



Transcript of Proceedings

CRIME AND MISCONDUCT COMMISSION

MR R NEEDHAM, Chairman

MR R DEVLIN SC, Counsel Assisting, Appointed by the Chairman

OPERATION PROXY

BRISBANE

..DATE 15/07/2008

..DAY 2

PUBLIC HEARING

THE HEARING RESUMED AT 10.12 A.M.

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MR NEEDHAM: Yes, Mr Devlin.

MR DEVLIN: Chairman, I should say at the outset that it was envisaged that Mr Flavell would commence his evidence this afternoon. That's not possible according to his counsel, and I don't have any issue with that, if we start him tomorrow. That would mean that today will be Mr Leckenby and Mr Harper. So, I'd expect we'd finish at least by lunchtime.

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If it please, I'll call Gavin Leckenby. You might also note, Chairman, we've gone beyond the horse and cart age and we're going to show a few documents on a screen, as long as we can get it to project up there.

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GAVIN JOHN LECKENBY, ON AFFIRMATION, EXAMINED:

MR DEVLIN: Good morning. Can you tell us your full name, please?-- Gavin John Leckenby.

Can you have a look at this document, please. Is that the attendance notice that gets you here today?-- Yes, it is.

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Thank you. I tender that for the record.

MR NEEDHAM: That's Exhibit H30.

ADMITTED AND MARKED "EXHIBIT H30"

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MR DEVLIN: Mr Leckenby, what is your current occupation and position?-- I work in - I'm a public servant in the Department of Education, Training and the Arts, and my title is the Director of Strategic Industry Engagement.

And how long have you been involved in that position?-- I've been involved in that position for around about three months.

And back in May of 2006, what position did you occupy?-- The Director Stakeholder Performance.

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And who did you answer to?-- Over the period I was employed in that job, I answered to the Executive Director Industry Development, and the person in that position originally was Rod Camm and moved on to be Andrew Harris, and subsequently Geoff Favell.

Thank you. And what did the area in which I worked, what did

it do?-- The primary responsibility of the Stakeholder Performance Unit was to manage the procurement of VETs - vocation, education and training services in Queensland. So, it dealt largely with the User Choice Program in Queensland which is the program that funds registered training organisations or RTOs to deliver training to apprentices and trainees in Queensland, and also managed a number of other contestable programs in Queensland.

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Can you outline briefly how registered training organisations would put themselves in line for funding under the User Choice Program?-- Yes. About every three years, in accordance with the general provisions of the State Purchasing Policy, we, or the department implements a public tender process for the User Choice Program. The last one occurred in February/March 2006 to establish contracts for the 2006 to 2009 three year period. The tender process is largely a two stage process where, through public tender, we issue a notice that we are seeking RTOs to be considered as preferred suppliers in Queensland for the User Choice Program. They then tender through an electronic process, providing some written information. They're then evaluated internally by the department.

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Sorry?-- Sorry, and then the department approves a list of preferred suppliers based on those that meet a range of mandatory requirements and other benchmarks through the process, and then the second stage of the process is determining which of those preferred suppliers should be considered for an offer of a funding contract under the User Choice Program based on priorities and other factors that are taken into consideration in that process.

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I take it then that the process that you've just described is not simply a process of rubber stamping applications; you called them contestable?-- Yes.

So they are contested by the various participants?-- They are.

Applicants, sorry, and I take it from what you've said that some people who apply do miss out?-- They do. I think from memory we received approximately 190 tenders online and several dropped out before that process, but we received about 190 completed tenders through that process, of which 160 met our benchmarks for preferred supplier status and we subsequently offered contracts to around about 124 private providers.

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And then as to the sum of money that's ultimately applied to a particular applicant, does the applicant actually suggest a figure? How does the expenditure - how does the setting of that figure work, or how did it work in '06 is more to the point?-- Obviously we have a budget allocation for the program that's been allocated by Queensland Treasury, and that guides us in terms of the quantum of business that we can purchase in the State. The complication with User Choice Program is that it isn't all new business. Apprentices, in general, will go through their training in around about four

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years. So at any given time approximately two-thirds of the User Choice Program is committed to students that are already in the system that we maintain a commitment to. So the allocation process is a consideration around who are our current RTOs and have they met the benchmark, and if they are continuing RTOs, then to, I suppose, minimise disruption to the system, we provide allocations to them that are reflective of their continuing student liability, that is calculated by the system, so the number of students they have in the system and the level of outcomes that are left to be claimed, and then it's based on the priorities that have been established for that funding round which were published at the same time as the tender which were linked to, at that time, significant trade skill shortages, complications with the TAFE environment in terms of capacity to service the demand for apprenticeship training, and requiring growth for private providers in apprenticeship areas. So, we directed a large proportion of our new money, for want of a better word, to trying to support both public and private providers to grow in areas of trade skill shortages.

And in terms of the User Choice allocations by registered training organisations then, do those allocations represent a cap up to which the organisation may claim-----?-- Yes.

-----On the government?-- The contract is written in such a way that the value of the contract represents the maximum value that they can claim over that period, and for multi year contracts it's structured within annual periods, annual financial years, and so that organisation knows the maximum value at that point in time that they're able to claim through the system, and that obviously can get reset based on actual demand in the system at different points throughout a three year funding cycle.

Thank you. I'm going to show you now a document which is C11 for our purposes - D11, sorry, for our purposes. On the 8th of May 2006, did your immediate boss, Rod Camm, forward to you a request from the Director-General, Scott Flavell, in relation to a list of RTOs with User Choice Contracts?-- Yes, he did.

And the instruction seems to be, "Gavin, can you supply a list first thing tomorrow."?-- Yes.

"From Rod." The original question from the Director-General being on Monday, 8th May, "Do we have a list of RTOs with User Choice contracts?"; is that right?-- That is.

Thank you. Now, it would appear that you've sent a communication then at 9.30 a.m. on Tuesday, 9 May, "In response to your question below I have attached a spreadsheet that lists the private and public providers that Industry Development is recommending to receive a User Choice contract/agreement for 2006-2007." Is that right?-- That is right, yes.

Now, is recommending, had the process been completed?-- No.

At that stage we had just got to the end of the second stage of the tender process where we had compiled a list of recommended allocated values for either one or three years. But they hadn't been approved and the RTOs involved weren't aware of the amounts that we were going to be recommending.

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When the RTOs are made aware, are they made aware of anything beyond their own allocation?-- No.

Now, let's go to the third paragraph, "We are currently completing a briefing note to yourself and the minister seeking financial expenditure approval." So did these ultimate approvals have to be signed off by Governor-in-Council or Cabinet, or what?-- It depends on the contract level for each individual RTO. The process we utilised was we broke them down into the different expenditure brackets that align to our special financial expenditure delegations in the department, and that covered both, I think the Executive Director at that time, the Director-General, the Minister, and then Governor-in-Council.

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So, the lists of 124 private providers, to which you refer in this paragraph, the 15 TAFE institutes and the Australian Agricultural College were split up according to the size of the delegations of the sign off, is that a fair comment?-- And the public providers are treated a little bit differently in that they're internal business units of the department so they're managed as periodic expenditure within the department, and our Executive Director had unlimited expenditure delegation for periodic expenditure. So their financial approval process is managed a little bit different to the privates, but a similar principle.

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And the briefing note that you refer to in paragraph 3 is the commencement of that sign off process, I take it?-- Yes.

So you actually recite the figures then in the fourth paragraph, the tender process to generate a Private Provider Preferred Supplier List resulted in 196 tenders...", et cetera?-- Yes.

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You finish by saying, "Gaining Preferred Supplier status does not guarantee that an RTO will receive a User Choice contract."?-- That's correct.

So there is a attrition rate you're pointing out to the Director-General - oh, well, who did you send you to, to the Director-General; copying Rod Camm?-- Yes.

You are pointing out that there will be some disappointed applicants?-- That's correct.

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The next paragraph you might explain, "A key focus during the User Choice allocation process was ensuring sufficient funding allocation to support the Queensland Skills Plan...", et cetera. What were you meaning to convey there?-- Well, at that time the Queensland Skills Plan-----

Speak steadily so we can get it down accurately, thanks?-- At that time the Queensland Skills Plan had been released as the public, or the department's public policy around the VET system, and from a User Choice perspective the key outcomes within the Queensland Skills Plan were around some reforms to the User Choice policy framework which had been implemented and a target of creating an additional 17,000 trade training places over the four years of the plan. So, my point in the e-mail was the key - one of the key considerations in the allocation process was ensuring that sufficient funds were allocated to providers in trade areas to enable them to trade up to the value and create those trade training places, or support industry to create those trade training places.

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Right. And so just to go over to the second page, then, the number of trade training places were 17,000 extra places available each year by 2010. To this end allocation levels in key apprenticeship industries have increased substantially to provide the financial capacity for RTOs to expand to meet market expectations, and then you gave examples of sums of money by area of training?-- That's correct.

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Is that right?-- And it should be noted that that's both public and private RTOs, not just private RTOs.

Righto. Thank you. So I take it that you were answering a request from the Director-General channelled through Rod Camm, your boss?-- I was.

Now, just at the top of the e-mail stream, we see this: at 2.50 p.m. the same day, you having sent your communication at 9.30 a.m., the Director-General sends that to a man called Vern Wills. Did you know who Vern Wills was?-- No.

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Were you made aware that the information would be distributed to somebody outside the department?-- No.

Given that the briefing note had not yet been finalised, and given that there was no official sign off of the User Choice - successful User Choice Contracts, if you had known that, would that have changed what you did?-- That's probably a difficult question to answer. I would like to think it would, but in that situation it would have been a difficult situation for a public servant to find themselves in, I think.

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Okay?-- So I'm not really sure what I would have done in that situation.

You were acting subject to a request-----?-- Yes.

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-----Of superiors?-- Yes.

And you acted accordingly?-- I did.

I'll tender that document into the record. I do have a copy of the global amount struck out of the second page if that's necessary.

MR NEEDHAM: Oh, I see. These amounts on the second page, the amounts for automotive, construction, engineering, et cetera, were they confidential?-- No.

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Generally it is the sort of thing the government will normally trumpet the fact that they're giving increased money-----?-- And I don't remember clearly what we may have done at that point, but I think there may have been announcements around growth in trade training at that point. So, I wouldn't think - and given we'd moved on from there in terms of the amounts allocated, I wouldn't consider them confidential, okay.

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Okay. So those parts aren't confidential.

MR DEVLIN: So the document can go in.

MR NEEDHAM: Yes. So that entire series of e-mails will be Exhibit H31.

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ADMITTED AND MARKED "EXHIBIT H31"

MR NEEDHAM: It says, "I have attached a spreadsheet list", but the document on its face doesn't sort of show any attachment the way it normally appears in an e-mail. Was there an attachment with the e-mail that you sent?-- The e-mail I sent, yes, had an attachment.

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MR DEVLIN: I'm coming to that now. Would you look at this document, please. What I'm going to put up on the screen is a list. First of all it's called "User Choice allocations by RTO - as at 9 May, 2006." Is that the schedule that you appended, the one that's on the screen, minus the dollar amounts?-- Yes, it is.

And if we were to look up at the document fully filled out with dollar amounts, would we see from Axial Training downwards the largest sums of money then, for the most part, cascading downwards?-- Yes. In terms of three year allocation, yes.

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Thank you. And then that seems to be in a batch - I see. That seems to be in a batch covering three pages, numbering all the way up to 125?-- Yes.

Greening Australia Training?-- Yes.

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And then we go over to this other set of classifications which are the various government institutions; is that right?-- That's correct.

Thank you. Chairman, I'll tender the one with the dollar amounts as an exhibit subject to a non-publication order, but I'll tender the one with the dollar amounts taken out.

MR NEEDHAM: Well, the entire document will be Exhibit H32 subject to the non-publication order that I have already made.

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ADMITTED AND MARKED "EXHIBIT H32"

MR NEEDHAM: And H33 will be the edited version which is not subject to any confidentiality order.

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ADMITTED AND MARKED "EXHIBIT H33"

MR DEVLIN: Thank you. Now, all of that happened on the 9th of May, I think, as we've discovered. Now, I'll show you now a document entitled D12. Did that list then go from Mr Camm to the Acting Director Training Purchasing - sorry, to Mr Camm from the Acting Director Training Purchasing?-- Yes, it did.

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And again that information - the purpose is to seek your financial expenditure approval to award contracts?-- That's correct.

And there seems to be a date there. Is that Mr Camm's signature?-- That is.

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Date 9th May '06. So the day that you sent the information is the day that the sign-off process began?-- That's correct.

Down at the bottom of the document - did you compile this document?-- I think someone in the Training Purchasing Unit within Stakeholder Performance would have compiled the document.

Down in the last paragraph it is said, "It is proposed to seek financial expenditure approval of 210 million", et cetera. That was the total of the-----?-- Yes.

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-----allocations?-- Which comprised both one year and three year contract values.

Thank you. And then the attachments are described. Attachment 1 outlines the recommended financial expenditure for the triennium, and attachment 2 outlines a recommended financial expenditure to private RTOs under \$500,000, and the 15 Queensland TAFE institutes?-- That's correct.

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And then we see down the bottom Mr Camm has signed off the entire document as of the 9th of May 2006?-- That's correct.

So I'll formally tender that document, Chairman.

MR NEEDHAM: Well, that will have to be confidential, at least

for the attachments.

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MR DEVLIN: I'm quite - the witness has said the same attachment went with it, so I'm quite happy just to tender the communication as a public exhibit.

MR NEEDHAM: All right. So just the first two pages, the actual submission-----

MR DEVLIN: Yes.

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MR NEEDHAM: -----or briefing note will be Exhibit H34.

ADMITTED AND MARKED "EXHIBIT H34"

MR NEEDHAM: This presumably is only one submission or briefing note on this. The other part that was within the cabinet delegation level had to be a separate briefing-----?-- Yes. The final paragraph of that brief indicates that-----

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Yes, a separate brief?-- -----anything above 500,000 is a brief that goes through the Director-General to the Minister, with then a Governor-in-Council and Executive Council Minute that is off to the side.

Okay.

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MR DEVLIN: So the schedules become altered according to the delegations required?-- Yes.

Is that what you are saying?-- As per attachment 2 on that brief.

Yes. But the figures remain the same from the first schedule that I showed you?-- They do.

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They remain unchanged during the approval process?-- Yes.

They just get split up into the delegations-----?-- Yes.

-----is that a fair description?-- That's correct.

Righto. Now, can we have a look at the next document, if I can show you this one. Again, we needn't trouble ourselves with the attachments, but is this the standard briefing note to the minister then from the Executive Director, Industry Development, to seek Director-General, Minister and Governor-in-Council financial expenditure approval for those relevant User Choice Contracts, or User Choice people successful in gaining User Choice allocations?-- Yes, that's the brief that was used at the time.

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Thank you. Now, if we look at what happened to this one, this is a file copy, so we have a note from the file copy that the

original was signed by the Director-General as of either the 10th of May or the 16th of May. Can you verify that in any way?-- I can't verify whether it was the 10th or the 16th, but it was certainly one of those days by the look of it. It looks like the 10th.

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Yes. Then a notation, do you recognise the signature down there, a Mr Allen or Ms Allen?-- I think Fallon.

Fallon?-- The top one?

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Yes?-- I think that's Fallon.

So what is the meaning of this note, "Please note the required Executive Council approval as outlined in this attachments was given under ECM No. 418 on 25 May", it might be, "'06"?-- Certainly my interpretation is that the final grouping of contracts, which are above the \$1.5 million, at that stage required Governor-in-Council approval were separated from this brief as they need to be, and this is a notation to say that they have been approved in accordance with those cabinet processes.

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And according to the note on the 25th of May, probably?-- Yes, with a reference number.

Well, it must be May because Mr Fallon or Ms Fallon has signed off as of the 6th of June '06?-- Yes.

Thank you. And what does this note mean, "Approval for contracts under attachment 2 were endorsed by the Director-General on 10 May '06 as part of the overall briefing approval prior to final endorsement by the minister."?-- That's from Ralph Dewenger.

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How do you spell that name?-- D-E-W-E-N-G-E-R.

Yes?-- Who was, I think, the departmental liaison in the minister's area at that point, and I interpret that as that it's just stating that the Director-General approved funding for the contracts in attachment 2 as part of the overall process.

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And so again is that a reference to certain delegations being within the purview of the Director-General and not necessarily the minister?-- Yes. Based on the financial value that we were seeking.

Thank you. I tender that document as a confidential exhibit, Chairman.

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MR NEEDHAM: That's confidential, that one?

MR DEVLIN: I understand so. And in any event I was only trying to establish the process and relevant dates.

MR NEEDHAM: Yes, all right. Well, if there's no objection, I'll make that Exhibit H35 subject to the non-publication

order.

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ADMITTED AND MARKED "EXHIBIT H35"

MR DEVLIN: Those of us not all that intimately acquainted with government processes are aware that some things are ultimately gazetted by the Queensland Government. Are these User Choice allocation - were these User Choice allocations for the triennium 06-09 that we've just seen the approvals process for, were these ever publically gazetted as a group?-- No. It certainly wasn't the common practice of the department to do that.

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Thank you.

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MR NEEDHAM: Well, what advice was given of the results of the process?-- The process from financial approval was we negotiate, we make offers of contract to the RTOs on that list, which obviously requires them to accept that contract and potentially renegotiate, because there is detail in the contract around the qualifications they would deliver. Once - in terms of publication of amounts, there are, I suppose, two areas that the department normally publish as amounts. One is through ministerial releases. Because of the nature of the User Choice Contract, the Minister doesn't generally release amounts for individual RTOs because they haven't technically received that; it essentially enables them to trade up to a value. So it is always seen as a difficult area to promote that this RTO has received this amount of money because they will rightly come back and say, "No, we haven't, we have to earn it." The main way we publish that information is through an IT system, which is called the Queensland Training Information System or QTIS, where if you know how to operate that system, you can generate the annual value for that contract by drilling down into the RTO's details but it is mainly used by employers and apprentices and Australian apprenticeship centres to identify which RTOs have access to public funding and can deliver training to their apprentices.

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Sorry, does that allow the actual amount of funding over the triennium that-----?-- Not for the three years. It will only be for one year.

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Only for the one year, I see, but you can, if you know how to do it, ascertain the amount of funding that a particular RTO has got for that first year?-- Yes.

All right?-- From the 1st of July. So at the time they were being financially approved, that information would not have been on the website but from the 1st of July the financial values by qualification would be available on that website if - again if you knew how to get that information.

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Even apart from that, is my general knowledge correct that anything of this nature that has to go through Cabinet and Executive Council, most certainly doesn't get issued prior to its receiving Executive Council approval?-- No, or any financial approval, really.

I see. So even at ministerial or the DG level it is not issued-----?-- No.

-----until that approval has been obtained?-- That's right.

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If it is otherwise suitable for public announcement?-- Certainly at any point - while we're recommending these financial amounts at any point the financial delegates could refuse to sign that amount as is their delegation, and that, I suppose, puts us back into negotiating again for an amount to seek approval for.

Yes. Okay?-- We do have provision under the User Choice contract to publish information around the levels of funding. There was one clause in our - that we maintain in all of our contracts that enables us to publish that information on the QTIS site to the public and also to share that information with other States and Territories because it is a national program, but we - certainly in my two and a half years in the job we didn't exercise it to the right of publishing that this RTO has been approved for 10 million dollars, or whatever, over the three years but we certainly had the right to do that if we wished if we saw an opportunity to do so.

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Yes, thank you.

MR DEVLIN: I take it if you saw a public interest in doing so?-- Sorry, that's what I meant.

Now, I am just going to show you an example then of - and you might confirm this - of the department advising Betaray Training Academy of its allocation of User Choice contract?-- Yes, that would be the standard letter.

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For the triennium. The letter is addressed to Mrs Embrey of Betaray and asks her to return the contracts by Friday the 16th of June '06?-- That's correct.

And then we see the signature there of Ross Hanley?-- That's correct.

Acting principal purchasing officer, under the hand, though, perhaps of Larisa Villis, Acting Director, Training Purchasing as of 31 May 2006?-- That's correct.

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So is this an example of the individual RTO receiving advice of its individual allocation for the triennium?-- That is, yes, the template letter.

Thank you. I tender that.

MR NEEDHAM: That's exhibit H36.

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ADMITTED AND MARKED "EXHIBIT H36"

MR DEVLIN: With the template letter comes the contract to be signed up?-- Two copies of the contract.

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Two copies to be signed up by the RTO?-- Yes.

Thank you. So to summarise then, what is the use of the overarching schedule that we saw at H32 and 33? What is the purpose of that at the point that it was created on or about the 9th of May 2006?-- Information. Certainly I interpreted the request as this is a large sum of money, it is a potentially contentious program in that it is the largest

program where private organisations seek public money in our department and I certainly saw it as a request from the Director-General for information on what the status of the program is, which RTOs are likely to be recommended for funding and what the levels of funding were.

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Given the stage at which the approvals process was at, did you expect the document to be used other than within the department?-- No.

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And were you given any information to suggest that it might be used otherwise?-- No.

Thank you. That's the evidence of Mr Leckenby.

MR NEEDHAM: Yes, Mr Applegarth?

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MR APPLGARTH: Mr Leckenby, if I could just go to the User Choice matter a little more, User Choice is a national policy, is it?-- It is a national policy, yes.

And it was first endorsed in about 1997?-- That's correct.

And the essence of it is that employers, apprentices or trainees choose the individual training provider? That's the choice involved?-- That's the choice, yes.

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Rather than take a long time potentially to go into it, perhaps I could ask you to look at this document, which hopefully you will recognise, or at least agree with it. I don't know if that document is familiar to you?-- It is, yes.

Could you tell us what it is?-- It is the national statement of User Choice policy that's - that was originally established in 1997 as has been renewed by the State Ministers with the Commonwealth on two separate occasions.

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Mr Chairperson, I am not sure what the form is. I don't know if I have a right to tender-----

MR NEEDHAM: You certainly do, Mr Applegarth. If you want a document-----

MR APPLGARTH: If I can tender a document.

MR NEEDHAM: By all means.

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MR APPLGARTH: I seek to tender that document.

MR NEEDHAM: Exhibit H37.

ADMITTED AND MARKED "EXHIBIT H37"

MR APPLGARTH: And, Mr Leckenby, Queensland had its own User Choice program policy?-- Yes. And it refreshes it - that policy generally allying to the three year funding cycle.

And, as you have explained, it involves both private and public registered training organisations?-- Yes.

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So under that arrangement, an employer, or indeed an apprentice, can choose to go to a registered training organisation. They don't pay, as it were. If the service is provided, if the course is completed, and so on, that registered training organisation gets government funding?-- Not quite that simply.

I am sure it is not that simple, but that's the general principle-----?-- If the-----

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-----of the government funding for the provision of-----?-- We reserve the right to, I suppose, select the RTOs that we consider suitable for public funding.

Yes?-- So within the market there will be - there are - any employer or their apprentice has the choice of selecting any RTO that's registered in the country to deliver their training. Only some of those will currently have User Choice funding, and so the decision becomes, from an employer's perspective, if they want public funding there is a range in every qualification of public and private RTOs that they can select from and the QTIS system provides some information about who they are and then there are also other nationally registered training organisations that can deliver that training but it would be on a fee for service basis.

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Right. And I know it is very hard to deal with these matters at a level of simplicity because the administration and funding is no doubt a complicated matter, but the government within the system sets priorities across the system, is that a fair comment?-- That's correct, yes.

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And so the funding can be targeted towards an area that the government perceives there's a skills shortage?-- That's correct. So we don't fund the full market for apprentices and trainees. There are components of that market that remain unfunded by the public.

And within the system there are priorities built in in terms of funding; that something that's a high priority will get enhanced funding?-- Yes.

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And if it doesn't have such a high priority then funding may not be that great?-- We may limit growth or we may only fund a proportion of that market.

Now, I appreciate that at the time you weren't in the area particularly of policy development; you were administering and

managing the scheme, is that a fair comment?-- That's correct.

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But you would have been aware of the policy Evolution that was happening at 2004, 2005, 2006?-- Yes.

And part of that Evolution was the release of a Green Paper in June 2005?-- That's correct.

And if I could ask you to - if I could ask you to have a look at at least some pages of it. The document itself is a large one. You will see over on page 32 of the document - have you got it there - a gentleman who looks like he is a baker. There is issue about increasing responsiveness to the VET system?-- Yes.

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And it says, "The public training provider cannot do this alone. Queensland private training sector is better equipped in many cases to deliver responses, specialised training and so on." Do you see that?-- Yes.

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So the developments that occurred in - later in 2005, early 2006, May 2006 were predicted, as it were, back in June 2005 as a policy direction the Government was heading in?-- Yes, and the User Choice policy framework that was then developed and published built upon those statements around the role of private providers and how we can better generate flexibility.

And if you turn over the page - and I, of course, don't expect you to read all of this, but page 33, the left-hand column, about two thirds of the way down the page, "Given the strength of Queensland's vibrant private training sector, it is time to rethink the respective roles of public and private training providers, time to move beyond the traditional competitive approach", and so on. That was to announce Government policy back in 2005?-- Yes, that's correct.

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And you will see over in the right-hand column in the arrow, one of the priorities or proposals is to explore private training sector - sorry, "to explore with the private training sector the greater role it might have", and so on?-- Yes.

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And it says at the next full paragraph: "These proposals would create new market opportunities for private registered training organisations."?-- Yes.

May I tender that document which is extracts of the Green Paper?

MR NEEDHAM: Yes, that's exhibit H38.

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ADMITTED AND MARKED "EXHIBIT H38"

MR APPLGARTH: And as matters developed in later 2005 and into 2006, registered training organisations would have been aware of the intention to refine and improve the User Choice system so that it targeted what the government was identifying as areas of skill shortage?-- Yes, we held public forums throughout the State around - in preparation for the User Choice public tender to advise them of the details of the public policy - of the User Choice policy and, to a large extent, the findings of the Green Paper and working towards Queensland Skills Plan.

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Right. Again, in the interest of saving time, perhaps I can ask you to look at this document?

MR NEEDHAM: Do you have the date of the Green Paper?

MR APPLGARTH: I think it is June 2005 but I will check on that.

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MR NEEDHAM: Is that your memory?-- It would have been around about that time, yes.

Okay.

MR APPLGARTH: Mr Leckenby, do you recognise that document?-- I do.

You may have had a hand in writing it, I suppose?-- Sadly, yes.

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It seems to be dated 27 February - I am sorry, I have given you the wrong - I wanted to move to this document first so I won't withdraw that but if you could just hold that. All these documents look the same in the cold light of day. I am sorry about that. Could you look at this document, which is another one which I take it you will be familiar with?-- Yes.

And I think we built up the context to this. You said that these policies were evolving and being explained after the Green Paper, and so on. Do you recognise this as the Queensland User Choice Program Policy?-- I do.

40

I won't ask you whether you had a hand in writing that?-- I was involved, yes.

And it is dated 27 February 2006?-- Yes.

And that's on the eve of the White Paper or the Queensland Skills Plan?-- Skills plan and the - primarily the User Choice tender as well which was the timing of when it was produced.

50

So it is dated the 27th of February 2006. I take it it went into the public domain about then?-- It went on to the internet site and still is on the internet site, I think.

It would have been a significant announcement and of interest

to industry participants?-- Yes.

1

So the things that are in here weren't exactly a bolt out of the blue given what had happened in the Green Paper and what you had been telling industry participants in forums in one-on-one meetings?-- Yes, that's right.

Now, the document speaks for itself but probably just so that people who are here can follow the evidence a little better, could I take you to page 6, under the heading "Supporting the private sector". And you see there that that carries forward the theme from the Green Paper, that "Whilst Queensland's network of public RTOs will retain a significant role in developing skill entry User Choice Programs continue to compliment the robust public sector market, quality private providers will have an increased role in meeting market demand particularly in priority apprenticeship training." Do you see that?-- Yes.

10

And the next paragraph, if I could take you to that, "A number of the User Choice reforms are aimed at developing new private provider capabilities in high priority training areas where demand is not being met by current suppliers." Pausing there, those high priority training areas was something that had been identified to people in the system?-- Yes.

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In the months beforehand?-- Yes, and, I mean, the User Choice Program traditionally has provided a higher priority rating for apprenticeship or trade training, and this, I suppose, continued that and increased that focus on trade training.

30

And so it was the idea that there shouldn't be a complete surprise in February 2006 to people who might want to continue their businesses or increase the level of their businesses that they should know what type of funding was available, so to speak?-- Yes.

And what priorities were available?-- Yep. That's certainly the intent of the document is to inform the market about our future intent.

40

And you will see the next sentence, "Some of the reforms that are aimed at supporting and facilitating new and existing private RTOs to expand their customer market base." So it is a policy that is not only there for existing RTOs but for new ones as well?-- Yes, to attract new particularly apprenticeship RTOs into the market.

I appreciate that you aren't in the policy development area but given your understanding of it, that was an important government priority, was it?-- It was.

50

Because the RTOs that were there, some of them were big, some were small, but it was important, given the demand and given the available government funding, for there to be new participants if there could be?-- Yes.

That a new participant if they were well managed and had the

financial resources could do more than a small family business could?-- Potentially, yes.

1

Sir, I seek to tender the Queensland User Choice Policy - sorry, Queensland User Choice Program Policy.

MR NEEDHAM: That's exhibit H39.

ADMITTED AND MARKED "EXHIBIT H39"

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MR APPLGARTH: Now, if I could come back to the document I jumped the gun on before? Do you still have it there, Mr Leckenby, the User Choice Program Agreement?-- I do.

And this appears to be a pro forma. It is not given any - there is no particular other party; this is the pro forma?-- Yes, I imagine this is the current version on our internet site. The one around at the start of 2006/7 would have been called contract but this is the one that - we always maintain the current version of the agreement on the internet site.

20

Do I take it, though, the one back then, apart from not being called the agreement, being called contract, was materially the same?-- Yes. We changed a number of small provisions about how we manage money but the contract conditions are largely the same.

30

Basically it is a standard form contract? There is not much scope for individuals to come up with a whole new contract of their own?-- No.

That's the way the system operates?-- It is.

It couldn't operate on any other basis?-- Not with the volume of work that we process through the system, no.

40

Now, this contract or agreement, as you indicated generally before, provides a funding limit to the party to the agreement?-- Yes.

And it is up to the RTO to earn that funding?-- Yes.

And it does that by, amongst other things, submitting reports on what it has done?-- Yes. Using a national reporting system.

50

And that provision for reporting is under clause 6 of the agreement?-- Yes.

And I am sure there is a lot of technical aspects and the schedule to the agreement makes that clear when it is talking about payable values and the like, but basically, and at a very general level, they have to deliver?-- Yes.

They have to achieve target and completion rates?-- Yes, and the contract is considered quite a tightly controlled contract, in that there are no prepayments, to receive payment under the contract an RTO has to enrol an apprentice, has to begin training an apprentice, has to complete training in a unit of competency, which is a skill set, I suppose, within a national qualification, and then report that data accurately to us to enable our systems to capture that data and calculate a payment at that level.

1

And I take it from that that if the RTO doesn't deliver on the number of apprentices, doesn't achieve the completion rates then it just won't be paid-----?-- No.

10

-----what might be its total potential allocation?-- That's right. They have no claim over the full value unless they earn that money.

And obviously - I shouldn't say obviously - but I suppose it is the case that some RTOs, for one reason or another, fail to achieve their allocation?-- Yes, for market reasons more than anything else. The concept of User Choice is the users have to choose you to deliver their training or you don't earn the money.

20

And that's the beauty of the system?-- Yeah.

That people who provide good services, who attract people, who train them well enough and they complete, can achieve their allocation?-- Yep.

30

And if an RTO, say, isn't well managed, may fall short of its allocation?-- That's correct.

So just to summarise, the allocations that we saw in the schedules that you were taken to earlier, they are not in the nature of a government grant?-- No.

Far from it?-- No.

40

They are not a guarantee of funding?-- No.

It is up to the RTO to source clients, be they employers or employees who enter into agreements with the RTO?-- That's correct.

I seek to tender the User Choice Program Agreement.

MR NEEDHAM: That's H40.

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ADMITTED AND MARKED "EXHIBIT H40"

MR APPELGARTH: Now, can I turn then to your administration of the User Choice Program, and by your, I am not perhaps talking

about you personally, although at the time you were the person-----?-- One of the many minions involved, yes.

1

But-----?-- I was a person directly responsible.

-----perhaps a larger minion than others?-- Yes.

In terms of that administration, the User Choice program and the types of schedules that we saw has a sort of budgeting and planning aspect to them from the department's point of view?-- Yes.

10

Because there is a budget allocation which is reflected in, I suppose, the allocations?-- Yes, to a degree.

Yes. And could I hasten to add I don't know too much about public sector finance, but I understand the State Budget has projections as to how much funding there will be in years going forward?-- That's correct, yes.

20

And so in a public sector sense how much money was being allocated from this year's State Budget and was anticipated to be allocated in next year's State Budget and the one after that was in the public domain through budget papers and the like?-- Yeah, and through the statements that the government releases around budget time and those types of things.

And typically in terms of administering that budget you will expect each year there may be some expectation that the funding will go up by five per cent or 10 per cent as the case may be, is that how it operates?-- And with this one, with the User Choice program, the Queensland Skills Plan, the budget attached to the implementation of the Queensland Skills Plan provided additional money for the User Choice Program specifically to provide those 17,000 trade training places.

30

And that was a forward ongoing thing?-- Yes, for the four years of the Queensland Skills Plan.

If one looked at the budget papers or some other similar document you would see there are funds earmarked for the User Choice Program in the three or four years going ahead. Is that how it works?-- Yes, and generally - so that the annual amount - because it is a significant program within the department, the annual amount was generally highlighted as a dot point within our annual report or our Ministerial Portfolio Statement at the time.

40

So far as your administration of the scheme is concerned and achieving government policy it was important for you to be able to monitor the operation of the system?-- Yes.

50

For planning purposes?-- Yes.

To make sure that the funding that the government had allocated was being taken up?-- That's correct.

Now, I take it from your earlier evidence that it is possible

for a registered training organisation that has done well, in a sense, and trained a lot of apprentices to seek an increase in its allocation?-- That's correct.

1

And that happens routinely?-- Very regularly, yes.

All through the year?-- Yes. We often try to batch the processes together from an administrative sense so that we're not having an approval brief going up every week, but the negotiations around financial increases happen on an ongoing basis.

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And because you've got to budget, of course it is important to know whether you've got the money in the pot, if I can call it that, to grant that increase?-- Yes, yes.

So you may have the money available if you see that certain RTOs aren't reaching their expected performance levels and being funded as they might have anticipated?-- That's correct.

20

And so the - I shouldn't say underperforming but I can't think of a better word just at the moment - the underperforming RTOs allow for further allocations to other RTOs, is that right?-- That's correct. And in the last - in the last financial year, the government's provided additional money specifically for the User Choice program because growth rates for apprenticeship training were well above forecasted expectation, which is a good thing for the State and obviously an achievement under the Queensland Skills Plan but it did have financial implications for the User Choice Program. So actually additional money has also come to support growth in the last year.

30

And in terms of talking about good things, it is a good thing that an RTO who has performed well can seek to increase its allocation and, as it were, obtain funding that might have otherwise been potentially earmarked for one who doesn't perform so well?-- That's correct, yeah.

40

But that's the intent of the system?-- Yeah.

You mentioned earlier that there was a provision in relation to disclosure in the contract. If you still have it in front of you?-- I think it has disappeared.

That's H40. Just so that - I think it is clause 15 on page 6, Mr Leckenby?-- Yes.

I will just read the first sentence: "It is under the heading 15, "Communication and publication by the department", "The department may communicate or publish information to third parties including regulatory bodies and the public about any matter relating to this agreement."?-- That's correct.

50

See that? Then there is a non-exhaustive list of the things that can be disclosed?-- Yes.

Including initial and remaining funding?-- That's correct. 1

Enrolment completion and attrition rates?-- Yes.

So that sort of information goes into or can go into the public domain via the website that you were talking about?-- That's correct. Or other forms.

And that's a way in which, I suppose, for example, an existing RTO could see that there is other RTOs who are underperforming and could then make a bid for increase allocation?-- Yes, and many do use the information on the Queensland Training Information Service as a - as part of their business case as to why they should receive more money. 10

So as you understand it, one of the reasons that the information is posted on the website is to enable the system to operate?-- Yes, to inform the market.

And also to provide, I suppose, an accountable process that the public can see how money is being allocated?-- Yes. 20

And how it is being taken up?-- That's correct.

Public can see that, individual users in the system can see who is performing and who is not performing?-- Yes.

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Now, I haven't brought along, you'll be pleased to know, a copy of the QTIS website, but it is a website that produces, amongst other things, an RTO score card, is that term familiar to you?-- Yes.

So a member of the public can go on to that website and find out an RTO score card?-- Yes.

A competitor could go on to the website and see the RTO score card?-- That's correct.

10

And it would not be surprising if they did?-- No, I would imagine if you are an RTO in the market, you'd be keenly interested in what other RTOs are doing in similar qualifications to you.

Perhaps mad if you didn't?-- I would think so.

Okay. And that included month by month performance?-- It was updated monthly. The purpose of - I mean, prior to 2006-9, in the previous contract period, there were two contracts allocated to every RTO. There was an existing worker or an existing business contract and a new business contract, and QTIS used to publish the information relating to the new business contract because it was more informative to the market. It actually showed clearly how much allocation someone would have left and you could go to them for business. Once we've moved to the new - it's become a little bit less informative because we're combining the new and continuing student allocations together, but similar information is provided.

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30

Now, getting back to the area of administration in this Stakeholder Performance area that you were in, I take it the Director-General wasn't involved in the administration?-- No.

Save to the extent that the Director-General might be required to sign off under an agreement if it was within the Director-General's area of delegation?-- That's correct.

40

Mr Flavell, as Director-General, didn't seek to intervene to alter allocations?-- No.

And we've seen through the documents that came in earlier, particularly Exhibit H35 and H36, that there was a process for allocations to be signed off by divisional head or Director-General or the Minister or Governor-in-Council as the case may be?-- Yes.

50

And although there was the potential, of course, for any of those to not accept a recommendation, that would be a rare thing indeed?-- Yes. Particularly at a bulk process like that there can often be more negotiation around individual cases through business cases, but generally there were certainly no changes to our recommendations for that document's reference.

And to your knowledge did Mr Flavell as Director-General ever become involved in negotiations with RTOs over User Choice?-- Not to my knowledge, no.

1

And you would expect that you would know those things if he was?-- I'd certainly know the end result, and I don't recall a situation where - normally those matters were referred to the unit responsible for managing those contracts.

Thank you. Now, I take it from your earlier evidence that although there were annual allocations and in an administrative sense there were three yearly allocations, to maintain the stability of the system, and the stability of the RTOs that are involved in the User Choice Program, it's important for them to have a rough idea of the likelihood that they're going to be able to continue in business?-- Yes.

10

And so potential allocations to RTOs would be the subject of discussion between RTOs and either you or someone working in your area?-- Yes.

20

So that there is a degree of planning involved in terms of providing continuity to them?-- That's correct.

You would tell them that there's been a reallocation of priorities and you won't get the same degree of funding for that particular course next year, and so on?-- As much as we can, yes.

Because it is in your interests, and their interests, to give as much information as you can about these things?-- Yes. We want - if we have a position that we want to advise them of, our expectation would be that they can then advise the market and we don't have expectations that are being raised that the State can't meet in terms of funding.

30

And provided they're being well managed, and they're subject to appropriate audits and they maintained their registration and so on, it's important for the system that they continue?-- That's correct.

40

Because if, through some active caprice, someone which is denied what they expected to be a further year of participation in User Choice, then that could have big effects upon their business?-- Yes. And particularly - and also the students that they have in the system that will continue with them into the next year.

You guessed my next question. Because if someone unexpectedly fell out, that would have quite large impacts upon the students. They'd have to find somewhere else to go, perhaps?-- That's right, and one of the principles of User Choice in the way it's managed is a funding commitment is made to the student, not necessarily to the RTO. So if an RTO falls out of the system, the department generally endeavours to meet the commitment to that student by helping them to get placed with another RTO to continue their training.

50

But if you had thousands of students facing that predicament, it would be an enormous area of disruption for them?-- And us.

1

And for you?-- Yes.

And so the whole system, subject to special cases, is built upon continuity?-- That's correct.

As you explained before, that individual apprentices, their period of apprenticeship, a matter of years, straddles these sort of funding arrangements?-- Yes.

10

I take it that although there may be obviously reallocations, depending upon different government priorities, there is an expectation that unless there's a good reason to the contrary, poor performance or the like, that the future allocation will reflect what's gone before?-- We tend to - it really depends on the scope of delivery of that RTO. If we're talking about an RTO who is delivering in our highest priority area, generally we have provided advice that you can - if you're performing under the contract, you can expect a contract of the same size as a starting point.

20

I take it similarly that if you're not performing, if for whatever reason you didn't come up to last year's allocation, that instead of performing and earning 1 million, you underperformed and earned 800,000, then it would be surprising if you got a \$1 million allocation going forward?-- And-----

30

Is that-----?-- -----within the limits of the contract.

Yes?-- Because the - if we're talking about an apprenticeship provider, the contract has already provided them with a value for their third year, and so unless it's agreed to by both parties, that amount isn't reduced. If we're talking about a one year provider, then that's certainly the case. We do renegotiate a much - a lower figure that is more in line with their actual performance.

40

So, would you agree with me that both on a micro level of dealing with RTOs and on a macro level of dealing with the industry in general, it was very important in 2005-6 now for individual RTOs and RTOs in general to know what's in store for them in terms of likely allocations?-- Yes. In terms of investing in their own business, that was the intent behind a three year contract offer for apprenticeship providers was to give a level of security and enable them to invest in what is quite a resource intensive area.

50

That's existing RTOs to invest?-- Yes, and new.

Because a new one would probably only want to invest and target a particular area of the market if it saw that there was, as it were, a budget allocation-----?-- Yes.

-----for that sort of thing?-- That's correct.

Can I then move to a different topic, Mr Leckenby, and could you look at Exhibit H31, which is the e-mails in May 2006. Turn to the second page, about three-quarters of the way down the page, you'll see an e-mail from Mr Flavell to Mr Camm?-- Yes.

1

And it's asking for a list of the RTOs who have User Choice contracts; do you see that?-- Yes.

Now, this isn't meant to be critical. You provided the list, which became H33, of a list of RTOs as at 9 May 2006, did that generally reflect the ones who then already had User Choice Contracts?-- I suppose it was made up of both those who already had a contract and those that were being offered a new contract, but I take your point. It didn't - it is a list that has both, I think.

10

Yes. Can you put this question on notice. Would the vast majority of those RTOs on the list that you sent have been ones who already had User Choice Contracts?-- I would think probably over 80 per cent of those would be continuing RTOs.

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Right. So, in a sense, you didn't quite provide what you were asked for?-- No. I provided what I thought the question was about.

That's understood. But I suppose this was the list that you had closest to hand at the time?-- Yes.

And it was a convenient document, rather than going back and finding some other one that had the current list, as it were?-- Yes, and I suppose the interpretation of the question was around the process that we had underway.

30

Well, that was your interpretation of the question?-- Yes, I take that on board.

But you accept that that wasn't what the question was?-- Not in terms of reading that question, no.

40

Looking at the question now, if you had come up with a list and simply a list of the names of RTOs that then had User Choice Contracts, you would have been responding to the question?-- Yes.

I'm not being critical, but you were trying to be helpful in your response, I take it?-- Yes.

You interpreted the question a different way than perhaps you might interpret it now, looking at things?-- Yes. Quite possibly.

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Quite possibly. You're very busy at that time?-- Yes, it is the peak period for the program, so-----

I don't want to dwell on this, but you had, we see on the list that there was a personal bereavement in your family, too, so obviously-----?-- I think that was Rod.

I'm sorry?-- Rod Camm had a personal bereavement.

Okay. And so it was a convenient thing for you to send that document which you had in a spreadsheet form as the way that you thought you were best able to respond to the question?-- Yes.

I take it there would have been somewhere else a list of the RTOs who then had User Choice Contracts?-- Yes. Probably not ready at hand. It could have been produced.

10

Thank you. It might have been a more time consuming thing to do to produce it?-- Yes.

Thanks. And you helpfully did more than just send the things that you were asked to send, a list of the RTOs, you, as it were, gave an update to Mr Flavell on how things were coming along?-- Yes.

20

Would it be fair to say that although some of these details about 160 out of 196, and the like, would have been in the public domain, a lot of the information that you provided there about the Queensland Skills Plan and 17,000 extra places, and so on, was already out there in the public domain?-- Certainly the policy stuff was out there. The dollars and numbers wouldn't have been at that stage, and may still not be in terms of a readily identifiable public documents, but certainly the policy intent is in those policy documents.

30

Although we see on the next page about the market, automotive and construction, and so on in those areas, the various allocations, the fact that there were these priorities and residual fundings for those sorts of skilled areas was no secret?-- The numbers certainly would have been public, but the intent to provide additional dollars for those industries was at the heart of the policy.

And that had been announced publically in a macro sense that these were the high priorities area?-- Yes.

40

And RTOs would have been aware of that in individual dealings?-- Yes. They're four trade dominated industries from an apprenticeship and traineeship point of view, so the market should have expected the growth in those areas, that the dollar values invested in those areas would go up.

In a sense the government wouldn't have been doing its job if the department at all levels hadn't been informing the market that these were areas that should be targeted?-- Yes.

50

And that funding would be available for?-- Yes.

We see that the recommendations that were made in the document which became H33 were approved?-- The recommended dollar values?

Yes. The allocations?-- Yes, by the various delegates. 1

And the sort of global figures that are there were consistent with what had earlier been indicated as the type of funding that would be available for the User Choice Program?-- Yes. The allocations are reflective broadly of the dollar values that we would have had available for 2006-7.

So, I'm not really just talking about the specific allocation, I'm talking about the overall quantum?-- Yes. 10

And I don't want to go into individual numbers, but it might just help if the witness saw H33 - I'm sorry, H32. I'm not sure how clear that is. If your copy isn't clear, you are welcome to-----?-- I can read the numbers on it.

Can you?-- Yes.

I wasn't going to go to the numbers, although I expect they mightn't be a secret. But what I was interested in is when you look down the allocations 2006-2007, 2007-2008, 2008-2009, with each RTO's allocation, there just seems to be a steady State increase of 10 per cent?-- Yes. 20

And that expectation wouldn't have been a great secret. You would expect inbuilt growth in the system?-- Yes. Aligned to our policy around trying to grow that market for private providers, and the public provider.

And as RTOs individually, or RTOs collectively through some industry group indicated, or sought information about how much growth is in the system, subject to getting approval to this, there wouldn't have been any great problem with indicating that the government's expectation was that there would be increased allocation in the years going ahead?-- Yes. 30

Because that enables them to plan their businesses?-- That's correct.

MR NEEDHAM: There are some, Mr Applegarth, that that doesn't apply to. Some get it for the first year and then zero in subsequent years. 40

MR APPLGARTH: Perhaps, Mr Leckenby, I think I know why that is but you better tell us?-- The RTOs with three year allocations are the ones that have apprenticeship provision in their contract. The one with only a one year, or the RTOs with only one year allocations only deliver in traineeship areas, so they are then subsequently renegotiated. 50

MR NEEDHAM: So they might or might not get something?-- They get an annual contract that is renegotiated every year rather than a three year.

Okay. Thank you for that.

MR APPLGARTH: Do you still have the e-mail that's H31, Mr Leckenby?-- Yes.

You'll see the forwarding of your e-mail with some other comments to Mr Wills on the 9th of May, and the only comment seems to be, "You might be interested in this." Correct?-- Yes.

There's no real analysis of the schedule?-- No.

No analysis of what you'd said below?-- No.

And I suppose an existing, or a potential RTO would have an interest in these sort of topics?-- I would think so.

As I think we have already agreed, these allocations as at 9 May 2006 weren't a guarantee that the RTOs that are listed there would actually achieve this funding?-- Or that they'd be signed off-----

Yes?-- -----for approval, Mmm.

Signed off for approval by the-----?-- Delegated authority.

-----head of the unit, the Director-General, the Minister or the Governor-in-Council, as the case may be?-- Yes, and then accepted by the RTO under contract.

Yes. But assuming - and it seems to be a safe assumption from what we've seen, that the recommendations were approved in the following days or I think it was two weeks, that would then simply be the basis upon which an RTO, if it signed up a standard contract, accepting that allocation, would proceed? It wasn't a guarantee-----?-- No.

-----that they'd be funded to this amount?-- It was the amount that they could plan their business within.

And if someone was interested in buying one of these businesses, you would need to know a lot more about the business than its maximum allocation?-- I would imagine so, yes.

Because, as we've seen before, whether they get that government funding depends upon their performance?-- Yes.

And so these things at the 9th of May 2006 were in the nature of recommendations, ceased to be recommendations, became actual approvals in the first instance the very same day?-- Yes, when the Executive Director signed off.

Within two days? We see that from H35, with the Director-General signing off?-- Yes.

And within, what, about two weeks when the Executive Council signs off on the 25th of the 5th?-- That's correct.

So they were converted from recommendations to reality?-- Quite quickly.

Yes?-- Very quickly by our standards.

1

And is that because Mr Flavell was someone who indicated that he expected these things to go forward?-- No, I think it was the looming start date of the contracts that put a little bit of a hurry up on the system that day. The contracts needed to start on the 1st of July, or else the apprentices and trainees in the system would have a gap in terms of no funded provision to help to support them through the process.

10

And so I take it if we take the Betaray people as an example, as we saw in H36, the contract goes out to them on the 31st of May?-- Yes.

They're asked to sign it and return it by the 16th of June?-- Yes.

Let's assume they did so?-- I would imagine they would have. Most were waiting expectantly for their contracts to arrive.

20

And is it the case that most would just sign up on their allocation?-- I think most were aware of the provisions of the contract because it was made public during the tender process. So any issues they may have had with the contract conditions, they may have already come to terms with, and most had been around with the system long enough that the way that we managed that contract hadn't changed significantly in terms of an arrears based, outcome based contract. So most would be aware of what they're getting into.

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And in terms of the actual allocation, I don't want to be so blunt as to suggest this, but, I mean, is it sort of like it or lump it? They're offered an allocation of whatever, and they either take it or leave it?-- There is room, as in any negotiation process, for them to come back with a business case. Generally that was in areas that were non-apprenticeship based because generally the offers for three year contracts for apprenticeship providers were such that it enabled them to grow if they were already performing. We ended up getting - entered into further negotiations more with providers who were offered a one year contract generally in a lower priority area where we had restricted funding levels.

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So the typical User Choice RTO provider that is there on a three year contract would tend to sign up on the contract?-- Yes.

If they had some quibbles, they might sign up the contract, but engage in some negotiations-----?-- Yes.

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-----as to why going forward that they should have their allocation increased?-- And particularly for new RTOs in the system who received quite a small allocation, that was more common than those that were established in the system like the Betaray example.

And assuming that this letter to Betaray is typical, is that

the sort of time frame that applied the standard letter enclosing the contracts goes out at the end of May?-- Yes. Some may have gone out a little bit earlier because Betaray was part of the Executive Council approved process. So, the lower level values, we would have batched them and sent them out earlier in the process.

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So that would have been within a day or two of the 9th of May?-- We may have sent those under \$500,000 out, yes.

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And the ones that the Director-General would approve, similarly there would have been letters going to them within a day or two?-- I would imagine so, yes.

And so the bigger ones, if I can call it that, you expect their contracts back by the 16th of June?-- Yes.

So, as it were, you can announce to the world, and put up on the website, what the allocations are coming off for the 1st of July?-- And get them executed by - the ones above the Executive Director level, so above \$500,000, required the Director-General to actually execute the contracts on behalf of the State of Queensland. So, we needed that time as well to batch them up and move them across and get them signed and get them back and actually have them live in the system. But then certainly from the 1st of July, we would have made sure that the Queensland Training Information Service was updated with the new contract holders.

20

So just using Betaray as an example, and it is perhaps atypical because it is a bigger one, on the 9th of May, if you were informed of the recommendations, you would know what is being recommended for an allocation?-- I would have, yes. I was involved in that process.

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If someone had seen that spreadsheet, they would know that as well?-- Yes.

They could make an informed prediction as to whether that recommendation would be accepted or not?-- Yes.

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And it would be a rare thing indeed for the recommendation not to be accepted?-- Yes.

Come the 31st of May, if you phoned up Betaray and they wished to tell you, they'd say, "Well, we've been offered a contract with an allocation of" X dollars?-- Yes.

If they didn't tell you on the 31st of May, you go on the website, what, shortly after the 1st of July and find it out?-- Find out the one new value, anyway.

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And if you were informed as to what the expected growth was in the system, you'd have an idea of what was going forward?-- You could roughly estimate what the value was, yes.

That would tell you so much if you were wanting to buy the business, I suppose?-- In theory, yes.

Not that you were buying the business, but you would want to know a lot more about it than that, wouldn't you?-- I would imagine so, yes.

Thank you.

MR NEEDHAM: Just before you resume, a couple of things I want to clarify, and I'll certainly give you the opportunity to ask any further questions, Mr Applegarth.

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This funding list, or the recommendations that went forward as the attachment to Exhibit H31, do the RTOs existing or new put up business cases as to the amount they should get in the new round of funding?-- It is one of the elements taken in to consideration as part of the allocation. When they tender, there is what is termed a worksheet which is like an Excel spreadsheet where they essentially populate it with the details of the qualifications they wish out of their full scope they wish to be considered for, and they give us an indication of the number of students, and the likely dollar value that they're seeking. So that is one of the elements that is taken into consideration when we determine what we're able to offer under the agreement process.

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And presumably a new RTO, or a new training organisation that hasn't had existing funding, has got to rely entirely upon its proposal that it puts up to the department?-- Yes. And because of the nature of the contract, our normal process for new RTOs would have been to allocate a relatively small contract which would be below their expectations, to give them the opportunity to enter the market and to prove to the department that there are people in the market who wish to use their services, and then we can renegotiate that based on what they deliver.

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And is there a system within the department where you can provide assistance to, say, these new training organisations to assist them in working around the system, and working out how to get started as a training organisation?-- The department has a number of areas that are involved in both registering new RTOs, so, managing their compliance arrangements at a national level to give them RTO status, and in informing them about the market because the User Choice Contract essentially requires an RTO to deliver in accordance with National standards and the State legislation. So our regional offices are involved in providing information to RTOs around the expectations of the State in terms of delivering training to apprentices and the requirements in training plans and other things, and then our, or my former office in Stakeholder Performance were actively involved in supporting new RTOs to become established within User Choice and understand recording requirements, and when errors appear in that data what does that mean, and how they can best manage within the contract.

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All right. So if a person wanted to start up a training organisation, they could go to your area or to one of your regional offices, ask questions, receive information that would be available to them from the department and generally gain assistance in starting up their RTO?-- Yes.

All right. Was there any designated officers who did that work or is it just anyone within your area?-- It depends on what element of an RTO we're talking about. If we're talking about actually establishing an RTO, that is more to do with the regulator in Queensland which sits within the training quality and regulation part of the department and they have a registration unit that supports RTOs in making application and they also, I think, to my understanding, have a list of prequalified AQTF, Australian Quality Training Framework, consultants who support RTOs in developing the quality system. So generally the process of actually establishing an RTO would be more of a regulator function within the department where there is support available.

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Okay. And for things like this User Choice Program Policy where "a number of User Choice reforms are aimed at developing new private provider capabilities in high priority training areas where demand is not being met by current suppliers", now presumably it is no good having a statement like that unless you get it out into the market place, to the trainers and perhaps to the new trainers?-- Yep.

Which area of the department did that, providing that advice?-- Both the area that I work in, and broader the division that I work in, industry development, because the Queensland Skills Plan also funded networks of industry advisory organisations that are involved in working with industry around their skilling needs and working with RTOs.

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Right?-- And also because registration in the VET system is national, our approach was also about attracting interstate RTOs into Queensland to help address some of the demand in the State.

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All right. Presumably advising them of what are these high priority training areas that you would be looking at supporting?-- That's right.

Okay. Would I guess that some of those are the ones that are set out on the second page of exhibit H31, your email?-- Yes.

The ones that gain these big percentage increases?-- And those four industries receive a fairly significant proportion of the overall funding for the program. So they are industries that rely very heavily on a trade pathway into the industry and trade occupations within the industry, and so have always attracted a fairly significant proportion of User Choice funding and a growing proportion of User Choice funding.

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All right. So presumably if someone contacted the DET as it

was at that time and sought assistance in these areas, they would be directed to the appropriate areas to provide that assistance?-- That's right. If they were an existing - if they already had registration to be an RTO and were seeking entry into the User Choice market, they would obviously come to the area that I managed, and while there was a tender in early 2006, that was the major process that has been an ongoing process where if you are an apprenticeship provider seeking to do business in Queensland or already doing fee for service business in Queensland, we have been adding private RTOs in line with the policy that we had established since a conclusion of that tender process.

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I see. So this is an ongoing process of assisting these existing providers and the new possible entrants into the system?-- That's right. As well as the ones that don't establish a new business but either absorb or purchase an existing business, which happens as well.

Yes, okay. Anything out of that, Mr Applegarth?

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MR APPLGARTH: No, thank you, sir.

MR DEVLIN: I have a couple of questions of Mr Leckenby.

MR DEVLIN: You were asked questions about, and you acknowledged that in answer to the question do we have a list of RTOs with User Choice contracts, you seem to have given more information than you were asked for?-- That's correct.

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When you did give the information, in the first paragraph you said, "In response to your question below I have attached a spreadsheet that lists the private and public providers that Industry Development is recommending to receive."?-- Yes.

So you made it clear that it was in prospect?-- That's correct.

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In the second paragraph you said: "This spreadsheet includes details of the proposed funding level."?-- That's correct.

And later you said, "The proposed amount for financial approval."?-- That's correct.

And even in the third paragraph you said, "We are currently completing a briefing note to yourself and the Minister seeking financial expenditure approval."?-- That's correct.

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So you described in three separate paragraphs the nature of the document you were supplying to the Director-General?-- I did.

Thank you. I have nothing further of Mr Leckenby. May he be excused?

MR NEEDHAM: Yes, yes, thank you, Mr Leckenby, for your evidence.

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WITNESS EXCUSED

MR NEEDHAM: Do you desire to have a break in the middle of the morning?

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MR APPLGARTH: I am an old man but I am not that old.

MR DEVLIN: I will take the responsibility then for Mr Perritt.

MR NEEDHAM: We will adjourn for 10 minutes.

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THE COMMISSION ADJOURNED AT 11.50 A.M.

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THE COMMISSION RESUMED AT 12.05 P.M.

MR NEEDHAM: Yes, Mr Devlin?

MR DEVLIN: Commissioner, I would ask that Gregory Harper be called. I believe Mr van der Walt appears for Mr Harper.

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MR VAN DER WALT: Good morning, Chairman - it is afternoon now. I appear for Mr Harper and I have an application - I seek an order under section 197(5), effectively seeking a blanket order that all of his evidence is taken to have been given upon objection.

MR NEEDHAM: I see. All right. So you are in effect claiming privilege, is that what you mean?

MR VAN DER WALT: Yes, privilege against self incrimination.

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MR NEEDHAM: Yes, all right. Well, we'll wait until your client can confirm that he seeks that and I will have no difficulty in giving that.

MR VAN DER WALT: Thank you.

MR NEEDHAM: If you would perhaps like to establish that after your client has been sworn in?

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MR VAN DER WALT: Yes.

GREGORY JAMES HARPER, ON AFFIRMATION, EXAMINED:

MR DEVLIN: Can you tell us your full name, please?-- Gregory James Harper.

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Tell us if this attendance notice applies to you?-- It does.

Thank you. I tender that.

MR NEEDHAM: All right. Before you go any further then with this witness, we might have Mr van der Walt-----

MR VAN DER WALT: Mr Harper, I just asked the Chairman to make a blanket order in respect of your examination in respect of the self incrimination privilege and the Chairman has asked me to confirm with you whether that is an order that you are asking for?-- That's my wish.

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MR NEEDHAM: All right. So you claim privilege against self incrimination with respect to any answer that you may give?-- Yes.

All right. I grant that in respect of the totality of your evidence. So you don't have to address it again as you go through. Yes, thank you. That notice to appear will be exhibit H41.

ADMITTED AND MARKED "EXHIBIT H41"

MR DEVLIN: Sorry, H41?

MR NEEDHAM: 41.

MR DEVLIN: Thank you. Can you tell us what your current occupation is, Mr Harper?-- I am a senior executive officer in the Department of Employment Training and The Arts.

How long have you been with the department?-- I have been with the department in different - in its different forms since 1992.

And back in 2006 what functions were you carrying out?-- 2006, in the first half of the year I was Director of Logan Institute of TAFE and from July that year I was in a position as General Manager Business Services for the department.

What functions did you carry out as General Manager Business Services?-- I had a range of functions, leading the establishment of lead institutes; overseeing infrastructure planning for the department, I was looking after an initiative called Skilling Solutions Queensland, I was managing a Critical Change Project called Lean Activist Centre, which is about downsizing head office, and there is another function that just escapes me.

Very well. When did you finish with Logan Institute of TAFE again?-- I finished officially I think around the beginning of July but I took a month's holiday prior to officially completing duty with the institute.

And was that as a result of Logan Institute of TAFE being, as it were, closed?-- Amalgamated into the new Metropolitan South Institute of TAFE.

Thank you. Now, I want to show you a document that for our purposes is D11. This appears to be an appointment record from within the department for the 17th of May 2006 between 10 a.m. and 11 a.m. involving the Director-General, a Mr Vern Wills and yourself?-- Uh-huh.

Did you attend that meeting?-- I believe so, yes.

What occurred at that meeting, please?-- I think it was general discussion about the possibility of establishing a training and employment oriented business, national training

provider.

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A general discussion about who establishing that?-- I believe Vern Wills and Scott Flavell and the Enhance Group, I would have thought at the time.

Is that the understanding you reached as a result of what was said to you during the meeting?-- I believe so, yes.

Do you recall anything about what was said to you in specifics, please?-- I can't recall specifics. It is quite some time ago. I recall as a result of the meeting going away and preparing some sort of high level ideas about what sorts of activities that sort of a business might be involved in.

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Was it clear to you why you were involved in such a process?-- Yes.

I should say was it made clear to you by somebody at the meeting?-- Not at the meeting.

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MR NEEDHAM: Presumably before the meeting.

WITNESS: It was before the meeting.

MR DEVLIN: Yes. Who spoke to you?-- Scott Flavell had spoken to me.

By phone or in person?-- In person.

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And what did he say to you?-- He had asked me whether I might be interested in exploring the possibility of being involved with the establishment of a business.

And did he tell you at that meeting in what capacity you might be involved in the establishment of a business?-- He was proposing that I would look after training operations and probably broader general operations, although that wasn't discussed specifically.

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Did Mr Flavell explain to you during that meeting - that is not the 17th but the earlier meeting - what his role was to be?-- I don't know if he explained it - yes, I presume he did and my assumption is that he has - he had told me that he would be the CEO of that business.

Do you have a recall of him saying that?-- Not specifically, no, I don't specifically recall him saying he would be the CEO. I guess I assumed that was what his role would be.

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You were interviewed in relation to this matter on the 9th of April 2008?-- Yes.

I refer to page 7 of that interview. Just have a look at the text up on the board here. Did you at that time tell the investigators "I was asked by Scott Flavell whether I might be interested if he were to leave the department in going with him to set up a private training company"?-- That's right,

yes.

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Do you remember when that was said to you?-- Not specifically but it would have been some time early May, I think.

MR APPLGARTH: Mr Chairman, might I have access to that?

MR DEVLIN: I can hand down a copy of the interview.

MR APPLGARTH: Thank you.

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MR DEVLIN: I am looking at page 8 of the document.

MR NEEDHAM: You might have to get a copy.

MR DEVLIN: Might I proceed at this stage?

MR APPLGARTH: Yes.

MR DEVLIN: I am looking at page 8 of the document. In relation to a conversation about May - you qualified it May/June 2006 - did you say, when you were asked what Scott Flavell asked you to do, did you say, "Would I be interested in going with him to his exploring the possibility of setting up a private provider and he had people that he was working with about the possibility of going with him to act as CEO of that company or general manager if he was CEO."?-- Okay, yeah. That would be - that would be right.

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So-----?-- Chief-----

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-----They were things that were said to you by Mr Flavell?-- I believe so, yes.

Did you also say there at line 98 - 198, sorry, "That was prior to me leaving Logan TAFE, just prior to the TAFE - Logan TAFE being disbanded."?-- Yes.

MR NEEDHAM: Can you recall when Logan TAFE was disbanded?-- Yes, officially from July the 1st.

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Okay?-- That year.

MR DEVLIN: Now, do you recall any more specifics about the meeting of the 17th of May which involved Mr Wills?-- No, nothing specific, although I said I sort of did some work on a concept document on what sorts of business activities might be - represent opportunities and I think - I can't remember but I think it was a fellow Warren Sinclair who was involved in that meeting as well, if I am not mistaken.

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Okay. If I can just ask you to have a look at document D12? I will tender the appointment for the 17th of May.

MR NEEDHAM: That's exhibit H42.

ADMITTED AND MARKED "EXHIBIT H42"

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MR NEEDHAM: Whose appointment diary is this from? Do we know?

MR DEVLIN: Mr Wills, I am advised.

MR NEEDHAM: Mr Wills, thank you.

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MR DEVLIN: Is this the document that you referred to, a concept paper?-- Yes, yep.

I formally tender the document, Chairman.

MR NEEDHAM: That's exhibit H43.

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ADMITTED AND MARKED "EXHIBIT H43"

MR DEVLIN: Now - if that can stay - do you want to mark it first? Can we just talk about what's on the screen until it comes back to you?-- Yes.

If you met with Mr Wills and the Director-General on the Wednesday the 17th of May?-- Uh-huh.

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Where did that meeting take place, by the way?-- Oh, at Mr Wills' office.

It appears that the following day at 5.07 p.m. you supplied what you call a dump of information to the Director-General and to warren@gbus.net, subject "Enhance training", you call it "a dump of information" - we will come to that in a moment - but you say, "Hope it is what you want, Warren"?-- Yes.

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So what did you mean to convey - sorry, who was Warren?-- Warren was a person that was employed by Vern Wills to put business concept proposal together. That was my understanding of his role.

Had you met Mr Wills before?-- I don't recall whether I'd met him before then or not but I might have met him a week or two before that.

Do you know why you have conveyed this also to the Director-General, "Also, Scott, the numbers are Christine Skippington and Derek Merrin." Do you know why you gave those numbers?-- Because I - look, I didn't have time to be working on, you know, detailed business proposals. I had a job to do and I was also heading overseas in June and the company wanted to look at setting up - the opportunity of setting up a business and what the - you know, what the business concept would be and so on and they needed somebody to do it and they

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were a couple of people that I knew knew about the business and could provide - I thought could provide advice and assistance in preparing, you know, business case information, that sort of thing, specifically about the VET sector.

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Right. And so - let's go to the information you provided in this dump?-- Yes.

So you addressed it to Warren?-- Yes.

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And you've referred him to some sites, some internet sites?-- Yep.

You have referred him to a research paper that was released with the government's Green Paper?-- Yes.

You have talked about "value add" in the area of delivery costs?-- Yes.

Then you have talked about "Enhance's potential sustainable competitive advantage"?-- Yes.

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"Is in flexibility"?-- Yes.

And you have referred to a survey that you completed with employers and industry?-- Uh-huh.

In which they gave feedback that "the training offered needs to be flexible and readily accessible"?-- Yes, that's right.

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You have given a few pointers in the document as to how that might be achieved?-- Yes, that's correct.

You have referred to the "flexible training approach already operating in the trades at Logan"?-- Yep.

And then you give an example for a User Choice contract?-- Yes.

And I take it you drew on readily available information?-- Oh, yes, very - they are general sort of indicative figures, yeah.

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And you've outlined the sort of training that was being done at Logan TAFE, I take it?-- Yes.

To give Mr Sinclair, Warren Sinclair-----?-- Yeah.

-----who was working for Mr Wills-----?-- Yes.

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-----some background in this training area?-- That's correct.

And you conclude the document by talking about profit margins?-- Uh-huh. Again, indicative sort of profit margins and what might be achievable.

Now, did you see this as being part of your employment, to give such information of that generic kind to someone looking

to start a business as a registered training organisation?--
 No, but I could give that sort of information to other
 providers as a director of an institute if I chose to and if I
 was looking to collaborate with them or share market
 information. The information is very readily and commonly
 available because government so strongly supports the
 establishment of private training companies and provides
 advice on how to do business plans and bill capability and get
 infrastructure and so on. It is much, much, much more
 sophisticated information that's readily available than I
 provided Warren.

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Right?-- He just needed to get in and look at the websites
 and those were just a couple of indicators of it, you know,
 the Commonwealth area and there is so much information
 available. It is where you go to get it.

What you did, though, was against the background of a
 conversation with Mr Flavell about the possibility of you
 working as a general manager in this particular organisation
 which was seeking to get started, wasn't it? It was against
 that background?-- Yes, possibility of - if that business was
 established and if I chose to go with the business as general
 manager, yes.

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Now, we know that in the end you decided not to go?-- Yes.

Along the journey, though, which seems to have started in
 about May-----?-- Correct.

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-----of '06 did you - for you personally, did the notion of a
 possible or potential conflict of interest cross your mind?--
 Yes, it did. I have got to say there are two issues here. I
 mean the - first off, the establishment of private training
 companies is very, very much government policy, right, so it
 is very much supported. And I certainly envisaged that the
 establishment of a business - a national business
 headquartered in Queensland, that would be a very significant
 national provider would be something that would be seen as an
 achievement by the government and demonstrate leadership of
 government - of Queensland in the vocational education market.
 So from that perspective, no, there wasn't a conflict. But as
 an individual, as an employee I also felt, "Well, look, you
 can't go doing your private business, you know, in work time
 using work resources." So I was very mindful of that, and,
 hence, the work that I put in, I put it in my own time, not
 that I put in a lot of work, but that which I did I put it in
 and I saw it as, look, this is me exploring a job opportunity.
 This is the sort of information that a prospective employer in
 an interview process would very likely ask of you. You know,
 what do you see as the strategic opportunities of this
 business, what do you see as the strengths, weaknesses,
 threats, et cetera. What would you do about it. Very general
 information. So I was looking - looking at exploring those
 options, look, from a point of view of a prospective employer.
 So, yes, I was mindful but also felt I managed it very
 appropriately.

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Being mindful of it did you raise that matter with the Director-General yourself when you had an opportunity?-- In a - I referenced it, if I recall, in a discussion. I just said, "Look, you know, I have got to be mindful myself of my potential conflict of interest or perceived conflict of interest. I am currently a director of an institute, so, you know, I am not - I can't do very much to assist in this process. You are interested in me as general manager, that's fine. In the longer term if you go that way and set up the business and I want to go, that's fine." It is really more a matter of acknowledging that I couldn't do much, nor could I be perceived as being actively pursuing that objective, ie in detail doing work for it, helping to set it up. So, yeah, that was - that's the context.

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Well, if you had a one on one discussion with Mr Flavell before the 17th of May 2006 meeting-----?-- Yes.

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-----and you produced that dump of information in time to send it at 5 o'clock on the 18th of May, are you able to say when you had that conversation with your Director-General?-- No, I can't specifically say. I don't remember. It may have been some other time before then or after then. I don't remember specifically. The-----

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Do you recall what the response of the Director-General was to what you said?-- I think he just acknowledged that I needed to make sure I managed my potential conflict of interest.

So that was his response to you?-- That's as far as I recall, yes. I don't remember a specific response.

Thank you. Now, that particular dump of information, I see it was transmitted at 5.07 p.m. on a working day?-- Yes.

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Was it something that you did work on in work time, or just out-----?-- No. It would have been done the night before and then later in the afternoon when I got a chance, I had a bit of the look and a tidy up and sent it, I think. I certainly would not have been working on it at work time. I had too much else to do.

Right. And just to underline that, you sent the material from what looks like a private e-mail address?-- Correct.

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So you must have even knocked off and got home in time to send it?-- No, not necessarily. I don't know. Don't recall.

Could you access your private address from work?-- Yes, I could access Graffiti from work, yes.

Was that a deliberate choice of yours to use your private - I'm not being critical by the question, I'm just curious as to the answer?-- Yes.

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Was that a deliberate decision by you?-- Yes, I wanted to keep the two separate. I didn't want to be sort of using departmental e-mail to be conducting private business. It would be like using departmental letterhead to send a job application to another business.

Can you then give us the distinction then. If there was government policy as you, I think, described generally of government encouraging private registered training organisations into the sector, why then didn't you just consider it to be something to be done in your own work time at the direction of the Director-General?-- Because I wasn't asked - that wasn't part of my role. My job wasn't to set up a private training company. My job was to do my job.

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But I'm just interested in your thought process again. I'm not implying criticism. If you had a perception that government was encouraging the entry of private providers, why

did you not see it as being something that was a necessary part of your job, particularly if the involvement came directly from suggestions by the Director-General?-- Well, government has policy that, you know, a lot of things happen. It doesn't mean it is part of every public servant's job. So, it wasn't part of my job to be preparing business cases, and concept proposals for the establishment of private business. That was a private matter. Like I wouldn't write a job application during work hours either.

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Okay. Was the fact that you had been spoken to about the possibility of taking up employment-----?-- Yes.

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-----within the new organisation also a critical factor in the decision you made to keep it strictly separate?-- Yes. Yes.

And it sounds like it was a decision you'd made for yourself by Thursday, the 18th of May 2006, at least because you used your private e-mail address?-- That's right.

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Thank you. I'll ask you to go to document D13. Once again you appear to have sent this from your private e-mail address-----?-- Yes.

-----on the 30th of May 2006 to Warren Sinclair again, and you copied in the Director-General?-- Yes.

And the document is entitled, "Answers to your queries."?-- Yes.

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Perhaps we might try and discover what the queries were. Anyway, it might be implicit from what we then see?-- Yes. I don't remember the queries but they would be implicit, yes.

You commence by saying, "Hi Warren. In response to your request...preferred target industry/s for business launch and flex delivery strategy as discussed. The three priority areas are Energy, Telecommunications and Finance. Resources could be a fourth."?-- Yes.

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"For each sector, Enhance should try to offer a complete training solution...", et cetera?-- Hm-mmm

So, from where did you glean that sort of information to form the view that the priority areas should be those that you've nominated?-- I think that they're sectors that are growing. They're areas that haven't had a lot of traditional training. They're probably not interested in traditional modes of training. They're national markets, and I thought a company that was operating nationally with good connections into, you know, industry could potentially do well. So I guess there was a good fit and that was just my thinking about where the fit might be.

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Yes. Under "Curriculum Content", you've referred Mr Sinclair to the NTIS website?-- Yes.

And what was that in a nutshell?-- NTIS is a system that the

government provides basically to provide all training providers with information about who is delivering the training, where it's being delivered, and what qualifications are available. It goes down to descriptions of units of competencies within training packages, qualifications.

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So again this was generally available information, you just drew his attention to it?-- Yes.

Then you appear to give him a mini lecture on what appears to be a big issue for you which is flexible delivery?-- Yes.

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Is that a fair comment?-- It is.

And was that something that you learnt from your days at Logan TAFE?-- No, that's something I've learnt professionally from a career spanning 30 years in education. But in the VET sector, flexible delivery is a big deal. They have a flexible learning framework that is about trying to get the whole VET sector, TAFE and privates, to respond better to client needs. Flexible delivery is really about responding to client needs.

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Yes. And so over the page then, on page 2, you have headings, "Flexible delivery, self-paced learning, practical competency assessment", and then under "Organisational Structure", you say in that third sentence, "Big competitive advantage for Enhance is its capacity to structure its employment arrangements around a base salary with sales and service incentives. Puts it ahead of a public provider immediately." So, you're simply pointing out to - did you know by then Sinclair was sort of a consultant to Mr Wills-----?-- Yes, yes.

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-----and his interests?-- Yes.

So you are pointing out to him where this new body, which at that point, from your point of view, was called Enhance?-- Yes.

Is that right?-- Mmm.

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At least at this point in time? Where it could find its niche in the market?-- Yes.

Even though it was in the nature of general information, you would say?-- Yeah, general strategy, business strategy.

Again, was it information that you compiled in your own time and transmitted from your own private e-mail?-- Yes.

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So that - I think it says in response to your request, do you know whether you received requests for assistance at a meeting, or by e-mail, or what?-- Oh, I don't recall exactly how I received it. It could have been via e-mail to my Graffiti account. It could have been by phone. I don't remember.

Right. Again that's dated 30th of May at 4.26?-- Yes.

I want to show you this document just for your response. It's dated 30th of May, the same day as your communication. It's called D14 for our purposes. This is from Sinclair to Wills dated that day. If we go over the page, paragraph 6, "With men of the calibre of Greg and Scott, the senior management area is looking very strong." So, had you discussed the prospect of being part of the senior management of the new venture when you saw Mr Wills on the 17th of May?-- Yes.

And was that during that meeting that that discussion occurred, the prospect of you being in senior management?-- I don't remember if it was that meeting or maybe a meeting a week before or something, but around then, yes.

How many meetings do you believe you had with Mr Wills?-- I might have had two with him before June that year.

And on each occasion was Mr Flavell present?-- I think so, yes.

And so at the same meeting, was the prospect of Mr Flavell being also part of senior management part of the discussion?-- I don't know if it was part of the discussion. I would say more that it would have been assumed. That's why we were there.

Right. I just want to draw something else to your attention. This is written by someone else, but I'm just interested. He says this - Mr Sinclair says, "So Vern, here are some of the action points that I'll be talking to Greg and Scott about this week", and the second dot point is the highlighted part, "Assess the current companies in those sectors for strategic acquisition, Axial is a current potential contender." Do you recall being present for any discussion about Axial?-- No, not specifically about Axial. I know the company. I know of the company. I don't know very much or anything really about it - something with automotive or something. That's all I can say.

Okay then. I want to show you-----

MR NEEDHAM: We might tender some of these-----

MR DEVLIN: Sorry, yes.

MR NEEDHAM: -----to get the record straight. The e-mail of Mr Harper to Warren Sinclair of the 30th of May 2006 is Exhibit H44.

ADMITTED AND MARKED "EXHIBIT H44"

MR NEEDHAM: The e-mail from Warren Sinclair to Vern Wills of the 30th of May 2006 attaching the memo from Mr Sinclair to

Vern Wills of that same day is Exhibit H45.

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ADMITTED AND MARKED "EXHIBIT H45"

MR DEVLIN: Thank you. I want you to have a look at D15. It's just a note of a meeting. See if you can confirm whether or not you attended it. This is from the Director-General's calendar, just look at the hard copy there, it might be easier. You were slated for a visit on the 1st of June 2006 at the DG's office, just the two of you. Given the timing of the other material that you had compiled for Mr Sinclair, and the subject matter of the discussions earlier in May, are you able to recall whether you attended that meeting?-- No, I can't recall if I attended that meeting. I don't remember the meeting.

10

Did you, however, attend any meetings, one on one, with the Director-General to discuss this project after the 17th of May meeting with Mr Wills?-- I may have had a meeting with Scott, I don't remember, to talk about the fact that I wasn't going to be around from June the 6th, onwards, and that's about the time - potential time. So it might have been for that purpose.

20

And that was when you were going overseas?-- Yes.

30

I'll tender that for completeness of the record?-- I don't know. It could have been a meeting about something else, too, because I had another matter that was sort of being resolved if I recall.

So you had another subject matter that you met with the Director-General on?-- I had been meeting with him earlier, and whether there was a tidy up around that, I don't know.

And what was that subject matter?-- Well, that is what I was going to be doing when I returned.

40

MR NEEDHAM: That's within the department?-- Within the department.

With TAFE finishing?-- Yes.

Okay. That's Exhibit H46.

50

ADMITTED AND MARKED "EXHIBIT H46"

MR DEVLIN: I want you to look at D16. Now, again, a couple of pages in, third page in, this is written by someone else, but it may or may not be reflective of things that were

discussed with you. This is again from Warren Sinclair to Vern Wills: "Further to my memo of the 30th May, I provide you with an update on progress after further discussions with both Greg and Scott." So, do you recall that you met with Warren Sinclair for discussions between the 17th of May and your departure in early June for your overseas trip?-- No, I don't recall meeting with him.

1

Did you have e-mail discussions, perhaps, or phone discussions?-- Yeah, that e-mail that was tabled before is probably the document that he may be referring to, I think.

10

In expressing your view that there was a compelling need for training in Energy, Telecommunications, Finance and Resources, did that reflect the view that you had at that time?-- Yes, I think so.

Very well. It says below, "Scott will be preparing the detail required to review the existing delivery to Energy, and he will also be providing a model structure for how he sees the flexible approach we should be looking for Energy as well as Sport." Were you present for any such discussions leading up to your departure for overseas?-- Not that I recall, no.

20

These words in yellow there, "I will fax through to you a list of current RTO companies receiving funding under the User Choice Program. This list is the 'hot' list of potential acquisitions." Do you recall discussing the list of companies in receipt of User Choice funding for the triennium?-- No.

30

Were you in an area where you were able to access such information in a global sense, that is?-- Yes, I could have got it from websites, I would think, if I wanted to get it, probably off the NTIS site and I think there is a QTIS or something in Queensland site that gives the same sort of information, I might have used it.

As far as you know is that where all that information is collected together for all the RTOs?-- Yes. Publically available websites.

40

Now, have you actually accessed it yourself on occasions?-- I access NTIS quite a lot but I don't think I've accessed QTIS more than a few times.

Have you ever accessed a public website to get all of the RTOs in receipt of funding, you, yourself, personally?-- No, not that I recall. Certainly not.

Right. Shaded in red there, "I have been able to ascertain from Scott that the bulk of the curriculum content is already developed and will only need minor amendments which he and Greg can do. He has access to the core modules at little or no cost." Now, in terms of curriculum content, do we understand that that is readily available from public sources?-- It is.

50

But somebody would have to source it, collate it, adapt it to

the new company, I suppose?-- And somebody who is qualified to do that, and certainly not Scott nor I would be qualified to do that.

1

I see. So it was never discussed with you that you would source curriculum content and develop it?-- I would have told Warren that you could get curriculum readily from ANTA. It is readily available and that learning resources who support the delivery of most qualifications are also readily available through publically available arrangements.

10

The underlined part, "Scott suggests that from the time he and Greg start there will be a 2-3 month lead time to finalise all resources and be ready to start delivery." Were you present for any conversation in which a thing such as lead time from a start time with the new entity was discussed with you? It is the first underlining on the page?-- Scott needs to give two months notice on the contract?

Where do we see that? It's just the suggestion, "Scott suggests that from the time he and Greg start there will be a 2-3 month lead time"?-- Yes.

20

I am just wondering if that was ever discussed with you in your presence?-- Not that I recall. That would be accurate, I suppose.

Mmm?-- That would be accurate, but I don't recall having a discussion.

30

Okay. Down further below, "Scott looks to be the CEO with Greg functioning at Chief Operations Officer level", is that what that is meant to convey?-- That's like that general manager type role, yes.

And you have already said that was discussed with you at some point-----?-- Yes.

-----in the lead up to your going overseas?-- Yes.

40

Had you expressed, by the time you went overseas, any firm view about what your future held in any conversation with the Director-General?-- Can you clarify what your meaning is?

Did you discuss with Mr Flavell, or with even the people wanting to establish the private training organisation apart from Mr Flavell, your intentions in relation to leaving the government and starting with a private - with this private organisation?-- Well, if it was to be established, and it wasn't clear that it would, I indicated that I might be interested in going. I'd also said to Scott, and I don't remember when - to Mr Flavell - that I would have - given my situation as a public servant with some years of service, that I would prefer that I got a year's leave from government, with the sanction of government to go and work in the private sector.

50

Do you believe you had said that before you went overseas, or

was that something you said when you got back?-- I believe I said it before I went overseas.

1

Who to?-- Oh, to Scott.

That D16, I'll tender that into the record.

MR NEEDHAM: That's Exhibit H46.

MR DEVLIN: If it doesn't inconvenience anyone, I should be able to finish by the end of the lunch hour, Mr Chairman. 47, I believe.

10

MR NEEDHAM: Yes, it is 47.

ADMITTED AND MARKED "EXHIBIT H47"

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MR DEVLIN: Are you happy to sit on, Chairman, if there's no inconvenience?

MR NEEDHAM: How much longer do you think you will be?

MR DEVLIN: I don't know that I'll be that long. I'll probably eat into the lunch break by about 15 to 20 minutes.

MR NEEDHAM: Oh, well, we have cross-examination then. We will adjourn.

30

MR APPLGARTH: If it assists I wasn't planning to cross-examine at any length, perhaps not at all. But I'm, of course, in the hands of the Commission as to what is convenient to you and the witness and all concerned.

MR VAN DER WALT: I am in a similar position at the moment not intending to ask any questions.

40

MR NEEDHAM: All right. If everyone is happy, we'll sit on. If we can finish before half past one, that would mean we won't have to bother coming back.

MR DEVLIN: Thank you.

I just want to show you D17. This is probably at the point where you have departed on your overseas trip but it is a communication from the Director-General to Warren Sinclair. The words used by the Director-General are, "As a start up, Greg and I could undertake the negotiation with sporting bodies, contract management, et cetera. We would need to develop training product and teachers." And makes the suggestion, "As a start up you could contract the Sunshine Coast TAFE to provide product and training and add a margin, 15-20 per cent." Do you recall any of that being discussed with you by either Mr Flavell, or the others involved with the proposed new body?-- No, I don't recall it.

50

MR NEEDHAM: Are you tendering that document?

1

MR DEVLIN: Yes. I'll tender that. Thank you.

MR NEEDHAM: That's H48.

ADMITTED AND MARKED "EXHIBIT H48"

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MR DEVLIN: If you have a look at D18, there is an attachment to this e-mail that refers to a sports apprenticeship model?-- Okay.

Did you have anything to do with the creation of that document?-- I don't think I wrote anything in it, but I told Scott about a model that I'd seen in the UK with - I've forgotten the name of the company but there was a company that was doing sport-----

20

Carter & Carter?-- Carter & Carter, yes.

So you had a conversation with the Director-General?-- Yes.

Now, it appears to have been attached to this e-mail of the 26th of June. When did you get back from overseas, do you remember?-- Well, not until July. July the 6th, or something like that.

30

Who is Kerry O'Dwyer, see the author of the e-mail?-- I don't know.

In any event, they had a conversation with Mr Flavell, you did not develop the document?-- I don't recall having any input into that document. I understand it, look being at it, but I don't recall seeing it.

40

Thank you. I'll tender that for the record.

MR NEEDHAM: That's Exhibit H49.

ADMITTED AND MARKED "EXHIBIT H49"

MR DEVLIN: If you have a look at D19, it's just a meeting record. You were slated for a meeting from 12 till 1 with the Director-General to discuss Greg Harper's new role in operations. Do you recall what that was a reference to since you were back from overseas?-- That would have been a meeting about my role and particularly - Scott Flavell was the sponsor of the work around Lean Activist Centre.

50

MR NEEDHAM: Of which centre?-- Lean Activist Centre. It was a project aimed to down size head office. 1

MR DEVLIN: Thank you. I'll tender that into the record.

MR NEEDHAM: That is Exhibit H50.

ADMITTED AND MARKED "EXHIBIT H50" 10

WITNESS: That would have been my first day back at work, was it?

MR DEVLIN: Do you think it was?-- Yes. That's 7th of July, was it?

11th of July?-- Soon after I returned, yes. 20

Right. Just another meeting record just to see if you can assist us at all. 17th of July, you are meeting with him for another hour?-- Again, I don't recall the detail of the meeting. Scott Flavell was an important sponsor of that project, and that was a fairly big focus for me, getting that started and how to move it forward. So - I don't recall the meeting so, yes, I could have met with him for that purpose.

30

40

50

After you rang - sorry, after you returned from overseas?--
Yeah.

Did you meet with the Director-General in his office on - in
relation to the proposal to launch a private registered
training organisation?-- I would have certainly had met with
Scott at some time about that and discussed it with him some
time, I would think.

10

I tender that into the record.

MR NEEDHAM: That's - well, I haven't received a copy of that
yet.

MR DEVLIN: Sorry, that was-----

MR NEEDHAM: Appointment of the 17th, is it?

MR DEVLIN: D20.

20

MR NEEDHAM: That's exhibit H51.

ADMITTED AND MARKED "EXHIBIT H51"

MR DEVLIN: This is D21, a further meeting on the 27th of
July, "planning session". Again, can you assist us
with-----?-- Again I don't remember but that sounds more like
a meeting to discuss the business opportunity. That sounds
more like something that I was going to meet with Scott to
discuss.

30

The private provider proposition?-- Yes.

Which was still bubbling along, was it, from your point of
view?-- Still bubbling along, still stuff happening. I
wasn't doing - I was doing very little. I didn't have, as I
said before, time or commitment to be able to put towards it
but I did do some things and I prepared another document, I
think, fairly around that time. Might have been a bit sooner
than that, actually. I am not exactly sure.

40

I am actually leading up to a document?-- Okay.

I will tender that for the record.

50

MR NEEDHAM: That's H52.

ADMITTED AND MARKED "EXHIBIT H52"

MR DEVLIN: There is a meeting on the 8th of August from 10 to 11.30 and it is entitled "project update". Does that assist you at all in determining whether-----?-- Project update would have been - that meeting would have been about Lean Activist Centre.

1

Thank you. That's D22 and I tender that for the record.

MR NEEDHAM: That's H53.

10

ADMITTED AND MARKED "EXHIBIT H53"

MR DEVLIN: Now, on 9th of August, if you can have a look at D23-----?-- Can I just clarify, I make that summation by virtue of the fact that I wouldn't have referred to this as a project. I referred to Lean Activist Centre as a project.

20

What's the difference?-- Well, this is - the activity around the Enhance strategy was around strategy and planning, whereas a project has a specific time-frame and outcome.

Were you employed as a project officer?-- No, I was leading a project. I had a project team working on Lean Activist Centre.

Lean Activist Centre?-- Yes.

30

Right. That's what makes you think-----?-- That's right.

-----why that term was used?-- Yes.

Thank you. So Wednesday the 9th of August we see that you sent an attachment saying, "Over to you, Scott"?-- Yeah.

And on - sorry, on Tuesday the 8th of August and then on Wednesday the 9th of August that's been sent on by Scott Flavell to warren@gbus.net, and to Vern Wills and it is headed "Enhance Strategy Doc 2.doc Enhance attachments"?-- Uh-huh.

40

And then we see an attachment starting "Business Opportunity", and I think you will find it runs for 13 pages?-- Yep.

Had you been working on this up to sending it to the Director-General on the 8th of August?-- I spent a weekend - full weekend, the whole weekend working on some business concepts and some of this - most of this is work I did. Most of it, not all of it.

50

Right. I am just drawing your attention to a few highlighted parts?-- Yep.

First highlighted paragraph, second sentence, "TAFEs provide training places but do not offer flexible training or employment services."?-- Yes.

You refer to the TAFE system as "inflexible, has outdated work practices and operates in a restricted industrial relations environment."?-- Some of them.

1

Yeah. Well, you - did you have any sense of discomfort about creating documents like this when you yourself had been such a prominent part of the TAFE?-- Had been. Did I have some discomfort? No, I have got over discomfort with competition. TAFEs and other providers are, you know, funded by government to deliver flexible training to industry.

10

Yep?-- So I think it is true that a lot of TAFEs are inflexible. I have seen that.

Was it strange to you that you were putting in a document for perhaps private use, expressions like that, though?-- Well, it is for their consumption.

For whose consumption?-- Possible people who might be interested in being involved in supporting the business and backing the business.

20

Was that your understanding of the document-----?-- Yes.

-----as you compiled it?-- Yes.

That it was to be used to attract investors?-- Potential investors. That's my understanding.

30

Sorry, that was your understanding?-- Yes.

By whoever was floating this private company?-- Correct.

Thank you. At page 4 of the document, "TAFE has a number of weaknesses which make it vulnerable to competition", et cetera?-- Yes.

And then, "It has some strengths, however"?-- Yes.

40

So you were giving a robust appraisal of the performance of your employer?-- Well, TAFE wasn't my employer; the department was my employer.

Your former employer?-- My former employer, yes.

In fact, they closed your institute on you?-- They did close the institute, yes.

Did you have any reservations about that? Were you-----?-- I was disappointed that that happened but that's the way it is and I understood, you know, what my role was and why that change had happened.

50

On page 5?-- Yeah.

Highlighted parts?-- Yeah.

Still about TAFE, "Their main problems are their inability to effectively manage statewide and national contracts", et cetera?-- Yes. True.

1

There is a little section on page 6 called "Brokering User Choice"?-- Yes.

So you even put in this proposal the idea of brokering User Choice training to other providers such as TAFE?-- That's right.

10

On behalf of the major clients?-- I think the business opportunity was in complementing what TAFE does, not taking it head on where it is strong.

Yes. The document seems to refer to areas where the new provider might go at in competition with TAFE but other areas where it might collaborate. Is that a fair-----?-- Yes, I suppose. I would say the areas where TAFEs - it would be going in competition is where TAFE doesn't perform.

20

You speak of the strategy of purchasing a provider such as Hilton International that has an established market. Do you remember where that notion came from?-- Where is that?

Sorry, top of page 8?-- Page 8. I don't know. That might have been a section of a document that I got from elsewhere and just plugged in there. I don't remember.

Did you-----?-- I don't know that I wrote that.

30

Did you from time to time consult with Scott Flavell over the content of the document before you finally sent it to him and said, "Over to you"?-- I think a little but basically I just spent a weekend knocking it over to, you know, get some traction and get it completed. I didn't have time to muck around talking, you know, going backwards and forwards to people. I thought I would just get in and put something together that was useful.

40

Did you at that time - see, I am interested in why you would expend a weekend?-- Yes.

So I ask this question: did you see it at that time as an opportunity to put your skills in front of a prospective employer?-- Yes, and a weekend is about how much time you spend writing a job application.

So in a way it was a kind of job application by the efficiency with which you produced some good documents; is that the way you saw it?-- Yes, yeah.

50

Reference to "Enhance/Hilton" there in page 9 under "Business Strategy"?-- Mmm.

But you don't know whether you wrote that or you think you didn't?-- No, I don't think I wrote that section but I might have plugged it in. I don't know whether I plugged it in or

somebody else did, actually. I don't recall.

1

Do you know who else was contributing to the creation of the document?-- Other than I sent it to Scott, no. I don't know whether I sent it on - I will just go back a bit here - no, I only sent it to Scott. I didn't send it to Warren.

Okay. This is on page 12, under "Management Resources", the shaded part. "Credibility and a long-term commitment to learning innovation and excellence will need to be the ethos and passion of key leadership. To this end the two key management positions will be filled by Scott Flavell, the current Director-General for Education and Training in the Queensland Government, and Greg Harper, Executive Director of Logan TAFE. The full curriculum vitae can be found", et cetera. Did you write that?-- I don't think so, no. I wouldn't have described myself as Executive Director of Logan TAFE at that time because that's not technically correct.

10

"Both men have a commitment to vocational education with Greg having overseen the establishment of VE programmes at TAFE". You didn't write that?-- No.

20

Reference to the Chairman, Trevor Roe OBE. Did you write that?-- No.

Would it be possible at this distance to determine which parts you did and didn't write?-- Two years but I will give it a go.

30

Perhaps you can-----?-- I think I recall the apprentice training session.

MR NEEDHAM: Do you want him to highlight the part?

MR DEVLIN: Yeah, I thought perhaps we might get through to the end and perhaps he could provide-----?-- I think I could do it by pages. I wouldn't be definitive on this because I don't recall, but approximately pages 3 through to about - some of - like, business strategy I don't recall. Some of those other - but I may have written - that may have been customised but I think some of that I wrote. Certainly the Business Growth Strategy section I wrote. Don't recall.

40

Just give a page number if you would, please?-- That's up to - up to 13 but it looks to me like parts of it have been edited and bits have been added and so on. Up to about 13.

After you had done your bit?-- Yeah.

50

Thank you. I want to go to a part well into the document. I want you to go to page - looks to be unnumbered on my copy. Three pages back from the rear of the document. The dot point Korea appears at the top of the page - K-O-R-E-A, the country?-- Yeah.

Turn it over. So the dot point reads, "You can market a brand"?-- I can't find that. Three pages back from?

The end. Three full two-sided pages?-- Oh-----

The page begins, "You can market a brand"?-- Okay, yeah.

There is a section headed "Offshore Recruitment Activities"?--
Mmm.

Did you know anything about offshore recruitment activities?--
Not very much, no.

I want to draw your attention to the - did you do much from
Logan TAFE, by the way, while you were director there?-- They
closed international programmes at Logan TAFE, so, no,
nothing.

Was Gold Coast good at it?-- Gold Coast was very good at it.

Do you know Ross Martin?-- I know Ross Martin, yes.

Personally and by repute?-- I know him professionally, yes.

Have a look at the paragraph that's highlighted. "A typical
two day visit to Hong Kong, for example, should result in", et
cetera. Did you write any of that?-- No, I wouldn't know
that. No.

So you are not the I in the brackets, "I will send a separate
email from my leading Gold Coast sales staff on his recent
visit to Hong Kong and Taiwan"?-- I didn't know Ross Martin
was at the Gold Coast. No, no. I didn't write that, no.

Thank you. So in general terms you feel you wrote 3 to 13?--
Yes, and some of the attachments are things that I'd written
previously, I think.

Can you identify them then?-- Oh-----

By their headings?-- No, actually, I don't know that any of
them - of the attachments are familiar.

Okay. So then I will ask you to have a look at document 28.

MR NEEDHAM: Are you tendering that last one?

MR DEVLIN: Thank you, I tender that.

MR NEEDHAM: The last document we have been discussing for the
last five minutes or so is exhibit H54.

ADMITTED AND MARKED "EXHIBIT H54"

MR DEVLIN: So you sent your effort on the 8th of August to
the Director-General and it got sent on in some form - well,

in the form we've looked at, anyway, on the 9th of August
apparently. I am taking you now to the 23rd of August. The
notation for the meeting that's in the records is "re briefs
to be signed". Does that mean anything to you as to the
subject matter of the meeting on that day as to where it was
held?-- No, I don't recall.

1

Thank you. I tender that, for completeness.

MR NEEDHAM: That's exhibit H55.

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ADMITTED AND MARKED "EXHIBIT H55"

WITNESS: I certainly don't remember any briefs.

MR DEVLIN: What would briefs be a reference to in public
service parlance?-- A brief would have been - might have been
commissioning of the project that I was working on, it might
have been a brief, something like that, but I don't remember
the meeting and I don't remember a brief.

20

Okay. I will show you D30. That's another meeting record.
The 9th of August for half an hour. No topic recorded. In
the period following the forwarding of your effort, what would
you call it, a business plan?-- Business - more a business
case.

30

Business case?-- Yeah.

Are you familiar with the term "information memorandum" as
being a formal term of art for a company that's looking for
investment?-- Yes.

Did you regard it as that, as a draft information
memorandum?-- It was draft - it was well, no, from my
perspective I knew what it was to be used for. I knew it was
to be used to support the creation of that sort of document.

40

Right. Who told you that?-- Scott would have told me that.

Okay?-- Or the meeting - or a meeting I attended perhaps
would have told me that, I don't know.

Was Scott at any meeting where you would have been told that
if it was at a meeting?-- Look, yes, he would have been. He
would have been at a meeting if I was at one.

50

You certainly didn't meet on your own with people like Vern
Wills or-----?-- No, no.

-----Warren Sinclair?-- I could have spoken to Warren
Sinclair on the phone separately but I didn't - I didn't meet
with Vern Wills separately.

To return to D30 then you can't help us with - my question really is in the days following your delivery of that document to the Director-General, did you have meetings specifically about its content?-- I don't recall. I don't think I'd have needed to specifically. I'd sort of done my bit, as I saw it.

1

Well, I want you to do your best. Do you have any recall in the period following the delivery of that document having a specific meeting with the Director-General to discuss the content of that document delivered on the 8th of August?-- I don't recall the meeting specifically to do that.

10

MR NEEDHAM: That appointment for the 29th of August is H56.

ADMITTED AND MARKED "EXHIBIT H56"

MR DEVLIN: Thank you. I will just ask you to have a look at document 29 then, D29. After you - it is all right, you can hand that one back, thanks. After you delivered the document on the 8th of August, do you believe you added to the document subsequently?-- No.

20

Thank you. I want to show you document 34, D34. There is a communication here between the Director-General and Vern Wills dated the 19th of September 2006. By that time the Director-General was only Director-General of Mines and Energy, you might recall?-- Yes.

30

Finishing up in - on about the 18th of October 2006. He writes about the College of Immigration: "Time is running out on this project. Greg has had a look at it and spoken to a number of people down south. They really want a partnership with a uni, et cetera." Did you do any leg work on that for this proposed entity?-- College of Immigration?

It is another person's words, I am just interested in whether you can recall playing any role in relation to making such inquiries?-- I have no recollection of the - of that. No, I-----

40

Thank you. I tender that for the record.

MR NEEDHAM: That's exhibit H57.

ADMITTED AND MARKED "EXHIBIT H57"

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MR DEVLIN: Now, I want to show you document D35. This is a communication on the 19th of September to you, so Mr Flavell is still the Director-General for Mines and Energy?-- Yeah.

Asking for your CV?-- Yeah.

1

And "do you want to meet tomorrow at 11"?-- Uh-huh.

You did send your CV?-- Yes, I believe so.

And what was your attitude to possible future employment as of the 19th of September 2006?-- That was about when the new department had been formed and I was feeling more comfortable about staying with government and I thought there'd be better chance of a role for me in the new department. I was less inclined by that stage to be interested in going.

10

Okay. I will just, in fairness to you, show you D36, though?-- Yes.

Which is soon after that. I will tender that document for the record.

MR NEEDHAM: That's exhibit H58.

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ADMITTED AND MARKED "EXHIBIT H58"

MR DEVLIN: There seems to be in prospect a meeting between you and either Walter Gilmore or Vern Wills or both?-- Mmm.

30

Did you know that Walter Gilmore had an association with this proposed entity?-- Yes, I believe - yes, I knew that.

Scott Flavell tells them that a mid to late November start date is possible for you. Do you know whether or not you had such a conversation with Mr Flavell as of late September '06?-- I don't recall having a discussion with Scott about a start date but if I was going to go, that would have been from that timeline, that realistic timeline, but my - I believe by then I'd really decided I wasn't going to go. It was unlikely that I'd go but I was probably still keeping my bets open. I can't really remember exactly what my thinking was at the - at that time.

40

So you don't know what you said to Scott Flavell?-- I don't recall saying to Scott, yes, I - well, I wouldn't have said to Scott, "Yes, I'll definitely go." I probably would have said I'll - I would look at going if the department gives me a year's leave. I would have to explore whether that's a possibility. And I think around the 19th of - is that 19th of September?

50

27th, that one was?-- 27th, okay, so that's after the new Director-General's been appointed.

Yes, Rachel Hunter was the new Director-General of DET?-- Yeah. I don't think - I don't recall. By that stage I thought it was unrealistic to expect the department was going

to give me a year's leave to go and set up the general manager of a private training company. I think they sort of - the likelihood of that wasn't as great.

1

Why was that?-- Different Ministers and different people have different priorities, and I think my reading of it was Rachel Hunter probably would have said, "Oh, that's fine, Greg. If you want to go, go, but you are not getting a year's leave to go." That was my reading of it.

10

Was it already public, as you recall it, that Mr Flavell had left DET as the Director-General even if he hadn't left Mines and Energy. Do you recall that as being part of the-----?-- Sorry, my understanding was that Mr Flavell had told government that he intended not to renew his contract and that he was going to go out and set up a private training company.

Right?-- Prior to that - prior to the - that was my understanding.

20

Okay?-- After the election. In fact, my understanding is that government was aware of that before the election.

MR NEEDHAM: That last email is H59.

ADMITTED AND MARKED "EXHIBIT H59"

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MR DEVLIN: Thank you. Now, I will ask you to look at document 38. I am nearly finished, Chairman. This is an appointment record for a meeting at Enhance which would appear to be Friday the 6th of October, 9 a.m. to 10 a.m.?-- Mmm.

Do you recall attending such a meeting?-- No, I don't, and I think I may have told Scott I wasn't going by then. That's my thinking but I don't recall for sure and I don't recall having - going to that meeting but, I mean, I didn't - I just don't remember going to a meeting.

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Okay. Now, later on in the piece, I think some time in 2007-----

MR NEEDHAM: Well, just - that will be-----

MR DEVLIN: Sorry, I tender that.

MR NEEDHAM: -----H60.

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ADMITTED AND MARKED "EXHIBIT H60"

MR DEVLIN: Sorry, about your decision not to be involved had

you received any particular - had you been on the other end of any attempted persuasion by Mr Flavell to join him? How did it pan out when you said that, that you weren't interested in going over? Did he try to persuade you to go?-- I don't remember the exact circumstance under which I told him. I think it was sort of, you know, a discussion that happened over a period of time. I think what I said to him is, "Look, I don't think I'll get a year's leave to go, and, you know, I am really looking at other options. I think my recollection was I told him about other things I was looking at, a job in New South Wales and/or possibly going overseas.

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Okay then. Look, finally during '07 did you have some interface with Vocational Education and Training on behalf of a sporting club?-- Yes.

From your own personal point of view since you were a board member of that club?-- Correct.

How did you handle that interface? Were you looking for funding for training? What was the - just briefly what was the relationship. We don't even need to know what the club was, just the relationship was?-- Just an opportunity for a partnership to provide complementary activity, ie the club would do football side of it and the organisation would provide language and promotion and, you know, that side of the business.

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So as a board member of that club-----?-- Yes.

-----you were looking at a proposal to interface with your department?-- No. With Enhance.

I beg your pardon. With Enhance. Now, you remained a member of the department?-- Yes.

Did you take any steps yourself to manage that interface with Enhance in terms of advising anybody within your department?-- Yes. I told the Deputy Director-General that I'd had those discussions with Enhance about - for the football club, and the reason I did that was because there was a potential conflict of interest there. Why wasn't I sort of setting that business opportunity up for my own institute, and the reason is that the institute couldn't invest the money upfront to do the marketing.

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Right. So you felt the need to raise that and disclose it?-- Yes.

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Did you play any role in discussions with Scott Flavell about All Trades Queensland?-- I don't recall having discussions with Scott Flavell specifically about All Trades Queensland. I got an e-mail from whom - which sort of bemused me a bit which said, you know, "Greg, thanks for the lead with All Trades Queensland, you know, we should give you some shares." I think that was flippant. But what I thought was, "God, I don't think I gave Scott Flavell a lead about All Trades Queensland", and I was trying to think what it entailed. I may have said something to somebody else in the organisation that they took it as a lead and it wasn't intended that way. Thomas Gribbin, who is the head of that organisation, is a friend of mine and a major sponsor of the football club that I was referring to, and I know he was unhappy with TAFE, and I'd done quite a bit of work to try and make sure that TAFE kept that business. I wouldn't have been recommending that he go to CAG at that particular time, personally, because they weren't established as a credible training provider at that time in the areas that are important to his business. So it wouldn't have been in my interest to see him go, and, in fact, I do have discussions with Thomas trying to tell him that TAFE could - Skills Tech had an attitude, or certain people in Skills Tech had an attitude that they didn't need All Trades, they had plenty of trade training business without All Trades and they were just a pain, but the attitude of the department was that, you know, TAFE should keep that business, and I did intervene to try and help them keep that business. So, I was somewhat bemused by that, and I also mentioned that to the Deputy Director-General that I'd received that e-mail, and I didn't really understand it, and I wasn't - I certainly was looking to ensure that TAFE kept that business.

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All right, then. Thank you, Mr Harper.

MR NEEDHAM: Just putting it briefly, then. You recognised a possible conflict of interest?-- Yes.

You dealt with it by doing any work in your own time rather than the department's time?-- Yes.

Using your own equipment rather than the department's equipment?-- Yes.

And that the information that you gave to this body of investors, or potential investors, was, in effect, generic information. Information that was already available in the public domain?-- That's right.

Not giving out what could be seen as confidential information to the department?-- That's correct.

Is that the way I should understand it, the way you handled it?-- Correct. Yes.

All right. You also were in the situation, I suppose, where it was disclosed to your senior officer, namely your Director-General in this unusual situation where he was the one who approached you in the first place?-- Yes.

Did you consider advising one of the deputies?-- I thought about that, but the difficulty is I thought, well, Mr Flavell may not want the deputies to know at this time what he was planning to do so that was for him to really declare his intentions, and I must say I thought that establishing a training - private training company was seen as good government policy. That's what government would be encouraging.

Yes. All right. Thank you. Yes, Mr van der Walt?

MR VAN DER WALT: I have no questions.

MR APPLGARTH: I regret to say I do. I'm sorry I didn't originally, but the evidence was so interesting it's prompted me.

MR NEEDHAM: You don't have to excuse yourself.

MR APPLGARTH: You mentioned earlier about different cultures depending on who the minister was or the Director-General was?-- Mmm.

And just at the end of your evidence, you were talking about good government policy to establish-----?-- Private training.

-----private training?-- Yes.

Is that the policy that you understood applied when Mr Flavell was Director-General?-- Yes.

Did you understand that at the time at the endorsement or the minister?-- The current minister?

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The minister when he was Director-General, the minister who was the minister then, was it Mr Barton?-- Yes.

And in fact it had the endorsement of the whole of government?-- Yes.

Because the White Papers and the Green Papers were whole of government procedures?-- Yes.

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I won't take the time to put this document in front of you, but the Green Paper which, I think, was in June 2005, spoke about the - "It is time to move beyond the traditional competitive approach to establish a more strategic relationship based on what each sector does best" et cetera. Is that your understanding of the new culture?-- It is, yes. I wasn't saying that there is a change in the culture. That's still the policy.

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Yes. But had there traditionally been the thinking that private registered training organisations competed with TAFE and TAFE shouldn't do them a favour because they're in competition, was that the old way of thinking?-- I think that now the TAFEs are in competition with one another and with other providers, and they collaborate where it is in their commercial interests to do so.

You were taken earlier to some words in what became Exhibit H54 which was that document that you made some contributions to over a weekend about the TAFE system not being flexible, and so on. You weren't anti TAFE?-- No. Certainly not.

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And Mr Flavell wasn't anti TAFE?-- No.

In fact, the Queensland Skills Plan that he and, of course, others developed in 2005-2006 culminated in major initiatives for TAFE?-- That's right.

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So it wasn't as if TAFE stood at being privatised?-- No.

On the contrary, there was a 303 million capital improvement program to modernise the network of 15 TAFE institutes?-- That's right.

And so the policy direction that he was part of tried to improve skills training both in the TAFE and in the private sector?-- That's right.

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But he was part of a reform agenda to reorganise TAFEs, correct?-- Yes.

And I shouldn't say "he", but he was Director-General, he got outside consultants, there was the Boston Consulting Group?-- Boston Consulting Group.

To look at what could be done to improve the TAFE system in terms of its management?-- That's right.

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And efficiency?-- Yes, that's right.

And streamlining it?-- Yes.

And the announcement that the TAFE system was to be streamlined occurred on the 8th of March 2006 when Premier Beattie and Minister Barton released the White Paper; correct?-- Yes, that's right.

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Now, do I understand the project that you were talking about - and you'll forgive me if I've forgotten its name already?-- The Lean Activist Centre.

The Lean Active Centre project, was that a carry on of-----?-- That is a direct result of the Boston report.

And the idea was to try and make savings in TAFE head office as it were?-- In the department.

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In the department. So that the money that was freed up that was otherwise caught up in administering the TAFE system could be used more effectively?-- That's right.

That is the project you were on in 2006?-- That's right. It's one of many projects. It wasn't the only project. Or one of four or five key initiatives.

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In 2006, we heard earlier you were at TAFE, you didn't regard yourself as a TAFE loyalist, you were part of the department?-- That's right. My job was to implement the policy. I had leadership for a number of those Queensland Skills Plan initiatives.

Now, I'm a little out of sync here but I just remember before you concluded your evidence, you mentioned something about All Trades Queensland?-- Yes.

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That was a big supplier of training positions, was it?-- A big supplier-----

A big acquirer?-- Yes. They employ apprentices.

And the issue about All Trades is something that emerged in mid 2007?-- Yes.

That's well after Mr Flavell has left?-- That's right.

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And is it true to your recollection that it decided to transfer in 2007, 100 apprentices from the TAFE sector to CAG?-- I don't know if that's true. I believe that was proposed. I don't know that it happened.

And just if I can deal with it briefly?-- Hm-mmm.

Do I understand that some people - I may have misunderstand

your evidence, that is why I just want to clarify it, but there were some people in the TAFE area, or the department, who were perhaps indifferent to All Trades going elsewhere? They had enough people coming through the front door and figured they didn't need All Trades, with some difficulties that they had with managing it or something. Is that the upshot of your evidence?-- There were some that gave All Trades Queensland that message.

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And whether All Trades was making a good decision or not, it was an indication that it was going to take its 2,700 apprentices and go over to CAG?-- I understand that was what was proposed, yes. They had roughly that many apprentices and they were talking about taking them all over.

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And is it your understanding, though, that when this happened, although some people within the department might have been happy to see the back of them, that other people weren't so happy at the prospect of the TAFE system being seen to lose such a large-----?-- That's right. Me, for one.

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And so there were steps taken to reverse that?-- Yes.

Just a couple of general questions. In 2006 - throughout 2006, you were obviously thinking about your future?-- Yes.

And the prospect of taking leave might have, as it were, given you the best of both worlds, you could have seen whether you liked going out into the private sector without cutting your ties?-- Yes, and gave me an opportunity to show my commercial expertise getting the very valued experience working in the private sector. TAFE values people who have got private sector experience over people who have got purely public sector experience.

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So it was good for your career?-- Yes, it would have been potentially.

And I think Mr Paul Keating said you should always back self interest because it's always in a try?-- It is always the winner.

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But it also might have some benefits for the system?-- Yes.

By that I mean the vocational, employment and training system as a whole?-- Potentially.

That someone with your experience goes into the private sector and you might come back and bring back that extra experience?-- That's right.

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Obviously there are difficult issues to manage and you have been confronted with them here. The Commission is looking at ways of trying to improve things. I know everyone would do something differently if they had their time over again, but can you assist us as to how someone who is thinking about going from one sector to the other, and might be getting headhunted, should deal with it?-- Well, I don't know that I

would deal with it greatly differently than what I did. I probably spent more time preparing fruitlessly, ultimately, but I was also checking out a prospective employer and making my own decisions and looking at what my options were. I made my decision. I don't have any specific suggestions on how to improve the system. The system is as it is with, you know, I'm on a contract. That contract has an end date. I have to look at my - keep very vigilant at what my employment opportunities are.

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Because you wouldn't want to leave it to the 11th hour and find for some reason or another your contract is not renewed?-- Renewed, that's correct.

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You need to have options?-- That's right. There is not even a termination payment.

You did a study exchange in the UK?-- Yes.

And I think Mr Devlin said there is a company called Carter & Carter there?-- Yes.

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Did you observe how it did business?-- No.

Well, did you not observe first hand, but did you get some understanding of how it operated?-- Later, I did. Only because the CEO of Carter & Carter was a director that I met when I was over there. She went from the further education sector into the private sector.

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Now, I'm conscious of time, but it will help us all, I think, if we try and get some understanding of this. From your knowledge of the UK sector, was Carter & Carter a large vocational employment training company?-- My understanding was it was large, yes. Fairly large, anyway.

Was there any company in the Australian and business environment that was similar to it, or in Queensland VET sector that was similar to it?-- Not at that time, no.

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Would it be a fair summary to say that the private RTOs in Queensland, particularly the ones using User Choice Contracts, tended to be smaller businesses?-- Correct.

Or if they received a substantial allocation, they may not have been businesses with large capital backing?-- That's right.

And that, to your mind, was a systemic problem?-- Yes. I saw the opportunity that Mr Flavell saw.

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And you thought that opportunity was consistent with government policy?-- I thought it was a good thing for Queensland.

Yes. And did you have discussions with him as to how it was that the Queensland market, or perhaps even the Australian market, but let's just stick with the Queensland market, the

Queensland market for vocational employment training wasn't as mature or developed as, say, the UK market seemed to be with participants like Carter & Carter?-- I had general discussions about Carter & Carter. I don't remember the specific.

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Can I then just bring you back to a document that became Exhibit - I think it's 54. It is the one that you worked on on the weekend?-- Yes.

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It might help if the witness was shown it. Just while that is coming to you, Mr Sinclair, his name has been frequently mentioned here. Did you understand from your dealings with him and from Mr Wills, that it was Mr Sinclair who was involved in developing the business case on behalf of Mr Wills?-- That's right. That was my understanding.

Both you and Mr Flavell had some input into it, but it was Mr Sinclair whose, you'll recall his day job was to do that?-- That's right.

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If we just look at that attachment, perhaps if you look at the first page of Exhibit H54, you see the attachments that go on. There are really two documents. One is called Enhance Strategy document, the other one is called Enhance Attachments. And so the documents that Mr Devlin was taking you through appear, at least in their format, to be two separate documents. The first 14 pages and then there's attachments?-- Yes.

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And you worked to a greater or lesser extent on both those documents on this weekend?-- Yes.

I see at the bottom of the first wording page it's got Gbus Ventures Pty Ltd. That is Mr Sinclair's-----?-- I understand that's the case.

It seems to line up with his e-mail address of Gbus?-- Yes.

So, is it the case that this document at some stage of it being under Mr Sinclair's management, some earlier edition of it, was to get it into that format?-- Earlier or later, I don't know. I can't recall.

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Well, at some stage or other at least you get it, or can you remember whether it had the Gbus Venture Pty Ltd?-- I don't remember. Now that you say that I'm thinking that's possible, yes.

And the attachments, doing the best that you can to recall it, might it be that they're effectively cuts and pastes of earlier documents that dealt with international models and-----?-- I think so. I think that's where they probably come from.

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And you can't help us at this distance as to who did the cutting and pasting?-- No.

Whether it was you on the weekend working off documents-----?-- I don't think it was me on the weekend.

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-----or somebody perhaps beforehand?-- It's possible they came beforehand and I just left them there or after, I don't remember.

Yes. I have no further questions.

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MR VAN DER WALT: Chairman, one question. Mr Applegarth just asked you about the work that you did on that weekend in relation to the exhibits you have been looking at, and he asked you whether both of the attachments was work that you did on that weekend. Now, I think you previously gave evidence that you worked on pages 3 to 13?-- That's right.

But you're not familiar with having done anything in respect of the attachments?-- No, I'm not. I don't recall doing anything with them. Certainly I didn't do anything on that weekend, and whether there was something, I had seen them before, I don't know. I was familiar with some of it but I don't know that I wrote any of it.

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Thank you.

MR NEEDHAM: Yes, Mr Devlin.

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MR DEVLIN: Just specifically in relation 3 to 13, you also made some qualification also about the strategy section, didn't you?-- Yes.

Is that the Business Growth Strategy section?-- Yes, if I recall.

There's also a Business Strategy heading at page 9, so can you help us out with that?-- That section is more familiar to me.

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Business Strategy. But Business Growth Strategy is not?-- Business Strategy is more familiar to me. Business Growth Strategy - no, Business Growth Strategy, yes. Yes. I did some of that work. I remember doing that table.

So, in terms of Business Strategy and Business Growth Strategy headings at pages 9 and 11 respectively, you did do some work on those sections?-- Yes.

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So it remains true that to the best of your recollection, pages 3 to 13 were-----?-- Largely my work.

-----largely your work?-- Yes.

It is the attachments that you're not as clear on?-- Yeah. They may have been done. I think they have been done

previously, I just referenced them or something.

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Thank you.

MR NEEDHAM: Thank you, Mr Harper. That is the end of Mr Harper's evidence?

MR DEVLIN: Yes. May he be excused?

MR NEEDHAM: Yes. Thank you, Mr Harper. Thank you for your evidence. You are excused.

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WITNESS EXCUSED

MR NEEDHAM: I understand it is not convenient for Mr Flavell to commence today?

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MR APPEGARTH: Yes. I'm happy to explain.

MR NEEDHAM: That's all right, you don't need to explain.

MR APPEGARTH: Mr Devlin and I have had a discussion about what is the most convenient for all concerned, and it will probably be quicker if he has an opportunity to confer with Mr Perrett. He had a professional commitment yesterday.

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MR NEEDHAM: You don't need to explain. I'm perfectly agreeable to going along with the suggestion.

MR DEVLIN: Chairman, I had flagged a need to rise at 3.30 tomorrow. Are you content to start at 10, however, or would you like to start a bit earlier?

MR NEEDHAM: We can start earlier. 9.30.

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MR APPEGARTH: Yes. Thank you.

MR DEVLIN: Thank you.

THE HEARING ADJOURNED AT 1.50 P.M. TILL 9.30 A.M. THE FOLLOWING DAY

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