FEDERAL COURT OF AUSTRALIA

Australian Competition and Consumer Commission v Unique International College [2017] FCA 727

|  |  |
| --- | --- |
| File number: | NSD 1277 of 2015 |
|  |  |
| Judge: | **PERRAM J** |
|  |  |
| Date of judgment: | 30 June 2017 |
|  |  |
| Catchwords: | **CONSUMER LAW** – alleged contraventions of s 21 of Australian Consumer Law – unconscionable conduct in trade or commerce – unconscionable conduct in connection with goods or services – where Respondent provided vocational educational services in form of online courses in management, salon management and marketing – allegation that Respondent targeted particular locations, including rural and remote towns and indigenous communities and areas with significant populations of low socio-economic status for marketing and enrolling consumers in courses – whether system of conduct or pattern of behaviour established – whether unconscionable conduct in relation to six nominated consumers - whether unconscionable conduct in all the circumstances  **CONSUMER LAW** – alleged contraventions of ss 18 and 29 of Australian Consumer Law – misleading or deceptive conduct in trade or commerce – false or misleading representations about goods or services – whether conduct of Respondent misleading or deceptive in relation to representations made to consumers – whether silence in relation to particulars of VET FEE-HELP scheme misleading or deceptive  **CONSUMER LAW** – alleged contraventions of ss 74, 76, 78 and 79 of Australian Consumer Law – unsolicited consumer agreement provisions – whether unsolicited consumer agreements within meaning of Division 2 – whether statute requires dealer to initiate negotiations which led to entering into of agreement – disclosing purpose and identity – informing person of termination period – requirement to give document to customer – requirements for all unsolicited consumer agreements – whether ‘party plan event’ exception applies |
|  |  |
| Legislation: | *Competition and Consumer Act 2010* (Cth) sch 2, *Australian Consumer Law*,ss 21, 21(4), 21(4)(b), 22, 22(1), 22(1)(a), 22(1)(c), 22(1)(d), 22(1)(e), 22(1)(i), 69, 69(1)(b), 69(1)(c), 69(4), 70, 71, 71(a), 71(b), 72, 73, 74, 75, 75(1), 75(1)(a), 76, 76(1), 77, 78, 78(1), 79, 79(b)(i), 79(c)(i), 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95  *Corporations Act 2001* (Cth) s 254T  *Evidence Act 1995* (Cth) ss 95, 97  *Higher Education Support Act 2003* (Cth)  *Higher Education Support Amendment (Streamlining and Other Measures) Act 2012* (Cth)  *Higher Education Support Amendment (VET FEE-HELP and other Measure) Act 2012* (Cth)  *Competition and Consumer Regulations 2010* (Cth) rr 81(1)(c), 81(2), 84, 84(c) |
|  |  |
| Cases cited: | *Australian Competition and Consumer Commission v ACN 099 814 749 Pty Ltd* [2016] FCA 403  *Australian Competition and Consumer Commission v ACN 117 372 915 Pty Limited (in liq) (formerly Advanced Medical Institute Pty Ltd)* [2015] FCA 368; [2015] ATPR 42-498  *Australian Competition and Consumer Commission v Keshow* [2005] FCA 558; [2005] ASAL 55-142  *Australian Competition and Consumer Commission v Titan Marketing Pty Ltd* [2014] FCA 913; [2014] ATPR 42-480  *Jones v Dunkel* [1959] HCA 8; (1959) 101 CLR 298  *Nezovic v Minister for Immigration and Multicultural Affairs (No 2)* [2003] FCA 1263; (2003) 133 FCR 190  *Paciocco v Australia and New Zealand Banking Group Limited* [2015] FCAFC 50; (2015) 236 FCR 199  *Sunchen Pty Ltd v Federal Commissioner of Taxation* [2010] FCA 21; (2010) 264 ALR 447  *Macquarie Dictionary* (4th ed, Macquarie Library, 2005)  *Oxford English Dictionary* (2nd ed, Oxford University Press, 1989) |
|  |  |
| Date of hearing: | 6-10 June, 14-17 June, 20-23 June, 12-14 July 2016 |
|  |  |
| Date of last submissions: | 27 July 2016 (Applicants)  27 July 2016 (Respondent) |
|  |  |
| Registry: |  |
|  |  |
| Division: |  |
|  |  |
| National Practice Area: | Commercial and Corporations |
|  |  |
| Sub-area: | Regulator and Consumer Protection |
|  |  |
| Category: | Catchwords |
|  |  |
| Number of paragraphs: | 779 |
|  |  |
| Counsel for the Applicants: | Mr N O’Bryan SC with Mr D Tynan and Ms S Patterson |
|  |  |
| Solicitor for the Applicants: | Australian Government Solicitor |
|  |  |
| Counsel for the Respondent: | Mr D Pritchard SC with Mr R Davies |
|  |  |
| Solicitor for the Respondent: | Minter Ellison |

|  |  |
| --- | --- |
| **Table of Corrections** |  |
|  |  |
| 4 July 2017 | In [762(c)], the word “Tre” has been replaced with the words “Unique did not inform Tre or Mrs Simpson that he”. |

ORDERS

|  |  |  |
| --- | --- | --- |
|  | | NSD 1277 of 2015 |
|  | | |
| BETWEEN: | AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  First Applicant  COMMONWEALTH OF AUSTRALIA  Second Applicant | |
| AND: | UNIQUE INTERNATIONAL COLLEGE  Respondent | |

|  |  |
| --- | --- |
| JUDGE: | PERRAM J |
| DATE OF ORDER: | 30 JUNE 2017 |

THE COURT ORDERS THAT:

1. The parties are to bring in short minutes of order giving effect to these reasons within 21 days.
2. Stand the matter over for a further case management hearing on Friday, 28 July 2017.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

PERRAM J:

|  |  |
| --- | --- |
| 1. Introduction | [1] |
| 2. Some matters of background | [4] |
| 3. The Applicants’ Pleaded Case | [16] |
| 4. The Applicants’ Lay Witnesses | [33] |
| Natasha Paudel (Walgett) | [35] |
| Margaret Simpson (Tolland) | [63] |
| Pre-enrolment questionnaire | [79] |
| Pre-enrolment test | [103] |
| Acknowledgment form headed ‘Information session’ | [108] |
| Enrolment application and agreement form | [113] |
| Australian government form entitled ‘Request for VET FEE-HELP’ | [118] |
| Consent form giving permission to Unique to apply for a ‘Unique Student Identifier’ | [123] |
| Acknowledgment form acknowledging that online students had received an orientation program | [125] |
| Consent form consenting to the use by Unique of still photographs or videos of the applicant in its promotional materials | [129] |
| Evaluation form assessing the student induction process | [130] |
| Acknowledgment form acknowledging that the cost of the course had been disclosed | [131] |
| Student feedback form | [133] |
| Kylie Simpson (Tolland) | [136] |
| Jaycee Edwards (Bourke) | [148] |
| June Smith (Bourke) | [170] |
| Fiona Smith (Bourke) | [191] |
| Penny Martin (Unique employee) | [215] |
| Larissa Kidwell (Taree) | [225] |
| 5. Unique’s Witnesses | [248] |
| Johanne Richardson (Bourke) | [250] |
| Adell Richardson (Bourke) | [284] |
| Mandy Kang (Walgett, Taree, Tolland) | [307] |
| The events at Walgett | [358] |
| The events at Tolland | [366] |
| The events at Taree | [370] |
| General conclusion | [374] |
| Jasmeen Kaur (Walgett, Taree, Tolland) | [375] |
| Christopher Bell (Tolland) | [398] |
| Gurneet Kaur | [435] |
| Nyomi Whitton (Walgett) | [448] |
| Leslie Tighe | [464] |
| Jyoti Chaudhary | [480] |
| Donna Hickey (Taree) | [485] |
| Guramrit Singh Jandu (‘Rubbal’) (Walgett, Taree) | [505] |
| Thea Merritt (Tolland) | [530] |
| Amarjit Singh | [538] |
| Manmohan Singh | [595] |
| 6. The Expert Evidence of Professor Vinson | [607] |
| 7. Findings – The Individual Consumers Case | [641] |
| Unique’s Usual Practice | [641] |
| Walgett | [655] |
| Tolland | [673] |
| Taree | [690] |
| Bourke | [692] |
| 8. Findings – The System Case | [710] |
| 9. Relevant Principles | [723] |
| Three separate allegations | [723] |
| Misleading or deceptive conduct | [724] |
| Unconscionable conduct | [727] |
| Unsolicited consumer agreements | [730] |
| System of Conduct or Pattern of Behaviour | [757] |
| 10. Application of Principles to Facts as Found – The Individual Consumers Case | [758] |
| Natasha Paudel (Walgett) | [758] |
| Tre Simpson (Tolland) | [762] |
| Kylie Simpson (Tolland) | [766] |
| Jaycee Edwards (Bourke) | [769] |
| Fiona Smith (Bourke) | [771] |
| June Smith (Bourke) | [772] |
| 11. Application of Principles to Facts as Found – The System Case | [773] |
| 12 Conclusion | [779] |

## 1. Introduction

1. The Applicants are the Australian Competition and Consumer Commission (‘Commission’) and the Commonwealth of Australia (‘Commonwealth’). The Respondent ('Unique') is a vocational education and training provider operating from Granville in Sydney's west. The Applicants accuse Unique of having breached various provisions of the Australian Consumer Law (‘ACL’): by behaving unconscionably towards six persons it sought to enrol in its courses; by having a system for enrolling its students which was itself unconscionable; and by engaging in misleading or deceptive conduct. They also allege that Unique sought to have people enter into unsolicited consumer agreements without complying with the additional requirements of Division 2 of the ACL.
2. I have concluded that the Applicants have succeeded in proving most of these allegations.
3. The parties are to bring in short minutes of order giving effect to these reasons within 21 days.

## 2. Some matters of background

1. The Applicants’ case is confined to the period commencing on 1 July 2014 and concluding on 30 September 2015 (the ‘relevant period’). During the relevant period, Unique offered potential students courses in respect of which many students would be eligible for a kind of Commonwealth financial assistance known as ‘VET FEE-HELP’. The four courses relevant to this proceeding were: a Diploma of Management, an Advanced Diploma of Management, a Diploma of Salon Management and a Diploma of Marketing. Unique also offered other courses but these were not eligible for VET FEE-HELP.
2. VET FEE-HELP is a shorthand for Vocational Education and Training FEE Higher Education Loan Program. During the relevant period, which spanned some 15 months, the VET FEE-HELP scheme had these pertinent features:

* it was available to Australian citizens or holders of a permanent humanitarian visa who were resident in Australia, provided that they were enrolled in a full fee paying course approved for VET FEE-HELP (as Unique’s four courses were);
* the Commonwealth would pay in full whatever the tuition fee was for each unit of the approved course and would treat the combined amounts as a loan to the student;
* the loan would be repayable through the tax system once the student began to earn more than the ‘minimum repayment income’ ($53,345 for the period 1 July 2014 to 30 June 2015; $54,126 for the period 1 July 2015 to 30 June 2016) on the income above that amount at a sliding scale of between 4% to 8%. The highest rate became applicable at $99,070 during the relevant period;
* each person had a maximum lifetime amount which could be borrowed through this and other related schemes (such as HECS). This amount was indexed and was $97,728 for the 2015 financial year. The amount which the student had at any time borrowed was specified in an account maintained by the Commonwealth called the FEE-HELP balance;
* there was a 20% loan fee on top of the tuition fee which was also payable to the Commonwealth and which was debited to the student’s FEE-HELP balance; and
* the amount of the student’s FEE-HELP balance was indexed to the Consumer Price Index (‘CPI’).

1. An important plank in the Applicants’ case is the suggestion that Unique told prospective students that its courses were free or were free if the student did not earn more than the minimum repayment income. Such a statement, if made, would have been incorrect. Although a student did not have to pay any money upfront on enrolment, the effect of the scheme was that he or she would be left with a CPI indexed debt equivalent to the relevant tuition fee along with an additional 20% fee charged. Whilst it was true that the debt only became repayable once the student earned more than the minimum repayment income and was, at least in that sense, contingent, this is by no means the same as having no debt. Further, the debiting of the FEE-HELP account by the amount of the fee combined with the lifetime cap on that account (here, around $98,000) meant that the student incurring a VET FEE-HELP debt diminished the amount of VET FEE-HELP assistance available to him or her in the future. Those two features guarantee that it is wrong to suggest that a course in respect of which a student would be eligible for VET FEE-HELP was a course which was free. I hasten to add that it was Unique’s position that it had never made such statements.
2. Another important aspect of the Applicants’ case was Unique’s incentive procedures. Of these, there were three.

* Unique gave students who enrolled in any of its four courses approved for VET FEE-HELP a free laptop/iPad or, in some cases, a $1,000 cash gift with which to purchase such a device (or were promised an iPad and $200 cash as they progressed through their courses).
* It also conducted a student referral programme under which a student who referred another student who enrolled in a VET FEE-HELP course would receive at least a $200 reward and sometimes more (provided, of course, that the student lasted until the census date for their course, which triggered the Commonwealth’s payment obligation to Unique).
* Allied with that scheme, Unique also engaged third party contractors to carry out enrolments on its behalf on a commission basis. Following some government disquiet, these arrangements were terminated after 31 March 2015 (with the exception of some payments to Mr Christopher Bell, a Unique employee to whom Unique paid commissions up to 30 June 2015, allegedly because of an administrative oversight).

1. Unique commenced teaching operations some time shortly after October 2007 when it was granted registration under the relevant State and Federal regulatory regimes. For a number of years thereafter its operations were modest and consisted of training a mix of mostly overseas students, but also some who were local. Its enrolment numbers for the years 2008-2013 were as follows:

|  |  |
| --- | --- |
| **Year** | **Number of Students enrolled** |
| 2008 | 177 |
| 2009 | 367 |
| 2010 | 394 |
| 2011 | 676 |
| 2012 | 789 |
| 2013 | 631 |

1. Until 2009, VET FEE-HELP had existed in a form which required that for courses to be eligible there had to exist credit transfer arrangements with another institution offering a higher education award. This was to encourage ‘pathways into higher education’. This required, in practice, VET providers to enter into course credit transfer arrangements with those other institutions. Unique actively sought out and secured such arrangements during the period 2011 to 2012. The institutions with which it entered into credit transfer arrangements during this period included the University of Ballarat, the Australian Catholic University and the University of New England. Even so, Unique did not obtain registration of any of its courses at that time for VET FEE-HELP. Because its courses were not approved under the VET FEE-HELP scheme, Unique was not able to offer VET FEE-HELP funding for its students.
2. Consequently, during this period the VET FEE-HELP scheme had no effect on Unique’s enrolments.
3. In 2012, however, there was a change in government policy following a review of the VET FEE-HELP scheme and it was decided by the Commonwealth that there would be a change in the laws under which VET FEE-HELP was provided. With effect from 1 January 2013, the requirement that a VET FEE-HELP eligible course count towards a course at another institution of higher education was removed. Having been apprised of these potential changes by the Department of Education and Training (‘the Department’) in June 2012, Unique commenced a process of obtaining registration of four of its courses for VET FEE-HELP under the revised scheme and it achieved that registration on 27 November 2013 (the cause of the one year delay in obtaining registration is of no present relevance). Its enrolment numbers now substantially increased as follows:

|  |  |
| --- | --- |
| **Year** | **Number of Students enrolled** |
| 2013 | 631 |
| 2014 | 3,251 |
| 2015 | 4,677 |

1. A factor which may have contributed to this dramatic increase in enrolments was Unique’s practice from 1 January 2014 of making its courses available online. Before that time, it had been necessary for students to attend at its Granville premises. However, once the four courses which were offered under VET FEE-HELP were made available online, this removed the necessity for any geographical link to Unique’s premises.
2. The increase in Unique’s enrolments directly increased its revenues. Those revenues and net profits after tax for the financial years 2013-2015 were thus:

|  |  |  |
| --- | --- | --- |
| **Year** | **Revenue** | **Net Profits after tax** |
| 2013 | $1,702,612 | $40,301 |
| 2014 | $15,942,949 | $8,214,031 |
| 2015 | $56,183,632 | $33,779,726 |

1. The severing of the geographical nexus with Granville at the end of 2013 also allowed Unique to obtain enrolments from persons distributed widely across eastern Australia. It did so by sending staff members on road trips to various inland urban centres and conducting thereat ‘sign-up’ meetings at the homes of a chosen local resident. It is not disputed that these ‘sign-up’ trips were made across many regional areas of New South Wales, Victoria and Queensland and that many students were signed up via them.
2. With that background set out, it is useful now to turn to the Applicants’ pleaded case.

## 3. The Applicants’ Pleaded Case

1. At the risk of stating the obvious, the Applicants’ case was not that Unique had behaved unconscionably towards the Commonwealth. It was not said that the Commonwealth itself had been misled or that Unique should compensate the Commonwealth for bad loans made. Its case instead was focussed on the proposition that it was Unique’s students who had been the victims of the allegedly unconscionable or misleading behaviour. From time to time, the Applicants pointed to the very significant sums which Unique had received from the Commonwealth to buttress their substantive submissions. For example, it was put, not without force, that the possibility of deriving such enormous revenues could easily be seen as providing a motive for Unique to strive to increase the number of its enrolments. At other times, it seemed to be advanced as a form of forensic panacea for whatever difficulty of proof might, at any particular point in the trial, have been encountered by the Applicants.
2. But the Applicants’ case is not a case about the misappropriation of Commonwealth funds, nor is it a case, despite the way it was sometimes depicted outside the courtroom, about rorting by Unique of a Commonwealth scheme. The Applicants’ case was, from beginning to end, a case alleging the unconscientious exploitation and misleading of *students*. Such a case is by no means the same as a case which directly alleges that the Commonwealth has been defrauded. It is quite possible for the rorting of a scheme to happen without exploitation of students. It is also equally possible for exploitation of students to occur in the absence of rorting. One needs to be careful to distinguish the two and to ensure that one’s instinctive sense of outrage at one matter, which was not alleged or proved, does not affect one’s assessment of the other.
3. The Applicants’ case had two distinct elements although, as will be seen, they were to an extent intertwined.
4. The first element was located in Part 2 of its Amended Statement of Claim dated 9 May 2016 (‘ASOC’) and was focussed on Unique’s *enrolment processes*. In a nutshell, the allegation was that Unique had an enrolment process and that this process was inherently unconscionable. Paragraph 21 of the ASOC pleaded the nature of the enrolment process. Paragraph 22 pleaded the alleged failures which inhered within that process. Paragraph 23 pleaded the kinds of consumers who might be ensnared by such a process. Paragraph 26 pleaded that Unique had done this to maximise its revenues. Paragraph 28 alleged correlatively that it was likely also to have caused loss to the consumers. Paragraph 29 brought it all together and alleged, for various reasons, that the conduct thus disclosed was unconscionable.
5. These allegations may be summarised as follows:
6. It was alleged that Unique had targeted particular locations for enrolment purposes. These towns and cities were said to be situated in areas where inhabitants were generally people of lower socio-economic means and/or were comprised of a higher percentage of indigenous persons than the average eastern Australian town or city. These locations were said to include: Bankstown, Boggabilla, Bourke, Brewarrina, Emerton, Moree, Taree, Toomelah, Walgett, Wagga Wagga and Granville. At these locations it is then said that Unique conducted marketing operations by, *inter alia*, calling on consumers at their homes for the purpose of conducting group marketing activities. At these group marketing events, it is alleged that Unique’s staff told the attendees that its courses were free or free until they reached a particular level of income following completion of their chosen course. At the same time, free laptops were allegedly handed out to those who signed up. It is also alleged that the staff were on remuneration arrangements which were based on the number of students whom they were able to convince to enrol.
7. Against the backdrop of what the Applicants alleged was involved in the enrolment process, they went on to then allege a number of matters which they said that process did not include. It was said that Unique did not:

* ascertain whether the students had the capacity to pay the course fees;
* explain to the students the nature of the VET FEE-HELP scheme; in particular, the nature of their obligations to the Commonwealth if they received a loan under it or that they would be left with a contingent debt;
* ascertain whether the students intended to undertake the course;
* ascertain whether the students understood they were enrolling in a course; or
* ascertain whether the students had read and understood the forms they were asked to sign (and related allegations).

1. At the risk of oversimplification, the enrolment process alleged was therefore one involving group meetings at homes in particular areas at which consumers of educational services were given laptops if they signed up to courses and were told either that the courses were free or, at least, would be free until they achieved a certain level of income. This marketing was performed by Unique’s staff members who were paid by reference to the number of consumers they successfully enrolled. Forms were then filled out which were not explained and, at the same time, no effort was made to ascertain the suitability of any particular student for a course. No explanation of the VET FEE-HELP system was given.
2. The second part of the case was not concerned with Unique’s system. Instead, at paragraphs 31 to 143 of the ASOC, the Applicants set out their case that Unique had engaged in unconscionable behaviour towards six identified consumers. The allegations in each case related to the signing up of each of the six consumers to Unique’s courses at three separate signing up meetings conducted by its staff in outlying parts of New South Wales. The visits were to areas which the Applicants identified as being socio-economically disadvantaged and with a high proportion of indigenous members of the community. The three visits and the consumers involved were as follows:

* Walgett (on Friday, 10 October 2014) in respect of Ms Natasha Paudel (referred to in the Applicants’ pleading as Consumer E);
* Tolland, a suburb of Wagga Wagga (on Monday, 30 March 2015), in respect of Ms Kylie Simpson (Consumer A) and Mr Tre Simpson (Consumer F); and
* Bourke (on Wednesday, 10 June 2015) in respect of Ms Jaycee Edwards (Consumer B), Ms Fiona Smith (Consumer C) and Ms June Smith (Consumer D).

1. The thrust of the case was, subject to minor variations between the various consumers, three-pronged.
2. First, it was said that Unique had engaged in misleading or deceptive conduct in relation to each of the consumers (apart from Ms Natasha Paudel) because it had not informed any of them that the courses were not free and that each would be left with a debt to the Commonwealth under the VET FEE-HELP scheme. These were alleged to be ‘representations by silence’ which were false or misleading (or likely to mislead or deceive). In relation to some of the consumers, it was further alleged that direct representations of a misleading nature were made; for example, that the laptop and course itself would be free (June and Fiona Smith).
3. Secondly, it was alleged that Unique had behaved unconscionably towards the consumers because of its failure to explain the nature of what they were signing up to in circumstances whereby, putting it shortly, this was combined with an aggressive enrolment process and where there were elements of disadvantage in the circumstances of each of the individual consumers. I will delay explaining these individual circumstances for now save to say that they largely related to issues of literacy and education.
4. The third prong was a narrow allegation that Unique had engaged in the practice of seeking to procure entry by the six consumers into unsolicited consumer agreements without complying with the additional requirements of Division 2 of the ACL. This was also put forward as an element of the Applicants’ case on unconscionability.
5. An interesting aspect of the case alleged in relation to the individual consumers is that it relied, in part, on the Applicants’ more general system case pleaded in relation to Unique’s enrolment processes. This can be seen, for example, at paragraph 48 of the ASOC (in relation to Ms Kylie Simpson) which explicitly picks up the system case pleaded at paragraphs 21 and 22. A related curiosity is that the system case at paragraph 27 of the ASOC alleges that the individual consumers’ cases are to be seen as manifestations of the system case. It is possible this results in some circularity. However, it is best not to be distracted by these pleading issues in the abstract. This is because the pleadings do sufficiently identify the four principal areas of evidentiary dispute between the parties. These are:

* the nature of Unique’s enrolment system;
* the events at Walgett on 10 October 2014;
* the events at Tolland on 30 March 2015; and
* the events at Bourke on 10 June 2015.

1. The Applicants also relied upon some events at Taree although not in relation to individual consumers. Each of these topics is hotly in dispute between the parties. Unique says that its enrolment processes were proper and called witnesses from amongst its staff and officers to make good this point. These witnesses were cross-examined extensively by Senior Counsel for the Applicants to suggest that their evidence was unreliable. The basic thrust of the cross-examination, to strip it of much of its undoubted subtlety, was that the evidence produced by Unique of its proper processes was concocted after the event for the purposes of this proceeding.
2. Some of the witnesses called by Unique in relation to its systems also gave evidence about the events at Walgett, Tolland and Bourke. Their evidence was to the effect that the presentations to would-be consumers which Unique, through its staff, had conducted had been adequate and appropriate. The Applicants called a number of witnesses who were present at these meetings to give evidence about the deficiencies of what had occurred. These witnesses were cross-examined by Senior Counsel for Unique with a view to establishing, *inter alia*, that their recollection was not clear or that they did not know precisely what was going on.
3. The case therefore presented the unusual spectacle of most of the witnesses being subject to serious credit attacks. Both sides achieved a measure of success in this regard. The resolution of the factual debate in this case is, therefore, a very complicated affair and, if I may say with respect, much more complicated than either side’s submissions assumed. Both sides argued that most of their own witnesses were reliable and most of the other side’s were not. This was an overly simplistic approach to a much more complex situation. Many of the witnesses on both sides were plainly unreliable in one way or the other. A dose of realism in the parties’ submissions would have been helpful. I will start with the evidence before moving to my ultimate findings.

## 4. The Applicants’ Lay Witnesses

1. There were eight lay witnesses for the Applicants. There were also some formal affidavits read relating to enrolment data which do not need to be assayed. The eight lay witnesses were:

* Natasha Paudel;
* Margaret Simpson;
* Kylie Simpson;
* Jaycee Edwards;
* June Smith;
* Fiona Smith;
* Larissa Kidwell; and
* Penny Martin.

1. I deal with these in turn.

### Natasha Paudel (Walgett)

1. Ms Paudel affirmed an affidavit in this proceeding of 29 March 2016. She gave oral evidence on the fourth day of the trial which was 9 June 2016.
2. The evidence of Ms Paudel relates to events which most likely occurred on 10 October 2014 (the date on her enrolment form) at Walgett. Ms Paudel is around 30 years old, Aboriginal and lives in Walgett with her family. At the time of the events which underlie this proceeding, she was living with her parents as she had been involved in a car accident and was in the process of recovering. This should be emphasised because her recovery from this car accident was a part of the Applicants’ case on unconscionability. I admitted evidence by Ms Paudel that at this time she thought she was in a ‘vulnerable headspace’ but only as evidence that that was her own opinion. There was no expert testimony that the sequalae of the car accident rendered Ms Paudel vulnerable or unable to understand what she was doing.
3. She completed year 12 at high school although not any further training. She has good computer skills and can use the internet. When she gave evidence in the proceeding she was employed as a school learning support officer at Walgett Primary School. She has also worked part time at a women’s refuge. She has had a number of other responsible positions such as the hostel manager for the Darungaling Hostel which assists Aboriginal people engaged in tertiary study in the Newcastle area. She has also worked at the Attorney-General’s Department assisting Aboriginal people involved in cases before the Local Court and the Victims Compensation Tribunal. As I relate below, she has previously earned more than $50,000 per annum.
4. Ms Paudel gave her evidence in a careful and considered fashion. Both sides submitted that she was a witness of credit whose evidence should, in general, be accepted. I agree with those submissions. She struck me as an impressive witness who was both intelligent and endeavouring to assist as much as she could by her evidence.
5. Mr Alan Tighe is a member of the extended family of Ms Paudel’s mother and is known to Ms Paudel. At some point in October 2014, Ms Paudel was driving with another person along Sutherland Street in Walgett when she saw a group of about four to five people standing outside a house she knew to be Alan Tighe’s. One of these persons was Mr Billy Jones, who was also known to Ms Paudel. She decided to pull over to the kerb and ask Billy Jones what was going on. He replied, in effect, that if she wanted to get a free iPad or laptop she should sign up for a Diploma of Management or Salon Management. Ms Paudel’s evidence did not include the suggestion that Billy Jones had said explicitly that the iPads and laptops would be free but I am satisfied that this was conveyed. Ms Paudel subsequently reported the conversation to her cousin, Trishy Anne Walford, and in that account of her initial conversation it is apparent that she attributed to Billy Jones the statement that the iPads and laptops would be free. As will become clear, iPads and laptops were being handed out at Alan Tighe’s house and it is altogether plausible, indeed likely, that Billy Jones would have said this.
6. Ms Paudel gave evidence that she also asked Billy Jones which course he was doing and he said that he was doing salon management. This made Ms Paudel laugh, I infer, because of the unlikelihood of Billy Jones being involved in salon management. It was probably at this point that Billy Jones told Ms Paudel that the courses being offered were also free. Ms Paudel did not mention this in her evidence in chief but she did mention it under cross-examination. She was challenged as to whether she was mistaken and that the reference to the courses being free was perhaps really a reference to the iPads and laptops being free but this she did not accept. Although, as I indicate below, she did not pretend to have a perfect recollection of the precise train of events, I am satisfied nevertheless that Billy Jones did say this to her.
7. The impression that this encounter between Ms Paudel and Billy Jones, which opens with a fragment of conversation about an unidentified course and free computer equipment, does not make terribly much sense is borne out, I think, by the fact that Ms Paudel was disinclined, at least initially, to take Billy Jones seriously.
8. In any event, by that evening it seems that Ms Paudel had understood that the deal being offered by whomever Billy Jones had himself been talking to was that she would receive a free iPad or laptop if she enrolled in a course and the course was free. She said as much to her cousin, Trishy, at least in relation to the iPad and laptop.
9. But the iPad and laptop were not her only motivations. Ms Paudel also gave evidence that she had some interest in doing a management course at this time. In fact, she claimed to have been in negotiations with another government provider possibly to ‘do a management role back in Newcastle’ at that time. I infer that her interest in returning to Alan Tighe’s house to explore the situation further was therefore twofold. On the one hand she was motivated by a significant interest in obtaining free computer equipment; on the other, she also had some interest in the subject matter of the courses being offered.
10. Ms Paudel and Trishy then decided to go back to Alan Tighe’s house the next day and to find out what it was all about. Ms Paudel did not explain in her evidence why she thought that the iPads and laptops would still be available the next day at Alan Tighe’s house but the most likely explanation is that something else to that effect may have been said to her by Billy Jones. Perhaps, alternatively, she did not know this but just thought it was worth a try. I do not need to resolve this issue, however, because there is no doubt that she did go back and that the iPads and laptops were still available when she did
11. It was Ms Paudel’s evidence that she and Trishy arrived at Alan Tighe’s house just after lunch on the next day. Upon entering the home, Ms Paudel saw two sales representatives sitting at a table, both of whom were Indian women. I interpolate at this point that I am satisfied that the two women involved were Ms Mandeep Kang and Ms Jasmeen Kaur (‘Jasmeen’), both employees of Unique. There was also a third male employee present who I am satisfied was most likely Guramrit Singh Jandu (‘Rubbal’). On the table were piles of forms with the words ‘Apply for VET’ written on them. There were also boxes filled with iPads and laptops.
12. The tableau was as follows: there were a number of people standing around the table some of whom were known to Ms Paudel; she saw people filling out the forms with the assistance of one of the sales representatives; and, upon completing the forms, being handed an iPad or laptop in a box. Ms Paudel described the room as one in which people were ‘coming and going’.
13. She very frankly agreed that her recollection of events was not perfect which was a reasonable concession to make and to her credit for so doing. Under cross-examination she agreed that the two women had said they were an ‘approved provider’. I suspect she really meant by this that they had said Unique was an approved provider. It would be natural for them to have said so and in her evidence Ms Paudel appeared to accept that someone had mentioned Unique at some stage during her time at Alan Tighe’s house. I accept that the following answer that she gave about this during cross-examination at T-331 was not as clear as it could have been:

‘Did they tell you – or someone tell you – I withdraw that. Did one of the Indian ladies tell you they were from Unique College?---I can’t remember if they said those words, but I just remember Sydney. So – yes.’

1. However, given the practical exigencies of the situation I think this would have been said and I take this answer to be some evidence, although perhaps not the best, that it was. In any event, I accept that Ms Paudel was informed by the two Indian women that the courses were being offered by Unique. It is very likely at around the same time that she was also told there were two courses on offer: the Diploma of Management and the Diploma of Salon Management. She had, of course, heard this the day before from Billy Jones in her initial encounter with him on Sutherland Street. The question of timing is an inference I have drawn but there is no doubt this was said and this seems to be the natural time at which it would have been said.
2. At some point, one of the sales representatives handed Ms Paudel one of the forms headed ‘Apply for VET’. She saw the words ‘Diploma of Management’ on the form together with a figure of around $20,000. The $20,000 was a reference to the tuition fees for the course in the Diploma of Management. Of course, she had been told by Billy Jones the day before that the courses were free. Ms Paudel herself was puzzled by why the course would cost $20,000 but did not think to ask about this at the time. In any event, as she accepted under cross-examination, whatever had been said about the courses being free, she knew by the time it came to considering the form that the course she was signing up to cost around $20,000.
3. It is necessary to pause here to observe that Ms Paudel did not give evidence that any of Unique’s representatives had told her that the courses were free. Her evidence about the courses being free was singularly derived from what Billy Jones had told her. And, contrary to her prior belief, she knew once she saw the forms that at least one of the courses actually cost $20,000. It is fair to say, therefore, that the only evidence about what Unique’s representatives said about the cost of the course was that which was contained in the forms she was handed. Ms Paudel’s evidence establishes that she knew that the forms said the course cost $20,000.
4. Some interim conclusions follow from this. First, no-one from Unique told Ms Paudel that the course would be free. Secondly, Unique – through its application form – told at least Ms Paudel, that the course would cost $20,000. Thirdly, Ms Paudel understood this.
5. Ms Paudel also accepted that she had been told that the $20,000 tuition fee would be paid by a loan from the government which would not be repayable until she earned more than $50,000 (although, as I have explained, the minimum repayment income was $53,345 at this time, I do not make anything of this discrepancy). During her cross-examination, Ms Paudel said that her understanding about VET FEE-HELP at this time was not complete (she understood it ‘a little bit’: T-323.11). In this, she is no doubt correct. I do not think, for example, that at the signing up session she understood that the loan would be paid back through the tax system. However, I am satisfied she understood that the tuition fees would be lent to her and that she would have to repay them when her income reached around $50,000.
6. Some other matters emerged during the cross-examination. It seems likely that she was told that the course was offered online which made it attractive to her and that it was possible to cancel enrolment prior to some date not made very clear in the evidence. I infer that the date in question was what is known as the census date. I explain this concept more fully below. For present purposes, I am prepared to infer that Ms Paudel was told she could withdraw up to the census date. It seems she was also told that a support person was offered by Unique who could be called in the case of query and that she would be sent further documentation by that person.
7. At some point during this process – most likely at its conclusion – Ms Paudel completed the paperwork encompassed in the forms she had been provided. It appears that the forms had asterisks next to sections which she was asked to complete but that employees of Unique filled out the balance of the form later on. In particular, there were several sections containing ticks which Ms Paudel said were not done by her (I accept Ms Paudel could recognise her own handwriting). Some of these ticks were next to statements acknowledging matters such as that particular information had been provided or that she had read and understood the obligations arising from the VET FEE-HELP scheme. I accept that Ms Paudel did not tick these boxes and had not been acquainted with these matters (although as I explain later, I am also satisfied that she understood what she was doing).
8. The forms also included a signed declaration in the following terms:

‘I acknowledge that I have been given the correct information on the total due fees for my chosen course which is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and understand that I have to start repaying the due fees plus the 20% loan fee back once I start earning above the minimum threshold \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as per VET FEEHELP Information for 2015.’

1. Ms Paudel did not recall the 20% fee being mentioned although she accepted that it was possible that it had been mentioned. I am not satisfied that the 20% fee was not brought to her attention.
2. Importantly, she did say, however, that one of the Indian ladies had said to her that if she started to earn more than $50,000 she would have to start repaying the government. For completeness, Ms Paudel had, at the time she signed the form, already previously earned more than $50,000, so I do not think that for her the possibility that repayment would become necessary was academic
3. All up the filling out of the forms appears to have taken about 15 minutes and she was otherwise present at Alan Tighe’s house for about half an hour. She described the form filling as ‘very quick’: T-320.14.
4. No evidence was led that Ms Paudel received a laptop. I infer, however, that she did. It was one of the reasons she had gone to Alan Tighe’s house and Unique’s representatives were in fact giving out laptops. I can see no reason why this would not have occurred.
5. Ms Paudel did not report seeing the representatives of Unique giving an introductory session during which they explained the details of the courses to the people present. I discuss this in more detail below but Unique’s witnesses gave evidence that such a detailed introduction did occur and that it was during that introduction that the nature of the courses and the VET FEE-HELP scheme were fully explained. Because Ms Paudel is a reliable witness I am confident that she did not see such an introduction being given whilst she was there. Had she done so it would have been mentioned in her evidence; but it was not. Counsel for Unique – correctly accepting with respect that she was a reliable witness – put to Ms Paudel that she may have arrived after the information session was given, with which she agreed
6. For present purposes, it is sufficient to accept that contention. There is no utility in asking, in relation to the case concerning Ms Paudel, whether the introductory session was in fact given if she was not there when it is said to have occurred.
7. After she left Alan Tighe’s house, Ms Paudel began to develop doubts over the legitimacy of the enrolment process and, in fact, that what was involved with the enrolment process was some form of ‘scam’. These doubts were inspired by a conversation she had with a relative of hers who warned her that enrolling in the course would merely leave her with a debt. She subsequently received an email from Unique and decided to call the college. During that telephone call she was told that Unique did not involve a ‘scam’. She subsequently received some emails from Unique about the courses but she has never taken any further step to pursue the course in which she had enrolled on that October day. As at the date of the hearing she was unaware whether she had a VET FEE-HELP debt or not.

### Margaret Simpson (Tolland)

1. Mrs Simpson swore two affidavits in this proceeding; one of 25 January 2016 and another of 17 May 2016. She gave oral evidence on the fourth and fifth days of the trial which were 9-10 June 2016. Her being called was chiefly to give evidence in relation to two of the six consumers in the Applicants’ individual consumers case which, as I have explained, also bears on the Applicants’ system case.
2. Primarily, Mrs Simpson gave evidence of the difficulties encountered by her grandson, Tre Simpson, referred to hereafter as ‘Tre’. Tre is now a 22 year old Aboriginal man. He requires full-time supervision (for reasons which I shall explain) which Mrs Simpson has provided to him his entire life. Unique accepted in its written submissions that Mrs Simpson’s evidence of Tre’s demeanour and nature was credible and was the product of many years of close range observation. Tre’s conditions are many. He has neurofibromatosis, also known as Von Recklinghausen’s Disease, Attention Deficit Disorder, Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder (Adolescent). Until just before the trial, he was taking Risperidone, an antipsychotic medicine, and at earlier times he has taken dexamphetamine, Ritalin and anti-depressants. A few months prior to the events which I am about to relate, he was diagnosed with depression as a result of which he did, on occasion, take Mirtazapine. I note in passing that he no longer does so, although he continues to be prescribed Risperidone.
3. According to Mrs Simpson, although Tre is 21 he acts like he is 15. He cannot manage money or handle change. He does not talk much and particularly not to strangers. When he does speak (usually to friends or family) Mrs Simpson said it is often very difficult to follow what he is saying. He speaks without thinking, has no patience and cannot concentrate. He becomes abusive without provocation. Because of his difficulties, Mrs Simpson is unable to leave Tre unsupervised and has to attend meetings with him as she said he cannot look after himself. The evidence suggests that Tre can read, at least to an extent. He left school after completing year 10 at high school and Mrs Simpson gave evidence that he had used a computer in the past. I accept this evidence.
4. Tre was not called to give evidence before me. Although no explanation for this was given, I am prepared to infer that Tre was unwilling to travel to Sydney for the hearing. Certainly Mrs Simpson gave evidence that he was too scared to do so. Unique made no criticism of the decision by the Applicants not to call Tre. I think it reasonably plain that his various difficulties would have made the eliciting of evidence from him very difficult.
5. Nevertheless, that leaves me in something of a quandary. Although I am aware from Mrs Simpson’s evidence of the various difficulties which Tre faces, I am not aware of the extent to which these problems may be obvious to others. I say that having particular regard to Mrs Simpson’s evidence that he is silent around strangers. She also gave evidence that he could answer simple questions.
6. It has not been shown to my satisfaction that Tre’s difficulties would have been obvious to Unique’s staff. Accepting Mrs Simpson’s evidence that he did not look healthy because he did not eat properly, he might merely have seemed at the sign-up meeting an unhealthy and silent youth; perhaps a not unrecognisable condition to those used to dealing with young adults in Tre’s situation. Although Mrs Simpson gave evidence that he could be abusive at times it was not her evidence that he was abusive during the meeting.
7. Turning then to what Mrs Simpson said happened at the meeting (which was not the only topic she addressed in her testimony), it was largely unhelpful to Unique. For that reason Unique submitted that this aspect of her evidence was unreliable whilst not going so far as to submit that Mrs Simpson was dishonest. I think it useful to begin with what Mrs Simpson’s account was, then to address these criticisms.
8. Lavina Merritt (whom Mrs Simpson calls Aunty Vennie) had driven over to Mrs Simpson’s house following a chance encounter in the street. This occurred as Mrs Simpson was *en route* home after visiting her daughter’s house. Aunty Vennie had pulled up in a car driven by a man with whom Mrs Simpson was not familiar. She said that that he ‘looked Indian in appearance’. A short discussion ensued which involved, in a similar fashion to the conversation between Ms Paudel and Billy Jones in Walgett, the topic of free laptops. Mrs Simpson gave evidence that she then walked home, soon after which she again met with Aunty Vennie and that same man whom she now believed to be ‘some kind of salesman because he was not from around my area’. This occurred out the front of Mrs Simpson’s house.
9. Mrs Simpson then invited the two of them into her home, which provided Aunty Vennie with an opportunity to remark to Tre that a free laptop was available to him. Mrs Simpson’s evidence was that Tre then ran through the house and said “Aunty Vennie’s got laptops’. He was to Mrs Simpson’s observation excited. This was not a novel situation for Mrs Simpson. On a prior occasion, Tre had obtained a free laptop from some other vocational entity. When Tre mentioned the free laptop on this occasion she remarked ‘Oh Tre, not again.’
10. At this point, Tre was running through the house looking for his tax file number and pension card (he receives the disability support pension). It seems likely that he was told that he would need these and it seems to me that it is most likely Aunty Vennie who told him this.
11. The three of them then drove from Mrs Simpson and Tre’s house in Wagga Wagga to Aunty Vennie’s house at Tolland. When they arrived, Mrs Simpson saw about 10 people there which she said caused her to remark to Aunty Vennie ‘What a line up, it’s like Centrelink’. The people who were there were all signing application forms. As will be seen, this is apt to suggest that Mrs Simpson and Tre had arrived at an event which had already commenced.
12. When she arrived, Mrs Simpson saw two women sitting at a long table who were of Indian appearance. It is clear from evidence led later in the trial that these must have been Mandy Kang and Jasmeen. They did not identify themselves or where they were from. According to Mrs Simpson, one of these women immediately handed her some papers and a test to complete. At the time this occurred, Mrs Simpson said that no explanation was provided for what this paperwork was. In any event, she and Tre went to the front of the house and sat on some tables and chairs on the front lawn.
13. Before turning to what Mrs Simpson and Tre did with this paperwork, it is useful to describe what it was. The paperwork was comprised of eleven separate forms:
14. A pre-enrolment questionnaire;
15. A pre-enrolment test;
16. An acknowledgment form headed ‘Information session’;
17. An enrolment application and agreement form;
18. An Australian government form entitled ‘Request for VET FEE-HELP’;
19. A consent form giving permission to Unique to apply for a ‘Unique Student Identifier’;
20. An acknowledgment form acknowledging that online students had received an orientation program;
21. A consent form consenting to the use by Unique of still photographs or videos of the applicant in its promotional materials;
22. An evaluation form assessing the student induction process;
23. An acknowledgment form acknowledging that the cost of the course had been disclosed; and
24. A student feedback form.
25. In her affidavit, Mrs Simpson said that she filled out these forms as best she could for Tre. This included his name, age and address. In relation to the second document mentioned above (a pre-enrolment test) she said that she obtained assistance from a friend of hers who was present at the meeting, called Mel Connors. I shall call her Mel. During her cross-examination, Mrs Simpson gave additional evidence that Mel might have assisted with filling out some of the other forms too.
26. During her cross-examination, Mrs Simpson was taken to a number of the documents referred to above. In a number of instances she denied the writing was hers although in others she accepted it was.
27. The forms are, nevertheless, interesting and by themselves throw light on what was taking place. I deal with each in turn:

#### Pre-enrolment questionnaire

1. The first form was that entitled ‘Pre-Enrolment Questionnaire’. Its front page said this:

‘(The purpose of this questionnaire is to determine the potential student’s suitability to the course.)

Unique International College (UIC) delegate will use this form to conduct an interview with each applicant to assess suitability into the qualification. The SMD179 Local Student enrolment application and agreement form will be completed and signed by all local students after an interview has been successfully completed. Students who wish to enrol under VET FEE-HELP program must complete additional documents e.g. Request for VET FEE-HELP assistance forms, VFHD 2 information session acknowledgement form etc.

A Student meets the entry requirements in line with SMP 133 Student entry requirements, enrolment and orientation policy if the student provides satisfactory answers to all the following questions asked by Unique International College (UIC) Delegate.’

1. Mrs Simpson’s affidavit evidence was that she filled the form out with Tre. According to her affidavit evidence, Mel did not help with this form but only with the maths questions which were in the second form, the pre-enrolment test. In cross-examination it appeared that Mel’s role might have touched upon other forms. In any event, the critical point is that Mrs Simpson gave no evidence of any person from Unique conducting the test as this form suggested should have happened.
2. The evidence led by Unique in relation to Mrs Simpson and Tre consisted of the testimony of Ms Kang, Jasmeen, Mr Christopher Bell and his partner, Thea Merritt (‘Thea’). As will be seen, these witnesses gave evidence of an allegedly invariable practice of Ms Kang’s of conducting a presentation at the start of each meeting. It was during this presentation that she imparted what was said to be an adequate explanation of the nature of the course and, more generally, the VET FEE-HELP scheme to the assembled potential students. Jasmeen and Mr Bell gave corroborating evidence of this practice. Ms Kang gave evidence of having given assistance to Tre in completing some of the paperwork by filling out his student feedback form (form 11 in my list above). As I discuss when dealing with Ms Kang’s evidence, I reject this. Ms Kang completed this aspect of the paperwork without consulting him when she discovered it was incomplete. Later in these reasons I conclude that the evidence of all four of these witnesses on the topic of Ms Kang’s presentation is unreliable.
3. Something additional should also be said of the evidence of Thea. She is Aunty Vennie’s granddaughter. She was present at the same meeting at Vennie’s house. She corroborates Ms Kang’s evidence that a presentation was given at the outset of that meeting. However, that may be irrelevant because Mrs Simpson’s evidence suggested that she and Tre arrived at a time when the 8 or 9 people present at the meeting had begun filling out the forms, that is to say, after the time at which Ms Kang would have allegedly given the presentation to which she testified.
4. If that be so, there arises no direct collision between Ms Kang’s evidence about her presentation and Mrs Simpson’s evidence about the meeting because they can be reconciled by the fact that Mrs Simpson and Tre arrived late.
5. Thea’s evidence complicates this, however. During her cross-examination at T-1241 Thea gave evidence that Mrs Simpson and Tre had arrived with Mrs Simpson’s daughter, Kylie Simpson (‘Kylie’) and that Kylie had been present during Ms Kang’s presentation. This carried with it the further implication that Mrs Simpson and Tre had been present for the presentation. Thea also contradicted Mrs Simpson’s evidence that she and Tre had filled out the forms outside the front of the house. She said, rather, that she had seen them filling the forms out inside the house with the others.
6. How may this conflict be resolved? It has not yet been necessary to deal with the evidence of Kylie who was also present at the meeting. Kylie, like Tre, is one of the persons in the Applicants’ individual consumers case and it will be necessary to deal with her evidence in relation to that aspect presently. However, she also gives evidence which has ancillary relevance to the case about Tre. This is because she too came to Aunty Vennie’s home.
7. Kylie’s affidavit evidence about this was that she had been at home with Mrs Simpson and Tre. One might have taken from this at least that Kylie lived in the same home as Mrs Simpson. However, Mrs Simpson’s evidence was that Kylie lived around the corner. I think that Kylie’s evidence simply means therefore that Kylie was at Mrs Simpson’s home. Kylie said that Aunty Vennie came around and took Mrs Simpson and Tre to Aunty Vennie’s home in Tolland. She then said that Aunty Vennie returned about 20 minutes later and took her and Regina, who is her sister, to Aunty Vennie’s home at Tolland.
8. Unique submitted that Kylie’s evidence contradicted Mrs Simpson’s as to whether both were present at the house at Tolland at the same time citing T-430.1 and T-464.21.
9. Mrs Simpson’s evidence was, at T-430, that Aunty Vennie took the two of them to her home. When they returned to Mrs Simpson’s home afterwards, Kylie was there and it was then that Aunty Vennie took Kylie to her home. Kylie’s evidence was that the three of them (Mrs Simpson, Tre and herself) were at Mrs Simpson’s house, Aunty Vennie picked up Mrs Simpson and Tre and took them to her house. It was at this point that Aunty Vennie returned and took Kylie and Regina to her house. On this view, Mrs Simpson and Tre were still at Aunty Vennie’s house along with the Unique employees when Kylie arrived. Consistent with that version of events, Kylie said she saw Mrs Simpson and Tre there.
10. Kylie was cross-examined by Senior Counsel for Unique. I will expand on this later when I deal with her direct evidence about her own dealings with Unique. However, I formed a strong view during her cross-examination that, with respect, she had very little grasp of what was going on around her. For example, she was asked during her examination in chief about the forms she had signed at the sign-up meeting. The exchange with counsel is reproduced below:

‘Did anyone read the following text to you:

“John and Emily are the directors for the company called JE Houses. In year 2009, John and Emily bought 5 houses in Kingspark. After two years they purchased one more house in the same area.”

1. How many houses do JE houses have in total?’

(errors in original)

1. At T-452, Kylie answered this question ‘Six’ (the question was whether anyone read her the question). This was not an isolated example of her comprehension difficulties. In her affidavit of 25 January 2016 at paragraph 35 she said that she thought that she might be signing up to a course but during her oral evidence at T-460 she said that no one said anything about a course to her and she did not think she was signing up to one. She then agreed at T-460 during oral evidence that her affidavit evidence in this regard was incorrect (i.e. she had not thought she was signing up to a course) but then moments later during oral evidence she indicated at T-461 that she may have been signing up for a course.
2. She was asked whether she understood the course was offered online. During her cross-examination at T-471 this exchange occurred:

‘See, well, did you understand the course that was being offered was online course? --- Online?

Yes, online? --- I’ve got no internet at home. I couldn’t do nothing at home because I’ve got no internet.

But did you understand the course being offered was online? --- No. This one here, all the ticks on here, I never ticked all these ones here.

What was that, I’m sorry? --- This one here.

Yes? --- 4 to 6.

Yes? --- I never seen this one, I never ticked all these ones here.’

1. She also gave evidence about her signature which I cannot accept. She was taken to the forms that were filled out in support of her application to enrol in a Unique course. During cross-examination at T-474 she acknowledged that the signature contained in one of the forms was hers but she denied earlier in her cross-examination at T-455 and T-457 that other signatures in related forms were hers. For privacy reasons, I will not set out a copy of the signatures on those pages. However, I will record that the signatures are all the same so that Kylie’s evidence makes no sense.
2. In addition to these matters, I should record that Kylie presented as a witness who seemed to have little grasp of what was being said to her. She appeared emotionally flat and unengaged. Like her brother, Tre, Kylie has Von Recklinghausen Disease and suffers from severe migraines. She cannot read or write very well. Although 44 years of age she has never worked because of her disabilities. It was my impression that Kylie is a person of very limited capacities. It is also clear that this would be obvious to anyone who spoke with her.
3. In making those remarks I have taken into account the fact that in many cases indigenous people find it difficult to give evidence in the context of a courtroom so that what sometimes appear to be demeanour related issues are in fact cultural artefacts.
4. Despite that, I do not think that I can rely upon Kylie’s evidence. This is not because I think she was seeking to deceive the Court. I do not think that to be the case. Rather, it is because I found it very difficult to extract any coherent narrative from it. Her affidavit evidence did present a clear narrative but the disjunct between it and her oral evidence is such that the obscurity of the latter causes me to doubt the apparent coherence of the former.
5. Consequently, Kylie’s evidence is of little use in resolving the conflict between Mrs Simpson and Thea. On balance I have come to the view that I should prefer Mrs Simpson’s evidence about this over Thea’s. The reason is that I think it more likely that Mrs Simpson would recall who she attended the meeting with, particularly when Tre and Kylie are close relatives. As I later explain about Thea, there is also reason to doubt her reliability as a witness.
6. I therefore conclude that Mrs Simpson and Tre did not arrive with Kylie. Further, I accept Mrs Simpson’s evidence that she and Tre did not see a presentation by Ms Kang.
7. Returning then, perhaps at length, to the pre-enrolment questionnaire handed to Mrs Simpson and Tre, it will follow, if it did not already appear clear, that the interview by Unique’s delegate referred to in it certainly did not happen in Tre and Mrs Simpson’s case. So far as the filling out of the questionnaire itself was concerned the evidence was a little unclear. It seems Tre wanted Mrs Simpson to fill it out for him in its entirety but she pointed out that parts of it called for his signature. In filling out the questionnaire and, so it seems, the other forms, Mrs Simpson derived no assistance from the Unique staff who were present.
8. There were six questions on the first page of the questionnaire accompanied by a series of ticks in fields alongside those questions. The questions seem to have been intended to gauge the suitability of the candidate for the chosen course. This is apparent from part of question 3 which, relevantly, was as follows.

‘If yes, does the student meet the minimum entry requirements? (Please answer this question in conjunction with the question in the questionnaire).”

1. Mrs Simpson’s evidence was that, apart from question 4, all of the ticks on this page had not been placed there by her. Question 4 asked what the intended mode of study was and there Mrs Simpson said she had ticked a box marked ‘online’. Why she decided to tick that box was not established in the evidence. At best one can surmise that she may have thought that this might justify the apparently free iPad or laptop.
2. But the other questions are instructive. Question 2 asks what course was to be studied and here there is a tick next to ‘Diploma of Management’. Question 5 poses a series of questions which may be summarised as questions asking whether the student has sufficient computer skills to use Word, email, Excel, PowerPoint and Skype. Next to all of these there are ticks in the column marked satisfactory. Because I accept Mrs Simpson’s evidence about the writing on this form, it follows that these marks were placed there by someone not being her or Tre. Under cross-examination, Mrs Simpson agreed that her friend Mel had joined her to help her with filling out the form at the time the questionnaire was being completed. Mrs Simpson accepted that the ticks on the questionnaire which were not in her own handwriting might have been done by Mel. At other parts of the evidence, Mrs Simpson suggested that Mel helped with the maths questions (which are not located in the questionnaire).
3. The second page of the form includes in the same unidentified hand an indication that Tre has ‘advance’ technical skill, a proposition for which there can be no foundation. Mrs Simpson accepted that she had indicated on this second page that Tre had access to a computer and the internet at home (which does not, in fact, appear to have been correct) and he did not require extra assistance or have medical conditions. Tre’s signature appears on this page and her evidence was that it was his signature.

#### Pre-enrolment test

1. The second form was entitled ‘pre-enrolment test’. It consisted of a series of questions. There are six questions on the first page.
2. They, and the hand written answers appearing under them, were as follows:

‘Student Name: *TRE SIMPSON*

Please indicate in 200 words or less why you want to undertake study in this course? *NEED EDUCATION*

Please indicate any issues in 200 words or less that you believe may affect your studies (e.g. illness, disability, family commitments, works commitments, etc).

*NO*

What career path would you like to enter into on the completion of this course? Explain briefly in 200 words or less.

*MANAGER*

Are you currently employed in industry of your chosen study? Explain briefly in 200 words or less.

*NO*

Why have you chosen to do complete your studies through online study mode?

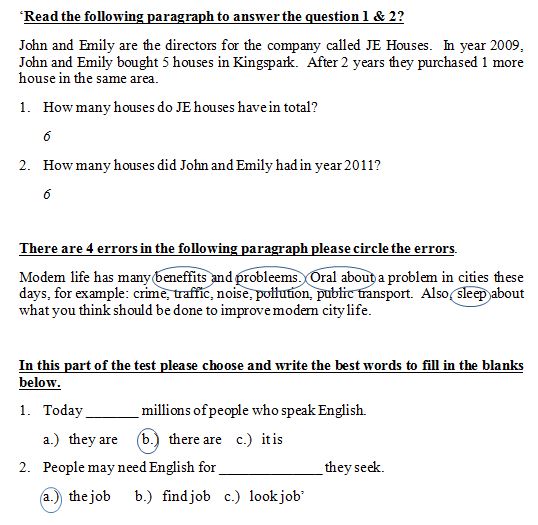
*NO*

Why have you chosen to study at Unique International College?

*EASY FOR ME’*

(Italics indicate handwriting)

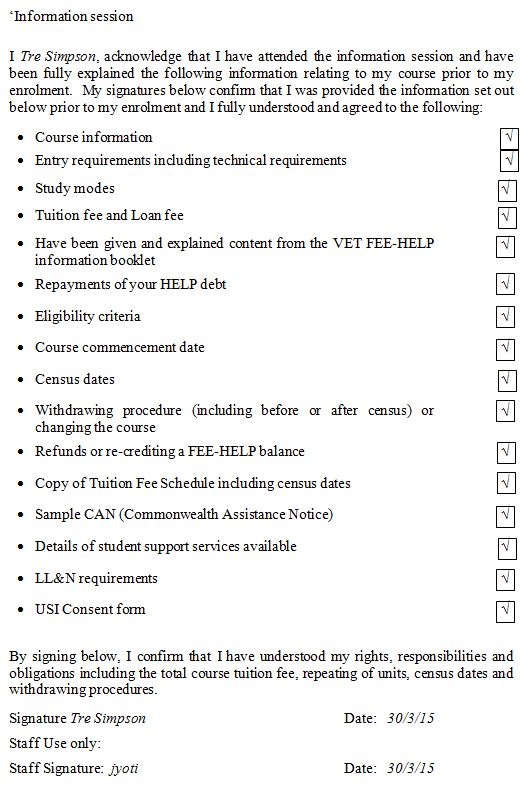
1. Mrs Simpson’s evidence was that she filled in Tre’s name and the words ‘need education’ but the other answers were not in her handwriting. It is clearer in the case of this second form that Mel assisted in its completion (because it is this form which contains the maths questions). I conclude that some of the other answers were written by Mel. I say ‘some’ because, in fact, it may be that there are three different handwriting styles evident on this page. The identity of the third person is unclear.
2. The following page of the test involves questions intended to show the student’s aptitude for the course. For example:



1. The answers to ‘1’ and ‘2’ are correct. The answers 1(b) and 2(a) have been circled correctly. Mrs Simpson said she did not see this page and I conclude that it was completed by Mel. Similar remarks may be made about the balance of this test, that is to say, parts of it were completed by Mrs Simpson, some by Mel, perhaps some by someone else. No-one suggested that Tre had much input into the process, apart from applying his signature.

#### Acknowledgment form headed ‘Information session’

1. The next document was a pro forma certification in this form:



(italics indicate handwriting)

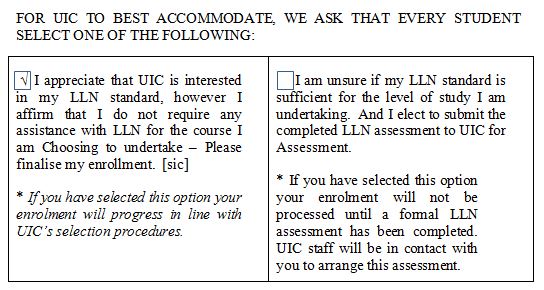
1. The ticks in the boxes were handwritten but Mrs Simpson’s evidence was that the handwriting was not hers. The signature is Tre’s and Mrs Simpson wrote his name at the top of the form. There are some other matters which should be observed about this form. First, for the reasons I have given, is the fact that none of the matters which Tre is taken to have certified were explained to him on this form, were explained either to him or Mrs Simpson. That, of course, includes this form itself. Secondly, as I explain later in these reasons at [483], the signature of ‘Jyoti’ which appears under Tre’s signature could not have been affixed on the date it bears. Jyoti Chaudhary was not in Tolland at this meeting. To the extent that this form suggests in some way that Ms Chaudhary was a witness to the matters Tre is apparently certifying, this impression is false. Thirdly, in relation to the ticks it was Mrs Simpson’s evidence that she thought it likely that they had been placed there by Mel but this was only because:

‘I would say she would have, because she’s the only one there doing the paperwork with us.’

1. This rather suggests that Mrs Simpson’s evidence about how much of the forms had been filled out by Mel was influenced by an assumption on her part that the ticks had been placed on the forms at the meeting and not subsequently.
2. This is consistent with a more general observation about Mrs Simpson’s evidence as to how she filled out the forms. It is this: in her efforts to assist the Court in her evidence about how the forms were filled out she was at times prone to give answers based not on what she recalled but, where she could not remember, on what she thought she had done; that is to say, her evidence about the forms was attended by a degree of *ex post facto* reconstruction. I do not mean this critically and it was an understandable position in the circumstances.
3. It is of some significance in the present context, however. Mrs Simpson’s testimony is some evidence that the only other person who helped fill out the forms was Mel. However, I do not think that her evidence can exclude the possibility that some other person filled them out later. It was part of the Applicants’ case that this, in fact, had occurred. I deal with the evidence relating to that later in these reasons at [126]-[127], [133]-[134], [278]-[281], [443]-[446], [483]-[484], [527]-[528] and [556], but these observations will mean that Mrs Simpson’s evidence is not to be seen as reliably contradicting such a case.

#### Enrolment application and agreement form

1. The next form was entitled ‘Enrolment Application and Agreement Form’. This form was six pages long. The way it was completed would suggest to the reader that the applicant was Tre Simpson, that he was born in Australia, that his highest level of education was year 10, that he spoke ‘excellent’ English, that he was unemployed and that he wished to do the Diploma of Management full-time in April 2015. The form indicated Tre’s desire to complete a Diploma of Management because a tick appeared in a box next to that course. Next to that box were the words ‘Tuition Fee $22,000’.
2. On page 4 of the form there was a section dealing with language, literacy and numeracy (‘LLN’). It explained that Unique provided LLN support to students who required it. This was followed by two boxes as follows, the left one of which was ticked:



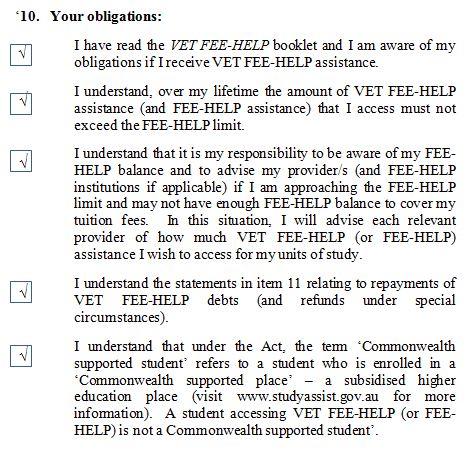
1. There may be difficulties in understanding how a person with literacy problems might be expected to approach this question but that is not presently relevant. There was another section on the same page which appeared to indicate that Tre had ‘Advanced’ computer skills (by circling the appropriate answer in a box so marked).
2. Mrs Simpson’s oral evidence in chief was that neither she nor Tre had ticked the ‘Advanced’ box or the LLN box. Insofar as the rest of the form was concerned she confirmed, with a degree of uncertainty, that some parts were in her handwriting and others (principally signatures) were in Tre’s. Although this was explored in some detail, I do not think I need to set it out. But she did give evidence that parts of the form had not been filled out by her in addition to the two I have already mentioned. These were:

* the ticks on p.2 (indicating completion of year 10);
* the year ‘2012’ in the same section;
* the section headed ‘Diploma of Management. VET FEE-HELP. Full time six months. Part time 12 months. Tuition $22,000’ (T 408); and
* the course start date at p.3.

1. I pause here to note that the completion of the first two of these parts she attributed to Tre, whereas the second two she attributed to an unknown third party. Generally speaking, Unique submitted that Mrs Simpson seemed overly clear that the handwriting was not hers whenever the topic of VET FEE-HELP arose, although it did not say this was the result of deliberate deceit on her part. It was an unconscious bias, so it was said, arising from her understandable concern for her grandson. More specifically, Unique suggested that her testimony was influenced by her natural concern that Tre not be burdened by a debt for a course he did not complete. This suggestion seems somewhat at odds with the proposition that Mrs Simpson was not deliberately lying to the Court and I do not accept this criticism of her evidence. Although I do think that there was a degree of unconscious reconstruction in her evidence as to the filling out of the forms, I do not think that she displayed the unconscious bias for which Unique contended. Whilst it is true that her evidence about those parts of the form referring to VET FEE-HELP was that the writing was not hers, an alternative explanation is that these parts were filled out by Unique employees after the event. As will be seen later in these reasons at [126]-[127], [133]-[134], [279]-[281], [443]-[446], [483]-[484], [527]-[528] and [556] that is the interpretation I favour.

#### Australian government form entitled ‘Request for VET FEE-HELP’

1. The next form was a government form headed ‘Request for VET FEE-HELP assistance’. By this form a person could request VET FEE-HELP. This form contained expected fields for completion such as name and address, date of birth, course to be studied and Australian citizenship/residency. It also had fields for the applicant’s tax file number and, at item 10, a section headed ‘Your obligations’. This section was as follows (including ticks):



1. This was then followed by items 11 and 12 which were as follows:

‘**11. By signing this form, you also:**

● **declare that:**

- you have read the *VET FEE-HELP* *information* booklet and are aware of your obligations if you receive VET FEE-HELP assistance; and

- the information on this form is complete and correct and you can produce documents to verify this if required.

● **request that:**

- the Commonwealth lend you the amount of the VET tuition fees for the units in your course outstanding at the census date and to use the amount so lent to pay your provider on your behalf.

● **understand that:**

- if you are a full fee-paying student, a loan fee of 20% will be applied to the amount of VET FEE-HELP assistance provided (if you are a subsidised student in a state or territory that has implemented subsidised VET FEE-HELP arrangements, you will not incur a loan fee). The loan fee will be included in your VET FEE-HELP debt. You should contact your provider for more information;

- you will repay to the ATO the amount that the Commonwealth has loaned to you (plus the loan fee if applicable). These repayments will be made in accordance with Chapter 4 of the Act when your income reaches a certain level, even if you have not completed your studies;

- your debt with the Commonwealth will remain if you withdraw or cancel your enrolment after the census date but that your debt may be removed by your provider in special circumstances;

- your HELP debt will be indexed annually in line with the Act;

- you will not be able to obtain VET FEE-HELP assistance for VET unit(s) of study if you do not meet the TFN requirements;

- you will no longer be able to obtain VET FEE-HELP assistance when the total amount of VET FEE-HELP (and FEE-HELP assistance) you have obtained reaches the FEE-HELP limit as set out in the Act;

- you are able to cancel this request, in writing, at any time, with your provider, and that it will no longer apply from that time. However, this must be done by the census date, otherwise you will have a debt to the Australian Government that you are legally required to repay;

- if your eligibility for VET FEE-HELP changes you must notify your VET provider;

- the Department of Education collects your information in accordance with the Australian Privacy Principles for the purpose of administering Commonwealth assistance, including verifying eligibility for a HELP loan. It is also collected for the purpose of research, statistics and programme assurance. If you do not provide the information required on this form you may not be eligible for Commonwealth Assistance;

- the authority to collect and share this information with other government agencies including, but not limited to, the ATO and the Department of Immigration and Border Protection for the purpose of verifying your eligibility is contained in Part 5-4 Division 179-20 of the Act;

- the information may not otherwise be disclosed without your consent unless authorised or required by law;

- full details of how the department handles personal information for the purpose of the Higher Education Loan Programme can be found at www.studyassist.gov.au;

- the Department of Education’s Privacy Policy, including information on access and correction of personal information and how to make a complaint, can be found at www.education.gov.au/condensed-privacy-policy; and

- giving false or misleading information is a serious offence under the *Criminal Code Act 1995*.

Go to item 12

**12. Declaration:**

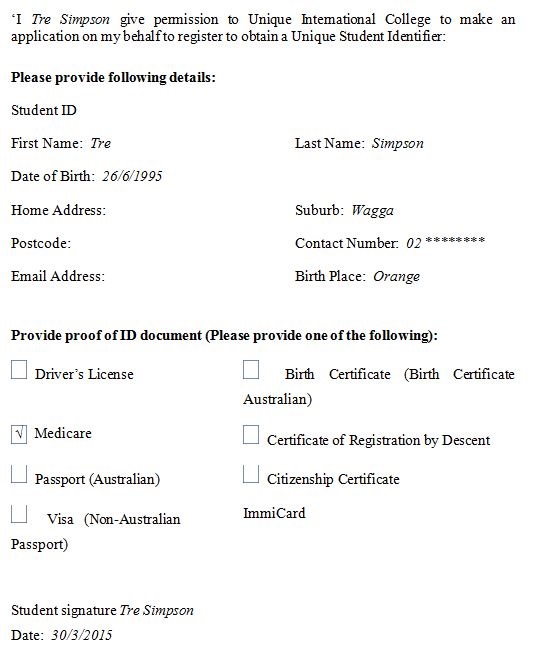
Signature *Tre Simpson*

Date: *30/3/15.*’

1. Mrs Simpson’s evidence was that she wrote Tre’s name on the first page of the form but nothing else that appeared on that page. Under the section headed ‘Your obligations’, which I have set out above, she was clear that she had not filled out any of it nor had Tre. She was not able to assist the Court in relation to whether the ticks were already there when the form was signed by Tre or not.
2. It was Mrs Simpson’s account that the tax file number appearing on the first page of the form must have been put there by representatives of Unique after the forms were handed in. Mrs Simpson deposed that there was some perfunctory conversation with one of the Indian ladies (Ms Kang or Jasmeen) and also with Mr Bell. Nothing of substance passed during these conversations, although it seems that Mr Bell took a photo of Tre, most likely on his iPhone.
3. In short, I find that none of this form was explained to Mrs Simpson or Tre. They were quite unaware of what Tre was signing.

#### Consent form giving permission to Unique to apply for a ‘Unique Student Identifier’

1. The following form is headed ‘Unique Student Identifier Consent Form’:



(italics indicate handwriting)

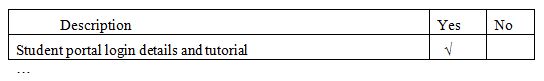
1. Most of the handwriting on this form was Tre’s according to Mrs Simpson. Some of it was not. However, nothing important turns on this form and it is not necessary to consider it further.

#### Acknowledgment form acknowledging that online students had received an orientation program

1. The next form is entitled ‘Acknowledgement of Orientation for Online Students’. The form was filled out with Tre’s name and birthdate which Mrs Simpson confirmed was in Tre’s handwriting. This text then appeared at the top of the form:

‘I confirm that I have attended the Unique International College Pty Ltd orientation program on the date *30.3.15* by phone / face to face (Please circle). This orientation covered the following information regarding my enrolment at Unique International College:’

1. Mrs Simpson gave evidence that this handwriting was neither hers nor Tre’s. There was then set out a long list of matters which were said to have been explained with a field for ticks. Since it is repetitive, I will simply set out the first which is representative:



1. I have concluded that neither this tick nor the others appearing on the form were in Mrs Simpson’s or Tre’s handwriting. Although I find that Tre’s name and signature did appear at the end and these appear genuine.
2. As should now be apparent, I conclude that no such orientation program was administered to Tre. Further, in the time available to them on the evidence before me, neither Mrs Simpson nor Tre could have properly understood this form.

#### Consent form consenting to the use by Unique of still photographs or videos of the applicant in its promotional materials

1. The next form was a consent form by which the putative student consented to the use by Unique of photographs of them. It is signed by Tre. No part of the Applicants’ case turns upon this form and I can pass over it.

#### Evaluation form assessing the student induction process

1. The next form was entitled ‘Evaluation of the Student Induction Process’. This document appeared to be an assessment of the presentation which Mrs Simpson and Tre, on the findings I have made, did not see even if it actually took place. There was no direct evidence about the handwriting or the ticks on this form. I think it most likely, however, that Tre’s name was written on this form by Mrs Simpson (or possibly Tre) but the ticks are most likely by some other person.

#### Acknowledgment form acknowledging that the cost of the course had been disclosed

1. The next form was an acknowledgement in these terms:

‘I acknowledge that I have been given the correct information on the total due fees for my chosen course which is *22000* and I understand that I have to start repaying the due fees plus the 20% loan fee back once I start earning above the minimum threshold *53000* as per VET FEE-HELP information for 2015.

Student Signature: *X Tre Simpson*

Unique International College Staff would like to thank you for choosing our college & wish you a pleasant learning experience.

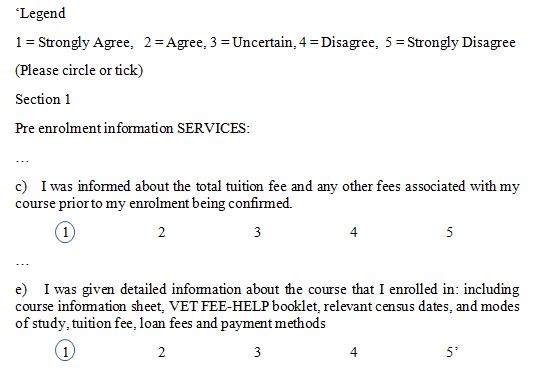
Thank you’

(italics indicate handwriting)

1. Mrs Simpson’s evidence about this was that the signature was Tre’s but that the numbers $22,000 and $53,000 were not on the form at the time that she saw it.

#### Student feedback form

1. The last form was entitled ‘Student Feedback Form’. Mrs Simpson’s evidence was that the handwriting on the form was neither hers nor Tre’s and that she had not read it. Section 1(c) and 1(e) were in these terms:



1. The circling of ‘1’ signified ‘strongly agree’. Mrs Simpson did accept that the signature on the second page was Tre’s. These are it seems to me, therefore, further examples of form filling by some third party tending to suggest, incorrectly, that matters which had not been explained had in fact been explained.
2. As will be apparent from the recitation of the evidence above, Mrs Simpson did in fact deliberately complete some aspects of the forms on Tre’s behalf in ways which were incorrect. For example, ticking ‘yes’ for whether he had the internet at home and ‘no’ for whether he had a disability. The reasons why she might have done this were not explored in any detail. It could theoretically be to her discredit. In relation to some of Unique’s witnesses, I later conclude at [278]-[281], [443]-[446], [483]-[484], [527]-[528] and [556] that completing false declarations is to their discredit. In Mrs Simpson’s case, however, I do not think that it is. She was present at the meeting with some sense of resignation (‘Oh Tre, not again’) to get him the laptop which she knew there was no point resisting: T-415. She did not want him to get the laptop but she knew his mind could not be changed. In the past she had needed to get two domestic violence orders against him. Further, it would have been apparent to Mrs Simpson that Unique’s representatives were largely concerned with ensuring the paperwork was completed without any substantive interest in whether the students were suitable. In any event, Mrs Simpson found herself trying to satisfy the demands of an ungovernable grandson in the company of persons who evidently were not concerned with the truth of what was put in the paperwork. I do not, in that circumstance, think it to her discredit that she completed some of Tre’s paperwork incorrectly.

### Kylie Simpson (Tolland)

1. Kylie affirmed an affidavit in this proceeding of 25 January 2016. She gave oral evidence on the fifth day of the trial which was 10 June 2016.
2. I have already dealt with some aspects of Kylie’s evidence. In particular, I have explained certain limitations in her abilities which would, in my opinion, have been obvious to anyone talking with her even for a short period of time. I have also explained why I prefer Mrs Simpson’s evidence of when she arrived at the meeting to that of Kylie’s. On Mrs Simpson’s account it is clear that Kylie arrived at Aunty Vennie’s house sometime after Mrs Simpson and Tre had already left the sign-up meeting and returned home to Mrs Simpson’s residence. One can be confident, therefore, on the sequence of events I have found to have occurred, that even if there was an introductory talk given by Ms Kang it cannot have been seen by Kylie. These further matters should be noted. In addition to her Von Recklinghausen’s disease, Kylie has learning difficulties and suffers from migraine. She has never worked. She is also on the Disability Support Pension (‘DSP’).
3. Kylie gave an account of her dealings at Aunty Vennie’s house which was not dissimilar to Mrs Simpson’s. She said she arrived and was handed the forms and told, ‘Fill this out’. She asked for help in filling them out and one of the women from Unique asked her questions such as her name and filled out the form for her. She said that the purpose of the forms was not explained to her and that she did not think to ask any questions. She was not told that she was signing up for a course although she thought she might have been. She had, in any event, no intention of signing up for a course but instead just wanted the laptop (which she received).
4. I have found it difficult to assess whether I should accept this evidence. It appears very clearly set out in her affidavit but her cross-examination revealed that it was questionable whether she actually had that degree of clarity. It is quite possible, I suppose, that Kylie was able to express herself more clearly to the solicitors who drew the affidavit away from the intimidating atmosphere of the courtroom. But even allowing that that might be so, I remain reluctant to act on this evidence on its own.
5. On the other hand, the account given by Kylie of what happened strongly resembles Mrs Simpson’s account. Both say they were handed the forms when they walked in and both say that nothing in the forms was explained to them. And, it seems likely that both were only peripherally involved in filing out the forms.
6. I have considered the extent to which I may use the similarity between the accounts given by Mrs Simpson and Kylie to reason that the former corroborates the latter. I do not think, however, it can be used corroboratively. Mrs Simpson’s evidence is about what happened to her and Tre whereas Kylie’s is about what happened to her. It is true that they happened at the same meeting but the critical parts of their evidence are about different subject matter, however similar they appear.
7. It thus seems to me to follow that I may use Mrs Simpson’s evidence to corroborate Kylie’s where they are giving evidence about the same event or topic. Examples of this would include that the meeting took place at Aunty Vennie’s and that three people were present from Unique. However, when it comes to the evidence Kylie gave of what was said to her in the process of filling out the forms I do not think that Mrs Simpson’s evidence can be treated as corroborative.
8. It may be that Mrs Simpson’s evidence could be seen as similar fact or tendency evidence. On this view, Mrs Simpson’s evidence might reveal the existence of a tendency of processing the students as quickly as possible to get them signed up without thought as to the debt consequences for them. However, there are procedural requirements attending the use of similar fact or tendency evidence contained in s 97 of the *Evidence Act 1995* (Cth) which were not utilised in this case. Consequently, reasoning of that kind is not available in this case even if it is relevant for another purpose: s 95.
9. Consequently, it seems to me I must consider the reliability of Kylie’s evidence about how the forms were filled out and what explanation was given to her on its own. I have, in coming to that conclusion, also asked myself whether her account might be buttressed by the surrounding context of the meeting but I do not, on balance, consider that this would be a legitimate line of reasoning.
10. For the reasons I have already given, I do not think Kylie was a reliable witness. Thus whilst I do not find that her evidence was false, I just do not think that it is reliable enough to make findings adverse to Unique upon. I thus limit my findings about Kylie only to these matters:

* she attended the meeting in the manner I have indicated above in my treatment of Mrs Simpson’s evidence; and
* she filled out forms possibly with some assistance.

1. Further than this I do not think it safe to go.
2. However, this is by the by. As I have already indicated, it would have been plain beyond any doubt to the Unique personnel at the meeting that Kylie should not be signed up to any course. It reflects negatively upon the Unique staff present that she was signed up. It should not have occurred. It also shows, as I have indicated above, that the Unique personnel present had no interest in the truth of the paperwork. There cannot really be any dispute about this. An incident during the trial showed this. To my alarm, and also the growing and visible consternation of those behind him, Senior Counsel for Unique subjected Kylie to a vigorous cross-examination designed, I think, to expose her as a liar. What it showed very powerfully instead was that she had no idea what was going on at all. The luncheon adjournment then intervened. After lunch the cross-examination was not pursued. The reasons for this were palpable.

### Jaycee Edwards (Bourke)

1. Jaycee Edwards (‘Jaycee’) affirmed an affidavit in this proceeding of 2 February 2016. She gave oral evidence on the fourth day of the trial which was 9 June 2016.
2. Jaycee was 19 years old at the time of the trial. She lives with her father at the Alice Edwards Village, an Aboriginal mission on the outskirts of Bourke. She is an Aboriginal single mother of two children, unemployed and in receipt of Centrelink benefits. Both children were under two years old when she affirmed her affidavit. She is able to read and write but struggles with larger words. She left high school in year 11 and has done no further study since. She did not have a laptop until given one by Unique (it said lent). She does not have an internet connection at home although she can use a computer and the internet.
3. Her grandmother is June Smith (‘June’). June also gave evidence in the case which I deal with at [170]-[190] of these reasons. June lives at the Alice Edwards Village. At some point in the middle of 2015, Jaycee was at June’s house. Also at June’s house that day were Jaycee’s sister, Mona, and her aunt, Lauren Cubby. From June’s house, Jaycee could see two people she identified as salespeople outside one of the neighbours’ houses. Lauren went to investigate and called out to Jaycee that if she wanted a free laptop she should come to where she was.
4. Jaycee went to join her and then seems to have had a brief word with one of the two women. The two salespersons were also Aboriginal. They were Johanne and Adell Richardson (‘Johanne’ and ‘Adell’ respectively). They worked for Unique (although whether Adell was employed by Unique is contested). Jaycee gave evidence that during this initial conversation, she asked them what they were doing and was told that they were trying to sign up people for a course so as to give them a laptop. I think it is likely that she was told at this time that in order to get the free laptop she would need some identification documents. I infer this because Jaycee gave evidence in her affidavit that she then sent a cousin (Roy, who was sitting in a car nearby) to fetch her identification documents from her father’s home. She also told the two women to go to June’s house. She said that they told her they were from Mount Druitt and worked for Unique.
5. On Jaycee’s account, the party regrouped in the front garden of June’s house where there was a table outside. I pause to observe, as a pre-cursor to the ‘party plan’ issues which I discuss later in these reasons at [753]-[756], that June did not invite anyone to her house, but it would be fair to say that Jaycee did invite Johanne and Adell to June’s house. On the other hand, the evidence does not support the notion that Jaycee, Mona or Lauren were invited to June’s house – they were already there. This finding is relevant to the ‘party plan event’ issues discussed later.
6. According to Jaycee, once they had all regrouped in the front yard of June’s house, Adell and Johanne introduced themselves. Jaycee asked whether she would have to pay for the laptop and was told that she would not. Unique would pay for them and the course. She was also told that if she wanted to do the course it would take six months and she would receive a login and password. This account was revealed during the following exchange which occurred during her cross-examination:

‘Yes. And then there was a signing up process? --- Yes

Okay. All right. Can I just go back in that order. So the general discussion first; is that right? --- Yes.

Do you remember what the general discussion was about? --- They were trying to get people to sign up to do a course and after the course you can get a free laptop. And then one of us asked if we had to do the course or we didn’t’ and the saleswoman said, “No, you don’t have to do the course, but you can if you want and we will send the login and – yes, the login stuff to start the course.”

Okay. All right. We will come back in a little time to what was said, but can I just then deal with the – at that stage – can I deal with after the general discussion people were asked did they want to sign up; is that right/ --- Yes. Yes.

And did everyone say they wanted to sign up or not everyone or ------ Yes, all of us did.

Okay? --- We were in it for the free laptop.

…

Yes. And you understood they were there to try and persuade you, if you wanted to do it, the online course? --- Yes.

Is that right? ---Yes.

Yes. But you thought to yourself, “Well, I don’t want to do the course. I just want the laptop”? ---Yes.

Yes, fair enough. But the salesladies, did they say, “Well this course,” did they say what the course was about, even if you didn’t want to do it? --- I don’t know. I can’t remember. It was a study course.

Yes? --- I don’t know what – what they were studying for.

1. After this introduction, Jaycee gave evidence that Adell began to speak with June separately whilst Johanne spoke with Jaycee. It seems that Johanne handed a bundle of forms to Jaycee which were stapled together. A bundle was also handed to Mona. The forms had ‘X’ marked at various locations. Johanne pointed to these and told Jaycee to sign the forms in those locations. There were other parts of the forms which she had to complete herself such as her name and date of birth. Jaycee said that Johanne took her through the forms ‘quickly’ but that she did not explain them to her or Mona. Further, she said that she was given no time to read the forms and, in any event, trusted Johanne because she thought that she knew what she was doing.
2. Jaycee continued that at the time Johanne handed the forms to Jaycee she asked her for her ID and to sign them. One of the forms asked for her tax file number. This Jaycee did not have but Jaycee used Johanne’s mobile phone to log on to the Centrelink webpage where she was able to retrieve it.
3. As she was filling out the forms she noticed that it had faces printed on it. Jaycee said that Johanne told her to draw smiley faces on this page but she did not explain why or what this meant.
4. Jaycee was a little unclear on this but there was some further discussions between them in which Johanne conveyed to her that she was not obliged to do the course if she did not so desire. Jaycee said that she was never told what the course was about. There was nothing surprising about this, however. Jaycee had no interest in doing a course and just wanted a laptop. In fact, Jaycee thought she was signing up for a laptop.
5. Jaycee said that Johanne did not:

* tell Jaycee how to cancel the course or give her written information about this;
* give her a copy of the paperwork or any other papers or brochures about the course;
* explain to Jaycee that if she signed up to a course that she would be left with a debt; or
* ask Jaycee whether she had finished school or use a computer.

1. After this, they went to the car and Jaycee received her laptop. She thought that the process of completing the forms and getting the laptop took about 20 minutes in all.
2. After she signed up, Jaycee received two emails from Unique one of which had login details. She paid no attention to either really because she was not interested in doing a course.
3. Jaycee was cross-examined by Mr Pritchard, Senior Counsel for Unique, in what turned out to be a painstaking cross-examination. The aim of the cross-examination was to obtain from Jaycee an admission that Unique’s staff had given an explanation of the courses and the funding for those courses. I do not think that this endeavour was successful.
4. In its closing written submissions at paragraph 795, Unique relied upon an admission made by Jaycee during her evidence that there had taken place at June’s house a general discussion of what the VET FEE-HELP sign-up sessions were all about. However, the actual evidence about this is somewhat less substantial. It appeared during Jaycee’s cross-examination at T-357.27-.37 as follows:

‘Yes. Good. And at that stage or later did everyone sit around the table? --- Yes. Some of us sat and some of us stood.

Okay? ---Like, the older people sat.

Yes. And so was there a general discussion about what was going on in a general sense? --- Yes, I think so.

Yes. And just we will come back to what was being discussed in a sec, but the table, was either or one of the Aboriginal ladies, the sales ladies, I will call them that; is that easiest for you? --- Yes.’

1. I do not think that this is evidence that the course was explained to Jaycee or its costs or the VET FEE-HELP system.
2. Unique also relied upon T-365.1 which was said to show that Jaycee had agreed that she understood that by enrolling in the course she had to pay for it, but only if she started earning over $50,000 a year. This evidence was as follows:

‘Yes. And did you understand that if you enrolled for the course, at least theoretically, in your mind, you had to pay for the course? No, that was badly put. I apologise. Thanks. Do you understand that by enrolling for the course you had to pay for it? --- Yes.

Okay. But did you also understand, well, you only had to start paying for it if I earn over $50,000 a year? --- I think so.

And someone explained that to you, as you recall? --- No.

But you just knew that – you understood that anyway? --- I think so.’

1. This rather vague evidence needs to be read alongside evidence a little later in these terms:

‘…And you understood the course had a cost; correct? --- Yes, I think so.

Yes, Yes. But you didn’t think you had to pay the cost yourself? --- Yes.

That’s right? --- Yes.

But you thought you only had to pay the cost if you earned over $50,000; is that right? --- I think so.

Yes. And what I want to get from you is how did you have that belief? How did you come to think that? Do you think it was because the ladies told you? The Aboriginal salesladies told you that? --- I don’t know.

You just don’t know how you knew it? --- I don’t know.

Okay. All right. We’re at 2909. Are you still there? --- Yes.

Now, I just want to put to you – ask you about the question 10. You see, “How do you intend to fund your studies?” Do you see that? --- Yes.

You understood this course – you weren’t paying for it straight away?---I didn’t know we had to pay for it at all. I thought it was free.

Yes. Well, you’ve told me you thought you had to pay for it but you didn’t have to pay back for it until you earned over $50,000; isn’t that right? --- Yes.’

1. It may be that this evidence rises as high as that Jaycee understood that she would have to pay the course costs if she earned more than $50,000, although I have difficulty squaring that with her evidence that the course was free. The evidence could support a finding that if she did know that as a fact, it was not something the Unique employees had told her (see especially the first passage).
2. On the other hand, I do accept that Jaycee was told by the two Unique staff members (Johanne and Adell) that they were from Mount Druitt in Sydney and that the courses being offered were in management or salon management
3. As I have said already, after filling out the forms as instructed, Jaycee received a laptop. This conclusion is inconsistent with the evidence of Johanne and Adell. I deal with their evidence below at [250]-[283] and [284]-[306] respectively and therein give my reasons for rejecting its veracity. Unique criticised Jaycee’s reliability as a witness. I did not find her to be unreliable. I had two impressions of Jaycee’s evidence. The first was that under cross-examination she seemed prone to agreeing with what was being put to her. This left me with the impression that she might have ‘admitted’ matters about which she was perhaps less sure than she seemed to be. At times this led her evidence to appear a little inconsistent. The tension I have referred to above between her evidence that she thought that she might have had to pay for the course whilst simultaneously thinking the course was free is an example of the kind of problem I have in mind. I did not think this resulted from any lack of honesty on her part.
4. My second impression of her evidence was that her recollection was a little hazy. Neither of these matters cause me to change my assessment of her evidence given above. Indeed, in relation to the first matter, it most likely has the effect of reducing the likely impact of admissions made by Jaycee under cross-examination.

### June Smith (Bourke)

1. June swore an affidavit in this proceeding of 3 February 2016. She gave oral evidence on the first and second days of the trial which were 6 and 7 June 2016.
2. June is a 68 year old Aboriginal woman. As I have already related, she is Jaycee’s grandmother. Like Jaycee, she lives in the Alice Edwards Village and has lived there for 50 years. She is the primary carer for six of her grandchildren all of whom are minors and live with her. June left school at around the age of 12 or 13 and could not read or write at that time. Subsequently, in 2013 she completed a literacy program as a result of which she has acquired basic literacy skills. She nevertheless has difficulty with big words and her spelling is variable. She has difficulty using a mobile phone and cannot use a computer.
3. As Jaycee’s evidence suggests, June was indeed present at the meeting which took place at her house on 10 June 2015. In its broad outline, June’s account is similar to Jaycee’s. June observed Jaycee and her sister Mona talking to two Aboriginal women two doors down from her house. Shortly afterwards, June’s foster daughter Lauren Cubby, who it will be recalled was the initiator of the conversation with Johanne and Adell, came over and said that laptops were being given away. June said that she learnt around the same time that the two women were being shown around town by a friend of hers, Annie Gun (now deceased), and her husband. Shortly after this the two saleswomen came over to June’s house. June was comfortable with this because they were with Annie.
4. Once they arrived, the two saleswomen introduced themselves. At this point, her daughter, Fiona Smith (‘Fiona’), also arrived. Then present at the meeting were:

Jaycee Edwards

Mona Edwards

Lauren Cubby

Fiona Smith

Annie Gun

Annie’s husband

June Smith

Johanne Richardson (Unique)

Adell Richardson (Unique)

1. What happened at this point is disputed between the parties. June was cross-examined extensively. Many of the answers she gave whilst being cross-examined were not altogether consistent. For example, her answers as to how her experience as a drover came to be on her pre-enrolment questionnaire did not strike me as altogether satisfactory.
2. On the other hand, my general impression was that June was seeking to tell the truth. The difficulty seemed to me to lie in a desire to give answers which supported what she genuinely believed to be the case and some difficulty in comprehending the questions which were being put to her by counsel. That is to say, I think there was a degree to which June’s evidence about what had happened blurred into what she believed had happened and this was exacerbated by the confusion of the courtroom. I have no doubt that what she believed had happened was a belief genuinely held. But quite a lot of her evidence about what had happened seemed reconstructive in nature. She was very adamant in many of her answers to an extent which I do not think it would be natural to expect a witness to be. Again, I think this was likely to be a product of the fervency of the view she held that Unique had done something wrong rather than a product of deception.
3. Whilst I therefore accept that June’s evidence was genuinely given, it seems to me that I should approach it with some circumspection.
4. The principal issue to be determined at a factual level is the extent to what Johanne and Adell explained the courses, their costs and the VET FEE-HELP scheme to the participants. Also in issue is the extent to which some form of explanation was given as part of the form filling exercise.
5. It seems that once the meeting got under way around the table, June spent most of her time speaking with Adell, whom she described as the older saleswoman.
6. June gave evidence as to what Adell said to her. She told June that the laptop was free. June told her that she did not know how to use a laptop but that she had grandchildren who might be able to help, which prompted Adell to ask whether she should go get a form to fill for her. Adell then suggested that she might help by filling out the forms for her. June said that Adell then started doing her paperwork for her. At this point it became apparent that June’s tax file number would be needed and so she went to get it (and her glasses).
7. June then said she asked how many courses she had to do to get the laptop. She said that Adell told her that you had to do a ‘first course’ to get the laptop. She also told her that she would need to plug the computer into the internet. June said that she told Adell that she did not have access to the internet to which Adell replied that she might go to the library and plug it in there. She then said she was asked to sign the forms. After this she said she was given the laptop by the ‘younger one’ (Johanne).
8. June said that Adell did not say anything else about the course but she did agree that she was showed a brochure which she did not understand.
9. She said that whilst signing the forms, Adell moved through the forms too quickly for her to read. They were not explained to her.
10. She said she was not told that she could cancel her enrolment or that they had to leave her property if she asked them to do so. She also said she was given no information about the courses whatsoever.
11. In its written closing submissions, Unique contended that June had conceded during cross-examination that ‘she could have been told’ that the money to pay for the course was a loan from the government and that she would not have to repay this until she earned more than $50,000. There is an obvious tension between that concession (if it was made) and the idea that she might have been told the course was free. However, this tension does not arise. Unique’s submission is not an adequate rendering of the evidence which June gave. What she said about this under cross-examination was at T-116-117 and was in these terms:

‘Madam, the Aboriginal lady, the elder lady, was sitting next to you when this document was - - -? ---Yes. I know she was sitting next to me - - -

Put this - - - ? --- - - - but I had to go inside to get the tax file number and my glasses.

Yes? --- So, you know, I didn’t really bother what she was doing, I just give her my tax file number. She gave me the paper back and I sat up there for a while and either – she wrote all this on here because I didn’t know nothing about this - $22,000, is it?

Yes, it is? --- By God, that’s a lot of money and – because I would have questioned that. I would have said, “Where the hell I’m going to get this from to pay for the course?”

And you were told it’s a loan from the government, you don’t have to repay the loan from the government until such time as you earn over $50,000. That’s what you were told correct? --- I could have been told that, but I still would have questioned it. I would have said, “Why would I want to get this money from the government when I would never be able to pay it back?”

Because you didn’t believe you would ever have to pay it back, because you believed in June 2015 that you would never earn over $50,000? --- Yes. I know that.’

1. Like much of the evidence in this case this exchange is a little unclear. However, construed in its entirety, I do not think that it is fair to read this as the concession Unique alleges. The whole passage is premised on the idea that June did not know of the $22,000. The rest of her answers seem to be hypothetical and premised on that assumption. Consequently, I reject Unique’s submission about this.
2. What then to make of June’s evidence? It is mostly contradicted by Johanne and Adell’s evidence. I deal with their evidence later in these reasons at [250]-[283] and [284]-[306] and explain why I did not regard either of them as a reliable witness.
3. Although June’s evidence, especially in the witness box, was at times a little confused I am satisfied that this was largely the results of an alien environment and a lower level of literacy. The one part of her evidence that did concern me was her answer during her examination in chief at T-66 that Adell had told her that she needed to do a ‘first course’ to get the laptop. This seemed to me at first to be obviously incorrect. However, the answer makes more sense if by doing a course June meant only enrol in a course. Upon mature reflection, this is what I believe this evidence means.
4. Consequently, I accept June as a witness of truth. Generally, I accept her evidence. I keep in mind the reconstructive nature of some of it, and the degree of confusion which attended other parts of it.
5. I also accept, as Unique contended, that June was told that Adell and Johanne were from Unique.
6. I turn then to the evidence of Fiona.

### Fiona Smith (Bourke)

1. Fiona swore an affidavit in this proceeding of 3 February 2016. She gave oral evidence on the second day of the trial which was 7 June 2016.
2. As with many of the witnesses in this case, the eliciting of her evidence was, and its assessment is, attended with some difficulty. She finished high school at year 8 and is now 46 years old. She has lived in the Alice Edwards Village all her life and lives across the road from her mother, June. She has a Diploma of Aboriginal Studies from TAFE which she obtained in Dubbo and certificates in Visual Arts and Music. She currently works on a casual basis as a broadcaster with Radio 2cuzFM. She reads and writes well. She did not have a computer before Unique gave her one and does not have an internet connection. She uses it for music and watching DVDs. Although she has an email account on her phone which allows her to receive and read emails, she does not know how to send emails.
3. I have found Fiona’s evidence difficult to assess. Often her evidence was inconsistent. For example, she said during cross-examination at T-146 that it was not really explained that the course was a management course but shortly afterwards at T-148 she accepted that she was, in fact, given an explanation of the course although she did not pay much attention. At other times, her evidence did not make sense. At T-123 she said she asked why the laptops were free and was told, in response, that it was for older people who did not know how to use a computer. This made no sense to me.
4. During the cross-examination, Fiona also laughed at various points and at moments which did not seem to me to be at all funny. Whilst preparing these reasons I wondered whether her manner was a function of a certain element of bravado perhaps to cover for some embarrassment at having signed up for the course without knowing much about its contents. But I am not really sure that this can be correct. It may be that her evidence is to be understood as an example of the disadvantage indigenous witnesses sometimes suffer in a highly formal environment. So, ultimately, Fiona is something of a puzzle.
5. That said, I do not think that she was deliberately setting out to deceive the Court. Of that, I am reasonably confident. On the other hand, perhaps a little like June, I sometimes felt that the answers she gave were the answers she thought would assist with acceptance of her genuinely held view of what had happened. I propose therefore to approach her evidence cautiously.
6. Fiona was one of the attendees at the meeting at June’s house. Prior to attending that meeting she was already familiar with the idea of signing up to a course in order to receive a laptop which she had apparently encountered at some earlier point in 2011. Her motivations in attending the meeting and signing up for the course seem to have been twofold. She wished to get the free laptop but she also wanted to help her mother to become computer literate.
7. Her account of how the meeting with Johanne and Adell began was not materially different to that given by June and Jaycee. She heard that some Aboriginal women were giving out free laptops. She understood they were offering a course. One small difference between the accounts is that it is Fiona who said she invited them to June’s house. There was some initial discussion in the front yard during which she was told she needed her identification documents and her tax file number.
8. One thing that Fiona did ask was how it was that the laptops were free. Fiona’s evidence about the explanation of this given by Adell and Johanne was a little unclear. At one point, Fiona said she was told that they were free so that older people who could not use the internet could be assisted; at another point, she said that she was told that ‘it was like a driving test, you know what I mean? Like, you do one quiz you get an iPad, and then she said to me that, “When you’re finished the second course you do – you get $200 and a certificate”’.
9. I have not found it possible to form a precise view as to what was said to her on this topic. In another part of her evidence she said that she thought that the laptop would be free so long as she earned less than $50,000. It sounds like her earning threshold for the purposes of the VET scheme may, therefore, have been mentioned to her. But it is difficult to imagine that if that topic had actually been touched upon by the representatives of Unique that it would have been explained as relating to the repayment of the small cost of a laptop as opposed to the large cost of a course.
10. On the other hand, Fiona was adamant that the course cost of $22,000 had not been mentioned to her. At another point she said that the whole issue of what the course would cost was never discussed and hence she also thought that no-one had said the course was free. She did however think that she was told the laptop was free although, as noted already, she thought she would have to pay for it if she earned more than $50,000.
11. The person with whom Fiona was speaking was Johanne. June on the other hand, was speaking with the mother, Adell. Since the interlocutors were different it is difficult to think, therefore, that I might be able to unravel what was said to Fiona by reference to what had been said to June. On the other hand, this is perhaps not such a large difficulty in relation to Jaycee whose evidence also hinged on a conversation with Johanne. Another problem with Fiona’s evidence on this issue is that she was very clear that she had no interest in the course and was only signing up for the laptop. It was for this reason that she did not care whether she did the course or not. Indeed, she said she had no intention of doing the course. It was because of this that she was not terribly focussed on what was said to her. In fact, during cross-examination she gave evidence that what was said to her went ‘in one ear and out the other’.
12. This rather suggests, and I am inclined to infer, that her account of the discussions is not likely to be especially reliable. Fiona was, however, clear that notwithstanding that she was not paying much attention she would have tuned in if money or the $22,000 course cost had been mentioned. It would, as she said, have rung bells. If it had been said, so she claimed, she would not have signed up.
13. I do not think this is reliable. It is difficult to accept that if she was not paying attention she would have noticed if a particular topic happened to be mentioned. This is more likely wishful thinking.
14. On balance, I have come to the view that I am not by her evidence affirmatively satisfied as to the contents of anything said to Fiona before she began signing the forms. I am satisfied that some things were said to her; I just do not know what they were. I do not accept that her evidence demonstrates therefore that she was told the course could be done online or that she was not told what the census date was. I return to the role of Jaycee’s evidence in relation to this later.
15. I turn then to the way in which her forms were filled out. There is some blurring between her account of the explanations given before the forms were filled out and the testimony about what happened whilst the forms were being completed. I have not found it possible to delineate these with much clarity.
16. Fiona gave evidence that the forms which were presented to her were stapled together. She said that she did not get a chance to look at the forms as she signed them and that she was told by the younger woman (Johanne) just to sign at various spots on the forms. She signed her signature so many times that ‘she felt like a popstar’. This is consistent with the large number of places on the forms which call for a signature.
17. She agrees the signature on the forms is hers but denies that the balance of the handwriting on the forms is hers. I am inclined to accept this. Part of the forms recorded in someone’s handwriting that one of the reasons Fiona wanted to do the course was to help her children. Fiona has no children and it is unlikely that she would have written this.
18. Part of the forms refers to a cost of $22,000 for the course and the fact that this need not be repaid until a threshold $53,345 is earned. These entries are in handwriting. Fiona denies that this handwriting was on her form at the time she signed it. She also denies that:

* she was handed a brochure;
* that there was any mention of the VET-FEE-HELP scheme; or
* that it was explained that she would be left with a debt to the government.

1. Fiona’s account of how the forms were signed might rather suggest that the process took not very long. Yet Fiona’s evidence was that it took nearly an hour. She was cross-examined by Senior Counsel who suggested that this was because she had been asked detailed questions by Johanne but she denied this, claiming instead that it was because she was chatting with Johanne. There are other time difficulties; she thought the meeting lasted 2-3 hours or more but she herself was only there for one hour and twenty minutes. It is not clear to me how she could have known the total duration of the meeting if she was not present for its entirety.
2. As with the discussions before the forms were filled out, I am reluctant to act on much of this evidence. Whilst I cannot be persuaded that Fiona’s evidence was false, I am just not affirmatively satisfied that her account is correct. There are exceptions to this. I do accept:

* most of the handwriting on the forms is not hers;
* the signatures are hers;
* the forms were stapled;
* she went through the forms with Johanne; and
* she had no interest in the course and just wanted to get the laptop.

1. But I cannot find on the basis of her evidence that she was:

* not told about VET-FEE-HELP
* not told the cost of the course was $22,000 which she did not have to repay until she earned more than $53,345;
* not given a brochure; or
* not told about the census date.

1. I do find that she was told the laptop was free and that she was given a laptop.
2. Fiona said that after the forms had been completed she asked Johanne how she could get into the course. She said that Johanne told her that she would send through some emails.
3. The following Monday, Fiona said she went to work and it was after discussions with co-workers that she began to suspect she had been the victim of a scam. Fiona gives an account of subsequently calling Unique and having a discussion with Mr Bell. It was during this conversation that she said that she first became aware of the cost of the course and the repayment obligations. I accept that she was told about those matters during this call. For the reasons I have given, I do not think it has been proved that this was the first time she had heard about these matters.

### Penny Martin (Unique employee)

1. Ms Martin gave oral evidence on the third day of the trial which was 8 June 2016.
2. Ms Martin holds qualifications in education and hairdressing. She was employed by Unique during two periods between 2007 and 2009 and from November 2014 to February 2015. During this second period she worked six hours per week as an online assessor. This involved her working on about 10 occasions of which only about four involved an actual attendance at the Granville premises. For the balance she worked from home. When she worked for Unique on the second occasion she received an email to which was attached Unique’s policies and guidelines. She was also trained as an online assessor since she was a little unfamiliar with computers. After her training, she was assigned some 80 students. She subsequently attended a personal development day at Unique just before Christmas in 2014 which was attended by about 20 people. It was also attended by Ms Gagen Kaur (‘Gagen’), the head teacher.
3. As it happens, Unique introduced a new computer training system on 31 December 2014 called ‘Ammonite’ and Ms Martin also received a manual about how to operate that system by email that day. There were also emails after that time updating her on the system. . Her impression of the new Ammonite system was that it had a tendency to reduce the role of the online instructors. Prior to Ammonite, communications between online instructors and students had occurred either via emails or online forums. Ammonite now provided for direct access to materials via the system (using logins) and assessment through that system.
4. Ms Martin gave some evidence upon which the Applicants especially relied that related to the initial cohort of 80 students to which she had been assigned. From an initial email which she sent to her newly assigned cohort, she received back about 40 bounce backs and the balance did not respond at all. She also made further attempts to communicate by email with those whom she thought may not have received the initial email. The implication of this evidence which the Applicants sought to draw, as I understood it, was that there was no genuine involvement from the student end.
5. Ms Martin followed up these emails by further ‘shout outs’ (I assume emails or statements logged in the online forums) but she received no replies.
6. Ms Martin was concerned about this. Her experience as a teacher indicated to her that in a class of 30 one might lose 15 students but in the case of a larger class of 80, the absence of any responses raised a ‘question mark’. She went and spoke to Amarjit Singh (‘Amarjit’), who was the Chief Executive Officer of Unique, to share her concerns. In their hour and a half conversation he struck her as passionate about education. Their conversation covered a range of topics: the poor state of Unique’s finances, the possibility of opening a laser clinic and perhaps writing a script for a Bollywood movie. Eventually, he referred Ms Martin to Gagen.
7. Ms Martin told Gagen that she was concerned, based on her previous experience at another college, that the students might not exist. Ms Martin had noticed, in that regard, that some of the email addresses given for the students were the same.
8. Gagen told Ms Martin that the college was going to give the students individual college email addresses. It is not clear to me how this would have solved the problem since at least half of the emails had been bouncing back from their intended addressees. My impression was that Ms Martin never really got to the bottom of her concerns about this. Despite that, she was aware that she had seen other trainers in the system receive feedback in the forums. There were also two occasions when she had met students face-to-face but she had no way of knowing if they were her students. Both occasions involved a group of retired, largely Filipino, students.
9. Ms Martin gave evidence that her dealings with the education staff at Unique had been satisfactory in the sense that all of her queries had been answered promptly and the personnel were very nice people.
10. Both the Applicants and Unique accepted that Ms Marin was a witness of credit. I accept her evidence.

### Larissa Kidwell (Taree)

1. Larissa Kidwell swore an affidavit in this proceeding of 18 February 2016 and gave oral evidence on the second day of the trial which was 7 June 2016.
2. Her evidence was about the events at Taree. This aspect of the case directly related only to the Applicants’ system case and Ms Kidwell was not one of the Applicants’ individual consumers.
3. Ms Kidwell was born in 1977 in Australia and is of Indian, not indigenous, heritage. In 2007 she was admitted as a solicitor of the Supreme Court of New South Wales having earlier procured admission to a degree in law. She presently resides in Taree with her husband, an indigenous man who has certain mental health issues and is unable to read or write. A significant attack upon the credit of Ms Kidwell was launched by Counsel for Unique. I explain that attack below and my reasons for rejecting it. I found Ms Kidwell to be a credible witness and I accept her evidence.
4. Ms Kidwell’s evidence is that she was present at the Taree Centrelink Office on the morning of 27 November 2014 with her husband. She observed a group of about 8-9 Aboriginal people printing off their Centrelink payment summary forms. One of the women was an acquaintance of Ms Kidwell’s husband although at this time Ms Kidwell was unacquainted with her. She subsequently found out that this particular woman was known as ‘Aunty Francis’ and was well-known in the Aboriginal community in the Taree region. Aunty Francis told Ms Kidwell that she should come to her home because some people were coming up from Sydney who would be giving out free laptops. All that Ms Kidwell would need to bring would be her Centrelink payment summary and her tax file number.
5. She discussed Aunty Francis’ suggestion with her husband and they were both interested in getting a laptop. They therefore lined up to get their payment summaries from Centrelink. In that regard, Ms Kidwell was in receipt *inter alia* of a Centrelink Carer Allowance, no doubt, for giving daily care to her husband. Because it will be presently relevant, there is no reason I can discern why I should proceed on the basis that her husband did not obtain his Centrelink payment summary. It was why he was there.
6. There was some delay in the process of getting the summaries as the other persons in Aunty Francis’ party printed their forms out and this delay was exacerbated to an extent by a printer failure. Ms Kidwell attached her form as printed out to her affidavit in this proceeding. This document is dated 27 November 2014 and has her tax file number on it. She did not attach her husband’s but I have no reason to think that she did not obtain his or that his form did not travel with Ms Kidwell to Aunty Francis’ house.
7. Aunty Francis lived at the Taree Purfleet Mission which I understand to be an Aboriginal mission. Ms Kidwell gave evidence that she and her husband drove from Centrelink to Aunty Francis’ house at which they arrived at around 10.30 am. When they arrived there were already about six people waiting outside although Aunty Francis herself was not there (I assume she was still at, or in transit from, Centrelink).
8. After asking whether this house was the place where the computers were, Ms Kidwell and her husband were taken indoors by a woman whom she assumed was Aunty Francis’ niece or daughter. There they waited for about 20 minutes after which time her husband left to go to the local Aboriginal land council so as to meet a friend. A brief discussion between the niece/daughter and Ms Kidwell ensued in which it was impressed upon Ms Kidwell that she needed to have her Centrelink payment summary without which the organisers might become upset at her.
9. As time passed, a crowd of around 60 people gathered at the house and Ms Kidwell became concerned that she might be unable to procure the laptop because of the numbers present. She therefore proposed to the niece/daughter, who did not demur, that they should try and compile a list of those present for the more orderly distribution of the equipment. From somewhere, the evidence is not at all clear on this particular, she obtained a piece of butchers paper and began to write a list of those present upon it. Not everyone participated in this process.
10. At around 12.30 pm her husband returned and just after that two cars drove up to Aunty Francis’ house. From out these cars stepped two women and a man who Ms Kidwell thought looked Indian. As will appear, there is no doubt that these three were Ms Kang, Jasmeen and Rubbal, although Ms Kidwell did not at this time (or even now) know this.
11. Ms Kang and Jasmeen then removed two boxes from one of the cars. One was filled with what appeared to be HP and Dell computers; the other with forms. Ms Kidwell thought the computers were ‘dodgy-looking’ and dented. In her affidavit, she said they looked scratched. They were not in packaging.
12. The trio then swept into the dining room of Aunty Francis’ house where the two boxes were put down on the table and the assembled crowd was addressed.
13. Rubbal said:

‘We offer government courses. You will need to complete the course to get a laptop. We don’t have many forms. You have to fill in the forms to get the laptop.’

1. When Rubbal had finished speaking, either Ms Kang or Jasmeen gave a short address – Ms Kidwell called it a ‘spiel’. Ms Kidwell could not remember in evidence in chief the contents of this spiel, but she was sure it was only about five minutes in duration.
2. Ms Kidwell was cross-examined about the spiel. As a result of that cross-examination it emerged that on Ms Kidwell’s version of events the woman giving it had not explained the VET FEE-HELP payment arrangement, the recognition of prior learning, the ability to withdraw from the courses before the census date or the support services which existed for students once enrolled. Ms Kidwell did, however, accept that she was told during the spiel that if she dropped out of the course the computer would have to be returned.
3. It was then time to hand out the forms. Before this occurred, Ms Kidwell was able to give to one of the Indian women the butcher’s paper with the list of names on it, presumably to make more likely the receipt of a laptop. This strategy succeeded and the paperwork was handed out by one of the women calling out names from Ms Kidwell’s list. Ms Kidwell’s name was near the top of that list.
4. Consequently, she and her husband were amongst the first to receive the paperwork. The woman handing out the forms told her that they only had 26 computers but that she did not need to worry as they would be coming back with more.
5. Ms Kidwell’s husband handed his forms to her as he could not complete them himself, being unable to read or write. She began with his forms. She was anxious to complete them all to make sure she got a laptop. She also deposed that there was some degree of pressure to do so quickly as the number of available laptops exceeded the number of attendees at the sign-up meeting by a ratio of more than 2:1. Rubbal wrote down the number of her husband’s drivers licence, Medicare card and pension card. He also took a photo on his phone of each piece of identification.
6. It seems that Ms Kidwell also sought assistance from Rubbal in filling out the forms. He told her to tick the boxes. She also asked about the four page VET FEE-HELP request form and was told by Rubbal that she should definitely fill that one in. During the process of filling out the forms Ms Kidwell became aware, as a result of her own experience with the HECS system, that what was being offered was a loan. She asked Rubbal about this and he confirmed it. Rubbal told her that it was a loan but did not need to be paid back until $54,000 was being earned.
7. Ms Kidwell was cross-examined about the process of filling out the forms. One of the forms was headed ‘information session’. It had a series of boxes which Ms Kidwell ticked, agreeing that various things had been explained to her husband. This mattered because during her cross-examination she said nothing had been explained to him at all. The point of the cross-examination was to undermine her evidence on this. Save that she repeated her evidence in chief that the $54,000 threshold had been mentioned, she maintained her position that none of the matters on the form had been explained. Her specific evidence was:

‘Sorry, do you have – it’s page 11 on the bottom right-hand corner, Madam? --- Okay. So we weren’t told about course information. We weren’t told about entry requirements. We weren’t told about study nodes. We weren’t told about tuition fee or loan fee. There was discussion about the VET FEE-HELP, which I then realised was actually HECS. There was a slight discussion about repayment of your HELP debt, meaning that they said, “Look, if you don’t earn 54,000 you don’t have to pay it.” Nothing about eligibility criteria; nothing about the course commencement date; nothing about the census date; nothing about the withdrawing procedure or changing the course; nothing about refunds; nothing about the schedule; nothing about Commonwealth assistance notice; nothing about details of student support services available; nothing about LL and N requirements; nothing about the USI consent form.’

1. I accept this evidence. I find that these matters were not explained. Ms Kidwell was tested about this with the suggestion that she was willing to complete false forms with the corresponding aspersion that this was not proper for a solicitor. Ms Kidwell’s evidence was that her focus was on getting a laptop. I do not think her conduct dishonest in that context, which included evidence that she had not noticed that the ticked boxes in her husband’s paperwork amounted to acknowledgements that the contents of the form had been understood. She ‘didn’t really read it’ and instead followed the advice given to her by Rubbal to ‘just tick the boxes’. Further, as I explain later in these reasons, Unique had little interest in this paperwork except that it should be completed. What it wanted was for people to sign up to its courses. The manner in which this meeting was conducted can hardly have failed to impress upon those present that what was on offer was an exchange: enrolment for signed paperwork. Rubbal had told Ms Kidwell to tick the boxes; that is what she did. It lies uncomfortably in the mouth of Unique now to attack the honesty of those who gave effect to this pre-emptory process. I reject this attack upon her credit.
2. It was toward the end of the process of filling out the forms that she reached the enrolment application form. It then dawned upon her that what was involved was a HECS-like loan. She had previously thought that it was a government funded course which was free for indigenous people. She had an anticipation, of course, that she would exceed the $54,000 threshold when she returned to the workforce. She told her husband that she did not want a loan for a $500 computer, especially ones which appeared to be in a state of disrepair. They then got up to leave but one of the Unique employees tried to get her to leave the paperwork which she did not agree to do. This form filling part of the meeting went for about 20 minutes.
3. It was suggested to Ms Kidwell in cross-examination that this was not how the meeting ended. It was put to her that she did not have her husband’s tax file number and hence he could not get a computer. I reject this suggestion. It is true that Ms Kidwell did not attach her husband’s Centrelink payment form to her affidavit but that struck me as a thin base upon which to launch such an attack. She had been at Centrelink with her husband and obtained her own form. I accept her evidence that she obtained his. Why would she not?

## 5. Unique’s Witnesses

1. Unique called 14 witnesses during the trial:

* Johanne Richardson
* Adell Richardson
* Mandy Kang;
* Jasmeen Kaur
* Christopher Bell;
* Gurneet Kaur
* Nyomi Whitton;
* Leslie Tighe;
* Jyoti Chaudhary;
* Donna Hickey;
* Guramrit Singh Jandu (Rubbal);
* Thea Merritt;
* Amarjit Singh; and
* Manmohan Singh.

1. I deal with their evidence in turn.

### Johanne Richardson (Bourke)

1. Johanne affirmed two affidavits in this proceeding; one of 28 April 2016 and another of 3 June 2016. She gave oral evidence on the sixth and seventh days of the trial which were 14 and 15 June 2016. Johanne works for Unique and has done so since 2 September 2014. Her evidence principally related to the events at Bourke on 10 June 2015. Her evidence broadly supported Unique’s position.
2. Johanne was born in 1982 and identifies as Aboriginal. Her high school education finished in 1997 when she completed year 10. She lives in Shellharbour, New South Wales. In January 2014, she heard from her brother that there was a woman signing people up for a course at the Richmond Shopping Centre. She was interested in this idea and went along to the shopping centre where she met for the first time, Ms Kang. She said she commenced a course in salon management with Unique in March 2014 and completed it in August 2014.
3. She also said that she commenced a Diploma of Management in July 2014 which she completed in May 2015. It was put to her under cross-examination that she had failed every unit in both courses. She testified that she was unsure as to whether she had passed them. It struck me as odd that she would not know this.
4. In any event, Johanne said that in August 2014 she asked Ms Kang for work at Unique a few times. Not long after this she was interviewed by Amarjit and given the position of Marketing and Admissions Officer. At the time she commenced with Unique she said she was provided various policy and procedure documents. She said that she read these whilst at Unique although she does not say when, during that period, she read them. Her remuneration included an entitlement to a payment of $30 per student she referred to Unique who then enrolled. Across the relevant period, Johanne said she referred about 60-100 students of which she estimated 50% were Aboriginal. Her initial duties were administrative in nature, such as answering phones.
5. Johanne said that in September 2014, the same month she began work, she attended a training course about VET FEE-HELP. Soon afterwards she began to attend student visits with Rubbal and Ms Kang so that she could learn about the process of enrolling students. She attended about five meetings with them in Newcastle and in Sydney before she starting enrolling people herself. During these initial five visits, she said she saw them explain ‘each step in the enrolment process’ including the course information, VET FEE-HELP loans and tuition fees. Johanne said that Rubbal was particularly at pains to explain the fees and that the ‘debt does stay for life until they pay it back’.
6. Thus was Johanne’s evidence about her general practices. In relation to the trip to Bourke, her evidence was that at some point in June 2015 she had been contacted by an Edmond Caban and told that there were people in Bourke who were interested in enrolling in a course. The connexion with Edmond was that Johanne had enrolled his partner’s son in a course whilst at Tamworth. Johanne then asked Ms Kang for permission to make a visit to Bourke which she received.
7. Johanne said that she then travelled from Sydney to Bourke on 9 June 2015. She did so with her mother, Adell, who she said only assisted with the driving and did not work for Unique. As will be seen in due course, I am unable to accept this aspect of Johanne’s evidence.
8. In any event, Johanne said that she took 20 enrolment kits with her and arrived in Bourke later that evening. They stayed at the Back O’ Bourke Motel.
9. The next morning they met up with Edmond who took them to a sign-up meeting with about 10 Aboriginal persons presently awaiting them at the house hosting the visit. It was at the end of this meeting that Edmond told them there was another house nearby with more people interested in signing up to Unique courses. This was June’s house. Adell and Johanne then travelled to the Alice Edwards Village not far from June’s house. There, Johanne had a conversation with two girls. These must have been Jaycee Edwards and her aunt, Lauren Cubby, in light of my previous findings. A brief discussion ensued and she then went to June’s house where a table and chairs were set up in the driveway. Johanne said she then conducted a meeting in accordance with her usual practice (which I describe below). She does not say that June invited them to her house.
10. She said that at the end of the meeting, she and her mother drove back to Sydney where they handed the completed paperwork into Rubbal just before midnight.
11. Johanne gave some general evidence about the process by which she recruited students for Unique. She testified that she enjoyed doing the course and told her family and friends about it. She believed the course was good for Aboriginal people in terms of self-improvement. She told people who were interested in doing a course to contact her. If they did contact her she sometimes organised to meet with them, but only with Ms Kang’s permission. She would only go to homes if invited. This appeared to result in meetings when she visited a town. Although not explicit in Johanne’s evidence, I infer this because the fact of the meeting would be spread by word of mouth. Where more people turned up than was expected, she would split them into groups.
12. Her evidence was that having split them into groups she would take each group through the enrolment process finishing with one group and then beginning on the next. Sometimes while one group was waiting she would have them read over the VET FEE-HELP information. She had documents of that kind in her possession because she was provided with an ‘enrolment set’ by the administration personnel at Unique as part of her employment. This contained forms, course information and the VET FEE-HELP information booklets.
13. Johanne gave detailed evidence about the enrolment process she generally followed at these meetings. In the final form of her testimony elicited orally in chief, Johanne’s account of what transpired was centred on what she referred to as her slides. By this what she meant was slides printed on paper which she read out. A copy of these slides eventually made its way into evidence as Exhibit 33. It is likely that these paper print offs were PowerPoint slides. She gave an oral account of what she said which was largely similar to the content of the slides.
14. This evidence was elicited without Johanne ever having referred to the slides in either of her two previous affidavits. Those affidavits were directed to explaining what Johanne did at the Bourke meeting. Her failure to refer to the slides in either of those affidavits strikes me as very surprising particularly given that she accepted that she was always aware of the slides. Her attempts to explain this problem made little sense to me.
15. In any event, her evidence was that she generally:

* handed out the ‘enrolment set’;
* explained VET FEE-HELP. This explanation included describing that it involved a loan from the government which had to be paid back through the tax system once the student earned more than $54,126. She said her spiel included telling the attendees that if ‘you don’t have a job, the loan will sit with you for life’;
* explained in relation to the course, the cost, length, online aspects, tutors and support available to students;
* she would then walk the students through the enrolment papers which included the pre-enrolment questionnaire and the LLN test; and
* she allowed the students to fill out the forms but she remained on hand in case they had any questions.

1. After the enrolment process was complete she said that she would hand out the laptops but only to students who did not have access to a computer. From April 2015, the free laptop was replaced with a loaned laptop. She said she would also give a step-by-step explanation of how to log on to Unique’s online system.
2. At the end of the process she said that she left, *inter alia*, the following documents with the students:

* a copy of Unique’s cancellation and suspension policy;
* the VET FEE-HELP booklet; and
* a step-by-step guide on how to log on to Unique’s online learning and assessment systems.

1. In the event that a student said to her that they did not use email she said she would have told them that she would send the assessments on paper if they preferred.
2. Thus was Johanne’s evidence. While I do not think that all of her evidence was made up I am satisfied that it would be unsafe to rely upon it in any area of controversy. There were at least three areas of her evidence where I am satisfied that Johanne was giving untrue evidence.
3. The first of these concerns her evidence about how she used her ‘slides’ as the basis of her explanation to potential students. These ‘slides’ were, as her oral evidence eventually made clear, at the very centre of the way in which she allegedly went about giving her presentations. How she gave those presentations was the specific topic explored in her two previous affidavits. Yet no mention was made of the slides in those affidavits. She said that she was aware of the slides when she prepared those affidavits but she does not recall why she left them out. I am unable to accept this as an explanation. My sense that Johanne’s evidence about this was unreliable is augmented by the fact that she largely succeeded in giving an account of what she said at the meetings which was the same as that contained in the slides without having them before her. It looked to me as if she had memorised them.
4. Secondly, she gave evidence about the role of her mother, Adell, on the trip to Bourke which I cannot accept. At paragraph 57 of her affidavit of 28 April 2016, Johanne explained that her mother’s role in her trip to Bourke had been simply to help out with the driving:

‘My mum came along to help with the driving as it was a long trip. She didn’t have anything to do with the work I was doing for Unique. She does not work for Unique.’

1. Of course, this is contrary to the evidence I have set out of both Fiona and June, both of whom gave evidence that Adell had a significant role to play during the Bourke meeting. Johanne was aware of this evidence and denied that it was true at paragraphs 72 and 91 of her affidavit.
2. That Johanne’s evidence in this regard was contradicted by Fiona’s and June’s would not, by itself, have led me to view this aspect of Johanne’s evidence as necessarily untrue. However, evidence emerged during Johanne’s cross-examination of text messages sent from Adell’s mobile phone which make it very hard to accept her evidence about this. These included:

* a text message from Adell on 23 March 2015 to Ms Kang ‘confirming Saturday Tamworth’;
* a text message from Ms Kang to Adell on 25 March 2015 ‘Going to Cowra with Nyomi’;
* a similar text message from Adell to Ms Kang about ‘Matraville’ on the same day;
* a text message from Adell to Ms Kang on 27 March 2015 in these terms:: (‘condo’ means Condobolin)
* ‘Mandy im going tomorrow me and johanne were staying the whole weekend I will get everything also ive booked Tuesday back to condo ive missef (sic) 20 people can I still do them or cancel’;
* a text message from Adell to Ms Kang on the same day in these terms:
* ‘I will for sure I have 8 already from mt druitt and matraville’;
* a text message from Adell to Ms Kang on 30 April 2015 in these terms:
* ‘Hi mandy I have to go down wollongong tonight and I need those forms to take with me I can get the nowra and bomedary people while im there can you have someone bring them to my house please.’; and
* a text message from Adell to Ms Kang on the same day in these terms:
* ‘Ok because that will be to (sic) much for rubal im signing 2 people Sunday at emerton near my house’.

1. There are several other text messages which had the same basic import and I need not set them out. They show that Adell was very actively involved in Unique’s business, including in signing people up. There was some evidence that Johanne had used her mother’s mobile number to send text messages (presumably when Adell was driving) but this cannot explain all of these texts. Quite apart from that, I am sceptical of the claim that Johanne used her mother’s mobile number to send messages.
2. When confronted with this material, Johanne denied that her evidence that her mother had no role with Unique was false: T-615. I do not accept her denial. One puzzle about this which I am unable to resolve is why Johanne gave evidence that her mother had a much more attenuated role than was the case. It does not appear to be a proposition that would necessarily harm either Johanne or Unique. Put another way, I am unable to determine what Johanne’s rationale for giving this false evidence was. That notwithstanding, I remain persuaded that this aspect of her evidence was false.
3. A third reason for concluding Johanne was unreliable concerned her evidence about the counter-signing of the forms executed at the Bourke meeting. That meeting took place on 10 June 2015. The forms contained a section entitled ‘Staff Declaration’. Under this heading was a certification followed by a space for a staff member’s name and signature.
4. The certificate was as follows:

‘STAFF DECLARATION

I have conducted an interview by phone/face to face (Please circle) with the Student detailed in this Enrolment Application and Agreement Form and have implemented UIC’s Student Entry Requirements, Selection and Orientation Policy, including a selection procedures in full. I have also provided the student with a copy of the VET FEE-HELP Information for 2015, which provides the student with all details regarding their VET FEE-HELP obligations. I declare that the student in this application meets their chosen program(s) Entry Requirements and has been provided with accurate and sufficient information for their chosen program(s). I therefore declare that this student is suitable for enrolment into their chosen course(s).

Staff Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Staff Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_’

1. The forms which were completed at the Bourke meeting each had this section completed by Rubbal. Rubbal has signed each form and dated it 10 June 2015.
2. Rubbal was not at the Bourke meeting. Indeed, on 10 June 2015, as Johanne’s cross-examination revealed, Rubbal was in Sydney. Her evidence was that she and her mother had driven from Bourke to Sydney that day and that he had signed them at Unique’s premises just before midnight.
3. I have concluded that Rubbal’s certification was false in each case. He conducted none of the interviews at Bourke and provided none of the material referred to in the certificate. Johanne’s evidence is that she had explained to Rubbal what had happened at the Bourke meeting and it was following that explanation that he, as her supervisor, had completed the certificate back in Granville.
4. For me to accept this version of events I would need to accept:

* Rubbal’s completion of an apparently false certificate is to be explained by the existence of an innocent office process whereby Johanne would report to her supervisor who would then complete the paperwork consistently with that report;
* the date of 10 June 2015 which Rubbal has inserted into the form is the date on which he actually signed it;
* Johanne travelled from Bourke to Granville in Sydney (some 738 km) in the afternoon of 10 June 2015, arriving at the College in Granville just before midnight; and
* Rubbal was at the College at that time, at which point he completed the paperwork.

1. This strikes me as distinctly unlikely and I do not think it is what happened. Johanne was not telling the truth about this.
2. There were two further matters which might be seen to adversely affect Johanne’s credit but which I do not think can be reliably used in that way. The first is her evidence about which courses she had passed. Her recollection during cross-examination at T-635-628 appeared to be at odds with the facts, but she appeared to be genuinely surprised by this. The second is her evidence, again during cross-examination, at T-635 that she did not know the meaning of the expression ‘Aboriginal community’. I cannot exclude the possibility that this evidence was the result of a degree of confusion during the cross-examination.
3. Nevertheless, I am persuaded that Johanne’s evidence is not reliable. Unless independently corroborated or obviously correct, I do not think it would be safe to rely upon it.

### Adell Richardson (Bourke)

1. Adell swore an affidavit in this proceeding of 4 June 2016. She gave oral evidence on the tenth day of the trial which was 20 June 2016.
2. Her evidence was as follows. Adell completed school to the end of year 9, has four children, including Johanne, and presently cares for her disabled husband. She first became aware of Unique sometime in 2014 when she met Ms Kang in a shopping centre at Windsor, a town situated on the Hawkesbury River. Adell’s account of this meeting is abbreviated. It seems that Adell approached Ms Kang and told her that she wanted to sign up for a course and get a laptop. This account appears to presume a certain degree of knowledge on Adell’s part about what Unique was offering. Adell’s evidence did not clarify where this understanding came from.
3. Adell said that Ms Kang explained various aspects of the courses to her including:

* the length and cost of the course;
* that it was a Diploma of Management;
* that she needed to present identification documents and her tax file number;
* the cost of $20,000;
* VET FEE-HELP; and
* the $50,000 threshold.

1. She also said that Ms Kang went through the forms with her and explained them to her. About a week later she received the laptop. It was about a week later that her children Johanne, Janine and John signed up for a course with Unique. Subsequently, Johanne took up work with Unique, having previously worked at BiLo.
2. Adell gave evidence that she liked traveling with Johanne when the latter was visiting various locations to give information sessions and sign up students. Other reasons she liked to travel with Johanne included because she wanted to see Australia and meet other Aboriginal people.
3. In any event, in the middle of June 2015 Adell travelled with Johanne to Bourke. She confirms Johanne’s evidence that they stayed in a hotel in Bourke the night before the proposed sign-up meetings. She then gave evidence of attending two sign-up meetings the next day. The first was at Darling St in Bourke. I do not need to spend much time on this meeting. She said that Johanne gave an information session speaking from some documents and that afterwards the people present filled out paperwork.
4. More important for this litigation is the second meeting at the Alice Edwards Village, which I have now already discussed in some detail. It was Adell’s evidence that Edmond Caban took Johanne and Adell to June’s house. Largely, her account confirms Johanne’s. The meeting took place at about 11 am. There were about 6-8 people present. Johanne asked whether the people present wished to do a course. They answered ‘yes’. Johanne then went to get her presentation materials and paperwork from the car. Those present moved under the car port and sat around a table. Adell sat next to an older woman who I conclude was June. Johanne then gave her information session which she did standing up and moving around. The information session went for about 45 minutes. During this session, Adell’s evidence suggests that she was not very focussed on the events at hand. She said she spoke with June but not in relation to the courses. The effect of her evidence is that she did not do so because she was not employed by Unique.
5. Adell gave evidence about what Johanne said during her information session. Because Adell had seen Johanne present the information session before she became bored by it and wandered off for a while. Nevertheless Adell was clear that Johanne spoke about:

* VET FEE-HELP;
* the course cost $22,000 plus a 20% loan fee;
* how long the course went for;
* the $54,000 earning threshold beyond which repayment of the loan would occur; and
* the existence of student support and the location of the college in Granville.

1. At the end of this presentation the forms were distributed to the participants so they could be filled out. Adell accepts that she helped June fill out her forms because this was thought to be faster. She said that it took about 30 minutes. She denies that she would have answered any questions about VET FEE-HELP referring them instead to Johanne. All in all, she said the meeting took about an hour and a half.
2. Except where it is consistent with established facts or other reliable materials I do not think it would be safe to rely upon Adell’s evidence by itself to establish any of the contested issues in this case. This is because there were two matters about which I was satisfied Adell’s evidence was deliberately false.
3. The first concerns her evidence that she did not work for Unique and just travelled with Johanne to keep her company. This evidence was directly contradicted by the text messages which were sent from and to her mobile phone. On their face, the text messages (which are usefully summarised in Exhibit 46) clearly show that Adell was actively involved in Unique’s everyday business. So for example, Adell’s phone sent this text message to Ms Kang on 21 March 2015:

‘Mandy ive got a complaint about 1 of the computers dont have word working I dont know what that is what shouldvi tell her’.

(errors in original)

1. Adell’s response in relation to this, and other similar text messages in Exhibit 46, was that the messages had been sent by Johanne or written by Adell on behalf of Johanne. Why would this be so? It was because Johanne was using her (Adell’s) phone because it had better reception.
2. This explanation encountered difficulties with a text message sent on 27 March 2015. According to it, Adell sent this message to Ms Kang:

‘Mandy im going tomorrow me and johanne were staying the whole weekend I will get everything also ive booked tuesday back to condo ive missef 20 people can I still do them or cancel’.

(errors in original)

1. It is difficult to see why Johanne would send a message referring to herself in the third person. Adell’s explanation was at:

‘Now, I want you to pay particular attention to the first few words, particularly the reference to “me and Johanne”? --- Mmm.

You wrote that SMS, didn’t you? --- I did write it, but it’s probably for Johanne.

Maybe it’s for Johanne, but you wrote it, didn’t’ you? --- Yes, I did.

Yes indeed, you’ve written quite a number of these SMS message, haven’t you, Ms Richardson? --- No, I haven’t.

No. You deny that, do you? --- I do.’

1. I do not accept this explanation. The 27 March 2015 text message therefore reveals that Adell was involved in the internal workings of Unique. It shows that her account of simply accompanying Johanne is false.
2. Two further text messages make a similar point. The first is an SMS exchange which took place between 5.09 am and 5.24 am on 16 June 2015 between Ms Kang’s mobile phone and Adell’s:

‘Adell: “mandy I have newcastle and lightning ridge set up 50 each:”

Mandy: “Adelle Rubbal said he will go”.

1. A similar exchange took place on 18 June 2015 between 9.54 am and 10.00 am:

‘mandy before you stop at the end of the month can we do 3 more towns wagga wagga, wee waa, and narabri These people have been asking us to come

Adell, we have done narrabri long time ago when Nyomi’s cousin or friend Lorraine was helping Nyomi. There were about 20 from Wee Waa so if you take the list with you for this one as well a lot have been done in Waggaa (sic) so maybe list for that one aswell. But otherwise all good.

The lady from dubbo said its her people in some of these towns and she said they haven’t signed i’ll give it a go thanks mandy.’

1. Adell was cross-examined about this and the exchange at T-1161.20-1162.29 was as follows:

‘You will see the next one, 94 is from Mandee Kang to your phone. She said:

“Adell, Rubbal said he will go”.

Was Mandee Kang in a habit of addressing your daughter as Adell? --- Well, it’s my number. She probably just said Adell.

She was addressing - - -? ---Sometimes I send the messages - - -

- - - you, wasn’t’ she, Ms Richardson?--- - - - that Johanne tells me to write while she’s driving.

She sent it to you because you were communicating with her, weren’t you? - - - Could have – might have then. I don’t – I’m not sure.

See, it’s a response. If you look at the previous item 93, Mandee Kang is responding to your SMS sent to her just a few minutes earlier, about 15 minutes earlier; see that. She responding to you because you sent the previous SMS; do you agree? --- No, I don’t agree.

You don’t agree. Go to item 102 on 18 June. Item 102:

“Mandee, before you stop at the end of the month, can we do three more towns? Wagga, Wee Waa and Narrabri. These people have been asking us to come.”

Did you send that one?---I have never been to Wagga Wagga, Wee Waa or Narrabri.

And has anyone ever asked you to go there to do sign-ups for Unique?---No.

No. You will see Mandee Kang responds to that message from your phone a few moments later, four minutes later. Item 103:

“Adell, we have done Narrabri a long time ago when Naomi’s cousin or friend Lorraine was helping Naomi. There were about 20 from Wee Waa, so if you take the list with you for this one as well, a lot have been done in Wagga, so maybe list for that one as well. But otherwise all good.”

You sure you were not organising these trips at this time, Ms Richardson? --- Wasn’t me. I didn’t organise those trips because I didn’t’ go.

Mandee Kang is responding to you and she’s addressing you, Adell; you agree? Do you agree?--- I agree she’s addressing me, but I didn’t go on these trips, so - - -

She’s addressing you, Ms Richardson, because you are the one sending the messages to her in each of these items; do you agree? ---I disagree.

And then you responded to that message within two minutes; that’s 104:

“The lady from Dubbo said it’s her people in some of these towns. She said they haven’t signed. I will give it a go. Thanks, Mandee”

That was you responding, wasn’t it?---It might have been Johanne responding. I didn’t go.

It was you responding on the SMS, Ms Richardson, wasn’t it?---No.’

1. I do not accept these denials. I therefore do not accept her evidence that these text messages are to be explained by the fact that Johanne was using Adell’s phone.
2. Of course, all of this evidence was part of an ancillary attempt on Adell’s part to show that she had not worked for Unique. During her cross-examination, Adell was confronted with a bank statement for one of Unique’s accounts with the Commonwealth Bank. There is an entry for 23 April 2015 which records a transfer of $1500 to ‘Adell’. Adell was cross-examined about this at T-1163:

‘Ms Richardson, these are bank statements that have been given to us by Unique College, and I want to draw your attention to an item – you will see the dates on the left-hand side of the pages. These are all dates in 2015, and you on 23 April 2015 there was a transfer made out of Unique’s bank account to Adell for $1500. You are the Adell identified in that transfer, aren’t you? --- I’m not sure.

You are the person who received the $1500 from Unique College on 23 April 2015; you agree? --- I don’t agree

Do you deny receiving that $1500 on 23 April? --- I do

You deny it? --- Yes

Is it your evidence you’ve never received anything from Unique College? --- I’ve received not a cent from Unique.

Not a cent. So that’s not you. The Adell that’s named there; is that your evidence? --- That’s my evidence.’

1. I do not accept this evidence.
2. Adell gave evidence that she had helped June fill out her forms. Under cross-examination she contended that although the handwriting was hers she had merely written down June’s answers. It would be difficult to form a view about this except that it also emerged that Adell’s handwriting was on both Fiona and Jaycee’s forms. In relation to Fiona’s forms it is clear that Adell has written on the forms certain matters which I am satisfied Fiona would not have said. For example, during cross-examination at T-1169 it emerged that Adell had written on Fiona’s form that the reason she wished to do the course was because she wished to study online at home with her children. Fiona has no children and I am satisfied that she would not have told Adell to write such a thing on the form. At T-1169 it was suggested to Adell that her evidence about this was false, which she denied, but I do not accept this.
3. I therefore do not regard Adell as a reliable witness in areas of controversy.

### Mandy Kang (Walgett, Taree, Tolland)

1. Ms Kang affirmed two affidavits in this proceeding; one of 28 April 2016 and another of 3 June 2016. She gave oral evidence on the seventh and eighth days of the trial which were 15 and 16 June 2016.
2. Ms Kang is the student engagement manager of Unique. Her evidence was directed to the following topics:

* her engagement by Unique;
* Unique’s participation in the VET FEE-HELP system and the enrolment of students in VET FEE-HELP courses;
* Unique’s canvassing of students;
* Unique’s information slides;
* Unique’s forms used in the process of signing students up;
* Unique’s student orientation materials;
* Ms Kang’s trip to Walgett;
* Ms Kang’s trip to Taree;
* Ms Kang’s trip to Wagga Wagga/Tolland;
* Unique’s enrolment processes; and
* Unique’s post-enrolment procedures.

1. As will appear shortly, there are abundant reasons not to accept Ms Kang as a witness of truth. However, it is also clear that she created a great deal of internal documentation relating to systems and enrolment processes. It was not suggested that I should conclude that this documentation was fabricated and I do not do so. Where this documentation fits into the events at the college is one of the puzzles of this litigation.
2. I will indicate at the outset why I do not accept Ms Kang to be a witness of credit. During her cross-examination, there were several occasions when I became satisfied that she was not telling the truth.
3. The first of these concerns an SMS message which Ms Kang sent to Adell at 4.30 am on 30 April 2015:

‘Also in the meantime sign up more people while you guys are there wherever you go my brother said…’

1. Ms Kang was asked about this during cross-examination at T-866-867:

Who’s the brother you’re referring to?---Could be Amarjit.

It’s your brother-in-law you’re referring to, is it?---Yes.

So is that what he said to you, “Sign up more people while you guys are there,

wherever you go”?---No.

Well, what did you mean when you wrote that to Adell Richardson?---See, I can tell

you what it may have meant. I have no idea what it means.

You have no idea what that means. And is it your evidence that Amarjit has never

said to you something like, “Sign up more people while you guys are there wherever

you go”? Is that your evidence?---Yes.

Yes. He never said anything like that to you?---Yes.

So you were just making that up in that SMS were you?---I – that’s why I don’t like

doing SMSs because when the phone does itself – you’re typing something else. It

just types something else. That’s why I don’t like doing SMSs.

HIS HONOUR: You’re saying this is the result of an autocorrect?---Yes. Yes.

Sorry. That’s what I meant.

MR O’BRYAN: Which word - - -?---Yes.

Which word has autocorrected wrongly?---The whole sentence. I have no idea.

So, what, every word is autocorrected wrongly; is that right? That’s your

evidence?---I don’t know.

1. I regard Ms Kang’s suggestion that the entire sentence was as a result of an autocorrect error to be false. Confronted with evidence that she was personally aware that the aim of the exercise was simply to sign people up, Ms Kang chose a path of denial which I cannot reasonably be expected to believe.
2. The second matter concerns Ms Kang’s evidence as to whether Rubbal was a Justice of the Peace. An SMS message sent by Ms Kang to Adell on 30 April 2015 said:

‘Yea but you able to find a JP? Otherwise we can send Rubbal with you as he is a JP as well…’

1. During cross-examination at T-866, Ms Kang denied that Rubbal was a JP. She was then pressed as to why she had said Rubbal was a JP in the SMS message. This exchange at T-859 then occurred:

Now, was Rubbal a JP – a justice of the peace?---No. Rubbal is not a JP.

Why did you write that?---It must be a typo.

For what?---That – where – I have no idea right now, but Rubbal is not a JP. With the messaging, you – even you yourself know that it does automatic - - -

What was the question you were asking at the beginning of that SMS:

‘Yay, but you able to find a JP?’

What does the JP refer to there?---I have no idea. Sorry.

Do you remember sending this text?---Why would I send this text?

1. Again, this evidence is not plausible. The text message is also untrue. Together they constitute material suggesting that Ms Kang is willing to lie both casually (in a text message) and formally (in the witness box).
2. The third concerns Ms Kang’s evidence about her diary. During cross-examination at T-859 this exchange occurred:

Right. Do you keep any records whatsoever, apart from these SMSs, of these

visits?---No.

No. So you don’t have a diary. Is that right?---I don’t keep a diary.

You don’t keep any diary at all. Is that right?---Yes.

Yes. You didn’t keep a diary in March 2015. Is that correct?---Yes.

Yes. And you’ve got no notes or other records of any of these visits. Is that the

case?---Yes.

1. Contrary to this evidence, Ms Kang’s 2015 diary was in evidence as part of Exhibit 53. She was asked about it during cross-examination at T-865:

My junior has just pointed out to me, Ms Kang, that you produced a diary in answer to a notice to produce which we gave you in this case. We got a document which is identified as your diary. I might show it to you, but - - -?---Yes.

Your Honour, this is in the applicant’s supplementary documentary evidence volume, volume 1, under tab 98.

So I’m just going to – I’m just going to hand that to you and ask you to confirm that the description given to it by your solicitors in answer to our notice to produce is correct. That’s your diary, isn’t it, that I’m showing you now – tab 98?---Yes. This is my diary, but I never kept track of my diary.

This is your diary, but you never did what?---I had diary, but I never wrote much in my diaries.

So you did have a diary and you – but you didn’t use it much; is that your evidence?---Yes. That’s my evidence. Yes.

1. This episode is consistent with the view I have reached that Ms Kang was willing to give false evidence when she thought it was to her advantage.
2. The fourth concern I have is with the evidence she gave of her dealings with Kylie. I have already explained above at [93] and [137] that, having seen Kylie give her evidence, I am confident that any person talking with her would have appreciated at once that she was a person of limited capacities.
3. Kylie, it will be recalled, gave evidence about the enrolment forms she had signed at the meeting in Tolland. One of these was the pre-enrolment questionnaire. It was Ms Kang who had carried out the interview with Kylie and she was cross-examined about this. It was Ms Kang’s evidence that the handwriting on this form was, in fact, hers. Ms Kang’s evidence was that the answers on this page were recorded by her on the form because they were Kylie’s answers to the questions she had asked of her. Ms Kang was asked about several of these questions and answers. I propose to confine my attention to questions 5 and 6. In these two sections, Kylie is recorded as having basic skills using Microsoft Word, Excel and PowerPoint; also, to be able to use email, Skype and Webcam. She is also listed as having intermediate technical skills. Ms Kang’s evidence was that she would only record such matters if she had satisfied herself as to these matters.
4. Having seen Kylie give her own evidence, I cannot accept this evidence from Ms Kang. There is no chance that Kylie could possibly have left Ms Kang with the impression that she had these skills. Having seen both women, the only plausible explanation is that Ms Kang was lying about this.
5. The fifth concern I have with Ms Kang’s testimony is her evidence about some cash withdrawals which were made from Unique’s account with the Commonwealth Bank. The particular branch was the Granville branch which was about 100 metres from Unique’s campus. During cross-examination, Ms Kang was asked who made some withdrawals on this account which were identified in Unique’s bank statements. Her answer was that it was Amarjit . She was then asked whether she might have done some of them to which she replied that she might have done ‘one or two’.
6. Exhibit 36 was an Australian Transaction Reports and Analysis Centre (‘AUSTRAC’) record of Ms Kang’s activities on this account. It shows her engaged in more than 90 cash withdrawals on it between 21 July 2014 and 21 December 2015 which totalled in all $1,890,600. Confronted with Exhibit 36, Ms Kang agreed that she had made cash withdrawals.
7. Her initial evidence that she made only one or two withdrawals was false and she changed her position only when confronted with Exhibit 36. This was, in my opinion, a large untruth.
8. These five matters show, and I accept, that Ms Kang was prepared to lie in her evidence when it suited her. There were other attacks made on her credit with which I do not find it necessary to deal. I will record, however, that I reject the attack made on her credit in relation to her qualifications. Although she seemed unclear about the detail of some of them, I do not think it was because she had not done them. It was instead because of their large number. Just why Ms Kang had so many qualifications raises its own questions but little utility for present purposes would be served by pursuing that issue.
9. On the other hand, Unique gave numerous examples of instances where Ms Kang was said to be telling the truth to buttress its written closing submissions that she was a witness of credit. For example it was said that her evidence that she could not recall what was actually said at Walgett, Taree and Wagga Wagga was ‘palpably honest’. It was also said that she gave ‘credible and direct’ evidence about Ms Kidwell at Taree. If describing Ms Kidwell, a youngish Indian woman, as an older Aboriginal woman can be included under the canopy of the credible then this might be so. However, the canopy of credibility is not so large.
10. In any event, that Ms Kang is shown sometimes not to have been lying does not establish that she is a credible witness. For the reasons I have given, she was not.
11. There were some aspects of Ms Kang’s evidence which I do accept as true. I accept that she was born in 1984 in India and emigrated to Australia with her parents in 1997; that she completed her secondary studies in the United States; that she commenced, but did not complete, various tertiary courses at universities; and that she has a formidable array of diplomas and certificates.
12. Ms Kang is married to Balfeet Singh, who is the brother of Amarjit Singh. She has a number of children. After a spell as a train guard, Ms Kang began working for Unique in August 2008. There she has held four roles:

|  |  |
| --- | --- |
| August 2008 | HR Manager |
| January 2011 | Trainer and Assessor |
| November 2013 | Senior Marketing Manager |
| December 2015 | Student Engagement Manager |

1. I accept Ms Kang’s evidence that on 27 November 2013, Unique was approved by the Department as a VET provider. This coincided with Ms Kang’s appointment as Unique’s Senior Marketing Manager. Ms Kang gave evidence that as part of the process of obtaining that registration, Unique implemented a number of policies. One of these, for example, was entitled ‘AP 150 Student Review Requirements and Recrediting a FEE-HELP Balance’. As I have already said, I accept that these documents were generated and do exist. I do not accept Ms Kang’s evidence that they were implemented if that means she took any step to ensure that either herself or Unique’s employees actually used them. I reject her evidence that she directed Unique’s employees to use them although I accept that the employees were most likely provided with copies of the various policies and guidelines.
2. As will be appreciated from the evidence of several of the witnesses called by Unique, an important part of this case concerns what was said at the beginning of the sign-up meetings. This arises as a direct issue in relation to the Applicants’ case on the individual consumers but also arises in an indirect way in relation to its system case. Ms Kang gave evidence about what she said by way of introduction and this, of course, is of immediate relevance to the sign-up meetings held at Walgett, Taree and Tolland which she attended.
3. To understand her evidence it is necessary to put something of a timeline on events. It was on 27 November 2013 that Unique obtained approval as a VET provider. I return to the evidence of Amarjit below at [538]-[594] but he gave evidence, which I accept, that a decision was made by him to change the mode of delivery of Unique’s courses to include its online provision and this was approved by the Department on 2 January 2014.
4. There was therefore a brief period between 27 November 2013 and 2 January 2014 when Unique’s VET FEE-HELP eligible courses were offered face-to-face. During this period the only students who could enrol in Unique’s VET FEE-HELP eligible courses were those who could attend its Granville premises for tuition. Although Ms Kang gave evidence that in around November – December 2013, Unique instituted two arrangements (which I describe below), I think it unlikely that these had any real traction before the inception of the online courses on 2 January 2014. I accept her evidence that before its registration as a VET provider most of its students were overseas students. It appears that these students had a greater capacity to pay Unique’s fees upfront.
5. Ms Kang gave evidence that in April 2014 she developed a formal series of slides that she could speak to during out-of-college visits to make sure she touched upon all of the information she wished to talk about. I return to the topic of those slides shortly.
6. But even on Ms Kang’s account she had no slides in the period between November 2013 and 1 January 2014 (before the online courses were approved) and between 1 January 2014 and April 2014 (when the slides were first created).
7. Ms Kang gave evidence that in this first period it was her standard practice at sign-up sessions to give an overview during which she would:

‘(a) explain the courses Unique offered, including the cost, length of time required, entry requirements and study modes offered for each course;

(b) ask the student if they wanted to complete a course and which course they wanted to complete;

(c) explain that the student was signing up for a course;

(d) explain the obligations arising from the forms and that the purpose of the forms were to sign up to a course;

(e) explain that there were different payment options for the courses;

(f) explain the VET FEE-HELP scheme to students and the nature of their obligations if they received VET FEE-HELP including that:

(i) a VET FEE-HELP course is not free and that it is a loan from the government;

(ii) the student would have a debt to the Government after the census date for each unit of the course;

(iii) the loan must be paid back to (sic) the student if they earn over the threshold amount;

(iv) there is a 20% loan fee;

(v) the loan stays with the student for life unless it is repaid; and

(g) explain withdrawing from the course and the relevance of the census dates.’

1. As I have indicated already, I do not accept that Ms Kang’s testimony is reliable in areas of controversy. This topic is an area of controversy. I do not accept this evidence. This is not to say that I find that these matters were not said; only that I do not propose to act on Ms Kang’s evidence to that effect. Because I have concluded that Ms Kang is an unreliable witness, I would not be prepared to accept this evidence on its own.
2. In relation to the period commencing in April 2014, however, Ms Kang’s account is corroborated by the ‘slides’ she prepared for her presentations. These slides were not used on a projector but instead on her computer. I infer from this that she meant that she used her laptop as a prompt. No attempt was made by the Applicants to prove that the slides had been created after the event.
3. By itself, I would not accept Ms Kang’s evidence that she used the slides as a basis for her presentation. This is because I do not accept her as a credible witness and because I do not accept that the documents generated by Unique necessarily reflect actual practices.
4. Ms Kang gave evidence which I do accept (due to its uncontroversial nature) that Unique initially required persons signing up for one of their VET courses to complete two forms being an enrolment application form and a VET FEE-HELP form.
5. As I have endeavoured to explain, the VET FEE-HELP form, parts of which can be found at [118]-[119] above, is a form prepared by the Australian government. By it an applicant can apply through its provider for VET FEE-HELP in relation to a VET course. As I have already mentioned, it requires applicants, *inter alia*, to provide their tax file numbers. It also has boxes to be ticked which confirm that an applicant has read the VET FEE-HELP booklet and understands the various features of the VET FEE-HELP scheme. These include that it creates a debt repayable through the tax system and that there is a 20% fee.
6. The enrolment form requires similar details.
7. I accept Ms Kang’s evidence as to how she came to use the process of holding meetings. Initially she had tried to sign people up to Unique’s course at public places such as shopping malls or by using backpackers to distribute flyers. The students who were signed up this way were required to come to the Granville campus to do the enrolment process.
8. It was Ms Kang’s evidence that she changed to visiting people’s houses (by invitation) and holding sign-up meetings because it was a ‘much smoother process’, because the former process at Granville ‘made life difficult for the staff’ and because Ms Kang liked the process of talking to groups of potential students all at once.
9. I do not accept this evidence. In fact, once Unique switched to providing its course online there was no longer any need for its students to have a geographical nexus with the Granville campus. As I conclude below at [629], Unique’s city enrolment rate in the relevant period was 0.03% of its total students. The online nature of the courses had the effect of permitting Unique to solicit enrolments from anywhere. In the context of visiting geographically disparate locations, it was necessary that Unique had a way of getting the paperwork done. The process of distributing flyers or soliciting passers-by in shopping centres was not practical for this purpose. In my opinion, once Unique was released from its tether to its Granville premises, the process of sign-up meetings was the only feasible way of proceeding.
10. No doubt, the ability to provide the course online was what made it possible to sign up potential enrolees outside of Sydney, but how did Unique actually make the move into the countryside?
11. Ms Kang’s evidence about this was at paragraphs 81-83, 86, and 90-91 of her first affidavit. She said that the referral process used by Unique resulted in students bringing their friends and relatives in to enrol. Under Unique’s referral system, an enrolled student would receive $200 for each student they brought in. She instanced examples of individuals who had been students (such as Melissa and Nyomi Whitton) who had brought in others such as Adell and Johanne. The particular point of this evidence was that some of these people were Aboriginal and so an innocent explanation was available to rebut any suggestion that Unique had targeted Aboriginal students in particular when offering their courses.
12. Whilst I am prepared to accept that Unique’s referral scheme is likely to have caused the existence of its courses to spread by word of mouth, I do not accept what was, I think, implicit in Ms Kang’s evidence, that the locations at which she ended up marketing its courses were not the result of deliberate decision-making on her, or Unique’s, part.
13. No doubt, the referral system was likely to bring in leads in various, possibly quite separate, areas. But it was Ms Kang (or at least Unique) who made the choice about which leads would be followed up. Ms Kang did not give evidence in her affidavit explaining how that particular decision was made.
14. Ms Kang gave evidence, which I accept, that in March 2014, she implemented a new form, the ‘Information Session Acknowledgment Form’. I accept this because it was not suggested the document had been fabricated.
15. This form, which was an antecedent of the one I have set out at [108] above, required an enrolee to fill in their name and, by using a series of boxes which needed to be ticked, to indicate that certain specified matters had been understood by them. These matters included the following:

* the tuition fee;
* the operation of the VET FEE-HELP system; and
* the census dates.

1. Ms Kang’s evidence was that she directed all staff to use the form and she used it herself. I do not accept this evidence. I do accept that it is likely that Ms Kang sought to ensure that this form was completed and directed her staff accordingly. But I do not think she had any interest in whether the explanations had, in fact, been given. Her interest was only to be in possession of a form which would prove, in the event of litigation or inquiry, that proper explanation had been given.
2. In relation to each of the meetings which I have considered above, I am satisfied that the fact that a student has ticked the boxes on this form (or that the boxes have been ticked) and signed the form is unreliable evidence that the students understood the matters referred to within it.
3. Ms Kang gave evidence about what she regarded as the proprieties of offering potential students incentives such as laptops and iPads. I accept her evidence that she was aware in June 2014 that an answer had been given at a Senate Estimates Committee that the Australian Skills Quality Authority did not think that the offering of incentives infringed its relevant standards or the ACL.
4. Ms Kang gave evidence, which I also accept, that over time she amended the existing paperwork or created new forms or documents. I do not accept her evidence, in each case, as to her motive for creating the documents. I am satisfied that her motive in generating the paperwork was to provide the appearance of a properly operating system rather than in fact running such a system.
5. I turn then to Ms Kang’s evidence about the meetings held at Walgett, Taree and Tolland, which have already been recounted from the perspective of the Applicants’ witnesses in this proceeding. Ms Kang, it should be noted, was not present at the meeting in Bourke.

#### The events at Walgett

1. I do not accept Ms Kang’s evidence of how the visit to Walgett came to be scheduled. That evidence was part of Unique’s case in resisting the Applicants’ case that it had targeted disadvantaged people. She said she was asked to do a visit by Nyomi Whitton. As I have said, I do not regard Ms Kang’s uncorroborated evidence on disputed matters as reliable. In this case, her evidence was corroborated by Nyomi Whitton. However, as will be seen I did not regard her as a reliable witness either.
2. I do accept Ms Kang’s evidence that she travelled with Jasmeen and Rubbal to Walgett on 10 October 2014 and that they left at around 2 am that morning. I also accept that she arrived at the house of Alan Tighe at Sutherland Street, Wagga Wagga at about lunchtime.
3. Ms Kang said that she sat down at a long table and unpacked her materials. The materials included information on each of the courses as well as the VET FEE-HELP booklet. She said she gave a presentation to those attending and that during this presentation she explained the courses and the nature of VET FEE-HELP. In her affidavit, she made no mention of having used her slides to assist her in doing so. I think, however, that this may be implicit in paragraph 94 of her first affidavit.
4. I take her evidence to be that she explained the matters she set out at paragraph 61 of her first affidavit by reference to the slides she described at paragraph 98.
5. She also gave evidence that after the presentation she sat at the table answering questions and enrolling students. She said that she explained each of the forms to the students and that she explained Unique’s online systems.
6. She was specific that she recalled enrolling Natasha Paudel and it was also the effect of her evidence that the meeting took place only on one day. It will be recalled that it was Ms Paudel’s evidence that the meeting took place over two days and that she had arrived only on the second. Indeed, Counsel for Unique explicitly relied upon the two day length of the meeting to diminish the capacity of Ms Paudel’s evidence to contradict Ms Kang’s evidence.
7. As I have already indicated at [38] above, I accept Ms Paudel as a witness of truth. As a result, her evidence relates only to the second day of the meeting by which time, so it seems to me, Ms Kang would already have given her presentation.
8. I am not prepared to accept Ms Kang’s account of her introductory session at the Walgett meeting without corroborative evidence. Further, I do not regard the slides as being a sufficient form of such corroborative evidence. I do not accept her evidence that she explained the forms and answered questions at the Walgett meeting. I accept instead Ms Paudel’s account of what happened with the forms – that the process was ‘very quick’ – as applying not only to Ms Paudel but to the conduct of the meeting generally.

#### The events at Tolland

1. Ms Kang said that she was approached by Mr Bell towards the end of March at the College about holding an information session at Tolland for his family and friends. It would be at his aunt’s house and there would be about 20 people present. She and Jasmeen then travelled in a car hired by Rubbal to Tolland on 30 March 2015, although Rubbal did not accompany them. They arrived at about midday.
2. There were not many people when they arrived so they waited for a while. She said that Kylie and Tre arrived after she did and she is sure they were there for the information session. She said that Mr Bell introduced her as ‘the boss’.
3. She said that she followed her standard practice in holding the information session. After the information session she said she recalled sitting on a couch with Tre. She did not recall whether she did his pre-enrolment interview but she did say that she filled in student feedback forms and put his date of birth and birthplace on the Unique Student Identifier consent form. She said that in accordance with her usual practice she asked Tre whether he understood his rights and responsibilities about the course. She said she explained the online portal to those present. After the paperwork was completed the laptops were handed out. She thought they were at the house for about 2-3 hours.
4. I do not accept Ms Kang’s evidence about the Tolland meeting. As I discuss later, there were a large number of people enrolled by Ms Kang and her ability to recall a conversation with Tre is not plausible. I also do not accept that she recalled that Kylie and Tre arrived after she did. I do not regard her evidence about the slides as reliable. I do accept that she completed the feedback form but she did not do this after speaking to Tre. Instead she did it after the event when she discovered the paperwork was incomplete.

#### The events at Taree

1. It was Ms Kang’s evidence that the trip to Taree had been organised as a result of a referral from one of Unique’s students, Donna Hickey. This is corroborated by Ms Hickey whose evidence in relation to this matter at [486]-[487] of these reasons I am prepared to accept. I therefore accept Ms Kang’s evidence about this. I also accept Ms Kang’s evidence that:

* she drove to Taree in the company of Jasmeen and Rubbal on 27 November 2014 arriving at around 10.30 am or 11.00 am; and
* Jasmeen, Rubbal and she were taken into Aunty Francis’ house.

1. Ms Kang said that she gave her information session by reference to her slides and then asked who was interested in enrolling. I accept that she asked this question. By itself, I would not accept her evidence that she gave her presentation by reference to her slides.
2. Ms Kang’s evidence about this introductory session is directly contradicted by the evidence of Ms Kidwell and directly corroborated by the evidence of Ms Donna Hickey. As will be seen at [504] of these reasons, I accept that whilst Ms Hickey is a witness of truth, her memory is poor and her account of the Taree meeting is, therefore, unreliable. Whether Ms Kang’s evidence about the introductory session should be accepted is largely, therefore, a function of how the credible but contradictory evidence of Ms Kidwell and Ms Hickey is resolved.
3. There are other variations between the evidence of Ms Kang and Ms Kidwell about the meeting such as the number of people at the meeting.

#### General conclusion

1. I do not accept Ms Kang as a witness of truth. Save where I indicate otherwise, I propose not to rely on her evidence.

### Jasmeen Kaur (Walgett, Taree, Tolland)

1. Jasmeen swore two affidavits in this proceeding; one of 29 April 2016 and another of 2 June 2016. She gave oral evidence on the ninth and tenth day of the trial which were 17 and 20 June 2016. She was cross-examined extensively.
2. Jasmeen is the partner of Amarjit. During the relevant period she was Unique’s operations manager and head of sales. She was also an online trainer and assessor. She commenced working for Unique in June 2011. She attended courses run by the Department on the VET FEE-HELP scheme during 2011 although Unique was not then registered in relation to that scheme. It was Jasmeen who in 2013 was put in charge of obtaining Unique’s registration as an approved provider under the VET FEE-HELP scheme.
3. As I have said, it was in November 2013 that this registration was finally obtained. At around the same time, changes were made to the scheme to allow courses to be offered online. At that time, a meeting took place within Unique as to how to market Unique’s VET FEE-HELP course. Present at this meeting were Ms Kang, Amarjit, Rubbal, Gagen and Jasmeen. It was decided that Unique would call ex-students who had previously contacted Unique about doing VET FEE-HELP courses. They decided that students who elected to do the courses online would be offered a free laptop or iPad.
4. Further adjustments were subsequently made to the incentive structures. According to Jasmeen, the final form of the incentive program was as follows:

* $200 for referring a friend or family member; and
* students who remained enrolled past the census date (at least 20% of the way through the course) would receive a free laptop, iPad or alternatively, $1,000 to purchase such a device.

1. I do not at all accept that the program worked in this way. The evidence before me showed that the laptops and iPads were distributed at the time students were signed up and not part way through the courses.
2. According to Jasmeen, Unique initially sought to sign up potential students to its VET FEE-HELP course in shopping centres using stalls and also by distributing leaflets in railway stations. After a couple of months, Unique stopped doing this as most of its students were coming by way of referral.
3. The actual concept of sign-up meetings seems to have had its genesis at a public meeting held at Tregear Community Centre in May 2014 which appears to have got out of hand when not everyone present was permitted to enrol. Subsequently, visits to the homes of interested people were organised.
4. Jasmeen gave evidence about the sign-up meetings at Walgett in October 2014, in Taree in November 2014, and at Tolland on 30 March 2015. Before turning to the detail of that evidence, reference should first be made to Jasmeen’s evidence, which was of a general nature, about what happened at these meetings.
5. She said that when she attended information sessions in the company of other staff members such as Ms Kang or Rubbal administrative tasks were usually attended to by persons such as Ms Chaudhary, Gurneet Kaur (‘Gurneet’) or Rupinder Kaur. In the relevant period, she did some 30-40 visits. Usually Ms Kang was in charge of each visit. By the time she arrived at a meeting it had already been set up by others, usually the persons who had been Unique’s contact in the area.
6. The session would begin with Ms Kang giving her presentation. The topics covered during this presentation were:

* introduction;
* courses on offer;
* commencement date;
* census date;
* payments option;
* eligibility for VET FEE-HELP;
* student support services;
* referral and re-crediting;
* feedback; and
* letters and emails.

1. Jasmeen thinks these presentations typically went for about 20 minutes. She said that Ms Kang sometimes gave presentations from paper slides and sometimes using a projector. At various points in her evidence, she said that the presentations were given by computer. She then said that by computer she had meant projector. She included a photograph in her evidence apparently showing a projector being used. There is also a photograph of Ms Kang using a laptop to give a presentation. This photo was actually taken by Rubbal and I return to its significance later in these reasons.
2. Jasmeen would hand out course information sheets and the VET-FEE-HELP information booklets. She said that if she was asked whether the VET FEE-HELP courses were free she responded by saying that it was a loan from the government which would be repaid though the tax system.
3. After this, Jasmeen said she went through the pre-enrolment questionnaire (but only after March 2015 when it was implemented) together with the literacy and numeracy test. If a student performed the test satisfactorily she would give them the forms. She did not, however, fill out the forms for them. After she checked that a student had completed their forms correctly, she said that she would countersign their forms, as was required. She admitted that sometimes she forgot to countersign the forms and so would do so once she returned to Unique’s campus – this admission is to her credit; and that other times she would direct Gurneet or Ms Chaudhary to do so – this admission is not. This is further evidence of what seems to have been a widespread practice of Unique employees being prepared to sign declarations and acknowledgments about a sequence of events which they were in a position neither to declare nor acknowledge. At the conclusion of the meeting she would give out the laptops and iPads. This was inconsistent with her evidence that the incentive scheme involved the distribution of the equipment only after the census date.
4. Thus was her general evidence.
5. As to the Walgett visit in October 2014, she said she attended with Ms Kang and Rubbal. She said that the general procedure would have been followed. She denied Mr Paudel’s account of what happened.
6. As to the Taree visit in November 2014, she said she travelled with Ms Kang and Rubbal. She denied that 60 people were present and said that only 26 were present. She denied there were two cars involved; that laptops in boxes were brought into the house; that the computers were second-hand or that the Unique personnel did not introduce themselves. She said that the withdrawal process was explained but denied both Ms Kidwell’s account of a list of names being prepared and her account of her conversation about the number of laptops which had been brought.
7. As to the Tolland visit, she said that she drove there with Ms Kang. They visited Aunty Vennie’s house but she said that they left the laptops in the car. There were already people there when they arrived. Her recollection was that Ms Kang gave the presentation without using her slides.
8. She said the usual process was followed at Tolland. Ms Kang told those present that they would be given the enrolment papers if they were eligible. To determine whether they were eligible they were broken into groups and the pre-enrolment test and LLN test were given to them. She thought that this took about 5-8 minutes. Following this they were given the enrolment forms. After the paperwork was done, the laptops were distributed having been brought in from the car.
9. Although she had no actual recollection of speaking to Tre, Mrs Simpson or Kylie, she denied she would have told Kylie to fill out the forms using words such as ‘fill it out’. Instead, she said she would have provided assistance in her usual way. She denied that the forms were not explained. She denied all of Kylie’s evidence as to the matters about which she said she was not told.
10. In my view, Jasmeen was, on the whole, an unreliable witness. Exhibit 42 consisted of AUSTRAC records which showed that she had been involved in a large number of cash transactions each in the sum of $10,000. Her evidence during cross-examination was that she did not know what these were. That was not a credible response. Also not credible was her evidence that she had no memory of two cash transaction which were in the sums of $333,950 and in excess of $470,000 which she gave later during the same cross-examination. I do not believe this.
11. There were some other matters Jasmeen could not recall. Although a sign-up session took place in Shepparton and although Jasmeen was certainly there (as text messages show) she could not remember why she was there. That seems a most unlikely contention. She also had no recollection of who it was within Unique to whom she reported cash withdrawals. This is also implausible given their size. Finally, she had no recollection about various complaints which were made to Unique. I do not believe that she would not remember these matters.
12. I do not accept that Jasmeen was giving truthful testimony when she said she had no recollection of these matters. It follows that I am satisfied that in that respect, at least, her evidence was false.
13. In areas of controversy, I propose to approach her evidence sceptically and bearing in mind that she was willing, when it suited her, to give false evidence.

### Christopher Bell (Tolland)

1. Mr Bell affirmed two affidavits in this proceeding; one of 28 April 2016 and another of 2 June 2016. He gave oral evidence on the ninth day of the trial which was 17 June 2016.
2. Mr Bell was 27 years old at the date of the trial. He first became aware of Unique in late 2014 through a neighbour, Naomi Whitton and started the Diploma of Management with Unique in 2015. He subsequently completed this course and incurred a VET FEE-HELP debt in doing so. In March 2015, he started working for Unique on a casual basis as a ‘Marketing and Admissions Officer’. That involved explaining Unique’s courses to persons who were interested in enrolling.
3. Mr Bell arranged for visits to be made to persons who expressed an interest in doing one of Unique’s courses to him by telephone. Often these were friends or relatives who contacted him. At other times, he was contacted by persons who had been put in touch by another student or as a result of seeing one of Unique’s flyers.
4. When he was contacted in this way, he would arrange with Ms Kang to make a visit, which would often take place at the home of the person who had contacted him.
5. Mr Bell said that in the period between March and September 2015 he attended around 10-15 visits which he had organised. Usually, he attended them with Ms Kang. Between 2 March 2015 and 28 June 2015, Mr Bell’s payslips show he enrolled 151 students for which he was paid around $30 each, which is several thousand dollars. His evidence was that 70-80% of these were relatives of his and the remaining 20-30% were friends. In re-examination, he explained that he had a very large family with a couple of hundred cousins. Under cross-examination, he was only able to name four people from amongst those he had signed up who had completed the course but subsequently said that he thought there might have been more than four.
6. Mr Bell’s evidence is relevant principally for the account he gives of what happened at the meeting at Tolland at Aunty Vennie’s house. His evidence about this was in two parts. First, he gave evidence about what generally occurred at sign-up meetings; secondly, he gave specific evidence as to what had occurred at Tolland.
7. As to his general account, Mr Bell’s version was as follows. The first thing which happened at an information session was a presentation which provided information to those present. This was usually given by Ms Kang if she was present, but when he was on his own Mr Bell gave it himself.
8. Mr Bell dealt with this presentation both in his oral evidence as well as in his affidavit evidence.
9. For the reasons which now follow, I do not regard his evidence as reliable. In relation to his oral evidence, Mr Bell was asked what Ms Kang said at these sessions. Mr Bell’s answer extended from T-917-918 and consisted of a word perfect and verbatim account of what Ms Kang had said. It was clear that he had memorised the speech prior to giving his evidence. At T-1025, I pressed Mr Bell on this point and whether this was really very likely to which he responded that he had had to give the same talk himself on a number of occasions and therefore was familiar with the contents of her speech.
10. My impression of this exchange, and his evidence in general, was that Mr Bell genuinely believed it was important for some reason, not known to me, for him to give the word perfect and verbatim account of Ms Kang’s speech that he did. This is why, after his explanation to me as to how he could remember it in such detail, he said this:

‘I was very nervous this morning and I think I may have missed something, but I’m not sure.’

1. This suggests, and I conclude, that Mr Bell genuinely believed he had to recite as accurately as possible what he thought Ms Kang had said. In this he was incorrect.
2. I do not know from where Mr Bell got this bad idea but I am able confidently to exclude all of Unique’s legal representatives in whom I have the fullest confidence. But regardless of where it came from, it has the effect that Mr Bell’s evidence about what Ms Kang said is false. I do not accept, having seen Mr Bell’s performance in the courtroom, that it was evidence of an actual recollection; it was a rote learned speech.
3. Having discerned that this aspect of Mr Bell’s evidence, which is after all about a critical aspect of the case, is unreliable, the question then arises whether it can be viewed as an isolated instance explicable by some form of excessive enthusiasm or whether its impact is less unconfined.
4. Two matters concern me in that regard. First, because I do not know why Mr Bell gave his evidence this way I do not know what his motive was. Hence, it is difficult to know the extent of the effect of that motive on the balance of his evidence. Secondly, I am concerned that in his affidavit evidence he made no mention of the slides which Ms Kang said, during the giving of her evidence, that she used. Once in the witness box, Mr Bell gave evidence that Ms Kang had used slides. He agreed that he had not included this in either of his affidavits but nevertheless went so far as to say that he had a set of them on his desk at work. He gave evidence that he had most recently looked at them about a month before giving his evidence. However, I do not accept this evidence. He can only have given his rote learned speech from the slides and this could not have been done as long ago as a month before giving his evidence.
5. I do not at this stage draw any conclusions about whether these slides actually existed at the relevant time. It is enough for now to say that Mr Bell’s evidence touching upon the slides is not reliable.
6. Taking those two matters together it seems I must regard Mr Bell’s evidence as unreliable in areas of controversy or where it is not corroborated. This is a general observation.
7. As to the content of Ms Kang’s information session, I am, for the reasons already given, satisfied that Mr Bell’s evidence about this in the witness box should not be accepted because, regardless of why he gave this evidence, it was not evidence of a genuine recollection. He also gave evidence on the same topic at paragraphs 28-43 of his first affidavit. Having concluded that his oral evidence about this was unreliable it is difficult to see that a different approach can be taken to his written evidence.
8. Because the balance of Mr Bell’s evidence, which is to be treated as otherwise unreliable, may yet have a corroborative effect it is necessary to say what the evidence was. In short, Mr Bell said that in the information session Ms Kang would explain:

* payment options, including by VET FEE-HELP;
* the process of withdrawal from the course; and
* the engagement and support services offered by Unique.

1. Mr Bell said that he brought with him to each session VET FEE-HELP booklets and sample Commonwealth Assistance Notices which he made available to potential enrolees by putting them on the table before the session or at other times, after the session. He denied that he had ever told the students that the courses were free. He did accept that questions were sometimes asked during the session. The answers given by Ms Kang or himself, so far as they are material, were that the students were enrolling in a course of study for which they would incur a VET FEE-HELP debt if they applied and did not withdraw before the first census date.
2. Following that part of the sign-up meeting, Mr Bell said that the next step was the administration of a pre-enrolment questionnaire and an LLN test. He said that he did this from late March 2015 and that if a person did not meet the eligibility criteria in the questionnaire or pass the LLN test, he did not enrol them.
3. Mr Bell then said that in relation to those students who had passed the second phase, the sign-up meeting would proceed to filling out the application forms. He set out what these forms were. I have dealt with that topic elsewhere in these reasons and do not need to deal with it here again. His evidence was that each form was explained during the information session. He denies filling out forms for students but said he was available to answer their questions.
4. In relation to VET FEE-HELP he said that he explained it was a loan that would have to be repaid if the income threshold was exceeded. He said that he always inquired why a student wished to do the course so he could confirm if they actually intended to undertake the course.
5. His estimate was that the form filling part of the meeting took about 15 to 20 minutes. He said that it was after this that the laptops or tablets were handed out. He did not see any second-hand devices.
6. He also said that after the session he made available a range of documents such as course information sheets for the students to take if they wished. He accepted that not all students took these materials.
7. As to Mr Bell’s evidence about the specific events which had occurred at Tolland and at which he had been present (some of that evidence was by way of background and some of it was more directed to the events themselves), the following is relevant.
8. Although I have concluded that Mr Bell’s evidence is generally unreliable, I do accept his evidence as to the background to the visit to Tolland. For this to have been false would have involved particularly bold-faced lying on Mr Bell’s part. He did not strike me as a bold-faced liar. Although he gave false evidence as I have explained above at [409], this appeared to be out of a misplaced sense that this was the right thing to do. Additionally, it strikes me as unlikely that Mr Bell would lie about his own family (which this aspect of his evidence concerned).
9. The important aspect of the background is that it was Mr Bell who provided the connection which led to the Tolland visit. It transpires that Aunty Vennie (at whose home the Tolland sign-up meeting was conducted) had been present at another sign-up meeting held in Cowra at which had been present Mr Bell’s mother. Additionally, Aunty Vennie is the aunt of Mr Bell’s partner. These connections led Mr Bell to organise the sign-up meeting at Tolland. He was well acquainted with Aunty Vennie and had been to her house on many occasions. He did not travel with Ms Kang or Jasmeen but went up separately the day before, staying in Cowra. He arrived at Aunty Vennie’s house the next morning about an hour before Ms Kang and Jasmeen arrived. Mr Bell also gave evidence that there were around eight people at the house, most of whom he knew to varying extents. In particular, he knew Kylie and had heard of Tre. Mr Bell’s payslips for the fortnight in which the Tolland visit occurred suggested he had signed up 29 students. He accepted that there had only been one sign-up session in that area. He was not able to recall whether he had done other sign-up sessions in that period. It is possible, although by no means certain, that the payslips therefore undermine Mr Bell’s evidence that only 8 people were present at Aunty Vennie’s house. Later in his cross-examination, he thought that there may have been about 20 potential students present.
10. Subject to the issue of how many people were present, I accept this evidence about the background to the meeting.
11. Mr Bell’s remaining evidence about the meeting is to be treated with care in the manner I have indicated.
12. Mr Bell’s recollection is that Mrs Simpson, Kylie and Tre had arrived after he did, but beyond that Mr Bell was not clear when they had arrived. He did say that if people arrived halfway through Ms Kang’s presentation she would provide the information to that person later on a one-on-one basis.
13. He thought Tre looked like an ordinary young man and did not notice anything untoward about him. He did notice that he spoke a lot, which was contrary to Mrs Simpson’s evidence that he did not speak very much in front of strangers**.**
14. Mr Bell said that he helped to put out Unique’s information pamphlets and the VET FEE-HELP information around Aunty Vennie’s lounge room. Ms Kang then gave her information session in the manner Mr Bell earlier described. Mr Bell gave evidence that Mrs Simpson, Kylie and Tre were present in the dining room for the presentation which took about 20 minutes.
15. Mr Bell gave evidence that after the information session had concluded, he sat at the dining room table to take the students through the enrolment process. The dining table was in a large area which included both the dining room and kitchen. Mr Bell said that Tre sat at the table at some point. He denies that he administered the pre-enrolment questionnaire or LLN test to Tre. Mr Bell thinks he went through some of the enrolment process with Tre but does not recall how much of that process Tre had already done when Tre had sat down. He was not aware of anyone else taking Tre through the forms but he did see him filling them out, including signing them when they were complete. He did not see Ms Kang check Tre’s forms but assumed that she had done so. He denied completing any of Tre’s forms. He did not discuss with Tre or Kylie why either wished to do a Diploma of Management. It seems to me unlikely that Mr Bell would have the level of recall about these matters which his evidence suggests, given the number of sessions he said he attended.
16. He denies that any of those present suggested that they were just present to get the laptop. Mr Bell said that he did not fill out forms for any student and that none of the students indicated to him that they did not understand what was being proposed. Nor did any indicate that they did not have access to the internet. For the reasons I have already given, it would have been obvious to Mr Bell that Kylie did not understand what she was doing. Mr Bell denied that he signed up Kylie at a time after the enrolment session.
17. Finally, in relation to Tolland, Mr Bell said that the students wrote the cost of the course on the forms and none had indicated that they were concerned about the cost.
18. In addition to this evidence about the Tolland visit, Mr Bell also gave evidence about a student engagement team which had been formed within Unique. This team was set up in August or September 2015 by Amarjit. The purpose of this team was to encourage students to get started with their courses. They did this principally by ringing students. Mr Bell thought he rang around 80 people per day. He was only on the team for 2 or 3 weeks. The other three people on the team (Alana, Amanda and Melissa) did not give evidence.
19. Save as indicated, I do not propose to act on Mr Bell’s evidence unless it is plausibly corroborated.

### Gurneet Kaur

1. Gurneet affirmed two affidavits in this proceeding; one of 28 April 2016 and another of 2 June 2016. She gave oral evidence on the eleventh day of the trial which was 21 June 2016.
2. Gurneet started working for Unique in November 2013 as a marketing specialist but she did not complete a Diploma of Marketing until 2015. She had heard about the potential for a job at Unique in 2013 through a cousin who was a student there. She said that upon her employment she was given copies of Unique’s various policies (which she identified) and was required to read them.
3. She was involved in the presentation of information sessions to potential students. This she did at the Granville campus but she also gave evidence about what had happened at a small number of student visits which she had also attended.
4. I do not think that Gurneet’s evidence as to what happened at Granville is particularly material to this case which is about what the Applicants allege Unique did in its sign-up trips away from Granville. It is possible that Gurneet’s evidence of what happened at Granville could provide some form of corroboration for what happened elsewhere. However, its probative effect as such would appear to be rather low. I will not deal with this evidence in close detail. It is enough to say that Gurneet’s version of the information session and sign-up process at Granville is quite similar to that described by Unique’s other witnesses as having happened at the visits at other places.
5. In relation to information sessions given at the sign-up visits, Gurneet’s evidence was, as already noted, that she only went to a few. She described Ms Kang’s information session talk in a way which was essentially consistent with the evidence given by Unique’s other witnesses. Unlike those witnesses, however, Gurneet did refer in her first affidavit to the slides she said were used at the presentations. Gurneet also said that after the presentation she distributed course information. She thought that the information session went for about 25-30 minutes with the whole meeting taking about two hours.
6. I do not accept that Gurneet’s evidence is reliable. During her cross-examination she gave answers which I do not consider to have been true. These related to her certification of enrolment documents allegedly completed on behalf of Kylie. There is no doubt that Gurneet was not present at the meeting at Tolland at which Kylie was signed up on 30 March 2015. She accepted as much during cross-examination. In relation to the forms filled out by (or in the name of) Kylie, there were two locations where what is supposed to be Kylie’s signature appeared.
7. The first was a form which included an acknowledgement that the signatory had attended the information session and had been informed about a specified list of topics relating to that session. A signature purporting to be Kylie’s appears on this document although she denied that it was hers, as I have explained at [92] above. The signature is dated 30 March 2015. Underneath it is a staff signature also dated 30 March 2015. Gurneet’s evidence was that this was her signature.
8. Because she was not in Tolland on that day she could not have signed this document at the same time as Kylie. Gurneet was certain, nevertheless, that because the date she had placed next to her signature was 30 March 2015 this was when she had signed it. But Ms Kang’s evidence was that she did not bring the forms back from Tolland for one or two days. Although I regard Ms Kang’s evidence as generally unreliable, this aspect of her evidence is inherently plausible as it is difficult to see that the forms could have got back to Granville on the same day that they were in Tolland given the distance between Granville and Tolland (some 456km). Even if they had, it would be surprising that Gurneet would have processed them at what would then have been a very late hour.
9. Accordingly, I conclude that Gurneet’s surprisingly emphatic evidence that she signed this form on 30 March 2015 is not true. This also has the consequence that she must have backdated the document. Neither conclusion is to her credit.
10. A similar problem arises in relation to the staff declaration appearing on Kylie’s enrolment form. Under Kylie’s signature a box appears as follows:

‘STAFF DECLARATION

I have conducted an interview by phone/face to face (Please circle) with the Student detailed in this Enrolment Application and Agreement Form and have implemented UIC’s Student Entry Requirements, Selection and Orientation Policy, including selection procedures in full. I have also provided the student with a copy of the VET FEE-HELP Information for 2014, which provides the student with all details regarding their VET FEE-HELP obligations. I declare that the student in this application meets their chosen program(s) Entry Requirements and has been provided with accurate and sufficient information for their chosen program(s).

….’

1. Underneath this, Gurneet has signed the form and dated it 30 March 2015.
2. This declaration is false and Gurneet did none of the things stated in the declaration because she was not in Tolland and could not have done them. Her explanation for the false declaration was that it was her practice to sign off on incomplete forms which had been brought back to Granville when a staff member who had been present at the relevant information session (usually Ms Kang) told her it was alright to do so. On this basis, she thought it likely that Ms Kang, or someone, had told her to sign the declaration on Kylie’s form. Gurneet was quite relaxed when challenged about this under cross-examination and she did not, to my observation, perceive there to be any kind of problem with completing a false declaration. For example, this exchange occurred:

‘Q. But you signed this. You declared that you did, didn’t you?

A. Yes. But Mandee told us to sign, so I signed this form.’

1. This suggests a degree of ethical colour blindness on Gurneet’s part. Combined with her false evidence about the 30 March 2015 date on her countersignature and the fact that she backdated that form, I feel constrained to conclude that she is an unreliable witness. Unless her evidence about matters is uncontroversial or corroborated in a satisfactory way, I do not think it safe to rely upon it.

### Nyomi Whitton (Walgett)

1. Ms Nyomi Whitton swore two affidavits in this proceeding; one of 27 April 2016 and another of 21 June 2016. She gave oral evidence on the eleventh day of the trial which was 21 June 2016.
2. Ms Whitton was an obviously dishonest witness and I give no weight to any of her evidence which has no value. Unique submitted that ‘Ms Whitton gave particularly credible and direct evidence in relation to the events of the information session at Walgett’. I do not agree with this submission.
3. Although I reject her evidence in its entirety, for completeness it should be recorded that her evidence related principally to the events at the Walgett meeting where Ms Paudel was signed up. She gave a similar version of Ms Kang’s information session to evidence given by Unique’s other witnesses, although it was a little more basic. Examining the differences would add little to these reasons given the clarity of the view I have arrived at that her evidence has no value.
4. Her unreliability as a witness emerges from her evidence about certain text messages. Exhibit 39 consisted of a table of text messages obtained from Ms Kang’s mobile phone. A number of them appear to be from or to Ms Whitton.
5. Before dealing with these in detail, it is necessary to begin with the topic of Ms Whitton’s mobile telephone number. Ms Whitton denied knowing what her own number was and had claimed to have failed to bring her phone to Court, as this exchange during cross-examination reveals at T-1283 showed:

‘Q. What’s your mobile phone number?

A. I don’t know. I don’t know mine.

Q. What is your mobile phone number?

A. I don’t know.

Q. Where is your mobile phone?

A. At home.

Q. At home. And you don’t know the number of your mobile phone; is that right?

A. Yes.

Q. Yes. How many numbers have you had in the last year, mobile numbers?

A. Couldn’t tell you. I don’t know.

Q. Is it more than one?

A. Yes.

Q. How many?

A. I don’t know

Q. How many, Ms Whitton, mobile phone numbers have you had in the past year?

A. I don’t know.’

1. I do not accept that Ms Whitton did not know her own mobile number. I am deeply sceptical that she left her phone at ‘home’ especially as she lives in Berkeley which is in Wollongong. It seems to me most unlikely that a young woman would travel from Wollongong into the central business district of Sydney for the day and leave her mobile phone at home. A much more likely explanation, which I embrace, is that she does know her own number and did not want to produce her phone in court lest her number could be revealed.
2. But there is no need to remain in doubt about Ms Whitton’s number. In her supplementary affidavit of 21 June 2016, she gave evidence about her presence at a sign-up meeting conducted by Ms Kang at Richmond, a town in New South Wales in the City of Hawkesbury. She said that she had filled out an enrolment form herself as a former Unique student at Richmond and she attached this to her affidavit. On it she has written two mobile numbers, one for herself (xxxx xxx286) and one for an emergency contact person, her partner John Richardson (xxxx xxx949). Ms Whitton gave evidence about these numbers under cross-examination

‘Q. Yes. You will see two mobile numbers are on that page. One of them is your number at that time?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And that was your number at that time, is that right?

A. Which one? The mobile.

Q. The one that’s shown under your name “mobile”; see that number?

A. Yes, could have been. It could – I – could have been. I don’t know. I don’t - - -

Q. What, would you put a false number on an enrolment form, Ms Whitton?

A. I don’t know.

Q. Did you fill out this form or not?

A. Yes.

Q. Well, would you have put a false mobile number under your own name?

A. No.

Q. No. Would you have put a - - -?

A. I don’t - -

Q. false mobile number in respect of your partner John’s name?

A. I don’t know

Q. You don’t know?

A. I don’t know

Q. Would you have done that, Ms Whitton?

A. Maybe. I don’t know.’

1. In any event, it is clear that Ms Whitton used the number xxx xxx286 as her own number at this time and knew it. Returning then to the text messages set out in Exhibit 39, Ms Whitton was pressed about several messages from or to the number xxxx xxx949 (that is the number she put down for John). In Ms Kang’s phone that number is associated with the name ‘John Nyomi’.
2. On 23 March 2015, the following exchange passed between Ms Kang and someone using the ‘John Nyomi’ number: ‘John Nyomi’ said ‘So tomorrow at your house then Wednesday and Friday Cowra?’ (errors in original). Ms Kang replied:

‘Hi Nyomi, our laptop delivery hadn’t come in so we will have to post the laptops out to the people we sign up tomorrow. Plus can we do 50 people at Cowra instead of 2 trips that way we can do those Friday.’

1. Now it will be apparent from what Ms Whitton placed on the enrolment form that she was familiar with the number xxxx xxx949 and one straightforward view might be that she was using John’s phone. She was cross-examined about this in the following way at T-1277:

‘Q. Is that your mobile number?

A. No.

Q. Whose is it?

A. I don’t know.

Q. Do you not recognise that number?

A. No, I don’t.

Q. It has got nothing to do with you?

A. No.

Q. Never has had anything to do with you?

A. No. I haven’t had that number.

Q. It has got nothing to do with John; is that your evidence?

A. Yes

Q. Do think carefully about this, Ms Whitton?

A. Yes.

Q. Just look at that number again, xxxx xxx 949; do you see that?

A. Yes

Q. It’s identified in Mandee Kang’s phone as a number connected with John Nyomi?

A. Mmm.

Q. John is your partner?

A. Yes.

Q. Nyomi is you?

A. Yes.

Q. Is it your evidence that you have never used that number?

A. No, I haven’t used that.

Q. Is it your evidence you do not recognise that number?

A. Yes.

Q. If you look at the next item on the list, 55908, Mandee Kang sends a message to that number saying:

*Hi Nyomi, our laptop delivery hadn’t come in so we will have to post the laptops out to the people we sign up tomorrow. Plus can we do 50 people at Cowra instead of two trips that way we can do those Friday.’*

Q. Do you still deny that that number is yours?

A. It’s not my number.

Q. Do you deny receiving that SMS on 23 March 2015?

A. I haven’t seen that message before.

Q. Do you deny receiving that message on 23 March 2015?

A. Yes.’

1. This evidence is, in large part, false. Ms Whitton placed this number on her own enrolment form. It is true that the xxxx xxx949 number was recorded by Ms Whitton on that enrolment form as her partner John’s number. But this establishes that the person using that number was either John or Ms Whitton. The question then becomes why Ms Kang is sending text messages to that number addressed to Ms Whitton rather than John. The only answers which are logically available are either that Ms Whitton was using John’s phone or that John was using the phone and Ms Kang mistakenly thought he was Ms Whitton. (I dismiss as sufficiently unlikely not to warrant attention the idea that the phone had been stolen by someone masquerading as Ms Whitton).
2. The thesis that Ms Kang was mistakenly communicating with John, though logically available is factually impossible to embrace. There are at least three problems. First, there are several more message interactions between Ms Kang and ‘John Nyomi’ in which Ms Kang continues to assume ‘John Nyomi’ is Ms Whitton. These messages reveal that the person using the ‘John Nyomi’ phone is travelling to various locations to do sign-up meetings and is communicating with Ms Kang in relation to logistical issues about those visits. Second, since it was Ms Kang who was in charge of these visits it seems to me to be impossible to think that she would be mistaken in thinking that Ms Whitton was doing this work rather than John. If Ms Kang thought Ms Whitton was doing these visits it can only be because she arranged for Ms Whitton to do so. Thirdly, there is no evidence that John was the person involved in these messages.
3. Ms Whitton was cross-examined about a number of these text messages. There is no need to set them out. They are at entries 55908, 55942, 56059, 56257, 57102 and 44036 in Exhibit 39. These are either between Ms Kang and ‘John Nyomi’ or collateral to such a communication (such as one involving the mobile phone of Carla Whitton, a relative of hers). Ms Whitton denied repeatedly that she was the person operating the ‘John Nyomi’ phone. These denials were false and in this she was lying on her oath. She was also lying when she denied being the person who sent message 58423 on Exhibit 39. This was sent from a different number to the other messages (the new number was xxxx xxx012) and was referred to in Ms Kang’s phone as ‘Nyomi new’. Message 58423 reads:

‘Hi mandy I had to do some i done 9 at penrith cause john don’t want me going away this week as I haven’t seen my kids for a week’.

1. Ms Whitton has four children and, as already mentioned, her partner is called John. This message was clearly from Ms Whitton. Her denial that it was, was itself untrue.
2. Counsel for Unique submitted that her evidence was credible because it could be explained by the fact that the cross-examination ‘was based on a false premise in relation to a mobile telephone number obviously in the name of her partner John at part of the relevant time.’ For the reasons I have already given, this submission does not withstand even moderate scrutiny.
3. I decline to act on Ms Whitton’s evidence unless corroborated or independently supported.

### Leslie Tighe

1. Ms Tighe swore two affidavits in this proceeding; one of 27 April 2016 and another of 21 June 2016. She gave oral evidence on the eleventh day of the trial which was 21 June 2016.
2. Ms Tighe is a bartender who, at the relevant time, lived in Dubbo. Her evidence related to two topics. The first was the circumstances in which she signed up to Unique’s Diploma of Management at a meeting with Ms Kang at Dubbo and her subsequent studying of that course.
3. The second concerned the sign-up meeting held at her father’s house in Walgett which Ms Tighe said she attended. It again will be recalled that Ms Paudel was the witness in support of the Applicants’ individual consumers case who was signed up in Walgett.
4. The basic thrust of Ms Tighe’s evidence is that on both occasions Ms Kang had provided full information about the nature of the courses, the VET FEE-HELP scheme and the repayment obligations under that scheme. In summary, her account corroborated that of Unique’s other witnesses who gave evidence about the Walgett meeting.
5. The circumstances in which Ms Tighe came herself to sign up for a course at Dubbo were not directly relevant to the case. However, they had considerable indirect relevance. This was for a number of reasons. First, she gave an account of the events at Dubbo which emphasised her interest in doing Unique’s course ‘because the online system made it easier to study from a rural area’. She gave explicit evidence of having commenced that course and further evidence that the course went ‘well’. This positive experience about the course then led her to think that perhaps her own friends and relatives might be interested in studying with Unique as well.
6. She said that she spoke to her father, Alan Tighe, at Walgett and he agreed with the idea. She also said that she spoke with some other local residents and they asked for her to arrange for Unique to make a visit to her father’s house to provide information about the courses. Ms Tighe then said that she contacted Nyomi Whitton to organise such a meeting at her father’s house in Walgett.
7. When Ms Tighe gave her evidence in the witness box, I was largely disposed to regard her as a witness of truth. However, a comparison between her testimony and objectively available evidence shows that significant portions of her account cannot be correct; moreover, that they are incorrect in ways which cannot have been accidental.
8. Ms Tighe was cross-examined about the circumstances of her use of Unique’s online systems. That cross-examination occurred against a backdrop which included her evidence that it was the online nature of the courses which had attracted her to Unique and that she had begun her studies which had been going well. It was indeed this positive experience which was said by her to explain why she sought to get others involved.
9. Admitted into evidence during the trial was a USB device which became Exhibit 71. It contained, *inter alia*, replacement answers to interrogatories filed by the Applicants on 6 May 2016. Also contained on the USB was a replacement schedule to those replacement answers. It was a list of each student who Unique’s records indicated had enrolled in a course of study during the relevant period but had never logged on to Unique’s online learning platforms. Ms Tighe’s name was on that list. This means that Ms Tighe never logged on to Unique’s online system. It follows that Ms Tighe’s evidence that she commenced the course and that it was going well cannot have been true.
10. She gave further evidence under cross-examination when she was pressed on this topic. She agreed that she had needed to obtain login details which had been emailed to her. She then said she had logged on once but had ‘since moved location’ by which she meant she had moved from Dubbo to Sydney. Why this would explain why she had only logged in once was not explained by Ms Tighe, nor explored in re-examination or discussed in any party’s written submissions. Could it have meant that she attended the Granville campus instead? This was not suggested to me by Unique and it would be procedurally unfair to entertain it.
11. She was then asked what she had done when she had performed this single act of logging in . She said that she had undertaken a ‘brief overlook’ and had done one of the assessments. Pressed further, however, she could not recall what the assessment was about.
12. She then changed her evidence and said that she had not done the assessment the first time she logged on. For a while she persisted, nevertheless, with her evidence that she had only logged on once. This, however, made no sense. A little later she then said she had logged on twice (but only twice and no more).
13. She remained, however, unable to recall what the assessment was about. Indeed, as the refreshingly concise cross-examination by Ms Patterson of junior counsel well showed, Ms Tighe was unable to recall what any of the subjects of the Management Diploma were. She was asked how many units there were in the course to which she responded 7 or 8 but then immediately gave evidence that this was a guess.
14. When eventually confronted with the fact that Unique’s records showed she had not logged on at all, she gave evidence that this must be because the records were incorrect.
15. I do not accept this evidence. Ms Tighe’s account of how she became familiar with Unique’s course is not true. The fact that she put this history forward as providing the explanation for how the meeting at her father’s house at Walgett came to be organised means that I cannot accept that explanation either.
16. That leaves Ms Tighe’s evidence about what happened at the Walgett meeting itself. Without dwelling on the detail it will suffice to say that it closely matches the evidence given by Unique’s other witnesses about the Walgett meeting. For reasons which will be obvious, however, I do not regard Ms Tighe’s evidence as reliable. Except where independently corroborated, I do not propose directly to rely upon it.

### Jyoti Chaudhary

1. Ms Chaudhary affirmed one affidavit in this proceeding of 28 April 2016. She gave oral evidence on the eleventh day of the trial which was 21 June 2016.
2. Ms Chaudhary started working for Unique as a trainee admin officer in November 2013. She gave evidence about her involvement in the enrolment process at Granville. She also gave evidence of her attendance at some student visits conducted by Ms Kang at locations such as Orange and Kempsey.
3. Her evidence as to both topics broadly corroborated that given by Unique’s other witnesses; that is to say, she gave evidence that the courses and the VET FEE-HELP scheme were adequately explained (omitting a lot of detail).
4. Ms Chaudhary was cross-examined. That cross-examination established that she had completed a false declaration and backdated a document (both in respect of enrolment forms relating to Tre but also relating to several others). Further, she denied in the witness box that she had backdated the documents in question when plainly she had.
5. For that reason, I do not regard Ms Chaudhary as a reliable witness. I do not propose to act on her evidence unless it is independently corroborated.

### Donna Hickey (Taree)

1. Ms Hickey swore two affidavits in this proceeding; one of 27 April 2016 and another of 21 June 2016. She gave oral evidence on the eleventh day of the trial which was 21 June 2016.
2. Ms Hickey’s evidence principally related to the events at Taree about which she gave direct evidence. Ms Hickey had herself enrolled into a Unique course in early 2014 from which she claimed to have later graduated. She said that she had visited Taree with a friend for the weekend. I infer that this trip took place shortly before 27 November 2014 when the sign-up meeting at Aunty Francis’ house was held. Whilst in Taree for that weekend she became acquainted with Aunty Francis. She said that she told Aunty Francis about Unique, that she had studied a course with Unique online and that Unique had also given her a laptop to use for that purpose. She also told Aunty Francis that there were no upfront fees but that the course was not free and was paid for by the government which itself needed to be repaid once one earned more than $50,000.
3. Aunty Francis expressed interest in doing a Unique course so Ms Hickey arranged for Ms Kang to come to Taree for an information session. Subsequent discussions between Ms Hickey and Aunty Francis resulted in a decision that a sign-up meeting would be held at the home of the mother of Aunty Francis at the Purfleet Mission.
4. A visit to Taree by Ms Kang, Jasmeen and Rubbal subsequently did take place and, when it did, Ms Hickey was present at it. As agreed beforehand, the meeting took place at the home of the mother of Aunty Francis.
5. Ms Hickey gave evidence that there were about 20 people present. Some of them asked whether they were at the correct place to sign up for a course. She said that she was not asked by any of these people whether this was the place to get a free laptop.
6. Ms Hickey also gave evidence that some of the people present asked her about her own experience of studying at Unique. She said that she told them that the course was offered online and that a laptop was provided for study. She told them that the course was not free ‘and you have to pay fees’ but that the Unique people would explain it better.
7. Ms Hickey said that the 20 or so people present sat in the kitchen and dining room at which point Ms Kang delivered her information session. Ms Hickey’s recollection is that this went for about 30 minutes during which time Ms Kang discussed, without the use of her slides:

* the courses which were available;
* what was involved in studying the courses;
* that Unique would give students who ‘first enrolled’ a laptop to use during study;
* that the laptop would need to be returned if they withdrew from the course;
* that there were no upfront fees but the course was not free; and
* that if they signed up for VET FEE-HELP, it was a loan that would need to be repaid to the government once more than $50,000 was being earned.

1. She recalled some discussion of census dates but was unclear about the detail.
2. Following Ms Kang’s presentation, she recalled people filling out the enrolment forms which she thought they each did on their own. She was clear that she did not hear Unique’s representatives suggest that either the courses or laptops were free. She thought that this part of the meeting took about 30 minutes to complete. Following its conclusion, Rubbal went to the car and brought in boxes of laptops.
3. My impression of Ms Hickey’s evidence at the time she was in the witness box was that she presented as an honest witness but was somewhat embarrassed by a matter which was raised with her during cross-examination.
4. Ms Hickey’s embarrassment arose from a minor statement in her affidavit otherwise of little direct relevance. It was a statement at paragraph 1 that in February 2014 she had commenced a ‘Diploma of Salon’ with Unique – which I take to be a Diploma of Salon Management – and that she had later graduated from it. She also gave evidence that she had subsequently enrolled in Unique’s Diploma of Management but had not completed it for family reasons.
5. Under cross-examination, Ms Hickey was asked questions about her Diploma of Salon Management during which, at T-1247, she was unable to recall at all what the subjects she had studied in the course were or how many units of study she had done. Indeed, at T-1249 she was not able to recall being told that she had passed the course at all and she did not receive any certificate of graduation; she simply ‘just thought [she] passed it’. When prompted with the names of some courses within the Diploma (e.g. ‘Provide a Safe Working Environment’) she did not recall them.
6. It was suggested to her during the cross-examination that she had in fact not been awarded the Diploma and she had failed many subjects. Ms Hickey’s evidence was that she had been told that she had passed her subjects. When pressed about this point, this exchange occurred:

‘Q. What made you think you passed?

1. Because I did study it, but I just – I don’t really remember it. I’ve – I’ve had other family issues, so.

Q. Okay. So nobody told you you had passed?

A. No.’

1. The evidence of whether she did in fact procure this earlier Diploma is otherwise thin. She was cross-examined on a document marked for identification (MFI 24) and it was put to her that this showed she had failed but that document was not tendered and I can take no account of its contents. Nor was she re-examined about this issue.
2. I feel hesitant to make a finding on the issue of whether Ms Hickey did, or did not, complete a Diploma of Salon Management. Regardless, however, I do accept that Ms Hickey’s evidence that she thought she had obtained the Diploma was sincere as was the similar evidence in paragraph 1 of her affidavit. My impression was that she was genuinely taken aback by the suggestion that she did not achieve the Diploma and her own inability to explain satisfactorily why others should accept that she had.
3. For that reason, as I have said, I accept that Ms Hickey’s evidence was genuine. However, the cross-examination of her about this revealed she had basically no recollection of the basic elements of something which a person of ordinary reasonable memory would certainly remember. That conclusion, which does not depend for its correctness upon whether Ms Hickey did, or did not, obtain the Diploma – suggests that she has very poor recollection.
4. That observation is significant when it comes to assessing the reliability of the account she gave of what happened at the meeting at Taree. That account was very detailed in what Ms Hickey was able to recall. Some of Unique’s other witnesses have sought to place their ability to recall in detail what happened at the various meetings by reference to what were said to be invariable practices. Ms Hickey did not attempt that. Her recollection appeared to be direct and detailed. That degree of recollection would be implausible with a witness of ordinary memory. For example, I do not think that a person with no particular reason to do so would have recalled in detail what Ms Kang said at a meeting in late 2014 when swearing an affidavit dated 27 April 2016. Yet this is exactly what Ms Hickey did at paragraph 18 of her affidavit where she set out the topics Ms Kang is said to have discussed.
5. However, for the reasons I have already given, I do not think that Ms Hickey has the memory of an ordinary person. Instead, her memory appears to me to be significantly weaker than most people’s.
6. I do not accept, therefore, that her detailed recollection of the Taree meeting can be reliable. I do not propose directly to act upon it unless it is independently corroborated.
7. What then is one to make of the fact that despite having a very poor memory, Ms Hickey has given a very detailed account of the meeting at Taree? It implies that Ms Hickey’s account is incorrect to the extent that she purports to recall what I am satisfied she could not. It is not necessary for the purposes of these reasons to determine whether this incorrect recollection is the result of an active intention of Ms Hickey’s part to give a version of events sympathetic to Unique. It could just as easily be the result of having picked up an erroneous recollection of events from having been in proximity to other witnesses of Unique or from a subconscious desire to assist Unique. There may be other explanations. Regardless of what the cause of Ms Hickey’s unreliable recollection of the Taree meeting is, the recollection remains unreliable and I do not accept it despite Unique’s submission that she was ‘impressive’.

### Guramrit Singh Jandu (‘Rubbal’) (Walgett, Taree)

1. Rubbal affirmed two affidavits in this proceeding; one of 28 April 2016 and another of 3 June 2016. He gave oral evidence on the eleventh day of the trial which was 21 June 2016.
2. Rubbal commenced full time work at Unique in 2010 as an admissions officer although he had worked on a casual basis since 2009. He was involved in the decision-making processes within Unique in November 2013 with respect to marketing which followed upon its receipt of approval to provide VET FEE-HELP courses. Along with Amarjit, Gagan, Jasmeen and Ms Kang, he was involved in a series of meetings at that time in which it was decided by Unique:

* to use its internal records to contact students who had previously inquired about enrolling in VET FEE-HELP courses;
* to maintain the pre-existing referral program under which past or current students who referred family or friends to Unique were given $200 in cash;
* to offer online students the option of an electronic device to assist in their studies or $1,000 to purchase such a device. Like Ms Kang and a number of Unique’s other witnesses, he gave evidence of Unique having operated stalls in shopping centres. These stalls were not particularly successful. After a few months, Unique began to provide home visits to give information presentations and enrol students. Rubbal was involved in the presentations both at the Granville campus and at these home visits.

1. Rubbal gave evidence about the sign-up meeting held at Walgett on 10 October 2014 where Ms Paudel had been enrolled. His evidence needs to be understood in a context which includes other evidence he gave that he attended approximately 150 such out-of-college information and enrolment sessions in the period between April 2014 and October 2015. As a passing observation, it might be noted that this is nearly two meetings per week.
2. Unsurprisingly, it was Rubbal’s evidence that he had no specific memories of the visit to Walgett in October 2014, although he did recall the name Natasha Paudel ‘because Paudel is a Nepalese name’ and Rubbal had supposedly known a lot of Nepalese students from his time at Unique. He did give evidence that by the time of the Walgett visit he had participated in at least 60 visits with Ms Kang and Jasmeen. He said that he could remember nothing out of the ordinary for the visit and thought therefore that it was likely to have occurred in line with the ordinary practices attending such meetings.
3. He described this general practice at paragraphs 37-45 of his first affirmed affidavit. As with Unique’s other witnesses, he described a processes having two stages. First, Ms Kang would give her information session. If he was on his own he would give it instead of her. The topics dealt with in the information session were also set out at paragraph 38 of his affidavit. These included an explanation of VET FEE-HELP and information about when a student could withdraw from a course. There was a certain similarity between the matters which Rubbal described as having been said and the slides attached to Ms Kang’s affidavit. He also said that sometimes students would interrupt the information session by asking questions, the most common of which related to the cost of the courses and whether or not the minimum repayment income threshold would increase in the future.
4. After the information session, Rubbal said that the students were then required generally to fill out forms. These included the following:

* an enrolment and application form;
* some student orientation materials which included an acknowledgement of orientation form;
* a student feedback form; and
* a VET FEE-HELP form.

1. Rubbal said that he would check the forms collected from the students to make sure that they were complete. Some of the forms called for a staff countersignature which, in his affidavit, he said he either did at the time of the session or later back at Unique’s campus. When the forms were complete, he would then give a demonstration of how to log on to Unique’s online system in relation to which he would also provide written materials. It was only after all of this was done that the student wold be given a laptop. The laptops were never old or second-hand. Rubbal said that documents were left out for students at the end of this process to take if they wished which contained course information, the VET FEE-HELP booklet and the cancellation policy.
2. There was a change to the forms in late March 2015 to include the pre-enrolment questionnaire and the LLN test. Rubbal said that after these were introduced he would interview students to see if they were suitable for the courses. His evidence was that he did sometimes tell students that they were not suitable for the courses on the basis of the questionnaire. He also said that if a student failed the LLN test they would not be enrolled. His evidence, however, was that this had only happened 3 or 4 times.
3. Rubbal gave evidence that he was always informed of Unique’s policies and read them. In relation to VET FEE-HELP, Rubbal said that he was kept up to date by Ms Kang about changes to Unique’s policies. However, he was very clear that he always explained to would-be applicants that the scheme involved a loan from the Commonwealth which was repayable once more than a certain amount was earned by them.
4. Rubbal gave explicit evidence that he and Ms Kang held meetings with the marketing team to remind them that they should ensure that students understood the enrolments process. This allegedly took place in mid-to-late 2015, which is certainly after the sign-up events at Walgett, Tolland and Taree took place and probably after those at Bourke did.
5. He denied targeting particular students for enrolment or that Unique had any policy of targeting people from particular backgrounds or that he ever told students the courses were free. He also denied enrolling students who could not understand what he was saying or whom he thought could not read or write or use a computer.
6. Given the large number of times Rubbal attended sign-up meetings I am willing to accept, in principle, that this degree of recall on his part is possible.
7. Rubbal then gave specific evidence about the meeting at Taree on 27 November 2014. He had some recollection of travelling to Taree with Ms Kang and Jasmeen, such as the fact that he drove, but had no real recollection of the meeting itself. He cannot recall anything out of the ordinary about the meeting and therefore believes the usual practice would have been followed.
8. I have come to the conclusion that I should not rely upon the evidence of Rubbal unless it is corroborated. Although I accept it as possible that Rubbal’s circumstances were such that it is plausible that he could recall as he says, his cross-examination revealed that he was not reliable. In contrast to his detailed recollection of the usual practice contained in his affidavits, Rubbal appeared under cross-examination not to be able to recall much at all.
9. Despite the detail of his evidence about Ms Kang’s usual practice, Rubbal omitted any reference to her slides in his affidavits. The first time he mentioned her slides was in his oral testimony in chief. At T-1191-92 Rubbal was cross-examined about this. His response was that he had used the term ‘information session’ in his affidavit as synonymous with ‘information presentation slides’ because ‘we usually call it information session’. He also denied that anyone had prompted him to include a reference to them in his oral testimony.
10. I do not accept Rubbal’s evidence about this. If the slides had been used on a consistent basis, I am confident that given the number of meetings he went to, they would have been at the front of his recollection. The absence of any reference to the slides in the detailed section of his affidavit where he sought to say precisely what happened at these meetings is therefore eloquent in its failure to refer to the slides.
11. Equally implausible, in my view, is the idea that it only occurred to him after he swore his affidavit that he should mention the slides. When pressed on this, he was equally unable to recall when he first realised the slides were important. This also strikes me as quite implausible. This is not to say necessarily that the slides did not exist; only that it is as yet unexplained why no reference was made to them earlier. I return to the significance of this matter later in these reasons at [644]-[654], but to foreshadow it, it may be consistent with the slides in fact existing but being used briefly or intermittently or both.
12. Special mention should also be made of Rubbal’s evidence of certain photographs. He said that he had taken photographs of information sessions held at Gilgandra on 14 October 2014, Armidale on 24 October 2014 and an unknown location on 28 February 2015. The Gilgandra photos certainly show some people in a room in which there is a projector screen with what appears to be a slide on display. The Armidale photos are similar. They show people sitting in a room with a projector screen with a slide on it. Ms Kang appears in those photos. The photos from the unknown location on 28 February 2015 show some people in a room with one person operating a laptop but the slide apparently being projected is not visible.
13. No challenge was made to this evidence by the Applicants. Indeed, the re-examination of Rubbal showed that he was willing to make available his phone (upon which the photos had been taken). This would have permitted the person inspecting the photos to see where and when they were taken. There was no evidence before me as to whether Rubbal’s invitation in this regard was taken up.
14. In the circumstances, it seems to me that I cannot proceed other than on the basis that the photographs were taken where and when Rubbal said they were. The contrary was not suggested to me by the Applicants.
15. This evidence is significant. It shows a slide being used at sign-up meetings in October 2014 and February 2015. The photographs therefore corroborate Rubbal’s version of events to an extent. I return to this issue below at [644]-[654] when I find the facts.
16. Rubbal was cross-examined about a number of other topics such as the making of cash payments and the identity of the persons involved in organising the visits. The Applicants did not submit that I should find that Rubbal’s evidence about these matters was unreliable.
17. The Applicants did, however, submit that Rubbal was an unreliable witness because he had countersigned various enrolment forms in a way which suggested he had been present in Bourke on 10 June 2015 (when he was not). This had involved falsely declaring that a full explanation of the VET FEE-HELP arrangements had been given to the students when he could not have known that since he was not present.
18. As I have in the case of Ms Chaudhary, I conclude that this criticism is well-founded. It is a reason to approach Rubbal’s evidence with care.
19. For those reasons, I do not propose to accept Rubbal’s evidence unless it is corroborated.

### Thea Merritt (Tolland)

1. Thea swore two affidavits in this proceeding; one of 27 April 2016 and another of 2 June 2016. She gave oral evidence on the eleventh day of the trial which was 21 June 2016.
2. Thea is the partner of Mr Bell. She gave evidence of having enrolled in a Diploma of Management with Unique. She had heard about Unique from a friend and attended a meeting with Ms Kang who had explained to her what was involved in studying, how long the course would take, census dates and course fees. She was quite clear in her affidavit that Ms Kang had explained to her the intricacies of the VET FEE-HELP scheme. She had also explained that the course could be done online and that Unique would give her a laptop to use for her studies. She spoke about this with Mr Bell and then decided to enrol. She subsequently received a laptop.
3. Thea was cross-examined about her studies. She was unable to remember much about them at all as this exchange during her cross-examination at T-1223-24 showed:

‘Q. So you’ve completed the Diploma of Management; is that right?

A. Yes.

Q. When did you complete that?

A. I’m not sure if it was – I don’t remember exactly times and that, how long ago. It was about a year ago.

Q. You finished a year ago?

A. I’m not 100 per cent sure.

Q. Do you know when you enrolled?

A. Would have been, like, a year and a bit ago.

Q. When is that? Can you say the month, do you know?

A. I’m not 100 per cent sure.

Q. So the beginning of 2015?

A. Yes, could have been.

Q. February?

A. Yes, I think so, but I’m not 100 per cent sure.

Q. That’s fine?

A. So I don’t want to say yes or no.

Q. That’s fine. We have records that you commenced on 5 February 2015; does that ring a bell?

A. Yes, but, like I said, I’m not 100 per cent sure, so I don’t want to say yes or no.

Q. No, that’s fine. That’s okay. Do you recall when you completed the Diploma of Management?

A. I think it might have been 12 months ago, but I’m not 100 per cent sure, because I was – I did three different studies. I think I was doing them all around the same time, because I was going to TAFE as well as doing Children Services.

Q. Yes. And I think you said you think you finished around 12 months ago, so that would be around June 2015; is that your evidence?

A. Yes, but I’m not 100 per cent sure, like I said.

Q. So do you think it took you about three months to do the course?

A. No.

Q. How long did it take you to do the course?

A. I’m not sure.

Q. Do you have any recollection of – I withdraw that. Do you recall what units of study you completed in the Diploma of Management?

A. Yes, I do, but I don’t recall, because, like I said, it was a while ago and I was doing a couple of different studies. I was doing one at TAFE, as well.

Q. Yes?

A. And I don’t remember much about that either because I’ve had a lot going on.

Q. Sure. So are you able to say the names of any of the subjects you completed in the Diploma of Management?-

A. I don’t recall 100 per cent.

Q. Can you recall one?

A. I can’t sit here and say them, because I’m not 100 per cent sure.

Q. So you can’t recall the name of one subject that you completed in the Diploma of Management; is that right?

A. With my Diploma of Management?

Q. Yes?

A. Like I said, I’m not 100 per cent sure, so I don’t want to say any names.

Q. Did you receive a certificate for this course?

A. Yes, I did.’

1. This inability to recall the detail of her studies stands in contrast to the detailed evidence she gave in her affidavit which concerned what she said Ms Kang had told her before she enrolled. It is not plausible that she would be unable to recall the name of any of the subjects she had studied for the Diploma whilst being fully able to remember minor details such as the fact that Ms Kang had mentioned the $54,000 earning cap under VET FEE-HELP and the census dates for the courses.
2. This suggests that her evidence about these matters is unreliable. I am also sceptical of Thea’s evidence that no-one, including her partner, Mr Bell, had mentioned Unique’s referral program to her. Mr Bell was making a large amount of money from the program and it is difficult to accept that he had any motive for keeping Thea in the dark about such positive news.
3. Indeed, although Thea said she was not paid under the referral scheme she gave evidence that she was at the sign-up meeting at Tolland with Mr Bell on 30 March 2015 with the Simpsons. It stretches credulity to think that she was not aware that most of the people she was then with, including her partner, were being paid additionally per student signed up. There is simply no sensible reason for her to have remained ignorant of the scheme and I do not think she was.
4. For those reasons, I think Thea’s evidence is to be approached with some care.
5. I do not accept, on its own, her evidence about what Ms Kang told the persons present at that meeting during her introduction. I also do not accept her evidence that Kylie and Tre were present in the room at the same time when the forms were handed out. Tre was already back home with Mrs Simpson when this occurred.

### Amarjit Singh

1. Amarjit, who is the son of Manmohan Singh (‘Manmohan’), swore six affidavits read in this proceeding which were dated: 29 April 2016, 3 June 2016, 10 June 2016, two of 21 June 2016 and 6 July 2016. He gave oral evidence on the fourteenth and fifteenth days of the trial which were 12 and 13 July 2016.
2. As I have mentioned earlier in these reasons at [220], Amarjit is the CEO of Unique. He is also a director. He gave evidence of having a background in education. This consisted of his having trained as an elementary school teacher in the Punjab in 1995. He arrived in Australia in 1998 and before setting up Unique, which was incorporated in 2006, he was involved in a number of positions, none of which involved education.
3. Amarjit became its CEO in 2007, a role in which he has continuously served since that time. He described his duties as including the overall day-to-day management of Unique and promoting a culture of ethical and professional practice amongst the staff and within the organisation. Unique was registered as a training organisation in October 2007.
4. Initially, Unique was registered for 60 international students but this was subsequently increased to 120. Courses in hairdressing and salon management were offered. In January 2008, Unique began its referral program whereunder students who introduced other students were paid $200 per student.
5. In 2010, Unique’s approval was increased to 400 students. In the same year, Amarjit’s father, Manmohan, took over as the sole director of Unique. Amarjit said that he then reported to his father. The ownership structure of Unique was in evidence which, combined with Amarjit’s affidavit evidence at paragraph 51, showed that all of the shares in Unique were held by two trusts. The trusts gave the trustee a power to appoint beneficiaries and the trustee in the case of both trusts were companies in which the only shareholder and director was Manmohan. In May 2012, Amarjit became a director of Unique again.
6. In 2010, Amarjit began investigating the merits of Unique obtaining registration under the VET FEE-HELP scheme.
7. By June 2011, Unique had reached an arrangement with a number of tertiary institutions under which Unique’s Diploma of Management and its Diploma of Salon Management would be counted towards the award of one of the institution’s tertiary qualifications. At this time, this was a prerequisite to registration under VET, as I have previously explained. Unique applied for registration as a VET provider on 16 October 2012 but subsequently withdrew that application. It renewed the application in June 2013. As part of the qualification requirements, Unique was required to have a large number of policy documents, all of which it duly submitted. On 27 November 2013, this application was approved by the Department. A meeting was convened the next day to discuss how these courses should be pursued. It was decided around this time that Unique would offer them online. At a meeting the next day, Amarjit decided that Unique should offer laptops or iPads to students doing the online courses as ‘part of Unique’s responsibility to provide students with adequate resources to complete the courses that we provided’. There was also discussion of the desirability of contacting former students and applying an already existing student referral program where students were paid $200 per new student enrolled, to the new courses which were eligible for VET FEE-HELP. Amarjit implemented each of these initiatives.
8. Amarjit gave evidence about the roles of individuals within Unique in relation to VET FEE-HELP and also about staff training. An important aspect of this evidence was his evidence that from December 2013, a sales script had been prepared by Ms Kang for the information sessions. An initial copy of this script was in evidence. I will not set it out. It is a detailed document and if it was used as the basis for an explanation of the VET scheme it is likely that explanations based upon it would be satisfactory. For example, the script explains:

* the courses on offer;
* that the courses are not free and have to be repaid to the government once more than $51,309 is earned (which was the minimum repayment amount at that time);
* the course costs;
* the iPad/laptop offer; and
* eligibility for VET FEE-HELP.

1. The script dealt with many other topics besides.
2. It was not suggested to Amarjit that this document had been falsely created after the event. Nor do I think it would be procedurally fair to entertain such a notion. I accept, therefore, that Unique had such a script in December 2013.
3. Amarjit also gave evidence of the existence of the policies and manuals which set out the procedures for enrolling students. He said that he gave Ms Kang the role of ensuring that the policies were enforced and also to ensure that they were updated to reflect changes to regulations and any applicable standards. Further, he said that he directed all of Unique’s employees to comply with these policies.
4. He also gave evidence similar to that given by other witnesses called by Unique, which related to:

* the operation of stalls in shopping enters by Unique employees; and
* the provision of iPads and laptops;

1. Amarjit said that the student information sessions had begun in early 2014 largely as a result of the referral program. He denied that there was any policy of targeting particular groups and said that where the information session took place was often quite random.
2. Amarjit also gave evidence that during the relevant period, Unique had enrolled in VET courses 3,631 students of whom 561 had come from Bankstown, Boggabilla, Bourke, Brewarrina, Emerton, Granville, Moree, Taree, Toomelah, Walgett and Wagga Wagga.
3. Amarjit gave evidence that at a Budget Estimates Hearing on 2 and 3 June 2014 questions had been asked about Unique’s use of incentives. However, Unique had previously been told on 27 February 2014 by the Department that the use of incentives did not breach the *Higher Education Support Act 2003* (Cth). Answers given to Senate Estimates confirmed this view.
4. Throughout 2014-2015, Amarjit said that Unique’s marketing team was expanded. Johanne Richardson was added in September 2014. In February – March 2015, Chris Bell, Rupinder Kaur and Jyoti Chaudhary were added.
5. This expansion reflected a dramatic increase in Unique’s student numbers:

2008 177

2009 367

2010 394

2011 676

2012 789

2013 631

2014 3,251

2015 4,677

1. Amarjit said that the dramatic increase in enrolments created a strain on its processes. One way this was manifest was by increasing the size of the marketing and training teams. He also gave evidence that in August 2015 he created a ‘Student Screening Services Unit’ which appeared to consist of Rubbal. He was said to be the student screening manager. It was said that the unit was introduced as a ‘pro-active measure to have an extra layer of checks on the student enrolments files’. This was said to have involved ensuring that each student file was properly screened, audited and checked before entering the student’s details in the Registered Training Organisation software manager.
2. The other evidence in this case supports the idea that the forms were indeed checked back at Granville. However, the evidence of Ms Chaudhary and Rubbal is capable of suggesting that the role was performed by ensuring the paperwork was complete rather than that it was appropriate, a process which I have found involved falsifying staff declarations.
3. Amarjit said he also set up in August 2015 a ‘Student Engagement Unit’ which was designed to contact students to follow them up. It will be recalled that I have set out at [433], Mr Bell’s evidence that he was on this team for a two to three week period during which he apparently made a large number of calls.
4. Amarjit gave evidence that students were unenrolled if such requests were made in accordance with Unique’s policies. He also said that staff were trained about the intricacies of VET FEE-HELP. He said that the referral scheme worked very well and had led to a significant increase in enrolments.
5. Amarjit gave evidence that the Ammonite software (referred to at [217] of these reasons) was implemented in part to make Unique’s online portal more interesting. He also gave evidence that his complement of trainers increased from 6 before the introduction of VET-FEE-HELP to 30 as at 8 August 2014.
6. In the course of Amarjit’s evidence he produced (and there were tendered) formal job descriptions for the positions of ‘Trainer and Assessor’ and ‘Online Trainer and Assessor’. The main difference between the two positions was that the online trainer did not do any direct teaching. The implication of this is that a single online trainer could work with a much larger number of students. That seems to me a reasonable proposition. Amarjit said that Unique assigned a single online trainer for no more than 80 students but one trainer for each face-to-face class of 25. This is consistent with Penny Martin’s evidence at [215]-[224] above.
7. There was evidence that some persons doing the online course asked for the physical materials which were posted to them. These people completed the assessments on paper and sent them back. There was no evidence about the extent of this practice.
8. Amarjit gave evidence that the Department first indicated that it would stop paying Unique advance payments in November 2015. At that time, Unique was receiving monthly VET payments of around $7 million.
9. At various points during the trial, the topic of how much money Unique made and the final destination of those funds loomed into view. Amarjit addressed this issue in his third supplementary affidavit of 21 June 2016. A great deal of cross-examination was directed at this issue which cannot be assessed without grasping this material. As already mentioned, Unique had two shareholders who were trustees of discretionary trusts.
10. VET approval was only received in November 2013. For the financial year ending 30 June 2013, Unique’s audited accounts reveal total revenue of $1,702,612 and a net profit after tax of $40,301. On 5 November 2013, Amarjit and Manmohan, as directors, resolved to declare a dividend of $65,500.
11. It will be recalled that Unique received VET approval in the same month. Almost immediately its revenues began to increase beyond the modest income it had been receiving until then. In practice, the Department made VET payments in advance and monthly based on a determined annual figure. From time to time there would be reconciliation payments.
12. Starting in February 2014, Unique began to receive monthly payments of $49,731.81 and these were scheduled to be paid right through until 15 December 2014 (a total of $547,049.91). This approval was rapidly superseded by another which became available on 14 April 2014. Under this there was to be a monthly payment of $2,475,000 being instalments for an annual figure of $29,700,000. Considering that the total revenues for Unique in the previous financial year were $1,702,612 this must have been an extraordinary development in the life of the company (and its shareholders). It was a seventeenfold increase in revenue.
13. This does not appear to have caused even a ripple at the Department. In his evidence, Amarjit put the dramatic increase down to increased VET enrolments.
14. But there was more to come. It appeared that Unique had been underpaid for the period between February and April 2014 so it received a reconciliation payment of $9,800,536.36.
15. As a result of this increase in its revenues, Unique’s audited financial statements reveal revenues for the financial year ending 30 June 2014 of $15,942,449 which yielded a net after tax profit of $8,214,031. This was a 203-fold increase over the result in the previous year. These accounts were signed by Amarjit and Manmohan on 23 December 2014. On 14 December 2014, the directors resolved to declare a dividend of $8,235,488.10. This dividend is said to have been paid to the shareholders on or around 22 May 2015.
16. On 19 December 2014, the Department approved a new payment schedule for the 2014-2015 year totalling the eye-watering sum of $84,329,978 made up of monthly instalments of $7,027,498.16. It was in November 2015 that the Department finally stopped these payments. But this was not before the Department gave Unique a further $46,997,985 in July 2015 as a reconciliation payment for the 2014 year.
17. For the financial year ended 30 June 2015, Unique’s audited financial statements show revenues of $56,183,682 and an after tax profit of $33,779,726. They also show that by then Unique’s expenses seem to have jumped to $7,920,972.
18. On 4 August 2015, Unique resolved to pay a dividend of $5,799,741.40. On 14 September 2015, the directors declared a fourth dividend of $33,952,061. The resolutions appear to be defective because they do not indicate out of which year’s profits they were declared and do not appear to be interim. Whether, in light of the gathering clouds of the ACCC’s inquiries which had commenced, to Unique’s knowledge, on 29 June 2015, the requirements of s 254T of the *Corporations Act 2001* (Cth) were met is not a question for this Court. In any event, Amarjit said this dividend was paid in November 2015.
19. It appears that the directors also declared a further dividend of $42,030,421.30 on 2 October 2015. This was paid in December 2015 and May 2016 in two tranches.
20. Amarjit gave evidence that as a result of the stopping of payments by the Department in November 2015 the Commonwealth still owes Unique a further $23 million. He also said that Unique purchased a property at Kenthurst in Sydney’s north-west for $5.7 million on 26 June 2014. It was his intention that this was to be owned by Ms Kang and Jasmeen. It was sold to them in July 2015. They paid a market price for it of $5.8 million and it was not an attempt to avoid creditors according to Amarjit.
21. He gave evidence about loans to and by directors and additional salaries. Unique’s board decided to grant Manmohan an annual salary of $126,000 for the 2015 financial year. This was done on 2 July 2015. It also granted him a salary of $199,000 for the 2016 financial year. The salary for 2015 was paid in part in cash in sums of $30,000 on 3 September 2015 and $10,000 on 15 September 2015. Amarjit said this was recorded in the Mind Your Own Business (‘MYOB’) statements. He also said that Unique advanced Manmohan a loan of $847,209.
22. He also gave evidence that his father had advanced a loan of $668,601 to Unique during the 2014 financial year. He went on to say that Unique repaid the loan although he does not say when. But, so it seems, there was in place a standing loan agreement with Manmohan (designed, I assume, to ensure that the loans were not treated as income for tax purposes).
23. Unique’s accounts for the financial year ending 30 June 2014 record loans to directors of $688,601. Amarjit said that these were loans to his father. Unique’s MYOB records for that financial year show four payments to Manmohan as follows:

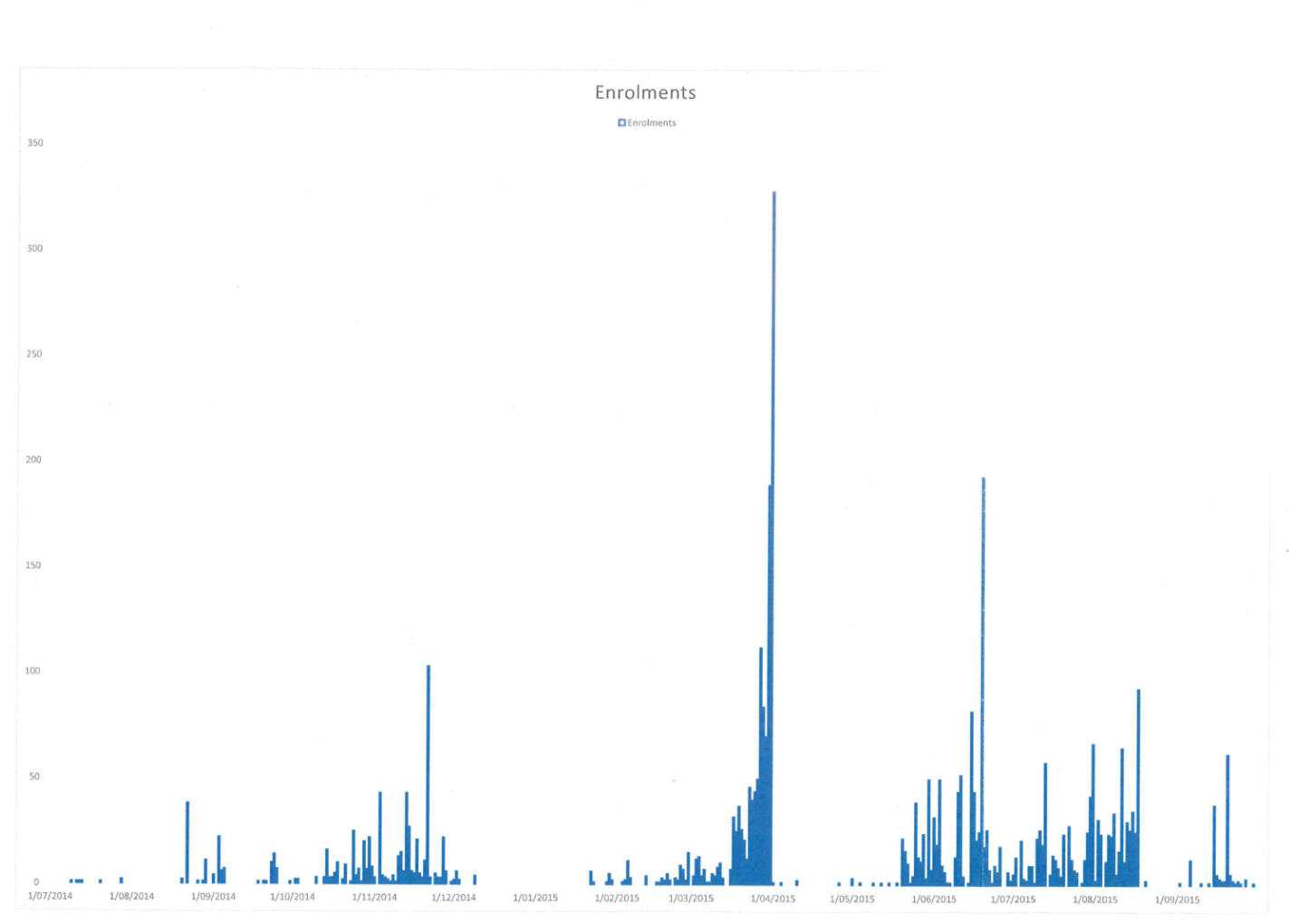
‘30 September 2014 $123,556.85 Loan

30 December 2014 $180,551.68 Loan

3 September 2015 $30,000 Salary

15 September 2015 $10,000 Salary’

1. Amarjit said there were other payments for which there are no records. He also gives evidence that figures recorded in the MYOB statements as loans to directors in September 2015 were in fact loans to his father under a fresh loan agreement dated 1 July 2015.
2. There were aspects of Amarjit’s evidence which suggested that he was not willing to accept propositions which were obvious. Exhibit 35 was a copy of bank statements for an account in Unique’s name held with the Commonwealth Bank. Amarjit was asked whether it was he who had transacted most of the business on this account. This he denied on the basis that he had provided his login and password to other key managers. Yet when pressed further he accepted that ‘the overwhelming majority of transactions’ were his.
3. Another aspect of Amarjit’s evidence which I regarded as unsatisfactory was his evidence of the circumstances leading to the end of the incentive programs at the end of March 2015. The government had announced that it would no longer be permitted for VET providers to have incentive programs in place within their businesses after 31 March 2015. The evidence unequivocally showed that Unique’s enrolments increased sharply at the end of that month. Exhibit 73 was a graph of enrolments at this time. It looks like this:



1. The word ‘spike’ seems apt. Raw numbers were also provided to further illuminate the graphic representation. Those numbers, which I have chosen selectively but relevantly, were as follows:

**Date Students enrolled**

12/03/2015 10

13/03/2015 3

14/03/15 0

15/03/2015 0

16/03/2015 7

…

26/03/2015 50

27/03/2015 112

28/03/2015 87

29/03/2015 70

30/03/2015 189

31/03/2015 328

01/04/2015 1

02/04/2015 0

03/04/2015 0

04/04/2015 1

05/04/2015 0

1. Amarjit denied that this represented an attempt to sign up as many students as possible before incentive programs had to be suspended. His explanation was twofold:
2. the new Ammonite system increased the completion rates in January to March 2015; and
3. Unique enrolled students on the basis of invitations.
4. I accept neither of these. (a) is wide of the mark. The present debate is why enrolments increased in March 2015. That completion rates were increasing across the first quarter of 2015 has nothing to do with enrolment rates at the end of the quarter. Proposition (b) really means no more or less that that the spike is to be explained by coincidence. I do not accept this.
5. I therefore conclude that Amarjit was lying to the Court about this. The significant spike in enrolments at the end of the first quarter was, in fact, caused by a corresponding effort on Unique’s part to increase in its enrolments prior to the end of the incentive program.
6. There is a further matter which may be deduced from this. It is that Amarjit must have been fully aware that the incentive programs were having a significant impact on enrolments and that without them, enrolments would not continue as they had been. In fact, he did say this in his affidavit evidence.
7. Another unsatisfactory aspect of Amarjit’s evidence concerned the payment of incentives after the 31 March 2015 deadline. According to his affidavit of 29 April 2016, Amarjit’s response to the government requirement that incentives end on 31 March 2015 was as follows:

* he terminated the use of agents who were paid to enrol students;
* he caused Unique to stop paying for referrals; and
* he caused Unique to stop giving laptops and iPads to students who enrolled with Unique on or after 1 April 2015 and implemented a program of lending them instead.

1. There is no doubt that this evidence was intended to convey to the Court that all types of incentive programs had been terminated on 31 March 2015.
2. That evidence was largely supported by Unique’s internal accounting. Amarjit gave evidence in his third supplementary affidavit of 21 June 2016 that Unique kept track of its cash flow on a day-to-day basis using MYOB software. This was Exhibit 47. He specifically said that MYOB software ‘allows Unique to record, amongst other information, cash payments made by it from the cash withdrawn from its bank account for any given period of time’.
3. Amarjit was cross-examined on this document. Exhibit 47 was produced from Unique’s MYOB records as a result of a request by the Applicants. Amarjit eschewed all knowledge of the document. According to him, other people were better placed to answer questions about Exhibit 47.
4. Amarjit’s unwillingness to engage directly with Exhibit 47 on the basis that others were better placed to answer, allowed him the luxury of being able not to answer certain questions about Exhibit 47 which had no obvious answers. Exhibit 47, Unique’s internal record, showed cash withdrawals for April 2015 of $543.50. This was quite consistent with the incentives program ending. But the corresponding Commonwealth Bank records in Exhibit 35 suggest cash withdrawals of $60,000. Similarly, in May 2015 the MYOB records show cash withdrawals of $723.27 but the bank records show $150,000 was taken out in cash.
5. This suggests that the MYOB records are unreliable. I so conclude.
6. The Applicants devoted considerable energy to proving that Exhibit 47 was inaccurate in other ways. For example, it contains numerous references to payments of dividends in substantial sums. Amarjit conceded during cross-examination at T-1506 that they were not dividends but may have been loans to directors or directors’ salary. At other times he tried to say that payments to third parties were actually loans to his father. Amarjit could throw no light on this, saying only that his father had directed it. Other curious transactions such as the recording of undocumented dividend payments (one in the amount of $22 million) were also said to have been the result of directions from his father. When Amarjit’s father gave evidence (I return to this below) he said he was not an active director. If I accept both men’s evidence, it seems that the payments just happened by themselves.
7. Amarjit’s evidence about the financial records showed either that he was a spectacularly incompetent CEO and had no idea what was going on inside his own business or that he was a liar. My impression of Amarjit was that he was a man of some intelligence. I therefore conclude that his evidence about Unique’s finances was false.
8. For those reasons, I conclude that the evidence of Amarjit Singh should not be relied upon.

### Manmohan Singh

1. Manmohan swore two affidavits in this proceeding; one of 3 May 2016 and another 7 July 2016. He gave oral evidence on the fifteenth day of the trial which was 13 July 2016.
2. His evidence was quite limited. He confirmed that he, with Amarjit, were the directors of Unique. He denied any awareness of a policy within Unique of targeting rural areas or indigenous people. He said that Amarjit was the CEO and had full carriage of the business. He attended directors’ meetings, maintained minutes and reviewed financial information provided by Amarjit but beyond that his rule did not extend, according to him. He also gave evidence that dividends were declared by Unique as follows:

‘$8,235,428.10 14 December 2014

$5,799,741.400 4 August 2015

$33,952,061.00 14 September 2015’

1. Under cross-examination, Manmohan agreed that these were the only dividends paid between 14 December 2014 and 14 September 2015. Manmohan was then taxed with Exhibit 47, the MYOB document, which appeared to record multiple other dividend payments. To this he made no reply in substance except that Amarjit was the person making the decisions. In relation to Exhibit 47 in general, Manmohan said it was his son who had looked after it.
2. Manmohan was then cross-examined on what may be viewed as some unsatisfactory aspects of Exhibit 47. It will be recalled that Exhibit 47 is the MYOB document which records payments out of the Commonwealth Bank account. Documents were produced by the Commonwealth Bank (Exhibit 59) and these showed significant omissions from Exhibit 47. There were four which the cross-examiner highlighted:

Date Amount Description

29 July 2014 $40,030 Funds to purchase IMT sent to Jaspal Singh

5 September 2014 $160,030 Funds sent to Resort Brokers

5 September 2014 $350,030 Funds sent to Resort Brokers

11 May 2015 $578,000 Transfer to Ibrahim Chambour

1. Manmohan said that each of these was a loan to him by Unique.
2. Next, Manmohan was challenged about certain evidence he has given in related proceedings in this Court for freezing orders.
3. A folder of documents relating to that application became Exhibit 61. In Exhibit 61 there was included behind Tab 13 an affidavit of Manmohan which dealt at with 57 cash payments apparently made by Unique to him between 1 September 2015 and 31 May 2016. These ranged in size from sums as small as $500 to sums as large as $60,000. Manmohan said in this affidavit that these were all loans to him as a director.
4. The Applicants’ representatives did some work cross-checking this evidence with the material subpoenaed from the Commonwealth Bank. The fruits of their labours appeared behind Tab 2 of Exhibit 61. At T-1621 counsel for Unique reserved its position on Tab 2’s summary nature but this reservation did not result in further complaint.
5. There is an entry for 7 October 2015 which shows that $1,000 was taken from an ATM at Nambucca Heads. Manmohan said that he ‘told them take it for me’ by which he meant Amarjit. Another $1,000 seems to have been taken on 11 October 2015 at Forster. Manmohan’s evidence as to whether he had or had not been in those places was obscure: T-1620. A reading of the transcript might suggest that there were comprehension issues attending this evidence which was given using a translator. This was not my impression, however. I thought Manmohan knew precisely what was being asked of him.
6. It also appeared that $15,000 was taken from the account and given to Rubbal. Manmohan said that this was his salary which he was using to repay a loan from Rubbal. I can think of no possible reason for such a loan and none was suggested.
7. Finally, Exhibit 61 also showed that $20,000 paid to Manmohan according to his freezing order affidavit was in fact paid to Grant Thornton.
8. That was Manmohan’s evidence. I thought he was plainly lying in the evidence just described. I place no weight on any of his evidence.

## 6. The Expert Evidence of Professor Vinson

1. The distinguished social scientist, Professor Tony Vinson, produced a report dated 5 May 2016 for the purposes of the proceeding. He gave oral evidence on the fifth day of the trial which was 10 June 2016. Whilst judgment was reserved, Professor Vinson passed away.
2. As might be expected, Professor Vinson’s report was thorough. He had, with some assistance, collated all the postcode information about Unique’s enrolments and then, in various ways, used that postcode material to assess the socio-economic profile of Unique’s students. He did this using statistics about postcodes derived from census data collected by the Australian Bureau of Statistics (‘ABS’) and by using the enrolment data for Unique. The former were known as the Socio-Economic Indexes for Areas (SEIFA). He used SEIFA 2011 which is based on the census conducted in 2011. That, of course, was the last census conducted before 2016. The 2016 census was conducted in August 2016, after the trial.
3. Professor Vinson used two of these indexes for his analysis. These were the Relative Socio-Economic Disadvantage index (IRSD) which captures diverse aspects of people’s access to material and social resources. The other was the ABS Index of Economic Resources (IER). It summarises variables relating to financial aspects of relative advantage and disadvantage, including indicators of high and low income, as well as variables that correlate with high or low wealth.
4. The Applicants relied on Professor Vinson’s report for five propositions in support of its system case. These were:
5. There is a statistically significant correlation between the number of Unique’s enrolments and relative socio-economic disadvantage at the postcode level;
6. the NSW rate of enrolments for Unique increases by remoteness and the variation is highly statistically significant;
7. on a share of population basis, there is a 14-fold overrepresentation of indigenous students in the NSW enrolees;
8. 63.1% of indigenous NSW enrolees resided in postcodes that fell within the four most disadvantaged of the 20 ventiles of the ABS IRSD as compared to 54.7% for NSW enrolees generally;
9. in some postcodes within the middle ventiles of the ABS IRSD such as Wagga Wagga, enrolments are drawn from the most disadvantaged areas within those postcodes (such as Tolland). It is also said that these areas are characterised by a comparatively high number of indigenous residents and other indicators of social disadvantage.
10. Professor Vinson’s use of the enrolment data and the ABS statistics was a function of the questions which he was posed.
11. I do not hesitate to accept Professor Vinson’s evidence. I do not think that the validity of the conclusions he drew in his report were even marginally impacted by his cross-examination.
12. This is not to say that the cross-examination was ineffective. Unique’s primary criticism of Professor Vinson’s evidence was that it is irrelevant because of the questions he had been asked. The argument was developed this way:
13. First, by using the ABS statistics the Applicants were comparing the socio-economic advantage or disadvantage of its students with the position of the general population. The correct comparison, so it submitted, was between the position of its students and the population of people enrolled in VET courses. This was important because the Commonwealth’s own inquiries had shown that the VET population was a disadvantaged one.
14. Secondly, to make good this point Unique relied upon a report launched by the Commonwealth Minister for Tertiary Education on 3 May 2011 entitled ‘*Skills for Prosperity: a roadmap for vocational education and training*’. This report was prepared by Skills Australia on behalf of the Commonwealth. It was Exhibit 29. Page 24 of that report stated:

‘There are communities of significant employment disadvantage and individuals who, for a variety of complex reasons remain outside or on the margins of the labour market…

We see the VET sector as having a major role in responding to this challenge and reaching people who have only been marginally or intermittently connected to the world of work and formal education. The sector has a strong profile in appealing to and attracting such learners who have often had poor school experiences as well as those who are not ready for higher education.

Compared to higher education, VET has almost double the proportion of students from low socioeconomic backgrounds; triple the proportion of students from non-English-speaking background homes; five times the proportion of Indigenous students; and a strong presence in regional Australia.

Some students in the sector can be characterised as vulnerable learners… To successfully enter and stay in the workforce, students will often need to develop basic capability in areas such as language, literacy and numeracy.’

1. This was evidence, so it was said, that the VET population did not have the same socio-economic profile as the general population. It was submitted that Professor Vinson’s report demonstrated that there was a correlation between socio-economic disadvantage and being enrolled at Unique but this did not demonstrate causality. There was good reason to think, as the Commonwealth’s own report showed, that the socio-economic disadvantage of Unique’s students derived from the fact that they were in the VET system in the first place.
2. Professor Vinson had not done an analysis of the VET population generally because he was not asked to do one. Indeed, the methodology of comparison exhibited in his report was not his idea and emerged from the questions to which he was asked by the Applicants to respond.
3. There was further evidence bearing upon this issue, once again emanating from the Commonwealth. A strong theme in this material was the use of vocational training to address social disadvantage.
4. The VET FEE-HELP scheme commenced in 2009. As I have endeavoured to explain already in these reasons, to be eligible for VET-FEE HELP, courses offered by VET providers were required to be linked to existing higher education studies. In 2012, the Commonwealth concluded agreements with the States and Territories in relation to the reform of the vocational sector. These were the *National Partnership Agreement on Skills Reform* and the *National Agreement for Skills and Workforce Development*. Both noted that:

‘The Commonwealth and the States are also committed to a responsive, agile and equitable national training system that meets the needs of industry and students (including those from disadvantaged groups or locations) and provides pathways into and removes barriers between schools; adult and community; vocational and higher education; and employment…

The Parties are committed to increasing the level of workforce participation and providing the support an individual experiencing disadvantage or disengagement (including young people) may need in order to gain skills that lead to employment or other meaningful engagement in society…

In particular, the Parties are committed to addressing the issue of social inclusion, including responding to Indigenous disadvantage.’

1. There then followed in 2012 the passage of the *Higher Education Support Amendment (VET FEE-HELP and other Measures) Act 2012* (Cth) and the *Higher Education Support Amendment (Streamlining and Other Measures) Act 2012* (Cth). This legislation removed the link between VET funding and higher education. It was accompanied by an explanatory memorandum which said this:

The low take-up of VET FEE-HELP is an equity issue. People from identified demographic groups have a lower participation rate in education and training. These groups include Indigenous Australians, and people from a non-English speaking background, with disability, from regional and remote areas, from low socioeconomic backgrounds, and people not currently engaged in employment. Increased student take-up of VET FEE-HELP is key to lifting VET participation amongst these groups nationally.’

1. Unique’s point about this is that it was said to show that VET FEE-HELP was targeted at the disadvantaged. No-one should be surprised that the disadvantaged were well-represented in the cohort of Unique’s students. So the argument goes, that was the whole point of VET FEE-HELP.
2. The 2012 changes took effect on 1 January 2013. Prior to then, the participation rate in VET FEE-HELP had been 55,000. By 2015 it had increased to 272,000. It was apparent, as this proceeding makes clear, that there were structural deficiencies in the VET FEE-HELP scheme. In April 2016, just before the trial, the Commonwealth released a discussion paper entitled “*Redesigning VET FEE-HELP: Discussion Paper’* (‘the Discussion Paper’). This paper included data about students under VET FEE-HELP in 2014 and 2015. Both parties seemed to accept the correctness of Unique’s submission as to what the Discussion Paper showed, which was recorded at paragraph 59 of its closing written submissions. Senior Counsel for the Applicants also relied upon the same figures at T-1684. I have been unable to extract the same figures from the Discussion Paper from the page referred to in Unique’s submissions or from any other page. The figures in Unique’s submissions were:

VET 2014 VET 2015

Indigenous Students > 12,700 (6%) 24,513 (9%)

Low socio-economic areas > 51,400 (25%) 74,049 (27%)

1. I propose to act on the basis that if both parties accepted this to be correct (even though it does not appear to be), I should do the same. In light of these figures I accept that there are sound reasons to think that the VET cohort is quite different in its socio-economic and indigeneity profile to the general population. Hence, there may be reasons to doubt the usefulness of a comparison between the qualities of the Unique enrolment cohort and that of the general population.
2. I raised with Senior Counsel for the Applicants that difficulty in final address. At T-1683 an argument was developed in response as follows:
3. First, in NSW there were 3,289 enrolments with Unique in the relevant period. Of these, 1,187 were indigenous. This made for a rate of 36.09%. The rate disclosed in the Discussion Paper of 2016 for indigenous enrolment in VET across Australia was > 6% in 2014 rising to 9% in 2015. But in either case it could be seen that the VET indigenous rate of enrolment across Australia was very much lower than Unique’s rate of 36.09% in NSW.
4. Counsel was kind enough to leave me with a similar exercise to perform for myself in the case of disadvantaged students. The Discussion Paper at p 15 suggested in 2015 that 74,049 out of 271,985 total VET FEE-HELP students across Australia were in the lowest quintile. This amounted to a rate of 27%. The lowest quintile is the bottom 20%. Professor Vinson used ventiles rather than quintiles for the majority of his report, but he also calculated Unique’s enrolment pattern in NSW alone at 54.7% within the lowest quintile in the SEIFA categories.
5. In relation to the issue of very remote areas in NSW the Discussion Paper at p 15 also suggested that in 2015, 1,544 out of 271,985 total VET FEE-HELP students across Australia were classified as having come from very remote areas. This is a rate of 0.57% or 57 people out of 10,000 across Australia. Professor Vinson put Unique’s corresponding rate at 1.31% or 131 people out of 10,000 in NSW.
6. Also notable is the major city rate. The Discussion Paper suggests that 188,145 VET students out of 271,985 in 2015 were from major cities across Australia, a rate of 69.17%. For Unique, Professor Vinson put the figure at 3 per 10,000 (or 0.03%).
7. It is useful to summarise the VET FEE-HELP statistics Australia wide against Unique’s results in NSW:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Indigenous | Lowest 20% | Very Remote | Cities |
| Unique in relevant period (NSW) | 36% | 54.7% | 1.31% | 0.03% |
| VET general 2015 (Aus) | 9% | 27% | 0.56% | 69.17% |

1. These figures are stark. Whilst it is true that Professor Vinson did not give this evidence, it is the consequence of applying his evidence to the figures in the Discussion Paper.
2. The Applicants did not advance this argument in writing and their treatment of it, which may be described as brief, was at T-1683-85 in their closing submissions. That treatment was perfunctory, dealt only with NSW and only with indigeneity and the most disadvantaged categories. It left almost all of the arithmetic up to the Court. Nevertheless, the point was advanced, and certainly in relation to NSW, sufficiently to put Unique on notice that it was being put. In assessing the brevity of the point, account also needs to be taken of the fact that this argument by the Applicants was a response to Unique’s submission that Professor Vinson had compared Unique’s enrolments to the wrong concept, the general population.
3. No submission was made about Queensland and Victoria. It is not the role of the Court to guess what the Applicants’ submission about Queensland and Victoria would have been if it had been put. I disregard it.
4. The table above in relation to NSW suggests that Unique’s enrolment profile featured markedly more indigenous persons, markedly more people of socio-economic disadvantage and markedly more people from very remote areas than the general population of VET students in 2015 across Australia.
5. To this argument, Unique had a number of responses. One of these, pursued orally at T-1728 was that, for example, in relation to the ‘very remote’ category the number of enrolments in absolute terms was only 80 and was the result of a small number of visits. I suppose the point being made there is that it may be possible to argue that this figure is highly variable with such a small sample. However, that argument weakens when the cities’ figures are brought to account. Ultimately, I am not persuaded by it.
6. Then it was said that the way in which Professor Vinson had dealt with some individual locations such as Bankstown or Wagga Wagga was not satisfactory. Since I have not relied on this aspect of Professor Vinson’s evidence I do not need to address this issue.
7. Next it was said that the manner in which Professor Vinson dismissed or downplayed some data ‘cast some shadow over has independence’. I do not accept this submission which I do not think was at all fair. Without dwelling on all of its features, this submission was developed by reference to points such as those expressed in Unique’s closing submissions at paragraphs 641-42. I propose to set this out:

‘641. In relation to the data regarding the volume of enrolments by reference to the SEIFA IRSD locational socio-economic disadvantage scale, Professor Vinson notes in Section 9.1.2 of the Report that:

*four ventiles near the middle of the SEIFA scale (ventiles 9-12 in Table 6) made a combined contribution of 16.5% of the total enrolments and represent a limited departure from the general tapering of the number of enrolments as one progresses from the most disadvantaged to the least disadvantaged end of the ABS IRSD scale.*

642. No explanation is provided for the apparently random selection of ventiles 9-12, as opposed to ventiles 7 to 14 for example, representing the middle 40% of the State, which provides a much higher statistical departure of 35% of total enrolments. No analysis or discussion is provided for the ways in which the departure may be inconsistent with the overarching theme of enrolment according to locational socio-economic disadvantage. During cross-examination, Professor Vinson said he had some sympathy for the proposition that the “*limited departure”* which applied to the ventiles at 9 to 12 in the table actually commence at bank 7 and goes all the way through to 14. Professor Vinson agreed that *“there’s certainly an elevation”* (D5/519.21), but went on to say that he went inside that bulge to see whether it shows discontinuity with the apparent connection with disadvantage and pointed to Wagga Wagga as an example that the theme of disadvantage being associated with enrolment was sustained (D5/519.24-35). The problems with the selection of Wagga Wagga without explanation have already been identified in paragraph [639] above.’

[italicisation in original]

1. Even assuming the criticism is valid, it provides no warrant for traducing Professor Vinson’s independence.
2. Professor Vinson was also criticised for doing an analysis of the ‘very remote’ category when he was not asked to do so. I did not think there was much in this point.
3. The evidence of Professor Vinson when considered in conjunction with the figures in the Discussion Paper of 2016 shows that the enrolment profile of Unique in relation to:

* indigeneity
* remoteness; and
* socio-economic disadvantage;

substantially exceeded the corresponding profile of VET students in general.

1. I return to the issue of what one can do with that fact in the next section of these reasons.

## 7. Findings – The Individual Consumers Case

### Unique’s Usual Practice

1. A large part of the debate in this case turns on the extent to which Unique has succeeded in proving the existence of its usual practices in relation to the way in which it signed up its students.
2. Nine of Unique’s witnesses gave direct evidence about what they saw at sign-up meetings. Ms Whitton, Gurneet and Ms Chaudhary each gave evidence which was indirectly relevant to what would occur at Unique’s sign-up meetings. Amarjit did not give direct evidence but his evidence largely supported their general tenor. Only Manmohan was entirely clear of the issue.
3. I have concluded that all of Unique’s witnesses were, in various ways, unreliable and have indicated my unwillingness to act upon their evidence unless corroborated.
4. How precisely such corroboration might be proved was not really explored in Unique’s submissions. The relevant sources of corroboration seem to me as follows:

* the existence of the sales script created in December 2013 by Ms Kang which the Applicants did not contend had been created after the event;
* the apparent documentary existence of Ms Kang’s slides which, again, were not said by the Applicants to have been created after the event;
* the evidence of some of the Applicants’ witnesses that there was always an introductory session of some kind given by one of Unique’s representatives, usually Ms Kang;
* Rubbal’s photographs; and
* the fact that most of Unique’s witnesses gave similar accounts of what happened.

1. I do not think the last point helps very much. The similarity in accounts may be explained by three alternate hypotheses:
2. the witnesses all saw the same series of events;
3. there has been a degree of collusion between them; or
4. coincidence.
5. (c) can be put aside. There is material which supports both (a) and (b). (a) is consistent, I suppose, with the idea that information sessions held on a frequent basis might be expected to be similar whilst (b) is consistent with the fact that some of Unique’s witnesses appeared to have an exceptional recall of events about which such a developed recollection is not naturally to be expected. In other cases, it was obvious that the witnesses had considered the nature of their evidence just before the hearing and were able to suddenly remember something formerly forgotten. Principal amongst these was the recollection that many of Unique’s witnesses had on the eve of their oral testimony that Ms Kang had used slides. In a similar vein, some witnesses – principally Mr Bell – seemed to have attempted to memorise their evidence. I am not sure I could draw the conclusion on the balance of probabilities that this proved that Unique’s witnesses had colluded or (perhaps more likely) had been told what to say.
6. But what can be said is that it would be unwise to use the fact that so many of Unique’s witnesses gave the same account as each other, as being in general, corroborative. I therefore propose to discount the fifth bullet point above although, in considering the effect of all the evidence, I do not eliminate it as a factor altogether.
7. The other four bullet points are the heart of the case. There is no doubt that the slides existed or that Rubbal took photographs at sign-up meetings showing that they had been used. The slides will corroborate Unique’s case if it is proved that it was Unique’s general practice to use them at sign-up meetings and that that general practice included going through all of the matters contained in the slides.
8. It seems to me that I should accept that the slides were sometimes on display at sign-up meetings. The photographs show that they were on display at some meetings. But the fact that they were sometimes on display does not answer the question of how much of the information on them was actually conveyed to the persons at the meetings or how often this happened. To answer that question, one would need to know how quickly the person conducting the meeting went through the slides and what they said. Neither the admitted existence of the slides, nor Rubbal’s photographs, nor my acceptance that the slides were probably visible at some sign-up meetings throws much light on that question.
9. I should accept, I think, that at the sign-up meetings an introductory session was given. Many of the Applicants’ witnesses gave evidence to that effect. But I incline to the view that this introductory session was only about 5 minutes in duration. Ms Kidwell gave evidence to this effect, which I have set out at [238] of these reasons, and I accept her evidence. Of course, her evidence only related to the events at Taree. But Ms Kang was involved in that meeting and she was in charge of the conduct of the sign-up meetings in general. If the introductory session at Taree only went for 5 minutes then it is reasonable to infer, and I do, that Ms Kang was satisfied with an introductory session of only 5 minutes duration. It seems to me reasonable to infer that she would have taken the same position at the meetings which she ran. And, if Ms Kang thought this the appropriate approach, I should infer that she would not have instructed the people who were working for her to do something different. This brevity is supported by the clear impression I have that Unique’s employees were involved in a scramble to sign up as many people as possible. I have in mind many of the text messages in Exhibit 46 which are contemporaneous statements between the actors which are very relevant to determining what was going on.
10. I conclude, therefore, that the introductory sessions were short. It is possible that at some meetings the slides were on display during the introductory session. The fact that most of Unique’s witnesses made no mention of the slides in their affidavit evidence also suggests that the slides were not a central feature of what was taking place at the meetings even if they were sometimes used. If they had occupied the central role which Unique now seeks to attribute to them it is difficult to see how they were largely absent from Unique’s affidavit evidence.
11. In light of those observations, I do not think that the slides or Rubbal’s photographs provide much corroboration for the elaborate version of events now given by Unique’s witnesses beyond confirming that there were introductory sessions at which they were to some extent on display.
12. That leaves rather up in the air what in fact was said during the introductory sessions. Much is unclear. What I can say, however, is that I do not think that the existence of the introductory sessions or the fact that the slides may have been used at some sessions provides a reason for rejecting evidence given by the Applicants’ witnesses about what was, and was not, said to them. Unique has succeeded in showing that there were introductory sessions but it has not succeeded in showing what was said during them. And although the slides and Rubbal’s photographs made its case stronger than it would otherwise have been, I am not satisfied that they overcome the difficulties it confronted. The slides do not persuade me as to the contents of the introductory sessions and I do not accept that the evidence given by Unique’s witnesses about what was said is reliable. I realise a different view could be taken, but it is not the view at which I have arrived.
13. For those reasons, I do not find these corroborative matters of assistance beyond establishing that there were slides and introductory sessions.

#### Walgett

1. The meeting at Walgett which is central to this proceeding occurred on 9 or 10 October 2014. It is therefore the first of the meetings chronologically in the Applicants’ overall case. The relevant consumer relied upon by the Applicants is Ms Natasha Paudel, who was referred to as Consumer E in the pleading. From Unique’s side of the ledger there were present Ms Kang, Jasmeen and Rubbal. I have accepted Ms Paudel’s evidence above at [38], although a brief information session was probably given by Ms Kang before Ms Paudel arrived.
2. Turning to the Applicants’ specific allegations about this meeting which are set out in the ASOC at paragraphs 106-119, I find as follows:
3. Ms Paudel was 29 years old at the time of the meeting in Walgett. She was staying with her family in Walgett whilst recovering from a car accident. The accident did not render her vulnerable in any medical sense. Exhibit 73 records three enrolments on 10 October 2014, three enrolments on 13 October 2014 and sixteen enrolments on 14 October 2014. Assuming some delay in the processing of the paperwork, it is nevertheless clear that the number of people signed up at the Walgett meeting was not as large as the later meetings relied upon by the Applicants.
4. Ms Paudel was driving along Sutherland Street on 9 October 2014 (the day before the meeting) with another person when she encountered a group of 4 or 5 people standing outside Alan Tighe’s home. One of them was Billy Jones who was known to her. He told her that she could get a free laptop or iPad if she signed up for a Diploma of Management or Salon Management.
5. She and her cousin, Trishy, returned to Alan Tighe’s house the next day just after lunch. When they went inside the house Ms Paudel saw two women from Unique. I am satisfied that these women were Ms Kang and Jasmeen. I also find that Rubbal was present. This was Ms Kang’s evidence and I am willing to accept this aspect of it which is consistent with what appears to have been Rubbal’s role with Unique.
6. The evidence of Leslie Tighe was that she had mentioned the idea of Unique to her father, Alan, and he was agreeable to the idea. It was Leslie who then spoke with Nyomi Whitton who arranged for the meeting at Alan’s house. Although I did not regard any of these witnesses as reliable I accept this evidence. This is because:

* the meeting did happen at Alan Tighe’s house;
* Leslie Tighe was at the meeting; and
* it is apparent that Nyomi Whitton and her mother were at the coal face in organising meetings.

1. It was, therefore, Leslie who invited Unique to Alan’s house.
2. There were, according to Unique’s witnesses, around 10-12 people at the meeting. The Applicants submitted that about 80 people were signed up at the meeting by reference to MFI 17 but it was never tendered in evidence. The Applicants did not expand on why I should act on MFI 17. Exhibit 73 suggests that 3 people enrolled on 10 October 2014 but I am not entirely confident about its accuracy as to specific days. Ms Paudel thought there were a number of people at the meeting and that people were coming and going. Notwithstanding my doubts about their credibility, in light of Ms Paudel’s evidence, I propose to accept that there were 10-12 people at the meeting.
3. I do find that the purpose that Ms Kang and those who were assisting her had at the meeting was to persuade the persons at Alan Tighe’s house to sign up for Unique’s courses.
4. Unique’s representatives did identify themselves as being from Unique and that it was an approved provider. There was no express evidence that any Unique employee asked Ms Paudel which course she wished to do. However, I infer that this was in fact asked and that Ms Paudel indicated that she wished to do the Diploma of Management. Only that inference explains how she came to have the form about that Diploma.
5. Ms Paudel’s enrolment forms have asterisks on them which were placed there by Unique staff. They indicated the parts she was to complete. These included her name, date of birth, tax file number, contact details and signature. The forms also contained boxes which were ticked. These were not ticked by Ms Paudel and I conclude they were therefore ticked by Unique employees. Some of these boxes which had been ticked confirmed that VET FEE-HELP had been explained.
6. Unique’s employees did not explain to Ms Paudel what the enrolment form was or what the VET FEE HELP application form was. However, I am satisfied that she knew independently what an enrolment form was and that she also understood that under VET FEE-HELP she would have an obligation to repay the Commonwealth if her income exceeded approximately $50,000 per annum.
7. These forms were certainly supplied to Ms Paudel in relation to the supply by Unique of its courses. Ms Paudel completed those parts she was asked to complete and signed them. She therefore concluded an enrolment agreement and made an application for VET FEE-HELP to the Commonwealth. She then received a laptop. I do not find that it was provided to her ‘on terms’. I find she was not given a copy. The process took 15 minutes.
8. Whilst Ms Paudel was going through this process so were other people who were present at the meeting. I am satisfied that everyone at the meeting understood that eligibility for a laptop depended on signing up for a course. Other people did sign up and did receive laptops.
9. Unique’s employees did not ask whether Ms Paudel had an internet connection at home. But Ms Paudel certainly knew about the internet and was attracted to the online nature of the courses. Nothing of substance turns on this in her case.
10. Unique’s employees did not explain to Ms Paudel what her obligations were on signing up for the course, but I am satisfied that she understood them. I am also satisfied that they did not ascertain that she understood. If they had attempted to do so, they would have found that she did.
11. On the other hand she was not:

* told that she would have a contingent debt;
* given copies of the paperwork she signed;
* a copy of the VET FEE-HELP booklet; or
* given written details of the courses.

1. She was, however, told about the census dates and her right to cancel.

#### Tolland

1. The sign-up meeting in Tolland took place on 30 March 2015. There were 2 individual consumers advanced by the Applicants who attended that meeting: Kylie Simpson and Tre Simpson. The Applicants also called Mrs Margaret Simpson, Tre’s grandmother. The directly relevant witnesses called by Unique were Ms Kang, Jasmeen, Chris Bell and Thea, all of whom were present at the meeting.
2. Tre was 19 years old at the time of the meeting and is indigenous. He has several conditions including ADHD, attention deficit hyperactivity disorder and oppositional defiant disorder (adolescent). Although Unique’s submissions tended to dance around this point, in light of its acceptance of Mrs Simpson as an honest witness, I have no hesitation in accepting that Tre is a very limited young man. I do not think that this would be necessarily obvious, however, on first encountering him. He has no formal education beyond year 10 but has used a computer in the past. He lives in public housing with his grandmother, Mrs Simpson, who cares for him because he is incapable of looking after himself. He has never had a job and receives the DSP.
3. Unique relied upon some of the forms filled out on Tre’s behalf which were said to indicate, *inter alia*, that he did not have any disability or impairment, had advanced computer skills and did have access to the internet. This was a reference to the pre-enrolment questionnaire form. Mrs Simpson completed these parts of the form (although neither she nor Tre had circled the word ‘Advanced’). The page was signed by Tre. As I have explained above at [135] these incorrect answers were not to her discredit in the circumstances in which she found herself. I therefore accept that by the pre-enrolment questionnaire it was represented by Mrs Simpson that Tre had an internet connection and no disability. I do not think that Unique had any interest in the truth of what was said in the forms however. Its concern (and Ms Kang’s) was only that the forms were completed.
4. Mrs Simpson’s daughter is Kylie who is Tre’s aunt. She was 41 at the time of the meeting at Aunty Vennie’s house. She is indigenous and lives around the corner from Mrs Simpson in Tolland. She has limited education and is limited in her ability to read and write well. She has never had a job and is on DSP.
5. She has learning disabilities caused by her Von Recklinghausen’s disease, from which her nephew Tre also suffers. She does not know how to use email but can use a computer to access Facebook and YouTube. She does not have an internet connection.
6. I turn to the meeting itself. I have accepted Mr Bell’s evidence that it was organised as a result of his connections with Aunty Vennie who is his partner’s aunt. Although there was no direct evidence, I infer that Aunty Vennie at some stage signalled her consent to Mr Bell and Unique holding the information session at her house. I do not find that she invited the people who came to her house but I do infer that she was content for them to be there.
7. The sequence of events was as follows:
8. Following an earlier chance meeting between Mrs Simpson and Aunty Vennie, Mrs Simpson was at her home with Tre. Aunty Vennie arrived by car. She said something to Tre which caused him to run through the house saying ‘Aunty Vennie has laptops’. Aunty Vennie then drove Mrs Simpson and Tre to her house. Aunty Vennie then returned to Mrs Simpson’s house about 20 minutes later and brought Kylie and Regina back to her house.
9. The evidence as to whether Kylie knew that laptops were on offer is not entirely satisfactory. However, I can imagine no other plausible reason why she would have signed up without the offer of one. It seems clear that laptops were on offer and that Aunty Vennie told Tre they were on offer. I infer that she must have been told something similar by someone. I do not find that the person who so informed her was from Unique. It was more likely a word of mouth occurrence.
10. I find that none of Mrs Simpson, Tre or Kylie was present when Ms Kang gave her information session (assuming in favour of Unique that she gave one of some kind). They arrived after the time at which it would have been given.
11. In relation to Tre, I find that some parts of the forms were filled out by Mrs Simpson with some assistance from Mel Connors who, it will be recalled, is Mrs Simpson’s friend. Other parts were completed by Unique’s employees. I conclude that the form filling exercise in Tre’s case was not directed by Unique at ascertaining any information about Tre and was purely for the purpose of ensuring that paperwork was complete from Unique’s perspective. Ms Kang, Jasmeen, Ms Merritt and Mr Bell were entirely indifferent as to Tre’s suitability for the course. Their only interest was to make sure he enrolled. To the extent that the forms suggest a process by which Unique determined that Tre was suitable, I reject their reliability as evidence of that kind. The large number of enrolments which occurred during this period shows that this meeting was for the purpose of signing up as many people as possible. It had little to do with education. It was principally about raising as much money as possible before the curtain came down on incentives on 31 March 2015, the very next day. I am unable to make findings about what was said or not said to Kylie. The evidence from both sides is not sufficiently reliable. I do, however, conclude she would have appeared as patently unsuitable for the course for which she was enrolling due to my findings at [93], [137] and [320] in relation to her intellectual capabilities.
12. Following completion of the forms, the result was that Tre and Kylie entered into an enrolment agreement and applied for VET FEE-HELP. I find that at no time were any aspects of the course or the VET FEE-HELP system explained to Tre or Mrs Simpson. They then received a laptop each.
13. I do accept that Ms Kang identified herself as being from Unique at the beginning of the information session. However, the Simpsons had not arrived at that point.
14. I make these additional findings:

* no-one from Unique explained to Tre or Mrs Simpson the name of the courses involved;
* they were not asked if they had an internet connection at home;
* Unique’s employees did not explain to them the obligations arising from the forms;
* Unique’s employees did not make any attempt to discern whether Tre understood what he was signing and in Kylie’s case should have known that she did not;
* Unique’s employees did not give them copies of the forms they had completed;
* Unique’s employees did not tell them the cost of the course;
* Unique’s employees did not tell them they were incurring a substantial debt; and
* Unique’s employees did not tell them of their right to cancel before the census date.

1. I find that it was entirely obvious to the Unique employees present that Kylie was totally unable to understand what she was doing. I do not make this finding in relation to Tre. I do not find that Unique employees believed him sufficiently competent, only that the Applicants have not proved the contrary which was their onus.
2. On the other hand, I am satisfied that Unique’s employees were quite indifferent to Tre’s actual position. Actual and genuine inquiry on their part – as opposed to the form filling exercise embarked upon – would have revealed the problem soon enough.
3. I therefore conclude in both Tre and Kylie’s cases that the transaction was entirely exploitative. Unique received a large amount of money; Kylie and Tre received a lifetime contingent debt and an inexpensive device.

#### Taree

1. The Applicants did not advance an individual consumer case in relation to Taree. As I understand it, it was relied upon only to prove that Unique’s claims about its enrolment processes were not accurate and to assist in the system case.
2. As I have already indicated at [227], I accept Ms Kidwell’s account of the meeting at Taree. I therefore accept that Ms Kang’s ‘spiel’ went for five minutes and omitted any explanation of the VET FEE-HELP arrangement or the right to withdraw from the course before the census date. It was only when she quizzed Rubbal further that Ms Kidwell discovered the true nature of what was being offered. I conclude that the process at Taree was, in essence, the same as at Tolland. Unique’s employees’ only interest was to get the paperwork completed without any interest in either explaining the true nature of what was on offer or the debt to which it would give rise. Whilst Ms Kidman was not ultimately exploited because she worked out what was going on, her evidence does allow me to conclude that what took place at Taree was, in general, exploitative of the large number of indigenous people there.

#### Bourke

1. The three individual consumers relied upon by the Applicants for the Bourke meeting were Jaycee, Fiona and June. The directly relevant witnesses from Unique were Johanne and her mother, Adell. The meeting took place on 10 June 2015.
2. Three introductory aspects of this matter should be noted. First, this meeting was not conducted by Ms Kang or Jasmeen. Nor were Rubbal or Mr Bell present. It therefore differs from the meetings at Walgett, Tolland and Taree. To the extent that the practices revealed at Bourke appear similar to those at Walgett, Tolland and Taree that may be material capable of suggesting that those events were not isolated occurrences.
3. Secondly, the incentive programs had been closed on 1 April 2015. Thereafter, Unique’s documentation suggests that laptops were not given away but merely lent for the purposes of the courses. As I will shortly explain, it is tolerably clear that at the Bourke meeting they were still being discussed as if they were given away. Combined with an absence of any evidence from Unique that it sought the return of a single laptop from (the very many) students who did not complete (or even commence) their courses, this suggests – and I find – that the laptop incentive program in substance continued.
4. Thirdly, the meeting at June’s house was not scheduled via prior arrangement as it had been in Walgett and Tolland (or even Taree). Instead, the evidence established that Adell and Johanne were taken to ‘another house’ by Edmund Caben who told them that there might be people there interested in signing up. It was Lauren Cubby who went to speak with Adell and Johanne who she saw on the street. Ultimately, it was Jaycee who invited them to June’s house.
5. Turning to each of the individual consumers, I find that Jaycee was 18 at the time of the meeting, is indigenous and lived at the relevant time at an Aboriginal mission, the Alice Edwards Village, on the outskirts of Bourke. She was educated to year 11 and struggles with reading and writing. She is unemployed and in receipt of Centrelink benefits. She did not have a computer at the time of the meeting or an internet connection.
6. June Smith was 66 years old at the time of the meeting, is indigenous, and has lived at the Alice Edwards Village for 50 years. She left school aged 12 or 13 and was entirely illiterate at that time. She acquired basic literacy skills in 2013. At the time of the meeting she did not have a computer or an internet connection. She has difficulty using a mobile phone.
7. Fiona Smith was 44 at the time of the meeting, is indigenous, lives at the Alice Edwards Village and completed school to year 8. She has done subsequent study at the Dubbo TAFE and has procured a Diploma of Aboriginal Studies and a Certificate in Visual Arts and one in Music. She reads and writes well.
8. She does not have an internet connection. Before Unique gave her a laptop at the meeting (it said lent) she had not had a computer. She now uses Unique’s computer for listening to music and watching DVDs. She has an email account which she can access on her phone but she can only read them and does not know how to send them.
9. The meeting occurred at June’s house on 10 June 2015. June was at home. Jaycee encountered Adell and Johanne on the street who were coming from another sign-up meeting. She heard that they were giving away laptops for people to sign up to courses. She invited them to June’s house (which was nearby).
10. There were already several people at June’s house sitting around a table. I do not find that Adell and Johanne identified themselves as being from Unique. But I do accept that they did conduct a very brief introductory session at the start of the meeting during which I accept Jaycee’s evidence that they introduced themselves (which I take to mean by name).
11. During this brief introductory session those assembled were told:

* there was a course on offer and if a person signed up they would get a free laptop;
* Unique would pay for the laptop and the course; and
* the course would take six months and those signing up would receive a log-in and password.

1. During this introductory session I do not think that VET FEE-HELP or census dates were discussed. Following this, Jaycee and Fiona began talking with Johanne but June spoke with Adell.
2. Although I have concluded that I should not rely upon Fiona’s account on its own, Fiona’s version in many ways resembles Jaycee’s version which I am willing to act upon. Both were speaking to Johanne. In her discussions with Fiona and Jaycee, Johanne:

* handed out a bundle of stapled forms which had X marked at various locations;
* told them to sign at those locations;
* took them through the forms quickly with no explanation;
* asked them to provide identifying information;
* told them that they did not have to complete the course if they did not want to;
* did not tell them about the contents of the course;
* did not tell them that they would be left with a debt;
* did not tell them that they could cancel their enrolment prior to the census date;
* did not give them a copy of the paperwork; and
* did not inquire as to the level of their education.

1. The forms were then signed and the laptops given to Fiona and Jaycee.
2. June did not speak with Johanne, but rather Adell.
3. June was shown a brochure but it was not explained to her. She was presented with the forms and told where to sign. They were not explained to her. She signed the forms because she believed she needed to do so to get a laptop. She was told the laptop was free. She understood that she was enrolling for some kind of course. No aspect of the VET FEE-HELP scheme was explained to her. She was not told she would be left with a debt. She was not told that she could withdraw from the course prior to the census date.
4. She was not told that she could ask them to leave the premises immediately. She was not given copies of the paperwork she had signed. June had no use for the laptop which must have been apparent to Adell. Nevertheless, she was signed up for the course. And this was so even though she had no internet connection.
5. I find that Unique’s behaviour towards each of Jaycee, June and Fiona was exploitative and I do not accept that Adell was merely there to provide passive assistance to Johanne. She was actively involved in the process. That process involved luring Jaycee, June and Fiona with laptops to derive significant revenues from the Commonwealth which then saddled them with a lifetime contingent debt. Nor was any given a copy of the agreement.

## 8. Findings – The System Case

1. The Applicants’ system case was set out at paragraphs 21 and 22 of the ASOC. It set out what it alleged was a process Unique had for enrolling students. Its most controversial assertion was that Unique targeted particular locations including rural and remote towns and areas with significant populations of low socio-economic status for its enrolment process.
2. The principal evidence relied upon by the Applicants to make good this allegation was the evidence of Professor Vinson set out above (understood in the light of the data in the Discussion Paper). As I mention above, I only propose to consider this case in relation to NSW.
3. The evidence shows that 36% of Unique’s enrolees in NSW in the relevant period were indigenous whilst the indigenous enrolment rate of the general VET population across Australia was 9%. This means that Unique’s rate in NSW was 4 times higher than what the national data reflected. Unique’s enrolment rate in NSW in areas of the lowest socio-economic advantage was 54.7% whilst that of the general VET population across Australia was 27%. Its rate was therefore more than twice as high. Its enrolment rate in the very remote areas of NSW was 1.31% and that of the general VET population across Australia 0.57%, an overrepresentation rate of about double. Finally, Unique’s enrolment rate in cities in NSW was 0.03% whilst the general VET across Australia rate was 69%. This means that Unique enrolled in cities in NSW at a rate 2,300 times less than the general VET population across Australia.
4. This evidence is part of a circumstantial case. One must therefore consider the other features which support that case as well as those which do not. Having done so one asks whether the Applicants have proved on the balance of probabilities whether the targeting practice they allege has been proved.
5. This requires one to consider competing hypotheses. The Applicants’ hypothesis is that the socio-economic data is what one would expect if the alleged practice existed. Unique contends that the figures may result from other matters. Chiefly, its two points are, first, that the data is the result of its referral system and the fact that some of its employees had contacts in the areas in question. On this view, what had happened was not a design; it was an unexpected consequence of its incentive systems. Secondly, it was said that the data was skewed by a small number of visits in remote areas which had had large numbers of enrolments.
6. It is not totally clear what the skewing effect was. No-one tried to show its extent i.e. how much it reduced the effect set out above. Even if, however, the skewing effect is sufficient to be taken seriously, it is not inconsistent with the Applicants' case. The relevant data points are Taree, Tolland and Bourke where there were large numbers of enrolments (and to a lesser extent, Walgett). The evidence about those meetings, however, shows conduct exploitative of the persons it was directed at. That exploitative conduct is inconsistent with the hypothesis of a proper enrolment system having had the unexpected, but innocent, consequence of causing large numbers of enrolments at these locations. On the findings I have made, Unique’s hypothesis must therefore become not only that the unusual enrolment profile was an unexpected by-product of its referral system and the identity of its staff, but that the exploitative enrolment practices revealed at Walgett, Taree, Tolland and Bourke were unfortunate coincidences caused, presumably by some sort of internal system failure. The Applicants’ simpler hypothesis is that they were not a coincidence at all.
7. There are additional matters supporting the Applicants’ hypothesis. The first of these is the large sums of money that Unique was making from the enrolment process. There is nothing wrong in principle with the idea that Unique was trying to make a profit, it was a business after all. But the sums of money involved here are so very large that they may be seen as providing a motive for Unique to engage in exploitative practices. That exploitative practices were in fact engaged in at Walgett, Taree, Tolland and Bourke is consistent with that motive having had an effect and not being merely theoretical. Of course, it might be said that the motive was not acted upon and the events in these towns were just the result of an unfortunate break down in corporate discipline. But the opposite view is just as open.
8. The sums of money which Unique was making, therefore, are capable of being evidence that Unique had a real motive to engage in the kind of targeted conduct alleged. Indeed, not to reach that conclusion would require me to accept (which I could) that what happened in Walgett, Taree, Tolland and Bourke were isolated internal failures, that is to say, the result of coincidental bouts of bad luck.
9. On the other hand, the extensive documentation relied upon by Unique surrounding its enrolment procedures is evidence which tends to make less likely the enrolment process alleged by the Applicants. The difficulty with this material however, is, as I have already said, that it does not seem to have corresponded with the reality of what took place at the sign-up meetings about which I have heard evidence. It is possible that away from the towns about which evidence has been led the processes used by Unique were consistent with this documentation. There is evidence before the Court to that effect from Unique’s witnesses. However, I have concluded that that evidence is not reliable.
10. Taking all of these matters into account, I conclude that the Applicants have established the allegation that Unique targeted outlying areas, people of socio-economic disadvantage and Aboriginals.
11. What then of the other factual allegations about Unique’s system of enrolment made by the Applicants? These were located in paragraphs 21 to 26 of the ASOC. These largely involved an attempt to extrapolate from what happened at the meetings in Walgett, Taree, Tolland and Bourke to a more general procedure. So, for example, the Applicants alleged that the system included having Unique’s staff represent to the proposed students that its courses were free and that Unique had failed to explain adequately the contents of the sign-up forms. At a high level of generality that kind of reasoning – if unsupported by anything else – would not permit one to conclude that the enrolment system had those features. To do that successfully, it would be necessary to conclude that the events at Walgett, Taree, Tolland and Bourke were somehow representative and to reach that conclusion it would be necessary to know how the Applicants had selected the nominated consumers in those towns from amongst the thousands of persons enrolled with Unique across the relevant period.
12. I raised this with the Applicants before the trial commenced and Unique made the same point in its submissions. I do not think that any satisfactory answer by the Applicants was ever made to this point. Certainly, the Applicants made no attempt of which I was aware to explain how they had chosen the individual consumers and towns that they had. Without that information, I cannot rationally conclude that what took place in those towns was generally representative. Despite that difficulty other evidence, unrelated to these four towns, does establish certain more limited systemic features. There are three I would identify in addition to the targeting strategy referred to above: first, the gift of computers to proposed students on signing up (either directly as a gift before 31 March 2015 or on a purported loan basis after that date); secondly, the use of incentives for its own staff to encourage them to sign up students; and thirdly, the holding of sign-up meetings at the targeted locations. Unique’s own evidence establishes these matters.
13. I have not found it necessary to rely upon the principles in *Jones v Dunkel* [1959] HCA 8; (1959) 101 CLR 298 in reaching these conclusions. I note for completeness, however, that such a submission was made to me by the Applicants.

## 9. Relevant Principles

### Three separate allegations

1. There are three separate allegations in play: misleading or deceptive conduct, unconscionable conduct and the entry into of unsolicited consumer agreements.

### Misleading or deceptive conduct

1. The principles in relation to misleading or deceptive conduct are clear and do not call for detailed exposition. The Applicants relied on both section 18 and subsection 29(1)(i) of the ACL (which relates to representations about the price of the goods or services). It is not in doubt that a representation for the purpose of subsection 29(1)(i) can be made orally or in writing and also includes implications arising from the representor’s silence. In this case, the various statements about ‘free’ courses and laptops fall within both sections.
2. The debt created by the VET FEE-HELP scheme was readily able to be understood by people who had no expectation of earning more than $50,000 as being the same as free. But free it was not. It reduced their ability to enrol in future vocational training courses. Such a scheme, when combined with the attractive offer of a free laptop, created a powerful impression of a very good deal. That powerful impression was incorrect, however. Having engendered such an impression with the laptops, it was misleading not to explain in the clearest terms precisely how the VET FEE-HELP scheme worked and the fact that it would leave each person who took the laptop with a lifetime debt as well as a reduced ability to access the VET FEE-HELP system in the future. And, the kind of explanation which was called for was one which was tailored to the audience which had been persuaded to attend the sign-up sessions by the lure of a free laptop in the first place. The cohort involved, even on Unique’s case, was a cohort in which disadvantaged persons featured. Such a group was even more exposed to the lure of the laptop than the general community. Thus, an even clearer explanation was called for.
3. Perhaps put a little less formally, it was misleading to offer free laptops to groups of poorly educated and/or illiterate people on the basis that they sign up to VET FEE-HELP courses without explaining in the plainest of terms what the ramifications of this would be.

### Unconscionable conduct

1. So far as the concept of unconscionability in s 21 of the ACLis concerned, the principles are also clear. What constitutes unconscionable conduct for the purposes of s 21 is an inquiry undertaken by reference to an evaluative statutory standard. One should not test the matter by reference to other non-textual evaluative standards such as ‘moral obloquy’ but should remain focussed on the word ‘unconscionability’ in s 21 in its statutory context. Thus one must survey the values and norms recognised in the statute itself, the place of norms and values in equity and commercial law and the guidance the statute itself gives as to its values. As Allsop CJ said in *Paciocco v Australia and New Zealand Banking Group Limited* [2015] FCAFC 50; (2015) 236 FCR 199 at 274 [296] the concept of unconscionability (which informs the related statutory definition of ‘unconscionable conduct’) :

‘…includes a recognition of the deep and abiding requirement of honesty in behaviour; a rejection of trickery or sharp practice; fairness when dealing with consumers; the central importance of the faithful performance of bargains and promises freely made; the protection of those whose vulnerability as to the protection of their own interests places them in a position that calls for a just legal system to respond for their protection, especially from those who would victimise, predate or take advantage; a recognition that inequality of bargaining power can (but not always) be used in a way that is contrary to fair dealing or conscience; the importance of a reasonable degree of certainty in commercial transactions; the reversibility of enrichments unjustly received; the importance of behaviour in a business and consumer context that exhibits good faith and fair dealing; and the conduct of an equitable and certain judicial system that is not a harbour for idiosyncratic or personal moral judgment and exercise of power and discretion based thereon.’

1. Section 22(1) sets out a non-exhaustive list of relevant considerations for this exercise. It provides:

‘**22 Matters the court may have regard to for the purposes of section 21**

(1) Without limiting the matters to which the court may have regard for the purpose of determining whether a person (the ***supplier***) has contravened section 21 in connection with the supply or possible supply of goods or services to a person (the ***customer***), the court may have regard to:

(a) the relative strengths of the bargaining positions of the supplier and the customer; and

(b) whether, as a result of conduct engaged in by the supplier, the customer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and

(c) whether the customer was able to understand any documents relating to the supply or possible supply of the goods or services; and

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the customer or a person acting on behalf of the customer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and

(e) the amount for which, and the circumstances under which, the customer could have acquired identical or equivalent goods or services from a person other than the supplier; and

(f) the extent to which the supplier’s conduct towards the customer was consistent with the supplier’s conduct in similar transactions between the supplier and other like customers; and

(g) the requirements of any applicable industry code; and

(h) the requirements of any other industry code, if the customer acted on the reasonable belief that the supplier would comply with that code; and

(i) the extent to which the supplier unreasonably failed to disclose to the customer:

(i) any intended conduct of the supplier that might affect the interests of the customer; and

(ii) any risks to the customer arising from the supplier’s intended conduct (being risks that the supplier should have foreseen would not be apparent to the customer); and

(j) if there is a contract between the supplier and the customer for the supply of the goods or services:

(i) the extent to which the supplier was willing to negotiate the terms and conditions of the contract with the customer; and

(ii) the terms and conditions of the contract; and

(iii) the conduct of the supplier and the customer in complying with the terms and conditions of the contract; and

(iv) any conduct that the supplier or the customer engaged in, in connection with their commercial relationship, after they entered into the contract; and

(k) without limiting paragraph (j), whether the supplier has a contractual right to vary unilaterally a term or condition of a contract between the supplier and the customer for the supply of the goods or services; and

(l) the extent to which the supplier and the customer acted in good faith.

…’

1. Relevant to the present proceeding are subparagraphs 22(1)(a), (c), (d), (e) and (i).

### Unsolicited consumer agreements

1. Turning then to the issue of unsolicited consumer agreements, the following points are relevant.
2. The ACL contains close regulation of the making (and circumstances surrounding the making) of what it terms 'unsolicited consumer agreements'. These are contained in Division 2 (‘Unsolicited Consumer Agreements’) of the ACL at ss 69-95. Central to them is the idea of an 'unsolicited consumer agreement'. The definition can be found in s 69. There is no debate between the parties that several elements of the definition were satisfied in relation to the various agreements entered into between the six individual consumers and Unique; but there is debate as to whether they all were. The disputed parts of the definition were ss 69(1)(b) and (c) of the ACL. These require that for an agreement to be an ‘unsolicited consumer agreement’ the following criteria must be satisfied:

‘...

(b) it is made as a result of negotiations between a dealer and the consumer:

(i) in each other's presence at a place other than the business or trade premises of the supplier of the goods or services; or

(ii) by telephone;

whether or not they are the only negotiations that precede the making of the agreement; and

(c) the consumer did not invite the dealer to come to that place, or to make a telephone call, for the purposes of entering into negotiations relating to the supply of those goods or services (whether or not the consumer made such an invitation in relation to a different supply)’.

1. It is natural to think of door-to-door sales when thinking of this topic, but reflection on the expression ‘unsolicited consumer agreement’ may reveal a concept broader merely than door knocking. I do not mean by that to suggest that the definition in s 69 should be interpreted by reference to the content of the phrase ‘unsolicited consumer agreement’' but only to indicate that one should perhaps not be too surprised if the definition turned out to extend beyond traditional door-to-door sales.
2. The concept of a ‘dealer’ which is used in the definition is defined in ways which are significant and I will come back to that in a moment. What might be emphasised for now is that ss 69(1)(b) and (c) would appear to cover a situation where the consumer and the dealer meet on neutral territory (by which I mean at a place other than the business or trade premises of the dealer) without any invitation from the consumer. What makes it ‘unsolicited’ is the fact that the consumer did not invite the dealer. Whether the dealer invited the consumer or not appears to be irrelevant to ss 69(1)(b) and (c).
3. So long as Unique is a dealer, therefore, this might suggest that an agreement with the named consumers was unsolicited in the relevant sense. To paraphrase the provision, the agreement was made in a place which was not Unique’s ordinary place of business and the named consumers did not invite Unique to that place. As a matter of ordinary language, it seems that ss 69(1)(b) and (c) require the conclusion that these agreements were unsolicited consumer agreements.
4. Was Unique a ‘dealer’ so that this conclusion inevitably flows? ‘Dealer’ is defined in s 71 of the ACL in these terms:

‘A ***dealer*** is a person who, in trade or commerce:

(a) enters into negotiations with a consumer with a view to making an agreement for the supply of goods or services to the consumer; or

(b) calls on, or telephones, a consumer for the purpose of entering into such negotiations;

whether or not that person is, or is to be, the supplier of the goods or services.

1. Unique did not dispute that it was a dealer. But this, I apprehend, was because it accepted that it entered into negotiations with the named consumers (i.e. s 71(a)) and not because it had ‘called on’ them (i.e. s 71(b)). It might be thought that the concession by Unique that it was a dealer was fatal to its defence of this aspect of the matter but it called in aide an interpretation of s 69(1)(b) articulated by Reeves J in *Australian Competition and Consumer Commission v ACN 099 814 749 Pty Ltd* [2016] FCA 403 that required, before the section could be enlivened, ‘that it is the dealer who has to initiate the negotiations with the consumer’: at [134]. In this case, Unique submitted that it had not initiated the negotiations with the named consumers hence, if this argument were correct, the agreements would not be unsolicited.
2. Reeves J concluded that s 69(1)(b) needed to be read this way because of the combined effect of the requirement in s 69(1)(b) that the agreement be made ‘as a result of negotiations between a dealer and the consumer’ and the prohibitions contained in ss 73-75 on a dealer doing particular things when ‘calling on’ a consumer. I do not agree that either of those matters necessitates the conclusion that s 69(1)(b) requires, before there can be an unsolicited consumer agreement, that the dealer initiate the negotiations. Indeed, with respect, this is what s 69(1)(b) does not say. The words in s 69(1)(b) that require the agreement to be made ‘as a result of negotiations between a dealer and the consumer’, as Reeves J observed, do import a causative link between the antecedent negotiations and the resulting agreement but they are silent on who must initiate those negotiations. Consequently, I respectfully cannot accept the statement at [134]:

‘That definition requires that person to be someone who “enters into negotiations with a consumer” and that those negotiations be “with a view to making an agreement” for the supply of the services in question. As well as reinforcing the causative link mentioned above, *the words “enters into negotiations” introduce another significant element, namely a requirement that it is the dealer who has to initiate the negotiations with the consumer*.’

(emphasis added)

1. I am unable to agree with the italicised portion. To say that one person enters into negotiations with another says nothing as to the identity of the initiating party. In this context, ‘enter’ means ‘to make a beginning of or in, or begin upon; engage or become involved in’ (see *Macquarie Dictionary* (4th ed, Macquarie Library, 2005)) or ‘to enter on (or upon), to make a beginning in’ (see *Oxford English Dictionary* (2nd ed, Oxford University Press, 1989)).
2. Hence, one might say ‘After the Germans attacked, the Empire entered upon a state of war’ without in the leastwise suggesting that the Empire started the war. Correspondingly, to say that one has entered upon negotiations is to say only that one has begun negotiating and to say nothing about the identity of the initiator.
3. So far as ss 73-75 of the ACL are concerned, they certainly do contain prohibitions and requirements on what dealers do when they ‘call on’ consumers. However, the definition of ‘dealer’ in s 71 shows that it is perfectly possible to be a dealer under s 71(a) without calling on consumers at all. Hence, the requirements of ss 73-75 are directed only to persons who are dealers by reason of the definition in s 71(b) (‘calls on, or telephones, a consumer for the purpose of entering into such negotiations’) and have nothing to say in relation to those persons who are dealers by reason of s 71(a). To read the requirements of ss 73-75 as containing an implication that before one can be a dealer at all one must first call upon a consumer is directly to contradict s 71(a) which is explicit in accepting the contrary. Not only that, but such a reading denudes of content several other prohibitions in the Division which are not prefaced by a requirement that a consumer be called upon, e.g. ss 76-79. Hence, I cannot with respect agree with this statement at [134]:

‘Further support for this is provided in the expressions used elsewhere in the UCA provisions such as subdivision B of Division 2 where constraints are placed on a dealer when “Negotiating Unsolicited Consumer Agreements”, to wit: “a **dealer must not cal**l on a person for the purpose of negotiating ...” (s 73), “**a dealer who calls on** a person for the purpose of negotiating an unsolicited consumer agreement ...” (s 74), and “**a dealer who calls on** a person at any premises for the purpose of negotiating ...” (s 75).’

1. At the same paragraph this was also said:

‘On this aspect, it is also worth noting that the specific protective measures provided by the UCA provisions (see at [122] above) are primarily directed to allowing a consumer the right to reject unwanted or unsolicited goods or services supplied as a result of an agreement entered into after particular kinds of unscrupulous sales practices were employed. All these provisions, together therefore serve to characterise the negotiations and the agreement which results as unsolicited, or unrequested, by the consumer.’

1. I do not agree that the matter mentioned in the first sentence provides support for a gloss that the dealer must initiate the negotiations. Section 69(1)(b) does address itself to the identity of the initiating party but only by providing that it must not be the consumer. It does not say that it must be the dealer. Indeed, it seems to me clear that the definition is explicitly addressing itself to the situation that neither party initiates the negotiation and declares that that situation is covered by the requirements of the Division.
2. In those circumstances, I do not agree with the construction of the Division which requires dealer initiation reached in *Australian Competition and Consumer Commission v ACN 099 814 749 Pty Ltd* [2016] FCA 403. In that decision, Reeves J applied his reasoning at [134] to the facts he had found to conclude that some of the agreements relied upon by the Commission in that case had not resulted from negotiations initiated by dealers and so were not unsolicited consumer agreements within the meaning of the statute. The conclusions were, therefore, part of the ratio decidendi. On the other hand, the proceeding was uncontested, although this may be less significant since the party who was represented on this issue, the Commission, was the party who lost. I accept that single judges should follow other decisions of single judges of the Court unless persuaded they are plainly wrong, especially where the subject of the decision is a federal or otherwise uniform national statute: see *Nezovic v Minister for Immigration and Multicultural Affairs (No 2)* [2003] FCA 1263; (2003) 133 FCR 190 at 206 [52] per French J; see also *Sunchen Pty Ltd v Federal Commissioner of Taxation* [2010] FCA 21; (2010) 264 ALR 447 at 454 [20]. In this case, however, I am persuaded that the decision in *Australian Competition and Consumer Commission v ACN 099 814 749 Pty Ltd* [2016] FCA 403 is plainly wrong in the requisite sense. The dispositive error which it is apparent has been made is that his Honour has reasoned that the ‘call on’ provisions give rise to a general implication about the need for a dealer to initiate a negotiation without referring to s 71(a) which shows that no such implication can arise. In that circumstance, I propose not to follow this aspect of *Australian Competition and Consumer Commission v ACN 099 814 749 Pty Ltd* [2016] FCA 403.
3. It follows that the agreements entered into by the named consumers were unsolicited consumer agreements. Four contraventions were said to follow from this being breaches of ss 74, 76, 78(1) and 79. Section 74 provides:

‘**74 Disclosing purpose and identity**

A dealer who calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must, as soon as practicable and in any event before starting to negotiate:

(a) clearly advise the person that the dealer’s purpose is to seek the person’s agreement to a supply of the goods or services concerned; and

(b) clearly advise the person that the dealer is obliged to leave the premises immediately on request; and

(c) provide to the person such information relating to the dealer’s identity as is prescribed by the regulations.’

1. Section 74 required a dealer who ‘calls on’ a consumer to disclose their purpose and identity. The first issue is what does it mean to ‘call on’ a consumer?
2. There are three aspects of the expression ‘call on’ worth noting. First, ‘calls on’ appears in each of ss 71(b), 73(1), 74 and 75(1). It is reasonably clear that in each case it relates to an activity which occurs at a set of premises since this is expressly referred to in each of ss 74(b) and 75(1). Although the reference to premises does not appear expressly in ss 71(b) or 73(1), I do not think that the meaning of ‘call on’ could be different in those provisions. Secondly, whilst ‘calling on’ must happen at a set of premises, the premises need not be those of the consumer since s 75(1)(a) contemplates that the occupier rather than the consumer may ask the dealer to leave. Thirdly, the content of ‘call on’ takes some flavour from the company it keeps in the definition of dealer in s 71(b) where it is said that the dealer ‘calls on, or telephones’ the consumer. It carries with it a notion of contact. Taking each of those matters into account, I conclude that a dealer will call on a consumer when the dealer visits premises which are not his or her own (i.e. premises other than the business or trade premises of the supplier of the goods or services) and at those premises meets a consumer whether those premises are those of the consumer or not.
3. The conclusion in the preceding paragraph will mean that Unique’s staff ‘called on’ the nominated consumers at each meeting. Consequently, the obligation in s 74 to disclose their identity and purpose were enlivened. There were three of these and they all had to be complied with before beginning any negotiations with the consumers. The consumers needed to be told that the purpose of the visit was to seek the consumer’s agreement to the supply of the courses; that the dealer was obliged to leave the premises immediately if requested to do so; and that the dealer had to provide such information relating to his or her identity as prescribed by the regulations i.e. the dealer’s name and Unique’s name and address.
4. Section 76(1) required Unique to inform the named consumers in writing and before the agreement was made of their entitlement to terminate the agreement prior to the end of the ‘termination period’ which, in this case, was the census date and of the way in which that right could be exercised. By reg 84 of the *Competition and Consumer Regulations 2010* (Cth) (‘the Regulations’) this information could be attached to the agreement. Reg 84 provides:

‘**84** **Form and way of giving information about termination period**

For paragraph 76(d) of the Australian Consumer Law, information given in writing must be:

(a) attached to the agreement or agreement document for the supply of goods or services; and

(b) transparent; and

(c) in text that is the most prominent text in the document, other than the text setting out the dealer’s or supplier’s name or logo.’

1. For each agreement in this case there was a notice but it was not ‘attached’ to the agreement but formed part of it. Leaving that aside, the text of the notice was much less prominent than other parts of the agreement so that reg 84 was not complied with. Hence, in each case, s 76 was not complied with.
2. Section 78(1) required Unique to give to the consumer a copy of an unsolicited consumer agreement negotiated other than over the phone immediately after it was signed. This did not happen in any case.
3. Section 79 provides:

‘**79 Requirements for all unsolicited consumer agreements etc.**

The supplier under an unsolicited consumer agreement must ensure that the agreement, or (if the agreement was negotiated by telephone) the agreement document, complies with the following requirements:

(a) it must set out in full all the terms of the agreement, including:

(i) the total consideration to be paid or provided by the consumer under the agreement or, if the total consideration is not ascertainable at the time the agreement is made, the way in which it is to be calculated; and

(ii) any postal or delivery charges to be paid by the consumer;

(b) its front page must include a notice that:

(i) conspicuously and prominently informs the consumer of the consumer's right to terminate the agreement; and

(ii) conspicuously and prominently sets out any other information prescribed by the regulations; and

(iii) complies with any other requirements prescribed by the regulations;

(c) it must be accompanied by a notice that:

(i) may be used by the consumer to terminate the agreement; and

(ii) complies with any requirements prescribed by the regulations;

(d) it must conspicuously and prominently set out in full:

(i) the supplier's name; and

(ii) if the supplier has an ABN--the supplier's ABN; and

(iii) if the supplier does not have an ABN but has an ACN--the supplier's ACN; and

(iv) the supplier's business address (not being a post box) or, if the supplier does not have a business address, the supplier's residential address; and

(v) if the supplier has an email address--the supplier's email address; and

(vi) if the supplier has a fax number--the supplier's fax number;

(e) it must be printed clearly or typewritten (apart from any amendments to the printed or typewritten form, which may be handwritten);

(f) it must be transparent.’

1. The Applicants only expressly referred in their submissions to two breaches of s 79 *viz* a failure conspicuously to include a notice informing the consumer of their right to terminate (s 79(b)(i)) and a failure to include a form of notice for so doing (s 79(c)(i)). I am satisfied both of these were breached. No such statement appeared on the first page of any of the agreements. None was accompanied by a notice of the consumer’s rights of termination, or even if ‘accompanied’ carries with it ‘included in’, a notice complying with reg 84(c) for the reasons just given.
2. It is then necessary to deal with Unique’s argument that it was entitled to rely on what was referred to as the ‘party plan exception’. Section 69(4) of the ACL has the effect that an agreement which would otherwise be an ‘unsolicited consumer agreement’ will not be so if it is an agreement which the regulations provide is not an unsolicited consumer agreement. Reg 81(1)(c) of the Regulations provides that an agreement made in the course of what it refers to as a ‘party plan event’ will not be an unsolicited consumer agreement. Reg 81(2) defines a ‘party plan event’ to mean:

‘…an event for which the following circumstances exist:

(a) the purpose of the event is to negotiate for:

(i) the supply of goods or services to 1 or more persons; or

(ii) the supply of goods and services to 1 or more persons;

(b) before the event, the inviter for the party plan event invites 3 or more persons to attend the party plan event;

(c) during the event, the persons are in the same premises as the inviter for the party plan event or a representative of the inviter for the party plan event.’

1. For this exception to be engaged it would be necessary for Unique to demonstrate that someone invited three or more persons to each of the houses in Walgett, Tolland and Bourke for the ‘party plan event’. I am satisfied that there were more than three persons at each house but I am not satisfied that it is shown that there was an ‘inviter’ who did the inviting. ‘Inviter’ is defined as follows:

‘***Inviter***, for a party plan event, means the person who invites another person to the party plan event.’

1. The evidence does not make clear how the people at each house came to be there. They may have heard by way of word of mouth. Indeed, that is quite likely given the free iPad/laptop offer which was being made. In any event, it is Unique which needed to prove the existence of the ‘inviter’ but it made no attempt during the trial to show precisely how the meetings came about.
2. I do not think therefore that Unique discharges the onus of proof which it bears. This makes it unnecessary to consider the Applicants’ contention that Unique had not pleaded the party plan exception. This contention appears, however, to be correct. It is not difficult to imagine that if it had been pleaded the Applicants might have explored more closely how each meeting came to be called. Had it been necessary to consider this issue I would have concluded that Unique should not be permitted to rely on this point but, as I have indicated, I do not think it could have succeeded even if it were permitted to raise it.

### System of Conduct or Pattern of Behaviour

1. The Applicants must identify a ‘system of conduct or pattern of behaviour’ within the meaning of s 21(4). These words have received little judicial exegesis as yet although there have been some cases in which a system has been found: see, for example, *Australian Competition and Consumer Commission v Keshow* [2005] FCA 558; [2005] ASAL 55-142; *Australian Competition and Consumer Commission v Titan Marketing Pty Ltd* [2014] FCA 913; [2014] ATPR 42-480; *Australian Competition and Consumer Commission v ACN 117 372 915 Pty Limited (in liq) (formerly Advanced Medical Institute Pty Ltd)* [2015] FCA 368. This expression may cover many situations. These include those where an internal process is deliberately adopted. But the phrase ‘pattern of behaviour’ will also cover those situations where a process emerges without necessarily ever having been expressly articulated. Both limbs have relevance to this case.

## 10. Application of Principles to Facts as Found – The Individual Consumers Case

### Natasha Paudel (Walgett)

1. First, although I am satisfied that Unique’s employees told Ms Paudel they were from Unique I have not affirmatively found that they provided her with its address or their own names before any negotiations began. I am not prepared, however, to find that this was not done (which was the Applicants’ burden). The vagueness of the evidence does not permit sufficient confidence at this level of technical granularity. The same may be said about whether she was told before any negotiations that Unique was offering courses or whether she was told they had to leave if requested. Accordingly, although I am satisfied that she was ‘called on’ within the meaning of s 74, I am not satisfied on the balance of probabilities that Unique breached s 74 in her case. On the other hand, for the reasons I have already given above, I do accept that Unique breached ss 76 and 79. And because I have found that she was not given a copy of the agreement, a breach of s 78 is also established.
2. Secondly, I am not satisfied that Unique’s behaviour towards Ms Paudel was unconscionable. She was told that she would be left with a debt if she signed up and, importantly, she understood this to be the case. She was also told that she could get out of her course before the census date. Ms Paudel knew what was going on and I do not think she was exploited by Unique.
3. Thirdly, no case that Ms Paudel had been deceived was advanced.
4. If I were wrong in any of those conclusions, I do accept that she was likely to suffer loss, in the form of a debt to the Commonwealth, as a result of signing up.

### Tre Simpson (Tolland)

1. First, I conclude that:
2. Unique did not inform Tre or Mrs Simpson that he was enrolling in a course beyond what was written in the forms. What was written on the forms had no informative effect on Tre or Mrs Simpson (nor was it intended to);
3. Unique did not inform Mrs Simpson or Tre of the cost of the course; and
4. Unique did not inform Tre or Mrs Simpson that he would incur a debt unless he cancelled before the census date or even that he could cancel by the census date.
5. In the context of a meeting at which it is plain that Unique was exploiting the people present for its own pecuniary purposes, this was misleading. Breaches of s 18 are established in each case. In relation to (b) a breach of s 29(1)(i) is established.
6. Secondly, this conduct was unconscionable. It involved the exploitation of an uneducated indigenous person with no understanding of what he was agreeing to in return for a laptop which was worth substantially less than the debt which was being incurred.
7. Thirdly, in relation to the issues relating to unsolicited consumer agreements, I am satisfied that Tre was ‘called on’ within the meaning of s 74. Although I have not found that Unique did comply with the requirements of s 74, I conclude for the same reasons I have given in relation to Ms Paudel that I should not make a finding that it did not comply with it. The subject matter of s 74 is fairly technical and the absence of clear evidence about these matters does not persuade me that the steps required by s 74 were not, in fact, carried out. On the other hand, because Tre did not receive a copy of the agreement a breach of 78 is established. And, for the reasons I have given in relation to Ms Paudel, breaches of ss 76 and 79 are also established.

### Kylie Simpson (Tolland)

1. First, I am unable to find that Kylie was misled. The evidence is just too unclear.
2. Secondly, I accept that Unique’s dealings with Kylie were unconscionable because of my findings in relation to her significant and visible impairment which I have set out above at [93], [137] and [320].
3. Thirdly, I make the same findings for Kylie in relation to ss 74, 76, 78 and 79 as I have for Tre.

### Jaycee Edwards (Bourke)

1. First, Unique misled Jaycee by not telling her she would have to pay for the course; by not telling her the cost of the course and, most importantly, that enrolling would leave her with a debt to the Commonwealth if she did not cancel by the census date. The first two were breaches of both ss 18 and 29(1)(i). The last was a breach of s 18.
2. Secondly, Unique’s conduct towards Jaycee was exploitative. It was unconscionable. No case was pleaded in relation to Jaycee based on ss 74, 76, 78 and 79 of the ACL. I assume this is because she invited the Unique staff to June’s home.

### Fiona Smith (Bourke)

1. I reach the same conclusions in relation to Fiona on the misleading or deceptive conduct and unconscionability cases as I have in relation to Jaycee. In relation to the unsolicited consumer agreement allegations, I reach the same conclusion that I have in the case of Tre.

### June Smith (Bourke)

1. I reach the same conclusions in relation to June as I have in relation to Fiona.

## 11. Application of Principles to Facts as Found – The System Case

1. As already mentioned, s 21 of the ACL deals with unconscionable conduct. Section 21(4) provides:

‘**21 Unconscionable conduct in connection with goods or services**

‘…

(4) It is the intention of Parliament that:

(a) this section is not limited by the unwritten law relating to unconscionable conduct; and

(b) this section is capable of applying to a system of conduct or pattern of behaviour, whether or not a particular individual is identified as having been disadvantaged by the conduct or behaviour; and

(c) in considering whether conduct to which a contract relates is unconscionable, a court’s consideration of the contract may include consideration of:

(i) the terms of the contract; and

(ii) the manner in which and the extent to which the contract is carried out;

and is not limited to consideration of the circumstances relating to formation of the contract.’

1. The Applicants’ case was that Unique had a ‘system of conduct or pattern of behaviour’ within the meaning of s 21(4)(b) of the ACL. The four features of the Applicants’ case on this which I have accepted are:
   1. the strategy of targeting disadvantaged people by reference to indigeneity, remoteness and social disadvantage (whether deliberate in its original conception or not);
   2. the use of gifts of laptops or iPads to students signing (or loan computers after 31 March 2015);
   3. the use of incentives to staff to encourage them to sign up students; and
   4. the holding of sign-up meetings.
2. It was unclear to me whether the Applicants’ case on targeting extended to Queensland and Victoria. Its particulars to paragraph 21 of the ASOC were all towns in New South Wales although the list was said to be inclusive. Professor Vinson did consider the position in Queensland and Victoria and the rates of enrolment both parties took me to in the Discussion Paper were national figures. On balance, I have come to the view that a case about Queensland and Victoria was not clearly run and I decline to deal with it.
3. Matters (b) to (d) constituted a system within the meaning of s 21(4). They were each the result of considered decision making by senior management within Unique. This is not clear, however, in the case of (a). As I have indicated above, whilst I accept that targeting of the disadvantaged is what took place I remain unclear as to how it came about. But I am certain that it was happening. In that circumstance, it is appropriate to describe what took place as a pattern of behaviour within the meaning of s 21(4). However, I do not need to decide precisely what the mechanism was. For the purposes of considering the Applicants’ case it is sufficient that I am satisfied that there must have been such a mechanism. I am satisfied of that proposition in New South Wales.
4. The Applicants therefore succeed in establishing within the meaning of s 21(4), the existence of both a system and a pattern of behaviour with the four features above. I will call the system and pattern thus identified compendiously, ‘the system’
5. The next question is whether this system was unconscionable. I do not think that (b) to (d) by themselves would necessarily be unconscionable. With the correct student cohort and management practices this style of operation may well have been permissible. However, when the practices in (b) to (d) are deployed against a targeted group of disadvantaged persons very different issues arise. In terms of s 22(1), it seems to me relevant to note in an assessment of the system that the targeted cohort consisted of people who were unlikely to understand the documentation involved (s 22(1)(c)) and that the use of the gift of a free (or ‘lent’) computer was apt to confuse this particular cohort into thinking a very bad deal was a good one – in my opinion an unfair tactic within the meaning of s 22(1)(d). The effect of the system in (b) to (d) was to supercharge the exploitation of the disadvantaged group which was being targeted (and also Unique’s remarkable profits). The system was unconscionable within the meaning of s 21.

## 12 Conclusion

1. The matter will be listed for a further case management hearing on Friday, 28 July 2017 so I can hear from the parties in relation to preparing further argument on relief and costs. In the meantime, they should endeavour to bring in short minutes of order giving effect to these reasons within 21 days.

|  |
| --- |
| I certify that the preceding seven hundred and seventy-nine (779) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Perram. |

Associate:

Dated: 30 June 2017