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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION JARAH

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY, 27 JANUARY 2015

AT 10.11AM

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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, is Mr – oh, Mr Cresnar. Just take a seat, Mr Cresnar.

<PHILLIP CRESNAR, on former affirmation

[10.11am]

10 ASSISTANT COMMISSIONER: Mr Sutton, could I just say obviously during his evidence already your client has disputed certain matters or put versions of matters. I certainly don't require you to go through those matters again. We've heard what he's had to say but if there are areas of clarification or areas that haven't been gone to I'd certainly invite you to explore them.

MR SUTTON: Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you.

20 MR SUTTON: Just before we do and just so I give maximum notice, Exhibit 24 which was tendered which I think was the video, I think it's 24 of the Bunnings - - -

ASSISTANT COMMISSIONER: Yes.

MR SUTTON: - - - is not actually available on the website, it doesn't appear to be, if I could ask the Commission for a copy of that DVD I would be grateful, thank you.

30 ASSISTANT COMMISSIONER: Yes, we'll see if we can organise that.

MR SUTTON: Thank you. Commissioner, just also, hopefully it will assist you, I've tried to reduce the questions into blocks specific to particular witnesses.

ASSISTANT COMMISSIONER: Ah hmm.

40 MR SUTTON: There may be some chronological difference or difficulty with that and if that's the case then so be it but I've tried to, in keeping with what I said on Friday keep everything short and logical.

ASSISTANT COMMISSIONER: Thank you.

MR SUTTON: Thank you.

I'll start with Mr Bastow. Mr Bastow, you heard evidence, claims to have raised his rates by 30 per cent so that he would not be selected back on the panel. Do you recall that evidence?---Yeah.

Do you have any knowledge of that?---Ah, I kind of remember that he revised his rates, however, I don't believe that he revised his rates to get away from Ausgrid 'cause he has a simple choice or decline offers from Ausgrid.

That is written within the Standing Deed, Standing Offer Deed, is that right?---That's right.

10 So even if he becomes a panel member he doesn't have to accept work?  
---No.

And indeed he could have simply not put in an application to re-tender to come onto the panel, is that correct?---Correct.

Okay?---Twice.

You recall in Mr Bastow's evidence that he stated his last contact with you was in 2011?---Yeah.

20 And he was emphatic there was no contact beyond 2011, do you recall that?  
---He was, yeah.

In fact to your knowledge has there been contact since that time?---There has.

I'll show you a document. Now, before reading anything that may be indicated on that document, is it correct to say that that is a photograph of a message on a telephone that was in your possession?---It is, yeah.

30 And that telephone was a telephone that had previously been seized by the Independent Commission Against Corruption?---That's right.

Okay. And in the – sorry, I withdraw that. Is that a telephone that you used and operated?---It is, yeah.

It says towards the top left-hand side the words, "Jason Bastow" and "Messages." First of all, are you aware how the words, "Jason Bastow" come to be on the telephone screen?---I saved his number in the phone.

40 Okay. The body of the message says, "Jason Bastow [REDACTED]  
[REDACTED] Are you aware if that was or is Mr Bastow's number?---Should be his mobile, present.

And I'm unaware for cautious purposes, I don't know if a suppression needs to be made in relation to that, but that's a matter for the Commission of course.

ASSISTANT COMMISSIONER: Yes, there's a standing suppression order on any mobile phone numbers.

### **STANDING SUPPRESSION ORDER ON ANY MOBILE PHONE NUMBERS**

10 MR SUTTON: Thank you. It then goes on, "Soy flat white?" Is that correct?---That's right.

What does that refer to?---He's asking me if I want a soy flat white while he's waiting for me at the café across the road.

Below it is the date, "Tuesday," Sorry, T-u-e, presumably Tuesday, Feb," F-e-b, "19, 2013, 6.50am." Does it accord with your recollection that this message was received on your telephone at 6.50 in the morning- -?---Yes.

20 - - -on Tuesday, the 19<sup>th</sup> of February, 2013?---It does, yeah.

Where were you when you received that message?---In bed.

Where?---At my home.

And that's Alexandria or Beaconsfield?---It is, yeah.

That's the home that we've heard about throughout the course of this inquiry?---That's right.

30 What did you do in response to receiving that message?---Ah, went across to the café and sat with Mr Bastow.

And did you have your soy flat white?---Did, yeah.

Did he have something to eat or drink?---I think he had a coffee.

Did you have anything to eat?---Ah, don't think so.

40 Okay. Did you have a discussion with him?---I did, yeah.

What was the topic of that discussion?---Ah, he said he was going for the Ausgrid panel again and he wanted to know if I could help him out getting onto that panel. He also said that he's got a – there was an old project on the Central Coast where Ausgrid are trying to back charge him for some road base that wasn't laid correctly.

All right. I'll stop you there for just a moment. As best as you can and about that particular topic, can you remember the words that were said?

---Not exactly, no.

But was it words to the effect of, I'm going to try and get on the panel again and I want you to help me?---It was, yeah.

And did you say words to the effect of, you will not get back on because you have not fixed the defects on the job on the Central Coast?---Something like that, yeah.

10 When you said those words to him, to the best of your recollection what did he say to you?---He wanted to know if I could help him fix the, fix the defects on the Central Coast with any means possible and he said he was still going to try and get on the panel regardless.

And what did you do – or I withdraw that. What did you understand him to mean by any means possible?---Ah, just fix it up dodgily, on the, corruptly.

All right. And what did you say?---I said, "There's nothing I can do about that, sorry."

20

Okay. How long were you talking with him for?---Fifteen minutes, twenty minutes.

Were there any other topics of conversation?---Not that I can remember.

Were you present when Mr Bastow paid for the coffee that you had and whatever drink he had?---No, I think he purchased that before I arrived at the café.

30 How did he know you were coming across to the café?---Ah, he called me previously.

All right. So you received a text and a phone call?---I think so, yeah.

Right.

ASSISTANT COMMISSIONER: You mean earlier in the morning?

---Ah, earlier in the week.

40 So you'd arranged to meet him on this day for a coffee. Is that right?  
---I think so, yeah.

MR SUTTON: Was there any other contact post his – I'll withdraw that. To your knowledge did he make another application to get on the panel?  
---He did, yeah.

Was that successful or unsuccessful?---Unsuccessful.

Was there any other contact he made to you?---Ah, yeah. He, he sent me a text message later on in the year and asked – told me – I guess we arranged to meet at the Vicinity pub on Bourke Road in Alexandria and um, he told me that there was several contractors under investigation and he asked me if I'd helped anyone.

10 All right. Was there a – sorry, I'll withdraw that. As part of the process of making application, if a party is refused admission to the panel for what of a better term, did they receive any form of paperwork or other?---They would, yeah.

And do you know or can you place this contact in respect of the timing of that, what I'll call a rejection notice, whatever it might actually be called? ---Perhaps June, July.

And that was about the time of this contact at the Vicinity pub?---Yeah.

20 While you were at the Vicinity pub, and is that the corner of Bourke and Collins in Alexandria?---Yes, it is.

What did you drink there?---Ah, Peroni.

Okay. And what did Mr Bastow drink to the best of your knowledge?---I can't remember.

Okay. Who paid – sorry, I'll withdraw that. Was any food consumed? ---Yeah.

30 Do you remember what you had?---I think it was an antipasto plate.

All right. And who paid for the food and alcohol?---Mr Bastow.

Do you know how he paid?---I suspect he paid with a card from memory.

Now you said that he informed you that a number of people were being investigated? - - - ---That's correct.

40 - - - at Ausgrid. Did he tell you who was doing the investigation?---The ICAC.

Did he ask you in respect of you providing assistance to anyone to get on the panel?---Sorry, say that again.

Did he ask you if you provided any assistance to anyone to get on the panel?---He did.

What did you say in response to that?---I said I didn't help anyone.

Did he tell you where he was getting this information from?---He said he got this information from Frank Malkoun.

And who is that person?---He was an ex-safety officer at Ausgrid.

And it's correct, I think you've already said that he asked you if you knew anyone engaged in corrupt practices at Ausgrid?---That's right.

10 What did you say to Mr Bastow in respect of anything that he said to you?  
---I'm not sure. I just wanted to get out of there. I thought I was being recorded.

ASSISTANT COMMISSIONER: Sorry, you were being recorded?---I thought I was, yeah.

What do you mean?---Well, it's odd – it was an odd line of questioning so I thought perhaps he was recording me.

20 Oh, you thought he was wearing a tape recorder to trap you?---Correct, yeah.

Why did you agree to meet him?---I don't know. Why not.

Well, if you thought he was going to try to trap you why - - -?---Well, I didn't, I didn't know what we were meeting about so - - -

All right. You said this was arranged via a text message?---I think so. Text or phone calls, yeah.

30 All right. But you don't have a text message?---Not for that one, no.

Yes, Mr Sutton.

MR SUTTON: Thank you, Assistant Commissioner. Was there any other contact that you can recall post the evidence of Mr Bastow that the last time you met was 2011 and the two incidents you've recited here today?---With myself?

40 Yeah?---No, I don't think there was.

During the evidence to the Commission, Mr Bastow suggested that it was your suggestion that the De Jong invoice in relation to your car be used to write off for repairs to Mr Bastow's trucks. Do you recall that evidence?---I do.

What do you say in relation to that?---He requested that it be written down as something else, like truck parts so he could write it off on tax and that's not the only occasion where something like that occurred.

You were taken at one stage to – I'll withdraw that. The Commission has had specifically its attention drawn to an invoice from DJW Projects, being page 1318 of the materials. Do you recall that?---Yes.

And that was a sound mixer?---It was.

But its recorded has computer hardware?---Yes, it is.

10 Firstly, when that was purchased did you do it in person, was it done over the Internet or was it in person with you and someone else present?  
---Bastow and I were present at the shop.

Okay. And why, if you have knowledge of this, why was it changed such that it now reads "computer hardware" rather than what it actually is?  
---Bastow wanted to write it off on tax.

Excuse me one moment. If the witness can be shown page 1327 from the Bastow tender bundle please.  
20

Now before we go to the document, this document relates to a Sony Bravia television, is that correct?---That's right.

It's written though as a Sony KDL-52XBR computer monitor, you see that?  
---Yeah.

Again, when this was purchased who was present?---Bastow and myself. I've got it there, thanks.

30 And the address which was your address at the time has lines through it, is that correct?---It appears to be correct, yes.

And in handwriting below your address is another address that appears to be 49 South Creek, I'm not sure if that's Road, but anyway, Shanes Park?  
---It's hard to read it but it's not my writing but yeah, it looks like it.

Do you know whose writing it is?---No, I don't.

Do you recognise that address?---Yes.  
40

And what address is that?---It's the Bastow business address.

Okay. Again, did you ask for the address to be changed?---No.

Did you ask for the description of the equipment to be changed?---No.

Do you know who did ask for the equipment to be changed?---Bastow asked the guy in the shop.



And were you present when he asked for the address to be changed?---No.

Do you know who changed that address?---No.

During his examination, excuse me, Mr Bastow purported or propounded the impression he was uncomfortable with being in your presence at your home, do you recall that?---Yes.

10 He spoke about eating food and even, even drinking beer, do you recall that?---Yeah.

Who provided that beer?---He brought a case of beer with him.

How many times did he come to your home?---Ah, several.

How many times did you try to train him or give him guidance on the estimator?---At least twice.

20 I can't tender the photograph of the telephone, Commissioner, so I'd ask Counsel Assisting to do so.

MR GARTELMANN: Yes. I (not transcribable) make that tender.

MR CHEE: (not transcribable) Could I ask for a copy.

ASSISTANT COMMISSIONER: Yes, the copy of the message on the phone will be Exhibit 28.

30

**#EXHIBIT 28 – PHOTOGRAPH OF SMS MESSAGE FROM JASON BASTOW TO PHILLIP CRESNAR DATED 19 FEBRUARY 2013**

MR SUTTON: And for the record I've provided Mr Chee with a copy of that photograph, Commissioner.

ASSISTANT COMMISSIONER: Thank you.

40 MR SUTTON: Now, in respect of the evidence that you've heard of the items that were bought that you have used, using the Bastow credit card by whatever means, do you accept that those things were bought for you?  
---Yes.

What was the process at the beginning of when items were bought for – well, I withdraw that, I withdraw that. When you were first dealing with and assisting Mr Bastow, did you make a suggestion to him in regard to remuneration?---Yes.

And that was to receive cash on an hourly rate. Is that right?---That's correct.

He refused?---Yep.

And said he would buy you things from time – my words, from time to time?---That's correct.

10 And that was initially things like the sound mixer, the TV, where he would go into the shop with you- -?---Yep.

- - -and he would present the credit card. Is that right?---That's correct.

Did that system modify as time went along?---It did.

And did that manifest by you being in a shop, phoning him and then handing the phone to the shop assistant so he could provide credit card details?

20 ---It did, yep.

And did that then manifest again such that at some later point you actually had the credit card details?---That's correct.

In relation to that hourly rate, is it your evidence that that was for calculating variations on projects for him?---Yes.

For providing estimates on projects?---Yes.

30 To try to teach him to use the software?---Yes.

Are you able to say on how many projects or variations that you assisted him?---Oh, quite a few, over a 100 I'd say.

And is it correct to say that those projects may have varied in value between 10,000 and \$200,000?---Yes.

Do you recall that there was a witness who was called by the Commission, Mr Robert Ujszaszi?---I do.

40

And it was – I withdraw that. There was a particular line of questioning that was put to him in relation to purchasing something or rather providing him money through PayPal?---Right.

Do you recall that?---Yep.

And you've already told the Commission that that was in relation to a MoTaC, MoTeC, sorry, engine management system and a Garrett Turbo?

---Yes.

In relation to the purchase of those two pieces of equipment, did you have a specific or particular conversation with Mr Bastow for the use of the credit card?---Yes.

Did you tell him what the credit card was specifically to be used for?--- Yes.

10 Or that it was just to be used on a PayPal account with Mr Ujszaszi?---No, I wouldn't buy anything without asking first.

Okay. And with respect to Mr Ujszaszi, did you tell him who the owner of the credit card that was supplying the funds was?---No.

Did he have any knowledge of – I'll withdraw that. Did you give him any knowledge or reason to suspect that it wasn't a credit card that you were operating?---No, I didn't.

20 Would it be right to say that the relationship between yourself and Mr Bastow deteriorated around June 2010 when the wall collapsed at Kogarah on the Princes Highway?---Yeah.

Now, about that time or probably just after, Mr Bastow suggests you demanded cash from him. Do you recall that?---I do.

Did you do that?---No, I didn't.

Did you receive any cash from him?---No, I didn't.

30 Sometime after that, that is the collapse of the wall, not the money, did information come to you from Thomas Lowes that there was some dispute or upset between you and Mr Bastow?---Yes.

There was a person by the name of Brett Thompson who was an employee of Bastow. Is that correct?---That's correct.

And he passed information to Tom Lowes to the best of your knowledge- - -?---Correct.

40 - - -that there was to be a complaint made about you?---Yes.

And Tom Lowes forwarded that complaint on?---Ah- - -

I'm sorry, forwarded that, that information on to you?---That's right.

Was it also – sorry, withdraw that. Were you also informed at the same time that Mr Bastow had a high level of disregard for Tom Lowes?---Yes.

And so again to the best of your knowledge was that in relation to Tom Lowes now working for Garde Pty Limited?---Working for Garde at the time, yeah.

And Garde have just got on the panel. Is that right?---That's right.

Now you recall that Mr Bastow's evidence was that Garde was already on the panel. Do you recall that?---Yes.

- 10 Is it correct to say there are a number of panels that exist for Ausgrid contractors?---That's correct.

When we talk about "the panel" in the context of this investigation we're talking about the 11kV panel. Is that right?---That's right.

So to your knowledge Garde was on another panel?---Yes.

Is that right?---Yes.

- 20 But they only came onto the 11kV panel after Mr Bastow's company not being on it for whatever reason?---That's right.

Do you remember Mr Bastow pressuring you for more bore work?---I do.

When was this?---Ah, 2009, 2010.

Were you able to assist him with anything like that?---No, I wasn't.

- 30 Did he ever tell you that he was getting instructions – sorry, withdraw that. You recall last week you gave evidence that you formed the view that you were in some kind of employment arrangement with Mr Bastow?---That's right.

And a number of questions were put to you by Mr Chee that tried to define that arrangement?---That's right.

In broad terms is this a correct proposition, that you were doing work for Bastow, Bastow Civil Constructions at the request of Jason Bastow?---Yes.

- 40 And as a consequence of that you were receiving reward or remuneration?---That's correct.

Is that as high as your definition of employment goes?---It is.

Did Mr Bastow ever tell you he was receiving instructions from Steve Brennan on the Estimator software?---No.

When was the last time you provided Mr Bastow assistance on the Estimator software?---Ah, it would've been about 2010 sometime.

Well, you know that there was the wall collapse around I think it was 5 June, 2010?---That's right.

Was it before or after the wall collapse?---It would've been a bit before.

A bit before. Is that a month or - - -?---I think so.

10

- - - two months or what are we talking about?---I'm not sure. I can't really remember.

Okay. You recall evidence last week in respect of Mr McGann and Madden and MDM Formwork?---Yes.

20

Commissioner, if I could have, it's exhibit 5, session 1120, that particular call put on the screen, just the first page. While that's happening you recall giving evidence that you looked at – sorry, withdraw that. It was put to you that Mr Madden went to a bank, withdrew a certain amount of money that then subsequently at the Greengate Hotel Mr McGann provided you with an envelope that contained that money. Do you recall that?---Yes.

And you said no, it contained drawings or specifications?---That's correct.

Okay. In this call on 20 January, so the same day, do you see about line – well, the second time your name is mentioned - - -?---Yeah.

30

- - - "I'm just, look, I'm just fucking ah, looking at this drawing for you". Was that the drawing relating to the specifications or drawing you received from them on that day or was that something else?---Ah, I'm not sure. It could've been or it could've been something else. I've received drawings from them before.

In relation to Mr Burke, you told the Commission that you took the cheques from Mr Burke?---That's right.

40

When I say the cheques you'll recall the Commissioner five cheques, three from the Commonwealth Bank of Australia, if we talk about those first? ---Okay.

You would agree that you took those from the truck?---That's right, the van.

From, sorry, I withdraw that, from a truck of Mr Burke's business?---Yeah.

And you say that occurred in circumstances when you went to sign the HAC book, the hazard and, the hazardous book that people have to sign when they come on site, is that correct?---That's correct.

And you agree that there was a fourth cheque, an ANZ cheque made out to Architectural Décor?---That's right.

And you agree you took that in the same circumstances?---That's right.

There was of course a fifth cheque to Sydney Tools?---That's right.

10 Just so we're completely clear do you have any knowledge of that cheque whatsoever?---No.

And you deny completely taking that cheque?---That's correct.

You have – I withdraw that. In relation to Mr Burke the import is that you had a good relationship with him, do you agree with that?---Yes.

And it was put to Mr Burke that you gave him advice to purchase a road saw, do you recall that?---I do.

20 He said that wasn't correct, do you recall that?---Yeah.

Why did you tell him to purchase a road saw?---Because I thought it would save him money.

And to your knowledge did it?---Well, he told me it did, yeah.

30 Okay. Was there any other reason that you know of or perceived to think that would give you a good relationship with him?---Well, I guess I never really hassled him on site, I just let him get on with the job.

Did you turn a blind eye to anything he was doing in terms of quality of work or ignoring defects?---His quality of work was fantastic.

And is it simply that the quality of your relationship with him together with his direction to you to go and sign the book – sorry, I withdraw that. Is it the quality of the relationship with him that made you think that he was showing some favouritism to you?---Yes.

40 And did that manifest by the presentation to you in your mind of blank signed cheques in the truck?---That's right.

Do you accept now, having heard Mr Burke's evidence, that in fact the cheques were not for you?---Yes.

And would you have taken them if you'd known that they were not intended for you?---No, I wouldn't.

You've given evidence that you've been employed by TGB and Sons?

---Yeah.

Mr Twomey in effect?---That's right.

Since leaving Ausgrid, is that right?---That's right.

You would also concede that you were doing work for Ausgrid, sorry, I withdraw that, for TGB before you left Ausgrid?---That's right.

10 Commissioner, just in relation to something that was said in a compulsory I'd just seek lifting of the suppression order in relation to one answer, it goes to the location of where work was said to have been done but I don't think it's given yet in this inquiry.

ASSISTANT COMMISSIONER: The location?

MR SUTTON: Of some work that TGB.

ASSISTANT COMMISSIONER: Yes, all right.

20

MR SUTTON: It goes only to that content.

ASSISTANT COMMISSIONER: Yes.

**LIFTING OF SUPPRESSION ORDER IN RELATION TO ONE  
ANSWER OF COMPULSORY EXAMINATION OF MR CRESNAR**

30 MR SUTTON: Thank you.

You were compulsorily examined in I think it was April of this year, last year?---Yeah.

And in the course of that you were asked where TGB have done some work that you've been party to, is that correct?---That's right.

And you said one of the places was Moruya?---Ah, they hadn't worked there but we were tendering for work there, yes.

40

Tendering for work. Was there also work in Newcastle?---There was.

And you did work for RMS and road sawing?---That's right.

Where was that?---Tuggerah

And you did work sealing joints on roads?---Same job, yeah.

And since leaving Ausgrid is it correct to say you've quoted on work for TGB at Mosman, Ashfield, North Sydney, Newcastle and Hornsby Council areas?---That's correct.

And also some further RMS road sawing?---Yes.

Now, you told the Commission about Mr Twomey renovating his home. Is that right?---That's right.

10 Did you assist him with any work on that home?---Yes.

What?---Laying pavers around his pool, painting and wiring the extension.

In relation to the painting, was that occurring at or about or around the same time as painting at your home?---It was, yeah.

And you've heard evidence that's been presented in relation to the wall unit that was paid for by Mr Twomey?---Yep.

20 To your knowledge was that bought with any particular purpose in mind?  
---Ah, I was going to go and work for him directly.

Was that an enticement or a gift on the basis of you coming to work for him?---It was, yeah.

Now, you've heard evidence in this Commission that certainly some things that were paid for were paid for using Murray Civil Works methods. When I say methods, I mean credit card or otherwise?---Yep.

30 Putting aside the Bunnings card for a moment, in relation to anything else that was purchased, did you have any knowledge of Murray Civil Works being used for that purpose?---No.

Did you have any knowledge of the arrangement between Mr Twomey and Mr Valentine, sorry, Murray?---No.

Do you know if Mr Twomey has reimbursed Mr Murray?---I've got no idea.

40 In relation to the Bunnings card, is it your evidence that whatever was bought on that card you repaid to Mr Twomey in cash?---That's correct.

So just in summary you accept that Mr Twomey was in fact using a Murray, sorry, a Murray Civil Works credit card based on the evidence that you've seen here?---Yes.

What is your knowledge of the Ausgrid gifts policy?---Ah, you have to report receiving gifts, something like that.



Were you ever provided with any specific training in relation to that?  
---I don't think so. I think it was a, it was a release emailed around with all the other emails we get.

Do you remember, recall specifically or generally reading that policy?---No, I don't.

10 Did you receive any other instructions, guidance or training in relation to the gifts policy?---Don't think so, no.

Did you have to sign any documents to acknowledge that you received the general email in relation to the gifts policy?---No, they just email it round.

What is your knowledge of the Ausgrid secondary employment policy, if there is one?---Ah, I think you're supposed to report it perhaps.

20 Have you ever seen it?---Ah, I think there was another email sent round saying a secondary employment policy had been either updated or introduced.

Did you read it?---Not really, no.

Were you required to sign acknowledgement to having received it?---No, it was just emailed around with the rest of them.

Was there any specific, other than this email you refer to, instructions, guidance or training in relation to the secondary employment policy?  
---I don't think there was.

30 You would concede though, would you not, that you undertook ethics training- - -?---Yes.

- - -in December 2013 and March 2014?---Yes.

You've had questions asked of you in respect of your grandfather. Do you recall those?---Yes.

40 There seems to be an assumption based on the way the questions were asked that your grandfather is still alive. Do you recall that?---Ah, not sure, no.

Okay. Well, in fact is your grandfather still alive?---No.

When did he die?---2012.

You were a Contract Cable Laying, sorry, an officer in the Contract Cable Laying group, is that right?---That's right.

And your role in part related to receiving quotes, et cetera, was to pass them through to the portfolio manager for approval?---That's right.

In your experience are variations common?---Yes.

Excuse me one second, Commissioner.

Is it fair to say though that despite them being common they can often be anticipated?---That's right.

10

But is it also fair to say then that the, the usual question mark is around the quantities or the size, or the size of the variation?---Yeah.

Now just while we're talking about quantities we've heard or much has been said about the schedule of rates in the Standard Deed, Standing Offer Deed, do you recall that?---Yeah.

Now just so I can be clear the schedule of rates relate to specific tasks to complete something, is that right?---That's right.

20

So if a hole or a trench is to be dug the schedule of rates qualified, or correct me please if I'm wrong, will relate to perhaps a per metre cost of someone to come in or more people as required, depending on the surface, with equipment to mark it up, to block it off, to operate all the equipment necessary in a safe fashion and then to fill the hole back in when whatever work has been done, is that correct?---That's right.

And that process for want of a better term can relate to all sorts of tasks, is that right?---That's right.

30

So when we talk about quantities we're not talking about a measure of lime or a measure of cement or a measure of rubble or something, we're talking about all the facets required to complete a particular task?---That's right.

And all of those rates are known to you, and indeed anyone in Ausgrid, because they're on the particular paperwork that relates to particular contractors?---That's right.

40

So when you receive a design from the project section, and again if I've got that wrong please correct me, that says we want to dig a trench between location A and location B, in effect you will already know if it goes to that design who the cheapest will be, is that right?---Once we conduct a desktop estimate, yeah.

Explain the desktop estimate to me?---You get a design and you plug the, the quantities of the design into the Estimator based on the, the lengths given in the design.

And I am correct, am I not, in saying that you are bound to take the cheapest quote?---That's correct. Not the quote but the price, the cheapest price generated from the Estimator.

Well, let's just understand that for a second. The Estimator could generate a price X but when the job – and I'm talking about a variation at the moment I believe?---Right.

10 But when the job comes out at sub \$250,000 – or \$200,000, have you plugged in the prices of the relevant people on that relevant panel and worked out who the cheapest is?---That's right, yeah.

You then ask that contractor, whoever the cheapest on is, to provide you with a price themselves?---Yeah.

20 ASSISTANT COMMISSIONER: But wouldn't their pricing all be the same, they'd be using the schedule of rates. Isn't the only thing that changes the quantities?---You conduct a desktop estimate, get your um, get your prices, figure out who's the cheapest, then you'll go and have a site meeting and measure the job accurately with the contractor.

Yes, but if the schedule of rates is the same for everyone, how does somebody come out cheaper?---Everyone's got their own different schedule of rates. The rates – description of the rates are the same however the pricing is different for different contractors.

Is it set by Ausgrid or by them?---Ah, it was something that was set up when ah, when the Standing Order Deed was set up.

30 So they've put in a schedule of rates have they?---As part of that Standing Order Deed, yeah.

MR SUTTON: Commissioner, if it assists I'll refer you to the evidence of Mr Bastow who says he increased his rates by 30 per cent.

ASSISTANT COMMISSIONER: Yes. So the quantity would still affect the ultimate price though?---Well, yeah. Prices - - -

40 If somebody said I'm going to have to dig X metres longer than somebody else - - -?---No.

- - - their price would come out lower – higher?---Well, the scope is defined in the design.

Yes, it is but then you go to the site and walk it and measure it don't you?  
---That's right.

So it could be slightly different from what's in the design?---Oh, of course, yeah.

Thank you. Yes, Mr Sutton.

MR SUTTON: Thank you. So just so we're clear, contractor A could have a price of \$10 per metre or per unit of quantity?---Yeah.

10 Contractor B could be \$11 and contractor C could be \$12. Is that right?  
---That's right.

So there could be three entirely different rates - - -?---Yes.

- - - for particular quantities?---Yeah.

So you conduct a desktop audit?---That's right.

20 You work out according to that audit who the cheapest is going to be  
according to the desktop?---That's right.

And your obligation then under Ausgrid directions is to go to the person or rather the entity who comes out cheapest?---Yes.

Take them to the site?---Yeah.

And then measure?---Yeah.

Have them put in a price?---Yeah.

30 Now let's say the design team has said the job will cost \$10,000?---Yeah.

But they come in at \$12,000?---Yeah.

And on the desktop audit or quote there was someone who came in at \$11,000?---Yeah.

What happens in that circumstance?---Generally you send the, the pricing info off to the project manager of the project in - - -

40 So when you say the pricing info - - ----Yeah.

- - - is that the desktop quotes and the price?---No. It's the price, the actual price, the contract value.

What happens then?---Then if need be they will get additional funding for the project.

So if the price the design team quoted was 10,000, you've got a price from the cheapest person come in at 12,000, do you go back to the other person or other two contractors?---No. Well, they'd be even more expensive.

Okay. So you take it then to the design team or to your portfolio manager with a recommendation?---Ah, portfolio manager.

Is that Mr Partridge?---Yes.

10 And before him a Mr Mettam?---Mettam's the next step up above Partridge.

Okay. Now in the course of measuring and preparing the work, is it correct to say that there can be – well, you've already said renovate – sorry, variations are common?---Yes.

Is there or are there circumstances where Ausgrid is contractually obliged to pay the cost of the variations?---Absolutely.

20 And does that occur when there are latent conditions?---It does, yes.

And an example of latent conditions is rock. Is that right?---That's right.

Could be groundwater?---Could be, yep.

Okay. And so if rock or groundwater is struck, a further price or an amendment could be required. What happens in relation to those particular types of variations?---Ah, we just send a variation through for approval and you notify your client as well.

30 And again is that to the design team or is that to portfolio manager or where does it go?---Both.

You were asked some questions about sometimes Ausgrid officers not being able to get to the site. Remember those questions?---That's right, yeah.

And you said that the contractors will mark the road with paint?---That's right.

40 What does that mean, how does that assist anybody?---Just to record the depths of the rock in the trench.

But if they dug a trench there's a hole in the ground?---Yep.

And the Ausgrid officer – are you saying then an Ausgrid officer would turn up some point later and look at the marks on the road?---Well, you can't just leave a trench open because ah, there's no one available to come and have a look so they'll mark up the, the rock on the road before backfilling the trench.

So let's say there's a 50-metre trench got to be dug?---Yeah.

Pick a number. 10 metres of it is dug and they hit solid rock?---Yeah.

If an Ausgrid officer is not available to come and inspect it straightway do I understand you're saying then the contractor will fill the hole in – sorry, will mark the road?---That's right.

10 Fill the hole in?---Yeah.

And wait until someone can come and have a look at it?---No.

Well, what happens?---They just proceed with working and in the, in the course of, of digging the trench, laying the conduits and backfilling, they um, they just continue.

20 So they actually complete the whole task?---That's right, yeah, they, we don't put things on hold 'cause Ausgrid officers aren't available.

Okay. So they're expected just to complete the work and then accordingly charge later on?---That's right.

But can't it be the case that there can be disputes about whether conditions are latent conditions or just something that was foreseeable?---Not really. I mean latent conditions can be foreseeable.

But not the quantities?---That's correct.

30 So if – what would happen then in the circumstance where a contractor claims for 10 metres of rock- - -?---Yep.

- - -and someone sitting back in the office in the design team thinks there should only be two metres of rock. What would happen there?---Ah, you might request some photographs or something like that from the contractor.

So photographs can be taken?---Yes, absolutely.

40 Is it common that that's the case?---Yes.

Have you had any circumstances involving you particularly where claims for variations have been argued against?---Yes.

And have you had circumstances where they have been resolved in both favour of the contractor and the favour of Ausgrid, obviously different jobs at different times?---Yes, absolutely.

So would it be fair to describe it as swings and roundabouts, sometimes Ausgrid will triumph and sometimes the contractor will triumph?  
---That's correct.

Now, we heard in passing about positive and negative variations. Do your recall that?---Yep.

10 Can you explain those terms, please?---Positive is where the variation amount is positive, i.e. the contractor gets more money, negative is where the variation amount is negative, i.e. money is taken off the contractor.

Excuse me one second, Commissioner. I just want to read something to you. Mr Evan Partridge, who's a portfolio manager you say, this is Commissioner, paragraph 48 of his statement, "On all major variations to a project to require the approval of the project management team it has sometimes been the practice of the Contract Cable Laying section to give small variations proposed by the contractor to go ahead on the spot before the project management team give their approval." First of all, have you had experience of that?---Yeah.

20 "This is where the cost is really low, for example, a few hundred dollars." Have you had experience of that?---Yeah.

And if it was of some significant sum, perhaps going into the thousands then, that would need to be referred to management, is that correct?---That's right.

30 In circumstances where you have made those or given those approvals has there been any ramification for you?---No, I don't think so.

Has anyone challenged your discretion?---No.

Do you always make recommendations on price variations on the basis of the best price for Ausgrid?---Variations, variations are – do you mean between different contractors?

No, whilst the project is ongoing?---Right.

40 With a job that's been commenced a variation has been required?---Okay, yeah.

Have you always made – well, I withdraw that. If a variation has been required what has been your motivation in making a recommendation for or against a variation?---Whether the variation is to the benefit of the network.

Have you ever refused variations?---Yes.

And so just going back to that paragraph I read to you and your experience in relation to the value of variations and on the spot, have you ever been challenged in relation to your agreement to particular levels of expenditure as it relates to variations?---No, I don't think so, no.

In relation to your role and what you said about getting the best price for Ausgrid, you in evidence made a statement that what was referred to in a telephone call as an invention was you pioneering the use of subcontractors to do restoration or reinstatement work, do you recall that?---Yeah.

10

Before subcontractors were doing that work who was performing the task? ---The local authorities.

And/or RMS or RTA as they then were?---That's right, yeah.

Since the subcontractors have been performing the work has this in a financial sense been to Ausgrid's advantage or disadvantage?---Advantage.

20 Is that because the cost to Ausgrid of doing reinstatement work has been lowered?---Yes, significantly.

I'm sorry, I didn't hear your answer?---Significantly lowered, yeah.

Thank you. Are you able to say, and if you're not please say so, that on average there's been a price reduction of X or Y per cent?---I have seen some of the reports run and the overall savings has been in the millions.

30 And do you ask this Commission to accept that it was you who first came up with the thought or the idea that subcontractors should be performing this restoration work?---That's right, yeah.

Did you have to seek permission from anyone in management - - -?---Yes.

- - - to have that occur?---Yes.

And who was that?---Ah, I think it was Geoff Doherty at the time.

And what was his position?---Manager of the CCL section.

40 Is that the position that Mr Partridge now fills?---It's the position that Mettam has or had.

So the one above Mr Partridge?---That's right.

Did you have to provide any documentation or substantiation for your theory that subcontractors will be cheaper?---Not really sure. It's quite obvious that they would be cheaper though.



Okay. Why do you say that?---Ah, you just look at the, the rates the council charge. They're very high or used to be.

Is that getting closer now do you know?---Yeah, they've – they're sort of ah, rejecting the pricing now.

Okay. I'll take you to – I don't think there's any need to put this on the screen – I'll take you to exhibit 23, just for the record purposes, and it was session 1345. It was a conversation where you use the words “fudge figures”. Do you recall that?---Yeah.

And if you need that put up on the screen say so but let me ask you the question first. Now in that conversation you're talking to Mr Twomey. Correct?---That's right.

And you make the statement, “Yeah, do you know, I'll tell you one thing, that cable pull you did this morning Dunmain were actually slightly cheaper than you but I fudged the figures”?---That's right.

20 Firstly, what was the difference in costs?---Ah, well, for a cable pull only it would've been very small.

Do you recall specifically?---No.

Are you able to give an idea as best you can?---\$200.

Okay. And at the time was there a particular – I'll withdraw that. At that time were Dunmain operating in that area?---No.

30 So this particular job I think was in the North Region. Is that right?---That's right.

And where were Dunmain working?---Central Coast and the city.

So, okay. Who were the other contractors in the North Region?---Diona and CLM or (not transcribable)

40 And in relation to those were they cheaper or more expensive?---More expensive.

Was there a policy or otherwise of not bringing out of area contractors into other areas?---We, we were given which panel members we could use in an area set by management so that's, that's what we were given to choose from.

Okay. So is it a correct statement then that Murray Civil Works were the cheapest contractor in that area at that time?---That's correct.

I just want to read you something from Mr Partridge's statement again, paragraph 37, "The set-up and running costs make smaller jobs expensive which means contractors get little or no profit. Forcing competitive bidding on larger jobs means contractors must offer lump sum discount in prices. This means contractors are again getting little or no profit and could even price themselves out of a contract all together". Now at the time, and I'm talking about specifically this fudging conversation?---Yeah.

10 At the time were Dunmain working close by do you know?---No, they weren't.

Was Murray Civil Works working close by in that area?---Well, yeah, because they're North.

And the actual job itself was simply pulling a piece of cable. Is that right?  
---That's correct. Through a, a duct that was existing in the ground.

So there was no digging?---No digging.

20 No excavation of any kind, just pulling a cable through an existing hole?---I believe so, yes.

Okay. So the comment in relation to fudging the figures, what do you say in relation to that?---I was just talking shit on the phone.

Is that because in fact Dunmain were never in with the claim to do that work?---That's correct.

30 And according to Ausgrid they wouldn't be brought into the area anyway?  
---That's right.

There was another, another conversation that also forms part of Exhibit 23, I think it's referred to as the Trouve Street matter, it's session 414, again I don't think it needs to be brought up, Commissioner, if the Commission requires it so be it. You had a conversation with a member of Ausgrid staff, do you recall this call?---Yeah.

40 And in essence it was about taking a piece of cable from one location to another per the design?---That's right.

But when on the ground the Ausgrid engineer or person there thought it made more sense to finish the job short, so shorter than the design, is that correct?---That's correct.

Now you have said in that phone call you think the job should be done according to the design, is that right?---That's right.

Was or ultimately did the job get completed to the design?---No.

And why not?---Ah, I think I rang the guy back and told him no, we'll just leave it.

Just leave it you mean just - - -?---Just leave it as, as, yeah, cancel the job.

Okay. In fact though your evidence at this Commission was that you were concerned about the state of employment at Ausgrid at the time, is that right?---That's right.

10

You were managing staff at the time?---Yes.

And is it correct to say that the people you were managing and others within the Contract Cable Laying group were running short of work?---It was very quiet, yeah.

20

Okay. Now I appreciate this statement is made some time later than the call, approximately 12 months, I just want to read to you something from Walter Stefani, Program Director, Capital Works at Ausgrid. Paragraph 27. "The second change is the need for staff reductions. This is ongoing. I am aware that this creating some uncertainty amongst Contract Cable Laying and this is understandable. I have told the staff in Contract Cable Laying that reductions were necessary because there were too many staff and too few jobs." Contract Cable Laying staff, sorry, "Contract Cable Laying have a staff of more than 30 and this was appropriate when in the past they managed 80 crews. The number of crews is now much reduced. It currently fluctuates between 13 and 16 but there has been no reduction in staff within the Contract Cable Laying. The fact is there is not enough work for Contract Cable Laying either current or forecast that supports that current level of staff." Now with that in mind does that accord with your observations but somewhat earlier in time?---That's right, yeah.

30

How many crews were operating about this time, do you know?---Ah, in the north four, three.

Okay?---I think.

Do you know how many across the whole of Contract Cable Laying?---Ah, 20, 15.

40

Okay?---We used to have 80 crews.

So at the time that you were talking to the, sorry, to the Ausgrid employee the amount of work if we just base it on the number of crews has fallen by about 75 per cent, is that right?---That's right, yeah.

And each and every job that an Ausgrid staff member doesn't have to do would have been of concern vis-à-vis their future employment?---That's right.

Being specifically or just numbers in that department, across the board?  
---Yeah, yeah.

And was that in your mind at the time when you thought it would be better initially to complete this task?---Yes, it was.

10

But you did change your mind and say don't go ahead and do it, is that right?---That's right.

Is that because it was in the best interests of Ausgrid as an organisation or was there some technical reason?---I think it, I think it was in the best interests of Ausgrid to complete the, the project as per the design but it's best to keep the client on your good side.

20

When – you've used that term a couple of times, “the client on your good side.” Who is the client you refer to?---The client, Field Services and Zone Development.

And Field Services is another department within Ausgrid who provides work to Contract Cable Laying to go out and do. Is that right?---That's right.

And last week you recall you were asked questions about Mouhamad Jomaa, J-o-m-a-a?---Yes.

30

And that was in relation to a reinstatement or restoration job at Mosman. Is that correct?---That's correct.

And he was in possession of your personal mobile number. Correct?  
---That's right.

And you've given evidence, and indeed the Commission appeared to know the name of the person who introduced him to you, and that's why he had your personal number. Is that right?---That's right.

40

And this was the first piece of work that he was to do for Ausgrid. Correct?  
---That's right.

Did you have the impression he wanted to impress you with his efficiencies?---Yes.

And he informed you directly that the price, of a price rather, that he thought this particular job should be done for. Is that right?---That's right.

You had a view that the price was wrong. Correct?---That's right.

It was put to you in cross-examination, transcript 448 line 49, "What is about Mr Jomaa's message to you stating that he could do the job for \$263,000 or thereabouts that leads you believe he's, he's quoting on the wrong, on the basis of the wrong spec?" You answered, "The quantities and the specification and that price didn't seem to match." Do you recall giving that?---Yep.

10 Firstly, had you been to the site of this work?---Yes.

Had you measured or examined the site?---We had, yeah.

Had you formed a view in your mind about how much it might cost to do this work?---Ah, yeah.

When I say formed a view, not necessarily come to a specific number but come to a view of what it – the region it might fall into?---Correct, yeah.

20 Okay. And is that because at this time you had been doing this kind of work for a decent period of time?---Yes.

So about the time of this call, and that's November 2013, how long had you been working in this area? When I say this area, not the physical area but the area of work you were performing?---Oh, several years.

More than three?---Yep.

Five?---About five, yeah.

30 Okay. And indeed in the telephone call that forms part of Exhibit 26 at session 394, no need to put it up, you're talking to Mr Twomey and you say, "Hmm, what was it? It was two. I had, I had a job, I had a job, jeez, I had a job with a 600 metre pull and then it was, I had a 600 metre job with council and 600 metres, I had a 700 metre job with council and that was 220."? ---That's right.

Mr Twomey says, "Right". And you say, "And this job is fucken way longer than that ain't it"?---Yeah.

40 Do you record how – sorry, recall how much longer or what the size of this job was?---Oh, it was pretty big. It was spread up over different areas. It was over a kilometre anyway.

Okay. So it was over a kilometre in length and you recall the council on a 700 metre job, so approximately a third smaller had quoted 220,000. Is that right?---Pretty sure, yeah.

Okay. So that should have made, even if it was just a kilometre, Mr Jomaa's quote on the same figures around 300,000. Do you agree?---That's right. I think this job was way over a kilometre.

Okay. So is the case then having received Mr Jomaa's quote it did not sit well with your professional knowledge and understanding of the work that was to be done?---That's right.

10 And indeed you suspected it could not be done at that cost?---I'd be very surprised.

And had it been attempted it simply wouldn't have been completed for that cost?---I highly doubt it.

Can I just ask one question, going back to that that I've just read to you. Taken in extract it says, "I had a job with a 600 metre pool", p-o-o-l? ---Right.

20 Is that correctly transcribed?---Probably means pull as in there was a, a length of cable 600 metres long that should be - - -

So that should be p-u-l-l?---I think so, yeah.

Okay. You recall Ms Said giving evidence?---Yeah.

She was asked about a stage 3A contractor offer document. Do you recall that?---Yes.

30 And you – and she was asked about any put, any input that you might have provided, do you recall that?---That's right.

Did you provide her with some assistance on that particular task?---Yeah, from memory that was, that was a, a project called Little Walker Street (not transcribable) which was the very first project signed up on the new Standard Order Deed and at the time nothing was ready, the Estimator wasn't ready, the contract wasn't ready, the job was urgent, it was a fault so we basically had to do whatever we could to get it signed off contractually on time.

40 There's a document that I'll refer to as the note, there was a note said to have been left in Mr Bastow's letterbox?---Right.

You've had that read to you and you've seen it on the screen, you know what I'm talking about?---Yes.

Do you know anything about that note?---Nothing at all.

Did you write it?---No.

Did you place it in the letterbox?---No.

Did you cause it to be written or placed in the letterbox or both of those things?---No, no.

Commissioner, I note the time, there are two further areas, probably about 10 to 15 minutes at the most.

10 ASSISTANT COMMISSIONER: Do you want to continue or you'd rather  
- - -

MR SUTTON: I'm happy to take the break or continue, as it pleases.

ASSISTANT COMMISSIONER: All right. I think we'll take the break.

### **SHORT ADJOURNMENT**

**[11.29am]**

20

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

MR SUTTON: Thank you, Commissioner.

Mr Cresnar – and again some relief is sought, Commissioner, in relation to the compulsory examination and comment about his drinking habit, that's all.

30

### **RELIEF SOUGHT FROM COMPULSORY EXAMINATION OF MR CRESNAR**

ASSISTANT COMMISSIONER: Yes, all right.

MR SUTTON: Thank you. Mr Cresnar, you've indicated to this Commission, both in public and private examination, that you're a heavy consumer of alcohol. Is that correct?---Yep.

40

In your private examinations you indicated consuming something in the region of two bottles of wine a day. Is that right?---A night, yeah.

A night. And has that habit continued?---Yes.

And what do you consume to date?---Ah, beer and scotch as well as wine.

In what quantities on a daily average or weekly average, whatever you're able to describe?---Um, probably two cases of beer a week and some scotch and some wine.

Do you consider yourself an alcoholic?---Oh, I'm not sure.

Okay. In the course of your initial examination in this public inquiry you were asked about your experience in pricing concrete. Do you recall that?---Yes.

10

And that came -- excuse me. Yes, that came about in the context of questioning at 418 of the transcript about MDM Formwork and you assisting them in their role. Do you recall that?---Yes.

And you gave an answer to the effect of that you've priced home developments yourself in the Alexandria area?---That's right.

20

Can you please explain what that experience was, what you were doing over what time period?---Yeah. I spent about six months doing a feasibility study on whether or not to demolish a warehouse and construct five terraces in Beaconsfield and then ah, there was another single dwelling home I was looking at building a duplex in its place on Reserve Street, Beaconsfield.

And you say together with your general knowledge, the work you've been doing for Ausgrid, that formed the basis of your experience to be able to assist MDM Formwork?---That's right.

30

Okay. By implication if not explicitly it's suggested that you have favoured Mr Toohey (as said) in the amount of work that he's received. Do you recall suggestions of that nature?---Hmm, yeah.

I just want to read to you from Mr Partridge's statement at paragraph 34. "I believe it is well known in the Contract Cable Laying section that the cheapest contractor on the panel and that operates in the Sydney Metropolitan North Region is Murray Civil Works." Does that accord with your recollection at the relevant time?---Yes.

40

Now, that pricing or the suggestion he is the cheapest contractor would relate to the schedule of rates. Is that correct?---That's right.

The schedule of rates is combined at the time the contractor is admitted to the panel. Is that correct?---That's right.

The admission to the panel, is that anything that you were party to?---No.

Who decides who goes onto the panel?---Oh, there's a, there's a team set up at Ausgrid that um, evaluate all of those tenders.



Have you ever been part of that team?---Never.

If it's the case then that Mr Murray's organisation – sorry, Mr Twomey and Mr Murray's organisation, Murray Civil Works is the cheapest why would they not get all the work?---I don't think they're physically capable of completing all of the work.

10 Okay. Indeed, at paragraph 29 of Mr Partridge's statement he states, "It's important to know that in choosing a contractor the focus of Contract Cable Laying section is not how many contracts of work that a contractor has, rather the focus is on how many crews a contractor can operate at any one time. A crew is a contractor's group of workers that it has responsibility for." Is that correct?---Yes.

So can it be the case then that physically one entity just does not have enough men to work on all of the work that was around at that time? ---That's right.

20 Because, paragraph 32 of Mr Partridge's statement he says, "In cases where the works are estimated to be less than 200,000 the project planner is allowed to, allowed to choose the cheapest contractor from the relevant contractors chosen to work in the panel." So in fact there is no choice, you must take the cheapest. Correct?---That's right.

So by logic then Mr Murray or Murray Civil Works should get the lion's share of the work based on that philosophy?---That's right.

30 But from time to time others will get work because they don't have, that is Murray Civil Works, enough crews to do all of the work?---That's right.

Is it also a policy though to share the work around as much as possible? ---Ah, yeah.

Because in reality it is necessary to keep contractors and their crews working so they're available on notice to do work. Is that right?---That's right.

Less than fifteen minutes, Commissioner. That completes.

40 ASSISTANT COMMISSIONER: Thank you for that. Yes.

MS DAVENPORT: Commissioner, as a result of the questioning of Mr Cresnar by his solicitor, there's a matter that has arisen which I'd seek the Commissioner's leave to ask some questions of Mr Cresnar.

ASSISTANT COMMISSIONER: Yes, Ms Davenport.

MS DAVENPORT: Mr Cresnar, you said in your evidence that you were never trained in relation to the policy of Ausgrid about the acceptance of gifts and benefits. Do you recall that?---I don't remember any formal training in that, no.

Well, do you recall attending various team, team meetings with agendas from time to time at Ausgrid?---I do, yeah.

10 And I want to suggest to you that in February of 2012 you attended such a meeting where one of the issues that was discussed was the acceptance of gifts and benefits?---I don't remember that.

If you have a look please at this document. You're familiar with that type of documentation in relation to meetings that were held by Ausgrid from time to time?---Yes.

And you'll see that that appears to be a meeting that was held on 22 February, 2012?---Yes.

20 And you'll see on the agenda at the highlighted – that the DO&R was the Distribution Operations and Reliability sector, is that correct?---That's correct.

And you'll see that on the agenda of that meeting one of the items to be discussed right at the bottom with the highlighting is the receiving of gifts and benefits?---Correct.

30 And the note beside it says that it has particular relevance to people working in the CCL area?---That's right.

And if you turn over I think about four pages you'll see a list of attendees at that meeting?---Yeah.

And you'll see that you were one of those attendees?---That's right.

So does that assist you in recalling that you attended a meeting in February 2012 in which the acceptance of gifts and benefits by employees of Ausgrid was discussed?---I don't remember it.

40 Right, thank you. If that could be returned. You also said that in relation to the Code of Conduct that you had received no training. Is that right?---Ah, not, not – there was some recent training at the end there, I think two or three modules of ethics training.

Well, do you remember the early 2014, '13, I'm sorry, in April of 2013 a new Code of Conduct came out?---Yes.

And do you recall having team briefs or toolbox talks given by Mr Partridge in relation to that new Code of Conduct?---I don't recall that specifically, no.

All right. Would you have a look please at this document. You see that document appears to – at the top it has the topic which is Code of Conduct? ---Yeah.

10 And it has a list of participants?---Yes.

And your name is listed as part of that?---Yeah.

I want to show you an excerpt from Exhibit 27, pages 285 to 293, sorry.

I wonder if you could show this to Mr Cresnar please?---Thanks.

I want to suggest to you that at that particular meeting it was that Code of Conduct that was discussed by Mr Partridge?---Could have been, yeah.

20 And you'll see there are two tabbed portions of that in little green tabs, one of those refers to the, the issue of reporting of gifts and benefits from, from contractors?---Yeah.

And the other one refers to the issue of secondary employment and the need to obtain permission in order to undertake secondary employment?---Yeah.

And I suggest to you that at that meeting or at that forum run by Mr Partridge those issues were discussed?---Okay, I accept that.

30 Right. Commissioner, I ask Mr Gartelmann if he would tender those documents.

MR GARTELMANN: Yes, I'm prepared to tender those documents.

ASSISTANT COMMISSIONER: Yes, well the minutes of the meeting on 22 February will be Exhibit 29.

40 **#EXHIBIT 29 – MINUTES OF MEETING DATED 22 FEBRUARY 2012**

ASSISTANT COMMISSIONER: And what is the other document?

MS DAVENPORT: The other document, Commissioner, is an attendance sheet in relation to a meeting that was held on 22, 24 April, 2013 and annexed to that is a copy taken, well a copy of the document taken from Exhibit 27 of the matters that were, the documents that were tendered by Mr

Gartelmann and that is a Code of Conduct that came into effect in April of 2013.

ASSISTANT COMMISSIONER: The attendance sheet and the attachment will be Exhibit 30.

**#EXHIBIT 30 – ATTENDANCE SHEET 24 APRIL 2013  
ATTACHING CODE OF CONDUCT**

10

MS DAVENPORT: Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Gartelmann.

MR GARTELMANN: Mr Cresnar, you've been asked some questions by your representative today regarding your contact with Mr Jason Bastow, that's right, isn't it?---Yes.

20 And you've given evidence about two meetings you say occurred between yourself and Mr, Mr Bastow in the year 2013, is that right?---That's right.

One at a café and one at a pub, is that right?---That's right.

Now you had not had contact as I understand it with Mr Bastow prior to those meetings for approximately three years?---Yeah, something like that.

30 When Mr Bastow contacted you to arrange a meeting at the café you said he sent you a message or used his telephone to call you, was that right?---I think so, yeah.

And no doubt he would have used the same phone that he used to send the message regarding the soy flat white?---No, he wouldn't have had that number, he would have called me on my work phone.

That's your Ausgrid-issued Apple iPhone?---Correct.

That's the one with the number ending 8-6-6?---Yes, is it, yeah.

40 And he would have contacted you with that phone in the days preceding the meeting at the café. Is that right?---Yeah, I'd say so, yep.

Well, if you simply received a message to the effect, "Soy flat white," you wouldn't have understood what the hell he was talking about, would you?  
---No.

So it follows doesn't it that there must have been some communication between yourself and Mr Bastow in the days preceding the meeting you say took place at the café. Correct?---That's correct.

And that communication must have taken place by way of phone. Correct? ---Yes.

10 All right. So your evidence is that the communication took place between Mr Bastow and yourself through your Ausgrid-issued iPhone?---Correct.

You've given evidence also about a meeting that you say took place later that year at the pub. Is that right?---That's right.

This is the Vicinity Hotel, is it?---I think it was, yep.

Roughly what month was that?---Ah, it could have been June or July I think. Not too sure.

20 All right. Had you had any contact do you say between yourself and Mr Bastow after the café and before the pub?---Don't think so.

Well, there must have been some communication between yourself and Mr Bastow regarding arranging to meet at the pub, right?---Pretty sure he sent me a text saying he was at the pub.

All right?---And I was in the area.

The pub's just down the road from your house I take it?---That's right, yeah.

30 So he sent you a text and I take it he sent the text on the same phone that he sent the text regarding the soy flat white?---Ah, might have been the Nokia.

The Nokia. All right?---Yeah.

Well, just so we're clear, are you saying the phone that you received the text in relation to the soy flat white was not the Nokia?---That's correct.

That's the HTC phone, is it?---That's right, yes.

40 All right. So you had three phones operating at this point in time. Is that right?---Ah, no, I think the HTC wasn't operating at this point in time.

Well, you got the message about the soy flat white in February 2013 on that phone, didn't you?---Yes.

So you're saying that that ceased to work after, sometime after February 2013 and before the meeting at the pub?---Pretty sure, yeah.

All right. So any communication between yourself and Mr Bastow in relation to the meeting at the pub took place on your Nokia phone?  
---Pretty sure, yeah.

Well, was there any other phone that it could have been other than the Nokia?---No, there wasn't.

10 All right. And what communication was there between yourself and Mr Bastow regarding arranging to meet at the pub?---Ah, I think he just sent me a text.

Was it the same day that you met him?---Yes.

Was it just the one text?---I think so.

After the meeting the pub have you had any contact with Mr Bastow?  
---No.

20 So the last time you had any contact with Mr Bastow was when you met him at the Vicinity Hotel?---Correct.

All right. I want to move on to ask you some questions about another topic you've been asked about today. Do you understand that?---Yep.

You've been asked some questions in relation to the reason as you understood it that Mr Burke was happy to provide you with signed blank cheques. Do you recall those questions?---Yes.

30 Now, as I understand your evidence today you've said that firstly you'd advised Mr Burke to buy a saw?---A road saw, yep, Husqvarna road saw.

And secondly Mr Burke thought you weren't hassling him. Is that right?  
---That's right.

Well, let's just deal with the latter topic first, that is the extent to which you were in a position to hassle Mr Burke. All right?---Right.

40 In your position as an Ausgrid officer dealing with work carried out by Cloughcor Pty Limited, you were in a position to make determinations adverse to Cloughcor, weren't you?---Hmm, I don't think I'd agree with that.

Well, you've given here today about variations being both positive and negative haven't you?---I don't think you could have an adverse effect on any of the contractors because um, well, everything you do regarding variations et cetera goes through management.

Well, look, you've given evidence here today that a negative variation would have the effect of less money to the contractor. Do you recall saying that here today?---Yes.

And that's the truth isn't it?---Yes, it is the truth.

So you as an Ausgrid contract inspector had the capacity to make recommendations in relation to variations didn't you?---That's right.

10 Both positive and negative. Right?---Yes.

So you had the power to make recommendations in relation to negative variations that would have the effect of less money to the contractor. Correct?---You'd need a good reason to ah, put forward a negative variation.

All right. But nonetheless you could still make a recommendation in that respect. Correct?---Correct.

20 And you could have made such recommendations in relation to variations to contracts performed by Cloughcor Pty Limited. Correct?---I don't recall ever being in a situation where there was need for a negative variation.

All right. But I'm asking you about the power that you had. Do you understand that?---Right.

You would accept that you had the power to make a recommendation? ---Yes.

30 All right. You also had the power to make determinations in relation to non-conformances didn't you?---That's right.

And as a contract inspector you had sole discretion in that regard didn't you?---Yeah.

That's not a matter you had to refer up the management chain for approval is it?---Oh, it could have been - - -

40 All right. But - - -?--- - - - circumstantially.

Circumstantial?---Circumstantially, yeah.

By that do you mean it depends?---That's correct.

It depends on the nature of the non-conformance?---Yes.

All right. So in relation to some non-conformances you had the power to make the decision yourself?---That's right, yeah.

And issuing a non-conformance would have a negative or adverse impact upon the contractor concerned. Correct?---That's right, yeah.

Because it requires the contractor to perform the work itself at its own expense. Correct?---No. It requires the contractor to fix up whatever they've done wrong at their own expense.

Yes, at its own expense. Correct?---That's correct.

10

All right. So it's adverse isn't it, the issuing of a non-conformance notice is adverse to the contractor in that sense?---Could be, yeah.

All right. And you had the power to issue non-conformances to contractors. Correct?---That's right.

All right. So there are two ways at least in respect of which you could make determinations as a contract inspector that might have adverse consequences to a contractor. Correct?---Correct.

20

So when you say that you weren't hassling Mr Burke or that Mr Burke thought you weren't hassling him, is that what you're referring to, your capacity to make adverse determinations to Cloughcor?---No.

What are you talking about then?---I just let him get on with the job.

Well, what would you do that would get in the way of him getting on with the job?---Ah, don't know.

30

Well, isn't it the case that you could let him get on with the job or you could make adverse determinations that would affect him getting on with the job? ---I could, yeah.

All right?---But I never found a reason to do that because his quality of work was very good.

All right. But you understood, didn't you, that Mr Burke was happy with how you were performing your role as an Ausgrid contract inspector in relation to the works that he was conducting?---Seemed to be, yeah.

40

And you thought that – I'll withdraw that. You understood that Mr Burke thought that you had the capacity to influence the extent of work that he got or the extent of payment that he got for that work?---I'm not sure if he felt that way.

Well, you may not be sure if he felt that way but you thought that that's what he believed isn't it, isn't that the case?---I really don't know what I thought at that stage.



Excuse me, Commissioner. Isn't it the case that you were – sorry, excuse me, Commissioner. I've mentioned two ways in which you could make a determination or recommendation which would have an adverse effect upon a contractor, being negative variations and non-conformances. Correct?  
---Correct.

10 But in your position as a contract inspector even your approval of positive variations or your recommendation in relation to such an approval could have consequences for a contractor couldn't it?---It could.

For example, a contractor might seek a variation to a particular extent and you had the power to make a recommendation for its approval to a lesser extent, correct?---Correct.

So you would accept wouldn't you that in your position as an Ausgrid contract inspector you had the power to make determinations which would have consequences for contractors on a number of levels?---Correct.

20 Now you understood that Mr Burke perceived that you were carrying out your Ausgrid contractor, contract inspector duties in a way favourable to Cloughcor Pty Limited didn't you?---I'm really not sure.

Well, I'm going to ask for a lifting of the suppression order in relation to a compulsory examination conducted in August of last year.

### **SUPPRESSION ORDER RELIEF FROM MR CRESNAR'S COMPULSORY EXAMINATION**

30

ASSISTANT COMMISSIONER: Yes.

MR GARTELMANN: And it'll be of pages 441 and 442. Look, back in August of last year you attended a compulsory examination at the Independent Commission Against Corruption didn't you?---Yeah.

40 And in the course of that examination you were asked this question, "You understood that Mr Burke was happy with how things were going for Cloughcor because of the way you were performing your role as an Ausgrid contract inspector, correct?" Answer, "Correct."?---Okay.

That's the evidence that you gave here in August of last year isn't it?---It seems to be.

You were asked, "He thought you could influence whatever, he was happy because he was getting a lot of work and he thought you could somehow

influence that, is that correct?" Answer, "That's correct."?---Can't guarantee that that answer was correct. I don't know what he was thinking.

Would you accept that that's the evidence that you gave here in your compulsory examination last year?---Yeah.

You were asked this, "But you were happy for him to think that I take it?" and your answer, "That's correct." Would you accept that?---Okay, yeah.

- 10 You were asked, "Because he was, he was giving you these nice cheques occasionally," and you answered, "Correct."?---Okay.

Well, that's the evidence that you gave here in August of last year, Mr Cresnar?---Yeah.

Were you giving truthful evidence in your compulsory examination in August of last year?---To the best of my knowledge I was, yeah.

- 20 All right. Well, that's not a matter about which you could have been confused is it?---Probably not.

No. I would suggest to you that the answer that you, the evidence that you gave in your examination last year was in fact the truth?---Oh, I don't know. Could have been.

You, you were happy in effect to cultivate a belief on Mr Burke's part that you were in a position to influence what work he got or at the very least the payment that he got for it?---Right.

- 30 That's right isn't it?---Oh, I'm not sure.

Well, that's why you thought he was happy to give you cheques?---I don't really remember what I was thinking back then anymore.

But you just agreed that there was no, there's no reason you could have been, you could have misunderstood the effect of those questions?---I don't agree that I have an exact recollection of what I was thinking at the time back in, when was it, 2011.

- 40 I'm asking you about the questions and answers that you gave in August of last year?---Yes, I understand that which relate to how I may have felt or thought about certain things back in 2011.

But do you agree with me that in these answers, the questions and answers that I've just read out to you from August of last year you were – you don't say I can't remember what happened back in 2011?---Well, if I can't remember what happened back in 2011 then I can't remember what happened back in 2011.

In the answers that I've just read out you don't express any difficulty with the question do you?---I'm under oath here and you're asking me about how I, what I thought back in 2011.

I'm asking you actually about the questions and answers given in the compulsory examination in August last year. Do you understand that?---  
Yes.

10 And in those questions and answers, Mr Cresnar, you made it clear that you understood Mr Burke was happy with how things were going for Cloughcor because of how he perceived you were doing your role as an Ausgrid contract inspector?---Um, I don't know if those answers are accurate or not.

Well- -?---I don't remember certain things from back then.

Look, Mr Cresnar, you're giving false evidence now in denying the truth of the evidence that you gave in that compulsory examination in August of last year, aren't you?---No, I don't, I'm not giving false evidence, no.  
20

Look, isn't it the case, Mr Cresnar, that you perceived that Mr Burke thought you could influence what work he got and what payment he got for his work in your role as an Ausgrid officer?---Might have done. Not sure.

Well, that's the evidence that you gave in August of last year. You understand that?---I'm not, I'm not arguing with that.

And the only reason you would have given that evidence is because it's the truth. Right?---I don't remember it, yeah, could have been.  
30

There's no reason you would have made that up in your compulsory examination, is there, Mr Cresnar?---Don't think so, no.

And there's no apparent confusion on your part in the answers that you gave, is there?---There is at the moment, yeah.

No, in the answers that you gave in your compulsory examination in August of last year?---Were they towards the end of the examination or at the start?

40 You understand that it's not for you to ask questions here in this inquiry. Do you understand that?---No, I don't.

You are here to answer questions. Do you understand that?---I don't think that was ever put to me.

I'm sorry, what was not put to you?---That I wasn't able to ask any questions.

You understand that you are sworn to give evidence answering questions I put to you in this inquiry?---Right.

And you understand that it is an offence to fail to answer those questions?  
---Yes.

10 All right. Well, let's try again. When you gave evidence at your compulsory examination in August of last year you confirmed you believed Mr Burke was happy with how things were going for Cloughcor because of the way you were performing your role as an Ausgrid contract inspector?  
---Okay.

Now, were you or were you not giving false evidence in your compulsory examination in August of last year in that respect?---I wouldn't have, no.

No. In your compulsory examination in August of last year you confirmed that you thought Mr Burke thought you could influence what work he got and you confirmed that that was correct?---That probably was correct, yeah.

20 All right. So it is the case, is it not, that you perceived that Mr Burke thought you could influence what work he got. Correct?---Ah, say that again?

It is the case, isn't it, that you perceived that Mr Burke thought you could influence what work he got?---That might have been, yeah.

All right. Well, that's the evidence that you gave in your compulsory examination of August last year?---That's right.

30 And you did not give that evidence falsely. Correct?---Correct.

And so it must – it follows, isn't it, doesn't it, that it is the truth?---It does, yes.

All right. So, Mr Cresnar, you were taking Mr Burke's cheques because you thought he believed you could influence the work that he got for his company. Correct?---Seems like it, yep.

40 All right. You've been asked some questions by your representative here today about that telephone conversation in which you refer to "fudging the figures." You understand the one I mean?---Yes.

But as I understand your evidence you've suggested that you may not have been truthful in what you said to Mr Twomey about fudging the figures?  
---That's correct.

Is that what you're saying?---Yes.

But even if that's right, you conveyed to Mr Twomey that you fudged the figures on his behalf. Correct?---I'm not sure what I was saying.

Well, the conversation is quite clearly about fudging the figures for Murray Civil Works at the expense of Dunmain, isn't it?---Yep.

10 All right. So if you were lying to Mr Twomey in saying that you fudged the figures, Mr Twomey understood that you'd fudged the figures on his behalf and at the expense of Dunmain. Correct?---I don't know what Mr Twomey understood.

That's why you told him, on your version, you fudged the figures. Why else would you have told him that you fudged the figures, Mr Cresnar?---I don't remember why I told him I fudged the figures.

Look, the reason that you've fudged the figures – I'll withdraw that. There are two reasons you may have told him that I would suggest?---Okay.

20 Do you understand that?---Yeah.

One, because you did fudge the figures?---Right.

Two, because you wanted Mr Twomey to understand that you had fudged the figures on his behalf. Correct?---Right.

So which was it?---I don't remember why I said that.

30 Look, there must have been one – there must be a reason, Mr Cresnar?---I don't know what the reason was.

Well, look, would you accept that it must logically have been one of the two reasons I've just identified?---No.

What other reason would there be?---I don't remember the reason.

All right. So would you - - -?---I don't always do things logically either.

40 Mr Cresnar, can you think of any reason you might have told Mr Twomey that you had fudged the figures for Murray Civil Works' benefit and at the expense of Dunmain other than the two reasons that I've identified?---I think I was just talking shit on the phone like I said earlier.

Yes, but why were you talking the shit?---I don't know. I seem to do that sometimes.

All right. But can you think of any reason why you may have talked that shit other than the two reasons that I've identified?---Ah, no.

All right. Look, it's the case, isn't it, Mr Cresnar, that you must have either fudged the figures or wanted Mr Twomey to believe that you had?---I don't, I don't remember why I said it.

All right?---For what purpose.

Is it the case that if you told Mr Twomey you'd fudged the figures but you hadn't, you wanted him to believe that you had done something in your role as an Ausgrid officer for his benefit?---I don't think so, no.

10

Is it the case that you did that because you wanted to exploit that belief in order to obtain further benefits from Mr Twomey?---I don't think so, no.

Now you've also given some evidence today in answer to questions from your representative about your influencing variations for contractors. Do you recall that topic?---Yeah.

20

And as I understand your evidence you said that you've always done it for the benefit of Ausgrid. Is that effectively what you're saying?---I think I said the network, did I?

Yes, you may well have said that?---Yeah.

The benefit of the network?---Right.

Well, when you say the network, what are you referring to there, the cables themselves and the substations and that sort of thing?---That's correct.

30

Not people?---Well - - -

Things not people. Is that right?---Ultimately people benefit from a reliable network.

All right. You're talking about consumers of Ausgrid services. Is that right?---Well, I just do things to the best way possible for a reliable electricity network.

40

All right. So just so we're clear, you're saying that you exercised your role as an Ausgrid officer in determining variations for the benefit of the network. Is that right?---That's correct, yes.

But you recall, Mr Cresnar, that you were – I'll withdraw that. Earlier today you were asked by your legal representative about a telephone conversation between yourself and another Ausgrid officer in relation to a variation regarding where some cable was to – the length that a particular cable was to go to. Do you remember that?---That was a discussion about reducing the scope of a project.

Yes. The Ausgrid officer that you were talking to wanted to reduce the scope of the project. Correct?---That's right.

And are you saying that your conversation with that Ausgrid officer was for the purposes of the benefit of the network?---That's correct in part, yes.

In part. Well, why do you say in part?---It was also to the benefit of the low work levels that staff - - -

10 All right. So - - -?--- - - - in the CCL section had.

So partly for the benefit of the network?---That's correct.

So for the consumers of Ausgrid services?---That's right, yeah.

Is that what you're referring to?---Yeah.

And partly for the benefit of Ausgrid staff. Is that right?---That's right.

20 Look, Mr Cresnar, you know full well that you attempted to influence that Ausgrid officer's determination for the benefit of Murray Civil Works didn't you?---No.

Because shortly after the telephone conversation concerned you got on the phone to David Naughton of Murray Civil Works didn't you?---That's right.

You told him to get around to the job site quickly?---That's right.

30 So that Murray Civil Works could do the job before it was too late?---No. so that once the footpath has been saw cut then it would be unlikely that the scope of the project would be reduced thus giving the best result for the network.

So that's why you got on the phone to David Naughton at Murray Civil Works?---That's correct.

Look, isn't it the case that David Naughton then went around to the job site but found it was too late because the Ausgrid officer had already arrived?  
---Oh, I'm not sure.

40

Didn't he ring you up a little bit later and say in effect it's too late, they're, they're already there?---I thought I rang him up.

You rang him up and told him to get around, right?---Yeah, after that I thought I rang him back.

All right. In any event you had a further conversation with him, correct?  
---That's right.

And he told you it's too late, they're already there, it's already done?---I'm not sure. I know there was another conversation about it.

10 All right. Look, I want to suggest to you, Mr Cresnar, that the reason that you had those telephone conversations with Mr Naughton after your telephone conversation with your fellow Ausgrid officer is that you were concerned to ensure that Murray Civil Works got the benefit of the existing contract and that it wasn't the subject of a negative variation?---No, that's not correct.

You didn't have the benefit of the network in mind at all, Mr Cresnar?---I did.

Excuse me, Commissioner.

20 Now the last thing I'll ask you some questions about, Mr Cresnar, concerns the evidence you've given here today regarding whether contracts were to be awarded to the cheapest contractor as a general proposition. Do you understand that?---Yes.

It's the case isn't it that at least during certain periods that you were an Ausgrid officer that the position varied according to the value of the contract?---The position of what?

As to whether or not the contract was to be awarded necessarily to the cheapest contractor?---Ah, it wasn't like that years ago, no.

30 All right. It's the case isn't it that initially Ausgrid officers had discretion to choose a contractor according to a number of variables?---That's correct, yes.

A number of factors perhaps would be a more accurate way of describing it, would you agree with that?---Yeah.

Including such matters as current workload of the contractor?---Yes.

Availability of crew to carry out the particular kind of work?---Yeah.

40 Suitability of the contractor?---Yeah.

And an Ausgrid officer would make an assessment of those factors and then make a recommendation based upon that?---That's right.

And then the contract would be referred up to management for approval based on the contract officer's recommendations?---Yes.



All right. And it's the case isn't it that Contract Cable Laying officers were given information regarding the budget that design teams had allowed for a particular project, correct?---Sometimes, not very often.

10 All right. But I just want to confirm this arising from your evidence earlier today, you did not require – I'll withdraw that. You were not required to see the approval of design teams for, before a contract could be awarded were you?---We were required to send off specific information before the, the, the job would start and that included the price of the job and if there were issues with budgets and things then we'd get feedback to place the job on hold.

Was it the case that as a general proposition you did not get that kind of feedback?---Occasionally we did.

When you say occasionally give us an estimate of the proportion of contracts that you submitted to the design team that were in effect put on hold?---Five per cent.

20 Right. And it's the case isn't it that the design teams gave you information regarding the budget that had been allocated for a particular project that did that include matters such as variations?---Ah, sometimes, yeah.

Well, look, it's the case isn't it that the variations were approved on an ad hoc basis as a result of contingencies as they arose?---That's right, usually.

30 All right. So the design time budget could not accommodate the scope of all variations that might arise. Correct?---Usually they would estimate projects with contingencies in place for things like rock and moving trench alignments.

All right. So they accommodate- - -?---Which, which would accommodate for the, the realistic figure.

All right. But is it the case that variations were sometimes approved as a result of contingencies arising during the lifespan of a contract that design teams had not budgeted for?---Sometimes, yes.

40 All right. And it wasn't the case that you were required to seek the approval of the design team before making a recommendation in relation to the approval of a variation?---Ah, I'm not quite sure. I think we had to – I think the rules changed as well at some point in time.

Is it the case essentially what would happen is that you would make the recommendation for the approval but the design team would be informed at some stage about the recommendation?---Sometimes, yes.

Right. But it's not the case that you had to go to the design team and confirm it approved the variation before you made a recommendation to your management?---That was the case later on.

When you say later on, from what period?---Oh, I'm not sure, the last 12 months of my employment perhaps.

The last 12, okay. So from about April '13 to April '14?---Yeah, I don't know.

10

All right?---I don't really remember, but somewhere there.

Okay. Excuse me, Commissioner.

I have nothing further in re-examination.

ASSISTANT COMMISSIONER: Thank you. Well, that concludes your examination, Mr Cresnar, and you are now excused?---Thank you.

20

Thank you. You may leave.

**THE WITNESS EXCUSED**

**[12.36pm]**

ASSISTANT COMMISSIONER: Yes, Mr Gartelmann.

MR GARTELMANN: Commissioner, I call Jason Bastow.

30

ASSISTANT COMMISSIONER: Yes.

MR SUTTON: Commissioner, could I seek leave for Mr Cresnar just for this portion to remain seated next to me during the - -

ASSISTANT COMMISSIONER: Yes, that's fine.

MR SUTTON: Thank you.

ASSISTANT COMMISSIONER: Yes. Just take a seat, Mr Bastow.

40

MR CHEE: Assistant Commissioner, am I to understand that the previous section 38 declaration will continue to apply?

ASSISTANT COMMISSIONER: No, I'll have to make a new one as he's been re-summonsed.

MR CHEE: A new one. Very well. Right.

ASSISTANT COMMISSIONER: So I'll make that.

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection. There is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

10

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED**

20

ASSISTANT COMMISSIONER: Could the witness be sworn, please.

ASSISTANT COMMISSIONER: Yes, Mr Gartelmann.

MR GARTELMANN: Is your full name Jason Bastow?---Yes.

Mr Bastow, I want you to understand that you've been recalled to give  
evidence at this inquiry at the request of Mr Cresnar and/or his legal  
10 representative. Do you understand that?---Yes.

Just before handing you over for further questioning by Mr Cresnar's legal  
representative, when do you say you last had contact with Mr Cresnar other  
than in relation to attending here at the inquiry?---Ah, it was approximately  
in 2012/2013.

And what was the context in which that contact occurred?---Um, I rang Phil  
Cresnar to ask if I was owed any money on his projects.

20 Right. When you communicated with Mr Cresnar for that purpose, how did  
you do so?---Um, I called, at the time I was in, I think I was in Brisbane and  
I made the phone call to Phil Cresnar and said um, "Can we meet, I need  
information about," if I was owed any money on projects.

All right. Do you recall upon which telephone line of Mr Cresnar's you  
called?---Ah, the Ausgrid ah, phone.

Right. And how many times did you communicate with Mr Cresnar for that  
purpose?---Um, on two separate occasions.

30 And were those communications both by way of phone?---Ah, no. Um, first  
was by phone and then Cresnar had rung me back, I can't remember if I  
landed in Sydney or before I landed in Sydney, and said, "Look, I can meet  
you close to the airport."

And did you meet Mr Cresnar?---Yes.

Where?---Um, it was in a pub um, or like a tavern close to um, the airport  
between sort of his house and the airport.

40 Do you recall the name of the pub?---No, I don't, sorry.

Do you recall roughly when that meeting occurred?---Um, I'm pretty sure it  
was '13 but it was, yeah, 2013.

But you can't be more specific in relation to the month?---Um, no, sorry.

What conversation did you have with Mr Cresnar when you met with him?

---Cresnar said that he wanted to meet me and that's where he guided me to meet him. Um, I do remember it was a new-type pub or tavern sort of type arrangement. Um, and he said he'll talk to me about how much money I was owed on the Ausgrid contract.

But once you were at the meeting you spoke to him about that topic I take it?---Yes, that's correct.

10 Did you speak to him about any other topic?---Um, I do remember talking briefly about Thomas Lowes but I don't remember the content of it.

Did you talk to him about any other topic other than the money that you were owed and Thomas Lowes?---Um, no.

20 All right. And after that meeting did you have any further contact with Mr Cresnar?---Yes. After, after I met up with him and asked him what um, money was owed um, he contacted me and said can you meet me at the café opposite his place and he would um, have a, a report for me on how much money I was actually owed from Ausgrid.

And how did you communicate with Mr Cresnar for the purposes of that meeting?---Ah, he rang me.

Did you meet Mr Cresnar at the café?---Yes.

Did you have a conversation with him?---Yes.

30 And what was the effect of that conversation?---He showed me a document saying that Bastow Civil was owed money, that he document, that was only one page and he said to me that if you wanted further information that I would have to supply him or buy him a um, solar um, fan for his house.

Was there any further conversation?---No, I left.

So apart from the conversation in relation to money owed to you and in relation to the fan there was no other conversation?---Not that I recall.

Right. Did you have any contact with Mr Cresnar thereafter?---No.

40 All right. And is it the case that you have not had any contact with him until your attendance here at this inquiry after the meeting at the café?---I've had no contact with him since then.

Excuse me, Commissioner. Yes, that's the examination or further examination of this witness.

ASSISTANT COMMISSIONER: Yes. Mr Sutton.

MR SUTTON: Thank you, Commissioner.

Ransom, Mr Bastow, do you remember that word?---Yes.

Ransom, do you remember saying that in respect of Mr Cresnar?---Yes.

“I wanted nothing more to do with him, he was holding me to ransom.”  
Correct?---Yes.

10 The last time you were here, you remember saying those words?---Yes.

And you said those words were said in 2011, do you remember saying that?  
---I'm not, not too sure if it was 2011.

Do you remember saying those words, sir, that the last contact you had was  
in 2011, that was your evidence to this Commission?---I also told the  
Commission on a previous examination that I had contact with Mr Cresnar.

20 Didn't in this public inquiry did you?---Maybe I understood the question  
wrong.

So were you lying in the compulsory examination or were you lying to this  
inquiry?---I wasn't laying, I made a mistake.

You made a mistake?---Or I misheard the question.

2011 “He held me to ransom. I wanted nothing more to do with him.” Do  
you remember that?---Yes.

30 “30 per cent I increased my rates by because I wanted nothing more to do  
with him.” Do you remember that?

MR CHEE: I object. That wasn't his evidence. It was he had increased  
some of his rates by 30 per cent not his rates by 30 per cent.

MR SUTTON: Were there rates that you told us about that you increased  
by 30 per cent?---Up to 30 per cent.

40 Because you didn't want to get the contract to be back on the panel. Is that  
right?---That's right.

You could have just not applied to go back on the panel. Correct?---I could  
have.

You put them up by 30 per cent because you wanted to earn more money.  
That's the truth isn't it?---No.

So this man who is holding you to ransom you say, you just after earlier evidence, after two years decide to make contact. Is that the case?---Ah, yes.

How many, and I don't expect an exact number, but how many people do you think work at Ausgrid?---I'm not sure.

Hundreds, thousands?---I wouldn't have a clue.

10 It'd be at least hundreds wouldn't it just by sheer logic?---Well, it's a big area.

Right. Are you seriously - - -?---I wouldn't agree with hundreds.

I'm sorry, I cut you off. I apologise. Carry on?---I'm not too sure how many people work for Ausgrid.

20 Are you seriously suggesting the only person that you can speak to about money you think you're owed is the one person who is holding you to ransom?---I only spoke to Cresnar because I was heading back from Brisbane and he wanted to meet me when I got off the plane.

30 Sir, is that a serious proposition, the only person that you can speak to in Ausgrid to help you recover funds you say you're owed is Phillip Cresnar? ---I didn't see anything wrong with it. I simply just started with Cresnar and I was going to work my way through. Shortly after Evan Partridge contacted me and said to me that basically he'll work all the variations out, if there was any added or any money owed off any projects, and that he would send me an Excel spreadsheet and which he did and I had meetings with him.

So this is the man who held you to ransom. You could have gone to his manager couldn't you, you could have said I completed work, Mr Partridge, in 2010, it's now 2013 or 2011 and it's now 2013 but before we go into that actually, and you correct me if I'm wrong and I might be, did you get any work after the Kogarah building collapse?---Yes.

Much?---I'm not sure.

40 Very little, if any, wasn't it?---The Kogarah was under investigation. It had nothing to do with me at all.

No, answer the question I've asked you, sir?---I'm not sure.

It was very little, if any, wasn't it?---I'm not sure.

So it's probably more like three years you've decided and you go back to the one person you say is holding you to ransom. That's what you want this

Commission to believe?---I wasn't, I wasn't on the contract at the time, I wasn't nothing, nothing of it.

That's what you want this Commission to believe, that suddenly after nearly three years you want the one person who holds you to ransom to fix up moneys you're owed. That's the serious proposition you put to this Commission?---I didn't honour his demands.

10 Did you listen to my question?---Yes.

Will you answer that question?---It wasn't that at all.

Well, who else did you speak to?---Evan Partridge.

Why didn't you start at Evan Partridge?---I also spoke to an Indian fellow in  
- - -

20 No, answer the question I just asked you?---I also spoke to Evan Partridge -  
- -

No, answer the question I asked you, sir. Why didn't you start with Evan Partridge?---Well, shortly after I'd spoken to Cresnar, Evan had sent me an email and discussed with me - - -

No, answer the question I asked you?---I spoke - - -

It's very simple?---I spoke to - - -

30 Please listen. No, no, no. I'm going to repeat it for you. I don't want there to be any mistake. It's a very simple proposition. Why did you not start with Evan Partridge?---I don't know why.

No. Because you're making this up as you go along aren't you, sir?---No, I'm not. No.

You're lying to this Commission?---I've given that evidence to the Commission already.

40 You told us in the public inquiry that your last contact with this man was back in 2011 because you wanted nothing more to do with him. Nothing mistakable about that is there?---Nothing to do with the corruption, no.

Nothing mistaken. The question that was put to you by Counsel Assisting was when was your last contact and you said 2011?---I made a mistake.

And now you're trying to make up a story to cover for it?---I'm not making a story up.



You didn't tell the Commission earlier, that is in this public inquiry, that there was any discussion about Tom Lowe (as said) did you when put, when questions were put to you by Counsel Assisting?---I remember you asked me a question - - -

No, answer my question, sir?---No.

Really, please, it would be much quicker if you listen and answer what you're asked?---Can you say the question again?

10

When Counsel Assisting was asking you questions you mentioned nothing about Tom Lowe (as said) did you?---I don't recall.

I'll tell you you didn't, if you accept that from me, why are you now mentioning it today?---(No Audible Reply)

I'll tell you why, because you've heard it in propositions from me haven't you?---One proposition from you, yes.

20

And that's why you're now making up a story to fit that scenario?---No, I've told the Commission about Thomas Lowes already in the compulsory examinations.

Excuse me, Commissioner.

So isn't it the case that you attempted to get back on the Ausgrid panel in 2013?---We submitted a tender.

30

Is that a yes or a no?---Bastow submitted a tender.

Is that a yes or a no?---It wasn't my intention, it was the company's intention.

Very good, I'll accept that. Did you – sorry, I think we heard evidence and correct me if I'm wrong, that you're the sole director of Bastow Civil?  
---That's correct.

40

Did you determine that Bastow Civil Constructions would attempt to get back, on the panel, that is the 11kV panel, of Ausgrid in 2013?---My company and the project managers determined that.

Did the company pick up documents and create documents? I withdraw that. Who drives the company, sir, who pushes the company forward and manages the company, who is ultimately responsible?---Myself.

Right. And is it not the case that you perhaps in consultation with staff, that you, on behalf of the company ultimately decided that you would attempt to

have Bastow Civil returned to the 11kV panel in 2013?---We submitted a tender.

So that's a yes then?---The company submitted a tender.

Yeah. It was rejected, correct?---That's correct.

10 The last conversation that Mr – I withdraw that. The last time you were discussing work with Mr Cresnar back in 2011 had nothing to do with you submitting a tender to come on the panel in 2013 did it?---I never had a conversation with Cresnar as such at all.

Indeed. And yet the evidence is that he is aware in February of 2013 that you intended to go on that panel or that Bastow Civil Construction intended to make application to that panel?---Bastow re-tendered.

Did you listen to the question?---Can you say the question again?

20 Are you having problems hearing me?---I am significantly deaf, yes.

Very good. I want to suggest to you that in 2011 there were no conversations between you and Phillip Cresnar about you applying, that is Bastow Civil Constructions, to get back on the panel, the 11kV panel? ---I can't remember having a conversation with Phillip Cresnar.

There was no conversation about that, was there?---I can't remember.

30 Well, in 2013 – sorry, 2011, you were still on the panel, weren't you? ---Ah, coming to an end.

So are you saying in 2011 you had a conversation with Phillip Cresnar to say in 2013, Phil, me old mate, I'll be making an application for Bastow Civil to get back on the panel?---I don't recall having a conversation with Phil at all.

Because it never happened, did it, that's why you don't remember it? ---Well, I don't remember it, don't remember the conversation with Phil.

40 In 2013 in February the evidence of Mr Cresnar is that you meet him at a café opposite his home. You're aware of that?---Yes.

That you sent him a text at 6.50 in the morning on Tuesday, 19 February. You're aware of that?---Yes.

And that text, which probably should be shown, Commissioner, Exhibit 28 I think it is – from you says, "Soy flat white?" Now, don't answer that because a document is about to be shown to you?---I can see that.

Do you agree you sent that text?---Yes.

And on that morning you and he met in the café. Do you agree with that?  
---Yes.

And you said to him words to the effect of, I'm going to try and get on the panel again and I want you to help me?---No.

10 And he said words to you to the effect of, you'll not get back on because you've not fixed the defects on a job on the Central Coast?---No.

You're aware of a job on the Central Coast that existed at that time that you were involved in?---I'm aware of a project, yes.

And that was a project where you were negatively reported upon and there were defects that needed remedying. Do you recall that?---Yes.

20 And you at that time, that's 2013, had still not remedied the defects. Do you agree with that?---Yes.

You said to Mr Cresnar words to the effect of, I want you to fix up the defect problem for me by whatever means are required, sorry, by whatever methods or means are required. Do you recall that?---That's absolute bullshit, no.

I take it that's a simple no?---No.

30 And he said to you words to the effect of, there is nothing I can or will do?  
---We never had the conversation.

So just so we're completely clear, are you saying there was no conversation on that morning about you trying to get back on the panel?---No.

You paid for the coffee that morning?---I um, yes.

Did you use a card or a credit card or a debit card or cash, how did you pay?  
---I can't remember.

40 Just so we're explicit and clear with each other, I want to suggest to you there was no conversation at the meeting or indeed at any other, about you asking Mr Cresnar for help in recovering moneys you say or claim were owed by Bastow Civil?---The conversation was completely based on if I was owed moneys to Bastow Civil.

There was no spreadsheet that was provided to you?---Yes.

Do you have a copy of that?---No.

Cat ate it?---Sorry?

What happened to it?---Don't know.

So let me get this clear. The man who holds you to ransom is the only person you approach about moneys owed. Correct?---I approached- - -

ASSISTANT COMMISSIONER: I don't think that's fair.

10 MR SUTTON: Oh sorry, no, I withdraw that. Was the first person you approached?---I don't think it was a first person, I think Evan Partridge and also there was an Indian chap that I spoke to at Ausgrid as well.

So now we've got somebody else you've spoken to before?---I mentioned that to you before but I was going to start speaking to all of them then Evan Partridge suggest that he would work everything out and notify and let me know.

20 So why do you need to – all right, let's reverse the system of questioning then. If you've got Evan Partridge who's the manager of the area, why do you need to speak to Mr Cresnar at all?---This was shortly after.

No, no, answer the question. You've just told us - - -

ASSISTANT COMMISSIONER: Well, sorry, we need to understand what he's saying before you can cattle with it. Are you saying you spoke to Partridge before or after you spoke to Mr Cresnar?---I spoke to Cresnar first and Partridge after.

30 All right.

MR SUTTON: Sorry sir, I understood you from the very beginning to say you spoke to Mr Cresnar first. Then you said no, I spoke to Mr Partridge and an Indian gentleman first and now you're back to Mr Cresnar, what is it?---I spoke to Mr Partridge after.

40 Right. All right. Well, as I say, just so we're clear with each other I suggest to you there were no conversations with Mr Cresnar nor spreadsheets in relation to debts you claim owed to Bastow Civil Constructions?---There was conversations, there was a spreadsheet.

And they certainly didn't occur either in the description that you gave relating to the café or in a pub halfway between the hotel – sorry the airport and Mr Cresnar's home?---Yes, there was conversations about (not transcribable)

When you failed – that is – your company failed to get back on the Panel, did you receive a document or a rejection notice or something telling you you'd been unsuccessful?---We had a meeting.

Did you receive a document – I'll asking again.---I'm unsure, I can't remember.

But you say there was also a meeting in person with someone.---Yes.

10 Who was that with?---John Mettam.

And was that around June or July time 2013?---No, it was 2011 I think.

2011?---Yes. I would have evidence of emails, I can go back to my emails and find it.

So we've been talking about you resubmitting an application, or submitting I should say, an application to get on the panel in 2013, do you understand that?---Yes.

20

And you acknowledged earlier that you did in 2013, make application to get on the panel, do you remember that?---I can't remember if it's in 2013 or 2012.

No, no, just think about the evidence you gave this morning, sir.---Okay.

You agreed with me, you made application on the 11kV Panel on 2013, did you or did you not?---I (not transcribable) suggest, I'm not too sure whether it's 12 or 13 I made an application.

30

Well hang on, a minute ago it was 11, which date do you want to pick sir?---I'm not too sure. I made two applications.

Are you making this up as you go along?---No, I'm wondering if you're making it up.

Are you intentionally trying to be difficult?---No, I'm not, I'm wondering if you're making it up as you go along.

40 Oh sir, that's a very dangerous path, I've got my written instructions thank you.---Okay.

The record will speak to your answers though I'm pleased to say. 2013, you applied to get on the 11kV panel, you were rejected. I suggest you received a document or some form of notification around the June or July time, what do you say to that?---I would have received a notification.

Good. And it was about the time, shortly after you received the rejection notice – I’m calling it a rejection notice, it may have some other name – you understand that?---Ah hmm.

Okay. But about the time you received that notice you got in contact with Mr Cresnar?---I’m unsure of when I received the notice, I’m unsure.

10 You met with him sir, firstly, at a bar for a very short period of time but then moved to the Vicinity Pub, the Vicinity Pub is on the corner of Bourke Road and Collins Street Alexandria. Do you recall that?---No.

But you do recall a pub at some time?---Yes.

So could it be that your memory as to this pub and its location is as flaky or difficult as it is in relation to dates when you did or didn’t apply for panels? ---I just remember it was in – within the Alexandria area.

20 Okay. So now we’re agreed you met in a pub and it was in the Alexandria area?---It was between the airport and his place.

Okay. I suggest there, sir, that you bought Mr Cresnar a beer?---Maybe shouted a round.

And you bought yourself a beer?---Possibly, yes.

And you also bought some food, perhaps an antipasto place?---We had food but I’m not sure who paid for it.

30 I suggest you paid for it?---I don’t know. I can’t remember.

Well, isn’t that the import of your evidence, sir, that you pay for everything when it comes to Mr Cresnar?---Prior to that.

So you say suddenly he became charitable and he decided he was going to shout the bar for your benefit. Is that what you’re saying?---I can’t remember.

40 No. Because the truth of the matter is, sir, you were there trying to court him weren’t you?---No.

You were trying to persuade him to your way of thinking and part of that process was to buy him beer and food?---No.

During the course of that meeting you made mention of a person by the name of Frank Malkoun. Do you recall that?---I’m not sure if I made mention of his name.

You know who he is though don’t you?---Yes.

And you know that he was an employee, or maybe still is to my knowledge, I don't know, of Ausgrid?---He wasn't an employee he was a contractor.

Excuse me one second. But whatever, his principal place was at Ausgrid as far as you were concerned?---I'm not too sure if he was still working at Ausgrid at the time.

10 Okay. In the course of conversation, and sorry, can we accept that there was conversation between you and Mr Cresnar at a pub in Alexandria at some time?---Yes.

Well, for the purposes of what I've put to you, I say the Vicinity pub, Alexandria which you may or may not accept or may not remember, but you said words to the effect of that there was an ICAC inquiry going on investigating contractors at Ausgrid?---No, never had the conversation.

20 And you asked Mr Cresnar if he had assisted or helped anyone get onto the panel?---No.

And you told him that [REDACTED] was the source of that information? ---I don't remember that at all.

And you asked Mr Cresnar if he knew anyone else – sorry, if he knew anyone who was engaging in corrupt practices?---No.

And Mr Cresnar said words to the effect of he was unable to help you. He finished his drink and left?---That wasn't the conversation at all.

30 What do you say was the conversation?---The conversation was asking was (not transcribable) any money to Bastow Civil. I do not understand why you suggest that Cresnar had anything to do with renewal of the contract when he didn't have anything to do with renewal of the contract so why would that conversation ever take place.

To quote Counsel Assisting you're here to answer the questions, I'm here to ask them?---That's right. But I just don't understand - - -

40 And just to assist you, it's never been suggested Mr Cresnar could affect those contracts?---As far as I knew it was a Board - - -

Do you understand that?---As far as I knew it was a Board set up.

Do you understand that?---Yes.

Right. So I want to go to another topic. In the course of your evidence in this public inquiry you have suggested that certain receipts or invoices were

amended because Mr Cresnar wanted them so, and I take your mind immediately to the De Jong car invoice. You remember that one?  
---Ah hmm.

Remember that evidence?---Yes.

And it was your suggestion that it was amended at his request and he suggested he use it as a tax write off. Do you remember that?---No (not transcribable) conversation.

10

So that evidence wasn't given, he didn't suggest to you that you use it as a tax write-off?---No.

Okay.

MR CHEE: Assistant Commissioner, if I may interject, I think we are going over ground which has already been questioned and put to Mr Bastow in the previous occasion that he was called to give evidence. I'm not entirely sure where this is going.

20

ASSISTANT COMMISSIONER: Well, there's a part of I think what, it wants to be put that that was not put which was about the cheque and the cash.

MR CHEE: And it's my understanding that Mr Sutton had instructions about that and did put certain propositions to Mr Bastow.

ASSISTANT COMMISSIONER: Well, whatever he put he didn't - - -

30 MR CHEE: He's having a second bit at the cherry.

ASSISTANT COMMISSIONER: - - - put that and I do think your client needs to be given an opportunity to respond to that so I will allow this line of questioning. Yes, Mr Sutton.

MR SUTTON: Thank you, Commissioner.

Sir, in the same vein you will recall being shown an invoice DJW Projects?  
---Yes.

40

Do you remember that? And you gave evidence that you know despite what the face of the document says that that was a sound mixer?---Yes.

In fact the face of the documents says "computer hardware" doesn't it?  
---Yes.



So again I put to you that that description was put on the invoice at your behest so that you could use it for your tax claim benefit purposes?---No, that was Cresnar.

You ended up with the invoice?---Yes.

You ended up with the invoice for De Jong?---Yes.

10 So I'll ask you about one other document then I'll ask it to be put in front of you. You recall buying for Mr Cresnar a Sony KDL-52XBR computer monitor?---Yes.

Otherwise known as a Sony Bravia TV?---Yes.

At that purchase and indeed the purchase of the sound mixer you were present, correct?---Yes.

What is – sorry, I withdraw that. Is the address 49 South Creek Road, Stanes (as said) Park known to you?---Yes.

20 What address is that?---It's a business address.

Business address of who?---Bastow Civil.

Sir, I suggest to you that you had this – sorry, I withdraw that. Perhaps if he can be shown page 1327 on the screen please.

So you can see that the address that's been removed is Mr Cresnar's or was Mr Cresnar's address, you can see that's been struck out, lines through it? ---Yes, yeah.

30

And the address that has been inserted is 49 South Creek Road, Stanes (as said) Park?---That's correct.

And that is your business address as you've said?---Yes.

And you had that address inserted there didn't you?---Yes.

40 And again I suggest to you, sir, having reached that agreement that that was the purposes of you claiming things on your tax?---No, that was quite simply Phil wanted the monitor delivered to my place so I, he wanted me to deliver it to his place.

Hang on, let me get that right?---It was completely a change of address.

You go with him to buy it, yes?---That's correct.

They put his address on there, yes?---Yes.

But you say he says no, I'd rather have your address put on it so you can deliver it to me?---The monitor was a quite large monitor if I remember and it couldn't fit into the vehicle.

Well, let's call it what it was, it was a TV screen, it was a television, it was a Bravia, Sony Bravia television wasn't it?---Yes.

Okay. So it's not a monitor, let's not muck around?---Well, that's what they put on the invoice.

10

At your request, sir?---I don't think so.

With your address, sir?---I wrote the address on there for delivery.

So that's your handwriting. Why wasn't – sir, I suggest to you these three invoices that you have been shown have been doctored both as to the descriptions and the addresses for your benefit?---No.

20 You attended Mr Cresnar's home – I withdraw that before we go there. Your suggested conversation at the café, and I apologise (not transcribable) Commissioner, was that he showed you one page of a document that you don't have. Agreed?---I'm going to try and find it now.

Didn't think it was worthwhile bringing it before?---Well, I gave a lot of evidence to ICAC and some of it hasn't been tendered.

30 All right. But anyway, in relation to that you say there was a one-page document that seemed to have more pages before it was complete. Is that right?---There was a one-page document of a summary.

And you say that Mr Cresnar will give you the, sorry, said he would give you the balance of the document if you bought him a fan?---A solar-powered fan.

A fan. Yes?---Yes.

40 We're talking about a fan that – I don't know, is it something that goes on the ceiling or is it on a pedestal or how does it work?---He explained to me it was a ceiling fan.

Okay. You've been to his house on more than one occasion, haven't you? ---Yes.

You'd know it was fully air conditioned?---How would I know that?

Well, you've been there in the summer and in the winter, you've been there on more than one occasion. There's no need for a fan, is there?

ASSISTANT COMMISSIONER: Well, I presume a solar-powered fan would be for outside, wouldn't it?

MR SUTTON: Well, the evidence- - -

ASSISTANT COMMISSIONER: No other way it would work.

MR SUTTON: The evidence is from this witness that it goes on the ceiling on the inside, presumably the ceiling on the inside, unless there's a skyhook.  
10

ASSISTANT COMMISSIONER: Could be in a courtyard.

THE WITNESS: The fan that was described to me was to remove heat out of the ceiling, so it was solar.

ASSISTANT COMMISSIONER: So it would be what, up in the roof?  
---Yes, that's what he wanted.

Oh, like one of those- -?---Like a whirlybird.  
20

Yeah, I see?---It was solar-powered at a temperature or something.

MR SUTTON: In case I missed it before, I put it to you that is another work of fiction?---It's the truth.

Yes, thank you, Commissioner.

ASSISTANT COMMISSIONER: Mr Sutton, I think it still hasn't been put to this witness that the \$20,000 cheque- - -  
30

MR SUTTON: Oh, you are correct. I'm sorry.

ASSISTANT COMMISSIONER: Somebody needs to put – he may be – are you aware of that evidence?

MR SUTTON: I'll put it to him now, Commissioner, if I may.

ASSISTANT COMMISSIONER: All right. Well, shortly.

MR SUTTON: Yes, very shortly. I apologise. I thought I got everything yesterday but obviously I'm mistaken.  
40

ASSISTANT COMMISSIONER: Yes.

MR SUTTON: In relation to the motor vehicle, the Saab that was being fixed by De Jong in Canberra, this is what we're talking about now. Okay?  
---Ah hmm.

I want to suggest to you, sir, that you had a conversation with Mr Cresnar where he told you what work he was going to do to his car. Do you recall that?---No.

So he never told you what he was doing to his car?---He just said he was getting performance parts for his car.

10 I suggest to you there was a conversation with him about the car and about him fixing it up and you saying, oh, I'm into rally driving as well, and you had a manly conversation about fast cars and bits and pieces?---I never said I was into rally driving.

Didn't you tell the Commission before you had a car, you were into motor sports?---Team motor sports.

What kind of driving was it?---As in circuit racing.

My apologies. Other than that, other than me getting the division of types of racing confused, do you agree with the rest of the proposition?  
20 ---I don't think the conversation was at the same time, we spoke about my motor racing on several occasions.

Okay. I suggest to you that when he told you how much it was going to cost, you said to him words to the effect of, well, hang on, I need some money, so how about I write you a cheque for the cost of the car, you give me cash and I'll get the tax write-off?---That was never said. That's a lie.

I suggest to you that ultimately what happened was you wrote the cheque for \$25,034 or \$25,036 and he gave you \$20,000 in cash which you – well  
30 first of all, I'll put that proposition to you?---Never gave me any money.

And you said that that money was what you wanted for spending money that your wife wouldn't know about?---Never took place.

I think that covers it Commissioner. Thank you.

ASSISTANT COMMISSIONER: Yes, thank you.

40 MR SUTTON: And I'm sorry I thought I got that evidence.

ASSISTANT COMMISSIONER: Yes Mr Chee.

MR CHEE: I'm very mindful of the time and I'll be very brief.

ASSISTANT COMMISSIONER: Yes.

MR CHEE: Mr Bastow, you do have a hearing impairment don' you?---  
Yes.

Could you elaborate on that?---My left ear doesn't work at all and I have  
loss of hearing in my right ear.

10 Right. You were asked about when you had last dealings with Mr Cresnar,  
did you have any – and that was a question which I asked you – did you  
have any difficulties hearing that question?---Um, I do find you talk a bit  
quietly, that's all.

I'd ask for the lifting of a suppression order in respect of a compulsory  
examination from January of 2014 page 78. It relates to the issue of when  
Mr Bastow last had dealings with Mr Cresnar.

ASSISTANT COMMISSIONER: Yes, I release you from that suppression  
order for page 78.

20 **LIFTING OF SUPPRESSION ORDER IN RLEATION TO MR  
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MR CHEE: Mr Bastow, I'm going to read a section to you, question, when  
was the last time you had any dealings with Cresnar? Answer, As far as I  
remember 2009 may be 2010, that's about it. Question, Okay, And you –  
Answer. I did have one more, I actually requested, I phoned Cresnar and I  
30 asked him were we owed any money off the contract on these projects. That  
would have been early last year. Question, You asked him what? Answer,  
Were we owed any money in variations on the, on any projects that we did  
for him. Question, Right, okay. So that was one conversation you had with  
him. Answer, Yes. Question, And that was some time last year. Answer,  
Yes. Do you recall that evidence?---Yes.

Was that truthful evidence?---Yes.

And that accords with your evidence today?---Yes.

40 Thank you.

ASSISTANT COMMISSIONER: Thank you Mr Chee. If there's nothing?

MR GARTELMANN: No, there's nothing.

ASSISTANT COMMISSIONER: Good. All right. Thank you, that  
concludes your evidence. You're now excused.

**THE WITNESS EXCUSED**

**[1.23PM]**

MS DAVENPORT: Commissioner, I've just noticed that the document that was shown to Mr Cresnar which became Exhibit 29 is still with me.

ASSISTANT COMMISSIONER: Oh Ms Davenport, we better get that. Thank you. Mr Gartelmann, if, if we resume, when do you think we need to resume to finish is what I'm asking you?

MR GARTELMANN: Some time before now.

ASSISTANT COMMISSIONER: All right. Look. I think we'll resume at 2.00pm.

MR GARTELMANN: Thank you Commissioner.

20 **LUNCHEON ADJOURNMENT**

**[1.23PM]**