

MORAL RIGHTS AND WRONGS OF RESEARCH FUNDING

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Abstract

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Some recent Australian developments in contract research funding have implications that are at least as significant as those associated with journal rankings. This article argues that heterodox economists should pay careful attention to the provisions that attach to research funding. This article examines links between Australia's competitive and contract research funding arrangements, moral rights clauses and some implications for particular disciplines and areas of research, including heterodox economics. The aim of this article is to demonstrate the importance of being vigilant in the implications of all indicators of research output, quality and impact that are used in research assessment exercises.

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Introduction

Heterodox economists have expressed considerable concern about the practice of ranking journals as part of government and administration attempts to measure research quality.

The purpose of this article is draw attention to another significant component of measurable research output in Australia: competitive and contract research funding.

Within the context of Australia's higher education research sector, research funding plays an important role in league tables which ostensibly rank the status of research institutions and in the promotional prospects of academics. It is also an area that has been heavily influenced by government policies.

The aim of this article is to demonstrate the importance of being vigilant in the implications of all indicators of research output, quality and impact that are used in research assessment exercises. Some recent Australian developments in contract research funding have implications that are at least as significant as those associated with journal rankings. The following is an argument for careful attention to the provisions that attach to research funding and consists of three parts. Firstly it provides an overview of the role of competitive and contract research funding and its significance in the context of Australia's higher education sector. Secondly, it discusses the relatively recent inclusion of moral rights clauses in research funding contracts and their implications for academic independence. The third section consists of a discussion of the links between Australia's competitive and contract funding arrangements, moral rights clauses and some

implications for particular disciplines and areas of research, including heterodox economics.

The Importance of Contract Research Funding in Australia

Australian universities typically have few internal resources such as endowment funds for funding research programs and therefore rely on a dual funding approach comprised of block funding and competitive funding schemes administered by the Commonwealth Government. Block funding is provided through a number of schemes such as the Research Training Scheme, Institutional Grants Scheme, Research Infrastructure Block Grants Scheme and Australian Postgraduate Awards scheme. Allocations to each university are determined on the basis of performance measures and an associated funding formula administered by Australia's relevant Commonwealth government department. Once block funding has been allocated, the recipient university can apportion the funds according to its research, teaching and other priorities.

A second stream of funding is provided via a competitive funding mechanism. The largest and most prestigious sources of competitive funding are the Australian Research Council (ARC) and the National Health and Medical Research Council (NHMRC). The ARC is the relevant body for most social research projects that concern heterodox economists, performing a similar role to the Economic and Social Research Council in the United Kingdom and the National Science Foundation in the United States.

Researchers submit their project proposals to the ARC for peer assessment and, within the constraints of various guidelines and national research priorities, funding is allocated

to the most highly ranked projects. The two largest ARC funding schemes are Discovery Grants and Linkage Grants. A key difference between the two schemes is that Linkage Grant proposals require support and partial funding from “industry partners” from the private, public or not for profit sectors; Discovery Grant proposals do not require the participation of an industry partner. Funding under these schemes is highly sought after and is considered a key indicator of research success and status in the higher education sector. The overall success rates for funding commencing in early 2008 were 21.4 per cent for Discovery Grants and 47.6 per cent for Linkage Grant applicants. In many cases the allocated funding was below the level requested by the project applications. For example, successful Discovery Grant applicants received an average of 65.4 per cent of their requested funding for 2008; for Linkage Grant applications the average was approximately 80 per cent (Australian Research Council: 2007a, b).

The results of ARC competitive grant processes are widely publicized and published in tables showing the success rates and levels of funding for each university. The level of research funding obtained under these schemes contributes to each institution’s research income indicator for the next round of block funding. There is thus a dual pay off – the project funding and the flow on effect of improved block funding.

A number of smaller categories of research funding sit alongside the major categories described above. Among these are research projects commissioned by federal and state government departments, statutory authorities, private firms and not-for-profit organizations. These projects are usually initiated by a call for tender that asks

researchers to submit project proposals that address predefined research objectives. While public sector expenditure on “contract research” projects represents a relatively small proportion of governments’ total research expenditure they are important within the context of university research funding and a particularly significant source of research funding among those working in the humanities and social sciences. Aggregated statistics for the higher education sector show that 2005 revenue from ARC grants totaled \$A455 million compared with revenue from contracts and consultancies of \$A651 million (Department of Education Science and Training 2006: Table 1, p. 16). While consultancies might be considered different from research contracts, disaggregated information for the two categories of funding is not provided in this report.

While contract research is important at an institutional level, it could be argued that its role is even more significant for the individual researchers who achieve such funding. Key indicators for assessing research performance and prospects for promotion generally involve success in the four areas of: post-graduate completions; publication (increasingly in highly ranked journals); ‘high esteem’ factors (such as editorial board memberships, key note speaker invitations); and research income. In addition, many research units within universities employ research assistants and fellows who rely on the income from contract research for their continued employment.

The purpose of this discussion is to provide an indication of the significance of contract research funding rather than a comprehensive account of its quantity and distribution. Indeed, despite its significance in the humanities and social sciences, there is little

detailed systematic information on the importance of contract research and the number of university researchers reliant on this form of funding (CHASS, 2006; Productivity Commission, 2007). The focus is the examination of a particular clause, commonly known as a moral rights waiver that is becoming increasingly prevalent in contracts for research undertaken for government departments.

Moral rights and research contracts

While the importance of contract research has continued to grow, the political and legal context in which it takes place has been subject to a range of developments. A significant change in recent years has been the inclusion of a clause known as a “moral rights clause” in the terms and conditions of contracts for research services undertaken for some government departments. The clauses require researchers to consent to the potential infringement of their moral rights. For many researchers this raises two questions: what does the term “moral rights” mean in this context; and what does it mean to consent to their possible infringement?

In the Australian context, moral rights refer to a provision of the *Copyright Act 1968* (Cth) which allows individual creators to retain certain rights in relation to copyright works they may have sold to another party. The development of moral rights provisions was closely linked with international conventions recognizing the rights of those producing literary, dramatic, musical and other artistic works. In the context of a discussion on research contracts, however, the term author is perhaps more appropriate than creator. The moral rights retained by creators mean that they have the right:

- To be attributed (or credited) for their work;
- Not to have their work falsely attributed; and
- Not to have their work treated in a derogatory way.

(From: www.copyright.org.au/pdf/acc/infosheets_pdf/G043.pdf)

Moral rights are inalienable and individual. They are separate from the economic rights of copyright owners. While an individual creator retains specific moral rights, copyright owners have the economic rights relevant to the reproduction and distribution of the relevant work. The *Copyright Act 1968* also allows for infringements of an author's moral rights when it is reasonable for this to occur.

The introduction of moral rights provisions through the *Copyright Act 1968* has been an area of ongoing debate. While some copyright owners wish for unimpeded use of material they have acquired, artistic communities in particular have sought to protect the integrity of their work and their right of attribution. In an attempt to reconcile these competing approaches, the legislation includes a provision for individuals to consent to the infringement of their moral rights. In a parliamentary debate in 2000, the Commonwealth Attorney General outlined the argument in the following terms:

The consent provision allows authors to decide for themselves what acts or omissions they will permit and whether or not it is in their interests to do so. It would be patronising to suggest that authors cannot decide this for themselves. The government believes that users of works are entitled

to certainty as to the legal effect of consent by an author to acts that would infringe moral rights. (Hansard, 2000)

In recent years the debate appears to have shifted from arguments confined to the creative arts to issues associated with broader issues of authorship. The implications of moral rights for government departments who use materials authored by employees or provided by third parties were specifically considered by the Copyright Law Review Committee in 2005 (Copyright Law Review Committee 2005). The Committee noted that there was significant support for the legislative provision on moral rights and that it allowed for exceptions based on a standard of reasonableness.

The Commonwealth Department of Family and Community Services (FACS), however, argued that the test of reasonableness was insufficient to ensure that they were not hindered in their use of material over which they held copyright:

For example, FACS has been approached by an author who sought to prevent FACS modifying material that the author had created for and delivered to FACS (copyright was owned by FACS). As it was necessary for FACS to modify the material and disseminate [it] to the public, FACS was forced to rely on a presumption that its activities were 'reasonable'. (Copyright Law Review Committee 2005: 148)

Two government departments from Western Australia submitted similar views:

The WA Attorney-General stated that governments should, as far as possible, comply with moral rights, but considered that government should not be bound by Part IX. His submission expressed concern that identifying and attributing authors in some circumstances is ‘difficult and possibly unreasonable.’ The WA Department of Premier and Cabinet expressed a similar view. (Copyright Law Review Committee 2005:149)

The Committee concluded however that “there should be no change to the current moral rights provisions insofar as they relate to government” and argued that their view “accords with most of those in submissions” (Copyright Law Review Committee 2005:151). In short, the existing legislative provisions were considered to provide sufficient flexibility for government departments to use their copyright materials in a reasonable manner.

Since the Committee’s conclusions were reached, some government departments and organizations reliant on public funding have proceeded to insert consents to infringements of moral rights into various contracts for services. The following clause, contained in a research contract recently sent to a colleague, is an example of a moral rights consent:

The contractor will obtain from its personnel and any sub-contractors, to the extent permitted by applicable law, unconditional:

(a) Consents to any alteration to, including additions to, or deletions from, any Contract Material used or produced in connection with the Agreed Services that would otherwise infringe their moral rights...

In effect, this means that a University, as “contractor”, must obtain consents from their staff agreeing to the potential infringement of their moral rights in connection with the project undertaken.

No centrally coordinated information has been found from which to cite the prevalence of such provisions in research contracts, nor has detailed information been found on where they originated and how they became more commonplace. It seems likely that moral rights clauses were progressively added to research contracts by individual Commonwealth and State government departments in response to the Copyright Law Review Committee’s decision not to recommend blanket changes, as discussed above. Regardless of their origin or rationale, eighteen such contracts were signed at Curtin University of Technology in the two years preceding the 2007 federal election. Australia’s higher education sector includes 37 publicly funded universities and one small privately funded university which could reasonably be expected to have significant interest in such sources of research income.

Can Independent Research that is Politically Sensitive Exist Alongside Moral Rights

Waivers?

Consenting to an infringement of moral rights in order to obtain a research contract has obvious implications for academic freedom and integrity. It effectively means that the resulting research reports/outcomes can be altered by the contracting government department. Some government departments have refused to negotiate on this issue and have adopted a take it or leave it approach to ‘negotiating’ contracts relevant to research projects and funding.

A researcher’s decision to refuse to sign a moral rights consent may have relatively serious implications. As discussed above, one of the key indicators of academic activity in the Australian system is the securing of research income. It confers status on the lead researchers and, along with publications, is a key factor determining promotion prospects. Refusing to sign research contracts containing a moral rights consent and forgoing research income therefore has potentially significant personal consequences for lead researchers on contract projects.

More importantly, however, some academics and research units employ staff whose salaries are funded almost entirely on the basis of securing such contracts. The continued viability of such units depends on their success in securing research grants and contracts. If a principal researcher refuses to sign a contract on the basis of a moral rights waiver, it may well be the staff working for him/her on a particular project who are vulnerable to reduced prospects for continued employment. Again, this has resulted in pressure on academics to sign contracts. It is unclear whether this situation might constitute duress; a

context in which a researcher is not freely able to make a decision about whether to sign a contract.

The combination of moral rights clauses within the context of research assessment exercises and promotion systems that give high priority to the achievement of research funding goes to the heart of academic independence. This, of course, is an issue for all academics. However, it seems particularly relevant for heterodox economists who, by definition, are likely to have research interests outside of mainstream economic theory and policy approaches.

An example of the potential for colliding interests was very publicly demonstrated during the Australian federal election in 2007. In 2005, the conservative Liberal/National Party coalition government had introduced wide ranging legislative changes, generally known as *WorkChoices*, to the regulatory framework governing employment relations. Analysis of *Work Choices* did not lie within the scope of one discipline. Key implications were relevant to a range of researchers with overlapping interests in economic and social research. As a result, the regulations were keenly debated by researchers in the areas of industrial relations, employment law and labour market economics. Heterodox economists were among the contributors from a range of relevant disciplines (see for example Jefferson and Preston 2007; Jefferson *et al*, 2007; King and Stilwell, 2006; King 2005; Plowman and Preston, 2005).

In the period immediately preceding the 2007 election, academics who discussed research findings that showed sectoral declines in earnings and employment conditions under the new regulatory framework were subject to very public and unfavourable comment from the Workplace Relations Minister, Joe Hockey. In some cases, comments were not focused on the validity of research findings but on researchers themselves (O'Keefe, 2007). Researchers' backgrounds appeared to be scrutinized for evidence of previous work experience or interest in issues relevant to the opposition Australian Labor Party or trade unions and their capacity to produce competent research was questioned. Perhaps the most prominent example of such treatment was that meted out to Professor John Buchanan from the University of Sydney, following the release of research whose findings could be construed as politically damaging to the Liberal/National Party coalition government (Van Wanrooy *et al*, 2007). Minister Hockey's derogatory comments made front page news in Australia's only national daily newspaper and there was discussion about whether Buchanan would take legal action against the Minister (ABC News 2007). The fact that the project also involved researchers without prior involvement in labour movement organizations was, along with the content of the report, relatively neglected.

One of the key issues throughout the various *WorkChoices* debates was the need for research that could monitor the effects of the legislation on different sectors of the workforce. There were significant limitations on the capacity of existing official data sources to monitor change in key areas of wage and employment conditions. For example, it was not possible to know whether increases in average earnings represented

an improvement in employment conditions or the implications of the trading-off of an employment entitlement such as annual leave or overtime. This was a shortcoming noted by the Minister himself and emphasized in a number of reports undertaken in the two years prior to the election (Preston, Jefferson, and Seymour 2006; ABC Online 2007). In the absence of adequate official data, a wide range of relatively small scale research projects were undertaken with funding from diverse sources including State government departments and not for profit organizations (see for example a series of six coordinated studies is summarised in Elton *et al*, 2007).

In the aftermath of the election, which was won by the Australian Labor Party, the ex-Minister admitted that some of his cabinet colleagues had probably been unaware that existing employment conditions could in fact be compromised under the *WorkChoices* legislation. Without the heat of an election context, the implications of the legislation for workforce participants were discussed in a relatively more considered manner. It became apparent that misgivings about the legislation were not confined to academics with labour movement connections but extended to members of the previous government who, prior to the election, had publicly supported the introduction of the legislation (Jackson, 2008).

In the context of wide reaching legislation which aimed to encourage flexibility, employment growth and family friendly working provisions, it would not have been unreasonable for a number of relevant government departments to call for research projects that addressed specific issues of concern. In this particular case there were few relevant calls for research proposals. However, the possible inclusion of a moral rights

clause in research contracts would have been a cause for concern among the research community in this context. *WorkChoices* was a highly politicized and contentious piece of legislation. While there was (and continues to be) a need for independent, constructive research, it appears likely that many researchers with relevant experience would be unwilling to sign a research contract that contained a clause such as that outline above (see for example the discussion in O'Keefe, 2007).

The growing inclusion of moral rights clauses in research contracts therefore has a number of implications. Firstly, there are issues of self selection; researchers who are most likely to produce results that do not reflect government policy may also be those who are unlikely to allocate time and resources to tendering for research proposals. Clearly, researchers who do not tender for government research contracts have reduced scope for achieving external research income. Secondly, if academics do tender for contract research projects, they may be required to sign a moral rights waiver as part of the conditions of project funding. As argued above, consents have implications for academic independence and the representation of the research findings. Thirdly, without external research income, academics have a reduced capacity to employ research assistants and prospects for this source of research training and experience become more limited. Finally, the question of achieving research contracts is linked with the promotional prospects of individual academics.

It is a matter for conjecture as to whether heterodox economists are likely to be over represented among researchers who are affected by moral rights waivers. However,

heterodox economists are, by definition, those who have taken a methodological position outside of the mainstream. It appears likely that this sector of the profession will have sensitivities about the prospects of research being misrepresented or misattributed. At a minimum, it could be expected that heterodox economists would be among those groups of academics expressing concern about the growing inclusion of moral rights clauses in research contracts.

Conclusions

Currently, two factors may mitigate the ongoing effects of moral rights clauses and the pending introduction of a research assessment system. Firstly, there was a change of government in November 2007. The new (Australian Labor Party) government is using rhetoric which indicates that the use of moral rights waivers will be inconsistent with their wish for open debate. In particular, the Minister for Innovation, Industry, Science and Research, Kim Carr is in the early but active stages of discussion about a charter of researchers' rights and responsibilities that appears directly relevant to the issues raised by moral rights clauses. Addressing Universities Australia in March 2008, the Minister stated:

University academics have not felt entirely confident to speak out about their research, where this has had bearing on Government policy. Those that have spoken publicly have sometimes incurred the wrath of the Government itself. They have been held up to ridicule and their reputations have been questioned.

There have been many instances of this – I don't need to cite them here. This made academics think twice before they spoke up.

At the same time, the previous Government used its funding powers to exert influence over universities themselves....

This meant that they were sometimes less than able to fulfill their proper role as guardians and creators of knowledge – let alone their legitimate role as generators of debate, enablers of dissent and challengers to the status quo. (Carr, 2008)

Secondly, the specific issue of moral rights has been taken up by the universities' peak body, Universities Australia. Its Chief Executive Officer, Dr Glenn Withers, who has a background as an academic economist, has been charged with negotiating this issue with the Australian government on behalf of its thirty eight member universities.

Research assessment exercises do not operate in a vacuum and the broader political and legislative climate can combine with research assessment exercises to have significant and perhaps unintended consequences. Heterodox economists, particularly in Australia, already face challenges with respect to the growing use of journal rankings and citation indexes to measure the 'quality' of their research. Australia's recent experience suggests that research assessment exercises will warrant additional vigilance in any area of activity that is likely to affect any relevant indicator used in research assessment exercises.

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