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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 FRIDAY, 23 JANUARY 2015

AT 10.14AM

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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: Commissioner, before resuming the evidence of Mr Cresnar it's been brought to my attention that there is a reference to the name of a particular individual in one of the tender bundles that was made an exhibit yesterday, the name of the individual is [REDACTED]

10

ASSISTANT COMMISSIONER: Right.

MR GARTELMANN: And it's been suggested that it might be appropriate to suppress mention of his name, there being no evidence of corrupt conduct in his respect. So that might be an appropriate order to make.

ASSISTANT COMMISSIONER: Which exhibit is this in?

20

MR GARTELMANN: I'll just confirm the reference. It was brought to my attention by Mr Cresnar's representative

MR SUTTON: If I can assist, Commissioner, it appears in the tender bundle of Murray Civil Works at pages 656, 657, 658.

ASSISTANT COMMISSIONER: So that's Exhibit 20.

MR SUTTON: Yes.

30

ASSISTANT COMMISSIONER: All right. Well, I suppress the name [REDACTED] where it appears in Exhibit 20.

**SUPPRESSION ORDER OF THE NAME [REDACTED]
WHERE IT APPEARS IN EXHIBIT 20**

MR SUTTON: Thank you, Commissioner.

40

MR GARTELMANN: I think we're ready to resume the evidence of Mr Cresnar.

ASSISTANT COMMISSIONER: Yes.

MR SUTTON: Before we do, there are just two issues I wish to mention if I may, Commissioner. The first is I made a request at an earlier point in relation to Mr Bastow and any applications he may have made at any time, but particularly more late I time in relation to attempts to get onto the Ausgrid panel. It relates to not only some answers that he gave in relation

to questions asked by Counsel Assisting, and that is those answers were to the effect that he priced himself out because he wanted to get away, you will remember that, but there's also other bases which have been made aware to Counsel Assisting and solicitor for the Commission in relation to another area of cross-examination that is sought to be, or examination I should say that will be sought to be made of Mr Cresnar that documentary evidence if it exists would assist the Commission in that regard in my respectful submission.

- 10 MR GARTELMANN: I can indicate, Commissioner, that we are not in possession of the applications from Mr Bastow for the extensions to the Standing Order Deed that he sought. The only documents that we have in connection with it are Board minutes from Ausgrid which are contained within the first tender bundle related to corruption prevention, which I think is Exhibit 11. So in short Mr Sutton has access to all we've got.

ASSISTANT COMMISSIONER: Yes. I mean I presume this is a matter that goes only to credit?

- 20 MR GARTELMANN: Yes.

ASSISTANT COMMISSIONER: It's not a matter that we're investigating as to whether he wanted to get back on the panel or he didn't, so I can understand why we don't have that material. I do think it's a matter that you're entitled to ask Mr Bastow if he's recalled whatever you like about that.

MR SUTTON: And I have made that suggestion, Commissioner.

- 30 ASSISTANT COMMISSIONER: Yes. Well, I think in the end that's how the matter will probably be dealt with.

MR SUTTON: Certainly. If I can just make this observation, in my submission it goes to something more than just credit, it goes to whether or not there have been offences committed in this Commission in respect to certain answers.

ASSISTANT COMMISSIONER: By Mr Bastow?

- 40 MR SUTTON: By Mr Bastow.

ASSISTANT COMMISSIONER: Yes, yes, I appreciate that.

MR SUTTON: The final point is there was an exchange between yourself and I yesterday where I may have been robust in what I perceived to be comments about the way I was conducting this matter. If I was overly robust and in my opinion I may well have been – I formally apologise on the record for that and offer that apology to you, Commissioner.

ASSISTANT COMMISSIONER: Thank you for that, Mr Sutton.

MR SUTTON: That exchange came about in relation to evidence being given by Mr Cresnar that related to two topics, as I recall, and unfortunately I didn't get transcripts until 9.00am this morning and I haven't been able to go through them.

ASSISTANT COMMISSIONER: Yes.

10

MR SUTTON: But those topics were the \$20,000 from his grandfather and the issue of a conversation that was, or on Your Honour's – sorry, on the Commissioner's recollection not put to Mr Eamon Burke. If I could draw the Commission's attention to page 181 of the transcript at line 35 through to the bottom of the page it reads, "Mr Cresnar" – and this is a question being put by me – "Mr Cresnar assisted you with, with a matter other than anything to do with Ausgrid. You were, you were complaining to him about the expense of hiring subcontractors to saw roads. Do you recall that conversation?" Answer, "No, no, what? No, can you explain it more?" I said, "Sure. In essence he explained to you the cost involved in road sawing?" "Yeah." I continue, "And suggested it would be cheaper for you to buy your own road saw and do that particular task yourself. When I say yourself, I'm talking about your business obviously?" "Yes." "Do you recall that?" "No."

20

ASSISTANT COMMISSIONER: Yes, well, I agree that that part was put to- - -

MR SUTTON; Yes.

30

ASSISTANT COMMISSIONER: - - -the- - -

MR SUTTON: I can't, as I say, I can't or I don't dispute your observations that the \$20,000 in respect of the grandfather was not put.

ASSISTANT COMMISSIONER: Yes.

MR SUTTON: But the, the dispute between yourself and I arose in particular about whether or not the road saw issue was raised.

40

ASSISTANT COMMISSIONER: Yes, and - - -

MR SUTTON: And that was.

ASSISTANT COMMISSIONER: - - - the issue of the, the cheques being tacit payment for that advice. But having heard your client's evidence on that topic I must say I do have some sympathy with the fact that it may have been difficult to put it to Mr Burke because it didn't really revolve around

anything he said or, or did as such, more it was your client's understanding of what he was thinking. So, yes, look, that's, that's fine, Mr Sutton.

MR SUTTON: Thank you, Commissioner.

ASSISTANT COMMISSIONER: I think we can resume now with Mr Cresnar. Just take a seat, Mr Cresnar.

ASSISTANT COMMISSIONER: The section 38 declaration and the affirmation you've made continue to apply to your evidence here today?

---Okay, thanks.

Yes, Mr Gartelmann.

10 MR GARTELMANN: Mr Cresnar, yesterday afternoon I was questioning you about the subject of renovations in your Alexandria home and payment for certain items by Mr Twomey?---Yes.

I want to resume with some further questioning in respect of that subject. Do you understand that?---Yeah.

In the course of renovating your Alexandria home you no doubt needed to purchase materials and supplies on a regular basis?---Yeah.

20 Tools and equipment?---Ah, I had most of the tools and equipment.

All right. Well, you bought a Ryobi drill for example?---Yes.

You bought a Bosch sander for example?---Yes.

You bought a Karcher, K-a-r-c-h-e-r, brand high pressure water cleaner? ---Yes.

30 And you bought all of those items from Bunnings didn't you?---I - - -

Yes?---Yes.

And you also needed to buy things such as paint, materials for painting purposes, preparations and the like, garden materials, things of that nature, correct?---Yes.

And you bought many things of that nature from Bunnings didn't you? ---Yes.

40 Now you're aware the investigators when they searched your home took photos of a number of items of that nature?---Yes.

And you've previously seen those photos, haven't you?---I've had a quick look, yeah.

And you're aware, aren't you, that investigators – I withdraw that. Have you seen a summary of transactions conducted on the Murray Civil Works' trade account with Bunnings?---Not properly, no.

Not properly. So you have some exposure to it but you haven't been able to go through it in detail, is that what you're saying?---Correct.

All right. Well, what I want to suggest to you that, is that on the summary of transactions conducted on the Murray Civil Works' trade card account there appear many of the items that were seen during the course of the search of your home by investigators. Would you accept that?---How many is many?

10

Well, for example, the Ryobi drill that I just mentioned, correct?---Correct.

The Bosch sander for example?---Correct.

The Karcher high pressure water cleaner for example?---Correct.

And many of the - - -?---Sorry, I don't think the Karcher high pressure water sprayer was ah, was part of it.

20

Sure. Could I ask for page 850 to be brought up. You need to go down that page and you'll see a line on that table which is in bold, do you see that there?---Yes.

And do you see in the column in the middle of the page where the details of the item are set out "Cleaner high pressure Karcher"?---Yes. Are you saying that was photographed at my place?

No?---Right. That's what I thought you were saying.

30

I'm suggesting to you that you bought that from Bunnings?---Right. Okay.

And I'm suggesting to you that you bought it from Bunnings using the Murray Civil Works trade card account?---Yes.

You agree with that?---I do, yeah.

And I want to suggest to you that there are many items on the list of transactions relating to Murray Civil Works trade card account that you purchased for the purposes of your renovations?---Not every - - -

40

MR SUTTON: Objection. Could I just ask Counsel Assisting through you, Commissioner, is it suggested particularly that this item was bought by my client for his sole ongoing purpose, commencing at the renovation and continuing. Is that the suggestion?

MR GARTELMANN: Well, the short answer is we don't know what his ultimate purpose was. It's not being suggested that he was going to retain it forever if that's what the objection is?---I remember telling you in another

compulsory examination that he wanted me to buy that to clean his pavers around – his Travertine pavers from his pool, that particular item.

All right. But you don't dispute that you bought it?---No, I don't, no.

Is it the case perhaps that you bought one and Mr Twomey bought one of the same kind?---No, I don't think so. I think he wasn't happy with the first one I bought for him.

10 All right. But you've agreed with me already that there are other items that appear on that list which you did buy for your own benefit, such as for example, the Ryobi drill and the Bosch sander?---Correct.

All right. And I want to suggest to you that there are many items that appear on that list which are consistent with items that were seen in the course of the search of your home. Would you agree with that?---Yes.

All right. What I really want to suggest to you is this, Mr Cresnar, you had access to the Murray Civil Works trade card account to buy whatever you
20 wanted for the purposes of your renovations?---Ah, correct.

Why was that?---Ah, it gives you a discount so I could buy things at a discounted rate and I would pay Denis back.

You could pay Denis back?---That's correct.

So are you suggesting that for all of the items that you purchased on the Murray Civil Works trade card account you paid Denis back?---For all of the items I purchased for myself, yes.
30

All right. How did you pay him back?---With cash.

Where did the cash come from?---From the bank.

So it will be reflected in withdrawals from your bank account. Is that correct?---Possibly, unless I used rent money.

You know full well don't you, Mr Cresnar, that there aren't many cash withdrawals from your bank account statements?---I haven't looked at my
40 bank account statements.

Look, isn't it the case that you were provided with access to the Murray Civil Works trade card account on an ongoing basis to do as you pleased?
---Not necessarily, no.

Isn't the case that you just had possession of a Murray Civil Works trade card that you kept for yourself?---No, that's not correct.

All right. Well, I'll ask you to watch something.

VIDEO RECORDING PLAYED

[10.28am]

MR GARTELMANN: You've just watched some video footage of yourself and Mr Twomey at a Bunnings store?---Correct.

10 And would you agree with me that in the course of that footage you can see yourself remove what appears to be a Bunnings trade card account from your own wallet?---Correct.

And you pay for the items that are purchased on that occasion with that trade card account?---Correct.

And then you put the trade card back into your own wallet?---Correct.

20 Now, Mr Twomey's there with you at the time, right?---That's right.

And you're using a Murray Civil Works trade card to pay for items for yourself, perhaps Mr Twomey or perhaps the both of you, but you're conducting the transaction yourself on the Murray Civil Works trade card? ---Correct.

So it's the case, isn't it, that Mr Cresnar, that you had the ongoing possession of a Murray Civil Works trade card?---That's not correct, no.

30 Why on earth do you have it in your wallet?---Well, I have it sometimes but not all the time.

Why on earth do you put it back in your wallet?---Well, Denis likes me to buy stuff for him from Bunnings from time to time.

But you're there with Denis. Correct?---On that occasion I was, yeah.

Why isn't the card in his wallet?---I just told you, he likes me to buy him stuff from Bunnings from time to time.

40 What, he's incapable of pulling the card out of his own wallet and paying for it?---He struggles to find time to go to Bunnings.

But he's there with you. I don't follow. What are you suggesting?---On the one occasion, it doesn't apply to every occasion.

But on that one occasion why isn't the card in Mr Twomey's wallet rather than yours?---Because sometimes he gives it to me 'cause he likes me to buy him things from Bunnings.

But why doesn't he carry out the transaction himself if he's there, Mr Cresnar?---Perhaps you can ask him on Tuesday.

Well, we will, you can rest assured of that, but I require you to answer that question. Do you understand it?---I have answered that question.

10 Why does Mr Twomey not keep possession of the card himself?---Because he likes me to buy things from Bunnings for him on that, with that card from time to time.

Look, is the reality of the situation, Mr Cresnar, that you have no explanation for why you appear to have the ongoing possession of a Murray Civil Works trade card?---I just gave you an explanation.

You have not given any explanation, Mr Cresnar?---I, my opinion is that I gave you an explanation.

20 ASSISTANT COMMISSIONER: Your explanation doesn't make any sense because you say he likes you to buy things for him when he's too busy - - -?---Correct.

- - -but he was there?---But normally he is very busy, plus this time he wanted a brushcutter and, and some other stuff that I can't fit in my car.

Well, none of that explains why you had the card?---He likes me to buy him stuff from Bunnings. We heard a phone conversation yesterday where he was asking me if I got him the stuff from Bunnings yet.

30 MR GARTELMANN: And the reason you had that conversation with him I'd suggest is because he knew that you had his Murray Civil Works trade card- - -?---Correct.

- - -on an ongoing basis?---I didn't have it all the time.

When didn't you have it?---Oh, I don't know, I didn't keep a log.

40 Isn't it the case that you had it substantially in your possession for an extended period of time?---I don't think so.

Months?---I don't think so.

You don't think so?---On and off perhaps.

Isn't it the case that you used the Murray Civil Works trade card to buy whatever you needed to carry out your renovations on an ongoing basis? ---On occasions, yes.

And isn't it the case that you never refunded any money to Mr Twomey or Murray Civil Works for those purchases?---I refunded money to Mr Twomey.

On how many occasions?---I don't know, I didn't keep records of it.

Are we talking once or twice or dozens?---Dozens.

10 And so on each occasion you paid him cash?---That's correct.

And on each occasion therefore there would be a corresponding cash withdrawal on your bank statements. Correct?---Not necessarily, no.

Were you getting further sums of money perhaps from your grandfather?
---No.

Bundles of hundred dollar notes?---No.

20 Where were you getting the cash from to refund Mr Twomey?---Might have been the bank or it might have been rent money.

Well, just for completeness sake, Mr Cresnar, I'm suggesting to you that substantially all of the transactions that were set out on that summary that you've been shown were conducted by yourself and for your benefit?---We just saw some footage where a transaction was conducted not for my benefit.

30 Sure, but we see the footage depicting you have the ongoing possession of the Murray Civil Works' trade card?---But the goods purchased were not for my benefit.

Some of them are, aren't they?---Some of them are, correct.

And you keep possession of the card?---Not constantly, no.

Well, it looks like it wouldn't you?---Looks can be deceiving.

40 All right. Mr Cresnar, while we're on that topic I want to ask you about a slightly unrelated topic and that is your company car during the period that you were employed by Ausgrid?---Yeah.

In your position as an Ausgrid officer you were entitled to the use of a company car for business purposes, correct?---That's correct.

And you had an Ausgrid vehicle with logos on the side?---Yes.

When investigators searched your home inside your vehicle they found some white magnetic signs, do you recall that?---Yes.

And isn't it the case that you used those white magnetic signs to cover up the Ausgrid logo?---That's correct.

So looks can be deceiving as you say, Mr Cresnar?---That's right, yeah.

10 Isn't it the case that you used the white magnetic signs so that you could use the Ausgrid vehicle for private purposes?---Correct.

You understood at the time that Ausgrid had a policy in relation to its fleet of vehicles?---Yes.

And that part of that policy was that you were not entitled to use your vehicle for private purposes?---Correct.

20 So you knew that you were using a company vehicle for private purposes improperly?---Correct.

Were you ever, were you ever given the use of a vehicle by a contractor or subcontractor?---Yes, Denis.

Twomey?---That's correct.

Are you talking about Denis Twomey's car?---Yeah, I think he lent me his car once and one of his Murray Civil cars another time.

30 When you say one of his Murray Civil cars you're aware that he employs a project manager by the name of David Naughton?---Correct.

And it's the case isn't it that you were provided with the use of David Naughton's car?---When he went to Ireland, yeah, at Christmas.

Well, there were two occasions weren't there?---Ah, I'm not sure.

40 I want to suggest to you that you were provided with the use of David Naughton's car over two summer holiday periods?---That would make sense, yeah.

Why would it make sense?---Because they were holiday periods.

Why would it make sense that you were provided with a Murray Civil Works' car for your own use?---Denis let me do that.

Why?---Because we're friends.

But this is a contractor in relation to whom you carry out official duties on behalf of Ausgrid, correct?---Correct.

And the vehicle belongs to the contractor, not to Denis Twomey, correct?
---Correct.

And the contractor is providing you with a benefit at the same time as you are carrying out official duties for Ausgrid?---This is more a, just a personal friend thing than a contractor benefit.

10

Irrespective it's Murray Civil Works' car, right?---It is, yes.

Murray Civil Works is a contractor to Ausgrid, correct?---Correct.

You are Ausgrid, or were, an Ausgrid officer at that time, correct?
---Correct.

20

So at the time that you were an Ausgrid officer with responsibilities including dealing with contracts to that particular contractor you are receiving the benefit of the use of that contractor's motor vehicle?
---Because I'm friends with Denis, yes.

But you accept that that is the case, correct?---I accept that I had use of a car because I'm friends with Denis.

You accept that you had the use of a contractor's car, correct?---Because I'm friends with Denis, correct.

30

All right. And you knew that it was wrong for you to accept that benefit?
---I'm not sure.

Well, look, Mr Cresnar, you've told us that you have attended training in relation to ethics in the course of your employment at Ausgrid?---Correct.

And it's the case isn't it that you must have attended, must have become aware at least of the Code of Conduct by sometime in 2010 at the very latest?---Perhaps.

40

Well, specifically what I'm referring to there is that in October, 2010 weren't you the subject of an investigation in relation to theft of copper wire belonging to Ausgrid?---Yes.

And in the course of that investigation Ausgrid determined whether or not you had breached the code of conduct?---Correct.

So you would have had to have been aware of the existence of the code of conduct as at that time. Right?---Correct.

So well before you're using Murray Civil Works' car for your private purposes you know there's a code of conduct. Correct?---Correct.

Surely, Mr Cresnar, you understood that using a contractor's car for your own private purposes at the time that you were an Ausgrid officer was in breach of the code of conduct?---Possibly.

Well, you knew it didn't you?---I'm not sure.

10 You knew it but you didn't think it was a big thing perhaps. Is that right?
---Perhaps. Perhaps.

All right. But you knew it was wrong?---I'm not sure.

You're not sure?---No.

Is that because you have no understanding of ethics?---That's because I just thought he was giving me the use of the car because we were friends.

20 Yeah, but once again, it's the contractor's car isn't it, it's not Mr Twomey's?---Right.

Now Murray Civil Works' vehicles you're aware pay for their fuel with the use of a fuel card?---Correct.

The company maintains an account with a chain of service stations and it allocates fuel cards to Murray Civil Works?---Yes.

30 Did you use a Murray Civil Works' fuel card for your own private use?
---When using the car?

At any time?---I think I did when I was using the car.

Did you try and make an arrangement with Mr Twomey so that you could have the use of a Murray Civil Works' fuel card on an ongoing basis?---I don't think so.

40 Excuse me, Commissioner. Can I just confirm your position about this, Mr Cresnar. Are you saying that you were provided with the use of a Murray Civil Works' fuel card only in relation to your use of David Naughton's car over those two summer holiday periods?---I'm pretty sure that's the way it was, yeah.

Well, when you say you're pretty sure, surely you would remember if you were provided with a Murray Civil Works' fuel card for use on any other vehicle or with any other vehicle?---That's right.

You would remember that wouldn't you?---Yeah.

All right. I'm going to ask you to listen to something. It's page 449.

AUDIO RECORDING PLAYED

[10.44am]

MR GARTELMANN: Now, Mr Cresnar, there are two aspects of that conversation that I'd like to ask you about?---Okay.

10

Do you understand that?---Yeah.

Firstly the fuel card. Now you would agree with me that in the course of that conversation you are discussing with Mr Twomey him arranging a fuel card for you?---Correct.

And Mr Twomey asks you for the numberplate of your car?---Correct.

20

And you say, "Oh, you can't do that, lad, use someone else's."?---Yeah.

And the reason that you do that is that you know it would be improper to use your Ausgrid vehicle's registration number to put on a Murray Civil Works' fuel card?---I think we were talking a TGB Civil fuel card on that occasion 'cause I was doing a lot of driving up to the Central Coast for him.

Does TGB even have fuel cards?---I'm not sure, I think they might have a couple.

30

You think they might have a couple?---I think so, I know they've got credit cards.

So they've got credit cards?---Yes.

Yes. So what is it about this telephone call that makes you think that you're referring there to a TGB card rather than a Murray Civil card?---Because I have to do a bit of driving for him sometimes for his TGB business.

40

ASSISTANT COMMISSIONER: But that's not the context its spoken about, he's talking about a reinstatement job, that would be Ausgrid work for Murray Civil wouldn't it, or - - -?---That's right.

- - - or Murray Civil work for Ausgrid?---But ah, the fuel card's not related to that reinstatement job.

Well, it sounds like he thinks it is?---I disagree.

I think the recording speaks for itself.

MR GARTELMANN: Is it possible when you're talking to Mr Twomey about the numberplate issue and you say "You can't do that, lad, use someone else's," that you're referring there to a difficulty with providing the registration plate in relation to other car, the Saab?---Yeah, well, I don't really want to use that for work purposes.

I see. So you say to Mr Twomey, you suggest to him that he put his, that is his registration number, on the card, right?---Right.

10 And that's because you're concerned that there might be some implication of you having your fuel paid for by Murray Civil Works aren't you?---No, we were talking about a TGB fuel card.

So why are you troubled about using your numberplate?---Well, he's meant to be getting me a work car as well which he since has.

Why are you troubled about giving him your numberplate?---I'm not going to be using that car for work purposes.

20 But you're not going to be using Mr Twomey's car for work purposes either?---Well, I am at the moment.

So why are you suggesting in that telephone call to Mr Twomey that he use his registration number rather than your own?---He was either going to give me his Jeep or his wife's Jeep and now I have his wife's.

Well, he doesn't seem to understand that does he? He says, "I need the numberplate of your car."?---That's because he was organising the card before the car.

30 But, Mr Cresnar, none of this makes sense?---I suggest you speak to him about it but the, the um, the, the intent of it was to get me a car and a card for TGB Civil.

Look, Mr Cresnar, isn't the simple truth of the matter that you were trying to get Mr Twomey to provide you with a fuel card funded by Murray Civil to pay for your own fuel?---No, that's not correct.

40 And you wanted to ensure that that didn't come to the notice of anybody and so accordingly you ensured that he didn't use the registration number of your own vehicle?---That's not correct.

That's the obvious inference from that conversation I'd suggest, Mr Cresnar?---It's possible but it's not correct.

Now there's a second aspect of that conversation that I wanted to ask you about?---Okay.

Now you said that you've had the Bunnings trade card from time to time because you buy things for Mr Twomey in part?---Correct.

You recall that in the course of the conversation you've just heard Mr Twomey says this, "Did you buy all that paint in Bunnings?" Do you remember him saying that?---Yes.

10 And you respond, "Yeah." And then Mr Twomey says, "Well, slacken back now before you buy." And you say, "Sorry?" And he says, "You want to slacken back a bit."?---Right.

Do you remember that passage of the conversation?---Yes.

And what that reflects is that you had bought paint to carry out your renovations on your Alexandria home at Bunnings using the Murray Civil Works' trade card. Right?---Right.

20 And that Mr Twomey was telling you to go easy on your expenditure on the Bunnings trade card?---Remember he was also renovating his home at the same time. Some of that paint was for him.

Irrespective, Mr Twomey is telling you to go easy isn't he?---Perhaps the account was low.

Would you agree with me that Mr Twomey is telling you to go easy with your spending on the Bunnings trade card?---I'm not sure. It might refer to the account getting low.

30 What does slacken back a bit mean?---Slacken back a bit.

Ease up on your spending on the trade card?---Ease up on spending of the trade card, perhaps.

Yes. Of course it is. That's the only thing it could mean in context, Mr Cresnar?---It wasn't all my spending.

40 Irrespective, he's telling you to slacken up a bit isn't he?---There's information in the same conversation of stuff purchased for him on the Bunnings card by myself.

And a little bit later, Mr Cresnar, you say to Mr Twomey, "Did someone say something?"?---Right.

You're worried about whether or not it's come to notice that you are using Murray Civil Works' Bunnings trade card to make extensive purchases?
---No.

Well, why on earth would you be worried about someone saying something?---Um, perhaps some of the stuff he was getting from Bunnings wasn't for Murray Civil purposes either.

You're just making that up as you go along, Mr Cresnar?---No, I'm not.

You don't even have a recollection of any such thing. That's why you prefaced your answer with the word perhaps?---No.

10 Look, isn't the answer obvious, Mr Cresnar, the only reason you're be concerned about someone saying something is because you knew you shouldn't be using the Murray Civil Works' trade card to make purchases for your renovations to your home?---No, that's the answer.

There's no explanation for it other than that is there?---I already gave you one.

20 You haven't given any explanation that makes sense, with respect, Mr Cresnar?---It makes sense to me and I'm sure it'll make sense on Tuesday as well.

Why – how do you know that, Mr Cresnar?---Well, obviously he's going to just tell you the arrangement we had with the Bunnings card.

When you say obviously, is it the case that you know what evidence Mr Twomey is likely to give here next week?---No.

30 Have you been in touch with Mr Twomey lately?---I speak, I speak to him every day, yes.

You speak to him every day?---Correct.

And you've been speaking to him every day during the course of this inquiry I take it?---Pretty much, yeah.

And you've been discussing the evidence that's been given in this inquiry with Mr Twomey I take it?---Definitely not. I just told him to look at the transcripts on the website.

40 Oh, did you?---Yeah.

Did you discuss anything about the evidence that had been given as reflected in those transcripts?---I don't think so.

Surely you did, Mr Cresnar?---I don't think so.

ASSISTANT COMMISSIONER: Are you working for him at the moment?---Yes, I am.

How long have you been working for Mr Twomey?---Since I left Ausgrid.

And are you working for Murray Civil or for TGB?---No, TGB.

MR GARTELMANN: And what's – I'm sorry, Commissioner.

ASSISTANT COMMISSIONER: No, that's fine. Go.

10 MR GARTELMANN: What is your position at TGB?---Estimator,
engineer.

Is it the case that it doesn't have really a title?---Pretty much, yeah.

Is it because there really isn't a position as such?---No, it's not.

Is it the case that Mr Twomey still gives you things?---Ah, yeah.

Are you on a salary?---Yeah, kind of.

20

What's your salary?---\$1,200 a week.

All right. And is it a permanent full-time job?---It should be, yeah.

It should be?---It should be.

Well, what do you mean by that?---Well, as long as he still – he keeps
winning work, yeah.

30 All right. But as far as you are aware at this point in time it is a permanent
position?---That's correct.

And apart from your attending here at this inquiry you work for him on a
full-time basis. Is that right?---That's correct.

And how long has that been the case?---Since I left Ausgrid.

So I think that was April you said last year?---Yeah.

40 Now, does TGB do contract work for government authorities?---They do,
yeah.

Which authorities does TGB do work for?---Ah, Mosman and Fairfield
Councils.

For councils, municipal councils?---Correct.

Any other government authorities?---I don't think so.

Well, you would know if you've been there as a permanent employee for nine months?---Right, I don't think so.

You'd be well across which government authorities TGB was- -?---From, from time, from time to time perhaps.

Right. Well, tell us about other government authorities that TGB does contract work for?---I don't know of any.

10

You don't know of any other than the two councils you've just mentioned? ---That's correct.

All right. Now, has TGB been required to tender for those contracts? ---Yes.

And are you involved in tendering for contracts with councils for TGB? ---Yes, I am.

20 You're currently involved in that?---Yes. Is that a problem?

Yes, it is?---Why?

It'll become apparent following this inquiry, Mr Cresnar, if it's not apparent to you now. In any event, Mr Cresnar, going back to the telephone conversation that you were played before, I want to suggest to you that you knew full well that you did not have the authority of Murray Civil Works to use its trade card to carry out transactions at Bunnings as you pleased? ---Sorry, I wasn't listening. What was that?

30

Well, look, you understand that Murray Civil Works comprises two directors, Mr Murray and Mr Twomey. Right?---Right.

Perhaps I'll get at it this way. You knew that it was wrong for you to be using the Murray Civil Works trade card account to go and buy things to carry out the renovations on your home, didn't you?---No.

40 And that's why you were anxious when Mr Twomey told you to slacken off a bit with your expenditure on the trade card and you said, "Did someone say something?"---No, that's not right, no.

And I want to suggest in denying that in your evidence here today you are giving false evidence yet again to this inquiry?---No, I'm not, no.

And in denying that – I'll withdraw that. In respect of the conversation relating to the fuel card, I want to suggest to you that in that course of that conversation you are clearly making an arrangement with Mr Twomey for

him to provide you with a Murray Civil Works fuel card for you to use on your own vehicles?---TGB fuel card.

And I want to suggest to you that you are attempting to ensure that that is covered up by making sure that Mr Twomey doesn't use your cars' registration details?---No, that's not right.

10 And I want to suggest to you that in your evidence here today denying that, that you are yet again giving false evidence to this inquiry?---No, that's not right.

Right. I'm going to move on to a different topic now. Mr Cresnar, I asked you yesterday about your payments to Dan Kitchens in respect of your wall unit. Do you recall those questions?---I'm sure I will when you- - -

All right. You recall the topic- - -?---Yes.

20 - - -was discussed in evidence yesterday. Now, as I recall your evidence yesterday you suggested that you had paid for the deposit yourself?
---That's right.

And you suggested that that was worth, I think you said \$5,000?---Yes.

Well, I want to suggest you're mistaken about that and it was in fact a little less than 2,000?---I don't think that's right.

All right. But in any event you don't dispute do you that- - -?---It was definitely 5,000, credit card.

30 - - -the balance – I'm sorry, continue?---It was definitely 5,000 on my credit card.

On the credit card?---On my credit card.

On your credit card?---Yes.

40 All right. You don't dispute though that the balance of the payment for the wall unit was paid with a credit card, the details of which were provided to you by Mr Twomey?---I don't dispute that, no.

And you don't dispute that those payments totalled about twenty-four and a half thousand dollars?---No, I don't dispute that.

And when Mr Twomey provided you with the credit card details you knew that it was a business account, didn't you?---No.

You didn't?---No. I only had this credit card name and number.

So you just thought it was his personal credit card?---That's correct.

I see. I'm going to ask you to listen to something. Page 117.

AUDIO RECORDING PLAYED

[11.00am]

10 MR GARTELMANN: Mr Cresnar, you've just heard yourself in a
telephone conversation with a representative of Dan Kitchens. Right?
---Right.

And in the course of that conversation you tell him that the transaction is
going to be made on a business account?---Right.

So your evidence earlier that you thought that it was Mr Murray's personal
credit card that was being used- - -?---Mr Twomey's.

20 I'm sorry, Mr Twomey's personal credit card being used to pay for the
transaction was false, wasn't it?---It was wrong, yes.

Well, you knew it was false, didn't you?---No, I didn't.

Because you had to make arrangements to ensure that this payment was
acceptable to Mr Twomey?---This is over 12 months ago, I just didn't
remember.

That's right. It's a little over 12 months ago?---Correct.

30 And you in the course of that conversation with the Dan Kitchens
representative alluded to the fact that there may be a two per cent surcharge
because of the transaction being conducted on a credit card. Right?---Right.

And you have to go and check with Mr Twomey that that's all right?
---Correct.

And you tell Mr, or the Dan Kitchens representative that that might be an
issue because it's going on a business account?---Correct.

40 And then subsequently of course you have conversations with Mr Twomey
to confirm that it's all right that the transaction is made notwithstanding the
two per cent surcharge. Right?---Right.

And then you ring back Dan Kitchens and the transaction goes ahead.
Right?---Right.

So you must know full well, Mr Cresnar, that that transaction was conducted on Mr Twomey's business credit card account?---I'd just forgotten those details.

You're lying about that, Mr Cresnar?---I'm not, no, I'm not.

And you knew full well that the business concerned was Murray Civil Works?---I didn't think it was, no.

- 10 Well, had anything that Mr Twomey said to you suggested otherwise?
---I don't know.

So why on earth would you have not thought that it was going on the Murray Civil Works business account?---I thought it was his own dealings.

Well, you've just heard yourself telling the Dan Kitchens representative that it was going on a business account, right?---Yes, but he does have his own businesses.

- 20 Yes, but what did Mr Twomey say to you that made you think that this was going on a business account for anything other than Murray Civil Works?
---I'm not sure.

That's right, because he never said anything to that effect, did he?---I don't know.

You understood that you could make this payment on the Murray Civil Works credit card account?---No, I don't think so.

- 30 You don't think so?---That's correct.

Now you've subsequently had a few difficulties processing the transaction but ultimately the transaction was approved, would you – do you have a recollection of that?---No.

Well, you know the transaction was ultimately approved at least because the kitchen came didn't it?---That's correct.

- 40 I'm sorry, the wall unit came?---Yeah.

I want to ask you to listen to one further conversation.

AUDIO RECORDING PLAYED

[11.06am]

MR GARTELMANN: Mr Cresnar, early on in the course of that conversation you refer to “that thing worked anyway”, do you remember that passage of conversation?---Yes.

The thing you’re referring to is the credit card?---Right.

Well, the conversation has taken place on 27 November, only shortly after you made the final and substantial payment for the wall unit to Dan Kitchens with Mr Twomey’s credit card, right?---Yeah.

10

So you would accept that you are saying or when you are “that thing worked anyway” you’re referring to the credit card transaction?---I don’t really remember that specific conversation there.

In any event Mr Twomey responds, “I look after you all the time, lad.”? ---Yeah.

And it’s the case, isn’t it, that Mr Twomey does look after you all the time? ---Yes.

20

But what I’m interested in is your response, and I appreciate that you’re saying it in a joking way, but you refer to or you ask Mr Twomey not to speak to him like that because you will make a big problem, do you remember that?---Yeah.

And the reason that you thought that it might be a bit problem is because you didn’t, you foresee that there was in fact a problem with Mr Twomey looking after you all the time?---No, that’s not right.

30

What else does it mean?---It’s just stupidity on the phone. It doesn’t mean anything.

Well, its stupidity insofar as you were caught saying it on the phone?---No. You must have thousands of conversations with me with other people speaking like that.

Well, none in which it appears – well, I withdraw that?---It’s just, it’s just me being stupid, it means absolutely nothing.

40

I appreciate that you’re saying it in a joking manner but why say that there would, that Mr Twomey might make a big problem?---I just told you, I was just being stupid, I say that to a lot of people.

Yeah, so, so why is that, why is that funny?---It’s just funny.

Why?---Why not. I don’t know. It just doesn’t make sense. It’s just stupid talk on the phone. It means nothing.

It doesn't make sense other than that underlying it there is a concern about Mr Twomey providing you with gifts and benefits and paying for your purchases?---No, that wasn't part of the conversation at all.

Did you - - -?---Like even in that conversation where he spoke about a TGB Civil job at the end there with some cable - - -

This is in reference to Adisty is it?---That's correct.

10 All right. All right.

ASSISTANT COMMISSIONER: Was Adisty working for TGB?---I think she works on the side for him bits and pieces.

Oh, she works on the side too does she?---I think so.

Oh?---Helps him out.

I thought she was working for Murray Civil?---Well, that's her main role.
20

So you're thinking ahead, Mr Cresnar, but I think you'll have to think a bit more closely about that one and actually it might be timely to remind you. I'm very concerned about your evidence. I don't think you're giving enough care to your evidence and I'd just like to remind you that every instance in which you give false or misleading evidence if it's found to be so is a separate offence. Do you understand that?---Yeah.

So it's very important that you listen carefully to the questions and answer them honestly otherwise there could be repercussions. Do you understand that?---Yes.
30

Thank you. Yes, Mr Gartelmann.

MR GARTELMANN: Mr Cresnar, did you have any reason to have the means to access the bank accounts of Murray Civil Works Pty Limited? ---Yeah. Denis said he was going – they were going broke and he wanted me to look at transactions to see if I thought they were getting ripped off in any way and he kept hassling me to do it and do it until I finally had a look.

40 But you're an engineer aren't you?---That's right. I've got no accounting skills or anything like that but - - -

Right?---- - - as I say he just was persistent.

But what can you bring to the table in going through Murray Civil Works Pty Limited's accounts that Mr Twomey can't?---Well, I think I did flag one transaction that looked a bit funny.

But what skills do you have that Mr Twomey needs for you to access his Murray Civil Works Pty Limited business accounts?---He's not very good with computers.

But the statements can be printed out on a page surely?---Oh, he doesn't really do that either.

And in any event, how are you going to know whether any of these payments are improper or excessive?---I really wouldn't know.

10

You wouldn't know. Exactly, Mr Cresnar?---That's right, yeah.

You wouldn't have any idea?---Correct.

Mr Twomey has got to know far more about his accounts one would think than you would?---Well, one would think.

With the exception perhaps of his credit card account. Is that the case? ---Sorry, I don't understand you.

20

What I'm suggesting to you is that he may not have been completely across the expenditure being conducted on the Murray Civil Works' credit card account because you were making many of the purchases on that account yourself?---I don't think the log in refers the Murray Civil credit card account.

What are you referring to there?---Well, you're asking me something about log ins to a bank account. It wasn't a credit card account I don't think.

30

Right. But you're suggesting that Mr Twomey has given you access to go through – I'll withdraw that. You're suggesting that Mr Twomey has given you access to the Murray Civil Works' accounts generally. Is that right? ---No. It's only one account.

Oh, it was only one account was it?---It was, yeah.

All right. Which account was that?---I don't remember. It wasn't a credit account.

40

All right. So you don't remember which card – which account it was notwithstanding that you went through this exercise on Mr Twomey's behalf?---Business account. I only looked at it once.

And when was that?---I've got no idea.

Where was it?---No idea.

Because it didn't take place did it, Mr Cresnar?---I didn't look at it, is that what you're saying?

No, you did not look through Murray Civil Works' accounts for Mr Twomey to detect unusual transactions conducted on those accounts did you?---I did, yeah, once I think.

I think?---Well, you've got the phone with the text messages on it. I've replied with a transaction name so it's there.

10

Well, I don't quite follow that, with respect, but look, what I'm suggesting to you, Mr Cresnar, is you're making up an explanation for why you would have access to Murray Civil Works' bank accounts?---There's a reply from Siobhan's text message showing her a transaction to look at that I flagged.

That you've flagged?---That's right. After looking at the account once.

20

All right. So are you referring there to your knowledge of the evidence tendered in this inquiry?---No, I'm just referring to a text message I saw on my phone after you guys gave it back.

All right. Which phone was that?---Hmm, was it a Nokia? I don't know.

Well, you had a number of phones, didn't you, Mr Cresnar?---Yep.

You had an iPhone, an Apple iPhone. Right?---That's right.

And that was a phone that was issued to you by work?---Yes.

30

And that was in your own name. Right?---Right.

Now, you've mentioned a Nokia phone?---I, I think it's a Nokia. Dunno.

All right. And whose name is the, that phone service in?---I'm not sure.

Was it your own name?---I don't know.

Why would it be anybody other than your own name?---I don't know.

40

Well, what possible reason would there be for you to have a phone service in your own name?---What possible reason would there be to have a phone service in my name?

In, other than in your own name?---I just don't remember how I got the phones up and running.

Look, Mr Cresnar, stop being coy about it and just answer the question. What possible reason would you have to have a phone service other than in your own name?---No reason.

All right. So are you saying then that any other phones that you possessed, the services would have been in your own name?---Oh, I just don't know.

You don't know?---I don't know.

10 Look, you do know full well that those phone services were in other names, names other than your own?---I just don't remember.

And the reason that you had phone services in names other than your own was so that you could communicate with Ausgrid contractors and subcontractors on the sly?---Was it?

Yes?---I don't think so.

20 ASSISTANT COMMISSIONER: Well, can you advance any other reason why you might have a phone in another name?---No.

None at all?---No.

All right?---Unless I got given a phone from someone and it was in their name perhaps.

And you'd leave it in their name?---Well, why not?

30 Why would you do that, why wouldn't you want any phone you had to be in your name?---I wouldn't have any reason for them not to be.

Yes, Mr Gartelmann.

MR GARTELMANN: Mr Cresnar, for completeness sake, you are not giving truthful evidence in relation to your possession of phones the services of which were in names other than your own, are you?---I'm not lying, no.

40 Going back then to the question of your access to Murray Civil Works accounts, you're saying you had access to one account?---I think so, yeah.

And that was because Mr Twomey asked you to go through and see if he was being ripped off?---Correct.

And who did he think he was being ripped off by?---His business partner.

That's Mr Murray?---Correct.

So Mr Twomey thinks Mr Murray's ripping him off?---Well, he wasn't sure.

But he's concerned about it enough to ask you to go through the account statements?---I think he was, yeah.

Well, that was your understanding on your account?---Correct.

10 And did Mr Twomey say in what respect he thought that Mr Murray was ripping him off?---I really don't know.

No, that's because no such conversation ever occurred I'd suggest?---Ah, there definitely was.

You're making up that as an explanation for why you had access to Murray Civil Works accounts?---No, that's the real explanation.

20 So you can't elaborate any further why it was that Mr Twomey thought that Mr Murray was ripping him off?---Because they seemed to be broke all the time.

Well, you would have some understanding of why they might have some deficits in their accounts?---And why is that?

Because you were using their accounts to buy things for yourself?---Do you mean the Bunnings account?

30 The wall unit, the fireplace, the sewing machine, the list goes on and on, doesn't it, Mr Cresnar?---I didn't realise that was on a Murray Civil account.

Well, you knew that the wall unit was purchased on a business account, you've just heard yourself telling the Dan Kitchens representative so? ---Denis has other businesses of his own.

All right. Now, in any event you say that you had access to the Murray Civil, a Murray Civil account on one occasion in order to detect whether or not there was a suspicious transaction?---Correct.

40 What were you asked to look out for in particular?---Ah, just anything.

And how would you know if they were suspicious?---I wouldn't.

You wouldn't have any idea?---Not really.

It's preposterous, this explanation, Mr Cresnar?---It's the real explanation.

It makes no sense whatsoever?---Well, I'm sorry but that's the explanation.

Well, were you asked to look out for any particular kind of expense?---Just something that didn't seem like it was related to business expenditure I guess.

But surely Mr Twomey could look for that himself couldn't he?---Well, if he knew how to use a computer he might be able to.

10 But he didn't need to use a computer to look for it himself did he?---Well, how else would he do it?

Well, he's a director and shareholder of Murray Civil Works Pty Limited, correct?---Correct.

He has an accountant employed?---Yeah, but I don't think he trusted them.

Oh, he didn't trust Ms Wang either?---I don't think so.

20 But even if he didn't trust Ms Wang he could still go and have a look at the accounts statements himself couldn't he?---Yes, but he asked me to do it.

So – and the reason - - -?---I, I agree with you it's totally ridiculous but he asked me to do it and he kept bugging me to do it till I did.

All right. Well, we'll leave it at that, we're agreed it's totally ridiculous? ---Okay.

30 Your explanation though as I understand it is that you had access to the business account, correct, but not the credit card account?---That's right.

All right. So you wouldn't have had any reason to know Mr Twomey's credit card account level at any time would you?---His own personal one?

Any of them?---Ah, no.

Look, I'm not going to play it to you now but you're aware that a conversation was played to Adisty Said in evidence?---That's right.

40 And that, and you're aware that in the course of that conversation you say words to the effect of Ms Said needs to get the claims in before Christmas because Horse, ie Twomey, has a dint in his credit card?---Correct.

Right. So the claims that you're referring to in the course of that conversation are Murray Civil Works' claims for payments from Ausgrid, right?---Right.

And you're suggesting that Ms Said needs to get those claims in because Mr Twomey has a low level of funds in his credit card account?---In his personal credit card, correct.

But you're saying to Ms Said that she needs to get the claims in because Twomey has a low level of funds in his credit card?---Correct.

So clearly you're referring there to his business credit card?---No, I wasn't, no.

10

Why on earth then does it make any difference whether or not Ms Said gets the claims in for Murray Civil Works' payments from Ausgrid before Christmas?---There's no correlation there, I was referring to his business, sorry, his personal credit card.

Because there is a correlation in your mind at the time of the conversation, Mr Cresnar, because you used the word "cause", ie, because?---It's not an accurate correlation.

20 Because you say "Because Horse has a dint in his credit card."?---Right.

So you're suggesting to Ms Said that it's necessary to get the claims in so that there's money available in the Murray Civil Works accounts.

MR SUTTON: Objection. Counsel Assisting is suggesting at one point that this conversation relates to the Murray Civil credit works, credit card, the conversation as recorded speaks of his credit card which in my respectful submission is a personal statement and - - -

30 ASSISTANT COMMISSIONER: Counsel Assisting's perfectly entitled to put to the witness that the inference is open that there was a connection between money going to Murray Civil and therefore it was a Murray Civil credit card that would benefit not Mr Twomey personally. That's what he's putting. I understand what you're saying about the words being his credit card but I think it's perfectly proper for Mr Gartelmann to put what may be an inference that's open from the conversation.

40 MR SUTTON: As long as it's clear that the conversation is stated as in the recording which refers to his, in my respectful submission, personal but the proposition is, and I accept the proposition - - -

ASSISTANT COMMISSIONER: Yes.

MR SUTTON: - - - he's trying to get to - - -

ASSISTANT COMMISSIONER: Yes.

MR SUTTON: - - - but, but the recording does not in my respectful submission accurately support it though I accept an inference can be drawn.

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

MR GARTELMANN: Mr Cresnar, you understand full well what I'm getting at, don't you?---Yes.

10 You're suggesting to Ms Said that she needs to get the claims for Murray Civil Works to get paid by Ausgrid before Christmas so that Mr Twomey's accounts are topped up?---No, so he gets his Christmas bonus.

So he gets his Christmas bonus?---That's right.

How do you know anything about his Christmas bonus?---It's just an assumption.

20 It's an assumption. I see. Isn't it an assumption that you're making here today by way of an explanation?---You're making an assumption out of this um, recorded phone conversation aren't you?

I'm just reading your words, with respect, Mr Cresnar. You say to Ms Said she needs to get the claims in before Christmas 'cause Horse has a dint in is credit card?---Just an assumption.

Mr Cresnar, you are once again giving false evidence in this inquiry about your knowledge of that conversation?---No, that's not true.

30 You understand the import of the Commissioner's observations earlier, that each time I'm putting these things to you and suggesting that you're giving false evidence there is a potential for an offence of giving false or misleading evidence to be established?---Yes.

Very well. I'm going on to move to a different topic. You're aware of a company named MDM Formworks Pty Limited aren't you?---Correct.

40 And you know that the directors and shareholders of that company are Mr McGann and Mr Madden?---That's right.

And you're aware that MDM Formworks Pty Limited has at times been a subcontractor to Murray Civil Works Pty Limited?---That's right.

And you would know, if only from the evidence in this inquiry, that all of the work that MDM Formworks did for Murray Civil was Ausgrid work? ---Correct.

Did you know Mr Madden and Mr McGann before they formed MDM Formworks?---I think I did, yeah.

They were friends with your former flatmate Mr Treacy?---That's right.

Did you have any involvement in MDM Formworks being set up?---No.

10 You didn't suggest to MDM Formworks for example that they might set up – I'm sorry. You didn't suggest to Mr McGann or Mr Madden that they might set up MDM Formworks with a view to getting work from Murray Civil?---No. They'd already had it set up and they were working elsewhere as far as I know.

But I've just asked you whether or not you knew Mr Madden and Mr McGann before they set up MDM Formworks?---I did, yeah.

20 So what I'm asking you about is before the set up MDM Formworks did you suggest to them that they might set up the company with a view to getting work as a subcontractor to Murray Civil?---No, I didn't.

Did Mr Madden and Mr McGann know either of the directors of Murray Civil Works - - -?---No.

- - - as far as you're aware?---No, they didn't, no.

Did you introduce Mr Madden or Mr McGann to Denis Twomey for example?---I'm not sure. Could have done.

30 You could have couldn't you?---I could have, yeah.

And did you suggest to them that – that is to Mr Madden and Mr McGann that they might be able to get work - - -?---I think um - - -

- - - through Denis Twomey?---Yeah, I think, I think I told them I'd ask perhaps, you know.

40 All right. And then after MDM Formworks was formed it began to do subcontracting work for Murray Civil Works. Correct?---I think they worked for others first.

All right. But in any event, it ultimately performed subcontracting work for Murray Civil Works?---Correct.

Some of the jobs that MDM Formworks worked on for Murray Civil Works, that is Ausgrid jobs, were in the North Region?---Yes.

And at the relevant time, say 2013 to 2014, you were an Ausgrid officer dealing with jobs in the North Region?---That's correct.

Indeed up until you resigned before you were to be terminated you were the project, or a project planner for the North Region?---Correct.

And you also were a contract inspector in relation to contracts for works in the North Region?---That's right.

One of the jobs that MDM Formworks did for Murray Civil for Ausgrid was at Lindfield, wasn't it?---That's correct.

10

That was a job involving what's known as reinstatement work, wasn't it?
---It was.

You were the contract inspector for Ausgrid in relation to that job?---Yes.

That job commenced sometime late 2013 and then continued over until early to mid-2014. Would you agree with that?---Yes.

20

Now, as the contract inspector for Ausgrid in relation to that job no doubt you went out onsite?---That's right.

You carried out inspections- - -?---Yes.

- - -in the course of your official duties as an Ausgrid officer?---I did.

And during the course of exercising those functions you dealt with Mr Madden and Mr McGann?---That's right.

30

Was there any reason for you to carry out work as a contract inspector in relation to that particular contract at Lindfield other than onsite or in the office?---No.

No reason for example why you might need to meet the subcontractor or its officers at a pub or nearby?---I don't know.

40

Well, look, you know from evidence at the beginning of this inquiry that there is footage of you meeting Mr McGann and Mr Madden outside the Greengate Hotel on the Pacific Highway at Lindfield on 20 January last year?---Yeah, I saw that on the news.

Were you not sitting in the hearing room at the time that evidence was given?---No.

All right. All right. Well, look, we can play that footage again if you, if it's necessary?---No, I've seen it.

You've seen it?---Quite a few times.

Yes?---Yeah.

You would have been particularly interested in what it depicted I would assume?---Yeah.

Because you would agree with me, wouldn't you, that it depicts Mr Madden and Mr McGann jointly handing over an envelope of cash to you?---It appears to depict that.

10 Right. And the envelope did contain two and a half thousand dollars cash, didn't it?---No.

What did it contain?---Drawings for a school.

I see.

ASSISTANT COMMISSIONER: That must have been a very small school?---Why do you say that?

20 Because it's a very small envelope. What do you mean by drawings, what, what were they, blueprints or- -?---No, I think they were- - -

- - -did they draw them themselves? I don't understand this?---
- - -engineering drawings.

They were engineering drawings. For what school?---I'm not sure.

Well then that must have been very useful for you. Yes, Mr Gartelmann.

30 MR GARTELMANN: You're not sure which school?---No, I don't know which school it was.

All right. Why on your account did Mr Madden and Mr McGann give you some drawings of a school outside the pub at Lindfield on 20 January?
---I used to price things for them.

You used to do work for MDM Formworks Pty Limited too. Is that the case?---That's correct.

40 I see. Pricing jobs?---And I have since as well.

All right. So you're talking about pricing quotes for work?---Yeah.

Pricing quotes for work in their respect I assume with contractors?
---Well, in some occasions they just want labour estimates or steel and concrete estimates.

All right. Now, you have no background in estimating steel and concrete, do you?---Ah, a little bit.

Well, look, Mr Cresnar, you were, you were for quite a number of years employed as a graduate engineer at Ausgrid. Right?---Correct.

And I assume the expression graduate engineer mean that that's, that was your first job out of uni?---No, it wasn't.

10 All right. So are you saying that you used to work in the construction industry?---No, I'm not.

So how on earth is it that you have any skills that might be of benefit to McGann and Mr Madden in, in quoting for jobs in relation to pricing steel and concrete?---I've um, priced home developments for myself previously.

Oh, this is in relation to Alexandria?---Ah, there was a – well, that area, yeah. Not related to my house, no.

20 All right. But in any event you don't have any background in your employment that gives you skills to price concrete and steel on a commercial basis do you?---No, only what I've done on my own.

All right. So let's just be blunt about it, Mr Cresnar, this explanation about you getting MDM Formworks assistance for pricing jobs is just false?---It's not false at all.

You're giving false evidence again in the course of this inquiry in relation to your knowledge of the circumstances in which you met Mr McGann and
30 Mr Madden on 20 January last year?---No, I'm not.

And you've giving false evidence about what took place at that, on that date just outside the Greengate Hotel on the Pacific Highway at Lindfield?
---No.

And specifically you're giving false evidence in denying that you were given an envelope containing \$2,500 cash aren't you?---I'm not giving false evidence.

40 You would be aware from the evidence given in this inquiry on Monday that not only was there footage of the envelope being passed by Mr Madden or Mr McGann to you and you slipping it in, in your pocket - - -?---Right.

- - - but also that shortly before that one of them attended the bank - - -?
---Yes.

- - - at Lindfield, withdrew \$2,500 cash and put it into the envelope?
---That's right.

And then very shortly after that the envelope's passed to you?---Well, it's obviously not the same envelope.

Look, Mr Cresnar, it is as clear as day you were provided \$2,500 cash on that day outside the Greengate Hotel, it's obvious?---It looks obvious but it's not the case.

10 You would be aware also, wouldn't you, that on Monday in this inquiry some telephone conversations were played?---That's correct.

And in the course of one of those conversations between yourself and Mr Madden there was a discussion about how much you had agreed between yourself and Mr McGann was to be paid in relation to the Lindfield job? ---Something along those lines.

20 All right. So you accept that there was a discussion between yourself and Mr Madden regarding an agreement for payment in relation to the Lindfield job, correct?---Um, no.

Well, when you say something along those lines what do you mean? ---Something about values and quotes, yeah, but not payment.

30 Well, look, in the course of that conversation, and I can play it to you if you need it but you can probably assume that what I'm reading to you is correct, all right, Mr Madden says, "How much was that Lindfield job?" You say, "Oh, I can't remember, was it 180 or something?", clearly referring to the value of the contract, and then Mr Madden says, "No, but what did you agree with Fergal for that for me?"---That's right.

So what you're referring to there is an agreement between yourself on the one hand and Fergal again and Mr Madden on the other hand in relation to payment for that job?---I think what it was is some footings that they were, I priced for them a while ago and ah, I'm trying to remember if they were 5,000 each or 2,500 each per footing.

So why didn't you say anything about that in the course of the conversation? ---Well, that's what the conversation was about I'm pretty sure.

40 Well, look, you're happy to look at it now I take it are you?---Yeah.

If we could draw your attention firstly to page 389. You see there on the top line Mr Madden is saying, was ringing you about the Lindfield job in effect?---Yeah.

Then you say, "Was it 180 or something?" And then Mr Madden says, "No, but what did you agree with Fergal for that for me?" Right?---Right.

So what about that did you understand to mean footings or anything of that nature?---It's just the five and the two and a half, it just – I think it was footings.

I see. Couldn't it be the case, Mr Cresnar, that the two and a half is a reference to \$2,500 consistent with the sum of money that was withdrawn from the Lindfield bank, put in an envelope which you put in your pocket outside the Greenfield – the Greengate Hotel at Lindfield?---But he says for me. He says for me, like for himself.

10

Yes, for himself to pay you. Right?---I – no, I don't think so.

But two and a half is a reference to \$2,500 isn't it, Mr Cresnar?---That's correct.

Right. You agree with that?---Yes.

20 So you are agreeing that you've had a conversation with Mr Madden regarding an agreement between yourself on the one hand and Mr McGann and Mr Madden on the other hand in relation to a payment of \$2,500. Right?---I think it's, it's ah, a quote of \$2,500 per footing basis.

But nothing about the conversation raised the topic of footings at all, Mr Cresnar?---They talk about the Lindfield job and they gave me some um, some drawings to quote out at Lindfield which we referred to as the Lindfield job. It's - - -

Oh look - - -?---You can't even pronounce where it is.

30 Because it - - -?---Gundawandilla or, I don't know.

It doesn't exist no doubt?---Gundaneena.

Is the reason you're having difficulty pronouncing it. Mr Cresnar, this is getting farcical. Do you understand that?---No, I don't.

Look, Mr Madden and Mr McGann are doing a job for Murray Civil Works for Ausgrid at Lindfield. Right?---Right.

40 And here you are talking to Mr Madden about the Lindfield job. Right? ---Right.

It's the job that Mr McGann and Mr Madden are doing for Murray Civil Works for Ausgrid at Lindfield isn't it?---No, it's not, no.

Oh, you cannot be serious, Mr Cresnar?---I am serious.

Once again, Mr Cresnar, you're giving false evidence in this inquiry about your knowledge of that conversation?---I'm not, no.

You would be aware from reading the transcripts of the evidence that was given here on Monday that there was a further telephone conversation between yourself and, on this occasion, Mr McGann?---Right.

10 And I'll ask for the pages to be brought up on screen because it might assist your recollection. 498. And just while it's coming up I'm going to tell you that the conversation that I'm referring to now was one on 20 January a little before the meeting takes place. Do you understand that?---When was the meeting, sorry?

20 January, 2014?---Okay. So the same day.

The same day?---Right.

Just a short time before it takes place. All right. Do you accept that?---Yes.

20 Now in the course of this conversation you're referring again to the Lindfield job?---Yeah.

You can see that from what appears on page 498?---The pavers in Lindfield.

Yeah?---Yes.

30 Now I'm going to ask you to look at page 500. Now do you see there towards the top of the page Mr McGann says, "Can we meet you somewhere?"?---Yes.

And then you go on to discuss where you might meet and then about two-thirds of the way down the page so you see Mr McGann says, "We want to sort you out"?---Yes.

Now sort you out means pay you doesn't it, Mr Cresnar?---No. They gave me a bottle of whisky.

40 Well, look, we've seen the footage of the meeting and you are given an envelope with what appears almost unavoidably to be cash - - -?---We went somewhere else.

- - - but not any whisky, Mr Cresnar?---We went somewhere else after this.

But where did you go after this?---To look at the pavers on the Pacific Highway.

All right. So coincidentally the footage of the meeting outside the hotel has the envelope being passed to you and no whisky?---Correct.

But then you say there was some other meeting?---Yeah, we went somewhere else after that.

You're making that up, Mr Cresnar?---No, we did go somewhere else after that.

Well, look, you know that Mr McGann and Mr Madden gave evidence here on Monday?---Right.

10

And you would know that it was not put to them that there was such further meeting at which whisky was exchanged?---They didn't seem to have a very good recollection of the whole thing.

But in any event it was not put to them that there was a further meeting at which whisky was exchanged was it, you would know that from reading the transcripts of the evidence?---I wasn't aware that you had to put things to people like that.

20 All right. Look, Mr Cresnar, you are giving false evidence in the face of the blatantly obvious I would suggest?---I'm not.

You've got a telephone conversation between yourself and Mr Madden in which you discuss an agreement in relation to the Lindfield job, correct? ---Discuss an agreement?

Yes?---Yes, correct but ah, I - - -

30 You've got a telephone – yes, go on?---Like I said the Lindfield job just means another job that we called the Lindfield job 'cause they gave me the plans out at Lindfield.

Mr Cresnar, you've got a telephone conversation in relation to an agreement for a payment for a job at Lindfield, can we agree on that?---No.

Well, I thought you said that the \$2,500, the reference to two and a half is a reference to \$2,500, you've agreed with that?---But it's not a payment, I think it's a quote.

40 All right. You've got a telephone conversation where there is an agreement in relation to the Lindfield job, correct?---Correct.

You've got a reference to \$2,500 at least in the context of that conversation, correct?---Correct.

You've then got a conversation between yourself and Mr McGann where McGann says he wants to sort you out, correct?---Correct, being the whisky.

And then you've got a meeting taking place immediately or very shortly after that between yourself and Mr McGann and Mr Madden where an envelope is handed to you and you put it in your pocket and walk away in circumstances where one of them had just gone to the bank and got \$2,500 and put it into an envelope?---That's right.

10 Look, you put it all together and it is unavoidable I would suggest, Mr Cresnar, you received \$2,500 cash from Mr McGann and Mr Madden on 20 January, 2014 outside the Greengate Hotel?---I'm sorry, they gave me plans.

Once again you are lying in your evidence to this inquiry, Mr Cresnar?
---No.

ASSISTANT COMMISSIONER: Mr Gartelmann, we might take a short adjournment at this time.

MR GARTELMANN: Yes, sorry.

20 ASSISTANT COMMISSIONER: We'll adjourn for 15 minutes.

SHORT ADJOURNMENT

[11.48am]

ASSISTANT COMMISSIONER: Thank you, please be seated.

30 MR GARTELMANN: I've just been reminded, Commissioner, there was one item that I have neglected to tender to date and that is the DVD of the footage from Bunnings.

ASSISTANT COMMISSIONER: Yes. Well, that will be Exhibit 24.

#EXHIBIT 24 - VIDEO OF PHILLIP CRESNAR AND DENIS TWOMEY AT BUNNINGS

40 ASSISTANT COMMISSIONER: And what about the telephone intercept transcripts that have been shown to this witness now, some of those have not been tendered to this stage.

MR GARTELMANN: Yes, that is correct. I'll just confirm which ones have been played that have not been tendered to date. Excuse me.

Commissioner, if it's not inconvenient it may be preferable to hold off from that tender for the present.

ASSISTANT COMMISSIONER: Yes.

MR GARTELMANN: And I'm sure my instructor will remind me in due course.

Now, Mr Cresnar, before the break you were giving evidence about your conversations with Mr McGann and Mr Madden in relation to the Lindfield job. Do you recall that?---Yep.

10 Now, as I understand the explanation you've given here today for a reference to anything to be given to you it's in relation to work you were doing for Mr Madden and Mr McGann on this school you can't remember. Is that right?---No, that was a, that was a new job. The school was the plans that they gave to me. So the two and a half \$5,000 quotes was the previous project for them.

All right. So, and the previous project, the two and a half and the \$5,000 quotes, what did they relate to?---Footings for water tanks.

20 For which job?---Ah, it was somewhere out in, it's rural.

But for whom?---I'm not sure. It came through ah, EstimateOne.

But who did these jobs for whom?---The, I'm not sure.

You don't know anything about these jobs?---They gave me some work to price, some EstimateOne work.

30 So you're talking about Mr McGann and Mr Madden doing a job though?
---Correct.

Is that right?---Correct.

Okay. This explanation you're giving- - -?---Quoting, quoting for a job, yeah.

Yes. This explanation that you're giving though about, for the two and a half thousand or 5,000- - -?---Yes.

40 - - -that relates to some assistance you gave to Mr Madden and Mr McGann in relation to some job they were doing. Is that right?---It relates to quotes that they were going or they have submitted that they were going to submit for, for other work.

All right. And why were you involved in that?---I was pricing it for them.

So you were pricing a quote for them for a job?---Correct.

All right. And what was that job to do?---To put down footings for water tanks or cattle troughs or something like that.

You don't seem to have much of a recollection of it, Mr Cresnar?---Well, it was a while ago.

It's only a year ago?---Well, that's a while, isn't it?

10 It's not long enough for you to have no apparent genuine recollection of it at all, Mr Cresnar?---Well, I do have a recollection of it.

Well, tell us about where it was for a starter?---It's rural. I can't remember the name of the place.

Rural in the sense of within New South Wales?---Up near the New South Wales and Queensland border I think.

Oh, you think?---I think so. They do a lot of- - -

20 You're not sure about that?---They do a lot of work in those areas.

Mr McGann and Mr Madden do a lot of work in the rural area near the border. Is that what you're saying?---Correct, yes.

All right. So what was it that you did for them in this pricing this quote, what did you actually do?---Come up with the prices that I believed they should submit.

30 To whom?---To the EstimateOne person, whoever it was.

And you can't tell us anything about who the work was to be done for?
---No.

No, because- - ?---I don't have those details on me.

Well, they'd surely be available in your memory if you had, if there was any such work done by you in fact?---I can have a look and see if I've still got the design info.

40 But my question to you really, Mr Cresnar, is this. If you had done any work for Mr Madden and Mr McGann pricing a job such as you've described, you'd have a memory of at least who it was to be done for?
---Well, I've priced a lot of jobs since so- - -

Look, Mr Cresnar, you're giving false evidence in this inquiry in relation to your explanation for the conversation to which we've been referring?---No.

All right. But in any event, your explanation as I understand it about some assistance you gave Mr Madden and Mr McGann in relation to this job up at near the border?---Correct.

All right. So it's nothing to do with Ausgrid?---No.

Nothing to do with Murray Civil Works?---I don't think so.

Well, why would Murray Civil Works have had any involvement in it?
10 ---Well, they wouldn't have.

No. All right. Well, I'm going to ask you to listen to this. Page 416, please.

AUDIO RECORDING PLAYED

[12.19pm]

MR GARTELMANN: Now, Mr Cresnar, I'm going to just let you know
20 that that conversation you've just listened to takes place two days after the conversation we've talked about earlier where you're on the phone with Mr Madden - - -?---Right.

- - - talking about the Lindfield job and how much you'd agreed and there was the reference to the five or two and a half each?---Right.

So that will put it into context for you?---Right.

So in this conversation that you just heard a moment ago, you recognise the
30 voices of yourself and Mr Twomey?---Yeah.

And in that conversation you tell Mr Twomey that Mr Madden had rung you up?---Yes.

And that he'd argued with you about what the agreement was?---Right.

Correct?---Correct.

And clearly the agreement related to payment to you and Mr Twomey?
40 ---I'm not sure what it related to.

Oh, come on, Mr Cresnar, you can do better than that, of course you can?
---Can I read it again?

Yes?---Thanks.

I take you to page 416. Now do you see there at the bottom of the page?
---Yeah.

You refer to "That fucking John Madden ringing me up."?---Yeah.

Do you see that?---I do.

Then as I've just explained to you two days before Mr Madden rang you up?---Right.

10 And you discussed what was agreed for the payment on the Lindfield job, right?---Right.

You refer to it was five, two and a half each, do you remember that?
---Yeah.

All right. And so then in this conversation on 22 December, 2013 you and Mr Twomey go on to discuss your recollections about what you'd actually agreed with Mr Madden and/or Mr McGann regarding the Lindfield job?
---Right.

20 Don't you?---Yeah.

And it's clear isn't it that what you're really discussing there is an agreement in relation to payment to you and Mr Twomey in respect of the Lindfield job?---I, can I look at the next page, I'm not sure what it's about yet.

Well, look, just looking at what you've looked at today, to date, you would agree with me that that's clearly what this telephone conversation is about?
---Well, sir, what's 20 and 10?

30 Well, look, what I'm suggesting to you, Mr Cresnar, is that originally you wanted to get 20 in total out of Mr McGann and Mr Madden but they wouldn't agree with it. Would you agree with that?---I'm not sure, no.

That's the obvious inference isn't it?---No.

If I can have - - -?---Yes.

40 If I can ask you to look at page 417. You see that what you're saying there at the top "that was definitely fine on that one because I remember we wanted 20 and then they were like oh, no, and we'll give 10"?---But that could be the, the prices they submit for work.

Mr Cresnar, the job was worth over \$100,000. Right?---Which particular job is this?

The Lindfield job, Mr Cresnar?---Which Lindfield job?

Mr Cresnar, you know full well that Mr Madden and Mr McGann carried out a restoration job at Lindfield for Murray Civil Works for Ausgrid don't you?---There's mention here about smaller jobs.

Yes, but that's in relation to what work you might give to other subcontractors in exchange for payment to yourself and Mr Twomey isn't it?---Well, can I have a look at the next page please.

10 Look, just before we do that, Mr Cresnar, you appreciate you're here to answer my questions?---Correct.

You understand that?---Yes.

I want to suggest to you, Mr Cresnar, that it is plain as day that what you are discussing with Mr Twomey there is an arrangement between yourself and Mr Twomey on the one hand and Mr McGann and Mr Madden on the other hand for payment in respect of the Lindfield job?---I'm not sure what it is.

20 Oh look, you're lying in your evidence, Mr Twomey – Mr Cresnar?
---There's mention of conduits somewhere as well.

So what, Mr Cresnar?---Well, I just don't understand all the - - -

You do understand full well?--- - - - components.

You just don't like the implications of it, Mr Cresnar?---I'm not sure what it's about.

30 Look, it's plain as day, Mr Cresnar. You are caught on tape with Mr Twomey discussing a corrupt arrangement in relation to payments from Mr McGann and Mr Madden?---I'm not sure - - -

It's plain as day isn't it?---I'm not sure what it's about.

You've got no other explanation for it have you?---No.

You go on in the course of this conversation to talk about other work coming up?---Right.

40 And you go on to talk about, in effect, who's going to get what. What subcontractors will get what work with Murray Civil Work in relation to Ausgrid contracts. That's what you're talking about isn't it?---I'm not sure. Fix the crossing.

Yeah, you have no idea about what you're talking about. Is that right?
---(No Audible Reply)

It's only a little over a year ago isn't it?---Yes.

Why else would you have been saying to Mr Twomey that you remember that at the start it was fucking 20 and then we settled for 10 mate. Why on earth would you be saying these things, Mr Cresnar?---I'm not sure.

Look, it's obvious, Mr Cresnar. Why don't you just admit it?---I don't know if these are quotes.

Quotes for what?---For work it seems like it could be.

10

They're quotes for corrupt payments?---I don't think they are.

That's what you're talking about?---I don't think it is.

Yes you do?---Can you -- there's talk about conduits.

20

Look, who cares about the conduits, Mr Cresnar. You're talking about an arrangement between yourself and Mr Twomey on the one hand and Mr Madden and Mr McGann on the other hand for payments in relation to the Lindfield job?---I'm not sure.

Yes you are and you're lying in your evidence here today in this inquiry in respect of your knowledge about that conversation?---I'm not sure what this conversation was about.

In a conversation I took you to earlier?---Yeah.

30

In the conversation where you talk to Mr Madden and you talk about your understanding of whether or not the agreement was for five or two and a half each?---Right.

There is a reference to it being the same as before. Do you remember that? ---Yes.

So it follows, doesn't it, that from that reference it was your understanding that there had been previous agreements between yourself and Mr Madden and/or Mr McGann in relation to sums of money?---No, I think they were quotes for other work.

40

References in the context of five or two and a half each and then discussion about whether it was the same as before?---Right.

That's what occurs in the course of that conversation?---Yes.

So clearly you're referring to whether or not the payment in respect of the Lindfield job was five or two and a half each just like the payment in respect of some other job?---I think they're quotes, quote amounts - - -

They might be - - -?--- - - - for previous work.

- - - quotes but they're quotes for corrupt payments?---No, they're quotes to complete work.

Well, I'm going to put it to you, Mr Cresnar, that you had previously had agreements with Mr Madden and Mr McGann in relation to them paying you and perhaps Mr Twomey in respect of other jobs for Ausgrid?---No, I don't think.

10

And I would suggest to you that that is the only sensible inference from the conversation you had with Mr Madden on 20 December, 2013 to which I've just referred you?---I think they're prices for quotes.

Again, Mr Cresnar, you're lying in your evidence in this inquiry about your knowledge of payments to you by Mr Madden and Mr McGann in respect of jobs other than the Lindfield job aren't you?---What other jobs?

20

Whatever the jobs were before that you're referring to in your conversation with Mr Madden?---Right. I don't know.

You know full well, Mr Cresnar, don't you?---No.

And you just don't want to admit it, do you?---I don't want to admit to something that I don't know about.

You don't want to admit to something that would perhaps constitute corrupt conduct?---Well, I just don't really understand what those previous quotes were for.

30

No, because there were no previous quotes except in relation to perhaps corrupt payments?---Well, there were plenty of quotes.

There were plenty of corrupt payments, I'll give you that, Mr Cresnar. This work that MDM Formworks was carrying out at Lindfield - - -Yes.

- - - for Murray Civil Works on behalf of Ausgrid - - -?---Right.

- - - was what is known as a restoration job?---Correct.

40

Sometimes a reinstatement job?---Yes.

Much the same thing isn't it?---It is.

Now it's quite common isn't it for contractors to Ausgrid to subcontract out work of that kind?---Yes.

And in the ordinary course of events an Ausgrid officer, no doubt a contract inspector, would be provided with a quote from the contractor - - -?
---Correct.

- - - in relation to it getting the restoration or reinstatement works done by a subcontractor?---Correct.

10 And when an Ausgrid officer receives a quote for that kind of work it's incumbent upon the Ausgrid officer to check whether or not the municipal council or other authority having any responsibility in relation to roads or footpaths in that area would be able to conduct the same work?---That's right.

And as part of the duties of the Ausgrid officer you would check the value of the quote that the contractor has given you against what you've been told by the council or other authority about how much it would cost them to do the work, right?---Ah, the councils publish their rates on their website so you don't really need to approach them.

20 So - - -?---You can work out what the cost's going to be.

All right. Well, let's just deal with it one step at a time. In any event isn't the case that the Ausgrid officer dealing with a quote for a restoration job should assess the quote against what the council or other authority would charge to do the job?---Correct.

30 All right. But you're saying are you that the council simply publishes the rate to do that job on its website and so you just go onto the website to find that information out?---Usually, yeah.

Well, what about in unusual – I withdraw that. You say usually, what do you mean by that?---That's a standard, the standard procedure.

All right. So are you saying that councils don't give that information on a confidential as in commercial in confidence – I'll withdraw that. Are you saying that councils do not provide that information on a commercial in confidence basis?---What does that mean?

40 Are you saying that the council does not provide that information to you confidentially?---That's correct, it's on their Websites.

All right. So you don't go and contact the council to find out that information other than to look at the Website?---Well, you can do but it's not needed.

Because you can just look at the Website?---Correct.

So that's what you would do if you were the contract inspector receiving a quote from a contractor for restoration work?---Yeah.

All right. Well, I'm going to ask you to listen to this. 335.

AUDIO RECORDING PLAYED

[12.35pm]

10 MR GARTELMANN: Mr Cresnar, in that- - -

MR SUTTON: Sorry, if I can ask Counsel – I apologise, I have a cold as you know, I've been coughing throughout this whole thing. There was one – and if it could be put back up on the screen because what I'm about to say relates to that document. The previous page, please. Yep. The final paragraph there, I'm just wondering if it's possible to play that again. I'm not sure I agree, and it may be that I'm wrong, with the word sly. I thought I heard fly, for want of a – if it could be – certainly just at that point.

20 ASSISTANT COMMISSIONER: Yes. Well, your client's heard it and hasn't raised any cavil with what's put there.

MR SUTTON: Well, I accept that, but my client's sitting in what might be termed a rather hot seat at the moment and I'm here to look after his interests as best as I can within the legislation. I simply ask that that be replayed so I could hear it.

30 ASSISTANT COMMISSIONER: Well, can that paragraph be played again? Or I suppose you'll have to play the – just start from the beginning, there's not much before that.

MR SUTTON: Thank you, Commissioner.

AUDIO RECORDING PLAYED

[12.38pm]

MR SUTTON: Thank you, Commissioner.

40 ASSISTANT COMMISSIONER: Well, I think it's "on the sly," don't you, Mr Cresnar?---Sounds like "fly" to me.

MR SUTTON: I can – I accept that.

THE WITNESS: I thought it sounded like "fly."

ASSISTANT COMMISSIONER: Well- - -

MR GARTELMANN: Well, I'm sure you do now, Mr Cresnar, with that helpful assistance.

MR SUTTON: I object to that flighty comment.

MR GARTELMANN: I meant it on the sly.

ASSISTANT COMMISSIONER: I'm sure Mr Gartelmann doesn't mean it.

10 MR GARTELMANN: No, don't take it to heart.

Might I resume?

MR SUTTON: Sorry?

MR GARTELMANN: Might I resume?

MR SUTTON: You may.

20 ASSISTANT COMMISSIONER: Yes.

MR GARTELMANN: In the course of that conversation with Mr Twomey, Mr Cresnar, you're providing Mr Twomey with advice about whether or not Murray Civil Works' quote for a restoration job is cheaper or more expensive than what the council would charge to do that job, aren't you?
---Yep.

30 You are providing information to a contractor enabling the contractor to pitch its quote at the right level to get the job. Correct?---I didn't see any information about pricing exchanged there.

But you're telling him about who's the cheaper aren't you?---Well, the information isn't there to say that.

Who cares, Mr Cresnar. You're telling him about whether it's cheaper or not. Right?---Well, I said I was only joking didn't I at the end.

40 Sure, but you're still discussing with Mr Twomey whether or not his, that is Murray Civil Works, quote for the job is cheaper or not than the council's?
---But I also said there I haven't got the council's price back.

But you're trying to get it aren't you?---Yes.

So what it shows I would suggest to you, Mr Cresnar, is that your practice was this when you received quote for a restoration job from a contractor such as Murray Civil works, you'd give the contractor information about whether or not their quote was competitive relative to the council or other

authority's price to carry out the work?---Well, they'd get that information anyway if they didn't win the job or they won the job.

Whether or not they might have got it ultimately you were giving that information to contractors weren't you?---I don't think so.

Well, aren't you doing that in the course of this conversation?---But there's no price there.

10 But you - - -?---You're telling me I'm - - -

You're clearly - - -?---You're telling me I'm giving them pricing information when I didn't see it written down there.

I'm telling you you're giving them information regarding whether or not their quote is cheaper or not than the council's. It's clearly what you're referring to in that conversation, Mr Cresnar?---But there's no council quote in that conversation.

20 But you're referring to the council's price to do the job aren't you?---There is no price there.

You are referring to it nonetheless?---I'm referring to a price that's not there?

Mr Cresnar, you're trying to hide what is blatantly obvious, that you are assisting a contractor to pitch its quote at the right level so it gets the job - - -?---There's no - - -

30 - - - aren't you?---There's no price in the conversation.

But what you're talking about with Mr Twomey is an arrangement to do that. Correct?---But there's no price. I'm sorry.

You're talking to Mr Twomey about getting a quote from the council on the sly or on the fly as it may be and providing it to Mr Twomey so that he can pitch his quote to Ausgrid at the right level. Correct?---I'm not sure. I just - - -

40 Yes you are, Mr Cresnar?---There's no price there.

You know full well what that conversation is about don't you?---But there's no price in the conversation.

Who cares, Mr Cresnar?---Well, it's quite an important factor isn't it.

All that matters to Mr Twomey is whether or not he's pitching it at the right level, cheaper or otherwise. Right?---But the price isn't there.

Who cares, Mr Cresnar?---So how can he determine if he's pitching it at the right level if the price isn't there.

Mr Cresnar, can you at least agree that you are conveying to Mr Twomey whether or not his price is cheaper than what the council would charge?
---That information is not there to convey to him so, no.

10 You are discussing an arrangement with Mr Twomey to convey to him at least the information of whether or not his quote is cheaper or otherwise than the council's?---I don't agree.

What on earth are you talking about then?---But there's no council price there.

ASSISTANT COMMISSIONER: Yes, but you're telling him his price is too high, it has to be cheaper?---Right.

20 You' agree that wouldn't you?---I don't think I'm being serious there. I'm just saying – I'm just having difficulty here because there's no council price there.

MR GARTELMANN: Mr Cresnar, you are lying in your evidence again in this inquiry about your knowledge of that conversation with Mr Twomey aren't you?---No. There's no pricing information here. Is there another page?

30 Look, I want to put to you this, Mr Cresnar. What you did in practice in your arrangement with Mr Twomey was that you would give him information about whether or not his quote was competitive relative to the price of the council or other authority so that he could get the job?---I would give him information to – I would point him in the, the website of the council's.

That's what we're talking about in this conversation?---Well, there's no price in this conversation.

40 You're talking about getting it off – that information off the council officer aren't you?---Right.

Nothing to do with the website is it?---Well - - -

You don't say to Mr Twomey go and have a look at the website yourself. I'm an Ausgrid officer. I shouldn't be involved in this do you?---The councils have their rates published on their websites.

Yes. So why don't you say something about that to Mr Twomey?---I've told him that before.

But you don't talk to him about that in this conversation. You undertake to get that information from a council officer don't you?---Well, I haven't got the information yet.

But you undertake to get it, don't you?---I have asked the council for a quote, yes.

10 With a view to giving it to, that information, to Mr Twomey, correct?
---Well, it doesn't say that.

That's what you are agreeing to do, isn't it?---No.

Would you ever do such a thing?---I don't think so.

Have you ever done such a thing?---I have told people that you're pricing's too high and if you keep pricing like this you're not going to be successful.

20 And why would you give that information, I take it you're talking about the contractors for Ausgrid work?---Restoration work, yeah.

All right. Contractors submitting quotes for restoration work no doubt including works carried out by subcontractors?---Correct.

All right. So you tell the contractor or the subcontractor?---The contractor.

You tell the contractor that their prices are too expensive?---That the quotes can be too expensive and, yeah.

30 Right. Who, which contractors have you told. Have you given that information to?---Oh, I'm not sure.

Many I take it?---I don't, I don't know.

Well, is it just Murray Civil Works?---No, I think um, Diona have asked for feedback on their restoration quotes.

40 Now Cloughcor was a subcontractor to Diona wasn't it?---Yeah, but not for restoration.

All right. Have you ever given this information to subcontractors?---What information?

Information regarding whether or not their prices for doing a restoration job were competitive?---I'm not sure.

Well, is that something that you should be doing as an Ausgrid officer do you think?---I don't think there would be a problem in directing them to the appropriate council's website.

I see. So that's what you're saying you would have done then in relation to subcontractors, you would have directed them to the council's website?
---Yes.

10 All right. I want to ask you in particular about a restoration job in Mosman late 2013. Do you understand that?---Yeah.

Now in that timeframe or – I withdraw that. At that time you were an Ausgrid officer with responsibilities either as a project planner and/or contract inspector in the North Region?---Yeah.

And so you would have received quotes from contractors in relation to restoration jobs in that region?---Correct.

20 I want to ask you in particular about a restoration job conducted for Ausgrid by Murray Civil Works at Mosman. Do you understand that?---Yes.

Do you remember that job?---Yeah, I think there's been several.

All right. But I'm talking about one in late 2013 that commenced?---Okay.

Do you remember that job?---Are you sure it commenced in 2013?

30 Well, what I'm really dealing with here is the question of the quote being submitted to Ausgrid for that job. Do you understand that?---Right.

So what I'm suggesting is that the quote was submitted - - -?---Okay. Yes.

- - - in late 2013?---I remember that one, yeah.

All right then. And do you remember getting an email from Ms Said on behalf of Murray Civil Works in relation to that job?---Oh, vaguely.

40 All right. Well, excuse me a moment, Commissioner. Excuse me, Commissioner. All right. I'll need to give you this document in hard copy, Mr Cresnar, it won't come up on the screen I don't think.

MR SUTTON: May I inquire if there's a copy for me to look at please?

MR GARTELMANN: We'll make one available very shortly, just as soon as we can.

MR SUTTON: Thank you.

MR GARTELMANN: Now firstly, can I direct your attention to the first page, Mr Cresnar?---Yes.

Do you accept that that appears to be a copy of an email from Ms Said to you?---Yes.

Dated 17 December, 2013?---Yes.

10 And it attaches a stage 3A, i.e. contractor offer, together with a quote from MSA Civil, does it not?---It does.

And MSA Civil was a subcontractor who occasionally did work for Murray Civil Works, wasn't it?---No, only once I think.

All right?---They weren't any good.

Well, on one occasion in any event. All right. Now- - -?---Three-quarters of an occasion.

20 I beg your pardon?---Three-quarters of an occasion.

All right. So there was only the one subcontract between MSA Civil and Murray Civil Works is what you're saying?---Yeah.

All right then. Now, the stage 3A contractor offer is followed by a quote from MSA Civil?---Yep.

30 And you can see on the quote, if you have a look at the first page of the quote, on the top right-hand corner it's got the date, 10 December, 2013? ---Yeah.

And it says "Quote Number" but then it says, "Mosman."?---Right.

And you would accept that that relates to the Mosman restoration job - - -?---Yes.

- - -we talked about a moment ago?---Yes.

40 Now, I just ask you to look firstly at the last page of the quote?---Yes.

And do you see there it's got the total amount including GST being \$344,300?---I do.

And the total amount excluding GST being \$313,000?---Yes.

And then if we go back to the stage 3A contractor offer- - -?---Yes.

- - -and you'll see page 1 of the two pages- - -?---Yes.

- - -in about the middle of the page it's got total cost being \$344,000 – I withdraw that - \$ 344,300?---Yes.

Plus GST amounting to \$378,730?---Yes.

In the line above that it says that items charged at cost plus 10 per cent?
---Yes.

10 And we've heard evidence in this inquiry about how a contractor will submit an invoice to Ausgrid for, on a cost plus basis charging an additional 10 per cent over and above the subcontractor's invoice?---Yes.

All right. So that's what that, those figures reflect, isn't it?---It is.

All right. Now, this document, stage 3A contractor offer together with the quote from MSA Civil was received by you by way of email from Adisty Said?---Yes.

20 And it was emailed to you at your work address at Ausgrid?---Yep.

Because you were the Ausgrid officer responsible for dealing with that particular job?---Correct.

And if I recall your evidence from earlier yesterday correctly, the process would be that you would then submit this on to the relevant managerial level to approve a contract of that value?---Correct.

All right. And did you do that- - -?---Yes.

30 - - -in respect of this particular job?---I did, yes.

And in all likelihood the work was carried out and the payment was made in the sums set out on the stage 3A contractor offer?---Correct.

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

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 25.

40 **#EXHIBIT 25 - MOSSMAN ZD EAST RESTORATION – STAGE 1 & 2 REPORTS “EMAIL AND QUOTE”**

MR GARTELMANN: That document might be returned from the witness. We're just getting copies of that made and we'll have one provided to Mr Cresnar's legal representative as soon as possible.

ASSISTANT COMMISSIONER: Yes.

MR GARTELMANN: While that's happening, Mr Cresnar, I just wanted to ask you a little bit about MSA Civil. You mentioned that they did just that one job or three-quarters of a job as you put it?---That's right.

The company MSA Civil, or business MSA Civil was run by man called Mouhamad Jomaa?---Right.

10 That's your knowledge isn't it?---Yes.

Jomaa's spelt J-o-m-a-a. It might be appropriate at this time, Commissioner, for me to seek to make a, request a suppression order in respect of that name because I don't anticipate this witness will be called.

ASSISTANT COMMISSIONER: Yes, I make the suppression order in respect of the name Mouhamad Jomaa.

20 **SUPPRESSION ORDER IN RESPECT OF THE NAME**

████████████████████

MR GARTELMANN: Bearing in mind that on your evidence MSA Civil only did the one job or three-quarters of a job for Murray Civil Works I take it you wouldn't have had much in the way of dealings with ██████████
---No.

30 Did he have your private number?---He did, yeah.

Why was that?---Because he was introduced to me by a friend.

Because he was introduced to you by a friend?---That's correct.

Was the friend Denis Twomey?---No.

Who was it?---A friend call Bill.

40 ██████████ That's correct.

All right. All right. Now did ██████████ and yourself socialise?---Ah, he invited me to his Christmas party.

Did you go?---I did.

What year was that?---2013.

And that was well and truly after you were aware of the existence of a Code of Conduct at Ausgrid?---That's correct.

And you knew that the Code of Conduct said that you should not attend functions for contractors with the Contract Cable Laying Division?---Oh, I don't know.

Well, you knew you shouldn't be going to Christmas parties of contractors didn't you?---Why not?

10

Because it's in breach of the Code of Conduct perhaps?---Right. Okay.

About which you were aware by this time, correct?---Correct.

In any event you went to his Christmas party. Did you socialise with him otherwise?---No.

All right. Did you have any dealings with him for work purposes other than in relation to the Mosman restoration job?---No.

20

All right. Well, I'm going to ask you to look at some SMS messages firstly between yourself and [REDACTED] page 255. Now, first, the first message you see on the screen there dated 27 November, 2013 is from [REDACTED] to you?---Yeah.

And it says, "Hey, mate, is this your private num," short for number? ---Yeah.

30

Next message, page 256, [REDACTED] says, "So I can tell you what I'm sitting at regarding price."?---Yeah.

Next message, page 257, you say, "Okay."?---Yeah.

Next message, page 258, [REDACTED] says, "I finished up at 263,872 plus GST. That includes all excavation, removal of spoil" it says, "supply and lay concrete formwork and asphalt. Strip formwork, topsoil and make good and tidy any affected areas. What you think?" Do you see that?---Yes.

40

And then the next message, page 259, you say to [REDACTED], "I'll let you know when I hear back from council."?---Yes.

And then lastly, page 260, [REDACTED] says, "K mate," an abbreviation for okay?---Yes.

So in the course of those SMS messages between yourself and [REDACTED] isn't it the case that [REDACTED] is asking you on your private number about whether or not the price that he wants to pitch for the restoration job will be

successful?---Yes. Well, I think he wanted feedback because this was his first restoration job for Ausgrid.

And then you say you'll let him know once you hear back from council?
---Correct.

So you go off to the council officer, right?---Right.

10 And you make an inquiry regarding how much it would cost the council to conduct the restoration job, right?---I requested a quote, yes.

Yes. And then you let [REDACTED] know whether or not he's pitched it at the right level?---I didn't, no.

You didn't?---I didn't.

Well, what did the council tell you it would do for the job?---I can't remember.

20 Why was it then that [REDACTED] is asking you if this is your private number?---I'm not sure.

Because surely if your dealings with [REDACTED] in relation to this job were aboveboard he would be calling you on your Ausgrid number. Right?
---Right.

It's obvious isn't it?---Probably if he assumed or he's right it's – sensitive information like that - - -

30 Yes?--- - - - shouldn't be ah, discussed at all.

Was his assumption in that regard correct?---Yes.

It shouldn't have been discussed should it?---No.

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

40 You knew that to provide that kind of information to a subcontractor quoting to a contractor to quote to Ausgrid for a restoration job was wrong?
---Correct.

And that's why the conversation – I'll withdraw that – why the messages took place on your private number?---Correct.

Now I take it at some stage you let [REDACTED] know what the council would charge for the job?---No, I don't think I did.

You didn't?---No.

All right. But in the text messages that [REDACTED] sent you regarding the job he's offering to do it for \$2,603 – I'll withdraw that – \$263,872 plus GST. Right?---Right.

And then you forward on a stage 3A contractor offer through to your superiors for their approval for Murray Civil Works to get the contract for that restoration job at a much greater value don't you?---Yes.

10 And your stage 3A contractor offer has the quote from MSA Civil attached stating that it'll do the job for \$313,000 plus GST?---Correct.

So having been told by [REDACTED] that he's prepared to do it for approximately \$263,000 you receive from Adisty Said at Murray Civil Works their contractor offer annexing the MSA quote to do it for \$313,000 you send that on to be approved?---Correct.

So you know that [REDACTED] quote has been inflated by approximately \$50,000. Correct?---Ah, I don't think so.

20

Well, the difference between \$2663,000 - - -?---Yes.

- - - and \$313,000 is \$50,000. Would you agree with that?---Yes.

So having been told by [REDACTED] he can do the job for \$263,000 you get Ausgrid to approve a contract to Murray Civil Works which would result in [REDACTED] getting paid \$313,000?---Right.

30 It follows, doesn't it, that [REDACTED] invoice has been padded by \$50,000 and you knew about it?---Not necessarily.

How could you not have known about it?---I think he quoted to the wrong standard.

You don't say that in any of these text messages do you?---No.

So you just bumped it up by \$50,000 because you thought it was probably a little bit light on?---I think he was sent Auspec 209 to reprice.

40 Look, no amount of tech talk, Mr Cresnar, is going to allow you to wriggle out of this one I'd suggest.

MR SUTTON: Objection. Objection.

ASSISTANT COMMISSIONER: To what, Mr Sutton?

MR SUTTON: The witness has suggested that this person [REDACTED] has quoted contrary to particular specifications, it is therefore unfair to suggest

and I quote I think accurately, "No amount of tech talk's going to get you out of this one." It's a gratuitous comment with respect if there is exploration to be done in relation to a different standard [REDACTED] has quoted in effect on an orange when he should be quoting on a lemon then that needs to be explored.

ASSISTANT COMMISSIONER: Yes Mr Gartelmann.

10 MR GARTELMANN: I won't press it and I'll move on. Mr Cresnar, in your SMS messages with [REDACTED] what you say to him is, I'll let you know in effect, was that he'd hear back from Council.---Correct.

You don't say anything about specifications in those messages do you?
---No.

So, the only thing you undertake to do is let him know once you hear back from the Council what it would charge to do the job, right?---I'm not sure if that's what I meant.

20 Well, that's what you said. You said, "I'll let you know when I hear back from Council."---I'll let you know what I think about his price when I get the Council's it doesn't say - - -

Yes, that's right.---It doesn't say that I'm going to disclose the Council's price.

But he's pitched a quote to you at approximately \$263,000, correct?---
Correct.

30 And you say to him, "I'll let you know when I hear back from Council," correct?---However, that's not a formal quote without any, without any terms and conditions or any mention of - - -

No, but that's what he - - -?- - -specification.

Look, it doesn't matter Mr Cresnar, he's telling you, he's thinking of putting together his quote at that price, doesn't he, isn't he?---There's no information behind that price, that's just an estimate.

40 It doesn't matter though Mr Cresnar, he's telling you he's prepared to do the job, to pitch the quote at \$263,000 or thereabouts, isn't he?---Yes.

You tell him, I'll let you know when I hear back from Council, correct?---
Okay, correct.

You don't say anything about specifications, do you?---Not in the text message, no.

Or anywhere else?---Well, I'm not sure.

No. What you do is you go off to the Council, you find out how much the Council will charge to do the job right.---Right.

And then you find out that the Council will charge to do the job than [REDACTED] so you tell [REDACTED] he can bump up his fees by \$50,000-odd.
---No, I didn't do that.

10 And then, knowing full well what Mr Jomaa was prepared to do the job for you get the contractor officer from Adisty Said at Murray Civil Works, having an inflated invoice from NSA Civil and you submit it on to your managers for them to approve for payment to Murray Civil Works and NSA Civil, correct?---I didn't do that, no.

I thought you agreed before that you did?---No, I didn't.

You submitted this Stage 3 A Contract offer together with the NSA quote - - -?---Yes.

20 - - - onto your managers how had the appropriate delegation to approve that contract.---That's right.

It was approved and I think you agreed earlier that the works would therefore would have been done and payment would have been made. You agreed with that earlier.---You just said something was inflated or I told someone price information – I'm denying that.

All right. I appreciate that.

30 MR SUTTON: Commissioner, I'm sorry to keep doing this but Council Assisting put a proposition in general terms that a course of events would have happened, documents would have been submitted, work would have been done, payment would have been made. It may well be that in the ordinary course that that course of conduct could have occurred or would have occurred but with respect, the proposition has not been put nor has it been accepted therefore – in my submission – that in this particular case that particular course of conduct did actually occur, I don't know if it's within this witness knowledge.

40 ASSISTANT COMMISSIONER: The witness earlier agreed that this was referred on and paid.

MR SUTTON: The propositions put were it would have, would have and would have and not, it did, it was, it did happen. There are serious consequences that are going to come out of this.

ASSISTANT COMMISSIONER: Yes.

MR SUTTON: There need to be specificity with respect.

ASSISTANT COMMISSIONER: Do you remember referring this on for payment or not?---After the job was complete?

Mmm.---Oh no, I was – left Ausgrid at that stage.

10 So you say you did not refer this claim on for payment or approval?---I wasn't at Ausgrid any more at that stage.

MR GARTELMANN: I'm sorry. You got this email from Adisty Said on 17 December, 2013. Right?---Correct.

Five months or so before you left Ausgrid. Right?---Correct.

What did you do with it when you got it?---Forwarded it to management for signoff.

20 All right. And as far as you're aware, Murray Civil Works then got the contract to carry out that restoration job?---Correct.

And as far as you're aware, MSA Civil did the subcontracting work for Murray Civil Works?---They did some of that job, I think they kicked them offsite.

All right. But let's go back to the stage 3A contractor offer that was submitted to you by Adisty Said on 17 December, 2013?---Yes.

30 You were the Ausgrid officer with responsibility for receiving and processing that contractor offer?---Correct.

And are we right in understanding that what you did when you got it is that you sent it to your manager with a recommendation for approval?---Correct.

Just put aside the question of who was ultimately paid what?---Right.

40 Why did you do that knowing full well that [REDACTED] invoice was bumped up by \$50,000 over what he'd indicate to you he would do the job for?--[REDACTED] invoice, invoice was the cheapest of three.

So you knew that he would do it for \$263,000, here you are as the Ausgrid officer receiving the contractor offer annexing a quote for \$313,000, you know it's been bumped up by \$50,000?---I don't think it has been bumped up by \$50,000.

Well, how do you explain the difference?---Well, I don't think he quoted it originally to the proper specification, like I said, and his quote was the cheapest of three, including the council's price and one other.

So are you seriously suggesting that there was some communication with you, between you and [REDACTED] correcting him about the specification that he should be quoting for?---I remember sending the specification to Murray Civil to send to their restoration subcontractors and in addition to that there were some Telstra pits and things that needed replacing on that job.

10

But did you get back to [REDACTED] and say hang on, no, you've quoted on the wrong specs?---I didn't get back to [REDACTED] what the council's price was.

Did you get back to [REDACTED] at all?---I don't think I did.

Did you get back to [REDACTED] and say, you can bump it up by another fifty grand and you'll still get it 'cause it'll still come in under the council's price?---No, I don't think I did.

20

Of course you did, Mr Cresnar?---I didn't.

That's the only explanation for what's going on here?---You've seen the text messages, there's- - -

That's precisely right, we have seen the text messages?---There's no feedback leak for the council's price.

30 You know [REDACTED] is prepared to do the job for \$263,00, you get a quote where he says he's going to do it for \$313,000 and you submit it on to Ausgrid management for approval, don't you?---There's no specifications or quantities in that text message with that quote.

It doesn't matter, Mr Cresnar?---I believe it does.

40 And so you're saying as I understand it that you speak to Murray Civil Works about the belief you have that [REDACTED] quoted on the wrong spec?---No, I sent Murray Civil Works the specification that their subcontractors have to quote to. I also sent Murray Civil Works the quantities for the job, so I don't know if there's been a twist in the price or whatever between the information that Murray Civil sent to the subcontractors and the price he text me, I'm not sure, but I did not tell [REDACTED] what the council's price is and as I said, there's no specifications or terms and conditions attached to that text message of that price.

You may not have told [REDACTED] what the council's price was but you told him, didn't you, that he could bump it up by another \$50,000 and still get the job?---No, I didn't.

Any communications between yourself and Murray Civil regarding what [REDACTED] had initially quoted for the job would be surely by way of email, wouldn't they?---I think so.

Well, they would be, wouldn't they? I mean that's the way you're supposed to carry out your job as an Ausgrid officer in dealing with contractors?
---Any communications between who, sorry?

10 Between you as an Ausgrid officer- - -?---Yes.

- - - and Murray Civil Works- - -?---Yes.

- - -in relation to correcting [REDACTED] misapprehension about specs would have been by way of email?---Okay.

Is that right?---I'd agree with that, yes.

20 Well, do you say that there were any telephone conversations between yourself and [REDACTED] about this?---I don't know.

Do you say whether or not there were any SMS messages between yourself and [REDACTED] about this?---About the specifications?

About anything to do with this invoice that he'd indicated, this quote that he'd indicated he could do for \$263,000?---Well, he sent me the price, that price via a text message which I didn't respond to.

30 Yes, so well, I take it you're saying that there would not have been any further communication by way of SMS, is that right?---That's correct.

Okay. All right. So in that case then it would have been by way of email between yourself and Murray Civil Works?---Yes.

All right. So we should be able to find that email, right?---You should, yes.

Right?---It's probably just a generic email that attaches a specification for them to submit to their subbies.

40 All right. What is it about [REDACTED] text saying he will, he could do the job at \$263,000 that led you to believe that it was based on the wrong spec?
---Oh, you put something to me and I replied, that's, that's it.

I'm sorry, I don't follow that answer?---I don't follow your question.

What is it about [REDACTED] message to you stating that he could do the job for \$263,000 or thereabouts that leads you to believe he's, he's quoting on

the wrong, on the basis of the wrong spec?---The quantities and the specification and that price didn't seem to, to match.

All right. So you just thought it was just too low generally, it just felt too low, is that right?---It was very – well, it was very low, I believed it was very low anyway.

Well, you no doubt believed that once you contacted the council?---That's right.

10

And so isn't it the case, Mr Cresnar, that what you do as a consequence is that you let it be known to [REDACTED] one way or another that he's at liberty to bump it up by another \$50,000 and he'll still get the job?---No, I didn't tell him that at all.

Is it the case that you told Mr Twomey who told him that?---I don't think so.

20

I note the time, Commissioner, would you be proposing to continue to sit on for a time or take a luncheon adjournment?

ASSISTANT COMMISSIONER: I think we'll take the luncheon adjournment. We'll resume at 2.15.

LUNCHEON ADJOURNMENT

[1.18pm]