



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**VICE PRESIDENT CATANZARITI  
DEPUTY PRESIDENT KOVACIC  
COMMISSIONER JOHNS**

**s.156 - 4 yearly review of modern awards**

**Four yearly review of modern awards  
(AM2015/6)  
Educational Services Awards**

**Melbourne**

**10.10 AM, WEDNESDAY, 19 OCTOBER 2016**

**Continued from 2/09/2016**

PN6961

VICE PRESIDENT CATANZARITI: I will just have the appearances again.

PN6962

MR K McALPINE: Mr K McAlpine with Ms L Gale for the National Tertiary Education Union.

PN6963

MR M BUTLER: If the Commission pleases, Butler, initial M, and I appear for the Association of Professional Engineers, Scientists and Managers Australia.

PN6964

VICE PRESIDENT CATANZARITI: Thank you, Mr Butler.

PN6965

MR N RUSKIN: Nick Ruskin. I appear with John Monroe for the Association of Australian Medical Researchers.

PN6966

VICE PRESIDENT CATANZARITI: Thank you. Yes?

PN6967

MR McALPINE: Thank you, your Honour. One question we were seeking the guidance of the Commission on was about whether parties should present their openings at the beginning or whether I should present the opening for the NTEU and then call our witnesses, and have the openings separately or together.

PN6968

VICE PRESIDENT CATANZARITI: Well, it might be more efficient just to have two short openings so that we know what the competing arguments are.

PN6969

MR McALPINE: Thank you, your Honour. One housekeeping matter. Last week the NTEU filed a bundle of documents which were a consolidation of our 2016 documents plus the document that we might wish to refer to from the 2012 proceedings which we somewhat narrowed from what was in the initial 2012 proceedings and I was going to request that that be marked for identification.

PN6970

VICE PRESIDENT CATANZARITI: Yes. That would be MFI41.

**MFI #41 FOLDER OF SUBMISSION AND STATEMENTS  
RELATING TO RESEARCH INSTITUTES**

PN6971

MR McALPINE: Thank you, your Honour. So I was proposing to make some opening submissions now. Our case, the case that we bring to the Commission today, is about research institutes and their proper award coverage. We need to understand what research institutes are, at least as they're being discussed in these proceedings. Research institutes are independent corporate bodies. They're not for profit. They're charitable institutions in the sense that donations I think are tax

deductible. And they're established as question of fact, although the definition that we're seeking may encompass some other bodies. Overwhelmingly the bodies we're actually talking about are established to carry out research to advance human health. So that's the broad scope of what we're talking about when we talk about research institutes.

PN6972

A few of these institutions are involved in an incidental way in the provision of health services, but this is generally a very small part of the work of this sector, and overwhelmingly the provision of health or allied services is incidental to the research priorities of the organisation. So, in our submission, these are distinguishable from health providers even though they're involved in the process of health research.

PN6973

In our application we set out a definition of research institutes that's consistent with that but narrows the definition somewhat by requiring affiliation to a University and the use of academic titles conferred by Universities. Now, that might seem like a technical distinction but it actually in practice characterises the type of institutions we're talking about and distinguishes them from, what you might call, say, for example, political party think tanks or advocacy groups who might say that they do research but they don't do the type of research that we think should be compassed by this amendment to the awards.

PN6974

The staff they employ, these research institutes employ, work in a variety of functions including researchers, research administrators, technical staff, professional clerical administrative computing finance and management staff and media communications and marketing staff. They have, on varying estimates, and I don't think it is of great dispute between the parties, somewhere between eight and 10,000 employees. So they're not an insignificant sector in the overall workforce.

PN6975

Sometimes the workforce figures are described by reference to both staff and students. Virtually all of these organisations have PhD students and/or Honours students enrolled in Universities undertaking their research at these research institutes. And they play an important role in post graduate education. Just as that post graduate education plays an important role in the research they perform and in their success, and I'll come back to that briefly.

PN6976

I just want to say a couple of things about the onus in this matter. We're going first but there's no particular reason for this. Both parties bear the onus given the Full Bench's remarks earlier in these proceedings about how prima facie the existing award arrangements constitute an appropriate safety net. In these proceedings, as far as we can tell, none of the parties support the status quo. All of the parties want changes to what the award modernisation Full Bench has decided. And there's a reason why no one supports the status quo. In our submission, and we'll come to this, it's quite unsatisfactory and unclear. If nothing else, AAMRI, the employer organisation in these proceedings and in the

proceedings in 2012 taken as a whole have taken inconsistent positions over time about which awards apply at these research institutes. And in that we don't allege any disingenuousness on their part. We say they looked at the awards and they came to a different conclusion to us in good faith because, in fact, we just say it's unclear.

PN6977

The fundamental argument about why we think our application should be preferred is that the work done in these institutes is cognate to that done by employees covered by the two higher education modern awards. And we say the Commission should do one of two things. Our preferred position is that two higher education modern awards be amended to cover research institutes as defined in our application. This would prevent an unnecessary further proliferation of modern awards which we're guessing that the Commission is disinclined, at least prima facie, to create additional modern awards. However, our alternative position, which is satisfactory from our point of view, is that new separate awards be made for research institutes covering academic and general staff, and we would say those should use the classifications and rates from those higher education modern awards. We don't have a particular preference. This is not, in our view, a union coverage issue. This is about establishing an appropriate safety net.

PN6978

And for that reason, of course, we're opposed to the joint position of AAMRI and APESMA. So we see the kernel of this matter as, particularly from an industrial and award point of view, is that central to our argument about the cognate nature of research institute work and University research is the concept of academic research. And academic research is at the core of the work value issues and the appropriateness of industrial coverage.

PN6979

Academic research, even in a medical and health context, is enormously diverse. It can be a clinical trial of a new drug. It can be understanding the molecular or genetic factors which might give rise to disease or their treatment. It might be practice based research taking data from surgical practice or even health prevention practice. It can involve doctors, general practitioners and specialists. It can involve nurses, social workers, epidemiologists, engineers, cultural theorists and linguists, and perhaps even lawyers.

PN6980

The research institutes undertake academic research, and that's considered both, to use the old language, both from the point of view of the industry of the employer, and the industry of the employees, is either engaged in academic research or supporting academic research. And we say academic research, and the evidence will show this, academic research has the following characteristics: the advancement and discovery of new knowledge and the question of accepted knowledge; commitment to methodological norms based upon the dispassionate search for the truth and based on evidence; the presentation of the outcomes or findings of research to critical scrutiny appears nationally and internationally within the relevant discipline; work being conducted for the public good, not for private good and subject to ethical regulatory guidelines; freedom of research;

findings from political or commercial control or interference; and requirements for appropriate qualifications or a track record to participate as appear in the relevant discipline. So these are the characteristics we say of academic research and we say that Universities and research institutes, whatever their differences, have these things in common.

PN6981

From an award and industrial point of view, for example, in relation to the pattern of work value recognition established over many decades, it is academic research which is the common factor used to establish work value for academic researchers irrespective of their discipline. So much is obvious from the fact that while the minimum award rates for a nurse and a medical specialist might be \$30,000 apart, the award rate for a research professor, level E, in nursing and surgery is the same, and that's because the thing that gives it the work value, the thing that's relevant in terms of setting a safety net of wages, conditions and classifications, is academic research not the particular discipline of the researcher.

PN6982

So the two existing modern awards, the higher education academic staff award and the higher education general staff award apply to Universities. So the question is do they apply only to higher education? And we say the answer to that is arguably no. These two awards do apply to Universities but Universities themselves are major research institutions in general and major medical research institutions in particular.

PN6983

The relationship within Universities between their higher education functions and teaching and research has traditionally been conceived through the teaching and research nexus with those who teach being engaged also in research. However, outside that teaching research nexus for many decades Universities have had large numbers of academic and general staff based in research only activities. These are people who do not teach or have only a very limited teaching role. This is particularly so in the health sciences, medicine and biological sciences. The most recent figures suggest that excluding casual employees there are 2500 general staff and 14,700 academic staff employed directly by Universities engaged in research only as opposed to teaching and research functions. So nearly 17 and a-half thousand non-casual staff. So while Universities are no doubt higher education institutions they're all major research institutions quite independently of their educational function. And what this means is that in effect if we conceive of industries of employers the higher education modern awards are already in this sense multi-industry awards irrespective of their name.

PN6984

So these two modern awards developed for higher education and their predecessors have always had to encompass the range of academic and general staff who are engaged primarily or exclusively in academic research. And to the extent to establish award rates and classification structures capable of defining and classifying such work, both academic and general. They are the only modern awards in existence which comprehend and establish relativities and appropriate work value for all the work done in research.

PN6985

We should make clear, so it's not an issue of contention between the parties in the proceedings I hope, that we're not saying that research institutes are higher education institutions. That's not our contention. They don't confer degrees. Generally speaking they do not conduct courses of lectures leading to the conferral of higher education qualifications although there's some limited evidence of this. They're not part of Universities, they are independent institutions. They're not controlled entities or subsidiaries or related corporations of Universities, either technically or in reality as some other bodies are. They are University controlled entities, for example, language centres which are companies wholly owned by a University that carry on University functions. But they're not like that. They are independent institutions.

PN6986

So having said that they do play an exceptionally important role as do research only academics in Universities in what is called research training in medical research areas. They provide the academic supervisors for Honours and PhD students in large numbers the research institutes do, and provide critically important access to the type of high quality research infrastructure that's needed for those students to do their studies.

PN6987

So what we say as well is that, as I said, only the two modern awards for higher education describe and properly classify all jobs. To not either amend the scope of those two awards or create a new award based on the same conditions would be to leave a mish-mash of awards potentially with inconsistent work values being assigned to people working together who would otherwise be considered to be of the same work value level.

PN6988

Now, to some extent, and I don't want to overstate this, to some extent this is reflected in the award history. Currently some but not all of these staff, those who are not currently covered by a modern award, are still covered by an award made in 1989. The Universities affiliated institutes at academic research salaries Victoria and Western Australian award which covers a significant number of the research institute employees. Victoria has the heaviest concentration in terms of staff of the research institutes.

PN6989

Now, this is one of a few awards made by the Commission or its predecessors in specific consideration of research institutes. There were other enterprise awards, such as the mental health research institute award and a general staff award at the Walter and Eliza Hall Institute, a very large research institute. Now, what we can see from those awards is that they reflected exactly the rates and classification structures in the awards which covered Universities. So there was a safety net established by the Commission, a proper set of minimum rates which applied to research institutes and in a residual sense, and I wouldn't put it higher than that, a residual sense to some of the existing employees still. Smith DP in 2011 did not set aside the research salaries award, the academic research salaries award, because, I don't want to overstate it, but he said he wasn't convinced that there

weren't still employees to which it applied and to which no modern award applied working in the research institutes.

PN6990

DEPUTY PRESIDENT KOVACIC: Mr McAlpine, do you have a sense of to whom or where the employees of that particular award, where they may operate, where they may be and how many?

PN6991

MR McALPINE: It is a bit of a mish-mash. If our friends from APESMA are correct, if that's correct, there'll be some employees who have science degrees who are probably covered by that award, the professional employees award, but, for example, a person holding a medical degree who works at a research institute, which is not a health provider, it's not in the health industry, which I think if you refer to the definitions in that award, they need to be employed in the health industry, as far as I can see, they're not covered by any modern award, and that therefore that extant residual award which existed from 1989 to 2010 would still apply to them. Similarly, if I was a research fellow who had a physiotherapy degree or – I wouldn't want to – maybe a nursing degree, but I'd need to go back. Every time I go through all this and I remember it for a few days, and then I have to go back for it probably for closing submissions, but, yes, we don't say it's more than a residual coverage, but our main point is that there was, between 1989 and 2010 a properly set minimum rates award which had the same classification structures applied to Universities and to research institutes in Victoria and Western Australia.

PN6992

DEPUTY PRESIDENT KOVACIC: Just one other question, Mr McAlpine.

PN6993

MR McALPINE: Yes.

PN6994

DEPUTY PRESIDENT KOVACIC: Are there many research institutes that are based outside Victoria and Western Australia?

PN6995

MR McALPINE: Yes, there are. I did say Victoria had a disproportionately large number, given its population, but by all means there are now in Queensland, the largest research institute in Queensland is the QIMR, Queensland Institute of Medical Research and it's a State instrumentality and would not fall within the scope, I think, of either our application or of the other side's application, and in New South Wales there are a number of significant research institutes. And there's a new large one, which wouldn't have been comprehended by that award, in South Australia called the South Australian Medical Research Institute, I think. Yes, SAHMRI.

PN6996

So, yes, there certainly are. And it's not – I deliberately didn't want to overstate the position and say this was a wall-to-wall industry award. It wasn't.

PN6997

DEPUTY PRESIDENT KOVACIC: And I didn't hear you say that.

PN6998

MR McALPINE: No. So we say there's been very little put – another point, we say there's been very little put before the Commission so far in these proceedings to suggest that the higher education modern awards are inappropriate as a safety net. There's just nothing been put as far as we can see of any real substance. It seems to be, we're different from Universities so we want to be covered by a different award, and we - at least my general following of the award modernisation procedures is, that that argument generally speaking didn't cut it with the award modernisation Full Bench unless there were proper grounds for a differentiation based on relevant industrial considerations.

PN6999

In the 2012 proceedings witnesses were asked what were the problems with the higher education modern awards, and the thing that was cited was the limitations on the use of fixed term contracts were cited as a major problem with the higher education modern awards given that, I think it's common ground, a very big majority of people in research institutes are on some form of fixed term contract. And yet it was clear, on the face of the higher education modern awards, that the restrictions on fixed term employment only apply to those places that were previously covered by the higher education contract of employment award. So the objection in 2012, in our submission, was largely misconceived, and nothing has really been put as to why those are not the appropriate awards, given that they can provide wall-to-wall coverage.

PN7000

A few quick points which I won't go to in any detail, but we say the evidence will disclose this. The higher education classification structure and other key elements of the higher education awards have continued to be reflected in enterprise agreements negotiated since 2010 and therefore at least provide some indication that the industrial parties, including in circumstances where the NTEU wasn't involved, have continued to consider that those structures are the best to regulate classifications.

PN7001

Universities and medical research institutes compete with each other in the same labour markets. Universities and medical research institutes compete for research project grants from major government granting agencies. Nearly always on the same terms. In some cases, in fact, there's regular poaching which goes on, which we think is probably not in the interests of the industry, but quite often a chief investigator at a University or at a research institute transfers their employment and moves from, I won't give a name, but moves from a research institute to a University or vice versa and the grant follows them. So there's this sort of transfer, not just of staff, but actually of research projects. Often people are – I suppose we should be happy for our members, but people are offered inducements to transfer.

PN7002

We say, by way of submission, that the definition proposed for award coverage that we proposed is clear. It's stable. It's clear who's in. It's clear who's out. And I will take the Commission, if I may, to, just briefly, as briefly as I can, some of the proceedings in the award modernisation process because I think it's important that the Commission understand the process that led to the current situation, which we consider to be unsatisfactory. This is simply an extract, and obviously the Commission and the other parties can go and look at the whole transcript and the whole decisions but I just want to highlight a number of points about the proceedings that led to the making of the relevant awards. And these are extracts of transcript and decisions. So could I suggest that be marked for identification?

PN7003

VICE PRESIDENT CATANZARITI: MFI42.

**MFI #42 EXTRACTS FROM TRANSCRIPTS AND DECISIONS IN  
RELATION TO AMOD PROCEEDINGS**

PN7004

MR McALPINE: Thank you, your Honour. Now, there were proceedings on 27 May 2008 and these were proceedings before the award modernisation Full Bench about which industries should be considered priority industries, that is, the first cabs off the rank, if you like, for the process of award modernisation and what the scope of the Commission's considerations should be in those proceedings. So, Ms Bissett, as she then was, for the ACTU, proposed in those proceedings a proposal about a higher education award and she particularly said it covers controlled entities of Universities, relevant research institutes with Universities with some exclusions, private providers of post-school education, et cetera. So the proposal from the ACTU, which was in an exhibit, but I haven't taken you to that, was that there be a higher education award that should cover controlled entities of Universities and research institutes. And at paragraph 668 in those proceedings, again, I made reference to, down the bottom of that page, to controlled entities of Universities that are involved in education and training.

PN7005

And then at paragraph 669 I talked about the nexus between Universities and research institutes and talked about, essentially, the matters I've gone to this morning, and why it was important that the higher education award include research institutes. Smith C asked, at paragraph 670 whether there was already award coverage in that area, and I said basically what I've said this morning; that there was some award coverage in Victoria and Western Australia, and that some research institutes were government agencies.

PN7006

Briefly at paragraph 2713 Mr Mendelson for the CPSU also said that research institutes should be included and he made the point, given his interests, that obviously organisations like the CSIRO should be excluded from that coverage because they have their own industrial arrangements.

PN7007

COMMISSIONER JOHNS: Sorry, Mr McAlpine, just for own my benefit.

PN7008

MR McALPINE: Yes.

PN7009

COMMISSIONER JOHNS: What are we to make of the fact that you've been consistently saying this for eight years?

PN7010

MR McALPINE: Sorry?

PN7011

COMMISSIONER JOHNS: What are we to make of the fact that you've just been consistently saying this for eight years?

PN7012

MR McALPINE: The point I want to get to is actually about trying to understand the extent to which the Commission actually turned its mind to the question at the final point. So that's where I'm leading. My point is not that because we've been saying this for eight years the Commission, as currently constituted, should do something about it.

PN7013

COMMISSIONER JOHNS: Should finally do something about it.

PN7014

MR McALPINE: That's not my point.

PN7015

COMMISSIONER JOHNS: Right. Okay.

PN7016

MR McALPINE: Okay. I should have made that clearer. So going over the page, there's a decision of the Full Bench of 20 June 2008, and I've only included extracts. I'll take the Commission to paragraph 30 of that decision which is a couple of pages over at the bottom of the page. And the Full Bench said in making the decision that higher education should be a priority award, which was opposed by some people, they also defined what they were talking about at that point. And they said:

PN7017

*We've decided to include a defined area of higher education on the priority list. We shall focus on mainstream Universities both public and private. And then at this stage essentially we're not going to look at those things although we intend to include both public and private. The number of modern awards to be made is yet to be decided but, in our view, it's preferable to examine all of the relevant issues at the same time.*

PN7018

So they were basically saying at this stage we're just looking at the Universities but we will have to come back and consider those other issues.

PN7019

And then over the page in December they make a decision about the award and in that decision they actually don't say anything about the scope of the award at all except that they're going to have two. They publish two draft awards; one academic and one for general, and that no distinction should be made between public and private Universities. Other than that they don't go to the question of a scope of the award.

PN7020

And then if I can you over the page and the Commission can consider this in its own time, but just very briefly these are extracts from the transcript of what we'll call the stage 3 proceedings which were dealing with the rest of educational services other than Universities, amongst a whole mass of other issues as well but specifically that. And there's a discussion on the transcript between me and the late Whelan C about the controlled entities and research institutes. So there was a discussion about controlled entities and we had said that we thought that controlled entities of Universities that are involved in higher education should be covered by the higher education award, and I said that I thought that we'd probably already lost that argument and Whelan C said, "No, everything is still" – well, she said at paragraph 287:

PN7021

*Well, all I can say I don't believe that any avenue is totally closed.*

PN7022

So I then talked about the controlled entities as one group, the student unions, that is, the Universities unions, the student associations as another group, and the third group I talked about was research institutes, so there were three separate issues put to the Commission. Again, we drew the attention of the Commission back to our earlier submissions about why research institutes should be covered and we made it clear that research institutes were not controlled entities of Universities. And then finally in the statement of 22 May by the Full Bench, 22 May 2009, which was about these stage 3 issues, that is education services, the Commission talks about the range of education providers at paragraph 62. And then at paragraph 63 it says:

PN7023

*Awards in this sector also cover employees of Universities unions, student unions and University controlled entities.*

PN7024

When the higher education awards were created in the priority stage we did not deal with the coverage of these areas but provided for them to be considered at this stage. And then they say:

PN7025

*We've decided that the Universities unions and student unions can most appropriately be dealt with by the higher education industry general staff award -*

PN7026

Which they have subsequently been –

PN7027

*rather than by the creation of an award specific to those organisations.*

PN7028

In relation to non-teaching in University controlled entities generally some maybe covered by the Educational Services Awards. Others will be covered by a classification in another industry award or in an occupation award. Now, I won't come back to that in future. I just – our view is that, with respect to the Commission, although in a technical sense the Commission didn't do what we wanted it to do, I think it's fairly clear from that transcript, that in circumstances where, at that stage, there was no opposition to the inclusion of these organisations that it had been put by the CPSU, the ACTU and ourselves, and then it was put again in the proceedings before Whelan C that the Full Bench simply overlooked the question of research institutes. They simply didn't address them. They addressed the student unions; they addressed the controlled entities, but they didn't address the question of research institutes. And on that basis we say that although I think it's reasonably legal in a legal sense what the Commission did, I don't think it's fair to say that the Commission made a considered decision that research institutes should be covered, for example, by the professional employees award, or that they shouldn't be covered by the higher education award.

PN7029

So, as I said, it's not to say we've been asking for this for a long time, so you should do it, it's really just saying, we don't think the Full Bench really considered the matter that was put to them. I know that, you know, in the proceedings that I included the extract there before Whelan C, there was a cast of thousands, and there were many, many things the Commission had to consider. So I'll leave that point.

PN7030

Turning briefly to the AAMRI and APESMA application. APESMA has looked at its own award so to speak, the professional employees award, and that award has four broad classification levels, and the highest of those classifications is level 4. Now, last year Mr Walton – I won't go into detail but Mr Walton, as a courtesy, for which we thank him, came and told us that they had reached an agreement with the employers to proceed with a joint application, which is an application that was made last year. Our response was, of course, that given the previous award rates what they were proposing with that level 4 from the professional employees award would involve a cut up to \$36,000 in award rates compared to those which it applied before. Not surprisingly we were very happy about that. And earlier this year they amended their application to create a new classification in medical research. The medical research employee I think it's called at level 5. Now, that's an award they say already applies to most employees. So what they're now in fact doing is providing for the variation of minimum rates. For some level 4 employees, from 66,000 to 70,000, which is their new proposed level 5. And we say that's a proposal to vary minimum rates under an award and we say that the Commission at least needs to consider the meaning of section 156, and we say that to create that new classification and lift some employees from level 4 to level 5 could only be done for work value reasons, as defined in section 156(4). And we say that there's nothing been put;

there's not the detail that's required or the evidence that's required for the Commission to vary the rates in the award that currently apply to level 4 employees.

PN7031

Finally, in relation to the applications of AAMRI and APESMA it should be noted that they have at least had something to say about the medical researchers as they describe them, however, in relation to non-researchers without tertiary qualifications AAMRI and APESMA have provided no real account of how their existing employees would fair under the regime they propose or how that compares with what we've proposed.

PN7032

We remember that the Bench in earlier opening submissions said that we should address section 134 and I'll do that very briefly. We say that in reality a lot of the matters listed in section 134 about the modern awards objective are not strictly relevant to these proceedings however we would say that in relation to the principle of equal remuneration for work of equal value set out at 134(1)(e) we say our proposal involves two awards that cover all employees, and particularly in relation to general staff what we have is an integrated set of salary rates and career structures that comprehends every single employee who works for a research institute and establishes an appropriate work value and salary relationship between each employee that works there. And we say that encourages the concept of equal remuneration for work of equal value whereas a hotch-potch of awards or no awards, in the case of some people, doesn't promote that.

PN7033

In relation to (f) we don't think that there's likely to be an impact on employment costs to any significant extent with either of the applications that are before you, however, again, despite what the employers say we think that the proposal that we put forward involves significantly lower regulatory burden because it's pretty clear it reflects having two awards that apply to all employees with clear descriptors that actually describe the type of work that is being done, technical, research, administrative management, et cetera is a reduced regulatory burden and for the same reason we say 134(1)(g) is important in the sense that the need to ensure a simple easy to understand, stable and sustainable modern award system that avoids unnecessary overlap of modern awards. So again we say if everybody who works at the Walter and Eliza Hall Institute knows that they're covered by this award or that award and here's the classification structures and here are the descriptors that is easy to understand for the employees and easy to understand for the employer.

PN7034

So that's all I wanted to say by way of opening submissions and I do have one other document which I'd like to hand up which again is just an extract of various documents and we thought the Commission and the parties may find it useful. We'll obviously want to make a couple of points about that but, and the other parties have been provided with this. What we bundled together here is the proposed salary rates and classification structures proposed by both ourselves and our friends from AAMRI and APESMA so general staff, the higher education academic classifications and rates and the professional employees award and that

includes their proposed now level 5. The existing award goes up to level 4 and then what we've done as well is we've inserted the classification standards for higher research for only academic staff from the higher education academic staff modern award and similarly the general staff classification standards from the higher education general staff award, and we've inserted AAMRI and APESMA's, at the back, on page 16, and thereafter we inserted APESMA and AAMRI's proposed classification structure for what they're essentially proposing as amendments to the professional employees award and we thought that might be a useful reference point and save us moving from document to document with witnesses and otherwise and so we'd ask that that be marked.

PN7035

VICE PRESIDENT CATANZARITI: MFI43.

### **MFI #43 COMPARISON OF WAGES AND CLASSIFICATIONS**

PN7036

MR McALPINE: Thank you. And unless the Commission has questions, I'll finish my submissions there.

PN7037

COMMISSIONER JOHNS: Sorry, Mr McAlpine, just further exploring the argument you make about section 157 subparagraph (2), how does inserting a new level 5 vary the modern award minimum wages?

PN7038

MR McALPINE: Because if I've got, for example, an award had one classification and one rate in it, for example, and it was \$1000 a week, and it covered a particular group of employees then inserting a new classification, we say, of \$1200 a week is to move some of those employees from - - -

PN7039

COMMISSIONER JOHNS: Only if they satisfy the classification.

PN7040

MR McALPINE: Yes.

PN7041

COMMISSIONER JOHNS: They're moving by virtue of the classification. They're not moving by virtue of some variation in the minimum wage.

PN7042

MR McALPINE: Well, at the moment the employees who meet the new definition of the higher classification currently have an entitlement, in my example, to \$1000 a week. And what is proposed - - -

PN7043

COMMISSIONER JOHNS: So if I'm currently level 4 my minimum is 68,001.

PN7044

MR McALPINE: Yes.

PN7045

COMMISSIONER JOHNS: If the new level goes in, level 5, my new minimum is 80.

PN7046

MR McALPINE: Yes.

PN7047

COMMISSIONER JOHNS: You say that's a variation to

PN7048

the minimum?

PN7049

MR McALPINE: Yes. And I couldn't find any - - -

PN7050

COMMISSIONER JOHNS: Indirectly?

PN7051

MR McALPINE: Yes. And I remember from my own experience in ancient times that the insertion of a new higher classification in an award had to be justified on work value grounds because what you're in effect doing is moving some employees who are in this level to a new higher level.

PN7052

COMMISSIONER JOHNS: Yes, all right. I understand.

PN7053

MR McALPINE: So it's an adjustment in minimum – I couldn't find any consideration of it and I chose my words carefully in the submission. I said that the Commission would need to consider the implications of section 156. At this stage I didn't offer any conclusive answer on that question. We say that the Commission will need to consider what the meaning of section 156 is and whether it's applicable in these circumstances.

PN7054

COMMISSIONER JOHNS: All right. I understand. Thank you. I appreciate it.

PN7055

VICE PRESIDENT CATANZARITI: Thank you, Mr Butler? Do you want to go first, Mr Ruskin?

PN7056

MR RUSKIN: I want to say make about 50 points in my opening and then I'm going to address some of the issues that were raised by Mr McAlpine. I tell you the 50 so you can count down and know I'm getting close to the end.

PN7057

COMMISSIONER JOHNS: Mr Ruskin, no doubt you'll get to it in your own time.

PN7058

MR RUSKIN: Yes.

PN7059

COMMISSIONER JOHNS: But whilst it's fresh in my mind, if you could deal with the 157 subparagraph (2) issue now that might be useful. No, I'm happy to wait. I'm happy to wait.

PN7060

MR RUSKIN: Thank you. I think Mr Butler will address that.

PN7061

COMMISSIONER JOHNS: Yes. Thank you.

PN7062

MR RUSKIN: We'll come to it, if that's - - -

PN7063

COMMISSIONER JOHNS: It will just all be together in the transcript, that's all.

PN7064

MR RUSKIN: Yes, it will be. Yes, it will be.

PN7065

MR BUTLER: Commissioner, I'm happy to do it now, if that would - - -

PN7066

VICE PRESIDENT CATANZARITI: Yes, all right. If you're ready to do it, let's do it.

PN7067

MR BUTLER: Thank you. The issue of the level 5 in the proposed medical research stream, as raised by Mr McAlpine, would not in the view of the association mean almost by some sleight of hand that persons currently classified under level 4 would automatically be classified at level 5. The definitions, the classification descriptors, and if you just bear with me for a moment, Commissioner, the classification descriptors deal with quite different duties and responsibilities. For example, at 3.1.10 the level 5, which is the definition of an experienced medical research employee at level 5, this employee is clearly a very senior employee. The employee leads a research team unit within their organisation for conceiving programs and problems to be investigated, and I'm para-phrasing here. We will certainly come to this descriptor during the evidence. Make responsible decisions on all matters including ways of obtaining research programs objectives and financial management of research funding, hold a substantial major record of independent and original contribution. Support and guide the efforts of professional research employees. But if I go back up to subclause (a) of this definition:

PN7068

*An employee at this level is expected to have received recognition as an authority nationally or internationally in their area of research expertise.*

PN7069

That is at a high level for the definition of the level 4, but, for example, and again I'm para-phrasing, Members of the Bench, makes reference to criteria such as:

PN7070

*play a major role in the research direction of the research group including, where appropriate leading a research group or managing research projects. Produce research that results in publications or influences health guidelines, health policy and/or other health advancements.*

PN7071

The definition for level 5 is quite different. A different level - - -

PN7072

COMMISSIONER JOHNS: So the point then, you agree that by inserting a level 5 there's a variation to the modern award minimum wages, but you say 157(2)(a) that that's justified by work value reasons, or do you say that this is not a variation of minimum wages?

PN7073

MR BUTLER: It would be the creation of the medical research stream, if it were to be granted, and inclusion of that classification of level 5 would be a variation.

PN7074

COMMISSIONER JOHNS: And you say therefore it's justified on the work value reason?

PN7075

MR BUTLER: We will present submissions that go to that issue.

PN7076

COMMISSIONER JOHNS: Okay. I understand. Thank you.

PN7077

MR BUTLER: Yes.

PN7078

MR RUSKIN: First point; the professional employees award is the modern award that covers scientists performing research including those with a doctoral research degree. Now, that's something that Mr McAlpine has today conceded; that it does cover research scientists but there's a recent Federal Circuit Court decision, which I can give you the citation of, which says that very thing. It's the *Fair Work Ombudsman v Priority Matters Pty Ltd and Ors* Federal Circuit Court [2016] FCCA 1474. And it says that, this is just reading from the decision in paragraph 214:

PN7079

*I find that Dr Wohlthat's qualifications were relevant to his employment in the role of a simulation scientist which was admitted in the pleadings. Given his PhD was obtained in 2011 this employee falls within the criteria in the*

*academic schedule to the Professional Employees Award for Professional Scientist.*

PN7080

He then deals with the issue of him doing research and they say that's still science and it falls under that award. So we say that the first point that that is the award that has been set by this Tribunal to cover research scientists and scientists in Australia.

PN7081

Secondly, our proposal to vary the PEA really arises from the proceedings in 2013 where Smit DP, as he then was, made suggestions that it was a bit of an awkward fit. Now, he didn't say they weren't covered, and we don't agree that they weren't covered. They are covered. But we thought it would help address the issue if we came up with a classification structure that better detailed the type of work specifically by medical researchers employed by MRIs. In 2013 we didn't think that was necessary. We have sought to address the Commission's possible concerns, or that Member of Commission's concerns, by dealing with better descriptors, and also we are expanding the coverage of the award, which we think is a helpful thing, to cover award free employees who are medical researchers who hold degrees in science but because of the old nature of the award it only applies to degrees in science in Australia, New Zealand or the United Kingdom, but not anyone else who had a science degree from another country. So we expand the coverage to include the United States and health related disciplines.

PN7082

Thirdly, the preform predecessor awards to the professional employees award covered the vast majority of independent MRIs in relation to their wages and conditions of employment. So the predecessor awards to the modern award covered these MRI employees performing science research.

PN7083

Fourthly, scientific medical researchers are scientists and research scientists are performing the work of scientists. There seems to be a suggestion that these people are not scientists. They're researchers and it's somehow different, and we'll be providing evidence to that point, a witness statement of Dr Smith. And there's also the decision of Cohen J in the MOA v APSA, which I think was the Association of Professional Scientists Australia, print FO592, the Australian Conciliation and Arbitration Commission where she says in her decision that research is a form of a subset of science.

PN7084

In order to help diagnose, prevent or treat disease such as cancer and diabetes medical researchers' work involves professional scientific duties using scientific equipment and techniques, experiments, microscopes, testing. That's the scientific process. Rely on underpinning scientific knowledge, e.g. biology, cells, vascular systems, genetics obtained through scientific academic qualifications. The point is that they are doing science and to suggest that they're somehow not doing science is strongly rejected.

PN7085

What we call the independent MRIs, there are about 50 of them. AAMRI representing about 36 of them who are independent MRIs but there is a number that are not members of AAMRI and they fall within the descriptions that we put of an MRI and which are already covered by the professional employees award. There's about 50 of them. They are not members of an industry with established relativities such that that should justify departure from the terms of the PEA. The professional employees award is the current award which covers them set by this Commission.

PN7086

Over 90 per cent of scientists in Australia are employed other than in the higher education industry. Over 90 per cent of scientists are employed not in the higher education industry. Less than 10 per cent of scientists are covered by the so-called higher education industry academics staff award 2010. Only 13 per cent of academics at Universities are scientists. Eighty-seven per cent of academics at Universities are not scientists.

PN7087

Point number 8, in the issues decision the Commission acknowledged that in achieving modern award objectives different outcomes between different modern awards would occur as a result of the diversity in the characteristics of employers and employees covered by different modern awards.

PN7088

In the modern award modernisation process the Commission noted that concerns had been expressed that historical boundaries should be respected between industries based on factors such as the regulatory environment, training and qualifications in the peculiar circumstances of the enterprises in the industry. The NTEU application does not respect it. They wish to break those boundaries by bringing into the higher education award medical research institutes which are not part of it. And if you look at the regulatory environment, training, qualifications and the peculiar nature of it, they are very different from the higher education industry.

PN7089

MRIs are themselves not easily defined and do not fit comfortably under an industry award. The size of MRIs range from 33 employees to the largest which is about 887 employees. I think the median, I worked out, at least in respect of our members, there are 13 other MRIs affected by this application which are probably smaller, but of ours that would be affected by this application, the median size is 139. The median size of a University in Australia is 2611. They're enormous. We are not enormous.

PN7090

Universities are homogenous in terms of their purpose, their operations, their regulation, their funding and their tax treatment. But MRIs are diverse. They are diverse in missions, in their primary funding sources, in their regulation or lack of regulation, in their operations and in their activities outside of research as you will see many of these institutions don't just do research, they do many other things. And there's no Act that regulates them as a unique industry or sector like you'd have with those 36 Universities.

PN7091

The primary focus of higher education is the education. The primary focus of MRIs is the diagnosis prevent or treatment of disease through medical, scientific research and as a result many medical research institutes are involved not just in research but in associated activities such as clinical services, public health activities, protection and development of intellectual property, commercialisation, public health delivery, policy development and advocacy. Did you notice that Mr McAlpine, in his opening, did not mention the dreaded word, the health industry? He talked about Universities and he talked about medical research in the institutions and how similar they were. He makes no mention of the health industry which is parallel to MRIs.

PN7092

MRIs are not recognised by government as part of the higher education sector and therefore are not subject to the unique regulatory environment of higher education institutions. As you may know Universities are regulated by the Higher Education Support Act and the Tertiary Education Quality and Standards Agency Act and they're subject to reporting requirements to the Tertiary Education Quality and Standards Agency, the Australian Research Council and the Commonwealth Department of Education and Training, and required to report on research data to the excellence in research for Australia research valuation framework. That's called the ERA. They have to report on their research to the ERA.

PN7093

MRIs are not subject to that regulation and they are not subject to that reporting requirement and they are not regulated as a sector or an industry by anyone except for their reporting obligations to the Australian Charities Not for Profits Commission as charities and they fall under the responsibility of the Federal Department of Health, not education by way of information.

PN7094

Point 17, independent MRIs, as we call ourselves, have unique funding arrangements, predominantly fixed term and project specific grants, as distinct from block funding model for hospitals and Universities. They get block funding, we don't. The corporate structure and tax treatment of the MRIs are such that they are health promotion charities or public benevolent institutions set up as companies limited by guarantee or as other incorporated entities. Therefore employees of MRIs have the benefit, because of this status as charities or benevolent institutions to receive remuneration in the form of fringe benefits tax exemptions. Now, they don't apply to higher education institutions.

PN7095

MRIs, Medical Research Institutes, are not eligible, they are not eligible to apply for grants to the Australian Research Council. Only Universities in two other institutions can apply for grants to the Australian Research Council. MRIs can't. MRIs receive less indirect government funding to support research than do Universities. MRIs are not eligible to receive research block funding from the Commonwealth Government to which Universities are eligible.

PN7096

Point number 21, MRIs are eligible for funding for operational overheads associated with the national Health and Medical Research Council grants, the NHMRC grants, through the Independent Research Institutes Infrastructure Support Scheme, the IRIIS, which is available only to independent MRIs. So this is infrastructure funding.

PN7097

Universities are focused on scholarly publication of research. That being the fact, you can tell that by the descriptors in the higher education awards which talk about scholarly research. That's what they do. That is not the primary focus of MRI's researchers. And some MRIs focus on what's called grey literature, which is not accepted by key Universities metrics. Grey literature means publishing something in a magazine about elderly people, for instance, which is they're pleased that it's published because it promotes their work, but it's not, in the academic research sense, counted as part of the ERA. It's doesn't count. So we reject the notion that Mr McAlpine strongly asserts that these MRIs are doing academic research. They do research and much of what they do is not something which would count at a University. And that's a fundamental difference. It's a fundamental difference going to the different work that they do and the different work value.

PN7098

Doug Hilton: this is point number 23, so I'm nearly half-way, who is the director of the Walter and Eliza Hall Institute, and will be giving evidence, says that research institutes may be much less similar to Universities than they are to hospitals or commercial organisations. They are not the same as Universities and they're not the same as hospitals, and they're not the same as commercial organisations, but they're certainly closer. Brendan Crabb, who is the director of the Burnet institutes, used to be the McFarlane Burnet Institute, acknowledges the work of medical researchers as similar to scientists who are employed by Universities. He does acknowledge that. And other institutions like hospitals but are distinct from the work of non-science University academics and researchers which make up the vast majority of University academics.

PN7099

See, NTEU lumped them all together. They think the 87 per cent of those academic employees of Universities are the same as the scientific researchers at MRIs, and we say they're not the same. They may be the same in terms of the scientific academics at Universities but they're not the same as the scientific researchers at MRIs.

PN7100

The work of medical researchers and their staff supporting medical research at MRIs is similar to the work performed by medical researchers and staff in a variety of sectors including the hospital, government research facilities, commercial research facilities like CSL. It is unremarkable that there are common parallels in the work performed by medical researchers at MRIs and those small number of medical researchers at Universities, but the vast majority of medical researchers are not in higher education.

PN7101

The fact that many MRIs have affiliation agreements with a University is also unremarkable. The NTEU makes it remarkable because the NTEU says this is one of the two links that enables their definition of what an MRI is that brings them under their proposed definition. There are two links. One is that you're affiliated with the University, and the other one is about whether they have any connection to the University through honorary appointments as academics.

PN7102

Now, dealing with the first one, MRIs do have affiliation agreements with Universities. So do Zoos, so do Hospitals, so do commercial entities. So one of the two links that they think bring them under their higher education award is something that perhaps should bring in the zoos as well.

PN7103

Point 27, the fact that there is collaboration between MRIs and Universities is unremarkable as well. As there is research collaboration amongst medical researchers across Australia and internationally at MRIs, at hospitals, at government and commercial entities, not for profit organisations. Of course there's collaboration.

PN7104

The application by the NTEU to vary the higher education awards, other than the matter before you today, all the other matters that you're dealing with in this case, of which we are not involved, dealing with all sorts of things, are, I think, representative of being very specific to the higher education industry, and the fact that there is that long detailed case being run as part of this, highlights the vast difference between Universities, those 36 Universities and MRIs in terms of the academic variations being pursued by the NTEU, but the material before the Commission, which we've only had a scant look at, is a world away from the world of MRIs. We don't want to be under that.

PN7105

The NTEU seeks to include research institutes in higher education on the basis that they consider that they are involved in education. That MRIs are involved in education, and higher education is of course involved in education. Yet in its own definition on what is a research institute that will go into the higher education awards, they include rightly, in terms of the definition, they include MRIs that are established for charitable educational other purposes, so they even concede that the purpose of MRIs is not education alone. But they want to include in the education awards institutions which are established for a charitable purpose and not an education purpose.

PN7106

Point 30, medical researchers at MRIs who supervise students, which is the second link they make to MRIs and higher education, do so in their capacity as honorary employees or fractional employees of Universities. Not as staff of MRIs. Supervision of research higher degree students at MRIs is quite different from teaching as we will show. It is not teaching, as is more practical, and it enables research higher degree students to work collaboratively with a more senior researcher who trains them into how to do their job. The type of mentoring and development is widespread in the professions and in other industries.

PN7107

The fact that professionals at MRIs and indeed other institutions like commercial organisations like hospitals, like government organisations, hold titles from Universities does not mean they are undertaking academic research or engaging in the supervision of students for an award course because they're not. The training of staff in health services and government bodies or junior researchers does not mean that those bodies should be covered by a higher education award. Staff are trained in hospitals, doing their qualifications, but they're not suggested to be covered by a higher education award.

PN7108

This issue of titles, which is the second string to the bow of the NTEU in linking MRIs to Universities, is quite unremarkable. The University of Melbourne has introduced this year enterprise professors. They have introduced enterprise professors so that Universities can have closer links to commercial organisations, and so the, I think it's the, head of, I think a division of BHP, has become a professor, Mr Bracks, Mr Brumby have all been appointed these enterprise professors and that's not because they are academics, although they're very clever people, but it's so as to link Universities to commercial entities. Well, that's the second string of the NTEU's bow and that's not a reason for bringing them under that award.

PN7109

Many MRIs are co-located at hospitals. Very few of them are located at Universities. Sixty per cent of the employees of the MRIs that we represent are medical research staff so the majority of the staff of these MRIs that we represent are medical research staff. Of the remaining 40 per cent most of the non-medical research staff have their occupational award coverage and this should not be disturbed without justification. Most of them are covered by the occupational awards.

PN7110

The NTEU's criticism of existing occupational coverage are confused and for instance they fail to take into account in their submissions the occupational coverage of the health professionals and support services award. They seem to think that that award only covers people in the health industry, and it does cover people in the health industry when it comes to an industry, but it's also an occupational award, so if you are a physiotherapist working at a law firm, God forbid, you would be covered by that award. So a physiotherapist or any other health professional at an MRI are covered by that award though we are not in the health industry.

PN7111

In the issues decision the Full Bench found there was a legislative acceptance that at the time they were made modern awards were consistent with the modern awards objective, and that previous Full Bench decisions should generally be followed in the absence of cogent reasons for not doing so. The coverage of higher education awards has previously been determined and we say that the Commission declined to include research institutes.

PN7112

While student unions were brought under the higher education awards controlled entities of Universities were not. The Commission determined, and I think Mr McAlpine has taken you to that in decision [2009] AIRCFB 450, that non-teaching staff in University controlled entities, much closer to the University than we are, if not covered by the draft educational services post-secondary educational award will be covered by classifications in another industry award, or in an occupational award. So the Full Bench faced with the issue of controlled entities, controlled University entities, decided that controlled entity staff should not be covered by the higher education award, because occupational awards were perfectly all right. Well, if they're perfectly all right in the eyes of the Full Bench then same could be said for the MRIs non-research staff.

PN7113

COMMISSIONER JOHNS: Did they positively determine that or did they just not refer to it?

PN7114

MR RUSKIN: In relation to controlled entities they positively determined it and I think the material that Mr McAlpine - - -

PN7115

COMMISSIONER JOHNS: But in relation to research institutes, I think - - -

PN7116

MR RUSKIN: In terms of research institutes, no – in terms of controlled entities that's so. In terms of research institutes, when you look at the language of the transcript there was talk as if the research institutes were also in the sub-set of University controlled entities and we say they had that before them and decided not to include research institutes under the award. Mr McAlpine will disagree but in our - - -

PN7117

COMMISSIONER JOHNS: Well, he will say that they just didn't get there.

PN7118

MR RUSKIN: Yes, he will say that, but, in our submissions, we've – in one of our many submissions, our submissions in response on 3 June at paragraph 24, and I can take you there now if you'd like.

PN7119

VICE PRESIDENT CATANZARITI: No, just the reference is fine. Thank you.

PN7120

MR RUSKIN: Yes. Yes, it's 3 June in support.

PN7121

COMMISSIONER JOHNS: Yes. Yes.

PN7122

MR RUSKIN: Paragraph 24, we deal with the transcript and what's happened and why we say research institutes were dealt with and disposed of and shouldn't be

disturbed. We say University controlled entities which were definitely considered by the Commission are significantly more closely related to Universities than MRIs but the Commission decided that they did not need to be covered by higher education awards but by occupational awards. The Commission continues to endorse the mix of industry and occupational awards even if Mr McAlpine doesn't.

PN7123

In the recent EY report Commissioned by the President of the Commission about multiple modern award coverage and the utility of majority clauses noted that the parties agree that the specific industry and occupational based modern awards best reflected specific roles, requirement, training and professional development opportunities, and to group the conditions and entitlements of all employees under the one award would reverse the perceived benefits of having separate modern awards. This was this notion of, as I understand it, that where, in our case, we have 60 per cent of staff covered by or will be covered by the professional employees award that for convenience you would put in a clause that says that staff of the institutions where the majority of the staff are covered by this award will also be covered by this award. And that was a suggestion, I think of the President for which led to the research to see, well, would that make things easier and the conclusion from EY was that this problem about occupational awards is not a problem. People liked them and the Commission continues to support them.

PN7124

We say the occupational modern awards that cover MRIs best reflect the specific roles and requirements of employees at MRIs. The NTEU has not established work value basis for changing the award coverage of MRIs. The onus is on them. We note what you say, Commissioner, about level 5, but at the moment the status quo of this Commission is that medical researchers, most medical researchers at our MRIs are covered by an existing award as supported by the Federal Circuit Court and I think Mr McAlpine made that concession.

PN7125

Secondly, most staff, non-medical research staff of the MRIs that we represent are covered by existing awards. What the NTEU wish to do is a massive change to that and that should not be forgotten. They are the ones that want to change, vastly change, the scope of coverage which we do not.

PN7126

Paragraph 43, I think. The definition of research institutes by the NTEU is arbitrary in terms of focus on affiliation to a University which we say can be easily disaffiliated. Mr McAlpine says well, they haven't which is true. Or based on the fact the second string is it's the affiliation. The second string is that employees may hold academic titles conferred on them, not by the MRI, but by the higher education institution. Well, we see that's a terrible basis for an industry definition. If you look at the 122 modern awards plus those industry awards, and you look at what is an industry, is it really consistent with that that the definition of an MRI is one which is affiliated with the Universities and where there is a staff member at that institution that happens to have conferred on it, not necessarily anything to do with the MRI, an academic honorary title, and that maketh the industry? I don't think so.

PN7127

Despite the NTEU's objections to occupational awards, in the transitional view before Smith DP it argued that nurses at MRIs should continue to be covered by the nurses award. So that was their position in 2013 that despite they wanted, you know, to get rid of occupational awards, put everyone under this industry, they wanted nurses separated. Now, its position is now unclear. It seems to be asserting a different thing, but I make that point.

PN7128

Look, the general staff award classifications that they want to put MRIs under are very broad and really if you look at the higher education workers descriptors you could fit advertising companies under those awards. They're very broad in their descriptors. There are 10 levels; very, very broad. They would cover many industries. So if we were the advertising industry they would be able to say, "Look, look at the higher education workers award, it's very good for advertising. Look, it describes clerical administrative work, it has managers, it has all sorts. It's terrific". Well, that's how they're arguing the MRI. It's the same argument.

PN7129

The historical award coverage of medical researchers under the pre-form science awards and now the PEA is in contrast to the NTEU's argument. Pre-reform science awards before the modern PEA award, did cover medical research institutes. But it is true that there were a few. There were 12 Victorian and WA only medical research institutes, 21 out of about 50, that, in relation to salaries only, in 1989 were placed under the Universities and affiliated institutes academic research salaries award WA and Victoria '89. That's true. It was a consent award. I remember it. It did not involve many proceedings. It was just a consent award that was made. There were hardly any changes to it since 1989. It only covers salaries, and it doesn't cover most staff now, and of course it's 10 years out of date. The highest rate is about \$71,000. So it hasn't, for understandable reasons, kept up, but it's an old award, made 30 years ago at a time when no one considered any of this, and things have moved on. And it only covered 12 and it doesn't have much effect any more. The award that does have effect is the professional employees award.

PN7130

Now, only six current MRIs had pre-reform coverage by awards that reflected, in any way, the higher education workers classifications. The NTEU is arguing that many MRIs were covered by higher education workers classifications and therefore they should be covered now. Well, as of today, there is no award made by this Commission which covers – no higher education workers classification enterprise award or industry award which covers MRIs. There are none. There were, at some stage, six; six out of 50. There is no reason why the terms that previously applied to this small minority and does not any more ought be extended to all independent MRIs.

PN7131

The application we've made to provide clearer classification levels for medical researchers under the PEA and include researchers who are currently award free, is supported by the employer body representing MRIs, us, the union representing professional scientists and others, APESMA, and the Australian Industry Group.

All of them say the home for medical researchers at MRIs is the PEA and all of them support in total the application before you today to alter the professional employees award, employers and unions alike. The NTEU sits all alone and we say, as Mr Walton will say, the NTEU hasn't shown an active interest in medical research issues.

PN7132

My last point is the NTEU application would drastically alter existing wage relativities that exist – existing wage relativities compared to the application that we've made to clarify the classifications and expand the scope of the PEA modernising it to take into account non-English, American and New Zealand science degrees, leaving most non-research staff of MRIs under the occupational awards that this Commission has made.

PN7133

Now, I think I should address just some of the issues that Mr McAlpine raised, and I'll do so quickly.

PN7134

COMMISSIONER JOHNS: Well, Mr Ruskin, while you're on the wage relatively issue, if I look at MFI43.

PN7135

MR RUSKIN: Yes. Yes.

PN7136

COMMISSIONER JOHNS: How is the argument you've just made made out in terms of the adjustment in wage relativity?

PN7137

MR RUSKIN: The application variation?

PN7138

COMMISSIONER JOHNS: No. I think you were saying their application would significantly adjust wage relativity.

PN7139

MR RUSKIN: Yes, it would, because their application would mean that MRIs who were not covered at all by the higher education awards would be covered by the higher education awards. None of them are covered at the moment. Not a single MRI is covered by either of those awards. None of them. Whereas the professional employees award covers most medical researchers at our MRIs at the moment, and the occupational awards, which we don't see should be disturbed, cover the non-medical research staff at MRIs, but their application would bring all of the employees who are not covered by the higher education awards into the higher education awards, from zero to 100 per cent.

PN7140

COMMISSIONER JOHNS: But how does that affect the wage relativity?

PN7141

MR RUSKIN: Because the minimum wage rates at the moment are those set by the PEA and not by the higher education award in relation to MRIs. And they wish to introduce a salary level that would change the minimum rates markedly from the minimum rates in the awards at the moment.

PN7142

COMMISSIONER JOHNS: Thank you.

PN7143

MR RUSKIN: I should say that those rates that they've provided, MFI43, are not up-to-date in that since we put in our application there's been a national wage movement which is reflected in their first two columns but it's not reflected in that document. Ms Gale notes that it is covered but it was an application made before 1 July 2016, so our application was made before the national wage movement. And, sorry, the 80,000 figure would be updated by the national wage movement is what I mean.

PN7144

I think I've covered all the points that I've addressed in my response. The only thing is that Mr McAlpine talks about a hotch-potch of awards and what he's saying is occupational awards are a hotch-potch of awards which I don't think the Commission accepts. If there's no further questions.

PN7145

VICE PRESIDENT CATANZARITI: All right. We'll take a short adjournment.

PN7146

MR RUSKIN: Thank you.

**SHORT ADJOURNMENT**

**[11.48 AM]**

**RESUMED**

**[12.14 PM]**

PN7147

VICE PRESIDENT CATANZARITI: Yes, Mr Butler?

PN7148

MR BUTLER: Members of the Bench, APESMA also wishes to make an opening statement in these proceedings. AAMRI and APESMA have made a joint application to vary the professional employees award. In submissions and evidence that will be outlined in support of the joint application it's submitted that the professional employees award is the appropriate occupational modern award to cover medical research employees. Further, it's also submitted, as outlined by Mr Ruskin, and most of what Mr Ruskin has already said to the Commission is supported by APESMA, but it's submitted that the professional employees award already has appropriate application to the majority of medical researchers on the basis that the majority of medical research employees are professional scientists who are performing professional duties in accordance with the award. And I'll come to a brief history of the outline of award regulation for professional scientists later.

PN7149

But before I do that, Members of the Full Bench, I'd just like to make some comments on the specific variation to the professional employees. And this variation seeks to achieve two objectives. The first objective is to create a separate medical research stream by varying the existing clause 3 by inserting a new subclause 3.7. And the effect of this variation is to expand the coverage of the professional employees award to include what we would submit is the minority of medical research employees who are currently award free.

PN7150

At present, and as outlined in the written statement of Professor Hilton, who will be called as a witness, and based on a survey that was conducted by AAMRI 70.1 per cent of medical researchers employed by medical research institutes possess degrees from Australian, New Zealand or United Kingdom Universities, and therefore on that basis it is submitted that their qualifications fall within the professional employees as it currently stands. And again no doubt that this will be tested, the basis on which this percentage has been ascertained is a survey conducted by AAMRI of 35 out of 36 medical research institutes.

PN7151

So it's submitted that the 70.1 per cent medical researchers who possess professional scientific qualifications are covered under the scientist stream outlined in clause 3.4 of the professional employees award. However, there are a minority of medical research employees which, whilst performing the same duties, are excluded from coverage because of two factors. The first factor is for 17.8 per cent of the medical research employees, is that their professional scientific qualifications are excluded under the academic schedule as contained 3.3 of the award.

PN7152

As I mentioned, the qualification schedule refers to a number of qualifications that are assessed by professional learned societies and then has a catch all provision that refers to a degree in science from an Australian, New Zealand, or United Kingdom University or from an Australian tertiary institution. This provision has the effect of excluding professional scientists who may be highly qualified but who have degrees from the United States for example. Secondly, there are approximately 12.1 per cent of medical research employees who possess degree qualifications and disciplines that are medical or health related, but are not in all instances professional scientific qualifications as such.

PN7153

Therefore, Members of the Bench, the proposed inclusion of a new subclause 3.7 would correct what AAMRI and APESMA would see as anomalies by including qualifications that are medical, science or health related, including qualifications that may have been obtained in the United States, and provide for the award, a definition of a medical research institute. The proposed variation to the coverage clause will make it clear that the award would only apply to employers principally engaged as a medical research institute, and we'll address these issues in more detail in witness evidence and submissions.

PN7154

The second objective of the joint application is the proposed creation of a separate medical research stream as set out in a new schedule C. And it's submitted that the classification descriptors are more contextual in their description of the hierarchy of the work performed at each level, including the level of responsibilities which are exercised.

PN7155

The fundamental divide between the position advanced by APESMA and AAMRI and, we submit, from our perspective a key factor in this case, is the NTEU claim that research in the context of medical research institutes is somehow removed from science, and at one stage in the submission the NTEU submission in reply, and witness evidence at paragraph 20, it goes as far as to claim that a science degree has little more relevance to research than their year 12 qualification. And that further on the claim was made that a science degree is not required for work in an MRI. In its important industrial and career sense academic staff are researchers not scientists. We believe that, and we'll support by evidence and submissions, that what the NTEU are attempting to do is to draw an artificial distinction between science and research.

PN7156

The position put by the parties in support of the joint application is that the use of the scientific method is an integral part of medical research. In this regard it will be submitted that in the context of medical research that in order to help diagnosis, prevention or treatment of diseases, such as cancer, diabetes, et cetera, that the work of medical researchers involves scientific duties in using a whole range of scientific equipment, techniques including the use of experiments, microscopes, testing, the scientific process, relying on underpinning science knowledge. Everything from the biology, cells, vascular system obtained through professional scientific academic qualifications.

PN7157

Witness evidence of which explores the scientific basis of the research conducted in medical research institutes being provided by a number of witnesses, including, when he's available to give evidence, Dr Ross Smith, who, in his statement at paragraph 3, says that undertaking scientific duties requires the application of principles, techniques, and methods developed over the course of a science degree and commonly subsequent discipline based qualifications and that it essentially makes no difference whether such work is carried out in the medical research institutes or elsewhere.

PN7158

Further, at paragraph 4 of Dr Smith's statement, he explains the scientific method as involving the making of hypotheses, developing predictions and then collecting and analysing data designed to test those predictions. And in addition there's the evidence of Professor Douglas Hilton, who I understand will be giving evidence tomorrow. And he'll give evidence that the core work of MRI researchers is aligned with improving health outcomes and is based on the scientific method.

PN7159

So, Members of the Bench, it may assist if I could briefly provide some contextual background in that I briefly touch on the history of award regulation for

professional scientists in the non-government sector. This is referred to in the witness statement of Mr Chris Walton at paragraph 9, that the first award for non-government professional scientists as an occupational award covering a range of industries was the professional scientists award which was first made in 1964. This award included a definition that remains to this day in the professional employees award, includes a definition of professional scientific duties. And I quote that those:

PN7160

*Duties carried out in any particular employment be added with discharge of any portion of which duties requires academic qualifications of the employee as specified in the academic schedule.*

PN7161

The academic schedule contained in the award referred to at that time and up until the present are qualifications approved by a number of scientific institutes and the general provision of obtaining a degree in science from an Australian, New Zealand or United Kingdom tertiary institution.

PN7162

Whilst the academic schedule of approved qualifications has been expanded over time, the definition of professional scientific duties has been included in the various successor awards up until the present and the making of the professional employees award. Therefore in respect of the current application the possession of professional scientific qualifications by medical research employees and the requirement for them to use these qualifications in the performance of their duties is, in our respectful view, the basis for their coverage under the professional employees award.

PN7163

Insofar as the classification structure of the current award, the predecessor awards to this current award, initially there were two classifications in the professional scientists award: classification for a qualified scientist; and an experienced scientist. The classification structure was expanded in 1995 arising out of proceedings in respect of the then structural efficiency principle as adopted in the 1989 national wage case decision. The classification levels in the award were expanded to the current four levels of responsibility, and the relevant Full Bench decision was decision 171 of '95 print M3882.

PN7164

Over the time the professional employees award, and its various predecessor awards, has become almost the default award for professional scientists with exceptions where awards have been made for specific sectors. As outlined in paragraph 10 of Mr Walton's statement, the coverage of the professional scientists award and today the professional employees award has been extensive to say the least. For example, in 2006, as part of the consolidation of the professional scientists award, 1800 employers were listed as respondents and this figure didn't include the members of the registered employer organisations such as the Victorian Chamber of Commerce and Industry and the Ai Group. Industries covered included everything from electronics, food, pharmaceuticals, oil, water science, laboratories, beer and wine production and so on. Included were a

number of medical research institutes and these are referred in Mr Walton's statement.

PN7165

A further observation on this point, Members of the Bench, is that the Commission has always regulated work through the award system either via occupational or separate awards. Since 1964 it has regulated the occupation of many professional scientists under what is now the professional employees award. As the evidence shows there are some professional scientists undertaking medical research in Universities. For historical reasons they are covered under the relevant higher education academics award, and the joint application is not seeking to disturb that, however, as we believe the evidence will show, most staff in medical research institutes are professional scientists. We would be submitting that nearly 90 per cent of medical researchers are professional scientists, and I suppose one of the many issues that the Bench needs to determine is whether the employment is regulated by the occupational award that covers a great majority of professional scientists or whether it places these medical researchers into a separate award with academics and University researchers, the vast majority of whom are not professional scientists as medical research employees.

PN7166

Just one final matter I think we'd like to comment on, Members of the Bench. In Mr McAlpine's opening statement he made a reference to a conversation that he had with Mr Walton, Chief Executive Officer of the Association, and it's very difficult for Mr Walton to reply, but we'd just say that what was suggested by Mr McAlpine is rejected and Mr Walton, as a witness, will be subject to questioning. If the Commission pleases.

PN7167

VICE PRESIDENT CATANZARITI: Thank you. Mr McAlpine? Thank you, Ms Gale.

PN7168

MS GALE: Thank you, your Honour. We now propose to call our first witness, Mr Roy Sneddon.

PN7169

VICE PRESIDENT CATANZARITI: And I just want to make sure that I've got the right version of this. There's been some agreement to the document in terms of – there's been an agreement in terms of taking out what's - - -

PN7170

MS GALE: Yes, your Honour. There is a redacted version of Mr Sneddon's statement which is in the bundle of NTEU materials, MFI41 at page 177. But I do have a - - -

PN7171

VICE PRESIDENT CATANZARITI: I've got that one, yes.

PN7172

MS GALE: Okay.

PN7173

THE ASSOCIATE: Would you please state your full name and address for the record.

PN7174

MR SNEDDON: My full name is Roy Sneddon (address supplied).

**<ROY SNEDDON, AFFIRMED** [12.32 PM]

**EXAMINATION-IN-CHIEF BY MS GALE** [12.32 PM]

PN7175

MS GALE: Thank you, Mr Sneddon. Would you just repeat your name and address for the record, please?---Yes, my name is Roy Sneddon (address supplied).

PN7176

Thank you. And, Mr Sneddon, have you prepared a witness statement for these proceedings?---Yes, ma'am.

PN7177

And you have a copy of the redacted version of that with you?---Yes, ma'am. Yes.

PN7178

Okay. Now, I understand there are some minor corrections that you wish to make, and the first of those is at paragraph 4?---Yes, ma'am.

PN7179

At the end of that paragraph you wish to add the words "with the exception of one year"?---Yes. That's correct.

PN7180

So that would read that you have:

PN7181

*held either the convenor or secretary roles since 2009 with the exception of one year.*

PN7182

Is that correct?---Yes, ma'am.

PN7183

The next correction, I understand, is at paragraph 27?---Mm-hm.

PN7184

And in the first line of that paragraph where it says, "I have been employed", you wish to say "I was employed"?---Yes.

\*\*\* ROY SNEDDON

XN MS GALE

PN7185

Then to add at the end of the paragraph a new sentence:

PN7186

*From April 2016 until now I have been employed in similar roles at HEO 7 at the University of Adelaide.*

PN7187

?---That's correct. Yes.

PN7188

The last correction is at paragraph 39. In the second line of paragraph 39, after the word "research", you wish to insert the words "requiring Ethics approval"?---Yes, ma'am.

PN7189

So that that sentence will read:

PN7190

*It is a rule in any funding body guidelines that research requiring Ethics approval does not commence until appropriate Ethics are in place, regardless of the employer.*

PN7191

?---Yes, ma'am.

PN7192

MS GALE: With those corrections, do you say this statement is true and correct?---Yes, ma'am.

PN7193

Do you adopt it as your evidence in these proceedings?---This is my statement, yes.

PN7194

Thank you, no further questions.

PN7195

VICE PRESIDENT CATANZARITI: That will be NTEU AH.

**EXHIBIT #AH STATEMENT OF ROY SNEDDON DATED 10/03/16**

**CROSS-EXAMINATION BY MR RUSKIN**

**[12.35 PM]**

PN7196

MR RUSKIN: Mr Sneddon, you are the convenor of the South Australian Chapter of the Australasian Research Management Society?---Yes, sir.

\*\*\* ROY SNEDDON

XXN MR RUSKIN

PN7197

As set out in paragraph 4 of your statement. This is a professional association for research managers in higher education, MRIs, hospitals, government departments,

research organisations, funding agencies, cooperative research centres, business and not-for-profit organisations?---That is my understanding, yes, sir.

PN7198

You regard the research manager work done across these sectors as similar across all the sectors?---Yes.

PN7199

Sorry?---Yes.

PN7200

Your statement doesn't confine its comments to medical research institutes and universities. The comments you make are about research funding and commonality of management and administration refers to research across those various sectors mentioned in paragraph 4 of your statement; is that right?---My expertise is in grant management, yes.

PN7201

Sorry?---My expertise is in grant management, sir, yes.

PN7202

You, in paragraph 13 of your statement, refer to the Hanson Institute?---Yes, sir.

PN7203

The Hanson Institute, you are aware, is not an independent MRI, medical research institute, that is the subject of this application but a medical research institute that is run by the Royal Adelaide Hospital, South Australian Pathology?---This is a little bit more complicated than a simple "yes" or "no". Your Honours, the Hanson Institute was a joint partnership between the old Institute of Medical and Veterinary Sciences, IMVS, and Royal Adelaide Hospital and it was considered by the NHMRC, that is the National Health and Medical Research Council, and also the Department of Health websites as being an independent medical research institute. Whether that falls under the definition of this Court, sir, I don't know.

PN7204

Isn't it actually a part of a hospital? It is not a separate institute standing on its own, it is an arm of a hospital?---Not of the hospital, sir, also of the IMVS, which had a different corporate structure.

PN7205

Sorry, IMVS?---IMVS is the Institute of Medical and Veterinary Sciences, sir.

PN7206

And that is part of the hospital?---No, sir.

PN7207

It is not part of the hospital?---No, it is not. No, it had two separate corporate bodies, both belonging to South Australian Health or SA Health, but they were two separate bodies.

\*\*\* ROY SNEDDON

XXN MR RUSKIN

PN7208

Is it your opinion the Hanson Institute is affected by this application or are you not in a position to say?---I don't know, sir.

PN7209

You make the point, at paragraph 14 of your statement, that employees of SA Health are affiliated with universities as adjuncts or clinical title holders or both, don't you?---That is correct, sir.

PN7210

Appointments of this kind are not confined to medical research institutes, are they?---Well, certainly my understanding, sir, is that at the Hanson Institute, we would have employees of IMVS, SA Pathology or the Royal Adelaide Hospital that would have affiliations, either clinical affiliations, academic affiliations, with many of the universities. Similarly, at, say, SAHMRI, which is another one of the affiliated organisations that we would work with, our employees at SA Health would also have affiliate status with SAHMRI, they would have worked at SAHMRI and also at the universities. It is a complex web of who the employer is versus who the affiliate title is as to who administers the research grant on behalf of the funding bodies.

PN7211

I suppose my question was employees of South Australian Health, which is a government entity - - -?---Yes.

PN7212

- - - were affiliated with universities as adjunct or clinical title holders?---That's right, they were the employee of the SA Health, the hospital, or IMVS and they held title with the universities.

PN7213

SA Health isn't a medical research institute, it is a health entity?---It is a health institute, yes, sir, health government body, yes.

PN7214

In paragraph 17 of your statement, you say that research - sorry, can I come back to the Hanson Institute?---Yes, sir.

PN7215

I put to you that the Hanson Institute is the research division of the Royal Adelaide Hospital and South Australia Pathology and it is not a stand-alone legal entity?---No, it is not a stand-alone legal entity, no, sir.

PN7216

It is part of those other bodies?---It is a joint venture of those two organisations, yes.

\*\*\* ROY SNEDDON

XXN MR RUSKIN

PN7217

That was my point, thank you. You say, at paragraph 17, that research was mostly conducted jointly with universities?---Yes, sir.

PN7218

You said that in the first statement. And grants were submitted to funding bodies through universities?---Yes, sir.

PN7219

But you are aware that MRIs more frequently submit grants directly to funding bodies without being submitted jointly with other parties? Are you aware of that?---I do know that, as my role with the University of Adelaide, we have SAHMRI employees who are adjuncts that have put their grant through us at the University of Adelaide rather than directly through SAHMRI, sir.

PN7220

But you are aware that there are other MRIs that put their grants directly to the funding body?---Yes, sir.

PN7221

You have not been employed with a medical research institute which is the subject of this application, have you?---The subject of this application, sir, as the definitions we talked about before?

PN7222

Sorry, that means the definition being a medical research institute that is not part of a university, not part of a hospital, it stands alone and not government?---My employers are the Royal Adelaide Hospital, University of South Australia, Flinders University and the University of Adelaide.

PN7223

You note, correctly I think, at paragraph 19 of your statement that the Australian Code for the Responsible Conduct of Research, you say was developed jointly by the NHMRC, the Australian Research Council and Universities Australia, don't you?---Yes, sir, amongst others.

PN7224

You agree, don't you, that independent medical research institutes were not involved in that at all?---I don't know the answer to that, sir.

PN7225

You don't mention them, though, do you? You mention all the others?---I don't know the answer to it. I only put what I know.

PN7226

What you know. All right. Do you know that Universities Australia doesn't represent independent medical research institutes?---I do not know the answer to that, sir.

\*\*\* ROY SNEDDON

XXN MR RUSKIN

PN7227

This Code for Responsible Conduct of Research, that code is relevant to hospitals, MRIs, commercial entities, indeed any entity undertaking medical research in Australia; isn't that right?---My understanding of it, sir, as a research grants

officer, is that our compliance is based on the Australian Code of Conduct. Outside of my role as a research administration officer, I don't know.

PN7228

You don't know that it applies to hospitals?---I only know my role, sir.

PN7229

You don't know, all right, fine. You use the term in your statement about being an ASO?---Yes, sir, that's administration services officer.

PN7230

In paragraph 31 of your statement, you use a bit of colourful language, you say:

PN7231

*Medical research in Australia is a spider web of research occurring within and across research institutes in the public and private sectors and universities.*

PN7232

Is that right?---Those are my words, sir, yes.

PN7233

You agree, don't you, that medical research is done across Australia in all sorts of sectors and industries that you have described?---Yes, sir.

PN7234

You say, at paragraph 32, that a research institute is often part of larger organisations?---Yes, in my experience, sir.

PN7235

Are you aware that most MRIs are small compared to a university and are not part of an organisation but is the organisation itself?---That is outside my experience, sir.

PN7236

You don't know?---No.

PN7237

Are you aware that the National Ageing Research Institute has 33 employees?---No, sir, that is outside my experience.

PN7238

You say that a researcher at a research institute is also a university adjunct that are involved in teaching and supervising doctoral students?---Yes, sir.

PN7239

Are you aware that most medical researchers from independent MRIs do not teach but they supervise staff who are students primarily for the benefit of research?---I'm sorry, I don't understand the question, sir. Can you repeat that?

\*\*\* ROY SNEDDON

XXN MR RUSKIN

PN7240

Are you aware - you may not be - that most medical researchers from independent medical research institutes don't teach but supervise students who are students primarily at those MRIs for the benefit of research?---The word "teach" in this context is largely to do with PhD students that could be termed as "supervised". The experience I have at the Hanson Institute, the bulk of our researchers were involved in supervision of PhD students. If that meets your definition, sir, then that is - - -

PN7241

They are not involved with teaching?---Some are. It depends on the area. For example, if they were in the School of Nursing, they have both undergraduate and postgraduate students.

PN7242

Sorry, this is at the Hanson Institute?---Yes. We also have nursing, public health, psychology. It wasn't just simply science, sir.

PN7243

I think you have said the Hanson Institute is part of the other entity, the South Australia - - -?---The Hanson Institute was a joint venture between SA Pathology and Royal Adelaide Hospital.

PN7244

There will be a witness in these proceedings called Professor Brendan Crabb and he is the director and CEO of the Burnet Institute?---I have not had dealings with the Burnet Institute, sir.

PN7245

It is a medical research institute. Anyway, he makes this statement and I wonder if you would agree with it. If I could just read it and if it is beyond your scope, that's fine, but it touches on this issue. He says:

PN7246

*The supervision of research higher degree students is quite different from teaching. It is more of a practical mentoring role in which research higher degree students are able to work collaboratively with a more senior researcher who trains them in how to do their job.*

PN7247

Do you agree with that?---If he is talking about higher degree students being masters and PhD students, yes, sir, I agree with that.

PN7248

You make the point, at paragraph 19, that there are high levels of integration with administration grants between hospitals, MRIs and universities, don't you?---Yes, sir, I do.

\*\*\* ROY SNEDDON

XXN MR RUSKIN

PN7249

In the next paragraph of your statement, you talk about the skills of research administrators, but, for some reason, you limit your comments only to higher

education and medical research institutes. It would also be the case that this is the situation with other sectors that you have mentioned in paragraph 4 of your statement, that is that that statement applies equally to government departments, research organisations, funding agencies, cooperative research centres, businesses and not-for-profit organisations, would it not?---My role as a research grant administrator would deal with anyone that was on that grant. So if they are on a government agency, we would have contractual obligations with the researcher that was on the government agency. If they were with another medical research institute or another university, our day-to-day operations would be to negotiate with the research officers at the other institutions, whoever they may be, to ensure that all the contractual paperwork was in place.

PN7250

And "whoever they may be" are not limited to universities and MRIs?---No, sir, they could be government organisations, they could be anybody.

PN7251

At paragraph 22, you talk about when you became employed by Flinders University?---Yes, sir.

PN7252

That was the first time you were employed by a university, wasn't it?---As an employer, yes, sir.

PN7253

As an employee?---As an employee, they were my employer, yes.

PN7254

It was the first time you were employed in an HEO or HEW classification?---Yes, HEO, higher education officer, sir.

PN7255

You had never been subject to those terms and conditions before, had you?---No, sir. I was previously employed as an ASO under the Public Sector Salary Award.

PN7256

As the convenor of the South Australian Chapter of the Australasian Research Management Society, are you aware that the terms and conditions of employment of employees in higher education, in independent MRIs, in hospitals, in government departments, in funding agencies and business are not all the same?---Only anecdotally, sir, as we discuss with our other members.

PN7257

When you were employed at the Hanson Institute by SA Health, you were employed, were you not, pursuant to the terms of Healthcare Workers in South Australia, weren't you?---Well, the Public Sector Salary Award, sir.

\*\*\* ROY SNEDDON

XXN MR RUSKIN

PN7258

Yes?---More than just healthcare workers. It would be the same award if I was working in the Department of Transport.

PN7259

You are aware that the terms and conditions of employment for employees at South Australia Health will not change as a result of this application?---I don't know, sir, probably not.

PN7260

In paragraph 24 of your statement, you talk about the movement of grants awarded to researchers?---Yes, sir.

PN7261

The references you make to the movements of grants, none of those institutions you refer to are independent medical research institutes that are the subject of this application?---In that paragraph, I haven't mentioned them, sir, but we certainly do. We have transferred grants to Bakery, we have transferred grants to SAHMRI. Whoever that researcher transfers to, under our contractual obligations to the National Health and Medical Research Council or the other funding body, we have to arrange for the transfer.

PN7262

But the institutions you have mentioned don't include any MRIs in this paragraph, do they?---In that paragraph, no, sir.

PN7263

What about ARC grants? They can't be transferred to an MRI, can they?---That is outside my experience, sir.

PN7264

Again at paragraph 28, you talk about the similarities between projects, grant researchers and research administrators at various institutes?---Yes, sir.

PN7265

And you talk about:

PN7266

*The Hanson Institute, the Royal Adelaide Hospital, SA Pathology and the three universities where I have worked are the same.*

PN7267

Again, in paragraph 28, you don't mention any medical research institutes that are the subject of this application?---No, sir.

PN7268

But you are aware that medical research is performed at medical research institutes?---Absolutely. As part of my job here, I deal with my compadres in the institutes.

PN7269

At paragraph 29, you say:

\*\*\* ROY SNEDDON

XXN MR RUSKIN

PN7270

*The workforce must follow the same rules and regulations.*

PN7271

?---Yes, sir.

PN7272

But that is not the case, is it?---I am talking about research grants, which are the area of my expertise, sir. Under research grants, we have a contractual obligation to the funding bodies and those contractual obligations determine how we administer our grants.

PN7273

So you are just talking about the research?---Research undertaken under research grants, yes, sir, that is my area of expertise.

PN7274

You say the workforce must follow the same rules and regulations and other compliance measures. We took that to mean a broader statement, that the rules and regulations affecting institutions are all the same, but universities are under different rules and regulations to medical research institutes?---Irrespective of whether it is a university, a medical research institute or a hospital, if they have signed the funding agreement with the National Health and Medical Research Council or the ARC, the Australian Research Council, they are all bound by that same rule book, sir.

PN7275

If that is so, how come the Australian Research Council process is outside your experience if you are so experienced in these things?---The bulk of my experience, apart from a short gig at the ARC team at the University of Adelaide, has been involved with health, and this is largely because I have come through the Royal Adelaide Hospital system and then, when I entered the university system, I was sought after for my experience in the health field, sir.

PN7276

There are health applications you can make in the ARC. Why have you had not any dealings with them?---The bulk of the ARC health applications that I have done have involved - the ARC rules wouldn't allow you for something that is medically-related or patient-related but instead turn to the pure science, and so there's exclusion criteria, and in an ARC grant, there is a section that says, "Does this have any relevance to health and medical research?" and if it does, you have to explain to the ARC why your particular grant doesn't have patient-centred outcomes.

PN7277

But even though you say it is outside your experience, you must be aware that Australian Research Council grants can't be sought by anything other than a university, bar two other institutions?---My only dealings with the ARC grants were either at the university or as a - what do you call it - a CIV, a co-investigator.

\*\*\* ROY SNEDDON

XXN MR RUSKIN

PN7278

Yes?---They can't be the lead investigator but co-investigator can be, or, if the investigator has less than 50 per cent - and it has been a couple of years since I have dealt with ARC grants - but as part of the eligibility criteria, they had to have less than 50 per cent of their employment outside of the university sector. So, a large part of the job that we would have to do as research administrators at the grant application stage was determining if the investigator was actually eligible for those grants.

PN7279

To be eligible, you had to have a connection to the university?---Yes, sir.

PN7280

VICE PRESIDENT CATANZARITI: Is that a convenient time?

PN7281

MR RUSKIN: Sorry?

PN7282

VICE PRESIDENT CATANZARITI: Is that a convenient time?

PN7283

MR RUSKIN: Well, I think I have only got a few more questions.

PN7284

VICE PRESIDENT CATANZARITI: If you can finish, yes, we will go on.

PN7285

MR RUSKIN: I could finish, if you like.

PN7286

VICE PRESIDENT CATANZARITI: Yes.

PN7287

MR RUSKIN: At paragraph 34, you state that SA Pathology and Royal Adelaide Hospital, a large proportion of research applicants were adjunct, affiliates, title-holders at universities. That is not uncommon, is it, within the health industry of which you are familiar?---With the health industry that I am familiar with, sir, yes.

PN7288

It is not uncommon?---The bulk of our researchers, and certainly also at Queen Elizabeth Hospital and Flinders University, if they were an employee of the hospital, they would have an adjunct title with the university, and they would therefore apply through the university as the administering body for the grant.

PN7289

But it is common within the health industry to have those titles?---Yes, sir.

PN7290

Two more questions. Are you familiar with the tax concession arrangements available to independent MRIs which are not available to universities?---No, sir.

\*\*\* ROY SNEDDON

XXN MR RUSKIN

PN7291

You agree, don't you, that many clerical and administrative jobs in the organisations you talk about are similar across many industries and sectors and that functions regarding issuing invoices and collecting moneys, those sorts of functions are common across industries?---They would not be classified as research administrators, sir.

PN7292

No?---They would be classified as clerical staff. Research administrators are defined by the advice and consultancy that they provide and the support they provide specific to researchers.

PN7293

Yes?---And I am talking about in the scope of research grant administration.

PN7294

You say clerical and administrative work is involved in research support, don't you?---For example, if I had - - -

PN7295

Perhaps my question wasn't clear. In paragraph 29, you do say:

PN7296

*The clerical and administrative work involved in research support is highly specialised.*

PN7297

You do say that?---Yes, in terms of grants - - -

PN7298

So it does involve clerical work?---A fantastic example of this, sir, would be finance and the raising of invoices. It is quite specific to research grants because of our contractual obligations to the funding bodies. For example, if a researcher was to come to me and say, "Look, I want to put my staff Christmas dinner on my NHMRC code", and this has happened, our custodial role as research grant administrators, including research grant finance, would be to say, "No, you cannot do that against this grant, you have to take that from a different pot of money." So, from that point of view, sir, it is very different from day-to-day invoice-raising. Once it has cleared our process, it gets handed to the rest of the Finance Department, who would then raise the invoice.

PN7299

And that is a skill you have got to have in research administration, wherever you are doing it, be it a hospital - - -?---As part of our custodial role under the NHMRC funding rules, it defines what is required of that role, yes, sir.

PN7300

No further questions.

\*\*\* ROY SNEDDON

XXN MR RUSKIN

PN7301

VICE PRESIDENT CATANZARITI: We will adjourn until 2 o'clock.

<THE WITNESS WITHDREW [1.01 PM]

LUNCHEON ADJOURNMENT [1.01 PM]

RESUMED [2.06 PM]

<ROY SNEDDON, RECALLED [2.16 PM]

RE-EXAMINATION BY MS GALE [2.16 PM]

PN7302

VICE PRESIDENT CATANZARITI: Yes, Ms Gale?

PN7303

MS GALE: Mr Sneddon, in the proceedings this morning, you referred several times to SAHMRI. Can you just explain what SAHMRI is?---SAHMRI is the South Australian Health and Medical Research Institute. It was put together by the South Australian Government but not part of the public service per se. We have researchers at SAHMRI that are SAHMRI employees, we have researchers at SAHMRI that are university employees and they do cross-pollinate in that we have SAHMRI employees that put their grants through the university and we have university employees that put their grants through SAHMRI as part of their grant administration.

PN7304

You were also asked about the proposition that many employees across the health sector, research institutes and other places, would have adjunct titles. That was put to you, I think, that that was quite common. Why? Why would they have adjunct titles?---Well, there's benefits to the non-university-employed medicos, nurses and so forth to have the title of "Professor". It helps them in their career, it helps the universities in that, as their grants are administered by the universities, the universities can count those grants towards the university rankings and/or block grant funding and other university measures. The hospitals we work with would get a benefit in terms of status as being a large teaching and research hospital. So by having that cross-pollination between the universities and the hospitals, it is a win-win. That is how it was explained to me when I first took the job.

PN7305

No further questions.

PN7306

VICE PRESIDENT CATANZARITI: You are excused.

<THE WITNESS WITHDREW [2.18 PM]

\*\*\* ROY SNEDDON

RXN MS GALE

PN7307

MS GALE: The next witness will be Dr Peter Higgs, whose statement is found at page 143 of MFI41.

PN7308

THE ASSOCIATE: If you could state your full name and address for the record.

PN7309

MR HIGGS: It is Peter Gregory Higgs, (address supplied).

**<PETER GREGORY HIGGS, AFFIRMED** [2.19 PM]

**EXAMINATION-IN-CHIEF BY MS GALE** [2.19 PM]

PN7310

MS GALE: Thank you, Dr Higgs. Did you prepare a statement for these proceedings?---Yes, I did.

PN7311

You have a copy of that statement before you?---I do.

PN7312

Are there any changes or amendments you need to make to that statement?---No, there aren't.

PN7313

Do you say that it is true and correct?---It is.

PN7314

Do you adopt that as your evidence in these proceedings?---Yes, I do.

PN7315

No further questions.

PN7316

VICE PRESIDENT CATANZARITI: That will be NTEU AI.

**EXHIBIT #AI STATEMENT OF PETER HIGGS DATED 10/03/16**

**CROSS-EXAMINATION BY MR RUSKIN** [2.20 PM]

PN7317

MR RUSKIN: Dr Higgs, having regard to paragraph 4 of your statement that you have been appointed as senior lecturer at La Trobe?---Yes.

PN7318

\*\*\* PETER GREGORY HIGGS

XN MS GALE

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

You could not be employed as a senior lecturer teaching an award course at the Burnet Institute or at any MRI, could you?---I'm not sure, to be honest. I know

that I can work a proportion of my time as a consultant and, at the moment, I am still employed by the Burnet.

PN7319

Yes, but you couldn't be a senior lecturer at Burnet teaching an award course because they don't run award courses because award courses are run by other institutions; isn't that right?---As I understand, the course that I taught in May of this year was a Monash University Masters of Public Health course when I was an employee of the Burnet. Whether or not I can still teach that course or not, I'm not sure, if that's what you mean.

PN7320

It was a course run by Monash?---That's right, but the Burnet is responsible for it.

PN7321

The director of the Burnet, Professor Crabb, has also worked as a teaching and research academic?---Yes.

PN7322

He will say that his primary role in that position was to teach. Would you say it is correct that your primary role at La Trobe is to teach?---Forty per cent teaching, 40 per cent research is what I have been employed to do.

PN7323

In paragraph 6 of your statement, the last sentence, if I can take you to that, that says:

PN7324

*Precisely the same time of work as this occurs and for the same purposes in universities where there are many research-only staff who undertake no, or very little, undergraduate teaching duties but are devoted to the same type of work with the same purpose.*

PN7325

?---Yes.

PN7326

That is, they are devoted to human health. Do you agree that public hospitals are also devoted to human health?---Hospitals are devoted to public health, yes.

PN7327

And universities, not-for-profits, public sector medical institutions, medical research and universities, but only where they do medical research, are all there to advance knowledge in human health, do you think?---Yes.

PN7328

Paragraph 11 of your statement, you say:

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

PN7329

*Students can complete a Masters of Public Health at Burnet through Monash University.*

PN7330

?---Yes.

PN7331

Do you accept or do you know that Burnet is an exception in that it does operate a masters and that most MRIs don't operate a masters in this way?---Yes. It makes it a unique part of the medical research fraternity, for sure.

PN7332

In paragraph 14, you say:

PN7333

*The job roles at the Institute -*

PN7334

presumably the Burnet -

PN7335

*are equivalent to academic roles in universities, research assistants -*

PN7336

blah, blah, blah, blah, blah?---Yes.

PN7337

You agree that a research assistant, a research officer or a research fellow could also apply not just for an academic role, which you talk about, but for a position at a public hospital in research, a government department, a funding agency at CSIRO?---Yes.

PN7338

Do you agree?---Similar sorts of skills, yes.

PN7339

And at CSL?---I'm sure there would be people at the Burnet who have worked at CSL or could apply for those sorts of jobs, just not in the unit that I work in, which is a public health-focused research unit.

PN7340

I see. In paragraph 15:

PN7341

*I define my vocation as a researcher.*

PN7342

?---Yes.

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

PN7343

I want to read out to you a short statement that someone is going to give in these proceedings and I just wanted to see whether you agree with this?---Sure.

PN7344

It says:

PN7345

*Medical researchers undertaking work in the MRI sector are utilising the scientific method, they are doing science.*

PN7346

Do you agree with that?---They are doing research, yes.

PN7347

You don't think they are doing science?---"Science" is a broad term - social science, medical science. Yes, I do social science research, so I call myself a researcher.

PN7348

Paragraph 15 of your statement, where you say:

PN7349

*I am a researcher. By this I mean who collects and analyses and writes up data, generating and publishing new knowledge is a big important part of this.*

PN7350

Yes?---Yes.

PN7351

Professor Crabb says, or we think he will say, unless he changes his mind, and I presume you agree with this?---He is my boss.

PN7352

Well, you are here to give your own honest view of things?---Yes, sure.

PN7353

I am sure that won't dissuade you - that:

PN7354

*Researchers at the Burnet are more concerned with developing a new drug or a treatment or a prevention method than the publication of their research in a journal.*

PN7355

Do you agree with that?---I don't, actually.

PN7356

You don't agree with it?---No, I think there's - I think ultimately we are doing research to get published in journals.

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

PN7357

You don't think that you are not as concerned or more concerned with the development of new drugs and treatments and prevention methods?---I don't know about "more concerned", I'm not sure that the weight - that you would put weighting - how you would kind of work out the weighting of that. I think the Burnet, as you have pointed out, is quite a unique institution in that we are doing a lot of public health kind of work and that the work, I think - our little slogan is "From evidence to action" - that we make contributions to public health that are beyond or more than just writing for publications.

PN7358

Yes?---But I think publications are an important and an essential part of the work that we do.

PN7359

But you do translational research, don't you?---Yes, definitely.

PN7360

Okay?---That gets published in journals.

PN7361

But you don't agree with Professor Crabb that it is really the development of the drug and the translation of that into activities that are important rather than the journal publication?---To be honest, I think that if you weren't publishing in the journals, you wouldn't be getting the money to do the research. So that's hard to work out exactly where you put the balance in terms of the importance, but I think Brendan, Professor Crabb, would say that all of the work that we do needs to be published because without having good and important publications in academic journals, they're not going to get the grants or the Burnet won't get the grants to enable them to do the research to do that sort of stuff. So to be - - -

PN7362

MRI researchers do publish in academic journals?---Absolutely.

PN7363

But so do researchers, you would agree, at hospitals, pharmaceutical companies and universities?---Yes.

PN7364

The Burnet also publishes, not in the ERA-type journals, but in grey literature, don't they?---Yes, they do.

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

PN7365

That is an important part of the way they propagate information?---It's part. I don't - again, the emphasis on importance - I think the importance in terms of the Burnet being able to get grants and that sort of thing that enable them to do the work, it requires publication in ERA journals, but there is an important component in terms of making a contribution to what else is going on to publish in grey literature that is also a part of what goes on. The Burnet publishes its own magazine - I think it is called Impact - that, you know, they will be writing things

up for that as well, but if they are not publishing in the main journals, they are not getting the grants.

PN7366

But for DFAT funding, you don't need to publish in journals, do you?---You don't have to, no, for that, but again there's a number of my publications that are funded by DFAT that are published in academic journals, so it is important for those people to get PhDs, for those people to get post-doctoral fellowships.

PN7367

So, in fact, as you say, the researchers who publish in academic journals, hospitals, pharmaceutical companies, et cetera, they need to do that in order to get funding, they all need to do that to get funding from some research funders?---Yes, I'm not sure how those organisations are actually funded, but - - -

PN7368

No, but if you are applying for the same grant - - -?---Yes, sure.

PN7369

- - - it would be the same criteria, would it not?---Yes, it would, but I am not sure that those organisations are competing for the grants at the same level that medical research institutes are, like I don't - I don't think that CSL is applying for grants from the NHMRC in the same way that the Burnet is.

PN7370

But public hospitals and public sector would be?---Yes, for sure. Public hospitals, certainly. I don't know about public sector.

PN7371

CSIRO?---CSIRO, to be honest, I'm not sure. I know there's been a lot of complications at CSIRO in terms of lack of - because they were mainly funded from the Commonwealth, I think, so they had a block grant, but I'm not sure.

PN7372

You say, at paragraph 17:

PN7373

*There is no difference at all between the research work I have done at the Institute and within a university.*

PN7374

?---Yes.

PN7375

You would say the same, wouldn't you, about research work done at public hospitals, CSIRO, South Australian Pathology? I know you haven't worked there?---No.

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

PN7376

But it is similar sort of work, isn't it?---Yes, I'm not a hundred per cent - I just know, because I've done work at university research institutes inside of universities and at the Burnet, that the work I do in those organisations are the same.

PN7377

But you are not sure about CSIRO?---I'm not sure.

PN7378

Or SA Pathology?---No.

PN7379

Or public hospitals?---Public hospitals, for example at The Alfred, there's a number of people that I work collaboratively with at The Alfred who have appointments at both Burnet and, say, Monash University, so the work that we do together is the same kind of work.

PN7380

The Burnet isn't eligible for an ARC grant, is it?---No, it's not.

PN7381

A university is?---Yes.

PN7382

So, as a staff member of Burnet, you are not eligible to apply for an ARC grant unless you have got some university - - -?---University appointment of at least point 2.

PN7383

Point 2 FTE?---Yes.

PN7384

At paragraph 19, you say:

PN7385

*We must also collaborate in gaining Ethics approval for projects.*

PN7386

?---Yes.

PN7387

You are not suggesting that Ethics approval is special to universities and MRIs and do not equally apply to the commercial sector or public sectors or CSIRO or the public sector, or do you not know?---Well, I know that there's a number of organisations that work in the public sector, for example the Community Health Service, that we have collaborated with who don't apply for Ethics, whereas we would apply for Ethics.

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

PN7388

So you are not sure whether the Ethics requirements apply beyond universities and MRIs?---No, I'm not.

PN7389

You don't know if they apply - I put to you they apply to hospitals; are you aware of that?---Yes, they definitely - we apply through The Alfred Hospital Ethics Committee, yes.

PN7390

You say in paragraph 6 of your statement, which is a very long paragraph, and somewhere in that long paragraph, I think you say that MRIs are not, except incidentally, involved in the provision of medical health or dental services. Do you recall saying that?---Yes.

PN7391

What about the I-based MRIs which provide a significant level of health services? You are aware of these, how they recruit patients for clinical trials?---The I-based?

PN7392

Yes, "I"?---Yes, sure. I know that they exist, but I don't know anything about how they work.

PN7393

All right. What about the Baker Clinical Services? Are you familiar with that?---I know who the Baker Institute is, but in terms of their actual clinical role.

PN7394

They are in the same building, aren't they, next-door to you?---Next-door, yes.

PN7395

You don't know - you are not familiar with their - - -?---I don't collaborate with them on any projects. The Burnet probably does, but they are part of The Alfred Medical Research Precinct Group, yes.

PN7396

What I am doing is challenging you, and I will come to a question?---Yes, sure.

PN7397

That MRIs are involved in the provision of medical health or dental services, or you don't think they are, except incidentally?---Right. Yes, certainly when I say that, I speak for the Burnet, I guess, rather than for all medical research institutes.

PN7398

Well, you don't speak for the Burnet, do you?---Well, I don't speak for the Burnet, but I speak from my experience of what they provide in terms of that stuff.

PN7399

Yes?---So only incidentally do the Burnet provide medical services.

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

PN7400

But you are not familiar with the other activities, medical health and dental services, operated by other MRIs?---No, I'm not, no.

PN7401

You refer to your extensive experience working in research institutes and universities?---Yes.

PN7402

Is it right that the only institute research that you have worked at has been the Burnet?---The only medical research institute, yes.

PN7403

You have only worked as - and I don't mean it - - -?---Sure. No, that's fine.

PN7404

- - - to say there is something wrong in that, but you have only ever worked as a researcher at the Burnet or at a university; is that right?---Well, the two research institutes that are attached to universities, they are not medical research institutes, but the Kirby Institute at the University of New South Wales - - -

PN7405

But that was at a university?---Well, it was actually at the Kirby, I was employed by the Kirby, which is part of a university, and then I was based at the National Drug Research Institute, which is a Commonwealth-funded centre, part of Curtin University.

PN7406

Yes?---So it's a kind of a subtle difference, but they are part of universities in the same way that - yes.

PN7407

All right. Brendan Crabb will give evidence that the Burnet links medical research with public health action?---Yes.

PN7408

You agree, do you, that Burnet does actually engage in significant amounts of public health activities?---Absolutely.

PN7409

You, yourself, worked as a community development worker at Burnet?---Yes.

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

PN7410

You agree that public health activities conducted at Burnet are not usually carried out by a university, or do you not know?---I don't think - certainly the public health activities that I conduct at the Burnet are no different to that that I have done at the universities that I have been employed at. So, every Thursday, for example, as part of my active research role, we have a van that goes into street drug markets where we are collecting data for research purposes. We do regular testing, we are doing a clinical trial of new treatments for Hepatitis C at the

moment, and my role in that is no different based at the universities or at the Burnet.

PN7411

COMMISSIONER JOHNS: Who are you doing that with? With the university or with Burnet?---Well, I am employed by the university but I am a collaborator on a Burnet project, so they - I mean, this is kind of the subtlety of who employs me to do the work that I kind of do. I am employed to be a researcher at the university, I am working on a Burnet, essentially, project, but whether I'm a Burnet employee for that part of the time or whether I'm a university employee, it's not - like it's hard to kind of say whether I'm - - -

PN7412

But you get paid by both?---I do get paid. I'm a point 2 position with the Burnet, so the work that I do, whether it's that part of the job, whether it's the supervision of students, whether it's the writing up of papers, it's hard to kind of say. Well, I don't like to sit down and say, "This is my job, 15 minutes of this hour I'm spending doing this". I've got three email accounts that are operating all the time, you know, it's - - -

PN7413

It's all a bit blurry?---It's very blurry, to be honest, in terms of that, and I don't know that the organisations themselves could say - they would just say that Peter - when I write papers, I have both affiliations, so it's kind of - it's work that I do, I get paid by two employers, mostly by one, a little bit by the other.

PN7414

MR RUSKIN: The AusAID work that is done, that can't be done by a university, can it?---I'm not sure. Probably not, I would say, but I don't - - -

PN7415

Burnet is an NGO, isn't?---Yes, it is.

PN7416

Do you know of a university that is an NGO?---No.

PN7417

Are you familiar with the special tax concessions that operate at a research institute compared to a uni?---Yes, I am.

PN7418

They are different, aren't they?---Yes.

PN7419

I have just got a few questions about the statement that Professor Crabb might give in these proceedings?---Yes.

PN7420

I just want to see if you agree with Professor Crabb on these things or not?---Yes.

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

PN7421

And it should have no impact on your career. He says:

PN7422

*The government structure provides the Burnet with its entrepreneurial focus on improving health outcomes through the development of products and changes to policy.*

PN7423

?---Sure.

PN7424

Do you agree with that?---Yes, I would agree with that. It's a separate - I mean, it's an important but separate kind of part of the research, I guess.

PN7425

Burnet is located at The Alfred Precinct?---Yes.

PN7426

In another paragraph, this is what he says:

PN7427

*I am responsible to the Board of Directors for providing strategic leadership in the direction of the institute -*

PN7428

and this is the bit that I wanted to ask you about -

PN7429

*in support of its mission in achieving better health for poor and vulnerable communities in Australia and internationally through research, education and public health.*

PN7430

?---Yes.

PN7431

Do you agree with that?---Yes.

PN7432

That is not the same mission as the mission of a university, is it?---I'm not sure, but, I mean, there's lots of motherhood statements, I guess, that universities might use to say that, yes, they are doing important work, or - I don't know - at La Trobe, I have just started there and there's always a thing saying, "We have just been ranked this, we're doing this."

PN7433

Yes, but we are talking about health outcomes, in achieving better health for poor and vulnerable communities and internationally?---Yes, sure.

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

PN7434

Universities don't say that as their major purpose?---No, I wouldn't say that is their major purpose.

PN7435

This is another statement of his?---From Brendan, yes.

PN7436

It is to do with teaching?---Yes.

PN7437

He says, and I think I have talked about this earlier, he was teaching in research academic and he says his principal role was to teach?---Yes.

PN7438

You have said something different about your role at La Trobe?---Sure, yes.

PN7439

And it was to coordinate, run and teach undergraduate courses, he said?---Yes.

PN7440

He said:

PN7441

*It was clear that was the principal reason for my tenure.*

PN7442

That is what he says about himself?---Yes, sure.

PN7443

He said:

PN7444

*I maintained a research laboratory as well but this was clearly a secondary reason. What this -*

PN7445

and this is what I want to ask you about -

PN7446

*What this exemplifies is not just the fundamentally different role that I played at the university compared to a medical research institute, but gets to the heart -*

PN7447

and I wondered if you would share this view -

PN7448

*of the distinction between a higher education organisation and an independent medical research institute.*

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

PN7449

Do you agree with that?---I mean, it depends on what you are employed to do, I think. I mean, there's lots of research-only academics and I'm as a research-only academic at both Curtin University and the University of New South Wales where I didn't have any responsibility for teaching at all, so it really - and in my role where I've just started, they are telling me that 40 per cent of my time is dedicated to research and 40 per cent of my time is teaching, mostly undergrads but also some masters level, but also there's an expectation that you take on PhD students as well.

PN7450

You don't think there is a difference in the purpose of what you are doing, that even though you are doing research, one is academic research and one is less academic and more transactional?---I just - I mean - - -

PN7451

Translational, sorry?---Yes, I think academic, the - - -

PN7452

You don't see the difference?---I don't think there is a difference between translational research and academic research in terms of they both get published in academic journals.

PN7453

So you don't agree with Professor Crabb if he was to say such a thing? I don't mean to - - -?---No, no.

PN7454

I just have to ask you that?---I just think - I mean, in the role that he was obviously employed at, he had a very heavy teaching focus. I'm fortunate to have had a research-only academic career up until this point in time where I've just taken on - now I've got a teaching responsibility as well.

PN7455

Again, Professor Hilton, who is the head of the WEHI, I put that he shares the same view as Professor Crabb about that difference, but you don't see it in your experience?---I just think it depends on what role you have. It has certainly not been my experience and it's not the experience of a lot of other research-only academics inside the university.

PN7456

You can't really speak for them?---I can't speak for them, no.

PN7457

Another thing he says - - -?---Brendan or - - -

PN7458

Sorry, Brendan, Professor Crabb, he says that the supervision of research higher degree students is quite different from teaching?---Yes.

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

PN7459

It is more of a practical mentoring role in which the research higher degree students are able to work collaboratively with a more senior researcher who trains them in how to do their job. Do you agree with that?---It is different, definitely. Supervision of PhD and honour students is definitely different to teaching at undergraduate level, yes.

PN7460

We are talking about the setting in which the - we are not talking about undergraduates, we are talking about research higher degree students?---Yes.

PN7461

He is saying the supervision of them is quite different from teaching?---I think - -  
-

PN7462

Do you share that view?---Well, I think it is all part of teaching and, to be honest, the students - - -

PN7463

It is more practical mentoring; would you agree with that?---Practical mentoring, yes, that would be a fair description.

PN7464

Training to do their job, effectively, as part of helping them in their career as well as - - -?---Yes, certainly there's a mentoring role for that.

PN7465

Burnet originated from the hospital, Fairfield Hospital, did it not?---Yes, it did.

PN7466

Do you agree that the Burnet collaborates with big pharmaceutical manufacturers, hospitals, charities such as the Gates Foundation and the Wellcome Trust and universities?---Yes, it does.

PN7467

And that it has entered a partnership with Omega Diagnostics to manufacture, commercialise and distribute CD Point of Care Tests to measure the immune status of people living with HIV in developing countries?---Yes.

PN7468

One last question?---Sure.

PN7469

Are you aware that many MRIs get a lot of their funding through philanthropy, that the Heart Foundation, Research Foundation, 80 per cent of its funding is through philanthropy?---Sure.

\*\*\* PETER GREGORY HIGGS

XXN MR RUSKIN

PN7470

Are you aware of that?---I'm not sure of the proportions but I know that the Burnet gets quite a bit of money from - - -

PN7471

The Burnet gets some too?---Yes, sure.

PN7472

Sorry, I said the "Heart Foundation", the Heart Research Institute?---Research, yes. Yes, I'm not sure of that, but as do universities.

PN7473

COMMISSIONER JOHNS: Mine seems to always be asking for money?---Yes, exactly, constantly ringing us up - alumni this.

PN7474

MR RUSKIN: Not quite as successful. Do you agree about the students working at MRIs that in any professional supervisory relationship - let me start again. The NTEU say research work involves passing knowledge on to students in the next generation of researchers?---Yes.

PN7475

Do you agree that in any professional supervisory relationship, this is what occurs in the early phases of professional employment?---Yes.

PN7476

Or are you not aware?---No, that would be, yes, fair to say.

PN7477

No further questions.

PN7478

MR BUTLER: Your Honour, I have a couple of questions, if I may?

PN7479

VICE PRESIDENT CATANZARITI: Sure.

**CROSS-EXAMINATION BY MR BUTLER**

**[2.51 PM]**

PN7480

MR BUTLER: Dr Higgs, if I can refer first of all to your curriculum vitae, which begins at page 151 of the combined NTEU materials?---Yes.

PN7481

I notice that your initial undergraduate qualification was a Bachelor of Social Work from the University of New South Wales?---It was, yes.

PN7482

Between 1984 and 1987?---Yes.

\*\*\* PETER GREGORY HIGGS

XXN MR BUTLER

PN7483

As an undergraduate social work degree, this course included a broad range of units? If I can use the term social work theory and practice and introduction to basic counselling and the principles that underpin that?---Yes.

PN7484

Social policy, community development and an introduction to research?---Yes.

PN7485

You were taught by your lecturers and tutors to view this within a sociological framework?---Yes, social work framework, I guess, rather than a sociological one, but, yes.

PN7486

In terms of your future research activities, you would agree that the principles that you learned about, evidence-based research or research in general, provided the building blocks for your research career?---Yes, that's right.

PN7487

I notice from 1995, January to June, you undertook Hanoi-based field work for a masters course at the Institute of Sociology in Hanoi in Vietnam?---Yes.

PN7488

That would be an example of you building upon your initial social work degree?---Yes, that's right. The start of my research degree really, I guess, because, yes, in social work, I wasn't trained to be a researcher, but this was really part of my starting to be a researcher rather than a social worker.

PN7489

But as part of your social work degree, you would have - - -?---We did two units in research, yes.

PN7490

You would have undertaken minor research of some description?---To be honest, we had to do four field work placements.

PN7491

Yes?---They weren't necessarily research and I didn't do a research placement as part of my undergrad degree.

PN7492

But after you undertook the field placements, you would have prepared reports?---Yes, sure.

PN7493

It wouldn't have just been turning up to have a look around?---No, no, definitely. There's a process for ticking off markers that say that you have acquired those skills or that you have achieved competency in this and that, yes.

\*\*\* PETER GREGORY HIGGS

XXN MR BUTLER

PN7494

If I can refer you to paragraph 15 of your witness statement, you say, "In any case" - and I know I am taking this slightly out of context?---Sure.

PN7495

You say:

PN7496

*In any case, I define my vocation as a researcher. By this I mean someone who collects, analyses and writes up data.*

PN7497

?---Sure.

PN7498

But this doesn't happen out of context, does it? I mean, you work as a researcher, you would go all the way back to your initial social work degree?---I guess you build on what you learn in an undergrad, yes, but my research career, if you want, started when I was employed by the Burnet in 1996, so I had done a Research Masters and then I got a position at the Burnet, which wasn't strictly - the initial ones, as you will see, were community development-based work, but I worked into a research career from there.

PN7499

Community development is a subset of social work?---Social work, yes.

PN7500

As is research in a particular context?---Yes, sure.

PN7501

Is a subset of social work?---Yes.

PN7502

I notice that you are a member of the Australian Association of Social Workers?---Yes, that's my professional body, I guess.

PN7503

They include people who are - - -?---Academics.

PN7504

And also include researchers?---Yes.

PN7505

Those are the only questions I had, your Honour.

PN7506

VICE PRESIDENT CATANZARITI: Thank you. Ms Gale?

**RE-EXAMINATION BY MS GALE**

**[2.56 PM]**

\*\*\* PETER GREGORY HIGGS

RXN MS GALE

PN7507

MS GALE: Dr Higgs, you were asked about the course that you taught while you were at the Burnet?---Yes.

PN7508

You agreed that was offered by Monash University?---Yes.

PN7509

I think you said Burnet were responsible for it. Can you explain how that arrangement worked?---Yes. What you get is a Masters of Public Health or a Masters of International Health from Monash University, but the people who teach that component of the course are all Burnet, or it is run by the Burnet, so there's an education team at the Burnet who are responsible for delivering that and I was one of the people responsible for the course development and delivery of that.

PN7510

Were you employed by Monash University?---No, I wasn't.

PN7511

You were also asked about Burnet's production of what I think was called grey literature?---Yes.

PN7512

Does that only happen in research institutes?---No.

PN7513

You were taken to the Burnet motto, if you like, about linking medical research with public health activities?---Yes, action, yes.

PN7514

I think you said that universities also engage in public health activities and the example you gave was your own activities?---Yes.

PN7515

Are you aware of any public health activities carried out by colleagues who are university-only researchers employees?---Yes. There's lots of different people who have examples in which they do the work, so where I've started now at La Trobe, there are two research-only institutes, I guess, the Centre for Alcohol Policy Research and the Australian Research Centre in Sex, Health and Society - ARCSHS is what it is called. They are both research-only institutes based within La Trobe where people are doing research about, for example, Hepatitis B in diverse communities. There's a collaboration that I am doing where we are looking at what happens to people after they finish their Hepatitis C treatment, how do they respond to the meaning of the word "cure" as they are told by their doctors that they have been cured of that. So that is both done at a research institute, I guess, yes. There's lots of examples in hepatitis nowadays. The Kirby Institute, where I did my postdoc, got a lot of money from the pharmaceutical industry to do work around upscaling treatment for Hepatitis C, for example.

\*\*\* PETER GREGORY HIGGS

RXN MS GALE

PN7516

There was also a discussion about the distinction between, or the possible distinction between, teaching and supervision at the postgraduate level?---Yes.

PN7517

How would you characterise what is involved in PhD supervision?---For me, and I've got a number of - well, I've got a PhD student at the moment but I've had a number of people who have finished - and what it meant was that we were working together to develop a protocol for the research, we were reflecting on the data as it was being collected and as it was being written up, collaborating on the writing of papers. A lot of the papers that I have written are jointly done with people who are either honour students or PhD students.

PN7518

Has that involved any role in assessment?---Yes, it does, for sure, like at the moment, anyone who supervises an honours student at Monash as part of the Burnet will also be asked - I think there's about 18 students who are doing honours, so I will be asked to mark someone else's honours and those supervisors will be asked to mark the honour students that I have responsibility for, yes.

PN7519

Are those characteristics of PhD supervision different whether you are at a university or at Burnet?---No, well, they haven't been in my experience.

PN7520

VICE PRESIDENT CATANZARITI: From your experience in universities and in research institutes, would you say that there is a different emphasis in relation to grey publications from other publications?---At the Burnet, the emphasis would be on the writing of publications in peer review journals. So whilst there is an importance to keep other people aware of what is happening in relation to the Burnet, in terms of the institute's credibility and how it is marked as compared to other organisations - - -

PN7521

I will rephrase the question?---Sure. Sorry.

PN7522

It would be uncommon for universities to be endorsing their academics to be publishing widely in grey publications?---Sure, definitely.

PN7523

That is so, isn't it?---Yes, for sure.

PN7524

Thank you, Professor Higgs?---Thank you.

<THE WITNESS WITHDREW

[3.02 PM]

PN7525

MS GALE: The next witness will be Mr David Trevaks, whose statement is at page 189 of MFI41.

\*\*\* PETER GREGORY HIGGS

RXN MS GALE

PN7526

THE ASSOCIATE: Would you please state your full name and address, please.

PN7527

MR TREVAKS: David Trevaks, (address supplied).

**<DAVID TREVAKS, AFFIRMED** [3.03 PM]

**EXAMINATION-IN-CHIEF BY MS GALE** [3.03 PM]

PN7528

MS GALE: Thank you, Mr Trevaks. Did you prepare a statement for these proceedings?---That's correct.

PN7529

Do you have a copy with you?---I have a copy here.

PN7530

I understand you wish to make two corrections to that statement?---That's correct.

PN7531

The first of those is at paragraph 5 where there is a list of dot points and the first two dot points are actually one?---That's correct.

PN7532

So your duties don't include manipulation?---Not officially.

PN7533

They include computer-based graphic manipulation?---Yes, that's correct.

PN7534

The second correction is at paragraph 6 in the last line, where you say you are the co-author of seven peer review publications. That should now read eight?---That's right.

PN7535

With those changes, do you say that this statement is true and correct?---Yes, I do.

PN7536

You adopt it as your evidence in these proceedings?---Sorry?

PN7537

Do you adopt it as your evidence in these proceedings?---Yes.

PN7538

VICE PRESIDENT CATANZARITI: NTEU AJ.

**EXHIBIT #AJ STATEMENT OF DAVID TREVAKS DATED 11/03/16**

\*\*\* DAVID TREVAKS

XN MS GALE

PN7539

MS GALE: If the witness can be shown this document?

PN7540

Mr Trevaks, can you identify this document?---Yes, this was a submission made by The Florey Institute to the NHMRC consultation on changing the granting system that is occurring now.

PN7541

The document appears to be undated. Do you have any understanding of its approximate date?---My understanding is I think submissions closed in August, so it would have been mid this year.

PN7542

Can that be marked, your Honour?

PN7543

VICE PRESIDENT CATANZARITI: You just want to mark it?

PN7544

MS GALE: Sorry, I tender it.

PN7545

VICE PRESIDENT CATANZARITI: Is there any objection to this document being tendered?

PN7546

MR RUSKIN: Well, we didn't see it until late last night, so I am not sure what its purpose is or how it relates to the work that this witness does. I have some objection to it being filed at this time where I don't see its relationship to the case, so I do oppose it.

PN7547

VICE PRESIDENT CATANZARITI: What I might do for the moment, I might just ask you to leave the witness box for a moment.

**<THE WITNESS WITHDREW**

**[3.06 PM]**

PN7548

VICE PRESIDENT CATANZARITI: Yes, Ms Gale, what do you want to say about the document?

PN7549

MS GALE: Your Honour, this document is within the witness's knowledge. We did provide it to the other side, as they say, late yesterday. We indicated in that communication the extent to which we say that it is relevant to the case and that is  
- - -

PN7550

VICE PRESIDENT CATANZARITI: Can you tell us?

\*\*\* DAVID TREVAKS

XN MS GALE

PN7551

MS GALE: In relation to questions 1.1, 2.1 and 3.1 where the same words appear in relation to each question, and that appears at point 3 in the answer to question 1.1:

PN7552

*The Florey recommends closing the gap between NH and MRC PSP packages in grants and the true costs of salaries by fully funding all salaries consistent with NTEU rates.*

PN7553

That is a matter that we will seek to take up with some of the employer witnesses.

PN7554

VICE PRESIDENT CATANZARITI: In the Institute case, you want to put that proposition to employer witnesses?

PN7555

MS GALE: Yes.

PN7556

VICE PRESIDENT CATANZARITI: Mr Ruskin, the question can be put to employer witnesses, presumably.

PN7557

MR RUSKIN: Is he the author of the document? Does he know what the words mean?

PN7558

VICE PRESIDENT CATANZARITI: He is certainly not suggesting he is the author of the document.

PN7559

MR RUSKIN: He is not the author?

PN7560

VICE PRESIDENT CATANZARITI: All he is saying is he is familiar with it and he was able to identify it.

PN7561

MR RUSKIN: So he is going to be asked questions about what it means even though he is not the author of it?

PN7562

VICE PRESIDENT CATANZARITI: Ms Gale, I understand what you are saying is you are just going to tender the document?

PN7563

MS GALE: That is correct, your Honour.

PN7564

VICE PRESIDENT CATANZARITI: And that's it?

PN7565

MS GALE: Yes.

PN7566

VICE PRESIDENT CATANZARITI: There are not going to be any further questions?

PN7567

MS GALE: No.

PN7568

MR RUSKIN: You are not going to ask any questions?

PN7569

VICE PRESIDENT CATANZARITI: There are not going to be any questions asked of the witness.

PN7570

MR RUSKIN: All right.

PN7571

COMMISSIONER JOHNS: I think there are going to be some questions asked of your witness.

PN7572

VICE PRESIDENT CATANZARITI: Yes.

PN7573

MR RUSKIN: Okay.

PN7574

VICE PRESIDENT CATANZARITI: Do you press the objection?

PN7575

MR RUSKIN: No, I don't press the objection.

PN7576

VICE PRESIDENT CATANZARITI: All right. I will formally have the document marked NTEU AK and then we can bring the witness back.

**EXHIBIT #AK STRUCTURAL REVIEW OF NHMRC'S GRANT PROGRAM**

**<DAVID TREVAKS, RECALLED**

**[3.09 PM]**

**CROSS-EXAMINATION BY MR RUSKIN**

**[3.09 PM]**

PN7577

MS GALE: Thank you, Mr Trevaks. No further questions, your Honour.

\*\*\* DAVID TREVAKS

XXN MR RUSKIN

PN7578

VICE PRESIDENT CATANZARITI: Thank you. Mr Ruskin?

PN7579

MR RUSKIN: Mr Trevaks, you say you have worked at a number of laboratories within The Florey over the last 5 years?---That's correct.

PN7580

You agree, don't you, that there are laboratories of the kinds at Florey at which you have worked which are at public hospitals and at SA Pathology and CSIRO and CSL, would you say?---There are laboratories like at The Florey; is that the question?

PN7581

Yes?---Yes.

PN7582

At paragraph 7 of your statement, you say that you have received the necessary training in equipment and laboratories when you worked as a theatre technician in the hospital sector. You say that?---The point - - -

PN7583

Sorry, it is paragraph 7?---Yes.

PN7584

It says:

PN7585

*Prior to coming to the Institute over 25 years ago, I worked in the hospital sector as a theatre technician. I received all my training on the job on equipments and in laboratories.*

PN7586

You don't demur from that, do you?---No. Well, the second sentence refers to my time at The Florey. It's a bit confusing there.

PN7587

It is very confusing. Why do you say that?---Well, I was just attempting - - -

PN7588

You didn't learn anything as a theatre technician at the hospital? I am sure you did?---Yes - no, no, I did, I certainly learned a lot at the hospital.

PN7589

What I am putting to you is that you were performing similar work as a technician at a hospital as you were when you came to The Florey?---I wouldn't describe it necessarily as "similar work". There are aspects like sterility, theatre techniques, but working in the laboratory is really quite different to working in the hospital theatre.

\*\*\* DAVID TREVAKS

XXN MR RUSKIN

PN7590

So you didn't get any training in equipments as a theatre technician?---We had minimal equipment training there.

PN7591

Okay?---It was mostly moving patients, assisting setting up the theatre, et cetera.

PN7592

I must say, I find that a bit misleading. My interpretation of what you were saying was that you did receive training on the job in equipments in the laboratories, but you say you didn't do that at the hospital?---The hospitals I worked at had no laboratories, they were private hospitals.

PN7593

But you learned some technical skills? You are a senior technical officer, aren't you, at The Florey?---That's correct.

PN7594

So presumably you learned some technical skills at the hospital?---Yes.

PN7595

Are you aware that The Florey is affiliated with Royal Melbourne Hospital?---Yes, I am.

PN7596

And that it is incorporated as a company limited by guarantee?---I'm vaguely aware of the meaning of that, yes.

PN7597

You say, at paragraph 8, that The Florey is situated on the University of Melbourne Parkville Campus and the Melbourne Brain Centre Heidelberg Campus and closely collaborates with many university colleagues. You think that is important to be located at a university campus?---It's certainly convenient for many things.

PN7598

You have put it in your statement. Isn't it there because you are trying to make something out of it?---Well, I was explaining where I work.

PN7599

Yes?---And where I work there, we do collaborate with people from the university.

PN7600

No, no, I am saying to you, you make the point that you are located at a university campus?---Yes.

PN7601

You do, don't you?---Yes.

\*\*\* DAVID TREVAKS

XXN MR RUSKIN

PN7602

You think that is important?---Yes.

PN7603

So you are also aware there are plenty of examples of MRIs that are located within a hospital campus, aren't you?---Yes.

PN7604

And that would be important, too?---Yes. So at Heidelberg, we are next to the Austin Hospital, which is important, yes.

PN7605

You say in paragraph 8:

PN7606

*We are very much integrated with the university. For example, we are fully integrated into the University of Melbourne computer and parts of the payroll systems.*

PN7607

You say that?---Yes.

PN7608

Having regard to your job, you know that to be so?---Yes, so all Florey staff, for example, have a University of Melbourne address, email address, and entered in their Themis system.

PN7609

VICE PRESIDENT CATANZARITI: Does that mean you are all at unimelb.edu.au?---Well, we actually - we've got florey.edu emails but the underlying email is University of Melbourne. We have both.

PN7610

What is on your business - if I send you an email?---I would say @florey.edu.au.

PN7611

Right?---But that is an alias and it is actually a Uni Melbourne address.

PN7612

But to the whole wide world, you are represented as someone not from the university?---Yes, the Florey, that's correct, yes.

PN7613

DEPUTY PRESIDENT KOVACIC: Do you know the nature of the arrangement that underpins that provision of IT services and otherwise? Is it a contractual arrangement just because it's size of Florey as opposed to the university or - - - ?---I don't have any particular details on the actual agreement except to know that computer systems, we can log onto the university system, our servers are often held in the university system, but the exact arrangement, I am not aware of.

\*\*\* DAVID TREVAKS

XXN MR RUSKIN

PN7614

Has that been a long-standing arrangement, to the best of your knowledge?---Yes, yes.

PN7615

MR RUSKIN: In fact, did you know of the MRIs that AAMRI represent that are independent medical research institutes, 24 of them are located at or in a hospital compared to three at a university. Did you know that?---I'll take your word of that.

PN7616

And that, therefore, many medical research institutes use the hospital payrolls and IT platforms?---I'm not aware of that but if that's - - -

PN7617

Do you think that is important?---Well, for the running of the institute, I'm sure it's very important how they pay their staff.

PN7618

Yes, but you seem to make a thing of it in your statement, don't you? You are saying, "We are fully integrated in the University of Melbourne computer and parts of the payroll system." So you think that is important, I presume, and that is why you put it in your statement?---Yes, and it's also explaining my situation.

PN7619

What is your situation?---At The Florey.

PN7620

Yes, but if you think it is important, is it also important - if you think that is an important factor, I am saying to you that 24 institutions are based at hospitals, so that must be an overwhelming factor compared to three at universities, if it is important?---I would say for each institute, it's of equal importance. I'm not sure the arithmetic, if that changes the importance.

PN7621

Like the Wesley Medical Research Queensland is connected to the hospital there. All right, regarding paragraph 15 of your statement, you say that - perhaps you should go back to 14. You say you get the benefit of the university infrastructure and resources, you think that is important?---I - - -

PN7622

Sorry, you don't think that is important?---I think for every medical research institute, any support they can get is important.

PN7623

So it doesn't matter from the University of Melbourne, it just matters if they get support from somewhere else; is that what you are saying?---Well, I think it's important at the university because we work in conjunction with many of the university staff as well.

\*\*\* DAVID TREVAKS

XXN MR RUSKIN

PN7624

And that is important?--- Yes.

PN7625

So if 24 research institutes are on the - and I am saying this, you don't know that - are on hospital campuses and therefore working closely with hospitals, that is also an important factor in understanding the research institute, isn't it?---I am sure any environment the institutes are within is important, yes.

PN7626

You talk, in paragraph 14, about The Florey Department of Neuroscience, University of Melbourne and you talk about being a fully integrated department of the university. You say that in paragraph 14?---Yes. In many ways, I should say, not - - -

PN7627

You do say, "We have in many ways"?---Yes, in many ways. I haven't said we have become fully integrated.

PN7628

No, but in many ways, you have become fully integrated?---Yes.

PN7629

In paragraph 15, you say:

PN7630

*This just builds on what has always been an integrated relationship with the Institute. We have full library rights at the university and university staff oversee our car park.*

PN7631

That is important, the overseeing of a car park? That fits into the function and the purpose of a medical research institute?---Well, I think when we are always struggling for resources, any assistance like that is useful for an institute.

PN7632

Yes, that's nice, but you are not just saying it is great to be supported, you are trying to make a point, aren't you, that it's the University of Melbourne that helps you, your institute, with the car park?---Well, it was more an example of the close relationship, yes.

PN7633

Yes, you are giving an example of the close relationship because you think that is an important - that is a factor that this Tribunal should take into account?---Well, I think - - -

PN7634

The car parking?---Well, institutes - it was an example I picked, but I think collaboration with other organisations is very important for institutes.

\*\*\* DAVID TREVAKS

XXN MR RUSKIN

PN7635

Very important. So if 24 institutes are located on a hospital and three - sorry, 24 medical research institutes are located on a hospital ground and three are located on a university ground, what does that say to you about the importance of the medical research institutes?---Sorry, what does it say about the importance of medical research?

PN7636

You are telling this Commission that you are putting in your knowledge the context that Florey is at the University of Melbourne, that you get library rights, you get car parking access - oversight, I should say - and you talk about the IT and payroll and you say that is an important factor in understanding the institution and the support it gets from the university. That is why it is in your statement, isn't it?---Yes, so, for example, library rights are very important because we have to access journals.

PN7637

Yes, but I am saying to you if you think that is important, then if three institutions are - I say - you don't know but I say - three institutions are on university grounds and get the assistance of them, but 24 are at hospitals, doesn't it say something that the hospital sector is more important to those medical research institutes in composite than the university?---Well, I guess I would look at each individual institute's circumstance.

PN7638

All right.

PN7639

COMMISSIONER JOHNS: Just to come back to something the Deputy President might have been raising, presumably all this is covered in some service agreement or there is some fee for service for the provision? The university is not acting out of its benevolence giving all this stuff?---No.

PN7640

I get access to the University of Melbourne's library because I pay a service fee as an alumni, so, you know, presumably there is some service agreement?---I'm not aware of the particulars of agreements and these have ebbed and flowed over the years, these aren't set in stone. I mean, my basic understanding is they get the benefit of our research and collaborate with their staff and we get other benefits back.

PN7641

MR RUSKIN: And the car park - - -

PN7642

DEPUTY PRESIDENT KOVACIC: Sorry, Mr Ruskin.

PN7643

In terms of the parking permit, do you pay for that?---Yes.

\*\*\* DAVID TREVAKS

XXN MR RUSKIN

PN7644

So that is just - - -?---Yes.

PN7645

Whether it is a student, it is a similar arrangement?---Yes.

PN7646

Thank you.

PN7647

MR RUSKIN: The question I was going to ask about these paragraphs which I have finally got to is this: you talk about the relationship between The Florey and Melbourne University, but it is not fully integrated, is it, because The Florey has its own independent board?---Correct.

PN7648

It has its own governmental structure and did you know that under its affiliation agreement with Melbourne University, it can disaffiliate?---That's what I understand, yes.

PN7649

You are also aware, are you, that the Peter MacCallum Cancer Institute, which is a public hospital - yes?---Yes.

PN7650

That has a so-called department of the university within it; did you know that?---Yes.

PN7651

It is actually quite rare for this to occur, isn't it, that there is sort of this departmental arrangement with a university within these MRIs that we are talking about, or are you not aware of that?---I really couldn't comment on each individual institute's arrangements.

PN7652

But you think it is important, this issue of having this association with Melbourne Uni, that that means, according to the NTEU's application, that is a factor in considering issues to do with employment conditions between medical researchers at universities and medical researchers at research institutes, isn't it?---Yes, I don't believe we would have that arrangement unless they felt we were a good fit for it.

PN7653

I am putting to you that of about 50 medical research institutes, you and one other are about the only ones that have it. Did you know that?---I will accept your statement.

PN7654

In paragraph 38 of your statement, you say - what do you say - it may have changed because you changed your statement, I am sorry - paragraph 36?---Thirty-six?

\*\*\* DAVID TREVAKS

XXN MR RUSKIN

PN7655

Yes, sorry, it is paragraph 36:

PN7656

*Some medical research institutes have closer ties to industry or philanthropic organisations.*

PN7657

Obviously you accept that:

PN7658

*There are many full-time research staff at universities that hold competitively peer-reviewed grants, which is exactly the same as ours.*

PN7659

You say that, and you say:

PN7660

*As the grants are portable.*

PN7661

You go on to say that, don't you?---Yes.

PN7662

But ARC grants aren't portable, are they? You can't take your ARC grant from a university and take it to an MRI if you are not employed by a university, can you?---No. My understanding is - - -

PN7663

So they are not portable, are they?---No.

PN7664

Not all of them?---No.

PN7665

That was my point. Are you aware why some MRIs put their grants through a university, why they do it?---My understanding would be to reduce burden on their research office because the university has a large department and it's quite hard on smaller institutes to do that, and also to hopefully attract some more money.

PN7666

So you don't think it is actually not altruistic, but it is there to get more money, that it is mainly to access indirectly cost-funding by the university which is not available to an MRI? Isn't that why they really do it, so they can access indirectly cost-funding that they can't themselves get? Are you aware of that?---Yes, I'm sure that is part of the reason, but - - -

PN7667

That is a good reason, isn't it?---Money is always a good reason, but - - -

\*\*\* DAVID TREVAKS

XXN MR RUSKIN

PN7668

I am talking about indirect cost-funding?---Yes, but our director is always going on about the importance of our association with the universities in Australia, around the world.

PN7669

Right?---Because through that collaboration, we believe we get better scientific outputs.

PN7670

Are you aware The Florey no longer puts its grants through Melbourne Uni?---Yes, we have changed back.

PN7671

You have changed back, haven't you?---Yes.

PN7672

So you don't put them through the uni, do you?---That has stopped this year, I think.

PN7673

Are you aware that MRIs have a worse-off deal from the Federal Government than a university when it comes to indirect cost-funding for research?---I'm aware, yes, it's a different deal.

PN7674

I am saying it is a worse-off deal. Do you know if it's a worse-off deal?---I'm not - I don't know the intricacies of the arrangements, so I hesitate to make a judgment.

PN7675

No, fine. You say that you consider - I had better get the right paragraph because it has changed. I think it is 24 or 29. You say that you consider that there is no distinction between research which occurs in a uni and which occurs at The Florey. I think you say that in paragraph 29?---Yes, correct.

PN7676

You say that there is close collaboration with university staff, I think you have said, haven't you?---Yes.

PN7677

My question to you is: you have had associations with hospitals, haven't you?---Yes.

PN7678

So you would make the same comment about research at hospitals and research at MRIs and research at unis, wouldn't you?---Yes.

\*\*\* DAVID TREVAKS

XXN MR RUSKIN

PN7679

And collaboration between unis, MRIs and hospitals are just as important to each other?---Yes.

PN7680

In paragraph 30, you say:

PN7681

*We don't interact with health patients or provide a health service.*

PN7682

That is what you say?---We are not in a direct service like a hospital would.

PN7683

I am just quoting your words?---Yes.

PN7684

Do you stand by your words:

PN7685

*We don't interact with health patients or provide a health service.*

PN7686

?---Yes.

PN7687

But that is not the case at the Austin Hospital, is it, where The Florey is located and where plenty of Florey researchers interact with patients and clinicians at the Austin Hospital? Isn't that right?---Well, how do you describe a "patient"? I am talking about someone that comes in with an illness who needs to be treated. That is what I would call a patient.

PN7688

You don't have - - -?---Do we have subjects who are ill? Yes.

PN7689

And don't your researchers - they are at the Austin, so they can interact with clinicians and patients at the Austin Hospital; isn't that the case?---Yes, so any human trials would require subjects.

PN7690

All right. You would think that was the case at all the other 24 MRIs that are located in hospitals, wouldn't you?---I'm not aware.

PN7691

Not aware, all right?---Whether they are all doing human trial work or not, I'm not sure.

PN7692

You note in paragraph 31, you say:

\*\*\* DAVID TREVAKS

XXN MR RUSKIN

PN7693

*There is a difference between a technical officer at The Florey compared to Melbourne University in that the university seems to have a pool of general staff employed to set up labs. In the Institute, most of the funding comes from grants without equivalent infrastructure money, so this doesn't happen.*

PN7694

Yes?---Yes.

PN7695

That is because they don't get equivalent infrastructure funding, do they, the MRIs compared to universities?---That's part of it, and there's also internal policy decisions that - - -

PN7696

They don't want the money?---No, that they have decided to assign staff to direct projects. At The Florey 25 years ago, yes, they did, we used to work on many projects. So it is also an internal staffing decision.

PN7697

But one of the factors, an important factor, you would agree, is the fact that there is less infrastructure funding to MRIs than to universities?---Yes.

PN7698

You talk about staff moving from universities to The Florey, but you are aware, are you, that staff move from universities to hospitals, to the public sector, to commercial entities like CSL and CSIRO in the medical research institute world? They move there, don't they?---I'm not sure which paragraph, but I was referring to people moving and continuing their same research work.

PN7699

Which you agree can't happen if you have an ARC grant and you want to come to The Florey?---Yes.

PN7700

Unless - - -?---And it could not happen if you went to a company or many other organisations.

PN7701

Yes, because you can only get an ARC grant from a university?---That is a recent change, yes.

PN7702

It is the current rules for ARC grants, isn't it?---Correct, yes.

PN7703

In paragraph 13, you talk about collaboration. This is my last question. You talk about collaboration between universities and research institutes. I think you do.

\*\*\* DAVID TREVAKS

XXN MR RUSKIN

PN7704

DEPUTY PRESIDENT KOVACIC: The second line, Mr Ruskin.

PN7705

MR RUSKIN: Thank you:

PN7706

*What I mean by this is the amount of collaboration between universities and research institutes.*

PN7707

You talk about that?---Sorry, which paragraph is that?

PN7708

This is paragraph 13?---Thank you.

PN7709

This is where you say:

PN7710

*Every employer likes to lay claim to everyone else.*

PN7711

?---Yes.

PN7712

You say:

PN7713

*What I mean by this is the amount of collaboration between universities and research institutes means that someone may be funded via money to a university but work in a research institute on a project.*

PN7714

?---Yes.

PN7715

You are aware, aren't you, that there are collaborative projects between MRIs and hospitals, between universities and hospitals, between the public sector and MRIs, between industry and MRIs? All of those organisations which do medical research collaborate with one another, don't they?---I'm certainly aware of hospitals and universities. With private companies - - -

PN7716

You are not aware?---Well, some arrangements are pay for fee sort of service.

PN7717

You are not aware of the collaboration or you are aware of the collaboration?---I just wasn't going to describe, if someone pays you to do something, that necessarily as "collaboration". In the scientific term, we would usually refer to collaborating with fellow researchers on a project.

\*\*\* DAVID TREVAKS

XXN MR RUSKIN

PN7718

So you don't think there is any collaboration between CSL and - - -?---No, no, I am not saying that. I am not so aware of arrangements with private companies.

PN7719

You made a throwaway line - perhaps it was not a throwaway line - you said: "Our director says you should collaborate with the university"?---It adds strength to the institute.

PN7720

Sorry?---He said it adds strength to our institute.

PN7721

He doesn't say you should collaborate with hospitals? That is not important?---No, no, with hospitals.

PN7722

Important, isn't it?---Well, in your area of research, the most important thing in collaborating is someone who has a similar objective.

PN7723

All right?---I will put it that way.

PN7724

Thank you.

PN7725

MR BUTLER: I have no questions, your Honour.

PN7726

VICE PRESIDENT CATANZARITI: Ms Gale, any re-examination?

**RE-EXAMINATION BY MS GALE**

**[3.36 PM]**

PN7727

MS GALE: Mr Trevaks, are you aware of how many universities have campuses at hospitals?---How many universities have - well, for example, out at the Austin where we are, there's a university department in the Lance Townsend Building, but how many there are across the nation, I'm not sure.

PN7728

You were asked some questions about the restrictions on ARC grants moving between research institutes and universities, or they can't move in the other direction from a university to a research institute. Are there limits on where you can move to with NH and MRC grants?---My understanding is you can move to another organisation that would be eligible under the rules to be an administrating institute, so the universities, basically, or other institutes.

\*\*\* DAVID TREVAKS

RXN MS GALE

PN7729

What would be the balance in terms of the number of grants, do you know, comparing ARC and NH and MRC grants in medical research?---I would have thought it's predominantly NHMRC because the ARC grants are usually for novel ideas, not necessarily for new techniques. Their emphasis was generally not on biomedical.

PN7730

No further questions.

PN7731

VICE PRESIDENT CATANZARITI: Thank you, you are excused?---Thank you.

<THE WITNESS WITHDREW

[3.37 PM]

PN7732

VICE PRESIDENT CATANZARITI: Is there any other witness for today?

PN7733

MR RUSKIN: We waxed and waned over this, I'm afraid. Professor Hilton is our next witness and we didn't think he would be - - -

PN7734

VICE PRESIDENT CATANZARITI: No, that's fine.

PN7735

MR RUSKIN: Sorry.

PN7736

VICE PRESIDENT CATANZARITI: No problem. The Commission is adjourned.

**ADJOURNED INDEFINITELY**

**[3.38 PM]**

\*\*\* DAVID TREVAKS

RXN MS GALE

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