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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 2.05PM

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

ASSISTANT COMMISSIONER: Thank you. Mr Dencker.

<IAN DENCKER, on former oath

[2.05pm]

10 MR BLAKE: Just before lunch, Mr Dencker, I showed you tab 26 and the memorandum from Mr Phagen of 25 March, 2009. I just want you to, take you back to March 2009 and in about the middle of March 2009 I want to suggest to you that there was an Executive meeting which Mr Baird attended where the issues that were raised in that memorandum were discussed, at least in general terms?---It's, it's, possible, I do remember Mr Phagen - - -

He gave a presentation?---Yes, yes.

20 And there was a discussion within, within the Executive about writing to Mr Cummins seeking information from him about the issues that had been raised by Mr Phagen?---Yes.

And that was a decision that the Executive took. Do you agree with that? ---In terms of this memorandum here?

No, to write to Mr Cummins to seek an explanation regarding the issues raised in the memorandum?---Yes, yes.

30 And that decision that was taken by the Executive you personally regarded as being in the best interests of the Council to try and obtain that information, didn't you?---Yes.

Now, I just want to take you back to about the same time, mid-March of 2009, and do you recall that Mr Mailey attended an Executive meeting and he showed a PowerPoint presentation that indicated, he was saying, theft and pilfering by Council employees?---Yes.

And you're aware, aren't you, that following that presentation there was some legal representatives of Maddocks present?---I can't recall but it's possible.

40 You wouldn't dispute it though would you?---I can't recall it but I won't dispute it, refute.

And in the middle of March, on 18 March, an order or permission was obtained under the Workplace Surveillance Act to carry out covert surveillance on some employees at the depot. You became aware of that, didn't you?---That's my understanding, yes.

And that order was varied on 20 March, 2009 to encompass all employees of the depot, you became aware of that, didn't you?---I, I can't recall any specific details but I only recall that, that Council's lawyers were seeking a court order for surveillance to be able to happen.

And I take it you were concerned when you heard Mr Mailey reporting his observations of pilfering and theft at the depot?---Yes, all, all the people present were.

10 Yes. And you regarded that as a very serious matter?---Absolutely.

And you thought that surveillance, seeking covert surveillance, under the Workplace Surveillance Act was an appropriate step to take to seek better evidence of the reported theft?---I, I don't remember me having any other view that, than the lawyers and Mr Mailey were I believe were proposing that, that the surveillance should happen and I had no, accepted that.

20 You again, joined with the other members of the Executive in giving those instructions?---I can't recall giving any instructions, but I, 'cause I don't have any expertise in workplace surveillance, but if was okayed by HR or any of the lawyers I would have been supportive of that and I would not have raised any objection to that.

Yes. And on the basis of what information you had, you regarded a covert surveillance as being in the best interests of the Council?---Only if that was okayed by HR and the lawyers.

And there was no dissent from HR or the lawyers was there?---No.

30 And that commenced well before, that is the surveillance commenced well before the allegations in the Sydney Morning Herald on the 4<sup>th</sup>, the 6<sup>th</sup> and 7<sup>th</sup> of April didn't it?---If you're telling me that's, I don't have those dates, but if you're saying that's the case, I accept that.

Yes. And it's really incorrect to say that the covert surveillance was part of a strategy for Mr Romano to clear his name?---It's probably yes and no. Would you like me to explain?

40 Please do?---It was my understanding it was, it was part of the legal strategy devised by the lawyers and Mr Romano, I guess for the truth to come out and, and I think they were the words that were being used. And to demonstrate with solid evidence that pilfering and theft was occurring at the depot. And that Mr Romano was attempting to put processes in place to stop that occurring.

Yes. And it was the issue of alleged theft and pilfering that was the sole reason for undertaking the covert surveillance wasn't it, to your understanding?---To my understanding, absolutely.

Yes. Now I want to ask you some questions, you were asked some questions about Mr Saad and his termination or that's what it was put to you. And you said in your evidence that he was a casual whose employment was not extended. Do you recall that evidence?---Yes.

10 It's the case that after the Council election in 2008, you became aware that there was a very substantial deficit in the budget of the operations section of the Council?---My recollection is that the CFO had made the Executive aware of budgetary issues relating to, to staff.

And that issue came under consideration by the Executive from about November, 2008?---Yes. No, I recall probably even earlier, I think, the CFO was concerned about Council's budget probably from early 2008. He was raising concerns about the state of Council's budget.

20 But the issue crystallized immediately or within a few weeks after the election in September, 2008 didn't it?---I can't recall any specific time in 2008. But I, I do recall that, it would make sense that, because there was always a lot of work leading up to an election because the Council of the day want to demonstrate to its constituents that it's delivered on its promises. So there's always an influx of like staff (not transcribable) most Council's are working, so I do recall the discussion. Whether it's immediately after, I can't recall. It might've been, it might've even been leading up to the election and the CFO said, look we need to monitor our expenditures. I can't remember a specific date, but I do recall that discussion happening.

30 Thank you. I want to suggest to you in around November of 2008 the Executive team took a number of decisions to reduce the impact of the budget blowout and the first one was to cease all overtime payments to staff immediately. Do you agree with that?---I do recall there was discussion about that, yes.

And secondly to phase out or terminate all non-essential staff immediately? ---Yes.

40 And thirdly to identify as many capital works items in the Council's operations as possible that could be delayed to free up funds?---Yes. I'm not sure of that specific date but I do recall having that discussion at the Executive in 2008, yes.

And to identify as many cost savings in other areas as possible to free up funds?---Yes.

And those decisions, I suggest, we worked through by the Executive team and other Council officers in the first few months of 2009 to implement

them?---Yes and possibly areas where, I think there was talk about overtime in 2008.

All right, thank you. And the non-essential staff identified included casuals, didn't it?---Yes.

And there were a number of casual employees apart from Mr Saad whose employment was not extended in late 2008 and the first few months of 2009, weren't there?---Yes.

10

Thank you. Now, I want to take you to the cross functional team, the depot reform cross functional team. You were asked a number of questions about that?---Yes.

You might like to close the exhibits in front of you and can Mr Dencker be shown Exhibit 200 please. Now, Mr Dencker you, if you go to page 4. Just to remind you again of the sequence. There are the minutes of a meeting of 7 April and you are asked some questions about that and you were present at that meeting?---Yes.

20

And then if you go to page 5 of Exhibit 200, you see there the minutes of a meeting of 14 April and you were present at that meeting?---Yes.

And item 1.1, in the last sentence refers to PDs are to be run past Maddocks for their review. Maddocks to advise if PDs need to go through ICAC? ---Yes.

And I think it was your evidence that was your suggestion?---Yes.

30 And I take it it was your suggestion because you were conscious of Council, in dealing with the employment matter involving the position of the civil maintenance co-ordinator not being seen to act in any way in reprisal against Mr Child?---Absolutely.

Now if that can be closed and Mr Dencker be shown Exhibit 280 please. I just might ask you to take the other exhibits so he's not swamped with paper. Mr Dencker, I'll just get you to quickly read through the briefing note to refresh your memory - - -?---Ah hmm.

40 - - - and then I'd like to ask you some questions about it. If you go to page 4 or 5 you'll see a number of names and signatures and I take it above the name Ian Dencker A/General Manager, that's your signature?---Yes.

And your handwriting has circled the word "approved"?---Yes.

And you signed the briefing note and circled "approved: to indicate that the recommendations A to D were approved?---Yes.

And for this purpose you were the Acting General Manager making those decisions?---Yes.

And you'll see that in recommendation A on page 4 it says that three vacant positions in the depot, two civil and one mechanical, not be filled and that casual staff be released?---Yes.

10 And in approving that particular recommendation A you took into account the material on page 2 under the heading (b) Civil Maintenance Group, you just might like to read that material, that section to yourself down to (c)?  
---Yes.

And you saw there, halfway through that section, it is proposed to reduce the full-time equivalent by three positions resulting in 12 full-time equivalent positions and to achieve this it is proposed in (i) two vacant positions in the civil area not be filled and that all casuals are to be released, short term within four weeks?---Yes.

20 And it was Mr Saad or the decision not to extend Mr Saad was encompassed by the approval of (a) on page 4 which picked up the proposal on page 2 that I've just taken you to?---Yes.

Now, you will also see on page 1, sorry, and in your view the decision in paragraph (a) that three vacant positions, sorry, positions in the depot be not filled and all casual staff be released, you believe that decision was in the best interests of the Council, didn't you?---Yes.

30 Now, can you go into the section (a) on page 1 and just read that to yourself over to the first five or six lines on the top of page 2?---Okay. Sorry - - -

You'll see little (a) civil maintenance co-ordinator?---Yes, yes.

I would like you to read that section?---Yes.

Over the page, the first five or six lines down to little (b) civil maintenance work?---Yes.

40 Section (a) gave a rationale for the change in the nature of the responsibilities to be attached to the position of civil maintenance co-ordinator?---Yes.

And in substance it was saying that issues of project management and external contract management should be added to the role?---Yes.

And in, on page 4 in approving the final structure, the civil maintenance and construction team little (c). Do you see that?---Yes.

You were agreeing to the change in the nature of the role for the civil maintenance co-ordinator. That was one of the things you were agreeing to?---As set out in there, in the briefing memorandum.

Yes?---I was, I was approving CEO set out in the briefing memorandum.

Yes?---So whatever's contained within that, I approved that.

10 And you regarded that particular recommendation as being in the best interests of the Council didn't you?---Yes.

Close that, please. Can Mr Dencker be shown Exhibit 264, please. Mr Dencker, can you just have a look at that email and just quickly peruse the attached letter from Maddocks of 19 May. But I direct your attention in particular to the summary on the first page of the Maddocks letter?---Just the first page?

Yes, just the first page?---Yep.

20 This was the advice obtained from Maddocks that had been minuted in the depot reform cross functional team meeting on 14 April, 2009?

MS RONALDS: I object. How could something be (not transcribable)

MR BLAKE: Well, I'll ask another question. Following the decision on 29 April, that I just took you to, Cummins, sorry not, Maddocks were retained for legal advice in respect of the proposed change in the position description of civil maintenance co-ordinator. Do you agree with that?---I remember they were, we required Mr Macklin to, yes, to get, to run the matter past the  
30 lawyers, yes.

And on 20 May, you received this email?---Yes.

And you read the advice from Maddocks didn't you?---Yes.

And in particular you looked at the summary?---Yes, I would've looked at the summary.

40 Yes. And you saw that Maddocks advised in respect of the issues, question 1, whether there was a risk of a claim of constructive dismissal by Mr Child?---While it's addressed to me I can't - - -

ASSISTANT COMMISSIONER: Yes, Mr Dencker, why does this email say it was Mr Romano who asked for the advice to be obtained? I thought you were acting as General Manager in respect of the depot restructure?  
---Yeah.

Did you know this advice was being obtained?---Well, I'm just, I can't, I note it's been cc'd to me and, and my normal practice if that was the case I would have, I would have read it so I can't actually recall reading it a year ago, I can't recollect it but I'm just reading it now as I would have read it back then.

10 And you didn't ask for the advice, did you?---Not unless this is the advice that we had specifically asked as part of the, from memory, there's a part in the CFT minutes. I'm assuming that this relates back to that but I'll have to just check the CFT minutes to see if this matches what we have asked for because I remember one incident we had asked Mr Macklin to run the position description past Maddocks to make sure that there was no issue with the ICAC.

20 Yes, Mr Blake, I do wonder about what we are going from taking him through this advice. I don't think he has much memory of or understanding of it. Well, I wasn't going to take it any further and ask Mr Dencker for his opinion as to whether or not, particular aspects of it. I was just concerned as to whether he saw it and what - - -?---I would, I would have, if it was sent to me I would have, I would have seen it and I would have, I would have read it probably quickly.

Thank you. Now, can I show you this email. You received this email on 20 May, Mr Dencker, from Mr Romano?---I can't recall it but it, it, it says that it was sent to me so if it was I would've seen it.

And I take it Mr Romano's advice recalling that email accorded with your own view as to what should happen at that time?---Yeah, absolutely.

30 And as far as you're aware that was a common view held amongst the Executive team that progress of the matter involving Mr Child required the approval of ICAC?---Yes.

I tender that email, Commissioner.

ASSISTANT COMMISSIONER: Yes, the email from Mr Romano dated 20 May 2009 is Exhibit 295, sorry 296.

40 **#EXHIBIT 296 - EMAIL FROM MR MACKLIN TO MR ROMANO DATED 20 MAY 2009 AND ADVICE ATTACHED**

MR BLAKE: Mr Dencker, around about the end of May the Executive team was involved in preparing a briefing document to provide to ICAC, wasn't it?---I'm not sure exactly which document you're referring to.

Can Mr Dencker be shown Exhibit 281 please. That's an email you received on 29 May?---Yes, it says it was sent to me, yeah.

And you'll see the attachment is called an internal draft management briefing document?---Yes.

And it set out information regarding Mr Giangrasso, Mr Cummins and Mr Child?---Yes.

10 And you'll see on the email itself, with the heading subject, it was version 3 of the document, input from Les, Khaled and Ian and attachments, version 3, input from Les, Khaled and Ian and you had some input into the preparation of the draft management briefing, didn't you?---I can't recall having any specific input into it because I was not involved in any of these operational matters that Peter Macklin was driving however, it's, it's, it's highly likely that I would have said look, I would have raised no objection to this document which I believe was prepared by Mr Macklin.

20 Right. And it was prepared by Mr Macklin in consultation with the members of the Executive team, wasn't it?---I can't recall but it's likely that Mr Macklin would have circulated an earlier draft. I can't remember but that is, that is likely to have happened.

Yes. And in early June, sorry, about mid-June Council sought advice through Maddocks from Mr Leggat SC as to how to approach ICAC. Do you recall that?---I've gone through my emails and I've seen that there's some emails confirming that is the case.

30 Yes. And Mr Hullick represented the Council on that occasion?---I'm not sure if that's the case. I, I can't recall, are you saying we met with, sorry, what - - -

Yes. There was a meeting in Mr Leggat's chambers. Did you attend that meeting?---I can't recall attending that meeting.

But you know that meeting was for the purpose of obtaining advice as to whether Council should be approaching ICAC and, if so, how?---That sounds correct.

40 But you have no real doubt about that now, do you?---I'd have to check all the documents but I'm trusting what you say appears a reasonable proposition.

Can you close the exhibit in front of you and I'm wondering can Mr Dencker now be shown Exhibit 241 please?---Thank you.

Mr Dencker, can you go to pages 8 and 9 please, I think you've been taken to this a few times?---Yes.

The first email in time that is, that's the last email in sequence was an email from Mr Macklin to Mr Baird and Mr Gardner copied to yourself, Mr Hullick and Mr Azer sent at 1.03pm on 29 June?---Yes.

And you'll see on page 9 it's addressed to David and Darren?---Yes.

That you understood to be Mr Baird and Mr Gardner?---Yes.

10 And sought their advice and you'll see in the second paragraph, Mr Macklin set out his meeting with the Executive team that morning, that's Mr Hullick, yourself and Mr Azer?---Yep.

And the position of the Executive, their preferred position was that those workers if they returned to work would be suspended during an investigation, that was the preferred position?---Yes and no. It's a conditional yes. The proposition was put forward by the senior manager HR, Peter Macklin. I supported his recommendation subject to the lawyers being comfortable with that recommendation.

20

Yes, subject to legal advice - - -?---Yes.

- - - your view was that decision was in the best interests of the Council?

---Subject to legal advice I, I supported Mr Macklin's recommendation subject to legal advice, yes.

And you regarded that subject to legal advice as being a decision in the best interests of the Council?---Yes, and that was presented as such to me by Mr Macklin.

30

Yes, and in the last paragraph of Mr Macklin's email, just looking at directed to David, Mr Baird, I would appreciate if you would liaise with both Ian and the General Manager on your collective view re the above as a matter of urgency. Do you see that?---Sorry, sorry, what's that?

If you go to the last paragraph of that email?---Yep, yep.

It was a request for Mr Baird to liaise with you and the General Manager?

---Right.

40

As to your collective view?---Yeah, I see that.

Yes. And your response to that email was to ensure that Mr Gardner gain some legal advice because you sent an email on that day at 5.08pm to Mr Gardner?---Yes.

And you wanted to ensure that Mr Gardner gave legal advice that dealt with the matters raised in Mr Macklin's email to you?---Yes.

And you wanted to ensure in particular that any steps taken by Council would not be seen as a reprisal against either Mr Child or Mr Cummins?  
---Yes, and can I just add they were also to David Baird because there was the two areas Mr Baird (not transcribable) covered both Mr Gardner and Mr Baird. I would've thought that would cover all aspects, both ICAC law and workplace law.

10 Yes, and to your understanding, Mr Gardner was the partner responsible for giving advice about the workplace or employment matters?---Yes.

And Mr Baird was the partner responsible for giving advice about ICAC and liaising with ICAC?---Yes.

And you wanted to ensure that they both spoke to one another so that each knew what each other was saying?---Absolutely.

And Mr Gardner responded to you at 6.04pm on 29 June?---Yes.

20 And Mr Romano also the next day sent an email to Mr Baird and to yourself and Mr Hullick asking that all these matters were endorsed prior to any action being taken?---Yes.

And your understanding was that Mr Romano was concerned that any action taken by Council would not be perceived as being a reprisal against either Mr Child or Mr Cummins?---Absolutely.

Pardon me, Commissioner, I might be able to (not transcribable) exhibit.

30 Do you have Exhibit 241 in front of you, Mr Dencker?---Yes.

Can you please look at pages 10 through to 16 please?---I've quickly read through.

It's an email sent by Mr Macklin to Mr Hullick, yourself, Mr Azer and Mr Romano on 8 July?---Yes.

And it attached a letter advice from Maddocks of 8 July, 2009?---Yes.

40 And you perused the letter from Maddocks?---I would have quickly perused it, yes.

And you would have noticed the second paragraph on page 11 that the briefing outlines the Council's options with respect to each of these employees before any action is taken by Council. "Will confirm that we'll seek advice from Mr Craig Leggat SC regarding whether a particular action could or should be taken in light of current ICAC investigations"?---Yes.

And that was a matter of concern to you at that time, wasn't it?---Yes, absolutely, yes.

And the proposal on 8 July was that that briefing note would be provided to Mr Leggat for his advice, that's what Mr Macklin said to you?---That's what he's saying, yes, (not transcribable) agree.

As far as you're aware that happened, didn't it?---As far as I can, I can remember, yes.

10

And that can be, and did you attend any conference with Mr Leggat, Mr Dencker?---I can't recollect during this timeframe.

And when you say you can't recollect, you're not sure one way or the other?---I can't, I'm more certain that I didn't but it would be in my, if I, if I did it would be in my Outlook Calendar and I'll be guided by that but I, I can't recollect. I'm not saying it - - -

20

So you can't be sure without reference to your calendar?---That's right, I'd have to look at some of my notes to prompt my memory but at this stage I can't recollect.

Thank you. You can close that exhibit please. Can Mr Dencker be shown Exhibit 283. I'll take you, just before you look at that, Mr Dencker, before you look at that I just want to ask you another question?---Yes.

30

In the period from about May through to about October or November, 2009, there are a number of meetings, sometimes called strategy meeting, sometimes called legal meetings, where there are representatives of Maddocks, sometimes HWL Ebsworth and sometimes Henry Davis York with members of the Executive team and also Mr Romano. Do you recall a number of meetings?---Yes.

You attended a number, didn't you?---Yes.

40

And I think you said this morning you didn't have a very good memory of the precise issues that were discussed at those meetings?---I can recollect some minutes that Mr Macklin took and I've, I've, I've refreshed my memory by looking at those minutes Mr Macklin took and, and there were some subsequent emails so that's my recollection by being refreshed, by looking at those minutes.

And just in general terms there were three particular issues that were intersecting, I want to suggest to you, legal issues. There was the employment issues, firstly, involving Mr Child, Mr Giangrasso and Mr Cummins?---When you say employment what do you mean?

Issues as to their continuation of employment and whether they should be suspended or not?---Like workplace, HR type issues?

Yes?---Yes, yes.

Yes. Each of Mr Cummins, Mr Child and Mr Giangrasso had made claims under the worker's compensation act?---I, I think that's correct. I - - -

10 In fact you made a statement in response to Mr Cummins' claim didn't you?---Yes. Yeah, yeah, certainly Mr Cummins, yeah.

And there was also the issue of responding to ICAC and liaising with ICAC about employment issues and worker's compensation?---Yes. That was, that was discussed.

And these meetings, at these meetings these two issues were discussed together?---I think the, from time to time they were intermingled.

20 Yes. There was some intersection - - -?---There was crossover and it was, it was hard to work out where, where the boundaries were exactly. But I think the lawyers tried to set the boundaries as well as they could.

Yes. Your understanding was that there was some intersection between those three issues?---Yes.

Yes?---That's, that's what I understood.

30 And do your understanding the lawyers were there at least in part to ensure that Mr Romano didn't overstep into areas where he had no proper role?  
---Absolutely.

And do your observation, that happened?---Yes, yes, certainly.

Now can you just look at Exhibit 283, please?---Yes.

That's an email that you received from Mr Macklin?---Yes.

40 And it asked certain things of Darren and Erin, you understood that was Maddocks?---Yes.

For legal advice?---Yes.

And Mr Baird, that this would need to be cleared by ICAC?---Yes.

And it was also sent to the Executive team for your information and comment?---Yes.

And when you received this email I take it you read it?---Yes, I read it. I would've read it, if it was sent to me I would've read it quickly.

And I take it you were satisfied that, with a particular request for Mr Baird asking whether it would need to be cleared by ICAC, that Council was acting appropriately on this matter?---Yes, I was satisfied on a few grounds. It had been prepared by the senior manager, HR, Peter Macklin. He had expertise in this area. And it was also going to be cleared by both the workplace and ICAC lawyers.

10

Thank you. You can return that Exhibit. And can Mr Dencker be shown Exhibit 252, please. I'm sorry, I've taken you out of sequence but I want you to go back to June so you'll see this is an email from Mr Macklin sent on 12 June, sorry, I beg your pardon, if you look at, I think it's the fourth last page?---On this whole document?

Yes, I think it's Exhibit C13 and you'll see there's a email, Mr Romano Tuesday, 1, something obscured, June?---12 June.

20 Yes. And then a email from Mr Macklin, Friday 12 June, 2009 sent at 5.49pm?---5.49pm?

Yes?---Yes, I have that in front of me.

And that was sent to you?---Yes.

And that's something that you read at the time?---Yes.

30 And I take it you read in the third paragraph that Mr Macklin had consulted with our Council's legal representatives?---Yes, yes.

And he was seeking advice as to what Council should do if Mr Child and Mr Giangrosso presented themselves fit for work?---Yes.

And you I take it agreed that it was appropriate for the Council to obtain legal advice how to handle that situation if it arose?---Yes.

40 And to your mind that legal advice was important to ensure that Council, in whatever action it took, would not be seen to be acting in any way in reprisal against Mr Child or Mr Giangrosso?---That is correct.

Now, that exhibit can be returned. Can Mr Dencker be shown Exhibit 284 please. Mr Dencker, you'll see it's a string of emails beginning on 5 August and it has a memorandum of 30 July attached to it from Mr Macklin and a draft letter to Mr Giangrosso?---Ah hmm.

You'll see that the first email in time, last in sequence of 30 July sent at 10.07 was an email I just took you to at, it was sent to the Executive team for information and comment?---Yes.

And you received this email and read it on 5 August, 2009?---Yes.

You saw it recorded some legal advice from Mr Baird sent to Mr Macklin on Friday, 31 July?---Yes.

10 And that advice was discussed by the Executive team with Mr Macklin?  
---Yes.

And the Executive team thought the appropriate way forward would be to notify ICAC of the Council's intentions to conduct a full and proper investigation into the matter?---Yes.

And as far as you know that's what happened?---Yes.

20 That exhibit can be returned. Can Mr Dencker be shown Exhibit 276 please?---Thank you.

This was an email sent from Mr Macklin on Monday, 17 August to senior officers, that would have included you, Mr Dencker?  
---I'm not sure. It's possible. I'd, I'd have to see what that list entails.

Yes. You were aware that in mid-August 2009 that Mr Macklin was liaising with Maddocks regarding an anti-discrimination claim brought by Mr Saad?---Yes.

30 And if you go to the third last page you'll see a letter there from Maddocks to Mr Macklin bearing the date 17 August, 2008?---Third last page.

Sorry, I misled you, 17 August, 2009, the third-last page?---That's the last page of Mr Gardner's transmission, that's the third-last page.

It's third-last in mine, it's got Maddocks on the top right-hand corner?  
---Yeah.

40 In the top left-hand corner, email letter?---(not transcribable)

Well, perhaps you might go to the fourth-last page then?---(not transcribable) this one here? Is it, is it the start of the letter or - - -

The start of the letter?---Yeah, I've got the start now, yes.

Yes. Mine's copied on both pages. Now, can you go over to paragraph 9 please and paragraph 10 and just read them to yourself?---Right, I've read them.

And at the time of about 17 August or a bit later you became aware that Maddocks was expressing the view that Council would be required to undertake a full disciplinary investigation into the allegations against Mr Child and Mr Issa?---I, I can't recollect that date.

10 ASSISTANT COMMISSIONER: Mr Blake, it doesn't seem to be me that he's necessarily seen this letter or if he does he remembers it or whether he can say anything useful about it?---I was going to ask, was it sent to me or - -

Well, I don't know.

MR BLAKE: Well, he's recorded as a recipient.

20 ASSISTANT COMMISSIONER: Well, I don't know that he is, I don't know whether senior officers is the same as Executive or something different but in any case, I see little utility in taking him to matters where he seems to have been fairly peripherally involved.

MR BLAKE: Well, do you recall, Mr Dencker, there being any discussion in the Executive as to whether disciplinary action, or sorry, Mr Child should be suspended from duty pending an investigation?---I think I said earlier that I recall Mr Macklin wanting to meet with the Executive to, to put a proposition forward relating to suspension and that that was, the approval was subject to being okay with the workplace and ICA lawyers, ICAC lawyers.

30 Your recollection is that the Executive supported that subject to legal advice. Is that correct?---Subject to legal advice, yes. We supported the recommendation of Mr Macklin.

Yes. Thank you. That can be returned. Can Mr Dencker be shown Exhibit 285, please?---Just, I hope I answered the correct question, but I got a little bit confused just towards the end (not transcribable) exactly what the question was.

40 And I'll just (not transcribable) I was suggesting to you that the Executive team supported the suspension of Mr Child pending their investigation into his conduct subject to legal advice, to that effect, do agreed with that? ---That's right. And also conditional training and, and this was my suggestion, and I think I said that he be on full pay.

All right. That can be returned. If Mr Dencker can be shown Exhibit 285. Did you receive that email from Mr Macklin on Wednesday, 2 September at 2.41pm?---That's what it says, so I will accept that.

Yes. And was the question of the suspension of Mr Giangrasso discussed by the Executive so as to be able to give Mr Macklin a direction one way or the other?---I can't specifically recollect, but it's likely that, that Mr Macklin would've raised this issue and, and he would've come to the Executive with a recommendation. And normally he would say, look I already ran this past Maddocks and this is the recommend a way forward. And, and it's likely that the (not transcribable) said yes, and if, that's we support your recommendation as senior manager HR, subject to the workplace and ICAC lawyers being happy with it.

10

Thank you. And then if that can be returned. And Exhibit 286 - - -?---And I just add also, I think there was discussion and on full pay if there was any suspension. It had to be on full pay.

Yes. This is a string of emails, first in time (not transcribable) in sequence. See on Thursday, 3 September, 3.46 from Mr Macklin to Mr Baird and a copy to yourself with emails from Mr Hullick to Mr Baird, copied to yourself and ending with an email from Mr Macklin to Mr Baird and Mr Hullick, copied to yourself?---Yes, I see it.

20

And that's an email you saw at the time?---It was sent to me, so I accept that I would've seen it.

Yes. And was the question of Mr Giangrasso's suspension something discussed by the Executive on or about 3 September?---I can't recall the specific date whether this was discussed or not. I do recall Mr Macklin from, not, not many times, but when these matters were, when he had new information that he'd been discussing with the workplace lawyers, his practice was to, to keep the Executive informed.

30

Yes?---And then come forward with a recommendation and then, and then, so this is what I'm recommending, this is what I've discussed with the workplace lawyers, this is recommended way forward and he would ask for the Executive team support which we would do conditionally then subject to, I think I used this, I sound like a broken record, subject to the ICAC lawyers and the ICAC being happy and the workplace lawyers being happy. It was like a, a standing instruction.

Can I show you this document. Have you seen this email before?---It's sent to me, so I accept that I would have seen it at the time.

40

And Mr Timothy Davis was the lawyer assisting David Baird, do you recall that?---I can't recall now but I, I, I take your word for it.

And he provided to Mr Hullick and yourself a response to ICAC for your review and comment?---All right.

Do you recall that?---I can't recall now.

And you'd accept though that you received it and looked at the letter and - -  
-?---I accept that I would have received it and, and if there was a letter  
attached I would've had a quick look at the letter as well.

Yes, and you received a response or a further email from Mr Davis sent at  
2.23pm on Friday, 2 October including Mr Leggat's SC comments?---Sorry,  
what was the - - -

10 It's the third email in the string?---The, the 2<sup>nd</sup> of October, 2.23pm?

Yes?---Yes, I would've seen that if it was sent to me.

Yes. And you saw Mr Hullick's reply to Mr Davis which was copied to you  
and sent at 5.27pm?---Yes.

And to the best of your knowledge that letter in draft form there was sent to  
the Independent Commission Against Corruption?---I, I can't recall but I  
would assume that would be the case.

20 I seek to tender that document, Commissioner.

ASSISTANT COMMISSIONER: Yes, the email from Mr Davis on  
2 October and related emails will be Exhibit 296.

**#EXHIBIT 297 - EMAIL FROM MR TIMOTHY DAVIS DATED 2  
OCTOBER 2009 AND RELATED EMAILS**

30 MR BLAKE: No further questions, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Blake. I think that's the  
end of - - -

MR LEGGAT: I have some questions, Commissioner. I'd like to go last if  
there's no one else.

40 ASSISTANT COMMISSIONER: I think you are last. There's nobody else  
put their hand up.

MS RONALDS: (not transcribable) Mr Dencker, I just want to ask you a  
couple of questions. It was put to you by Mr Blake a moment ago that the  
only reason for the Workplace Surveillance Act was related to theft and  
pilfering, do you remember him asking you that question and to your  
agreeing to it?---Yes.

Do you recall, do you know what basis you had for saying that?  
---Mr Mailey did the PowerPoint. He pointed out what he believed to be theft and pilfering, that's what he thought it was.

10 Yes, no, but Mr Blake to you a specific question which was that it was the only basis for getting the workplace surveillance authority and I just want to suggest to you that that was not correct. I just want to understand that basis you said to him yes. Is it just based on your recollection?---I, I was, I remember very clearly the PowerPoint presentation that Mr Mailey did to the Executive and the, the discussion that the Executive was, it seemed to be, it seemed to be very focussed on, on the alleged theft and pilfering. That's my, that's I guess a basis, I'm just thinking about the, the, the comments and it's - - -

Have you ever had occasion to read the application put in under an affidavit from Mr Gardner to, and attaching the application for the workplace surveillance authority?---No.

20 Where it sets out not only about theft and pilfering but about people working, number of employees working in private residences, an assertion about Mr Giangrasso doing private work?---I hadn't seen Mr Gardner's application.

You haven't seen (not transcribable). Just, for the assistance of the transcript, that's Exhibit 221. You've not seen that. So you're just relying on your memory when you said that yes you agreed with what Mr Blake put to you, were you?---I'm relying on my memory and, and my recollection of the, of the PowerPoint presentation and Mr Mailey's comments.

30 But you weren't involved in the preparation of the formal court document?  
---No.

And you've given some evidence this morning about claiming not to know who was involved or whether there were people who'd been named who have made complaints to this Commission. Do you remember that?---Yes.

40 And I would suggest to you that your recollection is wrong, would you agree? That is, the evidence you gave this morning is wrong?---No, I, I don't agree but I, I'll - - -

All right. Can the witness be shown Exhibit 281?---Can I just add that when we received a letter from Mr McKenzie that it had some specific information in it and I, I made reference to that.

That was - - -?---That was (not transcribable)

Can I ask you to look at this document?---Yes.

Now, you've agreed with Mr Blake, as I understand it, that you would've read this at the time. Do you see information specifically addressing three people?---Yes, yes.

And I'm suggesting to you that when you looked at this you well knew that those three people were being raised in a meeting with the ICAC because they'd made protected disclosures to the ICAC?---No.

10 And you knew that by 29 May, 2009?---That they had made a protected disclosure? No.

Well, why did you think, when you read this document, there was going to be a meeting to discuss three people with the ICAC?---I think there was, the reason that three people had been raised was that there was a, there was potential that these people had raised allegations.

20 You didn't have any doubt, did you, from 6 April, 2009, that Mr Child was the main source of the articles in the Sydney Morning Herald?---I, I had no idea who was the main source of those allegations.

Mr Dencker, I'm suggesting to you that from 6 April it was openly discussed among members of the Executive, even if not at a formal Executive meeting, that Mr Child was the primary source of the allegations in the Herald, wasn't it?---Absolutely not.

Well, I'm suggesting to you it was and that happened repeatedly and you were aware of it from that time, weren't you?---Absolutely not.

30 Well, do you seriously tell the Commission that you read this document and you had no idea why those three people out of the hundred people who worked at Burwood Council, that three people who are named in this document to be raised at a meeting at ICAC, you had no idea why they were there? Is that your serious evidence?---Mr, Mr Macklin had, I believe, had raised the (not transcribable) potential for these individuals who have made an allegation to, but he wasn't sure. Nobody knew who, who (not transcribable) had made any protected disclosure.

Well, that's your evidence?---That's correct.

40 Can the witness be shown Exhibit 241. I'd ask you to go to page 9. Do you see the material in italics in relation to Mr Child? You've been taken to this email on several occasions?---Sorry, which, which - - -

Page 9?---Page 9. Do you see what it says about Mr Child, it is alleged that Mr Child has made numerous phone calls to the SMH journalist. So certainly by 29 June in an email that you're copied in it's no mystery that it's Mr Child, is it?---I don't think anyone had, even at that stage it was, it

was an allegation. Nobody knew if he had, this email, made any allegations to the Sydney Morning Herald.

Mr Dencker, is that your serious evidence?---Yes.

You seriously want the Commissioner to believe that?---Yes. Nobody knew who, it was suspected it could be somebody from the depot staff but nobody knew who he was or if any allegations had been made to the ICAC or if any protected disclosure had been lodged with the, nobody had any idea.

10

Mr Dencker, I suggest to you that is false evidence and you well know that it's false evidence, don't you?---No, I'd disagree with that.

You know that from 6 April it was openly discussed that the person who had made at least some of the revelations to the Sydney Morning Herald was Mr Child?---No, that's completely incorrect.

20

And that references by Mr Romano to persons resisting change in the depot was merely code for Steve Child's name, wasn't it?---No, I disagree with that.

And you well knew that, didn't you, that is that it was alleged that Mr Child was resisting changes in the depot?---He was, Steve Ellul and Mr Macklin as part of the discussions at the CFT had raised that Mr Child was not happy with the revised position description.

30

And he was the only person identified at depot CFT meetings as being resistant to depot changes, wasn't he?---I don't think that's correct. I think Mr Macklin and Mr Ellul mentioned other names as well. There was, there was no focus on Mr Child.

Can the witness be shown Exhibit 242. Can I ask you to turn to page 34 of the statement at the front, paragraph 197?---Page 34?

Yes. Have you had occasion to read this paragraph before?---No.

40

Well, I'd just like you to read through it and tell me when you've finished it, it goes over the page and there's a number, particular focus on the things you're alleged to have said, this is a statement by Mr Romano where he says you said things, essentially a particular issue is your idea when you read this?---Okay.

Now, and to be fair to you so I'm, Mr Baird denies the first, the second half of what's said there, that he said is the first comment, that is that it was his idea, but going to the next one, see where you say I agree and then the comments thereafter, Council has committed hundreds of thousands of dollars, did you say that?---No, I can't recall it.

And we need to demonstrate that Robert's been given an opportunity et cetera?---No, I did not say that.

And then I support David's suggestion we write to Robert and see his explanation as to some of these unanswered issues. Did you say that?---I don't, I don't recall saying anything at this meeting but I don't recall that, no.

10 And then it's your suggestion that Phagen compile a report we can use to back up any correspondence to Robert. Was that your idea?---No.

And then over the page, Mr Romano's alleged to have said, You work with Maddocks, Ian, that's you, to prepare correspondence and organise John to produce a report. Do you see that? Do you remember that happening? ---No.

So having read this now, does any of this conversation remind you of something that happened?---Nothing at all.

20 So you deny that any conversation like that occurred?---Yes, I deny that.

Thank you. I have nothing, I'm sorry. Do you recall any meeting at Maddocks where this issue was discussed, that is, writing to Mr Cummins? ---The only meeting I remember is one where there were forensic accountants and that sticks out in my mind and that was an issue that was focussed on, on issues at the CF, the CFO, that's it and I'm not sure if it was at Maddocks, I seem to think it was at Maddocks'. That's the only thing I remember, a meeting at Maddocks where there were forensic accountants and they were looking at trying to work out what had happened to some  
30 money that Matthew had identified.

Had identified. Right. And that's all you can recall?---That's all I can recall.

Because a fair reading of this is that you and Mr Baird between you came up with the idea of writing to Mr Cummins?---No, not correct.

And it wasn't your idea?---No, it wasn't my idea.

40 Thank you. So do you recall being at a meeting when someone suggested it?---No.

I have nothing further.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Leggat.

MR LEGGAT: Thank you, Commissioner.

Mr Dencker, what your professional qualifications?---I have a Bachelor of Arts majoring in geography and Diploma of Urban Regional Planning. I'm a professional town planner.

Have you any professional qualifications in relation to protected disclosures or investigations?---No.

10 Have you done any courses or do you have any experience or background in relation to investigations or protected disclosures?---No.

I understand that you were born in Denmark in 1962 and spent most of your childhood in Denmark. Is that right?---Yes.

Your sense of humour has been the subject of questions, particularly your sense of humour in terms of sending a YouTube film clip about the cleaner to Mr Cummins. Are you able to cast any light on, on your sense of  
20 humour?---It's probably fair to say that Danes have a fairly dry sense of humour and sometimes perhaps a black sense of humour, probably the bleak winter months. So, I'm also a big fan of Quentin Tarantino's movies that have a sort of, I guess, a black humour portrayed throughout so my sense of humour is probably influenced by that, I think.

Now prior to your sending Mr Cummins a YouTube clip, had he sent you a YouTube clip or he mentioned to you a mentioned YouTube site that he suggested that you might have a look at?---Seven weeks prior - - -

30 ASSISTANT COMMISSIONER: Mr Leggat, I don't think the circumstances of the other matter were that according to Mr Cummins he had been removed from an investigation and he was upset about it and it was in those circumstances that we examined how Mr Dencker came into it and how he dealt with it. I think the general exchange of YouTube clips is not helpful or useful. I don't think it can be equated at all with what happened to Mr Cummins.

MR LEGGAT: We take a different view Commissioner.

40 ASSISTANT COMMISSIONER: Yes, but it's not going to help me at all – unless it happened in exactly the same situation where Mr Dencker had just been removed from a matter and then Mr Cummins made certain comments to him and then sent him a YouTube. I don't see how it helps me at all.

MR LEGGAT: All right. Well let me approach it this way. Your relationship with Mr Cummins at the time when you sent him the YouTube clip, how would you describe that relationship?---I thought we were good work mates and he had a nickname for me, he called me the Iceman.

The Ice man?---The Ice man. He reckoned that I was cool, probably cool under pressure and - - -

ASSISTANT COMMISSIONER: I don't think it was a literary illusion.---I think cool under pressure and particularly at executive team meetings he felt that my method of dealing with the management style of Mr Romano was effective. So he called me the Ice man. So, I had, the relationship was sufficiently close for me to, I have to say I don't – he was probably the closest work colleague that I had in terms the executive and we had, we had  
10 a – I felt a pretty good repour.

MR LEGGAT: Why did you feel you had a good repour?---We always used to – I don't know, not in a bad way, we used to have a good laugh about Mr Romano's management style you know, we'd always, I think we used to joke that you know, that Pat sort of shared the love equally and I used to joke and I think the lawyers did too to that Mr Romano will keep one of your kidneys in the safe – it was sort of that tough – and we shared those jokes with Mr Romano too. We used to joke amongst ourselves about  
20 his management style, his tough management style and I felt this was in, in that sort of similar line of jokes about the general manager as we used to joke – since he came on board often – and I don't' think in a disrespectful way but more like just having a go at the boss, you know, the top boss.

And you've described your relationship as being sufficiently close.---Yes.

Was part of that closeness established by Mr Cummins advising you about YouTube sites that you might have a look at?---Yes.

Prior cleaner roles that you've had at Council, could you describe those  
30 please.---I would like to clarify – I've never referred to myself as the cleaner. I do acknowledge that I have a probably a Mr Fix-it reputation because I was a person that was able to, to take on complex work matters and have a successful outcome in the best interest of Council. So one of the prior roles that I had was the restructuring of the Council's customer services' area which involved the, the front counter and the call centre which also involved um, revised position descriptions because we needed a more higher skilled people to deal with the public and it also involved some redundancies. So that was a fairly difficult task but the outcome now is that  
40 we have a very good customer services team in place and with very good skilled staff.

Why was it a difficult role in your view?---It was a difficult because – my view was that to do the job effectively you needed to have a professional role at the front counter and that needed, we needed to re-profile those job descriptions. It was difficult because it involved complex workplace laws, working with the unions, working with staff to try and find a way forward.

There was another cleaner or fix-it role that you performed, wasn't there involving - - -?---Information services.

10 Yes, why was that a difficult role that required your services?---It was difficult because, it involved a large number of technical issues deficiencies which needed to be addressed. I think when I took over the further rate of the cabling was 80% and that was like a basic infrastructure issue that had to be addressed. So it was difficult in that there were many complex technical issues that I had to, and this was from February onwards, I have to say it took a fair bit of my time because it was an area that I wasn't familiar with and for period of time that would be my highest priority in terms of sorting out basic infrastructure, IT issues. There were also software issues in relation to not having a sufficient finance or payroll software system in place which is now being addressed with the introduction of a new software finance one package.

20 Let me take you to the start of 2009 – so January/February/March of 2009. Your role at Council was as director of planning.---Planning and Environment, yes.

Planning and Environment, thank you. How busy were you in that role at that time?---I was, it's probably been the busiest I was as the director of planning and environment because the, the Council LEP was at very critical stage and it took a lot of my attention – probably 95% of my working week was involved in dealing with my normal planning and environment duties.

30 In your opinion what hours, if any, did you have to investigate complaints about the general manager's behaviour in 2009?---I had no power or authority invested with me to do any investigation into Mr Romano.

In that early part of 2009 did you feel in some way obligated to Mr Romano because of the role that he'd played in what's been described as the photocopier/toner allegation?---The issue arose because Mr Cummins was concerned about a printer/cartridge order and - - -

40 ASSISTANT COMMISSIONER: Mr Dencker, I don't really think you're asked to go through the whole history of it, you've been asked a question about whether you felt obligated to Mr Romano as a result of that incident. Perhaps you could limit yourself to that.---Sorry, I felt in no way obligated to Mr Romano because I'd only used three cartridges in the period of three years for a home printer which was allowed as my part of employment contract.

MR LEGGAT: Now, learned senior counsel assisting suggested to you that you were covering up for Mr Romano and you appeared to be visibly distressed by that. Why did that allegation cause you distress?---It was, it was just, it was just so wrong, the proposition, and I've never seen in all my years of working with Mr Romano any behaviour that remotely resembled,

resembling any corrupt behaviour and I would never cover up corrupt conduct of anybody in the workplace or anywhere for that matter.

10 You had on a prior occasion reported a Council employee to the ICAC, hadn't you?---Yeah, in a, in a previous place of employment I had made a protected disclosure to the ICAC which was not followed through because of lack of any evidence that would be sufficient for them to conduct an inquiry and I, I, my, my dealings with the ICAC is that unless you have any evidence, any shred of evidence that deals with any corrupt conduct the ICA is not going to be interested from my, and that was my, that's my experience with the ICAC.

20 You were asked some questions about sending a letter to Mr Cummins, it's been described as the IT letter and you thought that it was fair and appropriate to send the IT letter to Mr Cummins while he was on sick leave and why did you form that view?---I formed the view that, and I had to, my view was that it was fair but I didn't have any, any input into the (not transcribable) I felt it was fair to raise technical issues or financial issues which had been raised by the acting senior manager IT and also the CFO, number 1 the approach had been vetted by Council's lawyers. If I was the director in charge of my area and I was on sick leave and a serious matter like that cropped up I would want to, I would want to know. I wouldn't want to not be told. I would be expect, I would expect my supervisor to tell me if, if a serious matter had, had cropped up whilst I was on sick leave I would expect to be informed.

30 You were asked some questions concerning your apparent lack of compassion in not contacting Mr Cummins while he was on sick leave to ask how he was, human being to human being, why was it that you behaved in such a manner?---Probably two reasons, one I did discuss it with Mr Belling at the time and Mr Belling's advice was that it would be better to await the, the outcome of the inquiry to, to progress formal discussions with Mr Cummins. The other thing I felt, when, when, when the allegation of Mr Cummins were first, about the YouTube clip I felt like betrayed and hurt because I thought that he betrayed my trust as a, as a work friend, colleague where I sent him a joke innocently that appeared to me that he twisted that around to, to his own advantage and I was afraid that if I contacted him again he would someone misconstrue or twist my words again and use them against me so I had a, a real fear of that happening.

40

Thank you, Mr Dencker. Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Leggat. I think Mr Dencker can be excused now from further attendance.

MS RONALDS: He can.

ASSISTANT COMMISSIONER: Thank you, Mr Dencker. You're now excused?---Thank you.

**THE WITNESS EXCUSED**

**[3.44pm]**

ASSISTANT COMMISSIONER: You might as well start.

10 MS RONALDS: Sorry?

ASSISTANT COMMISSIONER: Are we going to start Mr Hullick?

MS RONALDS: Mr Hullick.

ASSISTANT COMMISSIONER: Thank you. Mr Hullick, you are still under oath and the order that was previously made applies to your evidence today. Thank you.

MS RONALDS: Mr Hullick, I want to just go through a number of little issues that you we might be able to knock off before the end of the day. In relation to Mr Cummins, I just want to take you to one issue. If the witness could be shown Exhibit 155 and if you could turn to page 21 and just so you know what's coming, this is about the return of property that led, correspondence that was written to Mr Cummins or Mr Cummins' lawyers about the return of property. If you could just turn to page 21 and you'll see there there's a letter from Maddocks from Gardner and you'll see number 1 is, We request that he is not in possession of Council files et cetera, had you provided the instructions to Mr Gardner, to the best of your recollection, that this letter be sent?---I took advice from, I, I wasn't really in a position where I knew what letters could be sent and what letters couldn't be sent so I always, I took this, the view that I would take notice of what the lawyers told me because in relation to any employment matters or whatever, they were the experts not me so - - -

20 But you understand in terms of the relationship between the client and a lawyer that it's the client that gives the instructions and the lawyer provides advice?---Yes.

So that you, as the person, when you are the person giving the instructions you are responsible for any of the decisions that Council makes or if you're part of the decision you're responsible for part of the decision, do you understand that?---Yes.

30 And that the lawyers don't make any decisions for you, do they?---They give advice that, and as I said, I am not a, I'm not an employment, I'm not a lawyer, I'm not an employment lawyer in particular. I've never dealt with these sort of matters before so before I sign anything or, or do anything I take advice from them. That's exactly what I did and I don't, I don't put any input into the way the letters are written because I allow, I allow them to do that the right way.

Well, that may be so but you understand that you still stand responsible for the contents when you're the person instructing?---That's right.

40 You might rely on the advice of the lawyers but, as I say, that's only advice and there has to be some responsible person within Council who makes the decisions?---Yes.

And as I understand it, you were the Acting General Manager in relation to the Cummins matters?---That's right.

And so that when there is correspondence from Maddocks on behalf of Council to Harmers would you accept that that was, that you accept

responsibility for the instructions that are included in those letters, just wait for me to finish otherwise the transcript gets confused. And so that Mr Gardner if he's saying something in the letter, he's saying that because you've said so, now he may give you advice that he thinks that's the way to go but when you accept that advice, that then becomes your instructions. Do you understand that's the process?---Yes, yes.

10 And then, if I could ask you then to turn to the next page, you'll see there's a reply from Harmers. Do you remember reading this on or about 25 March?---Yes, I would have.

All right. Now, can the witness be shown 244 and you'll see, you understand that Mr Romano has produced a number of statements?---Yes.

And I don't know if you've had an opportunity to read them?---No, not all of them, no.

All right. Well, this is one that he's called legal advice statement?---Yes.

20 And if I could ask you to turn to page, you see there's a statement at the front - - -?---Yes.

- - - and there's a number of annexures. If I could ask you to turn to page 5, paragraph 45 and you'll see it's down the bottom of page 5 and then going over to the top of page 6. If you could just read that to yourself and tell me when you're finished reading it?---Yeah.

30 Now, I know it's a while ago but casting your mind back, do you recall being at a meeting on 26 March, 2009, with Mr Gardner and Mr Romano?-- -26 March?

Ah hmm. Do you see Mr Romano says, "I recall that on the morning of the 26<sup>th</sup> I attended a meeting with HULLICK and Gardner" do you see that?---Yes, I saw that.

And do you understand, do you recall what that meeting was about?---No, I'm sorry, I can't.

40 And do you recall why Mr Romano was there?---No, I can't.

And do you recall Mr Gardner saying the words that is put? I'll just give you the correspondence so you understand the context of what the comments are?---Mmm. I, I can sort of vaguely remember some sort of, the wording doesn't sort of necessarily ring true but, yeah, it could've been, could've been some sort of wording from Mr Gardner along those lines.

And in particular, looking at what you are alleged to have said by Mr Romano, "Yes, we should do that. He doesn't need to have Council

property if he's on sick leave"?---No, I don't necessarily, but I don't agree with that.

So you wouldn't have, you didn't say that?---Well, I can't see why he wouldn't have, you know, if he's on sick leave he should, should be able to have his, his laptop and some of the other stuff that he would normally have in his day-to-day, day-to-day work. He still had, he still had his motor vehicle. I mean, I wouldn't have said that he shouldn't have Council property.

10

So would you deny that you said that?---Yeah, I think so, yeah.

Because it doesn't reflect your view?---Yeah, that's right, mmm.

So it's not, it's not an accurate reflection of what the view you held?---No, I can't recall saying that at all.

Now, just more generally, I'm just wanting to use that as an example but more generally, when you were appointed by Mr Romano as Acting General Manager in relation to the Cummins matter - - -?---Yep.

20

- - - what did you understand your role and functions were?---Well, Mr Cummins had put in a, a letter to Council in March, whatever the date was - - -

The 16<sup>th</sup>?---Something, yeah - - -

Now known as the Harmers letters?---The, yeah, well, the Harmers letters. Well, yeah, he put in, he put in these letters where he asserted a number of, a number of things and he said that he wouldn't, he wouldn't pursue these matters if he was given some money basically.

30

All right?---So my role was to really get to the bottom of the matters that were asserted in the letter so - - -

And did you, sorry, I didn't mean to stop you. Had you finished?---Yeah, well, basically that was it, yeah.

And did you understand that you were the sole decision maker in relation to it, to the issue, that is, as Acting General Manager in relation to the Cummins letters, did you understand you were the sole decision maker? ---It's, that's always a bit difficult. Yes, I, I mean I, I think, I was given that role but Mr Romano always had a, a habit of, you know, sort of coming in later, if you like, and sort of trying to, to, to, to reassert his, his position or whatever so you, you never really, you never really thought that you were a hundred per cent in charge of, of, of a particular matter even though, I mean, I took, I took the, the letter seriously and I felt with it, in (not transcribable).

40

But at any time Mr Romano may want to know what was going on?---I think I updated him at certain times, yeah.

Seek to traverse the decisions you were making about the seemly conduct of the matter?---No, he, I think he basically let me do what I wanted to do in relation to the matters, yeah.

10 And but was it your view that the final authority always remained with him if there was any contentious issue to be decided?---Well, the thing is that he, and this is always a bit difficult because the thing is, he's the General Manager. He, he's in charge. Now, until he's not in charge, he's in charge, so, you know, you can't sort of, you can't sort of abrogate his leadership or, or responsibility, if you like. You can't, you can't become equal.

And that's what I'm trying to explore?---Yeah.

20 Because it's hard to see where it falls because it seems that sometimes he's there, sometimes he's not but he's never not there completely if that makes sense, would that be correct, that is, that he always maintained a monitoring and supervisory role in relation to what was happening?---Well, Mr Romano was, was all over the place and he had, he had dozens of things he was dealing with all, you know, basically all at the one time. I mean, that's his, that's sort of his style and I think it was mentioned here earlier where he would, he would issue instructions to six different, six different people to do the same thing and he was all, always all over the place and I often found in the past that I'd be given a task to do and I'd get towards the end of it and that he'd come in and, and ask me where it's all at and I might've been going for three months or four months on it and he'd want an update and then he'd say something along the lines, oh, you know, that's, how about  
30 this, or how about that, or something, and you'd sort of have to, so he'd sort of jump in like that, you know. He, he'd do that but in this instance with Cummins, well, basically it reached the stage where it was basically put on hold anyway but so we didn't really, we didn't really get into that sort of conversation with each other so - - -

40 I'm just trying to work out why he's with you and Gardner at a meeting on 26 March when it was about Cummins?---Yeah, I, look, I'm not saying the meeting didn't occur but I can't, I can't, I just can't recall that meeting. I met with Mr Gardner on a number of occasions. I don't actually remember him, remember meeting with Mr Gardner and Mr Cummins - - -

No, I think Mr Cummins was there merely - - -?--- - -(not transcribable) Mr Romano, with Mr Romano. But we could've but if we did I can't remember the, I certainly couldn't remember the details of that particular meeting.

Now, in terms of your dealing with the Cummins matter - - -?---Yes.

Did you have any meetings with the Mayor in order to brief the Mayor about the Cummins, what was in the Cummins letters?---No, I didn't meet with the Mayor. I can't remember meeting with the Mayor, no.

By yourself or with Mr Romano or not at all?---No, I can't remember meeting with the Mayor.

And were you responsible at any time for briefing counsel - - -?---No.

10 - - - about - - -?---Sorry.

- - - just wait, about the Cummins matter?---No. What happens was that, I'm just trying to think. There was a, I think there was a briefing for the councillors, when we had, we had an extraordinary meeting where we, Council decided that we would hold a, I think a, a, an investigation into the matters that Cummins raised.

20 Into the ones Cummins raised or the ones that were raised in the Sydney - - - ?---Well, the ones that were raised, no, in Cummins's, in Cummins's letter.

Okay?---Yeah, yeah. But, I mean, some of the matters that were raised in Cummins's letter or basically all the matters that were raised in Cummins's letter also raised in the, pretty much raised in the, in the Herald I think as well.

We might disagree about that?---Well, well, I think the ones in the Herald were also in Cummins's letter but there was, Cummins had a whole host of other things as well. That's, that's my - - -

30 And there's been no suggestion that Mr Cummins was involved in the Sydney Morning Herald article?---I thought - - -

As far as you're aware?---Well, I don't know. I thought he probably was. I thought he could've been, yeah.

Did you think that at the time?---Yeah, I, I thought that he, he probably was, yeah. I mean I wasn't sure but, you know.

40 And did you hold that view?---Yeah, yeah, I think that he was, he must've been involved.

What did you base that view on?---Well, he was either involved with, he was either involved directly or indirectly I, I, I believe. I believe that.

Why?---Because on hindsight, now, some of the things that he raised were also raised in, in the Herald. Now, he wouldn't have, he, he obviously must've got that information from somewhere. So that, that was, that was my opinion.

So what do you say was the substantial difference by making you Acting General Manager in the conduct of the Robert Cummins matter than if you hadn't been appointed as Acting General Manager and it had just been given to you as part of your normal job?---That I had the, the, well basically just to, to give it, to give it top priority.

Priority?---Well, give it priority and get it, yes, get it, get it resolved as quickly as possible.

10

What difference, if any, did it make in the way you exercised your power and authority, if any, in relation to the matter?---In, in, in what sense? I don't think I - - -

In what you did in the decisions you made, the conduct of the matter, what difference did becoming Acting General Manager make?---If I hadn't, if I'd been given it and, and hadn't been given the, the title of Acting General Manager I would've done the same thing, I suppose, yes.

20

That's what I'm trying to find out?---Yeah, mmm.

It wasn't just to be a chimera?---Oh, I think it was just to identify the fact that I was, that I was looking after that particular aspect. There was a whole host of things going on of course and I was just given the, the, that one to sort of run with if you like.

30

If I could just have a moment, I just tender two documents because it may assist our friends overnight in their preparation. If I could tender a string of emails which ends with one, dated 7 June, perhaps we should refer to the one from Mr Hullick to Gardner, Macklin and Dencker dated Friday, 24 April and annexed to it is a draft letter which is referred to in the email before, it'll be self-evident when anyone interested reads it.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 298.

**#EXHIBIT 298 - EMAIL FROM MR HULLICK TO MR GARDNER,  
MR MACKLIN AND MR DENCKER DATED 24 APRIL 2009**

40

MS RONALDS: One of the matters we'll go to tomorrow is the requirements of section 55 and what happens with Ebsworths which is a matter I need to explore with the witness but just to assist for those who haven't seen the document (not transcribable) overnight if I could tender this document so that people aren't caught out tomorrow, a bundle of documents relating to Ebsworths being put on the legal panel in June and July, 2009.

ASSISTANT COMMISSIONER: Yes, that will be Exhibit 299.

**#EXHIBIT 299 - BUNDLE OF DOCUMENTS RELATED TO HWL  
EBSWORTH REGARDING APPOINTMENT OF HWL EBSWORTH  
TO COUNCIL'S LEGAL PANEL**

10 MS RONALDS: Perhaps now is the appropriate time?

ASSISTANT COMMISSIONER: Yes. We'll resume at 10 o'clock  
tomorrow morning.

**<WITNESS STOOD DOWN [4.03pm]**

20 **AT 4.03pm THE MATTER WAS ADJOURNED ACCORDINGLY  
[4.03pm]**