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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 28 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.

<PETER MACKLIN, on former oath

[10.06am]

MS RONALDS: Now, Mr Macklin, I asked you overnight to review the transcript of your compulsory examination. Is there any issue you wish to traverse in relation to them?---No, it was just a minor spelling error on Robert's name, that's all, no.

And Mr, and I think Mr Dardano's name's spelt wrongly somewhere as well?---I can't, no, I don't remember that.

In relation to the workers compensation statement that you gave in relation to the Cummins' matter, do you agree with me it's not even-handed?
---Would I agree with you it's what, sorry?

Not even-handed?---No, I don't agree, no.

You don't agree, you, you - - -?---No, I've reread, I've reread it again this morning.

Do you think that's an even-handed approach what you set out there?
---Yes, I do.

I'd suggest to you that's there nothing positive about Mr Cummins in it, would you agree?---I, I think I referred to some performance issues that were supposed to be in issue and I said that as far as I'm aware, I think I might have said in my statement that I didn't, I wasn't aware of any performance - - -

But the even-handed approach you told the Commissioner about yesterday, that is, you saw fault on both sides is not reflected in this statement, would you agree?---No.

ASSISTANT COMMISSIONER: In particular, Mr Macklin, your statement really made Mr Cummins sound like he was a bit crazy, didn't it? Like he was totally off the deep end and he overreacted to this whole issue and, you know the part I'm talking about - - -?---Ah hmm.

- - - where you said he seemed to think this was an important allegation and he was sort of unbalanced about it. I mean it's - - -?---It's my recollection of how he reacted when I spoke to him about that.

Yeah. But I mean, I guess in hindsight he probably was right to be a bit concerned about the allegation and, and the repercussions for anybody who tried to look into it?---Yeah, I appreciate that but at the time I was asked to

provide a statement and I was asked questions and I'm, and I answered the questions to the best of my knowledge at the time and my observations were that Robert was, did react in a, in a, an emotional sort of way when we, when I talked to him about the matter.

Thank you.

10 MS RONALDS: I'll show you an email that you sent, or that you received from Mr Dardano dated 3 August which you then passed on to Mr Gardner and Ms Wilson. Do you see that? And the bulk of the email is where Mr Dardano is raising quite serious issues about the credibility of an allegation that Mr Child called Mr - - -?---Mmm.

- - - Saad a black C. Do you see that?---(NO AUDIBLE REPLY)

20 That is, if it had happened Mr Dardano, reports, Mr Saad, who was a perpetual complainer, would have been inside his office complaining about it and that never happened. That was a significant matter, wasn't it?---Yes.

And you sent that to Gardner and Wilson?---Yeah, it looks, yes, I did.

And I'll just show you a bundle of documents you then put together. You see this is a bundle of documents you put together?---Yes.

Who's Peter Callaghan?---The insurance, the - - -

30 You have to keep your voice up, Mr Macklin?---Sorry, the insurance manager at StateCover.

Oh, right. And David, I assume means Mr Baird, since it's addressed to Mr Baird?---Yes.

40 Right. And you've put there, now if I can just ask you to move through it, you'll see there's a six page note from Mr, it's not signed, but it's from Mr Gardner, as I understand it. By the content I'm assuming it's from Mr Gardner. And assuming at one stage it had a covering letter that said that. If I could ask you then to turn to see 4.1, 4.2, et cetera on page 2, where it discusses the Saad allegations against Mr Child. Do you see that there? ---Yes, on page 2, 4.1.

Yes, on page 2. Nowhere in this advice does it traverse the fact, if you could just take it from me to say what (not transcribable), but does it traverse the fact that you and others considered Mr Saad of low credibility. Did you go back to Mr Gardner and say you haven't taken into account the fact that Mr Saad was a regular complainer and we didn't necessarily believe what he said?---I can't recall if I did or not.

Because that was an important matter to take into account wasn't it, in terms of Council's response to it?---Yes, I would think so.

And if I could then ask you to turn to the last, not the last page but there's a, the third last page of the bundle?---The third last page. Yep.

You see this is a letter to you?---Yes.

From Mr Gardner?---Yes, I can see that.

10

And again over the page where it talks about assessment of the complaint under 1, you'll see a doesn't there traverse the issue that Mr Saad was considered by you and others to be of low credibility, but, you see that under 4.1 and 4.2? And what I'm suggesting to you is that was a critical issue to take into account when looking at the Saad discrimination complaint wasn't it?---Yes, I, look, yes, I think it would've been significant.

And so weren't you worried that - - -?---Whether it was discussed or not - - -

20

I'm sorry?---Whether it was discussed or not I can't recall.

And it was important wasn't it that Mr Risteski had a history of an acrimonious relationship to put it perhaps politely with Mr Child?---Yes.

That mattered about assessing what his response to the allegation of having heard, allegedly having overheard the use of the term. That was important as well wasn't it?---That's right.

30

Neither of those are reflected in Mr Gardner's comments there or advice there. Did you go back to him and say you haven't covered everything, we also need to look at these two separate issues?---No, I don't think I did.

If I could tender those two. Perhaps they could have separate numbers for convenience.

ASSISTANT COMMISSIONER: Yes. The email from Mr Macklin of 3 August will be Exhibit 275.

40

#EXHIBIT 275 - EMAIL FROM PETER MACKLIN TO MR DARDANO DATED 3 AUGUST 2009: J SAAD

ASSISTANT COMMISSIONER: And the bundle of documents in relation to the legal advice will be Exhibit 276.

**#EXHIBIT 276 - BUNDLE OF DOCUMENTS IN RELATION TO
LEGAL ADVICE: STEVE CHILD & ADB MATTER**

MS RONALDS: In relation to handling worker's compensation matters, you right, are you the person in Council who handles worker's compensation matters?---Yes, it falls within my area of control.

10 You'll have to keep your voice up, Mr Macklin?---It falls within my area of control, yes.

And is it correct that when statements are taken from people involved by, statements are taken by StateCover or CNA or someone acting on StateCover's behalf, you are forwarded, as the employer a copy of those statement?---Yes, in most situations we are, yeah.

As a matter of practice that's right isn't it?---Yes.

20 That they are forwarded both to the injured worker - - -?---Yes. And then - - -

- - - so that he or she have them and they can respond to them as they see fit. And they're provided to you as information - - -?---As, yes.

And any investigation report is also provided to the employer and the employee?---I'm not too sure if we get an investigation report. I'm trying to think back to the last one that I was involved in.

30 You certainly get the statements?---Yes, after they've all been collected and, and, and a decision has been made on them based on the statements.

Liability, yes?---Yes.

40 I'll show you this statement. This is a statement from Mr Dardano in the Giangrasso workers comp claim and it's the matter I was referring to yesterday. Do you recall? Hang on they're all sticking together. And if I could - you see that, that's Mr Dardano's and if I could ask you to turn to paragraph 6 on page 3. You see there, that's what Mr Dardano says he said. That doesn't accord with your recollection of it does it?---No, it doesn't.

But it's more likely that Mr Dardano would be correct wouldn't it in his recollection of what he said?---Well, if he's put it in a statement I would say yes.

If I can tender that document.

ASSISTANT COMMISSIONER: Yes. A statement of Mr Dardano dated 1 June, I don't know if it is dated 1 June.

MS RONALDS: It's dated 1 June, 2009 on the front page.

ASSISTANT COMMISSIONER: It is but the handwriting seems to be 4 June but we'll say 1 June anyway. That will be Exhibit 277.

#EXHIBIT 277 - STATEMENT OF MR JOHN DARDANO DATED 1 JUNE 2009

10

MS RONALDS: You see in paragraph 5 of that statement, that is, paragraph 5 in Exhibit 277. "On 4 March I was on my way to the yard when I received a call from former worker Joe Saad." So Mr Saad's making another complaint. "He said that there was a fight in the yard and that Joe had hit Tompsett. Now, that's simply not true is it?---No.

It's not an accurate account of what happened on your understanding?---No.

20 So it's another example of Mr Saad making a false complaint isn't it?---Yes.

And do you remember that being discussed at the time, that is, that Saad had alleged that Giangrasso had hit Tompsett?---Yes, I do recall that.

And you knew at the time that that was wrong?---I asked Joe and Joe said he didn't.

And Ms Tompsett in her complaint certainly doesn't say she'd been hit did she?---No.

30

So that's another example that you knew as at March 2009 that Mr Saad had made a false complaint?---Yes.

Did you tell Mr Gardner about that?---Not that I can recall.

Would've been important for him to know that wouldn't it?---Yes, now looking at it, yes.

I have nothing further.

40

ASSISTANT COMMISSIONER: Yes, thank you. Are there any application to examine this witness?

MR CHALMERS: Yes, Commissioner.

ASSISTANT COMMISSIONER: Yes. Mr Chalmers.

MR CHALMERS: You might recall I'm acting for Mr Issa?---Yeah.

If I can start off by coming back to that 2009 Christmas party. You recall that I asked you some questions previously in the Commission?---Yes.

And in relation to asking you about the letter in relation to, it was sent to Mr Issa telling him he couldn't come to the Christmas party. Do you recall that letter?---Yes, I do.

10 All right. And if I can refer to the transcript from 15 April, 2010 when I cross-examined, when I asked you questions - - -?
---Yeah.

- - - and particularly in relation to transcript page 1265?---Ah hmm.

And I think the best way, unless that can be shown you, is just for me to read you some lines just to refresh your memory?---Right.

20 And I'm referring her on page 1265 to lines 29, that paragraph starting line 29. This is my long-winded question, "Those Council functions could have a lot, could be a whole lot of type of functions (not transcribable) functions, you're just banning him completely from Council functions. You see, what I'm going to put to you in relation to this letter and the reason that he was banned from the Christmas party was that this was consistent with Mr Romano's approach that he just wanted to completely isolate Mr Issa away from the Council." That's my question?---Mmm.

30 And your response was, "That's not true, in particular in regard to this letter, that's not true because Mr Romano didn't know about this until after I'd advised him after the fact"?---Mmm.

Can I ask you, what did you mean by after the fact in that response?---After the decision was made to write the letter.

Right. And did you get any assistance or was Mr Romano asked anything in relation to that letter?---No.

40 Right. And were any comments sought from Mr Romano in relation to that letter before it was sent?---No, I don't think he's, he, he, I don't think he even saw the letter.

Okay. And was Mr Romano emailed in relation to that letter and suggest some amendments to that letter?---No.

All right. I want to show you, can I show you a number of emails, there seem to be three in number, can you have a look at that and it goes from bottom to top?---Yes.

Now, it's head Re Preliminary View of Council Investigations, Strictly Confidential, the first one it's an email from you on Friday, 11 December, 2009 at 4.26pm. Do you see that - - -?---Yes.

- - - at the bottom and (not transcribable) your thoughts. Do I assume that that's in relation to a draft letter you did in relation to sending a letter in relation to Christmas parties to my client Mr Issa and others?---I, I, I don't, I can't recall what that was about, that, that brief email. I can't recall.

10 Right, go to the next one above, it's from Peter Macklin?---Yeah.

Sent on 14 December, 9.02am and it's to senior officers. Do you see it says to senior officers?---Yes.

Now, I've noticed in a lot of your emails previously you specify in the cc's who those, when you send to other directors or officers of the Burwood Council you - - -?---Yes.

20 - - - specify their names. Is there any reason you start using the term senior officers here?---No, I can't, I can't remember why I would have used the senior officers, it's a, it's a mailing list. I, I would normally, I normally would cc it to the people who, who I have to brief or that I have to inform.

And would Mr Romano be one of those senior officers?---I know he's not on the regular email list but I can't recall if he's on that list or not.

Let me specifically ask you, do you remember sending a copy of this email to Mr Romano?---No, I don't.

30 All right. Are you saying you didn't or you can't say either way?---I can't be sure whether Pat is included in the senior officers mailing list but I, I certainly didn't intend to send it to Pat. I know I had already made, discussed the issue after Steve Ellul came to me to talk about the problem and I discussed it with the director. I can clearly recall at the time that it wasn't, that it was a matter that we, that we should be dealing with and not involving Pat.

40 Right. Now, have a look at the, all right, all right, and that, that email and by the way why did you send a copy to David Baird and you see it says cc David Baird?---Because I'd been instructed on a number of occasions to include David Baird in any, any matters of that sort of nature.

By who?---By the, by the General Manager. (not transcribable) I think.

By Pat Romano?---Yes. I think there was occasions where he'd counselled me for not including everyone in a communication. And I, I, to the best of my recollection at the time, that's probably why I sent it to David.

Well - - -?---And I think David was also, I think the conduit to the, to ICAC, I think that may have been why I sent it to him.

Well, I note that the first email at the bottom of the page is sent to Erin Wilson. So why did you determine to send a copy to David Baird in the second email?---I, to keep him informed, I think. Erin was assisting me in drafting letters, but David wasn't getting any, wasn't providing any input into the drafting of the letter.

10 And in relation to the limited, the limited matters that Mr Romano was supposed to keep an eye on?---Yes.

Did you think that conflicted with that?---Sorry, what do you mean?

Well, what I mean is that at that stage these letters in December, 2009?
---Yes.

20 Pat Romano was not supposed to have input in relation to complaints made in relation to the driveway and the flats. And this involves not just my client, Mr Issa, but this letter also involves Mr Giangrasso and Mr Child. Didn't you think that, that sending copies and involving Mr Romano in this was a conflict in relation to keeping employees away from the Christmas party?---No, I didn't.

All right. Now have a look at the top email?---Yeah.

30 You'll see there that it's got the same heading as the two other emails, that is preliminary (not transcribable) Council investigation. Strictly confidential. So you see it's the same heading as the two previous emails?
---Yep.

All right. And you'll see that the attachments are (not transcribable) doc, Steve and Joe doc, Ammer doc?---Ah hmm.

So documents, do you agree that this clearly refers to the letters that were to be sent from Burwood Council to Steve, Joe and my client, Ammer in relation to the Christmas party?---Yeah.

40 Do you agree that's clear?---Yes, it is. Yeah.

And would you agree that Mr Romano, in an email to yourself says, looks fine to me. Please note I have suggested some changes. See green word attached?---Yeah. I don't recall that.

You don't recall that at all?---No.

Now I don't have a copy of that attachment, but do you recall what the attachment was - - -?---No, I don't.

- - - and what changes Mr Romano wanted?---No, I don't.

And do you know where that document could be found?---Well, if it was emailed to me it'd be on the system somewhere. But I, no.

And this was a document that to the best of your knowledge hasn't been produced to ICAC or has it been produced to ICAC?---I don't know. I can't tell you that.

10

And do you think you could find that document?---If it's still on the system, yes.

Would you agree that on the face of it these documents show that Pat Romano had a lot of involvement in relation to those letters going out? ---No, I wouldn't agree with that. He did, he had some involvement, but I can distinctly recall not trying to involve him too much in it.

20

Well, doesn't this show that you failed? I mean the top email on that page specifically has him recommending amendments to the letter?---Yes, I can see that.

Yes. And you had no memory of that when you gave evidence to ICAC at the private inquiry?---No, I don't recall that.

And you had no evidence of that until this was shown to you here this morning?---That's right.

30

Can I suggest that you were fully aware that Mr Romano was involved in keeping my client away from the Christmas party in December, 2009?---No, he had no role in it at all.

Now I'm just going to stay on the Christmas party for a little bit longer. I'm not going to repeat the questions I asked you on the last occasion. But I am going to ask you this, my client went to the Christmas party in 2008, both at Chambers and at the depot. Are you aware of that?---I, no, I can't say - - -

Either way?---If, if, if you say he was there he was there.

40

Okay. And you took no action, you took no action in any way to limit my client going to both the Christmas party in 2008 and the specific Christmas depot party in 2008 did you?---No, I didn't.

Okay. Now, just because I know you've got a lot on your mind, just to do a bit of a timeline in relation to my client he had been basically working at the depot after his operation in 2008, from about August 2008 he's been working at the depot. All right. So that's 2008. This is prior to the 2008 Christmas party?---Yep.

Understand what I'm saying. Now, he'd been working at the depot, are you aware in a kind of supervisory role?---Yeah.

Are you aware of that?---Yes.

10 Yes. And yet despite the fact that he'd been working from August 2008 to December 2008 as a supervisory role at the depot you didn't see any need for his protection or for any other reason to stop him going to the Christmas party or the Christmas depot party in 2008 did you?---No.

No. Now, there was a program in relation to Council, it was a program called Journey to Success. Do you remember that Journey to Success program?---Yes.

And in 2008 there had been Journey to Success meetings. Do you agree with that?---Yes.

20 And in 2009 they were moved from an outside venue to Council Chambers?---That's right.

Do you recall that?---Yes.

And do you recall that some time after February 2009 there was such a meeting that you attended?---The Journey to Success?

Yes?---Yes.

30 2009 at the Council Chambers?---Yes.

And the depot staff were there?---Yes.

And my client was there?---I - - -

Or will you accept?---I'll accept it, yeah, yeah.

40 Yes. Now, given your concerns about the 2009 Christmas, sorry, given your concerns about my client did you make any attempt in March or April 2009 whenever that meeting was to stop my client attending that meeting? ---No.

No. Now, you're aware that my client was moved from the depot to Council Chambers in late February 2009?---That's right.

Okay. So he had nothing to do with the depot from February 2009 until the Christmas party in 2009 did he?---No, I don't think he did.

No. So why was it considered given that he wasn't working at the depot that he would be - since February 2009 why was it considered that there be any danger to him at the Christmas party in the end of 2009?---Well, I think you need to ask Steve Ellul that. He came to me and said that he's had some concerns raised by staff to him and he wanted me to, he wanted some guidance and advice from me on how to handle it.

Right. And did you check the voracity of what Mr Ellul was telling you, did you check which workers?---No, I took his word for it.

10

But tell me what Mr Ellul is saying in essence is that there's some workers that might assault or hurt Mr Issa, that was the basis of what he was saying according to your evidence here at the Commission anyway?---Yes.

And in relation to that do you remember that you were so concerned in relation to other employees threatening or having altercations with each other that led to inquiries why was it that you didn't get the names of these people who were a danger to my client and instigate investigations in relation to them?---I can't tell you why I didn't do that, I was really acting on the, I was, Steve Ellul came to me with some concerns, discussed it with the director, I really didn't know what to do, I, I, I just didn't want the Christmas party to deteriorate into something that got nasty because of alcohol being consumed so, yeah, I discussed the matter with, with Maddocks Lawyers and felt that it was probably advisable to write a letter.

20

Do you think there was a problem philosophically or ethically that the people who were going to do the potential assaulting or intimidating were the people who were allowed to come to the party and the people who were going to be potential victims of that were not allowed to come to the party? Did that in any way bother you?---I can't say that I put my mind to that at the time.

30

You were just essentially following what Pat Romano wanted you to do in relation to the Christmas party?---No.

He was involved?---No, he wasn't.

And you already knew that he didn't want my client anywhere near the Council Chambers?---No, that's not - - -

40

All right. Now, I want to take you to the next issue which is in relation to my client not having work at the Council Chambers in or about June 2009 and I won't repeat any of the questions I asked you previously. Now, did you ever tell, sorry, I'll withdraw that. Could I refer you to Exhibits 130 which is the statement of John Inglese.

ASSISTANT COMMISSIONER: Yes, I think - - -

MR CHALMERS: Sorry, I haven't tendered the email.

ASSISTANT COMMISSIONER: Yes.

MR CHALMERS: I seek to tender that email.

ASSISTANT COMMISSIONER: The email from Mr Romano dated 14 December and the proceeding emails will be Exhibit 278.

10

**#EXHIBIT 278 - EMAIL FROM PAT ROMANO DATED 14
DECEMBER 2009 to MR MACKLIN AND MR BAIRD AND
PRECEEDING EMAILS**

MR CHALMERS: Now, can I take you to Exhibit 130 which is the statement of John Inglese. Can I particularly refer you, sorry. Now, you say in paragraph 30 of that statement page 8 of 8, you say, sorry, I withdraw that. Mr Inglese says, and I don't know if you've had an opportunity to
20 have a look at this but in paragraph 30 he says, "I think that HR and Khaled Azer decided that it just wasn't the best scenario and I remember hearing Peter Macklin saying that his recovery might be better at home." Did you ever tell Mr Inglese that you thought that my client Mr - that Ammer's, the best scenario for Ammer was that his recovery might be best if he stayed at home. Do you ever recall saying that?---I can't recall discussing that with John at all. No, I, I can't recall having that conversation with John.

Now, in relation to that statement in paragraph 29 it's clear that when Mr Inglese is talking about this he's talking about this conversation that he says
30 he had with you happening while Ammer was still working in the Council Chambers. So does that assist your memory in relation to whether any such discussion took place or not?---No, I've already said I don't recall having a discussion with John about that matter.

You say it didn't happen or do you say - - -?---No, I'm not saying it didn't happen I just say I can't recall it.

Because if it did happen and if it's correct then what that means is that you'd already made a determination that my client was better off at home
40 while he was working at the Council Chambers. Did you make such a determination?---No.

So Mr Inglese just has this wrong does he?---Look, I just can't, I can't recall discussing that with John. He may be mistaken, look, I can't recall.

Now, I want to take you to some questions in relation to evidence you gave at the ICAC, to the, when you were doing the private inquiry and I'll just,

I'll just, perhaps it would assist if the witness could be shown Exhibit 252. Have you got that before you?---Yeah.

All right. So can I take you, can I take you to page 139 of the transcript, that's evidence you gave at the Commission on 10 February, 2010?---139. Okay. I've got page 139.

Yes, 139 PT around line 30 I'll take you to first?---Okay.

10 Okay. Now this, this in relation to the issue of my client, that no suitable work being found for my client at the Council Chambers in or around June 2009, all right. You were asked questions just below line 32 or 33, "Okay. Who raised the issue? Was it Mr Azer, Mr Thinesh," do you see that question?---Yes.

Okay. Now, you answered, "We did, when an employee is on suitable duties and he wasn't performing a substantive position, he was just assisting someone, we regularly discussed how things are going with him. Look, I know there was some frustration with Mr Issa being in the workplace in the office environment. He, there was some concern that he was out on his phone the whole time and not doing much work." Now, I just want to concentrate on out on his phone the whole time and not doing much work. Was that from your observations or from other people's observations? ---From other people's observations.

Okay. Who's observations?---Well, I think it come from Pat.

From Pat Romano?---Well, I, well, obviously it wouldn't have been the whole time, obviously I, I should have chosen the word I used there better instead of whole time but there was a complaint that Pat had about him being out on the phone all the time, oh, well, okay, not all the time, most, some time.

All right. So isn't it the fact that Pat Romano in all likelihood told you that my client was on the phone all the time and that you were just repeating what Pat Romano told you to the Commission?---Possibly, yeah, I would have, yeah.

40 Yes. And you made no checks to see whether this is true or not? You just accepted it because Pat Romano said it it must be right?---No, I didn't, no, that's not true. I think I could recall, can recall speaking to Ammer about it.

You say, you say to the Commission there was some concern that he was out, out on the phone the whole time. What, what, what, all right, let me withdraw that. Why did you think it was necessary to tell the Commission this? Why, I mean, you're, you're saying negative things about my client. Why did you think it was necessary to do that?

MS McGLINCHEY: Commissioner, could I just object to this point. I think that the point of this part of the evidence was that he was being asked about concerns that were expressed to him. Mr, Mr Chalmers seems to be asking him if he investigated all of these things. This is about his evidence that he gave in response to counsel assisting's questions, I'm sorry, Mr McKenzie's questions. If Mr McKenzie didn't think that they were adequate at the time he could have taken him to other matters. I don't, I think that, I'm just wondering if the point of these questions is to assist you in this investigation or perhaps to perhaps get evidence for another matter and perhaps if we could keep it on matters that are of direct interest to this investigation.

ASSISTANT COMMISSIONER: Well, yes, what are you trying to get at here? I think Mr Macklin has agreed that he was probably repeating there what he'd been told by Mr Romano.

MR CHALMERS: My point is that he's saying prejudicial material on basically hearsay to the Commission with the point, with the point of besmirching my client and - - -

ASSISTANT COMMISSIONER: But if that's what he was told he can't not say it because it might besmirch your client so if that's a view he unfairly formed himself without proper evidence, yes, you could criticise him but if he's just passing on what he was told by somebody else, I think he's advancing there that that was the reason that was being given for why certain people didn't want him around the office. I don't know that he's expressing his own view that that was the truth.

MR CHALMERS: All, right, Commissioner, I'll move on?
---Commissioner, I, I didn't agree with that. I, I could see, where I sat I could see Ammer at his desk and he, I could see he was doing work so I know he wasn't on the phone the whole time but that's what was said to me.

Well, why did, if I can just ask one more question and I'll move on, Commissioner. If you knew that that wasn't the correct version, why give an incorrect version to the Commission rather than a correct, a correct observation that you objectively could make?---Look, I can't recall why I didn't add that one when Don, Mr, Mr McKenzie was asking me the question. I don't know.

All right. I'll move on. Now, in relation to, did, are you saying that Fred Finness, as he's noted here in the transcript, did you hear anything from Fred that he wasn't pleased with the, with my client's work? It's Fred Thinesh but - - -?---Mmm, I don't think he said anything to me about that. Look to the best of my recollection and obviously I'll have to read what I said here to make sure I don't make any mistakes, but to the best of my recollection it was, it was Fred's view was that the work had been, the work was drying up.

All right. Now, I want to take you page 141, line 10. Look at 10, the question is, "Right. But in this case the decision was made subsequently to keep him away from the workplace." You say, "Not by me"?---Mmm.

"Like I said before I would image that Mr Romano would have liked him not to be around." Why did you think that Mr Romano didn't want him to be around?---Well, it's pretty clear.

- 10 From what?---Well, from his comments that he made, that he, he knew he was part of Steve's crew. It was clearly, it was clear in my mind that Pat didn't want him to be in the work, in the office environment.

Did Mr Romano tell you or imply to you that one of the reasons he didn't like my client around the office on the phone was because he might be speaking to Mr Child or other people at the depot, staff?---I can recall that being said, whether Pat told me that or not I'm not too sure but I can recall it being said.

- 20 Mmm. But it's likely it was said by Pat Romano, isn't it?---Possibly.

And did he also say because, and did he also say that he didn't like my client being around the Chambers because he, he might be in contact with the newspapers or might pass on stuff that he hears around the Chambers to the depot or to the newspaper?---No, I can't recall that being said.

Did you feel that was one of the reasons Mr Romano had for not allowing or not wanting my client around the office?---I'm not too sure.

- 30 All right. But it's a possibility, isn't it?---Yeah.

All right. I'll move on.

ASSISTANT COMMISSIONER: I think, Mr Chalmers, if Mr Romano didn't say it I don't know how he could feel it.

MR CHALMERS: All right, your Honour.

- 40 And then you go on to say in the same response in line 10, "Mr Thinesh wasn't very comfortable with him being there either because he, from what I gathered later, he didn't do much and he was on his, on the phone all the time and wouldn't follow instructions." Who do you say that comes from? It sort of implies that it came from Mr Thinesh in the response?---Mmm. To the best of my recollection that's what Fred had said.

Right. And have you had occasion to look at Fred Thinesh's statement?
---No.

Are you aware, so if I can just refer to Exhibit 129 and paragraph 9, you're not aware that this was said in Mr Thinesh's statement. Ammer completed the first part of his work around April or May, 2009. I reviewed the work that Ammer did and reported back to John Inglese that he had done a good job in the timeframe. I also told Sarah Langshaw, Human Resources officer, that Ammer had done a good job and we're all okay with how things were going. You weren't aware of that?---I can't say I can, I was aware of that.

10 All right. But the point is, first of all in response to answers in this private inquiry?---Yes.

You're using what Pat Romano told you that my client wasn't working well. And here you seem to be implying and in that response, that Mr Thinesh was saying that my client wasn't working well?---Well, from the, the meeting that I had with Fred and Khaled at the time, I think that's what was portrayed to me.

20 See, aren't you trying to imply to the Commission in this private inquiry, both in that response and the previous response, trying to suggest that my client wasn't working properly and that was one of the reasons he was removed?---No, the reason, no that's not right. No.

So it's just, sorry, it's just coincident that in two separate answers you suggested two different people were not happy with my client's work?
---Who - - -

30 Well Mr Romano, you've quoted Mr Romano's view. I've gone to that question and answer in the private inquiry. And now this is Mr Thinesh's views?---Okay. Yeah.

And yet objectively you knew that my client was doing a good job?---I can't recall whether he, whether I had reports that he was doing a good job or not. All I know is that the work had dried up.

40 All right. Now, well I just want to very quickly go to one issue before I go on to others. Now, in relation to the work that was available in relation to June, 2009, there was both, if I could put it this way, short time work and long term work. There was future, future funds, looking at future assets. Do you know what that's about, looking at the future assets? Working out which footpaths would need to be looked in five, ten, fifteen, twenty year timeframes. What kerbs, what gutters, what pipes, what drainage. Were you aware that that was an ongoing programme?---No, I wasn't.

And were you aware that a lot of the work that my client had done, particularly in May and June, 2009, was in relation to these future works programme?---I didn't know that.

And that there was months and months of work to do?---I didn't know that.

Now, you gave evidence that when my, that you had discussions with an insurance company after my client had left the Chambers and was at home. And that a determination was made that it was not, it was not in Council interest to have my client come back and work at the Council, because work couldn't be found for him. Do you remember giving that evidence?---I can recall.

10 Did you tell my client that? Did you tell my client that a determination had been made?---No.

All right. Now also in relation to the discrimination claim by Mr Saad. All right. In relation to that my client was initially one of the persons complained about. Is that right?---Yes. I think I can remember that.

Right. And he was asked to provide information in relation to that?---That's right.

20 Yes. And then in September, 2009 when the, the case was determined, was my client advised that the case had been determined? That there'd been a, that the matter had been settled?---I can't recall if there was a letter sent to him or not.

Can I suggest to you that the first time he found out that this matter, sorry, I'm putting it to you that the first time my client found out that this matter had been settled was here at the ICAC Commission?---I, I, that's what you're saying, he, I answered before, I can't recall whether I wrote to him and told him. I can't recall communicating to him the outcome of the
30 inquiry, the, the (not transcribable)

All right. Perhaps do you recall or were you aware that Sarah Langshaw sent a letter to my client on 20 November, 2009?---I can't recall it, but I probably would've seen it.

Perhaps I, perhaps I can make a noise on the microphone. Perhaps I could show that to the witness. Now this is a letter from Sarah Langshaw Acting Human Resources Manager to my client dated 20 November, 2009. Do you see that it refers to the fact finding interview?---Yes.
40

And to be fair to you, in the second paragraph it says, I emphasise that your actions are not the subject of this investigation. Do you see that?---Yes.

So at that time had Council determined that my client was not the subject of any investigation?---I really can't tell you that. I was, I was on leave at this time. I don't know.

And anyway, you agree in that it doesn't say anything about the discrimination matter having been finalised?---Yes, I agree.

And there's no explanation as to how the fact finding interview relates to the anti discrimination case?---I think it directly relates to the discrimination case.

Pardon?---It reads to me that it relates to the discrimination case.

10 Right. Well, I suggest that that's also how it read to my client. You see the date 20 November, 2009?---Yes.

The matter, the discrimination case had been settled in September, 2009 hadn't it?---That's right.

So there's very little explanation as to what was happening or what had been resolved and exactly what the fact finding interview was. Would you agree with that? With all those three propositions?---Yes.

20 All right. Now I just want to, I'm nearly at the end, I seek to tender - - -?
---Actually, I can't recall, I can't recall seeing this letter actually.

Pardon?---I can't recall seeing this letter, this letter that Sarah's liaised with Maddocks and preparing.

Well, I seek to tender that.

ASSISTANT COMMISSIONER: Yes. The letter to Mr Issa from the Council dated 20 November, 2009 will be Exhibit 279.

30

#EXHIBIT 279 - LETTER FROM MS LANGSHAW TO MR AMMAR ISSA DATED 20/11/2009

MR CHALMERS: All right. Now lastly were you aware that any surveillance was organised on my client on or around 28 April, 2010, that's this year?---No.

40 Do you know of anyone or any person or anyone delegated by Council to follow my client or check on my client on or around 28 April, 2010?---No, definitely not.

Right. And do you know of anyone called M & A Investigators at Engadine? Ever heard of them?---Never heard of them before until I heard it raised in the transcript here.

Right. Sorry, there is one other thing. I understand that at the 2009 Christmas party a number of workers who were on workers compensation attended that party. Are you aware of that?---I'm not aware of that. I attended the party for about 20 minutes just to say hello. I can't recall seeing who was actually on workers comp and not at work and who attended, I don't think there was anyone but I, I can't, I can't recall.

Tony De Carlos?---Who?

10 Tony De Carlos?---It's Tony De Naskos.

Yes?---Tony De Naskos is at work on suitable duties.

Yes. Mr Stadodidas - - -?---Who?

- - - was he at the Christmas party? Mr Stadodidas?---I've never heard of that person.

20 Stan Aidinlis, sorry?---Stan? Stan, Stan, well, Stan was at work on suitable duties. I don't know if he was at the Christmas party or not. I didn't take a roll check.

And just, this is the last question you'll be relieved to know. But did you ever see as strange to you that the five people involved in making the complaint in relation to Burwood Council in one way or another for separate reasons and separate ways were not allowed to work for or not at the premises of the Council? Did that ever seem as coincidence or strange to you?---Your question is again what, do I think it was strange that - - -

30 Yes, that the person - - -?---The five people. Who's the five?

Mr Giangrasso?---Mr Child?

Mr Child?---Mr Issa?

Mr Saad?---Mr Saad?

40 Saad, yeah. My client and Robert Cummins?---That's four, five, okay. Did I think it was strange?

Well, coincidental that none of those five by June 2009 none of those persons were actively working for Council, they were on leave, workers compensation or they had been suspended. Did that ever occur to you as being a strange thing, strange coincidence?---Not strange. Well, yes, not strange but concerned.

And yet you were very much involved in that process one way or the other weren't you?---Yes, I was.

I have nothing further.

ASSISTANT COMMISSIONER: Yes, Mr Neil.

MR NEIL: Thank you, Commissioner. Mr Macklin, I act for Mr Baird?---
Ah hmm.

10 I just want to ask you about one particular topic. You gave evidence of a
meeting at which the people including yourself, Mr Baird, Mr Romano and I
think Mr Hullick at which Mr Romano was somewhat emotional. Do you
recall that?---(NO AUDIBLE REPLY)

And I think you said that Mr Baird and perhaps Mr Hullick had to talk to
him to settle him down?---Look, I've attended a couple of meetings where
Pat had got emotional and upset.

20 And - - -?---Ones that David were at, I think the meetings in Henry Davis
York where David was there as well and I think Pat was pretty upset on a
couple of occasions.

Yes. And did Mr Baird take Mr Romano out of the room at some time?---I
think I can recall David doing that at one, one, once or twice, yeah.

And was Mr Romano at the time what might be called in an agitated state?
---Yes, you could say that.

Was he highly emotional?---The situations that I'm thinking of at Henry
David York's offices, yes, highly agitated.

30 And to your observations when Mr Baird spoke to Mr Romano or took him
out of the room after that did Mr Romano appear to be more calm?---Yeah,
I'd have to agree with that.

Yes. Would you agree that Mr Baird assisted to settle him down?---Yes,
yeah.

And would that have happened in your presence on more than one
occasion?---Yes.

40 Yes, thank you.

MR TAYLOR: Assistant Commissioner, (not transcribable).

ASSISTANT COMMISSIONER: Yes, Mr Taylor.

MR TAYLOR: Mr Macklin, as I think you're aware I act for Mr Azer. It's
a situation isn't it that Mr Azer regularly spoke to you about human
resources issues?---Mmm.

And that was almost a constant stream of discussion between you?---Yes.

And is it fair to say that he always referred to you in relation to any of those sorts of issues?---Yes.

He readily accepted your advice in relation to those matters?---Yes.

Now, and that included advice in relation to, for instance, the suspension of Mr Child?---Yes, I would say so, yes.

10

Now, I want to take you to 5 February, the incident in Mr Azer's office with Mr Dardano and yourself?---Yes, yes.

Now, Mr Azer was ultimately the director responsible for the depot, that's clear isn't it?---That's right.

It was clear to you as I understand your evidence that when Mr Dardano was relating what Mr Saad had complained about it involved a number of issues. Is that right?---Yes.

20

And part of that complaint was in relation to him performing work in Council time at a block of units?---Yes.

And that appeared to be connected to Mr Becerra?---Yes.

Now, that I think you said rang alarm bells for you immediately. Is that correct?---Yes, I think I said that, yeah.

30

Now, I know you disagree with Mr Azer's recollection of what was said and I'm not going to traverse that to any great degree. Was it your habit to call him Mr Director?---No.

Have you ever called him Mr Director?---Khaled?

Yes?---No.

Now, ultimately he was responsible for the depot and the timesheets, the pay that was paid to the workers from the depot wasn't he?---Yes, he was responsible for the timesheet. Well, ultimately, yeah.

40

Yes. He had to sign off on various activities including timesheets, pays and all that sort of thing?---I can't recall whether he would sign off on all of them but I, I, yeah, he would have some staff possibly on the supervisors at the depot.

And if one of the workers from the depot had in fact been working on a block of units during Council time he may well have signed off on pay, timesheets, that sort of thing covering that period of time?---Look, without

knowing what the, without having a clear recollection of the process they follow there I can't answer that for sure but he possibly may have, yeah.

Possible. And if the Saad complaint was correct, that is, he'd been working on Council time where he couldn't have been working Mr Azer could have some liability could he not for not conducting a proper supervisory role in relation to the depot workers?---Well, yes, he ultimately be responsible.

10 And wasn't that the conflict of interest that he declared at the time?---I don't recall any discussion about a conflict of interest.

I appreciate that but is it possible that he did?---Look, no, I don't, I can't, I, I, I can't recall any discussion about a conflict of interest in that meeting, I think it was fairly brief meeting.

But it was fairly brief because you were keen to get around to Mr Cummins as the Director of Governance as soon as possible?---To get some advice and guidance, yes.

20 Because you saw it as a very serious issue?---Mmm.

And if it was the case that Mr Azer didn't seem to appreciate the seriousness you were keen to do something about it straightaway?---No, I think Khaled appreciated the seriousness of it but I was keen to address the issue, yep.

Now it's, your evidence that, in relation to Mr Child and the job description, you were vividly opposed to the tertiary qualifications being part of the essential criteria. Is that correct?---Yes.

30 And Mr Azer agreed with that did he not?---Yes.

And he actively argued against that?---Yes.

And there's no doubt in your mind that you and he were at one as far as that was concerned?---Yes.

Now, it's also true is it not that both you and Mr Azer had a number of discussions about the implementation of the Morrison Low Report?---Oh, yes.

40

And that was over a fairly lengthy period of time?---Oh, yes.

And it certainly was your understanding that certain things had to be done to implement the recommendations. Correct?---That's right.

And there were certain practical matters that had to go further than mere recommendations contained in the report?---Oh, no, I wouldn't agree with that. I think that my involvement was, really the Morrison Low Report and

implementing the changes that they recommended. I don't know how much further he went from that. It was really only Steve Ellul's involvement where it went to the next level.

Okay. Well as far as that was concerned, once he came on board and made further recommendations, you and Mr Azer discussed those?---Yes, there was discussion about that. Yeah.

And you and he came to certain views about it?---Yes.

10

And you and he, for want of a better term, were at one as far as they were concerned?---Yes. I would rely on his expertise in terms of the contract management and the project management functions being combined or, but I didn't have any expertise in that area, so I'd rely on Khaled there. But, yeah, we, we discussed it regularly.

And he relied on you in relation to the HR issues that arose?---Yeah. How to implement it, yeah.

20

And you had no serious disagreement about those steps that were being taken?---With Khaled?

Yes?---No.

And it would be fair to say would it that you and he had a fairly consistent view in relation to what needed to be done after Mr Ellul made certain recommendations?---Yes. It would be fair to say that.

30

Thank you. Now in the private inquiry, this is at page 78, Commissioner, at about line 25, you were asked this question by Mr McKenzie in relation to Mr Azer. Was he ignoring the issue of Mr Dardano, with Mr Dardano raised, I think it might probably be inferred that it was, was he ignoring the issue when Mr Dardano raised it. And you said, Oh, no, he was listening, like I was, but, look, I don't know how I got the feeling that he wasn't, didn't want to be involved. I just sensed it. Remember giving that evidence?---I do.

40

Are you able to elaborate on what caused you to have that sense, that feeling?---I've got to think back to the meeting now. I just sensed that, well he was nervous, he seemed upset or nervous or rattled about the, what was being discussed.

But what gave you that impression? Like he didn't physically go and hide under the desk as someone (not transcribable)?---No, no, that's not, what Robert said, Robert come and said that I'd said is not true.

He didn't throw his arms up?---No.

Run out of the room or anything?---No, no, no, no. Look - - -

I'm just trying to understand - - -?---I know.

- - - that gave you that understanding?---I know. It was just a feeling I got. Look, I, I, Khaled and I have a fair bit to do with each other and I, I just felt that, well clearly it was not John Dardano's role. He was really, you could specifically call an employee, he was a contractor filling a temporary role. I just got the feeling that Khaled was a bit nervous and rattled about it and I thought well maybe I, I better talk to this employee. I can't, look I can't recall the exact circumstances which made me get that feeling.

10

So is it fair to say that your, your recollection of that meeting or conversation on 5 February is not a hundred per cent accurate or correct? ---To the best of my recollection what I just said in the private conference and what I've said elsewhere is, is what I think occurred.

Okay. But you don't suggest to the Commission that you remember everything that was said or everything that was done?---No. I couldn't, no, it's too long ago to remember exactly every word - - -

20

Thank you. Now just finally in relation to assisting Mr Child in relation to, sorry, the planning work. There was restoration offices moved up to Council Chambers at some stage. Do you remember that?---I think it was proposed. I don't think it ever happened to the best of my knowledge.

Did Mr Azer ask you whether he could move Daniel and Carlos into the renovated CCTV room?---Oh, no, okay, I do remember something, some discussion about that.

30

And was that done to assist Mr Child with planning?---I wouldn't know. I don't know, I'm sorry.

That's not something you'd have knowledge about?---No.

Yes, thank you, Assistant Commissioner.

ASSISTANT COMMISSIONER: Thank you.

MR HANLEY: Assistant Commissioner, may I ask some questions?

40

ASSISTANT COMMISSIONER: Yes, Mr Hanley.

MR HANLEY: Thank you. Mr Macklin, I think you know I appear for Mr Child. In relation to the complaint by Mr Saad about the work being done by him on units in February of 2009?---Yes.

At some stage after that were you at a meeting when, with the General Manager when he made a comment along the lines that, care would have to

be taken with Mr Child because he may also make allegations?---I can't recall that being said in a meeting, no.

Okay. Do you recall Mr Romano expressing any concerns that Mr Child may make allegations after the Saad complaint was made?---No, I can't recall.

Okay?---Sorry.

10 By the, sorry, I'll withdraw that. On 4 April, 2009, you saw the article in The Sydney Morning Herald?---Yes.

Did you receive an email from Mr Romano to the Executive members advising that he was not guilty of anything that was being disclosed in that article on that day?---On the Saturday?

On the Saturday?---I don't recall receiving an email. And I wouldn't of been checking anyway.

20 On the 6th, the Monday when you went to work, you'd seen another article in relation to allegations about Mr Romano of a similar nature to that on the 4th?---Yes. There was an article on the 6th.

And that created a lot of concern with the Executive at the Burwood Council?---Oh, yes.

When you had read both those articles did you consider whether they had any consistency with what Mr Saad had been saying back in February of 2009?---Yes.

30 Did you raise that at any meeting, with the Executive on 6 April?---No, I don't recall raising it at that, on 6 April meeting. I don't have a clear recollection of that meeting, although I, I think from what I've heard here., that meeting did occur. No, I didn't raise that, no.

Well after the two articles, the Executive were very concerned about the image of the Council and what was being alleged weren't they?---Yes.

40 And there was a meeting on 6 April, including Mr Romano and the rest of the Executive and yourself?---Yeah, look, I accept that there was a meeting. I just can't recall it in detail.

Well, this must've been a fairly important meeting wasn't it in view of the allegations?---Yes.

Well, you say you have a limited recollection of what occurred at it?---I do.

Do you recall the fact that Mr Child was nominated as being the person behind the articles on 4 and 6 April?---Look, I can recall that, that it was, everyone considered it was Steve.

And Mr Romano was upset about it wasn't he?---Oh, yes. Yes.

And he thought, did he express a view either at that meeting or on any other time that day in your presence that he thought Mr Child was out to get him? ---Yes.

10

And, and he preferred, did he express a view either directly or indirectly that he would prefer it if Mr Child was not at the workplace any longer?--- Clearly it was, has been, clearly, yes, that's been portrayed to me, yes.

MR HANLEY: That was as early as 6 April?---I can't recall if it was 6 April but that was the feeling.

Because on 7 April you had a cross-functional team meeting which we've heard about in these proceedings - - -?---Yes.

20

- - - regarding Mr Child's position?---That's right.

During which Mr Ellul raised changes to his position and I think you've agreed with counsel assisting that went beyond the recommendations of the Morrison Low report?---It did.

And in fact in a letter that you subsequently wrote to Mr Child on 20 April you expressed that, didn't you?---Yes.

30

But at this meeting on 7 April Mr Dencker was representing the General Manager?---He was.

Had there been a suggestion on the 6th that Mr Romano would at least for public purposes be seen to have stepped aside from the administration of the depot staff?---Sorry, I missed it.

Did Mr Romano suggest on the 6th that he would step down from being involved in the depot?---I do recall Pat saying that, whether it was at that meeting on 6 April, it may, it must have been. I just don't have a clear recollection of that meeting.

40

But certainly your recollection is - - -?---Mmm.

- - - that on the cross-functional team meeting on 7 April - - -?---Yes.

- - - Mr Dencker appeared at the meeting and he was representing the General Manager?---That's right.

And Mr Hullick was there?---Yes.

They were two men that normally didn't involve themselves in the personalities and running of the, the depot did they?---That's right.

That was something that you and Mr Azer, Azer were far more connected with (not transcribable) and also in the administration?---Yes.

10 And your evidence, and I think it's Mr Azer's evidence, is that you thought that the changes being recommended by Mr Ellul were a bit unfair?---Yes.

But your views did not prevail, did they?---No, that's right.

And was it the situation that Mr Dencker expressed the view that Mr Ellul's recommendations should be adopted?---Well, yes, because they were and he was chairing the meeting.

He was the chairman?---Mmm.

20 He had the casting vote, did he?---Yes.

And Mr Hullick agreed with him?---Yeah, he must have because that was, was approved.

And did you see that vote by Dencker and Hullick, particularly looking at their positions in relation to the depot as opposed to you and Azer, as being a reflection of what Mr Romano wanted?---I can't recall if I thought that at the time but it would appear that way.

30 Because Mr Dencker was Mr Romano's man, wasn't he?---No, I don't necessarily agree with that.

You don't think so?---No, no.

Mr Ellul, you've heard the questions I've asked Mr Azer and others about his lack of opportunity to observe Mr Child in his role?---Mmm.

You've heard those questions, haven't you?---Mmm.

40 Would you agree with that proposition, that he had limited opportunity to do that?---Well, yes.

And Mr Child wasn't immediately advised, was he, that his position was going to be so radically changed?---(NO AUDIBLE REPLY)

He wasn't advised until you had a meeting with him on the 20th and subsequently - - ?---That's right.

- - - you sent him a letter on the same day?---That's right.

And he expressed the view at that stage that people were trying to get rid of him?---Yes.

Now, on 7 April, if I could just go back to that, were you aware that according to Mr Mailey that he had received a telephone call from Mr Dencker at 8 o'clock that morning requesting that the surveillance be reactivated in relation to the depot workers which included Mr Child and Mr Giangrasso?---Am I aware that - - -

Were you aware on the, on the day that you had the meeting with Mr Ellul and others about Mr Child's position that Mr Dencker had asked Mr Mailey to reactivate the surveillance of the depot workers?---I can't say I was aware at the time but I've since been, I've heard that said in, in these hearings. I can't recall if I, if I knew that at the time.

Keeping that fact in mind - - -?---Mmm.

20 - - - does that assist you as to whether anyone, including Mr Romano, directed at any meeting on 6 April that the surveillance should be reactivated in relation to those people?---I can't recall Pat ever giving an instruction to recommence the surveillance, no, I don't, no.

Do you recall any discussions at that meeting on 6 April as to whether there should be an investigation of the Council's policy to see whether Mr Child or whoever had been responsible for the Sydney Morning Herald articles had somehow breached Council policy?---At that meeting I can't recall any discussion about that but - - -

30 Did you become aware that on the 7th that Mr Romano issued instructions that an investigation should be made of the policy to see whether it had been breached and if not whether any recommendation should be made to (not transcribable)?---I can't recall if I knew that on 7 April but at some point in time I was aware of Pat's view in relation to Steve allegedly contacting the, the newspapers so I think I might have mentioned it in my evidence yesterday that Pat asked me to obtain Steve's mobile phone records (not transcribable).

40 If, sorry, do you want to say anything further?---No.

You recall counsel assisting took you to Exhibit 241, if the witness could have access to that please, Assistant Commissioner, and if you can recall it I'll just describe it briefly for you while it's being obtained, it was a letter addressed to David and Darren, Mr Baird and Mr Gardner, and it appeared to be attached to an email from Mr Dencker to Mr Gardner on 29 June, 2009. Do you recall being asked questions about that by counsel assisting the Commission?---Yeah.

If you could please go to page 9 of that exhibit?---Page 9.

It should be numbered down the bottom I believe?---Yes.

And do you see, you see that letter which you appear to have put together to be attached to Mr Dencker's email to Mr Gardner in which you are seeking legal advice?---Yes.

10 Now, do you see the paragraph which is italicised with Mr Child commencing there?---Yes, yes.

And on the third line I think it says, a clear violation of Council's code of conduct and that Mr Child would have been aware of it. Do you see that? ---Yes.

Now, looking at that, does that assist your recollection as to whether back on 6 or 7 April there had been a request by Mr Romano to look at the code of conduct to see if Mr Child had breached it?---No, I can't recall if, if, if
20 I'm aware of Pat asking for a review of the code of conduct, I, no I can't recall.

Certainly up unto, up until that time, 29 June - - -?---Mmm.

- - - were you and any other member of the Executive assigned to look for reasons to ensure that Mr Child didn't return to the workplace?---In my, in my situation I'd have to say yes.

Well, you seem to be driving this by this letter and I want to just give you
30 the opportunity to ask whether this was something you did off your instigation or whether you were, had been briefed to pursue these lines?---I would have been briefed to pursue these lines (not transcribable).

Who by?---I can't recall but it would have, I, I, I'd have to say the General Manager because I know that that was, he was pretty upset about all this at the time.

Well, in relation to the contents of that letter, you refer to the Executive meeting, team meeting that morning, do you see that in the second
40 paragraph of the first sentence?---Yeah.

And it includes Mr Azer. Had you seen an article in the Sydney Morning Herald on 20 May accusing Mr Azer and Mr Inglese of not revealing that \$240,000 had been paid doubly by a company to the Council?---I can remember that article, yes.

Well, was Mr Azer concerned about that at this meeting?---(NO AUDIBLE REPLY)

In view of what you've set out in the paragraph about Mr Child, numerous phone calls to the Sydney Morning journalist, numerous articles in the paper that caused significant disruption and damage to the organisation?---Look, I can't recall whether Khaled was upset. It was, it was, sorry, what was your question again?

10 Well, was Mr, was that one of the articles that you were concerned about when you referred to the numerous phone calls and numerous articles?---If it was after the time that the articles were in the paper I'm, I'm assuming yes.

Was Mr Azer upset about it at this meeting on that morning?---I can't recall whether at that meeting he was upset about it but I know he was upset about it.

20 But the thrust of this advice or letter seeking advice is that you're looking for a way, suggesting ways to your legal advisers that they may consider would give you a legal basis to ensure that either or both Mr Child and Mr Cummins would, did not return to work and could be suspended in some way?---That's right.

And would it have been Mr Romano who had suggested that there should be ways looked at to see whether these two men could be suspended?---To the best of my recollection, yes.

30 It appears to be somewhat emotive in relation to the suggestion that the clearly breached violations of the code of conduct by Mr Child's (not transcribable). Would you accept that as a reading of the contents of that? ---Yes.

Did you feel that, that it was, did you feel emotional about it?---I can't recall how I felt at the time but I, but, no I can't recall whether I, whether I felt - - -

Because you did, you did receive an advice, didn't you, addressed to you? ---I, I assume so.

40 From Erin, Erin Wilson but approved by Mr Gardner referring to a meeting at Council on 30 June to discuss Robert Cummins, Steve Child and Joe Giangrasso. If you go to page 11 it's under a Maddocks - - -?---Yeah.

- - - letterhead, an email letter. Do you recall getting that?---Yes.

And they clearly were addressing whether you could suspend or the Council was entitled to suspend Mr Child, amongst other issues, that's correct, isn't it?---Mmm, yes.

And at paragraph 27 on page 14 of that exhibit it's clearly advised to you that if Mr Child wished to return it would be difficult for Council to prevent him?---That's right.

There was no justifiable industrial or disciplinary reasons to suspend him?
---That's right.

So he wasn't suspended at that stage, was he?---It doesn't look like it, no.

10 No. You accepted the advice?---Yes.

But on 23 July, 2009 Mr Saad made an anti-discrimination claim, several months after he'd been sacked?---That's right.

And did, was it discussed between you or in your presence by the members of the Executive that this may be a way of being able to get rid of Mr Child?
---No, I don't recall any discussion about that. It was, no.

Sorry, I note the time.

20

ASSISTANT COMMISSIONER: Yes. We will resume at 10 to 11.00.

SHORT ADJOURNMENT

[11.33am]

ASSISTANT COMMISSIONER: Please be seated. Do we have a witness now?

30 MS RONALDS: Sorry, Commissioner, I didn't realise he wasn't here.

ASSISTANT COMMISSIONER: We do really (not transcribable)

MS RONALDS: I knew someone would do one one day, but Mr Macklin I didn't pick as the one who'd do it I have to say.

ASSISTANT COMMISSIONER: Well, we might just adjourn for a short period til we find a witness.

40

SHORT ADJOURNMENT

[11.57am]

ASSISTANT COMMISSIONER: Yes, please be seated. Yes, Mr Hanley.

MR HANLEY: Mr Macklin, in relation to the anti discrimination claim by Mr Saad, were you concerned about the fact that it was made several months after he'd been dismissed? In view of your concerns about his

credibility?---I, no I can't say that, I can't recall whether I was concerned about it or not. I was, no, I can't recall.

Because you gave evidence at the private hearing at page 144, line 44 that you had a discussion with Mr Romano about Mr Saad being removed from the workplace. And I think your evidence was, I can recall some discussions that Mr Romano had with me about Mr Saad's credibility?---
Yes.

10 And whether he's the sort of person who should be working at Burwood?
---Yes.

Mr Romano suggested to you that his employment should be terminated?
---I, yes, I can recall saying that.

Sorry?---I can recall saying that.

I think you said also at page 145 that to the best of your recollection it was a
20 decision that was made by Mr Dencker in the company of Mr Azer, Steve
Ellul and myself and I suspect possibly Les Hullick there as well?---Yes, I
do remember that.

And it was put to you, essentially the decision of Mr Dencker, and you said
to the best of my recollection, it was?---I'm sorry, I didn't hear that last bit,
sorry?

I think you were asked, so it was essentially the decision of Dencker?---Yes.

30 And the answer was, to the best of my recollection, yes?---Yes.

And it was discussed as a group. Mr Saad's retrenchment as a casual
employee from the Council was something that Mr Ellul argued strongly
against?---Yes.

In fact he had the opportunity by then to have observed Mr Saad working
and considered him a good worker?---I'm not too sure of the dates, but I
would say, yes. Yeah.

40 Was it raised at the meeting whether there was an ulterior reason to get rid
of Mr Saad, for example, the fact that he had made allegations against the
General Manager in February 2009?---I can't recall whether those, that
discussion occurred at that meeting, no.

Might the witness be shown Exhibit 200, Assistant Commissioner. Do you
have that exhibit, Mr Macklin?---Yes.

Sorry. Could you go to page 12 please an email from Stephen Ellul to Mr Dencker on 27 April copied in as Mr Azer, Mr Hullick and Mr Dardano re the Joe Saad issue. Now, did you ever see that email, it doesn't appear to be addressed to you but in view of your involvement in Mr Saad's employment was that sent to you or did you see it?---Not at the time, I've seen it since the hearing's commenced but I haven't, no, not at the time, I can't say (not transcribable).

Only since the hearing's commenced?---I think so.

10

But it was consistent with Mr Ellul's arguing strongly for the retention of Mr Saad. Is that correct?

MS LEGGAT: Commissioner, can I object to that. The email clearly doesn't say that. This witness says that it wasn't sent to him at that time, it's a matter for you to read it and form a view.

ASSISTANT COMMISSIONER: Yes, I don't know that this witness can usefully add anything about an email that he hasn't seen.

20

MR HANLEY: (not transcribable). If I can just take you now then to the actual discrimination claim by Mr Saad. He forwarded a document of complaint to the Anti-Discrimination Board and I was wondering if the witness could have Exhibit 153. Do you see the actual complaint that had been filed by him with the Anti-Discrimination Board?---Yes.

If I can take you to page 9 as numbered in the black text rather than the page number on the bottom. Do you see that?---Yes.

30 At the top it's got in bold letters, "What happened?"?---That's right.

And you'll see there's some dot points made there?---Yes.

And that the first dot point he claims that he attempted to speak to John Dardano, Khaled Azer about how he's being treated by Mr Child and his gang and this also included Human Resources department?---That's right.

Would you take that as a reference to you the last - - -?---Yes.

40 Did Mr Saad complain to you about any discrimination of a nature that he complained to the Anti-Discrimination Board?---Mr Saad had complained to me once before about a, a, a disagreement that he had with Ammer Issa, that's the only one that I can recall that occurred.

Because he goes on to say in the second dot point, "No one wanted to take action so I spoke to my workplace delegate"?---Ah hmm.

Did you, would you accept that that was a correct statement that you and Mr Azer and Mr Dardano took no action in relation to any complaints he made about discrimination?---I can't answer for John Dardano and Khaled but I, in terms of the, his, in terms of where it was referring to our team, no, that's not correct.

Well, in view of that did you think that that also reflected on Mr Saad's credibility?---Yes, to some extent.

10 He then nominates Mr Child and Mr Issa as being a person who have discriminated against him and if you go over to the next page, page 10 and you'll see some further dot points underneath from late April 2008 to April 2009. Do you see that?---Yes.

Where he makes his complaints?---Yes.

And says he was called a black C?---Yes.

20 "And when I told Steve Child that I don't like it they continued to call me that name"?---Yes.

It doesn't appear in this document that he's alleged at any point specifically that Mr Child called him those names?---(NO AUDIBLE REPLY)

Are you aware of any specific claim where he says Mr Child called him that?---Look, my understanding was that he was saying that Steve had called him that name.

30 If refers to "they continued to call me"?---Yeah. Look, I don't know who he refers, he means to, what he means by saying "they".

When you investigated this matter did you interview any other people or not ascertain the identity of the "they" who were calling him this name?---I can't recall as a result of my preliminary investigation whether, who "they" were.

So no one else was suspended in relation to calling him that name?---No.

40 He says on the next page in the second paragraph he was bullied and treated unfairly by his supervisor and his offsider Mr Issa?---Yes.

And he seems to have taken exception to the way he was spoken to in relation to being given directions and one might take that view of what was said?---Yes.

And that he was singled our or picked out in front of other staff and called a black bastard and harassed about his religion. See that on the next paragraph?---Yes, I do.

Did you ever ascertain who called him a black bastard?---No, I can't recall whether I was able to find out who did it.

When you read his complaint, his formal complaint did you form the view that he was very concerned about why he'd been sacked?---I'm sorry?

He was really concerned about the reasons behind why he had been sacked?---Yes, he was.

10

And that had nothing to do with Mr Child did it?---No, it didn't.

And that he amongst many things or the ones listed 1 to 5 wanted an apology from Burwood Council and a personal apology from Steven Child. You see that at number 5 on page 12?---Yes, I can see that.

Well, that's set out under what he would like to happen about his complaint isn't it?---That's right.

20

He in no way sought any financial gain it would appear from what he's listed there?---That's right.

And Council's policy in relation to anti-discrimination primarily looked at to whether these matters or these types of matters could be resolved in some conciliatory fashion or by way of education?---Yes, that's the words that I can recall in the policy.

30

In attempting to deal with Mr Saad's claims did you explore whether you could provide him with any true reasons why he was sacked?---There was in the conciliation meeting at the Anti-Discrimination Board to the best of my recollection that was discussed. There was no, to the best of my recollection at that time Joe was not pursuing, I think he dropped trying to get an apology, I don't think that's, I think, I don't think it was important for him at the time, he, he, he certainly commenced the discussion about a financial settlement.

He discussed that at the meeting, at the reconciliation or the conciliation?---Yes, he did.

40

But prior to that as far as the Council policy goes in relation to these types of claims, Council is required to deal with the allegation as quick as possible?---Yes.

And in relation to the matters that he has listed there as to what he sought to achieve by his complaint, did you set to initiate any meeting with him to see whether they could be resolved prior to conciliation at the Board?---No.

Did you contact Mr Child to see whether he would be prepared to apologise?---No.

Did you speak to the Executive to see whether, as a Council, you could render a letter to him apologising for any perceived or real discrimination that he had suffered or (not transcribable)?---I'm sorry, did I - - -

10 Did you go to the Board and say, look, this fellow wants an apology from us. It might be an easy way of getting rid of him?---No, I didn't do that.

May he give Exhibit 147, Assistant Commissioner. Does that appear to be the policy against Council (not transcribable) against discrimination and harassment, (not transcribable) policy agreement to procedures?---Yes.

And you're familiar with it in your position in HR?---Yes, I am.

20 Could you go to page 2 of that, with the heading 2.3, it's about senior and middle managers. And responsible for managing any discrimination in their teams and what they were to ensure. And that was directed at you wasn't it? In relation to staff (not transcribable) position?---Yes.

And one of the matters was that at dot point 4 that the matters were to be dealt with promptly?---Yes.

Well, after you received the claim and seen what Mr Saad wanted, did you do anything in relation to resolving the matters that he had raised?---No, I didn't. No. I, no, I didn't.

30 Was there any discussion amongst the Executive that Mr Saad's complaint may in effect afford a way of ensuring that Mr Child didn't return to the workplace?---I can't recall that being discussed in my presence.

Did you ever seek advice as to whether he could be suspended because of Mr Saad's claim?---I think I did, yes.

Did you ever conference Mr Saad after the claim had been lodged to ascertain specifically who the people were that were using the terms that he complained about?---I'm sorry, I don't - - -

40 Well, did you say to him, well who are these people? Did you ring him up or contact him and say would you come along and just tell me who you're complaining about, who specifically said these nasty things to you, these discriminatory things to you?---No, I didn't contact him.

You sought a response from Mr Child?---Yes.

And he denied - - -?---Yes.

- - - that he had ever heard anyone calling Mr Saad these names?---I think that's, that's, I think that's correct. Yes.

And in fact he said he never called him that?---Ah hmm.

And he also set out various matters that would've gone to challenging the credibility of Mr Saad's claim didn't he? Matters that could be easily verifiable particularly in view of the religious overtones or prejudice that Mr Saad had made in relation to - - -?---Yes.

10

- - - the fact, in particular the fact that Mr Child had a policy that he had introduced at the depot which indicated he was very aware of being responsive and understanding of other people religious beliefs?---I saw that in Steve's response. Yes.

And that was easily verifiable and was wasn't it?---I guess it is, yes.

20 Could you go to page 5. See the very top point there? It says where the grievance cannot be resolved by the director and Human Resources Manager, the General Manager must investigate further and resolve the matter. If the General Manager is unable to resolve the matter, the employee or contractor who made the complaint has to be advised in writing as to why. Do you see that?---Yes.

The policy is really to, if possible, by sitting down and having sensible discussions about this, hopefully to resolve the matter without any need to invoke the Board's determination. And this is the step, I would suggest, that's envisaged as a way of avoiding that?---Yes.

30 Did you do any of those things?---No, I didn't.

Did you contact the General Manager as to whether he should investigate it?---No.

Did you advise either Mr Saad or Mr Child that the matter could not be resolved?---No, I didn't.

Advise them in writing?---No, I didn't.

40 And see the next one talks about where the complainant only wants an apology, which was certainly one of the things that Mr Saad wanted wasn't it?---I think Joe would want more than an apology.

Well, on the face of what he had set out in his complaint, he really wanted some explanation as to why he was sacked didn't he?---That's right.

An explanation as to why he was treated the way he was, why Council didn't do anything about it. Whether he could get his job back and be apologised to?---Yes.

That wasn't explored either I take it?---No.

Well, 3.6 sets out the rights of a person alleged to be causing the discrimination, et cetera. Do you see that?---Yes.

10 You advised Mr Child of the complaint in writing as you were required to?
---Yes, we did.

And did you provide a fair hearing with the opportunity present their side on the issues as part of the investigation to an independent unbiased arbitant, arbitrator?---Not at that point, no.

You say that occurred later when the conciliation hearing took place at the board?---It hasn't occurred yet.

20 It still hasn't occurred?---No.

He wasn't invited to, Mr Child that is, was invited to attend the conciliation hearing?---No, he wasn't.

Or advised as to the fact that it was even taking place?---I think he knew it was taking place, but he wasn't invited.

30 How do you think he knew it was taking place?---In my letter to him I, look I can't recall the exact content of the letter that I wrote to him advising him of the complaint, but I can't be sure if he knew or not. I'm sorry.

Okay. Was it a deliberate decision made by you or the Executive to keep him out of this process, that is - - -?---No. No. Not by me anyway. No I, no I, I've never dealt with one of these before and I was guided by I guess my legal advice in how to handle this.

40 You were guided by the policy?---Not directly no. I didn't think the policy really had a, a part to play in this 'cause I thought it was matter that was to be dealt with by the ADB. In hindsight, look, I'm looking at this now, there are things that I should've done in regard to how Steve was communicated to with this matter that I should've done. And I, and in hindsight, and seeing, looking at it now, there are some things that I should've done.

Because 3.7 dictates that the matter must be dealt with immediately and commence an investigation within twenty four hours doesn't it?---Yes.

And to reach an outcome as soon as practical, acceptable to the complaint, the person making the complaint and possibly the person who has alleged to have made the complaint?---That's right. It says that there.

The final paragraph on that page talks about education doesn't it? (not transcribable) if possible, a verbal warning, a formal written warning and in extreme cases dismissal?---Yes.

MR HANLEY: And the next page at 3.11 - - -

10

MS McGLINCHEY: Commissioner, could I just say something?

ASSISTANT COMMISSIONER: Yes.

20

MS McGLINCHEY: I probably should have raised this before but I wasn't quite sure how much detail we were going into on the policy. This is a policy that was in place from 10 September, 2009. I think if Mr Hanley wants to put specific things he needs to be very careful about the matter that he's dealing with in relation to whether this policy was in place or whether a previous policy was in place and I understand we don't have that previous policy.

ASSISTANT COMMISSIONER: Yes. I understand Mr Macklin said yesterday generally he considered the previous policy was the same but I mean it may not have been identical.

MS McGLINCHEY: I think he had similar.

30

ASSISTANT COMMISSIONER: Mmm.

MS McGLINCHEY: As a matter of fairness we really should have that policy if there was another one in place and that people should be aware of the differences between one or the other, especially if we're dealing with matters that took place in early 2009.

40

ASSISTANT COMMISSIONER: Although I must say it does seem from what Mr Macklin's saying that he didn't really deal with this matter in accordance with the policy. He thought that it was being dealt with by the Anti-Discrimination Board and that that process should, so I really don't think that there's much to be gained by going through the policy in detail. I think he concedes that he didn't purport to follow the processes in this policy because he didn't think they applied.

MS McGLINCHEY: I agree with the Commissioner, especially if we are, if specific points are then put from this policy, it needs to be recognised if these matters happened at a time quite a bit before that and we should really be, if we're talking about the policy we're dealing with for some of the matters.

MS RONALDS: (not transcribable)

MS McGLINCHEY: Yes, but some of the matters that we've been speaking about are before this time. We also, I mean, to be fair too, if we're talking about a policy that was introduced we should, around about this time, we should really understand to what extent it was circulated through the Council and I don't think we've heard of any that but, you know, I'm not raising that particularly but just that I think we should be very careful about dates and that, when this policy was introduced. Thank you.

ASSISTANT COMMISSIONER: Yes. Yes. Well, Mr Hanley - - -

MR HANLEY: Yes, I've heard it.

ASSISTANT COMMISSIONER: - - - I must say I don't see the point of taking him in detail through the policy. It seems to be quite obvious he didn't advert to it or the preceding policy in the way this matter was dealt with. I hope I'm not being unfair but I understand that to be Mr Macklin's evidence.

MR HANLEY: That's right.

ASSISTANT COMMISSIONER: That he thought the matter was being dealt with through the ADB and through the legal advice that he was getting from, from Maddocks I believe.

MR HANLEY: Was it your understanding, irrespective of at what stage the complaint was made and a policy was on foot, that no judgments or assumptions would be made no action would be taken until the investigation was complete?---Yes, that's right.

But action was taken in relation to Mr Child, wasn't it?---That's right.

First of all, he was not included in any way in the conciliation meeting or hearing?---That's right.

And he was subsequently suspended?---That's right.

40 And I want to suggest to you that his suspension was part of an attempt to ensure by Council and the Executive that he did not return to work?---In my mind the, the circumstances warranted suspension. I think that the Executive generally were, probably were happy with that outcome.

Because there's no clear evidence in his complaint that he was alleging Mr Child had specifically used discriminatory terms such as black C against him, was there?---No, but I, I'm not too sure. I, I thought it was, it was, it was directed at Steve and - - -

But you hadn't confirmed that by any meeting or letter from Mr Saad prior to any conciliatory meeting, had you?---No, I hadn't.

And when you, in Exhibit 273 when you sent an email to the senior officers about the ABD conciliatory conference you refer to the fact that Mr Saad raised the fact that he was terminated because he knew too much, he raised that issue with you at the conciliatory conference?---I'm sorry?

10 Might he have Exhibit 273, please. Have you got that? You were shown that, I think, yesterday by counsel assisting?---Yes.

It's an email on 15 September by you to senior officers about the conference, the conciliation conference?---That's not what I've got here.

Haven't you? Maybe I've got the wrong number?---This was the suspension of public duties, from duty.

273 isn't it?---No.

20

I've got the wrong number, my apologies.

MS RONALDS: 270.

MR HANLEY: 270, is it? My apologies. Could he be shown 270. You were shown that yesterday, weren't you?

30 Yes. And you see at the paragraph you raised a number of issues about halfway down the page in relation to his unsuccessful attempts to secure permanent positions implied, implied that Mr Child was discriminated against and that he was terminated because he knew too much?---That's right, that's my, well, that's my report to the Executive as to what Mr Saad said in the conciliation meeting.

40 When he said he, at the meeting that you were present at that he knew too much, did he expand upon that at all?---Look, I can't expand on it now. I, it was a long, it was a long day in the conciliation meeting. If you've ever met Joe he talks a million miles an hour. I was just trying to summarise what I think he, to the best of my knowledge what he'd said in the, in the, in the hearing, in the conciliation conference. I can't recall the detail as to what he, when I was referring to he knew too much, I - - -

Part of Mr Saad's claim was that the Council and particularly you and others hadn't dealt with his complaints properly when he raised them with you? ---That's right.

Was that part of the settlement that you took into account?---(NO AUDIBLE REPLY)

Protecting Council in relation to a finding that they hadn't dealt with the matter appropriately when he'd raised it with you?---Was it taken into consideration in, by the settlement?

When you offered to pay him five weeks' pay?---Sorry?

When, when the Council paid him or agreed to pay him five weeks' page?
---Yes, yes.

10

Was that part of the consideration, his complaints against you and other Executive members?---I can't, I can't say that it was a consideration that I thought of but it was one of his complaints and the matter was settled, yes.

Did you manage to elicit from Mr Saad at the meeting who the other people were that he indicated in his original complaint had made discriminatory comments to him?---I can't remember the, the detail of that meeting I'm sorry, Mr Hanley.

20

Well, you considered apparently, according to number 3 on that email, that the Council had taken the complaints seriously and suspended Mr Child from duty pending an internal investigation into the allegations raised?
---That's right.

30

Did you, in view of the seriousness with which the complaint was considered, do you say you didn't make any inquiry as to whether there was anyone else making these discriminatory remarks to Mr Saad who would have been also worthy, one would assume, of being suspended?---I again can't recall exploring that at the time. No, it seemed to, the focus seemed to be clearly on Steve Child.

I suggest that the reason it was focus on Steve Child was that this was seen as a way of ensuring that he didn't return to work?---Not in my mind.

Did you, sorry, I withdraw that. It certainly achieved that didn't it?---Yes.

And it only became an issue when he became available to return to work?
---Yes.

40

The sequence is that he advised you didn't he that he had a medical certificate saying he could return to work and on the very day or the day after you advised him he was suspended?---That's right.

So he hadn't been advised he was going to be suspended immediately after the conference, the conciliation conference was he?---I can't recall the sequence of dates that things occurred.

Was he only advised that he was not allowed to return to work when he informed you that he was fit, willing and prepared to return to work?---I think, I think that's right.

See, what I want to suggest to you is that after the Sydney Morning Herald article there was a concerted policy by the executive at least for Council to ensure that Mr Child was removed from his employment in one way or another at Burwood Council wasn't there?---I think it's fair to suggest that.

10 And it's a situation isn't it that he's still suspended?---Yes, he is.

And that is despite the letter that was sent to him last week on 19 May under the hand of Julie Quigley and Acting Senior Human Resources Officer?---I'm not too sure about that.

Well, have you been advised that his suspension has been removed?---I haven't been involved in that, in, I'm not too sure what Steve's current status is.

20 You are familiar with the letter though aren't you?---I've seen the letter, I can't recall the exact contents of it.

The letter has been tendered in a bundle, Commissioner, might I just show him a loose-leaf copy and possibly tender it separately?

ASSISTANT COMMISSIONER: Yes. Do you know what bundle that's in?

MR HANLEY: I've tried to find it, I've sought assistance but I can't. 247
30 is it?

ASSISTANT COMMISSIONER: Yes. Well, you can show him a loose-leaf copy if it's part of 247.

MR HANLEY: This was, I think, shown to you, Mr Macklin, by counsel assisting, it's a letter Mr Child received last week dated 19 March from Ms Quigley?---That's right.

40 Page 8 of Exhibit 247. I think in fairness to you you said that you hadn't had anything to do with this?---No.

You stepped aside (not transcribable)?---Yes.

But was the investigation into Mr Child taking place whilst you were the Human Resources Officer last year?---Yes.

And did you interview a number of people in relation to Mr Saad's complaint?---Not me. Prior to, to the best of my recollection prior to the

conciliation conference I did get around to try to speak to the employees named in the, in the complaint and try to ascertain what it was about. After the, after the conciliation conference that's when Salli Browning was engaged and she was doing the interviews of the staff.

And you've already been taken to emails from her in December of 2009?
---Yes.

10 And that's whilst you were the Acting Human Resources Manager?---Yes.

And she certainly indicated there that there didn't appear to be any basis on which Mr Child - - -?---At that stage. It was my understanding that - - -

Did you instigate anything to be done after those emails in relation to the investigation or did you see that as an end to the investigation?---No, to the best of my recollection the investigation was continuing on the advice of Erin Wilson and that further employees were to be interviewed in the early part of this year.

20 So from August until December when she gave you an opinion at least on what she had before her had the investigation been ongoing then and employees being interviewed?---Yes.

And where are the files and notes of all those interviews?---With Salli Browning I would assume.

Not with the ICAC, not with ICAC?---I don't know.

30 And you're saying that that still left further people to be interviewed at the depot?---Yes, my understanding was that Salli Browning still wanted to interview more people. Then advice was given to me by Erin Wilson from Maddocks to not, not to do anything further until this inquiry has been completed.

Well, clearly it did happen didn't it? There were further things that were done even though this inquiry was ongoing in view of what's contained in the letter on 19 May?---Yes.

40 Because it says that further disciplinary investigation against you to be undertaken, had not been completed, it was interrupted but in the last several months further interviews in effect had been conducted with eyewitnesses and it's now concluded. That's a paraphrase of what it appears to say in the first two paragraphs? Were they (not transcribable)?
---I'm sorry, I didn't hear you.

It's clear from the first two paragraphs that the investigation was continuing this year?---Yes.

And during the course, one would assume, of the ICAC inquiry?---No.

So you're saying before the ICAC inquiry commenced the investigation to your knowledge had concluded or not?---Yes, well, put on hold or no final report was provided.

But it would appear from this letter that a final report has been provided and a decision conveyed to Council whereby they had expressed to Mr Child the conclusion which is set at the dot point in about point (not transcribable)?

10 ---It appears that way. I've had no involvement in that.

No, I appreciate that. The matter was hardly dealt with swiftly was it?---No, it went, took a while.

Can I take you to paragraph 3 of that letter and it talks about Council progressing the matters recommended by the review into the depot and the report from Morrison Low Consultants. A number of changes suggested by that report have been implemented and it goes on to talk about Mr Child's position (not transcribable)?---Yes.

20

And talk about it in the sense if one reads the rest of the paragraphs the position that had been reached in relation to its requirements as suggested by Mr Ellul on 7 April. Is that right?---Yes.

It appears to perpetuate a view that the Morrison Low report is the report that recommends the changes to Mr Child's position?---(NO AUDIBLE REPLY)

30 See, a number of changes suggested by (not transcribable) - - -?---Yes, it does.

- - - have now been implemented?---I agree.

The Council continue with the necessary changes?---Yes.

And refers to his position specifically?---Yes.

40 That's incorrect isn't it in the sense that the Morrison Low report I think you'd agree did not recommend the changes (not transcribable)?---That's right.

And this seems to have been perpetuated this view that whatever the Council does in relation to Mr Child's position is as a result of the Morrison Low report?---That's what the letter says.

Well, have you ever spoken to Ms Quigley to dispossess her of that view? ---No.

It then goes on to encourage him to apply for the role but I think you told counsel assisting that not long after 20 April you'd come to the view that Mr Child's position was in fact redundant as far as he was concerned. Is that correct?---20 April of last year?

Not long after that that you agreed with senior counsel yesterday?---Yes.

That you'd come to the position and expressed it in writing that his position was redundant?---Yes.

10

Yes, thank you.

ASSISTANT COMMISSIONER: Thank you. Does anyone else seek to question Mr Macklin?

MS McGLINCHEY: Well, I do but I would presume that other parties would prefer to go first.

ASSISTANT COMMISSIONER: Yes. Mr Blake?

20

MR BLAKE: Can I just retrieve that folder?

Mr Macklin, I want to take you to the events of February, 2009 and the disclosure of Joe Saad?---Ah hmm.

I think your evidence was yesterday that you received the communication from Mr Azer and Joe Dardano late, I think, in the end of a week. There was a weekend and then you then spoke to Joe Saad on the Monday or Tuesday or the following week?---I think so. My, my other statements that I've provided, either the worker's comp statement or my private conference, I think I've been able to pin down a date, and I'm thinking it might be the worker's conference, the worker's comp statement. I can't recall, it just, I can just remember that there was a weekend in between, but I, I'm not a hundred per cent sure.

30

Yes. And you spoke to Mr Romano, I think you said the day following the day you spoke to Joe Saad?---I think it was. I think it was the very next day, I was in a meeting and Pat pulled me out of the room.

40

Yes. And, so you wouldn't disagree with Mr Romano's recollection that it was Tuesday, 10 February that you and he had the first conversation?---That probably sounds right.

Yes. And you were very aware in that conversation not to reveal the identity of the person making the disclosure weren't you?---That's right.

Can Mr Macklin be shown Exhibit 242, please? Mr Macklin, the front of the page is a statement from, as part of a volume is a statement from Mr

Romano. Can you go to page 12 and look at paragraph 77 and I want you to look at the conversation in particular within that paragraph that Mr Romano has recorded?---Yes.

Do you agree that that sets out accurately the substance of what was discussed in the conversation you had with Mr Romano? Not the identical words, but the substance of what was discussed?---Yes. I don't think I thought it was a protected disclosure at the time, but it's attributed that I said that, a protected disclosure, but I, oh, look, that seems to be fairly consistent with what my recollection of that discussion.

And Mr Romano didn't refer in that conversation to the man Joe Saad did he?---No. I think he already knew who it was.

All right. Well, I suggest to you he didn't mention the name Joe Saad in the conversation did he?---No. My recollection is that he did. I got a sense that he already knew who it was.

Well I suggest that your sense that he already knew didn't arise because he mentioned the Joe Saad in the conversation?---No, I don't, I can't agree there. I think, I would only have made that, come to that conclusion if he had said the person's name.

Well, I suggest to you that you came to the conclusion, that that conclusion you formed was not based on anything that Mr Romano said to you in that conversation about the identity of the person making the disclosure?---No. I'm still, I'm still of the view that I, that he knew who the person was and he had named him.

And you made no note of the conversation did you?---It was in the hallway. It was, he pulled me out of the a meeting and then went straight to Robert Cummins' office.

Yes. I understand that. But the answer is you didn't make a note of the conversation?---No, I didn't. I'm sorry, I'm sorry, yes, no, I didn't make a note.

And I suggest to you now you can't be sure word for word of what was said in that discussion?---That's a fair comment.

And I also suggest to you can' be absolutely sure that M Romano referred to Joe Saad in the conversation?---Look, I'd have to agree with you even though I, I'm pretty sure that that's what was said. But look, it was a brief conversation and almost a year and a half ago, so I'd have to agree with you.

Now you had a further conversation you said with Mr Romano. I think at the end of, later in that week, after Mr Romano had sent you an email about, of disclosures being referred to him. Do you recall that?--- Yes.

And you disagreed with him?---Yes.

Now can you go to paragraph 128 of the statement. It's paragraph 128, I'll find the page for you?

MR McKENZIE: I've got it. Page 21.

10 MR BLAKE: I thank Mr McKenzie, he's quicker than me. Page 21. Can you just read that to yourself?---Yep.

Now do you agree with me that that sets out the substance of the conversation you had with Mr Romano?---No. I can't recall the detail of the discussion. I know that it was fairly one sided. That doesn't, what's written there doesn't, doesn't, doesn't trigger in my mind the conversation that I had with Pat on that day.

20 It's true though that you and he agreed to disagree as it were about whether all disclosures should be reported to him?---Yes, that's fair to say. Yes.

And the email correspondence that preceded that conversation is that set out in tab 7 of Exhibit 272?---Yes.

And you had no difficulty in standing up to Mr Romano on this issue did you?---On that occasion, no.

30 You regarded, I think you said to counsel assisting, what Mr Romano was suggesting was outrageous?---Look, I may have said that, yes. I recall that, yeah.

And within an hour you'd asserted strongly your opposing view?---Yes.

There was no recrimination visited upon you by Mr Romano for opposing him on this occasion was there?---No.

And I suggest you've never had a fear that Mr Romano would take action against you when you disagreed with him. Would you agree with that? ---Oh no, I wouldn't agree with that.

40 Were you fearful of a reaction from Mr Romano before you sent this email?---Yes, yes.

Yes. And I take it your confidence in opposing Mr Romano was increased when he didn't take any action against you that you thought he might?---No, I, I can't recall that that, that I had that thought once I'd met with Pat and discussed this.

Your evidence was yesterday that on a number of occasions you had not followed Mr Romano's instructions?---There were times, yes.

Yes. And that included in 2008 maintaining a file on Mr Cummins' performance?---That's right.

And there were a number of other occasions where you ignored what Mr Romano said?---That's, there were some times, yes, I did, yeah.

10 And you suffered no recrimination from Mr Romano for any of those actions, did you?---No, just he probably didn't know that I was ignoring his instructions, probably because he may have forgotten.

Now, can you just close that for the time being. Can Mr Macklin be shown Exhibit 155. Mr Macklin, can you go to page 60 please?---60 is it? Yes.

You were asked about this letter yesterday. Do you recall that?---Yes.

20 And you suggested, you were asked whose idea it was and you said you couldn't be sure but I'd probably say it was probably Pat's?---Yes.

Why did you say it was probably Mr Romano's idea?---Because I knew that he was upset about the Cummins situation.

And is that the basis on which you expressed the view that it was probably Pat's idea because he was upset?---Yes.

And you'd agree with me you don't know whose idea it was?---No, I don't.

30 So you're agreeing with me that you don't know whose idea it was?---I think I do, yeah, I don't, yeah.

Thank you. And there were a number of or a couple of meetings in March of 2009, before this letter was written, and after the two Harmers letters - - -?---Mmm.

- - - of 16 March, 2009 were - - -?---Ah hmm.

40 - - - received involving the Executive and someone from Maddocks, Mr Baird?---There may have been, I, I can't recall.

Yes. And I suggest that on about 30 March there was a meeting where Mr Gardner attended and he was asked to draft a letter seeking information from Mr Cummins about the IT matters?---Look, I can't recall there was a meeting but I, I know that Darren was involved in some of the issues.

Yes. And this letter was in fact drafted by Mr Gardner to you knowledge, wasn't it?---I don't know for sure but I would assume it was.

Yes. And it was provided to you and Mr Hullick for review?---I can only have a, I can only have a brief recollection of being involved in this letter.

But you'd agree that you reviewed it before it was sent?---No, I didn't review it in depth, no.

10 Well, when you say you didn't review it in depth, you had an opportunity to (not transcribable)?---I would have had an opportunity to look at it briefly but I don't, I, I didn't know much about the issues that were being addressed and I, I really couldn't contribute much to it.

You knew that there had, that by this time a significant issue had arisen so far as the management of the information services group within the Council which was under the control of Mr Cummins, you knew that, didn't you? ---There were some issues there, yes.

20 And in fact you had received some, an email and if you go to tab 26 of Exhibit 242, do you still have that?---No, I don't, thanks.

Tab 26. That's an email that was copied to you containing a memorandum of Joe Phagen?---Yes.

And that's an email that you received and read at the time?---I, I can't recall receiving this, whether I don't recall, I don't have any recollection of receiving this but obviously I did receive it because it's cc'd to me.

30 And in the period from 24 March, say, to the end of March you were generally familiar with the concerns being raised in the memorandum of Mr Phagen which is attached to the email, weren't you?---Well, I was, I know that there were some issues and some concerns. I don't recall that, that memo, I can't recall if I read it or not.

Yes. And you were, if you can go to tab 27, you became aware at the end of March, 30 March that a draft report had been prepared on those issues?---I knew about it, yes.

40 Yes. And that was provided to Maddocks for the purpose of drafting a letter. You were aware of that, weren't you?---I'm not aware of it but that would make sense.

Yes. And at the time this letter was sent the disclosures in the Sydney Morning Herald had taken place, on 4, 6 April, hadn't they?---The letter that was sent to Robert Cummins?

Yes, 24 April?---Yes.

Yes. And the letter was reviewed by you I suggest shortly before it was sent on 24 April?---Again I said before I didn't, haven't, I didn't review the letter in length. I can remember seeing a copy of it but I didn't really have much to contribute to it so I didn't have much role to play in the letter.

You saw it shortly before it was sent on 24 April. Do you agree with that?
---I can recall, I can recall seeing it, yes.

10 And by that time a Code of Conduct of the inquiry had been established by the Council to investigate the allegations that was being made in the Herald?---Yes, I can recall that, those steps being taken, yeah.

Yes. And Ms Ronalds SC had been appointed to conduct that inquiry. You knew that didn't you?---I can recall attending a meeting in Ms Ronald's office. I'm not too sure whether she was appointed or not, I don't know. I wasn't involved in that side of it.

20 And you said you regarded this letter, this is at transcript 288, as a reprisal. Your answer to the question was, "I suggest to you 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?" And you said, "Well, I think it was probably a reprisal against the letter he wrote, yes." Do you recall giving that evidence yesterday?---Yeah.

When you say a reprisal against the letter you wrote you were referring to the letter of allegations of 16 March, the long - -?---The Harmers letter, yes.

30 The Harmers letter, yes. I am going to explore this in a little depth.

ASSISTANT COMMISSIONER: Yes. All right. At this stage we will adjourn until 2.00pm.

LUNCHEON ADJOURNMENT

[1.01pm]