



DECISION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards— Education Group

(AM2015/6)

VICE PRESIDENT CATANZARITI

DEPUTY PRESIDENT KOVACIC

COMMISSIONER JOHNS

SYDNEY, 12 FEBRUARY 2018

4 yearly review of modern awards – coverage of medical research institutes –Higher Education Industry—Academic Staff—Award 2010, Higher Education (General Staff) Award 2010 and Professional Employees Award 2010.

1. Background

[1] Section 156 of the *Fair Work Act 2009* (Cth) (the FW Act) requires the Fair Work Commission (the Commission) to conduct a 4 yearly review of modern awards as soon as practicable after 1 January 2014.

[2] As part of the first 4 yearly review, a dedicated Full Bench of the Commission has dealt with a number of claims to vary the *Higher Education Industry—Academic Staff—Award 2010*; the *Higher Education Industry—General Staff—Award 2010*; the Educational Services (Post-Secondary Education) Award 2010; the *Educational Services (Schools) General Staff Award 2010*; and the *Professional Employees Award 2010* (collectively the Education Group).¹

[3] As per the Further Amended Directions, this decision deals with the claim to expand the coverage of the *Higher Education Industry—Academic Staff—Award 2010* (Academic Staff Award)², the *Higher Education (General Staff) Award 2010* (General Staff Award)³ and the *Professional Employees Award 2010* (Professionals Award)⁴ to include research institutes.⁵

2. The Legislative Context

2.1 The Review

[4] Section 156 of the FW Act requires the Commission to conduct a 4 yearly review of modern awards as soon as practicable after 1 January 2014.

[5] Subsection 156(2) specifies what must and may be done in the Review:

“(2) In a 4 yearly review of modern awards, the FWC:

- (a) must review all modern awards; and
- (b) may make:
 - (i) one or more determinations varying modern awards; and
 - (ii) one or more modern awards; and
 - (iii) one or more determinations revoking modern awards; and
- (c) must not review, or make a determination to vary, a default fund term of a modern award.

Note 1: Special criteria apply to changing coverage of modern awards or revoking modern awards (see sections 163 and 164).

Note 2: For reviews of default fund terms of modern awards, see Division 4A.”

[6] Subsection 156(5) requires each modern award to be reviewed ‘in its own right’. In *National Retail Association v Fair Work Commission*⁶ the Court noted the purpose of the ‘in its own right’ requirement is to ensure the review is ‘conducted by reference to the particular terms and the particular operation of each particular award rather than by a global assessment based upon generally applicable considerations’.

[7] The scope of the Review was outlined in the *Preliminary Jurisdictional Issues Decision*.⁷ It was acknowledged ‘The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a ‘stable’ modern award system (s.134(1)(g)). The need for a ‘stable’ modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variations’.⁸

2.2 The modern awards objective

[8] The modern awards objective is set out in s.134 of the FW Act. It states:

“134 The modern awards objective

What is the modern awards objective?

(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

- (a) relative living standards and the needs of the low paid; and
- (b) the need to encourage collective bargaining; and
- (c) the need to promote social inclusion through increased workforce

participation; and

(d) the need to promote flexible modern work practices and the efficient and productive performance of work; and

(da) the need to provide additional remuneration for:

(i) employees working overtime; or

(ii) employees working unsocial, irregular or unpredictable hours;
or

(iii) employees working on weekends or public holidays; or

(iv) employees working shifts; and

(e) the principle of equal remuneration for work of equal or comparable value; and

(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and

(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and

(h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the *modern awards objective*.

When does the modern awards objective apply?

(2) The modern awards objective applies to the performance or exercise of the FWC's *modern award powers*, which are:

(a) the FWC's functions or powers under this Part; and

(b) the FWC's functions or powers under Part 2–6, so far as they relate to modern award minimum wages.

Note: The FWC must also take into account the objects of this Act and any other applicable provisions. For example, if the FWC is setting, varying or revoking modern award minimum wages, the minimum wages objective also applies (see section 284)."

[9] No particular primacy is attached to any of the above considerations and not all will necessarily be relevant in the context of a particular proposal to vary a modern award.⁹

[10] Section 138 of the FW Act provides that terms included in modern awards must be

‘necessary to achieve the modern awards objective’. What is ‘necessary’ will involve a value judgment based on the assessment of the considerations stated in s.134(1)(a) to (h), having regard to the submissions and evidence.¹⁰

[11] The modern awards objective applies to the exercise of the Commission’s modern award powers which are defined to include the Commission’s functions or powers under Part 2–3 of the FW Act. The Review function is set out in s.156, which is in Part 2–3 and therefore will involve the performance or exercise of the Commission’s modern award powers.

2.3 Background to the awards

[12] The modern awards under review were created as a result of the award modernisation process conducted in 2008–09 under Part 10A of the *Workplace Relations Act 1996* (Cth) (the WR Act). Awards in the higher education sector were made during the first ‘Priority’ stage while the Professional Employees Award was developed in Stage 3.¹¹

[13] In making the Professional Employees Award the Award Modernisation Full Bench issued a Statement which discussed the coverage of the draft award and indicated further consideration may be given to the scope of the coverage once other related awards were finalised.¹²

Transitional Review

[14] During the Transitional Review of modern awards in 2012–13 under Schedule 5 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, Deputy President Smith considered the NTEU’s claim and made the following comments about the potential gap in award coverage of independent medical research employees:

“The threshold argument has merit but I am far from satisfied that the modern awards adequately cover MRIs when it comes to those conducting research. From the proceedings it appears to me that the awards referred to for those in research would produce an awkward fit. The history of the *Professional Employees Award 2010* would reveal that research scientists in MRIs were not in contemplation when consideration was given to the terms of that award.”¹³

(emphasis added)

[15] The Deputy President went on to conclude:

“I have reached the conclusion that this is such an irregular background of award and agreement regulation that to seek to declare that MRIs have no natural home with universities or vice versa, would take this matter beyond what was contemplated by this review. In the absence of agreement, the depth of the conflicting expectations and practical approaches could not be properly understood until all the evidence and submissions were presented. Whilst, it might be a matter of regret to those opposing the applications that time was taken with submissions and evidence, it has provided the parties with a level of detailed material upon which discussions can (and should) take place before the four yearly review.”¹⁴

(emphasis added)

Other proceedings

[16] The Federal Circuit Court considered the coverage of the Professional Employees Award in *Fair Work Ombudsman v Priority Matters Pty Ltd & Anor and Ors.*¹⁵ The decision considered the link between a formal scientific qualification and a scientific research role. The decision held that where a researcher was utilising scientific skills he was performing the role of a Professional Scientist as per the Professional Employees Award.

3. Variations proposed

[17] All applicants were seeking to address issues around the coverage of employers and employees in certain research institutes however while the National Tertiary Education Union (NTEU) consider such institutes better fit within the coverage of the Higher Education Awards, the Association of Australian Medical Research Institutes (AAMRI) and the Association for Professional Engineers, Scientists and Managers, Australia (APESMA) have sought to expand the coverage of the Professionals Award.

NTEU

[18] As part of the four yearly review the NTEU has sought to vary the Academic Staff Award and the General Staff Award to cover medical research institutes.¹⁶

[19] The NTEU's proposed variation to the Academic Staff Award was to replace existing clause 4.1 with the following clause:¹⁷

This industry award covers employers throughout Australia in the higher education industry as defined and Research Institutes and [sic] defined, and their academic staff in the classifications listed in clause 18 to the exclusion of any other modern award.
(emphasis added)

[20] The NTEU's proposed variation to the General Staff Award was to replace existing clause 4.1 with the following clause:¹⁸

This industry award covers employers throughout Australia in the higher education industry as defined, and Research Institutes as defined, and University Unions and Student Unions as defined, and their employees engaged as general staff in the classifications listed in clause 15—Rates of pay in this award to the exclusion of any other modern award.
(emphasis added)

[21] The NTEU proposed that Research Institutes be defined as,

“... a corporate entity;

- whose primary activity is to undertake medical, health, scientific or social research, and
- which is established for a charitable, educational or other public purpose, and
- which is affiliate to a university, or where persons employed who hold academic titles conferred by a higher education institute, and
- where the supervision of the research work of postgraduate research students occurs;

but not including:

- an entity whose primary business is the provision of medical, health, social or religious services to patients, customers or clients;
- any State, Territory or Commonwealth Department or Agency;
- any for-profit corporation.”

AAMRI and APESMA

[22] AAMRI and APESMA have sought to vary the Professional Employees Award by extending the coverage to research employees who are not currently covered.¹⁹

[23] AAMRI and APESMA’s proposed variation to the Professional Employees Award includes inserting new definitions in clause 3.7, a new area of coverage in clause 4.3, a new classification structure for Medical Research Institutes in Schedule C and a number of other consequential amendments (which are not reproduced here).²⁰

[24] The new clause 3.7 proposed:

3.7 Medical research industry stream

medical research industry means that industry in which the employer:

- (a) undertakes basic, applied, translational or clinical research; and
- (b) operates for the primary purpose of the advancement of the cure, diagnosis, prevention and treatment of disease.

Academic qualifications means:

- (a) a university degree majoring in a medical, science or health related discipline (three, four or five year course) from an Australian, New Zealand, United Kingdom or United States of America university or from an Australian tertiary educational institution;
- (b) a PhD, Research Doctorate or Masters degree majoring in a medical, science or health related discipline.

Experienced medical research employee means a Professional medical research employee with the undermentioned qualifications and employed by a medical research institute in employment the adequate discharge of any portion of the duties of which employment requires that:

- (a) they have graduated with a PhD, Research Doctorate or Masters degree majoring in a medical, science or health related discipline; or
- (b) they, not having so graduated, will have had further experience in professional medical research duties, after obtaining their university degree, as follows:
 - (i) when a graduate (four or five year course) – four years’ experience;
 - (ii) when a graduate (three year course) – five years’ experience.

Graduate medical research employee means a Professional medical research employee, other than an Experienced medical research employee, that is, a person possessing a university degree majoring in a medical, science or health related discipline (three, four or five year course) from an Australian, New Zealand, United Kingdom or United States of America university or from an Australian tertiary educational institution.

health services means activities that are intended or claimed by the entity performing them to:

- (a) assess, maintain or improve an individual's health;
- (b) diagnose an individual's illness, injury or disability; or
- (c) treat an individual's illness, injury or disability or suspected illness, injury or disability.

higher education organisation means an educational institution providing undergraduate and post-graduate teaching leading to the conferring of degrees.

medical research institute means a not-for-profit organisation principally engaged in the medical research industry but does not include:

- (a) organisations operating for the primary purpose of the provision of health services;
- (b) higher education organisations as defined;
- (c) Commonwealth, State or Territory government agencies.

Professional medical research employee means a person qualified to carry out professional medical research duties as defined. The term Professional medical research employee will embrace and include Graduate medical research employee and Experienced medical research employee as defined in this clause.

professional medical research duties means duties

- (a) carried out by a person in a medical research institute;
- (b) undertaking basic, applied, translational or clinical research;
- (c) the adequate discharge of any portion of which duties requires a person to hold the Academic qualifications as defined.

[25] The new clause 4.3 proposed was set out as follows:

4.3 This award covers employers throughout Australia principally engaged as a medical research institutes with respect to their employees performing professional medical research duties who are covered by the classifications in Schedule C—

Medical Research Institutes and those employees.

(emphasis added)

[26] The new Schedule C proposed has not been reproduced in full here but includes a new Level 5 classification:

C.1.10 Level 5—Experienced medical research employee

(a) An employee at this level is expected to have achieved recognition as an authority nationally or internationally in their area of research expertise, and play a leading role within the research community. They will oversee a program of research and receive independent research funding.

(b) An employee at this level is expected to:

(i) lead a research team/unit within their organisation, including conceiving programs and problems to be investigated and determining research strategy and direction;

(ii) make responsible decisions on all matters, including ways of attaining research program objectives and financial management of research funding, subject only to overall policy and financial controls;

(iii) hold a substantial/major record of independent, original contributions to an area of research and/or its impact on health and community outcomes;

(iv) oversee research that results in publications or influences health guidelines, health policy or other health advancements, either independently or through collaborations with other researchers, health professionals, policy officers or other relevant professionals at a national or international level;

(v) present at national and international conferences and seminars;

(vi) support and guide the research efforts of Professional medical research employees in the research team/unit, direct staff, and supervise Research Higher Degree projects and students.

4. The Submissions

NTEU

[27] The NTEU's claim proposes variations to the coverage of both the Academic Staff Award and the General Staff Award (collectively the Higher Education Awards).

[28] In the present matter, the NTEU submitted that the industrial character of the work performed in independent research institutes is essentially the same as work performed by researchers covered by the Higher Education Awards.²¹

[29] The NTEU did not believe that the Commission considered this matter during the award modernisation proceedings so the lack of coverage for these researchers was an inadvertent omission.²²

[30] During the award modernisation process the ACTU, the NTEU and the CPSU made oral submissions about the coverage of the Higher Education Awards. The NTEU noted the similarities between research facilities that are and are not linked to a university.²³ At the time, they submitted that:

“...there's a long-standing nexus and similarity between the type of research institute we refer to which is fairly circumscribed and the higher education sector. There's a considerable turnover of employees between those two sectors and the sort of research that they do is very similar to the research that is done in universities...”²⁴

[31] In the Stage 3 Statement, the award modernisation Full Bench noted:

“Awards in this sector also cover employees of university unions, student unions and university controlled entities. When the higher education awards were created in the priority stage of award modernisation we did not deal with the coverage of these areas but provided for them to be considered in this stage.

We have decided that coverage of university unions and student unions can most appropriately be dealt with by amendment to the Higher Education Industry–General Staff–Award 2010 rather than by the creation of an award specific to those organisations. In relation to non-teaching staff in university controlled entities generally, some may be covered by the draft Educational Services (Post-Secondary Education) Award 2010. Others will be covered by a classification in another industry award or in an occupational award.”²⁵

(emphasis added)

[32] Given that the Full Bench had foreshadowed further discussions about coverage for university controlled entities, which the NTEU submitted included research institutes, the NTEU concluded that the ultimate omission from coverage was inadvertent.²⁶

[33] The NTEU submitted that the Commission must consider previous decisions about this matter and the award modernisation request in s.576C of the WR Act. The request included:

“2. The creation of modern awards is not intended to:

(a) extend award coverage to those classes of employees, such as managerial employees, who, because of the nature or seniority of their role, have traditionally been award free. This does not preclude the extension of modern award coverage to new industries or new occupations where the work performed by employees in those industries or occupations is of a similar nature to work that has historically been regulated by awards (including State awards) in Australia...”²⁷

[34] The NTEU submitted that some employees who were previously covered by the *Universities and Affiliated Institutions Academic Research Salaries (Victoria and Western Australia) Award 1989*²⁸ were disadvantaged by moving to the coverage of the Professional Employees Award. The NTEU submitted that some employees may have suffered a reduction in pay of up to \$35,000 per year.²⁹ However, no detailed analysis of this pre-reform award was submitted. We note that the latest version of the award does not include position

descriptions for wage classifications.

[35] The NTEU noted that neither academic nor general staff in research institutes have “traditionally been award free”, although award coverage was not universal.³⁰ The NTEU asserted that the award modernisation Full Bench varied and removed award coverage for many employees and it resulted in a reduced rate of pay.³¹

[36] The Higher Education Awards cannot be said to meet the modern awards objective in respect of s.134(g) of the Act which requires:

“(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards”

[37] The NTEU submitted that the AAMRI’s assertion that research institutes are fundamentally different from universities, contradicts the practice of quite a number of its members.³²

[38] The NTEU conceded that independent research institutes do not confer degrees and do not run undergraduate teaching.³³

[39] The NTEU does not believe that the Commission is required to determine whether universities and research institutes are the same, but whether the work of research institutes is substantially similar to the work covered by the Higher Education Awards.³⁴

[40] The NTEU noted that the Higher Education Awards are not Higher Education *Teaching* Awards. The awards have always had to encompass employees who engage only in part of what a university does.³⁵ The classification and pay structure accommodates this.³⁶

[41] The NTEU submitted that a number of research institutes have agreed to be bound by the classification structure in the General Staff Award in the past, and continue to utilise the provision in enterprise agreements.³⁷

[42] The NTEU presented an alternate position. If the Commission is not minded to cover research institutes under the Higher Education Awards, the NTEU’s preference would be to make a separate modern award.³⁸

[43] Of note, the NTEU had previously made a similar claim as part of the Transitional Review of modern awards in 2012. At the time, Deputy President Smith did not determine the merits of the claim because the scope of the Transitional Review was much narrower than the current four yearly review.³⁹

[44] The NTEU submitted a document summarising which aspects of its 2013 submissions it sought to rely on as part of the current proceedings.⁴⁰ The material was limited to the witness statements of Ken McAlpine lodged on 4 March 2013 and 17 April 2013 and the Transcripts from hearings in April and May 2013.

[45] In the present matter, the NTEU provided submissions addressing some of the material produced as part of the 2012 case.⁴¹ The submissions noted that the Higher Education Awards already take into account the principle of equal remuneration for work of equal or comparable value. The classifications and relativities in the two modern awards already reflect industry

practice, as do those in current and past enterprise agreements made with research institutes.⁴²

[46] The NTEU agreed with the employer submissions that employees in the same occupation should receive the same minimum entitlements. If the NTEU claim is granted, no further variations would be required and the awards would meet the modern awards objective.⁴³

AAMRI and APESMA

[47] AAMRI and APESMA oppose the NTEU's claim to expand the coverage of the Academic Staff Award and the General Staff Award because it submitted that research employees are more appropriately covered by the Professional Employees Award.⁴⁴

[48] AAMRI and APESMA submitted that the Professional Employees Award, which is an occupational rather than an industry award, covers most employees performing professional research duties at independent medical research institutes because those employees are generally professional scientists.⁴⁵

[49] AAMRI and APESMA submitted that their claim is seeking to clarify the coverage of the Professional Employees Award and extend coverage to research employees who are not currently covered.⁴⁶

[50] The proposed variations extend coverage to "medical research employees" and provide a broader definition of that term. It also provides a new Level 5 classification and corresponding pay rate.⁴⁷

[51] AAMRI and APESMA submitted that the variations proposed will meet the modern awards objective because it will create equivalent terms and conditions for medical research employees performing similar work to scientific researchers across Australia. It will ensure a simpler and easier to understand modern award system by clarifying the coverage of the Professional Employees Award. It will ensure a stable modern awards system by only making minor variations.⁴⁸

[52] AAMRI and APESMA have consistently asserted that the Professional Employees Award currently covers most research employees at medical research institutes.⁴⁹ This assertion is made on the basis that the role of a medical researcher requires the knowledge and skills attained through a scientific degree.⁵⁰

[53] AAMRI and APESMA submitted that research is undertaken by employees at all levels, some are undertaking research for their own work and others are assisting more senior researchers.⁵¹ Researchers may hold a degree in science or a scientific field. AAMRI and APESMA submitted that most medical researchers require a degree in science to perform their research duties.⁵²

[54] AAMRI and APESMA disagree with the NTEU's argument that scientific researchers do not require a science degree.⁵³ A degree in a scientific field is required in a majority of medical research roles.

[55] AAMRI and APESMA dispute the NTEU's suggestion that a medical researcher's undergraduate degree has little relevance to their work. They submitted that a researcher's

degree underpins their role as a medical researcher.⁵⁴

[56] The variations proposed by AAMRI and APESMA would expand the coverage of the Professional Employees Award to the categories of employees who hold academic qualifications that are not currently covered. The variation would include degrees in medical and health disciplines, degrees from the USA and PhD, Research Doctorates or Masters Degrees from any jurisdiction.⁵⁵

[57] AAMRI and APESMA submitted that all work performed by research employees in independent research institutes should be covered by the Professional Employees Award because most research employees are already covered by that award. They also submitted that the work of scientific research employees in independent research institutes is the same as, or similar to, the work of other scientists already covered by the Professional Employees Award.⁵⁶

[58] AAMRI and APESMA submitted that the witness evidence of Professor Hilton, Professor Crabb and Dr Ross supported the proposition that the work being performed by research employees in independent research institutes is largely the same as other scientists covered by the Professional Employees Award because the work of medical researchers is scientific work involving the application of the scientific method.⁵⁷

[59] AAMRI and APESMA proposed a variation to the classification structure in the Professional Employees Award so that it would include the “professional medical research employee” stream and capture “professional medical research duties”.⁵⁸

[60] AAMRI and APESMA submitted that this variation addresses the concerns raised by Deputy President Smith in his decision during the Transitional Review process.⁵⁹

[61] The new Level 5 classification that AAMRI and APESMA have proposed would require a new wage rate. AAMRI and APESMA submitted that the proposed rate of \$81,920 per annum would meet the minimum wages objective in s.284(4) of the FW Act.⁶⁰

[62] The rate of \$81,920 considers the relative pay rates set for Levels 1–4 in the Professional Employees Award and accounts for the additional responsibilities of a Level 5.⁶¹ The work performed by a Level 5 involves more extensive research, managerial and decision making responsibilities.⁶² AAMRI and APESMA describe the work of a Level 5 Medical Research Employee as significantly higher than a Level 4.⁶³

[63] AAMRI and APESMA submitted that the variation proposed is not seeking to vary a minimum wage; it is seeking to introduce a new rate, and is therefore not bound by the requirement to present a work value test case as per s. 156(3) of the Act.⁶⁴

[64] If a work value reason is required it must be directed at varying the rate of a Level 4 employee from \$68,001 to \$81,920. AAMRI and APESMA submitted that the work of a proposed Level 5 employee is significantly higher than a Level 4 employee and the wage increase reflects that.⁶⁵

The Group of Eight Universities (GO8)

[65] The GO8 submitted that the NTEU’s claims regarding coverage for research institutes

was primarily a matter for research institutes, however it opposed the definition being based upon “affiliation”.⁶⁶

[66] The GO8 confirmed that it was not intervening in the NTEU’s claim but was opposed to the proposed definition of “Research Institute”.⁶⁷

[67] The GO8 noted that a similar application was unsuccessfully pursued as part of the Transitional Review in 2012.⁶⁸

[68] The GO8 submitted that the proposed variation should not be adopted as drafted because it will create uncertainty due to the ambiguous terminology it uses.⁶⁹ The definition would not clearly be industry or occupation based because of the requirement for certain qualifications and an interpretation about whether an institute is associated with a university.

[69] The GO8 submitted that if the Commission grants the NTEU’s claim, the definition should be refined so that it provides greater certainty and is not dependent upon an affiliation or formal association with a university or the holding of academic titles associated with higher education.⁷⁰

Community and Public Sector Union (CPSU)

[70] The CPSU supported the proposal and submissions of the NTEU in relation to the General Staff Award.⁷¹

5. Submissions in reply

AAMRI and APESMA

[71] AAMRI and APESMA oppose the variations proposed by the NTEU.⁷² They submitted that the NTEU’s claim has been considered and determined before. The Commission has previously determined not to vary the coverage of the Higher Education Awards.⁷³

[72] AAMRI and APESMA do not believe the Higher Education Awards are appropriate to cover medical research institutes because they are not in the same industry.⁷⁴

[73] AAMRI and APESMA submitted that the NTEU’s assertion that independent medical research institutes ought to be covered by the Higher Education Awards is unfounded and has not been supported by the evidence presented.⁷⁵

[74] The Award Modernisation Full Bench decided that the Higher Education Awards would not cover research institutes. This decision was made after considering evidence presented and the historic award coverage.⁷⁶

[75] In making the Professional Employees Award the Full Bench issued a Statement which discussed the coverage of the proposed award.⁷⁷ AAMRI and APESMA submitted that the NTEU did not debate coverage of medical research institutes during award modernisation.⁷⁸

[76] AAMRI and APESMA submitted that the NTEU has failed to demonstrate that this

Full Bench should re-visit the decision made during award modernisation on the basis that its predecessor did not consider the coverage issue.⁷⁹

[77] The NTEU has argued that the decision not to cover medical research institutes under the Higher Education Awards is erroneous with respect to the Award Modernisation Request because some employees previously covered by the pre-reform award covering academic research employees now fall within the coverage of the Professional Employees Award.⁸⁰

[78] The NTEU submitted that those employees were disadvantaged because they suffered a reduction in pay. AAMRI and APESMA submitted that there is no evidence to suggest that any employee suffered an actual disadvantage based on the pre-reform rates however they concede that the rates under the Higher Education Awards are up to 25% higher.⁸¹

[79] AAMRI and APESMA submitted that the historical award coverage of research scientists at medical research institutes was by the predecessors to the Professional Employees award.⁸²

[80] AAMRI and APESMA noted that the AIRC found it inappropriate for the Higher Education Awards to cover entities which are closely connected with higher education⁸³ so it would similarly be inappropriate to cover an independent medical research institute.⁸⁴

[81] AAMRI and APESMA disagree with the NTEU's assertion that researchers would fall within the scope of the education industry. The definition of the higher education industry focusses on the education of higher education students.⁸⁵

[82] AAMRI and APESMA do not dispute that there are affiliations and close collaboration between independent medical research institutes and universities, however they do not attach so much weight to that fact.⁸⁶

[83] AAMRI and APESMA acknowledged that there are similarities between the work of employees at independent medical research institutes and some scientific research employees at universities. They did not agree that that fact means the coverage should be under the educational awards.⁸⁷

[84] AAMRI and APESMA noted the differences between the work of independent medical research institutes and the medical research work at universities. These differences include the focus on commercial research rather than academic pursuits, the broad range of activities undertaken by independent institutes and the way the facilities operate.⁸⁸

[85] AAMRI and APESMA submitted that the NTEU has not shown the similarities between university researchers and independent researchers are any greater than researchers in hospitals, government or commercial organisations.⁸⁹

[86] AAMRI and APESMA agreed that independent medical research institutes are involved in supervising academic research; however it is not their primary focus or purpose.⁹⁰

[87] AAMRI and APESMA noted that little to no evidence was led by the NTEU that was directed at the sources of funding for medical research institutes in universities. There is no source of funding available to both independent research institutes and universities that are not also available to hospitals, government entities and not-for-profit organisations.⁹¹

[88] AAMRI and APESMA submitted that independent research institutes are subject to different regulatory obligations to universities including taxation.⁹²

[89] AAMRI and APESMA acknowledged that the classification structure in the Higher Education Awards has been used in some independent research institutes however this may include research and non-research positions.⁹³ This is partly due to the fact that some institutes may have commenced as part of a university and have evolved over the years.

[90] AAMRI and APESMA concluded that in respect of that small proportion of research employees who do not fall within the coverage of the Professional Employees Award, it is appropriate to vary the Professional Employees Award to cover those employees.⁹⁴

[91] AAMRI and APESMA made a further submission in reply reiterating their position that most researchers in independent research institutes are already covered by the Professional Employees Award and their proposed variation would only affect a minority of employees.⁹⁵

[92] AAMRI and APESMA submitted that the NTEU's criticisms of their proposed variations are primarily directed at drafting errors and could be rectified by amendments to the draft determination.⁹⁶

[93] AAMRI and APESMA submitted that the NTEU does not understand how the workforce operates in independent research institutes.⁹⁷

[94] AAMRI and APESMA considered the onus each party bears to demonstrate that the respective claims are necessary to meet the modern awards objective. The NTEU is required to demonstrate that it is appropriate for employees at independent research institutes to be covered by the Higher Education Awards. AAMRI and APESMA submitted that the NTEU has failed to prove that.⁹⁸

NTEU

[95] The NTEU submitted that AAMRI and APESMA have not advanced probative evidence in support of their claims, especially in support of the claim to introduce a new classification.⁹⁹

[96] The NTEU noted that AAMRI and APESMA have simultaneously claimed that the Professional Employees Award already covers most research employees whilst seeking to insert a new classification. The NTEU submitted that both positions cannot be sustained, either the award is already covering the employees affected and only requires some tweaking or it doesn't and requires substantial re-wording.¹⁰⁰

[97] The NTEU submitted that AAMRI and APESMA's proposal only seeks to cover "research employees" however the terminology would capture a significant number of non-research staff and this would create ambiguity and uncertainty.¹⁰¹

[98] The NTEU raised concerns about the definition AAMRI and APESMA have proposed because it includes the undefined term "health related discipline".¹⁰²

[99] The Professional Employees Award includes a requirement that employees attain a particular qualification and be members of particular associations. There is no similar body governing employment as a researcher.¹⁰³ The NTEU submitted that this will cause further confusion and ambiguity.

[100] The NTEU was critical of the survey evidence presented by the AAMRI because the questions were limited to what role a person was undertaking and whether they held a qualification, it did not ask whether their qualification was a requirement of the role.¹⁰⁴ The survey results were presented in a way that skewed the results and cannot be considered useful to the deliberations.

[101] The NTEU concluded that the new medical research industry stream fails to meet the modern awards objective because it fails to establish a simple, easy to understand provision. The NTEU submitted that its introduction would create ambiguity and uncertainty because it uses terminology like “health related” and relies on an uncertain range of qualifications.¹⁰⁵

[102] The NTEU submitted that the range of qualifications proposed for the medical research industry stream is considerably narrower than found elsewhere in the Professional Employees Award.¹⁰⁶

[103] The NTEU was critical of the modifications AAMRI and APESMA proposed to Schedule C because it does not suit the range and types of work being performed.¹⁰⁷

[104] The NTEU submitted that the new Level 5 classification and accompanying rate of pay constitutes varying a rate of pay and requires a work value test case as per the decision in the *Pastoral Award 2010*.¹⁰⁸ The NTEU has characterised the proposal of AAMRI and APESMA as akin to the AWU’s claim regarding the Pastoral Award.¹⁰⁹

[105] In that matter the Full Bench noted that:

“The *Pastoral Award 2010* already contains a minimum rate for the crutching of rams and ram stags, such work falls within the category of ‘All other crutching’. The AWU claim seeks to increase the rate currently prescribed for undertaking that work and on that basis is more aptly described as an application seeking a determination ‘varying modern award minimum wages’. Accordingly, contrary to the AWU’s submission, ss.156(3) and (4) are applicable to the claim to increase the minimum rate for crutching rams and ram stags. Further, as such a variation involves the Commission’s functions or powers under Part 2-3, the minimum wages objective is also applicable (s.284(2)).”¹¹⁰

[106] The NTEU submitted that AAMRI and APESMA failed to produce any probative evidence in support of either new rates or varying existing ones and the claim should be rejected.¹¹¹

[107] The NTEU submitted that AAMRI and APESMA have not clarified which employees would be covered by which modern awards, or be award free, if their applications were accepted.¹¹²

[108] The NTEU noted that allied health professionals who are not researchers but are employed by medical research institutes may face a coverage issue. The NTEU presented the

following hypothetical scenario about how AAMRI and APESMA's claim may affect the *Health Professionals and Support Services Award 2010* (Health Professionals Award):¹¹³

“Two physiotherapists working for the same employer could find themselves in the situation where the one with a purely clinical role (and whose treatment data was used to conduct research) would have no award entitlements whatever, and the other (who undertook research) would be covered by the PEA. There could and would be arguments about whether particular employees were engaged in professional medical research duties or not.”

[109] Unlike the AAMRI and APESMA proposal, the NTEU proposal would see employees covered either as an academic or general staff professional, with consistent work value assignments across the occupational streams within each award.¹¹⁴

[110] The NTEU agreed with the list of occupations that may be covered by the *Miscellaneous Award 2010* (Miscellaneous Award) that was produced by AAMRI. The NTEU submitted that if the proposed variations are made to the Professional Employees Award, those employees will lose award coverage under the Miscellaneous Award because the coverage of the Professional Employees Award will expand to become an industry award, however there are no additional classifications proposed for ancillary staff like cleaners.¹¹⁵

[111] The NTEU submitted that the rates of pay established in the Academic Staff Award are appropriate to the work of those holding academic status who work in medical research institutes.¹¹⁶ However, the NTEU noted that if the Commission sets new rates, it should look to the rates and classifications in the most appropriate cognate industries such as the Health Professionals Award.¹¹⁷

[112] The NTEU concluded that its proposal to vary the Higher Education Awards should be preferred to the AAMRI and APESMA claim.¹¹⁸

6. Evidence

NTEU

[113] The NTEU primarily relied on witness testimony.¹¹⁹

Ken McAlpine

[114] Mr Ken McAlpine is the Union Education Officer at the NTEU.¹²⁰

[115] Mr McAlpine provided a number of witness statements which acted as a vessel for submitting ancillary material to the Commission. The material included job advertisements for medical research institutions.¹²¹ These positions were within medical research, general, technical, administrative and managerial roles.¹²²

[116] Mr McAlpine also provided the Commission with a copy of the 2015 Annual Report of the National Ageing Research Institute.¹²³

[117] Mr McAlpine provided correspondence noting that the NTEU sought to rely on his witness statements from 4 March 2013 and 17 April 2013 and the accompanying

attachments.¹²⁴

[118] Mr McAlpine was not cross examined in relation to his statement and other submissions in relation to this claim.

David Trevaks

[119] Mr David Trevaks provided a witness statement in support of the NTEU's claim.¹²⁵

[120] Mr Trevaks is a Senior Technical Officer and Laboratory Supervisor at the Florey Institute of Neuroscience and Mental Health, University of Melbourne. His employment is covered by the *Howard Florey Institute Union Enterprise Agreement 2014–2017*.¹²⁶

[121] Mr Trevaks has never been employed by the university but his workplace is on the university campus. He described the institute as being integrated with the university, for example they share IT and payroll systems.

[122] Mr Trevaks works on research projects in conjunction with senior academic researchers. It is difficult to distinguish between the work done by the university and the work done by the institute because the projects are done collaboratively.

[123] Mr Trevaks' experience has involved working collaboratively with members of different faculties at the university and scientists in other research institutes.

[124] Mr Trevaks believes that the Higher Education Worker level descriptors in the *Howard Florey Institute Union Enterprise Agreement 2014-2017* are largely the same as the ones in the University of Melbourne's Collective Agreement.¹²⁷

[125] Mr Trevaks noted that he did not see a distinction between research done at a University and that which occurs at the Florey Institute. The work is research and education; there is no interaction with healthcare patients.

[126] Mr Trevaks explained that all medical research institutes are funded in a similar manner; they can apply for grants to fund research and employ people. Research Institutes have different access to infrastructure funding and philanthropic funds, depending on their circumstances. The more projects the institute and the university do, the more support they attract.

[127] Along with his witness statement, Mr Trevaks provided the rates of pay position descriptions in the *Howard Florey Institute Union Enterprise Agreement 2014-2017* and for researchers covered by the University of Melbourne's Collective Agreement.

[128] Mr Trevaks was cross-examined on 19 October 2016.¹²⁸

[129] Under cross-examination AAMRI and APESMA put it to Mr Trevaks that most research institutes are affiliated or integrated with hospitals, not universities.¹²⁹ Mr Trevaks conceded that being integrated with another facility, be it a university or hospital, is important for the operation of a research institute. Universities and hospitals have more resources and established systems that the institutes can use and therefore cut costs.

Roy Sneddon

[130] Mr Roy Sneddon provided a witness statement in support of the NTEU's claim.¹³⁰

[131] Mr Sneddon works in research administration. He is currently employed at the Australasian Research Management Society in South Australia.

[132] Mr Sneddon has worked in universities and in research institutes and stated that in his experience the funding models, governance, job roles, skills required and processes involved are largely the same in both settings.

[133] The research administration roles that Mr Sneddon has held in both government and university sectors were governed by the *Australian Code for the Responsible Conduct of Research* and the *NHMRC Funding Agreement*.

[134] Mr Sneddon state that there is a relatively 'level playing field' in medical research administration as between research institutes and universities.

[135] In Mr Sneddon's experience, if a researcher at a research institute is also a University adjunct, they are also involved in teaching and supervising doctoral students.

[136] Mr Sneddon noted that funding sources are the same or similar across research institutes and universities, being primarily through grants, bequests and fund raising.

[137] In Mr Sneddon's experience, universities have classifications within awards and enterprise agreements which better cover the work of research support staff.

[138] Along with his witness statement, Mr Sneddon provided the applicable rates of pay position descriptions for research roles.

[139] Mr Sneddon was cross-examined on 19 October 2016.¹³¹

[140] During the cross-examination there was a discussion about whether the Hanson Institute was part of the Royal Adelaide Hospital. Mr Sneddon described it as a separate entity operating under the corporate structure of the Institute of Medical and Veterinary Sciences.¹³² Mr Sneddon conceded that the Hanson Institute is actually a joint venture between Royal Adelaide Hospital and South Australia Pathology.¹³³

[141] During the cross-examination, the AAMRI asked Mr Sneddon about whether medical researchers at the Hanson Institute were involved in the teaching or supervision of PhD students. Mr Sneddon explained that some are but it depends on the field of study.¹³⁴

Peter Higgs

[142] Mr Peter Higgs provided a witness statement in support of the NTEU's claim.¹³⁵

[143] Mr Higgs is currently a Senior Fellow at the Burnet Institute (the Institute) in Melbourne but has had extensive experience working in universities and research institutes. In his experience, Mr Higgs has found that the work performed in both facilities is fundamentally the same.

[144] The Institute was founded as an independent institute conducting medical research. It is registered as a company limited by guarantee and as a charity. The Institute is governed by a Board of Directors and employs approximately 350 employees; including researchers, students and administrative staff.

[145] Mr Higgs stated that the job roles at the Institute are equivalent to academic roles in Universities. He does not see any difference between the work he has done at the institute as compared with the university.

[146] Mr Higgs noted that in addition to staff who undertake roles as researchers, there are others who are engaged in the research process but who do not themselves publish new knowledge.

[147] Mr Higgs explained that his current research project involves interaction with test subjects (drug users) which is unusual for a researcher.

[148] Mr Higgs stated that one of the key attractions to working in a research institute is the tax concessions. It allows staff to enter attractive salary packaging arrangements.

[149] Mr Higgs provided a copy of his curriculum vitae detailing his job titles, experience and publications.

[150] Mr Higgs was cross-examined on 19 October 2016.¹³⁶

[151] During cross-examination Mr Higgs was questioned about the priorities of the Burnet institute and whether the focus was on developing a drug. Mr Higgs stated that he believed the priority was to conduct research for the purpose of publication.¹³⁷

AAMRI and APESMA

[152] AAMRI and APESMA's witnesses presented evidence that 87.9% of research staff at independent medical research institutes are scientists whose roles require a degree in science.¹³⁸ The work performed at independent research facilities is largely similar to the work currently covered by the Professional Employees Award.

[153] Professor Hilton provided the Commission with a survey conducted by AAMRI to determine how many medical researchers at the 36 independent medical research institutes are currently covered by the Professional Employees Award.¹³⁹ 35 medical research institutes provided a response.¹⁴⁰

[154] The survey found that there were approximately 2,761 medical researchers employed at independent medical research institutes forming 58.6% of all staff employed at those medical research institutes.¹⁴¹ 87.9% of medical researchers employed by independent medical research institutes hold a degree in science¹⁴² and approximately 12.1% of medical researchers employed do not possess a science degree but another relevant degree.¹⁴³

Douglas Hilton

[155] Professor Douglas Hilton is the Director of the independent medical research institute

Walter and Eliza Hall Institute of Medical Research (WEHI) in Melbourne. WEHI is a company limited by guarantee, a registered charity¹⁴⁴ and overseen by an independent board of directors.¹⁴⁵ WEHI employs 463 medical researchers and 303 support staff.¹⁴⁶

[156] Professor Hilton is the President of AAMRI.¹⁴⁷ AAMRI is an advocacy body representing 46 medical research institutes.¹⁴⁸

[157] The majority of AAMRI members are independent MRIs, meaning that they are independent legal entities.¹⁴⁹ Nine of the medical research institutes are part of other entities. Five of them form part of a university.¹⁵⁰

[158] Medical research institutes are primarily companies limited by guarantee and overseen by a Board of Directors.¹⁵¹

[159] Professor Hilton stated that in addition to the primary activity of medical research that many medical research institutes are involved in associated activities which further their mission.¹⁵² These activities include clinical services, public health activities, protection and development of intellectual property, commercialisation, public health delivery, policy development and advocacy.¹⁵³ Professor Hilton stated that the diversity of activities of independent medical research institutes is clearly distinct from universities.¹⁵⁴

[160] Professor Hilton noted that each medical research institute has a differently composed workforce due to the different focus on research and translational activities at each medical research institute.¹⁵⁵ Medical research institute workforces range from smaller institutions, such as National Ageing Research Institute (NARI) with 33 employees, to an independent medical research institute with 887 employees.¹⁵⁶ The median number of employees for a medical research institute is 139.¹⁵⁷

[161] The majority of independent medical research institutes are co-located with health services or hospitals,¹⁵⁸ which allows for the sharing of resources and staff. In addition, medical research institutes are often closely aligned with hospitals and health services in their activities and organisational structure.¹⁵⁹ Professor Hilton stated that it is rare that a medical research institute will be located on a university campus.¹⁶⁰

[162] Professor Hilton stated that there are distinct differences between the work of medical researchers in medical research institutes and those of research academics generally at universities.¹⁶¹ While medical research is similar to the work of medical researchers and other scientific researchers employed in universities, it is clearly different from the kind of work performed by the majority of academics in universities such as in the humanities.¹⁶²

[163] The work of research academics at universities is primarily measured by scholarly publications.¹⁶³ The number of scholarly publications, and in which journals they are published, also influence university rankings, and are consequently a key measure of a university's success.¹⁶⁴

[164] Professor Hilton stated that, in contrast to universities, the success of a medical research institute is determined by the influence of its research on health outcomes.¹⁶⁵ While publication output and impact are still indicators of a medical research institute's success, there is a greater emphasis on the translation of research into policy and outcomes.¹⁶⁶

[165] Medical researchers, in their capacity as employees of the medical research institutes, are also rarely involved in lecturing undergraduates whereas many research academics are engaged in teaching.¹⁶⁷ Medical research institute employees who are involved in teaching are usually co-appointed with a university.¹⁶⁸

[166] In relation to the supervision of higher degree research students enrolled at affiliated universities, Professor Hilton stated that medical research institutes adopt a variety of arrangements including that medical research institute research staff co-supervise students, medical research institute staff are appointed to honorary academic positions or independent medical research institutes being nominal departments of universities.¹⁶⁹

[167] Professor Hilton stated that for administrative purposes, WEHI is nominally a department of the University of Melbourne, which allows for WEHI medical researchers to supervise Honours and PhD students enrolled at the University. However, WEHI is not treated like other departments of the University of Melbourne, and the university has no control over the budget, funding, research or strategic direction of WEHI.¹⁷⁰

[168] Professor Hilton noted that MRIs are not the only organisations affiliated with universities which include hospitals and health service providers, consulting firms, NGOs and museums.¹⁷¹ For example, WEHI is affiliated with both the Royal Melbourne Hospital and the University of Melbourne.¹⁷² Professor Hilton stated that an affiliation does not mean that the medical research institute is integrated with that affiliated organisation.¹⁷³

[169] Medical research institutes and universities are subject to different regulation, reporting requirements and funding processes.¹⁷⁴ Professor Hilton stated that medical research institutes fall under the 'responsibility' of the Department of Health, and receive funding for operational costs through the National Health and Medical Research Council (NHMRC).¹⁷⁵ Universities are regulated by, and receive funding for operational costs from the Department of Education.¹⁷⁶

[170] Professor Hilton noted that universities and medical research institutes obtain funding from sources that are each inaccessible to the other.¹⁷⁷ Funding sources available to medical research institutes that are unavailable to universities include NHMRC Independent Research Institute Infrastructure Support Scheme grants¹⁷⁸ and state funding.¹⁷⁹ Universities, on the other hand, are eligible for Research Block Grant Funding,¹⁸⁰ the Commonwealth Grant Scheme¹⁸¹ and Australian Research Council (ARC) programmes. Indeed, an ARC grant is not ordinarily able to be transferred from a university to a medical research institute should a researcher change employees.¹⁸²

[171] Professor Hilton stated that it is incorrect that the majority of grants funding medical research institutes' research are administered through universities.¹⁸³ NHMRC data for 2014 shows that 66% of NHMRC funding for research was directly administered by medical research institutes.¹⁸⁴ However, they do sometimes submit grants through universities such as when universities are entitled to funding for indirect costs to which medical research institutes are not.¹⁸⁵

[172] Professor Hilton stated that on the basis of his professional experience that there were similarities in the operation of independent medical research institutes and commercial research organisations.¹⁸⁶

[173] In relation to the Higher Education Awards, Professor Hilton noted that the classification descriptions are not appropriate descriptions of the work of all medical research institute researchers. The focus at each level is on "scholarly activities", which does not sufficiently capture the different emphasis of many medical research institutes on the translation of research to impact, including alternative outputs of research, such as involvement in public health activities, impact on policy and health guidelines, and publication in 'grey literature', meaning non-peer-reviewed publications.¹⁸⁷

[174] During cross-examination, Professor Hilton agreed that WEHI had previously been covered by its own General Staff Award¹⁸⁸ and that the Award included the same descriptors and pay rates as in the Higher Education General Staff Award.¹⁸⁹ Professor Hilton agreed that the WEHI had advertised for a research technician at HEW5 level, a level in the Higher Education Award.¹⁹⁰

[175] Professor Hilton agreed that WEHI promotes itself as the Department of Medical Biology of the University of Melbourne for the purposes of teaching and WEHI for research purposes.¹⁹¹

Professor Brendan Crabb

[176] Professor Brendan Crabb is the Director and CEO of the Institute¹⁹² and was previously the President of AAMRI between 2012 and 2014. Professor Crabb possesses a PhD from the University of Melbourne and is a molecular biologist by training.¹⁹³ He has previously been employed at numerous medical research institutes.¹⁹⁴

[177] Professor Crabb noted that medical researchers perform similar work to scientific researchers, some of whom are employed at universities as research only scientists.¹⁹⁵ Professor Crabb distinguished between the type of work performed by scientific researchers and university academics.¹⁹⁶

[178] Professor Crabb described that in his experience as a teaching and research academic that he was primarily employed to co-ordinate, run and teach undergraduate courses¹⁹⁷ and that any research work was secondary. This exemplified the fundamentally different roles of a researcher and academic, and an independent medical research institute and a higher education organisation.¹⁹⁸

[179] Higher degree students at the Institute are supervised by Institute researchers but are enrolled at a university.¹⁹⁹ It would be unusual for an independent medical research institute to pay its staff to engage in lecturing or teaching and staff engaged in these activities are engaged and paid by the relevant university.²⁰⁰ Professor Crabb stated that higher degree supervision is quite different from teaching undergraduates as the students work more collaboratively.²⁰¹

[180] The Institute has a different set of functions to a university that encompass research, NGO activities²⁰² and bringing novel technologies to market.²⁰³ Professor Crabb stated that the Institute had a strong culture of translating research outcomes and developing and partnering novel technologies such as vaccines, diagnostics and therapeutics, some of which reach the market.²⁰⁴

[181] The Institute's funding arrangements also distinguish it from a university as it includes

funding from DFAT, the Department for International Development (UK); and the US Agency for International Development (USAID).²⁰⁵ Universities are not able to access these grants.²⁰⁶

[182] Under cross-examination, Professor Crabb confirmed that the Institute perform some teaching duties as it delivers units for the Master of Public Health and Master of International Health programs at Monash University.²⁰⁷ Staff involved in the delivery of these units are employed by the Institute directly rather than by Monash University.²⁰⁸

[183] Professor Crabb agreed that there was overlap in some sections of medical research institutes and university research centres.²⁰⁹ Professor Crabb stated that it was definitely the case that some activities by some researchers would be almost indistinguishable between a research only researcher at a university and a researcher at a research institute.²¹⁰ Professor Crabb agreed that there was a fair degree of mobility between researchers working in a university and a medical research institute.²¹¹

[184] Professor Crabb agreed that the Institute was a party to the old *Universities and Affiliated Academic Research Salaries Victoria and Western Australia Award*.²¹² He stated that to his knowledge there had not been any significant problems with any award structure that the Institute had.²¹³

Debra O'Connor

[185] Ms Debra O'Connor is the Executive Manager and Deputy Director of the NARI.²¹⁴ Ms O'Connor is a social worker and manager by training.²¹⁵

[186] NARI is an independent medical research institutes²¹⁶ and a public company limited by guarantee. It is governed by a constitution pursuant to the *Corporations Act 2001* (Cth). NARI employs 33 employees including 21 researchers.²¹⁷

[187] NARI conducts a diverse range of activities including research, advocacy, public health promotion and professional education.²¹⁸ It is also involved in the development of guidelines for health service providers and consulting for agencies and government bodies.²¹⁹

[188] Ms O'Connor stated that NARI researchers currently supervise approximately 13 higher degree students through appointment or an honorary appointment with a university.²²⁰

[189] NARI researchers are unable to assume primary supervision status and NARI is unable to enrol students.²²¹

[190] NARI is an affiliated research institute with the University of Melbourne.²²² There is a funding agreement between the university and NARI enabling the university to administer category one research funding.²²³

[191] NARI collaborates with a wide range of health services, not-for-profits, advocacy groups and universities in order to support its mission of furthering clinical research and health promotion focused on healthy ageing.²²⁴ NARI is co-located at the Royal Melbourne Hospital²²⁵ and provides a research advisory function to the Hospital.²²⁶

[192] NARI receives 50% of its recurrent funding from state government grants and

contracts. Universities are ineligible for this funding.²²⁷

[193] Ms O'Connor agreed that the Higher Education Academic Award applied to research only staff working in universities.²²⁸ Ms O'Connor also agreed that the NARI Enterprise Agreement²²⁹ included the staff classifications of Research Assistant Grade 1, Research Officer, Research Fellow, Senior Research Fellow, Principal Research Fellow or Associate Professor²³⁰ and levels described as A to E.

Christopher Walton

[194] Mr Christopher Walton provided a witness statement on behalf of AAMRI and APESMA.²³¹

[195] Mr Walton is the Chief Executive Officer of APESMA.

[196] APESMA's governance structure is primarily based on the concept of professional identity. Mr Walton stated that the Professional Scientists Division comprises members who fulfil a broad range of roles across a diverse range of industries.²³²

[197] Mr Walton stated that the Professional Employees Award is an occupational award for professional scientists and the coverage is widespread. The exemptions predominately apply to scientists in the government sector.

[198] Mr Walton referred to ABS data collected during the 2011 Census. It showed that the vast majority of qualified scientists are employed outside the higher education sector.

[199] APESMA conducted a survey of medical research institutes sector in October to November 2015. The survey demonstrated that researchers joined the industry because of the focus on linking health and medical research to improved health outcomes.²³³

[200] Mr Walton noted that 74.4% of respondents believed medical research institutes should remain independent and work collaboratively with universities and hospitals.

[201] Mr Walton provided a number of attachments to his statement including the *2015 Professional Scientists Remuneration Survey Report*.²³⁴

[202] Mr Walton was cross examined by the NTEU's representative on 20 October 2016.²³⁵

[203] Under cross-examination, Mr Walton discussed the link between holding a science qualification and undertaking scientific research.²³⁶

[204] Mr Walton explained that the research he had conducted demonstrated some subjective results because some people working as lecturers and tutors in higher education may identify themselves as working either in science or in higher education.²³⁷ Mr Walton's conclusion was that there are approximately 80,000 scientists in Australia and the majority of them work under the Professional Employees Award²³⁸

[205] Mr Walton was asked whether he agreed that the APESMA and AAMRI claim was seeking to compress three award classifications from the Higher Education Awards into one classification in the Professional Employees Award. Mr Walton said that the respondents to

the pre-reform award did not include medical research institutes so they may have never used that pre-existing classification structure.²³⁹

Dr Ross Smith

[206] Dr Ross Smith is the Director of Hydrobiology Pty Ltd, an environmental science consulting firm.²⁴⁰ He has previously held the position of President at Science & Technology Australia, Society of Environmental Toxicology and Chemistry (Asia Pacific Branch) and the Australasian Society of Ecotoxicology.²⁴¹

[207] Dr Smith stated that in his experience undertaking scientific duties, it makes no difference whether the work is carried out by a medical research institute, university, government or the private sector.²⁴² In his opinion, it does not matter what the final product of scientific endeavour is, the practice of the scientific method remains the same.²⁴³

[208] Dr Smith stated that he had viewed and applied the current classification structure in the Professional Employees Award, and believed that research work fits within the award classification structure.²⁴⁴

[209] Under cross-examination, Dr Smith agreed that he had never worked for a medical research institute as an employee.²⁴⁵ Dr Smith agreed that he was unfamiliar with the Higher Education Awards and would be unable to compare the conditions, salary structure and career structure²⁴⁶ in the Professional Employees Award with the Higher Education Awards.

7. Hearings

[210] A number of hearings were conducted before this Full Bench to provide interested parties with an opportunity to make oral submissions and cross examine witnesses. The hearing on 30 March 2017 related to the claim about the coverage of research institutes.²⁴⁷

[211] The parties that appeared during the relevant proceedings were the NTEU, the CPSU, AAMRI and APESMA.

[212] At the hearing the NTEU submitted that the parties all seemed to be in agreement that the Commission must do something about the award coverage of medical research institutes; they just do not agree about which course of action to adopt.²⁴⁸

[213] The NTEU re-stated its contention that the Higher Education awards are the best fit for medical researchers.²⁴⁹ The NTEU agreed that the inconsistent treatment of qualifications from different countries could be rectified by some amendments.²⁵⁰

[214] Conversely, the NTEU did not agree with AAMRI and APESMA's proposed addition of a new Level 5 classification for the medical research stream because is no comparable classification for other streams.²⁵¹

[215] The NTEU submitted that if the Commission is not minded to grant its claim regarding the Higher Education Awards then the Commission could consider making a new award for medical researchers or "tweak" the Health Professionals Award.²⁵²

[216] APESMA re-stated its position that most medical research institute employees are

already covered by the Professional Employees Award.²⁵³ The AAMRI agreed with this position.²⁵⁴

[217] APESMA submitted that medical research institutes are not universities and do not want to be regulated by the Higher Education Awards.²⁵⁵

[218] The AAMRI noted that the proposed Level 5 classification is limited to the medical research stream because that is the only area of the industry where a proposal has been developed.²⁵⁶

8. Consideration

[219] Having considered the material submitted by all parties and the competing positions we consider it both timely and necessary to resolve the issue of coverage for independent medical research institutes. In doing so, we have determined to amend the Professional Employees Award. The amended Award, together with the National Employment Standards, will provide a fair and relevant minimum safety net of terms and conditions consistent with the modern awards objective. Our determination is subject to the comments below about the future programming of the matter.

[220] Having considered the industrial character of the work performed we accept that it is similar to that performed in universities and that there is turnover of employees between the two sectors. We also accept that some medical research institutes are co-located within universities (although a greater number are co-located within hospitals).

[221] However, while recognising the similarities, we reject the NTEU submission that the work of medical research institutes is essentially the same as that of universities. This submission was an overstatement of the factual reality. Important differences include:

- (a) the fact that the work of independent medical research institutes is focussed on the translation of research into policy and outcomes (for example the elimination of harms and the improvement in health outcomes);
- (b) in responding to health issues independent medical research institutes work more closely with communities, civil society organisations, governments, non-government organisations (including international non-government organisations) and UN agencies;
- (c) the principle role of independent medical research institutes is not to teach. In their capacity as researchers employees do not coordinate, run and teach undergraduate courses;
- (d) where lecturing and teaching is undertaken by employees of independent medical research institutes is paid for separately by the relevant university (it is not a usual part of their work with the research institute);
- (e) to the extent that employees of independent medical research institutes supervise research higher degree students they do so as honorary or part time staff of universities (not as employees of their research institute);
- (f) having separate Boards of Directors that set separate budgets, funding, research goals and strategic direction;

(g) different funding arrangements to universities including access to grants not available to universities; and

(h) different regulatory regimes.

[222] Further, the evidence supports a finding that most employees performing professional research duties at independent medical research institutes are generally professional scientists and their roles requires the knowledge and skills attained through a science degree. For this reason the occupational nature of the Professional Employees Award (as opposed to the industry nature of the Higher Education Awards) is more appropriate.

[223] To the extent that AAMRI and APESMA submitted that medical research institutes are fundamentally different from universities; that submission too was an overstatement of the factual reality. There are similarities in the work of employees at independent medical research institutes and some of the scientific research performed by employees at universities. Further, there are often affiliations and close collaboration between independent medical research institutes and universities.

[224] But the differences outweigh the similarities and we have determined that the differences are such that it is appropriate to vary the Professional Employees Award.

[225] AAMRI and APESMA proposed a new classification structure for Medical Research Institutes in clause 3 (and a number of other consequential amendments). They submitted that the proposed variation to include a medical research industry stream does not seek to vary a minimum wage, but that it is seeking to introduce a new rate with the consequence that it was not bound by the requirement to present a work value test case as per s.156(3) of the Act. We do not agree.

[226] The variation put forward by AAMRI and APESMA is analogous to the variation proposed by the AWU the *Pastoral Award 2010*. In the decision the Full Bench held that:²⁵⁷

“[40] The provisions which specifically apply to the Review are in ss 156(3) and (4), which provide as follows:

‘(3) In a 4 yearly review of modern awards, the FWC may make a determination varying modern award minimum wages only if the FWC is satisfied that the variation of modern award minimum wages is justified by work value reasons.

(4) Work value reasons are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

- ‘(a) the nature of the work;
- (b) the level of skill or responsibility involved in doing the work;
- (c) the conditions under which the work is done.’

[41] The AWU submits that subsections 156(3) and (4) do *not* apply to its proposal to vary the *Pastoral Award 2010* to provide double the minimum rate for crutching rams and ram stags. It is submitted that ss.156(3) and (4) only apply to determinations ‘*varying* modern award minimum wages’ and that as the AWU’s claim seeks to *set* a

minimum wage for crutching rams and ram stags, ss.156(3) and (4) have no application. It is on that basis that the AWU contends that the relevant statutory provision is the minimum wages objective in s.284.

[42] In support of its submission the AWU points to the difference in language between s.156(3) and s.284. Subsection 156(3) is directed at determinations made in the context of a 4 yearly review ‘*varying* modern award minimum wages’. The minimum wages objective applies to the Commission’s functions or powers in the Review ‘so far as they relate to *setting, varying or revoking* modern award minimum wages’ (s.284(2)(b)).

[43] It is plain from s.284(4) that the legislature intended there to be a distinction between *setting* and *varying* modern award minimum wages, as distinct meanings have been given to these terms. It follows from the difference in language between s.156(3), which only refers to ‘varying’ minimum wages, and s.284, which refers to ‘setting’, ‘varying’ or ‘revoking’ minimum wages, that there is some force in the AWU’s contention that s.156(3) does not apply to the *setting* or *revoking* of modern award minimum wages in the Review. But, for the reasons which follow, it is unnecessary for us to determine that issue in the present proceedings.

[44] Properly characterised the AWU’s proposal is not a claim to *set* a new modern award minimum wage for the crutching of rams and ram stags. Subsection 284(4) defines the setting of modern award minimum wages in terms of the ‘*initial* setting of one or more new modern minimum wages’. This is to be contrasted with the varying of modern award minimum wages which is defined as ‘*varying the current rate* of one or more modern award minimum wages’.

[45] The *Pastoral Award 2010* already contains a minimum rate for the crutching of rams and ram stags, such work falls within the category of ‘All other crutching’. The AWU claim seeks to increase the rate currently prescribed for undertaking that work and on that basis is more aptly described as an application seeking a determination ‘varying modern award minimum wages’. Accordingly, contrary to the AWU’s submission, ss.156(3) and (4) are applicable to the claim to increase the minimum rate for crutching rams and ram stags. Further, as such a variation involves the Commission’s functions or powers under Part 2-3, the minimum wages objective is also applicable (s.284(2)).

[46] For completeness we would observe that even if s.156(3) did not apply to the current claim that would not necessarily mean that work value considerations were irrelevant to our consideration of the claim. It seems to us that such matters may well be relevant to the establishment of ‘a safety net of fair minimum wages’, as required by the minimum wages objective (s.284(1)). But it is unnecessary for us to express a concluded view on that issue and we do not propose to do so.

[47] Subsection 156(3) confers a discretion on the Commission to vary modern award minimum wages in a 4 yearly review of modern awards. The discretion is only enlivened if the Commission is satisfied that the variation is ‘justified by work value reasons’.

[48] As s.156(4) makes clear, work value reasons are ‘reasons justifying the amount that employees should be paid or doing a particular kind of work’. Work value reasons are reasons related to any of the following:

- ‘(a) the nature of the work;
- (b) the level of skill or responsibility involved in doing the work;
- (c) the conditions under which the work is done.’

[49] The factors identified in s.156(4) are consistent with the considerations which have historically informed work value assessments by the Commission and predecessor tribunals. Such assessments call for the exercise of broad judgment. As Munro J observed in *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v HPM Industries*:

‘...experience of work value cases suggests that work value equivalence is a relative measure, sometimes dependent upon an exercise of judgment. A history of such cases would disclose that a number of evaluation techniques have been applied for various purposes and with various outcomes from time to time.’”

[227] In the present matter the proposal advanced by AAMRI and APESMA is not a claim to *set* a new modern award minimum wage for scientific work. The Professional Employees Award already contains a minimum rate for those performing professional scientific duties. Clause 3.4 defines “Experienced scientist” in the scientist stream. Clause 3.5 defines “Qualified scientist”. The claim advanced by AAMRI and APESMA seeks to increase the rate currently prescribed for undertaking that scientific work (in so far as it relates to medical research). Medical research is a scientific method it is not in a class of its own.

[228] On that basis the AAMRI and APESMA claim is more aptly described as an application seeking a determination ‘varying modern award minimum wages’. Accordingly, ss.156(3) and (4) are applicable to the claim to increase the minimum rate for scientific work. Further, as such a variation involves the Commission’s functions or powers under Part 2-3, the minimum wages objective is also applicable (s.284(2)).

[229] The evidence of AAMRI and APESMA witnesses was largely confined to the issue of award coverage. The AAMRI and APESMA witnesses did not address work value reasons that justify the new clause 3.7 medical research industry stream. Their evidence did not go to:

- (a) the nature of the work in the proposed medical research industry stream compared with the generic scientists stream;
- (b) the level of skill or responsibility involved in doing work in the medical research industry stream; or
- (c) the conditions under which work is done.

[230] Consequently, on the evidence presently before us the discretion conferred by subsection 156(3) is not enlivened. While it seems it may be the case (and we remain open to being persuaded that it is), we are not presently satisfied that the proposed medical research industry stream variation is justified by work value reasons. For these reasons we propose to

further program the matter so that further evidence can be filed about the nature of the work, the level of skill and responsibility and the conditions under which the work is done.

[231] Our approach in this regard is consistent with the approach taken by the Full Bench in the 4 yearly review of the *Real Estate Industry Award 2010 (REI Award)*. In that matter the Full Bench first made a provisional determination that an increase to the minimum REI Award wage for Property Sales Representatives should be granted on work value grounds. The Full Bench provisionally determined²⁵⁸ that the Property Sales Representative classification is the appropriate benchmark for other classifications in the REI Award. However, rather than determine the relativities of the other classifications in the REI Award the Full Bench decided to allow the parties a further opportunity to attempt to reach agreement on the matter. Subsequently, the Full Bench determined the substantive matters in relation to classifications.²⁵⁹

[232] In this matter we have provisionally determined that the Professional Employees Award should be amended. Further, we have decided to allow the parties a further opportunity to attempt to reach agreement on the medical research industry stream and its place in the Professional Employees Award.

9. Next steps

[233] Having regard to our decision to vary the Professional Employees we consider it necessary to further program the matter so that additional evidence can be filed about the nature of the work, the level of skill and responsibility and the conditions under which the work is done that would justify the variation of the Professional Employees Award to include medical research industry stream.

[234] Further, having regard to this decision and the submissions made by the NTEU directed at drafting errors in the draft determination prepared by AAMRI and APESMA, they are invited to file an amended draft determination addressing the same.

[235] Commissioner Johns will convene a conference with the parties to discuss the timetable for the next steps referred to above.



VICE PRESIDENT

Appearances:

K McAlpine for the National Tertiary Education Industry Union and the Community and Public Sector Union

L Gale for the National Tertiary Education Industry Union and the Community and Public Sector Union

N Ruskin for the Association of Australian Medical Research Institutes

M Butler for the Association for Professional Engineers, Scientists and Managers, Australia

Hearing Details:

Before the Full Bench:

2016

Melbourne

30 March 2017

Final written submissions:

AAMRI and APESMA, 24 March 2017

NTEU, 24 March 2017

Printed by authority of the Commonwealth Government Printer

<PR600184>

¹ See [Directions](#) of 21 April 2015

² [MA000006](#)

³ [MA000007](#)

⁴ [MA000065](#)

⁵ See [Directions](#) of 20 April 2016

⁶ [\[2014\] FCAFC 118](#), at [85]

⁷ [\[2014\] FWCFB 1788](#)

⁸ *Ibid*, at [23]

⁹ [\[2017\] FWCFB 1001](#), at [115]

¹⁰ [\[2014\] FWCFB 1788](#), at [36]

¹¹ [AM2008/54](#)

¹² [\[2009\] AIRCFB 450](#), at [190], [196]

¹³ [\[2013\] FWC 7947](#), at [35]

¹⁴ *Ibid* at [46]

¹⁵ [\[2016\] FCCA 1474](#), at [214]

¹⁶ [NTEU](#) Submission, 2 March 2015

¹⁷ [NTEU](#) Submission, 2 October 2015 (MA000006)

¹⁸ [NTEU](#) Submission, 2 October 2015 (MA000007)

¹⁹ [APESMA and AAMRI](#) submission, 3 February 2017, para 11

²⁰ [APESMA and AAMRI](#) submission, 4 July 2016, Attachment 2

²¹ [NTEU](#) submission, 3 February 2017, para L5

²² *Ibid*

- ²³ Ibid, at para L8
- ²⁴ [Transcript](#), 27 May 2008, PN669
- ²⁵ [\[2009\] AIRCFB 450](#), at [63]–[64] (citations omitted)
- ²⁶ [NTEU](#) submission, 3 February 2017, paras L12–L13
- ²⁷ Award Modernisation Request– [Consolidated Version](#)
- ²⁸ [AP801440](#)
- ²⁹ [NTEU](#) submission, 3 February 2017, para L16
- ³⁰ Ibid, para L19
- ³¹ Ibid, para L22
- ³² Ibid, para L31
- ³³ Ibid, para L32
- ³⁴ Ibid, para L34
- ³⁵ Ibid, para L40
- ³⁶ Ibid, para L41
- ³⁷ Ibid, para L44
- ³⁸ Ibid, para L53
- ³⁹ [\[2013\] FWC 7947](#), at [49]
- ⁴⁰ [NTEU](#) Summary of previous submissions, 13 October 2016
- ⁴¹ [NTEU](#) submission, 11 July 2016
- ⁴² Ibid, para 15
- ⁴³ Ibid, paras 46–47
- ⁴⁴ [AAMRI submission](#), 16 October 2015
- ⁴⁵ [AAMRI and APESMA](#) submission, 3 February 2017, para 4
- ⁴⁶ Ibid, para 11
- ⁴⁷ Ibid, para 13
- ⁴⁸ Ibid, para 16
- ⁴⁹ [AAMRI and APESMA](#) submission, 3 February 2017, para 18 and [AAMRI and APESMA](#) submission, 11 March 2016, para 30
- ⁵⁰ [AAMRI and APESMA](#) submission, 11 March 2016, para 36
- ⁵¹ [AAMRI and APESMA](#) submission, 3 February 2017, para 27
- ⁵² Ibid, para 33
- ⁵³ [AAMRI and APESMA](#) submission in reply, 11 July 2016, paras 12–13
- ⁵⁴ Ibid, para 17
- ⁵⁵ [AAMRI and APESMA](#) submission, 3 February 2017, para 36
- ⁵⁶ Ibid, para 38
- ⁵⁷ Ibid, para 44
- ⁵⁸ Ibid, para 47
- ⁵⁹ [\[2013\] FWC 7947](#) at [35]
- ⁶⁰ [AAMRI and APESMA](#) submission, 3 February 2017, para 50
- ⁶¹ Ibid, para 53
- ⁶² Ibid, para 56
- ⁶³ Ibid, para 57
- ⁶⁴ Ibid, para 60
- ⁶⁵ Ibid, para 64
- ⁶⁶ [GO8](#) submission, 21 October 2015
- ⁶⁷ [GO8](#) submission, 8 March 2017

- ⁶⁸ [GO8](#) submission, 6 June 2016, para 220
- ⁶⁹ Ibid, para 222
- ⁷⁰ Ibid, para 223
- ⁷¹ [CPSU](#) Submission, 11 March 2016, para 3
- ⁷² [AAMRI and APESMA](#) submission in reply, 3 March 2017
- ⁷³ [AAMRI and APESMA](#) submission in reply, 3 June 2016, para 21–22
- ⁷⁴ Ibid, para 21
- ⁷⁵ [AAMRI and APESMA](#) submission in reply, 3 March 2017, para 5
- ⁷⁶ Ibid, para 16
- ⁷⁷ [\[2009\] AIRCFB 450](#) at [189]–[198]
- ⁷⁸ [AAMRI and APESMA](#) submission in reply, 3 March 2017, para 19
- ⁷⁹ Ibid, para 22
- ⁸⁰ Ibid, para 26
- ⁸¹ Ibid, para 27
- ⁸² Ibid, para 31
- ⁸³ [\[2009\] AIRCFB 450](#) at [63]–[64]
- ⁸⁴ [AAMRI and APESMA](#) submission in reply, 3 March 2017, para 42
- ⁸⁵ Ibid, para 45
- ⁸⁶ Ibid, para 53
- ⁸⁷ Ibid, para 65
- ⁸⁸ Ibid, para 68
- ⁸⁹ Ibid, para 69
- ⁹⁰ Ibid, paras 93–94
- ⁹¹ Ibid, para 104
- ⁹² Ibid, para 127
- ⁹³ Ibid, para 110
- ⁹⁴ Ibid, para 134
- ⁹⁵ [AAMRI and APESMA](#) submission in reply, 24 March 2017, para 9
- ⁹⁶ Ibid, paras 11-12
- ⁹⁷ Ibid, para 14
- ⁹⁸ Ibid, para 19
- ⁹⁹ [NTEU](#) submission in reply, 3 March 2017, para 3.3
- ¹⁰⁰ Ibid, para 2.5
- ¹⁰¹ Ibid, para 4.4
- ¹⁰² Ibid, para 4.5
- ¹⁰³ Ibid, para 4.7
- ¹⁰⁴ Ibid, para 4.11
- ¹⁰⁵ Ibid, para 4.24
- ¹⁰⁶ Ibid, para 5.10
- ¹⁰⁷ Ibid, para 6.16
- ¹⁰⁸ [\[2015\] FWCFCB 8810](#)
- ¹⁰⁹ [NTEU](#) submission in reply, 3 March 2017, para 7.7
- ¹¹⁰ [\[2015\] FWCFCB 8810](#) at [45]
- ¹¹¹ [NTEU](#) submission in reply, 3 March 2017, para 7.14
- ¹¹² Ibid, para 9.2
- ¹¹³ Ibid, para 10.15

-
- ¹¹⁴ Ibid, para 10.16
- ¹¹⁵ Ibid, paras 10.28–10.32
- ¹¹⁶ Ibid, para 11.1
- ¹¹⁷ Ibid, para 11.8
- ¹¹⁸ Ibid, para 12.1
- ¹¹⁹ [NTEU](#) submission, 3 February 2017, para A111
- ¹²⁰ [Statement](#), Ken McAlpine, 26 July 2016, para 1
- ¹²¹ Ibid, page 163
- ¹²² Ibid, para 6
- ¹²³ [Statement](#), Ken McAlpine, 11 July 2016, page 56
- ¹²⁴ [NTEU](#) Summary of previous submissions, 13 October 2016, page 211 onwards
- ¹²⁵ [Statement](#), David Trevaks, 11 March 2016
- ¹²⁶ [AE406289](#)
- ¹²⁷ *University Of Melbourne Enterprise Agreement 2013*, [AE406763](#)
- ¹²⁸ [Transcript](#) 19 October 2016, Exhibit #AJ
- ¹²⁹ Ibid, at PN7615
- ¹³⁰ [Statement](#), Roy Sneddon, 11 March 2016
- ¹³¹ [Transcript](#) 19 October 2016, Exhibit #AH
- ¹³² Ibid, at PN7203
- ¹³³ Ibid, at PN7215
- ¹³⁴ Ibid, at PN7241–PN7242
- ¹³⁵ [Statement](#), Peter Higgs, 11 March 2016
- ¹³⁶ [Transcript](#) 19 October 2016, Exhibit #AI
- ¹³⁷ Ibid, at PN7356
- ¹³⁸ [AAMRI and APESMA](#) submission, 3 February 2017, para 14
- ¹³⁹ [Statement](#), Douglas Hilton, 11 March 2016, para 52
- ¹⁴⁰ Ibid, para 55
- ¹⁴¹ Ibid, para 56
- ¹⁴² Ibid, para 56
- ¹⁴³ Ibid, para 56
- ¹⁴⁴ Ibid, para 12
- ¹⁴⁵ Ibid, para 13
- ¹⁴⁶ Ibid, para 14
- ¹⁴⁷ Ibid, para 1
- ¹⁴⁸ Ibid, para 21
- ¹⁴⁹ Ibid, para 21
- ¹⁵⁰ Ibid, para 21
- ¹⁵¹ [Statement](#), Douglas Hilton, 3 June 2016, para 13
- ¹⁵² Ibid, para 6
- ¹⁵³ Ibid, para 6
- ¹⁵⁴ Ibid, para 9
- ¹⁵⁵ Ibid, para 10
- ¹⁵⁶ Ibid, para 11
- ¹⁵⁷ Ibid, para 11
- ¹⁵⁸ Ibid, para 14
- ¹⁵⁹ Ibid, para 16

- ¹⁶⁰ Ibid, para 14
¹⁶¹ Ibid, para 18
¹⁶² Ibid, para 19
¹⁶³ Ibid, para 20
¹⁶⁴ Ibid, para 20
¹⁶⁵ Ibid, para 21
¹⁶⁶ Ibid, para 21
¹⁶⁷ Ibid, para 22
¹⁶⁸ Ibid, para 22
¹⁶⁹ [Statement](#), Douglas Hilton, 11 March 2016, para 25
¹⁷⁰ Ibid, para 17
¹⁷¹ [Statement](#), Douglas Hilton, 3 June 2016, para 27
¹⁷² Ibid, para 23
¹⁷³ Ibid, para 25
¹⁷⁴ Ibid, paras 30-34
¹⁷⁵ Ibid, para 33
¹⁷⁶ Ibid, para 33
¹⁷⁷ Ibid, para 35
¹⁷⁸ Ibid, para 37
¹⁷⁹ Ibid, para 38
¹⁸⁰ Ibid, para 41
¹⁸¹ Ibid, para 42
¹⁸² Ibid, para 46
¹⁸³ Ibid, para 47
¹⁸⁴ Ibid, para 47
¹⁸⁵ Ibid, para 48
¹⁸⁶ [Statement](#), Douglas Hilton, 11 March 2016, para 39
¹⁸⁷ [Statement](#), Douglas Hilton, 3 June 2016, para 53
¹⁸⁸ [Transcript](#), 20 October 2016, PN7814
¹⁸⁹ Ibid, PN7816
¹⁹⁰ Ibid, PN8003
¹⁹¹ Ibid, PN8023
¹⁹² [Statement](#), Brendan Crabb, 3 June 2016, para 1
¹⁹³ Ibid, para 3
¹⁹⁴ Ibid, para 4
¹⁹⁵ Ibid, para 22
¹⁹⁶ Ibid, para 22
¹⁹⁷ Ibid, para 23
¹⁹⁸ Ibid, para 23
¹⁹⁹ Ibid, para 30
²⁰⁰ Ibid, para 31
²⁰¹ Ibid, para 33
²⁰² Ibid, para 26
²⁰³ Ibid, para 37
²⁰⁴ Ibid, para 37
²⁰⁵ Ibid, para 43

- ²⁰⁶ Ibid, para 43
- ²⁰⁷ [Transcript](#), 1 December 2016, PN9796
- ²⁰⁸ Ibid, PN9798
- ²⁰⁹ Ibid, PN9835
- ²¹⁰ Ibid, PN9869
- ²¹¹ Ibid, PN9870
- ²¹² Ibid, PN9897
- ²¹³ Ibid, PN9898
- ²¹⁴ [Statement](#), Debra O'Connor, 3 June 2016, para 1
- ²¹⁵ Ibid, para 4
- ²¹⁶ Ibid, para 10
- ²¹⁷ Ibid, para 16
- ²¹⁸ Ibid, para 19
- ²¹⁹ Ibid, para 20
- ²²⁰ Ibid, para 24
- ²²¹ Ibid, para 27
- ²²² Ibid, para 33
- ²²³ Ibid, para 34
- ²²⁴ Ibid, para 35
- ²²⁵ Ibid, para 29
- ²²⁶ Ibid, para 30
- ²²⁷ Ibid, para 41
- ²²⁸ [Transcript](#), 20 October 2016, PN8266
- ²²⁹ *National Ageing Research Institute Ltd Enterprise Agreement 2015* [[AE416657](#)]
- ²³⁰ [Transcript](#), 20 October 2016, PN8249
- ²³¹ [Statement](#), Christopher Walton, 11 March 2016
- ²³² Ibid, para 6
- ²³³ Ibid, para 23
- ²³⁴ Ibid, Annexure C
- ²³⁵ [Transcript](#), 20 October 2016, Exhibit #APESMA1
- ²³⁶ Ibid, PN8081–PN8089
- ²³⁷ Ibid, PN8100
- ²³⁸ Ibid, PN8104
- ²³⁹ Ibid, PN8147
- ²⁴⁰ [Statement](#), Ross Smith, 3 June 2016, para 1
- ²⁴¹ Ibid, para 1
- ²⁴² Ibid, para 2
- ²⁴³ Ibid, para 5
- ²⁴⁴ Ibid, para 9
- ²⁴⁵ [Transcript](#), 1 December 2016, PN9981
- ²⁴⁶ Ibid, PN9987
- ²⁴⁷ [Transcript](#), 30 March 2017, PN709 onwards (Introductory discussion on [Transcript](#), 29 March 2017)
- ²⁴⁸ [Transcript](#), 30 March 2017, PN718
- ²⁴⁹ Ibid, PN720
- ²⁵⁰ Ibid, PN725
- ²⁵¹ Ibid, PN731

²⁵² Ibid, PN748

²⁵³ Ibid, PN771

²⁵⁴ Ibid, PN812

²⁵⁵ Ibid, PN774

²⁵⁶ Ibid, PN825

²⁵⁷ [\[2015\] FWCFCB 8810](#), at [40]–[49]

²⁵⁸ [2017] FWCFCB 3543

²⁵⁹ [2018] FWCFCB 354