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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 24 MAY, 2010

AT 10.10AM

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

MS RONALDS: Commissioner, in the last few days the Commission has been provided with some material from Mr Romano and they are matters that I'd like to address first up if I may. There's also other material that has to be tendered but some matters need to be addressed about the material that has been produced and provided to the Commission and the way that it, in my submission, it should be properly be dealt with. There are three
10 different issues. One is two volumes of documents were provided which, as I understand it, Mr Romano says relates to the evidence of Mr Baird, I'm sure Mr Blake will correct me if I'm wrong but as I understand it there is a substantial body of documents, a number of them clearly are confidential and they are legal advice that in my submission Mr Romano had no right to produce to the Commission but we'll leave that aside for a moment because he has no capacity to have them but that the privilege if it exists, and I know it doesn't formally exist, but there might be matters that Mr Belling wishes to address the Commission on in relation to those two folders and I don't know whether he's in the position to do that now - - -

20

MR BELLING: I am.

MS RONALDS: - - - because there, it is an argument that it's not in the public interest that a number of these documents be provided, they really are matters between the Council and their legal advisers, a lot of which have no, are of no interest to this Commission anyway and the issues that we're addressing. So that's the first matter.

The second is a document that's called a legal advice statement from
30 Mr Romano that was provided late Thursday afternoon to this Commission. It's a detailed document that we've had to deal with in a very short time. There's issues about the contents of that statement and I don't know whether Mr Belling's in the position given the late provision of that material to deal with that now but there are some matters - - -

MR BELLING: Theoretically I (not transcribable).

MS RONALDS: - - - and I noted that Mr Leggat is unable to be with us so Mr Belling's stepped up to the plate today because of that. And then there's
40 a statement of Mr Romano's about driveways which I don't think gives rise to any issues from anybody, it relates to the earlier part of the inquiry. In relation to the statement called legal advice statement, I only adopt the name, I don't adopt it as a correct descriptor, it's my submission that it should be dealt with in this way. It is accepted as Mr Romano's view of the world and his account of conversations. It goes no higher than that. I would seek that Mr Blake not be given leave to cross-examine Mr Baird in relation to any of these matters unless there are one or two major issues but certainly not to go through it line by line. In my submission, given the matters that

are traversed, that is not in the public interest and would involve a substantial waste of this Commission's time to do that. There are a couple of minor, a couple of issues that I will take Mr Baird to and Mr Neil as I understand may wish to do so but also within a brief compass and given the role of this Commission it's my submission that it's simply not appropriate or necessary for the issues that go to the heart of this inquiry for time to be spent on this statement in the way that has happened before in relation to Mr Romano's account of conversations. So that's, that's the basis upon which I seek that it be tendered and only on that basis, that is, that it is
10 Mr Romano's view of what happened.

ASSISTANT COMMISSIONER: So there's a statement and two volumes of documents that relate to that statement, is that - - -

MS RONALDS: Well, there's the statement which has seven specific exhibits to it and then there's the two volumes of documents that are referred to in the statement but not all the contents of the two volumes are referred to in the statement and so the rest why they're there.

20 ASSISTANT COMMISSIONER: So are you asking for the statement to be admitted on the basis you've suggested - - -

MS RONALDS: Yes.

ASSISTANT COMMISSIONER: - - - and the two volumes of documents to be admitted but as a confidential exhibit?

MS RONALDS: Well, it depends on Mr Belling's view of it because it's really Council's documents that were provided.
30

ASSISTANT COMMISSIONER: Well, yes, that's right and as you say, the privilege is not - - -

MS RONALDS: Sustained.

ASSISTANT COMMISSIONER: - - - abrogated unless the Commission requires the production of documents.

40 MS RONALDS: And a lot of the documents well, there's a lot of repetition, a number of them are already exhibits so I don't know why they were necessary to reproduce but a number of other ones are really matters between the Council and their legal advisers which I would say don't go to any relevant issue and again one wonders why they were produced. But they were produced by Mr Romano, again one wonders why, and how he holds the documents and why he felt he could do so but that's again a matter for him and his legal advisers but Mr Belling I considered, but I've not had an opportunity to discuss it with him given the late provision of all these documents, that Mr Belling I thought might have some concerns from the

Council's point of view in relation to, to there is no public interest in some of these documents being made public.

ASSISTANT COMMISSIONER: Yes. Do you have anything to say on this issue, Mr Belling?

MR BELLING: I do, may it please the Commissioner. We have principle's inclusion in the first (not transcribable) of the inquiry has got ability to go through legal and professional privilege. But it has already fallen from you, Commissioner, there's no aggregation of privilege by the Council. Some of these matters you will note when you see them are going to involve the Council in probably a contested litigation with some of the persons names and the subject indeed of the legal advice, so my primary objection is to, to waiver a privilege and we wish to maintain the privilege. One of the ways in which it may be, I may be able to deal with it is to schedulise those items which we object to and then they be the subject of a suppression order. In the time available I haven't had the chance to do that. But I'm a little uncertain (not transcribable) senior counsel assisting exactly what might get into evidence in any event. But I'd be very happy to schedulise our objections over some appropriate break. It may mean that the transcript needs to be held up for a short while that's attended to in order to preserve privilege.

ASSISTANT COMMISSIONER: Well, I mean presently I'm minded to make both of the volumes confidential Exhibits, which I think would address your concerns without having to go through and work out which ones the Council has a claim of privilege in respect of. It seems from what counsel assisting says, that that's the appropriate way to deal with that issue. So I think that takes care of the privilege. We'll make the two volumes of documents, which include the Council privilege documents confidential Exhibits. I mean, generally I must say I am concerned that we are still having documents produced in this way and at a late stage. We've been adjourned for a month. I understand these documents were only provided, you know, within the past few days, which is not good enough. Also people still don't seem to understand that it's counsel assisting who decides what is relevant information and what will be placed before this inquiry. However, in light of what Ms Ronalds has said, I agree with her proposed course of action, that is that the statement and attachments will be accepted as an Exhibit on the basis that it is Mr Romano's version of the matters that are raised in it. It's not to be put in detail to Mr Baird or other witnesses. If there is a particular point of interest, then leave may be applied for to ask about that. But we cannot have the inquiry ground to a halt by going through pages and pages of largely irrelevant information on the basis of what counsel assisting says.

MR BLAKE: Can I say something?

ASSISTANT COMMISSIONER: Yes, Mr Blake.

MR BLAKE: Counsel assisting and I have a, probably a different view as to the issues that arise with Mr Baird and Maddocks and HWL Ebsworths in 2009, the examination on the last occasion suggested at least in part that Mr Baird's relationship with Mr Romano was not sufficiently distant or objective. And I think that was the (not transcribable) at least part of the examination. So this material we would submit is relevant to the reprisal issue. And the reprisal issue has a number of facets and concerns actions taken in relation to Mr Child, Mr Giangrasso and Mr Cummins. This
10 evidence is sort to produce to (not transcribable) that Mr Romano to the extent that he was involved in (not transcribable) and other Council officers were acting on legal advice. And we will submit that that is a relevant consideration (not transcribable) probability for reprisals in (not transcribable). The two volume statement was provided to the Council and counsel assisting on the last day (not transcribable). It is true that the statement, the text on Mr Romano's statement was only provided on Thursday afternoon. The reason for setting out his version, I accept it is only his version of meetings he attended where legal advice was proffered. So Mr Baird will be asked whether he agrees with it or not. I think, it was
20 put in this way to avoid lengthy cross-examination. However, it may be relevant if Mr Baird disagrees that these things were said. And it may then be suggested that Mr Romano or Council officers were acting uninstructed by legal advice or (not transcribable) legal advice of carrying out and so forth reprisals. But that's that nature of it. I do not take them (not transcribable) just ask Mr Baird whether he agrees with the substance of what's in that particular paragraph or not. This (not transcribable) presumably he would say what his version is. I don't know whether it's controversial or not. But I don't accept that this material is irrelevant to the reprisal issues. And if (not transcribable) demonstrate that the Council was
30 seeking legal advice in relation to various steps which are alleged to be reprisals and acting in conformity with legal advice that was received.

ASSISTANT COMMISSIONER: Yes, well, Mr Blake, I don't think anybody is attempting to stop you eventually making submissions about the contents of any of these documents or the statements and similarly Mr Baird might wish to make submissions in response eventually. I think all counsel assisting is saying is we do not need to take Mr Baird through all of the information. He's been provided with a copy of it and I don't think it would be helpful to the inquiry to cross-examine him in detail on it. I think it's a
40 matter that can be dealt with by way of submission. Unless there is some central or highly relevant issue that you convince me otherwise that you should be given leave to cross-examine him about.

MR BLAKE: Well, I don't really know but there's about half a dozen (not transcribable) which, with legal advice was given. I don't know Mr Baird whether he agrees with Mr Romano's version or he violently disagrees with it or he (not transcribable). I don't know how I can make submissions in the absence of putting things to Mr Baird unless it's accepted that this is an ac

curate account of what was said or if there is some contrary account, how is that going to be of use for the Commission? That's the only query that I am raising but the substance of it goes to the issue that I've said. Mr Romano, if he had any part (not transcribable) Council officers were acting and conforming with legal advice.

ASSISTANT COMMISSIONER: Yes, Mr Ronalds, what do you say?

10 MR NEIL: Commissioner, could I just, before Ms Ronalds - - -

MS RONALDS: (Not transcribable).

MR NEIL: Yes, thank you. Could I, on behalf of Mr Baird just say that I support the position of counsel assisting. A letter has been sent to the solicitors for Mr Romano with a copy to the solicitor for the Commission in detail setting out objections including how we can't see how many of these documents could really be relevant to Mr Baird. In the two folders there's 200 tabs and a number documents within each tab. In the exhibits to another statement which is Exhibit 242 there's 40-odd tabs. We would
20 submit that the views that you've just expressed are the best way to manage the matter, giving Mr Blake some perhaps opportunity to deal in a compact fashion with discreet matters because otherwise frankly would be not only unproductive but onerous to Mr Baird and if all these documents were to be gone through we could be here for many days. But we don't want to unduly restrict Mr Blake but he would have our letters and he would understand our position and the last of these statements only came in Thursday or Friday. We've all had to, I think including counsel assisting, have tendered it very late and we would submit that it's, you have rightly identified the
30 importance of having the Commission's proceedings kept in reasonable bounds.

ASSISTANT COMMISSIONER: Thank you. Yes, Ms Ronalds.

MS RONALDS: I think Mr Neil and I might be in furious agreement but perhaps, not Mr Blake and I (not transcribable) the first time. We're not seeking to stop, I'm not saying I don't consent to the tender of this document called Legal Advice Statement. The other statement about Mr Cummins was tendered out of session so that others could be provided with a copy of it. The difficulty with the late provision of this document is
40 that I understand it was provided to counsel for the Council and to counsel for Mr Baird but others who represent members of the Executive have not had an opportunity to see it so they are at a disadvantage and we weren't able to circulate it as we had with others because of the late provision.

Now, so, I'm not seeking to stop it going in on the basis that it is not necessary for every conversation to be put. Mr Baird has an opportunity to respond through Mr Neil on any critical matters and as I say, I'll take him to a couple and other than that, in my submission that's as it is and Mr Blake

can address the matters in submission. That's where they appropriately rest. There is a letter from Mr Baird to Mr McKenzie attaching the documents and the letter that he sent to, sorry, it doesn't actually attach the letter he sent to the solicitors for Mr Romano but I assume that could be (not transcribable) or maybe it is in there, sorry. But we're just having that copied. We understand Mr Romano will provide copies of his statement, et cetera and in our submission that's how the matter should proceed. There is the letter that sets out their objection to it, that is self-evident. There's a number of documents attached to it. We would say that should be tendered
10 as well and then not all the documents are before the Commission and if there's any primary matters that Mr Baird wishes to cavil with then he can do so but otherwise the legal advice statements, so-called, is accepted as Mr Romano's version of what happened and nothing more than that and then it's a matter for the Commission in what one draws from that.

ASSISTANT COMMISSIONER: Yes. All right. Well, I'll make the legal advice statement of Mr Romano Exhibit 244.

20 **#EXHIBIT 244 - MR ROMANO'S STATEMENT IN RELATION TO REPRISALS**

ASSISTANT COMMISSIONER: The two folders of documents which include the Council legal advices will be Exhibit 245 which will be a confidential exhibit.

30 **#EXHIBIT 245 - TWO VOLUMES OF DOCUMENTS PROVIDED BY MR ROMANO**

ASSISTANT COMMISSIONER: And the final exhibit is a letter from Mr Baird's solicitors is it?

MS RONALDS: Yes, to Mr McKenzie with a number of attachments which includes a letter, importantly includes a letter to Mr Gorry from Mr Baird dated 19 May, 2010 which sets out their view about the documents and it's self-evident what they say about it, I won't (not transcribable) but it includes
40 that in the bundle.

ASSISTANT COMMISSIONER: Yes. Well, that will be Exhibit 246.

#EXHIBIT 246 - DOCUMENTS PRODUCED BY MR BAIRD

MS RONALDS: And we're just having that copied and I'm sure it's going to walk through the door in a moment but it hasn't yet done so. So we've relied on Mr Romano to provide 244 to others who are here and I assume he has those copies now to provide those to other, other counsel who are here and there was, excuse me one moment, so 246 will be distributed by us and 244 will be distributed by Mr Blake or those who assist him and in relation to 245, it may be that Mr Belling and I can have a conversation and if there's anything that we particularly think should be tendered publicly we'll take it out of it and tender it publicly. We can do that in the next day or so.

10

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: And I do have a couple of other matters, documents to tender at this stage if I may.

ASSISTANT COMMISSIONER: Ah hmm.

MS RONALDS: One is, just excuse me one, some documents relating to the depot reforms and the first one is a meeting of 7 April which is in fact in Exhibit 200 but just so, sorry, so this one stands on its own and if I could tender that.

20

ASSISTANT COMMISSIONER: Yes. Those documents re depot reform will be Exhibit 247.

#EXHIBIT 247 - DEPOT REFORMS

MS RONALDS: And a statement by Vera Karpowicz dated 18 May, 2010.

30

ASSISTANT COMMISSIONER: That will be Exhibit 248.

#EXHIBIT 248 - STATEMENT OF VERA LOUISA KARPOWICZ DATED 18 MAY 2010

MS RONALDS: Right. And I do have 246 to distribute to those who don't have it and Mr Belling seeks to, Mr Belling's got something he'd like to tell you.

40

ASSISTANT COMMISSIONER: Yes, Mr Belling.

MR BELLING: Thank you, Ms Commissioner. Under section 336 and 351 of the act, of the (not transcribable) Act, 1993, it's open to Council to appoint an acting general manager to fill a vacancy. On 19 April, Council,

by unanimous resolution resolved as follows. Assistant Commissioner, I'd like to read this on to the record.

ASSISTANT COMMISSIONER: Yes.

10 MR BELLING: There are some consequential documents that I will provide to senior counsel assisting over the next day or so. And she will make the decision as to whether we need to tender those. But on 19 May Council resolved unanimously to appoint Mr Stephen Blackadder as acting
10 general manager until no later than 29 October, 2010, to fill the vacancy created by the departure of Mr Pat Romano. And the intent of that appointment, Assistant Commissioner, is to assist Council in the reformed processes in which it's engaged and in particular to assist with the recruitment of a general manager under section 344 of the Act. The contracts are in the final stages of negotiation. It is expected that Mr Blackadder will commence in that position on Wednesday. Once the contract is finalised, I will provide copies of that, that and the relevant material to senior counsel assisting.

20 ASSISTANT COMMISSIONER: Thank you Mr Belling.

MR BELLING: May it please the Commission.

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: I call Mr Baird.

30 MR BELLING: Assistant Commissioner, I said 19 April, the date was 19 May.

ASSISTANT COMMISSIONER: You said April once and May once, so, two bob each way, so fifty per cent right. Yes, Mr Baird, take a seat. The orders previously made in respect of you continue to apply.

MR BAIRD: Thank you.

MS RONALDS: And I advised you previously that I had completed my examination of you, but I understand there's been a tsunami of documents since and there just some several matters (not transcribable) for clarity I need to take (not transcribable) just bear with me. If the witness can be shown Exhibit 242. It's a separate stand alone statement. Mr Baird, if I could ask you when it's provided to you, perhaps if you could put your material aside at this stage. At about page 34, you've had occasion to review this statement?---I believe so, yes.

It's dated 30 April, that was not when it was provided. See page 34?---Yes.

See paragraph, you right, 197?---Yeah.

If I could ask you to just look down the page to about point 4 on the page, just after the hole, top hole, the conversation I was referring to and then it goes into a statement alleged to have been made by you. Do you see that? ---Yes.

That is the allegations are serious, et cetera. And then it goes on to say, however, Mr Cummins should be held to account for some of the issues that have been uncovered by the ISCFT. In my opinion, Council should write and ask him, ask for him to please explain some of the irregularities that have been uncovered in the review of the tape. To the best of your recollection was that the view you expressed?---No.

At that meeting?---No, it was not.

And is that the sort of language you would use when providing legal advice to a client?---No.

And in particular would you, do you recall saying Mr Cummins should be held to account for some of the issues that have been uncovered?---No. The paragraph that you referred to is in my view not an accurate reflection of what I said nor does it appear to me to be logically consistent, which is something that troubled me when I read it. The first sentence says the, the sentence attributed to me says, the allegations, which I think are the ones that were raised by Mr Walker and Mr Phegan are very serious. My recollection was that I was concerned at the seriousness of the issues raised. The next sentence seems to be a complete non sequitur, which to my mind is indicative of the fact that I didn't say it or word to those effect. Because it says I support Council's decision this morning not to pursue the matter. If I, I regarded these matters as serious, my recollection is that I would have said or did say words to the effect that these are matters that are extremely serious. They need to be promptly investigated and we need to probably put the proper authorities on notice. I think I referred to, reference to the police

and with the ICAC. Because what was being put at the meeting was the suggestion that Council had been asked to authorise invoices for this IT contract that were either fraudulent or that, invoices which were for significant amounts of money. And I think we were talking about multiple hundreds of thousands of dollars that was sought to be approved or had been approved. And the suggestion was that the work hadn't been done or that there was some improper or inappropriate basis for these invoices to have been raised. So, I, in my mind the warning bells were ringing and I was suggesting that the proper line of investigation, I've just indicated, should have been undertaken. So then for me to say as it attributed, I support Council's decision this morning not to pursue it is just, I reject that. It's absolutely wrong. I didn't say it and it was never said.

And in terms of, however Mr Cummins should be held to account for some of the issues that have been covered?---No, no, I didn't say that.

Is that the sort of language you would use?---No. No, it's not.

And then the idea of writing to Mr Cummins to ask him to please explain is attributed to you. Do you accept that it was your idea to write to Mr Cummins?---No, I don't.

You understand that, I'm not sure if you were here when Mr Cummins gave evidence, but he puts that correspondence as an act of reprisal against him and the input as I read it, this conversation is Mr Romano is saying it was your idea?---No, I don't believe that's correct or accurate. And I think that, my recollection was that most if not all of this work was undertaken by Mr Gardner's group, because it related to the employment issues. I had very little involvement in it.

And do you recall whether anyone came up at that meeting with the idea of pursuing Mr Cummins by writing to him to explain some of the irregularities?---I can't be sure. I think the suggestion was made by one of the members of the group that were discussing it, it was an active discussion which really I was invited to sit in on. I wasn't really participating. But one of the members, I can't remember who, was suggesting that, that the issue, the relevance of Mr Cummins in this issue was that Mr Cummins, as I understand was the director responsible for the IT work and the IT contract. The suggestion was that he had a responsibility to the Council to make sure that these contracts were undertaken properly and that if this sort of expenditure was undertaken that the expenditure was undertaken and that all appropriate checks and balances had been looked at before authorising payment of these very substantial invoices. I think that was the context in which it was raised. And I can't remember who, but someone suggested that if there had been a, I think the words that were being flung around the meeting were rorting or scamming, I think those were the sort of words, if this was a, an invoicing scam, then I think someone was suggesting that they would want to know what Mr Cummins knew about it, because he was

responsible for the contract. That was the context in which his name was used.

Thank you. In relation to that meeting which was 18 March, the day before Council had, well, Mr Romano had received the letter from Harmers you were aware of it by that meeting, was that meeting concerning the letter? Sorry, the - - -

10 The meeting that's referred to, that I just took you to?---Yes. Was that the meeting referred to the Harmers letters?

Yes?---No, I think it was a discreet meeting. My recollection was that it was a, that the, the forensic consultants had been brought into a discreet meeting to talk about this IT issue.

Right. And it wasn't so it didn't overlap or run into a meeting about the Harmers' letters?---No, I don't believe so.

20 Thank you. Now, I think you, if you could just close that one up, Mr Baird, did you have a copy of Exhibit 244 which is the legal advice statement? Do you have that there?---I, I do.

Now, if I could ask you to turn to page 21 of that statement, do you see paragraph 127? Now, you've had an opportunity to read this statement. Is that correct?---Yes, I have.

Paragraph 127 sets out a conversation purportedly between you, Mr Gorry and Mr, sorry, you and Mr Romano, the I being Mr Romano?---Yes.

30 If I could take you to the last, you see the italicised material at the very bottom of the page and it says we want to show the ICAC that there is a sensational, deliberate conspiracy against Pat because of his efforts to reform the depot. Now, to the best of your recollection, on 4 May, 2009 was that, did you say that?---Was it the 4th?

See, it starts at 124, on 4 May, 2009 I attended a meeting at HDY's office with Baird, Neil, Gorry and Herman?---Yes, yes, up the top, yes.

40 And then it runs down?---Yes, I wanted to check the date.

All right?---Well, I don't agree that the paragraph which is the, virtually the bottom third of the page are words that are accurately reflecting my input into the agreement, in - - -

We're starting, where it starts from Mr Baird down?---Well, from the top of the paragraph but that, I don't - - -

Are you all right?---Yeah. The, I, I didn't say all of those words and certainly the impression that those words convey are not the impression that I recall but the last paragraph that you referred to - - -

10 That first sentence in the last paragraph?---Yeah, I didn't use the word sensational, that's not something that I would use but I did, I did remember discussing that what we understood from Mr Romano's instructions and his explanation, what later became known as the conspiracy theory and that was that the, the reason that these allegations had been made against Mr Romano by the depot staff was, it was a reverse retaliation because Mr Romano was championing the depot reforms and was determined to see those reforms undertaken and he felt a number of the people at the depot were seeking to discredit him and were seeking to undermine his position by taking the action that he alleges, he alleged that they were taking and this was a plan to destabilise him and so that he would back off the depot reforms and I had conveyed that theory to the, to both, to senior counsel who was advising at the time and to the ICAC.

20 And what that suggests is that you had in fact embraced and indeed adopted that as an accurate position for the Council?---Well, that was, on, on the evidence that Mr Romano was putting to us, putting to me I felt that it was a theory worth investigating, a matter worth investigating.

What I'm suggesting to you is that this appears to reflect a much more robust adoption of the theory?---Yes, I'd agree with that.

30 And I'm seeking to explore with you whether that accurately reflects your view, that is, that you had embraced and adopted the theory put forward by Mr Romano or whether you maintain it was a position to look at?---Well, I think it was probably the latter, it was something that, that I felt was justifiable providing that we could prove it, providing Mr Romano could prove it but it certainly had a logic to it and also one has to accept the context that Mr Romano at this stage was still protesting his innocence and his, you know, the fact that he was the victim in this matter not the other way around.

40 Not only at this stage?---Well, at this stage and consistently but I had put that to, I had put that to senior counsel who was advising us at the time and I understood that that was accepted as a plausible matter that warranted investigation.

If I could then ask you to turn to page 27, paragraph 150 and it's about point 9 of the page, again, just to put it in context, this was a conversation on 15 June, a meeting on 15 June with Mr Leggat of senior counsel, yourself and Mr Romano?---Ah hmm.

Do you see that?---Yes.

And if I could take you to the last entry of yours, it is purported there, do you need a minute just to get on top of what it is?---This is 15 June meeting?

Yes, so this is some further down the track?---Yes.

I just want to take you to the bottom quote from you. Do you see it about point 9 of the page?---Yeah.

10 “We will get to the bottom of this”?---Ah hmm.

“Don’t worry, you are the white knight in this. They’ll realise the depot reforms and the investigations into the unauthorised activities will show that some staff at the depot are the corrupt persons, not you.” Now, does that reflect - - -?---I think it’s, once again, it’s a slightly, it’s, it’s an exaggeration of the words and the position that I was putting. I don’t know whether I used the word white knight but what we were trying to get to the bottom of and Mr Leggat was also I think pursuing this line from his discussion with Mr Romano was that if, if what Mr Romano said was true and correct and at that stage we accepted it to be true and correct, then he would not be the one who was vilified, he would be exonerated. That was what we were putting.

But you seem to be doing more than that with respect?---Well - - -

What you were doing is embracing Mr Romano’s position and white knight is a particular - - -?---It’s an emotional term. I didn’t, I don’t think I said that and I don’t think, I think that this exaggerates the position I put, yeah. One also has to understand the context in which that discussion and I don’t know whether it was this discussion or another discussion that we had with Mr Leggat where we were considering what was called an open book policy in, in going to the ICAC with Mr Romano and the possibility of Mr Leggat approaching the then Commissioner and seeking an interview in relation to Burwood Council and Mr Romano so - - -

That’s the next conversation - - -?---Yeah.

- - - I think, with Mr Leggat where he sets out, where what he’s set out is certain views about that, sorry, if you just bear with me one moment. I’m sorry, Commissioner, if I could just have a moment, we have just got a problem with one document that’s now been made confidential.

We’ll return to that perhaps when we’ve sorted out something with Mr Belling. (Not transcribable). I’ll just show you this document, in a minute. This is an email sent to you and I’ll hand you a hard copy?---Thank you.

See there’s an email exchange between Mr Macklin and Mr Romano and then it’s sent to you on 12 February, 2009 at 3.40. Do you see that in the middle of the top page?---Yep.

“David, I request you review Council’s policy in relation to the PDF and a copy of our policy. Please call me to discuss”?---Yes.

Do you see that?---Yes.

And then you send it Ms Kelly?---Yes.

And she was your assistant, was she, was she - - -?---Yes.

10

- - - a member of the legal team?---Correct, mmm.

She’s your assistant, not a solicitor?---No, no, sorry, she’s a solicitor in my team, more of the Maddocks team.

Okay, it says, “New matter can go on Burwood General”?---Yes.

And despite all the documents that have ever been produced to us, I’ve never seen anything that follows through on that, that is, I’ve never an
20 advice, I’ve never seen a draft advice, I’ve not seen any material that is response to that request from Mr Romano to (a) discuss it with him and (b) then provide an advice. Do you have any recollection of what happened?
---My recollection was that I, I asked Mrs Kelly to do, the other Mrs Kelly, Monica Kelly, to deal with it and I thought that she was going to ring one of the officers at Burwood because my recollection was that Mr Romano said that we, we could talk to, I’m not sure who he nominated. It might have been Mr Hullick, I can’t remember, but Mrs Kelly was going to follow that through and I, I had assumed she was dealing with it so I can’t - - -

30

But she wouldn’t send an advice without you signing off on it - - -?---No, no, no, she wouldn’t, but perhaps - - -

Do you recall ever producing anything? It just seems to have disappeared into the vortex, that’s all?---Well, I, I thought that it had been concluded but I, I can’t remember.

If I could tender that.

40

ASSISTANT COMMISSIONER: Yes, the email string which ends with an email from Mr Baird to Mrs Kelly will be Exhibit 249.

#EXHIBIT 249 - EMAIL DATED 12 FEBRUARY 2009 FROM PAT ROMANO TO DAVID BAIRD

MS RONALDS: I have nothing further.

ASSISTANT COMMISSIONER: Thank you. So is Mr Baird excused now?

MS RONALDS: No, no, I think - - -

ASSISTANT COMMISSIONER: He is stood down?

10 MS RONALDS: No, I think others may want to - - -

ASSISTANT COMMISSIONER: All right, yes.

MS RONALDS: When you said I'd finished, not, I do have one other matter that I may revert to when (not transcribable) Mr Belling but I was trying not to (not transcribable).

ASSISTANT COMMISSIONER: Yes. Is there any application to examine Mr Baird at this stage? Mr Blake?

20 MS RONALDS: Once he's excused then he won't be returning.

ASSISTANT COMMISSIONER: All right.

MR BLAKE: Mr Baird, you were asked some questions on the last occasion about Mr Romano's management style by counsel assisting. Have you had a chance to, have you taken an opportunity to refresh your memory of the evidence you gave on the last occasion or do you have a copy of the transcript of your part of the evidence with you?

30 ---No, I don't have a copy of the transcript. I'm generally aware of what I said but I, if you want to ask me a specific question you'd have to help me refresh my memory with the transcript.

We'll see how we go but if you need the transcript I'm sure (not transcribable). You were asked at page 1726 at line 42, it was in the context of some members of the evidence, of the Executive and Mr Macklin had given evidence, "I didn't feel able to take him on". That's Mr Romano, to adopt the vernacular. And you answered, "That is correct. I understand what you're saying"?---Yep.

40 Then counsel assisting then asked, "And you were present at a number of meetings with those various people, the Executive, Mr Macklin and Mr Romano?" And you said, "Yes, there were" referring to the meetings. And you went on to refer to you being asked on occasions by Mr Hullick, Mr Dencker and Mr Macklin, to take him on, just (not transcribable) the question, or you, you answered, and, which you said you did on some occasions. And then so far as the merits of some particular matters you disagreed with Mr Romano. Do you recall that evidence?---Yes.

I just wanted to ask you, the meetings that you were referring to, were they meetings of the project group for the library project?---Generally, yes.

Yes, and up until the time that the Sydney Morning Herald allegations were made in April, 2009, the only meetings that you regularly attended were the project group, management group. You didn't attend other sorts of meetings on a regular basis?---I was on call generally. If I was requested to come to a meeting or invited to come to a meeting I, I went but the regular, regularly scheduled meetings there were two strands. The project team
10 meetings and what we used to call legal matter team meetings.

And when you were referring to the meetings, you're referring to what, the legal meetings and the project meetings, is that correct?---Both, both those meetings. Sometimes, once or twice, there were ad hoc other meetings that were convened when I was out at Burwood but generally those are the two structured meetings.

And Mr Romano's management style that you saw in those meetings was that he challenged the position taken by individuals, other individuals where
20 he disagreed?---Yes.

Forcefully expressed his own opinion?---Yes.

And you'd agree with me that through that process of expression of opinions, contrary opinions, was a way different perspectives were articulated?---Yes, but he, he was extremely persuasive and often wanted to achieve his view to be the view that was ultimately agreed to. It was in those circumstances sometimes when the others would ask me to, to view their, their particular input with an opportunity to try and persuade him that
30 perhaps he'd gone too far or his, his opinion was a bit excessive and these were vigorous debates that we had.

And from time to time Mr Romano resiled from his position and changed his mind?---Yes.

You'd agree that Mr Romano was a demanding manager, as you observed him?---Extremely, yes.

And he, in your view, was seeking to act in the best interests of the Council?---Yes, that's a fair comment but I qualify that answer without
40 reference to the other issues that have obviously been brought forward during this Commission.

Yes, all right, but so far as the library project, your belief was he was seeking to advance the best interests of the Council?---Yeah, I, I think he had a, a passion, enthusiasm for the library project. And he was, his energy and his input was never flagging. I'd certainly acknowledge that.

ASSISTANT COMMISSIONER: Mr Blake, is it relevant that Mr Romano was interested in the library project or acted well in the library project or didn't act well in the library project? We're not investigating it at all.

MR BLAKE: Well, statements were made which I don't know how they will be used in submissions, about Mr Romano's management style and that
- - -

10 ASSISTANT COMMISSIONER: This is not about his management style, it's about whether he really believed in the library project and was trying to do well by the Council. That was nothing to do with how, about how he treated people or whether he was a bully or yelled during meetings. He might do all of that because he believed in the library project so I, I would just ask you to narrow your cross-examination to matters that are really in issue which I don't think that is.

MR BLAKE: Thank you, Commissioner. I wasn't planning to ask any further questions on that topic.

20 Mr Baird, you also gave some evidence on the last occasion on the context of a statement made to the Council, I think by the Mayor, on 7 April, 2009 that Mr Romano was voluntarily stepping aside. Do you recall some evidence around that issue? This is page 1733 of the transcript?---(NO AUDIBLE REPLY)

Perhaps I just might refresh your memory?---Yes.

30 There was a statement in the minutes of the meeting I think when the Mayor said the General Manager has indicated to me that you'll voluntarily step aside and counsel assisting, and I quote, said, "I suggest to you this does not reflect what happened over the next six to nine months, does it," and you responded, "In the ultimate practice I think it did"?---Yes.

And there was a number of questions as to whether he had truly stepped aside and the - - -?---Yes.

40 - - - the substance of what you said was while he sought to be involved he had in fact not made decisions or had stepped aside, that was the position you were maintaining I think. Do you remember that?---Yes, I remember that, yes.

It's correct that as at the time of that meeting on 7 April that the only allegations that had been made at that time was about the driveway, that's Mr Romano's driveway, and the use of Council staff and Council equipment on the Befaro units. They were the only two issues that had been raised in those two Herald articles. Do you recall that?---I believe that's correct but I haven't read them for a while.

But your understanding of Mr Romano's voluntarily stepping aside was insofar as the Council was dealing with those two specific allegations?
---Yes, I can't, I can't remember the specifics but it, I think that's correct, yes.

And it's true to say after that that you, apart from setting, sorry, I withdraw that. After that one of the steps taken to respond to those allegations was initial steps taken to set up a, what was called a code of conduct inquiry?
---That's correct.

10

And steps were taken in the establishment of the code of conduct in April and up till about early May 2009?---Up till the point when the ICAC intervened and said that they were going to, well, confirmed that they were going to undertake a preliminary investigation.

Yes?---Yes.

And Mr Romano had no involvement or dealings with you in setting up the code of conduct inquiry and related matters after the Council meeting on
20 7 April, 2009, did he?---I believe that's correct, yes.

By the time that the ICAC decided to become involved, I think in about early May of 2009, there had been some additional allegations raised in the Sydney Morning Herald. Would you agree with that?---Yes.

Concerning Mr Romano's alleged involvement, improper involved in elections in September 2008?---Yes.

Mr Romano's improper involvement in the appointment of Mr Becerra as
30 architect?---I'd have to read the articles once again to refresh my memory but it's fair to say that the, the ambit of the original matters looked at by the Herald had been expanded and also I can't remember the exact date but the Cummins letter was also to hand and that also created another raft of allegations.

Yes. And I suggest that to your knowledge the scope of the allegations was limited by what was in the Harmers letters, the, one of the letters of
40 16 March or, or and what had been published in the Sydney Morning Herald as at early May of 2009?---I'm not sure what your question is saying, what are you - - -

Sorry, I withdraw that. Your understanding of the scope of the allegations as at early May 2009 when the ICAC proposed to take over this matter were those allegations that had been aired in the three or four, five, articles in the Sydney Morning Herald - - -?---Yeah.

- - - as well as the allegations made by Mr Cummins through his solicitors, Harmers, one of the letters of 16 March?---I think it was fair to say it was an amalgam of all of them - - -

10 Yes?--- - - - and I think it was fair to say that we tried to also obtain some clarification from the ICAC as to which matters they were going to focus upon in terms of whether there was a residual area that might be a matter for Council to continue with its code of conduct inquiry. I think that at one particular stage we were talking to the ICAC about trying to delineate between the issues with ICAC perhaps focussing on the, on the, the
paveway, the driveway and the flats and possibly the Becerra matter, the contract and there being another few matters that the Council might continue to investigate and ultimately I think we received advice from the ICAC that they wanted to cover the field so to speak and that we, we said all right, we, we won't take any further action to independently investigate, we don't want any crossover or any duplication so I think that was all occurring late April, early May, from my recollection without access to documents.

20 Would you agree with me that that question of what the Council might pursue and what ICAC was pursuing remained unclear for some considerable time - - -?---Mmm.

- - - from May 2009 up until and including October 2009?---I'm not, I wouldn't say it extended to October, I certainly, from the point, I think, I think the end point was when senior counsel advising Burwood in terms of an independent inquiry effectively stood down, that was the point I think that if we can call that date up, I think that was around about the time that we confirmed that ICAC were taking over the whole of the matter, yeah.

30 Would you agree with me that the whole of the matter, there was some lack of clarity as to what precisely were the allegations that ICAC was dealing with from May 2009 up till and including October 2009?---I think it's fair to say that we were certainly trying to find out the specifics of the allegations, yes, we, Burwood Council, were, yes.

And there was correspondence from the Council to the ICAC seeking to clarify that. Do you recall that?---Yes, I do.

40 And you were involved in providing some advice in relation to that correspondence?---I think that's correct, yes.

And Mr Romano was, to your knowledge, still carrying out his other functions as general manager that didn't fall within the ambit of the ICAC allegations?---Those matters where he had not voluntarily transferred the carriage of the matters to Mr Hullick and Mr Dencker, yes.

Yes. And I suggest that some of the issues that arose as to whether Mr Romano should attend meetings or not arose because of a lack of clarity as to whether a particular matter was before the ICAC or not?’

MR NEIL: (not transcribable) raise an objection on relevance in that it just doesn’t seem to go to reprisals, which is the phase of the inquiry.

ASSISTANT COMMISSIONER: Yes, I must say I’m not really seeing where this is going Mr Blake.

10

MR BLAKE: Well, it was put to Mr (not transcribable) that Mr Romano was inappropriately asserting himself into meetings. And Mr Baird made some comments about that. I’m just seeking to explore the context in which Mr Romano was operating.

ASSISTANT COMMISSIONER: Okay. I thought you put to Mr Baird he accepted last time that he, Mr Romano did, you know, largely stop being involved in decisions. He’s not saying, are you, it’s a side issue we seem to be spending a lot of time on it, is what I’m saying.

20

MR BLAKE: If I’m told that this will not be taken up in submissions I will abandon this issue and move on to something else. It was raised (not transcribable)

MS RONALDS: It will be taken up in submissions.

ASSISTANT COMMISSIONER: Yes. It will be, but I just don’t know where you are getting with this line of questioning. Mr Baird went to some meetings. I think he’s already given evidence about that.

30

MR BLAKE: Well, I ultimately wish to make a submission that because of the lack of clarity that Mr Romano did nothing inappropriate in seeking to attend meetings. And he was not inappropriately influencing outcomes of relevant to reprisal.

ASSISTANT COMMISSIONER: Well, you don’t seem to be really putting that to this witness in any specific instance. If you want to put it as a general proposition, perhaps you can just put it to him and he might agree with you.

40

MR BLAKE: (not transcribable) do you agree Mr Baird, so far as you are concerned, you didn’t see any occasion when Mr Romano attended a meeting involving yourself between October and November, 2009 in which he inappropriately sought to influence the outcome of a decision relating to a matter before the ICAC?

MS RONALDS: (not transcribable) inappropriate in matters of judgement. There’s a matter of fact that needs to be explored whether he asserted

himself into the process or not, is the matter. It is a completely (not transcribable) whether that was inappropriate or not. But by rolling the two issues in together, it's my suggestion that's not a fair question to be put to Mr Baird. The question without the word inappropriate (not transcribable)

MR BLAKE: Well, I was seeking to avoid doing it too quickly, so I'll take it more slowly. To your knowledge did Mr Baird - - -?---Romano.

10 - - - Mr Romano any of the meetings between May, about May and November, 2009, seek to direct decisions made in respect of any of the issues that you understood were being investigated by the ICAC?---I'm not aware of any directive that he made that would fall within that description.

Thank you?---But in fairness, his general demeanour and conduct at meetings sometimes was such that he needed to be gently reminded of the demarcation and sometimes told in the nicest possibly way to settle down.

20 And from your perspective, your observation, once reminded he adhered to that. Is that correct?---Yeah, once, once reminded he was able to I think moderate his behaviour.

30 Such that he didn't issue any directives as to how matters were to be dealt with?---No. It was more, more a matter of him, I guess, one, one way of putting it would be his grandstanding, his tendency to grandstand and to, to take over a meeting and to start a huge discussion on issues that might not be to any relevant, relating to for example, the (not transcribable) of natural justice, the injustice of it all. How the ICAC situation was affecting him and he was very, very upset about it and emotional and sometimes we had to tell him to calm down. I certainly did, at least three or four times.

Right. So far as the alleged specific reprisals against Mr Child or Mr Giangrasso and Mr Cummins, he gave no directions or issued no instructions as to how those matters were to be dealt with so far as you're concerned?---I don't, I don't know. I'm not aware.

When you say you're not aware, you can't - - - I'm not aware of any directions that I witnessed.

40 Yes, thank you.

Mr Baird, so far as the Harmers letters of 16 March, 2009, you were concerned about whether those letters taken together (not transcribable) to an issue of unprofessional conduct weren't you?---It was, in fairness, it was an issue raised fairly and squarely by Mr Gardner, who was dealing with the matters and he discussed it with me and put his views that the letters were in that context inappropriate and potentially were letters that could be regarded as professionally - - -

ASSISTANT COMMISSIONER: Sorry, Mr Baird. Mr Blake, what is the relevance of the view somebody else might've formed about the propriety of those letters? We're not going to be making findings about the propriety of those letters.

MR BLAKE: It's, I understand that, but Mr Cummins said that the various responses by Maddocks in correspondence (not transcribable) from Harmers was part of the reprisal. I don't think there was any letter that was written by Maddocks that he excluded from part of the reprisal.

10

ASSISTANT COMMISSIONER: Yes.

MR BLAKE: Now if there was a view that the conduct of his lawyers or himself was inappropriate it would provide some basis for response.

ASSISTANT COMMISSIONER: But I don't, the responses he was talking about were responses demanding the return information or - - -

MR BLAKE: Well, that is true but not only that.

20

ASSISTANT COMMISSIONER: Well, I can't recall ever seeing a response that said, you know, this is blackmail or, you know, I really don't see where this is getting us and in particular I don't really care whether a view was formed that they were behaving unprofessionally because I don't think that was ever put in a letter, was it, or was? Yes, well, I don't think, I mean, we could go through all of this for days on end. I mean, what do you want to actually put to Mr Baird, that he advised that they were acting unprofessionally?

30 MR BLAKE: Yes.

ASSISTANT COMMISSIONER: Well, is that right, Mr Baird?---No, it's not. Mr Gardner advised and I took his advice on board and, and I, I adopted it. I accepted his advice.

MR BLAKE: Mr Todd Neal was part of your section, is that correct?---Yes.

And he wrote letters under your instruction about the Harmers matters, do you agree with that?---Yes.

40

And letters he wrote suggesting that their conduct was unprofessional were written on your instructions, weren't they?---There's a sequence here that's important because we sought senior counsel's advice on those letters too and the advice came back confirming that there may be a concern with the correspondence and we were acting on that advice as well.

Do you agree that in early April there was a meeting between Harmers and Maddocks together with Mr Hullick, Mr Macklin - - -?---Mmm.

- - - and Mr Gardner as well in which there was an attempt to try and elucidate what the issues were and possibly resolve the matter?---I'm not aware that there was a meeting. I didn't attend that meeting.

Well, I suggest there was a meeting - - -?---I'm pretty sure I didn't attend.

- - - on 2 April which you were at least present at the beginning?---At the beginning but I left.

10

And Mr Romano also left and stayed outside, did he?---I think that's correct but I wasn't at that the, the substantive part of that meeting I didn't attend.

Yes, thank you. You were also asked some questions, several questions about the circumstances or the reaction of the Council at the time these allegations were made in April of 2009. Do you recall that?---Not really.

No. Well, you were asked about your attendance or your communications with the mayor - - -?---Yes.

20

- - - Ms Furneaux-Cook - - -?---Yes.

- - - prior to the Council meeting on 7 April and your attendance at the Council meeting on 7 April 2009?---Yes.

Do you recall being asked some questions about that?---Yes.

30

You, on pages 1715, this was in the context of a conversation that you'd had with the mayor on 1 April, 2009, and conversations with Mr Romano on that day. You were asked at line 38, "Why were you talking to him about it when you'd been having a conversation with the mayor about her position?" and your answer was, "Because Pat Romano would ring me and ask me about what was happening and I had to tell him continually there was a process whether he rang me about whether, what Mr Hullick was doing, what Mr Bent was doing. I had to continually remind him there was a process"?---Yes.

40

The timeframe that you were, in answering that question, what was the timeframe in which you were, had in mind?---A timeframe for what?

"Mr Romano would ring me and ask me"?---I think it's fair to say during the whole course of (not transcribable) with the mayor during that whole period, mmm.

And from the Saturday, that's Saturday the 4th, there was a meeting, first at your office and I think Mr Gorry came along?---No.

Well, he went to see Mr Gorry?---Mr, Mr Gorry didn't come to my office. I think that was the meeting at Maddocks which Mr Romano wanted to have and, is that the meeting with Mr Fasanella and Mr Becerra as well?

Yes, I think - - -?---Yes. Mr Gorry wasn't at that meeting.

And shortly after that, to your knowledge - - -?---Yes.

- - - Mr Romano retained Mr Gorry to act as his solicitor?---Yes.

10

And from that time Mr Romano was seeking advice from Mr Gorry, wasn't he? Certainly not you - - -?---Absolutely. But the whole, the whole purpose of that meeting at my office was to carefully delineate my role and to point out to the others that Maddocks and I would be acting for Burwood Council. They'd have to seek their own advice.

Yes?---And I reported that to the mayor I think after the meeting by telephone. I'm pretty sure.

20

So what you're referring to were conversations between about 1 April and about 4 April?---Well, that's one of the timeframes but I, I still maintain the fact that there were ongoing discussions that I would have with Mr Romano where I'd always have to sort of say, "Pat, there's a process, put it to Ian or put it to Les but, you know, you've got to stay out of this."

30

Now, on page of the transcript, 1721, you were asked some questions about your role as a legal adviser and how did you see your role as a legal adviser at the bottom of 1720 and you said, "It's not, it's probably not but I was, I was being asked for both legal and strategic advice by the mayor and by the general manager but I've always offered my best efforts to provide strategic advice to my clients"?---Mmm.

40

And I think the context of this was on 1 April. What was the strategic advice that you were being asked for by Mr Romano on that day or of the time you're referring to?---I can't recall him asking for "strategic advice". I think I was, my observation was that my approach to giving advice was a combination of both the legal, interaction between the legal issues and appropriate strategies to resolve them which might be, for example, Council putting its indemnity insurers on notice, Council having an appropriate public relations response or a media response to these issues, advising the Department of Local Government, advising the ICAC, a meeting possibly with the Department, a meeting with the mayor and the other councillors, a special councillors briefing session. Those are the sort of things that we were covering as they're sort of, it was an action plan reacting to the media storm and what was, I think we, I, I said was in earlier evidence it was a bit of a, there was a, an atmosphere of crisis at Burwood at that stage. That's what I meant.

And I think in that same context you used the word meltdown?---Meltdown, yes.

What did you precisely mean by that?---Well, there was a, it wasn't - - -

I understand it's a metaphor but - - -?---It's a metaphor for the collective focus of, of all the mayor, the general manager, the senior members of the, of the leadership team had all been, were all aware of the media article. The impact of the allegations is that, I'll just indicate there was a collective, a massive collective concern with the outcome of those allegations and the impact of those allegations on the organisation and the morale. It was an extremely destabilising period. I mean, I think it's self-evidence what I meant.

You didn't mean that the Council became inoperative or dysfunctional? ---No, no, I did not, no.

(Not transcribable) longer than five minutes.

20 ASSISTANT COMMISSIONER: Yes, we'll adjourn for 15 minutes, thank you.

SHORT ADJOURNMENT

[11.31am]

ASSISTANT COMMISSIONER: Thank you, please be seated.

30 MR BLAKE: Mr Baird, from May of 2009, can I suggest that legal issues arose in sort of three broad areas, there were three workers compensation claims, one by Mr Child and one by Mr Giangrasso and one by Mr Cummins and Mr David Allen was the solicitor of the Council in that regard. Secondly, Mr - - -?---For the Council?

Yes?---Yes.

40 And secondly there were some what I'd call employment issues relating to each of those three and Maddocks was retained by the Council and Mr Gardner and Ms Wilson were largely dealing with those matters?---Yes.

And thirdly there were issues relating to the interface between those employment issues and ICAC, liaison with ICAC and related issues which you had responsibility for and staff under your supervision?---Yes, that's correct.

And in the period from about May to November were a number of legal meetings, if I can call them that, in which Mr Gardner and/or Ms Wilson, yourself and Mr Gorry or Mr Herman from Henry Davis York and

sometimes member of the executive were present?---Yes, there was always a member of the executive and it was either Mr Hullick or Mr Dencker.

Yes?---Always.

And at those meetings, just speaking generally, issues arose regularly I suggest as the intersection between those three issues?---Yes.

10 And that great care had to be taken to ensure that for example any employment action taken would impinge upon the ICAC inquiry, that was a concern?---Yes, it was a serious and, and vital concern.

And it was something that you were alert to?---Absolutely.

20 And so far as you were concerned, you made every effort to ensure that any action taken by the Council in relation to a workers compensation or employment matter would not impact upon, adversely, upon the ICAC investigation?---Yes, that's correct and when I was in doubt or, not so much in doubt, when I wanted to confirm my views often I sought instructions to get senior counsel's sign off on that particular issue.

Yes. So I think Mr Leggat SC was, gave advice on several occasions in this period relating to these issues?---Correct.

And so far as you're aware Council acted in accordance with that advice? ---Yeah, yes, yes.

Yes, I've got nothing further, Commissioner.

30 ASSISTANT COMMISSIONER: Thank you, Mr Blake.

MR HANLEY: Assistant Commissioner, I have a question if I may, I'm sorry.

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: I just have one matter that I referred to earlier, it will probably be easier if I (not transcribable). Mr Blake caught me out.

40 Can I show you this letter. It's a letter that you authored dated 5 May, 2009 when you were at Maddocks. Do you see that?---Yes.

And I just want to take you down, it reports on a meeting that you attended at this Commission, just to put it in context. Do you see that?---(NO AUDIBLE REPLY)

And if I could take you to the fourth paragraph, see after setting out, do you see that paragraph there?---Yes.

I just want to take you to the first sentence, “After setting out to the ICAC what we considered to be the underlying motivations behind the allegations the ICAC encouraged Council to make complaints in relation to the IC contracts and depot culture which would also be likely to form part of the ICAC’s investigation.” Now, leaving aside whether that’s what happened at the meeting or not, just to, if I could take you to the first part of the sentence and referring to what I said earlier, would you agree that that view that you say we considered to be the underlying motivations by we, you’re referring to Maddocks not to the Council?---I was confirming, well, actually it was a collective view that I had as to the, all those who were advising the Council, including senior counsel.

There being a (not transcribable) senior counsel apparently in this matter, that was me?---Yes, it was.

And but what I’m saying is when you say we consider, you’d agree to a reader that looks like Maddocks, that is - - -?---Well, on one view but if you read the whole letter in its context I think the important part is that well, could I just review the whole letter, I’m sorry, I’m struggling a little bit.

You’re clearly not well today, Mr Baird?---I’ve got the flu, Commissioner, I hope it’s not infectious. I’m sorry, sorry, I’m just a bit drowsy, the pills that I took.

Tell me when you’ve finished?---The context that I think I used we was our advisory team which included yourself, because you came down to the ICAC with me that day and we had the discussion with Mr Simons and his team.

What I’m suggesting to you is this, rather than it being Mr Romano’s theory as you earlier described it it had been more solidly embraced by you and the Council’s legal adviser, would you agree?---Well - - -

That is the conspiracy about the depot reform?---I don’t know whether I’d say more solidly embraced. It was a model which I thought had, had a legitimate foundation and it was a matter that I had discussed with yourself and I think you also accepted it on the face of the instructions that we had at the time. And we didn’t, both you and I did not know what we now know.

No. If I could tender that letter.

ASSISTANT COMMISSIONER: Yes. That letter from Maddocks dated 11 May, ’09 will be Exhibit 250.

**#EXHIBIT 250 - LETTER FROM MADDOCKS (MR BAIRD)
DATED 8/5/2009 TO STEPHEN GORRY, HENRY DAVIS YORK RE
ALLEGATIONS OF CORRUPTION AGAINST PAT ROMANO**

MS RONALDS: Can I just indicate the source is out of the confidential two volumes that were tendered earlier.

ASSISTANT COMMISSIONER: Yes, Mr Hanley.

MR HANLEY: Yes, thank you, Assistant Commissioner. Might the witness have access to Exhibit 241, please. Whilst that's being done, Mr Baird, my name is Hanley. I appear or have leave to appear for Mr Child. Do you recall on the last occasion counsel assisting was asking you some questions about emails that had been directed to you and Mr Gardner, I believe. Do you recall being asked some questions about that?---Yep.

If I just take you to page, sorry, page 8 of that Exhibit. It should be, at the very bottom there should be an email from Mr Dencker to Darren Gardner attaching a document it would appear prepared by Mr Macklin, addressed to you and Mr Gardner?---Yes.

Do you see that?---Yes.

20 Now I think you were asked some questions by counsel assisting on the last occasion about that attachment directed to you and Darren from Mr Macklin. Do you recall that?---Yes, I think I do.

And I think you gave evidence that Mr Gardner was handling all the employment issues, if I can paraphrase your evidence?---Yes.

And that included any advice in relation to whether Mr Child could be suspended?---Yes.

30 And I think you advised counsel on the last occasion, at page 1,752, that you asked Darren to have a little talk about it to Mr Romano, in effect. Is that right?---Where - - -

By Mr Macklin?---You've lost me.

Did you, I'll go back a step. At the very end of that attachment to the email - - -?---Yes.

40 - - - it says, David, I would appreciate if you could liaise with both Ian and the general manager on your collective view re the above as a matter of urgency. Do you see that? It's the very last sentence of that attachment to the email?---Oh, I see, yes. Yes. Yes.

I think you were asked by counsel assisting at page 1,752 at about line 31, whether you had in fact liaised with the general manager or Ian, who I take it is Ian Dencker?---Yes.

Because counsel assisting couldn't find such an email and I think you said you handed the matter back to Mr Gardner and asked if he'd have a little with them in effect?---Yes, I did.

Do you recall giving that evidence?---Yes, now I remember, yes.

All right. It's clear from the attachment isn't it that Mr Macklin is seeking advice in relation to including Mr Child, whether there were grounds for suspending him from work?---Yes.

10

And one of the matters raised, in the second last paragraph of that attachment, was his numerous phone calls to the Sydney Morning Herald and articles that had been published and he suggested, Mr Macklin, that it was a clear violation of the Council's code of conduct. Do you see that? ---Yes.

20

Did you understand that he was suggesting to you that maybe an exploration by you legally or Mr Gardner legally of that assertion may provide a grounds for suspending Mr Child?---I understand what Mr Macklin was putting to me, yes. But - - -

He's asking you in effect was that a basis wasn't it?---Well, I am, as I said earlier, I referred it to Darren and said these are the issues that you've got to focus on. It's an employment matter. I, I have no expertise and I think I would've said to Mr Macklin, I'll get Darren on to it because I just don't know. It's not my area.

30

Let me just clear this up with you then. Did you provide any legal advice, either whilst you were at Maddocks or later at Ebsworths to any member of the Burwood Council Executive as to how they could suspend Mr Child? ---As to how or the basis - - -

Yes. The basis for - - ?---No, no.

40

So I take it that you weren't involved in giving nor did you give any advice to Burwood Council Executive in relation to the Joe Saad anti-discrimination claim?---No. It was Mr Gardner's. I was privy to it in that I knew about it and there may have been some very, very indirect reference in discussion to it and I might have made a comment in terms of its tactical relevance to the ICAC, but on the employment issue, absolutely not.

I'm talking about legal advice?---Yeah, legal advice on employment, on suspension of those gentlemen, no.

In relation to how the Council or the Executive of the Council might deal with the anti-discrimination claim by Mr Saad against Mr Child. Did you provide any legal advice about that?---On the anti-discrimination - - -

Claim?---claim, I don't believe I did, no.

You didn't advise that they should pay out the claim?---No, Mr Gardner advised on that.

You're aware of that are you?---I believe so, yes.

Okay. You didn't get any advice about surveillance on Mr Child in relation to that claim or any other - - -?---No, no.

10

- - - grounds for a basis for suspension?---No.

You didn't provide any legal advice to the Council or the Executive in relation to obtaining the services of a Ms Browning, who appears to be some expert in the area of anti-discrimination?---I don't know who she is.

Okay. Seeing emails from her in this (not transcribable)?---Well, I saw a reference to the name, but I couldn't remember who she was.

20 Okay. So you know nothing about that and provided no advice?---No. No.

Okay. If I take you to page 11 of the Exhibit 241?---Page 11.

11?---Yep.

It should be down the bottom I believe and - - -?---Yep.

- - - it appears to be an email letter under the letterhead of Maddocks?---
Yep.

30

From Ian Wilson?---Yes.

To Peter Macklin?---Yes.

And if you go to the very last page, I think you'll find that it appears, at least it was authorised by Mr Gardner, which is at page 16?---Yes.

Did you see that advice?---At the time?

40 At the time or subsequent to your move to Ebsworths?---I don't remember. I've seen it in the body of the, in the context of the Exhibits in this, before this Commission. But - - -

I understand. Prior to that?---I don't think I did.

Okay. In view of the email with the attachment from Mr Macklin that you've been asked questions about, which is at page 9 of that Exhibit, did you or Mr Gardner tell you that he provided an advice to Council in relation

to this issue?---Yeah. Mr Gardner would keep me informed of the, of where he was up to and if he said, look, I'm preparing, he may have said, look I'm preparing an advice on the employment issues and I would've said fine. He may have shown it to me. At the time I might've script read it, but I didn't really, I don't recall seeing it at the time.

Did you consult or was this advice brought to your attention by any members of the Executive after your move to Ebsworths?---I don't believe so.

10

So Mr Macklin, for example didn't raise with you the fact that he'd received this advice and whether you agreed with it or disagreed with it?---I don't believe so.

If I could take you to page 13 of the Exhibit and in particular paragraph 27? ---Mmm.

If you could just read paragraph 27 to yourself?---If Mr Child, is that the one?

20

Yes?---Yes.

All right. Did you give any advice to the Executive of Burwood Council contrary to what's contained in that paragraph?---I don't believe so. But I didn't know about the advice in the first place or I wasn't aware of - - -

No. I'm just asking whether, irrespective of that advice, your knowledge of it, did you give advice contrary to what's contained in that paragraph?---I don't believe so, no.

30

Yes, that, that Exhibit can be retained. Today, just (not transcribable) may have access to Exhibit 246 please. Thank you. Mr Baird, 246 is dated 19 May, 2010 addressed to Mr Don McKenzie of the ICAC organisation and signed by you. Is that correct?---Yes.

Mr Baird, 246 is dated 19 May, 2010, addressed to Mr Don McKenzie of the ICAC organisation and signed by you, is that correct? ---Yes.

40

Under the heading, under the, from Ebsworths in effect?---Yes.

On behalf of the Council?---On behalf of me.

On behalf of you, okay. If you could see attached to that is a letter dated 2 April, 2009?---Yes.

And again the pages are numbered. If you go to 6 October and it appears to be a letter from you to Mr Darren Curd of ICAC?---What, what date? They're not numbered on mine.

6 October?---Yes.

It's a letter from you in relation to a number of matters but people who have given evidence in these proceedings?---Yes.

10 And on page 2 of that letter in bold letters is a 2 and Mr Steven Child?
---Yes.

And you said, "Mr Child is currently suspended". Do you see that?---Yes.

"Pending the outcome of an Anti-Discrimination Board investigation of an incident involving another Council employee"?---Yes.

And that was your understand as at 6 October, 2009?---Yes, it was information that I obtained from Mr Gardner's group. This is - - -
20

Mr Gardner is still handling these matters?---Yeah. What, what, I don't want to pre-empt your question but this was a status report letter that was sent to the ICAC so that they would be aware of all the, effectively where Burwood was up to in relation to a number of matters and a number of the matters concerned the employment of certain people at the depot and I, it was my job to put together the, a letter but I asked for input from Mr Gardner's group in relation to the employment issues.

So Mr Gardner, was he still at Maddocks?---Is he still at - - -
30

Was he still at Maddocks?---Yes.

But you were at Ebsworths when you were writing this letter?---Yes.

On behalf of the Council?---Yeah. I think we were having, well, we were collaborating in a sense that he was still providing assistance. We were assisting each other.

Who advised you that Mr Child had been suspended pending the outcome of an Anti-Discrimination Board investigation?---I'm pretty sure it would've, I would've got that either from the Council through Mr Gardner or Mr Gardner direct.
40

Were you aware at that stage of the claim by Mr Saad had been settled?
---Had been?

Settled?---I don't know what I was aware of at the time because this was my, this letter was my state of understanding from instructions and from consultation.

Did you make any inquiries as to why he had been suspended?---Did you say that Mr Saad's matter had been settled?

Yes?---Well, it says that on page 4.

10 All right. Well, why is he still under investigation?---I don't know.

Was this information provided by Mr Gardner or someone from the Executive?---Yes.

One or the other?---One or the other, yes.

As were the rest of the allegations set out in relation to Mr Child?---Yes.

20 Paragraphs (a), (b), (c) and (d), is that correct?---Yes, yes.

Do you recall who gave you the information contained in those paragraphs or the sub-paragraphs?---It could've been Mr Macklin, I can't recall.

Did you get the impression that members of the Executive were keen for one reason or another to suspend Mr Child from employment at Burwood Council?---I didn't hear you. Were, were, were - - -

30 Did you get some impression, did you get the impression either directly or indirectly from members of the Executive at Burwood Council that they were keen to find means to dismiss or to suspend Mr Child from his employment?---I'm just trying to think. I don't know whether I'd say they were, that they were keen. I think they were, I think the better way, my impression was that they were keen to advance the interests of Council and they had certain concerns about employment conduct and that was the, the issue that they were grappling with. I, I, I was really at the periphery of the employment issues. It didn't really, I wouldn't say I got a handle on the factual issues to be able to comment.

40 Do you have a direct recollection of speaking to Mr Gardner about the fact that Mr Child had been suspended from his employment?---No, I don't. I don't remember.

Could it have been Mr Macklin or another member of the Executive who told you that?---Could've been Mr Macklin.

Did you discuss those issues when you wrote this letter with Mr Gardner?
---I don't recall. As I said before, it was a status reporting letter and it was, what I was told at that time was the status of the matters.

At no stage were you told when you wrote that letter by Mr Gardner that he had advised the Council that they were legally entitled to suspend Mr Child?---I don't recall that.

Is that something that you would consider an importance factor when you were preparing this letter, that sort of information?---I can say that if that information had been given to me, it would have been reported as the status of the matter because this was a status reporting matter.

10

So by that do I take it you would have stated in the letter that on legal advice he had been suspended?---If I had known that, yes.

In relation to that letter and in respect of Mr Child, I take you to paragraph 2(a) of Mr Child, this is on page 2?---Yes.

"Mr Child paid Council staff out of his own pocketed", pocket I think it should be, "for overtime work by staff for Council"?---Mmm.

20

Have you been shown any letters from Mr Child to Mr Romano on that issue?---Mmm, I don't remember.

Had you given Mr Romano any advice in relation to any letter that he could, by way of response from him to Mr Child, about that sort of issue?---I don't recall. I think there was some documents that were shown in this Commission relating to correspondence going backwards and forwards between Mr Child and Mr Romano but I don't recall whether I'd seen that at this time relating to payment out of his own pocket.

30

I wonder if the witness could be shown Exhibit 148. Sorry, I might have made a mistake. No, I'm sorry, that's wrong, my apologies, 151?---Thank you (not transcribable).

Do you have that exhibit in front of you, Mr Baird?---151, yes.

Yes. It should be, on the front page should be a email from Peter Macklin dated 5 March?---Got it.

Is that correct?---Yes.

40

Could I take you to page 5 of that exhibit?---Yes.

And you'll see an email from Steve Child to Pat Romano dated 23 March, 2009?---Yes.

Were you shown that letter around March of 2009 by Mr Romano or by anyone else?---I don't remember.

You don't think so?---I don't think so but there's a chance that it would have gone to Mr Gardner if it was related to the employment issues.

Were you asked to give any advice on payment of moneys to people to attend the Council elections?---Yes, that, are you referring to the - - -

I'm only referring to earlier discussion. Did you ever get, were you ever asked to give any advice in relation to what's contained in the contents of this letter, the second last paragraph, after 23 March, 2009?---(NO
10 AUDIBLE REPLY)

You see the second last paragraph, the second sentence says, "I am sure you're aware I also paid staff members for overtime at your request on election day"?---Yes, what's the, sorry, the question is?

Did you give, were you asked by Mr Romano to give any advice about that after 23 March, 2009?---I don't recall, no.

If you have a look at page of that exhibit?---Yeah.
20

Do you recall as to whether you drafted this letter or not?---No, I did not.

You did not?---No.

Okay. Thank you. That can be returned. Yes, thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Hanley.

MR CHALMERS: I'm acting for Ammer Issa. Can the witness be shown
30 Exhibit 187 which hopefully is a letter from Peter Macklin to Ammer Issa involved the depot staff Christmas party.

187, do you see that's a letter from Burwood Council to Ammer Issa?
---Yes.

I'd ask you just to read that to yourself but the first question will be did you have any, were you asked for any advice by Council or any other person in relation to the matters raised in this letter?---I don't think, I don't think I was and I remember at the time there was, I think Peter Macklin mentioned
40 to me in passing that there was some issue, some issue relating to a staff member who had been told not to go to a Christmas party but I just don't recall the detail and I think that once again if there was an inquiry made I would have referred it directly to Mr Gardner and he would have directly dealt with it.

Can you have a think, to the best of your memory what Mr Macklin told you?---Well, it would have, my recollection is that Mr Macklin in passing either on the telephone would have said we have a, an issue relating to a

staff member and concerns for his safety at a Christmas party or a Christmas function and I said that's a bit strange and look, you better speak to Darren about it because he's, he's dealing with the employment issues and I don't really deal with that sort of thing and I would have passed it over to him but it was just a vague, a vague recollection because it does seem a little bit strange, it sticks in my memory that there was a concern about someone being, someone's safety at a Christmas function which - - -

10 Do you recall whether you asked for what sort of safety concerns Mr Macklin held?---Do I remember them? I - - -

Yeah, I mean, did you ask any follow up questions or - - -?---I can't really remember.

And did, do you recall whether Mr Macklin mentioned Mr Issa's name in relation to - - -?---I can't remember, he may have but I, I've never met with Mr Issa and of all the Burwood employees I, that I have heard their name, I hadn't heard his name until recently.

20 Well, in relation, I mean, this information given the time that this letter was written would have been towards the end of 2009 clearly because it's talking about a Christmas party on 23 December, 2009?---This letter is not, this letter is undated, did you know?

Sorry?---This letter is undated.

It's undated but it does refer to a staff Christmas party on 23 December, 2009?---Correct, yeah, but the actual date of the letter is not disclosed.

30 And by then you would have had a pretty clear insight both in relations to your discussions with ICAC and from conversations that you overheard Mr Romano say as to which staff members were making allegations against Mr Romano, is that not the case?---I don't follow your question, sorry.

My question is that by - - -?---You said I overheard a - - -

40 - - - say November 2009 you would have been aware that Ammer Issa was one of the persons who was involved in relation to work done on Mr Romano's residence?---I don't think I knew that he was involved in it, no.

And in relation to the staff that were allowed or not allowed to the Christmas party, was there no warning light that activated so far as you were concerned to be very aware of matters raised by Council in relation to stopping members going to the Christmas party, was there any warning bell, was there any - - -?---Well, I wasn't really involved in that aspect of it. As I've said, I would have referred it to the appropriate employment expert. I don't have a lot to do with advising on Christmas parties.

When, when Mr Macklin rang you and given that you were surprised that there was an issue about some safety to a worker at the Christmas party, did you write down any notes in relation to that?---I said he may have called me not that he did call me, that was what I said, he may have called me about it, I don't remember.

10 Well, sorry, I thought you said you were surprised by the content, that is, that one of the worker's safety was an issue at the Christmas party?---Yes, no, I said that but if you go back further I said he may have called me about it, I don't remember.

Well, how, oh, I see, you're saying that it might not have been Mr Macklin? ---Yes.

20 All right. But whether it be Mr Macklin or not, clearly the, a phone conversation was made to you. Is that correct?---Well, I have a vague recollection of a discussion about a Christmas party and a potential incident which I then referred on or suggested it's really not my area and I didn't really, you know, it was a very short and not detailed discussion.

Did you make a note of that conversation?---I don't think I did. It was a, I don't think I did, no.

Now in relation to Ammer Issa, do you remember being contacted by Council at all in relation to any responsibilities that Council had to provide him with work, anything of that nature?---Not at all, no. This was an employment issue and I did not handle it.

30 Right. So there was no, you were not a conduit as it were from Council to the other personnel?---Conduit to who?

Well, a conduit to other people within your law firm?---Possibly yes but I don't know whether we handled it or whether it was still back with Maddocks, I don't know, if I had referred it it would have gone to Mr Belling, you could ask him but I, I don't remember.

40 Did you have anything to do with the issue as to surveillance of the depot staff by video camera?---No, that was handled by Mr Gardner. I was aware, generally aware of it but the whole issue of video surveillance was handled by Mr Gardner's group.

I have nothing further.

ASSISTANT COMMISSIONER: Thank you, Mr Chalmers. Yes, any further questions for this witness at this time? Mr Neil.

MR NEIL: Thank you, Commissioner.

Mr Baird, as I understand your position there are certain matters relating to employment and I think workers compensation that you weren't actively involved with. Is that so?---Correct.

And in some of the paragraphs of statements of Mr Romano, he makes reference to some matters and attributes some conversations to you about employment matters. And without going into all the details of them, are there some instances where in your view he should've been referring to Mr Gardner?---I believe that's the case, yes.

10

Just to take one matter, however, out of Exhibit 242, there's a discreet matter of a conversation, I'll keep this short, relating to 16 the March letters from Harmers. Do you remember those?---Yes.

And it is, who, who, and there was a meeting referred to in paragraph 230 and there's some references to you having made adverse statements about those letters. Can you recall who was in fact conducting or controlling, who was the main person running that meeting?---Could I see the statement?

20 Yes. Do you have Exhibit 242?---I don't know. Is that - - -

Could the witness be show a copy of Exhibit 242, please, Commissioner?

ASSISTANT COMMISSIONER: Yes?---No, I didn't.

MR NEIL: If you go please to page 40, paragraph 230, this is a reference, if you go back to page 39, to a meeting on 18 March?---Yes.

30 At which Mr Romano says the second part of the meeting related to in effect to these letters. Do you see that?---Yes.

Now what I really want to ask you is were the words in that paragraph attributed to you, did you say all of those words?---No, I don't believe I did. I think that there's confusion between words that are attributed to me and what was actually said by Mr Gardner who was present. I think that much of this was Mr Gardner's comments, because I gave the letters to him initially because I thought they were employment issues.

40 All right. Did he put you on to the name of the senior counsel?---Indeed. I had not met that person or did not know of her until Mr Gardner referred Burwood Council and suggested that we should retain her.

All right. Thank you. And did Mr Gardner at the, towards the beginning or at some stage relatively early in the meeting express an opinion about the letters?---Yes.

All right. Now perhaps you could return that and do you have with you already perhaps a copy of Exhibit 244, this statement said to be legal advice statement?---I do.

I think Mr Blake has asked you about a number of matters this morning and I'll therefore take you through to some short matters I want to ask you. Firstly at page 9, paragraph 78 there's a reference to a meeting on 2 April, 2009. Is that the meeting that you, as far as the substance was concerned, did not attend?---Yes.

10

Right. You were there at the outset, but you left and Mr Romano left?
---Correct.

And who remained for the meeting with the Cummins representatives?---I can't be certain as to who remained because I left. But the balance of the people that I think were described.

Could that have included Mr Gardner?---Yes.

20 All right. Thank you. Could I just ask you to go to the end of page 21. Now counsel assisting asked you about something towards the end of that page, the last paragraph?---21?

Yes. The last paragraph on page 21?---Yep.

30 And you gave some answers. I just want to take you across to the top of page 22. It is attributed to you that you've said starting at the very end of 21, we have enough to refute the allegations of the Harmers letters and Ms Ronalds can embellish on our gravity. Pat will make a statement to clear his name. Did you use those words?---No. Absolutely not.

Would you, can you recall what you did say?---Oh, I can only reconstruct it from the context - - -

Well, I won't ask you to reconstruct, but you didn't use the words, Ms Ronalds can embellish on our gravity?---No. Not at all.

40 All right. Now if I can take you to page 33, just before paragraph 171, there's a chapter of this statement that starts, the request of Mr Baird endorsed Council actions in relation to workers compensation matters. Do you see that?---Just before - - -

Just before para 171, there's a heading?---Before we deal with that I just wanted to add, I didn't say on page 22, at the bottom words attributed to me, the second last paragraph, I just noticed that.

Yes, I can see that as far as that is concerned, the aim of the exercise is to switch them?---Yeah, I didn't that.

That's the same meeting you're alleged to have said that. What do you say about that?---No, I didn't say it.

All right. All right. Thank you. Thank you. Going to page 33?---Ah hmm. Paragraph - - -

10 Immediately prior or to paragraph 171, there's a heading, Request that Mr Baird Endorse Council's Actions in Relation to Workers Compensation Matters, 30 June, 2009. Do you see that?---Yes.

Was it your role to endorse or otherwise deal with the Council actions in relation to workers compensation matters?---Not at all.

All right. And in 175, there's reference to emails being sent. Who was involved in those matters?---The workers compensation matters?

20 Yes?---Quite a number of people including the solicitor who was acting for Council.

Right?---I can't think of his name.

Mr Allen?---Mr Allen, yes.

30 In paragraph 175, Mr Romano says, I sent that email because I expected Mr Baird, Mr Dencker and Mr Hullick to approve of the actions proposed by Council before those actions were taken. And it seems to be in relation to something to do with workers compensation. I'll ask you again, would you have been involved? Was it your role to be involved?---I would not have been approving the actions proposed by Council. I think that any involvement that I would have had would have been in the context of understanding and to guide the Council in relation to any possible crossover between the workers compensation issues and for example ICAC related issues.

All right. Could I ask you to go to page 36?---Ah hmm.

At paragraph 193, and also at page 37, paragraph 195?---Ah hmm.

40 Mr Romano suggests that there may have been an occasion when he was unhappy with some advice that Council had received from, he says, Mr Gardner, Mr Baird and Mr Leggat, SC, about the Giangrasso matter. Were you involved in that?---Only in so far as that it impacted upon the ICAC issue. I wasn't handling the Giangrasso employment issue. Mr Gardner was handling that. But if there was a concern and we were alive to the concern and certainly I and Mr Leggat were very concerned about a perception being created that there was some form of retaliatory action in relation to Mr Giangrasso.

Thank you?---And I was seeking Mr Leggat's advice to make sure that we were playing it with a straight bat.

On page 37 at paragraph at 195, Mr Romano says, it was his intent to challenge the Executive team and Mr Macklin about the quality of the legal advice he had received from Mr Baird in relation to sending the letter to Mr Giangrasso and the proposed actions by Council. What do you say about that?---I think it was, I think he's confused once again myself and Mr
10 Gardner, because I didn't send any advice in relation to Mr Giangrasso. I think Mr Gardner handled all that.

All right. If I could take you to page 49. There is, paragraph 240, it seems to relate to a meeting on 29 September, 2009. The chapter starts at page 47. In the centre of the page it is attributed to you a statement, O.K. if he (Cummins) breached Council's PD policy it is something that the ICAC should know about, he could damage ICAC's view of him. Did you say that?---No.

20 Can you recall if you said anything on that topic?---I think that what I would've said or did say related to the facts that if I wanted to find out what the facts were with the Council's PD policy and who it directed should be the person who would undertake any inquiry and if that was not Mr Cummins, certainly it was relevant that we should establish that but I didn't say those words.

All right. Page 50 there is attributed to you in the same paragraph about point 3 on the page, "Each person agreed that the matter should be settled with Mr Cummins if proceedings proceed to the IRC". And it's said that
30 you said, "Okay, we'll pay him in that case". Do you recall saying that? ---No, no.

Do you recall contributing to this, this discussion on this topic?---Yes, because the whole issue, Mr Gardner was handling the commercial negotiations for settlement of the matter with Mr Cummins. I, I was taking advice from Mr Leggat because I was very, very concerned that we not in any way be seen to be acting in a manner that could bring us, that, that, that either Burwood or, or myself or Mr Leggat or any of the players would be criticised for endeavouring to broker some sort of leveraged settlement
40 because that's not what we were seeking to achieve and I didn't, I think Mr Leggat raised the issue that, with, with myself and, I can't remember whether Mr Gardner was there when we had discussions about it but Mr Leggat was of the view and I agreed with him that we could not and should not be seen to be attempting to buy Mr, Mr Cummins. That would be an extremely un, unacceptable proposition and ironically I remember Mr Leggat saying, "Well, we'll have the ICAC on our backs because it'll look as though it's corrupt conduct" so we were very, very careful as to how

we were conducting those negotiations but Mr Gardner was handling the matter. We were just alerting him to our concerns.

On the same page, page 50 in paragraph 241, there's a reference to you saying at about point 7 some words about "Council could not take action against Giangrasso in relation to issues 1 or 2 but that didn't mean that Council couldn't deal with other issues." Did you say those things?---I don't think I said those exact words. I, I, I was, this related to some discussions or there was correspondence I think between my firm and the
10 ICAC on, on this particular matter and I think the ICAC were, were, there were five issues that were being discussed and I think all I wanted to know, what I wanted to ascertain and, and, from, and I think I raised this with Mr Leggat was whether he felt that a whole range of issues, 1 through to 5, were, were joined or whether 2, 3 and 4 could be hived off and therefore weren't, weren't related to the ICAC concerns. I think that's what I was trying to achieve.

Thank you, but you were concerned, as I understand what you're saying, to
20 maintain the division between the various matters?---Correct. If, if there was a genuine employment issue that was a matter between the Council as employer and any of the staff as employees, matters that were not relevant in terms of the ICAC investigation and matters which were, Mr Gardner was, was absolutely, absolutely convinced were, were totally related to employment then that was a matter which I think Mr Leggat was satisfied there was scope to pursue, vis a vis employer, employee.

At page 52 within paragraph 247, towards the top of the page there's
30 reference to Macklin and Gardner saying things and then you saying, "What is the timeframe for Salli Browning in completing her investigation?" Do you recall saying that?---No, I don't remember. I don't even know who Salli Browning is. I think it might've been the lady that was doing some sort of independent report for Mr Gardner but I don't remember saying that.

All right. Did you ever commission a Ms Browning to do any work for you?---I didn't. I don't know who she is.

All right. Just further down the page, there is a reference at about point 8 to
40 you saying, "Darren, we need 80 per cent or better assurance that the racial vilification case against Mr Child will be upheld." Did you say those words?---I, I, I said words to the effect that, that we have to guarantee, and I might've said 80 per cent, because if they were going to act on the basis of this racial slur that occurred, and act responsibly as the employer, they being Burwood Council, I wanted Darren to give the group his, his opinion that it was not just a strong case, it was an overwhelmingly strong case and that Burwood would be successful.

All right. Now, earlier you answered some questions of Mr Blake about what in fact became the division of functions between various people and

the workers compensation side was being handled, I think, by Mr Allen?
---Yes.

Mr Gorry was handling personal matters for Mr Romano?---Yes, including his advising him on his, on giving evidence in, for Council as part of the workers compensation claim.

The employment matters were being handled by Mr Gardner with his assistance, Wilson, and I think and others?---Correct.

10

You were handling the ICAC side of the matter?---Yes.

Did you also have some, for some period of time at least some general ordinary work for Council that wasn't involved with any of these problems?---Yes. All my other Burwood work was what I, what you might call ordinary work including the, the extraordinary town centre matter.

20

All right. To some extent, well I'll ask this. To what extent was it did you have input into the division of the various functions between the various different people?---Well, it was, I had input in a sense of, of maintaining this, the, the protocol at the meetings. We had, at these meetings there were up to four or five at times legal practitioners who were aware of their roles in relation to dividing and protecting the interests of their clients. Dividing in the sense of hiving of particular matters and understanding their roles, that we didn't want there to be any crossover or any, any improper crossover. So, and, and at all times I'm pretty, my recollection was that either Mr Hullick and/or Mr Dencker or both of them were in attendance at these meetings to properly advise me, instruct me if, if necessary and also to take decisions on those matters that Mr Romano had stood aside from.

30

All right. They have being appointed, I think, acting general managers for certain areas?---Yes.

And did you consider that in practice this division of functions worked reasonably well?---In the circumstances, yes, I believe it did work reasonably well and when it didn't it was for reasons which I've alluded to before and those reasons were, were that Mr Romano sometimes got a little bit animated and, and we had to or I had to say something to bring him back into line and, and we returned to the agenda.

40

Did, I think you've said you didn't, in answer last time to counsel assisting, you didn't really turn your attention to the production of a document that reflected this. Is that right?---No, I didn't because I guess it was, it was a practice and, and protocol that was adopted and it was working. We had a number of those meetings and, and went through quite a lot of material and they seemed to be efficacious.

Did you consider the practice was operating sufficiently satisfactorily that as you now consider you, you would not have needed to prepare a document?--
-I, I think that I was satisfied that they were working, that they were, that they were working in practice as, it was an effective model to keep everybody aware of their duties and responsibilities.

All right. If there should still be left any suggestion that in your considerations of Mr Romano's protestations of interest you got over-close to him what would you say on that?---Could, sorry, could you just repeat the question? I'm - - -

I think you've said earlier in answer to some questions that he was protesting his innocence throughout much of the relevant times?---Yes.

He was producing statements that you considered at least ought to be investigated, he was making statements and allegations. A suggestion may have been made that you went a little further than you went a little further than acting in the ordinary legal course of viewing these matters and that you got in some way too close to Mr Romano. What would you say about that?---No, I, I'd say this, my, my alleged closeness to him was something that, that I would never have and did never, did not allow to interfere with my primary duty and responsibility, nor did I allow it to compromise my, my judgment. I, I would say in the same breath as I've said earlier I, my friendship with him, which was declared, probably created a, a natural sympathy for his position but I did not allow that sympathy to colour my judgment and my closeness was often, I would use it to, to counsel him privately and, and to often state to him in no uncertain terms that I thought he had been, acted in many, on many occasions over the top. Now, it was that degree of closeness that allowed me to perhaps take that liberty because I would never take that, that sort of liberty with a client in the ordinary course because it would be presumptuous and perhaps a bit, seen to be possibly even rude but that was the only time that I would ever have used my degree of closeness with him, was the fact that we could talk to each other in extremely robust terms and he let me have it on many occasions and I let him have it on a couple of occasions.

And I think at some stage, I think about December of last year, you had a discussion with Mr Leggat and after that you provided some information to the ICAC about some things that Mr Romano had said to you. Is that correct?---Absolutely.

I think you've said also, I think to counsel assisting and perhaps others, that you did not realise certain factual matters involving Mr Romano and the allegations against him until the commencement of these public proceedings. Is that correct?---That's correct, the first day of these proceedings (not transcribable).

And prior to that, do you have a view as to whether or not prior to that Mr Romano had misled you about matters?---Prior to that day?

Yes?---Well, prior to the, my, my suspicions in that regard were commenced on the day that he came to see me in December, was it.

Thank you. Prior to that, have you got a view as to whether he'd been misleading you?---No, no, I've, I've accepted his absolute assurances that he had done nothing wrong other than quote, he, he always said to me,
10 David, I've done nothing wrong. I might have been a sloppy manager but I have done nothing wrong, I have not been corrupt. That's, those were his words. I might have been a sloppy manager, they might get me on sloppy management but they, I am not corrupt.

And have you learnt anything since that has led you to the view that he had not been completely frank with you?---I've learnt as everyone has learnt that his behaviour was entirely duplicitous.

How do you feel about it?---Words can't describe how I feel about it. I'm
20 personally devastated because I did consider him a friend. Professionally I'm, suffice to say this is the most unpleasant experience I've ever had in almost 30 years, unpleasant in the sense of having to sit here and give evidence on oath in relation to these sort of matters, have my conduct subject to this sort of scrutiny and review, have my reputation before the world and certainly before the industry that I've acted for for 30 years subject to this type of imputation. It's just been a nightmare and, you know, I've, I don't want to say anything more.

Thank you. Thank you, Commissioner.
30

ASSISTANT COMMISSIONER: Thank you. Yes, now Mr Baird may be excused at this stage?

MS RONALDS: Yes, Commissioner?---Forever?

For this inquiry at this time.

ASSISTANT COMMISSIONER: Yes, Mr Baird, you're now excused?
40 ---Well, that's a great relief, thank you very much.

THE WITNESS EXCUSED

[1.06pm]

ASSISTANT COMMISSIONER: All right. Well, this seems to be an appropriate time. We'll resume at 2 o'clock.

MS RONALDS: I'll call Mr Azer when we return.

LUNCHEON ADJOURNMENT

[1.06pm]