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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 14 APRIL, 2010

AT 2.05PM

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

ASSISTANT COMMISSIONER: Thank you. Please be seated.

<ALBERT BECERRA, on former oath

[2.07pm]

ASSISTANT COMMISSIONER: Yes, Ms McDonald.

10 MS McDONALD: Yes, thank you, Commissioner. Just before lunch we
were talking about the establishment of Architects Becerra, the new
company, in February, 2007. If you had not have had, if you had not
obtained the job at Burwood Council, what did you anticipate doing
financially in 2007, post your departure from Baker Kavanagh?---As part of
the agreement with Baker Kavanagh, there were certain clients that I was
still working with. There were still projects that had to be completed and
some projects that had, like as I said, DA into Council and we were waiting
approval. So there was a substantial amount of work that had to be done
and clients, I also had to complete St Mary's Concord School. So there was
quite a few projects still outstanding that I was allowed from Baker
20 Kavanagh to carry on with.

So did you have any idea, say in February, '07 when you set up Architects
Becerra that, of what the income of that company might be for its first
year?---No. I was relying basically on the jobs that I had. And based on the
number of clients that I had and projects that were coming in.

And who were the shareholders of that company?---Poppy Becerra, my wife
and myself.

30 And does Poppy work or is she just a silent partner in it?---No, she works.
She's a practicing architect.

So she was working as well as an architect and getting fees?---She was
working for another company at the time when we were getting together to
start this one.

And there's been a suggestion that you needed the job in order to fund the
project of, that was done through the vehicle of Befaro Pty Limited. Was
there, what other sources of money would you have had for that project?
40 ---We do have another investment property, Poppy and I. We also have a
line of credit that we were using to fund that project. And we had put some
money, and superannuation funds were also going to be used for the Befaro
project.

I see. And there was also the rent?---The rent, from, we were hoping that
the rent from the units would also cover, cover a substantial amount of the -
- -

So were you relying on the job at Burwood Council in any way to, to do the Befaro project?---No, because we were also counting in refurbishing the units, which we had allowed for to increase the rent and that was one of the aims.

Okay. I just want to visit just very briefly some evidence you gave before lunch. Can I show you three documents. Now these are searches I understand that your solicitor did over the lunch adjournment. Is that right? ---That's right. That's right.

10

Do you understand what they are?---Yes. One of them is the settlement, shows the settlement date for Befaro. The other - - -

Sorry, the settlement date of Befaro, you mean the settlement date of the purchase by - - -?---The purchase - - -

- - - by Befaro of the units?---By Befaro, that's right.

At Edwin Street. Correct?---At Edwin Street, 187 Edwin Street.

20

And what's the date of that settlement?---1st of the 6th, 2007.

So it was in June, 2007. I think your evidence before lunch was that the purchase had occurred in early 2007?---Not the purchase, no. That's right.

So at the time that you did the pecuniary interest disclosure in 2007, that was May, I think, was the first disclosure?---That's right.

30

And the settlement on, on this property didn't occur til June. Is that right? ---That's right.

I'll just, and I don't want to repeat anything that's already been said. I understand the meeting you had with Mr Baird on 14 March, 2007 was the meeting note which has become Exhibit 114 in these proceedings?---Ah hmm.

It's been well canvassed that that note records advice given to you by Nash O'Neill Tomko?---Correct.

40

So to be clear, it is not, it does not record anything you said to Mr Baird or to Mr Romano about what you wanted in terms of an engagement with Burwood Council?---No, it does not.

Thank you. Can the witness be shown MFI 4, please. Oh, I'm sorry, can I tender those, those documents, the, there's a transfer - - -

MS RONALDS: They're not necessary. There's a pile of documents that's already been produced with the first date on them. If you went back and looked at the old Exhibits - - -

MS McDONALD: We did look at the old Exhibits.

MS RONALDS: It takes longer to argue about them then - - -

10 MS McDONALD: I did look for it, it's not in the Befaro set of documents.

ASSISTANT COMMISSIONER: I'm sorry, what is this showing and do we already have it or not or don't we know?

MS RONALDS: 75.

ASSISTANT COMMISSIONER: Oh, is this - - -

MS RONALDS: Oh, sorry.

20 ASSISTANT COMMISSIONER: No, sorry, these transfer documents.

MS RONALDS: They show the date of 1 June, which I thought was in elsewhere and it wasn't something that I'm particularly - - -

MS McDONALD: If you can tell me it is (not transcribable) but I've got - - -

30 MS RONALDS: Well, there's no point in us wasting time arguing about that. That's what I'm saying.

MS McDONALD: So therefore I tender those documents.

ASSISTANT COMMISSIONER: All right. That will be Exhibit 181.

#EXHIBIT 181 - LAND AND PROPERTY INFORMATION NEW SOUTH WALES – TITLE SEARCH DOCUMENTS – EDWIN STREET – BEFARO PTY LTD

40 MS McDONALD: Thank you. Yes, now, can you, you have MFI 4 in front of you?---Mmm. I do.

Can you please explain to the Commissioner what that is?---It is an email received advising me of an opportunity at seek.com, it's addressed to me and says this is the hyperlink to, they've chosen me to hyperlink to the job.

I see. Now can I show you another document. Now can you explain what that document is, please?---That is part of the job description from seek.com, which tells, you know, it describes the project and the advertiser. And - - -

Sorry. Is that a, an email acknowledging that you have applied for the job? ---Yes, it is, because it's, when I got that I sent my CV.

10 Ah hmm?---And upon sending my CV you get this return email that says good luck.

I see. So that was the way in which you actually applied for the job. Is that right?---I applied formally through this.

Now you heard evidence yesterday from Mr Dencker that he'd never seen this email and had no knowledge about how it came to be. Is that right?--- That's right, that's what he said yesterday, yes.

20 And what was your reaction to that evidence?---I was surprised because it said it came from Ian Dencker but he said he, he didn't send it but that's where I received the email, it said from Ian Dencker.

So back in April 2007 when you received this email were you surprised to receive an email courtesy of Mr Dencker telling you about this job?---Well, I knew of Ian Dencker but I was surprised that he, yeah, that he sent me that email, yeah.

30 So you were surprised. Did you, did you think to question it or was it something that you thought he may have sent you?---I thought he may have sent it to me because it had his name on it.

I see. And had you done work with Ian Dencker up to that point?---I'd done work through the cross-functional team with relationship with Mr Dencker, yes, and I, like I said, I have also submitted DAs to Ian Dencker for work for Baker Kavanagh prior to (not transcribable).

40 So you were surprised but it wasn't completely impossible that he would have alerted you to the existence of a position at Council for principal architect?---No, because like I said, I'd been working with Burwood Council for over two years, nearly three years at that time on the civic precinct project.

And so until yesterday it was your understanding that it had been Ian Dencker that had alerted you to the job?---That was my understanding until Mr Ian Dencker said it wasn't he who sent it.

Can I tender that email and also the second email which acknowledges the receipt by Seek of Mr Becerra's application?

ASSISTANT COMMISSIONER: Yes, so MFI 4 will be Exhibit 182.

**#EXHIBIT 182 - COPY OF AN EMAIL FROM MR DENCKER TO
APJACBECERRA@OZEMAIL.COM.AU DATED 2 APRIL 2007
SUBJECT: OPPORTUNITY OF INTEREST – PRINCIPAL
ARCHITECT – 12 MONTH CONTRACT - \$140K PACKAGE**

10

ASSISTANT COMMISSIONER: Now, I understand you did receive the purported email from Ian Dencker. Is that what you're saying?---That's right, that's right.

And the email from Seek Services will be Exhibit 183.

20

**#EXHIBIT 183 - COPY OF AN EMAIL FROM SEEK SERVICE
DATED 2 APRIL 2007 TO MR BECERRA, SUBJECT: JOB
APPLICATION CONFIRMATION**

MS McDONALD: Just before I finish on that topic, last evening I understand that you went onto the Seek website - - -?---That's right.

- - - to see if it's possible for anybody to create an email of this nature is that right?---You just have to type in an email name and it says you can send it to a friend so when you find a job you see you might pass it onto a friend so you just type in your email address and you send it.

30

So now you accept, do you, that it may have emanated from someone other than Ian Dencker?---It may have, yes.

Now, you had the interview with, for the job with Mr Hullick, Mr Dencker and Mr Macklin?---Yes.

I understand was, was Ms Kapell from Recruitment Edge also there?---She was present, yes.

40

And at that interview the question of the hours was discussed?---The time, the time spent on the project was discussed, it was discussed about two to three days a week to be working on the project and be on call for the Council at any time.

And you've also said that you didn't say anything at that interview about your relationship with Mr Romano?---No, I did not.

And just again, why is that?---As I said, when we came, Baker Kavanagh Architects became part of the panel of architects, one of the declarations we had to make as a return form was a conflict of interest which I filled in and I sent it back and the people that were interviewing me, I guess they had the file.

And can the witness please be shown Exhibit 174. Now this is an email I think which originates with Mr Macklin sending a draft of the contract to Ms Kapell at Recruitment Edge?---That's correct.

10

And then Ms Kapell forwards it on to yourself?---That's right.

Can you just turn to the very last page in that bundle. Now, that's an email from yourself back to Tania?---That's right.

And what does that email say?---It looks fine at a glance but my name is Becerra.

20

Right?---So I corrected the spelling of my name.

And can you just turn to page 3 of the draft contract and you'll see under Hours of Work it talks there about up to a weekly maximum of 38 hours plus reasonable additional hours averaged over the term?---That's right.

Was that a term you considered and looked at when you said looks fine at a glance?---That's right.

30

So you were happy to consider the position on the basis that it was possible you'd be working up to a weekly maximum of 38 hours?---That's right.

Now, did you have any input other than to correct your name, the spelling of your name, in the document that you finally signed?---No, I did not.

And I think your evidence was that the final version of this document you signed when you went to Burwood Council, is that right?---That's right.

A few days later?---That's right.

40

And you didn't, it looked, it appeared to be the same and you didn't pick up any errors?---Other than the one again with the spelling mistake that I corrected.

I just want to very quickly look at the invoices that were rendered by you in this matter. Can the witness please be shown Exhibit 145 and he can return the exhibit he has. Just turn to page 11 of that exhibit, that's where the invoices start. Now, it's your evidence that, as I understand it, that Mr Romano asked you to render these invoices, is that right?---That's, that's correct.

Did he say to you that you should give a break down in some sort of form other than a tax invoice of the work that you'd done so adjustments could be made to the budgets between projects?---No, it's not a break down. He said just to put down the hours I worked on different jobs that did not relate to the civic precinct project.

And is it correct that you, you're not a lawyer?----No.

- 10 So did you consider what your contractual entitlement was to do that?---No, I took that, when he was telling me to do that that I would put it in because it was work outside my understanding of the contract.

I see, and so the basis that you thought that you were rendering these tax invoices was because Mr Romano had asked you to present them?---That's one of them and the other thing is because he requested so it can be put to the appropriate budgets and/or divisions or management responsibilities of Council, the different projects.

- 20 I see. Now, you've looked through all of these tax invoices reasonably carefully and you're familiar with them?---(not transcribable) mistakes.

Tell me, the work that you did in, in those invoices, I think you've given extensive evidence that that's supported by diary notes, files and you spent over a weekend determining how much time had actually been spent on the things set out in those invoices?---That's correct.

- 30 And so the time that you did spent on these projects, was it done during normal work hours, 9.00 to 5.00?---Some, yes, but a lot of it, no. A lot of it was outside. Was a lot of reading of documents and briefs and with the LEP especially was going through the LEP document.

I see, and so why were you doing work outside of hours like that?---I was asked by one of the Directors at Burwood Council to do some work and - - -

And what, and you just do it?---I just did it but the issue was there was a lot of other things I was doing during the day so some of this was outside of those work hours.

- 40 I see, and just to be absolutely clear, it's been done to death but hopefully we can make some clarify on. On page 11 when it talks about the new Burwood Town Centre LEP, that's Local Environment Plan, is that right? ---Yes, that's right.

Now, that is a separate thing to the work you were doing in designing buildings for the Council civic precinct project, is that right?---That's correct.

Can you have a look, sorry, could the witness please be shown Exhibit 179. Now, you gave evidence earlier that you can't recall this chain of emails?--- No, I can't.

Can I ask you to look at the email that's after, so the first one says, "Albert, did you attach invoices? Pat" And the next one down is from Albert Becerra sent Tuesday, 11 March at 1.27 and it's addressed to Pat Romano so it's - - -?---Yes.

10 - - - purporting to be an email from you to Pat?---Yes.

Is there a reason why you would then address the email Albert?---No, I think (not transcribable) can't make out this email.

So you don't recall it?---No.

There's a discussion in supposedly these emails about you charging \$200 an hour?---Yes.

20 Okay. Do you remember anything being written about you charging \$200 an hour?---No, I can't recall. I did, as I said before, I did have discussions with Mr Romano regarding that rate but not right - - -

So you had discussions?---Yes, I did.

But it did not manifest itself into any emails with Mr Romano about that? ---I can't recall putting it on an email, no.

30 And can the witness please, that exhibit can be returned. Can the witness please be shown Exhibit 145?---I've got - - -

Sorry, still has it. Can you please turn to page 21. Now, that page and the following few pages are a series of emails that concern the third contract that you entered, or well about to enter with Council?---That's correct.

You've seen these as a result of being shown this exhibit before?---Yes, I have.

40 Were you aware before these proceedings of any of these discussions?---No, I was not.

And just to be clear, you never requested or anyone, Mr Romano or anybody else at Council a change from an employment situation to a consultancy situation?---No, I did not.

And you did not request that that consultancy agreement, that is the one you ultimately signed, be done with your company, Architects Becerra?---No, it

was suggested by the HR Manager that it best be done through my company.

How often did you purchase things for Council?---It's not purchase but they're called purchase orders. That's when you engage people outside of Council to partake in things like surveys or the like. Normally if I requested I wouldn't set one up. I really rely on Robert Teo and Harry Webey to prepare those documents.

10 So have you ever filled in a purchase order?---Not that I can recall, no.

So you haven't really had occasion to acquaint yourself with the Council's purchasing policy?---No.

And finally, the witness can return those and can the witness please be shown Exhibits 141 and 142. These are phone records. Exhibit 141 is a table prepared by the Commission which summarises phone calls made to yourself apparently by Mr Child and 142 are emails that you have made to Mr Child, sorry, telephone calls, sorry. Now, you've had reason before to
20 examine these tables, is that correct?---That's correct.

And you accept that they contain records of those phone calls?---Yes.

And tell me, were there reasons other than in relation to the units for Mr Child to speak to you?---There was on occasion, like I said, with regard to some of the work he was doing in Railway Parade. There was an issue with Sydney Water and he asked me if I could assist him in some of the work he was doing there overnight in the night works because there was a dispute between Council and Sydney Water, the three - - -
30

And would there have been many calls in relation to that?---A few but not many.

I have nothing further of the witness.

ASSISTANT COMMISSIONER: Thank you, Ms McDonald.

MS RONALDS: Just one quick question, in 2007 after you started at Burwood Council what percentage of the income of Architects Becerra
40 would have been the Burwood 140,000?---It wasn't directed at Architects Becerra.

Right?---It was, it was - - -

It was paid privately to you as a salary?---Paid to me, that's right.

And you didn't then redirect it to the company?---No, I did not.

And did you draw a salary from Architects Becerra during the course of 2007?---Towards the later part of it, yes.

And what percentage of your income then would have Burwood been of the overall amount you drew from - - -?---The majority of it.

A significant majority?---Yes.

85, 90 per cent?---In that order.

10

And in 2008?---A bit less than that but about the same.

So about 85 per cent?---Yes, something to that effect.

2009?---I haven't done it for this year but a fair bit of it, yes.

We're in 2010 - - -?---'10 yeah.

- - - so 2009?---A fair bit of it.

20

85 per cent still?---Approximately there.

Thank you. I have nothing further.

ASSISTANT COMMISSIONER: Thank you. Now, is Mr Becerra finished?

MS RONALDS: Yes.

30

ASSISTANT COMMISSIONER: Yes, all right.

MS RONALDS: There is a moment when someone is finished.

ASSISTANT COMMISSIONER: That's good. Yes, thank you, Mr Becerra, you are now excused from further attendance. You may leave?---Thank you.

THE WITNESS EXCUSED

[2.31pm]

40

MS RONALDS: I call Robert Cummins.

ASSISTANT COMMISSIONER: Yes, Mr Cummins, you've previously been sworn and I confirm that the section 38 declaration continues to apply to your evidence.

MS RONALDS: I just have a few questions, Mr Cummins. You're aware that two statements of yours have been tendered, I don't think you were here when they were tendered but they were tendered the other day?---Yes.

You know that?---Yeah, I saw the transcript, yes.

10 Yes. If the witness could be shown Exhibit 122, Exhibit 122 attaches a detailed statement that you made to this Commission?---Yes, that's right.

And if you could just confirm for me that paragraph 17 to 66 is a matter relating, is your account of what happened when an employee by the name of Joe Saad made a disclosure, if I could call it that - - -?---That's correct.

- - - and the subsequent flow of events - - -?---That's right.

- - - that occurred?---Yes, yes.

20

And to the best of your knowledge and recollection that's a correct account, isn't it?---It sure is. Obviously because it was a protected disclosure or a potential protected disclosure I took detailed notes at the time in my role as one of the staff responsible for taking them so, yeah, I'd say that it's, it's very accurate.

Okay. And certain things happened and you were, Mr Romano was told about the disclosure?---That's correct.

30 And you understood because you'd done some preliminary investigation that it was a property that involved, on your review, Mr Becerra and Mr Romano?---I wasn't aware that the particular property in question was owned by Mr Romano until he told me so, I think that was on the 10th.

That's on 10 February?---I obviously had an inkling that, that it was because of the email analysis that I'd done and also I looked at the pecuniary interest disclosures but I wasn't, I wasn't sure obviously, I was, you know, until Mr Romano admitted to me that the work that had been done on the units was a property owned by both himself and Mr Becerra.

40

Okay. Just don't worry about your statement for a moment. I just want to ask you what in your view should have happened to that disclosure and how should it have been processed within the Council?---Well, I guess the disclosure I was dealing with was essentially the one from Peter Macklin because at that stage Joe Saad was fearful of making one himself because he said that people who, people who it dealt with run the Council were his words so my, my first priority was to protect the whistleblower, I mean, I'd seen people get completely destroyed at Burwood Council who'd made

allegations against various people in the past so I was very concerned for the whistleblower in the first instance so I didn't want Mr Macklin to obviously mention his name again, he did mention it once to me and I said don't mention it again, don't mention it to anyone else. If this person wants to be protected under the Act he'll need to make a disclosure to either myself or Pina Viney. I guess one of the problems with the policy at the time was that Peter Macklin was not a person who disclosures could be made to for them to be protected.

10 He wasn't considered a delegate or - - -?---That's right. But I mean - - -

It was a limited range of people within the policy who could be delegated?
---That's right. Because one of them - - -

I mean who could receive?---And one of them was a director and the interesting thing about this one was that Peter Macklin came to me and said that he tried to talk to Khaled Azer about it, who is one of the people you can make disclosures to, but he said he didn't want to know. And but later, you know, he said he hid under his desk. I mean obviously, like I don't take
20 that literally, but words to that effect.

And you as a director could've received it?---Absolutely, yes.

But you never had any face to face, one on one discussions with the person you now know to be Mr Saad or (not transcribable)?---No. I, I requested Mr Macklin to organise a meeting between Pina Viney and the whistleblower if that's what whistleblower wanted.

And, sorry, I just want to look at the policy which we've got here, but it's
30 just temporarily gone missing. And so how should it, from your position, what should've happened to that disclosure?---Well at that point I was unaware and I think Peter Macklin was and everyone else was that Mr Romano was personally involved in it.

But once you became aware of that?---Well, I guess I wasn't aware a hundred per cent until 4 April, when the newspaper, in The Herald, that Mr Romano was actually hands-on in the, in the work of the, the alleged work at the, at the block of units. So from my perspective my recommendation was at the time that Mr Romano having a, having a conflict of interest
40 because of the wives owing Befaro and obviously because of other things I found out during, doing my email investigation that some, someone else should be appointed to take over the role as General Manager so that Pina Viney and myself, as the governance team could report to them on what we'd found and any other things we, we sought during the preliminary investigation.

But then you were removed from the investigation on the 10th?---That's right. I had a conversation with Mr Romano after he found out that I was

investigating enough to, obviously that these allegations were made and it was a robust conversation, I think the word's been used, where it was quite heated at times, but I did convince him to stand aside and to appoint Ian Dencker to deal with the matter, because I had to disclose to him at that time that I knew about Befaro and I knew that he was business partners with Albert Becerra.

10 And if I could just show you this document which is a copy of the policy. Sorry, we've only got one at the moment, so, and you'll see there that, you're familiar with this policy obviously?---Yes.

You (not transcribable) shall we say. Did you have a role in developing this policy?---I did. There was a previous policy to this that we used, I think for another protected disclosure that came in before this. This was been changed at some point after that and there were some slight amendments made to who the reporting lines were, things like that. But I would've had some involvement, but, you know, it certainly wasn't, I wasn't the project manager for it.

20 Okay. Well, if you go to page 7 you'll see under 6.0, reporting under the internal reporting system?---Yes.

The, I don't want to read it out to you, but you see that there there's a disclosure co-ordinator?---Yes.

That was Ms Viney?---For this policy, yes.

The next one's you?---Yes.

30 And the next one's Mr Romano. And the next one's the Mayor?---Yes.

Now in relation to a protected disclosure about the General Manager, would it be your view that the Mayor should be involved in some prompt manner given that that's the only person on that list more senior than the General Manager himself?---From a technical policy perspective, yes. The reality (not transcribable) was somewhat different.

40 Right. So it wouldn't have been that anyone would've been discussing about advising the Mayor in February 2009 about the protected disclosure?--I, I think I raised it with Mr Macklin at the time that, that if, basically my inkling was if the General Manager didn't stand aside at that point, then I would have reason to believe that he was engaged in some form of mal-administration and at that point I would need to take that issue to the Mayor.

But when you say "stand aside", you only mean stand aside in relation to the investigation into the complaint?---That's right, yes.

But in fact there was no investigation and nothing happened.---No, once I was taken off the investigation, in my opinion, was a cover-up commenced and there was no investigation.

If I could tender that policy. I'm sorry, we'll have to distribute it later. I'm advised it's part of 121.

ASSISTANT COMMISSIONER: All right.

10 MS RONALDS: Seek and find themselves.

ASSISTANT COMMISSIONER: Good.

MS RONALDS: And also part of 121 to tabulate is a, the email that you sent, you then sent an email on 10 February at 1.55. Do you remember that?---Yes.

20 Saying to Miss Viney that you'd been, that you were no longer involved?---
Yes, that was immediately after the meeting with Mr Romano, yes.

And you also sent and Mr Romano sent you one on 10 February at 4.49, copied you in to one to Ian Dencker.---I think it's addressed to me but he says, Ian.

Ian, yes.---Yeah, I think it, it was supposed to go to me, it probably should have been cc'd to Ian, yes, it was definitely.

30 I think it is, I might have the wrong attachment. There are two emails that are in elsewhere.---Yeah.

Now, you had, I don't mean to be pejorative about this, but you had an emotional response to this sequence of events, didn't you?---Yes, I had a nervous breakdown.

And you said, did you not, then and on other occasions during this time that you thought that someone might kill you?---Yes.

And you thought that someone might destroy your house?---Yes.

40 Now that's a reflection of how you felt at the time.---That's right and it was, obviously I've done a lot of work with my psychologist since then and he's job was to get me from a stage where I thought I was definitely going to die and he described that he wanted me to get down to a two or a five per cent chance – which in his opinion was the reality of being a whistle blower in local government. Obviously, we discussed the things that were said to me to make me form that opinion, things that I interpreted as death threats.

And you now accept that that was an over-reaction.---It was, it was caused by my illness, yes.

And you now don't seriously hold that view?---I still have major concerns for my safety, yes.

Right, you do.---Yes.

10 And in terms of the disclosures that the General Manager, Mr Becerra made, you've been here, I think when some evidence was given about those disclosures. Who normally sees those disclosure documents?---Sorry, the disclosures by who sorry?

By the General Manager about his - - -?---Oh, you mean procurer interests, sorry, I thought you meant - sorry.

20 Sorry, that was my fault, I was opaque.---The practice at Burwood, my understanding, was that Pina Viney collated those, they were placed into a folder and they were kept in the General Manager's office.

And it's correct, isn't it, they weren't available for public scrutiny.---It was very hard for the customers to get hold of them, they had to make an appointment, I disagreed with the practice but it was Mr Romano's call that they are supposed to be available under Section 12, so anyone should be able walk in and view them at any time. Mr Romano implemented a policy where they would have to make an appointment and he would need to know exactly who wanted to see them and for what reason and a lot of onerous things that probably weren't really in the scope of Section 12.

30 And you say that you had a conversation with him about it and you expressed a disagreement with that process?---Yes.

But that was the one that was in place.---That's right.

And in relation to the employment of Mr Becerra you've been present while the details of that have been gone through today. You didn't play any role in that, did you?---No.

40 No. Is it correct that you were approached by someone who was concerned about the payments to Mr Becerra?---Yes, that's correct.

And you raised that, didn't you, with Mr Macklin?---Yes, yes.

And do you remember when that was?---Yes, I made a file note which I haven't, I refer to in my statements, I think it's 28 August, so it would have been that day or - - -

Which year?---2008.

Right.---So it would have been the day before or that day and that person that was, it's in my statement I think its Mathew Walker raised that concern with me.

10 And you spoke to Mr Macklin and he said, he'd look into it?---Yeah, Mr Macklin, in fairness to Mr Macklin, he was, it was late in the day and he was going on leave that day so, he said you know, he'd look into it when he got back from his holidays which was at least a couple weeks or something from there.

But you never had any further conversations with Mr Macklin about that?---No, up until the protected disclosures came in in February, I'd forgotten all about it. I mean, Mr Macklin went on leave and then my wife had a baby so I went on leave straight after, so it was many weeks before I saw Mr Macklin again I think.

And by that, the matter had faded?---Yes.

20 And so you didn't follow up about payments made to Mr Becerra?---Well, at, well, I guess there was no real need for me to do so because at the time, obviously, Mr Walker had also spoken to Mr Hullick and/or Mr Romano and Mr Romano did come down and reassure Mr Hullick and Mr Walker that Albert had a very specific contract and that the invoices should be paid as a matter of urgency.

30 Right. But you weren't party to those conversations?---I overheard that conversation. That was, my office is right next door to Les's so, I was standing outside when Mr Romano came and told Les that, yeah.

And do you remember, that would have been earlier wouldn't it, than August?---Um, no, my recollection was that it was around the same time so it may, I understand the evidence shows that some invoices came in in April it may not have been referring to those invoices, it may have actually been a later invoice.

40 If there were some later August invoices?---I didn't know, I'm not sure whether Mr Walker knew but I certainly didn't know about the April ones. The first inkling I had of it was in, was in August.

Right.---So it may have been a subsequent invoice.

And in, sorry, I've just lost something here. In February, late February and early March, were you responsible for sending any anonymous text messages to Mr Romano?---No.

Were you responsible for sending an anonymous text message to Mr Becerra?---No, I didn't send anyone any anonymous emails, text messages or anything like that.

Now, it's your view, is it not, that you have been subjected to some actions in response to the stand you took in relation to the disclosure by Mr Saad?
---Yes, that's correct.

And can you explain to the Commissioner what you see as those actions?
10 ---Well, first of all obviously, some of them, as we've spoken about, are basically bullying and harassment from the day that Mr Romano found out about it including administrative tasks being given to me, other staff being encouraged to bully me, to load me up with administrative work. Taking away areas of my responsibility, obviously taking me off the investigation, obviously Mr Dencker's attitude and statements to me that he was the cleaner, that he came in to clean up my mess and um, that he was like Harvey Keitel and then he sent me the email with the clip about bungled
20 assassination and the crime scene that Harvey Keitel cleaned up including killing one of, someone who was about to essentially blow the whistle which is obviously the one that had the major impact on me from a psychological perspective. And then even after that, after I left work and went on leave the actions of Council, the bullying didn't stop. It was, they wanted me to give back all the documents I had and they took my laptop and analysed my laptop and basically hacked into emails that I had sent to my lawyers, you know, confidential and privileged emails, things like that. They, they did, and then when I lodged a WorkCover claim, the next day, they sent a letter to my house threatening my employment.

That's in relation to the IT review?---To the IT review, the day after I
30 lodged my workers comp claim - - -

And you were sent a letter about the IT review and you, and Harmers is on your behalf responded.---That's right.

And you know that that's in the bundle of documents.---Yes.

And have you ever heard any further matter about that?---No, nothing.

So that you sent that letter?---Yes.
40

You've never been sent a report about the review?---No, I've never seen a report about the review. The review was set up after I went on sick leave and after Mr Romano found out I was on the investigation so I mean I just perceived that it was a massive stitch-up.

But as far as you know it's never been concluded?---No. I wouldn't expect it to ever be, I mean, surely they've got other things to investigate at Council.

Don't speculate about it, I'm just trying to find out whether you've ever been sent any outcomes?---Sorry.

The last you ever had was the letter from Harmers?---That's right.

And there was never any response to that?---No.

And Mr Hullick's never been in contact about that matter since?---No, no.

10

And are there any matters that you consider have been taken against you as, which you have perceived to be a response to the position you are in?---Yes, the, the responses from Mr Dencker, basically the witnesses for the workers comp claim all contain matters which I consider to be false, misleading and outright lies - - -

20

Right?--- - - - especially Mr Romano's obviously but also Mr Dencker's and Mr Macklin's and then subsequently after that they must have found a receipt that I had in my drawer at work for a USB stick that I bought when I got a new laptop, way before any of this, the whistleblower stuff happened and then they sent, Mr Baird himself actually sent a letter to my lawyers demanding to know where it was and what I've done with it and what data it was. I mean, that was extremely distressing, that was, that was in June.

And you considered that completely unnecessary?---Completely. I mean, it was, you know, especially, I mean, I was still at home trying to recover from anxiety and depression so to, to have to deal with stuff like that is, it's, it's hard enough when you're well but when you're sick it's, it's disgraceful.

30

And Mr Leggat asked you some questions last time about your workers compensation claim and you'll see in the bundle that we've included some documents so you don't need to, you understand that what I'm trying to do is put things in so you don't have to go through it?---Yes, that's, and I appreciate that, I do.

To try and save you having to discuss it publicly. So they're the main matters that you consider that have been, steps taken against you?---Yes. There's, there's obviously other things in the letters back from my lawyers which I think are in the bundle so - - -

40

The letters are and they speak for themselves?---Yes, that's right.

There was just no other incidents that you wish to specifically identify to assist the Commissioner?---No.

I have nothing further.

ASSISTANT COMMISSIONER: Thank you. Is there any application to cross-examine this witness?

MR LEGGAT: Yes, I would seek to.

ASSISTANT COMMISSIONER: Yes, Mr Leggat.

MR LEGGAT: Mr Cummins, you spoke about the witnesses from the workers compensation claim making statements that contained lies. Do you recall giving that evidence a minute ago?---Yes.

You identified Mr Dencker and Mr Macklin. Can you indicate specifically what lies it is that you allege Mr Dencker made?---I didn't say that Mr Dencker made lies.

I must have misheard you. Are you saying - - -?---The lies, the outright lies are in Mr Romano's statement.

Thank you?---Mr Dencker's statement is somewhat misleading but I don't recall any outright lies in it.

Yes, thank you. Did Mr Macklin's statement contain any lies in your view? ---Yes, yes it did.

Could you identify the lies that Mr Macklin made in the witness statement for the purpose of the workers compensation claim?---Oh, regarding my performance over the course of the entire time I was at Council. It certainly, it is, it is a lot different to, to what I experienced and also to what the, my letters of bonuses and commendations state. They were, I mean Mr Macklin didn't even refer to those letters in the statement so he obviously had access to my personnel file and he could have easily referred to those and mentioned them in his statement and he didn't.

Are you able to identify any specific sentence or paragraphs - - -?---I don't, I don't have - - -

- - - that Mr Macklin, just wait until I finish the question - - -?---Yeah.

- - - that Mr Macklin is guilty of lying in?---I don't have a copy in front of me. My statement that I gave, I went through it in detail and I gave a statement back to WorkCover I think on 12 June which, which goes through each and every assertion that was made by Mr Macklin and, well, all of the witnesses, I'm not sure whether, I know the ICAC's got that, I'm not sure whether it's been tabled.

Now sometimes you'd accept that people have different views about things like performance and those views, whilst different, can be held on a bona

fide basis. Do you think that Mr Macklin went beyond holding a bona fide different view and actually told lies?---Yes.

And you say, as I understand it, that by looking at your response to Mr Macklin's statement we can find where those lies are identified. Is that what you're suggesting?---That's correct.

10 This afternoon you gave some evidence that Khaled said that he did not want to know. Can you remember giving evidence to that effect?---Yeah, it wasn't, it was, that was Mr Macklin's saying that Khaled had said that, I didn't have a conversation with Khaled himself.

When you were asked some questions about the internal reporting policy, you said words to the effect, The reality at Burwood was somewhat different and you were talking about the Mayor's role?---That's right.

20 And what did you mean by that?---Well, I think it's come out in this inquiry and it was certainly my perception at the time that to take a complaint to the Mayor certainly while Mr, certainly while Mr Faker was Mayor would have certainly gone nowhere and it was also very difficult to go to Ms Furneaux-Cook, no offence to her, just that the system at Burwood was that if that was ever referred back to the General Manager or to Mr Baird then obviously there was in my, my perception was there was a good chance of a cover-up.

30 If we can explore your experience with Mr Faker. What, what occurred during the mayoralty of Mr Faker which led you to believe that any complaints would have gone nowhere?---Mr, Mr Faker, it's outlined in my statement which has been tabled, Councillor Faker and Mr Romano were often involved in, in matters where they did not adequately manage their conflicts of interest.

40 Yeah. And that's the extent, is it, of your concern about why the process would have broken down under Mayor Faker?---Well, the other main thing was obviously during the 2008 election it became abundantly clear to myself and a lot of the other staff that Mr Romano was extremely well-connected to the Labor Party and he was doing everything he could to ensure that they got the numbers back in the 2008 election so obviously Mr Faker or Councillor Faker, being the number 1 on the Labor ticket, they obviously had a, you know, a mutual arrangement that I perceived where they looked after each other's interest.

So beyond you perceiving the existence of a mutual relationship, do you have any other facts which caused you to form the view about Mayor Faker? ---None that I could think of that aren't outlined already in those statements. I think the statements cover it.

Ms Furneaux-Cook, you seem to approach her mayoralty in a slightly different manner, do you?---Yes, yes.

10 What was the difficulties you perceived (not transcribable)?---Well, look, at, at, in the first couple of weeks of Ms Furneaux-Cook's mayoralty I was, I was very confident in her, in her independence. Unfortunately within a few weeks it became clear to myself and other staff that an alliance between the Liberals, Councillor Sidoti and Councillor Liang and also Councillor Donayre and Councillor Furneaux-Cook had been broken down and that, which basically left the Mayor with, with no power in essence that it was instead of being four three in Ms Furneaux-Cook's matter she had lost the numbers and it was the Liberal and Labor in alliance which held the power in the Council.

20 And why in your mind would that be relevant to investigations concerning corruption?---Well, to anything, the councillors remember have absolutely no power outside of the Council meeting so to stand down Mr Romano, as we saw what happened in April when the stories broke in the paper, it would have been very difficult for Ms Furneaux-Cook to, to get the numbers to do that, to get a resolution for that to happen.

ASSISTANT COMMISSIONER: And I suppose even with the best ruler in the world it would be difficult, wouldn't it, for either Mr Faker or Ms Furneaux-Cook to actually investigate these allegations?---Absolutely, yes.

30 They would have no power to do so or apparent ability to do so?---That's right. I mean, they would have had to rely on the word and the integrity of Mr Romano and Mr Baird.

40 MR LEGGAT: Have you given any thought as to how that situation might be capable of being corrected in the future if such a problem were to arise again?---Well, I mean I think that any piece of legislation or any policy is only as good as the people who, you know, abide by it or enact it. I mean, I've had obviously quite a bit of experience with section 20 which on paper looks really good and like it will work and, to be honest it's failed miserably, no piece of legislation can stop people doing the wrong think, you know. We have legislation against murder in New South Wales yet people get killed every week so, you know, I've put a lot of thought into it but I don't think there's any perfect system or perfect piece of legislation or policy that could have stopped what happened happening. There are obviously some things, maybe some, some better internal, sorry better independence within having General Managers or, or public, I was the public officer at Burwood yet the Act stipulates that I'm answerable to the General Manager. Now, if that was different, if I had a, a right or an obligation to go straight to the Department of Local Government or to the Ombudsman I think that would have enabled or empowered me to do a bit more. Obviously the Mayor and certainly at Burwood Council were given

very little information, in my opinion deliberately, so that they wouldn't know what was going on and, and they'd have very little power. A lot of things were deliberately kept from Ms Furneaux-Cook and from even Mr Faker and the Council in my opinion deliberately say that they, they wouldn't really know what was going on.

You spoke about a conclusion that you'd reached regarding the inadequacy of section 20, that's section 20 of the Protected Disclosures Act is it?
---That's correct.

10

How, from your experience, has that proven to be inadequate?---Well, it basically stipulates that you shouldn't get bullied or harassed for, for making a disclosure. Obviously in my case I not only investigated someone else's disclosure I also made my own to Pina Viney as the disclosure and that disclosure related to Albert Becerra's contract and that investigation obviously went nowhere as well until, until we spoke to ICAC about it. So, I mean, my lawyers wrote back to Council from day 1 saying, you know, beware of section 20 basically, don't bully my client yet, you know, it's a piece of paper, it didn't stop them, nothing was going to stop them doing it because they knew ultimately that, that myself and the other whistleblowers were a threat to them.

20

I'll take you to Exhibit 121 which is your statement to the ICAC of 13 November, 2009, I just want to explore what's in the - - -?---I don't have that one. I've got, I've got 122.

30

Could the witness be provided with 121 please. Now, Mr Cummins, let me preface these questions by indicating that what I'm seeking to do is explore the matters that you've raised. I'm not being critical of you, I'm not suggesting things didn't happen, I'm merely seeking to explore your recollection. Now, paragraph 39 and 40 deal with the installation of the security system at the General Manager and the Mayor's house?---Yes.

40

Paragraph 40 you say, is just prior to installation of the security system and before an executive meeting. Mr Romano stated the executive had been told, it's wrong but I'm going to do it anyway. Now, is that something that you heard Mr Romano say, words to that effect?---Yes. And, and this needs to be put in context. It says, just prior to the installation that in reality having seen the other evidence this week, it was just prior to the payment of the invoice. So it was, I now understand that the security system was put in in November some time. So that statement was actually made, I've seen from the evidence that the bill didn't come in for some time after, so I think it was when they were, when Mr Walker and Mr Romano were talking about budgeting applications, when the, that the bill needed to be paid and obviously some money needed to be freed up for that bill. I walked in and I think, you know, this statement was directed at me. It was, because I was the one who told him it was wrong, so, yeah.

So you're impression is that the context included a statement being directed to you by Mr Romano, I've been told it's wrong, meaning - - -?---Yeah, that's right.

- - - (not transcribable) thinks it's wrong, but I'm going to do it anyway?
---That's correct. And obviously at that, at that point in time, you know, he'd had conversations and sent emails to the rest of the executive to reassure them that it was the right thing to do, but obviously he still knew that I held the view that it was wrong.

10

And the, the people who were within earshot, can I explore that with you? Who, who was there who heard Mr Romano say that?---I would say, I've heard the other evidence about Mr Dencker and Mr Hullick not hearing it, and I don't dispute that. But it may very well have been that they weren't there or weren't within earshot. The only person I can guarantee that was there was myself and Mr Romano. He was, he was talking to someone else and I would make the assumption that the most likely person was Mr Walker, as the CFO.

20

Would Mr Macklin have been in earshot?---I'm not sure. I mean it was, it was, it was at a time when the, the meeting was about to start and the matter being discussed wasn't really a matter that was on the agenda for the executive and that often happened at Burwood that a few informal things would be spoken about just before a meeting. So it could be, it could be that Mr Macklin was either walking in or getting a coffee or sitting down ready to go.

Can I take you to paragraph 88, please?---Yes.

30

After the financial year ended, 2008, Mr Macklin and Mr Walker mentioned to me that Mr Child was paid so much overtime during 2007/2008 that he actually earned more than \$200,000 for the year. I recall stating to Mr Walker, if he worked the hours (not transcribable) and Mr Walker stated, but he didn't. Now, was that statement, that is the statement by Mr Walker, but he didn't, made in the presence of Mr Macklin?---No.

40

It was made by Mr Walker to - - -?---That's right. It was, Mr Macklin and Mr Walker separately made the remarks that, Mr Child was a topic of conversation on a regular basis around Council. He was affectionately know as the koala or the protected species by some of the staff. So, obviously people spoke about him a lot, about how much power he had, about how much money he was earning. Obviously most of the, most of the innuendo and statements made were unsubstantiated, but obviously because Mr Macklin and Mr Walker, I would've had knowledge of this. I do take them on their word that he did earn that much money.

Right. No, I'm more concerned about your recollection - - -?---Oh, yes.

- - - of Mr Walker seems to have been aware that the overtime wasn't - - -?
---Well, yeah, look, I don't know whether he was aware of whether, I mean, he was just making an assumption, because obviously it was well known at that time that Mr Child was putting in, was claiming for working 18 hour days, 14 hour days, things like that. So like, you know, in fairness to Mr Walker, you know, I'm not sure whether he had accurate knowledge of, of whether he was or wasn't working. I think he just made an assumption that it would've been impossible for him to have been working that many hours.

10 Did the conversation continue any further? Did you quiz Mr Walker about how he knew that or whether he (not transcribable) that to anyone?---No, I mean I, no, I, I mean, I didn't disagree with him. I, I would've thought that it would've been almost impossible to earn that much money and be working on Council projects myself. I mean, I had absolutely no inkling at that time that there was work going on at the block of units or anywhere else but, yeah, I mean, I didn't question him, you know.

All right. Now, paragraph 142, there's a Mr White who tells you that he feels uncomfortable because he, Mr White, has deleted files from Burwood
20 Council's systems at the direction of Mr Romano. Can you tell us some more about that please. What else was said by Mr White about deletion of material in relation to Mr Romano?---He, he didn't elaborate on, on what was said there and I, and I mean, he'd already left the employment of Council at that time. This was, you know, at sort of 20 past 5.00 on his last day kind of thing. So I just sort of took it that he, that he had to, he wanted to get it off his chest, you know, that Pat had made him do it. He wasn't comfortable. But, you know, he, he, it was reassuring that he said, you know, basically don't worry about it, there's, there's back-ups and if, if they're ever needed they can be found. At that stage obviously I had no
30 idea what was coming regarding or that Mr Romano had been sending emails to Mr Child and others about works at, at the units. At that stage I didn't even know that Mr Romano had been hands on with the renovations of the units so the statement, I remember it but it didn't make a lot of sense until obviously the, the emails were published in the Sydney Morning Herald.

Did Mr White indicate to you what the nature of the files were that he had deleted at the request of Mr Romano?---No, he didn't, but I guess, sorry, no he didn't but obviously the second part of his statement referred to emails so
40 I assumed that they were, were emails and I do recall at the time in the last few days of Mr White's tenure at Council, Mr Romano speaking to him on a on-on-one conversation that I overheard saying something like don't forget the Hotmail emails.

Sorry, can you just repeat that?---He said don't forget the Hotmail emails.

Who said that to whom?---Mr Romano said that Mr White.

And was that said in the context of don't forget to delete them or was it a different context?---Obviously what he was saying was public, well, that I was hearing it so obviously I would assume he was being a bit guarded but it, it may, I mean, it may very well have related to the same thing and that would've, it makes the statement that Mr White made at the time make a little bit more sense in that the last few days of his, of his tenure he was directed, allegedly directed to delete files regarding, you know, 187 Edwin or something else.

10 Have you heard from anyone other than Mr White about the deletion of files at the direction of Mr Romano?---No, that was, that's, that was the only time I'd ever heard it.

Thank you, Mr Cummins.

ASSISTANT COMMISSIONER: Thank you. Yes, is there any other application to cross-examine this witness? Mr Eurell?

MR EURELL: Thank you, Commissioner.

20

Mr Cummins, would you say that you enjoyed a degree of job satisfaction until about 16 February, 2009?---Certainly until 4 February 2009. I received the disclosure on the 5th so that's when my stress level started. Obviously it was more enjoyable before the election in 2008 which, and obviously more enjoyable still before the incident with the security system. Obviously it's, it's, it's not pleasant when you have disagreement with your boss especially when essentially you're trying to help him to not end up in an ICAC inquiry some time down the track and, and you're essentially bullied.

30

Is that what you saw your role as, as to try and stop the Council ending up in an ICAC inquiry?---It's certainly part of my role. Another part is obviously to keep the reputation of Council as all the other directors are intact, to offer advice to Mr Romano and others - - -

And to that end, you I presume, given the familiarity you seem to have in your evidence today at least, went to some efforts to familiarise yourself with the provisions of the Protected Disclosures Act?---I certainly I - - -

40 Do you agree with that?---At that time, not so much before the 16th but certainly afterwards.

You say you didn't have very much familiarity with the Protected Disclosures Act before 4 February, 2009?---I had, I had a reasonable amount of familiarity obviously in my role. I'd only ever done one Protected Disclosure before that time.

You had worked fairly closely with Pina Viney that point, hadn't you?---
Pina Viney, yes.

Yes. She reported to you?---That's correct.

And you had in fact I think you say in your affidavit of 15 May been
involved in a number of discussions surrounding the need to protect
information made pursuant to the Protected Disclosures Act, hadn't you?
---If, if you're referring to the safe, is that what you're talking about?

10

Yes?---Well, it was obviously Ms Vina was, was concerned obviously as
part of her role that things should be protected if they, when and if they do
come in so I, I'd assisted her with that as much as I could including - - -

When did that conversation take place?---I'm not sure.

Well, it was before 4 February, wasn't it?---Yes.

20 And have you read the, were you familiar with the Model Code of Practice?
Code of Conduct (not transcribable)?---I was aware of Burwood Council's
Code of Conduct which is based on the Model Code of Conduct.

Yes?---Yes.

And you would familiarise yourself, I presume, with that as early as or as
soon as you became Director of Governance, yes?---I'm assuming I would
have, yes.

30 And your experience at that time had been substantially government, hadn't
it?---My work experience you're talking about?

Yes?---Yes, I've only ever worked in the New South Wales Government, in
the UK Local Government and Australian Local Government.

40 And can, is it safe to say that you're familiar with all the correspondence
that has been exchanged between your lawyers, that is Harmers, and the
lawyers for the Council relating to your workers compensation claim and
then your subsequent breach of contract and bullying claim?---I've kept,
under medical advice I've kept that to a minimum.

Well, you have them there in front of you, don't you, the - - -?---Some of
them, yes. There's probably a lot more.

Where and when did you first decide that you should be familiar with the
Protected Disclosures Act?

ASSISTANT COMMISSIONER: I'm sorry, Mr Eurell, I'm really not seeking where any of this is going. I mean, if you want to put something to the witness please feel free but we seem to be going around in circles.

MR EURELL: Commissioner, this is running to this witness's motivation to make statements against Mr Hullick's interest that I'm going to come to in due course but before we get there I'd like to work out just when and where this witness became familiar with his obligations and the powers that flow from the Protected Disclosure Act. It is rather critical to some of the statements he makes against Mr Hullick.

ASSISTANT COMMISSIONER: Yes, well, yes. Can you get to the point, please.

MR EURELL: Can you tell me when and where?---No, I can't.

You don't know?---You said when and where. I can't give you an exact date. Obviously being involved in governance from May '07 it would've been some time around then or after then but definitely when we received the first Protected Disclosure which I think was in 2008.

And you're aware of one of the requirements for getting the protections of the Protected Disclosures Act is that it's a voluntary disclosure, aren't you? ---That's correct.

Now, you have made two statements to the investigators from this Commission?---At least.

Yes. And you've also made an affidavit dated 15 May, 2009?---No, that was a, that was at the request of the ICAC. I'd made a protected disclosure to the ICAC and they obviously wanted something in an admissible format so they requested through my lawyers a formal statement and that's, that's what I think you're referring to as the affidavit.

Yes. That's on 15 May?---That's right.

That's 11 days after the Sydney Morning Herald published the story regarding Burwood Council isn't it?---No, it's not.

When was the Sydney Morning Herald article published? Do you know? ---The first one was 4 April, 2009.

Okay. So it's about a month and a half after that story?---My statement, yes.

Okay. Now, in that statement you recount a number of events and one of them for example is on 17 December, 2008 that you recount - this is at paragraph 14 of your statement. You recount a statement made by Mr

Romano the then General Manager in which he says, "I break the Workplace Surveillance Act 20 times a day."?---That's correct.

10 You have included that in your statement because you're asserting aren't you that he was confessing to breaking the law according to you?---No, the context of that statement was that we were talking about the Internet and Email Monitoring policy and I told him that there were some issues with some cyber-bludging, he wanted to know who it was and I told him that I couldn't tell him, we couldn't do the analysis at that stage 'cause the policy hadn't been enacted and we hadn't give staff 14 days notice. I said, if I told him or we did the analysis that would've broken the Workplace Surveillance Act and his response was, Don't worry about that I work the, I break it 20 times a day.

Yes. And so you've included in your statement here though because you're telling this Commission that Mr Romano admitted to you he was breaking the law 20 times a day?

20 MR ECKSTEIN: I object to that, Commissioner. The question was put, it was answered and now the witness seeks to quiz what has been said by Mr Cummins. The statement's quite clear - - -

ASSISTANT COMMISSIONER: I'm not, yes, I'm not sure what is being asked. I mean I think what he has said is clear, it's in his statement, if you want to ask him something about - - -

MR EURELL: Let me ask you this. Did you report that to anybody?---That statement?
30 Yes?---I had no inkling to think that he was telling the truth so I had no proof that he did.

So you doubt that Mr Romano was breaking the Workplace Relations Act 20 times a day?---I certainly did at that point in time, yes.

40 Okay. Let's move on to one of the other allegations you've made. You have asserted at paragraph 72 of your statement that Mr Hullick has made a statement that the applicants for the position of Principal Architect would be interviewed and then Mr Becerra would be appointed. Did you doubt that that was serious?---I certainly had no inkling to think that Les was involved in any impropriety if that's what you're saying.

Do you maintain that position even today?---Yes.

So you doubt that - I withdraw that. What you're saying there is that you didn't think Mr Hullick was saying that Mr Becerra's appointment was a foregone conclusion, you don't accept that that's what he meant?---No, he meant it was a foregone conclusion but I didn't certainly think that he

would've been responsible for making that happen but certainly from the conversation and the tone of it it was the, you know, the, there was someone else was going to make that decision and there wasn't much that Les could do about it.

10 Did you think that was - well, you've included in your statement haven't you because you're asserting that Mr Hullick has been involved in something other than proper conduct?---No, the, the premise of just about everyone at Council was that - and certainly my statements on reflection of those is that a lot of people including Mr Hullick and the other directors were essentially bullied into doing things through fear of retribution.

So what you understood Mr Hullick to be saying there is that he would have to go through the interview process and then Mr Becerra would have to be appointed at Mr Romano's direction?---Basically that the whole thing was a bit joke, yeah.

20 So you don't, you're not suggesting there that Mr Hullick's been involved in any impropriety. Is that what you tell the Commission?---I have no evidence to say that he was or otherwise look, other than that's exactly what was said and that's why it's in my statement, it's certainly relevant to Mr Becerra's appointment, I was asked to make a statement by the ICAC and that's what I did.

Paragraph, thank you. At paragraph 73 you say that Mr Becerra was forwarding invoices to Finance for payment related to architectural works? ---73 of which statement, sorry?

30 This is the same, we're going through the statement you made to ICAC, the first statement of 15 - - -?---70?

May?---70-what?

73 directly under the paragraph we were just talking about?---Yes, yes, sorry.

Do you see that?---Yep.

40 Did you think there was anything improper in that?---From Mr Hullick, no, Mr Hullick was being - - -

Not from Mr Hullick, it had nothing to do with Mr Hullick according to your statement. I'm asking whether you saw anything, - - -?---Sorry, I was looking at 74, I apologise.

- - - anything improper in what was being, the complaint that had been made to you about Mr Becerra forwarding invoices to Finance for payment related to architectural works?---I have no reason to think it was, it was improper

but it was made to me as a, in the context of a complaint so someone else had an issue with it so therefore I thought it would be prudent to go and have a chat to the HR Manager to see if he knew anymore about it to see - 'cause I wasn't familiar at all with Mr Becerra's contract at that point.

Did you suspect that Mr Becerra or anyone else had been involved in corrupt conduct at that point?---No. Certainly not and right up until February I, I certainly had a high opinion of Mr Becerra. I would not have thought that he was involved in anything like that.

10

Why did you go to Peter Macklin?---'Cause it was a HR matter, it was about a, it was about an HR contract so - - -

Okay. Paragraph 84?---Yeah.

You say that Mr Romano had said to the executive, and this is in relation to the security system that he'd been told it was wrong, you understood that to mean it was wrong that he installed the security system?---That's right, yeah.

20

And that you were going to do it anyway, that he was going to do it anyway?---Yeah, I just, I just spoke about that just, just previously, yes.

Yes. But you understood Mr Romano to be saying there that he was going to act in his personal interest to install the security system against advice?---No, not at all. He was saying that I had personally told him it was wrong but on the, on the balance of the rest of the advice and the support he had from the executive and legal advice he was going to do it anyway. And, and all that was was him having a dig at me saying that, I know you have objections to this as a dissenting member of the executive which I often was but I'm going to do it anyway. That was, that was not out of character for Mr Romano, he said that sort of thing on many occasions.

30

All right. Can you go to paragraph 163 of your statement. You make a complaint to the investigators at paragraph 163 don't you that Mr Romano had allowed a councillor at Burwood who was suspended or disqualified from driving to use a Council vehicle?

40

ASSISTANT COMMISSIONER: Sorry, Mr Eurell, what is the question? Are you just asking him whether he - - -

MR EURELL: No, I'm asking him if that's what he's saying. Is the meaning of, of paragraph 163 there that you're telling this Commission that Mr Romano had allowed a councillor to use a Council vehicle whilst suspended or disqualified from driving?

ASSISTANT COMMISSIONER: Well, I think it's obvious the paragraph is reporting to this Commission that he sent an email to Mr Romano that had certain contents.

MR EURELL: Well, I would've thought that in relation to some - - -

10 MS RONALDS: Can I indicate that - as I understand it Mr Romano is more than adequately represented. This legal representative represents Mr Hullick only and these matters seem not the slightest of interest to anyone just to Mr Hullick.

ASSISTANT COMMISSIONER: Yes, I must say this issue doesn't relate to Mr Hullick at all does it?

20 MR EURELL: Well, it relates to Mr Hullick in this way. As I understood, and I'm trying to clarify what is meant by some of the portions of this statement. It's been tendered in evidence and I would have thought that the portion of evidence that I just examined this witness on in relation to Mr Hullick was suggesting that Mr Hullick had somehow approached the appointment of Mr Becerra, which is a complaint central to Mr Hullick's appearance this Commission as a foregone conclusion and therefore - - -

ASSISTANT COMMISSIONER: Yes, I understand that and no-one objected to your putting a question to him about that.

30 MR EURELL: This witness has now moved away from that position which appeared to be apparent on the face of the statement and he's now suggesting that in fact what he was saying was that he didn't interpret it that way at all but rather it was a complaint by Mr Hullick that he was being bullied. Now - - -

MS RONALDS: (not transcribable) evidence at all.

MR LEGGAT: No.

ASSISTANT COMMISSIONER: No, I, I don't he, he said he thought it meant that it was a foregone conclusion.

40 MR EURELL: He didn't have a say in the decision.

ASSISTANT COMMISSIONER: Well, yes.

MS RONALDS: (not transcribable)

MR EURELL: Well, this is where I'm going. I'd like to know exactly, learned senior counsel for this Commission has tendered this statement in evidence. No doubt there intends to be made submissions in relation to it.

This witness should be explaining exactly what allegations he's making against Mr Hullick in that regard.

ASSISTANT COMMISSIONER: Yes, and in respect of Mr Hullick you are welcome to question him about what he's saying.

MR EURELL: Then I return to that issue if we're at cross purposes about what that means.

10 MS RONALDS: Well, counsel, with respect (not transcribable) in my submission (not transcribable). It doesn't move from the point that it's got nothing to do with Councillor Wong. Mr Hullick's interests are not affected by the matter that proceeded to traverse and that's why I object.

MR EURELL: Well, I'll come back to then Mr Hullick's evidence for a moment, the evidence in relation to Mr Hullick. Are you, are you suggesting, is what you're saying in this statement about Mr Hullick that he felt that he would have to go through the interview process and then appoint Mr Becerra regardless?---That was, that's what I considered at the time, yes.
20

And at the time did you think there was anything improper about what Mr Hullick was saying to you?---It didn't make a lot of sense at the time. It obviously made more sense to me after I discovered the relationship between Mr Romano and Mr Becerra which I was unaware of at that time when Mr Hullick made that statement.

So to your knowledge Mr Hullick intended to carry through the interview process and the recruitment process of the principal architect in good faith. Do you say anything otherwise?---I, until this inquiry I didn't even know that Mr Hullick was on the interview panel. There was no details of that given to me at all at the time or any time afterwards.
30

You see, I'm having difficulty understanding what the point of including that paragraph about Mr Hullick is if you're not saying he had done anything improper whilst at Burwood Council?---Well, he says we as in Council. I think Council in a whole, I think the Commission was entitled to know that Council in a whole had acted in that way. It's up to someone else to determine what role Mr Hullick had in that, in that appointment.

40 ASSISTANT COMMISSIONER: Yes, Mr Eurell, really he can only report what he says he heard Mr Hullick say. The Commission will have to look at that in the context of other evidence about what did happen and how the interview process went and form conclusions. Now, I've given you some leeway in wanting to test further his recollection or what he perceived was meant but, you know, I'm happy for you to question him about whether that really was said or was something else said but all he can do is record what was said which was obviously considered relevant to an issue about how Mr Becerra got appointed which I think on any view it is. In some say it's a

statement allegedly made by somebody who was on the interview panel and will have to be assessed in that light so I don't know.

MR EURELL: Commissioner, with the greatest of respect, this questioning is about how you will interpret that. I mean, on the face of this statement and it's been tendered as an exhibit in these proceedings, it suggests that Mr Hullick had been involved in some impropriety to have Mr Becerra appointed regardless of the process. Now, if this witness is saying that's not what he meant, I'm happy to leave it with that but I think it needs to be
10 clarified because at the moment in black and white form which is how he's given the evidence, it's - - -

ASSISTANT COMMISSIONER: Well, I don't think it's a question of what he meant. He can only report what he says he heard and he says he interpreted that as meaning it was a foregone conclusion but that he doesn't particularly import any impropriety to Mr Hullick because he thought he probably would've been bullied into it and that's what he says about it. I think the main think is what he says was said by Mr Hullick.

20 MR EURELL: Why didn't you, or did you challenge Mr Hullick on what he meant?---No, it was perfectly clear to me what he meant. I mean it was, it was said in a jovial context. It was, you know, I, I was sympathetic to him, I suppose.

And you were the Director of Governance at that point?---That's correct.

And throughout your tenure as Director of Governance at Burwood Council, on many occasions you kept records, didn't you? You kept file notes of conversations you'd had and some of them are in fact annexed to the
30 statement we're discussing. -I wouldn't say on many occasions. On some occasions yes.

You didn't make a file note about that conversation, did you?---No, because at the time it was, I guess, out of context. It wasn't until that ICAC raised matters of Mr Becerra's appointment that it was put into context.

And in fact the first time you've ever made a record of that conversation is about two and a half years later, do you agree?---It would've been in, yeah, April '09 so whatever that timeframe is, that's correct.
40

And you accept that you could be mistaken about that conversation?---No, I'm not mistaken about that conversation.

But after he said, after you say Mr Hullick said, "We'll just appointed Albert anyway" you just left that, whilst the Director of Governance you didn't challenge him on it and ask him whether or not there was some corruption issue that should be explored?---I'd raised it as a matter of governance saying that it was good governance that we were going through

the process of interviews so I'd raised it with him and he was a man of a lot more experience than I was in local government matters so - - -

But you hadn't been shy about taking up suggestions of corrupt conduct with the Directors or the General Manager up to that date, had you?---I think after, by that point in time I'm not sure how, how much I'd been bullied into not revealing when I had an issue with Mr Romano.

10 That's not the question I just asked you. The question I asked you was, up until the time of this conversation, as at the time of this conversation, you have taken issue with corrupt, what you saw were corrupt practices at Burwood Council with various people. You weren't shy about it, were you?---Sometimes I was shy about it, yes.

On many occasions you weren't shy about it?---On matters that I thought were extremely important, obviously I would take the risk and put stuff in writing and raise it. On this occasion, in the context with which it was said, I didn't believe it was a major issue at the time.

20 Why didn't you ask Mr Hullick if you thought it was important conversation yet you didn't record it? Why didn't you ask him whether or not Mr Romano had said to him that Mr Becerra was going to get appointed regardless of the merit in the interview process?---At that time I didn't have the knowledge obviously that, that myself and this Commission has now so it didn't occur to me to raise it with him. I mean, he, he laughed about it.

But Mr Cummins, you, the words are, "We'll interview the applicants and then we'll appoint Albert" - - -

30 MR ECKSTEIN: Well, I object to this, Commissioner. We're going around in circles. The document speaks for itself and now we're being asked to swear on oath to a negative which, of course, based on the assumption that he should've done something which is a matter for the Commission.

40 ASSISTANT COMMISSIONER: Yes, and I must say I do think the witness's original answer was responsive in that he said that it, you know, it reached a stage where he didn't feel he should raise anything about Mr Romano. I mean, this happened, this was post the November '07 exchanges, wasn't it, where you'd raised issues and then put fairly firmly in your place by Mr Romano?---It may have been before but there certainly were other, other issues.

Well, this is '08, isn't it?---Yes.

When was Mr Becerra - - -

MR EURELL: April '07.

THE WITNESS: It couldn't have been April '07 because I wasn't the Director of Governance at that time so - - -

ASSISTANT COMMISSIONER: When - - -?---I may have been making the, I may have been making the statement as just an executive, member of the executive.

10 MR EURELL: Are you now saying that this conversation might have taken place some time other than April, '07 if at all?---No. But I think you put to me before why didn't I raise it as director of governance. But if the conversation did happen in April, '07 then I, I didn't raise it as director of governance, I raised it just as a member of staff and a member of the executive. It may explain why I didn't take the matter further, because I wasn't in charge of governance at the time.

Can I ask you this, where were you keeping each of the annexures that you've put, that you've annexed to this statement to ICAC immediately prior to making it, because you weren't working at that time were you?
20 You'd left Council in February?---No. I was, well I still work at Council to this day, so - - -

Sorry, you weren't working from Council premises. The last day that you have been at Council because you went off sick was - - -?---16 February, 2009.

Yes. And this statement is made 15 May?---This statement's made 15 May, so, no, but, hang on, but I'd made a protected disclosure before this statement at which, at which point the ICAC then said, can you please give
30 us this statement.

So you were keeping all these records that you've annexed to this statement regarding various indiscretions of people at Council at home?---No, that's not correct.

Do you recall in February, 2009 there being some discussion of downsizing the number of executive directors at Burwood Council?---No.

40 You don't?---No.

Do you agree that in the correspondence that was, that was exchanged after you left Council in February, 2009 that, that you were, to settle to complained raised in that matter or two years pay?---Only regarding the bullying and harassment claims, yes.

Thank you. Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you Mr Eurell. Anybody else?

MS McDONALD: I have one question.

ASSISTANT COMMISSIONER: Ms McDonald, yes.

MS McDONALD: When Mr Hullick told you that, that the interviews would be conducted and then we'll appoint Albert anyway, is it possible that he was saying that because he thought it was just inconceivable that anyone could be a better applicant than Albert Becerra, given his involvement in the civic precinct project?---You'll have to ask Mr Hullick that one.

10

So, so you agree that you actually don't know what he meant when he said, we'll interview them and appoint Albert anyway? It could be sinister or it could be completely innocent?---I never had an inkling that Mr Hullick was being sinister or nasty about the statement. It was made in a jovial manner. Therefore, I suppose I interpreted that as meaning that it was a foregone conclusion that Albert would be appointed. Now, what Mr Hullick really meant by it or, you know, whether he had an alternative motive, you'll have to ask Mr Hullick that.

20

Okay. Thank you.

ASSISTANT COMMISSIONER: Yes, Mr Neil.

MR NEIL: Mr Cummins, you said in your evidence when you referred to Mr Baird, anything that you meant to, by which you meant to convey that he, Mr Baird had been involved in some kind of cover-up?---A cover-up, no, I think I was referring to, to bullying rather than a cover-up.

30

You cite one letter that you say it was something to do with a UBS stick. Is that right?---A USB stick and DVDs purchased from my credit card, that's right.

Could it have been a routine solicitors letter asking you to return such property of the Council that you had in your possession after you'd gone on sick leave?---No.

Have you got a copy of the letter?---It's been tendered.

40

Do you know which tender please, if I could ask? Is it in your 121 or 122? ---No. It's in a bundle of documents - - -

Thank you, 155.

MS RONALDS: Page 43, Exhibit 155.

MR NEIL: Thank you. Might the witness be shown Exhibit 155.

Are you referring to a letter at page 43 of Exhibit 155?---That's correct, the second page is missing.

MS RONALDS: (not transcribable)

MR NEIL: And that's a letter to your solicitor, is it not?---That's correct.

Would you have a look at page 21 of that exhibit?---Yes.

10 Were you made aware of that letter being sent by Maddocks to your solicitors?---Yes.

And that's from Mr Gardner, the partner at Maddocks, isn't it?---That one is, yes.

Yes. So can you find anything in 155 that carries Mr Baird's signature asking you to return anything?

20 ASSISTANT COMMISSIONER: Well, 43 has got DB up the top, I presume it's from - - -?---Yes, yes, 43 is from David Baird, the second letter, the second page has been cut off.

We don't have the signature page unfortunately, perhaps we can - - -?---The bullying element of the letter is points 1, 2 and 3 in the second half of the letter which ask me whether I have it in my possession, whether I've copied or caused to be copied on these media devices any files, documents, please identify other storage that has been, now, at that time Council was well aware that I was in contact with the ICAC and obviously they were very keen to, I interpreted that as them to be very keen to know what I had given
30 to the ICAC.

MR NEIL: Without going into the details of matters, if you have a look at the third paragraph, would you look at the third paragraph?---Starting, which, which one?

We are instructed that on 27 January, 2009 your client purchased with his Council corporate credit card the following data storage media devices. Do you see that?---That's correct.

40 Now, without going into the truth or otherwise if the solicitor had been instructed that those things had occurred, why do you think it's bullying that the solicitor writes a letter to your solicitor to ask for a return of items? ---They're not asking for the return of them, they're asking what I'd done with them and what data I'd had on them.

What's wrong with that if, if you'd done in the way that's been suggested in the letter?---I think it's pretty self-explanatory. Someone at home on sick leave suffering from anxiety and depression who'd already made protected

disclosures to the ICAC which Mr Baird was fully aware of, this letter's nothing but, it's disgraceful.

Was Mr Baird according to you fully aware of the contents of the protected disclosures you made?---Absolutely.

How do you say that? They were protected, weren't they?---He was very aware of the letter dated 16 March to Council.

10 Which letter are you referring to please?---16 March, 2009 from my lawyers to Council's lawyers. Mr Baird also obviously had a massive conflict of interest which I was aware of at the time so the fact that he wrote me a letter at all I think is disgusting.

20 You say he wrote you a letter or did he write through his firm to your solicitors?---He wrote to my lawyers because all correspondence had been instructed to go through the solicitors. But there's no doubt in my mind as to who this letter is directed at. They wanted to know what I'd done, not what my solicitors had done. The question is do you maintain it's me, it's got nothing to do with my lawyers. They want to know what I did.

Mr Cummins, do you accept that lawyers represent clients?---Mr Baird should've been representing Burwood Council.

Do you accept that lawyers represent clients? Do you understand the question?---I understand the question.

Did your lawyers represent you?---That's right.

30 Did you give them instructions as to certain matters?---Yes.

Did you authorise them to write certain letters?---Yes.

Do you accept that other lawyers acting for other clients might write letters on the instructions of their clients?---Absolutely.

And that could include Mr Baird could it not?---Yes, it could.

40 Thank you.

ASSISTANT COMMISSIONER: Yes.

MR CHALMERS: Yes. I'd like to ask some - - -

ASSISTANT COMMISSIONER: I think you'll have to come forward.

MR CHALMERS: I'm acting for Mr Issa. I want to refer to, to Exhibit 121, paragraphs 145, 146 and 147?---Yes.

Now you describe there an executive meeting on 16 February, 2009 in relation to the depot staff?---Yes, that's right.

And you say there that, if you would like to just take a moment to read paragraph 145, 146 and 147, so you get the context - - -?---Yes. Yeah, I understand. Yes.

All right. Now in relation to that, you talk about in paragraph 146, other staff being displaced or disadvantaged?---Yes.

10

Can you see that?---Yes.

What staff are you referring to there?---In 146, obviously I mention Miss Stephanie King.

Yes?---In 147 I did not recall the name at the time, but I have now reason to believe that it is Mr Issa who was on worker's compensation at the time.

Okay. And apparently there was the suggestion that he be moved to the CCTV monitoring room?---That's correct.

20

And in paragraph 147 you say, if you think that is a good idea, I have grave fears for this organisation. What was in that determination to move that person, who's apparently Mr Issa to the CCTV monitoring rooms, that gave you fears for the organisation?---It was, obviously this was at the end of what I'd seen to, in my mind, was a cover-up and the bullying and harassment of staff involved with the original complaint of the units. So I had, I tried my best in that meeting to, to get my views across regarding that I thought was happening was, was quite abhorrent. And I think that's the last thing I said, was, because I came after the, the mention of the CCTV monitoring room.

30

Okay?---In, in, sorry, in particular reference to that, I had some background in the management of staff in CCTV monitoring rooms and I know it to be an awful job and something certainly that someone with a, with a, on worker's comp with a back injury and no skills in monitoring CCTV just shouldn't of been even thought of to go into that situation. So I was concerned obviously for that staff member and, you know, the fact that (not transcribable) executive, whilst they were trying we just weren't getting through to the General Manager that what he was doing was, was wrong.

40

All right. And so would it be fair to generalise in relation to what (not transcribable) was that you thought that sending such a person to the CCTV room would basically be a punishment?---Yes.

And do you think that that was part of what you described in paragraph 146 as Mr Romano saying, divide and conquer?---Absolutely.

Yes. Thank you.

ASSISTANT COMMISSIONER: Thank you Mr Chalmers. Mr Blake.

MR BLAKE: I have an application.

ASSISTANT COMMISSIONER: Yes.

MR BLAKE: But I'll just need to check my assumptions. Mr Cummins has referred to a statement I think of 12 June, 2009, which includes the first misleading statements about lies. And he identified I think the main
10 perpetrator of the outright lies as Mr Romano. And as far as I'm aware that statement is not in evidence in any place.

ASSISTANT COMMISSIONER: You mean a statement where he identifies what he considers to be the lies?

MR BLAKE: The false, misleading, outright lies. And it would be, in my submission, very unfair for those statements to be made without the document being produced and me having a chance to examine it and if
20 appropriate cross-examine on it otherwise we will be here for hours while I go through each and every statement to identify what he says is false and why it's false and, or an outright lie.

ASSISTANT COMMISSIONER: Yes. Well, I'm trying to avoid getting too deeply into the worker's compensation matter but I mean that has been said, I mean I don't know whether we even have that. Do we have that, Ms
Ronalds?

MS RONALDS: I've been trying to find (not transcribable).

30 ASSISTANT COMMISSIONER: All right. Well, I think if we do have it or if we can get it which I assume we can I do think it would be fair for you to be able to look at it. I mean I don't, I'm sure you can understand I don't want to get into the rights and wrongs of the worker's compensation claim but - - -

MR BLAKE: I can understand that but Mr Cummins has identified about ten matters that he characterises as bullying by Mr Romano or reprisals for his action on 10 February. I count at least ten but that was one of them he identified and he specifically referred to his statement of 12 June including
40 his statement false and misleading comments but particularly outright lies. Now, this is a very serious allegation that Mr Romano has acted against Mr Cummins because he had reported matters to ICAC or he expected he would and to characterise Mr Romano's response to the worker's compensation claim as outright lies is also a very serious allegation.

ASSISTANT COMMISSIONER: Yes.

MR BLAKE: And if I can just, that is my main concern but he also identified twice a protected disclosure. Now, I'm also not aware of that being in the evidence. I don't know if the matters of that protected disclosure are truly replicated in his first statement or his second statement, probably not but in my submission I ought to be entitled in fairness to have access to that if appropriate to test it. So it would certainly assist me and would shorten at least potentially by a very substantial amount of time if I was to have access to those documents.

10 ASSISTANT COMMISSIONER: I must say I thought the protected disclosure to the Commission was this statement. Is there another written document you've prepared that you classify as a protected disclosure?--- There was a letter from myself to Commissioner that was sent previously and then in response to that my lawyers told the Commission that I'd be willing to help them on any matter and then the, my understanding is the investigators requested through my lawyers that we, that I prepare or that they assist me preparing a formal statement 'cause I wasn't sure obviously at the time as to what, what format of protected disclosure it should be in so
- - -

20 So your lawyers sent in a letter which is what you refer to as a protected disclosure?---Yeah, but it was a letter that I'd written and that I'd signed.

All right. To the Commission?---Yeah, to the Commission.

All right.

MR BLAKE: Well, he certainly did that but he also identified as my notes a disclosure to Pina Viney about Mr Becerra's conduct.

30 ASSISTANT COMMISSIONER: Well, that might - do you say you made a protected disclosure to Pina Viney?---A verbal one, yes.

A verbal one?---Yeah, there's no, there's no written evidence of that.

There would be no - - -?---She, Ms Viney does refer to those disclosures in her worker's compensation response statement so you do have a copy of that.

40 All right.

MR BLAKE: I misunderstood that but my principal concern is this identified statement of 12 June which contains the full catalogue of falsehood, misleading statement and outright lies?---That statement was made to the worker's compensation insurer not to the ICAC.

Well, it would be in my submission manifestly unfair for me not to have access to that to be able to cross-examine this witness.

MS RONALDS: (not transcribable)

ASSISTANT COMMISSIONER: Yes, I have no problem with you seeing that nor with seeing the letter which was originally written to the Commission by Mr - - -

MS RONALDS: I don't (not transcribable).

10 ASSISTANT COMMISSIONER: No, it sounds to me as if that was a fairly general complaint at that time but I don't, I can't, I can't see any reason why you shouldn't be allowed to see that. Yes. So we all seem to be in agreement, it's a very good way to end the day.

MS RONALDS: I've just got something I'd like to tender, Commissioner.

ASSISTANT COMMISSIONER: Sure.

20 MR ECKSTEIN: For the sake of completeness I have handed counsel assisting a copy of an unsigned statement of the same date as Mr Blake referred to and to put it in context I think it should be shown with the station of Mr Pat Romano dated 19 March, 2009 to investigators hired by the workers comp insurers because it is in response I believe to statements made in that statement that this letter is then sent off to the workers comp insurer.

ASSISTANT COMMISSIONER: Well, I presume Mr Blake would have access to the statement that's being criticised but if, if not I'm happy for him to be given that as well.

30 MR BLAKE: I have (not transcribable).

ASSISTANT COMMISSIONER: Yes.

MR ECKSTEIN: Thank you.

ASSISTANT COMMISSIONER: Yes, Ms Ronalds, you have something to tender?

40 MS RONALDS: I'd like to tender a bundle of documents provided by Ebsworth, sorry HWL Ebsworth relating to the employment of Mr Becerra. Mr Cummins, you can stand down from the witness box.

THE WITNESS STOOD DOWN

[4.02pm]

ASSISTANT COMMISSIONER: Yes, that will be Exhibit 184.

**#EXHIBIT 184 - EMAIL SENT ON BEHALF OF MR DENCKER
DATED 16 JUNE 2009, SUBJECT: CONFIDENTIAL:
EMPLOYMENT CONTRACT – ALBERT BECERRA**

MS RONALDS: I tender a copy of a Deed of Release between Mr Saad and Burwood Council and can I just say this relates to a bundle of documents which is now Exhibit 153 which is a discrimination complaint lodged by Mr Saad and this is the outcome of it. Mr Saad gave some evidence about the matter having been settled, this is the Deed of Release.

ASSISTANT COMMISSIONER: That will be Exhibit 185.

**#EXHIBIT 185 - MADDOCKS DOCUMENT RE DEED OF
RELEASE – MR YOUSSEF SAAD AND BURWOOD COUNCIL**

MS RONALDS: And I tender a statement by Matthew Walker which relates to the purchase by Mr Romano of a car, sorry, the purchase at Mr Romano's direction of the purchase of a car.

ASSISTANT COMMISSIONER: That will be Exhibit 186.

**#EXHIBIT 186 - STATEMENT OF MR MATTHEW WALKER
DATED 13 APRIL 2010**

ASSISTANT COMMISSIONER: All right. Well, if there's nothing else at this stage?

MS RONALDS: Nothing further. 9.30 tomorrow?

ASSISTANT COMMISSIONER: Yes.

MR BLAKE: Commissioner, do you intend to revisit the question of dates?

ASSISTANT COMMISSIONER: Could we leave that till tomorrow morning. I just want to check out a couple of things but first thing in the morning we will get to that issue.

MR BLAKE: Yes.

ASSISTANT COMMISSIONER: And 9.30 tomorrow morning, thank you.

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