

**IN THE FAIR WORK COMMISSION  
4 YEARLY REVIEW OF MODERN AWARDS  
AWARD STAGE – GROUPS 3 AND 4**

**Matter Nos:** AM2014/281 (*Professional Employees Award 2010*)  
AM2015/6 (Education Group)

**Applicants:** The Association of Australian Medical Research Institutes (**AAMRI**) and the Association for Professional Engineers, Scientists and Managers, Australia (**APESMA**)

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**OUTLINE OF SUBMISSIONS IN REPLY  
THE ASSOCIATION OF AUSTRALIAN MEDICAL RESEARCH INSTITUTES  
AND  
THE ASSOCIATION FOR PROFESSIONAL ENGINEERS, SCIENTISTS AND MANAGERS  
AUSTRALIA**

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**INTRODUCTION**

1. AAMRI and APESMA set out the following submissions in accordance with Direction [5] the Further Amended Directions of Commissioner Johns dated 20 April 2016 as part of the 4 yearly review of modern awards (**Review**).

2. AAMRI and APESMA makes these submissions in reply to the National Tertiary Education Industry Union (**NTEU**)'s Submissions in Response dated 3 June 2016 (**NTEU Submissions in Response**).
3. AAMRI and APESMA also refer to and rely on:
  - (a) their submissions dated 11 March 2016 (**AAMRI & APESMA Submissions in Support**) in support of their application of 16 October 2015 (**AAMRI & APESMA Application**) to vary the *Professional Employees Award 2010* (**PEA**); and
  - (b) their submissions dated 3 June 2016 (**AAMRI & APESMA Submissions in Response**) in response to the NTEU's applications (**NTEU Applications**) to vary the *Higher Education Industry—Academic Staff—Award 2010* (MA000006) (**Academic Award**) and the *Higher Education Industry—General Staff—Award 2010* (MA000007) (**General Staff Award**) (or collectively, the **Higher Education Awards**).
4. The role of AAMRI and APESMA, and the background to this matter are set out in detail at [1] to [13] of the AAMRI & APESMA Submissions in Support.

## **SUBMISSIONS IN REPLY**

### **Summary**

5. The Commission ought not refuse the AAMRI & APESMA Application for the following reasons:
  - (a) the NTEU's attempted distinction between work as a researcher and work as a scientist (and between science degrees and research degrees) ignores precedent, and the evidence of those working as scientific researchers;
  - (b) the PEA is the appropriate award for medical researchers at independent medical research institutes (**independent MRIs**);
  - (c) the NTEU has :
    - (i) ignored the evident industry differences between independent MRIs and higher education institutions, such as job roles, purpose, funding, regulation, and "educational elements"; and
    - (ii) focused on immaterial considerations, such as:
      - (A) academic titles;

- (B) links that independent MRIs have with universities (as independent MRIs also have such links with health services, government and commercial organisations); and
  - (C) that there is a history of the NTEU bargaining with a small number of independent MRIs;
- (d) the NTEU Application is the application which drastically alters existing wage relativities, and the onus rests on the NTEU to justify its departure from existing award coverage;
- (e) the classifications in the Higher Education Awards:
- (i) are inappropriate for employees of independent MRIs, in respect of the Academic Award;
  - (ii) are so broadly drafted as to be able to cover any employee, not particularly employees of independent MRIs, in respect of the General Staff Award; and
- (f) the AAMRI & APESMA Application is in line with the principles and form of the PEA and appropriately describes the work performed by MRI medical researchers, in contrast to the NTEU Applications.
6. We note in response to the NTEU's comments at [10], that AAMRI and APESMA have intentionally categorised MRIs as "independent" to differentiate them from those operating as part of a health service, government body or higher education institution, which are covered by the *Health Professionals and Supports Services Award 2010*, *State Government Agencies Award 2010*, relevant enterprise awards, or the Higher Education Awards.

### **Purported distinction between science and medical research**

#### Work as a scientific researcher is work as a scientist

7. The NTEU has sought to characterise the work of MRI research scientists as "research" work and distinguish it from "science" at [19] and [33] to [35]. AAMRI and APESMA submit that 'science' and 'research' are in no way mutually exclusive terms, as the NTEU tries to suggest, and a scientist clearly includes a person who performs scientific research of the kind performed in independent MRIs.
8. To suggest that scientific research is not science seems to ignore the authority of the Australian Conciliation and Arbitration Commission (**ACAC**), referred to at [45] to [47] of the

AAMRI & APESMA Submissions in Support, that science is broader than and ***includes*** scientific research and investigation.

9. The witness statement of Ross Smith at [3] makes the point that in his experience, "*it makes no difference whether [scientific duties are] carried out in a Medical Research Institute or in other fields of research science such as working in other types of government or privately funded research institutes, at a University or working in the private sector*".
10. The NTEU submits at [39] that there is a purported "difficulty in confining the work of researchers in MRIs to "science"". We have comprehensively reviewed the position descriptions provided (See the Attachment to this Outline of Submissions in Reply), and note that each and every position description which for a researcher, research officer, research assistant, or research technician expressly refers to science or fields of science such as biology, biochemistry, molecular biology, genetics, physical chemistry. Many of these position descriptions refer to the researchers at independent MRIs as scientists and note the scientific work of the relevant independent MRI
11. For instance, the advertisement for a Senior Biostatistician with the Murdoch Children's Research Institute specifically refers to the position as one of the "Data Science researchers". The NTEU also notes the breadth of MCRI's research themes, all of which are sciences (with the possible exception of Population Health, a social science which applies the scientific method, and which will be covered if the AAMRI & APESMA Application is successful). It is therefore unclear how MCRI or the position referred to does anything but confirm that MCRI employs scientists who are primarily engaged in scientific research, in medical and related sciences.

Scientific researchers are covered by the PEA

12. The NTEU has submitted that the PEA does not in fact cover MRI researchers on the basis that they are working towards or in possession of a PhD and that their positions do not require their science degrees (at [20], [37], [43]). That is, they appear to be claiming:
  - (a) that a PhD (or other postgraduate qualification) in a scientific field is not a science degree; and
  - (b) that once a researcher has obtained a PhD (or other postgraduate qualification), any undergraduate science degree is irrelevant to the duties of an MRI researcher; and
  - (c) that all MRI researchers either possess or are working towards a relevant PhD (at [20]).

13. We strongly dispute these arguments. A degree in a scientific field, whether at an undergraduate or PhD level and whether containing "science" in the name or not, is required by the vast majority of medical researchers at independent MRIs. We note the submissions of the Australian Industry Group (**AiG**) dated 6 May 2016, the main employer association involved in the development of the PEA (at [3]), that "*[n]o doubt many employees of medical research institutes are already covered by the PEA, that is, those employees with certain professional science qualifications*".
14. While many MRI researchers possess or are studying a PhD, it is also an erroneous and unfounded assumption that all MRI researchers are doing so.
15. The NTEU seems to rely on the presumption that the degree in science required in order to be covered by the PEA must be a Bachelor of Science. More specifically, they appear to be claiming that a PhD in a scientific field is not a science degree. AAMRI and APESMA submit that this is inconsistent with the consideration by ACAC of the meaning of the term "degree in science" in *The Municipal Officers' Association of Australia v The Association of Professional Scientists of Australia*.<sup>1</sup> At p 3, ACAC found that:

*[T]here is no precise, generally accepted, meaning for the words "degree in science" when they stand alone. However, in a particular context a precise meaning may be easily ascertained. In the context of the rules of the applicant organization, a "degree in science" means one that is an appropriate qualification to carry out investigation in a field of science. The important factor is not, of course, the name of the degree but the field of study leading to the conferring of that degree. Whether the degree is in that sense "a degree in science" may not be answered readily by the man in the street but, in my view, it would not provide any difficulty for the category of persons who might be expected to seek membership of the organization or for their employers.*[Emphasis added]

16. In the sense used by ACAC in this decision, a PhD or other research degree in a scientific field is a "degree in science" that is appropriate to carry out investigation in the relevant scientific field. This would clearly include the examples referred to by the NTEU at [44] (although not provided in evidence) of PhDs "*in the specific area of research (for example in a 'biological field related to cancer'*".
17. AAMRI and APESMA also vehemently dispute the NTEU's suggestion at [20] that a medical researcher's undergraduate degree has little relevance to their work. Possession of, eg, a Bachelor of Science (or a related Bachelor degree, with or without Honours) is ordinarily

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<sup>1</sup> M077 Mis 360/82 MD Print F0592.

the base qualification acceptable for employment as a researcher with an independent MRI– see the witness statement of Douglas Hilton at [48]. Such degrees underpin the role of medical researchers and are the source of underlying scientific principles essential to their research – eg the scientific method, the knowledge specific to their scientific field, and the application of statistics. For example, one could not perform work as a genetics researcher without the understanding of DNA obtained in a Bachelor degree majoring in biology.

18. The relevance of a medical researcher's undergraduate degree to their medical research duties is no less if they have a PhD. In order to undertake a PhD, one requires a previous undergraduate degree with Honours; in the case of MRI researchers, this generally must be in a field relevant to the field of medical research, and is generally a degree in science. Therefore, the Bachelor level science degree underpins their PhD and, by extension, their scientific research duties at an independent MRI. The understanding of the scientific method and the relevant scientific field (e.g. biology) is no less relevant because they have a PhD. There is no basis in the NTEU's argument that obtaining a PhD makes the underlying Bachelor degree irrelevant for the purposes of a scientific researcher performing their duties and, accordingly, their coverage by the PEA.
19. By way of further elaboration the proposed definitions contained in Clause 3.7 and the proposed classification definitions contained in Schedule C – Medical Research Institutes are very relevant to an understanding of this issue. For instance the entry qualifications for a “Graduate medical research employee” and an “Experienced medical research employee” reflect the qualifications required for the different levels of medical research work. These definitions are then to be read in the context of the hierarchy of responsibilities which are outlined in the proposed 4 level classification structure.
20. For clarity, AAMRI and APESMA note that the characterisation of the qualifications of medical researchers at [20] of the NTEU Submissions in Response is incorrect. The evidence of Douglas Hilton was that:
  - (a) 70.1% of medical researchers at independent MRIs possess a degree in science (in the sense outlined above) **from an Australian, New Zealand or United Kingdom university** which is required for the adequate discharge of their duties; and
  - (b) a further 17.8% of medical researchers at independent MRIs possess a degree in science (in the sense outlined above) from **universities other than Australia, New Zealand or the United Kingdom.**

## The PEA is the appropriate award for medical researchers

21. The NTEU suggests at [9] that the Academic Award is the most appropriate award for medical research scientists in independent MRIs and universities because they are both engaged in "academic research". This is incorrect because:
- (a) it is appropriate for the PEA to continue to cover all scientific research, except where this coverage is departed from by an industry award; and
  - (b) it is inappropriate to cover medical research scientists outside the higher education sector with the same terms and conditions as "academic researchers".
22. As set out above, the PEA is the appropriate award for scientific researchers, as it has occupational coverage of scientists. This submission is supported by the submission of AiG dated 7 July 2016 that *"the appropriate modern award to cover medical research institutes and their relevant medical research employees is the PEA"*.
23. Medical research scientists employed by health services, higher education institutions, and government bodies such as the CSIRO are excluded from the occupational coverage of the PEA due to their coverage by applicable industry awards. They would otherwise be covered by the PEA. The onus is on the NTEU to justify departure from the existing coverage. As set out in the AAMRI & APESMA Submissions in Response at [39] to [77], the NTEU has not done so.
24. Further, AAMRI and APESMA submit that medical research is not "academic research". No definition of "academic research" has been provided by the NTEU. The Macquarie Dictionary provides the following meanings for the term "academic":
1. *relating to an advanced institution of learning, as a college, university, or academy; relating to higher education.*
  - ...
  3. *theoretical; speculative; without practical bearing: an academic question.*
25. Academic research is therefore research conducted at or in relation to an advanced institution of learning, in higher education. This definition accords with the kind of research that is covered by the Higher Education Awards, in the definition of higher education: *"research to support and inform the curriculum"*.
26. The distinctions in work between medical researchers at independent MRIs and research academics at higher education institutions is set out at [17] to [22] of the further witness statement of Douglas Hilton. This includes that research academics are focused on

scholarly publication, and the fact that many research academics are also engaged in teaching.

27. At [11], the NTEU also distinguishes between what it calls the "academic research" of independent MRIs and the work of for-profit corporations. The witness statement of Brendan Crabb at [20] outlines how the research work of medical researchers may be considered similar to that of researchers in for-profit corporations (such as a pharmaceutical company).
28. In his testimony before the Transitional Review, when comparing the research conducted at independent MRIs with that conducted at universities, Tom Kay, the Director of the St Vincent's Institute of Medical Research, stated that:

*[In a medical research institute t]here will always be greater focus on - most of the research institutes are co-located with hospitals, you know at least a majority of them and the focus of that activity in medical research institutes is to do with disease or health, you know the flipside of disease. The emphasis in a university will never be - on a university campus the emphasis will always be somewhat less on disease and somewhat more on the advancement of knowledge, the sort of more abstract aspects of - the less applied if you like aspects of medical research.*

...

*So I think medical research, these are professional workplaces working on specific problems, trying to solve particular applied problems. They're really not places for people doing blue sky research or in a sort of more academic sense. They are not really academic in that sense, they are much more focussed on the application to health and to disease.<sup>2</sup>*

29. AAMRI and APESMA submit that the work of medical researchers has more in common with the work of other scientists covered by the PEA, than with the research academics covered by the Academic Award. That Award covers many researchers in non-scientific fields such as law, commerce, and the humanities. For this reason, the AAMRI & APESMA Application seeks to extend a common occupational award, which already applies to the vast majority of MRI researchers and other scientists, to the small proportion of MRI researchers who are not already covered, because all are doing the work of scientists and applying the scientific method.
30. The extension of the PEA to the small proportion of MRI researchers who are not already covered is consistent with the evolution of the different streams within this modern award. This is reflected in the recognition for example within Clause 3.3 of the PEA which defines

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<sup>2</sup> Transitional Review, Transcript of 29 April 2013 at [PN541].

amongst other things an “Experienced information technology employee”, “Graduate information technology employee” and Professional information technology employee”. In this regard the Information technology and telecommunication services stream recognises in addition to those who possess Professional engineering and Professional scientific qualifications the more generic information technology professional qualifications.

31. In addition the creation of the proposed Medical research industry stream has had the added advantage of allowing for the development of more sector specific classification descriptors providing greater context in its description of the typical Medical research career path.
32. In contrast, the NTEU seeks to have an industry award that applies to all academics in the higher education industry, from scientific researchers to legal lecturers to English tutors, only a small proportion of whom use the scientific method, to also apply to medical research scientists employed by some independent MRIs, based on the arbitrary boundary of affiliation set out in the NTEU's proposed definition of research institute.

#### **MRIs are clearly distinct from universities**

33. The NTEU suggests that there is a clear industry fit (at [8]) and no industrial difference (at [12]) between higher education institutions and independent MRIs. AAMRI and APESMA have clearly set out that independent MRIs operate in diverse circumstances that can be drastically distinct from those of the higher education industry.
34. The NTEU claims at [9] that the work, job roles, purpose and funding sources of independent MRIs are identical. This has been comprehensively rebutted at:
  - (a) [24] to [32] above, in respect of work and job roles;
  - (b) [81] to [85] of the AAMRI & APESMA Submissions in Response, in respect of purpose; and
  - (c) [89] to [94] of the AAMRI & APESMA Submissions in Response, in respect of funding.
35. The AAMRI & APESMA Submissions in Response also set out the differences in regulatory environment (at [86] to [88]) and tax treatment (at [95] to [97]) which demonstrate a relevant industrial difference.

### Purpose

36. In short, the AAMRI & APESMA Submissions in Response make it clear that the mission of independent MRIs is focused on the advancement of the cure, diagnosis, prevention and treatment of disease. The production of new knowledge is **how** independent MRIs go about achieving their purpose – it is not their purpose in and of itself. The purpose of independent MRIs is also to translate that new knowledge into improved health outcomes, which is why so many MRIs conduct public health activities and health service provision, set out in Annexure 1 to Douglas Hilton's further witness statement. The NTEU Submissions in Response do not address the substantial other activities of independent MRIs.
37. In contrast, the NTEU has stated that the **purpose** of universities is the production of new knowledge.<sup>3</sup> The purpose of such research is set out in the definition of higher education industry in the Higher Education Awards; ie "*performing research to support and inform the curriculum*". It may also be academic in the sense of being "*theoretical; speculative; and without practical bearing*", as defined in the Macquarie Dictionary, whereas research at an independent MRI must be directed at the advancement of the cure, diagnosis, prevention and treatment of disease.

### "Educational elements"

38. The NTEU claims that research work at independent MRIs "*includes important educational elements*" at [19], and that this supports the contention that they belong to the same industry as higher education institutions. However, as identified at [30] to [34] of the witness statement of Brendan Crabb, education is a secondary or other activity of independent MRIs. To the extent that independent MRIs engage in research training, community education and professional development, these activities are quite distinct from teaching. The relatively minor significance of education to the activities of independent MRIs is why little mention was made of it in the AAMRI & APESMA Submissions in Support.
39. Further, as set out in the AAMRI & APESMA Submissions in Response at [69] to [75], not all MRI researchers supervise research students, and to the extent that some do, this is by virtue of their appointment at a higher education institution, and in order to obtain the assistance of honours and research higher degree students in their research work. Independent MRIs are unable to enrol students. Researchers in health services and government bodies also train and supervise students, in some cases routinely, yet there is no application for such employees to be covered by the Higher Education Awards.

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<sup>3</sup> Transitional Review, NTEU's Final submissions (3 June 2013) at [61].

40. The NTEU makes the point at [36] that "*research work also involves passing knowledge on to students and the next generation of researchers*", and at [38] that independent MRIs are "*training the 'next generation' of researchers*". These arguments do little to advance the NTEU's claim – it is expected in any professional supervisory relationship in particular during the initial phases of professional employment that the supervisor passes on knowledge to their supervisee, and that employers will train their employees in the skills necessary to perform their role. This situation is already reflected in the classification descriptors outlined in Schedule B of the PEA for instance at Level 3 and Level 4 and is a common feature of professional employment.
41. The NTEU also makes the point at [40] that some MRI researchers hold co-appointments with universities. However, no evidence has been given for the claim that independent MRI researchers *generally* have joint appointments with universities, or that this is different from the joint appointments with universities or independent MRIs held by researchers in health services, the private sector and government. We also note that nothing turns on the NTEU's claim in this respect.

#### Academic titles

42. The NTEU has further sought to argue that independent MRIs are industrially similar to higher education institutions because MRI researchers may hold academic titles, at [11] and [19].
43. It is unclear from the NTEU's application what it means by "academic title". AAMRI and APESMA presume that the NTEU is referring to titles conferred by universities, such as "Professor" and "Associate Professor". AAMRI and APESMA submit it is not true that MRI researchers "routinely" have such titles, or even that a majority of MRI staff do so.
44. Further, it is inconsequential that **some** MRI researchers hold academic titles. The fact that no application is made in respect of other researchers who hold such titles demonstrates that this factor ought to be disregarded in determining award coverage. Researchers in commercial organisations, government organisations, hospitals and other entities also hold such titles, but this does not mean that those entities are more or less aligned with higher education than others. Nor does it mean that the professionals who hold such titles are undertaking "academic research" as discussed above, or engaging in the supervision of students. These titles are awarded by universities as an acknowledgement of an individual's career achievement and do not indicate a particular affinity with higher education.

Similarities that are common to universities, health services, commercial organisations etc

45. Organisational affiliations, board appointments, research collaborations and a number of other organisational or employee relationships set out in previous submissions are common between independent MRIs, health services, government agencies, commercial organisations, and higher education institutions. None of these types of relationships is unique to universities and independent MRIs. Such relationships also exist between independent MRIs and other entities, and between universities and other entities. Therefore, such relationships cannot be used to justify independent MRIs being covered by the Higher Education Awards if such coverage would not extend to these other entities.
46. AAMRI and APESMA submit that it is immaterial that AAMRI membership includes university institutes in addition to the majority of independent MRIs (NTEU Submissions in Response at [14]). This is because AAMRI membership also includes institutes that are part of government agencies and institutes that are parts of health services, as set out at [21] of the witness statement of Douglas Hilton. AAMRI's membership base, which can also include medical research hubs, is irrelevant to the different industrial relations and Award coverage of these different sectors, and in no way implies that institutes in these sectors are homogenous or from the same industry.
47. Similarly, it is immaterial that some independent MRIs allow universities to appoint board membership. As acknowledged in the NTEU submission at [13], both the University of Melbourne and Royal Melbourne Hospital are able to appoint board members of the Walter and Eliza Hall Institute. Certain independent MRIs also allow for State governments or the National Health and Medical Research Council to appoint board members. Further, the witness statement of Brendan Crabb at [12] sets out that the majority of Burnet's Board of Directors is drawn from the corporate world. Such board members are required to act in the best interests of the independent MRI, not the organisation which appointed them.

History of bargaining

48. The NTEU submit at [27] to [30] that there has been a history of coverage of a minority of independent MRIs by terms applied to higher education institutions, at [27] to [30], and collective bargaining has occurred between a minority of independent MRIs and the NTEU, at [53] to [58].
49. AAMRI and APESMA have set out the historical award coverage of researchers in independent MRIs at [48] to [54] of the AAMRI & APESMA Submissions in Support. These submissions demonstrate that, save for those few Victorian and WA independent MRIs specifically named as respondents to the *Universities and Affiliated Institutions Academic*

*Research Salaries (Victoria and Western Australia) Award 1989*, medical researchers at independent MRIs were covered by the pre-reform scientists awards. The NTEU has provided no argument against that coverage. The NTEU Applications would have the effect that the named exceptions to pre-reform award coverage would be imposed on all independent MRIs, including the majority that were and are not covered by such terms.

50. Similarly, at present a few independent MRIs are subject to enterprise agreements that contain classifications that are similar to those in the Higher Education Awards. However, the vast majority are not. Further, as set out at [105] of the AAMRI & APESMA Submissions in Response, the terms of these enterprise agreements have departed from those in the Higher Education Awards.
51. Further, AAMRI and APESMA question the relevance of the NTEU's assertion of its involvement in bargaining for enterprise agreements at some independent MRIs. The capacity for either the NTEU or APESMA to represent medical researchers has not been questioned. Neither the PEA nor the Higher Education Awards are expressed to cover any registered employee organisations. The NTEU has made the unsupported assertion that the AAMRI & APESMA Application is "*an inappropriate grasp at extending union coverage*". The scope of the award does not dictate union coverage.
52. We also note the witness statement of Chris Walton that APESMA has been actively involved in issues affecting the science sector, including independent MRIs, for many years. For instance at [16] of the statement of Chris Walton mention is made of APESMA's role as an active member of the Research Alliance. At [19] the Association's work at the policy and structural levels is outlined and includes amongst other things the making of on-going submissions to various inquiries and supporting Science and Technology Australia's advocacy for increased funding to such bodies such as the Australian Research Council etc. In addition at the workplace level APESMA is an active representative of medical research employees. One recent initiative [21-27] involved the conduct of a workplace survey of medical research employees in order to better understand their career experiences, the barriers they saw to their research outcomes and the issues they faced in their working life. The results of the survey were published in a report titled "Professionals Australia report: Best and Brightest – Advancing Medical Research; 2016 Medical Research Institute sector survey report" which was attached as Annexure G to Chris Walton's statement.

### **Minimum rates of pay**

53. The NTEU submits, at [48] to [66], that the minimum rates of pay in the PEA do not provide an adequate safety net for staff in independent MRIs.

54. However, the rates in the PEA are based on established work value relativities for scientists, and are the rates that currently apply to 70.1% of medical researchers in independent MRIs. It is untrue to claim, as the NTEU does at [51], that the AAMRI & APESMA Application will affect the BOOT when the PEA already applies as the underpinning award in that respect. It is also untrue that the PEA will 'lower wages', given that the PEA minimum rates of pay already apply to 70.1% of MRI researchers.
55. In respect of non-research employees, AAMRI and APESMA have set out, in their Submissions in Response, the awards that already apply to such employees. No mention of these was made in the AAMRI & APESMA Submissions in Support because such employees are adequately covered by existing modern awards – see the Transitional Review Decision at [36]. Contrary to the NTEU's submissions at [51], the NTEU has been aware of the occupational awards that apply to non-research staff since the Transitional Review.
56. At [59] and [60], the NTEU claims that AAMRI and APESMA have not addressed the comment of DP Smith at [49] of the Transitional Review Decision that there are real issues regarding equal remuneration for work of equal value. AAMRI and APESMA refer to and repeat their Submissions in Response that the work of employees at independent MRIs is also of equal or comparable value to that performed across hospitals, government and the private sector (see [49] to [68]).
57. It is a circular argument for the NTEU to claim, as it does at [64], that AAMRI and APESMA are amending wage relativities under the *Fair Work Act*. In order to make any sense, this claim rests on the assumption that the Higher Education Awards already apply to staff at independent MRIs. To the contrary, the NTEU Application – not the AAMRI & APESMA Application – represents a drastic change to existing modern award coverage, and accordingly existing modern award minimum wages..
58. In order to justify the variation in the modern award minimum wages that would occur if the NTEU Applications were successful, the NTEU bears the onus of establishing that employees of independent MRIs have a different work value to those of others in their occupation, eg other research scientists, other clerical staff, and other health professionals. The witness statement of Ross Smith rebuts this in respect of research scientists by making clear that the work value of research scientists is equivalent across the various workplaces in which such researchers work, including independent MRIs.
59. AAMRI and APESMA further submit that there is no basis for the NTEU's claim at [66] that the AAMRI & APESMA Application would result in lower wages. The PEA already covers 70.1% of medical researchers now – it is unclear how expanding it to award free medical

researchers will result in reduced wages. In any event, the evidence of Tom Kay at the Transitional Review was that independent MRI wages are set in the context of global competition for high quality staff with other research institutes (nationally and internationally), hospitals, government, the private sector and universities.<sup>4</sup>

### **Capacity for coverage by the Higher Education Awards**

60. The NTEU claims at [15] that the Higher Education Awards can be applied to the employees of independent MRIs as a "readymade fit", with "limited amendment" (at [62]). AAMRI and APESMA submit that:
- (a) the Academic Award's classifications are not appropriate to the work of researchers in independent MRIs; and
  - (b) the fact that the classifications in the General Staff Award are capable of describing the work performed by non-research employees at independent MRIs does not mean that they are the appropriate safety net of terms and conditions.
61. AAMRI and APESMA submit that the MSALs contained in the Academic Award are a poor fit for researchers in independent MRIs. They are directed at capturing academic researchers in the sciences, humanities and everything in between. They do not capture the career pathway and expectations of MRI researchers, which reflect the different purposes of independent MRIs from universities. They also fail to take into account the activities of independent MRIs which universities do not routinely undertake, that is, the translation of research to public health activities, policy advice, health guideline development and health service provision.
62. The General Staff Award contains classifications expressed in incredibly broad terms, so as to capture, as stated in the Award Modernisation, everyone "*from...cleaners to trades people et cetera*".<sup>5</sup> It is therefore unsurprising and unpersuasive that any employee could be described by such classifications. AAMRI and APESMA submit that the General Staff Award classifications are no more suitable to employees at independent MRIs than employees in, for example, a hospital or a government organisation. This in no way establishes a unique nexus between independent MRIs and the Higher Education Awards.
63. In respect of the issues regarding modern award coverage identified by the Fair Work Ombudsman,<sup>6</sup> AAMRI and APESMA note that modern award coverage would be much

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<sup>4</sup> Transitional Review, Transcript of 29 April 2013 at [PN542].

<sup>5</sup> Award Modernisation (AM2008/33), Transcript of 17 March 2009 at [PN290].

<sup>6</sup> Fair Work Ombudsman, *Modern Award Review: Coverage Issues in Modern Awards* (20 May 2014) at [21].

simpler if all employees were subject to a one size fits all award, but that does not mean that such coverage would be appropriate.

### **Purported issues with AAMRI & APESMA Application**

64. The NTEU argues at [21] and [22] that the AAMRI and APESMA Application is circular. This is simply not the case. In the simplest terms, AAMRI and APESMA submit that:
- (a) The majority (70.1%) of medical researchers are already covered by the PEA;
  - (b) It is therefore appropriate for the remaining 29.9% of medical researchers to be covered by the PEA, rather than remaining award free.
65. The NTEU has also taken the following issues with the form of the AAMRI and APESMA Application:
- (a) that it is somehow incomplete as it does not deal with non-research employees, who will allegedly be "stranded" (at [18]);
  - (b) that it has required "awkward amendments" and rewritten "key tenets" of the PEA, requiring "extensive amendment" (at [16], [22] and [63]);
  - (c) that the proposed classifications in Schedule C are somehow too broad and do not capture the work of medical researchers (at [23] to [24]).
66. In respect of non-research employees, the NTEU Application is a solution to a non-existent problem. As set out in the AAMRI & APESMA Submissions in Response at [22] to [28], the occupational coverage which they criticise was previously drawn to the attention of the Full Bench of the Commission. The Full Bench accepted that staff at university-controlled entities would be covered by occupational awards. This is the status quo not only of independent MRIs, but many other employers in Australia.
67. AAMRI and APESMA acknowledge that DP Smith suggested in the Transitional Ruling (at [36]) that "*consideration would have to be given to the benefit or otherwise of employers having to deal with a myriad of industrial instruments*". Such consideration was given to this issue by the recently commissioned report "Multiple modern award coverage and the utility of majority clauses", which stated that "*to group the conditions and entitlements of all employees under the one award...would reverse the perceived benefits of having separate modern awards, for the minimal gain of reduced administrative burden*".<sup>7</sup>

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<sup>7</sup> EY Sweeney, "Fair Work Commission: Multiple modern award coverage and the utility of majority clauses" (May 2016) at p 40, referred to at [34] of the AAMRI & APESMA Submissions in Response.

68. In respect of the form of the proposed amendments, the NTEU has not articulated how these are "awkward". The amendments have stayed close to the structure of the other coverage streams in the PEA, and applied its tenets to the similar, but not identical, requirements of medical researchers. As pointed out in paragraph [30], the amended classification descriptors proposed for the Medical research stream are now more contextual. This is as a result of the separation from the more generic Professional scientific classification descriptors which cover the multiplicity of Professional scientific roles. We note the submissions of AiG dated 7 July 2016 that the amended proposed variation submitted by AAMRI and APESMA on 4 July 2016 addresses any concerns that the AAMRI & APESMA Application departed from key principles in the PEA.
69. In contrast, the NTEU Applications rewrite the basic tenets of industrial coverage set out by the Full Bench in the Award Modernisation.<sup>8</sup> The NTEU Applications would create a non-existent and amorphous "*higher education combined with some, but not all, research institutes which have a linkage to some higher education institutions*" industry.<sup>9</sup> It would also disrupt the existing basis for common award coverage between higher education institutions and student unions, being the focus on students (see AAMRI & APESMA Submissions in Response at [81] to [85]). It also seeks to extend coverage of the Higher Educational Awards beyond organisations established for an educational purpose to those established for a "*charitable...or other public purpose*".
70. The NTEU has also argued that the proposed classifications in Schedule C of the AAMRI & APESMA Application are too broad. It is unclear how this can be a criticism, when the classifications are far more specific to the work performed by medical researchers than those contained in the Academic Award. The only reasons provided by the NTEU are that the proposed classifications barely mention education or the holding of academic titles. This is because, unlike the higher education sector, these are secondary to the primary work performed by MRI researchers. The witness statement of Douglas Hilton states that the proposed classifications do accurately describe the duties and distinguishing features of an MRI researcher (at [50]).
71. The NTEU states that it is unclear which flexible work practices are referred to by AAMRI and APESMA. The AAMRI & APESMA Submissions in Support set out at [81] to [83] that the varying methods of compensation for overtime in clause 18 of the PEA are an example of the flexible work practices referred to.

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<sup>8</sup> *Re Request from the Minister for Employment and Industrial Relations — 28 March 2008 (Award Modernisation Case (2008))* [2008] AIRCFB 550 at [13].

<sup>9</sup> Transitional Review, AAMRI's Final submissions (18 June 2013) at [47].

72. Finally, the NTEU Reply Submissions at [47] indicate that the NTEU would seek to ensure that its members covered by the Higher Education Awards "*remain exempt from the PEA*". This paragraph clearly misunderstands the effect of the AAMRI & APESMA Application – the proposed medical research stream definitions (proposed clause 3.7 of the PEA) exclude higher education organisations from the definition of medical research institute.
73. If the Commission grants the AAMRI & APESMA Application, researchers employed by higher education institutions will continue to be covered by the Higher Education Awards, and researchers employed in independent MRIs (who have never been covered by the Higher Education Awards) will be covered by the PEA. 70.1% of those researchers in independent MRIs are already covered by the PEA, and the remaining 30% proposed to be covered are currently award free. As AAMRI and APESMA have clearly established, scientific researchers employed by independent MRIs have *never* been exempt from the PEA, and so cannot "remain" exempt. This is so regardless of whether they are members of the NTEU.

#### **Further issues with the NTEU Applications**

74. In comparison with the AAMRI & APESMA Application, the NTEU Applications are fundamentally misconceived in their approach to award coverage. In particular, AAMRI and APESMA note the following issues below with the NTEU Applications.
75. The NTEU Applications would not extend coverage of the Higher Education Awards to nurses at independent MRIs. The basis for exempting employees covered by one occupational award while disrupting the coverage of others is unclear. The suggestion of only excluding one occupation shows the inconsistency in the NTEU's argument that the Higher Education Awards are required – if it is not necessary that nurses at independent MRIs be covered by the Higher Education Awards, why do the NTEU say that health professionals, clerical staff, and MRI researchers must be?
76. The NTEU Applications also retain an inappropriate definition of research institute. This definition is difficult to apply and divides independent research institutes based on the arbitrary distinctions of being affiliated to a university or employing persons holding academic titles conferred by a higher education institution, which can be altered by the act of disaffiliation. As set out by AAMRI and APESMA, the NTEU's proposed definition is superficial and therefore is no basis for such an industrial boundary.

**Association of Australian Medical Research Institutes**

**Association for Professional Engineers, Scientists and Managers, Australia**

## Attachment

### Analysis of Position Descriptions

#### Acronyms Used:

MD means Macquarie Dictionary (<<https://www.macquariedictionary.com.au/>> as at 7 July 2016).

#### Positions covered by the *Professional Employees Award 2010*

#	Medical Research Institute	Position	Relevant elements of position description	Basis for coverage
1.	Murdoch Children's Research Institute	Biostatistician	<p>Theme: <b><u>Data Science</u></b></p> <p>Our Themes include</p> <p>A <b><u>PhD in biostatistics, statistics</u></b> or closely related discipline</p>	MD: " <b><u>statistics</u></b> : 1...the <b><u>science</u></b> which deals with the collection, classification and use of numerical facts or data"
2.	Walter + Eliza Hall Institute	Five Year Postdoctoral Research Fellowship in Rare Cancer Biology and Genomics	<p>Applicants should have a <b><u>PhD in a biological field</u></b> related to cancer research and at least three years post-doctoral experience in basic cancer research. A strong interest in <b><u>biology</u></b> and a passion for <b><u>science</u></b> is essential.</p>	MD: " <b><u>biology</u></b> : 1. the <b><u>science</u></b> of life or living matter in all its forms and phenomena, especially with reference to origin, growth, reproduction, structure, etc"
3.	Children's Medical Research Institute	Research Officer in Proteomics	<p>The successful candidate must hold the following:...</p> <p><b><u>PhD in Biochemistry, Biotechnology</u></b> or</p>	<p>MD: "<b><u>biochemistry</u></b>: the <b><u>chemistry</u></b> of living matter"</p> <p>MD: "<b><u>chemistry</u></b>: 1. the <b><u>science</u></b> concerned with the composition of substances, the</p>

			<i>equivalent experience in a related field.</i>	<i>various elementary forms of matter, and the interactions between them"</i>
4.	Hudson Institute of Medical Research	Research Officer	<p><i>Demonstrated abilities:</i></p> <p><i>- Technical skills in <b>molecular biology</b>, murine <b>genetics</b>, tissue cell culture and gene expression analysis</i></p> <p><i>If you are have [sic] a <b>Phd or M.D./PhD training in cancer biology, molecular biology, genetics, biochemistry</b> or a related discipline.</i></p>	<p>MD: "<b>molecular biology</b>: the <b>scientific</b> study of biological phenomena at a molecular level, especially of deoxyribonucleic acid (DNA) and gene structure"</p> <p>MD: "<b>genetics</b>: the <b>science</b> of heredity, dealing with resemblances and differences of related organisms flowing from the interaction of their genes and the environment"</p> <p>MD: "<b>biochemistry</b>: the <b>chemistry</b> of living matter"</p> <p>MD: "<b>chemistry</b>: 1. the <b>science</b> concerned with the composition of substances, the various elementary forms of matter, and the interactions between them"</p>
5.	Children's Medical Research Institute	Research Officer	<p><i>Applications are invited for an enthusiastic and motivated post-doctoral <b>scientist</b>...</i></p> <p><i><b>PhD</b> and must have experience in mass spectrometry and <b>protein biochemistry</b></i></p> <p><i>Broad experience of quantitative proteomics such as SWATH and TNT labelling, phosphoproteomics, bioinformatics and/or <b>physical chemistry</b></i></p>	<p>MD: "<b>molecular biology</b>: the <b>scientific</b> study of biological phenomena at a molecular level, especially of deoxyribonucleic acid (DNA) and gene structure"</p> <p>MD: "<b>biochemistry</b>: the <b>chemistry</b> of living matter"</p> <p>MD: "<b>physical chemistry</b>: that branch of <b>chemistry</b> which deals with the relations</p>

			<p>and <b><u>molecular biology</u></b>, would be a distinct advantage...</p> <p>Provide <b><u>scientific</u></b> and creative leadership, and demonstrate excellent communication and interpersonal skills.</p>	<p>between the physical (i.e. electrical, optical, etc) properties of substances and their chemical properties"</p> <p>MD: "<b><u>chemistry</u></b>: 1. the <b><u>science</u></b> concerned with the composition of substances, the various elementary forms of matter, and the interactions between them"</p>
6.	Children's Medical Research Institute	<p>Various:</p> <p>Research officer – Cell Cycle Unit</p> <p>Research Assistant – Cell Cycle Unit</p> <p>Research Assistant – Proteomics</p> <p>Research Officer - Proteomics</p>	<p>CMRI always welcomes enquiries from <b><u>qualified scientists</u></b> interested in post-doctoral or sabbatical opportunities...</p>	
7.	The Florey Institute of Neuroscience and Mental Health	Postdoctoral Researcher	<p><b><u>Post doctoral qualifications with experience in electrophysiology...</u></b></p> <p>The Florey's staff, <b><u>scientists</u></b> and students...</p> <p>Essential:</p> <ul style="list-style-type: none"> <li>- PhD or MD</li> <li>- Strong <b><u>neuroscience</u></b> background</li> </ul>	<p>MD: "<b><u>electrophysiology</u></b>: the study of the electrical properties of biological cells and tissues"</p> <p>MD: "<b><u>neuroscience</u></b>: the study of the nervous system, originally purely from a biological point of view but increasingly in partnership with such disciplines as psychology, computer science, music, communications, and medicine"</p>

8.	The Florey Institute of Neuroscience and Mental Health	Research Scientist (Structural Neuroimaging Analyst)	A <b><u>doctorate in physics</u></b> or equivalent...  Provide an important significant contribution to the <b><u>science</u></b> of the group	MD: " <b><u>physics</u></b> : the <b><u>science</u></b> dealing with natural laws and processes, and the states and properties of matter and energy, other than those restricted to living matter and to chemical changes"
9.	The Florey Institute of Neuroscience and Mental Health	Senior Research Officer Public Health	<b><u>Bachelor degree in science</u></b> or health related field  Post-graduate qualifications in public health/epidemiology	Bachelor degree in science
10.	The George Institute	Postdoctoral Research Fellow – John Chalmers Clinical Research Fellowship	Applicants must hold a relevant postgraduate degree in disciplines (including medicine, <b><u>science</u></b> or health)	Must hold a postgraduate degree in disciplines including science.
11.	Children's Cancer Institute	Research Officer – LB	<b><u>PhD or equivalent in relevant science</u></b> or medical field and 1-5 years' postdoctoral experience  Experience in translational <b><u>cancer biology</u></b>  Expertise in cell and <b><u>molecular biology</u></b> techniques, and cancer genomics or proteomics.	MD: " <b><u>biology</u></b> : 1. the <b><u>science</u></b> of life or living matter in all its forms and phenomena, especially with reference to origin, growth, reproduction, structure, etc"  MD: " <b><u>molecular biology</u></b> : the <b><u>scientific</u></b> study of biological phenomena at a molecular level, especially of deoxyribonucleic acid (DNA) and gene structure"
12.	Walter + Eliza	Stafford Fox Centenary Fellowships in Rare Cancer:	<b><u>Applicants should have a PhD in a biological field</u></b> related to cancer	MD: " <b><u>biology</u></b> : 1. the <b><u>science</u></b> of life or living matter in all its forms and

	Hall Institute	Biology & Genomics, and Bioinformatics & Computational Biology	research and at least three years post-doctoral experience in basic cancer research. A strong interest in <b>biology</b> and a <b>passion</b> for <b>science</b> is essential.	phenomena, especially with reference to origin, growth, reproduction, structure, etc"
13.	Children's Medical Research Institute	Research Officer – Cell Cycle Unit	<p>Applications are invited for an enthusiastic and motivated <b>post-doctoral scientist</b> in the Cell Cycle Unit.</p> <p>The successful candidate must hold the following:</p> <ul style="list-style-type: none"> <li>- <b>PhD</b> and must have experience in mass spectrometry and <b>protein biochemistry</b></li> <li>- Broad experience of quantitative proteomics such as SWATH and TNT labelling and <b>molecular biology</b>, would be a distinct advantage</li> </ul> <p>Provide <b>scientific</b> and creative leadership, and demonstrate excellent communication and interpersonal skills</p>	<p>MD: "<b>biochemistry</b>: the <b>chemistry</b> of living matter"</p> <p>MD: "<b>chemistry</b>: 1. the <b>science</b> concerned with the composition of substances, the various elementary forms of matter, and the interactions between them"</p> <p>MD: "<b>molecular biology</b>: the <b>scientific</b> study of biological phenomena at a molecular level, especially of deoxyribonucleic acid (DNA) and gene structure"</p>
14.	Children's Medical Research Institute	Post doctoral/Clinical Research Fellow in Neurodegenerative Diseases	For the Post-doctoral Research Fellow position it is essential that you hold an <b>MD/PhD in a neuroscience-related</b> subject.	MD: " <b>neuroscience</b> : the study of the nervous system, originally purely from a biological point of view but increasingly in partnership with such disciplines as psychology, computer science, music, communications, and medicine"
15.	Telethon Description Telethon Kids	Experienced Research Assistant/Research Officer	Qualifications – <b>PhD, or Bachelors degree with Honours in a health</b>	Must hold a degree in health sciences

	Institute		<u>sciences discipline</u>	
16.	Children's Cancer Institute	Senior Research Assistant/Junior Research Officer	<p><b><u>BSc or MSc/PhD in a relevant scientific medical field</u></b></p> <p><i>Has experience in molecular and cellular biology</i></p>	MD: " <b>molecular biology</b> : the <b>scientific</b> study of biological phenomena at a molecular level, especially of deoxyribonucleic acid (DNA) and gene structure"
17.	The Florey Institute of Neuroscience	Research Assistant	<p><b><u>Bachelor of Science degree with Honours (or equivalent)</u></b></p> <p><i>Evidence of <b>formal scientific training</b> and achievement</i></p> <p><i>The MS Division headed by Prof Trevor Kilpatrick comprises more than 20 researchers including <b>scientists</b>, students and research assistants.</i></p>	MD: " <b>molecular biology</b> : the <b>scientific</b> study of biological phenomena at a molecular level, especially of deoxyribonucleic acid (DNA) and gene structure"
18.	Walter + Eliza Hall Institute for Medical Research	Research Technician, Structural Biology Division	<p><i>The appointee will possess:</i></p> <p>- <b><u>BSc(Hons)</u></b> or equivalent degree and significant laboratory experience</p> <p><i>Routine molecular biology and cloning techniques</i></p>	MD: " <b>molecular biology</b> : the <b>scientific</b> study of biological phenomena at a molecular level, especially of deoxyribonucleic acid (DNA) and gene structure"
19.	Florey Institute of Neuroscience	Microscopy Supervisor Facility	<p><b><u>Bachelor of Science (with Honours) or Masters Degree in physics, biophysics, neuroscience, histology or molecular biology</u></b></p>	<p>MD: "<b>physics</b>: the <b>science</b> dealing with natural laws and processes, and the states and properties of matter and energy, other than those restricted to living matter and to chemical changes"</p> <p>MD: "<b>neuroscience</b>: the study of the</p>

				<p><i>nervous system, originally purely from a biological point of view but increasingly in partnership with such disciplines as psychology, computer science, music, communications, and medicine"</i></p> <p>MD: "<b>histology</b>: the science concerned with the study of the detailed structure of animal and plant tissues"</p> <p>MD: "<b>molecular biology</b>: the <u>scientific</u> study of biological phenomena at a molecular level, especially of deoxyribonucleic acid (DNA) and gene structure"</p>
20.	Walter + Eliza Hall Institute for Medical Research	Research <b>Scientist</b>	Computing	<p>A passion for <u>science</u> and an interest in <u>biology</u> is essential</p> <p>A PhD in <u>computer science</u>, mathematics, bioinformatics, or other quantitative discipline is desirable</p> <p>MD: "<b>computer science</b>: the science that deals with the theoretical and practical aspects of using computers to process information, or with the development and design of computer software and hardware, or with the specific applications of computers"</p> <p>MD: "<b>bioinformatics</b>: a <u>scientific</u> discipline which applies <u>computer science</u> to the analysing of biological data"</p>

### Positions covered by other modern awards or award free

#	Medical Research Institute	Position	Relevant elements of position description	Award
21.	Walter + Eliza Hall Institute	Division Coordinator	<p><i>The division coordinator will ensure that the division runs efficiently by providing high-level administrative, regulatory and budgetary support.</i></p> <p><i>The appointee will possess:...</i></p> <p><i>Laboratory experience and/or relevant qualifications such as a BSc (Hons) or PhD (preferred) in the Life Sciences</i></p>	<p><i>Clerks—Private Sector Award 2010</i></p> <p>(NB: While this position could also be covered by the PEA on the grounds that it requires a degree in science, the duties of the position make the Clerks Award the appropriate award – see clause 4.10 of the PEA)</p>
22.	The Florey Institute of Neuroscience	Data and Administration Officer	<p><i>Will primarily be responsible for providing administration and data management support for the Australian Stroke Clinical Registry...</i></p>	<p><i>Clerks—Private Sector Award 2010</i></p>
23.	The Garvan Institute of Medical Research	Animal Technician – ABR Mossvale Facility	<p><i>The Garvan Institute of Medical Research is one of Australia's leading medical research institutes, with over 600 <b>scientists</b>, students and support staff.</i></p> <p><i>Relevant tertiary qualifications</i></p>	<p><i>Miscellaneous Award 2010</i></p>
24.	The Florey Institute of Neuroscience	Senior Technician	<p><i>Completion of Animal Technician Degree</i></p>	<p><i>Miscellaneous Award 2010</i></p>

25.	Florey Institute of Neuroscience	I.T Project Officer	<i>Degree in Computer Science or equivalent qualification</i>	Award free
26.	AAMRI (Seconded from and employed by Walter + Eliza Hall Institute)	Director, Policy & Operations		Award free