



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 16/07/2008

..DAY 3

PUBLIC HEARING

THE HEARING RESUMED AT 9.35 A.M.

MR DEVLIN: Good morning, Commissioner. I would ask that Scott Cameron Flavell be called.

MR APPLGARTH: Just while Mr Flavell is coming to the witness-box, Mr Chairperson, given the legal uncertainty that Counsel Assisting alluded to at pages 14 and 15 of the transcript, I wish to make a claim on behalf of my client under section 197 of the Act in respect of his answers. I previewed that with my learned friend Mr Devlin.

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Also the fact that, in my submission, it is convenient and expeditious for an order to be made under section 197(5) that all of his answers are to be regarded as having been given on objection, and as I understand Mr Devlin agrees that's the convenient and appropriate way to proceed.

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MR NEEDHAM: Yes, I am happy to proceed that way. We will get just your client to confirm that when he is sworn in and we will grant that blanket immunity.

MR APPLGARTH: Certainly.

MR NEEDHAM: I might say I can understand your giving him that legal advice to get him to follow this course.

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MR APPLGARTH: It is a precautionary thing, of course.

MR NEEDHAM: Indeed.

SCOTT CAMERON FLAVELL, SWORN AND EXAMINED:

MR NEEDHAM: Mr Flavell, is it the situation that you desire to claim privilege against self-incrimination?-- That's the case, sir.

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All right. Well, that is noted for the entirety of your evidence. You will be required to answer the questions but that privilege will be noted for the entirety of your evidence?-- Thank you.

Yes, Mr Devlin?

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MR DEVLIN: Can you tell us your full name, please?-- Scott Cameron Flavell.

And can you tell us if this attendance notice refers to you?-- Yes, it does.

And - yes, I will tender that, thank you, Chairman.

MR NEEDHAM: That's exhibit H61.

ADMITTED AND MARKED "EXHIBIT H61"

MR DEVLIN: Now, Mr Flavell, I am interested to have some understanding of your own background in the - particularly in the public service. I have got a general understanding that you operated for some years in Treasury in fairly senior positions?-- Correct.

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And what was your first year of service in Treasury?-- 1992.

And how long did you remain in that office - well, not the same office but how long did you remain working for Treasury?-- I was an employee of Treasury up until 1998 and then I - during that period of time I was seconded to various positions as well but I remained a Treasury employee during that period of time and I returned to Treasury in - for the period of 1999 and 2000 as well.

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And did you have-----?-- During-----

Go on-----?-- During that period I was also employed by the Department of the Premier and Cabinet and - and then I returned back to Treasury for a period of time where I headed up the Office of Energy, which was then located in Treasury.

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Yeah?-- And then moved on to become Director-General of the Department of Innovation Information Economy, Sport and Recreation.

When was that?-- I was appointed Acting Director-General in June 2002 and I became a permanent Director-General - and this is approximate. I think it is-----

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That's all I want?-- -----around about six months later.

Right. Thank you. And when you became Director-General of the Department of Innovation - we will use that short title - in full-time capacity how long did you occupy that position?-- I was in that position up until the 2004 election which I think was in February 2004. Might have been late January 2004.

After that election?-- I was appointed to the position of Director-General Department Of Employment and Training.

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Yep?-- And then from July I was also appointed to the position of Director-General Department of Energy as well.

Thanks. Just trying to get a picture up on the board, Chairman, so I will let that happen and then I will continue. Excuse me, Mr Flavell. I might add, Chairman, that my

children won't even give me the controls of the television.

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MR NEEDHAM: It might show the wisdom of your children, Mr Devlin.

MR DEVLIN: What sort of functions did you carry out in Treasury between '92 and '98?-- A range of functions. I was employed in the - I was first employed in the Budget Division of Queensland Treasury where I had a range of responsibilities for expenditure allocation across a number of portfolio areas. I was also responsible for revenue estimation, revenue forecasting, performed some functions around public/private partnerships. I then worked in the area of government and corporations for a period of time on electricity market reform and on a range of other competition policy implementation arrangements.

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And when you were with Department of Premier and Cabinet was it mainly in relation to the Office of Energy?-- No, when I was in the Department of Premier and Cabinet, I was Executive Director of the Economic Policy Division, so I was in charge of the entire economic policy group for the Premier's Department.

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So you were in some highly sensitive areas at the centre of government?-- Correct.

So you'd have been in no doubt about your duties as a public servant?-- Yes.

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Then when you first became a Director-General in a full-time capacity, by the look of it, you received this letter, 3rd of July 2002, "Mr Scott Flavell, Acting Director-General Department of Innovation", et cetera. "Dear Scott", signed by Rachael Hunter, the Public Service Commissioner. "I refer to your recent appointment as Director-General, Department of Innovation and Information Economy", et cetera. "Section 55 of the Public Service Act requires persons who have been appointed as a Chief Executive to give their Minister a declaration of interests within one month after the appointment. Even though your appointment is in an acting capacity, I believe it is still prudent for you to complete a declaration of interests form and provide a copy to your Ministers as soon as possible. Accordingly, I have enclosed copies of declaration of interests forms." Did you receive that?-- It appears to be the case.

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Okay. There is the signature of presumably Rachael Hunter, plus seems to have been countersigned. Is one of those your initials?-- No. No.

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Okay. So you don't remember it but you are not going to argue with me?-- No.

Thank you. Then on the 27th of October - I will tender these as a bundle, Chairman, for the record - did you receive another one as Director-General, it concerns your performance agreement, but then under "declaration of interests" you are

told, "In accordance with section 55 of the Public Service Act you are required to give your Minister a declaration of your interests within one month after your appointment." Signed by Rachael Hunter, Public Service Commissioner. Do you accept you received that letter?-- I can't recall receiving it but-----

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I asked do you accept you received it?-- Well, I can't recall receiving it but that would appear to be the case.

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All right. And on the 24th of February 2004 as Director of Employment and Training, you are reminded by George O'Farrell, the Acting Public Service Commissioner, about section 55 of the Act requiring you to give your Minister a declaration of your interests within one month of your appointment. Did you receive that document - sorry-----?-- Same response, that would appear to be the case.

Thank you. I will tender those as a bundle, Chairman.

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MR NEEDHAM: Well, those copies of those three letters will be exhibit H62.

ADMITTED AND MARKED "EXHIBIT H62"

MR DEVLIN: Thank you. Now, I want to explore with you what you knew about what rules applied to you. I will hand you first the Code of Conduct 2005 of the Department of Employment and Training. I understand that you, as Director-General, actually signed off on this Code of Conduct. Are you able to confirm one way or the other?-- I don't recall signing it but it is highly likely that that occurred.

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Thank you. Principle 3 relates to Integrity. Principle 3, "Integrity". I want to take you to 3.1, "Conflicts of Interest". "As a public official you must ensure that your use of official powers or position does not give rise to a real or apparent conflict of interest. You have an obligation to avoid any conduct which would undermine public confidence. This obligation requires that you ensure that your actions, conduct and relationships do not raise questions about your willingness and ability to serve the government of the day regardless of personal political or ideological preferences; ability to use official powers, influence resources and information properly; maintain proper confidentiality of official information; and avoid using the powers or influence of public office, official resources or official information for personal or other improper advantage." You would have no doubt that those principles of integrity apply to you?-- Yes.

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3.2, "Identifying Conflicts of Interest". "To identify whether or not a situation involves a real or apparent conflict between your public duty and a private interest, ask yourself could I or my family or friends benefit or appear to

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benefit directly or indirectly from this situation?" Third dot point, fourth dot point, "Would my actions withstand public scrutiny? In particular would a reasonable person consider that I was in a position to use my knowledge, access to resources or influence to gain a public benefit."

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MR NEEDHAM: Sorry, "to gain a benefit".

MR DEVLIN: "Gain a benefit", sorry. You would have no doubt that applied to you? You would have no doubt that rules of integrity would apply to you?-- Yes.

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And, "If you are uncertain about whether the situation represents a conflict of interest you are to approach your manager for assistance." In your case the manager would be?-- Well, the Premier.

What about the Minister?-- Or my employment contract is with the Premier.

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You would not regard your Minister as somebody senior to you in the immediate hierarchy?-- I do, yes, but in terms of a legal issue, my employing entity is the Premier.

You would have no doubt that you could approach your Minister as well?-- Yes.

MR NEEDHAM: Could I ask are you familiar with the role of the Integrity Commissioner?-- Yes.

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And you know you can approach - you could in your position approach the Integrity Commissioner for advice on these sorts of matters?-- Correct, yes.

All right. "Declaring Conflicts of Interest" is at 3.4. "If you have a private interest which could influence or appear to influence a decision, recommendation or action in carrying out your public duty, you have an obligation to disclose the relevant information in writing by completing the conflict of interest declaration form accessible from the intranet and take no further action that may be affected by the conflict unless authorised by the Director-General or delegate, or in the case of the Director-General, by the Minister." You have no doubt that applied to you?-- Yes.

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And finally "Managing Conflicts of Interest", 3.5. "The Director-General or delegate is responsible for resolving conflicts of interest, that is real or apparent, in a manner which protects the department's integrity and is consistent with the Code, the Public Service Act and relevant legislation. When considering suitable courses of action to avoid or minimise the conflict, either real or apparent, the Director-General or delegate may decide to rearrange the public official's duties, request the public official to discontinue the private association or interest or authorise the public official to continue with normal duties subject to certain conditions." You have no doubt that that was a role that you were required to carry out as Director-General under

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the Code of Conduct?-- Yes.

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Were you called upon as Director-General to act under 3.5 of the Code of Conduct during your time at DET?-- No.

The Public Service Act is specific about conflicts of interest for Chief Executives of departments. There are only two sections we need to look at. Look up on the screen until you get a hardcopy placed in your hands. Section 55 is that provision of the Public Service Act which is referred to in the letters, isn't it? Particularly 55(1), that's what was referred to in those three letters I showed you? You accept that?-- Yes.

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Then "Conflicts of Interest", "If the Chief Executive of a department has an interest that conflicts or may conflict with the discharge of the Chief Executive's responsibilities, the Chief Executive must disclose the nature of the interest and conflict to the Departmental Minister as soon as practicable after the relevant facts come to the Chief Executive's knowledge; and must not take action or further action in relation to a matter that is or may be affected by the conflict unless authorised by the departmental Minister." That applied to you, of course?-- Yes.

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"The departmental Minister", (2) of 56, "for a department may direct the Chief Executive of the department to resolve a conflict or possible conflict between an interest of the Chief Executive and the Chief Executive's responsibilities." That applied to you?-- Yes.

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Who was your relevant Minister from early 2004 until you resigned in September 2006?-- Both Tom Barton and John Mickel.

Did you raise any matter of conflict of interest or - I will go back to the actual word in the Code of Conduct - conflict of interest or apparent conflict of interest with either of your Ministers?-- No.

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The Human Resource Management Policy of the Department of Employment and Training put out a document described as number 23-----

MR NEEDHAM: Mr Devlin, we might take as an exhibit the extract of the Code of Conduct of the department.

MR DEVLIN: Thank you.

MR NEEDHAM: That will be exhibit H63.

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ADMITTED AND MARKED "EXHIBIT H63"

MR DEVLIN: Thank you. So the purpose of this Human Resource

Management Policy number 23, effective from the 20th of January 2006 - see that down the bottom?-- Yes.

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Is "to detail the minimum requirements for identification, declaration, management and monitoring conflicts of interest that may occur for employees of the department. A guideline is included to assist decision making during the process of identification, declaration, management and monitoring of conflicts of interest." So you would have no doubt this applied to you?-- Yes, it would.

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Thank you. "Principles: Employees have an obligation to perform their duties in a fair and impartial manner placing the public interest first at all times." Clause 2 of the Principles, "Where possible, conflicts of interest should be avoided." Clause 3, "Potential, apparent and real conflicts of interest may occur in the course of employees' duties. Where an employee's private interests come into conflict with their duty to place the public interest first, the conflict must be disclosed to be effectively managed and monitored in a transparent and accountable manner." You have no doubt that those three principles applied to you in the discharge of your high office?-- Yes.

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Thank you. I will tender that Resource Management Policy.

MR NEEDHAM: That will be exhibit H64.

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ADMITTED AND MARKED "EXHIBIT H64"

MR DEVLIN: What did you know about Vernon Wills when you commenced to deal with him as Director-General of the Department of Education and Training?-- Employment Training?

Sorry?-- Employment and Training?

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Employment and Training, sorry?-- I had known Vern Wills for probably close to a decade. I'd come across him in various forums. I knew that he was - he was somebody I was acquainted with, he was somebody who is involved with - I knew him predominantly through his work with the Enhance Group of companies which involved market research and corporate advisory work.

Right. Did you know him to be an entrepreneur?-- Yes, I think I would probably describe Vern as an entrepreneur of sorts.

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Did you know him to have extensive business interests?-- No.

Did you know him to have been the key driver in a company in 1998 called Card Call which became Go Talk?-- At the time of - at the time of - when I was in Department of Employment and Training, I wasn't aware of that issue.

Right. What did you know him to be involved in in business then as of 2005 when you started to deal with him as the Director-General of that department?-- I knew that he was involved with the Enhance Group of companies and that he was - also had some other company directorships.

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Right. Did you know - do you know of your own general knowledge about Go Talk?-- I do subsequently.

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Do you know that it was a company that started in a small way and moved towards a public float?-- I am not aware it is a listed company.

Are you aware of a company he was involved in called Dark Blue Sea?-- Yes.

What was that?-- As far as I know - and this is my knowledge after being in the Department of Employment and Training - as far as I know it is some sort of IT or internet business that he is a director of.

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That deals in real estate?-- I don't - I think it is an IT business, like a software business.

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Did you know of a company called Prospects Limited that dealt in real and not virtual real estate?-- No.

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So when you began to deal with him in the role as Director-General of DET, what business interests specifically did you know that he was involved in?-- I knew he was involved in the Enhance group of companies.

And what did those companies do?-- As I mentioned earlier, market research and corporate advisory.

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Market research and corporate advisory. What other business interests, apart from Enhance, did, to your knowledge, Mr Wills enjoy as of 2005?-- I think - I mean, it's hard to answer because I know more about his personal business affairs subsequently. But at that time I knew of him and his involvement with the Enhance group of companies.

Right?-- I knew no sort of further detail, financial information about his personal history.

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Sorry, I don't mean to be repetitive-----?-- Yes.

-----I think I understand where you are coming from now. Is this a fair statement of something you knew at that time, that is in '05, that he had a small number of corporate clients through Enhance who operated in the energy sector?-- Yes.

And that as Director-General of Mines and Energy, which was a concurrent position that you held, that put you into contact from time to time with him?-- Yes.

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So he wasn't a director, to your knowledge, of energy companies that interfaced. He was a director of - what did you call it before, a corporate advisory company?-- Yes, and he did have a number of energy companies, energy and resource companies.

Did he hold any expertise in vocational training to your knowledge?-- No.

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I want to take you to some words that your counsel used on your behalf at page 21 of the transcript on the first day of this public part of the inquiry. He said this down the bottom of the page, "I'll conclude my opening remarks, if I may. I want to emphasise that in saying, firstly, that Mr Flavell found himself in the same difficult area that many other employees find themselves in considering alternative future employment, and, secondly, in saying that Mr Flavell found himself in the rather unusual position of identifying business opportunities to a potential employer, the pursuit of which were consistent with government policy, is it to suggest that everything he did was appropriate. He clearly, with the benefit of hindsight, thinks it was inappropriate and foolish to use the language that he did in the e-mail of 7 September 2005." I'll skip over then. "Mr Flavell doesn't want me to suggest that with the benefit of hindsight he would have done things differently. Clearly"-----

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MR APPEGARTH: I think there is a "not" there.

MR DEVLIN: "He would not". I accept that. "He would not have done things differently. Clearly he would have, but I hope I have explained that he found himself in a difficult position. Partly, it must be said, of his own making and if he had his time over again he wouldn't have done things in the way he did them, and partly, though, because separation issues are inherently complex...", et cetera.

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MR NEEDHAM: Just before you go on. We will perhaps correct the transcript, that that "would" in the second line there should be "wouldn't", would you agree?

MR APPEGARTH: Yes, thank you.

MR DEVLIN: Thanks, Chairman.

Could you assist us with enumerating, just in dot point fashion, what, with the benefit of hindsight, you would have done differently, or would have refrained from doing? Are you able to do that?-- In a dot point fashion, yes.

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Thank you. I'd be interested to receive that from you?-- In my view, I made errors of judgment in relation to e-mail discourse with Mr Wills and, you know, on reflection, I believe that was careless, and consider that it's something that I shouldn't have done. I also believe that-----

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MR NEEDHAM: Before you go on, I don't understand what you mean by e-mail - errors of judgment in relation to e-mail discourse with Mr wills. What do you mean by that?-- Well, I mean, referring to the - if you refer to the e-mail of 7th September, clearly the language in that was careless and inappropriate, and I wouldn't use that form of language again.

I see. So you are saying that you would hold the sentiments that are expressed in the e-mail but you wouldn't put it in writing in an e-mail, or are you saying that the sentiments that were expressed in the e-mail, you wouldn't hold those sentiments?-- I was about to go on to the next dot point to cover that issue. I mean, I also believe that with the benefit of hindsight, and while I didn't - I don't - I think the conflict of interest issue in relation to this is a grey area, I would have been more cautious and, in effect, I think that I probably would have consulted, as you mentioned earlier, someone like the Integrity Commissioner and sought advice from the Integrity Commissioner before entering into any discourse with Mr Wills about business opportunities in the area. As eager as I may have been to have the market develop and investment in the sector, and other things, I think balancing that with my other responsibilities, I needed to show more care and judgment in relation to that.

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MR DEVLIN: Are you confining your dot point response about e-mail discourse which was careless and inappropriate to the e-mail of the 7th of September '05?-- No.

Would you like to - you see, you have been a very senior and responsible public servant and you find yourself in a serious inquiry as to your conduct and the conduct of others. So, you've clearly reflected deeply on your conduct as the light has been shone upon it. Could you in further dot point fashion give us at least - and I know you are being asked to do this without particular notes or anything, but could you give us at least those e-mails, or actions, or words that stand out as being, on reflection, equally careless and inappropriate - sorry, not equally. Just careless and inappropriate?-- It's difficult to recall without documents, every e-mail.

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All right. Well, would you be content to approach them one by one as we deal with various events, but if there's something you'd like to say now, and say "As a matter of fact this particular matter, I do recall", please go ahead. I'm giving you that opportunity, but I'm not holding you to those. You have said - you have made it clear it's not the only one. I'm just interested if there are others that stand out to you?-- The one that clearly stands out to me, and normally I'd be a lot more prudent and careful in this, was the one that was referred to yesterday by Mr Leckenby in relation to the User Choice arrangements. Normally I'm very diligent about those sorts of processes because I've worked a whole range of processes before in terms of tender processes and the like. In that situation, I was asked for - did I have any information or a list of RTOs. I sought the information from Gavin. I didn't reflect on the actual scenario of the information contained in the document and I sent it on, and I shouldn't. You know, that was just an error of judgment; I shouldn't have done that.

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You see, it's not as if you didn't come to the office of Director-General of DET without extensive background in areas where the utmost propriety needed to be observed in terms of information exchange. I have in mind being a responsible and senior officer in Treasury for a very long time in public service terms; you'd agree?-- I'd agree, and, you know, right up to the end of my employment, I was involved in many responsible areas, such as the privatisation of the energy assets.

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Indeed, as a Treasury official, you might end up knowing far more about a private enterprise than it appears to know itself in a market context?-- Possibly, yes.

And there would be a heightened duty on a public servant to always act in the public interest and not in any private interest such as market speculation, just as one example?-- Yes.

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I want to show you now Exhibit H9 which is this Concept Paper for the Development of a Quality International Vocational Education and Training Services Provider. It was something that was sent by you to Mr Wills which had been prepared as requested by John Slater in October of 2005. Do you remember

some discussion of that with Mr Slater yesterday?-- Yes.

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I'll just recap on what Mr Slater told us about it. This is what he said at page 44 of the transcript. I'm putting it up there so that if your counsel thinks I'm being selective in what I put to you, he can - and I invite him to - ask me to correct the question or give you more context. I've just shaded what I want to put to you and I invite him, if he feels I'm understating the matter or misstating it, to correct me straightaway. "I went over and had a meeting in his office. The Director-General's office. Scott asked me - said that there were a group of investors who were interested in the concept of entering the private training area, particularly in the area of international education, and he said that he had - was aware that I had had some background in that area, and had asked how would I go about, or what ideas would I have to move into the sector...I had a verbal discussion in the meeting with Scott about the sort of things that could be done based on my experience. I'd worked in both the private sector. I was formerly with the Russo Group which is a private training organisation and had grown some international business there for them, and I'd also worked on both the education side but also some of the international areas there." So, he was queried about sending the document on the 14th of October; said he did it in his own time. Said that he, on the next page, attended a meeting with you and Mr Wills on the 17th of October. Do you see that?-- Yep.

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I just want to explore with you now the lead up to that event as it has been discovered by the Commission and see if you can recall some relevant events. Excuse me, Commissioner. This is the - and I'll zoom in on it a bit. It is a bit hard to see on the screen but you have a hard copy there now. This is the Enhance Corporate Pty Ltd accounts which shows a business development meeting at Il Centro Restaurant & Bar with Scott Flavell, Director-General, Department of Employment & Training, and it would appear to have been a lunch with Mr Wills and the date for it is the 2nd of September, the date being in the American fashion, I imagine, because you'll see one at the bottom of the page 9/27 and on the last look there weren't 27 months in the year, though sometimes it feels like it. You would accept, would you, that on the 2nd of September 2005, you lunched alone with Mr Wills?-- I can't recall that.

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Would you deny that at times you lunched alone with Mr Wills?-- I wouldn't deny that.

MR NEEDHAM: Well, do you accept that you lunched on that date, going from that record?-- Well, it's not my record, and I had sought access to my diary but it didn't go back that far. But I'm not - I couldn't say that it didn't occur.

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MR NEEDHAM: You'll tender that Enhance document?

MR NEEDHAM: Yes, thank you.

MR NEEDHAM: That will be Exhibit H65. What will you call that, extract from the financial records of Enhance Corporate

Pty Ltd for September of '05.

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MR DEVLIN: Thank you.

ADMITTED AND MARKED "EXHIBIT H65"

MR DEVLIN: On that date, and I'll have to show you these records in a moment, I can't do it now, unfortunately, I'll come back it and I won't ask you to respond, I'll just tell you what information the Commission has. On that date telephone records from DETA would indicate that you called Mr Wills on his number on three occasions at 9.39 a.m. for 14 seconds; 12.29 p.m. for 111 seconds, and at 4.27 p.m. for 24 seconds. Now, I'd like to be able to tell you what day of the week that was. Maybe I can tell you in a moment to assist you. And I can tell you, and I'll show you the records, I don't want to be accused of making it up, that on the following day at 12.26 p.m., you phoned him for 299 seconds. Now, you don't dispute, do you, that you phoned Mr Wills quite often?-- No, I don't dispute that.

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I'll just ask you for the moment to accept that the 3rd is a Saturday. I am informed from computer things that happen over there magically that Friday was the 2nd of September, and I'll just have to ask you to accept there were three calls: one at the start of the day, one in the middle of the day and one at the end of the day, and then at 12.26 p.m. on the Saturday, the 3rd of September, the call records show that you spoke to him for 299 seconds which is about five minutes. The next document I can show you, though, and it's this one, it is H3, Exhibit H3, it is an e-mail stream that commences with you at 3.54 p.m. messaging Ross Martin to say, "Subject: Hong Kong/Taiwan. To follow on from our recent discussion about VET export opportunities, I was wondering how you went on your August trip to Hong Kong and Taiwan. I am keen to know the level of business that you secured from the trip." Can you assist us with whether the message you sent to Mr Martin on the 5th of September 2005 at 3.54 p.m. was caused by Friday's lunch and Saturday's phone call with Mr Wills?-- No, it wasn't.

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What caused your communication to Mr Martin?-- To go over some of the issues that Ross Martin has previously given evidence on. When I commenced in the Department of Employment and Training, I found we had a vast number of people travelling overseas, and the outcomes from their overseas travel was, to say the least, patchy. The reporting was poor. The sort of level of analysis and briefing notes that were supplied to me, including the documentation that I was required to sign off on, wasn't particularly acceptable, and obviously in reading all those notes, the one person who did stand out was Ross Martin. So, over a period of time I had been thinking, together with some other senior officers in the department, about how we restructure or reform our approach to the international sector, and, as part of that, I had entered

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into discussion with Ross about how he went about it because he seemed to be one of the individuals who were operating at best practice in relation to that, and that was also confirmed to me by Bob McAulay who used to be Ross's supervisor at the Gold Coast TAFE, and then subsequently Bob became Executive Director of Operations in the Department of Employment and Training.

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Yes. I suppose at this distance you can't tell us what the business development was that Mr Wills caused to be recorded in Enhance's records about the luncheon - acquittal for the luncheon. Are you able to at this distance-----?-- No.

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Are you able to tell us at this distance what a call for five minutes at lunchtime on the Saturday would have been about?-- No.

But you would say to us that contact with Mr Vern Wills on those two days had absolutely nothing to do with your communication to Ross Martin?-- That's correct.

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Well, then, perhaps you might explain why his communication-----

MR NEEDHAM: Mr Devlin, the bottom part of this is confidential, you might want to move it down.

MR DEVLIN: Yes, thank you.

MR NEEDHAM: Why Mr Martin's reply to you in the early hours of Tuesday, 6 September, the early working hours, is copied directly to Mr Wills within two hours?-- From me?

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Yes?-- I believed it was information that he may have been interested in.

Why?-- Well, because he had discussed with me, he had raised with me the concept of developing - that he and Mr Roe were looking at developing an education and training company, and he asked me for information about how the international market operated.

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Can you assist us with whether in your communication with Mr Martin you referred to there being somebody in the private sector interested in this matter?-- No, but I can't recall when I had the meeting with Ross Martin. It was prior to him going away on this trip.

You'd be quite conscious of the fact that in some of your email traffic there is a sort of a reference to third parties having an interest in a matter?-- That's right.

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You don't choose to give any preamble to Mr Martin on this occasion?-- No.

You can see the body of the email that you can just look at in hard copy - I am not going to put it up on the screen - but you would agree that the body of the email contains financial and numerical details of students recruited into the TAFE system from various locations in Asia and in to particular categories of training? Do you accept that?-- It contains information relating to the outcome from his recent trip.

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Why did you consider it appropriate to supply a person in the private sector with internal TAFE information of that commercial kind?-- I don't believe it is commercial in confidence.

Did you turn your mind to that?-- Yes, I think I did.

You did?-- Yeah.

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Thank you. I am going to, when we have a break, supply telephone records to your counsel. At the moment I will work off a schedule and I undertake that if there is any incorrect entry that's been distilled on to this, I will make it very clear on the public record before you finish if I have put something incorrect to you. Do you understand? I am just trying to save a bit of time?-- Yes.

But I will certainly allow your legal representatives to see such records. This is what I couldn't show you earlier. Telephone records show that on the 2nd of September there are those three calls to Mr Wills' mobile from you - I will just get that right - from your landline, and the landline is shown up here, just for completeness 3224 2684. Do you happen to recall whether that was the landline you used in your office?-- Yeah, that's right.

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Thanks. We've got the Saturday call for five minutes. We've got the Monday call at 11.33 for nearly three minutes, and then bearing in mind that the email that you flicked on was at 10.25 a.m., there is an attempt to call, it would appear, five seconds at 10.29, and then a call on the same day at 3.55 p.m. for 83 seconds. So you maintain, do you, that nothing that Mr Wills said to you on the 2nd, 3rd, 5th of September led to you deciding to give him that information?-- I can't-----

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MR NEEDHAM: I don't think the witness has said that.

MR DEVLIN: No, I just realised I probably put that wrongly. What's your reaction? You tell me what's your reaction to that?-- Well, as I said, I can't specifically recall having a discussion with Mr Wills around Vocational Education and Training at that time and I can't recall him specifically requesting this information and I doubt whether he would request this information. That's not to say that there may not have been a discussion about vocational education around that time because it is a matter that he had raised with me.

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Yeah.

MR NEEDHAM: It seems fairly clear that it must have been at that time, mustn't it? Your email of the 7th of September says, "An example of how the company would operate"?-- Yeah.

The company must have been this vehicle he was talking about to you of the possibility of setting up a training company?-- Yes.

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And it would seem very likely that, you know, if someone is wanting to get information from someone such as yourself, they invite you to lunch and chat about it over lunch. That's a fairly normal way of doing things, isn't it?-- Yeah, it - possibly, yeah. But I can't say categorically because-----

No?-- I don't-----

But it seems a little bit too much of a coincidence that it wasn't that lunch and then following Monday you are sending an example of how the company we're talking about on Friday would operate?-- Oh, no, I mean - I mean, it could have been any number of things that were discussed at the lunch.

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I dare say, but one of them would seem to be "the company"?-- Well, I-----

All right, if it wasn't that Friday it was obviously some earlier time or some other time, and are you saying you can't remember the details of when it was first raised with you of the interest of Mr Wills and the other people involved with him in setting up this training company?-- Only in general terms, that it was around, you know, August/September 2005.

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All right. Can you remember what your reaction was at the time when he raised that with you?-- Yeah, I thought it was an unusual sector for him to focus on. I had never considered that was a particular area of business interest for him or, indeed, you know, for investors in general, really, and-----

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Did you ask him then why he was concentrating on this sector?-- Yes, I did.

What did he say?-- He said that he had been looking at the sector for some time, he had some engagement with a company called IBT Education, which is a large firm based in Perth. He said that he and Mr Roe had been discussing this concept

for some time well prior to their engagement with me, they had been looking at acquiring other registered training organisations, they'd had some discussions and he said it was a sector that they were interested in, and he was looking to see what I actually understood of the sector and where the market opportunities were.

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Right. Now, Mr Wills is obviously a gentleman who part of his work - and you have agreed he is an entrepreneur - is to set up businesses in positions where there is good opportunities, get the business going and in some cases, if it turns out to be appropriate, to float those businesses on the stock market. Is that - are you aware that's the case?-- Well, I am aware that that's what he has done in the past, yes.

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And did he say anything about that in this case-----?-- No.

-----at that stage?-- No.

All right. At a later stage quite clearly it turned out that was part of the idea in this case, but-----?-- At a later stage it was one of the ideas.

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All right. That wasn't floated to you at that early stage?-- No.

All right. Was there anything floated to you at that early stage about any possible role that you might have in the company?-- Oh, he asked me if I would be interested in working with him in that particular area, and I said - I honestly said I hadn't really considered it before. I regarded myself as an expert in the energy sector. That's where I'd spent most of my time working. But I did agree to think about it and I agreed that I would - you know, I was intrigued that he and Mr Roe wanted to get involved in that sector because I think, you know, that was a positive thing, that we had private investors looking to enter into that sector and contribute to training places, contribute investment dollars to training places, and it was consistent with a lot of things that the government was trying to do around promoting science research and education. Part of the Smart State strategy.

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Did you know of Mr Roe before that date?-- Yes.

Did you know Mr Roe and Mr Wills as both being gentlemen who, to use the vernacular, have got some runs on the board in the past vis-à-vis successful businesses?-- I knew Trevor Roe through his involvement in - as the Chair of Queensland Investment Corporation.

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Right?-- And I knew him also through his role in Rothschild Investment Bank who had been doing some work in the energy sector.

All right. Thank you, Mr Devlin.

MR DEVLIN: I will show you this then. At 10.28 a.m. on the

7th you have replied to Mr Martin as follows: "This is excellent information and a great outcome for your trip. Please keep me updated on your performance in these markets as there is enormous potential here for the VET system. I know you're off to Korea shortly. What do you expect. Scott." See that?-- Yep.

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So to give you the sequence again, you've sent off that email at 10.28 a.m. and I can't vouch for how they were - how the times were coordinated but at 10.29 you tried to ring Mr Wills, at least, probably didn't speak to him, who knows. Then Mr Martin sends you a reply. And it says this: "Before Korea is Europe this Friday with Chris, Deb, Craig and private providers, and QETI going to Poland, Hungary", et cetera. And you send on to Mr Wills at 1.29 p.m., "Itinerary for eastern Europe. Vern, you can also see the opportunity in eastern Europe, Scott." So do you accept from that sequence - and we have seen the documents during Mr Martin's evidence - do you accept in that sequence that you appear to have passed on Mr Martin's itinerary?-- I have passed on the itinerary for the eastern European trip, yes.

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Yeah. Can you at all recall why you did that?-- As general information. It - somebody was asking me about the investment opportunities in various international education sectors and this was information that I thought would be of interest to somebody who is contemplating investing funds in developing a business in this sector.

Right. Did you turn your mind to the nature of the document, that is the itinerary that you were sending?-- I can't recall specifically turning my mind to the nature of that document but I don't consider that to be confidential information.

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Well, somebody did. Somebody did.

MR APPLGARTH: Who is the somebody?

MR DEVLIN: Perhaps you didn't notice it, hey?

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MR NEEDHAM: I think you need to point the witness to what you are referring to.

MR DEVLIN: The word "confidential". It is shaded?-- Okay.

Okay. So we've got Queensland Education and Training VET provider trip. And at the bottom of the page we've got "Confidential". What, didn't you notice?-- No, and it - wasn't that document provided to other private education and training providers?

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I don't know, but they'd be operating to get their own contacts, wouldn't they? I mean, overseas contacts are like gold in this industry, surely?

MR APPLGARTH: With respect, if we recall Mr Martin's evidence he said that he went with private providers to the same places. So, I mean, our learned friend can speculate

about matters but it would be helpful if the witness was reminded of the evidence in the case rather than this speculation.

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MR DEVLIN: I am just interested in whether - well, I think you have answered the question - no, I don't know that you have. Did you turn your mind to the fact that what you were given by Mr Martin was branded "confidential"?-- No. This is not clear to me that this is his personal itinerary.

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All right?-- And I wouldn't consider an itinerary to be something that was highly confidential, and I think given that this is with QETI and given the objectives of QETI in terms of coordination of both private and public providers of education to enhance or increase international student numbers, I would think it was consistent with that.

Okay.

MR NEEDHAM: Did you seek that from Mr Martin to pass it on or was this also totally coincidental that you were interested in finding out what Mr Martin was doing and just as an aside passed it on?-- Because he passed it on to me and I probably passed on the previous information to Mr Wills, I thought he might be interested in this as well.

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See, your email to Mr Wills passing on the first information is at 10.25 a.m. when it was sent?-- Mmm.

And your email to Mr Martin asking him for more information was three minutes later, which if you type the way I do means you went straight from one email to the other. You have sent one to Mr Wills and immediately asked Mr Martin for more. You say it is coincidental that they are connected that way?-- Yeah, I doubt if Mr Wills asked me for more information on this.

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I am not suggesting that?-- Or whether he actually acted on this as all, so.

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There wasn't time, so we needn't bring Mr Wills into it. I am asking about you; not Mr Wills?-- Mmm.

You sent an email to Mr Wills and within three minutes you typed and sent another email back to Mr Martin asking for more information. I am asking if those - coincidence of times on those is coincidental or whether you sent it to Mr Wills so you sought more information to be able to send more information to Mr Wills?-- I think it is coincidental. I mean, he sent me the email, I said, "Thanks for that, keep me updated", and then as part of that he sent me some more information.

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Which you also sent on to Mr Wills?-- Yes.

Yes, Mr Devlin?

MR DEVLIN: Thank you.

MR NEEDHAM: Sorry before we go on, can I ask whether you can give me any example of where you've provided similar sort of information to any other party apart from Mr Wills and his colleagues?-- In terms of?

Personally, not by directing them to officers within your department but where you have personally gone to this sort of trouble of providing information to some other interested party?-- I would think that there is lots of instances where people have contacted me for information and I have agreed to seek that information and provide it to them. I can't think off the top of my head anything specifically in terms of vocational education. It was very rare for there to be any interest from business people in general about investment in that particular sector.

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You heard - it was Mr Leckenby, wasn't it, yesterday who told us that there were in fact areas such as his own that he worked in and also the regulatory area, both of which as part of their normal business answered any queries from any persons who were interested in setting up a training organisation. Were you aware that your staff did that sort of activity?-- I was aware that probably more the regional offices than Gavin's area undertook that task, and I think that comes back to my earlier statement in terms of the dot points, and when I have reflected on this in hindsight I would have followed a different process. I believe good process leads to good outcomes and I followed poor process in relation to these matters and I should have told Mr Wills to deal directly with other individuals.

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Yes. See, as the CEO - in fact, you were the CEO of two organisations - you just don't have time to be doing these sort of things that you were doing unless you've got some personal good reason for doing it, I would suggest. Would you agree with that?-- No, I mean, I think you can't - I mean, I think you need to place me in a position where I was somebody who as a public servant took a lot of interest in actually developing the sectors that I was involved in.

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But can you point me to anyone else that you've put in the amount of work in assisting them in setting up training organisation-----?-- No.

-----or answering their queries?-- No.

As we see in this case?-- No.

No. Yes, thank you, Mr Devlin.

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MR DEVLIN: I need to complete the sequence but I need to go back to an earlier part of the sequence. At 10.24 a.m. on the 7th of September you passed on to Mr Wills a business case document in which you said in the covering letter: "Vern, attached is a business concept rather than a detailed business plan. I will also send to you an email from one of my staff that explains how the international arrangements operate. The

Gold Coast TAFE has a detailed international business plan which can be replicated across the system and I will send it to you at the end of the week." See that?-- Yep.

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Then you-----

MR NEEDHAM: That seems to be one minute before exhibit H3 was sent.

MR DEVLIN: Yes.

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MR NEEDHAM: I see.

MR DEVLIN: Then you send "Business Concept - Training Company" to Mr Wills as the attachment. Who drafted that?-- I believe I did.

When by reference to sending it on the 7th of September?-- It doesn't have the - I can't see what date it was drafted.

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No, well, you have sent it on the Wednesday. We've heard from other public servants that they do their drafting in their own time. It is not possible you did it over the weekend leading up to Wednesday the 7th, is it?-- It could be.

After lunch on the Friday. It is possible you did it after lunch on the Friday?-- Oh, it could be possible, yes.

Right. Let's just track through this then. The theme of it seems to be summed up in the opening lines, like a good document should: "There are a number of opportunities to sell Australian Vocational Education and Training to international students." I want to take you to the paragraph at the top of page 3, "A typical two day visit to Hong Kong, for example, should result in \$300,000 - \$400,000 in secured enrolments. I will send a separate email from my leading Gold Coast sales staff on his recent visit to Hong Kong and Taiwan. He secured \$350,000 in business and you will begin to understand the type of operation that I am explaining." So clearly you had in mind sending Mr Martin's communication, you'd agree?-- Yes.

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And you feel that you were entitled to do that?-- I don't consider that there is anything commercial in confidence in relation to that.

Down at the bottom of that page under the heading "Mining Services Training", you say, "In Queensland the biggest areas of training are in mining services and civil construction to service the mining industry. I have established an RTO with the central Queensland TAFE. It has a manager and contracts with private training companies to service contracts within the mining sector. Once again it is essentially a training broker in the mining sector and could easily be replicated as a private company outside of the government system. The key to its success is the current manager, who could easily be poached to replicate the model in a private company and become a competitor to the government broker that I have established which is now the single largest provider of mine training in

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Queensland. The entity has contracts with more than 40 companies and mine sites." Is that one of the examples of an in hindsight judgment that this was careless and/or inappropriate?-- Certainly.

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And you drive the point home under "Business Model", "Training is provided on a contract basis and pricing of training is based on a cost plus margin model. The only real competitor would be the government entity which would largely collapse". There is nothing in government policy that talks about collapsing existing successful government institutions, is there?-- No.

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If you had your time over, you would not have written that, would you?-- No.

And if you had your time over in dealing with Mr Wills, you would not have permitted yourself - sorry, if you had the thought about that, you would not have permitted yourself to put that thought into action; isn't that correct?-- Yes.

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Because, going back to the Code of Conduct, that would clearly not be in the public interest; isn't that correct?-- Yes.

There is another aspect to it and that is the public perception that this document was your job application with Mr Wills. Would you like to respond to my prompting on that matter?-- Well, it wasn't my job application with Mr Wills. I hadn't discussed in any detail with him at all about accepting a job in this area. I mean, I undertook to provide him with some information in relation to assisting him look at the opportunities in this sector, and, indeed, during this time, if it is September 2007-----

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MR APPLGARTH: I think it is 2005.

MR DEVLIN: 2005?-- Sorry, September 2005, I had been offered a position as the chief executive of the Australian Energy Market Commission and I believe I was discussing that particular option with that entity.

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MR NEEDHAM: Mr Flavell, at the bottom of the prior page, it says, "To service the mining market, I have established an RTO with the Central Queensland TAFE." Is the "I", you?-- "I" is the department.

The department?-- Yeah.

You refer to the department as "I"?-- Well-----

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Something like the Royal "we", is it? The department isn't "I". "I" there must be you, I would suggest?-- Well, I mean, I don't take unilateral decisions to set entities up, but I did provide a lot of assistance to the individuals involved to address this issue. I need to put mining services in context. It is a big sector of the economy, an area of enormous skill shortage.

I don't need to know the size of it-----?-- Well, I think it's important because I had a lot of - if you are asking about "I", I mean, I had a lot of people in the resources sector wanting me to address this particular issue.

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I'm sorry, you might be perhaps misunderstanding my question. I'm not asking who set up the Rockhampton TAFE, or who set up the mining training up there. I know that was done through the department, perhaps with your guidance and leadership. I'm asking the term that is in this document, which you say you wrote, when it says in that document "I", are you referring to yourself, or, are you referring to someone else?-- Well, it would be me.

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"It would be me". Okay. Then over the page, the paragraph under "Business Model" - Mr Devlin, could you put that paragraph up, the one under "Business Model", thanks?

MR DEVLIN: "In this market"?

MR NEEDHAM: No. "Training is provided on a contract basis." "The only real competitor would be the government entity which would largely collapse if we acquired the current manager." If the "I" on the previous page is you, who is the "we" on this page?-- Well, I mean, given this discourse with Mr Wills, it's between Mr Wills and I.

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Right. So obviously you were envisaging a project involving yourself and Mr Wills where you would be setting up an entity, and that entity would largely then, if it acquired the current manager of the Rockhampton enterprise, collapse the government entity?-- I mean, I just think it was sloppy use of English in terms of, you know, I hadn't had any interaction, or any agreement with Mr Wills in relation to this. But he had sort of put a proposal to me, and, in that concept, I used the "we".

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Well, see, it was put to you whether this was a job application, in effect?-- Yes.

You heard Mr Harper yesterday say that the work that he did, and provided through to Mr Wills and to Mr - the other gentleman, whose name I forget, he considered it in some ways to be akin to a job application. The inference would similarly be open to you when you are writing this sort of document and using the terms - especially when you are using the term "we"?-- Well, in this case, I mean, I certainly had not made any decision, or taken any position to join with Mr Wills in this business venture. In terms of "we", you know, I had agreed to provide him with some assistance in terms of what the market opportunities were.

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It tends to suggest you were very much keeping your options open? I'm not suggesting you would have formulated the final decision to-----?-- Oh, look, I agree. This is an option that was put to me and it was something that I thought, "Well, that might be worth considering in the future", but as I mentioned earlier, I did actually was - I had a job offer in another sector.

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Of course. You'd keep all your options open. Your barrister spoke about that yesterday. I understand that. Naturally, you would. But the point I'm interested in is this: it reaches a stage where your consideration of it is such that you get to the point where there is at least an apparent conflict of interest, if not a real conflict of interest. Now, did it ever occur to you at any stage then in 2005, that you might be reaching that stage of an apparent or a real conflict of interest when you were talking in terms of "we" doing these things?-- No.

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Did you just not turn your mind to it at all?-- No, because I really wasn't sort of taking it as a particularly serious career option.

But, you know, you say it was the government policy and everything and you were supporting the government policy?-- Yes.

You typed up this document yourself, did you?-- Yes.

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Or did you dictate it and have your secretary type it?-- No, I would have typed it myself.

You know, that's-----?-- At the time, Mr Devlin, I didn't - Mr Needham, I didn't think about it in terms of being a conflict of interest. Obviously in hindsight when I've looked back, I've thought, well, this is particularly - this is, you know, a potential conflict of interest and I should have been alert to that.

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See, you're going way beyond what you would normally do to anyone coming to you saying, "Look, I'm interested in looking at setting up a training organisation", and it suggests to me that there's only two reasons why you would do this. One is that perhaps friendship with Mr Wills, you were assisting a friend. You have obviously known him for a fair while?-- Yeah.

The alternative is that you were interested in this as a possible future career prospect-----

MR APPLGARTH: Well, before the witness answers the question, Sir, the question is premised on preferential treatment compared to other people who came to him.

MR NEEDHAM: Well, I thought he had already said to me he had never done anything like this for anyone else.

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MR APPLGARTH: Well, that's right. He said because other people didn't come to him. So the question is premised on preferential treatment between Mr Wills' interest and someone else, and that someone else hasn't been identified. In fact-----

MR NEEDHAM: Look, I take your point. If another person came and offered him a business job, perhaps he might have done the same.

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MR APPLGARTH: I'm not being-----

MR NEEDHAM: Yes, I take your point. I'll rephrase it.

Putting it as to whether it was preferential over what you did to anyone else, the amount of work that you did on this suggests to me, and I'm putting it to you fairly so that you have the opportunity to comment on it, that it's done for one of two reasons; the only two reasons I can see at this stage. One, that it is the friendship with Mr Wills, if it was that; secondly, that you were looking at it as a possibility of a future career option. Now, do you want to comment upon those two inferences?-- I think it was probably more the former. I had known Mr Wills and I agreed to assist him, but, at the same time, I wasn't ruling it out as something that I may wish to pursue at a later date.

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All right. So a bit of both?-- Mmm.

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Yes. Thank you, Mr Devlin.

MR DEVLIN: In that connection are you familiar with the document put out by the Integrity Commissioner - the Queensland Integrity Commissioner headed, "Conflicts of Interest in the Public Sector." Are you familiar with that document at all?-- No.

Its currency is February 2006, Information Sheet 2. Before you departed the public service, did you ever learn who the Integrity Commissioner was?-- Yes.

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Who was that?-- Mr Crooke.

Gary Crooke QC?-- Yes.

You'll see on the front of this Information Sheet, the section dealing with personal interests: "Because of the broad duties

imposed on public sector officials, a variety of personal interests may come into conflict, or appear to come into conflict, with the performance of official duties." Then down further, "Consequently, actions which would raise the appearance of a conflict of interest in the mind of a reasonable person with knowledge of the relevant facts should be avoided." When you look back on the relevant facts here, do you agree that there is the appearance of a conflict of interest, or do you refute that?-- Sorry, in what aspect?

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When you expose all the facts that a reasonable person might look at, do you agree now, in hindsight, that those events that we've just gone through from the 2nd of September to the 7th of September, culminating in the words you chose, that to a reasonable person that might appear to constitute a conflict of interest?-- I think at best it would be not an actual conflict of interest, but a potential conflict of interest.

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Thank you. Now, the Integrity Commissioner had something to say-----

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MR NEEDHAM: Sorry, before you go on to that, looking back on it, when you are advising a private group of people of actions that they could take to collapse a successful government enterprise in the TAFE system, namely, this Rockhampton mining training, are you saying that isn't a real conflict of interest?-- I'm saying at the time I think it was just incredibly careless.

Yes, but it amounted to a real conflict?-- I didn't spend a lot of time on the particular issue and probably, you know, just didn't reflect on it in any particular detail. I can tell you-----

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I accept that?-- I can tell you we didn't actually - I mean, nothing ever occurred in relation to that, and it was just a-----

I accept that?-- Yes.

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I'm just interested in your viewpoint now as a person who has been a senior executive officer?-- Yes.

In fact, a Chief Executive officer in the public sector. Do you not see it as a real conflict of interest for a CEO of an organisation, such as DET, to be advising a group of private investors how they could collapse a successful operation being run by that public sector organisation?-- I think if that - I mean, that wasn't my intention.

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No, no, but that's what you did. That's what you were advising?-- Mmm.

You mightn't have intended that, but when you look back on it, you must see that that's what you were advising. Fortunately it didn't come about, but don't you see that that was a real conflict of interest to be advising that way?-- I mean, I think it's debatable but-----

All right.

MR APPEGARTH: Well, the witness was going to finish. Perhaps he finished. He said "but".

MR NEEDHAM: Sorry, I don't mean to cut you off. You don't see it?-- Well, I mean, I think there's - you know, a perceived conflict of interest. I don't consider it to be a real conflict of interest because I just think it was a hastily prepared piece of information that I didn't consider in any detail, and so it was just, you know, very careless on my behalf.

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Yes. See, the difficulty I have is that's your explanation excusing why you did this. That doesn't, I would suggest, stop it from being a real conflict of interest. Don't you see any difference between the two?-- Well, I understand your explanation, yes.

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All right.

MR DEVLIN: Further on in the Integrity Commissioner's document, it says this, "A person" - sorry, there must be a preamble: "In the public sector, such personal interests can arise if". "In the public sector, such public interests can arise if: (iv) A person has or seeks employment either in or outside the public sector which could compromise decision making: for example, if a public official makes a decision favourable to a nonpublic sector person or entity in the hope of obtaining employment, or if an official attempts to set up a business which could deal with the entity in which the official is employed. Such conduct may involve a criminal offence." Pretty strong words, aren't they?-- Mmm.

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And here is a person inquiring of the Director-General about setting up a business in the private sector in the area directly referable to the Director-General's duties. Do you accept that?-- Yes.

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I'll tender the Information Sheet Number 2, February 2006, of the Queensland Integrity Commissioner.

MR NEEDHAM: That's Exhibit H66.

ADMITTED AND MARKED "EXHIBIT H66"

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MR DEVLIN: Just to look at the contact then that you had after the 7th, I'll just show you these and I should have given these to your legal representatives earlier, but I will give, as I say, the phone records. Distilling them, we have on the 9th of September through to the 27th of September, a number of calls to Mr Wills' mobile phone.

MR NEEDHAM: These ones that have been handed up I presume to the witness as well don't start until October. 1

MR DEVLIN: Yes. We're missing the front page.

MR NEEDHAM: I see.

MR DEVLIN: Have you got the September list in yours?-- No. Yes. Yes, there is.

You have. So it is the Chairman who is missing his. Okay. Thank you. So on the 9th of September, you have a conversation for 382 seconds. On the 21st of September, you have a conversation for 11 minutes or so, all the way through to the 27th of September. It is a fair bit of contact, yes or no?-- Yes. 10

And then we have a meeting record which shows that Mr Wills had an appointment with you on the 14th of September at Level 17, 61 Mary Street. What is that address, Mr Flavell?-- That's my business office, or was my office - Director-General's office. 20

Director-General of what?-- Employment, Training and Energy.

So did you only occupy one office?-- Yes.

And was it in the employment and training complex?-- No.

Or the energy complex?-- Energy. 30

Thank you. So since you dealt with Mr Wills on other matters to do with your energy point folio, I take it you wouldn't be able to say at this distance what that was about?-- No.

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

MR NEEDHAM: Are you tendering the telephone records?

MR DEVLIN: I shall. 40

MR NEEDHAM: Yes. Well, the telephone records will be H67.

ADMITTED AND MARKED "EXHIBIT H67"

MR NEEDHAM: The appointment record for the 14th of September will be H68. 50

ADMITTED AND MARKED "EXHIBIT H68"

MR APPLGARTH: Sir, I think the Information Sheet from the Integrity Commissioner of February '06 is H66. I could be wrong.

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MR NEEDHAM: You are right again, Mr Applegarth. Thank you for keeping me on the straight and narrow.

MR APPLGARTH: I know. My fee will follow.

MR DEVLIN: I've got that much paper I can't be any help to you, I'm sorry, so Mr Applegarth will have to keep track of that.

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The next thing of interest is that you heard Mr Peter King's evidence that he was contacted by you, or took a call, sorry, from you at the Hilton International College in about October of 2005. Do you remember that?-- Yes.

This is transcript page 82 here. This is his evidence yesterday "Mr Flavell indicated he'd been trying to contact Hilton International College, that some people that he had been involved with were interested in joint partnership arrangements or even possibly the sale of colleges to expand their businesses." You don't disagree with that text, the nature of the call?-- Without looking at the specific text, the call occurred, yes.

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This seems to be - I don't want to go into his assumptions but, rather, what he remembers about the conversation, under line 30, "Initially there were one or two questions relating to the ownership of the business and, as I say, whether Glynne was interested in selling the business. But the bulk of the questions were more to do with the size of the operation, the numbers of students, and the current situation with regard to international students who were there." So, what led up to that in October of 2005?-- Are you happy for me to refer to the discussions with Mr Slater?

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Yes, go ahead?-- So in relation to those discussions with Mr Slater, in the context of those discussions, he had raised with me that there was the possibility that this company may be interested in being for sale, and, on that basis, I think Mr Slater may have been trying to make contact with them through ACPET. He referred it to me and I phoned them to advise them that a group of investors had approached me and that they were interested in looking at potential acquisitions in this sector. My recollection is Mr - when I rang up, I asked for the principal of the college. Mr King came on the phone, or phoned back, indicating, I believe, that he was a business advisor or some context like that. He advised me, if I recall, that he wasn't sure what the objectives of the owners were in that respect but he would pass it on to them, and I think he actually mentioned to me that it was a small family company and it's probably not likely that they'll be interested in such a thing at this stage, and I passed that information on to Mr Wills and had nothing further to do with it at that stage.

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Why did you get involved at all?-- Simply because I was having those discussions with Mr Slater and, you know, I thought given that there was, you know, an investor interested, I would make the inquiry.

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Mr Slater says he attended a meeting with you and Mr Wills, and mentioned that ACPET - mentioned to you, anyway, whether in the meeting or elsewhere, that ACPET might know such information. Do you remember that as the flavour of his evidence?-- Yes.

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And that he went off pursuing this Michael Hill, was it?-- Hall.

Hall. So you don't disagree with any of that?-- Well, no, I don't disagree with his evidence, no.

And you were content for Mr Slater, as one of your employees, to go off chasing that information, were you?-- Yeah. I had no problem with it.

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Now, we've got Exhibit H9 being Mr Slater's document, So I would ask that you see that.

MR NEEDHAM: It might be a suitable time to take mid morning break at this stage-----

MR DEVLIN: Thank you.

MR NEEDHAM: -----seeing we started early. We'll adjourn for 15 minutes. That will give people time to have a cup of coffee.

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THE HEARING ADJOURNED AT 11.22 A.M.

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THE HEARING RESUMED AT 11.47 A.M.

SCOTT CAMERON FLAVELL, CONTINUING EXAMINATION-IN-CHIEF:

MR DEVLIN: I think I called for exhibit H9, which was the paper Mr Slater said he prepared at your request and sent to you on 14th of October 2005. My only question about that is did you think it was all right to detail a project officer to do this document, did you?-- Yes.

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And I am interested to know whether - see, Mr Slater said he did it in his private time?-- Yep.

I think he was the one that used his private email?-- Mmm.

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Did you see it as something that he could have just done in his own public service time?-- I had - I mean, he elected to do it in that - in his private time. I mean, I have no problem with people sort of, you know, striking a balance between their work and - in their work time, you know, doing certain things at work. In this instance he was somebody who had some expertise in this area and I had a discussion with him and mentioned to him the approach from Mr Wills and we had a discussion and he was prepared to undertake that, and he said, you know, he would prefer to do it in his private time.

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So you had a discussion with him about that?-- Yes.

About him preferring to do it in his private time?-- Yep.

Okay. Now, I am just trying to find - now, we know that by reference to - we know that there was the approach to Hilton in October and then there is exhibit H12.

MR APPLGARTH: While that's going up, just for the record I should note, if it helps, that H9 - this is about Mr Slater's emails - the H9 document seems to be on a work email.

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MR DEVLIN: I was trying to pick that up.

MR APPLGARTH: It has got a work signature block, as it were. The one that Mr Devlin is about to come to has an optus.net email. So Mr Slater seems to have used two different ones and there is a cc to his work email in the one that's H11, but I would have to go to his evidence as to timing. I think he said he was very busy and he did it after hours.

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MR NEEDHAM: That's his general memory, he said he was busy and he did it after hours. Certainly the next one is the one he was doing at 11 o'clock at night.

MR APPLGARTH: Yes.

MR DEVLIN: I think I am actually thinking of Mr Harper, actually. 1

MR NEEDHAM: Mr Harper was the one who always used his own private email.

MR APPLGARTH: I think the upshot is I think we're in furious agreement with Mr Slater is that he was busy and he did these what we might call after hours. 10

MR NEEDHAM: Yes.

MR APPLGARTH: But there is that ambiguity, as we see from the email traffic, as to whether he was using private or departmental email.

MR NEEDHAM: Yes, he certainly used departmental email in H9.

MR DEVLIN: That's accepted. And I didn't want to mislead you. You might have been thinking Mr Harper as well, but did you have that sort of conversation with Slater as well?-- I - in terms of John Slater, I can't really recall whether it was - whether we had a specific discussion about whether it was after hours or during hours. I seem to recall him having done work on it on the weekend, though. 20

Yeah, okay?-- Yeah.

I just wanted to get your response to this email dated the 3rd of November 2005 which was sent to Mr Wills: "John is having discussions with an ELICOS school which is on the market to find out some additional detail. He is also looking at the city site I mentioned and will take you for a look if it scrubs up." Can you explain what happened there?-- I can't actually recall what that's actually about. 30

It certainly reads like Mr Slater is kind of acting as some kind of agent for this interested party. I just want your comment on that?-- On the----- 40

The way you choose your words seems to suggest that?-- No, John wasn't acting as an agent for them at all. He was providing information. He is somebody who I had a lot of regard for in the system and worked in this area previously and I was keen for him to have these discussions with Mr Wills.

And the attachment that went with it on this occasion-----

MR NEEDHAM: While we're still on that email explaining what it means, the last paragraph, I find the last sentence in particular difficult to understand what it means. Are you able to assist on that, Mr Flavell? "We need to make sure we are not serving a direct competitor."?-- Look, I - I don't know what that----- 50

It is obviously something to do with the Sunshine Coast work that you do up there. "Could be in the 200,000 to 400,000 per

annum range"?-- Yeah, I don't know what that's about unless it is referred to in the actual document subsequently.

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Okay. And I note at that stage you were still referring to "we", as if you were at least portraying yourself as being involved in this new training entity?-- Yep.

Yes, thank you, Mr Devlin.

MR DEVLIN: Thank you. And we've heard from Mr Slater, if I remember the evidence correctly - and again I invite my friend to correct me if I've got this wrong - but Mr Slater believed that he did not get the name of Hilton until about the 7th of November. I am just wondering what ELICOS school you are talking about in an email dated the 3rd of November. Can you assist there?-- Well, the only school I can recall having - anybody having any discussion with is the Hilton College.

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And as for looking at a city site to see if it scrubs up, you just cannot put any story to that now?-- No, I don't know what that - I don't know what that relates to, no.

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I mean, Slater said he didn't go looking at city sites, if I recall his evidence correctly. You weren't trying to impress Mr Wills with a little bit of verisimilitude?-- I doubt it.

Okay. Then the attachment is this more detailed work-up by Slater with lots and lots of figures for the development of different scenarios for a language school. You thought that was all right for Mr Wills to get from inside the department?-- Well, it was all John's own knowledge from his experience.

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I understand that?-- Mmm.

You thought it was all right?-- Yeah.

Okay. And before we leave that document, there was mention of the Sunshine Coast matter. Does that - are you able to put anything to that, what the Sunshine Coast issue was about? Did you speak to Mike Anderson from the Sunshine Coast, for example?-- Not at that stage. Not in 2005. In fact, I don't think Mike was at Sunshine Coast then. I think he might have been in head of Human Resources.

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Okay. Now, the Commission is in possession of information that in the month of November you contacted the lady Glynne Hilton and that Natalie McIntyre also participated in a conversation, that they had - or you had a conversation with them about the possible sale of the Hilton International College. Do you remember that?-- No.

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I will need to put something to you specifically for your response?-- This is November 2005 you are talking about?

Yeah. Do you remember speaking to Ms Hilton at all whilst you were Director-General?-- No.

I am sorry, that was a secondhand conversation and the end result of that was with Mr King. I think I put to you earlier based on Mr King's recollection it was October. In fairness to you the - Ms Hilton's recollection was that she was overseas in November when she received information that you had inquired-----?-- Okay.

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-----through Mr King?-- Okay.

So I correct that?-- All right.

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It would appear Mr King's recollection is a month out, that it was between the 3rd and the 29th of November?-- Okay.

That you had the conversation with Mr King?-- Okay.

Now, exhibit H5 is the snapshot of statistics sent to you by Ross Martin which you sent on to Mr Wills with the note, "You can see the growth in the vocational education market from the following stats. It is interesting to see where the demand is coming from." So that's of 4th of November 2005?-- Uh-huh.

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Just have a look at the hardcopy exhibit, if you would?-- Yep.

Again, did you think it was okay for one of the employees of TAFE to assemble that material for you and then for you to flick it on to Mr Wills?-- Well, he would have been doing it for my purpose because I asked him to keep me regularly updated, and I don't think there was any confidential information in here, I think it is all QETI or Education International information which - which I forwarded on.

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Right. Now, I will just on the way through just check the phone records. Excuse me, Commissioner. Just to bring us along in the time-frame in terms of your telephone traffic with Mr Wills, we left September behind before the break, so now we've got - and I think you've still got the hardcopy with you, haven't you? Just follow me from the bottom of page 1?-- No, it is not here now.

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Perhaps the orderly has it.

MR NEEDHAM: That's exhibit H67.

MR DEVLIN: So two calls in the early days of October. I accept some of them are very short, so they are probably better understood as attempts to call. Right through October on his mobile, one to his office number. Then November, which is what we're in now, in terms of the time-frame, November '05, we have quite a long call on the 3rd and then calls or attempted calls on the 4th, 11th, 18th, three on the 21st, one on the 24th and the 28th and the 29th. So you would agree there is still a lot of telephone traffic between yourself and Mr Wills, at least on that summary?-- Yes.

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Accepting it to be accurate?-- Yes.

And I take it that a fair proportion of that was to do with the assistance you were giving him in this vocational training area. Are you able to say one way or the other?-- I actually - you know, from about November, certainly from mid-November on, I don't really recall having too many further discussions with him for a period of time up until about, you know, around about April of the next year in terms of vocational education.

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Yeah, okay.

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MR NEEDHAM: Were all these other calls business related or would you ring and talk about, say, the football and, you know, some social thing?-- I mean, there would be - there could be some of that in it.

Right?-- You know, and on occasions, you know - you know, just general social conversation about things. I mean, he is - I mean, he represented a lot of people and, you know, in the energy game it is one of the biggest industries in town, and so there is a lot of interaction in relation to those sorts of things.

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All right?-- Yeah.

MR DEVLIN: You went overseas from the 23rd of December to the 11th of January of 2006?

MR NEEDHAM: Sorry, while you are on that, these telephone calls are just from Mr Flavell's number to Mr Wills' mobile, are they, or are they both ways? Are you able to say?

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MR DEVLIN: They are only one way, I understand. That's right, they are the DETA phone records.

MR NEEDHAM: They are the outgoing calls from DETA?

MR DEVLIN: Yes. What other pursuits socially did you have in common with Mr Wills? Did you attend football matches or dinners with your wives or events involving your children? What was it?-- I think I'd attended some football matches with him and he had invited us to his house together with, you know, a range of other people for functions.

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Right. And how often through 2005 and 2006, can you estimate, did you visit his private home? Is that possible to estimate?-- Three.

Right. Okay?-- That's just an estimate.

Yeah. I just want to take you to something that appears from records that you appear to have drafted on the 27th of January '06 after you got back from overseas just for your comment. It is headed "Some future options with training and energy"?-- Yeah.

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To summarise, it seems to be - is that your handwriting down in the corner?-- I don't have any handwriting.

MR NEEDHAM: It hasn't come out in the copy.

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MR DEVLIN: I am sorry, that's all right. That's just an internal notation?-- No.

But you finish with - start the last paragraph with "After two years as DG of DET, I think the release of the White Paper is a good time for me to move on." Do you remember the circumstance - certainly did you draft this?-- Yes.

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They were your thoughts-----?-- Yes.

-----at the time?-- Yes.

And were you by January '06 thinking of moving on as Director-General?-- This was a note that I drafted to Rob Whiddon, the Premier's Chief of Staff, and I had - when I initially took on the two portfolios, because it was a pretty large workload, there was a general discussion about how we'd manage that workload in the future and the - prior to this we had a discussion about me - about me moving on to some other - or just relinquishing one of the responsibilities, because there was a lot on and we were going through a lot of energy reform as well with employment and training reform. And this was - this was a suggestion to Rob pretty much having put together the White Paper that it was - you know, I think it would have been a good time for me to relinquish that and just continue to focus on the energy responsibilities and I wanted him to raise it with the Premier.

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I am sorry, did you document "leave the department of energy" as the prospect for your future? Can you just pick up the phrase?-- Which one, sorry?

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Did you have in prospect continuing on with the Department of Energy?-- Yes, yes. So I had two portfolios and this wasn't the first time I sort of raised issues about my workload because I also had a third agency with Corporate Solutions Queensland, so I - there was a lot on and I also thought - sorry, I wanted to just continue to focus on the energy responsibilities.

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I see?-- And relinquish the Employment and Training responsibilities. I think I was saying it was actually a good time and I think part of the problem was, you know, I'd done a lot of hard work in terms of cost savings and things like that and we needed somebody who was probably better able to smooth through the implementation arrangements.

Okay. And I see that now. You are saying you would like to concentrate on some "key priority areas" up here. So you weren't looking at parachuting out of the public service, as such?-- No, no, this was simply a note to Rob Whiddon. And I asked him to raise it with the Premier, he raised it with the Premier, the Premier came back and said no, so.

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I will tender that for the record.

MR NEEDHAM: Yes, that's exhibit H69.

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ADMITTED AND MARKED "EXHIBIT H69"

MR DEVLIN: Now, I am moving the time-frame on a bit into March of 2006. So you have been back from overseas for a month and a half, and if we look back at your telephone records there is a very long conversation on the 2nd of March with Vern Wills and on the 6th of March - sorry, on Friday the 3rd of March - I will zoom in for you on this - sorry, it is the 6th of March, although the notation is "dinner Friday 3rd March". The records of Enhance show again just you and Mr Wills at dinner. Are you prepared to accept that that occurred? Was that at Il Centro?-- Once again it wasn't reflected in my diary that I had but I am not saying - it is possible that it occurred.

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I am just tracking some of the activity that is detectable. On the 21st of March we have you slated for an appointment with Mr-----

MR NEEDHAM: Did you want to tender the Enhance finance records-----

MR DEVLIN: I will tender that.

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MR NEEDHAM: -----for the 6th of March is exhibit H70.

ADMITTED AND MARKED "EXHIBIT H70"

MR DEVLIN: You've got an appointment on the 21st of March for half an hour, at least in your records. And then if we look on the 21st of March there is a longish phone call.

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MR NEEDHAM: Well, take them one at a time. Are you tendering the appointment?

MR DEVLIN: Yes, I will tender that.

MR NEEDHAM: The appointment for 21st of March is exhibit H71.

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ADMITTED AND MARKED "EXHIBIT H71"

MR DEVLIN: So I guess at this distance you simply have to accept that these things may have occurred. That's the best you can do with that, I suppose?-- Yeah.

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Yep. Then we go to - I am just leading up to a particular date, you see. Then we go to an appointment slated with Vern wills and Darryl Somerville on 24th of March from 12 to 2 p.m. Now, to assist you there I will now show you more Enhance documents, and I will tender them then together, Chairman. This shows a business development meeting paid for by Enhance involving Vern Wills, Darryl Somerville and yourself. And the information is that it was at the Cha Cha Cha Restaurant, billed \$440 odd to Enhance. Do you recall meeting with Mr Somerville on the 26th of - sorry, 24th of March over lunch?-- I don't actually recall that lunch.

Do you-----?-- But it was in my diary, so.

Yep. So you accept that it occurred?-- Well, if it was in my diary, yes.

Thank you. So I will tender the appointment notation and the Enhance business records.

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MR NEEDHAM: Those two documents together will be H72.

ADMITTED AND MARKED "EXHIBIT H72"

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MR DEVLIN: We'll keep that date in mind, the 24th of March, and see what the telephone traffic was like. On the 22nd of March, there is a 10 minute telephone conversation. See, Mr Somerville became, correct me if I'm wrong, a director and shareholder of Careers Australia Group, didn't he?-- That's right.

And so did you on your retirement from the public service?-- That's right.

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Are you saying you have no memory of a lunch with Mr Somerville and Mr Wills?-- I can't recall that lunch, but I don't - I believe it probably did exist. I used to deal with Darryl Somerville a lot because he was in charge of the - he was chair of the implementation group for full retail contestability for electricity which was a project, an important project, that I had to oversee.

Okay. So I'll at least ask the question. Do you have any recollection of discussing your future - the future prospects of a company in the vocational education area at a lunch with Vern Wills and Darryl Somerville in March of 2006?-- No. I certainly - that certainly did not happen.

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Right. We then have a 13th of April appointment and lunch again at the Cha Cha Cha, bill to Enhance Corporate. You will see the notes - the records, sorry, below the 24th of March one are the 13th of April, Vern Wills, yourself, plus one other client according to the records. Do you remember that lunch?-- Could you actually tell me what day that was? Like-----

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MR NEEDHAM: Day of the week?-- Yes.

MR DEVLIN: Day of the week, we'll look it up. 13th April 2006. Thursday, 13th of April, I'm told?-- Yes, I do remember that lunch, yes.

What happened at that lunch?-- That was - at that lunch, that was when - as I mentioned earlier, while I'd had some discussions with Mr Wills about vocational education during 2005, I'd really had, you know, not pursued those discussions or concepts any further. During this period of time, I had a whole range of other things on my plate, and I believe it was sort of around this time that he actually came back and started talking to me again about, you know, he's still interested in doing something with the vocational education sector, would I be interested in talking to him further.

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And was there discussion over that lunch on the 13th of April about that topic?-- I believe so.

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Thank you.

MR NEEDHAM: Do you know who the other person was?-- No, I can't. I can't actually recall.

Why do you say it would be that lunch rather than the Somerville lunch? I know that that discussion didn't occur when Mr Somerville was there?-- I never discussed anything about this with Mr Somerville until November 2006.

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All right. Well, that's Exhibit H73.

ADMITTED AND MARKED "EXHIBIT H73"

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MR DEVLIN: Thank you. If we keep one eye on your telephone records then, for April we see a five minute telephone call with Mr Wills from your office on the 11th of April, a flurry of three shortish telephone calls on the day of the lunch, and then a couple of long calls in the balance of April. Do you see that? So, 27th of April is 10 minutes, 11 minutes?-- Yes.

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So, just accepting those records for the purposes of this exercise to be accurate, you are starting to have some longish telephone calls with him, as telephone calls go, on the 27th of April. There's actually two for a total of 1000 seconds.

MR NEEDHAM: Did you have a mobile phone as well, a DET phone?-- Yes, I have a phone, yes.

Do we have those records, Mr Devlin?

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MR DEVLIN: That's right, they're landline and mobiles.

MR NEEDHAM: They're the calls from your mobile and the landline?

MR DEVLIN: Yes. Because I mentioned the 27th of April because this is what we see in e-mail traffic then on the 28th at 4.50 from you to Vern Wills re training, you have referred him to the Carter & Carter website, "This is the model we are exploring." Do you know who that is a reference to, the "we"?-- Greg Harper and I.

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So you have now drawn Greg Harper into the matter, assisting Mr Wills; is that right?-- Yes. In relation to this issue, yes.

The model would be: training brokerage; training business solutions - advisory services; training provision, probably focusing on gaming/leisure, energy and resources and telecomms; international training in these areas. Employment services. The key is leveraging the government funding available for training and employment in the same way as Groves has done..." - a reference to Eddie Groves, I take it, "...with child care. In this way you are not just relying on full fee paying students. I will develop a bit of a strategy next week." So, it would appear that by the end of April, you're back into active assistance of Mr Wills in his attempts

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to launch a company within your area of responsibility; is that a fair comment?-- Yes. From April, he had a discussion with me again and I said I'd be happy to help him out and work on some concepts.

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Okay.

MR NEEDHAM: You did tend to be a little bit more heavily involved in the possibility of you being involved in this training organisation. The way I read this, you are saying, "I want to get more heavily involved in the training market for corporates leveraging government funding." Now, obviously that is not in DET, that has got to be outside DET. So it tends to be suggesting that "I, in this new training organisation"-----?-- Oh, yes, yes.

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-----"want to get more heavily involved in this area"?-- "I" in terms of developing the concept.

So not you as part of the company, just you in developing the concept for others to do?-- Yes. And I think I was trying to explain to him what the Carter & Carter business model was there. I think I should clarify prior to this, there had been no discussion about anything to do with User Choice or anything like that, or apprenticeship training, and this is - follows some discussions with Greg Harper. We actually started to think, well, you know, why is the Queensland market not developing in the same way as other markets like the UK.

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As a DG, I'd suggest you don't express yourself very well if that was your intention. I'm not saying that I would suggest you should get more heavily involved in the training market, instead of saying that, you say, "I want to get more heavily involved in the training market." Is that what you are saying, you meant they should get involved but you expressed it as "I should get involved"?-- I, in terms of developing the business concept.

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That is an unusual way to express it, isn't it?-- Well-----

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All right?-- I don't spend a lot of time considering the words I put in e-mails.

Well, I'd suggest anyone reading that would read it as that you, personally, wanted to get more involved in these things-----?-- Yeah.

-----not that you were going to develop a concept where someone else could get involved in developing it?-- Well, be that as it may, I had made no decision to do this at this particular point in time.

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Okay.

MR DEVLIN: I'll tender that e-mail.

MR NEEDHAM: That's Exhibit H74.

ADMITTED AND MARKED "EXHIBIT H74"

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MR DEVLIN: Somebody did go to that trouble, though. Mr Wills, according to a letter from Hopgood Ganim to him, registered the name "Enhance Education and Training Pty Ltd" on the 9th of May 2006. I suppose you don't know anything about that?-- I wasn't aware that he was dealing with his lawyers on that matter, no.

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All right. I'll tender that for the sake of the record.

MR NEEDHAM: Exhibit H74.

MR DEVLIN: A couple of things happened around about that time. Firstly, you're slated for an appointment with Mr Wills on the 8th of May from 3 to 4.30 p.m. Can you help us with what that was about at this distance?-- Where did it occur?

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Where did it occur? We'll see if we can tell you.

MR APPLGARTH: While Mr Devlin is getting instructions, can I be of use, and Mr Perrett claims credit for this. I think the last one that you made H74, Hopgood Ganim, might be 75 because the e-mail of 28th April 2006 is 74.

MR NEEDHAM: Thank you, Mr Perrett. That is right. So that last document, the Hopgood Ganim letter, will be H75.

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ADMITTED AND MARKED "H75"

MR DEVLIN: Mr Perrett is a good advertisement for an instructing solicitor, Mr Chairman.

We think it is a DETA record but we're going to confirm it if we can, Mr Flavell?-- Thank you.

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I'm going to give you - see the time 3 to 4.30?-- Yes.

I'll give you a little jog: on the 8th of May at 5.25 p.m., you e-mailed to Rod Camm, "Do we have a list of RTOs with User Choice contracts?" Mr Camm replies later that same evening, I think, "We would have" - this is at 5.45 p.m. the same day, "We would have. I have been on bereavement leave today. Gavin, can you supply a list first thing tomorrow."

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MR NEEDHAM: That document you are referring to is already an exhibit?

MR DEVLIN: Yes, it is. H31, I think.

MR NEEDHAM: Thank you.

MR DEVLIN: Okay. I'm instructed that the meeting-----

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MR NEEDHAM: No, it's not.

MR DEVLIN: It's not H31?

MR NEEDHAM: Oh, yes. Yes, I'm sorry, it is.

MR DEVLIN: I'm instructed it is a meeting at Enhance from 3 to 4.30, just to recap on the time frame, and it's from Wills' calendar from Enhance. Just to recap on the time frame at 5.25 p.m., you e-mailed Rod Camm for the User Choice list of RTOs with User Choice contracts. He e-mails back at 5.45 p.m. flicking the job to Gavin Leckenby. Have you followed that so far?-- Yes.

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Then on the 9th of May at 9.30 a.m., Leckenby sends you the proposed 2006-7 User Choice contract values, and attached to the e-mail, as we learnt yesterday, was the list of 124 successful User Choice applicants for the triennium with all their dollar figures attached. Do you remember all that?-- Yes.

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Do you reckon you're entitled to send this to Mr Wills at 2.50 p.m. on the 9th of May?-- Well, as I mentioned earlier, I sent that in error.

Sent it in error. Well, let's examine that. Let's examine that closely. Here you are, Mr Flavell, the holder of high office in the Queensland Government, and greatly valued by the Premier of the day, so it would seem. You're not going to disagree with me, are you?-- No.

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You have extensive Treasury experience; you're not going to disagree with me?-- No.

And you receive an e-mail which you do not on-forward for the balance of the day. At 9.30 a.m. you get it, 2.50 p.m. you send it on with the heading, "User Choice allocations as at 9 May '06." Let's examine what Mr Leckenby tells you. A very astute officer, Mr Leckenby, isn't he?-- He is a very good officer.

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Impressive. He says, "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." Did you miss the words "is recommending"?-- I believe if I had have reflected on it in detail, I would have understood what it was, and would not have sent it on.

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Did you miss the word "proposed" in the title?-- No, I didn't - I didn't reflect on it in any detail.

Did you miss the words "proposed funding level" in the second paragraph?-- Well, yes.

Did you miss the words "proposed amount" in the last sentence

of that paragraph?-- Yes.

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Second last line?-- Yep.

And did you miss the fact that they were currently completing a briefing note to yourself and the minister, did you miss that, too?-- Yeah, well, I don't believe I read the e-mail in detail, if I did at all.

Well, you would say you didn't deliberately give Mr Wills a leg up, is that right?-- Yes.

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You would say you did not deliberately provide commercial information before even the minister had it; is that right?-- Yes.

You would say that you did not deliberately supply commercial information before it had ever been approved by anybody with a delegation, is that what you would say?-- I don't believe I did it in any deliberate way, no.

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Do you see how it looks?-- I think, yes, it doesn't look good at all.

Do you think that an objective observer might smell the whiff of a conflict of interest?-- Yes.

MR APPLGARTH: Well, "smell the whiff" is a pejorative term. The question can be formulated in a better way.

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MR DEVLIN: Do you think that an objective observer would think that you have put yourself in the way of a conflict of interest? I think your answer was yes to the pejorative question. Now I'm asking you a straight one. Would you like to give me a straight answer?-- Yes.

If you had your time over, there's no way in the world you would do that, would that be right?-- Yeah.

You agree, then, that you signed off, according to your delegations, on the 10th of May, and that government - sorry, the Governor-in-Council signed off on the larger delegations on the 25th of May, do you accept that time frame?-- Yes.

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Going back to the top of your e-mail, you say this, "You might be interested in this." So it's not an accident that you flicked it on, is it?-- No.

And then you continue, "In relation to your request re names, I think we should consider a couple: Enhance Training and Employment (for the group); Enhance Performance Solutions (for advice and employment services), and Enhance Institute of Technology (for training provision)." Do you see that?-- Yes.

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And, in fact, we know from official records that the registration of the company by Hopgood Ganim occurred on the 9th of May; we just looked at what occurred on the 9th of May.

MR NEEDHAM: That's Exhibit H75.

MR DEVLIN: Exhibit H75. You saw that, remember?-- Yes.

And I think this trail all started with an appointment that Mr Wills recorded in the Enhance records with you between 3 and 4.30 p.m. on the day before?-- Yes.

MR NEEDHAM: Well, the Enhance appointment note for the 8th of May will be Exhibit H76.

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ADMITTED AND MARKED "EXHIBIT H76"

MR DEVLIN: To come back to the words of the Integrity Commissioner, I suggest that the evidence indicates that you were, by the 9th of May 2006, a person who was seeking employment outside the public sector which could compromise decision making. What do you say to that?-- I had not made any decision about being involved in any commercial arrangement with Mr Wills or anybody else.

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MR APPEGARTH: In my submission, it would be helpful, and perhaps fair, if my learned friend when he identifies a composed decision, a decision about what? I mean, if he's left it at a general level it's probably not terribly helpful. I mean, that's the difficulty here. There is a formal sign off. That is technically a decision. I'm just not sure what-----

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MR NEEDHAM: It could be a decision as to whether to hand out material that was covered by Cabinet in Confidence provisions, namely, the list that went on that day. That is the closest decision to that point in time.

MR APPEGARTH: Well, I'm not sure whether we're talking about a decision in terms of the awarding of a contract. I'm just commenting on the generality of the question and, therefore-----

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MR NEEDHAM: No, look, I don't know that I can take your point. One can be in a position of conflict of interest without necessarily being at that stage about to make a - enter into a contract with the party, or something of that nature. Just if you are dealing with a party that has some potential to cause a conflict of interest between your interest with that party and the carrying out of your duties, you are then in a position of conflict of interest.

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MR APPEGARTH: I don't want to delay the evidence, of course, but it's probably important because this discussion will need to happen, that when we're talking about a party, we identify a party in the sense that the type of example that is given by the Integrity Commissioner is an awarding of a contract.

MR NEEDHAM: I'm happy to identify the party in this case. I would have thought that's pretty plain. It's Mr Wills and his group-----

MR APPLGARTH: Well-----

MR NEEDHAM: -----is the party.

MR APPLGARTH: Well, it's easy to say Mr Wills and his group. But that's a group in which this gentleman, so far as the evidence indicates, had no interest. They weren't on any - in the sense of a shareholding, in terms of any of those companies-----

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MR NEEDHAM: "In relation to your request re names, I think we should consider a couple." He's involving himself with the group. It's "we".

MR APPLGARTH: He's involving himself with discussing a company yet to be formed, and the company yet to be formed isn't on the list that's the schedule. None of the companies, real or imagined, named or unnamed, are on the list that the questions are presently going to. So this is-----

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MR NEEDHAM: Look, I have no difficulty with the question as it is presently framed. These issues as to what might or might not constitute a conflict of interest, I think, we'll pursue at a later time when we hear submissions.

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MR APPLGARTH: Well, I don't cavil with the ruling. I'm simply concerned that in the reporting of this matter it is easy for people who aren't across the detail as Mr Devlin and you are to lead to an assumption, in the context of these questions about lists of companies, to think a Wills' company is on a list and a decision is being made in respect of a Wills' company. That's the potential unfairness. Not anything here, but the reporting of it, because these things can be readily confused, and I'm already conscious that some reporting yesterday was of that flavour, and it's important, I think, and I've made the point, so I'll sit down-----

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MR NEEDHAM: I appreciate hearing from you. I hadn't looked at it from the point of view of reporting. So, from that point of view, if you could be as explicit as you can, Mr Devlin, in talking about the conflict of interest.

MR DEVLIN: I'll endeavour to be.

The next phrase of the Integrity Commissioner says this, "For example, if a public official makes a decision favourable to a non-public sector person, or entity in the hope of obtaining employment, or if an official attempts to set up a business which could deal with the entity in which the official is employed, such conduct may involve a criminal offence." Now, I'm concentrating for the moment on a decision which an objective observer might regard as being favourable to Mr Wills to transmit a list which is confidential to

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government about RTOs and their allocations for the next triennium. Do you understand the nature of my question?-- Yes.

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You have failed the test, have you not?-- No.

Why?-- Well, I mean, I think it's a little more complex than you are referring to. It's not as if the User Choice Program is some highly secretive piece of information. It is a very open process in terms of funding that's allocated to RTOs, how it's reported, how it's presented, how it's updated, how it's collated, how it's presented in the budget papers and the like. A lot of this information will be in the public domain in several weeks.

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In several weeks. There's the rub. The RTO, we know from the evidence, got a letter on the 31st of May. You can take it from me all the letters went out on the 31st of May. Are you prepared to accept that? Remember the reference to the Betaray letter, 31st of May?-- Yes.

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MR NEEDHAM: I think the evidence was some of them would have been a bit earlier.

MR DEVLIN: Okay. Thank you, Chairman. I stand corrected.

So there is a matter of days and weeks, perhaps, a couple of weeks, where a person with commercial savvy might in some way gain a commercial advantage. Now, we've heard all about due diligence and all that, but do you accept as a matter of possibility that a commercial advantage might be gained from the use of that financial information that was in the spreadsheet?-- No.

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All right then. Well, let's see what did happen. I can see you are not going to agree with me.

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MR APPLGARTH: Well, that comment is unnecessary.

MR DEVLIN: Sorry.

MR APPLGARTH: The witness gives his evidence and he doesn't deserve that.

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MR NEEDHAM: The comment I think was withdrawn.

MR DEVLIN: Yes, I withdraw that.

MR NEEDHAM: Just before you go on, can I ask why did you ask Mr Camm for a list of RTOs with User Choice contracts?-- Oh, it was more like RTOs in the apprenticeship training area.

Why did you ask Mr Camm for that list?-- Because Mr Wills had asked me did I have that information.

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I see. So you did it because Mr Wills wanted the list?-- Yeah, he asked me if that information was available, yes.

Okay. Now, we've heard from Mr Leckenby that in fact at that time they were in the middle of what is a triennial process?-- Yes.

The allocation of the '06/'09 User Choice contracts?-- Mmm.

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You were aware of that at that time? This is, I would imagine, a reasonably big thing within the department; happening only once every three years and a very large amount of money involved?-- I knew in general terms that they were going through the process, yes.

Okay. So you then receive the document, you didn't look at it, you say - you didn't reflect on it in any detail. So obviously you weren't getting it in your role as DG to consider how this process was going; you just got it and passed it straight on to Mr Wills?-- Mmm.

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And this is where you didn't reflect on the fact that part at least of that document was covered by Cabinet confidentiality requirements?-- Mmm.

You would be aware from working in Treasury - and then you were working in policy area, the Economic Policy area within the Department of Premier and Cabinet?-- Mmm.

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You would be working in that area all the time with cabinet material?-- Yes.

That's part of that work?-- The Executive Council material.

Yes, yes. Well, that goes through Cabinet and on to Executive Council?-- Yes.

As this had to?-- Yes.

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And you would be aware it is drummed into public servants of the need for confidentiality with respect to material going to Cabinet and to Executive Council?-- Yes.

And you would be aware how seriously that is viewed within the public sector of handing out material covered by Cabinet confidentiality?-- Yeah, well - yes.

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If one of your officers within DET did that, you would be looking at that person's actions very seriously. Is that not so?-- I think that's probably accurate, yes.

And yet as a DG, the Director-General of the department, you were doing that yourself?-- Well, in this case that's what happened.

And you say that happened by inadvertence, that you didn't reflect on it and didn't even see that?-- Well, that's - that's my recollection at the time. That that - my recollection is that somebody had asked me - asked me - asked for this information. I mean, the whole User Choice program is - I don't, you know, sort of regard as this highly confidential process. I didn't have it in my - in the back of my mind about where we were at that stage and what needed to go to Executive Council and what didn't, so there was - so it was just, you know, a - it - I believe just an error in judgment.

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Right. I must say, I am comforted if it was just a careless action on your part rather than a deliberate action because if it was a deliberate action you would have to agree it would be a most serious thing. But you say it was really - you say not thinking, but it was, really, if it did occur that way, an incredibly careless action?-- I did ask - I did ask for some information. Predominantly the information I was seeking on, you know, who were basically the apprenticeship providers of apprenticeship training to pass on, then through that process I got more information than I suppose that I'd bargained for.

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One other point I would like to give you the opportunity to comment on, there has been discussion about conflict of interest in the light of you looking for another position, et cetera. I'd like you to comment on the fact of whether you ever thought it was a conflict of interest merely because of what was obviously a degree of friendship between yourself and Mr Wills to the extent that you visited his house. Did that issue as a conflict of interest ever come into your mind, exercise your mind at all?-- That I knew him in a social context?

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Yes. Well, you knew him well enough to be visiting his home. It wasn't just a matter of an acquaintance?-- I don't believe that element of conflict occurred to me.

Well, you did tell me before the mid-morning break that your

reasons for helping Mr Wills was - back in '05 was two-fold: one was the fact that he was a friend, and secondly that the possibility of a future job prospect, and you said the latter - the former was more important than the latter at that stage. Did those thoughts - what was the state as at this time, in May of '06? Friendship? Possible work? Which was more important at that time?-- Oh, I mean, more than anything I thought this is a good idea and a good opportunity to - for some investors to get together and develop a business in this sector which would actually assist with the skills plan, providing training places and meeting the government's targets and objectives, and I was really sort of focussing on it to that extent. The fact that I knew Wills, yes, that was part of it. The fact that he was - he was sort of interested in me joining in with a company, yes, I had that under consideration.

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Mr Flavell, I find that hard to accept, I must say. Your counsel did say about the preferential treatment, that you didn't treat anyone else this way. There was no difference because no-one else approached you. I readily accept that would be true. People don't approach the Director-General when they are after assistance unless they know the Director-General or have some in into the Director-General. Isn't that the case? They approach the officers?-- Well, people - I mean, people approach the Director-General for assistance all - you know, on a - you know, if they have a meeting, if it is somebody in the entity sector, if they are looking for some form of assistance-----

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Let's confine it to the training sector, DET?-- Yeah.

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Let's keep it to the topic that we're talking about. People approaching you there. How many approached you as compared to how many approached your officers?-- Oh, in terms of the only dealings I had in relation to this was with Mr Wills.

Yes. And that's the normal way, isn't it? That, you know, you have got to have some sort of in to get to see the Director-General unless you are another Director-General or, you know, a person of some influence. You normally end up with the officer; not with the boss?-- That can be the case.

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All right?-- I never, ever sort of said, you know, I am not meeting people. If somebody wanted to meet me and they had a valid reason to do so, I would readily agree to meet them.

Of course. If it was a situation, you would then have an officer - one of your officers from the area of interest with you at the meeting?-- Yep.

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That would be normal?-- Not always.

Not always but that would be fairly normal. If someone you didn't know is coming to talk to you about the possibility of setting up a training organisation, you would have one of your officers, I would suggest, normally with you?-- In my case probably not.

And you would then pass that person on to one of your officers to give assistance to that person?-- Possibly, yes.

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Well, you would not - I would suggest you would not do for them what you did for Mr Wills in this case?-- Mmm.

And we could go through the detail of what you did?-- Yes.

But the simple answer is that you would not do for them what you did for Mr Wills?-- Mmm.

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Isn't that the case?-- I think that's probably an accurate reflection.

Yes, all right. Thank you.

MR DEVLIN: The email we just looked at where you said, "In relation to your request re names, I think we should consider a couple", and you've given the names and you also sent along the allocation spreadsheet, that was 9th of May 2.50 p.m., this is what happened at 9th of May at 3.06 p.m. It appears that you sent an email headed "Buy something", saying, "Vern, if you look at the websites of list of private RTOs I sent you, none of them really stands out as anything special. We reckon you are better off buying an employment agency labour hire and recruitment and develop your training specialty from there. We have a couple of options we will pursue after we agree on a business plan, the market research strategy and possibly hire a consultant we know who can assess the good and bad companies for us." Can you assist us with that communication?-- Yes, Mr Wills, as we've indicated, was keen to acquire some businesses in this area and he had been looking at businesses both - but both - he asked for my view and the view of Greg Harper, that's in relation to "we", and, you know, we considered that if you are looking to grow or develop a business in this area, you might want to look at other alternatives.

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Okay. Now, you could sign a delegation up to-----

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MR NEEDHAM: Do you want to tender that email?

MR DEVLIN: Yes, thank you.

MR NEEDHAM: That's exhibit H77.

ADMITTED AND MARKED "EXHIBIT H77"

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MR DEVLIN: H77?

MR NEEDHAM: H77, Mr Perrett.

MR APPLGARTH: Mr Perrett is going to delegate that task.

MR DEVLIN: You have used the corporate "we" a few times. Let's go through the "we"s one by one. "We reckon you are better off buying an employment agency". Who is "we" in that context?-- I just mentioned Greg Harper and I.

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"We have a couple of options we will pursue after we agree on a business plan." Who are the "we"s in that sentence?-- I think that would be Greg and I again.

"And possibly hire a consultant we know." Who is going to hire a consultant? You and Mr Harper?-- No, that would be Wills.

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"Who can assess the good and bad companies for us".

MR NEEDHAM: Who is the "us"?-- All three of us.

Who is the three?-- Greg, Wills and myself.

MR DEVLIN: You are suggesting a joint plan of action, are you not?-- Yes.

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And you are suggesting it 16 minutes after you flicked on the User Choice allocations for the triennium, correct?-- Yep.

The very next day, as we see from exhibit H35, as I understand it, was that you yourself signed off on the 10th of May - yes, this one has a non-publication order so I will just show the heading "To seek Director-General, Minister, Governor in Council financial expenditure approval to award contracts", et cetera. Your delegation was up to \$750,000?-- Yes, at that time.

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And the Minister's delegation was up to 1.5 million?-- Yeah.

At that time?-- Yes, I think so, yes.

And therefore Executive Council or Governor in Council had to sign off on sums of money above 1.5 million?-- Yep.

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We know from the document that you must have signed the delegations you could sign on the 10th. Is that what we get from this document?-- That's what is likely to have occurred.

In fact, there is a notation "approval for contracts under attachment 2 were endorsed by the Director-General on the 10th of May", so that would seem to be your delegations taken care of?-- Yep.

Then the notation above that is attachment 4, "Please note the required Executive Council approval as outlined in this attachment was given under ECM" - what's that? Executive Cabinet Minute?-- Council Minute.

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Council Minute?-- Yep.

"Number 418 on 25 May '06"?-- Yeah.

MR NEEDHAM: Did you realise when you saw this that did it suddenly occur to you what you had given out two days before-----?-- No.

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-----the part of what you'd given out was what was in fact going through the Executive Council?-- No, I - I can't - I can't recall but I-----

Well, you'd recall the horrible sinking feeling that you had when you realised it, wouldn't you?-- Yeah.

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MR DEVLIN: I am blotting out the - I am blotting out the sum of money for the individuals to show you this but this is schedule one. I will just shift it a bit. There you go. Schedule 1, expenditure totalling 77 million. This is an attachment to the letter. Do you notice that the top of the list here - I will put it to you another way - schedule 1 is everything above 1.5 million. So it involves Governor in Council?-- Yep.

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You will have to accept that from me?-- Yep.

Do you see the top of the list is Axial Training Pty Ltd?-- Yep.

Then third on the list is the Australian Institute of Technology?-- Yep.

And 5th on the list is Betaray. See that?-- Yep.

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And Hilton is federally funded, I think we heard that yesterday. Remember that? Do you remember that?-- Yeah, it has that - it has an AMEP program, yes.

I am just interested in this, since Executive Council signed off on the 25th of May for Axial, according to the documentation, see if you can explain this one, that on the 17th of May at 4.08 p.m. you communicate again with Vern Wills "re Axial" as follows - I am handing you the hardcopy. "Have a look at the website www.axial.com.au. They are the largest private training provider for government projects at the moment and will receive about \$10 million over the next three years. Note the integrated strategy with labour hire." Then you refer to other work sites. So I didn't quite catch your answer to the Chairman when he asked you the question about that sinking feeling. Did you get one when you signed off on the 10th according to your own delegations? I just didn't hear the answer?-- No, I didn't at the time, no.

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No. So now we see from this email that - what are we - eight days short of Executive Council approval for Axial, it being over 1.5 and at the top of a cascading list, you're telling Mr Wills about Axial. What do you say to that?-- Well, I mean, I have provided some information to him on Axial's User Choice allocation.

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Before it was approved, correct?-- Yes.

And this time it is not just unbelievably negligent of you or careless, you are pressing home any advantage that might be gained. What do you say to that?-- Well, I just - I don't see there could be any advantage gained.

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But you appear to have taken a deliberate choice to highlight Axial knowing that the top of the delegations in excess of 1.5 million for the triennium was Axial. At least you would acknowledge that much?-- Yes.

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On the same day - I will tender that email.

MR NEEDHAM: That's exhibit H78.

ADMITTED AND MARKED "EXHIBIT H78"

MR DEVLIN: On the same day this appointment record would appear to be for Mary Street. So it would appear to be your office. You are slated for a meeting with Wills and Harper, 17th of May. So there is a lot happening, isn't there? 10 o'clock till 11. And then you send - you fire off in the afternoon some information about Axial. Can you explain that combination of events, please?-- This 17th of May meeting I believe was with Mr Wills and Mr Harper, in that we sort of discussed the development of the vocational education business with Mr Harper's possible involvement. We had at the meeting a general discussion about issues and what the market opportunity might be.

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I will take you - firstly I will tender the meeting record.

MR NEEDHAM: That's exhibit H79.

ADMITTED AND MARKED "EXHIBIT H 79"

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MR DEVLIN: I am conscious of the time. I will take you briefly to Mr Harper's evidence at page 126 of the record. He speaks of a - see the top line there. It was before the meeting. He speaks of a conversation with you. "He had asked me whether I might be interested in exploring the possibility of being involved with 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." There is a few presumptions after that so I won't take you to that. So far do you disagree with Mr Harper's evidence given yesterday?-- Can you put that back up again, please?

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Sorry, yes, I will give you time to think about it.

MR APPLGARTH: Which page is that, Mr Devlin?

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MR DEVLIN: 126.

MR APPLGARTH: Thank you.

MR DEVLIN: This is relating to before the meeting?-- Yep.

Harper remembers that you had this conversation with him before the meeting?-- Yep. I had a conversation with Greg Harper and it was in the context of him discussing his career options. We were - as the evidence was detailed yesterday, the TAFE that he was in charge of was having administrative arrangement change. We had a general discussion about a range of issues, the sort of thing came around to, you know, the training market and private versus public providers. I mentioned to him that Mr Wills had been talking to me about the possibility of doing something in this area and it was in that context that I raised it with him as well.

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Right?-- And he - it was in that context that he'd said that he'd had some interest, he was always - he'd always sort of thought about what could be done in this particular area of the vocational education sector and the advantages that, you know, a private provider could provide to the vocational education market.

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He gave evidence of some presumptions he made but then I brought him back to what he said at interview with the Crime and Misconduct Commission, and I quoted: "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." They were his previous words at interview?-- Mmm.

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He said, "That's right, yes." When I asked him when that was said he said most likely in early May. Do you disagree so far?-- My recollection is that I didn't ask him specifically whether he was interested in going in to set up a private training business but we had a general discussion about the issue and that the possibility or concept that Vern Wills was actually working on a particular project in this area and was he interested in discussing it with him.

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I then put it to him more fully about the words that he used at interview: "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." He said, "That would be right." Do you accept Mr Harper's version of your conversation?-- My recollection it was a more general discussion than that.

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Thank you?-- But I don't deny the fact that I discussed the possibility of him having a discussion with Mr Wills and exploring that opportunity.

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Yes. So that here we have it, then, the allocations are confidential to the department as of the 9th of May, correct?-- Yes.

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You sign off on your delegations up to \$750,000 on the 10th of May, correct?-- Yes.

You are in a position to see schedule 1, which is the Governor in Council delegation above 1.5 million, correct?-- Yes.

Governor in Council does not sign off until the 25th of May 2006, correct?-- Yes.

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On the 17th of May, having spoken to Mr Harper earlier in May, you meet with Mr Harper, Mr Vern Wills at your office, correct?-- I don't think it was at my office.

Okay. But you accept that you met. Mr Harper gave an account of that meeting?-- Yes.

On the afternoon of that day after the slated time for the meeting, you sent an email to him telling him to look at the website for Axial-----

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MR NEEDHAM: You mean Mr Wills, I think.

MR DEVLIN: To Mr Wills, correct?-- Yes.

Telling him something which even Axial didn't know on the 17th of May, namely that the allocation for the triennium was of a certain value, correct?-- Yes.

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Perhaps that's an appropriate time.

MR NEEDHAM: Yes. 2.15 be suitable? I realise you might have to get back up to chambers or something.

MR APPLGARTH: No, I am conscious of the early rising this afternoon so I am happy to come back whenever. Could I just make an observation in terms of Axial not knowing, that might be a convenient working assumption. They obviously didn't know of this paperwork and didn't know of the Executive council decision.

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MR NEEDHAM: My memory was that the ones that were able to be signed off at an earlier stage by the lesser delegates could be informed immediately after those approvals were given.

MR APPLGARTH: Yes.

MR NEEDHAM: But the one that had to go to Governor in Council, they would not be advised until after the Governor in Council approval, which we know was the 25th of May.

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MR APPLGARTH: I agree with that but the point is whether Axial may have known through some informal means that Mr Leckenby spoke about, about what was in prospect what they were bidding for. Of course, I agree with you they wouldn't

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have known the Executive Council decision.

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MR NEEDHAM: They would have known what they were bidding for,
yes, of course.

MR APPELGARTH: Thank you.

MR NEEDHAM: 2.15.

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THE HEARING ADJOURNED AT 1.13 P.M. TILL 2.15 P.M.

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THE HEARING RESUMED AT 2.15 P.M.

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SCOTT CAMERON FLAVELL, CONTINUING EXAMINATION-IN-CHIEF:

MR NEEDHAM: Yes. When you are ready, Mr Devlin.

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MR DEVLIN: Thank you.

If the witness can see D35 for our purposes, but it's already got an exhibit number. Anyway, I'll show you. We visited it yesterday with Mr Harper. We were talking before lunch about the meeting with Mr Wills and yourself and Mr Harper, and then we have an e-mail from Mr Harper to you and then on to Mr Sinclair who was the consultant assisting Mr Wills; correct?-- Yes.

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"Attached is my dump of information. Hope it's what you want, Warren."

MR NEEDHAM: That's Exhibit H43.

MR DEVLIN: Thank you, Chairman.

This is the one I discussed with Mr Harper yesterday. He's given Mr Sinclair some websites to visit, but then he starts to give information about a flexible training program and so on. I take it you thought that all this kind of provision of information was okay, was it?-- Yes.

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And whether or not staff like Mr Harper did these things in their own time or their private time was of no concern to you?-- Well, he did it willingly, and I was happy with that arrangement.

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You heard both - well, a number of employees further down the tree say that they responded to requests of the Director-General in the sense of what else would they do but respond to such requests. You must acknowledge, surely, that your position meant that no matter what the issue, the staff would respond as a matter of seriousness if it came from your position; do you accept that?-- Generally.

I want to show you D36 for our purposes. On 19 May at 2.25 p.m., you send a document to Warren Sinclair, the consultant, headed, "Education and Training for Business Plan", and ultimately Warren sends it on to Vern Wills. I just want to show you a few things. Who compiled this Education and Training document?-- I'm not sure. It doesn't look like my typeface.

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Okay. The passage there where Axial is mentioned as the largest private RTO contractor, I just want to take you to

this passage at the second last page: "The strategy would be to purchase one of the RTOs, preferably with an exposure to the resources sector (e.g. Axial). This company could be used as a base to build labour hire, group training and international services. The purchase of an international English training company such as the Hilton Academy is also desirable in the development of the international market." See that?-- Yes.

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Over the page it says this, "In this instance the CEO of the company would be the former Director-General for Employment and Training", and there is mention of Greg Harper as a former Institute Director of 20 years experience and a mention of Trevor Roe. It seems that you were content to let a description of yourself as the CEO of the new company go forward in a document to the consultant to Mr Wills as of the 19th of May 2006?-- Will, that was the arrangement that Mr Wills was proposing.

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Well, see, I just want to examine in this context this issue about you not having made up your mind. I suggest to you, for your response, that on any assessment of it, you were very hands-on in terms of the affairs of the private investor developing the private company, the private sector company. What do you say to that.

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MR NEEDHAM: As at this time?

MR DEVLIN: As at this time, the 19th of May?-- Oh, look, I agree that I was active in assisting him develop this concept.

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Can I ask you this: in attempting to avoid potential or real conflicts of interest, did you adopt the position of, as it were, crossing your fingers behind your back and, in your own mind, not committing to a future course of action so as to justify all of the assistance you were giving Wills and his interests? Do you follow my question?-- Yes. I don't believe I used some sort of false justification if that's what you're saying.

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And yet in a document going out of your control, you describe yourself as the CEO of the company in unmistakable terms?-- Well, I mean, that's what was being proposed in a business sort of Concept document.

But somebody might conclude that to allow the document to be broadcast in that form is evidence that you accepted the proposal-----?-- Well-----

-----by itself?-- -----I hadn't accepted the proposal at that time.

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And you refute the proposition that you used it as some kind of justification for not proceeding according to the codes of conduct that we discussed this morning?-- Could you repeat that?

And that you don't accept that you used the non-committal as

some kind of justification for not following the procedure contained in the codes of conduct that we examined this morning?-- I had not committed to being employed with this company at this time.

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I think before we leave that document also - no, it's all right. Of course, as of the 19th of May, as we discovered before the luncheon break, the Governor-in-Council had not yet approved the delegations above 1.5 including Axial; correct? It didn't happen until the 25th?-- That's right.

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If we now go to Exhibit H45 or D42 in our system.

MR NEEDHAM: Just before you go off this document, I'll make it an exhibit.

MR DEVLIN: Thank you, sorry.

MR NEEDHAM: H80.

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ADMITTED AND MARKED "EXHIBIT H80"

MR NEEDHAM: Mr Flavell, with this, you say you don't think you typed this attachment because it's not your typeface?-- Mmm.

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You are sending it to Warren Sinclair. Are you able to assist us as to who might have taped it? Would it be - Mr Harper was working at that stage with it, we know?-- It may have been Harper, yes.

I think - correct me if I'm wrong - but I think the evidence as at that stage Mr Slater wasn't doing anything by that stage?-- No, no. He'd stopped.

So really it would only be Mr Harper, wouldn't it?-- Yes.

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Okay.

MR DEVLIN: Well, that begs the question also that here's an employee, if, indeed, he dealt with this document, here is an employee handling a document which speaks of you as the CEO of the new entity in unmistakable terms as of 19th of May 2006? Isn't that suggestive that you were fully accepting the proposal being put to you by Mr Wills in your own mind?-- No.

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Okay.

MR NEEDHAM: I'm just looking at Exhibit H43, perhaps the witness could be shown, which is an e-mail from Mr Harper to you and to Mr Sinclair. The one that says "Attached is my dump of information"?-- Oh, yes.

Now, that's got something that was obviously at that stage

typed up by Mr Harper as the work that he was doing at that time. A couple of things about it. It's different to the one attached to this Exhibit H80 and it's a different typeface?-- Mmm.

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Tending to suggest it wasn't Mr Harper. You know, a day later he is sending you a different document which could lead to the inference that the only other person working on it at that stage was yourself?

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MR APPLGARTH: Well, with respect, Sir-----

MR NEEDHAM: Well, that's true. It could have been a draft sent to this witness from Mr Sinclair which he is sending back. That's true. I take your point.

MR APPLGARTH: It could have been Mr Sinclair's document. It could have been anyone's document. It could have gone around the loom and gone through different fonts. With respect, it shouldn't be put to him that the only inference is it was him.

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MR NEEDHAM: Chastisement accepted. I accept your point. I should make myself plain. The only people from within DET working on this at that time were yourself and Mr Harper?-- That's correct.

Now, there is the alternatives then from outside DET that it could have been Mr Sinclair who sent it as a draft to you, perhaps for any comments you wanted on it, or, Mr Wills who might have done the same thing, and you're sending it back but with no comments. You were just sending it without anything in the body of the e-mail as we see from H80, in which case you're accepting it without any demur, any comment?-- Yeah. Well, that's the way it appears.

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So, are they the alternatives then, or is there any other alternative?-- No, there's no other alternative. There was nobody else working on this.

Okay. Thanks.

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MR DEVLIN: Thank you. I want to show you now a document which I'll make clear was authored by somebody other than you, namely Mr Sinclair, but the way he expresses himself is in D42 for our purposes, otherwise Exhibit H45. It is a document dated 30th of May, and it's Mr Sinclair talking to Mr Wills: "The following are my preliminary feelings on the development of the VE plan. The emerging key issues in terms of the approach can be summarised as follows. My initial thoughts are that we need to use the expertise of both Scott and Greg and select say 2 key industries that will be the initial focus of the business roll out." Is that something you discussed with Mr Sinclair as of the 30th of May 2006? I'm sorry, have you not read this before?-- No, I'm just reading it now.

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I'll give you a chance. I don't mean to rush you, I'll give you a chance to read it?-- I can't recall having a specific discussion with Mr Sinclair without Mr Wills being present.

Okay. The second page, Mr Sinclair makes the observation: "With men of the calibre of Greg and Scott the senior management area is looking very strong". So that seems to be Mr Sinclair's mindset. Did you discuss such concepts with Mr Sinclair as of the 30th of May?-- Mr Sinclair was present with discussions that were had with Mr Wills, and, as I said, Mr Wills was proposing that I was - the person or one of the people he was considering for this role.

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See, what's interesting is that we've just seen the document that is dated 19th of May, that, to put it at its very lowest, has passed through your hands and speaks of you in unmistakable terms as the CEO, and Mr Harper as some kind of senior management figure in the new body, that is the 19th of May. It doesn't appear that - I'm not suggesting you've seen Mr Sinclair's communication to Mr Wills, I'm not suggesting that. But it doesn't seem, from what Mr Sinclair writes on the 30th of May, that you've done anything to disabuse him of the notion that you would be the CEO for the new body. Do you follow my logic?-- Yeah.

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So, again, I suggest to you that that would suggest that you had accepted the proposition that you would be the new company CEO?-- No, I definitely had not accepted that proposition at this stage.

Thank you.

MR NEEDHAM: Exhibit H81.

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MR DEVLIN: Yes. It's already H45.

MR NEEDHAM: Oh, is it.

MR DEVLIN: Thank you.

MR NEEDHAM: We won't admit it twice then.

MR DEVLIN: I'll ask you to look at H47, an existing exhibit which for our purposes is D46. H47 was tendered yesterday during Mr Harper's evidence. On the 6th of June, Mr Wills receives this memo from Mr Sinclair: "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, that suggests at least that between the 30th of May and the 6th of June, you've had further discussions with Mr Sinclair. Do you think that's likely to be the case?-- Yes. It could obviously be the case.

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So, 30th of May to 6th of June. Let's keep an eye on how the telephone traffic is going because we just haven't checked the month of May lately. Just have a look at these dates with me. Just in terms of assessing a bit of telephone traffic, on the 3rd of May and the 6th of May, quite long telephone conversations with Mr Wills; 11th of May, two moderately long telephone conversations. On the 15th and 18th of May, and then on the 22nd of May, 780 seconds - 13 minutes, roughly, or

exactly, in fact. We know that that document passed through your hands on the 19th of May describing you as the CEO. So, it's not as if up to the 23rd of May, you didn't have a fair bit of contact with Mr Wills. The phone records would appear to support the fact that you did; you agree-----?-- Yes.

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-----if this summary is accurate, and you certainly didn't say anything to Mr Wills to say, "Now, look here, you're moving a bit fast", or anything of that nature. Don't recall anything like that?-- No.

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Thank you. Then you're away 11 June to 16 June. We'll come back to the phone records again at some point. Just following in a chronological order, if you'll allow me to do that because things tend to happen in an order. I think I put that back without taking you to page 3. I'm not suggesting you saw this communication, but it's an insight into Sinclair and Wills' state of mind.

MR NEEDHAM: Can we finish dealing with page 1.

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MR DEVLIN: Certainly.

MR NEEDHAM: Toward the bottom of that I wanted to just ask-----

MR DEVLIN: I'll put it up then, Commissioner.

MR NEEDHAM: The bottom paragraph, it says there, "I will fax" - this is, of course, Mr Sinclair talking to Mr Wills, "I will fax through to you a list of current RTO companies receiving funding under the User Choice program." We know Mr Wills already had that, you had sent it direct. But it goes on, "This list is the 'hot' list of potential acquisitions and more particularly the top say 12 private providers." Does that accord with the sort of discussions that had been going on in May?-- Mr Sinclair had been employed by Mr Wills to develop commercial concepts for the business, and so I assume that that's what he's referring to in relation to that.

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Yes. My question was: does that note there, "That this list is the 'hot' list for potential acquisitions and more particularly the top say 12 private providers", does that accord with the discussions that had been taking place earlier between yourself, Mr Wills; Mr Sinclair?-- Talking about-----

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These are the possible purchases?-- -----companies - I think those sort of potential acquisitions were mentioned, yes.

I see. Okay. Thanks. Yes. Thank you, Mr Devlin.

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MR DEVLIN: Thank you. Again just to revisit the mindset, Mr Sinclair, it says a couple of things about your activities: "Scott is providing the first run at this for Energy and I hope to get it later this week." So, were you developing some kind of business concept or plan for training in the Energy sector?-- That's probably what that is referring to, yes.

And then the next one down, you appear to be quoted, almost, "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." He'd be correctly quoting you, wouldn't he, or correctly attributing you, I better be careful with Mr Applegarth in the room.

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MR APPLGARTH: Well, you don't need to be careful because I'm here. You just need to be careful.

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MR DEVLIN: Are you correctly attributed?-- I mean, I think if there was a discussion about me taking on the role, I would have said I would need, you know, need to provide notice under my contract and exit within that time frame.

That's indicative of an intention to terminate and separate, is it not?-- Oh, look, I was actively considering this opportunity.

Well, if you were actively considering it, and, at the same time in charge of the public side of that sector, and, at the same time, putting together concepts for somebody who might soon employ you, did it cross your mind that you were very much in the area of potential, if not real, conflict of interest?-- I was in charge of the entire sector.

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Did it not cross your mind in the circumstances I just outlined, and as is reflected in this paragraph, that you were in a very real sense in an area of potential for conflict of interest?-- Well, no, I didn't consider that.

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Okay. And certainly it would appear that Mr Sinclair is happy to describe you as looking to be the CEO with Greg Harper functioning at Chief Operations Officer level, see that?-- Yes.

Did you have such conversations in the period leading up to the 6th of June 2006?-- I think that that was - if I went and commenced in the company and Greg commenced in the company, they were the positions that they were talking about.

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There seems to be discussion of the possible acquisition of Axial, do you see that, that same paragraph where support staff would be necessary. And in terms of picking up on the Chairman's question about the first page of the document, Mr Sinclair says he'll need to fax the list of the current training providers as he's only got it in hard copy. So, clearly the list you did supply on the 9th of May was of interest to Mr Sinclair and Mr Wills, do you accept that? It seems to be what you get from that line?-- Yes.

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I want to show you D54. It is one we haven't seen tendered before. This is an exchange on Monday, the 26th of June going into Tuesday, the 27th. The e-mail stream starts with a message from you to Rod Arthur. Who was he, now?-- In this position?

Yes. Who was he?-- He was Executive Director Training

Quality and Regulation.

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And the subject was All Trades. At that time what sort of organisation was All Trades?-- I think it was - had become a private company. It was a period when it went from being a group training company to a private labour hire type firm.

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Okay. I am not sure why the department would want this particular matter not broadcast because they are in annual reports of two labour hire companies, but the question - perhaps I won't show it, you have got it in hardcopy, in an excess of caution. This is how you start with Rod Arthur: "Following on from our discussion the other day, what sort of margins does a labour hire company like All Trades make? How do they charge out an apprentice, for example?" Then Rod Arthur replies the following day with a range of figures. Some of them appear to be drawn from annual reports, do you agree?-- Yes.

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Then you fire this on to Warren, copy Vern Wills. Perhaps I will just put that back up on the screen. You write: "This gives you an idea of the margins these labour hire and group training companies make. This would be an important part of the business, that is offer the full suite of services, recruit, employ and hire out to companies in addition to undertaking the training." See that?-- Yep.

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Now, I am going to suggest to you for your response that this is actually quite an important piece of advice you're giving to these people that you are talking about the prospects of employment with from time to time at this time. And I will suggest why and then you can tell me if I'm wrong. Group training companies are not for profit, am I right?-- Yes.

And they are sort of funded fundamentally for that purpose. You know, they're a special class of recipient of government money because they are not for profit?-- Yes, that's right.

30

If you could combine a group training company with a labour hire function, the labour hire function can actually make a profit; it is not for profit at all, the labour hire segment. Have I got that right?-- Well, group training is basically labour hire.

Is it?-- Yes.

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Okay?-- Right, so in the case of All Trades Queensland, they were a group training company receiving government funding and then they converted to a - and it was quite contentious at the time - converted from a group training company to a private labour hire company.

And why was that contentious?-- Because they had up until that stage been a group training company receiving government funding and they had effectively gone from being a not for profit group to a profit group.

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So aren't you really saying to Sinclair and Wills, "Hey, look at this. This can be done in this way because All Trades has succeeded in morphing into this"?-- No, no, no.

No?-- See, what this is about in terms of a business model - and this is where private providers can offer - potentially offer better services than the public system, and what an

employer often likes is to have like a one stop shop for people to employ their apprentice and also train their apprentice.

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Yeah?-- So what a labour hire group training company does is actually undertake all the paperwork and all that sort of stuff.

Yes?-- And then apprentices and other training can be done separate to that. You know, of those individuals.

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Yep. So can I put this to you for your response: you are actually asking a fairly senior public servant to put together a few figures but then you are firing it off to your friend in the private sector. Did you have any problem with any of that?-- No.

Okay then. If I could have a look at D55 - sorry, I will tender that for the record.

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MR NEEDHAM: That's H81.

ADMITTED AND MARKED "EXHIBIT H81"

MR DEVLIN: All right, before we move too far through - just hang on to that, please. Just before we get too far ahead of ourselves, 26th of June. You can hand the witness a copy, thank you. 26th of June, 5.27 p.m. from you to Warren Sinclair. And the Sports Apprenticeship Model comes as an attachment from Kerry O'Dwyer. Who is Kerry O'Dwyer?-- Says here, my principal executive officer.

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There it is, sorry, yes. Then we look at the attachment, Sports Apprenticeship Model. Who wrote this?-- I think it was prepared by - some of it has been prepared by me, other parts of it have been prepared by - I think most of it was prepared by me drawing on some work that I'd seen in discussions I'd had with Mike Anderson in the department.

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But for the use of not the department but Mr Sinclair and Mr Wills?-- Well, no, the use of concept for the system.

A concept for the system?-- Yeah.

Private partnerships, hey - public/private partnerships?-- Or potentially or any - I mean, this is a new concept. It hadn't been progressed within the system.

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Yeah, but a new concept sent by you for the first time, so it looks, but correct me if I'm wrong, sent by you to Mr Sinclair?

MR NEEDHAM: Mr Wills.

MR DEVLIN: And Mr Wills. Copy Mr Wills. I mean, do you think you sent this to someone in the department as well?-- No, I would have - I had discussions with people in the department about it.

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Mmm?-- Mr Anderson.

Sorry?-- I think it would have been Mr Anderson.

Okay. So do you know whether you sent him a copy of this particular paper?-- No, I can't - I am not aware.

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Well, if it was a truly public/private partnership - I put this to you as an observation, a common sense one for your response - you might think it is totally silly - but if it was truly to help out both the public and the private sector, I wonder why you wouldn't have said to warren@gbus; Mike Anderson Sunshine Coast TAFE, "Boys, good news, do you want to get together on this?" Do you think you ever did that?-- I did have discussions with Mr Anderson about it.

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Yeah, I am interested in whether you sent him the document fully formulated as it is here in this attachment?-- No, I don't believe I sent it to him in this form.

So that having formulated the matter more fully after discussions with Mike Anderson, would that be right, was it something you formatted into this document more fully after discussing with Mr Anderson?-- I think that would - that would be my recollection.

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You haven't sent it back to him then saying, "Mate, thanks for your input the other day. Have a crack at this one. Let's see if we can get this to have legs up on the Sunshine Coast." No?-- I continued to have discussions with Mr Anderson about this on the Sunshine Coast. Even after he left from the Sunshine Coast.

But the party that gets the benefit of the fully, at this point anyway, formulated model is Mr Sinclair and Mr Wills, is that right? Is that right?-- Well, I can't - I can't say that Mr Anderson - I mean, I didn't email it to Mr Anderson in this context but I know I had lengthy discussions with him about it.

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MR NEEDHAM: Mr Devlin referred to this as a public/private partnership?-- Mmm.

Is that the sort of thing it was?-- No, it wasn't really at that sort of stage, but the whole - I mean, the whole VET system is public/private partnerships everywhere. That's the way that system operates. It is not like the energy sector where, you know, you have corporations or companies operating, I mean, the units of public service and then there is all these partnership arrangements that go on all the time.

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Well, pardon me, but if the public sphere is looking to do something in conjunction with the private sphere, isn't there

- under the State Purchasing Policy aren't there requirements as to how that's done, that you don't just give the possibility to one private operator, it is put out there so that anyone in the private sphere who is interested can put forward their bit, in effect, on it?-- No, it is not a formal system like that in the vocational education system. There is sort of individual partnerships are brokered on a regular basis. I don't think there is any sort of overarching principles that govern it, govern it in the same way that, like, a public/private partnership that I looked after, say the Southbank TAFE.

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Okay. I must say I haven't read this fully, but looking through it it looks like a suggestion of doing something in conjunction with the Sunshine Coast TAFE. Is that the idea?-- I think - yes, and I think Sunshine Coast is probably the - I mean is more the Sunshine Coast region which was the - which was the possibility out of this.

All right. I thought there was something here about it can be done through the Sunshine Coast TAFE?-- You could partner with a TAFE.

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Yes?-- Yeah.

Is that where Mr Anderson was?-- Yes.

The Sunshine Coast?-- Yes.

So are you saying the way that it was done, or was it a proposal like that would be just given out to the person, a private operator of your choosing - when I say your, I mean the department's choosing - rather than giving it out as an expression of interest that any operator could put forward for?-- Well, it could be done in a number of ways.

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So you are not bound by the State Purchasing Policy?-- I think - I am not - I am not aware that the State Purchasing Policy actually applies in this sort of-----

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All right?-- -----relation to these sort of things. It is like a training brokerage. Brokers have advantages, they might be able to source clients, customers do things more flexibly, different industrial relations arrangements, but then they don't actually - and they can source students from particular areas in a different way to what TAFE can but then they might not have the TAFE facilities or they might not have the equipment or infrastructure. Then there is sort of like a partnership sort of developed, and I have seen that happen before in the system.

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Oh, yes, but any broker can put forward to start introducing students to, say, the Sunshine Coast TAFE, but if you are starting a new system with a new concept, wouldn't it be more akin with the normal State Purchasing Policy that you would give that out to any interested private operator rather than just selecting the one that you prefer, namely the one operated by or proposed to be operated by your friend in which

you might end up being the CEO?-- Well, I think in this case it was very much a high level concept and, you know, it is - it wasn't at that stage.

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All right. Yes, thank you, Mr Devlin.

MR DEVLIN: I will tender that into the record.

MR NEEDHAM: Exhibit H83.

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ADMITTED AND MARKED "EXHIBIT H83"

MR DEVLIN: I think we were at the 7th of June when I went backwards a little bit, earlier into June. So I would ask you to look at this one, which is D55 for our purposes. A copy is coming to you, I hope. So this is from you to Warren and Vern. "International Market" is the subject. Attachment: "International Higher Education Strategy". "Attached is some text explaining the international strategy." I know you have had access to some of the larger documents beforehand but if you need more time to look at something, just please say so. My first question is who compiled this?-- This would have been me.

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And we are now seeing an education and training document and the sport proposal that we've just looked at, and this one, that all appear to be in similar font, would you say? Have a look back at the last exhibit.

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MR NEEDHAM: Sports apprenticeship doesn't.

MR DEVLIN: It doesn't, hey. Okay, I won't go there then. Anyway, you think you compiled this one?-- Yes.

And in this you have referred to Hilton Colleges down the bottom there under the dot points. "Colleges such as Hilton have serviced this market well for 20 years." Then over the page under "Business Model" you write, "To establish this business the purchase of an established international English language college would be the base." And then you mention the Hilton College and what it might be purchased for. So you are definitely giving Mr Sinclair and Mr Wills some advice on the way forward, would you agree?-- Yes.

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As part of the strategy for pursuing international students, is that right?-- Yes.

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And, of course, you'd contacted - I think we're now satisfied you contacted Mr King directly in the November of the previous year, correct?-- That's right.

So I will tender that into the record.

MR NEEDHAM: That will be H83.

ADMITTED AND MARKED "EXHIBIT H83"

MR DEVLIN: Now I want to go to D56. I am told that this document which is up with you, Chairman, 7th of September Business Concept, hasn't been tendered.

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MR NEEDHAM: With me where?

MR DEVLIN: It has been overlooked. The tender of it has been overlooked. So-----

MR NEEDHAM: Sorry, you have lost me.

MR DEVLIN: It is the 7th of September 2005 document. So I am happy to hand this one up.

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MR NEEDHAM: I think we'd better get another one.

MR DEVLIN: It is out of order now but I believe it was overlooked this morning.

MR NEEDHAM: Do you know the one referred to?

MR APPEGARTH: Yes, thank you, sir.

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MR NEEDHAM: Well, that document will be exhibit H84.

ADMITTED AND MARKED "EXHIBIT H84"

MR DEVLIN: Thank you. Now, I will take you to D56 for our purposes, which is your email to Sinclair and Wills about apprenticeship training dated the 30th of June 2006, and can you confirm that you're the author of this document?-- I think parts of it.

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Who might have done other parts?-- I think - no, I think this would all most likely be me unless Mr Harper has contributed to it in some way.

Look, I am just curious, I just can't help noting the time of the transmission. 21 minutes after the official end of the financial year. Do you get a bit busy as a CEO or is it all plain sailing for you at the end of a financial year. Just curious?-- Sorry, I don't understand the-----

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I am interested in how you found the time. You are obviously an extremely busy man and this is about the third in a row in the space of about, what, five or six days that you've churned out these papers on various topics. It was obviously of some

importance to you. Am I making myself clear?-- Yeah, and let me make myself clear that I used to work between 12 and 18 hours a day most days.

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Well, I am-----?-- So-----

Well, exactly. A man with two portfolios-----?-- Yeah.

-----and you are giving a hand to Mr Sinclair, a consultant. You were happy with that, were you, thought it was all part of your function?-- I had no problem with providing him assistance.

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Okay, and it does appear that it was your draft. It certainly reads that way, I suggest, with the words "a bit rushed but a first cut". Sounds like the person who has authored it, doesn't it?-- Yeah.

Thanks. I will tender that.

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MR NEEDHAM: I note on page 2 of the attachment in the third paragraph - Mr Devlin, you might put it up, perhaps - a note about Company A¹.

MR DEVLIN: Yes, I was coming to that, thank you. Just read that paragraph through. So you refer to the size of *Company A's* current User Choice contract and you say this: "I am advised that *Company A* may be experiencing cashflow difficulties at present." I wonder how you came by that information, do you remember?-- I mean, I can't recall directly how that information came my way.

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It is almost underlying that *Company A* would be a good target for the entrepreneur Mr Wills. What's your response to that?--

Well, I am not aware that they had cashflow targets but I am aware that Mr Wills had problems - I mean did speak to *Company A* and it didn't progress any further.

I am coming to that. I am just interested can you remember whether that information might have come to your knowledge, whether it be true or false, in your official capacity as the Director-General?-- It could possibly have come to me in my capacity, yes.

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Okay. Do you reckon that was right, to pass on something like that in the context of that paragraph to a private entrepreneur in the circumstances you found yourself in?-- Oh, I'd say it is indiscreet. I think, you know, in the context of, you know, discussions around businesses I suppose any entity with a cashflow problem - and I am just - this is sort of speculating because I can't recall that I was actually advised about *Company A* but I did have a concern because there was an entity called *Company B*² that had a couple of thousand apprentices about 12 months earlier that had similar

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¹ Pursuant to a Section 202 Non-Publication Order.

² Pursuant to a Section 202 Non-Publication Order.

difficulties and we had to take quite drastic action against to place those apprentices in the system.

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Yeah. Anyway, you say indiscreet but really being - I would suggest for your comment, whether you did agree or disagree with me - I suggest you are being driven to errors of judgment because of the very conflict situation you found yourself in wanting to put your case to your possible future employer and yet having solemn duties to perform as Director-General. What do you say to that? You were led into error by a conflict?-- I mean, it is - I mean, I - I would say it is an error of judgment but I didn't - I don't believe that I had a - a very - a specific conflict at this stage.

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MR NEEDHAM: Mr Devlin, can I just indicate to the press who are here and out in the training room that I would put a non-publication order on the use of the names - was it *Company B*, the other one you said?-- Yep.

Company B and Company A in this context.

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MR DEVLIN: Yes.

MR NEEDHAM: So in other words any publication of this segment of the evidence should refer to - use some other terminologies talking about a named training organisation of such - I do not think it would be in the interests of either of those companies to have press about them suffering cashflow difficulties at any time and that should not be printed.

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MR DEVLIN: Indeed. And in circumstances where it is not known whether the information was true or false.

MR NEEDHAM: Well, if it came from within the department to this witness, it was quite possibly true because isn't it the situation that the department requires RTOs to give over their financial records to be looked at within the department?-- Well-----

Each year?-- -----they are audited on a regular basis, yes.

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Yes, and understandably by the department. So it could well have been true at that time. Hopefully it is not true now but there is a non-publication order and that must not be published.

MR DEVLIN: Thank you. We move the time-frame on from the 30th of June-----

MR NEEDHAM: That document will be H85.

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ADMITTED AND MARKED "EXHIBIT H85"

MR DEVLIN: We move the time-frame on from the 30th of June to

the 5th of July. This would appear to be from Enhance's records, Mr Flavell. On the 5th of July, 2006 Mr Wills confirmed with Val Llewellyn, the operator of Axial, a meeting with himself and Mr Sinclair. I just ask you to accept that that's come out of Enhance's records. Do you know anything about that meeting in particular?-- After the event there was some discussion that a meeting had occurred.

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Thank you. I am going to put to you what Mr Llewellyn says about that. Just have a look up on the screen there - it is all right, we can read it from the screen. "I had a one hour meeting with a man by the name of Vernon Wills" - this is Mr Llewellyn speaking from Axial - "and another man whose name I cannot remember on 11 July 2006. Both men came to Axial house. I remember that Wills did all the talking, Wills in this conversation asked me if I was interested in selling Axial. I told him that I was not interested in selling the business but I would listen. The only thing that Wills did say that a high ranking DET employee was going to be the manager of the business. Wills did not mention any names. Wills made an indicative pricing formula to buy Axial but the offer was too low. I told Wills the offer was too low and that he needed to reconsider the formula and that he should ring me if it was to be changed. The meeting was basically finished after that point." So of Mr Llewellyn's account, what do you recall being told and who by about that meeting? You have mentioned that you did get some feedback about the meeting, so I am just interested - that's Mr Llewellyn's version but what do you remember being told? Can you assist us?-- Oh, some time after - and I can't recall when - I was told that they had approached RTOs, being Hilton, Betaray and Axial, and that they'd had discussions and that they hadn't progressed with Axial.

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Okay. Now, I mustn't forget the telephone-----

MR NEEDHAM: I think we've gone through a couple of documents now.

MR DEVLIN: Yes.

MR NEEDHAM: There is an e-mail of the 5th of July to Val.

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

MR NEEDHAM: That's H86.

ADMITTED AND MARKED "EXHIBIT H86"

MR NEEDHAM: And then-----

MR DEVLIN: The statement of Mr Llewellyn.

MR NEEDHAM: -----the statement of Mr Llewellyn is Exhibit H87.

ADMITTED AND MARKED "EXHIBIT H87"

MR NEEDHAM: I was looking at this. Was the part that you read out into the record then paragraph 13 of that document?

MR DEVLIN: I read into the record paragraphs 12 and 13.

MR NEEDHAM: 12 and 13, yes. That part in 13 where - is Val a Mr Llewellyn or Mrs?

MR DEVLIN: I understand a Mr.

MR NEEDHAM: The part where Mr Llewellyn describes what Mr Wills said to him, that he was representing a consortium that was looking at buying a range of RTOs with a view to amalgamating them; after consolidating the business it would be floated on a share market and sold off, is that in accordance with as you understood the proposition?-- Whereabouts is this?

In paragraph 13?-- Not at that time. The first I recall talking about share market floats and public offerings, and things like that, was when we met with ABN AMRO in October 2006.

Yes. Thank you.

MR DEVLIN: I have tendered that into the record.

MR NEEDHAM: Yes. That's H87.

MR DEVLIN: That was a meeting on the 11th of July. Just have a look at your phone records. You remind me that you were overseas. Have a look up on the screen. Was it till the 16th of June or was it longer that you were overseas, do you remember?-- No. I came back on the 16th of June which was a Friday.

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Thank you. Just have a look at what happened in terms of telephone records on the 11th of July, two longish phone calls at 1.52 p.m. and 6.27 p.m. with Mr Wills. Did I say 6.27, that's what I meant to say. And perhaps an attempt to call for four seconds at 6.36, and then what appears to be a resumption of the telephone call for another four minutes or so, a bit less than four minutes, at 6.37. So, I take it some of that discussion would have been a discussion on the telephone between you and Mr Wills about his approach to Mr Llewellyn and the results?-- Oh, I don't know - when did he speak to Mr Llewellyn?

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The 11th of July? Oh, you mean time of day?-- Oh, no, no.

Certainly that was the date. We've got the appointment record that I showed you, and we've got Mr Llewellyn's recollection that it was the 11th of July. I'm just interested in whether seeing that there was a total of 11 or 1200 seconds of telephone conversation between you and Mr Wills, whether Mr Wills' approach to Axial was the subject of some of that discussion? Do you reckon it might have been?-- I don't recall having detailed discussions with him about Axial.

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I see. Well, have a look at the 12th of July while we're on the topic and we're in the area. Is that about 20 minutes on the phone at 5.48 on the 12th. Do you think that one or other of those four telephone calls of some appreciable length were concerned with the approach to Axial?-- Well, I don't recall having detailed discussions with him about Axial at that time.

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You volunteered earlier that you did know that the Axial approach proved unsuccessful?-- That's right.

You believe you knew that on the day that it was made or the day after?-- I can't-----

Or don't you know?-- No, I can't recall. I can only recall having what I think were a brief discussion with him, in which he said he had a meeting, and it didn't progress and I don't believe they had another meeting with him as far as I know.

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Do you see the close relationship between the advice or views you are conveying to Mr Sinclair and Mr Wills and then action taken, for example, to make the approach to Mr Llewellyn directly? Do you see the closeness in the relationship? You've got it in documents in early July, and then an approach on the 11th. You'd nominated Axial as a target for the new company, haven't you?-- Well, I've said to them that Axial is

one company that they may wish to consider in the context of a whole lot of companies.

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Yes. And Axial just happened to be the top of the list in the private registered training organisations in terms of their User Choice contract allocations for the triennium as well?-- Well, that means they had the most students, yes.

I'd like you now to go to a message which is D65. This is an e-mail from you to Vern Wills found on the Enhance system at 6.06 p.m. Let's just see where that fits with the phone calls before we worry about what it says. 6.06 p.m., after the 1.52 p.m. call but before the 6.27 p.m. call, and before the 6.37 p.m. call. So, here's a chain of events that you might like to reflect upon. "Vern, two other companies are Betaray Training and Work Skills Advancement Corporation, both pretty similar to Axial. I also think we should have a close look at international English colleges, this is the model that Shafston and IBT used to get into the international higher education market." "I also think we should have a close look." You refer to a website and you say, "We still should pursue Hilton and another good one is Langton's." And you finalise your communication this way, "There are two separate elements here, domestic employment and training and international education. We should be in both over time but the strategy we adopt first will depend on the business that is acquired." What are you doing, Mr Flavell, on the 11th of July 2006 if you are not providing detailed advice as the prospective CEO of a new private provider to the entrepreneur seeking to launch it? It's what you are doing, isn't it?-- Yes. I'm providing advice to him, yes.

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Detailed advice?-- I wouldn't regard that as detailed.

This is just not some casual piece of assistance from a government servant. This is the assistance of somebody deeply involved in the creation of a new company. What do you say to that?-- Well, I was actively considering this as an option.

No. I suggest to you you were actively pursuing it. Not considering it. Pursuing it, what do you say to that?-- No, I think it was still, from my perspective at this stage, still an option for me in among a number of options that I had.

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And you would say, would you, that there was no conflict of interest between your private interests as that potential CEO and your public duty as the Director-General, is that what you would say?-- Yes.

And would you say that in hindsight, you were not giving detailed advice in the hope of obtaining employment?-- No, I wasn't.

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Thank you. I tender that.

MR NEEDHAM: That's H88.

ADMITTED AND MARKED "EXHIBIT H88"

MR DEVLIN: I'd like you to go to finally D67. This will be the final topic for the day, bearing in mind your mention of Betaray in your e-mail of the 11th of July. I'll go to the second page first. From Vern Wills to betaray@bigpond.net.au, "Subject: Jan, conversation p.m. Date: 13th of July 2006 at 5.08 p.m." This is what Jan Embrey writes from Betaray, relevantly, and that is on Saturday, the 15th of July in response to Mr Wills' 13th of July communication, "I had a look at your web page this morning." The highlighted area, "You indicated to me that you were interested in knowing if we were willing to 'sell' our business. There are several definitions of 'sell'. If you are seriously interested in 'buying' our business, please feel free to contact us again.'" Do you agree that that e-mail appears to be indicative of an offer, an expression of interest, from Mr Wills to Betaray on or about Thursday, the 13th of July 2006? Do you accept that that's what it appears to indicate?-- Isn't it the 18th of July?

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Well, just to help you, that message appears to be tagged on to the message of Saturday, the 15th of July, as if there's already been a conversation. Do you accept that? I'm not suggesting - did you know anything about the approach by Mr Wills to Betaray?-- I wasn't aware the detail of what meeting he was having, or how he was proposing to approach them. I actually thought it was Mr Sinclair who spoke to them.

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Well, in any event, there appears to have been conversation between Jan Embrey of Betaray and Vern Wills, doesn't there?-- Yes.

And so low and behold after Axial, Mr Llewellyn, tells Mr Wills he's not interested, just to recap, on the 11th of July, you suggest that one of the alternative targets might be Betaray and, low and behold, at least by the 15th of July, Mr Wills has made the approach. Do you accept that that's what the documentation appears to show?-- Yes.

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And do you accept that you were deeply involved in the affairs of a private provider at this point in giving detailed advice to your prospective employer?-- Well, it wasn't a private provider at this point.

That's your answer, is it?-- It was still a business concept.

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Thank you. Would that be a convenient time, Chairman? I tender that document.

MR NEEDHAM: Yes. That will be Exhibit H89.

ADMITTED AND MARKED "EXHIBIT H89"

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MR APPLGARTH: Can I just mention one matter in the interests it might be of help. Mr Perrett pointed out, this is uncontroversial, the witness doesn't need to stay for it, but Chairperson, you mentioned something about audit processes and the like. Mr Perrett just pointed out, because the evidence is recent, I should note that in paragraph 18 of Mr Llewellyn's statement, he makes reference to Reporting Act compliance.

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MR NEEDHAM: Which paragraph is that?

MR APPLGARTH: Paragraph 18 on page 4, just the last sentence - I mean the whole paragraph is relevant, but in terms of reporting, the last sentence might be at odds with what was the understanding.

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MR NEEDHAM: Yes. Okay. I note that. Thanks.

MR DEVLIN: Thank you. That is all I have for this afternoon. A 10 o'clock start?

MR NEEDHAM: Yes. That will be fine.

THE HEARING ADJOURNED AT 3.30 P.M. TILL 10 A.M. THE FOLLOWING DAY

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