widely made for this section of the Survey (about 14% of respondents commented). The comments made indicate some level of dissatisfaction and satisfaction with issues related to this area, as follows:

- ‘Criteria [for selection] are used but are often vague and subjective.’
- ‘I am considering leaving employment in the NSW public sector, whereas until about 2 years ago I wanted to make it my career until retirement. The retention incentives now are almost nil.’
- ‘The recruitment, promotion and retention of SES personnel has become more performance focussed than at any other time in the past.’

### **4.7 Performance**

#### *4.7.1 Details of SES Contracts and Performance Agreements*

The majority (96%) of respondents do have a current SES Employment Contract and are likely to have had one or more contracts. Just over half (51%) have had 2 or more previous contracts, 31 per cent have had 1 previous contract while 19 per cent have had no previous contract.

Those who that gave details as to how their contracts were renewed (79%), indicated that the most usual form of contract renewal is a new contract after appointment to another SES position (57%), which suggests considerable promotional opportunities for SEs already in the SES. Another 19 per cent had their contracts renewed after advertising, 15 per cent had their contracts rolled over.

Of those who gave a response to the question on the length of their contract (85%) the majority had contracts (69%) for five years or more, it is noted that some contracts (10%) are for one year or less. While there may be valid reasons for reducing the contract length, how performance can reasonably be assessed over such a short period is obviously in question.

The majority (92%) of respondents also have a current Performance Agreement (PA). Of those SEs with a PA, performance review largely takes place every six months (45%) or annually (47%). Some respondents (5%) do not have their PAs reviewed at all and some (3%) are reviewed less frequently than the majority. As would be

expected, CEOs (60%), the person with whom the PA was negotiated (23%) and Ministers (12%) are the most likely reviewers.

**Table 4.7.1 SES Contract Details**

	<b>% of Responses (% rounded)</b>
Whether SES has a current employment contract (N=199)	
Yes	96
No	4
Number of previous contracts (N=200)	
None	19
1	31
2	23
3+	28
Process used to Renew/Establish subsequent Contracts (N=159)	
Rolled Over	15
Rolled Over after successfully reapplying	19
New Contract after appointment to another position	57
Other	9
Length of Current Employment Contract (N=170)	
1 year or less	8
2 years	5
3 years	12
4 years	4
5 years	69
other (eg monthly)	2

### 4.7.2 Professional development

Given that advanced management training and development was a stated objective of the SES, only 62 per cent have participated in any work-sponsored professional development programs designed to enhance SES performance (Table 4.7.2). Of those who have participated, the experience is considered to be beneficial because: of useful relevant knowledge (68%); it provided knowledge enhancing the capacity of the SES to make high level strategic decisions (64%); it strengthened SES competencies (54%); or it provided professional development and assistance in achieving a formal PA (37%).

When professional development is undertaken the benefits are apparent. This indicates that more formal effort is required to strengthen this aspect of the SES.

**Table 4.7.2 Perceived benefits of professional development experiences to individual SEs**

	+%
useful relevant knowledge even if not directly related to SES position	68
knowledge enhances capacity to make high level strategic decisions	64
strengthened required SES competencies	54
assisted to fulfil PA requirements	37
enhanced promotional prospects	31

Source: SES Survey (1998)

### 4.7.3 Performance Agreements

While those SEs who have PAs perceive that they are useful for guiding performance (Table 4.7.3), especially in terms of organisational objectives (87%), respondents also indicate that PAs do not provide a high level of assurance that employment will not be terminated for other than performance reasons (37%), or that PAs are particularly relevant to promotional opportunities (37%). Clearly the existence of a PA does not always mitigate against the potential for political influence (18%). This further suggests that dual streams of accountability, involving the formal SES and informal, personalised political processes, operate within the NSW SES to some extent.

**Table 4.7.3 Utility of a Performance Agreement for guiding individual SE achievement**

	+%
contributing to attainment of organisational objectives	87
focusing on productivity enhancements	76
improving organisational performance in area of responsibility	71
providing a formal benchmark of performance for contract renewal	70
enhancing leadership capacity including disseminating government policy	63
improving the quality of advice about area of responsibility	51
defining autonomy as an SES officer	44
enhancing promotional prospects	37
providing assurance that contract will be not terminated for other than poor performance	37
limiting the opportunities for political influence beyond the SES framework	18

Source: SES Survey (1998)

#### 4.7.4 Performance Appraisal

Eighty per cent of respondents regarded commitment to the organisation as being relevant to performance appraisal (Table 4.7.4). Seventy-eight per cent regarded actual performance related to a PA as being relevant while 74 per cent perceived that performance regardless of a formal PA was important. This indicates that the formal performance appraisal system of the NSW SES, in practice, competes with less systematised processes including subjective assessments about performance, and loyalty to the organisation, whether accurate or not. A major area of formal SES systemic dysfunction and obvious vulnerability has been highlighted with these responses. If the formal performance appraisal system is to operate with acceptable integrity and consistency, a major review of the current situation, as reported by respondents, is obviously indicated.

**Table 4.7.4 Factors relevant to SE performance appraisal**

	+%
apparent commitment to organisation	80
actual performance related to PA	78
perceptions about performance regardless of formal PA	74
perceptions about willingness to provide neutral advice	52
perceptions about willingness to be responsive to partisan imperatives	26

Source: SES Survey (1998)

#### 4.7.5 Factors guiding SES performance

According to respondents (Table 4.7.5), SEs are guided to perform most influentially by their own sense of professionalism (99%), what is perceived to be the intrinsic value of SES work (98%), and to a lesser degree, contributing to the achievement of Government's objectives (78%) and the opportunity to apply individual expertise to SES work (76%). Seemingly, the opportunity to participate in professional development (18%) and for performance pay (15%) are not significant performance motivators.

**Table 4.7.5 Factors that guide SE's performance**

	+%
professional pride in performing well	99
intrinsic value of work that SE does	98
interest in contributing to the attainment of Government's objectives	78
opportunity to use expertise	76
PA (n/a = 5%)	63
salary	36
employment contract (n/a = 7%)	31
pragmatic personal considerations (eg financial and other commitments)	26
concern about contract termination	25
status of being in the SES	22
participation in professional development (n/a = 9%)	18
performance pay (n/a = 27%)	15

Source: SES Survey (1998)

#### 4.7.6 Comments

Some indicative comments made in relation to this section of the Survey are as follows:

- 'It is difficult to have a performance agreement developed but once undertaken it is very difficult to be allowed to implement it.'
- 'I have not had any opportunities to participate in a professional development programme.'
- 'Professional development for SES is virtually non-existent. SES remuneration approaches the atrocious. Performance pay arrangements must be introduced. Removal of non-performers must be encouraged.'

## 4.8 Policy Development and Advice

### 4.8.1 Policy making and specialist advice

When providing policy or specialist advice to the Government, SEs indicate that they are most influenced by Government policy (88%), the Westminster principle of non partisanship or neutral advice (79%), their own sense of experience and expertise (77%), as well as the known views of the Minister (69%) (Table 4.8.1). Respondents are, apparently, not significantly influenced by any perceived need to give politically partisan advice (11%), or being on a fixed term contract (7%).

However, other responses in this Survey relating to these two latter issues from differing perspectives do reveal a number of uncertainties amongst SEs ( 4.5.2, 4.6.4). This especially relates to factors taken into account when considering the SES role, and, fixed term contracts with the possibility of early termination for other than poor performance, where issues of partisanship do seem to count. While it is clearly not possible to test these factors beyond reasonable doubt on the evidence available from Survey analysis, it seems probable that partisan considerations are influential to some extent from time to time and are responded to accordingly by some members of the NSW SES.

**Table 4.8.1 Factors which influence SEs' policy making or specialist advice for the Government**

	+%
the policy of the government of the day	88
providing neutral advice even if the Government does not like the advice	79
SE's specialist expertise regardless of others' views	77
the known views of the minister	69
political judgement about key issues	56
expectations about professional goals	49
the known views of ministerial staff	45
concern to provide advice that the Government might want regardless of merit	11
being on a fixed term contract	7

Source: SES Survey (1998)

#### 4.8.2 *Crucial decisions subject to formal review*

While bound to a considerable extent by formal statutes (78%), more respondents (87%) indicate that they are influenced by the merits of individual cases when making crucial decisions subject to formal review (Table 4.8.2). This suggests that crucial decision making processes are not, primarily, guided by formalised rules. In a positive light, this situation could be seen to support flexibility, innovation, risk management practices, and high levels of professional judgement all expected of the SES, but equally in a more dubious way could imply that some decisions, if personalised and individualised, will be inconsistent with formalised notions of due process and natural justice.

**Table 4.8.2 Influences which affect SES' crucial decisions subject to formal review**

	+%
merits of the individual case	87
legal statutes which set the parameters for action	78
procedural fairness even if outside relevant statutes	68
Government policy and professional judgement	55
on the basis of precedent	44
on the basis of political acceptability regardless of law or policy	8

Source: SES Survey (1998)

### 4.9 Incentives

#### 4.9.1 *Details of merit pay and secondments*

A majority of respondents (62%) consider merit pay to be an important performance incentive. Just over a third of respondents (37%) were eligible for merit pay (also referred to as performance pay). Of these 78 per cent had received merit pay.

A majority of respondents (62%) consider mobility to be important for ensuring that the best people are in key SES positions. Only a small proportion of respondents (27%) have had the opportunity for secondment (also referred to as mobility) to another SES position. Of those who have had the opportunity for secondment 75 per cent have actually been seconded to another position.

#### 4.9.2 Professional support

Almost all respondents (97%) indicate that being valued by Government as intellectual and professional advisers is important to maintain the SES as professional leaders. Clear policy direction from Government in relation to their expectations of the SES (89%) and bipartisan parliamentary support (86%) are also regarded as significant. Guidance from central agencies (80%) and the availability of professional development opportunities (79%) also receive a considerable proportion of support.

The other forms of support outlined (Table 4.9.2), relatively, as desirable by SEs may provide a basic framework for beginning to assess the performance of the SES system as it currently operates and the kind of future support that may be required, or desired, if the SES is going to perform to its potential.

**Table 4.9.2 Forms of support that are needed to maintain SES members as professional leaders of the NSW Public Service**

	+%
SES members valued by Government as intellectual and professional advisers	97
clear policy direction from Government in relation to their expectations of the SES	89
SES receives bipartisan Parliamentary support	86
policy guidance from central agencies	80
formal professional development opportunities are available	79
frequent peer networking opportunities	74
formal CEOs' advisory board or committee advises Government	72
regular collective professional development activities	70
formal annual portfolio meetings with the Premier, Minister, and/or central agencies to review performance	69
high level formalised exchange between public, private not for profit sectors	62
SES mobility	61
cohesive SES culture	53
formal SES communication (eg newsletter)	45

Source: SES Survey (1998)

### 4.9.3 Comments

Indicative comment for this section is as follows:

- [As indicated in the Survey Table 4.9.2], all of it [Table 4.9.2] is vital but virtually none of it occurs at present. The SES has become individualised and agency based. No collective. No esprit de corps. No mobility.'

## 4.10 Accountability and Responsiveness

### 4.10.1 Accountable to whom?

Where applicable, a high proportion of SEs (98%) see themselves as accountable to the CEO and 87 per cent regard themselves as accountable to the Minister (Table 4.10.1). SEs also perceive that they are accountable to the electorate (68%), the reality of practice is that the direct accountability is to the Minister and the Government of the day (80%).

In terms of managing down, as leaders, overall, of the NSW public service and in their own organisations, SEs do not perceive that they are accountable to the NSW Public Service (20%) to any significant degree. (Although this is a contrary finding to 4.5.2 where SEs did acknowledge that leadership of the public service was important in terms of providing executive leadership to the NSW Public Service (86%)). This finding, however, suggests that SEs are placed within a hierarchy of power where managing up is perceived to be more critical (or time consuming) than managing down. SEs, seemingly, perceive themselves to be apart from the rest of the public service. This is an area which, apparently, requires further examination as to how the relationship between SEs, as executive leaders and the rest of the NSW public service might be enhanced.

**Table 4.10.1 Key people to whom SEs are accountable**

	+%
CEO (where applicable: 87% of sample)	98
direct supervisor: (where applicable: 67% of sample)	93
Minister	87
Government of the day	80
a Board (where applicable: 46% of sample)	80
NSW electorate	68
NSW Parliament	64
NSW Public Service	20

Source: SES Survey (1998)

#### 4.10.2 SES Accountabilities

SEs perceive their accountabilities to be largely related to resource management (98%), financial management (93%), performance management goals (91%) and non partisan policy management (88%) (Table 4.10.2). Such accountabilities are in accord with formal performance management systems of the SES. However, other evidence outlined above in the Survey summary suggests that the SES is not always as functional or formalised as this.

The fact that well over half of the respondents also indicate that being sensitive to Government's electoral imperatives beyond formal accountabilities (65%) is important, again, tends to suggest that there are both formal and informal accountability streams of influence, in practice.

**Table 4.10.2 SES Accountabilities**

	+%
managing public resources including people efficiently	98
managing delegated funds in accordance with legislation and guidelines	93
formally agreed performance goals	91
responsiveness to Government's policy agenda in a politically neutral way	88
providing neutral policy advice and options in the public interest	88
being sensitive to Government's electoral imperatives beyond any formal accountability	65

Source: SES Survey (1998)

#### 4.10.3 SES work

SEs indicate that both potential impact (97%) and urgency (96%) are important when responding to the demands of SES work (Table 4.10.3). Work also proceeds as planned for more than half the time (60%), while just less than half the respondents (47%) indicate that they have limited control over their workload (separate response). Of some concern is the relatively large number (42%) who indicate that their work loads are greater than can reasonably be managed.

Whether this is mainly related to the size and structure of the NSW SES (Table 4.10.4) and the result of downsizing exercises (4.6.4 reasons for involuntary termination) is not directly canvassed in this Survey. However, the responses, here, suggest that more in depth examination of work allocation, work flows and results of such effort in a valued added way relating to the public interest is indicated.

**Table 4.10.3** Extent and demands of SES work

	+%
responsive to work's potential impact	97
responsive to work's urgency	96
work proceeds as planned	60
limited control over work load	47
work demands are greater than can be reasonably managed	42
work beyond individual capacity and unreasonable in terms of position	4
not enough work and under utilised	1

Source: SES Survey (1998)

#### 4.10.4 Size and structure of the SES

Only just over half the SE respondents indicate that the size and structure of the SES (Table 4.10.4) within their organisations are adequate (55%) which suggests a reasonable level of dissatisfaction. Structure (bands/levels appropriate to accountabilities 47%) would seem to be less of an issue than size (insufficient positions 38%). Only a small percentage (10%) of respondents consider that the SES is too large.

Overall, the size and structure of the SES seem to require some general review to increase the levels of satisfaction about these aspects.

**Table 4.10.4** Size and structure of SES in respondents' organisation

	+%
size and structure adequate	55
bands/levels appropriate to accountabilities	47
insufficient SES positions	38
too many SES positions	10

Source: SES Survey (1998)

#### 4.10.5 Responding to irregularities

Responses of SEs in this area suggest the possibility of a potentially unsatisfactory formal response to issues relating to possible perceived instances of, for example, maladministration, waste of resources and/or corruption (Table 4.10.5). While just more than three quarters of respondents indicated their willingness to make an unqualified report to the relevant authorities (78%) under such conditions this still leaves a percentage (22%) who are equivocal or reluctant to make a report. Adequate formal protection, if reporting irregularities, does not seem to be a real concern (4%).

Within the context of ethical and professional behaviours expected of SEs, some further exploration and clarification of these issues, as systemic concerns, is indicated.

**Table 4.10.5 SES response to irregularities (eg maladministration, waste of resources or corruption)**

	+%
make an unqualified report to relevant authorities as allowed or required	78
make a report but with concerns about legal protection related to disclosure	50
report to a someone with more authority and leave it up to that person	44
make an anonymous report to relevant authority	9
not report because of lack of protection	4
leak concerns to someone	2

Source: SES Survey (1998)

#### 4.10.6 Comments

An indicative comment for this section is as follows:

- ‘Depending on how serious the matter is I might first raise my concerns/suspicious with the person concerned and seek an explanation before taking formal action.’

### 4.11 Satisfaction and Enhancements

#### 4.11.1 SEs' satisfaction levels with some features of the SES

Respondents were asked to indicate their levels of satisfaction with a number of features of the SES. Contrary to some of the earlier responses in this Survey touching on these issues in other ways, the levels of positive satisfaction (excluding neutral and negative responses) were relatively low (Table 4.11.1.).

This response suggests that there are a number of systemic issues that need more attention. The processes for removal from office beyond assessment of performance through formal performance management systems (12%) and processes for the early termination of employment (13%) with such low levels of satisfaction are clearly major issues of concern to SEs. Other systemic issues relating to mobility opportunities (15%) and performance pay (19%) attracted responses also indicating low levels of satisfaction. At a more political level, some dissatisfaction relating to the public image of the SES (18%) is indicated.

As this Survey suggests, so far, the absence of a satisfactory, or reliable, range of formal SES decision rules based on due process and natural justice, which may moderate some of the less formal power-behavioural exchanges within the SES, may have heightened these negative perceptions.

**Table 4.11.1 Levels of satisfaction with aspects of the NSW SES**

	+%
relevance of performance review	61
employment contract duration	58
individual Performance Agreement as a tool of accountability and productivity	58
peer support	54
informal recognition of contribution to SES	48
capacity of SES structures and policies	40
working hours needed to perform responsibilities	37
SES remuneration levels	35
employment security	33
professional development opportunities	32
formal recognition of contribution to SES (incentives)	27
opportunities for performance pay	19
SES public image	18
mobility opportunities	15
early termination of employment processes	13
processes for removal from office for reasons other than poor performance defined through formal SES performance management processes	12

Source: SES Survey (1998)

#### 4.11.2 A hypothetical question - reapplying for a position in the NSW SES

Respondents were asked, hypothetically, that if they had left the NSW SES of their own accord whether they would reapply for another SES position. Of the 87 per cent of the sample who responded, almost half (48%) the SEs indicated that they were fairly definitely likely to return. Conversely, a reasonable proportion (35%) indicated that they were not likely to return and eighteen per cent were neutral. Twenty seven respondents did not indicate whether they would or would not return.

Of those respondents who indicated why they were not likely to reapply to join the NSW SES, a range of reasons were reported [by occurrences] (Table 4.11.2). The fairly negative response to this question seems to indicate a relatively low level of satisfaction, overall, with the NSW SES.

**Table 4.11.2 Reasons for not reapplying to the NSW SES**

	<b>occurrences</b>
the poor package offered to the SES	11
better employment conditions in the private sector	6
situational	6
dislike of extreme politics	5
personal strain caused by corruption and disappointment in government's restructuring	3
no personal satisfaction from the job	2
unacceptable working environment	2

Source: SES Survey (1998)

#### 4.11.3 The main challenges facing the SES

Respondents were further asked to identify the five main challenges facing them as members of the NSW SES. To elicit more qualitative responses no prompts were given in the Survey.

Achieving performance targets within a contractual environment (26 occurrences), maintaining staff morale and motivation (25 occurrences), surviving in spite of good performance (23 occurrences), dealing with stress related to contract renewal and the erosion of benefits (21 occurrences) are identified as the key issues.

The challenges identified here are consistent with some of the less positive responses to questions already reported in this Survey which

particularly relate to the informal decision rules and processes which, apparently, render the formal system the NSW SES less effective than was intended.

**Table 4.11.3 Main challenges facing the NSW SES**

	<b>occurrences</b>
achieving targets within the contracted environment	26
maintaining staff morale, motivation, enthusiasm, innovation and personal expertise	25
providing effective leadership, guidance, support and direction to staff	23
surviving in spite of good performance	23
dealing with stress, health issues, contract renewal processes and erosion of benefits	21
change of Government	18
providing market competitive services	17
dealing with uncertainty about the SES due to Government policies and interference	16
managing at a time of limited resources	16
being motivated, energised and keeping up to date professionally	16
increasing requirement of submitting reports centrally	16

Source: SES Survey (1998)

#### *4.11.4 Enhancements to the SES*

SEs were asked to nominate five important enhancements for the SES (Table 4.11.4). Again, no prompts were given to elicit qualitative responses that were more unconstrained. The two most critical issues reported relate to legally binding contractual and performance arrangements (28 occurrences) and performance based pay and benefits (23 occurrences).

The formal contract and performance management arrangements clearly need critical attention if the integrity of the SES is not to be eroded further by informal and apparently unacceptable (to SEs) processes. Other proposed enhancements are outlined below (Table 4.11.4) and are consistent with the general analysis already reported.

**Table 4.11.4 Enhancements to SES**

	<b>occurrences</b>
Better formal support binding both parties legally	28
Providing performance based pay and benefits	23
Creating an SES culture, able to learn from others	16
More high level professional development activities	16
SES recognised in the 'network' and publicly	15
more accountability and less central agencies' interference	14
well defined goals of SES from government	11

Source: SES Survey (1998)

#### 4.11.5 Comments

Indicative comments relating to the hypothetical question in this section about likely return to the NSW SES after leaving, are as follows:

- ‘Security no longer exists. Instantaneous dismissal at the whim of a Minister or senior Central Agency bureaucrat is a great disincentive.’
- ‘I regret my move into the NSW SES it is behind other states, the political interference is quite unacceptable and the processes of government are well behind current practice’
- ‘It would not be my preferred option. But I have a dedication to public service and a desire to contribute in a meaningful way. It’s just a shame that one cannot be recognised and rewarded as a professional for doing this. The use of the SES as a political football by governments and oppositions is appalling ... When I first joined the SES there was a real performance “zing”. The performance environment was very strong. Now it has degraded to a point where performance occurs despite the system, not because of it.’

#### 4.11.6 General Comments

Respondents were also invited to make any general comments at the end of the Survey. Again, the response was limited. However, indicative comments are as follows:

- ‘A few SES officers that I know who remain members of trade unions inform me that their trade unions are disinterested in their pay and conditions and other industrial problems because they are in the SES. Apparently the trade unions (eg the PSA) don’t care about what the current government does to their SES members.’

- ‘A great survey. Just what is needed to save the SES and get it back on its feet again – without which the performance of the NSW public sector will continue to decline. Dynamic, sensitive management needs to be encouraged in my organisation; nurtured and supported. Only then can high performance be generated and sustained over the long term. The current SES regime is crumbling and will degrade rapidly if not saved urgently. PLEASE HELP!!’

#### **4.12 Summary of SES Survey Findings**

The responses to the Survey, overall, suggest a partly dysfunctional SES with a range of systemic issues that require attention, (perhaps, with some urgency). This needs to occur if performance at SES level is not to be affected negatively over time, so enabling the SES to operate on a formal systems’ standard, in the public interest. The most critical issues, as reported in this Survey by respondents, relate to the perceived ineffectiveness of the formal contractual and performance appraisal processes of the NSW SES. In this context, informal processes, particularly those that might have some power-political basis, in the NSW governmental and public service bureaucratic arenas, seem to impact on the capacity of the formal NSW SES system. Prescribed decision rules fail to influence some important decision making processes, in practice. While the comments included in this Summary are not representative of all or even most respondents, in that additional comments were rarely made, they do highlight some of the concerns already reported in the Survey.

In summary, key issues identified in Survey analysis which appear to require further consideration are outlined, as follows:

- the relevance of all SES objectives, (as formally stated at the time of SES and following the first formal evaluation by Coopers and Lybrand (1990, 1991))
- the need for better role clarification, decision rules and review processes for guiding policy and other streams of strategic advice
  - between ministers and CEOs
  - between CEOs and ministerial advisers
  - between CEOs and other SEs
- clearer recruitment processes including more open and transparent decision making processes, such as decisions about political appointees

- redefinition of merit to acknowledge the importance of political acumen and negotiation skills as requisite competencies for the SES
- better decision rules and review processes for early termination of employment and removal from office for other than poor performance
- SES contracts to be provided on a legal basis with entitlements for SEs clearly stated on the contract if early termination of employment occurs for other than poor performance
- meaningful professional development opportunities are available in a more institutionalised form
- Performance Agreement and performance appraisal processes are consistent with the formal requirements of the SES and decisions are made accordingly
- a firm policy on merit pay applies more equitably across the public sector
- mobility programs are available, as appropriate
- the role of the SES within the contestable decision making arena is defined and stated by Government to reduce ambiguity, and includes a leadership role of the NSW public service
- the pressure on SEs from competing accountability systems – the formal SES and informal political expectations – is recognised in a more formal way with better decision rules and role definition (as outlined above), (perhaps subject to independent review).
- work allocation processes and workloads of SEs are reviewed to determine whether they are reasonable or not, given current conditions and remuneration decisions.
- the previous point also relates to what the right size and structure of the NSW SES might be, (which once agreed may well be addressed through bipartisan political support).
- issues relating to satisfaction levels of SEs across a range of factors need further consideration to determine the best ways of increasing member confidence in the NSW SES.

#### **4.13 Comparing the SES Survey Findings to the SES Literature Review**

Most of the problematic areas identified in the Survey responses are not confined just to the NSW SES but are factors that are also outlined within the SES Literature Review (1998) for other jurisdictions. Effectively, the continuing operation of the SES in NSW, as in other polities, indicates how complex some of these issues are in practice. However, there is substantial evidence which suggests that the current formal systems of the NSW SES provide limited guidance for the Government and CEOs (and, perhaps, ministerial advisers) in terms of performance management (SES Literature Review 1998; SES Survey 1998). The sometimes adversarial nature of the arena in which executive performance takes place (SES Literature Review 1998), on an informal standard perhaps motivated by power behavioural issues, mitigates against formal systemic application.

In comparing these Survey findings, as far as possible, to the Coopers and Lybrand (1990) Survey of the NSW SES (the same Survey instruments have not been used in each case) there are some apparent similarities and differences. Generally, the current Survey (1998) findings are not as positive as the Survey (Coopers and Lybrand 1990) conducted earlier. However, similar to the Coopers and Lybrand (1990; SES Literature Review 1998) research, it is apparent in the responses to this SES Survey (1998) that NSW SEs perceive their own performance at a relatively high level, at the same time acknowledging a number of problems with SES systemic dysfunction.

The findings from the current SES Survey (1998) that indicate the impact, or actually non impact, of formal codes of conduct may be limited are consistent with the Coopers and Lybrand (1990, 1991, SES Literature Review 1998) NSW SES research and other research outlined in the SES Literature Review (1998). Whether the revised 'Code of Conduct and Ethics for Public Sector Executives' prepared by the Premier's Department (1998) in collaboration with other agencies including the ICAC and The Audit Office, will make a difference in this direction probably remains uncertain. This is notwithstanding the fact that commitment to the Code by SEs is a statutory requirement. Therefore, other areas for review of the NSW SES may be needed in relation to whether:

- standards of performance outlined by the ICAC (1996) and included in the revised Code of Conduct and Ethics (1998) are moderating SES performance as intended. If the Code of Conduct is ineffective, better ways of reinforcing the importance of such a tool of professional accountability need to be considered

- some clarification of what 'public interest' might mean in practice in a range of situations is also indicated, given that the responsibility for acting in the public interest is an important aspect of the Code of Conduct and Ethics (1998).

Other issues revealed in the SES Survey (1998) and which were also canvassed in the SES Literature Review (1998) suggest that:

- lateral recruitment from the private sector is no longer a primary objective of the NSW SES
- the formal mobility program instituted after the commencement of this Performance Audit by the Premier's Department in accordance with Section 53A of the Public Sector Management Act 1988 (SES Literature Review 1998) is timely given the response in the SES Survey (1998)
- the SES Survey (1998) results indicating that SEs need to be politically astute and sensitive actors in the political-ministerial interface are consistent with the SES Literature Review (1998)
- SEs have high expectations in terms of their professional relationships with Government which are seemingly contrary to Government's apparent distrust (SES Literature Review 1998) of the SES and the public airing of SES matters for more general political purposes
- the increasingly contestable policy arena means that, in some instances, CEOs' roles, perhaps, as part of a less trusted bureaucracy by governments, are not as clear as they were previously, especially with the apparently increasing influence of the partisan alternative bureaucracy of ministerial advisers (SES Literature Review 1998; SES Survey 1998)
- the formal accredited performance management systems which are meant to operate in most organisations (SES Literature Review 1998) have failed to set the parameters in which performance appraisal takes place
- crucial decision making processes are not, primarily, guided by formalised rules. In a positive light, this situation could be seen to support flexibility, innovation, risk management practices, and high levels of professional judgement all expected of the SES, but equally in a more dubious way could imply that some decisions, if personalised and individualised, will be inconsistent with formalised notions of due process and natural justice
- the gap between the SES and the top levels of the public service, outlined in earlier research (SES Literature Review 1998) has created apparent uncertainty about the obligations of the SES to the NSW public service (SES Survey 1998)

- similar to the Coopers and Lybrand research (1990, 1991), SEs, as respondents, may overvalue their level of performance (SES Survey 1998)
- the continuing political and public debate about the SES including size, structure and remuneration has created apparent uncertainty and concern amongst SES members about whether decisions of SES appropriateness are based on rational managerial-leadership standards or more politically based decision making processes (SES Literature Review 1998; SES Survey 1998)
- the reports of the ICAC (1992; 1996; SES Literature Review 1998) might indicate that the responses about responding to irregularities (4.10.5 this Report, SES Survey 1998) are consistent with culturally driven behavioural norms which are not based on formal statutory performance requirements. However, as the SES Literature Review (1998) reveals such behavioural norms are no longer acceptable to the ICAC (1996).

#### **4.14 Conclusion**

The SES Survey, primarily using extensive quantitative analysis with some qualitative comments, has highlighted a number of key areas of concern in relation to the operation of the NSW SES. While limited in scope and number, the more qualitative responses to each section of the Survey also suggest that there are some major areas of the NSW SES requiring quite concentrated review. Apart from identifying some specific issues relating to the contract and performance management environment, in its broadest sense, there is an apparent systemic weakness of the NSW SES, which makes it susceptible to more informal, political and/or bureaucratic influences. Therefore, the capacity of SEs, to balance the pressures of any accountability stream at any given time will probably depend upon the prevailing political environment, generally, but will also be relevant to the specific public sector organisation in which the SE works and the particular relationships that develop between the political and bureaucratic arenas.

Pockets of political influence, even if limited but located across the sector, can obviously make the formal SES system less functional and confuse decision rules. Whether this situation can be improved may be dependent upon the Government of the day, individual ministers and their staff, in terms of better role definition and the practices that are followed. Enhancing the competence of political and managerial actors, across the spectrum of relevant accountabilities and establishing certain parameters in which accountabilities are better defined in practice may relieve some of these contradictory pressures of the SES.

## **5. SES Interviews**

### **5.1 Introduction**

To support the findings of the SES Literature Review (1998) and SES Survey (1998), and as part of the research methodology involving triangulation (using three research methods to validate findings), it was intended to complete a number of interviews (SES Interviews 1998) with a range of current and former SES members as well as a small number of NSW public service officers just below SES level. The views of current SES members were considered to be important in clarifying or expanding upon issues of relevance that were raised through the other means of research, especially the SES Survey (1998) process. In canvassing the views of former SES it was anticipated that reflective responses, could be considered especially in terms of these interviewees proposing how any critical issues outlined in other parts of the research might be addressed. It was also considered that the views of members of the NSW SES feeder group were also important, especially as the gap between this group and the SES was identified as a significant issue in the earlier SES research (Coopers and Lybrand 1990, 1991; SES Literature Review 1998). It was not part of the researchers brief to undertake interviews beyond these groups.

While interview results are likely to provide more subjective findings than material elicited through other research means like literature, document review and survey, the rich first person description obtained by such means, nevertheless, records actual perceptions and concerns, whether real or exaggerated, about the area of interest, in this case the NSW SES. In this sense, findings from interviews as SES case studies, are just as valid in terms of exploring the functioning of the SES as the findings from other research methods, if they are perceived by the key actors to impact on the SES. Any perceptions under these circumstances will represent a reality for those individuals.

### **5.2 The Interview Process**

Thirty three interviews, with former and current CES/SES members and a small number of officers below SES level, were conducted mostly in person but also by telephone depending on preferences and convenience for Interviewees. Just over half of the interviewees were current CEOs/SEs, with former and below SEs making up, fairly evenly, the rest of the interviewees. Some Interviewees were selected at random from the database while other Interviewees were chosen on the basis of their positions/location (in that they held key positions in relation to the functioning of the NSW SES) or former positions in the NSW public sector, their availability and willingness to participate, and/or their direct approach to the research team. In several instances, it was not possible to find a mutually acceptable or convenient time for interview with several willing potential Interviewees. A number of current and former CES/SES members also declined to be interviewed or did not contact the Research Team, as invited. Other SES members were no longer in the positions indicated on the database and were not followed up.

So as not to prejudice or preempt views about particular issues, no formal interview protocol was used in that no set questions were initially asked of each interviewee. Rather, interviews were semi-structured and Interviewees were asked, generally, to identify what they considered to be the strengths and weaknesses of the NSW SES, and how the SES might be improved. Certain issues that had been identified through the processes of SES Literature Review (1998), SES Survey (1998) development and earlier interviews were also raised with Interviewees in terms of their own perceptions. No sound recordings of interviews were made but contemporaneous notes, for the most part, were taken during the time of interview. Some interviews were written up in more detail following the actual interview. For most interviews, two interviewers were present and notes were taken separately at the time and later compared. While some Interviewees were willing to be cited personally, other Interviewees were concerned about possible identification and repercussions. For the purpose of the research the material contained below is, generically, cited as SES Interviews 1998 and no individuals are identified. Any material in single quotation marks denotes a direct quote from an interviewee. It is also noted that the interviews are not recorded in a more detailed form in this research to ensure the anonymity of individual interviewees in terms of their specific comments. As far as possible (in that the range of views were canvassed) and as relevant, both positive and negative comments of interviewees are included.

### **5.3 Analysis of the Interviews**

For the most part during the interview process, there was a high level of consistency among interviewees about the range of issues that are critical to the functioning of the NSW SES but where some level of dysfunction might now be apparent. However, particular views across interviews range from generally positive to highly negative. For example, the majority of Interviewees perceive that there is a higher level of dysfunction in the NSW SES than has existed formerly and that the formalised systems of the SES are inadequate to deal with increasing politicisation of the SES and NSW public service bureaucracy. Politicisation is, generally, perceived to be the political and/or bureaucratic arrangements and behaviours which drive the SES but which exist outside the formal systemic features of the SES. While most Interviewees indicate that only a relatively small part of the SES is overtly politicised, the impact of such politicisation reflects on the SES overall and influences general perceptions.

In contrast, several Interviewees (3) took a generally pragmatic view of the current situation of the SES in that they do not perceive any serious dysfunction or politicisation or that contemporary practice is any different from trends and factors that existed in the bureaucratic and political environments, prior to the introduction of the SES in NSW. Therefore, across interviews and issues related to the NSW SES some polarisation of views is apparent.

Notably, Interviewees quite frequently use colourful analogy and metaphor which portrays the NSW SES environment in terms of the 'wild west' 'cowboys and indians' 'gung ho' 'hip shooting', and 'personality management'. Such metaphors suggest a contestable and adversarial environment where issues of formal and assumed power struggles are apparent. Generally, Interviewees strongly perceive that the SES, as a leadership body of the NSW public sector, has become more politicised in recent years. Examples which interviewees cite relate to the way politicians during the former and current governments' time have used the size of the SES for political purposes. This includes the resultant continuing media coverage of issues relevant to the SES especially the prominent public reporting of NSW CES/SES dismissals. Interviewees also report that they perceive that the SES is, to a significant extent, driven by the government's electoral imperatives, which may or often may not be in the public interest.

Nevertheless, there is an acceptance that the SES as an, albeit flawed, instrument of change introduced in 1989 by the Liberal-National Party Coalition Government has been successful, to an extent, in altering the top level managerial culture of the NSW public service. 'The principle of the SES is a good one' (SES Interviews 1998). Therefore, rather than abolishing the SES some fundamental enhancements to the formal SES system are required, including the commitment of the Government of the day to the positive functioning of the NSW SES.

However, while the managerial autonomy and flexibility provided by the SES, especially, to CEOs, is seen positively on the one hand, there is also concern, on the other hand, that the SES system provides 'far more opportunity for manipulation' and 'politicisation' (in its broadest sense) than previous systems (SES Interviews 1998). In this context, several serious systemic vulnerabilities and dysfunctions are perceived by Interviewees which may occur at the political or bureaucratic levels. The main issues identified through the interview process include:

- the incapacity of the formal SES system in NSW, consistently, to provide a functional framework in which decision rules about recruitment, appointment and performance, for example, are applied fairly and equitably across the sector
- the increasing practice of CEO dismissals at change of government apparently on the advice of 'disaffected' policy advisers and 'party hacks'
- how strategic capabilities of the SES executive leadership might be better defined and developed within the SES
- the challenge for some CEOs to provide their Ministers with neutral policy advice in an increasingly contestable policy advising arena, particularly relating to the role of ministerial advisers where there are issues of assumed and inappropriate power
- the difficulty of managing the breakdown of a relationship between CEOs and Ministers, and/or CEOs and subordinate SES staff in an appropriate way, beyond 'public humiliation' and 'banishment'. This is considered to be especially important when it is apparent that the breakdown is personality based and that the subject CES/SES members can continue to contribute to the enhancement of public management and policy advisory roles in NSW in other positions because of their qualifications competence and experience
- contract arrangements and performance agreements are perceived to be risky and tenuous at best especially relating to processes for contract termination and removal from office

- the perceived incentives available to SES members are not in balance with the perceived risks associated with SES performance
- NSW public service officers below the SES do not see the SES as a viable employment opportunity as the level of risk in relation to employment is considered to be too high.

These issues are reported on in more detail in the following parts of the Performance Audit Report (5.4 – 5.11).

#### **5.4 The Formal System of the SES**

The NSW SES does not operate as an homogeneous system in that it is perceived by the majority of Interviewees that the set of formal operating standards and principles are not applied consistently across the sector. While the SES is perceived to operate reasonably well in many organisations, it is also considered that a number of organisations are politicised to varying degrees, including to the point where the SES cannot function, formally, as intended. The environment is considered to be highly dynamic in that it is difficult to predict which organisations may become politicised at any given time. Politicisation in this sense is seen to mean:

- a decision making environment in which formal systems, role definitions and decision rules of the SES are not necessarily applied.

The decision making process becomes more personalised and may be based on personality issues. Central and operating organisations are both involved. The factors which mitigate against the universal application of formal principles are complex and relate to issues of competence or incompetence, systems failure, as well as politics, personalities and power.

There are views that the situation of heterogeneity and informality existed at the time the CES/SES came into existence but, equally, there are perceptions that the level of politicisation has continued to increase since the inception of the SES. In this sense, ministers and/or their advisers, as well as CEOs are perceived, frequently, to act in ways which are not consistent with the formal structures of the SES. However, informal structures are not seen to replace formal structures. Rather it is perceived that the formal structures and processes may be used as symbols of legitimation to mask more doubtful personalised and individualised processes related to patronage and power. On the other hand, informal processes may be more overt. Therefore, even in

the more politicised organisations, as perceived by Interviewees (1998), both formal and informal systems will usually co-exist. 'Changes happen by default - shifts are subtle'.

The point at which obvious dysfunction of the SES might occur in a systemic way is also difficult to assess because perceptions may be influenced and, perhaps, heightened by the apparent dramatic quality of particular events, the level of gossip or misinformation, and the extent to which individuals may be directly impacted. Nevertheless, the majority of Interviewees expressed concerns about the extent of formal systems failure. This was largely attributed to:

- the current Government's preference for informal processes as a response to ever changing electoral imperatives
- the Government's perceived lack of interest in the public sector
- the Government's apparent distrust of the capacity of the CES/SES to deliver the politically desirable result
- perceptions about the assumed power of ministerial advisers, especially chiefs of staff, at the expense of the CEO and to effectively run organisational agendas, in some instances
- 'personality management' including some CEOs' inappropriate use of the formal systems to mask fairly blatant and more subtle forms of bureaucratic patronage (SES Interviews 1998).

At the political level, actions outside of the formal SES framework which impact upon the capacity of the SES to perform are seen pragmatically by some Interviewees to be the result of a more public and dynamic approach to politics and political issues. Issue management, including the role and power of the media, is seen as a priority of government to which the SES needs to be responsive. In this sense, there is an acknowledgement of the inevitability of an increasing shift towards a formalised Washington model of public sector politicisation.

The majority of Interviewees, however, perceive a strong shift towards an electorally driven government where decisions are taken on the basis of short term political gain at the expense of longer term strategic capability, to the point where any reasonable balance between governments and public sectors acting in the public interest and the impact of electoral concerns (self interest of governments) has been lost. 'There is nothing to protect the integrity or capacity of the public service.'

At the bureaucratic level it is perceived that, in some cases, informal approaches involving patronage may be more important for determining individual success than formal performance management systems. A prime example of bureaucratic politicisation given is when restructuring is used to terminate contracts and to move people

in and out of positions regardless of their formal reported performance. The principles that do exist including formal codes of conduct have not been sufficient in the areas of perceived politicisation to mitigate against inconsistent and inappropriate behaviour including 'personality management' related to issues of power and patronage. 'There is no perfect system but you start with a set of principles.'

Some Interviewees also expressed concerns about the original structure of the SES and the way positions were moved into the SES on the basis of a private sector market analysis conducted by consultants. 'Positions which got into the SES structure were based on the gift of the gab and explaining and exaggerating positions to ... consultants' (SES Interviewees 1998). In some instances, Interviewees perceive that the SES system has not addressed issues of long term inefficiencies (which may have been apparent prior to the SES) and that some people have been rewarded with SES positions because of connections rather than talent. In this sense, the SES system has failed, in some instances to place the best people in the right positions. Size of the SES is also at issue for some Interviewees 'I think the SES is too big.'

## 5.5 Change of Government

The majority of Interviewees indicate their concern about what they perceive to be the increasing propensity for incoming governments to make significant changes at the CEO level of the SES in NSW. It is noted that this is an area of discussion which elicited a fairly emotive response not just from former CEOs whose contracts had been terminated but from other Interviewees, including those who are below SES level. The actions of incoming governments are seen to be more consistent with a Washington system of public governance than a Westminster system. 'If we go the US way at least it would be honest' (SES Interviewees 1998).

Several problems for government are seen to be associated with this practice.

- incoming governments if they have been in opposition for some years are likely to reduce immediately the intellectual and strategic capacity of their SES to perform because of politically motivated decisions about CEOs' allegiances rather than capability. This will occur before the government, especially ministers, have come to understand the complexities of their portfolio areas
- 'New governments are given absolute power to fire ... that's unsettling in the first year .. you lose your intellectual property

over night and your capacity.' 'The political arm assesses if you did a good job for the previous government.' 'Governments have looked to appoint permanent heads sympathetic to the government of the day ... this is reasonable ... [but] appointments were made of people who were clearly not capable' (SES Interviewees 1998)

- some of the best CEOs are removed from office on this basis
- ministerial advisers, for the most part, are not seen to be competent enough in portfolio areas to be adequate substitutes for experienced CEOs.

Interviewees also indicate that the way changes at CEO level are made is highly unsatisfactory. 'In the transition to the new government the public sector behaved professionally. The problems started to emerge with appointments, restructuring and the deletion of positions.' 'Turkeys could come in with a change of government with no understanding of procedural fairness ... with people dumped unceremoniously ... and with cynical interviews.' 'I wasn't told anything until a press announcement was made.' (Interviewees 1998) It is considered by Interviewees that more appropriate ways of handling a change of government can be made. 'If the decision to remove subject CEOs could be deferred for several months, governments and their ministers might make different decisions.' 'A cooling off period would stop them being rabid.' 'There's a three months' moratorium in the USA after a government changes ... no slash and burn ... in twelve weeks you can see if people can perform' (SES Interviewees 1998).

A minority of Interviewees agreed that changes at the top of the SES, at CEO level, is now an accepted part of modern government action, even in Westminster derived systems. 'For CEOs it is fair enough, CEOs have got to be prepared to work with the government of the day.' 'The reality of the public sector is that it operates in a political environment' (SES Interviewees 1998).

## 5.6 Strategic Capability

The majority of Interviewees perceive that there is an important issue relating to the overall competence of the SES to perform. This is partly due to the loss of CEOs and other SES staff where there has been a continuous erosion of 'corporate knowledge' and 'intellectual capability'. 'The damage - loss of intellectual capital and capacity building.' (SES Interviewees 1998). Interviewees also perceive that how CEOs can contribute in a strategic way to government decision making is also vexed, given the limited autonomy of CEOs to make real strategic decisions. 'Leadership, judgement, performance - what are the priorities you take forward?' '[Bureaucratic and government actions] impact on public sector's ability to attract and retain good people' (SES Interviews 1998). Government is also seen to operate on the basis of short term electoral imperatives rather than with a longer term strategic viewpoint in mind. 'Governments are increasingly not willing to make or take long term decisions on fundamentals' (SES Interviews 1998).

Generally, Interviewees indicate that little is done to develop the strategic capacity of the SES. 'Professional development of the SES was abysmal.' 'The SES are the leaders and you run leadership training not management training.' 'You can't offer elite training to too big a group' (SES Interviews 1998).

From below SES level, Interviewees perceive SES members quite negatively. Some consider many SEs to be generally incompetent, lacking leadership skills, strategic capability and vision. Others recognise that capability varies across the SES. Interviewees in the SES feeder group consider that SEs spend so much time managing up in the political arena in relation to short term political and electoral issues that there is no time for leadership of the NSW public service or a longer term strategic viewpoint. Therefore, the intellectual capital which needs to be contained within an SES is seen to be either lacking or not functioning. To a large extent, the level of incompetence is considered to be related to the political games in which SEs participate either willingly or as an inevitable result of increasing politicisation of the sector to the point where the public interest is not being served.

## 5.7 Policy Advice

The majority of Interviewees perceive that the Westminster principle relating to 'frank and fearless' advice rarely operates in the NSW SES. Generally, the policy development and advisory role is perceived to take place in an increasingly contestable arena in NSW. The key players are seen to be Ministers, staff in Ministerial Offices (especially Chiefs of Staff), CEOs, and to a lesser degree individuals (often subordinate departmental staff) to whom Ministers or their staff go directly for policy advice. The absence of an effective Cabinet process, (unlike the one operated by the Victorian government which is considered to provide well defined collective processes for policy advice), is also seen by several Interviewees to support informality, rather than formality, in policy making processes. In some instances, the media are considered to be strong influencers of government policy. Both negative and positive views of this situation are apparent. On the one hand, Interviewees (3) indicate that this situation reflects a pragmatic reality of a contemporary public sector. On the other hand, this situation is seen to be unacceptable to the majority of Interviewees.

It is also acknowledged that in the early years of the NSW SES two important streams of policy advice were usually sought by ministers. First, technical advice was provided by the CEO in relation to departmental issues. Secondly, political advice was provided by the ministerial office. The minister was then in a position to weigh up the advice from two differing perspectives. As the policy arena has become more contestable, however, it is perceived that issues of power and control now may determine which piece of policy advice gets to the minister.

While a small number of Interviewees indicate that there is no difficulty in providing the best technical advice about policy issues to ministers, others indicate that there are significant problems in this direction. The capacity to provide the best advice occurs only when a CEO is able to establish a sound professional relationship with a minister, usually through 'negotiation' and 'political nous'. Where CEO/Ministerial, ministerial office, relations are more troublesome, for whatever reasons, the capacity to provide independent technical advice is considered to be less likely. Interviewees report that, in some instances, a fearful relationship developed between the bureaucratic and political environments and in these circumstances it was better to 'second guess' and provide the minister with advice that it was believed the minister wanted to hear. 'There is need for delineation [between the policy actors] using corporate governance principles.'

The role of ministerial advisers, in this context, is perceived to both support the policy advisory role of CEOs when relationships are well established and the ministerial staff are considered to be competent and to diminish the policy advisory role where relationships are problematic or ministerial staff are considered to be less than competent. 'Policy advice is not the exclusive domain of the public sector.' 'Policy advisers in [the bureaucracy] can capture ministers.' Where ministerial advisers are seen to be less than competent it is usually considered that the advisers have limited knowledge of the relevant department's operations and will only advise the minister from a political perspective.

Where relationships do, effectively, break down it is considered that it is almost impossible for the best policy advice to be offered (see also 5.8). 'The impact on government is that they are often making decisions without knowing the alternatives or what the impact of a decision is going to be.' The more attempts are made from the bureaucratic side to repair the relationship the more the CEO or other SES member are likely to be subjected to the inappropriate use of power, 'game playing' and even 'public humiliation'.

Interviewees perceive that in many cases, only one piece of advice is considered by the minister and this is more likely to be political. 'In terms of good policy making it is important that governments do have available options and implications and to test them out.' In this sense, policy advice as a tradeable commodity can become an instrument of individual competition, dominance and power from the bureaucratic or political arenas. 'Ministerial advisers have become filters to the extent where some of it is getting silly and where CEOs are not getting access to the minister ... a lot of the time ministers don't know it is happening.' However, the role of CEOs and departments as policy implementers, rather than advisers, may also be reinforced. 'The rhetoric says that the CES/SES sole job is to implement the policy of the day.' 'There needs to be a level of professionalism about advice and ministers being able to choose between options.'

The formal systems of the SES do little to support adjudication on these matters. If 'political nous' and 'negotiation skills' are, indeed, the essential prerequisites for performance in the SES then these competencies need to be included as part of the generic requirements for entry into the SES. However, as is acknowledged, these capabilities and competencies in the formal recruitment, appointment and developmental processes are not yet recognised. Rather the required formal generic competencies are more rationally based and are related to management and leadership. Yet, the less rational, political (nonpartisan) skills are also important.

## 5.8 Professional Relationships

An issue related to the policy advisory role of CEOs and other SES members, as indicated above (5.7), but which is also more broadly based relates to breakdowns of professional relationships between the SES and ministers and/or their advisers. The majority of Interviewees perceive that the usual public ways of resolving such issues are highly unsatisfactory. 'Once a relationship breaks down what is the fairest and most appropriate way to deal with it?' 'There is a tyranny of mediocrity in a political system totally dominated by politicians.'

It is widely stated that personality, power and politics, and whim rather than formal systems are the bases on which decisions are made and acted upon. 'CEOs' performance needs to be assessed by ministers. There's a great difficulty, if they like the person it's OK, if they didn't like the CEO they'd make noises but wouldn't commit themselves on paper.' In this sense, decisions are based on personality issues, and are politicised. 'Politicians are motivated by ego ... highly unprofessional.' Interviewees perceive that clear winners and losers are portrayed, especially in the media. Ministers are seen to have power over their CEOs and other SES staff and these Officers have little opportunity to defend themselves against such 'public humiliation'. In a wider sense, such events are perceived to do little to engender public confidence in the SES or to reinforce a professional image of public sector managers.

While it is acknowledged by Interviewees that there can be problems on both sides and that any government, primarily, has the power, rightly, to make decisions in their interests, greater fairness and due process, for the CEO, are considered to be equally important. Therefore, how a situation following a failure of personality rather than performance with particular individuals might be addressed, beyond dismissal or 'banishment' is still at issue. 'There needs to be a realignment or a parting of the ways on sensible terms.'

When the breakdown occurs between the ministerial adviser and a CEO the problems can be just as intense. Under these circumstances, CEOs are again seen to be at a disadvantage and in a difficult situation to defend their positions. 'I was constantly shocked and appalled by the way ministerial advisers took over the CEO role ... with notable exceptions.' The capacity of some ministerial staff to understand the department's business (as indicated above) was also raised by most Interviewees. 'They are purely political appointments with no core competency on topics they were dictating on. This is enormously dangerous.' However, some Interviewees consider that ministerial advisers have an important role to play, supporting their ministers, if that role is properly defined.

A number of Interviewees were also concerned about the flow-on effect of a negative CEO-ministerial relationship within the CEO's department. 'If the CEO ministerial relationship is tricky you get problems down the line.' However, if a CEO and a Minister are seen to have developed a good working relationship which operates outside the formal public service structures and the formal framework of the SES the situation may be considered to be equally problematic. 'If an unethical relationship exists between the Minister and the CEO there are long term effects.' 'There aren't any policies or descriptive clarity in terms of boundaries between politicians and bureaucracy.'

Breakdowns in relationships can also occur for a variety of reasons, again beyond actual formal performance, between CEOs and their SES staff. The same problems of subjectivity, personality and power are apparent in the bureaucratic environment. While the political decisions at least are recognised as such in CEO-ministerial relationship breakdowns, CEOs can use the legitimate and formal frameworks of the SES to justify indefensible actions (outlined further below (5.9) in relation to contracts and performance agreements). In this situation the use of inappropriate power may be at issue. In these circumstances, too, as Interviewees indicate it is often difficult to know which decisions are justified and which decisions are not. Overall, Interviewees perceive that in such circumstances there are often insufficient checks and balances within the formal system to avoid such victimisation on the basis of personality rather than performance. In this context, the Premier's Department has indicated its intention to provide a more formalised and independent system to mitigate against indiscriminate use of bureaucratic power based on personality issues.

## **5.9 Contracts, Performance Agreements and the SES Performance Management System**

### *5.9.1 Contracts*

Most Interviewees express a high level of concern about the status of the SES and perceive the contracts to be of limited worth, or completely worthless. 'The contract is meaningless.' 'Contracts are not worth the paper they are written on.' 'Under SES legislation you sign your rights away.' 'A contract should work - a contract with protection.' In cases of removal from office of SES officers for other than poor performance, either at the political level by the Government or at the bureaucratic level by CEOs, contracts are not considered to provide any safeguards at all about the initially agreed period of employment and entitlements of removed officers, such as:

- pay out of the contract for the time remaining

- the amount and period of salary maintenance (most recently stated to be one month)
- outplacement services (said to be no longer provided)
- return to the public service.

'If you fight it you become a political bunny.'

Decisions about these issues are seen to be at the whim of the Government, CEO, PEO and/or SOORT, as relevant. 'Individual deals are being done.' 'SOORT determines and there is no appeal.'

Therefore, the major issue raised for this area relates to what is perceived by most Interviewees to be a high degree of risk in terms of contract employment arrangements. When a problem arises, the formal system is not seen to provide the appropriate framework and decision rules for resolution.

One of the concerns expressed by many Interviewees about contracts and other employment issues relates to the perceived long-term incapacity of the PEO to resolve these issues. 'It was inappropriate to have a hired gun heading up the [SES] appointment area.' 'The PEO had an overt political agenda and it was poorly run. What is normally a check in the system became dysfunctional.' 'PEO appointments did not follow due process.' 'The government was increasingly wanting flexibility around performance areas.'

Due process and natural justice in employment issues, especially early termination of contract or removal of office, are not seen by Interviewees to occur. 'From the beginning the CES began to become politicised at all levels depending on the person in the position. CEOs got caught in politics ... CEOs played around with the SES in the same way. [The PEO] was at the forefront of paying back ... the example that set for others was bad.'

#### *5.9.2 Performance Management Systems and Performance Agreements*

Many Interviewees indicate that the formal performance management systems, as a required component of the SES for all organisations with more than a few SEs, does not have the force that it should have. 'Some agencies ... had nothing that you could regard as an appropriate performance management system.' Interviewees express concern about *ad hoc* decision making processes in preference to the prescribed, formal criteria relating to performance. 'There is a clear conflict between the requirements of the formal performance system and the informal system.' 'All staff need safety nets in terms of procedural fairness.'

What is also of concern to Interviewees is that when decisions are made for the early termination of employment for reasons other than

poor performance (especially ill-informed assumptions about political affiliations), an SES member's performance records over time are not considered. 'Your performance record [over the preceding years] the government never looks at that.'

On the other hand, a minority of Interviewees consider that the environment in which the SES operates is so dynamic that formal performance systems are of limited relevance. 'When you get to SES you assume a level of performance and you don't do it with mechanistic systems.' 'There's too much emphasis on measurables rather than non measurables.' Whether formal or less formal performance appraisal processes are applied it is generally acknowledged that some kind of negotiation about performance is required. 'Mutual agreement on priorities is an important agreement.'

Some Interviewees further suggest that critical decisions relating to performance require some form of independent review. 'The State Services Commission in New Zealand is an independent statutory authority.' 'You need a professional brokerage and clearing house for the SES.'

Another aspect raised by Interviewees is the incapacity of the SES job evaluation system to recognise the value of public sector work. This is particularly relevant when the amount of budget and numbers of employees are used as the major criteria for assessing the value of SES positions but do not apply to specific positions, such as policy work. 'The CED [Cullen, Egan and Dell] system is not well suited to the public service. There is too much credence given to budgets and people you supervise.' 'In the public service development of policy is not qualified in the CED system' (SES Interviews 1998).

### **5.10 Incentives**

The level of risk, as outlined above (5.9.1), according to Interviewees is not consistent with the incentives offered to members of the SES. Interviewees indicate that there has been a continuous erosion of SES benefits over time, especially in the time this Government has been in power. 'The public sector doesn't pay well.'

Interviewees also indicate that incentives offered within the formal system of the SES, while inadequate, are not as powerful as incentives offered through informal systems of political and bureaucratic patronage. 'As soon as the environment believes that advancement is not on merit or that it is tightly rule bound it is not an attractive environment for people to stay in.'

### 5.11 Succession Planning

With one exception, the few officers below SES level who were interviewed for this research, supported by the concerns of some former and current SES members, indicate that they have no interest in applying for positions in the NSW SES. Some have made deliberate decisions to apply for Senior Officer (SO) positions as a consequence of the added security of employment and conditions rather than SES positions because of their concerns about the uncertainty of SES employment. The strengths of the views of these Interviewees suggests that there may be a more representative number of NSW Public Service Officers in the SES feeder group who have a negative view of the benefits of the SES. If these Officers, including some who would, seemingly, be highly competitive for SES positions, are deliberately choosing not to apply for SES positions it is unlikely for advertised SES positions that the best person (in terms of competence) will be appointed.

Of particular concern, also, is the 'log jam' of officers now at Public Service Grades 11/12 who choose not to apply for promotion to the SES and/or have limited opportunities for SO positions, given the few positions that are available. Even when SO positions are created, it is also perceived that the same 'flawed' market based assessment process, which neglects the importance of the public service policy role, is used. 'There are a lot of disgruntled grade 12s out there, unmotivated, with nowhere to go.'

Some of the specific issues raised about succession into the SES from within the feeder group include:

- membership of the SES, as opposed to the NSW public service, provides limited employment safeguards and is too risky, especially the loss of tenure and right of return and lack of reasonable compensation should employment be terminated
- the relatively high perceived level of political patronage related to appointments and promotions and the need to become involved in these networks 'if you want to get on'
- the SES rewards individual performance rather than team effort
- the Government's perceived limited commitment to public service
- inability to put personal political interests aside in the SES
- cynicism about promoted advantages of the SES
- the apparent lack of concern for people in the SES

- those doing the best work do not necessarily get recognised as opposed to those who have a 'high profile' who do
- the control of CEOs from the centre of government.

From a succession planning perspective, this situation can only impact upon the future capacity of the NSW SES to perform at a high public sector standard. Such a situation will not assist governments in the future to manage in the public interest.

### **5.12 Summary of Findings from the Interviews**

In summary, some of the key issues raised in the SES Interviews (1998) are:

- the failure of the formal SES system to mediate behaviours and performance in some instances because of more political actions
- informal processes may be more rewarding than formal SES ones
- the market based system for SES job evaluation is inadequate, in some instances, especially when assessing policy advisory roles
- the influence of politics and patronage on critical decisions, relating to recruitment, appointment and promotion of SES members, involves bureaucratic and political patronage
- the removal of CEOs, Washington style, at change of government causes uncertainty and instability of the SES
- removal of CEOs and other SEs for political reasons results in the erosion of intellectual capital and corporate knowledge in the NSW SES
- the lack of formal professional development programs in the SES limits formal knowledge and capacity building
- the increasingly contestable policy advisory environment devalues the worth of technical policy advice given by CEOs, in some cases
- breakdowns in CEO-ministerial, CEO-ministerial adviser and CEO-other SES member relationships are not well managed or covered by formal protocols for reasonable action
- SES performance is more likely to be assessed on the basis of political rather than formal performance criteria
- SES contracts are regarded as having limited worth

- the lack of independent review or mediation of the SES especially in areas of critical decision making supports systemic dysfunction involving power political and personality management
- informal incentives may be more rewarding than incentives offered through the formal SES system
- officers in the SES feeder group are not inclined to apply for SES positions because of perceptions about a high level of employment risk.

### **5.13 Comparing the Interview Findings to the SES Survey and SES Literature Review**

The findings from the SES Interviews (1998) are, largely, consistent with the findings from other research methods used in the Performance Audit, in terms of major themes. Moreover, the problematic areas of the NSW SES are issues identified across a wide range of senior executive systems in other polities (SES Literature Review 1998). As with the Coopers and Lybrand (1991; SES Literature Review 1998) interview research, a more colourful picture of the NSW SES emerges with the current SES Interviews (1998). This research clearly identifies and confirms a number of critical issues for the NSW SES, nearly ten years on from its inception.

In general, the formal contractual and performance management systems of the NSW SES are seen by observers, commentators and participants (SES Literature Review 1998), SES Survey (1998) respondents, and now SES Interviewees (1998), as dysfunctional in various ways, as well outlined above. The SES Interviews (1998) also reveal that in some instances, the media are considered to be strong influencers of government policy. This is contrary to the findings in the SES Survey (1998). The public discrediting of the PEO through the ICAC (1996, SES Literature Review) process still has an apparent residual impact in terms of some Interviewees' (1998) perceptions about the ability of this office to perform in a nonpartisan way.

Overall, the capacity of the formal system of the NSW SES to withstand more informal, political, personal or power behavioural influences is noted in each part of the research. While acknowledging the in-principle value of the NSW SES there are common perceptions that the current situation needs to be improved, as a matter of some urgency, across a range of areas.

## **5.14 Conclusion**

The SES Interviews (1998) reinforce many of the findings already made in this research but do so with more colourful and rich qualitative description. Perhaps, what is particularly notable is that most of those interviewed, regardless of their personal circumstances, all consider the NSW SES to be a worthwhile system for moderating executive performance. This is with the proviso that the current range of dysfunctional processes can be ameliorated by review and reform decisions. However, it is also largely recognised that the impetus for serious change lies most critically with the current Government, itself. This will require a genuine commitment on behalf of Government to make the NSW SES an exemplary system of executive performance in which the Government and other key actors can be justifiably proud. On the other hand, a minority of Interviewees see the current situation as just a pragmatic reality of the inevitable shift towards a more politicised system of executive control.

## **6. Westminster Principles**

### **6.1 Introduction**

A major focus of the Performance Audit as defined by the Audit Office of New South Wales (NSW) is on Westminster principles of public service in the wider context of executive services and particularly the NSW SES. For the purpose of the Audit, Westminster principles are identified as:

- expert and professional, neutral public servants
- security of tenure and a career structure
- defined central processes of personnel management and control
- clear policies and procedures for appointment, advancement and termination
- delineation between strategic political policy arenas of government and the implementation of policy by public sector managers
- accountability to the polity through well defined parliamentary and other processes, including ministerial responsibility
- a strong commitment to public service (Audit Office of NSW Brief, SES Literature Review 1998).

One of the intentions of the Performance Audit was:

- to determine the extent to which Westminster principles were relevant prior to the implementation of the NSW SES, and
- to test whether these principles continue to apply to the NSW SES.

As indicated in the SES Literature Review (1998) there has been continuing debate over the years about the relevance of Westminster principles, not so much in concept but in practice. The evidence suggests that to a reasonable extent the principles no longer operate in Anglo polities in the way that was originally envisaged by Northcote and Trevalyn. There are also apparent degrees of separation from the original Westminster concepts in each polity in practice, with the federal Canadian jurisdiction, (or the federal system in Malaysia), being, perhaps, the closest to a Westminster system, in principle. In the NSW case, prior to the introduction of the SES, and since implementation, it has been asserted that Westminster principles no longer apply (SES Literature Review 1998; SES Survey 1998; SES Interviews 1998).

However, a critical point here is that Westminster principles do not necessarily have to be considered in their purely conceptual context as related to a traditional Westminster (or Whitehall) bureaucratic system. It is, therefore, not the intention of this research to propose a return to a bureaucratic system that has been, effectively, superseded. Nevertheless, Westminster principles, even if compromised to some extent in various polities, have largely shaped the parliamentary systems in Anglo polities and in their interpretive form, through both legislation as well as other formal conventions, have been held up as appropriate values guiding public service performance in a parliamentary democracy. In this sense, the public interest has been of primary concern.

The NSW SES operates in a contemporary setting where managerialist and economic rationalist decision making processes of government are important, but nonetheless Westminster principles can still be reinterpreted and redefined, for contemporary relevance. While the bureaucratic system has undergone evolutionary, and even revolutionary, change in recent years the parliamentary system in NSW remains largely the same. In this context, these redefined, NeoWestminster principles, similar to neoclassical economic principles in the political decision making arena, can be proposed as the defining public sector values to guide and moderate professional and ethical behaviours within the bureaucracy and the political-bureaucratic interface. Therefore, this section of the Performance

Audit, in the context of contemporary public sector practice, primarily, focuses on:

- defining traditional Westminster principles, as outlined above
- redefining Westminster principles (NeoWestminster principles) in the current context of change brought about by the paradigm shift to an economic rationalist managerialist construct of public sector management
- assessing the extent to which these redefined (NeoWestminster) principles operate within the NSW SES.

## **6.2 Expert and Professional, Neutral Senior Public Servants**

### *6.2.1 Traditional Westminster principles*

What constitutes expertise and professionalism in public service, seemingly, is rarely stated. However, in the Westminster sense, expertise and professionalism have been related to the specific entry qualifications required for high public service office:

- expertise for senior appointment has, largely, been gained over many years through professional development and career experience relating first to seniority and more recently to merit
- professionalism would seem to imply some ethical dimension related to workplace behaviours and performance that are in accordance with legislation, policies, formal workplace standards and/or codes of conduct.

As the Performance Audit indicates there have been continuing moves over the years to improve the expertise and professionalism of senior public servants within Anglo (and US) polities. The general impetus for reform has come from many arenas such as a series of important public sector reviews and legislative changes, including the introduction of formal SESs (SES Literature Review 1998).

The concept of neutrality, however, is more difficult to test. In terms of Westminster principles:

- neutrality relates to the capacity of a non partisan, professional and expert public servant to serve any government of the day.

The Performance Audit clearly implies that there has been a gradual politicisation within Westminster systems over the years in ways which seriously challenge the principle of neutrality (SES Literature Review 1998; SES Survey 1998; SES Interviews 1998). According to

some writers (Painter 1987; Alaba 1994 in SES Literature Review 1998), support for the principle of neutrality in the NSW public sector had already been largely abandoned in practice pre-SES. For example, there is evidence to suggest that central policy advisory processes within the Premier's Department were strengthened in deliberately partisan ways during the Wran government's period in office. Yet, as the literature implies, competence of these partisan appointees was also important. To what extent this means that a partisan appointee who is competent will act in a neutral, or partisan, way is unclear.

### 6.2.2 *NeoWestminster Values*

The somewhat dramatic paradigm shift towards economic rationalism and managerialism in public sectors over the last two decades has diminished the importance of life long learning and development in public service as the main criterion of expertise and professionalism. Instead, more generic managerial competencies are valued, especially, involving private sector experience. Thus, the more senior levels of the public service have been open to direct entrants with managerial expertise, especially from the private sector. Performance is assessed through formal management systems, usually using a goal-based approach, in line with private sector practice. Organisational efficiency is the basic criterion of success. The expectation is that the individual executive will perform on the basis of predetermined objectives, in the context of the stated corporate goals.

The development of SESs in Australia, including NSW, has involved implementation, largely, in accordance with these managerialist and performance management frameworks. Therefore, the competencies required for entry into the NSW SES, or for promotion, could be defined as expertise. These have largely required generic managerial capability. However, the traditional neutral policy advisory role for SES members, as part of expertise, is even less clear since the adoption of managerialist approaches. The increasing move towards dual streams of policy advice shared between the SES, particularly CEOs, and ministerial advisers, compounds this uncertainty. However, as the Performance Audit indicates, political acumen and understanding of the political environment are regarded as essential prerequisites for high office in the NSW SES (SES Survey 1998; SES Interviews 1998).

In more contemporary public sectors, therefore, a definition of expertise is not so traditionally stated but could, perhaps, be interpreted as:

- managerial, leadership and change management competencies, based on merit criteria (SES Literature Review; SES Survey 1998; SES Interviews 1998)
- political acumen, negotiation and relationship building competencies (also related to professionalism) (SES Literature Review; SES Survey 1998; SES Interviews).

Presently, two interpretations of professionalism seem to apply:

- one interpretation is defined by the NSW public service for SES members in formal and rational managerial standards such as those outlined in Codes of Conduct and performance management processes
- the other is mostly implicit and is, defined at the governmental level and relates to the more subjective and individualised political needs and expectations of ministers, especially for their particular CEOs.

To a large extent, concepts of neutrality have been replaced by ideas of responsiveness. While responsiveness does not have to mean partisanship, in all cases, such a principle provides some likelihood that responsive may mean being politically responsive in a partisan way.

### *6.2.3 The extent to which NeoWestminster principles are operating in the NSW SES*

While much was achieved during the 1980s to reinforce managerial principles relating to expertise and professionalism in the public service, through the Wilenski reforms (SES Literature Review 1998), the initiation of the SES in 1989 further reemphasised the importance of such ideals. The strong managerialist policy agenda of the Liberal-National Party Coalition Government, led by Premier Greiner, applied not just to the SES but to the whole of the NSW public service. Members of the SES, at the first review (Coopers and Lybrand 1990; 1991; SES Literature Review 1998), indicated that a professional culture within the SES had been established.

However, while expertise and professionalism were supported as important managerial values of the NSW SES, in practice, the existence of these values is much more difficult to confirm. Evidence from the ICAC (1992, 1996; SES Literature Review 1998) would suggest that there are specific, primary, examples where the principles of professionalism and expertise, in the context of the NSW public service, are in doubt, to the point where unprofessionalism and lack of expertise have existed. The extent to which these negative incidents

are isolated or are representative of wider problems in the NSW SES is not specifically addressed in this research. However, the apparent frequency with which CEOs and other members of the SES are removed from office, often in highly public circumstances, would suggest that the meaning of professionalism and expertise in the NSW SES needs to be redefined in quite specific terms, beyond political rhetoric. The role of ministers as managers, as heads of the SES hierarchy, also needs to be considered in relation to their competence to perform and support redefined values of expertise and professionalism in a managerialist rather than political frame.

In terms of neutrality, the more obvious practice of incoming governments in NSW over the last decade, of apparently predetermining and then arranging for the dismissal of certain CEOs perceived not to be partisan or at least sympathetic to the incoming government, followed by new, apparently, partisan appointments, also suggests that neutrality as a general principle no longer applies (SES Literature Review 1998; SES Interviews 1998). In this sense, systems derived from Westminster traditions, like NSW, are, in practice, shifting further towards a Washington model where obvious partisanship is a significant prerequisite for high public sector, bureaucratic office. The difference, seemingly between the Washington approach and practice in NSW is that the expected or intended level of partisanship is rarely openly or explicitly stated.

While 'professionalism' and 'expertise' can be redefined in a relevant way for the NSW SES as guiding values, 'neutrality' in its traditional interpretation, seemingly, cannot be recontextualised. Rhetoric relating to neutrality (SES Literature Review 1998) if it is meaningless in practice is only misleading. Where CEOs, especially, have been removed from office because they are considered not sufficiently partisan, some public declaration about the reasons for their removal would at least leave their professional reputations intact. If neutrality is a value which can be supported below CEO level then this needs to be formally stated and responded to. Responsiveness, as an alternative principle can easily be construed to be partisanship. However, as a more appropriate value, transparency in political appointments with clear declarations about the partisan nature of the decisions may be a reasonable and realistic substitute in the current environment.

The NeoWestminster values for the NSW SES which can be promoted in this area are:

- expertise
- professionalism
- transparency (in lieu of neutrality at declared levels of the SES)

- neutrality (only if it can be sustained below CEO level, which seems unlikely).

However, at this stage, the evidence strongly suggests that these principles are not supported to an acceptable extent in the current operations of the NSW SES. Expertise and professionalism need further definition and some assessment as to whether transparency can be encompassed in a formal value set of the SES also needs to be made.

### 6.3 Security of Tenure and a Career Structure

#### 6.3.1 *Traditional Westminster principles*

As the SES Literature Review (1998) indicates, security of tenure and a career structure were foundational aspects of the Westminster system of bureaucracy. Security of tenure meant, effectively, that:

- public servants had guaranteed employment throughout their careers, except in the case of serious digression.

A career structure:

- provided opportunities over time for promotion through a series of graded positions to high office.

#### 6.3.2 *NeoWestminster Values*

The shift towards economic rationalism and managerialism by governments, reflected in structures, such as formal SESs has had an obvious and strong impact on the Westminster principles of security of tenure and a career structure. While some governments initially supported the concept of tenure and a longer term career in structuring their SESs, others did not, with the move towards fixed term contract employment. This is consistent with the findings of the OECD (1997; SES Literature Review 1998) study on national governments with a number of countries (8 out of 13) adopting a fixed term contract approach.

In reality, as the research confirms the value of a contract in the SES is at issue (SES Literature Review 1998; SES Survey 1998; SES Interviews 1998). Ostensibly contract and performance are linked. However, governments, where contracts for SES officers apply, reserve the right, within legislation, to terminate the contract for reasons other than poor performance. These reasons might include organisational restructuring, or machinery of government changes as in the case of the Victorian SES (Office of the Public Service

Commissioner 1998), or where the Prime Minister can terminate employment such as in New Zealand and proposed for the Australian Public Service (SES Literature Review 1998). Clearly no security of tenure exists, even in the terms of a current contract. To some extent, the right of return to the public service for a terminated SES officer, where it exists, provides a limited safeguard as far as security of tenure is concerned. However, as the conditions of the Victorian SES confirm, the right of return does not imply perpetual employment. A period of unattachment may have a limit.

Under these circumstances, it is hard to support any notion that there might be a career structure in the SES. However, these principles can be redefined within their current SES context. In this sense, security of tenure could be interpreted as:

- security of contract, in that the stated terms of contract will apply, especially relating to the period of the contract and performance requirements.

If not, reasonable compensation arrangements need to be included in the terms of contract to indicate entitlements if employment is terminated for other than poor performance defined within a formal SES performance management system.

Similarly, career structure could imply that:

- appointment to the SES is seen as a desirable career opportunity by officers below SES and that SES members have opportunities for promotion and development.

### *6.3.3 The extent to which NeoWestminster principles are operating in the NSW SES*

The contract arrangements in the NSW SES represent a serious systemic weakness both in practice and potentially. The fact that numerous CEOs in the NSW SES and other SEs have been removed from office while existing contracts were in force confirms the precarious arrangements (SES Literature Review 1998; SES Interviews 1998).

While it is not surprising that the NSW Government, like other governments globally, want to maintain flexibility in employment arrangements and to reserve the right under SES legislation to terminate incumbent SES officers, especially at CEO level, the integrity of any SES system under such arrangements is compromised for a number of reasons.

- Such flexibility will, almost inevitably, lead to practices which can only be interpreted by the rest of the public sector and possibly the public as political regardless of the merit of individual cases in relation to termination.
- Such power of governments to terminate can also lead to a regime of fear if it is perceived that seemingly political terminations of contract are a matter of practice, particularly at times of a change of government.
- Restructuring can be used by CEOs as the formal justification for termination even when other more personalised factors not related to SES performance management systems apply.
- Such an apparently unsatisfactory contract arrangement will, undoubtedly, act as a disincentive for officers below SES who might aspire to SES positions, if they perceive that continuity of tenure defined within a contract employment system is precarious.

This is not to argue that Ministers' or even CEOs' rights to make appropriate decisions should be curtailed. However, some better process of independent review is indicated. How this might be achieved is already being considered by the Premier's Department of NSW. Even in a redefined NeoWestminster sense, these principles do not apply currently in the NSW SES (SES Literature Review 1998; SES Survey 1998; SES Interviews 1998).

## **6.4 Defined Central Processes of Personnel Management and Control**

### *6.4.1 Traditional Westminster principle*

This Westminster principle was supported structurally through the existence of an independent central agency of government, which in NSW was the Public Service Board (PSB). The PSB acted as the main employment and personnel management and control body over many years on the basis of clearly defined rules relating to recruitment, promotional and other personnel processes.

Reforms including moves towards economic rationalist and managerialist agendas by governments during the 1980s saw the dismantling, to various degrees, of such independent central structures and processes of personnel management. In NSW, the erosion of power and later the abolition of the PSB occurred over a number of years and during the tenure of two governments (SES Literature Review 1998).

### *6.4.2 NeoWestminster Values*

Such moves were consistent with two of the new values of managerialism: downstream autonomy; and, letting the managers manage. In this context, significant powers of personnel management and control were devolved to departmental heads. Other centralised processes, especially relating to personnel management and control of the SES in NSW, were established within the Premier's Department. While the nature of the central control was more limited and closer to government this Westminster principle can still apply with some qualification. Devolution of authority in personnel matters is appropriate in any contemporary public service but some credible central controlling body still needs to exist to develop personnel policies, oversee and review their implementation. This is to ensure, as far as possible, that policies are being applied fairly in the interests of the public service and the public. To achieve such a structure, other jurisdictions, (New Zealand, Victoria, the Australian Public Service), through machinery of government changes have appointed public service commissioners who conceptually have some independence from government to support the positive implementation and review of personnel matters (SES Literature Review 1998).

#### *6.4.3 The extent to which NeoWestminster principles are operating in the NSW SES*

The SES Literature Review (1998) indicates that, following the current NSW government's election, a formal Public Employment Office (PEO) with certain powers in relation to the SES was established within the Premier's Department under the PSM Amendment Act 1995. A Public Employment Officer was appointed to head the Office. However, as the ICAC (1996; SES Literature Review 1998) investigation shows, the capacities of this Office as a central controlling body and the Officer, as the effective steward of the SES, to act in accordance with certain standards of non partisanship, professionalism and integrity were questionable.

Some evidence from the Performance Audit (SES Surveys; SES Interviews 1998) would suggest that the legacy of those events, even several years on, continues to influence the perceptions of members of the NSW SES and other public sector staff in a negative way, even though the name of the office has changed and the former subject officers are no longer in those positions (SES Interviews 1998). The office is still perceived to be political. That is not to say that any current or future incumbent PEO, who is also the Head of the Premier's Department and as such the NSW public service, may not have the confidence of the SES, the government, or the NSW public service.

However, from a systemic perspective the wisdom of placing the PEO so close to government, may be good for the government but it means that the independence and professionalism of the PEO, on a managerialist-bureaucratic standard may not be so clear. As indicated above (Summary of SES Literature Review 1998) there is a real potential for a conflict of interest in terms of this position. Yet if government does want to assert its power over some personnel issues then the PEO is well located. Nevertheless, it would seem that some review of these structures and the capacity of the PEO to perform on a high professional public management standard needs further consideration.

The role of SOORT (Statutory and Other Offices Remuneration Tribunal) as a central reviewing body is also in question. As the evidence indicates (SES Interviews 1998), SOORT is seen to operate on the basis of 'changing goalposts' (SES Interviewees 1998) where entitlements at termination other than for poor performance are diminishing. Entitlements might also change between the time a contract is entered into and termination of employment for other than poor performance.

At a more prosaic level, the procedures for assessing SES remuneration levels and grades also pose some difficulties. Based on a private sector commercial market model, the system would seem to have more relevance for the commercial and corporatised sectors of the NSW SES. However, for SEs, including CEOs, in the inner budget sector, such a model is not so relevant in the more political environment where profit, by returning a financial dividend to government, is not the primary organisational goal. Disparity in income between CEOs and Ministers, in some instances (SES Literature Review 1998) also appears to be of concern and the cause of possible conflict between the two arenas. Given that the evidence suggests that the SES is not a highly cohesive form of executive organisation, a differentiated system of salary and grading assessment which better reflects the actions and responsibilities in each sub-sector of the NSW SES could be considered.

## **6.5 Clear Policies and Procedures for Appointment, Advancement and Termination**

### *6.5.1 Traditional Westminster principles*

This principle, relates to the previous principle (6.4), and traditionally defines the role of independent central agencies such as the PSB in NSW, in relation to the formal rules and policy guidelines that were established as the basis of these kind of personnel management decisions. In this sense, certain procedures were institutionalised and responded to over many years. However, these policies and procedures were often seen by both government and CEOs to be restrictive and inhibiting efficiencies, which may explain the demise of the NSW PSB. Such a structure and operation as that conducted by the PSB had apparently outlived its usefulness and a more flexible approach was required. Another viewpoint, however, is that governments have sought to bring some of these central processes under their more direct control for political purposes at the same time as devolving quite extensive responsibility for personnel matters to departmental CEOs, as outlined above (6.4) (SES Literature Review 1998; SES Interviews 1998).

### *6.5.2 NeoWestminster Values*

Clear rules, policies and procedures for appointment, advancement and termination are still relevant. The substance of those policies has changed and some of the more restrictive aspects have been addressed. Merit standards are meant to be the main criteria to determine the most appropriate candidates, to assess the worth of performance and to guide termination decisions. Therefore within a managerialist framework, this principle can still apply.

### *6.5.3 The extent to which NeoWestminster principles are operating in the NSW SES*

The evidence (SES Literature Review 1998; SES Survey 1998; SES Interviews 1998) suggests that there remains a significant gap between the intention of the formal rules and policies of the NSW SES relating to appointment, advancement and termination and their application, in some instances. This especially applies to concerns, related to termination of employment for other than poor performance whether initiated at a political or bureaucratic level, which have been strongly expressed about procedures. To a large degree, these decisions appear to be determined by personal, power political concerns rather than the formal rules.

While the Premier's Department has indicated its intentions to create a system of checks and balances and to review decisions about a range

of SES processes, especially terminations, from within the bureaucracy, at the political level a commitment by the government to public sector excellence is required beyond rhetoric. The highly publicised incidents where CEOs have been removed from office for other than poor performance, on a formal SES standard, cannot be sustained if a commitment to public sector excellence, which is clearly in everyone's interest, is to be achieved. Any system, as developed, will require firm standards of review and transparency, especially in the case of politically motivated decisions where the basis of merit in appointments, promotions and terminations needs to be clear.

## **6.6 Delineation between Strategic Political Policy Arenas of Government and the Implementation of Policy by Public Sector Managers**

### *6.6.1 Traditional Westminster principles*

The traditional Westminster principle of delineation emphasised the distinctions in roles, responsibilities and operating arenas between ministers and their CEOs. Whether this principle ever really operated in practice is debatable. Furthermore, perceptions by governments in this direction about the assumed power of the bureaucracy have been frequently reported in the Literature (1998). There have been attempts over the years to clarify this situation.

As the Fulton Report (1968; SES Literature Review 1998) indicates there was an emphasis on separating the roles of (then) Permanent Heads from chief ministerial policy advisers even though both positions were to remain within the bureaucracy and be graded at the same level. Thus, the idea that departmental heads would be primarily accountable for bureaucratic management and the ministerial adviser be primarily accountable for policy advice, was endorsed prior to the introduction of formal SES programs. However, in practice, it is doubtful that such delineation between the political policy and bureaucratic management roles has ever been that clear.

### *6.6.2 NeoWestminster Values*

In a formal sense, the impact of economic rationalist based policies and managerialism, including contract and performance arrangements consistent with principal-agent theory, has actually re-emphasised the importance of delineation. This has also been apparent in machinery of government changes where policy advisory ministries have been created separate from their operating departments (SES Literature Review 1998).

With the introduction of a formal SES in the US Federal bureaucracy, role delineation within the bureaucracy allocated management responsibility to career bureaucrats and policy advisory responsibilities to political appointees. Effectively, the managerialist public service career stream was separated to some degree from the political interface. On the other hand, political appointees, with the policy advisory role were much closer to government.

However, in Westminster systems and especially NSW, such a definition of roles has not been so apparent. The rise of ministerial advisers as a separate alternative political bureaucracy has in practice made the situation less clear. Furthermore, the more traditional policy advisory role of public sector CEOs has been reinforced, at least rhetorically, by some governments. Yet the reality of practice is often quite different where apparent accelerating politicisation is seen to exist. Overall, there seems to be lack of clarity as to whether this principle still applies.

The issue of delineation has been addressed more directly in the New Zealand setting. As part of the formal SES system, CEOs have responsibility for outputs and Ministers have responsibility for outcomes. While the State Service Commission in New Zealand, following the introduction of the SES in that polity reinforced the principle of frank and fearless advice, this situation is not as clear as this formal emphasis might suggest (SES Literature Review 1998).

In a NeoWestminster sense, the principle of delineation in practice is not so distinct, conceptually, but there is an intention to delineate the roles of respective actors. Therefore, within the different context provided by the managerialist construct this principle can be supported in terms of formal SES policy.

### *6.6.3 The extent to which NeoWestminster principles are operating in the NSW SES*

The situation related to delineation in the NSW SES is not consistent across the sector and is seemingly determined on the basis of individual and personalised Ministerial-CEO relationships. This can be both positive and negative (SES Literature Review 1998; SES Interviews 1998). What is seen as the increasingly high public profile of senior executives in the public domain, especially CEOs, as explicators and defenders of government policy also clouds this issue (SES Literature Review 1998).

The growth of the ministerial offices has undoubtedly increased the level of contestability in the policy advisory arena and to some degree confused the roles of specific policy advisory actors. As the evidence indicates, in practice, there has been a trend towards a formalised,

dual system of policy advice. By using the competitive market analogy, consistent with ERM discourse, it is apparent that several critical issues are relevant here.

First, the evidence (SES Literature Review 1998, SES Survey 1998, SES Interviews 1998) suggests that in the policy advisory internal market the products provided by CEOs and ministerial advisers are becoming less differentiated. Second, technical advice, traditionally offered by the CEO, is probably disappearing in favour of more politically and electorally sensitive advice, now offered by ministerial advisers, which is perceived, by the bureaucracy at least, to be more highly valued by ministers (SES Interviews 1998). Third, CEOs and Ministerial advisers now often compete to get their similar policy advisings to the Minister. Fourth, CEOs are not usually positioned in the advisory market with the same advantage as ministerial advisers who are far closer, administratively and politically, to their ministers.

Another issue raised in the Performance Audit (SES Literature Review 1998) which touches on the issue of delineation is the disparity of salaries awarded to CEOs and Ministers (and referred to above (6.4)). For some ministers, at least, this seems to have been an important aspect of the ministerial-CEO relationship and has influenced the way delineation has been defined. In one way this situation, if it does exist, is anomalous because in the hierarchical managerialist framework the Minister is the more senior manager yet less directly rewarded financially. On the other hand, the minister clearly has more power to control the future of the CEO and that power may be displayed, publicly, to assert control (SES Literature Review 1998). Both CEOs and ministers face employment risk.

Seemingly, a number of issues need clarification in terms of delineation.

- First, the roles and decision rules relating to the CEO-ministerial and CEO-ministerial adviser interface need to be more precisely stated in a formal way, including the relative roles and accountabilities, especially so that CEOs can provide frank and fearless advice.

- Second, any salary disparities between CEOs and Ministers need to be reassessed if this is becoming a reason why informal and apparently inappropriate power relationships are asserted at ministerial level. However, total benefits for each group, such as salary, other financial incentives and superannuation, would need to be taken into account.
- Third, this is relevant to the issue of employment risk for CEOs (6.5) where known and appropriate compensation clauses need to be included in CEO contracts should subjective political decisions influence removal from office.
- Fourth, the universal application of the market assessment for valuing CEOs salaries needs to be reviewed to consider whether a more appropriate differentiated model can be devised.

## **6.7 Accountability to the Polity through Well Defined Parliamentary and Other Processes including Ministerial Responsibility**

### *6.7.1 Traditional Westminster principles*

In the Westminster sense, a formal accountability channel existed in principle from the bureaucracy to the Minister to the Parliament. This principle operated on the basis of ministerial responsibility. It supported the idea of the anonymous public servant as departmental head with the minister traditionally responsible for anything that happened in the department. The resignation of the minister, in concept, was expected in the case of serious departmental transgression. In practice, however, there has been a move away from the idea of ministerial responsibility and whether a minister could ever really be held accountable for what happened in a department, especially if the department was large, is regarded as highly questionable (SES Literature Review 1998).

### *6.7.2 NeoWestminster Values*

As the evidence confirms, there is no doubt that the move towards managerialism in public sectors has reinforced the principles of accountability. Some processes of accountability predate as well as postdate the introduction of formal SESs. However, accountability processes have been emphasised as a fundamental part of the formal systems and structures of SESs. Apart from internal organisational processes of accountability, a range of other processes also apply, but not necessarily to the electorate and the parliament. There are accountability streams relating, for example, to:

- managerial responsibilities and accountabilities between central and operating agencies
- external review agencies such as Ombudsmen, Auditors-General and independent commissions against corruption
- special purpose parliamentary committees and processes of review
- annual reporting processes.

Where the accountabilities lie between the bureaucracy and the political arena is less clear, because ministerial responsibility, as a Westminster value, has largely disappeared. By making CEOs accountable, ostensibly through formal performance management systems, for virtually all that happens in their departments, there has been an actual shift in accountability downwards, away from the political arena to the bureaucratic structure.

### *6.7.3 The extent to which NeoWestminster principles are operating in the NSW SES*

The Performance Audit, overall, confirms that the main accountability of most CEOs, or other SEs via their CEOs, is to the relevant Minister (87%) rather than to the electorate (68%) or to Parliament (64%) (SES Survey 1988; 4.10.1).

If the value of accountability to the electorate and parliament, as a way of managing in the public interest, is to be reconfirmed in a NeoWestminster sense, SEs will need to be further convinced that this is directly where their accountabilities lie.

## **6.8 A Strong Commitment to Public Service**

### *6.8.1 Traditional Westminster principles*

This principle was supported by a lifelong career in public service, security of tenure, and limited remuneration (in comparison with the private sector) on the basis that commitment to public service provided its own intrinsic positive worth.

### 6.8.2 *NeoWestminster Values*

To a large extent, the strong commitment to public service is no longer presumed to apply within economic rationalist managerialist constructs. On the contrary, according to neoclassical economic theories, SEs (and other public servants) will be largely self interested, budget maximising actors using the allocation of resources as a way of acquiring power and status. On this basis, governments contract with their SEs by providing incentives as reasonable exchanges for sustained and enhanced performance. As numerous critics of neoclassical economic thinking would suggest, SEs are not just motivated by tangible incentives but also gain satisfaction from their contribution to public service (SES Literature Review 1998). Therefore, conceptually, a strong commitment to public service as a motivating factor for SEs is not really taken into account but might be included in the rhetoric of governments. However, in practice some obvious level of altruism within the public sector in this direction does exist (SES Literature Review 1998; SES Interviews 1998; SES Survey 1998). To what extent altruistic commitment to public service is a stronger motivator than the opportunity to accrue personal power and status is not specifically determined in this research.

### 6.8.3 *The extent to which NeoWestminster principles are operating in the NSW SES*

Nevertheless, the evidence from the Performance Audit indicates that governments and other politicians in NSW may not see the SES in the most positive light. On the other hand, SEs, themselves, perceive that they are strongly committed to public service. The extent to which this principle currently operates, is, therefore, a matter of perspective. To reconcile the differences between the political and bureaucratic arenas greater trust between the actors will need to be developed. Whether this is realistic as a possibility or is also altruistic, given current circumstances, remains to be seen. Some attempt at reconciliation, however, does seem indicated if a strong commitment to public service and thus, public interest, is to apply.

## **6.9 Value Systems and Performance Principles**

### 6.9.1 *Traditional Westminster principles*

The traditional values and performance principles of a Westminster system are addressed in this Section but have also been outlined quite fully in the Performance Audit, overall. What is apparent from this research is that two sets of values and performance principles apply. One set is defined within the rational, formal systems and processes of

bureaucratic and policy management which have developed over many years. The other set, is less prescriptive and is defined by practices which encompass some of the formal rules but also more interpretive and informal, power, behavioural aspects. In reality, this latter approach which is contrary to the conceptual and theoretical material is probably the actual normative model of public service.

### *6.9.2 NeoWestminster Values*

Similarly, in a NeoWestminster sense, a new set of values and performance principles have been defined, as outlined throughout this research and in this Section.

### *6.9.3 The extent to which NeoWestminster principles are operating in the NSW SES*

In the NSW SES there is clear conflict between the formal managerial-bureaucratic and the political value systems and performance principles. Some evidence would suggest that these competing value sets and performance principles now operate in a state of dis-equilibrium if the formal managerial-bureaucratic standards are considered. What appears, in some parts of the NSW public sector, to be an increasing demand from the political arena on the SES for responsiveness to political needs means that formal values sets and principles defined within the SES are compromised. If concerns about electability are the key motivating interests of government then informal and responsive processes will be favoured over the formal SES system. The scope and form of responsibility in this way will be defined by informal and individual relationship issues rather than the formal SES systems. The myth rather than the reality of formal SES systemic rationality is perpetuated by some members of the SES and other political actors. Fundamentally, governments will need to decide whether their commitment to a professional public service is a priority in practice or just the subject of political rhetoric. While some reinforcement of appropriate values can be supported by the SES this will only have meaning if there is limited dissonance between the espoused formal values and the actual behaviours of key actors.

## 6.10 Conclusion

It is apparent from this analysis that most of the traditional Westminster values can be recontextualised within the economic rationalist and managerialist paradigm of public sector management related to the NSW SES (as outlined in each part of this section). However, the evidence strongly indicates that there is a considerable gap between the altruistic or rational interpretation of these NeoWestminster values and practice in the NSW SES. If the SES is to perform to its potential, the current situation of informality seems unsustainable. Far better decision rules and role definitions need to apply. It is in any government's interest, and ultimately in the public interest, to consider these issues beyond symbolic rhetoric so that the SES can contribute to the enhanced management of the State of New South Wales and to provide leadership to the rest of the public service.

## 7. Findings And Proposals

### 7.1 Introduction

In addressing the main focus of the Performance Audit, this research into the NSW SES has attempted to:

- define the current model of the NSW SES, and
- indicate the extent to which this model is consistent with the principles of a Westminster system of public service.

The Terms of Reference for the Performance Audit also required the Research Team to indicate:

- how the SES model in NSW might be adapted or changed to enhance its capacity to better fulfil the values of an effective Westminster public service (as redefined in Section 6, above), and
- to identify what minimum essential features are necessary in the NSW public sector working environment to facilitate the capacity of the SES to serve the public interest.

These four broad areas are used to report the **Findings** and **Proposals** resulting from the Performance Audit.

## 7.2 The current model of the NSW SES

### 7.2.1 Introduction

Overall, the evidence from the Performance Audit suggests that the current model of the NSW SES is a hybrid system. This system has developed in a unique way relevant to the history, traditions and shifts that have occurred in the political, parliamentary and bureaucratic public sector arenas of NSW over a number of years and predating the commencement of the SES in 1989. In broad terms, Westminster principles have shaped the parliamentary and bureaucratic systems existing within NSW. At the time the NSW SES was established, major changes in the bureaucratic system were taking place with the implementation of well-defined managerialist policies consistent with ideas of business management. Conceptually, the formal NSW SES model shares much in common with formal SESs in other key polities as the OECD (1997) reports. However, to a considerable extent, in practice, the evidence indicates that the NSW SES also encompasses aspects of a more politicised Washington style SES model.

### 7.2.2 General Findings

In practice, two streams of influence operate as part of the model of the NSW SES (Table 3.4.5). These are:

- first, a formally defined, and conceptually rational stream of influence which encompasses, for example, the legislation, systems, structures, processes, policies and codes of conduct of the NSW SES.

Typical aspects of this stream of influence include:

- stated and formal objectives of the SES
- fixed term employment contracts
- performance management and review systems
- flexible remuneration packages
- incentive programs
- professional development programs
- mobility programs.

Formal professional relationships, roles and decision rules are prescribed within the rational system, supported by written guidelines and advice. The formal system may operate as intended, or may be overwhelmed by another stream of political influence, outlined below.

- second, an apparently dominant, flexible, political stream which is characterised by informality, personal relationships, power behaviours, political patronage and *ad hoc* decision making processes which are often aligned and responsive to political imperatives and key electoral issues. The key actors in this highly dynamic environment where it applies are:
  - Ministers
  - CEOs
  - (to a lesser extent) Ministerial Advisers, (comprising part of an alternative, politically located bureaucracy)
  - (also to a lesser degree) some SEs and NSW public servants.

The exchanges between the key actors may be direct or indirect, harmonious or conflictual, overt or covert and may be resolved on the basis of political expediency related to personal and political power. Decision rules and role definitions are imprecise and ever changing. This stream of influence may not apply consistently or right across the NSW public sector at any given time and will vary depending upon particular circumstances and relationships.

Typical aspects of this stream of influence include:

- some partisan decisions by government about the capacity and loyalty of individual CEOs, and other SEs
- which may result in removal from office and early termination of employment, with
- resultant uncertainty about security of formal SES contracts for CEOs and SEs
- a high level of contestability in the policy advising arena in some areas
- similar political behaviours may be replicated in the bureaucratic environment of the NSW public sector, especially between some CEOs and other SEs
- perceptions of some SEs and Officers in the SES feeder group that the NSW SES is politicised, and that
- membership of the NSW SES involves too high a level of employment risk.

On an executive performance spectrum (Table 7.2.1), which ranges from informal-political to formal-bureaucratic (NSW SES), the point at which optimal executive performance is likely to occur will usually be different for the primary actors, namely Ministers and SEs. As the evidence indicates, this dissonance between points of optimal

performance for the respective actors occurs, largely, because of different priorities, value sets and the driving forces which are meant to determine performance for each group. Furthermore, it is unlikely that these fundamental differences between the actors can be reconciled to create a common point of optimal executive performance. Rather, for the NSW SES to work, effectively, it would seem that the formal systems, decision rules and protocols need to encompass an explicit recognition of this situation.

**TABLE 7.2.1: SPECTRUM OF EXECUTIVE PERFORMANCE (showing points at which optimal performance occurs for key actors)**

Political actors	SES actors
INFORMAL-POLITICAL	FORMAL-BUREAUCRATIC (NSW SES)

The evidence also reveals that a number of systemic vulnerabilities and dysfunctions exist within the formal NSW SES. The most critical issues are identified in the research as:

- the insecurity of current employment contract arrangements
- the uncertainty of entitlements and compensation, in the case of early termination of employment for other than poor performance
- the formal SES performance management system sometimes fails to moderate performance because of the influence of the political stream
- the erosion of incentives
- some subjective appointment, promotion and termination decisions
- limited programs for professional development
- limited opportunity for mobility
- the apparent incapacity of formal codes of conduct and ethics for the NSW SES to moderate SES behaviour at a consistently acceptable level
- the uncertainty about which set of values (political or managerialist) actually drive performance in the NSW SES
- the perceived general failure of lateral appointments from the private sector as a main objective of the NSW SES
- the managerialist interpretation of merit which fails to recognise or encompass the political competence that SEs require, at least in some parts of the NSW SES

- the inadequacy of the market based system for SES job evaluation, in some instances, especially the policy advisory role
- breakdown of Ministerial-CEO relations and how they are managed
- the increasingly contestable policy advisory roles of key actors
- the perceived incapacity of the PEO, as an institution, to act as an independent arbiter of the NSW SES
- SES' concerns about the apparent politicisation of the NSW SES by Government and opposition politicians
- Officers in the SES feeder group's concerns about the current unattractiveness of SES employment.

As these issues have been well canvassed in the Performance Audit Report a summary of the Findings follows:

### **7.3 Summary of Findings**

#### *7.3.1 SES Employment Contracts*

The research (SES Literature Review 1998; SES Survey 1998; SES Interviews 1998) indicates a strong level of dissatisfaction in relation to SES Employment Contracts. This especially refers to the uncertain legal status of the Contracts. In some instances, the Contracts are perceived to be meaningless.

#### *7.3.2 Compensation in the Case of Early Termination of Employment for other than Poor Performance*

Procedures relating to the early termination of SES employment for other than poor performance are perceived to be inadequate, in that the set of conditions prevailing at the time an Employment Contract begins may no longer exist if the Contract is terminated early. There are perceptions that compensation, especially as salary maintenance and pay out on the contract, in such a case, is being reduced on a regular basis to an unacceptable minimum level (believed now to be one month).

### *7.3.3 Formal SES Performance Management System*

The formal performance management systems of the NSW SES instituted (and usually accredited in larger organisations) are not applied consistently across the sector. Performance decisions may be based on subjective criteria that are not included in a formal Performance Agreement.

### *7.3.4 Incentives*

Incentives including merit or performance pay are not applied consistently across the sector. Yet SEs perceive that an SES wide merit based system needs to be available to all members of the SES. There is also expressed concern about an overall erosion of benefits for SEs including the components of salary packages.

### *7.3.5 Appointment, Promotion and Termination Decisions*

Similarly, the research reveals that some SES appointment, promotion or termination decisions are made outside of the formal SES performance management system. Such decisions may be motivated beyond issues of competence by political views about political affiliations, and also at a bureaucratic level by more personalised and subjective assessments. The basis of such decision making may be motivated by power behavioural considerations and 'personality management' (SES Interviews 1998).

### *7.3.6 Professional Development and Strategic Capacity*

SES, professional development programs have been limited in some parts of the NSW public sector, contrary to the objectives of the SES. In this area, the evidence suggests that strategic capabilities at SES level may need further attention.

### *7.3.7 Mobility*

While some contrary views about the benefits of mobility within the SES are expressed by Interviewees (1998), the SES Survey results (1998) indicate that greater mobility within the SES is desired by many of the respondents.

### *7.3.8 Formal Codes of Conduct and Ethics*

Overall the evidence in this area strongly indicates that formal codes of conduct and ethics have limited impact on the professional behaviour of the SES in other than a limited way. Rather, the research shows that SEs may be guided more by informal power-political and/or subjective-bureaucratic situations. Formal SES processes may

be used tokenistically to mask these more power behavioural activities. However, some SEs may be driven by their own personal and professional sense of what is right and, therefore, see the formal codes of conduct as simply reinforcing their own views of acceptable conduct.

### *7.3.9 SES Values*

Two contrary sets of values, as indicated above, basically drive SES performance. The influence of either the informal political and/or bureaucratic stream of the more formally defined SES system will vary depending upon the level of politicisation at any given time, within a highly dynamic arena. Currently performance in the SES is not consistent with the NeoWestminster principles, as defined above (Section 6).

### *7.3.10 Lateral Appointment from the Private Sector*

The research indicates that lateral appointment from the private sector, largely on the basis of managerialist experience, does not ensure that the appointee will be able to fulfil the requirements of NSW SES public sector management and leadership positions. In reality, the majority of appointees to the NSW SES come from the NSW or other public sector areas. If these internal appointments have been made on merit then private sector managerial experience is clearly not a prerequisite for high executive office in NSW.

### *7.3.11 Merit*

Merit, as defined for the NSW SES, primarily, is based on managerial competence. As the research reveals, political acumen is seen to be almost equally important (SES Survey 1998), yet is apparently rarely stated as one of the essential criteria for appointment to the NSW SES. While political acumen may be less relevant the further the SES position is from the more political centre, such as in corporatised entities, criteria of merit need to reflect the reality of certain SES positions.

### *7.3.12 SES Job Evaluation*

Some Interviewees (SES Interviews 1998) suggest that the current market based assessment process of SES job evaluation, especially when related to the size of financial responsibilities and staff is inappropriate for some more specialised positions which are not so dependent upon managerialist responsibilities. This especially applies to central agencies and policy advisory roles where budget and span of employee control are not merit criteria and therefore do not relate to the capacity to fulfil the requirements of the position.

### *7.3.13 Ministerial-CEO relations*

The current informal processes for dealing with a breakdown in the working relationship between a Minister and a CEO are largely negative for the CEO concerned, especially when the breakdown is reported prominently in the media. Such reports often imply that some failure has occurred in terms of the CEO's professional capacity to perform in the position. In reality this may not be the case and issues of personal power and political whim may prevail on the basis of more subjective assessment processes. The relative perceived imbalance of power and/or salary between CEOs and Ministers also seems to exacerbate issues of power in some instances (SES Literature Review 1998).

#### *7.3.14 Policy Advice*

The policy advisory role of SEs is unclear in some areas of the SES. This is further confused by the increasingly contestable environment in which policy advice takes place. Supposedly, apolitical technical advice is provided by a CEO (or other SEs) while ministerial advisers provide more politically sensitive partisan advice. In reality, such a dual stream of policy advice is often not well defined and a competitive process may ensue (SES Interviews 1998). Some CEOs seem able to manage this situation with some confidence and integrity while others, seemingly, experience a high level of discomfort about the political nature of the policy advisory role for the SES. Perceptions about this vary and to a large extent CEOs will need to depend on their own sense of political acumen to manage the situation. However, even where political acumen is applied this may not be sufficient to counter more personalised issues.

#### *7.3.15 The Public Employment Office (PEO)*

There is still some residual negative impact in terms of the continuing credibility of the institution of the PEO (or its replacement office however named) following the 1996 ICAC investigation and report into the circumstances surrounding the dismissal of a CEO. Some SEs perceive that the PEO is a political office of government rather than an independent organisation which supports and adjudicates on matters related to SES employment.

### *7.3.16 Politicisation of the NSW SES*

The research strongly indicates a continuing shift in NSW towards an executive service that is more aligned to a Washington patronage and bureaucratic model than it is to a more independent Westminster style model. This means that political appointments will be made to some top positions. Political affiliations and patronage may act as criteria for success, sometimes overwhelming the more formal systems of the NSW. This might be reflected in an extensive change of CEOs at the time of an incoming government. Some SEs perceive that this situation extends into the bureaucratic environment where decisions are sometimes made (usually by CEOs) on the basis of personality and power rather than formal and prescribed SES procedures.

### *7.3.17 Succession Planning*

It is possible that a significant number of NSW Public Service Officers, as members of the SES feeder group, are not inclined to apply for positions in the SES. The small number of this group who were interviewed (SES Interviews 1998), if more representative of the wider feeder group, largely indicate that entry into the SES represents too high a level of employment risk. This is especially relevant when other less risky and almost as rewarding alternatives are available, especially through SO positions. If this situation is as it seems there could be a longer-term risk to the competence of the NSW SES to perform if well qualified officers are not applying for SES positions.

## **7.4 The extent to which the NSW SES model is consistent with the principles of a Westminster system of public service**

### *7.4.1 Finding*

As Section 6, above, of this Performance Audit Report indicates, the NSW SES model as it currently operates is not consistent with the redefined principles of a NeoWestminster system of public service which takes account of the prevailing public sector paradigm encompassing concepts of managerialism). The NeoWestminster principles are identified, as follows:

- expert, professional and responsive (non partisan) senior executives
- transparency of decision making (especially partisan decisions by government)
- security of SES contract and fair promotional opportunities in accordance with SES

- guidelines
- defined central processes of personnel management of the SES (such as those currently resided over by the Public Employment Officer)
- clear policies and procedures for appointment, advancement and termination
- clear delineation of responsibilities between the key strategic actors at political and bureaucratic levels
- accountability to the polity through well defined parliamentary and SES procedures
- a strong commitment to public service (Section 6, this Report).

Currently, the SES in practice fails the test to some extent on all of these principles (Section 6, above).

## **7.5 How the SES model in NSW might be adapted or changed to enhance its capacity to better fulfil the values of an effective Westminster public service**

### *7.5.1 Introduction*

How to address these findings from the SES Literature Review (1998), the SES Survey (1998), the SES Interviews (1998) and the examination of Westminster Principles (Section 6, above) is clearly problematic. While this research can propose a number of broad changes it is considered that the specific details might best be developed by the NSW Government and the Premier's Department (as the NSW public sector organisation with current responsibility for the stewardship of the SES). It is also noted that coincidentally and as a result of the Performance Audit processes, some initiatives to enhance the formal system on the NSW SES are already underway. Additionally, an appointed task force of representative CEOs and SES from across the sector may have a valuable contribution to make to the process of reform. Whatever form the reform processes of the NSW SES take, it is proposed that:

- the changes be encompassed in an integrated form (for example an electronic version of an 'Executive Handbook') which clarifies the legal framework, roles, decision rules, standards and processes relating not just to the NSW SES but to the political arena, as well (and which can be updated regularly), related to executive performance

- the revised NSW SES system act as the foundation Senior Executive performance standards which are assessed by a proposed independent reviewing authority reporting to the NSW Parliament, annually.

However, the basic challenge in addressing the critical issues and making the following proposals is to:

- determine to what extent rational systemic reform can be achieved, given that the NSW SES operates in a highly contestable, dynamic and political environment from which the SES cannot realistically be divorced or protected entirely.

#### *7.5.2 NeoWestminster Principles*

As a starting point for making a number of proposals which address the specific issues identified throughout this Performance Audit Report, a general review of the NSW SES using the NeoWestminster principles, as a broad framework for analysis, is also suggested in the following terms:

- Review and enhance the NSW SES both in concept and practice so that NeoWestminster principles can apply as a set of values designed to guide performance systems and professional relationships in the NSW SES.

#### *7.5.3 Specific Proposals*

While many issues were addressed throughout this Performance Audit Report, recommendations for the most identified issues are proposed, in relation to the following critical areas:

- SES Employment Contracts
- Compensation in the case of early termination of employment for other than poor performance
- Formal SES Performance Management System
- Incentives
- Performance management system
- Appointment, Promotion and Termination Decisions
- Professional Development
- Mobility
- Formal Codes of Conduct and Ethics
- SES values
- Lateral Appointment from the Private Sector
- Merit

- SES Job Evaluation
- Ministerial-CEO Relations
- Policy Advice
- The PEO
- Politicisation of the NSW SES
- Succession Planning.

#### *7.5.4 SES Employment Contracts*

Develop the SES Employment Contract so that it is a meaningful document with appropriate force in law.

#### *7.5.5 Compensation in the case of early termination of employment for other than poor performance*

Include termination entitlements of SES officers on the Employment Contract at the time the contract is entered into, so that SES members are aware of their entitlements should the contract be terminated early for other than poor performance. Conditions which protect both the employee and the employer need to apply.

(A formula, similar to the one developed in British Columbia Canada and reported by the Auditor General (SES Literature Review 1998) might provide some guidance in this direction.)

#### *7.5.6 Formal SES Performance Management System*

- Reinstate the defined formal processes of the NSW SES Performance Management System (modified if necessary) as the primary means of performance assessment and review.
- Monitor the application of the Performance System in the NSW SES, through an annual independent process of review by an identified SES Statutory Reviewing Officer reporting to the NSW Parliament.

(Other pertinent issues outlined in detail in Section 7.6, below)

#### *7.5.7 Incentives*

Canvass with SES members and other key actors, including SOORT, to determine what kind of coordinated and comprehensive incentive program may be offered to SEs. (This might encompass performance pay but would need to be more broadly based including salary packages, staff development entitlements, and mobility programs.)

Incentives [and perhaps disincentives] need to be well articulated to SEs or prospective SEs.

#### *7.5.8 Appointment, Promotion and Termination Decisions*

- Expand selection criteria for the NSW SES beyond managerialist competence, as appropriate, to recognise the political environment in which some CEO/SES positions operate.

(This will vary depending upon the type of organisation and the source of funding.)

- Implement a formal review and accountability process, centrally monitored, which provides checks and balances against subjective decision making processes in this area.

(The NSW Premier's Department is setting up a committee for this purpose.)

- Make the nature of any political decisions in this area public and transparent.

#### *7.5.9 Professional Development*

Devise and implement a more formalised and continuing professional development program for members of the SES. (This might include programs related to high level strategic decision making and the kind of competencies SEs now require to perform eg globalisation, contract management, partnerships with the private sector, public governance.)

(It is also noted that the Premier's Department is developing an initiative in this area.)

#### *7.5.10 Mobility*

Establish a more formalised mobility program for those members of the SE who consider secondment and other opportunities for learning and professional development to be important for their continuing performance enhancement. (Such an initiative would need to be actively coordinated and monitored from the PEO, or equivalent.)

(Also a current Premier's Department initiative.)

#### *7.5.11 Formal Codes of Conduct and Ethics*

Continue to reinforce the importance of ethical and professional behaviour of SES through central agency and independent statutory review of the SES. (However, unless ethical behaviour is rewarded in some direct way through the formal systems of the NSW SES, behaviour consistent with the formal Code of Conduct and Ethics may continue to be an unrealistic expectation – see Section 7.6 below.)

#### *7.5.12 NSW SES values*

(Outlined within the context of NeoWestminster values, as outlined in 7.3, 7.4.1 above.)

#### *7.5.13 Lateral Appointments from the Private Sector*

Delete any statements relating to the NSW SES which indicate that lateral appointments from the private sector are a key objective of the SES. Merit (redefined see 7.4.14, below) needs to be the main determinant of appointment.

#### *7.5.14 Merit*

Redefine Merit, as appropriate (especially for central and budget sector agencies) to recognise the importance of political acumen, and leadership competencies as essential requirements for the SES, beyond the managerialist competencies already specified. (This may also include high level strategic capability as a generic competence.)

#### *7.5.15 SES Job Evaluation*

Establish a system of job evaluation which better reflects the nature of the public sector in those areas of the NSW SES which are not consistent with the traditional private sector market model which is currently used.

(Also refer to 7.5.16 Ministerial-CEO Relations, below.)

#### *7.5.16 Ministerial-CEO Relations*

Require some statutory or other formalised and reviewed process of political-bureaucratic mediation before removal from office of a CEO by a Minister can take place.

(In making this proposal it is accepted that the Government needs to be free to act in its own as well as the public interest. Realistically, the formal system of the SES cannot be made watertight so that political action rather than poor performance will not motivate removal from office. However, some basic protocols need to be established which avoid the politicisation of these processes and apparent unreasonable assertions of power, on a SES systems standard, by ministers over their CEOs.)

#### *Remuneration and Power*

- Examine and address, if appropriate, the issue of differential salaries between CEOs and Ministers especially in budget funded organisations.
- Recognise that different parts of the NSW public sector operate on diverse managerial bases.
- Assess CEO/SES salaries using a public service-political model rather than private sector-management model (the analogy does not stand up in real terms in the inner budget sector – the CEO has limited autonomy and is subject to the Minister's control).
- (One possibility might be to) Reduce inner budget sector CEO base salaries, but factor in consistent and safeguarded compensation or incentives related to level of risk, inadequacy of current contract conditions, for example.
- Institute a formal performance pay scheme not determined by individual ministers or CEOs but in a more independent forum run by a reconstituted PEO, or similar body (in cooperation with SOORT).
- Recognise that there are 2 tiers of high level bureaucracy including the SES and Ministerial advisers and that processes, decision rules and standards of performance in this environment need to be more explicitly defined and transparent, to a considerable extent (also 7.5.17).

#### *7.5.17 Policy Advice*

- Clarify the respective roles of the key actors in the political-bureaucratic environment (also referred to above, 7.5.16) as indicated for the following groups:
  - partisan alternative bureaucracy - ministerial officers, political appointees to boards and ministerial committees
  - partisan SES public sector bureaucracy at SES level – some politically appointed CEOs and SEs
  - non partisan public sector bureaucracy at SES level - CEOs and SEs appointed on merit.

#### 7.5.18 *The PEO*

- Locate the PEO as an institution and position away from the Premier's Department (so that any incumbent does not hold the dual roles of PEO and the head of the public service regardless of the merit of any individual people in this position).

(The PEO may need to be an independent statutory appointment accountable to Parliament for public employment issues, especially senior executive matters.)

- Designate an independent officer (in one of the reviewing agencies eg Auditor General Ombudsman, ICAC with statutory responsibility to Parliament) as the SES Statutory Reviewing Officer (or similar title) who has the power to review decisions made in relation to the SES where Officers perceive that due process in accordance with stated rules, regulation and policies has not been followed. (It is proposed that the 'SES Statutory Reviewing Officer' make an annual report to Parliament on the SES.)

(If the PEO is not made an independent statutory position.)

#### 7.5.19 *Politicisation of the NSW SES*

(Addressed in Section 7.5, below.)

#### 7.5.20 *Succession Planning*

- Canvass with NSW Public Service Officers in the SES feeder group what they consider to be the minimum requirements for entry in to the SES and respond accordingly.
- (If SES systems, structures, processes, entitlements are responded to in accordance with these above proposals, the SES may well be more attractive to this feeder group than it appears to be at present.)

**7.6 The minimum essential features which are necessary in the public sector working environment to facilitate the capacity of the SES to serve the public interest.**

*7.6.1 General Proposals*

Overall, from a political level, for the formal NSW SES system to function at an acceptable managerial standard, the NSW Government, in the first instance, would need to make a purposive and transparent commitment to the support of the formal SES systems, beyond what currently operates. From a bureaucratic efficiency point of view it is obviously in any government's interest to support and develop the NSW SES so that it can perform with a high level strategic and operational capability.

From an electoral perspective, however, formal bureaucratic systems of the NSW Public Service will inevitably conflict with the business of politics, which seems to be the case in NSW currently and during the last decade, at least. While it might be possible to find some kind of acceptable strategic equilibrium between partisan and nonpartisan and formal and informal processes (Table 7.2.1), the evidence would suggest that, as a starting point Government needs to make a commitment to one of two broad and opposing options.

7.6.1a Government makes a public and transparent commitment to the enhancement of public sector management and in practice reflects the rhetoric of bureaucratic independence with consistent action carried out within formal SES legislation, decision rules and protocols on the basis of due process and natural justice and in the public interest

**OR**

7.6.1b Government is sensitive to the electorate and as such requires flexibility and informality in its dealings with the SES, but indicates publicly when the SES acts as a political, bureaucratic arm of Government, so that expectations of the NSW SES and other Public Service Officers are realistic.

In this case, the decision rules relating to critical issues such as standards of performance, removal from office and salary maintenance need to be stated consistently and applied in a transparent way related to the level of SES employment risk.

In either case, certain decision rules, both formal and informal relating to the SES need to be addressed as part of a continuing process of reform.

However, it is also obvious that not all interactions will take place within the formally prescribed SES system. Political and bureaucratic decisions will inevitably apply. This might involve more personalised decisions such as incompatibility or lack of confidence by the Minister, or a Ministerial Adviser, in the CEO, or a CEO lacking confidence in another SES member. However, even in these circumstances some reasonable standard of professionalism needs to guide practice.

At the political level, for Ministers, this could, perhaps, best be determined by a representative parliamentary committee such as the committee already considering required ethical standards of professional behaviour for all politicians (SES Literature Review 1998).

As Ministerial Advisers are accountable to their Ministers, Ministers will need to be able to justify the actions of any of their staff in a similar way. For CEOs, a more direct review to the relevant, proposed, statutory reviewing officer would be made.

Therefore, should any of the key actors choose to negotiate arrangements beyond those formally defined as part of the SES system:

- the onus will be on the relevant individuals to defend their actions should the matter be the subject of formal review. (The 'SES Statutory Reviewing Officer', as proposed, would report to Parliament annually on any such instances.)
- the integrity of the NSW SES will also depend upon bipartisan political support for the SES to avoid the continuing process of political point scoring.

## **7.7 Conclusion**

This Section of the Performance Audit Report identifies findings relating to a broad range of critical issues pertinent to the comprehensive research undertaken into the NSW SES. It also makes a number of proposals about how these issues might be addressed, given the current evidence. Importantly, the dissonance between where optimal executive performance might take place on a performance spectrum, encompassing the formal SES and less formal political arenas, is canvassed. The critical point here is that this arena, between the informal political actions and the application of formal SES structures, where much of the important decision making takes place, will always be difficult to manage. However, the reconsidered, NeoWestminster principles can be applied to provide a framework in which executive performance can be mediated to a considerable extent. Transparency in decision making processes where non partisan and partisan actions are clearly defined seems a primary essential element of performance if the integrity of the NSW SES is to be maintained.

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