

Wednesday 3 June 2015

Investigation into allegations that an Ausgrid engineer corruptly solicited and accepted benefits from Ausgrid contractors and subcontractors

ICAC FINDINGS

The ICAC found that Phillip Cresnar, Jason Bastow, Dennis Twomey, Eamon Burke, Patrick Miskelly, John Madden and Fergal McGann engaged in corrupt conduct as follows:

Phillip Cresnar, by:

- accepting benefits to the value of at least \$97,756 from Mr Bastow
- accepting \$2,500 from Mr Madden and Mr McGann

as an inducement or reward for Mr Cresnar exercising his public official functions as an Ausgrid employee to show favour, or not to show disfavour, to their businesses in relation to their work for Ausgrid

- accepting benefits from Mr Twomey to the value of \$50,506, the use of a Bunnings trade card and the use of a Murray Civil company car
- accepting four cheques from Mr Burke which Mr Cresnar used to purchase goods for his personal use to the value of \$99,327
- accepting two international airline tickets worth a total of \$2,652.41 from Mr Miskelly knowing that these benefits were intended to influence Mr Cresnar to exercise his public official functions to show favour, or not to show disfavour, to their businesses in relation to their work for Ausgrid.

Jason Bastow, John Madden and Fergal McGann by providing the above benefits to Mr Cresnar in the case of Mr Bastow and Mr McGann, and in the case of Mr Madden by being a party to an agreement whereby Mr McGann gave the \$2,500 to Mr Cresnar, as an inducement or reward for Mr Cresnar exercising his public official functions as an Ausgrid employee to show favour, or not to show disfavour, to their businesses in relation to their work for Ausgrid.

Dennis Twomey, Eamon Burke and Patrick Miskelly by providing the above benefits to Mr Cresnar knowing that these benefits were intended to influence Mr Cresnar to exercise his public official functions to show favour, or not to show disfavour, to their businesses in relation to their work for Ausgrid.

ICAC RECOMMENDATIONS

The ICAC is of the opinion that the advice of the Director of Public Prosecutions should be obtained with respect to the prosecution of:

- Phillip Cresnar for offences of receiving corrupt commissions or rewards pursuant to section 249B(1)(a) of the *Crimes Act 1900* in relation to the benefits he received from Messrs Bastow, Madden and McGann; offences of receiving corrupt commissions or rewards pursuant to section 249B(1)(b) of the *Crimes Act* in relation to the benefits he received from Messrs Twomey, Burke and Miskelly; attempting to procure the giving of false testimony at a compulsory examination or public inquiry contrary to section 89(a) of the *Independent Commission Against Corruption Act 1988* in relation to a letter sent to Mr Bastow; giving false or misleading evidence at a compulsory examination on 17 April 2014, contrary to section 87(1) of the ICAC Act, in relation to his evidence that he had done nothing in exchange for the benefits that were provided to him by Mr Bastow
- Dennis Twomey for: offences under section 249B(2)(b) of the *Crimes Act* in relation to the benefits he supplied Mr Cresnar; and an offence under section 114(1) of the ICAC Act of disclosing information about a Commission summons that was likely to prejudice a Commission investigation
- Eamon Burke: for offences under section 249B(2)(b) of the *Crimes Act* in relation to the four cheques he supplied to Mr Cresnar; and an offence under section 112 of the ICAC Act for disclosing information about his attendance at a compulsory examination

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- Patrick Miskelly for offences under section 249B(2)(b) of the Crimes Act in relation to the airline tickets he supplied to Mr Cresnar
- John Madden and Fergal McGann each for an offence under section 249B(2)(a) of the Crimes Act in relation to the \$2,500 payment to Mr Cresnar.

CORRUPTION PREVENTION

The Commission has made three corruption prevention recommendations to Ausgrid as follows:

- that, in the short term, Ausgrid tightens processes within the existing system for contract cable laying work orders to reduce existing corruption opportunities. In this regard, Ausgrid should focus on processes for approving variations, tightening the scope and budget for work order contracts, and reducing opportunities for individual officers to control key tasks, including the selection of contractors
- that Ausgrid improves its data management and retention systems. Data capture should, as a minimum, be able to provide Ausgrid with the capability to establish unusual expenditure patterns, improve the accuracy of estimates for work orders, capture information on environmental and site conditions to inform project design and budgeting, and help to establish cost benchmarks
- that Ausgrid considers and adopts the optimum contracting model to deliver contract cable laying work. Central to this consideration should be the alignment of Ausgrid and contractor motivations, Ausgrid's current operating environment, and the efficiency and effectiveness of any such contracting model.

BACKGROUND

In March 2013, the Commission commenced an investigation after receiving an anonymous complaint about Mr Cresnar, an engineer with the Contract Cable Laying division of Ausgrid. The complainant made a number of specific allegations relating to Mr Cresnar's conduct, including that he received cash and other benefits from Ausgrid contractors in return for favouring those contractors, and that he disclosed commercially sensitive information.

The Commission held a public inquiry, as part of the investigation, over six days from 19 to 27 January 2015. Assistant Commissioner Theresa Hamilton presided at the public inquiry, at which 12 witnesses gave evidence. The report is available on the ICAC website at www.icac.nsw.gov.au.

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