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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 9 JUNE 2010

AT 2.10PM

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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.

MS RONALDS: Commissioner, just before we start. I just note two things, one for the record which is that I have previously indicated but just so that it's abundantly clear that Mr Romano has put in a number of statements and they are his version of events. I don't intend to traverse each and every conversation and fact in those. They're not accepted, they not, not accepted. They'll be subject to the weight that one gives them in the process but I'm not intending to go through each of them as I've indicated on the record
10 previously.

The second issue is and in relation to a question one of our friends asked me at lunch time is that the Department of Local Government people will be here to talk about policy issues and what can happen in certain circumstances and what the Department of Local Government does. It's not necessary and I hadn't anticipated that anything, anyone other than Mr Leggat and I would be the last people standing at that point, that is, certainly those who represent individuals, unless they've got a particular issue they want to put to some in local government about something.
20 They're more than welcome to be here but they shouldn't feel that they need to be here. Certainly it will be a much broader discussion about policy and how it works and what the Department does and what the Minister does et cetera rather than looking at the specifics of Burwood Council. So if that assists my friends in their planning.

And in relation to submissions, since I've also been asked this question. My submissions will be provided on or before 9 July and any person seeking to put submissions in on behalf of their clients or any individual who wants to put them will need to have them to the Commission by 23 July.
30

ASSISTANT COMMISSIONER: Yes, thank you, Ms Ronalds.

MS RONALDS: And I neglected to tender the depreciation schedule that I handed to the witness prior to the luncheon adjournment. If I could do that.

ASSISTANT COMMISSIONER: Yes. I did notice that but I let you off the hook as we going for lunch.

MS RONALDS: Well, Mr Blake took me to task, so - - -
40

ASSISTANT COMMISSIONER: That depreciation schedule will be Exhibit 309.

#EXHIBIT 309 - DEPRECIATION SCHEDULE

MR LEGGAT: Commissioner, just before my learned friend recommences. My understanding is that the present intention is that the closing submissions as referred to in Section 31(10) of the ICAC Act are intended to be dealt with on the papers in chambers, so to speak. Can I just flag a slight concern that I have that that may not be open procedurally to the Commission but that can be the subject of discussion later. I just raise it, it having been raised.

10 ASSISTANT COMMISSIONER: All right. You mean the provision of written submissions?

MR LEGGAT: Yes, yes. The Section 31(10) appears to envisage that there will be a hearing of closing submissions and the hearing will either be in public or in private but that seems to be the extent of the discretion where there is a public inquiry that's being held.

20 ASSISTANT COMMISSIONER: I mean, I really read section 10 just as standing alone and saying what it says because it says without limiting 9 which says, "You may decide to hold part of the inquiry in private and without limiting that may decide to hear closing submissions in private." Anyway, it's an interesting issue, we'll have a look at that. I guess just because we've been doing it for 15 years doesn't mean it's right.

MS RONALDS: Perhaps I should note that submissions, my submissions and those submissions being put in will be subject to a section 112(1)(3) order, that is, as closing submissions they will be confidential and there's penalties attached to the release, we don't want to see them on the front page of the paper.

30 ASSISTANT COMMISSIONER: Yes. Could I just say generally that I think the idea of written submissions and also a section 112 order evolved out of fairness because unfortunately sometimes when counsel assisting makes submissions in public, to the general public it's considered well, that's right, you know, so counsel assisting may make a submission that a certain finding is open or that somebody's done something and that then becomes perceived to be the finding so it take from the final report of the Commission which may or may not accept submissions from counsel assisting or from anybody else. So I think the idea is that that will be dealt with in a way that doesn't prejudice persons who might be subject of
40 adverse findings. So that to my way of thinking is the rationale behind it but I'd be happy to address that issue if you wish to do so in more detail.

MR LEGGAT: Thank you.

MS RONALDS: Previously vehicles that the Council had purchased for your use had been sold through an auction system. Would you agree?
---Yes.

And if I could just show you this bundle of documents. They were sold through Pickles Auctions or whatever. See that?---Yes.

If I could tender that document.

ASSISTANT COMMISSIONER: Yes. This document relating to the disposal of General Manager's vehicles will be Exhibit 310.

10 **#EXHIBIT 310 - DOCUMENT REGARDING DISPOSAL OF
GENERAL MANAGER'S VEHICLE**

MS RONALDS: And, Mr Romano, I suggest to you that when you spoke to the purchaser and her husband on the day that you did the deal, not the day they collected the car but the day you did the deal they attended at your property. Do you recall that?---Yes.

10 And you had some negotiations about the price?---I don't recall the detail but, yes.

You started at 30,000 as I understand it and ended up at 26,000. Do you remember that?---As I said I don't remember the detail but it sounds about right.

And you told the purchaser's husband where the nearest ATM was and he went off and came back with \$500 cash which he gave to you?---I think that occurred, yes.

20 And you then explained to them that you wanted two cheques?---Look, it's possible that that occurred but I can't recall it.

Well, they arrived with two cheques when they came back on 14 November didn't they?---Yes. I don't know whether we talked about it on the day or whether we communicated in between.

But it was your idea, it wasn't their proposal?---Well, yes, that's right.

30 And you told them didn't you that there was a lease that had to be paid out and that's why you needed two cheques?---No, I don't recall that.

And I'd suggest to you that on 14 November, the day they picked up the car when you completed the sale document that I took you to earlier, you said to them that you would put the lower price on order to save stamp duty. Do you recall that?---No, I don't recall that. I do recall talking to them about one cheque being made out to the Council, because it was a Council vehicle. And that the vehicle was part of my contract and my contract allowed for me to sell on the vehicle if I wished to purchase it.

40 Well both of them have independent recollections of you referring to a leasing arrangement and that's why there were two cheques necessary? ---Well, I don't know about that. But I didn't have a lease arrangement with Council.

No?---So I had no reason to say that.

And I'm suggesting to you that you said to them that you would put the lower price on the official document in order to lower the stamp duty to be paid. Do you recall saying that?---No.

And if both of them independently recall that then it would be likely that that's what had happened wouldn't it?---Well, they, they've made statements that I said it was a lease car and that's incorrect, so I believe that that is also incorrect.

10 Now you didn't, after you'd sold the Honda CRV, you then acquired the Audi. Do you recall that?---That's correct. Yes.

And there was a gap wasn't there between, after they took possession on 14 November, 2008 until you got, took delivery of the Audi, sorry, 2007, until you took delivery of the Audi?---That's correct.

And you had a hire vehicle during some or all of that time didn't you?---I think there might've been a period of time where there was a hire vehicle. But I can't recall.

20

And who paid for the hire vehicle?---I can't recall. I don't know.

Well, doing the best you can?---Are you asking me to guess? Because I don't know, I can't recall.

But you did have a hire vehicle?---I have a vague recollection there might've been a hire vehicle or I took a leased car from the Council. I can't remember which.

30 And would you accept that the date, if you go to the last, have you still got Exhibit 308 there? The one that starts with your contract?---Yes.

The date of delivery, that is that you handed the car over, if you go to the last page, you see that's a document that purports to be a receipt?---Yes.

And that's dated 14 November, 2007. And you'd accept that's the date that you handed the vehicle over to the purchasers?---Oh, I, it'd be pretty close to that date.

40 And you banked the cheque the 15th, so they gave you the money and they drove off in the vehicle didn't they?---Yes.

They didn't give you the money and leave the car with you?---No.

And so that after the 14th, after 14 November, you didn't have that vehicle? ---That's correct.

And can the witness be shown Exhibit 172, which is a volume by itself. I think you got the Audi in January, 2008. Do you recall that?---That's right.

If I could ask you to turn to page 90. See there's some small numbers down the bottom right hand corner?---Yes.

And if I could ask you to take, have you got page 90 there?---Not quite yet. Yes, I have.

10 Entry number 6, 27 November, \$75.01 petrol for the car that you'd disposed of. See that's a claim for petrol for a car that you no longer held?---It would appear that way, yes.

Are you able to explain how that could've happened?---If in fact I was driving a Council lease car, it's possible that I was fuelling a Council lease car.

20 And the entry would've just been an accident would it?---Well, as I've mentioned previously, my PA at the time filled out these forms on my behalf and I didn't meticulously look at every word she put down.

But you were driving some vehicle. If you look down, turn over the page to page, sorry, if you go to page 98 you'll see there's petrol claims in January for the GMs car?---Yes.

And if you go to page 102, sorry, if you go to page 102, see that? Entry number 2, GM loan car?---Yes.

30 So that by 15 January it appears that you still haven't taken delivery of the Audi but that you are claiming petrol on a vehicle?---Yes. If my memory serves me correct and I stand corrected here, I, I think I had a lease car from Council for a period of time which I was using. The - - -

Sorry, just so I understand what you mean. A lease car from Council. What does that mean?---It was just another car from the fleet of cars that Council had that was available at the time and I would've been fuelling that car, car if I was driving it.

40 All right?---The dealer that we were buying the vehicle from did promise to deliver the vehicle by a set date and I can't remember whether it was me or Mr Azer had, had dialogue with the dealer and, and the arrangement that was reached that was, that if, if the car wasn't received by a certain date that they would then, they, the dealer, would then provide a, a, a loan car for the Council for my use and it's possible that I was fuelling that car, that car.

Now, in relation to, in relation to the purchase of the Audi, have you had occasion to look through your 2007 contract during the luncheon

adjournment?---No, I didn't skim it through lunch but I had a quick look at it when I got back in and it's no longer (not transcribable) so I can't - - -

I'm sorry, I can't hear you?---My apologies. No I didn't look at it over the luncheon period but I had a quick look at it when I got back into the room.

Ah hmm?---And I don't have it in front of me.

10 Can 308 be returned to the witness please. Now, your 2007 contract starts at page 16. Do you see that?---Yes.

And if it helps, remuneration is at page 24?---Yes.

And there's nothing about a car there, is there?---The way I read this at Section 8 which is remuneration, 8.1 says that "Council will provide the employee a total remuneration package set out in Schedule C."

20 Yes?---Schedule C is on page 42. Within the table contained on page 42 it says, "Fully maintained Council vehicle."

That's your contribution to the fully maintained Council vehicle at \$5,000?--That's right, so - - -

Now, just so that we're not at cross purposes, Mr Romano?---Yes.

I'm not talking about whether you're entitled to a fully maintained vehicle?---Yes.

30 What I'm talking about is the capacity to purchase a vehicle outright using Council funds as opposed to, for example, a novated lease or a lease consideration. Do you understand the distinction?---Yeah, I understand that.

40 So it's not about whether you're entitled to a car under this contract but how you say you're entitled to buy the Audi, all right? Just so we're clear?---I understand that and I appreciate and I thank you for detailing that out for me. I suppose my response to you is then, I'm assuming that you're seeking my, my input. My response is that as I said earlier, I think the contract is poorly worded. It does remain silent on how the vehicle is to come about. I acknowledge that. I wasn't the person that put together the entire contract. I did contribute through negotiations and writing some of the clauses that I had interest in but I didn't, I didn't actually put together the contract and look, in hindsight, I, I suppose there should've been a separate section on a car and how it would be provided and whether it be a leaseback or purchase or, you know, procedures for acquisition and, and, and disposal. Look, I acknowledge that and, you know, I've said that earlier but the contract appears to remain silent on that issue. But that doesn't mean that I've done something untoward.

Now, a new policy came in in relation to cars on 1 July, 2007. Do you recall that?---I don't recall the specific policy but I do remember discussing the policy at length with the executive.

10 And if the witness can be given Exhibit 186. If you could shut up 172 the big expenses one and that one can be returned to Ms Ross when she comes but you hang onto the other bundle. This is a statement of Mr Walker that you've had occasion to read before. Is that correct?---I may have but I just can't recall it.

All right. Well, just turn to page 10 and there's the new motor vehicle policy that started on 1 July, 2007. You see that?---I'm sorry, I can't find the page 10. The numbers seem to be - - -

The small numbers down the bottom. They start page, number 1 is the annexure, they renumber from the annexure?---So where am I looking at, annexure page 10 or - - -

20 Well, perhaps if you hand it to me I'll find it for you?---Motor Vehicle Policy, sorry, I found it, thank you.

And this was a new policy that came in from 1 July?---Yes.

Now, you were involved in the preparation of this policy?---I was involved in the review of it, I didn't actually prepare it.

30 And did you turn your mind to your car when you were looking at this policy?---I can't recall specifically thinking about the car that I was entitled to, no.

If I could ask you to just turn to page 13 you'll see Group 1, "General Manager is entitled to a vehicle via salary sacrifice as part of their negotiated salary package or by post-employment agreement." Do you see that?---Yes, I see that.

And that's as far as I can find as high as it gets?---Yes, that's right.

40 Thank you. Just put that aside for a moment and we'll return to it in a moment. Now, you decided to purchase a new car in late 2007. That's correct?---Yes.

And in relation to that purchase you didn't take to Council a resolution that you'd be authorised to expend Council funds to purchase a car did you? ---No, I assumed that my contract of employment gave me that authority.

Did you turn your mind to the fact that you were buying a relatively expensive car?---Well, I suppose whether one views a particular sum as

expensive is really a matter of perspective. Given the type of car that I was looking at and given the type of car that I thought I was entitled to no, I don't think it was expensive.

Well, why did you think you were entitled to spend \$84,000 of Council money on a car?---Because I believe my contract allowed me to have a vehicle.

10 It did on some constructions?---Yeah, if you recall through your own discussions with me earlier I also purchased a Honda CRB for \$42,000 so - -
-

20 A big gap though isn't there?---There is. At the time I, I was quite happy to have that vehicle and it served my purpose in terms of my private life and my business life as well. At the point in time where we changed the vehicle over and I was looking at this Audi I, I felt that I was entitled to that particular vehicle. It was a matter of preference. The contract nor Council's policy talks about vehicle type, expense ranges or the like but it was in the same ilk as what a car for the Mayor would, would be for example.

Mr Romano, did you look up what public servants employed by the New South Wales Government were entitled to have?---I never turned my mind to that but we work in local government and I was contracted to a local government body.

Why did you think it was worth spending \$84,000 worth of ratepayer's money on a vehicle for you to drive around in?---Well, the car was salary sacrificed so - - -

30 For \$5,000, yes?---And an additional five that I was putting aside for its purchase.

We'll return to that issue in a moment?---And that was my entitlement and it fell within what I believe to be the policies of Council.

You were earning roughly 200,000 at the time. Is that right?---It sounds about right, yes.

40 And did you take tax advice from your accountant about whether that was a correct sort of proportion spending \$84,000 on a car?---I don't recall if I spoke to my accountant, I may have.

Did you worry about whether it was a proper expenditure of Council funds?---I believed it was, I was entitled to it under my contract and it was allowable under the policy at Council.

What benefit the ratepayers get for you driving an \$84,000 car as opposed to say the Honda you'd had before?---It was part of my employment contract.

What benefit the ratepayers get for the increased expenditure of a car that you purchased?---It was part of my employment contract.

What benefit did they get for the expenditure of what I'd suggest to you was a substantial amount of money?---Well, as I just answered it was part of my employment contract and I had - - -

10 That's not the answer is it?---I had the vehicle available for private use as well as business use and the value that I saw that the ratepayers got was that I worked seven days a week, 365 days a year on call for the community at Burwood Council. I gave them great value for money. You would've seen by reading my emails that I worked at all sorts of hours and I received calls - - -

And how was the value increased - - -?---even when I was in bed at midnight from locals and politicians which not many people do get in their employment. So I thought they got great value for money.

20 And how was the value increased by spending \$84,000 for a Council that had a limited budget?---I believe that they got very good value for money for the expertise that I brought to the Council and that was part of my employment contract which is quite legitimate and valid and is appropriate and I understand is, is available to every General Manager in New South Wales and other bureaucrats.

That's your understanding is it?---That's what I understand, yes.

30 And do you now understand that New South Wales public servants aren't allowed to buy a car above the luxury tax limit?---I wasn't aware of that particular policy but through this hearing have found that out and I understand that to be the case.

Could I ask you to turn to page 1 of the annexures not the beginning of the statement. So the statement itself has six pages and then it renumbers from 1. Do you see that?---So the front of the statement of Mr Walker?

Yes?---Yep.

40 So there's six pages, go through those and then they start renumbering at 1 again?---Yes.

That's the order for the car?---Yes.

And they're the extras that you wanted on it?---Yes.

And so you thought a sunroof would improve your performance did you?

---Assisting counsel, as I said the car was made available for private use as well and given that it was for private use I don't see why the accessories on a car are an issue in terms of my employment or the decisions I made. I wanted a sunroof, I wanted certain accessories on there. It was salary sacrificed for the, for the arrangements I had through Council. It was available for private use. I just don't see the benefit in where you're going with that line of questioning. With all due respect - - -

10 Well, don't you worry about that, Mr Romano, just answer the questions. What benefit did the ratepayers of Burwood get for including significant number of accessories on the car?---They gained my experience and my dedication and the hours that I put into the community in that area for the duration of the period that I was there.

Thank you. And if I could ask you to turn to page 5. Now, Mr Azer signed this, Mr Azer had no role in setting your terms and conditions of employment did he?---No, he did not.

20 And he signed this because you directed him to do so. Would you agree?---No, I never directed him to sign it. He has responsibility for managing the fleet of Council. So it's an area of responsibility that's allocated as part of his role. And he controls the budget for that area. He has sub-delegated functions from me to him for that function.

But he has no role in setting your terms and conditions of employment and neither do you. Would you agree?---Well - - -

30 You can propose them to Council, but you don't set them do you?---Sorry, I disagree. A contract is negotiated by one or more parties, so obviously two or more parties. So I do have a say in what goes in the contract. There has to be an agreement by both parties. In terms of authorising the contract, well there's a process and that process was followed.

40 Yes. And what I'm suggesting to you is that the expenditure of what I'm putting to you is the significant amount of Council funds on a personal vehicle for you to drive was not an authorised expenditure by Council was it?---Well, if I may correct you, it was a personal and business vehicle. And as I said a few moments ago, Mr Azer had sub-delegated authority from me and within the budget which is approved by Council to authorise this expenditure and anything dealing with the fleet of Council. Managing a fleet of Council - - -

Thank you?---is an operational matter.

I'll show you this bundle of documents. These documents relate to the various times that there were changes to your terms and conditions of employment. If I could take you, see there's some page numbers down the bottom?---Yes.

Can I take you to page 52, please?---Yes.

You see that's your package?---Yes.

With a handwritten 1 September, 2005 note?---Yes.

Car value salary sacrifice \$5,000?---Yes.

10 And then add car salary sacrifice \$10,000?---Yes.

And when you've referred earlier to \$5,000 and \$5,000, I think you might've been mistaken, it was \$5,000 and \$10,000. Do you agree?---There was a period of time where I was contributing 10 and then changed over to five.

Then it dropped back to five?---Yes.

20 But it's this period I'm just looking at now. And then if I could ask you to turn to page 4. And this reflects the change, this isn't your handwriting, oh, sorry?---Yes.

This was a change that you wanted at that period. Would you agree?---Yes.

That is after your contract - - -?---Yes.

Yes. And that was the arrangement you wanted five and ten?---That's right.

30 Five thousand towards costs as per the five thousand in the clause that we were looking at earlier?---That's right.

And \$10,000 towards paying off purchase?---That's right.

And you understood that's what the other funds were for. \$5,000 was a contribution to the running of the vehicle wasn't it?---Well, it was a contribution to Council, whether they spent it on running costs or not, it's really up to the fleet manager.

40 And 10,000 was towards paying off the purchase?---It was my contribution that I was putting aside for a possible future purchase.

And you understood that salary sacrifice meant that you didn't pay tax on it, that is it's taken out of your salary before, before tax is assessed?---That's right. Yes.

And if you then turn one page forward to paragraph 3, you'll see effective 1/9/2007 fully maintained Council vehicle, \$5,000. Do you see that?---Yes.

And salary sacrifice \$10,000?---Well, I see the words, but I don't know that that's correct, but, yes.

Well, these are the formal documents from the Council file. Are you saying that's not correct?---Well, I think salary sacrifice of only 10,000 is incorrect, yes.

10 You changed it at some stage you say, to 5,000?---No, no, I'm not talking about the sum. I would've referred that any contributions towards the car in an entirety whether they were (not transcribable) different functions or not, was a salary sacrifice component. And I note that they're separately noted on here and don't believe that's right.

Well it may have just been a historical accident because originally there was 5,000 and then 10 was added later. But - - -?---Yeah. I'm not talking about the sum, I'm just talking about the descriptors that are there.

20 Yes?---Yeah, but you're right, there was a sum of 10,000 at one stage and then there should've been \$5,000 sum.

And in essence the \$10,000 was seen as a sort of bank wasn't it, to pay off any vehicle you may elect to purchase?---It was to be put aside and whether it was kept at Council or in my bank account wouldn't of made any difference. Yeah.

(not transcribable) with you?---I believe so, yeah. It was money that I'd paid tax on and I wanted it kept aside.

30 It's (not transcribable) pay tax on wasn't it? It was salary sacrifice money? ---My apologies. I, I'll withdraw that and restart it. It was money that was paid to me as part of my salary, so I was entitled to it. It was my salary.

But the whole point of salary sacrifice is that it can only be for certain things and not just generally and at large. Would you agree?---That's right. And the reason I asked Council to hold it was I didn't want to open up another bank account to hold that funds, those funds separately.

Just listen to the question Mr Romano, please?---Yep.

40 And your tax, that is taken from your salary before your tax is assessed isn't it? That is you don't pay tax on money that is seen to be and tagged as salary sacrifice money. That's correct isn't it?---I think so. That's right, yes.

Well, you don't have any doubt do you? You know what salary sacrifice means?---Yes.

And I'd suggest to you that you were not entitled to draw down that money and use it as income. Would you agree?---I'm not sure about that. I'm not a tax expert.

Well, that's what you did isn't it? You drew it down (not transcribable) ?--- I had (not transcribable) on it, yes, yes. On a number of occasions I drew out money, yes.

10 And have you then declared that in your annual tax to the ATO as salary, not money salary sacrificed?---I'm not sure. I'd have to check with my accountant.

But you'd need to do that wouldn't you, because if it was salary sacrifice money, no tax has been paid on it?---I understand from what you're telling me that it's correct, yeah.

20 Well, I can find nowhere that you've used the amount of \$10,000 a year to purchase a vehicle?---No, well, I was intending to buy the Audi, but circumstances have obviously changed.

Yes?---Yeah. I'd have to check with my accountant. I don't know what arrangements were made with that, those (not transcribable)

You were drawing down money before the disposal of the Honda weren't you?---Yes, I was. Yeah.

So you didn't keep it there for those purposes?---It was my intention to purchase the vehicles.

30 You didn't keep the money in the Council account for the purchase of the Honda did you?---No. I did describe to you earlier that I, it was a process error. That's correct.

MR BLAKE: Do you mean the Honda?

MS RONALDS: Yes, I do mean Honda?---Yeah. I understood the question.

40 You drew some down in August, 2007 didn't you?---Yes, that's right.

Before you sold the Honda?---That's right. Yeah, I said to you, I've made a number of draw downs over the years.

And what I'm suggesting to you is that the money was there for purchasing a car not to be used as a bank. Would you agree?---My intention was to buy the cars, that's correct. Yes.

But that's not what you did?---In terms of the Honda, I acknowledge that

there was a process error. But the money was to be used for the purchase of that car.

Don't worry about the process error. I'm only talking about the money drawn downs?---At this point that hasn't happened. You're correct.

And you haven't paid tax on it have you?---I don't know. I'd have to check with my accountant.

10 Well, can you do that overnight?---Well, I can make the inquiry, but I don't know. I mean, Mike Barney processed them in the last two weeks. The '08, '09 financial year.

Well, this starts at '07, so that should be (not transcribable) ?---Well, I don't know, I'd have to check with him.

Just go back to Mr Walker's statement. Have you still got that, Exhibit 186?---Yes.

20 See page 29? The small numbers down the bottom?---Yes.

See that's in August, 2007, asking 5,500 to purchase. That's prior to the sale of the Honda CRV isn't it?---Yes. I have acknowledged that I have drawn monies from time to time. And I agree that has been drawn down. Yes.

And in January, 2008, if you turn to the next page, you're asking for the car fund balance and the transfer to your bank account?---Yes.

30 Again, that wasn't to purchase a car in January, 2008 was it?---No. Well, the money is there to buy a vehicle. And at some point in time, had I been given the opportunity I would've bought the vehicle.

In January, 2008, the Council purchased you the Audi, didn't they?---Yes.

You didn't contribute to it?---No.

40 So taking, you weren't using the money in January, 2008 that you transferred to purchase a car, were you?---Well, me transferring money to my account doesn't constitute a decision to buy a car at that point in time. I was banking the money and as I said earlier, I elected to keep the money in trust with Council. I didn't want to open up another bank account but from time to time I did draw on the money and had I purchased the Audi I would've done a reconciliation of the amounts that I'd drawn and made the appropriate arrangements with my tax agent and the, and the ATO if there was a discrepancy. At this stage I haven't had the opportunity to do that and yes I did, in terms of process error with the Honda, obviously there's an error there in, in what I did, but - - -

Well, we're not talking about that, are we? We're talking about the drawdown of the funds?---My intention, my intention and the arrangements that I've made were for the purchase of the vehicle.

But each time you drew funds from the salary sacrificed money it was not for the purchase of a vehicle at the time you drew it down, was it?---No, not in those instances but it doesn't change that at some point there would have to be a reconciliation in terms of a purchase.

10

So when you sold the Honda was there a reconciliation in relation to the 5,500 you'd drawn down in August, 2007 prior to the sale of the Honda?
---No.

Why not?---I don't know. I'd have to think back and try and remember why.

Because there would've been a tax liability that arose, wouldn't there, and you well knew that, didn't you?---I don't know, I don't know.

20

You well knew there was a tax liability, didn't you?---No, I did not.

And the money was there, the salary sacrifice for a car purchase, not to be used as a general bank account, would you agree?---No, that's not right.

If I could tender that bundle.

30 ASSISTANT COMMISSIONER: Mr Romano, is it your evidence that you think you could have got tax free money paid into an account you nominated under salary sacrifice just to use for whatever you wanted, that you could have told the Council, I want you to pay me \$10,000 tax free into an account I nominate?---No, I - - -

40 You can only salary sacrifice for very specific items, can't you, because you're getting tax free money?---I, I understand what you're saying. I didn't realise that, that in terms of where the money was kept that, that it would create an issue by me drawing it down. I, I had, I had no understanding that by me drawing the money out, whether it was being kept by me in a personal account or whether it was being kept in trust by Council it would create a problem. My intentions always were to purchase a vehicle from Council. The (not transcribable) I'd kept for a couple of years. It was always my intention to see it out to the end of the contract. The only way that I could get a benefit out of the arrangements that I'd had in place was to kept the car for, for a four year period. It's not usual for cars to be kept for that long. They get turned over regularly every 40,000K or whatever the market value was such that they'd be an advantage for Council. So my view was I'd keep the one car because it was a good car, it was a nice car that I had the opportunity to purchase for the contract arrangement that I had and

it was my intention to buy that. Now, I did draw down from time to time and in hindsight it was probably , you know, an inappropriate way to account for the money but I did have intentions of reconciling the amounts that I had drawn down at the time that, you know, I purchased the vehicle from, from Council. In terms of my taxation arrangements, I, I, I don't know what my accountant's done. I'd have to check with him and in terms of the moneys that I've drawn to date, well, the car has been taken away from me from demand by Council so I haven't had the opportunity to, to request to buy that car as of April this year. So I'm going to have work out some arrangements with my accountant in terms of whatever taxes I might owe but it wasn't done intentionally.

I can't understand how you would be allowed to draw down on it at all. It's salary sacrificed money that's been put aside for a specific purpose. I mean, the Council couldn't then just give it to you tax free to use at your will. I can't understand how it happened?---I, I, I can see that but you see (not transcribable) didn't draw that to my attention either and if I was in error I would've expected him to, to tell me that.

20 Who didn't, sorry?---Mr Walker, the CFO, didn't draw that to my attention if I was in error but it wasn't a deliberate (not transcribable) on my part to, you know, take money. It's not, it's not what I do.

MS RONALDS: And you understand you pay tax year by year?---Yes.

So it's not a matter of four years later trying to work it all out backwards, is it?---Look, I accept your argument.

30 It's your responsibility to manage your tax affairs, isn't it? It's not Mr Walker's responsibility is it?---I rely on my accountant.

Yeah. It's not Mr Walker's responsibility, is it?---If I was drawing moneys inappropriately and there should've been taxes paid that weren't paid then I would've expected him as an accountant to draw that to my attention. I'm not an accountant.

40 So it's his responsibility to attend to your personal taxation affairs, is that your evidence?---No, what I'm saying is that if, if, if he believed what was said that there was an error in the process I was undertaking, that he could've drawn that to my attention. He obviously, it didn't occur to him either.

I wouldn't make a guess on Mr Walker's behalf, Mr Romano?---Well, I don't know what to say to you.

Well, is it your serious evidence that you didn't understand what salary sacrifice meant?---I had a general understanding - - -

You're the general - - -?--- - - - but it didn't, but it didn't occur to me while I was drawing down those amounts that, that I was actually creating a problem.

If I could tender that bundle.

ASSISTANT COMMISSIONER: Yes. Now, what is this that you're tendering?

10 MS RONALDS: The first one is, it's the, you asked a question. I don't think we've formally marked it on the record.

ASSISTANT COMMISSIONER: I'm sorry, I still don't know what's been tendered. Is it this big bundle - - -

MS RONALDS: This big bundle that starts with a Howe email dated 19 July, 2007.

ASSISTANT COMMISSIONER: And it relates to?

20

MS RONALDS: Terms and conditions of Mr Romano's employment, alterations therein, et cetera.

ASSISTANT COMMISSIONER: All right. Well, that bundle of documents will be Exhibit 311.

**#EXHIBIT 311 - BUNDLE OF DOCUMENTS - TERMS AND
CONDITIONS OF MR ROMANO'S EMPLOYMENT**

30

MS RONALDS: Now, after you'd commenced employment at Burwood Council or that is in 2005, you joined up as a Qantas member, do you remember that?---Yes.

And you got Council to pay your joining fee and two year membership?---I can't recall but that's possible.

40 And where do you say that this was an entitlement?---Well, it certainly was an entitlement on my contract, if that's what you're asking.

Mmm?---Yeah. I believe it's an operational issue and I had occasion to travel for, for Council as part of my role.

Not very often, was it?---No, not very often. I wouldn't say, you know, frequently, no, but there were occasions that I would travel.

Once or twice a year you attended a conference within regional New South Wales?---That's right.

A local government conference?---That's right.

You didn't require membership of a Qantas club, did it?---I did make that, that particular transaction in consultation with the Mayor of the day.

10 I'm sorry, in consultation with whom?---With the Mayor of the day.

And so there's a signed minute somewhere is there, approving it?---I, I, well, I, I - - -

Who is the Mayor of the day do you say?---I can't recall.

If I could show you this document. Would you be aware that it is extremely unusual for Qantas club membership to be part of a local government general manager's entitlement?---I, I, I wouldn't know, I'm not sure.

20 So you know about some things but not others about what (not transcribable) is that right?---Well, I, I don't seem to know enough according to you, with all due respect, but look, I don't know everything and there are some things that I do know about, and some things that I don't.

I just take you to the third page. You see there the sum of \$970?---Yes.

30 Paid for you to join and have a Qantas membership for two years and I suggest to you, you had no entitlement to that amount to be expended by Council, would you agree?---No.

And you had no use, proper use for a Qantas membership as part of your work conditions. Would you agree?---No.

You travelled infrequently by aeroplane as part of your job. Would you agree?---If I may explain.

Just answer the question please?---It would've been infrequent, yes.

40 Thank you. If I could tender that document.

ASSISTANT COMMISSIONER: Yes. The charges to the corporate card November, December 2005 will be Exhibit 312.

#EXHIBIT 312 - BUNDLE OF DOCUMENTS – CHARGES TO THE CORPORATE CREDIT CARD NOVEMBER/DECEMBER 2004

MS RONALDS: If the witness could have 172 returned, it's a single folder, the expenses folder and then all those other materials can be taken away. Sorry, Mr Romano, I've been told that there's a statement provided by you that apparently was delivered this morning once the hearing had commenced and it's about one of the issues that I intended to cross-examine him about. I've not seen it so I am at somewhat of a disadvantage and I'll have to, perhaps I'll return to that in the morning, I had hoped to complete this afternoon for both our sakes but I'll have to leave it because I haven't had a chance to read it and I don't want to be doubling up. Could you turn
10 to page 112?---Yes.

And if I could take you to entry number 9. See it's April Advantage Plus membership for \$279?---Yes.

Where do you say you had an entitlement to do that, to join up to that?
---Again it was, I perceived it to be an operational issue, at the time that I inquired about the car I was told that it could be used for business purposes. I had discussed the matter with our HR manager Mr Macklin, we were
20 going to use some of the services that were going to be provided with that card for other staff to use. After we purchased the card we found out that the company wouldn't allow the transfer of the car because they wanted it under a specific name and we couldn't use it for the purpose that we thought we could.

And I'm suggesting to you it was unauthorised expenditure. Would you agree?---I, as I said I thought it was an operational issue, it was going to be used by the staff generally and that was the thought process that went through my mind at the time.

30 And do you accept that the only person who obtained a benefit then was you?---It would appear that way and as I said the company informed us that it wasn't transferable and it wasn't the way it was described to us over the phone when we purchased it.

Now, in relation to the employment of Mr Becerra you've put in a statement and if you can shut that folder up. Assume I've read it. What I suggest to you is this that by the time Mr Becerra was employed by Council the conflict of interest between you and he had changed significantly from 2005 hadn't it?---It had changed, yes, I entered into a business relationship with
40 him.

And as I read your statement you seem to be saying because I told somebody in 2005 I didn't need to tell anyone else in 2007?---Well, no, that's not quite right.

That's not a fair reading of the statement?---No, well, I don't know whether that's been articulated well but - - -

It's your statement isn't it?---Yes, but if I can continue I can elaborate.

No, listen to the question. There was by early 2007 a significant conflict of interest in terms of any involvement that you might've had in Mr Becerra's employment. Would you agree?---Sorry, could you repeat the month, when do you think that that occurred?

Sorry?---What was the timeframe?

10 Once Befaro was set up and the purchase of the units at Edwin Street had occurred there was a significant business relationship between the families wasn't there?---Yes.

And you and he were working together on renovating the units and performing other tasks associated with Edwin Street?---In late 2007, yes.

And that was a matter I'd suggest to you that you should have fully declared. Would you agree?---Yes, and I thought I had in my pecuniary interest form.

20

And your pecuniary interest forms were kept in your office weren't they?
---Available for all to access.

They were kept in your office weren't they?---Yes.

And they were not available to all to access were they?---They were available to the appropriate officers, yes.

If they went and asked for them?---Yes.

30

They're not piled in the library are they for anyone to wander in and have a look at?---No.

In fact you kept them fairly strictly closely in your office didn't you to discourage anyone from having free and easy access to them. Would you agree?---No.

40

Well, why did you have to rely on people seeking out something, why didn't you openly declare to the executive that you and Mr Becerra had a business relationship?---I did openly declare that. I did that a number of times, I did it - - -

You heard the, I'm sorry?---I did it in 2005.

Don't worry about - - -?---I also declared to my executive on a number of occasions my relationship with him, I also declared it in my pecuniary interest forms each year.

And you've heard the evidence, I'm sorry?---Each year from 2007 onwards.

You've heard the evidence of all the members of the executive none of whom agree with you?---Well, I don't know that none of them agreed with me but I did - - -

Well, on the knowledge, the state of knowledge about the relationship between you and Mr Becerra who do you say agrees with that version of events that you just said?---Mr Hullick was in the chair this morning and he
10 said yes, that he knew there was a friendship between he and I.

I'm not talking about the friendship am I, I'm talking about the business relationship?---It was declared in my pecuniary interest forms. The pecuniary forms were there to be viewed by all, in fact in terms of the executive each year we reviewed a report that went to Council with those documents there freely available for all of them to look at. I know that some of them had looked at it now whether they've, you know, chosen to either forget or, or not want to talk about that here at this Commission I don't know but they were freely available, they were part of reports that we
20 put to Council each year and I know that each of them at one stage or another had access to those documents as part of that reporting process.

Why didn't you say I can't sign the contract there's a conflict of interest?
---Pardon?

Why didn't you say I can't sign that contract there's a conflict of interest?
---Which contract are we talking about?

Mr Becerra's 2007 employment contract?---Okay. I, I believe that it was a
30 recommendation that was an unanimous decision of a panel that had been set up by others that came to me. Basically all I was doing was, I won't say rubberstamping but signing off and authorising that, that decision that others had made. I actually did not make that decision, it was recommended to me.

You were signing the contract, Mr Romano, why didn't you say I can't do that, I've got a conflict of interest?---In hindsight I probably should've.

Well, don't worry about hindsight, you knew everything you knew then, you knew what the arrangement was in 2007?---I'd like to think that we
40 grow and learn and certainly my knowledge of conflict of interests and perceived conflict of interest has grown enormously in the last three years and what I, what I thought was a right thing back then today I have a different opinion on.

And I suggest to you the only reason you did make a declaration in 2009 is because the relationship had been fully exposed in the Sydney Morning Herald. Would you agree?---No, as I said my knowledge and understanding of conflict of interest has changed significantly and it, I understood in 2009

that really I shouldn't have had any involvement at all with, with that contract.

And I'm putting to you the only reason that you completed the handwritten note was because by then it was known by the members of the executive because it had been on the front page of the Sydney Morning Herald, that's the only reason you changed it wasn't it?---No, I disagree with you.

10 And I'd suggest to you that there was no legal entitlement for Mr Becerra to be paid extra payments in 2008. Would you agree?---I would disagree with you.

And you were just doing a favour for a mate weren't you?---No, I wasn't.

And a fair reading of the emails that you've provided now suggest that you were encouraging him along the way to put in the invoices. Would you agree?---I thought he was entitled to those payments and I, I did not, I did not discourage him.

20 And you didn't trouble to go back and look at the contract did you when those payments were being discussed in 2008?---No, I didn't look at the contract, no.

And had you done so I'd suggest to you you would've found there was no legal entitlement for those payments. Would you agree?---No, I had seen the contract that he's signed previously, I had skimmed through it and it was my belief at the time that he was entitled to those payments.

30 And I'm suggesting to you it was just to do a favour for a mate wasn't it, a bit of extra money for him?---No, I disagree with you.

Now you had a meeting with Mr Baird and Mr Becerra on 14 March, 2007. Do you remember that?---I don't know that I can remember that specific one, but I'll do my best.

Well, do you remember it?---I know that I had a meeting on that day, yes.

40 And there's a handwritten note from Mr Becerra recording certain matters that were discussed?---I recall seeing that note in this hearing if that's the one that you're talking about.

And just for the record, it's Exhibit 114. And I'm suggesting to you during the course of that meeting you didn't advise Mr Baird about the details of the business arrangements between you and Mr Becerra did you?---Possibly not in that meeting, but certainly beforehand. Mr Baird was well aware that I was in a business relationship with him.

Well, that's not (not transcribable)?---He had recommended a bank that we could approach in terms of a loan that we were looking at. In terms of buying the Befaro property at Edwin Street. He knew our arrangements.

Well, that's not his evidence is it?---I understand that's not his evidence. But they're the facts.

From your perspective?---Well, that's what occurred.

10 And I'd suggest to you that you organised terms and conditions of work for Mr Becerra that were highly favourable. Would you agree? That is the eight hours work that had to be done on premises and the capacity to undertake other work?---The eight hours was reference to him being at, at the Council premises, not the amount of work. He was required to do whatever hours were needed to complete the project that he was involved in. And they weren't terms that were drawn up for him specifically. They were terms that were discussed with Mr Hullick for the role for anyone that might apply for it and ultimately be engaged by Council.

20 Mr Romano, what I suggest happened was that there were certain matters included in the advertisement but that wasn't included in the advertisement was it?---I wasn't involved with the - - -

Just answer the question, Mr Romano?---Well, I don't know. I, I don't know who drafted the advertisement.

See what I suggest to you is you had the terms and conditions changed after the advertisement to advantage your friend. Would you agree?---No.

30 And that no other employee at Burwood Council had similar terms and conditions of employment did they?---Not that I'm aware of. But that was a special project that was being developed by Council. It required certain skills and it was difficult to get the type of arrangements that we wanted outside of a company arrangement which we had with BKA. So it was a specialised and very unique position.

So the answer is no?---Well, I hope I have, I'm not sure.

40 Excuse me for one moment. In relation to the position of Acting General Manager. I've seen an email appointing Mr Hullick in relation to the Cummins employment status. Do you recall that one?---Yes.

And I've seen one about Mr Dencker in the depot reform?---Yes.

Who did you appoint to be Acting General Manager in relation to liaison with this Commission and the investigation they were undertaking?---There was nothing formal that, that was put to anyone in particular.

Why not?---But there were discussions that I, I had with Mr Hullick and, and, and our lawyers. It, it was an unusual period of time. There were complex issues that were unfolding daily. The genesis of the issues date back to early February with - - -

10 Mr Romano, if I could just stop you here. All I asked was why was there no formal arrangement for someone to be Acting General Manager to liaise with the ICAC, given that you had an obvious conflict of interest?---I was trying explain by giving you a bit of background, but if you want me to be a little bit more succinct, I'll - - -

Yes, I would, thank you?---I'll try and do that without - - -

Thank you?---my words being taken out of context.

20 Thank you?---The extraordinary meeting at Council that occurred in, in the week of the, I think it was 7 or 6 of April, there were certain statements that were made by me and, and there was a resolution of Council that was declared. It was my understanding and expectation that, that Council's
30 lawyers in conjunction with the Mayor would put into place arrangements that would enable the resolution and the statements to be adhered to. That never really happened. There was no formal arrangements that were put to me, I, I don't know why those formal arrangements didn't happen and why Council didn't appoint an Acting General Manager, I didn't think I had a role to play in that but I did have discussions with Mr Hullick and others at that time and it was agreed that Mr Hullick would assume the roles in terms of direct access and direct contract with the ICAC. It was also agreed that he would, he would take on board the issues that were raised in the Herald articles and the discussion that occurred was around your appointment in
40 terms of the investigation of the Cummins matter and it was my understanding that Mr Hullick and Mr Baird were going to brief you in relation to adding those issues, those other issues that came along, the Herald stuff and ultimately the ICAC matters to that original Commission. But as I was saying earlier daily things were changing, the issues were complex, we had little guidance or very little dialogue with the ICAC. There was a point in time where we were asked to cease your Commission and not take any active involvement in, in further investigations. It was a complex period of time, I don't know what the exact reason why no one was appointed specifically to take on that role but there were a number of people
40 that were working together. Because there was lack of guidance I kept my involvement in the matters but to the best of my ability and to the best of my knowledge I don't think I made any decisions in relation to the matters that may have been a crossover a conflict on my part.

I suggest to you you continued to play an active role from 6 April up until the date that you were stood down from your employment, would you agree?---You, you describe active as being informed and, and having a say as a non-decision maker, then the answer is yes.

And you attended a number of meeting which have been referred to in this Commission as either strategy meetings or legal meetings at various lawyers' offices and I suggest to you, you shouldn't have attended any of them, should you?---I instigated them, I co-ordinated them and I actively ensured that people participated but I did - - -

10 And I'm suggesting to you - - -?--- - - - but I did not make decisions in relation to those matters and I had lawyers surround me and my staff to ensure that we weren't crossing over into territories that we weren't supposed to. We were given very little guidance. We're not experts, we're not lawyers.

Finished? You understand that lawyers give advice, don't you?---Yes.

And the advice is based on the instructions they receive?---In part, yes.

20 And in terms of factual matters, for them to give correct advice they need to be given correct factual matters put before them so that they can determine the issues, would you agree?---I think that the role of a client and a lawyer is quite complex. There needs to be an active part on both sides. Yes, there needs to be a factual statements made on the client's side but I will expect that a good lawyer would also interact with their client and ensure that the facts were extracted and were accurate and correct so there needs to be a partnership.

30 But lawyers don't make any decisions, do they?---I agree with you, they don't, but they certainly make recommendations and they give advice which assist in the decision-making process and ultimately a lot of clients, me included, will take that advice holus-bolus and make the decision based on that advice in its entirety.

That well - - -?--- - -And they, sorry, assisting counsel.

Go on?---It's all right. I'm - - -

That well maybe the process, yes, you are, if you could just focus on answering the questions?---Yes.

40 That well may be the process but you accept, don't you, if you or any other individual makes the decision the responsibility for the decision is that of the General Manager or the member of the Executive of the Council in your instance who've made the decision?---Yes.

Now in relation to the Section 22 Notices that were served on Council, you saw those when they came in, didn't you?---Some of them.

And you saw, you certainly saw 9 June one, that was the first one on the day that it arrived. Would you agree?---Yes, possibly.

Well, not possibly, it's correct isn't it – it was sent to you by Mr Baird on 9 June after it was delivered by him by Commission Officers.---I believe so.

And you had a conversation with him about it?---I may but I can't recall.

10 And you were concerned about the breadth of the documents being required weren't you?---No, I don't think I said or talked to him about that.

I didn't ask you that did I? I asked you whether you were, I said to you, you were concerned about the breadth of the documents being looked at. Would you agree?---No.

Because you were concerned about what that showed about the breadth of the investigation being conducted by this Commission?---I think it was obvious to all involved that it was quite an involved investigation.

20 Listen to the question. You were concerned that the Section 22 Notice of 9 June 2009 showed that there was a broad investigation occurring here. Would you agree?---From what I saw in those documents, yes I would agree that it appeared to be a broad investigation.

Now are you able to explain how it is that you have documents that you've produced in your statements that were not produced by Council?---Um, I have a Council laptop.

30 Yes.---It's hooked up to the network – all the documents that I produced here to this Commission were taken from my laptop from the inbox in my emails. I can't understand why Council doesn't have what I have in my computer.

I don't either – that's why I'm wondering if you could assist us.---I don't know.

Not because you would delete documents from the mainframe and put them in a separate folder, that's not the explanation?---Absolutely not, I wouldn't know where to start.

40 So if somebody described you as being technologically advanced, would that not be correct?---Um, I don't understand that question. If you say to me, do I have a knowledge of computer software applications such as Word and Excel, Cad type software for engineering purposes, yes I'm familiar with those sorts of applications. If you're asking me whether I have knowledge and expertise in writing script, computer script or accessing servers or mainframes, no I don't.

Turning to a different issue. Do you recall that received some anonymous correspondence about the depot?---Yes.

In 2007 and then in 2008. Do you recall that?---Yes, I do.

And you didn't institute a depot investigation in terms of IPP type of surveillance when you received those did you?---No, I did not.

10 And I'd suggest to you that in the middle of 2008 the reason you didn't institute any sort of surveillance from IPP or their equivalent was because you knew that if anyone was followed, including Mr Child in particular, he would go straight to the Edward Street units and questions would be raised. Would you agree?---No, I disagree entirely.

And that was the real reason why it didn't happen and by the time you did institute it in early 2009, you and Mr Child had fallen out and he wasn't going to the units anymore so there was not threat of his involvement in the unit being disclosed. Would you agree?---No, I disagree entirely.

20 You see, it was necessary wasn't it for Morrison Low to know what the real situation of the depot was before they started their review.---I'm sorry, I don't understand your question.

Well, the anonymous letters raise some issues about theft and mis-use of Council property didn't it?---They did, yes.

And as I understand it, you did nothing about that at the time which the letters were received. Is that correct?---No, that's not correct.

30 So what did you do about the theft and mis-use of Council property allegations in mid-2008?---I had no evidence that that was occurring um, there was a lot of disgruntlement at the depot. There were two - - -

Mr Romano, I asked you a very simple question. I asked you what did you do when you received the allegations in mid-2008 about theft and mis-use of property?---I spoke to Mr Macklin - - -

40 Could you please answer that question.---I spoke to Mr Macklin. Explained to him that I was concerned about the allegations, that was the second, possibly even the third letter I'd received in relation to issues occurring at the depot. There were lots of verbal complaints that had been received throughout that year as well. So I was very concerned. Mr Macklin's view on the matter was that he didn't think it was appropriate for management to act on anonymous letters and he was reluctant to investigate. He was reluctant to pursue the matter. He'd expressed a similar view at the end of 2007. I wanted him to conduct an investigation into the allegations and interview staff about it but he wasn't supportive of that. So the next action I took was to – in consultation with Mr Macklin was to imbed the anonymous

letter complaints within the review process of the Morrison Low brief. By that stage they had been commissioned, they were underway and I didn't feel that it was necessary to go an extra step at that point in time given that we had Morrison Low onboard and given that they were made aware of the complaints within the letters and the verbal complaints that we'd received.

10 But they didn't have any capacity to assess those complaints in the terms of the process they were undertaking did they? That was not part of their review process.---My view has always been to give the benefit of the doubt and my instructions to Morrison & Low team were that they would review processes and systems so as to avoid those sorts of issues occurring in the workplace. I didn't want them to be there full stop and we had issues with the chain of the command, we had issues with processes, we had issues with systems down there, we had issues with the quality of staff that we had down there. So my approach was to, in the first instance, look at those issues rather than launch into investigations.

20 And that was an entirely unresponsive answer to the question wasn't it Mr Romano – I didn't ask you anything about any of those issues did I?---You asked me what I did and I - - -

No, I said to you that there was no capacity for Morrison & Low to assess the allegations within the context of the terms of their review, was there? ---It wasn't the commission that we gave them.

No, thank you.---What I gave them - - -

30 Thank you. Now the surveillance of the depot that commenced in 2009 was a process driven by you as in, the main initiator, wasn't it?---No.

Well, who do you say drove it?---Well um - - -

Who initiated it?---Will you allow me to - - -

Mr Romano it's a very simple question. I've asked you whether you initiated. You said no. Who initiated it?---I don't recall who initiated it.

Just fell out of the sky did it?---I don't recall who specifically raised it.

40 Well, I'm suggesting to you that you did. Would you agree?---Um, I was part of that decision process but I don't recall whether it me or someone else that made the initial suggestion.

And what do you say was the reason why you did institute it, that it was instituted? What had changed suddenly?---I don't think there were any sudden changes. There was a cumulative build up of aggression from certain staff members at the depot, disgruntlement, the union involvement, management continuing to push the reforms that we'd started. I think it was

a cumulative build up of a number of issues but in the end the executive when we got together in February, decided that we needed to put to bed ultimately the allegations that had been made and continued to come out of the depot in February '09 that was. There was still complaints from staff that there was theft and other unauthorised activity occurring and the executive decided that the best way to deal with that was to engage some sort of surveillance.

10 And one of your motivations, I'd suggest, was that you were looking for dirt against Mr Child and Mr Giangrasso, weren't you?

---No, that's not correct. It was at the meeting that we had with the Executive in February I actually stepped out. I said to the Executive, given the allegations that have occurred against me earlier that months, I felt that I was conflicted and didn't participate in any decision-making from that point onwards. I, I actually invited IPP to talk to the Executive, which they did, and I believe that the Executive approved IPP to conduct surveillance. I knew it was occurring but I wasn't part of that decision-making process.

20 You were receiving regular reports from Mr Mailey, weren't you - - - ?---Absolutely, yes.

- - - during the whole process?---Yes.

You were the main person he was reporting to?---I don't believe that's right.

Well, that was his view?---He was reporting - - -

30 Do you recall his evidence?---In part but I do believe that he was reporting to Mr Macklin and also our lawyers through Ms Wilson.

He was, you were the main contact for Mr Mailey, weren't you, certainly in his view?---Look, I don't know what his view was.

Well, you were here when he gave his evidence, weren't you?---Yes but, you know, I don't profess to know what he was thinking. He was reporting to me and I, I do believe that he was engaged and was reporting formally to Mr Macklin and Ms Wilson.

40 And there was concern in the Executive about the continued expenditure on the investigation since there seemed to be nothing coming from it, do you recall that?---I, I was aware that the investigations were, were lengthy.

That's not what I asked you, is it? Would you please focus on the question, Mr Romano. You were aware that the members of the Executive were concerned about the on-going costs of the investigation as it appeared not to be having any product, would you agree?---No, not entirely.

But you knew that that was a concern?---I was told that there was discussion about that, yes.

And you were told at the time, weren't you?---I don't recall when I was told.

And who told you?---I, I, I think and I stand corrected here, it might've been with Mr Macklin.

10 And do you recall receiving a letter on 1 April, 2009, addressed to you from the union signed by Ben Krues?---I got a number of letters from the union during that period. I'm sorry, you'll have to refresh my memory.

About the surveillance?---There were a number of letters about the surveillance.

If the witness can be shown Exhibit 204?---It's okay, I can see it on the screen.

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

Well, that raised a serious matter, didn't it, that is, was there value for money in continuing surveillance when those being, those under surveillance or at least some of them had noticed that they were followed ---I did raise the issue with Mr Mailey after I received this letter and his view was that they would re-organise themselves, re-position themselves and that they should continue to monitor as per the original brief.

30 But he had a financial interest in continuing, wasn't it? He was being paid? ---Most experts have a financial interest when they're providing advice.

So in terms of his - - -?---His - - -

Sorry?---His explanation to me seemed logical and reasonable. I did direct him to Mr Macklin and, and the lawyers and I, I would, I think and I assume that he reiterated that to, to those people and the commission was continued. I, I, I didn't play an active part in ceasing or recommencing or continuing his work. He was just keeping me informed.

40 Can the witness be shown 225. You see where it says that, "We were advised at 11.00am" on the front page there, "on Saturday, 4 April, to cease". Was that you who advised IPP?---No.

Were you party to that decision?---No.

See, that's the day that the Sydney Morning Herald published the articles, you're aware of that?---Yeah, I was very much preoccupied with the articles.

And in terms of the following week, what role if any did you play in reinstating the surveillance?---None whatsoever. As I explained to you, I, apart from being briefed, didn't play an active role in IPPs commission.

Now, I'll show you a copy of your diary or the notes in a book. It's not really a diary. And I want to take you to the page that I'll open it up at, the right-hand side and just if you could assist me. Am I correct in interpreting that because 8 April is on the left-hand page, that that also applies to the right-hand page? That was one of the days Mr Child was under surveillance?---Yes.

Would that be a correct assumption on my part?---Yeah, it is, yes.

And so that would be a note that you wrote during the course or at the end of your discussion with Mr Mailey?---It was partly both. I recall I was having a meeting with Mr Howe. It was at a coffee shop in the vicinity of Council. While I was having the meeting with him I received a call from Mr Mailey and he was quite distressed. He was basically, the intent of his call was to put me on notice that his operatives had rung him, that they'd overheard discussions of Mr Child and others that he felt that there was a threat to me and my staff and that I should be aware of it and, and, and take whatever action I thought was appropriate. I was quite concerned during that conversation and I noted my concerns to Mr Howe and, and he and I both discussed what, what an appropriate action might be. I made - - -

And did you go to the police?---I can't recall if I did or not, I - - -

Well, doing the best you can?---I can't remember.

And you've got Mr Gorry's mobile phone number down the bottom there. So did you call him?---I, I can't remember.

If I can tender that?---I know that I, sorry, I know that I made a note on the diary saying duty of care and should I notify the police for me and Mr Azer and that was after, after the discussion I had with Mr Howe about duty of care.

It was a bit of an over-reaction, wasn't it?---Look, there was a lot happening. There were lot of emotions and there were lots of people I (not transcribable)

It's a bit of an over-reaction, wasn't it?---No, I, I, I think as an employer I have a duty of care and I felt that, that was a consideration I had to, I had to put forward.

If I could tender a photocopy of those pages. I'll just note that the ones I'm distributing I've blocked out Mr Gorry's mobile phone number. He won't get any unsolicited and unwanted calls from anyone in the room.

ASSISTANT COMMISSIONER: Yes, those pages will be Exhibit 313.

#EXHIBIT 313 - EXTRACT FROM MR ROMANO'S DIARY

10

MS RONALDS: Now, you know that Mr Child's house was placed under surveillance at one stage?---Yes, I received a call from Mr Mailey and he did point that out to me.

And was that your instruction that the house be placed under surveillance?
---No.

Had you ever said anything to Mr Mailey to suggest that Mr Child had misappropriated Council property?---I, I did have discussions with him. I don't know when, where I gave him information in relation to allegations that had been presented to me and the anonymous letters and the verbal complaints from staff.

So is the answer yes or no?---Yes.

And what evidence did you have to support such a suggestion?---Only from the complaints that I'd received.

Turning to Mr Cummins. After you received or after you were advised about the Harmers letter, you wanted to get rid of Mr Cummins out of the employment of Burwood Council, would you agree?---No.

And you said that to members of the executive didn't you?---No.

You made it very clear to them that you didn't want him back. Would you agree?---No.

You were very angry about the allegations weren't you?---Absolutely.

40 Because you knew some of them were true?---I disagree with that.

And you knew that if anyone investigated them you would be exposed?
---Quite to the contrary, I openly and actively pursued an investigation to the point where you were engaged to run an investigation.

Why didn't you stand down on 6 April from your role as General Manager until the matter was sorted out?---I didn't believe that me standing down would achieve anything that, beneficial for the Council or the community.

That's what my opponents wanted, they actively and are still pursuing a, what I call a smear campaign against me. They've actively tried to discredit me and continue to do so. I still believe that today and I believed that back then.

Are you serious?---I wouldn't be saying it if I wasn't.

10 See I'd suggest to you that you made it abundantly clear to the executive and Mr Macklin that you wanted them to do everything they could to make sure that Mr Cummins never came back to work. Would you agree?---You would be aware that Mr Cummins' letters made it abundantly clear that he did not want to be an employee of Council.

Can you answer my question, Mr Romano?---Sorry, would you repeat your question.

20 You made it abundantly clear to the members of the executive and to Mr Macklin that you wanted strategies in place to ensure that Mr Macklin did, Mr Cummins did not return to work at Burwood Council didn't you?---No, that's not correct.

And you encouraged them in the development of those strategies to ensure that, strategies were put in place to make sure that that occurred, that is, that he never returned?---No, that's not true.

And you knew that he had suffered a psychological collapse didn't you?
---No, I was not aware of that at the time.

30 You saw the medical certificates that were coming in?---I saw a couple of them and I had the same view as Mr Hullick which was that, sorry, do you want me to continue?

Please continue?---I'm happy to stop if you think I'm rambling but I don't mean to ramble.

Don't you?---No, I don't, I'm trying to offer information for you.

40 If you listen to the question and answer it it will probably make it easier for both of us. So you and Mr Hullick, did you and Mr Hullick discuss the fact that you didn't accept the validity of the medical certificates that Mr Cummins was putting in?---No.

Did you talk about reporting the doctor to the AMA because you thought they were fake medical certificates?---I don't know that they were fake but I wasn't convinced that Mr Cummins was truly as ill as what he was making out to be.

You had medical certificates saying he was unfit for work and you doubted them did you?---The medical certificates weren't very comprehensive, they were very brief, they didn't go into the detail of his condition. I did pursue the matter with Mr Macklin, I rang him and spoke to him about my concerns and his response to me was that he wasn't able to talk to Mr Cummins, he wasn't able to reach him by phone, that the only correspondence at the time that he was able to, or had at the time was via email and that it was made clear to him that, by Mr Cummins that he didn't want to have any dialogue with Council at that point in time. So I wasn't in the position to make a more objective assessment of what his medical condition was, all I knew was that he, he was not well, I, we had an argument prior to him leaving so I took that to be part of his issue that he wasn't happy with Council anymore and wasn't happy working for me or the organisation.

So in the absence of any objective evidence you formed the subjective view that he wasn't so sick that he couldn't come to work?---Well, particularly after we got the, what you're referring to as the Harmer letters - - -

So is the answer yes?---I felt that once we got the Harmer letters that that was a strategic ploy on his part, yes.

You now accept that view was wrong or is it a position you still maintain? ---Well, I, I, again with all due respect and I'm not trying to be smart I just don't have the evidence in front of me to say one thing or another but it's not impossible, I do believe that he probably is quite ill.

Can the witness be shown Exhibit 155. Could I ask you to turn to page 60. See the large handwritten numbers down the bottom?---Yes.

It's a letter you've had occasion to see before?---I think I've seen this one.

You were aware at the time that this letter was being sent to Mr Cummins weren't you?---I was aware that they were writing to him, yes.

And you were aware that, if I could ask you to turn to page 62, that the final three paragraphs were being included?---I don't recall seeing this letter at the time.

You were aware that it was going?---I was aware that there was correspondence going to Mr Cummins.

And you were aware that it included the last three paragraphs?---I, no, I wasn't aware.

So is it your serious evidence that you didn't know that his employment was being threatened if he didn't answer the letter?---I don't believe I saw this letter - - -

No, that's not - - -?--- - - -before it went out.

- - - the question is it, Mr Romano. What I'm asking you is were you aware that his employment was being threatened by Council if he didn't answer the letter?---No.

And I'm suggesting to you that you were well aware of it and it was part of your strategy to try and get rid of Cummins from employment at Burwood Council. Will you agree?---Absolutely not.

10

And it was part of your direction to Mr Hullick and Mr Macklin to do everything they could to come up with a strategy to get rid of him wasn't it?---No.

20

Well, have a look at it now, do you think that was a fair thing to say to someone? If you don't answer the letter, if you fail to respond it will be taken into account as to whether Council can reasonably continue your employment?---Well, it does say that failure to respond will be taken into account for any decision that are made about his employment. It doesn't say that it's the sole reason for termination or, or, you know.

Well, it doesn't say any other, anything else will be taken into account does it?---Well, I, I disagree with that, I think the letter was seeking a whole heap of information from him. It was clear from the information that's been requested it was to do with his management and, and responsibility for those matters.

30

It may well be, Mr Romano, but the only thing being addressed in the last paragraph is a failure to respond isn't it?---Well, I disagree with that. I think that it's implied in the first few words of that last sentence that it's a response to the questions that have been asked in the letter. I can understand though that you or others may read it in another fashion. I think it's easily interpreted both ways.

What's the other way, I'm sorry, I'm not completely confused?---What you're alleging which is failure to respond at all to this letter will be reason for termination of his employment. I can see that, I can see that someone can read it that way. It's not the way I would've read it.

40

What do you read it?---That the staff were seeking his views on the issues being raised in the correspondence and whatever his answers were would be weighted up amongst other things in terms of whether he was going to be held accountable to it.

That's how you read it is it?---Sorry?

That's how you read it?---That's the way I understand it, yes.

You see I'd suggest to you that a failure to respond to this letter it would be unfair to suggest to someone who is on sick leave that if they don't respond that it will be taken into account as whether their employment should reasonably continue. Would you agree?---Sorry, so that I don't fall into a trap or rambling again would you repeat the question please.

You knew that Mr Cummins was on sick leave didn't you?---Yes.

10 And what I'm suggesting to you is it was entirely unfair to send to someone on sick leave a detailed letter with a threat to their employment contained in the last sentence. Would you agree?---Are you asking me for my opinion as an individual or as the General Manager of the Council?

The General Manager of Council at the time on the basis that this letter was part of your instructions to your executive and senior staff to get rid of Mr Cummins?---Okay. Well, there's two parts to what you've asked me. Firstly, I did not instruct my executive or anyone to get rid of Mr Cummins. Secondly, if I had any say in the decision of sending this particular letter in the detail that has been articulated in this correspondence I would've, I
20 would've as the General Manager of Council not allowed the correspondence to go out in that fashion. I would've changed it. Well, in my experience and in my opinion and I'm not an expert, I'm not an employment lawyer should we have taken action to terminate Mr Cummins based on, on this, these words in this letter as you're implying? I think it would've been unfair dismissal. So I wouldn't have taken party to putting my signature on correspondence that was ambiguous and possibly insensitive.

30 On or about 4 May, 2009 did you read the reply sent on Mr Cummins' behalf by Harmers?---I can't recall.

Are you aware that the Cross Functional Team, the IS Cross Functional Team never went any further with this review after the receipt of Mr Cummins' reply?---I don't know that it was a, I don't know that the ISCFT didn't go any further as a result of that reply but I am aware of why they did not pursue it.

40 Why do you say they didn't pursue it?---There was a meeting at Maddocks at some point and I can't recall exactly when now where there was a presentation made by Mr Phegan and others in relation to issues that had come out of the review of the IT area.

If I could just stop you there. My understanding is that was before the letter was - -?---I don't know, I'm just giving, you asked me what my opinion was and I'm, I'm giving it to you.

Well, don't worry, if you're only speculating we'll leave it?---I'm not speculating.

If the witness could be shown 242?---I'm not speculating, this is fact.

It sounded like speculation?---No, it wasn't.

Well, what is the fact then?---The fact is that there was a meeting and there were discussions about the issues in the IT area and it was put to the meeting that further forensic work was to be undertaken in, on Council's computer systems in terms of validating whether or not the claims that were
10 being made in that correspondence that we were just talking about had some validity. There was a lot of debate about the cost of that extra work that was being sought because we didn't get the answers that we were looking for in terms of some of these issues from the investigation that had taken place. There was the view around the table that an additional \$100,000 of expenditure which was being sought to investigate the matter further was not appropriate, that that money would be better spent in fixing the issues that had been found, re-engaging consultants if that was necessary and doing whatever else was required and that was the reason why Mr Cummins was not pursued further.

20

Thank you. Could you turn to tab 28 of the bundle that's just been given to you. And to the second page of that. You see that's an email from Mr Macklin to Gardner and Hullick?---Yes.

It's about the letter that had been sent and the deadline and see the second last paragraph said, "You will also appreciate that Les and I will be under pressure to terminate his employment in accordance with what we said in our letter." And I'd suggest to you that that was an accurate reflection of the position at the time and that the pressure was coming from you on Mr
30 Macklin and Mr Hullick to find a way to terminate Mr Cummins' employment. Would you agree?---No.

Now, there was a check done on Mr Cummins's computer to see where he'd been sending documents, do you recall that?---No.

Well, have you still got 155 there?---Yes.

Can you turn to page 35?---Page 35 or tab 35?

40 No, 155. It's not the bundle. 155 is the stapled together material, clipped together material?---What page was that?

35, see that?---Yes, I see that.

And look behind that and you'll see there's a report by something called Control Risks?---Yes.

And I'd suggest it was your idea to have his computer reviewed, wasn't it?
---No.

And that you wanted that done because you were trying to dig some dirt up to find a ground to dismiss him, weren't you?---No, no.

And how do you say it was a proper expenditure of Council funds to engage Control Risk to review his laptop computer?---I, I wasn't involved in that decision so I can't answer.

10

Well, doing the best you can?---Well, as I said, I wasn't involved in this decision so I don't know whether it was an appropriate - - -

So you say you had nothing to do with this decision?---None whatsoever.

And any suggestion that you were the author of the idea would be wrong, would it?---I believe so.

20 See, I suggest to you it was an act of reprisal against Mr Cummins, would you agree, and that you were the author of it?---No.

What concern of it was, of yours was whether Mr Cummins should receive Centrelink payments?---I recall seeing the email that's has been discussed here at this hearing and I found it extraordinarily interesting, if I could put it that way, that someone could receive Centrelink payments while being employed.

30 He wasn't in receipt of income from Burwood Council, you knew that, didn't you?---I wasn't aware of whether he was getting sick leave or not but the application for Centrelink payments I found extraordinary. I remember ringing Mr Macklin and saying to him, how can this be, you know, isn't he on sick leave, isn't he getting sick leave arrangements here, and he said that he, he responded to me by saying that Mr Cummins had used up all his sick leave and that he was refusing to take annual leave and other leave arrangements that he had at Council. My concern was just that he was making an application whilst still employed. I, I had never heard of that and had not experienced that arrangement before.

40 But it was up to Centrelink to assess his eligibility, wasn't it?---I believe that Centrelink had asked us for contribution to an application that had been made.

That's right?---I, I wasn't declining to or I wasn't participating in declining that arrangement. I was questioning the fact that that could occur at all.

He wasn't being paid sick leave from the Council. You and others had worked hard to make sure that his workers compensation claim had been rejected at that stage so he had no income. You knew he had a wife and a

family and I suggest to you that the emails you sent contained in Exhibit 302 are vindictive, aren't they?---No, they're not.

That they are asking questions that you had no right to even concern yourself about, that is, whether he was eligible or not was a matter for Centrelink, wasn't it, not a matter for you?---And ultimately it was. I was questioning whether or not that arrangement was possible. I had never heard of those arrangements occurring in any employment arrangement that I'd been involved with.

10

You see, I suggest to you that you were just being nasty about it, weren't you?---No.

Well, you'd appointed Mr Hullick as the General Manager in the Cummins matter, hadn't you?---I was posing a question.

You had appointed Mr Hullick as Acting General Manager in the Cummins matter, hadn't you?---Yes, that's correct.

20

It had simply nothing to do with you, did it, whether Mr Cummins had applied for sickness benefit or not?---I was posing a question.

You were just being vindictive to Mr Cummins, weren't you, because he'd made a complaint against you?---No.

And I suggest to you it was an improper expenditure of Council funds to seek legal advice about whether it was entitled to it or not, would you agree?---I don't agree.

30

And the legal advice was sought on your instruction, wasn't it?---I don't believe I instructed. What I said was - - -

What did the lawyers say?---Yeah, what do the lawyers say.

Well - - -?---They were actively - - -

- - - go and ask the lawyers?---They were actively talking to Mr Hullick and others throughout this entire period. I just found that that particular application was extraordinary. I'd never heard of it before. That wasn't me saying no. And in fact - - -

40

I suggest to you it was - - -?---I believe that it was - - -

- - - you being vicious to Mr Cummins, wasn't it?---No.

And you were aware, sorry, on your direction or instruction Mr Macklin spent some time trying to come up with ways of suspending Mr Cummins and others, didn't he, from the workplace?---No.

And that you, he was doing that on your instruction, would you agree?---No.

And that you well knew that there was strategies being put in place to invalidly keep Mr Cummins out of the workplace if he wanted to return?---No, and in fact I intervened on a couple of occasions where I thought the Council's interests weren't being looked at. There were emails that indicate that and I was quite conscious of the fact that those individuals needed to be treated fairly.

10

You were aware, weren't you, that the Executive met either formally or informally on 29 June, 2009 and then sought legal advice about a strategy to keep Mr Cummins out of the workplace on the basis that he had failed to respond to issues of administration, that is, that his responses had been unsatisfactory?---Look, I know what you're talking about but I can't recall the exact details. It, do you have anything that can refresh my memory of the exact meeting because there were a number of meetings that occurred throughout that period.

20

I'm just asking you a very specific question about a very specific meeting and if you don't recall it, just say so?---I don't recall it.

Thank you. I notice the time, Commissioner.

ASSISTANT COMMISSIONER: Yes. We will adjourn at this time until 10.00m.

30

<WITNESS STOOD DOWN

[4.02pm]

**AT 4.02PM THE MATTER WAS ADJOURNED
UNTIL 10.00AM, THURSDAY, 10 JUNE, 2010**