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FULL BENCH—Unions—Application for Alteration of Rules—

2011 WAIRC 01174

APPLICATION PURSUANT TO S.62 - ALTERATION OF REGISTERED RULES - RULE 16 - EXECUTIVE AND ORGANISERS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

FULL BENCH

CITATION	:	2011 WAIRC 01174
CORAM	:	THE HONOURABLE J H SMITH, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH COMMISSIONER S M MAYMAN
HEARD	:	THURSDAY, 7 APRIL 2011, FRIDAY, 16 DECEMBER 2011
DELIVERED	:	WEDNESDAY, 21 DECEMBER 2011
FILE NO.	:	FBM 6 OF 2009
BETWEEN	:	THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS Applicant AND (NOT APPLICABLE) Respondent

Catchwords	:	Industrial Law (WA) - Application pursuant to s 62(2) and s 71(5) of the <i>Industrial Relations Act 1979</i> (WA) for the Full Bench to authorise registration of alterations to registered rules - Holding of office by persons who hold office in the applicant's counterpart Federal body - Statutory criteria satisfied.
Legislation	:	<i>Industrial Relations Act 1979</i> (WA) s 55(4), s 55(4)(b), s 55(4)(c), s 55(4)(d), s 55(4)(e), s 55(5), s 56(1), s 62, s 62(2), s 62(4), s 66, s 71, s 71(2), s 71(3), s 71(4), s 71(5), s 71(5)(a).
Result	:	Order issued
Representation:		
Counsel:		
Applicant	:	Mr S Millman (of counsel)
Solicitors:		
Applicant	:	Slater & Gordon Lawyers

Case(s) referred to in reasons:

Mcjannet v Reynolds [2009] WAIRC 01282; (2009) 89 WAIG 2395

Re application by The Construction Forestry Mining and Energy Union of Workers [2011] WAIRC 00422; (2011) 91 WAIG 1034

*Reasons for Decision***THE FULL BENCH:****Introduction**

1 This application by The Construction Forestry Mining and Energy Union of Workers was filed on 18 November 2009 and is made pursuant to s 62(2) and s 71(5) of the *Industrial Relations Act 1979* (WA) (the Act). The applicant, as a registered organisation under the Act, seeks the authorisation of the Full Bench for the Registrar to register an alteration to its rules to add a new paragraph (4A) to r 16 in accordance with s 71(5) of the Act as follows:

Each office in the Union may, from such time as the Executive may determine, be held by the person who, in accordance with the rules of the Construction and General Division, Western Australian Divisional Branch of the Construction, Forestry, Mining and Energy Union, holds the corresponding office.

2 The purpose of the rule change is that the applicant seeks to obtain a s 71 certificate to enable the offices that exist in this rule to be held by the persons holding the corresponding offices in its counterpart Federal body. A certificate will also enable it to make an agreement with its Federal organisation relating to the management and control of funds.

3 Prior to the issuance of a certificate, the applicant's rules must be altered and the Full Bench issue a declaration pursuant to s 71 of the Act. The first step will be completed when the Full Bench on 21 December 2011 issues a declaration in FBM 7 of 2011 pursuant to s 71(2) and s 71(4) of the Act declaring that:

(1) The rules of the applicant and its counterpart Federal body relating to the qualifications of persons for membership are deemed to be the same, in accordance with s 71(2) of the *Industrial Relations Act 1979* (the Act).

(2) The rules of the counterpart Federal body prescribing the offices which exist in the Branch are hereby deemed to be the same as the rules of the applicant, prescribing the offices which exist in the applicant, in accordance with s 71(4) of the Act.

4 The second step to obtain a s 71 certificate is prescribed in s 71(5)(a) of the Act and requires the rules of the applicant to be altered pursuant to s 62 of the Act to provide that each office in the State organisation may, from such time as the committee of management of the State organisation may determine, be held by the person who, in accordance with the rules of the State organisation's counterpart Federal body, holds the corresponding office in that body.

5 After hearing submissions on behalf of the applicant the Full Bench was satisfied that the requirements of the Act were met.

6 These reasons set out why we formed the opinion that the proposed r 16(4A) should be registered by the Registrar.

History of the Application

7 This application, FBM 6 of 2009, was filed in contemplation of a counterpart application being made for a declaration in accordance with s 71(2), s 71(3) and s 71(4) of the Act and heard concurrently. This application was made prior to the applicant making an application for a declaration. On 2 February 2010, the applicant made an application that FBM 6 of 2009 be adjourned sine die until an application for a declaration could be filed and heard and on 8 February 2010, the Full Bench made an order that the hearing listed for this application on 18 February 2010 be adjourned sine die. An application for a declaration was brought under s 71(2) and s 71(4) of the Act in FBM 15 of 2010. FBM 6 of 2009 was brought on for hearing on 7 April 2010 and FBM 15 of 2010 was also listed for hearing on that day. On 11 April 2011 (after hearing counsel for the applicant and Mr Mcjannett, an objector, in person on 7 April 2011), the Full Bench made an order that the objector file and serve an affidavit on 7 April 2011 and the applicant file and serve its response by 21 April 2011. The Full Bench also made an order that the objector file and serve its reply within seven days of receipt of the applicant's response.

8 In accordance with the orders made by the Full Bench on 11 April 2011, Mr Mcjannett filed an affidavit made by him on 7 April 2011. The applicant filed its submissions in response to the affidavit filed by Mr Mcjannett on 21 April 2011 and Mr Mcjannett filed his reply on 4 May 2011. This application was not relisted for hearing at that time as the Full Bench after hearing submissions in relation to the application for a declaration in FBM 15 of 2010 had reserved its decision. On 16 June 2011, the Full Bench issued its decision in FBM 15 of 2010 and dismissed the application: *Re application by The Construction Forestry Mining and Energy Union of Workers* [2011] WAIRC 00422; (2011) 91 WAIG 1034. The applicant filed a fresh application for a declaration under s 71(2), s 71(3) and s 71(4) of the Act on 24 October 2011: FBM 7 of 2011. The hearing of FBM 7 of 2011 was listed for hearing on 16 December 2011 at 10:30 am and this application was listed for hearing on the same day at 11:30 am. Prior to the hearing of this matter, Mr Mcjannett sought to withdraw his objection to this application by filing a Form 14 Notice of withdrawal or discontinuance on 9 December 2011.

The Applicant's Rules about Alteration

9 Section 62(2) of the Act prohibits the Registrar from registering any alteration to the rules of an organisation that is a matter referred to in s 71(5) of the Act unless so authorised by the Full Bench. Pursuant to s 62(4) of the Act, the requirements of s 55(4) of the Act must be complied with before the Full Bench can approve a rule alteration application. Section 55(4) of the Act provides that the Full Bench shall refuse an application by the organisation unless it is satisfied that:

- (a) the application has been authorised in accordance with the rules of the organisation;
- (b) reasonable steps have been taken to adequately inform the members —
 - (i) of the intention of the organisation to apply for registration;
 - (ii) of the proposed rules of the organisation; and
 - (iii) that the members or any of them may object to the making of the application or to those rules or any of them by forwarding a written objection to the Registrar,
 and having regard to the structure of the organisation and any other relevant circumstance, the members have been afforded a reasonable opportunity to make such an objection;
- (c) in relation to the members of the organisation —
 - (i) less than 5% have objected to the making of the application or to those rules or any of them, as the case may be; or
 - (ii) a majority of the members who voted in a ballot conducted in a manner approved by the Registrar has authorised or approved the making of the application and the proposed rules;
- (d) in relation to the alteration of the rules of the organisation, those rules provide for reasonable notice of any proposed alteration and reasons therefor to be given to the members of the organisation and for reasonable opportunity for the members to object to any such proposal; and
- (e) rules of the organisation relating to elections for office —
 - (i) provide that the election shall be by secret ballot; and
 - (ii) conform with the requirements of section 56(1),
 and are such as will ensure, as far as practicable, that no irregularity can occur in connection with the election.

Statutory Requirements Met

- 10 The first matter about which the Full Bench must be satisfied is the proposed rule alteration must be authorised by the organisation in accordance with its rules. The authority to alter the rules of the applicant is found in r 36 – Alteration of Rules. Rule 36 provides:

Subject to the provisions of the Industrial Relations Act (WA) 1979 or any Act relating to the alteration of these Rules the following provisions shall apply:

- (1) The Rules of the Union may be amended, added to, varied, repealed or substituted by such proposed alteration(s) to rules being approved by a Special or Ordinary General Meeting, and by such meeting authorising the making of an application to the Western Australian Industrial Relations Commission to register the said alteration(s) to rules, provided such alterations(s) shall not be or become effective until the Registrar of the Western Australian Industrial Relations Commission has given to the Union a certificate that the alteration(s) has been registered.
 - (2) The Union shall forward a notice by either posting to each member of the Union at their registered address or publishing in a Union magazine (which shall be distributed to all members) providing the following information to members:
 - (a) The intention of the Union to apply for registration of the proposed alteration(s) of the Rules of the Union;
 - (b) The terms of the proposed alteration(s) of the Rules of the Union and the reasons therefore;
 - (c) That the members or any of them may object to the making of the application for the proposed alteration(s) and/or object to the proposed alteration(s) or any of them by forwarding a written objection to the Registrar of the Western Australian Industrial Relations Commission and that objections should reach the Registrar no later than twenty-one (21) days after the date of the receipt of the notice.
- 11 Pursuant to r 36(1) of the rules of the applicant, alterations to a rule must be approved by a special or ordinary general meeting of the applicant. Pursuant to r 26 the applicant is required to hold general meetings at least each calendar month and under r 26(6) the quorum for any special general or ordinary meeting of the applicant is 30 members. The procedure for general meetings is provided for in r 27. Rule 27(5) requires that any member, at any meeting of the applicant or executive, is to give notice by way of motion of a resolution to be discussed at a future meeting by handing a copy to the president, who shall at once read it to the meeting. The notice of motion is then placed in the minute book pursuant to r 27(3) of the rules of the applicant.
- 12 The facts supporting the application to authorise the addition of a new r 16(4A) are set out in a statutory declaration made in November 2009 by Kevin Noel Reynolds, the secretary of the applicant. The evidence of Mr Reynolds in the documents attached to his statutory declaration establishes the following relevant matters:

- (a) As required by r 27(3) and r 27(5) of the rules of the applicant a meeting of the executive was held on 12 August 2009. In his statutory declaration, Mr Reynolds says at paragraph 3 that a notice of motion containing the proposed amendment was handed to the president and read out in accordance with r 27(5). However, when the minutes of the meeting are examined it is apparent that the minute of the proposed amendment was not given to the president but to vice president Glenn Hawkins who reported the proposed motion to the executive. It appears from those minutes that the president of the applicant, Mr Cam McCullough, and the senior vice president, Mr Ian Hawkins, were not present at meeting of the executive held on 12 August 2009. This error in the statutory declaration of Mr Reynolds is not material, as pursuant to r 25(1)(d) of the rules of the applicant, when the president is absent his or her duties are required to be performed by the senior vice president and in the absence of both the president and the senior vice president the vice president is required to perform the duties of the president.
- (b) In accordance with r 27(3) the motion was entered into the minute book for the general meeting.
- (c) A general meeting was held on 12 August 2009. A list of attendees of the general meeting that is attached to the statutory declaration of Mr Reynolds shows that more than 30 members of the applicant were present at the meeting.
- (d) The minutes of the general meeting record that the following motion was carried unanimously:
- A. This meeting approve the following amendment to the Rules of the Union (the Proposed Amendment):
- (1) The following rule 16(4A) be inserted in the rules –
- ‘(4A) Each office in the Union may, from such time as the Executive may determine, be held by the person who, in accordance with the rules of the Construction and General Division, Western Australian Divisional Branch of the Construction, Forestry, Mining and Energy Union, holds the corresponding office;’ (the New Rule).
- B. This meeting authorise the Union making an application to the Full Bench of the Western Australian Industrial Relations Commission (the WAIRC) :
- (1) for a declaration under section 71 of the Act that The Construction and General Division, Western Australian Divisional Branch of the Construction, Forestry, Mining and Energy Union (the Branch) is the Union's counterpart Federal body; and
- (2) for an order under section 62 of the Act authorising the Proposed Amendment.
- C. The Union post to each member of the Union at their registered address a notice containing the following information in accordance with section 55(4)(b) of the Act and Rule 36 - Alteration of Rules :
- (1) The intention of the Union to apply for registration of the Proposed Amendment;
- (2) The terms of the Proposed Amendment and the reasons therefore; and
- (3) That the members or any of them may object to the making of the application for the Proposed Amendment and/or object to the Proposed Amendment by forwarding a written objection to the Registrar of the WAIRC and that objections should reach the Registrar no later than twenty-one (21) days after the date of the receipt of the notice.
- D. This meeting authorise the Union making an application to the Registrar of the WAIRC under section 62 of the Act to register the Proposed Amendment.
- E. Subject to the successful alteration of the Rules referred to in paragraph A, this meeting authorise the Executive of the Union to notify the Registrar of the WAIRC under section 71(5)(b) that from a date decided by the Executive all offices in the Union will be filled in accordance with the New Rule.
- F. This meeting authorise the Union making an application to the Registrar of the WAIRC for the issuing of a certificate under section 71(5) of the Act.
- (e) On or about 27 August 2009, Mr Reynolds authorised the distribution, to all members, of correspondence that advised members of the results of the general meeting and that the executive of the applicant was unanimous in its support for the proposed amendment. The correspondence also advised that an application will be made to the Commission and that any objections to the proposed alterations to the rules should be received by the Registrar of the Commission no more than 21 days after the members received the notification.

13 Having regard to this evidence, we were satisfied that the application to alter the rules of the applicant had been authorised in accordance with its rules.

14 No objections were received to the proposed amendment by the applicant. However, three objections were received by the Registrar from members of the applicant. On 8 September 2009, the Registrar received an objection from Mr Robert Mcjannett. Mr Mcjannett has now withdrawn his objection. On 14 September 2009, the Registrar received an objection from Mr Paul Schultz and on 13 September 2009, the Registrar received an objection from Mr Brian Churchill. In each of the objections an issue is raised about assets being controlled by the applicant and each objector stated that the rule change should not be allowed until a decision in PRES 5 of 2009 has been reached and possibly not after that. PRES 5 of 2009 was an application made under s 66 of the Act by Mr Mcjannett against Mr Reynolds and others. A decision was delivered in that

matter by Ritter AP on 9 December 2009: *Mcjannet v Reynolds* [2009] WAIRC 01282; (2009) 89 WAIG 2395. In that matter irregularities in an election of officials of the applicant were alleged to have occurred, however, a substantive hearing of the matter did not proceed as the application was summarily dismissed.

- 15 As at 4 October 2011, the applicant's membership records record that the applicant had 13,797 members. Consequently as there are now only two objectors, we are satisfied that the number of members of the applicant who have objected comprise substantially less than 5% of the total number of members.
- 16 For these reasons we were satisfied that s 55(4)(b), s 55(4)(c) and s 55(4)(d) of the Act had been complied with. We were also satisfied that the requirements of s 55(5) of the Act do not arise as the proposed rule changes do not change or seek to alter in any way the eligibility of persons eligible to be members of the organisation. Section 55(4)(e) and s 56(1) of the Act relate to procedural rules for election for office, including secret ballots. The applicant's rules currently provide for the procedures required by these provisions of the Act and the alterations sought in this matter do not deal with the matters specified in those provisions of the Act. Consequently, no issue arises in this application in relation to the requirements of s 55(4)(e) and s 56(1) of the Act.
- 17 For these reasons we are of the opinion the following order should issue:

The Registrar is hereby authorised to register the alteration to the rules of the applicant by inserting in rule 16 – Executive and Organisers a new rule, r 16(4A) after r 16(4) as follows:

(4A) Each office in the Union may, from such time as the Executive may determine, be held by the person who, in accordance with the rules of the Construction and General Division, Western Australian Divisional Branch of the Construction, Forestry, Mining and Energy Union, holds the corresponding office;

2011 WAIRC 01168

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS	APPLICANT
	-and-	
	(NOT APPLICABLE)	RESPONDENT
CORAM	FULL BENCH	
	THE HONOURABLE J H SMITH, ACTING PRESIDENT	
	CHIEF COMMISSIONER A R BEECH	
	COMMISSIONER S M MAYMAN	
DATE	WEDNESDAY, 21 DECEMBER 2011	
FILE NO/S	FBM 6 OF 2009	
CITATION NO.	2011 WAIRC 01168	

Result	Order issued
Appearances	
Applicant	Mr S A Millman (of counsel)

Order

This matter having come on for hearing before the Full Bench on 16 December 2011, and having heard Mr S A Millman, of counsel on behalf of the applicant, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders —

The Registrar is hereby authorised to register the alteration to the rules of the applicant by inserting in rule 16 – Executive and Organisers a new rule, r 16(4A) after r 16(4) as follows:

(4A) Each office in the Union may, from such time as the Executive may determine, be held by the person who, in accordance with the rules of the Construction and General Division, Western Australian Divisional Branch of the Construction, Forestry, Mining and Energy Union, holds the corresponding office;

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

[L.S.]

2011 WAIRC 01167

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS
APPLICANT

-and-
 ROBERT MCJANNETT
OBJECTOR

CORAM FULL BENCH
 THE HONOURABLE J H SMITH, ACTING PRESIDENT
 CHIEF COMMISSIONER A R BEECH
 COMMISSIONER S M MAYMAN

DATE WEDNESDAY, 21 DECEMBER 2011

FILE NO/S FBM 6 OF 2009

CITATION NO. 2011 WAIRC 01167

Result Order issued

Appearances

Applicant Mr S A Millman (of counsel)

Objector In person

Order

HAVING heard Mr S A Millman, of counsel on behalf of the applicant, and Mr R Mcjannett, an objector, in person; and
 WHEREAS on 9 December 2011, the objector filed a notice of withdrawal or discontinuance; and
 WHEREAS on 16 December 2011, the applicant informed the Full Bench that the applicant consents to leave being granted to
 discontinue the objection;
 NOW THEREFORE, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby
 orders —
 THAT leave to discontinue the objection be granted.

By the Full Bench
 (Sgd.) J H SMITH,
 Acting President.

[L.S.]

FULL BENCH—Unions—Declarations made under Section 71—

2011 WAIRC 01175

APPLICATION FOR DECLARATION PURSUANT TO SECTION 71(2) RELATING TO FEDERAL COUNTERPART BODY
 WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

FULL BENCH

CITATION : 2011 WAIRC 01175

CORAM : THE HONOURABLE J H SMITH, ACTING PRESIDENT
 CHIEF COMMISSIONER A R BEECH
 COMMISSIONER S M MAYMAN

HEARD : FRIDAY, 16 DECEMBER 2011

DELIVERED : WEDNESDAY, 21 DECEMBER 2011

FILE NO. : FBM 7 OF 2011

BETWEEN : THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF
 WORKERS
 Applicant
 AND
 (NOT APPLICABLE)
 Respondent

Catchwords	:	Industrial Law (WA) - Application pursuant to s 71 for a declaration relating to qualifications of persons for membership of a state branch of a federal organisation and offices that exist within the branch
Legislation	:	<i>Industrial Relations Act 1979</i> (WA) s 27(1)(k), s 71, s 71(1), s 71(2), s 71(3), s 71(4); <i>Conciliation and Arbitration Act 1904</i> (Cth) s 36(2).
Result	:	Declaration made
Representation:		
Counsel:		
Applicant	:	Mr S Millman (of counsel)
Solicitors:		
Applicant	:	Slater & Gordon Lawyers

Case(s) referred to in reasons:

Gairns v The Royal Australian Nursing Federation Industrial Union of Workers, Perth (1989) 69 WAIG 2343

Re Ludeke; Ex parte The Customs Officers' Association of Australia, Fourth Division (1985) 155 CLR 513

*Reasons for Decision***THE FULL BENCH:****The Application**

- 1 The Full Bench has before it an application made under the *Industrial Relations Act 1979* (WA) (the Act) in which the applicant (the state organisation) seeks the following orders:
 - (a) A declaration pursuant to Section 71(2) and Section 71(3) of the *Industrial Relations Act 1979* (WA) that the Construction, Forestry, Mining and Energy Union, Construction and General Division Western Australian Branch is the counterpart Federal body ("the Counterpart Federal Body") of The Construction, Forestry, Mining and Energy Union of Workers ("the State Organisation");
 - (b) A declaration pursuant to Section 71(2) and Section 71(3) that the rules of the Counterpart Federal Body relating to the qualifications of persons for membership are the same, or in the alternative deemed to be the same as the qualifications of persons for membership within the State Organisation;
 - (c) A declaration pursuant to Section 71(4) that the offices within the Counterpart Federal Body are deemed to be the same as the offices within the State Organisation;
- 2 The grounds on which the application is made are:
 - (a) that the rules of the State Organisation and the Counterpart Federal Body are the same, or substantially the same;
 - (b) that for every office in the State Organisation there is a corresponding office in the Counterpart Federal Body;
 - (c) that the application fulfils the Objects of the Industrial Relations Act, in particular ss 6(ab), 6(e) and 6(f); and
 - (d) otherwise set out in the attached statutory declaration.
- 3 The applicant is a State organisation as defined in s 71(1) of the Act as it is a registered organisation under Div 4 of Part II of the Act. This is the second application brought by the applicant under s 71 of the Act that has been heard by a Full Bench in 2011. The first application was FBM 15 of 2010: *Re application by The Construction Forestry Mining and Energy Union of Workers* [2011] WAIRC 00422; (2011) 91 WAIG 1034. The Full Bench issued its decision in that matter on 16 June 2011 and dismissed the application. Although it found that the qualifications of persons for membership of the State organisation were substantially the same as the qualifications of persons for membership of the Construction, Forestry, Mining and Energy Union, Construction and General Division, Western Australia Divisional Branch (the Branch and the State organisation's counterpart Federal body), the Full Bench was not satisfied that the offices of the State organisation were the same or could be deemed to be the same as the State organisation's counterpart Federal body.

Application to intervene

- 4 On 9 December 2011, Robert Mcjannett filed an application for leave to intervene in this matter under s 27(1)(k) of the Act. The grounds on which the application was made are stated as:

the applicant intervener together with all other union members not holding office in the union and the private sector construction industry as a whole will be unduly prejudiced by the granting of a certificate under s 71 of the Act to the State organisation.

The applicant opposed the application by Mr Mcjannett to intervene.
- 5 Pursuant to s 27(1)(k) of the Act, the Commission may permit the intervention in proceedings of any person who has an interest in the proceedings. In *Gairns v The Royal Australian Nursing Federation Industrial Union of Workers, Perth* (1989) 69 WAIG 2343 Sharkey P found that the most helpful dissertation OF THE principles which relate to permitting intervention is set out in the judgment of the High Court in *Re Ludeke; Ex parte The Customs Officers' Association of Australia, Fourth Division* (1985) 155 CLR 513. In that matter Gibbs CJ with whom Dawson J agreed held that every person

whose rights will be directly affected by an order made by the Australian Conciliation and Arbitration Commission must be given a full and fair opportunity to be heard before an order is made (520). He also observed that:

- (a) The principles of natural justice do not require that everyone who may suffer some detriment as an indirect result of an order of the Commission is entitled to be heard before the order is made;
- (b) Orders made by the Commission may affect many members of the community who are not parties to the proceedings in question, but that does not mean that any member of the community who will be indirectly affected by an order of the Commission has a right to be heard (520).

6 Deane J expressed a similar view. He was of the opinion that the rules of procedural fairness ordinarily require the Commission to extend to the parties and to others who will be directly affected by its orders an adequate opportunity of being heard, but those rules do not require the Commission to ignore the nature of proceedings *inter partes* and to extend an opportunity of being heard to every person who, while not being a party, claims to have an indirect interest in the proceedings in the sense that he is likely to be indirectly advantaged or disadvantaged by an order or award of the Commission (530). Mason J, however, expressed a broader view and said (522):

In general, the applicant is required to have an interest which is a substantial interest, a legal interest or one which is known and protected by the law. In this respect the applicant must be interested in the outcome or the result of the litigation because he has a legal right which will be directly affected thereby or a legal liability which will be directly enlarged or diminished by the judgment — the interest must be direct and immediate rather than merely consequential.

7 Justice Mason also observed that an interest which in its nature is inadequate to support intervention in legal proceedings in a court may be sufficient to support intervention in a matter of industrial arbitration before the Commission (523).

8 Justice Brennan also expressed a broader view. He said (528):

Generally speaking, a decision that will affect adversely a person's legal rights or his proprietary or financial interests or his reputation ought not to be taken without first giving him an opportunity to be heard provided such an opportunity can be reasonably given (*F.A.I. Insurances Ltd. v. Winneke* (1982) 151 CLR 342, at pp. 411-412, even if that person is not directly involved in the proceedings which lead to the making of the decision: cf. *Reg. v. Town and Country Planning Commissioner; Ex parte Scott* [1970] Tas. S.R. 154, at pp. 182-187; 24 L.G.R.A. 108, at pp. 137-141. But that is not an absolute rule.

9 Justice Deane had regard to the express power in s 36(2) of the *Conciliation and Arbitration Act 1904* (Cth) which empowered the Commission to grant leave to a person or organisation to intervene in any matter where the Commission is of the opinion that it is desirable that a person or organisation should be heard. Having regard to that provision he found:

In other words, the Act expressly provides that the power to grant to a non-party leave to intervene can only be exercised by the Commission if it is persuaded that it is desirable that the applicant for such leave should be heard in those proceedings. Subject to that restriction, the general power to grant leave to intervene encompasses the power to grant such leave in a limited form: cf. *Reg. v. Evatt; Ex parte Master Builders' Association (N.S.W.)* (1974) 132 CLR 150 at pp. 153-154, 155. Indeed, conformably with the statutory restriction upon the exercise of the power and subject to the general observation that it ordinarily would not be open to the Commission to fail to be of the opinion that it was 'desirable that a person or organization should be heard' in relation to a part of the proceedings in which he, she or it was directly interested, one would expect that, in a case where the Commission is 'of the opinion that it is desirable that a person or organization should be heard' in relation to part only of proceedings before it, the grant of leave to intervene would be limited so that it related only to that part of those proceedings (530 – 531).

10 In *Gairns Sharkey P*, after having regard to each of the judgments in *Ludeke*, found (2347):

In deciding whether to exercise my discretion under s.27(1)(k) a number of matters must be considered under the section, and by application of the authorities to which I adverted above:-

- (1) That the applicants, for leave to intervene, have a sufficient interest. That is the primary question.
- (2) It would be doubtful that a person not directly affected would have sufficient interest, but such a person would not, as an absolute rule, have insufficient interest.
- (3) As Mr Gethin submitted, s.66 is directed to the resolution of internal problems arising under the rules of an organization (see for example s.66(1) which limits the classes of applicants).
- (4) The principal object of intervention is to ensure that all interested parties will participate in a single resolution of a controversy, instead of being relegated to a resolution of the controversy in several proceedings.
- (5) There are no unusual criteria to enable me to make this decision.
- (6) Generally speaking, a decision that will affect adversely a person's legal or property rights or interests would constitute sufficient interest, but that is not an absolute rule.
- (7) That in this case, the hearing was almost concluded before there was any application to intervene.
- (8) In hearing proceedings the Commission is bound to observe the rules of procedural fairness which are commonly referred to as the principles of natural justice (see *R. v. Commonwealth Conciliation and Arbitration Commission; ex parte Angliss Group* (1969) 122 CLR 546).

Those rules will ordinarily require the Commission to give the parties and give others who will be directly affected by its orders, and who have a sufficient interest, an adequate opportunity of being heard. They do not require the Commission to ignore the nature of proceedings, *inter partes*, and to extend an opportunity of being heard to every person, who, while

not being a party, claims merely to have an indirect interest in the proceedings, in the sense that he is likely to be directly or indirectly advantaged by an order or award which the Commission may make.

- 11 When the application to intervene was heard on 16 December 2011, Mr Mcjannett outlined particulars of the grounds of his application. In summary the points he made were as follows:
- (a) Officers and employees of the State organisation had interfered in contractual relations of members with their employer and had committed criminal offences and amongst other offences had stolen or misappropriated funds;
 - (b) There were no members of the State organisation;
 - (c) The State organisation had filed false returns in the Commission.
- 12 Section 71(1), s 71(2), s 71(3) and s 71(4) of the Act provides:
- (1) In this section —

Branch means the Western Australian Branch of an organisation of employees registered under the Commonwealth Act;

counterpart Federal body, in relation to a State organisation, means a Branch the rules of which —

 - (a) relating to the qualifications of persons for membership; and
 - (b) prescribing the offices which shall exist within the Branch,

are, or, in accordance with this section, are deemed to be, the same as the rules of the State organisation relating to the corresponding subject matter; and

State organisation means an organisation that is registered under Division 4 of Part II.
 - (2) The rules of the State organisation and its counterpart Federal body relating to the qualifications of persons for membership are deemed to be the same if, in the opinion of the Full Bench, they are substantially the same.
 - (3) The Full Bench may form the opinion that the rules referred to in subsection (2) are substantially the same notwithstanding that a person who is —
 - (a) eligible to be a member of the State organisation is, by reason of his being a member of a particular class of persons, ineligible to be a member of that State organisation's counterpart Federal body; or
 - (b) eligible to be a member of the counterpart Federal body is, for the reason referred to in paragraph (a), ineligible to be a member of the State organisation.
 - (4) The rules of a counterpart Federal body prescribing the offices which shall exist in the Branch are deemed to be the same as the rules of the State organisation prescribing the offices which shall exist in the State organisation if, for every office in the State organisation there is a corresponding office in the Branch.
- 13 After hearing submissions from Mr Mcjannett and from counsel for the applicant, the Full Bench dismissed Mr Mcjannett's application to intervene. The reason why the application was dismissed is that the Full Bench was not satisfied that Mr Mcjannett had shown a sufficient interest in the proceedings before the Full Bench. This is because the Full Bench formed the opinion that if the substantive application by the State organisation was to be granted, the ability of Mr Mcjannett to pursue a review of his allegations would not and could not be affected. This is in part because the matters raised in [11](a) by Mr Mcjannett are matters that if Mr Mcjannett wishes to pursue, can only be investigated by the Police or the Corruption and Crime Commission. As to the contention that the State organisation has no members, this issue has been litigated at length and found to have no merit by Ritter AP in *Thompson v Reynolds* [2009] WAIRC 00024; (2009) 184 IR 186; (2009) 89 WAIG 287 and *Mcjannett v Kevin Reynolds, Secretary – The Construction Forestry, Mining & Energy Union of Workers* [2009] WAIRC 01282; (2009) 89 WAIG 2395. In relation to the issue raised in [11](c), this is not a matter that can be considered by the Full Bench when hearing an application for a declaration under s 71 of the Act. This is a matter, (if it is to be pursued), that may be raised with the Registrar of the Commission.
- 14 The scope of the powers, functions and duties of a Full Bench hearing an application for a declaration under s 71 of the Act are circumscribed by the express provisions of s 71. The Full Bench is not provided with a discretionary power to make a declaration. The power in s 71 to make a declaration is not inquisitorial, nor arbitral, but requires the Full Bench to interpret the rules of the State organisation and the counterpart Federal body. If the conditions set out in s 71(2), s 71(3) and s 71(4) are met then the Full Bench is obliged to make a declaration. The pre-conditions set out in these provisions require the Full Bench to have regard to, and only to, the provisions of the rules of the State organisation and the rules of the counterpart Federal body.

Qualifications of persons for membership

- 15 Under s 71(2) of the Act, the Full Bench is required to consider whether the rules of the State organisation and its counterpart Federal body relating to the qualifications of persons for membership can be deemed to be the same. The Full Bench can make such a declaration if it forms the opinion that the rules of each body are substantially the same: s 71(2) of the Act. Further, s 71(3) of the Act provides the Full Bench may form the opinion that the rules referred to in s 71(2) are substantially the same notwithstanding that a person who is:
- (a) eligible to be a member of the State organisation is, by reason of his being a member of a particular class of persons, ineligible to be a member of that State organisation's counterpart Federal body; or
 - (b) eligible to be a member of the counterpart Federal body is, for the reason referred to in paragraph (a), ineligible to be a member of the State organisation.

- 16 In FBM 15 of 2010 the Full Bench had regard to the evidence contained in a statutory declaration made by Kevin oel Reynolds, the secretary of the State organisation and the counterpart Federal body. After considering the documents attached to his statutory declaration, in particular a document that set out in detail a table of persons who are qualified for membership of the State organisation and the counterpart Federal body, the Full Bench formed the view that the eligibility rules of both the State organisation and the counterpart Federal body are substantially the same as required by s 71(2) and s 71(3) of the Act.
- 17 In this matter the Full Bench has before it another statutory declaration made by Mr Reynolds. This statutory declaration was made on 10 October 2011. In that statutory declaration Mr Reynolds sets out a table which compares the businesses, callings, trades, manufacturers, undertakings, industries, occupations, vocations and industrial pursuits of persons usually employed or desiring to be employed who would be eligible to be members of the State organisation and the counterpart Federal body. That table reflects the same information and analysis as the table which was annexed to Mr Reynolds' affidavit in FBM 15 of 2010. Mr Reynolds in his affidavit made on 10 October 2011 attests that since the reasons for decision were published by the Full Bench in FBM 15 of 2010 there has not been any change to either the state rules or the federal rules in relation to eligibility of membership. Consequently, following the earlier decision in FBM 15 of 2010, we are satisfied that the eligibility rules of both the State organisation and the counterpart Federal body can be deemed to be the same as the persons eligible for membership of each body are substantially the same and it is not necessary to consider this issue any further in these reasons for decision.

Are the offices that exist in the counterpart Federal body the same as the offices of the applicant?

- 18 In FBM 15 of 2010 the Full Bench analysed of each of the offices in the State organisation and the counterpart Federal body. In conducting this analysis the Full Bench had regard to the observations of Pullin J in *Jones v Civil Service Association Inc* (2003) 84 WAIG 4 [35] where his Honour found that when determining whether the offices that exist in a counterpart Federal body are the same as the offices of the State organisation, it is necessary for the Full Bench to consider the functions and powers of the office based upon a consideration of the similarity or otherwise of the content of the rules. Since the determination of FBM 15 of 2010, the offices that exist in each organisation still remain the same. The offices that exist in the State organisation are established by r 16 of the rules of the state organisation. These are as follows:

- (a) President
- (b) Senior Vice President
- (c) Vice President
- (d) Secretary
- (e) Two Assistant Secretaries
- (f) Treasurer
- (g) Two Trustees
- (h) Two Ordinary Executive Members.

- 19 The offices of the counterpart Federal body are established by r 42(a)(v). These offices are as follows:

- (a) Divisional Branch President
- (b) Divisional Branch Senior Vice President
- (c) Divisional Branch Vice President
- (d) Divisional Branch Secretary
- (e) Two Divisional Branch Assistant Secretaries
- (f) Divisional Branch Treasurer
- (g) Three Divisional Branch Trustees
- (h) Five Divisional Branch Management Committee Members.

- 20 In FBM 15 of 2010 the Full Bench found that the rules of the counterpart Federal body did not prescribe any duties for the office of the Divisional Branch Treasurer or the office of Divisional Branch Senior Vice President. As those two offices had no powers or functions prescribed, the Full Bench found that they were not satisfied that for each of the offices prescribed in the State organisation there was a corresponding office in the Branch within the meaning of s 71(1), s 71(2) and s 71(3) of the Act. However, with the exception of those two offices, the Full Bench was satisfied that there was otherwise an office for each office in the State organisation and the Branch. In particular, the Full Bench in FBM 15 of 2010 made the following finding [51]:

In the circumstances where no functions or powers of the Divisional Branch Treasurer and the Divisional Branch Senior Vice President are prescribed in the rules of the counterpart Federal body (other than common duties as a member of the Divisional Branch Management Committee), and where specific functions and powers of the office of Treasurer and the Senior Vice President in the State organisation are prescribed and vested specifically in each office, we are unable to form the opinion that the rules of the counterpart Federal body prescribing offices are the same or can be deemed to be the same as the rules of the State organisation. For these reasons we are of the opinion that an order should be made that the application be dismissed.

- 21 In the statutory declaration made by Mr Reynolds on 10 October 2011 he states as follows:

19. On 11 August 2011, in the matter of *Construction, Forestry, Mining and Energy Union* [2011] FWAD 4832 ("the **FWA Decision**"), Fair Work Australia certified alterations to the Construction and General Division Rules. A copy of the FWA Decision is Annexed hereto and marked "**Annexure "KNR6"**".

20. The alterations made to the Construction and General Division Rules were sub rule 48A and the insertion of a new rule 48D. These alterations were lodged with Fair Work Australia on 12 July and 8 August 2011 respectively.
21. New sub rule 48A (b) is in respect of the Construction and General Division and reads as follows :
- "(b) *In the Western Australian Divisional Branch, the Divisional Branch Treasurer shall:*
- (i) *draw up a report and balance sheet for submission to members in the months of January and July and submit his or her books and accounts to the Auditor half-yearly;*
- (ii) *receive all moneys and pay them into the bank account of the Divisional Branch immediately, with the exception of petty cash not exceeding five hundred dollars (\$500.00) at any one time;*
- (iii) *keep distinct and intelligible account of all moneys received and expended, with vouchers detailed therefore;*
- (iv) *submit a statement of his or her receipt and expenditure every three months to the members of the Divisional Branch attending a General Meeting;*
- (v) *not make any payment, other than for his or her own travelling and accommodation expenses incurred whilst on business, exceeding twenty dollars (\$20,00) except by cheque;"*
22. New rule 48D is in respect of the Construction and General Division and reads as follows:
- "48D - DUTIES OF DIVISIONAL BRANCH SENIOR VICE-PRESIDENT (WESTERN AUSTRALIA)**
- Notwithstanding the provisions of any other rule relating to the duties of Divisional Branch officer, in the Western Australian Divisional Branch the duties of the Divisional Branch President shall, in his or her absence, be performed by the Divisional Branch Senior Vice President.*
- In the absence of both the Divisional Branch President and the Divisional Branch Senior Vice President, the Divisional Branch Vice President shall perform the duties of the Divisional Branch President. In the simultaneous absence of the Divisional Branch President, Divisional Branch Senior Vice President and Divisional Branch Vice President, the Divisional Branch Management Committee may appoint a member to carry out the duties of the President."*
- 22 It is clear from the changes to the rules of the counterpart Federal body that the functions and powers which are prescribed for the Divisional Branch Treasurer are now the same as the functions and powers prescribed for the office of Treasurer pursuant to r 25(3) of the rules of the State organisation. Also the duties now prescribed by r 48D of the rules of the counterpart Federal body are now the same as the functions and powers of the Senior Vice President and the Vice President of the State organisation.
- 23 Having regard to the changes to the rules of the counterpart Federal body which were made by Fair Work Australia on 11 August 2011 and to the reasons given by the Full Bench in FBA 15 of 2010, we are now satisfied that for each office in the State organisation there is a corresponding office in the Branch and that the declaration sought by the applicant should be made by the Full Bench.

2011 WAIRC 01169

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS

APPLICANT**-and-**

(NOT APPLICABLE)

RESPONDENT**CORAM**

FULL BENCH

THE HONOURABLE J H SMITH, ACTING PRESIDENT

CHIEF COMMISSIONER A R BEECH

COMMISSIONER S M MAYMAN

DATE

WEDNESDAY, 21 DECEMBER 2011

FILE NO/S

FBM 7 OF 2011

CITATION NO.

2011 WAIRC 01169

Result	Declaration issued
Appearances	
Applicant	Mr S A Millman (of counsel)

Declaration

This matter having come on for hearing before the Full Bench on 16 December 2011, and having heard Mr S A Millman, of counsel, on behalf of the applicant, the Full Bench being of the opinion upon the evidence that the rules of the applicant and the Construction, Forestry, Mining and Energy Union, Construction and General Division Western Australian Divisional Branch, its counterpart Federal body, relating to the qualifications of persons for membership of each such body are substantially the same, and the Full Bench also being of the opinion that the rules of the counterpart Federal body prescribing the offices which exist in the Branch are the same in this respect as the rules of the applicant, it is this day, 21 December 2011, declared as follows:—

- (1) The rules of the applicant and its counterpart Federal body relating to the qualifications of persons for membership are deemed to be the same, in accordance with s 71(2) of the *Industrial Relations Act 1979* (the Act).
- (2) The rules of the counterpart Federal body prescribing the offices which exist in the Branch are hereby deemed to be the same as the rules of the applicant, prescribing the offices which exist in the applicant, in accordance with s 71(4) of the Act.

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

[L.S.]

2011 WAIRC 01162

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS	APPLICANT
	-and- (NOT APPLICABLE)	RESPONDENT
CORAM	FULL BENCH THE HONOURABLE J H SMITH, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH COMMISSIONER S M MAYMAN	
DATE	FRIDAY, 16 DECEMBER 2011	
FILE NO/S	FBM 7 OF 2011	
CITATION NO.	2011 WAIRC 01162	

Result	Order issued
Appearances	
Applicant	Mr S A Millman (of counsel) Mr R Mcjannett

Order

This matter having come on for hearing before the Full Bench on 16 December 2011, and having heard Mr S A Millman, of counsel, on behalf of the applicant and Mr R Mcjannett, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders —

THAT the application by Robert Mcjannett for leave to intervene in these proceedings pursuant to s 27(1)(k) of the *Industrial Relations Act 1979* be and is hereby dismissed.

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

[L.S.]

UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

2011 WAIRC 01183

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION PHILIP DANALA	APPLICANT
	-v-	
	PATHWEST LABORATORY MEDICINE WA (SILVANO PALLADINO)	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	FRIDAY, 23 DECEMBER 2011	
FILE NO/S	U 65 OF 2010	
CITATION NO.	2011 WAIRC 01183	
Result	Discontinued	
Representation		
Applicant	Mr P Danala	
Respondent	Ms S Smith	

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
 WHEREAS on 4 June 2010 the Commission convened a conference for the purpose of conciliating between the parties; and
 WHEREAS at the conclusion of that conference the applicant sought to pursue his claim via an application to the Public Service Appeal Board; and
 WHEREAS the Commission contacted the applicant on several occasions about lodging a Notice of Withdrawal or Discontinuance form; and
 WHEREAS on 21 September 2011 the applicant filed a Notice of Withdrawal or Discontinuance in respect of the application; and
 WHEREAS on 10 October 2011 the respondent consented to the matter being discontinued;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2011 WAIRC 01180

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION SARAH GUALA	APPLICANT
	-v-	
	DURHAM LODGE THOROUGHBRED STUD	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	FRIDAY, 23 DECEMBER 2011	
FILE NO/S	U 118 OF 2011	
CITATION NO.	2011 WAIRC 01180	
Result	Application dismissed	

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979* lodged out of time, together with an application that the application be accepted out of time; and

WHEREAS on the 26th day of August 2011 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at the conclusion of that conference the applicant sought time to consider her position; and

WHEREAS on the 25th day of November 2011 the Commission set the matter down for hearing on the 14th day of December 2011 for the applicant to show cause why the application should not be dismissed; and

WHEREAS on the 14th day of December 2011 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner.

2012 WAIRC 00001

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

AARON GUTIERREZ

APPLICANT

-v-

BLEENOS BISTRO (BLEENOS PTY LTD.)

RESPONDENT

CORAM

COMMISSIONER S M MAYMAN

DATE

TUESDAY, 3 JANUARY 2012

FILE NO/S

B 117 OF 2011

CITATION NO.

2012 WAIRC 00001

Result Application discontinued

Representation

Applicant Mr A Gutierrez

Respondent Ms S Richardson

Order

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;

AND WHEREAS on 2 September 2011, 16 September 2011 and 28 September 2011 the Commission convened conferences for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference held on 28 September 2011 no agreement was able to be reached between the parties;

AND WHEREAS this matter was listed for hearing on 15 November 2011;

AND WHEREAS at the hearing the applicant sought and was granted an adjournment;

AND WHEREAS on 20 December 2011 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2011 WAIRC 01177

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 THOMAS HENRY HOAD
 TRADING AS BUCCANEER INFLATABLES PTY LTD
APPLICANT

-v-
 MELVILLE WATER POLO CLUB (INC)
RESPONDENT

CORAM ACTING SENIOR COMMISSIONER P E SCOTT
DATE FRIDAY, 23 DECEMBER 2011
FILE NO/S U 182 OF 2011
CITATION NO. 2011 WAIRC 01177

Result Application dismissed

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
 WHEREAS on the 12th day of December 2011 the applicant advised the Commission, in writing, that the parties had reached an agreement;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
 Acting Senior Commissioner.

2011 WAIRC 01187

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 KELLY-ANNE KELLY
APPLICANT

-v-
 COMMISSIONER OF POLICE
RESPONDENT

CORAM ACTING SENIOR COMMISSIONER P E SCOTT
DATE FRIDAY, 30 DECEMBER 2011
FILE NO/S U 64 OF 2011
CITATION NO. 2011 WAIRC 01187

Result Application dismissed

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*, and
 WHEREAS on the 19th day of May 2011 the Commission convened a conference for the purpose of conciliating between the parties; and
 WHEREAS at the conclusion of that conference the parties agreed to engage in further discussions; and
 WHEREAS on the 22nd day of December 2011 the applicant filed a Notice of Discontinuance in respect of the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
 Acting Senior Commissioner.

2011 WAIRC 01185

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	MIA KRIZNIC	APPLICANT
	-v-	
	DEVELOPMENTAL DISABILITY COUNCIL OF WA (INC)	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	FRIDAY, 30 DECEMBER 2011	
FILE NO/S	U 162 OF 2011	
CITATION NO.	2011 WAIRC 01185	
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Result	Application dismissed	

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*, and
 WHEREAS on the 2nd day of December 2011 the Commission convened a conference for the purpose of conciliating between the parties; and
 WHEREAS at the conclusion of that conference the parties reached an agreement in principle in respect of the application; and
 WHEREAS on the 20th day of December 2011 the applicant filed a Notice of Discontinuance in respect of the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
 Acting Senior Commissioner.

2011 WAIRC 01179

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	JACQUELINE ANNE LOMAS	APPLICANT
	-v-	
	METROPOLITAN HEALTH SERVICE	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	FRIDAY, 23 DECEMBER 2011	
FILE NO/S	U 190 OF 2009	
CITATION NO.	2011 WAIRC 01179	
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Result	Application dismissed	
Representation		
Applicant	No appearance	
Respondent	Ms T Sweeney	

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
 WHEREAS by letter dated the 9th day of September 2011 the Commission directed the applicant to advise the Commission of her intentions regarding the application no later than 4.00pm on the 23rd day of September 2011 and that if she did not contact the Commission by that time it may be assumed that she did not wish to proceed with the application and an order may issue for its dismissal; and
 WHEREAS by 4.00 pm on the 23rd day of September 2011 the applicant had not contacted the Commission; and

WHEREAS by a Notice of Hearing dated the 15th day of November 2011 the Commission advised the applicant that a hearing would be convened on Monday the 28th day of November 2011 for the applicant to show cause why the application should not be dismissed; and

WHEREAS at the hearing on Monday the 28th day of November 2011 there was no appearance for or by the applicant;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*; hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner.

2011 WAIRC 01178

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	JOHN MORRIS	APPLICANT
	-v-	
	GOVERNMENT OF WESTERN AUSTRALIA - DEPARTMENT OF HEALTH - HEALTH CORPORATE NETWORK	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	FRIDAY, 23 DECEMBER 2011	
FILE NO/S	U 196 OF 2009	
CITATION NO.	2011 WAIRC 01178	
Result	Application dismissed	
Representation		
Applicant	No appearance	
Respondent	Ms T Sweeney	

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and

WHEREAS by letter dated the 9th day of September 2011 the Commission directed the applicant to advise the Commission of his intentions regarding the application no later than 4.00pm on the 23rd day of September 2011 and that if he did not contact the Commission by that time it may be assumed that he did not wish to proceed with the application and an order may issue for its dismissal; and

WHEREAS by 4.00 pm on the 23rd day of September 2011 the applicant had not contacted the Commission; and

WHEREAS by a Notice of Hearing dated the 15th day of November 2011 the Commission advised the applicant that a hearing would be convened on Monday the 28th day of November 2011 for the applicant to show cause why the application should not be dismissed; and

WHEREAS at the hearing on Monday the 28th day of November 2011 there was no appearance for or by the applicant;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*; hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner.

2011 WAIRC 01186

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION RAYMOND WILLIAM MUIR	APPLICANT
	-v-	
	SOUTHERN ABORIGINAL CORPORATION	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	FRIDAY, 30 DECEMBER 2011	
FILE NO/S	U 177 OF 2011	
CITATION NO.	2011 WAIRC 01186	

Result	Application dismissed
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Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*, and
 WHEREAS on the 6th day of December 2011 the Commission convened a conference for the purpose of conciliating between the parties; and
 WHEREAS at the conclusion of that conference the applicant sought time to consider his position; and
 WHEREAS by an email dated the 21st day of December 2011 the applicant advised that he wished to discontinue the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner.

2011 WAIRC 01176

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION JUSTINE YOUNG	APPLICANT
	-v-	
	WORLEYPARSONS	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	FRIDAY, 23 DECEMBER 2011	
FILE NO/S	B 127 OF 2011	
CITATION NO.	2011 WAIRC 01176	

Result	Application dismissed
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Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and
 WHEREAS by a letter dated the 27th day of September 2011 the Commission directed the applicant to advise the Commission of her intentions regarding the application no later than 4.00 pm on the 4th day of October 2011 and that if she had not contacted the Commission by that time it may be assumed that she did not wish to proceed with the application and an order may issue for its dismissal; and
 WHEREAS by 4.00 pm on the 4th day of October 2011 the applicant had not contacted the Commission; and
 WHEREAS on Monday the 28th day of November 2011 the Commission convened a hearing for the purpose of the applicant showing cause why the application should not be dismissed; and
 WHEREAS the applicant did not appear at the hearing convened on the 28th day of November 2011;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner.

2011 WAIRC 01170

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
SARAH WICKHAM

APPLICANT

-v-

THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S.7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927 (WA) AS THE HOSPITALS FORMERLY COMPRISED IN THE METROPOLITAN HEALTH SERVICE BOARD, THE PEEL HEALTH SERVICES BOARD AND THE WA COUNTRY HEALTH SERVICE

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE WEDNESDAY, 21 DECEMBER 2011
FILE NO/S B 73 OF 2011
CITATION NO. 2011 WAIRC 01170

Result Application discontinued
Representation
Applicant Mr K Trainer (as agent)
Respondent Mr M Aulfrey (of counsel)

Order

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;
AND WHEREAS on 30 May 2011 the Commission convened a conference for the purpose of conciliating between the parties;
AND WHEREAS at the conclusion of the conference no agreement was able to be reached between the parties;
AND WHEREAS this matter was listed for a directions hearing on 9 August 2010;
AND WHEREAS this matter was listed for hearing on 19, 20, 21 and 22 September 2011;
AND WHEREAS prior to the hearing of the matter the parties were able to reach an agreement and the hearing was adjourned;
AND WHEREAS on 13 December 2011 the applicant filed a Notice of Discontinuance in respect of the application;
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2011 WAIRC 01171

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
SARAH WICKHAM

APPLICANT

-v-

THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S.7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927 (WA) AS THE HOSPITALS FORMERLY COMPRISED IN THE METROPOLITAN HEALTH SERVICE BOARD, THE PEEL HEALTH SERVICES BOARD AND THE WA COUNTRY HEALTH SERVICE

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE WEDNESDAY, 21 DECEMBER 2011
FILE NO/S U 73 OF 2011
CITATION NO. 2011 WAIRC 01171

Result	Application discontinued
Representation	
Applicant	Mr K Trainer (as agent)
Respondent	Mr M Aulfrey (of counsel)

Order

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
 AND WHEREAS on 30 May 2011 the Commission convened a conference for the purpose of conciliating between the parties;
 AND WHEREAS at the conclusion of the conference no agreement was able to be reached between the parties;
 AND WHEREAS this matter was listed for a directions hearing on 9 August 2010;
 AND WHEREAS this matter was listed for hearing on 19, 20, 21 and 22 September 2011;
 AND WHEREAS prior to the hearing of the matter the parties were able to reach an agreement and the hearing was adjourned;
 AND WHEREAS on 13 December 2011 the applicant filed a Notice of Discontinuance in respect of the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

CONFERENCES—Matters referred—

2011 WAIRC 00307

DISPUTE RE CLASSIFICATION FOR INSTRUCTORS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

UNITED FIREFIGHTERS UNION OF AUSTRALIA - WEST AUSTRALIAN BRANCH

APPLICANT

-v-

CHIEF OPERATIONS OFFICER - FIRE & EMERGENCY SERVICES AUTHORITY

RESPONDENT

CORAM

COMMISSIONER J L HARRISON

HEARD

TUESDAY, 5 OCTOBER 2010, WEDNESDAY, 6 OCTOBER 2010, THURSDAY, 7 OCTOBER 2010, FRIDAY, 8 OCTOBER 2010, THURSDAY, 9 DECEMBER 2010

DELIVERED

WEDNESDAY, 20 APRIL 2011

FILE NO.

CR 17 OF 2010

CITATION NO.

2011 WAIRC 00307

Catchwords

Industrial Relations (WA) - Application for new classification of Instructor to be remunerated at rate of District Officer - State Wage Order - Statement of Principles July 2010 - Principle 7 Work Value Changes - Appropriate in all the circumstances for new classification of Instructor to be created - Base rate of pay to be 92 percent of District Officer rate - Further hearing as to appropriate career structure for Instructor classification - *Industrial Relations Act 1979* (WA) s 6, s6(af), s 6(ca), s 26(1), s 26(1)(a), (c) and (d), s 44(9)

Result

Upheld in part

Representation

Applicant

Ms R Cosentino (of counsel)

Respondent

Mr G McCorry (as agent)

Reasons for Decision

- On 28 April 2010 the United Firefighters Union of Australia - West Australian Branch ("the applicant") lodged an application in the Commission pursuant to s 44 of the *Industrial Relations Act 1979* ("the Act") seeking the Commission's assistance with respect to a dispute with the Chief Operations Officer - Fire and Emergency Services Authority ("the respondent") about the remuneration to be paid to Instructors working at TFF schools.

2 The Commission convened numerous conferences however conciliation was unavailing and the issues in dispute were referred for hearing and determination pursuant to s 44(9) of the Act.

3 The schedule of the Memorandum of matters referred for hearing and determination is as follows:

“1. The applicant is seeking the following orders:

- (a) THAT a new classification of Instructor is to apply to employees of the respondent when training new recruits and existing employees during Recruit school training, Specialist training, Certification of Station Officer general training and SEP Training.
- (b) THAT the remuneration of Instructor be paid at the rate of a District Officer.

2. The respondent opposes the orders issuing.

Contentions:

Applicant

3. The applicant relies on Principle 7, Work Value Changes, of the Statement of Principles - July 2010, as the basis of its claim.

4. In support of its claims, the applicant maintains the following:

The Instructor Claim

- (a) For many years and throughout the careers of some of the longest serving current Firefighters, qualified trainers from amongst “the ranks” have performed various aspects of training of new recruits and existing employees. The duties of trainers have included:
 - Recruit school training;
 - Specialist training;
 - Certification of Station Officer general training; and
 - SEP Training.
- (b) In order to be able to conduct the training, employees require certain minimum training qualifications and they must maintain their training qualifications by regular updates and assessments.
- (c) Pre 1997, all training was conducted by employees classified at the level of District Officer. Certain District Officers having the requisite qualifications to act as trainers were transferred to the training centre (then located in Belmont) from their permanent positions to perform training on a temporary basis. There was no additional remuneration provided to the District Officers for performing these duties but involvement in training was viewed favorably for the purposes of selection for promotion to management positions. If not enough District Officers were available Station Officers were selected to act as District Officers for the duration of the Training and paid at the District Officer rank.
- (d) Since 1997 there has been a trend for the respondent to direct firefighters below the District Officer classification to perform training at the Training Centre. In particular, it is now the case that many Station Officers perform a great deal of Training Centre training. The *Western Australian Fire Service Enterprise Bargaining Agreement 2008* (“the 2008 Agreement”) provides for personnel performing training to be paid an allowance for that training. In reality, all personnel performing training, no matter their classification, are performing work that has historically been considered to fall within the District Officer classification. As a result personnel performing precisely the same work with the same level of skills are being paid at different rates depending on their classification.
- (e) The respondent now proposes to transfer personnel to the training centre on a permanent basis. The personnel contemplated for transfer in many instances are classified as Station Officers. In the circumstances, an allowance for providing training is inappropriate. A new classification must be created, comparable to the classification of District Officer, to be filled by full-time trainers.
- (f) The effect of the creation of a new classification is that any person who acts in the position of Instructor, whether on a full time permanent basis, or temporarily, will be entitled to be paid at a rate equivalent to District Officer for the duration of acting as an Instructor. In other words, all personnel performing training will be remunerated in the same amount for the same work.

Flow On

- (g) Under Principle 7 the Commission must be satisfied that the work value change sought does not have flow-on effect to other industries. Because the variations sought relate to classifications which are unique to the respondent and the fire service, the variations are not capable of flow-on such as would militate against approval of the variation.

Respondent

5. In support of its claim that the orders being sought not issue, the respondent maintains the following:

- (a) Application C 17 of 2010 is in relation to the remuneration for General Instructors for Recruit Firefighter Schools only, not instructors generally and the respondent objects to the expansion of this claim beyond Instructors for the Recruit Firefighter School.
- (b) The remuneration for Instructors is covered by existing provisions within the 2008 Agreement.

Clause 53. - Other Duties Allowance provides a specific allowance for Station Officers for undertaking specific duties including that of General Instructor at the Recruit Firefighter School and this allowance was negotiated between the respondent and the applicant during the negotiations for the 2008 Agreement.

- (c) The respondent has already advised the applicant that it intends to give consideration to a specific training allowance for Instructors during the negotiation of a replacement industrial agreement which is due to be registered in May 2011.
- (d) There has not been such a significant net addition to work requirements as to warrant the creation of the new classification of Instructor and the nature of training within the respondent's operations has not changed and neither has the work environment.
- (e) This is an issue of the classification of a position, rather than the creation of a new classification. General Instructor is a job title not a rank or classification level. If all job titles were included in the classification schedule, it would become unwieldy and unnecessarily cumbersome.
- (f) More than one pay rate is applicable to the position of General Instructor as the roles and responsibilities vary depending on the nature of the training being conducted.
- (g) Having all General Instructors paid at the same remuneration as District Officer is likely to have a significant impact on the applicant's members as firefighters would be denied valuable career development opportunities if the remuneration is at the District Officer level. The opportunities would then only be available for existing District Officers and Station Officers.
- (h) There is a likelihood of flow on effects of this application within the respondent's operations in relation to the implications for the rank of positions in supervisory roles in the training environment if this application is successful.
- (i) In conclusion, it is the respondent's position that the position of General Instructor has variable remuneration depending on the work that is being done, General Instructor is a job title rather than a rank and as a result, this is a matter of the classification of the position rather than a work value matter."

Background

4 At the commencement of the hearing the parties agreed on the background to this matter as follows:

- The respondent's Training Centre provides training to career firefighters, volunteers and commercial/third parties and this application concerns only career firefighter training delivered from the Training Centre. The relevant career firefighter training delivered from the Training Centre includes:
 - The Recruit Firefighter Program (the TFF school) - a 12 week program for newly appointed firefighters, qualifying participants in Certificate II in Firefighting Operations from the Public Safety Training Package ("PSTP") National Fire Curriculum.
 - The Modular Training Program - five year training, practical and theory to obtain the rank of Senior Firefighter ("SFF").
 - Skills Enhancement Program ("SEP") - an annual training program designed to update all firefighter skills and to refresh training to maintain currency of skills.
 - The Operational Management Program - designed to provide SFFs with skills and knowledge required for Station Officer ("SO") duties. It is foreshadowed that the Operational Management Program will soon be replaced with an Officer Training School.
 - Specialist Training to confer qualifications in particular areas regarded as "specialist".
- Career firefighter training is delivered to participants by qualified trainers generally appointed to a training role temporarily for the duration of the relevant training only. These trainers may be at SFF, SO or District Officer ("DO") rank. They are required to come off their usual shift on station and work on day duties to perform the training role. Currently on an interim basis SOs who deliver training are paid a temporary special allowance to Area Officer level. Those in classifications below DO also receive a weekly "other duties allowance" of \$102.75 in accordance with Clause 53 of the *Western Australian Fire Service Enterprise Bargaining Agreement 2008* ("the 2008 Agreement").
- The parties are in dispute in relation to the rank and remuneration of firefighters below the DO rank who perform career firefighter training.

5 **Glossary of Terms**

AFAC	Australian Fire and Emergency Services Authorities Council
AIIMS	Australasian Inter-Service Incident Management System
AQTF	Australian Quality Training Framework
BA	Breathing Apparatus
BATO	Breathing Apparatus Training Officer
CBR	Chemical, Biological and Radiological

DO	District Officer
FESA	Fire and Emergency Services Authority
HAZMAT	Hazardous Materials
POC	Point of Contact
PPE	Personal Protection Equipment
PSTP	Public Safety Training Package
RCR	Road Crash Rescue
RTO	Registered Training Organisation
SEP	Skills Enhancement Program
SFF	Senior Firefighter
SO	Station Officer
TFF	Trainee Firefighter
TAC	Training Accreditation Council
TPM	Training Procedures Manual
TRK	Training Resource Kit
USAR	Urban Search and Rescue

Applicant's evidence

Robert James Forster

- 6 Mr Forster gave evidence by way of a witness statement (Exhibit A7.1). Mr Forster is a DO and he is the Manager of Career Training at the respondent's Training Centre.
- 7 Mr Forster has a number of formal qualifications with respect to fire management, training and assessment. Mr Forster instructs in the following subjects:
 - General Fire;
 - BA;
 - Driving;
 - Confined Space;
 - Atmospheric Monitoring;
 - Compartment Fire Behaviour Training; and
 - Senior Assessor Incident Management.
- 8 Mr Forster has been involved in the Fire and Rescue industry since 1976. He commenced employment with the respondent in 1996 as a SO and in 1997 he became a General Instructor and trained firefighters. In 1998 he was the Acting DO Coordinator for TFF Course 46 and an Acting DO in charge of the SEP for that year. Between 1998 and 2002 Mr Forster was a DO in charge of the respondent's Commercial Training Unit.
- 9 Mr Forster gave evidence that in 1996 all General Instructors were paid as Acting DOs but this practice soon ceased and SOs who worked at the Training Centre then received a six percent allowance in addition to their normal salary. Mr Forster stated that when SFFs delivered TFF training they were paid at the rate of an Acting SO and did not receive the six percent allowance.
- 10 Mr Forster stated that in the 1980s a modular training system was used to train TFFs and additional firefighting skills were learned on shift which was a simplified version of what is currently undertaken. Mr Forster stated that when AFAC was established in the early 1990s this resulted in a move towards standardisation of training at a national level and training changed from being curriculum based to competency based training and AFAC prescribed the minimum theory to be taught which was knowledge based. In 2004 training incorporated the PSTP standards which are less prescriptive in terms of knowledge compared to the AFAC standards but there is more of a focus on learning skills used in the workplace. Mr Forster stated that applying the PSTP standards to training increases the demands on Instructors as each individual participant is assessed on all of the criteria set out in the standards, there is more recording required and more reporting and feedback must be given to participants. A higher level of attention must also be paid to individuals and their performance as group assessments cannot be performed. Mr Forster also said that the increased regulation of training, increasing compliance issues and more sophisticated technology being taught in the same or less time, means the content of training has changed and is now more complex.
- 11 Mr Forster stated that the current TFF course is conducted over 14 weeks and it involves four General Instructors delivering training to about 24 TFFs. Each course has a Coordinator (DO rank), a Duty Officer (SFF rank), BA Instructors, Driving Instructors, Managing Injury Instructors and Compartment Fire Behaviour Instructors. Driver training is run off and on road for 11 days of the TFF course. Mr Forster gave evidence that the SEP is run over four months or over about 120 days each year and for groups of 12 to 16 firefighters per day with two Instructors delivering training each day. These Instructors are

assisted by SOs who attend the training with their crew. Mr Forster stated that recently DOs delivered training to Incident Command course candidates over a period of 10 weeks.

- 12 Mr Forster stated that in his role as the Manager of Career Training he is in charge of career training and he has responsibility for:
- TFF courses and subsequent Firefighter Development Program (duration five years);
 - Operational Staff Return to Work Program;
 - Annual SEP;
 - Operational Management Program;
 - Driver Training;
 - BA Training; and
 - Recognition of Prior Learning.
- 13 Mr Forster stated that he reports to the Manager Training and Development, Mr David Evenis. Five Training and Development Officers, a BATO and one clerical position report to him.
- 14 Mr Forster stated that the respondent currently has 160 TRKs and he is responsible for ensuring they are up to date.
- 15 Mr Forster stated that FESA is a RTO and the retention of this status is dependent upon compliance with the AQTF standards. The TAC conducts AQTF assessments which is an indicator of the quality of training delivered by the respondent.
- 16 Mr Forster stated that at the end of each career firefighter course the course coordinator is required to prepare a report on course outcomes and he reviews these reports to check their compliance with procedural requirements. Mr Forster stated that almost without exception, courses delivered to career firefighters involve the management of significant and serious risks at various levels as firefighting, rescue and incident management involve significant threats and dangers to the public. Training must therefore be carried out in such a way that career firefighters who deliver the service are adequately skilled and competent to ensure that the risk to the public, colleagues and themselves when responding to an incident is minimised. Mr Forster stated that training also frequently involves exercises and use of equipment which can present danger to participants and trainers as this training simulates emergency response situations.
- 17 Mr Forster gave evidence that it is critical that Instructors who deliver training and assessors who pass participants are highly effective both as teachers and supervisors and they must be able to limit the risk of injury to participants during training and in the future. Mr Forster used Compartment Fire Behaviour training by way of example which covers exercises in controlled heat environments involving thermal layers of heat where the top layer exceeds 1200 degrees and he claimed that if a participant deviates from instruction in this area there is a risk of serious burn injuries. In RCR training participants must practice cutting metal and if equipment is not used correctly there is a significant risk of amputation and other physical injury and when participants approach burning liquefied petroleum gas they are at risk of exposure to extreme temperatures from the gas flames if the training is not conducted properly.
- 18 Mr Forster gave evidence that training career firefighters involves more than delivering theoretical concepts to firefighters. It requires vigilant management of participants when they undertake activities during training and when developing their competencies.
- 19 Mr Forster stated that different skills are used by Instructors to those used by SOs when conducting on-shift training and on-shift training also does not require a SO to have an in-depth understanding of the AQTF nor are they required to have any formal training qualifications outside of the qualifications to be a SO. There is also no requirement on SOs to conform with AQTF regulatory standards and conditions or the TPM when conducting on-shift maintenance training.
- 20 Mr Forster observed that in recent years the level of mechanical knowledge of TFFs has reduced and Instructors cannot take their level of practical knowledge or manual skills for granted.
- 21 Mr Forster maintained that to be an effective trainer Instructors must:
- Understand a range of training compliance issues including:
 - FESA's TPM;
 - AFAC standards;
 - PSTP;
 - Relationship of Government Skills Australia to training;
 - AQTF;
 - Australian Qualifications Framework;
 - National Training Information Service;
 - Competency Based Training; and
 - Australian Fire Competencies.
 - Possess skills and knowledge in the unit of competency being delivered and be able to deal effectively with TFFs who are now more highly educated and will challenge and ask questions.
 - Possess practical experience in the unit of competency being delivered.
 - Have keen supervisory skills including well developed peripheral vision skills.

- Have high order communication skills and confidence which enables the effective management and control of the behaviour of participants.
 - Possess leadership and negotiation skills to deal with various personalities and to motivate participants as there is often a high degree of emotion involved with training and potential for conflict. Instructors must ensure all participants remain disciplined.
 - Be good organisers to organise crews and the logical sequencing of the training.
 - Have an ability to make fast risk assessments, that is, see three or four steps ahead and be able to stop a participant from injuring themselves or others by quick action, even physical force.
 - Be able to deal with people with diverse backgrounds.
 - Have experience delivering at least two TFF courses or the direct guidance of a Senior General Instructor and the Course Coordinator.
 - Possess a Certificate IV in Firefighting Supervision.
- 22 Mr Forster is unaware of any employees who have less than SO rank who have demonstrated that they have all the above required skills and knowledge and Mr Forster stated that passing the Incident Command Course, which is a requirement for promotion to be a SO, is the basic requirement necessary to be an Instructor.
- 23 Mr Forster stated that the career training section at the Training Centre has about six SOs and SFFs and three positions are temporary and two are permanent. There is also a BA officer who is a SFF. Mr Forster stated that not all Instructors have completed the Operational Management Program. Mr Forster stated that under the AQTF standards and TAC requirements, extra work is required by Instructors to ensure they are compliant when delivering the PSTP.
- 24 Mr Forster stated that there is more expected of Instructors under PSTP compared to the AFAC requirements. Mr Forster stated that currently assessments are completed different to assessments made under the AFAC system and under AFAC the respondent was not required to have a TPM, which is a current requirement. Assessors must also currently complete assessment plans, pre and post assessment briefings and a summary of results. Mr Forster stated by way of illustration that the current Bushfire TRK under the PSTP system contains about 50 pages of compliance requirements and the Alarms and Sprinklers Instructors Guide and Learners Guide under AFAC had around two pages of compliance requirements.
- 25 Mr Forster stated that FESA requires its Instructors to hold qualifications in four subjects out of 14 of a Certificate IV qualification or hold a Certificate IV, they must meet TPM requirements and they must complete a TRK handover which involves demonstrating competency in the specific unit.
- 26 Mr Forster stated that the TPM is in place to ensure that the respondent complies with AQTF standards and conditions.
- 27 Mr Forster gave evidence that TRKs are written in three parts comprising Training Resources, Participants Resource/Learners Manual and Assessment Evaluation Resource. Previously the training package had only two sections - an Instructor's Guide and Learner's Guide.
- 28 Mr Forster stated that the SEP courses are not refresher courses and on-shift maintenance training conducted by SOs at the stations only updates skills.
- 29 Mr Forster stated that DOs supervise and direct personnel and he stated that DOs have to update their skills on an ongoing basis to be able to point out to an officer or a firefighter correct operational techniques and to give direction to firefighters.
- 30 Mr Forster stated that when the PSTP was introduced in mid 2000 what was taught and how it was taught and assessed changed and compliance requirements were put in place to ensure that the respondent did not risk losing its RTO status. In contrast under the AFAC requirements no TPM was in place, there was no hazard analysis or risk assessments undertaken nor was occupational health and safety documentation required to be completed. As a result Instructors are currently required to exercise greater skill levels than previously.
- 31 Under cross-examination Mr Forster stated that since July 2010 Instructors have had to undertake more moderation and validation under TAC requirements and because of these validation requirements Instructors have had to upgrade and validate their skills. Mr Forster stated that maintaining the respondent's RTO status relies on individuals complying with RTO requirements otherwise the respondent's RTO status could be in jeopardy. Mr Forster confirmed that Instructors used manuals and were required to follow the standards contained in them in order to ensure that the respondent was compliant with TAC requirements. Mr Forster stated that a handover is required when a TRK is used by an Instructor. This ensures that the Instructor has the qualifications to conduct the course, that the TRK is valid and that a standardised approach is followed. Mr Forster stated that Instructors are required to expand on the knowledge requirements contained in some of the areas in the TRK.
- 32 Mr Forster disagreed with the proposition that as an Instructor relies on TRKs to assess whether a trainee is competent the requirements on Instructors are therefore minimal. Mr Forster maintained that the current training and assessment was more complex than previously and involved more than TFFs just completing the requirements contained in a TRK. Mr Forster stated that there were a number of intangibles present when training and an Instructor was required to observe and make determinations about a trainee's understanding of the course requirements and a reasonable amount of latitude was given to Instructors to ensure that trainees achieved the appropriate levels of skills and knowledge. There was also more compliance required than previously as well as more prescription on trainees and Instructors. It was his view that the role of Instructor was therefore more demanding than previously.
- 33 Mr Forster stated that when he gave evidence that all General Instructors were paid as Acting DOs in 1996 he was only aware of one SO being paid as a DO.

- 34 Mr Forster stated that AFAC training relied heavily on inputs and outcomes compared to PSTP standards which required training to be more focused on developing skills and knowledge. Mr Forster disputed that the only change resulting from the introduction of PSTP was that more paperwork and more prescription was required and he stated by way of example that since 2000 the understanding of the science of fires had changed training in this area and the requirements on Instructors had evolved significantly in this regard. He also stated that compartment training previously took three days for TFFs but five days are now required to train in this area. Additionally, the science of firefighting was now more advanced and skill levels required of Instructors in this area was now greater as training was more technical and complex than in the 1990s.
- 35 Mr Forster denied that training had been 'dumbed' down as training was now more structured. Mr Forster stated that since 2005 Instructors required a greater knowledge to meet the requirements of the TPM. Furthermore, since the 1990s trainers have had to gain additional training qualifications which is a separate vocation to firefighting, training content is more sophisticated today than previously and was more practical given health and safety requirements and there was an enhanced knowledge of fire behaviour and science. Even though there was a dedicated safety officer at the Training Centre this person did not have primary responsibility for health and safety and Instructors have an equal responsibility for this issue.
- 36 Mr Forster confirmed that since early 2000 SOs have to hold four training and assessment competencies.
- 37 Mr Forster said that TFFs today were more highly educated, less mechanical and had more enquiring minds than previously so training them was more of a challenge for the Instructor and he stated that as the level of mechanical knowledge and experience of TFFs had reduced in recent years more explanation was therefore required by Instructors and this was a challenge for Instructors.
- 38 Mr Forster denied that Instructors do not have to think about the subject matter of what they are teaching given the level of detail contained in TRKs and he stated that this was a stupid proposition. Mr Forster stated that it was important for an Instructor to have underpinning knowledge of what was being taught to TFFs to ensure that there was a consistent and standardised approach to training being delivered at the required skill level and he stated that a mentoring process for Instructors assists in ensuring standardised outcomes. Mr Forster stated that it was also important for Instructors to have a high level of skills to ensure that training runs smoothly.
- 39 Mr Forster agreed that Training Development Officers at the Training Centre develop some TRKs however he maintained that their prime activity was to coordinate training not prepare training materials. Mr Forster stated that TRKs were prepared by a variety of persons including SOs and he stated that firefighters were not seconded to the Training Centre as training development officers to prepare TRKs. Mr Forster stated that when employees develop TRKs they were paid overtime to do so and he confirmed that some General Instructors write TRKs which are then edited by various internal departments.
- 40 Mr Forster stated that General Instructors instruct in a range of subjects as well as specialist areas if qualified to do so and he stated that at times additional specialist Instructors teach TFFs. Mr Forster stated that TFF training involved firefighting, BA and Driving training and in order for an Instructor to instruct in these areas they had to be qualified firefighters, have relevant Certificate IV qualifications plus units of competency in firefighting, Driving and BA as well as the requisite skills and experience. Mr Forster stated that competency in a unit was gained by an Instructor after undertaking five days of Instructor training plus being mentored on a TFF program of 11 days prior to teaching it and for accreditation purposes this process is overseen by a senior assessor who accredits the Instructor. Mr Forster stated that in contrast SOs currently undertake four units in training and assessment but they are not necessarily required to have additional training in firefighting, BA and Driver training.
- 41 Mr Forster stated that the current BA training was more complex and technical than the training in this area in the mid 1990s.
- 42 Under re-examination Mr Forster stated that in addition to the three basic areas that TFFs are trained as previously stated, they are trained in Compartment Fire Behaviour, RCR, Managing Injuries, BA Training and HAZMAT.
- 43 Mr Forster stated that a number of TRKs have been written by Instructors who hold specialist training skills including those employees who act as a POC.
- 44 Mr Forster stated that under current health and safety requirements an Instructor must undertake a hazard risk analysis of the content being delivered and he stated that not all activities undertaken by an Instructor in the General Instructor course were viewed by a safety officer. Mr Forster stated that when an Instructor undertakes his or her role they have to exercise independent thought, rely on their own knowledge, experience and particular skills, show leadership and be well organised.
- 45 Mr Forster stated that specialist Instructors have qualifications in several areas including RCR, USAR, Confined Space Rescue, Heavy Rescue, firefighting skills, Managing Injuries, Driving, Atmospheric Monitoring and Vertical Rescue.
- 46 Mr Forster stated that Instructors put in an expression of interest to teach at the Training Centre and the Instructor's qualifications are then reviewed to see whether or not they are suitable to train. Mr Forster stated the following about the qualifications required by Instructors in specialised areas:
- "- - for my purposes, given that this application relates to additional moneys to be paid for people undertaking, say, specialist training, I'm interested in understanding what if any additional training is required for an employee who actually undertakes this specialist training. Am I to understand, just as a general rule, that in addition to the four training assessment units, this specialist training cannot be undertaken unless employees have formal qualifications over and above the standard training given for those areas?---Certainly. If you were a practitioner, the trainer assessor and seniors (sic) assessors must have a higher order of qualification. So traditionally, Commissioner, what's happened is with, for example, a vertical rescue, they did a 19 day ... the practitioner did, I think it was a 19 day vertical rescue course, although not that we've ran one for quite some years now, but they did a 19 day basic course, and then if they showed promise, had a real love for that particular subject, they then pursued that, and they did another 19 day course, delivered it or helped deliver it to a (sic) already qualified vertical instructor, and then ... as an assistant ... and then pretty much were allowed

the next time round to be number 2 on the next course, so basically it was, like ... so it was a mentoring process. The other one that we have - - -"

(Transcript p 85)

- 47 Mr Forster stated that SEP training undertaken at the Training Centre updates existing skills and develops new skills and Instructors had to be experienced and accredited in line with national competencies in their area to run these courses. For example, Marine Firefighting and Managing Injuries.
- Kevin Jolly
- 48 Mr Jolly gave evidence by way of a witness statement (Exhibit A8). Mr Jolly is currently employed by the respondent as a SO and he is in charge of C Platoon, Bassendean Fire Station. Mr Jolly has held this position for 12 years. Mr Jolly commenced employment with the respondent in June 1985 and he became a SO in May 1992.
- 49 Mr Jolly is qualified as a Driving and BA Instructor and he has trained career firefighters in BA, HAZMAT management and RCR. Mr Jolly has also taught BA on a regular basis when permanent Instructors were on leave. Between 1995 and 1997 Mr Jolly transferred to the Forrestfield Training Centre as a BA Instructor and this involved training TFFs in BA, HAZMAT and RCR. From 1997 to 2006 Mr Jolly was involved in training TFFs in Emergency Driving and Four Wheel Driving, BA, HAZMAT and RCR.
- 50 Mr Jolly stated that in the 1990s the BA section at the Training Centre had four permanent Instructors known as BATOs and the head of this department between 1993 and 1998 was a DO known as the BA and Rescue Officer and he reported to the Superintendent of the Training Centre.
- 51 Mr Jolly has a number of formal training qualifications including a Certificate IV in Assessment and Workplace Training, a Certificate IV in Firefighting Supervision and six specialist qualifications as an Instructor/assessor in operational driving, operation of four wheel drive vehicles, BA, HAZMAT, Confined Space Rescue and Atmospheric Monitoring.
- 52 Mr Jolly instructed at the following courses:
- Recruit Schools 38, 39 and 40 - assisted with BA instruction and assessment;
 - Recruit Schools 55, 56, 57, 58 and 59 - Driver training instruction and assessment, Recruit School 58 - BA instruction and assessment;
 - Two Advanced Operational Training courses, BA and Road Accident Rescue instruction and assessment 1995-1997;
 - Three Incident Command courses as course Instructor/assessor 2003-2005;
 - Three Driving Instructor courses as the lead senior Instructor/assessor 2002-2005;
 - Two BA Instructor courses as the General Instructor 1995-1997;
 - Numerous volunteer courses in BA, Road Accident Rescue, Leadership and Incident Command as well as Emergency Driving 1993-2005;
 - Extensive commercial training for the mining, oil and gas industry that includes Fireman ship, Hot Fire Fighting, BA, HAZMAT, RCR and Confined Space Rescue 1993-2005;
 - BA and HAZMAT qualification training for the Police Department Drug Squad 1995-1997; and
 - Road Accident Rescue training for St John Ambulance recruits.
- 53 Mr Jolly gave evidence that over time the role of SO has changed dramatically. Whilst on shift SOs conduct maintenance training to maintain firefighters' qualifications across a range of disciplines and this involves refresher training in skills already held. SOs also mentor junior firefighters. Mr Jolly stated that in the first five years of a firefighter's employment with the respondent they progress through the firefighter development program and SOs manage their progress and this involves training and development in theory and practical exercises. Mr Jolly stated that SOs are not required to have specialist qualifications in order to undertake this training. Firefighters are required to undertake 100 hours per year of maintenance or refresher training and this usually takes between one and two hours each shift to complete. This training involves vehicle rescue techniques, hose lays, knots and lines or BA wear and is not examined or assessed. Mr Jolly stated that on the other hand TFF training is more thorough and every single step must be explained to TFFs in order to ensure that they understand what is being taught to them and rigorous practical exercises are completed in conditions. Competencies are tested periodically as well as theory assessed and each component of an exercise in a TRK must be taught. Mr Jolly gave evidence that there is little preparation required for maintenance training whereas there is extensive preparation outside of the usual hours for Instructors involved in TFF training.
- 54 Mr Jolly stated that when he trained as a firefighter in 1985 all Instructors and the Course Duty Officer were DOs and if a position was filled by a SO they were appointed as an Acting DO. Mr Jolly gave evidence that when he trained to become a SO in 1992 all of his Instructors were DOs including the BA and Driving Instructors.
- 55 Mr Jolly stated that in the late 1990s an Area Officer rank was created to train and manage volunteers in country areas and employees at this rank were paid a salary which was nine percent higher than an SO salary. Mr Jolly maintains that the rank and status of an Instructor affects the way TFFs learn and a DO is highly respected and even though SOs or SFFs are respected Mr Jolly does not believe that they are held in as high esteem as DOs.
- 56 Mr Jolly stated that prior to the introduction of the AFAC standards pass/fail modules were taught whereby every trainee had their performance recorded as a percentage and in order to pass a TFF was required to achieve a score of 75 percent on the practical tests and 65 percent on theory tests. From 1995 onwards assessment was based on competencies being achieved under the AFAC module system and Mr Jolly stated that the introduction of AFAC led to a shift towards competency based

assessment and consequently there were a lot of “grey areas” in the assessment of TFFs and the Instructor’s role became more difficult because you could not fail anyone and Instructors had to work harder to get people to redo areas that trainees were not yet competent in. In 2004 there was a further change to training and assessment when the PSTP was introduced to replace the AFAC system and the curriculum became more detailed.

- 57 Mr Jolly maintained that prior to the introduction of the AFAC standards there was less content to teach, less modules and the technology involved in delivering training was less complex than currently. Instructors often had to make their own overheads and they did not have computers and lesson plans were more simplistic such as photocopying textbook pages onto transparencies. In contrast PowerPoint presentations are now used, a lot more detail is required to be taught having regard to occupational health and safety requirements which have increased over time and a lot more attention is given to compliance issues. There is also more to cover during the same or shorter periods of time allocated for training. Mr Jolly stated that as firefighting is an inherently dangerous occupation, training in basic skills is equally as dangerous and an Instructor must take into account occupational health and safety parameters but also create a training environment that is as realistic as possible to maximise learning outcomes.
- 58 Mr Jolly stated that the responsibilities on Instructors increased after the change from AFAC to the PSTP and more accountability is now expected of Instructors. Every aspect of training must be recorded and signed off, there is a lot more paperwork to be completed and interviews to be undertaken and the Instructor must critique every aspect of a TFF’s training. Mr Jolly stated by way of example that when a TFF is trained on a fire truck a Driving Instructor conducts a written and practical assessment and this can involve on and off road capabilities and the TFF must also be qualified to operate the pump and have associated capabilities and when a TFF trains on a specialist piece of equipment such as a new BA or on an atmospheric monitor an Instructor must instruct and assess each TFF to qualify them to wear or operate each piece of equipment.
- 59 Mr Jolly stated that there is now an obligation on Instructors to maintain the currency of their qualifications every three years whereas previously this was not necessary.
- 60 Mr Jolly stated that over time the training facilities available to Instructors have changed and Mr Jolly gave evidence that the props used now are more sophisticated than previously and Instructors have to be vigilant and all safety systems have to be closely monitored given the chance of sustaining an injury. For example, training has evolved from burning rubber tyres with kerosene to simulate a smoke filled environment to having sophisticated gas and kerosene props pumped through pipes controlled by pressurised air. Mr Jolly stated that when conducting Compartment Fire Behaviour training the respondent uses a container which requires five Instructors to operate for safety reasons as it is so dangerous inside having crews witness fire behaviour.
- 61 Mr Jolly stated that during his time as an Instructor over 18 years a number of things have changed for Instructors. The new systems and processes required of Instructors are complex, Instructors are required to have high levels of knowledge, Instructors are currently more accountable, there is more paperwork and record keeping to be completed and Instructors are under pressure because of the rigid process and timeframes contained in the TRKs.
- 62 Mr Jolly stated that the qualifications required of Instructors have changed over time. In 1992 a component of the Officer School training was a module called “Train the Trainer” or TOP 1 which was conducted over 10 days and in 1996 Mr Jolly completed the Workplace Trainer/Assessor five day course, which was an AFAC qualification to requalify as an Instructor. Mr Jolly had to requalify as an Instructor in 2004 because his qualification was not compliant with the National Recognised Training Authority so he completed a four day Assessment and Workplace Training course which resulted in him attaining a Certificate IV - BSZ40198 in Assessment and Work Place Training. Mr Jolly stated that BA Instructors must now maintain their qualifications and an Instructor must accumulate 25 points of training every three years or they may lose their qualification.
- 63 Mr Jolly stated that when he was an Instructor at the Training Centre between 1995 and 1997 he was paid as a SO Level 2 as well as a six percent day duties allowance. When FESA was formed this six percent day duty allowance was abolished and he was paid the SO rate of pay when training. When Mr Jolly instructed at two TFF courses between 1999 and 2002 he was paid at SO Level 2 however, when he instructed on Recruit School 55 in 2004 and subsequent TFF school courses he was paid SO Level 2 plus a nine percent loading which was the equivalent pay to that of an Area Officer. Mr Jolly stated that prior to 2000 he was paid at a DO rate plus he received a day duties allowance of six percent as well as on call and availability allowances when training. From 2000 onwards a SO rate was paid to Instructors then an Area Officer rate was paid but this ceased when the 2008 Agreement was finalised.
- 64 Mr Jolly believes that the respondent has approximately 224 operational SOs and approximately 50 percent of them are qualified to be Instructors. Mr Jolly confirmed that he is currently the applicant’s President and he has held this position since 2006. Mr Jolly stated that he is aware that the rate of pay for a General Instructor has been an ongoing issue between the parties since the early 1990s (see Exhibit A9).
- 65 Under cross-examination Mr Jolly stated that SO training involves completing a five week Incident Command Course at the Training Centre.
- 66 Mr Jolly stated that training was more complex now than previously. All elements of a TRK have to be assessed and he stated that Instructors now have more processes to follow and training is more rigorous. Mr Jolly stated that TFF training is more complex than on-shift maintenance training and he stated that if he was to instruct at a TFF school he would have to study and research in order to successfully deliver the TRK requirements. Mr Jolly was aware that Instructors commenced undertaking their duties one week prior to a TFF school commencing but specialist Instructors are not given any preparation time prior to instructing at the Training Centre. Mr Jolly stated that at times he has been paid overtime for preparation to undertake training but he has not been paid for all of the hours of overtime that he has worked doing this task.

- 67 Mr Jolly stated that the perceived message from the respondent under the current training regime was that no trainee could fail and Instructors were under pressure to ensure that all trainees passed their course by meeting the required competencies. Mr Jolly stated that current TFFs have more diverse backgrounds than previously and some are more qualified, some have English as their second language and many lack manual dexterity and the ability to undertake manual work which is a significant portion of a firefighter's role. Even though TRKs are in place these packages have grown exponentially to cater for the requirements of all TFFs. Mr Jolly stated that as an Instructor he has been involved in writing training packages for the incident command packages delivered to SOs and he stated that these packages were not solely written by training development officers.
- 68 Mr Jolly stated that being an Instructor is not always voluntary as some employees are seconded to be an Instructor against their will and he gave evidence that some firefighters are not willing to undertake Instructor duties because of insufficient pay.
- Laurence Campbell
- 69 Mr Campbell gave evidence by way of a witness statement (Exhibit A17). Mr Campbell has been employed by the respondent since 1980 and he is currently a SO at Wangara Fire Station. He was promoted to this position in 1990. Mr Campbell has been an Instructor at the Training Centre and he has undertaken on-shift training as an SO.
- 70 Between 1994 and 2009 Mr Campbell undertook a number of courses and gained training qualifications. He trained in specialist BA, HAZMAT, Rescue Equipment and Procedures at the Training Centre in 1994 which was delivered by DOs over a period of five days. In 1995 Mr Campbell completed a three day CM3 Trainer/Assessor course which was the original trainer/assessor qualification recognised by FESA. In 2004 he completed the BSZ Certificate IV Trainer/Assessor course conducted by an external provider over nine days and he gained a Certificate IV in Fire Fighting Supervision in 2005. In 2006 he completed training to be a Confined Space Rescue Instructor at the Training Centre over one week and in 2007 he completed training to be a Compartment Fire Behaviour training Instructor over one week and he completed a TAA Certificate IV Trainer/Assessor course in 2009 over three days as a bridging course between the BSZ and a Certificate III qualification.
- 71 Mr Campbell has been an Instructor for 20 years and the programs he has delivered include:
- SEP;
 - BA, HAZMAT, Rescue - TFF, volunteer and commercial;
 - Operational Management Program - SO schools;
 - Compartment Fire T B (sic) - TFF schools/volunteers;
 - Introduction to Firefighting – volunteers;
 - Structural Firefighting – volunteers;
 - Operate Pumps – volunteers; and
 - Hot Fire – volunteers.
- 72 Mr Campbell was a full time Instructor at the Training Centre between April and October 1997.
- 73 Mr Campbell stated that when he attended TFF training in 1980 it was a 12 week course delivered by DOs or SOs acting as DOs who were permanently based at the Training Centre and this course did not cover HAZMAT and RCR, nor did it have Community Service Training or a Compartment Fire Behaviour component which is now a core component of firefighter training. Mr Campbell stated that understanding fire behaviour has evolved through the late 1980s and early 1990s and this has resulted in increased research and development of this science with respect to the behaviour of fires. Mr Campbell stated that the ratio of trainers to assessors at his school was about six to one and assessment was undertaken by the observation of trainees performing a drill previously demonstrated by the assessor and there was no formal process for obtaining feedback on this assessment. Mr Campbell stated that another difference between TFF training in the 1980s and now is the change to the complexity of technology and equipment which firefighters must now use compared to when he was a TFF.
- 74 Mr Campbell believes that TFF training now reflects less of an individual Instructor's personal or subjective views about a TFF's performance and focuses more on documented criteria and processes and assessment is more focused on individual trainees instead of a clustered or 'group' assessment. Mr Campbell stated that an Instructor's experience in a subject matter is of critical importance when teaching competently and this results in Instructors taking more time to prepare and report and record. Courses are also now structured to ensure that the skills taught and information imparted are documented so that the assessment reflects the training required instead of reflecting an assessor's views.
- 75 Mr Campbell stated that Instructors currently have access to good training resources. TRKs contain the lesson content and course materials for TFFs and the documents required to be completed for assessment purposes and in most cases a PowerPoint presentation is available. Mr Campbell stated however that there is no substitute for experience when delivering training and being able to clearly demonstrate how tasks are to be completed or understanding why they are done in a particular way. Experience is therefore required to determine performance criteria and competency. He stated that the TRK spells out the precise performance criteria but the theory behind the course content does not always lead to that particular performance criteria being fulfilled. For example, a TRK might spell out the precise manner a hose is to be carried but teaching this method effectively requires experience to demonstrate why a hose should be carried in a particular manner.
- 76 Mr Campbell stated that the instructing at the Training Centre is more stressful, demanding and more difficult than being on shift carrying out SO duties. An Instructor is responsible for ensuring that a TFF or trainee is competent in areas which have life and death ramifications and they train in environments or supervise exercises that are risky. If one person is lagging behind or not competent in a particular area, efforts must be made to ensure that this person becomes competent which means spending additional hours with them reviewing the competency and for each person who might be behind the demands and

workload on an Instructor increases. In contrast under the previous system of assessment a person may not be competent in a particular area yet would still be able to pass on the weight of other areas and there was therefore less incentive or need to spend the time ensuring this individual was competent. Another challenge for Instructors is to keep on top of paperwork and keep abreast of changes and updates and the onus lies on the Instructor to do this as the respondent does not always update its training materials.

- 77 Mr Campbell stated that TRKs were introduced around 2003 and they initially only covered Training Centre courses but additional TRKs are now being developed and rolled out for on-shift training areas. Mr Campbell stated that when he previously ran training courses he used materials limited to about five pieces of paper, including an attendance sheet, lesson plan, review sheet and a manual but TRKs contain an attendance sheet, pre-assessment briefing, delivery of information, post-assessment briefing, feedback form, PowerPoint disc and other items, Instructors must also sign assessments and sign off on competencies and there is also a process for briefing the trainee about their assessment.
- 78 Mr Campbell stated that TRKs are not always updated or current and Instructors have to check the currency of information contained in them each time they deliver training. For example, new equipment might be introduced changing what is taught in the TRK. Mr Campbell stated that the respondent has implemented a system to address this situation by designating a person as POC for a TRK who is an Instructor qualified to use that TRK. When reviewing a TRK Instructors identify issues and must forward information or issues to the POC, who then correlates and reviews this information and updates the TRK where relevant. There is therefore an additional responsibility on Instructors using TRKs to review them, share the results of that review and on the POC to translate that to update and keep the TRK current. Mr Campbell stated that he is the POC for the Bulky Foam Trailer TRK.
- 79 Mr Campbell stated that in 2007 and 2008 he received a temporary special allowance when training. Mr Campbell stated that the allowance does not come close to compensating for the remuneration he would have received if he was on shift for the same period taking into account working overtime.
- 80 As a SO Mr Campbell undertakes shift training for firefighters. This training has included:
- Appliances - Pumps and L/T (sic);
 - Specialist appliances;
 - Aerial appliance;
 - BA, HAZMAT, Rescue;
 - First Aid; and
 - Grade/Module training and assessments.
- 81 Mr Campbell stated that on-shift module training is undertaken once a firefighter comes out of TFF school and trainees undertake five years of further exams to progress to the next level as a firefighter. This involves training and assessment in operating pumps, hose drills, ladder drills, BA drills, RCR, rescue drills and HAZMAT drills. Training and assessing in these areas involves achieving outcomes and performance criteria. There are usually three to six people being trained on-station at any time, whereas at TFF schools or other training at the Training Centre involves six trainers to 18-24 trainees depending on the size of the school.
- 82 Mr Campbell gave evidence that maintenance training ensures that a firefighter's competencies are maintained and he stated that this training is far less structured in terms of timing, content and assessment than the training undertaken at the Training Centre. Mr Campbell stated that training TFFs and general training courses conducted at the Training Centre requires more coordination and organisation than on-shift training. Instructors at the Training Centre need to organise venues, resources, equipment and become familiar with the trainees in a short space of time whereas on shift the SO already knows and is familiar with the firefighters and Instructors at TFF schools need good communication skills to deal with the variety of TFFs being trained. Training at the Training Centre is also very structured and regimented because of time frames, resources and the required outcomes. The administrative requirements when conducting TFF training is also more onerous and if someone is struggling at a TFF school a lot of paperwork is needed to be completed to justify this outcome and there is therefore much more accountability with respect to results and outcomes. Additionally, TFF training is subject to the PSTP standards whereas on-shift training is not.
- 83 Under cross-examination Mr Campbell stated that in the past Instructors at the Training Centre were given the rank of Acting DO and paid an additional allowance to undertake training because they came off shift and there was an additional work load on the Instructor and additional skills were required to be utilised.
- 84 Mr Campbell stated that Instructors require enhanced scientific knowledge, expertise and experience to teach Compartment Fire Behaviour than previously and Mr Campbell stated that the Community Service training, which was now part of a firefighter's training, was delivered by FESA's managers not Instructors.
- 85 Mr Campbell denied that current TFF training was conducted in the same manner as it was when he was a TFF. Mr Campbell stated the following:
- “And what's different now?---What's different now is prior to actually doing this, you have got to do a pre-assessment briefing. Society is changing in a ... in a great deal in regards to the component. We have become a multicultural society. We have to ascertain whether an individual is ... with the individual whether English is a second language. We have to ask if they are capable of undergoing that training. They have to actually fill out a pre-course activity where they highlight if they have any injuries, illnesses or conditions that we should be made aware of. From there, we'll then proceed with a ... what we call a pre-assessment briefing where we'll outline the components of what they'll be instructed in and what they'll be assessed under, which gives a wide range of variables.

And it's all laid out in the training resource kit, is it not?---TRK, training resources kit. Yep.”

(Transcript p 130)

- 86 Mr Campbell stated that currently if a course requirement was not completed by a TFF he or she was trained until he or she was able to do so whereas previously if a TFF did not undertake a task properly they failed the course and had to repeat the whole module. Mr Campbell stated that the TRK requires more paperwork to be completed than previously with respect to assessment and review and there was now an appeal process. There was also now greater complexity with respect to what was being taught, technology and equipment had changed and there was a greater depth of knowledge required by an Instructor even though the methodology of delivering training was similar. Mr Campbell stated that even though TRKs contain what is to be taught the success of a TFF developing the required skills was dependent on the knowledge and skill of the Instructor.
- 87 Mr Campbell disputed the proposition that it had always been the case that Instructors organised resources for TFF schools.
- 88 Mr Campbell confirmed that in the early 1990s Instructors training TFFs attended the Training Centre one week before the course commenced.
- 89 Mr Campbell stated that the differences between training now and in the 1990s included currently having TRKs, more extensive preliminary work being required of Instructors, the background of TFFs needing to be determined and dealt with and as technology has evolved what was taught was now more complex. Additionally, this expanded knowledge had to be delivered in the same period of time and the Instructor was more accountable with respect to certifying and assessing competencies.
- 90 Under re-examination Mr Campbell stated that the TRKs included a range of information however this was in note form and needed expanding and when less detail is included outcomes are based on the knowledge of the Instructor. Assessments were previously subjective compared to more objective assessments which are currently undertaken.

Philip Brandrett

- 91 Mr Brandrett gave evidence by way of a witness statement (Exhibit A21). Mr Brandrett has been employed by the respondent since 1992 and in 1999 he was promoted to the position of SO. Mr Brandrett is currently employed by the respondent as a SO A Platoon at Rockingham Fire Station. Mr Brandrett has a range of formal training qualifications including a Certificate IV in Workplace Assessment, he is a BA/HAZMAT Instructor and he has a Certificate IV in Firefighting Supervision.
- 92 Mr Brandrett instructs in:
- Ground Controller, Structural Firefighting, Air Attack/Helitac; and
 - BA/HAZMAT, Introduction to AIIMS, AIIMS Awareness, Radio Communications and Hot Fire Simulations.
- 93 Mr Brandrett has facilitated and/or participated in the following training:
- 12 career TFF training schools;
 - 11 Incident Command Courses for SFFs to become SOs;
 - 15 BA Instructor courses;
 - 2 Instructor courses to upskill to new equipment;
 - 237 BA courses (volunteer and commercial);
 - 24 Hot fire simulation courses; and
 - 12 firefighting courses.
- 94 Mr Brandrett has instructed in the following TFF career courses:
- General Instructor: Recruit Schools 49, 50 and 62;
 - BA: Recruit Schools 49, 50, 51, 52, 53, 55, 56, 62 and 67;
 - HAZMAT: Recruit Schools 49, 50, 51, 52, 53, 55, 56, 62 and 67;
 - AIIMS Awareness or equivalent: Recruit Schools 49, 50, 51, 52, 55, 56, 62 and 67;
 - Radio Communications: Recruit Schools 49, 50, 51, 52, 53, 54, 55, 56, 59, 61, 62 and 67; and
 - Continually mentoring Instructors on an informal basis.
- 95 Mr Brandrett is a POC for BA and Radio Communications.
- 96 Between 2000 and 2002 Mr Brandrett was the BA/HAZMAT officer at the Training Centre and in this role Mr Brandrett maintained the skills of training officers in this area around the State, he was responsible for introducing new BA equipment and he provided advice and recommendations to the respondent with respect to operational matters. Mr Brandrett stated that he took on this additional responsibility with no extra pay.
- 97 Mr Brandrett stated that since being an Instructor at the Training Centre he has continually ensured that his skills are well above that of a trainee by reviewing new technologies and by reading transcripts and case studies of accidents to better understand what training would assist to reduce the likelihood of such events occurring in FESA. Mr Brandrett stated that he updates his knowledge about new products of his own volition when the respondent introduces new technologies and Mr Brandrett stated that it is incumbent on an Instructor to maintain the currency of his or her skills as technology changes rapidly. Mr Brandrett stated that he wrote the TRK on Radio Communications but he is currently teaching more updated information than that which is contained in the TRK.

- 98 Mr Brandrett stated that in his role as the BA POC he works with other senior assessors to ensure that Instructors have the required skills to impart correct information to TFFs and firefighters. As the BA POC he is also responsible for updating the TRK which he does by obtaining feedback from Instructors and others about the courses, as well as volunteers in remote areas and Mr Brandrett stated that TRKs must be regularly updated as part of the audit process applying to the respondent.
- 99 Mr Brandrett stated that he does not get paid for course preparation and he signs off on practical assessments during his lunch break when instructing.
- 100 Mr Brandrett stated that at the time of the hearing he was working overtime each day as he was coordinating a training course. Mr Brandrett stated that he spent about four hours preparing for Radio Communication courses and four hours coordinating Instructors including liaising with other BA Instructors. Mr Brandrett stated that as he is the most senior BA Instructor he coordinates upskilling and mentoring of other Instructors in this area and he stated that training Instructors is challenging because they have varying knowledge.
- 101 Mr Brandrett stated that much of the overtime he undertakes is unpaid.
- 102 Mr Brandrett stated that an Instructor has to have a Certificate IV qualification whereas a senior assessor must also be experienced and Mr Brandrett stated that he trained the respondent's current BA Instructor who is a SFF.
- 103 Mr Brandrett gave evidence that Instructors use a number of skills which are not formally taught to them. Instructors have to adapt TRKs to the environment within which they are teaching, they must be innovative and they have to know how to safely operate equipment. Mr Brandrett stated that in his role as a senior assessor he is continually mentoring other Instructors, coordinating upskilling sessions and reviewing relevant material and the delivery of sessions and as his substantive position is operational the work he commits to his own training and assessment delivery skills is completed during his own time.
- 104 Mr Brandrett stated that when he trained as a TFF in 1992 he was trained by SOs who reported to a DO.
- 105 Mr Brandrett prepared two tables comparing TFF training in 1992 to current TFF courses.

TFF 37 (1992) - 29 Trainees

Core Phases	1 Superintendent 3 District Officers 1 Station Officer 1 Duty Officer (SO) Other Station Officer instructors assisting during rotations of BA & Driving (District Officers in charge of BA, Driving sections)
Fire Fighter 1	Fire fighter 1 involved learning the structure of hierarchy and administrative side to the organisation followed by basic firefighting skills with minor equipment and hose first dry, then with water through it. PPE dressing (only 1 tunic and 1 helmet)
Fire Fighter 2	Fire fighter 2 involved learning more about the supply of water, hydraulics, pressures and pumping During the fire fighter 2 phase, the school was divided into 3 groups to rotate smaller numbers through driving and BA/Hazmat/Rescue. On completion of the rotations the school would reform to commence fire fighter 3
Fire Fighter 3	Fire fighter 3 would involve live fire fighting and consolidate all skills learnt forming into squads and responding to mock simulations in the various facets of incidents
Driving	On and Off road driving
Breathing Apparatus, Hazmat, Vehicle Rescue	Breathing Apparatus, Hazmat response and vehicle rescue

TFF 68 (2010) – 24 Trainees

Core Phases	1 District Officer 1 Duty Officer(FF) 4 General Instructors up to Station Officer Specialist Instructors for various subjects as required
Fire Fighter 1 (Complete School)	Fire fighter 1 involves learning the structure of hierarchy and administrative side to the organisation, followed by basic firefighting skills with minor equipment and hose, first dry, then with water through it. <ul style="list-style-type: none"> • AIIMS awareness • PPE and dressing process & matrix (now 2 helmets, 1 respirator mask, 2 tunics, over trousers, 2 types of gloves, 3 types of boots)
Fire Fighter 2 (Divided School)	Firefighter 2 is now run for 22 days involves learning: <ul style="list-style-type: none"> • the supply of water, hydraulics, pressures and pumping on various appliances • Manage Injuries, Oxy Viva and its administration to casualties • Road Crash Rescue • Gas & electric vehicles • SRS systems • Glass management

	<ul style="list-style-type: none"> Enhanced rescue equipment (Holton foot, sill clamp, casualty transfer boards) Intro (sic) to fire behaviour (dolls house and aquarium) USAR category 1 training and qualification <p>During the firefighter 2 phase, the school was divided into 3 groups to rotate smaller numbers through driving and BA/Hazmat/Rescue. On completion of the rotations the school would reform to commence firefighter 3</p>
Driving (11 days)	On and Off road driving, trailers, recovery and techniques
Breathing Apparatus, Hazmat, Vehicle Rescue	Breathing Apparatus, Hazmat response, twin cylinder application, buddy breathing, CBR response, Flash hood and face fit checks and vehicle rescue
Fire Fighter 3	<p>Firefighter 3 would involved (sic) live firefighting and consolidate all skills learnt forming into squads and responding to mock simulations in the various facets of incidents</p> <ul style="list-style-type: none"> Compartment fire behaviour training

(Extract Exhibit A21)

- 106 Mr Brandrett stated that the AIIMS course covers arrangements and cooperation between the emergency management services. Another difference between the two courses is the PPE used by firefighters and he stated that in 1992 firefighters used to wear one tunic and one helmet however now the PPE used is vastly different. Mr Brandrett stated that there have also been changes in the way the Firefighter 2 course is conducted and BA and Driving components are conducted in small groups of six so that TFFs get a one-on-one lesson and he claimed that the learning timelines are restrictive as there is a lot more material to get through. Mr Brandrett stated that there were also changes to the Australian Standards to Operate BA in 2009 which meant that the respondent has now put in place more checks on safety prior to firefighters responding to an incident.
- 107 Mr Brandrett stated that since FESA changed to using the PSTP under AQTF improvements have resulted in the delivery and documentation of training and assessment.
- 108 Mr Brandrett stated that the demand on resources sometimes limits access to training resources requiring the Instructor to use initiative and make adaptations to ensure that training delivery still meets the required outcomes and assessments. Mr Brandrett also stated that in conjunction with the Applied Training Section, Instructors at the Training Centre are responsible to innovate and design props.
- 109 Under cross-examination Mr Brandrett agreed that the POC role which he undertakes is voluntary and he stated that he has often not been paid overtime as he did not claim it on the basis that there was an expectation that Instructors were paid from 8.00am to 4.00pm. Mr Brandrett stated that he is not paid for any preparation time when preparing for his role as a specialist Instructor and he did this preparation at home on his days off and he did not to claim this overtime of his own volition. Mr Brandrett stated that even though there was no special requirement on him as a senior Instructor to update his skills he is required to have a superior underpinning knowledge to that of an Instructor and a senior assessor has more qualifications and technical expertise than an Instructor.
- 110 Mr Brandrett stated that he is teaching more updated information than the TRK on Radio Communications because the respondent's communications system is currently being updated.
- 111 Mr Brandrett stated that during 2010 he conducted six one day sessions for Instructors and he has instructed at two TFF schools and he prepared for these roles in his own time. Mr Brandrett stated that PPE has changed significantly since 1992 and firefighters now wear several items of clothing including chemical protective clothing.
- 112 Under re-examination Mr Brandrett stated that if an Instructor at a TFF school does not have the required skills to deliver training then specialist Instructors undertake this role.

Stephen Matthews

- 113 Mr Matthews gave evidence by way of a witness statement (Exhibit A24). Mr Matthews commenced employment with the Western Australian Fire Brigade in 1983 in the Communications section and in 1989 he trained as a firefighter. Mr Matthews is currently the Manager of Major Incident Training at the Training Centre in the rank of DO and he has been in this role since April 2009. In this role Mr Matthews develops and coordinates incident management training for SOs and higher ranks. Currently much of Mr Matthews' time is spent developing courses and training assessors who will then deliver courses.
- 114 Mr Matthews coordinates, delivers and has developed:
- Introduction to AIIMS;
 - Major Incident Management for Incident Controllers;
 - Logistics Officers training course;
 - Operations Officers training course; and
 - Planning Officers training course.
- 115 Mr Matthews stated that the TPM is the 'bible' for personnel working out of the Training Centre. It contains the relevant policies and procedures applicable to Instructors, administrators and participants involved in FESA training and it is a requirement that FESA maintain and update its TPM to maintain its RTO status and to comply with AQTF requirements. Mr Matthews stated that the TPM confirms that Instructors are required to have a minimum Certificate IV in Assessment and

Workplace Training qualification or equivalent competencies and they must have BSZ40IA, BSZ402A and BSZ403A qualifications.

- 116 As the Manager of Major Incident Training Mr Matthews recommends names of potential trainers and assessors for Major Incident training courses and he stated that he selects only those individuals who have demonstrated experience of managing major incidents and who have a high degree of skill, experience in instructing and who have a passion for the subject matter. Although the TPM does not expressly require vocational experience to deliver training, it is Mr Matthews' view that vocational experience is essential to enable training to be delivered in a manner consistent with the principles set out throughout the manual, that is, safely, of a high quality and in a responsible manner.
- 117 When Mr Matthews attended TFF training in 1989 the school was run by DOs or Acting DOs and for each component TFFs were given a few pages of course content and the information was succinct and limited to the learning outcomes and course material. The course was curriculum based and to pass a TFF needed to achieve a 75 percent mark. In the early 1990s a move to standardisation of training resulted in the development of the AQTF and the curriculum was changed to competency based training whereby core competencies were identified and he stated that a TFF could not pass a course without achieving all of the required minimum core competencies.
- 118 Mr Matthews stated that from 1990 to 1997 substantial changes were made to the respondent's training systems, procedures and its training culture and training firefighters changed from having annual exams over the first two years to modular training over five years. Firefighters were also required to undergo annual skills enhancement to ensure there were no gaps in their knowledge and skills and processes were put in place for recognition of prior learning and recording personal training attainment.
- 119 Mr Matthews stated that he trained TFFs in 1998 in general firefighting, BA, Driver training and other components of the TFF and at the time he was not paid any allowance to undertake this training and was only paid his base SO rate of pay. At the time Mr Matthews also conducted SEP training to career firefighters.
- 120 When Mr Matthews completed his Certificate IV in Assessment and Workplace Training in 2001 he trained in the following areas:
- Conduct assessment;
 - Review assessment;
 - Train Small Groups;
 - Deliver training sessions;
 - Plan and promote training;
 - Plan assessment;
 - Plan training sessions; and
 - Review training session.
- 121 Mr Matthews stated that the Major Incident Instructor is a substantive DO position.
- 122 Mr Matthews stated that conducting the SEP, TFF school and the Incident Command Course training involves a lot of work and effort compared to that required of a SO. He stated that when instructing he worked through his lunch break to organise materials or spend additional time with participants who were lagging behind. Mr Matthews stated that when he was instructing up to 20 TFFs at a time they each had individual personalities, problems and challenges and Instructors had to have good people skills and the ability to think on one's feet and he stated that in his experience participants invariably ask questions that cannot be anticipated. Mr Matthews stated that an Instructor needs to know technical knowledge and have vocational experience to be able to teach a subject and deal with participants and he stated that in addition to using technology and relevant tools for training, PowerPoint and other computer applications were skills required of Instructors. In particular AIIMS trainers need to have incident management experience because the subject matter is conceptual and an Instructor's practical experiences also allows participants to understand concepts. Mr Matthews stated that he occasionally taught the AIIMS course to TFFs and if he did not teach this course another suitably qualified Instructor would do so and this person may be a SO or DO.
- 123 Mr Matthews stated that the course coordinator, who is a DO, would manage TFF schools and judge who was appropriate to undertake training taking into account the required expertise, experience and qualifications required of this role. Mr Matthews stated the following:
- “And why is a District Officer given that role?---Well, traditionally, I guess we had District Officers used to manage, administer and deliver on the ... the training ... the Trainee Firefighter Schools.
- So it's custom and practice?---Yes, but also the ... the knowledge, I guess, that District Officers have. They ... again, similar to AIIMS, there may be some Station Officers who don't have the depth of knowledge that comes with experience to weigh up the ... the competencies.
- So the ... the District Officer who's coordinating each course - - -?---Mm.
- - - looks at the individuals who are available to ... to participate in the course and then makes judgments about ... about their expertise, experience, qualifications, as to whether or not they can conduct certain aspects of the course?---Well, I have never done that role, but, you know, I think from my experience of delivering training and being under a District Officer ... so being a Station Officer that people have, you know, long suits and short suits, so a breathing apparatus might be someone's preference and they might be better at it, so - - -

And would it be the case from your experience, and given that you have ... you have undertaken training for a long time - -?---Mm.

- - - and now at a senior level, that a senior instructor would have a greater breadth and depth of skills and experience than ... than someone who's ... sorry, a senior assessor ... than someone who's not got that qualification?---It's ... if you look at the senior assessor, there's actually a development process to go through, so the focus is really on the training environment. For example, with the diploma of training and assessment, that's actually higher than my firefighting qualification, which is a ... at certificate IV level and firefighting supervision. So, really, we're focusing on how much they know about training, notwithstanding that they have the ... the vocational experience and competence as well, but really once you get to trainer assessor, you're really starting to specialise in training delivery and assessment.

And yet the role that that person undertakes in recruit training is ... is ... if someone is a firefighter undertaking that role, they're paid at a different rate than, say, a Station Officer who undertakes that role?---Yes, I believe so. Yes.

Given their ... their rank?---I ... I think it depends on whether they're qualified. They may be a firefighter, but qualified as a Station Officer and then they would be remunerated as a Station Officer.

But a senior assessor is remunerated according to the - - -?---Their rank, not from - - -

- - - the ... their rank?---Yeah, not their assessment training ... assessment qualification.

All right?---Yeah.

And a senior assessor may, in fact, conduct the same course as a ... a trainer assessor?---Yes, and in addition to that, a senior assessor endorses and trains and qualifies trainers assessors.

Yes. And someone, for example, like Mr Brandrett, who's a specialist in breathing apparatus - - -?---Yes.

- - - and communication, he's paid his rank not ... paid at his rank not ... not necessarily for ... for his background or - - - ?---Yes. That's exactly right and he could be a senior assessor in BA and endorse and qualify me as a trainer assessor at a lesser level for training for that particular competency."

(Transcript p 156)

John Gordon

124 Mr Gordon gave evidence by way of a witness statement (Exhibit A25). Mr Gordon is currently employed as SO on B Platoon at Joondalup Fire Station where he has been since transferring there from the Training Centre in 1996. Mr Gordon graduated as a firefighter in January 1975 and in 1991 he transferred to the Training Centre for four months to train as a SO, Driving Instructor and BA Instructor and he spent the next three years relieving in the BA section at Belmont Training Centre. Between 1994 and 1996 Mr Gordon became a full-time BATO and when he returned to shift he soon became a relieving Instructor. Mr Gordon has spent the last 14 years instructing part-time both at the Training Centre with career trainees and carrying out career and volunteer training throughout the State. In the past five years Mr Gordon has instructed at six career TFF schools in BA and Driving.

125 Mr Gordon has the following qualifications:

- Certificate in Fire Engineering Management;
- Instructor/senior assessor - BA;
- Instructor/senior assessor – HAZMAT;
- Instructor/senior assessor - Atmospheric Monitoring;
- Instructor/senior assessor - Confined Space Rescue;
- Instructor/senior assessor - Operational Driving;
- Instructor/senior assessor - Operate 4 Wheel Drive Vehicles;
- Instructor/senior assessor - RCR; and
- Instructor/senior assessor - Development Guide.

126 Mr Gordon stated that when he trained as a firefighter in 1974 all Instructors held the rank of DO and all theory and practical assessments at the Training Centre were carried out by DOs and a Superintendent was in charge of the Training Centre. Mr Gordon stated that when he returned to the Training Centre to undertake officer training in 1991 this was still the case.

127 Mr Gordon has instructed at six TFF schools since 2005. Mr Gordon maintains that the most obvious change in instructing since 2005 has been the formalisation of training packages and record keeping to enable FESA to be a nationally recognised RTO and he stated that these new training procedures have resulted in Instructors having much heavier work loads as there is a greater need to provide evidence that training has been completed. Instructors also now have to carry out a formal TRK handover with Training and Development Officers for each module they instruct in and Mr Gordon stated that each Instructor is responsible to follow the TRK procedures and bring it up to currency when changes occur. Mr Gordon stated that Instructors must also have an understanding of the TPM and must be fully conversant with all aspects of training, record gathering and record keeping as laid down in the TPM including a knowledge of planning, organising and instructing.

128 Mr Gordon stated that since leaving the Training Centre he maintains his accreditation by undertaking regular training and attending periodic personal development courses.

129 Mr Gordon has delivered almost all aspects of firefighting including BA, Driving, Structural Firefighting, Confined Space Rescue and RCR. Mr Gordon stated that he is regularly called upon by his District Manager to conduct volunteer firefighter

training and in the past two months he has trained and qualified volunteers. Mr Gordon stated that he trains career firefighters on new vehicles when they are introduced into his district and he was recently asked to introduce the new MK 19 light tankers to Duncraig, Joondalup and Butler Fire Stations. Mr Gordon stated that this involved marking assessments and preparing qualification documentation.

130 Mr Gordon stated that during the week of the hearing he attended the Training Centre in his own time to be instructed and handed over a new TRK on the Mk 21 Land Rover light tanker which he will commission. He also gave evidence that as part of his on-shift driving responsibilities he is required to qualify drivers from adjoining stations in the North Coastal region of Perth.

131 Mr Gordon stated that when a new career firefighter school is advertised, interested qualified Instructors apply via an expression of interest stating their qualifications and suitability to fill the role and if selected the Instructor is taken off shift and they work a five day week at the Training Centre. Mr Gordon stated that in his case this involves an 86 kilometre round trip with no vehicle allowance being paid to him and he misses out on his Commercial Training Unit work at overtime rates and any paid hold backs or call backs that arise on shift work during this period. Mr Gordon stated that another down side of training is all of the extra unpaid overtime Instructors undertake and he stated that even the most experienced Instructors have to study at home prior to and during the courses they conduct. Mr Gordon stated that in his experience an average day for him when instructing at TFF schools is a minimum of 7.00am to 5.00pm with a 15 minute lunch break. Mr Gordon stated that if he is not prepared to work under these timeframes trainees miss out on valuable training time.

132 Under cross-examination Mr Gordon stated that training was more informal in 1991 and was based on little theory and specified outcomes and it was a basic process which relied on the expertise of individual Instructors. By 2005 TFF training became more formalised as TRKs and procedures manuals were used and Instructors became more accountable and had to sign off on every criteria, whereas previously there was little accountability for what was learnt. Now Instructors are accountable for assessing each area. Instructors are also now required to be more professional when undertaking training and even though there is a TRK for each different machine or vehicle used by TFFs, Instructors have to be trained in these machines and complete what TFFs are required to do before training TFFs. The introduction of new equipment also requires Instructors to undertake additional training to ensure that Instructors are qualified to train others and in some instances these changes may be significant. Mr Gordon stated that he was not paid overtime when attending handovers for a new TRK or when training to use new vehicles or equipment.

Leonard Hull

133 Mr Hull gave evidence by way of a witness statement (Exhibit A26). Mr Hull is currently employed as SO on B Platoon at Ellenbrook Fire Station. Mr Hull joined the respondent in February 1989 and six years later he was promoted to SO. Mr Hull has been a SO for 15 years.

134 Mr Hull has the following training qualifications:

- High Angle Rescue Instructor - December 1994;
- Train the trainer – January 1995;
- BA and Rescue Instructor – February 1995;
- Workplace Trainer – January 1999;
- Workplace Assessor – October 1999;
- Confined Space Entry – September 2001;
- RPL Assessor – September 2001;
- Driving Instructor – December 2001;
- Senior Line Rescue Instructor/assessor – November 2004;
- Senior Confined Space Rescue Instructor/assessor – February 2005;
- Heavy Rescue Instructor – July 2005;
- Spinal Extrication Instructor – October 2005;
- USAR (cat 2) Instructor – May 2006; and
- FESA Trainer – June 2010.

135 As SO Mr Hull undertakes the following duties:

- Officer in charge of a crew which responds to fire, rescue and HAZMAT incidents.
- Incident controller of multiple crews at fires ranging from bush to structural fires, rescues and HAZMAT incidents.
- Supervising Officer responsible for 10 vehicles and crews, rostering of crews and supervising the day to day running of the shift.
- Relief Officer duty working at all fire stations within the metropolitan area and some country stations.
- Training, qualifying and assessing firefighters and officers in skills such as:
 - Driving and operating on various appliances.
 - The operation and maintenance of BA units including:
 - Compressed Air - Drager PA54, PA80 and PA90, PSS 7000, Interspiro IS90, MSA BD96, Mini BD,

Spirocart and Drager aircart.

- Closed Circuit (02) - Drager BG174 and BG4.
- Oxygen units - Oxyviva, Microvent and Genesis II Resuscitation units.
- Enhanced vehicle extrication, emergency casualty care, packaging and spinal management.
- Confined space entry and rescues, atmospheric monitoring and ventilation.
- Rescuing from heights and depths using rescue frames, casualty handling equipment, rope management equipment, systems and access techniques.
- Technical rescues such as trench rescues, lift rescues and building collapse.
- The use and operation of numerous standard and specialist items of equipment.

136 Mr Hull stated that he has held the following day duty positions at the rank of SO:

- Instructor of a SEP, July 2001 - November 2001, at the Training Centre providing training to metropolitan and country crews, career and volunteer firefighters in Confined Space Entry, Communications Planning and Emergency Driving.
- Career Training and Development Officer for nine months in 2002. This role included:
 - Analysis and review of the recruit TFF program and Operational Management Program.
 - Developing and implementation programs for TFF courses to meet AFAC standards.
 - Coordinating and implementing training for career firefighters in particular Recruit and Operational Management Program. This included coordinating people to deliver training, making bookings, timetable planning and delivering content.
 - Liaising with stakeholders and external organisations to provide resources, presentations and information to participants.
 - Assessing and correlating records to meet the requirements of the organisation. This included assessments and audits of specification requirements.
 - Being the Course Coordinator and senior Instructor of Recruit School 51 in 2002.
 - During one course instructing in all fire fighting modules including BA, HAZMAT, Driving (on and off road) and Rescue and Casualty Assistance.

137 Mr Hull has conducted training in the following areas: BA, RCR, Spinal Management, Confined Space Entry and Rescue to both volunteer and career firefighters. Mr Hull has also developed and provided training to industry groups at the Commercial Training Unit, he has developed and implemented Line Rescue for the respondent and he has instructed at a National USAR course. Mr Hull is currently developing, reviewing and implementing Vertical Rescue to allow one system of equipment, techniques and process of training within the State for both career and volunteer firefighters.

138 Mr Hull stated that AFAC standards were specific to fire services whereas PSTP standards focus across the public service sector and the transition to PSTP standards therefore requires a revision of the supply and use of rescue equipment. Mr Hull stated that he was instrumental in changing Vertical Rescue training from the AFAC to PSTP specifications and he stated that as PSTP standards are not industry specific but designed for rescue applications across a range of industries it is less prescriptive with respect to content and more focused on the process of delivery of training.

139 Mr Hull gave evidence that the introduction of the PSTP and revision of the use and supply of rescue equipment has resulted in significant advances in the safety of the respondent's rescue practices and the content of rescue training. Mr Hull stated that PSTP standards cover underpinning knowledge and skills and as a result it makes it more difficult for those developing training and for Instructors delivering training because more consideration needs to be given to content and how to impart skills and knowledge effectively as greater discretion and decision making is required by Instructors. Mr Hull stated that after the introduction of the PSTP standards the time taken to train in some areas has been reduced thus placing additional pressure on Instructors.

140 Mr Hull stated that when he trained as a TFF in 1989 all General Instructors were DOs and over the next few years Instructors were appointed as Acting DOs if they were not a substantive DO. Prior to 1995 three substantive DOs ran the TFF and SO schools and he stated that during this period the BA section consisted of two BATOs who reported to a BA Rescue Officer. These BATOs provided BA training to TFFs, volunteers and operational personnel and the training included BA, Vehicle Rescue, HAZMAT and at times technical rescue such as Well rescue and rescue management systems. Mr Hull stated that the driving section consisted of two substantive SOs and a DO and they coordinated driver training from within the organisation and Driving Instructors have accredited and recognised Instructor qualifications. Mr Hull stated that all training sections ultimately reported to a Superintendent and he stated that the practice of having DOs and Acting DOs conduct all training ceased about 15 years ago.

141 Mr Hull stated that TFF training is very demanding on Instructors under a competency based assessment model. The Instructor is more personally involved in ensuring that a trainee is competent, rather than simply delivering content and demonstrating procedures and it also means paying attention to individuals to be able to identify where they are not yet competent and then focussing on that skill or knowledge with the individual until they are competent. Mr Hull stated that instructing is also emotionally and physically exhausting. Mr Hull gave evidence that he felt burnt out at the end of training at a TFF course as he was working over 50 hours a week. Additionally, packages for individual topics were at times outdated and inaccurate and the only information linking sessions together was contained in previous timetables.

- 142 Mr Hull stated that when the respondent introduced changes to its recruitment process in 2000 to allow greater diversity in the recruitment of TFFs this resulted in a greater proportion of women in the subsequent TFF schools and the personality and background of TFFs also changed. Mr Hull claimed that TFFs now tend to have less mechanical skills and knowledge but tend to be more abstract in their thinking and this has meant that Instructors have had to adapt their teaching techniques to an individual's capacities.
- 143 Mr Hull stated that prior to 1997 an Instructor only had to qualify once and there was no currency period for training qualifications held by a firefighter. Currently there are different qualification requirements on an Instructor to update and retain them. Mr Hull stated by way of example that as a Line Rescue Instructor up until recently he was required to undertake and instruct in all skills required of an operator within a six month period and according to the respondent's Vertical Rescue TRK operators must perform tasks every three months and be audited every 12 months. A Confined Space Rescue Instructor is required to perform these skills every six months and be audited every 12 months and BA and Driving Instructors are subject to a point system for maintaining training qualifications and these points are allocated for training conducted over three years and a minimum number of points is to be acquired during that period.
- 144 Under cross-examination Mr Hull stated that the TRKs were not developed by Training Development Officers but by Instructors who are specialists in their field of expertise. He reiterated that using the PSTP standards required discretion to be used on the part of the Instructor on an ongoing basis and when making decisions about the content to be delivered and he stated that descriptors and competencies are general and have to be adapted to the role required of a firefighter. Mr Hull disputed that a TRK did not allow for any discretion in how a competency was taught and he maintained that the techniques to teach competencies was open, sessions were flexible and they could be varied and were adjusted to reflect the course.
- 145 Mr Hull stated the following about the nature of TFFs becoming firefighters having changed in recent times:

"Can I take you to page 11 of your statement and the old paragraph 21, which is now paragraph 34? You say in the third sentence, "The personality and background of recruits was changing and this meant that we as trainers had to adapt our teaching techniques." What do you mean by that?---In the past, the selection for the Fire Brigade did aptitude testing and they took the top 10 percent. They did phobia testing. They did physical testing, took 10 percent off each level and then went through with an interview. Over the time there was a change to get more females in the job. What happened was the aptitude testing was very much mechanical based. They changed quite a few things. One of it was increase abstract reasoning and decrease (sic) mechanical aptitude. It tended to work, but by doing that it changed the style of people's thought process and their learning techniques, which became apparent on one of the recruit courses that I was doing, so we just had to change our teaching because the people who attended to be (sic) more abstract than mechanical.

But you have a TRK, training resource kit, for mechanical aptitude, don't you?---Not for mechanical aptitude.

Or to teach mechanical skills?---We don't teach mechanical skills.

Well, if they're not being taught and they're not being possessed, are they needed?---Basically, with the style of people coming in, it needs to change. The training resource kits came after 2002. They were only just in their infancy at that stage. The recruit course hadn't been put into a TRK. It was just a change in the style. We found with our assessments it did make an impact on the style, but there had been no change or no change in the ... the assessment criteria for it. In 2000 it was still under the AFAC.

Well, how did you have to adapt your teaching techniques?---Basically, the way the assessment ... what was apparent, that ... when we had done theory assessments on particular ones, their theory was quite ... was almost perfect, but when it came to do the practical afterwards, it was as if they weren't ... hadn't really understood anything they have taught, so that's what highlighted ... had a talk with the director at that stage and he was one of the ones that were instrumental and advised us that they had increased the abstract reasoning on the assessment, so from there we had to then change the process to actually identify that people were competent in the field. Previously to that, the theory questions actually asked the questions of characteristics of equipment, things like that, so we changed it. We actually gave them characteristics and then required an interpretation of that, so they had to have an understanding of the equipment and how it was used.

And was this recognised in the training materials?---During that stage, it was constantly going. The material was so far behind and that was ... again, was a considerable amount of work that had to be done, overnight, over the period, on our days off.

But now that you have training resource kits, is it still a problem?---Depending on the information on the training resource kits. Unless somebody is there updating them, things change; equipment changes in the organisation, our procedures change within the organisation on a daily basis unless somebody is actually dedicated to changing it, the TRK's do not get updated and people need to update those (sic)."

(Transcript p 179)

Peter Sutton

- 146 Mr Sutton gave evidence by way of a witness statement (Exhibit A27). Mr Sutton commenced employment with the respondent in 1995 and he has completed a number of qualifications in specialist firefighting skill areas as well as relevant training qualifications.
- 147 After Mr Sutton was promoted to SO in 2004 he became a BA Training and Development Officer for approximately two and a half years and in this role he coordinated BA and HAZMAT training which included organising Instructors, booking venues, reviewing training materials, dealing with all issues relevant to BA and HAZMAT and relevant policies and procedures. Mr Sutton stated that BA/HAZMAT is a specialist area within FESA and only qualified BA/HAZMAT Instructors are permitted to conduct BA training at TFF courses. Mr Sutton stated that to qualify to be a BA/HAZMAT Instructor a firefighter is required to attend a seven day course and instruct at a TFF school.

148 Mr Sutton stated that he has delivered training in the following areas of the TFF course:

- Administer Oxygen in an Emergency Situation;
- BA;
- HAZMAT; and
- Chemical, Biological and Radiological.

and he has trained personnel to become BA Instructors.

149 Mr Sutton stated that when he trained at the Training Centre he was only paid at the SO level and he was not paid any additional remuneration for not being on shift. Mr Sutton stated that in mid to late 2006 he returned to shift duties at Perth Fire Station for a short period and then moved to Maddington Fire Station where he is now a Level 2 SO, A Platoon. Mr Sutton stated that when he came off shift to do BA and HAZMAT training at TFF course number 60 he again received no additional remuneration for not being on shift.

150 Mr Sutton stated that when he was working at the Training Centre the respondent changed from using AFAC standards to the PSTP standards and in order to facilitate this five curriculum writers rewrote the respondent's training packages and a DO oversaw this process. Mr Sutton stated that PSTP compliant training is easier for participants in terms of assessment than under AFAC but Instructors use a different delivery approach. Previously Instructors could expect participants to know all of the content and they could be assessed on any part of it but the PSTP requires that participants self assess on theory components. Mr Sutton stated that the knowledge required of TFFs for BA training did not change as much as the knowledge required with respect to other packages. Mr Sutton stated that another change brought about by the introduction of the PSTP was the introduction of a points system for the maintenance of qualifications for Instructors. Mr Sutton stated that BA Instructors are required to attain a certain amount of points over a three year period to continue training and these points can be obtained by instructing various areas of BA training and he stated that he spends approximately one week of the year training to maintain the currency of his training and assessment qualifications.

151 Mr Sutton stated that new content is constantly being added to TFF courses. For example, USAR, Manage Injuries and Chemical, Biological and Radiological are all recent additions to the courses. Training materials and content are also constantly changing and Instructors need to keep abreast of these changes. Mr Sutton stated that Instructors need to review and update course content to reflect changes to practices and course content becomes outdated as a result of the introduction of new technology and equipment. Previously no one was responsible for updating TRKs for such updates and changes and individual Instructors had to do this in an ad hoc manner so he developed a process for having a single POC nominated for each TRK who is responsible for receiving feedback from other Instructors on changes to the TRK during the year and then compiling the changes and revising the TRK. Mr Sutton stated that this process was necessary because changes were so frequent and because the process of updating TRKs was difficult to manage.

152 Mr Sutton stated that as a BA Instructor he completed specialist Instructor training over nine days and then shadowed another senior Instructor before becoming a BA Instructor.

153 Mr Sutton stated that through experience he has learnt how to deliver training in a way that will be absorbed by a group or individually and this experience enables him to know when a person is understanding a concept or not. Mr Sutton stated that after training at three training schools he was able to deliver content fluently without having to regularly refer to the TRK. Mr Sutton stated that instructing TFFs is challenging and hard work and his experience of Recruit School 60 left him reluctant to deliver training at the TFF school again as it was so demanding on his time and stressful. Mr Sutton stated that there are demands on Instructors to teach a skill to a level of competency in a limited timeframe of 11 days and in that time Instructors need to not only impart their knowledge but sort out any problems or shortfalls. Mr Sutton stated that there is also pressure to deliver content correctly if a trainee is lagging behind or not picking things up. Demands have increased on Instructors as the goal is to ensure that trainees are competent and to do this the Instructors will stay late, come in early and work on weekends. Mr Sutton stated that more time has to be spent with individuals if they have any shortfalls and because exercises are often conducted in pairs, with their partner. Mr Sutton stated that the best way to assist a trainee to gain a skill is to practice in repetitious drills, to teach from different perspectives, or to teach in a conceptually different way and to be able to do this effectively Instructors need to draw on their own practical experience and use their own resources and creativity.

154 Mr Sutton stated that in his experience the most effective, successful Instructors who develop TFF skills to the required level of competency are those who have trained repetitively and know the subject thoroughly and are therefore good at imparting their knowledge. They also need to know the processes well to have good visual observation skills to be able to identify if a TFF is going down the wrong path to bring them back to the correct process. Mr Sutton stated that Instructors need to be confident in their delivery and if they lack the experience and confidence in subject matter they tend to focus their attention on their own delivery which means that they pay less attention to observing trainees.

155 Mr Sutton stated that in his experience the status and reputation of the Instructor delivering the training affects how content is received by participants and it is his view that when the Instructor does not have "credibility" participants have lacked professionalism, enthusiasm and confidence.

156 Mr Sutton stated that as a SO on shift he is responsible for his crew's training. Mr Sutton stated that on shift a SO is not teaching a skill but working on maintaining skills the crew already has. Each month firefighters need to be refreshed in a particular skill and this training involves running through a drill under the supervision and observation of the SO who provides feedback based on their own skill level and he stated that a minimum of 100 hours of maintenance training per year per person is required under the current industrial agreement. Mr Sutton stated that he delivers maintenance training to three people at a time which is not assessed. SOs also do on-shift training for the Firefighter Development Program which is the three years of training to obtain a Certificate II to become a SFF and this training is mainly activity based for example, doing a building inspection. Mr Sutton stated that no preparation is required for on-shift maintenance training because it covers an existing skill

and the required information is available on the intranet on station and materials are widely circulated and drills spelled out step by step.

- 157 Mr Sutton stated that Instructors are constantly busy getting activities ready, organising drills, setting up scenarios, ensuring there are cylinders in place and rooms for exercises, ensuring participant resources are ready, copied and available and ensuring that appliances are ready and equipped. Instructing also involves preparation and constant organisation and coordination and he stated that Instructors do this nonstop for nine hours. In contrast on-shift training involves content which firefighters already have and are conversant in and on-shift training can be done when convenient and with more time to adapt to problems and rectify problems. He stated that the content delivered at the Training Centre is more in depth, involves a greater amount of theory, more practical work and there is a requirement to adhere to a strict timeline. Mr Sutton stated that when conducting on-shift training he works his usual 10 hour rostered day and night shift so there is a lot more time available and less pressure associated with training. At the Training Centre hours are longer especially if participants are having problems and Mr Sutton stated that he has worked from 5.30am to 7.30pm on many occasions when training and he stated that the overall intensity of training TFFs is greater than any other category of training.
- 158 Under cross-examination Mr Sutton stated that it is stressful for an Instructor when TFFs are incompetent as decisions made by the Instructor about this TFF can be appealed and he stated that every course presents a challenge to the Instructor given the personalities of the TFFs undertaking the courses. Mr Sutton then said that as the Training Centre has good Instructors it was uncommon for a trainee to fail. Mr Sutton stated that preparation undertaken for TFF schools is carried out in part by Applied Training Officers as well as Instructors who ensure that all necessary resources are available and are functioning correctly.
- 159 Mr Sutton stated the following about the respondent's process for choosing TFFs:

“**HARRISON C:** All right.

Mr Sutton, just for my purposes, when a recruit attends recruit training, what ... what transpires prior to them getting to that point?---Prior to their actual entry on day 1 is they have undertaken the recruitment process, which is quite involved and lengthy. It starts with obviously the application, then online ... currently online aptitude tests, mechanical, logical reasoning and written tests, abstract reasoning, numerical reasoning and what happens is that there is a professor at UWA who'll observe the bell curve and will pick a certain amount of people from that, who will then go on to do physical testing. The physical testing is done out at the training centre and it includes about nine stations, which is tested for various skills, including claustrophobia, so confined space, or height anxiety and at the end of that day if they're deemed successful, they could then be interviewed and if they're interviewed and they're successful, then they undertake a medical test. The medical test then leads to a functional movement assessment to ensure they don't have any pre-existing injuries and eventually at that point they are offered a position. So they're offered a position. They attend a family night, which is, I guess, an opportunity for them to learn about things they may not be aware about the job, so the more stressful elements in terms of critical incident stress and to introduce that to their family members and then ... that's on a Friday and then Monday, day 1, the fun begins, so to speak.”

...

“**MR McCORRY:** Mr Sutton, when you were recruited, did you go through that same process, although perhaps not online?---No. It was similar. Do you want me to tell you exactly what it was?

Only if it's different?---Well, it was ... it was a different process back then, yes. It was ... it was different requirements. I ... I went and did a test on ... you know, in ... in a building rather than online and it was all done in person and the physical testing was ... was different back then and I was also a volunteer, who had been a volunteer for four years since I was 14 before I got in, so ... actually, it wasn't four years, it was six years, so my ... my initial testing was done slightly different than ... than others, although the same testing, it was done over one day and there wasn't a functional movement assessment back then, but the interview still and the physical ... the actual testing by the medical officer still occur.

Do ... do they test for things like fear of heights - - -?---Yes.

- - - claustrophobia and did that take several weeks, perhaps not for yourself - - -?---Back then - - -

- - - but for - - -?---Back then, from the date of first application to me starting the firies ... the actual firefighter school was about seven months.”

(Transcript pp 186-187)

Linton Mincherton

- 160 Mr Mincherton gave evidence by way of a witness statement (Exhibit A29). Mr Mincherton is a DO and the respondent's District Manager Northam, Northam Regional Office for Goldfields/Midlands Directorate and he has held this position since 1 September 2005. Mr Mincherton has been employed by the respondent since February 2001 and prior to this he was employed by the Western Australia Fire Brigade continuously from 1976 until 1997. From 1986 onwards Mr Mincherton was an Acting DO, then a DO and Acting Superintendent.
- 161 Mr Mincherton has conducted firefighting training since 1988 and he has qualifications in training as well as in a number of firefighting skill areas.
- 162 Mr Mincherton was the TFFs Modular Training Course Coordinator between June 1992 and December 1996 and he held the rank of DO at the time and for about 6 to 8 months during this period Mr Mincherton acted as the Superintendent of the Training Centre in a full-time role. As Course Coordinator at the Training Centre he delivered training at a number of TFF schools in the roles of trainer, Duty Officer and Officer in Charge as follows:
- TFF School 37 – trainer, DO – 22/05/1992 to 14/08/1992;
 - TFF School 38 – trainer, DO, Officer in Charge – 14/05/1993 to 30/07/1993;

- TFF School 39 – trainer, DO, Officer in Charge – 27/09/1993 to 12/12/1993;
- TFF School 40 – trainer, DO, Officer in Charge – 08/08/1994 to 20/10/1994; and
- Trainee SO Course 31 – trainer, DO – 15/02/1994 to 03/06/1994.

Mr Mincherton stated that he also came off shift to deliver training at the following schools:

- Trainee SO Course 25 – Duty Officer, SO – 06/02/1990 to 12/04/1990;
- TFF School 24 – Duty Officer, SO – 04/05/1990 to 27/07/1990; and
- TFF School 45 – trainer, DO, Officer in Charge – 25/09/1997 to 03/12/1997.

- 163 Mr Mincherton stated that in his role as a DO he delivers training and performs assessments and he therefore can compare the nature and requirements of career firefighter training and assessment delivered at the Training Centre with training undertaken by DOs and Area Managers.
- 164 Mr Mincherton stated that not all personnel holding a DO rank are required to perform training as part of their job description however it is a core component of the duties of virtually all regional managers, which include Area Managers and District Managers that they coordinate and train volunteer firefighters. Mr Mincherton stated that at least 75 percent of his time involves preparation, coordination, delivery, assessment and reporting of volunteer training and he maintains that career firefighting training is far more demanding than volunteer training which has less complexity and depth and is for shorter periods.
- 165 Mr Mincherton gave evidence that when he commenced as the coordinator at the Training Centre Instructors were selected to deliver TFF training based on an assessment of their ability to be a successful Instructor. There was always a large pool of person applying to train because the culture at the time was that training gave firefighters an opportunity to demonstrate a high level of skill and knowledge so as to be considered for promotion. Mr Mincherton stated that when he was responsible for selecting Instructors to deliver courses he coordinated, Instructors were either substantive DOs or SOs and a six percent allowance was paid to SOs to train in recognition of the preparation, reading and skills they were required to apply. The Duty Officer, who was usually either a SO or SFF, also received this allowance.
- 166 Mr Mincherton stated that as Training Coordinator he was aware of the need to have training delivered in a high quality manner as TFFs are involved in critical and dangerous situations where the lives of the public, other firefighters and their own lives will depend on how they behave and the skills and knowledge they have and how they apply it in each situation. The practical components of TFF training also involve high risk activities and situations and therefore TFFs must be skilfully managed and controlled.
- 167 Mr Mincherton stated that Instructors need to put in time and effort over and above what is required of on-shift personnel and Instructors cannot perform their duties well without a significant amount of preparation in their own time. This means not only being familiar with the course material but also planning training delivery and practical examples and demonstrations and it also often means gathering information over and above what is in the course material to ensure that the course content is relevant and up to date.
- 168 Mr Mincherton stated that the respondent needs to have the best, most experienced and competent people delivering training to maintain the quality of training. Mr Mincherton stated that based on his experience, there is a need for according status and reward to Instructors to attract those who are best for this role in line with the status and reward that previously existed. In summary Mr Mincherton described instructing as:
- unique in the role that it plays in the organisation;
 - critical to the organisation's effectiveness in delivering fire and rescue services;
 - critical to the careers and lives of career firefighters;
 - demanding of an Instructor's time and skills;
 - involving increasingly complex content and procedures; and
 - having to be delivered by competent, skilled and experienced Instructors such as to justify the creation of a new classification.

- 169 Under cross-examination Mr Mincherton stated that when delivering TFF courses preparation was important to ensure that they obtained underpinning knowledge and in order to do this when he worked as an Instructor he worked more than full-time hours. Mr Mincherton stated that when choosing Instructors he took into account their experience, underpinning knowledge, capacity to deliver training and skill level. Mr Mincherton maintained that a high standard of instructing was important and critical to operating a good fire service and he maintained that issues dealt with by firefighters today are more complex than previously.

Respondent's evidence

Lindsay Cuneo

- 170 Mr Cuneo gave evidence by way of a witness statement (Exhibit RA). Mr Cuneo is the respondent's Assistant Chief Operations Officer Coordination and he has been employed by FESA and its predecessor the Western Australian Fire Brigades Board since December 1976.
- 171 When Mr Cuneo was the respondent's Country Fire Department Training Officer in 1988 with the rank of SO at the Training Wing in Belmont his duties were to develop volunteer firefighter training courses and programs and deliver training across the

State. Mr Cuneo stated that he carried out these duties based on his experience within the firefighting industry, the training he received both as a firefighter and SO and by completing training courses.

- 172 Mr Cuneo stated that in 1988 TFF training was mainly undertaken by DOs and SOs and on one occasion a SFF delivered some subjects.
- 173 When Mr Cuneo was promoted to DO in early 1990 he was posted outside the training academy and he returned to be in charge of the Training Centre in late 1990. Mr Cuneo stated that at the time a team of five SOs developed and wrote the material for a new modular training system for a five year training program for firefighters to complete following graduation from TFF school to attain the rank of SFF. Mr Cuneo stated that this module system consisted of approximately 50 modules covering various firefighting subject areas such as Special Risks, BA and Firemanship and firefighters studied these modules and completed practical components whilst on station.
- 174 Mr Cuneo stated that in 1991 SOs began delivering more TFF training and by 1992 at least one SO was in charge of a squad and conducting extensive training and by 1997 five SOs delivered TFF training under the overall supervision of DOs. Mr Cuneo stated that theory training was delivered to TFFs in the class room and practical training was undertaken by Instructors and squad leaders in the yard and each squad consisted of approximately seven TFFs with a squad leader overseeing the development of practical skills and directing activities. The structure of the training area was that a Superintendent was in charge and DOs were responsible for areas such as TFF and officer training and the Training Cadre, Driver Training and BA areas had a DO in charge of one or more SOs.
- 175 Mr Cuneo has examined the public records of the training school between 1992 and 1999 and he stated that Instructors who delivered TFF training at the time were predominantly SOs but also included some SFFs. Mr Cuneo stated that the rationale behind TFF training being delivered by SOs and SFFs was that they had more recent day-to-day experience performing firefighting duties, unlike DOs who spent the majority of their time in management roles and who may not have had 'hands on' experience for some years. Mr Cuneo stated that DOs were preferred for delivering training to firefighters seeking promotion to SO because they had greater experience in the management responsibilities associated with the role of a SO.
- 176 Under cross-examination Mr Cuneo stated that he understood that competency based training had been phased in from 1992 and he was unaware when the PSTP was introduced and he stated that he has not had any involvement with the Training Centre for approximately 15 years. Mr Cuneo confirmed that all SOs have some training qualifications and he agreed that SFFs do not have to instruct when on shift. Mr Cuneo stated that the training system in place prior to the respondent becoming a RTO was fair and equitable. Mr Cuneo understood that some SFFs contributed to the contents of TRKs. Mr Cuneo maintained that the difference between preparation for on-shift maintenance refresher training and preparation for training TFFs at the Training Centre would only be marginal with respect to workload and he then qualified this by saying it depended on the subject matter and if materials for the subject area had already been prepared. Mr Cuneo stated that in the 1990s DOs delivered training at times at the Training Centre and by the early 1990s more SOs delivered training than previously and then SFFs undertook training and he stated that there was no set policy for this to happen. Mr Cuneo stated that DOs were not involved in SEP training and DOs were increasingly not undertaking training given the increased skills of SOs and firefighters.
- 177 Under re-examination Mr Cuneo understood that prior to the mid 1990s if a TFF did not pass his or her training they were given another opportunity or additional time to complete their training.

Lloyd Bailey

- 178 Mr Bailey gave evidence by way of a witness statement (Exhibit RB). Mr Bailey is the respondent's Assistant Chief Operations Officer Metropolitan Fire and he has been employed by the respondent and its predecessor the Western Australian Fire Brigades Board since 4 July 1980.
- 179 Mr Bailey was the BATO at Forrestfield Training Centre from 1994 to 1997 inclusive and during this time he held the rank of SO. Mr Bailey stated that at the time all BATOs were required to be qualified in open and closed circuit BA, RCR, Oxy Viva and HAZMAT and they were also required to be qualified Workplace Assessors.
- 180 Mr Bailey stated that he has examined the content of the current BA TRK which is being delivered in the current TFF school and he believed that the majority of the material taught now is the same as or very similar to the material he delivered in the 1990s and he stated that minimal changes which have occurred are attributable to updated/replaced technology or improvements in processes. Mr Bailey also gave evidence that whilst current paperwork requirements have altered to ensure compliance with AQTF requirements, the basic process of training and assessing of both theory and practical components remains the same as previously. That is, the Instructor demonstrates, explains, makes the learners practice, tests for understanding and records if competent or not yet competent and Mr Bailey stated that other than the documentation process the same training practices are followed.
- 181 Under cross-examination Mr Bailey stated that when he was the BATO between 1994 and 1997 he was an Acting DO for approximately 12 months during this period. Mr Bailey understood that TFF training for BA/HAZMAT now took 11 days compared to nine days in 1993 but he stated that the process of this training is still the same and the course content has not changed even though technology has. Mr Bailey maintained that undertaking a risk assessment of training was not just a current requirement of Instructors as previously these assessments were undertaken informally to manage safety. Mr Bailey also maintained that even though there was a new handover process with respect to TRKs, Instructors previously ensured that there was consistency with respect to training outcomes. Pre-assessment briefings were also undertaken and a post assessment feedback was given to TFFs if required. Mr Bailey stated in the past learning outcomes were adhered to and TFFs were assessed against these requirements and he maintained that the nature and background of TFFs and volunteers have always been diverse and he disagreed that a change in workplace diversity had led to different strategies for teaching TFFs and he stated that even though the tools used for assessing outcomes were now different the outcome remained the same. Mr Bailey maintained that even though the current training framework is complex Instructors and assessors did not need to know this framework in detail.

182 Under re-examination Mr Bailey maintained that the manual for the Drager BG174 Closed Circuit Oxygen BA confirms that the process used previously for training in this area was the same as used today.

David Evenis

183 Mr Evenis gave evidence by way of a witness statement and a witness statement in reply (Exhibits RC.1 and RC.2). Mr Evenis is the Manager of Training and Development at the Forrestfield Training Centre and he has been in this role since 18 August 2008. Mr Evenis is a Government officer.

184 Mr Evenis stated that six subordinate managers plus the Applied Training Officer report directly to him and each manager is in charge of a training section. The Applied Training Officer is responsible for organising and arranging equipment and the physical environment with in which training is carried out and this role is shared by two SOs with a number of applied training assistants under their control. Mr Evenis stated that the Training and Compliance Manager is responsible for ensuring that the respondent's training complies with AQTF requirements and as the respondent is a RTO its compliance with AQTF requirements is mandatory to remain registered. Mr Evenis stated that the Manager of the Commercial Training Unit is a DO who has two SOs and a Safety Training Officer under his supervision and this manager is responsible for coordinating the delivery of fire training services to external bodies on a fee for service basis. The Manager State Emergency Services Training has three Government officers under his command and is responsible for overseeing State Emergency Service training. The Manager Volunteer Firefighter Training oversees two Training and Development Officers and is responsible for developing training modules for volunteer firefighters. The Major Incident Training Manager has a SO as the Training and Development Officer and this manager is responsible for developing training programs to handle various roles and levels of incident management. The Manager Career Firefighter Training is a DO and has a number of SOs as subordinates and this Manager coordinates the delivery of training to career firefighters both at the Training Centre and on stations.

185 Mr Evenis stated that the current practice is that when training is required to be delivered to new TFFs, SOs and SFFs who have completed their Operational Management Program course are recruited from stations to deliver training over a 14 week period and he stated that the rationale for SOs and SFFs undertaking this role is that they have the most recent front line experience and are best fitted to deliver the training modules. Mr Evenis stated that training delivery is a core requirement of a person occupying a SO position and has been since at least 1996. Mr Evenis stated that SOs recruited to deliver training at the Training Centre do not require further or special qualifications as the delivery of training is a core requirement of a SO's job description and he stated that the SO training program undertaken through the Operational Management Program course covers training and assessment competencies from the nationally accredited Certificate IV in Training and Assessment.

186 Mr Evenis stated that possession of a Certificate IV in Training and Assessment is not a prerequisite for the delivery and assessment of vocational training and the only requirements under the AQTF are relevant trainer and assessor competencies from the Certificate IV plus holding relevant vocational competencies at the level of training being delivered or assessed.

187 Mr Evenis stated that annual SEP training consists of a series of refresher courses delivered to firefighters who have already graduated and been posted to stations. Mr Evenis stated that there are currently no permanent Instructors in the career firefighter training section and for the SEP Instructors are recruited specifically for each course.

188 Mr Evenis stated that when training courses are conducted for SOs these are usually delivered by DOs because of the emphasis on imparting higher level management skills to SOs.

189 Mr Evenis stated that the respondent will be recruiting increased numbers of firefighters over the next few years and as it has sometimes been difficult to recruit Instructors for these courses, the respondent has decided to establish permanent Instructor positions at the Training Centre for this purpose. Mr Evenis stated that these positions will not have permanent occupants but officers will be transferred from stations at their existing rank to serve in these positions for two to three years and then return to a station and Mr Evenis stated that the objective of rotating officers back to stations is to ensure that firefighters do not lose their operational skills.

190 Mr Evenis stated that in order to be an Instructor the following four units of competency are required:

- TAAASS401A - Plan and organise assessment;
- TAAASS402A - Assess competence;
- TAAASS404A - Participate in assessment validation; and
- TAADEL301A - Provide training through instruction and demonstration of work skills.

191 Mr Evenis stated that TAAASS401A applies to planning and organising an assessment process which may involve single or multiple candidates being assessed against individual or multiple units of competency in a process that includes a number of assessment events or activities over time, TAAASS402A addresses the competence of conducting competency assessment in accordance with a developed assessment plan, TAAASS404A focuses on the skills and knowledge needed to participate in assessment validation and TAADEL301A addresses the skills and knowledge required to organise and conduct instruction and demonstration of work skills through a planned approach and it emphasises training as being driven by work process and context. Mr Evenis stated that an Instructor with only these four competencies, plus vocational competency in the area, is required to be under the direct supervision of someone in possession of their Certificate IV in Training and Workplace Assessment in accordance with the AQTF Guidelines. Additionally, Standard 7 of the AQTF requires that all RTOs must ensure that each member of the RTO's staff involved in training, assessment or client services is competent to undertake the functions they perform.

192 Mr Evenis stated that the method by which a learner should be trained or assessed is not prescribed however both training and assessing guidelines are specified in TRKs. Mr Evenis stated that TRKs comply with AQTF requirements and contain training materials covering all of the information required to run a course. Mr Evenis stated that TRKs are provided to standardise training across FESA and to simplify the tasks required of Instructors and he maintained that they are written by Training and

Development Officers. Mr Evenis stated that the combination of the TPM and the relevant TRK for a course details every step that must occur prior to the commencement of the course, during the training and assessment period and after the course has finished including issuing certificates of competency and appropriate recording of outcomes and such details include prescribed instructions to the Instructor about how to prepare thoroughly for the course.

193 Mr Evenis stated that during the delivery of training the basic process followed for all courses is as follows:

- the relevant theory is discussed;
- if required a practical demonstration is given; and
- under direct supervision and guidance from the Instructor the learner attempts to accurately replicate the practical demonstration.

194 Mr Evenis stated that assessment is based on determining whether the learner is competent or not yet competent in each element being taught and the assessor must indicate whether or not each learner has correctly demonstrated each element and he stated that this is done by ticking the relevant box in the assessment checklist and he stated that both the method of training and the method of assessment are laid out in each relevant TRK.

195 Under cross-examination Mr Evenis stated that Instructors are required to be familiar with AQTF requirements as they must comply with them. Mr Evenis confirmed that using SOs and SFFs to train TFFs is based on them using their competencies on a regular basis and he stated that the respondent does not have a written policy to this effect but he understood that since his appointment this had been occurring. Mr Evenis stated that in order to train, a firefighter's experience was relevant not their rank.

196 Mr Evenis agreed that the 2006 Job Description Form for SOs included a training qualification which was a new requirement and he confirmed that when SOs undertake maintenance training it is not nationally recognised training and he agreed that not all SOs have formal training and assessment qualifications. Mr Evenis stated that SEP training could be both upskilling and refresher training and he stated that SOs had a major role in training as they trained TFFs during their five year initial training program.

197 Mr Evenis stated that over the next few years the respondent will be looking at appointing approximately sixteen additional firefighters and most will occupy permanent Instructor positions at the Training Centre.

198 Mr Evenis agreed that Instructors assist in updating TRKs as they gave feedback on materials and course content and he stated that there was a formal process in place for this to occur and he confirmed that Instructors have a critical role in the development of TRKs. Mr Evenis stated that whilst TRKs contain all of the information required to run a course each Instructor needed to be competent in that area to conduct the course and an Instructor was required to have vocational expertise in that area. Mr Evenis agreed that at times the TRK does not cover all of the required information and he confirmed that other material is also used to train TFFs and he confirmed that when using a TRK Instructors have discretion to meet an individual's needs. Mr Evenis stated that an Instructor has a critical role in the development of a TRK which must be written and trialled and even though there was a set process for using TRKs, the TRK formed the basis of the training and other issues were also dealt with apart from the information contained in the TRK. Mr Evenis agreed that most tasks associated with training were challenging.

199 Mr Evenis stated that Instructors need to be operational persons, they were required to develop materials, have good communication skills, be technologically and computer literate and have the ability to give feedback after each session and deal with conflict.

200 Mr Evenis stated that it was difficult to recruit Instructors at times in particular over the summer when firefighters were all required to be on duty, and he stated that the respondent faced challenges by having different Instructors at courses and he stated that the respondent wanted the best Instructors possible at the Training Centre. As the teaching load of Instructors was onerous the respondent was looking at appointing permanent Instructors to work at the Training Centre. Mr Evenis stated that of the sixteen positions required at the Training Centre five Instructors had been appointed on a temporary basis to date and it was hoped that the remaining Instructors would be appointed in the near future. Mr Evenis stated the following:

"Yes, all right. And if we can come back to my original question. You say that sometimes it's been difficult to recruit trainers to work at the training centre?---There have been challenges there and there are a range of reasons for that.

What do you understand the reasons to be?---There have been issues associated with whether or not ... for individuals, whether or not it is appropriate that they put their hand up. We have had industrial action a few times with respect to the levels of people who should be at the training centre to instruct during schools. There are restraints numbers-wise at the higher levels as well at particular times of the year; as we get to this time of the year, for instance.

So, what, there's an insufficient pool of people to call on?---We are down to just enough to go around, yes.

And what is that due to, do you say?---It's purely a numbers thing as we enter a period when it's all hands on deck as the summer comes along. That's my understanding of why we end up in that period or that time of restraint.

Because firefighters are expected to be on the job?---Yeah. We try to avoid having too much activity too late into the year for that reason. The training function is an unusual one in that there is a massive number of people within FESA who require operational training. The training centre ... until we put our new structures in place ... in effect has no teachers. It's bigger than some TAFE colleges, but it doesn't have a single designated teacher. It's an interesting training organisation to be involved with.

But you say that's about the change?---The idea of having tenured operational people in effect has ... whether we call them training development officers, instructors or whatever ... that will be a step in that direction.

And training development officers, are they from a station originally, or are they - - -?---A variety of ... yes, some are, some are not, depending ... because we've got our training centre people who work in volunteer training and SES for instance as well. We have training and development officers in those areas as well as in the career firefighting and major incident training.

So they're not actually ... well, for example, if you've got a training development officer who's a senior firefighter - - -?---
Yep.

- - - are they paid at that rate?---They're paid at - - -

Senior firefighter rate?---That would be my understanding and they come out, and they get an allowance. I believe the terminology is a "day duties allowance", but I couldn't be sure of that.

And what about those that aren't from a station? What's the remuneration - - -?---On a different award. So they're on GOSAC Award ... people who work in volunteer training for instance.

So are they paid the same rate of pay?---It's close.

Not the same though?---There's an equivalent level.

There is? So it is the same?---It's close. I don't think it's exactly the same.

Well, who is paid more?---I really couldn't tell you."

(Transcript pp 252-253)

"So how many positions have the temporary transfers been - - -?---We've got one, two ... we're just in the process of filling another three, so I'd say five at the moment.

And you say in your witness statement that these people will serve in the position for two to three years. I mean, what guarantee do these people have that they've got a minimum of two years or how ... I mean, how is that going to work?---The intent will be to advertise a tenure and it will be staggered up-front. As much as I would like, we can't click our fingers and advertise all 16 on one occasion and get them all there for three years, because the numbers are tight in that regard as well. The idea will be some may be initially advertised for two years, some for three. We're very mindful of the fact that these positions will need to maintain operational relevance, if you like, so the two to three-year thing will be then back into an operational role; the idea of that is that it will enhance for the individual both their skills back in their operational roles and will certainly give us something to work with at the training centre as well.

All right. Is there any documentation that you have out there confirming these arrangements?---There's ... there are proposals and things. To be honest, I'm not sure, because we're still awaiting a CEO sign-off on aspects of the structure itself.

So you put proposals to the hierarchy and - - -?---It's been a process that's taken more than 18 months to get to that point.

Right?---Yes. So there's quite a paper trail and we have a project officer in place who is charged with the responsibility of pushing through and ... when we do get sign-off ... to do all the development of the JDFs and so on.

Who's that project officer?---The project officer is a person by the name of Georgina Primosi. She works basically at the training centre but spends a fair bit of time in town as well.

And these 16 instructor positions, will you still require ... we've heard evidence from firefighters who have got specific skills in communications for example. Would you still require people like that to come and do specific sessions for skills enhancement programs as well as recruit training?---We'll always need specialist instructors, yes.

So they will operate in addition to the specialist instructors where necessary?---At the risk of it sounding a bit haphazard, the ... it will depend on what we get to some degree.

Yes?---We will look at the expertise of the pool that we have there and then, as required, we'll need to complement that with ... at particular times, whether it be with officer school or with recruit school, and SEP for that matter."

(Transcript pp 254-255)

Applicant's submissions

201 The applicant submits that this claim is based on changes to the work value of Instructors since September 1993 and this application affects all personnel who perform training and assessing at the Training Centre. These changes are in two categories:

1. Structural changes to training - including the introduction of the RTO status, implementation of Australian Fire Competencies and the PSTP, changes to training qualifications, introduction of the TPM and Standing Operational Procedures for training. These changes have resulted in increasing training qualification requirements, greater compliance requirements and greater quality in training outcomes.
2. Changes in the work value of SOs and SFFs who conduct training in circumstances where the training delivery was traditionally performed by substantive or Acting DOs prior to September 1993.

202 The applicant submits that the application should be determined on the basis of Principle 7 of the Statement of Principles. The applicant also submits that in determining this application the Commission must consider and take into account the objects of the Act set out in s 6 and the matters set out in s 26(1)(a) and (c) and the requirement on the Commission to act in accordance with the substantial merits of the case requires an assessment of the merits of the application for a wage increase based on the work value principle. In determining the merits of this claim, the Commission must have regard for the interests of the persons immediately concerned and the need to facilitate the efficient organisation and performance of work according to the needs of

the respondent, balanced with fairness to the respondent's employees and argues that a consideration of the factors identified in s 26(1)(c) and s 26(1)(d)(vi) lend support to the applicant's claims.

203 The relevant Work Value Change principle encompasses the following elements:

- Changes in work value may arise from changes in the nature of work, skill and responsibility required or the conditions under which work is performed.
- conditions under which work is performed relates to the environment in which work is done.
- The strict test for an alteration in wage rates is that the change in the nature of the work should constitute a significant net addition to work requirements so as to warrant the creation of a new classification or upgrading to a higher classification.
- Internal and any relevant external relativity changes must be justified and there must be no likelihood of wage "leapfrogging" arising from changes in relative position.
- Where there is a work value change justifying an increase in wages, an assessment must be made as to how the change is measured in monetary terms. Such assessment should normally be based on the previous work and the nature and extent of the change in work.

204 The applicant submits that the work value principle requires that the significant net addition test must be satisfied for wages to be altered on the grounds of work value and changes in work which are part of the natural evolution of ways of working must be distinguished from genuine work value changes as progressive or evolutionary change is insufficient (*State Electricity Commission of Victoria v The Federated Ironworkers' Association of Australia* Print G7498, 22 May 1987 per Coldham J, Cohen J and Griffin C).

205 In *Re Child Care Industry (ACT) Award 1998* PR954938 [2005] AIRC 28 (13 May 2005) the Full Bench of the Australian Industrial Relations Commission identified in the application of the work value change principles that various tribunals have considered the following factors to be relevant as the basis for finding work value changes:

- qualifications necessary for the job;
- training period required;
- attributes required for the performance of the work;
- responsibilities for the work, material and equipment and for the safety of the plant and other employees;
- conditions under which the work is performed such as heat, cold, dirt, wetness, noise, necessity to wear protective equipment etc;
- quality of work attributable to, and required of, the employee;
- versatility and adaptability; for example performing a multiplicity of functions;
- skill exercised;
- acquired knowledge of plant and process;
- supervision over others or necessity to work without supervision; and
- importance of the work to the overall operations of the plant.

206 The applicant submits that in relation to the measurement of work value changes in monetary terms, it is open to make comparisons with other rates in the relevant industrial instrument provided such comparisons are fair, proper, and reasonable in all the circumstances and once an appropriate rate has been assessed, the Commission may, depending on the circumstances create a new classification, fix a new rate for an existing classification or provide for an allowance to be paid (*Re Child Care Industry Award (ACT)* ibid at paragraphs 191 and 192).

207 The applicant submits that between 1994 and the present there have been significant productivity improvements in the delivery of training to career firefighters justifying the creation of a new classification for Instructors based on the Work Value Change principle. These productivity improvements fall into the following categories:

- changes in nature of work performed by Instructors;
- additional skills required of Instructors;
- additional and more onerous qualifications required of Instructors;
- changes in attributes required of Instructors;
- additional responsibilities for training materials, assessment and recording training;
- changed quality of outputs of training; and
- changing place and importance of training in FESA operations.

208 The applicant submits that the evidence overwhelmingly and clearly demonstrates that numerous changes to the nature of the work required to be performed by Instructors, that is productivity improvements, more than adequately meets the test set out in the Principles and demonstrate that the substantial merits, interests of the parties, efficiency in organisation of work and fairness to the employees justifies the issuance of the orders sought.

209 The applicant maintains that the applicant's witnesses are or were serving firefighters who have had extensive experience in the delivery of training with numerous years of experience and formal training qualifications. Mr Forster and Mr Matthews

also hold management positions in training operations and they also hold diploma level training qualifications. The applicant submits that its witnesses are all well qualified to give evidence about changes in the value of the work related to career firefighter training and the applicant argues that each witness gave their evidence in a clear and honest manner and their evidence was consistent with each other. Furthermore, much of the evidence given on behalf of the applicant was unchallenged and uncontradicted by witnesses for the respondent. In contrast none of the respondent's witnesses were well placed to give evidence about the work value changes of Instructors after 1993. Mr Cuneo lacks any recent training experience and was unable to comment on changes in the way training has been and is conducted and changes to the qualifications and skills required of Instructors and the applicant argues that his inability to answer questions put to him in cross-examination reflects on the reliability of his evidence-in-chief which should be afforded little weight. Mr Bailey has had no recent training experience and he last participated in training delivery in 1997 before the respondent became a RTO and before the introduction of the PSTP. Although Mr Bailey was unmoved in cross-examination as to his views about the lack of differences in delivery and outcomes of training between AFAC and PSTP standards his evidence was inconsistent with the evidence of all of the applicant's witnesses about the TPM and the Training and Development Framework. Mr Bailey's evidence about the process of the delivery of BA training being the same now as it was when he was an Instructor was made by comparing 'the basic steps' but not the BA TRK and his comparison is therefore virtually meaningless. Mr Evenis gave evidence in a clear and honest manner however his evidence-in-chief was general.

- 210 The applicant made the following submissions about the respondent's claim that the *Briginshaw* standard applied to this application (see *Briginshaw v Briginshaw* 1938 HCA 34 [*"Briginshaw"*]). The *Briginshaw* approach was expressed by Dixon J in that case at pages 36 1-362 as follows:-

"... when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality. No doubt an opinion that a state of facts exists may be held according to indefinite gradations of certainty ... at common law ... it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must effect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal."

- 211 In *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at 449-450, Mason CJ, Brennan, Deane and Gaudron JJ explained the *Briginshaw* approach as follows:

"The ordinary standard of proof required of a party who bears the onus in civil litigation in this country is proof on the balance of probabilities. That remains so even where the matter to be proved involves criminal conduct or fraud. On the other hand, the strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what it is sought to prove. Thus, authoritative statements have often been made to the effect that clear or cogent or strict proof is necessary "where so serious a matter as fraud is to be found". Statements to that effect should not, however, be understood as directed to the standard of proof. Rather, they should be understood as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct."

- 212 The applicant maintains that the respondent does not say why the *Briginshaw* approach should apply and the applicant argues that if the respondent is relying on the fact that the Principle contains the word "strict" its submission is misconceived as the *Briginshaw* approach relates to the fact finding exercise of the Commission. The applicant submits that the standard of proof in these proceedings is on the balance of probabilities and is to be in accordance with the substantial merits of the case (see s 26(l) of the Act). The *Briginshaw* standard has been applied in the industrial relations context where proceedings have involved allegations of breaching an industrial instrument or breaching relevant legislation where such breaches may result in the imposition of a civil penalty (see for example: *ALHMU v Dimension Cleaning* FCA BC9805492 relating to a prosecution for payslip deficiencies; *ABCC v CFMEU* [2010] FCA 784 which was a prosecution for unlawful industrial action under s 38 of the BCII Act; *LHMU v Arnotts Biscuits* [2010] FCA 770 relating to allegations of adverse action in breach of a workplace right under the Fair Work Act; *CFMEU v John Holland* [2010] FCAFC 90 which involved the contravention of right of entry provisions under the Workplace Relations Act).

- 213 The applicant submits that the respondent adopted competency based training in the early 1990s and the implementation of Australian Fire Competencies and competency based training model continued through the mid to late 1990s as reflected in the respondent's Training and Development Framework published in 1997. AFAC was established in the early 1990s which eventuated in a move to national standardisation of training and a change from curriculum based to competency based training. The applicant relies on the following definition of competency based assessment in the TPM which is as follows:

"Sometimes it may be challenging for an Assessor to make an assessment decision. Every situation is different. "Not yet competent" is not failure. It means the candidate needs more training, time or support in some identified skill areas."

- 214 The applicant maintains that the flow-on of competency based training has increased pressure, stress and demands on Instructors particularly in the context of the TFF school. Mr Hull, Mr Campbell, Mr Jolly and Mr Sutton all describe how Instructors must put in more time and attention to get someone not yet competent to competent in a limited timeframe and this means working weekends, during lunch, after hours with an individual or individuals. In particular Mr Hull described competency based training as "significantly more demanding on instructors" because:

"... the instructor is more personally involved in leading a trainee to become competent, rather than simply delivering content and demonstrating procedures. It means paying attention to individuals to be able to identify where they are not yet competent and then focusing on that skill or knowledge with the individual until they are competent."

- 215 The applicant submits that during the late 1990s the respondent continued to implement changes to its training delivery with an emphasis on competency based training, progressing the national reform agenda by implementing the Australian Fire Competency standards, introducing a standard format for training packages and the development of appropriate learning outcomes in areas such as risk analysis, public liaison, presentation skills and leadership in the community. The respondent also gained RTO status in about 1999 which requires the respondent and Instructors involved in delivery of nationally recognised training to have knowledge of and comply with national and state recognition policies and principles including the National Training Framework, the Australian Qualification Framework, the AQTF and the Framework for Competency Based Assessment in Vocational Education and Training (see Exhibits A4 and A5).
- 216 The applicant submits that the AQTF essential standards include standards for:
- Continuous improvement;
 - Meeting requirements of relevant training packages (in the respondent's case the Australian Fire Competencies and the PSTP)
 - Training materials and assessment methods being consistent with the relevant training packages;
 - Training and assessment performed by Instructors with certain minimum qualifications;
 - Training that meets individual participants' needs and supports individual participants;
 - Recording participants' participation and progress; and
 - Complaints and appeals processes
- 217 The applicant maintains that the TPM dated November 2003 had no predecessor and its publication therefore introduced for the first time a comprehensive set of policies and procedures applicable to Instructors. The TPM assists with compliance with the AQTF and Instructors are required to be familiar with all sections of the TPM, it includes processes for delivery of training and assessment as well as compliance, legislation and regulatory requirements which deal with access and equity, occupational health and safety and the requirements of regulation and registration of vocational education and training. The respondent also has Standing Operational Procedures for the Training Centre detailing further procedures for the delivery of training. The PSTP was then developed and implemented gradually by the respondent from around 2003 or 2004 and the applicant relies on the evidence given by its witnesses detailing the various ways that the introduction of the PSTP increased the demands or requirements of Instructors. For example, the PSTP has increased the requirement to assess participants individually on a detailed set of criteria set out in the standards with more reporting recording and feedback and the PSTP requires a higher level of attention to individuals and their performance throughout the training resulting in greater accountability in assessment.
- 218 The applicant argues that increased compliance requirements are reflected in the current TRK format. Training resources now comprise three volumes whereas under Australian Fire Competencies they were contained in two volumes, the current format has substantially more content devoted to compliance matters and Instructors now require greater skills and knowledge. The applicant submits that these developments have increased the regulatory, compliance and formalisation of training functions and this is associated with a greater amount of formal training and assessment through recording and keeping records of training and assessment.
- 219 The applicant rejects the proposition that recently introduced compliance requirements were always the responsibility of those administering training and did not increase the responsibilities on Instructors. Individual Instructors must now meet all requirements of the TPM so the respondent does not breach the AQTF requirements and as TRKs do not always contain all information or forms required by the TPM the Instructor is expected to identify that shortfall and comply with the TPM's requirements.
- 220 The applicant rejects the proposition that TRKs are so prescriptive that they reduce the discretion or work of Instructors. Whilst the PSTP requirements are demanding, there is a reasonable amount of latitude given to Instructors to adapt the methods of training for individuals and TRKs do not contain all that the Instructor is required to teach and a number of intangibles exist. The applicant also rejects the respondent's contention that less work is involved with a TRK. There is a new "paper trail" to follow in regards to deeming a person not yet competent, TRKs are in dot form and the successful delivery of training depends on the knowledge of the Instructor. Additionally, training materials contain parameters, techniques and principles but there are significant variations in their application and TRKs give suggested formats and options but are flexible and allow Instructors to make adjustments. Mr Evenis also accepted that Instructors have discretion to make changes and variations to TRKs and the respondent views the use of discretionary powers to acknowledge individual needs as being desirable.
- 221 The applicant argues that the development of training between 1993 and 2006 involved significant structural and framework changes in particular the respondent gaining and maintaining its RTO status. An Instructor's knowledge of and compliance with these requirements means that a higher quality of training is delivered and this is supported by the Training and Assessment Code of Practice which refers to mutual recognition of qualifications and national recognition of Instructors' qualifications and assessments being conducted using an open, supportive process, which ensures that participants are aware of the precise requirements of their assessment. The Australian Qualifications Framework Implementation Handbook also refers to the effect of the Australian Qualifications Framework on encouraging higher quality vocational education and training that meets individual and workplace vocational needs. In support of this the applicant relies on the TPM which requires assessors to collect evidence that:
- reflects the skills and knowledge described in the relevant units of competency;
 - shows application of the skills in the context described in the range statement;
 - indicates that skills and knowledge are applied in real workplace situations;

- demonstrates competence over a period of time;
 - demonstrates repeatable competency;
 - is corroborated;
 - is the work of the candidate;
 - is able to be verified; and
 - demonstrates the current skills and knowledge of the candidate.
- 222 The applicant argues that prior to the PSTP being adopted the approach to assessment was more informal. AFAC training materials did not require a Job Hazard Analysis to be conducted nor did they tell an Instructor how to assess trainees and Mr Jolly confirmed that prior to the PSTP standards Instructors were not required to examine all areas listed in the PSTP assessment criteria and in the past assessment was based on a selection of random tests or questions rather than testing all competencies. Pre-assessment briefings, which are designed to ascertain learning requirements of participants and to explain to participants variables, what will be assessed and how it will be assessed is now undertaken. Additionally, Instructors facilitate competency in trainees in all relevant skills as opposed to passing at a level of 65 percent or 75 percent and Instructors assess in ways that are accountable and transparent and their decisions are documented and recorded with respect to competencies achieved. The updating of training in accordance with Australian Fire Competencies and the PSTP has resulted in increases to the content of the training units or modules delivered and changes to content have also resulted from technological, scientific and social advances. More modules are also now being taught in TFF schools.
- 223 The applicant submits that since 1993 there has been a number of changes to the qualifications required of Instructors. Between 1993 and 2003 Instructors were qualified to deliver training either as a result of undergoing the training to become a SO which included a component on training or by completing a course known as CM3 or Train the Trainer. By 2003 the respondent required Instructors to update their qualifications to a Certificate IV in Assessment and Workplace Training which is a nationally recognised training qualification and is one level below diploma level. Instructors must have a minimum of BSZ404 Train Small Groups plus supervision by a person with Certificate IV if they do not have the Certificate IV and assessors must have three additional competencies from the BSZ training package. Senior assessors must have a minimum of a Certificate IV qualification as well as having completed the Senior Assessor Development Program. In addition to formal workplace training, all Instructors must have current certification demonstrating vocational competencies for a TRK and they must complete a handover for the TRK they are endorsed to train in and this TRK handover process was not a requirement under the Australian Fire Competencies. Instructors delivering specialist training require additional qualifications over and above those set out in the TPM and most Instructors have specialist qualifications. Historically there was no formal requirement for maintenance or retaining the currency of training and once an employee had qualified as an Instructor this qualification was ongoing. Now there are various requirements for Instructors to maintain the currency of their qualification, some of which are found in the TRKs. Additionally, a points system has now been introduced for maintenance of qualifications for training and assessing and a minimum number of points must be accumulated over three years and these points are obtained by instructing in various areas. Furthermore, there was no evidence given in these proceedings that there are any Instructors who are not formally qualified to instruct. Standing Operational Procedures for training at the Training Centre identifies specialist training/qualifications for the delivery of particular training and they require Instructors to have completed the Applied Training Awareness course when using the Applied Training Ground. The current Certificate IV Workplace Assessment and Training qualification is part of a new training package and supersedes the BSZ, the Training and Assessing Package or TAA, and the respondent has encouraged its Instructors to update their qualifications from the BSZ to the TAA. Furthermore, a new workplace assessment and training package was recently introduced and Instructors would be required to do more in validation and moderation to reach the new/current competencies.
- 224 The applicant submits that Instructors now require a high level of understanding of their subject matter to deliver content and to focus on observing trainees during training for both safety and assessment purposes and even though Instructors have always had to possess relevant skills and experience both pre and post 1993, since 2003 Instructors now must have detailed knowledge of the TPM and the AQTF which requires additional or greater skills on the part of the Instructors.
- 225 The applicant argues that the content of training particularly the TFF school has changed and increased over time and training is now delivered over the same period of time - 12 weeks, however several additional components or units are now included. These include AIIMS awareness, PPE and dressing process, Manage Injuries, RCR, Enhanced Rescue, Introduction to Fire Behaviour and USAR which are in addition to changes to Australian Standards and technologies which form part of the content delivered. Instructors are therefore now required to have increased knowledge, experience and skills to deliver this expanded content and in some instances, the same or more content must be taught in a shorter period of time, further increasing the demands on Instructors. Demographic changes amongst those participating in training have also taken place and TFFs now possess less mechanical skills but are more highly educated and as a result Instructors need to be more flexible in their teaching methods and more astute in ensuring they can deal with challenges and questions from participants.
- 226 The applicant submits that there has been an increase on the responsibility required of Instructors with respect to compliance and record keeping and assessment and there has been an increasing responsibility on Instructors in relation to occupational health and safety and Instructors must now conduct a Job Hazard Analysis. Instructors are responsible for informing Safety Officers of any accident or near miss and must complete associated records and Instructors must ensure all participants are supplied with and wear correct PPE and the culture of occupational health and safety has also changed and is more seriously regarded than previously.
- 227 Instructors are required to ensure that their knowledge of their subject area is up to date and relevant where gaps in the TRKs might exist and as TRKs are not always up to date Instructors need to keep abreast of changes in their relevant field. Some Instructors have written the TRKs and the responsibility for reviewing TRK material is now formalised by the recent

introduction of the POC system which involves an individual Instructor being appointed as POC to review a particular TRK for currency and to be the central point for collating feedback from other Instructors and then updating the TRK accordingly. All Instructors are responsible for reviewing the TRK and providing feedback to the POC and the respondent expects Instructors to identify where training materials could be improved or enhanced. Senior assessors have the added responsibility of supervising and mentoring other Instructors and the reduction in the number of DOs involved in training means that the level of supervision and support available to Instructors has diminished since September 1993 and Instructors have had to fill this gap.

228 Instructors spend a considerable amount of personal time preparing for training courses including reviewing materials, copying materials and handouts, coordinating props and resources and equipment and coordinating/liasing with other Instructors and they include cleaning and clearing of training areas and equipment.

229 Since 1993 instructing has been increasingly undertaken by SOs and SFFs and the additional framework knowledge, compliance requirements, qualifications, maintenance of qualifications, skills and responsibilities for Instructors has increased the work of SOs and SFFs instructing at the Training Centre. The applicant argues that SOs and SFFs who do not deliver career firefighter training do not need in-depth knowledge of the TPM, Standing Operational Procedures, the AQTF and other regulatory and compliance requirements and when SOs conduct on-shift training they have a different role to that of an Instructor at the Training Centre training in relation to the rigidity of assessment and the timing and environment of the delivery of training. The applicant submits that the delivery of training requires a different set of supervisory and teaching skills compared with the duties of on-shift SOs and SFFs and teaching new skills is different to refreshing or teaching skilled firefighters and on-shift training involves less formal assessment, materials are easily accessed and equipment is on station so no coordination is required for delivery of training, there is greater flexibility in delivery of training in terms of the time allowed and conditions under which it is undertaken. Furthermore, the requirement for SOs to have a “demonstrated ability to provide workplace training and assessment to PSTP Competency Standards” is a new requirement of SO selection. Although a firefighter must now have Certificate IV in training and assessing qualification to be promoted to SO, there are a number of SOs appointed prior to this qualification being a requirement for appointment who have no nationally recognised training and assessing qualifications.

230 Principle 7 of the Statement of Principles requires the applicant to justify any changes in wage relativities that will result within the relevant internal award classifications structure and against external classifications to which that structure is related and the applicant argues that the remuneration associated with a new classification for Instructors should be at the equivalent level as current DO rates of pay as there is substantial evidence that the work demands, skills and workload of Instructors exceeds significantly those required of on shift SOs. There is also evidence that the duties of Instructors are substantially the same as or similar to the duties of at least some DOs and most Area Officers in that a vast majority of the duties of those personnel involve the delivery of training to volunteers. It is also the case that from time to time DOs instructing at the Training Centre report to another DO.

231 In support of this claim the applicant relies on DOs traditionally performing TFF school training exclusively until the late 1980s and primarily until 1993 and DOs delivered SO training in 1992. DOs currently deliver the Incident Command Course, which is the training delivered at the Training Centre for firefighters wishing to be promoted to SO rank. Virtually all regional managers including Area Managers and District Managers must coordinate and perform training of volunteer firefighters which makes up a significant part of their duties. The relativities within the classification structure proposed by the applicant should therefore be determined by reference to the classification DO and should be 100 percent of the rate of DO. Furthermore, the wage rate for the new classification of Instructor should recognise the level of skill and responsibility of Instructors, the fact that their qualifications are equal to or may exceed the qualifications required of DOs and the value or worth of the work they perform to the organisation and to the community. If the classification of Instructor is implement the resultant relativities on the current industrial agreement rates will therefore be:

SFF	73%	\$1496.46
SO1	82%	\$1679.43
SO2	85%	\$1740.41
AO	92%	\$1893.51
I	100%	\$2046.57
DO	100%	\$2046.57

232 Because this application is not one which seeks a variation to an award or will affect wage rates for existing classifications in the *Fire Brigade Employees' Award, 1990 No A28 of 1989* (“the Award”) there can be no reference to external relativities and historically external relativities in relation to wage rates in the Award were determined by reference to the *Metal Trades (General) Award* and if this application is successful it will introduce a new classification but will not alter the relativity of wage rates between 1st Class Firefighter level 2 and the relevant metal trades rate so there is no effect on external relativities. There is also no basis for a comparison with the *Government Officers Salaries, Allowances and Conditions Award 1989* as this award classification structure is not related to the classification structure in the Award and is therefore not relevant for the purposes of point 7.3 of Principle 7.

233 Principle 7.7 requires work value changes to be measured over any date that on the evidence before the Commission is relevant and appropriate in the circumstances. The applicant submits the time for assessing work value changes should be from September 1993 to the present as training was mainly undertaken by SOs and SFFs from September 1993 onwards and significant structural changes that drove much of the work value changes relied upon by the applicant occurred from about 1995 with the introduction of the Australian Fire Competencies training packages and the new Training and Development

Framework published in 1997, the respondent gaining RTO status between 1999 and 2003 and the TPM and PSTP being implemented from 2003.

- 234 The applicant argues that the 1994 work value case did not specifically consider changes to the value of work performed by Instructors and there has been no subsequent consideration of the work performed by Instructors and in any event, as the last work value case was heard in February 1993 and May 1993 there can be no argument that the work value changes relied upon by the applicant were the subject of or ought to have been the subject of consideration in that case (see *United Firefighters Union of Western Australia v W.A. Fire Brigades Board* [1994] 74 WAIG 575 [“the 1994 work value case”]).
- 235 The applicant maintains that the Commission has heard evidence as to the interests of the persons immediately concerned, the need to facilitate the efficient organisation of work and fairness to employees in the industry and the respondent’s suggestion that SO and SFF personnel are engaged as Instructors in preference to those holding DO rank because they have more recent and relevant hands on experience is not reflected in formal written policy verifying this explanation of the rationale.
- 236 The applicant submits that if this application is granted it will not in any way hinder the participation of those with relevant vocational competence as Instructors and it will grant recognition to those individuals by way of a new classification and permit remuneration of those individuals in accordance with their level of vocational competence and the value of the work they perform. The current remuneration structure for Instructors is inadequate to compensate for the loss of shift penalties and the increase in costs of travel to the Training Centre and it does not provide an incentive for SOs in particular to suffer the pressures, stress, workload and inconvenience of coming off shift to deliver training at the Training Centre. These considerations have led to a shortfall in the numbers of qualified Instructors volunteering to deliver training, which in turn has led to the respondent directing individuals to perform Instructor duties, in turn leading to the dispute which preceded this arbitration. If the applicant’s claim is allowed this will have a positive effect on the efficient organisation and performance of work because it will encourage participation in training, provide a career path for Instructors and give due recognition to Instructors. Furthermore, Instructors of different ranks are currently paid disparate amounts for performing the same work which is unfair to employees and is inefficient and unfair that a person with higher qualifications, a Certificate IV qualified SO or SFF performing training, to be paid less than a non qualified DO who does not perform training. It is also inefficient and unfair that a DO, SO and SFF with the same qualifications perform the same role but be paid differently. Unless the application is granted, the absurd situation where SFF is qualified as a senior assessor might supervise a DO or SO delivering training, but be paid less than the DO or SO.
- 237 In summary the applicant submits that the changes in the nature of the work performed by Instructors since September 1993, the increases in the skills and qualifications required of them amount to a significant net addition to work requirements as to justify a new classification of Instructor. The work requirements that have increased between 1995 and 2006 which covers the transition from Australian Fire Competencies to PSTP are as follows:
- compliance requirements of documenting training and assessment;
 - knowledge of TPM, AQTF and the regulatory framework generally;
 - increased content to deliver and associated knowledge required;
 - more detailed and thorough assessment processes;
 - additional procedures such as pre-assessment briefing, Job Hazard Analysis, TRK handover;
 - qualification requirements increasing from CM3 to BSZ Certificate IV in 2008 to TAA Cert IV in 2009;
 - new requirements for maintaining qualification currency;
 - less supervision by DO trainers;
 - increasing responsibility for occupational health and safety;
 - need to adapt to a more diverse participant demographic;
 - time demands in preparation and conduct of training;
 - responsibility for writing and updating TRKs; and
 - ability to use PowerPoint for presentations and technology for TRK content.
- 238 The new work requirements are part of and result in greater productivity including:
- continuous improvement of training;
 - national recognition of training outcomes (qualifications);
 - training tailored to individual and organisation needs;
 - recording of training and outcomes;
 - transparency and accountability in assessment;
 - greater competency outcomes (over time, repeatable, verifiable);
 - standardisation; and
 - validated assessment.
- 239 In addition to the work requirements above, there are also new work requirements for SOs and SFFs since September 1993 to:
- conduct training at the Training Centre;

- lead and manage teams in training environment;
- communicate in a manner effective for training;
- demonstrate knowledge, competency and leadership in a simulated incident environment;
- be involved in coordination of training and preparation for training; and
- bear the responsibility for and associated stress and pressure of the process of training a person not competent in a skill to competent in limited time and in a group training environment.

240 The applicant submits that the evidence demonstrates that the skills, responsibilities and conditions under which Instructors work is at least the same as, if not more onerous than DOs working at the Training Centre prior to 1993 and currently, and the applicant relies on DOs in regions coordinating and delivering volunteer training for 70 percent to 80 percent of their time. Accordingly, the application is justified by reference to internal relativities. The existing classification structure is related to the *Metal Trades (General) Award*, the application proposes no increase to wages within the existing classification, but the creation of a new classification which does not presently exist in the *Metal Trades (General) Award* and there is therefore no change in relativities to the related award.

241 The applicant argues that a new classification of Instructor achieves efficiency in the manner in which training is delivered particularly in circumstances where the appointment of permanent Instructors is foreshadowed and imminent and the applicant believes that a new classification of Instructor will assist in the recruitment of Instructors to the Training Centre in circumstances where positions are currently difficult to fill. Further, such classification ought to be paid at DO rates to achieve parity between remuneration and value of work and fairness to those performing the training.

Respondent's submissions

242 The respondent argues that productivity improvements, if any have been demonstrated, are not a relevant basis for creating a new classification of Instructor and the respondent submits that the applicant's claim does not satisfy the wage fixing principles, it lacks merit and there is insufficient evidence to support the claim and this application should therefore be dismissed.

243 The respondent submits that Principle 7 of the Statement of Principles 2010 requires the Commission to apply the following principles in determining a work value claim:

- changes in work may not lead to an increase in wage rates;
- the test for any alteration to wage rates is strict and requires that the change in the nature of work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification;
- in addition to this test the applicant will need to justify any change to wage relativities ... within the relevant internal award classification structure but also against external classifications to which that structure is related;
- these are the only circumstances in which rates may be altered on the ground of work value;
- where new or changed work justifying a higher rate is performed only from time to time ... or where it is performed by only some of the persons covered by the classification, such new or changed work should be compensated by a special allowance which is payable only when new or changed work is performed; and
- changes which were or should have been taken into account in any previous work value adjustments are not to be included in any work value evaluation under the current provisions.

244 The respondent argues that the test for any alteration to wage rates is a strict test, that is to the *Briginshaw* standard which requires a higher level of proof than might otherwise be the case. The respondent argues that this level of proof is not satisfied by inexact proofs, indefinite testimony or indirect inferences. The respondent argues that the applicant is required to prove that:

- there has been a change in the nature of the work performed;
- the change has resulted in a net addition to work requirements;
- the net addition to work requirements is significant;
- any changes to wage relativities within the Award and with other awards are justified;
- the new or changed work is performed by all persons to be covered by the classification all the time and not only by some of the persons or from time to time;
- the changes were not taken into account in the 1994 work value case; and
- there is justification for the creation of a new classification.

245 The factors that determine work value for Instructors (see *Re Child Care Industry (ACT) Award 1998* [op cit]) include:

- the qualifications necessary for the job;
- the training period required;

- the attributes needed for the performance of the work;
- the level of responsibility for the work, materials, equipment and safety;
- the environmental conditions in which work is performed;
- the quality of work attributable to and required of the employee;
- the degree of multi-functionality and adaptability required;
- the level of skills exercised;
- the acquired knowledge needed;
- the supervisory level or lack of supervision in carrying out the work; and
- the importance of the work.

The degree of importance of any factor is dependent on the position being considered and not all factors are of equal value and work load or work volume is not a factor to be considered.

- 246 The respondent submits that the claims relied upon by the applicant in support of a new classification of Instructor are inferences and little if any evidence has been given in support of these assertions. These assertions include changes associated with the introduction of a formal competency based training system, more sophisticated technology being used, new skill sets being taught which have increased the qualifications required of Instructors, the level of skills, attributes and knowledge they require, additional responsibilities being imposed upon Instructors as they now have to instruct women, the foreign cultured, the mechanically inept and those with higher levels of education and a propensity to ask more questions than TFFs 20 years ago and they now use technology such as Microsoft PowerPoint for doing presentations. The respondent argues that the applicant seeks to have the Commission infer on the basis of these assertions about how much more onerous the workload on Instructors is given the significant net additions to work requirements on all Instructors, however little evidence has been given in respect of these claims. The respondent also maintains that the applicant adduced no evidence of whether any changes that occurred were not or could not have been taken into account in the 1994 work value case whilst conceding that training changes were a key component of the case.
- 247 The respondent maintains that the applicant did not adduce any evidence of what was or should be the quantum of the increase sought from the claimed net additional work requirement nor was there any evidence of the actual work value of Instructors or of the DO rate of pay claimed to be appropriate. The applicant's evidence also did not address the issue of what the introduction of the new classification would have on internal and external relativities in the Award.
- 248 The respondent argues that the nature of the work done by Instructors has not fundamentally changed over the past 20 years and any changes that have occurred have been small and evolutionary, reflecting changes in the wider community and what training should now be and how it should be delivered and recognised. Instructors then and now deliver training and assess the competency of trainees to perform certain tasks in a similar manner and the mode of instruction remains the same: the theory is explained, the task is demonstrated, the trainee practices and demonstrates whether he or she understands and can perform the task and the trainee is then assessed as competent or not competent and any changes that have occurred are process changes and not structural changes. All that has changed is that training has been formally standardised and the implementation of modular training and competency has occurred. The respondent also maintains that the implementation of modular training and competency based outcomes was part of the 1994 work value case (see the 1994 work value case at 578).
- 249 The respondent argues that the formal standardisation of training has not changed the nature of the work performed by Instructors and does not lead to any increase in work requirements of Instructors but actually reduces them as the TRKs prescribe in great detail what is to be taught, what each element of competency is and how it is to be measured. This application of Taylorism principles to the delivery of training means that less intellectual effort is required by Instructors as the breaking down of the process of delivering knowledge and competency by 'dicing and slicing' it into very small elements of learning which can be ticked off when acquired, does not require the Instructor to conduct a reflective assessment of whether or not overall the trainee has acquired competency in the subject which was a requirement prior to the introduction of modular competency based training. The paperwork may now be greater and the mode of judging and recording competency may have changed but these are not a change in the nature of the work performed or a net addition to it. Workload is not a factor in determining work value and the training and assessment process does not impose more onerous environmental or accountability conditions on those delivering training as Instructors have always been accountable for the outcomes of their instruction and have always been required to sign off that the competencies have been imparted and this does not signify any increase in responsibility or accountability. The level of accountability on Instructors has not changed and trainee outcomes will be the same whether the outcome is signed off or not and the ritual of handing over the TRK to an Instructor at the start of a course is simply a quality assurance measure. The respondent also submits that Instructors do not need to be familiar with all aspects of the TPM or the AQTF requirements.
- 250 The respondent argues that changes in technology over time are evolutionary and require less knowledge and involve less skill being exercised by Instructors. Furthermore, demonstrated competence in the subject area being taught as well as in delivering training has always been an essential requirement of an Instructor and using Microsoft PowerPoint is not a net addition to the level of skill and abilities and the respondent maintains that technological improvements actually reduce the level of skills needed to instruct and the time required to attain the skills. The respondent maintains that new subjects being taught including AIIMS, USAR, CFBT and Chemical, Biological and Radiological etc, are not net additions to the knowledge, skills and abilities of all Instructors but merely additional subject areas. There is not a requirement for any or all Instructors to have

training competencies in these subjects in addition to any others they possess and the obtaining of training competencies in these subjects is achieved in the same way as obtaining training competency in any other subject area and involves no greater work requirements nor are Instructors required to consider compliance issues.

- 251 The respondent maintains that the applicant's claim is predominantly based on the work volume of Instructors, dressed up to try and satisfy the work value principles and this is not a legitimate basis under the wage fixing principles for establishing a new classification. Furthermore, if the workload of the position is too onerous it is not for the Commission to give approval to something that should not be tolerated in the workplace and in any event the respondent does not accept that the workload of Instructors is too onerous. The respondent claims that the perception of what constitutes a hard day's work for employees who spend significant parts of their time waiting for high intensity, high risk work over short periods to occur, is likely to be significantly different from those held by the community at large. The respondent also argues that the continuous but moderate workload on Instructors over the entire day is not excessive. The respondent therefore argues that any changes that have occurred over the past 20 years to the role of Instructors do not amount to a net addition to work requirements and the applicant has not proven its case.
- 252 The respondent maintains that the applicant's evidence was long on the qualifications of its witnesses, their employment histories, the training courses they have delivered, the rank and status of others delivering courses in the past, how dangerous the job was and how much more work was involved in delivering the courses under the current training regime. The respondent argues that the applicant's evidence was short on details of how training was delivered in the past compared with today or any changes in the requirements for becoming an Instructor or what additional skills and attributes were needed to perform the job from those 20 years ago. Furthermore, it was only in cross examination on the training practices involved in instructing in use of the Drager BA equipment in the late 1980s and early 1990s that there was any evidence of what the training really consisted of in the past. The TRK and the evidence about how it is used for instructing in the BA equipment used today demonstrate the essential similarity in the key tasks and requirements then and now, namely show, explain, practice, observe and assess competence.
- 253 The respondent maintains that the substantive qualifications to be an Instructor have not changed in the past 20 years and the formal process of obtaining a qualification in order to be an Instructor is not a new requirement. The respondent argues that it has always been the case that an Instructor had to be competent in the subject matter being taught and competent in delivering the training and all that has changed is the formalisation of this. Becoming an Instructor is not a difficult achievement and the evidence indicates that obtaining training qualifications then and now is achievable in under two weeks, with up to a further two weeks training as well as the occasional demonstration of delivering the training to a class required to achieve specialist Instructor status. An Instructor has always had to be recognised as such in order to deliver training and it matters little what the name of a qualification is, who confers it or whether it is formally recognised outside FESA or even formally recognised within FESA and it is the recognition of the person's status as an Instructor that is the qualification and Instructors have always been recognised as being qualified. There was no evidence that obtaining recognised Instructor qualifications requires any greater skills or attributes or work under the current training regime than it did under the regime in place 20 years ago or that formal possession of the qualifications are a higher level of qualification than that obtained or obtainable 20 plus years ago. Maintenance of qualifications by accumulating points obtained by delivering a number of units of training within a period of time is nothing more than a formal process for ensuring that the Instructor remains competent to deliver training and a reasonable inference can be drawn that prior to the introduction of the points system, those selecting a person to deliver training had some process, even if informal, of ascertaining if a person remained competent. Moreover, the points system of maintaining competency is not a requirement for all units and there was no evidence that this points system of maintaining competency is applicable to all or even the majority of subjects being taught.
- 254 The respondent maintains that there was no credible evidence that there have been any significant changes in the way training is delivered and it was conceded by some of the applicant's witnesses that training in the past was delivered in substantially the same way as training is delivered now. The paucity of credible evidence to support the applicant's claim is reflected in the applicant's claim that it requires an expanded level of skill and attributes to operate PowerPoint presentation software and the applicant's evidence suggesting that it is more difficult to instruct trainees if they are not white Anglo-Saxon males or cannot be relied upon to know how to screw a nut on a bolt and build tree houses should be rejected out of hand. There was no evidence given about the extent of this problem, the means by which Instructors addressed it and how they obtained the skills and attributes that enabled them to do so and there was no explanation, if this was a problem, why there was not a TRK for Instructors to address this. The respondent rejects Mr Forster's claim that there has been an increase in the skills and attributes required of Instructors because of an increased need to understand compliance issues and maintains that this proposition is fanciful in the extreme. There was no suggestion, nor any evidence, that the facilities at the Training Centre and any technical changes in simulation of a realistic environment for the purposes of training had worsened the environmental conditions under which training was conducted and on the contrary environmental conditions in respect of safety and technology have improved the working environment over the past 20 years. Workload influenced changes in environmental conditions are therefore not a legitimate basis for claiming an increase in work value has occurred.
- 255 The respondent submits that no evidence was given by the applicant that there was for all the Instructors at all times, a significant change in the nature of the work performed. There are approximately 150 TRKs in existence, indicating that 150 subject areas of training are delivered and the evidence in relation to training was limited to a few specialist subjects. Additionally, senior assessors have no additional responsibilities to that of a trainer or trainer/assessor.
- 256 The respondent argues that the applicant is seeking that the classification of Instructor be that of a DO on the basis that historically training was delivered by DOs however, the only evidence that the work value of Instructors was comparable to that of DOs before the Commission was that DOs had always delivered training and training outcomes were better if delivered by a DO because of their uniform, discipline and rank and they have a vast knowledge of all subjects. However, SOs were

responsible for the delivery of training when the training wing was established therefore contradicting the assertion that DOs had always delivered training in the past. The respondent recognises that DOs are the best persons to deliver training in some areas but this is because of their demonstrated competencies in the specialist subjects being taught not because they have a DO rank.

- 257 The payment of DO rates of pay to Instructors in 1997/1998 and Area Officer rates from 2004 is not an acknowledgment that Instructor rates of pay should be at DO or any other level and an over award payment which is agreed to by the parties for a particular reason on a particular occasion does not form the basis of any proper fixation of an award rate and the decision to pay the DO rate is not to be regarded as a precedent.
- 258 The Award makes no special provision for Instructors. It provides for an allowance of six percent of the highest SO rate for employees who come off shift to perform other duties and it is only payable to employees below the rank of DO because DO and higher ranks are not shift employees but work a standard week. Since DOs carried out training duties in the 1980s and SOs did not largely take over the training functions until after the Award was made, it is implicit that the allowance is not paid in recognition of any increase in work value of employees performing training and if it was, and the work value was equivalent to that of a DO, it is a reasonable inference that the Award would have provided for the allowance to be equivalent to the difference in the rates of pay.
- 259 In the mid 1990s FESA's precursor organisation became bound by an award of the Australian Industrial Relations Commission and Clause 24 of that award provided for the payment of an allowance of six percent of the highest level of the employee's classification to SOs and firefighters who came off shift to undertake special duties. Subsequent certified agreements excluded the operation of Clause 24 and the respondent reverted to the Western Australian industrial relations system in 2006 and the Award was revived. The 2006 and 2008 industrial agreements excluded the operation of Clause 16 of the Award which conferred the six percent special allowance and replaced it with an indexed monetary amount and is paid as an inducement to undertake training duties and not as recognition of the work value of undertaking training duties. The respondent maintains that presumably the wage rates under these agreements were not discounted by the six percent rolled into the wages under the certified agreements made under the *Workplace Relations Act 1996* thereby recognising firefighters and SOs coming off shift by an additional quantum in their base rate of pay.
- 260 The current relativities between the classifications in the Award were determined in the 1994 work value case where the First Class Firefighter Level 2 was determined to be the benchmark position and the relevant relative work values prior to the case and afterwards is as follows:

	Pre Work Value Case	Post Work Value Case
Firefighter 1 st Class Level 2	100%	100%
Senior Firefighter	106%	115%
Station Officer 1 st Year	117.65%	125%
Station Officer 2 nd Year	122.55%	130%
Station Officer 3 rd Year	127.70%	135%
District Officer	136.04%	150%

- 261 The respondent argues that the applicant's claim for the Instructor position to have the rank and remuneration of a DO will distort the internal relativities within the Award. The Manager of Career Training, the top operational ranking position at the Training Centre holds the rank of DO and if the applicant's claim is granted, the Training Centre will have an inverted pyramid of DO classified positions and the applicant has made no effort to address this issue. Furthermore, this new structure will not facilitate the efficient organisation of the performance of work.
- 262 The respondent argues that the 1994 work value case recognised that modular training and competency outcomes justified a new classification structure and implicit in the decision therefore is that the increases in the relativities of SOs, SFFs and DOs over and above the approximately 4.5 percent granted for the additional roles undertaken and skills required of all employees incorporated a component for the skills, attributes, additional responsibilities and other factors required to deliver the modular training and competency outcomes to firefighters. The Commission can infer that the work value of instructing using modular concepts and competency based assessments is already recognised in the wage relativities of SFFs, SOs and DOs and amounts to about half the increase in the relativities of these positions.
- 263 The respondent maintains that if there had been any increase in the work value of Instructors over the past 20 years the Commission might reasonably have expected it to have been reflected in an Instructor classification or otherwise be dealt with in the recently issued *Fire Fighting Industries Award 2010* which reflects the current prescription in the State award of an allowance being paid for employees to come off shift work to perform training duties. The relativities within it correspond with the relativities determined in the 1994 work value case and can be said to recognise that training is an integral part of the role of employees and does not warrant a separate classification of Instructor.
- 264 In summary the respondent argues that the applicant has not demonstrated there has been a change in the nature of the work performed or that any changes have led to a significant net addition to work requirements. Moreover, it has not demonstrated that any new or changed work is performed by all Instructors all the time or that these were not accommodated in or contemplated by the 1994 work value case. The applicant's failure to address the issue of relativities or provide any justification for an Instructor classification should alone be reason to refuse the application.

265 The respondent submits that this application should therefore be dismissed.

Findings and conclusions

Credibility

266 I listened carefully to each witness and closely observed them. In my view each witness gave their evidence honestly and to the best of their recollection.

267 All of the applicant's witnesses have been Instructors for lengthy periods and have gained a range of training qualifications in order to be an Instructor and most of the applicant's witnesses have instructed since 1993 at numerous courses both at the Training Centre and on shift. Additionally, some of these witnesses have training qualifications to train other Instructors and two of the applicant's witnesses are the designated POC for their area of instruction. It is therefore my view that the applicant's witnesses are well placed to make judgements and give credible evidence about the changes which have taken place to the nature of the work performed by the respondent's Instructors and the way in which the work required of and undertaken by Instructors has changed since 1993. I reject the respondent's argument that the evidence given by the applicant's witnesses were largely assertions as it is my view the content of the TPM and other documentation tendered during these proceedings corroborates much of the evidence given by the applicant's witnesses. Furthermore, some of the evidence given by the applicant's witnesses was corroborated by other witnesses for the applicant.

268 Following is a summary of the courses the applicant's witnesses have instructed at and participated in, the approximate dates when this training took place and the training qualifications of each witness.

269 Mr Forster is the current Manager of Career Training at the Training Centre and he holds the following training qualifications:

- Diploma Training and Assessment Systems (BSZ);
- Diploma Training and Assessment (TAA);
- Certificate IV Fire Supervision;
- Certificate IV (X2) Training and Assessment;
- Certificate III Fire Operations; and
- Certificate II Emergency Responder (First Aid).

270 Mr Forster instructed in the following subjects between 1998 and 2002:

- General Fire;
- BA;
- Driving;
- Confined Space;
- Atmospheric Monitoring;
- Compartment Fire Behaviour Training; and
- Senior Assessor Incident Management.

271 Mr Jolly has the following training qualifications:

- Certificate in Workplace Training and Assessing, 1996;
- Certificate IV in Fire Fighting Supervision, 1998;
- Certificate IV in Assessment and Work Place Training BSZ 40198, 2004;
- Instructor/senior assessor- Operational Driving, 1992;
- Instructor/senior assessor - Operational 4 Wheel Drive Vehicles, 1992;
- Instructor/assessor - BA, 1992;
- Instructor/assessor - Hazardous Materials Management, 1992;
- Instructor/assessor - Confined Space Rescue, 1997; and
- Instructor/assessor - Atmosphere Monitoring, 1997.

272 Mr Jolly has instructed at the following courses/subjects:

- Recruit Schools 38, 39, 40 - Assisted with BA instruction and assessment;
- Recruit Schools 55, 56, 57, 58, 59 - Driver Training instruction and assessment; Recruit School 58 - BA instruction and assessment;
- Two Advanced Operational Training courses, BA and Road Accident Rescue instruction and assessment, 1995 - 1997;
- Three Incident Command Courses as course Instructor/assessor, 2003 - 2005;
- Three Driving Instructor courses as the lead senior Instructor/assessor, 2002 - 2005;
- Two BA Instructor courses as the General Instructor, 1995 - 1997;
- Numerous volunteer courses in BA, RCR, Leadership and Incident Command as well as Emergency Driving, 1993 - 2005;

- Extensive Commercial Training for the Mining, Oil and Gas Industry, including Firemanship, Hot Fire Fighting, BA, HAZMAT, RCR and Confined Space Rescue, 1993 - 2005;
- BA and HAZMAT qualification training for the Police Department Drug Squad, 1995 - 1997; and
- Road Accident Rescue training for St John's Ambulance recruits.

273 Mr Campbell has the following training qualifications:

- BA/HAZMAT/Rescue Equipment and Procedures – 1994;
- CM3 Trainer/Assessor – 1995;
- BSZ Certificate IV Trainer/Assessor - 2004;
- Certificate IV in Fire Fighting Supervision – 2005;
- Confined Space Rescue Instructor – 2006;
- Compartment Fire Behaviour Training Instructor – 2007; and
- TAA Certificate IV Trainer/Assessor – 2009.

274 Mr Campbell has instructed in the following courses/subjects in the past 20 years:

- SEP;
- BA/HAZMAT/Rescue - TFF, volunteer and commercial;
- Operational Management Program - SO schools;
- Compartment Fire Behaviour - TFF schools/volunteers;
- Introduction to Fire Fighting – volunteers;
- Structural Fire Fighting – volunteers;
- Operate Pumps – volunteers;
- Hot Fire – volunteers; and
- On-shift training:
Appliances - Pumps and L/T (sic);
Specialist appliances;
Aerial appliance;
BA/HAZMAT/Rescue;
First Aid; and
Grade/Module training and assessments.

275 Mr Brandrett has the following training qualifications:

- Certificate III in Firefighting Operations – 1997;
- Certificate IV in Firefighting Supervision – 2000;
- AFAC 4:03 Operational Management – 1999;
- AFAC 3:04 Fire and Incident Operations – 1999;
- BA/HAZMAT Instructor – 1999;
- Workplace Trainer – 2000; and
- Certificate IV in Workplace Assessment – 2001.

276 Mr Brandrett has instructed in the following subjects/courses and TFF training courses since the late 1990s:

- 12 career TFF training schools;
- 11 Incident Command Courses (for SFFs to become SOs);
- 15 BA Instructor courses;
- 2 Instructor specific upskill to new equipment courses;
- 237 BA courses (volunteer and commercial);
- 24 Hot Fire simulation courses;
- 12 firefighting courses;
- Trainer/assessor for Ground Controller, Structural Firefighting, Air Attack/Helitac
- Senior trainer/assessor for BA/HAZMAT, Introduction to AIIMS, AIIMS Awareness, Radio Communications, Hot Fire Simulations;
- General Instructor for Recruit Schools 49, 50 and 62;
- BA for Recruit Schools 49, 50, 51, 52, 53, 55, 56, 62 and 67;
- HAZMAT for Recruit Schools 49, 50, 51, 52, 53, 55, 56, 62 and 67;
- AIIMS Awareness or equivalent for Recruit Schools 49, 50, 51, 52, 55, 56, 62 and 67; and

- Radio Communications for Recruit Schools 49, 50, 51, 52, 53, 54, 55, 56, 59, 61, 62 and 67.

277 Mr Brandrett is also the POC for the BA and Radio Communications TRKs.

278 Mr Matthews is the Manager Major Incident Training at the Training Centre and he has the following training qualifications:

- Advanced Operational Training Program 1996 (equivalent to SO Competency) – 1996; and
- Certificate IV in Assessment and Workplace Training (BSZ) – 2001.

279 Mr Matthews has instructed in the following subjects/courses:

- Introduction to AIIMS;
- Major Incident Management for Incident controllers;
- Logistics Officers training course;
- Operations Officers training course;
- Planning Officers training course;
- SEP;
- Recruit school number 46: general firefighting, BA, Driver training and other components of the TFF course;
- Incident Command course;
- Recruit school number 49;
- Several volunteer firefighter and Incident Command Courses;
- Industrial Training with the Commercial Training Unit between 1997 and 2001;
- Coordinated and delivered training as the BHP Training Officer; and
- Volunteer firefighters in Newman, South Hedland and Port Hedland delivering and coordinating Fire Service training to BHP emergency response teams and Emergency Service Officers on several BHP Sites.

280 Mr Gordon has the following training qualifications:

- Instructor/senior assessor – BA;
- Instructor/senior assessor – HAZMAT;
- Instructor/senior assessor - Atmospheric Monitoring;
- Instructor/senior assessor - Confined Space Rescue;
- Instructor/senior assessor - Operational Driving;
- Instructor/senior assessor - Operate 4 Wheel Drive Vehicles;
- Instructor/senior assessor – RCR;
- Instructor/senior assessor - Development Guide;
- BSZ401A - Plan assessment;
- BSZ402A - Conduct assessment;
- BSZ403A - Review assessment;
- BSZ404A - Train small groups;
- BSZ405A - Plan and promote training;
- BSZ406A - Plan sessions;
- BSZ407A - Deliver training sessions;
- BSZ408A - Review training sessions;
- FESA0214A - TDTC2501A – trainer;
- FESA0214B - TDTC2501A – assessor;
- FESA0214E - PUAVEH001 – trainer/assessor;
- FESA0214D - PUAVEH001 – trainer;
- FESA0214F - PUAVEH001 – trainer;
- FESA0157B - PUAFIR207A – assessor;
- FESA0215B - PUAFIR306A – assessor;
- FESA0154B - PUAFIR307A – assessor;
- FESA0216B - PUAFIR308A – assessor;
- FESA0149B - PUASAR002A – assessor;
- FESA0147A - PUASAR005A – trainer;
- FESA0147B - PUASAR005A – assessor;
- FESA0300 - FESA trainer;
- FESA0301 - FESA assessor;

- 3:09 - Workplace Trainer cat 1;
- 3:11 - Public Speaking;
- 3:22 - Workplace Assessment; and
- Trainer assessor - Volunteer Structural Firefighting.

281 Mr Gordon has instructed in the following courses/subjects since the early 1990s

- BA;
- Driving;
- Structural Firefighting;
- Confined Space Rescue;
- RCR;
- Six TFF schools since 2005 - BA and Driving training;
- Commercial Training Unit - Intermediate and advanced Firefighting, BA, Driving, Team Leaders and Confined Space Rescue for industry; and
- Volunteer Firefighting training.

282 Mr Hull has the following training qualifications:

- High Angle Rescue Instructor;
- Train the trainer;
- BA and Rescue Instructor;
- Workplace trainer;
- Workplace assessor;
- Confined Space Entry;
- Recognised Prior Learning assessor;
- Driving Instructor;
- Senior Line Rescue Instructor/assessor;
- Senior Confined Space Rescue Instructor/assessor;
- Heavy Rescue Instructor;
- Spinal Extrication Instructor;
- USAR (cat 2) Instructor; and
- FESA trainer.

283 Mr Hull has instructed in the following courses/subjects since 1994:

- BA, RCR, Spinal Management, Confined Space Entry and Rescue training for both volunteer and career firefighters;
- SEP for career and volunteer firefighters training in Confined Space Entry, Communications Planning and Emergency Driving;
- Recruit school 51 instructing in all areas including BA, HAZMAT, Driving (on and off road), Rescue and Casualty Assistance;
- Commercial Training Unit providing training to industry groups in BA, firefighting, HAZMAT, Confined Space Entry, RCR and Rope Rescue;
- USAR category 1;
- National USAR course in Queensland; and
- High Angle Rescue at USAR course in Singapore.

284 Mr Sutton has the following training qualifications:

- BSZ403A and BSZ408A;
- Administer Oxygen in an Emergency Situation trainer assessor;
- FESA Ground Controller;
- FESA trainer assessor;
- BA senior assessor;
- BA Instructor;
- HAZMAT Instructor;
- FESA Level 1 Incident Manager;
- Field Liaison Officer;
- FESA Sector Commander;

- Hot Fire Simulations trainer assessor;
- FESA Incident Operations;
- FESA Operational Management;
- USAR Technician/Team Leader;
- USAR Canine Handler and Subject Matter Expert;
- Heavy Rescue trainer assessor;
- RCR senior assessor;
- Pump Operations assessor;
- Bush Firefighting assessor;
- Foam Trailer senior assessor;
- Carbon Dioxide Delivery Cache senior assessor;
- Mass Decontamination System senior assessor;
- Rapid Decontamination Unit senior assessor;
- Introduction to Firefighting;
- Structural Firefighting; and
- RCR Equipment Upgrade assessor.

285 Mr Sutton has trained TFFs in the following:

- Administer Oxygen in an Emergency Situation;
- BA;
- HAZMAT; and
- Chemical, Biological and Radiological.

286 Mr Sutton has trained volunteers in BA, HAZMAT, RCR, Pump Operations, Structural, Bush Fire and Introduction to Firefighting and has trained industrial groups whilst employed by the respondent. Mr Sutton has also trained personnel to become BA Instructors.

287 Mr Mincherton has the following training qualifications:

- Certificate III in Firefighting;
- Profile Off-Road Driving;
- Profile On-Road Driving;
- Diploma in Fire Engineering Management;
- Fire Investigation Structural;
- Conduct a Fire Investigation and Analysis;
- Certificate IV in Assessment;
- Activities Bush Fire Investigations;
- Certificate II in Firefighting;
- FESA Level 1 Incident Management;
- Profile Bush Fire Firefighting;
- Profile RCR;
- Profile Structural Firefighting; and
- Certificate IV in Training and Assessment.

288 Mr Mincherton has been an Instructor, Duty Officer and/or Officer in Charge at six TFF schools between 1992 and 1997. Mr Mincherton also trained SOs in 1990 and 1994.

289 The only witness for the respondent who gave evidence about the nature of training at the Training Centre and on-shift since the early 1990s was Mr Bailey and he gave evidence that the requirements on Instructors, the way in which TFFs and trainees are taught at the Training Centre and the roles of Instructors have not changed in any significant way since 1993. As I accept the detailed evidence given by each of the applicant's witnesses about their involvement in training activities and as this evidence was in accord with documentation tendered during the hearing and evidence given by other witnesses for the applicant, where relevant, and given the extensive knowledge, qualifications and experience of the applicant's witnesses with respect to instructing at the training Centre and on-shift since the early 1990s I find that the evidence given by the applicant's witnesses about the workload of Instructors and the complexity of the work currently required of Instructors compared to the workloads of Instructors in or about 1993 and the differences between on-shift training and instructing at the Training Centre should be accepted and preferred to the evidence given by Mr Bailey. In reaching this conclusion I note that all of the applicant's nine witnesses, with the exception of Mr Sutton who has been training with the respondent since 2000, have been instructing at the Training Centre since the 1990s and most have conducted on-shift training during this period. I also note that Mr Evenis has been the Manager of Training and Development at the Training Centre since 2008 but he has not worked as an Instructor and Mr Cuneo worked at the Training Centre in late 1990 for a couple of years so he has not had experience as an

Instructor since that time during which there has been considerable changes to the respondent's training regime and courses conducted at the Training Centre. In the circumstances I find that where there is any conflict in the evidence given by each witness I am of the view that the evidence given by the applicant's witnesses should be given greater weight and preferred to the evidence given on behalf of the respondent.

- 290 The applicant argues that a new Instructor classification should be introduced and be paid at the salary level of a DO. The applicant claims that this new classification should be introduced given significant increases to the value of the work performed by Instructors since the early 1990s and in particular increases to the skills, responsibilities, qualifications and complexity of the work undertaken by Instructors. The applicant also submits that the duties currently required of Instructors warrants payment at a DO rate because up to the early 1990s Instructors were in the main paid at the rate of a DO and the value of the work undertaken by an Instructor therefore equals at least that of a DO. In contrast the respondent maintains there has been no or limited change to the nature of the work required of Instructors since mid 1990 and any changes that have taken place are evolutionary. In any event if there were work value changes, any changes to the value of the work required of Instructors was recognised in the 1994 work value case which delivered wage increases to firefighters and coming off shift was compensated by way of other wage increases under the relevant industrial agreements. Furthermore, the applicant did not demonstrate that the skills, qualifications and experience required of an Instructor equates to that required of a DO. Additionally, the recent introduction of TRKs for subject areas has substantially reduced the workload, skills and duties required of Instructors and the practice of paying Instructors at the DO rate of pay ceased in or about 1997/1998.
- 291 When making a decision under the Act the Commission takes into account a range of matters including the objects as set out in s 6 of the Act as well as the provisions of s 26 of the Act and any other matter it considers relevant. In relation to making a decision with respect to this matter, it is my view and I find that the Commission should have regard to s 26(1)(a), (c) and (d) of the Act which is as follows:

“26. Commission to act according to equity and good conscience

- (1) In the exercise of its jurisdiction under this Act the Commission —
- (a) shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms;
- ...
- (c) shall have regard for the interests of the persons immediately concerned whether directly affected or not and, where appropriate, for the interests of the community as a whole; and
- (d) shall take into consideration to the extent that it is relevant —
- (i) the state of the national economy;
- (ii) the state of the economy of Western Australia;
- (iii) the capacity of employers as a whole or of an individual employer to pay wages, salaries, allowances or other remuneration and to bear the cost of improved or additional conditions of employment;
- (iv) the likely effects of its decision on the economies referred to in subparagraphs (i) and (ii) and, in particular, on the level of employment and on inflation;
- (v) any changes in productivity that have occurred or are likely to occur;
- (vi) the need to facilitate the efficient organisation and performance of work according to the needs of an industry and enterprises within it, balanced with fairness to the employees in the industry and enterprises;
- (vii) the need to encourage employers, employees and organisations to reach agreements appropriate to the needs of enterprises and the employees in those enterprises.”

- 292 It is also my view that with respect to this matter the Commission should take into account s 6(af) and s 6(ca) of the Act which are as follows:

- “(af) to facilitate the efficient organisation and performance of work according to the needs of an industry and enterprises within it, balanced with fairness to the employees in the industry and enterprises;
- ...
- (ca) to provide a system of fair wages and conditions of employment;”

- 293 Principle 7 of the Statement of Principles in the 2010 State Wage Order, Work Value Changes, reads as follows:

“7. Work Value Changes

- 7.1 Applications may be made for a wage increase under this Principle based on changes in work value.
- 7.2 Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification.
- 7.3 In addition to meeting this test a party making a work value application will need to justify any change to wage relativities that might result not only within the relevant internal award classifications structure but also against external classifications to which that structure is related. There must be no likelihood of wage “leapfrogging” arising out of changes in relative position.

- 7.4 These are the only circumstances in which rates may be altered on the ground of work value and the altered rates may be applied only to employees whose work has changed in accordance with this provision.
- 7.5 In applying the Work Value Changes Principle, the Commission will have regard to the need for any alterations to wage relativities between awards to be based on skill, responsibility and the conditions under which work is performed.
- 7.6 Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification or where it is performed only by some of the persons covered by the classification, such new or changed work should be compensated by a special allowance which is payable only when the new or changed work is performed by a particular employee and not by increasing the rate for the classification as a whole.
- 7.7 The time from which work value changes in an award should be measured is any date that on the evidence before the Commission is relevant and appropriate in the circumstances.
- 7.8 Care should be exercised to ensure that changes which were or should have been taken into account in any previous work value adjustments or in a structural efficiency exercise are not included in any work evaluation under this provision.
- 7.9 Where the tests specified in 7.2 and 7.3 are met, an assessment will have to be made as to how that alteration should be measured in money terms. Such assessment should normally be based on the previous work and the nature and extent of the change in work.
- 7.10 The expression "the conditions under which the work is performed" relates to the environment in which the work is done.
- 7.11 The Commission should guard against contrived classifications and over-classification of jobs.
- 7.12 Any changes in the nature of the work, skill and responsibility required or the conditions under which the work is performed, taken into account in assessing an increase under any other provision of these Principles, shall not be taken into account in any claim under this provision."

294 In *Health Services Union of Western Australia (Union of Workers) v Director General of Health in Right of the Minister for Health as the Metropolitan Health Service at Pathwest Laboratory Medicine WA* (2008) 88 WAIG 475 Scott C, as she was then, stated the following with respect to work value when dealing with a reclassification appeal at paragraphs 9 to 13:

"The concept of Work Value is one means of setting remuneration levels for particular work by determining the value to be attributed to that work. The concept has been in existence for many years before the concept of "work value change" was included within the Principles as one of the limited ways in which an increase in the level of remuneration could be justified.

Work Value is a tool or mechanism to assess the requirements of a job, and then to assign a relative value to the job. In the *Scientific Officers Case* ([1962] AR (NSW) 250 at 268), it was noted that the proper course was "to fix a rate based exclusively on work value". Reference was made in that decision to the *Professional Engineers Base Grade Case* of the Commonwealth Conciliation and Arbitration Commission in June 1961 (Serial No. A 8508) where the Commission said that there had previously been too much attention to salary patterns, the appropriate position in the wage structure, relationships with other employees, "and too little attention to actual duties, responsibility and work value..." The *Scientific Officers Case* also noted the New South Wales *Marine Motor Drivers Case* of 1960 where Beattie J said:

"A consideration of the work done by the employees still remains a predominant matter, for, in essence, the Commission's task is to place a value on the work done by employees in the classes for whom wages are to be fixed as minima". (1960 AR 256 at 259)

The decision in the *Scientific Officers Case* (supra) refers to the assessment of the work value by reference to the nature of the work, the responsibilities of the position, the conditions under which it is performed, and the qualifications and experience required.

It is noted that in the *Metal Trades Award 1952* ((1967) 121 CAR 587), the Commonwealth Conciliation Act and Arbitration Commission examined the work undertaken pursuant to that award for the purpose of establishing margins to be applicable to the rates of pay. In that case, Commissioner Winter had undertaken an investigation on behalf of the Commission taking account of "such factors as skill, qualifications, aptitude, experience, nature of the work and conditions in which or under which it is carried out." [at 589]

Wording similar to that used in the *Scientific Officers Case* (supra) and the *Metal Trades Award Case* (supra) is reflected in the Work Value Change Principle of this Commission's Statement of Principles ((2007) 87 WAIG 1487 at 1517), where:

"Changes in Work Value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which the work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification.""

- 295 After carefully considering all of the evidence given in these proceedings and the exhibits tendered and when taking into account my view on witness credit, I find that training and related duties currently undertaken by Instructors at the Training Centre constitutes a significant net addition to the value of the work, skills, qualifications and experience required of an Instructor compared to the value of the work, skills, qualifications and expertise previously required of Instructors in the early 1990s. I also find that the volume of work required of Instructors has increased significantly since 1993. Additionally, I find that the work currently undertaken by Instructors and the qualifications and experience required of Instructors in order for them to be proficient Instructors is significantly greater than the duties expected of a SFF and a SO.
- 296 Specifically I find that the manner in which training is delivered by Instructors at the Training Centre when undertaking TFF training and trainee instruction in general including SO and SEP training has changed significantly since the early 1990s with respect to the complexity and the nature of the work undertaken by Instructors and I find that the subject matter of the courses conducted by Instructors at the Training Centre and the areas they train in has increased in breadth and depth during this period. I find that the introduction of competency based assessment since 1994 has significantly impacted on how Instructors are required to train TFFs and trainees and I find that as a result the duties expected of Instructors are now more complex and challenging than was previously the case. I therefore find that there are currently greater responsibilities required of Instructors when delivering training than existed in the early 1990s. I also find that the volume of work required of Instructors during this period has increased due to the formal requirements on the respondent and Instructors since gaining RTO status and the change to a national competency based assessment process.
- 297 I find that training at the Training Centre in the 1980s was relatively informal. Success in a TFF course consisted of passing a set percentage of practical and theory requirements (75 percent – practical and 65 percent – theory) and courses were curriculum based. I find that in or about 1995 the AFAC standards were adopted by the respondent and this represented a move towards standardised training across Australia whereby courses were competency based. I find that the AFAC standards were refined by the introduction of the PSTP regime in mid 2000 which is also competency based and standardised across Australia. I find that the content of courses under the AFAC standard was not as comprehensive as at present and I find that teaching to the AFAC standards required less accountability on Instructors than is currently the case under the PSTP standards mainly due to the respondent obtaining RTO status in or about 1999.
- 298 I find that after the respondent adopted a national competency based assessment structure in the 1990s and after the respondent gained RTO status in or about 1999, the respondent and its Instructors were now required to be accredited under national guidelines to conduct training and Instructors' qualifications and the currency of these qualifications were now required to be maintained on an ongoing basis which was not previously the case. Additionally, the respondent and Instructors were required to adhere to a range of requirements in order for the respondent to retain its RTO status.
- 299 I find that since the early 1990s significant changes have taken place with respect to the role of Instructors, the context of the way in which work has been performed by Instructors and changes to the work required of Instructors in the following areas and these changes have resulted in greater expectations and requirements on Instructors with respect to their skills, qualifications and responsibilities and the conditions under which work is performed by them:
- (a) The nature of TFFs currently being trained as firefighters and the requirement on Instructors to be aware of access and equity legislative requirements when training.
 - (b) The manner in which courses are now conducted and how trainees are currently required to be assessed by Instructors.
 - (c) An expanded range and complexity of subjects now being taught by Instructors.
 - (d) The necessity for Instructors to obtain additional qualifications and vocational experience in order to be an Instructor, the ongoing requirement to retain the currency of their qualifications and vocational experience and be familiar with accreditation and compliance requirements on them and those on the respondent.
 - (e) Instructors are required to adhere to the requirements of the TRKs and they are required to contribute to the content of TRKs on an ongoing basis and complete TRK handovers.
 - (f) Instructors being subject to stringent occupational health and safety requirements when teaching as well as having to complete risk analysis assessments.
- (a) The nature of TFFs currently being trained as firefighters and the requirement on Instructors to be aware of access and equity legislative requirements when training
- 300 I find that in or about 2000 when the respondent expanded the background and types of TFFs it was accepting as trainees this resulted in Instructors having to change the way in which TFFs were taught. I find that as current TFFs have more varied backgrounds, skills and experiences than previously and as the mechanical skills of TFFs has declined in recent times these changes have resulted in Instructors having to alter the way in which they teach courses and adapt their teaching style in order to accommodate the varied backgrounds of TFFs thus requiring Instructors to be more flexible and exercise greater judgement in the way in which TFFs are taught. I also find as the content of what is covered in TFF course has increased since the early 1990s to now include AIIMS awareness, an expanded PPE, Managing Injuries, RCR, Enhanced Rescue, Introduction to Fire Behaviour and USAR and as these courses must be delivered with other basic TFF courses in the same amount of time as TFF training in the early 1990s Instructors must therefore now be more productive and efficient when training TFFs. Instructors are also now required to ensure that they cater for the individual differences of TFFs and other trainees and they are required to be aware of and adhere to legislative requirements in this regard. I find that as a result this has placed additional pressures on Instructors when teaching and assessing which did not previously exist thus increasing the workload on Instructors and the intensity of the work required of Instructors.

301 The relevant section of the TPM in relation to Instructors being required to accommodate individual differences of trainees, which has been in place since 2003, is as follows:

“Access and Equity Legislation

There is a range of legislation and policies, which promote access and equity within the national Vocational Education and Training system. Some of these include:

- *Building Diversity and the AQTF.*
- *National Aboriginal and Torres Straits Islander Strategy for Vocational Education and Training 1999-2003.*
- *Partners in a Learning Culture from 2000-2005.*
- *Building Pathway from 2000-2005.*
- *Disability Discrimination Act 1993.*

Refer to ANTA website at <www.anta.gov.au> for more information.

In keeping with these policies FESA has developed an *EEO and Diversity Management Plan* which is available on the FESA Intranet.

When training or assessing, assessors need to ensure that candidates are not disadvantaged in the training or assessment process due to cultural or language background, age, gender, religion or disability. Assessors also need to be aware of the ways in which candidates can be disadvantaged in the assessment process and what steps can be taken to ensure that assessment policies and practices take account of individual needs.

This may involve adjusting the assessment process by varying the procedures for conducting assessments or for gathering evidence. Reasonable adjustment involves varying the assessment process to take into account the special characteristics of the candidate while ensuring the validity and reliability of assessment decisions.

Reasonable adjustment

Reasonable adjustment, sometimes called reasonable accommodation or allowable adjustment, is designed to ensure that all people are treated equally in the assessment process. This means that, wherever possible, 'reasonable' adjustments are made to the assessment process to meet the individual needs of candidates.

Reasonable adjustments should be based upon the individual candidate's needs and abilities. This may involve providing interpreters for candidates from non-English speaking backgrounds, installing ramps for wheelchairs and adjustable desks for people with physical disabilities, or offering online assessment for candidates in remote locations. Other adjustments may include personal assistants, additional tutorial assistance, additional time for assessments, technology such as speech synthesisers or computer software, or assistance with managing stress and anxiety.

Adjustments are considered 'reasonable' if they do not impose an unjustifiable hardship upon the RTO or employer.

In determining whether an adjustment would impose unjustifiable hardship, the following factors should be taken into account:

- the nature of the benefit or detriment likely to be experienced by the person concerned
- the effect of the disability or disadvantage on the person concerned
- the financial circumstances and the estimated amount of expenditure required to be made by the organisation claiming unjustifiable hardship.

Advice on reasonable adjustment in Training Packages

The assessment guidelines section of all Training Packages should contain the following statement which outlines the approach that assessors should take to making reasonable adjustments in the assessment process when dealing with people with disabilities.

Reasonable adjustments are to be made to ensure equity in assessment for people with disabilities. This means that wherever possible, 'reasonable' adjustments are to be made to meet the individual needs of a person with a disability.

Adjustments are considered 'reasonable' if they do not impose an unjustifiable hardship on a training provider or employer. When assessing people with disabilities, assessors are encouraged to apply good practice assessment methods with sensitivity and flexibility.

The following guidelines will support good assessment for **all learners**, including those with a disability:

Identify the issues

Building a rapport with the learner will help you to identify any particular needs they may have and help you to meet those needs.

Create a climate of support

Successful assessment will not be possible in a climate of hostility or ignorance. As an assessor it is your role to create and foster a climate of tolerance, acceptance and support.

Ensure access

For people with disabilities, access can sometimes pose a problem and it is the trainer, assessor and employer who can provide assistance to ensure access is achieved. Access needs are based on the individual's needs and abilities and can include the provision of:

- ramps, height adjustable desks
- enlarged material, braille translations
- technology or support systems - such as audio tapes and speech synthesisers, an AUSLAN interpreter, a scribe to take dictated responses to questions.”

(Exhibit R2 pp 12:3-12:4)

(b) The manner in which courses are now conducted and how trainees are currently required to be assessed by Instructors

302 Under competency based assessment and in particular the PSTP Instructors must now ensure that trainees are fully competent in each unit of instruction in order to pass a course whereas under curriculum based assessment a trainee passed a course if he or she mastered most of the skills and knowledge requirements of a unit. I find that this change to learning and assessment whereby Instructors are required to ensure that a trainee is competent in each task or skill in order to pass a unit places a greater onus on Instructors when training than was previously the case in the early 1990s. Furthermore, if a trainee does not master a concept or task they are deemed to be 'Not Yet Competent' and there is now an onus on an Instructor to work with the trainee to ensure that they master the competency thereby placing additional pressure and time constraints on the Instructor. I find that having an appeal mechanism, which enables trainees to question the manner in which they have been trained as well as judgements made by Instructors about their level of competence, which did not exist in the 1990s, also places additional pressures on Instructors as their judgement about a trainee's skill level may now be scrutinised by a third party thereby increasing the workload and intensity of work of an Instructor. In particular, I find on the evidence that given the changing nature of TFFs, instruction under competency based assessment of TFFs has greatly impacted on the skills and responsibilities required of Instructors and that this has fundamentally altered the way in which training of TFFs has been undertaken since the early 1990s. Instructors are also now required to conduct a Job Hazard Analysis and even though the respondent argued that this was done informally by Instructors prior to its introduction I find that as this is now a new formal requirement on Instructors it has added to the duties expected of Instructors and is an added responsibility. It is also the case that after completing a course an Instructor is now required under the TPM to contribute to a Course Report thus adding to the responsibilities required of an Instructor.

303 The following extracts from the TPM confirms the assessment and appeal processes now open to trainees and the requirements on Instructors to complete a Course Report:

“Determining Competency

A person is considered to be 'competent' when they are able to apply their knowledge and skills to successfully complete work activities in a range of situations and environments, in accordance with the standard of performance expected in the workplace.

This view of competency:

- emphasises outcomes
- focuses on what is expected of an employee in the workplace
- highlights the application of skills and knowledge to workplace tasks
- incorporates the ability to transfer and apply skills and knowledge to new situations and environments
- focuses on what people are able to do and the ability to do this in a range of contexts.

Assessment and judgement

The assessment system and process have policies and procedures that make it as fair as possible. These include:

- thorough planning processes
- validation of assessment tools and materials
- an open and transparent assessment process
- collaboration with the candidate, the workplace and technical experts
- an appeals process.

Assessors need to ensure that their process for evaluating evidence is also fair. It is easy to have prejudices that are not recognised as such. For example, some individuals have opinions about whether men or women make better nannies or car mechanics.

On an individual basis, an assessor might make an assumption about competence in one area based on experience from another. For example, just because the candidate has proved competent in mustering cattle, it does not mean that the candidate can also herd sheep. These prejudices should not interfere with the fair and rigorous evaluation of the evidence.

Strategies and tools provided by FESA will assist assessors to conduct fair assessments.

Assessor uncertainties

Sometimes it may be challenging for an Assessor to make an assessment decision. Every situation is different. However, if the assessment process is one in which the candidate has fully participated and the assessor has the benefit of a supportive system of policies, procedures, advice and shared responsibility, the decision should be easy to make. **It is**

important to remember that the decision 'Not Yet Competent' is not failure. It means the candidate needs more training, time or support in some identified skill areas.

Assessors need to ensure that the collected evidence:

- reflects the skills and knowledge described in the relevant unit(s) of competency
- shows application of the skills in the context described in the range statement
- indicates that skills and knowledge are applied in real workplace situations
- demonstrates competence over a period of time
- demonstrates repeatable competency
- is corroborated
- is the work of the candidate
- is able to be verified
- demonstrates the current skills and knowledge of the candidate.

When the Assessor has completed all of the above checks, it should be clear whether the evidence meets the requirements for competency. The Assessor can then work out what feedback should be given to the participant and what further action is required.

Assessment decision and outcome

The Assessment Outcome will be one of the following:

- Competent
- Not Yet Competent.

The assessment outcome will be documented on the assessment checklist and a paper and electronic record kept by FESA for 30 years. (Refer to Section 10, 'Training Administration and Records').

Competent (C)

Candidates are deemed 'competent' when they can consistently demonstrate their skills and explain their knowledge to the standard required in a particular subject area.

Not Yet Competent (NYC)

Candidates are deemed 'Not Yet Competent' when they are unable/have not demonstrated appropriate levels of competence in accordance with the minimum performance standards.

FESA employees and volunteers assessed as 'Not Yet Competent' (after their first and second assessment) shall receive feedback and counselling by the Assessor, and may be given the opportunity to undergo further training prior to re-assessment. The Assessor will also advise the applicant of the *FESA Appeals Policy (Assessment)*.

Feedback to the candidate

Useful and clear feedback to the candidate is of primary importance to the assessment process. Feedback should include advice and explanation of the elements of competency achieved and elements of competency not yet achieved.

Effective feedback is:

- constructive
- balanced
- highlights positive results
- actionable
- relevant
- timely.

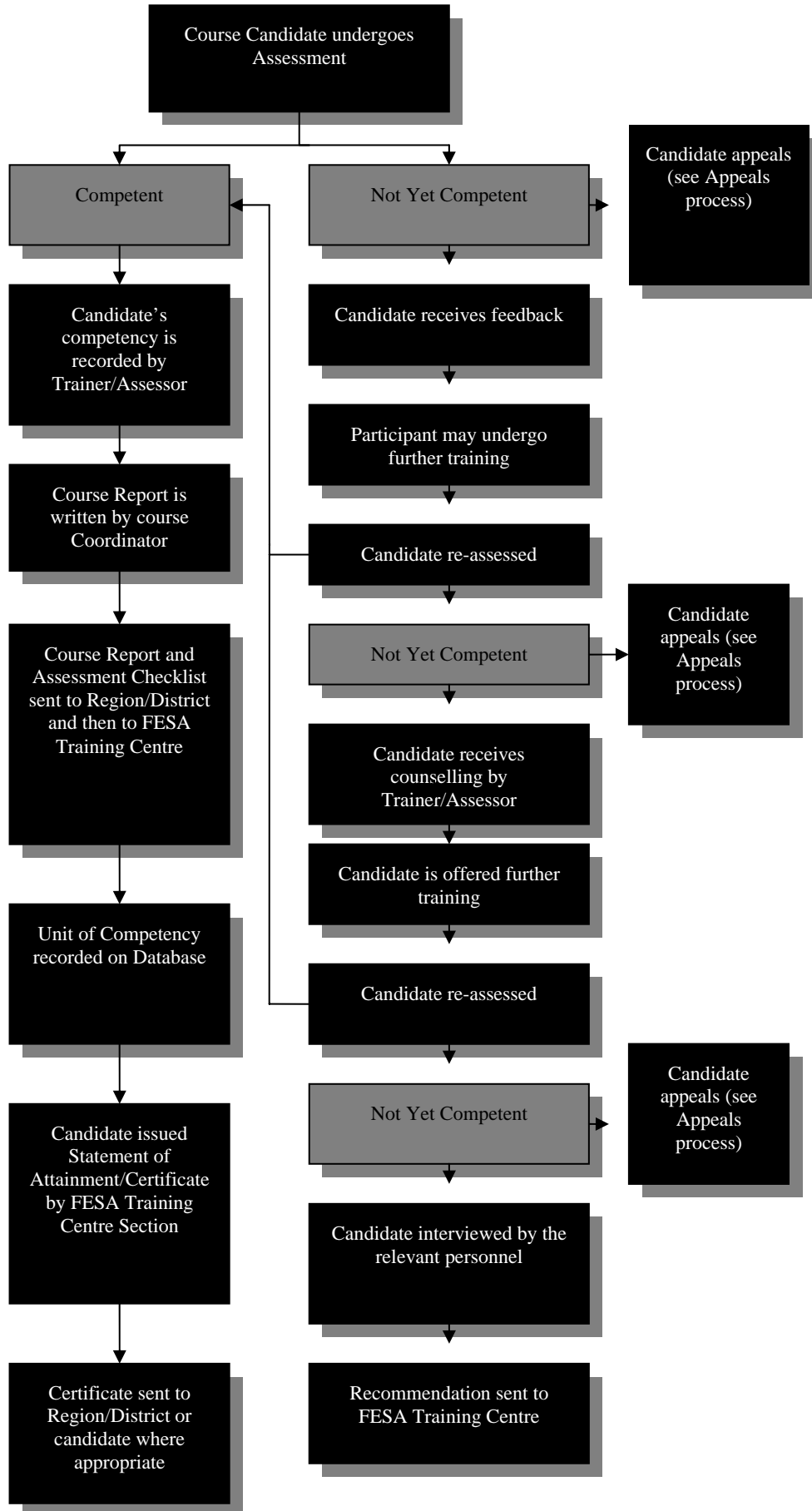
For candidates who are not yet competent, the Assessor and the Candidates' Supervisor will provide guidance and assistance in developing proposed remedial action/s and expected performance outcomes as part of the counselling process. This will further prepare the candidates for future reassessment.

The assessment process

The assessment process is the series of steps that candidates and assessors move through while undertaking the assessment. It includes preparing, conducting, recording, reporting and reviewing the assessment.

The assessment process is a critical component of the broader assessment system. That is, the structures and processes that the FESA has established to ensure that assessment decisions made in relation to many candidates, by many assessors, in many situations which are consistent, fair, valid and reliable.

Wherever possible, assessments will be conducted in the normal workplace of the person being assessed, using tools and/or equipment that are usually available. Assessment tools are provided in all Training Resource Kits.



The assessment steps

The following in-depth procedural steps complement the flow chart shown on the previous page.

Step	Procedures
Step 1:	<ul style="list-style-type: none"> • Candidate is identified as ready for assessment. • Candidate nominates their readiness for assessment OR Trainer/assessor deems candidate ready for assessment.
Step 2:	<ul style="list-style-type: none"> • Candidate is advised of assessment time, place, method, expected performance standards, resources available, timeframe of assessment, competencies being assessed and result of assessment if competency achieved. • This may be provided in written or verbal format as part of the training activity (see Appendix 8).
Step 3:	<ul style="list-style-type: none"> • Assessor administers the assessment/assessment tool, gathering sufficient and appropriate evidence in order to make the assessment judgement.
Step 4:	<ul style="list-style-type: none"> • Assessor evaluates the evidence gathered or provided by the candidate and makes the assessment judgement. • Assessor completes the assessment checklist as detailed in Part 3 of the TRK. • The checklist is then to be placed on the course TRIM file.
Step 5:	<ul style="list-style-type: none"> • Not Yet Competent. (If Competent skip to Step 12.) Assessor advises of assessment outcome and explains the judgement decision using the Post Assessment Briefing Form (Appendix 9). • The assessor and immediate supervisor counsel the candidate. They will provide guidance and assistance in developing proposed remedial actions and expected performance outcomes. • Trainer/Assessor advises the candidate of their right for appeal and provides a copy of the FESA Appeals (Assessment) Policy. • Candidate may be provided various additional training options. These may include: Repeat scheduled training course/module, one-on-one coaching/development, repeat part of a scheduled training course/module, undergo practice in a particular skill, mentoring, shadowing, reading and research.
Step 6:	<ul style="list-style-type: none"> • Candidates who are still found Not Yet Competent after the third assessment are interviewed by a review panel convened and chaired by the FESA Director Training & Development, Human Services or delegate. • Panel investigates circumstances of the candidate's inability to achieve competency.
Step 7:	<ul style="list-style-type: none"> • The Review Panel produce and submit a written recommendation/report regarding an appropriate course of action to the relevant Executive Director for endorsement.
Step 8:	<ul style="list-style-type: none"> • Director Training & Development produces documentation outlining the Review panel process and outcomes. As this document will be given to the candidate it will include the candidates right to appeal under the FESA Training and Assessment Policy.
Step 9:	<ul style="list-style-type: none"> • The endorsed course of action is implemented.
Step 10:	<ul style="list-style-type: none"> • Competent. Assessor advises the candidate of assessment outcome.
Step 11:	<ul style="list-style-type: none"> • Assessor completes the Assessment Checklist (Appendix 10) and the Post Assessment Feedback Briefing form (Appendix 9). • Candidate and Trainer/Assessor sign the Post Assessment Feedback Briefing form and Assessment Checklist (where possible). • Assessor provides candidate with a copy of the Post Assessment Feedback Briefing form, when requested. • Trainer/Assessor maintains the original Post Assessment Feedback Briefing form on the Candidate's Personal Training File and sends the Assessment Checklist to the FESA Training Centre for recording and filing.
Step 12:	<ul style="list-style-type: none"> • Trainer/Assessor provides feedback to the Course Coordinator regarding the Course Report Form (Appendix 11) for inclusion in the final submission of the report. • The Course Coordinator completes the course report.
Step 13:	<ul style="list-style-type: none"> • Upon completion, the Course Report is sent to the relevant FESA Training Centre, Section Manager.

Step	Procedures
	<ul style="list-style-type: none"> The Course Report is filed as part of FESA's RTO requirements.
Step 14:	<ul style="list-style-type: none"> The FESA Training Centre issues a Statement of Attainment/Certification of Qualification and forwards to the relevant District/Regional office or to the successful candidate as appropriate.

(Exhibit R2 pp 7:3-7:7)

“Appeals and Complaints/Grievances**Appeals**

An appeal against an assessment outcome or process may be lodged at any time if the person undergoing assessment feels they have been disadvantaged or discriminated against.

The Appeals Procedures apply to:

- Assessments conducted within a course.
- Assessments or decision within a Skills Recognition (RPL/RCC) process.

All FESA Volunteers and Staff have the right to appeal an assessment decision, where they feel that they have been treated unfairly, discriminated against, or otherwise dealt with in contravention of the FESA Training procedures Manual.

Grounds for Appeal

Valid grounds for submitting an appeal may include but are not limited to:

- alleged bias of the assessor;
- level of competence of the assessor;
- alleged wrong advice from the assessor regarding the assessment process;
- alleged inappropriate assessment process for the competency; and/or
- faulty or inappropriate equipment.

Procedures

An appellant wishing to submit an appeal must do so by completing an Appeals Application Form (Appendix 13).

An appeal against an assessment must be submitted in writing and signed by the appellant within fourteen (14) working days of the date of the result notification. The documentation should clearly state on what grounds the appeal is based and should include the evidence available to support the claim.

At Unit level

FESA Volunteers and Staff will submit their claims to the appropriate Regional Staff Member. If a candidate is not happy with the outcome they can go higher.

At Regional/District level

FESA Volunteers and Staff will submit their claims to either the relevant Regional Director or the FESA Training Centre (as appropriate).

On receipt of the letter of appeal, the Region or the FESA Training Centre will acknowledge receipt of the claim, in writing, to the claimant.

Upon the receipt of a letter of appeal the relevant Regional Staff Member or FESA Training Centre will nominate an independent relevant Assessor to review the appeal and make a determination.

The Independent Assessor has **three** options:

- deeming the appeal successful
- or**
- recommending re-assessment
- or**
- rejecting the appeal.”

(Exhibit R2 p 9:2)

“Monitoring and review

Monitoring and review processes will be carried out at regular intervals to ensure the ongoing efficiency of training management procedures and the quality of training and assessment activities.

These processes will include but not be limited to:

- Feedback from Trainers/Assessors, participants and Course Coordinators on the conclusion of course or activities.
- Analysis by the FESA Training Centre of all feedback received from clients (formal and informal feedback), and if necessary, amend the relevant documentation.

- Scheduled reviews and, if necessary, updating of all training documents (ie. FESA *Training Procedures Manual*, FESA Training Policy, Training Resource Kits).

Note: Each training document will outline its Scheduled Review Plan.

- Document control system.
- Annual self-assessment against RTO requirements.

Training and assessment activities feedback

The Course Coordinator (in consultation with the Trainers/Assessors) will report back, in writing (using a Course Report), to the FESA Training Centre (through their Regions/Districts) at the end of each program of training, in terms of:

- Course preparation and administration.
- Participant's results.
- Recommendations of changes, particularly regarding the Training Resource Kit (TRK).
- Other comments.

Upon receipt of a Course Report, the FESA Training Centre will review the report and, if necessary, amend the relevant TRK. All Course Reports will then be filed by the FESA Training Centre. When a TRK is reviewed (Scheduled Review) all previous Course Reports for that TRK will be used in the review.

Client feedback procedures

Client feedback is an essential part of a quality management system and every opportunity should be taken to encourage formal and informal comments from all clients.

Client feedback will be used to modify procedures, policies and guidelines and Training Resource Kits (TRKs), and may influence the *Training Procedures Manual* and other decisions.

Client confidentiality will be respected when sensitive issues are raised or when the client requests it.

Scheduled reviews

...

Course Reports are provided for Trainers and Trainer/Assessors to record feedback about Training Resource Kits.”

(Exhibit R2 pp 11:3-11:4)

(c) An expanded range and complexity of subjects now being taught by Instructors

304 I find that there is a greater range of subject matter and skill areas being taught both to TFFs and trainees than was the case in the early 1990s and I find that the complexity and number of courses now being taught at the Training Centre has expanded significantly in the past 20 years and as a result I find that Instructors are required to exercise greater skills, knowledge and expertise when instructing than was previously the case thereby increasing the value of the work required of Instructors. I also find that as a result of these changes the learning process is more sophisticated and therefore more demanding on an Instructor. I find that as a result of ongoing changes to skill areas and knowledge and technology relevant to courses taught at the Training Centre Instructors are required to regularly update and enhance both their knowledge and skills which I find on the evidence is often undertaken by Instructors in their own time and of their own volition. I find that as Instructors must ensure that they are familiar with these changes and they must update their skills and knowledge relevant to their area of expertise on an ongoing basis this had added to their workload and responsibilities. Whilst I accept that the knowledge and skill levels required of Instructors in the 1990s required ongoing revision I find that changes are now occurring at a more rapid rate than was previously the case and I find that this has been compounded by enhancements to equipment used by firefighters and firefighters now having a better understanding of how fires work, that is the science of fires. I find that PPE is now more complex than in the early 1990s and is upgraded on an ongoing basis and more complex machines and equipment firefighters use and are required to be familiar with on a day to day basis such as firefighting appliances are also impacting on the work currently required of Instructors. It is also the case there has been an expansion in the skill and knowledge areas that trainees and TFFs are expected to be trained in since 1994 including USAR, Vertical Rescue and updated RCR amongst others (see *Fire and Emergency Services Authority of Western Australia v United Firefighters Union Australia West Australian Branch* [2007] 87 WAIG 1283).

(d) The necessity for Instructors to obtain additional qualifications and vocational experience in order to be an Instructor, the ongoing requirement to retain the currency of their qualifications and vocational experience and be familiar with accreditation and compliance requirements on them and those on the respondent

305 I find that when the respondent gained RTO status in the later 1990s this impacted on the complexity of the work undertaken by Instructors and it impacted on the necessity for Instructors to become more highly qualified, skilled and knowledgeable about compliance requirements on Instructors and the respondent.

306 In 1992 Instructors were required to have the ‘Train the Trainer’ qualification in order to be an Instructor but Instructors must now at a minimum hold four units of a Certificate IV in Assessment and Workplace Training or be supervised by a person with this qualification and have specific specialist qualifications in their area of expertise which they are training and/or assessing and senior assessors must have a Certificate IV qualification as a minimum and must have completed the Senior Assessor Development Program and they supervise and mentor other Instructors. I find that Instructors must now upgrade their knowledge in their areas of expertise on an ongoing basis in order to retain their status as an Instructor and they must retain the currency of their qualifications and undertake relevant refresher courses in order to comply with the respondent’s RTO accreditation obligations and requirements and this impacts on the accreditation obligations and requirements on Instructors.

Instructors must also complete TRK handovers in the areas in which they are endorsed to train. I find that as these are new requirements on Instructors this has added to the workload and skills required of Instructors and changed the environment within which Instructors operate. Additionally, the respondent's TPM, which was first introduced in 2003, confirms that Instructors are now expected to have an understanding of the RTO requirements on both the respondent and Instructors thereby adding to the work required of Instructors and the TPM also contains policies and procedures with which Instructors must comply so that the respondent does not breach regulatory requirements. It is also the case that Instructors must be familiar with the TPM and its requirements and they must undertake pre and post assessment briefings, which are obligations on Instructors which I find did not exist prior to 1993. I also find that current TRKs contain requirements which Instructors are now required to comply with which was not the case prior to their introduction.

307 The relevant sections of the TPM detailing the qualifications and competencies required of Instructors and are as follows:

“Levels of Trainers/Assessors in FESA

There are three types/levels of Trainers and Assessors in FESA for both nationally recognised training courses/programs and for FESA Courses/Programs (not nationally recognised):

- **Level One:** Trainer
- **Level Two:** Trainer/Assessor
- **Level Three:** Senior Assessor.

Note: Skills Recognition Assessment requires additional consideration.

Required training qualifications for each level

Title	Role	Trainer/Assessor Competencies/Qualification
Trainer (Level One)	1. Conduct training sessions	Train small groups (BSZ404)
Trainer/Assessor (Level Two)	2. Conduct training sessions 3. Conduct assessments	Plan Assessment (BSZ401) Conduct Assessment (BSZ402) Review Assessment (BSZ403) Train Small Groups (BSZ404)
Senior Assessor (Level Three)	1. Conduct training sessions 2. Conduct assessments. 3. Mentor and coach assessors. 4. Endorse trainers and assessors.	Certificate IV in Assessment and Workplace Training (BSZ40198) <i>or progress towards</i> All levels require:
<ul style="list-style-type: none"> • Current certification demonstrating vocational competencies for TRK they wish to become endorsed in. • Recommendation from the appropriate personnel. • Direct Supervision when they do not hold Certificate IV in Workplace Training and Assessment. 		

What Training/Assessment can each level conduct?

	Type of Training			
	Workshop Seminar Information Session Continuation Training	Non-Nationally Recognised Training	Nationally Recognised	
			Training	Assessment
Trainer (Level One)	✓	✓	✓	
Trainer/Assessor (Level Two)	✓	✓	✓	✓
Senior Assessor (Level Three)	✓	✓	✓	✓
FESA Staff or Volunteer with no training qualifications	✓			

FESA Staff and Volunteers with old training qualifications and classified as Instructors under the old training system can continue to conduct courses/programs until those courses are superseded with new TRKs. All instructors who wish to continue training and/or assessing will require BSZ404 Train Small Groups and/or Workplace Assessor units BSZ401, 402, 403 at a minimum.”

(Exhibit R2 p 3:3)

(e) Instructors are required to adhere to the requirements of the TRKs and they are required to contribute to the content of TRKs on an ongoing basis and complete TRK handovers

308 I find that Instructors now have greater responsibilities and an increased workload with respect to training content and process than existed in 1993 as they are now required to contribute to the respondent's training manuals thus adding a further responsibility on the work required of Instructors. It was not in dispute and I find that the respondent requires Instructors to regularly contribute to updating the content of TRKs and as part of this process Instructors give feedback on the appropriateness of the content and operation of the relevant TRK after conducting each course. I also find on the evidence that some TRKs are not always up to date as a result of ongoing changes to equipment and relevant knowledge in some of the areas covered by TRKs and as a result Instructors have to keep up to date in his or her own time with these changes thus adding to the responsibilities on an Instructor. For example, Mr Brandrett gave evidence that he is currently teaching more updated information than that which is contained in the TRK on Radio Communications because the respondent's communications system is currently being updated. I find that the necessity to have the POC whereby one person coordinates changes to the knowledge, skills, and technology relevant to a TRK because of ongoing changes in these areas confirms the ongoing challenges facing Instructors with respect to the need to update their awareness about matters relevant to their skill area. It is also the case that a POC is not remunerated for undertaking this role nor is the POC remunerated for the time taken to update his or her skills and expertise in their area of specialisation. Instructors are now required to conduct a TRK handover with a senior assessor/Instructor and the prospective Instructor is to undertake any required gap training in this area, be suitably qualified, he or she must have taught the previous course within the past two years and be assessed by the senior assessor if required. I also find that in order to undertake a handover a senior assessor must have superior underpinning knowledge and technical expertise than that of the Instructor in order to undertake this role and they must update their knowledge and skills of their own volition to ensure that this is the case.

309 The relevant sections of the TPM which respect to TRK obligations on Instructors and senior assessors are as follows:

“Training Resource Kits (TRK)

TRKs are controlled training materials that contain all of the information required to run a FESA Training Course and comply with *AQTF* requirements.

A TRK is comprised of four parts:

- Introduction
- Trainer Resources (Part One)
- Participant Resources (Part Two)
- Assessment/Evaluation Resources (Part Three).

TRKs are designed to be issued to endorsed Trainers/Assessors (or Trainer) of that particular course. A copy of Part Two of the TRK (being the Participant Resources) is to be issued to each Participant as part of a course, ideally before the course commences.

Wherever possible, training material is aligned with the *Public Safety Training Package* or other endorsed Training Packages. This means that the skills and knowledge that participants develop may be recognised in other States and Territories.

TRKs are provided for two major reasons: firstly to standardise training across FESA and, secondly, to simplify the tasks of Trainers/Assessors.

Though some variation in the way in which courses are conducted may be necessary due to local conditions, TRKs are to be followed as closely as possible.

The two variations which are **not** acceptable is the deletion of:

- any session contained in a TRK (or parts thereof)
- the assessment process
- record management requirements.”

(Exhibit R2 p 4:2)

“Implementation process of a new TRK where there is an existing or similar training course in existence

A customised implementation process for each TRK should commence at the commencement of **Step 4** in the *TRK Review and Development Process*. This implementation process can be adapted to suit the requirements of the specific TRK/s:

Step	Procedures
Step 1:	Develop a matrix that clearly shows the relationship/pathway from existing training programs/courses to the new TRKs and the specific/identified training gap/evidence required. Identify pre-requisites for individuals who utilise a training gap/evidence logbook.
Step 2:	Develop a training gap/evidence logbook (first draft). This may also be the same training gap/evidence logbook for new TRK post course requirements (for National Recognition).
Step 3:	Identify (appropriate) FESA Staff and key Volunteers who have a qualification closely linked to the new competency. These people may also need to provide evidence of currency.
Step 4:	From the above group select an appropriate number to trial and provide feedback on the first draft training gap/evidence logbook. This should be completed in as short a time as possible.

Step	Procedures
	The relevant Training Section will be responsible for assessing completed training gap/evidence logbooks.
Step 5:	Modify first draft training gap/evidence logbook.
Step 6:	<p>Distribute training gap/evidence logbook to appropriate FESA Staff and key Volunteers. The outcome is that the relevant FESA Staff/Volunteers who are qualified in the existing training program/course will be able to complete the training gap/evidence log book document and receive a 'Statement of Attainment' for the Unit/s of Competency.</p> <p>This phase of assessment will also be the responsibility of the relevant training section. This group will potentially become the initial group of Trainers/Assessors and Senior Assessors in the new TRK who will be responsible for the ongoing assessment of completed training gap/evidence logbooks by individuals in their district or region.</p>
Step 7:	Final modification (if required) to the training gap/evidence logbook.
Step 8:	The relevant Training Section/s will then send the training gap/evidence log book to the respective Region/District Offices so that they can forward the document to Units/Brigades and to those members who are qualified in the existing program/training course (and meet the pre-requisites). The outcome of this stage is that individuals will be eligible for a Statement of Attainment in the new Unit/s of Competency.
Step 9:	<p>Identify potential Trainers/Assessors (Instructors) in the existing program/training course who meet the following requirements:</p> <ul style="list-style-type: none"> • Current/active Trainers/Instructors in the existing program/training course. • Have completed the training gap/evidence log book/have the relevant unit/s of competency (Statement of Attainment). • Have Train Small Groups and/or Workplace Assessor competencies.
Step 10:	Course developer to conduct an initial TRK handover to the above group who will become the initial Trainers/Assessors and Senior Assessors in the new TRK.
Step 11:	Conduct an initial pilot course using the new TRK and Trainers/Assessors from the above group.
Step 12:	<p>The pilot course can be conducted in either of the following two (2) formats:</p> <ol style="list-style-type: none"> 1. Conduct pilot course utilising a select group of Trainer/Assessors from the above group who are the actual "participants" as well as Trainers/Assessors. Utilise a peer assessment process with the outcome being a group of potential Senior Assessors. <p style="text-align: center;">OR</p> <ol style="list-style-type: none"> 2. Conduct a pilot course utilising a select group of Trainer/Assessors from the above group who will actually deliver the new course to an identified group of FESA staff/key volunteers who may/may not have the actual unit of competency. <p style="text-align: center;"><i>Note: Utilise a peer Assessment/Senior Assessor to "assess" each Trainer/Assessor delivering one session only. If the Trainer/Assessor is not an existing "Instructor" in a similar course, they will require assessment delivering a sufficient amount of the TRK. Refer to Trainer/Assessor requirements for more information.</i></p>
Step 13:	The outcome of the pilot course being a group of potential Senior Assessors.
Step 14:	Modify TRK and produce a 'final' version.

TRK Handover Process for transition from old TRKs to new TRKs

This handover process is to be used where a new TRK is developed where an existing course already exists and the gap between the two courses is minimal. The Senior Assessor of the TRK is to conduct a handover of the TRK to the prospective Trainer or Trainer/Assessor who has the following:

- has completed any gap training between the old course and the new TRK
- is qualified in Train Small Groups (for Trainer only) and Workplace Assessor (for Trainer/Assessor)
- is a current instructor in the old course (ie. conducted at least one course in the past two years)
- has completed a TRK registration form to become a Trainer or Trainer/Assessor (see Appendix 3)
- has received a TRK from the appropriate FESA Training Section
- been assessed by a Senior Assessor (where required).

Note: Those people who are Trainers only are not to be briefed on the assessment process (Part 3 of the TRK) because they are only qualified to train participants on the course and not assess them.

See the 'TRK Handover' (Appendix 4)."

310 I reject the respondent's claim that the introduction of TRKs has 'dumbed down' requirements on Instructors and this Taylorist incremental approach to learning has lessened the workload, experience and skills required of Instructors. Based on the evidence given by Instructors who currently use TRKs and after reviewing the TRKs submitted into the evidence I find that all TRKs form the template about how a subject or skill area is to be taught and contains the basic content relevant to an area of study but they are not and cannot be a substitute for an Instructor's capacity to ensure that a TFF or trainee achieves the required competency in a subject area. Even though each TRK identifies the key themes, skills and knowledge required with respect to a learning area I find that a TRK does not replace an Instructor's capacity to bring their high level of skills, leadership, experience and supervisory requirements as well as negotiating skills in the subject area being taught to training which in my view is fundamental to successful learning outcomes. I also find that a TRK and learning aids used during the learning process, which are often complex, cannot be utilised in a vacuum, nor is the TRK a substitute for a safe learning environment where the risk of injury is present. In the circumstances I am of the view that the information and tasks included in a TRK are not a substitute for ensuring that a trainee understands a skill or concept. Furthermore, Instructors are required to ensure that an individual's needs must be taken into account during training and Instructors must therefore adapt the learning process to the specific requirements of individuals and it is my view that the respondent's requirement that an Instructor be highly experienced and qualified in their area of expertise in order to be appointed as an Instructor as well as the requirement that Instructors hold high level training and/or assessment qualifications, supports this finding.

311 I also reject the respondent's claim that there has been no significant changes to the way in which training has been undertaken in the past 20 years and that the methodology of teaching and learning has not changed notwithstanding changes to content, and that change has been evolutionary. Clearly the impact of technology, an expanded array of complex subject areas which are now taught, increasing knowledge about fire science and ongoing upgrading of more complex and technical equipment has in my view dramatically altered the teaching and learning process.

(f) Instructors being subject to stringent occupational health and safety requirements when teaching as well as having to complete risk analysis assessments

312 I find that Instructors have a higher level of responsibility with respect to occupational health and safety matters and requirements when instructing now than was previously the case given the range and complexity of tasks now undertaken by TFFs and firefighters with respect to the skills and competencies required of TFFs and trainees and the complex technology and equipment currently used by Instructors and trainees during the learning process. Even though Safety Officers are stationed at the Training Centre and assist in general with occupational health and safety issues I find that they do not take responsibility for all occupational health and safety issues and requirements nor are they present at all times at each training session when training is being conducted. Additionally, Instructors are now required to conduct formal risk assessments of the training they undertake. I also find that training drills now take place in an environment where rescue and recovery situations are more life like, for example, using a simulated smoke filled environment when undertaking rescue training.

313 The requirements on Instructors with respect to occupational health and safety issues as set out in the AFTF 2010 Essential Standards for Continuing Registration, the Standing Operational Procedures for Training at the Training Centre and the TPM, which in my view are significant and onerous, are as follows:

“Standard 1: The RTO provides quality training and assessment across all of its operations

- 1.1 The RTO collects, analyses and acts on relevant data for continuous improvement of training and assessment
- 1.2 Strategies for training and assessment meet the requirements of the relevant Training Package or accredited course and are developed in consultation with industry stakeholders.
- 1.3 Staff, facilities, equipment and training and assessment materials used by the RTO are consistent with the requirements of the Training Package or accredited course and the RTO's own training and assessment strategies.
- 1.4 Training and assessment is delivered by trainers and assessors who:
 - (a) have the necessary training and assessment competencies as determined by the National Quality Council or its successors, and
 - (b) have the relevant vocational competencies at least to the level being delivered or assessed, and
 - (c) can demonstrate current industry skills directly relevant to the training/assessment being undertaken and
 - (d) continue to develop their VET knowledge and skills as well as their industry currency and trainer/assessor competence.
- 1.5 Assessment including Recognition of Prior Learning (RPL):
 - (a) meets the requirements of the relevant Training Package or accredited course
 - (b) is conducted in accordance with the principles of assessment and the rules of evidence
 - (c) meets workplace and, where relevant, regulatory requirements
 - (d) is systematically validated.”

(Exhibit R4 p 5)

“2.2 DUTIES

...

The decision to ignite the 'prop' will be made by the Ignition Officer in co-ordination with the Training Officer, Control Operator in the tower and the Safety Officer (if applicable) after it has been checked for unauthorised persons, objects or animals.

2.2.4 Applied Training Assistant

Pre-training inspections will be carried out by a (sic) ATA or a suitably qualified person. Results of this inspection will be entered onto the appropriate form and submitted to the ATO for filing or action. See Appendix 'D' of this manual.

During fire training evolutions the ATA will operate in accordance with section three of this procedure.

2.2.5 Training Officer

Training staff, in all training evolutions within FTC, shall be FESA endorsed trainers in the relevant aspects of the training being undertaken. If using the Applied Training Ground they must also have completed the 'Applied Training Awareness Course'. They will operate in a "participant to Trainer ratio" of no more than 1:7; however some evolutions have ratios as low as 1:3, (e.g. Fire Behaviour). Any changes to these ratios will be decided following a risk assessment and endorsed by the Facilities Planning Meeting.

Courses which have additional requirements are:-

- Fire Behaviour, including thermal layering - Must be qualified to FESA Fire Behaviour Level II Trainer/Assessor.
- Firefighting Evolutions - Hold the required pre-requisites for the appointment as a Fire Simulations Trainer/Assessor (see Appendix 'C').
The proposed Trainer must also have completed the process for appointing Hot Fire Training Facilities Trainer Assessor (see Appendix 'C')
- Extinguisher Training - The relevant qualification and endorsement by the FTC
- Breathing Apparatus - Must be a qualified FESA Breathing Apparatus Trainer/Assessor
- Driving - Must be a qualified FESA Driving Trainer/Assessor

The facilities Evacuation Procedure is issued to each section manager at the Training Centre and all private training providers.

All FESA Trainers and private training providers, operating in the Applied Training area, shall be issued with a current version of this Standing Operational Procedures Manual on completion of the induction and assessment.

Prior to commencement of each scenario the trainer must take the participants through each step of the 'Job Hazard Analysis' card to highlight the risks involved with the scenario. (Appendix 'I')

Trainers shall ensure adequate rest and refreshment breaks between all training evolutions, clean water to enable participants to hydrate must be available.

The Training Officer shall ensure that all participants have the required prerequisites or proved competent for the required training scenarios.

In the event of an accident, or near miss, the instructors must ensure that the Safety Officer is aware and that the correct paperwork is completed.

2.3 TRAINER/ASSESSOR PATHWAY

To ensure competency of the Training Officers on the Applied Training Ground the following levels of Trainer/Assessor, with their qualification, should apply:-

- | | | | |
|-----|-----------------------------------|---|---|
| (a) | Person in Training | - | Holds the pre-requisites to become a Trainer Assessor |
| (b) | Trainer/Assessor Fire Simulations | - | Has completed the process to become a Trainer/Assessor Assessed by ATO and DO Career Training |
| (c) | Senior Assessor/Safety Officer | - | Cert IV Assessment & Workplace Training, or working towards |

Whilst instructing on the Applied Training Ground there must be equal numbers of 'persons in training' to 'Trainer/Assessor' or 'Senior Assessor'. The Safety Officer for the day does not come into this equation.

All Trainers must comply with Section 3 of the Training Procedures Manual in reference to appropriate trainer/assessor qualifications and the Training Resource Kit endorsement process.

3. GENERAL PROCEDURES DURING TRAINING

3.1 DESIGNATED TRAINING AREA

The training area boundary is set by the Safety Officer in consultation with the Trainer.

Prior to participants starting training on the pads they are to be assessed, by a qualified Trainer/Assessor, to ensure they are at the required skill level. If their level is deemed to be insufficient remedial training is to be given,

3.1.1 Fire Evolutions

In general terms, this area extends from the training pad/zone to encompass the next pad adjacent to that being used. It follows therefore that adjacent pads are not to be used by different training groups at the same time and one pad separation must be maintained.

Due to the layout and size of the Applied Training area, a maximum of two training groups can use the fire training section of the facility at one time.

All persons are to ensure the correct terminology is used whilst training, see Appendix J'.

3.1.2 Rescue or Hazmat evolutions

During rescue and/or Hazmat evolutions the Trainer shall perform, or delegate, the duties of Safety Officer, not withstanding (sic) the regulation regarding participants performing this role.

- Live casualties are not permitted with rescues involving fires or rescues from height.
- Live casualties are permitted in other rescue exercises, with approval from the Applied Training Officer, utilising appropriate PPE, as per the risk assessment.

3.1.3 USAR Training Area

Due to the high level of risk involved with the use of USAR training props it is essential that only qualified personnel gain access to them. Both areas are easily identifiable and the following minimum qualifications must be adhered to:

Rubble Pile - USAR Cat 1 Qualified or participants under instruction

Collapsed Car Park - USAR Cat 2 Qualified only

3.1.4 Extinguisher Training

Due to the smaller scale safety issues inherent with this type of training, the Trainer assumes the duties of Safety Officer. An ATA, or appropriately qualified person, shall perform the duties of Ignition Officer.

3.1.5 Dress Standards

All staff and participants located within the training area during a training evolution shall comply with dress standards listed in Appendix 'A'.

All visitors and observers on the Applied Training Ground are required to comply with the dress standard, listed in Appendix 'A', when positioned inside the designated area.

Other spectators will be restricted to an area beyond the boundary designated by the Safety Officer.

The minimum standard of dress, at all times, must include closed in shoes due to the uneven surface.

Vehicles are not permitted on the Applied Training Ground at any time, unless clearance is first obtained from Applied Training/Safety Officer.

If training occurs in the yard/parade ground barriers must be set up to prevent vehicles accessing the training area

3.1.6 Signs

All signs on the Applied Training Ground are to be adhered to.

3.2 HOT WORK PERMITS

All areas around fuel storage require a 'Hot Work Permit' to be completed prior to work starting if the work involves any sort of ignition source in accordance to FESA's Hot Work Permit Procedures. All completed permits are to be filed on the FESA Record Document Management System (TRIM System).

3.3 CONFINED SPACES PERMITS

Confined spaces must not be entered until the proper procedures, in accordance with AS 2865, are completed. See Training Centre's 'Confined Space Procedures'. Confined space entry permits and atmospheric monitoring must be completed prior to entering a confined space. Following completion of the entry, the permits used are to be placed on the FESA Record Document Management System (TRIM System).

3.4 PERMIT TO DIG

All work involving digging must not commence until a 'Permit to dig' has been completed. Following completion the permit is to be entered onto the FESA Record Document Management System (TRIM System)."

(Exhibit R15 pp 8-11)

8. APPENDIX 'A'

It is the responsibility of the Trainer to ensure that all participants are supplied with, and wear, the correct PPE.

Guidelines for the PPE to be worn during evolutions are to be found in the 'Brigade Circular 24/2004'.

The minimum standard of Personal Protective Equipment for the Applied Training Ground is:-

8.1 FIRE EVOLUTIONS

- Level 2 Fire Helmet with visor
- Level 2 Fire Tunic
- Over trousers
- Steel toe capped, acid resistant Wellington boots
- Level 1 Gloves

Note: Additional PPE for evolutions within a container is flash hood and Level 2 gloves. For Fire Behaviour Training please observe the relevant SOP.

All Equipment is to be to the standard of FESA.”

(Exhibit R15 p 15)

10. APPENDIX 'C'

10.1 PRE-REQUISITES FOR APPOINTING FIRE SIMULATIONS TRAINER/ASSESSORS:

1. Have a Fire Service role within a region (Operational Management Program/Station Officer/Area Officer/District Officer) and be recommended by their Regional Director.
2. Possess the following 'defined' skills/knowledge/expertise:
 - Lead/manage teams in a structural/infrastructure firefighting environment
 - Experience in structural/infrastructure suppression techniques and structural/infrastructure firefighting skills including RECEO, VES.
 - Awareness of Occupational Health and Safety Legislation and safety issues relating to structural/infrastructure firefighting.
 - Possess excellent team communication (electronic and verbal) in relation to managing a team in a structural/infrastructure firefighting environment, including the chain of command.
 - Knowledge and experience using hydrants, branches, hoses and in particular, branch techniques.
 - Experience using and operating a variety of Fire Service pumps.
 - Knowledge of emergency care.
 - AFC Module 3.04 - Fire and Incident Operations.

Plus be able to demonstrate the above defined skills in a simulated incident environment.

3. Must have Train Small Groups and Workplace Assessor (or equivalent).

10.2 PROCESS FOR APPOINTING FIRE SIMULATIONS TRAINER/ASSESSORS:

1. Must complete the Trainer/Assessor Application form (TPM 03)
2. Must receive a "handover" from the FESA Applied Training Officer (ATO), or appointed person, which will include:
 - Ensuring that the applicant has a copy of the Applied Training SOP and that they have a full and comprehensive understanding of the SOPs
 - Ensuring that the applicant has a full working knowledge and understanding of all props, facilities and training for the correct isolation techniques (stepping, extend branch etc), and their use during fire simulations.
3. Must complete at least 3 actual “hot fire scenarios” under the supervision of the Applied Training Officer or appointed assessor using "Hot Fire Trainer/Assessor" tool (where applicable).
4. Final endorsement by Applied Training Officer or Hot Fire Senior Assessor
 - Ensuring that all appropriate forms and documentation are completed and filed accordingly
 - Ensuring that the appropriate information is entered on to TRAIN
 - (sic)
5. FTC issues a 'Hot Fire Ground Trainer/Assessor Endorsement' document.
6. Currency of the Hot Fire Trainer Assessor role must be maintained through ongoing practice of the role. Time frames to be determined by the FESA Manager Career Training in consultation with the FESA Applied Training Officer(s) and Senior Assessors.

(Please note only Level 2 CBFT Trainers/Assessors can use the sea containers (CBFT sea containers) for any purpose at all.)”

(Exhibit R15 pp 18-19)

“Safety Officers

A dedicated Safety Officer is to be appointed where the numbers involved in a course exceed the ability of the Trainer/Assessor to adequately manage safety issues. The responsibility of the Safety Officer is to ensure that all training is conducted in accordance with the systems and procedures outlined in the TRK and in accordance with the safety guidelines.

The Safety Officer must be appointed prior to the course in sufficient time to complete preparation of the safety requirements that the course demands.

The Safety Officer is to be competent in the Unit of Competency being conducted. The Safety Officer has the responsibility to prevent unsafe acts and conditions from developing, and has the authority to stop any activity if required.

The Safety Officer's appointment must be nominated on the Course Confirmation document. Once appointed, the Safety Officer is the final authority for all aspects of safety for the duration of that course.

The Safety Officer may request additional personnel be appointed as Assistant Safety Officers, if they perceive the need for such assistance. The authority of an Assistant Safety Officer at the scene is that delegated by the Safety Officer. The overall authority and accountability for safety at the course remains with the Safety Officer at all times and cannot be overruled by any other person.

Safety Officer's responsibilities

The following is a list of the Safety Officer's duties. These duties may be added to by the Course Coordinator, however additional duties must not interfere with the Safety Officer's execution of the duties listed.

Prior to the Course

- Obtain the name, address, telephone number and contact details of the following:
 - nearest available doctor
 - nearest ambulance assistance
 - nearest hospital with accident emergency facilities.
- Plan and (if possible) test the Safety Officer's communications facilities from the site to the base contact and any internal communications planned at the site.
- Obtain a copy of the course schedule, showing all planned activities and determine the safety requirements for the course, request Assistant Safety Officers be appointed, if required.
- Obtain a designated Safety Vehicle that will be dedicated to that task alone for the duration of the course. The vehicle must be capable of carrying and be equipped with, a stretcher and first aid kit.

Prior to the training

- Plan the best routes to be used for access to or evacuation from potential accident sites for medical assistance. Record this information or mark details on a map.
- Verify with the Course Coordinator, that the equipment to be used at the course is serviceable and appropriate.
- Appoint a qualified First Aid person and first aid equipment to the course and ensure that they will be present throughout the course.

During the Course

- Provide a general safety brief to all participants prior to the commencement of the course.”

(Exhibit R2 p 6:5)

Should a classification of Instructor be created?

- 314 I have carefully considered the evidence and documentation tendered during these proceedings. When taking into account the relevant objects of the Act, the provisions of Principle 7 Work Value Changes and the relevant authorities and the findings I have already made that there has been significant increases to the workload, responsibility, skills, experience, qualifications and the value of the work required of Instructors since 1993 I find that a new classification of Instructor should be created for Instructors working at the Training Centre.
- 315 In reaching the conclusion that a classification of Instructor be created I also note the evidence of Mr Evenis whereby he stated that due to the respondent experiencing difficulties recruiting Instructors to undertake TFF and other training the respondent has determined that Instructors be appointed from firefighting ranks to the Training Centre for periods of approximately two to three years, the background to this application arises as a result of firefighters being directed to undertake training at the Training Centre because of insufficient on-shift firefighters volunteering to undertake this role and the current way in which Instructors are paid is ad hoc and inequitable. In my view the creation of an Instructor classification will go some way to dealing with these issues.
- 316 I also find on the evidence that the nature of the work performed by Instructors at the Training Centre since 1993 constitutes a significant net addition to the skills, responsibilities, qualifications and experience currently required of SFFs and SOs and I reject the respondent's argument that when SOs undertake on-shift training it is no different to Instructors undertaking training duties at the Training Centre. I find that on-shift training does not include the same level of preparation, knowledge and depth of expertise and qualifications where relevant and knowledge of regulatory and compliance requirements required of Instructors when training at the Training Centre and I find in particular that training TFFs is more demanding and requires greater skill and knowledge than that required to train on-shift firefighters. I also reject the respondent's submission that the basis for the applicant's claim relates to an issue of increased volume of work and that any change to the work and role of an Instructor was evolutionary and minimal and that Instructors were complaining about their increased workload because they were not used to working full shifts given the nature of the work required of on-shift firefighters and SOs. I have already found that the volume of work required of Instructors has increased significantly since 1993 and that there has also been significant increases to the value of the work undertaken by Instructors during this period and in any event I find that when training Instructors not only work their normal shifts but also undertake additional preparation from time to time in their own time in order to be proficient, knowledgeable and successful Instructors. Furthermore, no evidence was led by the respondent in support of its claim that firefighters do not work full hours when on shift or are not fully occupied or productive whilst completing on-shift duties.
- 317 I reject the respondent's claim that when deciding this application the standard of proof onus on the applicant should be higher than that which normally applies in the Commission given the terms of Principle 7 Work Value Changes (see *Briginshaw*). Even though this was not pressed by the respondent at the hearing I find that Principle 7 is clear in its terms and a higher onus

of proof on the applicant is not required with respect to this application. Furthermore, the *Briginshaw* standard usually applies when serious allegations are raised or civil penalties apply which is not the case in this instance.

The Rate of Pay to be Paid to an Instructor

- 318 I find that there is currently no recognition by way of any wage increase for the additional skills, qualifications, responsibilities and experience held and used by Instructors at the Training Centre since the early 1990s nor have changes to the nature, workload and value of the work undertaken by Instructors at the Training Centre and the changed context within which Instructors undertake their role been recognised by way of any additional remuneration during this period notwithstanding the respondent's claim to the contrary. There is no dispute and I find that an allowance is paid to firefighters and SOs who work as Instructors at the Training Centre pursuant to Clause 53 of the 2008 Agreement however this is paid for salary losses incurred when coming off shift. I reject the respondent's claim that wage increases arising from the 1994 work value case delivered to firefighters included a component recognising the skills and additional responsibilities used by Instructors when delivering competency based training. I have carefully read the transcript of this case as well as the decisions of the Commission in Court Session with respect to this matter and I find that there is no reference to wage increases being granted to Instructors in return for using their skills, knowledge and qualifications when instructing at the Training Centre. I also reject the respondent's claim that a monetary amount was added to the rates of pay of firefighters in the 2006 and 2008 industrial agreements in recognition of the financial disadvantage suffered by firefighters, SFFs and SOs when coming off shift and even if these additional monies were paid to firefighters, SFFs and SOs, which is not clear on the evidence if this was the case, there was no evidence confirming that this quantum was paid in return for the additional skills, qualifications and experience gained and used by Instructors nor was there any evidence that it was in return for the increased workload on Instructors since 1993. There is also no evidence before me confirming that any other additional quantum was paid to firefighters, SFFs and SOs since the early 1990s in return for increases to the value of the work and the qualifications of an Instructor.
- 319 I find that the way in which Instructors have been paid since 1993 has been applied in an unfair, ad hoc and inequitable manner as Instructors have at times been paid different rates of pay to undertake the same duties and roles because Instructors are paid their substantive position plus an allowance pursuant to Clause 53 of the 2008 Agreement, if applicable. Furthermore, Instructors undertake different roles and are required to have different levels of qualifications and expertise and there is no recognition of the additional skills, qualifications, experience and knowledge gained and used by Instructors within this hierarchy.
- 320 After carefully considering the parties' submissions and the evidence given in these proceedings about the appropriate rate to be paid to an Instructor I do not accept the applicant's claim that all Instructors should be paid at the DO rate of pay. I find that the applicant's claim that all Instructors be paid a rate of pay of a DO does not reflect a proper analysis of the rate of pay that should apply to Instructors nor am I convinced on the evidence that the duties undertaken by an Instructor equate to those of a DO even though most Instructors in the early 1990s were paid at a DO rate of pay when instructing at the Training Centre.
- 321 I find that the rate of pay of an Instructor should be greater than the base rate of pay to be paid to a SO given that I have found that the skills, roles, responsibilities and qualifications currently required of an Instructor are additional to that of a SFF and SO. I note that currently there is an 18 percent pay differential between the rates of pay of a SO 1 and DO. In all of the circumstances of this case I find that an Instructor should be paid a quantum of 10 percent more than a SO 1 in recognition of the additional skills, role, responsibilities, qualifications and value of the work required of Instructors on the basis that it is my view that this adequately compensates a SFF or SO to undertake Instructor duties.
- 322 As stated Instructors are variously required to hold a range of qualifications, knowledge and experience and they undertake different roles and responsibilities when fulfilling the role of Instructor at the Training Centre including trainer, trainer/assessor, senior assessor and POC roles. I am therefore of the view that there should be an internal classification structure for Instructors and the position of Instructor (trainer) with a rate of pay of SO 1 plus 10 percent should be the base rate of this Instructor classification structure and that rates of pay within this structure should reflect the additional duties, training, qualifications and experience required of trainer/assessors, senior assessors and POCs over and above that of an Instructor/trainer. As this issue was not the subject of evidence and submissions at the hearing I will hear further from the parties as to an appropriate career structure for Instructors using an Instructor Level 1 rate of pay equivalent to that of 92 percent of a DO rate of pay as the minimum rate to be paid to an Instructor (trainer). I will also hear further from the parties about whether the Other Duties Allowance currently provided for in the 2008 Agreement at Clause 53 should continue to be paid when a SFF or SO instructs at the Training Centre given the implementation of a classification structure for Instructors when taking into account Instructors being appointed to the Training Centre on a long term basis and some Instructors only instructing at the Training Centre for short periods.
- 323 In reaching the conclusion that a new classification of Instructor be instituted I am satisfied and I find that the new classification structure of Instructor will not lead to any distortion of relativities within the respondent's existing classification structure nor will it distort any external relativity on the basis that the respondent's existing classification structure will remain intact and as the rates of pay for the Instructor classification will be a stand alone set of rates of pay. Furthermore, as the classification of Instructor is discrete and unique to work at the Training Centre I find that there will be no flow on impact of the decision to introduce a new classification of Instructor.
-

2011 WAIRC 01166

DISPUTE RE CLASSIFICATION FOR INSTRUCTORS
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION : 2011 WAIRC 01166
CORAM : COMMISSIONER J L HARRISON
HEARD : MONDAY, 3 OCTOBER 2011
 ADDITIONAL WRITTEN SUBMISSIONS
 MONDAY, 10 OCTOBER 2011, MONDAY, 17 OCTOBER 2011
DELIVERED : WEDNESDAY, 21 DECEMBER 2011
FILE NO. : CR 17 OF 2010
BETWEEN : UNITED FIREFIGHTERS UNION OF AUSTRALIA - WEST AUSTRALIAN
 BRANCH
 Applicant
 AND
 CHIEF OPERATIONS OFFICER - FIRE & EMERGENCY SERVICES AUTHORITY
 Respondent

Catchwords : Industrial Law (WA) - Application for new classification of Instructor to be remunerated at rate of District Officer - Supplementary Reasons for Decision - Application of Other Duties Allowance in *Western Australian Fire Service Enterprise Bargaining Agreement 2011* to new Instructor classification - Allowance to be paid in certain circumstances - Order issued

Legislation : *Industrial Relations Act 1979* s 44

Result : Order issued

Representation:

Applicant : Ms R Cosentino (of counsel)

Respondent : Ms G Anderson

Supplementary Reasons for Decision

- 1 On 20 April 2011 the Commission issued Reasons for Decision in relation to this application. In this decision the Commission concluded that a new classification of Instructor should be created and a career structure should apply to Instructors. The parties were advised that the Commission would hear further from the parties about finalising this issue as well as whether the Other Duties Allowance (the ODA) contained in Clause 41 of the *Western Australian Fire Service Enterprise Bargaining Agreement 2011* (the 2011 Agreement) should continue to be paid to employees who come off shift to instruct at the Training Centre.
- 2 After discussions between the parties and conferences held in the Commission with respect to these matters the parties reached agreement on the terms of a career structure but disagreed on the payment of the ODA to Instructors appointed under the new classification structure.
- 3 Clause 41. - Other Duties Allowance of the 2011 Agreement reads as follows:

41. Other Duties Allowance

These arrangements replace Clause 16. - Special Duties Allowance, of the Award.

- (1) Employees who come off shift to undertake identified positions classified at Station Officer level shall be paid an allowance for each completed week in the position.
- (2) This allowance will be effective from the date of registration and will increase in accordance with general wage related increases as follows:
 - \$106.81 effective from the first pay period on or after 9 June 2011;
 - \$111.62 effective from the first pay period on or after 9 June 2012; and
 - \$116.64 effective from the first pay period on or after 9 June 2013.
- (3) The allowance prescribed in sub clauses (1) and (2) shall only be payable for the duration of the appointment to the identified position.
- (4) This allowance prescribed in sub clauses (1) and (2) shall be paid in lieu of any existing administrative payments provided to the identified positions.
- (5) This allowance shall apply to the following positions:

- a. Fire Investigation Officer;
 - b. Applied Training Officer, Applied Training;
 - c. Training Officer, Career Training;
 - d. Breathing Apparatus (BA) Training Officer;
 - e. Training Officer, Commercial Training;
 - f. Training Officer, Volunteer Training;
 - g. General Instructor, Career Training;
 - h. Air Operations Officer, Air Services;
 - i. HAZMAT and CBR Officer, Special Risks;
 - j. Rescue Officer, Special Risks;
 - k. USAR Officer, Special Risks; and
 - l. Fire Safety Officer, Built Environment Branch.
 - m. Operations Information Officer;
 - n. Staff Deployment Officer;
 - o. Health and Safety Officer; and
 - p. Welfare Officer
- (6) This allowance will not be payable to employees engaged in the above or similar titled positions as Station Officer non-rank.
- (7) Notwithstanding the provisions of sub clause (4) of this clause, where from the nature of the duties required or from other relevant circumstances it appears just and reasonable, the Chief Executive Officer may grant the payment of the allowance prescribed in sub clauses (1) and (2) to other off shift positions that may be established either on a temporary or permanent basis.
- 4 Clause 41(5)(g) provides that this allowance applies to General Instructor, Career Training and the custom and practice has been that firefighters coming off shift to undertake Instructor duties were paid this allowance plus the salary of an SO if that was not their rank.
- 5 Clause 16. - Special Duties of the *Fire Brigade Employees' Award, 1990, No. A 28 of 1989* (the Award), which the ODA replaced, reads as follows:
- (1) Station officers assigned to a day duty position to undertake Special Administrative duties shall be paid an allowance equivalent to 6% of the top station officer total weekly wage.
 - (2) The allowance prescribed in subclause (1) shall only be payable for the duration of the appointment of the station officer to a day duties position.
 - (3) The allowance prescribed in subclause (1) of this clause shall be paid in lieu of the following allowances;
 - (a) Training Wing Overtime allowance
 - (b) Travel allowance
 - (c) Fares
 - (d) Higher Duties allowance to District Officers
 - (4) Station officers who relieve in a substantive day duty District Officer position shall be paid a higher duty allowance and shall not be eligible for the allowance as prescribed by this subclause.
 - (5) Firefighters assigned to a day duty position to undertaken special administrative duties shall be paid an allowance equivalent to 6% of their total weekly wage for the duration of their assignment to special duties.
- 6 'Day Duties Staff' is defined in the Award as 'all firefighting staff employed on other than continuous shift fire duties'.

Submissions

Applicant

- 7 The applicant maintains that the ODA should be paid to all employees who come off shift to undertake work as an Instructor for one week or more even if an Instructor is appointed to work at the Training Centre for 12 months or more and they then lose their substantive position. The applicant made the following submissions:

HARRISON C: Well, I understood the evidence was that up to three years may be - people may be appointed.

COSENTINO, MS: I think - that's right, that is the evidence, and - but practically what, because of - if a person fills a position temporarily, comes off shift for more than 12 months, then they lose their preference in relation to transfers. So - so the more usual position, there's no technical reason why a person couldn't be appointed for more than 12 months, but the practical application is that it's generally a period of 12 months because there's that disincentive for anybody continuing in a position for longer than 12 months.

HARRISON C: Because they - they lose their - their actual permanent position?

COSENTINO, MS: That's right.

HARRISON C: All right.

COSENTINO, MS: Their substantive position they - - -

HARRISON C: Yes, at that particular station.

COSENTINO, MS: - - - they then lose at 12 months.

HARRISON C: So someone else could be appointed there on a permanent basis?

COSENTINO, MS: Yes. And so we say there's no - there's no need to put an upper limit on the application of the Other Duties Allowance. ...

(Transcript p 300)

- 8 The applicant argues that the positions of General Instructor and Training Officer were included in Clause 41, even though these positions were not formally classified as an SO level position, to avoid any dispute about whether a position was or was not classified at SO level and to prevent the avoidance of payment by the manipulation of the classification of a position.
- 9 The applicant maintains that the payment of the ODA does not compensate an employee for skills gained or for work value considerations but it is paid in compensation for expenses incurred in performing work or for the sacrifice made to perform different work and the payment of the ODA is an incentive to come off shift and it compensates employees for the inconvenience of doing so. The ODA compensates employees for the disruption to or removal of various 'conveniences' associated with shift work and is paid for losses incurred by employees coming off shift such as extra travel time, the cost to move from station to the Training Centre and the loss of four consecutive days off. The applicant claims that continuous shift duties are a permanent and long term feature of the work of an operational firefighter and undertaking this shift pattern is associated with working closely with a familiar and trusted team based at a fire station, usually one located conveniently to an employee's home and firefighters working a regular shift pattern take on various commitments on days off including child care, caring for elderly or dependent parents, volunteer community service and other domestic arrangements.
- 10 The applicant maintains that the rates of pay of the new Instructor classification structure are based on an SO 1 rate of pay plus 10% and these wages are paid in recognition of the additional skills, role, responsibilities, qualifications and value of the work undertaken by Instructors and the applicant submits that the creation of a new classification structure with Instructors receiving additional pay as a result of the work value case has no bearing on the determination as to whether Instructors who come off shift are entitled to the payment of the ODA. The applicant argues that the case for the creation of Instructor classifications was argued on the basis of Principle 7 - Work Value Changes which permits increases in wages in consideration for changes in the environment in which work is performed and this Principle does not permit wages to be increased based on compensation for expenses or inconvenience as contemplated in the ODA. The applicant therefore submits that the new Instructor classifications and associated pay rates do not compensate for the expense, sacrifice or inconvenience associated with coming off shift to perform day duties at the Training Centre.
- 11 The applicant submits that there is no evidence that the payment of the ODA will hinder the efficient organisation and performance of the respondent's work or that the cost of making these payments will be onerous as to militate against this allowance being paid and what the applicant is effectively seeking is the preservation of the status quo and the continuation of a practice that has been in place for many years. Employees, other than District Officers (DO), who come off shift to perform day duties have been paid the ODA for some years and this allowance should therefore apply whenever an employee meets the conditions in Clause 41. The applicant also submits that to exclude some or all Instructors from being eligible to be paid the ODA will create arbitrary discrepancies and unfairness.
- 12 The applicant submits that pay relativities relate to minimum rates for a classification and not to the quantum of an employee's take home pay and allowances paid to classifications are not connected to the value of the work undertaken and the applicant argues that relativity changes to rates of pay if the ODA is paid to Instructors is not relevant to the determination of the payment of the ODA as the concept of relativities relates to wages and classifications and not the payment of allowances. Furthermore, a DO can be paid a number of additional allowances including On Call Allowances, Availability Allowances, use of car and phone (see Exhibit 2).
- 13 The applicant argues that the ODA currently applies to a range of positions whether they are undertaken for a short or long term period and some of the positions occupied by employees who receive this allowance are permanent substantive training positions including the classifications listed at Clause 41(5)b, c, e, f and g.
- 14 The applicant argues there is no evidence of the potential for a flow-on to other classifications if the ODA is paid to Instructors as Clause 41 of the 2011 Agreement is explicit in its terms and where the ODA has been applied beyond what is in this clause it has been by agreement between the parties through a new enterprise bargaining agreement or through the chief executive officer's discretion under Clause 41(7). The applicant also submits that the respondent only provided one example of a possible flow-on to a classification yet the person occupying this classification already receives the ODA.
- 15 In support of its submissions the applicant relied on the following documents:
Exhibit 1 – a document titled 'Other Duties Allowance' which is a summary of the way the positions identified at Clause 41(5) of the 2011 Agreement are filled.

Other Duties Allowance

a.	Fire Investigations Officer	2 permanent positions	Not substantially filled Usually act for a 1 to 12 month period without transfer
b.	Applied Training Officer, Applied Training	2 positions	1 position filled substantively 1 position not substantively filled, act for period of 1-12 months without transfer
c.	Training Officer, Career Training		See e below
d.	Breathing Apparatus (BA) Training Officer		
e.	Training Officer, Commercial Training Officer		c, e. f. & g. x 5 positions 2 filled substantively 3 not substantively filled. General Instructors for Recruit School engaged for 13 week period, other instructors for between 2-3 days to 2 weeks.
f.	Training Officer, Volunteer Training		As above
g.	General Instructor, Career Training		As above
h.	Air Operations Officer, Air Services	1 seasonal position	Seasonal position filled only during fire season, usually September to April but variable (about 6 months) Not substantively filled
i.	HAZMAT, and CBR Officer, Special Risks	1 permanent position	Not substantively filled. 1 individual acts for a period of between 3 months to 12 months
j.	Rescue Officer, Special Risks	1 permanent position	Not substantively filled. Act for 1-12 month period
k.	USAR Officer, Special Risks	1 permanent position	Not substantively filled. Appointment for period up to 12 months
l.	Fire Safety Officer, Built Environment Branch	2 permanent positions	substantive
m.	Operations Support Officer (information)	1 permanent position	Not substantively filled. Appointment for period up to 12 months
n.	Staff Deployment Officer	1 temporary position	SFF acting for 12 months
o.	Health and Safety Officer	1 permanent position	Not substantively filled. Appointment for period up to 12 months
p.	Welfare Officer	1 permanent position	Not substantively filled. Appointment for period up to 12 months

Exhibit 2 – a document setting out the remuneration of the new Instructor classification if the ODA is paid compared to the remuneration of a DO as at June 2011.

Position	Job	Rate of Pay 09 June 2011 (sic)	Weekly Pay	Plus Allowances
Instructors				ODA \$106.81
	Trainer	92%	\$1957.22	\$2064.03
	Trainer/Assessor	94%	\$1999.76	\$2106.03
	Snr Trainer/Assessor	96%	\$2042.31	\$2149.67
	Point of Contact	98%	\$2084.86	\$2191.67
District Officer (DO)	Pay Availability allowance On Call allowance Use of a Car Use of a Phone	\$2127.41 \$212.74 4 hours \$478.66 9 hours	\$2127.41	\$2340.15 \$2818.81

As of June 2011

- 16 In response to the respondent's further submissions with respect to Exhibits 1 and 2 the applicant rejects the respondent's assertion that there are at least six employees who were formerly shift workers who will never return to shift and the applicant maintains that there is nothing precluding these officers from returning to shift work in the future. The applicant also claims that nothing turns on whether or not a person returns to shift after working in one of the positions identified in Clause 41. The applicant submits that the respondent does not give any examples of its assertion that persons receiving the ODA have not come off shift and the applicant argues that all appointees are paid the ODA as compensation for coming off shift and all appointees can return to shift work. The applicant submits that the custom and practice has been that coming off shift for the purposes of the ODA clause has not been limited to acting or temporarily coming off shift but has included substantive moves off shift and the respondent's identification of substantive positions which are paid the ODA is generally consistent with the applicant's understanding that the ODA is paid to some individuals who hold substantive appointments. The applicant supports the payment of the allowance in recognition of the fact that without the incentive of being paid this allowance employees would not leave that shift work whether temporarily or permanently to fill these roles.
- 17 The applicant disputes the respondent's claim that the ODA is paid in recognition of the uniqueness of the role and the work performed in the identified positions in Clause 41 of the 2011 Agreement and that the allowance is not paid for coming off shift. This claim is also contrary to the express and agreed position stated by the respondent's agent in October 2010 whereby he stated that the ODA was paid as compensation to encourage and attract SOs to come off shift. The applicant relies on Mr McCorry stating the following:

... I'm instructed and I understand my friend agrees that this was compensation offered to encourage and to attract Station Officers to come off shift. The Station Officer rate of pay includes a built-in component for allowances for shift work and matters like that, and it's compensation for any overtime that they might be required to work on shift, and for change to their lifestyle patterns working a regular Monday-to-Friday week, rather than the rotating roster which is applicable.

(Transcript p 11)

- 18 The applicant argues that a number of 'Special Risk' positions which are paid the ODA also receive the Availability Allowance provided for in Clause 17. – Out of Hours Contact Arrangements of the 2011 Agreement when they are on roster or on call and in practice the allowance is not paid to shift workers. The applicant submits that the allowances listed under Clause 17 of the 2011 Agreement are paid to Hazmat and CBR Special Risk Project Officer positions listed in Clause 41 but not to other positions and these allowances are not typically paid to Instructors. The applicant is aware that some SOs undertaking roles identified in Clause 41 have also received the allowances contained in Clause 17 where applicable and whilst it is possible that these allowances are paid to Instructors, in practice it has not previously occurred and will not in the future. The applicant agrees that only one and not both of the allowances contained in Clause 17 are payable at any one time however, an Instructor receiving the ODA will not 'leapfrog' a DO's take home pay let alone a DO's total remuneration package. Additionally, DOs who are not paid the allowances contained in Clause 17 are DOs who work a 10/14 shift roster.

Respondent

- 19 The respondent opposes the ODA applying to employees under the new Instructor classification. The respondent argues that this allowance should not be paid because:
- the payment of the ODA to Instructors would in effect 'leapfrog' a DO salary which is not the intention of the State Wage Principle 7.3 and would denigrate the integrity of the DO position;
 - the Instructor role is a dedicated position which people apply for and are accepted into for two to three years, it has its own terms and salary and is not a role where staff are requested to 'come off shift' for short periods of time; and
 - the respondent is concerned the applicant has paid little regard to the relativities and implications to other positions and is attempting to manufacture a flow-on of this allowance to other 'day duties' staff.
- 20 The respondent argues that the role of Instructor is a dedicated role as part of the existing classification structure and the intention is that employees appointed under the new classification structure will not come off shift for short periods of time. The Instructor is also a new role with its own terms, conditions and salary and Instructors will be appointed for a two to three year tenure.
- 21 The respondent contends that the payment of the ODA only applies to select positions at SO level and the Instructor classification is a stand-alone classification and is not an SO level position. The respondent maintains that Clause 41 of the 2011 Agreement, and the superseded Clause 16 of the Award, confirms that the ODA is only paid to SO level positions undertaken as part of an SO role performed as a day job and an Instructor's role is not an assigned SO role, it is not performed outside of the normal hours of an SO and it is a position in its own right with its own conditions and salary. The respondent submits that the SO level positions contained in Clause 41 state that the ODA is for the work completed whilst in those positions only and the respondent submits that the positions contained in Clause 41 are only performed on a short term basis.
- 22 The respondent submits that the justification for paying the ODA to Instructors would need to take into account pay relativities and paying the ODA would not only have a detrimental effect on DO pay rates but it will also impact on the integrity of the duties undertaken by DOs. Employees appointed as an Instructor will be paid a base rate of 92% of a DO rate of pay for performing the work of that position and in some cases to pay the ODA would elevate the work value of the Instructor to that greater than the work value of a DO, in effect 'double dipping', which the respondent believes is neither fair nor equitable. If Senior Instructors are paid the ODA they would earn more than a DO and for a Senior Instructor to earn in excess of his or her manager, that is a DO, is neither equitable nor reasonable as the value of the work that an Instructor undertakes has been determined to be not greater than a DO rate of pay. The applicant has also not justified this change to relativities and the flow-on effect that will result if the ODA is paid to Instructors and if the ODA is paid to Instructors they will effectively 'leapfrog' the DO salary which is contrary to the intention of the Work Value Principle.

- 23 The respondent argues that if the ODA is paid to Instructors who come off shift the flow-on effect of this will allow the applicant to argue that other day duty staff who come off shift should also be paid the ODA. In particular the respondent is concerned that the applicant will attempt to flow-on this payment to DOs (53 staff), Area Officers (20 staff), staff in the Built Environment Branch (18 staff) and Superintendents (11), a total of 102 staff potentially claiming the ODA.
- 24 The respondent asserts that the ODA is payable for the uniqueness of the work undertaken in that position and not as compensation for coming off shift and the respondent submits that the 16 SO level positions which qualify for the ODA under Clause 41 of the 2011 Agreement are undertaken by a range of shift and permanent non-shift employees. The respondent submits that these 16 positions are specialist positions required to be undertaken outside of an SO's normal hours of work - that is they are day positions, which require specialist skills, experience and/or qualifications. Not all of these positions are filled by shift workers and at least six positions are filled either by former shift workers who will never return to shift work, or staff who have never previously undertaken shift work duties. The respondent argues that employees who are not normally shift workers are appointed to positions under Clause 41 in the same manner as shift workers as they have the necessary skills, experience and qualifications for that role. For example, the Health and Safety Officer role may be filled by a fire station's health and safety representative or a firefighter who has relevant tertiary qualifications but this person is not necessarily a shift worker. The mix of shift and non-shift workers in receipt of the ODA therefore demonstrates that the ODA is paid for work done in those positions and it is not paid because a particular person has come off shift to perform a day duties role.
- 25 The respondent maintains that the following table includes current positions and placements paid an ODA pursuant to Clause 41(5):

41(5)	Title	Positions	Substantive Occupant	Acting Occupants
a	Fire Investigation Officer	2	Vacant	SO R Curtis, SO J Bell
b	Applied Training Officer	1	Brian Ligertwood – non shift	
	Applied Training Officer (Temp)	1	N/A	SO N Buckland
c	Training Officer, Career Training	2	David Bear & Vacant	N/A & SFF N Mackintosh
d	Breathing Apparatus (BA) Training Officer	1	Vacant	SFF A Brown
e	Training Officer, Commercial Training	2	Vacant	Vacant
f	Training Officer, Volunteer Training	2	Paul Van Der Mey – non shift & Gary Holton – non shift	
g	General Instructor, Career Training	Temp only	N/A	Various
h	Air Operations Officer, Air Services	1	Vacant	Vacant
i	HAZMAT and CBR Officer, Special Risks	1	Vacant	SO W.Male
j	Rescue Officer, Special Risks	1	Vacant	SFF M.Sangston
k	USAR Officer	1	Vacant	SFF A Lane
l	Fire Safety Officer, Built Environment	2	WTyres – non shift and Vacant	FSA A.Grose – non shift
m	Operations Support Officer	2	Vacant	SFF K.Lusk & Vacant
n	Staff Deployment Officer	Temp only	n/a	SFF I.Agnew
o	Health and Safety Officer	1	Vacant	Vacant
p	Welfare Officer	1	Vacant	SFF R.Kingma – non shift

- 26 The respondent contests the applicant's suggestion that as a DO receives allowances under Clause 17. – Out of Hours Contact Arrangements of the 2011 Agreement this means a DO's salary package awards higher remuneration than the salary of an Instructor should that Instructor be in receipt of the ODA. The respondent claims that the Availability Allowance and the On Call Allowance in Clause 17 can be paid to all authorised employees including Instructors and the respondent argues that an assumption can be made that an SO undertaking a role identified in Clause 41(5) may also be paid an Availability Allowance or an On Call Allowance. The respondent also contests the applicant's argument that a DO is paid an Availability Allowance and an On Call Allowance which takes the DO salary package to greater than the salary of an Instructor in the event that the ODA is determined to be paid to an Instructor. There is an expectation that all operations staff are available to attend emergencies and incidents outside of their normal hours of work and an Availability Allowance or an On Call Allowance is therefore payable to all authorised employees not just DOs. The respondent argues that it may be assumed that an Instructor can be paid the Availability Allowance or On Call Allowance and should that Instructor, who is already in receipt of an Availability Allowance or On Call Allowance, also be paid the ODA then the salary paid to that Instructor would be greater than the DO salary and this is neither equitable nor reasonable. The respondent also strongly disputes the applicant's claim in Exhibit 2 that a DO has a gross weekly salary of \$2,818.81 as the Availability Allowance and the On Call Allowance are not

paid in that manner. If an employee is on call they receive the On Call Allowance only and they do not receive the Availability Allowance at the same time and to suggest otherwise is erroneous and misleading and not all DOs are required to be on call.

- 27 The respondent disputes that a DO's salary package includes a vehicle and any vehicles provided to a DO are for business purposes, they are not available when the staff member is on leave, they are exempt under the *Fringe Benefit Tax Assessment Act 1986* and do not contribute to a DO's salary package. Similarly mobile phones or any other portable electronic device are available for business purposes to enable employees to respond to emergency situations on a 24/7 basis and as such are an exempt benefit under s 58X of the *Fringe Benefits Tax Assessment Act 1986*. To suggest phones are part of a DO package is therefore erroneous and misleading.
- 28 The respondent submits that the applicant's claim for the payment of an ODA to Instructors has no merit and that it is not in the public interest to proceed to determine this matter. In the alternative, the respondent seeks an order that the ODA in Clause 41 of the 2011 Agreement not be paid to Instructors because the Instructor classification is not an SO level position. Furthermore, the value of the position of Instructor has been determined to be no greater than 98% of a DO rate of pay and to pay the ODA to some Instructors would leapfrog the rate of pay to that greater than a DO which is not the intention of the State Wage Principle 7. - Work Value Changes.

Findings and conclusions

- 29 I have carefully considered the parties' submissions and the information they provided in determining whether or not the ODA should apply to Instructors who are appointed to undertake duties under their new classification structure.
- 30 I have concerns about some of the submissions made by the respondent. In my view the respondent's submissions at times were inconsistent and were not in accord with some of the facts relevant to this issue.
- 31 The respondent submitted that the ODA is paid as compensation for the uniqueness of the work undertaken in the position the employee is transferred into and not as compensation for coming off shift during the hearing with respect to whether the ODA should be paid to Instructors. However, in the earlier hearing in relation to this matter the respondent's agent confirmed that the ODA was paid to employees, including Instructors, to attract employees to come off shift and it was paid as compensation for the inconvenience of not working a normal shift pattern and for any overtime worked on shift. The transcript of the initial hearing contains the following exchange confirming this:

MR McCORRY: What we would say is that the payment ... the relativities between a DO level and an SO or area level would more than compensate for the forgoing of that allowance. So it would be paid in addition to that and - - -

HARRISON C: It would not be paid - - -

MR McCORRY: It would not be paid in addition to any reclassification or insertion of a new classification. In relation to background to the clause, I'm instructed and I understand my friend agrees that this was compensation offered to encourage and to attract Station Officers to come off shift. The Station Officer rate of pay includes a built-in component for allowances for shift work and matters like that, and it's compensation for any overtime that they might be required to work on shift, and for change to their lifestyle patterns working a regular Monday-to-Friday week, rather than the rotating roster which is applicable. If it please the Commission.

HARRISON C: Okay. Thanks very much, Mr McCorry. Is that your understanding, Ms Cosentino?

MS COSENTINO: Yes, it is. It's essentially an incentive payment to workday duties. The other information that we shared with the respondent is that the origin of the allowance is the award. There was a training wing allowance in the award historically that was paid to anybody who worked day duties at the training wing. That was extended in the award to day duties generally, so not confined to the training wing and in those days was applicable to personnel of all ranks; whether you were DO, SO or any other rank, you received that allowance. The EBA does not carry over the District Officer allowance or eliminates the District Officer rank from the allowance.

(Transcript pp 10 – 11)

- 32 In support of its claim that Instructors should not be paid the ODA the respondent argued that not all positions identified in Clause 41 of the 2011 Agreement are filled by employees coming off shift. However, Clause 41(1) states that this clause, and hence the payment of the ODA, only applies when an employee comes off shift.
- 33 The respondent argued that the ODA should not be paid to Instructors as employees will occupy the position of Instructor for two or three years and it would not be a role whereby staff would come off shift to work as an Instructor for short periods of time. However, when the respondent's representative was specifically asked about the timeframes Instructors would work when coming off shift the respondent stated that some Instructors would not be required to instruct on a full-time basis and would instruct on an as-required basis. The exchange with respect to this issue is as follows:

HARRISON C: Well if we look at Exhibit 1, I understood you to say that the - well first of all, am I - am I to understand that the - and this is not what I understood was argued in the hearing, that the General Instructor is effectively a Senior Officer role, and that under the proposal by the respondent, all Instructors are going to be appointed to work at the training centre for periods of two to three years?

ANDERSON, MS: Yes.

HARRISON C: And, for example, all recruit school training will be undertaken by permanent ongoing employees?

ANDERSON, MS: Yes.

HARRISON C: What about SEP training?

ANDERSON, MS: Skills enhancement training, that would be filled when it's required obviously - - -

HARRISON C: Well - so they won't be appointed on a fulltime permanent basis for two to three years?

ANDERSON, MS: They wouldn't be sitting in a seat or standing in a classroom for two to three years.

HARRISON C: Yes.

ANDERSON, MS: It would be - but that - the person could be appointed to do that training for 2 to 3 years but not necessarily standing in a classroom for two to three years.

HARRISON C: Right, okay. So it's not an ongoing fulltime permanent position but someone may be contracted to undertake that training from time to time within that timeframe?

ANDERSON, MS: Yes.

HARRISON C: And is that how the respondent envisages people will undertake training now at the training centre?

ANDERSON, MS: I think when it comes to the recruit school, the trainers - the Instructors out there, the program is for 16 weeks but you would have your prep time prior to that and your wrap up time after that. They're putting through three schools - two, three schools a year and that equates to around about 52 weeks a year so you would have that same Instructor going through the different schools. That Instructor wouldn't - wouldn't necessarily whip back off the station after one school and you'd get somebody else. So you would get a continuity of instructing happening and then - - -

HARRISON C: For some Instructors?

ANDERSON, MS: For some Instructors.

HARRISON C: But those who aren't ongoing, if you like, in the scenario that you've just given, would they - the respondent envisages giving them a - say, a three year contract to come in every recruit school? Is that - is that am I to understand what your argument is?

ANDERSON, MS: The - well the terms and conditions for that would probably be outlined in the advertisement and that would be part of that advertisement to let people know that this would be a position whereby you would need to front up for the next two years, for example, every time we have the school.

HARRISON C: Say for one week each recruit school?

ANDERSON, MS: If it - if the training was - if - if the person was a recruit school trainer, they would be there for the duration of the 16 weeks. They might - but in the advertisement it would outline that you wouldn't just be there for 16 weeks. We would expect you to be there for the second school in the year and the third school in the year for example.

HARRISON C: Yes, but that - that's for the General Instructor but those that - that are instructing, for example, in BA, they may come off shift. But you're saying that they will be offered an ongoing contract to - to do a week each recruit school for a couple of years?

ANDERSON, MS: They could be, yes.

HARRISON C: Well I want to know what - - -

ANDERSON, MS: Well - well - I'm agreeing with you.

HARRISON C: - - - what the respondent's plans are.

ANDERSON, MS: Yes, there's a possibility - - -

HARRISON C: Is that what the respondent's plans are? Whereas currently I understood they were - they were brought in on a pretty much an ad hoc basis.

ANDERSON, MS: I think they're going to really tighten up the training school and just make it a little bit more accountable because of its RTO status.

HARRISON C: Yes, well - yes, well, I don't know if I can take that much further. Thank you. All right. So - so you say though that this ODA - the ODA shouldn't apply because these employees have certainty, for example, a two to three year tenure where they'll be off shift for that period?

ANDERSON, MS: That's correct.

HARRISON C: That - that would apply to some but not others?

ANDERSON, MS: That's correct.

(Transcript pp 315 - 317)

- 34 Notwithstanding my concerns about the inaccuracies and inconsistencies with some of the respondent's submissions I make the following findings in relation to whether or not Instructors at the Training Centre should be paid an ODA.
- 35 I find that the ODA is currently paid to instructors and other employees who come off shift to undertake the positions identified in Clause 41 including the role of General Instructor and the duties undertaken by these employees include similar duties to those undertaken by employees under the new Instructor classification. I also find that the ODA is paid to employees who come off shift to undertake a range of instructing duties, both on a long and short term basis and I find that currently if employees undertake the role of General Instructor and other Training Officer duties and is not a designated SO he or she is paid a Higher Duties allowance up to SO level as well as the ODA.
- 36 I find that the payment of the ODA is an incentive to encourage employees to come off shift and is paid as compensation for the disruption to or removal of arrangements associated with shift work including extra travel time, the cost to travel from their usual station to a new place of work and the loss of four consecutive days off. I also find that compensation for coming off shift as contemplated in the ODA is not included in the quantum awarded to Instructors under the new classification structure as the rates of pay of Instructors under the new classification structure were determined under Principle 7. - Work Value

Changes which deals with awarding wage increases based on changes to skills, qualifications and the circumstances under which work is performed.

- 37 I find that under the new classification structure, Instructors will come off shift to instruct for both short and long term periods as day duty employees and I find that these employees will suffer financial and other disadvantages as a result of coming off shift to undertake day duties including the loss of having a four day break. Taking these disadvantages into account and the requirement on the Commission to deal with matters according to equity, good conscience and the substantial merits and relevant objects of the Act, I find that the ODA should continue to be paid to Instructors who come off shift to undertake instructing duties at the Training Centre or any other instructing required of employees working under the new classification structure and be paid in accordance with the terms of Clause 41 of the 2011 Agreement but only if they undertake instructing for a period of one week or more but less than one year. I have reached this conclusion as I find that an employee who has a contract under the new Instructor classification for one year or more on a full-time permanent basis will in time adjust to working on a day duties basis and I take into account that employees will apply for appointment to these positions of their own volition.
- 38 I reject the respondent's argument that the payment of the ODA to Instructors is inappropriate as the wages of some Instructors who will receive the ODA would be greater than the rate of pay of a DO. I find that the ODA, which is paid in addition to an employee's base rate of pay, is one of many allowances paid to the respondent's employees including DOs. I also find that the impact on an employee's total pay of the payment of an allowance is not relevant to the determination of whether the ODA should be paid to Instructors as the ODA is paid in return for disadvantages suffered by employees when coming off shift and it is my view that the relevant comparator between positions is by reference to the base rate of pay for a position, not the total remuneration received by an employee, including a DO.
- 39 Apart from unsubstantiated assertions no evidence was provided by the respondent in support of its claim that the payment of an ODA to Instructors will have a flow-on effect to other positions. I am also satisfied and I find that the terms of Clause 41 are discrete and clear as to who is eligible to receive the ODA and if there is to be any change to the positions contained in Clause 41(5) then that is a matter for the parties to agree on in future negotiations. Furthermore, Clause 41(7) states that this allowance can only be paid to other employees at the respondent's discretion.
- 40 I do not accept the respondent's argument that as the position of Instructor is not the equivalent of an SO position and as the new Instructor position is a dedicated position with its own terms and conditions it should not attract the ODA. Whilst it is clear that the Instructor position is a new position with its own classification structure in my view it is a position which forms part of the respondent's normal classification structure and is no different to employees employed under other positions in this structure. Furthermore, Instructors under the new classification structure will come off shift to instruct and I find that these employees should be compensated for this change to an employee's circumstances in the same way as current employees who undertake instructing duties are compensated.
- 41 The applicant forwarded a Minute of Proposed Consent Order to the Commission on 9 November 2011 containing a schedule confirming the rate of pay of each classification of Instructor and the competencies required for each Instructor classification. It appears from correspondence received from the parties after the Commission received this document that not all issues in the proposed order were agreed. Given this and my findings with respect to the payment of the ODA to Instructors, which needs to be included in the schedule, I have edited this schedule in part and included a clause incorporating the payment of the ODA to Instructors.
- 42 I will therefore issue the following schedule as part of the minute of proposed order, as amended by the Commission, for the consideration of the parties and I will also declare that a new classification of Instructor be created for Instructors. This schedule is as follows:

SCHEDULE

1. The new Instructor classifications shall be:

Classification	Level	Relativity (% of District Officer base rate)
Instructor (I) Trainer	Level 1	92%
Instructor/Assessor (IA) Trainer	Level 2	94%
Senior Instructor/Assessor (SIA) Trainer	Level 3	96%
Senior Instructor/Assessor (SIA) Trainer / Point of Contact Instructor (POC)	Level 4	98%

2. Employees will be paid at the above Instructor classification rate of pay subject to the following:
- (a) all instructing positions require a minimum rank of Senior Firefighter.
 - (b) The classification of Level 1 Instructor Trainer will apply when working in a position that exercises the competencies set out in clause 4(a) or otherwise as agreed between the parties, for an Instructor.
 - (c) The classification of Level 2 Instructor/Assessor Trainer will apply when working in a position that exercises the competencies set out in clause 4(b) or as agreed between the parties, for an Instructor/Assessor Trainer.
 - (d) The classification of Level 3 Senior Instructor/Assessor Trainer will apply when working in a position that exercises the competencies set out in clause 4(c) or as agreed between the parties, for a Senior Instructor/Assessor Trainer.

- (e) The classification of Level 4 Senior Instructor/Assessor Trainer / Point of Contact will apply when working in a position that exercises the competencies as agreed between the parties. This classification is applied when a Senior Instructor/Assessor Trainer is required to be responsible for the moderation of a Training Resource Kit in a specified subject. The Senior Instructor/Assessor Trainer is recognised as a subject matter expert.
3. Instructing performed by an employee above the Rank of Station Officer Level 2 will be paid at their classification rate or the Instructor rate for the instructing assessor competencies they hold, whichever is greater.
4. The competencies for the Instructor classifications for the purposes of clause 2 above are:
- (a) Level 1 Instructor (I) Trainer
Competencies FESA Code 0300
- BSZ404 Train Small Groups;
 - TAADEL301 Provide Training through Instruction and Demonstration of Work Skill; or
 - TAEDEL301 Provide Work Skill Instruction.
- (b) Level 2 Instructor/Assessor (IA) Trainer
Competencies FESA Code 0300 and Code 0301
- BSZ404 Train Small Groups;
 - TAADEL301 Provide Training through Instruction and Demonstration of Work Skill; or
 - TAEDEL301 Provide Work Skill Instruction;
- and
- BSZ401 Plan Assessments;
 - BSZ402 Conduct Assessments; and
 - BSZ403 Review Assessments.
- or
- TAAASS401 Plan and Organise Assessments;
 - TAAASS402 Assess Competence; and
 - TAAASS403 Review Assessments.
- or
- TAEASS401 Plan Assessment Activities and Processes;
 - TAEASS402 Assess Competence; and
 - TAEASS403 Participate in Assessment Validation.
- (c) Level 3 Senior Instructor/Assessor (SIA) Trainer
- BSZ40198 Certificate IV in Assessment and Workplace Training;
 - TAA40104 Certificate IV in Training and Assessment; or
 - TAE40110 Certificate IV in Training and Assessment.
- or
- BSZ40198 Certificate IV in Assessment and Workplace Training
 - BSZ401 Plan Assessments
 - BSZ402 Conduct Assessments
 - BSZ403 Review Assessment
- or
- TAA40104 Certificate IV in Training and Assessment
 - TAAASS401 Plan and Organise Assessments
 - TAAASS402 Assess Competence
 - TAAASS404 Participate in Assessment Validation
- or
- TAE40110 Certificate IV in Training and Assessment
 - TAEASS401A Plan Assessment Activities and Processes
 - TAEASS402A Assess Competence
 - TAEASS403A Participate in Assessment Validation

- (d) Level 4 Senior Instructor/Assessor (SIA) Trainer / Point of Contact Instructor (POC)
- Same competencies as Senior Instructor/Assessor (SIA) Trainer; plus
 - Recognised as a subject matter expert.

5. The above classifications apply to the following positions existing as at the date of this Order:

Positions	Classification
All positions that involve instructing but not assessing in a Recruit School, Specialist Course, Certification of Station Officer General Training and SEP Training	Level 1 Instructor (I) Trainer
All positions that involve instructing or assessing in a Recruit School, Specialist Course, Certification of Station Officer General Training and SEP Training.	Level 2 Instructor/Assessor Trainer
Applied Training Officers (ATO) Training Development Officers (TDO) Major Incident Training Officers Special Projects Officer (Training) Lead Instructors for Recruit Schools Breathing Apparatus Course Instructors Driver Training Course Instructors Fire Fighting Course Instructors	Level 3 Senior Instructor/Assessor (SIA) Trainer

6. Positions which are not mentioned in clause 5 above the duties of which are the same as or substantially similar to the duties of any of the positions which are so mentioned shall be classified at the same classification as the relevant mentioned position.
7. Whenever an employee holding any of the competencies set out in clause 4 above prepares or delivers a training course in the Recruit School, Specialist Courses, Certification of Station Officer General Training and SEP Training the relevant Instructor classification shall apply to that employee.
8. Instructors appointed to work for one week or more and any employee who is not appointed as an Instructor on a full-time basis for one year or more shall be paid the Other Duties Allowance for each week worked as detailed in Clause 41 of the *Western Australian Fire Service Enterprise Bargaining Agreement 2011* and the quantum included in any subsequent industrial agreement.
9. Any disagreement or dispute about this schedule shall be determined in accordance with the Dispute Resolution Procedure set out in the *Western Australian Fire Service Enterprise Bargaining Agreement 2011* and any subsequent industrial agreement.

2011 WAIRC 01182

DISPUTE RE CLASSIFICATION FOR INSTRUCTORS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

UNITED FIREFIGHTERS UNION OF AUSTRALIA - WEST AUSTRALIAN BRANCH

APPLICANT

-v-

CHIEF OPERATIONS OFFICER - FIRE & EMERGENCY SERVICES AUTHORITY

RESPONDENT

CORAM

COMMISSIONER J L HARRISON

DATE

FRIDAY, 23 DECEMBER 2011

FILE NO/S

CR 17 OF 2010

CITATION NO.

2011 WAIRC 01182

Result

Order issued

Representation

Applicant

Ms R Cosentino (of counsel)

Respondent

Mr G McCorry (as agent) and Ms G Anderson

Order

NOW HAVING HEARD Ms R Cosentino of counsel on behalf of the applicant and Mr G McCorry as agent and Ms G Anderson on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby:

1. DECLARES that a new classification of Instructor be created.
2. ORDERS that the classifications, pay rates and allowances due to the position of Instructor are those set out in the schedule attached to this order.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

SCHEDULE

1. The new Instructor classifications shall be:

Classification	Level	Relativity (% of District Officer base rate)
Instructor (I) Trainer	Level 1	92%
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 - (e) The classification of Level 4 Senior Instructor/Assessor Trainer / Point of Contact will apply when working in a position that exercises the competencies as agreed between the parties. This classification is applied when a Senior Instructor/Assessor Trainer is required to be responsible for the moderation of a Training Resource Kit in a specified subject. The Senior Instructor/Assessor Trainer is recognised as a subject matter expert.
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 - TAADEL301 Provide Training through Instruction and Demonstration of Work Skill; or
 - TAEDEL301 Provide Work Skill Instruction;
 and
 - BSZ401 Plan Assessments;
 - BSZ402 Conduct Assessments; and
 - BSZ403 Review Assessments.
 or
 - TAAASS401 Plan and Organise Assessments;
 - TAAASS402 Assess Competence; and

- TAAASS403 Review Assessments.
- or
- TAEASS401 Plan Assessment Activities and Processes;
 - TAEASS402 Assess Competence; and
 - TAEASS403 Participate in Assessment Validation.
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- BSZ40198 Certificate IV in Assessment and Workplace Training;
 - TAA40104 Certificate IV in Training and Assessment; or
 - TAE40110 Certificate IV in Training and Assessment.
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- BSZ40198 Certificate IV in Assessment and Workplace Training
 - BSZ401 Plan Assessments
 - BSZ402 Conduct Assessments
 - BSZ403 Review Assessment
- or
- TAA40104 Certificate IV in Training and Assessment
 - TAAASS401 Plan and Organise Assessments
 - TAAASS402 Assess Competence
 - TAAASS404 Participate in Assessment Validation
- or
- TAE40110 Certificate IV in Training and Assessment
 - TAEASS401A Plan Assessment Activities and Processes
 - TAEASS402A Assess Competence
 - TAEASS403A Participate in Assessment Validation
- (d) Level 4 Senior Instructor/Assessor (SIA) Trainer / Point of Contact Instructor (POC)
- Same competencies as Senior Instructor/Assessor (SIA) Trainer; plus
 - Recognised as a subject matter expert.

5. The above classifications apply to the following positions existing as at the date of this Order:

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All positions that involve instructing but not assessing in a Recruit School, Specialist Course, Certification of Station Officer General Training and SEP Training	Level 1 Instructor (I) Trainer
All positions that involve instructing or assessing in a Recruit School, Specialist Course, Certification of Station Officer General Training and SEP Training.	Level 2 Instructor/Assessor Trainer
Applied Training Officers (ATO) Training Development Officers (TDO) Major Incident Training Officers Special Projects Officer (Training) Lead Instructors for Recruit Schools Breathing Apparatus Course Instructors Driver Training Course Instructors Fire Fighting Course Instructors	Level 3 Senior Instructor/Assessor (SIA) Trainer

6. Positions which are not mentioned in clause 5 above the duties of which are the same as or substantially similar to the duties of any of the positions which are so mentioned shall be classified at the same classification as the relevant mentioned position.
7. Whenever an employee holding any of the competencies set out in clause 4 above prepares or delivers a training course in the Recruit School, Specialist Courses, Certification of Station Officer General Training and SEP Training the relevant Instructor classification shall apply to that employee.

8. Instructors appointed to work for one week or more and any employee who is not appointed as an Instructor on a full-time basis for one year or more shall be paid the Other Duties Allowance for each week worked as detailed in Clause 41 of the *Western Australian Fire Service Enterprise Bargaining Agreement 2011* and the quantum included in any subsequent industrial agreement.
9. Any disagreement or dispute about this schedule shall be determined in accordance with the Dispute Resolution Procedure set out in the *Western Australian Fire Service Enterprise Bargaining Agreement 2011* and any subsequent industrial agreement.

PROCEDURAL DIRECTIONS AND ORDERS—

2012 WAIRC 00003

DISPUTE REGARDING THE EMPLOYERS REDEPLOYMENT OF UNION MEMBERS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

UNITED VOICE WA

APPLICANT

-v-

THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S.7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927 (WA) AS THE HOSPITALS FORMERLY COMPRISED IN THE METROPOLITAN HEALTH SERVICE BOARD; THE PEEL HEALTH SERVICES BOARD; THE WA COUNTRY HEALTH SERVICE

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE FRIDAY, 6 JANUARY 2012
FILE NO/S C 1 OF 2012
CITATION NO. 2012 WAIRC 00003

Result	Order issued
Representation	
Applicant	Ms Courtney Collins (of counsel)
Respondent	Ms Sadie Smith

Interim Order

WHEREAS on 5 January 2012 United Voice WA (the applicant) notified the Western Australian Industrial Relations Commission (the Commission) of an alleged industrial dispute and requested an urgent conference be convened pursuant to s.44 of the *Industrial Relations Act 1979* (the Act);

AND WHEREAS on 6 January 2012 the Commission convened a conference for the purpose of conciliating between the parties to resolve the alleged dispute;

AND WHEREAS the applicant alleged that effective as of 9 January 2012 five (5) menu assistants (the relevant employees) employed at Sir Charles Gairdiner Hospital (the hospital) by The Minister for Health in his incorporated capacity under s 7 of the *Hospitals and Health Services Act 1927* (WA) as the Hospitals formerly comprised in the Metropolitan Health Service Board; the Peel Health Services Board; the WA Country Health Service (the respondent) were to be disadvantaged in their employment by being redeployed, effective as of Monday 9 January 2012;

AND WHEREAS the applicant advised it has members employed by the respondent to whom the *WA Health – LHMU Support Workers Industrial Agreement 2007* (the Agreement) applies;

AND WHEREAS the five menu assistants concerned had been employed by the respondent in their current positions for 14, 15, 18, 19 and 38 years respectively;

AND WHEREAS the respondent in July 2011, notified the applicant of a definite decision that had been made to introduce major changes in the organisation and in particular changes to the structure of the respondent that would have significant effects on employees. Specifically, a decision had been made by the respondent regarding the hospital to restructure its workforce, resulting in ten (10) menu assistants' positions being declared surplus and abolished. A further decision had been made to redeploy the affected employees to alternative positions within the hospital effective as of 9 January 2012;

AND WHEREAS of the ten (10) affected employees who were offered alternative employment positions only five (5) employees accepted. The remaining employees (the relevant employees) declined to accept the offer on the grounds that the alternative employment was not suitable within the terms of subclause 8(1) of the *Western Australian Government/LHMU Redeployment, Retraining and Redundancy Certified Agreement 2004*;

AND WHEREAS the Public Sector Commission has yet to make a finding regarding the suitability of the alternative employment offered to the relevant employees the respondent has decided to continue with its plan to redeploy the all ten employees (including the relevant employees) on 9 January 2012;

AND WHEREAS it is the view of the applicant that the respondent's decision may have a negative impact on the relevant employees and may deteriorate relations between the applicant and the respondent, with an increasing potential for industrial action; and

WHEREAS the respondent opposed the issuance of an order advising the Commission that the restructure of the hospital food services meant that the jobs of menu assistants (the relevant employees) were no longer effective as of 9 January 2012. Additionally, if the Commission were to issue an order maintaining the status quo of the relevant employees, it would not be sensible to implement such an order, given no such jobs would exist; and

WHEREAS the respondent indicated that it was prepared to look into the possibility of achieving severance packages for the relevant employees; and

WHEREAS the respondent indicated in the event an order issued then they would work with the applicant to place the relevant employees in supernumerary positions in their current work areas and on their current rosters, having regard for the need to ensure meaningful work is carried out until such time as the issue of suitability of employment is finally determined; and

WHEREAS at the conclusion of the conference resolution of the issue in dispute was unable to be reached between the parties; and

WHEREAS it is the view of the Commission that the respondent's actions have had a negative impact on the dignity of the relevant employees who have been employed for such a long period of time; and

AND WHEREAS the Commission has had regard for the submissions of both parties and is of the view that it has jurisdiction to issue an interim order pursuant to s 44(6) of the Act in particular under s 44(6)(bb)(i) which enables the Commission to issue orders which the Commission is otherwise authorised to make under this Act in relation to an industrial matter; and

WHEREAS when applying the test of whether or not an interim order should issue and after considering the submissions put by both parties the Commission has formed the view that an interim order should issue on the basis that it is the Commission's view that the detriment to the relevant employees is greater than the detriment to the respondent if an interim order does not issue; and

FURTHER as the consequences of issuing an interim order are not irreversible the Commission therefore proposes to issue an interim order requiring the relevant employees continue to undertake the same duties beyond 9 January 2012 and if there is any change to these circumstances, liberty to apply is available to the respondent to vary this interim order; and

WHEREAS on Friday 6 January 2012 the minute of order was circulated to the parties; and

WHEREAS a speaking to the minutes was scheduled on Friday afternoon to hear the parties views on the amendments sought to the minute;

NOW THEREFORE the Commission having formed the view that in the circumstances an interim order in the current terms is necessary to maintain the relevant employees in their positions pending the resolution of the issue in dispute and pursuant to the powers conferred on it under the Act and in particular s 44(6) hereby Orders -

- 1) THAT the respondent, effective as of 9 January 2012, employ the relevant employees supernumerary, in their current positions, in their current work areas and on their current rosters. That none of the relevant employees be redeployed to any alternative position until the issue of suitability of alternative employment has been finally determined.
- 2) THAT on 9 January 2012 at 2pm a meeting take place at the hospital with the applicant, the respondent and all relevant employees to discuss the issue of meaningful work ensuring that all persons have regard for flexibility during the period of supernumerary employment.
- 3) THAT the respondent consider offering the relevant employees severance packages in accordance with clause 10 of the *Western Australian Government/LHMU Redeployment, Retraining and Redundancy Certified Agreement 2004* and report back to the applicant and the Commission with a preliminary view at the next conciliation conference.
- 4) THAT the Commission schedule a further conciliation conference no later than 10th January 2012.
- 5) THAT a copy of this order be placed on a noticeboard in the catering section of the hospital.
- 6) THAT liberty to apply is reserved to the parties in relation to this order.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

INDUSTRIAL AGREEMENTS—Notation of—

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Department of Environment and Conservation Agency Specific Agreement for Employees Working on Barrow Island 2011 PSAAG 22/2011	(Not applicable)	The Director General of the Department of Environment and Conservation, The General Secretary of the Community and Public Sector Union/Civil Service Association of WESTERN AUSTRALIA Inc	(Not applicable)	Commissioner S M Mayman	Agreement registered
The Greens (WA) Inc. Staff Agreement 2011 AG 32/2011	(Not applicable)	Western Australian Municipal, Administrative, Clerical and Services Union of Employees	Greens (WA) Inc	Chief Commissioner A R Beech	Agreement registered
Department of Environment and Conservation - AWU Fire Service Provisions Agreement 2011 AG 33/2011	11/01/2012	The Australian Workers' Union, West Australian Branch, Industrial Union of Workers and The Director General of the Department of Environment and Conservation	(Not applicable)	Commissioner S M Mayman	Agreement registered

PUBLIC SERVICE APPEAL BOARD—**2011 WAIRC 01173****APPEAL AGAINST THE DECISION BY EMPLOYER TO TERMINATE THE EMPLOYMENT**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

MS JOYCE NAIDOO

APPELLANT

-v-

GOVERNMENT OF WESTERN AUSTRALIA DRUG & ALCOHOL OFFICE

RESPONDENT**CORAM**

PUBLIC SERVICE APPEAL BOARD

ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN

MR J FRAME - BOARD MEMBER

MR G BROWN - BOARD MEMBER

DATE

WEDNESDAY, 21 DECEMBER 2011

FILE NO

PSAB 14 OF 2011

CITATION NO.

2011 WAIRC 01173

Result

Extension of time in which to appeal granted

Representation**Appellant**

Mr S Millman of counsel

Respondent

Ms K Worlock of counsel

Order

WHEREAS this is an appeal pursuant to the *Industrial Relations Act 1979* (the Act) filed beyond the 21 days allowed by the Act; and

WHEREAS the appellant seeks leave to file the appeal out of time; and

WHEREAS at the hearing convened on the 14th day of December 2011 the respondent consented to the granting of the application for an extension of time in which to file the appeal;

NOW THEREFORE, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the application for an extension of time in which to file the appeal be granted.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
On behalf of the Public Service Appeal Board.

2011 WAIRC 01172

APPEAL AGAINST THE DECISION BY EMPLOYER TO TERMINATE THE EMPLOYMENT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

MS JOYCE NAIDOO

APPELLANT

-v-

GOVERNMENT OF WESTERN AUSTRALIA DRUG & ALCOHOL OFFICE

RESPONDENT

CORAM

PUBLIC SERVICE APPEAL BOARD

ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN

MR J FRAME - BOARD MEMBER

MR G BROWN - BOARD MEMBER

DATE

WEDNESDAY, 21 DECEMBER 2011

FILE NO

PSAB 14 OF 2011

CITATION NO.

2011 WAIRC 01172

Result Direction issued

Representation

Appellant Mr S Millman of counsel

Respondent Ms K Worlock of counsel

Direction

WHEREAS this is an appeal to the Public Service Appeal Board pursuant to Section 80I of the *Industrial Relations Act 1979*, and

WHEREAS this appeal was set down for a scheduling hearing on the 14th day of December 2011; and

WHEREAS the parties agreed to Directions issuing for the purpose of preparation for hearing of the appeal;

NOW THEREFORE, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby directs:

1. THAT the appellant file and serve any witness statements no later than 35 days prior to the date of the hearing.
2. THAT the respondent file and serve any witness statements no later than 21 days prior to the date of the hearing.
3. THAT the appellant file and serve any witness statements in reply no later than 14 days prior to the date of the hearing.
4. THAT the parties file any submissions and a Statement of Agreed Facts no later than 7 days prior to the date of the hearing.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
On behalf of the Public Service Appeal Board.