

Performance Audit Report

NSW Senior Executive Service

Professionalism and Integrity

**Volume One: Summary and
Research Report**

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Table of Contents

Executive Summary	1
Recommendations	11
Part 1: Audit Overview of Key Issues and Directions For Change	13
The Senior Executive Service in NSW: Key Issues and Directions for Change	14
SES Models	16
Summary of Main Findings	19
Key Issues	21
1. Roles, Responsibilities and Accountability of the SES	21
2. SES Competencies	24
3. Selections and Appointments	25
4. Performance	28
5. Rewards/supports	33
6. Separation of the SES from Political Values and Environment	34
Audit Costs	35
Acknowledgements	36
Attachments	37
Attachment 1: SES Initiatives	38
Attachment 2: SES Models Comparative Table	41
Attachment 3: Survey Demographics	48
Attachment 4: Bibliography	50
Response from Premier's Department	55
Part 2: SES Research Report	

Executive Summary

Executive Summary

The Role of the SES

The efficiency and effectiveness of any organisation is guided and greatly affected by its executive management. The efficiency and effectiveness with which the public is served is significantly affected by the efficiency and the effectiveness of the Senior Executive Service (SES) and Chief Executive Service (CES). Unless otherwise specified, the term SES (or CES/SES) refers to both the CES and SES in this Report.

The significance of the role performed by the SES was highlighted by the Independent Commission Against Corruption (ICAC) in 1996:

It is of primary importance that public confidence is maintained in the integrity of the processes of public administration and of the officers and agencies of government. In particular, the strength and effectiveness of the SES or its equivalent or those who occupy senior management positions is, as a matter of public interest, vital to those processes.¹

Principles of Public Administration

It is vital that those who are entrusted with an executive management role in the public sector have clearly defined responsibilities, goals and objectives; have a clear system of rules, principles and ethics; and are accountable for their actions and their performance.

In New South Wales (NSW), these features of our public sector, and the legal framework within which our system of government operates, have been founded upon what are referred to as “Westminster/Whitehall principles”, reflecting our historical origins.

Aligning SES and Public Administration Principles

In February 1995 the then Opposition announced it would “revive the principle of an independent, non-political public service.”² It was concerned that implementation of the SES model was inefficient (costly, especially in terms of compensation payouts); that Ministerial discretion had been introduced to fill public service vacancies without advertising; and ineffective (not demonstrating improved performance in managing the public sector).

¹ The Independent Commission Against Corruption *Report on the Public Employment Office Evaluation of the Position of Director-General of the Department of Community Services*, ICAC, November 1996, p7.

² R Carr “The Public Sector: 2000 and Beyond” Speech to RIPAA Forum, State Library, 22 February 1995.

There was also concern that the effectiveness of the SES was hampered by Executive Government control. This was thought to have the effect of selecting senior executives on other than merit principles (namely on the basis of personal and political loyalties), which in turn might impede the SES in giving independent, expert advice to Government. The then Opposition leader cited Commissioner Fitzgerald to describe the problems facing the SES in NSW:

A system which provides the Executive Government with control over the careers of public officials adds enormously to the pressures upon those who are even moderately ambitious. Merit can be ignored, perceived disloyalty punished, and personal or political loyalties rewarded. Once there are signs that a Government prefers its favourites...when vacancies occur or other opportunities arise, the pressure upon those within the system becomes immense...the job of bureaucracy ... is to provide independent, impartial, expert advice on departmental issues...³

The Government recently reaffirmed its commitment to “restoring the principle of an independent non-political public service in NSW and to ensuring that the community receives value for money and quality service from its public sector bodies and employees”.⁴

In coming to this view, the Government has also reaffirmed that it does not want SES officers to be selected on their political capacities. As such the Government has reinforced the notion that although SES members ought to be politically aware, their involvement in crafting advice or presenting material aimed at party political objectives diminishes their capacity to act professionally.

**The NSW SES
Policy and
Legislative
Framework**

The SES is governed by a legislative framework that includes, but is not limited to:

- *Public Sector Management Act 1988 (PSMA)*
- *Public Sector Management Executives (Amendment) Act 1989*
- *Statutory and Other Offices Remuneration Act 1975*

³ *Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, Qld. 1989, cited by R. Carr, op cit.

⁴ Hansard, Legislative Assembly, 3 June 1998.

- *Statutory and Other Offices Remuneration (Executives) Amendment Act 1989*
- *Public Sector Executives Superannuation Act 1989*
- *Miscellaneous Acts (Public Sector Executives Superannuation) Amendment Act 1989*
- *Public Sector Management Act Regulation 1996.*

Legislation provides certain conditions for the employment of the SES, and prescribes some particular conditions for the CES. For instance, legislation provides for SES officers (below CES) to:

- be appointed by the Governor on the recommendation of the Department Head
- be appointed on merit
- have a contract with their employer (the agency CEO)
- be transferred to fill a vacancy
- have an annual performance review.

However, CES conditions are somewhat different. Legislation provides for appointments to the CES to be made by the Governor. CES employment contracts are with the Minister. The contract deals with the duties of the CES, remuneration and may provide for other agreements. Legislation also requires an annual performance review. Advertising of CES vacancies and appointment on merit are not legislative requirements.

Administrative arrangements supplement legislative provisions. These are set out in various policy manuals, Memoranda and Circulars. The Premier's Department *Circulars* and *Premier's Memoranda* advise policy developments in the SES and include information and/or guidance concerning:

- a *Code of Conduct and Ethics for Public Sector Executives* (1997)
- recruitment, selection and appointments
- performance planning and review
- redeployment, outplacement and redundancy
- grievance mediation
- a Model Contract
- relevant legislation governing the SES.

The *SES Administrator's Manual* includes guidance on:

- the creation of SES positions
- recruitment, selection and appointment
- remuneration
- conditions of appointment
- performance management
- grievances
- SES mobility
- administrative arrangements for unattached officers
- management development.

There are also a number of *Premier's Memoranda* and other Premier's Department *Circulars* which affect the SES.⁵ These together with periodic legislative changes have an important impact on the way the SES model operates. One recent improvement relates to enhanced opportunities available to unattached SES to pursue transfer, secondments or outplacement services (*Circular 98-22*). Another improvement relates to "New Arrangements for the Renewal of CES and SES Contracts" (*Premier's Memorandum 98-18*). This is a major reform which provides for the "smooth and seamless transition from the previous contract to a new contract" without advertising where the performance of the CES/SES officer is of a high standard.

Details of other important SES reform initiatives are outlined at Attachment 1.

**Premier's
Department
Research on Public
Administration
Principles**

It is apparent that SES reform is an on-going process which has occupied considerable attention of those responsible for its development and implementation.

A recently issued Premier's Department Discussion Paper, titled *Directions for Public Sector Reform in New South Wales*, observed an increasing tension between the managerialist model and the core values of the Westminster model. The *Discussion Paper* observed that until the mid 1970s, the

... Westminster model of governance provided a backdrop of ethical values to underpin behaviour, in particular defining the proper relationship between public administrator and politicians in terms of independence, impartiality, political neutrality and willingness to give free and frank advice to whichever political party was in power at the time.⁶

⁵ Premier's Department have advised that new SES guidelines, to replace the *SES Administration Manual* (1994), are imminent.

⁶ NSW Premier's Department, *Directions for Public Sector Reform in New South Wales Discussion Paper*, Public Sector Management Office, Sydney, July 1998, p.8.

The *Discussion Paper* stated that a strong drive toward efficiency, resulting in the pre-eminence of the managerialist model, led to a belief that “the values of the Westminster model were somehow old-fashioned and constricting, preventing the use of initiative, entrepreneurial flair and imagination”.⁷ However, while the trend toward measuring performance and ‘letting the managers manage’ continued, accountability requirements and mechanisms such as Freedom of Information legislation and “investigative and supervisory bodies such as the Ombudsman and the Independent Commission Against Corruption (ICAC)” were established.⁸

The *Discussion Paper* noted that public sector standards of accountability are fundamentally higher than those applying in the private sector in terms of transparency, probity and compliance in relation to the use of public revenue. These “standards of behaviour in relation to accountability and performance of public duty, the ethos and the principles are regarded as nigh-on absolute in their application.”⁹

The *Discussion Paper* concluded that the outcome of this tension in the model of public administration and in its application has been that :

...the core values of the Westminster model, only a relatively short time before questioned as being needlessly bureaucratic and old-fashioned, were reasserted as central to government. Admittedly, at the same time it was recognised that the search for a modern model of public administration and public sector management should continue, a model which would be appropriate to NSW and the Australia of the late 20th century and to Australia’s place in the international community.¹⁰

Government Objectives for the SES

In response to a request by The Audit Office to the Premier to outline all relevant Government policy objectives as they relate to this audit, the Director-General of Premier’s Department stated that the relevant objectives of the SES are to allow for:

- a change in culture to a more rigorous performance based senior executive sector
- a need for improved accountability in the areas of management capacity, policy formulation and advice

⁷ *ibid.*, p.8.

⁸ *ibid.*, p.9.

⁹ *ibid.*, pp. 14-15.

¹⁰ *ibid.*, p.10.

- a change from permanent tenure arrangements for executives to contract based employment.¹¹

Audit Objectives

The objective of this performance audit was to examine the extent to which the NSW model of executive management in the public sector is able to fulfil the Government's objectives for the SES.¹² In so doing, the audit gave consideration to what extent the NSW SES model is capable of giving effect to Westminster/Whitehall principles espoused by the Premier, and whether there was any scope to improve SES effectiveness in light of those goals and espousals.

The audit recognised that a framework for governing the SES has been in place since its inception and was mindful to identify potential for improvement in the framework. However, the audit was primarily concerned to establish the climate which exists within the SES, the attitudes held by the SES and behaviours they follow, so as to provide indications about the efficacy of the framework and the extent to which the Government's objectives for the SES are seen to be realised.

Audit Approach

The Audit Office contracted with the Faculty of Business, University of Technology Sydney (UTS) to undertake the field work for the audit. The UTS methodology involved an extensive literature review, a survey of current SES officers and personal interviews with current and past SES officers as well as a sample from the SES feeder group using a semi-structured format.¹³

There were 33 interviews, half of which were with current CES/SES. The remainder were evenly divided between ex-CES/SES and the feeder group (Grade 12).

The Audit Office retained control and responsibility for the audit, and also undertook research and analysis of Ministers' reports on the performance of 14 ex-CEOs in Annual Reports since 1995.

The full report from UTS is included as Part 2 of this Report.

¹¹ Letter from Dr C Gellatly, Director-General, Premier's Department to The Audit Office, 4 July 1997.

¹² As a separate exercise, The Audit Office expects to initiate a review of the basis of SES compensation payments whose contracts have been terminated by the employer.

¹³ Refer to Attachment 3 which provides information concerning the survey and interviews.

The Audit Office supports the report from UTS, and commends for attention by those with responsibility for improving the SES the detailed research provided by UTS in this report, and also in the accompanying Volume 2 Report.

Audit Opinion

The Audit Office is of the opinion that there are several features of the current SES model, or its application, which hinder the capacity of the SES to operate effectively in line with the Government's stated objectives.

The ultimate effect of these features is to reduce the capacity or perceived capacity of the SES to meet the Government's objectives for the operation of the SES.

Main Findings

There are aspects of the current system which SES officers support. The SES take pride in their professionalism, helping Government achieve its aims and they value the intrinsic nature of their work. The SES respondents considered that most of the originally stated objectives of the SES remained relevant to current SES practice. The objectives considered relevant include (Table 4.5.1a Part 2):

- accountability for specified outcomes
- high level management skills
- a high level of public sector productivity
- regular performance reviews
- recruitment and promotions on merit
- rigorous performance based culture
- good performers retained
- commercial management principles implemented.

Whilst survey respondents indicated that providing "neutral policy advice and options in the public interest" was regarded as a key SES accountability (Table 4.10.2) they also indicated that political factors strongly influence their advice (Table 4.8.1).

UTS also reported that, at least with some interviewees, "there is an acknowledgment of the inevitability of an increasing shift towards a formalised Washington model of public sector politicisation" (Section 5.4 Part 2).

Whilst the interviews were not intended to be statistically significant as a stand alone element, but rather to supplement the survey data with practical case study material, the interview results were consistent with survey and anecdotal evidence which indicates the views expressed are not out of line with the general views of many SES officers.

The audit also identified concerns about employment contracts; appointments and terminations; determination of remuneration; performance assessment and access to executive development.

Taken overall, difficulties in the SES identified by the audit included:¹⁴

- uncertainty caused by the way some contracts have been applied in practice
- removal for reasons other than poor performance
- informal strategies such as using restructuring to “terminate contracts and to move people in and out of positions regardless of their formal reported performance” (Section 5.4)
- inconsistently applied rules about selection/recruitment, appointment and removal of the SES
- an imbalance between CES responsibility to the Minister as the employer/reviewer with their responsibility not to act in a political or partial manner¹⁵
- apparent lack of rigour in, value of and Ministerial accountability for CES performance review processes
- failure to implement an adequate system of rewards and sanctions related to performance.¹⁶

Of the current SES surveyed, 87 per cent responded to the question as to whether they would be likely to apply again to the SES. Of these respondents, less than half (48%) indicated they would do so. Over a third indicated they were not likely to not reapply and 18 per cent were neutral.

The small number of officers below SES who were interviewed for the audit indicated that, with one exception, they had little interest in applying for an SES position. While not statistically significant, this seems to confirm other similar anecdotal evidence and is worthy of further investigation, as the SES feeder group (Grade 12) is vital to the effective future of the SES.

¹⁴ See Section 4, Part 2 for survey results and Section 7 for UTS proposals for change.

¹⁵ The *Code of Conduct and Ethics for Public Sector Executives* outlines clearly and comprehensively at Clause 3 and 10 how CES/SES officers are to conduct themselves vis-a-vis the Government.

¹⁶ An interim performance pay arrangement has been introduced in the 1997 SOORT determination. The 1998 determination proposed a model establishing a discreet component of performance pay relating to a formal performance review mechanism. The decision is to take effect from January 1999. The UTS survey was undertaken at the end of 1997.

The Audit Office believes that a major step in improving the capacity of the SES to meet the goals of a professional, non-political public service would be to enhance the SES model so that opportunities for professional, expert and impartial advice afforded by a highly skilled and capable SES are provided for. This requires a SES model that allows for:

- fair and equitable “rules” regarding recruitment, appointment and removal
- competencies to reflect the reality of CES/SES positions, including in some cases political acumen
- an employer of the CES/SES who is not entangled in the political environment¹⁷
- more objective and rigorous review of CES/SES performance
- equitable rewards and, if possible, bipartisan support for the CES/SES .

The SES appear to support the principles underpinning the current SES model. Certain features of the model and its application require further refinement with particular emphasis on independence and tenure issues. The Audit Office recommendations are designed to assist in the improvement process.

The Audit Office has communicated and cooperated with Premier’s Department in the course of this audit, and is encouraged by the Government’s positive and active approach to addressing many of the issues which have been raised in this Report.

The Government has implemented a range of SES initiatives to enhance the SES model (outlined in Appendix 1). Premier’s Department advise that they are strongly committed to continuous improvement in this area and that they consult widely with the SES on policy changes using a number of strategies and mechanisms, including the Chief Executives Committee.

Recent improvements, such as those to SES development and mobility opportunities and to the review/roll-over of contracts are a positive sign of reform. Continued efforts will be required to deal with ongoing SES reform and this Report seeks to provide information and to raise issues to assist these efforts.

¹⁷ see Recommendations.

Recommendations

The Audit Office recommends the following enhancements to the legislative and policy framework governing the SES:

1. Amend legislation to create a separate employing body for CES/SES
2. Ensure that legislation provides those CES/SES officers who are to be terminated for reasons other than poor performance with access to redeployment *or* to termination payouts which reflects the “no fault” nature of the situation and which ensures an adequate balance of risks and rewards
3. Ensure all SES contracts, particularly CES contracts, include detailed and clear performance expectations
4. Secure greater compliance with CES/SES annual performance evaluation requirements
5. Ensure that CES performance evaluation is robust and transparent
6. Consider expansion of desired SES competencies to include skills over and above managerial skills and ability. (These competencies could include an appreciation of public law and the acumen to discern political issues, without becoming political)
7. Expedite improved access to the enhanced SES professional development and mobility programs.

Part 1: Audit Overview of Key Issues and Directions For Change

The Senior Executive Service in NSW: Key Issues and Directions for Change

Audit Objectives The objective of this performance audit was to examine the extent to which the NSW model of executive management in the public sector is able to fulfil the Government's objectives¹⁸. In so doing, the audit gave consideration to what extent the NSW SES model is capable of giving effect to Westminster/Whitehall principles espoused by the Premier, and whether there was any scope to improve SES effectiveness in light of those goals and espousals.

The audit recognised that a framework for governing the SES has been in place since its inception and was mindful to identify potential for improvement in the framework. However, the audit was primarily concerned to establish the climate which exists within the SES, the attitudes held by the SES and behaviours they follow, so as to provide indications about the efficacy of the framework and the extent to which the Government's objectives for the SES are seen to be realised.

Audit Approach Following a tender process, The Audit Office contracted with the Faculty of Business, University of Technology Sydney (UTS) to undertake an extensive literature review, a survey of current SES officers and personal interviews with current and past SES officers as well as a sample from the SES feeder group (Grade 12) using semi-structured format. The Audit Office retained control and responsibility for the audit, and also undertook research and analysis of Ministers' reports on the performance of 14 ex-CEOs in Annual Reports since 1995.

UTS Research The agreed methodology for research contracted to UTS¹⁹ comprised:

- a literature review evaluating theoretical and empirical literature, including an assessment of models of SES in other Australian and overseas jurisdictions
- a mailed-back questionnaire received from 201 current SES
- interviews with current SES, ex-SES and current staff in the SES feeder group.²⁰

¹⁸ As a separate exercise, The Audit Office expects to initiate a review of the basis of SES compensation payments whose contracts have been terminated by the employer.

¹⁹ the role of UTS in the audit, and the means by which they were engaged, are set out in the Executive Summary.

²⁰ There were 33 interviews, half of which were with current CES/SES. The remainder were evenly divided between ex-CES/SES and the feeder group (grade 12).

To encourage free and candid discussion and exchange of opinions, the survey and the interviews were carried out independently by UTS, and on a confidential basis with The Audit Office having no access to individual responses.

The survey itself was formulated in a conservative way. Respondents were asked to base their responses upon their own actions, not their views of how others may act. The survey responses showed that whilst many of respondents' own actions as a SES officer were viewed in a positive way, there was sufficient dissatisfaction with aspects of the SES model and/or its application to warrant further investigation and/or action.

In addition, and notwithstanding the confidentiality arrangements and the conservative nature of the survey, UTS advised that many of the respondents did not provide position-related details (eg SES level and Band). UTS considered that a number of the SES were still concerned about adverse consequences if they were identified. It is therefore expected that responses to questions about the SES model and its application are also likely to have been cautious in many cases.

The personal interviews, however, approximately half of which were with current CES/SES (the remainder being former and below SES) were more forthright in revealing specific deficiencies with the SES model and its application.

Whilst the interviews were not intended to be statistically significant as a stand alone element, but rather to supplement the survey data with practical case study material, the interview results were consistent with survey and anecdotal evidence which indicates the views expressed are not out of line with the general views of many SES officers.

The small number of officers below SES who were interviewed for the audit indicated that, with one exception, they had little interest in applying for an SES position. While not statistically significant, this seems to confirm other similar anecdotal evidence and is worthy of further investigation, as the SES feeder group is vital to the effective future of the SES.

Reporting Audit Findings

This document is the first of two volumes produced to convey the findings of the audit. The second volume includes: results of the international literature review and detailed analysis of the SES survey. The full report from UTS is included as Part 2 of this Report.

The Audit Office supports the report from UTS, and commends for attention by those with responsibility for improving the SES the detailed research provided by UTS in this report, and also in the accompanying Volume 2 Report.

The Audit Office has communicated and cooperated fully with Premier's Department, and is encouraged by the positive and active approach of the Government to addressing many of the issues raised in this Report.

The range of matters addressed in this Part 1 Overview includes:

- ◆ SES Models
- ◆ Summary of Main Findings
- ◆ Key Issues:
 - ⇒ roles, responsibilities and accountabilities of the SES
 - ⇒ the concept of merit in terms of skills and capabilities
 - ⇒ selections and appointments
 - ⇒ performance
 - ⇒ rewards/supports
 - ⇒ separation of the SES from political values and environment.

SES Models

Concern about the extent to which public sector models should be non-partisan has been a long standing issue. The literature review analysis identifies the evolution of four public service executive accountability systems in Anglo American polities. These are:

- early patronage system (EPS)
- Westminster-Whitehall System (WeWS)
- Washington System (WaS)
- Economic Rationalist-Managerialist System (ERMS).

Each of these models has their own value system but none operates in a purely rational or theoretical form. However, the overriding principles implicit in each are a useful way of distinguishing different approaches to developing a SES.

The EPS model which existed till the mid 1890s is based on the concept that “acceptance into the elite most senior levels” of the public service depended on “high social standing, nepotism and aristocratic patronage” (Section 3.2 Part 2). Social standing could be defined by birthright (UK) or social positioning (USA). As such the model is considered to be corrupt, promoting incompetence and not serving the public interest.

From the mid 1800s to the late 1970s more formalised and professional systems of senior public sector management developed. These were based on merit-based bureaucratic principles and standards. These guided processes of entry, promotion and performance requirements.

Two major systems, the WeSW and the WaS, were founded on these principles. The WeWS was seen as non-partisan and anonymous with the ability to serve any government of the day while the WaS had an element of political patronage at the top levels.

Westminster-based public sectors were traditionally organised around a career public service characterised, in theory, by such features as:

- a professional, expert and impartial bureaucracy
- continuity and stability of administration
- centralised control and management of personnel
- permanent appointment and therefore a high degree of security
- a career structure based on seniority as well as merit
- well defined processes of appointment, progression and removal
- industrial conditions based on awards.

Economic problems in the late 1970s saw demands for reform of the public sector with a new model for managing senior executives emerging. There was also increasing government dissatisfaction with the perceived entrenched power of public bureaucracies and with their ability to respond to the new environment. The new model (Economic Rationalist Managerialist System (ERMS)) was characterised by a concept of public interest served by less direct government involvement in the delivery of services. Where government maintained that involvement, senior executives were expected to operate their organisation on business principles. They were expected to demonstrate improved management performance, efficiency, responsiveness and to be more accountable (commonly referred to as the new managerialism).

The Relevance of Westminster Values to A Modern Public Service

Westminster/Whitehall principles are seen by the Government as appropriate values guiding public sector performance in a parliamentary democracy. Public interest is served through a system of executive management which:

- recruits the best people for positions by recruiting according to merit
- has clearly defined responsibilities, goals and objectives
- has a clear system of rules, principles and ethics
- is able to provide frank and fearless advice free of political or partial influence
- makes managers accountable for their actions and performance.

As outlined earlier in the Executive Summary, The Government recently reaffirmed its commitment to “restoring the principle of an independent non-political public service in NSW and to ensuring that the community receives value for money and quality service from its public sector bodies and employees”.²¹

A recent major discussion paper issued by the Public Sector Management Office, NSW Premier’s Department²², on the future of public sector reform in NSW has also reaffirmed the principles of the Westminster model as central to government.

In NSW, the SES was established in 1989 to raise the overall standard of general management in the public sector and to secure continuing productivity increases. The Public Service Board, the employer of public sector staff, was abolished and a new Senior Executive Service (SES) and Chief Executive Service (CES) was created (both are referred to in this Report as the SES unless the context suggests otherwise).

The SES was founded on principles of:

- rewards and sanctions based on performance, with executives employed under performance based contracts for set periods
- contracts which could be readily terminated
- performance agreements
- Ministerial responsibility for evaluating performance of CES
- planned SES management development programs to enhance management skills
- planned increased opportunity for lateral recruitment and mobility by senior executives.

²¹ Hansard, Legislative Assembly, 3 June 1998.

²² NSW Premier’s Department, *Directions for Public Sector Reform in New South Wales Discussion Paper*, Public Sector Management Office, Sydney, July 1998.

Government Reforms of the SES

The Government determined that there were a range of reforms required for the SES. Proposed reform of the SES by the current Government was to include:

- reducing the number of SES
- limiting compensation payouts for contract termination
- requiring all SES posts to be advertised, thus encouraging the widest possible base for merit selection²³
- improving managerial experience of SES officers by encouraging mobility of SES appointees
- incorporating in SES officers' performance agreements the requirements to meet Government targets. Where these were consistently breached contracts would not be renewed.²⁴

The Executive Summary outlines the policy and legislative framework and ongoing reforms to the SES. Since its inception there have been a number of refinements to the NSW SES model. The details of SES initiatives are outlined at Attachment 1.

Summary of Main Findings

There are aspects of the current system which SES officers support. The SES take pride in their professionalism, helping Government achieve its objectives and value the intrinsic nature of their work. The SES respondents considered that most of the originally stated objectives of the SES remained relevant to current SES practice. The objectives considered relevant include (Table 4.5.1a Part 2):

- accountability for specified outcomes
- high level management skills
- a high level of public sector productivity
- regular performance reviews
- recruitment and promotions on merit
- rigorous performance based culture
- good performers retained
- commercial management principles implemented.

The audit concluded that there were several features of the current SES model (or its application) which hinder the capacity of the SES to operate effectively in line with the Government's stated objectives.

²³ This item in the Speech does not distinguish between SES and CES.

²⁴R. Carr, *Reviving Public Administration in NSW*, Speech to the Electricity Supply Professional Officers Association, 23 August 1994.

Taken overall, difficulties in the SES identified by the audit included:

- uncertainty caused by the way some contracts have been applied in practice
- removal for reasons other than poor performance
- informal strategies such as using restructuring to “terminate contracts and to move people in and out of positions regardless of their formal reported performance” (Section 5.4)
- inconsistently applied rules about selection/recruitment, appointment and removal of the SES
- an imbalance between CES responsibility to the Minister as the employer/reviewer with their responsibility not to act in a political or partial manner²⁵
- apparent lack of rigour in, value of and Ministerial accountability for CES performance review processes
- failure to implement an adequate system of rewards and sanctions related to performance.²⁶

Of the current SES surveyed, 87 per cent responded to the question as to whether they would apply again to the SES. Of these respondents, less than half (48%) indicated they would do so. Over a third indicated they would not reapply and 18 per cent were neutral.

Maximising the value of the SES model requires:

- fair and equitable “rules” regarding recruitment, appointment and removal
- competencies to reflect the reality of CES/SES positions including in some cases political acumen
- an employer of the CES/SES who is not entangled in the political environment
- more objective and rigorous review of CES/SES performance
- equitable rewards and, if possible, bipartisan support to the CES/SES.

²⁵ The *Code of Conduct and Ethics for Public Sector Executives* outlines clearly and comprehensively at Clauses 3 and 10 how CES/SES officers are to conduct themselves vis-a-vis the Government.

²⁶ An interim performance pay arrangement has been introduced in the 1997 SOORT determination. The 1998 determination proposed a model establishing a discreet component of performance pay relating to a formal performance review mechanism. The decision is to take effect from January 1999. The UTS survey was undertaken at the end of 1997.

Key Issues

1. Roles, Responsibilities and Accountability of the SES

Political Environment

The SES can only be effective in meeting the Government's policy goals if the design and implementation of the SES model allows the SES not to be entangled in the political environment. This requires a number of changes to current policy and practice. The perception of a significant proportion of SES that assessment of performance, contract termination and the provision of policy advice is influenced by political factors should be addressed.

The relationship between the SES and Ministers should not affect the manner in which the SES exercise their statutory powers. The previously reported Audit Office finding, for example, that agencies are not adequately scrutinising overseas travel by Ministerial or Ministerial Office staff, allows a suggestion that political influence may exist over the exercise of CEOs' statutory reporting responsibilities.²⁷ On the issue of poor controls over, and accountability for, Ministers and Ministerial Office travel, the Auditor-General has reported that agencies' "dependence on the Minister and Ministerial Office" does not allow agencies, and by implication, their CEO "to exercise effective scrutiny and control of Ministerial expenditure."²⁸

Factors the SES surveyed take into account when considering their role include (Table 4.5.2):

- having advanced intellectual capacity to provide high level advice to Government (92%)
- responsibility for directing and guiding implementation of Government policy (87%)
- providing executive leadership to the NSW public service (86%)
- advising Government and shaping high level, technical and specialised services (86%)
- being responsible for maximising Government's return on investment (84%)
- providing key, neutral advice to Government (77%)
- acting as primary policy advocate disseminating the Government's agenda (73%)

²⁷ Auditor-General's Report to Parliament 1997, Volume One, p.15.

²⁸ Auditor-General's Report to Parliament, 1996, Volume Three, p.31.

- being accountable to the electorate through the Parliament for the management of the State's resources (68%)
- being aware of electoral imperatives and are responsive to political agendas in a partisan way (45%).

Neutral Policy Advice

Similarly, survey respondents indicated that providing "neutral policy advice and options in the public interest" was regarded as a key SES accountability (Table 4.10.2). They indicated the following factors influenced their advice (Table 4.8.1):

- the policy of the Government of the day (88%)
- providing neutral advice even if the Government does not like the advice (79%)
- SES specialist expertise regardless of others' views (77%)
- professional goals defined in Performance Agreement (49%).

But the responses also indicate that political factors strongly influence SES advising function (Table 4.8.1):

- known views of the Minister (69%)
- political judgement about key issues (56%)
- known views of Ministerial staff (45%).

Even more significantly, the interviews indicated that political factors significantly influence the policy advising function beyond these points. This allows the suggestion that SES advising is tending to be politicised and is not consistent with Westminster values.

Survey responses do not show a consistent reason to explain why the provision of policy advice is influenced by political factors. The survey shows only 7 per cent of the SES stating that being on a contract influenced their own provision of advice (Table 4.8.1), yet one quarter of survey respondents believe concern about contract termination guides SES performance (Table 4.7.5).

The UTS in commenting on these inconsistencies stated (Section 4.8 Part 2):

... 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.

“Perceptions about willingness to be responsive to partisan imperatives” was regarded as a relevant factor in SES performance appraisal for 26 per cent of respondents. This can be contrasted with just over half of respondents (52%) who believed that “perceptions about willingness to provide neutral policy advice” was a relevant factor to performance appraisal (Table 4.7.4).

The audit concludes that there has in effect been reduction in the capacity of the SES model to support the giving of frank and fearless (neutral) advice.

**SES
Accountabilities
and Sources of
Authority**

Eighty-seven per cent of respondents indicated they are accountable to their Minister and 98 per cent to the CEO (Table 4.10.1).

The concept of the SES responsible to Ministers as resource managers is strongly supported by the SES (98%) and is consistent with the ERMS model (Table 4.10.2).

In making decisions that could be subject to formal review survey respondents indicated they personally would be influenced by merits of the case (87%), legal statutes (78%), procedural fairness (68%), Government policy and professional judgment (55%) and precedent (44%) (Table 4.8.2).

The survey respondents reported that sources of authority for their actions included (Table 4.5.3):

- statutes (86%)
- formal delegations (83%)
- own sense of professionalism (83%)
- working relationships with senior people (79%)
- Boards (where applicable 70%)
- formal SES code of conduct (44%)
- informal authority from Ministerial advisers (38%).

Among those who are seen by survey respondents to influence strategic policy and decision-making are (Table 4.5.4):

- the organisational CEO (92%)
- portfolio minister (85%)
- other senior executives within the organisation (70%)
- ministerial advisers within the portfolio area (63%)
- Boards (where applicable 63%).

There is considerable variation among the SES as to how they might respond if they found irregularities such as maladministration or corruption in the NSW public service. Half the survey respondents indicated that they would make a report but they would have concerns “about legal protection related to disclosure” (Table 4.10.5).

These results are likely to be conservative, assuming that many SES have not personally been confronted by a situation which has required them to consider making a protected disclosure. Research by the ICAC into the attitudes of NSW public servants generally about making protected disclosures clearly demonstrates that most officers would be unwilling to make disclosures because they do not believe adequate protection is available.²⁹

The Audit Office is of the view that such concerns could also have been reinforced by the circumstances surrounding the highly public 1996 ICAC enquiry into the dismissal of Mr Des Semple (then CEO of the Department of Community Services).³⁰

2. SES Competencies

Survey respondents were asked what they believed “merit” (the term used by much of the literature and by the UTS to refer to competencies) in recruitment and appointment to mean.³¹ Aspects of management rating highly included managerial competence (92%), leadership (89%), organisational change capacity (86%), compliance (82%), professional, technical and/or scientific skills (79%). Having a high level of political acumen was cited by 78 per cent, a high level of understanding of role of Government (72%), capacity to serve in the public

²⁹ Independent Commission Against Corruption, *Monitoring the Impact of the NSW Protected Disclosures Act 1994 : Encouraging NSW Public Sector Employees to Report Corruption*, November 1997.

³⁰ Independent Commission Against Corruption, *Report on the Public Employment Office Evaluation of the Position of Director-General*, Department of Community Services, November 1996.

³¹ The UTS survey asked questions on competencies in a section of the questionnaire entitled “merit”.

interest (71%), while willingness to provide independent advice to a Minister was cited by 65 per cent (Table 4.6.2). The report concludes that only slightly less important than managerial competencies are “the associated political and policy competencies” (Section 4.6.2).

3. Selections and Appointments

The *Public Sector Management Act 1988* requires SES (below CES) appointments to be made on merit and SES positions (below CES) to be advertised (Division 3, 15) (see also *Public Sector Management (Executives) Amendment Act 1989*). The legislation does not set out specific requirements for advertising CES positions or appointment on merit. The *SES Administrator’s Manual* indicates that Ministers have delegation to approve a position being filled without advertisement.

Performance Review Processes and Advertising

In 1993 the Government decided to require advertising of all CES and SES positions at the end of each contract. In May 1994 another *Premier’s Memorandum 94/15* allowed for the one-time renewal of contracts without advertising where performance of a high standard has been demonstrated over a major part of the contract. The procedure involves creating a review panel to assess performance. For CES, the panel is to consist of the responsible Minister, the Director-General, Premier’s Department and an independent.

This *Memorandum* indicated that the review panel would be required only when a Minister had taken a decision not to advertise a position. The review was also to be undertaken some time (unspecified) before the renewal of the contract.

Premier’s Memorandum 98/18 on “New arrangements for the Renewal of CES and SES contracts” was issued at the reporting phase of this SES audit. The new arrangements allow the performance of SES officers whose contracts are expiring to be reviewed by a panel (without advertising). The *Memorandum* explains that where performance is deemed to be of a high standard, the panel can recommend renewal of the contract. This should allow for a smooth and seamless transition from the previous contract to a new contract.

Premier’s Department have indicated to The Audit Office that Ministers can choose to test the market by advertising regardless of the performance of an incumbent.

The new arrangements appear to allow for greater rigour and transparency in dealing with expiring contracts and they better reflect the principles of merit, probity and equity in dealing with individual SES members.

Where a position is to be advertised the new arrangements would allow the incumbent six months “grace” before the expiration of the contract.

Appointments

The audit revealed different levels of satisfaction with appointment processes. On the basis of their own personal appointments and their own actions, respondents indicated a fairly high degree of satisfaction with appointment processes. Eighty-five per cent of survey respondents believed SES positions are always advertised, 80 per cent considered there was selection on merit while 80 per cent believed formal and neutral selection committees are convened (Table 4.6.1). The interviews on the other hand indicated a high level of dissatisfaction with appointment processes, especially the trend to appointing new CES with a change of government.

The UTS concluded that the interviews raised issues about “the incapacity of the formal SES system in NSW to provide a functional framework in which rules and decisions about the recruitment, appointment and performance of SES are fairly, equitably and consistently applied” (Section 5.3 Part 2).

Legislation does not require advertising of CES positions. However, the appointment of some CES without advertising may allow the perception of apparent or perceived political patronage to exist, even if this is not the case.

The Audit Office identified that an officer was recently appointed to a CES position in a department without advertising. Perceptions that this appointment may have been influenced by reasons other than merit were encouraged by the fact that the appointee had sought preselection to run as a candidate for the same political party as the Government in the 1998 Federal election.

The current *Code of Conduct and Ethics for Public Sector Executives (December 1997)* provides guidance to CES/SES officers on political participation,³² but is not sufficient in situations such as the one described above, involving political participation prior to appointment to a CES/SES position. Where CES/SES are appointed from outside the NSW public sector and where they have had recent political participation, protocols should be enhanced outlining steps needed to address perceptions that potential for conflict of interest may exist. Without such protocols it is difficult to persuade the public that political activists can manage politically sensitive matters in a politically neutral way. The Government might also wish to consider requiring CES positions to be advertised as a matter of course.

Promotion

There was considerable satisfaction with the opportunities provided to the SES for promotion (82%) (Table 4.6.3). Respondents indicated the most likely form of contract renewal is a new contract after appointment to another position (57%) rather than renewal of a contract for an existing position (Section 4.7.1). This indicates the existence of considerable promotional opportunities. The situation may be different for CES compared with the SES but lack of demographic data makes this impossible to identify.

Survey respondents indicated factors related to promotional prospects related to: ability to apply for relevant promotional positions (82%), opportunities were based on objective criteria (72%) and achievement of performance agreement goals (64%). There was also a belief that political affiliation (31%) and bureaucratic patronage (26%) influenced respondents promotional prospects (Table 4.6.3).

Situations should be avoided which allow suggestions that promotion was based on anything other than competence.

³² Clause 10 of the code provides guidance on how to handle potential conflicts of interest and what procedures executives already employed in the public sector should follow where they wish to nominate for State or Federal Parliament.

4. Performance

Survey respondents indicated that key factors in guiding their performance include (Table 4.7.5 Part 2):

- professional pride in performing well (99%)
- intrinsic value of work (98%)
- interest in contributing to the attainment of Government's objectives (78%)
- opportunity to use expertise (76%)
- performance agreement (63%).

Other factors include:

- salary (36%)
- employment contract (31%)
- pragmatic personal considerations (26%)
- concern about contract termination (25%)
- status of being in the SES (22%)
- participation in professional development (18%)
- performance pay (15%).

Defining and Reviewing Performance

Ministers have the responsibility to review and to prepare contracts for each member of the CES while the performance of the remaining SES is reviewed by the CES.³³

The majority of survey respondents (96%) have a performance agreement. Forty-seven per cent of respondents have their agreement reviewed annually and another 45 per cent have their agreement reviewed every six months. Eight per cent of the sample do not have their agreement reviewed at all or have it reviewed infrequently (see Section 4.7.1 and Table 4.7.1).

The majority of the sample (60%) have their performance agreement reviewed by the chief executive while 12 per cent have it reviewed by a Minister.

Current survey respondents identified a number of advantages to having a performance agreement (Table 4.7.3):

- contributing to organisational objectives (87%)
- focusing on productivity enhancements (76%)
- improving organisational performance in area of responsibility (71%)

³³ Initially, SES performance was to be reviewed by an Executive Performance Management Accreditation Committee (EPMAC) comprising external experts, representatives of the CES and key senior executives from central agencies.

- providing a benchmark of performance for contract renewal (70%)
- enhancing leadership capacity (63%).

Performance Management Systems

The *Annual Reports (Departments) Regulation 1995* under the *Annual Reports (Departments) Act 1985* and the *Annual Reports (Statutory Bodies) Act 1984* require performance assessments of high level SES officers, including CES officers, to be published in the agency's annual report. Thus Ministers' assessments of their CES are reportable matters.

The Audit Office examined comments made in Annual Reports by the responsible Ministers on the performance of 14 chief executives who were subsequently removed from their positions or resigned since August 1995. The analysis indicated that:

- in terms of Ministerial comment on CEO performance:
 - ◇ there was no reported comment for five CEOs prior to their leaving their positions
 - ◇ a "statement of work completed" was reported but there was no comment on performance for three CEOs
 - ◇ the annual report included favourable Ministerial comment for six CEOs subsequently removed.
- the short term of some former chief executives explains the lack of reported comment on their performance
- there appears to be no standard being used in regard to reporting on CEO performance.

Security of Employment (Contracts)

Under the previous senior executive model, the NSW Public Service Board was the employer of senior executives. Under current arrangements, the Minister is the employer of the CES. While the Chief Executive establishes the contract for other SES members, Ministers negotiate the contracts of chief executives.

The majority of SES (96%) have contracts with the majority of these (69%) being for five years. Ten per cent of SES have contracts for one year or less (Table 4.7.1 Part 2).

As noted elsewhere, the most likely form of contract renewal is a new contract after appointment to a new position.

Security of tenure offered by contracts seems mainly to be an issue for chief executives, though some second tier members of the SES have identified this as a concern.

The audit concluded that while flexibility in employment arrangements and reservation of the right to terminate SES was understandable, the integrity of the SES system could be compromised because:

- such flexibility could lead to practices adverse to SES members which would be interpreted as politically motivated, regardless of the actual merit of the termination
- powers of termination (especially where there are no practical appeal mechanisms) can lead to uncertainty
- unsatisfactory contract arrangements will act as a disincentive for those below the SES.

Particular aspects of contract arrangements which seem to be “risky and tenuous” and which threaten any notion of a career structure/ plan include lack of rules and safeguards about length of employment and termination payouts and conditions.

There have recently been several instances where a chief executive and other members of the SES have been removed from office or from the public service. The Audit Office considers the removal is best explained as the result of considerations which do not involve a careful assessment of performance.

The Audit Office identified that terminations of the CES/SES are often achieved through “agreed” resignations. A recent chief executive resignation from a government business for performance reasons was accompanied by an agreed compensation payment of \$440,000.³⁴ That officer was not a member of the SES. By comparison, resignations of CES/SES from departments of State, for apparently other than performance reasons, involve no compensation. This inconsistency is troublesome. It also lacks any rational foundation. Clear principles should be in place for such matters.

The Statutory and Other Offices and Remuneration Tribunal (SOORT) determines the termination payment for SES members removed from office. The principles which the Tribunal uses to make its determination are reportedly not available, including to the affected SES members. There has been no disclosure which The Audit Office could identify to make transparent how the Tribunal arrives at its decisions. To improve the accountability of this process, this matter is shortly to be audited.

³⁴ Although this payout was for the CEO of a Government business (and payouts for SES are determined on an individual basis), the rules regarding payouts for SES seem inconsistent and confusing.

If SES members are to occupy at risk positions, where their employment can be terminated for reasons not connected with careful assessment of performance, the lack of a remuneration which recognises this risk will inevitably lead to a reduction in skilled employees (or perhaps worse, for a Westminster / Whitehall public service, an obsequious SES). Just as the build-up of a skilled SES would take a number of years, so the reduction of a skilled SES will not occur overnight. But there are many factors acting to cause this reduction.

The Government needs to ensure that legislation provides that those CES/SES officers who are to be terminated for reasons other than poor performance with access to redeployment³⁵ or to termination payouts which reflects the “no fault” nature of the situation and which ensure an adequate balance of risks and rewards as happens in other jurisdictions.³⁶

Conversely, The Audit Office has not seen any action following critical comments by the ICAC in respect of some senior public servants. These officers have been retained at senior levels.

Removal Processes

Responses to the survey and in interviews indicate that involuntary termination of SES relates to factors more common than the “SES performance management system.” These factors included organisational restructuring (76%), retrenchment at a time of downsizing (67%) and perceived poor performance regardless of any Performance Agreement (37%) (Table 4.6.4 Part 2).

Removal on the basis of poor performance “tested on a formal Performance Agreement” was cited by 57 per cent of respondents.

Incompatibility of the SES with an influential person and perceived contrary political affiliations accounted for 51% and 38% of responses, respectively. A key issue raised in the interviews was the breakdown in a relationship between a chief executive and a Minister and the difficulty of managing such a breakdown especially when it is clear to at least one of the two parties that the breakdown is personality based (Table 4.6.4 Part 2).

³⁵ The New Mobility Program provides for redeployment for unattached officers.

³⁶ see Attachment 2 of this section.

Satisfaction with Performance Agreements

Dissatisfaction with the system of SES performance measurement and monitoring was reported as early as 1990 (Coopers and Lybrand Report). Chief executives reported accountability problems if Ministers interfere in management issues. Ministers reported difficulties where:

- the link between SES employment and improved organisational performance could not be established
- Ministers believed managers were motivated only by financial incentives and sanctions
- performance agreements were too vague
- other mechanisms such as briefings etc provided a better means of monitoring performance (Coopers and Lybrand, 1990).

In summary, Ministers at that time indicated they found the “formal SES system restrictive and wanted less formal more responsive processes of performance arranged on an individual relationship basis” (Section 3.6.2 Part 2).

Sixty-one per cent of survey respondents reported satisfaction with performance review processes while 58 per cent indicated that individual agreement served as a tool of accountability and productivity (Table 4.11.1).

Factors other than performance related to the Performance Agreement were considered by survey respondents to be relevant when their performance was being appraised (Table 4.7.4):

- apparent commitment to the organisation (80%)
- actual performance (78%)
- performance regardless of formal Performance Agreement (74%)
- willingness to provide neutral advice (52%)
- willingness to be responsive to partisan imperatives (26%)

The usefulness of a performance agreement was reported as relating to (Table 4.7.3):

- contributing to attainment of organisational objectives (87%)
- focusing on productivity enhancements (76%)
- improving organisational performance in area of responsibility (71%)
- providing a formal benchmark for contract renewal (70%)

The performance agreement was seen as less useful for:

- enhancing promotional prospects (37%)
- providing protection against termination for reasons other than poor performance (37%)
- limiting opportunities for political interference (18%).

5. Rewards/supports

Perceived incentives available to SES are not in balance with the perceived risks associated with SES performance.

Remuneration

Merit pay is considered by two-thirds of survey respondents to be an important incentive. However, only 37 per cent are eligible and of these only 78 per cent have received it.

Training and Development

Although advanced professional development and training was an objective of the SES, only two-thirds of survey respondents have participated in work-sponsored professional development programs designed to enhance SES performance. Of those who have received some training and development, the benefits seem to be generic (68%), enhance high level strategic decisions (64%) or strengthen SES competencies (54%) rather than assist with fulfilling Performance Agreement requirements (37%) or enhance their capacity to serve at higher levels (31%) (Table 4.7.2).

Mobility

Mobility of the SES is seen as an important way of enhancing the service as well as the careers of individuals. Some displaced SES have been transferred to other policy advisory and public management roles because of their qualifications, competence and experience.

Only 27 per cent of respondents have had secondment opportunities with 75 per cent of these actually being seconded (Section 4.9.1 Part 2).

Being valued by Government as intellectual and professional advisers is important to the SES (97%). On a practical level, survey respondents indicated the following strategies to support the SES (Table 4.9.2):

- clear policy direction from Government in relation to expectations of SES (89%)
- bipartisan Parliamentary support (86%)
- policy guidance from central agencies (80%)
- development opportunities (79%)
- peer networking (74%)

- opportunities for policy input (eg chief executives advisory committee) (72%)
- regular collective professional development activities (70%)
- formal portfolio meetings with Premier, Minister and central agencies (69%)
- SES mobility (61%).

6. Separation of the SES from Political Values and Environment

The SES can meet the Government's policy objectives set for it only if the model and its implementation allows for separation of the SES from political values and environment. Ministers' values of necessity are political ones and, under the Government's vision for the SES, SES members are not permitted to share Ministers' political goals. Indeed, it will sometimes arise that a SES member will have to act in a way that threatens a Minister's political goals including the Minister's own tenure.

To the extent that SES officers are subject to or entangled in the political environment, they will be less able to advise Ministers on matters of political embarrassment (such as Ministers apparently misleading Parliament or spending or proposing the spending of moneys in ways that break the law).

There have already been reports to Parliament that the current relationship between agencies and Ministers does not allow some public servants or public officers to undertake their statutory roles concerning the spending of public moneys in ways that meet the requirements of the law.

In addition to these general responsibilities, some SES officers have specific statutory powers which must lawfully be exercised outside of the direction by or close guidance of Ministers.

Providing the environment that meets the Government's goal thus requires:

- recruitment of the best candidates to the SES
- encouragement of the SES to provide the best advice to Ministers (less than five years ago a senior Minister described to SES inductees that the giving of unwanted advice by a SES officer is a career terminating activity)

- ensuring that SES exercise their responsibilities for which they are accountable, without Ministerial or political direction
- remuneration of the SES which reflects the skills required of the SES and the risks they are required to face.

CES/SES separation and independence from political values and environment requires removing from Ministers their role as employer and sole reviewer of CES performance. Changes to the current NSW SES model which would help achieve this include:

- an independent body which is responsible for appointments (NZ,UK), content of contracts (Sweden) and performance review (with Ministerial input being one consideration) (NZ,UK)
- legally binding contracts of reasonable duration and provision for roll over where there is satisfactory performance (UK)
- clear and reasonable conditions in contracts for “no-fault” termination (NZ, Austria) applied transparently.³⁷

The Audit Office Recommendations

To address the matters outlined, The Audit Office recommends reforms in a number of key areas of the SES. These recommendations are set out in full in the Executive Summary.

Audit Costs

Direct Salaries and Overhead Costs	\$108,147
Value of unpaid staff time (at standard rates only)	17,717
Consultants (UTS)	85,100
Printing (estimate)	15,000
Other Costs	200
Total Cost	\$226,164

³⁷ see Attachment 2 for a comparative analysis of SES models in NSW and other jurisdictions.

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The assistance of the many SES officers who responded to the survey and of those who were interviewed is also gratefully acknowledged.

Attachments

Attachment 1: SES Initiatives³⁸

Administrators Manual

The *SES Administrators Manual* was created in 1989. There were three updates since the first edition and a completely revised edition is due for release in December 1998. This will be an electronic version which is to be automatically updated as new policy is developed. This would ensure the widest possible access by SES administrators to current policy.

SES Job Evaluation

This has been in use since the inception of the SES and policy prescriptions on the use of recognised job evaluation systems have been in the public domain since that time.

Discussions have commenced with Cullen, Egan Dell with a view to enhancing the methodology in order to better reflect the true value of policy advisory positions.

It is to be noted that the points factor job evaluation systems are also used for non-SES job evaluations. These systems are recognised as assisting with the achievement of equitable outcomes.

The Report of the Pay Equity Enquiry will be used to facilitate a review of how jobs are evaluated. This will necessarily be done in consultation with the private sector providers of points factor job evaluation systems.

Code of Conduct for the SES

This was published in December 1997.

Design of a Model Contract

There has been a model contract in existence since the inception of the SES in 1989 and this is to be found in all editions of the *Administrator's Manual* to date. The Act requires a contract and the model contract assists agencies' adherence to that requirement. A revised model contract has been developed and issued in December 1998.

³⁸ Provided to The Audit Office by Premier's Department on 20 October 1998.

Renewal of SES contracts

The Premier (Premier's Memorandum 98-18) has approved new arrangements for the renewal of the contracts of CES and SES officers in certain circumstances.

A CES or SES contract can now be renewed on multiple occasions following a rigorous performance review.

Change to the *Public Sector Management Act*

Changes to legislation provide for a Department Head to be responsible for the equitable management of staff of the Department. (a new section 11(3)).

SES Mobility

The 1995 amendments to the *Public Sector Management Act* to include section 100A laid the foundation along with section 53A for an SES mobility system. This was further articulated in Circular 98-22.

Information package for unattached SES officers

This assistance has always been available to unattached SES officers through contact with the former SES Unit or via agency SES administrators. In addition information leaflets were developed in July 1995 for distribution by agencies and upon request, and updated in December 1997.

CEO and SES Induction

These programs have run since the inception of the SES. A new revitalised induction program for individual CEOs has been running in 1998. A revised SES induction program is in development following feedback from the PSMO customer survey and as part of the CES/SES professional development framework.

Holding of Chief Executive Committee (CEC) and small agency CEO meetings

These have been held for several years.

Planning for Professional Development of Chief Executives

The NSW public sector CEO professional development framework has been developed and will be considered by CEOs at their October and November 1998 forums. The induction module is already in use.

Executive Development Program and alumni

The Executive Development Program has been operating since 1995.

National Leaders Program

This initiative of the Public Sector Commissioners Forum ran for the first time in 1998 and will continue in 1999.

Attachment 2: SES Models Comparative Table³⁹

SES Issue	NSW	Commonwealth ⁴⁰	NZ	Canada	USA	UK
Recruitment	open/competitive	open/competitive	open/competitive	see below	open/competitive	open/competitive
Appointments ⁴¹	CEO appointed by Governor on advice of Government after selection by Minister	CEO appointed by Governor-General on advice of Government after selection by Minister	State Services Commission (SCC) appoints only Chief Executives (CE). It makes recommendations to Minister	Deputy Ministers appointed by Order of Governor in Council. Positions filled by promotion by redeploying existing Deputies (Deputy Minister positions are most senior positions) and promoting Associate Deputy Ministers or senior executives.	top officials (10%) are political appointees; tenure normally terminates with change of government	Senior positions approved by Head of Home Civil Service and Prime Minister after consideration by Senior Appointments Selection Committee (SASC) or following open recruitment under auspices of Civil Service Commissioners. SASC considers whether position should be open to competition or filled from within Civil Service or Department.
	other SES appointed by Governor on advice of Government after selection by CEO	other SES appointed by Governor-General on advice of Government after selection by CEO	Recruitment and appointments of other SES made by Chief Executives			

³⁹ Source: OECD Survey *Managing the Senior Public Service: A Survey of OECD Countries* 1997.

⁴⁰ Refers to new provisions in *Public Service Bill* 1997.

⁴¹ Most of countries surveyed maintain a clear-cut division between political staff and the senior public service and with only a few exceptions public servants are not permitted to serve as personal staff to ministers. OECD Report

SES Issue	NSW	Commonwealth ⁴²	NZ	Canada	USA	UK
Contracts ⁴³	fixed term	Secretaries appointed on a contract basis for maximum of five years these can be terminated by Prime Minister	all CE and other SES employed on contract basis based on a standard model	no guaranteed tenure	As above	all Senior Service covered by contracts (from 1996) indefinite duration provisions including performance management contract between Head of Department & Crown (CE will act in name of Minister in establishing contracts)
		other SES can enter into fixed term contracts with Department Secretary	re-appointments of CE subject to SSC recommendation & decision by Cabinet			Department may use fixed term or rolling contract sets out employment conditions including performance management

⁴² Refers to new provisions in *Public Service Bill 1997*.

⁴³ Sweden has a special advisory board to deal with the content of contracts and submits its recommendations to Government before a decision is finally made. Austria has appeal rights in relation to job performance and qualifications for another term.

SES Issue	NSW	Commonwealth ⁴⁴	NZ	Canada	USA	UK
			<p>only 23% of senior managers are SES employed on contract for maximum of five years</p> <p>contract positions advertised at expiry date & incumbent eligible re-apply</p> <p>contract covers:</p> <ul style="list-style-type: none"> • responsibilities of State Services Commissioner & CE • tenure, remuneration & leave • CE's obligations including: <ul style="list-style-type: none"> ◇ performance requirements and performance review provisions ◇ non-renewal of contract ◇ removal from office for misconduct ◇ special termination arrangements including department restructuring or abolition 			

⁴⁴ Refers to new Provisions in Public Service Bill 1997.

SES Issue	NSW	Commonwealth ⁴⁵	NZ	Canada	USA	UK
Performance Reviews ⁴⁶	<p>Formal system requires Ministerial appraisal of CES.</p> <p>Other SES appraised by Manager</p>	<p>no formal appraisal of Department Secretaries by relevant Minister</p> <p>Other SES have formal appraisal by Department Secretary.</p> <p>Poor performance managed through:</p> <ul style="list-style-type: none"> • agreed plan • reassignment • agreed reduction to lower classification 	<p>SSC assesses performance of Chief Executives, taking into account:</p> <ul style="list-style-type: none"> • Performance Agreement between Minister & Chief Executive • relevant Corporate Plan approved by Minister • objectives of the Department approved by Minister and priority accorded them by Minister • other arrangements between Chief Executive & Minister 	<p>Deputy Ministers directly accountable to the responsible minister and the Prime Minister and the clerk of the Privy Council.</p> <p>Performance assessed through:</p> <ul style="list-style-type: none"> • series of ministerial visits • input from central management agencies • review by Committee of Senior Officials <p>Departments expected to have performance reporting and evaluation for senior executives</p>	<p>Each member of SES has annual performance appraisal</p> <p>each agency establishes own appraisal using standard rules statute provides for level of competence and procedures for dealing with poor performance.</p> <p>These include being reassigned or being removed from SES. SES must also be recertified every three years on basis of performance.</p>	<p>Performance Review for Permanent Secretaries (PS) occurs in context of Remuneration Committee which determines pay for individuals.</p> <p>PS asked to provide self-assessment. Ministers asked to comment on this.</p> <p>All other Senior Civil Service have common review system comprising:</p> <ul style="list-style-type: none"> • a summary of their personal development plan • self-assessment by job holder

⁴⁵ Refers to new provisions in *Public Service Bill 1997*.

⁴⁶ Only Canada, New Zealand and UK have formal performance appraisal for all of their most senior public servants.

SES Issue	NSW	Commonwealth ⁴⁷	NZ	Canada	USA	UK
			<ul style="list-style-type: none"> • referees reports • self assessment • monitoring of key result areas <p>Mechanisms to identify and manage poor performance⁴⁸ Departments expected to have performance planning, review & training & development for other SES.</p>	<p>Department decision as to whether evaluation is to be formal or less structured.</p>		<ul style="list-style-type: none"> • a structured self-assessment against 'achievement of objectives', 'core criteria' and assessment of potential

⁴⁷ Refers to new provisions in *Public Service Bill 1997*.

⁴⁸ These include annual performance review process; specific requests from the Minister to investigate areas of poor performance or issues of concern that emerge during the year. Poor performance brought to attention of both Chief Executive and Minister and strategies are developed to address personal deficiencies in subsequent performance agreements.

SES Issue	NSW	Commonwealth ⁴⁹	NZ	Canada	USA	UK
Termination	can be dismissed by Minister at any time	<p>Department Secretaries can be dismissed at will of Government provision for payment of indemnity in such cases</p> <p>other SES may be retired voluntarily be Public Service Commissioner in cases involving redundancy or poor performance</p> <p>provisions for payouts</p>	<p>CE contract provides for:</p> <ol style="list-style-type: none"> 1. 'no-fault' termination 2. termination in event of restructure/ abolition of Department 3. termination after due process in case of unsatisfactory performance <p>redeployment in case of 1 & 2</p> <p>financial indemnity provisions in all 3 cases</p> <p>contracts for senior managers contain provisions for remuneration & non-renewal of contracts</p>	<p>Deputy ministers may be removed from their posts by a decision of the Government</p> <p>other executives can be removed because of lack of work, discontinuation of a function</p>	<p>SES must undergo recertification every three years, based on performance</p> <p>provisions for misconduct or neglect of duty</p>	<p>Senior Civil servants can have their employment terminated at the will of the crown</p> <p>contract provides for notice periods and compensation for early termination</p>

⁴⁹ Refers to new provisions in *Public Service Bill 1997*.

SES Issue	NSW	Commonwealth ⁵⁰	NZ	Canada	USA	UK
Turnover on change of government ⁵¹	no formal policy	no formal policy				
Succession planning	N/A	responsibility of individual department	service-wide succession management strategy based on concept of senior public service as 'unifying force'	uses succession planning to fill top positions at Deputy Minister level		Departments annually assess staff needs at senior level & identify staff for promotion
mobility	SES Mobility Scheme	rotation schemes			no formal mobility program	no formal mobility program, informal strategies

⁵⁰ Refers to new provisions in *Public Service Bill 1997*.

⁵¹ Most countries in OECD did not have wholesale changeover in senior ranks when the government changes. Exceptions are France (where 42% of positions are 'under government decision' and appointments can be terminated with change of government); USA (where 10% of positions are filled by presidential appointments. Appointees would normally change with a change of administration), and Sweden (where there are positions of 'Under Secretary' as political appointments. All resign from their post with a change of government).

Attachment 3: Survey Demographics

Characteristic	SES Population (1)		UTS Survey Respondents (current SES)			
	N	%	N	% of Sample (N=201)	% of Respondents	Respondents as % of equivalent Group in SES Population
SES Band						
1	556	58	22(b)	11(b)	17	4(b)
2	271	28	69	34	52	25
3	102	11	30	15	23	29
4	28	3	11	6	8	39
5+	n/a	--	1	0.5	1	n/a
Missing	4	0.4	68	34		
Total	961	100.4	201	100.5	100 (N=133)	14(c)
Position						
CES	83	9	36	18	18	43
SES	878	91	160	80	82	18
Missing			5	2		
Total	961	100	201	100	100 (N=196)	20(c)
Gender						
Male	775	81	159	79	80	21
Female	186	19	39	19	20	21
Missing			3	2		
Total	961	100	201	100	100 (N=198)	21(c)

Source (1) Premier's Department Database 1997

Note (a) n/a means not available
 (b) 1 in 6 of SES level 1 were sampled; all SES level 2 and above were sampled.
 (c) Total sample population was actually 561 because 1 in 6 of SES level 1 were sampled. This makes response rate of 36% of sample (N=561) and 21% of total SES population (N=961).

The demographic profile of the sample compared with that of the SES population as a whole is shown above. The sample of respondents is skewed toward the higher end of the SES population, partly reflecting the sampling frame and partly reflecting the response pattern itself.

Band 3 and 4 comprise 20 per cent of the respondents (34% did not provide Band information) compared with their being 14 per cent of the SES population.

Thirty-nine per cent of all Band 4s in the NSW public service responded as did 29 per cent of all SES Band 3.

The respondent sample comprises 18 per cent of CEOs although they are only 9 per cent of the SES population. Almost 40 per cent of CEOs responded.

The UTS have not provided demographic details of the interviewees in the case studies in order to preserve anonymity. There were 33 interviews, half of which were with current SES/CES. The remainder were evenly divided between ex-CES/SES and the feeder group. The interviews were not intended to be statistically significant as a stand alone element. Rather, they served to supplement the survey data with practical case study material. Interview results were consistent with anecdotal evidence which indicates the views expressed are not out of line with the general views of many SES officers.

To encourage free and candid discussion and exchange of opinions, the survey and the interviews were carried out independently by UTS, and on a confidential basis with The Audit Office having no access to individual responses.

For several reasons, The Audit Office considers the survey findings to be conservative.

Firstly, the survey itself was formulated so that respondents were asked to base their responses upon their own actions, not their views of how others may act.

In addition, and notwithstanding the confidentiality arrangements and the conservative nature of the survey, UTS advised that many of the respondents did not provide position-related details (eg SES level and Band). This would indicate that a number of the SES were still concerned about adverse consequences if they were identified. It is possible that such concerns might relate to the number of high profile dismissals of CEOs.

It is therefore expected that responses to questions about the SES model and its application are also likely to have been cautious in many cases.

Attachment 4: Bibliography

Auditor General of British Columbia *Report on Executive Severance Practices: Government Ministries and Crown Corporations*, 1996/1997.

Barrett,P., “Some Challenges Facing the APS in General and the SES in Particular”, Address to Senior Executive Leadership Program, Canberra, 19 May 1998.

Baxter,K.P., “Accountability in the Public Sector-theory, practice and humbug”, Address to Griffith University Seminar, 12 February, 1998.

Carr, R., “The Public Sector: 2000 and Beyond” Speech to RIPAA Forum, State Library, 22 February, 1995.

Halligan,J. “Departmental Secretaries in Canada and the United Kingdom”, *Australian Journal of Public Administration*, 56 (4), December 1997, pp.26-31.

Hood, A. “Public Officials, Government and the Public Trust”, *Australian Journal of Public Administration*, 57 (1), March 1998, pp. 98-114.

NSW Auditor-General’s *Report to Parliament 1997, Volume One*.

NSW Auditor-General’s *Report to Parliament, 1996, Volume Three*.

Page, E., Public Sector Management Amendment Bill, Second Reading, Hansard (Legislative Assembly), 3 June 1998.

Parliament of the Commonwealth of Australia, *An Advisory Report on the Public Service Bill 1997 and the Public Employment (Consequential and Transitional) Bill 1997*, September 1997.

Parliament of the Commonwealth of Australia, *Public Service Bill 1997*.

Parliament of the Commonwealth of Australia, *Public Employment (Consequential and Transitional) Bill 1997*.

Podger, A.S., "Departmental Secretaries: Introductory Notes", *Australian Journal of Public Administration*, 56 (4), December 1997, pp. 11-12.

Sturgess, G., "Can Parliament Cope" Toward a New Era in Public Accountability", *Canberra Bulletin of Public Administration*, September 199, pp.45-52.

Weller, P and Wanna, J. "Departmental Secretaries: Appointment, Termination and their Impact", *Australian Journal of Public Administration*, 56 (4), 13-25 December, 1997.

**Canadian Centre
for Management**

"A Strong Foundation: Report on the Task Force on Public Service Values and Ethics-A Summary" February 1997.

Discussion Paper on Values and Ethics in the Public Service, December, 1996.

Auditor-General of British Columbia "Issues Report on Executive Severance Practices in Government Ministries and Crown Corporations" *News Release*, May 1997.

Clerk of the Privy Council and Secretary to the Cabinet, *Fifth Annual Report to the Prime Minister on The Public Service of Canada*, 31 March 1998.

La Releve Task Force, *First Progress Report on La Releve: A Commitment to Action: Overview*, Report presented to the Clerk of the Privy Council and Secretary to the Cabinet, March 1998.

ICAC

Report on the Public Employment Office Evaluation of the Position of Director-General of the Department of Community Services, ICAC, November, 1996.

Laffin, M., and Painter, M. (eds) *Reform and Reversal: Lessons From the Coalition Government in NSW 1988-1995*, South Melbourne, MacMillan.

Mulgan, R., "Politicisation of Senior Appointments in the Australian Public Service" *Australian Journal of Public Administration*, Volume 57 Number 3, 1998.

- OECD** “Managing the Senior Public Service” Focus, September 1997.
Managing the Senior Public Service: A survey of OECD Countries, PUMA.
- NSW Ombudsman** *Principles of Administrative Good Conduct*, 1997.
- NSW Parliamentary Debates (Hansard)** Fahey, J. “Second Reading Speech, Public Sector Management (Executives) Amendment Bill”, 27 July 1989.
- Public Employment Office** “Assistance for Executives Affected by Restructuring and Changes in Government Priorities”, PEO, July 1995.
- Premier’s Department** *Code of Conduct and Ethics for Public Sector Executives*, December 1997.
Directions for Public Sector Reform in NSW Discussion Paper , Public Sector Management Office, Sydney, July, 1998.
Model Code of Conduct for Public Sector Agencies: Policy and Guidelines.
SES Administrator’s Manual, 1993, 1994.
SES Manual.
Chief Executives and Senior Executive Service: Total Remuneration Package Your Options, 1992 Edition.
Premier’s Department Circular 92/4 “Senior Executive Service- Reporting in 1991/92 Annual Reports” 1 May 1992.
- Memoranda and Circulars**⁵² *Premier’s Memorandum 93-33 “Cabinet Decision on the Advertising of Chief and Senior Executive Positions at the End of Contracts”*, 30 September 1993.
Premier’s Memorandum 94/15 “Mechanism for Renewal of CES/SES Contracts” 27 May 1994.
Premier’s Memorandum 98/18 “New Arrangements for the Renewal of CES and SES Contracts” 20 June 1998.

⁵² All Circulars and Memoranda relating to the SES were reviewed but are too numerous to list here.

Premier's Department *Circular 98-22 "SES Mobility System"*
14 April 1998.

Premier's Department *Circular 98-57 Unattached Officers-
Chief and Senior Executives (SES)* 30 July 1998.

Legislation

Annual Reports (Statutory Bodies) Act 1984

*Annual Reports (Departments) Regulation 1995 under the
Annual Reports (Departments) Act 1985*

Public Sector Management Act 1988 (PSMA)

Public Sector Management Executives (Amendment) Act 1989

*Statutory and Other Offices Remuneration (Executives)
Amendment Act 1989*

Public Sector Executives Superannuation Act 1989

*Miscellaneous Acts (Public Sector Executives Superannuation)
Amendment Act 1989*

Public Sector Management Act Regulation 1996

Statutory and Other Offices Remuneration Act 1975.

Response from Premier's Department

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Dear Mr Harris

PERFORMANCE AUDIT REPORT – NSW SENIOR EXECUTIVE SERVICE

I am writing to provide this response by Premier's Department to the Audit Office Report entitled "Performance Audit Report – NSW Senior Executive Service". The Premier's Department response addresses the core issues relevant to the audit as well as those matters identified in the Executive Summary and Recommendations contained in the Report

Premier's Department acknowledges that much of the content of the Final Audit Report has changed considerably from earlier drafts as a result of the extensive input from officers of this Department. It is disturbing however to see the number of errors of fact and interpretation that the Report still contains.

The Audit Office has relied, almost exclusively, on a survey and interviews with an excessively small sample of SES and ex-SES and some in the feeder group, a so-called "climate survey" produced by UTS, without further rigorous and objective testing of the opinions expressed. This is hardly a sound foundation for making broad generalisations and sweeping pronouncements about the effectiveness of the current SES model or recommendations about how it might be improved.

No systems analysis was undertaken, no SES administrators were consulted, nor was the considerable assistance provided by Premier's Department sufficient to compensate for the fundamental gaps in understanding evidenced in the UTS Research Report and the Audit Office Report.

The cost of the audit, the length of time taken to deliver the final report and the somewhat confused nature of the report flow directly from the ill conceived approach adopted by the Audit Office to the task. In conclusion, Premier's Department believes that, while the research component of the Report has been an interesting climate survey, there is little of substance which can be acted on to enhance the current legislative and policy framework governing the SES in NSW.

The Premier's Department response and detailed schedule (Attachments 1 & 2) provide I believe, a necessary balance to many of the claims made in the Audit Report.

Yours sincerely

C. Gellatly
Director-General

NSW SES PERFORMANCE AUDIT REPORT PREMIER'S DEPARTMENT RESPONSE

Audit Approach

There are serious deficiencies with the Audit methodology. Basing the Audit opinion largely on the Research Report undertaken by UTS is, I believe, erroneous. The literature survey undertaken by UTS relied excessively on the academic literature and failed to examine in any detail many of the policy documents or legislation which support the current SES framework in NSW. This is a serious oversight and accounts perhaps for the failure of the audit as a whole to understand the application of the Westminster model in the NSW context.

Although in some measure useful in raising issues for consideration, the UTS research is primarily *a report of the opinions* of current and ex-SES/CES and a small handful of officers below the SES level. It is difficult to see how such a survey of individual opinions plus qualitative interviews, without a systems analysis and evaluation can lead to a proper understanding, let alone a critique of the model of SES administration in NSW.

But aside from this, of concern is the small survey sample size (201) and the extremely small interview sample size (33) which throw into question the reliability of the findings as a whole. The Audit Office appears then to have misused what was essentially a climate survey by UTS as though it were authoritative, replicable research. This casts considerable doubt on the validity of assertions made by the Audit Office in the Audit Report.

For instance, the audit claims that “the small number of officers below SES who were interviewed for the audit indicated that with one exception they had little interest in applying for an SES position”. The audit accepts this as a confirmation of “other similar anecdotal evidence”. Such lack of substantiation of opinion with factual evidence is regrettably all too frequent in the Audit Report and therefore compromises the recommendations of the Report as a whole.

Audit Opinion

Premier's Department rejects the assertion in the Audit Opinion that there are several features of the current SES model (or its application) which hinder the capacity of the SES to operate effectively in line with the Government's stated objectives. Also rejected is the assertion that the “ultimate effect of these features is to reduce the capacity or perceived capacity of the SES to meet the Government's objectives for the operation of the SES”.

It is contended that the audit has failed to examine seriously the model of executive management and the implementation of the SES in NSW. Although some legislation and policy documents are referred to there is no in depth analysis of the application of the legislative, administrative and policy framework in action. Moreover, the audit at times lapses into a conflation of the differential legislative and administrative recruitment, employment and performance management rules and review processes applicable to CEOs and SES.

Premier's Department believes that the current legislative and policy framework governing the CES and SES ably assists the Government to meet its policy objectives of a rigorous performance based SES, with improved accountability in the areas of management capacity, policy formulation and advice through contract based employment. The Government's commitment to continuous quality improvement means that from time to time various aspects of the framework are reviewed and enhanced to ensure that the community continues to receive value for money and quality service from its public sector executives and employees.

In terms of the claimed *reduction* in SES capacity or perceived capacity to meet the Government's policy objectives, neither the UTS Research nor the Audit Office indicate that any controlled longitudinal study has been conducted which could lead to this conclusion. The Audit Office *has* supplemented the UTS research with "its own research and analysis of Ministers' reports on the performance of **14 ex-CEOs** in annual reports **since 1995.**" But such a statistically insignificant and skewed sample from the recent past could scarcely be said to provide a sound basis for the Audit Opinion.

Audit Office Main Findings

Premier's Department strongly rejects the audit's conclusion that "There has in effect been a reduction in the capacity in the reduction of the SES model to support the giving of frank and fearless (neutral) advice. (Audit Report p 23). The audit claims that "the SES can only be effective in meeting the Government's policy goals *if* the design and implementation of the SES model allows the SES not to be entangled in the political environment" (emphasis added) (Audit Report p 21). Such a claim is not supported by any quantitative data or analysis. The assertion casts an unreasonable pall on the professionalism of the public sector as a whole.

It is difficult to establish from the findings of the UTS Report just how the Audit Office could arrive at this opinion. Although the Audit Report uses UTS research (Table 4.8.1) to claim that SES indicated that political factors strongly influence their advice, an examination of the UTS source reveals that the two most significant influences on SES policy making are:

- the policy of the government of the day (88%); and
- providing neutral advice even if the Government does not like the advice (79%).

Although the audit acknowledges that *only some* interviewees saw a drift to a formalised Washington model of public sector politicisation, the Audit Report frequently uses such anecdotal material as the basis for its conclusions.

In short, the Audit Office seeks to proffer a series of *opinions as the basis for broad generalisations of fact*. These expressions of opinion are nowhere tested empirically to see whether they have wider validity across the sector. The Office has not considered any evidence in regard to executive turnover rates in NSW for example, nor done any benchmarking of such rates with other jurisdictions.

The evidence if examined is actually contrary to the Audit Office's assertions. The number of long term career public servants successfully performing at the executive level who have served NSW governments of whichever persuasion attests to the independent non-political nature of the SES. Indeed, the UTS Report supports this and observes that "political appointments are at a relatively low level." (UTS Report p 66).

Premier's Department believes that the vast majority of SES officers are complete professionals performing in accordance with the *Premier's Department Code of Conduct and Ethics for Public Sector Executives*, which commits them to the highest ethical standards of integrity, impartiality, accountability, honesty and responsiveness to the public interest.

Aspects of the current system which SES support

It is encouraging to note that the Audit Office has acknowledged several aspects of the current system which SES officers support such as: accountability for specified outcomes; high level management skills; a high level of public sector productivity; regular performance reviews; recruitment and promotions on merit; rigorous performance based culture; good performers being retained; and commercial management principles being implemented. A close examination of the UTS Report reveals in fact many more areas of satisfaction with the current SES model.

Audit Office Recommendations

1. Amend legislation to create a separate employing body for CES/SES.

The Audit Office recommends that legislation be amended to create a separate employing body for CES/SES. Though it is acknowledged that there are jurisdictions such as New Zealand, where Ministers do not choose their CEOs, Premier's Department would reject any recommendation which would have the consequence of removing from Ministers and CEOs their fundamental discretion in recruitment and termination decisions. The structural arrangements for the employment of CES/SES are a matter for Government to decide, not matters within the purview of the office of the Auditor General.

In making this recommendation the Audit Office has failed to acknowledge the robust mechanisms which are currently in place to provide independence in: the appointment of SES officers; SES contract management; performance review of SES and removal and termination processes of SES. Had the Audit Office carefully examined the *Public Sector Management Act 1988* (Act) it is doubtful that it would have made this recommendation.

2. Ensure that legislation provides those CES/SES officers access to redeployment or termination payouts which reflect no fault etc.

Access to "redeployment" where "no-fault" termination.

This is already available. Section 42(Q) of the Act is widely recognised as a "no-fault" termination. Unattached officers may be assisted by the provisions of the Mobility system (Circular 98-22); by exercising a "right of return" to the public sector; or by applying for compensation through the SOOR Tribunal. In addition, agencies are to meet the executive's reasonable costs of outplacement services. (Circular 98-57).

Termination payments which reflects the no-fault nature of the situation

The Premier's Department finds the Audit Office recommendation concerning termination payments somewhat puzzling. Levels of compensation are determined by SOORT in the context of the PSM Act 1988. The Audit Office contends that "the principles which the Tribunal uses to make its determination are reportedly not available, including the affected SES officers" (p 30). It is disappointing to note that the Tribunal has advised that neither the

Auditor General nor his consultants spoke with the Tribunal on compensation and related matters. This has led the Audit Office to a gross inaccuracy in its reporting of the Tribunal's functioning and basis for decision making.

When the new Tribunal was appointed in 1995 one of its first tasks was to develop a Statement of Principles to better inform SES officers of the types of matters the Tribunal would take into consideration when making its compensation determinations. This document and the accompanying Information Sheet for Applicants has been freely distributed to SES officers and Agencies. The document will shortly be published on the Remuneration Tribunals Website.

The Audit Office's further assertion that "there has been no disclosure which the Audit Office could identify to make transparent how the Tribunal arrives at its decisions" is similarly rejected by the Tribunal as inaccurate. Each of the Tribunal's compensation determinations lists those matters that the Tribunal took into consideration in making its determination. A copy of this determination is made available to the affected SES officer as well as his/her CEO.

It should be noted that the Crown Solicitor has advised that SOORT must consider each compensation claim on its own merits and that the Tribunal's statutory discretion in these matters cannot be fettered ie it cannot apply a formula in determining the quantum of compensation.

The Audit Office's expressed intention to audit the Tribunal "to improve accountability" is rejected. Crown Solicitor's advice on this matter indicates that the Auditor General has no power to undertake such an audit.

3. Ensure all SES contracts particularly CES contracts, include detailed and clear performance expectations.

The Audit Office recommends that SES contracts particularly CES contracts need to include detailed and clear performance expectations. These performance expectations are derived from performance indicators in agency corporate and business plans.

In the NSW SES these are named in the Performance Agreements between CEOs and their SES staff, and those between Ministers and CEOs. The Performance Agreement becomes Schedule B of the Model Contract. It is difficult to see how much more detailed and clear these expectations could be in light of the very comprehensive Premier's Department Guidelines available on developing executive performance agreements.

4. Secure greater compliance with CES/SES annual performance evaluation requirements

The Audit Office also recommends that greater compliance with CES/SES annual performance evaluation requirements be secured. An annual performance review is currently mandated in the Act (Section 42 I). The Strategic Management Cycle also incorporates this requirement and identifies key strategies to be addressed and the annual timing of such review. In addition, Premier's Department Performance Agreement Guidelines provide very detailed guidance on annual performance evaluation requirements. It is to be noted that the Audit Office has not conducted a compliance audit on executive performance agreements.

5. Ensure that CES performance evaluation is robust and transparent

In terms of performance evaluation, Premier's Department went to some lengths to explain to the Audit Office the rigorous performance appraisal system in place for both CEOs and SES. These processes are outlined in Section 42 I of the *Act* and Premier's Department Circulars and Guidelines. The Strategic Management Cycle also identifies key strategies to be addressed and the annual timing of such reviews. The UTS found that "*actual performance related to the performance agreement*" was considered relevant to performance appraisal by 78% of respondents (Table 4.7.4 p73)

It is agreed that 360 degree feedback may enhance the performance review process and Premier's Department Draft Executive Professional Development Model recommends the adoption of a comprehensive assessment process including self-assessment as one component

6. Consider expansion of desired SES competencies

Premier's Department agrees that assessment of competencies could be part of the selection process. Competencies can be used to support merit selection. Competencies are an assessment to a standard, rather than against another person, but merit is a relative concept.

For the purposes of the *Act*, merit is matter for determination having regard to the nature and duties of the position, abilities, qualifications, standards of work performed and the personal qualities relevant to the performance of the position.

The Audit Office attempts to define a number of competencies required of executives including (recommendation 6) eg "the acumen to discern political issues without becoming political". It is to be noted that the exercise of political judgment is already comprehensively addressed in the *Code of Conduct and Ethics for Public Sector Executives* (Clause 3).

7. Expedite improved access to the enhanced SES professional development and mobility programs

SES Professional Development

The Audit Office's final recommendation viz, expediting the implementation of, and improved access to, an enhanced SES professional development program, is in fact a recommendation about a process already underway. Briefly the following initiatives have been undertaken:

Premier's SES Briefing Program

A program conducted around strategic current issues addressed by the Premier. (1992)

SES Professional Development Framework

An integrated approach to SES professional development is still in the planning phase to incorporate existing programs with new strategies. Existing programs include:

- *SES Mobility Program*

A targeted development strategy to provide strategic work placement opportunities and skills development enhancement. (1997)

- *Strategic National Leaders' Program*

An initiative of the Public Service Commissioners bringing together 1–3 senior executives (at the deputy CEO level) from each state to think and debate as leaders the issues of globalisation, the future role of the public sector and intergovernmental relations. (1998)

- *CEO Induction Program*

An overview program to provide new Chief Executive Officers with an outline of the operation of strategic sector policies and their special accountabilities as CEOs.(1998)

The following program is under development:

- *Executive Outlook Program*

An intensive program, currently in the development stage, to promote strategic thinking and enhance operational implementation skills at the executive level.

SES Mobility Programs

Opportunities for redeployment to another position have gained greater recognition through the amendments to the Public Sector Management Act 1988 to promote mobility within the sector and the establishment of the SES Mobility System in Premier's Department.

The SES mobility program is built around sections 53A and 100A of the Act and already provides for mobility generally including for both attached and unattached SES. A strategic use of the mobility program is already envisaged in the Executive Professional Development Program. The Right of Return provisions for those SES who entered the Services prior to October 1995 (S.42R) are also available.

**SCHEDULE TO PREMIER’S DEPARTMENT RESPONSE DATED 15 DECEMBER, 1998
TO AUDIT OFFICE REPORT ON NSW SENIOR EXECUTIVE SERVICE**

AUDIT REPORT EXECUTIVE SUMMARY	PREMIER’S DEPARTMENT RESPONSE
<p>Audit Objectives</p> <p>To examine the extent to which the NSW model of executive management in the public sector is able to fulfil the Government’s objectives.</p> <p>To what extent the SES model is capable of giving effect to Westminster/Whitehall principles espoused by the Premier.</p> <p>Whether there was any scope to improve SES effectiveness in light of those goals and espousals.</p>	<p>The final Audit Office Report has changed the Audit Objectives from the original draft provided to Premier’s Department for comment. It is difficult to see why the Report’s objectives were changed post-facto, well after the research had been conducted.</p> <p>The Audit Office acknowledges that what UTS has conducted is essentially a climate survey, based on a survey and interviews with predominantly ex-SES and SES concerning their subjective experience in particular agencies. It is arguable that while these subjective experiences may reflect on the application of the SES legislative and policy framework in particular agencies, they can shed little light on the adequacy or efficacy of that framework, or its embodiment of Westminster/Whitehall principles.</p> <p>Note that the UTS terms of reference are very different from the Audit Objectives, viz, “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.” (p12 UTS report).</p> <p>The Audit cannot claim to suggest measures to improve the effectiveness of the SES system if it fails to thoroughly examine the current legislative and policy framework, performance management systems and professional development frameworks.</p>

AUDIT REPORT EXECUTIVE SUMMARY	PREMIER'S DEPARTMENT RESPONSE
<p>Audit Approach</p> <p>UTS was contracted to undertake a literature review, a survey of current SES officers and personal interviews with current and past SES officers as well as a sample from the SES feeder group using a semi-structured format.</p> <p>There were 33 interviews, half of which were with current SES/CES. The remainder were evenly divided between ex-CES/SES and the feeder group (Grade 12).</p> <p>The Audit Office retained control and responsibility for the audit, and also undertook its own research and analysis of Ministers' reports on the performance of 14 ex-CEOs in Annual Reports since 1995.</p>	<p>The methodology is flawed, in particular the over reliance on interview feedback. A sample size of 33 on a then base of 1,000 SES (without considering ex-SES or feeder group) is statistically meaningless.</p> <p>The Audit relies almost exclusively on individuals' subjective experience and opinions. Besides this the UTS research is frequently misused and quoted out of context.</p> <p>The methodology does not include any serious review of the legislative and policy framework governing SES administration.</p> <p>The Audit Office review of 14 ex-CEOs since 1995 must necessarily be skewed.</p> <p>No SES Administrators were interviewed or surveyed.</p>
<p>Proposed Audit Office Review of basis of SES compensation payments whose contracts have been terminated by the employer. (Footnote 12)</p>	<p>The Crown Solicitor advises (18/11/98) that the Audit Office is not able to conduct such an audit.</p>
<p>Audit Office supports the Report from UTS.</p>	<p>Premier's Department does not support certain of the UTS conclusions nor the use to which the UTS climate survey has been put by the Audit Office.</p>
<p>Main Findings</p> <ul style="list-style-type: none"> There are aspects of the current system which SES officers support. The SES take pride in their professionalism, helping Government achieve its objectives and value the intrinsic nature of their work. 	<p>These findings are welcome. They do not support the Audit Opinion however, that there are several features of the current SES model/application which hinder the capacity of the SES to operate effectively.</p>
<ul style="list-style-type: none"> The SES respondents considered that most of the originally stated objectives of the SES remained relevant to current SES practice. 	<p>Agreed. It is to be noted however that the Second Reading Speech establishing the SES was not examined by UTS, but a preponderance of Hansard extracts from 1995 onward have been examined.</p>

AUDIT REPORT EXECUTIVE SUMMARY	PREMIER'S DEPARTMENT RESPONSE
<ul style="list-style-type: none"> • The objectives considered relevant include (Table 4.5.1a Part 2). <ul style="list-style-type: none"> - accountability for specified outcomes; - high level management skills; - a high level of public sector productivity; - regular performance reviews; - recruitment and promotions on merit; - rigorous performance based culture; - good performers retained; - commercial management principles implemented. 	<p>It is encouraging to note that the Audit Office has commented favourably on those aspects of the current system which SES officers support. This indicates a high level of satisfaction with the model of the SES in NSW. It runs counter to the Audit Opinion in fact. It is puzzling in view of this widespread support among the SES that the Audit Opinion finds that the current SES model hinders operational effectiveness.</p>
<ul style="list-style-type: none"> • Whilst survey respondents indicated that providing “neutral policy and options in the public interest” was regarded as a key SES accountability (Table 4.10.2) they also indicated that political factors strongly influence their advice (Table 4.8.1) 	<p>Table 4.8.1 does not support this Audit Office claim. This Table indicates that the factors which influence SES policy making are: the policy of the Government of the day (88%); and providing neutral advice even if the Government does not like the advice (79%). Only 11% of those surveyed said concern to provide advice that the Government might want regardless of merit, influenced their policy advisory function. This could not lead to the Audit conclusion that political factors strongly influence [SES] advice.</p>

AUDIT REPORT EXECUTIVE SUMMARY	PREMIER'S DEPARTMENT RESPONSE
<ul style="list-style-type: none"> • UTS also reported that at least with some interviewees, “there is an acknowledgement of the inevitability of an increasing shift towards a formalised Washington model of public sector politicisation” (Section 5.4 Part 2). <p>The audit concludes that there has in effect been reduction in the capacity of the SES model to support the giving of frank and fearless (neutral) advice. (Audit Report p23).</p>	<p>Premier’s Department rejects the audit conclusion that there has been a reduction in the capacity of the SES model to support the giving of frank and fearless advice. The statement is not supported by any quantitative data. The only claim that can be made is that x percentage of the sample of SES interviewed believed such.</p> <p>The Audit Report gives no definition of politicisation. The UTS report gives the following definition: “a decision making environment in which formal systems, role definitions and decision rules of the SES are not necessarily applied” (p95). A contrasting definition is given by Mulgan in a recent AJPA Research article 57(3) September 1998. “The general test of politicisation is whether an appointee’s excessive connections with the policies of the appointing government are seen to make him or her incapable of loyally serving a new government with different policies, a test which depends on contestable judgments and leaves room for differences of opinion”.</p> <p>Premier’s Department believes that the vast majority of SES officers are complete professionals performing in accordance with the Premier’s Department Code of Conduct and Ethics for Public Sector Executives, which commits them to the highest ethical standards of integrity, impartiality, accountability, honesty and responsiveness to the public interest. This means that they are capable of serving governments of whichever persuasion. The number of long term career public servants successfully performing at the SES or CES level attests to the independent non-political nature of the SES.</p>
<ul style="list-style-type: none"> • Whilst the interviews were not intended to be statistically significant as a stand alone element, but rather to supplement the survey data with practical case study material, the interview results were consistent with survey and anecdotal evidence which indicates the views expressed are not out of line with the general views of many SES officers. 	<p>The Audit Office’s over-reliance on a narrow interview sample and anecdotal evidence is disturbing. This reinforces the view that many of the claims of the Audit Office are without a sound foundation.</p>

AUDIT REPORT EXECUTIVE SUMMARY	PREMIER'S DEPARTMENT RESPONSE
<p>Difficulties identified by the audit</p> <ul style="list-style-type: none"> Uncertainty caused by the way contracts have been applied in practice 	<p>The final Audit Office Report does not include specific references to relevant sections in the UTS report. It refers the reader to the UTS Report Sections 4 and 7 (footnote 14). Yet an examination of these sections does not reveal any evidence that could be said to support this claim. The contrary is in fact true.</p> <p>Section 4.11.4 of the UTS report asked SES to nominate five enhancements for the SES. Only 28 out of 201 respondents indicated “better formal support binding both parties legally” would be an enhancement; only 23 out of 201 respondents said providing performance based pay and benefits would be an enhancement. This is scarcely an indication of “uncertainty caused by the way contracts have been applied in practice”.</p>
<ul style="list-style-type: none"> Removal for reasons other than poor performance (Section 4.6.4). 	<p>The Act is clear (Section 42 Q) that the Governor may remove an executive officer from an executive position at any time.</p> <p>The UTS report (p.69) indicates the three main factors relevant to early termination of SES employment are: organisational restructuring 76%; retrenchment at a time of downsizing 67%; poor performance tested on a formal performance agreement 57%.</p>
<ul style="list-style-type: none"> Informal strategies such as using restructuring to “terminate contracts and to move people in and out of positions regardless of their formal reported performance” (Section 5.4). 	<p>The direct quote cannot be sourced in the UTS report. Section 5.4 is based predominantly on the statistically meaningless sample of 33 interviewees.</p>

AUDIT REPORT EXECUTIVE SUMMARY	PREMIER'S DEPARTMENT RESPONSE
<ul style="list-style-type: none"> Inconsistently applied rules about selection/ recruitment, appointment and removal of the SES 	<p>There are clear rules governing selection, recruitment, appointment and removal of the SES. These are found in the Public Sector Management Act and Regulations and in Premier's Memoranda and Departmental Circulars. These are all communicated in the revised <i>SES Guidelines</i> and have been available in various editions of the <i>SES Administrator's Manuals</i> since the inception of the SES in 1989.</p> <p>The Audit Office appears to misuse the UTS report. Section 4.6.1 of the UTS report indicates that "recruitment processes are largely carried out in accordance with NSW SES system requirements" in terms of positions being always advertised, selection occurring on the basis of merit and formal and neutral selection committees being convened. Moreover, "the responses indicate that political appointees recruited to the SES are at a relatively low level" (p.66).</p>
<ul style="list-style-type: none"> An imbalance between CES responsibility to the Minister as the employer/reviewer with their responsibility not to act in a political or partial manner (Section 4.6.3). 	<p>The UTS Report did not specifically address this issue.</p> <p>The Code of Conduct and Ethics for Public Sector Executives (CI 3) provides comprehensive guidance as to how relationships between executives and the Government are to be conducted.</p>
<ul style="list-style-type: none"> Apparent lack of rigour in, value of and Ministerial accountability for CES performance review processes (Section 4.7.4). 	<p>There is no verifiable, consistent evidence for this claim. It appears that the Audit report has misused the findings of the UTS report. 4.7.4 of the UTS report deals with SES performance appraisal not CES performance review processes.</p>
<ul style="list-style-type: none"> Failure to implement an adequate system of rewards and sanctions related to performance. 	<p>"Failure to implement" – this suggests an adequate reward system is in place but the fault lies in lack of implementation. An interim performance pay model was introduced in the 1997 SOORT Determination. This was modified in the 1998 SOORT Determination. The Government intends enhancing the model further in its 1999 submission to the Tribunal.</p> <p>Section 4.11.4 of the UTS report asked SES to nominate five enhancements for the SES. Only 23 out of 201 respondents said providing performance based pay and benefits would be an enhancement.</p>

AUDIT REPORT EXECUTIVE SUMMARY	PREMIER'S DEPARTMENT RESPONSE
<p>Further Claims</p> <ul style="list-style-type: none"> • Of the current SES surveyed, 87% responded to the question as to whether they would be likely to re-apply again to the SES. Of these respondents, less than half (48%) indicated they would do so. Over a third indicated they were not likely to re-apply and 18% were neutral. 	<p>It is to be noted that UTS received only 35 responses out of 201 surveyed to this question (Table 4.11.2). This is a statistically meaningless sample. No valid conclusions can be drawn.</p>
<ul style="list-style-type: none"> • The small number of officers below SES who were interviewed for the audit indicated that, with one exception, they had little interest in applying for an SES position (Section 5, Part 2). 	<p>This claim is based on interviews with an estimated (at most) six officers below the SES. (The Audit Office declined to give actual numbers of those interviewed in this group, but a total of only 33 ex-SES, ex-CEOs, current SES and below SES were interviewed). As a percentage of the total number of public servants in the SES feeder group (17,611 as at 30 June 1997) it is statistically meaningless.</p>
<ul style="list-style-type: none"> • The Audit Office has communicated and cooperated with Premier's Department in the course of this audit, and is encouraged by the Government's positive approach to addressing many of the issues which have been raised in this Report. 	<p>Premier's Department rejects many of the Audit Office findings as unsubstantiated by facts or analysis. The UTS climate survey has been put to an inappropriate use. The implication of a causal connection between the audit and recent refinements to the SES is not sustainable. On-going initiatives to refine aspects of the administration of the SES have been undertaken since the inception of the Service. This is part of Premier's Department's commitment to continuous quality improvement.</p>

AUDIT REPORT EXECUTIVE SUMMARY	PREMIER'S DEPARTMENT RESPONSE
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<p>Recommendations</p> <p>1. Amend legislation to create a separate employing body for CES/SES.</p>	<p>It is acknowledged that there are jurisdictions such as NZ where Ministers cannot choose their CEOs. But Premier's Department would reject any recommendation which would have the consequence of removing from Ministers and CEOs their fundamental discretion in recruitment and termination decisions. More importantly the structural arrangements for the employment of CES/SES are a matter for Government to decide, not matters within the purview of the office of the Auditor-General.</p> <p>In any case it can be argued that independence in executive employment matters is already enshrined within the provisions of the Public Sector Management Act:</p> <table border="0"> <tr> <td>Appointment of SES officers</td> <td>at sections 13, 14,15, 26, and 31</td> </tr> <tr> <td>SES Contract Management</td> <td>sections 42G and 42H</td> </tr> <tr> <td>Performance Review of SES</td> <td>section 42I of Act plus Premier's Memorandum 95-45 and Guidelines currently under review.</td> </tr> <tr> <td>Removal & termination processes</td> <td>section 42Q</td> </tr> </table> <p>It is important to note that decisions by agencies are made within a legislation and policy context established by the Government. Suitable appeal mechanisms are in place such as the SES Grievance Mediator and recourse to SOORT for compensation issues.</p>	Appointment of SES officers	at sections 13, 14,15, 26, and 31	SES Contract Management	sections 42G and 42H	Performance Review of SES	section 42I of Act plus Premier's Memorandum 95-45 and Guidelines currently under review.	Removal & termination processes	section 42Q
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<p>2. Ensure that legislation provides those CES/SES officers who are to be terminated for reasons other than poor performance with access to redeployment or to termination payouts which reflects the “no fault” nature of the situation and which ensure an adequate balance of risks and rewards.</p>	<p>The assertion implicit in this recommendation is that the current legislation is somehow defective.</p> <p>Premier's Department would argue that the legislative enablers are already in place for “a no fault” termination policy. Opportunities for redeployment to another position have gained greater recognition through the amendments to the Public Sector Management Act 1988 to promote mobility within the sector and the establishment of the SES Mobility System in Premier's Department.</p> <p>Use of Section 42(Q) of the Act is widely recognised as a “no-fault” termination. Unattached officers may be assisted by the provisions of the Mobility system (Circular 98-22); by exercising a “right of return” to the public sector; or by applying for compensation through the SOOR Tribunal. In addition, agencies are to meet the executive's reasonable costs of outplacement services. (Circular 98-57).</p> <p>Termination payouts: the actual levels of compensation are determined by SOORT in the context of the PSM Act 1988.</p> <p>It should be noted that the Crown Solicitor has advised that SOORT must consider each compensation claim on its own merits and that the Tribunal's statutory discretion in these matters cannot be fettered ie it cannot apply a formula in determining the quantum of compensation.</p>
<p>3. Ensure all SES contracts, particularly CES contracts, include detailed and clear performance expectations.</p>	<p>Premier's Department Guidelines available on developing executive performance agreements are very detailed, indeed prescriptive - it is difficult to see how much more detailed and clear they could be. The CEO Performance Agreement forms part of the executive's contract (Schedule B). It is also to be noted that the current performance review system for the SES is entirely focussed on the monitoring of key result areas.</p>

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<p>4. Secure greater compliance with CES/SES annual performance evaluation requirements.</p>	<p>In terms of performance management, Premier's Department went to some lengths to explain the application of the rigorous performance review process already in place for chief executives and SES. Annual performance reviews are a requirement under the Public Sector Management Act 1988. These processes are outlined in Section 42I of the Act and Circular 95-45. The Strategic Management Cycle also identifies key strategies to be addressed and the annual timing of such reviews. The current performance review system is entirely focussed on the monitoring of key result areas.</p>
<p>5. Ensure that CES performance evaluation is robust and transparent.</p>	<p>CEO performance evaluation is robust and transparent. The current performance review system is entirely focussed on the monitoring of key result areas. In addition Premier's Department draft Professional Development Model recommends the adoption of a comprehensive assessment process including 360° feedback and self-assessment as one component.</p>
<p>6. Consider expansion of desired SES competencies to include skills over and above managerial skills and ability. (These competencies could include an appreciation of public law, which governs SES, and the acumen to discern political issues, without becoming political).</p>	<p>It is agreed that competencies could be part of a selection process. Competencies are an assessment to a standard, rather than against another person. The "acumen to discern political issues without becoming political" ie the exercise of judgment is comprehensively addressed in the Code of Conduct and Ethics for Public Sector Executives (Clause 3).</p>
<p>7. Expedite improved access to the enhanced SES professional development and mobility programs.</p>	<p>The Executive Development framework is a comprehensive professional development framework for executives. Many aspects of the program have been running for some time.</p> <p>The SES mobility program is available for attached and unattached officers to move into different agencies. It is intended to be used to build capability across the sector, building a whole of government approach to issues as well as being of benefit to individual officers.</p>