



---

---

## 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 17/07/2008

..DAY 4

PUBLIC HEARING

THE HEARING RESUMED AT 10.07 A.M.

1

SCOTT CAMERON FLAVELL, CONTINUING EXAMINATION-IN-CHIEF:

MR NEEDHAM: I'll just wait here while they come in, that's all right.

10

MR DEVLIN: Sorry, chairman.

MR NEEDHAM: Yes, Mr Devlin.

MR DEVLIN: Yes. Sorry for that delay. I think we were at the 14th of July, and we've probably got to recap a little bit. We looked at a document dated the 11th of July which was your e-mail to Mr Wills in which you suggested Betaray as a target for acquisition, Work Skills Advancement Corporation, but you concluded your message with the words, "We still should pursue Hilton", or words to that effect. Remember that, the 11th of July?-- Yes, or words to that effect.

20

Yes. I've taken you through the contact, the record of the contact between the owner of Betaray then which occurred between the 13th and the 15th of July, between her and Mr Wills, or the couple and Mr Wills. I now want to show you this document. This is a message from Mr Wills to Glynne Hilton of HIC - Hilton International College: "Dear Glynne, I would like to make a time to meet you, regards, Vern Wills." So, I'm suggesting to you that within a day or two of your suggestions about Betaray and Hilton, there are approaches directly by Mr Wills to the owners of both of those institutions. Are you prepared to accept that that occurred?-- I'm prepared to accept this is an accurate meeting notification.

30

Yes. I tender that, Chairman.

40

MR NEEDHAM: That's Exhibit H90.

ADMITTED AND MARKED "EXHIBIT H90"

MR DEVLIN: And to just complete the narrative, if we can look at document 72. We'll go to 73, sorry, hand that back. We have on the 24th of July 2006, Monday, the 24th of July, we have - this is Hilton writing back to Mr Wills: "Thank you for meeting with Nathalie and myself last week. Your proposal is of interest and we would appreciate if you could prepare and forward the privacy agreement." You would know that a privacy agreement is a precursor to due diligence, and so on, the due diligence process, Mr Flavell?-- A confidentiality agreement, yes.

50

A confidentiality agreement. Now, just to see what telephone contact occurs at about this time, I'll take you back to the schedule.

MR NEEDHAM: Are you tendering that last e-mail?

MR DEVLIN: Yes, thank you.

MR NEEDHAM: That's H91.

ADMITTED AND MARKED "EXHIBIT H91"

MR DEVLIN: I'll take you back to the schedule. Do you notice that in this period - sorry, there's probably some more dates above. From the 12th of July, through July, although there aren't that many calls, do you notice the increasing intensity of the contact in terms of time of call. 21st of July, we've got 553 seconds. 26th of July, we've got about 11 minutes, all at a time when Betaray and Hilton are on the table as acquisitions for the new entity. My question is: is it likely that you were discussing these potential acquisitions with Mr Wills?-- Not to my recollection. I knew that he had contacted them, but as far as I was aware, I think it was Mr Sinclair who was doing the interaction.

Yes. I meant tick-tacking with Mr Wills by way of reporting on progress and so on, you see. So, you don't recall much telephone contact in this period, is that what you're saying, in relation to the matters that we're interested in, is that what you're saying?-- Not in relation to the matters of detailed discussions about acquisitions.

Okay. You say that Mr Sinclair and Mr Wills were really attending to that as far as you knew?-- Yeah, well, I thought that's why Mr Wills had employed Mr Sinclair.

Thank you. I'll ask you to look at document 74 now. This is the 26th of July, an infrastructure paper going from you to Mr Wills, and, to orient ourselves, I'm going to ask you to accept for the moment - and you can argue with me now if you want, if you remember it differently, but we're working towards a date of the 11th of September, Mr Flavell, when, in a letter, you made it clear to your employers that you were leaving - seeking to leave the employ of the Public Service to actually go to a private provider. So I want you to be clear that this Commission, subject to any other evidence you might wish to advance, accepts the proposition that you did make a disclosure but it was in a letter of the 11th of September 2006. Are you happy with that?-- Was that a Monday?

Yes. I'm told it was?-- Yes. Yes.

Okay. So that's the date we're working towards and you'll be

pleased to know when we get there I'll only have a limited number of questions for you after that. However, on the journey we see another paper going across to Mr Wills, that's my writing that says "DDG" because Jessica Moore, on behalf of Chris Robinson, the Deputy Director-General sent it to you: "The Infrastructure paper as requested. Please let me know if it's not the right one", and "Attached Skills for Infrastructure Projects. Regards, Jessica Moore." Do you remember the purpose for you requesting that paper?-- No, I haven't seen this document since I've departed.

1

10

I'm going to put the title of the paper up. It's said by the department to be in confidence, so I'll just show you the title and you've got the hard copy of it there anyway. The department classifies it this way, anyway, and the information of this Commission is that it was actually authored by the Deputy Director-General, Mr Robinson. Do you want to argue with me about that, or suggest some other construction? Have you had a chance to read that one? I'll pause if you want to get across it a bit better?-- I haven't had a chance to read it before.

20

Do you have any reason to doubt that it was authored by your Deputy Director-General? I'll let you spend some time with it because it is important?-- Yeah, I'd say it's highly likely this has been drafted by Chris Robinson.

Thank you. And it therefore would fairly have the description at least of an internal document, surely?-- I actually think this is a document that I requested, or was drafted by Chris because both he and I were having a discussion about a particular proposal or concept that we were going to submit to the Commonwealth Government in terms of a national reform initiative as part of the Ministerial Council for Vocational, Education and Training.

30

And was that coming up or something? Was a meeting of that coming up?-- Yes.

Do you know how far in advance it was if you're getting a copy of this on the 26th of July?-- There was - I mean, I was involved in the working group and I was - a lot of the reform agendas in this working group, we'd been tasked by COAG to do a whole range of things, and I was responsible for a whole range of things because that had been - they were very impressed with some of the work that had been undertaken in the Queensland Skills Plan, and so then I was given a range of tasks. So there was working groups in place, and these sort of documents were prepared for these working groups, and, as you can see, it's talking about sort of, you know, the government establishing a National Project Skills Office to develop better coordination across the infrastructure skills sector, and then all the detailed information in here would have been drawn from the very extensive research document that Chris Robinson largely led in 2005, which was part of the Green Paper, so the Green Paper research document.

40

50

So are you thinking that this is a paper that had already been

delivered to COAG, or was delivered to the working group?--  
Well, it was part of - I think it was part of that COAG  
process.

1

Yes?-- I mean, there was meetings along the way, discussions  
that occurred. I remember Chris and I putting this up and not  
getting anywhere, so they didn't like the proposal,  
unfortunately.

All right. Now, it might be too difficult at this distance to  
dredge out of your memory, but I'm interested in whether you  
believe it was due for delivery sometime in the near future,  
or perhaps had been delivered into the working group. If  
you're unable to say, just say so?-- Yeah, look, I am unable  
to say. But it was-----

10

It was an ongoing process is what you are saying?-- It was a  
public process, so COAG had made a decision, and the decision  
was around these parameters and then they'd council - that  
they commission the Ministerial Council for Vocational,  
Education and Training to undertake certain initiatives, and  
they then commissioned a senior committee of officials to then  
work through a range of issues, and then I was one of those  
senior committee of officials. Because of Chris's extensive  
background and knowledge in this sector, and because of my  
membership on it, he and I were working on some of these  
things.

20

Okay. You flicked it on to Wills within an hour or so, an  
hour and a half. Do you think that was a justified thing to  
do?-- Oh, I think in the context that he was somebody who was  
interested in the sector and he was trying to build up his  
knowledge, and he didn't have any knowledge, I think that's  
probably why I would have sent it to him.

30

There's a couple of things that you could draw from it, and  
I'm not saying this one is unique, but this practice of  
flicking on a document like this which seems to deal with high  
government policy, an objective bystander could put a couple  
of constructions on it. One, that the person who flicked it  
on considered that it might have had some commercial advantage  
to the person receiving it, potential commercial advantage, or  
a second construction is that it's just a way of demonstrating  
your ability to source internal - the internal workings of  
your department. Would you accept that that's what an  
objective bystander might think?-- No. This is about like a  
coordination mechanism to improve performance and outcomes in  
the Vocational Education sector. There's not a commercial  
strategy involved with this. It provides a lot of interesting  
detail and a good summary of the construction skills sector  
which is largely drawn out of work that had been done in the  
Queensland Skills Plan, and a lot of the extensive work that  
was done in the department then, I don't think there is now,  
but they might exist now, a very good labour market research  
area who used to produce a lot of this research and sort of -  
and that led - that had led to the Green Paper and the  
research paper for the Green Paper.

40

50

Okay?-- In terms of, you know, being able to source information, you know, for Vern Wills look, you know, it wasn't my intention, or role, or desire to be there trying to impress Vern Wills.

1

Well, that's worth a bit of examination. I mean, we've seen repeatedly where the minds of at least some of the parties were to the effect that you would be the CEO of the new entity. Nothing had been formalised yet, you say, but this might look like a continuing job application to an objective observer. Can I just have your response to that?-- I had no shortage of job potential - potential job offers, and I didn't need to be putting in an application to Vern Wills.

10

MR NEEDHAM: Mr Flavell, with respect, that doesn't answer the question. Can you address the question that you are asked and answer that; not tell us whether you could apply somewhere else for a job?-- In the second part of that, I said that I didn't need to be putting in an application to Mr Wills, and I don't regard this as an application.

20

You mightn't have needed to. We'll go faster if you would listen to the question. You were asked as to whether to an objective observer it could appear this way. Not whether you needed to apply here, or whether you could apply somewhere else. So can you answer that question, please?-- I don't believe so. This is general information. I don't believe that it would appear to an observer that I was - this was part of a job interview process.

30

MR DEVLIN: Okay. I won't labour the point. I just want to make one last observation for your response. See, the objective observer's eye would fall upon line 2, "To: Vern Wills." It doesn't say, "To: Vern Wills; Val Llewellyn; Glynne Hilton; Betaray." It says only "To: Vern wills" in circumstances where, regardless of what opportunities you have, it would appear you have chosen your opportunity with Mr Wills. That's my point. I'd like your response?-- My response is I hadn't chosen to pursue this with Mr Wills at this time. I was actively considering it, and that's the way I was treating it at that particular time.

40

Yes?-- I mean, it is something I was interested in.

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

MR NEEDHAM: Yes. That will be Exhibit H92.

50

ADMITTED AND MARKED "EXHIBIT H92"

MR NEEDHAM: Before you move off it, just if I can clarify one matter, Mr Flavell. You said this was a public process, this ongoing work with the COAG and the working parties that had been charged by COAG with carrying out this work. Are you

suggesting by that that all the material that was produced, such as this document, were being made public, or was it just a public process insofar as it was known generally that this process was underway?-- I don't think all these documents were published on the internet or anything like that.

1

Right?-- But there were working parties. There were groups. Documents were exchanged all around the country.

Within the working party?-- Within the working party, and officials. There would have been consultation with external parties, it was that sort of process. I don't believe it would have been sort of every document and then sort of published on the internet. This would have come under a topic that, you know, COAG had-----

10

Been addressed?-- Yes.

But my scant knowledge of these matters is that it's not within the ambit of one particular party within the working party to discern and to put out a document like this publically to someone totally unconnected with it?-- This was our initiative, but Chris and I had a discussion about how to take something forward. We developed this up and it didn't go-----

20

Yes, but again you're not answering the question. It might well be so that it didn't go - wasn't accepted by the working party, but it's a project that was done for the working party. Normally it wouldn't be your decision as to whether to give it out to some third party totally unconnected with the process, I would suggest. It would be up to the working party, or perhaps even to the COAG Ministers, themselves, to determine what might go out, be made public about proposals that had or had not been accepted?-- It's difficult for me to answer that without sort of fully understanding what the particular status of this document was. But it wouldn't be normal for wide dissemination of documents.

30

40

50

All right, thank you?-- But just in terms of that, I can't even recall if this was even placed on the agenda. I have a feeling that it wasn't.

Okay?-- Yeah.

MR DEVLIN: Just one moment. Excuse me one moment, Mr Flavell, sorry. I want to show you what Mr Wills would appear to have done with it.

10

MR APPEGARTH: Just before the witness does that, has that been given an exhibit number?

MR NEEDHAM: Exhibit 92. H92.

MR APPEGARTH: I take it the intent was to make the annexure confidential?

MR DEVLIN: Yes, thank you for that reminder.

20

MR NEEDHAM: Thank you for reminding me of that. I do make a non-publication order with respect to the-----

MR DEVLIN: Attachment.

MR NEEDHAM: -----attachment.

MR APPEGARTH: Mr Chairperson, I am not asking you to do anything other than that because Mr Devlin identified on the first day at page 3 that officers of the department have come up with some classification in respect of the process and the Commission understandably wanted to respect that process in terms of how exhibits were classified. I simply didn't want my silence to indicate that we necessarily accept that that document was suitably classified as confidential at the time, but more particularly whether it is now, and I don't want to take time to argue the toss about that document or other ones. It is a matter that we don't have a direct interest in but obviously in a different context we will need to address the confidential status or otherwise of this and other documents.

30

40

MR NEEDHAM: I understand and appreciate the approach you are taking on that, Mr Applegarth.

MR APPEGARTH: On that - and just so that - I don't necessarily want this on the record, but it may help so that the record is not all over the place - I am not sure whether this document, which is a research paper, is the one that the witness was referring to. Perhaps I could just give it to Mr Devlin. I am not suggesting it be tendered but it might be helpful if the witness was shown it. It may, as I say, be a research paper from a different time.

50

MR NEEDHAM: Certainly.

MR APPEGARTH: But if it helps, his reference in the evidence to a research paper, to fall into context, I am in Mr Devlin's

hands as to what he does with that.

1

MR NEEDHAM: Have you, Mr Applegarth, been provided with the - I am not sure what it is - the policy document, or whatever - that the department uses for classifying these documents?

MR DEVLIN: I don't know that we've given over the entire document.

MR NEEDHAM: I think it might help if Mr Applegarth had access to that.

10

MR APPLGARTH: Is that a classification - I will look at it but is that a classification process for this-----

MR NEEDHAM: I haven't seen it myself but I understand there is some document under which - which sets out the process under which these classifications are made.

MR APPLGARTH: Yes, obviously I will have to go away and think about that.

20

MR NEEDHAM: Yes.

MR APPLGARTH: And see how that intersects, if at all, with other things where documents are stamped confidential and those Cabinet confidentiality stamps, or whatever.

MR NEEDHAM: Well, I would envisage the internal departmental one would necessarily deal with Cabinet in confidence because that's an overarching thing that applies everywhere. As I say, I haven't seen it but I think you should have access to it.

30

MR APPLGARTH: Thank you. We will look at that and see how it intersects with, for example, the FOI Act, because a document that the department might classify as confidential may in fact be accessible under that Act, so that things don't fit together that well.

40

MR NEEDHAM: Certainly.

MR DEVLIN: I understand where Mr Applegarth is coming from and we'll supply that document which exposes the department's reasoning.

MR NEEDHAM: Yes.

MR DEVLIN: I just want to hand to you there that document that your counsel referred to. It has also got the title of a research paper. Is that at all relevant to what you were trying to express?-- Yeah, well, this was the extensive body of research that was undertaken by Chris Robinson and a number of other people, including myself, for the department of the Green Paper and that's where a lot of the information is drawn from and was updated as we went along in terms of developing the White Paper, which was the Skills Plan.

50

All right. If I could have that back? I won't clutter up the record with it but I will put the title of the document into the record. That's a document entitled "Skill for Jobs and Growth - a Queensland Government Research Paper published by the Department of Employment and Training to support Queensland's proposed responses to the challenges of skills for jobs and growth, a Green Paper, June 2005."

1

MR APPEGARTH: And if it helps Mr Devlin and the Commission, that's accessible on the internet.

10

MR NEEDHAM: Yes.

MR APPEGARTH: That's where I got my copy.

MR NEEDHAM: Well, it would be - I think you have said it is a forerunner to the Skills Plan that came out in, what, early 2006?-- Yes, that came out in June 2005 and it was the extensive body of evidence based research and analysis that was used then to develop the initiatives for the Skills Plan.

20

And the Skills Plan is this document here. That was the-----?-- There was a Green Paper - yeah, that's the one that was released, yes, that's the White Paper. There was a Green Paper before that in June and that went out for discussion and then the White Paper.

All right.

MR DEVLIN: Okay. Now, I just want to get on with what Mr Wills did with it, just to complete the chain. You've sent it at 3.33 p.m. on Wednesday the 26th of July. 3.33 p.m. And at 10.45 the next day he sent it to Keith Blyth "for your information only", and the Commission's information is that Mr Blyth was a marketing person with Enhance in Canberra. So you don't know anything about that, I take it?-- No.

30

I will tender that.

MR NEEDHAM: That's H93.

40

ADMITTED AND MARKED "EXHIBIT H93"

MR DEVLIN: Earlier than that, though, late in the afternoon of the 26th of July, 3.53 p.m., he also sent it, or Clare Wills did on his behalf, to Fay Duda, who was in the Perth office of Enhance. So I imagine you don't know anything about that either?-- No.

50

I will tender that into the record.

MR NEEDHAM: That's H94.

ADMITTED AND MARKED "EXHIBIT H94"

MR DEVLIN: You reckon that was all right, do you, for him to have done that?-- Well, I wasn't aware that he was going to do that and in the context that I was - I don't know why he would have done that. I was providing it for him for his general information about the construction skills sector, so I don't know why he would have supplied it to those people.

10

I am sure you would have preferred that he didn't?-- Yeah, I think that's right.

2nd of August we go to now. And Springfield - the Springfield part of the new entity's future activities starts to emerge. You may not have read that. I will leave it with you for a moment and when you are ready you can indicate?-- Yep.

20

Now, would you agree, to summarise, that this is a reasonably detailed, if brief advice about the intentions of the new entity to establish itself on a Springfield campus west of Brisbane in the future?-- Yes, brief but specific.

And it very much puts Betaray in the picture as the entity that would, whatever it was going to be called in the future, deliver on the Springfield campus. Is that a fair summary?-- That's correct.

30

Well, I will tender that into the record.

MR NEEDHAM: That's H95.

ADMITTED AND MARKED "EXHIBIT H95"

40

MR DEVLIN: Once again we see the serendipity between actions you take and actions that others take who are very close to Mr Wills' interests. This is a confidentiality deed now for Betaray in relation to Enhance granted - granted to Enhance Capital. Now we'll have to go to the first schedule. Sorry, the next page tells us the story. "This deed made the 1st day of August between Betaray and Enhance Capital." So I take it that you knew, in putting Betaray so firmly in the picture in Springfield, I take it you knew that the due diligence process for Betaray was commencing? Can I have your response to that?-- Yeah, I was aware that they had discussions with Betaray and that a due diligence process had - of some sort had started.

50

And so we're still about 40 days short of your disclosure to your employers. You reckon this was all right, hey, giving that sort of advice to Mr Wills without disclosing a potential conflict of interest to your employer?-- Well, I still don't

regard it as a conflict of interest.

1

I tender the confidentiality agreement between Enhance Capital Pty Ltd and Betaray.

MR NEEDHAM: That's H96.

ADMITTED AND MARKED "EXHIBIT H96"

10

MR DEVLIN: I will ask you to look at document 81. On the 7th of August, Mr Wills forwards to you - this is out of Enhance's records, of course - Mr Wills forwards to you at 9.51 a.m. a document, the text of which we see at the bottom. The sensitivity of it, according to the sender, is confidential. It is from accounts at Hilton International College. I should have highlighted that. It is confidential because it is subject to a confidentiality agreement, one would think. And the person in accounts at Hilton says he or she has "attached unaudited/unadjusted financial year 05/06 from MYOB", et cetera. So you would have no doubt from that that the financials of Hilton were going across to Warren Sinclair, copy to Glynne Hilton and a copy to Vern Wills at 9.39 a.m. on the 7th of August and you get them at 9.51 from Mr Wills. So do you reckon you were playing a part in the due diligence process, Mr Flavell?-- No. But he has supplied me with this information.

20

30

Yeah. What did you do with it?-- I can't - nothing, as far as I can recall.

Well, did you ring back and say, "Vern, don't send me this stuff."?-- No, I didn't.

No. Did you express your view on the financials to Mr Wills at any time?-- Not that - not that I can recall at this time. I would have at some stage.

40

You are just not able to recall whether you would have before 11 September 2006. Would that be your position?-- I mean, I think it is fair to say that I got increasingly involved in looking at this business opportunity as it got closer to 11th of September, particularly during the caretaker period of government when the election was on.

When do you reckon that started, Mr Flavell? Can you help us out of your general memory, caretaker period?-- 26 days before the 9th of September.

50

September, mmm. Is it about - that's roughly about the 7th of August, isn't it?-- Mmm.

A little bit early for the caretaker period, but anyway. Well, let's now move to the 9th of August. I will tender.

MR NEEDHAM: That will be H97.

1

ADMITTED AND MARKED "EXHIBIT H97"

MR DEVLIN: Thank you. I will ask you to have a look at this document, please. It is already H54, so it doesn't need to be tendered again. But I would ask a copy to be put in your hands. Just on that topic, by the way, about the financials - just to go back to that for a moment - it was flicked on to you at 9.51 a.m. on the 7th. There is a phone call between you and Mr Wilson, the 7th, after that at 12.15 for 282 seconds. It is not possible, is it, that you discussed the financials of Hilton with Mr Wills at that point?-- It is possible but I don't recall actually having a detailed discussion with him about the financials. I mean, I think - in terms of - it is worth looking at these issues sort of post me leaving the government and working in the business. I mean, the delineation of responsibilities was Mr Wills and then subsequently Mr Gilmore were doing all the financial - dealing with all the financial issues.

10

20

Yeah?-- I was undertaking different activities-----

Yeah?-- -----for the company.

Well, it is the extent of your involvement in the activities in the private sector that interests us, of course. Now, on the 9th of August you send to Warren and Vern Wills - Warren Sinclair and Vern Wills the Enhance strategy.doc as an attachment and you say, "Warren, I have made a few changes but we still need to do a bit more on the document but I would like to get your feedback at this stage." Greg Harper earlier than that has sent it on to you, Tuesday the 8th of August, "Over to you, Scott". See that?-- Yep.

30

This is the document that you would have been present whilst we explored it with Mr Harper?-- Yeah.

40

It is called "Business Opportunity". Do you accept that this document formed a substantial part of the ultimate Information Memorandum for the Careers Australia Group?-- Sir, the one that went - the March 2007 document?

I think that's the date of it. I will just check that. We think there is one of October '06. We will check that for you, but whatever ultimately went forward into the public domain? I can come back to that question if you would prefer to consider that question later. Probably a bit unfair if you haven't-----?-- Look, I mean, some of this might have - like, some of the general flavour of it might have gone into the Information Memorandum but the reality is the Information Memorandum was issued in March 2007, if I recall, and it was predominantly drafted - the text of which was predominantly drafted over a period of November/ December. Actually might

50

be December/ January of that period.

1

Well, didn't-----?-- Some of this may have been - these sort of ideas may have been drawn upon in it but it was - it is a different sort of document in company and business strategy by that stage.

Would you say this is a source document, one of a number of source documents for the Information Memorandum? Is that a fairer way to put it without committing you to the extent to which it was a source document? I mean, one can easily verify that by putting the two down beside one another and deciding what text made it into the IM?-- Yeah.

10

So I am not going to hold you to that but how would you describe it from your general recollection? Was it a source document?-- I can't recall if there was slabs of text or anything taken from this into the Information Memorandum. What I recall from the Information Memorandum is actually me sitting down and drafting it from scratch but I may have reflected or looked at something like this in its development.

20

So it may have been a source document?-- Yeah.

All right. Just a few things, to examine the terms of it, there are a lot of references to TAFE in this document that you sent across. Still whilst you were in charge of TAFE. You were okay about making observations about the weaknesses of TAFE in its set-up, its vulnerability to competition? You were okay with that, were you?-- Yeah, I was always quite open about it. I mean, my job was in charge of the TAFE sector but in charge of the system as well. The TAFEs were - and it was actually, if you look back on it, quite an unusual position in the sense that these were units of public administration - well, public service yet they were supposed to be technically competing against each other and the private sector, yet I was the accountable officer for all of it. So, you know, I had to sit back and then make, you know, objective observations about TAFE, about private providers, be a regulator, be a policy maker. You know, this sort of thing we would readily discuss in open forums.

30

40

But, of course, you weren't now an objective policy maker, you were somebody with a very real prospect of serious engagement with one element of the sector, correct?-- Well, that is correct but I don't see how that then it necessarily relates to the comments on TAFE.

Nevertheless, here we have quite a thorough going document. It now runs to - with an attachment, its body runs to 13 pages, then an attachment for at least another eight or so. It still hasn't crossed your mind to declare a potential conflict of interest, is that right?-- Yeah, that's correct.

50

If you had your time over, you'd have been declaring your conflict of interest well before this, wouldn't you? What's your honest assessment now?-- I think what I should have done is - and what others have done and that I didn't reflect on it

at the time - was to sit back and think more thoroughly about the process that one should adopt in such a situation and obviously seek the advice of the Integrity Commissioner in relation to it. I generally regret not doing that.

1

There is a reference to one strategy being for Enhance to purchase a provider like Hilton. That's on page 8. So just to help you out, you might recall Mr Harper felt that he wrote most of 3 to 13. Remember him giving that evidence?-- Yes.

10

So would you generally adopt that, that he shot on to you the bulk of the head document? And whilst we're on the topic then, I am nearly at the attachment, are you able to tell us who the author of the attachments was? Sorry, I have got two questions there; do you accept Mr Harper's evidence that he authored essentially about pages 3 to 13, and who is the author of the attachments?-- If I just look 3 to 13, I have no reason to disbelieve that Mr Harper had predominantly done - undertaken that-----

20

No reason to?-- No reason to.

Disbelieve?-- Disbelieve, yeah.

His recollection on that?-- Yeah.

Okay, well-----?-- And-----

Let's deal with the attachments in a moment?-- Yeah.

30

I just want you to concentrate on page 12. You said to Mr Wills you made a few changes - sorry, to Mr Sinclair, and here, of course, we see Scott Flavell being spoken of as the "current Director-General of education", but he is also being spoken of as "one of the key management positions". If you were content for this document to go forward, then I suggest to you a conflict of interest was staring you in the face as of the 9th of August 2006. What do you say to that?-- Well, I mean, it was proposed by Mr Sinclair and Mr Wills that I take on this role and that Greg Harper would also take on a role. As it turned out, I decided to pursue it and Greg didn't but at this stage it was, you know-----

40

50

You had in your own mind accepted the same-----

1

MR NEEDHAM: Had you finished?-----

MR DEVLIN: Sorry?-- It was several weeks away from me making a formal decision, and then even after that, making a formal decision, there was a bit of exchange of whether I'd actually leave to take on this job or not anyway.

Well, can you see that to the objective observer it looks as if you've already crossed over in your mind, or aren't you prepared to make that concession?-- I hadn't in my mind made a formal decision to do this at this stage. I was actively considering it though.

10

Can I just explore that for the moment because I promised at the start there'd be, I'd hoped, an intelligent discourse and I hope this is an example of it. In hindsight, is it a process - was it a process of crossing your fingers behind your back, adopting for your own piece of mind a fiction that you hadn't made up your mind yet? Does that appeal to you as a possible human motivation for you at the time looking back?

20

MR APPLGARTH: Look, I object to the question. I'm not sure if the witness is confused, but I am.

MR DEVLIN: I'll rephrase it if I'm not clear enough.

In hindsight are you prepared to concede that you adopted a mindset that avoided the question of whether you'd crossed over? Does that make more sense to you? Obviously not. It's an unintelligible discourse, not intelligent. Do you know what I mean?-- Yes, I think I know what you mean. I think - I come back to the point if I had done this over again, as I said earlier, I would have done - I would have undertaken this in a much different way, and obviously because not least the fact that, you know, I don't like the fact that I'm going through this process because of some of these actions and activities. I don't sort of concur with the view that it was just sort of convenient for me to sort of put it to the back of my mind.

30

40

That is a much better way of putting it. That is what I had in mind in my question, so, carry on?-- So I don't think it - but I genuinely don't believe that is what I was thinking at the time. I actually, if I can consider back to this period of time, I had a lot of things going on. I was in the middle of selling Energy assets. We were doing a whole lot of things, you know. I had, you know, Mr Wills asking me whether I was going to do this job. I hadn't made up my mind, and, you know, on reflection I just followed, you know, a very poor process.

50

Righto. I take it then you don't concede that series of phrases at page 12 of that document shows that you had in your own mind crossed over to this - in your own mind had made up your mind that you would be employed by this group, is that what you're saying?-- Yes.

Okay. Can I go to the attachments now. Can I just lead off by suggesting that the attachments have the appearance of an amalgamation of a number of the papers that we went through yesterday afternoon?-- Yes.

And those papers were ones that you prepared, is that a fair summary?-- Yes.

All right. Well, we'll move on, I think. Oh, no, there is one thing. I want you to go to the heading "Offshore Recruitment Activities." Do you see that that paragraph that we discussed way back in '05 as having been created after you received Mr Martin's report from the Gold Coast, do you see that that paragraph remains in there almost completely unchanged?-- Yes. The documents that I had there, I've just put them together, you know, collated them together and sent them on.

10

Yes. And you don't concede that it wasn't right for you to use Mr Martin's internal report in this way, or do you in hindsight?-- As I said I don't regard the information that Ross provided as Commercial in Confidence.

20

Now, you were present here for Mr Slater giving his evidence?-- Yes.

And you would now, by now, well appreciate that in February of 2007 when Ms Straughan started, a number of internal TAFE documents landed on Mr Slater's file, and you would appreciate that Mr Slater gave evidence that he asked Ms Straughan for some of those documents for templates and so on, remember all that as the effect of the evidence?-- Yes.

30

Did you have anything to do with that process, please?-- No, other than I had a general discussion with John about reporting arrangements for overseas travel and the need to improve it. I don't recall having any sort of detailed discussions about where we'd get templates from or whatever. However, I do consider the model for reporting that had been developed by Ross Martin, as I'd said earlier, was probably best practice in terms of reporting on overseas travel-----

40

Right?-- -----arrangements.

Excuse me one moment. Just a couple of other aspects of the document. Page 2 of the body of the document which Mr Harper drafted seems to speak of an intention to build the company to a level of maturity where it could be listed on the Australian Stock Exchange. It was obviously a concept that you were aware of and assented to. Yes, I'll qualify my question. That is on page 2. It might be something that somebody else added in fairness to you?-- Now, I don't think it would have been Mr Harper.

50

Right. Were you aware of that as a general concept for the way forward for this group?-- No.

You weren't?-- No. The discussion - as I recall, the discussion around financing and funding and the business strategy for the group was - there were some general sort of concepts about how it would be structured and how it would be put in place and the like, but going forward, when I started in the business in October, I think, there were a number of discussions then with financiers about the way forward in terms of structuring the company. One was with an investment bank called DDH Graham & Associates which proposed sort of a trust type structure, and then another one was with ABN AMRO Morgans around about the same time where they came back, and then proposed a model which involved a two stage process which was a model that involved going to the market to raise some capital privately from sophisticated investors and then ultimately listing on the Australian Stock Exchange.

MR NEEDHAM: Well, the process of how it would be done might have been organised in October, but clearly by this stage it was envisaged in general terms, because it's in this document which is sent to you on the 8th of August which you make any changes you feel necessary to it and send it on on the 9th of August. So, obviously you were aware of it at that time in general terms?-- In general terms. What date is it? In general terms it's probably a fair reflection that that was one of the concepts being proposed.

Yes. All right.

MR DEVLIN: Well, I just want to examine that just a little bit more. You had been a Treasury official for many years. You were no babe in the woods in relation to corporate matters, were you?-- How do you define corporate matters?

Well, the floating of the development of corporations, the public floating of corporations. I mean, you knew all about how those things were done?-- I was never involved in any of those issues in terms of private financing and private market type arrangements.

Okay?-- Up until this stage I can tell you, I had only ever had one parcel of shares in my life and they were purchased when the Commonwealth Bank was privatised in 1991.

Okay. Can I take it a different way then. Your communications seem to, at times, come back to a discussion, brief, maybe, about IBT, about Eddie Groves, and about Carter & Carter. They were all publically listed entities, were they not?-- Yes.

So, you knew what the model was, and you knew what the intention was all along?-- I don't believe that I knew what the model was and the intention was all along. And, indeed, as I said to you, we had a discussion with DDH Graham & Associates which was not about listing on the stock exchange.

All right then. The exhibit that you have been looking at is H54. That can be handed back, I don't need to tender it again. Have a brief look at document D87. I'm just

interested in a communication to you on the 24th of August. So we're now 18 days from your disclosure. Vern Wills attaches Education x.strategy in an e-mail to you. He copies it to David Alam. He was the financial officer for the group, or for Enhance, was he? He was the finance man within Enhance, or don't you remember?-- I think David Alam is the CFO at Enhance, yes.

1

Righto. It is the next document that I'm interested in. It is a communication from Warren Sinclair on Sunday, the 13th of August to Vern Wills, "Subject: VET", and down at paragraph 5, he's attached the latest version of the IM, the Information Memorandum for a start, but at paragraph 5 he says, "Scott has introduced some new target sectors and included them" - I think it should say - "in the revenue projections but there is not a plan yet developed for them. This will need to be fleshed out and the content added." So, do you accept by the 13th of August, you had introduced some new target sectors for the group to tackle? Is that how you remember it?-- I don't see that there's any new target sectors in here compared to what was in previous documents.

10

20

MR NEEDHAM: Well, I think he's saying that that will have to be added. This will need to be fleshed out and the content added?-- Oh, okay, yes.

MR DEVLIN: And paragraph 6, "Scott has also prepared a table for revenue projections which has been included in the Financial section. I have included a reworked table with more conservative numbers. You will need to run through with Scott how he thinks his projections will be reached and satisfy yourself of the robustness of the assumptions." So did Vern Wills run through with you matters concerning financial projections prior to your disclosures to your employers?-- We would have had a general discussion about this but these were very general numbers. I don't think Warren's text reflects accurately what these numbers were. They were pretty much back at the envelope type calculations. They weren't spreadsheets or any detailed models involved in it.

30

40

Is it likely that you had discussions with Wills on this topic prior to the 11th of September 2006?-- It's possible.

So it would appear from the text of - the choice of Mr Sinclair's words that you were, as August unfolded, actively working on the development of a document which formed a basis for the Information Memorandum, do you accept that?-- Sorry, could you repeat that?

That as August unfolded, you were actively working on a document which formed a basis for the Information Memorandum for the group ultimately?-- I was working on a document that formed the basis of - this document that Mr Sinclair has prepared which he has called an Information Memorandum, to me I don't consider it is an Information Memorandum and it doesn't reflect the Information Memorandum that was ultimately developed for the group.

50

More like a business plan, perhaps?-- Well, I wouldn't even say it is a business plan. I think if you have a business plan, you'd want to have some more detailed financial numbers than is provided here in this document.

1

Okay. I want you - I'll tender that.

MR NEEDHAM: That's Exhibit H98.

10

ADMITTED AND MARKED "EXHIBIT H98"

MR DEVLIN: I want you to go to document D89. You can go to the back of the document, the very last page. Well, in fairness to you we'll go to the front page first. Vern Wills sends this to you on the 17th of August. Go to the back page then so we can make sense of it. The attachments are: EH training high level analysis, Betaray Training Academy, HIC multi-period P & L spreadsheet '05, then '06; balance sheet HIC. P & L July '06; HIC balance sheet '06. They appear to be all the attachments. The next page at the top shows a message from David Alam that we now see is the Chief Financial Officer for the Enhance Group, "Dear Warren" is over the other page, the salutation, then we have: "I have requested info from Nathalie and Jan which is now coming in to me. They have been most prompt. It consists of answers to my questions, et cetera. On the surface of it, Betaray seems to have good cashflows and looks quite sound financially. Hilton looks to be a whole lot tighter. Please advise your requirements." So that is really the thrust of the communication and it gets to you. It would appear, and it is headed, "business Details for Betaray and Hilton", so it would appear that you are being kept in the loop, at the very least, concerning the due diligence process. What do you say to that?-- I think that reflects what's probably occurred here.

20

30

Thank you. I tender that.

40

MR NEEDHAM: That's H99.

ADMITTED AND MARKED "EXHIBIT H99"

MR DEVLIN: I'll ask you to have a look at another one for the 17th of August called D90. This one is headed, "Q8 HIC" from Vern Wills to Scott Flavell. You will need to discover then what the attachments were. At an earlier time, sent 15th of August, you'll find this on page 6 of 7 from accounts at HIC to David Alam; copy Glynne Hilton: "Dear David, in response to Q2...please find attached MYOB reports". So I guess you'd make the same comment, would you, that you were kept in the loop, at the very least, on the due diligence process by

50

another e-mail message that you received at your work?-- Yes.

1

I tender that.

MR NEEDHAM: H100.

ADMITTED AND MARKED "EXHIBIT H100"

10

MR DEVLIN: My assistants do not have H91 and 92, Chairman, just for the record. Mr Perrett might be on the job. There we go. Counsel has that.

We now move to the 20 - I'll come back to that. Okay. I'd like you to look now at D100, so we're at the century and not out both on the exhibits and our own documents, but we're nearly there, you'll be pleased to know. Still 17 days short of your disclosure, this letter of offer has been drafted to commence on the 1st of October 2006. A gross remuneration package of \$220,000 is offered. Is that the package that you did start on?-- No.

20

Did it go up or down, do you recall?-- It went slightly up.

Slightly up. It is addressed to you at your home address, and it is a message from David Alam to Walter Gilmore dated the 16th of October 2006. However, the date on the document is actually 25th August 2006. Could we deduce from this draft, in fairness to you - I'm not suggesting you got it, there's nothing to indicate that on this document, anyway - perhaps I should ask you. Do you recall getting a draft offer of employment on or about the 25th of August 2006?-- I received a document similar to this from Mr Wills in early September 2006.

30

Why do you remember it as being early September?-- Because I remember - I do recall that it was after me departing government that we had a discussion about my initial remuneration arrangements.

40

Well, this is what-----?-- I mean, me resigning my position. But I think it's fair to also say around this time I was pretty much coming to the view that, you know - and this is during the election campaign, and because the election campaign had been called, and I was conscious of the machinery government changes that would be made after the campaign - after the campaign and-----

50

After the election?-- After the election, that's why I was thinking, well, it's probably a good time then to announce a resignation during that period.

Okay. But still no disclosures?-- No. I hadn't made a disclosure, and I think I said - you know, I said previously that I decided to do it after the election campaign. My

employer was the Premier. He was in the middle of an election campaign.

1

All right. Just a matter of curiosity, though, is this, given the date of that letter: it is the same date as an appointment between you and Vern Wills from 12.30 to 2.30. So my question - that's out of Vernon Wills' records. My question to you is: given the date of the draft offer of employment, and given the date of an appointment you were slated for with Vern Wills, did you discuss terms of employment with him on that date at that appointment?-- It's possible, but my recollection is that it was in early September, and my recollection also is that while there was a draft of this document sort of floating around, when I went through my files, I actually didn't have a formal document. The formal document that I had was different to this. It was starting with Careers Australia Group. It was commencing on 19th of October. That was the document that I had in my records.

10

We'll put it in at the same time for completeness. So just to summarise what these documents might or might not tell us, do you accept that it's possible you were talking terms of employment with Vern Wills on the 25th of August?-- It's possible.

20

Thank you. I'll tender the draft offer of employment-----

MR NEEDHAM: Or e-mail which attaches that.

30

MR DEVLIN: -----and the e-mail that attaches that.

MR NEEDHAM: Will be Exhibit H101.

ADMITTED AND MARKED "EXHIBIT H101"

MR DEVLIN: Then I tender the appointment record dated 25th August.

40

MR NEEDHAM: H102.

ADMITTED AND MARKED "EXHIBIT H102"

MR DEVLIN: And I'll tender for completeness the ultimate package dated 12th October 2006 which shows a slightly increased package from 220, from memory, to 240?-- And a different employer.

50

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

MR NEEDHAM: That's Exhibit H103.

1

ADMITTED AND MARKED "EXHIBIT H103"

MR DEVLIN: I'd also, so that it is collected in the same spot, I also place on the record that the Commission's information is that Careers Australia Group was registered as an entity on the 12th of October 2006.

10

We're getting agonizingly close to the 11th of September, but we're now in a period where I think you frankly concede that you had made up your mind to go, but you chose the time of your disclosure as being the 11th of September. Is that fair comment?-- Yes.

Thank you. I'd like for you to see D112 which is already Exhibit H6.

20

MR NEEDHAM: Have you got the exhibit number?

MR DEVLIN: H6. We're now at the 4th of September. We're a week away from your disclosure. We'll probably have to follow this through a bit. On the third page, page 3 of 5 I think is where we start, you write to Rod Camm in the department, "I would like to get a list of all the international institutes in which we have established collaborative arrangements. I would also like to look at a copy of a MOU, probably one of the standard documents that Craig has signed." Now, let's go straight to the chase here, Mr Flavell. This is simply not cricket, is it?-- In what respect?

30

Well, you're asking your departmental officers to disgorge for you, without having made any disclosure to anybody about your intention to leave, documents that are in use within the organisation. You're not going to try and excuse this, are you?-- I'm just looking at the documents.

40

Yes, yes, take your time?-- See, the document is an agreement, a draft agreement that's used for MOUs.

50

Yeah?-- Yeah.

What do you say about it? "I would also like to look at a copy of an MOU, probably one of the standard documents that Craig has signed." Who is Craig?-- That would be Craig Sherrin, the Institute Director of Southbank Institute of TAFE.

It would be of great advantage to a new organisation to have a useful template, would it not?-- I wouldn't say it was a great advantage because I don't think it is, you know, a great strategic advantage to have a new template but it would assist in terms of if there were any agreements - agents agreements or memorandums of understanding entered into to understand how those documents had been drafted.

10

Let's put aside the debate about whether it was a useful document or not. In fairness to you, Mr Martin expressed the view in evidence that an MOU could be found with the press of a button on the internet. Could I just ask you this question: might he have better expressed it as being on the intranet of the TAFE system? Have you got any comment to make about that or just don't you know?-- I don't know but-----

20

All right?-- -----often when - if there were MOUs signed there would be a press release and sometimes the - my recollection the MOU would be attached to the press release.

Yeah?-- I mean, the MOUs, as Ross mentioned, didn't have any real legal standing, they were there as sort of like a, you know, an agreement to work - not even an agreement, sort of an intention to work together, and that would often be the way that, you know, particularly the Chinese entities liked to operate.

30

Yeah. But, you see, industry sources tell the Commission - and I will be - I will even tell you who it was - Mr King who gave evidence here - didn't give evidence about it because we didn't ask him about it, but he provided information after giving evidence that in his view MOUs were quite valuable to find and adopt. Do you know anything about that? Can you comment one way or the other about that?-- What do you mean to find and adopt?

40

Well, to get one to put into use in a way that's acceptable to the Chinese client or Taiwanese client?-- A template?

Yeah, a template?-- Yeah, I mean, look, it is useful information to be able to develop those sorts of documents in the format that's acceptable to the VET system.

50

Right. Next question then, if Mr Martin is right and it is not just available on the intranet of TAFE but on the internet - if he is right - then you could have done that. You needn't have troubled your officers in the department, correct?-- That's correct.

That's got logic to it, hasn't it?-- Yep.

1

But what you've chosen to do, with the mindset you now had by the 4th of September, was to immediately ask a senior officer to set that in motion without disclosure. Do you accept that?-- I hadn't disclosed to senior officers what I was intending to do.

And you immediately set in train a process of asking your minions, senior ones, or a senior one, to attend to it?-- Yes.

10

Then my question was - and we have been a long time at it. If you would just be frank with me. It is-----

MR APPLGARTH: I object.

MR DEVLIN: All right then.

MR APPLGARTH: We have been a long time at it, we will agree on that, but the accusation not being frank is quite unfair.

20

MR NEEDHAM: I have suggested to the witness that perhaps if he listen to the question and answers the question - he does have a bit of a habit sometimes of not answering the question.

MR APPLGARTH: I am not defending that. I am not defending that.

MR DEVLIN: I will withdraw the comment. I will simply ask the question.

30

MR APPLGARTH: We're just coming to this question now, admittedly after a long time.

MR DEVLIN: No, no, we're coming back to it. It is simply not cricket. It is not proper to have asked Mr Camm in what appears to be a direction from a Director-General to go looking for a document you're going to use somewhere else. Just give me your response and we'll move on?-- Look, I don't believe that it was, you know, to the extent that my intention was to use it - and I hasten to add that we never, ever used these, to my recollection, documents for any purpose - I can't recall signing any memorandum of understanding or anything when I was in the entity - but to the extent that I had requested it for that purpose, and at this stage I had more than likely decided to go, on that basis it wouldn't have been appropriate.

40

You said - you'd said you had made up your mind to go after the election result was known. You said that earlier?-- Yeah. I was just trying to look at the date.

50

Yeah, yeah, I know. 4th of September. One week?-- Yeah.

Sorry, five days to the election?-- Yeah.

And one week exactly to your disclosure?-- Yeah.

All right. So what's your answer then? Irrespective of whether you used the MOU, what's your answer about whether it was proper to ask Mr Camm to find you one?-- I just answered that.

MR APPLGARTH: I was going to say-----

MR DEVLIN: Sorry, well, I didn't hear it. What was your answer?

MR APPLGARTH: The word "inappropriate" was used, Mr Devlin.

MR DEVLIN: Did you accept that it was inappropriate?-- I mean, do you want me to go back through what I just said?

No, it is all right. It is on the record. I will move on. I am interested in the first request then. "I would like to get a list of all the international institutes in which we have established collaborative arrangements." What were you looking for, Mr Flavell?-- I can't recall in that respect, and I don't even recall receiving any such information.

Can you assist the Commission with any appreciation of what you were asking Mr Camm to supply?-- Sorry, where is this in the-----

MR NEEDHAM: Page 3 of 5 at the top.

MR DEVLIN: 3 of 5, sorry. While you are considering your answer I would like to hark back to one of the earliest expressions that you made and that you said frankly that you regret making, way back in September 2005, almost to the day, 7th of September 2005 when you talked about poaching an officer from Rockhampton TAFE, Central Queensland TAFE which might collapse - might have the effect of collapsing the TAFE operation. I am just wondering whether this request is also indicative of a last minute attempt to obtain other crucial offshore information which might have assisted you in your new endeavour?-- Look, I don't believe it was. That really wasn't part of - I mean, the business strategy in a - we didn't establish any collaborative arrangements that I'm aware of. I think I was probably just trying to find out, you know, the types of entities and offshore institutes that they are with, particularly in the Chinese market.

Yeah, but that would give you a contact list which would be extremely useful. Yes?-- It would be useful, yes. Be that as it may, I mean, every sort of collaborative arrangement was always announced and there were always lots of trips, and I participated in many of them myself where we went across and sort of announced these collaborative arrangements. Once again I could have found that information myself.

That's right?-- Mmm.

And what you were going to get, maybe - I just want your response to this - was a nice convenient list and an internal

and commercially sensitive one at that. What's your response to that?-- Well, I don't think it was commercially sensitive but it would have been a convenient list, but I don't ever recall receiving it.

1

Right. I will ask you to have a look at 112. I will tender that.

MR APPEGARTH: It is already-----

10

MR NEEDHAM: That last document you are referring to with the witness is H6. Are you meaning some other document?

MR DEVLIN: H6 I think, in view of the department's classification, has that been subject to a non-publication order at least as to the attachment, the MOU. I think it has.

MR NEEDHAM: Not on my noting.

20

MR DEVLIN: Perhaps I would ask that it be so.

MR NEEDHAM: It is already.

MR DEVLIN: Apparently it is, Chairman.

MR NEEDHAM: Is it? Okay.

MR DEVLIN: Then just for completeness then, that's 5 September - sorry, the request starts on the 4th of September and - H6 wasn't, I am now told.

30

MR NEEDHAM: No, it wasn't on my noting. All right. I will make the order at this stage.

MR DEVLIN: It was made in relation to H7, which is the next document. So I will just show you this. You send on an MOU template to Mr Vern Wills. The MOU template is the MOU with Quang Ninh People's Committee of Vietnam. So my only question to you is you must have considered this important enough to send on directly to Mr Wills. Do you accept that?-- Yeah, as an example of an MOU.

40

Thank you. That's H7. And I ask you now to look at D120, which you will be pleased to know is the end of the trail, from my point of view. This is the document in which you make your disclosure to the Premier dated 11th September 2006. The disclosure ultimately being there in paragraph 2, is that right?-- Yep.

50

Thank you. I tender that.

MR NEEDHAM: That's H104.

ADMITTED AND MARKED "EXHIBIT H104"

MR DEVLIN: I have only a couple of other questions for you,  
or couple of other topics.

MR NEEDHAM: We might take a mid-morning break at this stage.

MR DEVLIN: Thank you.

THE HEARING ADJOURNED AT 11.42 A.M.

THE HEARING RESUMED AT 12.12 P.M.

SCOTT CAMERON FLAVELL, CONTINUING:

MR DEVLIN: Just one matter about the 7th of September document I would like to take you to very briefly, 7th of September '05. That's H2. I thought it was H3 or H2. Anyway, I can ask you the question without going to the document, I think, and tell me if you are at a disadvantage in answering it. H84, I am told. H84, if that can be looked up, please. There was that discussion about a person at the Central Queensland TAFE that might be poached. Are you able to remember who that person was? I will put it up on the screen. Do you remember who that was?-- I think it was - I think the person who ran it there was a woman. I can't recall her name now.

10

20

Gilroy?-- Yeah, Ros Gilroy.

Ros Gilroy, okay. We're looking at exhibit H84. Just look up on the screen there, if you would. The phrase I am looking for is "a salary package of about 130 to 150,000 plus bonuses would be required to acquire the current manager who is based at Rockhampton"?-- Mmm.

30

So that relates to Ms Gilroy?-- I think that's what-----

Well, the Commission's information is that at the time that you gave that advice, Ms Gilroy was an A08 on \$85,000 a year. The proposition I am putting to you is that by suggesting - I am not saying it happened - I am not saying she was approached - but by suggesting that to Mr Wills' interests, you were proposing something which was, in effect, an offer she couldn't have refused, if it had ever been done, putting someone an offer which was, in effect, almost - at least 50 per cent, 60 per cent higher than her current salary. Have you got any comment to make about that?-- I think one - an A08 salary is higher than \$85,000 a year.

40

That's the Commission's information as-----?-- I think that's the cash. There is super, there is a package. There is all sorts of things on top of it. Ms Gilroy would have had a car as well. So there is probably a difference there.

Right?-- So but in terms of that number, I mean, the way I would always approach these things is how do you - the issue about trying to employ somebody out of the public service is you have to actually value their package appropriately, and so when you actually look at the cash salary component, there is a whole lot of other aspects to it, including their superannuation and other things, that aren't often - the public service don't gross up but in the private sector they do gross up their salaries. So that would have-----

50

Right?-- The 130,000 probably reflects - you know, in essence, \$130,000 type package would be - well, it would actually be less than a senior officer Grade 1 is getting. So probably represents similar to the next increment for somebody like Ros Gilroy.

Okay, thank you. I want to take you now to a page of your record of interview, and you will need to just refer to the screen on this - dated 8th of November '07. Remember you gave an interview?-- Mmm.

10

Page 7 of 21. You were asked, "Did you engage in any business activity with Vernon Wills during the period November '05 up until August '06?" You said, "No, no." "All right. Are you saying you didn't enter into any agreements with him?" "No." "Or arrangements?" "No." On what we've now seen, that is on the evidence that's been presented to you, do you think that is a full and frank answer to the Commission investigators back on 7 November '07?-- Well, I mean, there has been a lot of additional context added to this since then.

20

Yep?-- But in terms of the specific question about having - did I have a formal agreement with Vern Wills, no. But, you know, there was clearly, as we've seen, quite extensive discussions between he and I.

Yep. So do you think it was a full and frank answer? Sorry, I am putting up another one?-- But were they referring to a specific agreement?

30

The question put to you was - I will just read it again: "Did you engage in any business activity with Vern Wills", is the way it was first put, and we'll see if that changes. So your first go at it was, on the subject of business activity, "No, no." Then you are right, the question changed a bit. "All right, are you saying you didn't enter into any agreements with him?" "No." "Or arrangements?" "No." So I will show you again. The question was about business activity. So do you think the "no, no" that you gave is a full and frank response?-- Well, I was interpreting that as did I enter into any sort of - undertake any business activity with him.

40

Right. Okay?-- Up until August.

Well, clearly you were engaging in plenty of business activity?-- I was - well, I think there is a difference between activity and discussions.

Righto.

50

MR NEEDHAM: Mr Flavell, you were aware at that stage that this whole general issue was being looked at by the CMC investigators who were questioning you?--  
Um-----

It was an investigation that was being carried out as to what you had been doing?-- Yeah - sorry, I was just trying

to reflect on what the actual - what was actually put to me in terms of - because I did ask what was the nature of the investigation, what were the allegations, and I think the nature was failure to declare a conflict of interest.

1

And it was your opportunity to put forward what you'd done and to give your explanation as to why you'd done particular things at particular times?-- Mmm.

All right?-- But I didn't have access to a lot of information at that stage. It was just actually being presented to me.

10

That can well be so?-- Yeah.

And your answer would have to be qualified to that extent, that, "Yes, I did but I can't give you full details unless I have access to my diaries at the time", or whatever?-- Mmm.

But "no, no" is a fairly equivocal negative - sorry, is a very definite negative, isn't it; no business activity?-- I think I was referring to was there a formal business agreement.

20

Well, business activity doesn't on itself immediately connote a formal business agreement, does it?-- No.

MR DEVLIN: I want to take you to another exchange. This occurs on page 4 of 28. "Did you provide him any information at that time or any time while you were Director-General in regard to the value of User Choice contracts held by any of those providers?" You responded, "I can't recall." The question asked, "Would it have been within your ambit as Director-General to provide that information in regard to the value of User Choice contracts held by any of those private providers, Betaray, Australian Institute of Technology, or another company?" Your answer, "I mean, I can't recall that I provided any such information." Mr Cross - Detective Cross said, "If you did, would it have been appropriate?" And at that point you sought legal advice. Was it the truth that you didn't recall giving over the User Choice list, or was it not frank to say that?-- No, I could - could you put that up again, please?

30

40

Sure, sure. Context of the previous page - I can take you back for context. "Did you provide him any documentation in regard to any of those three Betaray, Australian Institute of Technology documentation concerning those three organisations?" "I can't recall." "Were any other training organisations discussed in the same or similar context?" "Specifically I think he may have asked me, you know, for information around who are RTOs in the market place and that sort of stuff. I think we might have had some general discussions about that and I think I mentioned to him that you could find information on the various government websites." Then you were asked by Detective Cross, "What would you consider to be appropriate information to provide to him?"

50

Answer: "Well, 'cause he asked me a question to assist." "Righto, what information did you consider would be appropriate to provide?" That's sort of the lead-up. "He asked me for information, this RTO whether they're quality providers." Do you see that as being a particularly frank exchange or not quite so frank?-- Well, it is difficult - from what I know now it is difficult to put my mindset what I knew back in November of last year.

10

But-----?-- I do recall that there was, you know, exchanges of information between myself and Mr Wills and quite frankly, you know, as it has come out, I have just been amazed at the extent to which it had occurred.

Yeah. You see, what you know now is actually what you know the Commission knows, you know. What you know now is what you know the Commission has found out. But, of course, you were a participant in all these events and I am just putting to you for your comment that at times in the interview you were not fully frank with the investigators and I've given you two examples. Do you accept that criticism?-- I didn't have a lot of information at the time as to what - to what it was about. The - you know, I had to sort of - was probably 12 - more than 12 months since I'd left. I couldn't recall how much - what sort of level of exchange of information there was between Mr Wills and I but there was exchange of information.

20

Yep. Page 11 of 21 then is the last exchange in the record of interview I would like to take you to. I hope you can read that through the shading. It says: "2006." "We, you know, agreed I had a discussion and agreed on shareholding arrangements for the entity based on our investment." So that's November '06 is where the passage starts. Question: "Who did you have those discussions with, Mr Flavell?" "Ah, with Mr Wills, Mr Roe, Mr Gilmore, who are all shareholders, and they all became shareholders of the company, and at that stage I agreed to invest 100,000 or 102,000, I think it was, of my money to purchase shares in this entity that we'd established and I think the physical transaction occurred in December 2006." Question: "When did you decide you were going to do that?" Your answer, "November 2006." See that?-- Yeah.

30

40

I just want to show you - I just want to show you the subscription agreement that you and your wife entered into. Subscription agreement between Careers Australia Group Pty Ltd and Scott Flavell and Loretta Boman. The date of the agreement should be here somewhere. The date of it is the 9th day of November 2006. So that's when it is signed. Your signatures are on the back.

50

MR NEEDHAM: This is for Steel-Loc Pty Ltd. Is that your company?-- No.

MR DEVLIN: I am sorry, you have probably been given the wrong document. All I was interested in was the subscription

agreement between Careers Australia and Mr Flavell and his wife. They are in a bundle.

1

WITNESS: I have got the right one.

MR DEVLIN: You have got the right one. The Chairman hasn't, that's all. Sorry, Chairman.

10

20

30

40

50

So it's all signed, sealed and delivered, it would appear, on the 9th of November 2006. The last matter I want to raise with you is this: the recitals say: "The Subscriber..." - that is you and your wife - "...together with the other investors, commenced discussions early in 2006 to establish a vehicle for the purpose of developing a yet to be named skills training company." Have you got that? It's on the very first page. There is a covering page and then there's the very first page. Yes. Just turn one page in?-- Yes.

10

"Recitals: The Subscriber, together with the other investors, commenced discussions in early 2006 to establish a vehicle for the purpose of developing a yet to be named skills training company." That is actually true, isn't it?-- Discussions had commenced in - well, prior to early 2006.

And Recital B says: "On 17 June 2006, it was agreed by the Subscriber and the Other Investors that together they would invest a total initial investment of \$50,000"-----

20

MR NEEDHAM: 500,000.

MR DEVLIN: \$500,000?-- Yes.

So, you've signed a document which recites that on a particular date it was agreed that you, your wife, and the other investors had agreed?-- Yeah.

Doesn't that mean that on the face of that document you should have declared your interest at least as of June 2006?-- Well, as I indicated in my interview, I don't believe that date is accurate, and I don't believe the document is accurate because there wasn't any agreement on the 17th of June, or any time during June to undertake that. The first discussions I had with Mr Wills and others around investments occurred in late - and the amount to be invested in late September is my recollection, and it was around about that time - it probably wasn't up until, you know, close to the time that I was going to leave government that I actually realised I probably had around about \$100,000 to invest in the business.

30

40

Well, whether or not the 17th of June is an accurate date, I'll tell you that Mr Wills has told us that that was his daughter's birthday, it was simply put in there to express the agreement, but that no actual meeting occurred that day. So that's what Mr Wills says. But you have actually signed a document acknowledging an agreement in June. Forget about 17 June. You have signed a document which has an untrue recital in it on your evidence today; is that right?-- That's right.

50

You've had a reputation as a very, very astute servant of Queensland, Mr Flavell. Can you put on the record for us here why you would sign a document that just had a complete untruth in it?-- I mean, I didn't read the document in any detail. It was - I wasn't involved in the preparation of the document. It was prepared by Mr Wills and his legal advisors, or the company's legal advisors, Hopgood Ganim. It came to me. You

know, I didn't reflect on it, you know, in the sense that I thought I was signing - the agreement that I was signing was well after I had departed government, and I'd signed it on that basis, and I'd taken a decision to invest in the company, you know, in around about - I think it was October.

1

See, a person signing a document who goes through it, might look at the 17th of June and say, "Well, I don't know it is the 17th but I remember we agreed in about June", and would probably sign it on that basis. Is that what you did?-- No, I didn't go through the document in any detail.

10

So, you were careless about this particular Recital B which had real implications for you?-- Yeah.

Is that where we get to?-- Yeah.

Now-----?-- I wouldn't have signed it if I'd reflected on, you know, what that date was.

20

Well, indeed, the Commission understands that one of the subscribers, Mr Somerville, didn't sign it for that very reason?-- Oh.

That he didn't agree there was a meeting on the 17th of June, you see. But, anyway, you were just careless, were you?-- I believe so.

Now, the first schedule shows the proposed share issue to you and your wife, 10,200,000. Then we see the second schedule showing again that same figure, 10,200,000. And then we see the price, one cent a share. You say despite your constant references to Carter & Carter, and IBT and Eddie Groves, that you weren't really aware of what Mr Wills was going to do with the company. Do you persist in that general response?-- No, I understand that there was some concept that the company might maybe develop and list it on the Australian Stock Exchange in some manner, but that's a very broad concept - context. There are a lot of issues that need to be developed before you actually get to a stage where you can list a company on the Australian Stock Exchange. I think it was probably around the time in October where we had discussions with DDH Graham and ABN AMRO where we actually started formulating that plan to see whether it was actually viable to list it on the exchange.

30

40

But you wouldn't have needed to be a genius to work out that if the shares floated at even a modest 20 cents, or even 10 cents, or 30 cents, your one cent shares would have yielded you a significant profit, would you accept that?-- Well, that's if you are successful in taking your business through to floating. But there was a lot to be done to take a business through to floating. Indeed, at that stage the company had \$2 million worth of debt.

50

Yes?-- So-----

Okay. Well, I'll put this to you as my last question and I'll

be sitting down. I'm suggesting to you that the benefits that you stood to gain from your involvement in this venture caused you to repeatedly fall into serious error. What do you say to that?-- Are you referring to when I was a Director-General?

1

Yes?-- No. I don't agree with that at all. Mr Devlin, I am not a person who is motivated by money, or, you know, financial return and I think there's a lot of people who will actually be able to back me up on that. But I was interested in developing this business because I actually thought it was a good thing to do. It was something that I was interested in. I thought it was consistent with government policy and I was really interested to get it up and running and underway. I didn't spend a lot of time on the financial issues of the company. Most of that was undertaken by Mr Wills. We started the company. I invested my own funds in the company, so I took that risk. We took on \$2 million worth of debt to buy some businesses which, you know - well, we can debate that for another time about whether that was a good idea or not, and there was the potential to then take that company forward in some way. Certainly there was some debate at the Board level and, you know, I'll accept that Mr Wills is very aggressive in terms of wanting to pursue a float, but both myself and the chair did not believe that that was the appropriate course of action and that's why that didn't occur.

10

20

And-----?-- And I should also note that in any sort of context like that, I mean, any float, whether it is worth 20 cents a share or not is dependent on what the market values are, and all these arrangements were subject to escrow arrangements where any - so, on the basis hypothetically that a company like this was floated, there was no way that I could derive any value or return from my shareholdings for two years after from the date it was floated.

30

Well, if your main motivation was the challenge of developing a private provider, then, and your future employment with this private provider was on the table, I'm suggesting to you for your comment that you allowed your private interests in relation to this potential employment to cause you to make decisions that were not in the public interest. Not once but repeatedly, what do you say to that?-- Any decision that I've taken has been - are you talking about policy decisions?

40

No, I'm not. I'm talking about decisions to provide information to those who might in future employ you, in particular, and advice, information and advice?-- And I've said, Mr Devlin, in hindsight I wouldn't do this - I wouldn't have done it this way, and I believe it was a poor process and I regret the way that it has been undertaken. I don't consider that anything that I did has actually, you know, provided any material benefit to the company in any way, and, indeed, when I look back on it a lot of the work that was sort of done was really not, you know, particularly sophisticated in terms of what work needed to be done once I started in the company.

50

Thank you. I have nothing further. Thank you, chairman.

MR APPLGARTH: Before I start asking the witness some questions, I wonder whether my learned friend, Mr Devlin, was minded to supplement the public record a little about the Commission's view as to whether that recital is accurate or not.

MR DEVLIN: I've already referred to Mr Wills' view that the 17th of June was a date arbitrarily selected for his daughter's birthday, I have already put that on the record.

10

I would put on the record that the Commission's view is that most probably by June of 2006, Mr Flavell had agreed in the way the recital suggests, that maybe the 17th of June may not be the date, but there was a general agreement by June and that's why he signed the document in the way he did.

MR NEEDHAM: I think you might have perhaps worded that badly, Mr Devlin. Perhaps it's not appropriate to say it is the Commission's view because the Commission hasn't formed a view.

20

MR DEVLIN: It is a view that could be taken.

MR NEEDHAM: That is the suggestion that would be put forward by counsel assisting?

MR DEVLIN: Indeed. It's my view, yes, indeed.

MR APPLGARTH: Well, if I can say this because it is important in terms of what has just been said to the witness. In my view, for counsel to make that submission, would be most unfair, and what I'm about to say has been cleared, and I have the authority of Hopgood Ganim to advise, that they've provided information about the providence of this document and their instructions to Ms Wood in the CMC. It included documents which indicated the providence of the document; that the recital was inserted at the instruction of Mr Wills on the 24th of October 2006. The earlier drafts of the document that don't contain that recital have been given to the Commission.

30

Mr Ganim, the lawyer for Hopgood Ganim, pointed out in an e-mail the basis of his investigation and the evidence, none of which Mr Devlin cared to share with us. That evidence was that no such meeting took place. He provided reasons as to why that was impossible. He refers to his discussion with Ms Wood, and I appreciate Ms Wood is not counsel here so she couldn't volunteer this.

40

On the basis of his instructions and investigations, he assures that no meeting took place. The subscribers mentioned did not have any involvement until October/ November, but he explains what Mr Wills wanted to do. He says misguided, but no subsequent subscribers would ever see the first agreements. The recitals are therefore wrong in recording meetings took place as stated but nothing hinges on it. No meetings took place as stated, and that's 100 per cent correct.

50

Gilmore was overseas at the time, and he wasn't an intended

subscriber back then. On 17 June, Trevor was in Sydney meeting a visiting dignitary.

1

In my experience with such agreements, where there is no conflict, no-one reads the recitals as long as the operative clauses apply. In terms of no-one reading the recitals, we were just handed Mr Gilmore and Mrs Gilmore's copy of the subscription agreement which also are there, and a habit perhaps shared by me in this room of not reading and recitals, they signed up to the same recital when Mr Gilmore wasn't on the scene in June 2006, as all the documents here show, and as Mr Devlin must know.

10

So I would have thought in fairness, Mr Devlin should have taken the matter a little further and communicated the instructions that Mr Ganim gave, and to indicate whether the CMC's inquiries of Mr Gilmore and other people who are purported signatories, or who were signatories to an agreement in identical terms, confirm that there was any such agreement back then. The omission to refer to that is, can I say, at the very least, unfortunate.

20

MR NEEDHAM: Well, Mr Applegarth, I understood Mr Devlin to make it very plain that it was accepted by himself that no such meeting occurred on the 17th of June. That's the impression I achieved, that that date was selected at random, with Mr Wills saying that it was in fact selected as - it was his daughter's birthday.

MR APPLGARTH: Yes.

30

MR NEEDHAM: Now, I don't see any problem. There was no such meeting that took place. It's an issue-----

MR APPLGARTH: And it couldn't have taken place.

MR NEEDHAM: That's fine, and it's accepted that no such meeting took place.

MR APPLGARTH: Well, if it-----

40

MR NEEDHAM: Perhaps it is a slightly different matter as to whether those particular shareholders, those ones who became shareholders who were involved in it earlier - and I hear what you say about Mr Gilmore that apparently he didn't come into it until later - whether they had, without having a formal meeting, formulated an idea that they would jointly invest in such a proposal.

MR APPLGARTH: Well-----

50

MR NEEDHAM: To record it then in a recital, unfortunately it appears that Hopgood Ganim's firm chose to put it in a false way in the document.

MR APPLGARTH: Well-----

MR NEEDHAM: I don't know that I agree with Mr Ganim that

no-one reads recitals and therefore they don't count.

1

MR APPLGARTH: Well, I don't agree with that either.

MR NEEDHAM: But it does seem to me slightly unusual that a reputable firm like Hopgood Ganim would put its name to drafting a document with a recital that it knows to be false. But putting that aside, that meeting appears not to have taken place, that's accepted, there was no such meeting.

10

I understood Mr Devlin was saying that he's not accepting that there wasn't, without there being a formal meeting, an agreement, a discussion/agreement in whatever form between some at least of those investors and certainly including this witness, that they would at an appropriate time invest in this company.

MR APPLGARTH: Sir, I don't want to take the matter any further. I'm not here representing Hopgood Ganim but I should just say something about that in the sense that, as far as I can see from the documents, the transactional lawyer who drafted this matter was instructed by Mr Wills to insert that. There's no reason to suggest that she had any knowledge that indicated that recital was wrong.

20

MR NEEDHAM: It could be so if Mr Wills misled her.

MR APPLGARTH: Well, that's right. So I think in fairness to Hopgood Ganim-----

30

MR NEEDHAM: I in fact presided at a closed hearing where Mr Wills gave evidence, and Mr Wills in fact said evidence to the contrary there.

MR APPLGARTH: Well-----

MR NEEDHAM: Which is somewhat to the contrary of Hopgood Ganim not knowing about the falsity. But, look, it's undoubted that it's accepted that there was no such meeting on the 17th of June of 2006.

40

MR APPLGARTH: Yes. Well, I'm glad it's accepted, but, in my submission, it's unfortunate that this matter has been raised because if it was accepted on the basis of the Commission's inquiries, instructions, its discussions with Mr Gilmore and whoever, one must wonder why the recital was put to the witness as if there could be some truth in it.

MR DEVLIN: It was not put that way, and I absolutely deny that. I'm going to ask for-----

50

MR NEEDHAM: It's all right. It wasn't put that way. It was put to the witness that it was accepted that it wasn't, and that in fact that was Mr wills' daughter's birthday.

MR APPLGARTH: Well-----

MR NEEDHAM: The witness was then asked whether he'd taken

part in any agreement back in June. Not at a meeting on the 17th, but in any general agreement to agree to invest, and he answered those questions, that, no, he hadn't.

1

MR APPLGARTH: Yes.

MR NEEDHAM: I didn't ever hear it as being put to this witness that there was such a meeting on the 17th. I heard it to the contrary and, in fact, I would have stopped Mr Devlin if he had done as you suggest.

10

MR APPLGARTH: I'm grateful for the clarification. If I misunderstood what Mr Devlin was putting, or I may have misunderstood the purpose of why he was putting the recital to him. If it's my misunderstanding, I apologise. I, though, had a different apprehension that the recital was being put, admittedly I concede later there is reference to a birthday party, but I thought the recital was being put to the witness for him to confirm its accuracy, and when he didn't, he was questioned as to other matters which appear in the record. I'm happy to move on.

20

MR NEEDHAM: All right.

MR DEVLIN: Well, I'm not. I want to dwell for one moment because I've been accused of being unfair, and I'm very conscious of the legislative charter of this Commission, and I simply want to say this and I'll be brief.

The recital speaks of an agreement, not a meeting, an agreement. The thrust of my questions were against a background of the evidence we've seen that at least by June 2006, the subscribers, that is the subscribers, had agreed to that arrangement. And I made it clear that the 17th of June was a fiction in my questioning, at least according to Mr Wills.

30

I had in mind a memo from inside Hopgood Ganim in which, on the 22nd of August, still some month or so - well, no, less than a month prior to the separation or at least the disclosure by this witness, Mr Wills gave these instructions: "They're looking to put in three initial shareholders, the new CEO, the new CFO and Enhance, a Trevor Roe company". And then it says this at paragraph 12, "They are looking to get some seed capital into the entity in this regard they have agreed as follows", at least by the 22nd of August, "The investors (being Enhance: CEO and CFO will put in between them 500,000 in equity."

40

I did not put any part of a question unfairly, and I would like my friend to withdraw that. I jealously guard my reputation for assisting commission's of inquiry.

50

MR NEEDHAM: I must say I didn't - I knew what Mr Wills had given in evidence, Mr Devlin, so I was listening to what you said. I didn't see any of it as being unfair. But now that you've referred to that document as being something that was said, albeit not in the presence of this witness, in August,

perhaps this witness should have the opportunity to comment upon the accuracy or otherwise of that because it is a document I haven't seen before.

1

MR DEVLIN: Certainly. May I say I had in mind the weight of the evidence which might suggest an agreement in June. That was the background to my question. Perhaps I could have been more careful in the way I framed my questions, but that was my intent.

10

Witness, you have seen what I've gone through there, a file note about Vern Wills by Hopgood Ganim. It would appear to suggest that at least by the 22nd of August, that was the proposal Mr Wills gave instructions about, about you, the CEO, that is, and the CFO and Enhance having an agreement. Do you agree or disagree with that proposition?-- Could I make some general comments about these issues, not just referring to this document? I'll refer to it, but I'll refer to some others. In June, I'll go back and check my records, but in June, I very much doubt that I would have known that I had \$100,000 to invest. The \$100,000 came from my - when I made inquiries about my accrued recreation and long service leave following my departure from the public service, and that was invested into the company. But I can't recall at actually what day I made those inquiries, but my contract was coming up for renewal. I haven't seen this document from Mr - who is it, Mr Wills.

20

It is instructions given by Mr wills to Hopgood Ganim?-- Yeah, I haven't seen it. I mean, I don't doubt that Mr Wills probably had a business structure like this in his mind, but the first I recall of discussing the actual business structure and investment arrangements and other things was in late September, in the Enhance offices, where he actually sort of detailed on a whiteboard \$500,000, how much, you know, was I to invest and other people to invest in the company.

30

Righto. Thank you. I'll tender the subscription agreement and the file note of the 22nd of August 2006.

40

MR NEEDHAM: Exhibit 105, I think. Can I check that with Mr Perrett?

MR PERRETT: Yes, that's right.

MR NEEDHAM: H105.

ADMITTED AND MARKED "EXHIBIT H105"

50

MR APPLGARTH: I'd be repeating my offer if I misunderstood Mr Devlin's intent. I know his reputation is hard earned. I regard him as fair in all matters.

MR NEEDHAM: Sorry, your offer?

MR APPEGARTH: Mr Devlin was asking me to apologise. I think I already have if I misunderstood his intent.

MR NEEDHAM: I don't think you need to.

MR APPEGARTH: I don't think I need to repeat it. But he was last on his feet, he asked me to make it clear my view of him, and my view of him has just has been stated. I misunderstood, perhaps, the intent of the question. But perhaps others may have had the same view that I did with the line of questioning not knowing -----

10

MR NEEDHAM: It's probably made it clearer now, Mr Applegarth, so it is probably for the best, albeit it has upset Mr Devlin.

MR DEVLIN: Well, I think Mr Applegarth is a fine fellow too, Commissioner.

MR APPEGARTH: Well, the mutual admirations-----

20

MR NEEDHAM: I have known both of you gentlemen a long time and I have a high repute for both of you.

MR APPEGARTH: We'll stop the mutual admirations society, it is too embarrassing. I may have to ask you to suppress that last piece of transcript, it is far too embarrassing.

30

Earlier you were taken to some documents, and my learned friend, Mr Devlin, said or suggested that these documents found their way into an Information Memorandum. Do you remember that line of questioning?-- Yes.

There were Cut and paste documents and the like?-- Yes.

And you gave some evidence about preparing an Information Memorandum. I'm not quoting you here, but the thrust of it was that there may have been some matters in those documents that eventually found their way in, but I think your evidence was you essentially started with a clean piece of paper?-- Yes.

40

Would you look at this document. I'm sorry, I don't have multiple copies at the moment. It is an Information Memorandum dated March 2007. Do you recognise that document?-- Yes.

Is that the document to which you referred as the Information Memorandum-----?-- Yes.

50

-----that you had a hand in preparing-----?-- Yes.

-----in early 2007 or late 2006?-- To clarify. My role was in relation to preparing a lot of the text.

Yes. I tender that document.

MR NEEDHAM: That will be Exhibit 106.

ADMITTED AND MARKED "EXHIBIT H106"

MR APPLGARTH: Might the witness be shown Exhibit H45. You may remember yesterday you were taken to this document, and, as Mr Devlin pointed out, it was someone else's document and I can't remember whether you said this but I should ask you: was that document sent to you?-- No, it wasn't.

10

There was reference to the document containing the expression "'hot' list"?-- Yes.

Is that an expression that was used by you at that time?-- No.

20

Was it an expression that was used in your presence?-- No.

If I could just ask you this: back at that period, the business that you envisaged, did it depend simply upon acquiring existing businesses?-- No. The concept was to look at - you know, we've had this discussion about there were a number of concepts. The concept was to look at the possibility of acquiring businesses as a platform to grow in this sector. But the real, I suppose, benefits and advantages of having a business with a platform was the organic growth that would occur in this sector.

30

So far as the acquisition of existing business is concerned, I don't want to go over this because Mr Devlin has covered it quite extensively. Was it important that those existing businesses be in a particular sector of the market?-- Not generally speaking, no. I mean, in terms of the businesses that were purchased, you know, a strategy was based around those particular businesses. If I had my time over again and I was involved in the company, which I'm not anymore, I wouldn't have gone into the apprenticeship training area. You know, it was just an area that I think is very - is a very difficult area to service in terms of the training market, and the returns are quite low and the capital costs, investment, are very high.

40

Now, reference was made by Mr Devlin to working out a list. He used the expression a cascading list?-- Mmm.

50

Can you just help us with that? I mean, I think as Mr Devlin indicated at page 215, it cascaded, it seems, from Axial number 1 to Betaray number 5. So it is a big cascade, but was there a sense of cascading?-- In terms of working down the list?

Of possible businesses to acquire?-- Not that I'm aware of. I think it was simply people looking at what RTOs were

possibly available for sale and then approaching them on that basis.

1

If I could ask you some questions about this period when the RTOs that come on the scene as you explained yesterday, that came into view when Mr Harper started contributing matters, the idea of obtaining an RTO that had a User Choice contract?-- Yes.

So, was that roughly from May 2006 onwards?-- Yes. It was Mr Harper's view - prior to that there'd been no sort of discussion about any sort of - if there was any business developed, would it be involved in apprenticeship training, or anything like that. I mean, the standard approach for the sector had been, you know, people establishing, you know, relatively large businesses that were in the full fee for service sector of the training market, and apprenticeship training was always seen as very difficult because of all the regulatory issues associated with apprenticeship training and matters of those sorts of issues.

10

20

30

40

50

Mr Commissioner, I am conscious of the time, but I am conscious that I probably don't think I will take too long. I don't want people to be denied their lunch.

MR NEEDHAM: It would be no inconvenience to me. If you won't be very long it is probably more convenient to everyone to sit on for half an hour, save having to come back this afternoon.

MR APPLGARTH: I think - I didn't specifically mention this to Mr Devlin but I gave him an idea of some topics I was going to cover. I think a lot of them are ones I can ask leading questions, just in the interests of speeding matters up. I will try not to if there are areas of contention.

MR DEVLIN: No, I don't have a problem with that.

MR APPLGARTH: You will see if you have still got H47, which is the Gbus Ventures, Mr Sinclair's note to Mr Wills of 6 June 2007. In the first dot point there is identification there of what you and Greg, who I take is Greg Harper, were the areas training should be focussed in. Do you see those ones? Energy, Telecommunications and the like?-- First dot point - sorry?

47. I am sorry.

MR NEEDHAM: It is the first dot point in the attachment.

MR APPLGARTH: It is 47. I have misled everyone.

MR NEEDHAM: No, you said 47.

MR APPLGARTH: I said 47 but I unfortunately had the witness given-----

WITNESS: He gave me a different document.

MR APPLGARTH: That one, 47, I think you established yesterday is a document that wasn't sent to you and hadn't been seen by you?-- Yeah.

45 is another Gbus document. We're now all on the same page?-- Mmm.

The first dot point is talking about what you and Mr Harper had identified as an under serviced market. Do you see that?-- Yeah.

And it says, "While both identified", et cetera, "as primary targets, these interests are currently being under serviced by inflexible TAFE delivery models"?-- Mmm.

Does that reflect the advice that either you or Mr Harper, or both of you gave?-- I think it was - the advice was more around Mr Harper's view because he is a recognised expert in flexible training delivery.

I think we've dealt with your and Mr Harper's involvement?--  
Yep.

1

During this process, starting in May 2006, is it the case that Mr Wills brought to the table, as it were, business and finance expertise that you and Mr Harper and others didn't have?-- Well, I mean - I think Mr Wills' expertise is in sort of business and finance, that's right. Mr Harper and I were both individuals with knowledge of policy and the sector.

10

And we've seen in exhibits this morning, for example, the century exhibit, D100. Mr David Allen - you don't need to go to this but Mr David Allen, Chief Financial Officer Enhance Group?-- Mmm.

Did Mr Wills have his people do the financial sides of things?-- Yeah, well, Mr Wills is dealing in all these matters separately to me and with people like his CFO, as I understand it, and Mr Sinclair who he had employed also through his Enhance Group, I also understand.

20

Now, up to this time, had you - I will withdraw the question. Had you had business dealings with Mr Wills? Had you bought shares in his company?-- No, no.

Or been a consultant to him?-- No, no.

Did that change? We've been over what activity you dealt with here preparatory to enter into agreements?-- Yeah.

30

But do you hold - the time we're talking about, had you had business dealings with him?-- No, no.

In that sense?-- No.

The other person, just to complete the picture, is Mr Sinclair who is - I take it he is Gbus Ventures Pty Ltd?-- Well-----

That's his letterhead?-- That's what's emerged through this, yeah.

40

Now, if you could just briefly describe what role he played in the evolution of this business plan, say after May 2006 - or perhaps take it back earlier?-- Yeah.

Could you just try to capture what his role was during his planning phase?-- I can't - I can't recall the exact date when he sort of emerged on the scene but I think it is around May 2006, and my understanding was that Mr Wills had - Mr Sinclair had some previous background and experience and dealings with Mr Wills and Mr Sinclair was regarded as somebody who could develop business plans, he had some sort of business planning acumen and Mr Wills had appointed him to undertake tasks in that area.

50

So were you, you personally, paying Mr Sinclair's way?-- No, no.

From your last answer, it indicated like he had some relationship with Mr Wills?-- Well, as I understand it I think he was employed by Mr Wills through either Mr Wills' own personal arrangements or Enhance, I don't know, but he was employed by Mr Wills to undertake this task.

1

Right. And he appears to drop out of the picture at some stage. Can you help us as to when and why? If you can't just tell us?-- Well, as far as I know he - and I don't know what the arrangement was but he finished up his dealings with Mr Wills and then Mr Gilmore appeared on the scene. He was somebody who Mr Wills had just negotiated with to become involved with this venture.

10

Right. Now, we've discussed, and I think you've agreed that you were earmarked to be the CEO if matters came to an agreement. Was there some contingency plan of which you were aware that if you didn't take that offer, if you took another offer or stayed put, as to whether there was a contingency plan?-- Yeah, I am aware that subsequent to the event that Mr Wills had discussed with other individuals who would be the CEO of the company, including the individual who is now currently the CEO of the company. To put that into some context, after I had indicated on the 9th of September that I wished to resign, there was a number of meetings between myself and the Premier where he had tried to convince me to remain in government in the role of - permanent role of Director-General Department of Mines and Energy, so - and, you know, quite frankly I was considering that issue at that particular time. Even though I put in a letter saying I intended to resign, the Premier had asked me not to and he asked me to sort of take some time to think about it.

20

30

Thank you. Now, after that date did you meet people associated with these businesses? For example, Ms Hilton - Mrs Hilton?-- Yes, yes, after I had resigned I met with the Hilton International - Mrs Hilton and their daughter Natalie McIntyre and I think some time later the Embreys from Betaray Training Academy.

40

Were you introduced to Mrs Hilton as the person who is going to-----?-- Yes.

-----be the CEO?-- Yes.

Did she say anything in response?-- I - I don't believe - I mean in terms of - in terms of my involvement I think she was surprised. There was some indication from Mr Wills that they had - people had thought that-----

50

Don't need to name individuals. Just say "another person"?-- Yeah, another person would be doing the job and I think that had surprised-----

I will move on to another topic. Yesterday - and this is at page 218 line 3 - you said in connection with information about Axial's User Choice allocation, which you acknowledge shouldn't have been referred to in May 2006, and you said,

"Well, I just - I don't see that there could be any advantage gained." That's what you said. I would like to just take a little time-----?-- Yep. 1

-----to get you to explain your answer, and perhaps I'll start with a more general topic about the potential commercial use of allocations to RTOs like Axial and Betaray and then come back to some more time specific issues?-- Yeah.

You heard Mr Leckenby's evidence about allocations; they are not a guarantee of funding and the like. Do you generally agree with his evidence?-- Yes, yeah. I mean, User Choice agreement is a - I mean - and we heard Mr Leckenby's evidence so I don't really want to repeat it but it is not a guarantee of funding, it is a funding limit and it is a process upon which the department uses to manage funding for apprenticeship training or apprenticeship training in designated areas, it manages that funding, because there had been a decision taken probably 20 years ago that unlike other areas of vocational education, apprenticeship training and some areas of traineeship training would be free to both the employer and the apprentice. And so - and this was the mechanism for the government to manage that process. You know, just because you have a limit doesn't mean you are guaranteed that funding. Indeed, some of the companies we purchased, while they had a limit, they actually had program training in significantly less than that limit. 10 20

So if I understand your answer, knowing what the allocation is by getting off the internet or being told of it doesn't indicate what the revenue of that entity is going to be?-- No, no, and of course with any business - I mean, that's - you know, that's potentially only one line of business operation. There would be, you know, fee for service business, there could be, you know, employment services, there could be any number of other revenue sources. And, of course, it doesn't - it doesn't provide you an indication of what the internal financial arrangements are of the company in terms of its profit and loss. 30 40

You have explained due diligence process. Is that why you understand due diligence is undertaken?-- Yeah, so what happened during the due diligence process from the time that those confidentiality agreements were signed and through to the time that it was completed in mid-December 2006, I think was the date, yeah, there was - due diligence process then delved into the detail of what was in - what the company's financial arrangements were and the negotiations occurred over the - between the owners and the company over the appropriate purchase price for those entities. 50

Now, I've got about as much commercial sophistication as you and I don't have any Commonwealth Bank shares so we will keep it at that level. In order to know what the value of the business is do you need to know, as far as you understand, what its maintainable income is before interest and tax to know what-----?-- Well, I mean to know what its revenue has been, you need to know what its historical revenue has been,

you need to know what its future prospective revenue will be, and you need to understand its cost structures and its - including its capital and facilities and equipment and all those sorts of things, staffing structures, those - all those arrangements.

1

Right. That's not in your - was that in your skill set?-- No, no, Mr Gilmore undertook those tasks for the group. My role within the group during that period of time - and while I was designated as CEO, it was a pretty loose type of arrangement because we were going through business development phase, my role was principally around business development and business strategy.

10

Okay. If we can just then quickly move through to the next topic which was being a bit more specific about the use that could be made of, for example, Axial or Betaray's allocation for 2006/2007. If I could be time specific I want to deal with what use could be made of that number in terms of the cap on allocations for that forthcoming year. What use could be made of it in, say, the May/June 2006 period before that figure goes up on the internet?-- Oh, you would have an understanding of the potential size of the - their - their - the number of apprentices that they could possibly train, but once again it is a number that can change during a period of time.

20

My learned friend Mr Devlin I think - I can't remember if it was yesterday or the day before spoke as Mr Wills being an entrepreneurial fellow. I am not quoting him here but there was an opportunity for Mr Wills to get in early?-- Yeah.

30

I am hopefully capturing the substance of what he said. Do you have any comments about that - whether there is a window of opportunity there in May/June 2006?-- Well, I don't believe it provided him with any benefit, or any material opportunity in relation to having access to that information.

I won't ask the witness this but it just may help if I put this on the record, so it is all in the one place. Exhibit H87 which was the statement from the owner of Axial, indicated that Mr Wills approached him first on the 11 July 2006. That's at paragraph 12. And at paragraph 13 it indicates that he didn't offer a price, only a price formula. Does that accord with your recollection as to what if anything may have been said or offered to Axial?-- I don't recall that - any discussion that there was any price offered to Axial, and typically in these sorts of discussions, as I've learnt subsequently from being in the company, that you would have an initial discussion about whether an entity was interested in possibly selling or merger or some other commercial arrangement, and then once you had explored that you would then start talking about what the financial arrangements could possibly be.

40

50

I am moving to another topic now, and that is yesterday there was discussion about what you acknowledged was a serious error in forwarding on the list of allocations that you did under

that email of the 9th of May 2008?-- Yep.

1

Now, that document, the attachment, if I am correct, starts its life, it would seem, as a working document within the department? The spreadsheet?-- Yes, yes, yes.

And it then goes forward through the process that we've seen and gets split up into different documents that go through different formal approvals by-----?-- Yes.

10

-----an officer, Director-General, or Executive Council and those I think over 1.5 million - I could be wrong about the number?-- That's right. That's right.

Does the document itself - tell me - and you may not be able to help us here - does that type of Executive Council approval involve a Cabinet submission?-- No, it's - minutes that go to Executive Council, particularly minutes like this, they are for expenditure approval, they have to go to Executive Council under the financial delegations, which are detailed under the Financial Administration and Audit Act, I believe. And therefore they go together - they go to - they are not sort of a Cabinet submission, and then it is sort of like on the Cabinet agenda for debate, or whatever like that, it is a document which goes forward with a schedule, Cabinet then endorses it and then it is lodged in the Executive Council secretariat.

20

Cabinet endorses it in the sense that there is a list of minutes?-- Yes.

30

Might be a-----?-- Minutes.

-----list of them?-- There is no discussion of it, it is sort of, you know, a - it is a process issue around the FA and A Act delegations.

We're not discounting the significance of it, I hasten to add. I am not asking the witness to do that and I don't understand he is, but just in terms of - I just want to clarify as to whether it was a Cabinet submission in the sense that we would understand because these things can be misunderstood.

40

MR NEEDHAM: I think from my general knowledge of other matters I have gained from my position, I think I understand how the process works.

MR APPLGARTH: I am sure you do. There might be some younger people in the audience who don't understand the difference between Executive Council and Cabinet.

50

MR NEEDHAM: Sure.

MR APPLGARTH: I will move on. Just one thing that I should ask you, I think it was accepted you were a very busy person during this period 2006/2007?-- Yeah.

We have looked at many emails over recent days?-- Mmm.

Do I take it they weren't the only emails you were receiving?-- No, no, I would probably - I think we did a count at one stage where there was in any given week 200 documents or - over 200 documents or emails or other forms of communication that I would receive that I was required to attend to.

Right?-- On average.

10

Just briefly, your day, does it involve sitting in your room or do you - your day, when you were Director-General or Director-General of these two departments, were you in your room beside your computer all day?-- The days - I mean, the role of a Director-General is taken up with a lot of meetings, so there is usually a lot of meetings. There is - I mean, my experience is most of the time in terms of paperwork you try and do as much as you can in the window of opportunity you have during the day.

20

Right?-- But also, you know, I would regularly have my assistant prepare a bundle of documents for me to take home at night to go through.

Okay. Now, I am going to hopefully move through this quickly, just to wrap up some of the aspects of the business after you started it - or you started as CEO, which the documents indicate your employment started I think on the 19th of October?-- That's right.

30

The letter of offer came to you on the 12th, I think. Did you have to do outside consultancy work?-- Yes. In terms of - in terms of the way - while-----

A "yes" will do?-- Yes, yes, but I would probably explain it. While those remuneration arrangements were sort of established, in practical terms while we were setting the company up, to undertake cashflow I - to generate cashflow for the business I did a whole range of other external work which I then - the revenue from which I gained I then put back into the company. It wasn't look a financial arrangement fee, I didn't get shares or anything associated with it, it was simply a-----

40

You would bring in the money to pay your salary?-- Correct.

We've seen you entered into a share subscription agreement on 9 November 2006?-- Yes.

You say you didn't read it carefully?-- Mmm.

50

Why is that?-- I wasn't involved in developing any of those documents. They were being developed by other individuals. It was a document that had been developed by - I knew the legal people who had been involved in it so I didn't spend a lot of time reflecting on the detail in the document. It is simply a - you know, a mistake that I didn't go through it in any particular detail.

Well, in the fullness of time you can go through and you can see that you also represented you were a corporation?-- Right.

Perhaps the people who drafted that may perhaps not have included that as well?-- Yeah, it was just both myself and my wife entered into as private shareholders. There was no companies involved.

10

Now, we've seen you subscribe at one cent?-- Yeah.

That's the same price as the other investors?-- Yes.

You weren't given any free shares?-- No.

In terms of the acquisitions of Hilton and Betaray, can I suggest to you that contracts were entered into by CAG to acquire them on the 15th of December 2006?-- Yes.

20

And that the Hilton transaction settled on the 8th of January 2007, or thereabouts?-- Yeah, yeah.

I am not asking you to be date perfect but is that your understanding?-- That sounds accurate, yes.

And the Betaray acquisition settled on 17 January 2007 or thereabouts?-- Yes, that sounds accurate.

You alluded before that - well, I'll just ask the question, I suppose. Were there some problems with - and I am not going to ask you where the problems sprang from but were there some problem with the Hilton and Betaray companies achieving what had been their projections?-- Yeah, I think it is - this is my view, and probably a view within the company, and I don't want to dwell on the historical business and internal business arrangements of the company, but I think it is fair to say that on reflection the purchases of those two businesses probably weren't the best commercial ventures that we could have undertaken, that during the course of early 2006 that the-----

30

Sorry, 2007?-- 2007, the revenue projections for both of those companies weren't at the level that we were expecting - I am not going to sort of go through and sort of talk about, you know, what particular issues were there.

I will move on?-- Suffice to say the company - overall the company wasn't in a particularly strong financial position and that's why I had to continue doing a lot of consulting work to inject that cashflow back into the business.

50

But at the same time you were developing the business plan as we see in that Information Memorandum that came out in March of 2007?-- That's right.

So apart from trying to keep the existing businesses that had been acquired going-----?-- Yep, yep.

-----and hopefully getting them on track-----?-- Yeah.

-----you had to think about other things?-- Yes. And while - to come back to the issue of share listings and stuff, while there were people there with a strategy around listing on the ASX, I think myself as a CEO had a very strong view that the company was a long, long, long way away from, at that time in early 2007, from being able to be listed on the Australian Stock Exchange.

In any case we see in the ideas that you had to try and get training positions in the mining industry which was the subject of the skills shortage. Did you get mining clients eventually? You don't need to name them but did you get into that area?-- Yes, yes, we got into that area.

We heard reference to All Trades in the evidence yesterday-----?-- Yes.

-----or I think it was with Mr Harper as well?-- Yeah.

May have been two days ago, I can't recall. There was some issue - and if you could just quickly summarise it - did All Trades come across as a client to CAG?-- Yes.

Or was it going to come across?-- Well, it - the issue around All Trades Queensland - I should go back a step. In terms of setting up these businesses, I mean I think - the training market is - you can't really categorise it as a pure competitive market, there is an element of competition between providers, but also cooperation and collaboration, and by this stage we were actually working with the TAFE system on a range of issues. The TAFE system, though, as we've discussed, had some - you know, had some issues and - around performance and flexibility and they'd had some problems with All Trades Queensland. All Trades Queensland were - are the largest employer of apprentices in Queensland. They are a labour hire firm but they employ apprentices.

1  
10  
20  
30  
40  
50  
60

Approximately how many apprentices did they have back then?-- 1  
2,700. And they had explored the opportunity with us to move  
into the field of apprenticeship training. To move into an  
agreement with us and to providing apprenticeship training.  
So we undertook to deal with them on that basis. Prior to  
doing that - and I should stress all the way along in terms of  
setting up this business, I'd had many discussions with people  
from Department of Education and Training, and explaining to  
them what we were doing in terms of growing in this  
apprenticeship training market because I didn't want to get to 10  
the point where we were working in this market and it was  
causing a lot of tension between us and the system. You know,  
I just didn't want that sort of perception that, you know, we  
were out there trying to really aggressively pursue their  
business. In terms of All Trades Queensland, before we took  
on that business, I actually met with the head of the -  
Mr Steve Ghost, the head of Skills Tech which is the overall  
overarching body which undertakes apprenticeship training in  
Queensland. I met with him on the basis, you know, that we  
weren't going to pursue the All Trades Queensland business if 20  
it caused - if it caused a degree of tension between us and  
the TAFE system. I then - he indicated-----

I don't want to cut you short. I'm not - this is very  
interesting, but we heard from Mr Harper that some people in  
the TAFE system obviously wanted All Trades back or some of  
All Trades back. So was there a bit of a tug of war there?--  
So, I mean, while Mr Ghost had no issues, it turned out that  
there were others in the system who did have a lot of problems 30  
with Careers Australia Group growing to that extent and what  
the implications would be, and that caused a degree of tension  
between us and the government officials.

Now, a registered training organisation in Queensland has to  
have a relationship including, to some extent, a commercial  
relationship with the government, or with the Department of  
Employment and Training if it's going to enter into, for  
example, User Choice contracts, correct?-- Yes. It has to  
have a regulatory arrangement. 40

And so CAG and the companies that it acquired had to continue  
to have that regulatory and, to some extent, contractual  
relationship?-- Yes, that's right. We were regularly audited  
as a registered training organisation before we bought any new  
businesses. We would have to undergo an audit after purchase  
of the business to ensure that we were meeting the required  
standards.

But there have to be User Choice contracts renewed and so  
on?-- Yes. I mean, it was a regular basis of dialogue around 50  
User Choice. And I think-----

That's enough for me?-- Yes.

Can I suggest to you you learnt in October 2007 that you were  
the subject of a CMC investigation?-- Yes. Early October  
2007.

Now, there's this CMC cloud over your head and, if I can summarise here, that posed difficulties in terms of the relationship between the company of which you were CEO and the department?-- Yes.

And you, in October 2007, found that your position, therefore, was untenable? I don't want to go into the details, but there were difficulties?-- I was asked to resign, yes.

10

And you resigned?-- Mmm.

In October 2007?-- Yes. Late, 22nd of October.

And you also transfer, as does your wife, the shares that you had purchased?-- Yes, that's right.

You transferred them back, so to speak, and they've gone to a nominee company of Hopgood Ganim, they were transferred back?-- Yes, at no - at the value at which we purchased them.

20

Thank you. I'm just on to, I think, the second last topic. I'm sorry if it has taken a little longer than I'd hoped. Chairperson, I have previewed this topic with Mr Devlin, and as he indicated, he doesn't mind me leading.

Mr Flavell, on your instructions at the start of this hearing on Monday, and I take it from your evidence it's still your position that you accept that the situation which you now find yourself in was in part of your own making and partly because of a difficult position which you found yourself in in developing plans for a business if and when you left the Public Service?-- That's right.

30

You're not denying that acts and omissions that you've addressed here, in part, bring you here?-- Yes, that's right.

The fact that there is a CMC investigation concerning you went into the media, when was it, the end of last-----?-- In November 2007 at some stage.

40

And was that - you are self-employed?-- Yeah, yeah, I operate my own consulting business in the Energy sector, predominantly.

At some stage, and I think it is Exhibit 1, the CMC decides to have a public hearing; that is a fact?-- Yes. Yes. Yes.

I'm not being critical of that decision. I'm simply trying to ascertain from you some of its consequences. One consequence is you've had to pay Mr Perrett and I, and others?-----

50

MR NEEDHAM: He doesn't have the to. You can waive your fees.

MR APPLGARTH: Can I just say I'm giving a substantial discount over my usual corporate and media clients?-- I mean, to paraphrase what you're saying, I'm not denying that I find myself here through acknowledgement of actions of my own

accord. However, you know, it has had a devastating impact for me personally, and financially, and, you know, it's been a very difficult situation and career prospects going forward are also quite - can be quite difficult as well.

1

And far be it for me to ever criticise the media except when I'm acting for a plaintiff, is that because this hearing has been the subject of extensive media publication?-- In part.

You've got a photo, a very large photo in the paper; not the social pages?-- Well, that's right.

10

"Bureaucrat stood to benefit", the AFT talks about "Contracts worth \$240 million", and so on. Even one - if you Google your name, "Flavell" in the Courier-Mail, it brings up as the first hit "Scott Flavell corrupt or just doing his job?" How has that media coverage made you feel?-- Oh, it's been very difficult, and, you know, I just - in terms of - in terms of my career and where I've come from and where - and the sort of things I have achieved in my period of time, it's very difficult to find myself in this situation given my contribution to public policy over a period of time.

20

And going forward, those things being on the public record, what is your apprehension as to whether they'll be helpful to your career?-- Well, I think it makes it very difficult to achieve future employment, whether it's as - certainly in the public sector, but more broadly in other areas it does make it difficult.

30

Thanks. I just want to end, not take too much time, just to round off some systems issues because as the Chairperson made clear at the start of the hearing, and the Commission made clear beforehand, your case study, very detailed case study, and what's come out of it may be used to formulate recommendations about matters. In terms of the position that you found yourself in, you earlier explained that you were the accountable officer to TAFEs, you were a regulator, you had a mission to promote private sector, and so on. You had multiple responsibilities; correct?-- Yes, that's right.

40

And I think you've given evidence yesterday and again today that that arrangement is rather different to some other sectors where you have corporatised entities?-- Yes.

That have their own system of accountability?-- That's right.

And is one of the things that you recommended when you were Director-General that there should be legislative change to properly constitute TAFEs as independent-----?-- Statutory bodies, that's right.

50

And that legislation went through shortly after you-----?-- Left, yes. So it's been introduced, and the first TAFE, being Southbank Institute has followed that way. I find the Director-General in any entity like that, it will just forever be confronted with a conflict because they have - they're responsible for every TAFE, and there's this competition that

goes on between them, and then they're responsible as a regulator for the entire system. They're the policy maker. They're the purchaser. It's just a recipe for disaster, and I have been able to reflect on it subsequently compared to - because I also had responsibility for Energy which was probably a more disciplined system where we had, you know, the Director-general of Energy has very specific responsibilities for policy and regulation, but not provision of Energy services.

1

Right. But nonetheless, the system that was developed and launched as a Queensland Skills Plan in March 2006 has achieved results?-- Oh, yes. I mean, it's a document that has received a lot of praise from a number of quarters. It is used at a National level. Even after I departed from government, I was still involved in many National processes to assist with policy development, consistent with the Skills Plan.

10

And only last July - sorry, last Thursday, July 10th, 2008, Minister Welford put out a press release "Queensland apprentices continue record growth." Are you aware of that?-- Yes.

20

In your opinion is that because of the policy settings? I know you are not taking personal credit for it, but in terms of policy settings and roll out private sector and funding of TAFEs, how much is that-----?-- I think Queensland can say now it is the leading jurisdiction in terms of apprenticeship training. It certainly trains - I think in actual number terms, it actually trains more apprentices than other States. Certainly in terms of growth it trains more, and it has one of the best and most flexible systems, and I think that's reflected in those numbers.

30

Leaving aside this issue about what the responsibilities of the Director-General were back in your time, it appears as if the Director-General then, and I'm not sure to what extent now, has to carry forward that policy and promote the delivery of employment and training through the private sector, to a large measure, not in dereliction of TAFE but it is part of the policy objective to continue; correct?-- Yes. In terms of the system, there is a target of 30,000 extra training places in trade and technical occupations over the next five years, and it would be virtually impossible for the TAFE system to deliver all of those. That's why it's important for both private and public providers to increase the number of training places.

40

I suppose just in the next couple of minutes, I'd just like to broaden it because as Mr Devlin and the Chairperson, Mr Needham, have indicated, we want to have an intelligent discourse about these issues, and can we broaden it to the more general issue of the fact that in Queensland, perhaps in many other States, in the UK and others, there's what's, I think, Blair Rights call it the Third Way?-- Yes.

50

What we have been talking about in the last few minutes is an

example of that where you don't have a whole government system, you know, privatise the government system, a wholly privatised system, you have a mix?-- Yes. I think what we were trying to achieve with Careers Australia Group was ahead of its time in some ways because it was sort of basing an entity around that Blair Government model which they call the Third Way. So it is not sort of privatisation, it not - the first way is pure government service delivery. The second way is privatisation. The Third Way is this combination between public and private where there's public and private entities operating together. There's collaboration. There's purchasing arrangements, and Careers Australia Group - I'm not saying it hasn't been done before because there's established, you know, private training market but Careers Australia Group was about trying to grow that to a substantial size.

1

10

Well, the Third Way sounds like a good idea but it puts people like you who have to serve that policy in a somewhat difficult position?-- Yes.

20

Trying to ensure that the public sector providers provide, and ensure that the private sector providers provide?-- Yes. I mean, there is a real - I mean, I think there needs to be a focus on how you manage that balance.

Because apart from the actual management to get the maximum results and its result driven, I take it-----?-- Yes, that's right.

-----ultimately you just want the number of apprentices trained for the allocated budget and that is the result?-- Yes.

30

But within that, people within various sectors can have the perception that you're favoring, as a Director-General, that you're favoring the private sector over the public, or vice versa?-- Yes. And that often occurs within this system, and most private providers think that the TAFE system is sort of out there, or the Department of Employment and Training doesn't give them as easy a run as they do the TAFE sector.

40

Well, no criticism. The gentleman who operated Axial, who is commenting about the rigor with which he was audited and the systems that had to be placed?-- I mean, that's correct. The view of private providers.

And were there also people within TAFE who thought the public - the private sector was getting too much of a go?-- Oh, I mean, there's always this tension between both sides. People see private providers have it easier because they don't have a lot of the restrictive industrial relations arrangements than other government processes, so the public provider thinks that. The private providers thinks that the TAFE system gets an easier run because it doesn't have to go through and negotiate, for example, for a User Choice contract, it just gets automatically funded for a contract based on the number of apprentices it trains. So, you know, there's that inherent tension in the system.

50

Well, Mr Flavell, I'll claim credit for this but on Monday in my opening, I gave a hypothetical example of the Director-General of Health having a similar policy objective of cutting down waiting lists, and it might be a good idea to deploy both the public hospitals and private hospitals to achieve that. So from your policy background, can you help this Commission and the Queensland public with any way in which this tension can be resolved and potential conflicts, I suppose, can be resolved? If you can, fine, if you can't, you can admit defeat. Can I put the question on notice, that might be a better way?-- Yes.

10

Just finally, and I think I have said finally three times, but this is final. From your evidence it seems you, and I take it it would extend to other Director-Generals are attractive to potential employers?-- Yes.

You were headhunted, so to speak?-- Yes. Yes.

20

And it's not just Directors'-General who are attractive to potential employers. It's not just senior management. There are people in all levels of responsibility in the public sector who are attractive potential employees to people in the private sector?-- That's correct.

We have seen that with Mr Slater and Mr Harper; correct?-- Yes, that's correct.

And from your background in George Street, would it be correct to say that a large percentage of public sector employees who are good do have an attraction to the private sector?-- Yes. I think that's right. I think increasingly we've seen over the last five years people exiting the public system into the private sector. A lot of that is because people see it - and a lot of people focus on remuneration. I actually don't believe that a lot of it is to do with remuneration. People actually are looking for new opportunities and challenges, and I think also people like myself are wanting a different experience so that you can experience something else and then possibly go - exchange and then at a later stage go back in into the public sector. So in terms of any new rules or regulations, or anything else that are considered, I think it's important that we continue to encourage people to be able to interact between the public and private sector because you can get advantages of that, and that's what John Slater said the other day. When we were in the TAFE system, we used to value people who had private sector experience because they brought in new skills and expertise into the system.

30

40

Sir, those are the only questions. Can I say, this last topic I have touched on is one of obvious interest to the Commission, and I hope that has been helpful up to a point.

50

As much as no doubt Mr Flavell will try to assist the Commission, there is a limit to how much we can do by way of submissions about what is a very complex matter that you're considering as to what new systems can apply in pre-separation

and post-separation contexts.

1

As we said on day 1, we'd like to help. That remains the case. We might be able to be of help if you could help us with identifying whether there are systems that operate in other Westminster countries or other countries that have developed systems so that we can focus perhaps on something concrete because this problem, I guess, I'm not asking Mr Flavell, I guess, is - must happen in White Hall, and New Zealand and every province of Canada and other States.  
So-----

10

MR NEEDHAM: Well, a review has been done. We'll look at perhaps providing that to you so that at a later stage you'll be making some submissions, if you want to make some submissions on those. Naturally, of course, we always look at what has been done in other jurisdictions to see if we can gain any benefit from it.

MR APPLGARTH: If we can help, we'll help. But obviously our submissions will be directed to Mr Flavell's circumstances and the unfortunate consequences for him of his admitted errors.

20

MR NEEDHAM: Yes. Yes, Mr Devlin.

MR DEVLIN: I have no further questions of Mr Flavell.

Chairman, can I ask that the public sittings adjourn to an appropriate date for the taking of some public submissions.

30

I have had extensive discussions with my learned friend. It would appear that the first date which would allow proper consideration of the evidence, and the matters involved, the first date where we could both assist you would be on Thursday, the 28th of August, which would give time to digest the evidence and formulate submissions, and I would propose to give my submissions to my learned friend about a week ahead of that.

MR NEEDHAM: All right. So you'll give over submissions by, you would aim for, Thursday, the 21st of August?

40

MR DEVLIN: Close of business that day, yes.

MR NEEDHAM: And Mr Applegarth, they go to you on an embargoed basis to use just for that purpose.

MR APPLGARTH: Yes, of course. By that obviously our client will need to see them. The solicitor's client.

50

MR NEEDHAM: Yes. It's just I do remember another public hearing I did. It went out on a confidential basis which included the Gold Coast Bulletin, but I'm not suggesting that would happen in your case.

MR APPLGARTH: I have not, I think - I don't want to say anything about the Gold Coast Bulletin or the Gold Coast.

MR NEEDHAM: That is probably a wise course. I understand.

1

MR APPELGARTH: I think from what Mr Devlin and I would say about the legal profession, that, I hope, would be an exception, if it was any member of the legal profession who did it, but I doubt very much if it was. There are people who have an interest in making mischief, and I think it would be exceptional. I couldn't think why anyone would want to do it.

MR NEEDHAM: All right. Well, I understand that it can be difficult to get a date that suits my convenience and the convenience of both of you busy counsel. So, allowing for that, we'll adjourn the further proceedings of this hearing to Thursday, the 28th of August at 10 o'clock on that day-----

10

MR DEVLIN: Yes, thank you.

MR NEEDHAM: -----with the understanding that you will provide, by the close of business on the 21st of August, an outline of your submissions to Mr Applegarth to enable him to be in a position on the 28th to make his submissions.

20

MR DEVLIN: And do you wish to make any comment about the venue for the hearing?

MR NEEDHAM: Yes. Well, we will have moved by that time. This will be the last hearing in this particular premises. We'll be in our new premises at Green Square in the Valley, St Paul's Terrace, and it will be heard there.

30

We'll adjourn till 10 a.m. on the 28th.

THE HEARING ADJOURNED AT 1.55 P.M. TILL 10 A.M. ON THURSDAY, 28TH AUGUST 2008 AT 10.00 A.M.

40

50

WITNESS LIST

1

SCOTT FLAVELL.....PAGE 247

10

EXHIBITS

EXHIBIT H90.....PAGE 247

EXHIBIT H91.....PAGE 248

20

EXHIBIT H92.....PAGE 251

EXHIBIT H93.....PAGE 255

EXHIBIT H94.....PAGE 256

EXHIBIT H95.....PAGE 256

EXHIBIT H96.....PAGE 257

30

EXHIBIT H97.....PAGE 258

EXHIBIT H98.....PAGE 265

EXHIBIT H99.....PAGE 265

EXHIBIT H100.....PAGE 266

EXHIBIT H101.....PAGE 267

40

EXHIBIT H102.....PAGE 267

EXHIBIT H103.....PAGE 268

EXHIBIT H104.....PAGE 272

EXHIBIT H105.....PAGE 286

EXHIBIT H106.....PAGE 288

50

-----