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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 27 MAY, 2010

AT 10.05AM

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

ASSISTANT COMMISSIONER: Thank you. Please be seated.

MS RONALDS: Before we start if I could tender the workers compensation statement by Khaled Azer in relation to Steve Child dated 5 June, 2009.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 266.

10 **#EXHIBIT 266 - STATEMENT OF STEVE CHILD DATED 5 JUNE 2009 – WORKERS COMPENSATION**

MS RONALDS: And if I could tender the, and if I could tender a statement provided by Mr Child in relation to what is said to be the bullying allegations put against him.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 267.

20

**#EXHIBIT 267 - STATEMENT OF STEVE CHILD DATED 1 MAY 2010 – BULLYING AND HARASSMENT ALLEGATIONS**

MS RONALDS: Mr Dencker, you recall yesterday you gave some evidence about the cleaner?---Yes.

And you also gave some evidence that you'd previously given a statement to StateCover in relation to Mr Cummins' workers compensation?---Yes.

10 And you wanted to rely on that, didn't you, yesterday as your evidence in this Commission?---Yes.

That's what you were seeking to do and I told you that that was not how it worked?---Yes.

When you gave evidence yesterday I said to you, and Commissioner for reference this is at page 2018, line 30. "Mr Dencker, you sent him a clip called the cleaner, you nominated yourself as the cleaner, didn't you?" and you said, "No, I did not." Do you remember that exchange we had  
20 yesterday?---Yes.

That is, you were saying to, to the Commissioner that you hadn't said to Mr Cummins that you were the cleaner, that's as I understand your evidence of yesterday?---I recall - - -

So you want to reflect on that evidence?---Yes, please.

You see what I'm suggesting is you did say to Mr Cummins that you were the cleaner?---I, I think my, what I was trying to convey yesterday that I  
30 didn't say I am the cleaner, what I was trying to convey yesterday that I said  
- - -

Never mind what you wanted to convey, just so you understand the question  
- - -?---Yeah.

- - - tell me exactly what you said to Mr Cummins?---To the best of my recollection I said to him, the entire sentence, How's it going mate, what's going on and then he couldn't tell me. And I said oh, great, you know, I, I'm, I feel just like, I feel like just a cleaner and then I told him about the  
40 You Tube clip, you know.

And you used the term the cleaner?---Yes, yes, yes, I did.

Right. So that when you said to the workers, in the workers compensation statement, "I also recall having a conversation in my office with Robert around that time frame," that is about the time we're talking about, "I said, 'I am like the cleaner here'"?---Yes, words to that effect. Not exactly that but words to that effect.

So yesterday we just had a misunderstanding, a substantial one perhaps but you, you - - -?---Yes.

- - - -accept that that's what you said to Mr Cummins and when Mr Cummins recounts it you said to him about that?---Yes.

Mr Cummins is correct in his recollection, isn't he, that is, you used the term the cleaner?---Yes.

10

And after you used the term the cleaner you sent him the You Tube clip we saw yesterday?---Yeah, indeed, that's right.

Thank you?---That's right.

Now, you recall yesterday we were looking at an email that you sent on 12 February at 11.20am saying that it is my understanding that no protected disclosure had been made. Do you remember that?---Yes.

20

All right. Now, I'll just show you this email with an email trail above it and I'd just like you to have a look at it.

30

I'm sorry, Commissioner, I just remembered what I was meant to say before I started. I've been advised that Mr Macklin will not be available for the week of 7 May, June, July, August, September, October and, and I'm sorry for those who I haven't told, had a chance to tell this to overnight. At morning tea time I'll stand Mr Dencker down and I understand he's been advised this, to enable Mr Macklin to give his evidence and for others to cross-examine Mr Macklin. I won't be that long with him because he has given an, I'll make sure my friends are aware of this and there's extra copies there if they haven't, there's a transcript of his compulsory with the exhibits for that, which is Exhibit 252 and there are actual copies there that Mr Eadie can provide to anyone here who hasn't got that so that will be the bulk of his evidence. So he will then finish his evidence, we will then return to Mr Dencker. I'm sorry there's a bit of juggling but in order to ensure that we had completed Mr Macklin by the end of tomorrow. If that's clear?

Sorry, Mr Dencker, I'd forgotten the housekeeping?---That's okay.

40

And you see that's an email that you sent to Mr Macklin on 12 February? ---Yes.

And then Pina Viney sends you an email?---Right.

And then on 3 April, 2009, so some two months later - - -?---Yes.

- - - you send it Mr Hullick. Do you see that? 3 April, 2009 at 4.45pm you send it to Mr Hullick and say, "As requested," with you mobile phone number underneath. Do you see that?---Yeah, yeah.

Do you recall why you did that?---I, I think Pina wanted it, Pina Viney wanted it and Les, I think they'd asked for it.

Well, it's 3 April, now the Sydney Morning Herald allegations are 4 April, just to help you?---Yeah, yeah.

10

And Ms McClymont had rung Mr Romano and Mr Becerra at that point. Were you aware of that? The day before the articles were published there were some phone calls?---I can't recollect.

And were you aware that there'd been a protected disclosure to the Mayor the week earlier?---No.

You didn't know any of that at the time?---No.

20 So you weren't involved in all the conversations that were going on in the week prior to 4 April?---No.

You were out of all that?---Yes.

So doing the best you can why did you send this to Mr Hullick?---I think Pina Viney and Mr Hullick had asked for it.

Well why, did they tell you why they wanted it?---No.

30 They didn't tell you or you don't recall?---I can't recall. I think Pina might've said she wanted it just for housekeeping.

Sorry?---For housekeeping.

For housekeeping?---Yes.

Just coincidental do you think that it was the day before The Sydney Morning Herald articles?---I don't know.

40 Well you now know that what Mr Saad had flagged in his disclosure were matters that were traversed in The Sydney Morning Herald article. Not the only thing, but one of the things. That is work on the units?---I'm not sure what Mr Saad had traversed in his disclosure.

And your evidence yesterday was that you didn't know the name of Mr Saad until the opening of this inquiry. But that wasn't right was it?---No. I don't think I said that.

Well, if you had said it it wouldn't of been right would it. You would've been confused?---Yeah. My evidence yesterday was that Mr Macklin said that to me and I think I gave a timeframe.

Yes. But your earlier evidence yesterday was that you didn't know until I opened?---No, that was not what I meant to convey. If I said that, that was a mistake.

10 Right. All right. Well, so you withdraw that if, if that was how I interpreted your answers, that's not how you meant it?---That's correct.

You knew about Mr Saad in early April, 2009. You knew his name?---Yes. Yeah.

Thank you. That's what you said later, that's why I was confused?---Yeah, no, that's right.

Okay?---Yeah, sorry.

20 If I could tender that email.

ASSISTANT COMMISSIONER: Yes. That email from Mr Dencker to Mr Hullick, 3 April, '09, will be Exhibit 268.

**#EXHIBIT 268 - EMAIL FROM MR DENCKER TO MR HULLICK  
DATED 3 APRIL 2009: DEPOT STAFF ISSUES**

30 ASSISTANT COMMISSIONER: Mr Dencker, can I ask you when you say in here in the absence of any statement the Council's protected disclosure policy is not involved. Was it your understanding that unless the person gave a written statement that the allegations didn't matter or didn't need to be investigated?---It was my understanding that, yes, the person who wanted to make a statement either written or orally then there would be no statement.

40 Well in this case it appears a statement of allegations had already been made to somebody from Council, so when he first raised it, he obviously first raised it with somebody, that's what all the fuss was about. So you thought unless he was willing to formally repeat that to somebody it didn't need to be investigated?---That's not how, that's not information I had.

So you didn't know that a statement of allegations had already been made to somebody in Council?---I did not know that, that Mr Saad had approached somebody in Council and made a statement. That was - - -

So you didn't know what he'd done and you didn't know what his allegations were?---That's right.

I'm just at a loss as to how you thought you could assess whether a protected disclosure had been made when you didn't know what had been done or what had been said or to whom?---I relied on the senior manager, HR and the - - -

Mr Macklin?---That's right, Mr Macklin.

10

All right. So his advice was pivotal in your decision?---Absolutely. Absolutely.

Thank you. Yes, Ms Ronalds.

MS RONALDS: When Mr Cummins first became a director you acted as a bit of a mentor to him didn't you?---Yes.

20

You helped him, you gave him some advice?---Yes.

And you were workmates?---I would say so, yes.

You weren't social friends but you were workmates. Is that correct?---Well, we were workmates, the closest we came to social friends was - - -

You'll have to keep your voice up a bit, Mr Dencker?---Sorry. Yeah, we were workmates, we weren't social friends. That's correct.

30

You didn't see each other at weekends and - - -?---No.

- - - go out to the pub on Friday night?---That's correct.

But in terms of member of the executive you helped him adjust to his new role didn't you?---Yes.

And you gave him some advice about how to be a director at Burwood Council?---Yes.

40

And when he was stuck with a problem he'd come and talk to you sometimes wouldn't he?---Yeah, absolutely.

And you would share with him your experience?---Yes.

And the way you thought the best way to work at Burwood Council?---Yes.

And in fact you were known as a yes man at Burwood Council aren't you? ---No.

That is, that if Mr Romano wanted something done you were the person who'd do it without any hesitation and without any questioning?---I disagree.

So if that was your reputation that would be unfair you would say?---Yes, absolutely.

Right. But you leant Mr Cummins a book didn't you, a book on management?---Yeah, I did.

10

And you drew his attention to a chapter in the book about how to deal with a narcissistic manager?---That's right, yeah.

And you said to him, You should read that?---Yes, yeah.

Because it would help in dealing with Mr Romano?---Yeah, that's right.

20

And he returned the book to you and then a few months later you could see he was struggling in his relationship with Mr Romano couldn't you?---I can't recall that timeframe.

But you gave the book back to him again and drew his attention a second time to the chapter about how to deal with a narcissistic manager. Do you remember that?---I can't recall that.

But you certainly remember giving it to him once?---Yes, yes.

30

And you agree that that's the chapter?---There was the, there was two things I gave to him, I gave him the Hardy's Business Review article.

And what was that called?---I think it was talking about the narcissistic manager and, and, and how to deal with them and there was another book I lent him which was Seven Effective Habits of Management which had a section in it which talks about not, it doesn't use that term but it talks about a typical tough sort of CEO that sort of, which I'd sort of classify Pat as.

40

And in terms of some of the advice, some of the advice was to say yes and go along with what he wants. Do you remember that in one of the articles? ---I can't remember the article specifically.

Do you still have them?---I actually, no, I don't.

You don't?---No.

Have you looked for them recently?---I think I've actually culled them. They're not in my office but I remember the contents.



And do you remember that Mr Cummins left, returned it to you the day he went on leave or the day before he went on leave?---I can't recall that.

But you gave that to him because you thought he needed a bit of advice about how to deal with Mr Romano?---Yes.

And you thought he wasn't going so well in terms of his dealing with Mr Romano?---Yes.

10 And that was because he kept challenging Mr Romano wasn't it?---Partly yes.

He wouldn't accept necessarily every decision Mr Romano made?---I disagree.

Well, why do you think he was struggling in his relationship with Mr Romano?---He was, when you're dealing, he was, at the executive meetings there would often be debates and sometimes the debates would be a little bit heated and, and not in a bad sense but a little bit heated.

20

Between Mr Romano and Mr Cummins or generally?---Mr, well, the ones involved Mr Cummins, I mean, I've had heated debates too but with Mr Cummins, yes, when he had an issue and challenged Mr Romano.

And you thought he was going about it the wrong way?---Yes.

And so you were trying to help him work out a more appropriate mechanism to get Mr Romano on side?---Yes, yes.

30 And to deal with Mr Romano?---Yes.

Because Mr Romano wasn't always that easy to deal with was he?---No.

He was quite emotional about issues at times?---Yes. Yes.

And after 4 April, 2009 he was frequently emotional about issues wasn't he?---Absolutely.

40 And he continued to vehemently declare his, that he's not done anything wrong?---Yes.

A position you now understand to be false?---Yes.

And he continued to blame Mr Cummins a lot didn't he for things that happened after Mr Cummins sent the letter that's now known as the Harmers letter?---Disagree with a lot.

He made it pretty clear that he didn't want Cummins back didn't he?---No, I would disagree with that.

You read the Harmers letter?---I haven't.

Did you read it on or about the time it arrived?---No.

No?---No.

10 When do you say you read it?---I haven't read the Harmers letter.

You haven't read it, I'm sorry. You have to keep your voice up, I can't hear what you're saying?---Sorry, sorry. I haven't read it.

Don't worry about the mike?---I haven't read it.

You've still not read it?---No.

20 You've been Acting General Manager for how long?---(NO AUDIBLE REPLY)

Recently?---Can you clarify the question?

Well, you've recently been Acting General Manager haven't you?---Yes. Eight weeks, nearly eight weeks.

And in that time you've not had occasion to read the original Harmers letter from Mr Cummins' lawyers - - -?---That's correct.

30 So you still don't know what Mr Cummins said?---No.

Is that right?---That's right.

And you say you didn't read it at the time?---No.

Well, there was discussion about it in the executive wasn't there?---I can't recall that.

40 So do you say it didn't happen or you don't recall it?---I can't recall it. I'm not saying it didn't happen but I can't recall it.

But you knew Mr Cummins was sick didn't you?---Yes, yes, he went on sick leave, yes.

He went on sick leave?---Yes.

And you knew that he was claiming that he had a psychological injury?  
---(NO AUDIBLE REPLY)

Might've used the word stress leave or something like that?---I think it was stress leave.

Well, did you ring him to see how he was going?---No.

Why not?---I didn't feel that was my role.

Why not, he was your workmate?---I never ring anybody.

10

You never ring anybody?---From, from - - -

It can't be a sensible proposition can it, Mr Dencker?---No.

MR LEGGAT: I don't think he finished his answer.

THE WITNESS: Yeah, sorry, I was taking too long. I never ring, make a habit of ringing anybody at their home from work.

20

MS RONALDS: So your work colleague who you'd worked with for some time goes off sick and you don't pick up the phone to see how he's going? ---That's right.

But you were prepared to be party to arrangements to pursue him over several matters weren't you?---(NO AUDIBLE REPLY)

We'll go through the detail in a moment?---Yeah, yes, yes.

30

Did you worry about that that you knew he was sick but you were happy to be party to matters to pursue him over several issues?---No.

Didn't cross your mind?---Yes and no.

So it did cross your mind?---Yes and no.

40

Well, yes or no? You either thought about the fact he was sick and you were party to various steps to pursue him on issues or you didn't?---I think I was happy to support the action by the lawyers, the WorkCover lawyers but I was also cognisant of the fact that we needed to ensure that Mr Cummins were being, was also being looked after under workplace law.

And what did you do to make sure he was being looked after under workplace law?---I satisfied myself in the meeting that I attended that there was proper and full discussion by Council's workplace lawyers.

What did that do for him?---I don't know.

Well, you've been Acting General Manager for the last eight weeks?

---Yeah.

Have you contacted Mr Cummins in the last eight weeks?---No.

Why not?---That job has been left to Council's lawyers and we have also appointed a senior HR independent contractor to deal with matters which Council's workplace lawyers have been dealing with.

I understand that?---Following - - -

10

I'm talking about as one human being to another. Were you here when Mr Cummins gave his evidence?---Yes.

You understand that he described certain actions to you as contributing to his decline in psychological health?---Yes.

Did you not think it appropriate you ring him up and talk to him about it?  
---I would've liked to on a personal note but I didn't feel it was appropriate for me to do that.

20

As human being to human being?---As a human being, I would've loved to ring him and I'd like to do that and I'd like to do that today. But I don't feel that's my place to do that and I mean that genuinely.

Has anyone told you not to do it? Have you received a specific instruction from somebody, and if so who, that you're not contact him as a human being to discuss how he is and how his health is?---I, I've had discussions with Council's Workplace lawyers and they, and they have, we have a strategy whereby Council has appointed an independent HR to deal with these matters.

30

Was there much of a sense of collegiality amongst the Executive or did you all operate as fairly independent operators?---I think we had a, as an Executive it was cohesive and it was also a friendly environment in a professional work sense.

Well, you've heard Mr Azer's evidence about how he was on the outer from February last year and excluded from various meetings, and we'll go to the meetings, but he was excluded from various meetings?---Yes.

40

And you were aware that that was happening?---Yes.

You knew that at the time?---Yes.

And you knew he wasn't happy about it?---No. I wouldn't say I knew that he wasn't happy about it.

So do you say the first time you knew he wasn't happy about it is when you heard his evidence on Monday?---To the extent that he gave evidence, I wasn't aware that, that he had, unhappy in the terms he described.

Well it would be hardly surprising he was unhappy was it? Decisions were being made about his work area and he was excluded from them?---Yes.

10 Didn't you turn your mind during the course of 2009 that the person who had managerial responsibility from the depot was not at any of the meetings discussing the staff at the depot and what was to happen?---The HDR meeting, yes, I turned my mind to that.

And what did you think?---The meetings, I felt that the action organised by, through HDR and HWO was appropriate.

I'm asking you what you thought about Mr Azer being excluded?---I thought it was appropriate.

20 See you'd seen before hadn't you, when Mr Romano had taken a set against someone and excluded them and isolated them from what was going on. You'd seen other instances of that hadn't you?---Can you just rephrase the whole question? You had - - -

You'd seen that one of Mr Romano's tactics when he was upset or disappointed with someone was to exclude them from what was going on? ---No. I wouldn't, I wouldn't say that.

So you've never seen it?---No. Not to exclude them.

30 Well, that's what he did with Mr Cummins in relation to the Saad disclosure didn't he?---In that, in that instance on that occasion. But he, yes and no. Because he, he spoke to me about it and it would appear to me that they made a joint decision.

Well, that's what he told you, they made a joint decision. Is that what he told you?---He told me that he had, he and Mr Cummins had discussed the matter and that they both agreed that it would be best if they both step away from it 'cause - - -

40 You're aware that Mr Cummins version is that it was Mr Romano's decision solely that Mr Cummins be removed from the investigation?---I'm not aware of that.

ASSISTANT COMMISSIONER: And also Mr Romano's version in his statement?---Okay.

That he ordered Mr Cummins to have nothing more to do with it?---Yeah, yeah, no, yes.

Well, is that what he told you? He didn't want Mr Cummins having anything to do with the investigation?---He told me that, yes.

So he, yes, so it wasn't mutual?---The way I understood it, I thought they'd come to, they'd had a discussion and they'd come to a decision that it was best if I looked at it. That's how I understand it. Maybe I'm explaining it wrong.

10 Well, it can't be both. Either he ordered Mr Cummins not to have anything to do with it or they came to a mutual decision. What did he tell you?---He told me that he had met Mr Cummins. He discussed the matter and that they both agreed that it would be best if they removed themselves from the matter and that, and that Mr Dencker, myself, be put in, look at it. But he also sent an email to me.

Saying what?---Oh, I'd have to see the email. It - - -

20 Well, what, saying something different? Why are you mentioning the email? I'm just trying to find out what Mr Romano told you - - -?---Yeah.

- - - about why Mr Cummins - - -?---Yeah.

- - - couldn't carry on with this investigation?---He said that they, they had met and they both got emotive and they both agreed that it would be best if they both step aside.

All right.

30 MS RONALDS: You said you thought it was appropriate that Mr Azer was excluded from the meetings - - -?---Yes.

- - - that he was excluded from?---Yes.

Why is that? Why was it appropriate?---The meetings were set up by, my understanding was HD, rather, HWL Maddocks and Mr Romano, there was a, it was a joint meeting that was set up and the General Manager sent out the invitation.

40 And he didn't want Mr Azer there?---That's correct. It would appear that way.

Yes. Well, why, why did you think that was appropriate, that's all I'm asking you?---In my mind it was - - -

Why couldn't he be there?---It was appropriate because it was the General Manager's call, also the matters discussed were, appeared predominantly workplace related and, and had a very high technical level of workplace law

issues so it was probably more appropriate for the, HR was the person that needed to be there, the senior manager of HR.

ASSISTANT COMMISSIONER: But it was about his area, wasn't it? It was about, a lot of them were about Mr Azer's area, the depot?---Right.

Yes, well, why couldn't he be there? Why was it appropriate that he not be there? The only reason you've advanced is because the General Manager didn't want him there. Was that enough for you?---There was two reasons.  
10 One is I though the General Manager had a made a decision and that was his call.

Yes?---And the second thing I said was it was predominantly related to workplace issues and, and the predominant discussions was workplace matters which would involve predominantly Mr Macklin's area and, and that, that was what, in my mind, felt it was appropriate for Mr Macklin to be there, Mr Azer didn't have expertise in, in workplace matters so he wouldn't, in my mind, have added any value to it because the discussion at the meetings I was at, 99.9 per cent were purely on, on very complex in my  
20 mind, workplace related matters and Mr Azer would not have added, in my view, any value.

Yes, thank you, Ms Ronalds.

MS RONALDS: But he might have learnt something mightn't he?---I don't know.

Well, you were the chair of the depot reform process?---That's, oh, the chair, who was the chair, sorry?  
30

You were, weren't you?---Yeah, yes, that's correct, the acting chair.

That's why you were there. Is that right?---I can't recall seeing a specific reason why I was there.

Well, you were there because you were in with the in-crowd and Mr Azer was out, that's what you were there for, isn't it?---No.

Why do you think you were made chair of the depot reform group, CFT or  
40 whatever it's called?---I think because I had a, a track record of delivering outcomes, working at Burwood Council in the areas where workplace reform and efficiencies needed to be gained.

And you did what Mr Romano asked you to do with no questions asked, didn't you?---I, I disagree with that.

Can the witness be shown Exhibit 64.

Do you recall this email, November, 2008?---I don't recall it.

It had happened. Do you remember it happening? You were being appointed Acting GM for the Child/ Risteski grievance case?---I don't, I don't recall that.

Sorry?---I don't recall that.

You don't recall it?---No.

10

Not at all?---No.

Did you have nothing to do with it?---I don't recall - - -

Is this the first time you've seen this email? You're copied in on it?---I don't, I don't recollect ever seeing this email before.

Did you have anything to do with the Risteski case?---I, I don't recall. No.

20

When you were made Acting GM for a particular specific purpose, what did you understand your role to be?---When I was, it was um, a sub-delegation from the, from the general manager to myself to, and on a particular issue. So I would basically be acting GM for the purpose of whatever purpose being assigned to me.

Right. But you don't recall having any involvement in this matter?---I, I don't, I don't recall having any involvement in this matter.

30

You've got quite a good memory in relation to other matters. Is it possible that you didn't do anything about this matter?---I just, I just can't recollect this matter.

Well, can I just see first of all Exhibit 267. I just want to open it at a particular page, because I'm sorry, we should've numbered the pages before we tendered (not transcribable). See I've just opened the document at a confidential memorandum to the general manager from Mr Macklin dated 10 November, 2008. Do you see that?---Yes.

40

And this email is 18 November, 2008, about half way through the bundle, oh, sorry, towards the back of the bundle. And do you remember ever seeing this document?---No. Can I read it? Can I read it? I don't recall seeing this document at all.

And then there's some, see there's some recommendations from Mr Macklin down the end?---Yes.

On the last page there?---Yes.



You don't remember seeing any this? Because you don't seem to be in any of the subsequent emails, so I'm just trying to work out why, this is dated 10 November. Do you see that? But Mr Romano is appointing you on 18 November, 2008?---Yes.

To investigate a matter which, well to be the Acting GM in a matter?  
---Yeah.

10 It seems to be done and dusted by then?---Yeah. I - - -

You can't help us at all?---No.

No idea?---No. No idea.

Do you recall that you had a role in relation to the IT CFT?---Yes.

And what was your understanding of your role in relation to that?---I was the chair of the information services CFT, cross functional team.

20 And do you recall when you were made the chair?---It was shortly after Mr Cummins went on sick leave and I think Mr White had also left Council's employ. It was shortly after that time.

All right. Well we'll go through it, but would you agree with the proposition that from 30 March, well on 30 March, there was a meeting at Maddocks that you and others attended about the IT area and the management of the IT area. Do you remember that? There was Mr Phegan, Mr Gardner, Ms Wilson, who's from Maddocks,. Mr Baird and Mr Romano. Do you remember a meeting there?---I do remember a meeting in  
30 town that involved the IT area or aspects of it. I'm not sure if this is the one you're talking about.

Well, according to Mr Romano there was a meeting on 30 March, 2009, not only according to Mr Romano, there are other documents to support it?  
---Okay. Yes.

And there was a discussion about how to handle the IT area and a discussion about whether Mr Cummins should be approached about the matter. Do you remember that?---I can't recall Mr Cummins being involved. I  
40 remember - - -

A discussion about Mr Cummins, he wasn't there?---My recollection of a meeting was, I can't recall Mr Cummins.

Being discussed?---I can't, no.

Okay. All right. But, all right, well we'll go backwards then shall we. If the witness could be shown Exhibit 242. And when you're handed the volume if I could ask you, Mr Dencker, to turn to tab 22?---Tab 22?

Yes. See and the documents behind the tab?---Yes.

10 Now Mr Cummins' last day, last day of work as I understand it was the 16<sup>th</sup>. So he then leaves, goes home and indicates he's not well. So several days later, the 20<sup>th</sup>, your, you send Mr Romano an email. Do you need a moment to read it?---I read it yesterday.

Right. So that the IT CFT was set up by the 20<sup>th</sup>. Is that correct?---It would appear that way, yes.

That's how I'm reading the email?---Yeah, I think that's - - -

So within a few days of Mr Cummins' departure?---Yes.

20 And you're asking Mr Romano if you could have thirty minutes if his time to discuss it with him?---Yep.

So Mr Romano had set it up?---The meeting?

Yes. No, the CFT?---No, I think it was my initiative.

So you decided that it needed to be done. On what basis?---That was the way that we'd dealt with all, all major projects at Council, we'd set up a CFT.

30 But IT wasn't in your area, was it?---IT was not in my area, that's correct.

So why did you decide it needed a CFT?---I recollect that, that the General Manager asked to assist because - - -

Sorry who had, I can't hear you?---The General Manager.

Right?---Had asked me to assist.

40 Keep your voice up?---Sorry.

If you lift your head up, if you talk down we can't hear you?---Yeah, sorry, sorry. The, the General Manager had asked me to assist in, in looking after the IT area.

And you said yes?---Yes, I said, yes.

And then if you could go to Tab 23, you see that there's a email there, it doesn't have the attachment unfortunately?---Right.

And we don't have another copy of it but it's the draft table of contents for the report we are producing for you, that's you to Mr Romano, right?---Yes.

So who's we?---The CFT I presume.

And was there a particular person who was doing it, you weren't writing the report, were no?---No, it was, it was, the IT area was - - -

10 Sorry, go on?---The IT area was (not transcribable).

The report that eventually appears with Mr Phegan's name on it, was that the report that you were discussing there?---Yes. I'm pretty sure that's what it is, it was - - -

And you're seeking, so you were providing a list of contents and asking him if that's the direction he really wants to go in, essentially that's what you're seeking there, isn't it?---Yeah, just, just a, yes, I'll agree, yes.

20 You're seeking his imprimatur for what you're planning to do?---I think I was seeking his input but - - -

Because you wanted to make sure you were doing what he wanted done?---I disagree.

So you didn't care what he wanted done?---I, I disagree with (not transcribable).

30 Well, why are you asking him?---I think it's exact as in the email that I wanted his input.

Have we covered everything?---Have we covered everything.

(not transcribable) you want done, everything you want done?---Yep.

Yes. If we turn to the next tab. You'll see then on 9 March - - -?---Sorry, the next page?

40 Yes?---Sorry.

Tab 24?---Yeah, yeah, yeah.

You sent out a note that advises everybody - - -?---Ah hmm.

- - - what's happening. That is, there's going to be a CFT?---Yes.

And, so that's just an advice?---Yes.

And then an issue of invoices arises and payments for consultant's fees. Do you recall that that became an issue?---It was in this time frame.

Sorry?---In this time frame.

Yes. Do you recall that became an issue?---Oh, sorry, I thought you said when, yeah, it became an issue, yes.

Turn to the next tab which is tab 25?---Yes.

10

And you'll see there's a note there from Mr Walker to Mr Romano. Do you see that?---Yeah.

On 17 March?---Yeah.

Mr Romano then says to, sends it to Baird and Gardner on 24 March as a FYI?---Right.

20

Now, you don't seem to be in this loop but you were, you were aware this was happening?---I was aware that the CFO had raised issues with invoices.

And were you driving that part of the process?---No.

Mr Walker was doing that, was he?---Yes.

All right. Well, if I could ask you to turn to the next tab, behind tab 26, you'll see there's an email, 24 March, 2009. Do you see that?---Sorry, 24 March?

30

Yes?---Yeah.

And you see that's an email from Mr Romano, if you just take a moment to read it?---Yes.

The acting IT manager and the director of planning, that's you, isn't it? ---That's right, yes, yes.

You're the second person, not the first person. Who was the acting IT manager at that stage?---John Phegan.

40

That's John Pecan?---I'm pretty a hundred per cent certain that would be the case.

And you were the director of planning?---That's correct.

Are seeking information in relation to budget expenditure and project delivery in the IT area from Mr Cummins. So you'd formed a view had you

that it was necessary to ask Mr Cummins for some information?---I was aware of this and I, I supported that.

Right. And then given the situation we have with Mr Cummins what is your advice in this request, into this request, sorry?---(NO AUDIBLE REPLY)

And you see some matters are asked of Mr Baird and Mr Gardner. See that?---Right. Yep.

10 And at that stage did you have any concerns because you knew that Mr Cummins was on sick leave?---No.

You thought it was appropriate to ask him some questions when he was on sick leave?---Yes.

And then a report was produced by Mr Beegan. See that? And that's behind tab 27. And it's dated 30 March, 2009 and it's a draft. So before any - and that's behind tab 27. Do you have that?---Yes, yes.

20 And you've seen this report before haven't you?---Yes.

So before anything is asked of Mr Cummins there's a draft report produced?---Yes.

So his input wasn't needed to get the matter that far was it?---No.

30 And then - if the witness could be shown Exhibit 155. If I could ask you to turn to page 60 but just before you do that I'll just show you an email. It appears in other places but for sanity's sake (not transcribable). Now, if you just read the email that I've sent to you, just had handed to you. You see it's 26 March, the substantive part of it?---Yes.

Is that Mr Hullick is appointed to act as the Acting General Manager in relation to dealing with the allegations and possible separation of Mr Cummins from Burwood Council's employment. That's 26 March?  
---Right.

40 So it's some five weeks after he's departed on sick leave. Mr Romano's raising the possibility that there will be a separation from his employment. Were you aware of that at the time?---(NO AUDIBLE REPLY)

Well, you received this email?---If I'd seen the email I would've been aware of it.

Was there a discussion at the executive about the fact that Mr Romano had stepped aside and Mr Hullick had stepped in to deal with these matters, the Cummins matters?---There was a member of the executive, I do recall a

discussion about Mr Hullick being Acting GM for the purpose of the dealing with Mr Cummins.

So Mr Romano sent the email I showed you a moment ago on 24 March raising questions to be sent to Mr Cummins and then two days later he steps aside so when the letter's finally sent it's signed by Mr Hullick. Would that be your understanding consistent with what you knew to be the arrangements at the time?---Sorry, I didn't understand the question.

10 All right. Well, we'll just go through one at a time. I'm trying to move through it quickly - - -?---Sorry, sorry.

- - - but that's obviously not going to work. If I could tender that email.

ASSISTANT COMMISSIONER: Yes. The email from Mr Hullick to Mr Romano dated 26 March and the subsequent email is Exhibit 269.

20 **#EXHIBIT 269 - EMAIL DATED 26 MARCH 2009 FROM MR HULLICK TO MR ROMANO AND SUBSEQUENT EMAIL**

MS RONALDS: Now, you sent a letter dated 24 April - just put that one aside?---Yep.

And have you got the bundle 155?---Yes, 155, yes.

Can you see it's got some handwritten page numbers down the bottom?  
---Yes.

30 If I could ask you to turn to page 60?---60?

Yes. Can you see that three page letter signed by Mr Hullick?---Right.

You got that?---Yes.

And sent to Mr Cummins?---Yes.

40 Now, what input, if any, did you have into the contents of this letter?---I had no input.

You saw it before it went?---I cannot recall seeing this before it went.

You knew it went?---I'm aware that there was correspondence sent. I'm not if it's this specific letter but I knew that a letter had been sent to Mr Cummins about issues with Council's Information Services.

Because that was something that your cross-functional team was looking at wasn't it?---Yes. Not the letter but issues - - -

The issues raised by it?---Yes, yes.

And do you say you didn't see the letter before you went, you weren't the person who needed to approve it?---No.

You say that would've been Mr Hullick's responsibility?---Yes.

10

And if you go - are you aware that someone made a decision to have this hand-delivered to Mr Cummins' home?---No.

And you've heard his evidence that caused him great distress?---Yes.

Do you say you weren't party to that decision?---No.

20 If I could ask you to turn to page 62. You see he's given a deadline. See down the bottom the three last paragraphs? "To assist Council in its investigation your written response is required by 5.00pm Monday, 4 May, 2009." Now was that discussed with you before the letter was sent?---No.

"As the director responsible for information services to Council your written response to this is vital to the IS cross-functional team's investigation." Now, you were chairing that?---Yes.

So it was important for you was it that you had his answer?---It would've been, yes.

30 "And should you fail to respond (not transcribable) as whether Council can reasonably continue your employment." Were you aware that was being sent to Mr Cummins five weeks after he'd gone off on stress leave?---No.

Not seen it before?---(NO AUDIBLE REPLY)

Now, if you look at the issues that have been identified they fall into an area about the work really of Mr White. Would you agree?---Just the issues in where?

40 The issues set out from page 1. They're about management and control of Mr White. That's one of the issues isn't it?---My understanding was it was focussed on Mr White and his management, yes. So I agree.

Yes. That was the primary focus wasn't it?---I believe so, yes.

It wasn't suggested that it was Mr Cummins directly was it?---Not directly, no.

No. But if anything had happened he was supervising Mr White and therefore he's being asked questions about that in relation to that role not suggested that he'd done anything himself personally. Would you agree?  
---That's my understanding, yes.

Now, you've been - see, what I suggest to you is that this is a very unfair letter to send to a director when he's just gone on sick leave. Would you agree?---No.

10 So you've been Acting General Manager for the last eight weeks. You're aware that the evidence in this Commission demonstrates that Mr Hullick has been responsible for signing certain invoices which apart from Mr Romano, I think it could be agreed that no one apart from Mr Romano thinks we're justified. Are you aware of that? That is in relation to the XXXXX surveillance and the Councillor's surveillance?---Yes.

As General Manager in the last eight weeks have you sent a letter to Mr Hullick requiring him to answer questions about those invoices that he signed?---No.

20

And saying that if he doesn't answer within a certain time his employment might be not continued?---No.

Why not?---I haven't felt that as my role to do that.

And you're aware that the evidence is that some people worked during Council hours on Mr Romano and Mr Becerra's flats or those owned by their wives and Mr Azer was responsible for them as staff. Have you written to Mr Azer and asked him about his supervision of that staff and told  
30 him if he didn't answer within a very short time his employment might be discontinued?---No.

Why not?---I didn't feel that was my place to do that.

Well, you were Acting General Manager weren't you?---Yeah, I didn't feel that was my role to do that.

Well, you had full powers of a General Manager didn't you?---Yes.

40 So you think it was fair enough to write to Mr Cummins when he's on sick leave but you're not going to follow through anything that's been revealed in this Commission with the speed that Mr Cummins was pursued. Is that your evidence?---I have had discussions with Council's lawyers about issues that may arise and the advice from our lawyers is that we should wait the outcome of the inquiry and, and its findings in relation to any possible actions that may need, may not need to be taken.



And it's your evidence that you thought this was a fair letter to send to Mr Cummins. Is that right? I don't want to misrepresent you?---Yes.

And you still think that?---At the time I felt that was a fair letter to send to Mr Cummins.

And I'm asking you do you still think it was fair in the circumstances that you now understand?---Yes.

10 You still do?---Yes.

If I could ask you to turn to page 63. You see Mr Cummins sends a detailed response and I think a fair reading of that response is that really it was Mr Romano's intervention that caused certain things to happen and he had no control over them. That's a summary of what he says. Have you read this before?---No.

You've never seen it before?---No.

20 Well, according to the letter from Mr Hullick you were the one who wanted the information?---The - - -

You chaired the IT CFT?---That's correct.

And it was said that IT CFT were the ones who wanted the information? ---Yes, the CFT wanted information and specifically the, the information services specialist.

30 So is it your serious evidence that you never saw the letter or the reply? ---That's correct.

And what happened after that?---I don't know. I don't understand the question.

Well, there's a draft report. Go back to tab 27 in the folder?---Yep.

No final report has ever been produced to this Commission. What happened? Mr Cummins sends a reply, you don't read it?---That's right.

40 There's a draft report but not ever seen a final report. Did the issue just die?---In terms of the report?

Mmm?---No, the - - -

You say there's a final report that's just never been produced to the Commission. Is that right?---Can I just have a look at the, the report?

Yes?---Can I make a correction? When I looked at the front page before there was another report that was done in terms of, so I might've got this report, there's two reports that was produced to the IT CFT, I don't actually recall seeing this specific report and so I apologise for that.

What's your role as chair?---To chair the Information Services CFT.

10 Well, don't you have to be across the documents to enable you to chair it effectively?---My capacity, I'm not a, I don't have to be across all documents so the answer to that is no.

Well, who's got the management responsibility to be across the documents then? Not Mr Cummins, he's on leave, not you?---That would be the experts which would be the Senior, the Acting Senior Manager, IT, Information Services.

If you don't have to be across the detail you have to know the strategy, don't you, as the chair?---(NO AUDIBLE REPLY)

20 Isn't that your role?---I was across the strategy of the information services CFT in relation to its charter. The work related to Mr Cummins was not a matter that was discussed at the CFT. That was handled separately by Mr Hullick.

So when Mr Hullick says in his letter, your written response to these issues is vital to the IS cross-functional team's investigations, was that not true? ---That would be, my understanding was there were technical components which would feed back into, so it, it is true. So the answer is yes, it is true.

30 But you didn't read the letter and you didn't read the reply so where was it fed into and what was it fed into?---It was my understanding that Mr Hullick was communicating with the CFO in relation to financial information and that he was also communicating with the manager, information services, the other expert in relation to IT matters.

Mr Dencker - - -?---Yes.

40 Let's not go back to where we were yesterday afternoon, please. I don't think either you or I could stand it. Listen to the question?---Yes, sorry.

A letter's sent, I say it's an act of harassment but we'll leave that aside, a letter's sent, you don't read it but it asserts that the information is vital, not even just a little bit important but vital to the IS cross-functional team's investigations?---Right.

You're the chair of the IS CFT, IT CFT, aren't you?---That's correct.

So Mr Hullick's holding out that this information is vital to what, to the cross-functional team that you chair?---That's correct.

What I'm trying to find out is what happened to the information?---My explanation is that the information was fed back from Mr Hullick to the information services manager and the CFO.

And then what happened?---It's my understanding that both of them took appropriate action in their roles.

10

And where was a final report ever produced?---I don't have that information, I don't know.

So it wasn't vital to the cross-functional team at all, it was only vital to one or two people who may or may not have been members of the cross-functional team. Is that right?---I disagree with that.

Was there a similar letter sent to Mr White?---I don't believe so. I'm not, I'm not, I have no knowledge of that.

20

Only to Mr Cummins or should I ask Mr Hullick about that?---You, I don't know the answer to that question.

If you turn to tab 28 of the folder, turn to the second page of the email there. You see there's an email from Mr Macklin dated Tuesday, May 5 at 8.51am. Do you see that?---Yes, yes, thank you, yes.

And so Mr Cummins was required to reply by the 4<sup>th</sup>, 5.00pm on 4 May, no?---Right, right.

30

Remember I took that to you?---Yeah, yeah, yeah.

And Mr Macklin doesn't let the grass grow under his feet, does he? He says, Darren, as you would be aware we received no response from Robert re the letter 24/4/09 in relation to alleged mismanagement issues. Our letter said it's vital to the IS cross-functional teams and if you don't answer we'll; take it into account et cetera. Do you see that?---Yes.

Now, did Mr Macklin discuss this email with you before he sent it?---No.

40

So the continual reliance on it being vital information to the IS CFT as a basis for terminating or having discussions about the termination of Mr Cummins' employment you say you weren't party to any of that, do you?---I, I don't understand the question, could you - - -

Well, what's being relied on as one of the reasons to traverse a discussion about terminating Mr Cummins' some five weeks after he goes on sick

leave is that, as the letter said, it's vital to the IS cross-functional team's investigation?---Right.

And will assist Council in its final deliberations?---Yes.

Right. And we've yet to find any of Council's final deliberations but we do have you as the chair of the IS cross-functional team. Do you see that?  
---Yes, yes, yes.

10 So that's being relied on to raise an issue about terminating?---Right.

Were you part of any discussions about that?---No.

And when it says further down you would also appreciate that, just read the email - - -?---Yeah.

- - - that Les and I will be under pressure to terminate his employment in accordance with what we said in our letter. Was that pressure from you?  
---No.

20

Were you party to any discussions about pressure - - -?---No.

- - - to sack Mr Cummins as soon as possible, get him out of the joint?---No.

Well, that's what's being said there, isn't it?---No.

You didn't know anything about that. Is that what you're saying?---Yes.

Nothing at all?---That's correct.

30

You were never party to any discussion in early May that suggested that Mr Cummins' employment should be terminated if he didn't answer a letter, by then some seven weeks into when he went on leave?---(NO AUDIBLE REPLY)

It didn't happen in your presence, is that what you say?---I can't recall any conversations from meetings relating to the, to this matter.

None at all?---No.

40

You weren't aware that Mr Hullick, Mr Macklin and presumably Mr Romano discussing ways to sack Mr Cummins as at early May 2009?  
---That's correct.

Nothing at all?---That's right.

Not party to it?---Exactly.

Excuse me a moment. Do you recall a meeting on 18 March, 2009 of the Executive team meeting at Maddocks where Mr Phegan made a brief verbal presentation about the IS CFT?---I can't recall. I'm not saying it didn't happen but I, I can't recall.

So you have no independent recollection of making statements there or there being a discussion about Mr Cummins and what should happen and pursuing him about the matter?---I, I can't recollect.

10 Can't recall anything?---I'm not saying it didn't happen but I, I, the only thing I remember, no, I remember a meeting with Maddocks but I can't remember if it's the one you're talking about.

Well, there seems to have been two that you went to, one on 18 March and one on 30 March, both at Maddocks, both with people from Burwood?  
---Right.

Including Mr Phegan, Phegan, however you say it?---It's possible that it happened - - -  
20

That doesn't help?--- - - - - but I just can't recollect.

And you don't keep diary notes of these sorts of things?---No.

You don't have a handy book like Mr Azer?---No.

You don't recall what you would've said?---No.

30 About supporting writing to Mr Cummins and requiring him to answer questions?---No, absolutely not.

See what I suggest to you is this Mr Dencker, you knew that Mr Cummins was on the out with Mr Romano didn't you, from the time he went on leave, he, Mr Cummins went on leave?---No, I disagree.

And you fell in very promptly behind that didn't you, and abandoned Mr Cummins and protected Mr Romano and Mr Romano's position?---I completely disagree.

40 And you never lifted a finger to protect your work colleague did you? Did nothing to put in place anything to protect Mr Cummins did you?---I don't understand your question.

Well, you didn't do anything to look after your colleague did you?---How do you mean?

You played a role in sending correspondence that harassed him. Would you agree?---No, I completely disagree.

So if it was suggested by Mr Romano that you supported that concept, that is sending him correspondence to ask him questions about what he'd done, that would be wrong would it?---I, I had no issue with a correspondence going to his role as director asking technical questions about his area.

You were prepared to do anything to protect Mr Romano weren't you?  
---Absolutely not.

10 And one of those was to bring down Mr Cummins?---I completely disagree.

And to force him out?---I completely disagree.

And you played an active role in all the decisions around that didn't you?---I completely disagree.

And you were at the meetings at Maddocks when it was decided to send him letters and you thought that was a fair thing to do didn't you?---I completely, I think it was fair to send a letter to him asking him questions  
20 about his area that he was looking after.

Even though you knew he was on worker related stress leave?---Yes.

And you did that because you knew that Mr Romano wanted Cummins out. You knew that didn't you? Romano had made that clear?---No, I did not.

He wanted to get rid of Cummins and he was going to achieve it one way or another. That was the process wasn't it?---I disagree with that.

30 And you were happy to be party to it weren't you?---No. I completely disagree.

You were happy to let Mr Cummins be pursued in the hope that he'd fall over and his employment could be terminated?---I completely disagree.

That was the plot wasn't it?---I completely disagree.

And you were party to the plot weren't you?---I completely disagree with that.

40

In your role as chair, I'm about to move on to quite a substantial new area which will take a while, I wonder if, since I need to interpose Mr Macklin, whether it would be appropriate to take the morning tea adjournment and then insert Mr Macklin, because otherwise I'll be halfway, a little way through.

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: I'm just trying to juggle issues and it might be easier if I stop now.

ASSISTANT COMMISSIONER: All right. Well, yes we'll stand Mr Dencker down and we'll adjourn until 20 to.

**THE WITNESS STOOD DOWN** [11.23am]

10

SHORT ADJOURNMENT [11.23am]

ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, Mr Macklin.

MS RONALDS: Macklin, yes.

20 ASSISTANT COMMISSIONER: Yes. Now Mr Macklin's been here before?

MS RONALDS: Yes.

ASSISTANT COMMISSIONER: Yes. Mr Macklin, you're still under oath and the orders still apply for your evidence here today.

MS RONALDS: Mr Macklin, if you need a break at any time, just tell me?--I might need, I don't think I'll last the full, after the lunch, to 4 o'clock, so  
---

No, no. Well, just feel free, it doesn't matter who's, who's -- -?---Okay.

10    - - - on their feet, just, just seek and adjournment - - -?---Yep.

- - - and we'll immediately have one for you?---Okay.

Now, you gave evidence in a compulsory examination and you understand don't you that that is now before the Commission?---I believe the transcript is, yes.

Yes. And the non-publication order has been lifted - - -?---Right.

20    - - - and is part of the record of the proceedings. And so, just so you understand. A lot of the matters that you went through in that, with Mr McKenzie, I won't be going through because we've already - - -?---Okay.

- - - you evidence has already - - -?---And my, my (not transcribable) has provided me with a statement that's still in draft form and I, that I haven't had a chance to go through in detail. But there are some things I need to fix up on it.

30    All right. Well don't worry about the statement. I just wanted - - -?---Okay.

- - - to tell you about the transcript. Have you read the transcript?---No.

Since it's been tendered?---No, I haven't. No.

Oh, that's unfortunate. I wanted to see whether there was anything you wanted to correct or anything that you now thought on reflection, but perhaps you can do that overnight if possible?---Okay.

40    Sorry, I just assumed you would've looked through it?---No, I haven't. No, no.

And you know that there was a bundle of Exhibits that were attached to that, Exhibit 252 and, the documents that you were shown by Mr McKenzie during the course of that interview are also - - -?---Yes. Okay.

- - - in, just so that you understand, so I won't go through a lot of those matters that you've already given evidence about?---All right, then.



Just in case you think something's gone missing. Woe betide they go missing. But in relation to, so the short answer is that I will be putting just some matters to you - - -?---Yes.

- - - not in the sort of detail that the others have been having. All right. I'll must you'll be terribly sorry to hear that. In relation to the Saad disclosure? ---Yes.

10 We'll go back to that and Commissioner, this is at Exhibit 252, which is the transcript, the page reference is 74 and it's line 25. You said in relation to that, you were asked about that and you said, I was in the director of technical services and operations office that day, that's Azer?---Yes.

With John Dardano, it's spelt wrongly in the transcript, we'll skip over that, and were just having a discussion generally. John Dardano said to the best of my recollection, that one of our labourers has just said he's been doing work for a manager from here during work time?---That's right.

20 Do you remember saying that?---Yes, I do.

Now in relation to, that's the original part of the disclosure?---That's right.

That is that the work was done during work time?---Yes. That's what Mr Dardano said. I think he thought that it had been done during work time.

And that concerned you. You say that your alarm bells rang?---Yes.

30 Because Council staff off working on a private property, it didn't matter whose private property, was not something you as Human Resources manager could - - -?---Well, doing any non-Council work during Council time is, is not - - -

It wouldn't matter whose property it was on?---No.

And so you were concerned about that?---Yes.

40 Now Mr Azer, you and Mr Dardano then had a conversation and is it correct that you suggested to Mr Azer that he might have, that he had a conflict of interest?---No.

What do you understand the term conflict of interest means?---Well, I don't - - -

Just generally?---know the proper definition. But if you've got an interest in something that may affect or cloud your judgement. An example could be, well, the example I guess that's come up today in this hearing is the, is the conflict of interest that the general manager had with Mr Becerra. Well, that's my definition of conflict of interest.

Sorry, the - - -?---Well, that's what I'm saying an example would be the conflict of interest that Mr Romano had with Mr Becerra's employment.

Yes. That's a clear conflict?---Yes.

And you were present when Mr Azer gave his evidence weren't you?---Yes.

10 And you heard him recount a conversation that he says you said - - -?---Yes.

- - - as I understand his evidence, that he had a conflict of interest and he should step aside?---Yeah. No, I didn't say that.

And your evidence as I read and understand the transcript was that he didn't want to have anything to do with it?---No. He stepped from it. Well, he was very nervous about it. He was rattled. And - - -

20 And did you understand why he was nervous or rattled?---No, I didn't know. Well, no I didn't know and I didn't, I thought, okay, it's another manager of the organisation and it certainly doesn't look good. But I didn't know, I certainly didn't know that there was a relationship between Albert and Pat, Mr Romano - - -

That's all right?---Yeah.

You can use first names?---Okay.

30 It's only me, I can't. But, and you didn't tell him that he was jumping in too quickly to write it off and to say that there was no problem?---No, I didn't say anything like that.

And you didn't suggest that he should have nothing to do with it?---No.

You understand that's the input of his evidence?---I know. Yes, yes.

But you deny that?---Yes. I was disappointed when I heard him say that yesterday, because it's not my recollection.

40 And is it correct that Mr Azer directed you not to tell Mr Romano?---I heard him say that yesterday too and I don't recall him saying that to me. And I don't know why he would say that.

He's not in a position to give you a formal direction, in the hierarchy is he? ---Oh, well, he's more senior than me in the organisation. But - - -

In real terms?---No, not really. I can't recall him saying that. I can definitely recall not saying that he had a conflict of interest because I couldn't imagine how he could have.

Okay, so you're clear about that?---Oh, yes.

And you then decided that someone had to do something, you right?---Yes. I'm, in hindsight unfortunately.

You decided someone had to do something about it?---Yep.

10 Sorry, when you say in hindsight unfortunately - - -?---Well, in hindsight I probably should've kept my nose out of it.

You mightn't be sitting here then?---Yeah.

Well, at least not (not transcribable)?---That's right.

20 You went and spoke to Mr Saad?---I, I think, the best of my recollection a couple of days later, yes. But my next recollection was going to see Robert Cummins and trying to seek advice from him about it. When I mentioned Albert Becerra's name, he reacted in a funny way and I think he said that, to the best of my recollection, he made comments to the effect that, oh, this will be our jobs or, he just reacted in a real strange way. You know, I was just trying to get some advice from him on how to deal with it because I, I was aware of the policy, I knew roughly how to deal with issues like that, but I really went in there for some guidance. I didn't really get any from Robert on that occasion.

Would you agree that it gave rise to two issues? One is whether there was a PD or not?---Yes.

30 That's one issue. But one is that allegations were being made that may have given rise to a serious issue?---Yes.

And they were quite separate weren't they?---Mmm.

They seem to have been confounded at least in some people's minds?  
---Ah hmm.

40 And you understand that Mr Dencker's approach was no PD therefore nothing?---Yes, and that was probably partly by fault as well.

Why do you say that?---Well, in hindsight in learning more about this protected, particularly, particularly after I was interviewed by Don McKenzie and he made me realise that, that was a protected disclosure.

Right?---I didn't realise it was at the time, it wasn't my area of expertise. I had thought that Joe had to say to me, yes, I want to make a protected disclosure and on that basis I said to Ian when he asked me, I said no, Joe doesn't want to make a protected disclosure. Joe didn't even seem to think

that the work on the units was very important. His main thing he was trying to, was trying to blame Steve and Joe for things that they were doing on nightshift. That was all, really the main reason why, and I had to prompt him when I spoke to him well, tell me about this work with the units and he didn't seem to think it was all that important.

And it was, as we now understand it he in fact didn't do work in the units at, during work time as I understand the evidence?---No, no, he, he said that to me on the day, he said no, it wasn't done during work time.

10

But he did say that Mr Child had done some work on the units, didn't he?  
---No, no, to the best of my recollection I asked him who organised this and he said Steve.

Right?---But - - -

So that gave Mr Child a role in relation to the work on the units?---I guess so, yeah, yeah.

20

And firstly, you didn't take any notes during this conversation?---I didn't take comprehensive notes and that was a big mistake I made.

So you concede that was a mistake?---Yes, yeah, there was a number of things that, well, in particular two things that I could have done better there and I'm quite prepared to admit that.

30

And what was the second one?---Well, having more knowledge about the protected disclosure and what, what constitutes a protected disclosure. I certainly can assure you now that if I'm still working in local government after all this is over I'll know that.

And when, did you think about going to talk to Mr Child about it?---Not at the time, not at the time.

Did you turn your mind to that as a possibility, of speaking to him?---Not at that moment, no.

40

Later? I mean, apart from the last few months?---I thought that, no, I thought that I should, yes, I could have gone to speak to Steve about it. Really then what happened next was I can't recall the exact dates but I think there was a week ending between when I met Joe and then when Pat came down and called me out of a interview room that I was in a meeting with and said have you been talking to an employee and then, and I said to him, yes, an employee has said to me and he said, he, he knew already.

So you weren't the person who told Mr Romano?---No. In my, in my work  
- - -

There seems to be a - - -?---No, I don't know how he found out.

So he found out from someone else, not you?---Yes.

Some people have fingered you as the person who told him?---I read Robert Cummins' - - -

10 I don't mean fingered but some people have suggested that you - - -?---I read Robert Cummins' statement, yeah. No, that's, I told him because I, because we were in a discussion and he said have you been talking to a member of staff about, about units, I think he said the word units but it was in the hallway and then he said look, I've got an interest in those units and, and I, I - - -

When was this? How long after you'd spoken to Mr Saad?---I think it was the next day.

20 So did you think then you better talk to Mr Child and find out what was going on?---It was a bit of whirlwind of things that were happening then and then Pat immediately went off to Robert Cummins' office and, and I know I saw him go in and close the door and then come out and then I think not long after that there was an email saying that Ian was looking after the matter. I could see the look on Pat Romano's face and, and his body, his reactions and I, I think at that time I thought no, I'm not going to, I really don't want to go and talk to Steve about it.

Mr Romano was upset?---Oh, yeah.

30 Angry?---In his normal way, yeah, when, yeah, when, when things weren't, yes, I'd say angry.

He has emotional responses to things?---Oh, yes, most definitely.

And he makes those clear?---Mmm.

And he was having one of those these days, one of those this day?---Yes.

40 And was he cross about the, what the employee was alleged to have said or the fact that no one had told him or both?---I couldn't be sure there. I'd say probably that he hasn't, he wasn't told.

ASSISTANT COMMISSIONER: Excuse me, did he ask you what the employee was, had said or did he already seem to know?---He already knew.

He already knew?---Mmm.

Did you ever - once he told you he had some involvement in the units did you think that you should not be discussing the matter with him any further?---Yes.

And did you do any - - -?---No, I didn't discuss it with him anymore really. I also - and I never mentioned the employee's name to anyone. He already knew who it was but I didn't, I made sure that I, that, that what I did know about protective disclosures is that it's got to be (not transcribable) confidentially and I didn't mention Joe's name to anyone.

10

MS RONALDS: But Mr Romano knew who it was?---Yeah.

He told you? I mean he used the name in the conversation?---I think he might've.

I mean told you but since you already knew - - -?---He knew, he knew.

He knew?---Yeah.

20

There was no doubt about that was there?---Mmm.

From the very beginning?---Yes. I think, I think it was when, when I organised to meet with Joe I thought I'll meet him after he'd finished work at the depot and I said to him, Look, don't come through the office area, come to the front counter and there's an interview room that we can get to the front counter. So I didn't want anyone to see him but he, I think he chose to walk through the office area anyway and obviously someone's told Pat.

30

And in terms, if we can go back a step. After you interviewed Mr Saad would it be correct that one of the reasons you didn't write things down was that you didn't want anything recorded on a bit of paper about it?---No, that's not correct, no. I took a note, I took a notepad in with me. I can clearly remember doing that. And Joe kept on saying, I don't need to make a note, I don't need to make records. And I think I took a notepad in with me but I don't, I didn't make enough notes or notes that I can now rely on. And I realise that that was a big mistake.

40

And when you spoke to Mr Dencker about it did you tell him any facts of what the - - -?---I told him what I was told.

Well, what was that?---That there was work done, that an employee had come to say that work was being done on units that it wasn't during, wasn't during work time and there was some allegation, he was making some allegations about Joe and Steve picking up rubbish from restaurants while they were on night shift.

And that was as far as it went?---Yeah. To the best of my recollection I told Ian what I was told by the employee.

ASSISTANT COMMISSIONER: Mr Saad, sorry, Ms Ronalds. Mr Saad had told you that two other employees were involved, Mr Giangrasso and Mr Vadala according to your evidence at the (not transcribable)?---Yes, I do, I do recall him saying - - -

10 So did you tell Mr Dencker that that other employees were working at the units?---I can't recall if I did or not, I'm sorry. I can recall having the discussion with Ian in trying to tell him what I was told but I can't specifically remember saying that these two employees were involved as well.

MS RONALDS: And were you surprised by what Mr Dencker did after which was just shut down the whole thing and not pursue it at all?---No, not at the time because in my mind although now mistakenly I thought that the matter, in regard to a protected disclosure there was none so I guess I got onto doing all my other work then, I got involved in other things then so I 20 didn't really, I can't remember if I thought - - -

And you now know that an investigation would've revealed certain matters?---Yes, I do.

That were in the end revealed in this Commission?---That's right.

Mr Dencker sends an email saying there's no protected disclosure all over and that's about 11.30 or so. About an hour later Mr Romano sends you an email. Can the witness be shown Exhibit 249. About what he considered to 30 be an appropriate way of dealing with allegations against himself?---Mmm.

And you were pretty unhappy about that?---Yes.

Just wait till we get the document?---Thank you.

If your years of experience in these matters it was a fairly outrageous proposal wasn't it?---Yes, yeah.

40 That is, tell me if there's a complaint made about me and I'll be the person who decides whether it's investigated?---That's right.

And you immediately took a stand against that. Now it's correct isn't it that sometimes Mr Romano made proposals that you didn't take a stand against, you went along with it?---Yes, there was some times when I did, yeah.

It was easier?---Yes, probably particularly in the last 12 months to 18 months there was times when you thought well, is it worthwhile sticking your head up (not transcribable) get it kicked.

Because you saw what happened to Mr Cummins?---Yes. And I've seen how Pat's treated other directors in meetings, in meetings and I really wasn't, sometimes you thought twice about speaking out. I think when I did speak out I'd be accused of being a sympathiser or whatever and I think that, he may have been trying to be just, to be joking about it but after a while it wore thin with me.

10 He was suggesting your loyalties elsewhere other than to Burwood Council. Is that right?---Yeah, probably, yeah.

Reflecting of your employment history in the past?---Yeah.

But this time you stood up to him?---Yes.

And you fairly promptly sent back within the hour - are you right?---Mmm.

20 Within the hour you sent back an email, well setting out fairly firmly your views. You see that?---Yes.

One thirty eight?---That's right.

(not transcribable) everyone else in it. Now, I've not been able to find that any of the directors supported you. Is that your recollection?---Not in writing.

That is, they left sort of hanging by yourself?---I didn't feel like that.

30 Didn't feel like that?---No. I think Les was away I think at the time. No, I didn't feel like that, it was my battle, I wasn't looking for other people to, you know, I saw it as, I saw it firstly as something that was not within the policy, in the protected disclosures. And secondly, as severely limiting my opportunity to do my, perform my job properly.

Did you notice that Mr Cummins wasn't included on it, on the original one from Mr Romano?---Yes, I can see that, yeah.

40 Did you notice that at the time?---I, I was probably more fired up about being - to concern myself with who it was sent to.

It was pretty odd wasn't it though to exclude Mr Cummins (not transcribable) issue?---Yes, it is, it (not transcribable).

Cummins was out of favour by 12 February wasn't he?---Yeah, most definitely.

So it wouldn't have surprised you that Romano would leave him out of things?---That doesn't surprise me now looking at it but at the time I can't



say that I thought it was unusual. I don't think I probably even looked at that, I just looked at what Pat had written.

And then he sends you back a reply two hours later?---Yes.

And then you see it was sent on to Mr Baird. Were you aware of that at the time?---No, I didn't know.

10 That Mr Baird had been asked to review Council's policy in relation to the PDA?---Not at that time. Like I know that Mr Baird, Maddocks (not transcribable) reviewing the, reviewing the policy but not at the time, no, I didn't know.

20 And did you ever see an advice or anything from Mr Baird or you thought maybe Monica Kelly about this issue, that is, a review or looking at it?---I may have seen something in the future but I can't really recall. I think I might have seen some sort of, some document or advice. I know I was involved with (not transcribable) in reviewing our - we met once or twice to review the protected disclosures policy and I think Bob Howe was involved with that meeting as well.

And in relation to the outcome of the Saad disclosure there was a discussion you had with Romano which focussed on secondary employment. Is that right?---Yes.

And given what you know now, it was hardly an appropriate focus for what was the real story, wasn't it?---Mmm, yeah.

30 But the real story wasn't known because there was no, no investigation of it?---That's right.

But Mr Romano was keen to talk about the secondary employment issue? ---Mmm.

That was his focus. Is that correct?---Yes, to the best of my recollection. I had a meeting with Pat after that email - - -

40 Right?--- - - - because he, I think he made the offer, I'm sorry, I shouldn't have, I think he offered to come and have it, offered me to come and have a chat about it and I, I, so I went up and talked to him about it and to the best of my recollection he wasn't really going to change his attitude or his point of view.

That he thought he should be arbiter of all complaints about him?---I think so. I tried to put an argument to him. In the end I knew that I wasn't going to get anywhere so I, I guess I did what I've done on a number of occasions and not followed his instruction, not that it's really done me much good

because no one's, I think people probably consider me as someone who, you know, they can't properly trust in these sorts of situations, you know.

Because you're seen as being in, in the Romano camp?---Yeah.

One of his team?---Mmm.

10 Can the witness be shown Exhibit 155, I want to look at the Mr Cummins' issues and the pursuit of what I consider to be an unfair pursuit of Mr Cummins?---Yeah.

You understand that - - -?---Yes, I do.

- - - what you heard this morning and I just want to explore with you your role in that pursuit and your explanation for why it happened. You were familiar with the Harmers' letters on or about the time they arrived or - - -? ---Thank you. Well, I was, I did get to see them, yes, yes.

20 And so you knew the range of allegations being made in them?---Yes.

And you were concerned about them?---Yes.

And Mr Cummins, Cummins, sorry, Mr Romano denied them all?---Yes, to the best of my recollection he did, yes.

30 And you accepted his denial?---Yes, I had to really, I had no, Robert, Robert's letter went into a lot of detail and I think there was a thought in the back of my mind that it, that if there's this much detail there must be some, you know, there must be something to it unless he's misinterpreted things but I really, I took Pat on, on his word that he had done nothing wrong.

And you now understand that Mr Romano made a repeated series of false statements about (not transcribable)?---Yes.

But at that time you didn't have any reason to doubt his voracity?---No.

40 You've got a bundle of documents there which is a bundle relating to Mr Cummins. If I could ask you, you see there's some handwritten page numbers down the bottom?---Yes.

If you turn to page 21, do you see that's a letter from Maddocks to Harmers?---Yes.

What, what if anything did you have to do with that letter and the formulation of the contents of that letter?---If I could just have a quick look at it?

Yeah, sure, sorry?---I probably could say I remember seeing it but I had no real involvement in it.

Was it your, it wasn't on your instructions?---My instructions, my - - -

I'm just trying to explore because it seems to be that while there's an email that goes to Mr Hullick telling him he's in charge of the Cummins' matters and - - -?---Mmm.

10 - - - I'll take you to the actual email shortly, that's 26 March, it does seem that you play, continue to play a substantial role in relation to dealing with the issue of Mr Cummins' employment and what's being done about it. Would that be a correct interpretation?---I was, I was, I was, to the best of my recollection I was probably passing letters or instructions on to the lawyers.

So you were the post box, were you, you weren't the initiator?---Probably, no, no, I wasn't the initiator, no.

20 Because it's, when looking at the flow of documents it appears that you are the person who on some occasions has come up with bright ideas about what to do with Mr Cummins?---No, I don't think, look, I, I can't recall having a major involvement in that.

O.K. Well, this letter is 8 May - - -?---Mmm.

- - - so it's a bit further on - - -?---Yeah.

30 - - - but I'm just trying to work out, I'm sorry, this letter 20 March where Mr Romano was still in charge, before he gave Mr Hullick the acting general manager's ship but you're not the one who came up with these ideas and asked Maddocks to do this?---No, I don't recall.

If I could ask you then to turn to page 35. You're aware that there was an investigation into Mr Cummins' laptop?---I'm aware of it, yes.

Was that your idea?---No.

40 Whose idea was that?---I couldn't be for sure but I'd probably say it was probably Pat's.

But you weren't party to a discussion about that or you weren't at a meeting where it was decided that Council funds could properly be expended looking at Mr Cummins' laptop?---I think I can recall attending one meeting at Maddocks' offices, I think, where there was some forensic accountants, I think, if that's the correct term.

Control risks?---That could be right.

You see, if you look at page 36 there's a report there called Project Proserpine?---Proserpine, yeah.

Control risks. You see that, is that likely to be - - -?---Yes.

And that's all about Mr Cummins' computer?---Okay. I don't remember, I have never seen this, I don't think.

10 You've not seen that?---No, but I do recall being at a meeting at Maddocks' offices in town but I can recall wondering why I was there.

All right. Well, turn to page 43?---43.

I'm just going through these to see what, if anything, what role if any you had?---Yes.

20 This is now Ebsworths, this is 22 June. This is about requesting items purportedly in Mr Cummins' possession be returned including, the actual end of this letter is not here or indeed in fact, like many documents there are 10 copies of them somewhere, this one I've not been able to find anywhere else and I think it was about \$107 was the value of the goods. Did you have anything to do with getting Ebsworths to write to Mr Cummins about these matters?---No.

That wasn't, again so that would be Mr Hullick, would it, or Mr Romano? ---I'm not sure. I'm not sure.

30 Now, if you can just close up that bundle and put it to one side for a minute but hang onto it, you'll need it again in a minute. In relation to the, what's called the ISCFT - - -?---Mmm.

- - - and you were here this morning I think - - -?---Yes.

- - - when we were discussing that with Mr Dencker, I'm sorry, you do need the bundle now. If I could ask you to turn to page 60. You see, that's a letter from Mr Hullick. Did you help Mr Hullick write this letter?---No. I can remember seeing it before it went out.

40 You saw it before it went out. The last bit looks like it's had an HR touch to it, that's why - - -?---Yeah, no. No, I'd say it's more like a lawyer's touch to it, I think. No, I, I can remember seeing the letter.

I mean, the guts of it, if I could call it that or the, the technical things - - -? ---Yeah.

- - - about what to do and requiring, were you party to a decision at any time that the letter should be sent?---No.

Were you present at any meeting at Maddocks where the matter was traversed?---To the best of my recollection, no.

No, I mean you're not meant to be there so I was just wondering whether you were?---No.

And if you saw it before it went, the letter is dated on or about 24 April?  
---Yes.

10

You knew at that stage that Mr Cummins was off on stress leave?---On sick leave.

Yes. And you'd had some contact with him?---Yes.

And he'd been gone then for just over two months?---Yes.

He went on, his last day of work was 16 February?---That's right.

20

Did you turn your mind to the fact that it was, might be inappropriate to send a letter like this to someone who was on sick leave?---Yes.

And did you discuss that with anyone? Sorry, I've jumped ahead. Having turned your mind to it, what did you think, it was okay to do or not?---No. No. I thought it was, I thought it was a bit, we, I think everyone knew why he was on sick leave, he was, he wasn't well.

And they knew that was because he'd had a falling out with Romano?---  
Well, I think you could assume that at that time, yep.

30

Well, more than just a falling out wasn't it?---Yeah.

I mean it was a significant problem in his relationship with the general manager?---Mmm.

And that was common amongst, I think you were called a member of the extended executive, that was common knowledge wasn't it?---Well, it was with me. I don't know whether it was discussed all that much in the Executive.

40

But you knew?---But Pat, Pat regularly talked to me about it. You know, I can remember on a number of occasions he'd be frustrated with Robert and I'd say, well talk to him. But I think they were both as bad as each other, they wouldn't talk to each other.

And when you saw this letter did you say to Mr Hullick, I don't think you should send it?---No, I didn't.

Why not? You're the HR manager aren't you?---I know.

Aren't you responsible for the way employees are treated within the organisation?---Yes.

From an IR/HR sort of perspective?---Yes, I am. Yes, I am.

This was making a threat to his employment. Didn't you have to approve the letter?---No, I didn't. No.

10

So it doesn't, matters that affect the HR/IR rights of employees don't require your tick?---Sometimes they do, when I'm involved. But, no, I wasn't really given any opportunity to provide input into this letter. I can, I can remember thinking that it wasn't right and I, and I sort of got the feeling that Les wasn't happy about doing it either.

Were you ever present when Mr Romano said that he wanted the letter sent?---I can't vividly recall a meeting, but I can recall possibly Pat coming into Les' office and wanting a letter delivered by Friday or something. He wanted it done quickly.

20

And would you agree with me that the last paragraph was entirely inappropriate from an HR point of view?---Yes.

In circumstances where a person's on sick leave and known to be on sick leave?---That's right.

And known to be suffering from a psychological injury caused, at least in his assertion, from his relationship with the general manager?---That's right.

30

A series of technical questions is sent to him and demanded that he answer within a particular time?---Yeah.

It was unfair wasn't it?---Particularly now looking at it, yes.

Well, you knew it was unfair then didn't you?---I didn't think it was the right thing to do, yeah.

But you didn't speak up?---The environment at the time was, was one where you really didn't want to challenge Pat on this.

40

Why? You'd be the next one to go. Is that what was happening?---Mmm.

You were worried about saving your own job. Mr Cummins was clearly on the outer and he wasn't going to be coming back. Even so, there was no point in trying to protect him. Is that what you thought?---Not particularly so in my own job, just not, I guess not earning his wrath on this matter, I suppose. You know, you weren't going to change his mind.

Because you earned his wrath then you're on the outer weren't you?  
---Mmm.

You'd be joining Mr Cummins?---I guess. I don't know whether I actually thought that through all that much, but I, I, I - - -

You knew you couldn't dissent from what he wanted done?---No.

10 And even though you thought it was unfair on Robert, you didn't speak up to defend Robert?---No, I didn't. No.

Have you contacted Mr Cummins since this inquiry started?---I've tried, since the inquiry stated, no, I haven't, no. No. I made several attempts to contact him while he was, when he first went off on sick leave. Left a number of phone messages to see if he was okay. He wouldn't return any phone calls, so I think I commenced just emailing him to see if he was okay. And then we commenced a dialogue via email. But he didn't want to talk about, I got the feeling he didn't want to talk about - - -

20

And he was quite sick at the time. Do you understand that now?---I do now particularly seeing him in the witness box last, I thought, yeah, he, yeah.

Yes. He wasn't like the man you used to know was he?---No.  
Did you see any similar letter being sent to Mr White? Do you know who Mr White is?---Yes, I do.

Was any letter sent to him asking him questions about how he performed his job?---Not that I'm aware of. I don't know.

30

(not transcribable) an issue was about how Mr White had done his job wasn't it?---I think so. I don't know the detail.

Mr White had gone? He'd resigned?---He left around about that time, yes.

Did you ever see any similar letter sent to Mr White?---No.

Did you say to Mr Hullick, where's Mr White's letter? We're sending one to Cummins, why aren't we sending one to White?---I think that's a good point. I didn't think of it at the time.

40

See, I suggest to you that this was a reprisal against Mr Cummins for making his disclosures about Mr Romano and there was no interest in pursuing Mr White was there?---Well, I think it was probably a reprisal against the letter he wrote, yes.

Yes. And you thought that at the time didn't you?---Yes.

You had a clear understanding at the time that that's what it was didn't you?---Sorry?

You had a clear understanding at the time that that's what this - - -?---Well, it looked it to me. It looked like it to me.

And did you see, if I could ask you to turn to page 63, the reply from Mr Cummins lawyers?---I think I did get shown a reply.

10 It's a pretty detailed reply wasn't it?---Yeah, yes, of course it is. Yes.

Excuse me a moment. Someone's nicked my document. You did get involved in Mr Cummins answering or you thought not answering didn't you?---Sorry? What was, I did get involved in - - -

Yes?---I saw the letter and I think I might've had some discussion with Les about it. He might've asked me more questions. I can remember one of the things that he asked me about was, I think Robert was saying that he wasn't (not transcribable) supervisor. And I said that he was.

20

Well, before that did you, you inserted yourself in the process pretty promptly didn't you on 5 May? Mr Cummins' reply was due at 5 o'clock on 4 May?---That's right.

If the witness could be shown Exhibit 242. If I could ask you to turn, Mr Macklin, to tab 28?---Yeah.

No, you haven't got it yet. Just hold on a minute?---Okay.

30 If I could ask you to turn to page 2 of the Exhibit, sorry, tab 28. Do you have that?---Yep.

Turn to the second page. So the reply is due on 4 May by 5.00pm. That's what the letter to Mr Cummins said. And to go back a step, are you aware that it was delivered to Mr Harmers, to Mr Cummins home, the letter?---The letter from Council?

Mmm?---Yes.

40 Did you support that? Or did you know that at the time?---I knew.

Before it went?---Yes.

You knew he had lawyers? You'd seen the Harmers letters, you knew very well that he had legal representation?---Yes, yeah.

Did it cross your mind it was an inappropriate thing to do? This to send it to



him at his home when you knew he was sick?---Look, I can't recall whether, whether it crossed my mind at the time.

It was just another act of harassment wasn't it?---I just know that, that Pat really wanted that letter delivered.

Pat wanted it delivered?---Oh, yeah. It was, yeah, and it was - - -

10 Part of his direction to Mr Hullick was it?---I'm, I'm assuming so. Yes.

So the reply was due by 5.00pm on the 4<sup>th</sup>. And then very promptly on 5 May at 8.51, do you see that?---Yes.

You're writing to Darren Gardner, asking for some advice about he can, how he can be sacked?---Yep. Yes, sorry, what was the question? I've just read the - - -

20 You just read it. See, you're saying there's been no response, in fact there had but we'll just leave that aside for the moment?---Okay.

You're not wasting any time are you?---It doesn't look like it. I was probably instructed to, to, to - - -

Were you instructed by Mr Romano to deal with it promptly or was it upon your own initiative?---Look, I can't recall if I was, if he, he'd given me a strict instruction but I know that he was very interested in, in the responses and the outcomes.

30 Even though he was supposed to be having nothing to do with Mr Cummins' employment matters because Mr Hullick was the person in charge. That was a farce wasn't it?---Well, he asserted himself on a lot of things, yeah, yeah.

The suggestion that Mr Hullick was running the show was just simply nonsense wasn't it?---Well, yeah, you can say that, yes.

All the decisions were being made by Mr Romano weren't they?---I don't know that for sure but I would anticipate that that's probably right.

40 Well, Mr Hullick I'd suggest to you didn't dream up sending the letter and having it delivered to Mr Cummins' home did he?---I'm sorry, I didn't hear that bit.

It wasn't Mr Hullick's idea to write the letter dated 24 April and threaten Mr Cummins' employment was it?---I wouldn't think so.

It's not, Mr Hullick isn't that sort of chap is he?---No.

It's got the hallmarks of Mr Romano all over it hasn't it?---Yes, it has.

Said here that, in the second paragraph you say, Our letter said dah, dah, that these issues is vital to the IS cross-functional team's investigations. Now, Mr Dencker doesn't seem to have thought it was important at all because he didn't read the letter or the reply?---Mmm.

10 What were you relying on to give those instructions to Mr Gardner? I mean it's a straight quote from the letter but you're instructing the lawyers in this regard so it's your responsibility in terms of the quality of the instructions. Do you accept that?---Yes.

How did you satisfy yourself that it was in fact vital?---I, look, I can't, I can't recall writing this email. I can't, I can't recall the thought processes that went into it when I prepared this.

Well, most of your emails start g'day but this one actually starts Darren but you don't doubt you wrote it do you?---No, I don't.

20 In the same (not transcribable)?---I'm not saying I didn't write I just, I can't recall the details around it.

It's a pretty serious email isn't it?---(NO AUDIBLE REPLY)

"We discussed late Friday of last week what our possible next steps are and your view which I agree with that Robert is anticipating we terminate his employment so that he can try and gain the upper hand by claiming unfair dismissal and using that forum to his advantage."?---Mmm.

30 So you'd been discussing with Mr Gardner the employment partner at Maddocks?---Yes.

About what Mr Cummins might do and whether you should sack him or not?---Yes, yes.

And was that because Mr Romano had said he wanted him sacked?---It was pretty clear that that's what Pat wanted.

40 So you had no doubt in your mind at all that Mr Romano wanted Mr Cummins sacked and you were helping him achieve the outcome he wanted?---It was clear in my mind that Pat wanted, didn't want Robert there anymore, yes.

And you were helping him achieve what he wanted?---I just followed instructions, yes.

You were helping him?---Mmm.

“By retaining him as an employee in the short term I would imagine we may have some more control in the matter. You would also appreciate that Les and I will be under pressure to terminate his employment in accordance with what we said in our letter.” So you are there claiming joint ownership with Mr Hullick of what I presume to be the letter of 24 April?---Yeah, well, the pressure was - - -

The pressure you’re speaking of came from Mr Romano?---Yes, of course.

10 It didn’t come from anyone else?---No.

It wasn’t Mr Hullick giving any pressure to you?---No.

Mr Hullick wasn’t very happy about the whole thing was he?---I don’t think he was.

20 Was there any discussion between you and Mr Hullick about being concerned to protect Robert in some way?---There may have been, there may have been some discussion between Les and myself about being concerned with this whole matter but how to protect him I can’t recall whether we discussed how to protect him.

Or did you just realise that he was dead in the water to adopt the vernacular as far as Mr Romano was concerned and he wouldn’t be coming back to Burwood so that you might as well look after yourselves since Mr Cummins wasn’t able to be looked after?---I wouldn’t, I don’t go along with that.

30 Well, that was the effect wasn’t it?---Look, I don’t, I don’t go along with that. It was, no, - - -

Well, you didn’t stand up for Mr Romano and tell him that it was unfair what he was doing to Mr Cummins did you?---No.

Didn’t take any stand to try and protect your work colleague did you?---No, not during that process.

You’re asking instructions from Mr Gardner about how you can terminate Mr Cummins?---That’s right.

40 Because you’re under pressure from Mr Romano to do so?---Yes.

And you were under so much pressure that you didn’t even wait till 9 o’clock, that is, the beginning of business day, the day after he was due to write, to put in his written response before you just fired off your email to Mr Gardner to get him sacked?---That’s right.

I’d suggest to you that was a further act of reprisal on your part because of the complaint that he’d raised, because of the disclosures he’d made about

Mr Romano wasn't it?---That wasn't, I don't think it was, I wasn't personally trying to make reprisal action against him.

You were doing what you were told?---Yes.

Well, you must take responsibility for your own actions don't you, Mr Macklin?---Yes, I'm prepared to do that.

You're the author of the email?---Yes, I am.

10

I mean, you've disclosed you're under pressure but you're still the author of the email?---Yes, I am.

You weren't prepared to say to Mr Romano I'm not going to follow it up, I'm don't think it's fair to sack Robert in all the circumstances, if you want to get that advice from Mr Gardner you get it?---Yeah. No, I didn't say that and I should've I suppose in hindsight.

20

If you want Mr Gardner to tell you how to sack Mr Cummins then you can ask him I'm not going to do it. None of that happened did it?---No.

So Mr Gardner then tells you, apart from a little jovial exchanged, you then advise Mr Gardner at the top, 5 May by 10 o'clock you send him the response because you've received it by then?---That's right.

And so that your precipitous request about termination was unnecessary wasn't it because Mr Cummins had in fact met the timetable it's just that it hadn't filtered through to you?---It looks it though I can't recall that, whether that was the case, yeah.

30

Well, you don't doubt that the attachment, see it refers to an attachment? See at the top, the top email 5 May at 10.04am?---Yes.

See that, it's got an attachment?---Yes.

And what I'd suggest to you was you attached a copy of this Harmers letter which is in the other bundle at page 63?---Yes, I must've, yeah, yeah.

40

And then what's your knowledge of what happened to this whole issue? There was a draft report produced by Mr Phegan and we've not (not transcribable) seen any further issue about it, any further material on it?---I don't recall seeing anything further about it.

No. So Mr Cummins answers?---Yes.

In a very sour way?---Yes.

Though I've seen somewhere that it is a suggestion that the answer was inadequate but leaving that aside for a moment. He thoroughly sets out his view of the world?---Yes.

And when one reads it it is redolent of what one understands to be Mr Romano's management style, that is, intervening directly with more junior staff and ignoring the hierarchal structure of the Council?---That's right.

10 And when one reads Mr Cummins' response (not transcribable) him it seems to reflect the pattern of conduct of Mr Romano?---Yes.

And there's nothing startling about it except that he does exactly that?  
---Mmm.

And is it your evidence that as far as you know nothing further happened about it?---Yes.

20 It was created as a way of trying to catch out Mr Cummins wasn't it?  
---Well, it looked, yes, I would think so, yes.

And that didn't work because he replied?---No, that's right.

And that was the end of it?---As far as I'm aware, yes.

There were other issues he was pursued on like the \$107 of discs and memory sticks that I've taken you to but in relation to this matter if we've not been able to uncover any further documents about it - - -?---No.

30 - - - would that be consistent with your recollection that nothing happened afterwards?---Yes.

Thank you. We're turning to another issue now which is about Mr Child and Mr Giangrasso?---Okay.

You were concerned by 12 June that they might want to return to work?  
---That, that would be right, yes.

40 And why did you hold that concern, let's take them one at a time. Mr Child, you understood, didn't you, from Mr Romano and he'd made it abundantly clear to you that he didn't want Mr Child back in the workplace?---That's right.

And you were concerned if Mr Child returned he might badmouth Mr Romano and cause problems?---I wasn't concerned about that.

You weren't concerned about that. You understood from 4 April, as I recall your evidence, that, which is the day the Sydney Morning Herald articles - - -?---Yes.

- - - were published that Mr Child was the source or likely source?---You, you could assume that it was, yes.

Yes. Because it was clear - - -?---Mmm.

- - - the information contained in it came from him, if not solely at least substantially?---Yeah.

10 And Mr Romano made it clear to you that he didn't want Child back?---Yes.

And do you recall was that immediately after, like the 6<sup>th</sup>? I think there was an Executive meeting on the 6<sup>th</sup> of April. Were you in attendance at that meeting?---I've heard that discussed in this hearing and I can't recall that meeting but - - -

Were you there when he was crying, of the evidence given by - - -?---Yes.

- - - Mr Azer yesterday?---Yes.

20

Mr Dencker, sorry?---Yes, I can recall that being, yeah, upset and crying, yeah.

So you, it sounds like you were at that meeting or that - - -?---It sounds like it was at the same, around about that time.

And indeed on the 6<sup>th</sup> there was an open discussion between you and members of the Executive about Mr Child and his role in the Sydney Morning Herald, wasn't there?---I don't think there was a open discussion.

30

I, I can only vaguely recall there was a meeting. I can recall Pat being very, very indignant, refuting the claims and then, then becoming visibly upset. No, there wasn't a lot of discussion about Steve, not that I could recall.

But you'd know when you read the paper, didn't you, you read the articles on the 4<sup>th</sup>?---Yeah, yes, I saw them on the Saturday, yeah.

You, and you spoke to others on that day, I mean other - - -?---I think the media manager might have rung me but I don't think I was talking to anyone else on that Saturday.

40

But even when you read it you knew that Mr Child was involved?---Well, you could, you reached that conclusion, yeah, you made an assumption, yes.

Yeah. Because there wasn't really anyone else, was there?---No.

Who slotted into all the details that were provided?---Mmm, yeah.

And you knew that Mr Romano and Mr Child had a friendly relationship?

---Oh, yes, yes.

That was an open secret, wasn't it?---Oh, yes, it was very, very open.

Yeah. So you didn't have any doubt?---No.

And Mr Romano made it clear to you that he expected you to manage Mr Child so that he didn't return to the workplace. Is that correct?---Look, I got that feeling pretty well straightaway that Pat didn't want him back.

10

Straightaway after the 4<sup>th</sup> or earlier than that?---I think it was earlier than that.

That's what I'm trying to explore with you?---I think so.

Yes?---It was probably around about the time of the workplace surveillance fiasco, whatever, it was, I think it was around about that time. No, I'm sorry, no, I think it was the time when I could see the relationship between Pat and Steve had broken down when Steve out an email letter about the disciplinary action.

20

All right. Well, we'll go to that in a moment but so from early, so from February 2009 you knew that their previously close relationship was disintegrated?---Yes.

Were you aware about the Liberal Party talking to the Liberal Party councillors in September 2008? Did that fracas cross your desk?---I was on leave for about seven weeks in, in '08 and I think Pat mentioned something or complained to me about it when I got back but it was - - -

30

When did you return, sorry?---I was away from, in August and most of September and I think I can recall Pat mentioning it to me or something along the lines a long time after it had happened.

Right?---I was away during the Council elections anyway so for that period.

But he was still talking about it when you came back?---I can remember him discussing it with me or complaining to me about it.

40

Right. And so that was, so you had those views about Mr Child from February 2009 - - -?---Mmm, mmm.

- - - if not earlier?---Mmm.

And what about Mr Giangrasso? Did you become aware that Mr Romano didn't want him back either?---It was probably around about the same time I think.

Did you link Child and Giangrasso, so when you read the article in the Sydney Morning Herald did you think Giangrasso might have a hand in it as well?---I can't recall whether, whether I thought he was involved or not. Look, I knew Steve and Joe were, working closely together.

Right?---I can't recall.

And Ammer Issa wasn't part of all this, was he?---No.

10 As far as you knew?---No.

No?---No, not at all.

At that stage?---No, yes, that's right.

If the witness could be shown Exhibit, the tabs to Exhibit 252, if you could just shut that folder up, Mr Macklin. I've just put a tag on the email I want to take you to, Mr Macklin because the pages aren't numbered and for my friends it's C13 and it's the fourth last page in the bundle. Do you see that?  
20 ---Yes.

It's an email from you to Azer, Hullick, Dencker, Romano and Erin Wilson?  
---That's right.

Copied to Ellul subject, Child and Giangrasso. Now, first of all, Mr Romano was supposed to have removed himself from these issues, the management of these issues?---Yes, he's supposed to have.

30 Well, why were you sending him an email?---He was still involved in it, he, he, I strongly felt that I would have had to have keep briefing him.

So any suggestion he'd removed himself was just not right in relation to Mr Child?---He was at the meetings at - - -

Sorry?---He was at the meetings at Henry Davis York and Ebsworths where these matters were discussed and provided input.

40 What I'm suggesting to you any suggestion that he in fact had removed himself was just not true, was it?---Look, I think he had difficulty removing himself.

And it didn't happen, did it?---No.

So you say I was just discussing the possibility with Khaled, that's Mr Azer - - -?---Yeah.

- - - this afternoon that Child and Giangrasso may at any time present themselves fit for work and what Council should do if this occurred?---Yes.



Although this is a remote possibility at the moment because they would (not transcribable) their workers comp rights it's a good idea to consider what Council should do. Now, was this on your initiative or have you been asked by Romano to go and think about it and explore what to do?---To the best of my recollection it was discussions that possibly had with Khaled and a number of other of the Executive about Steve and Joe coming back.

10 On the basis that you knew Romano didn't want them back?---Mmm.

And you had to try and keep them out of the workforce?---Well, I didn't feel like I had to keep them out of the workforce. I thought it was my role to explain to them the problems in trying to do that.

And there were problems, weren't there?---Of course there is.

You'd agree with me, wouldn't you, that the suspension of Mr Child on the basis of the discrimination complaint was a farce, wasn't it?---No.

20 There was no genuine reason to suspend him?---No, I don't agree there.

Mr Saad was no longer an employee?---No, but there was a number of employees who were to be interviewed as part of our obligations under the agreement reached in the ADB and it was my view, after discussing it with Maddocks, that Steve shouldn't be in the workplace when those employees were being interviewed in regard to those.

30 The settlement with Mr Saad was September?---Yeah, I think there was, it was September.

And there's some, there's a report that arrives in December. It wasn't a priority was it?---I'm not too sure of a report in December. Which one are you referring to?

Have you seen the Salli Browning report to Maddocks, by the effect there's no substance to the allegation apart from one person?---I've seen, I've seen what Salli Browning has provided to Erin, yes.

40 And that's in December?---Well, I don't know why she'd be sending it in December, because she was still interviewing employees in January, to the best of my knowledge.

Mmm. It seems a pretty complete report when you read it, pretty short, but - - -?---I can't say I recall seeing a report. I can recall seeing emails from Erin and, and I do know that, that the witnesses that Joe relied on for it to be unreliable. But I can't recall seeing a complete report.

All right. We'll return to the detail about it in a moment?---But obviously it's been sent to me, if say that I've seen it. But I don't recall seeing it.

I don't know whether you've seen it or not. Now in relation to Mr Giangrasso, your view as of 12 June is reflected there. Was that based on what Maddocks had told you, what Darren had told you or Erin had told you?---Yes.

10 That is allegations have been put, but he's unwell and so he hasn't answered them?---Yes. Yes. This is, this email is a reflection of the brief that I received from Erin. I was, sorry, the advice I received from Erin Wilson and I was briefing the Executive.

Right. But I mean it was based on your instructions, what can we do to keep them out?---I don't think that was my instruction.

20 Well, what do you say you asked her about? You say, I consulted our legal representatives and they agree with what I'm about to put forward as something we need to consider?---Ah hmm.

Well, what did you, what did the instructions you gave to Maddocks, to enable them to give you some advice?---To the best of my recollection it was the, the, it probably was words to that effect but, that the Executive didn't want, didn't want Steve Child back in the workplace.

And how can we keep him out?---Sorry?

30 And how can we keep it out? That's what you were trying to find out wasn't it?---Yes. Yeah, yes, you're right actually, I'm sorry. Yeah.

And Giangrasso as well?---Yes. I thought Joe's position was different. Clearly he had some employment issues that he had to respond to. Whether they were, they were allegations, he needed to respond to them.

But it was quite a different situation wasn't it?---Between Joe and Steve, yes.

40 And you understand the lawyers only give you advice when you ask them the question. They don't - - -?---Yeah.

- - - they don't suddenly ring you up and say, we think you should keep Steve and Joe out of the workforce do they?---No, no.

They only answer the question you asked them?---That's right.

And that was the question you asked them wasn't it?---I can't, look, looking at what, what was provided to me, yes, you would have to assume that. I can't recall exactly what my, what my instructions were to Erin.

But that was, this was the beginning of, then there are some other emails, but Mr Romano replies to you that he's noted it. Do you see the top email there?---Yes.

So he remains involved at that stage?---Yes.

10 Now in relation to Mr Child and his employment status. First of all Mr Child had been to see you hadn't he, some time earlier about concerns he had in the workplace?---I, you need to be more specific, I'm sorry. I'm not too sure.

In November, 2008, there were concerns weren't they, weren't there about the, I can never say this persons name, the Risteski complaint?---Oh, yes. Yes. Steve consulted me on a number of occasions about that.

20 And you were here this morning when we went through some emails which show that Mr Romano directed that Mr Dencker be involved by 18 November. But it seems to me when I look at the documents that your report on the 10<sup>th</sup> say it's all done by the 18<sup>th</sup>?---Yeah, yeah, I'm not too sure how that sequence occurred. I don't know.

Were you aware of that email before?---I can't say I am. I can vaguely remember possibly giving Ian a brief, a brief run down on what occurred. But I can't be for sure. But no, I, you're right - - -

A pointless sort of exercise at that point?---Yeah, I'm not too sure. I can't explain that. I don't know.

30 You don't know either. It'll remain one of life's mysteries. Can the witness be shown Exhibit 59. It's correct isn't it that Mr Child was concerned about the fact that he's thought Mr Risteski was making a false claim?---Yeah. Yes, yeah.

And he was quite, quite under the collar about it wasn't he?---Yes, he was.

40 And you sent him an email, do you see here? In regards, in the middle of it, it's about the middle of the page, you say, in regards to your comments, you'd be going to the Mayor on this issue regarding the worker's compensation, I again remind you you'll be subjected to disciplinary action because as you're aware there are strict obligations in relation to staff interactions with Councillors and these obligations are clearly set out in the Council's code of conduct?---That's right.

Did you take into account the protected disclosure policy when you sent that to him?---No.

Why not?---Nothing to do with it.

Why not?---It had nothing, it had nothing to do with it.

Well, you didn't know what he wanted to tell the Mayor?---No. I don't agree with that. I, I've, I've thought about this and I saw your opening statement in this whole hearing and I don't think that was right. Steve was complaining about how I was handling the worker's compensation claim.

10 Mmm?---To the best of my knowledge he was unhappy with how it was being handled by me and if he had a grievance about how I was being, how I was handling it, he should go through the normal process, not go to the Mayor.

But how do you know he didn't want to make a protected disclosure about the way you were handling it?---Well, I didn't think that. I didn't think that. I - - -

20 Do you remember at the time you wrote this that there was a specific provision in the protected disclosure act for persons to go to the Mayor in certain circumstances - - -?---Yes.

- - - including if they had a complaint about the general manager?---Yes, I was aware of that.

30 And you're threatening him with disciplinary action if he goes to the Mayor?---Yes, because it was a, it was not following the, the grievance procedure. Okay, well, I didn't think that he was going to make a protected disclosure about how I was handling the matter. It was, he was just unhappy with how the matter was being handled.

\*1258cp  
He might've had good reason to from what I understand about the matter?--- I don't believe so.

You don't think so? You think Mr Risteski had a genuine workers comp claim?---No.

That's what he was upset about wasn't he?---The claim was denied.

40 Mmm?---What Steve was upset about was Robert was paid two weeks pay by the insurer under provisional liability.

Mmm?---But Steve wanted, Steve wanted Robert to go without two weeks pay and I thought that was unfair. Everyone has a right under the Workers Compensation Act to be paid - - -

Even if they're making a false claim?---Well, yes, to the best of my understanding of the workers compensation if the claim's frivolous and vexatious, I'm not too sure. It wasn't my decision in regard to whether to

approve or deny the claim but the insurer, the insurer sometimes takes up to three or four weeks to make a decision but you can't just let the employee not get paid.

So you say that your advice to him, that is, threatening him with disciplinary action is he approached the Mayor was an appropriate response at the time?  
---At the time I thought that he was complaining about how I was handling the matter and that I had not done my job properly. And the correct process there is that if he's not happy with how I'm dealing with the matter that he goes to my supervisor not to the Mayor. It was clear in the organisation that you didn't approach the councillors unless you had a director with you and you can only say g'day to them and, you know, you couldn't discuss work related issues with them.

Except if you wanted to make a protected disclosure?---Of course. The thought never crossed my mind that Steve wanted to make a protected disclosure about how I was dealing with the matter.

Or about anything else?---No, it didn't cross my mind at all. I, I, I just thought it was about how I was handling the matter.

And you're now understanding a number of issues that could've properly formed the content of a protected disclosure?---Now, yes, I do, yeah, yeah.

And they were facts that existed at that time, they weren't facts that came into existence later were they?---If you mean the work on the unit.

That is, the work on the unit?---Yeah, of course.

30 Driveway, that had all been done by then?---That's right. From what I can, what I've heard, yes.

So you still think that was an appropriate email to send to Mr Child?  
---Look, in, in hindsight now I probably should've been a bit more clearer in saying that if you have an issue with my work performance you should see my supervisor and I would advise you not to go - and I can remember saying to him verbally, I advise you not to go to the Mayor about this until you go through the correct procedure.

40 And you knew who your supervisor was, that is, Mr Romano. Is that right?  
---2008, 2009?

2008?---8, yes, yeah, it was Pat, yeah.

And you knew they had been friends but you weren't aware that the relationship was disintegrating at that point?---No, I didn't know that, no.

You thought they were still mates?---I thought they were.

In effect you're saying go and tell your mate about it?---No - - -

Don't trouble the Mayor?---Sorry?

Go and talk to Romano about it he's my supervisor. That was the advice you gave him was it?---Yeah, if he's not happy with what I've done he needs to talk to my supervisor.

10 Okay. I notice the time, Commissioner, I'm about to move on.

ASSISTANT COMMISSIONER: Yes. We will adjourn until 2 o'clock.

LUNCHEON ADJOURNMENT

[1.01pm]