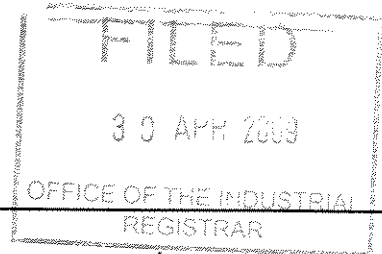


**BEFORE THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES**



No. IRC 2361 of 2008

**Re: Crown Employees (Chief
Education Officers –
Department of Education and
Training) Salaries and
Conditions Award 2009**

**APPLICATION FOR A
CONSENT AWARD**

Filed by:

The Director-General of
Education and Training and
Managing Director, TAFE New
South Wales

Contact name:

Bev Charlton
Level 7, 35 Bridge Street
SYDNEY NSW 2000
TEL: 9561 8848
FAX: 9561 8973

- A. The parties claim for a consent award
- B. Under section 11 of the *Industrial Relations Act 1996*
- C. In the terms as set out at Schedule A.
- D. Award affected:

Crown Employees (Chief Education Officers
– Department of Education and Training)
Salaries and Conditions Award 2009

E. Grounds and reasons.

See Schedule B

F. Particulars

See Attached Schedules B and C

G. Applicant:

Institute of Senior Educational Administrators
3/74 Wrights Road
Drummoyne NSW 2047

H. Respondent:

NSW Department of Education and Training
Employer
35 Bridge Street
SYDNEY NSW 2000

Signature: 

Darren Husdell
Director, Industrial Relations
NSW Department of Education and
Training

Dated: 30 April 2009

TO THE RESPONDENT(S):

IMPORTANT NOTICE:

- (1) The respondent is required, under the Rules of the Industrial Relations Commission, to file a notice of appearance at the Industrial Registry, 50 Phillip Street, Sydney, within 7 days of service of this notice on you.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel, solicitor or agent at the time and place specified in this notice or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this application, the parties will be subsequently advised of the date time and place when the Commission will hear this application. Any enquiries should be made to the Industrial Relations Commission List Clerk telephone 9258 0866.

SCHEDULE A

CROWN EMPLOYEES (CHIEF EDUCATION OFFICERS - DEPARTMENT OF EDUCATION AND TRAINING) SALARIES AND CONDITIONS AWARD 2009

AWARD

PART A

1. Arrangement

PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Purpose and Principles of this Award
3.	Definitions
4.	Qualifications
5.	Salaries and Other Remuneration
6.	Conditions of Employment
7.	Recreation Leave
8.	Deferred Salary Scheme
9.	Performance Management and Professional Development
10.	Mobility Provisions
11.	Technological Change
12.	Dispute Resolution Procedures
13.	Duties as Directed
14.	Redeployment
15.	Right of Return of Permanent Officers Temporarily Appointed to Chief Education Officer Positions
16.	No Further Claims
17.	Anti-Discrimination
18.	Area, Incidence and Duration

PART B

MONETARY RATES

Table 1 - Salary Scale

2. Purpose and Principles of This Award

- 2.1 This award establishes the conditions of employment, including salaries, of chief education officers.
- 2.2 The parties to this award are the Department and the ISEA.
- 2.3 The parties will support chief education officers by:
 - (a) providing clear lines of communication on matters affecting individuals and their work;
 - (b) developing individual and collective talents;
 - (c) promoting co-operation and teamwork;
 - (d) recognising individual and team contributions; and

- (e) promoting career planning and development.
- 2.4 This award aims to assist the Department and chief education officers in pursuing the goal of continuous improvement by:
- (a) supporting schools and TAFE in carrying out the government agenda;
 - (b) facilitating teaching and learning processes which will improve student opportunities and outcomes;
 - (c) improve organisation-wide productivity and efficiency;
 - (d) assisting and accelerating cultural change in the workplace towards greater participation and flexibility;
 - (e) promoting better and more satisfying jobs;
 - (f) developing and pursuing constructive changes aimed at improving teaching and learning in schools and TAFE on a co-operative, continuing basis by using a consultative approach;
 - (g) maintaining essential standards of employment conditions;
 - (h) providing certainty, stability and equity in salaries and conditions arrangements for the period of the award;
 - (i) laying a foundation for further workplace improvement through a commitment to improved teaching and learning in schools and TAFE, greater customer focus and commitment to quality service and to joint development of performance measures;
 - (j) enhancing the opportunities of chief education officers for career progression and mobility; and
 - (k) improving the effectiveness of the Department.

3. Definitions

- 3.1 "Act" means the *Teaching Service Act* 1980.
- 3.2 "Chief Education Officer" means a person appointed as such by the Director-General under the Act.
- 3.3 "Department" means the New South Wales Department of Education and Training.
- 3.4 "Director-General" means the Director-General of the New South Wales Department of Education and Training.
- 3.5 "Industrial Relations Commission" means the Industrial Relations Commission of New South Wales, established by the *Industrial Relations Act* 1996.
- 3.6 "ISEA" means the Institute of Senior Educational Administrators of New South Wales.
- 3.7 "Officer" means and includes all persons permanently or temporarily employed in the Teaching Service under the provisions of the Act.
- 3.8 "Parties" means the Department and the ISEA.
- 3.9 "Senior Officers" means employees employed as senior officers whose working conditions are prescribed under the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006, or its successor.

3.10 "TAFE" means the Technical and Further Education Commission of New South Wales.

4. Qualifications

- 4.1 The parties agree that the qualification requirements of positions should accurately reflect their requirements and should conform with equal employment opportunity principles.
- 4.2 The position criteria for future vacant chief education officer positions will, in the main, reflect the need for relevant educational experience.
- 4.3 Qualifications for appointment as a chief education officer will be as determined by the Director-General.

5. Salaries and Other Remuneration

- 5.1 Except as otherwise provided in subclause 5.5 of this clause, chief education officers must be employed at an annual salary not less than that for the classifications as set out in Table 1 - Salary Scale, of Part B, Monetary Rates.
- 5.2 Subject to the provisions of the Act and to the regulation made thereunder, chief education officers covered by this award will be paid the salary as set out in the said Table 1.
- 5.3 The salaries payable in Table 1 include remuneration of all incidents of employment other than:
 - (a) annual leave loading;
 - (b) travel or subsistence or motor vehicle allowances;
 - (c) allowances in relation to relocation expenses; and
 - (d) climatic living and disability (Broken Hill) allowances.
- 5.4 Persons appointed as chief education officers subsequent to the making of this award will be appointed to the appropriate salary level based on their background, experience and, where applicable, previous salary level.
- 5.5 Chief education officers not on salary level 3 shall be entitled to progress to a higher level of salary after each 12 months of service subject to satisfactory performance.
- 5.6 Salary packaging

For the purposes of this clause "salary" means the salary or rates of pay prescribed by Part B, Table 1 of this award and superable allowances.

- 5.6.1 An employee may, by agreement with the employer, enter into a salary packaging arrangement including salary sacrifice of superannuation where they may convert up to 100% of their salary to other benefits.

Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of salary available to be packaged. Such payroll deductions may include but are not limited to, compulsory superannuation payments, HECS payments, child support payments, judgment debtor/garnishee orders, union fees, health fund premiums.

- 5.6.2 The terms and conditions of the salary packaging arrangement, including the duration as agreed between the employee and employer, will be provided in a separate written agreement, in accordance with the Department's salary packaging guidelines. Such agreement must be made prior to the period of service to which the earnings relate.

5.6.3 Salary packaging must be cost neutral for the employer. Employees must reimburse the employer in full for the amount of:

5.6.3.1 any fringe benefits tax liability arising from a salary packaging arrangement; and

5.6.3.2 any administrative fees.

5.6.4 Where the employee makes an election to salary package the following payments made by the employer in relation to an employee shall be calculated by reference to the annual salary which the employee would have been entitled to receive but for the salary packaging arrangement:

5.6.4.1 Superannuation Guarantee Contributions;

5.6.4.2 any salary-related payment including but not limited to allowances and workers compensation payments; and

5.6.4.3 payments made in relation to accrued leave paid on termination of the employee's employment or on the death of the employee.

6. Conditions of Employment

6.1 The provisions of this award prevail over any award, industrial agreement, public sector agreement, determination under the *Teaching Service Act 1980* or the Public Sector Workforce Office or award of the Industrial Relations Commission which deal with the same matters in so far as they purport to apply to a chief education officer bound by this award.

6.2 Chief education officers will have access to working hours consistent with the flexible working hours conditions afforded Senior Officers, subject to operational requirements and departmental convenience.

6.3 Deduction of Association Membership Fees.

6.3.1 The ISEA shall provide the employer with a schedule setting out ISEA fortnightly membership fees payable by members of the ISEA in accordance with ISEA's rules.

6.3.2 The ISEA shall advise the employer of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of ISEA fortnightly membership fees payable shall be provided to the employer at least one month in advance of the variation taking effect.

6.3.3 Subject to 6.3.1 and 6.3.2 above, the Department shall deduct ISEA fortnightly membership fees from the pay of any employee who is a member of the ISEA in accordance with the ISEA'S rules, provided that the employee has authorised the Department to make such deductions.

6.3.4 Monies so deducted from employees' pay will be forwarded regularly to the ISEA together with all necessary information to enable the ISEA to reconcile and credit subscriptions to employees' ISEA membership accounts.

6.3.5 Unless other arrangements are agreed to by the Department and the ISEA, all ISEA membership fees shall be deducted on a fortnightly basis.

6.3.6 Where an employee has already authorised the deduction of ISEA membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

7. Recreation Leave

7.1 Chief education officers are entitled to four weeks recreation leave per annum.

7.2 Recreation leave will be taken at a time and for a period agreed between the chief education officer and the supervisor.

7.3 Payment will be made at the chief education officer's salary rate at that time.

8. Deferred Salary Scheme

8.1 The Department's deferred salary scheme provides chief education officers with an opportunity to take a year away from work for professional development and other experience such as industry experience, post graduate study, working in overseas education and training systems or other activities.

8.2 Under the deferred salary scheme, chief education officers are able to defer 20 per cent of their salary for the first four years and be paid the deferred salary in the fifth year whilst on leave.

9. Performance Management and Professional Development

9.1 The performance of chief education officers will be reviewed in accordance with the DET performance management and development scheme.

9.2 The parties confirm a commitment to professional and career training and development for chief education officers and to their obligation to maintain and update their professional skills for the benefit of students, staff and the Department.

9.3 The Department is committed to providing access to and support for professional, management development and technological training, and to enhance the career mobility of chief education officers.

9.4 Where the chief education officer is required to undertake a professional development activity by the Department, the compulsory fees involved will be met by the Department. Where the professional development activity is voluntary, the Department may, at its discretion, refund all or part of the compulsory fees incurred by chief education officers approved to undertake such training and professional development programs.

10. Mobility Provisions

10.1 The parties agree to develop and implement strategies to enhance the mobility between chief education officers and senior administrators in the Department and institute managers in TAFE.

11. Technological Change

11.1 The ISEA agrees to support the implementation of the Department's Technology Strategy.

11.2 The Department will assist chief education officers in meeting the demands of the Department's technology strategy by providing access to equipment and professional development opportunities designed to increase chief education officers' efficiency and productivity.

12. Dispute Resolution Procedures

12.1 Subject to the provisions of the *Industrial Relations Act 1996*, should any dispute (including a question or difficulty) about an industrial matter arise, then the following procedure shall apply.

12.1.1 Should any dispute, question or difficulty arise as to matters occurring in a particular workplace, then the chief education officer will raise the dispute, question or difficulty with the supervisor as soon as practicable.

12.1.2 The supervisor will discuss the matter with the chief education officer within two working days with a view to resolving the dispute, question or difficulty or by negotiating an agreed method and timeframe for proceeding.

12.1.3 Should the above procedure be unsuccessful in producing a resolution of the dispute, question or difficulty or should the matter be of a nature which involves multiple workplaces, then the chief education officer may raise the matter with an appropriate officer of the Department with a view to resolving the dispute, question or difficulty or negotiating an agreed method and timeframe for proceeding.

12.1.4 Where the procedures in paragraph 12.1.3 of this subclause do not lead to resolution of the dispute, question or difficulty, the matter will be referred to the Deputy Director-General, Workforce Management and Systems Improvement and the Secretary of the ISEA. They or their nominees will discuss the dispute, question or difficulty within five working days with a view to resolving the matter by negotiating an agreed method and timeframe for proceeding.

12.1.5 Should the above procedures not lead to resolution then either party may make application to the Industrial Relations Commission of New South Wales.

13. Duties as Directed

13.1 The Director-General, delegate, nominee or representative may direct a chief education officer to carry out such duties as are within the limits of the chief education officer's skills, competence and training, provided that such duties do not promote deskilling.

13.2 The Director-General may determine the location at which such duties will be carried out.

13.3 Any direction issued by the Director-General pursuant to subclauses 13.1 and 13.2 of this clause shall be consistent with the Director-General's responsibility to provide a safe, healthy working environment.

14. Redeployment

14.1 To allow greater flexibility to place a permanent chief education officer displaced through organisational change or the regrading of a position, the parties agree, subject to personal and geographic considerations, to place the chief education officer in:

14.1.1 another non school-based position under the Act of annual salary level for which the officer is qualified; or

14.1.2 an appropriate school-based position having regard to the chief education officer's salary, experience and background.

14.2 In implementing paragraph 14.1.2 of subclause 14.1 of this clause, the Department will take into account the experience of the chief education officer in both school-based and non-school based positions, the salary level of the chief education officer and the salary levels and locations of appropriate vacant school based positions, including executive positions.

15. Right of Return of Permanent Officers Temporarily Appointed to Chief Education Officer Positions

15.1 A permanent officer of the Department temporarily appointed to a chief education officer position for a period not exceeding twelve consecutive months will have right of return to their substantive position in the Department at the conclusion of the temporary appointment.

15.2 A permanent officer of the Department temporarily appointed to or acting in a chief education officer position for a period exceeding 12 consecutive months will have right of return to a position of equivalent salary and status as the substantive position occupied prior to the temporary appointment or acting arrangement.

16. No Further Claims

- 16.1 Except as provided by the *Industrial Relations Act 1996*, prior to 31 December 2011 there shall be no further claims by the parties to this Award for changes to salaries, rates of pay, allowances, or conditions of employment in relation to matters expressly contained in this award.

17. Anti-Discrimination

- 17.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 17.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed in clause 12, the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 17.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 17.4 Nothing in this clause is to be taken to affect:
- any conduct or act which is specifically exempted from anti-discrimination legislation;
 - offering or providing junior rates of pay to persons under 21 years of age;
 - any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*, or
 - a party to this award from pursuing matters of unlawful discrimination in any state or federal jurisdiction.
- 17.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

18. Area, Incidence and Duration

- 18.1 This award:
- 18.1.1 covers all chief education officers employed by the Department under the Act;
 - 18.1.2 rescinds and replaces the *Crown Employees (Chief Education Officers – Department of Education and Training) Salaries and Conditions Award 2006* published 27 February 2009 (367 I.G. 294) and all variations thereof; and
 - 18.1.3 commences on 1 January 2009 will remain in force until 31 December 2011.

PART B

MONETARY RATES

Table 1 - Salary Scale

Chief Education Officer	Salary from first pay period on or after	Salary from first pay period on or after	Salary from first pay period on or after
	1.1.09	1.1.10	1.1.11
	\$	\$	\$
Increase	4.4%	3.8%	3.8%
Level 3	135,608	140,761	146,110
Level 2	130,023	134,964	140,093
Level 1	120,713	125,300	130,061

Printed by the authority of the Industrial Registrar.

SCHEDULE B

GROUNDS AND REASONS

1. The parties to the *Crown Employees (Chief Education Officers – Department of Education and Training) Salaries and Conditions Award* (“the current award”) seek to make a new consent award to replace the current award.
2. The nominal term of the current award expired on 31 December 2008.
3. This consent application arises from proceedings brought in the Commission by the Institute of Senior Educational Administrators (“the ISEA”) in Matter No. IRC 2361 of 2008, *Crown Employees (Chief Education Officers – Department of Education and Training) Salaries and Conditions Award 2009*.
4. Following discussions, the Department and the Institute of Senior Educational Administrators have reached agreement on the increases to salaries contained in the award and the employee related reforms required by the *NSW Government Wages Policy 2007* to fund salary increases above 2.5% per annum.
5. This consent application seeks three increases to the salaries and as follows:
 - Increase of 4.4% from the first pay period on or after 1 January 2009.
 - Increase of 3.8% from the first pay period on or after 1 January 2010.
 - Increase of 3.8% from the first pay period on or after 1 January 2011.
6. The Department of Education and Training paid by administrative action, a 2.5% salary increase from 1 January 2009 to all employees covered by the current award.
7. The Department's application for a consent award reflects the agreement reached between the parties and is in full and final settlement of Matter No. IRC 23 61 of 2008.

8. The salaries and conditions of employment sought for employees in this application are fair and reasonable in the circumstances and the public interest.

9. Upon such other grounds and reasons as the Commission deems appropriate.

SCHEDULE C

PROVISIONS FOR EMPLOYEE RELATED SAVINGS

The increases to salaries and relevant allowances contained in the *Crown Employees (Chief Education Officers – Department of Education and Training) Salaries and Conditions Award* at Schedule A will be funded through the realisation of employee related savings through the implementation of the following reforms.

1. Workers compensation “top up” pay

Chief Education Officers can use their available leave balances to top up workers compensation payments as follows.

- (a) During the first 26 weeks absence, Chief Education Officers may use all available paid sick or long service leave balances to top up workers compensation pay to the level of their usual fortnightly salary.
- (b) After the first 26 weeks absence, if not exhausted, Chief Education Officers may use available paid sick leave credits to top up workers compensation payments to a maximum of:
 - i) 80% of their usual fortnightly salary from week 27 to week 30 inclusive; and
 - ii) 60% of their usual fortnightly salary from week 31 to 34 inclusive.
- (c) Top up pay will not be available beyond 34 weeks of absence on workers compensation benefits.

2. Annual leave loading

The payment to Chief Education Officers for annual leave loading shall not exceed the maximum salary amount payable to a staff member at Clerk Grade 12 level.

3. Travel Compensation/Subsistence Allowance

The existing travel compensation and subsistence allowance provisions for Chief Education Officers will be replaced with those provisions applicable to the NSW public service.

4. Performance Management Scheme

The existing performance management scheme for Chief Education Officers will be replaced with the performance management scheme applicable in the Department of Education and Training.