

**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**)

**FINAL 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. These submissions are in support of AAMRI and APESMA's application of October 2015 (**AAMRI & APESMA Application**), and in accordance with order 3 of the further amended directions of Commissioner Johns made on 22 March 2017. The AAMRI & APESMA Application proposes to vary the PEA so as to clarify its existing coverage

of research scientists, and extend that coverage to the outstanding minority of other research employees at independent MRIs.

2. AAMRI and APESMA make the following submissions in reply to the response submissions of the NTEU dated 3 March 2017 (**NTEU Closing Submissions in Response**), which were in response to AAMRI and APESMA's final submissions on 3 February 2017 (**AAMRI & APESMA Final Submissions in Support**).
3. The NTEU has also made applications (**NTEU Applications**) to vary the *Higher Education—Academic Staff—Award 2010 (Academic Award)* and the *Higher Education Industry—General Staff-Award 2010 (General Staff Award)* (collectively, the **Higher Education Awards**).
4. The substantial reasons to reject the NTEU Applications' attempt to pigeonhole the diverse work of independent medical research institutes (**MRIs**) into higher education are set out in in AAMRI and APESMA's submissions in response filed on 3 March 2017 (**AAMRI & APESMA Final Submissions in Response**). However, these Reply submissions address further deficiencies in the NTEU Applications that are apparent in the NTEU Closing Submissions in Response. AAMRI and APESMA's opposition to the NTEU Applications is not based on a desire for coverage or a political desire to maintain MRIs' independence from universities. The Higher Education Award classifications and industry are not appropriate to the MRI sector, which has been obvious for the past 5 years in which we have opposed these applications.

SUMMARY

5. The NTEU Closing Submissions in Response begin by mischaracterising the parties' respective positions. The parties do not simply "*part company about the best solution*"¹ – they fundamentally disagree about the extent of work the modern awards objective has to do.
6. AAMRI & APESMA's joint position is that:
 - (a) the PEA already covers approximately 70.1% of research scientists at independent MRIs, but this coverage could be more clearly expressed;
 - (b) the PEA's coverage should be extended to a small minority of other international research scientists and other research employees;

¹ NTEU Closing Submissions in Response at [1.1].

- (c) the occupational coverage of the existing award system is operating appropriately for all other employees.
- 7. AAMRI and APESMA wish to vary the coverage of 29.9% of research staff at independent MRIs, or approximately 17.5% of independent MRI employees. This is an application to cover those employees with ***an award that already applies to independent MRIs.***
- 8. In contrast, the NTEU considers that the entire occupational coverage that has been in place for over 7 years is inappropriate. They wish to drastically rearrange the existing award arrangements and displace these occupational awards with 2 awards that ***do not currently apply to any independent MRI.***

The AAMRI & APESMA Application

- 9. Contrary to the NTEU Closing Submissions in Response about the coverage of research employees:
 - (a) it is clear that most research employees at independent MRIs are research scientists and already covered by the PEA;
 - (b) there is probative evidence that the work of research employees at independent MRIs (most of whom are research scientists and already covered by the PEA) is of equivalent value to that of other scientists covered by the PEA such as those in commercial organisations;
 - (c) the proposed coverage set out in the proposed "medical research" stream is clear in its application and appropriately captures research employees at independent MRIs;
 - (d) the proposed classifications are an appropriate elaboration of the existing classifications in the PEA and accurately describe the work of employees working at those levels;
 - (e) the proposed Level 5, and corresponding rate of pay, involves setting a new rate, and in any case that rate is justified when compared with similar awards;
- 10. In respect of the coverage of non-research employees:
 - (a) such employees are appropriately covered by a simple scheme of occupational awards that is the existing status quo;

- (b) no reason (and certainly no evidence) has been provided to doubt that coverage;
 - (c) that coverage is not intended to be displaced by the proposed amendments to the PEA.
11. At their highest, the NTEU's claims seem directed at the way in which the draft variation implements the proposal by AAMRI and APESMA to clarify and extend the PEA's coverage.
12. To the extent the NTEU criticisms are found to have substance, most if not all are easily rectified with minor amendments. In the alternative, if the Commission were minded to accept the NTEU's criticisms in respect of the way in which the AAMRI & APESMA Application is drafted, AAMRI and APESMA submit that the Commission is able to accept the substance of the Application and implement it in a different form.

Effect on the NTEU Applications

13. The NTEU Closing Submissions in Response represent a substantial retreat from its primary positions that have been adopted throughout the proceedings. Many points contradict others in those and previous submissions, or concede points that undermine the NTEU Applications, including:
- (a) Most importantly, they have acknowledged that the PEA covers some research scientists in "*private sector organisations which might be considered cognate to the medical research industry*".² This concession detracts from the NTEU's arguments regarding the work value of research scientists and undermines the NTEU's quibbling about the extent of this coverage in independent MRIs.
 - (b) They criticise the use of "research" in the proposed definitions in the AAMRI & APESMA Application.³ If such criticism is valid, it suggests that the NTEU Applications, which define research institute as "*a corporate entity whose primary activity is to undertake medical, health, scientific or social **research***", ought not be accepted. It also suggests significant problems with the MSALs in

² NTEU Closing Submissions in Response at [11.22].

³ NTEU Closing Submissions in Response at [4.1].

the Academic Staff Award, which repeat and do not define the word "research" throughout.

- (c) They criticise the proposed definition of "Experienced medical research employee" because it only requires a Masters degree, and does not specify "*a Masters by Research*".⁴ This would suggest a problem with the existing MSALs, which only require "*a relevant higher degree*" without specifying that the degree be by research.
 - (d) They make the surprising claim that research at a junior level does not require a degree, and query whether the requirement for particular qualifications is an appropriate measure to distinguish award coverage.⁵ This completely contradicts the NTEU's unfounded claim that "*the PhD is actually the common entry point for employment as a researcher in independent research institutes*".⁶ It also sits uncomfortably with the NTEU Applications to cover research employees by the research only MSALs in Academic Staff Award. The lowest of these requires the research employee to "*normally hold a relevant higher degree*" as opposed to 3, 4 or 5 year degree.
 - (e) The submissions in relation to the pre-reform coverage of "medical scientists" concede that historically there has been competing award coverage in this sector.⁷ This undermines the NTEU's argument that the history of award coverage indicates that independent MRIs ought to be covered by the Higher Education Awards over other relevant awards.
14. The NTEU Applications would have the unfair effect of excluding graduate research scientists and other graduate research employees from coverage as researchers. The NTEU appears not to understand the workforce, or work performed in, independent MRIs. In spite of the NTEU's insistence to the contrary, the weight of evidence is that there **are** researchers with an undergraduate (3, 4 or 5 year) degree. They would arguably not be covered by the MSALs for research only academics in the Academic Staff Award, Level A of which "*will normally hold a relevant higher*

⁴ NTEU Closing Submissions in Response at [6.10].

⁵ NTEU Closing Submissions in Response at [4.16], [4.20].

⁶ NTEU Closing Submissions in Response at [5.8].

⁷ NTEU Closing Submissions in Response at [10.17] and Attachment 1.

degree". In the absence of any evidence regarding the entry point for research at universities, AAMRI and APESMA must take the NTEU at its submission that graduates are not contemplated by the research classifications in the Higher Education Awards. This simply demonstrates the unsuitability of those awards for independent MRIs, which **do** employ such graduate researchers.

15. This undercutting of the NTEU Applications, and the lengthy submissions regarding the NTEU's secondary submission that there should be a new award, suggests that the NTEU recognises that it has not made out a case for independent MRIs to be covered by the Higher Education Awards.
16. The choice before the Commission is between the status quo in respect of the majority of employees at independent MRIs, subject to the minor variations proposed by the AAMRI & APESMA Application, or, a new award. Before making a new award, s. 163(2) requires the Commission to consider whether another award is appropriate. AAMRI and APESMA respectfully submit that the PEA (with the proposed variations) is appropriate for the outstanding professional medical research employees, while the Higher Education Awards are clearly inappropriate.

Comments on onus

17. Much has been submitted regarding the onus in these proceedings. The onus rests on the party proposing a variation to show that variation is necessary to meet the modern awards objective. The onus must therefore be considered in light of the specific variations that are proposed by each of the applications in these proceedings.
18. AAMRI and APESMA must demonstrate that:
 - (a) The majority of researchers are currently covered by the PEA – meaning that they fall within the coverage terms of the PEA. This has been demonstrated by reference to case law interpreting the relevant terms of the PEA (albeit in a historical context), the survey evidence led by Douglas Hilton and the substantial witness evidence to the effect that most employees of independent MRIs are professional scientists who require a degree in science to perform their duties.
 - (b) In order to extend the coverage of the award – that the remaining research scientists and other research employees not currently covered by the PEA ought to be covered by the PEA. This has been done through evidence to the effect that these employees perform the same or similar work to their

professional scientists colleagues (in independent MRIs and other organisations) who are currently covered.

- (c) In order to clarify the existing coverage and extend it in accordance with the drafting proposed – that this drafting is appropriate. The drafting as set out in the AAMRI & APESMA Application is in response to the comments of DP Smith in the Transitional Review and sets out the particular duties of medical research employees at the Levels already described by Schedule B of the PEA. The evidence demonstrates that this proposed extended coverage is clear and is appropriate with regard to the work of professional medical research employees.
- (d) In order to introduce the new Level 5 – Professional medical research employee – that this work is appropriately classified at and paid at a higher rate of pay than a Level 4 – Experienced professional employee. It is not in dispute that work of this higher level exists, and the evidence was that it is appropriate that it be remunerated at a higher level. The pay rate is consistent with the relativities to the rest of the PEA, and also with similar classifications in another modern award (see below at 53).

19. In contrast, in order to succeed in the NTEU Applications, the NTEU is required to demonstrate that:

- (a) it is appropriate for employees at independent MRIs to be covered by the Higher Education Awards, because:
 - (i) the work of employees at independent MRIs is so similar to the work of employees at universities (including university researchers from humanities and other non-scientific fields, but not other medical research employees in other sectors) that it is appropriate for them to be covered by the same terms and conditions; and
 - (ii) the peculiar circumstances of independent MRIs and universities (but not hospitals, government or commercial organisations) are so similar that they ought to be subject to the same industrial obligations; and
- (b) that it is *necessary* for employees at independent MRIs to be covered by the Higher Education Awards, meaning either that:
 - (i) they are not appropriately covered by other awards; or

- (ii) that it is appropriate to displace the coverage of existing awards (eg their claim that the work of research scientists at independent MRIs covered by the PEA is distinct from those other scientists covered by the PEA).⁸

20. The NTEU has failed to demonstrate **any** of these criteria, let alone all of them, which is what they must do to justify the NTEU Applications.

SUBMISSIONS IN RESPONSE

The proposal to clarify and extend coverage

21. The AAMRI & APESMA Application is intended to clarify the PEA's existing coverage of research scientists at independent MRIs, and extend its coverage to those research employees at independent MRIs who are not currently covered.

22. The basis for this Application is set out in the AAMRI & APESMA Final Submissions in Support, but can be summarised as:

- (a) a majority of research staff at independent MRIs are scientists who are covered by the PEA;
- (b) this work is the same or similar to the work of scientists in private industry who are also covered by the PEA (work requires underpinning scientific knowledge, utilised a scientific process and scientific procedures);
- (c) the remaining research staff at MRIs (both scientists and other researchers) perform work the same or similar value to those scientists covered by the PEA; and
- (d) in response to concerns of Deputy President Smith in the Transitional Review that the PEA "*would produce an awkward fit*", the classification descriptions proposed by the AAMRI & APESMA Application better describe the work of medical research employees.

23. The NTEU's major criticism of this proposal seems to be that it is **not** convinced:

- (a) of the extent of the existing coverage of the PEA, but recognises that there is currently coverage;

⁸ Cf NTEU Closing Submissions in Response at [8].

- (b) that there is an equivalence of work between the work of scientists in private industry and medical research employees at independent MRIs; or
 - (c) that the proposed classifications adequately describe the work value of research employees at independent MRIs.
24. At para. 6.15 the NTEU states that *“The PEA is an award built on a graduate entry point followed by on-the-job experience and training leading to increasing levels of work complexity and responsibility. It is not suited to a workforce where there is a post graduate entry point, followed by intensive on-the-job team work where reputation is built through successful research outputs (in the form of publications, conference presentations, PhD supervisions....”*. This statement articulates very well the fundamental divide between the NTEU and AAMRI/APESMA approaches.
25. The NTEU in its submissions seeks to obscure the nature of the work undertaken by the overwhelming majority of medical research employees employed by Medical Research Institutes. Firstly, it attempt to merge both medical and non-medical research as “research”. While all types of research go on in a university, from research in the creative arts and humanities through to science, the medical research in independent MRIs is clearly based on the scientific method, an underpinning scientific knowledge and the use of scientific procedures.
26. Secondly and perhaps more revealing the NTEU dismisses the contribution to research which is made by any employee below the PhD level. In fact, they are so dismissive that in their Submission in Reply and Witness Evidence of 3 June 2016 at Paragraph 20 they state that *“However, the possession of a science degree per se is rarely an occupational requirement for a position as a researcher, and has little more relevance to the work value of most academic researchers than their Year- 12 qualification. Indeed, the possession of any undergraduate degree – science or medicine based or a degree in humanities – will usually have little relevance to the work of a researcher in an MRI”*. This assertion is not supported by evidence, is a very elitist view of research, is not creditable and was strongly contradicted by the AAMRI/APESMA witnesses. The evidence showed it is not possible to undertake the work of a medical researcher without the underpinning knowledge of science and without the use of techniques, procedures and equipment unique to scientists. A humanities researcher's work does not relate to finding new treatments or curing a medical condition.

27. Where there is a dispute over whether or not employees are covered by a particular industry, the Commission must consider the evidence that is put before it and decide the case based on such evidence. It is not simply, as proposed by the NTEU at 4.7 of the NTEU Closing Submissions in Response, that there is some external body which can be looked to for an answer to the question whether research duties require an employee to hold particular qualifications. In a Full Bench decision of the AIRC regarding the making of the *Information Technology Industry (Professional Engineers) Award 1999* [P1299], the Full Bench interpreted information technology workers as falling within "the industry of engineering". AAMRI and APESMA submit that in light of the evidence led that the work of medical research is predominately scientific research (which is why 90% of medical researchers are scientists), this matter is less contestable than that decision.
28. AAMRI and APESMA respond to the NTEU's particular claims regarding award coverage and work value below.

NTEU Claim	AAMRI & APESMA Response	Evidence
<p>The <i>Priority Matters</i> decision cannot be relied upon to demonstrate that employees with higher degrees in science are covered by the PEA (at [4.22]).</p>	<p>In the <i>Priority Matters</i> decision, it is apparent that there was a dispute about whether the PEA applied because the employee (Dr Wohlthat):</p> <ul style="list-style-type: none"> • was involved in research into new technologies; and • had a PhD in theoretical chemistry which was relevant to this work. <p>The Federal Circuit Court Judge determined that the PEA applied to Dr Wohlthat on the basis that his PhD fell into the criteria in the academic schedule to the PEA and was relevant to his employment.</p>	<p><i>Fair Work Ombudsman v Priority Matters Pty Ltd</i> [2016] FCCA 1474 at [86], [214]-[215].</p>
<p>Previous decisions regarding "degree in science" cannot be relied upon to interpret that phrase in the PEA (at [4.21]).</p>	<p>There are two decisions of the Australian Conciliation and Arbitration Commission relevant to the meaning of a "degree in science". Both demonstrate the interrelation between the rules of the then Association of Professional Scientists of Australia (APSA) (one of the predecessors to APESMA) and the development of these words in pre-reform awards.</p> <p>The term "degree in science" has formed part of the relevant professional scientist awards since 1964 and has evolved in tandem with the rules of the relevant Professional Scientists organisation.</p>	<p>Eg see <i>Professional Scientists' Award 1964</i> [A9630—8672/64]</p>
	<p>The first is a decision of Justice Cohen regarding a proposed amendment to the <i>Municipal Officers' (Melbourne and Metropolitan Board of Works) Award, 1971</i>, which was proposed based on the broadening of the rules of APSA.</p>	<p>M077 Mis 360/82 MD Print F0592</p>

NTEU Claim	AAMRI & APESMA Response	Evidence
	<p>Her Honour was required to determine what it meant to be "employed as a scientist", and found that it meant "<i>employed on the basis of scientific qualifications which in the judgment of the employer are required for an understanding of the functions to be performed and which would enable research to be carried out if necessary</i>"</p> <p>The second decision is the decision of Industrial Registrar McMahon. While it dealt with an amendment to the rules of APSA, it was clear that the Registrar was required to consider whether a degree in science meant a degree that had the name "science", or whether it involved a consideration of field of study.</p> <p>The Registrar considered both Bachelor and "higher degree awards", and adopted the decision of Justice Cohen that a degree in science meant "<i>one that is an appropriate qualification to carry out investigation in a field of science</i>".</p>	<p>Reg 024/84 M Print F7239, pp 2(f)-(g), 3(g)-(i).</p>
<p>There is insufficient evidence to establish the proportion of research employees at independent MRIs who are required to hold a degree in science (at [4.9]-[4.16]).</p>	<p>The survey of independent MRIs asked the respondents to:</p> <ul style="list-style-type: none"> • determine the proportion of employees who required a degree in order to perform research duties; • determine which of those employees held a degree in science and from which jurisdiction. <p>It can be inferred that, in circumstances when an employee requires a degree to perform their research duties, and holds a degree in science, that the degree they are required to hold to perform their research duties is the degree in science.</p> <p>Mr McAlpine conceded that the survey results were indicative of a requirement to hold such a degree to perform research duties.</p> <p>If the Commission were not minded to accept the empirical evidence of this survey, it is able to accept the testimony that research employees require a degree usually in science or related fields.</p> <p>It is not common for employees to hold a specialty other than in science.</p> <p>Further, the majority of the position descriptions led by Mr McAlpine clearly require a degree in a scientific field.</p>	<p>Hilton Statement at Appendix 2, "Research Employees"</p> <p>McAlpine at PN8085</p> <p>Walton at PN8086-8089.</p> <p>Crabb at PN9928 and 9957</p> <p>McAlpine Statement at Attachment N.</p> <p>Attachment to AAMRI & APESMA Outline of Submissions in Reply (11 July 2016)</p>
<p>There are several research</p>	<p>To sow further confusion, the NTEU submits that</p>	<p>Hilton Statement</p>

NTEU Claim	AAMRI & APESMA Response	Evidence
<p>positions that do not require a degree (at [4.16]-[4.19]).</p>	<p>not all medical research requires a qualification. They offer little elaboration or evidence to support this contention.</p> <p>The positions in the table at 4.17 which purports to support their position either includes roles that would be covered under other modern awards or requires in most instances the tertiary qualifications which they have dismissed.</p> <p>Save for one "Research Officer" role, none of the position descriptions appear to be "researcher" roles.</p> <p>In respect of the Research Officer in Proteonomics, the NTEU relies on "equivalent experience" to demonstrate that the employee does not require the PhDs in Biochemistry or Biotechnology. However, the language of job advertisements is not always precise. In this context, experience equivalent to a PhD would almost certainly be experience subsequent to an undergraduate degree.</p> <p>The evidence was that employees considered by independent MRIs to be medical researchers required the skills acquired through at least a Bachelor degree in science or a related degree.</p>	<p>at [48].</p> <p>Academic Staff Award, Schedule A.2.1.</p> <p>Crabb at PN9957.</p>
<p>No evidence of work value of independent MRI researchers (at [3]).</p> <p>The work of medical researchers is "<i>completely different type of work altogether</i>" (at [6.16]).</p>	<p>The NTEU seeks to obscure the nature of the work undertaken by the overwhelming majority of medical research employees employed by Medical Research Institutes. Firstly, they attempt to merge both medical and non-medical research as "research".</p> <p>The largely uncontested evidence of AAMRI and APESMA witnesses was that the work of scientists at MRIs was scientific work, and equivalent to other research scientists in commercial organisations, such as ASX listed companies, at the same level of responsibility.</p> <p>Research work fits within the existing classifications in Schedule B of the PEA.</p>	<p>Hilton Statement at [41]-[42], [44]-[45]</p> <p>Hilton at PN8037</p> <p>Crabb at PN9947</p> <p>Smith Statement at [5] and [9]</p> <p>Trevaks at PN7669 and 7719</p>
<p>Graduate classifications and rates are inappropriate to medical researchers (at [6.10], [6.15])</p>	<p>The unchallenged evidence was that a 3, 4 or 5 year degree is the lowest entry point for researchers at independent MRIs, and that employees may or may not start with a PhD.</p> <p>For example, NARI research employees are "research officers" if they do not have a PhD, and "research fellows" if they do.</p> <p>The NTEU has led no evidence of its assertion that a PhD is the starting point for researchers.</p>	<p>Hilton Statement at [48]</p> <p>O'Connor at PN8244-8252</p> <p><i>National Ageing Research Enterprise Agreement</i>, Appendices 2 and 3</p>
<p>There is a difference in work value between Schedule B and the proposed Schedule C (at [6.11]-[6.14]).</p>	<p>The classifications in Schedule C are drafted so that they elaborate on the specific medical research duties that a person otherwise classified at the same level in Schedule B would be expected to perform.</p>	<p>Hilton Statement at [49]-[50].</p>

NTEU Claim	AAMRI & APESMA Response	Evidence
<p>Eg:</p> <ul style="list-style-type: none"> • a PhD is different from the "on the job" experience of a Level 2 in Schedule B (at [6.11]). • the proposed definition of "Experienced medical research employee" at Level 2 equates a Masters with a PhD. • a Level 4 in Schedule C is expected to be acknowledged nationally (at [6.13]). 	<p>The evidence of Douglas Hilton was that the classifications in Schedule B of the PEA described the responsibilities of MRI research employees, and the proposed classifications described the distinguishing features of an MRI research employee.</p> <p>For instance, the duties of a Level 1 – Graduate professional medical research employee are very much what would be expected at the graduate entry level. For instance, at Level 1 an employee undertakes “professional medical research duties of limited scope and complexity that support and contribute to the research efforts of the research unit”. Further, they assist “more senior Professional medical research employees”.</p> <p>The evidence was that a PhD is very much like professional "on-the-job" training in the research context and that it is similar to research training of employees in commercial organisations</p> <p>The qualifications required at the various responsibility levels reflect the hierarchy of work. This is simply a reflection of the range of higher qualifications that would be expected at this level of responsibility without being overly prescriptive.</p> <p>Schedule B captures the outputs of all scientists and engineers, who may have either internal or external outputs. These are of equivalent value, but in contrast to the external outputs of research scientists in independent MRIs, not all will result in national recognition.</p>	<p></p> <p>Crabb Statement at [33]</p> <p>Sneddon at PN7249</p> <p>Higgs at PN7475</p> <p>Crabb at PN9937</p> <p></p> <p>Smith Statement at [5]-[7]</p>

29. On the basis of the above, it is apparent that the PEA clearly covers most research employees at independent MRIs. The NTEU's attempts to avoid this coverage are unconvincing.

30. The NTEU bears the onus of displacing this status quo. In spite of this, AAMRI and APESMA have led evidence in favour of retaining this status quo and demonstrating that scientific research in independent MRIs is similar to scientific work in other organisations. The NTEU has led no evidence to show that the work is of a different value.

31. In circumstances where the NTEU has made no effort to demonstrate a difference between the scientific work at independent MRIs and that at other organisations covered by the PEA, the NTEU Applications to remove independent MRIs from this coverage *must* fail.
32. Further, the evidence was that the non-purely scientific research employees were of a similar work value to the scientific employees. Accordingly, AAMRI and APESMA seek that Commission vary the PEA to extend coverage to those employees.⁹
33. The classifications proposed in Levels 1-4 of Schedule C are merely elaborations on the responsibilities in Levels 1-4 in Schedule B, in response to the comments of DP Smith in the Transitional Review. Accordingly, AAMRI and APESMA seek that the Commission adopt these classifications. AAMRI and APESMA consider that the existing classifications in Schedule B do describe the vast bulk of current medical researchers.

The drafting of the proposed variation

34. The NTEU has identified what it considers issues in the drafting of the variations proposed by the AAMRI & APESMA Application.
35. AAMRI and APESMA deny that the majority of these points have any merit. To the extent that there may be minor technical issues in drafting, these are able to be easily rectified without any meaningful alteration to the substance of the proposed variation.
36. The NTEU's narrow view of "what is or what is not" research colours their perspective when they comment on the proposed definition of "professional medical research duties" in Clause 3.7 – Medical research stream and the proposed classification structure as outlined in Schedule C – Medical Research Institutes.
37. The proposed definition of "professional medical research duties" means duties:
 - (a) carried out by a person in a medical research institute;
 - (b) undertaking basic, applied, translational or clinical research;
 - (c) the adequate discharge of any portion of which duties requires a person to hold the Academic qualifications as defined.

⁹ Hilton Statement at [46]-[47]; Walton at PN8089; Crabb at PN9931, 9957.

38. AAMRI and APESMA respond to the NTEU's criticisms of the drafting below:

NTEU drafting criticism	AAMRI & APESMA Response	Evidence
<p>No definition of "research" (at [4.1]-[4.4])</p>	<p>The term "research" takes its ordinary meaning, which is clearly understood from its current and historical usage in the award system.</p>	<p>Academic Award Schedule A.2.1 and others NTEU Closing Submissions in Response, Attachment 1</p>
	<p>The <i>Macquarie Dictionary</i> defines research as "<i>diligent and systematic inquiry or investigation into a subject in order to discover facts or principles</i>".</p>	<p>Macquarie Dictionary</p>
	<p>The NTEU put to witnesses an uncited definition of research containing multiple limbs. Witnesses were not asked whether this was a comprehensive definition or whether each limb was a defining characteristic. The NTEU was not even consistent in the limbs of its purported definition it chose to put to witnesses. Contrary to the NTEU's submission at [4.2], there was substantive consensus amongst witnesses about the meaning of research, with some witnesses providing qualifications to the broad generalisations made by the NTEU. This does not provide a basis for the NTEU's attempt to confuse the meaning of this term.</p>	<p>Hilton at PN7904-7916 O'Connor at PN8167-8176 Crabb at PN9922-9927.</p>
	<p>The term is given clarity by the use of the qualifying words "basic, applied, translational or clinical", which describe the type of research done by independent MRIs.</p>	<p>Hilton Statement at [47].</p>
	<p>The term is broad so as to take into account the diverse range of independent MRIs that are performing different research depending on their clinical and commercial operations.</p>	<p>Hilton Statement at [41]. Crabb at PN</p>
	<p>As the NTEU's own definition of a "research institute" relies on an undefined definition of "research", the NTEU's late doubts about the meaning of the word cannot be taken seriously.</p>	<p>NTEU Proposed Variations (5 October 2015)</p>
<p>No definition of "health related" (at [4.5])</p>	<p>At no point has it previously been suggested that this definition was confusing or would not be understood The definition ought to be read expansively, and would take its ordinary meaning.</p>	
	<p>The National Health and Medical Research Council (NHMRC), and the <i>National Health and Medical Research Council Act 1992 (NHMRC Act)</i>, use the word "health" without definition. The NHMRC Act provides guidance as to the type of health that is contemplated in that Act. At s. 7, the function of the CEO of the NHMRC include the improvement of health, the prevention, diagnosis and treatment of disease, the provision of health care, public health research and medical research, and</p>	<p>NHMRC Act at s. 7. NHMRC Corporate Plan 2015 at p 9.</p>

NTEU drafting criticism	AAMRI & APESMA Response	Evidence
	<p>ethical issues relating to health.</p> <p>In the NHMRC's corporate plan 2015, it states that "<i>consistent with the NHMRC Act, NHMRC focuses on the relevance of research proposals for health, rather than defining 'health and medical research' as a set of research disciplines. NHMRC will fund research in any or all areas of health</i>".</p> <p>The definition ought to be read in line with the broad definition given by the NHMRC in awarding research grants for health research.</p>	
	<p>Debra O'Connor's unchallenged evidence was that NARI employed several researchers with qualifications in "health related" disciplines, including psychology, aged care, cultural studies, social work, health sciences, applied science, human movement, health education, exercise physiology social sciences, and physiotherapy.</p>	<p>O'Connor Statement at [18].</p>
<p>Coverage depends on "the adequate discharge" test (at [4.6]-[4.8])</p>	<p>Assessing the requirement to possess certain qualifications in order to perform a portion of the duties is central to interpreting all streams of the PEA.</p> <p>The definitions of duties "the adequate discharge of any portion of which require qualifications" has its origins in the <i>Professional Engineers Award 1961</i>. This award is the parent award of all subsequent awards the coverage of which today comprise the totality of the coverage of the PEA.</p> <p>Even when qualifications have been approved by a Professional Association, the PEA still requires the objective assessment of whether or not a particular position requires those qualifications. Professional Associations are not involved in determining whether a particular position involves scientific or engineering duties, only which degrees will be relevant to such an assessment.</p> <p>A recent decision of the Commission (which dealt with award coverage in regard to an unfair dismissal jurisdictional matter) set out how to determine when the adequate discharge of duties requires particular qualifications in the context of professional engineering duties in the PEA.</p> <p>Beginning at paragraph 21, VP Lawler concluded that the term "<i>requires</i>" in the context of determining coverage would have the first meaning in the Macquarie Dictionary, that is "to have need of". In other words, it is an objective test.</p> <p>His Honour then proceeded to establish several principles for determining award coverage. These included that:</p> <ul style="list-style-type: none"> particular duties will be "professional 	<p><i>Professional Engineers Award 1961</i> ((1961) 97 CAR 233 and 97 CAR 344</p> <p>PEA at cl 3.2 "professional engineering duties"</p> <p>PEA at cl 3.3 "professional information technology duties"</p> <p>PEA at cl 3.4 "professional scientific duties"</p> <p><i>Sanjay Halasagi v George Weston Foods Limited</i> [2010] FWA 6503</p>

NTEU drafting criticism	AAMRI & APESMA Response	Evidence
	<p>engineering duties” if a qualification is “required” for the “adequate discharge” of “any portion of those duties”;</p> <ul style="list-style-type: none"> • the qualification must relate directly to the duties in question; • it would be prima facie evidence that the qualification was required if it were to be included in the advertisement for the position and then drawing on the 1961 Professional Engineers Case he referred to the “the adequate discharge of any portion” of duties was intended to ensure that when engineers advance in their career and assume administrative duties the Award can still cover them. 	
<p>Delineation of undergraduate qualifications (at [5])</p>	<p>This restriction arose in response to the AiG concern that the proposed stream, prior to the introduction of the geographic limitation, would <i>"water down key existing principles in the award"</i></p>	<p>AIG Submission (6 May 2016).</p>
	<p>The proposed geographical restriction on undergraduate degrees is based on the similar restriction set out for professional scientists. A Full Bench of the AIRC determined that this gave rise to a fair and relevant safety net for professional scientists, and AAMRI and APESMA submit that it will also give rise to a fair and relevant safety net for professional medical research employees.</p>	<p>PEA, cl 3.4 "Academic Schedule"(a)</p>
	<p>The first award covering professional scientists was the <i>Professional Scientists Award 1964</i> (20th May 1964). The definition of “Professional Scientific Duties” is in similar terms to that for Professional Engineers. The qualifications for Professional Scientists have been linked to nominated professional institutes but also as set out in Clause 3.4 of the PEA “A degree in science from an Australian, New Zealand or United Kingdom university or from an Australian tertiary institution”. The reason for this was simply that unlike Professional Engineering where there is one professional institute this is not the case for Science where there are many professional bodies and associations.</p>	<p>[A9630 – 8672/64] at the Schedule, paragraph (e)</p>
<p>Use of "competency standards" and "in-service training" (at [6.2]-[6.4])</p>	<p>AAMRI and APESMA acknowledge that these terms are unnecessary and respectfully seek that they be deleted from the proposed variation.</p>	<p>AAMRI & APESMA Application as amended (4 July 2016) at Schedule C.1.2(b)-(d)</p>

39. Save for minor drafting errors in relation to Level 1 – Graduate medical research employee, the NTEU criticisms of the drafting of the AAMRI & APESMA Application are unfounded. In contrast, there are significant issues in the way the NTEU Applications are drafted which reveal fundamental problems with those applications. These are addressed in detail in the AAMRI & APESMA Final Submissions in

Response. However, these fundamental issues in the drafting of the NTEU Applications include:

- (a) the use of the term research, which the NTEU says is unclear (AAMRI & APESMA do not accept this criticism but note that it has been made by the NTEU);
- (b) the use of "academic titles" as a defining characteristic of independent MRIs, when such titles are found in hospitals, government and the commercial sector;
- (c) the use of affiliations as a defining characteristic of independent MRIs, when such affiliations exist between MRIs, hospitals, government, universities, commercial entities, museums and zoos; and
- (d) the elitist and unsubstantiated fixation on PhDs as the defining characteristic of research employees (and the corresponding exclusion of graduates from the research only MSALs), when undergraduate degrees are also an entry point into research at independent MRIs.

The coverage of non-research employees

- 40. Contrary to its submissions, the NTEU has failed to demonstrate any hole or issue in existing award coverage that would make the NTEU Applications necessary to meet the modern awards objective.¹⁰
- 41. AAMRI and APESMA are proposing to amend the PEA to clarify the award's existing coverage of research scientists, and extend its coverage to other research employees it says are not currently covered but ought to be. They have not made, and are not making, any proposal in respect of the award coverage of any other employee at an independent MRI.
- 42. In contrast, the NTEU Applications are proposing to displace this existing award coverage by covering all employees at independent MRIs with the Higher Education Awards, which do not currently cover any such employees. In order to do so, the NTEU has claimed that not all employees at independent MRIs are currently covered by occupational awards. If there were a lack of coverage, the NTEU could have led evidence of such a lack of coverage – they have not.

¹⁰ NTEU Closing Submissions in Response at [9.1].

43. In spite of this, AAMRI and APESMA have set out the award coverage for non-research employees at independent MRIs. Appendix 1 to the AAMRI & APESMA Outline of Submissions in Response (3 June 2013) sets out both the relevant award coverage and how it is that the award applies to those groups of employees.
44. Until these Final Closing Submissions in Response, the NTEU has merely asserted a lack of coverage without supporting submissions or evidence. This casts significant doubt over its claim that there is any need to cover these employees with the General Staff Award. Even now, it has not led evidence of a single employee that is not covered by an occupational award. In contrast, it has merely dealt in hypotheticals with which it hopes to portray the system of occupational coverage as confusing.
45. The NTEU appears to have a fundamental distaste for occupational coverage, whereas occupational awards are a mainstay of the award system (see the decision of the AIRC Full Bench to cover university-controlled entities by occupational awards).¹¹ The research commissioned by the Commission as part of the Award Flexibility common issue, and the ACTU, AiG and ACCI submission in opposition to majority clauses in modern awards, comprehensively rejected this type of criticism of multiple award coverage in January 2016.¹²
46. AAMRI and APESMA have set out its response to the NTEU's misunderstanding of occupational award coverage below:

NTEU drafting criticism	AAMRI & APESMA Response	Evidence
Health Professionals (at [10.7]-[10.23])	<p><i>The HPSSA must have occupational coverage</i></p> <p>The NTEU seems to attempt to articulate an interpretation of clause 4.1(b) of the <i>Health Professionals and Support Services Award 2010 (HPSSA)</i> which extends to health professionals outside of the health industry, without extending occupationally to the common health professionals listed in the Schedule to that award.</p> <p>It is clear on the face of the Award, and the Award Modernisation process, that "<i>In relation to both nursing and health professionals the exposure drafts cover employees whether they are in the health industry or not</i>"</p> <p>It is unclear on what basis clause 4.1(b) of the HPSSA</p>	<p>HPSSA cls 4.1(b) and 15 and Schedules B and C.</p> <p><i>Award Modernisation</i> [2009] AIRCFB 50 at [81].</p>

¹¹ *Award Modernisation (AM2008/25-63)* [2009] AIRCFB 450 at [64]

¹² *Multiple modern award coverage and the utility of majority clauses* (May 2016), p 40; Submission of ACTU, AiG and ACCI (30 June 2016).

NTEU drafting criticism	AAMRI & APESMA Response	Evidence
	<p>would have work to do if it did not provide coverage occupationally. The NTEU have certainly not explained this interpretation of the coverage.</p>	
	<p><i>Any potential conflict between the HPSSA and the SCHADS Award is unaffected by these proceedings</i></p> <p>AAMRI and APESMA note the NTEU's contention that there may be a conflict between the coverage of the <i>Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS Award)</i> and the HPSSA.</p> <p>This conflict cannot be interpreted to mean that the HPSSA has no occupational coverage, as otherwise it would have no work to do.</p> <p>If there is a conflict in the award coverage, this is an existing problem in those awards that is in no way affected by any of the Applications in these proceedings.</p>	
	<p><i>The HPSSA covers employees in independent MRIs</i></p> <p>The HPSSA clearly covers employees in independent MRIs.</p> <p>While the NTEU led evidence from a single witness that employees in independent MRIs rarely perform health services, Peter Higgs acknowledged both that:</p> <ul style="list-style-type: none"> • his independent MRI employer (Burnet Institute) incidentally does so; and • he is not familiar with the extent to which other independent MRIs do so. <p>The evidence of Douglas Hilton elaborated on the diverse levels of health services provided by different independent MRIs across Australia. This evidence was not challenged.</p> <p>The NTEU's unfounded claim that MRIs do not, except incidentally, provide health services is manifestly untrue and demonstrates their unfamiliarity with the diversity of this sector.</p> <p>The NTEU provided no evidence of an employee engaged as a health professional (and not as a researcher) by an independent MRI who they claim is not covered by the HPSSA.</p>	<p>Higgs at PN7390-7400.</p> <p>Hilton Statement at [7] and [10].</p>
	<p><i>"Medical scientists" are diagnostic scientists</i></p> <p>AAMRI and APESMA do not understand the occupation of "medical scientist" to cover medical researchers, even though medical scientists may perform research.</p> <p>The predecessor award classifications referred to by the NTEU seem directed at <i>diagnostic scientists</i>.</p> <p>The only predecessor award to apply outside of health services, the <i>Health Services Union of Australia (Victoria – Private Sector – Medical Scientists, Psychologists and Pharmacists) Award 2004</i>, refers to the Australian Institute of Medical Laboratory Scientists as the relevant</p>	<p>Department of Immigration and Border Protection – Skilled Occupations List (at http://www.border.gov.au/Trav/Work/Work/Skills-assessment-and-assessing-authorities/skilled-occupations-lists/SOL, accessed on 20 March 2017)</p>

NTEU drafting criticism	AAMRI & APESMA Response	Evidence
	<p>Professional Association for the purpose of that pre-reform classification.</p> <p>This institute, now the Australian Institute of Medical Scientists (AIMS), has been specified by the Minister for Immigration and Citizenship as the assessing authority for the occupations of "Medical Laboratory Scientist" (formerly known as "Medical Scientist") and "Medical Laboratory Technician".</p> <p>The AIMS guidelines for these occupations set out that "<i>medical laboratory scientists are normally employed in diagnostic clinical laboratories, and they work in the field of laboratory medicine</i>". They require qualifications which specifically address diagnostic medicine, such as human anatomy, human physiology, immunology, general pathology. MRIs have great difficulty in obtaining visas for their medical research employees under these occupations because medical research employees do not meet the Department of Immigration's definition of a "medical scientist".</p> <p><i>Any purported conflicting coverage can be addressed</i></p> <p>If it were found that medical research employees in independent MRIs are covered by this occupation in the HPSSA (which is denied):</p> <ul style="list-style-type: none"> • there could be conflicting coverage between the PEA and the HPSSA; but • the NTEU Applications would be in no better position, as these employees would nonetheless be covered by modern awards. <p>If two awards cover an employee (which is denied), the solution is not to place these employees under a third award which has never covered any of these employees previously.</p> <p>The awards provide for resolving conflicting coverage based on the classification which is "<i>most appropriate to the work performed by the employee and to the environment in which the employee normally performs work</i>".</p> <p>Both the current and proposed PEA classifications would be the <i>more appropriate</i>, based on:</p> <ul style="list-style-type: none"> • the diagnostic focus of the medical scientist occupation in the HPSSA; • the fact that it is primarily a scientific environment as opposed to a health services environment; and • the limited historical coverage of "medical scientist" compared to "professional scientist". <p>The pre-reform awards relating to professional scientists had extensive pre-reform coverage throughout Australia, including specifically naming independent MRIs.</p>	<p>AIMS Guidelines for Assessment of Professional Skills & Qualifications (at https://www.aims.org.au/documents/item/88, accessed on 20 March 2017)</p> <p>PEA cl 4.10 HPSSA cl 4.8</p>
Miscellaneous	<i>Proposal does not exclude Miscellaneous Award</i>	

NTEU drafting criticism	AAMRI & APESMA Response	Evidence
employees (at [10.24]-[10.34])	<p>coverage</p> <p>AAMRI and APESMA do not consider that the proposed variation as drafted will have the effect proposed by the NTEU.</p> <p>The exclusion in cl 4.2 of the <i>Miscellaneous Award 2010</i> seems directed at those modern awards which cover an entire industry. This is to prevent employees who were intentionally not included in such an industry-wide award from being covered by the <i>Miscellaneous Award</i>.</p> <p>The "industrial" coverage of the PEA is limited to a single type of professional employee within certain "industries". It does not purport to, or attempt to, provide industry-wide coverage. Accordingly, the "medical research industry" is not covered in the sense meant by the <i>Miscellaneous Award 2010</i>.</p> <p>The NTEU's interpretation would have similar employees in IT firms and quality auditing firms excluded from the coverage of the <i>Miscellaneous Award 2010</i>.</p>	
	<p>Purported coverage issue can be rectified</p> <p>It is not the intention of the AAMRI & APESMA Application to impact on the existing award coverage for non-research employees, which is operating appropriately.</p> <p>If the Commission were to find that the coverage of the <i>Miscellaneous Award 2010</i> was affected by the Application, AAMRI and APESMA propose that it could easily be drafted so as not to refer to the "medical research industry".</p>	
Technical employees (at [10.35]-[10.42])	<p>Technical workers are appropriately covered</p> <p>AAMRI and APESMA accept the NTEU's propositions that technical workers are covered by the <i>Manufacturing and Associated Industries and Occupations Award 2010</i>.</p> <p>The NTEU has hypothesised that "<i>based on general knowledge and impression it is reasonable to draw the conclusion that it is highly likely that some are covered, and it is highly likely that many are not</i>". With respect, it is the NTEU's case that the current award system does not provide for adequate coverage, and therefore its obligation to provide any probative evidence that an employee is not covered.</p> <p>The NTEU has led evidence of a technical worker, David Trevaks, who would be covered by this award. The NTEU has not even suggested that he would not be so covered.</p> <p>To the extent that employees may not be covered by this award, they are of a type that is traditionally covered and would accordingly be covered by the <i>Miscellaneous Award 2010</i>.</p>	

47. The NTEU's criticism of coverage that "*would require the assessment of the balance of each employee's individual duties*"¹³ demonstrates its unfamiliarity with the operation of occupational awards. Coverage based on duties is the foundation of "*equal remuneration for work of equal or comparable value*".¹⁴ The NTEU's criticism that the safety net is not "systematic"¹⁵ fails to understand that many employers and employees throughout Australia work in industries that are not caught by an industry award, and for these employees the occupational awards operate without any detriment.
48. Section 134(1)(b) of the modern awards objective requires the Commission to take into account the need to encourage collective bargaining. Any concerns held by the NTEU about the complexity of multiple occupational awards covering independent MRIs is best resolved through bargaining, rather than shoehorning the entire sector into another sector's award.
49. The Commission may only vary the modern awards in accordance with the NTEU Applications if it is necessary to do so, and the party proposing a variation has the obligation of demonstrating that necessity.¹⁶ The fact that the NTEU cannot point to a single employee they say will not be covered means that they have failed to discharge that onus.

Rates of pay

50. AAMRI and APESMA maintain that the existing system of occupational award coverage provides for rates that are appropriate to the work performed by employees in those occupations. The NTEU has provided no reason for the Commission to depart from the rates it has already set for these employees.
51. The NTEU has made several comments in the NTEU Closing Submissions in Response that consider the appropriateness of various award classifications and rates. It has claimed that the Higher Education Awards contain the appropriate classifications and rates for the work performed at independent MRIs. However, it

¹³ NTEU Closing Submissions in Response at [10.41].

¹⁴ *Fair Work Act 2009*, s.134(1)(e).

¹⁵ NTEU Closing Submissions in Response at [10.43].

¹⁶ Issues Decision at *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 at [24] and [27].

also proposes other comparator rates in support of its secondary position that the Commission should make a new award for independent MRIs.

52. In respect of the question of whether the proposed rate for Level 5 – Professional medical research employee is setting or varying a rate, AAMRI and APESMA submit that the proposed classification attempts to capture a level of responsibility which may fall outside of the existing Level 4 in the PEA, having regard to previous decisions of the Commission regarding the coverage of that level of the PEA. An examination of the proposed descriptor for Level 5 shows a qualitative difference from the skill level in Level 4 of the PEA. Level 5 will cover the small amount of people at very senior levels. It is a classification agreed to by the relevant union and employer associations in the sector (including AiG), with appropriate regard to the existing relativities in the award and the base rates of similar positions in other awards such as the HPSSA.

53. AAMRI and APESMA set out their response to these comments below:

NTEU claim regarding rates	AAMRI & APESMA Response	Evidence
<p>The Research Academic MSALs allegedly contain descriptors "<i>specifically designed to reflect the nature of research work, including the work of medical and scientific researchers, in settings identical in all relevant respects to independent research institutes</i>" (at [6.15]).</p>	<p>Substantial evidence has been led by AAMRI and APESMA, and in many circumstances admitted by witnesses for the NTEU regarding the differences in:</p> <ul style="list-style-type: none"> work between employees in independent MRIs and universities, in particular the emphasis on translational research including grey literature and patents in MRIs compared with the focus on ARC ERA publications in universities; and the circumstances of independent MRIs from those of universities, such as size, diversity, funding, tax treatment, missions and corporate structure. 	<p>See AAMRI & APESMA Final Submissions in Response at [70]-[86]; [93]-[108]; [124]-[127]</p>
	<p>Substantial evidence has been led about the inappropriateness of these classification descriptors to the work that is actually done by research employees at independent MRIs.</p>	<p>Further Hilton Statement at [53] Hilton at PN7842-7854 Crabb at PN9892 O'Connor at PN8292, PN8294</p>
	<p>The MSAL descriptors have never applied to employees in independent MRIs. The Academic Salaries Award which applied to a small minority of independent MRIs did not contain descriptors</p>	<p>Academic Salaries Award</p>

NTEU claim regarding rates	AAMRI & APESMA Response	Evidence
	<p>for the various levels.</p> <p>The evidence of Brendan Crabb was that there is no clear equivalence of classifications between universities and independent MRIs. Peter Higgs' evidence supports this, as he is employed by a university at one level and by the Burnet at another.</p> <p>The Research Academic MSALs do not contemplate graduate research employees.</p> <p>It was the unchallenged evidence of Douglas Hilton and Debra O'Connor that there are research employees that commence at a graduate level.</p>	<p>Crabb at PN9875-9877</p> <p>Higgs Statement at [14]</p> <p>Hilton Statement at [48]</p> <p>O'Connor at PN8246-PN8249</p>
<p>The rates of pay established in the Academic Salaries Award are allegedly appropriate to independent MRIs (at [11.1])</p>	<p>In the decision which made the Academic Salaries Award, AAMRI and APESMA note that:</p> <ul style="list-style-type: none"> • while the AIRC determined that the salaries met the work value principle, the five level structure and the rates were agreed between AHEIA and the relevant unions; • the independent MRI parties were covered by the Academic Salaries Award by consent; and • there was no discussion of independent MRIs (or research institutes at all), and no indication that the Commission was asked to consider whether it was appropriate for such rates to apply to independent MRIs. <p>Further, the Academic Salaries Award contained no classifications to describe the work value of the employees whose rates it set and contained no substantive conditions of employment.</p> <p>The Academic Salaries Award only ever covered about 12 MRIs, not nationally but only within Victoria and WA.</p> <p>The AIRC roped four independent MRIs (Baker Medical Research Institute; Biomolecular Research Institute; Bionic Ear and Hearing Research Institute; and Reproductive Medicine Research Institute) into the classifications and rates in the Victorian predecessor to the PEA.</p> <p>In respect of those MRIs, such rates were deemed more appropriate than those applying at universities, in that those MRIs were removed from the coverage of the Academic Salaries Award when they became covered by the predecessor to the PEA.</p>	<p>Print J8559</p> <p>[AP797607]</p> <p>Roping In Award No. 2 of 2002</p> <p>Roping In Award No. 1 of 1997</p> <p><i>Workplace Relations Act 1996</i>, s. 148(1)</p>
<p>The rates of pay in the HEWS Award are allegedly relevant to non-research employees (at [11.3]).</p>	<p>These rates have traditionally applied to only 3 independent MRIs, and only in Victoria, from 2005 to 2010. It would be inappropriate to extend this coverage to all independent MRIs when it is clearly the exception.</p>	<p>HEWS Award, cl 4.1.1.</p>

NTEU claim regarding rates	AAMRI & APESMA Response	Evidence
	For example, the clear evidence is that NARI does not apply those classifications or rates. It would be strange to require NARI to categorise its approximately 10 non-research staff in accordance with the 10 level HEWS structure.	
The HPSSA rates allegedly demonstrate that the proposed Level 5 Professional medical research employee rate is inappropriate ([11.9]).	<p>The HPSSA is an award containing several pay-points based on years of experience. There has been no evidence that this pay-point approach is appropriate for independent MRIs.</p> <p>If it is accepted that Level 4 Health Professional in the HPSSA is equivalent to the proposed Level 5 in the PEA, then the proposed rate of \$81920 is appropriate.</p> <p>The proposed rate for a Level 5 Professional medical research employee is within \$70 p.a of pay point 2 of the Level 4 Health Professional.</p> <p>Professional scientists, which form most of the proposed professional medical research employees, have not traditionally had minimum rates with pay-points over the graduate entry level. In light of this, AAMRI and APESMA maintain that the proposed rate for Level 5 is an appropriate rate considering relativities with the HPSSA.</p>	HPSSA, cl 15.4
A comparison of the support classifications in the HPSSA is not equivalent to the rates in the <i>Clerks—Private Sector Award 2010</i> (at [11.10]).	<p>The highest rate in the <i>Clerks—Private Sector Award 2010</i> is actually Level 5 - \$47,008 p.a.</p> <p>There has been no assessment of the relative work values between the support staff in a hospital and an independent MRI, nor the historical or industrial reasons for the HPSSA rates.</p>	<i>Clerks—Private Sector Award 2010</i> , cl 16
Senior doctors have a higher base level of pay (at [11.14]).	<p>AAMRI and APESMA agree with the NTEU's acknowledgement that Senior Doctors "<i>may have work value considerations higher than their research activities which justify their rates of pay, so the comparison may not be of like-with-like</i>".</p> <p>Accordingly, they do not provide an appropriate comparison for rates of pay.</p>	
Relevance of <i>CSIRO Enterprise Award 2016</i> (at [11.18]-[11.21]).	AAMRI and APESMA submit that it would be inappropriate for the Commission to apply rates in an enterprise public sector award employers and awards with coverage broader than a single enterprise.	

CONCLUSION

54. AAMRI and APESMA have led probative evidence in support of the substance of their application (that the coverage of the PEA ought to be clarified and extended), and the way in which they have drafted the proposed variations.

55. In contrast, the NTEU has failed to rebut this evidence or provide any support for its criticisms of the AAMRI & APESMA Application. Further, in its recent articulation of supposed faults in the AAMRI & APESMA Application, the NTEU has demonstrated substantial defects in the NTEU Applications and seems to have retreated to a secondary position of a new award
56. The drafting and substance of the AAMRI & APESMA Application ought to be accepted by Commission, and the NTEU Applications rejected.

24 March 2017

Association of Australian Medical Research Institutes

Association for Professional Engineers, Scientists and Managers, Australia