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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 2.05PM

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

ASSISTANT COMMISSIONER: Please be seated.

MS RONALDS: There's just a couple of matters before we return to Mr Blake's work. One is that there seems to be some misapprehension by some people about what I said the other day and apparently I was opaque. The inquiry will reconvene on 7 June and it will hopefully only take a day or two but it will be seriatim that week, not just on the 7th as some people suffered from a misapprehension about and it will continue on through the course of that week, hopefully not for the whole week.

10

ASSISTANT COMMISSIONER: Not long.

MS RONALDS: Yes, we hope not for the whole week. So I apologise if anybody misunderstood me but that was what I was intending to convey and we will be here not PIC, contrary to what I told someone before. I understand Mr Chalmers (not transcribable).

20

MR CHALMERS: Yes. Assistant Commissioner, could I make an application, it's in relation to Exhibit 278 which was the emails that was I was cross-examining on this morning. In each of those emails it refers to, and they're three sets of emails referred to, they refer to attachments. I'm seeking leave that the Commission seek a copy of those attachments in relation, to be specific there's the first email, 11 December, 2009 at 4.26pm refers to attachments. Similarly for the email dated 14 December, 2009 and 9.02am and to the third email on 14 December, 2009 2.20pm in particular. I understand that the Commission does not have those documents and I'm seeking that the Commission seek to obtain those documents.

30

MR BLAKE: Commissioner, I may be able to short circuit that. I do have some attachments to that email and I was going to ask Mr Macklin one question about it, with attachments, so I'm happy to proceed to that course and if Mr Chalmers is not satisfied well, no doubt he'll renew his application.

ASSISTANT COMMISSIONER: All right. So you have, yes, you have the attachments. Yes, thank you. Yes, thank you, Mr Chalmers.

MR CHALMERS: Thank you.

40

ASSISTANT COMMISSIONER: We'll wait and see. Yes, Mr Blake.

MR BLAKE: Could Mr Macklin be shown Exhibit 90 please. Mr Macklin, you, I think, the two Harmers letters of 16 March are Exhibit 90 I want you to turn your attention to the longer one of the two. You read that about the time it was received, didn't you?

10 ASSISTANT COMMISSIONER: Exhibit 90 is the statement of Oliver XXXX, isn't it?

MS RONALDS: Yes.

MR BLAKE: 121, five pages from the back, I'm sorry, Mr Macklin. 121, five pages from the back, I'm sorry, Mr Macklin. Mr Macklin, I'm talking about the 10 page letter, dated 16 March, 2009?---Yes.

20 You read that letter shortly after it was received by Mr Romano?---I believe so.

And you regarded the allegations being raised as very serious didn't you?
---Yes.

On page 2, section 2, there were allegations of breach of the code of conduct. You saw that?---Yes.

And section 3 on page 3, mismanagement of conflict of interest. You saw that?---Yes.

30 Section 4 on page 3, misuse of resources and misuse of position?---Yes.

Section 5 on page 4, breach of expenses and facilities policy?---Yes.

Page 5, section 6, breach of the Council's tree preservation (not transcribable) policy. You saw that?---Yep.

And section 7 on page 6, breaches of electoral regulations?---Yes.

40 And then I think finally section 8 on page 7, failure to appropriately perform General Manager role?---Yes.

And you became aware that those, that set of allegations came within the scope of the independent investigation being conducted on behalf of the Council by Ms Ronalds yesterday didn't you?

MS RONALDS: Well, I object (not transcribable) was never conducted.

MR BLAKE: Well, I'm asking as to his awareness?---Of this inquiry?

No, not this inquiry. Can you, perhaps I can help you, can Mr Macklin be show Exhibit 155. Go to page 27, please. And can you look at the first paragraph and just read it to yourself?---Yes.

10 And I suggest to you that your understanding as at 21 April, at least, was that the Cummins' allegations came within the scope of the investigation that Ms Ronalds had been appointed to conduct?---I know that, I know that Council's, some of Council's Executives approached Ms Ronalds to discuss it. I don't, look, I don't know if there was an investigation that was commenced.

No, I didn't ask you about a commencement of an investigation. Your understanding was that the Cummins' allegations were to come within the scope of the investigation?---Oh, yes. Yes.

You understood that?---Yes, I understood that. I'm sorry.

20 And you gave evidence yesterday that you regarded the letter at page 60 of tab 155, that's Mr, the letter signed by Hullick?---Yes.

As being unfair. Would you agree with that?---Yeah.

And, do you need to look at it?---No, I know the letter.

30 Yes. And, if you can just close that for the moment. I do want to ask you some questions about it. But before I do that, can Mr Macklin be shown Exhibit 242. And if you could turn to tab 28, please and go to the reverse side of the first page of that tab?---First of that tab. Yes.

An email from you to Mr Gardner. And in the second last paragraph of that email to Mr Gardner you refer to our letter didn't you?---Yes.

And you regarded the letter of 24 April that Mr Hullick signed as being a letter put together by yourself and Mr Hullick didn't you?---No, it was Council's letter.

40 Well, I suggest to you that you understood that Mr Hullick and yourself had carriage of this matter?---No, it was Council's letter and that's what I meant, meant when I, when I said that.

I see. So that reference to Council, thank you. And you also said in relation to the letter of 24 April that you regarded it as being a reprisal. Do you recall that evidence?---Yes, I do.

As at April 2009 you'd had a long experience in local government hadn't you?---Yes.

And you were aware that any reprisal taken against an employee, Council employee making allegations was a very serious matter?---Yes.

And did you speak to Mr Hullick about this, your concern that this was a reprisal?---I can't recall if I did or not.

Yes. And did it turn your mind, did it occur to you that this reprisal would be a matter that the Independent Commission Against Corruption would be interested in?---No, I didn't.

10

Did you take any steps in relation to your concern that this was a reprisal? ---No, I didn't.

Why was that, Mr Macklin?---I can't recall exactly why I didn't, I know it was not a matter that I felt I could discuss with Pat or say to him that I don't, do you think you should be sending this letter. I can't recall why I didn't do anything about it.

20

You could've discussed it with Mr Gardner couldn't you and asked him whether the letter could be construed as being a reprisal?---I could've.

Could've spoken to the Mayor. Is that correct?---Technically yes, I could've.

Or could've spoken to the Commission?---Yes.

The reason you did nothing, Mr Macklin, is that you regarded this letter as being appropriate at the time it was sent didn't you?---That's not true.

30

And the reason you told counsel assisting that you regarded the letter as a reprisal was to blame Mr Romano and absolve yourself of responsibility? ---That's not true.

You see, Mr Macklin, that the letter, you knew the letter was sent, hand delivered to Mr Cummins?---Mmm.

And you said at one point you can remember Pat coming into Les' office and wanting to deliver a letter by Friday or something?---I can remember saying that.

40

Do you recall saying that?---Yes.

And then at another point you said that you assumed that Mr Hullick was given a direction to hand deliver it. Do you recall saying that?---I think that's what I said, yeah, I think I said that yesterday, whenever it was.

The correct position is that you never heard any instruction from Mr Romano to Mr Hullick to hand deliver the letter did you?---No, that's not correct.

You made an assumption that Mr Romano gave such an instruction?---No, it's not my recollection.

Yes. I suggest to you that your recollection is mistaken. Do you accept it could be mistaken?---No.

10

Now, do you have tab 28 of Exhibit 242 open?---Tab 28, the email?

Yes?---Yeah.

At page 2092 counsel assisting put this question to you in relation to this particular tab?---Okay.

20

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

And counsel assisting then said, "I suggest to you that was a further act of reprisal on your part because of the complaint that he'd raised, because of disclosures he'd made, about Mr Romano, wasn't it"?---Sorry, could you just repeat that again.

30

Counsel assisting then put to you this question, "I suggest to you that was a further act of reprisal on your part because of the complaint that he'd raised, because of disclosures he'd made, about Mr Romano, wasn't it," and you said, "That wasn't, I don't think it was, I wasn't, wasn't personally trying to make a reprisal action against him." And the next question, "You were doing what you were told." "Yes"?---Mmm.

40

You had been discussing with Mr Gardner on the previous Friday what steps the Council would take in the event that Mr Cummins made no reply to the letter of 24 April, 2009, hadn't you?---The Friday prior to this Tuesday (not transcribable).

Yes?---I, I can't recall that I was.

If you look at the fourth paragraph of the email it refers to discussions you had with Mr Gardner?---Yes, okay, yeah, I, I did. I just don't remember doing it.

Yes. And at the time you wrote and sent the email at 8.51am you had not become aware of the reply from Harmers to the letter of 24 April, 2009, had you?---That's right, that's right.

And the purpose in sending the email was to ascertain from Mr Gardner what steps might be taken in the light of your instructions that no response had been received?---Yes, it, it appears that's what the email was about.

10 And I suggest to you that seeking advice from a lawyer as to possible steps that could be taken couldn't possibly be act of reprisal and you didn't think so at the time?---No.

You disagree with that?---Yes.

Did you take any steps as at 5 May to communicate your belief that this was an act of reprisal to anybody?---I don't believe I did.

And why not, Mr Macklin?---I can't recall. I can't remember why I did it.

20 Because you regarded seeking advice from Mr Gardner as an entirely appropriate response to your then belief that there had been no response to the letter of 24 April. Do you agree with that?---No.

Mr Macklin, you were asked some questions by counsel assisting yesterday about Mr Child and it was put to you three times on pages 294, 295 and 296 of the transcript that Mr Romano had made it either clear or abundantly clear that he didn't want Mr Child back in the workplace?---That's right.

30 And you agreed with that, can you recall that?---Yes, I did.

Mr Romano never gave you any such instructions, did he?---What do you mean by instructions?

He never told you he didn't want Mr Child back in the workplace, did he? ---Yes, he did.

40 When did he tell you that, Mr Macklin?---On a number of occasions. I can't recall the dates, on a number of occasions. It was quite clear that Pat didn't want Steve Child back in the workplace.

The true position, Mr Macklin is that you formed the view that Mr Romano didn't want Mr Child back in that workplace on the basis that Mr Romano was asserting that Mr Child was responsible for the allegations?---No. I, I said before, it was very clear that, to a lot of people that Pat didn't want Steve Child back in the workplace.

Well, I'm not talking about other people, I'm asking about you?---Okay. Well, I'm quite certain.

And I suggest to you that that's a conclusion you formed and that you never received any instruction or statement from Mr Romano to that effect?---No. That's not true.

And you can't now recall the occasions. Is that what you tell the Commission, when Mr Romano said that?---He said it on numerous occasions.

10 Yes?---I can't recall the times and the dates, no.

How many occasions do you think he said it?---Usually when he was fired up about it, about the issue, I'd say, I'd only be, I'd only be having a guess at the amount of times. It was a number of times that I can recall Pat saying it.

And did he say in extended meetings at the Executive?---I'm not too sure. I know he said it to me. I'm not too sure if he's portrayed it in Executive meetings. I think he might've been, no, I don't, I can't be sure. I can't for
20 sure recall him saying that in an Executive meeting or other meetings. But I know that that's what he has said to me on a number of occasions.

And you gave evidence that you could see that the relationship between Mr Romano and Mr Child had broken down when Steve sent out an email letter about the disciplinary action. Do you recall giving that evidence?---Yes, I do.

Can Mr Macklin be shown, I hope I've got it right, 151, Exhibit 151. Mr Macklin, can you turn to page 5, please and you'll see an email of 23
30 March, 2009 from Mr Child to Mr Romano at 8.33am?---Yes.

Is that the email you were referring to?---Yes, it is. I'm pretty sure it is because it was the one where he referred to the, allegedly paying staff on election day. That's the one I'm, the - - -

That you're referring to?---Yeah.

And you received that on 23 March from Mr Romano. You see at the top of the page?---That's right.
40

And it was your belief from 23 March that Mr Romano wanted to get rid of Mr Child or have him not back in the workplace?---It's my belief that when I saw that email I could see that the relationship had broken down. I can't recall if it was at that same time that I formed the view that Pat wanted to get rid of Steve. But this, this was a very clear indication to me that the relationship had broken down.

As I understood your evidence yesterday you were intending to convey that the feeling you had that Mr Romano didn't want Steve Child back went back to the time that email was sent. Is that what you intended to convey?
---I think so. I think that's accurate.

Thank you. And you formed that conclusion on the basis of what you saw a break down in the relationship. Is that correct?---Are you asking me if I formed the conclusion that Pat wanted to get rid of Steve because of the break down in the relationship?

10

Yes?---Not, not really, I think it was more along the lines of, of the things that were going on with that covert surveillance order but I can't recall if at this time that I formed the view that Pat wanted to get rid of Steve. All I'm saying is that at this time it was my view that it looks like the, their friendship's broken down. It could've been at the same time, I'm not too sure.

You're not sure now when you formed that view that Mr Romano wanted to get rid of Mr Child?---I can't pinpoint it to a date, no.

20

You also gave some evidence that you became aware that Mr Romano didn't want Mr Giangrasso back in the workforce?---Yes, I did that yesterday.

And you said it was probably around the same time I think?---Yes.

How did you become aware that Mr Romano didn't want Mr Giangrasso back in the workforce?---It was a general impression that I got once Joe had gone on sick leave and then Richard Mailey had produced evidence of Joe working while on sick leave. So it was probably around about that time as well that I, I, I formed that view.

30

And Mr Romano never said to you he didn't want Mr Giangrasso back in the workforce did he, it was just a conclusion you formed yourself?---No, I can't clearly recall him making those comments in relation to Joe as clearly as I can about Steve. So no, I can't, I think it was a general impression or a feeling that I got on what was happening and what was occurring.

Thank you. Now, you were also asked a number of questions about the depot reform and I'd like to go to that topic if I can. You had had some involvement in the establishment of the Morrison Low inquiry hadn't you?
---Yes.

40

And at that time back in July of 2008 you were concerned about a number of occupation, health and safety and safe work practices, that was one factor that was a concern to you at the time?---Yes.

And after the report was received and I think approved by Mr Romano I think you saw Mr Child on 21 January?---That's right.

10 Do you recall that? And can Mr Macklin be shown Exhibit 200 please. In fact you might close all those exhibits, Mr Macklin, otherwise you'll be swamped in paper. Can you go to page 6 please. Just keep that there for a moment. I'll just ask you can you have Exhibit 150 as well. Just pardon me I think you've got the wrong exhibit. It's the letter of 21 January, 2009. 150 and page 6, I'm indebted to my friends. I'm sorry, I've lost myself but can you see that in that letter in the third last paragraph you convey to Mr Child that the position description would be reviewed and mandatory reflect the changes, that's something you said to him?---That's right.

And at the same time re-evaluate your position taking into account the responsibilities of the role as well as market influences?---That's right.

That's something you conveyed to him wasn't it the review and re-evaluation?---Yes.

20 And then if you can just close that. And do you still have Exhibit 242 in front of you?---Yep.

And if you can go to tab 41 which I think probably should be at the very back. That was an email you sent to Mr Azer and Dardano copied to senior officers and Sarah Langshaw and Chris Rudd setting out the steps that had been undertaken in the context of the review that you'd discussed with Mr Child?---Yes.

30 And at that stage in your mind it was an open question as to whether Mr Child's position would be advertised but your preference was not to do so? ---That's right.

Thank you. And that matter, that is, the position of Mr Child and the review that you had undertaken was discussed at a meeting on the Monday, 16 February. Do you recall that?---Yes.

40 A meeting in which Mr Dardano expressed reservations about Mr Child's ability to fulfil the role?---I can't recall if it was discussed at the meeting but I know John Dardano didn't, my understanding was John Dardano had that view, yes.

And you knew that at about that time didn't you?---I think so.

And at that time you were expressing concern that if there were changes to the position there could be union problems?---Yes.

Now, I'd like to show you - and you became a member of the depot reform cross-functional team?---Yes.

And I take it that a principle that you applied so far as you were concerned on that term was to put what in your view was the best interests of the Council first. You sought to do that?---Not necessarily.

Sorry?---My role in the CFT was to, no, not the best interests - - -

Well, perhaps I'll put it another way. In, insofar as you were a member of that team - - -?---Yes.

10

- - - and contributing to the discussions and decisions, you were seeking to act in the best interests of the Council, weren't you?---Yes, I was, yes.

Now, can I show you this document. Mr Macklin, this is a briefing note of 22 April, 2009 and on the fourth page it contains your signature?---Yes.

And under, on page 1, going over to page 2, under the heading Civil Maintenance Coordinator it was set out the rationale for the change in the role of the civil maintenance coordinator being proposed?---Yes.

20

And that's a change that you agreed to on 29 April, 2009 when you signed the briefing note?---Yes.

And when you signed that briefing note you were not influenced in any way by your belief that Mr Romano wanted Steve Child not to return to the workplace, were you?---No.

You regarded the change as being in the best interests of the Council? ---Yes.

30

And when you signed that memorandum you also, if you can look on page 4, were approving the release of casual staff?---Yes.

Two civil and one mechanical?---That's right.

And you understood that one of the civil staff was Mr Saad?---Yes.

And when you - - -?---Well, no, I don't, no I'm not, look, it, it may have been, yeah, one of them may have been Joe Saad.

40

And you understood that at the time, didn't you, Mr Macklin?---Well, that it, yes, by the looks of it, I've signed it on the 29th.

And in signing, approving the recommendation you sought the release of the three casual staff was in the best interests of the Council, didn't you?---Yes.

And in approving that recommendation you were not influenced by any belief you had that Mr Romano wanted Joe Saad out of the workplace, were you?---No.

And when you say no, you're expressing that you were, you were not so influenced?---No, I wasn't.

You're agreeing you - - -?---I'm sorry, I, I wasn't influenced, no, I'm sorry, I'm sorry.

10

Yes, thank you. I seek to tender that document.

ASSISTANT COMMISSIONER: Yes. The briefing noted dated 22 April will be Exhibit 280.

**#EXHIBIT 280 - BRIEFING NOTE DATED 22 APRIL 2009 –
RESTRUCTURE OF WORKS AND OPERATIONS GROUP**

20

MR BLAKE: Now, Mr Macklin, I'm going to ask you in a few minutes if you need a break but please tell me - - -?---I'm okay.

- - - if you want one beforehand?---I'm all right.

Now, can Mr Macklin then be shown Exhibit 264 please. Mr Macklin, this is a, a email you sent to Mr Romano and copied to Mr Hullick, Mr Azer, Mr Dencker and Sarah Langshaw and Chris Rudd?---Yeah.

30

It attached some advice on 19 May that you had received from Maddocks? ---That's right.

And you were seeking, and you've seen that advice before that was attached to the email?---Yes, I can't vividly recall it but I, I would have seen it before, yes.

40

Following the approval of the briefing memorandum you sought some advice on behalf of the Council as to whether the restructuring of the position of civil maintenance coordinator could give rise to any action by Mr Child, didn't you?---Yes. I was obviously instructed to find, find that out, yes.

And the advice received from Maddocks addressed three particular questions in the summary on the first page?---Yeah.

And you had no reason to doubt the correctness of that advice, did you, when you received it?---No.

And you conveyed it to the Executive and was it discussed in the Executive, can you recall that?---I can't recall it being discussed but it, I'd imagine it would have.

Yes. And could I show you this document, which is the next one. You recall sending this email, Mr Macklin?---Yes.

10 And the position in the second half of May approximately and going into early June was that the Council was proposing to place information in relation to Mr Giangrosso, Mr Child and Mr Cummins about their employment status before the Independent Commission Against Corruption?---That's my understanding.

And you sought information from Mr Hullick and Mr Azer and Mr Dencker to put together an accurate statement of the position that pertained at that time with respect to each of those employees?---Yeah, that's right.

20 And you circulated this version, version 3 for comment on 27, 29 May? ---That's right.

Yes. And as far you're aware that the information contained in the document, the attached document, was accurate at that time?---Yes, to the best of my knowledge, yes.

30 And the concern at that time in placing the matter before the Independent Commission Against Corruption was to avoid any suggestion that the Council might be acting in reprisal against any of those employees in taking any employment action against them?---Yes, I, yeah, that, that would be intention of this, this.

Yes, I seek to tender that document.

ASSISTANT COMMISSIONER: Yes. That email will be Exhibit 281.

#EXHIBIT 281 - EMAIL FROM MR MACKLIN DATED 29 MAY 2009: ISSUES FOR DISCUSSION WITH ICAC

40 MR BLAKE: Can I show you this document, Mr Macklin. I'd like you to go to the, you'll see it's a string of emails and you can see that the bottom email is an email from Mr Dencker sent on 1 June, 2009 at 11.43am to Mr Baird and copied to you?---Yes.

And the proposal was that Mr Baird and Mr Hullick would have a meeting with ICAC?---Yeah, that's what the email says. It appears to say that, yes.

And the information referred to in paragraph 1 put together by Mr Macklin, was the attachment to the email I just showed you?---Is it?

Well, I'm suggesting to you that was the information that you had compiled for the purpose of the proposed meeting with ICAC. Do you agree?---Oh, yeah. Yes, I'd agree.

Yes. I seek to tender that document.

10 ASSISTANT COMMISSIONER: Yes. That will be Exhibit 282.

#EXHIBIT 282 - EMAIL DATED 1 JUNE 2009 FROM MR DENCKER: VARIOUS LEGAL MATTERS

MR BLAKE: Are you aware that Mr Hullick, together with Mr Baird had a conference with Mr Leggat, SC in early June as to the issue of how ICAC might be approached on behalf of, by the Council?---I'm not, I'm not too
20 sure of the purpose of the meeting. I know that there was a meeting.

Yes. And to the best of your recollection the issue raised was how the Council might approach the ICAC about the matters set out in the document that you'd compiled?---Yes.

Thank you. Can Mr Macklin be shown Exhibit 252. Mr Macklin, I hope that, at almost the very back is a document C13, which has Mr Romano up the top on Tuesday, it looks like 1 June?---That's right.

30 But I want you to look at the email below it and it's sent from you on Friday, 12 June at 5.49pm?---Yep.

And the, you refer there in the third paragraph that you had consulted our legal representatives and I take it that was Maddocks. Is that correct?---Yes.

And you, I take it, had sought some advice as to, on the question of what entitlements the Council might have if Mr Giangrasso and Mr Child returned to work?---Yes.

40 And in the email you set out in substance the issues that had been raised by Maddocks that would need to be considered with respect to each of Mr Giangrasso and Mr Child?---That's right.

And in the second last paragraph on the first page you set out there a concern that was held by the members of the Executive. Is that correct? ---Yes.

And it was a concern you had yourself wasn't it?---No.

So you were just recording at that point the concern of the members of the Executive?---Yes.

And that was each of Mr Hullick, Mr Dencker and Mr Azer?---More so Mr Romano.

10 Right. Thank you. Now can I show you this document, I'm sure this was elsewhere but I'm afraid my memory's not good enough, 29 June, anyway, look, I'll (not transcribable). I'm sure it's already an Exhibit. I'm almost sure it's 241, pages 8 and 9. So just for the record I'm showing you Exhibit 241, pages 8 and 9. And this is the David and Darren email that's been referred to many times, Mr Macklin?---Yep.

And the position set out in the second paragraph, Council's preferred position was that of Mr Hullick, Mr Dencker and Mr Azer wasn't it?---Yes.

20 And that's something they expressed to you at a meeting of the Executive team that morning?---Yes.

And you were instructed to seek some advice about appropriate grounds for suspension for each of Mr Cummins and Mr Child?---Yes.

And there was also a request for Mr Baird to liaise with Mr Dencker and Mr Romano on the collective view of Darren Gardner and Mr Baird himself? ---That's right.

30 And if Mr Macklin can then be shown Exhibit 276. You were taken to this document by counsel assisting sometime today, I can't remember when. But can you go to the third last page, please. This was advice on 17 August, 2009 that you received from Maddocks?---Yes.

And you read it I take it?---Yes, I would've.

And you read paragraphs 9 and 10 on page 2?---Yes.

40 And you had no reason to doubt the advice of Maddocks in paragraph 9 that Council would be required to undertake the full disciplinary investigation into the allegations against Mr Child and Mr Issa didn't you?---No, I didn't. No, I didn't have any reason to doubt it.

And you read the opinion that the allegations against Mr Child are very serious and if substantiated may justify the decision on the part of the Council to dismiss Mr Child. You had no reason to doubt that opinion did you?---No.

And in paragraph 10 you read that Maddocks recommended that Council submit its response to the ADB to settle the complaint and also that should

Mr Child be determined medically fit to return to the workplace would recommend that Council suspend Mr Child pending a full investigation of the matters raised in the complaint?---Yes.

And you had no reason to question that recommendation did you?---No, no, I don't believe I did.

As you've said you had no particular expertise in these sorts of matters did you?---Not in Anti-Discrimination Board matters, no.

10

And you acted on that advice to suspend Mr Child didn't you, Mr Macklin? ---Yes.

And in suspending Mr Child you weren't influenced in any way by your belief that Mr Romano wanted Mr Child out of the workplace were you? ---No, I wasn't, I think I said that yesterday that I knew that Pat wanted him out of the workplace but I, I also had to deal with this issue as well and I, and I wasn't influenced by that.

20

Thank you. And Mr De Liseo was the officer of the Anti-Discrimination Board at the conciliation conference?---That's right.

And he expressed in that that it was appropriate for the Council to conduct an investigation into the complaint against Mr Child didn't he?---Yes.

And you had no reason to doubt what he said did you?---No.

Now, if I can go to, sorry, I'll withdraw that. Do you need a break now, Mr Macklin?---I'm okay. I'd rather get it over and done with.

30

If you can also look again at Exhibit 276, I think it's the one you might've just had with the front page?---Yes.

And your instruction to Mr Baird on the first page was to pass on this information to ICAC should he feel it's appropriate or warranted?---Yes.

And you gave that instruction to ensure that if in HWL Ebsworths view it was appropriate that this matter be referred to ICAC so they were fully informed?---That's right.

40

And then can Mr Macklin be shown Exhibit 153 pages 24 and 25. I'll take you to this email before from Salli Browning to Erin Wilson on 8 December at 8.35am which was I think forwarded to you?---I can recall seeing it but I'm not in the - - -

Yeah, it's not in that one but you saw it shortly after that. That's correct? ---I think so, yeah.

And your view when you read that was that it would be inappropriate for you to in any way pre-empt the final findings of Salli Browning by taking any action in relation to Mr Child in terms of returning to work. Do you agree with that?---Yes, because the investigation to the best of my knowledge hadn't been completed.

Yes, thank you. You can close that, Mr Macklin. I want to go to another topic now and that is the disciplinary action taken against Mr Child relating to the overtime matter?---Ah hmm.

10

Can Mr Macklin be shown Exhibit 151 please. I'm not sure if you've got it, Mr Macklin?---(not transcribable).

I don't think I've taken you to it?---Here it is.

Thank you. In your mind you regarded this matter as being very serious didn't you?---Well, serious, not very serious but serious. Not trivial.

20

One of the things that concerned you was that Mr Child had instructed Stephanie King to remove overtime from the timesheets. Would you like to look at the paragraph immediately above the word recommendation which is underlined towards the bottom?---I'm sorry, I didn't, yeah.

Sorry, this is 151 page 1?---Got it, yeah. Yes, now I can, I, it didn't spring to mind but I - - -

30

And Mr Child had no authority to alter employment records of other employees did he?---I'm not aware of the process at the depot, I think Steve would've had some input into the, into the timesheet and the overtime approval process. So I think he could've had, he could've been aware that some documents, 'cause he was the supervisor, he was the supervisor in the area. So no, I don't necessarily agree with that. I think he did have some authority to do that.

Yes. Certainly didn't have any authority to remove the overtime in this particular instance?---I'm sorry, what was your question?

40

He didn't have any authority to direct the removal of overtime from the timesheets in this particular instance?---He doesn't appear to have, no.

And another matter that was of concern to you was the potential occupational health and safety issues that could arise if any Council employee was engaged in unauthorised overtime?---Yes, that was one of the concerns.

And issues of legal liability if Council employees happened to be injured? ---That's right.

And that was a matter or the matter that was one of the principal concerns that you had at the time?---One of the concerns, yes.

Yes?---Yeah.

Now, I'd like to go another topic if I can, Mr Macklin, and that is your workers compensation statement, Exhibit 121?---121 was it, 121?

10 It begins with a statement of Mr Cummins to the Commission and your workers compensation statement is towards the back and it's hopefully tagged?---Yep, got it.

And when you came to complete that statement on 13 May, 2009 you were endeavouring to be truthful, weren't you?---Yes.

And you were not influenced in any statement you made within the statement by your belief that Mr Romano wanted Cummins out of the workforce, were you?---No, I wasn't, no.

20 And you were aware that Mr Romano was asked to prepare a statement by the workers compensation insurer in respect to Mr Cummins' claim, weren't you?---Yes.

And for that purpose that Mr Romano retained lawyers Henry David York to assist him?---Yes, that's right.

And Mr Romano provided a statement on 19 May, 2009?---I'm not too sure of the date but I, I take your word for it.

30 And to the best of your knowledge Mr Romano didn't have any access to your statement - - -?---No, he didn't.

- - - in preparing his own statement?---No, I, I don't believe he did.

40 Yes. Now, that can be closed. I want to ask you some questions about Mr Giangrosso. Can Mr Macklin be shown Exhibit 264, sorry, I withdraw that, Exhibit 281, sorry for the confusion. Mr Macklin, one of the matters that was proposed by the Council to be placed before the Independent Commission Against Corruption at 29 May was the position regarding, that's the employment position of Mr Giangrosso?---That's right.

And that was included in the attachment that you circulated?---That's right.

And to the best of your understanding that was one of the matters that it was proposed that Mr Hullick would raise with Mr Baird in conference with Mr Leggat firstly in early June?---I think that's right, yes.

Okay. Now, I've just taken you to but we'll just pass over emails of the 29th, firstly of 12 June, C13 to Exhibit 252 and the email of 29 June, Exhibit 241 pages 8 and 9 which mention Mr Giangrasso and I'd like to take you or show you this document. This is an email, Mr Macklin, that you sent to Mr Hullick, Mr Dencker, Mr Azer, Mr Ellul, Mr Romano and Erin Wilson of Maddocks and copied to Mr Gardner and Mr Baird and Sarah Langshaw?
---Yes.

10 And you were concerned at that time that, as to the incident that you been informed about on the afternoon of 29 July which is recorded on the last page of the memorandum of 30 July which you prepared for the senior executive team?---That's right.

And you sought some, were proposing to send a letter to Mr Giangrasso about that incident reported to you?---Yes, I was, that's right.

And you sought, were seeking advice from Mr Gardner and Ms Wilson as to the appropriateness of the draft letter?---Yes.

20 And from Mr Baird as to whether this would need to be cleared with ICAC?---That's right.

And you were also providing it to the Executive team for information and comment?---That's right.

I seek to tender that document.

ASSISTANT COMMISSIONER: Yes, that will be Exhibit 283.

30

#EXHIBIT 283 - EMAIL FROM MR MACKLIN DATED 30 JULY 2009: INVESTIGATION INTO ALLEGED THREATENING AND INTIMIDATING BEHAVIOUR – G GIANGRASSO

MR BLAKE: And I show you this document. These are two emails, firstly from Mr Baird to you sent on Friday, 31 July at 10.59am, at the bottom of the first page?---Yes.

40 And that recorded advice from Mr Baird?---Yes.

He said there appears to be a proper basis for taking action, however these allegations must be properly investigated and must not be seen in any way linked to the ICAC matter?---Yeah.

And he also conveyed the advice obtained from senior counsel as to the text of the letter?---Yes.

And you had no reason to doubt in any way the advice received from Mr Baird, did you?---No.

And in the top part of the email was an email from you to Mr Baird sent on 5 August at 11.29am?---Yes.

And you express, you had discussed Mr Baird's advice with the Executive by that stage?---Yes.

10 And their view was that they would be more comfortable if ICAC could be advised of the matter if you hadn't already done so?---That's right.

And expressed the term, help, the appropriate way forward, did you notify ICAC of their intentions? As far as you know did Mr Baird do that?---I don't know.

You don't know. All right. I seek to tender that email.

ASSISTANT COMMISSIONER: That will be Exhibit 284.

20

#EXHIBIT 284 - EMAILS FROM MR BAIRD TO MR MACKLIN DATED 31 JULY 2009 AND AN EMAIL FROM MR MACKLIN TO MR BAIRD AND OTHERS DATED 5 AUGUST 2009 AND 30 JULY 2009

MR BLAKE: Can you I show you this document. Mr Macklin, is that an email that you sent to Mr Romano, Mr Dencker, Mr Hullick and Mr Azer at 2.41pm on Wednesday, 2 September copied to Erin Wilson and David Baird?---Yes.

30

And you wrote that in the context that you'd received communication or a medical certificate stating that Mr Giangrasso proposed to return to work on Monday, 7 September, 2009?---That's right.

And you had prepared a draft letter for perusal by Maddocks?---Yeah, it says it there, yes.

40 And you say it was your recommendation that Council's position should be that if he is fit for pre-injury duties then there should be no impediment to him being required to respond the allegations put to him earlier?---Well, that's what I thought, yeah.

Yes?---If he was fit to come to work he could respond to the allegations.

And your view was not in any way influenced, the view you held that Mr Romano wanted Mr Giangrasso out of the workforce was it?---No. I think

I've said all along in terms of these issues I, I, I wasn't influenced by what Pat wanted.

And in the third last paragraph you raised the issue of the involvement of ICAC - - -?---Yep.

- - - (not transcribable) to be considered and you would approach Mr Baird for advice?---That's right.

10 I seek to tender that document.

MR NEIL: Commissioner, could I just observe that Exhibit 284 is tab 16 of Exhibit 245. And this document is tab 47 of Exhibit 245. I don't object on that ground, but could I ask if my learned friend could tell us when he tenders these if they're already in. I know it's convenient to do it again, but if there's any that, that aren't already in, it would be helpful to know so that we'll know precisely what we're dealing with.

20 MR BLAKE: As far as I'm aware these documents are part of the confidential Exhibit and I sought to be tendered separately having communicated with both counsel assisting and Burwood Council a couple of days ago that I'd be proposing to tender them.

MR NEIL: Thank you. But perhaps my friend could tell us the references he tenders them so we can make a note.

30 MR BLAKE: I would if I could. I'm afraid I can't. But I'm sure those behind me, my instructors will be able to do that in the week off. Yes, well, look, I'm assisted by counsel assisting who knows - - -

MS RONALDS: It's my job.

MR BLAKE: - - - our documents better than me. That one was tab 147.

ASSISTANT COMMISSIONER: Yes. All right. Well, this email of 2 September will be Exhibit 285.

40 **#EXHIBIT 285 - EMAIL FROM MR MACKLIN TO OTHERS
DATED 2 SEPTEMBER 2009 AND SUBSEQUENT EMAILS:
VARIOUS MATTERS**

MR BLAKE: All right. Can I show you this document, Mr Macklin, which is tab 150 in Exhibit 245, the confidential Exhibit. Mr Macklin, this is an email that you sent at 9.32am on Friday, 4 September to Mr Baird and Mr

Hullick and copied to Mr Hullick, Mr Dencker, Mr Azer, Mr Ellul, Mr Romano, Sarah Langshaw and Chris Wright?---Yes. Yes.

And the bottom half of the email is an email from David Baird to Mr Hullick, copied to you at 9.03am, which recorded the advice of Mr Baird to Mr Hullick?---Yes.

You said the letter was fine?---Yep.

10 And you said the action set out in the letter needs to be action that is soundly based on prior practices of Council based on written policies of Council?---That's right.

Otherwise the action could be characterised as punitive?---Yes.

And did you rely on the advice of Mr Baird in sending the letter of 3 September to Mr Giangrasso?---Yes, I did.

20 Yes. And in the email you sent to Mr Baird, that's at 9.32am at the top of the page, you advised him that Council does have in place a policy that allows disciplinary matters to be dealt with in this matter and it's consistent with other disciplinary action taken by Council?---That's right.

And that's the view that you held at the time?---Yes.

And still hold?---Yes.

I seek to tender that document.

30 ASSISTANT COMMISSIONER: That will be Exhibit 286.

**#EXHIBIT 286 - EMAIL FROM MR MACKLIN TO OTHERS
DATED 3 SEPTEMBER 2009 AND SUBSEQUENT EMAILS:
LETTER TO MR GIANGRASSO**

40 MR BLAKE: I'd like to take you to another topic if I may, Mr Macklin. During the period from about May, 2009 to really the end of the year, I want to suggest to you that there were three sets of legal issues that were being considered at the same time. One was the ICAC investigation, secondly, employment issues relating to Mr Cummins, Mr Giangrasso and Mr Child. And thirdly, worker's compensation claims that had been brought by Mr Cummins, Mr Giangrasso and Mr Child. Do you agree that those three issues were pending from about May, 2009 til the end off 2009?---Yes. I'd agree with that.

And you understood that there were a number of overlapping issues arising from the ICAC investigation, the employment issues and the worker's compensation issues?---Yes.

And you understood that a, a regime was set up whereby Maddocks was dealing with the employment matters?---That's right.

10 Certainly after 1 June, 2009, sorry, I'll withdraw that. Maddocks, before 1 June, 2009 and HWL Ebsworths after 1 June, 2009 was dealing with the ICAC matters?---Ah hmm. Yes.

And I think a Mr Dave Allen was dealing with the worker's compensation matters?---Yes.

And in that period there were a number of meetings set up, joint meetings, sometimes at Henry Davis York, sometimes at Maddocks, sometimes at HWL Ebsworths, to consider the intersection between those three matters? ---I can only recall meetings being held at Henry Davis York.

20 You can't recall at that place but at Maddocks or Ebsworths?---No, I think it was just, I think it was all at HW, Henry Davis York.

Just at Henry Davis York. And it was in the context of the intersection of those three issues that Mr Romano was present for parts of the meetings? ---Yes.

30 Now, let me just, just a couple of more matters to deal with. I said to Mr Chalmers I'd take you to the Christmas party. I only have one question. Could I show you this document. Mr Macklin, you've been shown just the front page of this email before, you'd agree with that?---That's right.

And I think you said that you received input in the letters from Maddocks? ---Mmm.

And you were not influenced in the decision that you made about the attendance of Mr Child and Giangrasso and Mr Issa at the Christmas party by your belief that Mr Romano wanted each of them out of the workplace were you?---No, I wasn't.

40 And the annexures or, sorry, the attachments to the letter I think except for the last page were those, all except the last page which we might remove were attached to the email weren't they?---Obviously they were. I, I really don't recall sending this to Pat, I, my clear recollection and I've said it on a number of occasions here and I think possibly the private hearing was that I made this decision based on the input from Khaled and Steve Ellul but having seen this I did sent it to Pat, I, you know, I stand corrected there but I, no, I wasn't influenced by him at all, I, I, to the best of my recollection I

told Pat afterwards what we decided, what we had decided to do. He didn't know anything about it.

I seek to tender the email with attachments but not the last page which can be removed.

10 ASSISTANT COMMISSIONER: Yes. So these attached letters are these the ones that you drafted? What about the ones that according to this Mr Romano sent back with changes? Does this help us with that issue do you know?---I'm not too sure, I, I, Commissioner, I honestly can't recall Pat having input into these letters. The attached letters are to the best of my knowledge the ones that were the drafts that we, that I agreed to with Erin Wilson from Maddocks and ones that I sent out.

All right. Well, that will be a marked Exhibit 287.

20 **#EXHIBIT 287 - EMAIL TO ERIN WILSON DATED 8 DECEMBER 2009 AND SUBSEQUENT EMAILS: PRELIMINARY VIEW BURWOOD**

MR BLAKE: Commissioner, we will see in the week off if we can perhaps copy a green word attach, maybe if it was in colouring.

ASSISTANT COMMISSIONER: Yes. I don't know what that means, I don't know whether that means track changes in green or something.

30 MR BLAKE: I've got no idea.

ASSISTANT COMMISSIONER: But I would like to see that if anybody can find it. Throw it open.

MR BLAKE: And just one last matter, Mr Macklin. I just want to ask you a couple of questions about depot surveillance. You had a role in obtaining initial legal advice about surveillance issues didn't you? And just can you be shown Exhibit 220 please?---Yes.

40 That's an email from Erin Wilson to you on 10 March with an attached advice?---That's right.

And that's something that you sought from her at the time?---Yes, I was obviously instructed to seek that advice, yes.

And can Mr Macklin be shown Exhibit 226. Mr Macklin, I think you said you saw a Power Point presentation of which this is the, a copy of it?---Yes.

And you, if you go to the entry on 10 March, 2009?---The entry of the Power Point presentation?

Yes, on 10 March, 2009 you'll see the first time is 11.42am?---Yes.

And part of that presentation was a Council worker was seen transferring fuel jerry from a Council truck to a vehicle?---Yes.

10 And if you go over the page 12 March, 2009 there's a reference to a male in a Council truck pulling out in front of the male's home, removing timber stakes and placing it at the side of his house out of sight?---Yes.

You saw that at the time?---Power Point presentation, yeah.

Yes, yes. And I suggest that you were persuaded from the Power Point presentation that there was at least on a prima facie basis evidence of theft uncovered by Mr Mahoney from the depot or involving depot staff?---I was a little bit suspicious about the jerry cans I wasn't convinced about the theft of fuel so no, I wasn't, I, I, I wasn't convinced.

20

Well, I suggest that you agreed with the decision to go, to seek permission for covert surveillance under the Workplace Surveillance Act. Do you agree with that?---No, I didn't agree.

You didn't agree. And I think your last involvement in the matter was viewing the videos. Is that correct? And if I can show you Exhibit 233? ---Yes, got it here.

30

And after that you had no further involvement. Is that correct?---I think I compiled a matrix of all the issues and sent it off to David Baird to go to ICAC I think. I know I prepared a matrix which took a long time to do because it went through every field officer's notes and then tried to address any issues or concerns attached to that and I sent it off on an Excel spreadsheet to David Baird I think to be passed on to ICAC. So that's the last involvement I had preparing that spreadsheet.

And just one question if I may, can you go to Exhibit 252. You had a chance to read the transcript overnight, didn't you?---I did read it last night.

40

You read it carefully?---I read it the best I could.

Yes?---Yes.

And in particular you read on page 135 on 10 February and in particular you confirmed the truthfulness of the answer to the question at line 7, "Now after the press disclosures was a decision made to try and remove people who make complaints to ICAC from the Council," and you said, "No, I'm aware of decisions made to remove people from the Council because we

suspected they had made a disclosure, well, no.” That’s a truthful answers, wasn’t it?---I’m, hang on, I’ve, you’ve lost me, which page was it, sorry?

Page 135?---135. Okay, yeah. So line 7, “Now after the press disclosures.”

The answer you gave was correct, wasn’t it?---I’ll just read it to make sure, yes.

10 And line 40, the question there, “After the press disclosure was there discussion about keeping Mr Child and Mr Giangrasso away from the workplace,” “There was, there was, I can recall some discussion but I can’t recall significant decisions being made on that basis,” and the answer you can’t recall significant decisions being made on that basis, that was a truthful answer, wasn’t it?---Yes.

Yes, thank you. Nothing further, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Blake. Yes, Mr Leggat.

20 MR LEGGAT: Thank you, Commissioner. Mr Macklin, I want to take you to an answer that you gave, I’ve just found it, page 226 of the transcript. You were being asked questions by learned senior counsel assisting concerning the Joe Saad disclosure and it appears - - -?---Did you say page - - -

30 Now, look, this is a context slightly different, I’ve miscued, let me try this. Mr Decker was asked questions about the Joe Saad disclosure and he can recall a discussion with you. I just want to get your comments on Mr Dencker’s recollection. So this is concerning a discussion between yourself and Mr Dencker and the question was, “How did this decision get made? Are you saying Mr Macklin told you there was no disclosure,” and Mr Dencker said, “That’s correct.” The question was, “So he said don’t worry about, there’s no disclosure,” and Mr Dencker says, “After we went through the policy, that’s what he said.” Now, the context is Mr Dencker is saying on oath in answer to questions from learned senior counsel assisting that you told him there was no protected disclosure. Now, you can recall having such a conversation with Mr Dencker, can’t you?---Yes, I can.

40 I’m sorry?---Yes, I can.

And that was your bona fide belief at the time, wasn’t it, there was no protected disclosure?---That’s right.

It wasn’t a conclusion that you’d come to that was influenced in any way by Mr Romano or anyone else, it was your own professional conclusion? ---Yes, misguided but yes.

You weren't trying to cover up anything to do anyone any favours or anything?---No, I wasn't trying to cover up anything.

And Mr Dencker said further on in the same cross-examination, this answer, and this is page 2031 of the transcript, "And it became very clear to me very early in the process that there, the first critical test of this, that it had to be made voluntarily had not been met and this went through my mind."

10 Question, "Why wasn't this voluntary?" This is referring to the alleged protected disclosure, "Because Mr Macklin said the person does not under any circumstances want to make one. That was the first test you had to pass." Now, you can recall saying words like that to Mr Dencker, can't you, that the - - -?---Yes, yes I can.

And were you at the time under the same misconception as Mr Dencker, that is, that there needed to be a, a voluntary component in order for there to be a protected disclosure?---Yes.

20 And was that a conclusion that you came to on a bona fide basis, uninfluenced by any desire or intention to protect Mr Romano or anyone else?---That's, yes, most definitely.

Let me take you to the email that you received from Mr Romano on about 12 February, 2009 described learned senior counsel assisting as the email where Mr Romano sets himself up as the arbiter of all complaints about him?---Yes.

Do you remember that email?---Yes, I do.

30 Now, Mr Dencker said this at page 2040 of the transcript, "To the best of my recollection, I recall having a discussion with Mr Romano and I think Mr Macklin, the executive was there and it was my view that we, that the protected disclosure policy needed review and I set about organising a meeting with Mr Baird and Mr Howe who had experience in local government and with Ms Viney." Now, is it your recollection that after Mr Romano sent what you agreed was an entirely inappropriate process, an email about a proposed, an entirely inappropriate process that you had a discussion with both Mr Romano and Mr Dencker to the effect that there needed to be a review of the disclosure policy and that Mr Baird, Mr Howe and Ms Viney should be involved in that?---I can't recall the discussion
40 with Pat being involved but I certainly was involved in a meeting with Bob Howe, Pina Viney, Ian Dencker and I think David Baird but I can't be 100 per cent sure there but I definitely do recall and I've got a file that I started to create on my desk which I called the Review of the Protected Disclosures Policy and I recall it's one or two meetings that we had. I can't recall discussing it with Pat. Ian may have raised it in a meeting, an Executive meeting, I can't recall that.

In that regard you were asked questions by learned senior counsel assisting at page 2081 of the transcript concerning this, the email from Mr Romano, the arbiter - - -?---Yes.

- - - of all things. The question was put to you at about line 28, "That is, they left sort of hanging by yourself"?---Mmm

And you said, I didn't feel like that?---No, I didn't.

10 Is part of the reason you didn't feel like that because of the, the discussion that I just took you to, that is that Mr Dencker and, Mr Dencker and Mr Baird and Mr Howe got together with you to discuss how the protected disclosure policy might be reconsidered rather than merely implementing Mr Romano's email?---Oh, look it could've been. I just can recall that in my response to Ms Ronalds question, I didn't feel like I needed to have the support of everyone else to take that stand. But it could've, in answer to your question, it could've had some difference, yes.

20 And that was part of the support that you felt from members of the Executive including Mr Dencker was it?---I didn't, look I don't think recall it as being support, but, because at the time I didn't think I felt like I needed any. But it was good to sit down and, and look at, you know, the process.

30 Thank you. Now in cross-examination at page 2076 of the transcript, you were asked by learned senior counsel assisting this question, about line 28. Would you agree that it gave rise to two issues? This is going back to the, the Saad alleged protected disclosure. Would you agree that it gave rise to two issues. One is whether there was a PD or not? And you said, Yes. And then question, You understand that Mr Dencker's approach was no PD, therefore nothing, is the question. And the answer is, Yes, and that was probably partly by fault as well?---My fault.

My fault, thank you?---Mmm. Mmm.

My recollection for what it's worth is that you said my fault?---Yeah I, yeah.

40 Yes. All right. The transcript records it says by fault, but you were, you were acknowledging weren't you that in your view you had contributed to Mr Dencker's approach, that is no PD, therefore no need to investigate? ---That's right.

Yes. Now that view, that is there was no protected disclosure, therefore that's the end of the matter, that was a view which you held on a bona fide basis, wasn't it?---Yes.

It wasn't a view that you'd reached in order to placate or to help Mr Romano was it?---No. No.

Okay. That was your professional view based on your experience?---Yes.

My understanding is that at Council in February, 2009, there were three people who had expertise in relation to protected disclosures, yourself. Is that right?---No, I wouldn't say I had expertise.

ASSISTANT COMMISSIONER: Yes. I would've had to object if he had claimed that?---I can assure you I won't.

10

MR LEGGAT: All right. Had some experience in relation to protected disclosure?---Limited experience in an issue that was, that arose probably some twelve months previous and the matter was first brought to me and I referred it to your governance co-ordinator, which in hindsight was what I should've done with this one. The other two people were Robert Cummins and Pina Viney.

Thank you. Robert Cummins and Pina Viney?---Yes.

20

Yes. Now when you reached the view that there was no PD and therefore that meant there was nothing further to be done - - -?---Mmm.

- - that was a view that was also reached by Mr Cummins, the expert wasn't it? And let me take you to an email sent by Mr Cummins to Ms Viney with a copy to you, this is Exhibit 242, page 9. I wonder if the witness might be shown Exhibit 242, tab 9, please?---Tab 9.

And you see this is an email from Robert Cummins, it's 16 February, 2009, which Ms Pina Viney copied to you?---That's right.

30

And Robert says, Pina, Ian Dencker has confirmed that there's no PD at present and therefore there is no need for you or indeed him to have any involvement as PD co-ordinator in the current matter. Do you see that? ---Yes, I can.

Now, it was apparent to you wasn't it when you read that email that the view that you had formed was one that Mr Cummins was endorsing and accepting as the correct approach, that is no PD, therefore we down tools?--- I can't recall - - -

40

MS RONALDS: Can I object. That's not a fair reading of the email at all.

ASSISTANT COMMISSIONER: Yes. I must say I don't think that's fair. It's saying that there's no need for the PD co-ordinator to be involved. I think the proposition that's being put more broadly to Mr Dencker and to Mr Macklin is that the fact that a PD hasn't been made doesn't mean there's not serious allegations that the Council might have to consider. And I think Mr Macklin agrees with that now?---Mmm.

Because I mean a PD is a very limited category (not transcribable) as you know. Like if a civilian makes an allegation it's not a PD under any circumstances, so if a civilian said somebody stole \$100,000 from the Council, you couldn't just say, well, that's not a protected disclosure, so we're not going to worry about that. I mean you understand that now don't you?---Yes, I do.

Yes. And I don't think that Mr Cummins was saying anything different.

10

MR LEGGAT: Let me take you to, to what Ms Viney's view appeared to be at the time and you'll find that at Exhibit 242, tab 6. Could I invite you to turn to tab 6, please. Pina Viney, 12 February, 2009, it's the, the back page, Mr Macklin?---Mmm.

To Ian Dencker with a copy to Peter Macklin?---Yes.

10 Ian, as I was given the personal person of the person who the allegation was made against by Robert Cummins, I'm removing it from my safe and returning to HR. As this is not a protected disclosure, this matter need not involve me any longer. Now that approach, that is there was no protected disclosure, therefore Dencker and Viney need not have any further involvement - - -?---Mmm.

- - - was the view that you'd formed as well wasn't it?---Yes.

Thank you. Now, and at the time, and I'll see if I can do this as quickly as I can to finish?---Okay.

30 You appear - - -?---I'll keep my legs crossed.

- - - you appear to, you appear to be the subject of cross-examination and criticism for your inaction to have taken certain steps in relation to, to, in relation to HR matters at Council. But you also were the recipient of a, of a letter from Don McKenzie, from the Commission in September of 2009. Did the letter from McKenzie cause you to act in any particular way? Did it tie your hands, so to speak?---Yes, in regard to Mr Giangrasso, most definitely.

40 All right. And did, did you feel that, that the ICAC was wanting to protect certain witnesses and you would be criticised if you were seen to be taking any steps that could've been retaliatory?---Yes. Yes.

All right. Have you given any consideration how that might be better managed in the future, the tension between business as usual at Council and protecting whistleblowers?---Can you ask me that question again?

Have you thought of a way that that problem that you were in where were you were being criticised for inaction and criticised if you were going to take action, have you thought how that might be resolved better in the future?---I think given the same circumstances again, maybe we should've communicated with ICAC earlier. Look, no, once, once I get out of this witness box and sit down and have a chance to read, read the transcripts and the evidence and, I think I'll certainly be following, looking at ways that I can improve how I've performed in this whole situation. To answer your question, at the moment, I really haven't, no I can't, I haven't got a lot of clarity on that just yet.

MR LEGGAT: Thank you.

ASSISTANT COMMISSIONER: Thank you, Mr Leggat. Yes, Ms McGlinchey.

MS McGLINCHEY: Commissioner, many of the matters which I would've liked to have covered have already been covered by other people so insofar as I might touch on those issues I'll just try to not ask any questions that have already been asked and I know Mr Macklin is getting very tired and would like to be out of the witness box.

ASSISTANT COMMISSIONER: Yes.

MS McGLINCHEY: Mr Macklin, just in relation to, and I know you've already been asked some questions about the making of your statement in regard to the workers compensation matter of Mr Cummins. I just want to ask you about the circumstances which led to you making that statement and perhaps if I could just put some propositions to you and if you could tell me if that's the case?---Yes.

Is it the case that you were requested by Mr Steven Kelly to attend an interview?---Yes.

All right. So you didn't initiate the process - - -?---No.

- - - Mr Kelly did? You attended the interview and is it the case that you were asked a number of specific questions?---That's right.

40 And you provided answers to those specific questions?---That's right.

Were you asked at any stage to give an overview of Mr Cummins' performance at the Council?---No, I don't recall being asked that, no.

But you were asked a series of very specific questions rather than open-ended questions?---Yes.

Did you go there with the attitude that you would say something negative about Mr Cummins - - -?---No.

- - - or create a bad impression on - - -?---No, definitely not.

Is the next thing that happened in the process that a statement was prepared for you you would assume by Mr Kelly?---Yes.

10 Out of the answers to the questions you provided to Mr Kelly?---Yes.

You were presented with the - - -?---That's right.

You were given the opportunity to make any corrections?---Yes.

Right. And you signed - - -?---Yes.

- - - the statement after reading it of course?---Yes.

20 And it represented a true account of the answers you'd given to those questions?---It did.

And you've had the opportunity to read that statement recently?---Yes.

And does it still represent a true account - - -?---It does.

30 - - - of the evidence you have given? Just moving to the disciplinary matter following the payment of cash by Mr Child for overtime. You were asked some questions about this yesterday and it was suggested to you that the actions that you took might've been an overreaction to, yes, to the matter that actually took place, the payment of cash by Mr Child and you rejected that?---Yes.

And you said that you didn't think that it was an overreaction - - -?---That's right.

- - - in the circumstances?---That's right.

40 Could I just put to you a number of matters which might've been circumstances at the time which you took into account in formulating your response to that?---Ah hmm.

Is it the case that the Morrison Low report had identified a massive overpayment, over budget payments for overtime?---Yes.

And that there was a quite a deal of concern in the Council about those, the blow-out of the budget (not transcribable)?---There was.

And that measures were being put in place to address bringing the budget back into some sort of reasonable shape?---Yes. That's right.

And one of the matters which was thought to be linked to the blow-out of the budget was the lack of planning or lack of proper scheduling of work in the depot?---I would think so, yes.

10 So that work was perhaps being carried out in a way which generated more overtime than would need be if there were proper scheduling?---That's right.

And those concerns were communicated to people in the depot including Mr Child?---Yes.

In relation to the specific incident that happened the overtime was approved?---Yes, it was.

20 Was there a concern that if Mr Child was seen to be needing to pay the money out of his own pocket that the workers underneath him might feel that they were being, treated poorly if they were required to do the work but they weren't going to be paid by their employer the Council?---Yes, that was a view that we had, yes.

And that would be, that would create some very bad feelings amongst the workers?---Yes, agree.

And it would all be a bit of a difficult situation down at the depot?---Yes.

30 Where management and the workers were perhaps at odds?---That's right.

So you wanted to limit that disharmony?---Yes.

All right. Was it also the case that it was reported to you that some of the workers who received the cash felt uncomfortable about being, having cash thrown at them out of a window of a car?---I think I can recall that, that, that feeling being portrayed to me, yes.

40 You can't recall now who might've said that to you?---I could, no, I can't. No, I can't, I'm sorry.

But you'd have a general recollection?---Yes.

There was some expression that people felt uncomfortable?---Yes.

And I think in one of the documents you've been shown today was said that some of the workers didn't even spend the money or we'll skip over that if you don't remember?---Mmm.

Could Mr Macklin be shown Exhibit 176. Mr Macklin, do you recall when you gave evidence in this Commission on the last occasion, not yesterday but the occasion before that?---Yes.

You were shown this document and you were asked some questions by counsel assisting in relation to the Becerra contract issue?---That's right. Yes, I can recall that.

10 And it was suggested to you that you perhaps should've taken this procedure into account in making decisions in relation to Mr Becerra employment?---That's right.

All right. Have you had a chance to look through this document and consider that? I think your answer on the occasion was that you weren't quite sure whether you didn't take that into account?---No, and I haven't, and I haven't had a chance to read it since, since I was asked that question.

Okay. Do you recognise this document at all?---Sorry?

20 Do you, do you recognise this document at all?---I, I'm aware that it, that it exists.

Do you understand it to be one of the documents which does have effect on employment contracts?---No, I'm not, I've, I've never had to refer to it before, no.

Do you, do you have any understanding about that this might be a document used for procuring services outside of employment?---That's right.

30 Mr Macklin, Mr Blake has taken you to some very important matters that the Council was considering from May 2009 to the end of the year and one of those was the ICAC inquiry?---Right.

Would it be fair to say that the lion's share of the work involved in producing documents for the ICAC inquiry fell on your shoulders?---Yes, a significant amount of it did and I can't take the credit for all of it but I did a lot of the work and that's actually my writing on the top of that document there. So, yes, there was a significant amount of work that my team did in preparing.

40 Are you able to give the Commission some idea of what sort of time involvement that required from you?---At certain periods of time it represented, I'm sorry, I'll withdraw that. Over the period of time I would, I would think that it probably presented close to 50 per cent of our time.

50 per cent of your time?---My, my time, I'm sorry.

And 50 per cent of your team's time?---No, not so much of my team by more so my time.

50 per cent of your time?---Mmm.

And am I right in saying that it would have been a significant amount of time from your team, perhaps (not transcribable) per cent?---Yes, yes.

10 All right. Because there were virtually truck loads of documents required?
---Yes, and we had to maintain confidentiality, you just couldn't hand it out to, hand it out, hand out the tasks willy-nilly, you had to make sure that it wasn't, it was kept confidential.

And during that time you also had your normal human resources tasks to perform which - - -?---Yes.

- - - which are also quite onerous?---Yes.

20 In a, in a Council which was undergoing quite a (not transcribable)?---Yes, it was.

And you were also under, you had also the major carriage of another major project?---Yes. We were reviewing our garbage services at the same time which was a significant project. That took a good six months and it involved weekly meetings with unions and staff reviewing reports. It was, it was a significant project at the same time.

And a project which was carried out quite successfully?---It was, yeah.

30 It involved the, the, virtually the privatisation of the garbage services?---It did and it, and it was done by reaching agreement with the staff with no lost time due to industrial action.

Which is quite a, quite an achievement?---It's unusual when you reform in that area.

40 Thank you, Mr Macklin. Mr Macklin, I'll just show you this document which is a letter to you dated 10 September, 2009. Do you recall receiving that letter?---Yes, I do.

And can you tell the Commission just in general terms the subject matter?
---It was a letter from Don McKenzie to myself in regard to Joe Giangrosso. In essence asking us to refrain from taking further action in regards to Mr Giangrosso until we received further advice from the Commission.

Advice generally, action generally or - - -?---Yes.

- - - specifically?---Well, I think, well, asking Joe to respond to the allegations that, that were put to him in a number of letters.

Thank you. I seek to tender that document. I'm sorry, I didn't give it to counsel, I think counsel assisting has it.

ASSISTANT COMMISSIONER: Yes. That letter from Mr McKenzie will be Exhibit 288.

10

#EXHIBIT 288 - LETTER FROM DON MCKENZIE TO MR MACKLIN DATED 10 SEPTEMBER 2009 RE GUISEPPE (JOE) GIANGRASSO

MS McGLINCHEY: I don't have anything further, Commissioner.

ASSISTANT COMMISSIONER: Thank you. All right.

20 MS RONALDS: Well, I was going to all Mr Dencker but I just wanted to see if I could cause a riot in the room by suggesting it.

ASSISTANT COMMISSIONER: Yes, thank you. You're now excused from further attendance, Mr Macklin.

THE WITNESS EXCUSED

[4.11pm]

30 ASSISTANT COMMISSIONER: If there's nothing else at this stage we will adjourn until 10.00am on 7 June.

AT 4.11pm THE MATTER WAS ADJOURNED ACCORDINGLY[4.11pm]