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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 25 MAY, 2010

AT 10.15AM

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

ASSISTANT COMMISSIONER: Thank you. Please be seated. Mr Azer, can you, yes, Mr Azer, you're still under oath and the order still applies to your evidence.

<KHALED AZER, on former oath

[10.15am]

10 MS RONALDS: Mr Azer, overnight you've had occasion to look through your diary. Is that correct?---That's correct.

And I'll just show you this document which, and I think you've got the original, but is a reproduction, no, don't worry about that, I'll just hand you the copy, of your entries for 10 February, 2009. And I'll just take you through those seriatim. You see the top one is a meeting, as I understand it? You see the first one it refers to a meeting?---Yep.

20 And it then says Pat instructed swift action on depot reform. Now just pausing there, a fair reading of Mr Romano's statements are that he was the instigator of the depot reform. Is that your view?---Well, he started the Morrison Low Report, from that sense, yes. But it was written by myself and, and (not transcribable)

Right?---And then John Dardano.

30 That's why I was confused because in his statements he seems to be indicating that he was the main driver of it, but it was your job wasn't it? ---Well, it is my job, but he was overseeing it as well. So he had interest in it.

Right. So he instructed you for swift action. Do not get distracted by any allegations. What did you understand he meant when he said that?---I realised by then that he would have known about the Joe Saad issue, that we've kept away from him since the 5<sup>th</sup>.

And there was no secret about who'd made the allegation was there?---Well, I knew so I would say he probably would have known anyway, but - - -

40 And indeed in his phone call on that evening he referred to Joe Saad didn't he?---Possibly, very good possibility, yes.

And your evidence yesterday for 14 April conversation was he named Joe Saad and said to you if you looked after Joe Saad allegation properly - - -? ---That's right. That's right.

- - - yesterday?---It's coming back to me, yep.

So that at least by 14 April he well knew that it was Joe Saad who'd made the original disclosure?---Yes.

And doing the best you can did he name Mr Saad on 10 February in this first conversation that you record here?---I can't be sure to be honest. I forgot about it until I (not transcribable) this morning.

And when he rang you that night do you recall whether he specifically named Mr Saad?---I can't be a hundred per cent sure if - - -

10

But you're clear about the 14 April that conversation?---Yeah.

Yes?---Definitely yeah. Yeah.

So sorry, he confided in me that his wife is one third owner of a property with Albert B's wife. You understood that to be Mr Becerra?---Yep.

And another person?---Yep.

20 Did he tell you who the other person was?---No.

And this other person knew Steve. You understood that refer to Mr Child? ---Mr Child. Yep.

Who helped him with tradesmen contacts?---Correct.

So what he's suggesting is the third person, not Mr Becerra and not himself - - -?---Yeah.

30 - - - or not Mr Becerra's wife and not Mrs Romano, but the third person knew Steve somehow?---That's right. That's what - - -

Did he tell you how he knew Steve?---No.

Did he tell you that he put him in contact?---No.

And do you now understand that that other person was someone called Tony Fasanella?---Yep.

40 But you didn't know that at the time?---No.

And you didn't ask him who it was?---No, I didn't.

But you understood did you that it was Mr Fasanella who, what independently contacted Mr Child? Is that what you understood Mr Romano to be telling you?---Well, from, yeah, when he told me knew him, so, yeah.

And was that the first, so reflecting on your evidence yesterday about when you knew about the property and Mr Romano's involvement, does that enable you to refresh your memory then that as at that - - -?---That morning.

That, is it the morning, oh, yes, sorry, in the boardroom after 2.30, is that right?---That's right.

So that afternoon - - -?---In the morning not afternoon, yeah.

10 On the 10<sup>th</sup>?---Yes.

That was when you knew that Mr Romano had some involvement in the units?---That's correct, yeah. In my evidence yesterday when I was referring to suspicions, that was in reply to the discussions we had on the 10<sup>th</sup> on the phone when Mr Romano was asking me why didn't you tell me on the 5<sup>th</sup> so I was saying, I said I only had some suspicions that you were involved because of the comments you made about bricks and mortar so that's, if, if it has been confused I'm, I just want to clarify that.

20 Oh, okay. Okay, well, I have got confused because I thought - - -?---Yeah.

- - - you meant by the time you spoke to him on the - - -?---No.

- - - 10<sup>th</sup> you weren't sure?---No, no. I was, on the 10<sup>th</sup> we were talking about in the context of what happened on the 5<sup>th</sup> and he was examining why on the 5<sup>th</sup> I directed Peter Macklin and John Dardano not to mention anything to Mr Romano and in that context this is where I said the reason I, I directed that was a number of reasons and one of them was that I had some  
30 suspicions of, that he may be involved because of his comments about bricks and mortar. I hope that clarifies that.

So initially it was your decision not to tell Mr Romano?---That's right.

And you'd said to Mr Macklin and Mr Dardano not to do so?---Correct.

Did you later understand that Mr Macklin had advised Mr Romano?---No, I'm not aware of that.

40 So you didn't (not transcribable)?---I, I, I didn't know who, how he found out.

Okay. Then you've got a note that we don't, doesn't, we don't need to worry about I don't think and then 10.2.09 8.40pm Pat Romano phoned on mobile. Now, this note that you've got then, one, two, three, are they the three issues he traversed in that phone call?---These are the issues, like, I woke up in the morning and that's why I recall but it was a very lengthy discussions, these are sort of the issues I, I put down.

That's what I was going to ask you. So you didn't record this after, immediately after the phone call but it's a reflection the following morning?  
---Yeah, you can see my signature and it says 11<sup>th</sup>.

The 11<sup>th</sup>?---Yeah.

Yes. And so there's one about cutting overtime and then question staff working second jobs, in particular and then you say and I, and I'm sorry, I can't read the next words, and I something spoke to Joe Giangrasso?---I  
10 personally spoke to Joe Giangrasso at Mosely Street to no avail.

That is seeking from him a - - -?---A secondary employment form, yes.

And he didn't produce one?---No, he didn't. He said he was obtaining legal advice and he is not obliged to.

Right. And he, and he told you that at the time?---Yeah, that's, I'm traversing into a different issue now.

20 Yes, that's okay?---Yeah, yeah.

We can do two things at once. So, but that because Mr Romano was still pushing about Mr Giangrasso and, and secondary employment?---Correct, that was in the context of you're not doing your job well, that's why you're having problems and you haven't cut the overtime, you haven't had secondary employment issues enforced so it was more in that context.

Right. And he was being critical of your performance?---Yeah, that's, that's, that's what it was, yeah.  
30

And you considered that to be unfair?---I thought it was at the time, yeah.

And you told him that?---I can't recall if I told him personally but in other occasions I did.

Right. So then you say, Pat asked for my version. Is that right?---Yeah.

You'll have to help me with your writing, of events regarding his meeting with HR. I stated that there would be a protected disclosure and that I knew,  
40 I have no first-hand information. I only became aware of his involvement this morning when he saw us?---Us, yeah.

Pat denied any wrongdoing?---Correct.

So you didn't tell him what had been told to you - - -?---No.

- - - about what Mr Saad had alleged?---No, he told me, he told me what he knew.

And that was because he already knew - - -?---Yeah.

- - - as much as you knew?---Yeah.

And what you knew and he knew coincided or did he know more things than you knew?---It's going back a long time, it'd be unfair to - - -

If I could tender that note.

10

ASSISTANT COMMISSIONER: The diary - - -

MS RONALDS: It's an extract from Mr, it's from your, it's not a formal diary, is it, it's from a spiral, Spirax bound notebook that you keep a running material in?---Correct.

I'm sorry, Commissioner, I didn't mean to interrupt you.

20

ASSISTANT COMMISSIONER: Yes, the entries from Mr Azer's diary from 10 February to 11 February will be Exhibit 253.

**#EXHIBIT 253 - EXTRACT FROM MR AZER'S DIARY – 10/2/2009-11/2/2009**

MS RONALDS: Now, you were aware when the articles were published in the Sydney Morning Herald on 4 April, that was the Saturday?---Yes.

30

Did you discuss it on the Saturday with any other members of the Executive?---Yes.

Did you have an informal Executive meeting?---No.

Did you meet with Mr Romano?---No.

Did you discuss things with Mr Romano?---No.

40

Who did you talk to?---I rang Mr Dencker.

All right?---And he was equally shocked like me.

All right?---And he said if this is correct, then he's done an injustice to himself and his family.

And what happened after that?---I also spoke to Mr Dardano and we were all in shock. We, we did not anticipate anything like that.

All right. And - - -?---And, and Mr Inglese as well.

And you to Mr - - -?---Inglese.

And in terms of the management of the issue within Council, you didn't play any role in that, did you?---I think from that point onwards there was a lack of trust in my sort of position within the Council in - - -

10 Why was that?---Well, the context of that phone call said it all. Is not, you should have told me, you're not doing the right thing. And I could see that's, that was probably the beginning of the end which will come back later.

Well, what do you mean by the end?---The issues that would be in my statement, the first statement.

All right?---In terms of the relationship.

20 So that Mr Romano blamed you for not telling him about what Saad had said and then, as I understand your evidence yesterday, blamed you for the Sydney Morning Herald articles because if you'd managed it differently it wouldn't have happened?---Well, that would have been indirectly I guess. Yeah, there's, there was (not transcribable) with different issues. I didn't keep notes of what happened around the - - -

Was it clear to you on the Saturday when you read the Herald articles that Mr Child was involved?---I was pretty much ninety, ninety something per cent sure it was him.

30 And Mr Giangrasso, did you think he was - - -?---No, no, Mr Child was the one that sort of came to mind.

And that was because you had already discussed with Mr Romano that Mr Child had had some involvement at least in the flat?---No. I did not sort of remember that bit but what was on my mind at the time was just reading the emails and the way it was portrayed looks like Mr Child the way he, he writes and (not transcribable) whatever so it was fairly unique.

40 All right. So and when you spoke to Mr Dardano, did you discuss that you thought it was Mr Child?---A great possibility.

And Mr Dencker, did you and he discuss that?---I can't recall exactly. The discussion with Mr Dencker was very short.

It was a pretty open discussion amongst the Executive, wasn't it, from 4 April that Mr Child was the source of the material in the Sydney Morning Herald?---Definitely with people underneath me, we, we, we had more

discussions about it. In terms of the Executive, I think would be fair to, to make that comment as well.

10 And Mr Child of course was in your area of supervision. Did Mr Romano have a discussion with you shortly after 4 April about what was happening with your staff, that is, how was it that Mr Child was doing this?---Well, there was always discussion about my staff before and after. Mr Romano was fairly interested in the depot from day one and it's one of the issues that I could not hold him back until maybe 7 February or 4<sup>th</sup>, in February and then he came back to it so he's always interested in why is this person here or why is this person not doing their job here and why is overtime going up, why is it going down, why is productivity so he's, he was pretty much, very much interested, hands on in the depot.

Right. But in relation to Mr Child and The Sydney Morning Herald articles, did you have a discussion with Mr Romano about the fact that he was in, Mr Child was in your area and therefore was your responsibility?---Can you repeat that, please?

20 Did, well, I'll put it another way. Shortly after The Sydney Morning Herald articles did Mr Romano make it clear to you that he thought it was Mr Child and that was somehow your fault, your responsibility because Mr Child was in your area of supervision?---(not transcribable) to say that.

And that he blamed you for The Sydney Morning Herald articles, not only about the Saad role but Mr Child?---I don't recall about the Saad issue, but yeah, because it's happening in the depot and comes under my jurisdiction. Yes, there was blame about it.

30 Right. And blame to you personally?---Yes, definitely, yeah.

And it was indicated to you by Mr Romano that you'd failed him?---Yes.

And what were the words he used to the best of your recollection?---I recall one day he told me he having me on a platter. So that was one comment that I, that was later on in the year.

40 That was about your performance?---It was not clear in what context, but it was quite shocking that, that was allegation that was made to me.

And what did you understand he meant by that?---I think it, to do with the, in my mind was for not telling him about the Joe Saad issue. It always goes back to that, that sort of - - -

And he continued that for some months afterwards?---Oh, yeah. yeah, he never, yeah.

And that was the beginning of the, the deterioration of your relationship with Mr Romano?---That's correct.

And he never moved from that position?---No.

That is he continued to blame you for what had happened?---That's right.

And you thought that was unfair?---That's right.

10 And you still think that was unfair?---Of course.

Now could the witness be shown Exhibit 197, please. I just want to take you through what happened since if we can move through it as quickly as we can. Okay, you see at the top there's a message from Mr Romano on the 5<sup>th</sup>, which is the day after the first article. Now you didn't have any role in any, in this document did you?---No.

20 But you received it. And you, and then if I could ask you to turn to the next page. You attended the extraordinary Council meeting. Do you see you are listed there as an attendee, on page 2, you see there's some handwritten numbers down the bottom? See there, you're listed as attending that meeting? Do you see that Mr Azer? On page 2?---Yes.

So you attended the meeting. And if I could ask you to turn to the numbered page 5. Were you present when the Mayor made this comment that is at the bottom of page 5 and over to page 6? You see the handwritten numbers down the bottom of the page?---Yes.

30 All right. Go to page, the page with 5 written on it. See down the bottom there, the Mayor is making a comment saying, thank you, it starts with, oh, thank you?---On page 5?

The last entry. Do you see that?---Okay. Thank you (not transcribable)

40 Yes. Now turn over to page 6 and you'll see she says, the general manager has indicated to me he'll voluntarily step aside from involvement in the management of issues relating to the allegations in The Sydney Morning Herald. Were you present when the Mayor said that?---To be honest, I can't recall. There was one particular extraordinary meeting that I was, I was not in attendance. Maybe that's on the 14<sup>th</sup>.

This one lists you as being present?---Yep, so, I must've been present.

Do you recall being advised that Mr Romano had stepped aside in relation to the management of issues relating to the allegations in The Sydney Morning Herald?---Yes, I remember that.

You knew that?---Yep.

And if I could ask you then to turn to page 8, the numbered page 8. See the handwritten note?---Ah hmm.

The handwritten number. See the report by the general manager. Did you receive that?---I never, it was in the context of a memo to all staff. Yeah, nothing specific, specific to this meeting.

10 Right. And Mr Macklin sent that out as you can see from, it's attached to an email at page 7. But you didn't have any involvement in that?---No.

And then on page 9 Mr Macklin sent out another email to everybody. You didn't have any involvement in drafting or preparing this document did you?---No.

And you didn't attend did you the meeting with the Department of Local Government?---No.

20 So you didn't have any involvement directly with the management of the issue of The Sydney Morning Herald article and the allegations therein at the time?---No.

And was that your choice?---No. It was not my choice.

And that was Mr Romano's choice?---That's right.

And that reflected, would it be correct, your understanding at the time was that that reflected his lack of trust in you?---Correct.

30 If the witness could be shown Exhibit 237. Now there are a series of meetings between Maddocks, Henry Davis York, who was Mr Romano's personal solicitor and members of the Executive over the next six months or so. And you attended some of those meetings. Is that correct?---No. I was present in only one Executive meeting where a member of Henry Davis York attended. And at that time Matthew Walker and I asked who's that person, and, and then Mr Romano said, he is my solicitor. He's come here to, to keep me on the right track so I don't move into areas that I shouldn't move into.

40 Ah hmm?---And I can't recall the exact discussion at that meeting. That was the only time I had a meeting where I've seen, was a meeting structured with Henry Davis York.

All right. If you could just look at the document you've just been handed. Do you see on the first page there is an email from Ms Karpowicz and you're listed as an attendee of a meeting on 22 July. Would that be the meeting you're referring to?---That's possible. Yep.

And that you're going to be there, and that appears to be about the only time that you appear?---Yeah. That was the first and last time.

Right. And you were unhappy about being excluded weren't you?---That's right.

Because you knew the issues that were being discussed were related to the depot and the depot staff?---Correct.

10 And you made your unhappiness known to Mr Romano?---That's right.

And he didn't change his view about that, you continued to be excluded? ---That's right.

And he made it clear to you that he didn't trust you?---Yes.

And that, so that, would it be correct to say that decisions were being made about the status of depot staff with no involvement from you?---No direct involvement, yes.

20

And occasionally Mr Macklin would consult you about what had been decided?---Mr Macklin, and sometimes Mr Dencker and sometimes Mr Hullick.

But not Mr Romano?---No.

And so were they telling you because they were trying to keep you in the loop?---I always requested to be briefed, so it's usually as a request of me that they answer to my request basically.

30

And they knew you, and the other members of the Executive knew you were unhappy that Mr Romano had excluded you?---Yes.

So it was a pretty open secret within the Executive?---Yeah, yeah. I remember at some stage Mr Dencker asked me, you know, you don't want to go, if you want to go you can still go. And I, I realised that possibly Mr Romano would stop it so there has been some sympathy from that sort of aspect, but I did not follow through to any, anything concrete.

40 Okay. When you say go, you mean go to a meeting?---Go to those meetings, yeah.

Now you've provided this morning some diary notes consistent with what we were talking about yesterday. Now one of those records a meeting on 7 May, 2009 between you, Mr Romano and Bob Howe?---That's right.

And do you remember you were giving some evidence about a discussion you had with Mr Howe and I perhaps misunderstood your evidence, I didn't

realise that Mr Romano was present at that meeting?---No, he was there and he told him, it was, the whole idea was to try to broker some resolution to the issue.

So would it be correct that you'd had an earlier discussion with Mr Howe so you knew that he was going to support you?---That's right.

You'd got him on side in effect?---That's right.

10 And then you had a meeting with Mr Romano and Mr Howe, you hoped to be able to use Mr Howe to speak to Mr Romano on your behalf?---Yeah, a very short meeting (not transcribable).

All right. So on the second entry there, not the swine flu teleconference but the next entry, Pat needs to give me more info, not just Les and Ian as I also need to be involved and be reassured?---Yeah.

20 That's what you said to Mr Romano, is it?---That's right, make sure that the depot reforms are happening in the right direction.

Right. And Bob thought it would be a good thing and that I have raised a good point so Mr Howe was supporting you?---Definitely, yeah.

But that Mr Romano still didn't change his position?---He seemed to, to sort of understand and agree with it but in reality it didn't happen.

You, you continued to be excluded?---That's right.

30 You then say sent an email to Ian re continuing with the reforms. Do you mean you sent an email or - - -?---Yes, I did.

- - - Mr Romano sent an email?---No, I, I, I did and it's, it's not relevant to the issue. That was another issue.

Oh, okay?---Yeah.

So that reflects, does it, the meeting you were talking about yesterday?  
---That's right.

40 All right. If I could tender that, and that would be a note you wrote on the day of the meeting?---Yeah.

But, so despite Mr Romano saying he would change he didn't?---No, it didn't, it didn't change.

And you continued to be excluded apart from that one meeting we've identified in July?---That's correct.

ASSISTANT COMMISSIONER: Yes. The diary note of the meeting of 7 May, '09 will be Exhibit 254.

**#EXHIBIT 254 - MR AZER'S DIARY NOTE OF MEETING ON 7 MAY 2009**

10 MS RONALDS: And you also found a note of a second, that you, note that you thought was relevant to assist the Commissioner in her considerations on this issue?---Yes.

And this is a meeting I understand that is 18 August and that second one is an eight?---That's right.

18 August, '09 and there's a meeting with Mr Romano, you, Hullick, Dencker and - - -?---John King.

20 Right. You're there twice I think?---Yeah, that's right.

And John Kliem, K-L-I-E-M?---K-L-E-E-M.

Oh, I see, sorry. And who's he?---He is the consultant who was prepared the restructuring and, and review of the, of the, of the Council's structure at the time.

Oh, okay. And then as I understand the, the portion you seek to refer to is between the two lines?---That's right.

30 After the meeting Pat said that he was, he has excluded me from a meeting tomorrow with the solicitors on depot issues, workers comp because it was about me. I didn't seek attendance but requested to be briefed and that's what you were telling us about yesterday?---That's right.

So that was on 18 August?---Correct.

And then you note on 19 August Macklin and Hullick, is that right?---That's right.

40 PM and - - -?---Yeah.

- - - return from that meeting at 1.30, no debriefing was offered. I saw the agenda briefly on Sarah's printer - - -?---Yeah.

- - - as PM had printed it. Not happy?---Yeah.

And that reflects your position at the time?---That's right.

That is you were unhappy about being excluded and not being debriefed?  
---Yeah, correct.

Both things?---Yeah.

And you thought you should have been at the meeting because it was about the depot?---That's right.

10 And then the 10<sup>th</sup> of the 9<sup>th</sup>, you've got second meeting ICAC workers comp in Pat's solicitor's officer, Hullick, Dencker, Romano and Macklin in attendance and I was not included, 9.30am Les and, Les and PM back 1.35. Is this related to Pat's comments on 8/9. So again you're being excluded from that meeting?---Yeah.

And no one debriefed you about what was happening?---Les did.

And then the 10<sup>th</sup>, sorry, Les briefed me on depot implications as a result of today's meeting?---Yeah.

20 And did he do that at your request?---Yes.

So you went and said to him what's happening?---Yes.

I need to know what's happening because - - -?---That's correct.

- - - the depot is actually in my jurisdiction?---Yeah.

30 And he knew you were not happy about being excluded?---I hadn't discussed his feelings but - - -

No, I meant his state of knowledge?---Possibly from my - - -

From what you said previously?---From what I said, yeah.

But he understood you were excluded by Mr Romano was your understanding?---Yeah, that's my understanding.

40 If I could tender that diary note?---Yes. Those diary notes covering 18 August to 10 September '09 will be Exhibit 255.

**#EXHIBIT 255 - MR AZER'S DIARY NOTES OF MEETINGS –  
18/8/2009 – 10/9/2009**

MS RONALDS: Now, yesterday you gave some evidence about seeking prices in relation to two other Audis?---Yeah.

And I'll just show you this email. Overnight you were able to locate this?  
---That's right.

And this is the email that you were referring to, that is that you made inquiries of Audi at Arncliffe and Audi at Rosebery?---Correct.

And they gave you certain advice about price et cetera?---That's right.

I tender that email.

10

ASSISTANT COMMISSIONER: Yes, this email of 19 November, '07 re Audi prices will be Exhibit 256.

**#EXHIBIT 256 - EMAIL DATED 19/11/2007 – RE AUDI PRICES**

20

MS RONALDS: I'll take you, now we're just going to move to the depot reform just so you know where I'm going. When you were interviewed for your position was it advised to you that depot reform was going to be an important part of your job?---No.

And when you were, were you briefed by Mr Romano on the day you started or around then?---That's right.

And were you interviewed by Mr Romano and others?---Yes.

30

And in that interview, before you accepted the job, was depot reform discussed at all?---No.

And when you started you discovered that depot reform was to be an important part of your job?---Not initially but, no, not initially, it came later on.

40

And how was it that it came about?---Well, the biggest brief I had when I first started was to restore the technical services area. We were down five or six engineers or people out of 12 so it was a significant spill and fill that was happening. At that time the acting manager at the depot was complaining bitterly about design and technical work not flowing through and therefore hindering his work and his people's work so at the time there was no inkling that there were problems at the depot at all, the problem was just fix the office and the second brief I had was a large amount of customer service requests that were coming through at the time and they needed to be addressed fairly quickly so to me these were the two biggest briefs when I first started and then getting started a couple of works which had not been started for some time, that's probably a third.

And then eventually depot reform became something that you became aware of was to be an important part of your job?---From June '08.

10 June '08. And what was it on your understanding that was the trigger in June '08 for that to become an issue?---It was basically, sort of only highlighting it as an issue and I did trust his judgment because, as I said, the depot was an issue that he had some great affinity with for some years and time, even before my time and he had one to one relationships with, with a number of depot people so basically he said trust me, we've got issues here to resolve and I've called Morrison Low and we need to work with them.

20 All right. Well, just before we get that far ahead, you're aware he had, you gave evidence yesterday that he had a relationship with Mr Child and you've just indicated depot people, was there some, any other persons that you understood he had a relationship with apart from or in addition to Mr Child?---Mr Child was the main, main one. Risteski later on came on board, there was also some kind of relationship and it was not clear whether he had a relationship with Mr Giangrasso or not, it was not, it was not clear (not transcribable).

And did you become aware that there had been some anonymous letters sent to Mr Romano about the depot, purportedly from unhappy depot workers?-- -That's correct, that's correct, and he referred to it.

And did you become aware of those at the time he received them or some later time?---More or less around the same time.

And you saw these letters?---I did see them, yeah.

30 If the witness could be shown a copy of 239.1 If I could ask you just to move through about six pages in you'll see a handwritten letter. Do you see that?---Yes.

Now, have you seen this letter before, do you recall?---Yeah, a long time ago.

And it raised certain issues about overtime?---From memory.

40 And do you recall what you did about it when you saw this letter?---I recall that there was instructions to the depot management to, to put a list of people that were interested in overtime on the board and they're allocated fairly and, and transparently.

And was that a direction from Mr Romano?---It, I can't recall whether it came from him or from discussions with myself and Mr Macklin.

But you (not transcribable) identified a genuine area and so you put in place something to address it?---That's right.

All right. Then that one, as I understand it was in '07 so then if I could ask you to turn to the next one which is sent to Mr Macklin dated 2 July, 2008. Do you see that?---Yep.

And also unsigned but quite detailed series of allegations?---Yes.

And do you recall reading this at the time?---I did.

10 And it refers to “an arrogant manner by my supervisor, Mr Steve Childs.” There wasn’t anyone called Steve Childs, was there?---He’s the only one.

No, it’s Mr Child it’s meant to be, isn’t it?---Yeah.

20 And what did you do when you read this one?---Well, I did discuss it with Mr Romano or he discussed it with me and was a number of theft and pilfering issues that were raised and I spoke to Mr Romano and (not transcribable) don’t get distracted from doing your job, you’re Bob the builder, you’re not (not transcribable). And actually I recall Mr Inglese was with me at one, one of those times where I received those instructions. He said, “Let Mr Macklin deal with those matters” which he was dealing with. I was following up but I was not as hands on as under the directions of the general manager. So that was in terms of the theft and pilfering issues. In terms of the other issues from discussions with Mr Macklin and Mr Romano, we came to the conclusion that with Morrison Low reports happening and, and due to come up early August, we just asked them to expedite it quickly so we can get all these things resolved in a, in a structured way.

30 And in terms of the theft and pilfering allegations, later, and I’ll return to it in a moment, but later there is surveillance of the depot by private investigators but that was after Morrison Low. Was there any discussion in July 2008 about it would be perhaps appropriate to have surveillance at that stage?---There’s a good possibility it would have but I can’t be 100 per cent sure.

Did you take any part in the decision to not do it at that time?---I can’t recall these things, I’m sorry.

40 Well, I don’t know whether it happened. That’s what I’m trying to explore with you. It seems to be there’s a logical odyssey about having the Morrison Low report and then having the surveillance. So you don’t know whether there is theft or pilfering or whether these are false allegations and then Morrison Low come in and make certain comments about that but, and then there’s an attempt to verify whether it happens or not?---Yeah.

It seems to be the wrong way round, that’s all?---I, I think, I think that through the, the issue of putting cameras in the depot and it was discussed

with HR at the time and we were told (not transcribable) that it could be industrial relations issues in relation to it and that really set, set it in train. That, that, that's from my vague recollection of the, of the sequence of events.

All right. And similarly there's another one, if you could turn, there's a two page typed one and then there's a, one with a handwritten note up the top, mid July 2008, "Attention the Mayor". And it's a page and a half of anonymous allegations. Do you see that?---(NO AUDIBLE REPLY)

10

Again, anonymous letter about things in the depot. Do you remember reading this at the time?---I was looking at that one. Yes, I remember that one.

Clearly written by, it's, it may have all been the same person for all I know but they were clearly written by people who knew at least something that was going on in the depot, weren't they?---Yeah. For matter of clarity I remember (not transcribable) letters so I remember the typed on. I, I, I did not see it but definitely the two written ones I have.

20

And you say that they were then fed into the Morrison Low report?---The, definitely the written one I went through it quickly and I made sure that there would be issues that, of structural nature that would be covered in, yeah, when we, we carrying out the reforms, yes.

If the witness could be shown Exhibit 209. Now, this is the Morrison Low report and with it on the front is a note signed by you and Mr Macklin. Do you see that, which is a memo about, to the General Manager about what you proposed as a way forward?---Yes.

30

And you and Mr Macklin had developed that position together?---That's right.

And it would be correct, would it not, that Morrison Low were concerned about the way job functions were allocated?---Yes.

And they thought there was a bit of a confusion in roles and there needed to be some clarification so that job duties were consistent within a certain area for each person?---That's right.

40

That was a primary focus of their decision, wasn't it?---Yes.

And if I could ask you to turn to page 2 of your memo although it's not numbered but you'll see that the civil maintenance superintendent was to be re-profiled to the civil maintenance co-ordinator and re-evaluated?---That's right.

And do you say that that conclusion was your understanding of the Morrison Low report?---That was my understanding. Well, (not transcribable) that was my, something with, Peter and I had discussed.

Because what I (not transcribable) was that my reading of Morrison Low doesn't lead to that?---No, it doesn't go to that sort of level of depth.

No?---Yeah.

10 And so is it correct then that you used Morrison Low as a basis but then you made a series of further decisions you and Mr Macklin - - -?---That's right.

- - - about how you should not only implement Morrison Low but go further than they proposed?---Well, in order to implement it we went to traverse those issues.

And you understood when you did that, that that was Mr Child's position - - -?---That's right.

20 - - - the one I've just taken you to?---Correct.

And the other positions were all held by people at the time?---That's right.

And so that from the very beginning, that is from 15 December, 2008, it was your view that Mr Child's position needed to be re-profiled and re-evaluated?---That's correct.

Can the witness be shown Exhibit 150.

30 And you then played an active role didn't you in the changes made to the civic maintenance position over the next six months or so?---Yeah. Not direct, but active, yes.

Now, see there's some handwritten page numbers down the bottom?---Yes.

If I could ask you to turn to page 6?---Yes.

40 You see there's a letter dated 21 January, 2009. And I'm sorry, just before we get there, before you did that memo that we just looked at in relation to Morrison Low, did you have occasion to review the position of, the original position description for Mr Child?---I would've probably glanced over it so that I, I can't be a hundred per cent sure when, when I've looked at it.

All right. If I could show you this document. As I understand it and I'm sure someone will correct me if I'm wrong, this was the position that Mr Child had and this was the duty statement that was still in operation at the time, as at December, 2008, when you started to review what was going, and moving forward?---That's right.

Now would you have looked at this document?---I would have glanced over it at the time. It was predominantly used by, I understand, by HR to develop the new position description.

Right. So you weren't actually doing that, that was what Mr Macklin was doing?---That's right.

If I could tender that document.

10

ASSISTANT COMMISSIONER: Yes. That position description for maintenance superintendant will be Exhibit 257.

**#EXHIBIT 257 - POSITION DESCRIPTION OF MAINTENANCE SUPERINTENDENT**

20 MS RONALDS: And so if I can take you back to the letter of the 6<sup>th</sup>?---Can we just take the fax number, blank it, for privacy reasons?

(not transcribable) right to just block it out?---Thanks.

Now page 6 you'll see is a letter is Mr Child dated 21 January, 2009?---Yes.

And it refers to a meeting that you and Mr Macklin had with Mr Child?  
---Correct.

30 And you advised him at that meeting that there would be a minimal to his duty, that is removal, as I understand it, of street sweepers from his jurisdiction and otherwise his position was to remain the same?---That's right.

40 Then there was a quite radical shift from that position later wasn't there?  
---From, this position was never cemented because in the same week, at the same time Mr Child became very hostile about it. And the union's actually within a couple of weeks challenged our method and re-valuation and I, I seeing an email from Mr Macklin saying that the unions were worried that it's, if the position were re-graded, it would need some advertising and, and the question was shall we advertise, shall we advertise internally or externally. And the new focus was on the money and also Mr Child in the same week and before and after that he was claiming that he was not getting enough money and he, he was claiming that he, he, he's entitled to \$50,000 more on his salary. And basically said, because of the change, major change in the position, in the profile and the money, the unions would not have carried it through. So it was not cut and dry as that, well put it this way, but that was our intent at that time.

So you told him that that was the intent?---That's right.

And then later there was a change in that intent?---That's right.

And that was after Mr Ellul came on board?---No. The change was before he started. The change of thinking, actually even goes back even before the Morrison Low report when the (not transcribable) wanted to split the job in two. And that was in late 2007. And I took it on board and I had to override him because I told him, I can't afford to have a maintenance supervisor and a capital works supervisor because we're too small. And, and we, we do maintenance and (not transcribable) alternatively so we cannot afford to do it. And I seen at the time his reason for that was that Mr Child had too much power and he was not flexible in terms of changing things. So we had that discussion with Mr Einarson and I told him, but you have, you're the manager you can control things. You can control litigations. And he was actually directed to work with Mr Macklin on a memo to stop overtime which was (not transcribable) Mr Dardano's issues. So that was the work of Mr Einarson with Mr Macklin late 2007. So the idea of a radical change to that position started even before that date and then afterwards when I first interviewed Mr Ellul, I think memory on 14 February, he came across as somebody who has done it before, because he came from Bankstown Council as it was on his CV. And I recall very clearly on that day he said, I'm interested in the reforms you guys are doing and he said, I would, we've been through it with civic services in Bankstown in the mid '90's and he said my views are any positions that you try to look around the current incumbents which we did in one area in Bankstown. After two years we regretted it because this area was entrenched and whatever they were doing nothing has changed. And he said, the area that I, he was involved with, they've actually positioned it and, and they ended with major redundancies happening there. And he said that after two years there was (not transcribable) So he had that thinking on that first interview. And he made it clear to me.

Well, on 21 January, you, a letter had been written to Mr Child setting out a certain position hadn't it?---Correct.

And what you're saying is very shortly thereafter there was a change in that position?---That doesn't mean, I have not changed my mind by that time and I can - - -

Well, when do you say you changed your mind?---I changed my, my mind, I've made a diary note of it on the 28<sup>th</sup> and then again on the 30<sup>th</sup> of January, of sorry, of March.

And what occasioned you to change your mind?---The occasions were a sequence of events from the 14<sup>th</sup> onwards, because we had a second interview with Mr Ellul, myself and Mr Romano. And he reiterated that position to Mr Romano. Mr Romano had been in the interim knowing what

was happening at the time, there was a major shift and major changes and major resistance from Mr Child to all the changes that were happening, most of them. And Mr Romano has started to instruct us to split him from that position. Macklin and myself were resistant, we said, we'll just give him our word we're not going to change our position easily. Mr Macklin was even more entrenched in that position than I was, listening more to Mr Ellul and his experience. But then when Mr Ellul mentioned what he mentioned on the first interview to Mr Romano, I realised that, he became very favourable, very favourable to this issue. And I recall him seeing us and  
10 telling us you've got to start to restructure that position.

So the change came from Mr Romano? He was driving the change?---He was supporting Mr Ellul's position.

And it was clear that that position meant that if there was a restructure, a significant restructure to the position Mr Child wouldn't have the qualifications to fulfil it. That's right isn't it?---Well, that came later on where the position was (not transcribable) in the CFT. And Mr Macklin and myself were very strongly of the view that Mr Child needs to have a fair go  
20 at the position and therefore the qualifications need to be, don't vary from essential criteria to, to desirable. That was on 7 April. At that time there was no in-depth discussion of how this, the position should be structured.

ASSISTANT COMMISSIONER: Sorry, did you say spill and fill?---That's right.

That was, Mr Romano said?---That's right.

Spill and fill the positions. They get rid of the incumbent?---Not  
30 necessarily. It's a term in the industry. Well, most probably this would happen.

It's not clear to me?---It is, but sometimes we spill and fill the same position with the same person. It's, it's highly unlikely I know but it can be covered this way.

All right. But in any case, Mr Ellul's clear view was you had to get rid of the incumbent. Well, you said that was his whole theory about the (not transcribable) won't work unless you can get rid of the - - -?---That was his,  
40 that was his, his prerogative at the time and I, I remember clearly he, well, he did not say clearly you have to get rid of the incumbent but he said you, you need to be careful not to have the position (not transcribable) around the incumbent so we'll, we'll think about the incumbent and if it doesn't work, it doesn't work.

MS RONALDS: So just so I don't misunderstand so we're clear. What he was saying was, you had to look at it as a structural position and not worry

about the incumbent and if the incumbent fitted in well, so be it?---That's exactly it.

But you had to restructure around the job duties. That was that (not transcribable)?---That's right, that's right., put the emphasis on the issues that were not happening and see how we can work with the incumbent or otherwise.

10 Now, you say you have a note of the 28<sup>th</sup> and/or 30 March?---Yes.

Do you have that with you?---Yes. I need to look through it.

All right. Well, perhaps during the morning tea adjourning. We'll move on and come back to it?---Yep.

20 And you were at the meeting on 7 April, sorry, just bear with me. Could the witness be shown Exhibit 247, I'm sorry, I've gone around in an elaborate circle and ended up where we started. Now, if I could ask you to turn to, do you see there's some handwritten numbers down the bottom, page 11? Do you have that?---Yes.

And half way down the page you'll see there's an email from Dardano to Ellul saying, "Can you forward me a copy of the PDs" and then Ellul to Dardano on 31 March, do you see that, at about half way down the page? ---Yes.

30 And if I could then ask you, and then attached is a series. You can see from down the bottom a series of position descriptions and then if you could turn to page 17 you'll see the position description for the civil maintenance co-ordinator?---Yes.

And do you see there under Essential Criteria?---Yes.

The first one is, "Tertiary qualifications in civil engineering or equivalent"? ---Yes.

Now, this appears to be Mr Ellul's change?---Possibility.

40 And had he discussed that with you on or about 31 March?---Great possibility, yes.

And you agreed to that course?---No.

Why not?---Because it clearly does not open it to the incumbent of my - - -

And you conveyed that to Mr Ellul?---Yes I have.

But he's produced anyway a document that has the essential criteria, the first one is the tertiary qualifications?---That's right.

And you well knew that that would knock Mr Child out of the field?---It would.

And then, so that circulated and then there's a meeting on the 7<sup>th</sup>, and in fact if you go to the front of 247 you'll see there's a meeting and you're present at that meeting?---That's right.

10

And if I could take you to 2.4?---Yes.

"PM and SE", you understand that was Macklin and Ellul?---Yep.

"To meet with Child to advise the position has been significantly re-profiled as a result of the Morrison Low report". Well, just pausing there. That's not quite accurate is it? It was being re-profiled first of all by you and Macklin further on than what was in the Morrison Low report and then again by Ellul with no reference to the Morrison Low report, would you agree?---Sorry, can you repeat that again.

20

See at 2.4?---Yes.

"Macklin and Ellul to meet with Child to advise the position has been significantly re-profiled as a result of the Morrison Low report". What I'm suggesting to you is that that is not actually an accurate representation of what had happened, would you agree?---In that meeting?

30

No, the re-profiling as done and reflected in Mr Ellul's email of 31 March that we just looked at?---But we changed that before we got into that (not transcribable).

So you say that the change to, from an essential criteria to a desirable criteria happened during the course of that meeting?---That's right, that's right.

Is that your clear recollection?---That's my recollection, yeah, because Peter Macklin and I were very vocal about it and we wanted (not transcribable).

40

All right. And so 2.2 you see sets out to be included as a desirable tertiary education qualification?---That's what I'm referring to, yes.

So you say that you directed Mr Ellul to remove it as an essential criteria as at that point?---That's correct.

And to move it to being a desirable qualification only?---Yeah, it was not a clear direction. It was basically the, the CFT supporting it. The acting general manager (not transcribable).

And on this matter Mr Dencker supported you?---That's right.

And Mr Hullick supported you?---That's right.

And you say that, was there any discussion about Mr Romano's view about Mr Child being in the position during the course of this meeting on 7 April?---I can't recall Mr Romano being involved in this issue at all.

10 No, that's not what I asked you, Mr Azer. Please listen to the question. Was there any discussion about Mr Romano's view about Mr Child being in the position at the meeting?---I can't recall, can't recall.

So then what happens is that the position will be reviewed by the consultative committee?---Yes.

The role will be re-advertised?---Yep.

And SC can re-apply?---That's correct.

20

And that was what was proposed?---That's correct.

And then if you could turn to the next page you'll see there's a meeting on 14 April?---Yep.

"Ellul to update the civil maintenance co-ordinator position description in line with Morris and Low report"?---Yep.

30 And what I'm suggesting to you was that the changes being proposed were in fact inconsistent with the Morrison Low report, do you agree?---Well, when they refer to the Morrison Low report, the Morrison Low report did not go into the detail of structurally, it's, it's basically saying take out the (not transcribable) so - - -

Happened in January, hadn't it?---That's right. They probably were referring to the same issue in January.

But that had already happened. Mr Child had been told that by letter dated 21 January?---No, that has never been (not transcribable) at all.

40

Well, he was sent that letter?---He was sent that letter but it was subject to going through the (not transcribable) talking to the unions, getting things and I understand at the time the unions had some major issues with it and it was documented on emails from Mr Macklin.

But the letter doesn't say any of that, does it?---No.

The letter says it's happened?---No, it didn't but the incumbent himself, he did not accept the position as is He wanted \$50,000 extra.

Mr Azer, please listen to the question. The letter of 21 January is unequivocal, isn't it?---Yeah.

It says these are the changes that have been made to your position?  
---Correct.

- 10 But the 14 April minutes suggest that what's happening to the position reflects in some way the Morrison Low report, don't they?---I think the intent was with extra focus on job planning which was the major issue that has been slipping and became obvious from that time to that time.

- And that's not in the Morrison Low report is it?---Well, it's, Morrison Low was, was, from memory was very critical about the amount of overtime that could have been maybe planned better and other issues like the workers compensation claims as a result of jobs not being planning or haphazard or, so that there was from, from, from my perspective and everybody's  
20 perspective was that the Morrison Low report was calling for better planning in this area in order to resolve a lot of issues.

- You see, what I'd suggest to you is this, that what the Morrison Low report said was that duties had, should go with functions and made a number of suggestions in that regard but that the changes being made by Mr Ellul and supported by the depot reforms CFT were his views and were not at all reflective of what was put in the Morrison Low report. Would you agree?  
---It was within the same context but it's not, the true positions would be in context with the, in context related to the Morrison Low report. The  
30 Morrison Low report was not specific in which way this position should be structured. The only thing that was very clear on it was that the sweepers would be taken away so if we keep referring to the Morrison Low report at any point in time I think you are within your right, that's my understanding.

It was a disguise, wasn't it, because Morrison Low didn't go in any way to the changes that Mr Ellul was making to the position?---No, the changes that he came up with it were things that have changed from 21 January onwards but it was still consistent with the Morrison Low report.

- 40 That's your view?---That's my view.

And I'm suggesting to you that it's inconsistent with the Morrison Low report because it's very clear that they have an approach about (not transcribable) duties and functions and what was being proposed by Mr Ellul was quite contrary to that proposition, would you agree?---No, that's not my understanding.

Thank you. If I could ask you to turn to the 16 April minutes you'll see that 1.2 says Macklin to aim to meet with S Child to discuss changes to job description by 23 April. Do you see that?---(NO AUDIBLE REPLY)

Sorry, at page 3 of the document you have?---Yes.

You'll see 1.2 under Depot Operation Review?---Yes.

10 So 1.1 is about having discussions with Mr Child, 1.2 is to meet with Mr Child to discuss changes to the job description. Do you see that?---Yes.

Now, they were just to advise him about it, wasn't it, it wasn't seeking his view about the changes?---Well, it's, yeah, discussion I guess could be a two-way street.

You weren't, you, nobody in the CFT was really interested in what Mr Child thought about the position, were they?---Well, we've always listened to his point of view but it doesn't necessarily follow it.

20 And the changes had already been made to the position description, hadn't they?---Well, that's right. Well, that was the intent of the CFT, unless something totally out of left field would come from Mr Child.

And nothing came because the one that's just been advertised reflects the one that was floating around in April?---I was not party to that meeting so I don't if anything of substance had come out of it.

Well, if you could go back to, have you got Exhibit 150 still?---Yes.

30 If you go to page 8 you'll see there's a letter sent to Mr Child from Mr Macklin referring to a meeting between Ellul, Macklin and Child on that day?---Yes.

And you'll see it's explained to you that Ellul has further, in the second paragraph, has further reviewed the Morrison Low report and has recommended further changes are made to the position, particularly in the areas of project and contract management?---Yeah.

40 And he explained to you that it was his view that contract and in-house maintenance and construction should be under the control of one position which provides a consolidation of all civil related skills and experience in one role. Do you see that?---Yes.

And that was the position put to Mr Child?---Yeah.

And I suggest to you that that is contrary to the position put in the Morrison Low report, would you agree?---But isn't the original position, didn't he do with this work anyway?

Listen to the question, just listen to the question?---Yeah.

10 Do you agree that that view being put by Mr Ellul is Mr Ellul's view not the Morrison Low report view, review?---All that Morrison Low has done in a, in a, in a nutshell was taking away the sweepers from the position. The position had contract management because I know he's been getting quotations and (not transcribable) contractors during the year and a few months I had before that so I know for a fact he was doing it, there was just more emphasis on it.

And this is the, I've just handed you a, Ms Ross has just handed you a document that is the draft position that was given to Mr Child at that meeting and you'll see if you turn to page 2 that tertiary qualifications has gone from essential to desirable?---That's very good, they've got it right.

And do you say that reflects the decision of 7 April?---That's correct.

20 And he was given that position date at that time?---That's right.

If I could tender that, that, the draft, it's got draft in a, what do you call that thing?

ASSISTANT COMMISSIONER: Yes. The draft position description of April '09 for a civil construction and maintenance coordinator will be Exhibit 258.

30 **#EXHIBIT 258 - DRAFT POSITION DESCRIPTION OF APRIL 2009  
- CIVIL CONSTRUCTION AND MAINTENANCE CO-ORDINATOR**

MS RONALDS: And then if you go back to Exhibit 247, do you still have that? I'm sorry to make you jump around between documents?---Yeah.

40 And if I could take you back to page 11, you'll see on the, I think it's the 26<sup>th</sup> but it may be the 28<sup>th</sup>, or it might be 28 April, you see Mr Ellul is sending some positions to, and do you know who that person is, Soruban Sivaloganathan?---No.

Do you know who that person is?---No.

All right. But you'll see he says attached PDs were attachments to the email dated 31 March, 2009. If you open the civil maintenance one you will find I had already inserted the tertiary qualification requirements prior to sending them to Dardano. The PDs are still in draft form and were changed several times in format et cetera. Will continue to find the other documents

tomorrow. Now, you don't know who this person is or why they're being sent the email?---This is actually 2010.

Oh, sorry?---That's must be Mr Ellul's QC.

That relates to the recent steps?---That's right.

10 But you'll see he had said I had already inserted the tertiary qualification requirements prior to sending them to Dardano and that was in March 2009?  
---That's right.

So that that was the step taken by Mr Ellul which you say was then changed at the direction of the meeting on 7 April, 2009?---That's right.

All right. Well, if you go back to then page 10 of the other bundle, Exhibit 150, there's, there's a letter from Macklin to Child, do you see at page 10, dated 30 April?---(NO AUDIBLE REPLY)

20 Were you consulted by Mr Macklin about this letter before it was sent?---I think I did, I was consulted I think.

And you knew that the position was progressing and that Mr Child was being offered some assistance in the preparation of his resume should he wish to apply for the position?---Yes, yes.

30 Well, it was clear, wasn't it, that if he didn't apply and obtain the position he would then have no alternate position in the depot?---Well, there were a number of vacancies, there's another coordinator's role that was still to be filled.

At 30 April, 2009 we're talking about?---It was coming up, which was the other vacancy.

Right?---Yeah, it's called depot support services coordinator.

But at the CFT meetings during the course of April it had been openly discussed, had it not, that Mr Child may end up becoming redundant?  
---That's right.

40 And in terms of the position it was clear from, to all the members of the CFT that that might be the outcome?---It might be outcome, yeah.

That is, the position be advertised, he may not be the best candidate and that if that happened it would be likely that he'd have to become redundant?  
---No, that was not discussed in that, in that clarify because there's always a requirement before you become redundant to look for deployment.

But it had been openly discussed at the CFT meetings, hadn't it, that there was a, one likely outcome was that Child would become redundant?---That was an outcome but it's not the only one.

No, but, and that had been discussed, hadn't it?---It, it was, it was a possibility that it could happen, yes.

And was the financing of such an outcome discussed?---Financing of redundancy?

10

Mmm?---Well, it was not concrete, it was not there yet so that was not looked at.

And Mr Ellul wasn't given a budget to implement depot reforms with, was he?---No, the General Manager has made it clear that from, from his own reserve, the General Manager's reserve, you could fund any of these works.

Any of the changes?---That's right.

20

I notice the time, Commissioner.

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: Perhaps if the witness could locate those notes during the adjournment so we can then - - -

ASSISTANT COMMISSIONER: All right. We'll adjourn for 15 minutes.

30

SHORT ADJOURNMENT

[11.31am]

MS RONALDS: Mr Azer, you referred earlier to a diary you had of 28 or 30 March, 2009?---Yes.

And during the morning tea adjournment you've located the document and I've just handed you a photocopy of that document. Is that correct?---Yes.

40

And is it correct that the, oh, is it correct that I haven't given it to anyone. Do you refer to the note down the bottom?---Yes. The second from the bottom, yep.

And it says, KA, that's you. Is that right?---That's right.

Can you just, believes the co-ordinators positions or position?---Positions.

Should be reviewed, spilled and advertised openly in view of the requirement emerging is it?---That's right.

In the workplace. What did you mean by that?---It's, my views at the time were that the, the work planning issues were becoming more and more of a gap that did not seem to be happening and causing issues.

And PM, I think that's PM. That's Macklin, right?---Correct.

Is against this?---Yes.

10 He wants them to be left as is. Ellul and Dardano think the job planning needs to have more focus in civil area?---That's right.

And so that was your view as at 30 March, 2009?---Yeah, yeah. And I, and I recall stating that to the meeting.

Right. And do you recall being at a meeting on 16 February, 2009, which is earlier than this where the position, with Mr Romano and the Executive and the position of Mr Child was discussed?---I need to go through my minutes to - - -

20

You don't have any recollection of that?---If it is in my diary, then I'll have recollections.

All right. Well let's just leave that for the moment. Thank you?---I think, I recall the position being discussed throughout February, but this particular date, I - - -

30 Do you remember Mr Romano expressing a particular view?---I recall that during February Mr Romano was expressing the views that maybe, maybe we should look at those positions closely. That's right. Yes.

And that maybe - - -?---Because the 17<sup>th</sup> is when I interviewed Mr Ellul for the first time. And I had that at the back of my mind that Mr Romano's also saying the same thing.

40

That is that it might be necessary to spill Mr Child's position and find someone who had more capabilities for it?---That's right. Yeah. And I recall being against it at the time and said, we've just said to the guy he's got his job and Macklin was of the same view.

So even before the 17<sup>th</sup> and what I'm suggesting to you was there was a meeting on 16 February?---Possibility, yeah.

Where that was discussed?---A great possibility, yes.

If I could tender that statement, page dated 30 March, 30/3/09.

ASSISTANT COMMISSIONER: Yes. Those diary notes of 30 March, '09 will be Exhibit 259.

**#EXHIBIT 259 - MR AZER'S DIARY NOTES DATED 30 MARCH 2009**

10 MS RONALDS: And the reforms were then put on hold because of this inquiry or because of matters relating to this Commission and the inquiry. Is that right?---Not all of it.

No. So some of it continued, but that, Mr Child's position was not filled. Is that correct?---Yes.

And I don't know if you've still got 247 with you, which starts with the minutes of 7 April. Do you still have that?---Yes.

20 If I could ask you to turn to page 8. This is a letter sent last week to Mr Child, do you see that?---Yes.

What role if any did you have in this letter?---No, I stayed at, at arms length. I was asked to sign off on, on the position and I met the acting general manager at the time, I told him I'm not in a position to, to be involved in that decision.

30 Why not?---Because I told him, I was instructed through the Council's solicitors at the time, a year earlier, that there's a moratorium applied to this position and it is subject to the inquiry. And I thought the timing, with me being involved could be seen as inappropriate.

And so you had nothing further to do with it?---Yeah. I, I was confronted with the form and the position description and, and then I said, I do not need to be involved with it.

And the acting general manager at that stage was Mr Dencker?---Correct.

And so you didn't sign off on this?---No, I refused to sign off on it.

40 Because you thought the timing was poor?---That's right.

Thank you?---It's not just the timing, it's basically my involvement in, at this point in time was not appropriate. If somebody else has got different views, that's, that's up to them.

Now in relation to the surveillance of the depot. Do you know what I'm talking about?---Yes.

That IPP was engaged - - -?---Yes.

IPP was engaged to conduct some surveillance of the depot. You're aware of that?---Yes.

And do you understand, and what role do you say you played in that decision?---I was, my first recollection of it is a meeting with IPP at Council where I shown a PowerPoint presentation.

10 Right?---And Mr Romano said that we need to look at these things seriously. He said that the allegations that were happening had not stopped yet. I've got some stuff that you need to look at. And you need to look at it and either support it or otherwise it's a major decision. The cost was around \$25,000 from memory, what he said. And, and then we had a look at the evidence.

All right. Could the witness be shown 226. And you take 225 when you go as well. Perhaps take all the other documents away or you'll drown in paperwork. So you'll see Exhibit 226 is the PowerPoint presentation. So  
20 you were present were you when Mr Mailey gave that presentation?---Yes, I was.

And you were present were you when the decision was made and you were part of the decision to institute the surveillance?---Correct.

And the depot was obviously still in your jurisdiction, so that was a matter, was it said to you that the allocation for the \$25,000 had to come out of your budgetary allocation?---I can't recall the amounts, but which allocation it was coming from, I don't recall exactly which budget it should come from.  
30

And you didn't play an active role did you in organising and then reviewing the surveillance as it occurred?---I was requested to assist IPP with identification of certain people on the videos.

Right. That was later I think?---That's right.

All right. Well, we'll get there in a moment. But in terms of reports from IPP, do you say that you saw reports from IPP about the surveillance? Don't worry about looking through that, just doing the best you can on your  
40 memory?---I saw them at some point in time.

And were you part of the workplace surveillance act authority application, that is did you play a role in making decisions about that and liaising with Maddocks to do it?---No. But I took a role in voting with the Executive to, to start it. That's, that's - - -

Was that all you did then?---Substantially, yes.

And who, who on your understanding was the major driver of the surveillance then?---Mr Romano.

So even though it was your area he really was the major person involved?  
---Yeah.

And you had little contact with the day to day operations of the surveillance?---Yes. I had very little.

10 And if I could as you then to look at the second document you've been handed. You'll see it's got some running sheets attached to it? What are known as running sheets. So see the schedules of what the, that's Exhibit 225?---Yep.

Did you see those at the time?---I seen the running sheets at some point in time but I can't recall exactly at what time.

20 Could the witness be shown Exhibit 204. Did you receive any feedback from the depot managers that the depot staff had twigged to the fact that someone seemed to be following them around?---Yes, not, only person that twigged.

Just one person or more than one person?---No, the report I had was one person.

And who were - - ?---One clerk.

30 And did you see this letter? See I've handed you a copy of Exhibit 204 which is a letter dated 1 April, 2009, from the union about surveillance. Did you see this on or about 1 April?---Yes, I did.

And Mr Romano provided it to you, did he, or someone on his behalf?  
---Possibly, yes.

And that set out pretty clearly, wasn't it - - ?---Yes.

40 - - - that members have noticed a particular car following them around the district, slowing down, speeding up when they're driving to and from jobs and attending to business?---Yes.

So it made it pretty clear that they then knew that some surveillance was being conducted?---Yes.

And did you form a view about the usefulness of continuing surveillance under those circumstances?---I did to a certain extent but it was confided in one, the, the depot at the time was separated into two camps and that was one person from one camp. It was very obvious that the other camp may not have got that because there was, they were not talking.

Right, so maybe one camp knew and, well, obviously someone knew?  
---Yeah.

So you didn't think that that was a good enough reason to pull the surveillance at that stage?---It was a good reason to reassess but not to pull it straight away.

10 And then if you go back, so was there a meeting of the Executive once this letter arrived or discussions?---I think there were discussions. I recall discussing it with Mr Macklin and Mr Romano.

Was Mr Dencker involved at all?---I can't recall. I don't think so. Maybe he was, yes.

20 And a decision was made to cease the surveillance?---I'm sorry, the decision to stop and start the surveillance has been on and off over all this time so I can't be 100 per cent sure. Maybe I can review if I've got any notes on it or not.

All right. Well, just look at, go back to Exhibit 225 and you see that the first page of that is an email from Yasmin Malouf?---Yes.

And it says, the second paragraphs, "We were advised at 11.00am on Saturday, 4 April, to cease investigations until advised." Was that you who told IPP to cease?---No.

30 And do you recall any decision being made presumably the day before on the Friday to cease?---I have a vague recollection that some time in March there was some pressure applied from the executive to Mr Romano to stop it and, and he pleaded, he said we'll need to go the full length of the, of the, the actual court approval.

40 All right?---And I recall that I think I might have minutes of that as well and then he said, and then we, we told him we don't support that because the evidence at that time, really it was around 30 March or something, and, and he pleaded and as I said industrially we are exposed because we got the court order and if we don't have enough information then, then, there's obviously things happening and they're going to stop and start so he managed to convince us that, to go further but we pulled him back and said no, we're not prepared, prepared even with that to go further. And I think we negotiated just to go until 3 April from memory.

Because the concern was it that nothing was coming of the surveillance?  
---There was some stuff coming and I've seen it and it was happening but it's definitely not of the same intensity that was happening at the time.

I'm sorry, what do you mean?---Was not on more regular occasions. There might be sort of two or three issues rather than a dozen issues.

And you see if you look at the email again, it says, "On Tuesday the 7<sup>th</sup>, on Monday the 7<sup>th</sup> of April" now in fact Monday was, it's the 6<sup>th</sup>. Tuesday was the 7<sup>th</sup>. So I don't know whether it's meant to be Tuesday the 7<sup>th</sup> of Monday the 6<sup>th</sup> but the email is sent on Tuesday, the 7<sup>th</sup>. "Ian Dencker advises at 8.00am that it be recommenced." Now, do you remember any discussions or were you privy to any discussion that says we've got to recommence it?  
10 ---No.

You don't have any recollection of - - -?---I don't have any recollection.

(Not transcribable)?---No.

And can you offer any explanation of why Mr Dencker would be doing it, given it's not his area of control?---I think it would have been at the time that he was made the acting general manager of depot reforms so it would have been under this capacity.  
20

And he was made acting manager for depot reforms. What was the reason for that, on your understanding?---It's because of the allegations in the Sydney Morning Herald.

He'd been appointed by Mr Romano?---By, that's right.

And it's correct, isn't it, that Mr Romano didn't not do anything about it further, that is, he still involved himself actively in the depot reform area, is that correct?---The, if you look at his involvement from sort of zero to 100, he was involved 80 per cent. After that sort of reduced in (not transcribable) to nearly 10 per cent or whatever is, is minimal. So there was a large reduction but he still was involved to, to, and, and the way he would justify it was like this issue is more of a corporate issue because it involves letters going elsewhere and I need to make sure that we're still functioning in the right way and that was the way he presented it to me.  
30

And was that consistent with your understanding of what the management responsibilities were meant to be?---It, it, I, I think initially it went reasonably okay (not transcribable). However, later on I realised that he was becoming more and more involved to the extent that I made some complaints about it.  
40

Well, when you say later on, when was that?---We're talking about later, last year, early this year.

And when you say you made complaints, who did you complain to?---I remember we had a, a meeting with senior counsel and Mr Dencker, Mr Hullick and Mr Walker.

That's Mr Leggat?---Mr Leggat, yeah.

And your raised concern, did you, that Mr Romano had not removed himself from the process?---That's right. I, I, he, at that time, at this time he was not as hands on and he was very careful but with time I realised he started to be more involved and directing certain things to happen. And I recall saying words to the effect that or trying to get him to, to, to, to be controlled and, and not to take over his general manager sort of position in these areas and I remember mentioning a couple of incidents where we could not do it and he overstepped the mark with Mr Dencker and, and, and he's done it so I sort of discussed it (not transcribable) that it was very difficult to keep him out.

And did Mr Leggat give you any advice about how to manage the position?--Yes, he said it needs to be acknowledged and towards the end, after I, I mentioned that and Mr Walker supported me in the position, he said the only way he could be managed is, he needs to be managed out.

20 But that didn't happen at that stage?---There were steps taken, I understand, but I was not hands on in it.

So you say, what, from the middle of the year, June, July?---No, no, no, this incident happened early this year.

But when you say he was reasserting himself in relation to the depot reforms, are you able to give us any time that you say that - - -?---Yeah, maybe three, four months and afterwards, roughly.

30 So July, August?---Maybe.

And that you say there's some specific incidents that you recall. What were they?---If I'm allowed to check my diary I might be able to refresh my memory on this issue.

But at this stage you don't have any independent recollection?---Yes, it was, I remember. He directed me to restructure a position of, of the depot, the, restorations officer.

40 And that, so that was intervening in your area - - -?---That's right.

- - - in a direct way?---Correct.

And if anyone was to make that decision you thought that should be you - - -?---That's right.

- - - in consultation with Mr Dencker who was the acting General Manager of depot reforms?---That's right, that's right.

And it was your understanding that Mr Romano should have no involvement with that at all?---Correct.

And did you say that to him?---Yes.

10 And was, what was his response?---His response, well, he would go on a tangent and say well, I'm, it isn't our decision. I said I'm not discussing the actual decision, I'm discussing the perception of you involved, getting me involved because with this position it could be seen that I'm carrying out any retributions toward that position because it's, this person was at some stage fairly hostile with, with me in a way so it cannot be led by you, it needs to be done by somebody at arm's length, even myself, I'm happy to provide what I know about the issue but the decision needs to be made at arm's length and they can ask me whatever I, I need to give them but I cannot just act on your directions and, and, and do that, it's inappropriate.

20 And was the position eventually altered in line with his view?---No, I've stopped it.

Right. So nothing's happened about the restoration?---No.

And do you recall any other incident?---He was heavily involved in the street sweeping issues and started to give directions on how many times we need to sweep certain streets and then we have complaints and then he comes back and says why did you do it this way, you don't do what I say, do what I think of and so there were, it also evolved on a technical issue that may have some human resources implications.

30 And do you remember when that was?---That was late last year and early this year.

And did you raise with him that you thought it was inappropriate for him to do that?---Yes, I did.

And what was his response?---He said we need to improve services and that doesn't come into it. We just need to make sure that the place is looking good and he looked at it from, from that aspect.

40 Now, just returning to the surveillance, unless you've got any other incidents you recall?---I think that's all I can recall now.

If we return to the surveillance, you went to IPP, do you recall that - - -?  
---Yes.

- - - and viewed some videos?---Correct.

In May?---That's right.

All right. Can the witness be shown Exhibit 233, please. Now, the problem, the issue was, wasn't it, you and Mr Dencker were concerned at the quality of the videos?---It was the quality of the report itself. Mr Dencker and I had a look at it and the running sheets did not correspond with the videos.

And so you thought if you went to IPP - - -?---And, and also - - -

10 Sorry, go on?---And also there was allegations of a certain tool being used in the wrong way - - -

Right?--- - - - and I also, while you're there you might as well have a look at this one and see if you could see what RPP were claiming was there on that screen.

All right. Well, if you just turn to the second page of the bundle I've just given you, you see down the bottom of the page there's an email from  
20 Mr Dencker then sends you an email saying there's still value in you attending the offices of IPP to ensure the following and then he tells you four things that he wants you to do?---Yes.

Do you see that?---Yes.

And that's the one where, it's my understanding from speaking to the General Manager that IPP has informed Council that a former employee was witnessed with money grips in his hands?---Yes.

30 Is that what you're talking about?---That's right.

And then from the surveillance footage neither Macklin nor I can distinguish whether or not this is the case and then you are given certain tasks to do. Now, you then attended at IPP?---Yes.

Is that correct?---Yes.

And you viewed the videos?---Yes.

40 Now, were you able to identify anyone performing any actions that you thought were unlawful or illegal or of concern to Council?---No. Yes, there were some acts that were unlawful but not, the monkey grips were not clear and he said he will get some stills that would show it.

All right. But what about some other acts by anyone else?---From memory there was some planks being moved from a Council vehicle outside the area to a house of another Council employee.

And you could identify the people involved?---I did.

And what happened after that?---That was, I understand was part of the moratorium of not acting on particular individuals and I've noted to Mr Macklin that this needs to be investigated at the first available opportunity.

So did you prepare a report or anything on what you viewed?---No, I think it would have been in the, in the running sheets (not transcribable).

10

You've not been able to find any record of what you found and whether you identified individuals?---I've taken diary notes on it and the views were to open the subject when it is appropriate to do so.

And so it's been put on hold, you understand, because of this inquiry?  
---That's right.

But there were people that you could physically identify?---That's correct.

20

And you have made notes of that and you've discussed that with Mr Macklin?---Yes.

And he and you agreed that until this inquiry was completed then that matter would be put on hold?---It would be on hold, yeah.

So there's been no further investigation or review of the information held by Council in relation to any individual depot workers?---As far as I understand, yes.

30

ASSISTANT COMMISSIONER: And is that the only potential wrongdoing that you observed during the, all of the videos?---There might have been another incident but without consulting my diary I may not recall.

Thank you.

MS RONALDS: Now, you recall the incident involving Mr Child and the payments of overtime to members of his team?---Yes.

40

And you were involved in that?---That's right.

And what I'd suggest to you is that what happened, that is the formal investigation and the admonishment et cetera was an overreaction to what had happened, would you agree?---No, I, given the circumstances I don't think I would agree with that.

Well, it was a pretty minor incident, wasn't it?---No, no, it was not.

Well, why do you say that?---Well, handing cash in envelopes to, to staff out in public was not, is not a good image of Council. What would happen if they keep, we, we don't react and they do it again and somebody gets injured, workers compensation claims, insurance, all sorts of issues would come out of it, who was the employer of these people.

I think we've just rolled a number of things into one, let's just untangle that, shall we?---Sure.

10 You were concerned that it looked poor image?---That's right.

Why didn't you just tell him not to do it again?---Yeah, Mr Child was told about a lot of things at that time not to do it again, he kept doing it.

You didn't have any evidence that he'd done this again, had you?---Yes, I have evidence he's done it again, yes.

20 So you say there is another incident where he's also on another occasion given cash to workers?---No, he's offered to pay Council in cash \$200 for Council concrete so he doesn't answer to another question and I (not transcribable).

30 I'm sorry, I don't know what you mean so he doesn't answer to another question?---He was asked about, about the additional concrete at Park Road which we'd later taken cause of it and he came and said don't ask me any questions, I'll pay the \$200 in cash. So it was more of a culture that needed to be broken and if you take this in the background of, of his demeanour and the way he was acting, we needed to nip it in the bud and, and, and act on this one given that he was given enough chance to go to coaching and try to improve this attitude so in, if you put yourself in, in this position and, and being told that this person does not listen, does not come back and discuss things in a, in a rational manner, stands over people and he went to coaching to improve that and it's still happened, it was reported to me as a director and then I personally encountered that a number of times where I've been personally threatened so - - -

By Mr Child?---Yeah, yeah.

40 So Mr Child had previously threatened you?---That's right.

And what had you done about that?---I've put it in the diary and I referred it to, to, to the General Manager at the time, that was before all these things happened and - - -

What did the general manager say to you?---He said well, he needs to be investigated, let Bob Howe know and let Mr Hullick know, which I did. And I've taken diary notes and I showed it to them.

And what happened?---Nothing happened.

And did you understand that Mr Child was protected by the general manager at that time?---No, at that time he was not, actually. From the 7<sup>th</sup>, from early February - - -

10 What year?---2009, it was obvious that, from a number of discussions I had with Mr Romano, finally he decided to carry out his promise to me that he's going to wash his hands, like Pontius Pilot, and he actually distanced himself from Mr Child.

And what was the trigger as far as you understood when he - - -?---It was the reports that I gave him about the resistance to the reforms by Mr Child.

But previous to that Mr Child, you say, had threatened you and when Mr Hullick and Mr - - -?---No, after, after that.

That was after that?---That's right.

20 Had you had reports during the course of 2008 that Mr Child was responsible for bullying members of the depot staff?---I understand that HR were investigating a number of them.

No. Just listen to my question. Had you had reports, as the person in charge of the depot that Mr Child was alleged to have been bullying members of staff?---Directly, personally, I don't recall. But I was made aware of - - -

From HR?---That's right.

30 And you understood they were conducting an investigation. Is that correct? ---That's how HR managed it, yes.

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

And have you ever seen any product from that investigation?---I have been requesting to see it and then later on I've seen a table of certain incidents. So he's, he's kept something on file. And he reported it to the Commission, which was - - -

40 But there was no, during the course of 2008, there was no formal investigation of Mr Child in relation to any specific allegations against him of bullying staff was there?---I think there were and they were non-conclusive. And that's what I, what I got from Mr Macklin.

See what seems to have happened is this, people keep saying, oh, Mr Child bullies people, but there's no actual incidents, there's no investigation, there's no proper process followed. Would you agree?---Well I was aware

that HR had a process in place and, and he reassured me at the time that he's investigated those issues whenever they occurred.

Who's he, Mr Macklin?---Mr Macklin, yeah. And he said that he could not find any conclusive evidence. It wasn't until I personally was threatened in February, March, 2009 that I realised that possibly there were some truth in it. The one incident I remember vividly is the issue with Risteski, there was some bullying issues and complaints from our insurance broker. That's one I was closely involved with.

10

But the allegations by Mr Risteski against Mr Child were dismissed weren't they? They were found not to have been (not transcribable)?---That's right. They were unfounded at the time.

And indeed there were findings made against Mr Risteski, which were in fact more serious weren't they?---From memory, yes.

You wouldn't of relied on that - - - ?---No. I relied on - - -

20

- - - (not transcribable) any allegations of bullying by Mr Child?---No. I relied on my own personal experience.

All right. Well, what was that? When did that happen and what happened? ---I've got a diary note on it, I can bring it up.

I'm sure you have. But just tell me to the best of your recollection when was it and what happened?---Okay. On one occasion when I handed a disciplinary letter - - -

30

Was that the disciplinary letter relating to the overpayment issue?---That's right. But there was before then, even 30 January, there was also another incident where he said, we're not going to make you look good any more. And he stands sort of over you, you in the office, over your desk. So, that was fairly aggressive to go to directors office and say that. That was the first incident.

We're not going to make you look good any more?---Yeah.

40

ASSISTANT COMMISSIONER: Was that the threat?---It was, it was a bullying sort of issue and in the way, it's not in the words, it's the way it was done. If you're sitting there and somebody's leaning over you and saying, we're not going to make you look good any more. Why are you changing the depot and the overtime?

MS RONALDS: All right. And you took that as a threat?---That was certainly extent it was inappropriate. And then I asked him to retract some - - -

(not transcribable) inappropriate, did you take it as a threat? Is that what you're telling the Commissioner?---It was verging on inappropriate, between inappropriate and a threat. But not a complete threat. Not as much as the others that I have just referred to afterwards.

Well, what happened afterwards?---It was during the course of investigating the 30 (not transcribable) and also when talking about him taking annual leave.

10 Right. Well, let's do it one at a time. Can the witness be shown Exhibit 151. My letter dated 19 March from you to Mr Child is about the disciplinary meeting in relation to allegation of inappropriate behaviour. It's paying money and not responding and behaviour seen as subordinate. Do you remember that?---Insubordinate. Yes.

And if you turn to page 3 of the bundle you've just been handed, see that? ---Yep.

20 That's the letter. Did you, are you saying that you handed that letter to Mr Child personally and he responded in a negative way. Is that what your evidence is?---Yeah, I think so.

Well - - -?---I'd have to check my diary. That's my recollection, yes.

30 All right. And what did he say to you that you considered inappropriate? ---It was more the tone of his voice and how he was raising his voice and standing over the desk. And I remember making a note in my diary that, are we safe or not? He said, words to the effect that, why are doing this to my boys? You're not my friend any more. And words to the effect that, you're going to regret it. In a very aggressive manner. So there was, these are said in maybe on this occasion or occasions before and after. These are all the words I remember.

How many separate incidents do you say - - -?---Maybe three.

- - - Mr Child, just wait for the question, please, Mr Azer. Do you say that Mr Child acted in a way that you considered bullying?---Twice.

40 Twice?---Yes.

And they're the two you've just explained?---That's right.

Was there a third where you considered it inappropriate but not bullying? ---On the 30<sup>th</sup>.

What was that occasion?---That's the, when he said, we're not going to make you look good anymore and standing over me.

Well then, so far you've described two incidents?---One time was, you're not my friend any more.

Oh, sorry?---And the other one was, you're going to regret it.

So they were different incidents?---Two different incidents.

Sorry, I misunderstood you. I thought they were the one incident?---No, no. They happened on two different occasions.

10

And do you say that they were matters that gave rise to concern?---The concern was that the coaching was not actually working the way we thought they were.

And whose idea was it to send him to coaching with Norman Turkington? ---I think it was a collaborative decision between myself and Peter Macklin. I don't know if Mr Romano was involved.

20

And that was to try and provide him with some skills to manage his team and to manage up?---It was, it had a number of facets to it and that was one of them. It was also to manage his mannerism and the way he reacts with people.

So to try and encourage him to behave more appropriately within the workplace?---That's right.

And so he'd been going for some time had he?---That's right.

30

And you felt that it wasn't working?---Initially it was working. And then after the 21<sup>st</sup>, I've seen it - - -

The 21<sup>st</sup> of what?---Of January, 2009, when the depot reforms took hold, it started to get reverse very quickly.

And that was when you began to have serious doubt about his capacity to engage in the reformed process. Is that correct?---That's correct.

40

And you saw that he was resisting, he was resisting the reform process? ---Yes, he was.

And you were concerned were you that he was going to encourage those he worked with to also resist the reform process?---That's right.

Did you understand he had a number of, that he had some sway in the depot?---That's right.

And that he had at least one group of people who would follow him? ---That's correct.

And you were concerned were you that that group would then also resist the changes to the depot?---Yes.

Did you understand he was speaking on behalf of those - - -?---He was portraying this way. I have not examined that personally to check it.

Right. But that was your concern?---It was, it was one of the concerns, yes.

10 And you discussed that with Mr Romano?---I did.

And what was his view?---I think it was his views that he's highlighted some time ago mid February he said maybe we should review that position.

Right?---I, I was not in agreement with it initially but then other issues happened and Mr Ellul had the time to review the Morrison Low report before he started on the job and, and he also was even more and more convinced and I told him, even in the interview I told him your predecessor had a chance to review the Morrison Low report. He made certain  
20 recommendations although I did not agree with them but he had the opportunity to review it. I'll also give you the same, the same privilege.

And was your concern that Mr Child's resistance to the changes in the depot was escalating?---It was escalating, that's right.

And that you didn't seem able to be able to move with the reform process, is that correct?---He did not seem to be willing, in my opinion. I thought he might be able to do it himself. In the back of my mind I always thought he would still come good because we've got a new manager that he's not in  
30 direct conflict with and I thought if we tell him the position is, is, is up for grabs he can, he might be able to be more subservient and work, work (not transcribable). I thought this might be a genuine point of trying to, to get a win/win situation.

If I could now turn to a different issue. Do you recall that in November or October/November, 2007, Mr Romano raised with you and members of the Executive that he and his family were being subjected to some acts of harassment?---Yes, I recall that.

40 Now, what do you recall he said in relation to that?---He said that there were physical issues and I can't recall exactly what they were and he said the police were not interested in, in investigating them and he mentioned something about threatening emails being sent from Council's library computers, I can recall that. And a whole swag of other things.

Well, do you remember what the whole swag of other things were?---It's difficult because now I might, from reading the transcript I might be - - -

All right, so now your memory might be polluted - - -?---Yes.

- - - by having the transcript?---That's, that's right, that's right. These are the two issues (not transcribable) be 100 per cent sure about.

And you now understand that no emails were sent except by him?---That's right.

But at that stage you believed what he said?---Yes, that's right.

10

You hadn't ever had at that stage any reason to doubt his honesty?---No, never.

And indeed until the opening of this inquiry had you ever had reason to doubt the voracity of matters he told you about?---No, I had some doubt on technical issues where we have had constant arguments and his convenient memory sometimes. But never of something of that magnitude in terms of corruption, no.

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But when you say technical issues, is that because you had more technical knowledge than him?---Well, in theory we're equally qualified but I'm more, more sort of hands on I guess and yes.

And if the witness could be shown Exhibit 13 and you can remove the other ones he has there. Do you recall the exchange of emails about the home security system? You know what I mean by that?---That's right.

And you expressed a particular view and I'll just show you your email. This is your email dated 9 November, 2007. Do you see yours is in the bottom part of the page there?---Yes.

30

And that was your, that reflects your view at the time?---That's right.

And you understood that Mr Romano rejected that view?---That's right.

But you put it forward as your genuine considered position that you wouldn't risk your reputation by doing it, that's essentially what you're saying, wasn't it?---That's right.

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And you were expressing concern for him that he not expose himself to anything that would be inappropriate?---That's right.

That was your motivation, wasn't it, to protect him?---To protect him and, yeah, in the first instance.

And his role as general manager and the Council's reputation in case something went wrong?---That's correct.

But your attempt to provide him with that advice was rebuffed?---No, it was not taken on board.

Yes. Now, do you recall in September, 2008, Mr Romano having a discussion with you that Mr Child and Mr Giangrasso had been seen having a conversation in the mall with some of the Liberals?---Um - - -

This was just after the election in 2008?---I was on annual leave, I was overseas at the time so I didn't have the discussion in September.

10

When do you say you had the discussion then?---When I first started which would have been early October.

2008?---That's right.

And what did he say to you? This is Mr Romano?---Yeah, he said words to the effect that your, your guys are breaking policy and procedures and they're talking to politicians without having, following the protocol.

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And he was quite agitated about that, wasn't he?---Yes, yeah, to a certain extent. It has been some time that passed since this happened.

But he still drew it to your attention?---He drew it to my attention, yes.

And did he ask you to do something about it?---No, he didn't.

But you spoke to Mr Child about it, didn't you?---That's right, and, and Mr Inglese.

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And what did you say to Mr Child?---I told him Steve, this issue came to my attention, can you just fill me in on what you, what you know about it? And he got a bit hostile and he actually started to answer a question that I didn't answer, that I didn't ask. He told me I'm fed up with this (not transcribable) I told him, Steve, this is not the question I asked. I want to know what happened, things like was the acting director there with you, Mr Inglese, so that we have compliance with the processes and, processes and procedures. He did not get that and he kept answering a different question that he's shown 100 per cent loyalty to Romano and he shouldn't be asked that question. At the end of the day he did not give me an answer but Mr Inglese confirmed that he was there as acting director.

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He was there at the coffee - - -?---He said he was, yes, and he was acting director at the time when I was away and that was all that I wanted to know to make sure that when this issue comes back again and my staff had been made allegations against, then I've got a, got the right answer for it. I did not conduct an investigation otherwise I would have spoken to Mr Giangrasso which I haven't.

You didn't speak to Mr Giangrasso - - - -?---No, it was not a, it was not an investigation. It was just for my, for my knowledge to be able to defend my staff.

And did you consider it was a subject worthy of discussion at all?---Yes. At this point in time and in many occasions Mr Romano would possibly when I put things forward that may impact on staff he would go on a tangent and use occasions like that to, to veto certain issues so it was fairly important for me to get the facts right so I can have an answer.

10

Now, in relation to Mr Issa, what role if any have you played in identifying jobs that he could do with his restrictions?---I've consulted with Mr Inglese on what we can offer. HR were fairly cautionary. They told us that we, our insurance company would demand that give him certain, for a certain period of time some work to do and we had some interesting discussions about where he can go. Mr Inglese did not initially want him to be there but, and then we came up with the idea of the asset management works so - - -

And it was your understanding that you were responsible for his management?---Not personally but yeah in, yeah, through up, up through the ranks.

And Mr Romano spoke to you, didn't he, about Mr Issa and said he didn't want him out the front of the Council offices on the phone?---On one occasion he did that, yes.

And do you remember when that was?---It would have been around July but I might have a diary note on it.

30 What year?---2009.

And he made it clear to you, Mr Romano, didn't he, that he had a very negative attitude about Mr Issa?---No, he said exactly that he was standing with a phone and not in a straight (not transcribable) been there for a long time and he said, and he's looking at the coming and going and he smirk at him and he was very angry about it.

And he said to you he's one of Child's mates?---I don't recall that particular words but - - -

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Or something like that. He mentioned, didn't he, that he was one Steve Child's group?---Can't be 100 per cent sure that he said that.

And he asked you didn't he to have him removed from the job that was in the main building?---No, I don't recall that.

Well, do you remember that you were involved in deciding that there were no suitable duties for Mr Issa and he should stop doing the work he'd been doing?---Yes.

And you and Mr Macklin decided that didn't you?---In consultation with Mr Thinesh and Mr Inglese.

What I'm suggesting to you is that you and Mr Macklin made the decision before you spoke to Mr Thinesh. Would you agree?---No, I disagree.

10

And you did that after Mr Romano had spoken to you about Mr Issa. That was the sequence wasn't it? Romano complains to you about Issa and then you and Macklin have a conversation and Issa is removed from his position?---Yeah. No, I think you, I disagree with this connection you've made. That is not the case, no. The issue while he was on the phone that was a separate issue some time earlier on. The other issue was actually triggered by a complaint I had from - - -

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From who?---I think either Mr Inglese or Mr Thinesh, I've got diary notes on it, I'm happy to provide it. They came to me I think on 21 July, 2009 and they complained that Mr Issa now is finished with the asset management works and now that I was putting demands on Mr Thinesh to start with the capital works jobs which were supposed to start sort of around May, June, has been postponed and there was, the first surveying was at Cheltenham Park, (not transcribable) Park and Mr Thinesh said that Issa could not have done it with his injuries and light duties. He discussed issues in depth, he said he cannot carry the (not transcribable) like a normal (not transcribable) would.

30

Let's accept that he couldn't do that job?---Yep.

Is it your evidence that there was nowhere in the Council, any other position that he could've filled?---No, no, definitely in the office we ran out of options and at the depot this is where he was initially and he was, he was definitely non-compliant.

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In what sense?---He was non-compliant in terms of observing his light duties. I remember disciplining Mr Child when I saw Mr Issa was working under his supervision late 2008 when Mr Issa was on the tools, working on the median form work at Railway Parade and, and at that time we received another workers compensation claim from Mr Issa referring to his back and an additional one on the knee injury. So it was obvious that Mr Issa was non-compliant in the outdoor setting and he was seen as a measure risk of hurting himself.

And there was no other job in Council?---No other jobs in, in the office of Technical Services but I didn't say there was nothing across the - HR would look at other area, there might be some other work elsewhere.

What role did you play in trying to find him a job?---I discussed that with Mr Macklin and he consulted with, with our insurers and from memory our insurance advised us that he is a high risk or re-injuring himself wherever he is and he's very tight supervision. And it was a view at the time that there was no incentive even financially for Council to keep doing that so it was predominantly - I said I don't have any work for him outdoor or indoor stuff and Mr Macklin decided that also given the circumstances that there may not be other roles (not transcribable) as well.

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What circumstances?---Sorry?

What circumstances?---The circumstances of the insurance company or insurance specialist advising us that it was not cost effective to do that anymore.

But Mr Romano had made it clear to you hadn't he when he'd spoken to you about Mr Issa that he didn't want him working in the head office area? ---I don't recall that discussion. I don't recall it. I know he, he, he mentioned it at (not transcribable) and (not transcribable) standing out there and we acted on that, I went and told Ammer, You're not supposed to be sitting here. We tell all the staff members if they want to walk they go around the block or stay inside but don't stop, don't stop in front of the door and I said that because I mentioned it to other staff members beforehand who were doing the same thing. It was not a good look for Council professionally.

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Do you recall being at a meeting on 29 June, 2009, a meeting of the executive, where you were discussing Mr Cummins and Mr Child and what would happen if they wanted to return to work?---I'm not too sure about the dates.

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Well, if the witness can be shown Exhibit 241 and the others can be taken back and when you're given the bundle if you could turn to page 9 and it starts actually at the bottom of page 8, it's an email from Macklin to, to Baird and Gardner but copied to you and others and if you look at the bottom there and then turn to page 9, you see on the second paragraph it says, I have met with the executive team this morning, Hullick, Dencker and Azer and it is Council's preferred position if either of these employees, Cummins and Child, attempts to return to work that they are suspended from the workplace for the duration of the investigation. Does that help you remember what happened?---As seen from the evidence I was not hands-on in the workers compensation issues so I was joining the dots. My recollections would be very sketchy because it did not follow any sequence of events. I was missing a lot of action.

Mr Azer, just listen to the question?---Mmm.

You were, are said to be at a meeting on 29 June, all I'm asking you is do you remember being party to that discussion and that decision?---I certainly remember the email and I don't remember raising any issues with it so it must have been correct.

10 So it would be correctly recollect, would it, your view at the time that Cummins and Child if they attempted to return to work should be suspended and that was the view of the executive, that is, that's a correct, Mr Macklin's got it right?---Well, I don't have evidence, I don't have evidence to the contrary.

Well, do you have a recollection of the meeting?---(NO AUDIBLE REPLY)

It was June last year?---I don't have any clear recollections of it.

And do you say, do you, that you were excluded from a number of the decisions and therefore when this matter came up did you just go along with the others?---I probably shut down.

20 Because you were still cross about it?---No, because I did not, I did not feel I had the full knowledge of the history or the legal advice that was backing that up so I thought my position would, would not have been strong enough to mount a successful argument. You want to also just put that in mind of how the dynamics were happening at the time. With Mr Romano I made sure that any arguments I would announce would have to be substantially, would have to be substantially supported and has got a good high rate of success otherwise what would happen is it would be used for, to discredit you and I was very mindful with my responsibility towards all my staff that  
30 the integrity of my directions on behalf of my staff were maintained so if there's an issue that I don't have the full knowledge of I would not voice any major issues about it to, to make sure that basically you, you maintain your integrity and you can have influence on changing things in the right direction.

You were aware of the anti-Discrimination Board complaint made by Mr Saad?---Yes, I was.

And who consulted you about that, Mr Macklin?---Predominantly, yes.

40 Mr Romano?---I, I recall Mr Macklin definitely, Mr - - -

And did you, sorry?---Mr Romano, I don't have any clear recollection.

Did you say to Mr Macklin there's very serious doubts about Mr, that you had very serious doubts about Mr Saad's credibility?---At that time I had some views about Mr Saad that he may not be very reliable.

Yes, now would you please answer the question?---Serious, I don't remember the word serious.

Did you say that to Mr Macklin?---I said that he may not be very reliable, yes.

10 Because that's important, that would be important wouldn't it, if Council was deciding what it would do about Mr Child, to rely on Mr Saad as a basis for suspension could be a bit thin, couldn't it, given your view of Mr Saad's credibility?---Yeah, but Mr Saad was not always wrong and there were certain situations where he was actually right so it does not dismiss the issue.

And what role did you play in agreeing that Mr Child should be suspended from work on the basis of the allegations by Saad?---I think it was driven by the other group predominantly but, and it was presented through the lawyers and I was informed or consulted on it in a certain way that I raised no objections to it at the time.

20 Well, the lawyers weren't making the decision, were they, they were just providing advice?---That's right.

It was an executive decision, wasn't it?---I don't have a clear recollection of, of the exact time of it, there might be something on file.

And so you say you agreed with the suspension?---I thought it was appropriate.

30 Why?---Because it's serious allegations at the time and this was - - -

There were a number of allegations that had been made about Mr Child and he'd never been suspended?---Yeah. My views at the time was that if the Anti-Discrimination Board has allowed a complaint then it must be of a significant nature and that was my own personal view.

And what did you base that view on?---Because I know that a lot of people would go to the Anti-Discrimination Board and, and their cases would not get, get a hearing so if it is supported there must be enough substance in it.

40 That's what you (not transcribable)?---That was my initial reaction to it.

And have you had any training in discrimination law to arrive at that view? ---No, no, that was also the views of Mr Macklin which I supported initially. He's the expert in this area.

Is he?---Well, he's the - - -

Who told you that?---He's the human resources manager.

And he told you if the board had accepted the complaint that must mean that it was right?---No, not right but he said it must be substantial enough for it to look at serious.

And you considered that that was the basis to suspend Mr Child from work?  
---I thought it was an appropriate basis.

10 What I suggest to you was that it was quite clear to the executive that Mr Romano didn't want Mr Child back at work and the discrimination complaint was used as a ruse to keep him out of work, would you agree?---I don't have enough information to agree with it but I also say that I realised at the time also that there would have been some serious risks to the organisation to Mr Child if he had returned at this point in time.

But that's not the basis upon which he was dismissed?---It was not, but it was one of the other things at the back of mind when - - -

20 You didn't tell him that did you?---No, I didn't. But I was not dealing with the issue.

So you say that at one level you said the decision was about X, but X were in the back of your mind, the prevailing factor was something else altogether?---Well, that was the trigger, that was the trigger that there was anti-discrimination board complaint and it was serious enough for them to take it on board and push it through.

30 And there was a commitment to Mr Child that there'd be an investigation. Are you aware of that?---Sorry?

There was a commitment that there would be an investigation by Council into the allegation. Are you aware of that?---I'm aware there was an investigation. In terms of commitment - - -

You don't know?---I don't recall.

Who was driving the investigation in terms of the timing of it?---I think it was done through HR.

40 Well what role did you play?---I was one of the people who supplied a, a statement.

Wasn't it of concern to you that it was taking quite a long time to achieve any outcome?---Yes, I had that concern which I shared with Mr Macklin.

Because Mr Child was on your books wasn't he?---That's right.

As was Mr Giangrasso?---That's right.

And as was Mr Issa?---Correct.

So you had three people who were not performing any duties for Council but were being paid out of your part of the budget?---That's right.

And that was a concern of yours?---It was.

10 And where would we find that concern reflected in writing?---It was not in writing, but it was, I knew it was an issue that was handled by the Executive group together with support from the solicitors. And my concerns were I needed to know more about what's happening and I made that concern and verbally and made minutes of it on at least a couple of occasions. I notice the time, Commissioner. Sorry, I didn't - - -

ASSISTANT COMMISSIONER: Yes. We will adjourn at this stage until 2.00pm.

20 LUNCHEON ADJOURNMENT

[1.05pm]