



New South Wales

ATTORNEY GENERAL
MINISTER FOR INDUSTRIAL RELATIONS

Associate to Justice G M Guidice
President
Australian Industrial Relations Commission
11 Exhibition St
Melbourne Vic 3000

Dear Associate

RE: Award Modernisation – Educational Services (Other than Higher Education) – AM2008/33

On 2 May 2009, the Commission published 50 exposure draft modern awards for 39 industries. Attached is a submission of the NSW Government in respect of the exposure draft titled *Educational Services (Teachers) Award 2010*.

Yours Sincerely


(John Hatzistergos)

Submission of the NSW Government As To The Exposure Draft Titled *Educational Services (Teachers) Award 2010*

In broad terms, the NSW Government's primary concern is that the award modernisation process does not disadvantage NSW employees or employers. In past submissions, we have argued that:

5. the modern awards should provide outcomes at least as beneficial as current NSW provisions.¹

This position has also been put in our subsequent submission to the Senate Inquiry into the *Fair Work (Transitional and Consequential Provisions) Bill* 2009, and we reiterate it now, particularly noting its consistency with paras 2(c) and 2(d) of the Consolidated Request.

The NSW Government is concerned that the exposure draft titled *Educational Services (Teachers) Award 2010* does not meet this requirement, for the specific reasons set out below.

Firstly, by way of background, it is noted that the NSW Government employs approximately 56,000 teachers, making it the largest such employer in Australia. As such, the pay and conditions enjoyed by NSW teachers could be expected to be of significant influence in the Australian educational services industry.

It is thus not clear why no current NSW State teachers award appears in the summary list of awards considered as part of the process of crafting the modern Teachers Award. This is so despite submissions of the Australian Education Union urging their inclusion², and despite the presence of all other State public sector teachers awards on the summary list³.

In the NSW Government submission, the apparent omission of the current State awards removes an important bench mark from the award modernisation process. It is submitted that the Commission would rectify this omission and have regard to the following NSW State award[s] before finalising any award that would apply to teachers in NSW:

Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award: (NSW, 359 IG 1114, 30 June 2006, Serial C4345); and

Crown Employees (Teachers in TAFE and Related Employees) Salaries and Conditions Award (NSW, 360 IG 500, 11 August 2006, Serial C4346)

¹ NSW Government Submission July 2008

² Australian Education Union Submission 6 March 2009, pp33-37.

³ For example: This list inter alia includes *Teachers (Public Sector Primary and Secondary Education) Award 1993 (WA)*, *Teacher's Award – State 2003* etc. It is noted, however, that these awards are said to have become NAPSAs. It is difficult to understand how this could be the case, given that the relevant employers (the Crown in the relevant State jurisdiction) are not financial or trading corporations.

Such awards are appropriate and relevant to consider, notwithstanding that they apply to teachers that will not be covered by the proposed modern award because the NSW Industrial Relations Commission, has, in an established line of authority, consistently maintained parity between government and non-government sector teachers awards for teachers in NSW. For example, in *Teachers (Archdiocese of Sydney and Dioceses of Broken Bay and Parramatta) (State) Award 2004 and other Awards* [2004] NSWIRComm 159 a Full Bench of the NSW Commission held that:

119The parties agreed, however, that the nexus between the rates of pay of teachers in the Government and Catholic school sectors should be maintained at this time.

120 The Agreed Statement of Facts recognised this agreement in this way:

In light of our commitment to parity with the government sector, the salaries payable to Catholic school teachers are the same as for government school teachers. Except for the head teacher in the government sector and Co-ordinator 2, there are no relationships between promotions positions in the government sector and Catholic schools.

.....

122 We note that we have had the benefit of reading the decision of the Full Bench in *Re Crown Employees (Teachers in Schools and TAFE and Related Employees) Salaries and Conditions Award* [2004] NSWIRComm 114 (the "Government Schools Case") before delivering our decision in this case. We are aware, therefore, that the concurrent proceedings in the Government school sector did not proceed on the same consensual basis as did the proceedings before us and that the issue of discounting for earlier awards and agreements was squarely raised by the respondents to those proceedings.

123 Indeed, as a result of the case brought by the respondents in the *Government Schools Case*, the Full Bench made moderate reductions in the increase in rates of pay awarded to teachers under the basic incremental scale. This outcome creates a tension, therefore, between the position of the parties in this matter (that no discount is warranted) and the strongly put contention that we should have regard to the ultimate conclusions of the Full Bench in the *Government Schools Case*.

124 On balance, and not without some reservations (because of the absence of discounting factors being demonstrated here), we have determined to apply the same adjustments in rates of pay as awarded in the *Government Schools Case*. We do so for three reasons:

1. It is apparent from the case put to us that the parties wished to maintain a nexus between the salary adjustments for teachers in the government and Catholic school sectors;
2. There are similar work value considerations arising in both cases;
3. The pattern of wage adjustments between government school and Catholic teachers since 1990 has been very similar.⁴

It is necessary to have regard to the relevant NSW State awards in order to consider whether the Commission should maintain the long-standing parity between awards that apply to Government and non-Government school teachers in NSW. It is submitted that the long-standing nexus between government and non-government award rates of pay, and the parity as to such pay, would not be broken unless there was strong reasons to do so. Nothing in the 22 May Statement suggests that this issue is being, or has been, considered in the process. The proposed pay rates in the exposure award in question, the *Educational Services (Teachers) Award 2010*, are significantly lower than those in, for example, the current State Award known as the *Teachers (Archdiocese of Sydney and Dioceses of Broken Bay and Parramatta)(State) Award 2006*, whose predecessor was the subject of the Commission proceedings quoted above.

A failure to properly consider the current rates and the long-standing nexus by which parity of wage rates has been maintained will result in employees subject to the modern award in NSW being disadvantaged in comparison to relevant NAPSAs, and second the loss of an important and long-standing nexus between State government and non-government sector instruments.

While the take home pay orders proposed in the *Fair Work (Transitional and Consequential Provisions) Bill 2009* and/or transitional provisions made by the Commission may address cases of individual pay disadvantage in the short term, they cannot address the issue of the loss of the nexus between the government and non-government sectors which will have long-term consequences.

Date June 2009

⁴ Teachers (Archdiocese of Sydney and Dioceses of Broken Bay and Parramatta) (State) Award 2004 and other awards [2004] NSWIRComm 159, para 119ff. Other relevant decisions are: *Re Crown Employees (Teachers in Schools and TAFE and Related Employees) Salaries and Conditions Award* [2004] NSW IRComm 114 (the "Government Schools Case"); *Teachers (Non-Government Schools) (State) Award and Other Awards* Industrial Commission of NSW In Court Session No 161 of 1990 (unreported).