

JARAH PUB00273
22/01/2015

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pp 00273-00333

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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 THURSDAY, 22 JANUARY 2015

AT 10.13AM

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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 Gartelmann, in respect of the timetable I understand that Mr Twomey will not now be available till next week. Is that correct?

MR GARTELmann: Yes, that's our understanding. He won't be back in the country until the weekend we're told.

ASSISTANT COMMISSIONER: All right. Well, we have two witnesses today who optimistically may finish today but if they don't we'll sit tomorrow. If we do finish both witnesses today we won't sit tomorrow and we will hear from Mr Twomey next Tuesday.

MR GARTELmann: Certainly.

ASSISTANT COMMISSIONER: Thank you.

MR SUTTON: Madam Commissioner, may I – sorry, just moving the furniture around. In respect of Tuesday, I'm just having my calendar checked. I appreciate the Commission doesn't sit at my convenience. My pocket diary shows me as being free which I hope is the case but I know there have been technical problems only discovered yesterday where some diaries on our computer system having been inaccurate and telephones being inaccurate. I just foreshadow that I might have an issue.

ASSISTANT COMMISSIONER: Thank you, Mr Sutton. Yes, Mr Gartelmann.

MR GARTELmann: Commissioner, I call Valentine Murray.

ASSISTANT COMMISSIONER: Is Mr Murray here?

MR GARTELmann: I understand he is but he may be just outside with his legal representative.

MR SUTTON: He's outside with Mr Hudson as I understand it.

ASSISTANT COMMISSIONER: I think – just take a seat, Mr Murray. Yes, Mr Hudson.

MR HUDSON: Yes. Thank you, Commissioner. I seek leave to appear for Mr Murray.

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

MR HUDSON: May it please the Commission for more abundant caution at this stage if it's convenient. I also note on the record that Mr Murray will be seeking a declaration.

ASSISTANT COMMISSIONER: Under section 38?

MR HUDSON: Correct.

ASSISTANT COMMISSIONER: And he understands the effect of such a declaration?

MR HUDSON: Yes, he does, Commissioner. Thank you.

10 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 this witness during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection. There is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

20 **PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY THIS WITNESS AND ALL
DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS
DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC
INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR
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WITNESS TO MAKE OBJECTION IN RESPECT OF ANY
PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING
PRODUCED**

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ASSISTANT COMMISSIONER: As I'm sure has been explained to you, Mr Murray, the effect of that is that nothing you say here could be used against you in other proceedings, the only exception being if it is found you've breached the Act by giving false or misleading evidence. Do you understand that?

MR MURRAY: Yes, I do.

40 ASSISTANT COMMISSIONER: Do you wish to take an oath on the Bible or make an affirmation?

MR MURRAY: Take an oath on the Bible. Stand up?

ASSISTANT COMMISSIONER: Yes, Mr Gartelmann.

MR GARTELmann: Is your full name Valentine Murray?---Yes, it is.

And Mr Murray, are you a director and shareholder of Murray Civil Works Pty Limited?---Yes, I am.

10

Were you formerly the sole director and shareholder of that company?
---Yes.

But now there are two directors and shareholders?---That's correct.

Yourself and Denis Twomey?---That's correct.

When did Mr Twomey become a director and shareholder of Murray Civil Works?---Um, about August 2011, maybe July.

20

What were the circumstances in which Mr Twomey became a director of Murray Civil Works?---Um, he purchased 50 per cent of the company.

Why was it that you took on another shareholder and director?---Um, we were interested in going for the Ausgrid contract so to make the company stronger um, we decided to join up.

Is it the case that you perceived that you would not be able to successfully tender for the Ausgrid word alone?---Um, felt that we wouldn't be strong enough, yeah.

And did you understand that Mr Twomey felt the same?---Yeah.

And so you decided to join forces in order to make a company substantial enough to get on the Ausgrid panel?---Yes.

All right. How did you know Mr Twomey?---I just me through him general work.

40

What do you mean by that?---He worked um, he worked on the Ausgrid network as a subcontractor the same as I did, just met at different jobs, different places.

And before he joined Murray Civil Works was it your understanding that he worked as a company known as TGB?---That's correct.

TGB Civil?---Um, I'm not sure.

All right.

ASSISTANT COMMISSIONER: Sorry, and with TGB Civil he was working as a subcontractor to Ausgrid?---To um, a company that worked for Ausgrid, yeah.

Right. But he was doing Ausgrid work?---Yes.

10 So what did you think he'd bring to the table that would allow you to get Ausgrid work directly?---Um, he had the same amount of equipment that I have so we'd double our equipment, we would double our staff so that was the main part of it, you know.

Thank you.

MR GARTELMANN: Now, Murray Civil Works tendered for Ausgrid work in the year 2011, is that correct?---Correct.

And it was successful?---Yes.

20 By that I mean it got on the Ausgrid panel?---It won the contract, yeah.

Yes. Well, to be clear about it, you enter into what's called a Standing Order Deed- -?---Yeah.

- - -with Ausgrid, don't you?---That's right.

And then under that Standing Order Deed, contracts to perform particular works are allocated as and when they're needed?---Yeah.

30 What sort of work had Murray Civil Works done before it tendered for the Ausgrid work?---We had worked on the Ausgrid network as a subcontractor and as a Level 1 ASP which would be similar, similar type of work.

And ASP stands for Accredited Service Provider, doesn't it?---Yes.

So an ASP 1 certification enables you to do work that involves connecting electricity cables, amongst other things?---Yes.

40 All right. So you had that certification prior to Mr Twomey joining Murray Civil Works?---Yes.

After Murray Civil Works Pty Limited tendered successfully for the Ausgrid panel its business boomed, didn't it?---Grew in volume anyway, yes.

Well, its turnover per annum increased substantially. Would you agree with that?---Yes.

And in the period 2011 through to 2013 Murray Civil Works was paid significant sums of money from Ausgrid?---Yes.

In the vicinity of \$26 million?---Yeah.

And most of that being in the two years 2012 to 2013?---'13 um, 2012 to '13, yeah, average turnover is 10 million a year.

10 All right?---Yeah.

And before you were on the Ausgrid panel, what was your average turnover?---Oh, probably around two million.

Who was involved in preparing the tender submission for Murray Civil Works?---Ah, myself, Denis Twomey, Adis Said, Jennifer Wang.

Now, I caught I think the name Adisty Said?---Yeah.

20 All right. What was her involvement in the preparation of the tender submission?---Um, a lot of preparation as in regards environmental and um, certification.

Now, was Adisty Said employed by Murray Civil Works only about a month or so before the tender submission?---Um, yeah, I suppose, yeah.

How is it that Adisty Said came to be employed by Murray Civil Works? ---Um, not sure but probably through word of mouth, through Denis Twomey.

30 Through Denis Twomey?---Yeah.

Was it the case that Mr Twomey introduced Adisty Said to you? ---Yeah.

And what did Mr Twomey suggest that Ms Said might bring to the table for Murray Civil Works?---She was qualified to submit this tender.

40 What sort of qualifications did she have to do that?---I, I, she's a lot of BA's, I don't understand them myself, but a lot of third-level education qualifications. I don't know what they are.

So she had tertiary education?---Yes.

But did she have technical skills or experience relevant to work on an electricity network?---That wasn't her job.

Righto. Well, can you tell us what exactly was her job?---To prepare the tender for submission.

How would she know how to do that?---It's education.

You mean she learnt that at university?---I would presume so, yes.

Isn't it the case that Ms Said worked in the retail sector selling shoes before she joined Murray Civil Works?---I don't know what she worked at.

10

You don't know?---No.

Didn't you inquire what she did as part of the job or part of the employment process?---No.

You didn't ask?---No.

20

Weren't you interested to know whether or not she had some relevant experience?---No, it didn't matter at the time. We do a lot of things by word of mouth, she had her qualifications so we took her on.

Was what you heard via word of mouth in relation to Ms Said that she was a friend of Phillip Cresnar?---I didn't know that.

Do you know that now?---I've heard it being said.

All right. So you knew that before I told you today?---I've heard it being said.

30

Right. What's your knowledge of the relationship between Ms Said and Mr Cresnar then?---I have no knowledge other than they were friends.

And what – that they were friends. Now when Mr – I withdraw that. When Ms Said was helping prepare the tender submission she was a friend of Mr Cresnar's at that time wasn't she?---I wasn't aware of that.

ASSISTANT COMMISSIONER: As I understood Ms Said's evidence Mr Cresnar was the one who introduced her to you?---Maybe to Mr Twomey, not to me.

40

Yes. Well, she seemed pretty clear in her evidence that she met you first through Mr Cresnar and then you introduced her to Mr Twomey?---I have no recollection - - -

Is that not correct?---I don't think so, no.

MR GARTELmann: Mr Murray, before Mr Twomey joined Murray Civil as a director and shareholder did you know Phillip Cresnar?---Um, no.

So you met Mr Cresnar through Mr Twomey I take it?---Through, through working for Ausgrid.

Well, you know that Mr Cresnar and Mr Twomey are friends don't you?
---Yeah, after - - -

And you knew – I'm sorry?---After we won the, the tender I learned that they were friends, yeah.

10

Oh, you only learnt after you won the tender?---Yeah.

Mr Twomey and Mr Cresnar have been friends for a number of years, you weren't aware of that at the time Mr Twomey became a director and shareholder of Murray Civil Works?---No.

Did you have any involvement in the preparation of the tender submission for Ausgrid work for Murray Civil?---Yes.

20

What was your involvement?---Ah, mainly the pricing and making sure that our company was certified.

When you refer to pricing are you referring to the information that goes into the schedule of rates in the Standing Order Deed?---Yes.

So you were responsible for determining that information?---Yeah.

All right. Did anybody assist you in that regard?---No.

30

Did Ms Said have any involvement in that respect?---No.

Did Mr Twomey have any involvement?---Not much, no.

Did Mr Twomey have any involvement in the preparation of the tender submission at all?---Um, very little.

So I just want to be clear about it, Mr Murray, when do you say you first learnt that Mr Twomey and Mr Cresnar were friends?---Sometime, sometime after the contract was awarded to us.

40

When you say some time are you talking about weeks, months or years?
---Oh, I don't know exactly. We used to meet at monthly meetings and just seeing that they were friendly like.

I want to suggest to you that Mr Twomey and Mr Cresnar are so close they were in almost daily contact with one another?---I'm not aware of that.

Weren't you aware of that when Mr Twomey joined Murray Civil Works and before Murray Civil Works was admitted to the Ausgrid panel?---No.

Now you understand that Mr Cresnar is a, or was, an Ausgrid officer?
---Yeah.

That he worked in the Contract Cable Laying Division of Ausgrid?---Yes.

10 You, you understand that there are officers who perform different kinds of roles within that division?---Yeah.

A project planner is responsible for recommending which contractor will be allocated a contract?---I'm not aware, aware of a project planner.

All right. Are you aware that there is an officer whatever might be the title who has some responsibility for making recommendations about which contractors get which contracts?---No.

Do you know the term contract inspector?---Yeah.

20 Was it your understanding after you were admitted to the Ausgrid panel and while you were doing Ausgrid work that Mr Cresnar was a contract inspector?---Yeah.

Did you understand – I'll withdraw that. What was your understanding as to whether contract inspectors had any involvement in determining which contractors were allocated contracts?---I'm sorry, I don't really understand that question.

30 What was your understanding about whether contract inspectors had any role in determining which contractors were allocated contracts?---I didn't think about that, we were just issued with the projects. I didn't think about who was issuing them or - - -

Did you think that Mr Cresnar had any involvement in determining which contractors got contracts?---No.

Now Ausgrid under its Standing Order Deed process has a multistage contracting process?---Yeah.

40 You attend at one stage of the process what's known as a walkthrough onsite?---Yeah.

An Ausgrid officer attends the walkthrough?---Yeah.

And a representative of a contractor such as yourself would also attend?
---Yes.

Now you employed at Murray Civil Works a person with a responsibility for that job didn't you?---Yes.

A project manager?---Yeah.

His name was David Naughton?---He's the latest one, yeah.

When did he start?---Um, I couldn't give you an exact date to be honest.

- 10 Well, was it a long time after you were admitted to the Ausgrid panel or was it ---?---Only about a year and a half to two years ago.

All right. Who was the project manager prior to that?---Um, Kieran Conway.

Oh, yes. Whoever it might be from time to time, the project manager would generally attend the walkthrough. Is that right?---Yeah.

- 20 Did you ever attend walkthroughs?---Um, at the start of the – or 2011 I probably walked a few jobs. After that I didn't have time.

Did Mr Twomey attend walkthroughs?---Um, yeah.

So Mr Twomey then would be together with the Ausgrid officer responsible for the particular job doing the walkthrough together?---Yeah, I presume so.

All right. Now there's another part of the contracting process called a stage 3A?---Yeah.

- 30 You know what I mean by that term?---Yes.

Sometimes also called a contractor offer?---Yeah.

And that stage takes place after the walkthrough. Correct?---Um, yeah. Stage 1 is the walkthrough, yeah.

And the stage 3A is essentially where the contractor is telling Ausgrid what it will do the work for, it's a quote?---Yeah, agreeing the measurements again.

- 40 Yes?---The schedule of rates - - -

Yes?---- - - - that are submitted.

Did Ms Said have any involvement in the preparation of stage 3A contractor offers for Murray Civil Works?---Very little.

She wouldn't have had the technical information or expertise to do that role would she?---Oh, she would.

How?---It's all done on an Estimator.

Did - - -?---You basically have to punch in metres against your prices and gives you a figure.

10 But where would she have got the quantities involved in order to put into the Estimator?---From the job or stage 1.

All right. So from the Murray Civil Works officer who attends the walkthrough?---Yes.

So David Naughton or before that, Kieran Conway?---Yeah.

Would she have got that information from anyone else?---Um, you could get it from Ausgrid, the inspector that walked the job or – they'd agree both measurements.

20 But isn't it the responsibility of the contractor to determine the quantities for itself to put together its stage 3A contractor offer?---Yes.

So you wouldn't get that information from Ausgrid surely?---The Ausgrid inspector and Murray Civil project manager walked the job together.

Yes?---They take the same measurements – they put down the same measurements on a sheet. Everyone – Ausgrid goes back to their office, they estimate off the same Estimator file that we use and everything should match up together.

But isn't it the responsibility of the contractor to calculate for itself- - -?--- Of course it is, yeah.

- - -the quantities against its schedule of rates in order to submit its stage 3A contractor offer?---Yes.

You can't take a shortcut and just ask the Ausgrid inspector in respect of a particular job to do it for you, can you?---I presume not, no.

40 No. And it would be wrong, wouldn't it, for an employee of Murray Civil Works to contact an Ausgrid contract inspector or other officer to get that information for you?

MR HUDSON: Commissioner, I object to that. It would be wrong? I mean what specific circumstance would it be wrong because with two people taking measurements there could be a situation where it's not a blanket wrongfulness to contact Ausgrid if something has gone awry.

ASSISTANT COMMISSIONER: Well, I'm sure the witness is quite capable of responding if he doesn't think there's anything wrong with it.

MR HUDSON: Thank you.

10 MR GARTELMANN: Can you answer the question?---You could have a situation where an Ausgrid inspector punched in a two-way pipe instead of a four-way pipe. His calculation then will come up differently, whereas we might put in a four-way pipe, ours is right, so there's a difference then in the two estimates.

Yes?---So there would be contact between Ausgrid and Murray Civil to rectify where that difference could be.

20 Sure. But what I'm asking you about is whether it would be appropriate to your understanding for you not to calculate your own quantities at all but just to ring up an Ausgrid contract inspector and get them to provide you the information?---Yeah, well, my understanding is that we would calculate- - -

Yes?--- - - -every project on our Estimator.

Ausgrid provided contractors with software- - ?---Yes.

- - -to use, the so-called Estimator. Is that right?---They didn't, they provided us with a disc, yes.

30 All right. And it enabled you to carry out the calculations of the quantities against the schedule of rates to calculate your contractor offer?---That's correct.

Were you able to operate the Estimator yourself?---No.

Was anybody in your office able to operate the Estimator?---Um, basically project managers.

All right. They were the only people who had the sort of technical knowledge or understanding- - ?---Yeah.

40 - - -necessary to operate it. Correct?---Yeah.

So Ms Said for example wouldn't know how to operate the Estimator, would she?---I'm sure she would if she had the measurements for a project, yes.

How is that she would know how to operate it when you don't?---I'm sorry?

How is it that she would know how to operate it when you don't?---She probably has the education to work with.

This is the university degrees you mean?---Probably. I don't know.

Well, you're really saying that you don't know whether or not she'd have ---?---I didn't, I never learnt how to operate it. I don't know if she has ---

- 10 All right?--- -the ability to operate it or not.

Now, Murray Civil Works Pty Limited engaged subcontractors from time to time to assist to complete contracts for Ausgrid work?---Yeah.

An example of that might be to carry out works for what are known as restoration jobs?---Yes.

When a contractor such as Murray Civil Works engages a subcontractor it ultimately invoices Ausgrid on a costs plus basis?---That's correct.

- 20 In other words, you add 10 per cent to the value of the invoice of the subcontractor when you're invoicing Ausgrid?---That's correct.

I want to ask you now about the bank accounts of Murray Civil Works. Do you understand that?---Yeah.

There were three accounts in total. Is that right?---Yeah.

- 30 A cheque account, a credit card account and a general operating account? ---General, cheque account is the general operating account.

I see?---There's a high interest account and a credit card account.

I see. All right. Well, I want to ask you specifically about the credit card account. Do you understand that?---Yeah.

Is it the case that there is the one account but there are at least two cards linked to that account?---That's correct.

- 40 One for each of the directors?---Yeah.

Who at Murray Civil Works had access to online banking in respect of Murray Civil Works' bank accounts?---Um, myself, Jennifer Wang, Denis Twomey, Siobhan Twomey.

Siobhan Twomey. What role did she have in Murray Civil Works? ---Nothing.

Why did she have access?---I'm sure because she's Denis' partner so she would be accessing for him.

All right. Is there any reason as far as you are concerned that Mr Cresnar might have had access to Murray Civil Works online banking?---Sorry, what was the question?

- Is there any reason as far as you're concerned that Mr Cresnar might have had access to Murray Civil Works online banking?---I have no knowledge 10 of him having access.

There's no reason why he would have access is there?---Definitely not.

Mr Cresnar has no financial interest in Murray Civil Works as far as you're aware?---No.

At least in the more recent past has it been the case that you are more often in the office and Mr Twomey is more out on the road?---That's correct.

- 20 And is it the case that you generally collect the mail and provide the bank statements to your accountant, Ms Wang?---Yeah.

And then Ms Wang goes through the bank statements each month?---Yeah.

Including the statement for the credit card account?---Yeah.

And she goes through the transactions on the accounts and attempts to ensure that they can be reconciled?---Yeah.

- 30 Now sometimes - I'll withdraw that. Most of the time Ms Wang would be able to know just from the nature of the transaction that it was a regular Murray Civil Works kind of expense?---I'm sure she would.

So what I'm really getting at is she wouldn't have to ask you about every expense on the statement would she?---Um, probably not.

But there would be some transactions on the credit card account statements that she'd have to ask about, correct?---Yeah.

- 40 Now who would Ms Wang typically make those inquiries with, yourself or Mr Twomey?---Um, she'd probably usually ask me first, yeah.

Because Mr Twomey's out on the road?---Yeah.

Now did you from time to time tell Ms Wang that certain expenses were personal expenses or director expenses?---What expense is that?

Did you tell Ms Wang from time to time that expenses, that is transactions carried out on the credit card account, were personal or director expenses? ---Um, yeah, there would have been a few situations where we would have personal expenses, yeah.

All right. Well, I want to ask you about some specific transactions. Did Ms Wang ask you about a transaction on the credit card account for payments via a PayPal account?---Yeah, she asked a few times, yeah.

- 10 What did you tell her when she asked you about those transactions?---Um, that they would be personal expenses to Denis Twomey.

I take it you don't have a PayPal account?---No.

So you assumed they must be Denis Twomey's?---Yeah.

And you told Ms Wang that they must be Denis Twomey's?---Yeah.

- 20 Okay. Are you aware of any payments via PayPal to a firm called Bathware Online funded by the Murray Civil Works' credit card account?---I didn't know what the payments were for.

Right. Murray Civil Works itself as distinct from Denis Twomey had no PayPal account?---No.

So anything paid for on the Murray Civil Works credit card account via a PayPal transaction would not have been for Murray Civil Works?---No.

- 30 I want to ask you next about a payment to a business called G Store. Did Ms Wang ask you about a payment to a firm by that name?---I'm not familiar with that name.

So I take it from what you're saying you don't have a recollection of Ms Wang asking you about that transaction?---No.

All right. Do you have any knowledge of a payment being made on the Murray Civil Works credit card account for a fireplace made by Rinnai, R-i-n-n-a-i?---No.

- 40 In the sum of approximately \$5,700?---No.

Well, there was a transaction of that kind made with your Murray Civil Works credit card?---I don't know how that possible.

Is there any reason why Denis Twomey would be using your credit card to make transactions on the Murray Civil Works credit card account?---It would be unusual, I'm just trying to think, did he lose his card at one stage and I gave him mine, but I'm not 100 per cent.

Are you saying you have a memory of that or you're just speculating?
---I'm just speculating. I'm not sure.

It would be unusual wouldn't it, because the point of having two cards is so that each director has their own card to make their own transactions?
---Yeah.

10 The PayPal account transactions I mentioned before were made also on or with your Murray Civil Works credit card. Do you understand that?
---I understand it but I never used my credit cards to pay any PayPals.

Can you think of any reason why Denis Twomey might have used your credit card, your Murray Civil Works credit card, to pay for PayPal transactions?---I honestly don't understand.

20 All right. Well, I'll ask you about another transaction. This was a payment to a business named Craft Depot in the sum of approximately \$1,800. Did Ms Wang ever draw to your attention a transaction of that kind?---I'm not familiar with that.

Are you aware of a payment being made on the Murray Civil Works credit card account or funded by the Murray Civil Works credit card account for a Bernina sewing machine?---No.

Well, look, Mr Murray, again your credit card was used to make a transaction of that kind. Can you think of any reason why that might have been?---When you say my credit card- - -

30 Yes, your- - ?---My Murray Civil credit card?

That's right?---I find that very hard to believe.

MR HUDSON: Well, sorry, Commissioner, I think there's a misunderstanding. When Counsel Assisting is saying your credit card I don't think he's referring physically to the physical card which was in the possession of this witness.

MR GARTELmann: I can clarify it perhaps.

40 ASSISTANT COMMISSIONER: Yes.

MR GARTELmann: There is the one Murray Civil Works credit card account. Correct?---Account, yes.

And there are two cards linked to that account?---Exactly.

And each card, each director has a card. Correct?---Correct.

ASSISTANT COMMISSIONER: With your name on it?---Yes. My name would be on one card and Denis Twomey's name would be on the other card.

MR GARTELMANN: And each card of course has its own number?
---Yeah. Um, yeah, I'm sure it has.

10 All right. So- - -?---It, no, it would have the same digits but might have a different card number. Do you know what I mean?

Yes, I understand? So like you're referring to my card there, I don't think that's right.

Excuse me a moment, Commissioner, I'll just clarify something. All right. I think I might for the sake of avoiding any confusion withdraw the suggestion that it was your card specifically that may have been used for these transactions?---Yeah.

20 I want to ask you now about another transaction conducted on Murray Civil Works' credit card account. In fact it's two transactions, two payments in November of 2013 to a business named Dan Kitchens. Do you have any knowledge as to why the Murray Civil Works' credit card would've been used to fund purchases to Dan Kitchens?---I presume it was Denis, Denis Twomey's for purchase of the kitchen.

Sorry, what was the last bit?---For a purchase of a kitchen or whatever he purchased.

30 The two payments were respectively for \$5,296 and \$17,100. Did Ms Wang bring those transactions to your attention?---No, she did not.

When did you first learn about transactions of that kind being conducted on the Murray Civil Works' credit card account?---Um, only recently.

How recently?---In the last month.

Who told you?---Um, Jennifer Wang.

40 Sorry?---Jennifer Wang.

Just in the last month?---Yeah, I was just made aware of them in the last month. I didn't realise them transactions were done.

Would you have told Ms Wang to write up any of the transactions that I've just mentioned as personal or director expenses?---Um, not them ones you mentioned but, no.

When an account – I'll withdraw that. When a transaction is written up as a personal or a director expense, how was the company reimbursed for that expense?---Um, not sure if it's – if it's as a personal expense it's – we pay our taxes on it.

But at some stage does the director pay back to the company the personal expense?---Yeah. It is in there as a loan to the director.

10 And not just that it's marked up as a loan. What I'm getting at is does the director actually pay back the money at some stage?---Um, presumably they'd have to, yeah.

Presumably would have to. So I take it from your answer you don't really have a recollection of that occurring?---Yeah, it's all in our accounts every year so I'm owed money or Denis owes money it's there.

But who decides who is owed what?---It's calculated at the end of the year.

By whom?---By Jennifer and our accountant.

20 All right.

ASSISTANT COMMISSIONER: But how do they know which of you is responsible for which?---Well, we have a meeting before we go to our accountant at the end of the year. We say yeah, that's allocated to Denis, this is allocated to me and we even things up and that's it.

MR GARTELMANN: All right.

30 ASSISTANT COMMISSIONER: So you know Ms Wang says that when she was doing her reconciliation she did ask you about these transactions. Are you aware that that's the evidence she gave?---No.

But you dispute – you deny that do you?---I'm saying I, I don't have any knowledge of them transactions - - -

Until a month ago?--- - - - and who they're allocated to at the moment.

40 Yes. But I'm asking you whether at the time these transactions arose or shortly thereafter did Ms Wang come to you and say, you know, what are these for?---Some of them I don't think so.

So some of them she may have?---Mmm, yeah, and I'd say put it as a director's or personal loan or whatever and we'll work it out when we get a meeting with Denis Twomey.

So you knew at the time that these were somehow for personal use?---Yeah. More so for Denis Twomey than myself.

So you knew about them at the time?---Some of them. Not all of them.

Did you know what was being purchased and for what reason?---No.

But you knew enough to say they were directors' expenses. How did you know they weren't business expenses?---I knew I, I didn't use my credit cards so they'd have to belong to Denis.

- 10 But how did you know it wasn't a business purchase by Denis?---I'd know if it was for business or not.

You'd know?---Yeah.

Yes, Mr Gartelmann.

MR GARTELmann: Mr Murray, you mentioned that you would have a meeting at the end of the year - - -?---Yeah.

- 20 - - - and you'd discuss who was responsible for whatever expense?---Yeah.

When you say the end of the year you mean the end of the financial year?
---Yes.

At the end of the financial year just past you would have had a meeting of that kind?---At the end of the financial just past, yeah, we didn't have that meeting yet.

You haven't had that one yet?---No.

- 30 And when do you typically have them, what month or period of the year?
---Um, there's no set time.

Well, when was the last one you had?---Um, probably last August before we seen our accountant.

Last August, August 2014?---No, 2013.

- 40 All right. So at that meeting who was present?---Myself, Denis, probably Jennifer.

And did you in that meeting discuss any payments made on the Murray Civil Works' credit card account via PayPal?---Yeah.

And what was said about those payments?---They would have been allocated to Denis Twomey.

So Denis Twomey told you or told yourself and Ms Wang that they were his payments?---Yeah.

ASSISTANT COMMISSIONER: But what did he say? I bought myself some bathroom fittings or something?---He didn't explain what it was.

He didn't tell you at all what they were for?---No, his own private, whatever he wants to buy he can buy.

- 10 MR HUDSON: Well, Commissioner, just to clarify I'm not sure that would have come up in that meeting, August 2013, because I'll stand corrected, I think the transactions which have been raised by Counsel Assisting are transactions from November, the period of November 2013.

ASSISTANT COMMISSIONER: The bathroom fittings were February 2013.

MR HUDSON: But thereafter any other transactions.

- 20 ASSISTANT COMMISSIONER: I beg your pardon?

MR HUDSON: Going - - -

ASSISTANT COMMISSIONER: Well, that's why I said bathroom fittings because they were the ones that would have been discussed I presume.

MR GARTELMANN: That's why the witness has been asked about the PayPal transactions because they're February 2013.

- 30 ASSISTANT COMMISSIONER: Mmm.

MR GARTELMANN: Now you mentioned in answer, in an answer you gave to a question from the Commissioner earlier that some of these transactions you do remember being discussed. Which ones do you remember?---I don't remember.

Well, the Dan Kitchens transaction was for a significant sum of money, well over \$20,000?---I have no recollection of that transaction.

- 40 But what I'm asking you about is whether or not it was discussed between yourself, Ms Twomey, Mr Twomey sorry, and Ms Wang?---No, it was not.

No discussion in relation to that as far as you're aware?---No.

What about the Bernina sewing machine?---No.

That was a payment to Craft Depot?---There was no discussion about that either.

And what about the fireplace, the Rinnai fireplace?---No discussion on that either.

Purchased from G Store. All right. Murray Civil Works held at least up until recently an account with Bunnings, the hardware store?---Yeah.

And has that account been closed recently?---No, the account is still running.

10

Is it? Is the Bunnings account something that is used frequently or - - - ?
---We had a Bunnings card per crew - - -

Ah hmm?--- - - - where they could pick up materials when they needed them.

So there were a number of cards linked to the one account I take it?
---Yeah.

20

Was anybody at Murray Civil Works responsible for going through statements relating to the Bunnings account and checking expenses where, for business purposes?---Um, no, it was – they just purchased what they needed when they needed it, nobody checked on, it's very hard to check something like that.

Yes. Were Murray Civil Works Bunnings account cards ever provided to anyone who was not an employee, director or shareholder of Murray Civil Works?---Not to my knowledge.

30

The Murray – I withdraw that. The Bunnings trade cards enable you to get a discount on purchases from Bunnings. Is that right?---I'm not sure about the discount, it's just for convenience.

Now, Murray Civil Works has a number of vehicles it runs. Correct?
---Yeah.

You have trucks and the like?---Yeah.

But also passenger vehicles?---Passenger?

40

Cars?---There's only one car, the rest are utes.

All right.

ASSISTANT COMMISSIONER: Are utes?---Utes, utility vehicles. Like got a tray at the back of it?

Well, that's a car isn't it?---Well, I would class it as a work vehicle, not a car, yeah.

Mmm.

MR GARTELMANN: Who has the car?---Um, project manager.

That's David Naughton or was David – I'm sorry, it is David Naughton?
---Yeah.

10

Are Murray Civil Works company vehicles ever used by people other than its employees?---Not to my knowledge.

You wouldn't approve of that I take it?---No.

Is the fuel for the company vehicles paid for usually with a fuel card?
---Yes.

So Murray Civil Works has an account with a particular service station?

20

---Yes.

And then there's a fuel card in relation to each vehicle?---Yes.

And does each fuel card have the registration number of that particular vehicle on it?---Yes.

Are you aware of the fuel cards for Murray Civil Works vehicles being provided to anyone other than their employees, its employees?---No.

30

Mr Murray, some of the transactions – I'll withdraw that. The transactions that I referred to earlier that were conducted on the Murray Civil Works credit card account were all made for the benefit of Mr Cresnar. Do you understand that?---No.

What about that don't you understand?---You're saying they're for the benefit of someone else. I don't understand that.

40

All right. Well, the Bathware or the PayPal account transactions to a firm called Bathware Online were to purchase bathroom fittings for Mr Cresnar's home?---I'm not aware of that.

The Rinnai fireplace purchased from G Store was for Mr Cresnar's home?
---I'm not aware of that.

The Bernina sewing machine purchased from Craft Depot was for Mr Cresnar?---I'm not aware of that.

And the payments, the two payments I mentioned to Dan Kitchens were for a new kitchen, I'm sorry, a wall unit in Mr Cresnar's home?---I'm not aware of that.

When did you first become aware that the Murray Civil Works credit card account had been used to make purchases for Mr Cresnar's benefit?---I am not aware of that.

You're still not aware of it?---No.

10

You weren't aware of it until today?---I presumed they were for Denis Twomey's.

You presumed it was for Denis Twomey?---Yes.

And you know don't you that Mr Twomey has a close relationship with Mr Cresnar?---(No Audible Reply)

You know that now, don't you?---I've been informed of that, yeah.

20

All right. And you've known that before or today's not the first time you've realised that, is it?---I've known for a while, yeah.

Yes. Business boomed for Murray Civil Works Pty Limited, didn't it, after it was admitted to the Ausgrid panels?---The volume of work increased, yes.

But they were the – I'm sorry.

ASSISTANT COMMISSIONER: Five times?---Sorry?

30

By five times?---Yeah.

Wouldn't you call that a boom?---Um, not necessarily, no.

MR GARTELMANN: It increased by five times in the space of a year, Mr Murray?---Um, yeah, no, I wouldn't class it as a major boom.

All right. But it increased very substantially didn't it?---When you take two companies joined together it didn't really.

40

All right. But in any event you've already accepted that your business turnover increased significantly?---Yeah.

And you now know that Mr Twomey is a close friend of Mr Cresnar's. Correct?---It's about the third time saying that. Yeah.

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

You know that he had responsibility for dealing with at least some of the contracts that Murray Civil Works was performing for Ausgrid?---Yeah.

Did you not draw any connection between the relationship between Mr Twomey and Mr Cresnar and the significant increase in the turnover of Murray Civil Works?---No.

10 And you did not notice or did not learn about any of the transactions being conducted on the Murray Civil Works credit card account for the benefit of Mr Cresnar until now or very recently?---That's correct.

Is it the case, Mr Murray, that you knew things were going on, that Mr Twomey was providing Mr Cresnar with benefits in exchange for him exercising his duties favourably to Murray Civil Works but you just didn't want to know the details?---That is not correct.

Is it the case that you did not make any inquiries about these transactions being conducted on your credit card account because you just did not want to know the truth?---That's not correct.

20 You were happy with how business was going for Murray Civil Works? ---Business was tough. It wasn't easy.

Well, it was financially very good?---Financially it wasn't very good. Turnover was high but financially it was, was tough going.

But in the year 2012 alone Murray Civil Works received payments from Ausgrid in excess of \$14 million?---Yeah.

30 Business was booming, Mr Murray?---I wouldn't say booming. Profit – make profit turnover against profit is a different thing.

It's because some of the – is that because some of the profit was being dissipated to Mr Cresnar?---I resent that accusation.

Well, you know now for a fact don't you that some of the payments on the Murray Civil Works' credit card account were being made for Mr Cresnar's benefit?---I did not know for a fact.

40 You've been informed of that before today, Mr Murray. You know well - -?---I do not know for a fact that is the situation.

You believe it to be the fact though don't you?---I do not believe it.

Mr Murray, is it the case that you just do not want to know?---That is not the case.

Excuse me. Yes, I have nothing further for this witness.

ASSISTANT COMMISSIONER: Mr Murray, did you ever tell Ms Wang that these expenses should be applied half and half as between you and Mr Twomey?---These expenses? Which particular - - -

Some of these personal expenses?---Some of the ones. We'd have to wait for – to have a meeting with Denis to see – allocate what expense to him, what expense to me.

10

Well, I take it from your evidence you would never have agreed to pay half of these expenses we've been talking about for the bathroom fittings and the wall unit?---They are not my expenses.

Well, what I'm – I'm just putting to you in fairness what Ms Wang said, that on occasion she was told by you, she believes it was you she mainly approached, to apply these personal expenses half and half, that is half to you - - -?---That might be - - -

20

- - - half to Mr Twomey?---That might be for a different expense but not for them particular expenses.

Well, what shared personal expenses would you have had that would be shared between you and Mr Twomey half and half?---Well, I don't know.

Sorry?---I um, I don't know at the moment.

Yes. All right. Thank you. Does anyone wish to cross-examine Mr Murray? Mr Sutton?

30

MR SUTTON: Thank you, Commissioner.

Mr Murray, my name is Sutton, S-u-t-t-o-n and I am here on Mr Cresnar's behalf. Do you understand that?---Yes.

40

So when you, this may or may not be something within your knowledge, and you just say what the position is, when you were first onto the panel is it correct from your knowledge to say there were problems with the Estimator program?---Um, there would have been a bug, yeah, a couple of times in the Estimator program.

And is it correct to say in fact that there was a delay in the rollout of parts of the Estimator program in part or in whole?---Yeah, that was correct, yeah.

Okay. And at times Ausgrid officers had to supply contractors with information necessary for them to be able to calculate pricing, is that correct?---Um, yes, at the start, yeah.

Yeah. Your - - -

ASSISTANT COMMISSIONER: What sort of information?---The Estimator, there was a bug in it, it wouldn't, it had our schedule of rates in it and it wouldn't match up properly with the Estimator that was in the Ausgrid system so there was different figures coming out so you had to work out where the mistake was, where the bug was, you know what I mean? It'd be something very simple, minor - - -

10 Right?--- - - - you know what I mean.

But you would have already had the quantities?---Yes.

So you wouldn't have needed to get that from Ausgrid officers?---No.

Thank you.

20 MR SUTTON: The pricing however and wherever calculated subject to the quantities was fixed because it was calculated on the schedule of rates that was part of the Standing Order Deed, is that correct?---That's correct.

You were asked a question by Counsel Assisting, and I'm not sure there's any negative assertion in this so just so we're clear, you were asked about engaging subcontractors for things like restoration work and it was put to you, if I heard the question correctly, that you would charge the invoice price plus 10 per cent, is that correct?---That's correct.

30 You've been involved in what I'll call very generically, and if there's a problem with this term I'll get picked up, but construction work for a number of years, is that correct?---Yes.

How many years?---Um, started back in '94.

Okay. So we're in about 11 years now, sorry, 20?---20 years.

21 years?---Yeah.

I'm trying to make myself younger. So is it correct then, sir, that throughout the time that you've been in that industry that 10 per cent charging for, I think it's called a builder's mark-up if I put it that way?---Yeah.

And 10 per cent is the standard arrangement that is used throughout the industry, whether its residential building, construction or however, is that your experience?---That would have been a common experience, yeah.

Thank you. Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Hudson.

MR HUDSON: Yes, thank you, Commissioner.

Mr Murray, has it been the case that you've had difficulties over the period of 2011 through to the current period meeting with Mr Twomey?---Um, yes.

Why have those problems occurred?---Um, he never seems to make the time to come to the office to finalise statements and situations like that.

10 Do you know of a reason why he won't make the time?---Um, he's normally gone to the pub I suppose, every evening.

Does he have a drinking problem?---Um, probably would have, yeah.

Does he also have a slight gambling problem?---Yes.

In relation to a number of the expenses that have been raised today by Counsel Assisting and also by the Commissioner is it the case that Mr Twomey was himself undertaking a house renovation during the approximate period of about 2012 to 2013?---Yeah, that's correct.

20 And was it the case from time to time that he would put housing renovation expenses on the credit card?---That's correct.

In terms of then balancing, if I may use that expression, directors' expenses at the end of the year, would it be the case that not only would they or could they occur as a debt owed to the business, it could also be the case that the other director would simply just take an extra drawing to make up for the gap in what each had earned for the year?--- Yeah, we could average it out either way, yeah.

30 In terms of the credit card, there was one single account. Is that correct? ---That's correct.

Attached to that account was a credit card which was in your possession. Correct?---That's correct.

Attached also to that account was a second credit card which was in the possession of Mr Twomey. Correct?---That's correct.

40 As it appears in the statement there is no differentiation as to who used what credit card. Do you follow what I'm asking?---Yeah, that seems to be the way, yeah.

In relation to your overall operation and the commencement of a partnership with Mr Twomey, it's correct to say isn't it that you had limited if any contact with Mr Phillip Cresnar throughout the period of 2011 to the present date. Is that correct?---That's correct.

It was put to you that the profit of Murray Civil Works had boomed over a period since the introduction- - -

ASSISTANT COMMISSIONER: I don't think it was put that the profit, it was put that business- - -

MR HUDSON: I'll withdraw that.

ASSISTANT COMMISSIONER: Business had boomed.

10

MR HUDSON: I'll withdraw that. I'll rephrase it this way. Business had boomed since the introduction of Mr Twomey as a partner into Murray Civil Works. Do you agree that that was put to you?---No.

No, do you agree that was put to you?---Oh, yes.

That was asked of you. You went to explain further about the difference between turnover and profit, do you agree with that?---Yes.

20 How many vehicles, and let's focus firstly on earthmoving vehicles, does Murray Civil Works operate?

ASSISTANT COMMISSIONER: Mr Hudson, I really don't think it's useful to go into this. If the witness wants to say that profit was only X he's, he's welcome to do so but I don't want to go through all their inventory and operating and expenses. I don't think it's useful.

MR HUDSON: What was the profit?---What year?

30 In the last 12 months?---Probably break even.

ASSISTANT COMMISSIONER: So you weren't taking any income from the business?---I take a wage every week.

How much?---3,000 a week.

And what about the previous year, did you break even that year too?---Um, probably 2012/13 was a good year.

40 Yeah, what was your profit then?---Probably about a million profit.

Okay.

MR HUDSON: Thank you, Commissioner.

MR GARTELMANN: Just one matter arising.

It's the case isn't it that work for Murray Civil Works Pty Limited doing Ausgrid contracts has dropped off since 2013?---Yeah, that's true.

Thank you.

ASSISTANT COMMISSIONER: Just so I'm clear, is it your evidence, Mr Murray, that you know nothing at all about any benefit being provided to Mr Cresnar by Murray Civil you or Mr Twomey?---That's correct.

- 10 Thank you. Well, I think that concludes your evidence. May this witness be excused?

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

ASSISTANT COMMISSIONER: Yes, all right. Well, thank you?---Thank you.

You're now excused.

20

THE WITNESS EXCUSED

[11.19am]

ASSISTANT COMMISSIONER: We might take the break a little early so we can start Mr Cresnar after morning tea. We will adjourn for 15 minutes.

SHORT ADJOURNMENT

[11.19am]

30

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

MR GARTELmann: I call Phillip Cresnar. While Mr Cresnar is coming forward I might indicate, Commissioner that there are two bundles of documents which will be relevant to this witness's evidence that haven't been tendered to date. One is a bundle simply marked the Cresnar tender bundle and the other is a bundle relating to Murray Civil Works Pty Limited. I will provide those now.

- 40 ASSISTANT COMMISSIONER: Yes. So do you want me to mark them as accepted?

MR GARTELmann: Yes, if that's convenient.

ASSISTANT COMMISSIONER: Well, the Cresnar tender bundle will be Exhibit 19 and the Murray Civil will be Exhibit 20.

#EXHIBIT 19 - TENDER BUNDLE- MURRAY CIVIL WORKS/TGB

#EXHIBIT 20 - TENDER BUNDLE – PHILLIP CRESNAR

ASSISTANT COMMISSIONER: Take a seat please, Mr Cresnar. Mr Sutton, is your client seeking a section 38 declaration?

- 10 MR SUTTON: He is, Madam Commissioner, and he has been informed as to the consequences.

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.

20 **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 Cresnar, do you want to take an oath on the Bible or make an affirmation?

MR CRESNAR: Affirmation please.

ASSISTANT COMMISSIONER: Thank you.

ASSISTANT COMMISSIONER: Yes, Mr Gartelmann.

MR GARTELmann: Is your full name Phillip Cresnar?---It is.

Mr Cresnar, are you a former Ausgrid employee?---Yes.

- 10 You were initially employed by Ausgrid in April of 2006 as a graduate engineer?---Correct.

Now you were here on Monday when I made my opening address to this inquiry?---Yes.

You might recall that I mentioned that your position was terminated last year. Do you remember that?---Yeah.

That's not quite correct is it?---Not really, no.

- 20 It's the case, isn't it, that you resigned at the time there was a notice of intention to be terminated?---That's correct.

During your employment with Ausgrid, Mr Cresnar, you were employed in the Contract Cable Laying division?---Yes.

Did you start work in the Contract Cable Laying division immediately when you were employed as a graduate engineer?---No.

- 30 Where did you first start?---Ah, somewhere in the city.

What division of Ausgrid was that?---I can't remember.

When did you commence work in the Contract Cable Laying division?---Eighteen months later I think.

So late 2007?---It could be something like that.

- 40 All right. Once you commenced work in the Contract Cable Laying division what was your position entitled, at least initially?---Project engineer.

It's the case, isn't it, that there are a number of roles performed by Ausgrid officers within the Contract Cable Laying division?---Yeah.

And sometimes it's the case, isn't it, that the one officer might perform a number of functional roles?---Sometimes, yes.

There's a role known as the project planner?---Correct.

A role known as a contract initiator?---I think that's a contract term only.

All right. And there's a role known as a contract inspector?---Correct.

During your employment in Contract Cable Laying did you from time to time fulfil each of those roles?---Sorry, can I just correct my last answer? I think all of those are simply contract terms and they're not specific roles as
10 defined by Ausgrid.

Yes, yes. They're not positions of a particular officer within Ausgrid, is that what you mean, they're not a job title?---They're not, no.

All right. But is it the case that in terms of the contract an Ausgrid officer may carry out each of those particular roles?---Correct.

All right. With Contract Cable Laying there are portfolio managers, is that correct?---Yes.

20 And the portfolio managers look after particular regions within the areas that Ausgrid deals with?---Correct.

There's a portfolio manager for the North Region?---Yes.

Which covers essentially the area north of the harbour and up to the Central Coast?---Yeah.

30 And then there's a portfolio manager for the Southern Region?---That's correct.

When you first started working in the Contract Cable Laying Division which region or regions were you working in?---Ah, the east and the north.

Is the east, does east fall within the responsibility of the project manager for the Southern Region?---There was no portfolio managers when I started working at Contract Cabling.

Oh, I see. It's something developed later is it?---Correct.

40 All right. But under – well, I withdraw that. When did the portfolio managers commence?---I'm not sure.

What's the best of your recollection?---Ah, when the workload really picked up and ah, there was, there was an increase in resources that was required to recruit two portfolio managers. I'm not quite sure when that was.

What year roughly?---Ah, two thousand and, I don't know, '10, '11, '12.

All right. Were there Contract Cabling officers reporting to portfolio managers who were responsible for determining which contracts should be allocated to which contractors?---Sorry, say that again?

Were there Contract Cable Laying officers reporting to portfolio managers who were responsible for determining or making recommendations about which contractors should be allocated contracts?---Yes.

10 And was that role described as the project planner?---Not necessarily.

Well, what was it described as?---Contract inspectors also have that role.

The contract inspector - - -?---Correct.

- - - has the role of determining which contracts are allocated to which contractors?---I'll give you an example of this. When I was assuming the role of a project planner I would delegate work to project inspectors and they chose who, who they wanted to issue the work to contractually.

20 But isn't it the responsibility of the project planner to make that determination?---No, I don't agree with that.

But the contractor inspector who's, as the title suggests, someone who carries out an inspection of works underway under a contract, correct? ---Correct.

30 Logically the contractor inspector role occurs after the contract commences?---No, I don't agree with that. It's good to involve them in contracts at the start.

Look, is it simply – is this the case, Mr Cresnar, that the one Ausgrid officer may well perform a number of these roles?---Correct.

Project planner and contract inspector?---Yes.

And you did that from time to time didn't you?---Yes.

40 So you were – in relation to perhaps any given contract you could be both the project planner and the contract inspector?---Correct.

The Ausgrid officer who would attend the walkthrough process of the contracting – I withdraw that. The Ausgrid officer who would perform, attend the walkthrough stage of the contracting process, what role or officer would attend the walkthrough?---Are you referring- - -

MR SUTTON: Can I – objection, objection.

ASSISTANT COMMISSIONER: I'm sorry?

MR SUTTON: I'm objecting. I just wonder if I could ask Counsel Assisting, from my understanding evidence has flowed before this Commission thus far, there appears to be two phases of systems, if I can use that terminology, the walkthrough as has been described this morning and is used in the questioning now by Counsel Assisting seems to refer to a period of 2011 or '12, we only heard about it for the first time or I did when Mr Murray gave his evidence this morning. Just so that there's no confusing
10 and for abundant caution, I'm asking Counsel Assisting to be clear about the timing when he's talking. Is this earlier on in the employment of Mr Cresnar or is it post 2011 or '12 whenever this new system came in?

ASSISTANT COMMISSIONER: Yes, Mr Sutton, I think your client's shown that he's quite capable of correcting Mr Gartelmann when he thinks he's got the processes wrong, so, but perhaps, Mr Gartelmann, you can specify a period.

MR GARTELmann: Yes, certainly, Commissioner.

20 Mr Cresnar, dealing with the time when you first commenced work in the Contract Cable Laying division firstly, do you understand?---Yes.

What was the name of the Ausgrid officer in Contract Cable Laying who would go out and have a look at the site where proposed work was to be carried out?---There's not any one officer that has that role, it's done by all the officers.

30 All right. So the project planner, the contract inspector would all go out onsite?---Potentially, yeah.

All right. Did the project- -?---Plus ah, plus other representatives for other areas of the company.

All right. The project planner, would the project planner always – I withdraw that. During the entire period of time that you were working in Contract Cable Laying, contracts for work with Ausgrid were performed under what is known as a Standing Order Deed. Correct?---Correct.

40 And under the Standing Order Deed there is a multi-stage process to the contract?---That's correct.

And one of the stages has always been what is called a walkthrough?
---Correct.

Right. What's the name of the Ausgrid officer who would attend the walkthrough stage of the contracting process?---All of the officers in the cable laying section can attend.

All right. And at the walkthrough stage of the contracting process the Ausgrid officer and a contractor or a number of contractors will measure quantities involved for the purposes of calculating contractor offers at a later stage of the process?---Yes, and there will also be an Ausgrid representative from the Field Services or Zone Development sections present as well.

Are you saying that that would always happen or was that sometimes the case?---That was 99 per cent the case.

10

All right. Now, Field Services is no longer existent, is it?---Ah, isn't it? It's news to me.

Well, have you heard of a division of Ausgrid now called Network Development?---Yes.

All right. Is it the case that Network Development now does what Field Services used to do?---Not that I'm aware of.

20 All right. What, when did you cease employment at Ausgrid?---Ah, May.

May last year?---I think so.

Right. In any event, Field Services or Network Development are responsible for the design of the project. Correct?---No.

What do you say they do?---Who does?

Field Services?---They, they already have the designs given to them by another section.

30 So what do Field Services do?---They liaise with the different areas within the organisation to complete the project as a whole.

All right. But in any event, the Field Services officers would then hand it over to Contract Cable Laying officers to engage a contractor to carry out the works necessary for the project. Correct?---Only the relevant parts of the project.

40 Well, do Field Services officers carry out the works themselves?---There are, there are staff members, field staff members within Field Services, yes.

And do they carry out contract – I'll withdraw that. Do they have any involvement in engaging contractors to carry out contract work for Ausgrid?---Yes.

They do, Field Services officers have a role in engaging contractors to carry out contract work for Ausgrid?---Correct.

Isn't that the whole point of the Contract Cable Laying division?---Cable Laying division only lays cable.

But its full title is Contract Cable Laying?---But there's other areas within Ausgrid that require contractors to – is not cable related.

All right. So it appears what you're saying then is that Field Services might deal with contractors who do things other than engage in contracts for cable laying?---Correct.
10

All right. But during the time that you were working in Contract Cable Laying you were dealing with contractors who would enter into contracts with Ausgrid to carry out cable laying works?---Correct.

And at times you perform functional roles of project planner as well as contract inspector?---Are you talking about when I first started?

I said "at times".

20 ASSISTANT COMMISSIONER: At any time?---Yes.

Well, look, we're going to be here for weeks if you don't just listen to the question and answer it. Can you try to do that?---I don't think that's very fair. That's what I am doing.

Well, try a little bit harder.

30 MR GARTELMANN: When you were working as a contract inspector in Contract Cable Laying one of your responsibilities was to approve the variations to contracts. Is that correct?---No.

Was your responsibility at least to receive claims for variations from contractors?---Yes.

And was your responsibility to assess that claim?---Yes.

And make a recommendation as to whether it should be approved?---Yes.

40 And did that recommendation then get forwarded to your portfolio manager?---Yes.

And it would be sent up to the managerial level with the appropriate delegation to make an approval?---That's correct.

Now variations might be conducted for a number of reasons. You would agree with that?---Yeah.

But as a general proposition variations are made because of circumstances that were previously unforeseen affecting the extent of work required?---Not entirely.

Well, tell us about it?---Ah, it's quite obvious that um, there's going to be rock on a project before work starts quite often so you know the variation is going to be there before the project starts.

10 But nonetheless a variation is made to the contract once the extent of work is determined?---Correct.

And that will affect – that will allow the contractor to perform work – different quantities of work to complete the contract?---Yes.

And ultimately a variation may have the effect that by increasing the work that the contractor does it may increase the payment?---Correct.

I want to ask you about the procedure for approval of variations or assessment of variations. Do you understand that?---Yeah.

20 Is it the case that the contractor would contact the Ausgrid officer, contract inspector with responsibility for the particular job and call on out to the site?---Yes.

Were Ausgrid officers always available to go out on site when they received such a request?---No.

What happened when an Ausgrid officer was not available to go out on site? ---They wouldn't go out on site and ah, the proof of variation or whatnot - - -

30 So what happened to the assessment of the claim for a variation?---Quite often the – if you're speaking about rock the contractors make up the depths of the rock on the road in paint, for example, different locations.

But would the variation claim be processed notwithstanding that a contract inspector has not attended on site?--- Yes.

40 So a variation might be approved ultimately, notwithstanding that no Ausgrid officer has actually gone out on site and had a look?---Yes.

So I take it then in those circumstances that the contract inspector would receive information from the contractor regarding what variation was sought?---Yes.

Make a determination as to whether or not the variation should be recommended for approval - - -?---Yes.

- - - and then submit it onto the portfolio manager who submits it on in turn to the managerial officer with the appropriate delegation?---Yes.

Would you agree with me that as a general proposition variations to contracts were a common feature of contracts administered by Contract Cable Laying?---Yes.

Most jobs were the subject of variations?---Yes.

- 10 And in some cases there might be multiple variations to the contract for one job?---Yes.

And ultimately the effect of multiple variations might be to increase the ultimate payment to a contractor quite significantly?---Yes.

I want to move onto a different topic now, Mr Cresnar. During the time that you've been employed or were employed as an Ausgrid officer was there to your knowledge a Code of Conduct in existence?---Ah, I'm not sure.

- 20 Was there to your knowledge at any time during an employment, your employment at Ausgrid a Conduct, a Code of Conduct?---Yes.

When do you say you first became aware of a Code of Conduct?---Oh, I'm not sure.

Tell us your best recollection, Mr Cresnar?---2011/12 perhaps.

How did you first become aware of a Code of Conduct?---Oh, there was some training rolled out.

- 30 Did you attend the training?---Yes.

So I take it it was around the time the first became aware of it, 2011/2012? ---I'd say so.

Did you attend training in relation to a Code of Conduct on a number of occasions?---Not really, no.

Just the once?---Yeah.

- 40 Back in 2011/2012?---Something like that.

Are you sure about that?---Pretty sure.

Doesn't Ausgrid from time to time – well, I'll withdraw that. Do you know what I mean by a corporate directive?---Yes.

Doesn't Ausgrid from time to time issue what is known as corporate directives in relation to their employees attending training for the Code of Conduct?---My understanding of a corporate directive is an information, informative email send around.

Yes, but is the content of some of those emails regarding employees attending training in relation to the Code of Conduct?---Ah, I'm not sure.

Have you attended what are called compulsory e-learning sessions?---Yes.
10

Have any of those e-learning sessions related to the Code of Conduct?
---Um, could have done.

Well, surely you'd remember wouldn't you?---Not really, there's quite a few of those e-learning things that we have to do.

Could it be the case, Mr Cresnar, that you didn't take any e-learning sessions in relation to the Code of Conduct seriously?---Oh, I don't think so.

20 Well, when you attended training in relation to the Code of Conduct did you take that seriously?---I don't even remember much about it.

Clearly not then. What sort of things did the Code of Conduct deal with to your recollection?---Ah, ethical, ethical things.

Ethical issues perhaps affecting an Ausgrid officer's exercise of his or her duties?---Yeah.

30 Ethical issues perhaps such as affecting gifts or benefits from contractors?
---Correct.

So your recall that part of the Code of Conduct, do you?---Yes.

And do you think you learned about that back in 2011/2012?---Could have done.

Well, you have a recollection of learning it sometime. When was it do you think that you first learnt about ethical issues relating to accepting gifts or benefits from contractors?---I think there was something presented in ah,
40 one of the team briefs.

When?---I'm not sure.

What's your best recollection of when?---Ah, 2012.

Right. Was it your understanding that the Code of Conduct required you to report offers of gifts or benefits from contractors?---Yes.

You understood that there was a reporting regime?---Yes, but that was ah, that wasn't rolled out until even later.

When was that rolled out?---2013.

Around what time in 2013?---I'm not sure.

- So what was your understanding before that was rolled out, as you describe it, regarding whether you were to report offers of gifts or benefits from contractors?---I understood it perfectly.
- 10

And what was your understanding through?---You report gifts and benefits.

All right. So even before they'd rolled out, as you describe it, training in relation to a reporting regime, you understood you were supposed to report offers of gifts or benefits from contractors?---I don't think ah, the gifts and benefits policy was part of the Code of Conduct originally.

- When do you think it became part of the Code of Conduct?---Oh, I'm not sure. Later on.
- 20

When?---2013.

All right. Did any of your training in relation to ethical issues deal with disclosing to your employer any conflict of interest?---Yes.

And what did you understand conflict of interest to mean in the context of you working as a Contract Cable Laying officer?---I'm not sure.

- 30 Well, wouldn't it deal with such matters as your having a relationship with contractors?---Could have done.

Surely you understood that that's what it meant?---I'm not sure.

Well, what did you understand it to mean?---I don't really remember it.

Well, what do you think conflict of interest means, Mr Cresnar?---Ah, for example you can't contract to the company you work for.

- 40 All right. What about you can't, whether you can -- I'll withdraw that. Do you think it might also include such matters as contacting to people with whom you are close?---Could do, yeah.

People who are your friends?---Yes.

Irrespective of the training you attended in relation to the Code of Conduct, you would have known, wouldn't you, the whole time you were working at

Contract Cable Laying that it was wrong for you to take gifts or benefits from contractors?---Not necessarily.

Surely you would know that that was unethical- - ?---Not sure.

- - -at least?---Not sure.

So let's say for example a contractor you're dealing with carrying out your official duties as an Ausgrid officer offers you cash. Do you think that
10 might present an ethical issue?---Absolutely.

All right. Let's say a contractor you're dealing with in carrying out your duties as an Ausgrid officer offers to make a payment or a purchase for something for you. Do you think that might give rise to an ethical issue?
---Potentially.

All right. If any of those things occurred you would have understood that you should report it to your supervisor or manager, wouldn't you?
---Possibly.

20 Well, you keep answering questions with the word possibly, either you did understand it or you didn't. You would have understood that you should report offers of cash or payments or purchases from contractors to your supervisor or manager?---It might depend why those offers are being made.

Why?---Perhaps those offers are being made for a circumstance that's not a conflict of interest.

30 In what circumstances would there not be a conflict of interest?---Secondary employment.

Well, let's deal with secondary employment. Are you not supposed to report secondary employment to your employer?---Mmm, not until 2013 I think that came in.

All right. Did you have secondary employment prior to 2013?---Yes.

With whom?---Bastow.

40 You were employed by Bastow?---That's how I'd describe it, yeah.

What was your position at Bastow, Mr Cresnar?---I'd work on the Estimator for him.

And I take it from what you're saying that you had entered into an arrangement with Mr Bastow on an ongoing basis for you to provide services to him of that kind?---Correct.

ASSISTANT COMMISSIONER: You mean you'd work on the Estimator for Ausgrid work?---Yes.

Weren't you already being paid by Ausgrid to - - ?---Not out of hours, no.

- - - deal with contractors about Estimators, et cetera?---Not out of hours.

All right. And is it your evidence that you didn't think secondary employment with a contractor to Ausgrid created a conflict of interest?

10 ---Correct.

MR GARTELMANN: So, Mr Cresnar, do we understand you correctly that you perceived no ethical issue with carrying out your official duties as an Ausgrid officer in the Contract Cable Laying Division including dealing with a contractor for whom you were working?---That's correct.

You can't be serious, Mr Cresnar?---I am deadly serious.

How could you not have understood that that created a conflict of interest?

20 ---Why does it have to create a conflict of interest?

Because you're helping the very person with whom you're supposed to be keeping at arm's length?---Where did it say that?

Look, Mr Cresnar, you're not an unintelligent man are you?---Not that I'm aware of.

You've got tertiary education?---Correct.

30 Surely, Mr Cresnar, you perceived a conflict of interest if you were working for Mr Bastow on an ongoing basis while you were dealing with him in your capacity as an Ausgrid officer in the Contract Cable Laying division?---I didn't perceive that as a conflict of interest.

All right. Well, let's go and deal then with some of the services that you provided to Mr Bastow. I think you've already acknowledged that you gave him assistance in relation to the Estimator program, is that right?---Correct.

40 When was the Estimator program first allocated to contractors?---Before I began employment at Ausgrid.

Well, we've heard the evidence of Mr Bastow that he had trouble operating the Estimator program?---Correct.

And so I take it you don't dispute what he says about you agreeing to help calculate his variation claims?---I don't dispute that, no.

All right. I take it you don't dispute that you went to – I'll withdraw that. You don't dispute that you had him over to your house to give him help? ---Correct. He brought the beer though.

All right. How many times did he come to your house?---Several.

What's that?---I'm not sure.

Are we talking once or twice or dozens?---Ah, dozens.

10 And you'd sit down together and – I withdraw that. Did Mr Bastow simply hand over the responsibility for the calculation of a variation claim to you? ---Yeah, I think he did, yeah.

Because, well, at least according to his evidence, he was completely incapable of using the Estimator?---Yeah.

So you were responsible for calculating the variations that Mr Bastow could claim from Ausgrid?---Correct and also the initial contract prices.

20 So you're talking there about even before the contract has been allocated? ---Yeah.

So you would help Mr Bastow use the Estimator to calculate prices for his contractor offer?---Correct.

And you're saying that you did not perceive there to be any conflict of interest in you doing that notwithstanding that you're the very Ausgrid officer who would receive these contractor officers for the purpose of 30 making recommendations as to their approval?---There are other Ausgrid officers receiving them as well. It weren't just my projects.

Yeah, not just yours sure but yours included. Correct?---Correct.

So insofar as you're the person receiving the contractor offer you perceive no conflict of interest in helping Mr Bastow price the job?---At least I knew the prices were correct.

40 You would agree with me that if that occurred it would give you significant opportunity to affect what, firstly, whether Mr Bastow got the contract at all?---I don't agree with that.

Well, isn't it the case that - - -?---He's already got the contract before you work out the price.

Well, I thought we were talking about contractor offers?---Right.

Now it's the case, isn't it, that there is - - -?---That's his offer not Ausgrid's offer.

Yes, I understand. But it's the case, isn't it, that there are essentially different rules applicable depending upon the size of the contract?---No, that didn't come in until after Bastow no longer worked at Ausgrid.

So let's go back to the period then before those rules came into force?
---Yeah.

- 10 Was it the case then that the Ausgrid officer, project planner or contract inspector however we might describe that officer, would have the responsibility for making recommendations as to which contractor would be allocated a contract irrespective of price?---That's correct.

All right. So at the time that you're dealing with Mr Bastow, at least in respect of some of the contracts you're assisting him with, you've got the power to make recommendations as to whether or not he gets the job?---No, I wasn't a, a planner or act in a planning role at that stage.

- 20 You've already told us though that a contract inspector could carry out these duties. You said that earlier. You corrected me?---That's correct.

So you clearly had the power on your own version to make a recommendation as to whether Mr Bastow got the job?---No, that's something that I introduced later on.

You introduced?---Correct.

- 30 When did you introduce it?---When I was acting planner in the north.

When was that?---Ah, 2012 onwards I think.

All right. But let's go back to when you were dealing with Mr Bastow. Isn't it the case according to your own evidence that in relation to those contracts that you have been allocated responsibility you had the capacity to make recommendations for your superiors as to whether or not a particular contractor got the job. Right?---No, not at that stage.

- 40 But, Mr Cresnar, your evidence to date has already confirmed that a contract inspector had that capacity?---I just told you that it was something I introduced later on when Bastow wasn't with Ausgrid any more.

Well, let's deal with it this way. Before you made this, this reform to Contract Cable Laying who had the responsibility for making recommendations?---The person in the planning role.

All right. Are you saying - - -?---Which wasn't me.

Which was not you.

ASSISTANT COMMISSIONER: Did you tell that person that you'd done Mr Bastow's claim for him?---No, I don't think I did.

So you were really effectively misleading Ausgrid?---Why?

10 Because they're thinking that Mr Bastow is doing all this great work and you were doing it?---I don't think it was an issue to help them out.

MR GARTELMANN: And get payment in one way or another on the side?---Correct.

And not to report that to Ausgrid?---Correct.

You cannot seriously have misunderstood that that created an ethical issue? ---I didn't see a problem with it.

20 When you were helping Mr Bastow calculate contractor offers, the information that you were using to calculate the offer would come from firstly the quantities that had been measured out on site?
---Yes.

And secondly the rates set out in the schedule of rates under his Standing Order Deed?---Yes.

The quantities that had been measured out onsite had at least in some cases been measured out by yourself?---Correct.

30 So you had – I withdraw that. The quantities that you measured out onsite would affect the value of the contract when multiplied by the schedule of rates fees. Right?---Right.

So when you're the contract inspector going out onsite and measuring out the quantities, Ausgrid relies on you to make that determination. Correct?
---Correct.

40 And then when you're making calculations for contractor offers for Mr Bastow, he's relying on you for the same information?---Correct.

So you've got a fair degree of responsibility in calculating those quantities, haven't you?---Yes.

And your calculations will affect ultimately, assuming Mr Bastow gets the contract, what Ausgrid has to pay him?---Correct.

And on the other side of the coin, what he gets out of Ausgrid?---Correct.

And so you're doing this job both for Ausgrid and Mr Bastow at the one time?---After hours.

Surely, Mr Cresnar, you perceived a conflict of interest in that?---No, I didn't.

How long did you carry out work for Mr Bastow, according to your version?---A couple of years.

10

Did you ever tell anyone at Ausgrid about it?---No.

Why?---I just didn't.

Because you knew it was wrong?---I didn't think it was wrong.

You must have known it was wrong, Mr Cresnar. Why stay silent about it? ---(No Audible Reply)

20

I've asked you a question, answer it?---Well, I just don't know why I didn't tell anyone, didn't see a need to.

Look, the reason you didn't tell anybody about it, if it's true, is because you knew you had to keep it under wraps. Correct?---I'm not sure.

You're not sure?---Correct.

So there's a possibility that that's the reason that you didn't tell anybody about it?---I don't think so.

30

Look, at one stage in your dealings with Mr Bastow you told him that he was hopeless?---Didn't say that.

Words to the effect that he'd be stuffed if it wasn't for you?---Didn't say that.

You knew that Mr Bastow was entirely dependent upon you for calculating or doing calculations with the Estimator?---No, he could have employed someone else to do it.

40

All right. But during the time when you've agreed to do it for him he was depending upon you to do it?---At the time, yeah.

Now, did you ask Mr Bastow for anything in exchange for what you were doing for him?---I asked him to pay me an hourly wage.

And what was that?---I think it was \$60 an hour.

And did he do that?---Sorry?

And did he do that?---No.

So when he refused to pay you an hourly wage, what did you do?---He ah, came up with an alternative.

He came up with it?---Correct.

- 10 And presumably the alternative was he'd go and buy you things to renovate your house?---He'd buy me things, yeah.

Well, yes, I withdraw that, it wasn't until a little later that you started to renovate the house was it?---Correct.

All right. So you're suggesting that Mr Bastow came up with a proposition to you, you work for me and I'll just buy you things?---Correct.

- 20 Mr Cresnar, you are lying about that arrangement?---How do you know I'm lying about it?

ASSISTANT COMMISSIONER: Mr Cresnar, could you please answer the questions, not ask questions?---I am not lying, no.

MR GARTELMANN: What was your arrangement according to your version with Mr Bastow about how many things Mr Bastow would buy you for a given amount of work you did for him?---I'm not really sure.

Well - - -?---Play it by ear.

- 30 Only you would and he would know about it?---Correct.

So bearing in mind – well, you've heard his evidence about the arrangement between you?---Yes.

And you would understand that his evidence was nothing like what you've described here in evidence today?---Correct.

- 40 So it's only you then who can tell us about what this arrangement was, correct?---Correct.

So tell us what was your arrangement with Mr Bastow regarding the supposed purchases in exchange for you doing work for him? How did it work?---He'd buy me things occasionally as long as I kept working on the estimates and variations, et cetera, yeah.

But how would you know whether you were getting paid enough for your work?---I was happy with how it was working out.

Because he bought you some things which in total added up to quite a significant amount of money?---Correct.

Well, you're aware of Mr Bastow's evidence regarding a number of transactions conducted on his credit card for items purchased by or for yourself?---Yeah.

There were 13 of those in total?---I'm not sure.

10

Well, your lawyer's no doubt shown you that summary table setting out those items?---Right.

Well, hasn't he?---Yeah.

All right. And you're aware that those items had a total value of a little over \$30,000?---Correct.

You don't dispute that those transactions were made by or for your benefit?

20

---No.

You're aware that Mr Bastow gave evidence about a number of other transactions conducted on your PayPal account but funded by his credit card account?---Yes.

And you've seen a table that sets out in summary form those transactions?

---Correct.

And you're aware that the total value of those transactions was in the vicinity of \$36,500?---Yeah.

And I take it from your evidence you don't dispute that those transactions were made for your benefit or by – sorry, those transactions were made by you?---Correct.

So all of those transactions carried out with the credit card or with the PayPal account funded by the credit card were made for you?---Yes.

40

I'm not going to go through those transactions individually, Mr Cresnar, but there are a couple that I'll just briefly refer to. Do you understand that?
---Yeah.

One of the PayPal transactions related to a purchase made from a firm called Appliances Online?---Correct.

And I would suggest to you that that related to the purchase of a fridge, a Bosch, B-o-s-c-h, fridge?---Okay.

Do you accept that?---Yes.

That's a fridge that you installed in your home?---Yes.

You recall Mr Bastow's evidence to the effect that you provided him with a phone at some stage?---Yes.

Is that the case?---No.

- 10 Well, one of the credit card transactions appears to relate to the purchase of a couple of Apple iPhones?---Yeah.

So those were just for your benefit not for his?---That's correct.

You're aware, aren't you, that amongst the PayPal account transactions there are two payments to a Robert Ujszaszi?---Yes.

Robert Ujszaszi is your friend. Correct?---I'm not sure any more.

- 20 Are you talking about since this week?---Yeah.

I see. In any event, up until this inquiry Mr Ujszaszi was your friend since uni?---Correct.

And there were two payments made to Mr Ujszaszi - - -?---Yeah.

- - - with your PayPal account but funded by Mr Bastow's credit card account?---Correct.

- 30 Why did you make those payments to Mr Ujszaszi?---I bought a MoTeC Engine Management System off him and then later a second-hand turbo.

All right. And why is it that you used your PayPal account to make those transactions?---I cleared it with Bastow. He said it was okay.

You cleared it with Bastow?---That's correct.

- 40 All right. I'm going to ask you now about transactions other than those conducted by way of PayPal and/or funded by Mr Bastow's credit card account. Do you understand that?---Yeah.

Was there an occasion when you put to Mr Bastow that you wanted to get some work on your car?---Yes.

And your car was a Saab motor vehicle?---That's right.

And you wanted to get some modifications done to it I take it?---That's correct.

And did you in effect ask Mr Bastow to pay for those modifications?---No.

You understand that a cheque from Bastow Civil Constructions Pty Limited in the sum of \$25,000.36 (as said) was used to pay for those modifications?--That's correct.

So - - -?---Oh, sort of.

- 10 Well, why don't you explain to us how that transaction came about?---He's got a rally car, I was doing work to my car, so ah, we were talking about that. I told him what I was going to get done and how much it was going to cost and he said, "Oh, don't do that. Just pay me some cash and I'll, I'll give you a cheque. You just make sure I can write it off." He told me he wanted some spending money that his missus didn't know about.

So you're suggesting that you've paid for it but via Mr Bastow?---Correct.

- 20 So you sent Mr Bastow \$25,000?---No, I gave him 20 which I got from my grandfather.

All right. But the 25,000 – you accept that \$25,036 was used to pay for these modifications?---That's correct.

And you accept that those funds were drawn at least upon Mr Bastow's cheque account?---Correct.

Or the cheque account of Bastow Civil?---Yes.

- 30 All right. Well, let's just deal with this one step at a time. You say that you sent Mr Bastow \$20,000?---I gave him 20 grand in cash, yeah.

And you say that Mr Bastow paid for your car modifications in the sum of \$25,036?---Correct.

All right. Well, just assuming for a moment the truth of your version about supplying Mr Bastow with the \$20,000 it follows, doesn't it, that the extra \$5,036 was provided by Mr Bastow?---Correct.

- 40 So assuming again for the moment the truth of your version about supplying Mr Bastow with the \$20,000, do you say then that the \$5,036 was part of the same arrangement whereby you did work for Bastow Civil helping him with his Estimator calculations and that was a payment for it?---No, this was separate.

Well, what was this payment for?---He ah, he wanted some spending money and he also wanted to claim the payment on tax.

But he's depriving himself of money in this transaction not getting any money out of it?---I don't know how the sums work out at the end.

Well, the cheque is in the sum of \$25,036?---What about the tax implications and the spending money that he had?

But just answer my question, if you will. The cheque is in the sum of \$25,036?---Correct.

- 10 That cheque is drawn on the Bastow Civil Constructions Pty Limited cheque account?---Correct.

That means \$25,036 has gone out of Bastow Civil's account. You understand that?---Yes.

And you provided Mr Bastow with \$20,000 cash you say?---Correct.

So there is a difference of \$5,036?---Correct.

- 20 Putting aside tax implications and the like, on the face of it Mr Bastow's company has lost \$5,036?---Okay.

So why did, according to you, Mr Bastow agree to do that for you? ---He told me he wanted some spending cash and he wanted to be able to write the thing off on tax.

ASSISTANT COMMISSIONER: You were here when Mr Bastow gave evidence, weren't you?---Yes.

- 30 This was never put to him?---I wasn't aware of how this whole thing works.

MR GARTELMANN: But surely you heard the evidence given by Mr Bastow and you told your lawyer, hang on, this isn't right?---No, I didn't, I just sat back and watched.

Is it because you only made this story up now?---No.

Have you made it up since you've heard Mr Bastow's evidence?---No.

- 40 You're aware that the cheque was used to pay for modifications to your car conducted by a man named De Jong?---Correct.

Mr De Jong quoted you \$25,000 or so to carry out the modifications but also to paint the car, didn't he?---Yes.

But he didn't ultimately get around to painting it, did he?---No.

And as a consequence he made a refund of about \$6,000?---Correct.

And you'd accept that that refund was paid directly into your account?
---Yes.

So you got the benefit of the refund, not Mr Bastow?---Correct.

Now, you heard Mr Bastow's evidence regarding the invoice for De Jong being made out to look as if it related to work on a truck?---Yep.

- 10 And I take it from what you're saying, you're suggesting that Mr Bastow made that happen?---That was done at his request, yes.

When you say it was done at his request, are you saying you asked Mr De Jong to do it?---Correct.

I see. When do you say it was that you, is it your grandfather gave you the \$20,000?---Correct.

When was that?---Ah, about the same time.

- 20 How was it that your grandfather gave you the \$20,000 in cash?---He just gave me the cash.

Where did he get it from?---I'm not sure.

Your grandfather was in a retirement home at the time, wasn't he?---No.

When did your grandfather move into the retirement home?---Ah, 2012.

- 30 Now, why was it that you – am I right in understanding your evidence that your grandfather gave you \$20,000 in cash?---Correct.

It's not like he transferred it from a bank?---No.

He handed it over in cash?---He did.

Was it mixed denominations?---No.

- 40 What denominations was it in?---Sorry, what do you mean, the ah, the notes?

The notes, yes?---Hundreds.

Why was it that your grandfather had \$20,000 in hundred dollar notes?
---I'm not sure.

Surely you would have been a little bit surprised at your grandfather's gift of this sum of cash?---No.

Didn't you ask him, grandfather, why do you have \$20,000 in hundred dollar notes?---No.

And when your grandfather gave you this sum of money, did he tell you why he was doing it?---For the car.

I take it you asked him?---That's correct.

- 10 What did your grandfather do for work?---I'm not sure, he's been retired for so long.

He was retired at the time that he gave you the \$20,000 in cash?---Yeah.

And he just had \$20,000 in cash lying around?---That's correct.

Mr Cresnar, you've giving false evidence in this explanation for Mr Bastow paying for your car modifications?---No.

- 20 Putting aside the payment for the modifications to the car you've agreed that all of the other transactions, the ones conducted on the credit card account and via PayPal, were for items purchased by or for you?---Yes.

And you say that all of those items were purchased by Mr Bastow as a kind of payment for you doing work calculating things on the Estimator for him? ---Correct, yes.

And you'd accept that those payments total close to \$70,000?---Correct.

- 30 And those payments were made over what period of time?---I'm not sure.

It's about 18 months or so isn't it?---Could be, yeah.

Now this you are saying is essentially secondary employment?---That's my take on it, yes.

All right. Now you've already told us that you didn't tell anybody about it at Ausgrid, correct?---Correct.

- 40 Did you tell the Tax Office about it?---No.

You didn't put this in your tax returns I take it?---No, I didn't, no.

Did you complete annual tax returns?---Yes.

Or income tax returns I should say?---Yes.

And in that income tax return you stated and you declared - - -?---No, I didn't, no.

What I was about to say is that you declared that the information that you provided in your income tax return was true and correct?---Okay.

Correct?---Correct.

10 And you set out in that return the sources of income that you had for the relevant financial year, correct?---Correct.

So you didn't say anything about payments approaching \$70,000 from Mr Bastow?---No.

Why not?---Well, ah, does it have to be money for tax?

Oh, come on, Mr Cresnar?---Well, how would I know? I'm not an accountant.

20 No, but you're as you've already accepted not an unintelligent man with tertiary education, you on your own account are suggesting that this was payment for secondary employment, correct?---Correct.

You knew it was income of one kind or another, correct?---Ah, I don't know if its relevant for tax.

Mr Cresnar, is it the case that you realise now that perhaps the explanation you've come up with for the payments Mr Bastow was making for you, there was a problem with it?---At the time I didn't realise.

30 Oh, come on, Mr Cresnar, you're not telling the truth in your evidence in this inquiry?---Yes, I am.

Isn't it the case, Mr Cresnar, that all of these payments, that is the credit card account transactions, the PayPal account transactions, the payment for the, for the modifications to your car, were all payments that were solicited by you from Mr Cresnar, from Mr Bastow, as a reward in the expectation that you would exercise your duties as an Ausgrid officer favourably to Bastow Civil Constructions Pty Limited?---No, they weren't.

40 They were either payment for work that you had done helping Mr Bastow or they were payments made by Mr Bastow in the hope that you would do things for him?---Payment for work that I had done.

You cannot seriously suggest, Mr Cresnar, that you cannot, that you did not perceive that there was any conflict of interest in you carrying out this work for Mr Bastow while at the very same time carrying out official duties on

behalf of Ausgrid in relation to the very same contracts?---I didn't perceive a conflict of interest in secondary employment.

And yet you didn't tell anybody at Ausgrid about it?---No.

The reason you didn't tell anybody about it is because you knew it was wrong?---I'm not sure about that.

Well, you've used the words not sure again. Mr Cresnar, at the very least
10 you would have suspected it was wrong?---I'm not sure.

All right. I'm going to ask you now about your dealings with Mr Miskelly?
---Okay.

Do you understand that?---Yep.

You understand Mr Miskelly was the director and shareholder of a company called Fer-Aim Pty Limited?---Yes.

20 And Fer-Aim was a subcontractor to another company called Diona Pty Limited- - -?---Yeah.

- - -for Ausgrid work?---Yeah.

And you know that most of Fer-Aim's work for Diona was Ausgrid work?
---Yes.

And you in your official capacity as an Ausgrid officer were responsible for dealing with contracts between Ausgrid and Diona Pty Limited?---Correct.

30 And as part of your duties you would have dealings with Diona's subcontractors from time to time?---Yeah.

Including Fer-Aim?---Yes.

So from time to time you would have dealings in the context of your official duties with Ausgrid with Mr Miskelly?---Sorry, say that again.

40 So from time to time in the context of your official duties with Ausgrid you would have dealing with Mr Miskelly?---Correct.

Now, you're aware aren't you that Mr Miskelly's credit card was used to fund purchases for airfares for you in 2010?---I am now, yes.

Well, when did you first become aware of that?---Oh, when I was reading the transcripts this week.

Well, you went overseas in 2010, didn't you?---I did, yeah.

You went to Croatia?---Correct.

And elsewhere in Europe before returning?---Yes.

Who paid for your airfares?---Paddy did.

Is Paddy, Paddy, Patrick Miskelly?---I don't think that's very fair for you to carry on like that.

10

I'm sorry?---Well, what did you just say?

Is Paddy Patrick Miskelly?---Oh, it sounded to me like you were stuttering, that's all.

Oh, Mr Cresnar, you said Paddy did?---That's correct.

Is, are you referring when you say Paddy to Patrick Miskelly?---I am, yes.

20

So where's the disrespect in my clarifying that?---I thought you were stuttering.

Does Patrick Miskelly stutter?---Yes, he does.

Oh, I see. Well, you can rest assured, Mr Cresnar, no offence was intended? ---Okay.

ASSISTANT COMMISSIONER: And I don't think he did stutter when he was in here. Maybe it's just with you?---Maybe.

30

MR GARTELMANN: Well, having cleared that up, Mr Cresnar, it's the case isn't it that Mr Miskelly paid for your airfares to Europe?---Correct.

ASSISTANT COMMISSIONER: But you said you only found out about that now?---I thought it was Bastow.

Oh.

40

MR GARTELMANN: Why did you have that understanding?---I just remember buying plane tickets with Bastow's credit card.

Well, for the sake of clarity, it is the case isn't it that you did buy airfares with Bastow's credit card but funded by a PayPal---?---Correct.

---transaction. But they were for travel on another occasion, weren't they? ---They were, yeah. I thought it applied to both occasions initially.

All right. So you understood that Mr Bastow had paid for your airfares in 2009 and in 2010?---Yeah.

And you understood I take it because those – I'll withdraw that. The 2009 airfares were funded by a PayPal transaction conducted with Mr Bastow's credit card?---Yes.

And we've already confirmed that on your version that was, those payments were for the work you were doing for Mr Bastow?---Correct.

10 So if you thought that both the airfares in 2009 and those in 2010 were paid for in the same way, I take it you're saying that you thought that the airfares in 2010 were also payment for the work you were doing for Mr Bastow?
---Correct.

And when did you first become aware that somebody other Mr Bastow had paid for your airfares in 2010?---When I read the transcripts this week.

20 Okay. So it's not the case that Mr Miskelly bought those airfares for you in 2010 as a gift is it?---Yeah.

Well, surely it cannot be the case, Mr Cresnar, if you only learnt that he paid for those transactions during the course of this inquiry?---I'm a bit confused. I forgot about something and, that's all.

What is it that you've forgotten about?---That he bought me plane tickets.

So why did Patrick Miskelly buy you plane tickets?---Because I helped him out at his house.

30 What did you do?---I helped him construct a patio and laid some asphalt mix for him.

And - - -

ASSISTANT COMMISSIONER: Sorry, didn't you just say you didn't know anything about him buying you these tickets till just now?---No, I forgot about it.

40 You forgot about it?---That's correct.

I don't see how you could forget about it?---Well, it was - - -

Have you been following the evidence in the inquiry at all?---Yeah, but the evidence has only been presented this week.

Yes. And that didn't jog your memory?---It did, yes.

Well, then why did you say you didn't know anything about it?---I didn't know anything about it until I read it on the transcripts this week. I didn't not know anything about it, I forgot about it.

MR GARTELMANN: Did you forget about it because Mr Miskelly never bought the airfares as a gift for you helping him out with his house?---No.

Is it the case that that's an explanation you've concocted to justify the payments you received or purchases made on your behalf from Mr
10 Miskelly?---No.

So tell us about the work that you did on Mr Miskelly's house?---I helped him build a patio and laid an asphalt driveway.

How long did that take you?---Oh, a few weeks.

A few weeks?---Correct.

Well - - -?---So it was only weekend work.

20 Because you were working as an Ausgrid officer Monday to Friday?
---That's correct.

You were working as an Ausgrid officer in relation to contracts, some of which were with Diona Pty Limited and some of those being performed or carried out by subcontractors including Fer-Aim?---Correct.

You didn't have any relationship with Mr Miskelly outside of the Ausgrid context did you?---Sort of.

30 What do you mean sort of?---I used to ah, go out to the pub with him on occasions.

Where did you meet Mr Miskelly?---At work.

So it was a relationship you've developed only in the context of work.
Right?---Right.

40 And yet you go around to Mr Miskelly's house and help out on your weekends building his patio and his – and laying asphalt on his driveway?
---I did, yeah.

Did you socialise with Mr Miskelly other than go to the pub on a couple of occasions?---Yes.

What sort of things did you do?---I used to go on houseboats with him at Christmastime, things like that.

You're aware, aren't you, that Fer-Aim ceased to do contract work for Diona on Ausgrid jobs after about 2011?---Yeah.

And it's the case, isn't it, that you didn't really have any contact with Mr Miskelly after that period of time did you?---After the Kogarah incident?

Yes?---Not for a little while, no.

Well, the Kogarah incident was in which year?---I'm not sure.

10

Roughly?---I don't know. I can't remember.

Well, how old were you roughly?---I don't know when the incident occurred.

Look, Mr Cresnar, you must have some recollection of when it occurred? ---I'm not good with dates and years and things.

Tell us the best of your recollection?---Was it 2010?

20

All right. So coincidentally Fer-Aim ceases to do work for Diona on Ausgrid jobs and you cease to have a relationship with Mr Miskelly?---I wouldn't say cease but, you know, things were a bit difficult.

Things must have been quite different though at the time that Mr Miskelly paid for your airfares back in 2010?---Yeah.

And that was at a time when Fer-Aim was doing a lot of work for Diona on Ausgrid jobs?---Okay.

30

Well, isn't it the case, Mr Cresnar, that Mr Miskelly paid for your airfares either because you asked him to or he did it in the hope that you would exercise your duties as an Ausgrid officer favourably to Fer-Aim?---No, that's not the case.

How many weekends did you work with Mr Miskelly putting up the patio and asphalting the drive?---I'm not sure.

Roughly.

40

ASSISTANT COMMISSIONER: You said a few?---A few, yeah, I just – it was so long ago I can't remember.

MR GARTELMANN: Was it a couple or was it dozens?---It was a few, a few is less - - -

Were you working for months or not?---No.

All right. Less than a month.

MR SUTTON: Well, objection.

ASSISTANT COMMISSIONER: Well, I think a few weeks is less than a month, doesn't a few mean three, about three?

MR SUTTON: No.

10 THE WITNESS: No.

MR SUTTON: The proposition that was first put was dozens and then it was changed to dozen but kept in the same context of the same question. There is unfairness in my respect in the proposition that was put.

ASSISTANT COMMISSIONER: Well, I think the final proposition put was that it was less than a month. Do you agree with that or not?---No.

How many weekends do you say you worked?---Well, a few.

20 What do you call a few?---Between five and 10.

All right.

MR GARTELMANN: You were carrying out this work on your version for Mr Miskelly as a friend?---That's correct.

You weren't expecting any payment?---No.

30 Mr Miskelly on your version pays your overseas airfares to the tune of more \$2,500?---Correct.

As a gift for you helping out as a friend put up the patio?---Correct.

Mr Cresnar, the value of the payment that Mr Miskelly made on your behalf far exceeds any conventional gift that a friend might buy for helping out at a working bee wouldn't you agree?---Not necessarily.

40 Isn't it the case that that payment – I withdraw that. In your capacity as an Ausgrid officer – I withdraw that. How many payments was it that Mr Miskelly made for you?---Ah, just the one.

And how did it occur? How did, how did, how was the payment made?---I booked flights with his credit card details.

So you were given his credit card details?---Correct.

Would you agree that in the ordinary course of life when a friend wants to buy someone a gift they might give them a present, a thing, like a bottle of wine, box of chocolates, something of that nature?---Correct.

But here you were given just credit card details?---Right.

And in – were you told you can use the credit card up to a certain - to purchase things up to a certain value?---No, I was told I could book a overseas trip with it.

10

Were you told whether you could book a trip overseas to New Zealand or Europe?---Yeah.

Were you told you could travel first class?---No, I wouldn't expect that.

All right. But what discussion did you have with Mr Miskelly about what value you were authorised to expend on his credit card?---He told me I could book an overseas trip, that's - - -

20 And that's it?---That's it, as far as I can remember from all those years ago.

And away you go and spend more than two and a half grand on his credit card?---Yes.

Look, Mr Cresnar, you're giving false evidence about the circumstances of that transaction?---No, I'm not.

Commissioner, I note the time and I'm about to move onto another area.

30 ASSISTANT COMMISSIONER: Yes. We will adjourn until 2 o'clock.

LUNCHEON ADJOURNMENT

[1.00pm]