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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION JARAH

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY, 22 JANUARY 2015

AT 2.02PM

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

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

MR GARTELMANN: Mr Cresnar, I just want to go back to your explanation for Mr Bastow making purchases on your behalf. Do you understand that?---Yeah, yeah.

10

Now you've given evidence here today that that occurred because of an arrangement you entered into with Mr Bastow whereby you did work for him calculating prices for contractor offers using the Estimator?---Correct.

Now I'm going to ask you something about what you've said previously about that. Do you understand that?---Yeah.

20

Commissioner, I will need to seek a lifting of the suppression order in order to do this, it's in relation to compulsory examination on 17 April last year and in particular - - -

MR SUTTON: Sorry, Counsel Assisting's voice has moved away from the microphone, I can't hear.

MR GARTELMANN: It's in relation to a compulsory examination conducted on 17 April last year, pages 284 to 285, they'll need to be edited in due course.

30

ASSISTANT COMMISSIONER: Yes. I release the suppression order in respect of those pages.

THE SUPPRESSION ORDER RELATING TO PAGES 284 TO 285 OF THE COMPULSORY EXAMINATION ON 17 APRIL, 2014 IS RELEASED

40

MR GARTELMANN: You were asked about a number of benefits, purchases made for your benefit during the course of an examination at the Independent Commission Against Corruption in April last year weren't you?---Yeah.

And you were asked this question, "What did you do for those contractors in return for those gifts and benefits?" and you said, "I don't know. I didn't do anything really." Do you remember giving that evidence?---Vaguely.

You were asked, "Nothing at all?" You answered, "Not really, no." Do you remember saying that?---Vaguely.

You were asked this question, "They just kept showering you with gifts and you didn't have to do anything?" And you answered, "I think Bastow wanted more bore work."?---Right.

Do you remember giving that evidence?---Vaguely.

10 You were asked, "Wanted more bore work?" And you confirmed, "Wanted more bore work." You were ask, "Asked you for it?" And you've said, "That's correct." You were asked, "What did you say?" And you said, "I'll try." You were asked if you could remember that you might've been asked to do in exchange for these gifts, can you remember anything and you clarified that I was asked to do an exchange and then you said, "Nothing at all." Do you remember saying that?---No.

Well, I'm going to suggest to you that that's the evidence you gave at a compulsory examination here at the Independent Commission Against Corruption in April of last year. Do you understand that?---Yes.

20 On the version that you've given here today about your arrangement with Mr Bastow, the version you gave at your compulsory examination in April last year was false wasn't it?---Ah, to the best of my recollection back at the time it was accurate.

Well, it's clearly false isn't it?---No.

You did do something for Mr Bastow in exchange for the gifts and benefits that he provided you?---That's correct.

30 So the version that you gave at your compulsory examination in April last year was false wasn't it?---Yes.

You knew it was false at the time that you gave that evidence?---No.

Of course you did, Mr Cresnar?---No.

40 How could you possibly have forgotten that you did a couple of years' worth of work for Mr Bastow calculating prices for him for his contractor offers on an ongoing basis in exchange for almost \$70,000 worth of purchases made on your behalf?---I had a few too many schooners between then and now.

Mr Cresnar, it's obvious, isn't it, you lied in your compulsory examination here last year?---No.

ASSISTANT COMMISSIONER: Or you're lying now?---I'm not lying now.

They can't both be true?---I'm not lying now.

So are you suggesting your memory has actually improved since last year?
---Well, it's, it helps your memory when you um – all this evidence is put in front of you.

MR GARTELMANN: I'm going to ask – read to you another passage of the same evidence – or the evidence that you gave on the same occasion. Do you understand that?---Yeah.

10

You were asked this question, “Why do you think the contractors were giving you gifts?” And you clarified it, “Which contractor are we talking about now?” And the questioner said, “Any contractor.” And you said, “Like I said, Bastow wanted more bore work.” Do you remember saying that?---Vaguely.

Well, clearly you didn't remember saying that until I took you to it. Correct?---Correct.

20

Otherwise you wouldn't have given the version that you gave here today. Right?---Sorry, say that again.

Otherwise you would not have given the version that you have given here today in relation to your arrangement with Mr Bastow?---I would've given the version I gave here today because I've remembered it.

Well, look, when you gave your evidence at the compulsory examination in April of last year it was closer in time to the events you were asked about wasn't it?---Yes.

30

So your memory would if anything have been better at that time would it not?---I've told you that looking at all the evidence it brings back your memory.

Mr Cresnar, you cannot seriously being suggesting that you forgot working for Mr Bastow for a couple of years for almost \$70,000 worth of purchases in exchange?---Yeah, it escaped my mind.

40

Mr Bastow – Mr Cresnar, you're giving false evidence in this inquiry and you gave – I'll withdraw that. You're giving false evidence in this inquiry in relation to your arrangement with Mr Bastow aren't you?---No.

And you gave false evidence when you appeared at the Independent Commission Against Corruption in April of last year about gifts or benefits from Mr Bastow?---Yes, unintentionally.

Unintentionally?---Sorry about that.

Well, you don't need to apologise to me. Mr Cresnar, you've told us today about receiving \$20,000 in hundred dollar notes from your grandfather?
---Yes.

Your grandfather's name's [REDACTED]?---That's right.

Was that occasion when [REDACTED] gave you \$20,000 in hundred dollar notes the only occasion when you were provided with a large sum of cash?
---No.

10

Did [REDACTED] give you large sums of cash on a regular basis?---Not really.

All right. So on how many occasions did [REDACTED] give you sums of cash in the tens of thousands of dollars?---Hmm, he'd normally give me less than 5,000.

When was the last occasion do you say that your grandfather gave you cash?
---Ah, I went up, I flew up there to pick him up one Christmas.

20

Where's there?---Where his ah, the retirement home is at Laurieton. That was the last time.

And when was that?---Not sure.

What year?---I don't know.

Well, to the best of your recollection, Mr Cresnar?---Ah, 2012.

30

Right. So going back a couple of years at least?---Yeah, yes.

Right. And when your grandfather gave you sums of money was it always in cash?---Yes.

When you went up to visit your grandfather in Laurieton at Christmas 2012 did he give you cash?---Yes.

So he was in the retirement home at this point in time?---He was, yeah.

40

Did he explain to you where he had all of this cash kept?---No.

Did you see where he produced it from?---No.

What, he just pulled it out of under his retirement home bed?---I didn't see where he produced it from.

Mr Cresnar, I want to suggest to you that you're giving false evidence about sources of cash in order to explain payments for renovations you did to your home in Alexandria?---No.

Amongst other things. Do you understand that?---Yes.

Before your grandfather retired, what did he do?---I'm not sure.

You don't even know what he did?---He was a clerk or something like that.

A clerk?---Yeah.

10 I see. He wasn't a person who earned large sums of money?---Well, I didn't really know him, I don't think I was born then.

You didn't really know him?---Oh, I wasn't born. I didn't know someone when I'm not born.

I see. But did you have a close relationship with your grandfather after you were born?---Yeah.

20 How often did you visit him?---Well ah, I lived in Canberra at that stage which is where he was living.

Sorry, which stage are you talking about now?---When I lived in Canberra.

And when was that?---After I was born.

Mr Cresnar, what period of time were you living in Canberra?---Ah, till 2004.

30 Right. And thereafter did you maintain a close relationship with your grandfather?---Yeah.

Did you visit him a lot?---A little bit.

How many times have you visited him since you've been an Ausgrid officer?---Ah, I see him at Christmastimes, Easter mainly.

All right. And on each occasion you see him does he hand over large wads of cash?---Usually.

40 Does he ever explain why he's doing that?---Yeah.

What does he say?---Oh, he just said um, "You're my only grandson."

Does he ever explain where he gets it from?---No.

Does he ever explain where he keeps it?---No.

Is anybody else around at the time that this happens?---No.

So you just have these secret meetings or meetings alone with your grandfather and every time you have one he hands over a large bundle of cash. Is that right?---When I visit my grandfather he's generous with that, yes.

Look, Mr Cresnar, you've giving false evidence trying to provide an explanation for payments for renovations that were conducted to your home, I would suggest?---I disagree.

10

Look, you carried out some extensive renovations to your Alexandria home after you purchased it in 2009 didn't you?---Yeah.

You renovated the existing two bathrooms, correct?---Correct

You added a third bathroom, correct?---Yes.

You had a courtyard area paved on the walls and the floors?---Yeah.

20 You renovated the kitchen area?---Yes.

It's an open-plan kitchen and living area, correct?---Correct.

You renovated the entirety of it, didn't you?--- Yes.

You had the entirety of the home painted?---Yes.

Can I just ask you this question, did you pay for any of those renovations yourself?---Yes.

30

And if so, what?---The painting.

All right. What about the rest of it?---Ah, I did a lot of it myself, like the demolition work, paid for the plumbing and the tiling.

The tiling. All right. Well, let's just deal with the tiling. When you say the tiling you're referring there to the tiling necessary for the bathrooms and perhaps the laundry?---Correct.

40 And that was carried out by a man named David Lago wasn't it?---It was, yeah.

Of Warago Tiling?---Yes.

And you paid him a sum of almost \$10,000 for that tiling work?---Correct.

And you paid him in cash didn't you?---I did.

Where did you get that cash from?---Ah, it would have been a combination of the bank, rental money and cash I had saved.

All right. Well, let's deal with your rental money. How much rent were you receiving at the time that you paid David Lago your \$10,000 in cash or thereabouts?---400 a week.

All right. And any cash withdrawals you made from your bank - - -?
---Correct.

10

- - - would be reflected in your bank account statements of course?---Yeah.

And you mentioned lastly you had some savings?---Yeah.

But you're talking about savings in the bank aren't you?---No.

What other savings did you have?---I had some, some cash left over from what my grandfather gave to me and rental money.

20

Well, let's just deal with that. You said that the last time that your grandfather gave you money was Christmas 2012?---Yes.

And you said I think that that transaction was about 5,000 or less than 5,000?---Correct.

You paid Mr Lago I think at the end of 2013 didn't you?---Um, it was spread out over a good 12 months I think.

30

All right. But during 2013?---Perhaps.

Well, is that consistent with your recollection, that it was 2013?---It was, I guess it could be.

Yes. Well, look, the tiling was completed in 2013 wasn't it?---Yeah, I think it was.

And the previous gift of a bundle of cash from your grandfather would have been the \$20,000 you say he gave you to pay for your car modifications?
---I'm not sure.

40

Well, when did you get cash from your grandfather prior to Christmas 2012?---I, look I didn't keep a log of this, I, I don't know.

Isn't it the case that you can't say because it simply didn't happen?---No.

Isn't it the case, Mr Cresnar, that you got cash not from your grandfather but from contractors and/or subcontractors doing work for Ausgrid?---No.

And isn't the case that you're inventing a story about your grandfather providing you cash in order to explain cash payments that were in fact made with money you'd received from contractors or subcontractors?---No.

Now some of the renovations to your Alexandria home were paid for, you know, with cheques drawn on the account of Cloughcor Pty Limited?
---Yes.

10 And you know that Eamon Burke is the sole director and shareholder of that company?---That's right.

Perhaps for accuracy's sake he's changed the company's name now hasn't he, to Burke Pipe & Civil?---I'm not sure.

You knew Mr Burke through your work with him – I'll withdraw that. You knew Mr Burke only in your capacity as an Ausgrid officer?---Correct.

You didn't have a relationship with Mr Burke outside work, did you?---No.

20 Cloughcor Pty Limited was a subcontractor to Diona Pty Limited?---Yes.

And Diona Pty Limited was a contractor to Ausgrid. Correct?---Correct.

And you know don't you that back in 2011/2012 Cloughcor Pty Limited was doing a lot of subcontracting work with Diona?---That's right.

30 And you would have heard the evidence in this inquiry suggesting that more than 80 per cent of the work that Cloughcor did was Diona work for Ausgrid?---I have no idea.

Well, you told us earlier that you've been following the evidence in the inquiry?---I wasn't following that bit of evidence.

All right. In any event, you knew Cloughcor was doing a lot of work on Ausgrid jobs as a subcontractor to Diona?---That's correct.

In 2011. Correct?---Yes.

40 Now, I want to ask you about payments that were made in that year. Do you understand that?---Yep.

Now, you had a kitchen designed, fabricated and installed in your Alexandria home in 2011, didn't you?---Yes.

And the value of that kitchen ultimately was a little over \$60,000, wasn't it?
---Yes.

And you know that that was paid for by a cheque drawn on the account of Cloughcor Pty Limited?---That's right.

I'm going to ask you to look at a document. Can we have page 556, please. Do you see there on the screen before you a copy of the cheque from Cloughcor Pty Limited paying Dan Kitchens that sum of money?---Yep.

Is that your handwriting on that cheque?---Yes.

10 Your handwriting in relation to the payee and the amount of the cheque?
---Yep.

What about the date?---Yes.

All right. So the only thing there on the cheque that's not handwritten by you is the signature?---That's correct.

Now, how did you come to be in possession of a cheque signed by Mr
20 Burke drawn on the Cloughcor Pty Limited account?---He left it in the HAC
book in his van.

He left it in the HAC book in his van?---And I took it out of the HAC book when I signed onto the HAC.

You stole it?---I assumed it was for me.

Why did you assume it was for you?---Because I told him to buy a road saw and he told me he was saving a lot of money and he told me specifically to
30 go into his van and sign on a HAC book in his van that's normally onsite
and it was right there at the page where you sign on.

And so that meant you- - -

ASSISTANT COMMISSIONER: I'm sorry, can I just stop for a minute. Mr Sutton, it's really most unsatisfactory that this evidence is being given, none of which has been put to Mr Burke and previously evidence has not been put to Mr Bastow. It makes it very difficult.

40 MR SUTTON: It does indeed, and that's one of the problems when these
inquiries occur and documents are kept back. I can only take- - -

ASSISTANT COMMISSIONER: Well, it's not question of documents. The witness would have- - -

MR SUTTON: Commissioner, you've asked me - - -

ASSISTANT COMMISSIONER: - - -known perfectly well that his relationship with Cloughcor and various other contactors was at issue.

MR SUTTON: Indeed. Can I be clear on this just for the record?

ASSISTANT COMMISSIONER: Yes.

MR SUTTON: Are you insinuating, Commissioner, or suggesting that I've had a part to do with this?

ASSISTANT COMMISSIONER: I'm not insinuating anything.

10

MR SUTTON: I just want to be clear on that first of all.

ASSISTANT COMMISSIONER: I find it – I appreciate that you can only proceed on your instructions but- - -

MR SUTTON: Might I remind you, Commissioner, you stopped me in the course of cross-examination of Mr Burke when I was putting to him that cheques were left in the HAC book and there was a discussion about whether the cheques were actually in a cheque book or whether they were separate and on their own.

20

ASSISTANT COMMISSIONER: I never - - -

MR SUTTON: That and the - - -

ASSISTANT COMMISSIONER: I'm not talking about that.

MR SUTTON: Well, I - - -

30 ASSISTANT COMMISSIONER: I am talking about the suggestion that there was a conversation between this witness and Mr Burke where Mr Burke told him to take a cheque for soil advice.

MR SUTTON: That was not the evidence, with respect.

ASSISTANT COMMISSIONER: Well, I think that is the evidence.

MR SUTTON: No, that was not the evidence, with respect.

40 ASSISTANT COMMISSIONER: How does it differ?

MR SUTTON: The evidence was from this witness that he had had a conversation about a road saw and from my recollection that was put to Mr Burke but he denied it and that this witness has said that he says there was a conversation that occurred and he was told to go and sign on the HAC book and when he did sign on there was a cheque there. It was then his assumption, that is, Mr Cresnar's assumption that the cheque was there as I – and I'm going to put a word forward, I don't know if he will accept this or

not but for the purposes of this discussion, a reward for him suggesting that Mr Burke buy a road saw which saved him a lot of money.

ASSISTANT COMMISSIONER: Well, I think it should have been put to Mr Burke - - -

MR SUTTON: It was, with respect.

10 ASSISTANT COMMISSIONER: - - - that it was suggested that he had left a cheque there. No, I'm sorry, it was never put to Mr Burke that he had left a cheque there for Mr Cresnar as a result of advice he had received about road soil.

MR SUTTON: Madam Commissioner, you stopped me in the course of putting those matters to him suggesting or saying words to the effect of but he doesn't accept that, Mr Sutton, that the cheque was left there in that manner.

20 ASSISTANT COMMISSIONER: No, I stopped - - -

MR SUTTON: And that whole line of inquiry stopped at that point. So I don't accept that it wasn't attempted to be put.

ASSISTANT COMMISSIONER: I would certainly have not stopped you putting evidence about discussions between - - -

MR SUTTON: Well, the transcript will speak for itself, Commissioner.

30 ASSISTANT COMMISSIONER: It will speak for itself.

MR GARTELMANN: The transcript relevantly is at page 180 and there's no suggestion there, with respect, Commissioner, that there was any stopping of Mr Sutton putting a matter to a witness. The only thing was a clarification of precisely what he was putting to a witness.

ASSISTANT COMMISSIONER: Yes. I – yes. Anyway, there's nothing that can be done about it now but, yes, carry on, Mr Gartelmann.

40 MR GARTELMANN: What was the conversation you now say you had with Mr Burke in relation to the HAC book and the cheque?---He told me to go into his van to sign onto the HAC book.

Right. And what was it about him saying that that led you to believe you could take his cheques?---It was unusual that he tells me go and sign on the HAC book left in his van like that.

But nothing about what he has told you has anything to do with a cheque?
---No.

Let's assume for a moment that your version about removing the cheque from the HAC book is the truth, surely it's the case, isn't it, on your version you've just stolen it?---I assumed he wanted me to take it.

You could not have assumed that on the basis of anything he said to you?
---I did.

How?---Just made the assumption.

10

Go and sign the HAC book means take my cheques?---That's what I thought, yeah.

You could not have genuinely formed any such belief, Mr Cresnar?---I did.

Had you had any discussion with Mr Burke at all about cheques?---No.

Did you tell him you'd taken his cheque?---No.

20

Well, on your version you've just stolen his cheque haven't you?---I'm not sure.

He hasn't given you any consent or indication of consent for you to remove his cheque from his HAC book has he?---Well, I thought it was the purpose.

What, signing the HAC book means take the cheque?---That's what I thought.

30

It doesn't even make any sense, Mr Cresnar, does it?---That's what I thought.

40

MR GARTELMANN: Well, if that's the case I want to ask you about something else you said about that matter previously. I'll need to seek another lifting of the suppression order. The same compulsory examination, this time at pages 268, 269. You were asked these questions, Mr Cresnar, and you gave these answers. "So, you got a new kitchen in your house." You answered, "Right." Question, "Have you?" and you answered, "Yes." Question, "When did you get that installed?" Answer, "2011." "Right. And who did that question?" You answered, "Dan Kitchens," and you asked, and you were asked, "How much did that cost?" "62,000 I think," you said. You were asked, "And who paid for that?" And you said, "It was paid for with a business cheque." Question, "Whose business cheque?" "A business cheque owned by an Eamon Burke." You were asked this question, "Tell us how you came to have the cheque," and you answered, "It was left in my letterbox."?---Yes.

Well, on the version you've given in evidence here today, the version that you gave in your compulsory examination in April last year was false wasn't it?---It turns out to be, yes.

What do you mean it turns out to be, it simply is isn't it?---It's, it's false, yes.

You knew it to be false at the time that you gave that version in that compulsory examination?---No.

10

Mr Cresnar, are you seriously suggesting that you could have wrongly thought in April of last year that someone had left a blank signed cheque in your letterbox?---That's correct.

You could have mistakenly been under that impression at the time that you were asked those questions?---Yeah, I mixed the cheques up. There were cheques in the letterbox but they were different.

20

They were different to what?---To the cheques from Eamon Burke.

Well, what could be confusing about the questions that you were asked that I've just read out to you in that examination back in April last year?---I've had cheques left in the letterbox but they weren't Eamon's cheques like I initially thought they were.

I see. So you've had cheques left in the letterbox from perhaps other contractors?---Correct.

30

I see. Which contractors were, were those contractors?---I'm not sure.

Well, do you have a recollection of any one particular - - -?---No.

- - - contractor leaving a cheque in your letterbox?---No.

What did you do with those cheques?---They were for my flatmate, Simon.

40

All right. But your explanation that you gave in April of last year, Mr Cresnar, was that you paid for your kitchen to the tune of more than \$60,000 with a cheque that you'd had left in your letterbox, that's the explanation you gave here?---Correct.

You could not have had any belief that a cheque had been left in your letterbox by Mr Burke and used to pay for your kitchen and then that turned out to be a false or mistaken belief?---Yeah, I mixed them up.

ASSISTANT COMMISSIONER: Are you saying other contractors left blank cheques in your mail?---For Simon, yeah, that's how he used to get paid.

What, by blank cheques?---No, they weren't, they were written out to cash, sorry, please pay cash.

So they had amounts on them?---Yeah. Did, yeah.

MR GARTELMANN: Mr Cresnar, in your examination last year you said that the cheque that you used to buy your kitchen had been left in your letterbox together with a note?---Right.

10

Do you remember that?---Yes.

And you gave evidence here at the Independent Commission Against Corruption during a compulsory examination in which you said that the note led you to believe that you had Mr Burke's authority to use his cheques to pay for your kitchen, do you remember that?---Yes.

Are you saying that that was all just a mistake?---That's correct.

20

Look, Mr Cresnar, you're not telling the truth now, you were not telling the truth during a compulsory examination in April of last year?---I was telling the truth, I'm telling the truth now, I was telling the truth back then to the best of my knowledge.

Look, it's simply not the case that you're telling the truth at all, Mr Cresnar? ---Well, I disagree.

30

You understand, you understood when you attended the compulsory examination in April of last year that you were required to give your answers as truthfully as you could?---Correct.

You understood that by giving false and misleading answers to those questions you were committing an offence?---Yeah.

So surely, Mr Cresnar, you would have been conscious to ensure that the answers that you gave were the truth, right?---I mixed them up.

Look, it's just a lie, isn't it, Mr Cresnar?---No.

40

How could you possibly mix that up?---Well, it happened a long time ago.

It would have been a remarkable occurrence, would it not, for a signed blank cheque to be left in your letterbox with a note on it leading you to form the belief you had authority to go and do with it as you pleased? ---Yep.

It's not something you could be mistaken about or forget?---I think under the circumstances it's not too unreasonable.

All right. So taking your explanation here today for why you forgot about the explanation you gave in the compulsory examination at face value, you got it wrong because you confused it with other cheques that had been left in your letterbox by other contractors. Is that right?---Correct.

But those other cheques had been left for someone else?---That's right.

10 So how is it possible then that when you're asked questions on oath or subject to affirmation in April of last year you could have thought that Mr Burke had left a cheque in the letterbox for you?---Yeah, I mixed them up.

Notwithstanding that these other cheques on your account here today were for somebody else, not for you?---I mixed them up.

You've mixed up your story because it's a total fabrication?---Mixed up my memory.

20 You can't remember your story because it's not the truth?---I remember the story.

Well, you don't, clearly, Mr Cresnar?---I remember telling you that version back in ah, April.

You remember telling us that?---Yes.

So your memory's not that bad, is it?---I've got the transcripts at home.

30 Right. I'm going to ask you about another cheque now, page 1393, please. Do you see before you on the screen a copy of another cheque drawn on the Cloughcor Pty Limited cheque account?---Yes.

Made out to Gosford Quarries- - -?---Yep.

- - -in the sum of \$5,810?---Yes.

That's your handwriting again, isn't it?---It is.

40 So is your explanation for that today going to be that you removed that from Mr Burke's HAC book too?---Yes.

Well, was that on the same occasion that you removed the other cheque or a different occasion?---No, this was the first one.

All right. So were there multiple occasions when Mr Burke's asked you to go and sign the HAC book and you've gone over to sign the HAC book and seen a cheque there and thought, oh, I'll just take that?---Yeah, there was four occasions.

And Mr Burke never said anything about cheques during any of these occasions. Is that right?---That's correct.

But on each occasion you thought you had his consent to remove his signed blank cheques?---Yes.

Why?---Well, I thought he left them there for me.

10 Why?---Well, with this particular one I remember telling him I was um, buying some sandstone and then the next time I saw him he told me to go into his van and sign on the HAC book and there was a cheque there.

And so what about him saying go and sign the HAC book makes you think you can remove his cheque?---Yeah, well, it's just, it was a weird situation, I thought that's what he wanted me to do.

Well, isn't it the case that if your version is true you're simply taking his cheque without his consent?---Possibly.

20 You're stealing?---Possibly.

Excuse me a moment, Commissioner.

I want to show you another cheque now. It's page 1399. You see before you on the screen a copy of another cheque drawn on the Cloughcor Pty Limited cheque account?---Yeah.

30 And this one is made out to Miele Australia Pty Limited?---Yeah.

In the sum of \$21,093?---That's right.

Now it's not your handwriting on this cheque is it?---No.

But is your explanation in relation to coming into possession of this cheque much the same?---The same thing, yeah.

40 Oh, yeah. You go to Mr Burke, he says go and sign the HAC book, you go open the HAC book and there's a blank cheque and you take it?---That's it.

And when you took this cheque from Mr Burke did you say anything about what you proposed to do with it?---No.

Did you say anything to Mr Burke on any occasion about what you were going to do with these cheques?---No.

Did you tell him anything about how much money you might make out the cheques to?---No.

About how much money you had his authority to spend?---No.

So you thought you could just go and spend tens of thousands of dollars?
---Yeah.

Of Mr Burke's company's funds?---That's right.

10 Notwithstanding that he'd never said anything about you doing such a
thing?---Yes.

Now you – that document can be taken down, thank you. You used the
cheque you've just been shown to pay for kitchen appliances for your newly
renovated kitchen - - -?---Yeah.

- - - from Miele. Correct?---That's right. Correct.

20 And you went to a store I take it to have a look at the kitchen appliances
before you purchased them?---Yeah.

And was that a store called Winning Appliances?---Yes.

It was an agent for Miele?---That's right.

Was it a store out at Northmead?---I could have been.

Well, do you have a memory of going to the store?---Not really.

30 How did you choose then the appliances that you were going to install in
your new kitchen?---I think I was given a recommendation by Dan
Kitchens.

By whom?---Dan Kitchens.

I see. Well, I want you to have a look at this document. Page 1402. Do
you see before you on the screen a copy of an invoice - - -?---Yes.

- - - to Miele?---Yes.

40 From Miele. And that relates to the kitchen appliances you purchased with
Mr Burke's Cloughcor Pty Limited cheque?---Yes.

Now in the box on the top left headed two, you see there the company name
- - -?---Yeah.

- - - and an address?---Yeah.

Those particulars relate to Mr Burke's company - - -?---Correct.

- - - and an address that's either – or both of his home and office?---Yeah.

Now who provided those details to Miele?---I did.

Why?---You've got to give them details when you buy something.

Yeah, but why didn't you give them your details, you were buying the kitchen for your home?---I've got my delivery address there.

10

Yeah, but why didn't you – why did you give them the details of Cloughcor Pty Limited?---I just assumed that's the right way to do it.

Why, it's your home?---It's a company cheque.

But what has that got to do with anything?---Company cheque, company bill to address.

20

Yes. Why are you getting Miele to make out the invoice to Cloughcor Pty Limited for a cheque – for appliances you're buying for your home, what's the point?---Well, it's – I just thought that's – should be the way it should be done.

Why?---Why not?

Why, Mr Cresnar?---Company cheque.

30

Why did you have the details of Cloughcor Pty Limited's address or Mr Burke's address?---I had the details so I could ah, give it to Miele.

Why, how did you get them?---Ah, it's a – not sure.

Yeah, it doesn't make sense on your account does it?---It makes plenty of sense.

Well, look, you've just gone and taken these cheques from Mr Burke's HAC book - - -?---Correct.

40

- - - without his knowledge. Correct?---Well, I – apparently so.

And then gone off to Miele and bought yourself \$20,000-odd worth of kitchen appliances, he doesn't know anything about what you're doing on your account does he?---Oh, apparently not.

So how is it that Miele gets Cloughcor Pty Limited's name and address?
---I gave it to them.

Sorry?---I gave the address to them.

They gave the address to them?---I gave the address to them.

But where did you get it from?---It's not hard to find someone's address.

So did you talk to Mr Burke about this?---No.

So what did you do to get the address?---I either had it from ah, I probably looked it up on Google. Yellow Pages, White Pages, whatever it is.

10

So on your version - - -?---It's his phone number too.

Yes, it is, isn't it, in the, the box on the right under the heading Customer's Contact Numbers?---Yeah.

That's Mr Burke's mobile number isn't it?---It is, yes.

So I take it on your version you supplied that to Miele Australia too?
---That's correct, yeah.

20

Why?---It's being purchased by his business, I put his business details on there.

It's not being purchased by his business at all on your version is it?---Sorry, by his business cheque.

It's being purchased by you for your home isn't it?---That's correct, yes.

30

Isn't the case, isn't it the case, Mr Cresnar, that you provided those details either by yourself with Mr Burke's knowledge or together with him in order to make it look like it was an expense for Cloughcor Pty Limited's business?---No.

There's just no other reason to provide those details is it, is there?---I've already given you the reason.

Well, why did you provide his customer contact number?---Because it was with his cheque.

40

So what, Miele has a query about what they're going to do with the kitchen appliances or what specific appliances are to go where and they rang Mr Burke?---Right.

And on your version Mr Burke knows nothing about this?---Well, I thought he knew everything about it.

Why?---He didn't know the specifics but I thought he was okay with me doing this with his cheques so - - -

Mr Burke didn't know anything about it at all on your account?---It appears that way.

So look, Mr Cresnar, your version just does not make any sense, does it?
---I don't know what to say. That's what I did.

Why don't you just admit that it's false?---No, it's not false.

10 Right. Well, we might move onto another document.

ASSISTANT COMMISSIONER: Before you do - - -

MR GARTELMANN: Yes.

ASSISTANT COMMISSIONER: - - - Mr Gartelmann I'll just mark the compulsory examination transcript pages to which the witness has been referred as Exhibit 21.

20

**#EXHIBIT 21 – EXTRACTS FROM COMPULSORY
EXAMINATION OF PHILLIP CRESNAR HELD ON 17 APRIL 2014
AND 18 AUGUST 2014 – PAGES 268-269, 434-436**

MR GARTELMANN: Certainly.

Do you see there before you on the screen a copy of yet another Cloughcor Pty Limited cheque?---Yes.

30

And this one's made out to Architectural Décor in the sum of \$12,400, right?---Right.

Your handwriting on the cheque?---Yes.

Only Mr Burke's signature - - -?---That's right.

- - - in the handwriting. Is your explanation in relation to this cheque once again you went to sign the HAC book and there was a cheque there so you took it?---Yes.

40

Mr Burke didn't say anything to you about taking the cheque?---No, he said, "Go into my van and sign the HAC book."

And you took his cheque?---The cheque was right at the page where you sign on.

Right. And then you thought that you had his authority to go and spend it on, spend \$12,400 of his money at Architectural Décor?---Yeah.

And what was it about what he'd said to you about signing the HAC book that made you think that?---Like the other occasions it was, it was at the same location in his van rather than where it normally is.

10 But what is it about sign the HAC book that makes you think you've got his authority to take money?---'Cause he told me to go to his van and sign the HAC book and the cheque was in the HAC book.

Yeah, but even - - -?---Just the circumstance of that made me believe that he left that there for me to take.

All right. But to do with as you pleased?---Yeah.

Which means spend all of his money?---Well, within reason.

20 Within reason? What, what was, what was within reason according to your understanding at the time?---Oh, I'm not sure.

Because Mr Burke hadn't said anything about how much money of his you could spend, on your version. Right?---That's right, yep.

So you could have written a cheque out to purchase another home in Alexandria, for example?---Well, I don't think that would be within reason.

30 And yet you think you've got authority to spend tens of thousands of dollars?---I thought I did, yeah.

Why do you think you've got authority to spend that much money?
---I think he was happy with the way things were going.

The way things were going for Bastow Civil Pty Limited as a subcontractor to Diona doing Ausgrid work?---Cloughcor.

MR SUTTON: Objection.

40 ASSISTANT COMMISSIONER: For, sorry, you said Bastow.

MR GARTELMANN: I'm sorry, I'm sorry, yes, I've got confused. I'll withdraw that.

You thought he was happy with how things were going for Cloughcor Pty Limited as a subcontractor to Diona?---Seemed like he was, yeah.

What made you think that he was happy about how things were going?
---He looked happy.

What, just on a day-to-day basis he just seemed a happy guy?---Seemed very happy on the days where he sent me to his van to sign on the HAC book.

I see. Do you know whether he was happy after he got back to the van and found the cheque gone?---Oh, I don't know, no.

10 He just seemed happy at the time that he said go and sign the HAC book?
---That's right.

All right. So there was nothing else about anything that Mr Burke said or did that made you think you had his authority to take his cheques or spend his money?---No, it was just the circumstances in which he told me to go to his van to sign on the HAC book- - -

All right?--- - - -and the cheque was there right at the page.

20 Now, this cheque before you on the screen now was used to pay for a large marble bowl- - -?---That's correct.

- - -feature for your back courtyard, wasn't it?---That's correct.

Can I have page 1538. Do you see before you on the screen now two photos of the courtyard at the rear of your Alexandria home?---Yes.

And on the uppermost photograph you can see a large marble bowl in the foreground?---Yep.

30 And on the lower photograph you see it up against the feature wall?---Yep.

Is this the large marble bowl that you bought with Mr Burke's Cloughcor cheque at Architectural Decor?---It is, yeah, but I ah, I did confuse the bowl with a marble dragon which I purchased from Vietnam that I have in the garage.

40 You did confuse it? I'm not sure that I know what you're getting at?
---I remember telling you in the compulsory examination I imported that bowl from Vietnam but I was confused.

I see?---I've got a hand-carved marble dragon, garage.

All right. Well, look, this bowl here cost \$12,400, didn't it?---It did.

And you had to get it lifted in with a crane, didn't you?---Hiab truck.

I Hiab truck?---Yeah.

A Hiab, a Hiab is a reference to a manufacturer of small crane arms that go on the back of a truck, right?---Correct.

All right. So you had to get one of those to lift this bowl into the backyard of your Alexandria home?---That's right.

Surely you didn't forget about that when you were asked about it when you attended for your compulsory examination?---No, I just thought it was the truck from the, the docks that delivered the dragon.

10

Was the dragon a large marble item as well?---Yeah.

And who paid for the dragon?---I did.

How much was the dragon?---\$1,600.

And where did you get the money for that?---Bank account.

20 All right. Excuse me, Commissioner. All right. I want to show you one further and final cheque, page 1484?---That's not my writing.

All right. All right. Well, that can be taken down. All right then. So putting aside the last cheque that was just briefly shown to you, would you accept that you've seen four cheques here today drawn on the Cloughcor Pty Limited account and signed by Mr Burke that you've used to purchase items for your own benefit?---Yes.

30

And would you accept that the total value of those items is in excess of \$90,000?---Yes.

So you say do you that because Mr Burke says sign the HAC book, you believe you've got the authority to spend over \$90,000 of Mr Burke's money?---I thought that was his intention, yes.

Now, you've mentioned that you thought Mr Burke was happy with how things were going for Cloughcor Pty Limited?---That's correct.

40

And that's just because he just seemed happy in a general sense?
---Yeah, and he um, said he was saving money 'cause of the road sawing he started doing on his own.

I didn't really catch your answer there, what was that?---He said he was saving money on the road sawing that he started to do on his own on my advice for him to buy a road saw.

Now, at the time that these cheques were taken by you from Mr Burke's van on your version, Cloughcor was doing 80 per cent of its work or thereabouts

with Diona Pty Limited. Would you accept that?---That's what I've been told.

And all of that work was Ausgrid work. Would you accept that?---Was 80 per cent of it Ausgrid work or- - -

80 per cent of the work that Cloughcor was doing was subcontracting to Diona Pty Limited. Correct?---Right, okay.

- 10 And all of the work that Cloughcor did as a subcontractor to Diona Pty Limited was Ausgrid work. Right?---I wouldn't really know that information.

Well, you were a contract inspector at the time in the Contract Cable Laying division, weren't you?---Yes.

And as a consequence of that you would have been dealing with Diona Pty Limited on a regular basis during 2011. Right?---Right.

- 20 You would have been going out to sites where Diona Pty Limited was carrying out work doing projects for Ausgrid during 2011. Right?---Right.

And you would have seen Cloughcor and its employees and director, including Mr Burke, on a regular basis. Right?---Right.

And your duties as the contract inspector at the time included receiving and processing claims for variations to contracts that Diona was performing. Correct?---Correct.

- 30 So you're saying that you believe that Mr Burke is happy with how he thinks things are going for Cloughcor Pty Limited. Right?---Right.

And you think that that's why he would consent to you taking his cheques and spending his money. Right?---Yep.

And bearing in mind that Mr Burke's company is doing very substantially or a very substantial part of its work for a contractor doing Ausgrid work, right?---Right.

- 40 Surely, Mr Cresnar, you were taking his money knowing that he expected you would perform your duties as an Ausgrid officer favourably to Diona and/or Cloughcor Pty Limited?---Oh, I'm not sure about that.

You must have understood on your version that that's why Mr Burke was happy?---Could have been, yeah.

I just want to go back briefly to address the appliances that you bought from Miele. Can I ask that page 1401 be taken up or put up rather. Do you see

on the bottom right-hand corner of this document there's a box that appears a little bolder than the other ones, and can you see the words there, "Print customer name," and then there is name Nat Finn?---Yeah.

Who's Nat Finn?---I'm not sure.

Do you see a signature above that?---Yeah.

10 Whose is that signature?---I'm not sure. Well, I think they were delivered to Dan Kitchens actually.

I see?---Yeah. Probably someone that works at Dan Kitchens.

Well, look, bearing in mind that in the top right-hand corner we have the delivery address, do you see that?---Yes.

And you see there the address 23 Beaconsfield Street, Beaconsfield, that's your home address isn't it?---Yes.

20 And then if we look above the box that I've just, I took you to a moment ago, do you see some capital letters there?---Yes.

It says "DEL" which you can take to be an abbreviation of deliver and then a date, 23 August, 2011, right?---Yeah.

And then it says "Route advised pls" for please "call one hour before del" for delivery" and then it's got a mobile number, do you see that?---Yeah.

30 And that's your mobile number isn't it?---It is, yeah.

So these Miele appliances were delivered to you surely?---No, they were delivered to Dan Kitchens.

But Miele's been instructed to telephone you an hour before they're delivered, right?---Right.

40 And it's your work mobile number there isn't it?---Ah, perhaps they were delivered while the kitchen was being installed and one of the workers signed for it.

Right. But the purpose of giving Mile an instruction to telephone you on your work number an hour before delivery is so that you can get back home to be there when they arrive, right?---Yes.

Well, surely you know whether you were there or not when the products were delivered?---I think the kitchen guys were there, which meant I didn't need to be there.

All right. That document can be taken down. Excuse me, Commissioner.
All right. I want to ask you about something else you said in your compulsory examination in, on another occasion. Do you understand that?
---Yeah.

You came to the Independent Commission Against Corruption in August last year as well didn't you?---Yeah.

10 And you were asked some questions on that occasion about some of the cheques you've been telling us about today?---Yeah.

Commissioner, I'll need to seek a lifting of the suppression order in relation to the compulsory examination conducted 18 August, 2014, in particular pages 434 to 436 and those will be edited in due course.

ASSISTANT COMMISSIONER: Yes. I lift the suppression order in respect of those pages.

20 **THE SUPPRESSION ORDER RELATING TO PAGES 434 TO 436 OF THE COMPULSORY EXAMINATION ON 18 AUGUST, 2014 IS RELEASED**

MR GARTELMANN: Now when you were asked questions at the Independent Commission Against Corruption in August of last year, Mr Cresnar, you were asked about the Miele cheque?---Right.

30 Or the cheque made out to Miele and drawn on the Cloughcor Pty Limited account, do you recall that?---Not really, no.

No. You were asked how you came to be in possession of that cheque too, do you remember that?---Sort of.

And in relation to that cheque you explained that that had been left in your letterbox too?---That's correct.

40 And that you had formed the belief that you could go and spend it because there'd been another cheque left previously?---That's right.

So when you gave evidence at the compulsory examination in August of last year the account you gave of the circumstances in which you came into possession of the cheque you made out to Miele was false?---That's correct.

You knew it was false at the time you gave that evidence?---No, I didn't, no.

There's no conceivable possibility I would suggest, Mr Cresnar, that you could have mistakenly thought that another cheque had been left in your

letterbox by Mr Burke signed but blank?---I mixed it up with the ones in the letterbox, like the other three cheques.

But they were left for somebody else weren't they?---Correct.

Made out to cash?---That's right.

Had nothing to do with Mr Burke. Right?---That's right.

10 So how on earth is it that you could have thought, you could have confused those with the cheques that you took from Mr Burke's van out of the HAC book?---I was – it happened a long time ago.

Look, Mr Cresnar, you were lying when you gave your evidence in the compulsory examination here in August of last year about the circumstances in which you came into possession of the cheque you used to pay for your Miele kitchen appliances?---I wasn't lying, no.

20 And you're lying today about the circumstances in which you came into possession of that cheque?---No.

All right. I'm going to move now to ask you some questions about Murray Civil Works Pty Limited?---Yeah.

Do you understand that?---Yeah.

You know Denis Twomey is a director of Murray Civil Works Pty Limited?---Yeah.

30 You've known Mr Twomey for what, eight years or so now?---Yeah.

So you knew Mr Twomey well before he joined Mr Murray and became a director and shareholder of Murray Civil Works?---That's right.

You know that Mr Twomey joined forces with Mr Murray in order to tender for Ausgrid work?---Correct.

40 Did you suggest to Mr Twomey that he contact Mr Murray with a view to tendering for Ausgrid work?---No. I didn't know Mr Murray.

All right. But you knew Adisty Said didn't you?---Yes.

And you introduced Ms Said to Mr Twomey?---I think I gave him her phone number perhaps.

But you would have talked to Mr Twomey about Ms Said before simply giving her phone number over wouldn't you?---I think he asked me if I knew anyone that could help him out ah, with um, the paperwork - - -

Oh, yes?--- - - - for the tender and then ah, I might've spoken to her to see if she was interested.

All right. And you'd known Ms Said for a year or so beforehand because you were dating as she's described it?---Yeah.

And you would have known that Ms said was working in a retail store selling shoes at that time?---That's correct.

10

So you introduced Ms Said to Ms Twomey to help with the paperwork for the Ausgrid tender?---Oh, he just said he wanted someone to help out with paperwork.

But you understood that Mr Twomey was joining forces with Mr Murray in order to tender for Ausgrid work didn't you?---Right.

You did didn't you?---I think so.

20

Well, you were a close friend of Denis Twomey's weren't you?---Yes.

And surely Mr Twomey talked to you about the reasons he was going to join Mr Murray as a director and shareholder of Murray Civil Works?---I'm not sure if he told me who or what the company was called.

Well, look, you knew that Mr Twomey wanted to tender for Ausgrid work didn't you?---Yes.

30

And you knew that he joined forces with someone with a view to tendering for Ausgrid work. Right?---Yes.

And you introduced Ms Said to Mr Twomey with a view to helping him go through that process. Right?---With a view to getting her a decent job.

After you – I'll withdraw that. When did you cease to date Ms Said?
---I'm not sure.

Was it before or after she was employed at Murray Civil Works?---Before.

40

How long before approximately?---Oh, months, a year.

Right. And after you ceased to date Ms Said did you remain on friendly terms?---We did, yeah.

Did you remain in contact with each other regularly?---Ah, I wouldn't say regularly.

What about after Ms Said became a Murray Civil Works employee?

---I don't think much changed.

Isn't it the case that you would contact Ms Said from time to time while she was at work at Murray Civil Works?---Oh, possibly.

Why would you do that?---Well, I don't even know if I did.

10 Right. Now, you know that Ms Said's background prior to joining Murray Civil Works would not have given her a great deal of experience or qualifications in preparing things such as contractor offers under Standing Order Deeds for Ausgrid work. Right?---Is that her background as a computer engineer?

Well, when you knew her she was working in a retail store selling shoes, wasn't she?---She's a computer engineer, highly intelligent.

20 Right. Whether she's highly intelligent, whether she's got experience in, as a computer engineer, she does not have any background in preparing contractor offers under Standing Order Deeds for Ausgrid, does she?
---That's not what she was doing, was it? I thought she was ah - - -

Well, we'll come to that, Mr Cresnar. After Murray Civil Works tendered for work with Ausgrid it carried out a lot of work in what is described as the North Region. Would you agree with that?---Yes.

And at the time that Murray Civil Works was carrying out work in the North Region you were a contract inspector in the North Region, weren't you?
---Yes.

30 And indeed you were an Ausgrid officer responsible for dealing with a number of contacts that Murray Civil Works did for Ausgrid?---Yes.

You were the contract inspector who was responsible for approving variations to contracts that Murray Civil Works performed for Ausgrid in the North Region?---Endorsing them, yes.

Well, assessing whether they were- - -?---Assessing, yes.

40 Right. And then making a recommendation to your superior about whether they should be approved?---Correct.

You would not have perhaps personally dealt with all of the variations for contracts that Murray Civil Works was doing within the North Region, would you?---No.

Because at this time you were largely in a project planner-type role?
---That's right.

So you were allocating contracts to other Murray Civil Works, I'm sorry, other Contract Cable Laying officers, right?---Correct.

So colleagues of yours would act as the contract initiator or contract inspector in relation to other contracts that Murray Civil Works was doing in the North Region?---Yes.

Some you'd do yourself?---Yes.

10 Some would be dealt with my others?---That's right.

When contracts were being, were allocated by you to other contractors in the – I'm sorry, I'll withdraw that. When contracts with Murray Civil Works were allocated to other Contract Cable Laying officers did you ever do anything to influence whether or not variations sought by Murray Civil Works should be approved or declined?---No.

20 Because that was there responsibility of the contract inspector who was allocated that particular job?---That's right.

Nothing to do with you?---Unless they were on leave or something.

All right. But when they were present you wouldn't have any role in it, would you, because that's the contract inspector's job?---That's right.

All right. I want you to listen to something, page 35.

30 **AUDIO RECORDING PLAYED** **[3.15pm]**

MR GARTELMANN: Mr Cresnar, you've just heard a recording of a telephone conversation haven't you?---Yeah.

And you recognise your own voice in that telephone conversation?---Yes.

And you're dealing there with another – well, you're having a conversation there with another Contract Cable Laying officer aren't you?---No.

40 Who are you dealing with?---It's [REDACTED] from Field Services.

All right. Now you're talking in the course of that conversation about a reinstatement job?---No.

Well, in the beginning of the conversation there is mention of running a cable up to another pole up the street and reference to a new reinstatement?--Yeah the council had laid a new footpath fairly recently which was, we'd have to dig up again if we were going to complete the project.

All right. Now in the course of that conversation you were discussing whether or not a – the the work that was required under that, under a contract should be reduced aren't you?---That's what Jonas was suggesting, yeah - - -

Yes?--- - - - to reduce the work.

10 And you tried to discourage it, didn't you?---That's correct.

And that was a contract that Murray Civil Works was performing at the time wasn't it?---Yes.

And you tried to discourage it because in your words, "You've got no work then"?---That's correct.

20 You tried to discourage another Ausgrid officer from doing something that would result in Murray Civil Works having less work?---No. The, the intention was – no one had any work including the project officers at Ausgrid. People were just sitting around with nothing to do so um, the small projects that we did have like this were even getting reduced.

All right. But the consequence of reducing it would be that there would be less work for Murray Civil Works. Correct?---Well, only by default in this case.

All right?---It could have been less work for whoever was issued the job.

30 All right. But the consequence would nevertheless be less work for Murray Civil and therefore ultimately less payment for Murray Civil. Correct? ---That's not the intention though.

Putting aside the intention, the consequence would be less work for Murray Civil Works wouldn't it?---Be less work for everyone.

The consequence would be less work for Murray Civil?---In this one instance, yes.

40 All right. And you tried to discourage it didn't you?---That's correct.

And that's because of your relationship with Denis Twomey?---No, it's not.

It's because you have a relationship with Denis Twomey whereby you benefit from payments and purchases made by Mr Twomey?---Sorry, you're wrong there.

So you say your intention was just that there would be less work for Ausgrid officers. Is that right?---That's right. We had project officers sitting around the office with nothing to do.

So you wanted to keep them busy?---Exactly.

So you're discouraging a reduction in the amount of work required under a contract to keep Ausgrid officers busy?---For some of the conversation, yeah, but turned it around in the end.

10

Look, Mr Cresnar, you're giving false evidence again aren't you?---Look, you know, you've really got nothing there on that phone conversation. It's very weak.

It may well appear that way to you, Mr Cresnar, but that's a matter for others to decide?---Well, fair enough.

20

In any event, you agree, don't you, that you were trying to discourage a reduction to a contract that would have the consequence that Murray Civil Work would have less work and therefore would receive less payment. Correct?---But it's not good for the network to, to not, not bring the distributor out away from the substation as well. It doesn't spread the load as efficiently.

Yeah, but that's not what you tell your colleague when you're in the telephone conversation is it?---Well, that's the truth of the matter.

30

But what you say to your colleague is you've got no work then. That's a bad idea. Right?---But they're, they're um, they're, they're, they're ah, what's the word, the cost cutting and the engineering benefits don't really weigh up all the time.

Mr Cresnar, your own words are "there would be no work then, you've got no work then". Correct?---As in Ausgrid Contract Cable Laying section has no work. That's right.

All right. So you had no concern about the impact upon Murray Civil?
---No.

40

Oh, I see?---No, not at all.

All right. Well, I'll ask you to listen to the next conversation then. 41.

AUDIO RECORDING PLAYED

[3.23pm]

MR GARTELMANN: Mr Cresnar, you've just heard your voice in another telephone conversation?---Yeah.

And would you agree with me that in that conversation you're having you're speaking with David Naughton from Murray Civil Works?---Yes.

And you're telling Mr Naughton to get around to the job quick and do the work that had originally been authorised under the contract. Correct?
---Correct.

10

So that by the time other Ausgrid officers got around there it would be too late to do anything about it. Right?---That's right.

So you say – or you said before in your evidence here today that your intention in trying to dissuade another Ausgrid officer from reducing a contract – the work required under a contract was just to keep Ausgrid officers busy. Right?---That's right.

20

But here you are on the phone straightaway after the conversation with your Ausgrid colleague to David Naughton from Murray Civil Works telling him to get around there quick and get started so that they get the benefit of the work don't you – aren't you?---No.

Well, what is your explanation for that?---I'd want him to start the job so that it has, it keeps the Ausgrid officers busy.

Oh, come on, Mr Cresnar, you can't be seriously expecting anyone to believe that?---Why not? It's, you heard it yourself.

30

You want to keep Ausgrid officers busy so you get Murray Civil to go around there and do work that is on the face of it unnecessary?---Well, they would have got whoever the contractor was who was issued with the job out there, it just happened to be a Murray Civil job.

Mr Cresnar, you are giving false evidence about your relationship with Murray Civil Works?---No, I'm not.

40

But you were aware, surely, that the decisions you made as an Ausgrid officer that would affect the amount of work that was required under a contract would affect Murray Civil, right?---Sorry, I wasn't listening. What was that?

You were aware in carrying out your duties as an Ausgrid officer when you made decisions about the amount of work that was required under a contract, if it was with Murray Civil of course it's going to have an impact on Murray Civil Works isn't it?---Well, it's going to have an impact on whoever it's with.

Yes. It's going to have a financial impact on Murray Civil Works isn't it?
---That's not what I was worried about.

Are you sure about that?---Positive.

You didn't care whether or not Murray Civil Works did well or otherwise?
---No.

10 Would you have ever talked to Mr Twomey about whether Murray Civil
Works was doing well or otherwise as a consequence of anything you did?
---I don't think so.

All right. Well, listen to this. Page 452.

AUDIO RECORDING PLAYED

[3.27pm]

20 MR GARTELMANN: Mr Cresnar, you've just heard a recording of a
conversation between yourself and Mr Twomey, you'd accept that?---Yes.

And in the course of that conversation you say "Do you know who I am?"
and he says, "Why, what's the problem?" And you say, "I'll be slacking off
a bit and you're going to feel it, don't you worry.?"---What does that mean?

30 Well, it means doesn't it that if you were to cease to exercise your duties as
an Ausgrid official favourably to Murray Civil Works it would have an
impact on that company?---I think it means we were just talking shit over
the phone.

Well, what do you say, why do you say to him that he's going to feel it if
you slack off?---Don't know.

What possible explanation is it for, is there for that other than that you were
referring to your capacity to influence how Murray Civil Works did with
contract work for Ausgrid?---Maybe I was talking about my capacity to um,
price work for TGB.

40 Well, that wouldn't have had much impact on Mr Twomey would it?
---Sorry?

You're telling him I'll be slacking off a bit and you're going to feel it, right?
---Right.

Now Murray Civil Works at this time, well, let me put it this way, Murray
Civil Works had turnover in the tens of millions of dollars per annum, right?
---Right.

TGB had turnover more like in the tens or hundreds of thousands of dollars, right?---Right.

So Mr Twomey's concern is with Murray Civil Works much more than TGB right?---Probably not.

Why not?---There's probably more profit with TGB than there is with Murray Civil.

10 Mr Cresnar, you're trying to distance yourself from the relationship you had with Mr Twomey in relation to Murray Civil Works, aren't you?---I don't have a relationship to Mr Twomey with Murray Civil Works.

None at all?---No. Well, not more than a professional one.

Just a purely professional one. Is that right?---That's right, yep.

All right. Well, listen to this. Page 474.

20

AUDIO RECORDING PLAYED

[3.30pm]

MR GARTELMANN: Mr Cresnar, you've just heard yourself in another telephone conversation with Mr Twomey?---Yes.

And it's clear isn't it that in that conversation you are informing Mr Twomey that Murray Civil Works is pricing its contractor offers just below that of Dunmain?---No, I was informing him his schedule of rates is just
30 below that of Dunmain.

All right. And that's not information that you should be providing to Murray Civil Works, is it?---Why not? I don't particularly agree that that's confidential or sensitive.

How could you possibly think that?---If someone's cheaper than someone else on a schedule of rates basis, which is a fixed rate, then what's the problem?---Oh, look, Mr Cresnar, you know full well that the information in each contactors schedule of rates is confidential?---I didn't give them the
40 contractor's rates, I just said they were cheaper.

Yeah, and you knew full well that you should not be doing that?---But that doesn't give them a financial advantage me telling them they're cheaper 'cause they're already cheaper.

It tells them how to pitch, that their pitching or that they will be successful in pitching their quotes for Ausgrid work, doesn't it?---Well, not necessarily, their quotes are based on their schedule of rates.

What's the point of telling Mr Twomey this?---Dunno. To cheer him up a bit. I don't know.

Look, Mr Cresnar, you knew full well that that was information that was confidential to Ausgrid and perhaps Dunmain that you were providing Mr Twomey because of your personal relationship with him?---I don't think it's that confidential, just there's no advantage they can gain over that.

10 All right. So- -?---It's just the situation it is.

All right. So you say that you're just telling him information that has no commercial value. Is that right?---That's right.

So you wouldn't do anything to try and help Murray Civil Works get a contract over Dunmain?---Oh, dunno.

20 Well, you surely do, don't you? Look, isn't it the case that you suspect that we might have something more for you to listen to?---Oh, possibly.

Yes. Okay. Well, why don't you tell us the truth then, it will save the trouble?---I think you may be referring to a little fault job in North Sydney CBD.

Yes, and tell us about that?---Oh, I think Dunmain were slightly cheaper.

Dunmain were slightly cheaper?---I think so.

30 Yes. And what happened?---I can't remember.

Okay. Well, why do you raise that?---I remember half of it.

And what is the half that you remember?---I remember, I remember we didn't really want to bring Dunmain into the area just for one job 'cause they're in another region.

So what did you do?---Not sure.

40 Well, you raised it for a reason, what's the reason, tell us about it?
---(not transcribable)

I beg your pardon?---(not transcribable)

What's the reason, why have you raised it, Mr Cresnar?---The reason for what?

The reason that you've raised this fault job. You've raised it in your own evidence, I haven't asked you about it, you've just volunteered it, why?

---Well, that's what I can remember where Dunmain were the cheaper.

And so what happened, Dunmain was the cheaper and so what?---I think the job got cancelled.

Oh, I see. So why did you tell us about that, I don't understand?---I just remember it.

10 Okay. But has it got anything to do with your providing favours to Murray Civil Works?---I don't think so.

So why did you raise it in the context of me questioning you about that topic?---Don't know.

All right. So you don't want to be any more forthcoming about what happened with this particular fault job that you've just volunteered in that context?---No.

20 All right. Are you sure that you don't have any greater recollection about what might have happened during the course of that fault job?---I'm not sure. I think we changed the rates to outside of CBD or something.

What does that mean, tell us about it?---Different rates for different areas.

So you changed the rates in what?---I'm not sure. I think – I can't remember.

30 Well, what is it that you're telling us about?---I've told you just about all I can remember about it.

Look, that's clearly not the case, Mr Cresnar. You've raised it for a reason. You anticipate that we've got a recording of you surely - - -?---Yeah.

- - - talking about some dealing you had with this fault job. Is that why you've raised it?---I'm not sure.

Well, only you would know why you've raised it?---Don't know.

40 Look, you're not giving false – I'm sorry. You are giving false evidence even now about the relationship with you have with Mr Twomey. Correct? ---No.

And about how you exercised your duties as an Ausgrid officer in relation to contracts performed by Murray Civil Works. Right?---I don't know.

All right. Well, I'm going to ask you to listen to another call then. 562. I'm sorry. Excuse me.

AUDIO RECORDING PLAYED

[3.37pm]

MR GARTELMANN: Mr Cresnar, you've heard another conversation between yourself and Mr Twomey?---Mmm.

And in the course of that conversation you are telling Mr Twomey that Dunmain was actually cheaper than Murray Civil Works?---Right.

10

Correct?---It appears so, yeah.

And you tell Mr Twomey that you fudged the figures?---Well, I'd have to look into the project and go over them to see if I was lying to him or not.

Mr Cresnar, you're talking to your long-standing friend Mr Twomey. Correct?---Correct.

20

Mr Twomey who buys you many, many things. Correct?---Correct.

And we'll come to that probably tomorrow but it's the case isn't it that Mr Twomey has purchased – made multiple purchases for your benefit isn't it? ---Yes.

And here you are telling Mr Twomey that notwithstanding that another contractor to Ausgrid was cheaper than Murray Civil Works you fudged the figures?---I don't know what that means so - - -

30

Yes you do, Mr Cresnar?---I don't remember the job.

You don't remember the telephone conversation is your problem I'd suggest. Look, it's plain as day, Mr Cresnar, you fudged the figures, didn't you?---What does that, what figures?

They're your words, Mr Cresnar, so you would know?---What were the, what were the figures that I fudged?

You fudged the figures on a contractor offer perhaps?---No.

40

You fudged the figures on a variation- - -?---Don't think so.

- - -claim or request perhaps?---Don't think so.

You don't think so?---Don't think so.

What, are you suggesting that that might be something that you would do? ---No.

You fudged the figures on something for Murray Civil Works to bring their price under that of Dunmain, didn't you?---I don't know what I fudged the figures on.

Look, it's the only possible interpretation of what you said, isn't it?---Not necessarily.

Come on, Mr Cresnar, when are you going to start telling the truth?---I've been telling the truth all day.

10

You have not told the truth at all today?---That's not true.

Mr Cresnar, that is plain as day. You fudged the figures, didn't you?
---Fudged the figures on what, what figures?

Fudged the figures for the benefit of Murray Civil Works. Right?
---I don't remember the job or the details around it.

20 Once again the problem you're having is that you don't remember the telephone conversation?---Or the job.

In any event, you fudged the figures for the benefit of Murray Civil Works and at the expense of Dunmain, another Ausgrid contractor. Correct?
---I'd have to look into it. I really don't remember a lot about it.

You don't even need to look into it, it's clear from what you said, isn't it?
---Well, you, I don't know what I, if what I said was even being truthful.

30 Look, the only reason you might not have a memory of that is because it was common practice for you?---I don't think so, no.

This is what you were doing all the time, Mr Cresnar?---No, it's not.

Fudging the figures for the benefit of contactors who paid you gifts and benefits?---No.

That's the only reason you wouldn't have a memory of it. Right?---No.

40 Got no explanation for it then?---I don't remember what the job was and what fudging the figures means.

Now, Mr Cresnar, Denis Twomey has bought you many things, hasn't he?
---Yes.

Denis Twomey or Murray Civil Works Pty Limited have paid for a great many of the renovations to your home in Alexandria?---I wasn't aware that anything was getting funded through the Murray Civil accounts.

Whether it was Murray Civil or Denis Twomey you were bought many things by Mr Twomey?---Yes.

For your benefit?---Yes.

Particularly in relation to the renovation of your home in Alexandria?
---Yes.

10 You had some marble, a marble bath and marble toilets installed in your bathrooms at the home?---Yep.

Excuse me, Commissioner.

Mr Twomey paid for those items, didn't he?--- Yes.

You had them imported from China. Is that right?---That's right.

20 And so together with import duties they cost quite a bit of money?
---I'm not sure how much they cost.

Is that because Mr Twomey paid or it?---Because I can't remember, it was a while ago.

I want to suggest to you that the total value, there were several payment, but including the import duties it came to about \$7,800?---That sounds about right.

All right. Mr Twomey paid for that?---Yes.

30 Excuse me.

I'll just ask you to look at a document. Do you see on the screen before you a photograph?---Yes.

And that's a photograph of the bathroom at your Alexandria home?
---That's right.

40 And that shows the marble bath that I've just been asking you about?
---Yep.

Excuse me.

You see before you, Mr Cresnar, another photograph?---Yeah.

That's again of a bathroom in your Alexandria home?---Yeah.

And there is again - well, I withdraw that. In that photograph you see a marble toilet?---Yes.

Is that one of the toilets that you had imported from China?---Yes.

That Mr Twomey paid for you?---Yeah.

And there was another one - - -?---That's right.

- - - much the same?---Yeah.

10 Why did Mr Twomey pay for those items?---Ah, I gave him some jugs I think.

You gave him some jugs?---Correct.

And when we refer to jugs in the context of your relationship with Mr Twomey we're referring to decorative jugs?---That's correct.

Royal Doulton jugs and things of that nature?---Yes.

20 You both had an interest in those, is that the case?---Yeah, I used to have an interest in them.

When you say you used to have an interest in them isn't it the case that both you and Mr Twomey shared an interest in them?---Ah, I used to collect them but not so much anymore.

All right. Well, I'll show you a document, it won't appear on screen but I'll have it handed to you if I can. Oh, I'm sorry, we can bring it up on screen. It's just not numbered. You see before you a photograph?---Mmm, yeah.

30 And do you accept that that's a photograph taken at the time that investigators searched your Alexandria home?---Yes.

And it depicts a display cabinet?---That's right.

And in the display cabinet are a number of decorative jugs?---Yeah.

So those were your jugs, right?---That's right.

40 So you had an interest in jugs as well as Mr Twomey, correct?---I suppose so.

All right. Well, I'll tender that document.

ASSISTANT COMMISSIONER: The photo of the jugs, that will be Exhibit 22.

**#EXHIBIT 22 – PHOTOGRAPH TAKEN UNDER SEARCH
WARRANT OF JUGS AT HOME OF PHILLIP CRESNAR**

MR GARTELMANN: So your explanation for the purchase by Mr Twomey of the marble bath and toilets was that Mr Twomey bought you some jugs?---I gave him some of mine.

10 I'm sorry, that you gave him some jugs?---Yeah, I think so.

You think so?---Yeah.

How much were the jugs that you gave Mr Twomey worth?---I'd have to look into it, it's – I think I gave him about, between 10 and 15 that valued anywhere up to 2,000 each.

All right. And why did you give the jugs to Mr Twomey?---Well, he started collecting them and I'd sort of lost interest.

20 All right.

ASSISTANT COMMISSIONER: Surely he wouldn't pay for jugs on the Murray Civil credit card would he?---I don't know how he pays for them.

Well, they'd be for his personal use I assume, not for Murray Civil?
---That's right.

MR GARTELMANN: How did you purchase the jugs that you gave to Denis Twomey?---eBay I think.

30 Where did you get the money from to make those purchases?---I've been collecting these since high school.

When did you buy the jugs that you gave to Mr Twomey?---Between high school and a couple of years ago.

Did you buy those jugs while you – or some of those jugs at least while you were an Ausgrid officer?---I'm not sure.

40 Did Mr Twomey pay for any jugs for you?---No.

Never?---Never.

Well, I want to let you know that yesterday the inquiry heard some evidence
- - -?---Yeah, I read that.

- - - from Ms Said?---Yeah.

All right. When you read it you no doubt had a look at the transcript of the -
- -?---Yes.

- - - telephone conversation you had with her where there was a joking
reference to you being jug man?---That's right.

And Ms Said makes reference to Denis Twomey buying you jugs doesn't
she?---She does.

10 And at the conclusion of that conversation you suggest to her, in effect, that
you no longer have an interest in jugs because now you are Honest John,
right?---Right.

It's clear from that telephone conversation you had with Ms Said I'd suggest
that Denis Twomey had previously bought you jugs?---No, we were just
talking shit on the phone again.

You're talking – I'll withdraw that. It's clear from the way in which you are
joking about the subject matter, Mr Cresnar, that Mr Twomey has
20 previously bought you jugs?---Well, it may appear to be that way but it's
not.

And it's clear to you that you are joking about how you no longer have an
interest in jugs because you say you are Honest John now. Right?---Just
talking crap on the phone.

But it's clear from the fact that you are joking about that very topic that
previously you had not been a person consistent with the nickname Honest
John isn't it?---Not necessarily.

30 That's why you and Ms Said find it funny?---That's the way you interpret
the phone conversation.

That's the only way it can be interpreted, Mr Cresnar?---By yourself, yeah.

By anyone?---Well, I don't interpret it that way because I know we were
just talking crap on the phone.

Mr Twomey also paid for a quantity of marble and Travertine tiles - - -?
40 ---That's right.

- - - that were installed in your Alexandria home didn't he?---No. I didn't
have any Travertine tiles installed at my home.

All right. Marble tiles?---Just the marble ones for my - - -

All right. The marble tiles were installed in the bathrooms?---Yes.

By Mr Lago?---That's right.

Those tiles were imported from Turkey?---Yes.

And it's the case, isn't it, that Mr Twomey paid for those tiles?---Yes.

Now what's your explanation for why Mr Twomey paid for those tiles?
---Because he got them at such a good price he paid for mine and the whole
thing - - -

10

What was that price?---I can't remember what the square metre rate is but if
you price them over here it was a lot cheaper.

Well, I want – so Mr Twomey imported some marble for - - -?---He
imported some Travertine pavers.

Yes. And you got the benefit of it?---I organised the import.

You organised the import?---I did, yeah.

20

All right. And so I take it you're suggesting that Mr Twomey retained some
of the, the Travertine pavers?---Yes, for his pool.

And you retained the marble tiles?---That's right.

I see. So you never obtained any Travertine pavers?---No.

I see. So all of the marble tiles were for you, all of the Travertine pavers
were for him?---And others, yeah.

30

The Travertine pavers were for others as well?---Yeah, I think so.

I see. All right. But the marble tiles were for you alone?---That's right.

Well, look, I want to suggest to you that the total value of the import was
\$14,766?---Yeah.

Does that sound about right?---It does, yeah.

40

And that's what Mr Twomey paid in total. Do you understand that?---Yes.

What proportion of that total value related to the marble tiles?---Probably
3,000.

All right. And why was it that Mr Twomey paid for your marble tiles?
---Well, he saved more than that in the import.

So why was it that he paid for your marble tiles?---Because I organised the import which saves him money.

So he was happy for you to have the \$3,000 worth of tiles because you organised the import?---That's correct.

In your bathroom that you renovated and in one respect had installed at your Alexandria home there were a number of fixtures installed?---Yes.

10 And you purchased those from Bathware Online via a PayPal transaction or, in fact, two?---That's right.

Those transactions were in the sums of \$8,135.60 and \$1,122.68 respectively?---Yeah.

Why did Mr Twomey pay for those items?---Ah, I was helping with some saw cutting work and could have been balance left over for some jobs, I helped him tile around his pool, I don't know.

20 You helped him tile around his pool?---That's correct.

You were asked about why it was that Mr Twomey paid for those fixtures when you attended your compulsory examination in August of last year weren't you?---Yep.

And I'll need a lifting of the suppression order in relation to the August compulsory examination for page 453.

30 ASSISTANT COMMISSIONER: Yes, that's released.

**THE SUPPRESSION ORDER RELATING TO PAGE 453 OF THE
COMPULSORY EXAMINATION ON 18 AUGUST, 2014 IS
RELEASED**

40 MR GARTELMANN: When you were asked about why it was that Mr Twomey paid for your bathroom fittings you said nothing about it being in exchange for you helping him tile around his pool?---Right.

Did that slip your mind?---Well, there's been a lot of things going on and I can't remember the exact order of each- - -

Indeed there have, Mr Cresnar?--- - - -thing.

But why would it have been that it slipped your mind, bearing in mind that you were being asked about it only the year after Mr Twomey had made

those payments on your behalf?---Well, things slip people's minds. It's not like I came in with a list of everything worked out.

Things slip people's minds when there are lots of things to remember?
---Correct.

And it's the case isn't it, Mr Cresnar, that you had many things to remember in relation to the payments for items used to renovate your Alexandria home?---Yes.

10

Because isn't it the truth that largely all of those items were paid for by contractors and/or subcontractors?---Yes.

And it's difficult to remember who paid for what?---Can be, yeah.

Mr Twomey paid for a Rinnai fireplace purchased from G Store, didn't he?
---Yeah.

20

And that was worth approximately \$5,700?---That's right.

Mr Twomey paid for a wall unit you had installed in your living area?
---Yes, or most of it.

Sorry, I didn't catch that last bit?---Or most of it.

He paid for most of it?---That's correct.

What part did you pay for?---The deposit, \$5,000.

30

All right. Well, look, there were two payments made to Dan Kitchens in respect of the wall unit, one was on 11 November, 2013 in the sum of \$5,296 and the other was on 23 November, 2013, in the sum of \$17,100. Do you understand that?---That was from his bank account?

Well, it was paid for by Mr Twomey but it was paid for by a Murray Civil Works account?---Okay. So the first 5,200 was from the Murray Civil Works account?

40

Well, I want to inform you that both payments were made by Mr Twomey?
---Right, okay.

Well, I withdraw that. Both payments were made from the Murray Civil Works credit card account?---Yep.

Do you understand that?---Yep.

So are you suggesting that there was some other payment that you made?
---Yeah, I put the deposit on my credit card to Dan Kitchens.

All right. But you don't dispute the fact that there were payments made on the Murray Civil Works credit card account in the vicinity of \$5,300 and \$17,000?---No.

All right. Now, Mr Twomey also paid for you to buy a sewing machine, a Bernina sewing machine from a business called Craft Depot?---That's right.

And that was valued at about \$1,800?---Yep.

10

And again that payment was made from the Murray Civil Works credit card account?---I wasn't aware of that at the time.

And similarly the bathroom fixtures from Bathware Online were paid for by Mr Twomey out of the Murray Civil Works credit card account?---Yeah.

So it's the case isn't it that many or a number of things purchased for your, for you and in particular for your home, were paid for by Mr Twomey with funds from Murray Civil Works' credit card account?---I wasn't aware of that when the payments were made.

20

And isn't it the case that those payments were made from Murray Civil Works' credit account because you were exercising your duties as an Ausgrid officer favourably to Murray Civil works?---No, it wasn't no.

Well, we know that's the case now don't we?---No, we don't.

You fudged the figures - - -?---That doesn't - - -

30

- - - to make sure - - -?---That doesn't - - -

- - - that Murray Civil Works got work at the expense of Dunmain?
---That doesn't mean that that's why he bought me those things.

Oh, he just did it out of the goodness of his heart did he?---I told you last time that I did work for his, his own company.

But you also fudged the figures so that Murray Civil Works would get contracts and/or payments at the expense of other contractors?---I don't know the details of, of exactly what figures were talked about in the phone conversation.

40

But whether you know the details or not you fudged the figures didn't you?
---What exactly does fudging the figures mean?

Fudging means making false entries in relation to figures doesn't it?---I'd have to have a look and see what I did.

But you know full well, Mr Cresnar, what fudging means don't you?---In the context of that phone conversation I do not remember what fudging the figures means.

You may not remember that particular transaction or that particular contract but you know full well what fudging the figures means?---Well I - - -

Don't you?---That's a very general term.

10 And, Mr Cresnar, you were fudging the figures so that Murray Civil Works got contracts or variations or payments in relation to contracts at the expense of other contractors?---No.

That's clearly what that telephone conversation records?---No, it doesn't.

And that's why you are getting multiple benefits paid for by Murray Civil Works credit card account. Right?---No.

I note the time, Commissioner.

20

ASSISTANT COMMISSIONER: Thank you.

The additional compulsory examination transcript pages 434, 436 and 453 will be made part of Exhibit 21 and the transcripts of the telephone calls that have been played will be made Exhibit 23.

#EXHIBIT 23 - TELEPHONE INTERCEPTS PLAYED TO PHILLIP CRESNAR AT PUBLIC INQUIRY ON 22 JANUARY 2015

30

ASSISTANT COMMISSIONER: We will adjourn now and resume at 10 o'clock tomorrow morning.

THE WITNESS WITHDREW [4.02pm]

40

AT 4.02pm THE MATTER WAS ADJOURNED ACCORDINGLY [4.02pm]