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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION JARAH

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY, 19 JANUARY 2015

AT 10.10AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

ASSISTANT COMMISSIONER: This is a public inquiry being conducted to support the Commission's investigation in Operation Jarah. I would remind legal representatives that the general practice directions which are available on the website will apply to this inquiry. Mr Tim Gartelmann has been as Counsel Assisting. He outline the general scope and purpose of the inquiry in his opening. After his opening address we will have a short adjournment and we will then take applications for leave to appear. Yes, Mr Gartelmann.

10 MR GARTELMANN: Thank you, Commissioner.

In 2013 the Independent Commission Against Corruption received information from an anonymous source alleging Phillip Cresnar, then an Ausgrid employee in its Contract Cable Laying Division, was engaging in corrupt conduct. Subsequently the Independent Commission Against Corruption commenced an investigation into the alleged conduct of Mr Cresnar. The scope and purpose of this public inquiry is to establish if Phillip Cresnar has engaged in corrupt conduct by 1, supplying confidential information to companies tendering to Ausgrid and other Government
20 agencies, 2, assisting companies to compile to tenders and submit contract variations that were submitted to Ausgrid and, 3, receiving cash, gifts and other benefits for carrying out these activities. The Commission will also examine whether any person alleged to have provided benefits to Mr Cresnar has engaged in corrupt conduct.

In order to understand the allegations and the evidence to be considered during this inquiry it will be necessary to explain a number of aspects of Ausgrid's operations and the role Mr Cresnar performed within Ausgrid. Ausgrid owns and manages an electricity network providing power in the
30 Sydney Metropolitan, Central Coast and Hunter regions. Ausgrid was formerly known as Energy Australia until March, 2 March, 2011 when it changed its name after the sale of its retail business.

Prior to that and until 1 March, 1996 Energy Australia was known as Sydney Electricity. Ausgrid is a New South Wales state owned corporation under the State Owned Corporations Act 1989 and section 36 of that Act provides that its employees are public officials for the purpose of the Independent Commission Against Corruption Act 1988. Accordingly, Mr Cresnar was at all relevant times a public official for the purposes of this
40 inquiry.

In order to develop and maintain its electricity network, Ausgrid requires works to be carried out involving excavation and the installation of cable on an on-going basis. Largely these works are contracted out to the private sector. Ausgrid has established panels of contractors available to carry out these works. Selected contractors were invited to tender to be included on panels to carry out work within specific regions of Ausgrid's franchise area. A successful tenderer might then enter into what is known as a Standing

Order Deed with Ausgrid.

Individual contracts to carry out works on particular projects are allocated to contractors who have entered into a Standing Order Deed. Entry into a Standing Order Deed does not itself guarantee the contractor will receive any work. The Standing Order Deed sets out specific stages of the contracting process and the conditions governing individual contracts. Contractors undertake to provide works of specific kinds at rates set out in schedules in the Standing Order Deeds. Each Standing Order Deed operates for a two year period subject to extensions of two years, that is, up to a maximum of six years.

The division of Ausgrid with responsibility for management of entry into and carrying out of individual contracts is known as Contract Cable Laying. The Contract Cable Laying division receives orders for works to complete projects designed in another Ausgrid division now called Network Development. Prior to a restructure of Ausgrid it was called Zone Development and Field Services. There are two portfolio managers under the manager of Contract Cable Laying each with responsibility for a region north of south of the harbour. Each portfolio manager supervises within their region a number of engineers or engineering officers who perform several roles with respect to work carried out under contract for Ausgrid.

Firstly, an officer known as the project planner is responsible for determining which contract is to be allocated the contract – which contractor is to be allocated the contract to carry out a particular work order. Responsibility for completion of the contract process is then delegated to an officer known as the contract initiator. Once the contract is entered into an officer known as the contract inspector is allocated to manage the contractor's performance and completion of work pursuant to the contract. The contract inspector is responsible for conducting site inspections to ensure the works comply with certain applicable standards and for determining whether variations to contracts should be approved.

Mr Cresnar was initially employed with Ausgrid on 10 April, 2006 as a graduate engineer. At the times relevant to this inquiry Mr Cresnar was employed in the position of project engineer in the Contracts and Distribution Engineering Services branch, Contract Cable Laying section. Mr Cresnar's employment with Ausgrid was ultimately terminated in 2014 during the course of the Commission's investigation.

Prior to the termination of his employment Mr Cresnar was one of two Contract Cable Laying officers who performed a role of project planner in the north region. Mr Cresnar's role as a project planner included allocating responsibility for initiating and managing contracts to other Contract Cable Laying officers in the north region. However, it appears Mr Cresnar also performed roles of contract initiator and/or contract inspector for contracts relating to works within a particular area of the north region himself.

The roles Mr Cresnar performed within Contract Cable Laying involved him dealing with contractors operating in the north region on a regular basis. Contractors often engage subcontractors to assist in carrying out works under contracts entered into under the Standing Order Deeds. Although the contractual relationship is in principle between Ausgrid and the principal contractor, in practice subcontractors effectively become onsite representatives of the principal contractor and so contract inspectors also deal with subcontractors on a regular basis. Accordingly, Mr Cresnar's role also involved dealing with subcontractors.

I am now going to turn to deal with some of the contractors and subcontractors who it is anticipated will be the subject of evidence in this inquiry.

It should be understood that there were multiple contractors operating in the north region carrying out works for Ausgrid at relevant times, at times relevant to this inquiry. Only certain of those contractors are likely to be the subject of evidence in this inquiry. Even where a contractor is mentioned in evidence it will not necessarily be because there is any suggestion the contractor has been involved in any corrupt conduct. Some contractors are likely to be mentioned only because there is evidence relating to Mr Cresnar's dealings with their subcontractors and not because there is any evidence the contractor was itself involved in any corrupt conduct. On the other hand, in at least one instance a contractor will be the subject of evidence both because of its own dealings with Mr Cresnar as well as those of its subcontractor.

In chronological order the first contractor having dealings with Mr Cresnar that will be the subject of evidence in this inquiry is Bastow Civil Constructions Pty Limited which I will refer to as Bastow Civil. Bastow Civil commenced performing work for Ausgrid in about 2007. The value of the contracts that Bastow Civil performed over the following years were substantial. The total value of the contracts to Bastow Civil between the years 2007 and 2012 amounted to almost \$20 million. The sole director and shareholder of Bastow Civil throughout these years was Mr Jason Bastow. It is anticipated that the evidence in this inquiry will establish that in the period 2008 to 2011 when Bastow Civil received the greatest proportion of its total payments from Ausgrid Mr Cresnar was the recipient of various benefits from Mr Bastow.

The evidence will show these benefits included at least the following. First Mr Cresnar conducted multiple transactions on a PayPal account that were paid for with Mr Bastow's credit card account. These transactions related to a variety of goods and services including consumer goods such as electronic equipment, computers, home entertainment appliances, airfares and tickets to events. The transactions were conducted over the years between 2008

and 2010. The total value of the transactions amounted to approximately \$36,500.

Second, Mr Cresnar used or had the use of Mr Bastow's credit card account to pay for multiple transactions other than those conducted with his PayPal account. These transactions again related to a variety of consumer goods such as electronic equipment, computers and home entertainment appliances. The transactions continued over the years 2008 to 2010, the total value of these transactions amounted to approximately \$31,000.

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Third, Mr Cresnar had extensive modifications carried out on his Saab car. The cost of these modifications was approximately \$25,000. Payment for the work was made with a Bastow Civil's company cheque in 2009. Lastly, it is anticipated there will be evidence that Mr Bastow provided Mr Cresnar with cash.

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The inquiry will explore whether the benefits Mr Cresnar received from Bastow or Bastow Civil were inducements or rewards in exchange for Mr Cresnar exercising his official functions in favour of Bastow Civil or were made in the belief that they would influence Mr Cresnar to show favour or not to show disfavour to Bastow Civil.

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Again in chronological order an ex-contractor to have dealings with Mr Cresnar that will be the subject of evidence in this inquiry is Murray Civil Works Pty Limited which I will refer to as Murray Civil. Murray Civil commenced performing work for Ausgrid in about 2011. Until that time the sole director and shareholder of Murray Civil was Mr Valentine Murray. In 2011 Mr Denis Twomey became a director and shareholder of Murray Civil. It appears Mr Twomey and Mr Cresnar had been friends for some years before Mr Twomey became a director and shareholder of Murray Civil. After Mr Twomey became a director and shareholder Murray Civil began to work almost exclusively for Ausgrid. The value of the contracts obtained in the following years were substantial. Between the years 2011 and 2013 the value of contracts to Murray Civil totalled more than \$26 million.

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It is anticipated that the evidence in this inquiry will establish that in the years 2012 and 2013 when most of the payments from Ausgrid were made to Murray Civil, Mr Cresnar was the recipient of a number of benefits paid for with the funds of Murray Civil or Mr Murray or Mr Twomey. The benefits were of various kinds. Mr Cresnar was at the time carrying out extensive renovations to a property he had purchased in Alexandria in 2009. Many of the benefits he received were for the purpose of these renovations. The evidence suggests benefits received by Mr Cresnar paid for with funds of Murray Civil, Mr Twomey, Mr Murray, I'm sorry, or Mr Twomey, included at least the following.

First Mr Cresnar acquired a quantity of imported travertine and marble tiles. These products cost approximately \$15,000. Payment for the products was made with an account in Mr Twomey's name. Second Mr Cresnar had a custom-made wall unit designed, built and installed. The wall unit was made by a firm called Dan Kitchens and cost more than \$22,000. The payments for the wall unit were made from Mr Murray's Murray Civil credit card account. Third Mr Cresnar acquired a fireplace made by Rinnai. The fireplace cost approximately \$5,700. Payment for the fireplace was again made from Mr Murray's Murray Civil credit card account. Fourth Mr
10 Cresnar purchased a Bernina sewing machine. The sewing machine cost approximately \$1,800. Payment for the sewing machine was again made from Mr Murray's Murray Civil credit card account. Fifth Mr Cresnar acquired an imported marble bath and two toilets. The cost of these products was approximately \$7,800 including import duties. The cost was paid for by Mr Twomey. Sixth Mr Cresnar purchased multiple hardware products from Bunnings stores using a Murray Civil trade card account in Mr Twomey's name. Seventh Mr Cresnar acquired a number of bathroom fittings and fixtures from Bathware Online. The cost of these products totalled \$9,200. Payment for these products was made with Mr Twomey's
20 PayPal account. Lastly Mr Cresnar appears to have been provided with occasional use of a Murray Civil company car.

This inquiry will explore whether benefits Mr Cresnar received from Murray Civil, Mr Murray or Mr Twomey were inducements or rewards in exchange for Mr Cresnar exercising his official functions in favour of Murray Civil or made in the belief that they would influence Mr Cresnar to show favour or not to show disfavour to Murray Civil.

As mentioned previously, at least one contractor will likely be the subject of
30 evidence, both because of its own dealings with Mr Cresnar and those of its subcontractors. A subcontractor to Murray Civil that will be the subject of evidence is MDM Formworks Pty Limited which I will refer to as MDM Formworks.

MDM Formworks carried out works as a subcontractor to Murray Civil during 2013. The value of these contracts to MDM Formworks was approximately \$362,000. The directors and shareholders of MDM Formworks were John Madden and Fergal McGann. In this inquiry it will be explored with Mr Cresnar obtained any benefits from Mr McGann and –
40 I'm sorry, Mr Madden and Mr McGann, such as cash payments and whether any such benefit was an inducement or a reward in exchange for Mr Cresnar exercising his official functions in favour of MDM Formworks or were made in the belief that they would influence Mr Cresnar to show favour or not to show disfavour to MDM Formworks.

As also mentioned previously, some contractors may be mentioned in this inquiry only because the evidence relates to the dealings of their subcontractors with Mr Cresnar and not because there is any suggestion the

contractor itself has been involved in any corrupt conduct. One such contractor is Diona Pty Limited which I will call Diona.

One of Diona's subcontractors that will be the subject of evidence is Cloughcor Pty Limited which I will refer to as Cloughcor. Cloughcor carried out works under subcontractor Diona for Ausgrid during the period 2011 to 2013. The total value of these contracts to Cloughcor was approximately \$9,158,000. The sole director and shareholder of Cloughcor during this period was Mr Eamon Burke.

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Cloughcor has changed its name to Burke Pipe & Civil Constructions Pty Limited. It is anticipated that the evidence in this inquiry will show that in 2011 Mr Cresnar received a number of benefits paid for with Cloughcor's funds. These benefits were of various kinds but generally relate to payment for materials and appliances for the purposes of Mr Cresnar's renovations.

First, Mr Cresnar acquired a quantity of sandstone tiles or pavers from Gosford Quarries. The cost of the tiles or pavers was approximately \$5,800. Payment for these items was made with a Cloughcor company cheque.

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Second, Mr Cresnar had a custom-made kitchen designed, built and installed. The kitchen was made by Dan Kitchens, the firm that Mr Cresnar had make the wall unit. The kitchen cost a total of approximately \$60,000. Payment for the kitchen was again made with a Cloughcor company cheque. Third, Mr Cresnar acquired several kitchen appliances from Miele Australia. The total cost of the appliances was approximately \$21,000. Payment for these appliances was similarly made with a Cloughcor company cheque. Lastly, Mr Cresnar acquired a large marble bowl from a firm called Architectural Décor. The marble bowl cost \$12,400, payment for which was again made with a Cloughcor company cheque.

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This inquiry will explore whether these benefits Mr Cresnar received from Cloughcor were inducements or reward in exchange for Mr Cresnar exercising his official functions in favour of Cloughcor or were made in the belief that they would influence Mr Cresnar to show favour or not to show disfavour to Cloughcor.

Another of Diona's subcontractors that will be the subject of evidence is Far-aim Pty Limited which I will refer to as Fer-aim. Fer-aim carried out works under subcontract to Diona for Ausgrid in 2010 and 2011. The total value of these contracts to Fer-aim was approximately \$3,282,000. The sole director and shareholder of Fer-aim was Mr Patrick Miskelly. It is anticipated that the evidence in this inquiry will show that in 2010 Mr Cresnar purchased airfares from Jetabroad for overseas travel. The total cost of the airfares was approximately \$2,650. Payment for the airfares was made with the credit card of Mr Miskelly. This inquiry will explore whether this benefit Mr Cresnar received from Mr Miskelly was an inducement or a reward in exchange for Mr Cresnar exercising his official

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functions in favour of Fer-Aim. All was made in the belief that it would influence Mr Cresnar to show favour or not to show disfavour to Fer-Aim.

10 That is a brief outline of the evidence that is presently anticipated relating to benefits Mr Cresnar appears to have received from Ausgrid contractors and their subcontractors. The total value of all the benefits received by Mr Cresnar is in excess of \$300,000. This inquiry will also consider whether there were any factors that may have allowed alleged corrupt conduct to occur and what systemic changes might be made to reduce the prospect of it recurring.

20 The first issue for consideration is whether the operation of the panel system for work Ausgrid contracted out to its, and its cable contract – I’m sorry, it’s Contract Cable Laying Division managed sufficiently limits opportunities for corrupt conduct to occur. The panel system allows Ausgrid to maintain a sufficient pool of capable contractors available to enter into contracts as and when they are needed to carry out work for projects in particular areas. A requirement to conduct an open tender for all Ausgrid’s contract work would likely be impractical. Previously Contract Cable Laying itself carried out the procurement process to determine which contractors were permitted to enter panels. However, changes have been implemented, since 2010 a separate and specialised unit called Contract Development has assumed this responsibility.

30 Nevertheless Contract Cable Laying Division officers continue to exercise substantial control over the allocation of individual contracts to particular contractors once they are on panels. Previous project planners could make recommendations regarding which contractors were allocated contracts irrespective of their value. Changes have recently been implemented in this respect. Since 2014 the procedures applicable for determining the contractor to be allocated a contract are dependent on whether the estimated value of the contract falls above or below a \$200,000 threshold.

40 Where the estimated value is below that threshold, the project planner makes a recommendation regarding the contractor to be allocated the contract. Recommendations may be made on several bases including price, suitability of the contractor and availability of its crew needed to carry out the work and ensuring contractors receive sufficient work to remain viable. Where the estimated value is above the threshold all panel members are given the opportunity to submit a lump sum quote after an onsite visit to assess factors that might affect carrying out the work.

Generally it is expected the contract will be awarded to the contractor submitting the lowest quote. However, the criteria applicable for allocation of contracts do not appear formalised. The extent to which recommendations may still be made on the basis of factors other than price is unclear. Any recommendations made on bases other than price necessarily involve project planners’ subjective assessment of the suitability

and capacity of contractors to carry out works providing the opportunity for favouritism.

Project planners' recommendations are submitted to portfolio managers who check the information provided before referring it to the officer with the appropriate delegation to approve a contract of that value. Nevertheless it appears project planners continue to retain an influential role in ultimate decisions regarding the allocation of contracts.

- 10 Further, it is not clear that the roles of Contract Cable Laying officers have been strictly delineated. It appears that project planners involved in allocation of contracts may have also carried out the roles of contract initiator or contract inspector in respect of those contracts. Any lack of segregation between these roles would tend to increase the prospect that a Contract Cable Laying officer may achieve end-to-end control of the process creating greater scope for corrupt conduct to occur. One of the objectives of the panel system was to ensure contractors received a fair allocation of both high and low value contracts as their profitability varies. However, it is not clear that there are effective systems in place to ensure
20 this occurs. This also provides an opportunity for favouritism.

- The approval of variations to contracts and the adequacy of systems to limit opportunities for corrupt conduct in this respect is a significant issue. Variations can substantially affect the profitability of contracts with significant budgetary consequences for Ausgrid. Even variations relating to work carried out by subcontractors will affect profitability for contractors as Ausgrid is invoiced on cost plus basis. That is, contractors retain a certain percentage of the invoice value. Variations are typically made when contingencies are encountered after contract work is commenced as a result
30 of what are known as latent conditions in circumstances affecting the nature and extent of the work required. Many examples of latent conditions exist.

Contract Cable Laying appears generally to have considered that variations arising from latent conditions could not be refused. Consequently, variations have been widespread. In principle, approval of variations is subject to the endorsement of project managers. However, the inability of project managers to readily attend sites to assess conditions has meant that contract inspectors' assessments have largely been determinative.

- 40 Whether these circumstances continue to provide the opportunity for contract inspectors to approve fraudulent variations in exchange for rewards from contractors is an issue to be considered. Contract inspectors have the capacity to influence the profitability of contracts in other ways. A contract inspector may determine that work does not comply with technical, network, safety, environmental or other standards following an onsite inspection. The contract inspector may then issue what is known as a non-conformance notice. The effect of the notice is to require the contractor to carry out remedial work necessary to achieve compliance at its own

expense. Contract inspectors have sole discretion whether to issue non-conformance notices. That determination may depend largely upon the contract inspector's subjective assessment of compliance with applicable standards. This creates the opportunity for exploitation of contractors for corrupt purposes. There are contract management practices that remain reliant on the subject assessments of Contract Cable Laying officers. The adequacy of systems for monitoring and recording contractor performance may also need to be considered.

- 10 Finally, Ausgrid has had in place fraud and corruption prevention guidelines and a code of conduct for a number of years. Corporate directives have been issued from time to time explaining the code and guidelines.

Supervisors and managers are required to bring the information to the attention of their staff and staff members are required periodically to participate in training sessions regarding these policies. The efficacy and adequacy of this training may need to be assessed.

- 20 These are some of the issues that may require consideration in light of the anticipated evidence in this inquiry.

Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Gartelmann. We will now take a short adjournment.

SHORT ADJOURNMENT

[10.40am]

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MS DAVENPORT: Yes, Your Honour, or sorry, Commissioner. Carolyn Davenport senior counsel instructed by Sparke Helmore. I seek leave to appear on behalf of Ausgrid.

ASSISTANT COMMISSIONER: Yes, Ms Davenport, you are given leave to appear.

- 40 MS DAVENPORT: Thank you.

ASSISTANT COMMISSIONER: Are there any other applications for leave to appear at this time?

MR CHEE: Yes, Assistant Commissioner, my name is Chee, C-h-e-e. I seek authorisation to appear on behalf of Mr Jason Bastow.

ASSISTANT COMMISSIONER: Yes, Mr Chee, you are given leave.

MR CHEE: Thank you.

MR CARROLL: My name is Carroll, C-a-r-r-o-l-l. I seek leave to appear for Ms Adisty Said.

ASSISTANT COMMISSIONER: Yes, Mr Carroll, you are given leave to appear.

MR CARROLL: Thank you.

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MR SUTTON: My name is Sutton, S-u-t-t-o-n. I seek leave to appear for Mr Cresnar.

ASSISTANT COMMISSIONER: For Mr Cresnar. Thank you. Yes, you are given leave to appear.

MR SUTTON: Thank you.

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ASSISTANT COMMISSIONER: Yes. If there are no other applications at this time, Mr Gartelmann.

MR GARTELMANN: Commissioner, the first witness to be called will be Jason Bastow. Before he's called to give oral evidence there are a number of documents relating to his evidence which are in a tender bundle which I will tender at this stage.

ASSISTANT COMMISSIONER: Yes. The tender bundle in respect of Mr Bastow will be Exhibit 1.

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**#EXHIBIT 1 - JASON BASTOW- BASTOW CIVIL
CONSTRUCTIONS- TENDER BUNDLE**

MR GARTELMANN: Copies of that bundle have been provided to Mr Bastow's representative and Mr Cresnar's representative.

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It may be prudent also to raise at this stage, Commissioner, the question of suppression orders in respect of the following information contained within that bundle. Firstly private telephone numbers, secondly private addresses, thirdly private email addresses and fourthly private bank account numbers.

ASSISTANT COMMISSIONER: Yes. Well, in respect of that bundle and any other bundles that are tendered at a future time in this inquiry, I suppress from publication any of the private details outlined by Mr Gartelmann, including telephone numbers, home addresses, email addresses and bank account details, subject to any further order that might be made.

I SUPPRESS FROM PUBLICATION ANY OF THE PRIVATE DETAILS OUTLINED BY MR GARTELMANN, INCLUDING TELEPHONE NUMBERS, HOME ADDRESSES, EMAIL ADDRESSES AND BANK ACCOUNT DETAILS, SUBJECT TO ANY FURTHER ORDER THAT MIGHT BE MADE

Thank you, Mr Gartelmann.

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MR GARTELMANN: Thank you, Commissioner. I call Jason Bastow.

ASSISTANT COMMISSIONER: Yes. Is Mr Bastow here?

MR CHEE: Could I indicate as Mr Bastow makes his way up to the witness stand that he will take an oath and that I've explained to him the operation of section 38 and he wishes to make, to seek a declaration under section 38.

ASSISTANT COMMISSIONER: Thank you.

20

Yes, take a seat, Mr Bastow.

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection. There is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

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PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED

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ASSISTANT COMMISSIONER: Could the witness be sworn, please.

ASSISTANT COMMISSIONER: Yes, Mr Gartelmann.

MR GARTELMANN: Is your full name Jason David Bastow?---Yes.

Bastow spelt B-a-s-t-o-w. Is that right?---Yes.

10 Mr Bastow, are you the director of Bastow Civil Constructions Pty Limited?
---Yes.

Are you the sole director of that company?---Yes.

And are you the sole shareholder?---Yes.

Did you set up Bastow Civil in about 2001?---Yes.

20 Bastow Civil, as the name implies, carries out work, civil work in respect of
utilities and the like. Is that correct?---Yes.

At some point in Bastow Civil's lifetime did the company move into what's
known as directional or horizontal drilling and bore work?---Yes.

Does that involve in short installing conduits for utilities including things
such as electricity cables?---Yes.

30 In 2006 to 2007 did Bastow Civil tender to be admitted to a panel for work
with Ausgrid?---Yes.

Ausgrid was formerly known as Energy Australia, wasn't it?---Yes.

But in any event, you submitted a tender to be admitted for panel with work
with that institution?---Yes.

And you were successful?---Yes.

40 After – I withdraw that. You were admitted to the panel in about 2007. Is
that right?---Yes.

After you were admitted to the panel, what happened to your business in
terms of turnover?---Um, over the years 2007/2008 the turnover increased
dramatically.

Can you indicate the kind of figures you're talking about?---I'm pretty sure
the company went from approximately six, \$6 million to a \$12 million
company.

Over what period?---Over the four years.

Now, I've referred to a panel. Is it the case that there are a number of panels?---Yes.

That is for work within particular areas that Ausgrid has responsibility for? ---Yes.

10 Which panels were you admitted to?---Ah, 11kV Distribution Panel.

Which regions were you allocated work within?---Central, Central Coast, Northern Region, Central Region, Southern Region.

Right. Once you were admitted to these panels you signed what was known as a Standing Order Deed. Is that right?---Yes.

And the original Standing Order Deed had a two-year term. Is that right? ---Yes.

20 But then it was subject to extensions of two years?---Yes.

And ultimately you were receiving work under Standing Order Deeds with Ausgrid for a period of some five or six years. Is that right?---Yes.

In the Standing Order Deed you agreed effectively to perform work for Ausgrid at certain rates. Is that right?---Yes.

30 And those rates are set out in what is known as the Schedule of Rates in the Standing Order Deed?---Yes.

The rates vary according to different types of work that you perform?---Yes.

And when you're given a particular contract to do a particular job for Ausgrid, how much you're paid is calculated according to what's in this Schedule of Rates?---Yes.

All right. Once you've been granted a contract to do a particular job for Ausgrid from time to time variation is made to those contracts?---Yes.

40 In your experience of performing work for Ausgrid were variations common or uncommon?---Common.

In order to carry – I withdraw that. In order to seek a variation for a contract, what was the procedure, what did you have to do?---You have to notify the CCL representative.

And by that you mean the Contract Cable Laying- -?---Yes.

--officer?---Yes.

--with responsibility for that contract?---Yes.

And what would happen once you notified the officer?---Ah, the officer may or may not attend the site and then approve the variation. We had to also um, send an email notification of verbal, verbal notification.

10 The Contract Cable Laying officer who would carry out those inspections was known as a contract inspector. Is that right?---Yes.

Now, you did work for Ausgrid in a number of regions so you dealt with multiple contract inspectors. Is that right?---Yes.

At some stage in your carrying out work for Ausgrid did you meet Phillip Cresnar?---Yes.

20 Do you recall where it was that you first met Mr Cresnar?---Um, first met Mr Cresnar at Mosman project.

Do you remember when that occurred?---Pretty sure it was early 2008.

The Mosman project was within what was known in Ausgrid work circles as the North Region. Is that right?---That's correct.

Did you deal with Mr Cresnar in other regions?---Yes.

Which regions?---Oh, the ah, Central Region I'm pretty sure it was.

30 Any other regions?---Um, only those two I'm pretty sure.

All right. Well, I want to ask you about a job that you did for Ausgrid known as the Kingsford Bore. Do you understand that?---Yes.

Which region was that job in?---I think it's in the Southern ah, sorry, the Central Region.

All right. Was that a big job for Bastow Civil?---Yes.

40 Work in relation to that took you a couple of years?---That's correct.

When you first started work on the Kingsford Bore, who was the contract inspector there?---Ben Selleck.

At some point did that change?---Yes.

Did you have some dealings then with Mr Cresnar?---Yes.

Was it your understanding that Mr Cresnar was appointed the contract inspector of the Kingsford Bore job?---Yes.

Before Mr Selleck left and Mr Cresnar commenced, did you have some or have occasion to need to seek variations in relation to the contract?---Ah, no. Or sorry, yes.

10 All right. And when you needed to seek those variations were you able to do them on yourself, on your own?---It was ah, it was a quotation originally at the start and then the variations, no.

In order to calculate the price for the variation, did you need to use a particular program that Ausgrid supplied?---Yes.

That was something called the Estimator?---That's correct.

Now is that software that Ausgrid supplied to contractors on the panels? ---Yes.

20 Did you ever receive any training in relation to the Estimator?---Not until some time after, it wasn't - - -

Some time after what?---I think it was about 2009.

Right?---There wasn't an issue training, it was just basically I asked another CCL rep to help me with some variations.

30 Well, going back to the Kingsford bore project did you ask a CCL rep as you've described it for help with variations there?---Yes.

Who was the first CCL rep that you asked for help with variations there? ---Phil Cresnar.

All right. What happened when you asked Mr Cresnar for help with variations there?---Phil said yeah, fine, he'll give me a hand with the variations and basically proceeded.

40 Right. Where did you have this conversation with Mr Cresnar?---I'm pretty sure it was on site at Kingsford.

Did you go anywhere else as a result?---Yes.

Where did you go?---To Cresnar's house.

Where was that?---Oh, in Alexandria.

Why did you go to his house?---He suggested to me that it was easier to go back to his house instead of back to Homebush because it was closer and basically he had a wireless or access to the server.

So you went to his house?---Yes.

And what happened there?---Cresnar proceeded to work out the variations and then basically he handed me the, basically a copy of the paperwork that showed all the variations I had to submit.

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Did you do anything else while you were at Mr Cresnar's house?---Yes.

What was that?---Oh, pretty much had some food there and, and drunk, and had some beer there as well.

Did Mr Cresnar say anything to you about whether or not these variations that he'd just calculated for you were liable to be approved or otherwise? ---Yes.

20 What did he say?---He said, "Just submit them, they'll be approved."

All right. Were they approved?---Yes.

Did you ask for, Mr Cresnar for any help with other variations?---Yes.

On the occasion when you were at, that first occasion when you were at his house?---Yes.

30 And what did he say?---Yes, he would.

Did Mr Cresnar ask you for anything or did you offer him anything on that first occasion when you were at his house?---No, not on the first occasion, no.

All right. So after that occasion at his house did you later ask Mr Cresnar for more help with variations?---Yes.

40 Where did you have conversations to that effect?---Cresnar said basically that because I was, he was helping me with other variations and then basically he was adding value to those variations and possible value he basically wanted things paid for or things bought for him.

Right. To the best of your recollection what did he actually say to you? ---It was at a section actually in Mosman where um, had, the project was nearly finished, completely built and we had a section where that um, the road was closed and the conduits were laid and the asphalt was laid on top um, we had a rock variation to finalise and also some extra depths and whatnot and then Cresnar basically said to me the fact that on that section

um, it's lucky that he was the inspector otherwise somebody else would make me dig it all back up and then basically I couldn't work out on the estimator how to work those variations and Phillip Cresnar worked all those variations out.

Where did he work them out, where were you when that took place?---Um, at that time he um, worked them out and sent me an email what to claim.

10 All right. And were they, were those variations subsequently approved?
---Yes.

Indeed, were all the variations that Mr Cresnar helped you with approved?
---Yes.

Are you able to say how many variations Mr Cresnar helped you with over the period of time that you were doing Ausgrid work?---Quite a few.

20 Can you give us any estimation?---Well, what it was is like a bunch of variations that I'd have from other areas as well that like we couldn't, they couldn't work out so I'd ask Cresnar to give me some guidance on how to work those variations out so like other CCL representatives and then, yeah, like I'm pretty sure it was hundreds of thousands of dollars' worth of variations.

All right. Well, let's take one example of that and going back to the Kingsford bore job?---Ah hmm.

30 Is it the case that the initial contract value in relation to that job was in the vicinity of three quarters of a million dollars?---Yes.

But there were some 11 variations approved to that contract, is that right?
---Yes.

And the total value of the variations was more than a million?---Yes.

40 Can you say whether they were all variations that Mr Cresnar helped you with?---Yes, but it was a little bit different from - some of Kingsford was actually a quoted price and some of it was through the Estimator so it was a bit of a mixed bag.

Right. Did Mr Cresnar ever explain to you what he was doing when he helped you with the variations?---No.

Did he explain to you how to use the Estimator program?---No.

Did you ever learn how to use the Estimator program?---I tried and tried, I -
- -

Sorry?---I got the basics of it but every time I sent a variation it was wrong.

Did anybody else help you with the Estimator program?---Some time later, yeah, I asked a gentleman called Stephen Brennan.

Right. And who was he?---He a Contract Cable Layer inspector.

Right. And did he help you with it?---Yes.

10 Now you mentioned earlier that in your experience of doing work for Ausgrid you dealt with multiple contract inspectors?---Yes.

Did your experience of contract inspectors vary according to how favourable they were in terms of the variations they would approve?---Yes.

Well, can you tell us a little about that?---Everybody was different.

In what respect?---Some inspectors could be quite harsh and some inspectors could be quite, I don't I guess generous.

20

And how would you rate Mr Cresnar in that context?---Generous.

Was anybody else as generous as him?---No.

All right. Was it your understanding that contract inspectors had a degree of discretion as to what variations to approve?---Yes.

And so was it your understanding that Mr Cresnar was exercising that discretion favourably - - -?---Yes.

30

- - - to Bastow Civil? Did you have any conversations with Mr Cresnar regarding what would happen if he didn't help you with the variations you sought?---Can you say that question differently, sorry?

Did you, did you have any conversations with Mr Cresnar regarding what might happen in terms of work for Bastow Civil or payments to Bastow Civil if he did not help you with the variations you sought?---He'd give me a hard time.

40 Can you remember what he -- to the best of your recollection what it was that he actually said to you?---It was at the Mosman project where basically that he said it's lucky that he was inspecting that project otherwise I'd get nothing.

What did you understand that to mean?---I wouldn't get a variation at all.

Was there a time when Mr Cresnar asked you for something in exchange for the help you were getting in terms of variations?---Yes.

When was the first time that that occurred?---It was between the Mosman and Kingsford projects.

What year roughly?---2008.

10 And on that first occasion what was it that Mr Cresnar said to you, to the best of your recollection?---He was basically, it was buying some entertainment projects and basically was basically he applied more onto the variations that he approved and that was like, yeah, they were, that was justifying that he wanted me to buy him like certain items for his house.

Right. So I take it from that you can't remember word for word the conversation?---No.

But you've mentioned that he wanted him to buy you certain things for his house. Did he say what those things were?---Um, it was toasters, kettles, some sort of stereo mixer um, and some TVs.

20 Where were you when this first conversation occurred?---I'm pretty sure I was on Mosman and Kingsford.

I'm sorry, where did the conversation take place?---The, the nuts and bolts of the conversation pretty much took place at his place.

All right. At his home?---Yes.

30 ASSISTANT COMMISSIONER: Mr Bastow, did I understand you to say that he told you he was going to add some more onto the variations - - -?
---Yes.

- - - and therefore you could pay for his equipment?---Yes.

Do you mean he was going to add more over and above what you would actually need for the variations?---Yes.

Yes, thank you.

40 MR GARTELMANN: When Mr Cresnar suggested that to you, what did you say to him?---I didn't know what to do. I was, I was sort of - at that time when it was suggested it was like I was sort of I guess held at ransom in some respect because I need those variations that we had legitimately paid because we had to pay subcontractors and our own staff and because I struggled with that estimate we had a lot of money that was held up that we couldn't get approved to get paid so it happened.

So what did you say?---I didn't. I sort of - when the variation - when he submitted the variation to me I produced an invoice back to him and then

some time after that he said to me, “You know I’ve put extra money in that project. When are you going to fix me up?”

All right. And what did you do when he said that?---I hesitated and hesitated and hesitated.

But ultimately did you do something?---Yes.

10 And what did you do?---I went and purchased some equipment from different stores.

All right. Now the equipment that you purchased, you mentioned earlier that there was – Mr Cresnar sought some assistance with respect to home appliances?---Yes.

Did you go with Mr Cresnar when you purchased those appliances?---Yes.

You accompanied him to the store. Is that right?---That’s correct.

20 And who was choosing where you were going?---He was.

What was the first thing that you recall purchasing for Mr Cresnar?---Um, I’m pretty sure it was a kettle, toaster and a mixer, a music mixing device.

Do you remember where you went to buy those items?---Yes.

Where was that?---I don’t remember exactly the location but it was a Harvey Norman or a Dick Smith and the other location was like a music store.

30 All right. Does the name DJW Projects mean anything to you?---I’m pretty sure that was on one of the invoices.

All right. A store at Redfern?---Yes.

Perhaps we might bring up screen page 1318. Do you see that document in front of you?---Yes.

40 You’d accept it appears to be an invoice to a firm DJW Projects?---Yes.

And under the heading there it refers to a business premises in Redfern?---Yes.

The details of the transaction on the invoice is stated to be computer hardware?---Yes.

And the sum of \$2,150. Are you familiar with that invoice?---I do remember the location, yes.

All right. Were you with Mr Cresnar when that transaction occurred?
---Yes.

And did you go there because he asked you to go with him?---Yes.

And did you buy that item or make that transaction for Mr Cresnar?---Yes.

10 It states that it's related to computer hardware. Is that the case?---It's like a
– I remember – if I remember I recall it was like a um – it was like a type of
– like not like a computer as in keyboard and such as that but it was like a
music mixer program.

All right. The music mixer that you referred to a moment ago?---Yeah.

All right. That document can be taken (not transcribable). Did you locate
that document that we've just seen at home somewhere?---I located a few
documents and, and given them but I can't remember if it's that one or not.

20 All right. Okay?---Sorry.

Was there another occasion where you went to a Bing Lee store with Mr
Cresnar?---Yes.

Was that again because he wanted you to buy him something?---Yes.

And what did you buy there?---I'm pretty sure that was the toaster, kettle
and something else. It was an iron and something else as well.

30 All right. I want to ask you specifically about a Pioneer Blu-ray DVD
player?---Yes.

Do you recall buying an item of that nature for Mr Cresnar?---I can't
remember buying that.

All right. You mentioned that you located a number of invoices at home. Is
that right?---At work sorry, yes.

40 Was one of those a Bing Lee invoice?---Um, there was – I'm not too sure
which invoice. I've got a few invoices.

All right?---Yes.

All right. Well, perhaps we'll deal with it this way. Have you gone through
statements relating to your credit card account to identify transactions that
you believe were made for the benefit of Mr Cresnar?---Yes.

And is it the case that you've identified some 13 transactions in total?---Yes.

That is credit card only transactions?---Yes.

And you're aware that those transactions have been set out in a table in summary form?---Yes.

I'll show you another document. It's page 2352. Do you recognise that, that table and the summary of information contained within it?---Yes.

- 10 And is that something you've seen before in your dealings with an ICAC investigator?---Yes.

All right. Now do you say that all of the transactions set out in that table were conducted on your credit card account for the benefit of Mr Cresnar? ---Yes.

And are you aware that the total value in relation to those transactions was \$31,187.24?---Yes.

- 20 Just looking at the individual transactions set out there on that table, is it the case that in relation to some of those transactions you recall going with Mr Cresnar to the premises – to the business concerned to carry out the transaction and some you don't?---Yes, that's correct.

All right. That document might be taken down from the screen. Have you also gone through your credit card account statements to identify transactions that appear to have been conducted on a PayPal account?---Yes, I've seen those.

- 30 Did you have a PayPal account in the time you were dealing with Mr Cresnar as a contract inspector?---I did but it was inactive.

Inactive?---Yes.

When you went through your credit card account statements did you identify a number of transactions that were made on your personal PayPal account by someone else?---I didn't have a PayPal account at that time, sorry. I didn't have one active.

- 40 All right. Did you identify a number of transactions that were made on your credit card account on a PayPal account?---Yes.

All right. I'll show you a document and this document will not come up on screen. We'll provide you with a hard copy of this document.

MR SUTTON: I wonder if Counsel Assisting has a copy of that document, Commissioner?

MR GARTELMANN: Yes, we'll make one available. I'm sorry, it's in the last page 50 in the bundle.

MR SUTTON: Thank you.

MR GARTELMANN: Mr Bastow, you have that document in front of you?
---Yes.

10 Do you recognise that as a table summarising information relating to PayPal transactions funded by your credit card account?---Yes.

And do you say that all of those transactions were conducted by somebody else?---Yes.

You've seen that table before?---Yes.

And you know that there are some 31 transactions on it?---Yes.

20 And you understand that the total value of those transactions is \$36,533.73?
---Yes.

That is the amount of money that was debited from your credit card account for those transactions. Is that right?---Yes.

All right. Were you involved yourself in any of the, those purchases?---No.

Are you aware that one of the transactions relates to it appears some mobile phones, Apple iPhones?---Ah, yes.

30 Were you involved in any way in that transaction?---I can't remember.

At some stage did Mr Cresnar give you a phone?---Yes.

Can you say when that was?---It was, I think it was late 2009, early 2010.

All right. And why did he give you a phone, to your knowledge?---Because I was being, I was avoiding his calls and basically said look, if, if you've got an issue with taking calls I'll get you a phone.

40 And he provided you with a phone for that purpose - - -?---Yes.

- - - to your understanding? Did he then contact you on that phone?---Yes.

What for?---Corrupt activities.

What do you mean by that?---Basically he wanted to talk to me about certain projects or whatever it may be and variations and he'd want stuff bought for him.

He'd want stuff bought for him?---Yes.

All right. Now about two-thirds of the way down the table there you'll see an entry on the left-hand column you'll see the date 18 November, 2009?
---Ah hmm.

10

And then in the third column it says "Appliances Online"?---Yes.

Are you aware that one of the PayPal transactions conducted and funded by your credit card account related to the purchase of a fridge, a Bosch brand fridge?---No.

You're not aware of that now?---Ah, no.

20

All right. All right. Well, that document can be returned. Did you authorise anyone to conduct PayPal transactions on your credit card?---No.

Did you supply Mr Cresnar with your credit card number at any time?
---Yes.

30

When did that happen?---Cresnar kept pushing and pushing to get the credit card number off me um, basically he wanted to, it was to return an item or something for a warranty and they were going to credit the credit card in that respect or that, it was proof that it was purchased, I'm not too sure. Um, and then finally I gave him, I gave the, I gave him the credit card.

So you gave him the credit card details because he wanted it to return an item, is that right?---That's correct.

And that was an item that you'd purchased with him previously?---That's correct.

Do you remember what the item was?---No, it could have been one of the items, I'm not too sure.

40

All right. Do you know a person by the name of Robert Ujszaszi, and I'll spell the surname, U-j-s-z-a-s-z-i?---No.

Have you ever had any cause to make a payment to a person by that name?
---No.

Do you have any knowledge of any transactions made for the benefit of that person?---I'm not sure of who Robert Ujszaszi is.

Are you now aware that some of the transactions conducted via PayPal and funded by your credit card account related to airfares?---I'm aware of that now, yes.

Specifically payments to a firm called Jetabroad in 2009?---I'm aware of that, yes.

Did you travel overseas or anywhere in 2009?---Ah, no.

10 You didn't make any payments to Jetabroad?---No.

When did you first learn that your credit card was being used to fund purchases or transactions that you did not make yourself?---I'm not sure of the exact date and time but my wife phoned me and said we've had a lot of transactions made on our credit card and basically said what are they for.

Can you give us an approximate timeframe?---I'm pretty sure between 2009 and 2010.

20 Right. Your wife carried out duties in the nature of the bookkeeping for Bastow Civil, is that right?---That's correct.

So she went through your account statements for that purpose?---That's correct.

And indeed the Bastow Civil credit card appears to be in her name. Is that right?---Um - - -

30 The account?---I'm -- yeah, I think so.

There are a number of cards attached or linked to the one account. Is that right?---Yes, that's correct.

Commissioner, I'm about to move onto another area and I note the time, is that a convenient time?

ASSISTANT COMMISSIONER: Yes. We'll take a 15 minute adjournment at this time.

40

SHORT ADJOURNMENT

[11.28am]

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

MR GARTELMANN: Before the break, Mr Bastow, you mentioned that you became aware PayPal transactions were being conducted that were

funded by your credit card account. Correct?---Yes.

I take it your wife noticed those transactions because she was going through the bank account statements for Bastow Civil?---Yes.

And she brought those to your attention?---Yes.

Did you then speak to Mr Cresnar about those transactions?---Yes.

10 What did you say?---It was on a line of something like what are you fucking doing, can you, you've got to stop doing this.

And what did he say?---Just basically um, he used to always say, like, "You're useless, your company is useless," um - - -

ASSISTANT COMMISSIONER: I'm sorry?---He used to say, "You're useless."

You're useless?---Yeah.

20

Right?---"Your company's useless," and basically what are you going to do about it.

MR GARTELMANN: Do you recall when it was that you had that conversation with him?---It was in 2010 I think sometime, I don't know, because I'm driving around the sites all the time, I can't remember exactly where I was to have that conversation, it was over the phone.

30 After you had that conversation with him did transactions continue to be conducted via PayPal funded by your credit card account?---I'm not sure.

Did your wife bring to your attention any further PayPal transactions after you had that conversation with Mr Cresnar?---I'm pretty sure she was doing like a bank reconciliation for the accounts- - -

Ah hmm?---?- -so I think it was like a multiple um, use of that credit card at the time for that PayPal account.

40 How many conversations did you have with Mr Cresnar regarding his use of your credit card for PayPal transactions?---It was pretty much that was it. I think there was another one after that when the card was cancelled or something or something like the lines of why was your card cancelled.

All right. Well, did you understand that then to mean that he continued to use your credit card for other transactions?---Yes.

After the first conversation- -?----Yes.

- - -in which you asked him to stop?---Yes.

Had you cancelled your credit card account?---No, I didn't.

Why did he say that to you, to your knowledge?---I'm pretty sure he tried to use it and it um, wasn't active.

Well, do you know why it became inactive?---Um, he rang, he actually rang me and told me.

10

Right. Do you know what he was using it to purchase at the time?---No.

Do you know who made the credit card inactive?---Um, I'm pretty sure my wife did.

During this period of time when you had those conversations with Mr Cresnar regarding his use of your credit card, was he continuing to act as a contact inspector in respect of jobs you were doing for Ausgrid?---Ah, yes, all my management team, yes.

20

I'm sorry, what was that last- - -?---All my, all my management team.

I see?---Yeah, it was multiple projects and some of the projects I wasn't across the projects.

All right. But am I right in understanding that Mr Cresnar was a contract inspector for Bastow Civil- - -?---Yes.

30

- - -jobs at the time that you had those conversations with him regarding - - -?---Yes.

- - -use of your credit card for PayPal transactions?---Yes.

You're aware aren't you that the PayPal transactions occurred over a period of roughly August 2008 to February 2010?---Thereabouts, yes.

And was Mr Cresnar acting as a contract inspector for jobs Bastow Civil was doing for Ausgrid over that period?---Yes.

40

And in the course of his duties as a contract inspector for those jobs he was approving variations?---Yes.

And Bastow Civil was getting paid for the variations that he approved? ---Yes, that's correct.

You mentioned earlier that his variations were approved on favourable terms to Bastow Civil- - -?---Yes.

- - -relative to other contract inspectors?---Yes.

In other words you were getting approvals for variations where they might not have been strictly necessary?---No, it was always variations on variations.

10 What do you mean by that?---So a lot of the CCL guys could be generous on rock claims or widths of um – depths of trench or widths, whatever widened the trench. So variations of it not just for um, one thing only but it was for a multiple task in that one metre of trench or two metres of trench and so on. So Cresnar would basically add to that variation so if it was a rock claim, there was rock (not transcribable) in the area then it increased.

All right. Variations that Mr Cresnar was approving for you during that period, were you sitting down together with him and calculating the variations?---No.

Where was he doing it?---I'm not sure where he was he was doing it.

20 Well, perhaps I framed the question poorly. Was Mr Cresnar assisting you to submit requests for variations?---He'd um – even projects – like he would just send me the information on what to submit in the variation, and they can do that. So under the contract it'll come up basically what the contract is, variation under what um – type of variation it was and then resubmit that variation at a cost. He'd even do that in projects that I wasn't even across or above it was actually my guys or actually my project managers are working on.

30 You mentioned earlier in your evidence that you went to Mr Cresnar's home?---That's correct.

As I understand it on more than one occasion?---Yes.

Can you say how many times you would've attended his home?---I think it was three or four.

All right. Did you attend the same home or did he move at some point?---He moved.

40 Did you attend therefore more than one home of Mr Cresnar's?---Yes. Yes.

Was there an occasion when you were at Mr Cresnar's home and he told you that he was getting some work done on his car?---Yes.

Can you tell us to the best of your recollection what he said?---Um, because basically he was putting some performance parts onto his car, getting some work done.

Did he say what his car was, what kind of car it was?---It was a Saab.

And why did Mr Cresnar tell you about that to your knowledge?---Um, I used to um, race in motor sport so I had a general idea about motor sport racing um, until about 2008 um, and then basically it sort of broke the ice in our conversation I suppose.

10 So he told you that he was going to get some performance work done on his car, right. Did he say anything about how he was going to pay for that?---
Not initially to start off with, no.

At some subsequent time?---Later on, yes.

And what did he say to you then?---He wanted me to pay him some money to get the car completed.

Can you recall where you were when that conversation took place?---I'm pretty sure it was at his house.

20 Did he say how much it was going to cost?---I think it was two or three figures but at the end it was about \$20,000.

What did you say when he said that to you?---I said okay.

Why?---I thought - - -

Why did you say okay?--- - - - he was just talking in like how much it was going to cost at the time.

30 Oh, I see. But you mentioned earlier that – I withdraw that. Did he ask you for payment in relation to that work?---Yes, yes.

What did you say in relation to that?---Um, eventually I said yes.

Why was that?---Basically he was um, taking money off the projects or the variations and then basically trying to get me to pay for just like appliances.

40 All right. So if he was doing that, why is it that you agreed to pay for the work on his car?---If I didn't just basically he'd just turn around and be – he wouldn't um, wouldn't be nice to anything that Bastow Civil (not transcribable) projects.

By that you mean he wouldn't approve variations or - - -?---It would be quite difficult to get variations approved. Wouldn't help me with the Estimator and stuff like that.

I'm going to show you a document. It's page 466 if we can bring that up on screen. Do you see a document in front of you there?---Yes.

And do you understand that to be a copy of a cheque - - -?---Yes.

- - - drawn on the Bastow Civil cheque account?---Yes.

Do you see the amount that the cheque is made out for being the sum of \$25,036?---Yes.

10 Is that your signature on that cheque?---Yes.

The amount in figures and in words is that your handwriting?---Yes.

The payee for the cheque details state De Jong, two words D-e J-o-n-g. Do you see that?---Yes.

Is that your handwriting?---Yes.

20 How did you come to write that cheque out in those terms?---I just wrote the cheque out.

All right. Well, why did you do it?---Because he basically wanted the money off me.

Why did you write it out to De Jong?---Because De Jong was the um, was the ah, performance place that um, was doing work on the Saab.

I take it Mr Cresnar told you that did he?---Yes.

30 Did Mr Cresnar tell you how much to make the cheque out for?---Yes.

ASSISTANT COMMISSIONER: Was there any discussion about why you should give him \$25,000?---It was just like the credit card statements, his credit card Visa transactions. It was just basically he just wanted anything that he can get.

I'm sorry?---He just wanted any money he could get.

40 Well, I know a lot of people want money but I'm trying to work out why you gave it to him. Was there any discussion about why you should, did he say anything about why you should?---Yes. Because it was um, part of the Kingsford um, variations. Part of the Kingsford.

Yes. Was he saying he would give you this much extra in the variations or just that he'd helped you with the variations therefore you should give him this money?---Yes.

The latter?---It was the variations in that quotation on the Kingsford project, yes.

Right. So would he actually say something like that - - -?---Yes.

- - - well, you know, I got you those variations you pay this money?---Yes.
So like - - -

I'm just trying to find out - - -?---Yeah.

- - - what he actually said?---Yes. Like it's like um, the Kingsford project.
10 There was a section where I made a mistake in the quotation and then um,
we changed that um, from fixed rate to um, extra over rate and one of the
conversations, you know, I had with him with that was basically that he was
– just left some money out for that project because if it wasn't for him I'd be
pretty much screwed.

Right? And therefore you should help him out with things like the car?
---Yeah. I just did it.

MR GARTELMANN: You'd accept that a sum a little in excess of \$25,000
20 was a considerable sum of money?---Yes, that's right.

For you to agree to make a cheque out on your company cheque account in
that sum you must've understood that Mr Cresnar was being very
favourable towards Bastow Civil in the way he acted as a contract
inspector?---Yes. The difference between the um, Kingsford project being a
fixed rate and a variable rate um, was quite huge but that's the way he did it.

Are you talking – when you mentioned there a variable rate are you talking
30 about the schedule of rates under the Standing Order Deed?---It's a little bit
different from the Estimator on the boring side because that was just a figure
sum like a quotation price and then basically um, you had variations if you
hit rock or shale within the bore. But originally on the, on the original
quotation it was, it was a mistake in that um, it was a fixed rate for the rock
where it should've been an extra and over rate for the rock.

Yes, I understand. The document appears to have disappeared on the
screen, from the screen, we'll just get that brought up again. You've
identified the handwriting of the payee and the amount in figures and
numerals. Can I draw your attention to the date in the top right corner of the
40 cheque?---Yes.

Is that your handwriting?---No.

Do you know whose it is?---No.

Where were you when you made out the cheque with the payee details and
the amount?---I'm not sure. I'm pretty sure it was one of the houses.

One of Cresnar's houses?---Yes. Oh, I could have written it earlier and given it to him but, yeah, I give it to him, it was me.

Did you know this firm De Jong?---No.

Did he tell you anything about it?---Not a great deal but he said to me that, yeah, with this cheque because I, I was anxious obviously about it that he could be able, I would be able to write it off onto like truck tyres or truck parts or gearbox or diffs for, you know, trucks that I had.

10

Did you do that?---No, I didn't write it off for that, no.

Did you know where De Jong carried out business?---I didn't know but I was told it was in Canberra.

Mr Cresnar told you that?---Yes.

20

Bearing in mind that the De Jong business is in Canberra did that present any difficulties for you in terms of writing off equipment given where you were working or Bastow Civil was working?---No, like one of the general conversations, like I had crews working in Canberra, in and out around that time as well.

Was Cresnar, Mr Cresnar aware of that?---I think so.

Did you, did he say anything to you in relation to how you might be able to write off the payment given that you had crews in Canberra?---Yes, yeah.

30

What did he say?---He said basically it'd be like a truck gearbox replacement or something like that.

All right. That document can be taken down and we'll have up page 460 please. Can you see a document on the screen before you, Mr Bastow?
---Yes.

Does that appear to be an invoice?---Yes.

For, I withdraw that. An invoice from De Jong?---Yes.

40

Now can I firstly draw your attention to the words "Bill to" on the left-hand side?---Yes.

And underneath that you'll see the name of your company?---Yes.

And the address beneath it being your company address?---Yes.

Can I draw your attention next to the bottom right-hand corner of the page?
---Yes.

You see the figures there \$25,036?---Yes.

And you'd accept that corresponds with what you made out the cheque for?
---Yes.

Now can I draw your attention next to the content under the heading
"Description", do you see that there?---Yes.

10 Under the word "Labour" it says, "Replace diff and axles and find faults"?
---Yes.

And under the words "Parts and materials" it says, "One diff 48,000lb and
two axles" and then "Repairs to diff housing", do you see all of that?---Yes.

Did De Jong carry out works for vehicles owned by Bastow Civil - - -?
---No.

- - - of that nature?---No.

20

Did you have any discussion with Mr De Jong about this invoice?---No.

Have you ever had any discussion with Mr De Jong?---No.

All right. That document might be taken down and we'll bring up next page
465. Now do you see what appears to be a printout of an account statement
relating to Bastow Civil?---Yes.

30 If I can draw your attention to the left-hand side, we see some dates, you see
17 April there?---Yes.

The cursor's just beneath it now?---Yeah.

And the fourth I think line beneath that you see the figures "500019"?
---Yes.

You'd accept that's a cheque number and you'd accept that corresponds to
the cheque that you made out to De Jong?---Yes.

40 And over on the right-hand side in the debit column you see that figure
again \$25,036, do you see that?---Yes.

So it's the case isn't it that \$25,036 was debited from Bastow Civil's cheque
account?---Yes.

Right. That document might be taken down. Was any money ever refunded
to you by Mr Cresnar?---No.

Was any money in relation to the payment to De Jong ever refunded to you?
---No.

Or to Bastow Civil?---No.

Now at the time that you made out the cheque to De Jong for Mr Cresnar he was acting as contract inspector for Bastow Civil jobs?---Yes.

10 What was your understanding about what would happen if you were to stop allowing transactions or making payments to Mr Cresnar, what would happen to Bastow Civil?---We'd pretty much get a lot of, a lot of crap work pretty much.

Well, can you explain what you mean by the crap work?---Well, anything under his discretion would be basically job that are small, not much money value, wouldn't pretty much get any decent projects or any changes or it'd be hard to apply for variations.

20 So far in your evidence you've addressed credit card transactions?---Yes.

PayPal transactions conducted on your credit card?---Yes.

And the cheque to Mr De Jong, is that correct?---Yes.

Did you make any other payments or give any other gifts or benefits to Mr Cresnar?---Yes.

30 What was that or what were they?---I made a payment to Phil Cresnar of \$5,000.

Was that cash?---Yes.

When did that occur?---It occurred around the Kogarah project.

Well, the Kogarah project you've told us earlier I think went for a couple of years. Is that right?---No, no, no, the Kogarah, the Kogarah project, that was the Kingsford project.

40 Oh, sorry?---The Kogarah project was, I'm pretty sure it was late 2010 or early 2010.

All right. Sometime in 2010?---I think so.

What were the circumstances in which you gave Mr Cresnar \$5,000 cash?
---Um, he was pretty pissed off that the credit card had been stopped so he was still trying to push to get money out of me.

What did he say that made you think he was pissed off?---We had a, a project at Kogarah that we had an incident where a wall collapsed and, and when that wall collapsed it was quite dangerous, it um, closed the Princes Highway and there was people involved inside and basically he, he said to me that, you know, my excavation could have contributed to the whole collapsing of it and then he wouldn't favour me basically that – or blamed me for it.

10 Now what did you understand to mean when he said that your excavation could have contributed to it?---Sorry, say again?

What did you understand him to be referring to when you said that your excavation could have contributed to that?---That I could pinged or he would go against me or I don't know what he would say to be honest, just it did damage to my company on the WorkCover side.

Was there a WorkCover investigation in relation to that?---Yes.

20 ASSISTANT COMMISSIONER: Sorry, are you saying this is in the context of the \$5,000?---Yes (not transcribable) Because those bores are actually um, if I recall they were just fixed lump sum prices and he was pushing to get variations out of them so he was always looking to actually get more money out of the projects.

Ah hmm?---Um, but um, the bores were fixed so he couldn't change that and basically he was trying to push me to excavate along the edge of the actual um, building as well and I refused to and basically he pushed me to pay him cash. It was- - -

30 Or he would blame you for the- - -?---For the wall and also other variations that he was claiming on other projects as well.

All right. And did he- - -?---It was- - -

And did he say this was because you stopped the credit card or- - -?---Yeah, yeah. He got- - -

40 He mentioned that, did he?---Yeah. He got quite aggressive. When the credit card stopped it was like his, you know, this little freedom that go and buy anything, so he was pretty angry about that.

Yes, Mr Gartelmann.

MR GARTELMANN: You mentioned that he was pushing for you to excavate close to the wall, if I understood your evidence correctly?
---That's correct.

Why did he want you to do that, to your understanding?---It wasn't part of my scope but that's, he was trying to push to get the extra variation so obviously a trench there would be more variations that could be acquired from that section.

And more variations would mean more money- - -?---That's correct.

- - -for Bastow Civil?---That's correct.

10 And then did you understand that to mean that you'd be liable for more payments to Mr Cresnar?---Yes, 'cause, yeah. That section would have been a lot of variations because of um, what was required to actually complete that area, like, because the wall was so old um, the engineers' reports and extra, you know.

Well, when Mr Cresnar pushed for you to excavate close to the wall, what did you say to him?---No, it's too unsafe.

20 And what did he say when you said it would be too unsafe?---That he still wanted me to do it.

So what happened?---I didn't do it.

And somebody must have done it though, is that right, is that correct?
---That's correct, yes.

30 And who did that to your knowledge?---I don't know the subcontractor's name but it was a subcontractor or Diona 'cause it was their section at the time.

Is that what caused the wall to collapse?---Yes.

Did you have a conversation with Mr Cresnar about cash after the collapse of the wall or before?---I think it was, I'm pretty sure it was after.

40 And you mentioned earlier that he said he would in effect put the blame for the collapse on you. Is that correct?---Yes. It was a section where the um, we finished the kerb a gutter, he wanted my guys to keep excavating to the edge of the wall and I said to my guys, no, they're not trenching past further. And then later um, I don't know, a couple of days or a week or whatever it may be, he instructed my guys to excavate to the wall which I found wasn't, I wasn't sort of happy about what was happening there.

All right. But in any event, the wall collapsed?---Yeah.

You've then had a conversation with Mr Cresnar. Whereabouts was that conversation?---I'm pretty sure it was near the site or on the site.

Do you have a recollection of where it was?---It was in Kogarah, yes.

No, you mentioned earlier that Mr Cresnar was pissed off about the credit card being stopped?---Yes.

Was it in that conversation that he said that to you?---As well, yes.

What, he repeated it, did he?---Yes.

10 All right. And can you tell us to the best of your recollection what was said that led to you paying Mr Cresnar the \$5,000 cash?---It was just, pay me that money, pay me that money. Pretty sure it was for variations in the wall.

Did you pay him the money?---Yes.

Did you pay it there and then or did you have to go and get it and- - -?
---No, no, I took my time.

20 Right. How many payments of cash did you make to Mr Cresnar?
---Pretty sure just the one.

Did you make any other payments or give Mr Cresnar any other gifts or benefits other than those that you've mentioned in your evidence?
---Not that I know of, that's pretty much it.

So was the payment of \$5,000 cash effectively the last payment or purchase?---I'm pretty sure it was.

30 And did you have any conversations with Mr Cresnar after that payment regarding further payments or purchases?---No.

Why did it come to an end?---Bastow moved out of the region so I wasn't under his direction anymore.

40 So is that something that you made happen?---I pushed and pushed to get away from Cresnar and get into the Southern Region. I'm pretty sure we were in the Southern Region before. Regarding the Kogarah Bore it was unique because most of the project was built by Diona and 'cause we specialised in the HDD we were called in just to do that one section.

I see?---Yeah.

But otherwise you weren't doing work in the southern region at that time?
---I'm pretty sure we were- - -

All right?--- - - -towards the end of it, yes.

But am I right in understanding that you took steps to have your business do work in other regions- - -?---Yes.

- - -that Mr Cresnar was not a contract inspector for?---Yes.

Did you do work in other regions then?---Yes.

10 When you ceased to do work in the regions where Mr Cresnar was responsible for the contracts as the contract inspector, what effect did it have on turnover for Bastow Civil?---In the, in the southern area it was still pretty good in the southern area and then the Central Coast Region, the turnover, the turnover was always there, it was about the profitability of the projects, so eventually the profit died off and the turnover dried or obviously, stopped as well.

At some point did it stop completely?---Yes.

When was that?---Around end of 2010 to '11 I think early.

20 Very early on in your evidence you were asked about the Standing Order Deeds and their terms and extensions of those terms. Do you recall that? ---Yes.

And around this time was the Deed term coming to an end?---It was – I'm not sure actually.

Well, let me put it another way. Was there a time when you were required to re-tender?---Yes.

30 Did you have a conversation with Mr Cresnar then about another firm tendering to get on panels for Ausgrid work?---It wasn't a firm, he said it was a mate of his.

Did he mention the mate's name?---No.

And what did Mr Cresnar say to you?---He requested a copy of my management system.

40 And is that something that you would use as part of your tender submission? ---Yes.

Did you provide it to him?---No.

I just want to ask you quickly about the issue of non-conformances. Do you understand what I mean by that term?---Yes.

Non-conformances are notices issued to contractors from time to time by Ausgrid - - -?---Yes.

- - - requiring them to rectify works.---Yes.

At their expense?---Yes.

It's your understanding is it, that the contract inspector allocated a particular job is responsible for issuing non-conformances?---Yes.

10 So in your work for Ausgrid where Mr Cresnar was the contract inspector he would initiate or issue non-conformance notices to you from time to time?---That's correct, yes.

Did you form any impression as to whether or not those non-conformances were issued favourably or unfavourably?---Yes.

20 What was that, what was your impression?---I believe that non-conformances could be issued that were um, a way or trying to I guess hurt the company or the contracting company or my company um, because non-conformances sometimes could be nearly every day on different sites and you'd have multiple non-conformances. They also carried value to them as well, some non-conformances, most of the time they did.

Prior to your credit card being stopped, was Mr Cresnar issuing you non-conformances regularly?---He issued some non-conformances but not regularly, no.

After your credit card being stopped, was there any change?---I was pretty much moved out of his jurisdiction then.

30 All right. When was it that you last had dealings with Mr Cresnar in his capacity as a contract inspector?---I'm not sure, sorry.

Would that be about 2011?---I think so.

Right. All right. And there after I take it, you did not have any contact with Mr Cresnar on a business or a personal level?---No.

Is that correct?---I didn't have contact with him at all, no.

40 Excuse me. I want to ask you now about something that happened just last year, in August. Do you understand that?---Yep.

On 21st of that month, did you find something in your letter box?---Yes.

What was it?---Um, it was an envelope with a letter inside it.

You opened it?---Yes.

And you read it?---Yes.

I'll have that document brought up on screen at page 1339. You see there, what appears to be a manila envelope?---Yes.

And it' addressed to you and marked private and confidential?---Yes.

Is that the envelope that you found in your letter box?---Yes.

10 All right. I'll ask you to be shown the next page, 1340. You see a type written document before you?---Yes.

Is that the letter you've referred to?---Yes.

That was inside the envelope that you found in your letter box - - -?---Yes, that's correct.

- - - on 21st of August, last year?---Yes.

20 Now, at the beginning of that letter there is reference to three items, a Pioneer DVD Player, a Bosch Fridge and a 46 inch Sony TV.---Yes.

Is it your understanding that those are items that were purchased with your credit card or via PayPal transactions funded by your credit card?--- Yes.

And it's your understanding that those were items purchased by Mr Cresnar?---Yes.

30 The second paragraph reads, "these items were gifts for you finding resources for you to fill the day labour crew position as you had no one available at the time." Firstly, were those items the three appliances listed above gifts?---Like yeah, not gifts from me but they were just transactions.

All right.

ASSISTANT COMMISSIONER: But you didn't decide to give him some gifts?---Yes.

You were asked?---Yes.

40 MR GARTELMANN: Were those items purchased for Mr Cresnar finding resources for day labour?---We never had day labour hire crews and yeah.

So - - -?---We had day labour crews but not under Phil Cresnar.

So is that statement in that second paragraph false?---Yes.

What did you understand that letter to be conveying to you?---Oh, for me not to talk to you guys and for me not to say anything.

When you say your guys, you're referring to The Independent Commission against Corruption?---Yes, sorry, yes.

10 Yes. Well, was it your understanding that it was an attempt to get you to say something about the reason for the purchase of those goods?---Yes.

To the Independent Commission against Corruption?---Yes.

Excuse me one moment. Yes, that's the examination for Mr Bastow.

ASSISTANT COMMISSIONER: Yes, does anyone seek to cross examine this witness?

Yes.

20 MR SUTTON: Yes thank you Commissioner.

ASSISTANT COMMISSIONER: Could you let the witness know for whom you appear.

MR SUTTON: I certainly will.

Mr Bastow, my name is Sutton, S-u-t-t-o-n, can you hear me?---Ah hmm.

30 I appear for Mr Cresnar, do you understand that?---(No audible reply)

It's my job to ask you some questions about the evidence you've given here today. Do you understand that?---(No audible reply)

You're going to need to answer rather than just nod your head, everything's being recorded I'm afraid. So do you understand that?---Yes.

40 Sir, I might go to something that came up in the middle of your evidence and forgive me for a moment, I'm not as familiar with a bundle of documents that I've been provided with today as Counsel Assisting is. You told The Commission that your wife was the book keeper for your business, is that right?---She was one of the book keepers, yes.

And she'd been doing that or undertaking that task for a good period of time?---Yes.

How long had your business been operating?---Since 2001.

And had she been checking the books since 2001?---She would finalise all the accounts, we had other girls bringing the accounts in and she would finalise all the accounts, yes.

But is it a fair statement – I don't want to trick you – to say that she had been looking at the books and considering the figures since 2001?---Yes.

And that continued possibly until today, would that be right?---Yes.

10

And yet – sorry, I withdraw that. There was a hard copy of a document, I might ask Counsel Assisting if he can make that available to you, it forms the last page of the tender bundle.

MR GARTELMANN: 2352 I believe.

MR SUTTON: No, the last page.

MR GARTELMANN: I'm sorry.

20

ASSISTANT COMMISSIONER: No, it's after 2352.

MR SUTTON: And I'd ask if 2352 can be put on the screen. Take a moment, sir, have a look at those two documents. Do you agree with me in relation to the document on the screen the first date is 5 June, 2008?---Yes.

And in relation to the hard copy it's 21 August, 2008?---Yes.

And then the last date on 2352 is 28 June, 2010?---Yes.

30

And the last date on the hard copy document is 24 February, 2010, yes?
---Yes.

In relation to the hard copy document there are 31 transactions and there are a further 13 transactions on 2352, and if I'm misleading you I'm sure Counsel Assisting will interject but do you accept that?---Yes.

And we've been told, I haven't done the sums, but that's a total of somewhere in the region of \$60,000-odd in total, do you agree with that?

40

---Yes.

And yet it's only somewhere in late 2009/2010 that your wife detects these, is that right?---Around about on the PayPal account, yes.

And what about the credit card transactions on 2352?---No.

What about the \$25,000 cheque, did she detect that?---No, because it was written from a cheque of, my personal cheque account, from Bastow Civil.

Just excuse me one second. Just so I'm not misleading you on page 466 of the tender bundle appears a cheque for \$25,036 that was referred to by Counsel Assisting on page 465 with reference to an ANZ New Zealand bank account and page 460 refers to the amount which is the De Jong reference that suggests work was done on your vehicles?---That's correct.

You say that cheque was written on your personal account?---It's, it's on my cheque, my cheque account for Bastow Civil.

10

So when you said it's your personal account it's not your personal account, it's the Bastow Civil Construction account?---That's correct, yes.

Okay. And you've told us that your wife was the person who was reviewing the accounts of the business?---Yes.

20

Does not detect that?---Well, we have thousands and thousands of transactions that go through on our account all the time and especially in that time so she may of looked at individual, individual accounts or another girl in the office could have done that which I'm pretty sure was Leanne then basically she compiles the bank statements and the bank reqs so it's not necessarily that my wife would have seen that.

In 2010 something happens, does she not review other materials to see if there's anything else going on or does she speak to you about it?---No, she knows the activity on the PayPal account which is not normal and raised concerns with me.

30

In relation to the variations we've heard about that you submitted, in relation to the variations do you say their request was legitimate?---The variations?

Put aside, put aside the dollar amounts or anything of that nature, just the request for a variation, in each and every instance were they legitimate variations?---Yes.

And you had a great deal of difficulty did you not in operating the, what's been called the Estimator computer system?---Yes.

40

And Mr Cresnar sat down with you on a number of occasions and tried to instruct you on how to operate this?---No, he just basically compiled the variations himself.

You say there was never a time that he sat down and showed you how the system worked?---No.

You see I suggest to you, sir, that there was one occasion for instance in his premises in the unit where he instructed you on how the system worked?

---No.

And at that time you had with you a USB stick, do you mean what I mean by, when I say a USB stick?---Yes.

Okay. And you inserted that into his computer and downloaded some information?---Those variations, yes.

10 So you agree then that you were with him in his unit?---Yes.

You agree that the Estimator system was being used?---Yes.

You agree that you downloaded information from that system onto a USB stick?---No, Phil Cresnar downloaded the information to the USB stick.

Sir, I suggested to you initially that it was you who did that and you agreed, why do you now change your mind?---I don't remember whose USB stick it was.

20 No, I said you downloaded information from that computer onto a USB stick and you said yes?---No, I did not download information off his computer to the USB stick.

Why have you now changed that answer?---Sorry, I misunderstood the question.

30 And I suggest to you, sir, that there were multiple other occasions where you were given the opportunity and demonstrated to by Mr Cresnar the Estimator system?---No.

But it became clear didn't it that you couldn't operate that system?---I couldn't operator the Estimator system.

You were – and some of us are like this computers but you were inept at being able to use it?---I weren't very computer, I'm not very computer literate.

40 Right. And it became efficient for Mr Cresnar if you wanted help to help you with that system?---Yes.

And you provided him with information and he provided you with the printouts or the downloads of the system that you could then submit?
---No.

No?---I provided him with some information, then he had other information that he, he would process the variations then email me what to claim on the contract.

Yes, he would email you the response that the system provided so that you could answer the inquiry or provide the variation in accordance with what the system required?---Yes.

Yes. Okay. You – excuse me one second, Ms Commissioner. From time to time in relation to the variations which you say were legitimately claimed Mr Cresnar was not as hard on you as he could have been, is that correct?
---Yes.

10 And you valued that, did you not?---They were all the same.

What does that mean, they were all the same?---Well, you could have some that were generous and some that weren't generous.

We're not talking about some, we're talking about Mr Cresnar?---Ah hmm.

The proposition that was put to you was that with some of the variations he wasn't as hard on you as some of the others and you valued that, didn't you?
---It wasn't the fact, I wasn't across all the projects so the variations were
20 always calculated by others, like marked on the road, whatever it may be, to find out what the heights and depth of the rock were, the width of the road, the depth of asphalt hot mix, then basically Cresnar would basically demonstrate how to pull that together um, on what we'd mark on the road and then that'd be basically, he would go away, take the information away and then give me back the um, how, how to submit the variation.

Mr Bastow, will you now answer the question I asked you?---I wouldn't say, I'd say he was generous but not favourable.

30 Would you now answer the question that I asked you?

ASSISTANT COMMISSIONER: The question is, did you value his generosity?---Yes.

MR SUTTON: There we go. And in response to that you brought him gifts, didn't you?---No.

Have you any idea of the value if Mr Cresnar had been tough on you in relation to the valuations of how much it would have hurt Bastow
40 Constructions?---No.

Well, are we talking hundreds of thousands, millions?---Could have been hundreds of thousands, I'm not too sure.

Hundreds of, hundreds of thousands of dollars?---I'm not too sure. I don't know exactly how much work was actually under Phil Cresnar.

Okay. It's the case – excuse me. It's the case that he also found for you or recommended to you an engineer when you were looking for one, did he not?---Ah, yes.

And that was of assistance to you?---It was just a, we were applying for a job and he said, I might have an engineer that works in a different organisation and he was looking for a job.

10 There was a situation where you were losing money on traffic control arrangements throughout your business. Do you recall that?---No.

Well, it's a case where you have to pay – sorry – as part of the project you are required to have WorkCover and other obligations, traffic control people, lollipop men and women?---Yes.

And Mr Cresnar supplied you with the phone number of an organisation that was in that particular line of business and you used them. Is that correct? ---I don't remember.

20 You don't remember, it didn't happen, it could have happened, what? ---I don't remember.

Okay. Well, I'm suggesting to you it did, and that was an advantage to you? ---Who was it?

I don't have that name?---And I don't remember and I'd suggest that no.

So you bought for him a television, yes?---Yes.

30 A Pioneer brand DVD player, Blu-Ray, we've heard about?---On evidence, yes.

And a fridge?---I don't recall buying – actually I don't recall buying the DVD player or the fridge.

And you gave him access to your credit card?---Yes.

40 And you were pleased with him because he wasn't being hard on you and said to him he could spend as he saw fit, not outrageously though?---No, no, I hated it. What's the point, there was that much work, there was plenty of work, there was more work than we knew how to deal with.

Well, isn't – sorry, I cut you off, I do apologise, please continue?---That's all I've got to say.

Well, isn't the point that by him not being hard on you, your company was better off to some several hundred thousand dollars?---I don't know how much but- - -

Well, those were your words, were they not?---I didn't say several.

Well, I think when the transcript is reviewed it will say several hundred thousand dollars.

ASSISTANT COMMISSIONER: I think he said hundreds of thousands of dollars, which is probably the same thing.

10 MR SUTTON: Thank you, Commissioner. Well, take the Commissioner's terms, hundreds of thousands of dollars, so isn't that motivation?
---Not necessarily, there was plenty of work wherever I was in Ausgrid under that, that Deed.

ASSISTANT COMMISSIONER: You mean there was plenty of work where you didn't have to pay gifts to get it?---That's correct.

MR SUTTON: You were removed from the Ausgrid panel, weren't you?
---Yes.

20

Twice?---No. My contract wasn't renewed.

And did you reapply and were refused?---Yes, I reapplied.

So effectively you were knocked back twice?---Yes.

And you blamed Mr Cresnar for that, didn't you?---No.

Not at all?---Not at all.

30

Do you have an employee by the name of Brett Thompson?---Yes.

Didn't you say to Mr Thompson that you blamed Mr Cresnar?---No, and I don't even recall.

You don't recall. Again it could have happened but you've just forgotten it conveniently?---No, I don't think it ever happened.

40

You don't think it did?---No. I never discussed anything with Brett Thompson about Cresnar or about that.

Do you know Thomas Lowes?---Yes.

You don't like Thomas Lowes either do you?---Well, he's an ex-employee.

And he got a spot on the panel, didn't he?---Not that I know of.

Garde Services Pty Limited?---Sorry, who?

Garde. Well, the Irish pronunciation I think is Garde, which if I'm correct is the Irish word for police?---So Garde's been on the panel before I was on the panel.

I suggest they came on after you and you blamed Mr Cresnar that you were removed and they came on the panel?---No. Garde was a major contractor for Ausgrid.

10 Sir, I need to put to you some things that came out as a result of the examination this morning, so I apologise I'm taking some times to go through the notes, but please bear with me. You suggested that Mr Cresnar in effect threatened you that he would make your life hard if you didn't pay him- - -?---Yes.

- - -in gifts and in kind?---Yes.

Did you tell your wife any of those?---I pretty much kept it all to myself.

20 In fact it's only when it's come before this Commission that this story of you being threatened has come out. Is that right?---I pretty much kept a lot of things to myself, even from my wife.

What did you tell her in relation to all the money that was being spent that she discovered in 2010?---I said don't worry about it, I'll try and sort it out.

The easy way to sort it out was to go the police or come to the Independent Commission Against Corruption, is it not, go to Ausgrid and report it to them?---I didn't know who I could trust.

30 Maybe not at Ausgrid, are you suggesting there's no one at the New South Wales Police you could have trusted?---I didn't know that was an avenue for me to do that.

Independent Commission Against Corruption?---No.

So no one you could trust or no one that you knew about. Isn't the case, sir, that all the time you were on that panel you were happy with the arrangement?---No.

40 And that's why you didn't say anything?---I was not happy with the arrangement whatsoever.

Because you were happy to line your own pockets. That's the truth, isn't it? ---No. Then why would I be not on the panel anymore?

You're not?---That's right.

So I want to suggest to you that at no time did Mr Cresnar ever suggest to you words exactly or similar to, I put extra money in the variation, when are you going to fix me up?---He said that all the time.

And it's the case, sir, is it not that in relation to the transactions that we've seen in 2352 and in that hard copy document that's still before you, you can't be certain which are for Mr Cresnar's benefit and which are for yours?---They're all for Cresnar's benefit. I mean he just went crazy with the Visa card, didn't stop.

10

I thought it was the case when you were answering questions for Counsel Assisting that you were unable to identify the transactions that for Mr Cresnar's benefit?---I, I didn't make the transactions on the PayPal account he did.

Are you able to identify the transaction that relates to the telephones?---No.

Well, it was suggested to you earlier by Counsel Assisting there was a transaction on one of those two pages that related to the purchase of iPhones so that Mr Cresnar could contact you. Do you recall those questions being put to you?---Yes.

20

And you accepted that was the truth. Do you recall that?---That two phones were bought?

Yeah?---Yes.

And it was suggested to you that the transaction in which those two phones were bought appears on one of those two pages?---Yes.

30

MR GARTELMANN: Well, that's not quite right with respect. It was suggested that there was a transaction relating to two phones. The witness gave evidence to the effect that he was provided with a phone but he didn't know where it – whether it was that transaction or otherwise.

MR SUTTON: Just so I'm clear, Madam Commissioner, Counsel Assisting appears to be saying that the transaction may or may not be on those documents. Could I be clear on that before I waste time.

40 MR GARTELMANN: I'm happy to clarify that if it assists.

ASSISTANT COMMISSIONER: Yes. I presume we have other evidence do we that one of those transaction relates to phones?

MR GARTELMANN: Yes, we do. That's correct. An exhibit.

ASSISTANT COMMISSIONER: So is it on the PayPal account or the other account?

MR GARTELMANN: Excuse me one moment. It's in 1326. I can assist my friend perhaps by reference to the page number of the tender bundle, 1326.

MR SUTTON: So that's 1326?

MR GARTELMANN: Yes.

10 MR SUTTON: Thank you.

MR GARTELMANN: But the witness's evidence was that there was a phone provided to him. He wasn't sure whether or not it was one of the phones purchased in the (not transcribable)

MR SUTTON: If I could just have a moment, Commissioner.

ASSISTANT COMMISSIONER: Sure.

20 MR SUTTON: Did you keep and use that telephone?---For a short amount of time.

And then what did you do with it?---Chucked it.

Threw it away?---Ah hmm.

A perfectly good - - -?---Yep.

- - - phone?---Yes.

30

Why would you throw it away?---Because I threw it away. I didn't want nothing to do with the phone.

In relation to the Kogarah job, 688 Princes Highway I think it was. Do you remember that?---Yes.

5 June or July, 2010 was the day the wall collapsed. Do you accept that?---I'm not too sure of the date the wall had collapsed. I can't confirm that.

40 I think it was 5 July. If I'm wrong someone will pick me up. That date is immaterial. Suggest to you, sir, that the contractor that was used to do the trenching work was someone other than your organisation?---Yes.

And your function was to bore and put in conduit?---Yes.

And that was in a location other than near the building?---It was close proximity to the building.

Well, in Counsel Assisting's questions and your answers you seem to be at pains to point out that it was away from the wall?---Well, I didn't give you a – I didn't give Counsel a measurement or anything like that but it was close proximity to the wall.

You were not the contractor who was engaged to dig up the footpath area close to the wall were you?---No. It was out of my scope and I said that before.

- 10 You were the contractor who was engaged to direction bore I think is the correct term. Is that right?---That's correct.

And that was away from the trenching that was being done, that is, the trenching that is close to the wall?---The – there was no trench at the time we've completed the bore, behind the bore.

There was no trench at the time of completing the bore?---There was no trench completed at the time when we completed the under bore.

- 20 So the trench went in afterwards?---That's correct.

And that's what caused – and the trench was what caused the wall to fall. Is that right?---There was speculation um, that the um, the wall was maybe caused from the bore hole exit or the actual trench as well could've contributed to it.

Well, the trench was right up against the wall, wasn't it?---I'm not sure exactly where the trench was but by specification it's 300 off the boundary line.

- 30 Just before I come back to the location of the trench, were you the principal contractor on that job?---On our bore section, yes.

Yeah. And the principal contractor on the trenching was Diona?---I'm pretty sure it was.

And a separate subcontractor did the trench next to the building?---I'm pretty sure it was, yes.

- 40 And when you completed our bore the building was still intact?---Yes.

And as soon as the trench was dug the building collapsed?---I wasn't there onsite.

All right. But what you can say is that the bore was near the kerb and guttering, is that correct, on what you were describing before?---The bore ended at the kerb and guttering, that's correct.

Ended at?---Ended at the kerb and guttering.

Okay. And where did it go from there, where was the other end of it?---The bore under Phil Cresnar was asked to retrench it - - -

No, no, just answer the question I asked you. Where does the bore end?
---At the kerb and gutter.

10 Where does it commence then?---The other side of the kerb and gutter. The other side of the road.

Other side of the road, the buildings?---The other side of the road.

Okay. So your bore goes from kerb on one side of the road to kerb on the other side. Yes?---The other side of the road was behind the kerb was up the side of the road to the adjacent street.

It goes across the road, doesn't it?---Yes.

20 It doesn't go parallel to the building alignment, does it?---No.

No. When your team of fellows finished their work they've ended at the kerb and guttering - - -?---Yes.

- - - and the wall was still intact?---Yes.

The trench you know I suggest – I withdraw that. Have you been engaged in civil and WorkCover proceedings?---Yes.

30 Have you provided statements or affidavits in relation to those?---Yes.

Have you seen photographs and plans of the area?---Some photos, yes.

You've seen photos of the trench have you not?---No.

You've not?---No.

40 Madame Commissioner, I apologise. I don't have a copy of this. I wasn't expecting to go into this, but if the witness can be shown this document.

MR GARTELMANN: Commissioner, I might intervene at this point and suggest that the questioning in relation to the responsibility for the wall collapse is perhaps going beyond the extent of the purposes and the scope of this inquiry.

ASSISTANT COMMISSIONER: Yes.

MR GARTELMANN: I appreciate that my friend has something to put to the witness in terms of his state of mind perhaps but in terms of going into the responsibility of particular individuals or entities as to the wall collapse it's a very big field.

ASSISTANT COMMISSIONER: Yes. Yes, Mr Sutton, I really don't want to get into the causes of the wall collapse. The only relevance was the alleged statement which this witness says your client made to him - - -

10 MR SUTTON: Your Honour, if I might - - -

- - - which you have re cross-examined about.

MR SUTTON: If I might have just a very small amount of latitude and then I'll move on from this point.

ASSISTANT COMMISSIONER: Yes.

20 MR SUTTON: Thank you. I'll show you this picture. Sorry, Madame Commissioner I should've said not Your Honour.

So that's the only picture I have so if I'm slightly confusing about what I'm saying I apologise, I don't have it in front of me, but in essence that's taken from an affidavit in relation to a WorkCover investigation and the dark area at the bottom of the page at the foot of the wall is the area where the trench is. Does that accord with your recollection of any material that you have seen since the collapse or material that you saw prior to the collapse in relation to plans?---I don't remember seeing this photo but I do remember there was fence panels near, adjacent to that building.

30

All right. Let me put this to you. The more likely cause of the collapse given that you're on the other side of the footpath is the trench that was right next to the wall, it's just a matter of logic, do you accept that?---There was doubt and there was an investigation which only just finished in the Supreme Court last week about this and we were cleared that it was none of our wrongdoing so there was issues raised where we excavated to, there was a possibility that we could have contributed to the wall falling down.

40 So the Supreme Court you are now telling this Commission as found no doubt what you suspected from the beginning that your company's works did not contribute to the collapse of the wall?---Look, I'm no expert but I did not want to trench next to the wall, Phil Cresnar instructed my guys to and - - -

So answer the question I asked you. A very simple question. You agree the Supreme Court - - -?---No, I don't think so.

- - - has now found what you believed to be the case all along, that you were not contributing to that falling wall?---We still have charges through the District Court now. I don't think we had anything to do with that.

10 Good. So we're on the same page. It follows then does it not that it is not only illogical but it never happened that Phil Cresnar demanded \$5,000 from you because you knew from the beginning you were not responsible for the collapse?---It happened and there was a WorkCover investigation, I was interviewed. Everyone looked at every possibility on why this wall collapsed.

You knew you were not responsible?---There could have been a possibility, we had a lot of water in the hole, it could have undermined the bore itself, it could have made - - -

20 But your bore didn't go beyond the footpath to the wall did it?---The bore finished at the kerb and gutter but there was an open point that Phil Cresnar instructed my guys to open to the wall. At the same time we found fuel tanks in that hole as well.

Didn't you tell us before that you told your staff not to dig that hole?---As I said to you before I told my staff not to, Phil Cresnar instructed my guys to and you can see that in the WorkCover report. It's stated in there.

Okay. I don't know if the Commission wants just to take a copy of that photograph, if so – if not I'll ask for it to be returned.

30 ASSISTANT COMMISSIONER: I think it can be returned, I don't think we need to tender it.

MR SUTTON: Yes, thank you, Commissioner.

ASSISTANT COMMISSIONER: Mr Sutton, could I just ask you, you've put as a general proposition that certain of the items received via the credit cards were gifts in appreciation of assistance, you've not specifically addressed the cheque for the Saab, do you have some specific instructions on that?

40 MR SUTTON: Your Honour, sorry, Commissioner, you are correct. It is a general principle, perhaps I'll just round it in this way.

Mr Bastow, it is my suggestion that you were comfortable and content to provide gifts to Mr Cresnar, not that he demanded anything?---No, I wasn't.

You allowed that to go on for well, throughout 2008 to 2010?---Yes.

And you did that because to do otherwise meant you and all your business would have to fork out in the vernacular, hundreds of thousands of dollars more?---No.

And if that's not clear, Commissioner, that's in relation to - - -

10 ASSISTANT COMMISSIONER: No, I understand that covers all of those items and I take it from what you put in respect of the alleged demand for \$5,000 that that did not happen - - -

MR SUTTON: Did not happen.

ASSISTANT COMMISSIONER: - - - and no money was paid on your instructions.

MR SUTTON: That is correct.

20 ASSISTANT COMMISSIONER: Yes, thank you. Thank you Mr Sutton. Mr Chee, do you want to ask anything?

MR CHEE: Yes I do, thank you Commissioner.

Mr Bastow, you had some difficulties with the use of the estimator, that's right, isn't it?---Yes.

30 And you approached Mr Cresnar as the CCL Rep with assistance, that's correct as well, isn't it?---Yes.

It's also your evidence that you approached other CCL Reps with assistance in using the estimator?---Yes, that's correct.

You approached Steven Brennan?---That's correct, yes.

40 What assistance did he provide to you?---Steven Brennan invited me back to the Homebush office to attend um, I attended there and basically we sat down for at least I think two hours and basically went through the project that we were working on and he helped me basically calculate variations and depths and widths on that project.

That process was quite a different process to the process that Mr Cresnar used when he so called, "assisted you".---Yes.

Mr Brennan, didn't ask for any given or any reward or other receipt of - - -?--No.

- - - things in return for that assistance?---No, none at all.

Can I take you to your evidence where, in relation to your meeting with Mr Cresnar at his home, the first meeting. Your evidence was that you had some food and some drink at his house.---That's correct.

Were you at all uneasy about this scenario, these circumstances?---Yes.

Did you make any mention of this to Mr Cresnar?---Yes.

10 And what did he say?---He said to me, look don't worry about it, all the, he said that a lot of people in Ausgrid do the same.

Was this a surprise to you?---Yes.

Did he do anything else to convince that this was actually true?---He said, he told me about an incident where a contractor at a party and it was actually two CCL staff to that and he took photos of that.

Did he show you that photo?---Yes.

20 Did you feel that you needed to complain to anyone about this?---Yes.

Who did you want to complain to?---I didn't know who I could complain to.

Did you receive any training from Ausgrid about corrupt, anti-corruption?
---No.

No documentation?---No.

30 You were asked some questions about non-conformance notices. Mr Cresnar as the CCL inspector could have issued multiple non-conformance notices couldn't he?---Yes.

And that could have been, would have come out of your profits and could have eaten away, in fact could have been a loss to your business?---That's correct.

Were you concerned that you were being held at ransom?---Yes.

40 And was this a factor which caused you to make the payments towards Mr Cresnar?---Yes.

You were also asked questions about the non-renewal of the contract?
---Yes.

When it came time to renew the contract what did you do?---I renewed the contract and I increased my prices.

But how much?---Um, over to renewal stage I was invited to, I believe some rates up to 30 per cent.

And when you did that did you think that those rates would be accepted?
---No.

So what was your intention by increasing those rates?---Just to get out of there.

10

You were never at any time a willing participant in this enterprise with Mr Cresnar were you?---No.

You threw out the phone that he gave you?---Yes.

You tried to move to a region where he wouldn't have influence?---Yes.

And you had nothing further to do with him - - -?---That's correct.

20

- - - after last speaking to him and paying the 5,000?---Yes.

Thank you.

ASSISTANT COMMISSIONER: Thank you, Mr Chee. Does anybody else wish to examine this witness?

MR GARTELMANN: Just one matter in re-examination.

30

ASSISTANT COMMISSIONER: Yes, Mr - - -

Mr Bastow, it was put to you in questions by Mr Sutton that the variations that Mr Cresnar approved for Bastow Civil were legitimate, do you remember those questions?---Yes.

In your evidence earlier today you referred to variations to variations that Mr Cresnar performed?---Yes.

40

What did you mean by that?---So he'd add more in the variations, the extent of the variations for himself.

You've also referred to Mr Cresnar giving or telling you that there was extra money in the variations or words to that effect?---Yes, so what I meant to say, like is it, he would add to the variation, say if there was rock in the variation then he'd add more rock to that variation.

Which would have the, the effect of increasing payments to Bastow Civil?
---That's correct, yes.

So was it your understanding that a contract inspector had an amount of latitude as to the extent to which a variation was approved?---Yes.

And was it your understanding that Mr Cresnar exercised that discretion favourably to Bastow Civil?---Yes.

10 And was it your understanding that the transactions conducted on your credit cards and via PayPal and the cheque provided to De Jong were in exchange for him doing so?---Yes.

Thank you.

ASSISTANT COMMISSIONER: Thank you. Yes. That concludes your evidence and I will now excuse you. We will adjourn and resume at 10 past 2.00.

20 **THE WITNESS EXCUSED** **[1.14pm]**

LUNCHEON ADJOURNMENT **[1.14pm]**