



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

COMMISSIONER BISSETT

C2023/3219

s.739 - Application to deal with a dispute

**Mr Rainer Kiessling
and
Fire Rescue Victoria T/A FRV
(C2023/3219)**

Melbourne

10.20 AM, WEDNESDAY, 20 SEPTEMBER 2023

Continued from 28/07/2023

PN1

THE COMMISSIONER: Good morning. I'll take appearances.

PN2

MR R KIESSLING: Yes. Rainer Kiessling, Commissioner, good morning.

PN3

THE COMMISSIONER: Thank you Mr Kiessling.

PN4

MR M CARRICK: Good morning, Commissioner. Mick Carrick on behalf of the FRV.

PN5

THE COMMISSIONER: Thank you, Mr Carrick. Mr Koletsis is here as well and I've already granted permission.

PN6

Mr Kiessling, you made an application to the Commission to deal with a dispute back in June of this year and following on from a number of conferences of the parties, we are where we are today in terms of the Commission hearing from the parties with respect to trying to resolve the outstanding issues.

PN7

The questions that are being considered today, Mr Carrick – and you weren't part of this process but were – or I think you might have been, but - - -

PN8

MR CARRICK: I was, Commissioner, yes.

PN9

THE COMMISSIONER: Yes. So have been resolved through discussions between the parties, some going and coming with my chambers and so on, and we settled on those questions as dealing with the outstanding matters. I understand from something you mentioned to my associate, Mr Kiessling, that there's still an outstanding issue with respect to leave recognition.

PN10

MR KIESSLING: Yes, Commissioner, just chasing up that leave. FRV indicated that they would credit my leave. They haven't.

PN11

THE COMMISSIONER: Have you provided FRV with the - - -

PN12

MR KIESSLING: I have, yes. I've chased it up twice with payroll but to no avail.

PN13

THE COMMISSIONER: Thank you. Mr Koletsis, is there any reason why payroll hasn't - - -

PN14

MR CARRICK: Sorry, Commissioner. My understanding is that the terms of the agreement state that FRV will recognise the leave - and in this case it's the long service leave, because my understanding is that the - - -

PN15

MR KIESSLING: Personal. Personal leave.

PN16

MR CARRICK: Sorry, that's right, it's the personal leave. It's the sick leave – on the basis that the agency that the employee is coming from will transfer the funds for that. I think in fact the agreement actually explicitly states that, and in this case we've approached the South Australian Metropolitan Fire Service requesting that, but I believe that they haven't provided that funding.

PN17

THE COMMISSIONER: I suggest you go back and tell them.

PN18

MR CARRICK: Yes.

PN19

THE COMMISSIONER: My understanding is that there's general agreement amongst the state government agencies and employees that leave transfers. It's your problem. If they haven't paid you, that's – if the agreement says you're going to recognise the leave, then you have to recognise the leave. I'm not going to deal with that question today, obviously.

PN20

MR CARRICK: No. I think the agreement does say subject to the transfer of funds, but I'll - - -

PN21

THE COMMISSIONER: Yes. I'm not going to deal with that matter today, but can you just make sure there's ongoing communication between you?

PN22

MR CARRICK: Yes, and, sorry, FRV's position is clear. If there's an entitlement there we will adhere to that.

PN23

THE COMMISSIONER: Yes. I think that FRV have to do everything that they can to ensure that that entitlement is there.

PN24

MR CARRICK: Yes, I agree.

PN25

THE COMMISSIONER: Yes, okay. So what I've received from the parties prior to today, just to make sure we've all got it, was put together – sorry, the material I received in accordance with the directions was put together in a court book by my chambers and that's been provided to both parties, and apart from a typo in one of

Mr Kiessling's documents in terms of appendix 66, which is actually numbered 67, or called 67, there's no issue with the material that's been filed.

PN26

Mr Carrick, can I just ask you whether it's FRV's intention to cross-examine Mr Kiessling about any of the material he's provided?

PN27

MR CARRICK: No, Commissioner, it's not.

PN28

THE COMMISSIONER: Good. Thank you. Mr Kiessling, a witness statement's been provided by FRV for a Mr Thorley, which seems to be with respect to some work that's being done for further recognition of qualifications. Did you wish to question Mr Thorley about that?

PN29

MR KIESSLING: Yes, I will. The document that FRV have provided seems to be quite specific around the qualifications which aren't national competency recognised. My issue is that no RPL has been done even for the national competencies I hold.

PN30

THE COMMISSIONER: Yes.

PN31

MR KIESSLING: And as a result of that, now, 18 months later, I've actually been excluded from a substantive promotions process by virtue of the fact that I don't hold the necessary qualification which had an RPL process been conducted I would actually be eligible for.

PN32

THE COMMISSIONER: Yes, okay.

PN33

MR KIESSLING: Yes.

PN34

THE COMMISSIONER: So there will be a requirement to cross-examine Mr Thorley.

PN35

MR CARRICK: Yes, Commissioner.

PN36

THE COMMISSIONER: In those circumstances, I think that probably the easiest thing to do first is to deal with Mr Thorley. So to the extent that you've made a witness statement, Mr Kiessling, there's no need for cross-examination of that, so that will be accepted by the Commission and will be marked as exhibit A1 on the file.

EXHIBIT #A1 WITNESS STATEMENT OF RAINER KIESSLING

PN37

THE COMMISSIONER: We'll call Mr Thorley, I think, and then once you've cross-examined Mr Thorley and we've finished with Mr Thorley, I'll then hear submissions from the parties about the issues that are in dispute. Okay? Everyone knows what we're doing?

PN38

MR CARRICK: Thank you, Commissioner.

PN39

THE COMMISSIONER: Good. Okay. Thank you.

PN40

THE ASSOCIATE: Can you please state your full name and your address.

PN41

MR THORLEY: Christian Anthony Thorley, (address supplied).

<CHRISTIAN ANTHONY THORLEY, AFFIRMED [10.28 AM]

EXAMINATION-IN-CHIEF BY MR CARRICK [10.28 AM]

PN42

THE COMMISSIONER: Thank you. Mr Carrick?

*** CHRISTIAN ANTHONY THORLEY

XN MR CARRICK

PN43

MR CARRICK: Thank you, Commissioner. Assistant Chief Officer Thorley, would you please provide your current rank and title?---Yes. So Assistant Chief Fire Officer Christian Thorley. Currently a state duty officer seconded back to the CFA, is my current role.

PN44

What was your position previous to this current role?---So previous to 1 July when I started in that role, I'd spent the previous two years within FRV operational training in two roles, one being the training development, so back-filling the FRV training development ACFO role, and also as a project – that role was called the ACFO of training strategy and innovation, which was effectively looking at harmonisational and legacy issues associated with fire service reform.

PN45

Thank you. Would you describe your experience in terms of the FRV training area as fairly knowledgeable?---Yes, in the training field and the qualification recognition process. Prior to reform I actually undertook a project with CFA to effectively qualify the whole Div B workforce to a point for the date of reform. So then we looked at having an equal playing field for qualifications for Div A, being MFB, and Div B, being CFA. So looked at – that was prior to reform I worked on that project, and then that's where FRV sort of sought my skills a couple of years back to come in and start looking at the project again, because we had had some gaps in people that had progressed and so forth. So,

yes, I'd say in that field of the training space and the qualifications, fairly knowledgeable in that space.

PN46

Thank you. I take it the reform you're talking about is the merger, so-called, of CFA and - - -?---Yes. Fire service reform, yes.

PN47

Would you be able to tell us a little bit about the status of FRV as a registered training organisation?---Yes. So effectively what happened at the date of reform, so effectively the MFB RTO status transitioned over into FRV training status. So it's a really – was under-resourced. They've just gone through a huge restructure in that space to gather the skills to be able to train the volume of people which FRV now need to train, and the really tricky bit is around our RTO compliance obligations.

PN48

And RTO is?---Registered training organisation. So ensuring that – meet our obligations as far as the RTO, and when audited, which we've got coming up sometime very soon, that we can meet the auditing requirements from ASQA and VRQA.

PN49

Those auditing - - -

*** CHRISTIAN ANTHONY THORLEY

XN MR CARRICK

PN50

THE COMMISSIONER: Can I just - - -

PN51

MR CARRICK: Sorry.

PN52

THE COMMISSIONER: Just for your information, Mr Carrick, I'm familiar with the vocational education and training system and RTOs and auditing and the acronyms of all sorts of wonderful organisations.

PN53

MR CARRICK: Thank you, Commissioner. I'll cut to the chase, in that case. Would you, in that case, please be able to describe really the impact of the advanced diploma of firefighting management, what that is and where that sits relative to lateral entry commanders, amongst others?---Yes. So the advanced diploma is a qualification which aligns to the rank of commander. So in the new world, being FRV, the advanced diploma is awarded on completion of the commander program. So people are promoted to the rank of commander. They go through the commander course and at the end of that course they're provided with a qualification, being the advanced diploma, to see them through their tenure as a commander, I suppose. It also forms part of being a prerequisite for promotion to assistant chief fire officer. So the requirement there is to hold the qualification and then two years' experience at the rank of commander within FRV/CFA MFB. So that's the importance of it, I suppose. So we award it as part

of the commander. One of the tricky things I've had to deal with is that we had people at reform transition into the new organisation at the rank of commander that didn't hold the advanced diploma qualification. So there's been a really complex body of work to work through that, and we're working through with – with some of those people we're working through an RPL pathway to try and achieve the advanced diploma qualification for those commanders that transitioned to FRV and didn't hold the required advanced diploma in firefighting management. We've also got another group I won't go into, but they're direct entry, and they're a little bit different again. So, yes, it's a fairly complex field, but effectively it's at the rank of commander and it's a prerequisite for the assistant chief fire officer promotion.

PN54

Am I right in thinking that this is an issue for lateral entry commanders as well to determine whether or not they've got the areas of competency that meet the requirements, or threshold requirements, of the diploma?---Yes. That would be, yes, a fair assessment. So effectively there's been a group of lateral entry commanders come into the FRV system now. So as part of that there wasn't necessarily a requirement to come into the commander rank holding that qualification, because a lot of other states throughout Australia don't actually have part of – or the qualification, so that wasn't a requirement.

*** CHRISTIAN ANTHONY THORLEY

XN MR CARRICK

PN55

Yes?---But obviously now that those people are embedded within FRV, they also fall into the bundle of people that are at the rank of commander that don't hold that qualification. We're working through a process to achieve that qualification for them – or help them to achieve that qualification.

PN56

That process, as I understand it, is one of determining what in fact the recognition process will be for prior existing competencies, whether those competencies meet the threshold requirements related to the diploma itself, and there is a process under the enterprise agreement, as I understand it, whereby the process for recognition of those competencies has to be considered and approved through a consultative committee. Can you tell us a little bit about that?---Well, effectively, what FRV's – and I'm sure the Commission is au fait with this, but we've got an obligation as an RTO to recognise – so if we've got formal training associated with the AQF levels, that's formal training, a national unit of competency. So as an RTO we've got an obligation to recognise those units of competency or qualifications, whatever they be. So that's the formal training, so as part of what we would look at, what we've done with the commanders who don't hold the qualification, we've worked through a process to say, okay, an individual enrolls in the advanced diploma. We then undertake a qualification recognition process, and that is where any qualifications aligned to the AQF framework in which FRV have on their scope of registration, we have the ability to credit transfer those units into the qualification that they've enrolled in. Once we've undertaken that process – so that's called out – that's a qualification recognition process. So that's about providing evidence. That is a direct credit transfer to units required within the qualification we're looking to achieve.

PN57

Yes?---From there, it's about undertaking a skills gap, what units of competency within the qualification don't individuals hold, and then undertaking an RPL pathway which would then look at individuals' informal training. So they are training units of competency that aren't aligned to the AQF levels and formally recognised training, looking at how we can support building an evidence portfolio to meet the requirements of the AQF level advanced diploma units, assessing those and then ultimately awarding a qualification under that. So that's what the process currently looks like and how FRV at the moment would credit transfer or alternatively undertake an RPL to achieve what we need to.

PN58

Where are we on the spectrum of approving that process?---So I – yes. What's today? Wednesday? I, yesterday, Tuesday, presented – so I wrote up a paper for ELT to support. So effectively I've put a paper forward which allows – well, the intent was to provide lateral entry commanders access to the RPL pathway no different to the access which the current commander cohort that don't hold the qualification had. So effectively requesting support from ELT to open that RPL pathway up to the lateral entry group. That was supported by ELT.

PN59

THE COMMISSIONER: Sorry, what's ELT?---Executive leadership team.

*** CHRISTIAN ANTHONY THORLEY

XN MR CARRICK

PN60

Thank you?---Sorry, Commissioner.

PN61

That's all right?---We then moved into – that then progressed – it was endorsed at ELT, progressed through to consultative committee, so our industrial mechanism. It was authorised – or, sorry, supported through consultative committee, referred back to the training sub-committee. So I had to present to the training sub-committee yesterday and they were fully supportive of my proposal in regard to the roll-out of the RPL pathway for those commanders, and effectively it's now been referred back to consultative committee just to completely close it off. Once that final close-off happens at consultative committee, we'll be able to communicate out to the cohort of lateral entry commanders. So that's where it's at at the moment.

PN62

MR CARRICK: Do you have any estimate in terms of time as to how long it will take for that process to complete – the approval process from the consultative - - -?---The referral – look, so it will go back into the next CC, and all it is is a report back. So all the authorisation of it has occurred. It's really just to report back to CC to say, 'This is how the process will work.' I'm not sure of the exact date of the next CC, but, Mick – I'm not sure whether – it would probably be within the next month, I would say.

PN63

It's roughly monthly, as I understand the evidence?---Yes.

PN64

Thank you very much for that. One other thing I wanted to check, in terms of the process for recognition of prior competencies, is it correct that the mere fact you hold a competency that might have been recognised in one state or in one jurisdiction, that doesn't necessarily have an equivalent in Victoria or under a nationally recognised unit of competency? So the mere fact you hold a competency won't necessarily be taken into account for the purposes of contributing towards the qualification, the diploma?---So in a formal sense that credit transfer process is effectively – that's governed by the unit and the package itself. So we can only credit transfer units which appear on our own scope of registration as an RTO so they need to appear on that first of all. They need to be relevant for the candidate. So, look, there's no use in us accrediting – you know, or credit transferring a unit that is way down the line. So we're really looking at credit transferring any units which they hold relevant to the qualification in which they're enrolled in, and then the underpinning prerequisite requirements for those units. So as part of that credit transfer process we would need to say, 'Okay, yes, individual X holds this unit awarded from this registered RTO.' We would do – we need – there's a whole process around how we acknowledge that. We also then need to ensure that they hold the prerequisite requirements for those units and then we can award that unit of competency on the scope of FRV via a credit transfer. The informal training, and that is when – so I hold a whole lot of CFA units which aren't necessarily AQF aligned. I get to use them if I RPL a unit which is similar in nature and I can use that as part of my evidence to put in front of an assessor to make an assessment on whether I do meet the requirements of that unit. So it's not a – it's no direct transfer, it's part of a process of RPL in itself. So the evidence can certainly be used, yes. Can it be directly credit transferred, no.

PN65

Thank you very much. That's all the questions I have, Commissioner. Thank you.

PN66

THE COMMISSIONER: Thank you. Just before I hand you over to Mr Kiessling, the advanced diploma of firefighting management, is that a nationally recognised qualification?---Yes, it is.

PN67

Is it delivered in every state?---No, not in its entirety. I think there's units of competency within the qualification that different services roll out. I believe – I'm not 100 per cent sure, but I think FRV might be one of the only ones that delivers the qualification in full as part of a promotional pathway.

PN68

MR CARRICK: Thank you.

PN69

THE COMMISSIONER: Mr Kiessling, do you have some questions for - - -

CROSS-EXAMINATION BY MR KIESSLING

[10.42 AM]

PN70

MR KIESSLING: Thank you, Commissioner. Yes, just on that comment, my understanding too is FRV is the only agency that can deliver the advanced diploma in firefighting management. So just trying to get my head about this – can I call you Chris or Mr Thorley?---Christian, Chris, yes.

PN71

Christian. You mentioned equal playing field, you mentioned pre-perform, you mentioned that there was a process that existed to upgrade and qualify those people in the CFA to the required qualification at reform time. Would that be a correct - - -?---No, RPL. It was an RPL pathway, exactly the same as what's occurred here, for people that met the eligibility requirements.

PN72

Yes?---But the difference being that CFA were the RTO who oversaw that project. Reform come about. Obviously those individuals are no longer covered by CFA as their RTO. FRV are now the new RTO, and that's why I was pulled in to work through developing an RPL pathway to you – two qualifications, sorry, the diploma and the advanced diploma, which I worked with an external provider to develop tools in regard to those RPLs.

*** CHRISTIAN ANTHONY THORLEY

XXN MR KIESSLING

PN73

Yes. So it would be fair to say the bones of the process were already there?---It would be a good assumption, but I can tell you, given RTOs have got different levels of comfort in regard to RPL - RPL is a really tricky thing, and compliance, obviously. So what I would say is that both of the pathways which I developed were dramatically different, and that's because of that compliance and governance aspect from both different organisations. So same person, same objective, two different pathways, really.

PN74

Right. So you're obviously aware that – I mean, I hold an advanced diploma in emergency management which has not been recognised by FRV as being a prerequisite for the current promotions process. They're sitting the exam today, as you know. My understanding is that there is people that have Progressed through to the promotions process that only hold the advanced diploma in emergency management?---Yes. Correct.

PN75

Yet I hold a diploma in emergency management and I haven't been allowed to progress through to the process?---Yes.

PN76

Obviously, from my perspective, I saw the writing on the wall there a long way away, and if you remember, I came and saw you and we talked at length about, you know, the qualification process?---Yes.

PN77

Do you recall saying to me that the advanced diploma in emergency management should be sufficient?---Look, no, I don't. Possibly I might have said that it's certainly been recognised for a group of candidates within it, but I don't recall saying that that would be sufficient, no.

PN78

So if we turn then to the nationally recognised qualifications which I do hold, and people have got my Emerald training record?---Yes.

PN79

Which is by no means exhaustive, because there's a whole heap of stuff which I didn't want to – you know, otherwise the court booklet would have been twice the width?---Yes.

PN80

Has FRV, since we've been here for just over 18 months now – have made no attempt to actually have a look at that as part of their, as you suggest, obligations to actually look at the national competencies and accredit them. That hasn't happen?---Yes.

*** CHRISTIAN ANTHONY THORLEY

XXN MR KIESSLING

PN81

Would that be a fair comment?---Yes, look, it's a comment, but effectively, like I said, as part of the process – so when you enrol in – so people can hold a variety of – I might hold an MBA of business. The relevance to the rank of commander for FRV, whilst it – personally development and it gives you a skill set, we're looking at a qualification associated with a rank, because that's what's on our scope as an RTO.

PN82

Yes?---So if you hold qualifications outside of that, that's fantastic, and like I said, by all means, those units of competency can be used in an RPL pathway to achieve a unit of competency which we do need for the qualification. That is where it goes, and that process will happen through the RPL. Like I said, the first – work through a process of getting first the authorising mechanism to get people enrolled in the advanced diploma, which is what I've been working through. Step 2 is then a qualification recognition process, what units of competency provide your formal training records. We'll work through what we can and can't credit transfer from AQF level units into the advanced diploma, and then step number 3 is effectively then working through, 'Okay, what are the gaps? These are the required evidence portfolios. What evidence have you got from that training that helps support your assessment of that unit of competency.

PN83

Yes, which is consistent with my understanding, is that there's a process which FRV are working on, albeit 18 months after we got here. So on paper I have no training record with FRV right now, yet I hold the qualification of commander level 4, eligible for promotion to assistant chief fire officer, yet I'm not allowed to sit the promotion process by virtue of the fact that FRV haven't run the RPL process 18 months later?---Well, so I'd say you're not eligible because you haven't

undertaken two years at the rank of commander within FRV, MFB, CFA. So that would be number 1, but also – sorry, I've lost my train of thought there. Formally recognised – I don't have any recognised qualifications sitting within an FRV system at the moment. As part of my process prior to reform, I worked on transcript of results for the CFA. So MFB at the time had got quite an antiquated – what was called Enrols, which was their AVETMISS compliance system. That system wasn't going to allow the volume of people which were at reform added to the system, added to that system. We've had to work through a procurement process in regard to getting a new student record management system. So at the point in time you are no different to me, no different to a majority of the staff that have transitioned from Div B, is that their formal recognition of qualifications is a statement of attainment from their previous RTO and also a USI transcript of results of which FRV acknowledge, as part of undertaking prerequisite checks for any of the promotional programs we go through.

PN84

And that's all great and I fully support that process, yet I find myself now in a situation where some people who hold an advanced diploma of emergency management have been able to go through to the exam phase of the current promotions process. I hold a diploma of emergency management. I haven't been permitted to go?---Yes.

*** CHRISTIAN ANTHONY THORLEY

XXN MR KIESSLING

PN85

Now, with regard to prerequisite two years of service or whatever, I think the EA doesn't actually specify two years of service, nor does the memorandum. What it says is that you must meet the selection criteria, which is pretty ambiguous. So my argument would be as eight years – nine, 10 years as an operational commander in metropolitan Adelaide, I would meet the service requirements which followed me as part of my lateral entry process?---And – yes. I'll stand to be corrected, but my understanding of the Div B EA in which you're covered by is that the requirement is a minimum of two years at the rank of commander within FRV.

PN86

No, that's for senior station officers, not for the commanders?---Well - - -

PN87

Yes?---I could be wrong, but that was my understanding. Again, I'll have another look at it. But I suppose for the Commissioner, and to your point about the advanced diploma of emergency management being utilised by some people, that was again through a consultative process, and that was a group of people which had transitioned into the rank of commander from external agencies. So they come in from the likes of Vic Pol and so forth.

PN88

Like me?---From outside of the fire sector. So they've come in from outside a fire sector directly into the rank of commander.

PN89

THE COMMISSIONER: So lateral entry?---Yes.

PN90

Well, it is lateral entry?---Yes.

PN91

My understanding is anything that's above the base is a lateral entry?---Yes. So they've come in and there wasn't support to provide them with the advanced diploma of firefighting management as part of that because they didn't hold the underpinning prerequisite units and the follow-through. So they didn't hold those. As part of ensuring that those individuals had a promotional pathway in front of them I put forward a paper to ELT and CC to provide an ultimate qualification to that group of individuals which would allow them access to promotion, and that was the advanced diploma of emergency management. So that was agreed from ELT to CC for a particular group of people that weren't able to access the RPL pathway for firefighting management.

PN92

Can I ask why it was limited to that group of people?---Because they hadn't progressed – they hadn't undertaken a recognised fire service recruit program and hadn't progressed through a recognised fire service promotional pathway, and that was - - -

*** CHRISTIAN ANTHONY THORLEY

XXN MR KIESSLING

PN93

So in that respect they got an easier pathway than Mr Kiessling might be seen - - -?---No, not necessarily. So the - - -

PN94

Well, a quicker one?---A process undertaken by a different RTO. So again, we haven't got that on our scope so we aren't able to RPL that. There is external providers out in Australia that can provide RPL for the emergency management because it's a bigger sector. It encompasses ADF, police and so forth.

PN95

MR KIESSLING: But the question I would have - - -

PN96

THE COMMISSIONER: Sorry, can - - -

PN97

MR KIESSLING: - - - Commissioner, would be, well, why aren't they being put through this same RPL process and being subjected to the same encumbrances that I'm being subjected to?---I can't answer that, because that – again, it's what was agreed.

PN98

Would you agree that that's actually manifestly unfair to people like myself - - -?---No.

PN99

- - - who hold a potentially higher qualification in terms of tenure and experience are not allowed to actually progress through to a promotion process with the same qualification that other people have who are allowed to progress? That's segregation, two different – we're all FRV employees, people keep telling me. I know for a fact that I'm treated as a Division C because I've got this lateral entry tattoo on my head, but I don't see it that way. I'm a professional firefighter with over 23 years of service. I just want to be treated equally in the context of being able to contest promotions on a merit-based process like everyone else?---Yes.

PN100

And because of the fact that FRV haven't run an RPL process, haven't even looked at an RPL process within that regard - - -

PN101

THE COMMISSIONER: Mr Carrick?

PN102

MR CARRICK: Sorry, Commissioner. This is more in the line of an opinion comment than a question directed at the witness. I'd ask - - -

*** CHRISTIAN ANTHONY THORLEY

XXN MR KIESSLING

PN103

MR KIESSLING: The question's coming. All I'm saying is would you say that that's unfair and potentially discriminatory?---No. I would say – I think it's fair. I think – so people have progressed through the pathway that's been in front of them, and unfortunately it is what it is. That's what's been agreed.

PN104

Well, as I said, it's - - -?---Yes.

PN105

I've got no further questions on that, Commissioner.

PN106

THE COMMISSIONER: I am a little bit confused, Mr Thorley, about why people who have come in through lateral entry from, for example, Vic Pol, have that advanced diploma of emergency management recognised but someone like Mr Kiessling, who's come in through lateral entry from another state, doesn't. For the purposes of – and let's just put aside whether he needs two years' service?---Yes.

PN107

I don't understand why the advanced diploma of emergency management was only recognised and can only be used by a very discrete group of people and why other lateral entry - - -?---It's a good question, and that is because we've got a really complex industrial environment, is the really simple answer to it.

PN108

Yes. Okay?---And that is – all I wanted to do was to ensure that a particular group of people had a pathway in front of them for promotion. And I suppose the other point is that those individuals are somewhat restricted to positions which

were formerly under the CFA banner, because that's where they come into that lateral entry process. So all I would say is it was a really difficult industrially – yes.

PN109

Did I understand you correctly before when you said that people who came out of the CFA – through the CFA pathway into the new organisation, that at the commander level a number don't hold that advanced diploma of firefighting management?---That's correct.

PN110

Are they held up as well by the need to get this process that you've described approved?---Yes.

PN111

So they're all sitting there waiting?---So they're all enrolled in the process and the RPL pathway is open to them.

PN112

So that was sorted out as part of the merger?---Yes. Yes, correct.

*** CHRISTIAN ANTHONY THORLEY

XXN MR KIESSLING

PN113

Yes. Okay?---And we haven't received assessments as yet, but they are being supported through achieving the requirements.

PN114

Was that part of the merger arrangement, that you would put them through that particular process, the CFA?---I believe it would have been, yes. The fact that they didn't – so date of reform they were substantive commanders, but they didn't hold the eligibility requirements because they hadn't undertaken their former CFA training framework so they weren't deemed eligible. So that was the issue, and again, as part of acknowledging that, that's why I was sort of pulled out of the position I was in to help work on a project to get a pathway there in front of them.

PN115

And now that pathway is the one that's being approved and hopefully will be ticked off by the consultative committee at its next meeting for people like Mr Kiessling?---Yes. That's correct.

PN116

Thank you. Anything arise from that? Sorry, Mr Kiessling, does anything arise from the questions I just asked that you want to - - -

PN117

MR KIESSLING: Look, Commissioner, just – yes.

PN118

THE COMMISSIONER: Sorry, just questions you want to direct to Mr Thorley.

PN119

MR KIESSLING: No, look, no further questions for Mr Thorley.

PN120

THE COMMISSIONER: Okay.

PN121

MR KIESSLING: I will just say, though, that, you know, obviously for me, having had no meaningful contact from FRV with regard to the qualifications that I hold and now being excluded in a process for some obscure reasons is extremely disappointing.

PN122

THE COMMISSIONER: Yes. We're getting into the realm of submissions there, but that's okay. Mr Carrick, do you have any re-examination?

RE-EXAMINATION BY MR CARRICK

[10.59 AM]

CHRISTIAN ANTHONY THORLEY

RXN MR CARRICK

PN123

MR CARRICK: Thank you, Commissioner. One other question, if I may, just a point of clarification. Firstly, any delay that perhaps has occurred is due to the process and perhaps not necessarily limited to lateral entry commanders, there is a process provided for under the enterprise agreement at 48(7)(ii). It basically prescribes a process of recognition of competencies that has to be subject to a consultation process through the consultative committee, and that's what's occurred?---Yes. Correct. I would like things to be a whole lot simpler and not undertake the consultative process, but there was a requirement to and it does take, yes, time, and also takes resources, which I'm spread very thin in what I do, trying to look after a whole lot of other qualifications as well. So, you know, workload-wise, really challenging – and it's not an excuse, but it's just the reality.

PN124

And just to clarify further, the provisions in the EA at 48(7)(ii), they are specific to lateral entry candidates or officers and that that process is and can be specifically dealt with within a lateral entry framework?---Yes. I'm not familiar with – just off the top of my head, but I'll take your - - -

PN125

Yes. That's fine. Thank you. That's all, Commissioner.

PN126

THE COMMISSIONER: Sorry, there is just one thing that arises in terms of clause 48(7) and 48(7)(ii). So putting aside the appalling English, 48(7) says, 'An employee' - and these are lateral entry:

PN127

An employee employed shall upon completion of an FRV recruits course be appointed to the classification under this division –

PN128

- equivalent to whatever –

PN129

- and have the competencies recognised by FRV for all purposes.

PN130

Are they the competencies in the FRV recruits course that are then recognised for all purposes? Is that what it – sorry, you might not know?---I don't know.

PN131

No, and if you don't know, that's fine?---Yes. I'd have to take it on notice.

PN132

Mr Carrick can tell me what the answer – well, you don't have to tell me right now, Mr Carrick.

PN133

MR CARRICK: If I can just consider that for a moment, Commissioner.

*** CHRISTIAN ANTHONY THORLEY

RXN MR CARRICK

PN134

THE COMMISSIONER: And I'm not quite sure why you need a clause that says you'll recognise the competencies of a course that you've just asked someone to complete, and I'm not quite sure why you'd have them complete them if you're not going to recognise the competencies.

PN135

MR CARRICK: That's a very good question, Commissioner, but if I might take that on notice.

PN136

THE COMMISSIONER: Yes?---Commissioner, one of the things might be that you obviously – you can credit transfer, you can't double the credit units of competency. So maybe it's in relation to that, but I'm really not sure.

PN137

Except that they have to – it seems that the lateral entries have to complete some recognised recruit course which is agreed between FRV and the UFU. Anyway, I won't go there.

PN138

MR KIESSLING: If I may, Commissioner, my understanding was that as part of becoming a lateral entry officer we had to go through the Firefighters Registration Board and it was a recruit course as part of a full-time fire service.

PN139

THE COMMISSIONER: Yes.

PN140

MR KIESSLING: If you take the term 'recruit', it doesn't necessarily mean junior firefighter, it means somebody that's been recruited into the service.

PN141

THE COMMISSIONER: Yes.

PN142

MR KIESSLING: So we did a full week - - -

PN143

THE COMMISSIONER: You did a course, yes.

PN144

MR KIESSLING: - - - course, yes.

PN145

THE COMMISSIONER: Yes. I - - -

PN146

MR KIESSLING: Which the RPL process was actually on the timetable to do as part of that course.

*** CHRISTIAN ANTHONY THORLEY

RXN MR CARRICK

PN147

THE COMMISSIONER: Yes. Thank you. Anything arising from that, Mr Carrick? You're just taking my query on notice.

PN148

MR CARRICK: Nothing further, Commissioner, thank you, for the moment.

PN149

THE COMMISSIONER: When you work out the English in that clause you can let me know.

PN150

MR CARRICK: I'm struggling with it at the moment.

PN151

THE COMMISSIONER: Thank you. Thank you very much, Mr Thorley. You're excused?---Thanks, Commissioner.

<THE WITNESS WITHDREW

[11.03 AM]

PN152

THE COMMISSIONER: Mr Kiessling, do you want to address me now on each of the questions?

PN153

MR KIESSLING: Yes.

PN154

THE COMMISSIONER: Sorry, I will take into account what you've put in writing.

PN155

MR KIESSLING: Right.

PN156

THE COMMISSIONER: It is just a question of whether there's additional bits and pieces that you want to tell me about.

PN157

MR KIESSLING: There is a letter which I've got; I did speak to Mr Carrick about that before, which was forwarded to me, it wasn't addressed to me, obviously, but it's from the chief officer of the CFA, and this would relate directly to, I think, the tenure requirements of the letter of engagement, which this letter from Jason Heffernan to Gavin Freeman basically asks the tenure requirement to be removed, and also specifically remove for the lateral entry commanders.

PN158

THE COMMISSIONER: So which question is that relevant to?

PN159

MR KIESSLING: That would be relevant to - - -

*** CHRISTIAN ANTHONY THORLEY

RXN MR CARRICK

PN160

MR CARRICK: Number 3.

PN161

MR KIESSLING: Is it question 3?

PN162

MR CARRICK: Prohibited from applying - - -

PN163

MR KIESSLING: Sorry. Bear with me, please, Commissioner.

PN164

THE COMMISSIONER: Question 3 is about applying to (indistinct).

PN165

MR KIESSLING: No. Yes, sorry, so it would be question 3, specifically with regard to the respondent's submission where they suggest that the higher duties is outweighed by my contractual obligations under the letter of engagement. So that's obviously – they're suggesting that that should be removed.

PN166

Also that their argument in question 3 seems to be based largely on a captain's pick style. 'We'll select who we want, when we want for where we want,' which is contravention again of this letter, which says, 'Should be eligible for career opportunities at CFA and FRV based on a fair and equitable merit-based process.'

PN167

THE COMMISSIONER: Who is the letter from?

PN168

MR KIESSLING: This is from Jason Heffernan to Commissioner Gavin Freeman.

PN169

THE COMMISSIONER: Who's Jason Heffernan?

PN170

MR KIESSLING: Jason Heffernan is the chief officer for the Country Fire Authority.

PN171

THE COMMISSIONER: Was?

PN172

MR KIESSLING: Is.

PN173

THE COMMISSIONER: Still?

PN174

MR KIESSLING: Yes.

PN175

THE COMMISSIONER: I didn't think we had a CFA.

PN176

MR KIESSLING: Sorry?

PN177

THE COMMISSIONER: I didn't think we had a CFA.

PN178

MR CARRICK: We still do, Commissioner.

PN179

MR KIESSLING: Yes.

PN180

THE COMMISSIONER: Do we?

PN181

MR KIESSLING: Yes.

PN182

THE COMMISSIONER: I'm very confused. No, I remember now. We do have. I recall.

PN183

MR KIESSLING: So at your discretion, I'll enter that into - - -

PN184

THE COMMISSIONER: Sorry, and who's it written to?

PN185

MR KIESSLING: Gavin Freeman, the commissioner of FRV.

PN186

THE COMMISSIONER: So that's Mr Heffernan's view.

PN187

MR KIESSLING: Well, he's asking Mr Freeman to please remove the tenure requirements.

PN188

THE COMMISSIONER: Which suggests that the tenure requirements exist.

PN189

MR KIESSLING: Correct. At the moment they do, yes.

PN190

THE COMMISSIONER: Yes. Okay. Do you have any objection to that being tendered?

PN191

MR CARRICK: I don' have any objection, no. If I could grab a copy of that, though, I'd appreciate it.

PN192

THE COMMISSIONER: Yes. Certainly.

PN193

MR CARRICK: Thank you, Commissioner.

PN194

THE COMMISSIONER: So I'll accept that document.

PN195

MR KIESSLING: Cool. Sorry.

PN196

THE COMMISSIONER: That's all right. Do you have a copy of that of your own, Mr Kiesslering?

PN197

MR KIESSLING: That is my copy, but I've got it on my emails as well.

PN198

THE COMMISSIONER: Okay. When we finish today my associate will just run off a copy for everyone so you've got it for your records.

PN199

MR KIESSLING: Yes.

PN200

THE COMMISSIONER: Thank you. Thank you for that.

PN201

MR KIESSLING: So in addition to the stuff which I've already written there are a number of – look, I've read through the respondent's submission. To me, there's a lot of stuff in there which is actually not directly relevant to the response to the question. Speculation about why I moved to Hamilton or not, whether it was close to Adelaide or not, is totally immaterial to the context of the discussion. So this is in question 1.

PN202

They suggest that there was a meeting with ACFO Bourke – so this is at paragraph 9:

PN203

To act up as an ACFO was – ACFO Bourke was on leave. The applicant felt he had been unreasonably overlooked and excluded from acting up to the available ACFO position.

PN204

Yes, that's true. What they neglect to mention was how the meeting – and you've got the evidence there which I submitted as part of my submission, how the meeting basically devolved into Mr Bourke saying, 'Well, I'm not giving you any act-up opportunities here or anywhere else for that matter and I think you're sub-par and you've got no respect and you've got this and you've got that,' and it wasn't just me, that was to Commander Emery as well. So I think that's pretty relevant in the context of these discussions as well.

PN205

The apparent breakdown – so this is paragraph 10. I didn't request a transfer to another district. I offered to relocate to district 10 at the time because I knew there as a hard to fill position there.

PN206

THE COMMISSIONER: District 10 being Sale?

PN207

MR KIESSLING: Sale, yes. So we discussed that at the conference hearing.

PN208

THE COMMISSIONER: Yes.

PN209

MR KIESSLING: And I understand that, you know, they're not obligated, FRV are not obligated to move me there, and that's fine, but the bottom line was that the work environment at district 5 had devolved into quite a toxic place to be at and FRV were reluctant to do anything about it, effectively.

PN210

THE COMMISSIONER: Can I just make clear that I'm not going to make any decisions about that process and what occurred then. It's not been subject to directions or anything else. So while it's useful background, that's all it is.

PN211

MR KIESSLING: Yes.

PN212

THE COMMISSIONER: Yes.

PN213

MR KIESSLING: I understand that, and that's part of the reason why I'm bringing it up, is there's a lot of stuff in here that probably doesn't – or is immaterial to the questions that you're asking, Commissioner.

PN214

They suggest that I was directed to work at district 4. That's incorrect. I was asked to and I agreed, subject to, obviously, the temporary transfer provisions being applicable, which was approved by Deputy Commissioner Bruce, and you have an email of that in my appendices as well.

PN215

THE COMMISSIONER: Yes.

PN216

MR KIESSLING: The facilitated discussion, again, to me is probably immaterial in the context of the question of whether I was on temporary transfer or not. Again, I was not directed and I was not permanently transferred. At all times they asked me to confirm the transfer in my response, and as is well established now, I rejected that transfer on at least five occasions in writing and once verbally.

PN217

Then at the conference hearing, coincidentally, Mr Bourke had been moved to another position within CFA, bushfire policy, and at that point I was happy to return to district 5.

PN218

So in answering question 1, I consider that I was under the conditions of clause 26 of the enterprise bargaining agreement. I was in dispute with FRV. I was working away from my normal workplace and the expenses were incurred under clause 2.1 of the accommodation agreement, which quite clearly states when you're away from your normal place of work you're allowed to claim temporary transfer allowances.

PN219

THE COMMISSIONER: Do I have that accommodation agreement?

PN220

MR CARRICK: It forms part of the EA, Commissioner.

PN221

THE COMMISSIONER: It is.

PN222

MR CARRICK: Yes.

PN223

MR KIESSLING: Yes.

PN224

MR CARRICK: It's appendix or schedule 4.

PN225

THE COMMISSIONER: Thank you.

PN226

MR KIESSLING: Sorry.

PN227

THE COMMISSIONER: Finding anything in an EA is such a challenge.

PN228

MR KIESSLING: So - - -

PN229

MR CARRICK: If I may add, Commissioner, there is two schedule 4s. There's a Div A and a Div B.

PN230

THE COMMISSIONER: Yes. I'm aware that there are two divisions. Is it in Division A or Division B.

PN231

MR KIESSLING: B.

PN232

MR CARRICK: Division B, Commissioner.

PN233

THE COMMISSIONER: Division B. Thank you.

PN234

MR KIESSLING: So my view is, in answering that question, really, the relevant facts to establish are was I under a dispute process with FRV, and I think the answer to that, certainly in my view, is yes.

PN235

Am I then able to claim the temporary transfer allowance? Again, I was still posted to Hamilton, which was my normal location of work. The paperwork, the staff action forms, et cetera, had never actually been processed to take me to district 4, which is entirely correct, because I'd rejected that transfer on a number of occasions, therefore clause 26.4 should apply.

PN236

THE COMMISSIONER: Can I just clarify, Mr Kiessling, at what time did you transfer to district 4?

PN237

MR KIESSLING: On 19 December.

PN238

THE COMMISSIONER: Last year.

PN239

MR KIESSLING: Yes.

PN240

THE COMMISSIONER: Well, obviously not this year.

PN241

MR KIESSLING: Yes.

PN242

THE COMMISSIONER: When did you raise the dispute with FRV?

PN243

MR KIESSLING: That would be with Ms Laughton on the – so it was a – well, there's a technical answer, and the technical answer is as soon as I rejected the temporary transfer to district 4. Mr Bruce, obviously, as my supervisor's supervisor, was certainly aware of it, but I didn't formalise it under the request for a step 4 meeting with Caz, Ms Laughton, until that day that I sent her that email. So please excuse me.

PN244

THE COMMISSIONER: That's okay.

PN245

MR KIESSLING: It's not that I'm disorganised, I just don't have it right in front of me here.

PN246

THE COMMISSIONER: That's all right. You always know where these things are (indistinct).

PN247

MR KIESSLING: So that was on the 16th of the 4th.

PN248

THE COMMISSIONER: Thank you.

PN249

MR KIESSLING: Which is - the step 4 resolution process was raised, yes.

PN250

THE COMMISSIONER: Yes. Thanks.

PN251

MR KIESSLING: The respondent goes on under question 1 to make some commentary about my living arrangements. Again, I submit to the Commission that a lot of these had been flagged with Mr Bruce. At no time did I receive any acknowledgment or any verification that they had actually in fact absorbed the issue that I was going through, and that it was simply put that my tenancy in Hamilton was ending.

PN252

I've got a family of six, so we're not a small family to house. The respondent repeatedly makes suggestions about how I should or where I should live or why can't I live in a two-bedroom unit or whatever. With respect to FRV and the Commission, that's really - my living arrangements and where I can relocate my family to a suitable accommodation, which is suitable for me and my wife and my kids and the dog is really none of their business. I don't know why FRV have taken such an interest in that, really.

PN253

Again, in the context of answering question 1 I consider that it's immaterial anyway, because I was under dispute. I'm entitled to the temporary transfer allowance, which was approved by Commissioner Bruce, noting that at all material times I was still allocated to district 5.

PN254

THE COMMISSIONER: Yes.

PN255

MR KIESSLING: To show FRV how good a guy I am, I didn't actually claim any of the meal allowance, et cetera, for the number of months between December and April that I would have been entitled to whilst working in district 4. So, you know, I'm not trying to cheat the system here, I'm just trying to get my 1,600 bucks back which I forked out in accommodation.

PN256

I even said to the boss down there at district 4, 'Look, I'll just roll the swag out on the floor here in the office,' but apparently that wasn't the right thing to do either.

PN257

The respondent makes some commentary about how long it takes to get to Casterton. All I can say is somebody better check Google Maps on that, because that's totally incorrect.

PN258

Clause 2.1, schedule 4 of the Division B agreement says, 'When required to work away from the normal work locations authorised by Fire Rescue Victoria' – I consider I've met those requirements.

PN259

THE COMMISSIONER: Yes.

PN260

MR KIESSLING: Question 2, which we've had significant discussion on with Mr Thorley, yes, I agree that the English in that clause is really, really bad, however I'm here, after 18 months. Not a finger has been lifted by the respondent to actually explain what Mr Thorley has just explained to me in that 18 months. Not a finger has been lifted to actually go through my training records and see potentially what modules that I need to catch up on to get to the advanced diploma.

PN261

I am experienced enough in government agency to know I could see the fact that I would be precluded from promotion coming over the hill, a long way away, and I actually went out of my way to try and get qualified to the best of my ability to be able to meet that requirement. Mr Thorley, as he says, doesn't remember that we did have a discussion, which you'll have to take my word for, I guess.

PN262

THE COMMISSIONER: Well, I have opposing words on it.

PN263

MR KIESSLING: Right. That the advanced diploma of emergency management would be sufficient for people in our cohort, the lateral entry cohort. So by lateral entry I'm talking about myself and Gavin Wright up in Swan Hill who came in through the police force.

PN264

I made some commentary around the definition of 'recruit' but I don't think that's relevant now.

PN265

Really, the point of this is that today, as I'm standing here, FRV are running a promotion, a substantive promotions process exam, and I've been excluded from that, which I think is just manifestly unfair given that people with the same qualifications I hold have been allowed to progress.

PN266

What happens with regard to the industrial agreement is none of my business, really, you know, the negotiations between the UFU and FRV. From my perspective as an employee of FRV, it is my expectation that FRV qualify me to the standard of a level 4 commander and then I'm able to progress to any career path opportunity from that rank – that that rank qualifies me to.

PN267

THE COMMISSIONER: I think that that might be an issue I'm being asked to decide.

PN268

MR KIESSLING: Right. Yes. So, look, I'm aware that other people have raised a dispute in those matters anyway, so that may be something that ends up here.

PN269

THE COMMISSIONER: Just explain to me, Mr Kiessling – we all concede that none of us can understand the English, but how under 48(7) - - -

PN270

MR KIESSLING: Yes.

PN271

THE COMMISSIONER: I'm just having trouble forming the link between clause 48(7) and the recognition of your skills and competencies with respect to the advanced diploma of firefighting management, because I don't read 48(7) as being about that, more about making sure you've done some entry level training that's necessary as deemed by FRV and UFU.

PN272

MR KIESSLING: So 48(7), the way I interpret it, and I guess the reason why I'm here, is it says, 'Have the competencies recognised by FRV for all purposes. Recognition of such competencies - - -'

PN273

THE COMMISSIONER: Yes, but which competencies are being recognised, is my query. Mr Carrick is wanting to jump to his feet for the - - -

PN274

MR CARRICK: Commissioner, having had the benefit of a few minutes to contemplate this, I think probably, on our view, 48(7)(2) is a reference to competencies beyond the initial training competencies, that two-week course that the commander undertook.

PN275

The reason I say that is because the competencies in the initial training process would have, I think, already been approved through the consultative committee process anyway, so the idea that you would have a further set of competencies to be considered and in fact determined in terms of the process for acceptance or otherwise of those competencies through the consultative process would suggest that that's a broader catch-all competencies reference rather than one that's specific to - - -

PN276

THE COMMISSIONER: So we don't have it a dispute between the parties that 48(7)(ii) captures this broader issue that Mr Kiessling is talking about, which is the recognition of his skills for the - - -

PN277

MR CARRICK: No. I think it's fair to say that we consider the competencies referred to there is in the broad, not in the narrow.

PN278

THE COMMISSIONER: Yes. It was the use of the word 'the' that got me.

PN279

MR CARRICK: Yes, Commissioner. I won't make any reference to the writing style adopted, but I think in context that's probably the most realistic view.

PN280

THE COMMISSIONER: Thank you for that.

PN281

MR CARRICK: Thank you.

PN282

THE COMMISSIONER: Yes.

PN283

MR KIESSLING: Putting aside the bad English in the clause, the reason I'm here is that my, I guess, utopian view, when I joined Fire Rescue Victoria, which is held in very high esteem for those outside of the organisation – I guess I have a bit of a jilted view of that now – is that I would be welcomed in the door and within a week of getting here somebody would sit down with me at a table and say, 'Right, Rainer, what qualifications have you got? What qualification do you need to hold as a commander,' which is acknowledged as being the advanced diploma in firefighting management, which FRV are the only RTO that can issue that in Australia.

PN284

THE COMMISSIONER: Yes.

PN285

MR KIESSLING: 'So what qualifications do you need to get you to that level,' and, 'Here's a training gaps analysis and here's the modules that you need to do. As soon as you've done them - like all the other commanders in CFA area land now. 'As soon as you've done them, you're eligible to contest the promotion.'

PN286

THE COMMISSIONER: I think you might have a slightly rose-coloured view of how quickly RTOs operate.

PN287

MR KIESSLING: Yes. Totally understand that, and I guess I'm somewhat reassured by Mr Thorley's assurances that the process is in progress at the moment. Again, where I come from the industrial environment would dictate that, 'Well, if these people don't have the qualification but they're otherwise eligible to contest the promotion, the same as those guys over there, then we'll just accept the qualification they've got and put that process in place as a catch-up should they get promoted.'

PN288

THE COMMISSIONER: Can I just say that I think that the – I understand the argument about the recognition of competencies. This question of this promotion process that's going on at the moment within FRV I think is outside the scope of the dispute that's before me, just to make it clear, and the fact that you're not

participating in that process is not something that can determine what the entitlement is under the agreement.

PN289

MR KIESSLING: Yes. I guess my argument, to put it into context, is that had I been provided that training needs analysis, the gaps analysis, then I wouldn't be in this position now, I'd have my advanced diploma in firefighting management, but my point is that hasn't occurred and we haven't been contacted in any meaningful way about how that would or should or when it will occur. That's the context of clause 48.

PN290

THE COMMISSIONER: Putting aside a seemingly lack of communication, 48(7)(2) doesn't just say your competency is recognised, but it says that the recognition of the competencies will be subject to consultation in accordance with clause 21, which I assume is the establishment of the consultative committee.

PN291

MR CARRICK: Correct, Commissioner.

PN292

THE COMMISSIONER: It seems that that is what is going on at the moment. You have an argument about how long it's taken, absolutely appreciate that view and the effect that you see that that has had, but it sounds like – it sounds, on its face, like the process that is anticipated by 48(7)(ii) is well underway and actually will be hopefully signed off in a month.

PN293

I say 'hopefully' because I don't know. I have no idea what the consultative council's processes are or what their view is or whether they're meeting in six weeks or two weeks. I say I hope that it is signed off because it seems to have been a very long process to get to here. Again, that's not a matter that's before me, how long it takes the consultative council to do their work, but that's part of the clause, is what I'm saying.

PN294

MR KIESSLING: So I guess the argument there then, from my perspective, would be there was a process. Until a new process is established, why not use the old process?

PN295

THE COMMISSIONER: Well, I don't know that there was an old process that was established generally. I know that there was a process that was established for a particular cohort. Whether that process applies to everyone is a different question as to the cohort that - - -

PN296

MR KIESSLING: As I said, I don't have the answers to those questions either.

PN297

THE COMMISSIONER: Yes. No. That's what I'm here for.

PN298

MR KIESSLING: All right.

PN299

THE COMMISSIONER: Just to make it clear, Mr Kiessling, I ask these questions just to try and flesh out the issues.

PN300

MR KIESSLING: Yes.

PN301

THE COMMISSIONER: I don't have a view yet.

PN302

MR KIESSLING: Look, I understand.

PN303

THE COMMISSIONER: Yes.

PN304

MR KIESSLING: I understand. Yes, and I think the more information I can put on the table here, the better to.

PN305

THE COMMISSIONER: Yes.

PN306

MR KIESSLING: Because I'm operating in a different information source environment than my colleagues over here.

PN307

THE COMMISSIONER: Yes, and you all operate in a very different information bubble than the one I'm in, which is why I ask the questions.

PN308

MR KIESSLING: Yes. So that brings us then, I think, quite neatly, to question 3, which is to do with the lateral entry letter of engagement, which holds us in the position for a period of three years at that commander rank.

PN309

THE COMMISSIONER: Does it say that anywhere in the agreement?

PN310

MR KIESSLING: The position number itself is a commander position.

PN311

THE COMMISSIONER: No, sorry, does it say anywhere in the agreement - - -

PN312

MR KIESSLING: No.

PN313

THE COMMISSIONER: - - - that where there's a lateral entry into a difficult to fill area, you're required to stay there for three years?

PN314

MR KIESSLING: My understanding is that that was an agreement made between FRV and the UFU, yes.

PN315

THE COMMISSIONER: Okay.

PN316

MR KIESSLING: And I'm sure the CFA would have had some input into that as well.

PN317

MR CARRICK: If it helps the Commission, there isn't any time limit imposed by the enterprise agreement. This is an arrangement that was entered into outside of the terms of the agreement.

PN318

MR KIESSLING: So I guess in summary that the respondent makes some argument about how that clause should be written and it can't be taken literally, et cetera, et cetera. Look, I'll leave you to go through that yourselves.

PN319

My view on this is their argument seems to be hinged on the fact that well I signed a letter that holds me to commander rank position for a period of three years; that automatically precludes me from applying for any higher duties outside of the district.

PN320

My concern with that is twofold. Number one, the letter of engagement quite clearly references the enterprise bargaining agreement as taking precedence in all matters of inconsistency. Clearly there's an inconsistency here about the length of tenure, which has been imposed in the letter, is not referenced in the enterprise bargaining agreement.

PN321

The second issue is that - - -

PN322

THE COMMISSIONER: Does that make it an inconsistency?

PN323

MR KIESSLING: Well, it makes it an inconsistency in terms of clause 65.1 in that the FRV are arguing that I'm not allowed to apply for any higher duties position by virtue of the fact that I've got a letter of engagement which holds me to a position for three years.

PN324

The inconsistency is that if I were a commander coming from Division A into Division B I could be promoted and two weeks later I could apply for a higher

duties position outside of the two-year tenure that they're subject to at the moment, which again isn't referenced in the EA. I could apply for a higher duties position from Colac up to Wangaratta if I wanted to. There's no restriction for that commander cohort.

PN325

Now, many of them don't do that, because they obviously live and work in the area, where they've bought a house and established a network of friends. For me that's slightly different, because I rent a house, I've come in from interstate, and to top it all off I've had this issue with Richard Burke and by extension Roland Luke in the southwest region. My desire in acting in that equal career path opportunity was, and I should say in part, driven by the fact that I could then act up elsewhere and remove myself from that toxic work environment.

PN326

Secondly, obviously apply for jobs – it's very hard to apply for a higher duties position if I haven't been given the opportunity to act up anywhere else. So the guy I work with at Hamilton has just secured a six-month act-up at Colac, so different district, contrary to the requirements put on myself that we're only allowed to act up for a two-month – and you've got the email in my submission anyway – two months within the district we're allocated to.

PN327

So there seems to be a bit of a captain's pick, or I use the term because that's part of the defence I've got here, is that FRV can choose to – or claim that they can choose to act up people where and when they want and it's not in fact a merit-based process, when of course their own literature says no, it is a merit-based process.

PN328

Getting back around to my argument is that really what I'm after here is to be granted the permission to apply for any act-up or higher duties position on a merit-based process alongside of everyone else.

PN329

Sorry, the third thing I should say too is that I have a little bit of experience with contracts and tenders through a fire appliance bill pro, which I did with South Australia.

PN330

So if somebody comes along and wants to vary the tender or vary the contract, then that infers a contract variation. What we have here is they've attempted to vary the contract by saying well we didn't think about that people would apply for act up opportunities, so now we're imposing a different set of rules on that specific cohort, which again, the three tenets of contract law are, you know, an offer and acceptance and the consideration. So the contract's actually changed by virtue of them having done that, in my view anyway, not that I'm an expert on contract law or anything.

PN331

And in addition to all of those comments I can only say this, the letter from Jason Heffernan, which implies, subject to Commissioner Freeman's acceptance of that, and to me in the environment we're in where we have FRV secondment staff working within CFA, there should be no reason why Mr Freeman wouldn't agree to that given the collaborative working relationship between the two chiefs.

PN332

But I just wanted to bring that up, because clearly there's something in the works which will remove all this stuff anyway.

PN333

I do have a significant issue with comments, probably from '69 through to '73/'74, which talks about that FRV basically reserved the right to not run a merit-based process. Despite the fact that, you know, I might qualify for an interview, they'll just decide no, we don't want this guy in that particular job for these particular reasons, and I think me again looking at it with an uneducated eye, that seems to me to be really, really unfair and I certainly would imagine that that wouldn't hold up in any sort of appeal process.

PN334

THE COMMISSIONER: Is there a clause in the agreement about the selection process?

PN335

MR KIESSLING: Not that I'm aware for the higher duties act up. In fact, significant amount of time spent searching for a higher duties policy didn't really met in an answer as to any of this. It's basically, to me, shoot your gun in the air and see where the bullet falls.

PN336

I think that's probably everything I've got on question three, if you have any questions, Commissioner.

PN337

THE COMMISSIONER: No, that's all right.

PN338

MR KIESSLING: Question four deals with the emergency medical response allowance. I started down a rabbit hole of saying why should I qualify for that, but really, on the face of it, every other commander that's eligible to receive the allowance receives the allowance in CFA's secondment plan.

PN339

THE COMMISSIONER: Mr Carrick, you might specifically address me on that when it becomes your turn.

PN340

MR CARRICK: Yes.

PN341

MR KIESSLING: Sorry, am I taking too much time - - -

PN342

THE COMMISSIONER: No, of course not. I just – I had a note to ask Mr Carrick about that, so I thought I'd mention it then.

PN343

MR KIESSLING: Yes. So clause 1.423 is probably – if I was the, and I don't want to make the respondent's argument for them, but if I was the respondent that's where I'd hang my hat - but clause 1.423 is in conflict I think with 146.12.1, and also 153.2, which basically say that everyone in that division gets the allowance, and I suspect that probably was an industrial agreement that they made to ensure that people didn't lose their allowances.

PN344

But in as far as being available, I had some notes here – following the logic that FRV present, it basically then suggests that by virtue of the fact that an FRV commander works for the CFA in a catchment area, they then forfeit their EMR allowance, if they've previously held it.

PN345

THE COMMISSIONER: Are there other FRV people who are seconded to CFA areas, besides – like, at your level?

PN346

MR KIESSLING: Look, I'd have to defer to my colleagues for the exact number. I believe there's around 260 of us that work in the CFA secondment space.

PN347

THE COMMISSIONER: And some of those would be below the commander level?

PN348

MR KIESSLING: They're all commander or acting.

PN349

THE COMMISSIONER: They're all commander or above?

PN350

MR KIESSLING: Yes. There are some instructors, which a leading firefighter would, but they get paid the commander rate - - -

PN351

THE COMMISSIONER: Yes, okay. I understand. So the question is whether any of those people are currently receiving that allowance.

PN352

MR KIESSLING: My understanding - and again this is evidence that they would have to provide - my understanding is that all but about 30 of them receive the EMR allowance whilst working for CFA under the secondment arrangement.

PN353

THE COMMISSIONER: Okay.

PN354

MR KIESSLING: I'm not even suggesting that I should just be paid the allowance. I genuinely want to do the training. I've already got a fairly high degree of medical training on-board through my experience in Germany, and also as an ambulance officer in South Australia. So happy to receive the training, really just a question of how and when that's going to occur, and then correspondingly, in line with clause 146, which I've actually said, look, I'm happy to be part of this training.

PN355

The clause actually says that you're required to pay the person from that day. FRV have come back and said we don't think that clause is relevant anymore. So I guess my question with that specific facet of this discussion would be, well, can FRV just decide what clauses are or are not relevant in an enterprise bargaining agreement, noting of course that that clause is reproduced in the new enterprise bargaining agreement and has already been agreed to. So when you question its relevance, well why is it in the new EA. If it's not relevant anymore take it out.

PN356

THE COMMISSIONER: The new EA hasn't been signed off yet, has it? It's still subject to some proceedings in the Commission?

PN357

MR KIESSLING: That's correct, but it has been highlighted - - -

PN358

THE COMMISSIONER: In principle?

PN359

MR KIESSLING: - - - as a change.

PN360

THE COMMISSIONER: Yes.

PN361

MR KIESSLING: And certainly with the information we get from the UFU, the fact that it's in green it's been already agreed to, and I believe Wilson C has made some determinations around that as well.

PN362

THE COMMISSIONER: Yes.

PN363

MR KIESSLING: I guess to resolve it, from my perspective, is from the date that I applied to do the EMR course, and into the future I should be eligible for the EMR allowance, until such time as FRV provide the training, and then obviously I will comply with whatever the training and reaccreditation requirements are in line with all the other commanders and ACFOs that work in the CFA secondment space at the moment.

PN364

I should note that the union told me not to come to the Commission today, because they felt that if I lost that particular argument then that would provide FRV a vehicle to say well everyone in CFA secondment land now no longer gets the EMR allowance.

PN365

THE COMMISSIONER: If the UFU have a view to express, then the UFU can come here and seek leave to express it.

PN366

MR KIESSLING: Yes. Well, clearly they're not here, are they.

PN367

THE COMMISSIONER: I suspect if I expressed a view and the FRV then tried to use that to back out of something they've already agreed to, some good faith bargaining issues would probably arise.

PN368

MR KIESSLING: Well, again, if it's agreed that's partially why I'm here.

PN369

THE COMMISSIONER: Sorry, so it's been given the green mark in the draft enterprise agreement - - -

PN370

MR KIESSLING: Correct.

PN371

THE COMMISSIONER: - - - as continuing to apply to commanders on secondment to CFA?

PN372

MR KIESSLING: Correct.

PN373

THE COMMISSIONER: Okay.

PN374

MR KIESSLING: And then the other question I had just for consideration was, well what happens after my three years when I want to transfer to Division A and the training is required. So now I'm in a situation where by definition of the respondent I can respond, although I would challenge that too, and still won't get paid the Div A allowance because I haven't done the training, and/or the clause isn't relevant that allows me to receive the training from the time of nomination.

PN375

It becomes very messy. I would say that it's – again, I talk a lot about it being fair, and maybe I don't have the vocabulary to express myself better, but it's really unfair that some people receive it. We come into the organisation and it's, like, no, you guys don't get the training, nor do you go to accidents, nor do you go to medical events, nor do you do this, that and the other, which clearly we do, in the

context of our day-to-day work. We are after all operation commanders, okay. And the remainder of our cohort also receives the allowance.

PN376

THE COMMISSIONER: I understand that when you use the word 'fair,' what you're doing is highlighting apparent inconsistencies in how these provisions are applied to the lateral entry group versus other commanders who haven't come in through lateral entry.

PN377

MR KIESSLING: Yes.

PN378

THE COMMISSIONER: So I understand that. Don't worry too much about not having the finesse of the language.

PN379

MR KIESSLING: Okay, yes. Then the last one is – sorry, could I ask the Commission's permission to just go back to when we were talking about 65.1 about equal access to career opportunities?

PN380

THE COMMISSIONER: Yes.

PN381

MR KIESSLING: I don't know whether you recall, Commissioner, but we sat in this court room at the conference, where FRV agreed already to allow me to apply for any opportunity within the state, and I think I've mentioned that in my correspondence as well. So I'm not really sure why FRV continue to challenge that. Sorry, I did forget to mention that note as well.

PN382

The last one is to do with clause 15(a). Again, I invite everyone to go back, as to the background, as to why I claimed or sought my rights under clause 15(a), in that FRV were trying to move me to another district without my consultation or agreement.

PN383

THE COMMISSIONER: Is yes the right answer?

PN384

MR KIESSLING: They agreed to that, but my concern is – and again, I've expressed this – look, as far as the Commission goes, it's probably asked and answered, but I would ask that the Commission consider what happens when Richard Burke comes back, and to say well he's not coming back is somewhat nebulous for me. I need to have some consistency about what expectations I would now receive – well what my expectations of FRV are in managing that situation down the track.

PN385

THE COMMISSIONER: Which I don't think is a question that I can answer.

PN386

MR KIESSLING: No. So - - -

PN387

THE COMMISSIONER: I understand the issue that you raise though.

PN388

MR KIESSLING: I just don't want to be back here in 12 months' time or 10 months' time going well they're trying to move me to district 4 again.

PN389

THE COMMISSIONER: I take it from what FRV have said is that they say that it cannot permanently transfer you to another location without your agreement. It cannot do that.

PN390

MR KIESSLING: Yes.

PN391

THE COMMISSIONER: To the extent that they say that, it may well be reflected in my decision. So that's where it will be.

PN392

MR KIESSLING: Yes.

PN393

THE COMMISSIONER: And that's - you know, in circumstances where you need reassurance, that's the document that you get to remind Mr Koletsis of, or whoever else it may be.

PN394

MR KIESSLING: Yes.

PN395

THE COMMISSIONER: And it's not a wise move for an employer, certainly a state government agency, to disregard decisions of the Commission.

PN396

MR KIESSLING: Very good. That's all I had. That's the five questions, Commissioner. So, if you have any questions of me?

PN397

THE COMMISSIONER: No. Thank you very much. It's very useful.

PN398

MR KIESSLING: Thank you.

PN399

THE COMMISSIONER: Mr Carrick?

PN400

MR CARRICK: Thank you, Commissioner. Unless it would be helpful for you, I don't propose to go into any detail in terms of the written submissions already provided.

PN401

THE COMMISSIONER: Sorry, just before you go on, Mr Kiessling, you'll get an opportunity to respond to anything new that Mr Carrick raises now, so just keep notes of anything you want to say.

PN402

MR KIESSLING: Thank you.

PN403

THE COMMISSIONER: Mr Carrick.

PN404

MR CARRICK: Thank you, Commissioner. Look, I'll take the opportunity of handing up a copy of the (indistinct) allowances.

PN405

THE COMMISSIONER: Number 2?

PN406

MR CARRICK: I'm sure you'll be more than aware of my having provided a copy to the commander as well. Really I wanted to say two things about the starting point in terms of this dispute. One is that many of the issues in dispute between the parties have been resolved since the initiation of the dispute itself.

PN407

By way of example, the management structure at Hamilton, which perhaps was the cause of some of the disagreements, has been resolved, at least temporarily, by ACFO Burke no longer being present in that fire station and being on extended long service leave.

PN408

Since that time the commander has returned to Hamilton from Casterton, so the issues about temporary transfer and the like have been resolved.

PN409

THE COMMISSIONER: Well, I don't know that it's been resolved. The temporary transfer has ended. The issue of the entitlements - - -

PN410

MR CARRICK: Indeed, is an ongoing issue, Commissioner.

PN411

THE COMMISSIONER: - - - hasn't been resolved yet.

PN412

MR CARRICK: No, Commissioner, was what I meant to say. My apologies.

PN413

THE COMMISSIONER: Yes.

PN414

MR CARRICK: And furthermore, the Commission has taken the opportunity to narrow down some of the issues in dispute through the question process that were refined on 28 July.

PN415

So from FRV's perspective, this is a fairly narrow subset of the original dispute, and I propose only really to reference a couple of points in relation to each of the questions rather than going to any chapter and verse in terms of the original submissions.

PN416

The question one issue about the temporary transfer, I think there are several things that we would like to say about that in addition to the original submissions.

PN417

One is that we do consider there's some artificiality in the position that has been adopted by the applicant, primarily to do with the fact that it is his unilateral decision to move his personal household from Hamilton to Ballarat that has led to the claims being made. It has nothing to do - - -

PN418

THE COMMISSIONER: Does the FRV have that problem with any other employee?

PN419

MR CARRICK: Not that I'm aware of.

PN420

THE COMMISSIONER: Do you question where they choose to live, if they have an entitlement to the allowance?

PN421

MR CARRICK: Well, I think – look, I'm not aware of whether we do or we don't, Commissioner. However - - -

PN422

THE COMMISSIONER: I suspect you don't.

PN423

MR CARRICK: Yes – well, we - - -

PN424

THE COMMISSIONER: I suspect people's living arrangements are not something FRV turns its mind to generally.

PN425

MR CARRICK: I think generally that's the case, Commissioner, but I think where an allowance has been claimed when somebody has unilaterally moved a third of the way across the state - - -

PN426

THE COMMISSIONER: Well I don't know it's a third of the way across the state.

PN427

MR CARRICK: Well it's almost three hours, Commissioner. That is a long way to move, from one district to another, and certainly in terms of what one would describe as the intention of the allowance arrangements, which I will be happy to go into in a second, it's a far cry from making the allowance for people who are legitimately moved a long way from their home to serve temporarily in a fire - - -

PN428

THE COMMISSIONER: Do the provisions reference how far you have to have moved from - - -

PN429

MR CARRICK: No, they don't.

PN430

THE COMMISSIONER: No?

PN431

MR CARRICK: No, they don't, but they say a number of other things, which include a reasonable threshold and one that passed a particular level of officer to get approval effectively, and also that those costs are necessary and approved or required, and none of those threshold requirements contained in the personal expenses and accommodation agreement, which is referenced at page 478 of the enterprise agreement at clause 92.5, have been met in this case.

PN432

So whilst the EA is silent in relation to the literal distance that might exist between a person's home and their temporary assignment, in this case we have a situation where the permanent workplace was Hamilton. Casterton's 57 kilometres up the road. It's half an hour's drive. That was the logical place to try and put the commander temporarily while the issues between he and ACFO Burke were resolved, to the extent they could be. It was not – and at the time of that particular transfer, the commander was resident in Hamilton.

PN433

So the fact that somebody chooses to then relocate a fair distance away, entirely for legitimate reasons I'm sure, but that doesn't count for or trigger an obligation on the FRV to pay an allowance to take into account that extra distance.

PN434

If that were the case then we could have people working, frankly, in Queensland and commuting, or elsewhere, and it makes no sense at all, and that's why the provisions in the personal expenses and accommodation agreement have those reasonableness thresholds.

PN435

If you'd like me to take you to those provisions I'm happy to, Commissioner, but they spell out effectively that it has to be reasonable, that it has to be necessary, it has to be approved, and none of those requirements were met in this instance.

PN436

THE COMMISSIONER: That's schedule 4?

PN437

MR CARRICK: That's schedule 4, Commissioner.

PN438

THE COMMISSIONER: What are the clause numbers in schedule 4 that are relevant - - -

PN439

MR CARRICK: The clause numbers are, Commissioner, specifically clause number 2.2:

PN440

Fire Rescue Victoria will reimburse an employee for actual and reasonable out-of-pocket expenses incurred by the employee in the course of his or her authorised duties.

PN441

The reference there is to 'actual and reasonable.' That's at clause 2.2 of the personal expenses and accommodation agreement at page 644 of the enterprise agreement. Clause 2.3 of that same agreement says:

PN442

An expense will be deemed necessary if it was incurred in the course of an employee's authorised duties and would not have been incurred in the ordinary circumstances of travel to and from the employee's home and normal duty location.

PN443

Clause 2.4:

PN444

Wherever practical, employees are required to obtain approval before incurring travel, personal and out-of-pocket expenses.

PN445

And the fourth clause that's relevant in that particular agreement is clause 2.5:

PN446

The authorised officer must ensure that all expenses were required and reasonable in the circumstances.

PN447

Our submission, Commissioner, is that none of those requirements were met. In other words, in respect of 2.2, it wasn't reasonable. In respect of 2.3, we say that it probably wasn't necessary. In respect of 2.4, we say that there was no approval

granted, and no attempt to obtain approval, and it certainly wasn't granted. And 2.5, the authorised officer in question did not determine that the expenses were required or reasonable in the circumstances.

PN448

THE COMMISSIONER: Who would the applicant have sought approval from?

PN449

MR CARRICK: In terms of the authorised officer?

PN450

THE COMMISSIONER: Mm.

PN451

MR CARRICK: That's a defined term, Commissioner, and I'll have a look for you but it's referenced – look, I assume it's the person who has got the authority to make that - - -

PN452

THE COMMISSIONER: I just wonder if it was the person that the applicant was having problems with.

PN453

MR CARRICK: If I may, Commissioner – yes, it would go through the change of command, so it would go to the ACFO, but ultimately the decision – my understanding, the decision-maker would be the deputy commissioner, who historically at that point would have been (indistinct) - - -

PN454

THE COMMISSIONER: And does it get to the deputy commissioner if the ACFO hasn't approved it?

PN455

MR CARRICK: It wouldn't be up to the ACFO to approve it. The ACFO would have to escalate it to the deputy commissioner, because I don't believe the ACFO has the authority to approve or disapprove it.

PN456

THE COMMISSIONER: Can I put the question straight? Mr Koletsis you might be able to answer it. Could the ACFO sit on it?

PN457

MR CARRICK: Arguably, yes, the ACFO could sit on it, but then the commander could - - -

PN458

THE COMMISSIONER: Escalate it himself?

PN459

MR CARRICK: - - - escalate it beyond that.

PN460

THE COMMISSIONER: Okay. Thank you.

PN461

MR CARRICK: If I can refer you, Commissioner, in respect of clause 2.5 of the accommodation agreement, so-called, no authorised officer, we say, approved the actual expenses being incurred.

PN462

Now, an authorised officer is a person defined at clause 3 of the accommodation agreement as being a person with the authority to approve expense payments in accordance with the expenses in the accommodation agreement. It's very circular, but that process wasn't adhered to.

PN463

THE COMMISSIONER: Okay. Thank you.

PN464

MR CARRICK: Harking back, Commissioner, to a couple of other things in relation to this point, we understand that there was no approval of allowances claimed by Commissioner Bruce. All that's said in that communication was that where there was an entitlement under the enterprise agreement it would be honoured, but that doesn't stretch to any allowance being claimed being approved. And although I have reiterated this, Commissioner, at the time the temporary appointment to Casterton was made, the commander was resident in Hamilton, which is close and proximate.

PN465

The only other observation I'd make in relation to the interpretation put on those clauses, including the personal expenses and accommodation agreement, is that contextually if there was an acceptance that those provisions were to be interpreted as really free-range choices about where one might live and therefore triggering an allowance entitlement, we could have people living in Mildura and working in Sale, or vice versa, with the rather problematic outcome being that we would be up for an allowance to get them across the state each time they were required to work, and that's not the intention of the enterprise agreement, and it's certainly not the intention of the personal expenses in the accommodation agreement provisions, and that's why there is a reasonableness threshold in those requirements.

PN466

As to question two and the recognition of competencies, Commissioner, I do want to simply reiterate the provisions of clause 4872 of the enterprise agreement, Division B of the enterprise agreement, which references that recognition as subject to consultation in accordance with clause 21 of that division.

PN467

Those clauses are expressly limited to lateral entrance. They don't apply more broadly. As a consequence of that, the submission by FRV is that the consultation provisions need to be taken into account, and as far as FRV is concerned we have adhered to those consultation requirements in accordance with 4872. Admittedly there has been some delay, but as a general proposition they have been adhered to.

PN468

I think one other thing I would like to refer to in respect of that question is, in assistant chief fire officer Thorley's evidence, he did make it clear that as far as he was aware he hadn't approved in any conversation with the commander the situation with the Diploma of Emergency Management would be a sufficient qualification to meet the threshold requirements for the advanced diploma that we were referring to earlier.

PN469

And the only other point I would make in relation to that is that, as far as we're aware, the process for lateral entrance has now been approved. I can't give you a guarantee as to the timeframe for that, but I understand that the consultants committee meets monthly, unless there's some emergency that requires that it has to be delayed, so our expectation would be either next month or the month after.

PN470

THE COMMISSIONER: I would encourage FRV to do all they can to get it on the agenda for next month.

PN471

MR CARRICK: We understand, Commissioner.

PN472

THE COMMISSIONER: Given the delays.

PN473

MR CARRICK: We do accept that. Commissioner, if I can take you to one further item in that question, which is the status of FRV as a registered training organisation. That status is dependent, amongst other things, on adhering to effectively recognition of national units of competency.

PN474

So, although the applicant has indicated that he has a number of competencies, we understand that, not all of those will necessarily be recognised if they don't meet those threshold requirements, and we just wanted to make that clear. The mere fact you have a competency doesn't get you across the line necessarily, but if it does accord with those national units of competency and the process that's been adopted, then they will.

PN475

THE COMMISSIONER: As I understand the submissions of Mr Kiessling, and he can correct me if I'm wrong, he recognises that there will be some units where he'll get a credit, because there will be a direct transfer; there will be some other units where his current skills and the competencies he's picked up will, through an RPL process, get recognised, and then there's the gap – there's whatever's left, and the training will be delivered to bring him up to speed in those particular areas.

PN476

So I didn't take Mr Kiessling's submissions as suggesting he should get any special treatment, just because of the number of competencies that he's clearly got,

but I think he recognised that that was the process, the process that was outlined by ACFO Thorley was - - -

PN477

MR CARRICK: Thank you, Commissioner. Look, I just wanted to make that point clear, if it wasn't clear.

PN478

THE COMMISSIONER: Yes.

PN479

MR CARRICK: But thank you. As to question three and this issue of prohibition from applying for acting up vacancies within the state, our submissions in that regard are found at pages 227 to 229 of the court book.

PN480

This aspect of the dispute revolves around the effect of the lateral entry contract provisions dealing with a three-year stay-put requirement, and that requirement was agreed to by Commander Kiessling on 14 April 2022 as part of really the bargain strike that he would remain in a hard to fill position for the first three years of his appointment to FRV.

PN481

The three-year requirement in the contract is found on page 233 of the court book. It's in the third paragraph, and it simply states effectively that he will remain in that position for three years.

PN482

The background to the lateral entry requirement for retention of staff, or retention of lateral entry recruits in a hard to fill location, is a product of FRV fulfilling its statutory obligations under section 7 of the Fire Rescue Victoria Act.

PN483

That section provides a number of functions that FRV has to meet, and one of them is operational coverage across Victoria on behalf of CFA in appointing the necessary officers that the CFA fire stations require across the entirety of the state.

PN484

So it's not something that's really taken out of the ether; it's part of FRV's obligations to provide operational and management support to the Country Fire Authority, and there are stations across the state that are simply difficult to fill. We don't get a large number of people putting their hands up at that commander level or above.

PN485

THE COMMISSIONER: Isn't the issue though whether that requirement can override what would otherwise be Mr Kiessling's entitlements under the agreement?

PN486

MR CARRICK: I'd concede that point, Commissioner. Our position on that is that the agreement is not inconsistent with the contractual provisions and the lateral entry - - -

PN487

THE COMMISSIONER: But the agreement allows for acting up?

PN488

MR CARRICK: It does.

PN489

THE COMMISSIONER: They ask for people to apply and be considered, and be selected?

PN490

MR CARRICK: It does, but that's not necessarily inconsistent with the position that's adopted in the contract. I concede that there is a debate to be had in respect of the interpretation of those provisions, but what I - - -

PN491

THE COMMISSIONER: This is the place to have it.

PN492

MR CARRICK: Well, in that case I'll fire away, Commissioner, which is essentially that the provisions in the agreement, particularly clause 65(1) of the agreement, which provides that – and it's the clause that the applicant has quoted – it provides that the employer will ensure that employees are not subjected to any form of bullying or harassment, that its employment practices are non-discriminatory, and that all workers have equal access to multiskilling, career path opportunities and all terms and conditions of employment.

PN493

Now, I accept that that is a clause that, on its face, looks like it is all-compassing and everybody gets everything that they want to apply for, but that's not - - -

PN494

THE COMMISSIONER: Well I don't think that's what the clause says. The agreement needs to be applied.

PN495

MR CARRICK: Indeed. The agreement needs to be applied, and the agreement needs to be applied though in context of each cohort of employees, the skillsets that they have, whether there are specific requirements that FRV is required to meet in terms of its own operational priorities.

PN496

And the position that FRV adopts is that 65(1) is a general perhaps catch-all clause, but it needs to be read in that context, and that means how would a reasonable person look at or interpret the language used in that clause, and I don't think a reasonable person looking at that clause would actually conclude that it

means that anyone can apply for anything anywhere or have a right to apply for anything anywhere, and I'll provide an example, Commissioner.

PN497

THE COMMISSIONER: I don't know that that's the position that's being put. Certainly the right to all of the terms and conditions of employment don't mean that if I don't have, for example, the skills necessary - I don't know, but try to think of something a bit strange - but it doesn't mean that if I don't have the necessary skills to undertake a particular role that I can in any event undertake it, or that I can ignore the asbestos and carbon fibres requirements. That's not what that clause means.

PN498

MR CARRICK: I accept that, Commissioner, in the sense that we're arguing perhaps in heated agreement that a literal reading of the clause doesn't make sense, that the fact that you've got a junior officer who may theoretically have the opportunity of applying for an acting up position to an ACFO position or above, it's nice in theory but in practice it doesn't work and that's not how it operates.

PN499

And all I'm saying really is that to the extent that you've got a provision in a lateral entry contract, which was agreed to by the parties at the initiation of that contractual relationship that they would stay put for three years, one of the implications of that is that you're not going to apply elsewhere during that three-year period because essentially FRV needs you for operational reasons to stay there.

PN500

THE COMMISSIONER: I think the difficulty I have, Mr Carrick, is that you're asking me to read down the general provision - - -

PN501

MR CARRICK: I am.

PN502

THE COMMISSIONER: - - - on the basis of something that is in a contract, not on the basis of something else that's in the agreement.

PN503

MR CARRICK: I accept that proposition, Commissioner, and I understand that there may be some technical difficulty to that. What I would say though is that even if we move out of the realms of the theoretical and into the practical, when FRV receives an application for an acting up role it is entitled to take into account all the operational coverage requirements that it is bound to meet in respect of section 7 of the FRV Act, and in doing so it will take into account matters that are broader than really Commander Kiessling or any of his cohorts' skillsets or capabilities. It will have to account for, or take into account what are the operational requirements, the priorities across the state, and - - -

PN504

THE COMMISSIONER: One presumes that all of that is set out in the selection criteria for the acting up?

PN505

MR CARRICK: I can't comment on that, Commissioner.

PN506

THE COMMISSIONER: You can't pull it out of your back pocket halfway through the interview process?

PN507

MR CARRICK: No, but equally, where you've got a statement in a contract that makes it quite explicit what the expectation is, to then turn around and say well we don't have, or we're not entitled to, as in FRV's not entitled to take into account broader considerations in an acting up context, I don't think that holds much water, because we'd apply that logic to any application from anyone across the organisation in terms of operational requirements.

PN508

So we're not going to move somebody from the hardest to fill position that exists in Victoria to something far less difficult to fill, because we'd have a vacuum that may represent an - - -

PN509

THE COMMISSIONER: Only if it's part of your selection process. So you've got to make it – to the extent that you might be able to do what it is you're saying, it would seem to me that you need to be clear in advertising the position that that is part of the selection process; that the operational needs across the state will be balanced in determining who gets the acting up, and you need to do that for every job you advertise. Because you can't just do it for lateral entry people.

PN510

MR CARRICK: Subject to instructions, Commissioner, I'm not sure we do it just for lateral entry applicants.

PN511

THE COMMISSIONER: No, I would hope not.

PN512

MR CARRICK: I think it's across the board. We take into account all the broad requirements that the FRV has to meet itself before accepting a candidate for a particular position.

PN513

THE COMMISSIONER: Are there guidelines for selection processes in FRV?

PN514

MR CARRICK: I'm – sorry, I'll defer to Mr Koletsis.

PN515

MR KOLETISIS: There are. There are, Commissioner.

PN516

THE COMMISSIONER: There are?

PN517

MR KOLETISIS: They're probably not as well-written as they should be, but – look, we find it challenging, I have to be honest.

PN518

THE COMMISSIONER: Well if you find it challenging, I suspect that FRV employees probably find it even more challenging.

PN519

MR KOLETISIS: Yes.

PN520

THE COMMISSIONER: It's perhaps something that FRV needs to look at. Are they available to employees?

PN521

MR KOLETISIS: I haven't looked at them. I'd have to go and have a look right now, reconnect to see. They should be available on the intranet, but I wouldn't put my hand on my heart to state that. But I guess I would say that it would be implied that operational requirements underpin the decision-making in the organisation.

PN522

THE COMMISSIONER: I'll come back to you, Mr Kiessling. Thank you. Mr Carrick?

PN523

MR CARRICK: Commissioner, the only other thing I would say is that - although I take the point, the exercise of sort of managerial prerogative in a circumstance where a person has been given the opportunity - and that's all that it is, it's an opportunity to apply for a job – that does not in and of itself entail or limit I would have thought the discretion available to the employer in these circumstances to take into account a broad range of issues which hark back either to their statutory obligations, and as I say the operational coverage obligations they have under the Act, as much as anything else.

PN524

I take your point that it should be perhaps made clearer if a person is putting themselves – they're throwing their hat into the ring for a job they have no prospect of getting, but each and every situation will depend on its circumstances.

PN525

THE COMMISSIONER: On the circumstances.

PN526

MR CARRICK: And we don't want to lock in or lock out people, and it may well be that as, for example, somebody who's in a hard to fill lateral entry position puts their hand up for another hard to fill lateral entry position, either circumstantially

or coincidentally we've got somebody who can backfill their position; good and well, but - - -

PN527

THE COMMISSIONER: The question I'm asked to answer, in terms of question three, is not whether Mr Kiessling needs to be granted (indistinct).

PN528

MR CARRICK: Indeed.

PN529

THE COMMISSIONER: It's whether he can apply.

PN530

MR CARRICK: I agree, Commissioner. You're perfectly right, and my reference to that point was only that, taking the matter out of perhaps the bandwidth of the question itself to a more practical perspective, it wouldn't be a guarantee in any event. But perhaps - - -

PN531

THE COMMISSIONER: But he can't be excluded from making the application, and having that application properly considered, as everybody else's application is properly considered.

PN532

MR CARRICK: Clearly, our position on that is a little bit of variance, Commissioner, only on the basis that we say that the contract itself, when you would, when you read it in light of the enterprise agreement provisions, I think when you read them together, they're not inherently inconsistent - - -

PN533

THE COMMISSIONER: So are you saying that it does prohibit him from applying for an acting up - - -?

PN534

MR CARRICK: That's our starting point, Commissioner. I can't take the matter much further than that, but that is our starting point, and in terms of the practical outcome, the wash up, in a circumstance where the applicant was to apply for an acting up position elsewhere, the broad-brush considerations that I've alluded to before would be taken into account, and that would most likely mean in circumstances where we couldn't backfill his position readily that we wouldn't be accepting an acting up position elsewhere. I think that's the practical reality of it.

PN535

THE COMMISSIONER: Okay.

PN536

MR CARRICK: But I acknowledge that that's not the question you've been asked to consider. If I may move on, Commissioner, to the emergency medical response issue at question four, there are a couple of clarifications I wanted to make perhaps before I go through a very short summary of that.

PN537

The first, if you like, clarification, which you raised when Commander Kiessling was speaking about this, was what is the position in relation to other commanders who hold that particular qualification, and the answer to that question is that there are some commanders who historically hold that EMR qualification, who have undertaken effectively that course some time ago, who continue to receive an EMR allowance, even in circumstances where potentially they are not required to apply that skillset.

PN538

THE COMMISSIONER: There you go. Such a simple answer to a question. So Mr Kiessling can undertake the training and you'll pay him the allowance, even if you don't require him - - -

PN539

MR CARRICK: No - - -

PN540

THE COMMISSIONER: Well that's what you're doing.

PN541

MR CARRICK: Well that's not quite the case, Commissioner, because the point I'm making is that that is of some historical relevance, but in the current framework - - -

PN542

THE COMMISSIONER: I'm not quite sure the agreement covers that.

PN543

MR CARRICK: Perhaps not, but if I may elaborate slightly. Commander Kiessling is in the position where he is not required, and will not be required in his current position, to answer an EMR emergency response. Yes, he has other qualifications that make him entirely suitable to responding to an emergency, I believe resuscitation and a number of other qualifications, but the EMR qualification is a much broader and detailed qualification.

PN544

It's one he's performed, well in-house – well through a third party but in-house at FRV, and in his current position he is not required to have that qualification, and he won't be called out to a scene, an accident scene or whatever it might be, where that qualification is required to be applied.

PN545

I understand that if he were to apply after the three-year limitation period for another appointment somewhere else where an EMR call could come into that station where he might work, then FRV would train him for that purpose, but until and unless he's in a position where that's required then it doesn't propose to provide him with that training.

PN546

THE COMMISSIONER: Where in the agreement does it say that it's up to FRV to determine who gets the training and who gets the allowance?

PN547

MR CARRICK: Well what it says, Commissioner, is two things: clause 146.12.1, that:

PN548

Employees who both elect to make themselves available to undertake first responder EMS training and also to perform first responder EMS duties on completion of such training whenever required will be paid an allowance in accordance with schedule 4 allowances for each and all hours worked.

PN549

Our view, Commissioner, is that if you're never going to be required to undertake that skillset or apply that skillset in a particular environment, and in this environment it's a catchment commander seconded to the CFA, where the CFA is not a responder serviced to EMR calls, it makes no sense that we would then put to the time, trouble or expense of training Commander Kiessling for a skillset that he cannot be available to be rostered for EMR in any event.

PN550

I mean, on that basis we could get a whole series of employees who no longer have an operational function undertaking that course but with the same end result. It has no utility whatsoever.

PN551

So our view, Commissioner, is that he will not be required in his current position to undertake an EMS call-out, and on that basis we don't consider that it is a requirement for us to train him or to pay him that allowance. Now, if those circumstances change - - -

PN552

THE COMMISSIONER: Then why are you paying some people, who are never required to be called out, the money?

PN553

MR CARRICK: For historical reasons I think, Commissioner, but I'm happy to - -
-

PN554

THE COMMISSIONER: Well, you're not prepared to take it off them, even though the agreement specifically has arrangements that allow you to take it off people.

PN555

MR KOLETISIS: It's Nick Koletsis, Commissioner. You're quite right, but FRV I guess adopts the view that, you know, we - - -

PN556

THE COMMISSIONER: (Indistinct.)

PN557

MR KOLETISIS: Yes, we don't take stuff away once people have got it, unless – there are a couple of exceptions to that rule that I'm familiar with where, for example, the fire investigation allowance may be taken away from someone if they don't maintain their currency or accreditation regarding fire investigation, but generally, I guess, once you've got it you keep it.

PN558

MR CARRICK: Commissioner, I think I've nothing to say further in respect of the EMR point. If I may turn to question five and then perhaps touch on a number of issues that have been raised during the course of Commander Kiessling's presentation.

PN559

Question five, we don't see that there's any issue there. We've already conceded that point, so I really have no further submissions in relation to that particular point.

PN560

THE COMMISSIONER: But you agree – just so it's on the record – that you cannot permanently transfer Mr Kiessling against his wishes?

PN561

MR CARRICK: That is what the enterprise agreement provides for, Commissioner, and we're not going to disregard that.

PN562

THE COMMISSIONER: Thank you.

PN563

MR CARRICK: If I may turn to two other issues? One is the letter that Commander Kiessling raised in relation to – sorry, from the CFA, Mr Heffernan, to the FRV in respect of their opinion relating to the appropriateness or not of the three-year fixed term appointments for lateral entry commanders.

PN564

That is – I mean I wasn't aware of that particular piece of correspondence until this morning. I don't know if much pivots off it, because it is an expression of opinion by an outside organisation, which may have an interest in expressing that opinion, but which is not actually relevant to the employment arrangements currently in existence between FRV and Commander Kiessling. I'm not sure much more again I can say about that.

PN565

THE COMMISSIONER: Yes.

PN566

MR CARRICK: There's one other matter I would like to raise, which is that Commander Kiessling has indicated that in Appendix 9 – so this is in reference to question three, Commissioner. My apologies, I should have dealt with that at the time.

PN567

In respect of Appendix 9, which is on page 159 of the court book, Commander Kiessling has indicated that a piece of correspondence from acting deputy commissioner, Mark Kennedy, to the applicant, the lateral entrance, suggested – his evidence is that - - -

PN568

THE COMMISSIONER: Sorry, what page of the court book?

PN569

MR CARRICK: It was page 159 of the court book. My apologies, Commissioner.

PN570

THE COMMISSIONER: No, that's fine.

PN571

MR CARRICK: It's Appendix 9 I believe, and it's a letter from acting deputy commissioner, Mark Kennedy, to the applicant. Sorry, we're just making sure that I've given you the correct number, Commissioner.

PN572

THE COMMISSIONER: No, I've got it. That's fine.

PN573

MR CARRICK: Yes. There is a reference that Commander Kiessling has made where he indicates that a sentence beginning with the words, 'It was not contemplated that successful applicants would seek extended periods of higher duties.' He's indicated that that somehow or other endorses his position in respect of FRV's position on acting up applications. I think if you read the quote in full it says:

PN574

It was not contemplated that successful applicants would seek extended periods of higher duties away from their appointed locations given their personal commitment and agreement to remain in the appointed location for three years.

PN575

I only wish to make it clear that that sentence has a tail that actually provides a qualification to perhaps the point that Commander Kiessling was making, and that really is the only point I wanted to make about that letter.

PN576

THE COMMISSIONER: Thank you.

PN577

MR CARRICK: I'm conscious we've kept you here for perhaps longer than was intended, Commissioner. Thank you.

PN578

THE COMMISSIONER: No, that's fine.

PN579

MR CARRICK: Thank you for your indulgence, and that's really the FRV's submissions. Thank you.

PN580

THE COMMISSIONER: Thank you, Mr Carrick. Mr Kiessling?

PN581

MR KIESSLING: Look, I don't know if I can add much more to that, but I will just reiterate that with regard to the first question, I was working away from my home location, clause 2.1 of the agreement, before all those other clauses, actually says: this allowance, temporary transfer allowance, scheduled payments will be applicable whenever an applicant is working away from their home location.

PN582

So to use the example of, I might be living in Queensland, but if I've been temporarily transferred to Casterton then I'm entitled to claim the temporary transfer allowance as per schedule 4, which is essentially meals and accommodation.

PN583

By the letter of the law, because there's no distance requirement between Casterton and Hamilton I could have elected to claim that same temporary transfer allowance while I was travelling from Hamilton to Casterton according to that.

PN584

Deputy Commissioner Bruce approved all award conditions. I specifically asked that, because I could, again, see this coming over the hill a mile off. So as far as approval goes, that was ticked off as well. When I put my variation - - -

PN585

THE COMMISSIONER: The approval – there's an approval in here, is there?

PN586

MR KIESSLING: Yes. You'll find that on Appendix – there's an appendix – Appendix 3. That'll be page 5. Sorry, page 5 of my – yes.

PN587

THE COMMISSIONER: Yes, court book 51.

PN588

MR KIESSLING: 51.

PN589

THE COMMISSIONER: David Bruce says that 'award conditions will apply while you're working,' and I assume he means agreement packages?

PN590

MR KIESSLING: Yes. So if you go to the appendix before that there'll be an email from me, and I've highlighted the relevant – '(Indistinct) until matter is resolved, clarify all allowances and conditions under the enterprise bargaining agreement will be afforded me during'.

PN591

THE COMMISSIONER: Yes. So you are entitled to what you are entitled to under the enterprise agreement. The question is: what are you entitled to under the enterprise agreement. That's the question.

PN592

MR KIESSLING: Yes. So I've made a claim under the schedule 4 payment schedule.

PN593

THE COMMISSIONER: Yes.

PN594

MR KIESSLING: That's it. No more, no less.

PN595

THE COMMISSIONER: Well there is an argument about the 'no more, no less' issue, which goes to clauses 2.2, 2.3, 2.4 and 2.5. So clause 2 has to be read in context. The context is – well, I haven't looked at it in detail, so I'm not going to say what the context is, but I can't ignore the subclauses necessarily. But it's a question of how the whole thing reads.

PN596

MR KIESSLING: Yes.

PN597

THE COMMISSIONER: That's what I'll take note of.

PN598

MR KIESSLING: Clause 2.1 says, 'when required to work away' - it says in part I should say - 'when required to work away from the normal work location as authorised by Fire Rescue Victoria.

PN599

THE COMMISSIONER: Yes. And then - - -

PN600

MR KIESSLING: I was authorised by Fire Rescue Victoria - - -

PN601

THE COMMISSIONER: And then 2.2 says that you get paid everything that's reasonable – or, sorry, I can't remember the exact words. So I can't ignore 2.2. I can't read 2.1 and then ignore the rest of the agreement. That's just not how - - -

PN602

MR KIESSLING: I understand completely, and I would say that my ability to claim allowance, by virtue of the fact that I'm working away from my home location, is a reasonable allowance, as approved by Deputy Commissioner Bruce.

PN603

THE COMMISSIONER: Can I just say that Deputy Commissioner Bruce hasn't approved any allowances. He says that the conditions will apply.

PN604

MR KIESSLING: Yes.

PN605

THE COMMISSIONER: He says award conditions will apply, we assume he means that the new conditions will apply while you're working there.

PN606

MR KIESSLING: Yes.

PN607

THE COMMISSIONER: The question is, for me, what conditions apply.

PN608

MR KIESSLING: Yes.

PN609

THE COMMISSIONER: And that's the question I'll resolve. I don't know the answer to that. I need to go and examine the clause in detail. But I understand the argument that you make, and I haven't – I absolutely don't know the answer.

PN610

MR KIESSLING: The other thing about it is I put the variation vouchers in through my officer down there, Mr John Jugum, and he rang Dave Bruce and was told not to approve them. So he was quite happy to put them through, as my officer. I don't have any evidence, short of calling John Jugum as a witness to have him testify to that, but - - -

PN611

THE COMMISSIONER: Yes. The question is what is it you're entitled to under the agreement. I don't really care what Bruce said or didn't say. He's not the one who determines those questions. They ultimately get decided here.

PN612

MR KIESSLING: Yes. Question two - - -

PN613

THE COMMISSIONER: Can I just say that, on its face, it does appear that if there is an entitlement to the allowances then the allowances have to be paid. I don't - - -

PN614

MR KIESSLING: I concede that point - - -

PN615

THE COMMISSIONER: Yes.

PN616

MR KIESSLING: - - - (indistinct), Commissioner, but it's just that clause 92.5, which references the personal expenses and accommodation agreement, colours the entirety of allowance entitlements under this division of the enterprise agreement.

PN617

THE COMMISSIONER: Yes.

PN618

MR KIESSLING: Yes.

PN619

THE COMMISSIONER: It will all be considered.

PN620

MR KIESSLING: With question two, I'm pretty happy with what's been presented here. As I said, noting your encouragement to FRV to get that off their agenda, and I guess whatever happens with regard to this promotions process will be resolved under a separate dispute resolution process.

PN621

THE COMMISSIONER: Yes.

PN622

MR KIESSLING: The higher duties vacancies within the state, I just wanted to note that the vacancies are advertised via memoranda, and in the memoranda it lists the key selection criteria and skills requirements. It lists that you must receive approval from your supervisor, which kind of resolves the issue around, well, if the supervisor says that you can go, who better to make that decision than your supervisor, not FRV in the head office.

PN623

So in terms of – you know, the lateral entry cohort obviously debate this at length, and we would argue a, you know, fill the gaps until there are no more gaps argument.

PN624

THE COMMISSIONER: That's a never-ending process.

PN625

MR KIESSLING: Correct, and speaking of Mr Heffernan's letter, that's obviously designed to make that a bit easier as well. I really have some issue with the fact that FRV are saying openly that we'll just pick and choose who we want to go where and when, as opposed to it being a merit-based selection process.

PN626

The secondment department are very, very quick to say to everyone that asks, no, this is a merit-based selection process, and that is evident, because people shift from positions to other positions incurring things like temporary transfer allowance, you know, and they might park the caravan at the local caravan park for \$30 a night and make a claim for \$200 a night accommodation every night that they're there. So, you know, when you talk about the potential to corrupt the system, it certainly exists and I've seen real first-hand experience of that.

PN627

So I reject the notion that, you know, we wouldn't send Rainer Kiessling to an act-up position based on his merit, on his qualifications, because it would leave a vacancy over here. It would then be, well, we'll fill the vacancy as it arises, and that's what FRV have done – as a casual observer that's what they've done since – that's what I've seen since I've been here.

PN628

With regard to question four, again, you know, my view is I don't work for the CFA. I'm an FRV employee and as such I should be afforded the same right to the same qualifications as everyone else in the organisation.

PN629

To suggest that we don't attend incidents, we're frontline. We're actually – our title is operations officers, so – FRV calls them 'catchment commanders,' but there's some legacy issues there around that. So we are operational. We are frontline. We are the ones that'll turn out to accidents in support of the volunteers. So, you know, I would argue that there's in fact a much greater likelihood of us utilising those skills, and certainly I've done that myself at incidents since I've been in Hamilton.

PN630

In terms of qualification, again some of the correspondence says, you know, there may be a pathway for RPL which would negate the need to do the training course in full. As an ambulance officer I held the Cert IV in Pre-Hospital Care, or whatever the name of it is. I'm certainly happy to provide FRV with evidence of that to hopefully short-circuit some of the training requirements.

PN631

And question five has I think been largely resolved. So thank you, Commissioner, and thank you for your time.

PN632

THE COMMISSIONER: Thank you. Thank you both parties for your extensive submissions. I know, Mr Kiessling, this has been a long process for you, but you have conducted yourself appropriately and provided some useful information to the Commission.

PN633

MR KIESSLING: Thank you.

PN634

THE COMMISSIONER: I'm going to reserve my decision, which, Mr Kiessling, just means I'm going to go away and think about it and obviously there's a lot to absorb. I will issue a decision in writing in due course. Just to give you some sense of the timeframe for that, it will most likely be within the next five weeks, hopefully sooner. It just depends what else pops up onto my plate in the meantime, but you should have it within five weeks.

PN635

If there's nothing else, we'll adjourn.

PN636

MR KIESSLING: Thank you.

ADJOURNED INDEFINITELY

[12.37 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

EXHIBIT #A1 WITNESS STATEMENT OF RAINER KIESSLING..... PN36
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