

MAGNUSPUB02104DOC
27/05/2010

MAGNUS
pp 02104-02147

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION MAGNUS

Reference: Operation E09/0560

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 27 MAY, 2010

AT 2.05PM

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

ASSISTANT COMMISSIONER: Thank you. Please be seated.

<PETER MACKLIN, on former oath

[2.04pm]

MS RONALDS: Now, Mr Macklin, in terms of the depot reform, you right?---Yes.

10 In terms of the depot reform process what if anything was your formal role?---The depot reform, in particular the Morrison Low report, you're referring to?

Well, we'll start there?---Yeah, okay. I had some role in, I don't think I played a part in selecting that company but I think there was discussion with me about their suitability and I know that they've done some work at other councils and were highly regarded and so I was happy with them to - - -

20 All right. Well, let's go back a step. There were some anonymous letters sent to Mr Romano?---Well, I'm aware of - - -

Did you see those at the time?---Yes, I'm aware of two anonymous handwritten letters.

And made some, pilfering seems to be the word of the week, some allegations of pilfering et cetera?---Yeah, look, I haven't read them for a while.

30 Well, were you tasked with investigating the contents of those letters at any stage?---No.

I took the view that anonymous letters really didn't have much weight, I didn't think that, I, I, my view has always been that if I receive anonymous letters that you've got to take that with a grain of salt because the person hasn't, isn't prepared to put their name to it, you need to think about whether really they are something that's worth investigating.

They may not put their name to it because they might be scared?---Well, at the time I didn't think that that would be the situation.

40 They might have concern about reprisal action being taken against them? ---Well, yes, that, that could be a possibility but at the time I didn't think that was an issue. There was a lot, there was lots of rumblings in the depot about overtime and how certain people use to get a lot of overtime and, and I think that the letters focussed on that and then they, they were complaining apparently about, I think of a letter with, about Joe dumping stuff and then, in the yard after hours but it was, it was sort of rumours that you'd already heard and, and things that you really can't investigate because you don't, you, you know, people aren't prepared to come forward and give statements

or talk about things and so no, I wasn't tasked to investigate the issues that arose from those letters, no.

And you didn't think on your evidence that there anything to investigate?
---No, I'd, I'd heard that people were complaining about not getting chosen to do overtime but that's been an issue at the depot for a number of years and, well, people who didn't work in the construction crew often complained about seeing the construction guys get all the overtime. They're not, they're the ones who had to work after hours and, and work on jobs that you couldn't do during the normal day and I don't they understood that, they just saw that there was favouritism and I didn't agree, I didn't think that was right.

Right. And in terms of the Morrison Low report, you reviewed it when it arrived?---(NO AUDIBLE REPLY)

Were you interviewed, sorry, we'll go back a step, were you interviewed?
---I wasn't interviewed but I, I did, I was, I was part of the process and I had looked at a few drafts and I was, I was given the opportunity to read, read some drafts and provide some input along the way.

And you became part of the depot reform CFT or at least you were attending the meetings so I assume that you were - - -?---Yes.

- - - part of that team?---Yes, I was.

And what did you understand your role was in relation to your membership of that team?---To provide advice and guidance in regard to any HR implications or issues.

And one of the big issues was Mr Child's job, wasn't it?---That's right.

One of the big issues that continues to be an issue?---Mmm.

And you were, you met with Mr Child on 21 January. Do you remember that?---Yes, I do.

And you met with him with Mr Azer?---That's right.

And afterwards you sent him a letter?---Yes.

On the same day?---Well, the letter was my, was my way I guessing of keeping the minutes of the meeting. It was confirming what was discussed in the meeting, yeah.

And essentially you told him that there was not much change to the position?---No, that's right, yeah.

And street sweepers were going elsewhere?---Yeah, I think that was the situation.

But his position wasn't going to be readvertised?---No.

If the witness could be shown Exhibit 150 please. If you could turn to page 6. That's the letter that you sent?---Yes.

10 And on the next page there's a letter from Mr Azer or signed by Mr Azer but it's about annual leave and it looks more redolent of something you've written. Would that be correct?---No, I didn't write this letter.

Didn't write that letter. Now, after the letter of 21 January there was in fact a further review of Mr Child's position?---That's right.

And there were changes to it?---That's right.

20 What part did you play in that?---I knew that Steve Ellul was not happy with the job description and he wanted to include tertiary qualifications - - -

And he did that in a draft?---Yes, and I think also, and obviously it refreshed my memory from yesterday when I was sitting in here. There was some discussion about contract and project management I think. I did play, I didn't play much of a role in that - - -

So you didn't draft the terms that when project management and contract administration were inserted?---No.

30 Sure?---No, I don't recall - in the job description?

Mmm?---Well, no, I don't think so. I don't have a recollection doing it.

Would it be correct that you and Mr Azer had some discussions and you were concerned about the tertiary qualification criteria being included as essential?---Yes, and I was - - -

And you were worried that it wouldn't get past the unions?---I wasn't worried about that.

40 You weren't worried about that?---No, I was more worried about the change of, the change that we've made and after I've just sat down with Stephen and explained to him that there's not going to be any changes. That was the main thing that I was concerned about.

Why were you concerned about that?---'Cause I just sat down and told him his job's not going to change.

It wasn't fair was it?---Well, no, I, I, whether it was fair or not I just thought it's making me look like a nut, like a mug, I, I wasn't happy about it.

It wasn't doing much for Mr Child was it?---No.

One minute he's told that he's got his job and all's well and the next minute he's being told that it's been fundamentally changed?---That's right.

10 It's not a way that you would normally think a desirable way to treat an employee is it?---No, it's not.

That's why I'm suggesting to you it wasn't fair to Mr Child?---If I was in his situation I'd have to say yes, it wasn't fair.

But you, do you recall having conversations with Mr Azer about the tertiary qualification bit?---We may have discussed it.

20 And conveying that to Mr Ellul?---I may have discussed it with Steve, Steve Ellul.

And you're aware that Mr Ellul circulated a draft on 31 March that had that?---I'm not aware of it at the time but I've seen since, since seeing it tabled here.

And then at the meeting on 7 April there appears to be a further shift?---Yes.

Do you recall that?---The meeting of the CFT?

30 Yes?---Yes.

And if the witness could be shown Exhibit 200. Just firstly, look at the minutes on the first page there, that's a meeting on 17 February. You're not present but did you see these minutes at the time?---I can't recall seeing these, no, I don't, no.

Just turn to page 4. See the handwritten numbers down the bottom?---Yep.

You see this is the minutes of the meeting of 7 April?---Oh, yes.

40 See there's a shift then between 21 April, 21 January and then there's the meeting on 7 April that confirms the shift, that is that the position to be quite significantly changed?---That's right.

That's the process?---That's right.

And I'm suggesting to you that, and I suggest to you that part of the reason for the change was because it was a deliberate attempt to exclude Mr Romano from the position wasn't it?---Mr Child?

Mr Child from the position, sorry. Mr Romano probably didn't want, Mr Child from the position?---Look there was discussion about, about that at the time. The main thing that, look I can recall at the time that Steve Ellul wanted to make the changes to the position. Of course in the background, you know, I can't sit here and say that, that Steve Child was out, was, was in favour, he was out of favour.

10 Mmm?---So I don't know what was in other people's minds, but you, you would have to suspect that that was what was, that was, that was what was happening. In my mind I, I wasn't happy because I'd sat and down and spoken to him and told him that, that his job wasn't changing.

And you thought it made you look like a dill?---Yeah.

Or you didn't know what was going on?---Well, it made us look stupid. Just you know, like I'd assessed Ellul's point, he wanted, he wanted it, he wanted to have a person who reported to him who had, you know, engineering qualifications of some sort. But it put, I felt it put us in a
20 difficult position.

And at the meeting of 7 April, it was openly discussed wasn't it that there, one outcome would be a redundancy for Child?---Well, yes. If there was a significant change to a position and he wasn't successful, yes. Well, I can't actually recall the discussion, but that would make sense that it was discussed then.

Well, I'd suggest to you there were a series of meetings during the course of April and about the job description, if you go through the minutes?---Yeah,
30 there was.

And I just to you that during the course of those meetings, there was open discussion about one potential outcome was a redundancy for Child?---Yes, I'd have to agree to that. Yeah.

Thank you. And if you go back to Exhibit 150. Have you still got there? I'm sorry to make you leap between documents?---Yep.

40 You'll see, if you turn to page 8, there's a, there's a record of a meeting, it's a letter from you. Do you see that?---Yeah. Yes.

Recording a discussion with Mr Child and that you'd provided him with a draft position description. Do you recall that meeting?---Yes, I do.

And that this record, this letter was again to record that in a sense of a minute was it?---Yes.

And you were advising him what the decision was weren't you?---I advised him that, that, yes, that a decision had been made to review the position description and to include additional qualifications and, and, and key capabilities. Yep.

And I suggest to you that the suggestion that there was genuine consultation with Mr Child was a farce wasn't it?---I wouldn't call it a farce.

10 Well, all the decisions had been made about the position hadn't they?---A decision had been made but it was, it was in my mind, it was open for him to provide input into it. And that was the meeting.

I suggest to you that that was not a genuine request. That is that all the decisions that mattered about the position had already been made?---In my mind no, I don't agree.

20 Well, what do you say that he could've said that would've assisted with the process?---Well, he could've, look I don't know, I don't know what he could've said. He was given the opportunity to provide input into the position description and, and what he thought of the inclusions that were, that were being recommended.

And, Mr Ellul, so you met with him on 20 - - -?---Yes.

- - - of April and in the other bundle if you turn to page 7, you'll see there's a memo from Mr Ellul about the restructure. Do you see that on page 7?
---Yes.

30 Dated 22 April. So Mr Ellul wasn't waiting for any response from Mr Child, was he?---I, I think that it was still open for Steve to provide input into that, into that position description.

That's what you genuinely thought at the time, Mr Macklin?---Yes, I did.

And then if you go back to the other bundle and go to page 10, you wrote to him again after the union wrote to you, do you see that?---Yes.

40 And the union letter, then is it, sorry, this requires a bit of leaping around, I'm sorry about this. You see the union letter's at page 10 of Exhibit 200, the other bundle?---Page 10.

And that set out their change, their view I mean?---Yes.

And then you write to him?---I think I would have written to the union first to respond to the letter.

Right. And those negotiations then continued and if you go to page 14 of Exhibit 200 you'll see there is your reply to the union?---Yes.

And you say down the bottom of page 2 of that letter, that is at numbered page 15 on Exhibit 200, it's Council's intention to advertise this position internally and externally once the position description had been provided to the staff consultant of Council and they have been given an opportunity. So as I understood there, there was to be consultation with Mr Child, he's expressed some views through his union, nothing's changed about the job description, now it's going to go to the staff consultative committee and then it'll be advertised?---Mmm.

10

That was the process to be followed, wasn't it?---Mmm.

And then it did go to the staff consultative committee?---Yes, it did.

And it was advertised?---Yes.

And it wasn't filled at that time?---No.

Because of this inquiry?---Yes.

20

And it was advertised last weekend?---Yes.

And what role if any did you have, if we could just jump ahead, into the letter that was sent to, sent to Mr Child a week ago advising him that the job would be advertised?---None.

So you didn't play any role in that?---No. I know, I know that it occurred and I've seen the letter but I played no role in it.

30

So you weren't consulted about that?---I was consulted. I've talked, I've been involved in meetings about it but I'm not playing, I've been, since I, I've come back from sick leave I've been removed from any dealings with Mr, with Joe, Steve and Robert Cummins and we've engaged a HR person to deal with those matters.

Ms Quigley?---Julie Quigley, yeah.

40

And she's dealing with things arising from this inquiry?---Yes. I've met, I, I, to define I guess being consulted I, I attended a meeting with Bryan Belling from Ebsworth's and Julie Quigley a few days ago but I made it clear that if, if, if Julie is to take over this, I'm not giving her any instructions or providing her any recommendations. She doesn't report to me, all I'm doing is providing her with some admin assistance if she needs it and providing her access to the files so she can be fully briefed but she is to report directly to the acting General Manager at the time, which was Ian and also I think to liaise to Bryan Belling.

And that's so that there's no suggestion of pollution from those who were involved earlier?---Of Bryan, Bryan Belling's view that I was tainted which was disappointing but - - -

And you're unhappy about that by the way you've just said that?---I am. I am unhappy about this whole thing but I can see that that makes sense because I shouldn't be involved in, in, in, in this, these matters, no.

10 All right. If you go back to Exhibit 200 - - -?---Yeah.

- - - and page 18?---18.

You'll see there's a meeting on 18 May, you see that and under 1.1 PM, that's you, see it's, is ensuring every opportunity is given for current civil maintenance supervisor to apply for the role. Do you see that?---Yes.

20 What did you do to implement that?---It's, the minutes are inferring that I, that I was actively doing things. What I, my role was in making sure that in the letter that I wrote to Steve that he was given the opportunity to apply for the position. I don't think the minutes accurately reflect that. I don't know, I'm assuming that Linda typed these minutes. By 18 May, I'm ensuring every document is given, I'd already done that.

Well, by 12 June you're expressing a view that you were restructuring the position that made him redundant. So what happened between 18 May when you're meant to be giving him information and 12 June whereby you're concluding, that it'd been restructured to make him redundant? ---What happened from those times?

30 Mmm?---I can't recall.

Well, if the witness (not transcribable), but if the witness could be shown the annexures to 252, which is your email of 12 June that we were looking at before lunch?---Okay.

Unless you've still got it there?---242?

40 252, sorry. No, 252. It was a bundle, it's, yes, that looks like it. It's the fat one. See where the tag is?---That one?

Yes. Go to the tag. I think you'll find that's the email (not transcribable) chaos. It's more chaotic over here it's any encouragement. You'll see that's your email of 12 June?---Yes.

Is that what it is? You've got that? You see under Mr Child, the second line, we are currently restructuring his position, which makes him redundant. It sounds like a pretty firm conclusion, at least in your mind by 12 June doesn't it?---Yes.

And that's what you thought wasn't it?---On 12 June, yes.

Mr Child was going to be redundant?---Yes.

Mmm. And the suggestion that he had an opportunity to apply and a chance to get the job, that was just a farce wasn't it?---No, I don't, I don't agree with that. No.

10 Well, you're the one who's, you're the HR manager. You run redundancies don't you?---Oh, I make, I facilitate them when they happen, yeah.

Yes. And you're the person who's saying by 12 June that he's, that's his position has been restructured and it's made him redundant. It doesn't sound like he's got much of a chance in your view does it by 12 June?
---Well, he did when we first wrote to him.

Sorry?---He did when we first wrote to him.

20 Not by 12 June?---He did in April or whenever it was when all these letters that I wrote to him, the second letter.

Don't worry about that. I'm just looking at 12 June. By then you were expressing a concluded view to the rest of the team that he'd, that the position had been restructured and that he was redundant?---Yes.

But you never actually formally, you still to this date didn't offer him formally a redundancy consistent with that view did you?---No.

30 Now in terms of the change of the position description between 31 March and 7 April, and the project management contract administration parts inserted. Do you know what I mean?---Mmm. Mmm.

I'm trying to do it shorthand, but we'll probably get caught out. What's your view of how that happened? What's your recollection of how it happened?---Steve Ellul had reviewed the Morrison Low Report and I think he was of the view that the contracted project management task or activities were separated and he felt they should be combined together. So he prepared a second report on, further to the Morrison Low Report
40 recommending, recommending that I believe to the best of my knowledge. Does that answer your question?

Because it's contrary to what Morrison Low actually recommended isn't it?--Yes, it's different, yeah.

Well, it's not different it's diametrically opposed?---I heard your questioning of Khaled yesterday and I'm sure it's different.

So in terms of actually drafting the provisions and what happened to it you didn't do any of that?---Look, I, the final copy of the PD would've been provided to me because I would've acted, facilitated the advertisement of the position. I think those extra provisions were inserted by either Steve or Khaled I'm not too sure but I don't have a recollection of doing it myself.

But it was discussed at the meeting on 7 April because that was the significant change wasn't it?---Yeah, there was significant changes not only with the, the requirement for qualifications but the other changes, yes.

10

And that made it quite different the position didn't it?---Yes.

Changed the grade?---Yes, it did.

Meant it had to be readvertised?---Yes.

All the things that you'd told Mr Child weren't going to happen?---That's right.

20 But you say that that was not your work?---When you say it was my, no, I didn't (not transcribable) the wording of the - - -

And it wasn't your idea. Is that right?---To change the position description? No, definitely not.

Now, in relation to the meeting on 27 April - do you have Exhibit 200 there again. If I could take you to page 12?---Okay, yep.

30 Got that?---Yes.

That's an email to Dencker, you're not actually included but do you remember seeing this at the time?---No, I can't say I can remember seeing it.

All right. Well, just turn the page to the meeting, minutes of the 27th and what I understand this meeting there was a discussion about terminating the employment of Mr Saad. Do you remember that?---Yes, I do.

40 And there was a split in the meeting. Is that your recollection?---Yes (not transcribable).

And you've heard the evidence that Mr Dardano and Mr Ellul and Mr Azer didn't want to sack him?---That's right.

And you didn't, you agreed with them, you thought your view was wasn't it that it would destabilise the place, the depot?---I can't remember if I used that exact word but my main concern was that he, he had all the skills that

we needed, he was, apart from him being a probably a bit of a serial complainer he was a good worker.

And you'd had had you not reason to doubt the voracity of some of the complaints he'd raised?---Mmm.

And you thought his credit was somewhat low in relation to the matters he complained about?---Yeah.

10 But he was an okay worker?---Mmm.

But you were outvoted by Mr Hullick and Mr Dencker?---Yes, I believe, yeah, - - -

That they carried the day?---Yeah.

And therefore he was terminated?---Yes.

20 And I'd suggest to you that you were aware at the time that the reason for the termination, the reason behind the termination was because he'd earlier made allegations about Mr Romano?---I suspected that.

It wasn't openly discussed but it was clear wasn't it that that was the reason that it was being pursued?---Yeah, I'm not, I think that it was, yes, I think it was the feeling. There was some discussion about his criminal record which I didn't think was relevant.

30 Because he'd had that record before he was employed?---That's right, yeah, it was years ago, well, from what I know it was years ago.

Now, in relation to the complaint lodged by Mr Saad - if the witness could perhaps return all the detritus he has there and be shown Exhibit 153 and 185. Sorry, Mr Macklin, just bear with me a minute?---Yep.

Sorry, Mr Macklin, now, you'll see in Exhibit 153 is a copy of Mr Saad's complaint?---Yes.

40 Now, when you first saw this you already had doubts about his credibility didn't you? This was some time after he'd been terminated?---Yes.

You had had those doubts before he was terminated?--- Yes.

Well, did you bring that to mind about when you decided to take various actions, various steps about it?---(NO AUDIBLE REPLY)

Didn't you worry about the fact that this was a person you thought had low credit in relation to complaints?---I would've, it would've thought, the thought had crossed my mind, yes, when this arrived.

What did you do about that?---I don't think there was much I could do. It was a complaint lodged with the Anti-Discrimination Board.

You were the person who was dealing with it, you went to the conciliation conference?---That's right.

10 Why didn't you go to the board and say this bloke complains all the time and every time we look at it there's no substance to the complaints? Did you tell Mr De Lizio that?---We met with Mr De Lizio for the majority of the day, I, I can't remember whether, can't remember whether I actually said those words to him but I, I did try to portray when we had the opportunity to discuss with him without Joe being in the room I, I would imagine I would've, would've made those sorts of comments that he's been, you know, that, that's been not a serial complainer but he, he, you know, he, he, I can't, I can't recall whether I told Mr De Lizio that he has no credit, I can't recall that.

20 But I would've discussed the issue with him.

Well, you got Mr Saad signed up (not transcribable) didn't you?---Yeah.

And you paid him some money?---Yeah.

Paid him some money on a complaint that possibly had no substance to it whatsoever?---Not exactly. At the time, Mr Risteski, I think Mr Risteski at the time.

30 Beg your pardon?---Mr, I think Mr Risteski at the time had said that he had heard similar comments being made.

The only person ever found to support Mr Saad was Mr Risteski?---That's right.

And what ever happened to his complaint? He'd been found to be the bully?---Yes.

And his complaint had been dismissed against Mr Child?---Mmm.

40 You knew he hated Mr Child didn't you?---Robert Risteski, yes, yeah.

Yes. Did you take that into account that the only person you could find anywhere to support Mr Saad was someone you knew who had a very negative view about Mr Child?---I disagree with the way you're putting it to me because I didn't go out looking for someone to support his allegations, I went out and I interviewed staff members who I, I think from memory might've named in this and asked what, what, interviewed them about it and

I think there was a couple of other staff members who had said yeah, you know, Risteski was the one who said that he had heard comments made.

Well, didn't that worry you? The only person - - -?---Look, of course it worried me but - - -

But you were still happy to hand over to Mr Saad a sum of some, what 5,000 odd dollars or something of Council money?---It was a lot less, a lot less than what he asked me for and I, and I was being - - -

10

It may been (not transcribable) ?---I was being guided by, I've never been involved in one of these matters before. I took a lawyer along with me. Mr De Lizio was quite keen for us to settle the matter.

Mr De Lizio is the officer at the anti-discrimination board?---Yeah.

It doesn't matter whether he's keen or not does it? It's a Council decision? ---Yeah, it was - - -

20

You're expending ratepayers funds aren't you?---Well, it's a commercial settlement trying to settle the matter. I thought that it was the right thing to do at the time on advice. I'm not an anti-discrimination expert, like I heard someone say yesterday. I didn't, I, I've entered this jurisdiction before. I thought the best outcome for Council would be to try to settle the matter and move on.

And all your years in HR you've never had to deal with a discrimination complaint to the board before?---Not the board, no. I've been - - -

30

HREOC?---Sorry?

HREOC, Human Rights Commission?---I've been a witness at one, but, but no I've never been, I've never had to deal, handle a matter, no.

So you relied on the legal advice you were receiving?---Yes, I did.

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

40

And in, in return for paying him money to go away in a sense, in essence, a commercial decision, he was to assist the investigation?---Yes.

You'd already made an investigation?---I'd conducted a preliminary one with myself and the HR officer. I went and spoke to, I think the employees named in this, I'd have to read it again to check. But my recollection was that the anti-discrimination board strongly recommended that we should conduct, conduct our own independent investigation of the, of the allegations that were made.

And after you'd been to that meeting you sent an email to the Executive and Mr Romano about what had happened. Do you remember that?---I don't remember, but you'll, obviously got it there. I don't recall sending it. I would've briefed them.

All right. I'll show you this document. That's your rendition of what happened?---Yes. Yes.

10 And then, so Mr Saad's disposed of on or about 15 September. He signs the deed of release a little bit later, gets his money and goes. Is that right? It's what happened?---He grabbed his paper and then left, yeah. Well, yes, he apparently left the country.

If I could tender the email.

ASSISTANT COMMISSIONER: Yes. The email from Mr Macklin will be Exhibit 270.

20 **#EXHIBIT 270 - EMAIL FROM MR MACKLIN TO SENIOR OFFICERS DATED 15 SEPTEMBER 2009 – Y SAAD**

MS RONALDS: And then, so that's September. Mr Child is then suspended?---Yes.

Why wasn't Mr Child taken to the anti-discrimination board conciliation conference?---I don't know why.

30 Well he'd responded to the complaint hadn't he?---I believe he, yes, I think he did. Yes.

In quite some detail refuting it?---And (not transcribable) responded as well, I think.

Refuting it. And Mr Saad had asked for certain things in the complaint hadn't he?---Yes.

40 Have you still got Exhibit 153? Look at page 12?---Yep.

To be given the true reasons why I was sacked, that had nothing to do with Mr Child did it?---No.

Why Council allows bullying, harassment of employees to happen without resolving issues at an earlier stage. That's about Council's policies isn't it? ---That's right.

Know why I was treated so badly by Steve Child. To get my job back at Council?---Yes.

That's nothing to do with Mr Child is it?---No.

He had nothing to do with terminating him?---No.

10 So it's outside the ambit of the complaint. And then an apology from Burwood Council as well as from Steve Child. Now that was what you knew he wanted. He hasn't asked for any money has he?---Not there, no.

No. So it changed at the conciliation conference?---Yes.

Well, was there any further request for Mr Child to apologise?---No.

That wasn't pursued?---No.

20 So nothing against Mr Child personally was pursued by Mr Saad?---I don't think, I can't recall that being discussed or debated at length at the Commission hearing, at the conciliation conference.

And he's not there and he doesn't have any representative there?---Steve Child you mean?

30 Mmm?---No. I was, well I, well the complaint was made against Council. Look I've, I've searched myself since this inquiry started as to why I didn't take Steve. I don't know why I didn't. It could be the time that I've discussed it with, with Maddocks and I just felt that it was a Council complaint so I should go or someone from Council should go. I think it could've been possibly a bit more volatile if Steve and Joe were in the same room.

You didn't even tell Mr Child that it had been settled?---In my letter that I wrote to Steve, yes, I actually, I checked that letter this morning before I come in here and I should've said to him, look, the matter's been settled, but we're obligated to conduct an internal investigation. So, yes, if I had a chance to write that letter again to Steve, I probably would say, the matter's been settled, but we're obligated to conduct an internal investigation.

40 Until this inquiry was held he didn't know the matter had been settled. You never told him?---No, well, that's probably right.

And that was pretty poor wasn't it?---Look, yes. Yeah, looking back on it now yes it is.

And then there's a report from Salli Browning on 9 December, so meanwhile Mr, Mr Child is suspended?---Yes.

Supposedly on the basis of the Saad discrimination complaint that has been settled?---Yes.

And I'm suggesting to you that you used the Saad discrimination complaint to keep Mr Child out of the workplace. Would you agree?---No.

And it was not a genuine suspension. Would you agree?---No, that's not, no, that's not true.

10 And there was no proper basis under the discrimination law to suspend him. Would you agree?---I think there's basis under the, under the award.

And Mr Saad was not in the workplace?---No. The people being investigated were, being interviewed were.

Mr Saad wasn't there was he?---No.

The people being interviewed were not complainants?---No.

20 They were not identified to Mr Child. They were not known to Mr Child? ---I'm not too sure.

It was a ruse wasn't it? You knew that Mr Romano didn't want, want Mr Child back and consistent with your earlier emails about coming up with a strategy to keep him out of the workplace, that's what you did. You used the discrimination complaint to keep him out of the workplace?---No, I didn't.

30 And it was not a proper decision was it?---No, I don't agree.

It was motivated by you trying to keep in good with Mr Romano so that you didn't become the next person he'd attack?---No, that's not true.

And there was, and I suggest to you that it was an improper suspension. That is the basis of the suspension was improper. Would you agree?---No, I wouldn't. At the time I got advice on it and I thought it was the proper thing to do.

40 Turn to page 23 of Exhibit 153. I'm sorry, 24. There's a report from Ms Browning. Do you see that? 8 December, 2009?---Yes.

And what does it say? There's only one person who supported the use of the word blame?---That's right.

And we know who that was don't we? Mr Risteski?---Yep.

No one else did?---Yes.

And what does she say at the end? Creditability at page 25. There are a number of inconsistencies in Joe Saad's statement. This is not a judgement of his character. I find it likely that he's aggrieved by work relationship with Steve Child and others and he does believe they are lacking in ethics. Well, that's not a discrimination complaint is it, lacking in ethics? There are inconsistencies in other witness statements. There is significant difficulty in extracting particulars from many of the employees interviewed and the preliminary findings are insufficient, insufficient or unsubstantiated aren't they?---That's right.

10

Well, why wasn't Mr Child reinstated on 9 December, that is following the receipt of this report from Ms Browning?---The investigation was still being conducted by, by Ms Browning.

She's given you the preliminary findings that there's no substance to it?--- But she was interviewing employees in February or January of this year, of, of - - -

20

Tell me where I find evidence of that?---Sorry?

Tell me where I find any material that supports that assertion?---Well, I got an email from Erin saying that she's still conducting investigations I think in early this year, what year are we talking about, whatever, yeah, this year.

Well, where's the final report?---I don't believe there is one.

30

You've got an employee you have suspended supposedly on the basis of a discrimination complaint that's settled, you've got an investigation that's so far taken three months and apparently according to you then takes another two months, that's five months?---Yeah.

It's a pretty expensive, isn't it?---It is, yes.

Why didn't it get more priority than that?---I'm not too sure.

Well, I suggest to you the reason there was no hurry about it was because the suspension on the basis of the discrimination claim was a ruse, wasn't it?---No.

40

And Mr Romano wanted him out of the workforce and so there was no one rushing around trying to get him back into the fold, was there?---Look, Pat wanted him out of the workplace but there was, there was, in terms of that investigation I was getting closely guided by Erin Wilson from Maddocks on that. My understanding was that the investigation was still undergoing.

Well, where's your emails to Erin saying hurry up, this is now three months, why isn't it completed? There's only a handful of people to talk to. It could have taken three days, not three months.

I would have made some phone calls. I can't recall if I've made a, sent her an email.

It was a tiny investigation, wasn't it? There was a couple of people to be spoken to and a short report to be written. That's all it needed?---I, I think there was, from memory I think there was a number of employees to be interviewed.

10 What, 10?---I can't, I can't tell you exactly.

20?---No, it would be less, it would be around about 10, I think.

Yes?---Mmm.

Hardly a mammoth job, is it?---I wouldn't have thought so.

Well, where were you asking by 9 December why isn't it finished? It's taken at least two months so far?---There was times when I did ask that.
20

And what happened?---Well, I think, she, I think the, at the time Ms Browning had all, had other investigations on board as well and then there was Christmas in between.

Was there any concern about Mr Child and his status?---I was concerned that I would like to get it over and done with, yes.

That's not what I'm asking you, Mr Macklin?---Okay.

30 I'm asking you about where do I find any records recording any concern on your part about the status of Mr Child, he's left hanging out there while there's - - -?---Yeah.

- - - supposedly some investigation going on that could have done in a couple of days?---I don't think it can, could have been done in a couple of days but I, look, I don't know, we were (not transcribable).

Well, two weeks max, it wouldn't take any longer than that?---I'm not an expert in that area so I'll rely on you for that but I, I don't know. I don't
40 have any, I can't produce you any records to show that I've sent concerns to Erin about the delay.

And 9 May is the first time Mr Child is told any outcome about the investigation, isn't it?---Maybe.

The letter that he got recently?---Yes, I believe so.

He's been remained to be suspended on the basis of a discrimination complaint - - -?---That's right.

- - - that was settled in September - - -?---Mmm.

- - - many months before?---That's right.

10 And I'm putting to you that he was kept out of the workforce because you knew Mr Romano didn't want him back and you happy for Ms Browning to take as long as she wanted because it didn't, it meant you didn't have a problem that you had to confront which was what you were going to do with Mr Child because you knew Mr Romano didn't want him back?---I don't agree with that.

Now, I suggest to you that your involvement in the investigation into Mr Child in relation to the payment of overtime in cash was an overreaction to what the claim was, would you agree?---No.

20 And it elevated to a degree of seriousness something that didn't require such an elevation, would you agree?---No, I don't agree.

And you did it at the time that you knew Mr Child and Mr Romano had fallen out?---Probably it's, it's around the same time, yes.

Yes. And you knew they'd fallen out and you thought it would be useful to pursue Mr Child?---No, that's not true.

30 And it was a minor matter that could have been dealt with quickly and simply, couldn't it?---(NO AUDIBLE REPLY)

He could have been told not to do it again?---It wasn't a, look, I don't think it was a minor matter.

40 On one occasion he paid a couple of people \$30 each?---In an envelope, handed to them or thrown out the window of a car to them and you look, you, I think you've got to look at the circumstances of situations like this, you know. I, the director had a view that it was, that it was serious. I thought that it was probably Steve trying to undermine John Dardano's authority and - - -

Well, that's not a finding, is it? You don't say that in your email?---I don't agree. I think in my, in the letter that went to Steve it said that. It was the allegation that we put to him I think from memory, that he was undermining the authority of the supervisor by doing that.

I think it was you, so that's your recollection, is it?---Yes.

And your behaviour is insubordinate?---Well, that's what - - -

Is that, is that a sort of charge that you, particular in a disciplinary matter that you'd usually make to somebody?---Well, that's what it means, isn't it?

Sorry?---It's, in my mind that's what it means.

Insubordinate, that's a word you use?---Mmm.

10 I mean, that's the word that was used but - - -?---I, I can't recall if I used that word but the essence what I thought was that he was undermining the authority of John Dardano.

And I'm suggesting to you that the - - -?---If that means insubordination (not transcribable).

- - - the penalty imposed on him was a gross overreaction, would you agree?---No, I don't agree with that.

20 Now, can the witness be shown Exhibit 241, please. Have you got that?
---Yeah.

If you could turn to page 8 and down the bottom you'll see that it starts an email from you dated 29 June. Do you see that?---(NO AUDIBLE REPLY)

Do you see down the bottom of page 8 and then it goes over to page 9?
---Yes.

30 I've met with the Executive team, Hullick, Dencker and Azer and it's Council's preferred position that if either Cummins or Child attempt to return to work they are suspended from the workplace for the duration of the investigation. Do you see that?---(NO AUDIBLE REPLY)

So that's what you wanted to do, or that's what the Executive team and you had cooked up by 29 June, do you see that?---Are you talking about page 8 -
- -

Yeah?--- - - - an email from me?

40 Sorry. An email from you, it starts down the bottom of the page, do you see that?---Private and confidential?

29 June, 1.03pm and then the text of it are, inconveniently, over the page, and this one is about Child and Cummins?---That's right.

And you wanted to keep them out of the workplace because you knew that's what Romano wanted?---It's what the Executive team and Pat wanted, yes.

Well, the Executive team was reflecting, weren't they, what Mr Romano had made clear to you all?---I can't recall specifically but that, that sounds right.

And Mr Cummins, currently Cummins, Council has asked Cummins to respond to issues of maladministration and to date his responses have been unsatisfactory. Now, we've looked at the letter, which is a detailed letter from Harmers on Mr Cummins' behalf, what other issue had he not responded to that was maladministration where there was an unsatisfactory response?---I can't recall. I, I don't know.

Well, there wasn't any were there?---Well, there was only, he responded to that letter.

In detail?---Mmm. Well, there may not have been any, any others.

Well, it's your email what did you mean?---I can't recall what my thought processes behind when I typed this email. It was obviously instructions I had received from the executive and from Pat.

Well, you would've satisfied yourself wouldn't you that it was factually correct? You're giving instructions to lawyers to get legal advice, it's important to tell the lawyers the right thing isn't it?---Mmm.

If you give them the wrong, ask them the wrong question they'll give you wrong the answer?---Well, I think that at the time the executive, whoever was, the executive I, I, I assume had thought that his responses weren't satisfactory.

And you just took that at face value did you, didn't turn your mind to what it was, whether there was a proper factual basis to ask Maddocks the question?---Sorry, can you ask me that again?

Do you want a break for a minute?---No, I'm okay.

What I'm suggesting to you is there was simply no factual basis to the assertion that you put in that email in relation to Mr Cummins on 29 June, that is, there was no basis to ask for advice on that basis, it is factually incorrect?---Look, I don't know, I can't recall, I, I, I think at the time the executive's view of, Council's view I suppose was that the responses weren't satisfactory. To the best of my recollection some of the responses weren't, I didn't think were correct but no, I didn't, in answer to your question, I'm sorry, I thought there was, it was factually correct when I, you know, when I sent this.

And in relation to Mr Child no mention of the discrimination complaint, what we're worried about here is Mr Child has made numerous phone calls to the Sydney Morning Herald journalist?--- Yep.

And there had been numerous articles in the paper that have caused significant disruption and damage to the organisation?---That's right.

That was the real reason you wanted him suspended wasn't it?---(NO AUDIBLE REPLY)

The real reason why you didn't want him in the workplace?---I had no concern about him being in the workplace personally.

10

You knew Mr Romano didn't want him there?---Of course.

You knew he didn't want him there because of what Mr Child had disclosed about Mr Romano?---Well, it was Pat's view that Steve was the one who'd gone to the paper. He even asked me to get his phone records for his Council phone and to conduct an investigation into that and I refused, well, I didn't want to be part of it and I, I, I didn't want to look at the phone records myself, I sent them to him to do, I didn't want to be part of it.

20

Why didn't you want to be part of it?---Well, I didn't see it as relevant.

You were aware he'd made a protected disclosure to this Commission? ---Not at the time I don't think.

It's been in the newspaper, surely you were reading the newspaper articles about this, about what was happening at Burwood weren't you?---I didn't think it was clear in my mind that, that, that Steve was a, had made a PD, I don't, I'm not too sure whether it was, it was, I guess it was assumed but I don't think we, I knew for sure that it was Steve.

30

You knew it was Mr Child, you've already given that evidence, Mr Macklin?---Well, everyone thought - - -

Do you want to resile from that evidence now?---Everyone thought it was him, yeah.

And can the witness be shown 62. Just turn four pages in. 7 April story, do you see that? Headline "Burwood Council workers file complaint with corruption commission."?---Mmm.

40

By 7 April you well knew there was, matters had been raised formally with this Commission didn't you?---Yeah, well, reading this article I do, refreshing my memory now, yeah.

It was a long time before 29 June wasn't it?---Yes, it was, yeah.

Just close that up, thank you. So returning to your email of 29 June?---Yep.

The reason then being traversed to suspend him was violating the Council's Code of Conduct because he'd rung up a journalist. Page 9?---Yep, that's what I said.

10 And whose idea was it to pursue that as a basis for suspending him?---I can assure you I wouldn't have sent this email off on my own back, I think, at the time that's, with Pat wanting to look at Steve's phone records and I think I can recall an email that I sent to the directors saying that, that they won't, to Pat that he wanted to suspend Steve on the basis that he'd been ringing the Sydney Morning Herald. And I said you can't do it or words to that effect so - - -

And are you aware that Mr Hullick sent an email to Maddocks asking them whether speaking to the journalist might waive the PD protections?---No, I don't recall seeing that (not transcribable).

Anyway, this is what you were saying at the time?---That's right.

20 And you were asking for legal advice about how to keep them out of the workforce but for the duration of the investigation. Now, that investigation was that, you're referring to the ICAC investigation then? You see up the top?---Yeah. I think that's the one I was referring to, yes, the ICAC investigation.

I'm suggesting to you this email was an act of reprisal against both Mr Cummins and Mr Child because they'd made complaints about Mr Romano wasn't it?---Yes.

30 Do you recall that you - you can just shut those up. Do you recall that you gave a statement to the Workers Compensation - - -?---Yes, I do.

- - - people in relation to Mr Cummins?---Yes.

Have you read it recently?---No, I haven't, no.

40 If the witness could be shown Exhibit 121. You'll see there's a couple of tags on 121 and I think one on, if all goes according to schedule 1 will say Macklin if you could just turn to that. Did you discuss making a statement with Mr Romano?---I'm sorry?

Did you discuss making this statement with Mr Romano on or about the time you made it?---Did I discuss making this statement with Pat?

Mmm?---No, I don't think, I don't think I would've, no.

And the detail you were intending to put in it?---I don't think Pat even knew I provided a statement.

Because there's some similarity in what you say and what he says about a particular incident?---I certainly didn't collude or discuss my statement with Pat, no.

So that would just be coincidence would it?---It must be.

Now, you set out certain views and if I could take you to the end of your statement you see paragraph 35?---Yes.

- 10 Generally, if I could just put it this way, your statement supports Mr Romano in his conveys a fairly negative impression of Mr Cummins. Would you agree?---In 35?

No, just in the whole statement.---No, I don't think so, I, I, I don't have a negative view of Robert, I don't and I, I think I may have portrayed in the statement I think he was, he was somehow at fault in regard to the relationship breakdown between him and Pat but, um, no I don't think I was portraying a negative, negative image of Robert.

- 20 Perhaps you'll read it over night and we can return to it in the morning. You say, in 36, for further background regarding the General Manager, I've observed that he demands a lot from his managers et cetera.---Yes.

- And then, 37, I note Robert raised the issue with me about the General Manger, it is the case that the General Manager can be disorganised, however the situation where senior managers are able to take the initiatives and you discussed it with that – with Robert and he expected him to come to you. Now, the view that you've just reflected – that is that the breakdown in the relationship was a two-way street in essence, in that it was both their
30 faults. Is that the view you now hold?---Yes, I still think that, I could see, I could see that their relationship wasn't going very well and Robert would often complain that he, that Pat keeps cancelling meetings And I said to him, "Well, ring him."

You see, when I read this statement I don't see that balanced approach – what I see is that you siding in essence with Mr Romano and not having anything good to say about Mr Cummins all the way through.---Oh, I'd have to read it again but I certainly that wasn't my intent.

- 40 Well, what I'm suggesting to you now is that you were trying to be more even handed than you were on the 13 May, 2009.---I'm trying to be more even handed now - - -

Yes.---?- - -than then, no I don't believe that.

All right. Well, why don't you read it over night and we can discuss it tomorrow just to save time.---If I've got the time, I've got to read that thing too.

Sorry?---If I've got time to read that, as well as this.

That won't take you long. Now in relation to Mr Giangrasso suspension, you had different concerns about that, didn't you?---Yes.

If the witness could be shown exhibit 152. Now Mr, before we get to there, just don't worry about the bundle for a minute. Mr Saad made some allegations about Mr Giangrasso didn't he?---Um - - -

10

He'd alleged that he stole fuel from the depot and put it in his rubbish removal truck?---I don't recall that one.

And that he alleged that Mr Giangrasso would pick up rubbish from the Golden Globe Restaurant in Council time and dump at the Council and in return the workers would receive free meals.---What Jo had said to me was that Jo was picking up rubbish from a – I thought he said a seafood restaurant. I don't recall him saying the name of the restaurant. I have had the name of the restaurant mentioned since but I can't, Jo was mainly saying that he was picking up rubbish, rubbish from the back of the restaurant.

20

And what sort of investigation did you conduct into those allegations?
---None.

Why not?---Well, Jo was alleging that it had happened six or eight months previously. He wouldn't tell me where the restaurant was, he wouldn't tell me the street that the restaurant was in – what was I suppose to do? I didn't, I didn't think it was worthy of investigating.

30

Well, you thought that an altercation with Miss Tompsett which, as far as Mr Giangrasso was concerned was cured on the day was worth pursuing didn't you?---Yeah.

And you didn't pursue anything about Mr Dardano who'd shouted and used bad language at the same time, did you?---Yes, I did.

So he was cautioned was he – he received a reprimand for that?---I, Mr Dardano said he didn't use bad language.

40

So it was all right to believe him. He'd admitted he had raised his voice and spoken inappropriately didn't he?---He, he, he said that he got out of the car and called Jo over to his car.

He'd admitted he'd raised his voice and spoken inappropriately didn't he?
---Yes.

Well, did he get a letter like Mr Child setting out what he'd done and how poor it was and how he shouldn't do that?---No.

Why not?---I didn't think it was warranted.

So you think the boss can come in and shout at the workers and that's okay?---No.

You put that on a different scale to paying them cash over time.---Yes.

10 That's acceptable in the work place and paying them cash isn't.---Neither are acceptable in the work place but I think one is more, more, given the circumstances was more serious than the other.

Really?---Yes.

No wonder (not transcribable)---Well, outdoor staff have a different way of communicating with each other, they often yell and talk loud and use bad language.

20 I suggest to you that in 2010 that that is not appropriate work place conduct even if it's outdoor staff.---I agree, I agree.

And it hasn't' been for a long time. And I suggest to you that if that is the culture at the depot still than it is out of place with what is appropriate work place culture in 2010. Would you agree?---Um, I don't think it's appropriate but I think it still goes on.

30 Well, may be because the supervisors when they inappropriately behave aren't subjected to the same discipline regime that you subject the workers to. Would that be one reason?---It could be.

You see Mr Dardano says that he used the F word in his statement.---I didn't know that, I didn't know.

Well, his statement to this Commission he says he did. I mean sorry, in his statement to the workers compensation matter he says he did.---I didn't know that, he didn't' tell me that.

40 So any suggestion that he thought he didn't swear wouldn't be consistent at least.---Look I didn't' know he swore.

But he said he didn't so that's okay.---Yes.

Whereas Mr Giangrasso says he thought the matter was resolved on the door with he and Miss Tompsett discussed it later, but you don't accept that. ---I thought it was resolved as well.

Well why did you, why did you continue to pursue it?---Because Ronita put in a written complaint.

Well, Mr Giangrasso raised a complaint about Mr Dardano didn't he with you in a meeting.---Yes, he said he wasn't happy about how he talked to him.

Yes.---Yes.

10 Well, that's raising a complaint.---And I think I said to Jo, are you happy for me to talk to him and tell him that it wasn't – you know – well let him know that it wasn't appropriate.

Well why didn't you do that to Miss Tompsett why didn't you say to her, I'll talk to Jo and tell him it's not appropriate? Why did it have to turn into a big formal investigation?---I don't know what you're talking about. I met Jo and talked to him about the issue and met with Ronita. Jo was happy to go over and apologise to her, I sensed that Ronita wasn't satisfied with that but then I didn't do any more about it because I thought the matter was rested and then she sent me an email with a written complaint wanting the matter – wanting the matter to be pursued.

20

And eventually you suspended him.---Yes.

On those matters?---No, more so on the basis of the, of the evidence that he was working while on sick leave.

And you'll see at page 12 is the letter you sent him. See that?---Yep.

30 And I suggest to you that this was an act of reprisal against Mr Giangrasso. Would you agree?---No, I would not agree with that.

40 And you knew that Mr Romano didn't want him back in the workplace because he saw him as Mr Child's sidekick?---I knew that. But this, I, you know, I, I am able to think independently. And I didn't, and this was a matter that I felt I had to deal with as a genuine employment issue. I knew that Joe and Steve were out of favour with the GM. But this, as far as I was concerned, was a genuine employment issue that I had to deal with. It was a difficult situation to be in. But I had, I sat down and thought closely, thought carefully about it, sought legal advice and it was, and I was in a difficult position because if you did nothing then I'd be, then the matter with (not transcribable) would progress further and she would be, she'd probably put a further complaint in. I had to do, I had to do something and I, like I sought, I thought long and hard about it, got advice on it and that's what we did.

And what have you done about it since? He's still suspended?---Waiting for him to respond to the allegations.

Are you seriously telling this Commission that as a responsible employer, if he doesn't respond in the next ten years, you'll just keep him suspended on full pay for the next ten years?---No. No, that's not right.

Well, this letter is September?---That's right.

We're getting close to nine months?---Yes.

And nothing's happened?---No, that's not true.

10

Well, let me just show you this email. This is your email to the team on the day that you sent the letter?---Yes.

As you'd anticipated you'd already been traversing since June that he might want to come back and there'd be problems about keeping out of the workplace because you didn't have much base, proper basis to do so?---I know that's not true.

20

I'm sorry?---I don't believe that, no. No, I had, I felt at the time that there was a sound basis to have him suspended from duty.

Okay. And in the letter of suspension you were very keen to assure him that there it wasn't punitive weren't you? Well, just look at the letter on page 13?---Okay. Page 13.

Council wishes to assure you that the decision to suspend you is not punitive in nature. Do you think he might rightly think he was being picked on? ---That's, he would've thought that. Yes, he could've thought that.

30

Sorry?---If the question is do I think that he thought he was being picked on, he probably would've thought that.

Yes. It wouldn't be surprising would it?---No, it wouldn't be.

So you that he remains suspended until he agrees to answer the allegations? Is that your position?---He was on sick leave for a period of time.

No, just look at the suspension letter?---Yep.

40

He was suspended in September?---That's right. Because he was, he was fit to come back to work.

Yes. You'd been worried about that for months. It comes to fruition. So 3 September you send him a letter suspending him?---Ah hmm.

And how long are you going to wait for him to reply?---Well, as soon as this, this inquiry is finished. We were told by ICAC not to pursue the matter any further. From the best of my recollection there was, I sought further

advice on this matter and it was proposed to write to Mr Giangrasso to say if you're not going to respond to the allegations then we need, we'll take into consideration what's been put to us so far and I was going to recommend termination. And a letter arrived from, I believe from ICAC saying that, please do not do anything else.

Right?---So that's what's happened in that period of time. There's been nothing, there's not that there's nothing happening.

10 If I could tender that email.

ASSISTANT COMMISSIONER: Yes. That email will be Exhibit 270.

MS RONALDS: I think the last one was 270.

ASSISTANT COMMISSIONER: Oh, sorry, 271.

20 **#EXHIBIT 271 - EMAIL FROM MR MACKLIN TO PAT ROMANO
AND OTHERS DATED 31 AUGUST 2009 AND SUBSEQUENT
EMAILS: VARIOUS MATTERS**

MS RONALDS: You've already given evidence about Mr Issa and the Christmas party, so we'll pass over that.

30 ASSISTANT COMMISSIONER: Mr Macklin, I noticed the first person this email is addressed to is Mr Romano. I thought he was supposed to stand aside from matters to do with Mr Giangrasso and Mr Child?---I think I might've, like I said before, Commissioner, I still felt I had, I was required to brief him on matters.

Why is that?---Because he was still actively involved.

I beg your pardon?---He was still actively involved.

All right.

40 MS RONALDS: Were you concerned that he was at meetings at Maddocks and HDY, that is Mr Romano?---Yes.

Did you think that was appropriate?---I, I didn't, no I thought, I didn't think it was appropriate. I - - -

Did you raise that with anyone?---I can't recall raising it with anyone on the Executive team. They were, all those meetings were a little bit bizarre anyway. I wasn't too sure - - -

Why were they bizarre?---At first I thought it was a bit strange having different law firms there representing different people. I wasn't too sure how it fitted. I'm not a legal expert. I didn't know whether, you know, Council's lawyers should be there with Pat's lawyers and whoever else. It was, I thought it was strange that Khaled wasn't included. I think I can recall asking Pat that and I think, I can't remember what he said, but I do remember raising it with him. So I guess that was what I mean by saying bizarre. They were a bit unusual.

- 10 And Mr Romano played an active role in discussions about strategy of dealing with the various issues didn't he?---Yes. He, he, he would get quite emotional at times. Stephen Gorry and David Baird would try to settle him down and I think I can recall sometimes he might've left the room, but, yeah, he played an active role.

And he had access to all the material that was being generated, letters, advices, et cetera didn't he, about Mr Child, Mr Cummins and Mr Giangrasso?---As far as I'm aware, yes.

- 20 Well you included him in some of your emails?---Yes. Yes.

And when material came from Maddocks or Ebsworths it was sent on to him?---I think in most cases, yes.

- Excuse me for one moment. Sorry, I just need to find copies of something. I'm almost finished. I want to show you an email in line with what we've just been talking about. See this is an email, if you just, there's a Romano answer, but just skip that for a moment and go down to you. See it's from you to Hullick copied in Dencker, Azer, Ellul, (not transcribable) and
30 Gardner and about Steve Child attending to work on worker's comp?
---Mmm.

And don't worry about the content of the email for a moment. Do you see the next one up above them is Romano sending it to Gorry and Herman, Neal and Baird?---Mmm.

Now, he's not copied in by you on the email. Did you blind copy him?
---(NO AUDIBLE REPLY)

- 40 Do you know what I mean by that?---Yes, I do. I don't normally blind copy.

I mean, he gets it but I can't work out how?---I'm not too sure either.

He gets it and then immediately sends it on to his lawyers and the Council's lawyers?---Yes.

But it's not sent to him by you?---No, that's right.

Any explanation of how that could have happened? You don't think you would have blind copied him? That's not a habit you adopted?---It's not normally what I would do, no.

You mean knowing that he wasn't meant to be involved in these things you didn't assist him to try and cover it up in any way by sending him blind copy?---No, I, I, no, I wouldn't do that.

10 Because it doesn't seem to have been sent by anyone else to him?---No, I, no, I, I can't, I can recall the issue but I can't recall whether I blind copied him, I normally wouldn't do that.

It was the only explanation I could come up with as to why - - -?---Yeah.

- - - but I'm happy if you want to give me another one?---No, I'm not, I can't give any other explanation.

If I could tender that.

20

ASSISTANT COMMISSIONER: Yes. That email will be Exhibit 272.

#EXHIBIT 272 - EMAIL FROM MR MACKLIN TO LES HULLICK AND OTHERS DATED 14 MAY 2009 AND SUBSEQUENT EMAILS: STEVE CHILD – ATTENDANCE TO JOB SITE WHILE ON WC

30 MS RONALDS: Now, in relation to the depot surveillance, you know what I mean by that?---Yes.

The Workplace Surveillance Authority Act and all that kerfuffle?---Yes.

What role if any did you play in that?---Well, I was at the meeting when Pat called Richard Mealy in to, to discuss issues or concerns they had.

Were you there for the PowerPoint?---I think I was, yes, yeah, I do, yeah, I was there, yes.

40 But you weren't driving that process?---No, I - - -

Mr Romano was driving the process?---Yeah, I ended up doing a lot of the work for it but no, I wasn't driving it, no.

And the, there was a decision conveyed on 4 April to IPP to stop doing the surveillance. Was that you who did that?---No. To my, no, I - - -

Were you party to any discussion on 3 April to determine that it should be stopped?---I know I was party to discussions that we weren't happy with the type of reports that were being provided by IPP.

And that was because Maddocks told you they weren't happy or were you independently not happy?---I thought it was terrible stuff.

All you got was running sheets and - - -?---Yeah.

10 - - - a very blurry DVD that doesn't really show anything to anyone?---No.

Well, not the one I looked at anyway?---No. No, in terms of that decision, I can't recall being involved in that, no.

And then to restart on the 6th or the 7th?---No, I, no, I don't recall being involved in that decision. I know, I think, I do know and I can't actually now remember whether it was, I know because at the time or because I've heard it discussed it since.

20 Right?---But, no, I have, I don't, to the best of my recollection I didn't play a major role in that.

So you did the leg work to make it all come together but you didn't actually, it wasn't your idea?---No, it wasn't my idea, I didn't like the idea.

Why not?---I didn't think it was warranted. I don't, I think that the rumours about what was happening down the depot were just rumours. I don't think there was theft and pilfering going on that, that, that people were saying. Apart from the incident that I investigated earlier on, sorry - - -

30 So you - - -?--- - - - apart from one incident that I investigated earlier on about theft of papers, there was really nothing that I thought, I thought Pat was probably reacting to what Richard was telling him and Pat was keen to find out stuff and I think Richard, I think he was, he was - - -

Trying to get a bit of work?---I don't want to say that but I think it was more he was a bit misinformed about what he saw, he thought he saw going on.

40 And, and, Mr Romano thought that this was a way of gathering evidence against Mr Child and Mr Giangrasso, didn't he?---Well, it seemed to focus on them.

Yes?---I was instructed by Pat to send photos of those two to Richard Mailey.

They were the focus at least from Mr Romano's point of view, weren't they?---Not exactly but I, I would have to say that was probably the, the key people, yeah.

Well, who, who, who, who, who else's photo did he tell you to send to Mr Mailey?---No, no one else's.

He did, he did contact me one weekend and sent me a text message with a photo asking me to identify an employee but I couldn't anyway so - - -

You couldn't see who it was?---No.

10 And indeed nothing useful ever came out of the investigation, did it?---The only thing that come out of it was, was video evidence showing Joe doing his, running his own business while he was on sick leave.

While he was on sick leave?---Mmm, which I thought was an issue.

And you heard his explanation for that, or not, if you weren't here when it said it, don't worry?---No, I haven't heard, no, no. I was more concerned with the whole concept of that, of it. I didn't like the concept of it. I, you know, I've worked in local government industrial relations and HR since
20 1993/94 and I think you pride yourself on being honest and upfront with unions, particular union delegates and as soon as we headed down this path I had the nagging feeling in my gut that, that the union officials are going to ring me up and say are you surveilling our workers?

And lo and behold - - -?---Well, he, he sent a fairly innocuous letter and I, I was able to send a fairly bland reply back but he never actually sat me down and said, are you surveilling our staff because I'd be then put in a position where I'd have to tell him, yes, we were because I, you don't build up
30 credibility by lying to the union officials, particularly when you're negotiating and stuff. So I was uncomfortable from day one.

So if Ben Kruse had asked you that directly you would have been obliged ethically to tell him yes?---I would. Look, I've probably had some sleepless nights over that as to what I would say.

In fact he took a more sort of more low key approach to it by saying that somebody thinks they're being followed?---That wasn't Ben, that was just Wayne and I, I don't know, I, yeah, it was a fairly brief letter that, and I, I, I put a brief response back which, which nothing's sort of come of it
40 fortunately.

So you didn't have 'fess up at that point?---No.

Are you aware of, in relation to suspension of public servants that there is a Premier's memorandum in relation to the circumstances in which public servants should be suspended on pay?---No, I'm not.

You're not aware of that?---No.

You're not aware that the prevailing public sector view from a Premier's memorandum of some years ago is that it has to be a very serious matter before someone is suspended on full pay and sent home on commonly called gardening leave?---No, I'm not aware of that, I'm - - -

And did you make any inquiries before you suspended Mr Child or Mr Giangrasso about - - -?---No.

10 - - - what was the prevailing public sector view?---No.

Did you make any inquiries to DLG about what they considered was appropriate circumstances to suspend people on full pay?---No, because it's covered within our award.

And you thought that's all that mattered?---That's what applies to us.

That you could do it?---I don't think the public sector one would apply to us anyway.

20

It's just about what is the culture of suspension. What I'm suggesting is that what you did is completely out of step with the public, public sector culture of the New South Wales Government. Are you aware of that?---I'm not aware of that, no.

And the fact that you can do it doesn't mean you have to do it?---No, that's right.

30

And the fact that you had provision in the award to do it doesn't mean that you're forced to do it, does it?---No, of course not.

It's a matter of discretion?---(not transcribable).

And what I'm suggesting to you is that to do it properly you should have made some inquiries as to what was the usual culture, that is, the reasons why people are suspended on full pay. Would you agree that would have been appropriate inquiry to make?---I, no, not at the time, no. I would, I wouldn't know there was guidelines along those lines but obviously now I do.

40

Just for completeness if I could just tender the relevant part of the memorandum recognising that Mr Macklin's not seen it but anyone familiar with public sector employment knows it well.

ASSISTANT COMMISSIONER: Yes. That Premier's memorandum will be Exhibit 273.

**#EXHIBIT 273 - PREMIER'S MEMORANDUM – M1994-35
SUSPENSION OF PUBLIC EMPLOYEES FROM DUTY**

MS RONALDS: I have nothing further at this stage.

ASSISTANT COMMISSIONER: Mr Macklin, could I just ask you, you seem to have shown a lot of interest in Mr Giangrasso's secondary employment in running his rubbish business but nobody seems to have shown any interest in whether the people who had been named in the original complaint were carrying on secondary employment working on the General Manager's units. Did it occur to you that you should take some interest in whether there was unauthorised secondary employment going on in that situation?---Yes. Yes.

Well, but you did absolutely nothing about that alleged secondary employment?---No, I, I emailed the General Manager. I can't recall exactly when seeking instructions or advice to deal with the secondary employment issues that had come out of the issues that are around and he, he didn't want me to focus on any one individual, he said no, let's review our secondary employment policy.

But why were you, I mean it supposedly involved him, his units, why would you go to him about it? In fact the secondary employment policy says if the General Manager become aware of somebody doing secondary employment he's required to write to them and get them to declare it?---That's right.

So did you ever think to ask him well, why are these people working on your units, it doesn't seem to be authorised, did you ever require them to get authorisation?---No, I didn't think to do that. But the issue with Joe was different to that. Joe was, the issue that I had with Joe was working while on sick leave.

Well, that was one of them, the letter of suspension puts it a separate issue that he was doing secondary employment?---Which was during his sick leave.

No, it's got as a third issue that you were doing secondary employment during sick leave?---Okay. Yes.

It also puts secondary employment just by itself as an issue?---Mmm.

And in fact your policy says that it only has to be declared if there's a potential conflict which there probably wasn't with the other but there probably was with working on the units?---That's right.

So, I mean I just want to give you an opportunity to comment on the fact that you and nobody else involved at the time seemed to show any interest

in the fact that there could've been unauthorised secondary employment going on that actually involved the General Manager of the Council?

---Mmm. Yeah, look, I can't comment on that, I'm sorry, I - - -

Yes. Thank you. Now, does anybody wish to examine Mr Macklin at this time?

MR ROGERS: Mr Macklin, my surname is Rogers, I act for Mr Giangrasso?---Okay.

10

Can I just ask have you still got Exhibit 152 there?---No.

If that could be passed back to Mr Macklin. Can I just ask for two other exhibits to be given to Mr Macklin, one being Exhibit 147 and the other being Exhibit 206?---Okay.

I'm just going to ask you a couple of more questions, Mr Macklin, about the incident involving Ms Tompsett?---Mmm.

20

I think you indicated to counsel assisting earlier that on the day that that took place at least when you were at the depot you were under the understanding that it was a resolved at that time?---Yes.

So can I just ask you this? Were you called to the depot on that day?---Yes.

Do you remember who contacted you to come down to the depot?---No, I can't recall but my HR officer and I went down to the depot together.

30

That was Ms Langshaw is that - - -?---No, Chris Rudd.

I'm sorry?---Chris Rudd.

Now, to the best of your recollection there was an apology from Mr Giangrasso on that day?---Yes.

And you left the depot under the understanding that things had been resolved?---Yes.

40

And then you received the email from Ms Tompsett?---That's right.

I think that was about 10.00am. If you can just turn to that. So that's in Exhibit 152. It's page, excuse me, page 5 of 152?---Yes.

Can I just ask you this question first? There's a distinction in the Bullying and Harassment Policy between oral complaints and written complaints isn't there?---Yeah, I think there is, yes.

When you received the email from Ms Tompsett did anything to do with the Bullying and Harassment Policy trigger in your mind about receiving a complaint by email or writing?---(NO AUDIBLE REPLY)

Did you have a look at the policy for example?---I'm inclined to say I would've, I can't recall looking at it but I would've.

10 Okay. Was your understanding then that, I think you said earlier that by receiving this email you thought that Ms Tompsett wanted the matter to be pursued further?---Yes.

If you can just go to paragraph 8 of the email, it's a paragraph commencing with the words, "Steve and I."?---Yes.

10 If you just go to the third line there, it says, "Dardano" meaning John Dardano "came up to me and asked me what Joe had said to me when I told John. He told me he wanted it dealt with by HR." Now, that indicates or I would suggest to you that it's Mr Dardano who's making the suggestion to Ms Tompsett to contact you. Would you agree with that?---Let me just read it. Yes. So your question was do you think - - -

Would you agree that it's indicated in that paragraph that it's Mr Dardano who was interested for Ms Tompsett to contact you rather than it coming directly from her?---No, I think it was Mr Dardano that wanted HR down there that morning to, to, to address the issue. I don't - - -

30 When you received that email what was your next step in investigating the matter or taking action?---I think I spoke to, rang Ronita or spoke to her and said I thought we'd settled this.

Do you remember when you did that?---Sorry?

Do you remember when you did that?---Look, I can't recall exactly but it would've been the same day.

Did you take any notes about that?---I may have.

40 But you can't specifically recall?---No.

Can I just get you to turn - - -?---I took, sorry, I took notes of the meeting I had with Joe and Steve - - -

That was at the (not transcribable)?--- - - - the same day so I, I imagine I would've taken notes of the discussion I had with Ronita but I think it might've been fairly short. She said, Look, I don't think this matter's resolved and I want, you know, I'm not happy, or words to that effect.

Okay. Can I just get you to return to page 5 of Exhibit 147 which is the policy?---5, 147. Yes.

Turn to page 5 there. There's a paragraph 3.7 and it talks about timeframes for resolving harassment, bullying, grievances?---Yes.

And indicates in the first dot point there to commence an investigation within 24 hours?---Yes, it does.

10 And you can see that in dot point 3 there it says, Reach an outcome as soon as practicable. What would be your understanding of those words?---To reach an outcome that Ronita would be happy with.

Yes. And in what timeframe would practical - - -?---(not transcribable) twenty four hours. Well, no, no, not to reach an outcome, but commence the process within twenty four hours.

But it's mentioned there in the third dot point, reach an outcome as soon as practicable?---Yeah.

20

What would be your understanding of, of an example of a timeframe that that would relate to?---An example of, an example of - - -

Well, let me put it this way, did you have a goal in mind that day on how quickly you wanted an outcome reached?---I think so, yes.

And what was in your mind at that time?---I can't recall. I'm sorry, I can't recall what was in my mind at the time.

30 Okay. Is it, is it the case that the first time that you sought a version of events formally from Mr Giangrasso was the letter on 20 April?---Yes.

You know which letter I'm referring to? It's in, it's in the bundle of documents 152?---Yes.

At page 6 there?---What number was it?

Page 6?---Yeah, that's the first time that I, that we formally put the, the complaint that Ronita made to Joe to respond, yes.

40

Okay. Was it your understanding at that time that the complaint had not yet been resolved? Is that why you put it in that letter?---Mmm.

Is there any reason you didn't address the letter to Mr Giangrasso or contact him prior to that? We're talking a month and a half after that the event took place. Is there any reason why no contact was made with him up until 20 April?---The time he was off on sick leave. A couple of contacts were made by Sarah, I think, Sarah Langshaw.

To Mr Giangrasso?---Yes.

And I think that, I think from what Sarah had said to me that she was, he was reluctant to talk to her. He felt that he was being picked on by her, by her calling him. I can't, I can't recall whether there was any discussion with Joe prior to this in regard to that complaint. I mean there may not have been.

- 10 Did you keep Ms Tompsett informed of what was going on during this process?---Well she asked me what was going on, yes.
Was she asking you as at the end of April?---I can't recall when she's asked me, but she had asked me a few times.

There was another letter sent to Mr Giangrasso on 29 April, which is at page 8 there?---Yes.

- 20 So I'm gathering still at that time is was your understanding that the, that the grievance hadn't been resolved?---No.

Can you just go to page 5 of the policy again. Can you see the top, the top point there where it says, where the grievance cannot be resolved by the Human Resources manager, which is you at the time, I think?---Yes.

The GM must investigate the matter further. Was Mr Romano or whoever was acting as the GM in relation to this issue informed do you know?---In regards to the, the complaint?

- 30 In relation to the fact that the grievance hadn't been resolved as far as you were concerned?---They would've known, yes. And they would've been informed, yeah.

And then it says if the GM is unable to resolve the matter the employer, sorry, the employee who made the complaint must be advised in writing. Did you do that to Ms Tompsett?---No.

Why's that?---Because it still hasn't been resolved.

- 40 But that's the, the policy indicates that you must keep her advised as to why it hasn't been resolved. So I'm asking you why she wasn't kept informed? Is it the case that you didn't consult the policy? Is that, was that the situation?---She's been kept informed, but not in writing.

Can Mr Macklin just be shown Exhibit 244. Sorry I've just been reminded, Mr Macklin, this, the policy document that you've got in front of you there is dated in September 2009. Was it the case that there was a similar policy in place prior to that that you're aware of?---We did review this policy. But the provisions would've been similar.

Okay. Can I just get you to turn to page 39. Sorry, bear with me for two seconds. Sorry, in relation to Exhibit 206 if you can just take that for a moment. It should be a small bundle of documents, I think it's in a - one of those documents should be a statement from Mr Romano dated 9 June, 2009?---Yes. (not transcribable).

10 Okay. If you can just go to the second page of that document. You see on paragraph 12 there there's an indication from Mr Romano about a conversation that he had with you, mentions you in paragraph 11 there. Do you see where I'm referring to there?---Paragraph 12 on page 2?

That's right. And if you go to paragraph 15 you can see that that says, "By the time I had received the report from the Human Resources Manager" if you go to the next section, "that the Human Resources Manager had taken steps to resolve the matter. I considered their response and management of the incident adequate and appropriate." Do you recall having a conversation to the effect, with Mr Romano to the effect that the matter had been resolved?---No.

20

That conversation didn't take place?---I can't recall, no. I can't recall having a conversation with Pat saying it's been resolved when it hadn't.

Can I just ask you a couple of questions about the incident on 29 July involving a phone call that was made from Mr Giangrasso to Mr Aidinlis. You had a conversation with Mr Aidinlis on 30 July. Is that right?---Yes.

And you wrote a memo to the executive in relation to that conversation?
---Yes, to the best of my recollection, yes. I met with Stan, I met with Stan
30 30th, yes, with Steve Ellul present as well.

If you can go to just page 11 of the bundle of documents 152. It has your memo there. And if Mr Macklin can be shown Exhibit 208. 208. Have you seen (not transcribable), Mr Macklin, the Exhibit 208?---The stat dec?

Yes?---No.

You can see it's a stat dec from Mr Aidinlis'?---Mmm.

40 If you can just go to page 2 of that document?---The stat dec?

Yes. There's a sentence about four lines, two lines down that begins, "The following day on 30 July."?---Mmm.

If you can just read that there?---Yes.

And the next paragraph, "All I told them was"?---Yes. Hang on I'll just finish reading it. Yep.

You'd see that Mr Aidinlis there is indicating that he received a message from Mr Giangrasso but it was his decision only to go and talk to Mr Risteski about it, that's what he's claiming there?---Yeah.

That's at odds with the memo that you wrote to the Executive on 30 July, you'd agree with that?---That's right, it is.

10 I'm going to suggest to you that the, that Mr Aidinlis' version of events in that stat dec was that was what took place in relation to the communications between Mr Giangrasso and Mr Aidinlis - - -?---(not transcribable)

- - - and that's that what was conveyed to you on 30 July in that meeting?
---No, that's not right.

You see, that was the basis upon, that complaint there was the basis upon which you then wrote to Mr Giangrasso on 3 September, isn't it?---That's right.

20 And in that letter, which is the next letter on page 12 of that bundle there - - -?---That's right.

If you can go to page 2 of that letter, in that first paragraph on page 2 you're indicating to Mr Giangrasso that one of the possibilities out of the investigation is that his employment is going to be terminated?---Not going to be.

Well, sorry, that in relation to the investigation - - -?---It could be considered.

30 - - - it's a possibility - - -?---Yes.

- - - that there, one of the possibilities is termination of his employment?
---Yes, it was a very serious, it was a serious matter as far as I was concerned.

Did you take a written statement from Mr Aidinlis?---No.

Did you take a written statement from Mr Risteski?---No, I didn't.

40 You're writing a letter to Mr Giangrasso, over a month later, and you're indicating to him that this is a matter that could lead to his termination. In the sentence prior to that you said the allegations made against you are a very serious and warrant a full investigation but you didn't take a written statement from either of the two people who were involved. Is that, is that a full investigation as far as you're concerned?---No.

What I'm going to suggest to you, Mr Macklin, is that what you're doing here or what Council is doing was using these two instances or allegations

of bullying as a means to hold something over Mr Giangrasso and prevent him from coming back from, to work. That's the suggestion I'm making to you. What do you say to that?---No, it's not, not true. I don't agree.

Just, I note the time, Commissioner, I just have one further very quick issue. If you can just go to the folder of documents 244, just to paragraph, page 44 of that, of that folder, down the bottom of that page, paragraph 228?---What page number did you say?

10 Sorry, page 44?---Sorry, what's the, what's the - - -

It's Exhibit, it's Exhibit 244 and it's page 44?---Page, sorry?

Page 44. I'm sorry, Mr Macklin, do you have that page?---Yeah, page 44 of Exhibit 244.

And down the bottom there of paragraph 228?---Yeah.

20 There's an indication of a conversation during a meeting, if you would like to you can turn back to the previous page 222, it indicates there
10 September Mr Romano attended the meeting with a number of people, one of them being you and then some words at 228, at paragraph 228, some words are attributed to you. It indicates there, Mr Giangrasso, you're saying Mr Giangrasso confirmed that he had approached the staff member regarding the Risteski threats but his version appears to be slightly different in that he did not tell Stan to pass on any threats. He does agree that he rang Stan and made comments in relation to Mr Risteski watching his back and then this comment, the unions are aware of this, sorry, are aware of this, this might be a typo there, may not, may not support him in relation to his
30 complaint against Council. Do you recall saying those words?---No.

Do you deny saying those words in that meeting?---Why would I be saying that Stan didn't agree with what was said by Risteski when I said, my understanding until I've seen this stat dec is that, is that Stan did pass on the threats to Robert Risteski.

So is it the case then you didn't say those words - - -?---No.

40 - - - in the meeting on 10 September?---No, I did not.

Just for completeness Commissioner, I handed this document to counsel assisting this morning. I just tender a letter from Ben Kruse, the general secretary of the New South Wales Administrative Utilities Union. It's dated yesterday. It's just in relation to this issue.

ASSISTANT COMMISSIONER: Yes.

MR ROGERS: I have a number of copies. Nothing further, Commissioner.

ASSISTANT COMMISSIONER: Yes. This letter signed by Mr Kruse, dated 26 May, 2010, will be Exhibit 274.

#EXHIBIT 274 - LETTER FROM BEN KRUSE, NSW LOCAL GOVERNMENT, CLERICAL, ADMINISTRATIVE, ENERGY, AIRLINES & UTILITIES UNION DATED 26 MAY 2010

10

ASSISTANT COMMISSIONER: Thank you. We will now adjourn until 10 o'clock tomorrow morning. Thank you.

AT 4.07PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.07PM]