

JARHPUB00450
23/01/2015

JARAH
pp 00450-00478

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION JARAH

Reference: Operation E13/0494

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY, 23 JANUARY 2015

AT 2.17PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

<PHILLIP CRESNAR, on former affirmation

[2.17pm]

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

MR GARTELMANN: Mr Cresnar, before lunch I was asking you about your dealings with [REDACTED] in relation to his quoting for the Mosman restoration job, you'll recall that?---Yes.

10

And I showed you some text messages between yourself and [REDACTED], correct?---Correct.

And those text messages took place on 27 November, 2013, do you understand that?---Yes.

The last of the text messages was at about half past 5.00 on that day? ---Yes.

20

Would you accept that? All right. I want to suggest to you that immediately after you spoke, you had those text messages with [REDACTED] what you did is you got on the phone to Mr Twomey and you talked about the quote that [REDACTED] had just indicated he would do the work for? ---Okay.

Well, do you accept that or not?---Yes.

30

And you in the course of speaking with Mr Twomey discussed whether or not it would be less expensive than the council would charge to do the same job?---Is this the phone conversation you had up earlier?

No, it's not?---It's another one?

Yes, it is?---Okay.

All right. Are you saying that you can't recall that conversation?---No, that's right.

40

All right. Well, in that case we'll have it played to you. Page 61, 261, sorry.

AUDIO RECORDING PLAYED

[2.19pm]

MR GARTELMANN: Now you just heard a conversation between yourself and Mr Twomey. Correct?---Correct.

And it takes place a few seconds after you received the last of your text messages from [REDACTED]?---Yes.

Do you understand that?---Yeah.

So basically what happens is after [REDACTED] sent you his text including one which gives you the price that he's prepared to do the job for you get on the phone to Mr Twomey and you talk about it with him don't you?---I do, yes.

10 And you discuss with Mr Twomey whether it'll be less than the council would charge to do the same work don't you?---That's right.

You might have seen the word the "coast" price in the transcript. That's incorrectly transcribed isn't it?---It is, yes.

Yeah. It's the council's price isn't it?---That's correct.

20 So you go on to discuss with Mr Twomey whether you think the quote [REDACTED] [REDACTED] has given you will be beneath the price that the council would charge to do the same job?---Correct.

And then ultimately the conversation ends with you waiting for the council to get back to you with its price for the job?---That's right.

All right. So you'd agree with me in the course of that conversation you say nothing to Mr Twomey about the specs upon which [REDACTED] has based his quote do you?---That's correct, nothing.

30 All you're talking about is whether or not it's cheaper than the council's likely price?---That's right.

So it's the case, isn't it, that what you and Mr Twomey were discussing was firstly, whether or not the contract could be awarded – the subcontract I should say could be awarded to MSA Civil. Correct?---Correct.

And it's implicit I would suggest in the fact that you are talking about this topic with Mr Twomey that you're determining the scope for the quote to be inflated?---It could've been.

40 Because isn't it the case that you had an arrangement with Mr Twomey on an ongoing basis whereby you'd steer work to particular subcontractors who you knew would be open to giving you payments or benefits. Isn't that the case?---No.

Isn't it the case that you used your position as an Ausgrid officer to convey information regarding what the council would charge to do a particular job to a contractor or subcontractor so that they could pitch their quotes at the right level to ensure they got the job?---That's correct, yes.

That is correct?---Yes.

Because you wanted particular contractors or more specifically subcontractors to get the job because you knew particular subcontractors would be open, open to providing you and/or Mr Twomey with benefits or payments?---I wanted to get the best price for Ausgrid.

10 Well, surely then when you got the stage 3A contractor offer from Adisty Said in relation to the Mosman restoration job and you saw that [REDACTED] had bumped up the invoice by \$50,000 you would have not made a recommendation to your superiors that that stage 3A contractor offer should be approved?---Well, as I said the ah, text message wasn't accompanied by any quantities or specifications.

No, and neither were any of your discussions with [REDACTED] or Mr Twomey, were they?---I'm not sure.

20 Because all that really mattered to you was that it was significantly less, that is [REDACTED] quote was significantly less than what you know the council would likely charge for the job, right?---Right.

And the reason that that mattered to you was because you saw the potential to allow [REDACTED] to increase his quote in exchange for payments to yourself and Mr Twomey?---I wasn't in any discussions with [REDACTED] about receiving payments.

30 But you were in such discussions with [REDACTED], weren't you?---I, well, you just heard the discussion I had with Mr Twomey.

Well, you've heard a discussion a little bit earlier today between yourself and Mr Twomey regarding payments that you'd sought from MDM Formworks. Correct?---Correct.

And that was in relation to restoration work too, wasn't it?---Yes.

40 You were discussing trying to get \$20,000 out of Mr McGann and Mr Madden for work of that kind, weren't you?---I'm not sure exactly what the discussion was about.

And you discussed your respective recollections that you'd settled on a price of \$10,000. Correct?---I'm not sure what that was about.

And you're discussing whether Mr Twomey, your annoyance that Mr Madden should be suggesting it was \$5,000 in total. Right?---I'm not sure.

In other words, two and a half thousand dollars each for you and for Mr Twomey. Right?---It could have been, I'm not sure.

All right. So what I want to suggest to you, Mr Cresnar, is that this is an ongoing course of conduct that you were engaged in with Mr Twomey. Do you understand that?---I understand what you're suggesting, yes.

Do you agree with it?---Oh, no.

10 Isn't it the case that you and Mr Twomey on an ongoing basis determined which subcontractors would get jobs for restoration in exchange for payments to yourself and Mr Twomey?---No, not at all.

Excuse me, Commissioner.

I want to ask you to listen to something.

AUDIO RECORDING PLAYED

[2.28pm]

20 MR GARTELMANN: In that conversation, Mr Cresnar, you're discussing with Mr Twomey which subcontractors Mr Twomey's going to use for reinstatement jobs aren't you?---Yes.

And Mr Twomey suggests to you a particular subcontractor be given a reinstatement job doesn't he?---He does.

And you don't like it, do you?---No.

30 And you get annoyed with Mr Twomey?---I do.

And you say to him "I think you should leave these decisions to the boss, not yourself."?---Right.

And when you use the expression "the boss" you're not referring to Valentine Murray are you?---No.

You're referring to yourself?---That's correct.

40 And then you go on to say "I invented this, all this, so just leave it to me."? ---That's right.

What was it that you invented, Mr Cresnar?---I was the person that pioneered getting restorations completed.

In exchange for payments?---No, just the start of it.

Look, Mr Cresnar, you pioneered a scheme whereby particular subcontractors were engaged to do restoration work for particular

contractors in exchange for payments by those subcontractors to yourself and Mr Twomey, didn't you?---That's not right, no.

That's what you invented, isn't it, Mr Cresnar?---I invented getting restorations done outside of the councils.

It wasn't your job to be telling Mr Twomey which subcontractors he could obtain quotes from, was it?---No, I agree.

10 Yes. He should have been seeking a number of quotes - - -?---That's correct.

- - - in relation to carrying out a restoration job - - -?---Yes.

- - - from a number of subcontractors, correct?---Right, correct.

And then that should have been forwarded to you as part of your stage 3A contractor offer together with the quotes or at the very least the cheapest quote, correct?---Correct.

20

And then you were responsible as an Ausgrid officer for making a recommendation as to whether or not that contractor offer should be approved, correct?---Correct.

And sending it up to your management level with the approval with the appropriate delegation to make that approval, correct?---Correct.

It wasn't for you to be telling Mr Twomey which subcontractors he could use?---That's right.

30

And yet here you are getting very annoyed with Mr Twomey because he's not using the subcontractors that you want him to use, correct?---Correct.

And the reason you're getting annoyed with him for doing that is because you want to use particular subcontractors who you know will pay you, right?---No, I like to use people that I know do a good job.

I'm going to ask you to listen to one further conversation, 540.

40

AUDIO RECORDING PLAYED

[2.34am]

MR GARTELMANN: Now, Mr Cresnar, in the course of that conversation you're again discussing with Mr Twomey allocation of work to particular subcontractors by Murray Civil Works aren't you?---I assume so.

And again you get a little bit testy with Mr Twomey over him promising subcontractors work without you consenting?---Correct.

And then you say to Mr Twomey, “You can’t fucking go and bloody think you’re running my invention now”. Correct?---Correct.

Now a moment ago you said in evidence that your invention referred to getting restoration work done or something to that effect?---External to councils, yes.

10

All right. And a little bit further down the page you then say, “If it wasn’t for that invention you’d be in a very bad spot”?---Correct.

Mr Twomey would be in a very bad spot but for your invention. Right?---Right.

So your explanation for what you mean by invention would have no bearing upon whether or not Mr Twomey was in a bad spot would it?---Sorry, say that again.

20

Your explanation for what you meant by your invention would have no bearing on whether Mr Twomey would be in a very spot would it?---No.

Because the invention you’re referring to is your scheme whereby you ensure particular subcontractors are given restoration jobs in exchange for payments to yourself and/or Mr Twomey. Right?---No.

30

And that’s why Mr Twomey would be in a very bad spot if it wasn’t for your invention. Correct?---No. Mr Twomey gets a 10 per cent management fee on top of all of these restoration jobs.

So they get a little bit extra. Is that right?---That’s right. They pay for their whole engineer for the year, like his wages out of that.

All right. But how do you reconcile that with telling him that if it wasn’t for your invention he’d be in a very bad spot?---Well, it’s just sometimes the way I talk. You don’t have to take it literal.

40

When you don’t know that you’re being listened to, when you don’t know that your telephone calls are being recorded?---Well, yeah.

Look, it’s clear, isn’t it, Mr Cresnar, that what you’re referring to there is ownership of a scheme, you’re responsible for inventing this scheme. Right?---Like I said it’s just restoration work.

It’s restoration work for particular subcontractors who are willing to pay you and Mr Twomey money?---No, it’s just restoration work.

Just such as we see in the conversation between yourself and Mr Twomey in relation to what was the arrangement with MDM Formworks?---That's right.

You're agreeing with that?---Oh, I'm not sure what I'm agreeing to.

10 Yes. The invention you're discussion with Mr Twomey in this telephone call you've just listened to is your scheme whereby you have an understanding with Mr Twomey that particular subcontractors will get restoration or reinstatement jobs in exchange for payments to yourself and Mr Twomey?---No, that's just restoration work.

And we see that scheme at work in the earlier conversation between yourself and Mr Twomey where you're discussing what was the agreement for payment by Mr McGann and Mr Madden. Right?---Well, I don't know what that conversation was about.

20 Well, that's the conversation where you're talking about whether it was \$20,000, \$10,000 and so on. Do you remember that conversation?---Yes.

That's the scheme at work, isn't it?---No.

That's the - - -?---The scheme is just restoration work.

And there was an earlier conversation between yourself and Mr Madden where you're discussing whether or not the agreement was 5,000 or two and a half thousand dollars each. Do you remember that conversation?---I do.

30 That's again the scheme at work, isn't it?---No.

It's, your discussing with Mr Madden whether the agreement for them to get that job, that restoration job at Lindfield, was in exchange for them paying you and Mr Twomey two and a half thousand dollars each?---Jeez, I think that conversation was, was past tense from a job.

Well, it was both past tense in relation to a job before, do your remember that?---No.

40 Well, in the course of the conversation with Mr Madden where you're discussing your arrangement with him about how much it was that you were to be paid, you just, you made reference to it being the same as the job before. Do you remember that?---Yes.

All right. So you're right in a sense, it was both past tense and present? ---Okay.

You were talking about previous jobs and you were talking about the current job. Correct?---Correct.

All right. And you're talking about payments in relation to both. Correct?
---I don't think we were, no.

Well, you've got no other rational explanation for it I'd suggest, have you?
---I think it was talking about quotes.

If it was quotes, Mr Cresnar, it was quotes for corrupt payments to you
and/or Mr Twomey?---It was quotes for work.

10

All right. Once again, Mr Cresnar, I'm going to suggest that you're giving
false evidence about your knowledge of the conversation between yourself
and Mr Twomey that you've just been taken to. Do you understand that?
---I understand that, yes.

Do you accept that?---No.

Now, all right, I'm going to move on to a different topic now. When was
the first time that you became aware that you were being investigated for
your conduct as an Ausgrid officer?---(No Audible Reply)

20

Well, perhaps I'll withdraw that because it might not be fair. You were the
subject of a previous investigation in relation to theft of copper wire back in
2010. Correct?---Ah, what sort of an investigation was that?

An internal Ausgrid investigation?---That's right, yes.

So I'm being, for the sake of fairness to you, clear. What I'm asking you
now is, when were you first aware that you were the subject of an
investigation in relation to your dealings with contractors and subcontractors
as an Ausgrid officer?---Ah, probably around, what was it, February?

30

Yes. And how was it that you became aware?---Ah, I went to visit
someone.

Mr Burke?---That's correct.

All right. Now, you're aware that a telephone conversation between
- - -?---I know you've got the phone conversation, yeah.

40

Yes. And but what I'm getting at is, you're aware of the content of that
telephone conversation?---I am, yeah.

All right. So you know then that in the course of that conversation Mr
Burke rings you up and suggests that you meet somewhere out of the way?
---He does.

And you ask if it's urgent and he says in effect, urgent enough, or words to that effect. Remember that?---He did, yes.

And then you met with Mr Burke following that telephone conversation
- - -?---Yep.

- - -out at Parklea Markets?---Correct.

10 Were the markets open or closed at the time that you were there?
---I'm not sure.

Whereabouts did you actually meet in the vicinity of Parklea Markets?
---The car park.

Where had you been earlier that day?---I'm not sure.

Was it a work day?---I don't know.

20 You were either – I withdraw that. In any event you drove out to Parklea
didn't you?---I did.

Why was it that you arranged to meet with Mr Burke when he told you that
he needed to speak with you?---He told me he wanted to meet me.
Why did you drive all the way out to Parklea to meet him?---He suggested
that we meet out near that area.

Why were you willing to drive all the way without knowing what it was
about?---'Cause, I don't know.

30 Isn't it the case that you were quite worried when Mr Burke said words to
the effect of someone's been asking questions?---That's right.

And you were quite worried because you knew that you had purchased
many things with Mr Burke's company's funds?---Correct.

And you knew you had good reason to be worried about it because you
knew that those purchases were corrupt?---Correct.

40 Before you went out to meet Mr Burke you rang Mr Twomey didn't you?
---Yes.

And you said to him you were meeting someone you hadn't seen in a long
time?---That's right.

And you suspected it would be a big problem?---Yes.

And Mr Twomey asked you who it was and you said to him that you'd
guessed it could be very bad?---That's correct.

Why did you guess it could be very bad?---Because I guessed it could be something like what's happening now.

Right. And that's because you knew all along that the payments that you had received or had made for you with the funds of Cloughcor Pty Limited were corrupt?---Correct.

And you knew that was a serious matter?---I did.

10

After you met with Mr Burke you had further telephone contact with Mr Twomey didn't you?---Yes.

And you made an arrangement to meet with Mr Twomey the next day?
---Mmm, I thought we meant that night.

All right?---I could be wrong.

20

Well, you could be right in fairness to you but in any event the day after you met with Mr Burke is it the case that you went to Mr Twomey's home?---It was, yeah.

And when I talk about Mr Twomey's home I'm referring to a property up at the Central Coast?---That's right.

And you know, don't you, that investigators were conducting surveillance upon you on that day?---Yes.

30

All right. And you know that you were seen to load into your car a number of items before you drove up to meet – or to Mr Twomey's property?
---That's right.

One of those items I would suggest is the Karcher high-pressure water cleaner described earlier in evidence today?---Could have been, yeah.

40

What you were doing was loading up property that you thought had been – I withdraw that. You were loading up property that had been purchased with the funds of contractors or subcontractors, correct?---Ah, no, just the Karcher pressure washer perhaps.

Well, the Karcher, Karcher pressure washer was not the only item you loaded up into the car was it?---No.

You loaded quite a number of items into the boot of the car, correct?
---I don't think I did, no.

Well, I'm suggesting to you that you did load a number of items into the car?---Okay.

And then you drove them up to Mr Twomey's Central Coast property?
---That's right.

And the reason that you took those items up to the Central Coast property was because those were items that had been purchased with the funds of contractors or subcontractors?---No.

10 Look, you did it the very day after Mr Burke gave you a tip off that you were the subject of an investigation, right?---That's correct.

You did it at the very next opportunity, correct - - -?---Um, I guess so.

- - - after you – and so it's clear, isn't it, that your objective was to get those items away from your home at the very first opportunity, correct?---I would have needed a Mac truck to do that.

20 That's correct. But you made a start didn't you, Mr Cresnar?---No, I didn't, no.

In any event, one of the items of property that you were seen to load into the car, the Karcher high pressure water cleaner unit, I think we've clarified in evidence was bought at Bunnings on the Murray Civil Works trade card?
---That's right.

And that's one of the items at least that you took up to Mr Twomey's the day after you were given the tip off by Mr Burke. Correct?---Correct.

30 Can I just ask you what it was that you talked about with Mr Burke when you were out at Parklea?---I'm not sure. I got very drunk that night.

Were you drunk when you met Mr Burke or after?---Ah, a bit of both.

Well, you didn't drive a car all the way out to Parklea heavily intoxicated I take it?---No. I was only slightly tipsy at that stage.

40 All right. So you would have a memory of what you discussed with Mr Burke out at Parklea wouldn't you?---I think I fried my brain after that and ah, there's not a lot left in memory.

Was it the case that you were drinking to drown your sorrows?---Quite possibly.

All right. But tell us about the recollection that you do have of your conversation with Mr Burke out at Parklea?---I really don't remember a lot.

Well, you're remember something. Tell us about that?---I don't know.

Tell us about what you remember, Mr Cresnar?---I don't remember much.

Tell us about what you talked about with Mr Burke?---He said questions have been asked and, I don't know, that's about all I remember.

You're lying in your evidence - - -?---He didn't seem happy.

I'm sorry. Go on?---He didn't seem happy.

- 10 You are lying in your evidence about the extent of your recollection of your conversation with Mr Burke out at the Parklea Markets on 17 February last year aren't you?---No.

Having driven all the way out to Parklea to talk with Mr Burke you would have been anxious to find out as much as you could about the investigation you were learning about for the very first time. Correct?---I'm not sure.

Well, of course you would. You've told us already that you were worried about it?---I don't know what there is to learn about an investigation.

- 20 You've just got to - - -

Well, you'd have to wonder who is investigating what surely. Surely you would've asked Mr Burke who was investigating you?---I don't know.

Of course you would have, Mr Cresnar. That's just ridiculous, with respect?---Well, it's um – don't really need to ask that to, to know. It's obvious isn't it.

- 30 All right. So you're saying you made an assumption that you were under investigation by the Independent Commission Against Corruption because of the nature of the conduct with which you'd engaged with Mr Burke?
---That's correct.

All right. But weren't you anxious to find out from Mr Burke how he knew that you were under investigation?---No.

Well, he told you on the phone someone's been asking questions. Right?
---Right.

- 40 Surely asked him who has been asking questions?---No.

Surely you asked him what questions are being asked?---No.

Surely you were asking him questions about what?---It was obvious.

You must have asked Mr Burke what questions were being asked?---I don't think I did.

So what did you talk to Mr Burke about out at Parklea Markets then?---I'm not really sure.

Because on your account you've heard all you need to hear in the telephone call. Right?---Right.

Someone's asking questions. You put two and two together. It's Mr Burke telling you this and that's all you need to know. Right?---That's right.

10 So there's no need to go to Parklea. Right?---Right.

So would you agree with me that your trip out to Parklea makes no sense unless you go there to speak to Mr Burke about what questions were being asked about you?---Well, I guess I thought it may have only been Diona asking questions.

All right. But didn't you say a moment ago that you just assumed that it was the Independent Commission Against Corruption investigating you?
---That's what I assumed, yes.

20

All right. So you went out there to talk to Mr Burke, if I'm understanding you correctly, to find out whether it was the Independent Commission Against Corruption or Diona?---Correct.

All right. So you talked to Mr Burke at least to that extent on your version. Correct?---Correct.

And what did Mr Burke say to you about that?---Um, don't really remember.

30

Of course you do, Mr Cresnar. It would have been one of the most important conversations of your life I'd suggest?---Probably.

It would have been news of very great import to you, that you were the subject of an investigation surely?---It certainly was.

And you would have asked Mr Burke to tell you as much as he could?---He didn't really say a lot.

40 But you would have asked him, surely?---I'm sure I asked him something.

Look, I want to suggest to you, Mr Cresnar, that well firstly you're not telling the truth about the conversation that you had with Mr Burke out at the Parklea Markets on 17 February last year. Do you accept that?
---I understand what you're saying.

Do you agree with me?---No.

What I want to suggest to you, Mr Cresnar, is that what you actually did discuss with Mr Burke out at the Parklea Market on 17 February last year is what the two of you were going to say about the payments that have been made with the funds of Cloughcor Pty Limited for your benefit?---I don't remember what we said.

Surely that's the point of meeting with Mr Burke out at the Parklea Markets?---Could have been. Like I said, I got hammered that night.

10 You might have got hammered later but you weren't hammered at the time, were you, Mr Cresnar?---No.

So you would remember what you discussed with Mr Burke out at Parklea Markets, I would suggest?---No.

And you are giving false evidence in declining to tell this inquiry anything about it?---Well, I got hammered and I don't remember a lot about it at all.

20 Now, I asked you yesterday about the fact of your attendance here for a compulsory examination last year. Do you remember that?---Yes.

And in the course of that compulsory examination you were asked questions about your dealings with Mr Bastow?---Correct.

And you were asked questions about who paid for a number of items in your home. Correct?---Yes.

Such as a Pioneer DVD Blu-Ray player?---Yes.

30 Such as a Bosch fridge?---Correct.

And a Sony TV?---Yes, and a holiday.

I want you to have a look at something, page 1339, 1340 I'm sorry, yes, 1340. Do you see before you a copy of a typewritten note or letter?---Yes.

And you having followed the evidence in this inquiry would understand that Mr Bastow says that that letter was inside an envelope dropped off at his letterbox- -?---Right.

40 - - -on 21 August last year?---Okay.

Now, that letter makes reference to the three items that I've just asked you about, the Pioneer DVD player. The Bosch fridge and the Sony TV, doesn't it?---It does.

And it goes on to say how those items have been traced back to transactions placed with your, i.e. Mr Bastow's, credit card number, doesn't it?---It does.

And then it goes on to say, “Don’t be bluffed into saying any more.”?
---That’s correct.

And it goes on to provide what appears to be an explanation. “These items were gifts for finding resources for you to fill the day labour crew position as you had no one available at the time?”---It does.

10 Now, at the time that this letter was dropped off at Mr Bastow’s letterbox
- - -?---Yep.

- - -you were well and truly aware of course that you were the subject of an investigation by the Independent Commission Against Corruption, weren’t you?---I was.

20 And you’d only recently been asked about those very same items, the Pioneer DVD player, the Bosch fridge and the Sony TV, in a compulsory examination at the Independent Commission Against Corruption. Correct?
---I think so, yeah.

No one else would know apart from yourself and Mr Bastow how you came to purchase those items would they?---No.

And the letter’s being dropped off to Mr Bastow’s house isn’t it?---Oh, I don’t know.

Well, you understand - - -?---That’s what he says.

30 - - - that’s the evidence that he’s given here?---That’s right.

So accepting - - -?---But I would have – if, if this was my letter I would have had to say something about the holiday, right, ‘cause I told you he bought me a holiday and - - -

Is it the case that after perhaps your compulsory examination you got hammered too?---Could have been.

40 All right. And is it the case that you remembered some things you were asked about and not other things?---I don’t know.

And is it the case that you wrote out a letter to Mr Bastow giving him a false explanation to provide to investigators about how those items were purchased for you?---Sorry, say that again?

Is it the case that you wrote out a letter - - -?---No, it’s not.

No one else would have known anything about these items apart from yourself and Mr Bastow?---That’s correct.

You'd just been asked about those items in a compulsory examination, right?---Right.

No one else would be providing this information to Mr Bastow conceivably?---That's right.

So it follows doesn't it that it must have been you who wrote this letter?
---I didn't write the letter.

10

Did you have somebody write the letter?---No.

Did you ask someone to do it for you?---Not that I'm aware of.

Not that you're aware of? What does that mean?---I don't remember asking anyone to write a letter.

20

Well, look, I'm going to suggest to you that there is absolutely no conceivable explanation for how a letter in those terms could have been dropped off to Mr Bastow's letterbox apart from it being from you?---I'd suggest to you that he left it in there.

He left it in there?---Well, that's what I'd suggest to you.

You're suggesting that he made it up?---That's -- well, look, it wasn't me so you said yourself it's either him or me that knew.

30

You're lying about your knowledge of the letter delivered to Mr Bastow's letterbox aren't you?---No.

You've giving false evidence once again in this inquiry?---No.

That can be taken down, thank you. Just lastly in relation to that topic, when you were the subject of that compulsory examination here at the Independent Commission Against Corruption you suggested that a possible explanation for payments made by Mr Bastow on your behalf - - -?---Yeah.

- - - was that you'd helped him to find day labour crew?---Right.

40

You said that in your, in your compulsory examination?---Right.

Now no one else apart from yourself and Mr Bastow would know anything about that, correct?---Ah, potentially, yeah.

Well, who?---The people that were the day labour crew.

All right. But no one else would know both about the explanation for the payments being you helping - - -?---No, they wouldn't, no.

No. So it follows, doesn't it, that whoever wrote that note knew that Mr Bastow has purchased the DVD player, the fridge and the TV and knew that – I withdraw that. The person, person who wrote that note knew that Mr Bastow had purchased the DVD player, the fridge and the TV and would have had to have known about any explanation for payments on account of helping with finding day labour crew?---That's right.

And it must have been you?---It wasn't me, no.

10

Once again, Mr Cresnar, you're lying in your evidence about your knowledge of that letter delivered to Mr Bastow's letterbox?---I don't have any knowledge of the letter so - - -

Mr Bastow, I'm sorry, Mr Cresnar, you were asked yesterday at one point whether you could recall paying for any of the renovations you conducted to your home in Alexandria and if I recall correctly your answer was no.

20 ASSISTANT COMMISSIONER: No, I think he said he paid for the painting.

MR GARTELMANN: That's quite correct, I'm - - -?---And the plumber and the tiler and - - -

Yes, that's right. Can you recall any others?---Ah, no.

All right. So apart from the paint, the plumber and the tilers - - -

30 ASSISTANT COMMISSIONER: Well, I'm sorry, I don't think you paid for the paint did you, didn't the Bunnings card pay for the paint? You may have paid for the painters, the labour?---No, I painted it myself.

Right. So you didn't pay for the paint did you?---I think I bought it from Dulux across the road.

But wasn't Mr Twomey complaining that you were spending up big on paint?---Yeah, but some of that was for him as well.

40 All right.

MR GARTELMANN: But Mr Twomey was the one complaining about you spending up too much on the trade card account?---Right. But I'm not, I'm not um, taking responsibility that everything being spent up was for me alone.

But Mr Twomey is telling you to go easy on the trade card. Right?---Right. I think it's because the account was low.

Yeah, certainly, but he's telling you to go easy on the trade card after he's learnt that you have purchased some paint. Right?---I just think the account – well, perhaps you'll find out more from him but my belief is the account was low and needed to be topped up at Bunnings.

All right. But Mr Twomey in the course of that conversation says words to the effect of was it you that bought all that paint. Remember that?---Yes.

10 All right. So he doesn't seem to have any knowledge about purchases of paint until he asks you that does he?---Did he say he bought all that paint?

Yes, words to that effect?---Yeah. Because it's probably the paint that the asked me to get for him.

But why would he then be saying go easy on the trade card if he knows about it?---My understanding is the account may have needed topping up with Bunnings.

20 It may have needed topping up simply because you were using it to buy everything you needed to carry out the renovations on your home?---Well, it's – I don't entirely agree with that.

You don't entirely agree?---No.

All right. You agree a little bit?---I agree somewhat, yes.

30 All right. Because you were making quite a number of purchases on the Bunnings trade card funded by the Murray Civil Works account weren't you?---Yes.

All right. So putting aside the paint then. You have a recollection that you paid for the plumbing and the tiling?---Correct.

But that's about it in terms of the renovations to your home?---I think so.

You had multiple appliances installed in your home paid for by contractors or subcontractors?---Yes.

40 All of this time you were earning a salary from Ausgrid. Right?---Yes.

You're putting almost all of your salary into your mortgage repayments. Right?---Yes.

And you're funding all of your expenses for goods and appliances and the like by payments from contractors and subcontractors?---Yes.

And you're doing all of that in exchange for favours – showing favour to contractors or subcontractors in respect of the work that you're carrying out at Ausgrid?---I don't agree with that entirely.

Well, you're providing them with confidential information from time to time. Correct?---I guess so.

You're doing so knowing that it will help them pitch their quotes and get work with Ausgrid?---No.

10

You're doing so knowing that it will help subcontractors get work with contractors for work with Ausgrid. Right?---No. I don't remember agreeing to that at all.

You're trying to influence variations that might be detrimental to contractors?---No, never did that.

Well, you did. You've heard a telephone conversation in which you did just that?---Which one was that, sorry?

20

There was a telephone conversation played to you yesterday in which you discouraged another Ausgrid officer from reducing the scope of work because it would mean no work. Remember that?---Yes, I remember that.

And that was work for Murray Civil Works wasn't it?---It was.

What I want to suggest to you in summary, Mr Cresnar, is that you funded the renovation of your home, the purchase of all your goods and appliances with payments from contractors and subcontractors in exchange for you corruptly exercising your duties as an Ausgrid officer?---I – what do you want me to say. I already told you I don't agree to that entirely.

30

Right. You've done so at the expense of your duties to your employer, Ausgrid. Do you agree with that?---Not really, somewhat.

And you've done so at the expense of the Australian taxpayer who funds contracts that Ausgrid awards?---I don't agree entirely to that either.

Not entirely. All right.

40

Excuse me, Commissioner.

That concludes the examination of this witness, Commissioner.

THE WITNESS: Thank God.

ASSISTANT COMMISSIONER: Yes. I'll mark the telephone intercept transcripts as Exhibit 26.

**#EXHIBIT 26 - TELEPHONE INTERCEPTS PLAYED TO PHILLIP
CRESNAR ON 23 JANUARY 2015**

MR GARTELMANN: Thank you, Commissioner. They will be – those
that have not been tendered to date will be tendered once we've had an
opportunity to go through and just ensure that we have the totality of them.
10

There is some more material that I would tender at this stage, it's the
policies and procedures bundle. I understand that that should be - -

ASSISTANT COMMISSIONER: All right. Well, that will be Exhibit 27.

#EXHIBIT 27 - AUSGRID POLICIES AND PROCEDURES

20 MR GARTELMANN: And I think that's all we have to tender at this stage.

ASSISTANT COMMISSIONER: Thank you. Yes. Does anyone seek to
cross-examine this witness?

MS DAVENPORT: No, Commissioner.

MR CHEE: I do, Commissioner.

ASSISTANT COMMISSIONER: Mr Chee.
30

MR CHEE: Mr Cresnar, I appear for Mr Jason Bastow. Do you understand
that?---Yep.

I've got a few questions and I'll try to make it brief. Yesterday you gave
evidence throughout the day, steadfastly maintaining that you were
employed by Bastow Civil Constructions. Is that correct?---That's correct.

What was your position there?---I was just helping him out with the
estimating work, my position- - -
40

Did your position have a title?---It did not, no.

Right. What were the terms of your employment?---Didn't have terms
either.

What about fixed hours, work hours?---Didn't have fixed work hours either.

And was there a place of work, were you given an office, a desk, somewhere to do the work?---No, I did it at my house.

Right. Onto the issue of remuneration. What was, in your version what was the remuneration for this employment?---No fixed remuneration either.

Were you provided with payslips?---No.

10 And who decided, decided the amount of the remuneration?---It wasn't decided.

It wasn't decided. Did you have a supervisor?---No.

So you worked by yourself?--- Yes.

No supervision?---That's correct.

20 I'd like to suggest it to you, Mr Cresnar, that there is no relationship of employment where there is no position title, there are no terms, there are no fixed at work hours, there's no place of work, no fixed place of work, the remuneration appears to be ad hoc, undecided, you have no supervisor. You'd agree that isn't a work relationship, would you?---I'd agree with you there, yes.

Sorry?---Yes, I agree.

30 So it wasn't a work relationship?---Well, in my mind it was but ah, technically speaking I don't think it fits the definition, as you've pointed out.

So what is your understanding of an employment relationship?---Well, hadn't really thought about that.

Well, you gave an answer yesterday and it's an answer which you've steadfastly maintained, that you were employed by Bastow Civil Constructions. Clearly you must have given some thought before giving that answer?---Well, it's the best description I could think of.

40 I put it to you that you're making this up as you go?---Didn't Bastow himself tell everyone that I helped him?

You can answer the question, Mr Cresnar.

MR SUTTON: He's answering the question, with respect.

MR CHEE: Commissioner.

ASSISTANT COMMISSIONER: Well, he's asking a question actually.

MR SUTTON: No, no.

ASSISTANT COMMISSIONER: If he wants to say something he can say it.

MR SUTTON: He was trying to answer the question when my friend cut over the top of him.

10 ASSISTANT COMMISSIONER: Yes, but he'd started his answer with "Didn't Mr Bastow" which is a question so just - - -

MR SUTTON: Or it could a rhetorical statement with respect.

ASSISTANT COMMISSIONER: Well, what do you want to say about that?

MR CHEE: I'd like to thank Mr Sutton for his assistance.

20 MR SUTTON: My pleasure, Mr Chee (not transcribable)

MR CHEE: You're welcome.

THE WITNESS: Sorry, what was the question again?

ASSISTANT COMMISSIONER: I think it was put to you that you're making this up as you go along?---Oh, right.

30 That you were working for Mr Bastow?---Bastow said himself I helped him out with estimates and so forth.

Yes, but he – yes?---So - - -

MR CHEE: But, Mr Cresnar – sorry, I do apologise if you have - - -? ---We're not both making it up are we?

40 I'm not quite sure that I follow. You say that Mr Bastow said that you were helping him but how does that give rise to an employment relationship?---Don't know, but if you're doing estimates for someone I guess I have some sort of belief that there must be some kind of an employment relationship there.

During your evidence yesterday Counsel Assisting asked you some questions about evidence from a compulsory examination in which you stated you didn't have anything to do with the contractors, that version that you gave at either one or both of those compulsory examinations is quite at odds with the version that you're giving today

and yesterday, isn't that right?---I don't remember giving that evidence.

Well, it was shown to you, you accept that, you gave that evidence?
---I said I didn't have anything to do with any contractors, is that what you're suggesting I said?

I'm suggesting that you during the course of a compulsory examination stated that you didn't have anything to do with
10 contractors?---I don't remember saying that.

Give a moment. I don't have the transcript reference for the moment but I'll, I can provide that in due course but for the moment if I could ask the witness to accept that that's what he said at the compulsory, on that assumption you would agree then that your evidence yesterday and today in relation to your employment with Bastow Civil Constructions is at odds with the statement that I've asked you to accept?---Yes.

20 Would you agree with that?---I would agree with that, yes.

After – well, when did you first form the belief that you were an employee of Bastow Civil Constructions?---When I started to complete estimates and variation estimates for him on a regular basis.

And during the compulsory examination if you had been asked what did you do for contractors knowing that having formed the belief that you were an employee of Bastow Civil Constructions you would have said at the compulsory examination that you were employed by
30 Bastow wouldn't you?---Yes.

And you didn't?---No.

I put it to you that you didn't say that because you never formed the belief that you were an employee of Bastow Constructions and that you only arrived at this version of events recently?---Fair enough.

You accept that?---Yeah, sure.

40 Mr Cresnar, during the course of Mr Bastow's cross-examination your lawyer put a number of propositions to him. The first that I'm going to refer to is at page 46, line 35 of the transcript. It was put to him that he was comfortable and content to provide gifts to you, Mr Cresnar. This was in relation to the credit card transactions?---Yes.

Do you recall that?---No.

Do I need to take you to the transcript?---No, it's fine. I um, accept that, yeah.

Do you accept that your lawyer said that?---Yes.

At the time you knew that if we accept what you say about the employment relationship that was, that was wrong?---Okay.

10

There's no basis to that?---I accept that.

So you were happy for him to mislead the Commission?

MR SUTTON: Well, I object to that terminology, with respect, Commissioner. That carries with it a - - -

MR CHEE: I'll reword it.

20

MR SUTTON: That carries with it a certain connotation which leads me to be very quickly to my feet and I would counsel my friend be very careful about the words he chooses and the way he frames his questions.

30

MR CHEE: I will reframe the question and I would preface it by saying that I am not making in any – I am not making any suggestion whatsoever that Mr Sutton has done anything wrong apart from act on his instructions which he's properly required to do. Mr Cresnar, in allowing your legal representative to put that proposition to Mr Bastow you saw no issue with having something which was – which you knew to be false being put to a witness. Is that correct?---I didn't understand how these things worked before. I've never been to a public inquiry before.

Mr Cresnar, this isn't a question of whether you knew how it worked or whether you understood how it worked, it's a question of whether you were – whether you would allow a question to be put to a witness on a basis which you knew to be wrong. Do you accept that?---No, I don't. I just – I don't feel as though I had any control over questions of the witness.

40

Mr Cresnar, you would have given instructions to your legal - - -

ASSISTANT COMMISSIONER: Mr Chee, I understand where you're going with this.

MR CHEE: All right.

ASSISTANT COMMISSIONER: I don't think it's useful to go into the issue of instructions.

MR CHEE: Thank you.

ASSISTANT COMMISSIONER: I think the most useful thing you can do for the Commission is take up with the witness any area where your client disagrees with what he's got to say where it has not already been made clear by your client's evidence. There's obviously areas of conflict and we're aware of them. If there are any major areas that you feel need to be put to this witness factually that is what I would invite you to do.

10 MR CHEE: Certainly, and I note that, Assistant Commissioner. Assistant Commissioner, I do have a few propositions that I believe I need to put and I'll make my way through them quickly.

ASSISTANT COMMISSIONER: Yes.

MR CHEE: Mr Cresnar, how did you come into possession of Mr Bastow's credit card details?---He gave them to me.

20 Did he say anything when he gave them to you?---I'm not sure. Just, I don't know.

I put it to you that he gave the credit card details to you because you asked him to?---No, I don't agree with that.

I put it to you that the stated reason for that request was because you wanted to return an item - - -?---I don't agree with - - -

- - - which he had purchased for you - - -?---I don't - - -

30 - - - on the credit card?---I don't agree with that. What was the item by the way?

I don't believe that Mr Bastow specified the item, it was rather an item which he had purchased for you?---Right.

I put it to you that you conducted transactions on the credit card without his permission?---That's not true.

40 I put it to you that upon Mr Bastow learning of these unauthorised transactions he said, "What are you fucking doing, you've got to stop doing this."?---That's not true.

I put it to you that you replied to him words to the effect, You're useless, your company's useless, what are you doing to do about it?---That's certainly not true.

If I could take you to a different area, Mr Cresnar. If I can take you to your evidence in relation to your meeting with Mr Bastow at your home where you say you showed him how to use the Estimator?---Yes.

It's my understanding that your evidence is that you offered him food but not beer, is that correct?---That's correct.

Are you familiar with the Peroni and Corona brands of beer?---Yes.

10 Do you drink those brands of beer?---I do.

I put it to you that you offered Mr Bastow either Peroni or Corona or both types of beer from your fridge on that occasion?---No, that's not my recollection of the event.

You've heard Mr Bastow's evidence that he felt uneasy about the situation and that you allayed his concerns by showing him a photo of you and other contractors?---I remember him saying that, yes.

20 Did you show him a photo?---No.

I put it to you that you did show him a photo of yourself and other contractors and that in that, in those circumstances, what do you say?---No, I didn't.

Mr Bastow gave further evidence in relation to the Mosman project and he gave evidence about a conversation that you had with him, did you say to Mr Bastow at any time in relation to the Mosman project it's lucky that you, Mr Cresnar, was inspecting the project otherwise Mr Bastow would get
30 nothing?---No, I don't remember saying that at all.

Could it have occurred?---I don't think so, no.

In between the Mosman and Kingsford projects Mr Bastow's given further evidence about a further conversation in which he says you told him, You know I put extra money in that project. When are you going to fix me up?
---I deny that.

Mr Bastow's given further evidence that in 2010, in or around 2010, the
40 credit card had been stopped and that you became angry and aggressive and that you asked him for money in the words, "Pay me the money, pay me the money." What do you say about that?---I deny that.

It's Mr Bastow's evidence that he gave you 5,000 in cash, I put it to you that you, you demanded this cash payment and it was given to you, Mr Cresnar, what do you say?---I deny that.

I put it to you, Mr Cresnar, that you made threats to Mr Bastow that if he didn't pay you, you would act unfavourably towards Bastow Civil Constructions, that you wouldn't assist him with the Estimator and that you would make his life difficult?---I deny that.

You did have the power to issue non-conformance notices, didn't you - -?
---Yes.

10 - - -whilst you were an officer at Ausgrid? You also had influence in relation to the approval of variations?---Correct.

You've accepted that?---Yes.

And also you were well-equipped to operate the Estimator?---Yes.

It put you in a position where you could exercise your discretion adversely to his interests and also the interests of Bastow Constructions. Do you agree with that?---I could have, yes, to some extent.

20 I put it to you again that you made demands under these threats and in effect you held him to ransom?---I deny that.

That's the questions that I have.

ASSISTANT COMMISSIONER: Thank you, Mr Chee.

MR CHEE: Thank you.

30 ASSISTANT COMMISSIONER: Does anyone else seek to cross-examine this witness? Mr Sutton, do you wish to re-examine?

MR SUTTON: Most definitely and it will be some considerable period of time I expect, Commissioner. I'm aware that of course time is valuable in here but there's been some material come today and some late tendered bundle of material that I've not had a chance to look at yet. I can only ask if it would be more appropriate for my position I'm asking that I be allowed to commence the examination on Monday morning, sorry, Tuesday morning.

40 ASSISTANT COMMISSIONER: How long do you think you'll be?

MR SUTTON: I could quite easily fill the morning I suspect. I will endeavour though, I will, I will, at pain with my family life and suffer the consequences from my wife, re-visit the material over the weekend and endeavour to condense it because I'm conscious of course there's also Mr Twomey and there's only limited time.

ASSISTANT COMMISSIONER: Well, if you think that being able to go through the material will condense your re-examination, which I feel it may, I think that would be appropriate.

MR SUTTON: I really do.

ASSISTANT COMMISSIONER: As long as we can get through Mr Twomey on the same day, which I believe we can, Mr Gartelmann. Do you think we could?

10

MR GARTELMANN: It all depends I suppose on how long Mr Sutton takes in re-examination, but I appreciate that he has some considerable ground to cover.

ASSISTANT COMMISSIONER: Yes.

MR GARTELMANN: But it really does depend.

ASSISTANT COMMISSIONER: Mmm. Well, look- - -

20

MR GARTELMANN: Let's be optimistic, if I could say that, Commissioner.

ASSISTANT COMMISSIONER: Yes. Well, look, it has been a long day and a couple of days for Mr Cresnar, so I do think it would be appropriate to adjourn at this time to allow Mr Sutton time to properly prepare for the re-examination and I'm sure we will be able to get through what we have to on Tuesday, even if we have to go a little bit later to finish.

30

MR GARTELMANN: Can I just formally say that it's anticipated that Mr Bastow will give some further brief evidence on Tuesday.

ASSISTANT COMMISSIONER: Yes. All right. All right. Well, at this stage we will adjourn until 10 o'clock on Tuesday.

THE WITNESS WITHDREW

[3.33pm]

40

AT 3.33PM THE MATTER WAS ADJOURNED ACCORDINGLY

[3.33pm]