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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 10 JUNE 2010

AT 2.08PM

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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: If I could tender a statement of Pat Romano's dated 10 June, regarding Accor and Qantas memberships.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 316.

10 **#EXHIBIT 316 - STATEMENT OF MR PAT ROMANO DATED 18
JUNE 2010 REGARDING ACCOR AND QANTAS MEMBERSHIPS**

MS RONALDS: And I tender Kordamentha Computer Forensic Report provided by Mr, well those who act on behalf of Mr Romano.

ASSISTANT COMMISSIONER: Sorry, what was the second thing?

20 MS RONALDS: Kordamentha Computer Forensic Report about certain emails that some crass person had suggested might - - -

ASSISTANT COMMISSIONER: Yes. That's Exhibit 317

**#EXHIBIT 317 - : KORDAMENTHA COMPUTER FORENSIC
REPORT DATED 9 JUNE 2010**

ASSISTANT COMMISSIONER: Yes, Mr McIlwaine.

MR McILWAINE: Mr Romano, can you just tell the Commissioner in fairly short terms how you would describe your relationship with Mr Giangrasso from the time you first commenced with Burwood Council until the time he ceased coming to work? In terms of the frequency of your contact in particular?---Assistant Commissioner, for the first few years of my employment at Council I had very little contact with Mr Giangrasso. I believe that most of my contact would've commenced around the 2006 period and it progressively became more frequent, if I can use those words from 2006 through to about the time that Mr Giangrasso left work. I would describe my relationship as a working relationship with Mr Giangrasso. Apart from a couple of occasions, most of my contact, if not all of my contact occurred in a work environment on projects that Mr Giangrasso was working on. And the two instances that come to mind where I had occasion to be in a social environment with Mr Giangrasso, and they were in late 2007, and, and also in 2008, early. So, I hope that answers the question.

20 Now from 2006 when your contact with Mr Giangrasso increased, how often would you have contact with him? Say on average, once a week, once a day? How would you say?---I don't believe it would've been more than maybe once or twice a week throughout the 2008 period, leading up to the election.

Okay?---I would probably lean more to one day a week rather than two.

30 So once or twice a week between 2008 and what about, that's contact at work?---At work, yes.

Forgetting about the two social meetings we've spoken about. Apart from contact at work and those two social functions, did you have contact with him outside working hours?---No.

Not at all?---Not at all.

Did you ever telephone him at home on the weekend?---I'm not sure. I can't answer that. I don't know.

40 Well, think about that. Was there an occasion when there was damage to your, the roof of your house during a storm and did you have occasion then to ring Mr Giangrasso at home on the weekend? Do you remember that?---I don't think so. No, I don't recall.

And you asked him for the name of a roofing contractor who could come and do some urgent repairs. Do you remember that?---I'm not sure. It could've occurred.

It happened didn't it?---I can't recall.

Well, did you suffer some damage to your roof during a storm?---I have had it, probably two or three times the occasion to call a roof plumber.

And apart from that telephone contact with Mr Giangrasso on a weekend and two social functions you've spoken about, did you have any other occasions to ring him on a weekend?---I can't recall.

10 All right. Now Mr Giangrasso, without any disrespect to him, held a fairly lowly position in Burwood Council. Do you agree with that?---I would probably disagree with you because I, I had a view that all employees, despite the job that they do have an equal standing amongst the staff.

We're not talking about his status, but he's not a person who's involved in policy decisions of the Council?---No, he's a worker on the outdoor staff, yes.

20 Now, do you agree that on a number of occasions he came to your personal office at Council Chambers?---Yes.

And how often, say for example, during 2008 do you say that would occur? ---Possibly two or three times.

Two or three times what?---Two or three times throughout - - -

In total?---Yeah, in total.

30 And there were also a number of occasions where you asked him to attend meetings involving senior officers of Council. Do you agree with that? ---No, I don't agree with that. I'm not sure that that occurred.

Can you remember an occasion in the middle of 2008 when you were having a meeting in the boardroom of Council Chambers with Mr Child and Mr Giangrasso and to give you the full background, during the course of that meeting some senior executives of the Council arrived to have a meeting in the boardroom and you told them to wait outside until you were finished your meeting with Mr Child and Mr Giangrasso? Do you remember that happening?---I don't have any specific recollection of, of
40 that. But if you have a date and some details that might refresh my memory, I'm happy to recollect.

Do you deny that happened?---I just can't recall.

Do you deny that it happened?---I can't recall. I met with Mr - - -

Sir, you can say I deny it happened or I can't deny it happened, it may have but I simply can't remember?---No - - -

MR BLAKE: Commissioner, I can't recall is the answer to the question.

ASSISTANT COMMISSIONER: Well, yes, I guess he perhaps can't recall.

MR McILWAINE: I'll ask another one. Do you accept the possibility that it did occur?---As I mentioned earlier I met with Mr Giangrasso and Mr Child probably two or three times throughout 2008 in my office so it could've been one of those meetings.

10

In the course of January 2008 what reason would you have for telephoning Mr Giangrasso?---I recall that in early 2008 there was an occasion when Mr Giangrasso was Acting Supervisor or Superintendent stepping into Mr Child's shoes and from, refreshing my memory from my records I recall that there were a number of occasions where I rang him around about January, February 2008 and the reason for those calls were for work purposes in his capacity as an Acting Superintendent for Steve Child.

20

And would those calls be during working hours?---Look, I can't recall. The guys were working unusual hours, they were working overtime. I remember one night in February he rang me while I was at dinner so it's possible that we had contact outside of what would be normal hours in a business environment.

30

Well, why would you call him - perhaps if the witness could be shown Exhibit 138, Commissioner. Perhaps if the witness could also be shown 2008 calendar. Now, you'll see from those documents that on 26 January, 2008 which I suggest to you by looking at the calendar apart from being Australia Day is also a - - -?---I, I can't hear you.

Sorry. If you look at the calendar which you've also been handed you'll see that 26 January, 2008 was a Saturday and was Australia Day. Can you explain why you would be calling Mr Giangrasso at 3 o'clock in the afternoon on that day and speaking to him for 12 and a half minutes?---Did you say 28 January?

26 January?---26 January which is a Saturday.

40

It will be on Exhibit 138, it's the third entry?---Yeah, so it's a Saturday?

Saturday?---I assume he was working on that day.

Well, and you see two entries down 16 February?---Yes, that was the evening I recall we talked while I was at dinner.

Well, that would suggest you telephoned him. Is that the case?---Possibly, yeah.

You telephoned him at 8 o'clock at night, you spoke to him for eight and a half minutes. Do you recall what that conversation was about?---I don't remember specifically but it would've been work related.

And you see again on 8 March, 2008 which is an entry a little further down which is also a Saturday, you called him at 1.53 in the afternoon and spoke for eight minutes?---Yes, it's possible he was working again on a Saturday. They were doing a lot of overtime.

10 You see, what I'm suggesting to you is that those calls occurred during a period while Mr Child was on leave and those calls related to work on the premises at Croydon?---I disagree with you.

If the witness could be shown Exhibit 206. This is a statement made by you for the purpose of responding to Mr Giangrasso's workers compensation claim?---Yes.

If that could be shown to you. Do you have that in front of you?---Yes.

20 And you agree that's your signature on the final page?---Yes.

And just going to the first page, you see paragraph 2, paragraphs 1 and 2, firstly paragraph 1 indicates that you're aware this accurately sets out the evidence you would be prepared to give in court, do you see that?---Yes.

And in the second paragraph you say, "This statement is true to the best of my knowledge and belief"?---Yes.

30 And you know, you make it knowing that if it's false you're liable to prosecution?---Yes.

Correct?---I understand that.

So you knew when you made this statement that it was very important that it be a truthful and accurate version - - -?---That's correct.

- - - of events?---To the best of my knowledge.

40 Well, I'd just like to turn to page 3 of the statement?---Yes.

Paragraph 26, "During my employment at Council I have not had a lot of direct contact with Mr Giangrasso however on each of the infrequent occasions I have met him he said to me words to the effect that Council does not appreciate me enough or Council doesn't pay me enough"?---That's correct.

Now, do you agree that it is not an accurate and correct statement to say that you'd not had a lot of direct contact with Mr Giangrasso?---I agree that I did not have a lot of contact with Mr Giangrasso.

Not a lot?---No.

You saw him, your evidence today is on a weekly occurrence, once or twice a week, that was your evidence, you'd speak to him once or twice a week?
---It's possible, yeah.

10

Well, I think that was your evidence?---Yes.

You've been out for social functions with him twice?---Yes.

Between January 2008 you called him, according to Exhibit 138, some nine times in a period of, I withdraw that. You certainly in January 2008 you'd had two telephone conversations with him, three I should say?---Yes, as his, in his capacity as acting supervisor, yes.

20

That well be but this doesn't limit your contact with him to personal or social, it's all contact?---Well, when I, when I compared, you know, the contact I have with other staff members as compared to Mr Giangrasso the way you've demonstrated today, my contact with him, I would, I would have the opinion that it is not a lot of contact.

So you'd say it was infrequent contact?---I would say that compared to other people that I have a working relationship or other type relationship with it's not frequent, no.

30

Well, your statement says, and it doesn't limit it by comparing it to other people, "However, on each of the infrequent occasions I have met him," now that's simply not true, was it?---No, I'd disagree with you.

And I'm suggesting to you that in that statement you sought to minimise your involvement with Mr Giangrasso because you knew that he had done work for you such as on the driveway at your direct request?---I disagree with you.

40

Of course, you don't mention in your statement anything about the work that Mr Giangrasso had done on your driveway, do you?---I can't remember the exact details of what was in the statement but I take your word for it.

Well, Mr Romano, have a good and careful look at the document if you like. There is absolutely no mention of Mr Giangrasso's involvement in the driveway?---I accept that.

And one of the topics of this statement was the question of Mr Giangrasso being involved in secondary employment wasn't it?---I can't recall the exact

I'll draw your attention to paragraphs 21 to 25. See the heading Mr Giangrasso's Secondary Employment?---Yes, I see that. And I was about to say I don't recall what the specific question that I was asked by the insurance company at the time was but I detailed to the best of my ability at the time a response.

10 Well, you see paragraph 24, "I am aware that Mr Giangrasso has undertaken secondary employment." You didn't think to mention the fact on your evidence that secondary employment, some of it took place at your premises?---I don't believe I was asked that and if I had been asked I probably would've availed myself or availed the insurance company of that information.

Well, firstly, - - -?---The question was a general question I believe from memory and I stand corrected here, was I aware that Mr Giangrasso was doing secondary employment? Yes, I was.

20 You were being asked what you knew about Mr Giangrasso's secondary employment weren't you?---I was asked whether I was aware that he had undertaken secondary employment and I think I've answered that.

But of course the person asking you the questions had no idea Mr Giangrasso had been doing some work on your premises. You'd agree with that?---I wouldn't know, I wouldn't know.

How would they know?---I wouldn't know, I don't know.

30 You didn't tell them did you?---I didn't tell them, no.

How else would they know Mr Giangrasso had done work on your private residence?---Mr Giangrasso could've told them.

Quickly onto another topic. Exhibit 245 I believe is the number is a statement you made about the driveway. Remember making that statement?---Yes.

You're familiar with it?---Yes.

40 You need to see it?---I'm familiar with it but if there's something I can't recall I'll ask for it.

Okay. Now, the statement was signed by you on 18 May, 2010?---Yes.

I accept that, I don't think there's any controversy about that?---No.

Attached to tab 9 was a bundle of documents relating to O'Brien Civil?
---Yes.

Do you remember that? You by this stage of making this statement have had your employment with Burwood Council terminated. Is that correct?
---Sorry, could you repeat that please?

Your employment with Burwood Council had been terminated by the time you made this statement?---Yes.

10 Those documents at tab 9 were, can you tell the Commission that the bundle of documents about O'Brien Civil how you got access to those documents?
---Through my lawyers we obtained permission from Council's lawyers to continue to use information that I had access to while I was employed with Burwood Council.

Just going back. Your original access to these documents did it take place before you left Burwood Council?---Yes.

20 So how did you physically get these documents?---Look, I can't be sure but some were by email, the majority of them were by email.

It's quite a large bundle of documents did you go and get someone to pull those documents out and provide you with a hard copy?---No, I did that myself.

So you went and accessed Council files and collected those documents, correct?---No, no, I, sorry, I must be confused. If you're referring to - - -

30 Well, perhaps you should be shown?---Are you talking about the public liability certificates or - - -

No, no, no. Perhaps if the witness could be shown Exhibit 245. It's a large bundle of documents which relate to Councils general dealings with O'Brien Civil. Do you remember those documents?---I remember some of those documents.

Perhaps we'll wait till you've been shown the documents. I might have the wrong exhibit number. The statement by Mr Romano in response to the driveway allegation - - -

40 MS RONALDS: 251.

MR McILWAINE: 251, I'm sorry. You remember the document, it's a large, it's a bundle of documents gathered, put forward by you to show that you had nothing much to do with O'Brien Civil's dealings with councils and you hadn't acted improperly?---I just did the contractual arrangements.

Calls for tenders and (not transcribable)?---Yes, that's right.

Thing along those lines?---Yes.

How did you get those documents?---I sought that information from our technical services area. I can't remember if it was from Mr Azer or Mr Inglese, but I requested that of the staff.

And they were brought to you?---And they were given to me, yes.

10 And those documents of course are the property of Burwood Council, aren't they?---Yes, that's correct.

And did you provide them to, did you take a copy and take it home?---No, I, I, I think I sent the copies that I got directly to the lawyers.

You said verbally your personal lawyers?---They were representing me as the General Manager at Council, yes.

20 Your personal lawyers, not the Council lawyers?---Well, HDY were representing me in my capacity as the General Manager as well as my own personal capacity, yes.

When you had your employment terminated with Burwood Council did you return the documents?---No, as I explained earlier, we sought permission from Council's lawyers to continue to use the information that was in our possession - - -

And was that - - -?--- - - - and that permission was given.

30 Was that in writing?---I'm not sure. I'd have to seek that information from my lawyers.

Who gave you the permission?---I beg your pardon?

Who gave the permission to you (not transcribable)?---I'm not sure but I find out for you.

40 And of course going back to earlier when you'd had the problem with Concord Council and you had to produce the, the certificates of currency of insurance how did you get access to those documents, Canada Bay?---I'm pretty sure I've answered this in the hearing previously but I'll, I'll reiterate it. I requested that information from my staff.

So you asked for the documents and they were provided to you?---That's correct.

And of course the problem with Canada Bay Council was nothing at all to do with Burwood Council, was it?---I, I, I think I've explained myself throughout these proceedings and I've given my explanations.

Well, do you agree with the proposition it was nothing at all to do with the business of Burwood Council?---Yes, I'd agree with that.

And I think you've admitted at least to, in your words, an error of judgment in producing those documents to, to Canada Bay?---Yes, yes, I've made that statement here in this hearing.

10 So you used the documents and facilities of Burwood Council to assist you to mislead the officer of Canada Bay Council that you were dealing with?
---I'd disagree with that.

Well, what part of that do you disagree with?---That I was misleading people.

20 Well, you produced documents to Canada Bay Council would have understood that you'd received from the contractor. Would you agree with that proposition?---I disagree with you, I don't know what they would have thought.

Do you agree that you misled the officer of Canada Bay Council in any way?---I, I think I've answered that and my answer was I disagree with you.

You don't believe you misled - - -?---I disagree with you.

Well, by that are you saying you say that you did not mislead the officer of Canada Bay Council in any way?---I, I don't believe that your statement is accurate.

30 Well, it wasn't a statement, it was a question?---Okay, well, I - - -

My question was - - -?--- - - - I disagree with the implication that you (not transcribable).

- - - is it your position that you did not in any way mislead the officer of Canada Bay Council that you were dealing with?---I don't know whether he thought he was misled or not.

40 No, I'm not going to ask you about what he thought - - -?---But I was not - - -

I'll ask you about whether you misled - - -?--- - - - intending to mislead anyone.

Sorry?---I was not intending to mislead anyone.

Forgetting whether you intended to or not, do you agree that you misled him?---I'd disagree with you.

Well, by disagreeing with me, are you saying no, I did not mislead an officer of the Canada Bay Council? Is that what you're saying, yes or no? ---I, I, I'm not sure what I'm supposed to give you as an answer because I think I've given you an answer.

10 ASSISTANT COMMISSIONER: Mr McIlwaine, I think he's saying he didn't intend to mislead - - -

MR McILWAINE: I appreciate that.

ASSISTANT COMMISSIONER: - - - and he doesn't know if the officer was misled. I don't really much point in continuing. It's a matter for you.

MR McILWAINE: Yes, I won't take it any further. Nothing further.

20 ASSISTANT COMMISSIONER: Thank you. Yes, Mr Chalmers.

MR CHALMERS: I'll need to get to where Mr McIlwaine is and I need his Exhibit 301.

ASSISTANT COMMISSIONER: All right.

MR CHALMERS: Mr Romano, I'm acting for Ammer Issa?---Yes.

30 Yes. I might just, so it does to a microphone. Right, now, I thank counsel assisting. She'll do anything to keep this moving along. All right. I want to start in relation to an Executive meeting held on 16 February, 2009 where there was discussions in relation to the works depot. Do you recall that meeting?---I have a vague recollection, yes.

40 All right. Now, in Exhibit 121 in paragraph 145, 146, 147 which is on page 40 of 43 of that statement, Mr Cummins, who was at that meeting, talks about the fact that a Ms Stephanie King, who was friends with Mr Child, that she was to be sent away from the depot. Do you recall that? ---I don't recall those specific words but I do remember a discussion involving Ms King.

And did you say after discussion, did you say that this was required to divide and conquer?---I, I don't recall those words specifically but there was some discussion about the management of the depot.

There's no doubt that there was some discussion that happened in relation to the depot, do you, are you saying you didn't say those words divide and conquer?---I think I've addressed that issue in my statements and I can't recall exactly at this, at this point in time.

So you can't say you didn't use those words?---Look, I just don't have any recollection at this point in time, I'm happy to, if you want me to have a look at my statements I'm happy to have a look at them and point out the area where I responded but I can't remember at this stage.

Well, when were your statements done?---I've done multiple statements over a number of weeks now and I've got to say a lot of that stuff has become a blur in my mind.

10 A bit of a blur, I understand that?---Yeah.

But I guess the point is that those statements were done in April, May 2010? ---It's possible, yeah.

Reflecting back on a time in February 2009, 16 February, 2009. Is that right? We're talking about the Executive meeting on 16 February, 2009? ---Yeah, when I prepared the statement for this Commission I, I did have the aid of emails and diary entries and whatnot so I was able to reconstruct a lot of my memory from, from that aid. You're asking me to reconstruct stuff now that's difficult for me to do but if you want to show me something specifically, if you want me to have a look at the statement where I responded to that, I can read it and I can reflect on, on what occurred and I can give you a more accurate answer otherwise I'd be guessing.

All right. Does it sound like the sort of thing you might have said at that meeting, divide and conquer?---I don't think that I would have used those words in, out of context on their own, no.

30 Do you recall that, recall I believe that Mr Macklin was asked whether he remembered you saying that at the meeting and - - -?---No, I don't.

- - - he remembered you saying something to that effect, divide and conquer?
---I don't know what Mr Macklin said.

40 All right. Now, according to Mr Cummins in his statement in paragraph 147, you said he should be moved to the CCTV monitoring room. Do you recall that?---No, I don't recall those words in, in the fashion that you've described but I do recall a discussion about what opportunities might exist for Mr Issa to undertake in his capacity under workers comp as light duties. I knew that there was a vacancy or an opportunity that was available within our CCTV monitoring room and I put that up as an option, yes.

And do you remember Mr Cummins replying words to the effect, and this is paragraph 147, If you think that is a good idea, I have grave fears for this organisation. Do you recall him saying that?---I recall words to that effect. I don't know if they're the exact words, but I do recall that.

Now in relation to the CCTV monitoring room, what are the duties of someone who'd be in the CCTV monitoring room?---From my understanding of what those staff members do, it, it requires them to sit in a room, which is a secure room. There are monitors in the room that occupy one wall of the room. There is a screen and computer facility at a desk directly in front of the wall. And the officer sitting in that room is required to monitor the screens on the wall.

10 That's right?---Monitor the screens on the wall. I was just waiting for you to give me your attention again. I wasn't what you were doing. So they're required to monitor the screens and when there are instances that occur out on the public arena, they're required to make reports and a certain process and - - -

So they're looking at stuff as it happens?---The screens move from camera to camera.

20 (not transcribable) location and watching stuff happen?---Yeah. That's right.

And there's only one person in that room isn't there?---No, not necessarily.

30 There's usually one person in that room isn't there?---Well, I can't answer that because I don't know for sure, but there are a number of chairs at the table that faces the wall and the, the strategy that we had at the time was that we would progressively build up our resources in that room. So it was anticipated that over a period of time there would be up to at least three people in that room. One of the other duties that was required was that if they got inquiries from the police they would need to respond to those inquiries as well.

40 So they need to be in the room constantly in case some event happened on the CCTV footage or they were contacted by the police?---There would periods of time that they would have to be in that room. In the case of Mr Issa, if that proposition had been accepted we would've had to have looked at his specific needs and requirements. And we would've worked with his doctor to design the job so that he would get the appropriate breaks and wouldn't be sitting in one spot, you know, continuously for a number of hours.

All right?---There would be details as to how he would be managed in that, in that environment.

Like you did in June, 2009? That kind of, that kind of concern and follow up - - - ?---Sorry, I don't understand.

- - - when Mr Issa, when Mr Issa left in June, 2009, the Council Chambers, there was no such follow up like that. There was nothing like it. He was

just told to leave and there was no follow up to see whether he'll get any duties at Chambers were there?---Well, I don't know that for sure.

Is that, is that the caring attitude that you would've shown him had he gone to the CCTV room is it?---I disagree with your statement.

10 Now, can I suggest to you that the CCTV monitoring room at that time only had one person and it would've been unthinkable that a person who needed to get up from time to time could possibly monitor the CCTV?---With all due respect, sir, Mr Issa would've been the second person in that room. It would've been envisaged that he would be in the room with someone else. We were trying to build up our resources in that area.

And can I suggest that the reason you wanted him in the CCTV monitoring room because it was in a separate room segregated from the rest of the Council Executive?---I disagree with you.

20 So there was a door that went there? A door that separated him from the rest of the Council on that floor. That's right isn't it?---The room was a secure room.

Yes. It was like segregation wasn't it?---No. It was the nature of the job.

And a good place in your view to put Mr Issa?---I dispute what you're trying to imply.

30 Now, in relation to the footage, the, the surveillance footage with IPP, I think that began at the beginning of March, 2010. Is that right?---It sounds about right. Yes.

And did you see any, was there any surveillance of my client, Mr Issa that you're aware of?---I can't recall. I don't think so.

Right. And were you aware, and what was the reason for the footage? The commissioning of the surveillance? Just very briefly?---It was in response to allegations that were being made about inappropriate activities at the depot.

40 Like stealing, pilfering that sort of thing?---That's right.

All right. So why, given the Mr Issa had been moved to the Council Chambers in late February, 2009, why was he on the list of persons to be surveyed, put under surveillance in early March, 2009?---I'm not aware of the list that you're referring to. But the covert, sorry the order from the courts for the covert surveillance of the depot staff was modified on my instruction to include all depot staff and that all depot staff would then be monitored.

But Mr Issa wasn't at the depot in February (not transcribable)?---It was to look at all staff involved with the depot.

10 What, past and previous, sorry, that had been at the depot at that time or previously?---It wouldn't be uncommon for, for staff that were on sick leave to show up in Burwood or on the work site. And I don't think it's unreasonable to include all staff whether they're at work or not. I did not want to be seen to be singling anyone out. And I was quite concerned with the first court order that we received in that it identified only a short list of people. I was quite concerned about that.

Now, and when the warrant was obtained for the surveillance from the Magistrate at Burwood Court, Mr (not transcribable) that was about the middle of March, 2009. Can you say why Ammer Issa's name was on that list to be, for surveillance?---I think I just answered that.

20 And did you check the documentation before it went to the, did you check the application that went to the Magistrate at Burwood Court?---Not the first one.

Pardon?---Not the first one, no.

What about - - -?---The second, which was on my request, I had a look at and I'm not a lawyer, but it appeared to be in order.

30 All right. And that was despite the fact that my client had then been working for over two, three weeks in the, in the Chambers, you still felt it was necessary to include his name?---I felt that any staff that were involved with the depot operations should be under monitoring or surveillance.

Now when the first article came out in the Sydney Morning Herald being at 762, the first day was the Saturday, 4 April. And I take it you read that article pretty carefully?---Look, I can't recall the exact reaction that I had to it. But, but I was upset. I don't know that I took in everything in the article but, but it did concern me.

40 Did you take from that that in your view that Mr Child was somehow involved in that article?---I suspected he might've been involved. But I didn't know that it was him or, or someone else.

So we go Exhibit 301 and I'm referring to your email of 6 April, 2010, which is at the bottom of page 1 of 2 and goes on to the back page?---Yes.

If I can take you to the front page. So I take it from that that what you were doing was, I'll withdraw that. Was it the fact that because you didn't quite know who had reported on you in the newspaper article, that the list you did here from one to seven on the back page was basically to try and get dirt on

anyone who might have given the information to the newspaper?---I, I disagree with that, no.

Well, it's interesting isn't it that points numbered 1 to 4 are all about Roy Einarson?---That's correct.

Now, as I understand it from this Commission, Roy Einarson was someone who left Council very quickly after having disputes with you?---No.

10 No?---No, that's not correct at all.

But you felt didn't you that he was disenchanted with you?---I was told by Mr Macklin that he believed that Mr Einarson had been threatened by staff in the depot and that caused him to leave on Christmas Eve of that year. It was quite sudden. There was no notice. And I was concerned that that had occurred. I wanted to - - -

20 You thought that - - -?---I wanted to explore and I wanted to find out what it is that caused him to leave so suddenly.

You thought that he might've been a possible source to the leaks to the Sydney Morning Herald?---Mr Einarson?

Mmm?---No, absolutely not.

And then you included grievances of other staff and you mentioned Mr Child, Mr Quirk and Giangrasso didn't you in point 7?---I asked for information in relation to warnings and grievances of those, those staff.

30 Because they might've been the other rats in the ranks involved who doxed him in, doxed you in?--- No, I was gathering information to provide to the lawyers.

For what purpose?---For the purpose that I've described here in this hearing. It was to look at possibilities of pilfering and theft et cetera and other matters relating to that involving possibly those people.

40 Now, can I suggest to you that after you read the second article in the Sydney Morning Herald on Monday, April 6, once again that's in Exhibit 62, it dawned on you that my client might've been involved in talking to the Sydney Morning Herald?---Quite the contrary, I never suspected at all that Mr Issa had contributed to the Sydney Morning Herald articles. I found him to be a polite person, quite a gentleman and it never crossed my mind that he was involved.

Even though in the fourth, the fourth, sorry, the fourth column one worker is quoted as saying, "He said he did not get paid for his work which included pouring concrete during work hours as the carpet was being laid the

following day.” That didn’t suggest to you that my client may or may not be involved?---I didn’t know who made that statement.

Well, we’re talking about a concreter?---Well, Mr Giangrasso’s a concreter as well.

Now, can I suggest to you that of course you well knew that Mr Issa was involved in doing work on your flats?---Up until this hearing I wasn’t aware of that.

10

And that on an occasion after he’d stopped working for you on the flats he once went with Steve Child to your, to those flats after mid-August 2008 where he saw you and you had a talk to Steve Child. Do you agree that happened?---I’m not aware of that happening at all, no.

Would you say it didn’t?---I don’t believe it did.

20

All right. Well, I’ll just be a bit more specific. This is in the statement of Ammer Issa Exhibit 131 and paragraph 36 which is on page 11 of 14, “I recall on one occasion seeing Pat Romano at the units. I was there with Steve during the week. We were in Council uniform and in Steve’s Council’s ute. Pat arrived at the units after us and spoke to Steve. He saw me and said hello but did not talk to me otherwise. There was a kitchen guy there doing some work, no other Council workers, this was the unit on the right at the top of the stairs, Pat left after about five minutes.” Do you recall that?---No, I don’t.

You say that never happened?---I don’t believe it did occur.

30

You don’t believe it did?---No, it didn’t.

It could’ve?---Did not occur.

Right. See, you full knew that my client was involved in relation to the work on your units didn’t you?---As I’ve said, up until this hearing I had no idea that he had been to that site.

And I suggest that that’s just not true?---Well, I disagree with you.

40

All right. Now, I want to take you to - as you know my client then moved to the Council Chambers where he worked with the engineer Fred Thinesh? ---Yes.

Now, apparently you were extremely unhappy that Mr Issa was at the office, at the Council Chambers I should say. Do you agree with that?---No, I don’t.

And that you told Mr Macklin that you were very unhappy in relation to Mr Issa being on the phone all the time?---That I do agree with.

And how many times did you tell Mr Macklin that?---Possibly once.

Only once?---That's correct.

Didn't you tell him a number of times?---I told Mr Azer at least two times and I recall at least one occasion where I spoke to Mr Macklin.

10

And now I want to refer you now to Exhibit 197 and your email of 25 April, 2009 which is on page 10. And I want to specifically refer you - - -?--- Sorry, Assistant Commissioner, may I have that statement so I can refresh my memory?

ASSISTANT COMMISSIONER: I beg your pardon?---May I have a copy of the statement that he's referring to?

ASSISTANT COMMISSIONER: Yes, I think it's been - Exhibit 197.

20

MR CHALMERS: Page 10?---Thank you. Yes.

I'm going to refer you to first of all paragraph 6. Perhaps because it's not such a long paragraph you might want to read it to yourself at first just to refresh your memory?---Yes.

30

Now, in the first line, sorry, the second line you say, "When (not transcribable) on exercise break he should be exercising." What made you think he should be exercising?---From the discussions that I'd been party to I understood that Mr Issa had a back problem, maybe incorrectly or correctly I assumed that through the discussions that he wasn't supposed to be sitting in one position for very long and I assumed that that would require him to move from a seated arrangement if he was working on light duties and, and do some sort of stretching or exercising.

And you assumed that did you?---Yes, I did.

And this whole paragraph 6, this whole email is based on that kind of assumption is it?---Yes.

40

All right. "I think we need to have a tighter structure to control him."? ---Yes.

Do you need to control him?---His movements in and out of the building, yes.

And why was that?---From my observation over a number of incidents it appeared to me that he was spending quite excessive amounts of time

outside of the building particularly in front of the, front door of the Chambers and there had been a number of discussions that I'd had with the executive about staff congregating and loitering around the front of the building particularly smokers. And I and the executive had issued instructions that if staff needed to smoke or to go outside for whatever reason that they didn't do that in front of the building. In fact I believe Mr Macklin implemented a system where people would walk around the block for example. I found it quite disconcerting that Mr Issa would stand in the front doorway on the phone and from time to time even smirk at me as I was coming in from a lunchbreak.

This is this gentleman you were talking about was smirking at you?---Well, you know, I didn't take, you know, much, you know, into that, only that he was standing in the doorway on the phone and, and I mentioned that to Mr Azer the first time, I believe that Mr Issa was talked to about that behaviour but immediately, a number of days later he proceeded to do the same thing. So I felt that it was quite - - -

Mr Issa wasn't smoking was he?---Beg your pardon?

Mr Issa - - -

ASSISTANT COMMISSIONER: No, he was smirking.

THE WITNESS: No, (not transcribable) he wasn't.

ASSISTANT COMMISSIONER: Sorry, when you're saying he did the same thing do you mean standing or smirking?---Standing on, and talking on the phone in front of the doorway.

All right.

MR CHALMERS: But he wasn't smoking was he?---No, but I did say that smokers and other people would sometimes congregate talking or doing other activities in front of the door.

I thought when I asked you that original question about what the problem was you said it was because people were smoking outside the front?---No, I said smoking and undertaking other activities in front of the door.

Like being on the phone?---Well, in, in his case he was on the phone, yes.

And what was the problem with that?---As I explained, I did not think that it was appropriate for staff to congregate at the front door of the Council, the only entry into the Council, smoking and talking on the phone.

But my client wasn't smoking?---I found that quite disconcerting.

My client wasn't smoking?---He was on the phone.

All right. And he wasn't blocking people getting in or out?---Not while I observed him, no.

No. So you just, the truth of it is you didn't like him on the phone?---I did not like him loitering in the front of the building on the phone.

10 And you didn't like him being on the phone unsupervised?---No, I was happy for him to be on the phone, it was in his own time.

I think we need to have (not transcribable) to control him then you suggest that Linda keeps a register on her desk, on her desk which requires OI to sign and sign, sign out and sign in. Do you see that?---Yes, I do see that.

Yes. And you initiated that policy or someone did. Are you aware of that? ---Well, I don't know if it was implemented, I never followed up.

20 If he abuses this privilege he should be disciplined, do you see that?---Yes.

Now, you say while OI is out of the office doing his stretching, if he's, if he is seen standing on one spot and not doing his stretching he should be disciplined?---I was concerned that he wasn't doing what the doctors required him to do.

You're suggesting someone gets disciplined but how did you know that he needed to do stretching?---Well, that was my assumption.

30 Well, why?---And in discussions that I had with other people I, I believed that that assumption was quite accurate. Now - - -

So he's going to, he's going to be disciplined for not stretching - - -?
---Sorry, I, would you mind if I completed my answer, is that okay?

All right?---Okay. So if he wasn't doing what he was supposed to do in terms of the doctor's instructions then he was exposing Council to a risk.

40 But my point is that you don't know whether he had to stretch or not?---I, I had the strong belief at the time that that's what he had to do.

Are you, have you got a medical degree?---No, but through my discussions with the appropriate staff, that was what I was led to believe.

Did you have a look at his WorkCover New South Wales medical certificate that says what he could do and what he couldn't do?---Not at the time.

Did you bother to have a look at that?---No, I relied on Mr Macklin's advice.

All right. Perhaps I can show it to you and I've got copies for, can you tell me there where it is suggested that he should do stretching?---It doesn't appear to say stretching but it does say walking up to 10 minutes, standing on the spot on the phone is not walking up to 10 minutes.

10 But you were suggesting that he be disciplined if he didn't stretch?---The discipline can take a number of forms. It could be someone talking to Mr Issa and saying look, the medical certificate says you've got to do blah, blah, blah, blah, why aren't you doing this/

Well, the medical certificates - - -?---Those notes could then be made and placed on file so that if there was an incident in the future we would have records of that discussion with him.

You see, all that the medical certificate requires is that he walks up to 10 minutes and stands up for 15 minutes. Do you see that?---That's right.

20 That's right. There's no exercising or stretching?---No, that's correct.

And you didn't check this out before you wrote this email, did you?---I relied on Mr Macklin's advice to me.

And you sort of build up steam towards the end of the paragraph, don't you, you say at the end, "I suggest that he is not allowed to stand out in the street. I think we need to provide him an area outside the building, say in front of KA's office, where Linda can supervise him?"

30 ASSISTANT COMMISSIONER: It says inside the building?---I think you mean inside the building.

MR CHALMERS: Inside the building where Linda can supervise him?
---That's right.

40 We're sort of getting close to house arrest here, aren't we?---He's an employee of Council. By, as an employee of Council I expect that all staff, not just him, do what they're required to do and if, and if an individual is not capable of managing their own time, and that was demonstrated to me by his behaviour, then I would expect the management to take steps to rectify that and that's, that's what I was intending to do with this email.

To the extent that a Council employee needed to supervise him every, 10 minutes in every hour?---Yes, that's right. I, I felt that that would probably be a good way of monitoring him and ensuring that he did what he was required to do in terms of his arrangements for light duties.

Can I suggest that what was really happening, sir, was that you were trying to isolate my client in trying to get him off the phone so he wouldn't contact

Mr Giangrasso and Mr Child?---No, I disagree with that. I didn't know who he was speaking to and it wasn't my concern anyway.

But I mean you were concerned that he could be speaking to Mr Child and Mr Giangrasso, especially given his proximity to all the things that were happening in relation to the informal meetings from time to time of the Executive, discussing all these very sensitive issues?---I disagree.

10 You weren't scared about our man in Berlin, you were scared about our man in Burwood. You thought he was a spy and you were going to monitor him?---I find your comments intriguing but I must disagree.

And then paragraph 11, go to paragraph 11, you say that there are people doing private work after hours, the people I'm aware of from IPP reports are?---That's correct.

Do you say that's correct?---That's correct, that's what I was told by Mr Mailey.

20 In relation to each person on that list?---I'm not sure if I covered everybody but at least the people on that list, yes.

You see, isn't that really an interesting way of having the people who you knew were involved in the units surveyed?---I don't know that the mowing crews were at the units.

30 Well, that's right, you go (a) to (e) but hey, just in case anyone thinks I'm specifically looking at these specific workers, why don't I put in mowing crews, that'll throw them?---There, there's a video clip that was shown to me at some point in time that showed Council staff, and I don't know their names because I unfortunately wasn't able to go to every staff member during, during my period there and know their names personally but there appeared to be mowing crews that were dismounting mowers from the back of utes and then going into private properties. That was communicated to me and a video was shown or still pictures were shown to me of, of that activity. That and other matters that related to each of those other people were also communicated to me so it was my understanding and Mr Mailey's belief and other people's belief that those people were at the very least in places where they shouldn't been. Well, it appeared that they were doing
40 things that they shouldn't have been doing.

You agree that this was on 7 May at a time when my client had been at the Chambers in March, April and the first week of May 2009?---Yeah, but my, my comments weren't limited to 7 May, they, they stretched back right to the beginning of the surveillance process. Now, if you look at clause 11 I actually finish off by saying there may be others, have PM, which is Peter Macklin, and Richard, Richard Mailey, compile a list. Now, I wasn't

limited it to those people, I was just, they were the ones that I recalled and knew about but I also knew that there were others.

10 Then in the last paragraph you become quite chilly, Gentlemen, given the nature of the malicious allegations that are currently afoot, I strongly recommend that you give immediate attention to the items above. What did the items above have to do with the malicious allegations that are currently afoot?---I, I believed that there were people that were out to discredit me and the Council and when I was referring to the items above I was referring to all the items from 1 through to 12 and I was ensuring that my staff, the management team, were actively doing what they were supposed to do in terms of managing the issues that were occurring at the time.

20 How did the malicious allegations that are currently afoot have to do to issues like pilfering and stealing and not being where people are supposed to be, how does that have any connection to malicious allegations that are currently afoot?---The connection is that the, I, I believed we had systems and processes in place to manage the movement of staff materials and other resources. If the allegations were true that would mean that the systems and processes and the individuals involved were not doing what they were required to do as an employee of Council. It did concern me that there might have been staff that ended up on the Befaro property, that concerned me.

What concerned you, was it not, was the fact that you wanted to discredit anyone who could put you in danger and suggest that you had been acting against the interests of Council and this document is a declaration of war? ---Again, an interest concept but I must disagree with you.

30 And so confident are you in your powers at Burwood Council that you don't even try and distinguish between the fact that you're trying to get dirt on a whole lot of people and the fact that that has to do with the allegations against you. The fact that you put in the words, in the last paragraph, does it not suggest that you felt so confident at Burwood Council that you couldn't see any difference between your needs and your interests and Burwood Council's interests?---I disagree with you.

40 And that you would put people under surveillance, you would have them followed, you would change them from one position to another in order to protect your interest and your power in Burwood Council?---No, I disagree with that.

I want to take you - - -

MR BLAKE: Are you going to tender this?

MR CHALMERS: Sorry, yes, I tender that WorkCover New South Wales medical certificate.

ASSISTANT COMMISSIONER: Yes. Mr Issa's medical certificate will be Exhibit 318.

#EXHIBIT 318 - WORKCOVER NSW MEDICAL CERTIFICATE – MR AMMAR ISSA

10 MR CHALMERS: Now, in relation to June, 2009 were you aware that consideration was being given when Mr Thinesh was involved, was to become involved in surveying work that my client, Ammer Issa was to, was no longer to work at Council, but was to be put on worker's compensation and sent home? Were you aware of that?---I was aware after the event, yes. And I had discussions with Mr Macklin about that.

And that fitted in very nicely with the fact, did it not, that you did not want Mr Issa at the Council Chambers?---I disagree with you.

20 Well, you see initially in this cross examination you referred to him as a gentleman and then you have him smirking at you. Are you saying, sorry, was I wrong?---No. What, what I was referring to was an incident that occurred in front of the Council Chambers. That doesn't change the fact that he was a gentleman. Generally his behaviour around me was quite courteous. He was always very respectful.

And when you were talking about the CCTV room you said, in evidence to this Commission this afternoon, that you would've, that if that had happened, I know it's theoretical because it didn't happen, he went
30 somewhere else. But had it happened, you would've, if there was only one person in the CCTV room, you would've had to get more, to make sure that he could do that work consistent with the light duties that he could perform?---No, it's not what I said.

All right?---What I said to you was that there was already one person in that room and that the addition of Mr Issa to the room would've made the people in that room two, not one.

40 That's your evidence. But what I'm suggesting to you - - -?---Well, that's the fact.

- - - is that what you're suggesting was that you would go to quite a bit of effort to make sure that Mr Issa could work within his means in the CCTV room. Would you agree with that proposition?---I would agree that wherever I was involved I would put a lot of effort into ensuring the right thing was done.

All right. And at that Executive meeting on 16 February, 2009 according to your evidence you were quite concerned to see that Mr Issa got a position where he could work, from your evidence here this afternoon?---No. That's not correct.

10 All right. Now in relation to June, 2009 when you became aware that there was consideration being given to Mr Issa not working any more at Council Chambers, did you make any effort or did you check whether there were any duties that he could perform at Council Chambers?---No. I did say a few moments ago that I spoke to Mr Macklin over the phone, if my memory serves me correctly. I recall him ringing me and talking to me about it. He said that he had made inquiries with both Mr Azer and others about suitable duties for Mr Issa. That there appeared to be no further work available in the Council for him. That the work that Mr Issa had been working on in the engineering area, which was the asset management area, using the staffs words, had dried up. I, I understand that Mr Macklin also had discussions with Council's insurer and he came to the opinion that there was no further work at Council for him. I didn't dispute that. I satisfied myself in that discussion that he had taken all steps that would've been required of him.
20 And I took him to his word and, and that's what occurred.

First of all just, can I suggest that Mr Macklin's evidence, and I could be corrected, but I seem to remember Mr Macklin's evidence on that point was that the worker's compensation person who came in, came in some time after that period of June, 2009?---Well, yes, that might be the case, but it doesn't stop, it doesn't stop Mr Macklin or anyone else ringing the insurer and getting advice. I took his words to be that he took advice.

30 Can I suggest to you that Mr Macklin was just doing what you made it clear to him you wanted him to do, which was to get rid of my client from Council Chambers because he's a nuisance, he's on the phone and he might give information to (not transcribable) Child or Mr Giangrosso were no longer at the Council?---With all due respect, I think that comment is quite absurd. I think I've demonstrated with my answers that I did go to quite some trouble to try and offer some light duties within the Council for Mr Issa. And, you know, from my point of view if he could be gainfully employed and there was something for him to do, that's what he would've done.

40 What about the future works programme? That was a continuous programme. That's what he'd been working on until June, 2009, why couldn't he continue working there?---Well, as I explained, I was advised that that work had dried up.

Sorry, the future works programme had dried up?---Well, I was told that there was no further work there that he could be gainfully employed with.

And who told you that?---Mr Macklin.

All right. Now, now when Mr Issa was then, stopped working at the Council Chambers, do you appreciate that his income went down a lot? Did you, were you aware of that or did you consider that?---I'm not privy to that sort of detail, no. I assumed that the worker's compensation people would pay him whatever the industry rates are.

And you're not aware that they pay a percentage of the wage and they don't include overtime?---No, I'm not aware of that.

10

(not transcribable) overtime?---Not aware of that detail.

And are you aware that no one rang up Mr Issa and told him that there was not going to be any consideration to him coming back to the Council Chambers?---No, I'm not aware of that.

And are you aware that after ICAC started for the first time, some people from rehabilitation started contacting him to try and assist him getting back in the workforce?---I'm not aware of that.

20

Now, I'll come to the famous Christmas party, the infamous Christmas party. Now, in relation to the Exhibits provided to Council, the, it seems from the Exhibit that the letter in relation to the Christmas party that you were sent a copy of that for your comments?---It was sent through to me and I did make some changes.

And just looking at that, those emails, sorry, sorry, Exhibit 278. The, it seems that you were aware previous to, you must've been aware previous to 14 December at 9.00am that some consideration was being given to not allowing my client to attend the Christmas party. Is that right?---I actually picked up the phone and had a discussion with Mr Macklin about that.

30

And when was that?---When I received the email that you're holding in your hand.

Well, at 2.20pm, you say, looks fine to me. Please note I have suggested some changes. See green word attached?---Yes.

You see that?---Yes, that's right.

40

So it's, the suggestion here is that you're expecting to receive that letter or did it just come as a complete surprise?---No. It came as surprise. I, I did challenge Mr Macklin about the actions they wanted to take. And this hearing has heard all the discussion on it. I don't want to go over that material. I don't want to delay this hearing any further. But I didn't agree with what they wanted to do. But I accepted the arguments that were put to me. I thought that the, the main issue which allowed me some comfort in terms of allowing that to go out was that of the further risks of injury to Mr

Issa and possibly some of the others. My, my knowledge of the, and this is no disrespect at all to the people at the depot, because I, I admire the work that they do, but with my knowledge of some of the behaviour of the depot staff, is that it can get quite rough at times. And it's the nature of the people that you're dealing with. And particularly where there's alcohol involved, there could be situations that occur. And, and as an employer, I think it was our duty to ensure the safety of all, all our staff.

10 If you had concerns about the letter why didn't you put it in an email?---I picked up the phone and had a discussion with Mr Macklin about it. That was my style, I, I didn't like putting those sorts of things in writing on any sort of issue, I preferred to discuss with my executive my views and to hear their views, at times I agreed with them, at times I didn't. On this one the main thing that swayed me to agree with their actions was the fact that they felt there could've been a risk to Mr Issa and others.

20 So according to the additional part of the Exhibit 278 that you don't have, but the green lettering that got produced to the Commission it was just a few words just from memory to attend the staff Christmas party, you just changed a few words according to that?---I think I included the words, "to attend the Burwood Council Christmas party." I wanted to be, I thought it would be clearer, I didn't want it to be, you know, taken out of context.

30 And you weren't concerned by the fact that the letter says nothing about the fear that there might be some aggression towards my client, you were happy that the letter was couched in the terms it was couched in?---I, I thought the letter was appropriate, I didn't feel that we should fuel the fire so to speak, there was already a lot of animosity amongst some of the staff at the depot, I didn't feel the need to aggravate that situation.

40 And what did you think of the second last paragraph, "As a consequence you're advised that you are not able to attend the Christmas party or any authorised Council functions." What was that about? "or any other, or any authorised Council functions." What was that about?---I understood that to mean that the risk that I've just spoken about would apply to any event that the Council was having, it could be a corporate function in terms of general training sessions and you heard in this hearing that I, Council led a number of corporate workshops that occurred quarterly in terms of training and values and so on at the Council. If there was a risk with an employee going to a Christmas party then that risk would also extend to other functions that we held. So I took that to mean that it wasn't just the Christmas party that we were talking about.

See, as I understand what Mackin's saying he's saying that the aggression would be towards my client, it wasn't that my client would be aggressive towards other people it's that other people would be aggressive to my client. Is that what Mr Peter Macklin told you or was it something different?

---Well, you're saying that he said that. My understanding and my discussion with him was that he had a concern specifically with the Christmas party in that there might've been friction amongst the staff but he, we also talked about the possibility of Mr Issa injuring himself at, at an event or function that Council might have.

10 And how would that happen?---He could've slipped on something, he could've been pushed by someone, he could've, anything could've happened and I, you know, I don't profess to be an expert on, you know, what ifs but I don't, I felt comfortable that enough information had been given to me by Mr Macklin to satisfy myself that that letter could go out.

Can I suggest that this was Mr Macklin doing your bidding? Your bidding being that you wanted my client away from the Council, permanently away from the Council?---I disagree.

20 And that this in addition to the fact that he was not allowed to work in Council Chambers anymore and that he was sent away from the Council is all a part of a policy by you to keep my client away from the Council?---I disagree with you.

Even if that cost my client money, didn't matter, he had to be kept away from the Council, not just the Council Chambers to work but even from Christmas parties and other social functions?---I disagree with you.

That was the cost he paid for going to the Herald?---I disagree with you.

Nothing further.

30 ASSISTANT COMMISSIONER: Thank you, Mr Chalmers. Mr Taylor?

MR TAYLOR: Mr Romano, earlier today you told Mr Hanley and then later this afternoon you told Mr McIlwaine that Mr Azer provided you with public liability policy documents. Is that correct?---I, I think I said it could've been him or one of the other staff from Engineering.

Well, when do you say Mr Azer possibly gave you those documents?
---Sorry?

40 When do you say Mr Azer possibly gave you those documents?---Are you asking me for a date and time?

Yes, please?---I can't remember.

Did you request him in writing or verbally to obtain those documents?---I had, I had a verbal discussion with him.

You now recollect that you'd made that request of him and he provided you - - -?---Look, I don't have a clear recollection, I think it was him, it could've been someone else.

Well, I want to suggest to you that just never occurred, he never made any such request of him and further he never supplied you with any such documents. Do you agree that that's possible?---It's possible that it might not have been him, yes.

10 Now, you've made a number of statements which have been tendered in the Commission. That's correct isn't it?---That's correct, yes.

And in preparing those statements you had access to documents such as exhibits, transcripts, emails, what other people had said in statements and so forth?---(not transcribable).

And you took care in preparing your statements I presume?---To the best of my ability.

20 Right. And in the statements you've responded to various persons, versions of events in their own statements and also in relation to the sworn evidence they've given. Is that correct?---That's correct, yes.

And I assume do I correctly that in preparing your statements you have dealt with those issues that you thought were important to this Commission in response?---To, to the best of my ability, yes.

30 Well, not, you picked out those parts of the evidence of others that you thought you needed to address. Correct?---No, I'm sorry, I disagree with that, I don't know that I've picked out evidence, I responded to situations and tried to clarify positions where possible and where required.

Do I take it then in your statements where you don't join issue with anything in somebody's statement that you then accept either their statement or their evidence as being accurate and correct?---No, I can't, I can't give you certainty of it, no.

40 Well, why, why wouldn't that be what you did in your statement, that is, you dealt with those issues that you thought were important and that you thought were inaccurate in the other person's versions of events even in statements or their sworn evidence?---I think that I can answer that by saying that generally I would've agreed with, with statements or issues that were raised by those individuals, it doesn't mean that I agree with them but generally I think they might've been right, the detail could've been slightly different.

There's no person's version of events of something of importance that you haven't responded to is there?---I'm not sure, I'm not sure if I can give you a direct answer on that.

Why not?---Because there's been so much information that's been put to this Commission, as I said earlier I struggle to keep clear in my mind all the separate incidents that have been raised.

10 You knew what people were raising in their statements and in their reports?
---Generally speaking I think I've covered off on most of the issues that I felt were critical. If I didn't cover off on some issues it was probably because it wasn't relevant or I had no argument with what was being said.

Isn't that agreeing with the proposition I just put to you?---Not necessarily, no.

20 All right. Prior to Mr Azer starting employment at Burwood Council in July 2007 you had no relationship with him. Is that correct?---I had occasion to work with Mr Azer while he was at Hurstville Council. We crossed paths there for a short period of time.

A very short period of time was it?---Maybe a month or two.

Yes. And you had no relationship outside that working environment. Correct?---None whatsoever.

And after he started at Burwood Council you had no relationship with him outside the working environment?---No, I didn't socialise with him no.

30 As at February 2009 you were good friends with Mr Becerra?---Yes.

You knew him reasonably well, if not quite well.---No, I knew Mr Becerra very well.

And as far as you were aware he had no relationship with Mr Azer other than in the work environment at Burwood Council.---I would agree with that statement.

40 Now, you were responsible for reviewing Mr Azer's performance at Council, weren't you?---That's correct.

And would you agree with me that up until the end of 2008 you were quite content with his performance as a director?---No.

You wouldn't agree with that?---I wouldn't agree.

Well, at any time, were you happy with his performance?---Yes, there are elements of the job that he did that I found to be quite acceptable and in cases above the normal.

10 Well, when did you become dissatisfied with his performance?---I think the best way to describe would be that it was a progressive cumulative build up of concern. I spoke to Mr Azer on many occasions about my concerns and expressed to him my views on how he could handle things better. It was a difficult relationship because we're both engineers and as engineers we tend to have our own views on certain things and his style sometimes clashed with my style. But generally speaking I found that he was quite co-operative.

When did the build-up of the dissatisfaction start?---I would say probably from the beginning of 2008.

Beginning of 2008?---Yes.

20 Can you explain to me then why you awarded him a bonus payment of \$12,617 in September 2008?---Because at that point in time I felt that generally speaking he did perform to my expectations on most issues.

You wouldn't pay him a bonus if he hadn't come to the view that he was doing a good job would you - - -?---We have a number of criteria and he met those criteria. I, I felt he needed to be rewarded for what he had done but I did mention to him the areas of improvement that I expected from him.

30 The criteria you're referring to are the key performance indicators aren't you?---There were key performance indicators and some of them were very black and white and, and, and um, some of them were quite negligent.

You don't agree then that as at the end of 2008 he was going a good job? ---No, what I said to you was that generally he was doing a good job but in terms of my dissatisfaction with his overall performance there was a build-up from the beginning of 2008 until the time I left Council.

40 During 2008 – sorry. He complained to you on a number of occasions – did he not – about the direct contact you were having with Mr Child whilst Mr Child was working at the depot?---I only recall one occasion - - -

When was that?---I can't tell you a specific time but it was, it was probably during 2008 and it was in relation directly to concerns that Graham McPherson the Acting Works Manager had raised with him.

Well, you were keeping Mr McPherson out of the frame as it were in having direct contact with Mr Child weren't you?---No, I disagree with that.

Did you not previously admit in evidence in the Commission that you had direct contact with Mr Child and left Mr McPherson out of the loop?---I think I use the words like – “I bypassed Mr McPherson and went directly to Mr Child.” But I didn’t Mr McPherson from dealing with Mr Child.

I want to suggest to you that Mr Azer commenced complaints to you about you having direct contact with Mr Child in 2007, would you agree with that nor not?---I couldn’t be sure, I thought it was more 2008 early 2008.

10 Well, I want to suggest to you that those complaints continued in 2008, would you agree with that or not?---I don’t recall him complaining more than the once.

But you say it’s just limited to one instance.---Well, that’s the one that I can recall.

Now in your statement of, pardon me, 30 April, 2010 which is Exhibit 242 at paragraphs 105 and following you gave evidence in relation to a conversation between yourself and Mr Azer which you said at that stage on
20 or around 12 February 2010 we had a following conversation where you start off “... are you aware of a complaint relating to staff member working on a block of units for (not transcribable) “ Do you remember that in your statement?---In relation to – was that in 2009?

You said in the statement 2010 but obviously you meant 2009.---Statement 2010, yes.

And you said at that stage that you didn’t recall calling Mr Azer on his mobile phone at home.---I was, there was a lot happening, I couldn’t
30 remember, recall every single contact, I wasn’t sure whether it was on the phone or not.

Because around that time, February 2009, you were having a lot of conversations with a lot of people, weren’t you?---I think it would be fair to say that my working days were quite hectic and I had lots of conversations most of the time with lots of people. I don’t think it was confined to just that period.

Well, what I want to suggest to you is that, that the amount of traffic – if I
40 can use that term – between you and other accelerated once you became aware of the Joe Saab complaint?---No, I don’t think that’s a correct statement.

Well, you subsequently admitted in another statement that you did ring Mr Azer at home late at night.---I did recall after reconstructing my memory and I struggled to do that - - -

Well, after you heard Mr Azer give evidence that's when you - - -?---Well, yes that's right it triggered my memory.

You've also seen the exhibits tendered in relation to Mr Azer's running diary.---Yes, I did see those.

Right. And in your statement, you don't dispute do you, in relation to say Exhibit 253 that you told him on the morning of the 10 February 2009 that you had an interest in this unit that was the subject of the Saad complaint.
10 ---I'm sorry, look I, it's possible I just can't, I don't have a clear recollection at this point.

Well, if you didn't dispute it in your subsequent statement that we take it that you accept Mr Azer's note in his evidence as being accurate and truthful.---I would suggest to you that whatever I put in my statements is my recollection.

Sorry, I missed that last word.---I would suggest to you that what I've put in my statements for this Commission is my recollection to the best of my
20 ability and knowledge.

Now, you've been shown Exhibit 301 on a number of occasions today, that's the email, the second part of it is, the top part's 6 April Mr Macklin to you, the bottom half of the front page is you to Mr Azer and Mr Macklin asking certain things, you don't need to be shown that again.---Not at this stage.

Thank you. It's the situation is it not that Mr Azer never responded to your email – correct?---I don't recall him responding.
30

Well, do you dispute (not transcribable)---Unless there's a written email where he responded, I don't remember him ringing me and I don't remember seeing a written response from him.

Well, I want to suggest to you that he didn't respond to you in writing or otherwise?---I don't remember one way or the other.

Now, you became upset with Mr Azer on about 10 February 2009 – didn't you – when you became aware that Joe Saad had originally made a
40 complaint to Mr Dardano which had been compliant – passed onto Mr Azer?---Um, I don't believe that I knew the identity of the complainant on 10 February but yes I was upset with Mr Azer. The reason for my disgruntlement was that I believe that he was walking away from his responsibilities. That issue in terms of his character and behaviour has been the subject of many discussions between him and I and was reflected in my performance reviews with him. As a director he was someone that was new to a director role and I had a lot of time and respect for Mr Azer. I felt that he needed to be mentored and encouraged in terms of his role and I spent a

fair bit of time with him in terms of coaching him in that regard and one of my concerns which became quite a major focus for me, particularly earlier this year before I left Council, was the fact that he had not grasp the concept that as a director he had responsibilities and delegations that he had to respond to and take account for and there were many occasions where he appeared to walk away from those responsibilities. Particularly with regards to those claims in February he put to me that there was a conflict of interest and he couldn't deal with the claims that were being presented and I challenged him on that, I struggled to understand what the conflict of interest was and I remember that during that week not just on the 10 but over a number of days and probably in the weeks that followed I had discussions with Mr Azer about what he interpreted and understood to be a conflict of interest in regards to those claims. I just did not understand how a senior person in an organisation could make a statement of that sort and just walk away. Clearly he had responsibilities that he was, he was required to be accounted for.

He said to you words to the effect of that he had a conflict of interest in investigating a complaint coming from a depot staff member because he was ultimately responsible for the depot staff didn't he?---Well, that's not a conflict of interest, that's his job, that's his delegation, he's responsible for those staff and part of his - - -

He said (not transcribable) - - -?---And part of his responsibility is to investigate claims of those staff. Can't just walk away.

He said to you words to the effect of that if the staff member has worked on these units in Council time I haven't properly supervised them and therefore I have a conflict in investigating that didn't he?---I don't believe he said that, no.

Okay. Now, your dissatisfaction with him continued in April 2009 such that in Exhibit 197 at page 10 and if you want to see this let me know. It's an email from you to Mr Dencker and Mr Hullick where you list a whole list of issues including one, "Has the exec team approved Stephen Ellul's preferred structure" and so on. You remember that?---Yes, I remember.

And that was your opinion at that stage that he was once again absolving himself from his responsibilities as a Director?---I thought there were a number of occasions where he did that, not specific in relation to the claims or the allegations that led us here today but on a number of issues.

It's a situation that you've heard the evidence that he said he was excluded from executive meetings and meetings with lawyers dealing with these issues, that is, issues subject to this inquiry. Would you agree with that as a proposition or not?---I, I heard his statements and I've heard the debate about those statements and the exclusion. He wasn't excluded, they weren't executive team meetings, they were special meetings that were organised by

me that included Council's lawyers and the two Acting General Managers. I believe that in one of the conversations that he refers to, had referred to in his statements and here in the hearing he has misheard me or misunderstood my comments to him. My discussion with him about him not participating in those meetings was along the lines that we didn't require him at those meetings because they involved strategies and workers comp matters, they, they weren't meetings of the executive per se.

10 They were dealing with depot staff were they not?---There were elements of that, yes.

Well, when you say there were elements you were dealing directly with depot staff weren't you?---The meetings were dealing with depot staff.

And he was the Director responsible for the depot?---And it would've been up to the Acting General Manager - - -

20 Can you please answer the question. Was he the Director responsible for the depot?---Yes.

Therefore responsible for the depot staff. Correct?---Yes.

And your criticism starting in February and going through to April was that he wasn't taking his responsibilities as a Director - - -?---He would pick and choose what he wanted to be involved in.

30 All right. But you excluded him from dealing with the issues relating to the workers compensation claim and the like of the depot staff didn't you?---I didn't exclude him.

You didn't invite him to the meetings?---I didn't feel that he - - -

Did you invite him to the meetings or not with the lawyers?---Am I able to explain why or you're (not transcribable)

Did you invite him to the meeting with the lawyers or not?---No, I did not.

You co-ordinated all those meetings?---That's right.

40 You were in charge of who attended and who didn't?---That's correct.

And you took a conscious decision to keep the Director who was responsible for those workers out of the loop didn't you?---In relation to the meetings, yes. In relation to him being briefed absolutely not.

Did you ever brief him?---I couldn't.

Did you ever brief him?---I was (not transcribable).

It's a yes or no, Mr Romano, did you brief him?---That's a no but I understand that Mr Hullick and Mr Dencker did at times brief him.

Did you direct either Mr Hullick or Mr Dencker to brief him?---I didn't think that I was in a position to do so.

Is that a no?---It's - - -

10 Is it a no?---It's exactly what I said.

Is it a no?---I didn't believe - - -

Did you or did you not direct either Mr Dencker or Mr Hullick to inform the Director responsible for these workers about what was going on?---I didn't believe I had a role to play - - -

Did you or did you not do that?---I don't believe that I had a role (not transcribable)

20

Well, you're not going to answer it, I'll move on. Now, there were quite a number of those meetings weren't there?---There were a few.

Well, how many do you call a few?---I don't know, between six and twelve.

Now, 27 July, 2009 do you recall having a conversation with Mr Azer whilst he was attending Maddocks in the city with Mr Baird in relation to the Energy Australia dispute?---Not specifically but if you refresh my memory I might be able to (not transcribable).

30

Well, I want to suggest to you that at about 9.00am on 27 July, 2009 you had a conversation on the telephone with Mr Azer, you being at the Council and him being in the city having attended upon Mr Baird and Maddocks in relation to the Energy Australia issue?---It's possible.

And you then immediately called a staff depot reforms meeting didn't you? ---I don't recall that.

40 Is it possible you did that?---It's possible, anything's possible.

He was part of the depot reform process wasn't he?---I understand that to be the case.

He was one of the persons tasked with implementing the depot reforms wasn't he?---Absolutely, yes.

Any reason why you called a meeting of the Depot Reform Committee knowing that that Director responsible for the reforms wouldn't or couldn't

possibly be there?---I don't recall calling that meeting, I don't recall that meeting occurring.

Pardon me a moment. Would you agree with me that the contact you had with Mr Azer dropped off after February 2009?---No, I disagree with that. He was an active player in the executive, he attended legal meetings that we had with Maddocks.

10 How many times did he attend legal meetings with Maddocks?---Whenever they were called there he was invited I'm sure.

That wasn't the case was it, Mr Romano?---I believe - - -

You had him excluded from a lot of those meetings?---No, they were separate meetings. I refer to legal meetings, there was specific meetings with Mr Baird that were labelled legal meetings and they occurred sometimes at Council and sometimes at Maddocks. Mr Azer was present at those meetings.

20 I want to suggest to you that he wasn't present at all those meetings. Would you agree with that or not?---I don't have the information to be able to confirm or deny that but if you're referring to the workers compensation meetings with a number of different law firms yes, he wasn't involved in those but if you're referring to the legal meetings that I'm referring to he did attend a number of those.

And not all of them, correct?---I can't recall.

30 Well, you can recall can't you?---Well, I can't recall every specific meeting. If you want I can go back to my diary and my notes and I'll see if he was at all the meetings but from my recollection he, he did attend most of them.

Now, as far as Mr Azer's concerned you never gave him any direction about taking reprisal action against Mr Child?---Absolutely not.

Never gave him any direction, reprisal action against Mr Giangrasso?
---Absolutely not.

40 Against Mr Issa?---Absolutely not.

Or anyone else. Is that right?---That's correct.

And how would you describe your relationship with Mr Azer as at April 2009?---I felt it was a good working relationship.

Notwithstanding your criticism of him?---Sir, I, I had a habit of criticising people that worked for me for areas of their work that they didn't fulfil and meet my expectations of. I think you've heard responses from a number of

those staff here at this hearing in relation to that and I didn't discriminate in relation to Mr Azer. If he did well I said he did well, if I felt he needed criticism I gave him criticism, where I thought he needed mentoring or coaching I gave him that mentoring and coaching.

What mentoring did you give him in 2009?---I think we had many discussions about decisions and decision-making of a manager. I can't recall one specific one at the moment but I talked to him on many occasions.

10 What coaching did you give him in 2009?---I gave him the, the benefit of my experience.

Can you give us an example?---Sorry, I can't hear.

Can you give us an example?---There was one occasion in relation to a dispute that we were having with Energy Australia where I monitored Mr Azer's progression of the matter and his ability to reach an amicable agreement with that group and he made some decisions along the way which I thought were good decisions but there was a point in time where he
20 procrastinated and, and failed to make a decision which resulted in myself having to contact Council's lawyers over a weekend to manage a potential legal dispute that we were facing with the Energy Australia group.

How is that coaching?---I was just giving you the context so that you might appreciate my answer. After that event, following that weekend, I had cause to talk to Mr Azer about that and explain to him that his lack of decision on that matter had led to an escalation of the conflict and that possibly he could have dealt with the matter a little bit differently and I gave him some
30 suggestions on how that might have occurred.

Do you agree that at times in Executive meetings he formed an opposite view to you about certain matters?---Yes, I would agree with that.

And on occasions, to use the vernacular, he stood up to you?---Yes, I think a number of my staff stood up to me.

Now, do you agree with Mr Azer's evidence that you were upset with him in February 2009, once again to use the vernacular, that you hadn't, he hadn't covered your back in relation to the Saad complaint?---No, I don't
40 agree with that statement.

So when, I withdraw that. I want to suggest to you that you were in fact upset with him because you felt that he hadn't covered your back in relation to the Saad complaint?---No, I disagree with that.

I want to suggest to you that thereafter you took steps to exclude him from meetings and information in relation - - -?---I disagree.

- - - in relation - - -?---I disagree.

- - - to the issues that were - - -?---I disagree with that.

- - - occurring within Council as a result of the allegations made in the Sydney Morning Herald articles, would you agree with that or not?---I disagree on that.

Thank you, Commissioner.

10

ASSISTANT COMMISSIONER: Thank you. Mr - - -

MS RONALDS: Commissioner, could I just note that on my sums we'll go slightly past 4.00 but the transcription person can stay still 4.30 in an endeavour to finish this witness, I'll have to disappear at 4.15 because I have a commitment with the Attorney but Mr McKenzie is happy to steer the ship in my absence and I'm sure that it'll be more than capably done. It would be, if that's convenient to those who haven't yet asked questions rather than have to, there's a problem with Mr Blake tomorrow and I'm
20 concerned that if his appeal runs over we'll all end up in terrible mess so is it possible to sit on for half an hour?

ASSISTANT COMMISSIONER: Yes, it would certainly be good to finish Mr Romano if we can.

MS RONALDS: Yes. Is it possible for people who haven't, I think there's only the three involved. You'll only be a minute anyway, won't you?

MR NEIL: About five, five or six minutes, as long as we can all agree to
30 get the witness finished today.

MS RONALDS: Yes. And Mr Leggat said he'd be 10 minutes.

MR LEGGAT: It will be less than that.

MS RONALDS: And you'll only be a couple of minutes, won't you?

MR EURELL: 10 or 20 minutes, yeah.

40 MS RONALDS: 10 or 20?

MR EURELL: That's what I indicated.

MS RONALDS: No, you said 10.

MR EURELL: I said 10 to 20. I'll try and make it 10.

ASSISTANT COMMISSIONER: Yes, Mr Neil.

MR NEIL: Thank you, Commissioner. Might the witness be shown Exhibit 289 please. Could I just ask you, Mr Romano, to go to page 22, paragraph 74 and would you familiarise yourself with that paragraph which deposes to a conversation between you and Mr Baird?---Yes.

Now, isn't this the case that you had a short conversation with Mr Baird in which you in substance asked him about how the contract was coming along in the Maddocks' office?---I don't remember where the conversation took place.

10

Did Mr Baird indicate that he would make inquiries to see what the position was?---If you're referring to - - -

Paragraph 74?---Yeah, 74 on page 23 in relation to - - -

That goes to page 23?---Yes, that's correct.

What I want to suggest to you is that you had agreed with a suggestion of Mr Baird that given your conflict of interest with Albert, that's Mr Becerra, he, Mr Baird, strongly recommended that Mr Les Hullick undertake any recruitment for the in-house position, isn't that right?---That's correct.

20

Yes. And indeed, that appears in terms in your paragraph 32 on page 12, correct?---Yes, I would agree with that.

Yes. And further in your paragraph 32 Mr Baird said that you said to Mr Baird, David should Les deal with you or someone else in your office in relation to progressing this matter, your own affidavit says Mr Baird says yes, Les, I'll get Darren Gardner to contact you as this is an employment matter which I don't have any experience in. Do you see that?---That's correct.

30

And indeed, you understood that Mr Gardner had particular competence in employment matters, correct?---That's correct.

And in your paragraph 32 Mr Hullick says, Do you want me to contact him as that might be faster, and Mr Baird says, yes, wait till tomorrow to ring him as I need to brief him. Do you see that?---Yes, that's right.

Now what I want to suggest to you is to the extent that paragraph 74 could be read as suggesting that Mr Baird was actively involved with that contract, any such suggestion would be quite inaccurate, do you agree?---I agree with your statement. It wasn't meant to be portrayed that way. He was merely chasing up, chasing up a contract that Mr Gardner's group was dealing with.

40

Yes, he was a conduit between you and Mr Gardner. Correct?---Correct, yes.

Yes. Now, I just want to put this to you, counsel assisting has asked you some questions, other persons have asked you some questions and I've now asked you some questions but I just want to suggest to you that whether there be any significant difference in your evidence or Mr Baird's, Mr Baird's is to be preferred to yours, what do you say to that? I'll try and be as competent as I can with *Browne v Dunn*, Commissioner?---I, I would disagree with that.

10 All right. Well, you understand there's a number of matters and you understand Mr Baird's position on some matters, you understand, the Commissioner understands that - - -?---Yeah, no, I understand that he may disagree with my view.

Now, did you intend in paragraph 74 to assign in fact a greater role to Mr Baird in respect of the contract than in fact he had, namely only as a conduit?---No, I think I was quite clear. David was just assisting with the facilitation and delivery of the contract.

20 But I want to suggest to you is that paragraph 74, as it has been expressed and signed to by you, in fact was intending to convey a greater involvement with the contract on the part of Mr Baird than in fact he had, do you agree with that or not?---No, I'd dispute that. If I can clarify it, I think, if it has been read that way, it has been misinterpreted. I think I've been quite clear that David was merely providing assistance with the following up of where that contract was.

Well, I suggest - - -?---I don't believe that he, he had any part to play in terms of the information that was in that contract.

30 But what I'm putting to you is that's not what section, paragraph 74, with the use of the words you've chosen is confined to. You've had Mr Baird saying he's just looking at the contract for Albert and wanted to clarify issues with you. You've got you talking to him about the, you didn't want an employee role. You've got him saying all these issues will be covered in the contract. Later on you're saying to him how's the contract coming along David? And he's saying it's nearly ready for you to look at. That creates more of an impression than a mere conduit doesn't it?

40 ---It was an attempt to try and communicate two separate instances. The first part of clause 74 refers to a discussion I recall occurring at, on the phone. And it was in, it was after, I can't recall the lawyer's name, I think it was Ms Richardson contacted me and we had discussions about employee versus permanent status and she was quoting, I think it was sections of the award about it and it, there was debate and confusion about that element of the contract. He rang me, there was a brief discussion, I think he'd been briefed by Ms Richardson or had discussions with someone in that group. And he just wanted to clarify quickly what, what I was expecting. I believe that he then communicated what I'd told him to the employment group. The second part of clause 74 refers to a meeting that I recall David was attending

at the Council with me. It wasn't in relation to the contract, but the questions that I asked and he took the time and effort to ring his office and try and find out what was happening with the contract.

Was the (not transcribable), there's no mention of Gardner or the employment group anywhere in paragraph 74 is there?---No. But as I said it wasn't meant, my words weren't meant to mislead this Commission or anyone in that way.

10 Are you sure of that?---Absolutely.

Were you when you signed this statement in a situation of some stress about these proceedings?---I think it would be fair to say that it's been quite stressful the last couple of years.

Could your memory of the events have been somewhat affected by stress?
---I've had to reconstruct a lot of my memory.

20 Yes. Could that paragraph contain a substantial amount of reconstruction inconsistent with your admitted fact that Mr Baird was merely a conduit on this point?---Sir, I think I've explained the situation clearly.

This statement of yours is part of an understatement that have been brought forward before the Commission in very recent times. Correct?---Yes.

And there's, they're voluminous. Correct?---Yes, absolutely.

Now this one I think signed by you on 25 May. Correct?---Possibly, yes.

30 That was a sitting day of the Commission. Correct?---Possibly, yes.

Have you been working long hours with your legal advisors to have these statements prepared?---I have.

Exhibit 290 for example, you signed on 26 May. It's a huge document. Do you agree?---Yes. A lot of the information has been developed over a period of time, however.

40 I take it you didn't sign Exhibit 289 during the sitting hours?---I don't think so.

Were you up late at night to sign it?---It could've been early morning.

Early morning. Like what time early morning?---8 o'clock.

I think, I think you used an expression earlier that, in terms of time that's gone by and the statements you've made, things have become a bit of a blur. Is that right?---While sitting here today, yes.

And one could not take specific statements such as paragraph 74 of 289 as being absolutely reliable memory could they, could we?---No, I disagree with that.

You're saying that - - -?---If I may?

10 Yes?---I think I've clarified what was meant with that clause and in terms of the preparation of these documents I have taken a lot of time and care. I've had the assistance of (not transcribable) lawyers and I've also had the
10 assistance of reconstructing my memory from diaries, emails, transcripts and the like. So, I'm fairly confident that most of what I've put together in my statements, you know, to a large degree, and you know, I do make mistakes, I think that's been pretty obvious, and is correct and accurate. Now, maybe the detail might not be strictly in alignment with what other people saw or heard on the day. But generally speaking I think that the content is right.

20 Well, the bottom line, you've agreed, and which I suggest you could've put in paragraph 74 in one line, was that Mr Baird was a conduit between you and Mr Gardner in terms of the contract. Correct?---As I have confirmed today, I believe that's correct.

Thank you.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Eurell.

30 MR EURELL: Thank you, Commissioner. Can I show you this document, please Mr Romano. Do you agree that this is a diagram that depicts the structure of the Council as at March, 2007 and in fact, at least in so far as the director level is concerned continuing up til the present date?---Yes, it would appear that way.

I beg your pardon?---I said, yes, it would appear that way. Yes.

40 Yes. Thank you. If I can tender that. Well actually, perhaps I'll tender all these in one bundle. If I can also show you this document. It's the case isn't it that there was a, well, the structure of Council both at the depot level and at the director level was a matter of ongoing consideration throughout your tenure at Burwood Council?---Not in the initial years, but certainly from probably 2005 or 2006 onwards, yes. To a lesser extent in the 2005/2006 period, but certainly quite, quite extensively recently.

And the second document I've shown you there is a report prepared by Strategic Consulting Solutions Pty Limited?---Yes.

A submission for the Council?---Yes.

And amongst other things it recommends that the position of director of corporate services was perhaps unnecessary and could be done away with. Is that right?---I'm sorry would you point out where it says that it's to be done away with?

10 There's a recommendation you'll see on page 2 underneath the director of corporate services that says a restructure and appointment of a senior manager for governance at around \$115,000 package could save the Council money?---Yeah, it reads no increases recommended and (not transcribable) the position they should not be included in a bonus programme. Thinking laterally, a restructure and appointment of a senior manager for governance around the values that have been indicated. If it was a proposition from the consultant to review the structure of the organisation.

And, and in broad terms, very generally, what it says is that the position of director of corporate services probably was unnecessary as a director level position, it could be simply a senior manager?---That's the way I would read it, yes.

20 And if I can show you this document, please. This is a proposed structure as at the date of November, 2008 isn't it, that contemplates how the Council might look if the position of director of corporate services was abolished?---That's correct.

And you will see in the second document that I have shown you there that there is a reference, at least as early as 24 July, 2008 which alludes to three directors performing well and one not performing so well?---That's correct.

30 Do you know who the director who was not performing so well was?---Mr Cummins.

Was these three documents that I've shown you known to the Executive at least as early as July, 2008? They all attended a training day at one point didn't they where they were, it was foreshadowed that there could potentially be a move to reduce the number of directors to three?---It wasn't a training day. It was a corporate weekend with our elected representatives.

40 Yes?---And it was some time I think in November or late October of that year. I'm not sure that I made this information available to the Executive as early as July, but certainly I, I did have discussions with Mr Cummins about his performance. I did not document that in writing. It wasn't my style.

A yes to shorten this (not transcribable) Mr Romano - - -?---But yes, it became quite clear in, in or around about November that the Council, the elected representatives wanted three divisions rather than four.

And was that known, to your knowledge, to Mr Cummins?---It was very clear at that workshop that that's what the Council wanted. It was talked about quite openly.

You have been involved in management in various capacities, and I'm talking about management of people in various capacities for a substantial period of time, would you agree?---I would agree.

10 You would agree, wouldn't you, that people go on sick leave for a variety of reasons, often or in some circumstances it's the case that they go on sick leave when they're not in fact sick at all?---I believe that that can occur, yes.

And an experienced manager in some circumstances would have good reason to approach a suggestion that an employee was sick with some degree of circumspect?---Yes.

20 And would you agree that the prevailing view of the Executive between the beginning of 2009 when Mr Cummins went on sick leave continuing up till perhaps at least as late as July 2009 was that there was some doubt as to whether or not Mr Cummins was in fact sick?---I, I believe that from the time that he went off on leave to at least the time that we received the Harmers' letters, the Executive were unsure as to, sorry, they, they, they took on face value that he was ill but certainly after the Harmers' letters were received I understand that I and, and at least Mr Hullick took the view that Mr Cummins may not be ill to the degree that we may have suspected.

30 When you say Harmers' letters, you're talking about the Harmers' letters, the letters that are in evidence that have been drafted by Harmers Lawyers that proposed Mr Cummins abandoning any suggestion or any claim to compensation caused, caused, in which his illness was caused by actions of Council if he receives two and a half years' pay?---I think it was more specific than that. I think he was suggesting that it was me that caused that distress in him. That's the way I read them.

They're the letters you're talking about?---That's right.

40 Can I show you these four documents. I'm sorry, I don't have copies of these, Commissioner, I've only received them this morning but Mr Romano will only need them for a moment. Can you confirm that these, they've been shown to Ms Ronalds.

ASSISTANT COMMISSIONER: She's not here any more so I think they better be shown to Mr McKenzie. While he's looking at those, can I just ask you Mr Eurell, I thought you said, I might have misheard, that the third document showed a restructure with the position of director, corporate services gone but it in fact shows the position of director, corporate services still there and the director of executive services gone as far as I can see.

MR EURELL: I'm sorry, I misspoke, he calls it director of corporate services but it, it acts on the suggestion in the Strategic Consulting Pty Limited report that the position relating to governance and administration would come underneath that director rather than being a governance position at a director level.

ASSISTANT COMMISSIONER: Well, I thought you were putting to the witness that this, the effect of this first recommendation was that they didn't need a director of corporate services.

10

MR EURELL: Of governance. I'm sorry, perhaps I misspoke. It's the case, isn't it, that what the second chart would indicate is that the suggestion or the proposal by Strategic Consulting Solutions Pty Limited that the position Robert Cummins had occupied would only need to be a position of senior manager rather than a position of director. Do you agree with that summary?---No, I, I, I don't, I disagree. I think what he was implying was that the role of director of corporate services could be downgraded to a senior manager of governance role. I think that's what was implied. I don't know - - -

20

This position, this position - - -?---I believe the words - - -

Just hold on a second. Which position do you say would have been downgraded?---In the letter of 24 July I understand and I understood then, and I understand now, that what he was suggesting was that the director of corporate services role could be downgraded to a senior manager of governance role.

30

Whose position? Who was occupying the position that would be - - -?
That was Mr Cummins at the time.

Mr Cummins' position would be downgraded from a director to a senior manager?---That's right.

Right.

40

ASSISTANT COMMISSIONER: That doesn't seem to be what this chart shows. It's still got a director of corporate services. The position that's not here is the director of executive services. Who was that?---Mr Hullick.

Well, I presume that what was proposed was they'd be incorporated into the one position, that Mr Hullick would become the director of corporate services?---Assistant Commissioner, these were early documents. They, I don't think it would ever progress to that level of detail so I think it would be, it's not correct to make that analogy. I think that if Council decided to move to the next step of creating three divisions that the role would be open and either Mr Hullick or Mr Cummins or others would, would apply for a new position.

Yes. I guess I didn't mean to say that Mr Hullick would get the position, I'm just talking about the position but anyway, this was only a, an idea or a proposal?---It was just an idea at the time, that's right.

All right. Sorry. Yes, Mr McKenzie, have you - - -

10 MR EURELL: This, Commissioner, only goes to, you recall I asked Mr Cummins a question about whether or not his various complaints were made to this Commission as a result of him seeing the writing on the wall so to speak of his position being downgraded and whether or not he knew that that was the case and he rejected that as a proposition but this evidence is just led really to reveal that perhaps there was something disingenuous in his evidence when I proposed that suggestion.

ASSISTANT COMMISSIONER: Yes, I know what it's, yes, I know what it's being led for I just don't think it's entirely clear but - - -

20 MR EURELL: Thank you, if I can tender those three documents together before I move on to the next (not transcribable).

ASSISTANT COMMISSIONER: Yes. Well, those three documents about the structure of the Council and proposed restructures will be Exhibit 319.

#EXHIBIT 319 - THREE DOCUMENTS RE STRUCTURE AND PROPOSED RESTRUCTURE OF BURWOOD COUNCIL

30 MR EURELL: Commissioner, does the witness have those medical certificates?

ASSISTANT COMMISSIONER: I'm not sure. Yes, could I just see them.

40 MR EURELL: Mr Romano, do you recognise, if you can just quickly have a look at those four certificates before they're given to the Commissioner. You agree that they're the four certificates that were received from Robert Cummins between the date that he went on sick leave from the Council and the date that the letter was sent regarding the Cross-Functional Team's review of the IT services that has become Exhibit, I think it's 145?---It would appear that way, yes.

Yes. And if they can perhaps be tendered, Commissioner. You agree, don't you, that the only information that they reveal is that Mr Cummins is unfit, doesn't go into any matters pertaining to why he is unfit and they do not reveal that he has been diagnosed with any form of psychological illness? ---I would agree with that, however, Mr Macklin did enter into dialogue with him, well, not, not - - -

Mr Romano, I'm not interested in the dialogue, I just want to know if you agree that those four certificates - - -?---Yes.

- - - are what had been received?---That's right.

10 Thank you. You would agree with the general proposition, wouldn't you, that when an employer receives medical certificates of that kind that they would approach them as being only as reliable as the information that the physician who has authored them has received?---I would agree with that.

And you would agree, wouldn't you, that during the relevant period of 16 February to 23 April, 2009 that Mr Cummins was intending or already engaged in negotiations with Council through his lawyers for compensation to sever his relationship with Council?---I would agree with that.

20 Just briefly, some questions have been addressed to you and Mr Hullick regarding seeking legal advice in relation to sick benefits that he had owing to him, that is Mr Cummins had owing to him at the time he was receiving Centrelink benefits. Do you recall those questions?---I recall some discussion but I, I don't understand the detail of it.

Do, do you agree with the general proposition that if you were aware a person was claiming benefits from Centrelink that they were not entitled to under the law that you had a civic responsibility to raise that with the authorities?---I would agree with you and that's why - - -

30 ASSISTANT COMMISSIONER: I don't really see the point of that question as there's absolutely no evidence that he had information that somebody was claiming entitlements to which they were not - - -

MR EURELL: Except to say this, Commissioner, that at the time Mr Hullick sought that legal advice it was known that Mr Cummins had sick leave owing to him, if the Council had become aware that Mr Cummins was seeking, was receiving or had claimed sick benefits through social security that is potentially a fraud and both Mr Hullick and Mr Romano would have been obliged I would've thought to have raised it and simply asking a query of the lawyers - - -

40 ASSISTANT COMMISSIONER: When you first raised the issue Mr Romano on his own evidence knew nothing about any of that, all he knew was he didn't think somebody could get Centrelink while they were on sick leave.

MR EURELL: Yes.

ASSISTANT COMMISSIONER: Anyway - - -

THE WITNESS: Assistant Commissioner, if I may offer some information, I'm not sure whether I misled this Commission the other day but I just didn't dialogue with Mr Macklin over the, over the email system I actually spoke to him over the phone and he did draw to my attention before I sent that email that Mr Cummins did have leave owing to him and from memory I think we talked about long service leave, annual leave, I can't remember exactly whether sick leave was discussed but there were a number of leave arrangements that hadn't been taken up by him and I had concerns that - and maybe not reflected very well in my email but I had concerns that someone could actually go to Centrelink and achieve a benefit when they were employed with Council and they were obviously leave arrangements there that he hadn't taken.

ASSISTANT COMMISSIONER: Well, your email doesn't refer at all to anything about his leave arrangements?---No, it didn't but I, I was severely concerned about his ability to actually claim benefits from Centrelink while he was employed with Council.

ASSISTANT COMMISSIONER: Yes.

MR EURELL: If the witness could please be shown Exhibit 145. Mr Romano, if you could just turn to one of the pages that contained invoice for Architects Becerra. You see there's a stamp on each of those invoices where a receiving officer and approving officer may sign?---I see that.

It's the case isn't it that there's no procedure or documented policy or procedure in Council that tells a person what their function is when signing either as the receiving officer or authorising officer?---That's correct.

That would be a matter would it not that falls within the portfolio of a Governance Director?---Yes, I agree with that.

Did Mr Cummins at any point in time during this tenure at Burwood Council raise with you a concern that there was no such policy or procedure?---No.

Do you know if he raised it with anybody else?---I don't believe that he would have but I'm, I'm, I would be able to tell you definitively.

And in your statement that is referred to as the statement regarding Albert Becerra, it's Exhibit 289 in these proceedings, you refer to a conversation you had with Mr Hullick in 2008, early March, paragraph 97, at paragraph 97, do you have a copy of that with you?---No.

Might the witness please be shown Exhibit 289.

THE WITNESS: Assistant Commissioner, with your approval can we have a short break so I can go to the bathroom?

ASSISTANT COMMISSIONER: You will be coming back tomorrow at this rate, Mr Romano. I'm afraid we have to have a short bathroom break.

THE WITNESS: Literally five minutes please.

ASSISTANT COMMISSIONER: Yes, we will adjourn for a short period.

SHORT ADJOURNMENT [4.24pm]

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ASSISTANT COMMISSIONER: Thank you. Please be seated.

THE WITNESS: Thank you, Assistant Commissioner.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr McKenzie.

MR McKENZIE: Commissioner, I've had discussions with my friends, I've had discussions with you and I think that there's some prospect that this matter will go for some period of time and much as I'm sure Mr Romano would prefer not to come back tomorrow no doubt he's been sitting in that seat all day and things may be becoming even more blurry for him and I think all the parties are happy with the idea of this matter going over till tomorrow, at 10 o'clock we'll commence with witnesses from the Department of Local Government and Mr Romano can resume his evidence at 2 o'clock by which stage Mr Blake will be with us again and other people who wish to ask Mr Romano questions will also be here and they'll be able to complete their examination. So we'd ask that that take place.

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ASSISTANT COMMISSIONER: Yes. All right. Well, yes, sorry, Mr Romano, but I feel you brought this on yourself going to the bathroom. No, not really. Now, sorry, I think we have tendered all Mr Eurell's documents that he's produced to date, so far. You've only produced the medical certificates and those first three - - -

30

MR EURELL: Yes.

ASSISTANT COMMISSIONER: Yes. The first three are Exhibit 318, sorry, 319 and the four medical certificates are 320 just for the record.

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#EXHIBIT 320 - FOUR MEDICAL CERTIFICATES FOR MR ROBERT CUMMINS

ASSISTANT COMMISSIONER: All right. Well, look, we will at this stage adjourn until 10 o'clock tomorrow on the basis that Mr McKenzie has suggested and Mr Romano will resume his evidence at 2 o'clock tomorrow. Thank you.

AT 4.32 THE MATTER WAS ADJOURNED ACCORDINGLY [4.32pm]