



**QUEENSLAND HEALTH PAYROLL SYSTEM
COMMISSION OF INQUIRY**

Addendum Statement of Witness

<i>Name of Witness</i>	James Donaldson Brown
<i>Date of Birth</i>	Known to the Commission
<i>Address and contact details</i>	Known to the Commission
<i>Occupation</i>	Executive Director, Shared Systems, Queensland Shared Systems

I, JAMES DONALDSON BROWN, state as follows:

BACKGROUND

1. This statement is provided as an addendum to my earlier statement dated 21 May 2013.
2. I was shown material that I did not previously have access to after signing my earlier statement, including the statement of Mr Jeremy Charleston from Clayton Utz and a file note of Mr Charleston regarding a telephone conversation he had with me on 19 August 2010 (document 126 in the Settlement Bundle).
3. I would like to respond to some of the matters discussed in those documents.

CHARLSTON FILE NOTE OF 19 AUGUST 2010

4. I recall the conversation described in Mr Charleston's file note of 19 August 2010, which is document 126 of the Settlement Bundle. I have set out below the contents of that file note of 19 August 2010 and I have responded to the best of my recollection as to what parts of that file note accord, or do not accord with my recollection of the telephone discussion on that date.
5. I have utilised the numbering system from the file note, and responded to the contents of each number paragraph item individually.

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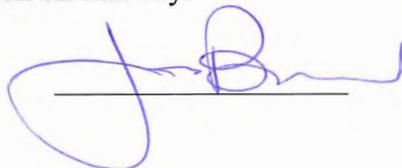
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6. Before responding to each paragraph, I need to make some general comments about the context of the conversation that Mr Charleston and I had. I make more detailed comments about the events leading up to the telephone conversation further in this statement.
7. The file note is probably the end of several meetings over quite an intense period spanning a short number of days. I can't exactly remember all the meetings but there would have been quite a number, spanning 2 to 4 days preceding 19 August 2010.
8. One of the drivers for some decisions around this date was a concern that the State's right to terminate the contract as part of the negotiation process was going to expire and I think it is fair to say there was some frustration expressed by both Clayton Utz and the Director-General and others as to the level of engagement by IBM in participating in the negotiation process.
9. It is my view, and a view that I think I would have expressed to Mr Charleston and others at some stage that it was a negotiation tactic of IBM to draw out the negotiation process so as to exhaust the period in which the State of Queensland had rights to terminate the contract under the current process. IBM's hand in the negotiations would have been strengthened once this period had expired.
10. I suspect that I expressed this view to the Director-General, Mr Grieson and Ms Natalie McDonald, the Associate Director-General and others.
11. As to each paragraph in Mr Charleston's file note:

James Brown rang JCC at 5.30 pm.

I recall a telephone conversation with Mr Charleston in the late afternoon of 19 August 2010. I believe I had more than one telephone conversation with Mr Charleston ~~on that day~~.

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1. ***He said that he had just come back from a meeting with the Director-General (Mal Grierson) and the Acting Director-General (Natalie MacDonald).***

This follows the 2½ hour meeting that the DG and ADG had with IBM from 11am today.

They instructed him on the outcome of the meeting and on what he is to do as a result.

That is an accurate summary of what I said to Mr Charleston.

2. ***The DG spoke to Ken Smith (Premiers) following the meeting with IBM.***

They have determined that the State has no interest in termination of the contract with IBM. The State wants IBM to finish the contract.

There is not enough confidence in Corptech to support the system. IBM emphasise this opinion to the DG.

IBM told the DG that IBM would sue the State and those threats were taken seriously by the DG.

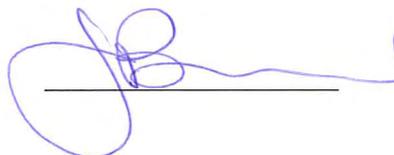
That is an accurate summary of what I said to Mr Charleston. By way of explanation, there are multiple sources for this statement that not only be attributed to IBM. IBM obviously in my view indicated that Corptech at the time wasn't ready to take on the support and maintenance of the system and so if the State chose to terminate the contract, the State would be significantly exposed and should the payroll fail, Corptech would not be able to support it.

3. ***James/Corptech has been instructed to do a deal with IBM around the following terms. Clayton Utz does not need to do anything.***

By 11.00 am tomorrow James is to provide Natalie with a draft terms sheet setting out what he has been told are the key principles discussed with IBM. The DG is to provide the key principles to Doak at IBM and IBM is to confirm them by cob tomorrow.

James will draft the key principles over night and send them to me and Swinson to review for any additions by 10am tomorrow.

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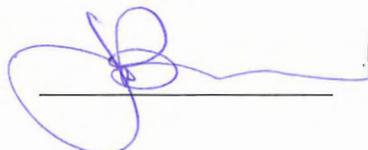
That is generally accurate as to what I said to Mr Charleston. but it requires some further explanation to give context.

In respect of 'James, CorpTech has been instructed to do a deal with IBM around the following terms. Clayton Utz does not need to do anything' - I think the context of that is Clayton Utz were originally engaged as commercial advisors on the basis we were moving into a fairly heavy duty negotiation process and the State would probably be advantaged by retaining someone to assist us during the negotiation process. Obviously the outcomes of the meeting that the Director-General, Mr Grierson and Natalie MacDonald had with IBM that day a deal in principle to settle had been constructed, and so therefore the ongoing need for that level of commercial expertise and negotiation according to the Director-General was no longer required.

4. The key principles are as follows:

- A. IBM to fix the list of defects at IBM's cost. There are currently 180 defects. There is no time limit specified for the fixes. If IBM takes until March 2011 then so be it.**
- B. All notices by IBM and so the State are to be removed from the table.**
- C. A line is ruled under the disputes. JCC said that from the State's perspective this is better positioned as electing to affirm the Contract.**
- D. The State will pay IBM \$1.7 million under SOW50.**
- E. The State will also pay \$1.85 million under SOW8. However, this will be paid in tranches around IBM's delivery of defects fixes.**
- F. There will be no damages clause. There is no security for IBM's performance, except that IBM is to specify how many fixes it can perform per month.**
- G. Corptech will prioritise the defects to be fixed.**
- H. It is agreed that IBM can perform new work. This will be costed separately. An independent third party is to cost and verify all new work. New work will be under new Statements of Work. The third party will do independent assessment of IBM's effort and cost.**

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- I. **IBM will provide extended support at IBM's cost until the defects are fixed.**
- J. **There will be obligations on IBM regarding transition and skills transfer to Corptech by the time IBM completes the fixes of defects and transitions to Corptech.**
- K. **The terms of settlement are confidential. They cannot be discussed with anyone except James Brown and Margaret Berenyi. John Beeston does not know about the terms and this cannot be discussed with him.**
- L. **The Cabinet Sub-Committee (CBRC) is to approve the revised position.**
- M. **The settlement terms are to be positioned as the culmination of a negotiation process.**

That is an accurate summary of what I said to Mr Charleston. I believe that I would have had a list of key principles for the terms of settlement in front of me and I would have read those term to Mr Charleston. He has, to my recollection, accurately recorded what I said were to be the terms of the settlement.

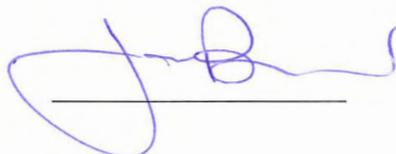
- 5. **I queried what will happen if IBM does not perform. James said there is no security for performance and IBM has a free rein.**

I don't believe this is an accurate note of what I said to Mr Charleston in respect of IBM's obligations.

IBM could not have had "free rein" as I had just outlined the key principles, and Mr Charleston has recorded in 'E' that: *'The State will also pay \$1.85 million under SOW8. However, this will be paid in tranches around IBM's delivery of defects fixes'*. If IBM had failed to deliver on the defect fixes, IBM would have been liable. There would not have been "free rein". Mr Charleston has misdescribed the nature of our telephone discussion in this respect. The term "free rein" is not a term that I would use.

- 6. **James said, confidentially, that this is a political decision. The politicians are extremely nervous and driven by the fact that if IBM is removed then there would be nobody to blame for the payroll problems [outside Government].**

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James said his personal view is that this is the worst possible outcome. IBM played hardball and got what it wanted.

James said that the real issue is that the DG was concerned about himself and the Minister. There will be an election in 18 months and they are very concerned about anything being public [in the health area].

I will address each of the paragraphs of this number individually, beginning with the last paragraph.

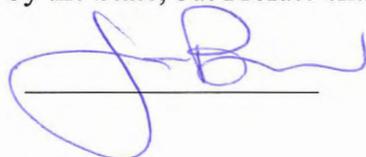
I completely refute in the strongest terms the accuracy of the last paragraph. As a senior public servant I would not comment on matters such as that to an external party or anyone, and I do not recall saying either the words in the last paragraph, or any words that could be misunderstood to mean what has been attributed to me in the last paragraph.

As to the second paragraph, being the one referring to my “personal view”, that is partially correct. I believe that I expressed the view that I was disappointed that the Government had chosen not to terminate the contract.

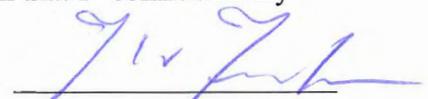
I believe I also had a conversation with him saying that the strongest commercial leverage that the State had was the right to terminate the contract, and therefore hold IBM accountable. I believe I said that in forgoing the right to terminate the contract it would be extremely difficult for the government to negotiate in the ensuing period terms and conditions suitable to the State. So I suppose what he’s done is in my view is summarised my words, and then colloquialised them in terms that he was comfortable with.

As to the first paragraph, I refute entirely that I said “*if IBM is removed then there would be nobody to blame for the payroll problems*”. It accept that it was possible that I may have made reference to political considerations needing to be taken account of by the State, but I refute entirely the imputation that I “confidentially”

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told Mr Charleston that it was a political decision. And I certainly did not say that the politicians were "extremely nervous" and driven by certain "facts".

I believe that Mr Charleston has over inflated the nature and contents of our telephone discussion on this point.

7. James instructed me not to respond to Blakes at all.

That is, generally speaking, an accurate summary of what I said to Mr Charleston, although the context of the statement needs to be kept in mind. I refer further in this statement to the context of the telephone call between Mr Charleston and myself, and Mr Charleston's earlier conversation with a lawyer at Blake Dawson.

8. CBRC will consider the proposal on Monday. James has to prepare the submission to CBRC tomorrow.

That is an accurate summary of what I said to Mr Charleston.

9. James will talk to Mallesons about drafting the contract variation to implement the terms. They are best placed to do this.

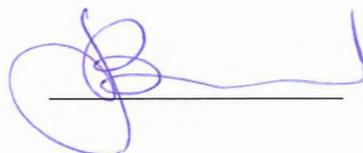
That is an accurate summary of what I said to Mr Charleston.

**10. By 11.00 am tomorrow James has to have the paper to Natalie MacDonald/.
James will send it to me and Mallesons for review and see if there is anything additional to be added.**

That is an accurate summary of what I said to Mr Charleston. Both I and Mr John Beeston drafted the document to send to Mallesons and Clayton Utz for review.

11. The DG will provide the paper to Bill Doak at IBM and have him affirm the principals [sic] by close of business tomorrow.

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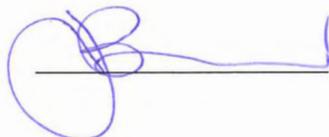


I cannot comment upon the accuracy of this notation. I simply do not recall it being said, but I accept that it may have been part of the telephone discussion between Mr Charleston and myself.

CONTEXT OF THE TELEPHONE DISCUSSION WITH MR CHARLESTON

12. In addition to responding to the contents of Mr Charleston's file note of 19 August 2010 I think it is important that I mention the context of the telephone call on that afternoon which is the subject of Mr Charleston's file note.
13. Earlier in the day of 19 August 2010, either late morning or early afternoon, the Director General, Mr Grieson and Ms Natalie MacDonald had a meeting with IBM, being represented by Mr Bill Doak, where IBM effectively concluded a deal between the State Government and IBM to settle the dispute, and that the key principles of the settlement agreement had been worked out between Mr Grieson, Ms McDonald and Mr Doak.
14. I am aware that earlier in that afternoon, Mr Charleston received a telephone call from a lawyer at Blake Dawson lawyers who acted for IBM.
15. When I spoke to Mr Charleston on the telephone that afternoon, he was clearly frustrated, annoyed, and angry that he had been put into a position where a rival legal firm had contacted him to tell him that a deal had already been negotiated with the State of Queensland and that he needed to obtain further instructions from his client.
16. Given that Mr Charleston's firm, Clayton Utz was commissioned by the State to assist in managing the negotiations between the State Government and IBM to resolve the many issues that arose under the contract, the direct settlement between the State Government and IBM would have resulted in Mr Charleston's firm, Clayton Utz being no longer required to provide significant legal services to the State Government.

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17. When I spoke to Mr Charleston that afternoon, being the conversation that he records in his file note, he was clearly annoyed and angry that a rival lawyer had put one on him. I would go as far as to suggest that Mr Charleston appeared to me to be professionally embarrassed to find out that his client had settled the dispute, and the lawyers for IBM knew before he did.
18. I believe that the context of the telephone call and the events leading up to his telephone conversation with me on that day colours the way Mr Charleston has chosen to express the contents of our telephone discussion.
19. I was approached by the Commission of Inquiry to make this statement. I make this statement voluntarily. The contents of this statement are true and correct to the best of my knowledge. I acknowledge that any false or misleading statement could be an offence against the Commissions of Inquiry Act 1950 or contempt of the Commission.

DECLARATION

This written statement by me dated 26th MAY 2013 and contained in the pages numbered 1 to 10 is true and correct to the best of my knowledge and belief.

[Signature] signature
Signed at BRISBANE this 26th day of May 2013.

Witnessed: [Signature] signature
TERENCE WILLIAM FISHER name of witness
Witnessed at BRISBANE this 26th day of May 2013.

Signature: [Signature]

Witness signature: [Signature]

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