

JARHPUB00088
20/01/2015

JARAH
pp 00088-00147

PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION JARAH

Reference: Operation E13/0494

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY, 20 JANUARY 2015

AT 10.13AM

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: Please be seated. I apologise for the late start, it was unavoidable. Yes, Mr Gartelmann.

MR GARTELMANN: Commissioner, before commencing with evidence from witnesses this morning there is a bundle of material relating to corruption prevention that I would seek to tender at this stage in order to make that available to the representatives of Ausgrid.

10 ASSISTANT COMMISSIONER: Yes. Well, the tender bundle in relation to corruption prevention issues will be Exhibit 9.

#EXHIBIT 9 – AUSGRID- CORRUPTION PREVENTION TENDER BUNDLE

MR GARTELMANN: Next, Commissioner, I would call Patrick Miskelly.

20 ASSISTANT COMMISSIONER: Yes, is Mr Miskelly here?

MR MISKELLY: Good morning.

ASSISTANT COMMISSIONER: Yes, good morning. Take a seat, Mr Miskelly.

MR MISKELLY: Yes.

ASSISTANT COMMISSIONER: You are unrepresented?

30 MR MISKELLY: That's correct.

ASSISTANT COMMISSIONER: You've been called here to give evidence and you are required to answer all of the questions asked of you. However, witnesses before the Commission may seek the protection of an order, the effect of which is that none of the evidence they give here can be used against them in any criminal or disciplinary proceedings. Do you understand the effect of that?

40 MR MISKELLY: Yeah, I do.

ASSISTANT COMMISSIONER: Or civil proceedings. And the only exception to this protection is if it's found you've breached the Act by giving false or misleading evidence for which the penalty can be imprisonment for up to five years. Do you understand that?

MR MISKELLY: I do.

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

MR MISKELLY: Um, what's, what's that mean again, sorry?

ASSISTANT COMMISSIONER: The order means that although you have to answer the questions asked of you none of the evidence you give here today - - -

10 MR MISKELLY: Yeah.

ASSISTANT COMMISSIONER: - - - could be used in later proceedings, for example criminal, civil or disciplinary proceedings except if it is found that you have lied.

MR MISKELLY: Of course, yeah.

ASSISTANT COMMISSIONER: Do you understand that?

20 MR MISKELLY: Yeah, I do.

ASSISTANT COMMISSIONER: So do you wish to seek that protection?

MR MISKELLY: Yes, please.

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
30 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.

**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
40 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.**

ASSISTANT COMMISSIONER: Mr Miskelly, you're required to take an oath on the Bible or make an affirmation to tell the truth.

MR MISKELLY: Yeah.

ASSISTANT COMMISSIONER: Do you have a preference?

MR MISKELLY: The Bible's fine, yeah.

ASSISTANT COMMISSIONER: Could the witness be sworn please.

ASSISTANT COMMISSIONER: Yes, Mr Gartelmann.

MR GARTELMANN: Is your full name Patrick Miskelly?---It is, yeah.

And Miskelly is spelt M-i-s-k-e-l-l-y?---That's correct.

10 Mr Miskelly, are you the sole director and shareholder of a company named Fer-Aim Pty Limited?---Yes.

And is Fer-Aim spelt F-e-r – A-i-m?---That's correct.

You set that company up in about 2008?---About that time, yeah.

And it's the case isn't it that Fer-Aim Pty Limited began to do work for another company called Diona Pty Limited?---Diona, that's correct.

20 Work for Diona Pty Limited that Fer-Aim did was largely on Ausgrid jobs, wasn't it?---At that time it was all for Ausgrid, yeah.

Right. When you say at that time you mean after you set up the company in 2008?---Yeah.

And am I right in understanding that that continued up until perhaps 2011 or so?---(not transcribable) probably up until a year and a half ago.

I see?---Yeah.

30 So for a period of time then all of the work that you were doing or Fer-Aim was doing for Diona- -?---Yeah.

- - -was Ausgrid work?---That's correct, yeah.

And what proportion of the work that Fer-Aim did was for Diona?---At that time 100 per cent.

All right?---Yeah.

40 So all of your work was for Diona and all of that work was on Ausgrid jobs? ---That's correct, yeah.

And that work was very valuable to Fer-Aim Pty Limited, wasn't it?---It was 100 per cent of income, yeah.

But not only was it your sole source of income, it made you a lot of money? ---It made the company a bit of money, yeah.

Well, just by way of example, during the years 2010 and 2011 you received payments from Diona Pty Limited in excess of \$3 million?---About that, yeah.

And that was all Ausgrid work, wasn't it?---That's correct.

Do you know Phillip Cresnar?---I do, yes.

10 How long have you known him?---Since 2008.

Around the time you set up Fer-Aim?---Yeah.

And when you were doing work for Diona Pty Limited on Ausgrid jobs - - -?---Mmm.

- - -you had dealings with Mr Cresnar as an Ausgrid officer?---That's correct.

20 At least at the time you set up Fer-Aim Mr Cresnar was a contract inspector, wasn't he?---Yes.

By that I mean an Ausgrid officer who would come out onsite and carry out inspections - - -?---Yeah.

- - - of the work that was being performed for Ausgrid?---That's correct.

30 Did you have a relationship with Mr Cresnar outside work?---Yes. Um, he used to come to our Christmas parties and we met him a few times for drinks.

So when you say a Christmas party – your Christmas parties are you referring to Fer-Aim Pty Limited's Christmas parties?---Yeah. That's correct.

And you mentioned also that you'd have a drink I think you said?---Yeah, we've met up for drinks and um, he's been to my house.

40 He's been to your house?---Yeah.

On how many occasions do you think?---Oh, I believe - - -

Was it once or twice or we're talking - - -?---Oh, at least a dozen times. Yeah.

Have you been to his house?---Yeah.

And you'd go out to have a drink. By that you mean socialise?---Socialise. Yeah.

All right. Now you mentioned earlier in your evidence that your work with Diona or Ausgrid jobs dried up about 18 months ago?---Yeah. About a year and a half ago, yeah.

What was the cause of that?---I think um, the Diona wasn't getting as much work and so it all fizzled out.

10

All right?---So I had to look elsewhere.

Did you continue to have a relationship with Mr Cresnar after you ceased working for Diona?---Yeah. I've met him a few times for drinks since then.

When was the last time you met him for a drink?---Ah, Christmas time there at the Mean Fiddler.

The Mean Fiddler is a pub - - -?---Pub in Rouse Hill, yeah.

20

In what suburb?---In Rouse Hill. Rouse Hill.

Rouse Hill?---Yeah.

That's somewhere near where you live I take it?---Yeah, that's right (not transcribable)

Prior to that had you had any contact with Mr Cresnar for the preceding say year?---Not much. Very little.

30

Why hadn't you had any contact during that year so?---That was um – there was um, a wall had fell in Kogarah. Um, Fer-Aim was taken to court over it by WorkCover and it was against Phil Cresnar so the relationship got a bit strained for a while.

I see. So after the Kogarah wall collapse - - -?---Yeah.

- - - your relationship with Mr Cresnar - - -?---Deteriorated a bit for a while.

40

All right. And am I right in understanding then that the only contact you've had with Mr Cresnar since was when he came to the Mean Fiddler pub at Rouse Hill?---Ah, yeah, pretty much.

And why did he come there?---Um, well, we normally met up for Christmas drinks, it's an ongoing thing, and this year – that – then we didn't have our Christmas party so we just met him for drinks.

All right. Did you discuss work?---No.

So it was purely a social occasion?---Purely social, yeah.

Excuse me a moment, Commissioner. At the time that you met up with Mr Cresnar at the Mean Fiddler pub - - -?---Yeah.

- - - were you aware that he was the subject of an investigation?---I had just been told that, yeah.

10 Who had told you that?---I got a letter in from yourselves.

When you say yourselves you're talking about - - -?---ICAC

- - - from the Independent Commission Against Corruption?---Yeah.

All right. And so not having spoken with Mr Cresnar for a period of a year or so or more - - -?---Mmm.

- - - you get something from the Independent Commission Against
20 Corruption and as a consequence of that you meet up with Mr Cresnar?
---No, it's just a coincidence.

It's just a coincidence?---Mmm.

Are you serious?---Yeah.

Your relationship became strained following the Kogarah wall collapse?
---Yeah.

30 Right?---Yeah.

You don't have any contact for a year or more. Right?---Well, very little.
Very little.

And then as a result of that – I'm sorry, I'll withdraw that. Notwithstanding that you just decide to meet up with him for a drink at the Mean Fiddler pub at Rouse Hill?---That's correct.

40 Now you're aware that Mr Cresnar lives nowhere near Rouse Hill, aren't you?---That's right.

So why is it that you agreed to – or arranged to meet up at Rouse Hill?
---Because I had lost my licence and he had to drive out to me.

All right. And how did you arrange to meet Mr Cresnar there?---I had a phone call from him.

You got a phone call from him or you called him?---I'm pretty sure he called me, from memory.

All right. What phone service did you get a call on, in other words was it your mobile phone or your landline?---I think it was a um, I think it was my mobile from memory. I can't actually remember to be honest.

Isn't it the case that you asked Mr Cresnar to call back on your landline?
---Yeah, that's correct, a text message. I remember now.

10

Yeah, all right?---Yeah.

And why was it that you did that?---Ah, well, because I knew possibly being recorded.

By whom would you think it would be recorded?---Well, I didn't, I didn't know, I didn't know.

20

Well, you thought the Independent Commission Against Corruption, didn't you?---I wasn't too sure. I didn't want to be recorded without my permission.

Well, who else would be recording it?---Well, that's what I'm saying, I didn't, I didn't know.

Why did you have any reason to think it would be recorded other than the fact that you'd received some documentation from ICAC?---Well, obviously youse are investigating.

30

Yes?---Yeah.

And that's why you thought your phone call might be recorded?---Possibly, yeah.

So what was it that you had to talk to Mr Cresnar about that you were worried about being recorded?---Oh, no reason.

40

No reason? So why are you worried about it being recorded?---I just didn't want to be recorded without my permission.

Look, isn't it the case that you were worried about it being recorded because you wanted to talk to Mr Cresnar about the fact that he was being investigated?---No.

Isn't it the case that you arranged to meet up with Mr Cresnar at the Mean Fiddler pub way out at Rouse Hill- -?---Mmm.

- - -to talk to him about the fact that he was being investigated?---No, it wasn't discussed.

It wasn't discussed at all?---No.

Are you serious?---Yeah.

So not having spoken to him for a year or more- - -?---Very little, as I said before.

10

- - -having learned that he's the subject of an ICAC investigation, having taken the steps to ensure that your telephone conversation isn't overheard - - -?---Mmm.

- - -you then meet up with him at the pub at Rouse Hill- - -?---Yeah.

- - -and you don't mention it?---That's correct.

20 Look, Mr Miskelly, your evidence about that is false, I want to suggest to you?---It's not.

You're lying?---I'm not lying.

I should just clarify one thing. Did you meet up with Mr Cresnar just before the Christmas just past or the one before that?---Ah, I met him both times, every year.

Both times?---Every year.

30 All right. Was anybody else present?---Um, my wife was present the last time.

All right. Well, let's just deal with the occasion that you met up with Mr Cresnar after you received some document from ICAC?---Yeah.

I want to suggest to you that that must have been Christmas 2013?---Hmm, yeah, would have been I think.

40 Was your wife present then?---Yeah.

What's your wife's name?---Natalie Miskelly.

Was she present throughout your get-together with Mr Cresnar?---Yep.

Just for completeness sake, Mr Miskelly, I put to you that your evidence about your meeting with Mr Cresnar on that occasion is false. You understand that's what's being alleged?---That's your allegation, yeah.

But more specifically I want to put to you this. You told Mr Cresnar that he was the subject of an investigation at that meeting, didn't you?---No.

You discussed it with him?---I didn't.

And yet you've got no explanation for why it was that you needed to get him to call back on the landline so it wouldn't be recorded?---That's correct.

You're lying, Mr Miskelly?---I'm not.

10

All right. Now let's go back to the work that you were doing for Diona in 2010/2011, that period of time?---Yeah.

Your work for Fer-Aim, sorry, your Fer-Aim – Fer-Aim's work for Diona Pty Limited was exclusively Ausgrid work, correct?---At that time, yeah.

And you knew Mr Cresnar was an Ausgrid officer - - -?---Yeah.

20

- - - at that time. You understood that he was a contract inspector for Ausgrid?---Correct.

And so you understood that he was responsible for approving things such as variations to contracts for Diona?---Yeah.

And you understood that a variation to a contract for Diona may indirectly benefit Fer-Aim Pty Limited?---(not transcribable)

30

Did you back in 2010, 2011 understand Mr Cresnar to be responsible for choosing which contractors were given Ausgrid work?---I think he just done the inspections on site.

All right?---I don't know anything about the work.

But you were aware that his duties as a contract inspector affected what Diona was paid for Ausgrid work and therefore indirectly what Fer-Aim was paid?---They would have been, that's correct.

40

So you understood that Mr Cresnar had the capacity in one way or another to influence what Fer-Aim was paid?---Yeah.

And so it was important to you wasn't it to keep a good relationship with Mr Cresnar?---Well, I had, I had a, a good relationship with him.

Did you give Mr Cresnar anything, pay for anything for Mr Cresnar in order to maintain a good relationship with him?---That wasn't the reason, I bought him an airline ticket for work he'd done around my house.

Right. I might just get you to repeat that answer, it was given a little bit quickly and it might have been a bit hard to understand?---Oh, sorry. Oh, he give me some help around the house with a back patio - - -

Yes?--- - - - and in return, he wouldn't take any money for it so I bought him an airline ticket.

I see. And when was that?---It was after we finished the work at the, sorry, I had a house in Dundas at the time.

10

I'm asking what year?---Oh, I think it was 2010-ish or '11 maybe.

All right?---Or it was '09 maybe.

So this is during the period when Fer-Aim was getting a lot of work from Diona?---Yeah.

Work worth millions - - -?---Yeah, yeah.

20

- - - to Fer-Aim?---Over the years, yeah.

All right. So you bought Mr Cresnar an airline ticket you said?---Yeah.

Why did you do that?---Because he wouldn't take any payment for the work he'd done for me.

When you say he wouldn't take any payment - - -?---Ah hmm.

30

- - - do you mean that you offered him payment?---For the work he done on the house, yeah.

What did you offer him?---Oh, I asked him for, I told him he couldn't, couldn't possibly do all that work for nothing and he said he couldn't take anything for it so myself and my wife bought him a ticket to surprise him.

All right. But did you offer him a sum of money?---Not (not transcribable)

40

ASSISTANT COMMISSIONER: I'm sorry, did you say you'd bought him the ticket to surprise him?---Mmm.

Oh. It might be a surprise if he didn't want to go anywhere. How would you know that he wanted an airline ticket?---Well, it's a nice surprise for him isn't it?

Where were you sending him?---Ah, well, it was his choice.

Oh, it was his – how could it be a surprise if it was his choice?---Well, I told him we were buying it for him.

I beg your pardon?---We, we told him we were buying it for him.

Well, then that's not much of a surprise then?---Well, it was a surprise, he wasn't expecting it, it was a surprise.

All right.

10 MR GARTELMANN: Look, Mr Miskelly, that doesn't make sense with respect. Either it was a surprise or it wasn't?---When we told him we were buying an airline ticket and that's a surprise isn't it?

Well, was he shocked was he?---He was a bit shocked, yeah.

ASSISTANT COMMISSIONER: Did he say I don't want an airline ticket?
---Ah, no.

20 MR GARTELMANN: Was he happy to go wherever you sent him?---Oh, it was his choice as I said, yeah.

All right. Why didn't you just buy Mr Cresnar a bottle of wine or a case of beer for helping you out with the patio?---Sure, why not.

I'm sorry?---Why not? What's the difference.

The amount of money involved, for a start?---Well, it could be a very expensive bottle of wine.

30 But why did you have to buy him something to the value of an airline ticket?---Because he done lots of work at my home.

When you say lots of work, how much did he do?---Oh, it was at least four or five weekends um, we put up a back, back patio.

Look, Mr Miskelly, you've previously been asked some questions about this, haven't you?---Yeah.

40 Commissioner, I'll need to seek a lifting of the suppression order in relation to a compulsory examination conducted.

ASSISTANT COMMISSIONER: Yes. Any particular page?

MR GARTELMANN: Excuse me one moment. 316 I think. It will need to be the subject of some editing but – the relevant passage is page 315 of the compulsory examination conducted 14 May, 2014. It'll need to be edited, but the passage concerned commences at the top of that page and down to line 20.

ASSISTANT COMMISSIONER: All right. Well, I remove the suppression order in respect of the matters you wish to put to the witness.

I REMOVE THE SUPPRESSION ORDER IN RESPECT OF THE MATTERS YOU WISH TO PUT TO THE WITNESS

10 MR GARTELMANN: Mr Miskelly, you were asked some questions about this payment you made for Mr Cresnar back in May of last year, weren't you?---Yes, that's correct.

And you explained the payment by, or in the same way that you have today, in other words relating to some help Mr Cresnar gave you with your patio? ---That's correct, yeah.

And you were asked about the extent of that help?---Mmm.

20 And it was put to you, "So what did it take, one, two weekends?" And you said, "Oh, at least three."?---Yeah.

So has it grown- - -?---Well- - -

- - -between when you were asked these questions in May of last year and today?---No. I can't remember the exact number, it was, as I say at that time it was at least three, it was definitely at least three.

30 Well, is it the case, Mr Miskelly, that the reason that it's changed is because it didn't happen?---No.

And you have no genuine recollection?---I have no recollection of how many weekends exactly there.

Sorry, I didn't catch that last answer?---Sorry, I said four weekends is at least three weekends.

Look- - -?---My answer the first time was at least three weekends and that's still the case.

40 Your answer initially here today was that it was- - -?---Four or five.

Yes?---Yeah.

So it's different, isn't it, to at least three?---He was there a few weekends. Is that (not transcribable)

Isn't it the case, Mr Miskelly, that you're trying to justify how much money was spent in this purchase of an airline ticket for Mr Cresnar by inflating or increasing the amount of work that he did for you- - -?---No.

- - -to make it sound like it had some kind of proportion?---This happened years ago, as you know, it's hard to remember that far back.

2010?---Yeah.

10 How much did this airline ticket cost you?---I can't remember. It was round about 2000 and something dollars. Can't remember.

So let's assume that the answer you gave back in May last year is correct, that it was say- - -?---At least three.

- - -at least three weekends worth of work?---Yeah.

So we're talking about six days?---Ah- - -

20 Or perhaps a little more, right?---More I'd say.

A couple of grand is a pretty big payment, isn't it, for a friend helping you out put up a patio over three weekends?---Not really.

Isn't it the case, Mr Miskelly, that this payment of the air fare for Mr Cresnar had nothing to do with him helping you out put up a patio?---No.

30 Isn't it the case that you made this payment to Mr Cresnar because you wanted him to treat Diona and/or Fer-Aim Pty Limited favourably in his role as an Ausgrid officer?---Absolutely not.

You wanted to keep him in onside?---Um, I didn't know he was even investigated about corruption until about a year ago.

Either you were paying Mr Cresnar for something he'd already done for you, that is as Fer-Aim Pty Limited, or you were doing it so that he would do something favourable to Fer-Aim?---It was nothing to do with Fer-Aim.

40 Now you said that you wanted this purchase to be a surprise for Mr Cresnar?---Mmm.

So how did you go about making the transaction?---Um, from memory it was on the company credit card.

That's the Fer-Aim Pty Limited credit card?---Oh, no, sorry. No, it would've been my personal one.

All right?---Personal one so - - -

And did you go to a travel agency?---Um, no. He picked the ticket and I paid for it.

And how did you do that though?---Um, on my own credit card.

Sorry?---My credit card, sorry. My credit card.

10 Yes, but Mr Cresnar has picked the ticket you said?---Mmm.

And you've paid for it?---Yeah.

How did you actually make the payment?---With my credit card.

And what did you do with your credit card?---I gave the travel agent the number. I really – I can't remember but I'm pretty sure I gave the travel agent my number.

20 You gave the travel agent your number?---I think so, yeah.

How many air fares did you buy?---One return ticket.

One return ticket?---Yeah.

ASSISTANT COMMISSIONER: To where?---I think it was Thailand.

To Thailand?---Yeah. Actually from memory it was one ticket out and one ticket back.

30 MR GARTELMANN: And I take it you decided to give this – make this payment to Mr Cresnar because he'd said something about wanting to go overseas?---Um, no. I just said it was his choice where to go.

I'm sorry?---Sorry. It was his choice where to go.

Where to go?---Mmm.

40 So did you have a conversation with him about - - -?---No. We just thanked him very much for what he'd done and would he take anything for it and he says no, he couldn't so we said all right, we're going to buy you a ticket. Where do you want to go?

Is it possible that you made the purchase yourself on-line?---I'm not too sure now to be honest. I can't remember.

Is that because you have no recollection about this transaction at all?---I can't remember what I – I can't remember exactly which way it was paid for.

Is it because there was no discussion with Mr Cresnar whatsoever about buying him a surprise air fare for overseas travel?---No, I just can't remember exactly the details.

You think he went to Thailand you said?---Yeah.

I want to suggest to you that the air fare that you purchased for Mr Cresnar sent him off to Croatia?---Is that where it was. It could have been?

10

Yes?---It could have been.

You have no recollection of it at all do you?---I don't know exactly the details, no.

That's because he never told you anything about it?---What do you mean?

Mr Cresnar never told you anything about where he was going?---I can't remember exactly where, I can't even remember where, where he went at the time.

20

Mr Miskelly, is the explanation for all of this simply that you just gave Mr Cresnar your credit card numbers?---No, that's not - - -

And he made this transaction all by himself?---Not from memory, no.

And you had nothing to do with it?---No.

Excuse me a moment, Commissioner.

30

In any event, Mr Miskelly, you made the payment for Mr Cresnar's airfares in 2010 - - -?---Mmm.

- - - and that's the time isn't it when or the period when Fer-Aim was getting work worth millions from Diona?---The turnover was millions, yeah.

Yes, all right. Ausgrid work?---Mmm.

Right?---That's correct.

40

And, excuse me, after the work with Diona for Ausgrid jobs dried up - - -? ---Ah hmm.

- - - your relationship with Mr Cresnar ceased?---Well, we obviously didn't, didn't see him as much, he wasn't on any jobs I was on.

But previously you say you'd had a social relationship with him?---Yeah, that's correct.

But once you work for Diona on Ausgrid jobs started to dry up so too did your relationship with Mr Cresnar?---It wasn't because of that though.

Is it a coincidence?---No, as I said before we had a court case going.

10 Well, Mr Miskelly, I want to suggest to you that the reason that this payment for an airfare or for airfares occurred when it did was because that's when you were getting valuable work from Diona Pty Limited, Ausgrid work?---That's the same time, yeah.

And the reason that it happened at the same time is because you made a payment to Mr Cresnar because of something he did favourably to Diona and therefore to Fer-Aim Pty Limited or alternatively because you wanted him to?---Absolutely not.

20 The total value of this airfare or these airfares was around \$2,500 wasn't it? ---That's correct, yeah.

Mr Miskelly, you'd have to accept that that is a very generous payment to a mate for helping out put up a patio over three weekends wouldn't you?---It was more than three weekends. It was at least three weekends.

At least three weekends?---Yeah. That's - - -

In any event it's a very generous payment to a mate for helping out put up a patio isn't it?---That's your opinion.

30 Well, it's obvious isn't it?---Not to me.

You could have hired professional labour to carry out the work and not have to do it yourself at all for that sum of money?---No, I don't think so.

Mr Miskelly, your explanation for the payment that you made for Mr Cresnar's benefit is a lie?---It's not a lie.

I have nothing further for this witness.

40 ASSISTANT COMMISSIONER: Thank you, Mr Gartelmann. Does anyone seek to cross-examine this witness? Yes, Mr Sutton.

MR SUTTON: Thank you, Commissioner. Mr Miskelly, my name is Sutton, S-u-t-t-o-n?---Yeah.

I appear for Mr Cresnar. Do you understand that?---I do, yeah.

I think you said before that you first came to – excuse me a second and I apologise for sniffing, I've got a cold at the moment – around 2008. Can I suggest to you it was more like 2009/10?---Two thousand and what, sorry?

9 or 10. So closer to 2009 than it was 2008?---When I first started the company?

No, no, when you first met Mr Cresnar?---Oh, sorry, it could have been possibly, yeah.

10

Okay. And it's agreed is it not that you first met him because you were subcontracting to Diona and he was working at Ausgrid?---That's correct, yeah.

Okay. And you built up a social relationship and as you've said, he attended your home and assisted you with some construction works? ---That's correct, yeah.

20

Okay. You've referred to something as called a patio?---Yeah.

If I use the words deck and pergola to describe the same area of work, are we talking about the same thing?---Um, there's no deck, just a pergola over the top.

Okay?---Yeah.

And the patio itself, what's that, how is that made?---There's a paved area with um, laser light transparent roof on it.

30

Okay. And that's the construction that he helped you to make?---That's, that's correct, yeah.

Okay. Was there some work on a driveway as well?---Yeah, there was some help making the driveway too.

And that was about 20 square metres. Is that right?---Ah, probably about that, yeah, approximately.

40

All right then. Now, Counsel Assisting has put to you on a number of occasions that there was something that Mr Cresnar did for you- -? ---Mmm.

- - -either directly for Fer-Aim or indirectly through Diona. They've never suggested to you what it was. Do you have any idea what he's talking about?---No, no idea, sir.

And – one second. The cooling or straining of your relationship with Mr Cresnar?---Mmm.

You mentioned that was about a court case to do with a collapsing wall. Is that right?---That's correct, yeah.

Was that the job at 688 Princes Highway, Kogarah?---Yeah.

And was that where you were subcontracted by Diona and you dug along the face of a wall and that wall collapsed?---Yeah, could be, yeah.

10 Okay. And there were WorkCover proceedings?---Yeah.

And there's also District Court proceedings?---There was, but they're all finished now, it's over.

And civil proceedings?---Yeah.

Okay. Sorry, you say the District Court proceedings are finished, do you? ---Yeah, for Fer-Aim it's finished now.

20 Okay. Do you know if it's still ongoing for anyone else?---I don't know.

All right. So as a consequence of – I'll withdraw that. Is it fair to say that you were on one side of that litigation and Mr Cresnar's position was on another side of that litigation?---That's correct, yeah.

And is the Commission to understand then that you thought it more appropriate to distance yourself and Mr Cresnar from- - -?---That's correct, yeah.

30 - - -from, from ongoing social contact?---That's correct.

Okay. And there's also another connection between yourself and Mr Cresnar by way of Simon Treacy. Is that right?---That's correct. Simon Treacy used to work for him.

And to your knowledge Simon became a flatmate- - -?---Yeah.

- - -of Mr Cresnar?---With Phil Cresnar, yeah.

40 Yes, thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Sutton. Any re-examination?

MR GARTELMANN: No, thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you. May this witness be excused?

MR GARTELMANN: Yes, as far as we're concerned.

ASSISTANT COMMISSIONER: Thank you. That concludes your evidence, Mr Miskelly?---Ah hmm.

You are now excused?---Thank you.

10 **THE WITNESS EXCUSED**

[10.55am]

MR GARTELMANN: Commissioner, before moving onto the next witness there is a tender bundle of documents relating to the evidence given by the last witness relating to Fer-Aim Pty Limited. I would tender that now.

ASSISTANT COMMISSIONER: Yes, the tender bundle in respect of Mr Miskelly will be Exhibit 10.

20

#EXHIBIT 10 – TENDER BUNDLE FOR FER- AIM P/L – PATRICK MISKELLY

MR SUTTON: Commissioner, may I inquire, there was a suppression order that was, rather relief given to Counsel Assisting in relation to a certain page of Mr Miskelly's compulsory interview. Is that to be tendered just in its edited form of course?

30 ASSISTANT COMMISSIONER: Yes, I think when it's redacted it will be tendered so I'll mark it as Exhibit 11.

#EXHIBIT 11 – PAGE 315 OF COMPULSORY EXAMINATION OF PATRICK MISKELLY AT THE ICAC ON 14 MAY 2014

MR SUTTON: Thank you.

40 ASSISTANT COMMISSIONER: Yes, Mr Gartelmann.

MR GARTELMANN: Yes, Commissioner, I call Robert Ujszaszi.

ASSISTANT COMMISSIONER: Yes.

MR MUNRO: If the Commission pleases, my name is Munro, M-u-n-r-o, I seek leave to appear for Mr Ujszaszi.

ASSISTANT COMMISSIONER: Yes, Mr Munro, you're given leave to appear.

MR MUNRO: I can indicate he will take an affirmation and he will take the usual objection as well.

ASSISTANT COMMISSIONER: And he understands the effect of the objection?

10 MR MUNRO: Yes, he does.

ASSISTANT COMMISSIONER: Just take a seat there, Mr Ujszaszi.

MR UJSZASZI: Thank you, Commissioner.

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
20 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.

**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
30 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.**

ASSISTANT COMMISSIONER: Mr Ujszaszi, the effect of that is that nothing you say can be used except if it's found you've breached the Act or lied. Do you understand that?

40 MR UJSZASZI: Yes, Commissioner.

ASSISTANT COMMISSIONER: Yes, could the witness be affirmed, please.

ASSISTANT COMMISSIONER: Yes, take a seat. Yes, Mr Gartelmann.

MR GARTELMANN: Is your full name Robert Ujszaszi?---Ah, Robert Steven Ujszaszi.

10 Thank you. And Ujszaszi is, Ujszaszi is spelt U-j-s-z-a-s-z-i?---That's correct.

But we pronounce that Ujszaszi?---That's fine.

ASSISTANT COMMISSIONER: It's close enough, Mr Gartelmann, is what he's saying.

MR GARTELMANN: Mr Ujszaszi, do you know Phillip Cresnar?---Yes.

20 How do you know him?---Ah, he's a friend ah, that I met in, at university.

How long ago was that?---Oh, 14 years.

Have you remained friends since university?---Yeah.

Are you close friends?---Ah, reasonably, we're, I catch up with him every now and then so probably see him every couple of months.

You've been to his house I take it?---Yeah.

30 He's been to yours?---Yes.

Have you ever worked with Mr Cresnar?---Ah, not, not specifically, no.

Why do you qualify it in that way?---Oh, just that I've discussed power engineering and gotten advice from him but I've never worked with Phil and I've never worked for Ausgrid or any Ausgrid's contractors.

Right. But you've gotten advice from him?---Yes.

40 Has there ever been any payment in relation to any work-related discussions that you've had?---No.

Have you ever received money from Mr Cresnar?---Oh, we're friends so we've traded things and, yeah, I'm sure.

What sort of things?---Um, car parts, ah, I think music festival tickets, all various things.

Well, you've mentioned car parts. What car parts have you traded?---Um, electronics um, um, valves, different items.

What's the most expensive item that you've traded with Mr Cresnar?---Ah, I don't know. Some data logging equipment.

And what's that worth?---Um - - -

In ball park figures?---500.

10

All right. And you've used the word traded. By that do you mean you've swapped items?---Swapped um, paid. Just all sorts of different things.

All right. But you have not traded any item worth more than a few hundred dollars. Is that right?---I could have. To, to the – that's ah, to the best of my recollection.

I want to ask you about the period late 2009, early 2010. Do you understand that?---Ah, yes.

20

Is that a period you remember because you bought your first home?---That's correct.

And settlement occurred in February, 2010?---That's correct.

So presumably you entered into the contract six weeks or so prior to that?---Probably longer, the Christmas break.

I see. It was an extended settlement period?---I'd imagine so, yeah.

30

All right. So is it possible then that you might've entered into the contract in late 2009?---That's correct.

When you bought your first home you were eligible for the first home owner's grant?---That's correct.

What proportion of the purchase price were you able to put forward by way of a deposit for that purchase?---I can't recall. It wouldn't have been – it wasn't much.

40

Is it the case that you had pretty limited funds to put towards a deposit at that time?---That's correct.

And did you borrow some money from your parents?---Ah, yeah, they've lent me – like purchased things for me and lent me money but I can't recall any - - -

I'm asking you specifically about the deposit for your home purchase. Did you borrow some money from your parents in order to make up a minimum deposit for that purchase?---Ah, no, they were guarantor for the property.

They were the guarantors?---Yeah.

All right. But you put together the deposit yourself then. Is that right?---
Ah, with – yeah, with whatever funds I had and a combination - - -

10 Did you get any help from anyone putting together the deposit?---No.

No one gave you any money for that reason?---No.

Is it the case that you had effectively the minimum deposit that the bank would accept to give you a mortgage over the property?---Well, there was no real requirement because of the guarantor.

I see. All right. Can you tell how much the deposit was then?---Ah, no, I can't recall.
20

All right. But you've agreed that you had limited funds for a deposit at that time?---That's correct.

All right. So you were conscious of money at the time?---Ah, no, I wouldn't say that.

Why not?---I had a good salary so - - -

What was it?---Um, I would've made a hundred and – over 100,000 that
30 year.

All right. For whom – for working for whom?---Australian Rail Track Corporation.

All right. All right. Well, look, I want to ask you about an account – I'll withdraw that. A transaction conducted on a PayPal account in your name?
---Yeah.

Do you understand that?---Yes.
40

In fact I want to ask you about two transactions conducted on that account?
---Sure.

Firstly, you accept that you had a PayPal account in your name?---Yes.

Why did you set that up?---Ah, well, that particular account um, you – am I able to mention a previous examination or – am I able to mention it?

Well, there's a complication in doing so but why don't you just tell us about why you set up the account?---Ah, well, since, since that was, was mentioned I had a think about it and I can't really recall why but I vaguely recall um, having a conversation with Phil about the PayPal account and I think I set it up for him but that's, that's the best I can remember.

You set it up for him?---I believe so, yes.

The account in your name?---Yes.

10

Why?---Well, it was for me but he asked if he could transfer funds to me via PayPal. That's to my recollection.

I see. And why did he want to do that?---I don't know. I, I can't recall. I can't recall if it was eBay related or um, I'm not sure.

It's the case isn't it that Mr Cresnar at the time had his own PayPal account?---Ah, I believe so.

20

So why is that he wanted you to set up a PayPal account to transfer money?--I think he transferred money from his PayPal account to mine.

Yes. Why?---Um, I can't recall.

Look, it was a significant sum of money that was transferred, wasn't it?---It was. It was a reasonable sum.

It was a sum in excess of five and a half thousand dollars transferred from Mr Cresnar's PayPal account to your PayPal account?---Yes.

30

So you'd remember that you'd expect?---Well, not necessarily, I can't recall the, the purpose behind the transfer.

But you set up this account at the request of Mr Cresnar for this transfer to occur?---No, that's, well, that's fair enough, but um, I can't recall why, and I didn't, I didn't use that account for a while and then since I was prompted earlier, since I was prompted last year I tried to have a look at when I've accessed it and I tried to access it in 2013 and um, I recall then that I was going to logon and use it for something but I wasn't able to access the account so I just created another one in my um, in my new email address.

40

Look, I'm going to show you some documents related to your PayPal account?---Yep.

Do you understand that?---Sure.

I'm going to show you a document, it's page 1315. Do you see a document before you on the screen?---I do, yes.

Would you accept that that is an activity log relating to your PayPal account?---Yeah, definitely.

Can I take you to the – you’ll see that the entries in that are in reverse chronological order, in other words, most recent at the top, oldest at the bottom?---Yes.

Can I take you to the bottom entry?---Yes.

10

In the column headed Action- -?---Yes.

It says, “Web account created and user agreement accepted?”---Yes.

Now, would you accept that that means that that’s when you created your PayPal account?---Yes, I would.

And if you look at the column to the left you have the date, 12 October, 2009?---Ah hmm.

20

And a time which says 2.26.04, but I’ll- -?---Is that international time or what?

Yes, clarify that that is Pacific Standard Time, so it’s not Australian Eastern Seaboard Time. Do you understand that?---Yes.

All right. But in any event, on or about 12 October, 2009 you set up your PayPal account, right?---Yeah.

30

Now, if I can take you to about halfway up the document, do you see in the column headed Action the words, “Web bank random deposit initiated?”---Yes, I do.

I’m going to suggest to you that that corresponds to a payment being received into your PayPal account?---Yep.

And it’s the one that I mentioned a moment ago that is in excess of five and a half thousand dollars?---Yes.

40

So the activity log shows that the same day you set up your Web account, your PayPal account, you get funds which are we know in excess of five and a half thousand dollars?---Ah hmm.

Would you accept that?---Yes.

Now, bearing in mind that you get the money the same day you set up the PayPal account, surely you would have a recollection of why those funds were, why it was necessary for you to set up this PayPal account for the

receipt of those funds?---No, I don't, I'd, I'd forgotten all about the reason why I, I had um, set it up until I was prompted, so I can't recall when, like, I can't recall why it was specifically set up.

Look- - -

ASSISTANT COMMISSIONER: But do you say Mr Cresnar asked you to do it?---Yeah, from, from a vague memory I'm, I'm pretty sure that we discussed it.

10

Well, you must, you must have some memory about why he wanted you to do it?---It, it could have been eBay related ah, I'm not sure.

What does that mean?---He was trading a lot of items.

But he had his own PayPal account as I understand it. Why would he need you to set up this other one?---I'm not sure.

20 You have no idea?---No, I'm not, yeah, I'm not sure. I would have probably flippantly said no, no problem.

MR GARTELMANN: But it's more than just you flippantly saying no problem, you go and create the PayPal account - - -?---Yes.

- - - in your own name, correct?---Ah, yes, I can understand that.

And that gets linked to your bank account?---Yes.

30 Well, if you have any doubt about the matter, if you look at roughly halfway through that page in the, in the column heading, headed Action underneath the entry that I've just taken you to you see the words (not transcribable) bank add?---Yes.

And over in the right-hand column do you see a reference under the heading of - - -?---Yes, I do.

You see the reference there to St George Bank?---Yeah.

40 And that's your bank isn't it?---Yes, it is.

It's your account?---Yeah, I accept that.

So putting it all together you create a PayPal account at Mr Cresnar's request - - -?---Ah hmm.

- - - so that he can transfer your money from his PayPal account - - -?
---Yeah, or his credit card.

All right. Well, look, I'm going to suggest to you that the money was transferred from Mr Cresnar's PayPal account - - -?---Yeah.

- - - and then transferred into your PayPal account and then ultimately made its way into your bank?---Yeah.

Why?---I, I can't recall.

10 Look, Mr Ujszaszi, you need to understand that simply saying I can't recall can be construed as failing to answer questions required of you in this inquiry. Do you understand that?---I, I understand that.

Are you seriously suggesting that Mr Cresnar asks you to set up this account so that he can transfer you money and you have no recollection why?---No, I don't, I'm not sure why.

Look, Mr Ujszaszi, you're not telling the truth about your recollection of these transactions are you?---I am.

20 I'm going to ask you to have a look at another document and this is the, at page 1341. You see a document in front of you, Mr Ujszaszi?---I do, yes.

Now I'm going to tell you that this is a summary of PayPal account activity relating to both your PayPal account and that of Mr Cresnar. Do you understand that?---I understand, yes.

In effect it's a chronology of transactions across the two accounts?---Yes.

30 Now unlike the last document I showed you this one is in chronological order so at the top the oldest, at the bottom the most recent transactions. Do you understand that?---Yes.

Now if you have a look over at the right-hand column under the heading PayPal Account Name you'll see the name of the account that the activity occurs on?---Yes.

The first two entries there relate to activity on Mr Cresnar's PayPal account. Do you see that?---Yes.

40 And then if I can take you to the second line, that is the second entry - - -? ---Yes.

- - - and about the middle of the page you'll see a column there Debit/Credit?---Um, ah, yes.

Now if you look a little bit further over to the left under the, in the column headed Amount you'll see a figure of \$5,758.15?---Yes, I do.

And in the column to the right of that Credit Card Payment and then there is a credit card number, and I'll only read to you the last four digits of that, 8-9-0-8, all right, do you see that?---Yes.

So I want to suggest to you that that reflects a transaction occurring on Mr Cresnar's PayPal account whereby the sum of \$5,758.15 is in effect coming into the account from that credit card?---That's fair enough.

10 Now if you have a look over to the left you'll see in the heading – in the column headed Time AEST, which you will understand to mean Australian Eastern Seaboard Time. Correct?---Yes.

You'll see the time that that occurs being 21.08.29?---Yes.

You can understand that means a little bit after 9 o'clock?---Ah hmm.

And you'll see further to the left a date 12 October, 2009. Right?---Yes.

20 Now can I draw your attention to the next line down. Let's go firstly over to the right-hand column. You'll see the PayPal account name in which the activity occurs is yours?---That's correct.

And then if you go to the fifth column from the left under the heading Description/Action you'll see web account created and user agreement accepted?---Yes.

And then going over to the date and time columns you'll see that it's the same day and the time is 21.26.04?---Yes.

30 So a little bit after perhaps 18 minutes, 17, 18 minutes after Mr Cresnar conducts this transaction on his PayPal account getting a little over \$5,500 from a credit card you create your PayPal account?---Yeah.

You'd accept that those two events occurred in a fairly short space of time?---That's, that's fair enough, yes.

Were you – I'll withdraw that. Were you with Mr Cresnar at the time that he made that transaction?---I believe so. I think so.

40 All right. Did he tell you what he was doing?---Um, I, I can't recall. I, I'm not sure.

Well, you say I believe so. Why do you believe so?---Um, I've got a vague recollection of sitting with him at his computer but I'm not sure. Again I, I only recall this since I've been prompted.

Look, Mr Ujszaszi, you've got a recollection of sitting there with Mr Cresnar at his computer. You've got a recollection that Mr Cresnar asked

you to set up this PayPal account. You're setting up the PayPal account within a matter of minutes after he's conducting a transaction on a credit card. He's transferring money from his PayPal account to your PayPal account?---Yeah.

Surely, Mr Ujzaszi, you know what it's about?---I'm not sure. It could've been an eBay purchase or something along those lines.

10 Why would it be an eBay purchase?---I don't know.

Because he's sending money from his PayPal account to your PayPal account. What's that got to do with eBay?---I'm not sure. I'm just speculating.

It's totally speculative, isn't it, yet you have a recollection that he asked you to set up the account so he can transfer you money?---A vague recollection, yes.

20 And you have a recollection of sitting next to him at his computer?---It's a vague recollection.

But nonetheless you have a recollection?---(No Audible Reply)

Look, Mr Ujzaszi, I want to suggest to you that Mr Cresnar obtained those funds from a credit card belong to a man named Jason Bastow?---Okay.

And then he's obtained those funds into his PayPal account and then transferred them to your account?---Okay.

30 Were you helping Mr Cresnar to launder some money?---No. I would've thought that that would've come for his credit card.

Why on earth were you taking the money from Mr Cresnar's PayPal account that he'd obtained from Mr Bastow?---I don't know.

Look, Mr Ujzaszi, I want to suggest that you do know and you're not telling the truth?---No, that's incorrect.

40 Can I take you to about halfway down the table?---Yeah, sure.

You'll see some entries there relating to the date 14 October, 2009. Looking at the left-hand column?---Yes.

Now, can you see in the time, Australian Eastern Standard Time column, the third column along, an entry at 21.22.55, do you see that?---Yes, I do.

And then in the Amount column we see an amount of \$5,619.65?---Yes.

And then in the Description column we see the words, “Withdraw funds to bank account.”?---Yes.

Now, if I could take you to the far right column you’ll see that that account activity occurs on your PayPal account. Do you see that?---Yes.

Would you accept that that reflects that the money that the money that had been transferred two days previously was going into your bank account?

---Ah, yes, well, the, the account was linked to the PayPal account so - - -

10

Yes. So what did you do with it once it got into your bank account?

---I don’t know, I can’t recall.

Are you seriously suggesting you have no recollection of what you did with those funds?---I am.

Notwithstanding that you have a recollection that Mr Cresnar’s asked you to set up this PayPal account so he can transfer you money?---It’s, it’s a vague recollection and only since you prompted me.

20

And notwithstanding this prompting you still have no explanation for what happened to the money?---Well, I don’t know what I would have done with it.

Is it possible that you gave or withdrew the money out in cash from your bank account- - -?---Don’t think so.

- - -and gave it to Mr Cresnar?---No, I don’t think so.

30 Can I draw your attention to another transaction, I think four lines below the one I’ve just taken you to?---Ah hmm.

This transaction occurs on 8 February, 2010?---Yes.

In the column headed Time, Australian Eastern Standard Time, we see the entry 18.05.40. Do you see that?---Yes.

And then beside that in the Amount column we see the figure \$1,236?

---Yes.

40

And then in the column to the right of that we see “Credit card payment from,” and then there is a credit card number ending in the digits 8-9-0-8?

---Okay.

The same credit card we were dealing with before, you understand?---Yes.

And then if we look over in the far right-hand column you'll see that the account activity occurs in the PayPal account of Mr Cresnar?---Ah, yes, I do, yeah.

And then in the column to the left of that and headed Action and Data you'll see it says, "To Robert Ujszaszi," and then it has an email address which I trust was the email address you had linked to your PayPal account?---That's correct, yeah.

10 All right. Would you accept that that reflects Mr Cresnar making a transaction on his PayPal account sending – I withdraw that – obtaining money from the credit card, the number of which I read out a moment ago, in the sum of \$1,236?---Yeah, yes, I accept that um, he transferred the money into my account.

Can I draw your attention to the line below, the column headed Description/Action says, "You've got funds. Credit card payment from Phillip." And then if you have a look at the far right-hand column you'll see that the account activity occurs on your PayPal account?---Yes.

20

So would you agree with me that that reflects that the money that Mr Cresnar had obtained from that credit card ending 8-9-0-8 was sent via Mr Cresnar's PayPal account to your PayPal account?---Yes.

So there were two transactions occurring between your respective PayPal accounts. Do you understand that?---I accept that, yes.

30 Surely given that there were two transfers of money you would have a recollection of why it occurred?---No, I certainly don't recall the second one.

But you do recall the first?---No, I vaguely recall discussing the PayPal account set-up with Phil and it possibly being at his house, but that's the best of my recollection.

40 Well, look, let's go a few, another four lines down. You'll see in the far left-hand column the date, 15 February, in the date and time, I'm sorry, the Time column for Australia Eastern Standard Time the entry 19.50.49 and you see there in the Description/Action column the words, "Withdraw funds to bank account." And then we have a look over in the far right-hand column and that confirms that that activity is occurring again on your PayPal account?---Yeah.

Would you reflect, understand that that reflects that the money that Mr Cresnar had sent to you about a week before via PayPal you accessed or had access to through your bank account?---Yes.

What happened to that money?---I'm not sure, I can't recall, I can't recall it being deposited in there in the first place.

Look, Mr Ujszaszi, you must understand that simply saying I can't recall repeatedly can be taken to be failing to give evidence - - -?---I understand that and - - -

10 - - - failing to answer questions?--- - - - and that's, that's why I'm, I'm giving you a vague recollection of, of discussing it with him, that's because that's the best of my recollection, I thought that was better than saying I can't recall.

It does not appear, Mr Ujszaszi, that your PayPal account was used other than for these two transactions in this period at all?---No, it wouldn't have been and um, I forgot about – look, until you prompted me I actually was using another, my family's PayPal account to generally do eBay purchases and then I tried to log into this account to use it for myself in 2013 'cause I, I remembered that I had an account of some sort but I wasn't able to log back into it.
20

All right. So after you received the two payments from Mr Cresnar via PayPal no further activity on that account until you try and access it in 2013?---Ah, I believe so, yeah.

But you remembered that you had the account in 2013, that's why you tried to access it?---I think I um, I went to set one up or I recalled I had one but - - -

30 Did Mr Cresnar ever have access to your bank account?---I don't believe so.

Did you ever provide him with your user name and password for online banking?---I, I don't think so, it's possible but I don't think so.

Well, there was no reason for that to occur as far as you are concerned? ---No, I don't think so.

40 Look, Mr Ujszaszi, one final time you've set up this PayPal account it appears exclusively to conduct these transactions with Mr Cresnar, you'd accept that?---At the time, yes.

Well, they haven't been used since have they?---I've, I've tried to use it but um, I haven't been able to use them.

All right. So you set it up exclusively to conduct these transactions with Mr Cresnar didn't you?---I would have set it up for, for Mr Cresnar to send me some funds but I, I can't recall what it was for.

Look, Mr Ujszaszi, you're not telling the truth in your evidence about your knowledge of those transactions are you?---I disagree with that.

And you've got no explanation for what happens to something in the vicinity of \$7,000 transferred by Mr Cresnar into your PayPal account and then transferred by you into your bank account?---No, I don't recall it, I would have, I would have – he would have requested me to set it up and it, it probably wouldn't have meant much to me at the time.

10 Did Mr Cresnar tell you anything about Mr Bastow?---No.

Did he say anything to you about whose credit card he was conducting these transactions on?---No.

And you have a recollection that you were sitting next to him at the time you set up your PayPal account, correct?---I believe, I believe so, yes.

And that occurs a matter of minutes after he conducts transactions on Mr Bastow's credit card?---Okay.

20

You understand that?---I do but I wouldn't have known whose credit card it was.

Well, I've told you that, that the number ending 8-9-0-8 is a credit card relating to a Mr Jason Bastow?---I, I accept that but it's, a credit card number wouldn't have meant anything to me at the time.

30 All right. Well, notwithstanding that it's only a matter of 17 or 18 minutes prior to you creating this web, this PayPal account for Mr, for Mr Cresnar at his request you have no knowledge about these transactions?---I, I, I can't recall.

You're not telling us - - -?---It's possible I, we conducted it over the telephone but I vaguely recall being at his place, whether that's another time that I was there I – as I said, it's a vague recollection.

Excuse me, Commissioner. Yes, I have nothing further. Thank you.

40 ASSISTANT COMMISSIONER: Mr Ujszaszi, if Mr Cresnar was there when you set it up would he have been able to access the PayPal account himself?---Yes, I probably would've provided him the details.

So he would've known the password and whatever details were necessary to access this account himself?---I believe so, yeah.

Was that the purpose of it, that he could use this PayPal account?---I can't recall. I just – I vaguely recall setting it up, discussing it with him and, and

probably setting it up at his request and I possibly would've just handed him the, the log in details.

Because you at that time didn't intend to use it yourself?---No. Well, at, at the time I was using my family's PayPal um, account to um, to do eBay purchases so it wasn't unusual to use somebody else's account for something.

10 No. All right. Thank you for that. Does anyone wish to cross-examine this witness?

MR SUTTON: I have no wish to cross-examine but may I just seek a point of clarification, and it might have been my error in note taking and it may reflect on the witness and something Counsel Assisting says. My original note in relation to that credit card was that it was Mr – the Counsel Assisting said it was Mr Cresnar's credit card and then just in the final questions it was – appears to have been changed or clarified but perhaps my notes were wrong.

20 ASSISTANT COMMISSIONER: On both occasions he said it was Mr Bastow's credit card.

MR SUTTON: Thank you. Then I have nothing further.

ASSISTANT COMMISSIONER: Yes.

MR SUTTON: Thank you.

30 ASSISTANT COMMISSIONER: Thank you. Nothing from you, Mr Munro?

MR MUNRO: Yes, Your Honour. Briefly.

ASSISTANT COMMISSIONER: Thank you.

40 MR MUNRO: Mr Ujszaszi, you were asked some questions by Counsel assisting about whether you were helping Mr Cresnar launder some money or words to that effect. Do you remember that question being asked?---Ah, no, no. No.

You don't remember that question being asked by Counsel Assisting?---Oh, sorry, the question?

Yeah?---I do. I do.

12 October, 2009 you set up the PayPal account. Does that sound right?
---Ah, yeah, looking at the records so - - -

And can I assume that in setting up that account you had to answer a series of questions that were asked by, by PayPal. Is that right?---I believe so, yes.

And one of the things that you had to do was to put in an email address. Is that right?---Yes.

And you put in the email address that was indicated in that document. Is that right?---I believe so, yes.

10 It's – was that an email address that you had previously been using?---Yeah, I used it all the time.

As of that date, that is October, 2009, how long had you had that email address for?---Ah, probably several years.

And that's an email address you also use professionally. Is that right?---Ah, at that time, yes, it was.

20 You were also asked as part of the application process to provide some bank details. Is that right?---Ah, I believe so, yes.

And you did that, provided some bank details. Is that right?---I would have, yeah.

And was that a St George account to the best of your memory?---Yes.

And is that a bank account that you had at that time been established for a number of years?---It was, it was for some time.

30 And you regularly used that bank account did you?---Yes.

Do you consider yourself – at the time did you consider yourself relatively computer savvy?---I did, yes.

So you understood that the information that you were providing in the application would be kept by PayPal?---Yes.

40 Similarly, when Mr Cresnar transferred some funds to you via PayPal did you understand that it was likely that that transaction could be traced?
---Yeah, certainly.

Did you ask Mr Cresnar where he got the funds from when he transferred the funds to you?---I don't believe so. I can't really recall the specific transfer.

And is that because you've been friends with him for a number of years?
---Yes. Yeah, I was friends with him for eight years prior to that.

And you trusted him?---Yes.

I just want to take you to page 1341. If that could be shown to the witness please. Mr Ujszaszi, as I understand it this is a summary of a document that's been created by someone that works for ICAC?---Yes.

On the left-hand, it was said to you that this appears in – these transactions appear in chronological order. I just want to take you to the left-hand column that says Date. Do you see that?---Yes.

10

I just want to take you to the second-last entry on that column. It indicates of a date of 15 February, 2009. Do you see that?---Yes.

And it said that on that particular date you had a closing balance on your credit card as I understand it of \$5,691.85. Do you see that?---Yes.

Could the witness please be shown page 1192. Do you understand that to be page 3 of 3 of Platinum Credit Card Statement from St George Bank for you?---Yes, I do, that's my credit card.

20

And would you accept from me that the date period that that statement is referable to is between 16 January, 2010 and 15 February, 2010?---Yes.

And do you see that on page 1192 the last entry is for 15 February?---Yes.

And the balance for that appears to be \$5,691.85. Do you see that?---Yes.

Do you accept that therefore the entry on page 1341, that is the summary prepared by ICAC, would appear to be a typographical error?---Yes.

30

And that was in fact the balance on your credit card as of 15 February, 2010. Is that right?---Yes.

Thank you.

ASSISTANT COMMISSIONER: Yes, thank you, Mr Munro.

MR GARTELMANN: I don't have any re-examination but we acknowledge that what's just been put to the witness is correct, that's a typographical error.

40

ASSISTANT COMMISSIONER: Thank you for that. Well, that concludes your evidence, Mr Ujszaszi, and you are now excused?---Okay, thank you, Commissioner.

THE WITNESS EXCUSED

[11.37am]

ASSISTANT COMMISSIONER: We will now take a 15 minute adjournment.

SHORT ADJOURNMENT

[11.37am]

MR GARTELMANN: (not transcribable) Eamon Burke.

10 ASSISTANT COMMISSIONER: Yes, is Mr Burke here?

MR STORIE: Good afternoon, Deputy Commissioner. Storie's my name, S-t-o-r-i-e. I appear for Mr Burke who is in attendance today.

ASSISTANT COMMISSIONER: Yes, Mr Storie, you're given leave to appear for Mr Burke. Have a seat, Mr Burke.

MR STORIE: Thank you. I hand up an appearance notice.

20 ASSISTANT COMMISSIONER: Mr Storie, does Mr Burke wish to seek an order under section 38?

MR STORIE: Yes, I was about to make that application. On the last occasion I think on 19 August that order was made and I'd ask that it be continued or renewed today, thank you.

ASSISTANT COMMISSIONER: And your client understands the effect of such an order?

30 MR STORIE: Yes.

ASSISTANT COMMISSIONER: Thank you. 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.

40

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.**

ASSISTANT COMMISSIONER: Mr Burke, will you take an oath on the Bible or do you wish to make an affirmation?

MR BURKE: On the Bible.

10 ASSISTANT COMMISSIONER: Thank you.

ASSISTANT COMMISSIONER: Mr Burke, the order I have made protects you from having the evidence you give here used against you except in cases where it's found you've breached the Act by giving false or misleading evidence. Do you understand that?---I do.

Thank you. Yes, Mr Gartelmann.

10

MR GARTELMANN: Your full name is Eamon Burke?---Yes.

Eamon is spelt E-a-m-o-n?---Yes.

And Burke is spelt B-u-r-k-e?---Yes.

Mr Burke, are you the sole director and shareholder of a company named Cloughcor Pty Limited?---Yes.

20

And Cloughcor is spelt C-l-o-u-g-h-c-o-r?---Yes.

Now you've recently changed the name of the company, is that right? ---Yes.

And it's now called Burke Pipe & Civil - - -?---Yes.

- - - Pty Limited, is that right?---Yes.

30

You might need to keep your voice up a little bit so that everybody can hear it?---Yes.

Did you set up Cloughcor Pty Limited in about 2006?---Yeah, yeah.

And after that did Cloughcor Pty Limited begin to do work as a subcontractor to Diona Pty Limited?---Yes.

You were a former employee of Diona weren't you?---Yes.

40

Diona Pty Limited carried out work as a contractor for Ausgrid, that's right isn't it?---That's right.

And Cloughcor's work for Diona was Ausgrid work?---Yes.

I want to ask you particularly about the period 2011/2012, do you understand that?---Yes.

At that time it's the case isn't it that most of Cloughcor's work was with Diona?---Yes.

80 per cent or more?---Yeah, it could have been, yeah, yes.

And all of the work that Cloughcor did for Diona Pty Limited was Ausgrid work?---Ah, yeah, there was some, some ah, yeah, mostly all the (not transcribable) yeah.

Almost all?---Yes.

10 Well, in the period that I've just mentioned, 2011/2012, Cloughcor received payments from Diona in the vicinity of nine odd million dollars. Would you agree with that?---No.

Sorry, I might have that figure wrong. Excuse me one moment. All right. Well, look, just dealing with it year by year, in 2011 Cloughcor received payments from Diona Pty Limited in the vicinity of \$3,800,000?
---I wouldn't be sure but I don't exactly know.

Is that consistent with your memory?---On one year?
20

Yeah?---No.

Well, dealing with the next year, 2012, did Cloughcor receive payments from Diona in the vicinity of \$2,800,000?---I don't think it was that, no.

All right. Perhaps we can just deal with it this way. Was Cloughcor receiving payments from Diona Pty Limited that were at least into the millions?---Not into the millions, no.

30 Well, what's your recollection of how much Cloughcor received from Diona Pty Limited about- -?---Within one year?

Yes?---Ah, it would be close to a million.

All right. In any event, it was very valuable work to Cloughcor, wasn't it?
---Yes.

The contract work that you did for Diona on Ausgrid jobs was valuable to Cloughcor?---Yes.
40

All right. Do you know Phillip Cresnar?---I do.

You understand he was formerly an officer at Ausgrid?---I do.

Did you know Mr Cresnar before you set up Cloughcor?---No.

Did you have a relationship with Mr Cresnar outside work?---No.

Have you ever been to his home?---No.

Has he ever been to yours?---No.

So you met Mr Cresnar when you, that is Cloughcor, was doing work for Diona Pty Limited on Ausgrid jobs?---Yes.

Was Mr Cresnar to your understanding an Ausgrid contract inspector at the time?---Yes, he was an inspector, yeah.

10

He'd come around to sites where Cloughcor was performing work for Diona on Ausgrid jobs and inspect what you were doing?---Yes.

And you understood that he was responsible for signing off on work that you had completed?---Yes.

To certify that it had been completed and to a satisfactory standard?
---That's correct.

20

You understood that Mr Cresnar as an inspector for Ausgrid contract work could approve variations to contracts for Diona?---Yes.

And a variation might have the effect of increasing the payment that Diona might get from Ausgrid for the work?---Yes, for the variations, yeah.

And indirectly that may benefit Cloughcor because it in turn gets more work from Diona, right?---That's right.

30

Now you've mentioned that you were the sole director and shareholder of Cloughcor Pty Limited but of course you've employed a number of staff over the years, haven't you?---Yes.

Now you employ admin staff?---That's right.

And you commenced to employ admin staff in around 2012 or perhaps 2013?---Ah, I think it'd be '13.

I'm sorry?---I think it was about 2013.

40

All right. So going back to the period 2011/2012 you didn't have admin staff at Cloughcor?---That's right.

Is it the case that your wife Mary Burke helped you with the books of Cloughcor back before you employed admin staff?---That's right.

Your wife's involvement in Cloughcor was only to help with admin such as paying expenses, wages and going through accounts to crosscheck transactions, that kind of thing?---Yes.

She had no involvement in the management of Cloughcor?---No, not in the management.

She didn't have any involvement in the work that Cloughcor actually carried out?---No.

So she never had any dealings with Ausgrid officers?---No.

10 Or Diona officers?---Yeah, she was dealing with Diona.

All right. When your wife was doing the admin work she would get to know what kind of expenses were regular expenses for Cloughcor?---Yeah, I guess so.

And she would pay those expenses out of the Cloughcor company account? ---Yes.

20 Some of those expenses no doubt, regular expenses she'd get to know, she could pay without asking you. Is that right?---That's right.

But other expenses that were out of the ordinary she might need to ask you about. Correct?---That's correct.

And then you'd tell her whether to pay the expense or not. Right?---Yes, yeah.

30 Now you also had an accountant at this period of time, 2011/2012. Is that right?---That's right.

But your, your accountant had no role in the management of the business did he?---No.

He was just responsible for preparing annual returns for tax purposes and the like. Right?---That's right.

In 2011/2012 Cloughcor's bank accounts were with the Commonwealth Bank?---Yeah.

40 You had a check account for the company with the Commonwealth?---I don't exactly remember but, yeah, I had, I had accounts there. I don't know if it was cheque or savings or credit.

Well, did Cloughcor ever write cheques?---Yes.

So it must've had a cheque account?---That's right, yeah. That's right.

Was that cheque account with the Commonwealth in 2011/2012?---Yes.

Did it also have what's known as an on-line saver account?---It probably did, yeah.

An account where you'd earn a little bit more interest than you might on the cheque account. Is that right?---I believe so, yeah.

Well look, Mr Burke, you were the account holder in effect for Cloughcor weren't you?---That's right.

10

So you were a signatory to the accounts?---Yes.

You could write cheques for Cloughcor?---Well, my, my writing's not that good but I can sign – I signed cheques, yeah.

All right. Your wife couldn't write or sign cheques for Cloughcor could she?---I don't know. She could at that time. Yeah, she could, yeah. Yeah, I think so.

20

She wasn't a signatory to the account was she?---I'm not sure.

You controlled the chequebook for Cloughcor didn't you?---Yeah, I had a chequebook, yeah.

But what I mean is that you kept it in your possession?---That's right.

Now I think you've agreed that Cloughcor had an online saver account so it follows that you had access to internet banking for your Cloughcor company accounts, right?---My wife done a lot of that, yeah.

30

All right. So your wife had access to the account and she could transfer money between the online saver and the cheque account - - -?---I believe so, yeah.

- - - that Cloughcor held. Back in 2011/2012 you'd get statements from the bank sent to you either at your home or your business address showing the transactions that occurred on the company accounts, is that right?---Yes.

40

And your wife would go through those statements for you to look at the transactions and check that they were okay wouldn't she?---Yeah, that was part of her role, yeah, it was part of it.

And if she was in doubt about any transactions she'd ask you about it, correct?---Correct.

And then you'd tell her what was the case with any particular transaction? ---Yeah, if I – yeah.

And at the end of each financial period those statements were provided onto your account for the purposes of preparing annual returns for the company and the like, is that right?---Say that again, sorry?

At the end of each financial period, accounting period, those statements would be provided, the bank statements would be provided to your accountant?---I believe so, yeah.

10 Now you've mentioned that Mr Cresnar had the capacity to approve variations for contracts Diona had with Ausgrid and that they might benefit indirectly Cloughcor, you understand that?---Say it again.

You've accepted that Mr Cresnar had the capacity to approve variations for contracts Diona did for Ausgrid, correct?---That's right, yeah.

And you've accepted that those variations might indirectly benefit Cloughcor because it was doing its work for Diona, correct?---That's correct.

20 What I want to ask you is this, have you ever given Mr Cresnar anything to help make sure that he made variations that were to the benefit of Cloughcor?---No.

Have you ever paid for anything for Mr Cresnar?---No.

Have you ever provided him with cash?---No.

30 Have, have you ever provided him with cheques?---Since the last time we were here, yeah, there was evidence saying that I did but not that I give it to him anyway but there's evidence saying that he had them cheques.

Well, let's just be clear about what you're saying there. Are you saying that you have no recollection of giving Mr Cresnar a cheque?---That's correct.

Any cheque at all?---Any cheque.

ASSISTANT COMMISSIONER: So you've never agreed to pay for anything for Mr Cresnar?---No, ma'am.

40 MR GARTELMANN: Has Mr Cresnar ever asked you to pay for anything?---No.

Has he ever asked you for anything at all?---No.

All right. Well, look, I'm going to show you a document, it's page 556. You see a document in front of you on the screen?---I do.

You would accept that that's a copy of a Cloughcor Pty Limited cheque?

---Yes.

Now, I understand that you have some limited reading capacity. Is that right?---Yes.

But you can read figures, numbers, can't you?---Yes.

Can I draw your attention to the bottom left-hand corner of the cheque and do you see there some figures 0-0-0-1-1-9?---Yes.

10

Would you accept that that's the cheque number for that particular cheque?---Yes.

All right. Now, on the right-hand side of the cheque we see some number, 60,024?---Yes.

Now, would you accept that that is an amount of \$60,024?---Yes.

20

Firstly, do you recognise the signature on that cheque?---I do.

Whose is it?---It's mine.

Do you recognise any of the other handwriting on the cheque?---No.

It's not yours, is it?---No.

And you're quite familiar with your wife's handwriting, aren't you?---Yes.

30

It's not your wife's, is it?---I don't know.

You don't know?---No, it's not.

All right. You can see that the cheque's made out to a business called Dan Kitchens. You can see those two words there?---Yes.

Who's Dan Kitchens?---I don't know.

But it's your company cheque. Correct?---Yes.

40

And it's got your signature on it. Correct?---Yes.

It's in the sum of a little more than \$60,000. Right?---Yes.

And you have no idea why your company cheque in that sum signed by you would be made out to Dan Kitchens. Is that what you're saying?---Yes.

Well, have you ever bought anything from Dan Kitchens?---Not that I know about, I don't honestly know, no.

And Cloughcor Pty Limited has never bought anything from Dan Kitchens?
---According to this it does, yeah.

All right. But according to your recollection it hasn't, has it?---No.

Well, Cloughcor's in the business of civil works, isn't it?---Yes.

10 So it wouldn't have the need for a \$60,000 payment to what appears to be a kitchen business, would it?---No.

You'll see the date on the top right-hand corner, it says 26 May, 2011. Do you have knowledge – I withdraw that. Did you know back at around that time that a cheque in that sum had been drawn on your account?---No.

Did anyone bring it to your attention at around that time?---Not that I can recall, no.

20 Right. Well, I'm going to show you another document, it's page 562. You see a document on the screen in front of you?---Yes.

It's a copy of a page of a bank statement for yourself or it's in relation to Cloughcor Pty Limited but it's addressed to yourself, isn't it?---Yes.

You'd accept that that's a statement in relation to the Cloughcor business account?---Yes.

30 I'm going to show you the next page, 563. Now, I want to draw your attention to a transaction at about three-quarters of the way down the page. Do you see on the left-hand side there's some dates set out?---Yes.

I'm going to ask you about a transaction on 27 May, do you see where the cursor is, do you see that, the date - - -?---Yeah.

- - - beside that, just see just beside the date there is the numbers 000119?
---Yes.

40 And you know that's the number of the cheque that you were just shown a short time ago?---Yes.

And then if we look over to the right about two-thirds of the way across in the debit column we see the figure \$60,024, right?---Yes.

So you'd accept wouldn't you that that shows that that cheque made out to Dan Kitchens was drawn on your account and debited your account by a little more than \$60,000?---Yes.

It's a big sum of money to go out of the Cloughcor company account?

---Yes.

In fact it's, it was so much that if you look over on the right-hand side of the page on that same line you'll see that there's this figure, \$41,173.14 and beside that the letters DR, do you see that?---Oh, yeah.

And what we're talking about here is in the balance column of the statement?---Yes.

10 You understand that DR means the account was overdrawn, it was in debit, you understand that don't you?---Yes.

So that \$60,000 cheque caused your Cloughcor company account to be overdrawn by more than \$40,000 didn't it?---Yes.

Now you've told us that your wife would check the Cloughcor statements and look for transactions if she was in, if she was in any doubt about a transaction she'd bring it to your attention and ask you about it, that's right isn't it?---Yes.

20

So did your wife notice that your account had been overdrawn by more than \$40,000 and bring that to your attention?---She could have, yeah, she could have.

Are you saying you don't have any memory of that?---I don't recall that anyway, no.

30 Was it a common thing for your account to be overdrawn by tens of thousands of dollars?---Ah, it was just the one, like I have a couple of accounts like ah, you're focussing on that one account so - - -

And I'm asking you whether or not it was a common thing for that to happen?---Yeah, on the accounts, yeah, that it goes up and down a lot.

But to be overdrawn by more than \$40,000, you're not suggesting that was a common thing to happen?---I think it is.

Surely your wife would have noticed that and brought it to your attention?---She probably could have, yeah.

40

And she would have asked you what's that cheque about?---Yeah, she might have, yeah.

Well, look, if you look at the next line down, and this is if we go over to the far left you'll see it relates to 30 May?---Ah hmm.

And you'll see beside that the words "NetBank TFR" and underneath that "Online saver"?---Yeah.

And then if we go over towards the right about three-quarters of the way across we see the figures \$60,000 and that's in the credit column, so you understand that what that reflects is that on 30 May someone having access to the Cloughcor company account transferred \$60,000 from the online saver account into the cheque account?---Yes.

And that's because the account was overdrawn by more than \$40,000, right? ---Yes.

10

Now as I understand your evidence your wife had access to internet banking on the Cloughcor business account?---That's right.

And so your wife must have made that transfer from the online saver account to the cheque account to bring the account back into the, into the black, would you agree with that?---Yes.

20

So after that cheque was presented and the money went out of the account within, within three days your wife's noticed the money's gone out, the account's overdrawn by more than \$40,000 and she's transferred money back into the account from the online saver account, right?---Yes.

Now surely your wife must've asked you about what that payment was about?---She could have, yeah.

Are you suggesting you have no memory of it?---I don't remember it, no.

30

Surely your wife must've been a little alarmed about an unusual payment, more than \$60,000 causing the account to be overdrawn?---You'd have to ask her that. Maybe she was.

We have to ask your wife about that?---Maybe she was over alarmed. I don't know.

Surely she told you she was concerned about it?---She could have.

40

ASSISTANT COMMISSIONER: Well, but what would you have said? You must have had a look and seen what the cheque was for?---We've got money in other accounts like ah, probably if I had enough to keep us going that's, that's what I was – like as long as we had enough money.

So you're saying as long as you had enough money to cover the cheque you didn't care what it was for?---Not if we had enough money for our upkeep of the house. That's what I was concerned about.

Yeah. So you didn't care if somebody had taken 60,000 out of your account by writing a cheque for something you didn't even know about?---Well, I do care, yeah, but - - -

Well, you don't really sound as though you care?---Yeah, well - - -

You don't really sound as if you're taking any of this very seriously at all. You're quite happy to give answers that don't seem to have any contact with reality or what a business would do?---Ah hmm.

10 So I'd like you to think about this. You think it's likely your wife would have brought this to your attention and said what's this \$60,000 cheque for that's overdrawn the account. You would've made some inquiries wouldn't you?---I probably would have, ma'am, yes.

And found out it was a cheque to Dan Kitchens?---I would have found that out.

And what would you have done about that?---How would I have found that out – can you find that out?

20 Well, did you try to find out anything about this cheque?---No, ma'am.

So what did you do, just said don't worry about it, transfer 60,000, let's move on?---I didn't say transfer 60,000. I just, just - - -

Well, what did you do?---I just go again and work as hard as I can, ma'am, and that's the best that I can do.

So you did absolutely nothing to try to find out what this cheque was about? ---That's right.

30 MR GARTELMANN: So are you suggesting that if money does missing out of your account you do nothing about it except work harder to get more money back in?---Well, I wouldn't say it just like that but, yes, it's like that. Yeah, you just have to keep – you keep – you've got to keep going, do the best you can.

Look, Mr Burke, you're not giving truthful evidence about your knowledge of that transaction are you?---Yes, I am.

40 You must have had some knowledge about what that cheque was used for? ---I don't recall it.

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

ASSISTANT COMMISSIONER: But you signed it?---Yes, ma'am.

Well, there's only a few options. Either you signed it knowing what it was for or you signed it and your wife or somebody wrongly gave it to somebody else or it was stolen from you. What are you saying, what do you

think happened?---Well, it's – as I say you know what happened with it. I can see what, what it is. That's, that's what happened to the cheque but at the time I didn't know – I don't know. That's what I'm saying.

Well, I'm trying to ask you to give us some explanation about how your signature ended up on that cheque?---Well, as I say I do – sometimes I do have to sign cheques on – like we had a few companies for ah, tips and things that we had to give them a blank cheque signed so at the end of the month then they tallied up the loads so as I say from time to time we do
10 have to sign cheques, blank cheques sort of.

So you're saying this was signed as a blank cheque you think?---I – that's what I can – that's – as I say I have no knowledge of where it went and how it was filled in.

But Mr Burke, even if you signed a blank cheque and gave it to someone, your wife must have brought it to your attention when she realised the account was overdrawn by more than \$40,000, she must have asked you about it. You must have made some inquiry to find out what had happened
20 to this supposedly blank cheque that you'd signed?
---I didn't make no inquiry into it.

Well, how did you know what to do with this expense when it came time to prepare your financial returns for your accountant or with your accountant, how did you know what to tell your accountant that this expense was for?
---Well ah, if he had a question on it he would have asked me, but ah, as I said, if that's, that's the accountant's, that's his job, to, to sort them things out.

30 But the accountant wouldn't know what you'd spent the money on, would he?---No.

He'd have to ask you. You're the only one who would know?---Well, he wouldn't have to, he can see it, they can see, you can see what's the, there's a cheque spent there and that's it.

So it doesn't matter what it's for. Is that what you're suggesting?---In what way and what do you mean?

40 Well, Mr Burke, you've told us that your wife would go through the statements?---Yeah.

And she'd work out what expenses were for what and she'd ask you about them if she didn't know. Correct?---Ah hmm.

I'll show you a document, page 1398. Do you see a document in front of you on the screen?---Yes.

And you'd accept that that's another copy of a page of a statement on the Cloughcor account?---Yes.

I want to draw your attention to the first of the list of transactions on that page. Do you see on the left-hand side we've got the column headed Date, we see the date, 27 May, 2011?---Yes.

The column to the right, Transaction Description, and then you've got those figures again, 0-0-0-1-1-9?---Yes.

10

You understand that's the cheque number. Correct?---Yes.

And then if we go over to the right, under the Debit column we see the figures \$60,024. Correct?---Yes.

So you'd be satisfied that this transaction relates to the cheque that you drew on the company – well, I'm sorry, the cheque that you signed at least on your Cloughcor company account for 60, that caused the account to be debited for \$60,024?---Yes.

20

All right. Now, what I want to draw your attention to is what's written just to the right of those figures. Do you see there that there's some handwriting and it says, "materials?"---Yes.

That's your wife's handwriting, isn't it?---I think so, yeah.

Well, it wouldn't be anybody else's, would it?---No.

Now, your wife would not have spent – I withdraw that. It's not your wife's signature on the cheque, is it?---No.

30

It's your signature on the cheque. So when your wife went through the account statements your wife would not have had any knowledge about what that cheque was for, would she?---No.

So she would have had to have asked you. Correct?---That's correct.

And you would have had to have told her it was for materials?---That's right.

40

And you know full well that that cheque was not for materials for Cloughcor Pty Limited, don't you?---No.

You agree with me?---Agree with you that I know full well it wasn't?

Yes?---No.

You don't agree with that?---No.

Well, look, you've already agreed that Cloughcor had made no transaction with Dan Kitchens. Correct?---Well, not that I know about.

Well, who else would know about it, Mr Burke? You're the sole director and shareholder of the company?---That's correct.

You must know about it?---No.

10 So you are the only person who could have told your wife that that transaction related to materials?---Yes, that could be the case, yeah.

Well, it is the case isn't it, it must be the case?---(No Audible Reply)

Isn't it?---I could have told her that's materials, she could have wrote it herself as materials, I don't know.

Your wife would not have known that it was materials, she wouldn't have known anything about it unless she asked you, correct?---Maybe so, yeah,
20 it's – you could be right.

You, you knew that that cheque was not for materials?---No, I didn't.

Mr Burke, you've agreed that Cloughcor Pty Limited did not make a transaction with Dan Kitchens, correct?---Sorry, could you say that again?

You've agreed that Cloughcor Pty Limited did not buy anything from Dan Kitchens?---On the cheque it says we have, yes.

30 But you did not buy any goods or services from Dan Kitchens, the cheque might be made out to Dan Kitchens?---Yes.

But you didn't do any business with Dan Kitchens did you?---That's right.

So you know that that cheque was not for materials for Cloughcor Pty Limited don't you?---No.

How can you suggest, Mr Burke, that there may be any doubt about that?
---Because I don't follow the cheques that closely.
40

But you had to have told your wife that it was for materials?---I don't honestly, I couldn't honestly tell you.

Look, you could honestly tell us, Mr Burke?---I can't.

Why don't you try honestly telling us?---Because I don't recall.

Just while we have that page handy, if it still is, can I just draw your attention to an entry six I think lines down beneath the one we've just been dealing with, do you see there that the handwriting again says "Materials"? ---Yes.

And there we see the sum just to the left of those word or that word \$44.99, do you see that?---Yes.

10 That's more consistent with the amounts of money that Cloughcor Pty Limited would be spending on materials isn't it?---No.

Well, Mr Burke, I want to suggest that \$60,000 is a very big sum of money for Cloughcor Pty Limited to be spending on materials?---I don't think so, no. We spend, we spend a lot on materials.

20 You don't spend anywhere near up to \$60,000 elsewhere in your account statements on transactions relating to materials, do you accept that?---See, I don't know how they farm it into this like 'cause as I say that's, doesn't make a lot of sense to me but materials, there's fuel, what's the difference?

Right. Yeah. But what you're saying there is it doesn't make a lot of sense because it's too big a sum of money for it to be materials for Cloughcor Pty Limited, right?---No.

ASSISTANT COMMISSIONER: But look, we know now this cheque wasn't spent on materials for Cloughcor, it was spent on a kitchen?---Yes.

30 So why would you tell your wife it was for materials?---Because I didn't know at the time, I don't, I know now.

So what, you can just make it up whatever you like, if you don't know you just make up something do you?---Not exactly, no. No, as I say - - -

Well - - -?--- - - - I don't do that, no.

Well, we come back to why would you say this was for materials?---I don't even recall saying to my wife it was materials.

40 Well, do you think your wife just made that up and decided to put it there? ---No, she could have called me and I could have said it's this, that or anything, it could have been road base, it could have been - - -

Yeah, but it wasn't. I'm trying to find out - - -?---I didn't know.

- - - why you'd say it was materials for Cloughcor when it wasn't?---You see I, as I say she could have called me up and I could have said it was concrete, road base.

Why would you lie like that?---Who's to say that I was lying because I didn't know at the time on that cheque.

So if you don't know and you just make something up, that's not lying?
---Well, maybe it is, ma'am, yeah, as I say, it could have- - -

All right. So we go back to why would you have lied to her like that?
---As I say, I don't honesty know, I don't know.

10 Yes, Mr Gartelmann.

MR GARTELMANN: The point of your wife going through the statements and writing on them words such as materials or fuel, hire and the like was so that those statements could be provided to your accountant and the accountant would know what the expenses were for. Right?---Yes.

So the accountant could prepare your company returns for tax purposes and the like. Right?---Yes.

20 And you knew that when you told your wife to write this expense up as materials?---Again I don't know.

You do know, Mr Burke, you must know?---I have a lot of other things goes on within a business and a job besides that.

Mr Burke, you're the sole director and shareholder of the company. You understand that, don't you?---Yes.

30 The buck stops with you?---If you could say that but- - -

You are the only one who would have knowledge of what this transaction was for?---Yes.

And you must have known that it related to payment for a kitchen from Dan Kitchens that Mr Cresnar purchased?---No, I didn't know.

40 So notwithstanding the fact that your account is overdrawn by more than \$40,000-odd and your wife has to transfer money from another account to bring it back into the black- - -?---That happens.

- - -notwithstanding that your wife's written "materials" presumably at your direction on the statement for the accountant, you still say you've got no idea about what this transaction was about?---That's correct.

Mr Burke, you're lying?---That's your opinion.

Excuse me, Commissioner.

All right. Mr Burke, I want to ask you now about another cheque, and I'm going to show you a document which is at page 1393. Do you see a document in front of you on the screen?---Yes.

You'd accept once again that that is a copy of a cheque on the Cloughcor Pty Limited cheque account?---Yes.

Now, down in the bottom left-hand corner we see those numerals again, but this time it's 0-0-0-1-1-1. Right?---Yes.

10

You'd accept that that's the cheque number?---Yes.

Now, you see the signature on the cheque there?---Yes.

That's your signature, isn't it?---Yes.

And then we see some handwriting on the rest of the cheque for the payee, the date and the amount. Is that handwriting yours?---No.

20

You'd agree with me that the handwriting looks indistinguishable from the handwriting on the other cheque you were shown a moment ago?---I don't know, you'd have to put it beside to see.

Well, we can show it again but you've seen them before, haven't you, you'd agree that it looks very similar?---I don't know.

Look- - -?---You'd have to put it beside to agree with you.

30

All right. 556. Do you see the handwriting there?---Yes.

All right. We'll go back to the one I was asking you about, 1393. See the handwriting there?---Yes.

Very similar, isn't it?---Yeah, it's, yeah. As I say I wouldn't be sure but, yeah.

All right?---It's your call there it's - - -

40

But you agree it looks similar, don't you?---No, I don't because I don't know - I honestly don't know about the writing.

Is there any reason why you'd be - - -?---Writing doesn't mean to - doesn't make a lot of sense to me.

But putting aside what the words say - - -?---(not transcribable) writing.

- - - you'd agree that the handwriting looks similar, wouldn't you?---I'd have to have the two of them together.

Well, look, you've already been through that exercise, Mr Burke?---Yeah, well let's move on.

Whose handwriting is it?---I don't know.

So is this another case of a cheque you've signed blank and somebody else filling in the details?---Yes.

10 That's not your wife's handwriting is it?---I don't think so.

Now I'm going to inform you that this cheque related to a purchase of some sandstone tiles or pavers. Do you understand that?---Sandstone, yeah.

Now you didn't have any cause to buy sandstone tiles or pavers for Cloughcor Pty Limited did you?---No.

It's not a purchase that the company made for Cloughcor purposes is it?
---No.

20

All right. So how is it that this cheque comes to be made out to Gosford Quarries in the sum of \$5,810 signed by you for purposes not related to Cloughcor?---I don't know.

Could it be the case, Mr Burke, that you do know and you don't want to say?---No.

Could it be because you know that that purchase was made by Mr Cresnar?
---No.

30

And could it be that you're reluctant to admit it because that would be to admit that you made what appears to be a corrupt payment to an Ausgrid officer?---No.

Is that why you have no recollection of these cheques?---I don't think so, no.

I'm going to show you another document now which is at page 1394. You have before you on the screen a copy of another page of a statement for the Cloughcor Pty Limited account. You'd accept that?---Yes.

40

Now I'm going to draw your attention to an entry about halfway down the list of transactions. Can you see the date 20 April, 2011?---Yes.

And just to the right of that in the column headed Transaction Description can you see those figures 000111?---Yes.

Now you'd accept that that's the cheque number of the cheque that you were just shown?---Yes.

And over to the next column on the right we see in the debit column the figures \$5,810. Correct?---Yes.

And you'd accept that that reflects that that sum of money \$5,810 was taken out of the Cloughcor company account. Right?---Yes.

10 And you've already seen that that cheque was made out to Gosford Quarries and you've accepted that that cheque actually relates to a purchase of some sandstone tiles or pavers. Correct?---Yes.

Now I want to draw your attention to the entry just to the right of the figures in the debit column. Do you see the handwriting there?---Yes.

You see the words "Haulage hire", do you see that?---Yes.

20 That's your wife's handwriting isn't it?---I think so, yeah.

Your wife would not have known what that cheque was used for just from looking at the account statement herself would she?---No.

So your wife would have had to have asked you what that payment related to wouldn't she?---Yes.

And you must have told her it related to haulage hire mustn't you, mustn't have you?---Yes.

30 And it was not for haulage hire was it?---Not looking at this, not, no.

And you must have known that at the time that you told your wife that it was haulage hire?---No.

Why would you have told your wife that it was haulage hire if you didn't know what it was for?---I'm not sure.

40 Well, you wouldn't just be making these words up randomly to tell your wife about these transactions would you?---No.

You must be doing it on the basis of your recollection of what that transaction was for?---Just, just do, yeah, as I say it's – you go off cheque numbers, yes, that's – I don't recall like.

Well, look, Mr Burke, isn't it the case that you do recall it and that you know that it's a cheque that was used by Mr Cresnar to purchase some sandstone tiles and pavers?---No.

Could it be that you can't recall it you say because you don't want to admit what you know to be the truth about it?---Say that again?

Could it be that you're reluctant to say what you know to be truth about that payment because you know the truth would implicate you in making a corrupt payment to Mr Cresnar?---No.

You've told us that you had exclusive possession of your chequebook, right?---That's right.

10

It's your signature on the cheque, right?---Yes.

Your wife must have asked you about it in order for her to write "Haulage hire" on it?---Yes.

You must have told her it was for haulage hire, correct?---Yes.

You must know, Mr Burke, what that transaction was about?---I don't.

20

Mr Burke, you're lying when you say you have no recollection of what that cheque was used for aren't you?---No.

Commissioner, I'm about to move onto another transaction.

ASSISTANT COMMISSIONER: Yes. Mr Burke, I'd like you to think over the lunch break about your evidence. As I told you at the beginning giving false or misleading evidence to this Commission is a very serious offence, punishable by up to five years' imprisonment. I'd like you to think seriously about the evidence you've giving here today. We'll adjourn until

30

2 o'clock.

LUNCHEON ADJOURNMENT

[12.59pm]