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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 2.10PM

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: Yes, Mr Gartelmann.

MR GARTELMANN: Commissioner, following the evidence of Mr Bastow there remain two documents to be tendered. First some of (not transcribable) transactions, it's a document, a single-page document entitled Table 1.

10 MR SUTTON: Commissioner, I'm not sure if Mr Gartelmann's microphone is working. I'm having difficulty hearing him back here.

ASSISTANT COMMISSIONER: Try again, Mr Gartelmann.

MR GARTELMANN: Yes, I'll make that louder. Following Mr Bastow's evidence there remain two documents to be tendered. The first is the summary of PayPal transactions, it's a single-page document entitled Table 1.

ASSISTANT COMMISSIONER: That will be Exhibit 2.

20

#EXHIBIT 2 - SUMMARY OF PAYPAL TRANSACTIONS "TABLE 1"

MR GARTELMANN: Secondly a statement of Andrew De Jong, D-e J-o-n-g, dated 8 December, 2014. I have copies of that.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 3.

30

#EXHIBIT 3 - STATEMENT OF ANDREW DE JONG DATED 8 DECEMBER 2014

MR SUTTON: Can I clarify, Commissioner, in relation to Exhibit 2, that's the unmarked document that appears as the last page in the bundle of tender documents?

40 ASSISTANT COMMISSIONER: I understand that's right. Is that right, Mr Gartelmann?

MR GARTELMANN: There is a summary of transactions on a credit card but not related to PayPal- - -

ASSISTANT COMMISSIONER: Yes.

MR GARTELMANN: - - -which is page 2352, the last page I think of the tender bundle, there is a separate summary document relating to PayPal transactions only which is not in the tender bundle.

ASSISTANT COMMISSIONER: I think it was in the tender bundle- - -

MR GARTELMANN: I'm sorry.

10 ASSISTANT COMMISSIONER: - - -as the last page but- - -

MR GARTELMANN: I'm sorry.

ASSISTANT COMMISSIONER: - - -it wasn't numbered.

MR GARTELMANN: My misunderstanding.

ASSISTANT COMMISSIONER: That's right.

20 MR SUTTON: And I wonder if there's a copy of Mr De Jong's statement, if so I might be provided with one.

MR GARTELMANN: I'm told that that will be made available on the Website directly.

ASSISTANT COMMISSIONER: All right.

MR SUTTON: How convenient.

30 MR GARTELMANN: I call Fergal McGann.

ASSISTANT COMMISSIONER: Yes. Mr McGann, could you come forward, please. Mr McGann, you're unrepresented?

MR McGANN: Yeah, yeah.

ASSISTANT COMMISSIONER: Just take a seat for a minute.

40 You've been called here to give evidence and you are required to answer all of the questions asked of you. Unlike witnesses in a court you are also required to answer questions even if you think those answer might tend to incriminate you, however before this Commission you can claim protection, if you are directed to answer such questions the resulting answers cannot be used against you in criminal, civil or disciplinary proceedings. Do you wish to seek the protection of such an order?

MR McGANN: Yeah, please.

ASSISTANT COMMISSIONER: I will point out that relevantly there is an exception to this protection in that it does not prevent evidence you give here today being used in a prosecution for an offence under the Act including giving false or misleading evidence for which the penalty can be imprisonment up to five years. Do you understand the effect of that?

MR McGANN: Yeah.

10 ASSISTANT COMMISSIONER: If it's found you've given false or misleading evidence the evidence you give here today could be used to base a charge.

MR McGANN: Yeah, yeah.

ASSISTANT COMMISSIONER: 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
20 objection in respect of any particular answer given or document or thing produced.

**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
30 OBJECTION. THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED**

ASSISTANT COMMISSIONER: You're required to take an oath on the Bible or make an affirmation to tell the truth.

MR McGANN: Yeah.

40 ASSISTANT COMMISSIONER: Do you want to take an oath on the Bible?

MR McGANN: I do, yeah.

ASSISTANT COMMISSIONER: Yes, Mr Gartelmann.

MR GARTELMANN: Your full name is Fergal McGann?---It is, yeah.

Fergal's spelt F-e-r-g-a-l?---Yeah.

10 And McGann is M-c-G-a-n-n?---Yeah, that's it.

Mr McGann, are you a director of a company named MDM Formworks Pty Limited?---Yeah.

There are two directors of that company aren't there?---That's right, yeah.

Yourself and John Madden?---Yeah.

20 You started up the business together?---We did, yeah.

Would you agree with me that that was about midway through 2012?
---That's right, yeah.

Is MDM Formworks a subcontractor to another company known as Murray Civil Works Pty Limited?---It was, yeah.

It was?---Yeah.

30 It's stopped has it?---Oh, yeah, yeah.

When did that cease?---Um, it would be over a year.

What caused it to cease?---Just ah, work got quiet.

I see. Now MDM Formworks did not contract exclusively to Murray Civil Works did it?---No.

You subcontracted to a few companies?---Ah, just one other, yeah.

40 Oh, one other?---Yeah.

What proportion of your work was from Murray Civil Works before it ceased?---Ah, I'd say 30 per cent, 40 per cent.

30 per cent?---Yeah.

Do you agree with me that the work that Murray Civil gave MDM Formworks was of some significant value to the company?---Ah, it would have been, yeah.

Well, for example in 2013 MDM Formworks was paid out over \$300,000 from Murray Civil Works, would you agree with that?---Yeah.

Do you know the directors or shareholders of Murray Civil Works?---Um, I'd know of Denis Twomey, yeah.

10

Now Twomey's spelt T-w-o-m-e-y isn't it?---I'm not sure.

All right. What about Valentine Murray, do you know of him?---No, no.

Have you heard of him?---I've heard of him, yeah.

But you've never met him?---No.

20 So your dealings with any directors or shareholders of Murray Civil Works were with Mr Twomey?---Ah, yeah, but very little.

I'm sorry, I didn't catch that last word?---We, we wouldn't have dealt with Denis, we would have dealt with Kieran Conway, his estimator.

Well, have you met Denis Twomey?---I have, yeah.

Kieran Conway is a project manager for Murray Civil Works, is that the case?---He, he, he was, yeah.

30 He was. But you had some dealings from time to time with Mr Twomey, is that right?---Yeah.

Was all the work that MDM Formworks did for Murray Civil Ausgrid work?---It was, yeah.

When you were on site doing Murray Civil jobs for Ausgrid you would have met Ausgrid officers from time to time?---We would have, yeah, yeah.

40

Specifically you met Phillip Cresnar?---Ah, on one of the jobs, yeah.

Which job was that?---Ah, at Lindfield.

Lindfield?---Yeah.

You'd met Mr Cresnar though before the Lindfield job hadn't you?---I had, yeah.

You have a mutual friend don't you?---Yeah, yeah, that's right.

A Simon Treacy?---Yeah.

And Mr Treacy was a friend of yours?---He was, yeah, yeah, yeah.

But he also lived with Mr Cresnar?---That's right, yeah.

So you've been out on social occasions with Mr Cresnar on a couple of times?---Sometimes, yeah, yeah.

10

Did you go out on those social occasions with Mr Cresnar before you started up MDM Formworks?---Um, we, I'm not quite sure.

Did you know Mr Cresnar before you started up MDM Formworks?---I don't – no, no, I didn't, no.

Did you start up MDM Formworks with a view to getting Ausgrid work as a subcontractor from Murray Civil?---No.

20

All right. Did Mr Cresnar introduce you to Mr Twomey?---No.

Where or how did you first meet Mr Twomey?---Ah, through Simon.

Simon Treacy?---Yeah.

But isn't it the case that Mr Cresnar introduced you to Mr Twomey with a view to you, that is MDM Formworks getting work from Murray Civil?---Um, I'm not quite sure what you mean.

30

Did Mr Cresnar put you in touch with Mr Twomey about work at all?---Ah, no, no, no.

You've mentioned the job you did for Murray Civil at Lindfield. Correct?---Yeah.

All right. Was that a job in the nature of reinstatement works?---It was, yeah.

40

Replacing a footpath and pavers on the footpath, that kind of work?---Yeah, that's right, yeah.

And Mr Cresnar was the contract inspector in relation to that particular job?---He was, yeah.

Did the contract – that is the contract that you had with Murray Civil for that job start in late 2013?---Um, it did I think, yeah. I think it did.

And did it continue – that is, did the work under that contract continue into the following year, last year, 2014?---Ah, it would've, yeah, yeah.

That contract was worth a significant amount of money to MDM Formworks, wasn't it?---It was, yeah.

It was more than 100,000 ultimately?---Yeah, yeah.

10 You met Mr Cresnar onsite at Lindfield from time to time during your work there?---Ah, twice I'd say, yeah.

Did you meet him anywhere else?---Um, there was one occasion where we were ah, at a nearby pub.

Was that the Greengate Hotel?---That's right, yeah.

On the Pacific Highway at Lindfield?---Yeah, yeah.

20 Why did you meet him at the pub?---Myself and John were having dinner and he was running late so we just – we decided to have something to eat. Then we met him there, had a chat and then we went to the job.

Sometimes people use the term dinner to mean an evening meal, sometimes it means a meal in the middle of the day, which are you referring to?---Ah, middle of the day.

30 Why did you meet Mr Cresnar on that particular occasion, what was the purpose of the meeting?---Ah, we were discussing pavers. We had paving to finish on the Lindfield job and we had to – just we were discussing those because they were hard to come by. We had problems locating some.

I take it you had to find the right paves for the job?---Yeah, that was it, yeah.

Is that normally something that a contract inspector would be responsible for sourcing?---Ah, yeah, yeah.

40 All right. Where – I withdraw that. You said that you were at the pub, you were having dinner and you met Mr Cresnar, whereabouts physically was it that you met him, was it inside the pub or outside?---Ah, just outside.

Did you give Mr Cresnar anything?---No.

Mr Madden was present with you at that meeting, wasn't he?---He was, yeah.

Did he give Mr Cresnar anything?---No.

So neither yourself nor Mr Madden gave Mr Cresnar anything at that meeting on 20 January outside the Greengate Hotel - - -?---No.

- - - at Lindfield?---Nothing.

Are you sure about that?---Not that I can recall anyway, no.

All right. I'm going to ask you to listen to something. Session 1120.

10

AUDIO RECORDING PLAYED

[2.25pm]

MR GARTELMANN: Mr McGann, you recognise that as a telephone conversation between yourself and Mr Cresnar?---Yeah.

In that telephone conversation you discussed with Mr Cresnar the pavers you were referring to didn't you?---Yeah.

20 And he told you where to find the pavers?---Yeah.

And then after you discussed the pavers you asked Mr Cresnar his whereabouts didn't you?---That's right, yeah.

And then you made an arrangement to meet him didn't you?---That's right, yeah.

And you said we've got something for you or words to that effect didn't you?---I think so, yeah.

30

You said, "We want to sort you out", didn't you?---I did, yeah.

What did you mean by sorting out Mr Cresnar?---Um, I, I'm not quite sure to be honest.

Well, you meant pay him some money didn't you?---No, no, no. Why, what reason would I have to give him money?

40 For giving MDM Formworks favourable treatment with respect to the work that it was doing for Murray Civil Works for Ausgrid jobs?---It's Murray Civil that give us the work, not Phil Cresnar. They award us the work.

But you were benefiting or MDM Formworks was benefiting from the work that was provided to Murray Civil Works, correct?---Yeah.

And any variations to the work that was contracted out to Murray Civil Works could benefit you, MDM Formworks, correct?---Well, yeah, if it's work it's obviously benefiting us, yeah.

So why don't you explain, Mr McGann, what you meant by sorting out Mr Cresnar?---I'm not quite sure.

Well, the answer's obvious isn't it? You were going to give him some money?---Why would I give him money like, why would I give Phil money?

10 As a payment?---But he wasn't giving us the work.

But you understood that he as a contract inspector for Ausgrid was able to influence the work that Murray Civil got or at least the variations for that work, correct?---I, I don't, I don't really know, I don't really know.

And you knew as a director and shareholder of MDM Formworks that you benefited from work provided to Murray Civil Works, didn't you?---Well, work yeah, obviously work for a company is benefiting, yeah.

20 You told us earlier that you met Mr Cresnar with a view to talking about these pavers. Is that right?---That's right, yeah.

But you've just heard in this telephone conversation that you've already discussed the pavers with Mr Cresnar over the telephone?---Yeah.

So there's no need to meet him, was there?---That's on one side of the road.

So you needed to meet with him in person to discuss what was on the other side of the road?---Yeah.

30 Why was that?---'Cause there's, there's, there's four different types of pavers.

So what- - -

40 ASSISTANT COMMISSIONER: Yes, but that's not what you said. That's not what you said. You didn't say, well, let's meet up and discuss the other pavers on the other side of the road, you said you wanted to give him something it sounds like. What's that about?---But that's, but that's what we done, we did meet up and go and look at the pavers.

Yes. Could you listen to the question. You didn't say anything in the phone call about wanting to meet him at the hotel to further discuss pavers, did you?---No.

Well, then that's not the reason obviously. What is the reason?---I'm not quite sure.

I'm sorry?---I'm not quite sure.

I'd like you to think about it carefully because as I've already told you, it's a very serious offence to give false or misleading evidence, punishable by up to five years imprisonment. Why did you want to meet him at the hotel?

---As I said, we discussed the pavers, we, we went to the job after we met at the hotel and discussed the pavers, that was it.

Yes, Mr Gartelmann.

- 10 MR GARTELMANN: But there would have been no need for you to – I withdraw that. You met Mr Cresnar after you left the hotel. Is that right?
---That's right, yeah.

Just outside the pub somewhere?---Yeah, he was just- - -

On the street?--- - - -coming in and we were just finished so- - -

Oh, right. So did you go to the job site?---We did, yeah.

- 20 Together with Mr Cresnar?---We drove and he drove.

Why didn't you just arrange to meet him at the job site then to discuss these pavers?---Because he was running late and we were early and we were having something to eat.

So why wouldn't you have just left the pub and gone to meet him at the job site?---He could have waited there, yeah, could have waited there.

- 30 So in order to discuss these pavers with Mr Cresnar you wouldn't have needed to go to the bank and get some money out or anything of that nature, would you?---No.

After leaving the pub and before meeting Mr Cresnar you didn't go to the bank and withdraw some cash to give to him by any chance?---Not that I can remember, no.

I'm going to ask you to look at a document, it's at page 879. Do you see a document in front of you there, Mr McGann?---I do, yeah.

- 40 Do you recognise that as a copy of the bank statement for MDM Formwork Pty Limited?---Yeah.

Do you see on the left-hand side there are date entries?---Yeah.

I want to draw your attention to the entries relating to 20 January just next to the cursor there, but going down that list of transactions, the very last one above the date 21 January. Now, do you see there that the statement records a transaction, card entry at Lindfield branch and then over in the next

column to the right under the heading Withdrawals we see the figure \$2,500?---Yeah.

So would you accept that a withdrawal was made from the bank account of MDM Formworks at Lindfield on 20 January for two and a half thousand dollars?---Yeah.

10 That document can be taken down. So why did you withdraw that sum of money, Mr McGann?---Mightn't have been me that withdrew it.

All right. Did the MDM Formworks Pty Limited bank account have two signatories, yourself and Mr Madden?---That's right, yeah.

All right. So you're saying you don't know anything about that withdrawal? ---I, I, I can't remember (not transcribable)

All right. Well, I'm going to ask you to look at some footage. Just bear with us a moment, it'll take a moment to come up.

20

VIDEO RECORDING PLAYED

[2.35pm]

MR GARTELMANN: Mr McGann, you've just watched some footage of yourself, would you agree?---No.

That's not you?---No.

30 Is that Mr Madden?---Yeah.

All right. Conducting a transaction at a bank?---That's right, yeah.

And at the end of that footage you see Mr Madden leaving the bank and in possession of a, an envelope, would you agree with that?---Yeah.

I'm going to tell you that that footage was taken from the Lindfield bank on 20 January last year, do you understand that?---Yeah.

40 Do you have any explanation for that withdrawal being conducted on your company account on that date and at that place?---No, no, could be for any reason.

And are you sure it's not because yourself or Mr Madden withdrew some cash to pay Mr Cresnar?---Absolutely not.

All right. I'm going to ask you to watch some further footage.

VIDEO RECORDING PLAYED

[2.40pm]

MR GARTELMANN: Mr McGann, you've just seen some further footage. I'm going to tell you that that footage was taken on 20 January just outside the Greengate Hotel at Lindfield. Do you understand that?---Yep.

10 And you'd agree with me that that footage depicts yourself and Mr Madden meeting with Mr Cresnar - - -?---That's right, yeah.

- - - at the back of one of your work utes?---Yeah.

And you'd agree with me that an envelope is passed to Mr Cresnar in that footage?---That's right, yeah.

And who passes the envelope to Mr Cresnar?---I do.

I'm sorry?---I do, yeah.

20 So if anyone has any explanation for what was passed to Mr Cresnar at that time and at that place it'd be yourself. Right?---That's right, yeah.

So what is the explanation?---That could be its drawings. It could be drawings.

Look, Mr McGann, you've just seen some footage of Mr Madden making the withdrawal - - -?---Yeah.

30 - - - at the bank walking out with the envelope. Correct?---That's right, yeah.

And you've just seen some footage of yourself handing the envelope to Mr Cresnar, haven't you?---Ah, how do you know that's the same envelope?

I'm suggesting to you that one thing occurred straight after the other. Do you understand that?---Yeah.

40 I'm suggesting to you that a withdrawal was made at your company account, the money was put into an envelope and then you handed it to Mr Cresnar. That's the case, isn't it?---That's right, yeah.

That's right. You're agreeing with that?---Why would I be – what would I be doing with the envelope that John took out? Why have I the envelope now? It could be drawings.

Well, you tell us. What are you handing Mr Cresnar?---That could be drawings for all I remember.

Why would you be giving Mr Cresnar drawings?---Because he often looked at jobs for us.

ASSISTANT COMMISSIONER: Sorry, he did what?---He often looked at a job for us, you know.

MR GARTELMANN: When you say he often looked at a job you mean he came out onsite and inspected the work you were doing. Correct?---No, he looked at drawings of jobs to price.

10

Why?---Because that's what he does. He's an engineer, isn't he?

ASSISTANT COMMISSIONER: Well, what drawings? Tell us what was it?---Ah, I think it was from a school.

I'm sorry?---A school project that we were looking at.

What was it a drawing of?---An actual school - - -

20 Where did you get it?--- - - - that was to be built. I got it off um, one of the Estimate sites.

And what were you giving it to him for?---To look at it and quote on it for us.

He was going to quote on it?---He was going to price it for us.

30 MR GARTELMANN: Mr McGann, you've told us that you had to meet Mr Cresnar to discuss the pavers that were on the other side of the road, the road you – the other side of the road that you couldn't talk about on the phone. Right?---Yeah.

That's the point of meeting Mr Cresnar on 20 January, 2014. Right? ---Right, yeah.

So you didn't need to hand an envelope to Mr Cresnar to talk about the pavers that were on the other side of the road, did you?---No

40 So I'm suggesting to you, Mr McGann, you are giving false evidence in suggesting that this document passed to Mr Cresnar was drawings. Do you understand that?---I can't remember to be honest, I can't say - - -

You can't remember. All right. So why did you say then that it was drawings?---I'm really 100 per cent sure it was drawings, yeah.

But you can't remember. Is that what you're saying?---Not so well, no.

Right. Well, Mr McGann, you've heard a recording of a telephone conversation between yourself and Mr Cresnar in which you say you're going to meet him to give him something. Right?---Yeah.

You say you're going to sort him out. Right?---That's right, yeah.

Your business partner goes to the bank and makes a withdrawal of two and a half thousand dollars. Right?---Yep.

10

Puts it in an envelope. Correct?---That's right, yeah.

And then you hand the envelope to Mr Cresnar. Correct?---That's not the same envelope.

Mr McGann, I want to suggest that you are lying in your evidence. What do you want to say about that?---I, I just, I'm, I'm not sure though to be honest.

20

I want to suggest to you that you handed two and a half thousand dollars to Mr Cresnar outside the Greengate Hotel at Lindfield on 20 January last year?---No, no.

All right. Now, have you ever given Mr Cresnar cash?---Never, no.

Have you ever given him anything other than cash?---No.

Have you ever made purchases on his behalf?---Never, no.

30

So you wouldn't know anything then about any agreement between yourself or Mr Madden on the one hand and Mr Cresnar on the other hand relating to payments of cash?---No.

Excuse me, Commissioner. That's the examination of this witness, thank you.

ASSISTANT COMMISSIONER: Yes. So may he – oh well, does anyone wish to cross-examine this witness? No. Can, Mr Sutton, do you wish to?

40

MR SUTTON: Very very briefly.

ASSISTANT COMMISSIONER: Yes.

MR SUTTON: In relation to the envelope that was passed across, could that have contained specifications in relation to a job?---Yeah, yeah, for drawings, yeah.

Okay. Thank you. Nothing further.

ASSISTANT COMMISSIONER: Yes. Do you want this witness excused?

MR GARTELMANN: Could we perhaps leave that until after the evidence of the next witness?

ASSISTANT COMMISSIONER: So he'll just be stood down at this time.

MR GARTELMANN: Yes, if that's convenient.

10

ASSISTANT COMMISSIONER: Yes. You're being stood down. You are not free to leave at this time as you are not excused. Thank you. But you may leave the witness box.

THE WITNESS STOOD DOWN

2.48pm]

ASSISTANT COMMISSIONER: Yes, Mr Gartelmann.

20

MR GARTELMANN: Your Honour, I'm sorry, Commissioner, I might raise the question of a suppression order in relation to the identity of the bank teller. It's recorded on the document as I understand it, the transaction record from the account.

ASSISTANT COMMISSIONER: Right.

MR GARTELMANN: I see. Yes, it's actually more a question of the image of the- - -

30

ASSISTANT COMMISSIONER: All right. Yes, well, I'll make a suppression order in relation to the publication of any information about the identity of the bank teller. Do you wish to tender the - - -

SUPPRESSION ORDER IN RELATION TO THE PUBLICATION OF ANY INFORMATION ABOUT THE IDENTITY OF THE BANK TELLER

40

MR GARTELMANN: I can do that now or after the next witness, as is convenience.

ASSISTANT COMMISSIONER: Yes. All right. We'll leave it if it's - - -

MR SUTTON: Can I just inquire, Commissioner, is it the intention of Counsel Assisting to be tendering both those videos that we've seen?

MR GARTELMANN: Yes, it is.

MR GARTELMANN: Thank you.

ASSISTANT COMMISSIONER: I understand at the end of the next witness.

MR GARTELMANN: Yes, thank you.

10

ASSISTANT COMMISSIONER: Thank you.

MR GARTELMANN: I call John Madden.

ASSISTANT COMMISSIONER: Yes. Mr Madden, could you come forward, please. Yes, just take a seat, Mr Madden. Are you legally represented here?

MR MADDEN: No.

20

ASSISTANT COMMISSIONER: Mr Madden, did you hear the warning that I gave to the previous witness about the effect of a section 38 order?

MR MADDEN: Yeah, yeah.

ASSISTANT COMMISSIONER: You understand that you can seek an order the effect of which is that none of the evidence you give here can be used against you in criminal, civil or disciplinary proceedings?

30 MR MADDEN: Yeah.

ASSISTANT COMMISSIONER: And do you wish to seek an order in those terms?

MR MADDEN: I think so.

ASSISTANT COMMISSIONER: I would remind you that this protection does not extend if it is found you've breached the ICAC Act by giving false or misleading evidence or in any other way. Do you understand that?

40

MR MADDEN: Yeah.

ASSISTANT COMMISSIONER: 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 this witness 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: Do you wish to take an oath on the Bible or be affirmed?

20 MR MADDEN: Yeah.

ASSISTANT COMMISSIONER: An oath on the Bible?

MR MADDEN: That's fine, yeah.

ASSISTANT COMMISSIONER: Yes, Mr Gartelmann.

MR GARTELMANN: Is your full name John Madden?---Yes.

And Mr Madden, you're a director of MDM Formworks Pty Limited?
---Yes.

10

You set that business up with your partner Fergal McGann?---Yes.

And you did that midway through 2012?---Correct, yeah.

Now MDM Formworks Pty Limited was a subcontractor to Murray Civil Works Pty Limited for a period of time?---It was, yeah, yeah.

And at least during 2013 that was valuable work to MDM Formworks?
---Ah, it would have been, yeah.

20

Well, you were paid more than \$300,000 by Murray Civil in 2013?---That's correct, yeah, yeah.

Now have you ever met any of the directors or shareholders of Murray Civil Pty Limited?---Ah, just Denis.

That's Denis Twomey?---Denis Twomey, yeah.

30

How do you know Mr Twomey?---Ah, just from the jobs really, from getting the work off him like.

Did you know him before you start MDM Formworks?---No, no. I knew of him but I had never met him.

Where you first introduced to Mr Twomey by Mr Cresnar?---No, by Simon Treacy.

Right. Simon Treacy's a friend of yours?---He's a friend of mine, yeah.

40

And he lived with Mr Cresnar?---He did.

So you met Mr Cresnar through Mr Treacy?---Yeah, yeah.

Did you meet Mr Cresnar before you started MDM Formworks?---Um, I would have met him a few times, yeah, yeah.

Was he involved in any way in you setting up MDM Formworks?---No, he had nothing to do with it. We ah, set up in June, we didn't take any work

off Murray Civil until I think it was December so we were subcontracting to another company.

All right. MDM Formworks did work for Murray Civil Works Pty Limited on Ausgrid jobs?---Right.

All of the work that MDM Formworks did for Murray Civil was Ausgrid work wasn't it?---I think it was, yeah, yeah.

10 I want to ask you about one particular job?---Yeah.

You did a job at Lindfield didn't you?---We did.

And that was what is known as reinstatement work?---Correct.

That job commenced in late 2013?---Yeah, yeah.

And continued into 2014?---Yeah.

20 And it was worth more than \$100,000 to MDM Formworks?---It would have been, yeah, yeah.

Have you ever – I withdraw that. Mr Cresnar was the contract inspector for the Lindfield job wasn't he?---He was.

And so you had some dealings with Mr Cresnar in his work capacity at least on that job didn't you?---Yeah, he would have called out from time to time just to inspect.

30 The reinstatement job required you to replace some paving on some, on a footpath, right?---It did, yeah.

Well, did you have any dealings with Mr Cresnar in relation to sourcing pavers?---Yeah, we were trying to find pavers and we couldn't find them and the job was dragging on and we were under pressure to get the job finished but we couldn't find them so I think we spoke to him about, if they could have them off any other job. There was different types and it was, it was very hard to get them.

40 Did you do any work, that is you as MDM Formworks, for Murray Civil other than the Lindfield job where Mr Cresnar was the contract inspector?---I think just in Lindfield, there was two jobs in Lindfield so I think he was all over the two of them, then the other jobs there was a different- - -

So there were two jobs at least where Mr Cresnar was the contract inspector?---Yeah, there would have been just, in Lindfield, yeah.

Righto?---They were beside each other.

Did you give Mr Cresnar anything in relation to getting the job for the Lindfield project from Murray Civil?---No.

Have you ever given Mr Cresnar anything at all?---No.

Has your- - -?---Not that I remember anyway.

10 Have you ever given Mr Cresnar cash?---No, not that I remember, no, no.

You've had no cause to give him cash?---No. He has looked at a few jobs for us ah, outside of Ausgrid and Murray Civil Works.

When you say he's looked at a few jobs, what do you mean?---Ah, he would have been pricing a small bit of work for us outside that works. We were trying to get some formwork on schools and stuff to get away from the footpaths, to get bigger jobs and he would have just been looking over them.

20 So were those jobs that you subcontracted to Murray Civil?---No, no. They weren't Ausgrid or Murray Civil Works.

So Mr Cresnar was giving you help- - -?---Yeah, he was just looking- - -
- - -pricing the jobs?--- - - -at the jobs and that was it.

Sorry, go on?---We didn't have the jobs, we were just looking to price them.

30 I see. And was Mr Cresnar giving you that assistance while he was an Ausgrid officer?---Um, I think he was, he actually was Ausgrid, yeah, but he was only looking over, it was more advice than- - -

Did you give him anything in exchange for that advice?---No, not that I remember, no.

You didn't give him any payment?---No, not that I can remember, no.

Mr Madden, you've been in the hearing room while some footage has been played. Is that right?---Yeah.

40 And you saw firstly some footage from a bank?---Yes.

And you understand that that footage was taken on 20 January last year at Lindfield?---Yes.

And you would accept that it depicts you making a transaction?---That's correct, yeah.

Why did you – or firstly do you accept that you withdrew a sum of two and a half thousand dollars that day?---I do, yeah, yeah.

Why did you make that withdrawal?---I don't know, I mean it's, I can't remember. I'd often take cash out of the bank for materials and stuff.

What did you do with the cash once you withdrew it?---I can't remember, it's, it's a long time ago.

10 Well, you've seen yourself in the footage putting the cash in an envelope?
---I did, yeah.

What did you do with that envelope?---That I don't know, no.

ASSISTANT COMMISSIONER: It looked as though you actually sealed up the envelope, licked it and sealed it?---Could have, could have.

20 Just seems a strange thing to do if you were going to spend it somewhere?
---Don't know. Maybe I took it out for material, I don't remember. I often
take cash out of the bank for material. Obviously you've seen the- - -

And seal it up in envelopes for later?---I know, but you've seen my bank statements you'll see I often withdraw cash.

MR GARTELMANN: You've also- - -?---It wouldn't be a strange thing for me to do to go and take out cash and go and buy material.

But as the Commissioner's pointed out- - -?---Yeah.

30 - - -it would be a strange thing to put it in an envelope and seal it up if that's what you were going to do with it, how you're going to deal with it, wouldn't it?---Maybe it was cash that I had put into the company myself and I was taking it back out.

So why put it into a sealed envelope?---Why not?

Why not put it into your wallet?

40 ASSISTANT COMMISSIONER: You see the putting it in a sealed envelope makes it look like you were going to give it to somebody else. That's the only reason I can think of that you'd seal up the envelope?
---No.

No.

MR GARTELMANN: Well, Mr Madden, you've seen some further footage depicting as meeting between yourself and your business partner, Mr McGann and Mr Cresnar outside the hotel?---Yeah.

You understand that that footage was taken shortly after you went to the bank at Lindfield?---Yeah.

And would you agree that that footage shows your business partner passing what appears to be an envelope to Mr Cresnar?---It looks like paper. I don't know if it's an envelope or what it is but.

10 Well, let's be blunt about it, Mr Madden. I want to suggest that you know perfectly well what it is. It's the envelope containing the \$2,500 cash that you just withdrew from the bank?---No.

You've got no other explanation for it?---Ah, for the paper or the - - -

For what was handed to Mr Cresnar outside the pub?---Well, maybe it was drawings or something. I don't know.

20 I'm sorry, what was that?---Maybe it was drawings or something. I don't know. Or specifications for the job. I'm not sure.

You don't have any recollection of that, do you?---But it's - as I said it's, it's - that's a year or more ago. I'm not sure what it was.

Why was it that you met Mr Cresnar outside the pub?---I don't know. We were having dinner in there and we met him there.

Yes, but what's the point of meeting him?---Of meeting him?

30 Yes. Why did you meet?---It was to talk about the Lindfield job.

So why not meet him onsite?---I don't know why we met him there. No.

Is the truth of it because you didn't need to meet him to talk about the job but just payment for the job?---Then why did we go to the job?

Well, it's not for you to ask questions here. Do you understand that?---Fair enough. Yeah.

40 All right. So you say that you have no knowledge of any payments between yourself and Mr McGann on the one hand and Mr Cresnar on the other at all. Is that right?---That's correct.

All right. Well, I want you to listen to a recording 765.

AUDIO RECORDING PLAYED

[3.02pm]

MR GARTELMANN: Mr Madden, do you recognise that as a recording of a telephone conversation between yourself and Mr Cresnar?---That's right, yeah.

You understand that it's an excerpt or an extract of that telephone conversation. Do you accept that?---That's fine, yeah.

All right. Now in that telephone conversation, Mr Madden, you make firstly, a reference to the Lindfield job. Correct?---Correct.

10

And then you discuss with Mr Cresnar how much you agreed for that job, didn't you?---Yeah, it sounded like that, yeah.

And then you had a debate about whether or not the agreement was five each or two and a half each. Correct?---Ah, we had some debate, yeah.

Yes. Well, the five and the two and a half relate to thousands of dollars, don't they?---It doesn't say that in the conversation.

20

No, but that's what you meant, isn't it?---No.

What do you say it is?---I haven't a clue, that's a, that's a year ago, I haven't a clue what that meant.

All right. Well, you've already told us that you've not made any payment or you have no knowledge of any payment between yourself and Mr McGann on the one hand and Mr Cresnar on the other?---Yeah.

30

What you said in your evidence in that respect was false wasn't it?---No.

You have knowledge of payments between yourself and Mr McGann to Mr Cresnar?---No.

And in that telephone conversation you are discussing such payments aren't you?---No.

You're discussing the payment for the Lindfield job that you were still doing in 2014, correct?---No.

40

And you were also making reference to a payment for a previous job?---No.

Well, what's your explanation for that - - -?---If that relates to thousands of dollars, if you, if you think we could make money by giving somebody \$5,000 on one of those jobs, there's no way.

ASSISTANT COMMISSIONER: Well, look, you're not really answering the question. What were you talking about, two and a half what? Sausage dogs, what?---(not transcribable) that's a year ago, I, I don't know.

Yes, I know it's a year ago, noted?---I'm not really being smart but I mean I actually just don't remember, that's a year ago like.

Well, I find that difficult to believe frankly, it's not that long ago. You were right into the conversation at the time, it was a pretty heated debate wasn't it?---Well, it sounds like it was, I mean, as I said it's a year ago.

It sounded like he was trying to say it was five each and you were saying, not it was only to be two and a half each?---No, it was nothing to do - - -

Two and a half what is what I'm asking?---I don't remember, it's a year ago.

You have no idea what you were talking about?---No.

20 MR GARTELMANN: You see, Mr Madden, you're not only referring to five each and two and a half each, you're referring to payment, you're saying words to the effect of how much I paid for that one before?---I don't even know what I was talking about.

I'm sorry?---I don't know what I was talking about.

Well, clearly you're referring to payment to Mr Cresnar?---No, I don't think so.

30 That's exactly what you're saying, you're saying payment in that conversation?---Whatever, whatever it was it wasn't payment to Phillip Cresnar, I can tell you that for sure.

Look, Mr Madden, you're giving false evidence in denying making payments to Mr Cresnar?---No.

You're giving false evidence in denying that you made a payment together with Mr McGann to Mr Cresnar on 20 January, 2014?---No, I never gave Phil Cresnar any money.

40 Is it just a coincidence, Mr Madden, that you're debating with Mr Cresnar in that telephone conversation whether or not it was five each or two and a half each and that there was a withdrawal of \$2,500 immediately before that put into the envelope?---No, it wasn't for Phil anyway, that's for sure.

Just a coincidence, hey?---Must have been.

Look, Mr Madden, your evidence in that respect is false?---No, it's not.

ASSISTANT COMMISSIONER: Well, so you can't give us any explanation at all as to what the five refers to and what the two and a half refers to?---I don't remember.

MR GARTELMANN: Excuse me, Commissioner.

10 Towards the end of the conversation that you've just heard, Mr Madden, after debating with Mr Cresnar whether or not it was five each or two and a half each you say "I'll have to go through my money"?---Yeah, I heard that.

Yeah. So why did you say that?---I don't know.

You do, don't you?---No.

20 You had to make sure that you had enough money to pay Mr Cresnar?---No. I had no, and I know I wasn't paying Phillip Cresnar because we didn't even want the work, we were trying to get away from it so I wouldn't have been paying Phil to get work, to get work out of him.

You didn't want the work?---We didn't want the work, we had another job on which was four times bigger than that job and that was a nuisance to us and we didn't want the work so - - -

But you agree with me that in that conversation you are clearly referring to having an agreement?---No, I wasn't, I wasn't giving him any money anyway, that's for sure.

30 But you had an agreement regarding some payment didn't you?---Ah, it wasn't for any money, no.

So whether or not you were trying to get away from that work you had a previous agreement and you had to fulfil your part of the agreement?
---No.

And I want to suggest to you that that agreement was for you and Mr McGann to pay Mr Cresnar \$2,500?---No.

40 And that that's what took place outside the pub that day?---Definitely not, no.

I can't take that any further, thank you, Commissioner.

ASSISTANT COMMISSIONER: Yes. Does anybody wish to cross-examine this witness? No. Can the witness be excused?

MR GARTELMANN: Yes, and so also could Mr McGann I think.

ASSISTANT COMMISSIONER: Yes, I don't think there's much point. Yes. All right. That concludes your evidence, you are excused, and I'll also excuse Mr McGann from further attendance.

THE WITNESSES EXCUSED

[3.10pm]

10 MR GARTELMANN: Commissioner, there are a number of things to tender relating to the evidence of the previous two witnesses. Firstly there is a bundle of document relating to MDM Formwork Pty Limited.

ASSISTANT COMMISSIONER: Yes. The tender bundle for MDM Formworks will be Exhibit 4.

#EXHIBIT 4 - TENDER BUNDLE MDM FORMWORKS – FERGAL MCGANN & JOHN MADDEN

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MR GARTELMANN: Secondly there are the recordings of the telephone conversations played to the witnesses, the first being a recording in relation to what is described as session 1120 and the second session 765.

ASSISTANT COMMISSIONER: Yes, the first will be Exhibit 5 and the second will be Exhibit 6.

30 **#EXHIBIT 5 - RECORDING OF TELEPHONE CONVERSATIONS - SESSION 1120**

#EXHIBIT 6 - RECORDING OF TELEPHONE CONVERSATION SECOND SESSION 765

40 MR GARTELMANN: And lastly, Commissioner, there are DVDs of the CCTV or video footage, firstly from the ANZ Bank at Lindfield on 20 January, 2014.

ASSISTANT COMMISSIONER: That will be Exhibit 7.

#EXHIBIT 7 - DVDS OF CCTV FOOTAGE OF 20 JANUARY 2014 – MDM FORMWORK -AT ANZ BANK LINDFIELD

MR GARTELMANN: And secondly the footage from outside the Greengate Hotel on 20 January, 2014.

ASSISTANT COMMISSIONER: That will be Exhibit 8.

**#EXHIBIT 8 - FOOTAGE OUTSIDE THE GREENGATE HOTEL
LINDFIELD**

10 MR GARTELMANN: Commissioner, I believe that that is the extent of the evidence that we have available for presentation today.

ASSISTANT COMMISSIONER: All right. All right. Well, we'll adjourn at this time and- - -

MR SUTTON: Before you, sorry, Commissioner, if I can just interrupt?

ASSISTANT COMMISSIONER: Yes, Mr Sutton.

20 MR SUTTON: I note what's been said but out of everyone in this room it's my client that's affected by this material mostly, obviously him being the subject of the investigation. I've been checking on the Website. The statement that was referred to earlier is still not there. I would ask, bearing in mind this is a relatively short inquiry, it's not like Spicer or Credo where we have the luxury of time and ongoing- - -

ASSISTANT COMMISSIONER: Yes.

30 MR SUTTON: - - -if copies of the shorter material that's been produced, Mr Marney's statement, if there are copies of the videos, of DVDs and certainly transcripts, we've seen transcripts have been produced, I would seek immediate access to those so that I can gain some instructions.

ASSISTANT COMMISSIONER: Yes, look, I'm sure that you can arrange something with Mr Gartelmann in that regard.

MR GARTELMANN: Yes.

ASSISTANT COMMISSIONER: I'm quite happy for that to be done.

40 MR SUTTON: Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you. Well, we will resume at 10 o'clock tomorrow.

**AT 3.12pm THE MATTER WAS ADJOURNED ACCORDINGLY
[3.12pm]**