SUBMISSION

DEPARTMENT OF EMPLOYMENT WORKPLACE AND RELATIONS

FAIR WORK LEGISLATION AMENDMENT (SECURE JOBS, BETTER PAY) ACT 2022

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About AAMRI

The Association of Australian Medical Research Institutes (AAMRI) is the peak body representing medical research institutes (MRIs) across Australia. Our 58 member organisations have over 20,000 staff and research students, are internationally recognised and undertake half of all government funded health and medical research in Australia. Our members include independent MRIs as well as university- and hospital-based institutes with a central focus on health and medical research. Their combined revenue exceeds $2.4 billion per annum and they received over $693 million in competitive grant funding in 2020. With over 1100 active clinical trials and over 100 new patents awarded each year, medical research institutes have a firm focus on improving health outcomes and delivering great commercial returns for Australia. Together, they aim to drive innovation in healthcare through research to improve the lives and livelihoods of people in Australia, and worldwide.

1 For further information about AAMRI and its members, please visit https://aamri.org.au
About AHEIA

The Australian Higher Education Industrial Association (AHEIA) is the employer association for the higher education sector, registered under the Federal Fair Work (Registered Organisations) Act 2009. Our 32 Australian university members currently employ over 150,000 staff in a variety of academic, research, professional and technical roles, and play a vital role in serving the needs of the communities in which they are located.

- In 2019–20, Australia’s universities undertook 36 per cent of Australia’s total R&D, and almost 80 per cent of public sector research.
- Universities perform 87 per cent of discovery or basic research in Australia.
- In 2020, universities performed approximately 45.3 per cent of all applied research in Australia compared to 38.9 per cent by Australian businesses.
- For every one per cent increase in R&D, Australia’s productivity rises by 0.13 per cent points.
- Even though Australia is home to just 0.3 per cent of the world’s population, we produce around three per cent of the world’s research.
- More than 90 per cent of Australian university research is rated as world class or higher.
- Universities represent the majority of Australia’s research workforce at 81,090 FTE out of a total workforce of 180,540 FTE (45 per cent) in 2020.
- Postgraduate students compromise 57 per cent of the university R&D workforce, making them significant contributors to Australia’s research efforts.
Overview

The Association of Australian Medical Research Institutes (AAMRI) and the Australian Higher Education Industrial Association (AHEIA) and their members support much of what is proposed in the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (the Act). Medical Research Institutes (MRIs) and Universities are fair employers, who promote job security, gender equality, and their enterprise agreements contain generous provisions. AAMRI and AHEIA are concerned that the changes proposed under Division 5 - Fixed-term contracts (Subdivision A – Limitations on fixed term contracts; subsection 333F) of the Act will have significant negative ramifications for both the MRI and higher education sectors.

Researchers, whether employed by MRIs or universities, predominately rely on funding from government, but more recently have become to rely on other funding sources, such as philanthropy and commercial investment. A summary of funding sources for MRIs and universities is at Attachment A (Department of Parliamentary Services’ Quick guide to university research funding). Typically, these funding sources operate in cycles of 1-5 years, and with the unpredictable nature of securing funding (with success rates often below 10-15% from major government funders), short-term contracts provide more assurance than casual employment, as the financial risks associated with redundancies are borne by the MRIs and universities themselves. The external nature of research funding means that a researcher is likely to spend their entire career working under a series of consecutive fixed-term contracts.

Without any foreseeable changes to the funding landscape in Australia, AAMRI and AHEIA strongly recommend that changes be made to the exceptions to limitations outlined in subsection 333F (1a, 1e and 1f) of the Act as outlined below. If the MRI and higher education sectors are not carved out of these provisions, or if they are not at least significantly amended, the unintended consequences will undermine research in Australia, jeopardise financial security and sustainability of MRIs, result in substantial job loss, and drive research offshore.

Exemptions in the Fair Work Act are insufficient

The exceptions to the limitations on fixed-term employment set out at s 333F of the Act are not sufficient to resolve the key issues for the MRI and university sectors.

Section 333F(f)(i) provides for an exception where the performance of work “is funded in whole or in part by government funding or funding of a kind prescribed by the regulations for the purposes of this subparagraph”. As set out above, not all research is wholly or even partly funded from government. We also note that the regulations have not yet been drafted.

Further, the additional requirement at s 333F(f)(iii) that “there are no reasonable prospects that the funding will be renewed after the end of that period” is far too restrictive, and would mean that many, if not most, research-based contracts would not fall within the exemption.

Section 333F(h) provides an exemption where “a modern award that covers the employee includes terms that permit any of the circumstances mentioned in subsections 333E(2) to (4) to occur”. The reference to award coverage is in itself problematic. Actual terms and conditions for most MRI and university employees are set by enterprise agreements, meaning that while an award might “cover”
an employee, it does not apply to them while an enterprise agreement is in operation. It will therefore be necessary to refer to an industrial instrument that does not apply to an employee to determine their full terms and conditions of employment, and in particular whether they are properly employed under a fixed term contract. The consequences for entering a prohibited fixed term contract are that the employee is effectively turned into a continuing employee (s 333G(a)).

Further, it is not clear whether the 2 modern awards in the higher education industry include terms that “permit” fixed term employment. The relevant clauses (Clauses 11.2 of the Higher Education Industry—Academic Staff—Award 2020, and the Higher Education Industry—General Staff—Award 2020), specifically refer to restrictions on the use of fixed-term employment, to certain categories. Even if the clauses as a whole are considered as to “permit” fixed term employment (subject to certain restrictions), they do not provide for the circumstances set out in subsections 333E(2) to (4) as follows:

- the identifiable period greater than 2 years only refers to certain contracts
- the award does not provide for an option or right to renew the contract more than once
- the award refers to contracts for the employee to perform the same, or substantially similar work, in subsequent contracts, but only in respect of the entitlement to limited severance and pay, not as to whether such contracts may be entered into on a fixed-term basis.

In addition, there are no provisions in modern awards that “permit” fixed term employment in the Professional Employees Award 2020, which covers employees of MRIs.

Likely consequences

If MRIs and universities are unable to employ staff on a fixed-term basis, they must employ them either on a casual or continuing basis. Clearly, casual employment is less secure than fixed-term employment. In addition, with the application of 25% casual loading to rates, valuable funds will be exhausted prematurely, and the research projects will be under greater risk of not achieving outcomes. The provisions in sector enterprise agreements mandate that staff who are employed on a continuing basis cannot be declared redundant unless a formal, lengthy, consultation process, including union involvement, is undertaken, and often the process includes an internal appeals procedure. The severance payments for staff employed under enterprise agreements across some MRIs and universities are far in excess of community standards, and it would not be tenable for these organisations to pay such severance to multiple former fixed-term staff. Current terms in the higher education modern awards and university enterprise agreements provide for a community standard severance (NES standard) where fixed-term contracts are not renewed in certain circumstances. This means that MRIs and universities would face enormous additional costs if this were to change.

In summary, if no changes are made to the exceptions to limitations as outlined above, the likely outcome would be:

- Reduced opportunities for researcher employment due to a more conservative approach from employers who will need include a provision for inevitable redundancies – inevitable due to the fact that not all research efforts are successful by their very nature (inevitable redundancies will impact employers, without achieving job security for employees, as is the intent of the legislation).
- Inequity in employment status - permanent versus fixed term/maximum term for essentially the same work, based on the employee’s funding source.
• Parents/carers who are required to work part-time will be negatively impacted if the two-year limitation is not extended to two years FTE. This is of particular concern for women in the sector, where there is already an issue in retaining these talented researchers.
• Ideally, it is recommended that the two-year limitation is extended to five-years which aligns with the typical government/non-government funding cycle.
• Temporary visas for researchers are often greater than two years – if there are no changes made, Australian research organisations will not be able to attract overseas talent.
• Research currently undertaken by in Australia would be sent offshore.

Overview of recommended changes to the Act

<table>
<thead>
<tr>
<th>Section</th>
<th>Recommendation</th>
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<tbody>
<tr>
<td>Section 333E(2)</td>
<td>Amend reference from 2 to 5 years</td>
</tr>
<tr>
<td>Section 333E(3)(a)</td>
<td>Amend reference from 2 to 5 years</td>
</tr>
<tr>
<td>Section 333E(5)(d)(i)</td>
<td>Amend reference from 2 to 5 years</td>
</tr>
<tr>
<td>Section 333F(1)(a)</td>
<td>Further clarification is required on the following “distinct and identifiable tasks involving specialised skills”</td>
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<td>Section 333F(1)(f)(i)</td>
<td>“is funded in whole or in part by government funding” should be expanded to include all forms of funding (e.g. government, philanthropic, investment, industry etc)</td>
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<tr>
<td>Section 333F(1)(f)(ii)</td>
<td>Amend reference from 2 to 5 years</td>
</tr>
<tr>
<td>Section 333F(f)(iii)</td>
<td>Delete “there are no reasonable prospects that the funding will be renewed after the end of that period”</td>
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<tr>
<td>Section 333H</td>
<td>Amend reference to include enterprise agreement</td>
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Conclusion

AAMRI and AHEIA fully support the desire for better job security, gender equality and collective bargaining for all Australians. As it currently stands, implementation of the new workplace laws for fixed-term contracts, under the Act, will have a catastrophic impact on Australia’s health and medical research community. It is crucial to strike a balance between promoting job security and providing flexibility to adapt to the unique challenges faced by our sector. By allowing exceptions to limitations on fixed-term contracts, researchers and medical research institutes can better navigate funding uncertainties and continue their vital work for the benefit of all Australians.