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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 7 JUNE 2010

AT 10.07AM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

ASSISTANT COMMISSIONER: Thank you, please be seated. Yes, Ms Ronalds?

MS RONALDS: During the course of the last week there have been five out of session tenders. If I could just refer to those so that everybody has got the numbers right. There's a statement of Mr Romano dated 25 May, 2010, Exhibit 289.

10 **#EXHIBIT 289 – STATEMENT OF PASQUALE (PAT) ROMANO DATED 25 MAY 2010**

MS RONALDS: 26 May, 2010 is Exhibit 290.

**#EXHIBIT 290 - STATEMENT OF PASQUALE (PAT) ROMANO DATED 26 MAY 2010**

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MS RONALDS: Statement dated 2 June, 2010 referring to surveillance of electoral candidates is 291.

**#EXHIBIT 291 - STATEMENT OF PAT ROMANO DATED 2 JUNE 2010 IN RELATION TO SURVEILLANCE OF ELECTORAL CANDIDATES**

30 MS RONALDS: Statement in relation to Mr Azer, Mr Dencker and Mr Macklin at the public inquiry dated 2 June is 292.

**#EXHIBIT 292 - STATEMENT OF PAT ROMANO DATED 2 JUNE 2010 RELATING TO EVIDENCE OF MR AZER, MR DENCKER & MR MACKLIN AT PUBLIC ENQUIRY AND OTHER MATTERS**

40 MS RONALDS: And a statement in response to allegations that he directed staff to hand out electoral material at Council elections on 13 September, 2008 is 283.

ASSISTANT COMMISSIONER: 293?

**#EXHIBIT 293 - STATEMENT OF PAT ROMANO DATED 4 JUNE 2010 IN RESPONSE TO ALLEGATION THAT HE DIRECTED**

**STAFF TO HAND OUT ELECTORAL MATERIAL AT COUNCIL ELECTIONS ON 13 SEPTEMBER 2008**

MS RONALDS: 293, sorry. And I understand if anyone wants those they then approach the HDY representatives. And then if I could tender the grievance policy and the workplace grievance policy and procedures that pre-dated the previous discrimination and harassment policy we were looking at recently. Perhaps if I could do those with one tender that might be convenient.

ASSISTANT COMMISSIONER: Yes, that will be Exhibit 294.

**#EXHIBIT 294 - BURWOOD COUNCIL GRIEVANCE POLICY AND BURWOOD COUNCIL WORKPLACE GRIEVANCE POLICY AND PROCEDURES**

20 MS RONALDS: And another seat has been left vacant. I then call Mr Dencker.

ASSISTANT COMMISSIONER: Yes, Mr Dencker, you're still under oath and the order previously made still applies to your evidence. Please have a seat.

MS RONALDS: Mr Dencker, what do you understand the term conflict of interest to mean?---It's, if you a conflict of interest between a private activity and a work related activity.

10 Any private activity and any work related activity or is there, are there any boundaries on it, on your understanding?---You'd have a conflict of interest if, if private activity interferes with your work activity or your, your private activity takes advantage of the work activity to, to gain something that you, which not otherwise be entitled to.

In relation to the depot reform, you were appointed, as I understand it, the Acting General Manager for depot reform, is that correct?---Yes.

20 What did you understand that meant in terms of what your functions and duties were?---I was to continue with the reforms that had been started in 2008 with the engagement of Morrison Low and - - -

And do you see yourself standing in the shoes of the General Manager or do you see yourself as standing somewhere near him but he still maintains primary control? What's the relationship as you understand it between the General Manager and you as Acting General Manager?---The General Manager was still the General Manager in terms of his authority and, of Council. That hadn't been diminished. I was aware of that. My role, and I have to say was, it wasn't entirely clear throughout that, that year because the General Manager reserved the right to have input into the process as the General Manager and also he, he expected to be informed on, because he started the reforms and it was known he had a great interest in them. He always had a great interest in the, in the depot, since I started work.

30 All right. If I could just - - -?---So my, so my role was probably more as a, as a chairperson of the cross-functional team in reality and I probably spent about an hour a week or a fortnight just chairing that and - - -

40 Is that all you did then in relation, not all you did or generally, but that's all you did in relation to depot reform?---Probably 95 per cent of my time was spent on non-depot reform duties because I had this expanding area regardless - - -

I'm not being critical, I'm just trying to - - -?---Yeah, yeah, no.

So you were more -?---My key role was a, I'd sort of sit in my office, would have meeting because mine was the only, sorry I'm - - -

No, no -?---Would have meetings in my office because probably operational wise I was the only, only director that actually had an office where you

could have meetings so it was practical in a sense and I'd chair the meetings and I would ensure that, because I had sort of a, a good project management style I'd ensure that everyone would have a say and that matters would progress and I'd keep the General Manager informed from time to time while he would have input from time to time and, yeah.

10 So I've not seen anything in writing that sets out what your functions were as the Acting General Manager depot reform. Is that because I've missed a piece of paper somewhere?---No, it was never clear and, and, and I have to say, amongst the Executive and myself we, we did, it was, it was a little bit confusing because the General Manager was still the General Manager and, and he, he, he, he wanted to be kept informed, he wanted to have input but I guess we, we tried as best as we could to, to progress the depot reforms and where matters involved had, in our mind, major budgetary organisational implications we'd refer to the GM because he was still the GM and other matters where, for example, if there's a termination issue it was felt by the group that it was better that I exercise that role and there was, there was one person which I, which I was required to terminate.

20 Was that Mr Saad?---No.

Well - - ?---It was Mr Quirke.

Mr Quirke, okay?---Yeah.

And did you have independent access to the Mayor to report on depot reform?---No, absolutely not.

30 And did you have independent access to the Councillors to report at Council meetings on depot reform?---Absolutely not.

And so if there was to be a report to Council it would be correct that Mr Romano wouldn't leave the room, I wasn't see as something he shouldn't be involved in?---No, absolutely not. He would, he would still be involved.

40 And he would make the report to Council, not yourself?---Oh, if there was a report to Council in terms of depot reforms it would probably come under the, the responsible director, Mr Azer. He would, if there was - - -

So Mr Azer would have done it?---But it would, also had to go through an executive team process and ultimately be okayed by the GM to go on the agenda.

Right. So it would be a false notion, wouldn't it, that having made you acting general manager depot reform that Mr Romano was then hands off any depot reform processes, that's not what happened in reality?---No, no, not at all.

And you understood that at the time?---I think we all understood that and there was, there was, it was very clear to all of us, yes, the answer's yes.

You can only give evidence on your behalf, you understand, so if you could just tell me your views not what you think might be the views of others?  
---Yes.

That was your understanding ?---Yes.

10

And in terms of the depot reform process, there were some anonymous letters and I think you've been here when they've been shown before, hand written letters. You didn't have any, in the middle of 2007 and then 2008, you didn't have any involvement in those at the time?---No.

Because it wasn't in your, the depot wasn't in your area so you didn't have any function or responsibility, did you?---No.

20

And in terms of briefing Morrison Low and organising them to do a report, you didn't have any involvement in that?---No.

And in terms of a decision conveyed Mr Child on 21 January, 2009 that his position was to remain the same except for a minor change and the correspondence arising there from, you didn't have any involvement in that, did you?---No.

30

Do you recall the date that you were actually appointed the acting general manager depot reform?---I read the email over the weekend but I can't recall the date now but there was - - -

Sometime in February I think, would that be correct?---I think that, that sounds - - -

Around the 16<sup>th</sup>?---It sounds right.

And you then started chairing meetings and in that role you received some emails about what was happening in the depot reform process?---Yes, I got emails, probably principally from the senior manager of HR, Peter Macklin.

40

But you didn't see yourself as driving the process itself, you only facilitated the meetings. Is that correct? I'm just trying to make a distinction between - - -?---Yes.

- - - the things that were happening under Morrison Low and other matters?  
---Yes, that's right.

You really were a facilitator to keep the process moving?---Absolutely.

And to ensure that everyone was working together and going forward?  
---Yes, yes.

And they are, I think referring to your project management skills, that was utilising those?---Yes, absolutely.

So, so it wasn't your job to get on top of all the detail?---No.

10 And to worry about whether the redesigned job for Mr Child was, had the right duties in it?---No, not at all.

And you understand that there's the issue about the redesign of the job that Mr Child had held?---Yeah. It was explained to me by, by the, Mr Macklin and, and the other staff.

But in terms of redrafting the job itself you didn't have anything to do with that?---In terms of redrafting the position description?

20 Yes?---No, I wouldn't have had any detailed involvement in that at all.

Somebody drafted it and we're still searching for the author but that wasn't you?---Right, no, no.

In terms of the revision by Mr Ellul to the position description, and that being sent around at various times, that was sent to you for information if it was sent to you and not for your input to alter it. Is that correct?---I believe that's correct, yes.

30 And can the witness be shown Exhibit 200. Now if I could ask you to turn to page 4. You see that's a meeting on 7 April?---Yes.

And you're present?---Yes.

And it's in your office?---Yes.

And it sets out a number of matters. Now the person, Ms, I don't know how you say it (not transcribable) is that how you say it, takes the minutes?  
---That's right.

40 Do you then check and confirm them or is that someone else's function?  
---From memory the, there'd be track changes made.

They'd be sent to everyone?---Peter Macklin would probably make most of the changes, 'cause he was on top of all the issues.

And so if I could take you to 1.2, you see draft position, et cetera? You didn't have any function yourself in putting that forward as a proposal did you?---No.

Again you were facilitating what was happening?---Yes.

And 2.4, you see Macklin and Ellul to meet with Child to advise et cetera?  
Was that your idea?---No.

And correspondence sent to Mr Child about the reformulation of the  
position and what was happening with it, et cetera. You've been here when  
those letters have been gone through?---Ah hmm.

10

You didn't draft any of those letters did you?---No.

And they weren't sent to you in your role as chairing the cross functional  
team, you weren't sent those letters to tick off or confirm that they could be  
sent?---I think from time to time I did, I would look through my emails and  
there's, there's sometimes where things come through and I think there's  
been occasions where I've written like, okay from my perspective.

20

Sometimes you'd send one saying noted or whatever?---Noted, okay from  
my perspective, subject to lawyers being happy or whatever. That'd be,  
there's a number of notes, like when I've gone through my emails.

But you weren't playing, I don't want to downplay your role, but you  
weren't playing any major functional role in, in doing that redesign?---No.  
Because I don't have any expertise in that area at all.

No. And you've never run a depot?---Never.

30

And so what the job duties might be was not something within your  
expertise. Is that correct?---That's correct.

And then if I could ask you to turn again to the next one. You'll see the  
meeting on 14 April?---Yes.

Maddocks to advise if the PD's need to go through ICAC. That was again  
not something for you to follow up and do?---That was my specific  
instruction.

40

That was your - - -?---Yeah.

- - - idea was it?---That was, that was my main input to these matters.

Right. To make sure that there was some review by Maddocks to make sure  
everything was on track so to speak?---Oh, to make sure that we didn't do  
anything that would upset the ICAC. And we were very concerned of that.

And again if you turn over the page to 16 April?---Yep.

You see there's 1.1. Ellul to send draft report on depot changes to Macklin to review?---Sorry - - -

I'm sorry. You right? On 16 April on page 6, 1.1?---Yes. Oh, 1.1. Yep.

Sorry. In an endeavour to go faster - - -?---No, no. It's all right.

10 - - - I did make it slower. You see it's not been sent to you to review. See the first sentence? Ellul to send draft report on depot changes to Macklin to review?---That's right.

Again, that's not your role in actually keeping an eye on the detail?---That's right.

Now if I could ask you to turn to page 7. You see this is a memo from Ellul to you?---Yep.

20 It was eventually signed off as I understand by all of you, but this is not a signed copy. Do you recall receiving this?---Yes.

And you received this in your role as Acting General Manager?---That's correct.

And what did you do, to the best of your recollection, when you received this one?---I, I read the, the briefing (not transcribable) and it was, is that, I'm just trying to see if this, that's not the full one is it? There was some, I'm just trying to think.

30 Well, it's the full one as I understand it?---Oh, sorry, yeah.

There was some attachments to it?---Yeah. It was quite a big, I remember it was quite a big bundle and I went, I read it carefully and it seemed to make sense to me. And I noted that it had been supported by the, the people responsible for that area. And I was happy to approve as Acting GM.

So you didn't make any substantial or even insignificant changes to it. Is that correct?---No. I can't recall making any changes at all. I just accepted it was correct.

40 Again, I'm just trying to explore how much intellectual input you had as opposed to a processing input?---Yes.

So, then if I could ask you to turn to the minutes of 23 April and you'll see there there's a proposed, see 1.6?---Yes.

Proposed new position to be advertised. That was reflective of the, of the proposition put in the previous paper wasn't it?---Yes.

And that was really a processing, these, these matters were processing of the report that you'd earlier signed off?---Yes.

Is that correct?---Yes.

And if I could then ask you to turn to page 10. You'll see there's a letter to Mr Romano from the General Secretary of the Local Government Union. Did you, do you recall whether you saw this at the time?---I can't remember seeing it at the time, but I may recall Mr Macklin explaining that the unions  
10 were involved.

Right. But you didn't have any in-depth involvement in that?---No.

Turn to page 12. This is an email addressed to you and it's from Mr Ellul?  
---Yep.

And it says, it's dated 27 April. Do you see that?---Yes.

I'll take this final opportunity once again requesting further deferment of  
20 this matter until we address other staffing issues. And then there's a list of dots?---Yeah.

And you see one is Joe Saad will be paid two weeks in lieu of notice but will be terminated immediately. Was that the first time you'd been involved in any sort of information about the potential termination of Mr Saad?---I have never been involved in, in the termination of Mr Saad. There was a question mark whether or not his casual employment should be given a, a further extension. But there was never, in my mind, any talk of termination. And I remember that was explained quite clearly to me by Mr Macklin at  
30 the time.

Was that at the meeting of 27 April or some other occasion?---I remember there was a, probably two meetings, maybe, there was maybe three meetings about this matter.

Right?---But they were never to discuss termination.

But there was a discussion about the employment status of Mr Saad?  
---There was, well, that's correct. There's been discussion about his casual  
40 employment status and whether or not he should be given a further extension.

And if you turn to the next page you'll see there's the minutes of 27 April. And as I understand it at that meeting there was in effect a vote on the employment status of Mr Saad. Do you recall that happening?---I can't remember if it was that day, but I remember a meeting where everybody had a say on Mr Saad.

And there was, as I understand it, a split at the meeting?---There were different views. It wasn't like a, in my view, a vote. It was more that we were all asked what our opinion was on Mr Saad. And I gave my views on the matter.

And you've heard others give evidence that it was a bit more formal than that, well in fact a lot more formal than that?---I'm not saying it's not formal, but I'm saying I can't recall a situation where we voted, there was no voting.

10

As I understand it, Dardano, Ellul and Azer all expressed a view that Mr Saad should continue working for Council?---They wanted him to have a final extension of two weeks.

And Mr Macklin supported them?---Yes.

And you and Mr Hullick didn't support the extension?---That's correct.

20 And you didn't support the extension because you knew that Mr Romano didn't want Mr Saad in the workforce anymore?---No.

That's correct, isn't it?---No, it's not, not correct.

Well, why do you say you didn't support the extension?---There was four reasons.

What?---One, he'd been caught stealing in the workplace. Mr Macklin advised me of that.

30 Caught stealing?---Caught stealing.

So that was discussed at the time?---Yes. The second, and in my view if you were to look at, if you were a casual person you should, and you're, you're looking for a further extension, there shouldn't be any record of stealing. The second issue was Mr Dardano had said that he was not a person that Council should employ. The third reason - - -

Did he tell you why?---He didn't say why.

40 Did you ask him why?---It was, it was in the, no, I can't remember. I think it, I think, yeah, no, I think it came up in discussion, it was related to the third and fourth reason and I think Mr Dardano agreed with Mr Azer and Mr Macklin that Mr Saad was not a team player. He tended to, I think Mr Azer's word was to polarise staff and I'd witnessed that myself when I went to the depot on one occasion and the other, and, and Mr Macklin said he tended to stir up trouble at, at the depot.

Ah hmm?---Like he'd get the, I'm not sure exactly what he meant but it, I had a, I think he called him a stirrer and the, the final reason - - -

Mr Macklin called him a stirrer?---Yeah.

Right?---Yeah.

And, and the final reason was that Mr Macklin advised us that he had a criminal record - - -

10

Right?--- - - - and, and following that meeting we actually reviewed some of the, and asked well, why are we employing people with criminal record in an area, you know, I'm not saying the person shouldn't get a second chance but it's at least something you should be aware of when you appoint somebody. Do that was - - -

20

That was the fourth reason?---Yeah. So that's probably the fourth reason and, and, and the only reason I seem to be getting from, from Steve Ellul and Mr Azer and Mr Macklin was that they wanted to keep Mr Saad on for a further two weeks because he was not in the Steve Child camp and, and for me that, I mean, it might be naïve of me but I think well, they should all be in the same camp working together and that is my lack of understanding of depot politics so to me that wasn't, if that was the only reason that could be offered for a further two week or final two week extension, to me that was not sufficient to outweigh those other, other grounds.

And was there a discussion about how Mr Saad had been making complaints that had turned out to be baseless?---Absolutely not.

30

There was no discussion about the concrete having been drilled when he made a complaint and that turned out to be false?---No.

Not at that meeting?---No.

And were you not aware of that as an issue?---I think that came up later but I can't recall that being discussed at all. There was, there was, that wasn't mentioned at that, at that meeting.

40

And were you aware that the allegations of stealing had been dealt with in 2008 and then finished with?---I think Mr Macklin said that to him there's the, I wasn't aware that it had been dealt with. I thought it was a fresh issue - - -

Ah hmm?--- - - - but Mr Macklin did say that he didn't consider that to be a, a serious issue because it was a long time ago and very early in, so it wasn't the key factor in my mind why I wouldn't lend my support to a further extension.

But in the end you as the chair and Mr Hullick had the sway of the day as I understand it, that is, that your decision was determinative. Is that as you understood it?---Not, not exactly. It was slightly different to that.

Well, what was your understanding? I mean, that's been the evidence of - -  
-?---Yeah.

10 - - - several other people, that is, that you had the casting vote, so to speak?  
---They had, in a previous decision of the Executive and probably over the  
last six months they cut back excess casuals and, you know, I think there's  
a, there's a, there's a whole group of people, it could be contractors, I think,  
agency staff, casuals but (not transcribable) full-time employees and there  
had been a gradual cutting back and that had been already pre-determined at  
the Executive. What, what was being sought from myself, what, what Steve  
Ellul and Peter Macklin were seeking from, from the Executive was to  
overturn that previous decision and, and myself and Les were not prepared  
to overturn that previous decision of the Executive because we had made  
cuts across the organisation and in my area I'd make cuts in the records area  
20 in terms of, you know, but Mr Azer was, was wanting, he went on the side  
of his senior manager and the manner in terms of overturning that previous  
decision.

And he was resisting those cuts, is that what you're seeking to say?---No,  
what I'm seeking to say, just in this he I think, he felt there was an  
advantage in having, and I'm not fully, I can't, sorry, in my mind it's not  
entirely clear what he meant by these depot politics but he was seeking that  
further extension. He felt that there would have been advantage to have  
Mr Saad on for a further two weeks.

30 Right. And that didn't happen and it was decided that his employment  
would cease at that point or - - -?---I think what happened he just, he's  
turned, just finished up as a casual because he's run out already but he'd had  
further extensions but he just finished up.

Now, in April there was, well, March and April, surveillance of the depot  
was instituted and you were present, weren't you, at a meeting where the,  
Mr Mailey from IPP put up a PowerPoint presentation?---Yes, yes.

40 And you were part of the decision to institute that surveillance?---Yeah, that  
was probably the, the first sort of legal strategy I think we had.

And that was part of the Executive, not as, as you, as your role as chair of  
the depot CFT. Is that correct?---I, I felt at the time it was part of the, the  
Executive/legal strategy where, so yeah, it wasn't part of the CFT.

And what was your role in the surveillance on an ongoing basis?---I had  
some role when I had concerns about the quality of, of the, well, that's just,  
probably my most detailed role.

And how did you become concerned about the quality of the product?---My recollection was - - -

Did you see the reports or - - -?---Not, it was raised by the lawyers, they felt that the footage was very poor, you couldn't see people's faces, it was - - -

The video footage was poor?---Well, I can't remember, it was, it could be, I saw some of the footage and it was, it was poor.

10

Yeah, it could be anyone anywhere?---It was very difficult to see who it was so I raised, I, I agreed with the lawyer, I said, yes, if we're going to present this information to the ICAC it's useless.

And were you aware that the union wrote a letter on 1 April?---I think Mr Macklin raised that with us that the, well, I can't be, I can't recollection but I think that's likely he would have raised that with us.

20

If the witness can be shown Exhibit 204 and the previous exhibit can be returned. Now, I know it's sometimes hard to recall what you've seen during the proceedings and what you've seen before at this stage but do you recall whether you saw this letter on or about 1 April, 2009?---I, I can't remember seeing it but I, I think Mr Macklin mentioned it, mentioned that the letter had been received.

30

And that was a concern, wasn't it, that is if some or all of the people being placed under surveillance had become aware of the fact that they were under surveillance. Was that something that you were concerned about?---I probably had other matters on my mind like the town centre LEP. I would have probably just noted it and if Mr Macklin said it was a concern I said oh, okay, it's a concern. I would have, I would have taken his word for it.

Thank you. If the witness could be shown Exhibit 225. Do you recall whether you advised IPP on Saturday, 4 April to cease the investigations? ---I can't recall that. I don't - - -

Because there's note of who did it?---I wouldn't have, I wouldn't have rung IPP on a Saturday.

40

Wouldn't you?---No, 'cause I wasn't, no, I wasn't driving the, the IPP process.

And to the best of your recollection you didn't - - -?---No, that'd be something that would be very uncharacteristic for me to do that.

Just look at the email dated 7 April. Do you see the second paragraph? It's from Mailey to Gardner. "We're advised at 11 o'clock on Saturday, 4 April, to cease investigations until advised". Do you see that? And then it

says, "On Monday, 7 April". Well, sadly, Tuesday was the 7<sup>th</sup> so I don't know whether it means Monday the 7<sup>th</sup>, Monday the 6<sup>th</sup> or Tuesday the 7<sup>th</sup>, "Ian Dencker rang at 8.00am". So you're the person who, according to this, gets reinstated. Do you have any recollection of that?---No, I don't. I was surprised to, to, to hear that the other day. The, the only thing I could say if I, I never ring anyone at 8 o'clock in the morning and, but if I did it would be from this, my, my work phone so - - -

10 So that's your (not transcribable)?---From my, from my mobile phone so you, I, I can't, I don't, I - - -

But if Mr Mailey noted that you rang him it's likely - - -?---Yeah, because - - -

- - - to be correct, isn't it?---I would say no.

No (not transcribable)?---Not Mr, I, I, I must admit - - -

20 Have you checked your phone log?---I haven't checked my phone log. I, I, I cannot recall ringing Mr Mailey. I, I recall having (not transcribable) maybe one conversation with Mr Mailey and that was relating to the quality of the videos.

You see, the Saturday, 4 April, is the day the Sydney Morning Herald published the first article?---I didn't, I didn't make any calls to Mr Mailey. That's, that, that - - -

That's the day?---Yeah, no, I, absolutely not.

30 And then either on the Monday or the Tuesday he alleges you rang at 8.00 and requested that it be started again and you have no recollection of doing that?---Absolutely not, no recollection whatsoever.

It wasn't your role, was it?---No.

Sp we haven't, you have no explanation for that?---No.

40 It may be that Mr Mailey's recorded the wrong person or that you don't remember? They're the only two options really, aren't they?---That's right but it, I just have absolutely no recollection of me making those two alleged phone calls.

Well, you're only alleged to have made the second one but - - -?---Okay.

- - - but (not transcribable) suggest you might have made the first one as well?---So, yeah, I have no recollection in relation to any of those two conversations.

As a member of the Executive you were party to discussions about what would happen if Cummins, Child or Giangrasso decided to come back to work or had clearances to come back to work, would you agree?---Yes, Mr Macklin raised that with us.

And that was a matter that you considered?---Yes.

10 And as chair of the CFT were you, did you have any particular concerns about Child and Giangrasso? Were there any particular issues of which you were aware?---I had no personal issue with Mr Giangrasso and Mr Child because I, I don't think I've even had a conversation with them ever since I worked with Council but I, I would, the only concern I would have would be any concerns raised by Mr, Mr Macklin and Mr Ellul or Mr Azer.

So you would have advised, relied on the advice of your fellow Executive - - -?---Absolutely.

20 - - - the extended Executive?---Well, principally Mr Macklin, Mr Ellul and Mr Azer.

All right. If the witness could be shown Exhibit 241 and those other two can be returned. If you could turn to page, you see there's some little numbers down the bottom. If you could turn to the bottom of page 8. You'll recall we were previously looking at the legal advice you sought? ---Yes.

30 Just over the page then just so that that makes sense. This is what's become known as the David and Darren email. You see, "I met with the Executive team this morning"?---Sorry - - -

Hullick, Dencker, Azer?---Yes.

And do you recall that meeting of 29 June, 2009?---I can't recall that specific meeting but I can recall a meeting where this was discussed.

40 And do you see there it says Cummins, "Currently Council has asked Cummins to respond to issues of maladministration and to date his responses have been unsatisfactory" and you recall we looked at that correspondence last time - - -?---Yes.

- - - or some time. Was that your view that's being expressed there?---No, I don't I, I wasn't asked for a view on that at all. I, I wasn't driving that process at all.

So that's, you just went along with the flow, did you?---No, I, that's not correct. I, I took an advice what the senior manager HR said and I trusted his advice.

And in relation to Child there's the calls to the SMH?---Just, just so I, can I just come, clarify too? In relation to, I, I didn't just go along with the flow. I, I trusted Mr Macklin but Mr Macklin (not transcribable) said that he'd run these issues past Council's workplace lawyers so that, those, that sort of two pronged approach satisfied myself.

That what was happening was appropriate?---Absolutely.

10 And the allegation put against Mr Child about making calls to the Sydney Morning Herald, clear violation of Council's code of conduct, do you remember that discussion?---I, I remember Mr Macklin and maybe Mr Ellul raising this as an issue.

20 ]Was there any discussion about the fact that there'd been a protected disclosure to this Commission in relation to Mr Child?---What's, not, not Mr Child but from the time the Sydney Morning Herald article appeared every meeting that I was attending to I think was vitally concerned about the fact that there was a possibility that somebody could be a whistleblower so that discussion was always had and, and hence when these matters came up that concern translated in a, in, in my requirement that these matters be run past the lawyers to ensure that there was no issues with ICAC.

Well, there was, there's no doubt was there? There'd been an article in the Sydney Morning Herald saying that there'd been complaints to ICAC?  
---Yes, that's, that's, that was right.

In early April?---Yes.

30 So you knew from then - - -?---Yes.

- - - if you assumed the Sydney Morning Herald was correct?---Well, we, we didn't know because, whether they - - -

Well; I'm sorry, I commenced (not transcribable) question. On 9 June this Commission served what's called a Section 22 notice on the Council via Mr Baird. Do you recall that?---I've since become aware of that. I don't think I was aware that, at the time because it wasn't served upon me. It was, it was - - -

40 It was a matter of discussion in Executive, wasn't it, the extent of the issues being raised?---No.

And the concerns that this Commission was looking at?---No.

Wasn't that a matter the Executive discussed?---I can't recall any discussion of any Section 22 ever received at the Executive, any Executive meeting.

Never?---Never.

So it wasn't a matter that the Executive ever turned their mind to as a collective Executive?---What happened was, the, the, that's correct. The General Manager had delegated I think all Section 22s to be received by Mr Hullick and Mr Hullick as a separate sort of, how can I say it, quarantined exercise, would gather information and, and he would, it there was anything he needed from myself he would say, "Oh, Mr Dencker, I need information on such and such but I wasn't, the Section 22 was not discussed amongst the members of the Executive as to how we'd take it. It was sort of - - -

So you weren't shown it so you could say, oh, I might have some things in this category and this category?---It was left to Mr Hullick to, to, to do. I, I wasn't shown it.

(not transcribable) If you just go back then to page 8 you'll see that you were then sending it onto Mr Gardner asking for legal advice?---Yes.

And then Romano sends an email to Baird, you and Hullick giving you a direction, "Gentlemen, please ensure that all these matters are endorsed by you prior to action being taken" do you see that?---Right, yes.

What did you understand him to mean by that?---I, I felt number one that, that he wanted Dave to assure himself that he wasn't, that we weren't upsetting the ICAC in terms of any ICAC law or guidelines. In terms of myself and Les, we were like, on some issues Acting General Managers so as a, as a matter of general business I think he just wanted to assure himself that, that we were also okay with the, with the issue.

In relation to Mr Cummins, and we discussed it before, but you understood that the issue was about what Mr White had or hadn't or done in his position?---Well, what was explained to me was two matters. It was, yes, that what Mr White had done but also Mr Cummins' supervision of Mr White.

And, and in terms of the letter threatening termination that we looked at previously, they were the matters that you understood were being traversed in that letter?---I can't recall seeing the specific contents, but I understand that the, the technical matters were matters that would be traversed.

And I think last time we, we went through that letter in some detail, so we don't need to return to it, you'll be pleased to know, well, I don't, other's may. Now in relation to what happened after the Sydney Morning Herald article appeared, if the witness could be given Exhibit 197. A number of things happened, but you don't seem to have played any role in them. Would that be correct?---I'm not sure what - - -

Except to go to the Local Government meeting, and I'll come to that in a moment?---I'm not sure about the number of things happening.

Just wait a minute?---Okay.

The other one can be returned as well. 4 April is when the article was published. This came out on the 5<sup>th</sup>. You didn't review it with Mr Romano before he sent it out?---No.

10 So the first you knew was when it landed in your email inbox?---Yes.

Now you attended the meeting, if I could ask you to turn to the next page. On 7 April, you're noted as being in attendance. See that on page 2?---Yes.

And if I could ask you then to turn to page 5 and 6. You see down the bottom and then at the top of page 6 is a statement read by the Mayor. You didn't have any role in formulating that statement did you?---So bottom of page?

20 5, top of page 6?---No. No role whatsoever.

And you weren't present when that was drafted prior to the meeting?---No.

You didn't make any contribution to its contents?---No.

If I could ask you to turn to page 7. It's an email from Peter Macklin and an attachment at page 8 is a, what's called a report by the General Manager. Did you play any role in the formulation of that so called report?---No.

30 And in, if you go to page 9 there's an email dated 17 April from Macklin to everyone?---(not transcribable)

See that? Did you play any role in formulating this email with Mr Macklin?---No.

All right. And then if I could ask you to turn to page 10. You'll see there's an email that you received along with Mr Hullick sent on 25 April at 2.04pm from Romano, with issues to consider. Do you see that?---Yes.

40 And that set out a number of issues that he was, that Mr Romano was telling you that he wanted considered. Do you recall that?---I, I've reviewed my emails, I don't recall it, but I, I have reviewed my emails and I've read it. So if it was sent to me - - -

But I've not seen a reply from you?---Yeah.

Or Mr Hullick in fact. Do you recall whether you answered it at all?---You see, I can't recall seeing it until, I - - -

So your, your recent review confirms you received it. Is that correct?---  
Yeah, yeah, just that I received it. But when I read it, I couldn't recall  
seeing it at, at the time.

All right. And you didn't answer it, well, we've not been provided, not that  
that necessarily means anything, but we've not been provided or the  
Commission's not been provided with any answers?---Yeah.

10 So you don't recall anything independently about it at this stage?---No.

Okay. Go to page 12. You'll see there's an arrangement to meet Mr  
Woodward and Mr Chapman of the Department of Local Government?  
---Yes.

And you were to attend. You did attend didn't you?---Yes.

And do you recall that Mr Romano was there for a portion, the first portion  
of the meeting?---Yeah, a very short period.

20

And then made a statement which is attached at, or handed a statement to  
Mr Woodward and Mr Chapman, that is attachment 13. Do you recall that?  
---Yep.

And then he left the meeting?---Right.

And do you recall what occurred at the rest of the meeting?---Yeah. It was,  
it was, there was a discussion between the Mayor and Mr Woodward and  
Mr Baird and myself. And - - -

30

Did the Department representative give you any advice about how to deal  
with the situation?---No.

Did - - -?---I don't think that they had any power to, to, they could - - -

So was it really more of a reporting session?---I think the Mayor wanted for  
them to get some guidance from the Department. Whether there was  
anything under the legislation and, that could assist Council.

40 Was that able to be provided?---No. I think, no.

So the Department wasn't in a position to suggest you did X, Y and Z? It  
was more a report from you to the Department about what you were doing.  
Is that correct?---That's correct. And I think the (not transcribable) it was, it  
was, you couldn't have a trial by media situation happen where anybody  
who, who wrote to the paper would result in the GM being stood down,  
'cause if that was the laws then we could have dysfunctional local

government (not transcribable). I think the view was we just had to go through a, a process and, but there was no guidance given.

Now you've been at a series of meetings with Mr Romano and Mr Hullick and others. Sometimes at Maddocks and sometimes at HDY about what are called worker's comp and ICAC matters. Do you recall that?---Yes.

And what was your understanding of the reason Mr Romano was there?  
---He was there in his role as General Manager.

10

Well, you were Acting General Manager weren't you in relation to some of the issues?---My role as Acting General Manager was only in relation to the deport reform CFT. I had very limited, you know, role in, in any of those matters, so - - -

20

Well, why were you there?---I think there was some, for those very limited matters that may cross over and, and from time to time I would say, look, this is a matter we really need to run past the ICAC and, and there were also sometimes where the, where the lawyers would ask, who was like supervising the process, they would ask Mr Romano to leave. And, and were (not transcribable) Mr Romano still needed somebody representing Council. So when Mr Romano excused himself or was asked to leave the meeting, as required by laws, you would need representation from Council. That's, I guess why we were there.

Did you ever express any views at the meeting that Mr Romano shouldn't be there at all?---No.

30

Why not?---Probably a number of reasons. Number 1, he as the General Manager, and he still had the, he had the full support of Council, so Mr Romano had strongly proclaimed his innocence. And I felt that from both myself, the lawyers and the Council, there was a presumption of innocence with Mr Romano. And I, I personally, I respected and trusted the GM. Obviously now, it was a big mistake. But they were key reasons.

40

Right. You see, I'd suggest to you that it was inappropriate for Mr Romano to be at meetings where Burwood Council was endeavouring to develop a strategy involving worker's compensation issues for Cummins, Child or Giangrasso. Would you agree?---I don't think I had the expertise to bring, so, yes, I know at the time that (not transcribable) I think up to six lawyers there. I thought it must be appropriate for Mr Romano to be there, 'cause they were supervising him carefully. And they would ask him to leave when they thought it was not appropriate. So I was, it gave me some comfort.

So would it be correct that your views were very influenced by what the lawyers were telling you?---Oh, absolutely.

But you understand lawyers only give you advice, they don't make the decision for you?---That's correct.

And you as a member of the Executive, present at the meetings, is a decision maker or one of the decision makers?---Yes.

Any decisions decided at the meeting you understand that?---Yes. That's correct.

10 And you would've understood that at the time?---Yes.

You understood that by attending those meetings you became part of responsibly, partly responsible for any decisions made which were implemented?---I agree with that, yes.

And that the lawyers really, they might give you certain advice but you don't, you're not bound by that advice. You understood that didn't you? ---That's correct. Yes.

20 They do just that, advise?---Yeah, no, I appreciate that.

And so they might be telling you what they think, but ultimately it was up to you and Mr Hullick to make the decisions wasn't it?---No, I disagree with that.

Right. Who do you think were making the decisions?---I think Mr Romano made it very clear at those meetings what his expectations were and, and he say unashamedly that in his role as General Manager and he said, I had a job to do to run Council and these are my expectations. I will continue to do my  
30 job unless told otherwise by lawyers or the ICAC. And he had a very strong input into those, those meetings. Unless directed by the lawyers to step outside. And in those few instances they were then, the matters were then, they would seek advice from, from myself, Mr Hullick and Mr Macklin. And on those occasions I would rely on Mr Macklin's expertise in terms of a way forward.

Right. So that any suggestion that Mr Romano was playing no role in relation to the ICAC matters would not be correct would it?---I think it's confusing what was ICAC and what was work. And I was confused myself.  
40 And I think the lawyers were confused too. Because it was all interwoven and it became a very muddled picture. And I think it was very difficult for, for anybody to work out where the boundaries were. I think everybody tried their best to, to try and work out where the boundaries were and when Mr Romano should or shouldn't be involved, and I think the lawyers were keeping a very close eye on, on Mr Romano and they would tell him, Mr Romano, you need to leave the room now because this is a matter you can't be involved in.

But that relied on them to do that?---Yes.

And you in your, with your project management skills didn't develop a list of do's and don't's or what, what should be included when he was present and when he wasn't?---I had no authority to do that.

10 Why not? You were there as a participant in the meeting. You're a member of the Executive?---Yeah. I had, I had no authority from the General Manager to do that. Mr Romano, anything that involved Mr Romano, and he made that very clear to us, anything that involved Mr Romano's employment contract was a matter between him and, and the Mayor and the Council.

Right?---It was no for myself or anyone else to deal with.

20 But what about issues involving allegations that had been made to this Commission? That didn't involve his employment contract did it? They were matters being discussed at these meetings?---I think from time, from time, I can't remember the specifics. The, because the lawyers kept the notes, but there were, from time to time when those matters came up, he would be asked to, to leave the room.

Right?---And they were, I thought they were very diligent in that. And they, and I never saw any, at those meetings, any what I considered inappropriate involvement by Mr Romano in any matters that, that we all understood involved the ICAC.

30 Well, were any records kept to your knowledge of the occasions when Mr Romano was asked to leave?---Those records would've been kept by the, the lawyers. They were all making notes.

Because in the notes that have been provided to the Commission, there's no record, so it's not possible when one reads them to know whether he was there or not?---Yeah, I'm sorry, I can't help you.

Now you knew that Mr Child and Mr Giangrasso had made complaints or disclosures to this Commission didn't you? And you knew that from early April?---No. No.

40 Well, it was published in the Sydney Morning Herald. Did you not read the Sydney Morning Herald, the articles about Burwood Council at the time they were published?---I remember skim reading the articles and - - -

And were you aware that Mr Cummins had made a disclosure to this Commission?---No.

You say you weren't aware of that at all?---No.

Never?---Never.

No one told you that?---That's right. Nobody told me that.

Even after 9 June when the section 22 notice was, first arrived?---That's correct.

Nobody said to you - - ?---Yeah. I've never seen a, I've never seen a protected disclosure by Mr Cummins, Mr Child or Mr Giangrasso.

10

To this Commission?---I've never seen, that's right. That's correct.

And during the course of the meetings that you attended, during the course of 2009 was there no discussion about the fact that the three of them had made protected disclosures to this Commission?---No, there was never any discussions about any specific individuals. But there was, in the meetings that I had with the CFT and there was really not, the CFT - - -

No, sorry, just so you understand me?---Sorry.

20

I'm talking about the meetings that you attended as a member of the Executive at Maddocks or HDY?---Oh, no. I can't recall - - -

What are seem to be loosely called the strategy meetings?---Yeah, I misunderstood the question.

Sorry. Was there no discussion at those meetings about the fact that the three people I've nominated had made protected disclosures to this Commission?---No, never.

30

Never. Not even after 9 June when the notice was received?---That's right. The only thing I will say, there was, a general concern at all time that any action that Council took and relating to the workplace related matters had to pass the, the ICAC test, like not to upset the ICAC.

And did you understand that to be?---That it couldn't be seen as, as, any response that Council took in relation to the workplace matters could not in any way be perceived as being, termed as retaliatory at someone who may be a potential whistleblower. I think there was discussion about some potential for them to be whistleblowers but not that they actually were whistleblowers. So there was, there was discussion, that's it's a possibility that these individuals could be whistleblowers and as such under the legislation we need to ensure, and this is what the lawyers were saying, I remember Mr Baird saying that we've got to be seen as not, and said, I will run this past the ICAC to make sure. And he did that, my understanding, on numerous occasions to the, to the extent, because we were all saying, well, what's the ICAC saying, what's the ICAC saying? He said, look, if I go and see them anymore, they're going to tell me to, and he used pee off, he said,

40

so, that sort of satisfied myself and that, we were taking those precautionary steps.

Is it your serious evidence that during the course of 2009, after about 9 April, you say you didn't know that Mr Child and Mr Giangrasso had made a protected disclosure to this Commission?---Not until I got the, we saw the letter from Mr McKenzie. That was the first that, and I'm not even sure if it states that they made a protected, I can't remember the contents, but I think from reading that letter, in terms of Mr Giangrasso, it was, it was clear that he had made contact. I can't remember what, so that was the first that I became aware of, when I had that official correspondence from the ICAC.

And at the Executive there was no discussion about whether they were all, the three of them were, had made protected disclosures?---I can't recall any conversation at the Executive where we spoke about protected disclosures by individuals of any, any description.

I'll show you this document?---Can I just, can I just say on that, can I just, I can't, I can't recall, at the Executive meetings, I just can't recall any specific instructions.

Discussions?---About specific, just to understand the question correctly because I, I can't recall any specific discussion at any Executive meeting where, where we said, oh, has such and such, such and such has made a PD and, and then being discussion about that. I cannot recall that.

So your evidence is, is it, that at meetings with the lawyers at either Maddocks or HDY on the strategy meetings - - -?---Yeah.

30 - - - Mr Baird raised some issues about reprisals - - -?---Yeah.

- - - but you didn't know there'd been a protected disclosure by anyone?  
---Sorry, I keep getting confused when you say Executive because are you talking about the HDY, HWL and Maddocks Executive meeting?

No, I'm talking about two different things?---Yeah, sorry.

As I understand it you have Executive meetings where you talk about issues that are of concern to the management of the Council. Is that correct?  
40 ---Yes, yes, yes.

At those meetings your evidence is that the issue of protected disclosures by Cummins, Child and Giangrasso was not openly traversed?---That's correct.

That's your evidence?---Yes.

But when you were at the so-called strategy meetings at HDY or Maddocks - - -?---Yeah.

- - - or maybe Ebsworths later, you say Mr Baird was worried about reprisals - - -?---Yeah.

- - - but again nobody said there'd been any PDs?---That's, that's right. I can never recall anybody saying there has been a (not transcribable) letter from Mr McKenzie that somebody has made a specific PD and these are the details of it. Just, just like if there was a general discussion that's a possibility and there's the potential but never any actual (not transcribable).

10

Can the witness be shown Exhibit 62. Just ignore that one for a moment, I'll return to it in a moment, I just need to pursue this for a moment?  
---That's all right.

You can turn in to four pages, you'll see there's the Sydney Morning Herald article on 7 April, 2009 which says, "Burwood Council workers file complaint with Corruption Commission." Do you see that?---Right. Can I just read it, can I read it?

20 Sure?---Yep, yep.

You would have read this on or about 7 April, wouldn't you?---I can't recall but I, I may have read it.

Well, the ratepayers of Burwood are paying you to be a member of the Executive, aren't they?---Yes.

And that involves management of the Council, doesn't it, not just your own little area?---Yes.

30

And this would have been a matter causing you some concern, wouldn't it?  
---Yes.

That is, that someone's gone off to the ICAC and lodged complaints about the General Manager?---Can I, where does it say that in the article, I just can't see that?

In the very first paragraph, Burwood Council staff et cetera have lodged a complaint with the Independent Commission Against Corruption. The staff members claim Pat Romano, the General Manager, et cetera, et cetera. Do you see that?---(NO AUDIBLE REPLY)

40

Now, it didn't name them, did it?---This is, this is what Kate McClymont is saying, yes.

Is it your serious evidence, Mr Dencker, that this was not discussed at a formal level at the Executive?---The only discussion I remember was Mr Romano would make a big long speech about this is a media smear

campaign, I will clear my name and that was, that was 99.99 per cent of the discussion was Mr Romano strongly refuting any claims and really sometimes maybe speaking for an hour on, on these matters and, and, and he made it very clear to myself, the lawyers, the Executive, the Councillors that this was a media smear campaign so when any articles came in that was his response and, and I believed him at the time and I feel too that the people surrounding him, the, the Councillors, the lawyers and other members believed, believed him as well that this was a, a media smear campaign.

10

Did you not maintain any sceptical view about it rather than embracing his position?---Mr Romano was very convincing. He was, he was crying, he's cried twice in, in that period when they came out and I felt sorry for him and I'd never had any reason to doubt Mr Romano's integrity or I'd never seen anything remotely resembling inappropriate behaviour. This was like the General Manager, like the captain, you know. I had, I completely trusted him.

20

And you now know that at least some of the allegations in the Sydney Morning Herald were correct?---Yes and that's, that's, that's extremely disappointing and, no, it's very disappointing to myself and I feel let down by that.

Just read the email I handed you a moment ago. This is an email from your or sent on your behalf, you see, dated 22 May at 11.55, Ms Riordan acts on your behalf, what do you do, dictate them to her or - - -?---Oh, sometimes I write, like I'd write notes and I'd give it to her.

30

And she turns it into - - -?---She'd turn it into an email, yeah.

But this reflects obviously the instructions you gave her about - - -?---Yes.

- - - an email to send?---Yes.

You don't doubt that, do you?---That's correct.

You see that it's sent to Baird, Gardner, Hullick, Romano, Macklin and it's about covert surveillance tapes?---Ah hmm.

40

Now, firstly, why were you involved in this issue?---I became involved when it became clear to the lawyers that, there was probably two reasons. One reason was it was part of the, the legal strategies set up by Mr Baird and Mr Romano to I guess clear the General Manager's good name and, and there was an expectation that, that the Executive and other staff were behind that strategy and assist. The second reason I became involved was there was, there was an issue here that, and I was seen as an individual that could, because there was a problem here I could, I could sort out this problem so it was given to me to try and see well, well, there's a really big issue with

these DVDs and the footage, Ian, can we, everyone else has had a go, can you have a go in trying to sort it out. So I tried to articulate and I guess this is my typical Mr Fix-it role where I'd go back to Mr Mailey and, and try and just pin him down, saying look, we need this information, this is critical to, to the, to the legal strategy, to, to our lawyers, we need this, because we need to move with the ICAC, we need this, this and this.

And you'll see that Mr Romano sent it on to his lawyers, his private lawyers. Do you see that?---Yes.

10

Did he tell you he was doing that with your email?---No.

Were you aware that that had happened?---No.

Did he seek your consent?---No.

If I could tender that document.

20

ASSISTANT COMMISSIONER: Yes. That email from Mr Dencker and the subsequent email will be Exhibit 295.

**#EXHIBIT 295 - EMAIL FROM IAN DENCKER DATED 22 MAY 2009 AND SUBSEQUENT EMAIL**

MS RONALDS: And IPP's done a significant amount or been paid significant fees for looking at the issue of posters being put up. Is that an issue that you've had any involvement in?---No.

30

Prosecutions for posters being illegally put up?---Not directly.

It's not your - - -?---No. I look after the rangers now and my - - -

Well, think back to 2009?---No, no involvement.

You (not transcribable)?---No involvement.

Just excuse me for one moment?---Yes.

40

MS RONALDS: I have nothing further, Commissioner.

ASSISTANT COMMISSIONER: Thank you. Does anyone wish to question Mr Dencker?

MR HANLEY: Yes, Commissioner, if I may.

Mr Dencker, I think (not transcribable) Mr Child?---Yes, yes.

You say in your answers to counsel assisting that it was as a result of your trust and confidence in the General Manager that you were pursuing those who may have made the claims against him in the Sydney Morning Herald news articles?---Yes and no.

10 Yes and no. What's the yes bit?---Yes, I trusted (not transcribable) but I also, nobody's at, I was also, that trust was backed up by the fact that he was working in close consultation with, with Council's lawyers on a, on a legal strategy to clear his name.

But when you were present at the extraordinary Council meeting on 7 April, you've been taken to that this morning and you were aware that the Mayor announced that the General Manager would voluntarily step aside from any involvement in the management of issues relating to the allegations in the Sydney Morning Herald articles, weren't you?---I wasn't present - - -

20 Your name is listed as being present at that meeting. It 's part of Exhibit 197, page 2 and in particular page 6 of that exhibit and you were taken to that this morning by counsel assisting. So you were present when the Mayor made that announcement?---No.

Weren't you?---No.

30 Had you left the meeting?---My recollection of, of any meetings involving the General Manager's contract or employment contract is that all staff leave and the only one that would be present would be the councillors, the General Manager and Council's lawyer.

Maybe you've misunderstood me. What I was putting to you is that the extraordinary meeting on 7 April, the Mayor announced that the General Manager would stand aside in relation to the allegations in the Sydney Morning Herald of, sorry, that Councillor Faker had raised at the meeting? ---I wasn't present when the Mayor made that because that would have been part of the closed session where - - -

40 So had you left the meeting at some stage?---That's my recollection that we were required to leave the meeting.

Well, weren't you appointed Acting General Manager after 7 April?---I wasn't appointed Acting General Manager by resolution of Council.

What does that mean?---It means the General Manager was still the General Manager. He had, he had the full powers and full confidence of Council.

Were you given roles as General Manager or Acting General Manager in relation to the allegations made in the Sydney Morning Herald?---No.

Well, on 5 April you saw the first of the Sydney Morning Herald articles, didn't you, on 4 April I should say?---Yes.

And on 5 April you received, amongst, with others, an email from Mr Romano denying them, correct?---Yes, if that's what you - - -

Well, you've been shown it this morning. It's Exhibit 197?---I'll trust you on that.

10

Righto, where he claimed they were false and that he intended to defend the matter and the email said and in effect, I had, "And have commenced a process by what, by which this will occur". Okay. That was to defend the claims. Did you ask him what that process was?---The process - - -

First of all, did you ask him what it was? What was the process - - -?---Yes, yes.

- - - he was commencing - - -?---Yes.

20

- - - was going to deal with these false allegations?---Yes. I recall having a discussion with the General Manager about the process.

Okay. And what was it?---The process was that by resolution of Council there would be an inquiry under a policy of Council and by which an external investigator would be brought in which, I think at that stage may have been decided would be Chris Ronalds and that was the best recommendation, that was the process at that, at that stage.

30

And the basis of the process was, or underlying it was that these allegations made on the, in the Sydney Morning Herald on 4 April were false, wasn't it?---I don't know the answer to that.

You were told they were false and you accepted what the General Manager told you, is that correct?---Yes.

But by 7 April, the third article, three in a row, and you've been taken to that by senior counsel assisting, you were aware of the particular nature of the allegations weren't you?---Yes. As per the paper.

40

Yeah. And did it seem to you that the allegations bore a striking similarity to an investigation of Mr Saad that you had conducted in February of 2009? ---No.

Not at all?---No.

Didn't ring any bells at all?---No.

Hadn't Mr Saad complained of similar matters? He had worked on properties owned by Mr Becerra in particular during Council time?---Not to my knowledge.

Well, did you ever speak to Mr Saad about that?---No.

But you conducted the investigation, didn't you?---I didn't conduct an investigation.

10 Did nothing about it, didn't you, the Saad allegation when you were brought in to replace Mr Cummins?---No, that's, sorry, what was the question?

So (not transcribable) nothing about the Saad investigation after you replaced Mr Cummins?---That's, that's not correct.

Did you speak to Mr Saad?---No.

Well, what did you do?---Well, I, I can go through my evidence from the other day.

20

Okay. You never spoke to Mr Saad but you were aware of his allegations, weren't you?---No.

Not at all?---Not at all.

Okay. See, what happened, I want to suggest, after the articles on the 4<sup>th</sup>, 5<sup>th</sup> and 7 April is that you and other members of the Executive determined that you were going to try and establish that those who had made the allegations were making false allegations, that's correct isn't it?---No.

30

Not at all?---No.

You deny that you rang Mr Mailey's office, don't you, at 8 o'clock on 7 April?---I have no recollection of ringing him.

Because you never made calls at 8 o'clock in the morning, is that right? ---I'd normally ring at the start of business hours which would be 9 o'clock onwards.

40 Would you ring him on 8 April?---I have no recollection of ringing him.

See, I want to suggest that you rang and re-opened the surveillance or requested it be opened again in relation to people such as Mr Child and Mr Giangrasso?---No.

You knew that that they had amongst the people investigated or surveilled prior to the time the surveillance was stopped?---I don't understand the question.

Okay. Who did you think had been surveilled by Mailey and IPP prior to April or during the first part of April in 2009?---The whole depot staff.

Okay. Did you see any of the reports in relation to these people?---Yes. I saw, I'm not sure if it's a report. I remember seeing a, a PowerPoint presentation. I'm not sure if that constitutes a report.

10 The investigation that was being conducted by an independent counsel under the code of conduct was (not transcribable) the authors of the reports in the newspapers, wasn't it?---Sorry, could you repeat that please?

You told us earlier that there was going to be an independent counsel under the code of conduct to conduct an investigation into the allegations against Mr Romano?---Yes.

And that was an investigation in relation to those who had made the allegations, wasn't it?---No.

20 What was the investigation into then?---It was an investigation into the Sydney Morning Herald articles.

Yeah, and who had made them, the allegations?---I, I don't know the answer to that question, I'm sorry.

30 Okay. See, you've been taken to an email today, Exhibit 197 page 10 which is an email from Mr Romano to you and others on 25 April, 2009 where he made inquiries of you in relation to a number of matters concerning the depot staff, didn't he? Do you need to have a look at it?---I can't remember an email making inquiries.

Might the witness have access to Exhibit 197, Assistant Commissioner.

ASSISTANT COMMISSIONER: Mr Dencker, while that's being obtained, can I just, you said in relation to why you got involved in trying to chase up a better quality DVD of the surveillance - - -?---Yes.

40 - - - that it was part of the legal strategy to clear the General Manager's good name. Do you recall that evidence you gave?---Yes.

Is that because you thought that if it could be shown that certain people in the workshop were misbehaving then that would somehow clear the General Manager's name?---My understanding was that the General Manager had said that these allegations were made primarily to avoid the restructure process or disciplinary proceedings and, and that he in consultation with our lawyers wanted to demonstrate to the ICAC evidence which supported his claim.

And to show that the people who were making the claims against him were doing so - - -?---Yeah.

- - - to avoid being held responsible for their own wrongdoing?---Yeah, I think he was saying, I'm trying to clean up the depot and because I'm trying to do that these people are now retaliating against me with a vicious media smear campaign to try and get me to stop to clean up the depot.

10 And you thought that in those circumstances it was appropriate to use Council resources to get evidence that would support his view and clear his name?---Yes and I also noted at the time that it was a matter that had involved our lawyers and they had, from my limited knowledge, given some parameters about how he would conduct that, that, that exercise.

Yes, thank you, I think we'll stop at this time. We'll resume in 15 minutes, thank you.

**SHORT ADJOURNMENT**

**[11.33am]**

20

ASSISTANT COMMISSIONER: Please be seated.

MR HANLEY: (not transcribable) Assistant Commissioner. Mr Dencker, by 7 April, you were fully aware weren't you of the allegations that had been contained in the three articles of the Sydney Morning Herald about Mr Romano and Mr Beccera?---Yes.

30 Right. And those articles detailed, as counsel has taken you to this morning, the allegations about doing work on units. Correct?---Yes.

Driveways, the driveway of Mr Romano was referred to?---To the best of my recollection, yes.

40 And the Sydney Morning Herald claimed that the basis of its evidence was not only the complaints made to it by unnamed people, but a series of Council emails in relation to orders and compliance with orders for work to be done at the units wasn't it?---I can't recollect. But if you tell me that's what the articles said, I will - - -

But you must've looked at these articles somewhat carefully, in view of the serious nature of the allegations about the Council you're employed at?---I recall reading the articles.

Well, you've told us, and it's apparent from Exhibits and these proceedings that Mr Romano denied them strenuously didn't he?---Yes.

Do you recall reading in the article on 7 April that Mr Becerra and Mr Romano denied any wrong doing, saying they were unaware that Council staff had worked on their six unit apartment block, et cetera, et cetera?---I can't - - -

Do you recall reading that?---I haven't read the article for, for a year or so, so I can't remember the particulars, but if that's what it said, I would have read it at the time.

10 This must've been one of the most dramatic occasions that you had encountered at Burwood Council wasn't it? Allegations against the General Manager of misusing his position in such a substantial way?---Yes.

Yes. Well, did you after reading the articles speak to Mr Romano about what was contained in them in relation to the particulars that were recited in the articles?---I think Mr Romano spoke to all of us.

20 But did you speak to him and say, look Pat, they're saying that you didn't know anything about these blokes working down at your units? How come you didn't know anything about it if they were there? Did you say anything like that to him?---On the Monday, there was a meeting with the Executive and I recall Mr Romano being in a very emotional state.

And did you ask him questions along that nature? (not transcribable) about the details in the articles and responses that were being attributed to him?---I can't recall quizzing him.

30 Well, how about just asking him, if you don't like the word quizzed?---I think there was, there was discussion at the Executive meeting where the content of the Sydney Morning Herald was discussed. And Mr Romano strongly declared his innocence and said it was a media smear campaign and he would, he would fight hard so the truth will come out.

40 Well, did he say how he was going to explain a statement attributed to him by the Sydney Morning Herald in their 7 April article, that he and Becerra knew nothing about the workers working at their units?---I think he said, and this gave me some comfort, that he was, he was going to talk to the Mayor and Council lawyers. He's going to put a report up to Council and he would ensure that the matter would be properly investigated independently and if necessary he would be happy for it to go to the ICAC. And he explained the process and that satisfied me and the rest of the Executive.

Well, did he say just amongst you, the Executive, look, I can explain all this because this is how I didn't know they were working there or words to that effect?---He, I remember him, I remember him being very emotional.

Well, forget that, did he give you any response like the sort I'm suggesting to you?---I'm just trying to recollect if you just allow me one minute, just what he actually said at that meeting. I remember he explained what I just said. He, he, to the best of my recollection he said that all he had done was, was I asked Mr Child for a list of tradespeople that could assist them with the units. And that any other allegations were completely false.

So Mr Child was named by him as being the potential source was he, of the articles?---No.

10

No. Just that he had asked Mr Child, that was Mr Romano had asked Mr Child for some tradesmen names. Is that correct?---Yes.

Well, did you say the articles are also referring to a series of emails?---No.

You didn't raise it with him?---I can't recall that.

Did anyone else of the Executive raise any of those questions with him?---I can't recall that.

20

Did Mr Macklin or Mr Azer raise the fact that Joe Saad had made similar complaints back in February?---No.

Did they talk to you privately about it?---Not at all.

You see, I want to suggest that by the end of the meeting, this Executive meeting on 7 April, it had been discussed and was clear that at least Mr Child was one of the people responsible for the articles in the Sydney Morning Herald in the preceding days and the 7<sup>th</sup> wasn't it?---No.

30

Never raised at all?---No.

Didn't you say, look, he could be behind all this, who would want to do this?---I think we all discussed that we needed to find that out and Mr Romano said that so yes and - - -

He mentioned Mr Child's name, didn't he?---He mentioned Mr Child's name in that he, he was a friend of his and that all he had done was ask Mr Child for a list of, of, of tradespeople working there who could assist him.

40

When he mentioned Mr Child's name did he suggest that maybe Mr Child was behind this?---No.

Did he suggest that people opposing reform at the depot were against, behind this?---I think he felt that, the impression I got that it was, he didn't know who it was but he felt it was, it was coming from the depot area. That's probably my strongest recollection. He didn't name anybody but he

felt that it was disgruntled employees who didn't want to have the restructure in place had made these allegations but he didn't mention anyone in particular. I'm very clear on that.

And did any, did either Mr Azer or Mr Macklin raise the possibility as to who those disgruntled people at the depot who were resisting change might be?---No.

10 So no names were mentioned at all as to who could be possibly behind this scurrilous attack upon the General Manager. Is that what you're saying?  
---To the best of my recollection, yes.

You're being frank and honest in that answer?---Yes, absolutely.

Because you see, the next day some extraordinary things happened, didn't they, after this article, the last of the articles?---I'm not sure what you're - - -

20 Well, on the 7<sup>th</sup> the surveillance was reactivated, presumably by you of the workers at the depot, wasn't it?---No.

It wasn't?---No.

Okay. On the 7<sup>th</sup> you met at the cross-functional team with Messrs Macklin, Azer, Stephen Ellul and Mr Hullick, didn't you?---Yes.

And one of the primary matters of discussion was the position of Steven Child, wasn't it?---(NO AUDIBLE REPLY)

30 You've been taken to this document many times, haven't you?---Yeah, I'm just, I, I don't think, the discussion focussed around the position, not the individual.

No. The position change that Mr Ellul was recommending meant that Mr Child really had little chance of being successful in any application for the job, didn't it?---I don't think that's correct, what my recollection of the discussion on the day.

40 And you were told by Messrs Macklin and Azer that they'd already implemented the Morrison Low report in relation to Steven Child on 21 January by changing his job position slightly and advising him that he didn't need to reapply for it. You were told that, weren't you?---I can't recollect that at all.

You certainly became aware that irrespective of what Mr Ellul was suggesting, that Messrs Macklin and Azer were against it in view of what they had done previously?---I'm, I'm not aware of that.

But you and Mr Hullick were for the changes recommended by Ellul, weren't you?---I supported Mr Ellul and his recommendations as the expert in that field.

10 Even though you had a Morrison Low report which, the two men who dealt more directly with the staff, that is Azer and Macklin, had implemented, you still supported Mr Ellul, is that what you're saying?---From the discussion on the day Mr Ellul had, had made a strong case in my view, from an operational point of view and with his expertise of running depots and I personally supported his view, yes.

And were you aware that Mr Ellul had only been working at the Council for a very, very short period of time before these recommendations were made on the 7<sup>th</sup>?---Yes.

And were you aware that Mr Child had been away during most of that period?---Probably, probably not aware. I didn't get down to that detail of knowledge of how the depot was running.

20 So you ignored the advice of the men who dealt directly with the depot, that is Azer and Macklin, and preferred Mr Ellul's, is that what you're saying? ---I, I don't believe I ignored Mr Azer's and Mr Macklin's advice at all. I don't recall them raising an objection. I recall there being a, a consensus on the day that Mr Ellul's preferred position was the way forward.

30 You see, I want to suggest that prior to that meeting and as a result of the Sydney Morning Herald articles there'd been a decision made and conveyed to you or joined in by you to get rid of Stephen Child?---No, that's incorrect.

And that first step taken was the process put into place on the 7<sup>th</sup> of April when you enthusiastically adopted Mr Ellul's recommendations. That's correct, isn't it?---That's incorrect.

Now, if you go to Exhibit 197 in front of you?---Yes, I have.

40 Prior to, sorry, I withdraw that. After the meeting on 7 April did you convey to Mr Romano what had happened about Steven Child's position? ---I can't recall doing that.

Okay. And 197, that should have on the front of it an email from Pat Romano dated 5 April, is that correct?---Yes, 5 April.

Okay. Now, if I could take you to page 10, it should be an email from Mr Romano to you dated 25 April, 2009. Do you see that?---Yes.

Have you got that open in front of you?---Yes, I have.

Okay. The first point he raises with you is, "Has the Executive team approved Steve Ellul's preferred structure, if so, have we commenced the recruitment process, if not, when is this to occur?" What did you understand that was about?---I, I can't recall seeing the email so I'd have to just look at it now and see from reading it fresh.

10 Well, what I want to suggest to you is that Mr Romano was vitally concerned in what was happening at the depot despite the fact that you were apparently looking after it, wasn't he?---That's incorrect. I wasn't looking after the depot.

You were looking after the reform changes, weren't you?---I was - - -

You were head of the CFT?---That's correct. I wasn't looking after the depot.

20 And I want to suggest in the paragraph what he's referring to is Stephen Ellul's recommended changes to Steven Child's position which you had commenced to implement on 7 April, that's correct, isn't it?---I disagree.

Well, what's it about?---I think he's just talking about Steve Ellul's preferred structure.

Being what?---Being as detailed in his briefing memorandum.

So you say it's got nothing to do with Child. Is that what you're say?  
---Absolutely.

30 Did you write back to Mr Romano and tell him what was happening?---I can't recall talking to him or writing to him about this email.

Now, paragraph 6 refers to very detailed suggestions in relation to Mr Issa, doesn't it?---I'm just reading it. Yes.

And about he should be supervised strictly?---Right.

Did you have anything to do with Mr Issa and his employment at the depot?  
---No.

40 Or elsewhere?---No.

Did you respond to Mr Romano about that?---I can't recall responding or talking to him on that.

Paragraph 10 and 11 referred to the IPP investigation of the depot staff, doesn't it?---10 and 11?

Yeah?---(NO AUDIBLE REPLY)

Is that correct?---11 appears to, I'm just trying to see the - - -

Don't worry about 10 so much, it deals with Mr Giangrasso?---Yeah, yeah. 10, 10, 11 has the word IPP in the, in the paragraph.

You see, Mr Romano wants to know whether Mr Macklin has issued letters to people about secondary employment, do you see that?---Yes.

10 And if they don't respond we have a responsibility to report them to the Taxation Office?---Yes.

The people I'm aware of from IPP reports only lists a number of people, do you see that?---Yes.

Were you aware of any reports from IPP in relation to what was set out in respect of those individuals?---No, I can just remember the PowerPoint presentation that was given to the Executive.

20 You see, what I want to suggest to you, sir, is that after the articles on 7 April there was a concerted effort to try and find whatever dirt that could be used against people who were suspected of being the whistleblowers, wasn't there?---I disagree.

And that the basis for getting anything against them was to be used against them in discrediting them at ICAC, wasn't it?---I disagree.

Okay. Well, do you see the first, do you see the people in there, Mr Child is mentioned, isn't he, Mr Giangrasso. Correct?---Yeah.

30 The actual named people you are now aware, aren't you, if you weren't before, were all people said to have worked on the units?---Yes, yes, that's right.

An extraordinary coincidence isn't it?---I must admit when I read that email I had, it's like the lights are - - -

40 What about, did the lights go off in your brain when you saw it on 25 April, why are these people being singled out?---They were just people, I had no knowledge either in a working capacity I've been talked about, they were just (not transcribable) from the depot.

But Mr Romano, Mr Romano's directing his email to you to report back to him, isn't he? You are the problem solver, aren't you, wasn't he asking you to sort it out?---I don't believe that's the way I read the email (not transcribable)

Well, did you report back to him about the IPP reports in respect of the people named in paragraph 11?---I can't recall responding at all to Mr Romano in relation to any of these matters.

Because he says have PM and Richard, and I presume that's Mr Mailey, have PM and Richard compiled a list, that was a direction to you, wasn't it?  
---(NO AUDIBLE REPLY)

10 Do you see that at the end of paragraph 11?---Yeah, I can see that now and, yes.

Have you produced all the emails that you wrote in relation to this to ICAC, this matter?---As far as I'm aware, yes.

Did you ever respond to this one?---I can't recall seeing it at the time or responding it or speaking to Mr Romano about it.

You can't recall speaking to Mr Romano about this at all?---Not at all.

20 Is he the sort of man, having written this to you, would leave it without a response, either verbally or by way of email, in your experience in dealing with him?---Yes.

He is?---Yes, he could have moved onto something else.

30 So ask all these questions and just leave it hanging in the air, that would not be unusual. Is that what you're saying?---Mr Romano's a very dynamic individual and he would move from issue to issue. I'm not sure if this is written on a Saturday, by Monday he could have had another 100 different issues in other areas, some other area that I had to deal with.

I suggest you're not being truthful?---No, I completely disagree with that. I'm being very truthful.

Then he goes on at the very end about the nature of the malicious allegations. Do you see that?---Yes.

40 And see he reminds you in the second sentence, the management team, which includes me, need to be seen to be responding to the deficiencies in our processes and systems. Do you see that?---Ah hmm, yes, I see that.

And then he goes on to talk about protecting the organisation and in this regard I seek a weekly report on the above issues?---Yes.

Did you provide him with weekly reports on the above issues, particularly in relation to paragraph 11?---No.

So that was just completely out the window as well, was it, what (not transcribable) - - -?---(NO AUDIBLE REPLY)

- - - spoken to about not complied with, is that correct?---What I suspect happened by Monday Mr Romano had probably spoken to Peter Macklin himself and just - - -

Are you - - -?---Can I just finish, please?

10 Go on?---Thanks, because that's how Mr Romano worked. He, he would, he would, things would come to him, he was always sort of thinking about how to best run Council in his, in his mind and, and he, something would come into head and he would feel the need to write it down or, but what would then, my experience was that in the next few times, by the time I got that he may have already spoken to Mr Khaled or Steve Ellul or Peter Macklin, I'm not, I'm not saying that's what happened but if I'm reading this now I suspect the reason why I didn't do anything is that by the time Monday came he would have already spoken to probably three other individuals and, and, about these issues because that's the way Mr Romano operated.

20

Could you go to paragraph, sorry, page 13 of that Exhibit., please, a statement dated 11 May, 2009 by Mr Romano that was shown to you this morning by counsel assisting?---Yes.

Would you please go to the last paragraph and the second sentence. Do you see that?---Yes.

30 It says, it will take time to deal with those. They've not only sought to bring me down but also attack the Council, et cetera?---Yes.

Did you ask him how he was going to deal with these people? Or did you already know?---Mr Romano was, in discussion Mr Romano said that the way he was going to do it was by working closely with the lawyers and the ICAC or the independent investigation, depending on that timeframe. And that's, that is what he set out to do. He wanted the truth to come out.

40 He wanted the truth to come out. Is that what he told you?---(not transcribable)

And did you ever speak to Mr Romano and take a statement from him about any of the allegations in the Sydney Morning Herald?---No. I had no authority to do that.

Did you instruct anyone that should do that?---I had no authority to do that either, so no.

So the really serious allegations before the Council were not about the

workers was it, were they? They were about Mr Romano's behaviour. They were really serious allegations about Mr Romano weren't they?  
---Are you talking about the one in the Sydney Morning Herald?

Well that's the one we're here for isn't it?---Yeah, I'm just trying to make -  
- -

There were some others we don't know about?---No.

10 No. Okay?---That's not what I'm saying. What I'm saying is, I did not feel the need to do that because, by resolution of Council, a legitimate and proper process had been set up. And that, it was very clear to me from the resolution of Council that was the action that should be taken. So the first part of the resolution of Council which was, and then through the ICAC involvement.

During the time that the surveillance was reactivated against the depot staff members you received emails from Mr Mailey or his secretary about what was happening didn't you?---I've gone through my emails and that is the  
20 case, yes.

They were reporting to you weren't they?---Yes.

And from time to time Mr Mailey's secretary sent you emails, I want to suggest, saying, Pat has asked me to forward this on to you or to bring this to your attention?---I can't recollect. But if you're saying that's what, that's the case, I would - - -

Well, do you recall one particular instance where it was brought to your  
30 attention that the quality of the surveillance material and particularly the photographs, videos, was poor?---I remember that coming up as, yep. Yes.

And I think we have Exhibit 295, which was formerly part of 233, which is the email from Tina O'Riordan on your behalf to Mr Mailey about that particular aspect, the DVD surveillance tape wasn't it?---Yes.

And the final paragraph said, you advised and I need this information by close of business, Monday, 25, as myself, Les and David Baird are intending to meet with the ICAC early next week. Do you see that?---Oh,  
40 what, sorry what number is that?

It's 295 now?---Because I had 295. I've only got - - -

May he have 295, please, Assistant Commissioner. It's also a page in 233?  
---Can I have that, sorry.

Could he have that, access to that Exhibit, 295, thank you. It was one of the last things counsel assisting showed you this morning?---Yep. Thank you.

Can you see it?---Yes, I see.

Do you remember now?---Yes, I remember now.

That's the one you referred on to Mr Romano wasn't it?---Yes.

10 Yes. And that's about the, that's addressed to Mr Mailey?---Yep.

And it says on the very last sentence, I need this information by COB, close of business, et cetera, et cetera?---Yes.

Because the three of you are intending to meet with ICAC early next week?  
---That's correct.

And you refer to it as a critical, critical evidence?---That's right.

20 Critical evidence in relation to, to what? Challenging, I would suggest, casting doubt or discrediting people like Mr Child wasn't it?---No.

Well, you were taking it to ICAC weren't you?---Mr Baird and then, my understanding was he was setting up a meeting with the, with the ICAC to, to advise them, and I don't think this was the whole focus either, there was, it was part of a, of a, of additional information that Mr Macklin was working on together with the lawyers.

Well, that's just gobbledy-gook that answer isn't it?---No.

30 Working on about what?---My understanding from talking to Mr Baird at the time was there was a legal (not transcribable) - - -

To discredit the workers I suggest. And that's why this material was wanted, wasn't it?---No, that's not correct.

That's why you wanted clear surveillance that might hopefully identify Mr Child, for example, doing something wrong. That's correct isn't it?  
---Absolutely not.

40 There was no reason to take any DVDs or surveillance to ICAC about any of the workers unless it's somehow related to this inquiry. That's correct isn't it?---Can I have that question again, please.

There was no need to taken any surveillance to ICAC about workers unless it had something to do with this inquiry?---No, I disagree with that.

Okay. You want to suggest there was some other reason?---Yes.

Such as?---When the presentation was given to the Executive, Mr Mailey said that he, on the surface, there appeared to be some very serious, sorry, there appeared to be evidence of pilfering and theft and inappropriate practices which were, needed, which were, were very, were very serious.

10 And what did that have to do with ICAC and this matter?---I think David Baird, from memory at the time, as part of the ICAC investigation, they wanted him to have a, a full picture of Mr Romano's ethics that had commenced in 2008 to, to clean up the depot and improve work practices so as to prevent pilfering and theft or any other inappropriate practices.

Are you saying that this material that you and Mr Baird and Mr Hullick wanted to have available for a meeting with ICAC was something to do quite interpedently of this, the allegations raised against Mr Romano in this hearing? Is that what you're saying?---No, that's not exactly what I'm saying. Can I explain?

20 Well, yes?---I wasn't driving this legal, so I'm talking as my understanding of why it was required. And the information was required for two reasons. One, one it was a concerning issue that pilfering and theft was apparently happening.

That had nothing to do with ICAC did it?---And secondly - - -

Do you agree with that proposition?---If there's corrupt conduct - - -

So you were going to initiate another inquiry were you, the three of you?  
---Can I just finish my answer, please.

30 Yes, go on?---The second part of the answer was that the lawyers and Mr Romano had made it very clear from day one that the reason why there was this, and I use (not transcribable) this media smear campaign, was to avoid disciplinary proceedings or to avoid the restructure process. And it was, it was, I think Mr Romano and Mr Baird made it very clear that when you have allegations that can't be vexatious or they can't be in an attempt to avoid disciplinary proceedings or, or other workplace reforms.

40 Okay. What did that have to do with ICAC?---Well, Mr Baird is probably the best expert in this one and I've answered the question to the best of my ability. I - - -

I suggest you haven't answered the questions to the best of your ability, sir., because the real answer is that this was part of a concerted effort to discredit people such as Mr Child, wasn't it?---Not at all.

And that's why you refer to the email, of the evidence as being critical, don't you?---It was critical because the lawyers had told me it was critical.

And of course you didn't ask why, is that what you're saying?---I trusted Mr Baird and he, he was genuine in his tone of voice when he told me that this information is critical.

Did you have any discussions with Mr Baird, Mr Hullick or Mr Romano or all three of them as to how this evidence could be used by ICAC?---I, I was not driving this process.

10 But you were going to attend the meeting, weren't you? You're not going to sit there like a Dodo, are you?---I, I, if I was attending a meeting the discussion would be led by Mr Baird.

You were there representing the Council as its most senior officer, weren't you?---Mmm.

You must've had some understanding as to why this material would be critical to be presented to ICAC?---Well, I think I've answered the question. If you want to go through my answers again.

20 No, thank you. And so I want to suggest that this was also part of a series of aims and, and programs implemented to get rid of not only Child and Giangrasso and Issa but also to get rid of Mr Saad because he had made similar claims back in February, hadn't he?---I totally disagree with that.

Okay. Might the witness have access to Exhibit 200, Assistant Commissioner? Mr Dencker, could you please go to page 12 of that exhibit. Does that page have an email from Stephen Ellul dated 27 April to yourself and others?---Yes.

30 Regarding Joe Saad (not transcribable)?---Yes.

Do you recall receiving this email?---Yes.

And this was Mr Ellul making a final plea for Mr Saad to be retained as an employee, wasn't it?---I disagree.

40 I will take this underlined and in capital letters, final opportunity to once against request a further deferment of this matter until we address other staffing issues (not transcribable). Do you see that?---Yes.

Had you been approached by Mr Ellul or discussed with him retaining Mr Saad prior to this final opportunity?---As, as I mentioned earlier, I recall possibly one or two prior meetings where Mr Saad's casual employment, they were seeking to, his finishing up but they wanted to further extend it.

And I want to take you to the, Mr, sorry, I withdraw that. Mr Ellul gives a suggested plan to deal with the matter, doesn't he, and, and has a number of dot points there? See that?---Yes.

And in the final paragraphs he says, "If John" and I put to you that that's John Whitecunas, would you accept that?---I, I don't know.

Well, look, have a look at the, the sentence after the first paragraph. "Regardless, I'd advise John Whitecunas will be at a meeting with you at 9.00am in your office." Do you see that?---Yeah.

10 And then in the final paragraph he says, "If John" and I want to suggest he's referring to the union representative - - -?---All right.

- - - Mr, is that correct?---Yes, I think that's the correct (not transcribable) yes.

Okay. "John suspects there is more to this matter than you will be saying. I suggest we defer the implementation of at least two to three weeks". Do you see that?---Yes.

20 Not, I want to suggest, Mr Ellul was raising with you that Mr Whitecunas might have suspected that there were other reasons behind getting rid of Mr Saad other than those being advanced in relation to his casual status, is that correct?---I don't agree with that.

Well, what did you understand it to mean?---One is, I, I, I don't really understand this email and what it, it's, I'm having difficulty understanding the language and maybe that's my lack of depot experience. I'm, I'm not really sure what he's saying there.

30 Well, you were fairly informed about this particular issue and what was going on at the depot at the time, weren't you?---What do you mean this particular issue?

Mr Saad, getting rid of him, sacking him?---There was never any (not transcribable) of sacking Mr Saad or getting rid of him.

40 While, see, they are sentences, "Whilst you observe that Joe does not have majority support, staff may be swayed by an experienced orator. At the end of the day it's your call." That seems to indicate you've had some discussions with Mr Ellul about what was going on at the depot and the political savvy of getting rid of Mr Saad at the time. Is that correct or not? ---Not Mr Ellul on his own but as I said earlier there was, I recall there has been one or two previous meetings where there was discussion about there extending the casual employment of Mr Saad.

Does that mean you were appraised as to what was going on at the depot in relation to this issue and the general politics there?---No. I don't understand depot politics other than what was explained to me that there appeared to be two camps.

I want to suggest that this was another example of a series of conduct in which the Executive, of which you're one, were attempting to get rid of people such as Mr Saad but in particular Mr Child, that's correct, isn't it?  
---Totally disagree.

And that there are attempts or requests made for legal advice by members of the Executive to your knowledge that somehow Council might be able to go behind any protected disclosure in relation to Mr Child and get rid of him, is that correct?---I don't understand the question.

10

Okay. Did you have anything to do with the Saad anti-discrimination or discrimination claim against Mr Child?---I had no direct input into that process.

Were you part of any part of the Executive that made decisions in relation to what should be done about it?---It was discussed at the joint lawyers meetings and I was present at those meetings.

20 And prior to that I want to suggest there'd been considered by the Executive including you that maybe Mr Child could be suspended because of allegations he'd made to the Sydney Morning Herald initially against Mr Romano and then later against Mr Azer and Mr Inglese?---No.

No, not at all?---Never.

30 You're not aware of anything like that? Seeking legal advice as to whether he could be suspended for speaking to the Sydney Morning Herald?---I recall going through my emails. There was, Mr Ellul had raised an issue about Mr Child allegedly contacting the Sydney Morning Herald and that the matter was referred to Council's lawyers. I remember that and I've refreshed by memory by looking at emails relating to that.

MR HANLEY: Thank you, Assistant Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Hanley. Yes, any other applications for leave to cross-examine? Mr Blake?

40 MR BLAKE: (not transcribable) can be shown Exhibit 242 and 292, please. Perhaps if the other Exhibits can be returned. Mr Dencker, I'd like to take you back to the time in February, 2009 and you recall you gave some evidence of your dealings around the protected disclosure?---Yes.

Can you look, I want you to look at two things together if you would?  
---Yes.

So can you go to Exhibit 242 and look at paragraph 98 on page 16?---So tab 16?

No, page 16?---Oh, sorry. Yep.

Paragraph 98?---Yep.

And then can you go to Exhibit 292?---Yep.

And go to paragraph 12 on pages 3 and 4?---Sorry, what tab is that?

That's paragraph, sorry, Exhibit 292?---Yeah.

10

Paragraph 12 on pages 3 and 4?---Sorry, I interrupted you, what's the tab on the Exhibit?

Okay. So paragraph 292, paragraph 12, pages 3 and 4?---I'm trying to work out the tab system.

There should be a statement in the front of it. And if there's not, oh, sorry, have I got the right one? Exhibit 292?---Yep.

20

Pages 3 and 4, paragraph 12?---Pages 3 and 4. Yep.

Paragraph 12?---Paragraph 12, yep.

Now can you just please read those two paragraphs to yourself. Firstly paragraph 98 in Exhibit 242. And then paragraph 12 in 242 and then paragraph 12 in Exhibit 292 and tell me when you're finished?---I read 98, yep.

30

Yes. And then read paragraph 12 in Exhibit 242?---Yep, I read, I read 12. And 98?

Yes. I want to put to you that when you read those two paragraphs together those two paragraphs set out the substance of the conversation you had with Mr Romano on 10 February?---Except in one, 1981, (?) Mr Romano didn't mention anything about (not transcribable) or a property in Ashfield or that it was the same units I think, I have, he didn't, he didn't say that. Everything else appears to be generally, generally accurate. Except for 1981 in 1 (?)

40

Is it your recollection there was no reference to the units at Ashfield in that first conversation?---Yes.

All right. Do you accept you could be mistaken about that and there was a reference?---No, I'm pretty certain of that. There was this, that he didn't mention Albert or, or conflict of interest. He made no reference to that.

Thank you. Now can you close Exhibit 292. I just want to ask you some more questions about Exhibit 242. I suggest we follow through the

sequence. If you go to tab 4, that is the email that you received from Mr Romano on that day, copied to Mr Macklin and Ms Viney?---Yes.

And that set out his instructions or confirmed his instructions to you that you'd received in the earlier conversation?---Yes.

And on the Thursday, 12 February you sent an email to Mr Macklin, which was copied to Mr Romano and Ms Viney and if you go to tab 6 and if you look at the very last email, the first one that was sent - - -?---Yep.

10

- - - at 11.20am, that is the email that you sent on that occasion?---Yes, that's the 10 February email?

No. 12 February, it's tab 6 so Exhibit 242?---Wait, wait there.

It's on the reverse page - - -?---Yep. Yep.

- - - the very first email at 11.20am?---Yes, yes.

20

And on that day you had a conversation with Mr Romano and you gave some evidence about that. And I'd like you to look at paragraph 111 on pages 18 and 19?---So I'm going back to - - -

Yes. Not Exhibit 292, Exhibit 242?---Yeah.

A statement at the beginning, if you can go to pages - - -?---Oh, right at the beginning. Yep, yep, yep.

30

Yes. Right, pages 18 and 19. And I'd like you to look at paragraphs 110 and then 111. Just read them to yourself and tell me when you've done that?---Yep. I've read 111.

Have you read 110 as well?---Yeah. 110, yes.

Now do you agree with me and I'll take them one by one that what is set out in paragraph 110 sets out accurately a conversation that you had with Mr Romano on 12 February, the substance of it?---No.

40

No. Okay. Do you - - -?---Parts of it are correct, but not all of it.

Well, which bit do you say or bits do you say is incorrect?---I, I recall having a conversation with Mr Romano before I sent the email. I don't recall having any conversation with Mr Romano after I sent the emails. I, I do recall him saying that he was, he was very, there could have been two conversations I had during that time frame but they were before the email and, and the conversation was he did not talk about the units and when I said that the person does not want to talk, he doesn't want to make a protected, Pat could have said words, that's not good enough, that's how

Mr Romano would, would speak. I can't recall him saying the person who made allegations, someone, I do recall Mr Romano saying look, you need to talk to Peter Macklin again and I recall twice going back to Peter Macklin and saying, look the General Manager is keen to, the General Manager doesn't think that's right that there's no protected disclosure he said then there must be one, go back to the person, surely the person wants, wants to say something so there's parts of it that are correct but other parts that are not. I don't recall him saying anything about Maddocks.

10 Sorry, you're now talking about paragraph 111, are you?---Sorry (not transcribable) so 110 and from - - -

Sorry, just on 110, you would place it before your email, not afterwards?  
---Yeah, I, I, but only, but the, it's not correct, I think all he said to me before the email was look, that's, it was a fairly short conversation but he wasn't happy, he was, he sounded like he was puzzled and concerned, saying look, that doesn't sound right, there must be a PD, it was a very brief conversation, please go back and check with Mr Macklin and that was pretty well the end of that conversation.

20

Right. And just to clarify one thing - - -?---And he could have said that's not good enough, he may, he may have said that.

Yes. And you don't recall any reference to, by Mr Romano to the units in that conversation?---No, no.

Thank you. Now, can you go to paragraph 111?---Yes. Just in relation to that - - -

30 Well, do you agree that that accurately sets out the substance of what was discussed in a conversation on 12 February?---There were, there were two conversations to the best of my recollection with Pat over the phone but to the best of my recollection they were before the email and they were both of a very similar vein to what I've just said in terms of 110, that was basically, look, I don't think that's right, I'm sure there's a PD, please go back and check with Mr Macklin again and, but after the email I can't recall having any conversation at all with, with Mr Macklin in relation to this matter or that he wanted me to progress the matter with Maddocks, I can't recall that.  
40 It was, it was pretty well just a very short conversation, just he was concerned and he wanted me to go back and double check with Mr Macklin.

Thank you. I suggest you may well be mistaken in your recollection that Mr Romano didn't mention the units in the conversation on 12 February?  
---No, I have a pretty good recollection of, of that and I, I cannot recall him mentioning the units at all.

Thank you. Now, can you go, open up Exhibit 242 to tab 7, please?---242, yeah. Yes.

I think you were shown this email or two emails on the last occasion, a series of emails, one from Mr Romano to Mr Macklin which you were copied into and Mr Macklin's reply which you were also copied into?  
---Yes.

10 You gave some evidence on the last occasion that this matter, you were concerned that this matter be dealt with in the context of proper legal advice and you referred to Mr Howe, Ms Viney and Mr Baird being involved?  
---Yes.

And that's an initiative that you took yourself, was it, to suggest that?  
---Yeah, I raised that, to the best of my, I raised that when it was discussed, at the Executive I think it was, that that would be the best way forward.

Yes. And to the best of your recollection that matter was progressed with a request to Mr Baird?---Yes, to the best of my recollection and Mr Howe and yeah, and we had a, I think we had one or two meetings in my office.

20 And I think your evidence was that when the allegations were raised in the Sydney Morning Herald that matter really ceased at that point?---It was, it was put on hold for about a year or so.

Right, thank you. Now, you were also asked some questions about the, I think information services cross-functional team?---Ah hmm.

And that was established shortly after Mr Cummins went on sick leave on about 16 February, 2009, is that correct?---That, that sounds correct.

30 And I think you were shown, just to refresh your memory, a couple of emails that you sent at that early stage where you were seeking some input from Mr Romano if you look at tabs 22 and 23 of Exhibit 242?---Yes.

And one of the issues that was of concern in that early stage of the information services cross-functional team were issues regarding some apparent abnormalities in the engagement of a, an external contractor called Associa. Do you recall that?---Are you talking about tab 22?

40 No, I'm just - - -?---Sorry.

I'm just hoping to direct your mind to that time. One of the issues being raised at that very early stage was some apparent abnormalities in the engagement of an external contractor called Associa. Do you recall that?  
---I don't think those issues came up as part of the, the CFT, they were raised independently by the CFO as part of normal accounting due process and, and my Mr John Phegan in relation to his role as, as senior, acting senior manager IT. In fact, they were raised in that time frame but not as I recall, they were raised independently of the CFT.

Right. But they came within the purview ultimately of the CFT, didn't they?---I disagree with that.

You disagree with that. Well, can you look at page 33 of Mr Cummins' statement, Exhibit 242 and I just want to direct your attention to paragraph 192?---Sorry, 33?

10 Page 33 and paragraph 192, sorry, it's Mr Romano's statement dealing with the Cummins' allegations, I'm very thankful to my - - -?---(not transcribable) and then 192?

- - - friends for my (not transcribable) the confusion I created?---192?

Yes, paragraph 192 and I'd just like you to read that paragraph if you would, please?---Yes.

20 And I want to suggest to you that that sets out the substance of a conversation you had with Mr Romano in early March dealing with some of these concerns that had been raised by Mr Walker and Mr Phagen. Do you agree with that?---I, I can't recall any such conversation.

Right. And when you say you can't recall, do you say it didn't take place or you simply cannot recall now one way or the other?---When I say I, I have no recollection that I had this conversation with, with Mr Romano.

So are you saying it's possible it occurred but you can't recall nit - - -?---  
No, I - - -

30 - - - or are you saying it didn't occur?---I said didn't occur.

All right, thank you. And do you accept you could be mistaken in that?  
---No, I think I'm, I'm very certain it did not occur.

Well, in relation, and there was a, I want to suggest to you that there was a meeting in about - - -?---No (not transcribable) sorry, can I, I've just read it properly. I will say that that conversation did not occur.

40 All right, thank you. I want to suggest to you in about the middle of March, 2009, there was a meeting of the Executive team which Mr Baird attended where Mr Phegan made a presentation of his researches to date regarding the contractual and other issues within the information services section?---I can't recollect but it's possible. I do recall Mr Phegan at some point would have given a, a brief to the Executive team. I can't recall if Mr Baird was present. I do recall Mr Phegan at some point in time giving a presentation to the Executive.

Thank you. And if you go to tab 26 of Exhibit 242. It's an email from Mr Romano to Mr Baird and Mr Gardner but a copy to yourself and Mr Phegan and Mr Macklin, do you see that?---Yep;

Can you just look at that and the attached memorandum?---All right.

And do you accept that that's an email you received at the time?---I'd accept that it appears to be an email I received, yes.

10 Yes, and your understanding of the issues being raised at the time I suggest are summarised in the memorandum. They were the issues being raised at the time, weren't they?---I think that's my understanding of the issues that John Phegan was raising at the time.

And you were copied in because you were chairing the information services cross functional team?---Yes.

And I want to suggest that at an Executive meeting in about mid March - - -  
20 ?---Can I just correct that? I was probably copied in because I was, because Mr Cummins wasn't there. I was effectively looking after the IT area - - -

Yes, you were taking responsibility for his area while he was on leave?---  
Yes, essentially, yes.

And I just want to go back to the Executive meeting. I see it's 1.00 and it's probably more than one question.

ASSISTANT COMMISSIONER: Thank you. We will resume at 2 o'clock.

30

**LUNCHEON ADJOURNMENT**

**[1.03pm]**