AM 2015/6

National Tertiary Education Industry Union

Outline of Submissions in Reply – Research Institutes Matters

1 Introduction

1.1 The Final Submissions in Support lodged by the Association of Australian Medical Research Institutes (AAMRI) and the Association of Professional Engineers, Scientists and Managers Australia (APESMA) support the proposition, shared by the NTEU that the existing safety net with respect to employees of independent research institutes is neither fair nor stable, simple nor easy to understand. On this basis, all parties support moving away from the status quo. However, NTEU and AAMRI/APESMA part company about the best solution.

1.2 NTEU has set out its proposal in previous Submissions lodged on 3 February 2017, and will respond to the reply to those Submissions prior to final hearing. However, before critiquing the proposals of AAMRI/APESMA it is appropriate very briefly to remind the Commission of the advantages of the NTEU's proposals. By contrast with what is proposed by the employers (or some of them), the proposals of the NTEU:

(a) reflect the position put to the Award Modernisation Full Bench in the award modernisation process by the ACTU, the NTEU and the CPSU, the merits of which position were not addressed at all in the Full Bench decision; and

(b) would result in the application of only two awards to the research-institutes sector, (the *Higher Education Industry Academic Staff Award 2010* and the *Higher Education Industry General Staff Award 2010*), each with properly-set minimum rates suited to the nature of the work performed in the sector, and providing for proper award coverage of employees.

1.3 In contrast, the scheme of coverage put forward by AAMRI and APRSMA does not meet the modern awards objective or the minimum wages objective.

1.4 The AAMRI/APESMA Submissions are made in support of various amendments to the *Professional Employees Award 2010* ("*PEA*").

1.5 In these submissions, the NTEU will first consider the problems of the AAMRI/APESMA proposal insofar as it relates to persons who hold a degree or higher and are engaged in the performance of research duties, and who might be covered by the *PEA* were it amended in the manner proposed by AAMRI/APESMA.

1.6 NTEU will then consider the problems of the AAMRI/APESMA proposal insofar as it relates to other employees of independent research institutes.

2 Inconsistency in the AAMRI/APESMA Position

2.1 AAMRI and APESMA assert at [4] – [5] of their submissions of 3 February 2017 that the professional scientist stream in the existing *PEA* already covers most employees performing professional research duties at independent MRIs, and that those it does not yet cover are only excluded by virtue of the national origin or discipline of their qualifications.

2.2 At [11] they claim that the amendments they propose to the *PEA* are solely for the purposes of clarity and extending the coverage to those who are currently excluded by virtue of the national origin or discipline of their qualifications.

2.3 Yet at [12] the amendments they propose to the *PEA* go well beyond matters of coverage scope to establish an entirely separate stream in the award, with an accompanying new set of classification definitions.

2.4 And at [13] they propose a new Level 5 classification and accompanying classification definition and pay rate "to ensure appropriate recognition of the work value of more senior medical research employees", despite their simultaneous assertion that all such employees are already encompassed by the professional scientist stream (with the only exception being on the basis of national origin or discipline of degrees).

2.5 They cannot have it both ways. Either the existing *PEA* is a good fit for this group of staff, in which case only minor tweaking would be required to allow for a broader range of qualifications in the case of medical researchers, or it requires substantial re-writing in relation to scope, classification definitions and range of classifications and salaries. If the latter, then it cannot be argued that the *PEA* is the natural home for this group of staff.

2.6 Further, if there is merit in clarification or simplification of the current variety of awards that AAMRI and APESMA submit apply to staff in independent Research Institutes, why does that merit only extend to employees with certain degrees, leaving the remainder of the workforce in an even worse situation in terms of award coverage than they (arguably) are now?

3 No evidence of appropriate work value levels

3.1 Beyond the bald assertion that "Science is science is science", no probative evidence has been advanced in these proceedings as to the actual nature of the work performed by researchers in independent MRIs which could lead to the conclusion that the rates established in the new research stream within the *PEA* are relevant or appropriate.

3.2 For example, the evidence of Mr Smith was that "the scientific method is the scientific method and science is science" [at PN9982] yet [at PN9985] he accepted the proposition that "The fact that the job involves the application of scientific method, by itself, won't tell us terribly much about the seniority or complexity or value of the position done by the employee."

3.3 In particular, no evidence was led in support of the creation of the proposed new classification Level 5, nor why it would be applicable to senior staff in medical research institutes but not, for example, to comparable staff in commercial pharmaceutical research laboratories or engineering firms.

3.4 No evidence was presented of how the work value for Level 5 was assessed, nor how it is benchmarked against comparable work value levels in other awards and existing work value levels in the *PEA*.

4 Proposed categories of work are vague and uncertain

"Research"

4.1 The proposed clause 3.7 is built entirely on the concept of "research". The complex web of cross-references include concepts such as a "medical ***research*** industry", "basic, applied, translational or clinical ***research***", "medical ***research*** employee" and "professional medical ***research*** duties". There is no definition of the term "research".

4.2 In the current proceedings, experienced academic researchers and research administrators were able to agree on some aspects of what constitutes research, but by no means all (see O'Connor, PN8167 – 76; Hilton, PN7903 – 18; Crabb, PN9922 – 27). There was also evidence from University employees that some activities, such as the supervision of research higher degree students, is counted as research activity in some places but not in others.

4.3 The delineation of award coverage on the basis of whether a person is engaged in research does not lead to clarity or certainty when the term is not, and probably cannot be, accurately defined. Further, if an employee moves from active research work to, for example, liaison with partners in the field or coordination of education programs, then uncertainty would arise as to which award covered them from time to time.

4.4 It is also unclear where the "bottom end" of the term "research" would be drawn for the purposes of the *PEA*. So long as a person has a degree from a relevant discipline, and their duties include any duties for which that degree is necessary, and they contribute in some way to the performance of research, they appear to be caught by this definition. This would encompass a significant number of staff traditionally considered to be clerical, administrative, technical or computing. As the *PEA* does not propose to encompass *all* research institute employees but only those defined as "research employees", this uncertainty as to the boundary between research roles and research support roles will lead to uncertainty and ambiguity about award coverage for employers and for many staff.

"Health related"

4.5 The "academic qualifications" definition at the proposed clause 3.7(c) and (d) in each case (undergraduate and postgraduate) refers to qualifications in "a medical, science or ***health related discipline***". There is no definition proposed as to what is or is not encompassed within the term "health related discipline". A common-sense construction will clearly read the term as extending to some para-medical professions, but other disciplinary fields will be contested and still others will clearly fall outside the scope (eg youth work, social work). This terminology, apparently intended to overcome the problem that a significant minority of Research Institute employees do not hold science or medicine qualifications, fails at the first hurdle, since it provides no clarity as to the scope of the coverage intended.

"the adequate discharge of any portion of which duties requires the person to hold the academic qualifications as defined."

4.6 The proposed definition of "professional medical research duties" upon which the scope of the proposed new subclause 4.3 is built, includes at cl.3.7(n) the criterion that the duties involve the undertaking of "research" (ref para 4.1 above) and at (o) the qualifier in relation to those research duties, "the adequate discharge of any portion of which duties requires a person to hold the Academic qualifications as defined". The draft award provides no guidance as to how this requirement is to be ascertained.

4.7 Unlike some of the other fields covered by the *PEA*, there is no Institute or Professional Association which governs the qualification levels required to be registered or recognised to work as a researcher in an independent research institute. There is no external body which can be looked to for an answer to the question "which research duties ***require*** the researcher to hold a particular academic qualification?"

4.8 The person attempting to make sense of the scope of this award, and its interaction with the coverage of other modern awards, would need to rely on the terms of the award itself to find an answer. Once again, the definition of the category proposed to be covered leads to confusion rather than clarity.

4.9 In preparation for these proceedings, AAMRI circulated a questionnaire to their members inquiring as to the number of employees who held various qualifications. On

the basis of responses from 35 independent research institutes, AAMRI concluded that 58.6% of staff in the sector are engaged in research and hold degrees. Of those, they report that 70.1% hold science degrees from Australian, NZ or UK universities, that another 17.8% hold degrees in science from another jurisdiction, and that the remainder have a non-science degree which is necessary for the performance of their duties. (ref. AAMRI #1, paras 54-56).

4.10 Professor Hilton's summary of the survey outcomes in his witness statement was limited to only part of the data (PN8012). AAMRI did not supply the full results of the survey. Professor Hilton was not involved in preparing or administering the survey (PN8009), nor did he appear to be aware of the instructions in the survey instrument itself as to who should or should not be counted in the tally of research staff (PN8016-17) despite those instructions being plain on the face of the document. The survey instrument itself guides respondents by indicating that the purpose of the survey is to assist in preparation of submissions for these proceedings, and the title of the survey refers to the Modern Award 4-yearly Review.

4.11 Examining the survey instrument (Appendix 2 to AAMRI#1), it quickly becomes apparent that what was invited was a simple count of the number of research staff who held qualifications, with no serious inquiry into on what basis the respondents determined that the holding of the qualification was required for the discharge of their research duties. It is a reasonable presumption that the personnel completing the questionnaire simply assumed that if the person held a degree and were performing research duties, then that degree was required for the performance of the work. No evidence was presented to support such a presumption.

4.12 At question 4 of the survey instrument, under the heading "Non-Research Positions", participating institutions were directed to record researchers who did not hold a degree. See for example the words at point 9 in the box: "… conducting medical research without a degree and/or assisting with medical research duties …" and at point 10 in the same box, a list of health professionals including "medical scientist".

4.13 In this way, the survey was constructed to classify those who held science or medical qualifications as research staff, and those who did not hold degrees as non-research staff, distorting the real figures and avoiding the real distribution of staff among the categories, and providing no useful or reliable data on the number of such staff for whom the holding of a medical, science or health related degree was necessary for the performance of their research duties.

4.14 Nor does the survey instrument make any inquiry into the proportion of research staff with postgraduate qualifications, what field(s) those higher qualifications might be in, nor whether *those* qualifications were required for the discharge of their research duties.

4.15 Little weight can be given to the claimed results of this survey. No evidence was provided as to its design or methodology. The instrument is clearly structured in such a way as to lead to the desired results. Only selective excerpts from the data have been provided, and no witness was provided who had direct knowledge of these things. The data reported by Professor Hilton certainly cannot be relied upon to prove AAMRI and APESMA's submissions at [14(a)] or [14(c)(i)] as to the composition of the workforce.

4.16 The conclusions AAMRI draw from their own survey of members, and which they urge upon this tribunal, is that if an employee *holds* a degree, then their work must necessarily *require* a degree, and moreover it must require *that* degree. While it is doubtless the case that for many research employees, their research work is founded squarely on the skills and expertise they have gained through their PhD and subsequent research, there are also many positions, particularly at more junior levels, where a degree, while it might be desirable, is not necessary for the performance of the duties required, and at more senior levels, where the duties are more administrative in nature, or involve the coordination or oversight of research management, where past

experience as a researcher, rather than any particular degree in any particular field, is the essential factor in the performance of the duties.

4.17 Looking at the job advertisements found at Attachment N to Exhibit H, while some positions, such as postdoctoral fellowships, clearly require a PhD, the following can also be seen:

Job advertised	**Selection criteria**
WEHI Division Coordinator	laboratory experience and/or relevant qualifications
MCRI Research Officer in Proteomics	PhD in Biochemistry, Biotechnology or equivalent experience in a related field
Florey Senior Technician (HEW5) (with "direct involvement in delivering successful research outcomes")	Skills, experience and a drivers' licence
Florey Data and Administration Officer	Bachelor degree in sciences or health related field and experience
WEHI Research Technician (HEW5)	BSc(Hons) or equivalent degree and experience
WEHI Research Technician (HEW7)	BSc(Hons) or Masters or equivalent and experience
Florey Microscopy Facility Supervisor (HEW7)	BSc(Hons) or Masters or equivalent and experience
Florey IT project manager (HEW7)	Degree in computer science or equivalent qualification and experience
WEHI Research Computing Scientist (HEW6-7)	PhD desirable but not essential, strong computing and programming skills essential.

4.18 In itself, this does not indicate whether or not the holding of the named qualification is necessary for the performance of the duties, since in a selection process an employer may aim high, and seek a field of candidates with higher qualifications than are strictly required to perform the work. Certainly the supply of graduates has increased to the point where it is common for a person to hold a degree which bears little or no relationship to the duties they perform in their job.

4.19 Nevertheless, the analysis above does indicate that some work directly involved in the conduct of research may be filled by persons with experience rather than qualifications, while other functions which support research activities but are not themselves directly involved in the conduct of research are advertised on the basis that they do require qualifications to be held.

4.20 No other evidence was adduced as to the alleged requirement for particular qualifications for the performance of various research duties. There was no evidence

as to why this was the appropriate measure by which to determine the scope of award coverage nor to distinguish between classification levels in the manner proposed.

4.21 At paragraph [28] of their Final Submissions, APESMA and AAMRI seek to rely upon a 1984 Decision of the Conciliation and Arbitration Commission in support of its view about what is meant by a 'degree in Science'. This was a Decision by the Registrar and dealt with an eligibility rule alteration by the Association of Professional Scientists, and as such was made in a context radically different from interpreting the *PEA*.

4.22 In relation to the question of qualifications and inclusion in the existing *PEA*, at paragraph 29 of their final submissions, AMRI/APESMA place some reliance upon the Judgement of the Federal Circuit Court in the *Priority Matters Case* (Fair Work Ombudsman v Priority Matters Pty Ltd [2016] FCCA 1474.) The Court found at paragraph 214-215 that a former employee was covered by the *PEA*. Specifically the Court found:

> *I find that Dr Wohlthat's qualifications were relevant to his employment in the role of a simulation scientist which was admitted in the pleadings. Given his PhD was obtained in 2011 this employee falls with the criteria in the academic schedule to the Professional Employees Award for Professional Scientist.*

4.23 No information is provided by AAMRI/APESMA, as to what facts were alleged or what arguments were put, nor does the Judge elaborate the reasoning.

Overview

4.24 In summary, the proposed new Medical Research Industry Stream fails to meet the Modern Award objective in that it fails to establish a simple, easy to understand provision. By reliance on terms such as "research" and "health related" and delineating coverage by reference to duties the discharge of which "requires" the holding of an uncertain range of qualifications, the introduction of this stream would introduce ambiguity and uncertainty. These problems are not mere drafting errors. They reflect a fundamentally erroneous understanding of and approach to award regulation for independent research institutes.

5 Strange delineation of relevant qualifications by national origin

5.1 Other streams of the *PEA* limit the scope of the award by reference to academic qualifications. In each case, while some qualifications may be directly referenced, there is also a provision which relies upon the recognition of other qualifications by a recognised professional body as being acceptable for admission to a professional membership of that body, or otherwise as being equivalent to the directly referenced qualifications.

5.2 For engineers (cl.3.2), there are no geographical limits on where a qualification was gained, but merely the requirement that the qualification is recognised by Engineers Australia.

5.3 For Information Technology and Telecommunications employees (cl.3.3) the requirement is for a degree from anywhere, or other qualifications recognised or accredited by the Australian Computer Society.

5.4 For the Scientist stream (cl.3.4) there is an "academic schedule" which begins at (a) with reference to Australian, New Zealand or United Kingdom universities and Australian tertiary education institutions, but adds all other academic qualifications recognised by (b) the Royal Australian Chemical Institute, (c) the Australian Institute for Physics, (d) the Australian Institute of Mining and Metallurgy and the Institution of Metallurgists (London), (e) the Australian Institute of Agricultural Science, (f) the Australian Institute of Food Science and Technology, and (g) any pharmacy board or council in Australia.

5.5 For the Quality auditing stream (cl.3.6) there is no restriction on what institution the relevant course of study or educational standard may be obtained at.

5.6 Yet for the proposed new Medical Research Industry stream (cl.3.7) there is the somewhat surprising restriction of recognised undergraduate academic qualifications to "a university degree … from an Australian, New Zealand, United Kingdom or United States of America university or from an Australian tertiary educational institution." This obviously echoes subclause (a) of the equivalent provision in the Scientist stream, but is not accompanied by any reference to a recognised authority for determining equivalence of qualifications from other countries.

5.7 Canada and the Republic of Ireland might feel snubbed to be left out of this narrow group, particularly since it has been extended beyond the Commonwealth First World to include the USA, but there is no logic in a workforce of highly mobile and collaborative researchers to not recognise equivalent qualifications from any other country.

5.8 In relation to postgraduate qualifications (proposed 3.7(d)), no restriction is proposed based on the nation in which the qualification was attained. This reflects the reality that the *PhD* is actually the common entry point for employment *as a researcher* in independent research institutes, and the AAMRI/APESMA assertion that an undergraduate science degree is the defining characteristic of the research workforce is a fallacy.

5.9 In these proceedings there was evidence of a collaborative research team in which Professor Crabb was involved, which undertook early stage research which may lead to the development of a vaccine for malaria (ref Exhibit #AY, PN9842-57). That research team included research participants from a number of Australian universities and research institutes, as well as some from Germany. If the German participants in that project came to Australia to work on the next phases of that research, unless they held postgraduate qualifications they would not be employed under the *PEA*, since their undergraduate qualifications did not come from one of the identified countries. Alternately, depending on their exact discipline, they *might* be employed under the Scientist stream, but with different classification descriptors than their Australian-educated colleagues. Such an outcome would be absurd and unfair and arguably discriminatory, and bears no relationship to any proper basis for fixing award classifications.

5.10 AAMRI and APESMA claim at [36] that the effect of the scheme they propose would be to "**extend**" the coverage of the range of academic qualification covered by the *PEA* to degrees majoring in medical and health related disciplines, degrees from the USA, and some postgraduate qualifications. In fact, by not allowing for recognition of the full range of international and postgraduate qualifications which might be recognised from time to time by various professional associations and institutes, the range of qualifications proposed for the medical research industry stream is considerably **narrower** than found elsewhere in the *PEA*.

6 Proposed Classification Definitions flawed and inadequate

6.1 The construction of the classification requirements for staff under the proposed Medical Research Industry Stream is complicated:

(a) Clause 4.3 establishes that to be covered by the *PEA* at all, an employee must be **performing professional medical research duties** and **covered by the classifications in Schedule C**.

(b) The definition of **professional medical research duties** at 3.7(m-o) is defined in such a way as to make holding an **academic qualification** as defined a requirement for performing the work.

(c) The definition of **academic qualification** at 3.7(c) is a three, four or five year degree in a poorly defined range of disciplines from a limited range of countries, and at 3.7(d) is a PhD, Research Doctorate or Masters in a poorly defined range of disciplines but from any country.

(d) **Graduate medical research employee** is defined in 3.7 as someone who holds one of the qualifications identified in 3.7(c).

(e) **Experienced medical research employee** is defined in 3.7 as someone who holds any of the qualifications mentioned at 3.7(c) or (d), and whose duties require that they have either the qualifications mentioned at 3.7(d) or the qualifications mentioned at 3.7(c) and four or five years subsequent experience in professional medical research duties.

(f) Both Graduate and Experienced medical research employees are then grouped together into the category **Professional medical research employee**.

(g) **Schedule C.1** then sets out classification definitions under the heading Professional Responsibility Levels. C1.1 – C1.6 deal with classification Level 1 which had four pay points and applies to **Graduate medical research employees**. C1.7 – C1.10 deal with classifications Level 2 – 5, all of which apply to **Experienced medical research employees**.

6.2 The classification definitions for Level 1 are clearly drawn from the definitions for Level 1 in Schedule B1, which relate to Graduate engineers, scientists and IT employees. The borrowing of terminology from Schedule B sees the introduction of concepts which sit strangely with the medical research employee stream.

6.3 For example, in relation to graduate engineers there is reference to **core competency standards**, a concept defined at clause 3.1 of the *PEA* as "the competency standards developed for a graduate's relevant professional discipline. Progress by a graduate towards attaining core competency standards will be assessed by comparison with the specified performance criteria." While these concepts of accepted competency standards and specified performance criteria may apply to a profession such as engineering in a commonly understood way, there is no evidence of their relevance to researchers. Indeed, while some researchers may be members of a professional discipline, many will not.

6.4 Similarly, there is reference to **in-service training**, a concept defined at clause 3.1 of the *PEA* as something undertaken only by "a technology based graduate". In an award which applies to engineers, scientists, IT professionals and quality auditors, the extent of the expression "technology based graduate" may be self-evident. If the award is extended to encompass the wide variety of discipline areas envisaged by the proposed medical research industry stream, the application of the term becomes ambiguous and problematic.

6.5 The attempt to shoe-horn researchers into a classification written for engineers and professional scientists has resulted in a Level 1 definition replete with irrelevant jargon.

6.6 In the broader hearings in this matter, considerable evidence has been led about the nature of research. One factor common to witnesses from the higher education and the research institutes sectors has been that there is great diversity in the way in which research is done. The great variety of academic fields of expertise employed by research institutes reinforces this point. Research teams are also variable in their hierarchical structure – they may involve collaboration across many workplaces, may have one part of a project in a laboratory headed by a senior researcher, but with the actual research being led by a PhD student, while another part of the project is done solo at a different campus by a postdoc, and yet a third involves field testing in another country. In this variable and unpredictable work environment, terminology such as "initial professional medical research duties" (C1.1(a)), "normal professional medical

research duties" (C1.1(b)), and "standard procedures" (C1.1(d)) misconstrue the nature of research work.

6.7 Overall the classification description in C1.1 is not suited to a description of either work or the application of skill and knowledge for research staff.

6.8 The terminology throughout Level 1 of "where they possess and **may be** required to utilise a level of professional skill and knowledge based on either the completion of an accredited **three or four** year **tertiary** qualification in Australia **or equivalent**" is inconsistent on many points with the threshold requirements for being a professional medical research employee at all, as set out in paragraph 6.1 above.

6.9 The qualification levels set out in C1 in relation to Level 1 are also inconsistent with the way the minimum salary wages for Pay points 1.1 and 1.2 are described in clause 15.

6.10 The definition of **Experienced medical research employee** at cl.3.7 equates a Masters with a PhD for classification purposes. There is not even a requirement that it be a Masters by Research. This surprising mash-up of qualification levels reflects the fact that it is in fact the PhD which is the most common entry point for researchers, and in order to replicate the salary structure for the rest of the *PEA*, the pretence of a PhD entry-point being higher than Level 2 would be transparently artificial. As Level 1 is the entry point for those with an undergraduate degree across the whole award, it would have caused other problems to locate the Masters in Level 1.

6.11 Nevertheless, the location of a PhD at level 2 in the *PEA*, and the attempt to describe measures of complexity for research work from Level 2 to Level 5, creates problems with internal relativities. Beginning with Level 2, a comparison between Schedule C and Schedule B shows a very different sort of classification definition. A PhD is different in quality and degree than on-the-job experience. It involves specialist training in research methodology and skills, but also the completion of an original contribution to knowledge in the relevant discipline and a rigorously-assessed demonstration of the capacity to analyse and publish research results. The definitional requirement that from Level 2 on (Experienced medical research employee) the duties performed be such as to require a PhD or equivalent, means that the work is necessarily different in work value level than that required of a Level 2 under Schedule B.

6.12 The proposed descriptor for Level 2 speaks (at C.1.7(a)) of usually being engaged in assignments "requiring substantial professional experience". This is clearly inaccurate, as for a significant proportion of researchers this is the entry level, and their work requires completion of a PhD, but does not require "extensive professional experience". Once again, the borrowing of language from Schedule B in order to demonstrate some sort of work value equivalence, fails to reflect the true nature of the research workforce.

6.13 By Level 4, a researcher is expected to be acknowledged nationally in their areas of expertise, whereas a Level 4 engineer exercises significant responsibility, but is not required to be known outside their own workplace.

6.14 This raises serious questions about the internal relativities proposed for the *PEA*. No evidence was presented that any of the proposed classification descriptions is an accurate or meaningful subdivision of levels of *research work,* or that it bears appropriate relativities to the *PEA* rates and classifications as currently expressed. Mere assertions of relativity does not constitute evidence.

6.15 The *PEA* is an award built on a graduate entry point followed by on-the-job experience and training leading to increasing levels of work complexity and responsibility. It is not suited to a workforce where there is a postgraduate entry point, followed by intensive on-the-job team work where reputation is built through successful research outputs (in the form of publications, conference presentations, PhD supervisions, successful grant applications, patents and discoveries). Responsibility is manifested through leadership in one's academic discipline more than through supervision of staff or administration of

big budget projects. Standing as a researcher is achieved by other measures than standing as an engineer. The proposed Schedule C stands in stark contrast to the Research Academic MSALs in the Higher Education Academic Award, which contains descriptors specifically designed to reflect the nature of research work, including the work of medical and scientific researchers in settings identical in all relevant respects to independent research institutes.

6.16 The proposed Schedule C in the *PEA* is a half-hearted attempt to modify definitions suited to one type of work to fit a completely different type of work altogether, and it fails.

7 Set or Vary? The proposed Level 5 classification and rate of pay

7.1 AAMRI and APESMA assert at [50] that the proposed Level 5 classification definition and rate of pay would constitute setting a new rate rather than varying an existing rate of pay. This is incorrect, and inconsistent with the balance of their submissions.

7.2 The proposed changes to the *PEA* are put forward on the basis that they constitute a variation to the award to "clarify" what they claim to be existing coverage. It is their submission that either all or the majority of research staff are already encompassed in the Scientist stream of the *PEA*, and that what they propose constitutes a "variation" (see, eg [34]) to amend what Commissioner Smith described as "an awkward fit" (see [46]-[47]).

7.3 The correct understanding of the AAMRI and APESMA application is that it is said to be a variation of the existing *PEA* rates and classification definitions with respect to a subset of the employees and forms of work they say are already encompassed by that award. They are proposing to vary the award descriptors for scientists so that those scientists working in the industry of medical research institutes:

(a) will be encompassed by cl. 3.7 instead of cl.3.4 and 3.5;

(b) will have their classifications described by Schedule C instead of Schedule B; and

(c) will have their pay scale varied by replacing the existing single Level 4 pay point with two pay points (called Level 4 and Level 5).

7.4 S.284 of the Fair Work Act prescribes the minimum wages objective, which relevantly requires the FWC to establish and maintain a safety net of fair minimum wages, taking into account (c) the principle of equal remuneration for work of equal or comparable value. Thus a consideration of work value is at the heart of the determination of fair minimum wages.

7.5 Subclause 284(4) defines the meaning of **setting** and **varying** modern award minimum wages. This distinction is relevant in considering the operation of s.135(1), which prescribes that in **varying** minimum wages, FWC must be satisfied that the variation is justified by work value reasons.

7.6 The interaction between the provisions relating to **setting** and **varying** was discussed in the Full Bench decision in relation to the *Pastoral Award 2010* [2015] FWCFB 8810. In that matter, there were already rates in the award for the crutching of sheep, but the AWU sought the inclusion of a higher rate for the more complex work of crutching rams and ram stags. That Bench found (emphasis added):

> [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.

7.7 NTEU submits that the variation sought by AAMRI and APESMA is akin to that sought by the AWU in the *Pastoral Award* case. In this instance there is already a rate of pay for all the professional scientists currently covered by the *PEA* who take independent decisions, are not subject to direction in relation to their area of expertise, coordinate work programs, make responsible decisions and administer large budgets, and who supervise a group or groups of other professionals. This is Level 4 in Schedule B. AAMRI and APESMA now say it is appropriate to differentiate that into two levels of skill or responsibility, and to fix a separate wage rate for each of those levels.

7.8 The submissions at [54] – [58] in support of the wage rate proposed rise no higher than mere assertion. The rate is not purported to be fixed by reference to any accepted relativities either within the *PEA* or between that and other properly fixed minimum rates.

Instead, after pointing to the existing wage rates in the *PEA* of between $46,764 and $68,001, they blithely suggest that the figure of $81,920 "sits comfortably within this range".

7.9 Rather than, as would be required by any proper consideration of relativity to properly fixed minimum rates, comparing the level of skill and responsibility proposed to that already found in Schedule B Level 4, they compare it only to the equally unsubstantiated proposed Level 4 in the proposed Schedule C. The distinctive elements they point to in attempting to establish a work value level for their proposed Level 5 are, in fact, substantially drawn from Level E in the Academic Award, and yet are proposed as justifying a significantly lower wage level.

7.10 NTEU submits that work value considerations are directly relevant to the establishment of a safety net of fair minimum wages, whether that is done by setting a new rate or varying the current rate. In considering fairness, work value has been a long-established basis for assessing the relative fairness of different rates of pay for different work.

7.11 In addition, the requirement at s.284(1)(d) to consider "the principle of equal pay for work of equal or comparable value" requires the tribunal to look beyond internal relativities in the current award (which AAMRI and APESMA say apply to work of a *different* value) but to consider appropriately fixed minimum rates in other awards which apply to work of equal of comparable value. NTEU says the first and most obvious point of comparison is the rates applicable to research-only academics under the Academic Award.

7.12 The proposed Level 5 is cut entirely from new cloth. No evidence has been provided which would justify extending the wage rates in the *PEA* in the manner proposed. No evidence has been provided which would justify extending it in such a manner only for research staff employed by Medical Research Institutes, and not for any other categories of employee covered by the *PEA*. There is not, in this case, any history in the *PEA* and its predecessor awards which could be considered comparable to the history of the crutching rates in the *Pastoral Award*. On the contrary, as DP Smith remarked in his decision at [35], *"The history of the Professional Employees Award 2010 [**MA000065**] would reveal that research scientists in MRIs were not in contemplation when consideration was given to the terms of that award. This is not to pronounce on the coverage of the award but simply to reflect the considerations which gave rise to the award"*.

7.13 AAMRI and APESMA have made no effort to produce probative evidence about the work value of research staff in independent research institutes. Their witnesses offered generic comments about the work being, by-and-large, scientific research, and to the particular funding arrangements (including in some cases charitable status) which make their budgetary situation different from that of universities, but no evidence was led which would enable the tribunal to properly asses the work value of research staff against either the current classification definitions in the *PEA*, or the proposed Schedule C. Their submissions offer broad generalisations as to work value, without any probative evidence or analysis of how the proposed rates compare with existing properly fixed minimum rates in this or any other award. They can perhaps best be characterised as "It's the vibe, your Honour".

7.14 This application comes nowhere near establishing a proper basis for the tribunal to either set new rates or vary the existing rates, and it should be rejected.

8 Evidence and Onus

8.1 AAMRI and APESMA say at [15] that NTEU did not lead evidence to contradict their propositions as to the qualification levels of MRI employees, nor that scientists

employed in MRIs perform work that is the same as or similar to work performed by other scientists covered by the *PEA*.

8.2 This submission misconstrues the onus in these proceedings. The onus falls on them to provide probative evidence in support of their propositions, which they have manifestly failed to do.

8.3 Such statistical and survey evidence as they have produced is either fatally flawed in methodology, or does not support the conclusions they seek to draw from it – in some cases both.

8.4 The NTEU has produced considerable evidence about the nature of research work and the work of those who support research, both in universities and in independent research institutes, including the direct evidence of working researchers.

8.5 The fact that the work of research scientists and other researchers in independent research institutes is largely indistinguishable from the work of research scientists and other researchers in university research institutes was confirmed by several witnesses.

8.6 NTEU submits that the overwhelming balance of the evidence supports the conclusion that the AAMRI and APESMA scheme should be rejected, and that they have failed to discharge the onus to provide reliable probative evidence in support of their application.

9 AAMRI fail to address award coverage for other employees

9.1 The AAMRI/APESMA submissions fail to set out what the award safety net would be in totality for all research institute employees. It is understandable that APESMA has sought to intervene primarily with respect to those employees in which it has a coverage interest. However, AAMRI has a greater responsibility to set out not merely what it thinks should happen to the *PEA*, but to explain the totality of what they are proposing would be the award safety net for all their employees.

9.2 They fail to say, except in the most dismissive terms, which employees would be covered by which modern awards if their applications were accepted, including which employees would be covered by which awards, and which would be award-free and which would be covered by the Miscellaneous Award. Although NTEU recognises that these are not proceedings *between parties* in the traditional sense, NTEU submits that in circumstances where the employers are uniquely placed to provide evidence about the nature of the work performed by all classes of employees and failed to do so in these proceedings, the Commission is entitled to infer that such evidence would not have assisted their argument that the existing safety net is fair simple and easy to understand.

9.3 In short NTEU submits that it has done the analysis which should have been done by the employers, and that, in addition to the problems with the proposed variations to the *PEA*, the picture which emerges is of an unfair, complex hotch-potch of award coverage when looking at the whole research institutes workforce.

10 Problems connected to award coverage of employees in the scheme proposed by the employers

10.1 The evidence of AAMRI and APESMA in the present proceedings was sparse about who the research institutes actually employ. The evidence of Professor Hilton in AAMRI #1 at paragraph 56(a) was that 41.4% of the staff of the 36 institutes surveyed were *not* medical researchers, but no further detail was offered about what they *were.*

10.2 NTEU uses as its starting point the list of occupations in medical research institutes which is Appendix 1 to the *AAMRI Outline of Submissions in Response* of 3 June 2016 (we could not find an exhibit number). In terms of the occupations listed, this is very similar to the list referred to as Appendix 3 to the witness statement of the Executive Officer of AAMRI Dr Nicole Den Elzen in the 2012 Award Review dealing with the same awards [Appendix 3 to Exhibit R3 in those proceedings, which can be found here: https://www.fwc.gov.au/documents/documents/awardmod/review/am2012187&190_sub&witstat_aamri.pdf]. At paragraph 26 and 27 of her Statement she described a very similar list as follows:

> *On 29 January 2013, I contacted the human resource manager (or equivalent position) of each of the AAMRI members by email, and asked them to provide me with details of the types of positions held by employees in their institutes, and the modern award (if any) that had been designated to apply to these employees. I received responses from 28 AAMRI members.*
>
> *Attached to this Statement at **Appendix 3** is a summary of **key types of positions** employed in respondent AAMRI members, and the indicative modern awards that have been designated to those positions.*

10.3 This is the best evidence we have about the occupations actually employed, along with those referred to and classified in enterprise agreements applying to the research institutes, which also give an indirect indication.

10.4 For ease of reference the list of occupations in Appendix 1 to the *AAMRI Outline of Submissions in Response* of 3 June 2016 is:

> Clerical and administrative employees,
> Aboriginal health worker,
> Biomedical engineer/technologist,
> Cardiac technologist,
> Clinical optometrist,
> Clinical psychologist,
> Community development worker,
> Genetic counsellor,
> Health information manager,
> Health statistician,
> International health and development professional,
> Medical laboratory technician / technologist,
> Medical scientist,
> Occupational therapist,
> Orthotist,
> Physiotherapist,
> Radiation therapy technologist,
> Research technologist,
> Social worker,
> Speech therapist,
> Technical officer
> Researchers with scientific degrees
> Other scientists (eg statisticians, neuroscientists, whose positions require a science degree)
> Nurses who are principally engaged in nursing duties
> Animal technician/care attendant,
> Building and maintenance staff,
> Cleaning staff,
> Security staff
>
> (note: **Medical practitioner** was also cited by Dr Den Elzen in 2012.)

10.5 Even accepting that AAMRI's list collapses many different and distinct occupations into broad categories (for example "clerical administrative employees", and "researchers"), it is apparent that there is a very diverse range of employees employed by independent medical research institutes, just as there is in the medical research institutes which are parts of universities.

10.6 Analysing the *effect* of the AAMRI/APESMA proposal requires a careful and systematic analysis of the coverage provisions and relevant effect of the *PEA*, varied as proposed by them, and of the other occupational or industry awards which might or might not apply.

Allied Health professionals who are not researchers but are employed by medical research institutes

10.7 The *Health Professionals and Support Services Award 2010* ("***HPSSA***") deals with coverage at Clause 4. Sub-Clause 4.1 states as follows:

> *4.1 This industry and occupational award covers:*
>
> **(a)** *employers throughout Australia in the health industry and their employees in the classifications listed in clauses 14—Minimum weekly wages for Support Services employees and 15—Minimum weekly wages for Health Professional employees to the exclusion of any other modern award;*
>
> **(b)** *employers engaging a health professional employee falling within the classification listed in clause 15.*

10.8 In the definitions list in Sub-Clause 3.1, "health industry" is defined as:

> ***health industry*** *means employers whose business and/or activity is in the delivery of health care, medical services and dental services*

10.9 It seems to be common ground that there is no basis to say that the business of medical research institutes *as employers* is the delivery of health care, though, as is apparent from the list of occupations, quite a number of their employees are engaged as health professionals rather than as researchers *per se.* Therefore, nothing in Sub-Clause 4.1 (a) could itself mean that any employee of a medical research institute is covered by the *HPSSA*. The question then needs to be asked what coverage is conferred by Sub-Clause 4.1 (b). This coverage is clearly not limited to the *health industry* and is intended to extend coverage to any employer engaging a health professional in the ***classification listed*** in Clause 15.

10.10 Turning to Clause 15 of the Award, it reads as follows:

> ***15.1 Progression through pay points***
>
> **(a)** ***Progression through level 1***
>
> *Employees will enter at the relevant pay point and then progress annually or, in the case of a part-time or casual employee, 1824 hours until they reach pay point 6.*
>
> **(b)** ***Progression through levels 2–4***
>
> *Progression for all classifications for which there is more than one pay point will be by annual movement to the next pay point having regard to the acquisition and use of skills, or in the case of a part-time or casual employee, 1824 hours of similar experience.*

15.2 Health Professional employee—level 1

	Per week
	$
Pay point 1 (UG 2 qualification)	*821.60*
Pay point 2 (three year degree entry)	*853.30*
Pay point 3 (four year degree entry)	*891.00*
Pay point 4 (masters degree entry)	*921.80*
Pay point 5 (PhD entry)	*1004.20*
Pay point 6	*1039.90*

15.3 Health Professional employee—level 2

	Per week
	$
Pay point 1	*1045.60*
Pay point 2	*1083.40*
Pay point 3	*1124.80*
Pay point 4	*1169.60*

15.4 Health Professional employee—level 3

	Per week
	$
Pay point 1	*1220.40*
Pay point 2	*1254.50*
Pay point 3	*1281.60*
Pay point 4	*1338.40*
Pay point 5	*1387.90*

15.4 Health Professional employee—level 4

	Per week
	$
Pay point 1	*1477.50*
Pay point 2	*1576.90*
Pay point 3	*1714.80*
Pay point 4	*1893.00*

10.11 The only ***classifications*** referred to in Clause 15 are the four classifications – Level 1 to Level 4. Sub Clause 4.1 (b) requires two distinct things - that an employee be both a health professional employee and that he or she be employed in one of the classifications listed in Clause 15. Although Schedule C (List of Common Health Professionals) of the *HPSSA* lists a number of *occupations*, these are referenced only in Schedule B (Classification Definitions).

10.12 This interpretation is fortified by the terms of the *Social, Community, Home Care and Disability Services Industry Award 2010* which is the main award which covers *social workers*, *youth workers* and *welfare workers*. All of these occupations are listed in Schedule C of the *HPSSA*. Yet the *Social, Community, Home Care and Disability*

Services Industry Award 2010 states in its coverage clause (in Sub-Clause 4.2) as follows:

> ***4.2*** *The award does not cover employers and employees covered by any of the following awards:*
>
> *(a) Aged Care Award 2010;*
>
> *(b) Amusement, Events and Recreation Award 2010;*
>
> *(c) Fitness Industry Award 2010;*
>
> *(d) Health Professionals and Support Services Award 2010; or*
>
> *(e) Nurses Award 2010.*

10.13 If the interpretation contended for about the proper effect of the *HPSSA* is incorrect , then it must follow that:

(a) All employers of social workers, youth workers and welfare workers are covered by the *HPSSA*, and

(b) By virtue of Sub-clause 4.2 of the *Social, Community, Home Care and Disability Services Industry Award 2010*, that Award does n**ot** apply to **any** social workers, youth workers and welfare workers.

10.14 NTEU submits that is an improbable outcome. If that submission is correct, then an employee engaged in the practice of a health profession, including at least the following occupations employed by research institutes, are not currently covered by the *HPSSA*:

Biomedical engineer/technologist,
Cardiac technologist,
Clinical optometrist,
Clinical psychologist,
Genetic counsellor,
Health information manager,
Health statistician,
Medical laboratory technician / technologist,
Occupational therapist,
Orthotist,
Physiotherapist,
Radiation therapy technologist,
Speech therapist.

10.15 Unless such employees are engaged in *professional medical research duties* (as defined in the AAMRI/APESMA proposal), these employees have no award entitlement at all, and certainly none which recognises the work value of their occupations. Under their proposed scheme, 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. That this is a real issue, and that the employers misunderstand the NTEU's position, is nowhere more apparent than in the following extract of their own submissions of 3 June 2016.

> *53. The NTEU also argues the affected MRI employees should not be covered by the Health Professionals and Support Services Award 2010 as this award covers employees who are providing a health service. The NTEU's submissions fail to address* ***those health professionals employed by MRIs who provide health services in the course of, incidental to or with no involvement in medical research****, and do not identify how this is distinct from the provision of a health*

service by any other health professional working outside of the health industry who is covered by this award. (emphasis added)

10.16 In fact, the "problem" identified by this submission is indeed serious, for AAMRI/APESMA's proposed scheme, but not for the NTEU's proposal, which sees everyone covered either as an academic or general staff professional, with consistent work value assignments across the occupational streams within each award.

10.17 However, NTEU acknowledges that there is an alternative interpretation of Sub-Clause 4.1(b) of the *HPSSA*. This is that despite the infelicity of language, 4.1 (b) has no work to do if it does not provide general *occupational* coverage of "health professionals" as listed in Schedule C of that Award.

10.18 This is certainly the interpretation for which APESMA/AAMRI have contended. Their *Outline of Submissions in Response* of 3 June 2016 includes Appendix 1 of those Submissions – entitled *Coverage and scope of awards applicable to employees of MRIs,* which purports to describe the *current* award coverage of employees in medical research institutes. In that Appendix they cite Clause 4.1 (b), and Schedules B and C of the *HPSSA* as the basis for their assertion that "health professionals" as listed in Schedule C are, on an occupational basis, covered by that award, which applies equally to the public and private sector.

10.19 If they are right about that, then they must live with the full consequences of that interpretation. The list of *health professionals* which they say are covered by the *HPSSA* includes ***medical scientist***. The term *medical scientist* is not defined in the *HPSSA* itself. However, the term was clearly defined and classified in detail in the predecessor federal awards, an examination of which resolves any doubt as to what a *medical scientist* is, and notably, in the NTEU's submission, appropriately describe the work and provide useful information about work value of medical scientists under the *HPSSA*. Attachment 1 brings together relevant extracts from those predecessor federal awards:

- AP833755CRV - Health Services Union of Australia (Victoria - Private Sector – Medical Scientists, Psychologists and Pharmacists) Award 2004
- AN150080 – Medical Scientists (South Australian Public Sector) Award
- AP830467 - Medical Scientists, Pharmacists and Psychologists (Public Sector - Victoria) Award 2003

10.20 For example, the practice and profession of a *medical scientist* manifestly includes medical research.

10.21 It follows from this that the effect of the award modernisation process, inadvertently or not, was to put medical scientists in medical research under the coverage of the *Health Professionals and Support Services Award 2010*

10.22 Given NTEU's primary position, which interpretation of the *HPSSA* is correct is a second-order issue. Forced to make a choice, we believe that the salary range and descriptors applicable to health professionals are more appropriate. That the same descriptors and rates would at least apply to all health professionals and medical scientists irrespective of whether or not they are engaged in research would be fairer, more stable and more easily understood.

10.23 If the AAMRI/APESMA interpretation is correct (and *HPSSA* has occupational coverage at medical research institutes, but somehow not for medical scientists), and their proposal were adopted, the medical research institutes would be left in the position where the highest award pay rate applicable to their leading researchers of professorial rank would be $81,920 p.a. (Level 5 proposed rate in *PEA*). The highest award rate applicable to a health professional *not* engaged in research would be ($98,738), which is also the highest award rate for a medical scientist under the *HPSSA*. To have these

award provisions operating together within the same workplace would not be fair or simple or stable, nor would be conducive to productive and flexible work practices.

10.24 If the AAMRI/APESMA interpretation is not correct (and the *HPSSA* has no application at medical research institutes) then health professionals who engage in *professional medical research duties* will have award rates as specified in the varied *PEA*, but the groups they cite as significant in their own submissions (see paragraphs 10.2 – 10.4 above) – those health professionals not engaged in research, will have no award coverage at all.

The status of the Professional Employees Award will change and adversely affect some employees

10.25 In the Table at Appendix 1 to the *AAMRI Outline of Submissions in Response* of 3 June 2016 on page it is suggested by AAMRI and APESMA that the following classes of employees are covered by the *Miscellaneous Award 2010*:

Animal technician/care attendant

Building and maintenance staff

Cleaning staff

Security staff

10.26 Without going to the matter in great detail, NTEU has looked at the coverage clauses of a number of other awards, and agrees with this interpretation. Having regard to the nature of the work and to the Award rates prescribed in the *Miscellaneous Award 2010*, NTEU submits that in relation to these employees and the present proposals of APESMA/AAMRI, the Commission should assume that these employees of medical research institutes are low paid and consideration is required to be given to their position by Section 134 (a) of the *Fair Work Act 2009*.

10.27 If the NTEU's interpretation of the operation of the effect of The *Health Professionals and Support Services Award 2010* (*HPSSA*) is correct, and health professionals employed in medical research institutes are not covered by that award, then it may well also be that some or all of these employees will also be covered by the *Miscellaneous Award 2010*. Whether this is so will depend upon what interpretation is given to Sub-Clause 4.2 of that Award, which states:

> *4.2 The award does not cover those classes of employees who, because of the nature or seniority of their role, have not traditionally been covered by awards including managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists.*

10.28 NTEU submits that these classes of employees, or most of them, have traditionally been covered by award in the higher education industry or health industry, and therefore are probably entitled to the benefit of the *Miscellaneous Award 2010*. However, whoever is currently entitled to the benefit of that Award will cease to have the benefit of it if the scheme proposed by AAMRI/APESMA is adopted.

10.29 This is because of the interaction of Section 4.3 of the *Miscellaneous Award 2010* and the proposed (but not current) terms of the *Professional Employees Award 2010* (*PEA*). Section 4.3 of the *Miscellaneous Award* says:

> *4.3 The award does not cover employees:*
>
> (a) **in an industry covered by a modern award who are not within a classification in that modern award**; or
>
> (b) in a class exempted by a modern award from its operation,

or employers in relation to those employees. (emphasis added)

10.30 Currently the *PEA* covers three industries, as well as certain occupations, as can be seen from Sub-Clauses 4.1 and 4.2 of the *PEA*.

> 4.1 This award covers employers throughout Australia with respect to their **employees performing professional engineering and professional scientific duties** who are covered by the classifications in Schedule B—Classification Structure of the award and those employees.
>
> 4.2 This award covers employers throughout Australia principally engaged in **the information technology industry**, **the quality auditing industry** or **the telecommunications services industry** and their employees who are covered by the classifications in Schedule B. (emphasis added)

10.31 Insofar as it operates under 4.1, the *PEA* is an occupational award. However, 4.2, appears to mean that it covers certain industries as well. In any case, the new Sub-Clause 4.3 (proposed by AMRI/APESMA) would read as follows:

> *4.3 This award covers employers throughout Australia principally engaged as a(sic) 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 employers.*

10.32 AAMRI/APESMA also propose to define the ***medical research industry*** in Sub-Clause 3.7 by reference to a class of employers, and likewise define ***medical research institute,*** also by reference to a class of employers.

10.33 This means that the *medical research industry* (as defined) or *medical research institutes* are ***an industry covered by a modern award,*** within the meaning of Sub-Clause 4.2 of the *Miscellaneous Award 2010*. In turn it must follow that, except for the classifications actually included in the *PEA*, no employees or employers in that industry are covered by *Miscellaneous Award 2010.*

10.34 This result is neither fair to the low-paid employees of medical research institutes – the animal attendants, cleaners, security staff and building maintenance staff - nor does it take account of their needs, nor for this reason does it meet the modern award objective.

10.35 The NTEU alternative – real industry awards that continue to provide coverage to groups of employees who have traditionally been covered by awards, is greatly to be preferred.

Technical officers and the operation of the PEA and the Manufacturing and Associated Industries and Occupations Award 2010

10.36 A significant group of employees in any medical research environment, especially those involving laboratory staff, is the technical staff, often known as Technical Assistants or Technical Officers. These, like NTEU witness David Trevaks, do not have degree qualifications but are in some cases, such as Mr Trevaks, nevertheless quite senior and highly skilled.

10.37 On the basis of his technical skills, Mr Trevaks is classified as at Level 7 under the descriptors and classification structure used for higher education general staff, including in the modern award.

10.38 Technical staff who do not have degrees will undoubtedly range from semi-skilled employees at the lowest level, to highly skilled and experienced employees whose work value significantly exceed that of a science graduate.

10.39 In the *Higher Education Industry General Staff Award 2010,* and in the *CSIRO Enterprise Award 2016* (a major award in the research sector) and in the *Health*

Professionals and Support Services Award 2010, technical employees are incorporated into unified structures with horizontal work value equivalences to other occupational streams. Outside of these areas, technical workers are dealt with on an occupational basis, through the *Manufacturing and Associated Industries and Occupations Award 2010.*

4.2 The award does not cover:

(a) *an employer who is outside the scope of clause 4.9(a) or (b) unless such employer employs an employee covered by clause 4.9(c) and the employer is not covered by another modern award containing a classification which is more appropriate to the work performed by the employee; or*

(b) *an employee excluded from award coverage by the Act; or*

(c) *exempt employers and employees, as set out in clause 4.11*.

10.40 None of the industries described in 4.9 (a) or 4.9 (b) covers medical research. Therefore any coverage of Sub-Clause 4.9 (c) defines the "occupational" scope of the Award, where under the operation of 4.2 (a), the award covers employees beyond those industries, if they are one of the following:

(a) *the following occupations:*

(i) maintenance employees in the engineering streams.

(ii) technical workers.

(iii) draughtspersons.

(iv) production planners.

(v) trainee engineers.

(vi) trainee scientists.

(vii) engine drivers.

10.41 *Technical workers* are defined as follows in Subclause 3.1:

***technical workers** are employees who are or who are mainly engaged:*

(c) *in the conducting of scientific or engineering work on:*

(i) *analytical, investigational, developmental, experimental or research work of a technical nature in connection with chemical, biochemical, physical chemical, bacteriological physics, physical testing or metallurgical processes; or*

(ii) *investigational, developmental, experimental, research or technical control work in manufacturing or pilot plants; or*

(d) *in assisting in the operations set out in (c)(i) and/or (c)(ii) by:*

(i) *the preparation or care of apparatus or materials; or*

(ii) *the recording or tabulating of results; or*

(iii) *any other means.*

10.42 Without the employers having provided much information about the work of particular employees it is hard for the Commission to draw any clear conclusion about whether any or many technical employees of medical research institutes are covered by (d) (i). However, based on general knowledge and impression it is reasonable to draw the conclusion that it is highly likely that some are covered, and it is highly likely that many are not. Deciding whether a technical employee would be covered by this Award under the scheme of award coverage proposed by AAMRI/APESMA, would require the

assessment of the balance of each employee's individual duties, to see whether their work was *mainly in connexion with* one of the quite specific fields listed, rather than some other field.

10.43 Such chance coverage, requiring assessment of each technical worker against an ambiguous list of fields, is no basis for a fair, stable or easy to understand safety net or system of modern awards. Two technical officers at the same medical research institute, working at the same work value level, possessed of the same technical qualifications, could be in the position where one has a minimum award wage in excess of $55,000 p.a. under the *Manufacturing and Associated Industries and Occupations Award 2010,* while the other had no award coverage at all.

Overview

10.44 Modern Awards are supposed to operate as fair safety net for employees. The foregoing analysis suggests that there has been no systematic attempt to design a fair safety net for employees at all. Rather the mess proposed by AAMRI and APESMA is more consistent with a political deal in which APESMA has been primarily concerned about union coverage issues and AAMRI has naively sought to make a political point about the 'independence' of medical research institutes from universities without proper consideration of the interests of their staff or the matters the Commission is required to consider.

11 If the Commission decides to determine award rates for research staff afresh

11.1 NTEU has submitted that the rates of pay established in the *Higher Education Industry Academic Salaries Award 2010* are appropriate to the work of those holding academic status who work in medical research institutes, those rates having been established by a Full Bench [Print J8559] in a special case which dealt with both:

(a) Universities, including their non-teaching research-only academic staff, including those employed by universities to work in their medical research institutes; and

(b) Medical Research Institutes covered by the *Universities and Affiliated Institutions Academic Research Salaries (Victoria and Western Australia) Award 1989*.

11.2 The rates were set directly by the Full Bench for those research institutes' academic and research staff following a work value inquiry. They were not added later 'in the dead of night' by a consent roping-in award with no consideration as to whether the rates were actually appropriate to the work.

11.3 The former *Higher Education Workers Victoria Award 2005* applied properly set minimum rates to all Victorian universities as well as to three major independent medical research institutes:

- Macfarlane Burnet Centre for Medical Research Limited;
- Howard Florey Institute of Experimental Physiology & Medicine; and
- Ludwig Institute for Cancer Research.

11.4 NTEU accepts that the Commission is in no sense bound, either in law or principle, to give the fact of previous award coverage over some of the industry determinative weight. While NTEU's primary submission is that the Commission is entitled to have regard to the application of these rates applying to the work of employees in medical research institutes, and with reasonable comfort determine that those rates are appropriate. However, this is not the only basis on which Commission can rejects the AAMRI/APESMA scheme of award coverage.

11.5 The Commission is entitled within its discretion to consider the issue of appropriate award minimum salaries for medical research institutes afresh, and as new rates. If it were to take this approach, NTEU submits that it should look to appropriate external comparators in cognate industries, especially those in other modern awards.

11.6 NTEU submits that the bundle of work and classifications in the medical research industry consists broadly of those who engage in research (basic, applied and translational), those who, usually with specialised skill directly support that research work but do not produce research "outputs", those who are health professionals (some of whom exercise their profession but do not engage in producing research "outputs"), clerical, information technology, administrative and management employees, and some physical grades working in support services.

11.7 For the extensive reasons given above, NTEU submits that the matrix of occupational awards does not provide an adequate or consistent safety net for these employees, and that these employees are best considered as an industry, or part of an industry in their own right.

11.8 Therefore, NTEU submits that if the Commission considers this "industry" *afresh*, and sets "new" rates, it should look to the rates and classifications in the most appropriate cognate industries. NTEU submits that all of the evidence, especially that of the employers, about collaboration and similarity of work, showed that the following awards should be considered to cover cognate or related areas:

Health Professionals and Support Services Award 2010 (MA000027)

11.9 This Award clearly covers an industry which has a significant role in medical research, though this work is part of a much larger industry. The Award covers Medical Scientists, referred to in detail above, who play a significant role in medical research. The rates of pay for these employees, and for the health professionals generally, whether engaged in research or not, cover the range of classifications form Level 1 (the graduate level) to Level 4 (the most senior Level). These currently cover the salary range from $42,855 p.a. to $98,738 p.a., with Level 4 (defined in part B.2.4 of Schedule B of the Award) requiring, for example, a medical scientist/researcher to *"have a proven track record of achievement at a senior level".* This Level proceeds in annual increments through the range **$77,066-$98,738 p.a**. At the top of this range, an employee is receiving 120.5% of the highest rate proposed by APESMA/AAMRI under the *PEA*.

11.10 The *HPSSA* also provides a comprehensive safety net to all non-health-professional employees, including technical staff, trades and physical grades staff, clerical administrative staff and other staff, some of whom will work in connection with medical research. These align work value across the occupational streams, to ensure a coherent and stable safety net, covering the range from **$37,305-$54,669**. By contrast, the highest rate of pay available to any such staff under the AAMRI/APESMA proposal would be the highest rate in the *Clerks Private Sector Award 2010* – Level 3 ($43,152 p.a.). However, as is demonstrated above, most employees would have no relevant award rate at all.

Medical Practitioners Award 2010

11.11 Medical Practitioners, in particular those engaged in major hospitals in senior roles, obviously play a role in medical research. This is recognised in their Award, which provides a work value based allowance to Senior Doctors (defined as **senior doctor** means a Specialist, Senior Specialist, Principal Specialist, Senior Principal Specialist, Deputy Director of Medical Services or Director of Medical Services.

11.12 This allowance is set out in Sub-Clause 16.3 of the Award:

16.3 Managerial allowance per annum for Senior Doctors only

Levels	***% of standard rate***
Level 1	*5.56*
Level 2	*13.02*
Level 3	*20.50*

16.3.1 To be eligible for payment of this allowance, the additional management responsibilities will include direct line responsibility for a unit, department or service and involvement in a number of, but not necessarily all of the following:

- *cost centre management including budget preparation and management of allocated budget;*
- *participation in planning and policy development;*
- ***responsibility for the co-ordination of research, training or teaching programs; or***
- *membership and participation in senior executive management teams.*(Emphasis added)

11.13 There are criteria for the determination of which level of allowances are payable which are in the Award but not reproduced here.

11.14 Senior doctors (as defined) involved in medical research have base salaries (and excluding medical superintendents and principal specialists) have base award salaries in the range of $85,049 p.a. to $105,657, to which might needed to be added an allowance payable for co-ordination of research or teaching programs. However, even ignoring the allowance, such medical researchers have base award rates 104-129% higher than the highest *PEA* rate proposed by AAMRI/APESMA proposal were accepted. It is acknowledged that these employees may well have work-value considerations higher than their research activities which justify their rates of pay, so the comparison may not be of like-with-like.

11.15 It is worth noting in passing that, given the scope of the definition of "medical practitioner" in subclause 3.1 of the Medical Practitioners Award, a medical practitioner employed by a research institute is currently award-free, and would remain so were the AAMRI/APESMA scheme adopted, unless they were engaged in "professional medical research duties" as defined.

Higher Education Industry Academic Staff Award 2010 and Higher Education Industry General Staff Award 2010

11.16 The *Higher Education Industry Academic Staff Award 2010* has been designed to cover the diversity of academic staff working in teaching or research-only roles in Australian universities, including those working in medical research institutes (including AAMRI members) where all the employees are covered by this Award. It includes, in the research area, salaries which range from Level A through to Level E, which covers the range from $48,280 to $106,098 p.a., with a PhD point at $56,985. This range covers from new graduates without a PhD, through to the most senior researchers.

11.17 *Higher Education Industry General Staff Award 2010,* like its equivalent for the health industry (*HPSSA*), has an integrated classification structure designed to cover all classes of non-academic staff, including professional staff, and like the *HPSSA* it provides for horizontal wok-value equivalence across occupational streams. It was designed to cover general staff (such as technical and non-academic research staff) in a research environment such as a medical research institute within a university. The salary range is from **$37,584** to **$71,984**.

CSIRO Enterprise Award 2016

11.18 Although this Award applies to only one enterprise, in the context of research organisations, it is of great significance as CSIRO has around 5000 employees, including research, scientific, technical information technology, clerical and administrative staff.

11.19 This award covers the range from **$37,316** to **$129,950**, as follows:

Employee Classification	**Annual (Full-time employees)**
	$
Level 1	37,316
Level 2 ("standard rate")	41,241
Level 3	49,198
Level 4	59,267
Level 5	67,517
Level 6	73,462
Level 7	87,217
Level 8	101,726
Level 9	129,950

11.20 This is a completely integrated structure covering all classes of employees, all of whom are engaged in research or in supporting the CSIRO's activities. For non-researchers – technical, professional, administrative, clerical and like staff, all of whom are covered, the salary range appears from the classification descriptors in Schedule A of the award, from Level 1-Level 7 **($37,316-$87217**). In respect of researchers, Level 3 ($49198) is the lowest level of professional appointment, (as is prescribed by part A.7 of Schedule A of the Award). This rate is slightly higher than the lowest rate applicable to academic research staff in universities. The two highest classification Levels in Schedule A of the Award can be *achieved without any specific management responsibility on the basis of research or scientific eminence*, as can be seen from the classification standards:

> ***Level 8 - $101,726***
>
> *Under broad guidance about objectives, assists in the overall strategic management of a division or corporate unit or manages a major scientific, engineering or administrative program. This requires a high degree of resource management and leadership ability. Has extensive expert knowledge of his/her field, and outstanding ability in planning and executing programs and implementing results. Typically provides expert scientific, engineering or administrative leadership to colleagues, with significant conceptual and creative input.*
>
> *Plans at the program level, comprising a range of related projects, to meet objectives. Seeks, allocates and monitors substantial resources. Has a major role in negotiating more complex, sensitive or contentious issues.*
>
> *OR*
>
> *Under broad guidance about research program objectives, undertakes outstanding scientific or engineering research requiring a high degree of originality, creativity and innovation. The scientist's or engineer's achievements represent a substantial advancement in scientific knowledge or for industry or for*

the community. Has extensive scientific or engineering knowledge, and outstanding ability in research planning, execution and/or implementing research results. Typically has an international reputation in a significant field of science or engineering or industrial application and provides expert scientific or engineering leadership to research colleagues. May plan at the program level, typically for multiple projects, to meet objectives and seek, allocate and monitor resources. May have a major role in negotiating complex, sensitive or contentious issues.

OR

Functions as a senior specialist.

Level 9 - $129,950

Responsible for the management of a research division or equivalent group. This requires outstanding strategic and resource management, and leadership and communication ability, coupled with sound understanding of the commercial application of scientific and technological innovations. Has extensive expert scientific, engineering or administrative knowledge, and outstanding ability in planning, execution and implementing results, combined with significant entrepreneurial skill. Provides pivotal leadership reflecting considerable vision matched by strategic planning skills, achievement, drive and focus on outcomes. Seeks, allocates, monitors and is accountable for very substantial human, financial and material resources. Carries overall responsibility for negotiating complex, sensitive and contentious issues.

OR

Has such eminence in a significant field of science or engineering that appointment as a CSIRO Fellow is warranted.

OR

Functions as a senior specialist.

Note: Special promotion criteria apply to advancement within this level.

11.21 Level 8 and level 9 are respectively 124% and 159% of top (new Level 5) rate proposed by AAMRI/APESMA for the *PEA*.

Professional Employees Award

11.22 The detail of this Award and the rates of pay are dealt with in detail elsewhere in these submissions. It cannot be denied that some of the employees covered by this award are engaged in research, in some private sector organisations which might be considered cognate to the medical research industry. The salary ranges are limited to graduate scientists, and are from **$46,764 p.a**. to **$68,001 p.a.**

12 Conclusion

12.1 Based on the above analysis of the problems with the scheme proposed by AAMRI and APESMA and of the other Modern Awards with possible relevance to Research Institutes and their employees, NTEU submits that if the Commission should prefer the NTEU's proposal for this sector to be covered by the Higher Education Modern Awards: they are the best fit, contain properly fixed minimum rates that encompass all the forms of work performed by employees of research institutes (including rates previously established as appropriate for this sector), and would provide clear and simple award regulation in accordance with the modern awards objective, and would not result in disturbing the classification structure or minimum rates (if adjusted for minimum wage

movements) already applying to some staff through the *Universities and Affiliated Institutions Academic Research Salaries (Victoria and Western Australia) Award 1989.*

12.2 Nevertheless, if the Commission comes to the view that it needs to establish "new" rates based an assessment of work value, or to reconsider the matter *ab initio* as though it were a new industry for which proper rates had never been set, NTEU submits that it should *not* accept the incoherent, unclear and unstable scheme proposed by AAMRI and APESMA, but rather, it should look to the rates in the most relevant cognate awards.

12.3 In NTEU's submission, these are the two Higher Education modern awards and the *Health Professionals and Support Services Award 2010* (*HPSSA*). These three awards are the only awards which have been specifically set for employees (researchers and others) who work in a medical research environment. In setting those rates, some consideration would also have to be given to the rates in the nation's largest research-specific award – the *CSIRO Enterprise Award 2016*, as well as to the *Medical Practitioners Award 2010,* and the *Professional Employees Award 2010,* and the *Manufacturing and Associated Industries and Occupations Award 2010* in respect of technical employees.

12.4 NTEU submits that the Commission can on this basis apply the rates in the Higher Education Modern awards with considerable comfort on work value grounds, either by attaching the research institutes to those awards or by including those rates in a new *Research Institutes Industry Award*.

12.5 Such an approach would be consistent with the conclusions of Smith DP when he considered the NTEU's application regarding research institutes as part of the 2012 Award Review:

> ***Consideration and conclusion***
>
> ***[34]*** *This is not an easy matter.*
>
> ***[35]*** *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 [MA000065] would reveal that research scientists in MRIs were not in contemplation when consideration was given to the terms of that award. This is not to pronounce on the coverage of the award but simply to reflect the considerations which gave rise to the award.***
>
> ***[36]*** *For those not conducting research, but who might be captured by the General Staff Award, they can more readily be placed under a modern award.* ***However, consideration would have to be given to the benefit or otherwise of employers having to deal with a myriad of industrial instruments as well as segregating the staff into essential two or more separate "industry identities". The efficiency sought to be achieved by award modernisation would not be evident in this area of employment.***
>
> ***[37]*** *I shall return to this later, but at this stage I shall review the conflicting considerations.*
>
> ***[38] Almost universally MRIs have personnel who hold what are regarded as academic titles—Professor, Associate Professor, Research Fellow and the like. A review of any of the annual reports will show that to be the case. There is also no doubt that they play a vital role in the education of post-graduate students. PhD students who are fortunate enough to be supervised by eminent scientists obtain significant benefit. It is too modest to express the view that such supervisors are not engaged in imparting knowledge through their interactions. It is difficult on the one hand to seek to publicly embrace***

relationships with universities to add gravamen to the work and yet to suggest that universities are in some way incidental to that work. The work of MRIs are vitally important in Australian society and those who carry out this work must exercise the highest academic excellence, in the sense of something being learned or scholarly, to ensure outcomes are credible and for the public benefit. In making this observation, I don't for one moment seek to disregard the financial advantage which might also be attracted to leading researchers. It is not by chance that academic titles are given and used. There is a public resonance and confidence in work which is subject of the academic rigour necessary to claim a successful outcome in research.

[39] *To the disinterested observer, MRIs are no doubt seen as institutions which are designed to greatly benefit society by solving serious and important problems and therefore attract the best "academic" minds to undertake this task. But similarly, when they are viewed objectively they do not resemble a university because they are clearly not involved in teaching undergraduates or conferring academic awards.*

[40] *It also, in my respectful view, is idle to pretend that research which can be owned and developed by Australians for the benefit of Australia, is not sought by universities and MRIs alike, understanding the constraints of each.*

[41] *The integration of research institutes with universities varies enormously from being a part of the university, to relying on funding from a university and finally having nothing to do with universities. There are a number of awards which apply to research institutes and it is not unusual to find academic titles and classification descriptions which are not dissimilar to universities. There are agreements which have familiar classification structures to those contained in the modern awards covering universities. The NTEU has an active bargaining presence in the area and its members have, in large measure, experience in universities and MRIs. In this sense, it would be difficult to unscramble that part of the egg by declaring that MRIs are not part of universities.*

[42] *When consideration is given to a family of work, it is the nature of the work which is important, not the funding source although the funding source can be used to fortify the type of work performed and its relationship or otherwise to the higher education sector. Whilst organisational structures and objectives may be relevant, funding vulnerabilities do not go to work value. AAMRI makes the point that there is also similar research performed at the CSIRO and Hospitals and they are not in higher education.*

[At paragraphs 43 to 43 Smith DP went on to deal with AAMRI's concern about the possible application of restrictions on fixed term contracts to MRIs]

[46] *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.*

[47] *Whilst AHEIA stated that a decision in favour of the MRI submission would not impact upon universities, it is difficult to see how any merit determination would not impact on the type of work which is common in universities and MRIs. The extent of that commonality is another reason why I have taken a more cautious approach. Whilst the parties have sought to provide the four corners of the argument, I remain concerned about finding one way or the other given the possible ramifications.*

[At paragraph 48 Smith DP recited the modern award objective in Section 134.]

> ***[49]*** *There are real issues in relation to ensuring that an award provides for equal remuneration for work of equal or comparable value given the interaction between universities and MRIs, but this must be done in full view of the other awards and this is not a matter contemplated for the review.* ***Further, I am not confident that industrial regulation in this area is simple, easy to understand, stable and sustainable, nor am I confident that some of the awards referred to by AAMRI have been set, having regard to fair and relevant safety net of terms and conditions of employment in MRIs.*** *However, again this is a wider question than those contemplated by this review. The matters before me go beyond technical matters or anomalies.*
>
> ***[50]*** *Without determining the merit of the matter and for the purpose of this review I dismiss the application.* [2013] FWC 7947 14 October 2013
>
> (Emphases added)

12.6 The AAMRI/APESMA proposal should be rejected in its entirety. It is an unfair, unstable and inconsistent mess. It appears to be the offspring of a strange marriage of convenience between APESMA and AAMRI, reflecting on the one hand APESMA's union coverage ambitions, which only relate to professional employees, and AAMRI's political desire to establish its "independence" from universities. Neither party to this marriage has given any real thought to the modern award objective.

Attachment 1

Contents – extracts from the following predecessor Awards to the HPSSA:

AP833755CRV - HEALTH SERVICES UNION OF AUSTRALIA (VICTORIA - PRIVATE SECTOR – MEDICAL SCIENTISTS, PSYCHOLOGISTS AND PHARMACISTS) AWARD 2004 31

AN150080 – MEDICAL SCIENTISTS (SOUTH AUSTRALIAN PUBLIC SECTOR) AWARD.. 36

AP830467 - MEDICAL SCIENTISTS, PHARMACISTS AND PSYCHOLOGISTS (PUBLIC SECTOR - VICTORIA) AWARD 2003 47

Note: The word "**research**" appears 43 times in these extracts, and has been bolded for emphasis.

AP833755CRV - Health Services Union of Australia (Victoria - Private Sector – Medical Scientists, Psychologists and Pharmacists) Award 2004

This AIR consolidated award incorporates all amendments up to and including 13 November 2007 (variation PR979870).

Clauses affected by the most recent amendment(s) are:

21. Deductions and allowances
36. Travelling transport and fares

About this Award:
This award partially supersedes the Health Services Union of Australia (Victoria Private Sector) Interim Award 1993 [AW783559]

Printed by authority of the Commonwealth Government Printer.

PART 1 –

1. TITLE

This award shall be known as the Health Services Union of Australia (Victoria - Private Sector – Medical Scientists, Psychologists and Pharmacists) Award 2004

2. ARRANGEMENT

[2 amended by PR954862; PR969977 ppc 16Dec05]

This award is arranged as follows:

Part 1 – Application
1. Title
2. Arrangement [PR969977]
3. Anti-discrimination
4. Definitions
5. Operation of award
6. Incidence of award
7. Previous award superseded

Part 2 - Award flexibility
8. Enterprise flexibility
9. Index of facilitative provisions

Part 3 - Dispute resolution
10. Disputes avoidance/settlement procedure

Part 4 - Employer and employee's duties, employment relationship and related arrangements
11. Notification of classification
12. Types of employment
13. Full-time employment
14. Part-time, sessional and relieving employment [PR970657]
15. Locum employment (pharmacists only) [PR969977]
16. Notice of termination [PR954862]
17. Redundancy [PR954862]
17A. Redundancy disputes procedures [PR954862]

Part 5 - Wages and related matters [PR954963]
18. Rates of pay [PR957109]
19. Higher duties
20. Payment of wages
21. Deductions and allowances [PR979870]
22. Occupational superannuation

Part 6 - Hours of work, breaks, Overtime, Shiftwork, Weekend work

23. Hours
24. Rosters
25. Meal intervals and rest intervals
26. Overtime
27. On-call/re-call
28. Shift work

Part 7 - Leave of absence and public holidays
29. Annual leave [PR969977]
30. Personal leave [PR969977]
30A. Bereavement leave [PR969977]
31. Jury service
32. Long service leave
33. Parental leave [PR969977]
34. Examination leave
35. Public holidays [PR967645]

Part 8 - Transfers travelling and working away from usual place of work
36. Travelling transport and fares [PR979870]

Part 9 - Accident pay, uniform and clothing
37. Accident pay
38. Uniforms and clothing

Part 10 - Award compliance
39. Posting of award

Appendix A - Schedule of respondents
Appendix B - Schedule of respondents

4. DEFINITIONS

4.10 Scientist or medical technologist means a person:

4.10.1 who holds a degree of Bachelor of Science of a Victorian University or its equivalent as determined by any such University; or
4.10.2 who holds a degree of Bachelor of Applied Science from a College of Advanced Education as registered in the National Register of awards in Advanced Education; or
4.10.3 who is eligible for Associate Membership of the Australian Institute of Medical Laboratory Scientists (AIMLS); or
4.10.4 who is engaged in studies leading to the attainment of being eligible for Associate Membership of the AIMLS; or
4.10.5 who is eligible for ordinary membership of the Neurophysiological Sciences Society of Australia; or
4.10.6 who is eligible for full membership of the Australian Society of Cardio-Vascular Perfusionists; or
4.10.7 who is eligible for ordinary membership of the Australasian Society of Respiratory Technology

5 - WAGES AND RELATED MATTERS

[Part 5 - preamble substituted by PR954958; PR954963 ppc 08Dec04]

The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review—Wages May 2004* decision [PR002004]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above-award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

18. RATES OF PAY

[18 substituted by PR954958 PR954963 ppc 08Dec04; corrected by PR957109 ppc 20Dec04]

18.1 Wage rates and classifications - Scientists

18.1.1 Trainee scientist

Percentage of the rate for the classification, "Scientist - Grade I, 1st year of experience after qualification"	%	Wages Per week $
Adult Trainee	80	503.05
Trainee in 4th year of part time course	85	532.25
Trainee in 5th year of part time course and thereafter	90	561.40

No trainee (as defined by clause 4.14) shall be required or permitted to work in any laboratory at any time without the supervision of a qualified employee.

18.1.2 Scientist - Grade I

A scientist who, under direction and supervision of more senior scientific staff undertakes laboratory or scientific work.

	Per week $
1st year of experience after qualification	619.80
2nd year of experience after qualification	656.70
3rd year of experience after qualification	688.30
4th year of experience after qualification	728.10
5th year of experience after qualification	758.40
6th year of experience after qualification and thereafter	789.00

Provided that:

18.1.2(a) A scientist who holds or is qualified to hold the degree of Bachelor of Applied Science Honours or Bachelor of Science Honours (4-year course) shall be entitled to be classified as a "Scientist - Grade I, 2nd year of experience after qualification.

18.1.2(b) A scientist who holds or is qualified to hold the degree of Master of Applied Science or Master of Science shall be entitled to be classified as a "Scientist - Grade I, 3rd year of experience after qualification", provided further that a scientist so classified shall not be entitled to the higher qualification payment prescribed in clause 21.3.4(a) for a further period of two years; and

18.1.2(c) A scientist who is a Fellow of the Australian Institute of Medical Laboratory Scientists or is qualified to hold a degree of Doctor of Philosophy shall be entitled to be classified as a "Scientist - Grade I, 5th year of experience after qualification", provided further that a scientist so classified shall not be entitled to the higher qualification payment prescribed in clause 21.3.4(b) for a further period of two years;

18.1.3 Scientist - Grade II

A scientist who:

18.1.3(a) supervises the scientific work in a class 4 department/unit/section;

18.1.3(b) has at least 6 years experience, and who through exhibiting excellence in their professional skills and/or is required to apply a level of performance worthy of additional remuneration; or

18.1.3(c) is engaged on specialised scientific work or work of a research or developmental nature which is not under the direct supervision of more senior scientific staff; or

18.1.3(d) is a deputy to a grade III scientist.

	Per week $
On appointment	789.00
2nd year after appointment	825.40
3rd year after appointment	860.60
4th year after appointment and thereafter	898.90

Provided that a "Scientist Grade I - 6th year of experience and thereafter" appointed to this grade shall be paid at the "Scientist Grade II - 2nd year after appointment" rate.

A scientist performing out of hours work and doing so alone and unsupervised shall be classified at not less than grade II for the period of time so worked.

18.1.4 Scientist - Grade III

A scientist who -

18.1.4(a) under the broad direction of more senior staff supervises the scientific work of a class 3 department/unit/section, or

18.1.4(b) is a deputy to a grade IV scientist, or

18.1.4(c) has been qualified (as defined) for at least 10 years and is engaged on specialised scientific work of a research or developmental nature.

	Per week $
On appointment	941.50
2nd year after appointment	970.70
3rd year after appointment	993.50
4th year after appointment thereafter	1042.10

18.1.5 Scientist - Grade IV

A scientist who:

18.1.5(a) supervises the scientific work in class 2 department/unit/section, or

18.1.5(b) is a senior specialist having advanced professional knowledge and extensive experience regularly engaged in dealing with highly complex problems in an aspect of scientific work.

Per week	$
On appointment and during 2nd year after appointment	1084.30
During 3rd and 4th years after appointment	1136.00
Thereafter	1208.00

18.1.6 Scientist - Grade V

A Scientist who is appointed as a senior principal **research** scientist. He/she is required to have an international reputation of a high order in a significant field of **research** as made evident by his/her published contributions in the field as recognised by his/her peers in the international scientific community.

	Per week $
	1465.90

18.1.7 Scientist Deputy Director

A Scientist who:

18.1.7(a) where there is not a Scientist Director, is the senior scientist in a class 1 department/unit/section, or

18.1.7(b) where there is a Scientists Director, is the next most senior scientist in a class 1 department/unit/section.

	Per week $
	1360.20

18.1.8 Scientist Director

Is a Scientist who is appointed a Director of a Department in a Teaching Hospital (as defined), or is appointed to relieve the Director of a Department in a Teaching Hospital (as defined), and who assumes the same responsibilities as the Director as a result of such appointment for a period exceeding four (4) weeks.

	Per week $
	1510.60

18.1.9 For the purpose of this clause -

18.1.9(a) the "1st year of experience after qualification" referred to in 18.1.1 shall be deemed to commence on the 1st day of January in the year following the year during which the scientist presented himself for final examination which, if successful, would entitle the scientist to the degree of Bachelor of Science or Bachelor of Applied Science (Medical Laboratory Science).
Where a scientist was required to attend a supplementary examination, such scientist shall, if successful, be deemed to have passed the final examination in the year during which such final examination was held.
Where a Scientist Grade I - 1st year of experience after qualification commences employment during the first year after qualification, such scientist shall be advanced to the classification Scientist Grade I - 2nd year of experience after qualification as from the 1st day of January in the next succeeding year.

18.1.9(b) Upon appointment, a scientist shall be notified in writing of his or her grading and classification within that Grade.

Grading of Departments, Units and Sections

Factors to be taken into consideration

1. Salaries budget of the relevant department/unit/section.
2. Number of units or sections in department or part of a department
3. Degree of "final responsibility" expected to be taken by the senior scientists.
4. Whether the hospital is a teaching hospital.

Weightings of the specific factors

1. $ Salaries Budget x 1/1000.
2. Unit x 40
   Section x 20
3. 100 points added to final score
4. If the workplace is a teaching hospital and the scientists are performing tasks normally associated with a teaching hospital then 100 points are added to the final score.

Class 4 Department/unit/section	< 200 points
Class 3	201 350 points
Class 2	351 800 points
Class 1	> 800 points

AN150080 – Medical Scientists (South Australian Public Sector) Award

This AIR consolidated award reproduces the former State award Medical Scientists (South Australian Public Sector) Award as at 27 March 2006.

About this Award:

Former award of the Industrial Relations Commission of South Australia.

Printed by authority of the Commonwealth Government Printer.

MEDICAL SCIENTISTS (SOUTH AUSTRALIAN PUBLIC SECTOR) AWARD

PART 1. - APPLICATION AND OPERATION OF AWARD

OPDATE 24:03:2000 on and from

CLAUSE 1.1 TITLE

OPDATE 24:03:2000 on and from

This Award is known as the Medical Scientists (South Australian Public Sector) Award.

CLAUSE 1.2 ARRANGEMENT

OPDATE 24:03:2006 on and from

1.2.1 By Part

Subject matter	Clause number
PART 1 - APPLICATION AND OPERATION OF AWARD	
Title	1.1
Arrangement	1.2
Scope, Persons Bound and Locality	1.3
Commencement Date of Award and Duration	1.4
Definitions	1.5
PART 2 - AWARD FLEXIBILITY	
Enterprise Flexibility Provision	2.1
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CLAUSE 1.5 DEFINITIONS

OPDATE 24:03:2006 on and from

1.5.1 *Association* means the Public Service Association of SA Inc.

1.5.2 *Medical Scientist* means:

1.5.2.1 an employee who holds an appropriate Science degree or recognised equivalent qualification and who is employed as a Medical Scientist, or

1.5.2.2 an employee who was employed as a Medical Scientist at the time of making this Award.

PART 5 - WAGES AND RELATED MATTERS

CLAUSE 5.1 CLASSIFICATION OF EMPLOYEES

OPDATE 24:03:2000 on and from

5.1.1 Medical Scientists will be classified in accordance with the criteria in Schedule 1.

5.1.2 Criteria for the assessment of scientific excellence are provided in Schedule 2.

The continuing entitlement for any individual to the scientific excellence salary will be subject to a satisfactory review every five years.

CLAUSE 5.2 SALARIES

OPDATE 24:03:2000 on and from

See Schedule 4.

SCHEDULE 1. CLASSIFICATION DESCRIPTIONS

OPDATE 24:03:2000 on and from

MS1 WORK LEVEL DEFINITIONS

Knowledge and Experience

- the application of scientific knowledge, expertise and competence to perform standard or routine diagnostic/**research** duties, including participation in problem definition, planning, execution, analysis and reporting.
- the scope and complexity of duties within the diagnostic/**research** environment will increase with experience to give an evolving level of operational competence.
- application of professional knowledge.

Operational Outcomes

To contribute to the operational objectives of the work group, a position at this level may include a combination of the following inputs:

- the execution, analysis and interpretation of findings as they relate to elements of the work.
- the selection and adoption of methods and processes within imposed constraints
- the application of procedures, methods and standards which are generally well established and straightforward.
- the exercise of professional judgement within prescribed areas
- the checking of aspects of the work of professional personnel and others within the same environment
- discussing techniques, procedures and results with clients on straightforward matters
- the undertaking of assignments of limited scope and complexity, comprising, in some situations, a minor phase of a broader or complex assignment
- the provision of reports on progress of project activities (with experience)
- the supervision of assigned non-professional employees.
- Assist in the training of employees
- the carriage of straightforward projects (with experience)
- the preparation of reports which incorporate recommendations on straightforward operations.
- the reporting of results to clients directly, according to the requirements of national accreditation standards

Working Environment

Under the direct supervision of a responsible senior professional, Medical Scientists at this level may operate individually, as a member of a project team, within a work group, or as a recent graduate. Operations may be under a level of professional direction which will decrease as experience increases. Activities at this level may be undertaken on an individual basis or as the ad hoc leader of a small team.

MS2 WORK LEVEL DEFINITIONS

Knowledge and Experience

A combination of professional expertise, competence and experience to perform any standard professional task within the discipline including problem definition, planning, execution, analysis and reporting. Tasks undertaken may be broad in scope and involve complex professional problems.

Operational Outcomes

To contribute to the operational objectives of the work group, a position at this level may include a combination of the following inputs:

- selection and application, based on professional judgement, of new and existing methods and techniques towards an end result.

- participation in **research** related to specific projects and areas of interest under reducing scientific direction
- apply scientific principles and methods to the achievement of work objectives that may be broad or complex. Elements may include problem definition and clarification, execution, analysis, interpretation, adaptation and recording of findings, and contributing to information publication and/or dissemination to meet specific communication or educational objectives.
- contributions to the development of new techniques and methodology
- the undertaking of complex activities under reducing professional direction
- the supervision of technical staff and other professional officers within the discipline in tasks requiring limited expertise or for functions of limited complexity
- the acceptance of professional responsibility for standards of the work undertaken
- the progressive attainment of greater knowledge and experience under reducing professional direction
- the training of other staff

To provide services to other agencies and individuals, a position at this level may combine any of the following responsibilities:

- the reporting of test results to clients directly
- the coordination of projects
- the provision of discrete scientific and consultancy services

Working Environment

Positions at this level may operate under limited supervision as either a member (in some instances as leader) of specialist professional or multi-disciplinary teams, or independently, may deputise for a professional head of a small, single function work unit, and be responsible for the work of a small component of the laboratory. These officers may also supervise staff (both technical and professional) and deputise for the head of a small single function diagnostic/research work group. In certain situations, advice may be sought regarding complex or unusual matters.

Project outcomes may supplement scientific knowledge, the provision of a service and/or the development/adoption of new or improved products, methods or practices. The results may be in a publishable form. Opinion may be sought as input to the employer's program planning process.

MS3 WORK LEVEL DEFINITIONS

Knowledge and Experience

- professional independence and competence
- the analysis of situations and identification of resources, opportunities and needs to develop and/or progress the objectives of the work group.
- proven expertise and capability
- demonstrate a broad, authoritative knowledge of the subject area

Operational Outcomes

To contribute to the operational objectives of the work group, a position at this level may include a combination of the following inputs:

- responsible, without supervision from a professional in the discipline for one or more projects, either as an individual, or as a leader of a work group.
- the development and promulgation of critical information for management
- the undertaking of projects or tests of a complex nature with limited or no professional supervision
- regularly contribute to the development of policy and broad program directions through participation as a member of relevant committees, working parties etc., and through provision of reports to management
- contribute to the promulgation of information regarding current developments in medical science

To satisfy work group operations, a position at this level may include a combination of the following inputs:

- contribute to the identification and development of programs or investigations within the framework of organisational objectives and priorities
- the determination of quality standards and/or outcomes of their work unit
- the undertaking of work, including projects with significant scope and/or complexity
- contributions to the development of operational policy
- the undertaking of professional duties of an innovative, novel, and/or critical nature without professional direction
- the assessment of the professional, technical and economic impacts of achievements/projects

- the achievement of specific scientific goals, which may include participation in the acquisition of external funding, the publication of **research** data and the presentation of findings in appropriate scientific forums
- the management of a work unit

To undertake services to other agencies and industry representatives and the public, a position may comprise:

- the provision of consultancy services and professional advice
- the assessment and review of the standards and work of other professional personnel/external consultants
- the exercising of control and coordination of either discrete operations or projects
- ensuring effective outcomes from work of significant scope and/or complexity
- the contribution of specialised scientific knowledge to, participation in, and facilitation of, training programs/activities within a discipline.
- contribute to the identification of current and future methodologies and consulting services in respect to appropriate scientific and clinical matters.
- service on committees relating to policy, planning and development.

Working Environment

A position at this level may operate as a specialist professional, a practitioner with responsibility for complex duties, or as a leader of work unit. In general, positions at this level possess professional responsibility for the outcomes of their work unit with limited or no professional supervision.

MMS1 (MANAGER, MEDICAL SCIENTIST, LEVEL 1)*

Reports to an Executive level position (or equivalent as assessed by the classification delegate). Responsible and accountable for the management of either a discrete branch or unit which has a significant scientific function(s) within the health unit. Demonstrates professional independence and competence, resolves problems and directly influences organisational attitudes and professional policy within the framework of the health unit's and SAHC operational programs. Communication with others will be as a key professional within the health unit and as a member of committees, working parties and/or policy development groups, both on an intra and an inter agency basis. It is anticipated that only the most complex unresolved problems and decisions regarding branch or unit functions would be referred to Senior Management.

MS4 WORK LEVEL DEFINITIONS

Knowledge and Experience

- professional independence and competence
- recognition as an authority within an area of medical science
- demonstrate the ability to analyse complex and sensitive situations to appropriately identify resources, opportunities and needs to develop and/or progress the objectives of the organisation and scientific developments.
- comprehensive knowledge within the professional discipline and broad exposure to other professional disciplines
- the application of professional judgement based on current knowledge and experience in the development and adoption of new or improved products, methods or practices.

Operational Outcomes

To satisfy work group operations, a position at this level may include a combination of the following inputs:

- the management of complex projects involving a number of personnel from either the discipline or a variety of professional disciplines and backgrounds/organisations
- the provision of a professional contribution to corporate objectives and policy
- the provision of consultancy services to industry, government or the public as an expert in a particular scientific field
- implementing and interpreting policy directives to satisfy the demands of professional and executive programs
- ensuring management/authorities are aware of current developments in the discipline
- the management of a significant work unit

To satisfy the objectives of the work group, a position at this level may comprise:

- the initiation, formulation and conduct of significant programs and investigations within the framework of (major work group) organisational objectives and priorities
- the undertaking of the more demanding evaluations of an economic and/or technical nature with professional independence

- the achievement of scientific goals through significant participation in external funding applications, the publication of **research** data and the presentation of findings in appropriate scientific forums
- the determination of operational policy and quality standards and/or outcomes for their work unit
- operation as a specialist with authority in a scientific field that impacts upon the agency
- the management of a significant work unit

To provide services to other agencies and/or private industry, and to other bodies, a position at this level may include any of the following inputs:

- the identification of current and future options relating to developments which impact on agencies/industry
- service on inter-agency committees relating to policy, planning, forecasting and other implications for development.
- the contribution of specialised scientific knowledge to, and participation in, internal teaching and training programs at undergraduate and postgraduate level.

Working Environment

Position classified at this level will generally have a high profile within the discipline and will operate within broad guidelines to achieve specific objectives with professional independence.

Positions at this level will make a major contribution to the development of scientific program directions and policies. The position may be involved in the scientific assessment and review of the standards and work of other professional personnel/external consultants in a particular scientific discipline. Outcomes achieved may include major inputs to the corporate program planning process, providing services and expert consultation to other agencies or industry, satisfying agency objectives and priorities.

MMS2 (MANAGER, MEDICAL SCIENTIST, LEVEL 2)*

Reports to an Executive level position, (or equivalent as assessed by the classification delegate), in some cases to a Chief Executive Officer, for the management of a discrete branch or unit with a major scientific function or a number of significant scientific functions to the operations of an agency. Under broad control and direction within the agency's objectives and priorities, discrete independence of operation and major contributions to the policies for the function, including where they impact on the operations of other agencies, will be increasingly evident. Either as manager of an ongoing program, or as head of a critical and significant component of a major work group, will exercise authority and responsibility for the achievement of program objectives.

MS5 WORK LEVEL DEFINITIONS

Knowledge and Experience

- a requirement for high levels of expertise and experience to determine professional objectives and priorities within the framework of an agency's corporate goals.
- recognition as a leading authority within a professional discipline

Operational Outcomes

To satisfy the Government's objectives and/or the agency's corporate goals, a position at this level may include any of the following inputs:

- the initiation and/or management of high level programs and major investigations
- the determination of operational standards/objectives within an agency
- the provision of authoritative and specialist consultancy services on aspects of policy development
- operation as a specialist with authority in a field where the requirements are very complex and of major importance to the agency
- the achievement of specific and significant programs and goals

To provide consultancy services to external organisations, a position at this level may include the following inputs:

- the provision of highly specialised services to Government agencies
- the provision of specialised services to industry where the end product is of major importance
- the contribution of specialised scientific knowledge to, and participation in, internal and external teaching programs at undergraduate and postgraduate level

Working Environment

Positions at this level have critical impacts to the agency, to industry, to the State, or to the Nation and decisions made will not usually be subject to professional review.

Work performed may be singular in scope or may encompass a series of conceptually related complex and non-routine scientific activities. Program (or subsidiary project) outcomes are likely to have a critical impact on scientific knowledge and/or contribute to the development and/or adoption of new or improved products, methods or practices within the agency, industry or discipline. Complex, non-routine situations that call for the application of advanced problem solving abilities, and may require the application of multi-disciplinary skills/knowledge, and which may also require novel or innovative methods. Programs are conducted with professional independence, either on an individual basis or as a program leader.

Outcomes will include key inputs to corporate program plans and policy development and/or provision of highly specialised consultancy services. Results will be communicated in an appropriate form.

MMS3 (MANAGER, MEDICAL SCIENTIST, LEVEL 3)*

Reports to an Executive level position (or equivalent as assessed by the classification delegate), or the Chief Executive Officer, for the management of a key and critical function to the agency's operational focus. As a manager of a significant workforce, determines the work group's objectives and priorities, within the framework of the agency's policies and programs, for work which is of a complex nature. Will have a direct and significant influence on the development and implementation of policy which may impact on other agencies. Through either personal expertise and/or the coordination of professional personnel, the occupant is generally recognised as an authority for the State Government on the functional area and provides consultancy services which extend beyond the agency.

MS6A WORK LEVEL DEFINITIONS

Knowledge and Experience expected in positions at the MS6A level include:

- a requirement for high levels of expertise and experience to determine complex and significant professional objectives and priorities within the framework of an agency's corporate objectives.
- recognition as a leading national and international recognised authority within a professional discipline with the ability to foster excellence in the diagnostic and/or **research** functions of the agency and the medical/scientific community.
- extensive refereed publications in internationally recognised journals
- technical and scientific expertise exercised is such that decisions, activities, **research** and/or diagnostic programs conducted are not subject to review.

Operational Outcomes

To satisfy the Government's objectives and/or agency's corporate goals, a position at this level may include the following features:

- the initiation and/or management of high level programs and major **research** activities.
- determine strategic and operational standards/objectives within the organisation.
- provision of authoritative and specialist consultancy services on aspects of innovative scientific **research** and development, where outcomes are of major importance to biomedical science.
- coordinate contribute to and develop patents
- provide leadership in the initiation, promotion, implementation and evaluation of innovative and relevant medical **research** functions at the national/international level.
- international recognition as an expert in a complex field of scientific and **research** services and have management responsibility for major programs of national/ international significance which impact on, and directly involve, other internationally recognised scientific officers and scientific activities/initiatives.
- undertake and manage individual and/or project activities with professional independence that is not subject to review.
- attract significant **research** monies.

To satisfy the objectives of the work group, a position at this level may comprise:

- management of a significant unit/branch and undertake a leadership role in organisational strategic planning, policy development and resource management with significant accountability for outcomes achieved, to ensure the effective management of:
- **research** funding (procurement and expenditure)
- physical and financial (recurrent) resource management
- human resource management
- intellectual resources and patents
- competencies and learning outcomes for **research** students
- initiation, development, implementation and review of strategic and operational policies, procedures and principles.

To provide services to other agencies and/or private industry, and to other bodies, a position at this level may include any of the following inputs:

- be sought by a range of relevant and recognised bodies and/or individuals as a leading national/international scientist.
- have a critical impact on scientific and **research** initiatives and activities at the national/international level.
- attract national/international recognition to the employing organisation.
- awarded academic status at professorial level D, and contribute to tertiary curricula development and delivery.

Working Environment

Positions at this level have critical and significant impacts on the organisation and the industry at a national/international level. Decisions made will not usually be subject to professional review.

MS6B WORK LEVEL DEFINITIONS

Knowledge and Experience expected in positions at the MS6B level include:

- a requirement for high levels of expertise and experience to promote and determine complex and significant professional objectives and priorities within the framework of an agency's corporate objectives and industry directions.
- recognition as an international leading authority within a professional discipline with the ability to foster excellence in the diagnostic and/or **research** functions of the agency and medical/scientific community.
- extensive refereed publications in internationally recognised journals
- collaborated with recognised international organisations on scientific projects that impact on an international scale.
- technical and scientific expertise exercised is such that decisions, activities, **research** and/or diagnostic programs conducted are not subject to review.

Operational Outcomes

To satisfy the Government's objectives and/or agency's corporate goals, a position at this level will include the following features:

- the initiation and/or management of complex and high level innovative programs and major **research** activities.
- determine strategic directions and operational standards/objectives within the organisation and industry.
- provision of authoritative and specialist consultancy services on aspects of innovative scientific **research** and development, where outcomes are of major importance to biomedical science on an international scale.
- attract as an individual or as a manager of team significant **research** monies into the State
- coordinate, contribute to and develop patents
- collaborate with recognised international organisations on scientific projects
- ensure the provision of leadership in the initiation, promotion, implementation and evaluation of leading edge innovative and relevant medical **research** functions at the international level, both as an individual and in the management of others.
- international recognition as a leading expert in a complex field of scientific and **research** services and have management responsibility for major programs of international significance which impact on, and directly involve, other internationally recognised scientific officers and scientific activities/initiatives.
- undertake and manage individual and/or project activities with professional independence and not subject to review.

To satisfy the objectives of the work group, a position at this level will comprise:

- management of a significant unit/branch and undertake a leadership role in organisational strategic planning, policy development and resource management with significant accountability for outcomes achieved to ensure the effective management of:
- **research** funding (procurement and expenditure)
- physical and financial (recurrent) resource management
- human resource management
- intellectual resources and patents
- competencies and learning outcomes for **research** students

- initiation, development, implementation and review of corporate strategic objectives, plans and operational policy, procedures and principles.

To provide services to other agencies and/or private industry, and to other bodies, a position at this level may include any of the following inputs:

- be sought by a range of relevant and recognised bodies and/or individuals as a leading national and international scientists.
- have a critical impact on scientific and **research** initiatives and activities at the National and International level.
- attract National and International recognition to the employing organisation.
- awarded academic status at professorial level D or E, and contribute to tertiary curricula development and delivery.

Working Environment

Positions at this level have critical and significant impacts on the organisation and biomedical science at the international level. Decisions made will not be subject to professional review.

* Manager, Medical Scientist (MMS) - Nature of Position

The nature of management positions suggests that they should be involved in the traditional functions of planning, controlling, organising and leading whereas non management positions which should form the bulk of the workforce are responsible for performing a clearly defined operational job.

The actual role of the position therefore needs to be closely examined. If the nature of the position is predominantly operational ie. the management aspects are not the prime focus of the position then it should not be classified in the management structure. While most management positions tend to have some "hands on" component, it is the nature of that component and the frequency that it occurs which will determine whether it is a management position.

The requirement to coordinate, supervise or manage a project would, not of itself qualify a position for the management structure.

As is the case in all classification matters the final decision requires the exercise of judgement. It is worth remembering however, that the management structures were not designed to provide employees with automatic salary increases.

The three management levels should be viewed as a senior management structure available only to employees who genuinely carry out a management role. Undoubtedly there will be positions within agencies that have some management responsibility below the levels described in the new structures. It does not mean that these positions should be classified in the management structure. As described in the work level definitions positions must be able to justify a classification at MS3, MS4 and MS5 before the management structure even becomes a consideration.

A position classified at these levels is to report to an executive level position or equivalent as assessed by the classification delegate. In determining what constitutes being equivalent to an executive level position, the following criteria is provided:

1. the salary of the supervisor of the position under review is equal to or greater than the salary for an EXA classification, and

2. the position is part of the senior executive team of the health unit, and

3. there are no more than two levels of management between the position and the Chief Executive Officer of the health unit.

SCHEDULE 2. SCIENTIFIC EXCELLENCE CRITERIA

OPDATE 24:03:2000 on and from

The concept of "scientific excellence" recognises that, within the field of work undertaken by Medical Scientists, there is scope for individuals to perform at a higher level than that demanded by responsibilities of their positions. Scientific Excellence is not payable for increased organisational management responsibilities nor for the routine services, research and teaching components inherent in a position, for such would constitute grounds for reclassification of both the position and the position increment.

Scientific excellence is defined as that level of performance which exceeds the acceptable level of scientific competence for the respective classification levels.

For the salary to be granted, it must be demonstrated that the level of scientific performance is significantly greater than the acceptable level of "scientific competence" for the position.

In determining the significance of "scientific excellence", the following factors are to be considered:

- Qualifications;
- Refereed Scientific Papers;

- Committee membership(s);
- Institute membership(s);
- Consultancy / Advisory Status;
- **Research** grants received;
- Teaching (by invitation outside the organisation);
- Speaking invitations; and
- Any other relevant factors.

SCHEDULE 3. CLASSIFICATION AND RECLASSIFICATION PROCESSES

OPDATE 24:03:2000 on and from

Reserved Matter

SCHEDULE 4. SALARIES

OPDATE 22:07:2005 1st pp on or after

This Schedule shall operate from the first pay period to commence on or after 22nd July, 2005.

The minimum annual salaries payable to Medical Scientists are as follows:

	$ per annum
Medical Scientist, level 1 (MS1)	
1st increment	35,458
2nd increment	36,585
3rd increment	38,225
4th increment	39,865
5th increment	41,401
6th increment	42,937
Medical Scientist, level 2 (MS2)	
1st increment	45,602
2nd increment	47,037
3rd increment	48,575
4th increment	50,112
scientific excellence	53,425
Medical Scientist, level 3 (MS3)	
1st increment	51,547
2nd increment	52,880
3rd increment	54,212
scientific excellence	57,387
Medical Scientist, level 4 (MS4)	
1st increment	56,293
2nd increment	57,697
3rd increment	59,030
4th increment	60,413
scientific excellence	63,489
Medical Scientist, level 5 (MS5)	
1st increment	62,412
2nd increment	63,488
3rd increment	64,565

	$ per annum
scientific excellence	67,576
Medical Scientist, level 6A (MS6A)	70,877
Medical Scientist, level 6B (MS6B)	75,595
Manager, Medical Scientist, level 1 (MMS1)	55,237
Manager, Medical Scientist, level 2 (MMS2)	61,438
Manager, Medical Scientist, level 3 (MMS3)	65,590

SAFETY NET ADJUSTMENTS

The rates of pay in this award include the arbitrated safety net adjustment payable under the State Wage Case July 2005. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Case principles or under the current Declaration, excepting those resulting from enterprise agreements, or award variations to give effect to enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

The rates of pay in this award also contain safety net wage adjustments as determined by previous State Wage Case decisions. The absorption arrangements applying in relation to those adjustments continue to apply.

end of text

AP830467 - Medical Scientists, Pharmacists and Psychologists (Public Sector - Victoria) Award 2003

This AIR consolidated award incorporates all amendments up to and including 24 March 2006 (variation PR969161).

Clauses affected by the most recent amendment(s) are:

2. Arrangement
30. Annual leave
31. Personal leave
31A. Bereavement leave
34. Parental leave

About this Award:

Printed by authority of the Commonwealth Government Printer.

PART 1

1. TITLE

This award shall be referred to as the Medical Scientists, Pharmacists and Psychologists (Public Sector - Victoria) Award 2003.

2. ARRANGEMENT

[2 amended by PR954161 PR969161]

This award is arranged as follows:

Part 1 - Application

1. Title
2. Arrangement [PR969161]
3. Anti-discrimination
4. Definitions
5. Operation of award
6. Incidence of award
7. Previous award superseded

Part 2 - Award flexibility

8. Enterprise flexibility
9. Index of facilitative provisions

Part 3 - Dispute resolution

10. Disputes avoidance/settlement procedure

Part 4 - Employer and employee's duties, employment relationship and related arrangements

11. Notification of classification
12. Types of employment
13. Full-time employment
14. Regular part-time employment
15. Locum employment (pharmacists only)
16. Trainee scientists
17. Notice of termination [PR954161]
18. Redundancy [PR954161]
18A. Redundancy disputes procedure [PR954161]

Part 5 - Wages and related matters

19. Rates of pay [PR954954]
20. Higher duties
21. Payment of wages
22. Deductions and allowances [PR954954]
23. Occupational superannuation

Part 6 - Hours of work, breaks, overtime, shiftwork, weekend work

24. Hours
25. Rosters
26. Meal intervals and rest intervals
27. Overtime
28. On-call/re-call
29. Shift work

Part 7 - Leave of absence and public holidays

30. Annual leave [PR969161]
31. Personal leave [PR969161]
31A. Bereavement leave [PR969161]
32. Jury service
33. Long service leave
34. Parental leave [PR969161]
35. Examination leave [PR958525]
36. Public holidays [PR966112]

Part 8 - Transfers travelling and working away from usual place of work

37. Travelling transport and fares [PR954954]

Part 9 - Accident pay, clothing, equipment and tools allowances

38. Accident pay
39 Clothing, equipment and tools allowances

Part 10 - Award compliance

40. Posting of award

Appendix 1 - Schedule of respondents

4. DEFINITIONS

4.9 Scientist means a person:

4.9.1 who holds a degree of Bachelor of Science of a Victorian University or its equivalent as determined by any such University; or

4.9.2 who holds a degree of Bachelor of Applied Science from a College of Advanced Education as registered in the National Register of awards in Advanced Education; or

4.9.3 who is eligible for Associate Membership of the Australian Institute of Medical Laboratory Scientists (AIMLS); or

4.9.4 who is engaged in studies leading to the attainment of being eligible for Associate Membership of the AIMLS; or

4.9.5 who is eligible for ordinary membership of the Neurophysiological Sciences Society of Australia; or

4.9.6 who is eligible for full membership of the Australian Society of Cardio-Vascular Perfusionists; or

4.9.7 who is eligible for ordinary membership of the Australasian Society of Respiratory Technology.

4.9.8 who holds a post-graduate diploma in audiology from a Victorian University or its equivalent as determined by any such university; or

4.9.9 who is eligible for membership of the Audiological Society of Australia; or

4.9.10 who is a Dietitian.

PART 5 - WAGES AND RELATED MATTERS

19. RATES OF PAY

19.4 Medical Scientists

19.4.1 Guidelines for merit reclassification of Medical Scientists

The following merit reclassification guidelines shall apply on the basis that:

19.4.1(a) Merit reclassification provisions do not take into account supervisory roles, management functions, or responsibilities of Scientists which are covered under the specific weighing factors formula.

19.4.1(b) Scientists employed in clinical diagnostic laboratories, with limited opportunities to pursue research and development work, are not excluded form career advancement on the basis of merit.

19.5 Grading criteria

19.5.1 Scientist grade 2

19.5.1(a) Is a Scientist appointed to this grade, and/or who is employed on work which requires special knowledge or depth of experience, and/or requires the application of a level of performance worthy of additional remuneration.

19.5.1(b) Experienced Scientists who can perform, without direct supervision, a wide range of diagnostic tests or procedures, and or work which requires specialised knowledge.

19.5.1(c) At this level, Scientists are required to have achieved a high level of performance and to have shown a commitment to further professional development.

19.5.1(d) To satisfy these requirements, Scientists must comply with at least four of the following criteria:

- 19.5.1(d)(i) Demonstrated experience and competence in the performance and understanding of a wide range of diagnostic tests or procedures or of complex and specialised tests.
- 19.5.1(d)(ii) Demonstrated ability in giving professional advice within and outside the laboratory on appropriate scientific and clinical matters.
- 19.5.1(d)(iii) Participation in laboratory programmes for training of undergraduates and graduate scientific staff.
- 19.5.1(d)(iv) Demonstrated ability to initiate and develop new diagnostic or research procedures applicable in their laboratory environment.
- 19.5.1(d)(v) Demonstrated ability to critically assess and evaluate new equipment, instruments or products relevant to the diagnostic work of their laboratory.
- 19.5.1(d)(vi) A recognised role in a development or research project approved by the employing institution. The significance of their role will be demonstrated by their presentation of results at scientific meetings or by publications in scientific journals.
- 19.5.1(d)(vii) Being enrolled for an MAACB, diploma of Bacteriology, M.Sc., M. App. Sc., MAIP, HGSACC, Graduate Diploma in Health Administration, D.Sc., Ph.D., FAIMS, or any other recognised equivalent Degree or Diploma relevant to medical sciences from a tertiary institution pursuant to clause of this Agreement where they have passed some subjects or where they, in the opinion of their academic supervisors, have made satisfactory progress for the success of the scientific thesis.

19.5.2 Scientist grade 3

19.5.2(a) Is a scientist appointed to this grade and/or who has been qualified (as defined) for at least eight years and is engaged on specialised scientific work or work of a research or developmental nature.

19.5.2(b) Widely experienced scientists with sound knowledge and skills relating to an extensive rage of diagnostic tests or procedures, and/or work of a specialised nature. At this level, Scientists may validate test results or be engaged in work of a research or developmental nature and are expected to have achieved a high level of professional development.

19.5.2(c) To satisfy these requirements scientists must:

- 19.5.2(c)(i) have a minimum of eight years professional experience;
- 19.5.2(c)(ii) have satisfied at least four of the merit criteria for Scientist grade 2.

19.5.2(d) Other factors to be taken into consideration are:

19.5.2(d)(i) Demonstrated experience and expertise in the direct performance and interpretation of a wide range of diagnostic procedures and/or in the evaluation, operation and maintenance of complex equipment and instruments.

19.5.2(d)(ii) Demonstrated commitment to professional development. Elements which will be taken into consideration include, inter alia:

regular participation in meetings of professional organisations;

membership of professional committees;

teaching activities.

19.5.2(e) Academic development achieved. Elements which will be considered are:

19.5.2(e)(i) Obtaining an MAACB, Diploma of Bacteriology, M.Sc., M. App. Sc., MAIP, HGSACC, graduate Diploma in Health Administration, D.Sc., Ph.D., FAACB, FAIMS, FAIP, FIMLS, membership of the Royal College of Pathologists, or any other recognised equivalent Degree or Diploma relevant to medical sciences from a tertiary institution pursuant to clause 19.5.14 (a) and (b) of this award.

19.5.2(e)(ii) Publications in which the applicant is a major contributor.

19.5.2(e)(iii) Presentations at scientific meetings relevant to medical sciences.

19.5.2(e)(iv) Academic appointments.

19.5.2(f) Demonstrated experience in:

19.5.2(f)(i) maintaining laboratory statistics;

19.5.2(f)(ii) formulating and maintaining programmes for the development and cost containment of the laboratory's work;

19.5.2(f)(iii) making budgetary submissions for their area.

19.5.3 Scientist grade 4

19.5.3(a) A Scientist appointed as such with at least ten years experience, utilising advanced and specialised professional knowledge and experience.

19.5.3(b) Very experienced Scientists with advanced and specialised professional knowledge relating to one or more disciplines of medical science. At this level, Scientists are expected to have made significant contributions to medical science and to be recognised as local experts in a relevant scientific and/or diagnostic speciality or activity.

19.5.3(c) To satisfy these requirements, scientists must:

19.5.3(c)(i) Have a minimum of ten years professional experience.

19.5.3(c)(ii) Have satisfied most of the criteria for a scientist grade 3.

19.5.3(c)(iii) Have a high standing in the scientific community as assessable on the basis of:

Qualifications; Awards; Past appointments; Publications; Membership of committees and of professional organisations; Consultancies; Research grants in which the applicant is the principal or associate investigator; Teaching appointments/commitments.

19.5.3(d) Other factors to be taken into consideration are:

Capacity in:

- formulating, initiating and conducting programmes devoted to laboratory organisation, introduction of new procedures in service, development and research; and
- assessing the value of such programmes in relating to the medical objectives and priorities of the employing Institution.

19.5.4 Scientist grade 5

All such applications shall, where disputed, be considered by the Committee constituted with an independent chairperson.

19.5.4(a) Trainee Scientists (persons who are engaged in studies leading to the attainment of being eligible for associate membership of the Australian Institute of Medical Laboratory Scientists).

year of part-time course	Percentage of the rate for the classification "Scientist - grade I - 1st year of experience after qualification" %	Wages per week $
First year	50	319.40
Second year	60	379.48
Third year	75	469.60
Fourth year	85	529.68
Thereafter	90	559.72

19.5.4(b) Provided that:

19.5.4(b)(i) An adult trainee shall receive not less than 80% of the rate prescribed for the classification "Scientist - grade I, 1st year of experience after qualification".

19.5.4(b)(ii) A trainee who as a full-time student passed all subjects in the first full-time year of the course, shall be paid not less than the rate prescribed for the 3rd year of the course (part-time).

19.5.4(b)(iii) A trainee who as a full-time student passed all subjects specified in the second full-time year of the course, shall be paid not less than the rate prescribed for 5th year and thereafter (part-time).

19.5.4(b)(iv) A trainee who as a full-time student has not passed all subjects specified for the appropriate full-time year of the course shall be paid at a rate equivalent to the next lower part-time classification than that which would apply in (ii) and (iii) above.

19.5.5 Scientist - grade I

	$
1st year of experience after qualification	619.80
2nd year of experience after qualification	656.70
3rd year of experience after qualification	688.30
4th year of experience after qualification	728.10
5th year of experience after qualification	758.40
6th year of experience after qualification and thereafter	789.00

19.5.5(a) For the purposes of this clause:

19.5.5(a)(i) The "1st year of experience after qualification" referred to in 19.5.5 shall be deemed to commence on the 1st day of January in the year following the year during which the Scientist presented himself for final examination which, if successful, would entitle the Scientist to the degree of Bachelor of Science or Bachelor of Applied Science.

19.5.5(a)(ii) Where a scientist was required to attend a supplementary examination, such Scientist shall, if successful, be deemed to have passed the final examination in the year during which such final examination was held.

19.5.5(a)(iii) Where a Scientist grade I - 1st year of experience after qualification commences employment during the first year after qualification, such Scientist shall be advanced to the classification Scientist grade I - 2nd year of experience after qualification, as from the 1st day of January in the next succeeding year.

19.5.5(b) Provided that:

19.5.5(b)(i) a Scientist who holds or is qualified to hold the degree of Bachelor of Applied Science Honours or Bachelor of Science Honours (4-year course) shall be entitled to be classified as a "Scientist - grade I, 2nd year of experience after qualification"; and

19.5.5(b)(ii) a Scientist who holds or is qualified to hold the degree of Master of Applied Science or Master of Science shall be entitled to be classified as a "Scientist - grade I, 3rd year of experience after qualification", provided further that a Scientist so classified shall not be entitled to the higher qualification payment prescribed in 19.5.14 for a further period of two years; and

19.5.5(b)(iii) a Scientist who is a Fellow of the Australian Institute of Medical Laboratory Scientists or is qualified to hold a degree of Doctor of Philosophy shall be entitled to be classified as a "Scientist - grade I, 5th year of experience after qualification", provided further that a Scientist

so classified shall not be entitled to the higher qualification payment prescribed in 19.5.14 for a further period of two years; and

19.5.5(b)(iv) a sole Scientist, i.e. a Scientist who is the only Scientist employed in a Department, shall be paid at the rate of 5% of the Scientist - grade I (1st year of experience rate) in addition to the appropriate rate applicable to a Scientist - grade I.

19.5.6 Scientist - grade II

Is a Scientist appointed to this grade, and/or who:

19.5.6(a) supervises the scientific work in a class 1 Department or section; or

19.5.6(b) is employed on work which requires special knowledge or depth of experience, and/or requires the application of a level of performance worthy of additional remuneration; or

19.5.6(c) is a deputy to a grade III Scientist who is in charge of a class 2 Department or section; or

19.5.6(d) is solely responsible for the maintenance of a blood banking system.

	$
On appointment	789.00
2nd year after appointment	825.40
3rd year after appointment	860.60
4th year after appointment and thereafter	898.90

Provided that a “Scientist grade I - 6th year of experience and thereafter” appointed to this grade shall be paid at the “Scientist grade II - 2nd year after appointment” rate.

19.5.7 Scientist - grade III

19.5.7(a) Is a Scientist appointed to this grade and/or who:

a Scientist who is responsible for the organisation and supervision of the scientific work of a class 2 Department/section; or

is appointed deputy to a grade IV Scientist; or

has been qualified (as defined) for at least eight years and is engaged on specialised scientific work or work of a research or developmental nature.

	$
On appointment	941.50
2nd year after appointment	970.70
3rd year after appointment	993.50
4th year after appointment and thereafter	1,042.10

19.5.7(b) Provided that where a Laboratory Manager is appointed in writing to assume the same administrative responsibilities as the Director or Pathologist in charge for a period exceeding four weeks they shall be paid at the top incremental level for the classification with the addition of 31.5% of that increment.

19.5.7(c) Pathology Department means a Department consisting of four or more of the following sections which are: Haematology, Biochemistry, Histology, Microbiology, Blood Bank, Serology, Haemostasis, Virology, Electronic Laboratory E.D.P., Immunology, Radio Immuno Assay.

19.5.8 Scientist - grade IV

19.5.8(a) a Scientist appointed as such with at least ten years experience, utilising advanced and specialised professional knowledge and experience; or

19.5.8(b) is directed to be responsible for the organisation and supervision of the scientific work of a class 3 Department or section.

	$
On appointment and during 2nd year after appointment	1,084.30
During 3rd and 4th years after appointment	1,136.00
Thereafter	1,208.00

19.5.9 Scientist grade V

19.5.9(a) Is a Scientist who is appointed as a senior principal research Scientist and who is responsible for the coordination of scientific effort on major research programme(s).

19.5.9(b) They are required to have an international reputation of a high order in a significant field of research as made evident by his or her published contributions in the field as recognised by their peers in the international scientific community.

	$
Scientist - grade V	1,465.90

19.5.10 Principal Scientist

19.5.10(a) The Senior Scientist in each of the following Departments shall be graded as a Principal Scientist:

Alfred Hospital Haematology Department;
Dandenong Hospital Pathology Department;
Royal Children's Hospital Haematology Department;
Royal Melbourne Hospital Biochemistry Department;
Royal Melbourne Hospital Haematology Department;
Royal Melbourne Hospital Microbiology Department;
St.Vincent's Hospital Biochemistry Department;
St.Vincent's Hospital Haematology Department;
St.Vincent's Hospital Microbiology Department.

19.5.10(b) This list may be varied by the Medical Scientists Classification Review Committee as specified in 19.4.1 and shall be subject to ratification by the Australian Industrial Relations Commission.

	$
Principal Scientist	1,360.20

19.5.11 Scientist Deputy Director

Is a Scientist who is appointed a deputy director of a Department in a teaching hospital (as defined), or is appointed to relieve the deputy director of a Department in a teaching hospital (as defined), and who assumes the same responsibilities as the deputy director as a result of such appointment for a period exceeding four weeks.

	$
Deputy Director (Scientist)	1,360.20

19.5.12 Director (Scientist)

Is a Scientist who is appointed a director of a Department in a teaching hospital (as defined), or is appointed to relieve the director of a Department in a teaching hospital (as defined), and who assumes the same responsibilities as the director as a result of such appointment for a period exceeding four weeks.

	$
Director (Scientist)	1,510.60

19.5.13 For the purposes of this clause:

19.5.13(a) Medical Scientists classification, criteria definitions, specific weighting factors formula:

19.5.13(a)(i) The following definitions are to be read in conjunction with the award classification standards.

19.5.13(a)(ii)A Department/Section is to be determined by the following specific weighting factors formula.

19.5.13(a)(iii)Factors taken into consideration

The first factor is based on fixed annual salaries, as at 31 December 1989, for each classification divided by 1000. The annual salary is to be exclusive of overtime and any ancillary payments.

19.5.13(a)(iii)(1) The points for each classification are as follows:

grade 4 = 52.88;
grade 3 = 44.68;
grade 2 = 37.60;
grade I= 32.08;
Trainee = 21.18.

19.5.13(a)(iii)(2)	Other classifications such as technicians (23.72) nursing, short term, part-time and ancillary staff (points determined as above) may also be included at the discretion of the parties on individual merit criteria.
19.5.13(a)(iii)(3)	Reporting relationships vary markedly from institution to institution and in some cases have a bearing on the resultant classification of the Scientist in question on direct accountability grounds.
19.5.13(a)(iii)(4)	In respect of staff working afternoon, night and/or weekend rosters, the points are to be allocated to the Scientist responsible for their diagnostic supervision. Staff working on rotation (daily, weekly or monthly in different areas) are to be allocated points on a pro rata basis mutually agreed between the persons in charge of the respective areas in which they work and to whom they are responsible. Evidentiary material may be required in the event of a contested application for reclassification.
19.5.13(a)(iv)	The second factor is the aspect of "final responsibility" of the Scientist in question. The criteria for the application of 100 points for this responsibility are:
19.5.13(a)(iv)(1)	the Scientist is a NATA approved signatory; or
19.5.13(a)(iv)(2)	there is no more senior scientific specialist on site; or
19.5.13(a)(iv)(3)	there is no clinical specialist on site.
19.5.13(a)(v)	The third factor to be applied is to recognise organisational complexity. The term UNIT (which attracts 40 points) is prescriptive in terms of the organisational entity due to the varied usage of the terminology (Department, Section or Unit). This is to ensure a universally applied approach irrespective of local terminology.
19.5.13(a)(v)(1)	Each 'Unit' supervised or for which responsibility is taken attracts 40 points and for the purposes of this clause includes Andrology, Biochemistry, Blood Banking, Cardiology, Cardio-Vascular Perfusion, Clinical Pharmacology, Cytogenetics, Cytology, Embryology, Endocrinology, Gastroenterology, Haematology, Histopathology, IVF Sciences, Immunology, Intensive Care, Lung Function, Medical Physics, Microbiology, Neuropathology, Neurophysiology, Physical Sciences, Renal Dialysis, Renal Unit, Tissue Typing, Vascular Unit or Virology.
19.5.13(a)(v)(2)	The term Section is applied to other specific areas, other than the abovementioned and is recognised as a single entity in its own right, and will attract twenty points.
19.5.13(a)(vi)	The fourth factor is whether or not the institution in which the Scientist is an employee is a teaching hospital. If so a further 100 points is added to the final score.
19.5.13(a)(vi)(1)	Note: Class 1 Department/unit/section - <200 points; Class 2 Department/unit/section - 200 to <480 points; Class 3 Department/unit/section - 480 points or more.
19.5.13(a)(vi)(2)	The above points may be amended or varied, in whole or part, from time to time by agreement of the Victorian Hospitals Industrial Association and the Health Services Union of Australia, Victoria No. 4 Branch, and may only be amended or varied via a hearing of the Australian Industrial Relations Commission convened for that purpose.
19.5.13(b)	The Medical Scientists Award Working Party The Medical Scientists Award Working Party shall comprise equal representation from employer and employee parties to this Award.
19.5.13(b)(i)	The classification of a Scientist Grade III or IV according to the application of the formula will not become operative unless a beneficial reclassification is endorsed by the Award Working Party in the circumstances where the minimum points are exceeded for at least four continuous weeks.
19.5.13(b)(ii)	Reclassifications will be dealt with by the Award Working Party by consideration of submissions from employers or employees.
19.5.13(b)(iii)	The role of the Award Working Party in this regard is limited to ensuring that the appropriate criteria are met, and endorsement will not be withheld where the appropriate criteria are met.
19.5.13(b)(iv)	Where a reclassification is endorsed by the Award Working Party the reclassification shall apply on and from the date at which the employee assumed the relevant duties or the date on which the circumstances first arose entitling the employee to the reclassification.
19.5.13(c)	The Medical Scientists Classification Review Committee

19.5.13(c)(i) This committee will process applications for reclassification based on the merit criteria as per this Award. This Committee shall comprise equal representation from employer and employee parties to this Award.

19.5.14 Higher Qualifications

Where a scientist has a higher qualification he/she shall be paid in addition the following:

19.5.14(a) For M.A.A.C.B., Diploma of Bacteriology, M.Sc., M.App.Sc., M.A.I.P., H.G.S.A.C.C., Graduate Diploma in Health Administration (see clause 4.0 - Definitions) or any other recognised equivalent Degree or Diploma from a tertiary institution, the sum of 6.5 per cent of the "Scientist Grade I, 1st year of experience" rate per week;

19.5.14(b) For F.A.A.C.B., F.A.I.M.L.S., D.Sc., Ph.D., F.A.I.P. or F.I.M.L.S. or Member of the Royal College of Pathologists (see sub-clause 4.0 - Definitions) the sum of 10 per cent of the "Scientist Grade I, 1st year of experience" rate per week.

19.5.14(c) Such allowance shall not be cumulative in the case of multiple higher qualifications. The aforementioned allowance shall not be applicable to Scientists appointed to the positions of Director or Deputy Director of a Department or to the classification Scientist - Grade V.