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## Transcript of Proceedings

CRIME AND MISCONDUCT COMMISSION

MR R NEEDHAM, Presiding Officer, Appointed by the Chairman

MR R DEVLIN SC, Counsel Assisting

OPERATION PROXY

BRISBANE

..DATE 14/07/2008

..DAY 1

PUBLIC HEARING

MR NEEDHAM: Good morning. This is hearing number IHM4 of 2008 of the Crime and Misconduct Commission conducted under section 176 of the Crime and Misconduct Act 2001.

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The Commission resolved on 16 May 2008 to hold public hearings in relation to alleged official misconduct of the former Director-General of the Department of Employment and Training. A copy of the Commission's resolution of the 16th of May 2008 I'll admit as Exhibit H1.

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ADMITTED AND MARKED "EXHIBIT H1"

MR NEEDHAM: This hearing is conducted in the context of a misconduct investigation, and, as Chairperson of the Commission, I will be conducting the hearing.

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Mr Ralph Devlin SC has been appointed as counsel assisting the inquiry.

I nominate as the hearing room orderly Alicia Brook to administer an oath or affirmation to any witness appearing at the hearing.

Pursuant to section 5 of the Recording of Evidence Act 1962, I direct that any evidence to be given, and any ruling, direction, or other matter be recorded by mechanical device, and Ms Helen Lubke and Ms Tracee Hunter will be the recorders for the purposes of today's hearing.

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It is proposed that witnesses will give evidence on oath and will be subject to examination and cross-examination, and witnesses are, of course, entitled to legal representation.

Mr Devlin, are there any preliminary matters to raise?

MR DEVLIN: Yes. Mr Chairman, the public hearing that we're embarking upon is being held as part of a Crime and Misconduct Commission investigation which is ongoing of its nature. Information is still being obtained and examined. Therefore, some unforeseen information or circumstance may arise, and so it may not always be possible to follow the procedure that I'm about to outline. However, at this current stage it's envisaged that six witnesses will be called during the hearing. It should take the bulk of the week, but it's hoped to conclude it within the week, subject to those qualifications I've already mentioned. Where possible, the witness has been provided a copy of his or her own transcript of interview.

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Mr Chairman, I understand that an indication has already been given to the media through a media advisory about the scope about the media access that will be permitted in the hearing room and its precincts during the public hearings. It might be appropriate to put those conditions formally on the record

at this point.

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MR NEEDHAM: Yes. Thank you, Mr Devlin. The media has been advised, and it will be a ruling of the Commission, that the media will be allowed to operate in the hearing room to cover opening comments both by myself and by counsel assisting, and with respect to each witness, when he or she is called, if the witness consents, the media will be given the opportunity to obtain vision of the witnesses during the first few minutes of the appearance of each witness. That should be while the witness is being sworn and being asked formal questions about his name, occupation, et cetera. No more filming or photography will be allowed during the investigative hearings.

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The reason for allowing the media in at the beginning of each witness's evidence is that we find if that isn't done, there is a media scrum in the precincts of the building which the owners of this building take objection to. We find that if the media is given this opportunity they then, we hope, and it has occurred in the past, the media are more reticent about chasing people through the building or the immediate precincts of the building.

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The media have been advised that a room has been made available for journalists covering the hearing. That is at the end of the corridor straight in front of us. That will have a direct video-link to this room. Recording of the audio from that link will be permitted for accuracy but not for broadcast.

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Now, are there any appearances here today?

MR APPLGARTH: If it please the Commission, I appear instructed by Mr Perry from Clayton Utz firm for Mr Flavell.

MR NEEDHAM: Thank you, Mr Applegarth. Now, is any of the evidence to be subject to a non-publication order, in general, that we know of at this stage?

MR DEVLIN: Chairman, by its very nature, the inquiry is concerned with whether or not commercially in confidence documents found their way to third parties from within the Department of Employment and Training. The number and range of those documents is, on current state of knowledge, a finite number and range.

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What I'd propose is that on occasions, you, Sir, will make a non-publication order pursuant to section 202 of the Crime and Misconduct Act where those documents have that character. Now, if a non-publication order is generally made in relation to that class of documents, it might well be the case that we stop and consider a particular document for having that character at appropriate times to protect any ongoing interest of the department. We've certainly had the benefit of assistance from departmental officers in classification of documents, and the Commission intends to respect that process of classification in terms of how an exhibit is handled.

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Having said that, the department is also content that documents that might have that character are nevertheless referred to by a witness for general context and the general nature of the document, so that I would propose, even if a document were to be subject to a section 202 non-publication order, that I will have explored the nature of the document fairly fully with the witness, and that might overcome any apparent lack of transparency, but it's for a good reason and that is the department's intellectual property, as it were, or commercial in confidence property is protected in appropriate cases.

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MR NEEDHAM: So I gather that you will be, when questioning the witness, you will be referring to the documents in a general sense without going to any of the specifics that could be of a confidential nature?

MR DEVLIN: That's so, and also - and I think they can be treated on a case by case basis. Also, in relation to one particular document, it may be that actual dollar amounts going to particular entities can simply be struck out and otherwise the document doesn't have any particular commercial sensitivity about it. So, each document will be considered on its merits as and when they arise, and I'm sure the appropriate treatment will be given in light of section 202.

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MR NEEDHAM: All right. Can I ask that you perhaps discuss these different documents with Mr Applegarth and with any other legal representative who appears so that those legal representatives can also cross-examine adequately upon the documents, but again without disclosing any details that might be deemed confidential by the department?

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MR DEVLIN: Yes. Thank you. We'll keep a watching brief on that.

MR NEEDHAM: Yes. Thank you. Well, for the reasons given by Mr Devlin, then, I will order that pursuant to section 202 of the Crime and Misconduct Act, a non-publication order will be made in relation to certain documents which will be identified by counsel assisting during the hearing. I make that general order now, and I'll just refer back to that general order at the time when each document is notified.

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Now, Mr Devlin, are there any opening comments that you desire to make?

MR DEVLIN: Yes. Chairman, I would like to put this matter in its context.

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Firstly, it should be observed that this public hearing is part of a misconduct investigation into possible official misconduct by the former Director-General of the Department of Employment and Training and former Director-general of Energy, Mr Flavell.

When conducting a hearing on behalf of the Commission, you, the presiding officer, are not bound by the rules of evidence.

You may inform yourself of anything in the way you consider appropriate, and you may decide procedures to be followed for the hearing, and those matters are set out in section 180 of the Act.

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The following factual issues that are before the Commission to be examined during this hearing, and, as I said it's hoped about four days of hearing may see the matter through, but that's impossible to be categorical about, but the issues that are to be examined relate to, firstly, the misuse of an official position for personal gain, whether such misuse has occurred.

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Secondly, whether there were conflicts of interest and whether there was a failure to disclose personal interests at particular times in the narrative.

Thirdly, whether there was any improper use of confidential departmental information.

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Fourthly, whether there was a failure in any public official's obligation to maintain integrity in the public sector, and, fifthly, a rather broad topic in relation to issues - complex issues, too, surrounding pre and post separation employment of senior public officials.

Mr Flavell was Director-General of the Department of Employment and Training from February 2004 until he resigned on the 15th of September 2006. He had concurrent employment in relation to the Department of Energy and, in that sense, was quite unusual having two, as it were, port folios for some of that period.

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As Director-General of the Department of Education and Training, Mr Flavell was responsible for the management and administration of that department. In the relevant period, 2005-2006, the department had regulatory authority over, and funding authority in relation to, both public and private registered training organisations, RTOs, and also managed the Queensland TAFE institutes.

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The majority of vocational education and training in Queensland is delivered by the government owned TAFE institutes. The rest, however, is provided by privately owned RTOs ranging from small family businesses in niche markets to training arms of multinational corporations.

Registered training organisations are able to apply for State Government funding under the User Choice Program which is administered by the department, and in 2006 the value of User Choice allocations was approximately \$41.7 million to private RTOs and approximately \$95 million to TAFE.

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In or about September 2005, more than a year before his resignation from the post of Director-General of DET, Mr Flavell was engaged in ongoing discussions and negotiations relating to the possible establishment of a private registered training organisation which would access the User Choice

funding over which Mr Flavell had overall stewardship.

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At a time of skills shortages, full employment and the boom in national student market, training was the new source of large sums of government money and very much a vibrant part of Queensland's economy.

Mr Flavell stood to make substantial personal financial gain from the establishment of a private training company if he were to become involved in it. A day after Mr Flavell resigned from the public service, he was employed as the Chief Executive officer of a particular private training company. Prior to leaving the public service, he was a party to documents evidencing agreements to be a part shareholder and a director of the private training company. Shortly after, that private training company purchased private registered training organisations Betaray Training Academy and Hilton International College.

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Upon the company being publically floated, even at a modest 20 cents a share, Mr Flavell could anticipate a return of up to \$2 million on his investment and, similarly, upwards if the shares floated at higher sums of money. He became a shareholder ultimately for 10,000, 204 and 82 shares at 1 cent a share, and even on a modest sum of 20 cents per share, once the company got going, therefore there was a potential for some significant financial gain into the future.

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This hearing will examine the ethical issue of whether Mr Flavell benefited from his position in the public service; whether he had conflicts of interests such as should have been disclosed to his minister while he was Director-General.

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Much has been written on this topic, however, Mr Chairman. The CMC, this Commission and ICAC New South Wales, have produced a joint publication entitled, "Managing Conflicts of Interest in the Public Sector", and in that document it was identified as follows:

"It is crucial that senior public officials protect the public interest by ensuring private interests that conflict with it are identified, managed, and disclosed."

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The report further stated that if this did not occur:

"Conflicts of interest can cause public officials to put private interests above the public interest, thereby compromising their work and creating a catalyst for serious misconduct and corruption."

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I'll refer in a moment to some of the mechanisms already available within the public sector which seek to govern such conduct, but I'll come to that in a moment. I'll just deal with some of the key issues which will begin to unfold from the evidence in a few moments time.

I expect over the next three or four days that this Commission will hear evidence - and I'm being a bit selective here - it

is evidence which will fall across a broad spectrum and over a period of about two calendar years, but evidence will be heard, for example, that as early as the 7th of September 2005, so a year and a few days before he resigned as Director-General of the Department of Education and Training, bearing in mind that he continued for a further month in his port folio with Energy, a document entitled "Business Concept" proposed that a private RTO, of which the documents will show Mr Flavell envisaged himself as a key part, would set out to affect TAFE's share of the market. Reference is made at an early stage to the poaching of a manager of a specialist mining services unit at Central Queensland TAFE, the observation being made by Mr Flavell in the document that the unit would "largely collapse if we acquired the current manager."

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Now, that kind of choice of language arises frequently in the documentation and at a relatively early stage. The use of the corporate "we" will be a matter of inquiry with Mr Flavell. Of course, he'll be given his opportunity to explain what was going on in his mind at a time really long before his separation from the public service; a Business Concept document going to a person looking to develop a new RTO, or, as it turned out, to take over existing RTOs.

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This inquiry will examine what the parameters are for engagement between the department and private parties who would want to join the registered training organisation list, as it were, and it may be that there are some difficulties identified in assessing when conflicts might arise, or it might be that the conflicts that are seen to arise are clear enough. These are matters which will be canvassed by way of a discourse. We're not here just pointing fingers. We're here to genuinely understand what thoughts go through a senior public servant's mind when his skills and knowledge base are perhaps in demand or being sought by someone in the private sector, and, more importantly, what steps such a person should take when confronting that situation, because the evidence here is that there was no disclosure of any potential conflict of interest to any party by Mr Flavell during the unfolding of these events.

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The evidence will show that Mr Flavell continued negotiations and discussions about the private registered training organisation with private investors into the calendar year 2006 and up to his resignation from government service, and, as I have said, I think on the day following his departure from Queensland Government service, he took up the position of CEO to the private training organisation which had been established.

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The evidence will show that Mr Flavell forwarded several e-mails to a private investor associated with the developing company, and those e-mails contain details of RTOs to purchase and other confidential information.

In a document entitled "International and Higher Education Strategy", Mr Flavell discussed a strategy for establishing an

English language college and recommended RTOs as a possible target, including Hilton International College, which was ultimately purchased by the private training company.

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On the 30th of June 2006, two and a half months short of his departure from the Department of Education and Training, Mr Flavell e-mailed a person associated with a private investor, a document entitled "Apprenticeship Training" document. In it he advised a particular RTO might be experiencing cashflow difficulties. The basis for that knowledge will be explored during this inquiry.

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The private investor subsequently approached that RTO with a view to purchasing that company. The question is: did that sort of information come to the Director-General in his official capacity, and, was it right that he should make such observations from within the public service to create at least the potential for commercial gain for the private investor?

The evidence will show that during the intervening year, Mr Flavell was active on behalf of the proposed RTO in a number of ways, devoting substantial time and energy, and clearly he is a man of great talent and ability having been, as I said earlier, in that unique position of holding two offices as Director-General simultaneously. But here he was devoting time and energy to advancing the proposal for the new RTO by doing some of the following things:

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By personally contacting an RTO which might be available for purchase, and we'll hear evidence from a Mr King tomorrow in relation to that matter.

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About Mr Flavell's direct approach on behalf of private investors. Eventually the question will be asked: is that a proper thing for a Director-General to have done without any disclosure of any potential conflict of evidence. Is it something that's within the proper interface between the Department of Education and Training and a potential private investor.

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The evidence will show that by collecting information from departmental employees, Mr Flavell was then collecting that and passing it on to the private investors. The evidence will show that, as I said before, he identified and suggested target RTOs for the new company to purchase, including, it would appear, providing confidential departmental information about the business affairs of some of those companies; by writing and providing a number of business planning documents for the new company - some of those identified himself as the new CEO; by attending meetings and participating in planning discussions with increasing frequency towards the end of his government tenure; by agreeing to become a director and shareholder in the new company; by approaching departmental staff and sounding out their willingness to work for the new company, and by contributing in material place to the compilation of the information memorandum for the new company's initial share issue.

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## Transcript of Proceedings

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Evidence will show that Mr Flavell had extensive discussions and planning meetings with a group of private investors and was actively assisting them in establishing and developing the new private training company.

Specifically, then, there are a number of witnesses that will be called in the first couple of days and, as I said, we expect to be speaking to Mr Flavell by Wednesday. Those that will be called ahead of Mr Flavell, though, include Mr Ross Martin, an employee of TAFE; Mr John Slater; Greg Harper and Gavin Leckenby. Indeed, all of them at the relevant time were employees of TAFE.

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Various documents were obtained from those gentlemen in circumstances where they will say, I expect, that they believed they were serving the interests of their Director-General. However, the evidence will show by way of email communication that a number of these documents were disseminated to the investor associated with the proposed new company, and that those documents have the appearance of assisting or being designed to assist the investor in the preparatory work whilst Mr Flavell was still employed as the Director-General.

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In particular, the Commission will hear shortly from a Mr Martin and the - I mention this particularly because the context of the activity ultimately is important - the evidence will show that on a particular date in September of 2005, Mr Flavell sent an email to Mr Martin, a senior project officer with the department, this is on 5th of September 2005, even the hour of the day can be instructive, this was at 3.54 p.m. on the 5th of September: To Ross Martin from scottflavell@det.qld.gov.au, subject Hong Kong Taiwan:

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"Ross, to follow on from our recent discussion about VET" - that's Vocational Education and Training - "export opportunities, I was wondering how you went on your August trip to Hong Kong and Taiwan. I am keen to know the level of business that you secured from the trip.

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Regards, Scott."

Then an email the following morning, 6th of September, from Ross Martin sets out the results of a recruitment trip. That was at 8.23 a.m. the following morning, the 6th. But at 10.25 a.m. on the 7th of September 2005, an email to the potential investor, Vern Wills, from Mr Flavell, subject "Hong Kong Taiwan", importance high, and a note, "Vern, an example of how the company would operate." Signed "Scott".

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So Mr Martin will be called shortly to give us his side of the request to provide information about the commercial activities of TAFE overseas. The email contained details of how many students had been obtained from what places, and so on, and then the Commission has investigated the context in which such a communication would occur; for example, that records would

indicate that Mr Flavell and Mr Wills were in constant contact at various times during 2005. Now, some of that contact will be explained by their mutual involvement in the energy sector, but then there are some events that are close in time that bear some examination and will be the subject of some questioning.

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On the 2nd of September - I think we will find is a Friday - I will just check that - which is a Friday, records would indicate that Mr Wills and Mr Flavell lunched at a city restaurant; that on that date there were calls between Flavell and Wills, telephone calls, on three separate occasions, some of them short but some of them longer, 9.39 a.m. on the 2nd; 12.29 p.m., a couple of minutes; 4.27 p.m. on the 5th, then the email to Mr Martin is at 3.45 p.m. But on that day Mr Flavell and Mr Wills had a telephone conversation for a couple of minutes earlier that day. The material that Mr Martin delivered to Mr Flavell was passed on at 10.24 a.m. on the 7th to Mr Wills. A further message at 10.25, a further message at 1.29 p.m. containing an itinerary for a trip to be taken to Hong Kong, Taiwan - sorry, to eastern Europe, and the Department of Education and Training has classified these details as being in confidence. But then telephone calls then have been detected on the 7th of September at 3.55 p.m. for a minute and a half after the time of the last email message. And then on the 9th of September and the 11th. There is an appointment on the 14th of September and then calls flow all through September at various times.

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So it is about the involvement, the level of involvement that the Director-General had with the private investor and whether documents ought to have been sent that were compiled by junior officers, who it must be said were responding to requests of their Director-General, and that's a pattern of behaviour which increases in frequency as one gets closer in the time-frame to Mr Flavell's departure from the Department of Education and Training on the 15th of September 2006. So I just give that by way of example. So we will be hearing from Mr Martin about various documents that he sent to his Director-General.

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Later in the time-frame - literally in the shadows of his separation from the department - we see Mr Martin sending across a draft Memorandum of Understanding, and, indeed, an actual Memorandum of Understanding between TAFE and an institution in China. That's a year later but literally in the shadows of his departure.

Is that proper? Mr Flavell might say it is. Well, this Commission has an interest in knowing why he might say that and whether there are other rules and regulations which might say otherwise or which might support him, or whether all of this can be justified by the phrase, "I'm from the Government. I'm here to help you."

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Now, if that's to be the justification, then let it be examined in the clear light of day so that this Commission can come to its own view about what if any changes to the current

regime are necessary to be recommended to government.

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As I have said at the start, although Mr Flavell is the centre of attention just at the moment, my intention as counsel assisting to be of genuine assistance to you, sir, is to engage in a discourse, hopefully an intelligent one, with Mr Flavell to determine if there is a justification, to determine what that justification is, to shine the light on it, and for the Commission to then make its determinations in light of what I hope will be an intelligent discourse.

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Mr Chairman, the evidence will show that as early as the 7th of September 2005, as I've alluded to, the corporate "we" is used by Mr Flavell when talking about the potential new RTO, that he was identifying himself as the CEO of the new RTO as early as the 19th of May 2006; that he recruited senior departmental staff in May of 2006, that he was - and there may be an inference arising that he engaged in these activities in the expectation of employment with the new training company - and that's a critical matter for this Commission to investigate and consider.

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The Director-General of a Queensland Government department is legally required to make a declaration of his personal interests and to formally declare any conflict of interest of which he becomes aware. No evidence has been found that Mr Flavell made any such declaration in respect of his involvement with the new training company, either as a declaration of an interest or as a declaration of a possible conflict of interest.

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The hearing will also examine the protocol for leaving the public service. There does not currently exist in Queensland any specific reference in the legislation governing Ministers, Directors General and public servants, any restrictions on employment after leaving the public sector. It is well-known in the public arena that senior public officials have obtained sometimes lucrative jobs in private enterprise immediately upon exiting their public position and in many cases those jobs are in the same field.

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Can I just try to put the evidence in some kind of context as well, Chairman, by referring briefly to those sorts of things which this Commission would have thought governed conduct of the kind that we will be looking at? DET employees in 2005/6 were required to identify and declare any conflict of interest. This is provided for in the departmental Code of Conduct, Human Resource Policy 23 and the Public Service Act itself. The department provided regular Code of Conduct training for all employees together with occasional broadcast reminders. An overview of the Code of Conduct was a mandatory component of all staff inductions. So it would appear that Codes of Conduct were matters that weren't left on the shelf, as it were, but were continually reminded to staff.

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The revised version of the Code of Conduct was actually signed off by Mr Flavell as Director-General of DET and the Department of Energy in February 2005. There has been no

evidence identified to indicate, as I have said earlier, that Mr Flavell made any such declaration for himself at any time during his tenure of the department.

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The DET Code of Conduct 2005 principle 3 is headed "Integrity". Section 3.1 deals with conflicts of interest and it relevantly says:

"As a public official you must ensure that your use of official powers or position does not give rise to a real or apparent conflict of interest. A public official is enjoined to ensure that your actions, conduct and relationships do not raise questions about your willingness or ability to serve the government of the day through the responsible Minister regardless of your personal, political or ideological preferences, use official powers, influence resources and information properly, maintain confidentiality of official information, and avoid using the powers or influence of public office official resources or official information for personal or other improper advantage.

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The Code requires employees to declare any private interest which could influence or appear to influence a decision."

The DET Human Resource Management Policy 23 is headed "Identifying, Managing and Monitoring Conflicts of Interest": Principles include:

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"Where possible, conflicts of interest should be avoided and potential, apparent and real conflicts of interest may occur in the course of employees' duties. When employees' private interests come into conflict with their duty to place the public interest first, the conflict must be disclosed and effectively managed and monitored in a transparent accountable manner."

It specifies that:

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"A written record of the issue and essential elements is required. Conflicts of interest is defined as a conflict between an employee's duty to serve the public interest and the employee's private interests."

And the accompanying guidelines specifically mention "future employment prospects or plans". And then it is described as "that is, post separation employment", and that's identified as a possible source of conflict. There was even a form created for the purpose called DF805 Conflicts of Interest Declaration.

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Next, the Public Service Act itself, Public Service Act 1996 section 56, deals with conflicts of interest:

"If the Chief Executive of a department has an interest that conflicts or may conflict with the discharge of the Chief Executive's responsibilities, the Chief Executive

must disclose the nature of the interest to the departmental Minister as soon as practicable after the relevant facts come to the Chief Executive's knowledge and must not take action and further action in relation to a matter that is or may be affected by the conflict unless authorised by the departmental Minister."

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So they are some of the provisions that apply and did apply at the relevant time. When Mr Flavell was appointed as CEO, he was reminded of this requirement in a letter from the Public Service Commissioner, dated 24 February 2004. Declaration forms were provided with the letter from the Public Service Commissioner and Mr Flavell had previously been sent similar letters on the 3rd of July 2002 and the 27th of October 2003.

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There is another principle within the DET Code of Conduct and that's 3.3, "Declaring your personal interests", there is an obligation upon the permanent head to make such a declaration within one month of commencing - one month of appointment.

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The Office of the Public Service Commissioner Directive 1/96 deals with declaration of interests of Chief Executives. 5.1:

"Directs that the Chief Executive must provide the departmental Minister with identifying information in relation to all significant pecuniary interests of the Chief Executive."

The directive remained in force throughout the relevant period and was superceded in January 2007 after Mr Flavell had separated from the public service. And section 55 of the Public Service Act deals with declaration of interests, as well as I think I have already referred to section 56.

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There are some provisions of the Criminal Code which may also assume some interest in this matter in terms of whether they are sufficient to cover the way government currently does its business but I just mention a couple of those to place them on the record. Section 85 of the Criminal Code relates to disclosure of official secrets, and obviously there would be much in the definition "official secrets". Section 92 of the Criminal Code relates to abuse of office. Section 89 relates to public officers interested in contracts, and there is a general overarching section 204 of the Criminal Code relating to disobedience to statute law, and there one might have in contemplation the provisions of the Public Service Act.

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There are, of course, rather more serious offences in the criminal calendar within Queensland, as this State has seen over the last 20 years, in relation to section 87, official corruption and so on. So those sorts of provisions are potentially in view - I am not suggesting necessarily in respect of Mr Flavell the evidence needs to fall but certainly they're the kinds of parameters in which the public life of our public service in Queensland are governed.

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I said at the outset that some documents are still classified by the department as in confidence or protected that went

across to the potential investor. The detail of those documents will be referred to as to their context and general content but there may be some non-publication orders that are appropriate to make, Mr Chairman.

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In conclusion, may I make this observation: that hearing the evidence of Mr Flavell, hearing his views on the appropriateness of various instances of his conduct, will assist the Commission to formulate recommendations for government for dealing with the complex issues - and no-one pretends they are not complex - of pre and post separation of employment of senior public officials. It is to be hoped that good use will be made of the time in which the evidence is heard in the overall public interest of securing for the future guidelines and procedures that secure the accountability of all public servants who come in receipt of confidential or protected materials.

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They are my opening comments, Chairman. I am rather hoping that Mr Martin is available to be called as a witness.

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MR APPLGARTH: Would it be possible before Mr Martin is called for me to make a short statement in response?

MR NEEDHAM: Certainly, certainly, Mr Applegarth.

MR APPLGARTH: Because this is a public hearing, in my submission it would be helpful if I try at an early stage to contribute to what my learned friend Mr Devlin said was hoped to be an intelligent discourse. Of course, Mr Flavell has a general idea in the light of the opening of the matters about which he may be questioned but doesn't know the specific issues and doesn't know all of the evidence that he will be required to address. So these opening remarks can't - and it would be impossible to address the evidence, so I confine myself to some more general matters in light of what's been said by Mr Devlin about the complex issues.

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I note that the Commission in its media release on the 28th of May said that it would use the results of this investigation to look at possible recommendations to assist in dealing with pre and post employment separation issues involving Ministers and senior executive officers in the public service. So can I confine my general remarks to that general topic, and in doing so can I make two points: one is concerning what Mr Flavell had in common with employees in both private and public sector employment when they are head-hunted about employment or when they are considering alternative employment opportunities.

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The second is what possibly makes his position different and the position in which Mr Flavell found himself when he came to consider leaving the public service and joining others to start up a skills training company compared to the typical position of an employee. In essence, this wasn't a typical case in which a person's current employer and a prospective future employer are in competition in a real sense.

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I will have to develop that point if I can. In a typical

employment situation, one's current employer may well be in direct conflict and its objectives in conflict with a competitor who may be offering employment. So that's the case when a mine manager decides to work from company A to company B or a journalist goes from one media organisation to another, and in those situations one can readily understand why providing information, making suggestions, doing anything that might benefit in the future a competitor is inimical to one's current employer's interests. But therein lies the difference because what's different in this case to a typical case where a mine manager is taking a walk from company A to company B or the marketing manager from Woolworths is taking a walk from Woolworths to Coles, is that there was a broader State Government policy that Mr Flavell and other people in his department were required to advance and that was to support the establishment and growth of public sector providers of skills training.

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Now, the policy was, as Mr Devlin said, to meet the skills shortage and I should say at the outset that although what ultimately became the Queensland Skills Plan developed policies that were to benefit all private providers that wasn't at the expense of the TAFE system, and I trust in due course Mr Flavell or someone else will say the skills plan did a lot of good for the TAFE system as well. But because the State Government policy, in fact well preceding the dates and events that Mr Devlin has dealt with, were talking about the need to improve the system, and I am quoting here from the Green Paper in June 2005 "to move beyond the traditional competitive approach and establish more strategic relationship based on what each sector does best in its best position to deliver", and envisaged a greater role for the private training sector and said that "these proposals would create new market opportunities for private registered training organisations", one has the difficult position of State Government policy being one to foster the establishment of private training organisations that would take up these opportunities.

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So by way of general observation it is quite different from the marketing manager from Woolworths taking a walk to Coles and saying, "I've got these ideas and this is the way we do business in my current employment and I think we could do the same for you."

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On the topic of information, and I have to, of course, necessarily keep my observations at a very general level, and I am not able and I don't wish to descend to detail, it is important in my submission to note at the outset that as far as I'm aware, a substantial body of information about the operation of RTOs, who they are, what their cap is under user choice funding and the like is in the public domain. So I don't wish to make light of whatever evidence may emerge and the like and we'll wait to see what the department classifies as confidential, whether you would classify it as confidential, I would classify it as confidential, or a Court would classify it as confidential or Dr Solomon would classify as confidential is a different matter but could I simply note

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at the outset that information about RTOs and what their application is of user choice funding are in the public domain. So much so that, as I understand it, the standard clauses in the user choice program is that the people who may receive this funding if they provide the training are contractually obliged to agree that information in relation to contracts can be put into the public domain.

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So I simply wish to make the point that although Mr Devlin has referred to the department's classification of information as confidential, we will need to look at information in the manner that you have envisaged conscious of the fact that a lot of information on my instructions is in the public domain.

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Can I then just return to the general topic, and that is what Mr Flavell has in common with other employees both in the private and public sector, and the issues that the Commission is going to address would seem not to be confined to public sector management and would not seem to be confined necessarily to the most senior levels of the public sector either. They seem to be broad issues, and I don't want to make this inquiry any bigger than it has to be, but the Commission's concern about what ought be done at a senior level raises the issue of, "Well, how are these issues addressed at a middle management level? How are they addressed in the private arena?", and I agree that they are complex issues, but may I just by way of a contribution to the hopefully intelligent discourse make a few observations?

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I am not an economist and I don't have an economics degree but what I know about economic analysis of law and what I understand the law to be is that the law strongly favours the ability of people to seek out improving employment opportunities and that's an economically good thing. It is reflected in the fact that the law looks with great scrutiny on restraints of trade on employees in taking up employment with a competitor. There may be certain limited restraints portrayed their if possible but the case law, which I am happy to go to in due course, shows a clear disposition against people being restrained from seeking better employment opportunities and correspondingly the law seems to say - and perhaps economics says this as well - that society as a whole is better off if people can be head-hunted to take up employment opportunities.

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The second point is that to be able to exercise the freedom which the law confers, it is important for the employee, whether it be in middle management or senior management in public or private sector, to be able to assess opportunities and also for the prospective employer to be able to assess the potential employee, and it seems to be in no-one's interest that someone should have to make a snap decision, as it were, on the 11th hour or at 11.59 before their employment runs out as to whether they will seek other employment.

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So it is important for all parties to be able to decide whether they will progress discussions and to be free, if they haven't made a binding commitment to walk away after exploring what's on offer to decide to go their separate ways.

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The third matter is as I understand the law, and I could be wrong about this but there's no obligation on an employee who is approached on a confidential basis, or to use the modern language, head-hunted, to disclose that they have been approached; to disclose to their current employer such an approach. In fact, if there is any legal obligation, it would be to respect the confidentiality of such an approach. Apart from respecting confidentiality of an approach, to be blunt about it, is probably in an employee's interest, whether it be an employee of the CMC, or employee of a media organisation or anyone else, not to disclose the fact that they have been approached, and a headline from the London Financial Times of the 8th of October 2005 nicely summarises the predicament in which an employee may be placed. The headline reads: "Head-hunted, short listed, and fired."

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It was about a case of a chief operating executive of an IT company who was head-hunted, was put on a short list. The short list then became disclosed, and that disclosure left the employee in an awkward situation with their current employment and his current employer declared that his leadership position had been vitally undermined and he was fired. And so that's another complex issue as to respecting confidences, but also not putting people in the invidious position of telling the world that they have been short listed or approached for a position if that makes their current employment untenable.

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It seems that people who proffer advice in this field, I don't know if they're expert or not, emphasise importance of not making snap decisions to carefully assess matters, and actually to keep these matters secret. Whether that is a good thing or not, I'm not sure, but that seems to be the thinking.

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Probably from what I've said, it's obvious that probably in all areas of employment in the course of what may be protracted discussions about the possibilities, that people do explore what's possible, and the potential future employer seeks to make them attractive, and the potential employee effectively says, "I've got these virtues." I don't think any of us have seen a bad CV yet", and so I think that's probably part of natural human inclinations to say "I can do it for you." It might be a mechanic who says to a potential employer, "I've been trained on this machine and if I come over to you and you buy that machine, I can bring all my knowledge on how to use it."

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In non-mechanical areas, people can say "I understand this market. I'm very familiar with the market. I'll be a valuable employee to you because I come with all this knowledge", and that's just part of the territory. Mr Flavell was probably in no different position from other people as being able to present to a prospective employer knowledge and skill. So, there are difficult areas about what can or can't be said about what you can do for a potential employer. I'm not trying to say Mr Flavell doesn't want to say that he did this well, but he found himself in a position that was common to many employees.

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Can I say from my limited experience in dealing with cases of this kind in the public sector, that often it's very hard to find, when an employee or a potential employer makes a definite commitment. Obviously if someone signs up and makes a contractual commitment, then they're bound. But in my limited experience these things evolve and ideas develop into possibilities, and it's an ever evolving process, and the potential employer and the potential employee may, themselves, have very different ideas about the level of the commitment as they sound each other out and explore what they might be able to do if a contractual relationship comes about.

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I'm thankful to Mr Devlin that he noted that whilst the attention is on Mr Flavell, there might be broader issues. So, the first point I've hopefully made is that it's unrealistic to imagine that prospective employees, be they journalists, mechanics or managers, don't have the freedom to explore employment possibilities and to give potential employers the impression, "I can do it for you", and to explain why that can be the case. And so Mr Flavell found himself in a common situation, and a somewhat difficult one, and so he wasn't Robinson Caruso.

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But, of course, anyone in that complex situation has to balance their entitlement to seek alternative employment with the interests of their current employer, and there's no getting away from that. But reference to the interests of one's current employer leads on to the second issue that I identified at the start, namely, that this wasn't a typical employment separation case in which an employee is approached or otherwise considered as taking up employment with a competitor. Of course, in that typical case, a current employee has a duty not to disclose information that would harm his employer's interests and advantage a competitor.

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But here one has the fact that government policy was to encourage new and existing private providers to establish businesses in the area of trade and technical training, and, therefore, separation issues in such a context seem to me, I'd submit, are quite different to separation issues in a truly competitive private employment situation, and because the Commission is looking at these difficult issues as they arise in a government context, perhaps I could throw up a couple of examples that perhaps raise a similar issue. I don't profess to say that these examples are the case, but it would seem to be similar issues of public policy arise.

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Let's imagine that the Director-General of Health is addressing waiting lists for elective surgery, a subject that Mr Devlin and I when we were last in company in a hearing room enjoyed hearing a lot of evidence about. Now, if the government policy is that both private and public hospitals should tackle waiting lists, would it be inappropriate for the Director-general of Health to point out business opportunities to existing participants in, or potential entrants into the private hospital sector? And to go further, and point out where the best opportunities are based on the information that the Director-General has at his or her disposal.

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One might imagine a different hypothetical example. You might imagine someone in the Department of Transport, and I think it's the case the government policy so to get more people out of their cars and on to buses to relieve congestion and save the planet, but if there's not enough government buses around, what if an employee in Queensland Transport points out to a businessman interested in getting into the transport business the opportunity to start up a business operation, and, in the course of doing so, becomes engaged in discussions about a business or employment opportunity with such a venture.

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So, it seems, with respect, that the predicament in which Mr Flavell found himself is one that isn't confined to this department, but where government policy is to advance a broader interest by encouraging private sector participants; there is this issue or this potential problem.

I have mentioned the Queensland Skills Program which in the Green Paper which preceded it identified the need to explore a greater role for the private sector. So, although at one level - and probably at the level of someone who is in a TAFE institute, you might well imagine that a private RTO is in some sense in competition, and that perception is understandable, but in the position where Mr Flavell found himself, his obligation, and the obligation really of other people in his department and across government, was to achieve the objectives of the Queensland Skill plan which was to increase the supply of quality providers of apprenticeship training.

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So, if I could summarise these points: in that policy context, encouraging new entrants to take up market opportunities as private sector providers was consistent with government policy. In fact, one could say that unless the private sector was encouraged and given suitable direction and information to take up the opportunities the government policy wanted it to take up, government policy would be frustrated to that extent.

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Now, pointing out opportunities and giving information to potential private providers may have involved conflicts with codes of conduct, that's what we're here to discuss and I don't wish to debate whether that is right or wrong, but pointing out opportunities and giving information to potential private providers, of course, would be frowned upon by people who had an interest in preserving the old way of doing things, but the old way of doing things wasn't the government policy anymore. And so when we look at the first issue which we're brought here to address, which is the role and responsibility of the Director-General, one could say that it was to develop and implant government policy of increasing the supply of quality providers of apprenticeship training, and that was something that other people might not have agreed with, but that is the overarching government policy.

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Now, I'll conclude my opening remarks, if I may. I want to emphasise that in saying, firstly, that Mr Flavell found

himself in the same difficult area that many other employees find themselves in considering alternative future employment, and, secondly, in saying that Mr Flavell found himself in the rather unusual position of identifying business opportunities to a potential employer, the pursuit of which were consistent with government policy, isn't to suggest that everything he did was appropriate.

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He clearly, with the benefit of hindsight, thinks it was inappropriate and foolish to use the language that he did in the e-mail of 7 September 2005. Although it's no excuse, and doesn't make it appropriate, the matter that Mr Devlin addressed about poaching an employee didn't come to pass I should mention.

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Mr Flavell doesn't want me to suggest that with the benefit of hindsight he would have done things differently. Clearly, he would have, but I hope I have explained that he found himself in a difficult position. Partly, it must be said, of his own making and if he had his time over again he wouldn't have done things in the way he did them, and partly, though, because separation issues are inherently complex where there are no clear guidelines, and if you, Mr Chairperson, with the assistance of Mr Devlin, can work out guidelines that satisfy these difficult complex issues, not only will you be doing the community a great service, but you may both be on a plane to Oslo for the Nobel Prize, I suspect.

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But I hope I have done three things: identified some general issues that he had in common, emphasise that he was in a very different situation from when the CEO of St George Bank takes a walk to Westpac, and suggested at least that some of the information, possibly much of the information available to Mr Flavell about the operation of the system and User Choice Agreements, in particular, was publically accessible. In short, I don't think one should conclude that are talking about a case of State secrets.

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Can I just finally clarify a couple of points, conscious, as I am, that we are yet to hear the evidence. But Mr Devlin made some points about Mr Flavell subscribing to shares and the like. Can I put down what I understand the position was, lest by my not saying anything, people may suggest that Mr Flavell made a tidy sum out of doing what he did.

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His CEO contract came to an end at the end of September 2006. Immediately after the State Election, he informed the then Premier, Mr Beattie, from the 9th of September that he didn't wish to renew his CEO agreement. Following discussions with the Premier, he agreed to remain as Acting Director of the Department of Mines and Energy until the position had been fulfilled. He announced his resignation to his colleagues and disclosed to all concerned his intention to be involved in the establishment of a registered training organisation.

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So far as matters then are concerned, there was that transition. The company to which he subscribed was pursuant to subscription agreement dated 9 November 2006, well after he

departed government, and his remuneration wasn't settled with his future employer until after he announced his departure. So, I don't think Mr Devlin suggested this but I just want to make it clear that Mr Flavell wasn't being paid, and didn't have any shares in any company, and didn't have an employment contract during the time that we're talking about. These things came to fruition after he publically announced his decision.

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Lest it be thought that he made a tidy sum out of this venture, he didn't. It wasn't the case that he acquired shares at 1 cent and sold them at 20 cents. He acquired them at 1 cent and it's unfortunate, but a CMC investigation led to problems in relations with the government and he, in effect, was forced to resign. When he resigned, at the same time he sold back his shares for the price that he'd paid for them. So he didn't make any profit out of shareholding, brief as it was in that company, and it should be said that although, in the public arena, we hear of people parachuting from ministerial leather to other positions and being paid a lot more than they used to be paid, Mr Flavell's salary arrangement was less than the one that he received as Director-General. And so although the fact that he didn't profit, in my submission, isn't to excuse anything that he may have done by way of inappropriate conduct, it's important, I think, to point out at this stage, and as I understand it the Commission and Mr Devlin isn't suggesting that he did stand to benefit, I think if I understood the opening, as indicating that there was a potential to benefit, and we've outlined our position that he didn't have a share in the company and during the time that he was Director-General.

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I thank you for the indulgence of saying what I've just said.

MR NEEDHAM: Yes. Thank you, Mr Applegarth. In view of the fact that your client won't give evidence until Wednesday, it was appropriate for you to have the opportunity to make those comments today. Thank you for the broader comments.

I agree that the issues here are broader than Mr Flavell. I agree they're complex, and we will be looking to hear from Mr Flavell, because any recommendations that the Commission makes at the end of the day, I'm very conscious of the fact that those recommendations have to be practical; not ones that stultify the employment of people coming, say, from the public sector into private sector into the public sector and perhaps going back again. So I'll be very keen to receive submissions from any party who feels that they can assist with this complex and difficult issue. Yes. Thank you, Mr Devlin.

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MR DEVLIN: Thank you, Chairman. I'd ask that Ross Martin be called.

MR NEEDHAM: Have you checked with this witness, his attitude vis-a-vis the camera?

MR DEVLIN: Yes, there's no objections.

ROSS JAMES MARTIN, SWORN AND EXAMINED:

MR DEVLIN: Good morning. Can you tell us your full name please?-- Ross James Martin.

Can you have a look at this attendance notice, please, and confirm that it relates to you?-- Yes, it does.

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Thank you. I tender that into the record, chairman.

MR NEEDHAM: Yes. That will be Exhibit H2.

ADMITTED AND MARKED "EXHIBIT H2"

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MR DEVLIN: Can you tell us your current occupation, Mr Martin?-- I'm the international business development manager for an organisation called Hospitality Training Association which is located in Fortitude Valley.

And had you, during 2005-2006, been employed by the Department of Education and Training?-- Yes.

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Tell us briefly your employment background, please, Mr Martin?-- I came up to Queensland 23 years ago to work at the Gold Coast Institute of TAFE, and during that course of time my area of expertise is cooking and hotel management, and I worked my way to the Director of Faculty of Tourism and Hospitality, and in conjunction with that for - I think it was about the last six years of that, I was doing exchange programs internationally with my students. So that was when international recruitment became a thing to do.

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About six years ago?-- No, no, no, about six years into that. So it's-----

Sorry?-- So it's about 12 or 14 years ago.

Yes?-- International recruitment. So I was asked whether I would set that up at the Gold Coast TAFE, which I did do, and became successful at it.

Now, in September 2005, what specific function were you fulfilling for TAFE?-- September 2005-----

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Perhaps if I show you a document, that might jog your memory. I'm going to show you a document for internal purposes which is D7?-- I think it was while I was working at the Gold Coast Institute of TAFE.

Thank you. Go to the second page of that document. Did you

receive from Mr Flavell on Monday, the 5th of September 2005, at 3.54 p.m., a note as follows - have you got it there?-- Yes.

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"To follow on from our recent discussion about VET export opportunities I was wondering how you went on your August trip to Hong Kong and Taiwan? I'm keen to know the level of business that you secured from the trip"?-- Right.

"Regard, Scott."?-- Mmm.

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You received that communication?-- Yes.

And so at that time what was your employment?-- That would have been when I was at the Gold Coast Institute of TAFE, responsible for international marketing and recruitment of students.

Thank you. Was that a large section of Gold Coast Institute of TAFE's business by then?-- I think so, yes. It was starting to become a profitable operation.

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Are you able to assist us with what the words "to follow on from our recent discussion" means? Had you had a discussion with the Director-General prior to receiving this e-mail, do you recall, or not?-- I had only one discussion. I was asked to go to his office to talk about doing business internationally and how I was - how I did it.

And when was that by reference to the receipt of this e-mail, do you recall?-- I don't recall the exact time, no.

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Did it precede - did being asked to go to his office precede this e-mail?-- Yes, I believe so.

And so did that mean that you travelled up from the Gold Coast or were you based in Brisbane at that time?-- No. I travelled up from the Gold Coast at that time.

And was that a direct invitation from the Director-General?-- I think it came via one of his assistants, and I was given the opportunity of three different dates, and I checked my diary and made one and I notified my institute director that I'd been requested to come to town and talk to the Director-General.

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Who was present for that discussion on the day you attended?-- It was just the Director-General and myself.

And are you able to say how long prior to the receipt of this e-mail that discussion was?-- Not exactly, no.

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And are you able to now give us the context of the discussion between yourself and the Director-General on that occasion?-- I believe that he just wanted to get some grass roots information as opposed to written briefs and reports about what happened, and I was told, or I think I was told from memory, or a couple of my supervisors said he was interested

because I was successful at what I did and was producing the results, and he wanted to do that so he can improve the business across the system.

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Very well. Do you know who passed that on to you?-- I think it was both the institute director and at the time I think his title was called the executive director, his name was Bob McAulay. He used to be the institute director at the Gold Coast TAFE.

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Thank you. Was he senior to you in the hierarchy?-- He certainly was.

Thank you. Now, turn to the front page, then, we've got to go forward in the document of course to understand how you responded. Did you respond on Tuesday, the 6th of September at 8.23 a.m. back to the Director-General "Subject: Hong Kong/Taiwan. Importance: High."?-- Yes. That's what it says.

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And you commenced by saying, "I recruited a table of 14 students. 10 from Hong Kong and four from Taiwan", et cetera?-- Yes.

At the third dot point, you gave a total value for the business signed directly from the trip as \$352,000?-- Yes.

And did you at the fifth or so dot point describe the recruitment as having been done through two key agents in Hong Kong and one key agent in Taiwan?-- Correct.

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Further down, three from the bottom of that page, you gave some then statistics, "All of the diplomas were out of Hong Kong which is traditionally a business focused country and always what we call a combined offer country, where Taiwan has always been migration focused", et cetera?-- Correct.

Now, were you told by the Director-General that this information was for the consumption of a person seeking to create a registered training organisation within the private sector?-- No.

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If you had known that, would it have changed the nature of the information you gave him?-- I doubt it at the time because, I mean, he was a Director-General. It is not my place to question what he was doing.

So that in answer to the request, you were doing what your Director-General required you to do?-- Correct.

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You thought?-- Hm-mmm.

Very well. I'll tender that document, thank you.

MR NEEDHAM: Yes. That will be Exhibit H3.

ADMITTED AND MARKED "EXHIBIT H3"

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MR DEVLIN: Now, that has been classified as in confidence, chairman, so that I would ask that an order be made specifically in relation to that document.

MR APPLGARTH: Just on that, I don't want to cause difficulties here, but I'm not sure classified by whom. I don't presently intend to go into the detail, but if matters that are being classified by the department, classified as confidential, then we may be having more matters declared confidential exhibits, so to speak, than is necessary.

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In my submission, I'm conscious of the need for caution, but I think Dr Soloman's report on FOI has been out for over a month and perhaps the department might want to review its view of what is confidential, particularly as we're dealing with matters that relate to September 2005. I don't want to be difficult, but I just wonder who is doing the classifying.

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MR NEEDHAM: Sure. Well, vis-a-vis Dr Solomon's report, I don't consider that really carries any weight here today, and surely what we've got to look at is the way this document was considered within the department, as at the time that it was disclosed. It might well be now that under Dr Solomon's view now, it's something that might be able to be made public. But if at the time within the department it was classified according to the then classification system as confidential, one would perhaps expect that the Director-General would have been complying with that, or, alternatively, changing the classification methodology within the department.

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MR APPLGARTH: I'm happy to leave Dr Solomon out of it. But I'm at the difficulty of knowing what's classified. I mean, in the course of other matters you see documents that are stamped "Confidential" or "Cabinet", or the like. What gradient are we talking about? Who has classified it? And let's just assume that someone who didn't class this document as confidential, commercial in confidence, or whatever the rubber stamp made back in 2005, let's assume it was of that character back then, even though it is not labelled as such is a separate issue. It may have had some commercial value, I'm not sure what, at the time. But does it have that status three years later? So even if it was classed as confidential back in September 2005, does that need to be maintained and inhibit potentially the examination of the document?

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MR NEEDHAM: Yes. Certainly. Are you able to respond to that, Mr Devlin?

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MR DEVLIN: Only, Commissioner, that the Commission has tried to be responsive to the wishes of the department, that a departmental officer has in good faith endeavoured to classify by existing standards. I can-----

MR NEEDHAM: By existing at the time or existing now?

MR DEVLIN: Well, as I understand it by standards that existed at the time and that has endeavoured to classify documents in that way so that due recognition is given to the status of the document according to the department. That's all I can really say about it.

MR NEEDHAM: See, there are two relevant things, aren't there: its classification at the time would perhaps indicate what should or should not have been done with the document at the time, whereas now its classification might be different because of the effluxion of time since then, and that might reflect whether perhaps it shouldn't have been disclosed at the time but it can now be publicly released. I think that's partly the point that Mr Applegarth is making and I think it is a valid point.

MR APPLGARTH: Yes, it is, Mr Commissioner.

MR DEVLIN: Yes, I am instructed that the Commission did put that question to the departmental officer and that the documents were also considered from that point of view and were considered still to be in confidence.

MR NEEDHAM: All right. Can we make this document in confidence at the moment and can the classification system that's used be supplied through to Mr Applegarth?

MR DEVLIN: Yes.

MR NEEDHAM: So that it can be considered and if Mr Applegarth wants to make submissions on that basis, he can then do so and we can perhaps change it at a later time if need be.

MR DEVLIN: Yes.

MR NEEDHAM: So at the moment then I would make that document subject to the earlier non-publication order.

MR DEVLIN: And I indicate that no doubt Mr Applegarth will make it clear if he feels at all inhibited in relation to any questions he would want to ask of Mr Martin. Could the witness have back exhibit - is that H3, Commissioner?

MR NEEDHAM: Yes.

MR DEVLIN: Could the witness have that back now? Specifically into the notation then, the last notation above your communication, you have sent yours on Tuesday the 6th of September 2005 at 8.23 a.m. - that's on the front page of the document. Do you see above there that it appears to have

been sent from Mr Flavell to a man called Vern Wills on the 7th of September at 10.25 a.m. Do you see that?-- Yes.

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With the words "Vern, an example of how the company would operate". At the time that you supplied the information, did you know that the information would be passed on in that way?-- No, I would never - wouldn't dawn on me to question it.

Very well, thank you. I will ask you now to look at a document that for our - that can be handed back now - for our purposes called D8. On the second page of this document you will see that above the body of your communication on 6th September 2005 at 8.23 a.m. is this reply, apparently from Mr Flavell, on Wednesday 7 September at 10.28 a.m. to you re Hong Kong Taiwan: "Ross, this is excellent information and a great outcome from your trip. Please keep me updated on your performance in these markets as there is enormous potential here for the VET system. I know you're off to Korea shortly, what do you expect?" Signed "Scott". Do you remember receiving that communication?-- Now that I see it I do, yes.

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And then did you on Wednesday the 7th of September 2005 at 12.04 p.m. send a message back, moving up the document, "No problem, I will keep you posted with an update closer to December when 2006 June should all be in the bag for Hong Kong and Taiwan." And did you add "Before Korea is Europe this Friday with Chris, Deb, Craig", et cetera?-- Yes.

Now, did you enclose with that email an attachment which was an itinerary for a Queensland Education and Training VET provider trip to Poland, Hungary, Slovakia and the Czech Republic from the 10th to the 22nd of September 2005?-- I don't recall sending that because I don't think I would have had it.

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MR NEEDHAM: Doesn't your email at the end of the first dot point show that as an attachment?-- Looks like an attachment from Scott to Vern I can see.

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No, no, down in the email from you to Scott Flavell?-- Yes.

The first dot point immediately below that it has got "itinerary for eastern Europe 5 September '05"?-- Oh, yes, I see, yes. I would have thought that would have been my itinerary that I would have sent to him but he would have already got that anyway because that was just a normal process of when you travelled overseas you had a travel request which was signed off by the Director-General and then the Minister. So I think - I would have thought that's what that was.

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MR DEVLIN: Now, in that first dot point you say, "Before Korea, is Europe this Friday with Chris, Deb, Craig and private providers"?-- Correct.

Do you recall who the private providers were who were going on the trip?-- I think it was John Paul College, Charlton Brown - I think that was represented by the lady that's the Chair of

what's called the Private Providers of Australia. I can't remember any others.

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Right. So there were some TAFE people?-- There was the Deputy Director-General, the Director of TAFE - of Gold Coast TAFE, the Director of Southbank.

And some private providers?-- Some private providers but that was the object of the exercise, it was a joint exercise through QETI, Queensland Educational Training International led by Paul Braddy.

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Now, what is Queensland Education Training International then?-- It was a body set up by the former Premier of Queensland to double the export income from \$500 million to a billion dollars in that year. I can't remember exactly the year. And it did do that in that time-frame. I think it exceeded it.

Right?-- And it is still there but I think it has changed departments, like everything does at the moment. And - but it is still there doing things as well.

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Is it now within the auspices of the Premier's Department itself?-- No, I don't - I think it is in the Department of Transport for some reason, I am not sure.

Right. Now, specifically in relation to the body of this communication in which you have apparently attached the itinerary for eastern Europe?-- Yep.

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Down at the last dot point did you discuss the fact that you had two key agents who had their Australian offices in Southport, et cetera?-- Yes.

Now, was this the sort of information that was generally available to the market, those sorts of-----?-- I think it would be pretty self evident. It was one of the things that I attributed to my success was Gold Coast TAFE had a building in the business centre of Southport and we had rented out shops, and in two of those shops were two of my key agents that represented us in two different countries, and that meant I could keep a close eye and work with them on a more close basis.

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Were they agents to whom other private providers had access?-- Certainly.

Mmm?-- There is no such thing as an exclusive educational agent.

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Right. And so the itinerary, if it was attached then - just have a look through it?-- Yes.

Did it set out various places and bodies in Poland and Slovakia?-- Hungary.

And Hungary. That you would be interfacing with - that your

party would be interfacing with?-- Yes, it was in two parts. There was the part led by Paul Braddy that went and talked to government to government, and then the operational people went and talked to schools and universities about doing business together. So more often than not there was two separate arms to the event.

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Very well. Now, if you look to the top of the document then, when you - you can see that on the 7th of September 2005 at 1.29 p.m. - so about an hour and a half after you sent it to the Director-General - it was sent on to this man called Vern Wills?-- Uh-huh.

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With the words: "You can also see the opportunity in eastern Europe"?-- Right.

So when you sent on the itinerary and so on for Europe, did you know or were you told that it was to be sent on to some other person in the private sector?-- No.

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Would it have concerned you if you had known that?-- Again, I would never have thought to question it anyway.

Right. So whatever the Director-General - whatever use he made of it was a matter for the Director-General?-- Correct.

Thank you. I tender that.

MR NEEDHAM: That's exhibit H4.

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ADMITTED AND MARKED "EXHIBIT H4"

MR DEVLIN: Again that's subject to a classification at this point, Chairman. I would ask again that that be the subject of a non-publication order at this time until it can be reconsidered by the department.

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MR NEEDHAM: Yes, all right. I will do that one on the same basis then as the last one, that that is for the moment subject to the non-publication order I have made.

MR DEVLIN: Thank you. Now, I would like you to have a look at the document that we call D9?-- Uh-huh.

Now, on the front page of this document - sorry, I will have to find where the communication starts - yeah, on the front page it would appear that you have sent on Tuesday the 1st of November 2005 at 12.15 p.m. to the Director-General details entitled "Snapshot of August statistics"?-- Yes.

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And you've said, "Scott, extract of monthly stats from QETI for August re VET Queensland. If this is not of interest just let me know. I don't want to bog you down", signed Ross?-- Uh-huh.

Do you recall sending this particular email?-- Yes, yes.

Now, that seems to have a lot of enrolment statistics?-- It is statistics that are open to anybody. QETI actually take them out of what's called AEI, Australian Education International - that is the Commonwealth body that looks after international - and they are posted on a monthly basis and everybody in the industry has access to that information.

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Very well?-- This is just a condensed form so you didn't have to go through pages and pages of stuff.

Right. So you have, as it were, extracted the figures for the benefit of the Director-General?-- Correct.

Do you recall the circumstances under which you supplied the email?-- I think it was just in conjunction with the work that I had been doing in the countries in the last six months. I think that was what I was doing.

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Right. You can see that on the 4th of November, a few days later, Mr Flavell sent - would appear to have sent that document on to Vern Wills saying, "You can see the growth in the vocational education market from the following stats. It is interesting to see where the demand is coming from"?-- Uh-huh.

See that?-- Yes.

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So again I take it you simply observed a request of the Director-General?-- Correct.

But you drew the figures from publicly available information by way of condensing them?-- Correct.

And what the Director-General did to them - did with them was a matter for him?-- Correct.

Thank you. I will tender that document.

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MR NEEDHAM: That's exhibit H5.

ADMITTED AND MARKED "EXHIBIT H5"

MR DEVLIN: Now, I want to move the time-frame on somewhat to September 2006. If you can have a look at document D10? Go to the third page of the document. There is an original message from Scott Flavell dated Monday 4 September 2006 at 1.08 p.m. to Rod Camm. Who was he?-- He was the Executive Director of the department that I worked in when I was in the head office or State office.

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By September 2006, a year later, were you based at head office

in Brisbane?-- Yes.

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The message from the Director-General was: "I would like to get a list of all the international institutes in which we have established collaborative arrangements. I would also like to look at a copy of an MOU, probably one of the standard documents that Craig has signed"-- Uh-huh.

Signed Scott. Who is Craig a reference to?-- Craig is the Institute Director of Southbank, Institute of Technology, as it is now.

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Right. So Rod Camm flicked that on to you at 1.15 p.m. on the 4th of September?-- Right.

Seven minutes later?-- Uh-huh.

"Can you put all this together, please", he says to you, is that right?-- Yes.

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Then you've sent back to Rod Camm on Monday the 4th of September at 3.09 p.m. later that afternoon - sorry, you've sent to the Director-General, copy Rod Camm?-- Right.

Enclosing a MOU, it would appear. Can you have a look at the attachment?-- The MOU?

The agent agreement, sorry?-- Agent agreement, yes. That became important then because the Commonwealth Government was - instigated a form that everybody complied with in terms of - to ensure that anybody that was registered to teach international students had to comply with having the same agents agreement.

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Right. And so how in your experience was the agent agreement dealt with internally within the TAFE system? Was it generally available to private providers?-- I don't know, to be truthful. It is a document that would be the same for them anyway. It would just be Joe Bloggs' name in there instead of Gold Coast TAFE's name on it.

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Right. And it would appear then that this new agent agreement was then included by you in a communication back to the Director-General, is that right?-- Yes.

And then at the top of the page it would appear that it was sent on on the 5th of September to Vern Wills, new agent agreement?-- Right.

So at any stage in your experience was the new agent agreement a confidential document to TAFE or are you unable to say?-- Oh, I am unable to be 100 per cent sure but I wouldn't think so given the fact that it was a document that was on the internet for everybody to take and maybe that had some adaptations to particular matters but in body - you had to comply with the regulations it had in it in order to be registered under the Act - I think it is PRICOS - and please don't ask me the acronym for that - but when you are

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registered with the Commonwealth Government to deliver to international students.

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Right. So in terms of what the Director-General did with it, that was a matter for him, I take it?-- Correct.

Thank you. I will tender that.

MR NEEDHAM: That's exhibit H6.

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ADMITTED AND MARKED "EXHIBIT H6"

MR DEVLIN: Again, I would ask that that - ask the witness now to have a look at D11. Now, on the 4th of September it seems that there was also a memorandum of understanding between the Department of Employment and Training and the Quang Ninh's People's Committee of Vietnam?-- Uh-huh.

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Do you remember that one?-- I only remember it because it was one of my colleagues that was doing my position at the Gold Coast put it together and went on the mission to have that signed. I think that at the time that Minister went as well.

Right. I will ask you to have a look at D12 as well. This one-----?-- Sorry?

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D11 and D12. We will treat these as one message because it is the second one, D12, that appears to have an attachment "draft MOU June 2006" document. Do you see that as an attachment on D12?-- Looks the same as the other one.

That's right, but this communication does appear to have attached a Draft Memorandum of Understanding?-- Right.

Of June '06. Does that relate to the Quang Ninh People's Committee document?-- Yes.

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And, again, is that - since it's between the Department of Employment and Training and Quang Ninh People's Committee, did that from your point of view have a degree of commerciality - sorry, confidentiality to it?-- Yes.

Does it appear that you have sent it to the Director-General at his request?-- Yes.

Thank you?-- I don't know specifically whether he wanted that particular MOU but it may have been one that I had on my desk at the time.

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Right. And what the Director-General did with that was a matter for him, I take it?-- Correct.

You can see at the top of both D11 and D12 that the document appears to have been sent on to Vern Wills?-- Uh-huh.

MR NEEDHAM: Mr Devlin, I can't pick the difference between these two.

MR DEVLIN: The only thing seems to be in the nature of the attachment, Chairman. The attachment of D11 says "2005 MOU template" which seems to be a reference back to the template document in exhibit H7.

MR NEEDHAM: I don't know about the witness but I think the one I have got is identical between the two.

MR DEVLIN: There is two identical attachments. That's why I have asked him to look at both of them together but the attachment notation on the email in D12 is different. It says "draft MOU June 2006", not "MOU template". So the witness has said that the MOU template was probably on a website somewhere.

WITNESS: No, the Memorandum of Understanding, I understand, when I was doing them they were all approved by the Crown Law department before we - and this became the norm and we just put in whatever was relevant for the MOU to be enacted.

MR DEVLIN: Right. So really it is D12 that I would want to tender, Chairman, which appears to attach the Memorandum of Understanding with the Committee in Vietnam.

MR NEEDHAM: That's the one with the number 4 on the top, is it?

MR DEVLIN: Yes - no, in fact the other one.

MR NEEDHAM: We don't have the 11 or 12. So the witness and I and perhaps Mr Applegarth are in the same situation?-- It has 2641 on that one and 2640 on that one.

MR DEVLIN: 2641.

MR NEEDHAM: 2641 will be H7.

ADMITTED AND MARKED "EXHIBIT H7"

MR DEVLIN: So from where you stood, anyway, the fact-----

MR NEEDHAM: Is that to be confidential or is that-----

MR DEVLIN: Yes, it is, thank you.

MR NEEDHAM: All right. So that's subject to the non-publication order that I have made.

MR DEVLIN: So that's - for our purposes that's D12. What exhibit number is that, please, chairman?

MR NEEDHAM: That's exhibit H7.

MR DEVLIN: Thank you. Now, if you just take back the memorandum of understanding, the attachment, that is exhibit H7, from where you sat, anyway, the actual identity of the client was a confidential matter for within TAFE, I take it?-- Correct.

Thank you. Now, again, you didn't know what use the Director-General was going to make of it, he didn't tell you?-- No, it wasn't an unusual question for a CEO of an organisation to ask.

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Thank you. At the time, 2006, are you able to describe from your general experience what the nature of the competition was for the international clientele between the TAFE system and the private providers?-- Private providers have always been two thirds in front of the public providers in terms of numbers and money.

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Right?-- And the role I played in the office - and I believe it still does - is to provide both the public and the private sector with the opportunities that come through the office in terms of whatever business there was, potential business.

Thank you. I have nothing further of Mr Martin.

MR NEEDHAM: Yes, Mr Applegarth.

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MR APPLGARTH: Thank you, Mr Chairperson. It seems that international student recruitment is part of whole of government policy to enhance exports. That's how it is treated?-- Well, I think it is the second largest export market in the country.

And I can share your uncertainty about whether Queensland Education and Training International is under what department but I just had a look at its website yesterday and it seems to be under a Queensland Government website headed "Trade Queensland", is that your understanding?-- I think that's how it is now, yes.

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If anyone wants the email, it is [www.export.qld.gov.au](http://www.export.qld.gov.au) but I don't know what department it is. Now, that says - you call it QETI?-- QETI that's the acronym.

Is that an acronym?-- When you work for the government acronyms are everything.

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It says, "QETI works in close collaboration with public and private providers?-- Correct.

That's your understanding?-- On the board of QETI it is made up of most of the Vice Chancellors of university and leaders of the private providers and the Director-General of the department, et cetera.

Ms Russo may have been on it?-- Yes.

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Right. Now, Queensland Government policy is that - as you understood it back in September 2005, was to increase the objective of enhance the exports-----?-- It was double export income. That was its initial three year charter.

It was to achieve this by both having public and private providers-----?-- Correct.

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-----provide international student services?-- Correct.

If we can just turn to your particular area back in September 2005 when you were discussing matters with Mr Flavell - I am not trying to compliment you here but you are known in the department as a successful recruiter?-- Correct.

More successful than other people who are trying to do the same thing as other TAFEs?-- I think also the fact it wasn't just successful, it was the minimum cost to have the result as opposed to other people were spending lots of money to get where we got without doing that.

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And from your experience both in private industry and in the public sector, any responsible CEO would want to know what you're doing right?-- That's what I was told by Bob McAulay that he wanted to get grass roots information as opposed to reading something that somebody else wanted him to know.

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Because there were other people from other TAFEs who went off on overseas travel and didn't get your results?-- Correct.

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And that was the upshot of your discussion with Mr Flavell when you saw him in person?-- I believe so.

And there was, what, some lack of coordination within the government side of things, would that be a fair comment, or it could have been improved?-- Yes. Yes.

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Can you just help us with that?-- I'm sorry?

Could you just help us as to what you saw as the problem?-- It's a bit hard to explain in a short sentence, but there are some people that don't have a commercial aspect of what they're doing as opposed to others, and I had a leader that had a bottom line that I had to meet initially and I kept on doing that all the way through what I was doing, and I don't believe other areas were doing that, but I'm not in the position to say whether that is a fact or not. It's just an assumption of mine.

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And was there some suggestion back at that time that it might be important to try and centralise these international recruiting functions-----?-- Correct.

-----rather than have people like you at different TAFEs paddling their own canoe or hopping on their own aircraft at government expense to go over?-- Correct.

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You are welcome to have another look at it, but the e-mail that you were first shown here this morning, the one of the 6th of September 2005, which is reporting on your - it's H3?-- I don't need to.

That was basically giving a snapshot of how you went about doing things?-- I mean, yeah. In essence, the Director-General always got a report anyway of everybody's trip. That was - that is one of the requirements. You do a travel request, and within 10 days of return you do a travel report which is signed off by the Director-General. But that's just - I can't recall exactly, but that's probably even a more precis version of the actual report.

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Right. Can I take you to the document that you saw a minute ago which was H7 which had what was described as typical MOU under it?-- Yes.

It might help if the witness was shown it. Do you still have it there?-- I have one, yes.

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This is in the e-mail described as a typical MOU?-- Right.

So, do I understand it that these were just a standard form of MOU that had been drafted by Crown Law?-- Correct.

And was put in the name of the-----?-- At the end of the day these things are really for people to put on their wall in

Asian countries because it is important to them, but it has no legal anything attached to it because you can't - because they're over there and we're here. It is just a matter of something nice that they've got something formal from us, that's about it.

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See, I was just trying to explore because when Mr Devlin asked you a while ago about this, you said that this agreement had a degree of confidentiality about it, that was your answer?-- I suppose in terms of between - in this instance I think it was the Gold Coast TAFE and the organisation, but I mean anybody within the department at the time, and particular the Director-General, obviously had the right to know what was happening.

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If I just tiptoe through this, and I hope I'm not giving - I'm conscious that this has been made a confidential exhibit, this Memorandum of Understanding doesn't contain any commercial terms?-- No, it never does because it doesn't really mean much, and there was a lot of those floating around, and now it comes to mind a little bit, I think at the time there was a bit of internal discussion about the amount of MOUs that were running and people were applying credit to it, "I've got this amount of MOUs attached to my institution and aren't I good."

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So, it doesn't really mean much, does it? It doesn't agree to pay someone anything? There's no performance levels?-- No. It's just a lot of Asian people or businesses like to have something like this so that they can hang on the wall.

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Well, there's no confidentiality clause in here. The other party, the Quang Ninh People's Committee, didn't have to keep this document confidential?-- I don't imagine they did. I don't know.

Well, they're entitled to put it on their wall?-- Yes..

They are entitled to give it to anyone who came through their front door?-- I would think so.

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They could hand it out to people at bus stops in the Quang Ninh province; is that right?-- Yes. I suppose, yes, in essence.

At a later stage you leave the public sector of employment?-- Yes.

And you joined the present employer, the Hospitality Training Association?-- Yes.

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And you do similar sort of work in the international recruitment field?-- Yes.

And in that role you are still part of this export industry?-- Yes.

I'm not being critical of you, far from it, but you are obviously an attractive recruit to the people who offered you

that employment given your experience?-- I took 12 months leave of absence from the department to go and work, and I think it was in January of this year I decided to resign from the public service because I had no desire to go back into that system because I'm not a head office person.

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Right. I don't want to deal with matters that are personal or confidential to you, but over that period, you obviously considered your future?-- I did, and because my background is - I'm a qualified chef and hotel manager and a teacher, and this organisation only deals in hospitality and my thought is moving towards retirement, so that is still the aim.

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And you had ongoing professional dealings with them over the years?-- Yes. The CEO of that organisation I actually employed as a teacher a long time ago at the Gold Coast, so it's sort of an ongoing relationship I've had for a long time.

I don't want to make it sound like it was a courtship, but it's probably hard to identify who sounded out who first or is it just something that developed?-- It happened over a period of time.

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A lengthy period of time, weeks, or months, or days?-- Months.

And it was a big decision for you?-- Obviously. Because when you've been in the public service for most of your life, you tend to be very cautious about stepping into the unknown world, I suppose, of private enterprise.

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And you had to have a field that what you're going to would work for you?-- I did, because in the role I was working in, I had quite a bit to do, given that we were working both with the public and the private sector, and I found HTA to be an organisation that was very professional in its approach and what it did, and it is very successful in what it does because I always say we're professional at the point of paranoia.

But you thought you could bring things to them that they possibly lacked?-- Not consciously, but I suppose, yes.

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Well, you brought your experience with you?-- Yes.

You brought the experience by dint of what you had been doing back in September 2005 as to what things worked and what didn't work?-- Hm-mmm.

And I don't want to go through the details of Exhibit H3, but you had a successful modus operandi, if I can call it that?-- Correct.

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About the use of agents and the like?-- Yes.

You knew where the opportunities were; correct?-- Correct.

You knew where international training fitted in with migration?-- Yes.

So you brought all this store of knowledge with you?-- Yes.

And, I'm not being critical, you have made use of that knowledge in your new position; it would be strange if you didn't?-- Yes. I hasten to add just one thing with migration because I'm not a migration lawyer, I don't give any advice to any potential applicant that they can or cannot be successful after they've done a course to apply for what is called PR or permanent residency.

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I didn't mean to suggest that, thanks for pointing that out. But what I'm trying to say is you understood how the market operated and how particular types of courses would be attractive to particular international students because it was a gateway in terms of permanent residency or migration?-- Correct.

And so all this knowledge you brought to your new employment?-- Yes.

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I have no further questions.

MR DEVLIN: Just a couple of things. Mr Martin, do I understand in relation to that document H7 that you've just been asked about, the only aspect of commerciality about the memorandum of agreement in your mind, the only thing confidentiality, is the identity of the client?-- I would say that would be the only thing, yes.

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So the rest of the document is something of a template?-- Yes. It is a lot about nothing.

Yes, I got you on that. But it's the actual identity of the client of Gold Coast TAFE?-- True.

Righto. Then the second matter: when you did crossover to the other employment, did you have to give any thought to the kind of documentation you felt entitled to take across?-- I didn't take anything.

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Right. So is that as a result of giving thought to that aspect? I'm just interested in what process you went through yourself?-- Just my own professional ethics. But I can't stop what's in here...

No, no, I understand that. I understand that. I'm just interested in how you applied your mind to, for example, the use of even TAFE template documents working for your new employer?-- No.

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Did that arise at all?-- No. The new employer doesn't really place much emphasis on MOUs anyway.

When you refer to the ethics of your employment, what kind of

rule of thumb did you apply for yourself in crossing over so far as any documents in use in TAFE were concerned?-- They stayed where they were.

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Why?-- I didn't really need them because they're not really applicable to what I do now. When I travelled overseas I put a business case in about two paragraphs, the way I want to go and not a book, and when I come back, I don't write a manuscript.

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So to encapsulate your evidence, was it more about the practicality of not needing any of the TAFE documents?-- I suppose it was a little bit of freedom in terms of doing stuff based on my knowledge and expertise.

Right. And so was it the fact that from your own point of view, you didn't actually need, or want to take any particular document across with you?-- No, it didn't really ever dawn on me to do so.

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Thank you.

MR APPLGARTH: Sorry about this. There is just one matter I neglected to ask Mr Martin about.

MR NEEDHAM: Certainly.

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MR APPLGARTH: Mr Martin, you were asked earlier about the identity of the other party to this Memorandum of Understanding, the Quang Ninh People's Committee and you thought that might be confidential?-- Well, only in terms of whether they wanted it broadcast anywhere, but I haven't given it any thought.

Would it surprise you if the Minister put out a press release saying there had been-----?-- Not at all because that's what they do.

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And in terms of if anyone asked you whether you had an MOU with the Quang Ninh People's Committee, you could say yes?-- I would say so, but I mean I don't - I wouldn't believe I would ever be asked.

Because not that many people would be interested in it?-- No.

Because it's a pretty worthless document in terms of confidentiality?-- It is.

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The people could ask the Quang Ninh People's Committee whether they had a Memorandum of Understanding with the Department of Employment and Training and they didn't need to keep that secret either?-- If my memory serves me right, the then minister led the delegation and did the signing of it over there at the time, so obviously they did a press release to

justify him going over there.

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Thank you very much.

MR DEVLIN: May Mr Martin be excused?

MR NEEDHAM: Yes, certainly. Thank you, Mr Martin.

WITNESS EXCUSED

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MR DEVLIN: I would ask that that exhibit can go back up. I would ask that John Slater be called.

MR NEEDHAM: Mr Lawler, you appear for Mr Slater?

MR LAWLER: Yes, I am, sir.

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MR NEEDHAM: Thank you. Mr Slater, are you happy to be filmed just at the very formal beginning of your evidence?

MR SLATER: Yes.

JOHN ANTHONY SLATER, SWORN AND EXAMINED:

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MR DEVLIN: Can you tell us your full name, please?-- John Anthony Slater.

Can you have a look at this document, please. Is that an attendance notice that calls you here today to give evidence?-- Yes.

Thank you. I tender that.

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MR NEEDHAM: That's Exhibit H8.

MR DEVLIN: Now, can you give us some of your employment background then so far as it involves employment in the Department of Employment and Training?-- Yes. I began my employment at Gold Coast TAFE in August of 2001. I was then seconded in July 2004 to a project which was called Skilling Solutions Queensland where I was based in Mary Street, and I was working on that project for a period of time.

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Right. Thank you. And tell us a little bit about Skilling Solutions Queensland then, what the project was about?-- There was a group of - there was a group of initiatives put forward by the department called Smart VET initiatives. Skilling Solutions was one of those which was a customer service base project concept that the Deputy Director-General approached me from the Gold Coast, his name was Chris

Robinson, and he approached me at the time to come up to start that project off from scratch. Basically, it was a concept to provide people with information about the VET sector, where they could go to find information about their skills training, and also where they could possibly get recognition for skills that they may have, and where they could go to get training.

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Was it a sort of shopfront project to assist the public?-- Yes.

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In plugging into training programs?-- Yes.

Righteo. Thank you. So whilst you're involved in that, were you called to a discussion with the Director-General?-- Yes.

And did an e-mail later - did you send an e-mail later attaching a Concept paper for the development of a vocational education and training services provider?-- Yes.

Have a look at this document which we, for our purposes, have called C16. It appears that you've sent to Mr Flavell, as requested, this concept paper. Are you able to tell us how it arose, please?-- Yes. I was working in Mary Street and I received a phone call from Scott Flavell asking me to come over and have a meeting with him. I went over and had a meeting in his office. The Director-General's office was across the road from Education House in Mary Street.

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Yes?-- And Scott asked me - said that he had - there were a group of investors who were interested in the concept of entering the private training area, particularly in the area of international education, and he said that he had - was aware that I had had some background in that area, and had asked how would I go about, or what ideas would I have to move into the sector.

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And is this series of concepts the result of that?-- Yes. I had a verbal discussion in the meeting with Scott about the sort of things that could be done based on my experience. I'd worked in both the private sector. I was formerly with the Russo Group which is a private training organisation and had grown some international business there for them, and I'd also worked at Gold Coast TAFE where I'd worked on both the education side but also some of the international areas there.

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Now, it would appear then from the document that you sent the Concept paper on to the Director-General then on Friday, the 14th of October 2005 at 5.24 p.m.?-- Yes.

Did you work on that in office time, or in your own time, or what, do you remember?-- No, I worked mainly in my time. The project I was on was fairly busy, and so I took this on as basically a project that I worked on.

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So it was a project that you worked on in addition to your ordinary workload?-- Hm-mmm.

Presumably because the Director-General asked for it?-- Yes.

Thank you. I'll formally tender that document, thank you.

MR NEEDHAM: That's Exhibit H9.

ADMITTED AND MARKED "EXHIBIT H9"

MR DEVLIN: Now, you'll see before it's taken off you, you'll see at the top there it's been passed on by the Director-General on Monday, the 17th of October 2005, at 11.56 a.m. to somebody called Vern Wills?-- Hm-mmm.

Did you ever meet Vern Wills?-- Yes, I did meet Vern Wills.

All right. I'll show you now another document which is just a notation of a meeting. Have a look at this document, please. So, bearing in mind that in the previous exhibit the Concept paper was passed on to this man on the 17th of October at almost midday, are you able to confirm that there was a meeting with the Director-General, Mr Wills, and yourself at the premises of Enhance?-- Yes, there was.

Between 2 and 3 p.m. that same day, the 17th of October?-- Yes.

Is that right? Can you tell us what was discussed that day?-- The Director - oh, Scott Flavell asked me to come along to meet Vern who was one of the investors that he was talking about, and would I - asked if I would present my ideas to him.

Right. So you did that, and did you address the actual Concept paper?-- Yes.

Do you recall what else happened that day?-- I went through the Concept paper based on my experience. I also - there were some questions asked of me in terms of some of my ideas, particularly around how you could enter the market. I'd suggested there were some different ways that you could do that based on my experience, and there were some questions around that.

Now, if the witness could now see C18. I'll tender that last little memorandum of the meeting?

MR NEEDHAM: Sorry.

MR DEVLIN: The memorandum of the meeting to which the witness referred should perhaps be tendered?

MR NEEDHAM: Yes, all right. That is Exhibit H10.

ADMITTED AND MARKED "EXHIBIT H10"

MR DEVLIN: This series of documents seems to be an e-mail from you to the Director-General on Monday, the 31st of October 2005?-- Hm-mmm.

Quite late at night, 11.02 p.m., and it seems to come from your home e-mail address, copied to your DET address, and sent directly to the Director-General; is that right?-- Yes.

And this time it says, "Scott, my notes and scenarios as discussed today. John." So was there a discussion on the 31st of October?-- I can't recall that discussion, but I do recall that these notes were more work that I had done on that original Concept paper.

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So it was a development of the Concept paper?-- Yes.

And again did you do that in your own time because of your other pressing duties, or in office time, or what?-- I did it at home. I did it as part of ongoing work on that project that I was asked to do.

20

And what was the subject matter of this developed paper?-- It was just an extension of some of the scenarios that you could possibly use.

For what particular kind of business activity?-- For the vocational education, particularly international education area.

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Now, under Scenarios, you've got different sheets of paper this time: Scenario 1, 2, 3 and 4?-- Yes.

With costings, including, it would appear, rent of premises, what commission would be charged, et cetera?-- Yes.

So would it be fair to describe these scenarios as four different types of business model, is that a fair description, or give it your own description if you would?-- They're not business models. They're describing, I guess, different types of international businesses that could occur. So, if you look at scenario 1, it was a small English language school based on 50 students, so the type of revenue and expenses that you might expect in that type of business. There were a number of different models that could be established, and, based on my experience, I put them down.

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Okay?-- They were fairly simple scenarios.

And having met Mr Wills, what was your understanding about the use to which the work you were doing was to be put?-- My work was always for the Director-General.

50

Right. So was it really a matter for him what use he made of it?-- Yes. It was always for Scott that I was doing this work.

Very well. Where did you get the figures from to put into the

various scenarios for the English school?-- It was from my experience.

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And you-----?-- In the industry it's fairly well-known the rates that are paid per week. It's fairly common knowledge as to what sort of commissions that are paid to agents. It's also fairly common knowledge how much you would pay a teacher. So, I simply applied those to the different models.

You just collected all that together for the Director-General?-- Hm-mmm.

10

And was it your understanding that the material you compiled and put together would be given to Mr Wills for his assistance, or what was your understanding?-- Well, as I said, when I was further approached, there were a group of investors that were interested in this area, and I was asked to put my thoughts on paper, and that's what I did.

Thank you. Thank you very much. I'll tender that, if I haven't already done so.

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MR NEEDHAM: That's Exhibit H11.

ADMITTED AND MARKED "EXHIBIT H11"

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MR DEVLIN: So, we're at the 31st of October 2005 in the time frame. I'd like you to have a look at C19. This is another generation of at least the e-mail stream. You'll see at the bottom of the first page - sorry, you see the attachments are the scenarios and the developed working paper?-- Yep.

And you'll see that at the bottom of the page is your communication to the Director-General of the 31st of October 2005, but then above that is a communication from the Director-General to Vern Wills dated Thursday, 3 November 2005, at 11.37 a.m.. Do you see that?-- Yes.

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I want to ask you about some of the things said in there apparently by the Director-General just to see if it squares with whatever you were doing at the time. The Director-General writes, "Vern, attached is some further information as discussed. John is having discussions with an ELICOS school which is on the market to find out some additional detail." Does that square with anything that you did at the Director-General's request, or at anyone's request at about November of 2005?-- When we had the meeting, one of the scenarios was to purchase an existing business, and I was questioned as to how you could go about doing that. I suggested that there is a private organisation called ACPET which is where members, private colleges are members of that group.

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What does ACPET stand for, otherwise we're going to drown under acronyms?-- Australian Council for Private Education and Training.

1

Thank you. And who ran that at that time? Who was its executive officer?-- Michael Hall.

Michael Hall, right?-- So I suggested that ACPET may be a source of information about - I was asked, well, where could you find out if private organisations were on the market, and I suggested ACPET. I was asked to follow up to see whether ACPET did in fact have any organisations that were for sale.

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Right. And so did you follow up with Michael Hall?-- Yes, I did.

I want you to - I will formally tender that document but I need the witness to keep that with him.

MR NEEDHAM: That's H12.

ADMITTED AND MARKED "EXHIBIT H12"

MR DEVLIN: Because there are other things that are said by the Director-General that I need to ask you about in a moment but let's just follow this line of inquiry. Can I ask the witness now see document C20? Now, this is about a four-page email bundle. If you go to the second last page of that bundle, you will see that you wrote an email to Michael Hall: "Michael, as discussed with you yesterday" - this is on the 19th of October, I think?-- Uh-huh.

"I have been approached by some business people who are interested in purchasing a private training organisation in Brisbane, particularly international ELICOS product, but also interested in RTO", registered training organisation, that is, "in VET Diploma products." What's that about?-- When I met, one of the scenarios - the scenarios I presented were that you could work just in the ELICOS market but in an international market it was very important to have pathway products into Vocational Education and Training Diplomas from my experience.

Right?-- So that was what that meant.

Okay. "My name was given to them as a result of my previous experience with Russo." So that's a reference to your previous experience in the private sector?-- Yes.

Is that right? "Could you please provide me with details you may have so that I can pass them on." So that was your original request?-- Yep.

And I think that's on the 19th of October. Can you confirm that for me?-- Yes.

And so had you discussed on the 18th of October with Michael Hall those matters?-- Yes. As I - well, I can't actually remember whether I phoned Michael but I must have phoned him about that.

Right?-- And this was a follow-up email.

Okay then. And you followed up later in October, is that right?-- Yes.

And then were you ultimately by Mr Hall given the name of an

organisation that might have been for sale?-- Yes, he gave me a couple of names of organisations.

1

And have you recorded them somewhere in your own files?-- Yes, I wrote them down - I wrote down - from a file note for myself I wrote down three names that I thought that he'd given me but in fact I think there were only two.

Right. I will ask you to look at C23. The first thing I am going to do is tender that bundle of emails which shows that inquiry of Michael Hall.

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MR NEEDHAM: That's exhibit H13.

ADMITTED AND MARKED "EXHIBIT H13"

MR DEVLIN: And then I will ask you to look at C23 so that you can tell us what information you got from Michael Hall as to what might have been available?-- Thanks.

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So what names were you given by Michael Hall?-- The names I've written here were John Reid, Workplace Training, and Hilton International College.

Now, why were you receiving information of possible registered training organisations for sale? What process are you carrying out as a public servant at that point?-- When I had come back - when we were walking back from the meeting with Vern Wells, I - Scott had asked me to follow up with ACPET to see whether there were any businesses available and whether in fact what I had suggested was correct, and so I was just following through with them.

30

And what did you do with the information?-- I can recall - I thought I tried to call one of the providers. They were unavailable so I passed that information on, their contact details on.

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And which provider do you believe you contacted?-- Hilton.

I will tender first of all your note.

MR NEEDHAM: That's exhibit H14.

ADMITTED AND MARKED "EXHIBIT H14"

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MR DEVLIN: And I will ask you to look at document C22. Was that H14, Chairman?

MR NEEDHAM: H14 is the note.

MR DEVLIN: Yes, thank you. Now, is it from this note that you can say that you believe you contacted - sorry, I will go back a step. I will go back a step. I will show you a message from within Hilton International College, that's C24 - if the witness could see that? That's not right, sorry. I will go to a different one. C21. This is a postmarked envelope found in the diary of Hilton International College with a notation on the back of it "John Slater, Head of Skilling Solutions", with a mobile number. Was that your work mobile at that time?-- Yes.

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And so does that confirm that you would appear to have spoken to somebody from Hilton College, or tried to, anyway, on the 8th of December?-- Yes.

Thank you?-- Around that date.

Around that date. Thank you, I will tender that.

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MR NEEDHAM: That's exhibit H15.

ADMITTED AND MARKED "EXHIBIT H15"

MR DEVLIN: Now I will ask you to look at C22. Have you got that now?-- This one?

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Yep. Is that a notation in your handwriting?-- Yes.

Can you just read out what's written-----?-- It says, "Glynne Hilton rang. Family problems, father ill. Will contact in new year. Rang Vern and discussed" - "and advised", sorry.

Today do you recall ringing Vern Wills to pass on that information?-- No, I don't recall doing that. I - I thought that I passed that information on to Scott Flavell but I've written here that I've passed it on to Vern. I don't actually recall doing that.

40

Right. So as of - hang on, we will help you with the other details of what appears to be just an email printout, printed out on your system with your heading on it, is that right?-- Yes.

It seems to be an email from Scott Flavell to you dated Wednesday the 14th of December 2005 containing some telephone numbers for Vern Wills?-- Yes.

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Is that what it is?-- Yes.

And you appear to have written these notes on that communication?-- Yes.

Do you believe you got that email from the Director-General?--

Yes.

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And under what circumstances?-- I am fairly sure that I - as far as I recall I had the information called back to me about Hilton and I - I was going to finalise it to give them the information that there was no-one available to contact and-----

Until the new year?-- Yes. And so I wrote - I wrote it on this note.

10

Right, thanks. So as to who you actually contacted to pass back that information, can you now help us with any accuracy as to who it was?-- Well, as I said, my - as I recall I thought that I'd contacted Scott Flavell.

Very well. Now, just at this point you are a fairly senior and experienced officer within the Department of Education and Training with some private sector experience. Is that a fair comment so far?-- Yes.

20

You were inquiring, it seems, of an existing registered training organisation, Hilton International College, is that right, as to whether or not it might be for sale?-- Yes.

Did that strike you as unusual?-- What I was doing was following up on the meetings that I'd had. I was asked to put together draft documents and draft scenarios. I was then asked after the meeting with Mr Wells to find out how that could possibly - you know, what the practicalities of that was. I was following up and following through with that.

30

Had you been specifically tasked by the Director-General directly to carry out any other projects as a project officer in the past?-- Well, only the Skilling solutions project, which he was the ultimate CEO of the department, but I was seconded by the Deputy Director-General from that. But no other contact.

Right?-- Was simply this project.

40

At the time that you were doing it did it occur to you that what you were doing was unusual?-- It was only unusual in the fact that I was an SO officer, a senior officer, and normally the Director-General dealt with SES officers, quite senior officers in the department. I wasn't, you know, a really senior officer and so in that regard it was unusual that I would be asked specifically to do that task, I thought.

Yes. And I am just trying to understand the context of dealing with a prospective private person wanting to enter into the registered training organisation market?-- Mmm.

50

Did that scenario and assisting a person in those circumstances occur to you at the time as unusual?-- No, because at the time the skills plan - there were a number of issues around increasing training places through TAFE and through private organisations. There was actually quite a

policy around trying to generate more training, trying to get more people skilled, and so in that regard it wasn't unusual.

1

Right. Now, your email spoke of, I think, a number of investors interested in whether there was one for sale?-- Mmm.

Did anybody tell you who those investors were in any of the meetings you had with the Director-General or with Mr-----?-- Yes, he did mention that they were very highly regarded business people from Queensland but one that I do remember, simply because of my experience at the Gold Coast, was Mr Trevor Rowe. So I remembered him. I hadn't heard of the others.

10

Very well. But those were disclosures to you by the Director-General?-- Yes.

And did the Director-General, for example, say to you that he was contemplating becoming involved in the new registered training organisation himself or any expression like that?-- No.

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Right. Now, I want to return to the terms then of page 12, which is still there, I think?-- Oh, yes.

If I haven't tendered it already, I formally tender the filenote dated around about 14 or 19 December.

MR NEEDHAM: The one that's on the email of 14 December?

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MR DEVLIN: Thank you, which was C22 for our internal purposes.

MR NEEDHAM: That's exhibit H16.

ADMITTED AND MARKED "EXHIBIT H16"

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MR DEVLIN: If you just return to H12, please? So what we see here is the Director-General saying to Mr Wills - I am not suggesting you had any particular input into the content; I am just asking you to confirm what you were doing at the time, as of the 3rd of November 2005. This statement: "John is having discussions with an ELICOS school which is on the market to find out some additional detail." So at that precise time, 3rd of November, were you having any particular discussions with any particular ELICOS school?-- The only thing I did, as mentioned before, was follow up to see - to finalise the task that I was asked to do.

50

Right. And then the second sentence says: "He is also looking at the city site I mentioned and will take you for a look if it scrubs up." Does that mean anything to you?-- I can't recall that at all.

Now, the next paragraph states: "The financial information does not include revenue from Sunshine Coast which could be in the 200,000 to 400,000 per annum range." Was any discussion given about the Sunshine Coast in your presence?-- I can't recall talking about the Sunshine Coast.

And then finally: "John is speaking with Sunshine Coast to see how the two businesses could work. We need to make sure we are not serving a direct competitor."?-- I can't-----

10

Does that mean anything to you in terms of what you were doing or what you were directed to do?-- No. I can't recall that at all.

Thank you. So that document can be handed up. Now, I want to show you a final note, which is C25 - final in terms of this period of time. This one is C25. Now, this is a note found in a diary relating to Hilton International College and it has got your name on it as well as a notation about St Vincent's Toowoomba and "rang December 2005". Do these notations assist you in any way in relation to any conversations you had with people from Hilton College?-- The only thing I can think of is I did call, so whether this was a note that I had called, I am not sure. I can't really recall in great detail who I spoke to at Hilton or whether they actually called me back. So I am not - I can't recall that in great detail.

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Righto then.

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MR NEEDHAM: Are you saying that note was found on the rear of the page of the December the 15th, December the 16th in the diary?

MR DEVLIN: Again found on the back of a blank envelope in that part of the diary.

MR NEEDHAM: I see.

MR DEVLIN: I will just tender that for the record.

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MR NEEDHAM: That's exhibit H17.

ADMITTED AND MARKED "EXHIBIT H17"

MR DEVLIN: Now, did you ultimately-----

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MR NEEDHAM: Are you moving away from that time now?

MR DEVLIN: I am, actually. I am going to another time-frame about a year later.

MR NEEDHAM: Before you do, can I just ask you a couple of questions? You said that it wasn't unusual in that the

department was wanting to encourage private training organisations?-- Mmm.

1

Were you ever asked by Mr Flavell on any other occasion to provide this sort of assistance to any other group of investors or existing-----?-- No.

-----training organisation?-- No.

So this is the only occasion?-- Yes.

10

All right. And I do note that in exhibit H13, which is the exchange of emails between yourself and Michael Hall of ACPET, that your initial email said to him, "Michael, as discussed with you yesterday, I had been approached by some business people who are interested in purchasing a private training organisation in Brisbane." Now, that's not quite right, is it, because you were at pains earlier to tell Mr Devlin that everything you were doing was because you were told to do it by Mr Flavell?-- Mmm.

20

And in fact you were approached by Mr Flavell; you were never approached by Mr Wills?-- Yes.

Now, is there any reason why you worded that incorrectly in that email rather than saying that your Director-General has told you to do these things?-- I don't know why I worded it that way. I just thought that was because I'd known ACPET before and I'd had previous knowledge with Michael, I thought that was the best way to word it at the time. That's the best reason I can say.

30

It could be an inference that you were wanting to keep out of the email-----?-- Well-----

-----and from the information of Mr Hall that Mr Flavell was in fact interested in this proposal?-- I - I can't recall sort of writing it that way for any reason, I just wrote it that way because I thought that was the best way to write it considering I was finding out information that way.

40

All right. Was there any other area within DET where people could go if they were interested in starting up a private training organisation to seek assistance from the department?-- I am not sure. I mean, my experience with the department, I went straight from private enterprise into Gold Coast TAFE and I worked there and then I came up from Gold Coast TAFE to be seconded on to the project. So in terms of what services were available or - the department was quite large and I guess my answer to that was I am really not sure-----

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You don't know?-- -----what areas were available and where people normally went for that type of information. So that's as best as I can-----

Sure, if you don't know, thanks. Mr Devlin, we might perhaps adjourn at this stage before you go on to another topic.

MR DEVLIN: Thank you.

MR NEEDHAM: We will adjourn until 2.15.

THE COMMISSION ADJOURNED AT 12.52 P.M. TILL 2.15 P.M.

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THE COMMISSION RESUMED AT 2.15 P.M.

JOHN ANTHONY SLATER, CONTINUING:

MR DEVLIN: Mr Slater, we're going to move the time-frame on by about 12 months to November - October/ November 2006. You will recall that in October of 2006 there was a general broadcast to the effect that Mr Flavell had resigned as Director-General and was taking up a position as CEO of Careers Australia Group?-- Yes.

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And it was after that that you were actually approached by Mr Flavell to speak to him about your own future in Careers Australia Group, is that right?-- Yes, I was asked to come to a meeting with him.

20

And was that on the 29th of November 2006?-- Yes.

And was it at the Axa Building?-- Yes, it was.

Which was whose offices at that time did you attend?-- It was the offices of the Enhance Group, I believe.

Okay.

30

MR NEEDHAM: That's Mr Wills' office?-- Yes.

MR DEVLIN: Mr Wills' office, right. Now, I would ask you to have a look at document 28 - C28. In particular an exchange of emails dated the 4th of December in relation to a position description for the Executive Director and Dean of the - what was it for? What position?-- It was the Executive Director position.

For what?-- For the Careers Australia Group.

40

For the Careers Australia Group?-- Yes.

So at that point what job were you in?-- I was in the position of Acting Institute Director at Southern Queensland Institute of TAFE.

And where were you based?-- In Toowoomba.

And so having got this document, did that follow a discussion with Mr Flavell in the city on the 29th of November?-- I came down to a meeting that he had arranged, yes.

50

And what was the subject matter of the meeting?-- He wanted to update me on what had occurred with the Careers Australia Group.

And did that meeting include a discussion about your future

prospects with that organisation?-- He talked about the fact that what the group had done, the companies that had been purchased, their future plans and that there was the possibility of some opportunities within the organisation.

1

Was it explained to you what companies had been purchased?-- There were two companies discussed, a company called Beteray-----

Yes?-- -----which was an Ipswich based company that had a contract for delivery of engineering and that type of apprenticeships.

10

Was it an existing Registered Training Organisation?-- Yes. And there was another company, the Hilton International College.

Now, during this conversation did the penny drop about what you had been asked to do back those months earlier that we talked about before lunch?

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MR APPLGARTH: I object to the question. It is confusing. "Penny dropped", what does that mean?

MR DEVLIN: All right. Did you have any thought process yourself about those tasks that you had been asked to do earlier?-- I thought - well, earlier I'd done the tasks for the Director-General and now he was working for that company, so I thought that he had obviously seen an interest in that organisation.

30

And now you yourself were being approached?-- Yes.

Now, I will tender that email dated 4 December.

MR NEEDHAM: I don't know what the witness has but what I've got is a series of emails of 22nd of November.

MR DEVLIN: Don't need those but there is another document with those.

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MR NEEDHAM: Not with the one I've got.

MR DEVLIN: I will arrange to hand up a different document, thanks. The witness has verbally - I am not tendering that. Just the 4th of December. I am quite happy for my learned friend to have that document, I just don't propose to tender it. I should - before I get off this document, did you suggest your own amendments to the position description in the days following the 4th of December?-- I was given a draft position description-----

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Yes?-- -----and I was asked to look at it, so I made some suggested changes to the position, yes.

Okay. I want to show you now a document for our purposes called C31. This is an email exchange on the 8th of December - Friday the 8th of December between yourself and Walter

Gilmore. Who was he?-- He was the - I met Walter Gilmore when I'd had the meeting with Scott. He was the CFO of the Careers Australia Group.

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Chief Financial Officer-----?-- Yes.

-----of this body that now Mr Flavell was CEO of?-- Yes.

And what is this email all about? What has happened?-- At the meeting that I had, it was arranged that the - that the people from Careers Australia Group, Scott and Walter and Tim Maguire, were going to be in Ipswich, around that area. There was some business apparently being done in Springfield area and I was in Toowoomba so they suggested that they would like to come and visit the TAFE that I was working at.

10

And this email says, from Mr Gilmore, "Thanks again for your help this morning. As discussed on the phone, can you try to get us some information?", and there is reference to floor plans and questions about average class sizes for each workshop and so on, is that so?-- Yes.

20

Now, had there been an inspection of your TAFE-----?-- Yes.

-----by these gentlemen?-- Yes, they'd come up and I'd taken them for a walk - although I hadn't, I'd asked one of the staff to escort them around the TAFE, which was a fairly normal-----

Fairly routine thing-----?-- Routine thing.

30

-----to do?-- During that time they were - because there was some interest in trade training by the group, they were interested in looking at classrooms, workshops. We took them around and showed them those things. The - and these were the questions they had as a result of that visit.

And so did you provide some information back to Mr Gilmore?-- Yes.

40

All right. I will ask you to have a look at C32 and I will tender that document.

MR NEEDHAM: Sorry, you are tendering the last document the witness has just looked at?

MR DEVLIN: The email exchange of 8 December, Chairman, yes.

MR NEEDHAM: Okay, that's exhibit H18.

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ADMITTED AND MARKED "EXHIBIT H18"

MR DEVLIN: I will ask you to see C32. Now, this is an email reply Monday, December 11?-- Yes.

In which you write back to Mr Gilmore, "I have enclosed a document that covers all of your questions. Give me a call if you need any more information. Cheers, John."?-- Yes.

Then you appear to have attached a series of statistics; indicative student numbers by faculty, by industry sector course type?-- Yes.

So were they publicly available statistics?-- They were - they were statistics that were readily available that you would normally provide, say, to an MPS or to - if there was a forum. I didn't feel there was any issue providing them. They were simply numbers of students by different faculty or industry type. 10

Okay. And so you were in the middle of fielding an offer, as it were, to go to this organisation, weren't you? In the middle of considering an offer?-- That had been discussed with me, yes. 20

Yes. And now the organisation was asking you for information?-- The organisation had come for a visit.

Yes?-- And part of the - at that time there was also a third party access policy within the department for TAFE.

Yes?-- So there was actually encouragement to work with the private sector. I felt that this was a possible large provider that was going to work in the area, whether it be private, and so, yes, I----- 30

And to what did the third access - third party access policy relate?-- It related to usage of TAFE facilities.

Right?-- Rooms, workshops, all of that sort of thing.

So is that use of excess TAFE facilities by private providers?-- My understanding of it was that if - when the rooms and facilities were available, if there was to be - we were to encourage third party access by private providers. 40

That is of access to TAFE assets that weren't otherwise in use?-- On a commercial basis.

On a commercial basis?-- Yes.

Right. So that even though you were fielding an offer, as it were, from this organisation, you had no difficulty in dealing with them in terms of the information that you were giving them? You felt you were entitled to do that?-- Yes. 50

Thank you. I will tender that.

MR NEEDHAM: There is nothing in this information that indicates that they were looking at, say, hiring, for them to use the facilities up there?-- Mmm.

The questions that were asked by Mr Gilmore is more relating to a separate one. Like, "We are trying to understand what number of students you can get through a facility like the one you showed us today"?-- During the-----

1

Are you saying that they expressed an interest in hiring the TAFE facilities?-- Yes, they were - there was an interest in looking at the facilities but there was also an interest in usage of the facilities if they came into that region.

10

Yes?-- Which eventually did occur.

Yes. You gave evidence at a closed hearing a couple of weeks ago?-- Uh-huh.

And you didn't tell us that then?-- Tell you?

That that was the situation vis-à-vis the Toowoomba visit?-- In regard to, sorry?

20

In regard to their possibly wanting to use the facilities of Toowoomba?-- That was part of the - that was part of the discussion.

Is that something you'd forgotten when you gave evidence previously? It can tend to suggest to me the possibility that it is something you are making up now perhaps to justify in hindsight what you did at the time? I am just giving you the opportunity to comment to me directly on that particular inference that I could draw?-- There were a number of discussions that were had. I was aware that the - that the group was interested in opening a - or were interested in opening in the Ipswich area, they wanted to come up and look at the TAFE, they wanted to look at the facilities but there was also discussion around use of the facilities if they moved into the area.

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Yes. Now, go back to what I asked you about, though, was the fact that you didn't tell me that when you gave evidence before me in closed hearings a couple of weeks ago. Is that something that slipped your mind at the time or is it something you have only remembered now, or the other inference is that it is something that you've now indicated to explain what otherwise you might have thought was not appropriate conduct on your part?-- I - I mustn't have thought at the time that it was an important issue.

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No. See, Springfield is a fair way away from Toowoomba, isn't it?-- Yeah, the Ipswich area-----

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Yes?-- -----is probably an hour.

Yes, all right. Thank you, Mr Slater.

MR DEVLIN: Thank you. I'll formally tender that document, C32, which attaches student enrolment numbers.

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MR NEEDHAM: On my note that's H19, but I think Ms Brooks thinks I might have missed one out.

MR DEVLIN: H19 seems to be correct.

MR NEEDHAM: Can we just clarify this? I don't know that that one of the 4th of December you tendered.

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MR DEVLIN: I should formally tender that. There was one that I didn't tender relating to the 22nd or the 29th of November.

MR NEEDHAM: Yes. Ms Brooks had noted that as being tendered whereas in fact it hadn't. This latest one is H19. That earlier one, which is an e-mail exchange of the 4th of December, is Exhibit 20, H20.

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ADMITTED AND MARKED "EXHIBIT H19"

ADMITTED AND MARKED "EXHIBIT H20"

MR DEVLIN: Thank you. Now, you sent that information on Monday, the 11th of December, that is the statistical information to Mr Gilmore, and then on Wednesday, the 13th of December, you enclosed a letter expressing your interest in the position of executive director, Careers Australia Institute of Technology, and a resume; is that right?-- Yes.

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So clearly very soon after the TAFE visit to Toowoomba, and the provision of information to representatives of the Careers Australia Group, you actually agreed to work for them; is that right?-- Yes.

40

Now, on the 22nd of December - sorry, January 2007, you commenced employment with the Careers Australia Group in that position?-- That's right.

And were you instrumental in the employment of somebody who had also previously been employed at the Gold Coast Institute of TAFE, Ms Aleisha Straughan?-- Yes.

What steps did you take to have Ms Straughan change her employment? Were you the first to speak to her about it, or what?-- I contacted Aleisha with the possibility of there being employment opportunities.

50

And what was her position with Gold Coast Institute of TAFE, Mr Slater?-- She was working on projects, I believe, at the time. I'm not exactly sure what position she held.

And what previous professional contact had you had with her?--  
When I first arrived at Gold Coast TAFE, she was in a position  
of a customer service manager.

1

Yes?-- And then when I was working on another project in the  
department, she came and worked on that project, on the ISAS  
project, with me for a period of time.

And what was the ISAS project?-- It was about computer  
systems and enrolment systems for TAFE.

10

I-S-A-S?-- Yes.

Very well. So you knew her employment history well?-- Yes.  
I'd worked with her, yes.

And was it you who suggested there was a job opportunity at  
CAG?-- Yes.

I'll ask you to accept for current purposes that Ms Straughan  
ceased her employment with TAFE on the 26th of February - I  
beg your pardon, commenced at CAG on the 26th of February  
2007. I'll ask you to accept that. Now, I want you to have a  
look at C42. Mr Slater, this document appeared on a directory  
within CAG within your area of now employment at just shortly  
after 8 a.m. on the 26th of February 2007, and it was a  
directory entitled, "John Slater". Now, this document has  
been determined to be in confidence by the department so I'll  
just make a couple of references to it. Firstly, do you  
recognise it as a Queensland Government Overseas Travel  
Report?-- Yes.

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Do you recognise it as a report by Mr Ross Martin?-- Yes.

And does it give a detailed account of a trip to Hong Kong,  
Warsaw Posnan, Poland, Prague in the Czech Republic for the  
period 21st February 2006 to the 13th of March 2006?-- Yes.

And does it give an entire A4 page, second page, of outcomes  
of the travel?-- Yes.

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Now, can you explain why a Gold Coast Institute of TAFE  
Overseas Travel Report relating to the commercial affairs of  
TAFE found its way to a directory, in your name, with your new  
employer? What do you know about that, please?-- When I was  
at Careers Australia Group, there was a very small amount of  
international business being done. It was in a very  
specialised area and there was an officer working on that.  
Scott Flavell wasn't happy with the reporting that was being  
done by that person travelling, so he asked me to look at the  
reporting. I knew that there was a very efficient reporting  
system being done at the Gold Coast TAFE, so I spoke to  
Aleisha and said was there - I asked her if there was a copy  
of that report for the headings and the structure, and I guess  
the tone of the report was much more of a professional report  
than what was being used, and so that was how it came to -  
Aleisha brought it with her.

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I see. I tender that as an exhibit with a non-publication order, Chairman.

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MR NEEDHAM: That's Exhibit H21, subject to the non-publication order.

ADMITTED AND MARKED "EXHIBIT H21"

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MR DEVLIN: So are you suggesting that the purpose of arranging for an internal TAFE document to end up at your new employer through Ms Straughan was for its advantages as a template reporting form?-- Yes, because I - once I'd looked at the report, I actually provided Scott Flavell with a new template for reports for the officer.

Do you concede that the document appears, though, to have quite a large amount of commercial information in it?-- I can see it could be perceived that way, but there was no commercial advantage with that report with Careers Australia Group because Careers Australia Group had very few international products. It had very few - very little activity in the international market, and would take a long time to develop that.

20

One might suggest, though, that if it had very few and such very few outlets in that area, and such outlets take some time to develop, that taking of shortcuts by obtaining other information from another organisation might be tempting?-- The international market in the vocational area requires you to have a whole range of products and services available, of which Careers Australia Group didn't have, and wouldn't have for a long time. It had a very limited international product range which was a highschool preparation course, and there was a lot of work that needed to be done. So, really, there were no shortcuts to be gained because the Gold Coast TAFE has something like 800 product ranges. It has university articulations. It has a very advanced international strategy, and this document was to be used, as I said, as a template so that - to look at the reporting that was going on.

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Well, have a look then at document C44 then. This is a Queensland Government Overseas Travel Report by Nathaly Clairmont for a journey 3 November 2006 to 21 November 2006 to the UK, France, Poland, the Czech Republic and Hungary, spelt "Hungry", again containing a page and a half of reporting on that trip, do you see that?-- Yes.

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That also arrived at the same time?-- Yes.

I'll tender that document again subject to a non-publication order, Chairman.

MR NEEDHAM: That's Exhibit H22, subject to the non-publication order.

ADMITTED AND MARKED "EXHIBIT H22"

MR DEVLIN: I ask you then to have a look at - perhaps when that's marked it can be handed back to the witness. I'd asked you now to have a look at document 45. This is a report of Andrew Gabriel, Queensland Government Overseas Travel Report for a period 11 November 2006 to 23 November 2006, reporting upon a trip on behalf of Gold Coast Institute of TAFE to India and Malaysia, again containing a page and a half of information, do you accept that?-- Yes.

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Now, I'll tender that into the report, again subject to a non-publication order, Chairman.

MR NEEDHAM: That's Exhibit H23, subject to the non-publication order.

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ADMITTED AND MARKED "EXHIBIT H23"

MR DEVLIN: Now, my question is this, Mr Slater: if these documents were intended to be a template for a reporting regime instead of a means of obtaining information, why were three necessary?-- I'm not sure why three were brought. Three weren't necessary.

30

Did it even cross your mind that you were receiving information that was potentially commercially sensitive?-- I didn't believe - the reason why I requested the information, as I said, was to get the structure and to get a much more professional approach to the reporting which is what Scott was concerned with. I can't even - I can remember those reports being saved. I don't think I even read them other than to look at the headings.

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Did Ms Straughan, to your recollection, resist any notion that she should bring such documents with her-----?-- Not that I recall.

-----from the records of TAFE?-- Not that I recall, no.

Mmm.

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MR NEEDHAM: Can you remember if you gave her a reason why you wanted such a document? See, if you didn't give her the reason, she might have thought you wanted the entire document, so she therefore brought you more?-- Yeah, sure.

Whereas if you had said the reason, then you would wonder why she would bring three?-- Yes. I can't remember the - I can

remember saying - having a conversation that the reporting was, you know, was not what we needed and that the reports at Gold Coast were much more focused on outcomes and the headings were very clear because I'd worked on them down there. I can't remember the exact conversation. I said, "Look, the reports down there are really good, would you be able to get me one." That's as I recall the conversation.

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All right.

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MR DEVLIN: Well, now, I'd like you to look at C46?-- Thank you.

Now, this document runs to three pages, and I think it's headed, "Gold Coast Active Agents"; is that right? Can you confirm that for me?-- Yes. I'm just looking at the top left-hand corner. Yes.

It seems to be a spreadsheet alphabetically organised of contacts spread through the Gold Coast, people operating businesses spread through the Gold Coast. It's headed, "Gold Coast Active Agents"?-- Yes.

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It seems to go for three pages from A to Z. Now, that also was delivered on to the CAG server on the morning of the 26th of February 2007. Can you assist this inquiry as to the circumstances under which it arrived at CAG?-- I believe Aleisha brought it, Aleisha Straughan brought it.

As a result of what request, you see? We've had a specific request about, you say, a form, although you got three, but a form which would assist you in formatting a reporting form for the Careers Australia Institute of Technology. What is the purpose for asking for the Gold Coast agents' list, please?-- This list was agents that were working - that are actively working in the international recruitment of students. Again, there was very little activity being undertaken by the Careers Australia Group once I'd arrived there. The international area was not very active, and I did suggest to Aleisha that some information about - we just had a discussion about agents. She then brought this list with her.

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You would know this-----?-- Sorry, at the Gold Coast, this list also included - there were - it was called the Gold Coast Agent List, but it also had agents from overseas and from Brisbane and Sydney because agents work in various offices.

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I understand that and I'm coming to that. Thank you. But I'm just trying to explore on what basis you felt justified in asking for information compiled by the Gold Coast Institute of TAFE to be delivered to your organisation which was effectively a competitor? Can you explain that?-- Well, again, as I said before, if it was effectively a competitor, I don't believe that. There was very little - there are very few international products. There was no agent activity; there was about a handful of students that-----

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But a casual - sorry, I didn't mean to cut you off. Complete

your answer?-- And so therefore the discussion around agents was there's going to need to be a lot of agent activity undertaken. There's very little activity happening. The international side of CAG, I think when the owners purchased the Hilton business, they thought that it was going to have more international business, but the Hiltons, I believe, had actually gone out of the international side of things. They were focusing on a migrant English program, and so Aleisha and I did discuss the need for working with agents. There are agent lists - information about agents that can be made available through other ways as well.

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Yes. But this is a way that involved a person leaving TAFE, bringing information to a competitor, that had been developed by TAFE. Surely you see that now?-- Yes. But it's a list of contacts.

Well, indeed. But, of course, it is a list of contacts developed over time by a particular commercial organisation. Let me ask you around the other way: Do you think you were perfectly entitled to access these records of TAFE?-- Where Aleisha and I had a discussion and she brought this document with her-----

20

Yes. You've said that?-- Yes.

I'm interested in your mindset, you see. Your attitude. Having left TAFE, yourself, did you consider that this was a piece of TAFE's property that you could access at will?-- I wasn't - I guess I wasn't expecting that this document may arrive. We were talking about-----

30

Well-----?-- We were talking about the need for activity with agents. Certainly I knew this document existed-----

Indeed?-- -----at TAFE.

I can imagine you wouldn't have expected being asked in a public forum about it, but I'm interested in your mindset at the time. This is an inquiry into, among other things, the use of documents by other sections of the same business sector, if you like-----?-- Mmm.

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-----that belonged and had been developed, that were germane to, and had been developed by TAFE. You couldn't, for a moment, suggest that you were entitled to access TAFE's information, sitting as you were at the Careers Australia Institute of Technology?-- I'm not suggesting that, no.

No. Righto. I tender that as a confidential exhibit at this time.

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MR NEEDHAM: That's Exhibit H24, subject to the non-publication order.

ADMITTED AND MARKED "EXHIBIT H24"

MR DEVLIN: Now, I believe we have a list of Brisbane agents. So there was Gold Coast active agents and then document 47 is headed, "Brisbane Agents". This is the list of Brisbane agents that Gold Coast Institute of TAFE had developed itself; correct?-- It would appear to be, yes.

Yes. And again my question is: you don't in any sense seek to justify the delivery of this document from within Gold Coast Institute of TAFE to the Careers Australia Institute of TAFE, do you?-- No.

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Thank you. And then finally-----

MR NEEDHAM: Is that to be an exhibit?

MR DEVLIN: Sorry, yes, I tender that.

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MR NEEDHAM: H25, subject to the non-publication order.

ADMITTED AND MARKED "EXHIBIT H25"

MR DEVLIN: And finally, then, there's an international list. It's just being copied at the moment, I'll come back to that. But, of course, a casual observer might think that the documents could be used to develop in the future the appropriate contacts in all of the places mentioned in those lists, you would agree with that?-- Yes.

30

In that list, sorry. Amongst those documents are a whole range of other TAFE documents downloaded that day?-- Yes.

You say you had some conversations with Ms Straughan. I should clarify: were those conversations, whilst she was herself still employed by TAFE but considering coming across to Careers Australia?-- When I was talking to - Aleisha and I had discussions about her position, what the position would be, the role, various issues around conditions and things like that. The position description, a draft look at things like that, or a discussion around that. So it would have been at the time we were talking about the business and what things may be - you know, the business, the focus of the business, the priorities, strategies, things like that.

40

And I won't-----

MR NEEDHAM: The focus of CAG, Careers Australia Group?-- The business she was coming to. So talking about the fact that, you know, even though there was initially a very strong focus on international business, it really was starting from scratch, and things like that.

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But you were looking to build up an international business over time?-- At the time that was part of the strategy, yes.

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Okay.

MR DEVLIN: Did you represent to Ms Straughan, for example, whether it be true or not, did you represent to Ms Straughan, for example, that requests were being made by Mr Flavell for these documents, or was this something that you did unilaterally of your own accord?-- In terms of the report, as I mentioned, that was regarding the fact the reports were - that Scott had looked at, he wasn't happy with. So that was simply around, as I mentioned before, the structure of those reports. There was never any request for any commercial information about anything.

10

You mean emanating from Mr Flavell to you?-- Yes.

It started with a request about report formatting?-- About report formatting, and the agent discussion was simply around the fact that when I joined the company, even though there was an international organisation that had been purchased, there was no international business there that was being undertaken, or very little.

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MR NEEDHAM: You say you had this discussion with Ms Straughan about the fact there was very little international business, but that was part of the ongoing strategy of the business to develop one?-- I can't recall if we talked much about the strategy. We did - when I talked to Aleisha, as far as I can recall, I talked to her about, well, this is what the business has done, they purchased these two companies, but the international one has got very few students, et cetera, et cetera. That was very early in the piece when we were talking, just to sort of fill her in on what she was coming to.

30

The point I'm getting at is you had another discussion with her about the proposed future strategy of the business, vis-a-vis, international students to obviously get her to, in her mind, bring along those three agents' lists that we just looked at?-- Oh, I see.

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Now, if that's the case-----?-- Aleisha was aware that the business was - had an international component as well, yes.

Right. Now, in that case that could be the same rationale which led to her bringing not just a template of the Overseas Travel Report which would be available presumably on the TAFE computer system, but to in fact bring along three completed reports as we've seen?-- Possibly, but - yes, I guess so.

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It just seems logical, doesn't it?-- Yes, yes, it could be. Although, Aleisha, I believe, through her experience also knows that it takes many, many years to develop an international business. It's taken six years or so, or seven or more, for Gold Coast to develop where it's at, and to have successful international business you need that breadth of

qualifications, depth of qualifications; articulations with the universities. All of those things take a long time to develop. So I think Aleisha would have been aware of that, but I didn't discuss that with her.

1

Okay.

MR DEVLIN: Were you also familiar with a person within TAFE called Nick Babovic?-- Yes.

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And did he also make the switch from TAFE to the Careers Australia Institute of Technology?-- Yes.

And did you arrange for that to occur?-- I discussed with Nick about the fact that there was a strong User Choice component which is the apprenticeship side in the organisation, and he had a very strong background in that area, and we did discuss those opportunities, yes.

And are you aware whether or not Mr Babovic brought documents with him when he left TAFE?-- I'm not aware. When he came to the organisation, he answered directly to Scott and the two halves of the business were basically the User Choice apprenticeship side and the international side, or - it was really a migrant English side which was branded the international side.

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And did you have more to do with that side?-- Yes.

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I see. And so-----?-- I had very - virtually nothing to do with the user choice apprenticeship side of the business.

So whereas you are able to tell this Commission that you had conversations with Aleisha Straughan on two particular topics germane to the international side which led to the delivery of some documents, did you have any such conversations with Nick Babovic?-- I would have had similar conversations with him in terms of the fact that what the business had done, where it was, because I had - I was in the business then, so I would have told him that they had purchased the two companies, that there was a strong apprenticeship component, that there was - there was a growth strategy in the company to grow and to purchase more businesses, there was a focus on that and I would have explained all of that to him.

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Now, did you, though, have any conversations about the need for any documentation?-- No.

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Thank you. Turning back to Aleisha Straughan then and her arrival to commence work on the 26th of February 2007, how did those documents arrive at Careers Australia Group?-- As far as I understand, when Aleisha came she emailed them to me and I saved them to the drive under my name, and there are a number of - as I said, I looked at the report, did some work on that. In terms of the other documents, they weren't really very useful because we weren't in any position to use them. So they just got saved.

30

MR NEEDHAM: When you say Aleisha emailed them, is that emailed them from TAFE to you or-----?-- No, when she arrived.

When she-----?-- Internally.

Okay, I see.

MR DEVLIN: I take it you wouldn't do that again?-- Do what again?

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Have any role in having documents from a former employer get switched across?-- No, in retrospect probably those - and knowing the direction that the company has gone in, when I started I felt that there was going to be a very strong international component which was part of the reason I joined. On the first day I got there I was told that there were no international students at all. And so, no, I wouldn't encourage that at all in the future.

50

Well, your answer seems to imply that you wouldn't do it again because there was no commercial usefulness of the documents, but really it is more a matter of principle, surely?-- No, what I was saying was - what I am trying to say is there is no - there was no - the international side of the business was really not - not there and in terms of the other sides of the business, equally there would be no - I wouldn't want - wouldn't want to go through with - there wasn't a need for it.

Even in terms of the agent lists and that that were provided, there are other avenues to get that material. It was really more of a convenience thing.

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More of a convenience thing?-- Yeah.

But the avenue you took-----?-- Mmm, I wouldn't take again.

-----was not proper-----?-- I wouldn't do it again.

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-----I suggest. You wouldn't do it again because it was not proper to take that route in getting the information. Do you accept that?-- Yes.

Thank you. Now, the last list I had to show you was this one. I apologise, that's my handwriting at the top left-hand corner, Chairman. It was in fact unlabelled. There should be three pages. Just satisfy yourself that that is the international list of agents. It will be obvious by their addresses, I presume. You accept that?-- Yes.

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Do you accept that's one of the documents that came across on the 26th of February?-- Yes.

Thank you. I will tender that, again subject to a non-publication order.

MR NEEDHAM: That's exhibit H26 subject to the non-publication order.

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ADMITTED AND MARKED "EXHIBIT H26"

MR DEVLIN: Thank you, Mr Slater. They are all the questions I have, Chairman.

MR NEEDHAM: Just before you get up.

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MR LAWLER: Certainly.

MR NEEDHAM: When one leaves the public service, isn't there an exit interview that you take part in? Did you take part in an exit interview or is that only more junior officers?-- I didn't have - when I left Gold Coast TAFE I had an exit interview with the institute director.

That's when you went from there to the head office?-- Yeah, yeah.

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And what was that exit interview about?-- Oh, handing over documents, keys and, you know, like pass codes and passwords and things like that.

And you said documents?-- Well, not really handing over documents, no, because I didn't - there weren't any sort of

thing.

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Right?-- But in terms of - like your car, car keys and things like that. In terms of when I was in Mary Street, the handover was done with - I think it was done with Bob McAulay. When I first got there I didn't really have a supervisor as such, I was a project officer, and so then when I went to Southern Cross - Southern Queensland Institute of TAFE, I handed all the - all of my keys and passwords and so forth back to the Chief Financial Officer who was up there.

10

I see?-- So it was sort of-----

You left and went, came from being the director up in Toowoomba?-- Toowoomba, yes. I wasn't in Mary Street.

So in those circumstances no HR person, say, conducted an interview with you?-- No.

All right.

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MR DEVLIN: I think I can assist?-- Not that I can recall. I had - I - I handed my - there was a - an officer called Athol Perrich and I handed all my keys and passwords and things up there to Southern Queensland. I am not - I did need some things from the HR area, as in final payroll and things like that which I requested and some of those things were emailed to me after the fact. I had to transfer my-----

MR NEEDHAM: Look, I don't need to know all those sorts of things about your own-----?-- But there wasn't sort of a-----

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-----personal affairs. What I am more interested in is whether anyone spoke to you when you left about confidential documents within the department, whether you handed over any USB sticks, say, that you might have had that were departmental property with departmental documents on them. Was there anything of that sort of nature done when you left?-- That wasn't done with me, no.

40

Okay.

MR DEVLIN: I can assist with some documentation. I would ask the witness to have a look at this separation notice and separation checklist. I appreciate you are probably working off your general recollection, witness. I will show you these. The first should be the separation notice. Is that what you are looking at?-- Yes.

That notice appears to be dated the 11th of January 2007 and signed by you?-- Yes.

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Then go over for the other two pages. There appears to be a separation checklist?-- Yes.

Which appears to be completed by G Barker, Director Support Services, dated 19 January '07. I think you agreed with me that you started with Careers Australia Institute of

Technology on the 22nd of January?-- Is this the first one? 1

No, the second one?-- I have got a 23rd of January signature.

It has been received stamped?-- Oh, yes, G Barker.

It seems to have been processed by the Director of Support Services?-- That's right.

So looking at-----?-- That was with - now that I recall, that 10  
was with Grace Barker who was the Director. That was the  
person I was telling you about, Director of Support Services,  
yes.

Grace Barker, righto. So going back to the checklist then, on  
the front page of the separation checklist-----?-- Uh-huh.

-----there is provision for things like return of mobile  
phone, return of laptop?-- Uh-huh. 20

Those things were done?-- Yes.

Is there a provision in there for return of a USB stick or  
anything of that nature? Doesn't appear to be, does there?--  
No.

In any event, how - by what process did you - sorry, do you  
know by what process the separation checklist was completed?--  
This is - I filled this in and sat down with Grace Barker and  
went through it with her. 30

Right. So that, for example, if you had purchased your own  
private USB stick, you as an employee wouldn't feel required  
to hand it over, would you, I take it?-- Sorry?

If you had your own privately-----?-- Like if I had my own  
private mobile phone?

If you had your own private USB stick, is my question, as an  
example you wouldn't be compelled by this checklist to hand it  
over?-- No. 40

But there are checklists - sorry, there are check points  
concerning the employee having cleared or deleted personal  
files, or archives removed to another appropriate staff  
member, and so on, and those things were done by you, is that  
right?-- Yes.

Okay?-- I just followed the checklist and did what I thought  
was supposed to be done and I did it with Grace Barker who was 50  
the director of corporate services, who is a senior officer.

Right. I will tender that, Chairman.

MR NEEDHAM: Yes, that's exhibit H27.

ADMITTED AND MARKED "EXHIBIT H27"

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MR NEEDHAM: Were you asked any questions about whether you had any, say, departmental documents on your home computer that you'd taken home to work on or anything like that?-- No.

In other words, about whether you had any material that you should-----?-- I wasn't asked.

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-----put back into the department?-- I wasn't asked that, no.

Okay. That's all right. Just - is that all on that, Mr Devlin?

MR DEVLIN: Yes, I have just got one other topic.

MR NEEDHAM: Just - this issue of staff leaving a department and just sort of feeling they can take departmental documents with them, your own view when a person - and here I am looking at recommendations we might have to make - when a person is being head-hunted, to use a term that was used this morning, do you yourself, as an ex-employee of the department, have any view as to whether there comes a time when you should tell your superior that you have been approached? In other words, whether you should declare the possible conflict of interest so that if it can be seen subsequently that you are doing something for that particular organisation, it can be determined objectively by someone superior to you as to whether it is appropriate that you should be doing it or whether you should be removed from the access with them? I am just seeking your guidance?-- Possibly.

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Your wisdom?-- Based on this experience, perhaps, yes, because - but then I guess what - I guess what I've said is I've - it is the way you view that commercial information, too, but I think that your suggestion may be a good one.

I understand, of course, that there would be a reluctance to be advising your superior that you are thinking of possibly leaving, say in case you don't?-- Mmm.

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You wouldn't want that to be known. But then again here you are as the director up at-----?-- Toowoomba.

-----Toowoomba, it might be viewed by some people in those circumstances that you're engaging with your prospective employer?-- Mmm.

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And showing them around the TAFE and everything?-- Mmm.

Could be seen as an apparent conflict of interest, even if it wasn't a real one?-- Yes, yes. That's true. And I guess, to address that, I actually asked other staff to do that. It wasn't - it was quite open, and, as I said, and I do remember in the first - you were talking about the closed hearing, talking about the fact that the third party access policy was

there and it was very new. It was a very new part of the skills plan and there is a very strong reluctance to - between TAFE and the private sector, whereas what was trying to be achieved through the skills plan was the government needs more skilled workers, therefore if you can work together, or if you can get more private providers, or if TAFE can become more efficient, or whatever those initiatives were, that was the objective. So I can see in this instance that perception could be there.

1

All right, you can't offer any other guidance, having been through this situation yourself, as to how it should be handled?-- I don't know how you can - as you said, I don't know how you can encourage people to share that they are looking for work elsewhere and that they are looking in the private sector. A lot of people do it on an ongoing basis. So-----

10

And there is nothing wrong with that?-- Yeah, and in the government - you know, vice versa. So there is always a reluctance to sort of share that information because things might fall through or, you know, you just don't know. I don't know how you would encourage people to do that.

20

Yes, but surely there is a concern when someone is in that situation that they are considering whether to join a private organisation, that if they are giving out departmental information during that time they might be doing it not out of the best interests of the department but more to build up their own credibility with the organisation that might be looking to engage their services in the future. There is a real potential, wouldn't you agree, for a conflict of interest situation to arise?-- Possibly, yes.

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Yes, all right, thank you.

MR DEVLIN: Thank you. I have nothing further of Mr Slater.

MR NEEDHAM: Yes.

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MR LAWLER: I have no questions, chairman.

MR NEEDHAM: Yes, Mr Applegarth?

MR APPLGARTH: Mr Slater, just on the question that the chairman asked you, I suppose your experience of being in private industry, then going to the government, then going out is not uncommon?-- Mmm.

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Is that right?-- No - oh, in the TAFE sector there aren't a lot of people have been in the private sector and gone in and out. A lot of people tend to have a long career within the government sector.

Right?-- So there is a few people who have had that

experience.

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So I suppose - it's a shame we have to personalise this, but you are another case study in addition to Mr Flavell. If we can move back, you were previously with Sarina Russo's organisation?-- Yes.

So presumably at some point you thought about the attractions of going to the government?-- Yes.

10

And it was a matter for you as to whether you disclosed to your then employer as to whether you were thinking about that?-- Yes.

And the possibility existed if you told them about that they may think you weren't a team player or in for the long haul or something like that. Is that a fair comment?-- There is always that hesitancy, although in my case I was quite upfront with it. The reason I wanted to move into the government was to see a different side of the VET sector that I hadn't experienced.

20

And to improve your personal skills-----?-- Mmm.

-----along the way, through you doing good for the community, we all hope, is that right, that you were trying to improve your skills, experience?-- I hadn't experienced that part of the market, which is a very big part of the VET sector.

And with that experience and skills you could either continue in the public sector or go into the private sector?-- Yes.

30

And that occurred to you; I suppose you had that clearly in mind?-- Yes, I could have.

If you reached a roadblock somewhere in your career path, you could then leave the public sector and go into the private sector, is that-----?-- I could.

That's in fact what you did-----?-- Mmm.

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-----isn't it? Can I go back to an earlier stage when you were the head of Education at the Gold Coast TAFE. Apart from that you were called in on some particular projects. Is there an enrolments project?-- No, I wasn't at the Gold Coast TAFE when I was doing that project.

I am sorry, my fault. Were you - you better explain it. Did some problem arise that the enrolment system had somehow been bungled and needed to be fixed?-- When I was seconded by the Deputy Director-General to do this Skilling Solutions Queensland project, I then - I fulfilled that project and then there was a new Operations Manager came into the department. His name was Bob McAulay and he asked me to not only do the Skilling solutions Queensland project work but to take on other projects, and other projects - one of those other projects was called ISAS, which was the student enrolment system for TAFE and it had - there had been problems with its

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implementation in the TAFE sector. I was asked to address that project and was asked to put a team together of people who could assist to stabilise that system for the whole of the TAFE sector because it had caused huge problems within TAFE.

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I will move on. I don't want to dwell on this but can you tell us why were you selected to do that project? Was it something in your experience?-- No, I had no IT experience. My experience was in managing TAFE institutes and also with enrolling students. So I was more - because I have - I had project management skills, I guess, I was asked to look at that as well.

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Can I deal with another topic, and I know dates and times and sequences are probably pretty hard, but can you recall an occasion early in November 2006 when you had a discussion with Mr Flavell about where he saw his future going, as to where you might see your future going?-- I can't recall those conversations. I know that we talked about - I know that we had some discussions around whether the Premier would change and what would happen in the department, things like that, we had some discussions around that.

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Do you recall an occasion when he told you that he thought he might be leaving to go to the energy sector?-- He said to me that he was - one of his - an option may be that he may become a consultant in that sector.

Right. Did he mention anything about Mr Wills and his plans?-- Not that I can recall.

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He didn't give you any indication in early 2006 that he was going in with them?-- Not that I can remember.

And you didn't have any intention of going in with them at that time?-- My career at that stage was with - my main focus was on becoming an institute director.

And in these discussions with Mr Flavell you would have made that clear, that's the way managers operate, that they bring people in and ask them what they are doing and what their intentions are?-- I hadn't met Scott Flavell very often. I hardly knew him.

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No, but you were interested in becoming a TAFE director, weren't you?-- Yes.

And you made that known?-- I made that known more to my immediate supervisor, which was Bob McAulay who was the operations manager who looked after the TAFEs.

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And you can't recall giving that same indication to Mr Flavell, that's where you saw your future?-- That I wanted to - that I wanted to pursue a career with TAFE?

Yes?-- I may have.

Right. Can I move on to the end of 2006, and you were asked

some questions by my learned friend Mr Devlin earlier about meetings that were set up - and I am not sure whether it was the 27th or the 29th of November, but I think Mr Devlin mentioned both of them, but you recall that bracket of evidence, some emails went around about trying to set up a meeting with Mr Flavell?-- With? When was this?

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The end of 2006. I think it was late November 2006?-- Yes.

And you went on to-----?-- I was the institute director at TAFE then.

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Yes, I just wanted to make this clear: Mr Flavell by then had left the public service. He was over in the private sector, correct?-- He left on the 18th of October. There was a broadcast sent out.

Yes. So just to be clear, because not everyone is as familiar as you are with the dates, this meeting was-----?-- After he'd left.

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-----when Mr Flavell was in the private sector?-- Yes.

Can I just deal briefly with the role that you had after you went to CAG?-- Mmm.

Obviously there is some significant integration problems trying to get the business up and running or integrate existing businesses into a new one?-- I was employed as the Executive Director.

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Yes?-- Of the institute.

And so that would have involved you in looking into the Hilton's business and looking at budget projections and whether they were on track to meet their budget, those sort of things?-- There was some discussions around the original proposals that they had put forward, yes.

And was there a budget problem, the budget that they had given wasn't being met by quite a large margin?-- There was issues around the fact that there was very little international business and that the business was mainly focussed around a Federal Government contract for migrant adults and that there was not a lot of room for growth for that, and therefore there were discussions around where could growth be obtained.

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And was there a factor that Hiltons had lost a Commonwealth Government literacy and numeracy program to TAFE?-- Yes, prior to - prior to me joining, apparently the Hiltons had an LLNP contract that had gone to TAFE, yes.

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I don't want to buy into this because it is only a peripheral relevance but it was a difficult bedding down period, was there?-- Definitely.

There is, for want of a better word, and I don't want to say who is right and who is wrong, and I don't want you, really,

to, there was a clash of cultures?-- I guess in retrospect we were brought in - there were a number of external officers brought in to the company, or external managers, and there were also a number of previous owners that stayed on, and to be expected there would be a period, I guess of adjustment that needs to go there where the new owners were expecting a different direction, et cetera. So I was not aware of that because I had never been in that before but that's what occurred, yes.

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So basically what had essentially been a family business was being integrated into-----?-- A new business.

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A new business that had plans to go in different directions?-- Uh-huh.

And you were part of that process of trying to manage that process?-- Well, that was one of my roles, was to - as the executive director, yes.

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Is that why you approached Ms - is it Aleisha Straughan, that you thought that she would be able to bring skills to bear in the area?-- Whenever - I guess I have learnt that when you start or when you manage in any organisation, having very good people around you is the key to being successful, and so Aleisha Straughan was a very good person who I'd worked with before, Nick Babovic was as well, and I mentioned to them that there may be possibilities of working in this organisation, they were interested and we progressed from there. Just like in any normal interaction when you join a new organisation, if people have worked with you before and you know they are good, then, you know, that's who you would contact if there were opportunity. If there were no opportunities, you wouldn't.

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Yes, I have no further questions. Thank you, Mr Slater.

MR DEVLIN: I have nothing further of Mr Slater. May he be excused?

MR NEEDHAM: Yes, thank you, Mr Slater?-- Thanks.

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MR DEVLIN: I have a brief witness now, Peter Anthony King. I would ask that he be called.

MR LAWLER: Might I be excused, Chairman.

MR NEEDHAM: Yes, thank you.

MR LAWLER: Good afternoon.

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PETER ANTHONY KING, SWORN AND EXAMINED:

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MR DEVLIN: Can you tell us your full name, please?-- Peter Anthony King.

And can you have a look at this attendance notice, please? Is that what brings you here?-- Yes, it does.

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Thank you. I will tender that.

MR NEEDHAM: Exhibit H27.

ADMITTED AND MARKED "EXHIBIT H27"

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MR DEVLIN: Mr King, have you also compiled a statement for the Commission?-- Yes, I have.

Have a look at this original statement, please? Is that the statement dated 21st April 2008 that you compiled?-- Yes, it is.

Thank you. I formally tender that. You may keep it with you, though, for the moment if you need to refer to it.

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MR NEEDHAM: That's exhibit H28.

ADMITTED AND MARKED "EXHIBIT H28"

MR DEVLIN: Thank you. Now, Mr King, you had quite an extensive background with the Department of Education in Queensland?-- That's correct.

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From 1960 until 2004?-- Uh-huh.

In what area of the Department of Education?-- Regionally I worked as a teacher and as a teacher in the Queensland School for the Deaf, and I moved into various sections of the head office of the Department of Education in the early 80s.

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After your retirement from the department, did you look at employment with Hilton International College?-- Yes. I expressed some interest in working as an international education consultant and, amongst others, Hilton approached me to discuss possible ways that I could work with them as a consultant.

And was that after you had retired from the department?-- Yes, it was.

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Thank you. And so what function did you carry out for Hilton, ultimately?-- Well, I was styled as their education consultant, but my main task was to try to assist them in building and rebuilding in some instances their markets for international students in various parts of south-east Asia.

And so did you in that capacity do the travelling that required the marketing for Hilton?-- Yes, I did.

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And as at late 2005, how would you describe the international component of Hilton's portfolio of work?-- It was still very small. It had started to grow, but it had a long way to go before it became the size that it had been previously.

In October 2005, did you receive a telephone message to contact a person named Scott Flavell?-- I did.

And who handed you that message, do you remember?-- My recollection is that it was given to me by the receptionist, Belinda Ceh.

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How do you spell that?-- C-E-H.

Thank you. And what did you do as a result of getting that message?-- I rang the telephone number that was indicated and that turned out to be somewhere in the Queensland Art Gallery, and I asked to speak to Mr Flavell and indicated I'd received a message to return a call, and I was told that he was no longer in the building and that I should try and contact him back in the Department of Vocation, Education and Training.

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Did you ultimately get to speak to Mr Flavell?-- Yes, I did. I believe it was the same afternoon.

Now, approximately when was this?-- Are you talking about the time of day?

The conversation - no, the month, the time?-- I believe it to be in October of 2005.

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Yes. Thank you. And what conversation took place when you finally did get to speak to Mr Flavell?-- Mr Flavell indicated he'd been trying to contact Hilton International College, that some people that he had had been involved with were interested in joint partnership arrangements or even possibly the sale of colleges to expand their businesses.

Did he elaborate?-- No. He asked me a few questions with respect to the present state of Hilton and the arrangements that were in place. I recall-----

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How did you-----?-- I recall-----

Go on?-- I recall indicating to him that I wasn't aware that the college was for sale but I was sure, like all private companies, if somebody had a good offer they'd only be too happy to listen to it.

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And so were there arrangements made to put someone in contact with Mr and Mrs Hilton?-- At the end of the conversation Mr Flavell indicated to me that he had whatever information he required for me, and that possibly some people would be contacting Mrs Hilton over the next short while.

Did you know who Scott Flavell was at that time, what function he had in the-----?-- Yes, I did. I knew he was the Director-General of Department of Vocation, Education and Training, and I believe he was also simultaneously the Director-General of Mines and Energy.

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Thank you. And was it clear to you from the conversation why it was you were speaking to him about these issues?-- No. My impression was that some people were interested and I assumed, and it was my assumption, that it was probably something to do with people wanting to get involved in either training foreign workers who needed English language training coming into Queensland, or possibly some people who had some business experience and were wanting to extend their business operations.

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And when you say Mr Flavell asked you some questions, what did those questions relate to?-- Mainly - initially there were one or two questions relating to the ownership of the business and, as I say, whether Glynne was interested in selling the business. But the bulk of the questions were more to do with the size of the operation, the numbers of students, and the current situation with regard to international students who were there.

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Right. Now, you had no reason to record the conversation. This is out of your general recollection, I take it?-- Yes. Very much, yes.

Thank you. And so did you pass on the information about the contact to Mr or Mrs Hilton?-- I gave the information to Mrs Hilton the next time that I spoke to her, gave her a general flavour of the conversation, and indicated that probably she'd get a call from somebody in the future that would make the matter a bit more clear.

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Very well. Thanks, Mr King. That is all I have.

MR NEEDHAM: Yes, Mr Applegarth?

MR APPEGARTH: Just a couple of questions. It seems there may have been some misunderstanding with messages being left as to who Mr Mr Flavell wanted to speak to-----?-- Yes, I understand-----

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-----is that your impression?-- Mr Flavell didn't ring me. He rang to speak to Glynne Hilton. Glynne wasn't available, but because he'd said that the message was urgent, it was passed on to me.

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In any event, you may have called him back, and he may have thought that you were the business consultant in the business side of the company, is that the upshot of it, whereas you called back thinking it may be some government or regulatory inquiry?-- My initial impression, when I saw the name Scott Flavell, was it was more likely than not to be a regulatory matter, yes.

But it wasn't. It was just a brief inquiry; the conversation didn't take too long?-- No, no, no.

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And, as you say, you didn't have anything more to do with him?-- No. In the matter that was under discussion at the time, no.

And, in fact, would it be the case that the next time you heard of his name in the context of Careers Australia Group was in September 2006? To put a context around it, do you recall an occasion when the Hiltons went off to have a meeting with Mr Wills and others, you may not have been at the meeting, and they came back and announced that Mr Flavell was going to go into the company?-- No, I'm not aware of that.

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When did you first hear Mr Flavell's name again in this context?-- Glynne and Nathaly spoke to me just before the public announcement that the college had been sold.

And that was in, what, late 2006?-- That's right.

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And that was the first time that Mr Flavell's name came into play with you?-- In relation to the sale of the college, yes.

I have no further questions.

MR DEVLIN: Thank you. May Mr King be excused?

MR NEEDHAM: Yes. Thank you, Mr King.

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WITNESS EXCUSED

MR DEVLIN: Tomorrow, Chairman, there'll be two witnesses in

the morning. That will be two other former TAFE employees: Gavin Leckenby and Greg Harper. I would expect therefore that the evidence will take a couple of hours in the morning and we're hoping to get a clean start with Mr Flavell on Wednesday. That is the current state of play.

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MR NEEDHAM: Yes. Mr Applegarth, is there any reason why Mr Flavell's evidence couldn't start tomorrow afternoon?

MR APPLGARTH: It's a matter for the Commission. Particularly not from my point of view. I haven't checked with him but I think that will be okay.

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MR NEEDHAM: We'll see how it goes.

MR APPLGARTH: Chairman, was the statement Mr King made an exhibit, I may have missed that?

MR NEEDHAM: Yes. Exhibit 29.

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ADMITTED AND MARKED "EXHIBIT 29"

MR DEVLIN: Can I just talk to my learned friend for a moment? Chairman, the reason we were to start Mr Flavell on Wednesday was to suit Mr Perrett's availability, so my friend is going to check that.

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MR APPLGARTH: I don't anticipate there will be a problem but if there is I'll tell Mr Devlin in the morning.

MR NEEDHAM: Yes. If you could sort it out between you. I certainly have other things I could do tomorrow afternoon.

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THE HEARING ADJOURNED AT 3.37 P.M. TILL 10 A.M. THE FOLLOWING DAY

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