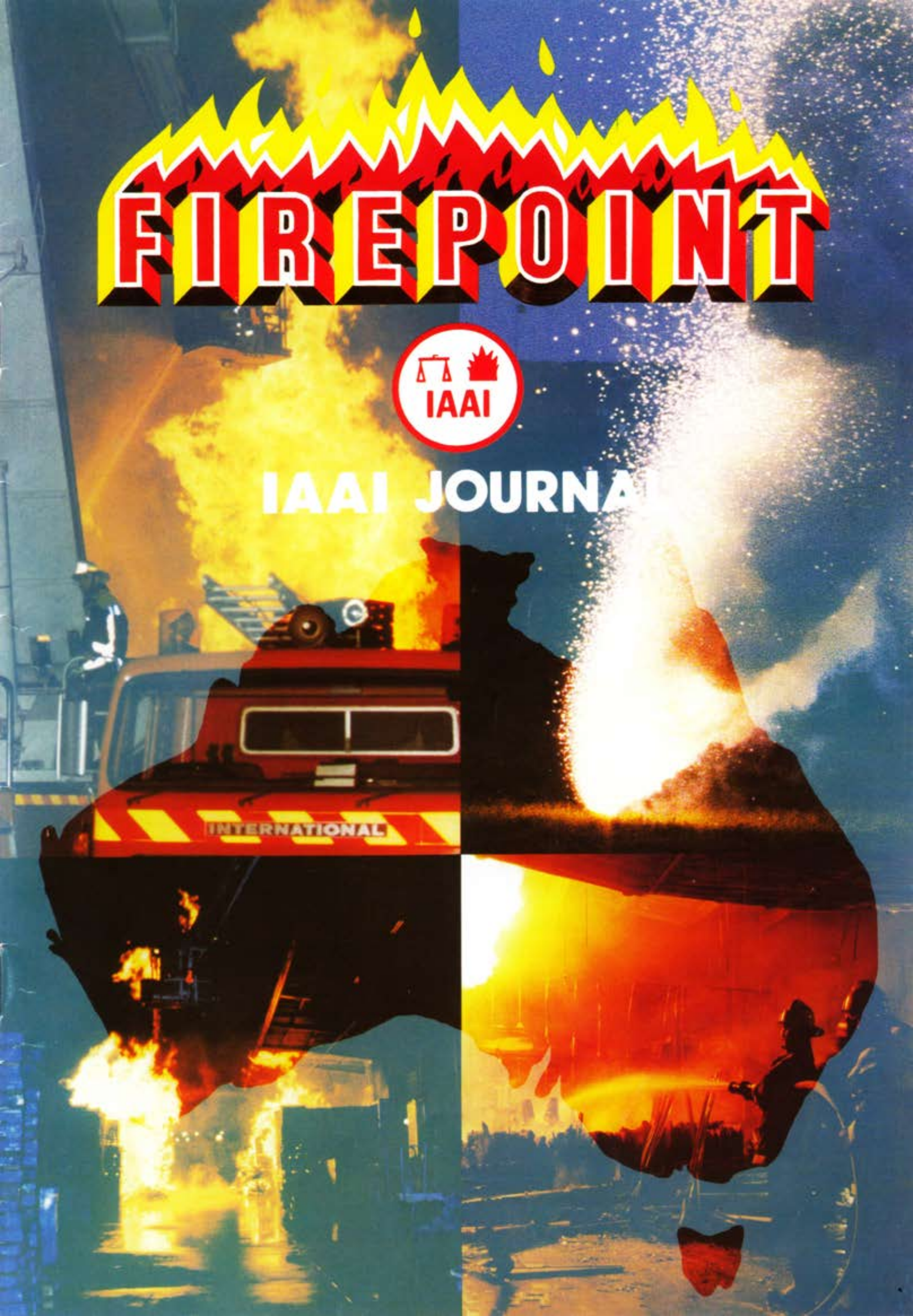


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IAAI JOURNAL



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EDITORIAL

This issue includes two articles on tragic fires which occurred in care facilities. One is on the Kew Cottage fires in Victoria, which in April 1996 claimed nine lives. The second is a similar facility in Pennsylvania, which had a fire in May 1997, in which ten residents lost their lives. There are differences in the circumstances involved, but there are also some striking similarities.

George Bernard Shaw said "we learn nothing from history except that we learn nothing from history". It would compound the tragedy of these two events, if we learnt nothing from them. I urge you to read the two articles.

I would like to congratulate the Queensland Association on being the first to have a Web page on the Internet. Well done! You can have a look at it at yourself at <http://www.qafi.asn.au> and read all about it in the Queensland News.

In this issue (page 26) we announce a competition for the best article, and best article with photos, to be sent in by members. I hope we will be flooded with your entries. Think about what you can contribute. There is a prize of \$250 for each of the two categories. Hopefully that will help to inspire you.

This is a bigger issue (32 pages instead of 24). If we get good local articles we can grow.

Wal Stern

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FRAUD - THE REFEREE'S REPORT

Michael Arnold LLB. Dip.Pub.Pol.

Preamble

The Referee is a part of the determination arm of the General Insurance Enquiries and Complaints Scheme (the Scheme) and is serviced by the Insurance Enquiries and Complaints Ltd (IEC). The Referee is an independent and impartial person whose focus is on disputes in which an insurer has alleged fraudulent behaviour on the part of an insured. The Referee can make binding determinations in respect of claims for amounts not exceeding \$120,000 and can make recommendations for amounts up to \$290,000.

Introduction

Fraudulent insurance claims impose a burden on the insurance industry and the consumers of its services. The industry estimates there is a loss of \$1.2 billion a year through fraud and it adds \$75.00 to the cost of the average premium. It was largely as a result of the concern for the industry and the impact that fraud had on the consumers that the Referee system was made part of the Scheme.

Although the number of cases involving fraud has fallen as a proportion of all matters handled since its inception, the past twelve months has seen substantial growth in the number of referrals to the Referee and the increase in workload has been significant.

By way of illustration I have listed the number of matters received and determined as Referee in the past two years.

01.07.95 - 30.6.96

Received	172
(18% of all cases)	

Closed	150
(16% of all cases)	

01.07.96 - 30.06.97

Received	227
(14% of all cases)	

Closed	212
(15% of all cases)	

Although it is relatively early days, both the statistical evidence and anecdotal material available suggests that only a small proportion of the determinations have been challenged by the consumers or attracted criticism from insurers.

This growth in numbers and the resolution factor indicates acceptance by insurers and consumers that matters of alleged fraud can be resolved by the Referee system. There is reason to believe that the expense of the traditional legal system with its expense, social dislocation, delays and uncertainties makes the Referee system a viable alternative.

The acceptance of the system also presents challenges. To preserve its benefits as a viable alternative it is essential to maintain the effective and timely operation of the Referee process. Resources are limited and efficient use must be made of all aspects of the scheme by the insurers and consumers at all times.

Recent Trends

Since the introduction of the Scheme there has been a major improvement in the internal dispute resolution processes of many insurance companies. This has led to the settlement of many matters before they reach the Referee.

A side effect is that complexity of matters and the quality of the evidentiary material that comes before the Referee has also changed. This can be attributed to the work done by insurers and consumers in narrowing issues in the search to resolve disputes before involving the Referee. Unresolved matters that come before the Referee usually now have issues of greater consequence that have to be determined and the material put forward by the insurers have more probative value.

These developments have seen a trend in the number of matters resolved in favour of the insurers increasing since the commencement of the Referee system. However there are a number of issues which are worthy of examination with a view to either facilitating the resolution of claims before they come to the Referee, or making them less time consuming when they do.

There are, in addition a number of what I describe as attitudinal matters that I believe need attention if the scheme is to progress and meet the community's needs for better dispute resolution. The changes in attitudes relate to greater emphasis on the inquisitorial rather than the adversarial approach to the solving of problems, the recognition of our different cultural groupings in our society

and the meeting of the expectation of consumers generally.

In this paper, I will try and meld together discussion of the operational aspects of the scheme with some reflections on the problems facing insurers and those they insure, improvements that can be made to insurer/ insured relationship and the sensitivity with which insurers deal with their clients.

The Referee

The Referee was appointed to complement the work of the General Insurance Claims Review Panel by conducting oral hearings in matters of fraud. The powers and duties of the Referee are prescribed in the Scheme's Terms of Reference and the Referee also takes into account the requirements of The General Insurance Code of Practice in making a determination.

There were a number of reasons for having a different structure for the Panel and that of the Referee. Principally, it was believed that:

1. Issues before the Panel essentially involve policy interpretation and were better suited to the wisdom of three members.
2. Issues before a Referee involves the credit of an

individual which is more suited to assessment by one person.

3. A person sitting alone was seen to be the most cost effective method of conducting such an examination and making findings of facts. Oral hearings were conducted in over 80% of matters involving fraud and in matters in which it is alleged there are substantial facts in dispute.
4. The flexibility required to travel to major cities throughout the country to conduct oral examinations was important. The cost and administrative advantages in one person rather than three having to undertake this task is apparent.
5. Having a person experienced in the law and with a sound knowledge of insurance law and satisfying criteria in relation to people skills and dispute resolution would meet the needs of the scheme in determining issues of fraud.

The matters that come before the Referee are those in which an insurer alleges:

- there has been fraudulent misrepresentation or non-disclosure,
- the claim may be fraudulent; or,
- that in the context of the above situations there are substantial facts in dispute which the Panel was not able to determine.

The Referee does not have to determine that there is in fact fraud but rather whether there were reasonable grounds for the insurer to have the view that the claim may be fraudulent.

The Referee, in arriving at a decision considers findings made as a result of any oral examination and all the material provided by the parties and must have regard to what is:

- fair and reasonable in all the circumstances,
- good insurance practice,
- the terms of the policy, and
- established legal principle.

What does this mean? By way of guidance I draw your attention to the 1997 Annual Review in which Sam Parrino, General Manager of the IEC Ltd outlined some guidelines to the approach to

determination of the disputes under the Scheme. In brief these were :

- (a) The consumer has the onus of establishing prima facie grounds for the dispute.
- (b) Disputes as to material facts are determined on the balance of probabilities and not beyond reasonable doubt.
- (c) There is no presumption that a consumer's claim is fraudulent or the consumer's evidence is less persuasive than an insurer's.
- (d) After the facts are established the application of the law and/or the policy provisions will generally resolve the matter. However it should be understood the requirement of utmost good faith by an insurer under the Insurance Contracts Act 1884, good insurance practice and compliance with the General Insurance Code of Practice may temper the strict application of legal principles to ensure a fair and reasonable result.

- (e) In a disputed claim or if there is any ambiguity as to the extent of cover the consumer will normally be given the benefit of any uncertainty in the construction of the policy wording.

The Inquisitorial Process

The Referee hearing and investigative process is in line with alternate dispute resolution philosophy, and is inquisitorial rather than adversarial. This is something with which many, whose legal experience and training is in our Common Law system, have had difficulty in coming to terms. Nevertheless it is part of the changing landscape of our legal system.

The establishment of tribunals, expansion of the ombudsman schemes, new emphasis on court based and private mediation, and conciliation and arbitration process have become part of the search for informal, speedy and inexpensive dispute resolution outcomes. A search that has been encouraged by the community weary of the existing legal system, cash strapped governments and judicial officers overloaded with work.

Proponents of the inquisitorial system claim it is designed to get at the

truth of the matter with the inquisitor having access to as much material as possible. Those in favour of the adversarial system maintain that the parties have the opportunity to control their own case and have an equal opportunity to win the case. There is no guarantee that the truth will come out in either system because of a number of outside factors but the emphasis in the Referee's inquisitorial process is on exposing to the light all the relevant material.

Arguments between the relevant benefits and disadvantages of the inquisitorial and adversarial systems in our process will continue to rage. The Referee is sometimes accused by legal representatives of an insured that their client are being subjected to "Star Chamber" proceedings whilst insurers maintain that they are disadvantaged by their inability to have the claimants cross-examined and matters determined by the established rules of evidence.

Whatever the point of view the Referee system has a number of aspects to recommend it to those concerned about the attaining of truth and the protecting of the rights of the parties to a dispute. The parties can gather their evidence, submit it to the Referee and support it under oral examination by

the Referee -an examination in which the other party may be present but cannot cross-examine. Additional information obtained in the examination, if relevant, is provided to the other party for comment before the Referee makes a determination.

Referee's Procedures

The Referee has a range of powers and duties under the Terms of Reference which are relevant to the determination process which I will touch on only in passing. Rather I will give a snapshot of the procedures followed in the day to day operations

The Referee is supplied with a file made up of documentation from the insurer and the insured in support of their respective positions. These files are compiled with the assistance of the IEC's case managers who ensure the parties understand the process and possible outcomes. The Referee examines all documentation presented and makes an initial assessment of the matter. If not satisfied with the material presented, the Referee may make further inquiries or conduct an oral examination of either party and witnesses.

When it is decided that an oral examination is necessary the parties are notified and offered the

opportunity to support their position in an oral examination conducted by the Referee. The insurer as an alternative is invited to raise any specific issues it wishes to be addressed and to list questions it believes the Referee should ask the insured. The insured person almost invariably takes up the offer of oral examination whilst the majority of insurers usually choose to rely on their documentary evidence and written submissions. In many cases however the Referee receives a set of questions from the insurers to put to the insured as part of the oral examination.

Oral examinations are conducted in the form of a structured interview and can include witnesses the insured brings to support a case. The process is not an interrogation and no formal evidence is taken but the procedure enables the Referee to test the credibility and accuracy of the material submitted by the parties. As earlier indicated the other party to the dispute may be present at an oral examination, provided the party being examined does not object but cannot cross-examine the party being interviewed.

The Referees to date believe that the structured but informal nature of an oral examination results in defensiveness and mistrust being minimised

and that oral examinations have been very successful. They are useful methods for clarifying factual disputes, collecting further evidence and assessing the honesty and credit of an insured and the witnesses.

If, in the course of the examination the insured becomes aware of allegations which had not been previously brought to his/her attention, opportunity will be provided for evidence to be supplied to rebut or clarify the allegation. As indicated earlier the Referee also consults with insurers whilst he is examining a dispute by requesting further information, clarifying issues and advising them of fresh information which may result in the resolution of the dispute. As a consequence information provided during or after an oral examination by an insured in rebuttal of an insurer's allegation is made available to the insurer for further comment.

I would like to make just a short note on legal representation. The Referee does not discourage either party to a dispute obtaining legal assistance and will consider all material put forward by legal representatives. The emphasis is on gathering all the relevant information that is available. However if the

Referee decides that an oral examination is necessary the aim is to make such an examination as informal as possible and legal representation is not encouraged. The Referee will exercise a discretion to allow legal representation if it is established that a person would be disadvantaged by his absence of such representation.

Referee's Determinations

After the conclusion of this process, excepting for some technical findings, there are three determination that a Referee may make.

- (a) a determination in favour of the claimant in which case the insurer is bound by the decision;
- (b) a determination in favour of the insurer in which case the complainant is not bound by the decision. Clause 8.16 of the Terms of Reference maintains the complainant's right to take legal action in respect of a dispute if the decision is unacceptable; and,
- (c) a determination that there are disputed facts which given that the procedures available to the

Referee do not allow for the taking of evidence and cross-examining of the complainant and witnesses, the complaint cannot be determined in favour of the complainant.

In the making of such a determination, a Referee can make recommendations or give opinions in order to facilitate resolution of the matter if it is felt necessary. Such recommendations are of course not binding and one would hope that they would be considered by the parties in the spirit of the Scheme.

If, after the Referee determines a dispute, there are unresolved issues which are outside of the Referee's jurisdiction or powers these issues will be referred to the other dispute resolution mechanisms of the Scheme i.e. the Panel or the Adjudicator.

Impediments To the Referee Process

It is the responsibility of the Referee to establish the facts to the extent that an opinion can be formed that there were reasonable grounds for the insurer to have the view that:

- (a) the claim may be fraudulent; or

- (b) on the inception or renewal of the policy a fraudulent misrepresentation or non-disclosure was made to the insurer.

However the objective of the Referee is to establish the truth in relation to any matter as far as is reasonably possible. This benefits both parties in the long term.

Impediments to this process can be

- (i) the failure by the insurer to disclose complete and adequate reasons to the insured upon rejection of a claim and
- (ii) the refusal by the parties to make a full and free exchange of documents and information.

The Referee has been encouraged by the response from the industry to the request that adequate reasons be provided to claimants in respect of denial of a claim where fraud is alleged. The provision of adequate reasons is also consistent with the requirements of the Code of Practice, the requirement to act with the utmost good faith and the concept of procedural fairness.

Also the recently developed Practice Notes on the exchange of information require insurers to give careful

consideration in disputes involving an allegation of fraud as to whether there is a need to claim confidentiality or privilege. This philosophy applies equally to an insured. The Practice Notes require any party identifying a document as confidential or subject to privilege to provide reasons for such an assertion.

However, there remain instances in which insufficient information is provided and this has the impact of preventing the resolution of a dispute at an early stage. The provision of adequate reasons for a denial of claim, together with details of the basis of that denial enables a claimant to be best prepared when coming before the Referee. The Referee respects a party's claim of confidentiality or privilege but often it becomes apparent in the course of an oral examination that the insured has some knowledge of the information or may well have a valid point to make in relation to same.

The tying of the Referee's hands by not allowing all matters to be canvassed can mean that matters capable of determination to both parties' satisfaction are not so determined. As a consequence matters may proceed needlessly to litigation where the information will come to light, if it is of any evidentiary value, and

may or may not have an impact in those proceedings.

This practice of making information available to parties at an early stage is in keeping with the trend in modern litigation philosophy in our adversarial system, as well as in alternate dispute resolution.

A Dilemma for the Insurer

One of the challenges for insurers is to maintain the application of rigour in assessing what is material or relevant to a decision that there may have been fraudulent conduct on the part of the claimant or there are substantial issues of fact in dispute. There are still too many claims that come before the Referee that should be resolved within an insurer's internal dispute resolution process.

The relevant clauses of the Terms of Reference, particularly Clauses 8.7(b), 8.8(a) and 9.1 should only be invoked when the insurer has reasonable grounds to have the view that the claim may be fraudulent or there are substantial issues of fact in dispute that cannot be resolved without cross-examination of an insured or witnesses. Yet there are instances that come before the Referee where the insurer seeks relief under these clauses

without proper or full investigation.

The problem is that often a number of issues said to be in dispute between the parties had not been put to the claimant or tested in any way. In these matters it is difficult for the Referee to determine if they were in fact in dispute. The Referee must be satisfied that a dispute exists between the parties before such a determination can be made under the Terms of Reference.

The Terms of Reference confers both the responsibility and the power upon the Referee to be satisfied that the information is complete, before making a determination. The Referee is entitled to seek this further information until satisfaction is achieved but this takes time and extra work.

The system works more expeditiously if the parties concentrate on material issues and supply all relevant information to the Referee at the earliest opportunity. The best evidence is usually obtained by focusing on the issues and prompt investigation when events are fresh in the mind of the witnesses. Time later spent gathering and reconsidering further information required by the Referee unnecessarily consumes resources.

The insurer relies to a great extent on timely

action and the record keeping of their direct staff, the ability of their assessors to keep abreast of current technology and the competence of the investigators to whom they contract out work. All of these people should be appraised of the change of emphasis and philosophy under the Scheme's dispute resolution system and the requirements of the industry's Code of Practice.

This will involve different attitudes and skills and the need for additional training at all levels. The insurers must be prepared to actively participate in the development of training programs and encourage the development of their staff and outside contractors to participate in such training programs.

The other problem facing the insurer is an attitudinal one. The shift away from the adversarial system of litigation has provided an opportunity for parties participating in any alternate dispute resolution system to narrow the areas of dispute to get down to the crux of the matter. However many have grown up in an adversarial environment and believe that the new process may be a softening on the resolution of fraudulent claims. Nothing is further from the reality. Either their own internal dispute resolution sections or the

Referee process, armed with the appropriate information, will make it clear at an early stage that those with fraudulent claims will have little chance of success in the courts.

Again the challenge for the insurer is to be able provide sufficient information so that informed decisions can be made. Once this is done resources can be directed at litigating through the courts those matters that strike at the heart of fraudulent behaviour. Both our system and the legal system will be enhanced if this opportunity is taken up.

A Problem for the Insured

A matter that can present problems for an insured is the proof of ownership and value of goods. The Referee often has to deal with a claim where an insurer's denial of liability is buttressed by a submission that the claim is fraudulent because of the claimant's failure to provide adequate proof of the loss. This allegation is based on the inability of a claimant to establish the ownership or value of items claimed as stolen or lost rather than on any positive evidence that a claimant was falsely claiming ownership of goods or deliberately exaggerating their value.

An impression is sometimes gained that the insurer is trying to lend weight to denial of liability based on otherwise uncertain grounds by adding this further allegation.

As a consequence, there have been occasions in which the Referee did not accept that the insurer had reasonable grounds to form a view that the claim may be fraudulent or that there were substantial facts in dispute in relation to the circumstances of the claim but was left with a dispute in relation to the goods.

The Referee must then decide whether the claimant is entitled to recover under the policy for the goods claimed, a task often made near impossible by the claimant's lack of documentary evidence. The making of a claim for goods for which a claimant lacks the proof of ownership or value, is not fraudulent in itself. This issue has to be viewed separately from the circumstances of the claim, unless it is beyond reasonable limits or is inextricably intertwined.

The Referee is often faced with two assertions by claimants in these matters. The first is that they asked the insurer at the time of making the proposal if proof of ownership or value of contents was required and were told it was not

necessary. The second is that when completing a claim form they were told to do the best they could when identifying or valuing items claimed.

There is no doubt these assertions are not always true, but it is certainly apparent that if it was emphasised that accurate record keeping was essential, many arguments over identity and value of goods claimed would be avoided.

The onus is, of course, upon the claimant to establish the loss in order to obtain indemnity under the policy. The problem that many claimants face is that they have not kept or did not have documentation that establishes ownership. Many purchase goods at open markets or similar places for cash. An inspection of these markets shows that cash transactions take place with little documentation provided in exchange. Experience also shows many people are careless in the maintenance of their records, attach records to the goods themselves, eg. manuals to television sets, or have no evidence of gifts.

The insurance industry is well aware of this and in fact, pay out claims on less than complete documentation. However there should be greater emphasis at the inception of a policy by insurers on making it clear that in the event of a claim, proof of

ownership and cost will almost invariably have to be established. Some insurers are exemplary in this regard and highlight in their policy documentation, the necessity of keeping records.

More could be done by other insurers. Their policy documentation should highlight the need to keep records of proof of purchase or ownership, whether it be receipts, manuals, credit card slips, photographs or the like, with the insurance policy and should reinforce the importance of the insured being accurate in listing their losses when lodging a claim. This would reduce unnecessary investigative work by insurers and potentially calls on the Referee's time.

Cultural Awareness

A profile of the claimants who come before the Referee reflect the ethnic mix and cultural diversity of our society. Hence it is necessary insurers have an appreciation and understanding of the traditions and attitudes of a wide range of people in processing claims. The utmost sensitivity must be shown at all levels of the organisation to avoid misunderstandings that are based on ignorance of cultural and sometimes political differences. The use of specialist rather than general interpreters

in investigations is essential in the face of changing boundaries in Europe and growth in our Asian population.

The allegation of fraudulent conduct by an insurer against persons of a different race newly arrived in the country can often cause considerable anguish. It can be particularly painful when the basis of the allegations is not clearly spelt out. In these circumstances serious complaints of bias or discrimination are sometimes made by an insured. The allegations may not have any substance but proper procedures can prevent any misunderstanding.

The problems usually relate to the investigative stage and it is essential that the investigators guard against any comments which give the impression of stereotyping any section of our migrant community. It is not appropriate for the Referee's role to investigate these allegations in depth but they cannot be discounted. Repeated allegations of such behaviour against an insurer should be the subject of scrutiny under the Code of Practice.

Particular problems often arise in relation to the proof of ownership or value of possessions and travel insurance claims. Certain nationalities have a tradition of giving gifts of

gold jewellery but usually such gifts are not accompanied by any documentary validation. Theft claims have come before the Referee in which a valuation of such items have been supplied to the insurer at the inception of the policy but liability has been denied because the claimant could not verify ownership of the goods. The same standard of proof of ownership required of all policy holders must apply but an evaluation of a claim should take account of the cultural background before denying liability on the grounds of suspected fraud or disputed facts.

Linked with this is the reliance on cash by many immigrants who have experienced problems with financial institutions in unstable times in their home lands. Such people often bring cash to this country through their relatives and hold cash reserves in their homes. There are obviously a number of reasons for these practices but it is not a tradition in this country and as a consequence they are open to suspicion. Although it is not so long ago that a former Prime Minister of the country suggested we should put our money under our beds, those senior citizens who have recollection of the days of the Depression still have some misgivings and a perusal of our newspapers shows the

disquiet of many people about current banking practices and fees.

Again material should be made available to proponents for insurance of the need to have satisfactory evidence of transactions and that the constant reliance on cash payments or purchases without adequate documentary evidence could be to their disadvantage in the event of a dispute.

Travel insurance claims involving migrants have also presented problems. It is reasonable to expect that numbers of migrants would travel to their homelands. Difficulties have arisen in claims involving treatment for illness whilst overseas because of the difficulty in obtaining satisfactory evidence. Claimants, because of limited resources often have to rely on the investigations of the insurer made through overseas agents. In the event of disputes this presents problems for a particular problem for a claimant in establishing a claim.

It also can present a dilemma for the Referee in evaluating the evidence and determining the substance of the issues as there are practical limits imposed on his power of investigation. In a recent matter an overseas medical practitioner who was supporting a claimant alleged that he had been

asked for a bribe by the insurer's investigator in order to obtain his support. He also suggested that this was not an unusual practice in his country. The allegation was denied but an unfavourable report did come in from the insurer's investigator leaving substantial issues of fact in dispute. The Referee was left with little option under the Terms of Reference but to refuse to grant the claim. To do otherwise the Referee may have been required to have made a value judgement based on race which would be untenable. This left the claimant with litigation as his only remaining resort - something beyond his means in the circumstances.

There must be a recognition as we mature as a nation, of at least two important truths. Firstly the world is a far smaller place than it was a generation ago. Secondly this country has a fine heritage from our indigenous people and has grown with the benefits provided by waves of new settlers. Despite the reservations some people have about the country's capacity to absorb further immigration, this tradition will continue. We have learnt to live and interact at the commercial level tolerably well with each other, to our mutual welfare. If this is to continue nobody in the

handling of insurance claims is expected to be naive about any individual's failings but must be understanding of the cultural differences of those in our community.

Minimal Or Insignificant Fraud

Section 56(2) of the Act has been applied sparingly to provide relief to claimants since the inception of the scheme. This approach matches the intent of the legislation and, in particular the direction in sub-section (3) that regard shall be had to the need to deter fraudulent conduct in relation to insurance. However in recent times there have been interpretations of the section which indicate the direction the Referee may follow in relation to false claims which are promptly corrected by claimants.

In two separate matters that came before the Referee for determination, claims had been lodged which contained or were based on false information. The insurer had denied liability and relied on sections 54(1) and 56(1) of the Insurance Contracts Act, 1984. Within 14 days of the lodgement of the claims the claimants had admitted that the information was false and the correct version of events were supplied. The original information was retracted and the correct

supplied, either in the course of or after an interview by the insurer, but before the claim was denied or any allegation of fraud was made. It was determined by the Referee in both matters that apart from the information originally provided the claim was not fraudulent and that the insurer had not suffered any prejudice by the lodgement of the first claim.

There is judicial authority that a false statement made in support of an otherwise valid claim does not, of necessity invalidate that claim. (GRE v Ormsby (1982) A.N.Z. Ins. cas 60-472.) In that case, a false statement was made in support of an otherwise valid claim and the court stated that this situation was distinguishable from a fraudulent claim. Although the decision is not universally regarded as correct it was considered as a useful in determining both matters. More reliance was placed on Gugliotti v Commercial Union(1992) 7 ANZ Ins. cas 61-104 in which a similar situation applied, albeit with a different result as the false statement was never retracted.

It is important to note the Referee ruled in favour of the claimant on the basis that there was an early and voluntary correction by the claimant, no evidence of any prejudice

to the insurer and the fraudulent aspect of the claim was minimal or insignificant in the context of the total claim.

This approach was regarded as consistent with the utmost good faith provisions of the Act as the claimant having coming to terms with his actions took prompt steps to remedy the situation in order to minimise any prejudice to the insurer. The effect of Sections 13 and 54(1) of the Act is that a breach of duty of utmost good faith by the insured entitles the insurer to refuse to indemnify the insurer but only to the extent that the insurer's interests are prejudiced by that breach. In both the cases there was no evidence of any prejudice suffered by the insurer

The Future

The benefits of alternate dispute resolution has now been recognised in a range of industries and is continuing to expand. We only have to look around us to see it. Despite the reservations there are about some of its recommendations, the recent Wallis Report also saw the development of industry based dispute schemes as part of the future.

The established legal system is realising its limitations. One of the major problems the courts have faced in recent

years has been the increase in the duration of trials. There are a number of reasons for this but it is important to note the criticism of judges about unwieldy procedures and the prolixity of material of doubtful relevance. The introduction of court-based mediation, compulsory case conferences before trial and the like, illustrate that the alternate dispute resolution has advantages in relation to cost, time and the saving of resources generally. The objective is that the issues that need to be litigated should be narrowed so that best use can be made of the courts resources.

The acceptance of the Referee system over the last few years is indicative of the greater importance that will be attached to alternate dispute resolution in the future. In many ways our Scheme leads the way for resolution of disputes, not only where there is fraud or disputed facts very much in issue, but in matters generally.

It is my view that there are opportunities for our process to be used in a wider range of issues in dispute between insurers and the beneficiaries of their policies. The Referee process and the Scheme generally could translate into other areas of insurance dispute resolution. There is, for example a move away

from common law remedies for personal injuries in the workplace or on the road in some States and the introduction of bureaucratic conciliation services. There are companies who self insure for workplace accidents and compensation obligations within state run systems.

The issues for determination when disputes arise are virtually the same as those that are dealt with under the Scheme. This creates an opportunity for our tripartite system to offer an alternative service that would better suit the needs of the consumer and the insurance industry. It would also relieve governments of budgetary obligations in some instances.

Such an expansion of the system would need fine tuning of the Scheme. This would have to be done with a consensus of the Government, an insurance industry and consumer movement committed to the successful operation of this alternative dispute resolution system, and the effective delivery of benefits. It is essential in the meantime that the Scheme continues to meet its existing obligations and satisfy the needs of both insurers and consumers.

(Paper presented to a meeting of NSW AFI on 26 March 1998).

KEW COTTAGE FIRES

by Gary Martin, Officer in Charge, Fire Investigation and Analysis, Victorian Metropolitan Fire and Emergency Services Board. Mr Martin concentrates on the role of the MFSEB in the fire.

Introduction

Following the inquest into the April 1996 fire that claimed the lives of nine men at Kew Cottages, the following provides a brief summary of the events of the night, the subsequent investigation by the Brigade and the Coroner's findings.

The Fire

At 2256 hours, Monday 8 April 1996, the metropolitan Fire Brigade's Communication Centre received an alarm of fire, from the installed main fire alarm system, located at the Administration Building, Kew Cottages.

At 2256 hours, the predetermined attendance was despatched from Richmond Fire Station (Pumper 10), Hawthorne Fire Station (Pumper 18) and North Balwyn Fire Station (Pumper 19).

At 2257 hours, the Brigade's Communication Centre received a call from the Administration at Kew to confirm that the alarm was

operating and that the call had been initiated from Units 30 and 31 (Building 37) Kew Cottages.

The Brigade's Communications Centre advised responding crews of the location of the alarm. The first on scene appliance (Pumper 10), responded directly to Units 30 and 31 where it was confirmed that an extensive fire was in progress, as was the evacuation of the units' residents.

The Brigade's firefighting and rescue response consisted of over 30 Appliances, 95 Firefighters and 12 Senior Officers, including the Minister for Police and Emergency Services who attended. Also heavily involved in the response were the Victorian Police, Metropolitan Ambulance Service, Human Services, Salvation Army, the local council and Coronial Services.

The resultant fire was given under control at 0022 hours on Tuesday 9 April, some 86 minutes after the first call was received, with the Brigade maintaining a presence until 1459 hours on Tuesday 9 April.

As the night unfolded, it was revealed that the fire claimed the lives of nine residents and one staff member had been transported to hospital suffering varying degrees of injury, the result of smoke inhalation.

The Investigation

Overview of the Investigation

The Brigade's investigation was completed in three months, with a report of some 250 pages being produced. The Brigade's investigation and subsequent report formed a major component of the Coronial Investigation.

The Coroner established a Coronial Task Force to investigate the fire, with investigators drawn from the Victoria Forensic Science Centre, the Victoria Police Arson Squad, Coronial Services and the Brigade's Fire Investigation and Analysis Unit.

The Brigade's Investigation Team adopted an intergrated problem solving approach, drawing upon relevant expertise from within the Fire Safety Directorate of the Metropolitan Fire Brigade, to perform the myriad of tasks that were identified.

During the investigation the following hypotheses were developed by the Investigation Team:

1. That the fire originated in combustible bedding located on or adjacent to a bed located on the northern wall of bedroom one, Flat E.
2. That the fire had developed rapidly within bedroom one

and spread via direct burning to bedroom two, through the dividing wall and also via super heated gases to other compartments within Flat E.

That untenable conditions were reached within Flat E within a short period of time, thus preventing the escape and rescue of nine of the ten occupants of Flat E.

In compiling the Brigade's Reprt, as well as validating the hypotheses put by the Investigation team, it was found necessary to conduct extensive live fire testing as well as undertake computer modelling of the fire growth, based on the known facts surrounding the fire. The information gained by the live fire tests, invaluable in enhancing the computer modelling, also provided the basis for recommendations relative to building construction methods and materials, internal furnishings, the fire protection and life safety features and systems that should be employed in an occupancy such as Kew. The data obtained assisted in establishing the time taken to reach untenable conditions which directly impacted on the time available to evacuate such premises, and the impact on this time on staff/client ratios.

In order to place the fire and subsequent Coronial Task Force investigation into context, the Brigade investigators examined:

- the history of the Kew Cottages Complex;

- the construction of the building involved in the fire;
- the cause and area of origin;
- the development of a fire cause and development hypothesis, and support for the hypothesis.

An interesting aspect of the Brigade's contribution to the Coronial Task Force was the investigation of alternative, cost effective, life safety systems, that were commercially available and suitable for occupancy conditions found at the Kew Cottages.

The History of Kew Cottages

Kew Cottages were built in 1887 in the grounds of the Willsmere Hospital. The cottages originally consisted of three cottages and a school with accommodation being provided for 20 children. In 1891 two additional cottages were built to deal with overcrowding. The additions at Kew Cottage continued into the 1900s with the constuction of Building 37 (the scene of the fire) completed as part of a five building addition to the complex in 1960.

Building 37, located at 6 Lower Drive, Kew Cottages, was originally built to house 40 beds in a nursing style of accommodation. The building had undergone a number of modifications over the years, dividing the structure into two distinct units, known as Unit 30 (comprising the western half of Building 37) and Unit 31

(comprising the eastern half of Building 37).

The most recent modification occurred in June 1993. The purpose of this modification was to allow for the accommodation of up to 64 residents in villa type accommodation. At the time of the fire, Building 37 was occupied by 46 residents and 2 carers.

Kew Cottages had a long history in terms of fires, with a fire in 1952 severely damaging a school located within the grounds. One fire in particular that occurred in Willsmere in 1968 claimed the lives of 6 residents. It was following this fire that recommendations from the Metropolitan Fire Brigade and the investigating member of the Post Master General (the responsible investigating officer at that time) caled for, among other things, alarms, sprinklers and staff training to occur.

At the time of the April 1968 fire, Kew Cottages were serviced by two main alarm panels, one covering the buildings south of the Lower Drive, with the main panel being located in the Administration Building, and the second alarm panel covering those buildings to the north of Lower Drive, with the main panel located at Units 7 and 8. A third alarm panel was located at the Administration Block. This panel was part of the fire protection upgrade and was to cover all alarms to the complex.

This upgrade was not complete at the time of the fire.

Building 37's Construction

Building 37 was a single storey structure measuring 70m x 20m, located at the northern side of Lower Drive. Building 37 was constructed externally with brick veneer walls, with a gable trussed roof covered by asbestos cement corrugated sheets, spanning much of the structure. The new sections of Building 37, constructed in 1993, that comprised part of Flat E and Flat B were covered by a skillion roof, covered by Kliplok metal decking.

The internal linings used throughout Building 37 varied considerably. This appears to be the result of many modifications and extensions carried out over the years. Internal linings included medium density fibre board, plaster board, fibrous plaster, caneite and masonite.

The floor construction also varied with sections consisting of concrete whilst others were formed using timber. The floors throughout the building were covered with vinyl floor coverings.

The windows throughout Building 37 were glazed with polycarbonate sheeting of thicknesses varying between 4.5 and 6mm. The windows were fixed with limit stops to restrict the distance by which they could be opened. The windows were covered with aluminium

security shutters, polyurethane filled to provide insulating properties.

Flat E was located on the northern side of Unit 32 and consisted of three bedrooms, a bathroom and a lounge kitchen area. Two bedrooms were located on the north side of the unit at the western end (the western most being bedroom 2), and the third bedroom located on the southern side of the western end. The bathroom was located adjacent to the bedroom on the southern side of Flat E and the kitchen/living room was located in the northeastern corner of Flat E. All rooms were accessed via a hallway located centrally within the flat, running in an east-west direction, and opening into the kitchen/living room area.

The Cause and Area of Origin

The following section provides an extremely brief outline as to the cause and origin of this fire. The fire originated within Flat E, Unit 32. A preliminary inspection was conducted within Flat E. The area of the kitchen/living area had sustained significant damage to all surfaces. The roof structure above this area had collapsed from the ends of the rafters nearest the centre of the flat, this being the area above the internal walls. The rafters were still positioned on the lintel above the window wall to the north. These rafters, although charred, were still relatively

complete.

Given the burn patterns within the structure and the degree of damage around the area of the bed positioned adjacent to the north wall of bedroom 1, Flat E, this fire was one consistent with one having its origins on or near the bedding of that bed. A thorough investigation of the area did not reveal any signs of an accelerant, nor any evidence of any other introduced fuel.

There was no evidence of any material that may be subject to spontaneous heating.

Excavation of the scene did not reveal any signs of an ignition source. These facts confirmed that this fire had been ignited by way of an introduced source of ignition. This led investigators to propose a hypothesis of:

"An introduced source of ignition, such as a cigarette lighter flame, in contact with bedding on or near the bed adjacent to the north wall of bedroom 1, as the cause of the fire.

Live Fire Tests

During the course of the investigation, a series of test were conducted at the Metropolitan Fire Brigade's fire resistant "Fire House", as well as a site leased by the Brigade in North Melbourne.

The purpose of these test were to establish, but was not limited to:

- testing the hypothesis developed from the scene investigation;
- validating the computer modelling parameters being used by the Brigade;
- assessing the performance of building materials and furnishings comparable to those used in extended care facilities;
- assessing the performance of residential life safety systems such as smoke alarms and residential sprinklers;
- identifying the rate at which a fire will develop in a compartment of similar design to that of Unit 31; assessing the impact of the known fuel load in relation to fire spread;
- identifying the time taken to reach untenable conditions, including such factors as the temperature of the smoke layer and the toxicity of evolved gases;
- assessing the fire resistance of building and furnishing materials similar to those used at the Kew Complex and establishing the rate at which a fire will spread to adjoining compartments.

The fire testing undertaken by the Brigade involved some 15 live tests, which involved the testing of all individual bed and bedding components from Kew and a composite of the above. The tests culminated in a full scale test cell, being a purpose built structure, built to similar specifications as two of the bedrooms and hallway of Flat E. The test structure was full scale and consisted of some 8.5

building squares, 76.5 square metres, approximately 850 square feet.

The test cell incorporated the following furnishings and instruments:

Room 1

Furnished with three beds and bedding taken from Kew Cottages and a wardrobe (three sectioned) also taken from Kew Cottages, which contained a small quantity of clothing. Three thermocouples were located in room 1, one at floor level, one at bed height, one wall mounted, one ceiling mounted gas species sampling device, one wall mounted gas species sampling device, and one domestic type, single point smoke alarm fitted to the ceiling.

Room 2

Furnished with four beds and bedding taken from Kew Cottages and a wardrobe (four sectioned) made from similar materials to that of the wardrobe in room 1. Two thermocouples were located in room 2, one at bed height and one at ceiling height, and one domestic type, battery powered, single point, smoke alarm was fitted to the ceiling.

The hallway did not contain any furnishings and one thermocouple was located at ceiling height in the hallway.

Video cameras were positioned as follows:

Video Camera 1, outside the passage way and fixed to capture the spread of fire from within room 1.

Video Camera 2, outside room 2 and positioned at a camera port (located in the bed wall) to capture the spread of fire into room 2.

Video Camera 3, located at an elevated position (on top of a scaffold) to capture the spread of fire from the windows and roof section.

Video Camera 4, located on the floor of the passage and directed into room 1. This camera was positioned to capture the development of the fire within room 1.

Video Camera 5, was roving to give an overall view of the test.

Video Camera 6, a thermal imaging camera was also roving, and was to capture an overall thermal image of the test. A thermal imaging camera was used in the event of the smoke layer affecting the image.

Video Camera 7, was located at the front, window side, of the test cell, to record the spread of fire across the front of the cell. Additional still photographs were also taken at various locations in and around the test cell.

The fire was set on the bottom right hand corner of a doona

cover, at the identified point of origin, by way of a cigarette lighter and the test recorded. Extensive data was collected and provided in the Brigade's report relative to the testing.

Computer Modelling

The purpose of the computer modelling was to provide an estimation of the likely fire conditions which resulted in the occupant fatalities of Flat E, Unit 31 Kew Cottages. The results of the computer modelling would be used to provide support or otherwise for the investigator's fire cause and development hypothesis. The computer modelling software used for the various scenario investigations was CFAST version 2.0.1, within the computer software package HAZARD 1, version 1.2.

While there are limitations in the accuracy of fire modelling, it is reasoned that the scenario presented and the resultant model predictions are a probable re-enactment of the fire. The added benefit of validating data by way of the live fire testing also improved the accuracy of the modelling. To further refine the process a sensitivity analysis of the heat release rate input to CFAST was undertaken, with different heat release rates and its impact on the results being assessed.

Because CFAST determined the heat release rate based on the available ventilation, there appeared no significant

variation in the results if the heat release input is varied between 11 MW and 17.5 MW. 11MW represented only the furniture objects contributing to the maximum heat release rate, while 17.5MW represented the furniture and 40% of the wall linings contributing to the maximum heat release rate.

The model predictions indicated that the layer height descended very quickly in all rooms. In the three rooms where the fatalities occurred (bedrooms 2 and 3 and kitchen/living room), the hot upper layer had descended to within 1.5 m of the floor in 360 seconds, 280 seconds and 320 seconds respectively.

The graphical results of the CFAST simulation indicate, in conjunction with the tests and fire scene investigations, that the hypothesis proposed by the Investigation Team, as to the cause and origin of the fire, is feasible in the circumstances present, at Kew Cottages on the night of the fire.

Assisting the Coroner

Whilst the Coronial Inquest was in progress the Investigation Unit assisted by providing further information and tests relative to equipment which was commercially available or could be utilised in such facilities.

Fire Alarm panels, automatic latching devices, audible alarms, strobe type alarms and combinations of these were

tested by the Brigade.

Advice and information was supplied to the Coroner, and members of the Bar representing some 17 interested parties.

Extensive recommendations relative to life safety were also made by the Brigade.

Conclusion

The Brigade report contained some 250 pages. Significantly this investigation was the first undertaken by the Brigade that involved live fire testing, being combined with computer modelling to validate a fire cause hypothesis.

The extent and detail that was involved is evident by:

- the inquest and the hearing of evidence commenced on October 14, 1996 and concluded on April 27, 1997;
- 17 parties were represented by 20 Barristers and Queen's Counsels, supported by 25 articulated clerks and instructing solicitors;
- 78 witnesses were called;
- 148 statements were tendered;
- 7031 pages of transcript were generated over 81 days of evidence, with 365 exhibits being tendered;

Findings

The Coroner handed down his findings into the fire at Kew Residential Services on 17 October 1997.

Contributions to the Deaths

The Coroner has a duty to find the identity of any person who has contributed to the cause of fire and death. The Coroner found that the State of Victoria contributed to the fire and deaths of the nine deceased. The State owed a duty of care, by way of its agents, the Department of Human Services (DHS) and Kew Residential Services to the residents of Kew Cottages.

Firstly, the State failed to have in place an adequate fire safety system. The Coroner noted that warnings as to the risks to residents were documented from 1968 and more recently in an MFSEB report of 1986 and that 10 years was 'far too long for the State of Victoria to have got its house in order'. The MFSEB's submission that the State was not only aware of the risk of fire but aware that any fire would have severe consequences because of the nature of the residents, staffing levels and the building construction was accepted.

Secondly, the State contributed to the deaths in that it failed to properly manage Paul Caras, the resident who is thought to have lit the fire. The Coroner found that he constituted a fire

lighting risk, and that the staff lacked risk management training and failed to manage his behaviour appropriately.

Coroner's Recommendations

The Coroner made 15 broad recommendations which are summarised:

1. Full residential sprinkler systems should be mandatory for buildings housing the intellectually disabled, the aged and the sick. Partial sprinkler protection is not appropriate in these buildings.
2. Standards should be developed regarding fire audits. Also to be included in the standard consultants/auditors view former audits and all audits and reports be stored in one file, being periodically reviewed and assessed.
3. All fire maintenance contracts should be audited technically and checked and Australian standards modified accordingly.
4. The fire protection industry and/or Australian standards develop a code regarding 'interim' fire protection measures as the staff at Kew had sought advice on interim measures which they could introduce pending a full upgrade, but none were presented. At the hearing Inspector Martin demonstrated a number of

options which were available.

5. Building classifications should be modified to account for not only the type of building but in the case of intellectually disabled, the type of residents and risks involved.
6. The DHS should review all recommendations and form a committee comprising the various representatives.

The Role of the Metropolitan Fire and Emergency Services Board

The Coroner drew attention to his written comments on the MFSEB, in which he noted both the response and upgrades of alarm was rapid and saved lives. He commended the action of firefighters at the scene, in particular S/F Calder, who attacked the fire within the flat and S/O Morris, who located and organised the rescue of two residents. The Coroner noted that these are 'telling example(s) of the risk(s) fire officers take to protect the public'.

In closing it is of note, that the Coroner both verbally and in his findings commended the MFSEB for the response to the fire and the assistance provided by personnel from the Fire and Hazard Safety Directorate of the MFSEB providing 'an objective and valuable level of assistance to the Coroner'.

FIRE IN AMERICAN CARE FACILITY

On May 13, 1997, a fire occurred at a board and care facility in Harveys Lake, Pennsylvania.. Investigators determined that the fire was caused by disposal of smoking materials on a screened-in porch area. The fire killed ten residents and injured three others. The building was heavily damaged by the fire.

The facility was a two-story wood-frame structure with several additions made over time. Fire protection features included a fire alarm system with smoke detectors and heat detectors, and fire extinguishers. Interior stairways were enclosed. Steel doors with self-closing devices protected openings to the stairways; the self-closing device on one of the stairway doors was deactivated. Wall and ceiling finishes were noncombustible. The facility was not equipped with an automatic sprinkler system.

The first floor contained three doors to the exterior. The second floor was accessible by two interior stairways on the west side of the building. The stairway on the southwest side led to a small foyer area that was accessible to the southwest door on the first floor. The stairway on the northwest side led to a small

open area at the door on the northwest side at the kitchen. This door was not identified in the second floor evacuation plan. An exterior stair way on the north side of the building was accessible from the second floor by travelling through a bedroom.

The interior stairway identified for occupant egress in the evacuation plan was separated from the rest of the structure, however, the door-closer on the door at the bottom of the stairway was disabled and the door open. The exterior stairway was only accessible by passing through a bedroom.

One staff member and 21 residents were in the building at the time of the fire. The 21 occupants of the building ranged in age from 58 to 99 with varying medical needs and mental capacities.

Investigators were not able to determine the type and frequency of fire safety training that had been provided for residents and staff.

Investigators determined that the fire started on an exterior screened-in porch being used as a smoking area. Once ignited, the fire involved the combustible materials used in

the construction of the porch, exterior siding for the building, and furnishings.

Investigators believe that the fire broke large windows between the porch and the interior of the building allowing the fire to enter one bedroom and a living room.

According to investigators, the staff member was in the kitchen completing paperwork when the building alarm sounded.

Based on previous false alarms, the staff member attempted to reset the building alarm system. When the alarm system did not reset, the staff member silenced the alarm trouble and the panel trouble indicators. It was at this time that the staff member was informed of a fire by a resident. After confirming the fire, the staff member returned to the kitchen and notified the rest of the residents by activating the drill switch on the alarm panel. The staff person then took action to assist in the evacuation of residents.

At approximately 9:10 p.m. a call was placed to the Harveys Lake Fire Department reporting a fire at the board and care facility. Department was immediately dispatched.

Fire fighters began arriving on the scene about 3 minutes later and they found that the building was heavily involved in fire. Many residents had escaped by the time that fire fighters arrived, and they reported to fire fighters that others were still in the building. Despite the severity of the fire, which prevented fire fighters from entering many areas, fire fighters were able to rescue six residents. Four of the residents who had been rescued, later died in the hospital. After the fire was extinguished, the bodies of six residents were found in various locations throughout the building. Preliminary information indicated that all residents died of smoke inhalation.

Investigators did not specify the materials that were first ignited by the smoking materials. It is believed that combustible furnishings on the front porch were some of the initial fuels that contributed to the fire travel around the outside of the building. The fire grew quickly, spreading down the ceiling of the porch in each direction. The fire then broke through one of the windows between the interior of the building and the porch. Once in the interior of the building, the fire travelled through open doorways and the open door to the stairway, cutting off the primary exits from the building. The fire

also travelled up through the walls to the second floor. Fire and products of combustion also continued to spread along the ceiling of the open living room on the first floor and into the open dining room. On the second floor, fire and products of combustion moved through the bedroom and out into the hall. Fire eventually broke through to the roof construction over the dining room and travelled throughout the combustible concealed space causing collapse of the roof structure over the dining area.

Based on the investigation and analysis of this fire, the following factors were considered to have contributed significantly to the loss of life and property in this incident:

- Improper use or disposal of smoking materials
- Ineffective resident and staff action
- Inadequate means of egress
- Open fire doors in vertical fire separations
- Room doors with inadequate fire resistance ratings
- Lack of automatic door closing devices on individual room doors
- Lack of automatic sprinkler system

The incident is the fourth since 1991 where the evacuation capabilities of the residents has had a direct impact on the number of

casualties. The assumption that the individual's have the abilities to independently process the degree of danger of a situation and act accordingly has also been identified as a factor in the following fires:

Colorado Springs, CO	1991
9 fatalities	
Broward County, FL	1994
5 fatalities	
Shelby County, TN	1996
4 fatalities	
Laurinburg, NC	1996
8 fatalities	

All of the seven significant factors identified in this incident as contributing to the loss of life are issues that are addressed in NFPA documents. A change in any one of them could potentially have had the ability to reduce the number of deaths that occurred at this fire.

Within the past 15 years, NFPA has investigated 11 fires, which have caused the deaths of 83 people. The type of board and care facilities in which these deaths have occurred range from those that house elderly patients to those that house mentally challenged people. With the potential increase in the number of these facilities, it is more and more important that an adequate level of fire protection is provided to ensure protection of the people living in them and to avoid future tragedies.

Victorian Fire Investigation Policy & Procedures

In the last issue we reproduced a copy of the Victorian Fire Investigation Policy and Procedures 1994 which are currently operating throughout Victoria. We neglected to report that the working party has reformed and has commenced a review of these procedures to include the new regulatory bodies, being the Chief Electrical Inspector of the Office of the Chief Electrical Inspector and the Office of Gas Safety, who have the powers of investigation. We will report on any further developments.

Visit to the State Forensic Laboratory

On the 25th February, 35 of our members visited the Victorian Forensic Science Centre at Macleod, for a tour with the theme of "How Forensic Science can Aid the Fire Investigator". Thanks to John Kelleher and Tony Mandarano, Committee members, and Karen Ireland and Bernadette DeVere of the VFSC and to the Forensic Social Club for the BBQ. Again, an evening that everyone enjoyed and found well worthwhile.

Membership

The Victorian Chapter Committee welcomes the following new member to the Chapter: Frank Stockton

Membership fees are due as at 1st July 1998 for the period of 98/99 currently \$30. Individual accounts will be forwarded to all members to identify whether fees are due or not. All members should have been issued with a Membership Certificate and this should be indicated with your return.

Coroner's Court

On Wednesday 24th June a visit has been arranged to the Coronial Services Facilities in South Melbourne at 7.30 pm. Bookings are essential. Details will be forwarded.

Annual General Meeting

The AGM for the Victorian Chapter has been set for Wednesday 29th July with the final details to be arranged. Members of the committee completing their second year of office and hence positions becoming available are:

Brian Neal
Scott Staunton
Terry McCabe
Bob Hetherington
John Kelleher
Gerry Nealon

Positions that will be vacant and for which nominations are requested:

President
Vice-President
Secretary
Four Committee members

Details of the AGM and nomination forms will be forwarded to all members.

Sponsorships

Any member or company that would be interested in advertising in "Firepoint" should contact the Chapter committee as your advertising will assist in the costs of this Chapter. Remember that although "Firepoint" is a national magazine your advertising covers all Chapter members in Victoria and Tasmania. Costs and other information can be obtained from any member of the committee.

News from the Committee

Bob Mitchelson, Committee member will be retiring shortly from his position of the Victorian Manager of the ICA. We wish him the best for the future. A decision of the committee for this year is that there will not be a major seminar, instead more dinner/breakfast meetings, day sessions are planned. This will include some city and country location to assist membership attending.

NEW SOUTH WALES NEWS

(A Report from President Ross Blowers)

Substantial activity has been underway by the NSW AFI Conference Committee in preparation for the July 23 - 24, 1998 Conference. Brochure's are included with this issue. The Conference will be opened by Mr Peter Ryan - Police Commissioner. Two respected international guest speakers will be providing detailed insight into the legal issues relating to the battle against arson in the United States. Similar insight will be gained from the Director of the Public Prosecutions - Mr Nick Cowdrey and a Senior Lawyer from the Office of the DPP. A great deal of interest has been expressed by intra and inter-state Members for this Conference. We are anticipating some interest from overseas members and guests as well. Overall, the NSW AFI Executive trust that the Conference will be a substantial benefit to all our Members and Guests. We look forward to meeting with you at the Conference. Please don't forget that the NSW AFI AGM will also take place at the Conference on July 23, 1998 after the first days sessions.

Over the past two years a tradition has been established

for Chapter President's to meet at various venues to discuss issues of importance and relevance. One issue that has constantly been raised is that of continued Membership and affiliation with the International Association of Arson Investigators. A great deal of discussion has taken place within Executive meetings and amongst Members in Chapters in Australia and New Zealand. The last occasion such a meeting took place was in New Zealand on March 21, 1998. During the course of that President's Conference, it was agreed that issues pertaining to the continued relationship with the International be brought to the attention of the General Membership.

A common argument put forward is the lack of support received from the International to Australian Chapters. This may be the case however, the NSW Chapter has chosen to be the master of it's own destiny. It is recognised and understood there are benefits in being affiliated with an "International" body. However, it must also be recognised that little effort appears to be extended to any Chapter outside mainland USA when it comes to support from speakers,

documentation and conference organising. A notable problem has been raised by Queensland in their bid to host an International Conference. Unfortunately, due to reasons not all-together clear, that Conference bid was unsuccessful.

A loud and concerted voice has again been raised to embark on establishing a South Pacific Fire Investigation Association. There are some strong arguments for promoting such a venture. However, the time and effort needed to create and maintain such an organisation is most probably beyond the financial resources and time commitments available to Australian and New Zealand Chapters and Chapter Executives.

Essentially, three issues have been raised for consideration. Our New Zealand Brothers have already commenced the process of discussion. Therefore, rather than re-invent the wheel, I shall review the options under consideration:

* Remain affiliated with the International. All Chapters pool funds to support the nomination of a Member to seek election to the Board of Directors on the International Board.

* Establish a separate (but affiliated) Division of the IAAI for the South Pacific Region.

* Withdraw completely from the International and form a South Pacific Association of Fire Investigators. The Association will be controlled and directed by South Pacific Regional Members.

The above options have several positives and negatives that need careful consideration. A balancing act will need to be fought within each Member's mind as to the direction they consider their respective Chapter should travel. Perhaps the most

important issue to ponder is the reason for change and what benefits, if any, would be derived from moving away from the status quo.

It is my belief that such a decision is not one that could or should be made by the individual Chapter Executives without due consultation with their Memberships. I do not anticipate this process being one that will be resolved overnight; I am more inclined to believe that it may take twelve months before all issues are thought through and a rational debate by Chapter Executives is conducted on a National basis. The outcome of the debate would need to be put back to the

Membership for final ratification.

I ask that all Members, regardless from which Chapter you are affiliated, consider the issues and report back to your Chapter Executive or the Editor of Fire Point.

I believe your ideas and attitudes are important to the continued success of the Fire Association Chapters in Australia and New Zealand. Please assist your Executives by offering opinions as to the direction you would wish the Associations to travel beyond the year 2000.

CASH PRIZES OFFERED TO MEMBERS

The Association of Fire Investigators (NSW) is offering:

1. A prize of \$250 for the best relevant article submitted to "Firepoint" by August 31, 1998; and
2. A further prize of \$250 for the best relevant article with photographs submitted to "Firepoint" by August 31, 1998, both articles to be suited for publication in the journal

Any Australian member who is financial as at 31st August, 1998, is eligible to enter, except for members of the NSW Executive.

The competition will be judged by the Editor, the NSW President, and the NSW Vice President. Their decision will be final.

MEMBERSHIP

The Chapter Committee welcomes the following new members to the Queensland Chapter:

- John Power - Walsh Halligan Douglas (Solicitors)
- Robert Walker - Queensland Fire & Rescue Authority

ANNUAL GENERAL MEETING

The AGM of the Queensland Chapter was held on Wednesday 25th March 1998. This was Terry Casey's last official duty as President of the QAFI. He now takes up the position of Immediate Past President on the new committee. The committee for 1998 is as follows:-

- President - Tom Dawson
- 1st Vice President - Bernice Norman
- 2nd Vice President - Peter McKeever
- Secretary/Treasurer - Geoff Nufer
- Major Project Co-Ordinator - Alan Faulks
- Programme Co-Ordinator - Murray Nystrom
- Membership Co-Ordinator - Gary Nash
- Hon. Solicitor/Sponsorship Co-Ordinator - Quentin Lanyon-Owen.
- Immediate Past President - Terry Casey.

OUTGOING ADDRESS BY TERRY CASEY

Overview of Terry's speech as outgoing President.

The QAFI saw a year of strong consolidation during 1997. Having re-read my report for the previous year, it remains clear that the success of Operation Bright Spark back in 1996, provided the energy for the sustained growth and

enthusiasm of the Association. However, for 1997 and into 1998, the Association will see some significant changes. Because of these changes I have decided to provide something of the history of the Association for the benefit of those newer members and for those older members whose memory, like mine, is not what it could be.

- **March 5, 1990** - a meeting was held of interested people, mostly from the Insurance Industry or Legal Profession, who decided to hold a formal organised business meeting on May 1, 1990. At this meeting Bruce Sainsbury, now an Honorary Member of our Association, spoke on the International Association of Arson Investigators (IAAI), and on the birth and growth of the New South Wales Chapter.
- **1992** - Our first AGM was held on February 26, 1992. New committee members included Bob Gelling & Geoff Nufer, with Rod Bevan continuing as President.
- **1993** - At this AGM Jeff Skerrett, the then Commissioner of the Qld Fire Service, spoke on "The Future Direction of the QFS". It was announced that our Association had been formally affiliated with the IAAI as Chapter 51. On February 23, 1993 David Muir wrote on behalf of the Association to the Police Commissioner requesting that consideration be given to the reintroduction of the Arson Squad, given its essential function and its disbanding in the post Fitzgerald era.
- **1994** - Office bearers remained essentially unchanged, with Brian Asher being elected as 2nd Vice President. An Arson/Fraud mock trial was successfully

staged with Mr Justice Derrington presiding. The distribution of Firepoint to our members began in June.

- **1995** - Re-election of Peter Thomas as President with a new committee member being Peter McKeever from the Arson Squad. As our name included the words "Arson Investigation", it had the potential to create a misconception that our Association was focused on only the criminal aspects of fire investigation. As there was a move to eliminate the word "Arson", from the Qld Criminal Code, the decision was taken to change the Association name to the Qld Association of Fire Investigators.
- **1996** - Terry Casey elected as President. Guest speakers during the year included Phil Koperberg, Commissioner NSW Rural Fire Service, Angelo Vasta & Tony Gates, Assistant Commissioner NSW Rural Fire Service. Commissioner Koperberg spoke on the cost to the community and insurance industry in relation to bushfires. Operation Bright Spark took place in August, and September saw the introduction of a central database on fire losses. This was to expand the data available through the Qld Fire Service. This was devised by Adrian Barry of the QFS - Fire Investigation Unit.
- **1997** - I am pleased to report that the Association is in good health, financially stable, with a significant growth in membership from 1996 to 1997. At the AGM, the Association re-elected the same executive, with an addition to the management committee being Alan Faulks, Dept. of Mines & Energy.

The Future - Looking back over the address I made to the AGM in 1996 when I was elected as President, there are a number of issues that I hoped we could tackle in my 2 year Presidency, and 3 of those 4 we did tackle successfully. The remaining one was to promote regional meetings and seminars. It is in this area that I hope to make some input in the coming 2 years as Immediate Past President. The other areas that I believe offer some substantial challenge and growth are in the area of Chapter to Chapter links in Australasia and also in the areas of the non-American Chapters of the International Association. As indicated in Firepoint, there is a strong move towards a regional seminar, this may draw people from as far a field as Israel. The third aspect, which I hope will be addressed, is to review our aims and our code of ethics. The fourth is to seek to forge links to other professional bodies, with the possibility that their professional development requirements may be met by attendance at some of our major projects, or more technical breakfast meetings.

Closure - I thank you, the members of the QAFI for supporting me as President over the past two years. I thank the Committee for their capacity to undertake what appears to be an increasing volume of work, and I look forward to continued growth for the Association for 1998 and beyond.

OVERVIEW OF PRESIDENTS PLAN FOR 1998

The new management committee has been reduced in size to nine (9). This streamline management team will focus on the formal needs and decision making processes of the QAFI.

Each of the elected committee members has accepted specific areas of responsibility.

The success of each area will depend on the establishment of effective working teams made up of members of the QAFI - **NOT THE MANAGEMENT COMMITTEE.**

QAFI members will be approached and encouraged to be directly involved in working parties for major projects, programme development, membership and other areas that are identified in the future.

Direct membership involvement and support will be the key to the success for the planned activities and the success of the QAFI.

The client focus of the 1998 management committee will be on the membership of the QAFI.

Provision of an adversary and information service targeting membership needs will be on my agenda for the next two years.

Major projects and support programmes will assist to achieve this aim.

The Major Project theme for 1998 is **"Hazards and Liabilities associated with Commercial and Industrial Premises"**.

Fires, chemical leaks/spillage and industrial accidents will feature, with a focus on the involvement of energy sources such as electricity and gas supplies.

The major project co-ordinator is Mr Alan Faulks (phone (07) 3237 0278) from the Department of Mines & Energy. Alan's ability and experience in planning and co-ordinating such events is outstanding.

To all members, vacancies exist in this Major Project team.

Please do not hesitate to contact Alan or any committee member to become involved in the action of the Major Project, or any other area of interest.

Finally, if you reflect over the new management committee, Government Agencies are not attempting a take-over. But due to the successful partnership and alliances that have been forged over the past years, agencies have been encouraged to share in the ongoing management and involvement with the QAFI.

Collectively, Queensland Government agencies recognise the importance of the Association that best represents the members of the Fire Investigation Industry of Queensland - the QAFI.

The management committee for 1998 is a balance, partnership and alliance of committed people who have a true passion for the Fire investigation industry and the QAFI.

I personally look forward to communicating with, and working with as many members as possible over the next two years.

Tom Dawson - President QAFI

PRODUCT RECALLS

Stefan Dryers sold from May 1997 to January 1998 with **Approval No. Q88059-157** stamped on the hand, are being recalled. They may have a defective switch which could break and cause an electric shock. **DO NOT USE THIS HAIR DRYER.**

Return it to your nearest Stefan Salon or Head Office, 170 Melbourne St, South Brisbane, it will be repaired at no cost. All inquiries call (07) 3844 9999 or Toll Free 1800 77 33 33.

Vaporiser Safety Recall

In the interest of public safety, Oshawa Enterprises voluntarily recalls a limited number of TAAV Steam Vaporiser Heating Units (approved and re-approved by the Office of the Chief electrical Inspector Victoria) manufactured prior to November 1995. We wish to replace three screws in the cylindrical electrode cover to minimise unauthorised tampering which could lead to exposure of live steel electrodes and potential injury.

The recall heating unit can be identified by a MELDEC brand plug (markings CAT 6 or CAT3). This recall **DOES NOT** apply to units with PALA 88 or LEAD HONOUR LH807 brand plugs. **DO NOT** return the water tank, **ONLY** return the heating unit including return address and phone number to **Oshawa Enterprises, PO Box 4018, Queanbeyan NSW 2620.**

All heating units returned for servicing during 1996 & 1997 are NOT affected by this voluntary recall.

Enquiries: Phone (02) 6286 3364.

Information provided by Department of Mines & Energy.

WEB SITE INFORMATION

The QAFI is now on the Internet. Our Web address is <http://www.qafi.asn.au>

The purpose of the website is to increase the opportunity for distribution of information between members of the Fire Investigation Industry.

The principle components of the website are designed to answer this need.

- Links
- Discussion Pages
- QAFI Newsletters

• Major Projects

Each of these is accessible through the navigation bar on the side or bottom of each page, with the exception of the discussion pages.

LINKS

The links page is open to contribution from members. If there is another category or links and sites which you think the membership may find useful, please email Geoff Nufer at secretary@qafi.asn.au

At present the following categories are present:

- Law Enforcement
- Fire Authorities
- Fire Research
- Fire Invest. Associations
- Fire Safety/Product Recall information
- Crime Stoppers

Within each category are links to sites currently available.

DISCUSSION PAGES

The discussion pages offer members and interested persons from anywhere on the web to discuss aspects of fire investigation. the pages are joined so that articles posted and the responses are tiered under one another. Please feel free to make this an active forum.

Please note that at the moment these pages are not secure. Do not discuss anything you wish to remain confidential. If there is a need, a "members only" discussion area will be opened. Access to this area will be for members only, and only those members who have been issued a password. Please contact Geoff Nufer if you are interested in this concept.

NEWSLETTER

The newsletters are the current main medium for transfer of information to our members. The intention of this page is to post previous newsletters to enable new members to catch up on previous activities of the Association. The website also

provides an opportunity for members to e-mail the editor with contributions or suggestions for future articles.

MAJOR PROJECTS

The major projects site is under construction at this time. It is intended to house information on the annual major project for the QAFI. Final itinerary and speakers for the information sessions and conference costs will be posted.

MEETINGS

The meetings page is also still under construction. It is intended to provide a full meetings calendar for the year and a brief outline of the topics for each meeting. A meeting calendar is currently available for download in adobe acrobat format.

ADVERTISING

In an effort to minimise the cost of maintaining the site, we are offering the opportunity for sponsors to advertise on our web pages.

Sponsors may choose, from selecting specific page on which to place their advertisement, or the entire site. If the sponsor already has a web presence the banner adds will provide a link to the site. Please direct all enquiries to the QAFI Secretary (Geoff Nufer) via e-mail: secretary@qafi.asn.au or on mobile 0411 600 438.

CONTACT INFORMATION

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INTERNATIONAL ASSOCIATION OF ARSON INVESTIGATORS

MEMBERSHIP APPLICATION

TO THE SECRETARY. _____ CHAPTER _____

ADDRESS _____

STATE _____ POST CODE _____

(Refer to the list of State office bearers on page 3 for the appropriate address).

I hereby apply for membership of the _____ Chapter of the International Association of Arson Investigators Inc. in accordance with its constitution and By-laws and agree to be bound thereby. I attach the sum of A\$ _____ in payment of Annual Dues (\$ _____) and Initiation Fee (\$ _____).

All information recorded in this application is hereby warranted to be true and correct.

1. NAME IN FULL _____ 2. DATE OF BIRTH _____

3. EMPLOYER _____ 4. POSITION _____

5. BUSINESS ADDRESS _____

CITY/SUBURB _____ STATE _____ POST CODE _____

6. HOME ADDRESS _____

CITY/SUBURB _____ STATE _____ POST CODE _____

7. PHONE (BUS) () _____ FAX () _____

MOBILE () _____ HOME () _____

8. PLEASE LIST ANY FORMAL QUALIFICATIONS (DEGREES, DIPLOMAS, CERTIFICATES etc. WITH THE NAME OF THE ISSUING AUTHORITY AND THE YEAR OF QUALIFICATION.

9. MEMBERSHIP of OTHER ORGANISATIONS _____

10. HAVE YOU EVER BEEN CONVICTED of a CRIME? YES _____ NO _____

11. FULL CONVICTION DETAILS _____

12. ARE YOU A MEMBER OF THE INTERNATIONAL ASSOCIATION of the IAAI?

MEMBERSHIP No. _____

13. REFERENCES (Name, address, phone number, occupation)

A _____

B _____

14. RECOMMENDED by a MEMBER in GOOD STANDING

SIGNATURE _____ DATE _____

15. APPLICANT'S SIGNATURE _____ DATE _____