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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION JARAH

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY, 20 JANUARY 2015

AT 2.02PM

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

ASSISTANT COMMISSIONER: Thank you, please be seated. Mr Burke, can you come back.

<EAMON BURKE, on former oath

[2.02pm]

ASSISTANT COMMISSIONER: Just have a seat. Thanks, Mr Gartelmann.

10

MR GARTELMANN: Mr Burke, I want to ask you about another cheque drawn on the Cloughcor Pty Limited company account now. Do you understand that?---Yes.

Can we have page 1399? Do you see on the screen before you a copy of another Cloughcor Pty Limited cheque?---Yes.

Now again on the bottom left-hand corner of the cheque of the cheque you can see the cheque numbers, in this case 0-0-0-1-2-3?---Yes.

20

Again, it's your signature on the cheque, correct?---Yes.

Now the handwriting on the cheque other than the signature, that's not yours is it?---No.

Do you recognise it?---No.

The cheque is in the sum of \$21,093 you would accept?---Yes.

30

And it's made to a business Miele Australia P/L, you understand that? ---Yes.

P/L being Pty Limited, you understand?---Yes.

Now you know that Miele is a manufacturer of appliances such as kitchen and laundry appliances?---Yes.

Did you buy for Cloughcor Pty Limited purposes appliances from Miele Australia worth \$21,093?---No.

40

There would be no cause for Cloughcor Pty Limited to buy appliances of that kind would there?---That's right.

And you didn't buy those appliances for your home either did you?---No.

Do you see below the copy of the cheque there is the copy of the reverse side of the cheque?---Yes.

And there is some handwriting there and there's a number, 2-2-7-2-0-3-5. Do you see that?---Yes.

Just bear that number in mind for a moment. I'm going to take you now to another document which is at page 1401. Do you see before you on the screen now a copy of an invoice?---Yes.

10 I want to draw your attention firstly to the top right-hand corner. Do you see a box there with the words "Your ref/cust ord no," which is an abbreviation for customer order number. Do you see that?---Yes.

And in that box there are these numerals, 2-2-7-2-0-3-5. Do you see that?---Yes.

It's the same number, isn't it, that's on the, handwritten on the back of the cheque we just looked at?---Yes.

20 So you can accept can't you that the cheque that you were just shown a moment ago was used to pay for the invoice you see before you now? --- (No Audible Reply)

You'd accept that?---Yes.

Next I want to draw your attention to the box on the upper left side of the page which has at the top of it the word "To." Do you see that?---Yes.

And underneath that we see your company name, Cloughcor Pty Limited. Correct?---Yes.

30 And then an address, [REDACTED] Do you see that?---Yes.

Whose address is that?---It's my address.

Your business address or work address? I'm sorry, your business address or home address?---Home address.

40 All right. Now, if we look over to the right-hand side, the box immediately beside the one we're just looking at, do you see the words, "Delivery address?"---Yes.

And again we see Cloughcor Pty Limited. Correct?---Yes.

And then underneath that we see [REDACTED] Do you see that?---Yes.

Now, is that an address that Cloughcor Pty Limited uses for the purposes of its business?---No, not that I know about.

Do you know who or what uses that address?---No.

Have you ever been to that address?---No.

You know now that that address is Mr Cresnar's home address?---I know now, yeah.

10 Let's look at the box beneath the one I've just been talking to you about.
Do you see in the middle of that box it says, "Customers contact numbers?"
And then beside the letter M, which you can assume stands for mobile, this
number - - -?---Yes.

- - [REDACTED] Do you see that number?---That's my number.

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

20 That's the mobile number you use for Cloughcor purposes. Correct?
---Yes.

I now want to take you to about halfway down the page. Can you see some
capital letters, you see beside the cursor now it says "D-e-l," those letters?
---Yes.

30 You can accept that that's an abbreviation for delivery. And then there's a
date, 23 August, 2011. It says, "A M route advised." And then "Pls," an
abbreviation for please, "call one hour before del," again for delivery, and
then there's another mobile number, "0-4-1-9-4-4-4-8-6-6." Do you see
that?---Yes.

Now, you know that that's Mr Cresnar's mobile phone number, don't you?
---I don't know by that, no.

Well, you had Mr Cresnar's mobile phone – I withdraw that. You used your
mobile phone to call Mr Cresnar on his mobile phone from time to time, did
you not?---Yes.

40 Have you any reason not to accept that that is Mr Cresnar's mobile phone
number?---No, I have no reason to not accept, no.

All right. So when we look at all of the information on that invoice would
you agree with me that it appears to suggest that Cloughcor Pty Limited has
purchased Miele appliances for delivery to Mr Cresnar's home address,
would you agree with that?---Yes.

And would you agree with me that Miele has been asked to call Mr
Cresnar's mobile phone number an hour before the appliances were
delivered to his home address, would you agree with that?---Yes.

Now the information provide to Miele includes your company name.
Correct?---Yes.

Your company address, sorry, your home address. Correct?---Yes.

Your mobile phone number. Correct?---Yes.

10 You must have provided that information to Miele, Mr Burke?---I don't recall that.

Surely you recall that, Mr Burke?---Not to me, you know.

Look, who else would have provided that information to Miele?---I don't know.

20 Well look, you understand that the appliances that Miele provided were installed in Mr Cresnar's home. You understand that don't you?---Yeah, according to this, yes.

And you understand that you or Cloughcor Pty Limited paid for those appliances?---Yes.

Now you didn't give Mr Cresnar your home address to give to Miele did you?---Not that I know about, no.

What do you mean not that you know about?---I can't recall that.

30 Look, isn't the case, Mr Burke, that you went to Miele Australia with Mr Cresnar for the purposes of this transaction?---No.

How on earth is it that Miele got your home address?---I don't know.

How on earth is it that Miele was given your mobile phone number in connection with this transaction?---Again I don't know.

And why was Miele asked to telephone Mr Cresnar an hour before the products were delivered to his home?---I don't know.

40 You have no explanation for that?---No, I don't.

Did you give Mr Cresnar the cheque that was used to pay for these appliances?---No.

You signed the cheque didn't you?---Yes.

And you're the only person who writes out cheques on the Cloughcor Pty Limited account aren't you?---Yeah, yes.

And you know this cheque was used to purchase these appliances from Miele Australia don't you?---I do know now, yeah.

And you've got absolutely no explanation for how it was that Miele Australia came to receive a cheque from Cloughcor Pty Limited signed by you to pay for these appliances?---No.

10 And no explanation whatsoever for how Miele Australia came to have the details of your company name, your home address, your mobile phone number?---No.

Either, Mr Burke, you provided those details to Mr Cresnar to provide to Miele Australia so that they could prepare an invoice to make it look like Cloughcor purchased these items or alternatively, you went with Mr Cresnar to Miele Australia and you conducted the transaction together. Which was it?---Neither.

20 It was neither. So what was it, how did it happen?---I don't know.

You've got no explanation for this whatsoever?---No.

When do you say you first learnt about a cheque in the sum of \$21,093 being drawn on the Cloughcor Pty Limited account for Miele Australia?---I don't know exactly the date but ah, the first meeting that I had with, with yourselves.

30 All right. So you're talking about when, at a prior attendance at the Independent Commission Against Corruption, is that right?---Yes.

You're, you're suggesting that you had no knowledge of the cheque that you signed being used to pay Miele Australia \$21,093 prior to a prior attendance here at ICAC?---That's right.

Mr Burke, you're lying aren't you?---No.

You know full well how that cheque was used to purchase these items don't you?---No.

40 Would you agree that this is the third cheque I've asked you about today? ---Yes.

The third cheque used to pay for items for Mr Cresnar?---Yes.

The third cheque signed by you made out by somebody else?---Yes.

The third cheque drawn on the Cloughcor Pty Limited cheque account? ---Yes.

No explanation for any of it?---I know where they're all gone now but then no, I didn't know.

You didn't know then when they were, where they were going?---No.

All right. Well, I'll ask you to have a look at another document. Page 1400. Do you see another copy of a statement for the Cloughcor Pty Limited account before you?---Yes.

10

And I draw your attention to the second transaction listed, can you see there a date, I think it's 20, sorry 25 – perhaps we'll just deal with it this way. Ignoring the date, just looking at the next column on the right do you see there the figures 0-0-0-1-2-3?---Yes.

And you'll recall that that's the number of the cheque I've just been asking you about, do you remember that?---Yes.

20

All right. If we look over to the right-hand side in the debit column we see the figures \$21,093, do you see that?---Yes.

And you know that that's the sum of money that was paid to Miele Australia for the kitchen appliances delivered to Mr Cresnar's home address?---Yes.

Let's look at what's written in, by hand immediately to the right of that, do you see the words or word "Materials" again?---Yes.

Once again that's your wife's handwriting isn't it?---Yes.

30

Once again your wife would have had no knowledge about that transaction, about what that cheque was used to pay for would she?---No.

The only knowledge she would have had would have come from you, right? ---That's right.

And you told her it was for materials, right?---Yes.

40

And it wasn't, was it?---Well, materials as in like I don't know what way they're put down, like that's materials, I mean are they just to buy things, I don't know.

Look, I don't really understand that answer, Mr Burke, but it was a simple question. It wasn't for materials was it?---Well, looking at it their now, no, it wasn't, no.

It was for kitchen appliances from Miele Australia, you know that don't you?---I do now, yeah.

So what you told your wife was false wasn't it?---Yes.

And the reason that you told her that it was for materials was to cover up what you knew to be the truth wasn't it?---No.

You knew that the cheque was used to pay for \$21,093 worth of kitchen appliances for Mr Cresnar didn't you?---I didn't know.

10 And you asked your wife to write it up as materials so that these statements could be sent off to the accountant for your annual returns to be prepared for tax purposes, correct?---That's what my wife has writ down, yes.

But you asked her to write that down, that's what I'm getting at?---Yes.

And you knew it was false at the time that you said that to her?---No.

So what did you do, just make it up?---I must have just, I must have said materials, yeah.

20 You agree that it's the same thing that you described the first transaction that I've talked to you about today as, the payment to Dan Kitchens, the \$60,000?---(No Audible Reply)

Do you understand what I'm putting to you?---Yes.

In both, on both occasions you're asked your wife to write up those transactions as materials?---Yes.

30 And on both occasions the transactions were not for materials, were they?
---That's correct.

Mr Burke, the reason that you asked your wife to write it up as materials on both occasions is because you wanted to hide the fact that you were making payments for Mr Cresnar's purchases?---No.

Mr Burke, you're giving false evidence here today about your knowledge of those transactions, aren't you?---No.

40 You know you're lying?---No.

I'm going to ask you about another cheque on page 1528. Do you see before you a photocopy of a cheque drawn on the Cloughcor Pty Limited account?---Yes.

Do you see on the bottom left-hand corner the cheque number, 0-0-1-0-1-3?
---Yes.

Do you see the signature on the cheque?---Yes.

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

The rest of the handwriting on the cheque is not yours, is it?---No.

It's the same or similar handwriting as the first two cheques you were shown here today, isn't it?---It looks like that, yes.

10 The cheque's made out to or for the sum of \$12,400, isn't it?---Yes.

And the payee is, it's a bit hard to read, but would you accept that that seems to say Architectural Décor?---Architect, yeah, yeah, I'm not sure, yes, it looks- - -

Has Cloughcor Pty Limited purchased anything for the purposes of its business from Architectural Décor?---Sometimes, yeah.

20 What have you bought?---I'm not sure what we bought but I think we ah, we do get involved with architectures.

I'm asking you about a business called Architectural Décor?---Oh, right, yeah. I don't know that business.

Oh, look, Mr Burke, you can't seriously have misunderstood what I was asking you about then?---It's an architect?

It's a firm called Architectural Décor, Mr Burke.

30 ASSISTANT COMMISSIONER: Do you know what décor is?---No, ma'am.

Like decorating houses and things?---Yeah. No.

Do you know?---No. They- - -

MR GARTELMANN: All right. Well, look, Mr Burke, I want to tell you that that cheque was used to pay for a large marble bowl or pond from Architectural Décor. Do you understand that?---Yes.

40 Now, Cloughcor Pty Limited had no business buying a large marble bowl or pond, did it?---Not for, no.

No. So how would it be then that a Cloughcor Pty Limited cheque signed by you was made out to Architectural Décor in the sum of \$12,400 to pay for such a thing?---I don't know.

Once again you have the exclusive control over your cheque book, don't you?---Yes.

It's your signature on the cheque. Right?---Yes.

And yet you have no knowledge about how this cheque came to be used to purchase a large marble bowl?---No.

I want you to understand, Mr Burke, that the bowl was purchased by or for Mr Cresnar. Can you accept that?---I didn't know that.

10 All right. But now that you know it, have you any explanation for how Mr Cresnar might have come in possession of a cheque signed by you on the Cloughcor Pty Limited account to use to purchase such a thing?---No.

And you've accepted haven't you that this cheque has handwriting on it that is similar to the handwriting on the first two cheques that you were shown here today haven't you?---Yes.

20 So we have three cheques that have handwriting appearing to be of the one person, signed by you, drawn on the Cloughcor Pty Limited account and you have no knowledge of it?---No, not at the time.

Mr Burke, you are not telling the truth in your evidence here today?---At the time I didn't know nothing about it.

How could you not have known?---I just, yeah, as I say probably work and trying to better myself I'm - - -

30 Sorry, what was that?---I was just work, working hard and better myself as best I can.

Well, does bettering yourself as best you can extend to paying Mr Cresnar so that you receive work through Diona for Cloughcor Pty Limited?---No.

So are you seriously suggesting, Mr Burke, that you're too busy working to know what happens with the company account over which you have effectively exclusive control?---Yes.

40 You don't care what comes into or goes out of the account, you just get back to work. Is that what you're saying?---I do care.

All right. And when you notice that money is going out of the account that you haven't authorised you'd do something about it surely wouldn't you? ---Yes.

And you must have noticed sums of this size going out of your company account?---We do buy a lot of materials.

You must have noticed, Mr Burke, these sums going out of your account?---
No, I didn't.

We're talking about the better part of \$100,000 going out of your company
account and you have no knowledge about it?---No.

Mr Burke, you're not telling the truth in your evidence here today?---Yes.

You're lying aren't you?---No.

10

And the reason you're lying is because you don't want to admit to having
made payments for purchases carried out for the benefit of Mr Cresnar.
That's right isn't it?---No.

And the reason you don't want to do that is because you know that you'd be
admitting to corrupt conduct?---No.

20

I'm going to ask you about one last cheque. Page 1484. Do you see there
on the screen before you a copy of yet another Cloughcor Pty Limited
cheque?---Yes.

Bottom left-hand corner we have the cheque number 001010. Do you see
that?---Yes.

It's your signature on the cheque isn't it?---Yes.

But the handwriting is not yours is it?---No.

30

And it's not that of your wife is it?---I don't think so, no.

No. It looks like the same handwriting of three other cheques that I've
shown you today doesn't it?---I'm not sure.

It looks similar doesn't it, Mr Burke?---Yes.

The cheque was made out to a sum of \$2,495 isn't it?---Yes.

You didn't write it out for that sum did you?---No.

40

So is this another cheque signed by you made by – made out by another
person to pay for things on behalf or for the benefit of Mr Cresnar?---No. I
don't know.

You don't know anything about it because it's not your handwriting is it?
---Yes.

So you've got no idea whether or not or who made that cheque out, is that
what you're saying?---Ah, I don't know, I honestly don't know, no.

Mr Burke, I want to suggest to you that the total value of the five cheques now that you've been shown here today is almost \$100,000. Do you understand that?---Yes.

And all of that money came out of your company account?---Yes.

All of the cheques are signed by you, right?---Yes.

10 They're all written out by another person, right?---Yeah.

Most if not all of them are used to purchase goods for Mr Cresnar, right?
---That's what the, yeah, that's what it's gone to, yes.

And you have no knowledge of it whatsoever, is that right?---That's right.

You have no knowledge of how someone might have come into possession of four or five cheques signed by you on your company account?---No, as I say I have no great knowledge of how, how it could be done, no.
20

It's not the case as if you, it's not as if you were dropping signed cheques off in people's letterboxes is it?---No.

And you have the exclusive control of your chequebook don't you?---Yes, well, as I say it stays within the work vehicle that I work in.

So isn't it the case then it follows, Mr Burke, you must know how those cheques came to be used to pay for items for Mr Cresnar's benefit?---No.

30 And you're giving false evidence in denying it aren't you?---No.

ASSISTANT COMMISSIONER: Have you ever discussed any of these cheques with Mr Cresnar?---Ah, as I said the time that we had a, I was in a meeting here I asked to see him and I asked him what was it about.

And this was what, last year?---Yes, ma'am.

And what did he say?---He couldn't say he couldn't put much on it, he didn't say much on, on that, he said there's a lot of details that ah, he can't
40 discuss.

He said he couldn't discuss it?---Yes.

So he's never rung you up and said thanks for much for that cheque or that, those goods?---No, ma'am.

MR GARTELMANN: Now, Mr Burke, you came to the Independent Commission Against Corruption for an examination on 31 January last year didn't you?---Yes. I'm not sure of the exact date but yes.

About a year ago, all right?---Yes.

Are you saying you had no knowledge before you came here on that day of these cheques causing almost \$100,000 to be deducted from your company account?---That's right.

10

And these cheques were drawn in or about the year 2011, right?---Yes, sounds right.

So for two to three years you had no knowledge that almost \$100,000 was missing from your company account?---That's right.

Notwithstanding that your wife's asked you to, about various transactions conducted by way of cheque on your company account?---Yeah, as I say, I didn't, yes.

20

And notwithstanding that you've told her to write up these transactions as materials or haulage hire?---Yes.

And notwithstanding that your accountant's then prepared presumably your company annual returns on the basis of the information you and your wife have provided, right?---Yes.

Again, Mr Burke, you're not telling the truth about your knowledge of these transactions, are you?---Yes, I am.

30

All right. Now, after you came here about a year ago, is it the case that you had some contact with Mr Cresnar?---Yes, that time, yeah.

You just mentioned to the Commissioner in your evidence?---Yes.

How did, how did it come to be that you came into contact with Mr Cresnar?---How did it what, sorry?

How did you make contact with Mr Cresnar?---I called him, I called him up.

40

All right. So you called him, right?---I, yeah.

Okay. And did you ask him over the phone about the things that were troubling you about these cheques?---I don't right remember now about the proper discussion but I did ask him.

Well, did you just talk to him over the phone or did you arrange to meet up somewhere?---I arranged to meet with him.

And where was it that you arranged to meet?---Ah, in ah, Sunnyholt Road.

Parklea?---Yes.

And why did you arrange to meet him out there?---‘Cause I’m renting a yard in Blacktown.

10 All right. You understand Mr Cresnar lived in the inner west?---I didn’t know where he lived.

But you contacted Mr Cresnar and asked him to come to meet you. Is that right?---That’s right.

Well, did you do so during business hours or after hours?---I don’t remember what time it was.

20 Isn’t it the case that you made an arrangement to meet him after hours?
---To be honest with you I work a lot of hours and I do a lot of day and night shifts.

Why didn’t you just talk to Mr Cresnar about what you wanted to know on the phone?---‘Cause I wanted to see him myself.

Why?---I just wanted to see what was going on.

Why didn’t you talk to him about it on the phone?---It’s better to see a person in person.

30 Why?---I just wanted to ah- - -

I’m sorry?---I wanted to see him in person.

Yes. Why?---Just to ask, ask- - -

Why was it that you could not talk to Mr Cresnar about what you wanted to talk to him about on the phone?---I don’t know, just wanted to see him.

40 Well, is it simply because when you came here to the Independent Commission Against Corruption on 31 January last year you were told that you were not to make contact with Mr Cresnar?---Yes, that was right.

You understood when you came here on 31 January last year that there was an investigation underway into Mr Cresnar’s conduct, didn’t you?---Yes.

And so the reason that you didn’t want to talk to Mr Cresnar about what you wanted to talk to him about on the phone was because you were concerned that someone might be listening. Isn’t that the case?---No.

So why was it that you wanted to meet him in person?---‘Cause I wanted to see him in person.

Why though?---‘Cause um, at least you can ask him straight to there and then.

Well, you can do that on the phone, it would even be quicker, wouldn’t it?
---Yes, it would be, yeah.

10

Look, isn’t the simple and obvious explanation, Mr Burke, that you wanted to have a discussion with Mr Cresnar about these transactions that I’ve been asking you today about?---No.

What you might say about it?---So I just wanted to know what was going on, I just wanted to know what was happening because ah, as I say, I have a family and things myself and I, I want to look after my family and make sure that they’re - - -

20

What do you mean by that?---I just didn’t know what was going on that time. There was way too much things alleged and said.

Look, I’m not quite sure what you’re saying there, Mr Burke. You’re saying that you wanted to meet up with Mr Cresnar in person rather than talk to him on the phone because you wanted to look after your family. What do you mean?---Well, as I say, I remember I was brought in and I was showed those cheques and money and stuff like that. I probably panicked and I wanted to know what I was involved in.

30

Look, isn’t it the case that you wanted to let Mr Cresnar know that he was under investigation?---No.

You wanted to know that you’ve been asked questions about what he – about his conduct?---No.

All right. Well, I’m going to ask you to listen to something. Session 1509.

AUDIO RECORDING PLAYED

[2.41pm]

40

MR GARTELMANN: Now, Mr Burke, you recognise in that recording yourself speaking to Mr Cresnar on the telephone?---Yes.

I’m going to inform you that that conversation was recorded on 17 February last year. Do you understand that?---Yes.

So a bit over a couple of weeks after you came here to the Independent Commission Against Corruption. Do you understand that?---Yes.

All right. Now you've heard yourself saying to Mr Cresnar in that conversation, "We've got to meet up somewhere. There been questions been asked about you there". You heard yourself say that didn't you?
---That's right.

10 So it's the case isn't it, Mr Burke, that you wanted to let Mr Cresnar know that you'd been asked questions about him?---Yeah, well, it looks that way, yeah, but - - -

Well, it's obviously the truth of the matter isn't it?---As I say I had me own questions to ask too.

All right. But you wanted to let Mr Cresnar know that you've been asked questions about him didn't you?---Well, as I say I had me own questions to ask.

20 All right. Well, look at it another way. You did tell Mr Cresnar that questions had been asked about you?---That's right.

Notwithstanding that you had been told when you came here on 31 January last year not to inform anyone about your attendance. Correct?---Yes.

And notwithstanding that you had been told that the investigation related to Mr Cresnar, correct?---Yes.

30 So you've told the very person the subject of the investigation that you'd been asked questions about him didn't you?---Yes.

You knew that you were not allowed to do that, didn't you?---Yes.

You knew you were committing an offence by doing it, didn't you?---Yes.

So bearing in mind you knew you were committing an offence why did you do it?---Because I was worried and stressed.

40 Why?---I'd say the evidence that was threw out there and the things it was threw and I just yeah, I didn't know what was going on.

You were worried and stressed weren't you, Mr Burke, because you knew that that evidence showed that you'd made payments of a corrupt nature to Mr Cresnar?---No, I do know that's the way that it looks like now but not at that time.

Mr Burke, you were worried because you knew all along that you had made payments or provided Mr Cresnar with cheques signed by yourself for him to make payments and you knew that those payments were corrupt?---No.

That's why you were worried and stressed isn't it?---No, I wasn't, no.

All right. Well, look, you arranged to meet Mr Cresnar in the course of that conversation didn't you?---Yes.

10 And you mentioned earlier in your evidence today that you arranged to meet him out at Parklea at Sunnyholt Road just because you were working on a jobsite out at Blacktown, is that right?---No, that's where me yard is, that's where I was working.

All right. I'm sorry, you're quite right, it's because you were renting a yard you said?---That's right.

20 But you've just heard yourself in this telephone conversation saying or discussing with Mr Cresnar where to meet up haven't you?---Yes.

And you yourself are saying we have to make sure you're out of public? ---Yes.

So you were arranging to meet Mr Cresnar somewhere not because it happened to be near your yard but because it was out of public sight, right? ---Yes.

30 So your evidence here today about why you chose the location you did was false wasn't it?---Ah, well, if you – yes.

And you knew it was false when you gave it, didn't you?---No, it's because – no.

Look, Mr Burke, you knew the reason that you met Mr Cresnar out at Parklea was because you didn't want anybody to see you, you knew that when I asked you those questions here today didn't you?---It probably was the case, yes, yeah.

40 All right. So you knew it was not the truth to explain why you met Mr Cresnar where you did by saying it was because you had a yard down the road, you knew that was not true didn't you?---Well um, it was kind of like, as I say it was more convenience to be there, it's not a - - -

Mr, Mr - - -?--- - - - it wasn't to get in out of the way or anything, it was, you heard it.

Mr Burke, you've, you've just agreed with me that you knew when I was asking you questions about this today that you met, you chose where you

were going to meet Mr Cresnar because it was out of sight, out of public sight?---As I say, yeah, if that's what you mean, yes, that's, that's right.

And you knew that when I asked you questions about why you met Mr Cresnar where you did didn't you?---Yes.

10 So you knew you were giving misleading evidence when you said that you met him where you did because you had a yard in Blacktown. It wasn't the whole truth was it?---It's a bit confusing but yes, it wasn't the whole truth (not transcribable)

All right. And you knew that at the time, you were saying what you said to mislead us, weren't you?---Oh, no, I just wasn't that exact, I did tell you I told you the truth on it. Wasn't it just – yeah, well, if that's what you think that's, that's what it is ah, I didn't mean to go in that way.

Look, isn't it the simple case, Mr Burke, that you've just been caught out telling a lie?---It could be, yes.

20 All right. So why not simply admit it?---I did say that I did meet the man.

Yeah, but where you chose to meet Mr Cresnar is what I'm asking you about, Mr Burke?---Yeah, as I say, that's where I decided to meet him and that's it.

30 Look, Mr Burke, you've just heard yourself in this telephone conversation with Mr Cresnar discussing where to meet and you suggesting, make sure we're out of public, or you're out of public. You've heard yourself saying that, haven't you?---Yes, I have.

You know why the location was chosen because it was you who was responsible for making sure it was out of public. Right?---As I say, you're asking the question, I didn't exactly remember that exact phone call there and then, I said that I did meet him there and then and that's what I did.

When you were speaking to Mr Cresnar and discussing when to catch up or to meet with him, he asked you, "Is it urgent, is it?" Do you recall that? ---Just recalled it there now, yeah.

40 And you said, "Urgent enough, yeah," didn't you?---That's right.

And that's because you believed it was a big problem for you and Mr Cresnar that you were being asked questions about these transactions conducted on the Cloughcor Pty Limited account?---No.

And you wanted to speak to Mr Cresnar as a matter of urgency because you were so worried about it?---I was stressed, yes.

So your evidence here today suggesting that you chose to meet Mr Cresnar out at Parklea just because you had a yard in Blacktown was not the truth, was it?---Well, I did tell you the truth, I don't exactly remember every phone, every word off the phone call, it was the truth, I did meet the man.

But you remember the reason that you met Mr Cresnar?---Yes.

And you remembered that when I was asking you about it today, didn't you?---I remembered that I wanted to ask him a few questions.

10

And you remembered that you were worried about it, didn't you?---I was worried myself, yes.

You remembered that it was a matter of urgency for you?---It wasn't that big of an urgency, no, because as I say, I just, it was probably ah, worrying me a lot, you know.

Well, it's your words in the telephone call, "Urgent enough, yeah." Those are your words aren't they?---Yes.

20

When you were asked questions here today about why it was you met Mr Cresnar at Parklea you recalled the circumstances of that meeting well enough, didn't you?---Yes.

You know that you met Mr Cresnar where you did because it was out of public. Right?---It was, I can't say it's out of public because it's still, it's, yeah, well, it's a meeting, yeah (not transcribable)

30 Well, look, you're the one who suggested to Mr Cresnar, "Make sure you are out of public."?---Okay. As I say, it's yeah, that's what I said, yes.

Well, you know that's what you said, you just heard it?---Yes.

And you arranged to meet Mr Cresnar at a time when – I withdraw that. You arranged to meet Mr Cresnar at the Parklea Markets, didn't you? ---Yes.

40 But you arranged to meet him at a time when the markets were closed, didn't you?---I don't know.

Well, you did meet him when the markets were closed, didn't you?---Yeah, I think they were, yeah, yeah.

Yeah, that's right. So there was nobody around, was there?---Hmm, there was people there but yeah, I didn't recall if much, as I say, it's, yeah.

Look, Mr Burke, you met him where you did and when you did to make sure no one heard what you had to say or saw you meet him. That's the truth, isn't it?---If that's what you think, yes, that's just what you're - - -

Well, never mind what I think, it's the truth, isn't it?---You're telling me, like, you're - - -

But it's the truth, isn't it?---No, it's not.

10 Look, Mr Burke, you've just heard yourself in a telephone call suggesting to Mr Cresnar it needs to be somewhere out of public as a matter of urgency?
---Yes.

You know full well, Mr Burke, that you met him where you did and when you did so that no one else would be around, don't you?---As I say, I wanted to meet him to find out myself.

All right. Well look, Mr Burke, when you met Mr Cresnar what did you actually say to him?---I went, I asked to see what was going on or I said
20 there's a lot of questions. I don't really remember the exact conversation but I - - -

So to the best of your recollection tell us what you said to Mr Cresnar?
---Said there's um, people asking questions about him and ah, the cheques that come from my company.

All right. So you told him that you've been asked about the cheques. Did Mr Cresnar say anything to you?---He wouldn't say much on it.

30 Well, what did he say to the best of your recollection?---Just there's things that are better not to be discussed.

Look, Mr Burke, you are not telling the truth?---I'm not sure to be honest with you. I can't honestly tell you because I don't remember the conversation.

Mr Burke, you would remember this event well and truly I would suggest?
---Ah, not by word - - -

40 It was only last year?--- Not word by word I don't.

It was only last year wasn't it, less than a year ago?---Yes.

You've made an arrangement to meet Mr Cresnar as a matter of urgency somewhere out of public. Correct?---Yes.

You've told him that you've been asked questions. Correct?---Yes.

You've told him that you've been asked questions about your company cheques. Correct?---I wanted to know what was going on, yes.

And you're seriously suggesting that all Mr Cresnar said was oh, I can't, I can't tell you anything?---He said there's some – he just said things are better to be left unsaid. I said - I'm not a hundred – I'm not sure.

Look, Mr Burke, Mr Cresnar has driven all the way out to Parklea to meet you. Right?---Yeah.

10

It's after business hours isn't it?---Yes.

He's come all that way to meet you. He's not going to Parklea Markets to do some shopping is he?---No.

He wants to know why you want to meet him as a matter of urgency doesn't he?---I wanted to know a few things.

20

But Mr Cresnar came all that way to meet you at your request when you suggested it was a matter of urgency?---Yes.

And are you seriously suggesting that having come all that way he says well, there are some things better left unsaid?---I don't remember the exact words from him.

Mr Burke, you might not remember the exact words but you must remember the substance of the conversation?---Yeah.

30

Tell us about it?---I can't remember.

Oh look, Mr Burke, you are not doing your best to give truthful evidence in this inquiry are you?---I am but I don't remember that.

At the time that you met Mr Burke – I'm sorry, at the time that you met Mr Cresnar out at Parklea you knew your wife had been summonsed to come into the Independent Commission Against Corruption as well didn't you? ---It was at the same time.

40

You knew your wife had been summonsed to attend?---She was summonsed to attend here, yes.

You knew that she was coming in shortly after you met Mr Cresnar out at Parklea didn't you?---As I say I don't really remember that but I know she – I know we had to come in – she had to come in here anyway. I don't know that exact date.

Excuse me, Commissioner. I'm sorry, Mr Burke, I may have misled you there about the date that your wife came in. I withdraw that. Do you understand that?---That's fine.

All right?---Yeah.

In fairness to you, now you told Mr Cresnar when you met him on 17 February out at Parklea that you'd been asked questions about these cheques that I've been asking you about today?---Yes.

10

Now you said that there were a lot of things that you wanted to know yourself didn't you?---Ah - - -

So if we were to believe you that somehow or other all of these cheques signed by you and drawn on your company account had gone missing without your knowledge and you knew nothing about it for a couple of years, surely the first thing you would be wanting to ask Mr Cresnar about is what happened to my cheques? How did you get my cheques? Surely that's the first thing you would have asked him if your story was the truth?

20

---Ah - - -

So did you?---I asked to see what was going on, yeah.

And what did he say?---Say something, it was just - I'm nearly sure it was left to be unsaid.

Didn't you say to Mr Cresnar I've just found out that almost \$100,000 has gone out of my company account without my knowledge, it seems to you, what's your explanation for it, didn't you ask him something to that effect?

30

---Yes.

Well, why didn't you tell us about that when I asked you about the conversation that you had with Mr Cresnar?---As I say I don't like, it was all (not transcribable) it was all, I didn't know what was going on, there was, everything was happening there.

Why don't you try again, Mr Burke, to tell us the whole of the conversation to the best of your recollection?---I don't remember much of the conversation.

40

But you've just acknowledged that you did ask Mr Cresnar - - -?---I did ask him to see what was going on.

But not just what was going on, you were asking him about what had happened to your cheques, right?---I asked to see what was going on, if there's things happening, cheques and things, I said, as I say some things is best left unsaid and, and that.

Surely, Mr Burke, Mr Cresnar said more to you than simply some things are better left unsaid?---I don't remember any.

Look, it was only a year ago or not even a year ago, Mr Burke?---Yeah, I don't remember much about it.

Oh, look, Mr Burke, you knew full well what was discussed in that meeting because it was a matter of concern to you, correct?---Yes.

10 And you're not telling the truth in this inquiry about your knowledge of that conversation are you?---As I said I don't remember much about the conversation.

Well, I'm suggesting to you, Mr Burke, you are giving false evidence when you say I do not remember much about that conversation. Do you understand that?---I do.

20 Are you seriously suggesting that Mr Cresnar said some things are better left unsaid and that was the end of the conversation?---I wasn't sure, as I say I don't remember much about it, I can't, I don't know what to say to you.

So you don't remember him saying anything else before he got in his car and went all the way back to the Inner West?---Not so much, no.

Mr Burke, you are giving false evidence about that conversation?---Yes.

You agree with that?---No.

30 Excuse me, Commissioner.

Now, Mr Burke, in the conversation that you've just heard played to you, when you were discussing with Mr Cresnar where you were to meet you said to him, "You know where you seeing me before one time", didn't you? ---Yes.

So where you met Mr Cresnar on 17 February was a location you'd met Mr Cresnar previously wasn't it?---On, on a job.

40 Well, Mr Cresnar didn't do a job at Parklea Markets?---No.

So Mr Cresnar wouldn't have been out there to see you on a job would he? ---No, not in that area.

So why is it that you met Mr Cresnar on an occasion previously out at Parklea Markets?---I don't believe I met him on a previous- - -

Well, you're just heard yourself discussing with Mr Cresnar when you were trying to arrange a location to meet, "You know where you were seeing me before one time?"---Yeah, that was a job in, in, I think it was North Sydney.

But what Mr Cresnar says immediately after you suggest that location is, "Yeah." And then you say, "Right ah, mid-west, all right, say nor'west direction." And he says, "Yep."?---Okay. Yeah, I don't, like, as I say, I don't, yeah.

10 And then he goes on to say, "That's the better area." And you go, "Yeah, I think so, it's a way out of a road anyway, yeah."?---Okay.

So it's clear isn't it, you met Mr Cresnar where you did on 17 February because it was way out of public sight, right?---It wasn't out of public sight as such, no.

Well, what did you mean by, "It's a way out of the road anyway?"---It was just a figure of speech.

20 Well, what's the point of meeting a way out of the road anyway unless it's to meet out of public sight?---Where's a way out of the road, you know, where do you, like, it's a figure of speech, it's- - -

So what's the point of arranging to meet Mr Cresnar a way out of the road if it's not to be out of public sight?---Yeah, I don't think it's out of public sight there but it's- - -

So why arrange to meet Mr Cresnar a way out of the road?---Yeah, I have no, I have no answer for you.

30 Look, Mr Burke, the answer's obvious isn't it, Mr Burke, it's because you wanted the meeting to take place out of public sight?---If that's what you think, that's what it is, yes.

Well, it's obvious because of what you said, Mr Burke, in your conversation with Mr Cresnar?---Yeah.

And you'd met Mr Cresnar at that same location previously?---No.

40 Well, look, you've just heard yourself saying, "You know where you were seeing me before one time?" You've just heard yourself say that?---Yeah.

And then Mr Cresnar agrees to meet you at that location. Correct?---Yes.

And it's mid-west, nor'west direction, isn't it?---Yes.

It's obvious, Mr Burke, you've met Mr Cresnar out in that area before?
---No I haven't.

Why on earth would you say that?---I don't know, it's just- - -

Look, Mr Burke, you know full well the truth of the matter is that you'd met Mr Cresnar out in the northwest direction previously, that is prior to 17 February last year?---No.

There's no possible explanation for what you said other than that, is there?
---I couldn't, there mustn't be, but no, I- - -

10

Is it an occasion – I withdraw that. Is it a location that you'd previously met with Mr Cresnar in order to provide him with cheques signed by you on the Cloughcor Pty Limited account?---No.

You had no relationship with Mr Cresnar outside of business, did you?
---No.

20

So you've got no reason to meet with Mr Cresnar out in the northwest direction other than for the purposes of Cloughcor Pty Limited business, right?---Yeah, I have no errands with him.

I'm sorry?---I have no, I have no errands outside of the, outside of work with him.

And yet here you are in this telephone conversation you've just heard suggesting to Mr Cresnar that you meet him where you met him before one time out northwest direction?---Yeah, that's, that's what it's, yeah.

30

That's what it, that's what you said?---That's what it said, yeah.

Yeah. And the reason you said it is because it's the truth?---I didn't meet him there before.

Well, why would you have said it?---I don't know, like, it's some, some things you, yeah, I don't know, I honestly, yeah, I didn't meet him.

Why would you have said it, Mr Burke?---I don't know.

40

There is only one possible explanation I would suggest to you and that is because it's the truth, you had met him out there previously in the northwest direction?---No.

All right. Mr Burke, you are giving false evidence in denying the obvious, that you have met Mr Cresnar prior to 17 February last year somewhere out in the northwest direction, aren't you?---No, I didn't meet him any other place at any other time.

Just lastly, Mr Burke, in that conversation towards the end you say to Mr Cresnar "This is a good line, yeah" Do you remember hearing yourself say that?---Yeah.

Why did you say that?---I don't know.

Oh, Mr - - -?---I honestly don't know why I said it.

10 Look, Mr Burke, the answer is obviously isn't it?---What?

You were worried about your telephone conversation being overheard?
---Yeah, as I say, yeah, maybe that was the case, yeah.

And why were you worried about your telephone conversation being overheard?---I don't (not transcribable) I don't know what to say to you.

Well, the answer is again obvious isn't it. Because you wanted to talk to Mr Cresnar about the matters for which he was under investigation?---Yes.

20 And you knew that at the time that you said that didn't you?---Yes.

And you knew that by talking to Mr Cresnar about those matters after having come into the Independent Commission Against Corruption on 31 January was committing an offence?---Yes.

That's the examination, Commissioner.

30 ASSISTANT COMMISSIONER: Mr Gartelmann, I notice that this witness has disputed the quantum of the payments that were received by Cloughcor from Diona which I think is an important issues.

MR GARTELMANN: Yes.

ASSISTANT COMMISSIONER: I presume that there is documentary evidence and that something will be tendered in due course to - - -

MR GARTELMANN: Yes, there will be directly, Commissioner.

40 ASSISTANT COMMISSIONER: - - - confirm the amount.

MR GARTELMANN: Yes.

ASSISTANT COMMISSIONER: I don't whether it needs to be put to the witness more specifically. I suppose if he continues to dispute it he could deal with it in submissions.

MR GARTELMANN: Yes.

ASSISTANT COMMISSIONER: But it would seem that the records would speak for themselves as to the amount of payments made.

MR GARTELMANN: Commissioner, there may be a simpler way of going about that if you'll excuse me for one moment.

ASSISTANT COMMISSIONER: Yes.

10 MR GARTELMANN: Thank you, Commissioner. Mr Burke, I'd like to show you a document. It's page 900. Do you see a document before you on the screen there, Mr Burke?---Yes.

That's, that appears to you to be a copy of the Cloughcor Pty Limited company tax return for the year ending 2011?---Yes.

I'll now show you page 902. Do you see on the page before you, Mr Burke, a box with the words total income?---Yes.

20 And do you see there the figure \$2,703,477?---Yes.

Do you agree that that reflects the gross income of Cloughcor Pty Limited for the financial year ended 2011?---Yes.

Now that document may be taken down.

Mr Burke, you've given evidence that in 2010 and 2011 the majority of the, the work that Cloughcor Pty Limited was doing was for Diona Pty Limited? ---Yes, yes.

30 I think you agreed that at least 80 per cent of your work was from Diona Pty Limited?---Yes.

And all of the work that you were doing for Diona Pty Limited was Ausgrid work, right?---Yes.

40 So it follows doesn't it that of the approximately two and three-quarter million dollars received by Cloughcor Pty Limited for the financial year ending in 2011 the vast majority of that income was from Diona Pty Limited for Ausgrid work?---Yes.

All right. I think that's as far as I can take that at this point, Commissioner.

ASSISTANT COMMISSIONER: Yes. Mr Gartelmann, there were two PayPal accounts shown to Mr Ujszaszi which I don't think were tendered and probably should be if they're not in evidence.

MR GARTELMANN: They are actually part of the tender bundle in relation to Bastow.

ASSISTANT COMMISSIONER: Oh, all right.

MR GARTELMANN: Yes.

ASSISTANT COMMISSIONER: And the telephone intercept transcript that was just played - - -

MR GARTELMANN: Yes.

10

ASSISTANT COMMISSIONER: - - - should be tendered?

MR GARTELMANN: Yes.

ASSISTANT COMMISSIONER: So the telephone conversation between Mr Burke and Mr Cresnar will be Exhibit 12.

20 **#EXHIBIT 12 – TELEPHONE INTERCEPT OF CONVERSATION
BETWEEN EAMON BURKE AND PHILLIP CRESNAR – SESSION
1509**

MR GARTELMANN: For the record that is session 1509.

ASSISTANT COMMISSIONER: 150 - thank you.

30 MR GARTELMANN: And there are two further items to tender in relation to the evidence that's been given in relation to Cloughcor Pty Limited, there is a tender bundle firstly.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 13.

**#EXHIBIT 13 - TENDER BUNDLE – CLOUGHCOR P/L (AKA
BURKE PIPE AND CIVIL)**

40 MR GARTELMANN: And lastly, Commissioner, a statement of Catherine Healy, H-e-a-l-y, dated 7 January, 2015.

ASSISTANT COMMISSIONER: Yes, that will be Exhibit 14.

**#EXHIBIT 14 – STATEMENT OF CATHERINE HEALY DATED 7
JANUARY 2015**

ASSISTANT COMMISSIONER: Thank you, Mr Gartelmann.

MR GARTELMANN: That's the material to tender at this stage.

ASSISTANT COMMISSIONER: Yes. Cross-examination for this witness? I presume Mr Sutton?

10 MR SUTTON: Thank you, Commissioner. Before I do I understand that there is a folder of documents, presumably that tender bundle, I wonder if I might access to that now, it will assist me to hopefully be quicker.

ASSISTANT COMMISSIONER: Yes.

MR SUTTON: Thank you. And if - - -

20 ASSISTANT COMMISSIONER: And I should say, Mr Sutton, that I would expect that any instructions with Mr Cresnar has in relation to the main issue of this witness's evidence which is the cheques et cetera would be put to this witness where it differs from his evidence.

MR SUTTON: Certainly. Commissioner, sorry, that's very true but until today two of those cheques were unknown to me, through the magic of technology I've been trying to get instructions.

ASSISTANT COMMISSIONER: Right.

MR SUTTON: I will go as far as I can - - -

30 ASSISTANT COMMISSIONER: Yes.

MR SUTTON: - - - if I can - - -

ASSISTANT COMMISSIONER: Yes.

MR SUTTON: - - - but if it's the case that I can't proceed properly I'll make that known to the Commission and ask for an adjournment on those points.

40 ASSISTANT COMMISSIONER: Thank you.

MR SUTTON: Thank you.

Mr Burke, as you've - I'm sorry, Counsel Assisting was on his feet.

MR GARTELMANN: Sorry, I just wanted to attend to one matter before Mr Sutton commences his cross-examination for his sake. In the tender bundle in relation to Cloughcor Pty Limited there is an index at the front and it indicates that pages 1533 to 1534 are a phone extraction report. That

has, that information has been removed for confidentiality of the subscribers to those telephones, it's considered that it's not necessary to disclose that information.

ASSISTANT COMMISSIONER: Yes, thank you. Yes, Mr Sutton.

MR SUTTON: Thank you. Might I just speak with Counsel Assisting very quickly?

10 ASSISTANT COMMISSIONER: Yes.

MR SUTTON: Thank you. Thank you, Commissioner.

Mr Burke, as you've probably worked out, my name is Sutton, S-u-t-t-o-n, and I'm instructed on behalf of Mr Cresnar. Do you understand that?
---Yes.

20 Okay. Is it correct to say that you first met Mr Cresnar around 2010 when you were subcontracting for Diona?---Yes.

Okay. And your business at the time was installing conduits and cables underground. Is that right?---That's right.

Okay. I won't be going to everything that you've been asked by Counsel Assisting today but just the points that are particularly relevant to Mr Cresnar. Do you understand?---Yes.

30 If I use the word or the words HAC book, H-a-c book, does that have any recollection or cause you to know what I'm talking about?---A HAC book is a book that ah, we fill in every morning that ah, that ah, tells us the hazards that we're going to do.

So as I understand it, and please correct me if I'm wrong, it's a document that anyone who visits the site has to sign onto and it recognises any hazards that may exist on that site?---That's right.

40 Okay. And it's usual that the HAC book, or it seems to be anyway, and again tell me if I'm wrong, that the HAC book is kept in the truck?---That's right. He's kept within an emergency assembly point wherever ah, wherever the, the first aid kits and things I guess is kept, yes.

Okay. And for obvious reasons it's kept out of the weather and it doesn't blow away and it's an important document for WorkCover and other purposes. Is that right?---That's right.

Okay. Now, you said before and you gave an example of where, excuse me, of where cheques could be signed by you, blank cheques, and not written out until they're required. You accept that's the case?---Yes.

And you gave that evidence. One of the examples you gave was for tipping fees. Is that right?---Yes.

Could there be other examples of that?---Ah, as I say, there's a lot of things, there's a lot of things that- - -

10 Do you have accounts at suppliers?---I'll say that it's different now because there's people in the office that opens accounts but back then there wasn't so many accounts open so you had to- - -

Okay?---Yeah.

So it wouldn't be unusual, well, I withdraw that. What I suggest to you is that from time to time, perhaps because it was a safe location, cheques with your signatures on blank cheques might be left in the HAC book?---Yeah, I wouldn't, I couldn't answer that truthfully to you 'cause it's within the vehicle, with the vehicle that I work with.

20 Okay. You were getting a lot of work, as you've agreed, 100 per cent of the work you were doing for Diona was to do with Ausgrid. Is that right? ---Yeah, about 80 per cent, yeah.

80 per cent of your work was coming through Diona but 100 per cent of that was for Ausgrid?---Oh, that's right, yes.

Okay?---Yeah.

30 All right. And did you perceive that Mr Cresnar was doing you any favours in relation to that work?---Not as such, no, no. As I say, we, we done our work and- - -

Okay?--- - - -from time to time they had, like everything, they had their troubles.

All right?---They have their good days and bad days.

40 From time to time, and I speak about three specific occasions, is it your evidence that you were not aware of cheques that you'd previously signed going missing?---Sorry, can you explain that to me?

Certainly. There are three cheques particularly that you have been asked about today. They are a cheque on 19 - well, a cheque that bears the date of 19 April in the sum of \$5,810 that was used at Gosford Quarries and if we forget just for a moment where it was used, the amount, were you aware that that cheque had gone missing?---No.

Okay. Was that or could that cheque have been one that was in the HAC book or in the vehicle?---The HAC book is what is like - - -

ASSISTANT COMMISSIONER: I don't think the witness has accepted that he left blank cheques in the HAC book so I don't think that's a fair question.

MR SUTTON: I'll go back to that because my understanding was he had. But the question I put to you previously, and you've heard what the
10 Commissioner has said and this is your evidence so you correct me, I'm suggesting to you that from time to time a blank cheque, that is a cheque you have signed but that is left blank, has been left in the HAC book in the vehicle or close to the HAC book in the vehicle?---As I say it could be in the vehicle, yeah, so how - what's close to you like it's, yeah there'd be cheques in the vehicle.

Okay?---But not in - - -

20 Under the HAC book, next to the HAC book, within the pages of the HAC book to be used later for some other purpose. Is that possible?---The cheque is in the vehicle, yeah.

Okay.

ASSISTANT COMMISSIONER: The cheque book?---The chequebook.

But we're talking about signed cheques as I understand it?---Yes, ma'am. Yeah.

30 So there'd be signed cheques in the chequebook?---Yes.

For you to take out and give to people?---That's right.

But I presume you'd always give them to somebody that you trusted?
---Give to the truck drivers that's going to the - - -

Who were working for you?---Yeah, well, they're working or else subbie, subbied in.

40 And you'd give them a blank cheque in the expectation they'd just pay for the tipping?---They, they give it to the um, office, the office within the tip or the people that looks after the tip.

Yes. But somebody has to fill in the amount?---Yeah, they fill it in at the end of the month then whenever they tally up the, the amount of loads that goes in.

So you'd leave the blank cheque with the tipping place?---Yes.

And they'd eventually fill it in - - -?---After - - -

- - - for the total for the month?---After they hauled whatever material. You could so many loads one day and more the next day. It's unknown how many loads that you can put in.

Yes. Yes, Mr Sutton.

- 10 MR SUTTON: Thank you. Just so we're clear, what I have to put to you is that on one occasion – sorry, on the – on or about the occasion of 19 April that that date was dated on so some days before then, Mr Cresnar attended and signed on the HAC book at your direction and that's when a cheque was removed. Do you have any knowledge of that?---No.

Sometime later a similar scenario as I've put to you occurred on 26 May. Sorry, that's the cheque dated 26 May not the occasion when the cheque was removed.

- 20 ASSISTANT COMMISSIONER: I'm sorry, are you putting to the witness that Mr Cresnar removed the cheque?

MR SUTTON: Yeah.

ASSISTANT COMMISSIONER: Do you understand that's what's being put?---Ah, removed from the, the vehicle?

MR SUTTON: Yeah.

- 30 ASSISTANT COMMISSIONER: Yes.

MR SUTTON: Yes?---Yes, I understand that's what you're saying. Well, that's what you seem to be - - -

But you're saying you've got no knowledge of it?---No.

Okay. And I'm saying again on the – on or about the date of the third cheque which I think was a November date, I don't have it in front of me, Counsel Assisting will correct me if I'm wrong, a similar course occurred.

- 40 You say you know nothing about that?---No.

So you're saying that cheques weren't left there by you for that purpose? ---That's right.

MR GARTELMANN: I've been invited to correct Mr Sutton if he was wrong. The third cheque that the witness has been asked about was a cheque in June of 2011.

ASSISTANT COMMISSIONER: June of 2011.

MR SUTTON: Yes.

MR GARTELMANN: Yes.

MR SUTTON: So in relation to those cheques, just to be clear the ones that I'm speaking about related to the pavers, relate to the kitchen and relate to the kitchen appliances. Those are the three cheques I'm talking about.

10

ASSISTANT COMMISSIONER: Yes, the last of those was in June.

MR SUTTON: Yes, thank you.

You have trouble, and I mean no disrespect when I say this, with writing, that's correct isn't it?---That's right.

Okay. Did you ever ask Mr Cresnar to assist you with writing of any kind? ---I don't really do much dealings with him with writing as such 'cause we have our Diona engineers there.

20

Sorry, I just, I just missed those last words?---There's Diona engineers.

Yeah?---They do all the writing and things.

Okay. You never asked him to write anything for you?---Not that I recall, no.

All right. If I suggest you did you would say that would be wrong?---Ah, I can't, I, I, honestly don't - - -

30

Okay?---I can't answer that one.

Mr Cresnar assisted you with, with a matter other than anything to do with Ausgrid, you were, you were complaining to him about the expense of hiring subcontractors to saw roads, do you recall that conversation?---No, no what, no, can you explain it more?

Sure. In essence he explained to you the costs involved in road sawing - - -? ---Yeah.

40

- - - and suggested it would be cheaper for you to buy your own road saw and do that particular task yourself, when I say yourself I'm talking about your business obviously?---Yes.

Do you recall that?---No.

Okay. Excuse me, Commissioner. Your Honour if I might – sorry, Commissioner, if I might just check to see if I’ve got some instructions?

ASSISTANT COMMISSIONER: Yes, certainly.

MR SUTTON: You were shown two cheques today in relation to I think its Architectural Décor and Sydney Tools, do you recall those?---Yes.

10 Do you have any knowledge of those at all?---No.

Nothing you can share with the Commission?---No.

Thank you, Commissioner.

ASSISTANT COMMISSIONER: Mr Sutton, so you’ve put everything you want to to this witness about the cheques, is that correct?

20 MR SUTTON: Everything I’m able to put on my instructions, yes.

ASSISTANT COMMISSIONER: Yes. All right. Mr Storie, do you want to re-examine at all?

MR STORIE: No, nothing arising.

ASSISTANT COMMISSIONER: Does anybody else seek to question the witness? No. Mr Gartelmann.

30 MR GARTELMANN: Just one matter in re-examination.

ASSISTANT COMMISSIONER: Yes.

40 MR GARTELMANN: Mr Burke, you were asked by Mr Sutton a question to the effect that, or to this effect, did you perceive that Mr Cresnar was doing you any favours and you said words to the effect not really, we had good days and bad days, do you remember giving that evidence?---I – yeah, no, as I say no, I don’t have nothing really to say on that but it’s like everything, it – but I mean by good days and bad days is you, you could get affected by weather, my traffic, by everything.

But you were asked a question about Mr Cresnar doing you any favours. Do you remember that question?---Yes, I do.

And in effect your answer was, not really. Is that right?---Yes.

But you’re aware that Mr Cresnar in his role as a contract inspector had the capacity to approve variations for contracts Diona was performing for

Ausgrid. You were aware of that at the time that you were, that Cloughcor was subcontracting to Diona?---Yes.

And you understood that contract inspectors had some discretion about the extent to which variations could be approved?---That was the dealings between Diona and Ausgrid.

All right. But you understood that the contract inspectors had some discretion about the extent of variations they could approve?---That's right.

10

And you understood that any variations to contracts for Diona might indirectly affect Cloughcor as a subcontractor. Correct?---Sorry, say that again?

You understood that any variations approved for contracts with Diona might indirectly affect Cloughcor?---Yes, that's, yeah, that he would like, yeah.

20

All right. So if Mr Cresnar was to exercise his discretion to approve variations on favourable terms to Diona, Cloughcor would also benefit indirectly. Correct?---Only if ah, only if Diona's passed it on, like only if it was, there was no contracts as such, I couldn't sign, I hadn't signed anything for a contract or such with them.

Sure. But a variation to a contract approved for Diona might allow Diona to give Cloughcor more work, correct?---(not transcribable) Yep.

30

So a favourable exercise of discretion on Mr Cresnar's part in approving variations for Diona might mean more work for Cloughcor. Correct? ---That's probably correct what you're saying, yeah, it's ah- - -

Well- - -?---It's not really, a variation doesn't really work the way that you're talking about, like, your quality work and your, your thing speaks for that.

Did you understand that some Ausgrid officers had the capacity to influence which contractors were allocated Ausgrid work?---No.

40

For more abundant caution I want to put this to you, Mr Burke. You gave Cloughcor cheques signed by yourself to Mr Cresnar for him to make purchases either because Mr Cresnar had exercised his duties for Ausgrid favourably for Diona and/or Cloughcor or because you hoped he would do so?---Yeah, I can't, no.

That's the only matter I have in re-examination.

ASSISTANT COMMISSIONER: I presume that Mr Cresnar could also as an inspector act unfavourably to you, for example he could say that your work wasn't up to scratch?---Yeah.

Could say it didn't, you know, wasn't good enough?---Yeah.

That's the role of the inspector isn't it, to inspect the work and see that it's all right?---The role is ah, yeah, I believe the role is for quality, yeah, and ah, safety and - - -

10 So an inspector who was against you could cause you quite a bit of trouble, couldn't he, he could say the work wasn't good enough, make you re-do it?
---Well, they have the authority to do that, yes, ma'am.

Yes. Thank you.

I think that completes this.

MR GARTELMANN: Yes, I think that's all we have for today, Commissioner.

20 ASSISTANT COMMISSIONER: And Mr Burke can be excused?

MR GARTELMANN: We would prefer, Commissioner, if he were not excused until tomorrow morning following the evidence of Mary Burke which is anticipated to occur first thing tomorrow.

ASSISTANT COMMISSIONER: Right. All right. Do you understand that you're free to go now but you're not excused from the summons, that is you may have to give evidence again tomorrow, so you will be advised?---May I ask what time?

30 I think – should he come back here tomorrow at 10.00?

MR GARTELMANN: Yes. Thank you, Commissioner.

ASSISTANT COMMISSIONER: You'll have to be back here tomorrow at 10.00.

40 MR SUTTON: Commissioner, on that basis then if anything flows – if I obtain further instructions I might seek leave tomorrow to further cross-examine.

ASSISTANT COMMISSIONER: Yes. That could work. That would be good. I would appreciate it. I mean I am a bit concerned about what you have put to this witness about the cheques because it doesn't address the issue of his approval to use them in the way they were used. Perhaps you can't address that issue but I will leave that to you, Mr Sutton.

MR SUTTON: Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you.

MR SUTTON: I'm sometimes a prisoner of instructions.

ASSISTANT COMMISSIONER: Yes. All right.

THE WITNESS STOOD DOWN

[3.41pm]

10

AT 3.41PM THE MATTER WAS ADJOURNED ACCORDINGLY

[3.41PM]