



## SPARK AND CANNON

### TRANSCRIPT OF PROCEEDINGS

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THE HONOURABLE RICHARD CHESTERMAN AO RFD QC, Commissioner

MR P. FLANAGAN SC, Counsel Assisting  
MR J. HORTON, Counsel Assisting  
MS A. NICHOLAS, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2012

QUEENSLAND HEALTH PAYROLL SYSTEM COMMISSION OF INQUIRY

BRISBANE

..DATE 29/05/2013

Continued from 28/05/13

DAY 34

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THE COMMISSION COMMENCED AT 10.07 AM

1

COMMISSIONER: Mr Kent, good morning.

MR KENT: Good morning, commissioner.

COMMISSIONER: You've frightened the witness away, have you?

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MR KENT: Yes. We're short of one cast member.

**BROWN, JAMES DONALDSON** called:

MR KENT: Mr Brown, I'm going to ask you about a different document from the one we were discussing yesterday afternoon. Can I ask you, please, to have a look at volume 2, commencing at page 222?---Yes, I have that document.

20

I think this may have been touched upon with you yesterday. Is that right?---I believe so, yes.

I think you may have said that you might have been the author or contributed to the authorship of this document? ---I believe that I did say that, yes.

You're described at the end as contact briefing officer? ---That's correct, yes.

30

All right. Just have a look at page 222. This was the cabinet submission briefing note before the meeting on 22 July and the first substantial paragraph on the page sets out the purpose of the submission to seek cabinet budget review committee approval to negotiate a settlement with IBM to conclude the contracting between the state and IBM of a Queensland Health rostering and payroll solution. Correct?---That's correct.

That was the purpose of it?---Yes.

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Just have a look at page 223 towards the bottom of the page under the heading "Issue". What's said there is some CBRC members may prefer to terminate the contract with IBM in the first instance rather than endorse the recommendation or to negotiate a settlement, and then there's a response. At the bottom of the page it's said with perspective of taking into full consideration the primary goal of maintaining the continuity of payroll services to Queensland Health. Can I pause there and ask you: that's correct, isn't it, that through this process, the primary goal was maintaining the continuity of the payroll services?---That is correct.

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BROWN, J.D. XXN

Just have a look at the top of page 224. I won't go through every word, but to summarise, there was advice in there that Mallesons considered it likely at that stage that if there was a termination, IBM would walk off the job, creating a significant risk. There was also discussion of counterclaims. Correct?---That is correct.

1

And there's reference to what KPMG had referred to in its report to the Department of Premier and Cabinet, an extract from that report. Correct?---That is correct.

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That says, amongst other things, it's imperative that any proposed change to support arrangements is transitioned and managed by so as not to negatively impact on the ability to support the payroll. The last paragraph of those three refers to KPMG indicating it wouldn't approve of the government to sever its relationship with IBM until the state effectively transitions support from IBM. That was and remained an important consideration, correct, an effective transition so that support wasn't interrupted? ---That would be correct.

20

Can I then take you, please, to the decision of the cabinet budget review committee that starts at page 226 of that volume. In particular, can I take you, please, to page 228 and the second paragraph on that page, which refers again to an orderly transition out of the contract, allowing the state the best opportunity to put in place alternative support arrangements. Correct?---Correct.

30

I pause to ask you this: it's out of this decision that Mr Grierson received his delegation to do negotiating? ---Yes, that is correct.

Can I take you forward, please, briefly to page 235?---Yes, I'm there.

Paragraph 36 reiterates:

*The most important outcome must be to ensure that the system is able to continue to deliver payroll services to Queensland Health.*

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COMMISSIONER: Where are you reading from?

MR KENT: Page 235, paragraph 36.

COMMISSIONER: 36. Thank you.

MR KENT: Mr Brown underlined the importance of continuity of the payroll services again?---That would be correct.

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And finally, can I take you to page 238, paragraph 54, again it's by Mallesons' advice that the state was in a strong position contractually vis-a-vis IBM and agreed to

settle and run the risk of giving up significant existing rights, but then the passage that starts this legal view does not take into full consideration, et cetera, down to the end of the paragraph, underlines again, I suggest, the importance that the CBRC was facing on maintaining the continuity of payroll services?---That is correct.

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In summary, the cabinet budget review committee wanted a smooth transition from IBM with a primary goal of maintaining the continuity of the payroll?---That is correct.

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Now, as you were being asked yesterday about the events of the second half or late August, particularly the week including 19 August that year, as I think you've agreed, the parties had agreed on a negotiating period in which Clayton Utz was involved, which was to expire on the 20th. Correct?---I believe so. That's right.

Then you've been over in some detail already some of the events of that week, particularly the events of the 19th. Correct?---Correct.

20

Can I just take you to a couple of details about that? This time it's volume 3, please. Can I ask you to have a look at page 136?---Yes, I'm there.

Is this an email from you to Mr Charlston on the morning of 19 August at 7.54 am?---That would be correct.

30

What you say in there is that - sorry, as context, by this time you had been in fairly regular contact with Mr Charlston. Correct?---Correct.

And he had given you feedback that he was having trouble advancing the negotiation with Blake with any real speed, I suppose. Is that correct?---Correct.

To the extent that perhaps by this time he had informed you, I think, that in his view they may not be serious about negotiating, something like that?---That accords with my recollection.

40

So the first paragraph of this email says:

*If you're unable to discuss the term sheet with Blake today, there will be little, as far as negotiation update, other than no progress to provide to the DG. Let's see how the morning pans out and I should be in a better position to seek advice from the DG as to how he would like to proceed with the meeting.*

50

Is it correct that at that stage it wasn't clear that Mr Charlston was not required for a meeting that day? ---That would be correct.

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BROWN, J.D. XXN

That may have developed later on during the day?---Yes, that may have; yes. 1

All right. The meeting, as you understood it, that Mr Grierson was going to attend, with someone from IBM anyway, was to commence at 11 am?---I can't recall a specific time but I do recall it was on that date.

Sure. Were you aware of it being set down for maybe one and a half hours?---I can recall it was - I can't recall the exact duration of the meeting, I'm sorry. 10

It wasn't going to be a particularly short one?---No, I wouldn't have expected it to have been.

All right. Now, you may well not be, but can I just ask you: were you aware of Mr Grierson speaking directly, albeit briefly, to Mr Charlston himself at about 11 am just prior to the meeting that happened?---Yes, I'm aware after the fact that Mr Grierson did contact Mr Charlston that morning. 20

Okay. And then your involvement was that yourself and Margaret Berenyi attended and saw Mr Grierson and Natalie MacDonald at about 3 o'clock that day?---I believe that to be correct, yes.

Or maybe just a bit after 3 o'clock?---Yes, so it was in the afternoon. 30

Now, did I understand you to say in evidence yesterday these settlement principles that we've been speaking about, you received them at that stage or some note, or a notion - - -?---Yeah, I believe that to be correct.

From Natalie? I think that was the question yesterday?---Yes.

I'm not sure whether you really adopted that or not?---Yes. Look, to be quite frank, I'm not exactly sure whether it was Mr Grierson or Ms MacDonald, but I did receive advice as to how to proceed with the settlement from either one of them. 40

Did you get some notes of it? The reason I ask is that you seem to have been able to give a fair bit of insight to Mr Charlston?---Look, I can't recall specifically, but obviously the detail of the settlement means I must have either taken notes or received some notes around what was negotiated. 50

Okay. Now, it was at that stage a proposal, correct - - -? ---Yes.

- - - that was described?---Yes.

Can I take you in volume 3, please, to page 153?---Yes, I'm there. 1

It's a bit hard to read, that "3", it's a bit like an 8. This is the letter from Blake Dawson to Mr Charlston on 20 August. Correct?---Yes.

I'm not sure, have you seen this before?---I can't recall it specifically but it's highly likely I did see this. It's more than highly likely; I'm sure I did, but I can't recall it specifically. 10

From its terms, it seems to treat the settlement negotiations as being ongoing, although expiring on that day, 20 August?---That would be correct, yes.

What it suggests is that there's to be, perhaps, an extension of the settlement period for another week until the 27th. Correct?---Correct. 20

Then is this what happened, that from the negotiations that took place on that 19th, there was activity leading up to the next meeting of the cabinet budget review committee on the 26th?---That would be correct.

So if I take you, please, to page 159 of that same volume? ---Yes, I'm there.

I think you may be familiar with this. You've seen this one at some stage. Correct?---Yes. 30

I think you may have eventually been copied into a copy of this one, but this is the advice that was forthcoming from Mallesons as at the 23rd, so that's the Monday, speaking of concern about waiving the rights to terminate if the period for negotiation goes on without reservation. Correct? ---Correct.

So that what seems to be contemplated in the second paragraph, at least, of that communication from Mr Swinson is that the state and IBM might be extending the period for negotiations for a further two weeks?---Yes. 40

If that was subject to an expressed acknowledgement by IBM that the right to terminate remained unaffected, then that may not be a waiver?---Correct.

All right. Thank you. That was consistent with the fact that whatever had been discussed on the 19th, it had to go back to the cabinet budget review committee for any further approval?---Correct. 50

Which was what was going to happen on the 26th?---Correct.

Just on that topic briefly, can I take you to page 162? ---Sorry, I didn't hear.

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BROWN, J.D. XXN

Page 162?---Thank you. Yes, I have it.

1

Perhaps, sorry, but if you just look at 161 for a moment, you will see that you were copied into this email, which was from Mr Backhouse attaching the draft letter, which was at 162?---Correct.

What that says to IBM is:

*Thank you for undertaking recent negotiations proposing the negotiation period being extended to close of business on 31 August for negotiations to reach an agreement subject to approval by executive government.*

10

---Mm'hm.

Correct?---Correct.

It's perhaps there for the first time that's what's hopefully going to be agreed on is described as a supplemental agreement, so that this was the time that was always subject to approval by executive government? ---Correct.

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All right. And finally, perhaps, on that point, just look at page 165. So this one is an email from Sarah Adam-Gedge. Now, is she an IBM person?

COMMISSIONER: Well, obviously. Public sector leader, ANZ, public business services.

30

MR KENT: I hope so. I hope that is, commissioner. You're aware of that, Mr Brown?---Yes. I believe she - in the chain of command, she was Bill Doak's boss and effectively based in Mumbai in India, I believe.

Do you know - you may not - do you know if she was there on 19 August?---I'm not aware of that.

40

Okay. Anyway, this thanks Mr Grierson for his letter and the meeting last Thursday, and the negotiating period got extended, effectively. Correct?---Correct.

All right.

COMMISSIONER: Mr Kent, that letter you put Mr Brown to, 162, it's a draft, obviously?

MR KENT: Yes.

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COMMISSIONER: Was the original sent?

MR KENT: Yes.

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BROWN, J.D. XXN

COMMISSIONER: Is that in the bundle? Let me see it quickly. 1

MR KENT: It's at, I think, 168.

COMMISSIONER: 168, yes. Thank you.

MR KENT: And that actually was signed by Mr Grierson. Now, as we've already mentioned, the proposal went to CBRC on 26 August?---I believe that to be correct, yes. 10

I think you may have told Mr Flanagan yesterday that you might have had an input into writing part of the submissions for that?---I was the main author of - - -

You were the main author?---Yes, I believe so.

All right. Now, I'll take you briefly to that, please. If you look at page 178, that's the commencement of a decision?---Yes, I'm there. 20

So just pausing on that page. It sets out the decision of the committee on that page, 178, the first one being to note the current status of the negotiations and a strong desire for a supplemental agreement. Correct?---Correct.

Thirdly, to note that the state seeks to protect its legal rights while the supplemental agreement is negotiated and executed?---Correct. 30

In paragraph 6, authorising the director-general to act as the delegate in progressing the preferred option? ---Correct.

And it's fair to say that negotiations from that point towards the supplemental agreement continued. Correct? ---That is correct.

With you involved, Mr Brown?---Correct. 40

Fairly centrally involved?---Along with others, yes.

Up to - it's not signed until 22 September?---That would be correct.

All right. May I take you to just a couple of other passages. Could you have a look at page 271 of that volume, please. Before I ask you about the detail of that page, is it fair to say that during that next month or so until it was finally signed up that negotiations ebbed and flowed, it wasn't completely plain sailing, there was times when things bogged down a bit and sticking points?---Look, I think that's a reasonable summary of a fairly intense period. 50



All right. So I'll just ask you about 271, then?---Right, I'm on there. 1

Mr Swinson emails you on 1 September saying, "I think IBM is playing games," and a commentary about him being contacted at exactly 4 pm about a mark up of another version of an agreement. Do you remain aware of that? ---Yes.

Was Mr Swinson a bit frustrated at times about all this? ---Look, I think it's fair to say that - not only about this, but John had a long history with the contract and he did express some frustration at this particular point. 10

Can I take you to page 296, please, of that volume?---Yes, I'm there.

This is from Ms Searle at CorpTech to Mr Backhouse, the topic being "Survival of the Rights"?---Yes. 20

If you go over to the next page, you will see that what was being requested at that stage by Mr Swinson, it seems, was a summary of the state's rights, which were to continue, despite entering the supplemental agreement, and there's a list of them there. Correct?---Correct.

It's the caveat that, as he says, certain aspects of IBM's liability would not survive?---Correct.

All right. So that all progressed to and resulted in, at the end of the day, the supplemental agreement?---That is correct. 30

Okay. Now, as I understood your evidence yesterday, you expressed a personal view that you disagreed with a compromise that didn't insist on the right to terminate? ---That was a - yes, I did express that view.

COMMISSIONER: And the right to claim damages?---Yes. 40

MR KENT: Which went with it?---Yes. And the consequence of impacts of terminating the contract.

Yes?---Yes.

Can I ask you: you were expressing a personal view in relation to that?---Well, I was, but I also was providing advice as my role to people who were the decision makers, so it was incumbent on me to provide the full range of advice. 50

COMMISSIONER: I got the impression what you said yesterday, more than impression, that in your view the state would be best served by preserving its rights to claim damages?---That is correct, Mr Commissioner.

MR KENT: Do you agree with me that it's possible for reasonable minds to differ about that, Mr Brown?---Yes. 1

All right?---Not everyone takes my advice.

MR FLANAGAN: Just to be accurate, I asked that series of questions in the context of Mr Brown being the primary author of the cabinet submissions for both 22 July and 26 August, and it was in that context that I sought his view of it as the author of those documents. 10

COMMISSIONER: I thought Mr Brown made his position very clear yesterday.

MR KENT: Well, you didn't have the delegation from the cabinet budget review committee?---No.

COMMISSIONER: No, he didn't make the decision, but his view that those who made it acted rationally. He won't say that because he's a very considerate public servant, but I say it, that was his view. 20

MR KENT: That may be something we can make submissions about.

COMMISSIONER: Of course it is.

MR KENT: Can I ask you this question, Mr Brown: see if I'm stating this correctly. If the state terminated and sought damages, then your view was that there was a prospect they could negotiate a stronger outcome with IBM? ---That is correct. 30

That's the idea behind it?---The idea behind it. It was based on some prior experience with contracts and contract negotiations in my experience.

Were you aware of the track health dispute that had taken place earlier with the state government?---Only very briefly and what I do know about it was relayed in very general terms from a partner of Clayton Utz, who I believe Clayton Utz were engaged to represent Queensland Health for a negotiated outcome. That's about all I know. 40

Are you aware that one wasn't negotiated and proceeded to trial?---I don't recall the specifics.

Okay. Anyway, I presume you would recognise that the idea of terminating and seeking damages carried with it some risks?---Most definitely. 50

If that didn't produce a suitable negotiated outcome, there could be a long and expensive legal battle?---Yes, that would be correct.

COMMISSIONER: Which might result in the state winning an award of damages of tens of millions of dollars?---That could also be correct, Mr Commissioner. 1

MR KENT: In relation to the circumstances under which Mr Grierson was operating, as you've told us the scenario as at that week of 19 August, was that the feedback from Mr Charlston was that IBM didn't seem to be negotiating with sincerity, if I put it that way?---Yes. 10

There was something of a time imperative coming up. Correct?---Correct.

I think you had advice that if there was a failure to terminate by 23 August and certainly as time went on, then there could be difficulties about continuing to assert that right?---Correct.

We've already discussed the possibilities of litigation and the risk of an unsupported payroll system?---Yes, we have discussed that. 20

All right. Is this conclusion about your firm view that the best outcome would have been terminating a claim of damages really comes down to valuing those risks. Correct? ---Yes. I would just like to qualify that. I think I also indicated that in potentially heading down the course of terminating the contract, the option to negotiate was still there. Seeking damages was probably part of a process that might eventuate from initially an attempt to negotiate a better position. 30

I understand. You're saying that by terminating, it didn't end the negotiating process?---Correct. And also preserve the crown's rights to damages or whatever.

And the termination course was something that you viewed as potentially strengthening the hand in the negotiating process?---I believed it to be the best, for want of a better word, the best bargaining chip that the state had, was the termination of the contract. 40

That's what it was, it was the bargaining chip in the - - -

COMMISSIONER: Mr Kent, do you oppose that view?

MR KENT: - - - negotiation process?---Correct.

Sorry?

COMMISSIONER: Do you oppose that view? 50

MR KENT: I don't oppose it as a view that could reasonably be reached, but I also appear for Mr Grierson, of course, and I have no further questions.

COMMISSIONER: All right. Now, Mr Mumford, have you got some questions? 1

MR MUMFORD: Yes, I do. Thank you, your Honour.

COMMISSIONER: Thank you.

MR MUMFORD: Commissioner. Mr Brown, do you have in front of you volume 3? I think you do?---Yes. 10

Can I ask you to turn to page 150? It's the file note by Mr Charlston. I've really got to ask some questions about this?---Yes, I'm there.

Mr Brown, I appeared for Mr Grierson only in respect of a narrow issue. Can I take you through this file note and put some propositions to you. Can we start with paragraph 2 of that document, which is at page 150? ---Mm'hm. 20

The first paragraph, the second paragraph reads: "They have determined that the state has no interest in termination," et cetera. Do you have that?---Yes, I have that.

Mr Grierson did not say anything in that paragraph to you. He did not say that no interest in terminating the contract with IBM?---No, they're not the words that Mr Grierson has used; they're a representation of Mr Charlston's interpretation of my conversation with him. 30

All right. Now, moving then to the next paragraph, that there is not enough confidence in CorpTech, Mr Brown did not say that to you?---Mr Grierson, do you mean?

Sorry, Mr Grierson did not say that to you, obviously?---He didn't say those exact words but Mr Grierson did express the IBM view as relayed to him that in IBM's view that CorpTech would not be able to support the system. 40

It would have been the case, wouldn't it, that CorpTech could have supported the system with the assistance of the specialist contractors that had been engaged by IBM? ---That's correct, and I believe I made reference to that yesterday - - -

All right?--- - - - about an orderly transition.

Then the next sentence that follows, I put to you that Mr Grierson did not say to you that IBM would sue the state and that the threats were taken seriously by Mr Grierson? ---What I do recall is Mr Grierson relaying to me that IBM indicated to him that should the state terminate the contract, it would more than likely sue the state. 50

Should they terminate - - -?---Yes.

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- - - they might sue?---I think it was more definite than "might".

If they terminate, IBM will commence a counterclaim?  
---Yes.

All right. That's unsurprising, given the history of things that had gone up to 19 August?---I wouldn't expect IBM to say anything else.

10

Turning, then, to paragraph 3, it reads there that, "James/CorpTech had been instructed to do a deal with IBM." You were asked, in fact, to draw up a draft settlement, not to do a deal?---No, that's correct. Yes, again, they're Mr - it's Mr Charlston's file note and his interpretation of my conversation with him.

Certainly. You didn't tell - sorry, Mr Grierson didn't tell you to exclude Clayton Utz from anything?---Not directly, no.

20

No, not indirectly, either?---No.

No. Can I take you, then, to the next page, at page 151. There are some items in Mr Charlston's file note, paragraphs labelled CBE, GFG, et cetera?---Oh, commencing on page 150?

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Yes, they start on page 150?---On paragraph 4?

Yes. Moving over to page 151 - - -?---Yes.

- - - can I direct your attention to paragraph K. It's the second and third lines where it says:

*John Beeston does not know about the terms and this contract cannot be discussed with him.*

40

Do you see that sentence?---That's correct.

Whatever the source of that is, Mr Grierson did not tell you that?---No.

No. Wherever that comes from, it's certainly not Mr Grierson?---No, and Mr Beeston also helped.

Yes?---Yes.

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All right. Now, turning then to paragraph 5, you've already been asked some questions about the use of the words "free reign". You've already told us that you wouldn't use those words in that context?---Correct.

And certainly Mr Grierson didn't say that to you? 1  
---Correct.

Thank you. Dealing with paragraph 6, the first paragraph there, we've heard - sorry, I withdraw that. You deny using those words, the most critical words there?---Yes, that's covered in my statement.

Yes, all right. And certainly Mr Grierson didn't say any of those things to you?---Yeah, again, I made no reference to Mr Grierson in that part of my statement. 10

All right. And dealing with the third paragraph of point 6, James said that the real issue was the DG - Mr Grierson never said anything to you to that effect? ---No. And again, I refer back to my statement where I refuted that quite strongly.

Yes. You didn't say it to Charlston and certainly to your knowledge Mr Grierson didn't say it to Mr Charlston? 20  
---Correct.

And he didn't say, Mr Grierson didn't say it to you?  
---Correct.

All right. Excuse me for a moment. Yes, that's all I have.

COMMISSIONER: Mr Brown, Mr Haddrick was here to represent you but he's not here this morning. Are you represented? 30  
---That's - oh, sorry.

Yes?

MS RUSA: Yes, your Honour, my name is Rusa, initial A, I'm in lieu of Mr Haddrick. I'm the solicitor (indistinct)

COMMISSIONER: Very well. Do you wish to ask Mr Brown some questions? 40

MS RUSA: We have no questions for Mr Brown.

COMMISSIONER: All right. Thank you. Mr Flanagan.

MR FLANAGAN: Yes, just one final topic, Mr Brown. In relation to the supplemental deed, there was ultimately an agreement that IBM would fix approximately 35 defects prior to 31 October 2010. Yes?---That is correct.

In relation to those 35 defects, did you, as the author of the cabinet submission for 26 August 2010, have any knowledge as to how many persons, that is employees of Queensland Health, how many of those employees' pay was affected by those 35 defects. 50

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BROWN, J.D. XXN  
BROWN, J.D. REXN

MR FOLEY: I object, Mr Commissioner. The term "author of the cabinet's submission" has been used repeatedly. The evidence of this witness is that he drafted the cabinet's submission. The author of that cabinet submission is Mr Schwarten. I make the point not because I seek to be merely semantic about it, but it's a point of substance, and I'd ask the question to be reframed in a way which reflects the evidence.

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COMMISSIONER: Mr Flanagan, we seem to have trodden on a thorny patch; you had better rephrase the question.

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MR FLANAGAN: Forget the word "author", just take my question as you having some input into the content of that document. Yes?---Yes. And please excuse - I forgot the - I mean - - -

Yes, the substance of the question is this - - -?---Yes, thank you.

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The substance of the question is: did you appreciate how those 35 defects at IBM were to correct impacted on the accuracy of pay for Queensland Health employees. First of all, the accuracy, and secondly, did you have any appreciation of the number of employees affected by those defects?---I had no specific knowledge or understanding of how those defects are then translated into how it would affect people's pay. Primarily, that was the accountability of Jane Stewart to identify, and so Ms Stewart would have a better appreciation of the exact impact of those remedies rather than myself.

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And to your knowledge did Mr Grierson personally have any appreciation of the severity of those defects in the sense of how many Health employees' pay was impacted and the extent to which those pays were impacted?---Look, not at a detailed level, I wouldn't expect him to have that level of detailed understanding.

1

Would you accept as a basic proposition that to appreciate the nature of that risk, that is the nature of the risk of IBM being terminated that one would need an appreciation of the nature of the impact of the defects that IBM had to fix on the system?---Yes, I would acknowledge that; yes.

10

Do you agree that there was no investigation, to your knowledge, of that issue in the context of you having input into the Cabinet submission of 26 August 2010?---That would be correct.

All right, thank you. Have you had the chance to read Ms Berenyi's statement in relation to how the CBRC submissions were prepared?---No, I haven't.

20

Can I just put this proposition to you that comes from paragraph 72 of her statement. She says:

*There were four major CBRC submissions developed by Mr Brown, endorsed by me and submitted through Natalie MacDonald for approval by Malcolm Grierson before being progressed to the minister.*

30

Was that the process that was followed?---Yes. That is generally correct.

Do you know of any major changes to the CBRC submissions that were developed by you from the time that you developed them to the time that they went to Mr Schwarten for execution?---During the drafting process and before final lodgment, there were some adjustments made to the CBRC based on a consultation that normally occurs with CBRC. I had no visibility once the CBRC was lodged as to how it may have been altered, if it was altered at all, post lodgment.

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All right, thank you. May Mr Brown be excused.

COMMISSIONER: Yes.

Mr Brown, thank you again for your assistance. You're free to go?---Thank you.

WITNESS WITHDREW

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COMMISSIONER: Mr Foley, it sounds from that last description that Mr Brown was the author of the document that Mr Schwarten was the proponent of the submission. Would that be a fair description?

29/5/13

BROWN, J.D. REXN



MR FOLEY: No, Mr Commissioner. The document is signed by the responsible minister. 1

COMMISSIONER: Yes, indeed.

MR FOLEY: And as such he accepts ministerial responsibility for the document. He is the author of the document. He assisted - - -

COMMISSIONER: Well, you - - - 10

MR FOLEY: - - - and by his department through his director-general, through to the deputy director-general and so on, who have the function of drafting - and we've heard that evidence. The point is not one relating to specific changes. The point is that the authorship of the document bears the relevant responsibility and the relevant responsibility is that of the minister.

COMMISSIONER: There's no doubt about that, but it doesn't seem to me to be a misuse of language describing Mr Brown as the author of it or, as you say, the submissions made by Mr Schwarten. It doesn't matter. We understand what happened and I take your point. Mr Schwarten has made the submission. 20

MR FOLEY: I respect the commissioner's observation, but I adhere to my objection.

COMMISSIONER: Yes. Yes, Mr Flanagan? 30

MR FLANAGAN: Yes. I call Mal Grierson.

**GRIERSON, MALCOLM JOHN** affirmed:

MR FLANAGAN: Would you give your full name to the commission please?---Malcolm John Grierson.

And, Mr Grierson, have you executed two further statements for the commission in relation to this particular tranche of evidence?---I have. 40

Would you look at these two documents, please? The first is a 23-page statement dated 24 May 2013?---Yes.

And the second is a 12-page statement dated 27 May 2013? ---Yes.

The contents of those documents are true and correct to the best of your knowledge and belief?---They appear to be. 50

I tender those two statements.

COMMISSIONER: Yes. Mr Grierson's two statements will be exhibit 149A and B. 1

ADMITTED AND MARKED: "EXHIBIT 149A"

ADMITTED AND MARKED: "EXHIBIT 149B"

MR FLANAGAN: Mr Grierson, would you look at these documents please. They're extracts from your diary. I just wanted you to confirm that they are in fact extracts from your diary?---Yes. 10

I'll hand a copy to you at the same time. There are extracts of Mr Grierson's diary already tendered, which is exhibit 117, so we're content for these to be either part of exhibit 117 - - -

COMMISSIONER: Yes. I'll add the further extracts from the diary to exhibit 117. 20

MR FLANAGAN: And they are extracts from your diary, Mr Grierson?---They appear to be. 20

Yes, thank you. Mr Grierson, in your second statement you refer to a receipt of an email from Ms MacDonald in relation to information from Mr Walsh concerning the CBRC proposal or submission for 26 August 2007?---Yes.

Would you look at this document?---Yes. 30

Is that the email you referred to in your statement?---Yes.

Yes. I tender that email, Mr Commissioner.

COMMISSIONER: Yes. The email to Mr Grierson from Ms MacDonald of 26 August 2010 will be exhibit 150.

ADMITTED AND MARKED: "EXHIBIT 150"

MR FLANAGAN: Mr Grierson, whilst you haven't been personally present in court, have you been able to follow the evidence given by witnesses for this week?---I've read a couple of transcripts, yes. 40

I only ask this for the purpose of shortening your evidence today, but you're familiar with the primary issues that you have been examining on - - -?---I certainly am.

Thank you. Can I then take you and start with volume 1, page 99? 50

COMMISSIONER: Mr Flanagan, I'm just looking at the email. What appears before the letters DP in the third line of Ms MacDonald's email?---Another D.

COMMISSIONER: Another D? Thank you.

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MR FLANAGAN: I suspect.

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COMMISSIONER: And who was?---Paul Lucas. Isn't that the deputy premier?

MR FLANAGAN: Yes.

COMMISSIONER: Is it DP or DDP? It's DP, is it?---No, sorry. It's - - -

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It's just that the whole word - - - ?---The word is the, "He has not convinced her that the deputy premier will take - - -

Yes?---I think that's what he means.

Thank you?---Sorry. Give us that page number again.

MR FLANAGAN: Yes. Page 99, Mr Grierson?---Yes. Yes?

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The process started, did it not, with you approving on advice from Mallesons to issue to IBM a notice to remedy for contract between the state of Queensland and IBM? ---Yes.

What was your general understanding of why that notice was issued?---This notice here?

Yes?---Because they, CorpTech, Health, were unhappy with the deliverables from IBM.

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And, in particular, the deliverable being the solution that had been proposed under the contract. Yes?---Yes.

You're aware that that was referred to as deliverable 47? ---I'll take your word for that.

You appreciate also under the contract that if there were severity 2 defects, IBM were responsible for having those severity 2 defects fixed within two days?---I'll take your word for that, too.

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All right. Are you able to inform us to your own knowledge how many severity 2 defects, putting aside blame for the present purpose, was there as at 30 April 2010?---I do not know.

Do you have an approximate number in mind?---No, I don't, but it's moved from 30s to 60s to hundreds. I don't know.

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All right. But ultimately in terms of defects that had to be fixed under the supplemental agreement of 22 September 2010 by IBM, there was approximately 35?---There were 35 that were identified as by the Health Department, I think, primarily, as being the critical defects that they wanted fixed as part of any supplemental agreement.

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Thank you?---I'm not sure how many were - there may have been others.

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Yes, thank you. In any event, you approved this submission?---Yes.

And you saw that the basic issue had been under the heading Issues on page 99 that the system acceptance milestone was not achieved on 30 April 2010 due to a number of defects in the system?---Yes.

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All right, thank you. Once that document issued, you recall that Ms Berenyi received an open letter dealing with the notice from Mr Bloomfield, but also a without prejudice letter from Mr Doak seeking a commercial settlement in relation to the notice to remedy defect?---Look, they weren't addressed to me. I don't recall at the time, but I have since seen them in the mountain of documentation that I've read in the last couple of months.

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Can I take you to Mr Doak's letter then, which is dated 19 May and you'll find that in the same bundle at page 119? ---Yes.

The proposal here, albeit on a without prejudice was that the delivery of deliverable 7 or other deliverables under SOW8 would be extended to 30 September 2010. Yes?---That's what it says at the top of the second page I presume you mean, "Will be resolved on or before 30 September."

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Yes?---Yes.

That in terms of there will be no severity 1 defects and in relation to all severity 2 defects which are IBM's responsibility as at 12 May 2010, as detailed in appendix A will be resolved on or before 30 September 2010 in accordance with the release - - -?---Yes.

It therefore has appendix A which contains 67 to 68 defects identified in the letter of severity 2 defects. Yes? ---That's what's there.

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Were you aware at the time that this proposal had been put forward by Mr Doak from IBM?---I don't recall it, no, but that doesn't mean to say that somebody didn't tell me about it. The letter certainly didn't come to me and I don't recall seeing it.

Do you have any recollection of meeting Mr Doak at or about the time or soon after his without prejudice letter had been sent?---I don't have any recollection, but you just tabled my diary, so if my diary says there's a meeting there then I'll accept there was a meeting.

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All right, thank you. Soon after that it would seem that Mr Backhouse had a meeting with you. Can I take you to volume 1, page 132?---Yes. 1

What I'm suggesting is that it actually was brought to your attention, the proposal, because Mallesons' advice was sought in relation to it in terms of options and then a briefing note was done for you, but this file note suggests a meeting with you and Mr Backhouse and Margaret Berenyi and James Brown and your associate director-general Ms MacDonald at 4.30 pm on or about 3 June 2010. Do you have any independent recollection of this meeting?---No, no. 10

All right?---But I'm not disputing it.

No; quite, but it seems that the Mallesons' option paper and note prepared by Mr Brown were discussed and you made a decision to hold IBM to its breach, not accept IBM's proposal, that is the proposal in Mr Doak's letter and to simply allow IBM further time to complete acceptance? ---Basically, yes. I basically followed the advice that I had received. 20

Quite. After having followed that advice, that is, an option of holding IBM to the contract and not accepting the without prejudice proposal, it was agreed that you would speak to IBM executives on the matter. Do you have any independent recollection of then meeting with IBM executives?---No, nNo, and I think I say that in my statement. 30

Thank you. Can I take you then to page 180 of volume 1? ---Yes.

This is an advice that was received by Mr Brown on 23 June 2010 from Crown Law. Yes?---Yes. That's what it says.

You were generally aware, were you not, Mr Grierson, that your offices continued to use Mallesons for general advice in relation to the contractual dispute?---I was aware they were using Mallesons. 40

And also Crown Law?---Oh, yes. Crown Law was across everything.

All right. Ultimately, they also engaged with your approval Clayton Utz for the purposes - - -?---That's correct. 50

- - - of the settlement negotiations with IBM?---Yes.

If you can look at then page 9 of this advice which you'll find at page 188?---Yes.

This is talking about if one was to terminate IBM's services under the contract what rights the state would have and what rights IBM would have simply to stop work. Yes?---Oh, yes. This is under (c).

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(c). Yes?---Yes.

Just by reference to (c) on that page, Mr Grierson, can you just give us in your own words your view of the risk of terminating IBM's services in terms of the transitioning and ongoing processes for the solution?---Well, CorpTech were managing the software at that stage, but they were only doing so with the assistance of IBM contractors, some of which worked for IBM, some of which worked for other subcontractors like Infor. The advice I had from very early in the piece was that IBM resources were critical to us maintaining the stability of the system. Now, I got that from the senior - do you want me to continue.

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Yes please?---I got that from the senior CorpTech people, Margaret Berenyi, Philip Hood, I think - well, James Brown certainly drafted those comments in the Cabinet submissions - Natalie MacDonald. You asked me about the interview about Jane Stewart. I believe she was of the same view, but I can't recall discussing it with Jane. So I certainly had that view from those people. The Health Department were also adamant the stability and they were keen that there was no upsetting of the status quo. I think by this stage - I'm not sure about the date of this, but I think by this stage that the director-general of premier and cabinet had already engaged - nothing to do with me - he engaged KPMG, who sent in some IT specialists to look at the system and what was happening. Their recommendation to him, and through him to the premier, not to me, was also that IBM were critical to the ongoing stability of the system and we should think seriously about the risks involved, if we took them out. I think that either Mallesons or Crown Law at that time - and I'm really testing the memory - but certainly one or both of them had said, "Okay. You could terminate, but you must take into account the operational requirements of what you're doing or the operational practicalities of what you're doing," words to that effect. So certainly by that stage, I was - if Philip Hood told me that they needed IBM consultants, they needed IBM consultants. Could I add one other thing? Every week - every fortnight, sorry - every fortnight I would receive from CorpTech a status of summary sheet of the system and in that would be graphs that would indicate how much processing power was being used by Workbrain; a lot of technical information about Workbrain, SAP, the computer centres, processes and so forth, but also in that would be a series of the top 10 or 15 people that were involved in maintaining the system and how many hours they had worked that fortnight and there were IBM and Infor consultants in that list and they were working sometimes 19 hours a day

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when the cycle was being run and that information I passed on to Ken Smith regularly every fortnight. So I guess all of that together gave me a clear belief that we needed to keep the IBM consultants in with CorpTech.

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You're aware of Ms Stewart's evidence that she gave on day 29 of the inquiry where she said that her preference would have been that IBM's services be terminated soon after the go live date?---Yes. Nothing to do with IBM consultants.

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Quite. In relation to IBM consultants, she was gradually creating a relationship with them and they were growing in confidence with her, including Infor. What specific investigations did you make - - - ?---I'm not sure that's correct. I mean, my advice was that Ms Stewart only got real access to negotiating with Infor after the supplemental agreement. That's the only time that she really was able to sit down and negotiate with Infor to get them on board.

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I think she was talking about establishing a relationship with Infor and establishing a relationship with IBM's subcontractors well and truly prior to the supplement agreement being signed on 22 September 2010?---Well, I don't have any doubt that she had a relationship with them. She was working until 3 o'clock in the morning with them every second week.

But my point is what evidence did you have that IBM would hinder the access of a person such as Ms Stewart to subcontractors with IBM or, indeed, Infor in relation to this project?---I didn't have any written evidence, nor did I have any written evidence that they wouldn't hinder. I had to go on my best judgment of my experience of 40 years in the IT industry as to what would happen.

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COMMISSIONER: Is that what you based your decision on, your experience of 40 years in the IT industry? You didn't, are you telling me, make any specific inquiries about this case?---Inquiries of whom, commissioner?

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IBM or its subcontractors. I wouldn't expect you to do it personally, but have them made?---I already had advice from Mr Hood, Ms Berenyi, Mr Brown, Ms Stewart, Ms MacDonald, the independent KPMG consultants. I know the IT forensic auditors looked at it and they were of the view that stabilisation was critical. So I had about 10 people who were clearly of the view that stabilisation involved the IBM consultants. Did I say to IBM, "Hey, look, fellows, if we terminate your contract will you be good to us and let us take over all your consultants?" No, I didn't do that. Did I believe they would? No, I didn't. Even I guess when you come to the supplemental agreement, Mr Flanagan, my aim with IBM wasn't that they wouldn't

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hinder, I wanted them to actually facilitate the transfer of those consultants over. I mean, they may not - and this comes to, I guess, the crux of what you're heading about - the legal rights we had with their contractors. They could say legally, "We're not going to hinder you talking to Infor, but that's different to us getting access to the Infor consultants.

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Right, but you were aware of the legal rights, because Mallesons had informed you on it and that there were disengagement rights under the existing contract and that there were rights of the state to ensure a smooth transition, even after termination. Yes?---There were legal rights.

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Quite, but can I just go to the practical rights then, Mr Grierson? Following on from Mr Commissioner's questions, it's the case that your belief that IBM would hinder access to subcontractors including Infor were simply that, a belief, not necessarily based, or indeed not based at all on investigations made of the subcontractors or IBM. Yes?---No. I've just said: 10 very experienced people had told me or the premier through the director-general of the Premier's Department that they needed those IBM people. Now, as I've said - - -

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COMMISSIONER: Was that ever raised in writing? I don't believe we've seen it?---Well, the KPMG report is in writing.

Yes, I know about that?---Well, that's - - -

You mentioned, I think, 10 public servants, senior public servants who gave you this advice. Was your advice in writing, because as I say, I don't think we've seen it? ---Well, I don't normally get advice like that in writing, but it was certainly sourced by Mr Brown when he put together the cabinet submission. That advice was certainly seen by premiers, Treasury and the Health Department, Michael Walsh, before the cabinet's submission went up, so nobody disputed that there was a need to keep those people on board.

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MR FLANAGAN: Can I say those documents you referred to and the information you referred to simply did this: it identified one risk, right, in this process. So in negotiating a settlement, one thing that KPMG made clear is that in negotiating a settlement, one should identify as a risk as a matter of prudence that you should keep IBM in place for the purposes of a transition. Yes? That is, to ensure that people continue to be paid. Yes?---KPMG and Philip Hood, and others, yes.

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And that's the risk that'd identified. Right?---Yes.

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But my question is more detailed; it's a little bit more specific, Mr Grierson. My question is actually about identifying the nature and substance of that risk, and can I put these certain propositions to you in relation to the nature and substance of the risk. The first proposition is this: you knew by July 2010 that the Health stabilisation project had transitioned to the Health - to the Payroll Improvement Project?---Yes, but that's irrelevant.

Why do you say that's irrelevant?---Because the stabilisation terminology was based on the need for Health Department to get the data right to make sure that the rostering decisions were right. It was not to make sure that we had additional computer power to handle the slowness, that was right. When you talk about

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"improvements", the improvements were - can I give you an example? The pay slip was very complex and most people couldn't understand it. Under stabilisation, that wasn't touched because people were still getting their pay slips; however, improvement meant fixing that pay slip up such that the nurse in hospital X could understand what the pay slip was. So from the Health Department point of view, and I think Ms Stewart confirmed this, it was two years before the system was really stabilised so that the change in the name of a committee - - -

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I don't wish to underestimate the importance of employees being able to understand their pay slips, but in terms of a commercial negotiations with IBM, a critical element more so is actually people being paid correctly. Yes?  
---Correct.

And what I'm suggesting is by the time as July 2010, when the project went from stabilisation to improvement, at least at that stage the major problems with people not getting paid at all had been fixed, you'd agree with that proposition?---No, I wouldn't.

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Why was that?---Because there were huge modules outstanding. For example, the concurrent employment module, which hadn't even been started as at June, July, that module was required and was particularly required by the deputy premier. It was causing a lot of concern out there with nurses and other Health workers who were in different roles in different hospitals, so there were still other people not being paid correctly as at July.

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See, as at - - -?---35 defects were still there.

As at 30 April 2010, had the deliverable been accepted? That is, had the state of Queensland deliverable 47 from IBM, which is IBM was suggesting all the material, that it should be accepted, and they in fact delivered it for acceptance in terms of the solution, had that been accepted CorpTech would have been responsible for supporting that solution thereafter. Yes?---I'll take your word for that.

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All right. And CorpTech were stepping up to the mark in each pay run in terms of dealing with supporting the solution. Yes?---They were, but only with the specialist consultants.

And it wasn't so much IBM that was required to stay on; it was particular subcontractors of IBM and, in particular, Infor. Yes?---There were IBM contractors, there were IBM contractors working for two firms (indistinct) and Infor, but a contractor - when we say "an IBM contractor", most employees of IBM on projects like that are contractors. They might have been a contractor for IBM for 20 years, but for tax purposes and their own company, they're still

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called contractors. All I'm interested in is that there was some specialist people that I needed, I believe, to help CorpTech get that pay through every fortnight.

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You had been to America with Mr Schwarten where you looked at a greenfield project because you knew that IBM had another project in Queensland for - sorry, I say "greenfield"; I can't recall the exact term, but you've been looking at other projects with IBM and indeed IBM was a very substantial IT contractor with the state of Queensland at the time of these negotiations. Yes?---The two projects that we looked at in America promised to deal with the building of a new computer centre, which in fact didn't go ahead. We hired space at the Springfield Polaris Centre. The second one was to do with some online e-government activity that the premier had seen when she had been in New York, called 'America 1' or something, and was very keen to introduce citizen online applications here in Australia. So they had nothing to do with Health.

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I'm not suggesting that. What I'm suggesting is a far broader proposition and it was actually called a green data centre that you saw. In relation to the relationship between the Queensland Government and IBM, it had been a relationship of longstanding. Yes?---Between the Queensland Government and IBM?

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Yes?---Yes, nineteen - probably I think we bought our first IBM computer in 1981 or 1982.

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And IBM as an IT company was one of the biggest contractors of the Queensland Government in that field. Yes? You knew that for a fact?---In the field of?

IT?---Yes. Well, yes, I'm sorry, my hesitation is because at that stage IBM were getting out of equipment and getting more into services, but yes, they were still very big. They weren't as big as some of the other companies in certain fields, but, yes, they were a major IT company in the world.

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Quite. And they were a big contractor vis-à-vis the Queensland Government. Yes?---Yes.

In relation to that, they had a reputation to maintain with the Queensland Government. Yes?---They had a reputation to maintain around the world, yes.

But, no, my question is more specific. They had a commercial reputation to maintain with the Queensland Government because of a long established relationship that was beneficial to both parties?---Yeah. I'm not trying to be difficult but, yes, they had a relationship with the Queensland Government as with every IT company. It wasn't so much about the historical

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importance of the relationship; it was about the potential for future work of the relationship. 1

Quite. If you put it in that context or my context, the point remains that it would seem unlikely that IBM would deliberately hinder, for the purposes of fixing this solution, access of CorpTech to the relevant subcontractors and Infor for the purposes of ensuring that Health employees were paid, even if they were terminated. 10

MR FOLEY: I really have to object. Mr Flanagan is really asking Mr Grierson to look into the minds of the people controlling IBM.

COMMISSIONER: But he's done that already. He has told us that the reason for the approach he took was that he was really afraid that IBM was - the contract with IBM was terminated, IBM would break its contract, disregard its obligations and not assist with the operation of the payroll. Now Mr Flanagan is testing that proposition. I think he's entitled to. It's vital to the part of the inquiry. 20

MR FOLEY: The distinction, in my submission, is that this is a subjective concern of IBM's about their reputation rather than what might be seen as their objective behaviour.

COMMISSIONER: I don't understand that; I'm not sure what you're saying. Mr Grierson is telling us what he thought IBM would do. Why can't Mr Flanagan test Mr Grierson's opinion? 30

MR FOLEY: Because this question is based on a premise of what IBM would think - - -

COMMISSIONER: No-one ever seemed to have asked IBM what it would do. I noticed the examination by IBM's counsel at this point hasn't been challenged with any of the previous witnesses, it just goes to the same point. 40

MR FOLEY: I can't take the objection any further.

COMMISSIONER: No. Yes, Mr Flanagan, please go on.

MR FLANAGAN: One piece of advice that you rely on was the KPMG report, yes, that was commissioned by the Department of Premier and Cabinet. Correct?---Yes.

Can I take you to volume 2, Mr Grierson, page 358, where we'll find the report. It actually starts at page 351 of volume 2. 50

COMMISSIONER: 358?

MR FLANAGAN: The report starts at 351, Mr Commissioner, and it's a report addressed to Mr Smith. Yes?---Yes, I didn't engage in - - - 1

No. You appreciated, though, in your conversations with Mr Smith, however, that he was seeking to identify the nature of the risk in terminating IBM. Yes?---I'm not sure if that was the total - I think he was looking at a way forward, but certainly part of that would be - I can't see the start of this report. Oh, here it is. 10

Page 351?---Yes. It says there were -

*The government is looking for courses of action available to resolve the issues and this report identifies a number of options for resolution of these issues.*

Do you know how long this review took by KPMG?---No. I had nothing to do with this review. 20

Well, you had something to do with it because - - -? ---Well, I was interviewed.

- - - you were interviewed?---Yes.

If you look at page 352, you're the top of the list in terms of people interviewed. You, your associate director-general, Ms Berenyi, Mr Brown, Mr Hood and Ms Stewart. Now, we've heard from Mr Brown, we've heard from Ms Stewart, we have a statement from Ms Berenyi. We are, I should identify, Mr Commissioner, getting further statements from Mr Walsh and Ms MacDonald. They might not be ready for tendering on Thursday, but we will ultimately get them. In relation to that, the main source of information for the KPMG report was people in the Department of Public Works and CorpTech. Yes?---Well, at least that's who they interviewed here. 30

Yes. The concern of the KPMG report that's repeated in both the cabinet budgetary review committee submission for both 22 July and 26 August 2010 is actually found at the bottom of page 358 and could I take you to that, Mr Grierson?---358? Yes. 40

Yes. And it's actually - - -?---The report, yes.

Yes. It's just the last two paragraphs. It says:

*CorpTech have made progress in developing a strategy to manage the transition of these key resources from IBM, thus ensuring continuity of support.* 50

Now, this is a report dated 21 July 2010, so it's almost a month before you have the settlement negotiations with Mr Doak and Ms Gedge in or about - on 19 August 2010?---Mm.

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But it says, "We do not believe it would be prudent," so it's a question of prudence, "We do not believe it would be prudent for the government to sever its relationship with IBM." And I'm not too sure that has legal consequences because even upon termination we all understand, do we not, Mr Grierson, that Mallesons had advised that there were existing rights under the contract and disengagement rights after termination with IBM. Yes?---Yes, I'm aware of that, yes.

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*Sever its relation with IBM until such time as it has a level of comfort that it can effectively manage the transition of the identified resources supplemented by an effective handover of key QHR documentation and status of the work progressing being managed by IBM.*

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---Yes.

So KPMG at its highest is putting this as identifying this risk as a matter of prudence and as a matter of reaching - the Queensland Government reaching a level of government. My questions to you today are really trying to find out what steps were taken to reach that level of comfort and what identification of that level of comfort was made to assess the risk in a negotiation. It's as simple as that. Can you tell us what was done?---Well, I think if you turn to the page before the one you've quoted, it actually says:

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*There's an understanding that discussions have commenced with the relevant suppliers regarding their interest and willingness to contract directly to CorpTech.*

I mean, people had been talking, but there are - there was something like 30 to 40, I think - test my memory but I think there was at least 30 to 40 IBM contractors involved and I think that as some of them came off their contract with IBM, there was an ability for us to approach them to see if they wanted to join CorpTech. We didn't necessarily want all of them, but there was some. However, the concern was more about the critical ones, the specialists, particularly Workbrain and the SAP stuff. I think the next paragraph talks about in some cases these organisations have a long history of work with IBM and this may impact on their willingness to contract directly with CorpTech. So that is a concern that's raised by the KPMG people. And can I just add, because I'm not quite sure where you're going with the list of who they interviewed, the KPMG IT specialists who did this report, I understand, actually went down, didn't just talk to people, they actually looked

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at the system, they actually, I'm told, they actually sat there through the night watching the system run, watching what rolls were being played by the various specialists in keeping this system running, rolling it back, rolling it forward, so I don't think this is just based on talking to Mal Grierson, Ms Berenyi, MacDonald. They actually went and sat with the (indistinct) so they understand - or understood, I believe, what the complications were.

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It would seem that the highest it got in terms of IBM resisting approaches being made to subcontractors is contained in the cabinet budget review committee submission of 26 August 2010. What it says there is that IBM had communicated that they didn't want CorpTech approaching their subcontractors because it was interfering with their contract with the government. Yes?---I was aware that they had expressed displeasure at CorpTech people actually talking about the possibility of transitioning over to CorpTech.

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Apart from your belief, based on your experience in the IT industry, that IBM may hinder and that this displeasure expressed by IBM in the way it was expressed, was there any other evidence to suggest that this was a risk or a risk that was so great that one would release IBM completely from any claim for damages?---You're jumping right ahead to supplemental agreements. The 22 July CBRC submission at that point in time, as I've said, the information, the best information that I had in front of me and the people who put the submission together had in front of them, and what Mr Schwarten had in front of him was that there was that there were critical IBM resources were in need. Nobody at any stage, whether from the CorpTech or IBM, or Health, came forward and said, "Hey, look, we will" - you know, "You terminate our contract and we'll still give you all of our contractors." We believe that was a risk; KPMG believed it was a risk; Crown Law believed it was a risk; the people in CorpTech and Health believed it was a risk.

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But it seems to have become, on the evidence we've heard, a risk that took such a - became such a central consideration that it was a risk that overcame all other commercial negotiation parameters?---Well, Mr Flanagan, the point - you have to go back to the 22 July cabinet submission and information that the premier was receiving through her director-general, not through me, that there were risks. The premier's advice to me at that CBRC meeting time was no risk was to be permitted as far as keeping that payroll running, so she wasn't interested in, "Well, maybe IBM will do this or maybe they won't." If there was a risk, her instructions, not advice, her instructions were: you are not to have any risks for the payroll going out to these Health employees. So - - -

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COMMISSIONER: This was advice or instructions given to you by the premier?---I was - well, that's what the premier said. 1

To you?---Yes.

Personally?---I was in the CBRC meeting, Mr Commissioner, and I heard the discussions, and it was quite clear to me that the premier's priority then, and I believe right through this whole exercise, was that payroll had to keep running and at no stage was there to be any risk of it not paying people, not coming out every fortnight. So whether the risk was this big, that big, doesn't matter, no risk was what she wanted as far as the payroll and I think she has - I think that obviously influenced her decisions along the process. 10

MR FLANAGAN: Do you know what was the basis of that view that there be no risk? Was that because there had grown such public pressure in relation to this issue and pressure in parliament in relation to it that any risk, no matter how small, was sufficient to permit the state of Queensland to waive all rights to damages?---You would have to ask the premier what was her decision, what influenced that, but I'm prepared to give you my estimate. 20

Yes, would you?---My guess. My guess is that - because I know that it happened with Minister Schwarten - the premier has in her electorate the biggest - one of the biggest hospitals in Queensland, PA, Princess Alexandra Hospital. I know that she visited Princess Alexandra, I know that my minister visited Rockhampton Hospital in his electorate, I know that the premier visited other hospitals, and I think that her prime reason for not wanting any risk was the fact that she met with people whose pay had caused them personal grief. I think this is where your opinion and my opinion, I guess, may vary. You, if I may say so with respect, are certainly looking at the legal aspects; I was looking at the system aspects and the logistics of getting CorpTech involved. The premier came above, I guess, both of those thoughts in that she and Mr Schwarten, and I think Mr Lucas, they were looking at the personal aspects of people not getting paid or getting half paid, or parts of their pay, or whatever, and I think that was the - that's my view is what the overriding concern was of the premier at the time, and probably still is. 30 40

If that was the primary basis upon which any negotiation would be conducted, why bother in engaging Clayton Utz at all?---Because there were a lot of technicalities about the negotiation that still had to be sorted out. I didn't particularly - how do I put this - won't say "want" - it was not my idea to engage Clayton Utz. I was happy with Mallesons and Crown Law, and my director of legal services. Mr Brown came to me and said - I think he said "Ms MacDonald", but somehow we sat down and he put forward 50

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the proposition that there were a lot of technical aspects to be sorted out here even though the cabinet had obviously made a decision back in 22 July. Before then, he believed that if we were going to get to negotiations and we hadn't commenced them, if we were, why not engage, and he had in mind - not Jeremy Charlston, somebody else - that he knew in Clayton Utz to assist. I said, "Fine." On the advice from my director of legal, this would probably be a good investment to get some people on board to assist us even though we had Mallesons in Crown Law. So that's why - I mean, at this stage also, the cabinet CBRC decision said, "Go forward and try to negotiate a supplemental agreement." We did not know where this was going at that point on 22 July.

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But you certainly had parameters on 22 July, didn't you?  
---There were parameters.

Yes. And those parameters included the state's preferred position of not releasing IBM at all - - -?---Yes.

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- - - from any future claims for damages?---That's correct.

Or at least a partial release whereby if the system proved not to work in the future, that they could still pursue IBM for damages in those circumstances. Yes?---Yes, they were parameters, but - - -

Can I go back to this, though, because otherwise we'll be here for a long time?---Yeah.

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It would seem from your last answer in terms of the premier's writing instruction or what impression you had of the premier's writing instruction that one could immediately assess that if there was any risk at all of IBM being terminated, then that was too much risk. Is that how we're to understand your answer?---Well, it's - I guess that follows in the sense that the CBRC were presented with options, one of which was termination. At their discussion - during their discussions, the implications of termination were considered and the premier had, I think, two views: one I've just talked about, about the people and keeping the payroll running. I think she had a second view based on the advice she had seen from Crown Law and Mallesons, and the response from IBM regarding the show cause. She thought that if there was going to be a legal - if there was going to be litigation, if we're going down that path, the state going down that path, you are looking at years and years, and years - - -

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Yes, I think that's slightly off topic. One would not need to investigate at all the nature and extent of the risk of terminating IBM because without any investigation one can say that a termination of IBM could create some risk of the transition not being as smooth as it would otherwise be if

they're not terminated. Yes?---That's correct, but the CBRC decision was, if you have a look at it, sorry, it says the preferred option. That didn't say that there weren't other options still on the table. What it said was cabinet has considered the options put forward, one of which was termination, and the preferred option, which means at this stage this is the preferred option, is to negotiate for a smooth transition. It did not rule out the possibility.

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But we've heard already from Ms Bligh and we've heard from Mr Schwarten that the primary consideration in determining to settle with IBM was the fact that there was a risk of termination and that risk was that it would affect the transition. Yes?---Yes.

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And if that effect or if that transition had with it any semblance of risk, then according to your evidence that would be sufficient on the premier's instructions not to terminate IBM and sue for damages?---Could you say that again, sorry.

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Yes. If there was any risk - - -?---Yes.

- - - if there was any risk at all, then one should not terminate?---Well, my instructions were to negotiate to hopefully arrive at a settlement as per the cabinet instructions within six weeks. The overriding parameter - you've mentioned the list of parameters. Nowhere in those list of parameters does it mention, "And make sure you keep the payroll running," but that was the overriding parameter with all of this exercise.

30

See, when you use the term "make sure you keep the payroll running", the payroll was running, wasn't it?---But people weren't being paid accurately.

Some people weren't being paid accurately but there was improvement in the payroll system. Yes? With each fortnightly pay run, improvements were being made. Yes? ---Mr Flanagan, that's my point that I made before: yes, there was some improvement, but Ms Bligh and Mr Schwarten were still going to hospitals and there were people not being paid. They didn't care if it improved from a thousand not being paid to 900 not being paid. That's an improvement, but there was still 900 not being paid.

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That was going to continue, Mr Grierson, whether IBM was there or not?---It was - pardon?

It was going to continue whether IBM were there or not. That is - - -?---What was going to continue?

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- - - these defects - people not being paid, because if they weren't being paid it was because there were identified severity 2 defects in the solution that needed

to be corrected. Yes?---Not necessarily. As I said to you 1  
my previous time here, a lot of the defects were due to  
data and decisions about the business processes within the  
Health Department.

COMMISSIONER: If that's right, that calls of pays being  
inaccurate, it was independent of IBM's presence, surely?  
---There were a lot of causes for people not being paid  
out - - -

I know, but deal with the ones that you just mentioned;  
that is, that Queensland Health was inefficient in its  
processing and recording of data. That had nothing to do  
with IBM. Take IBM away, you still have that problem.  
Keeping IBM in wouldn't solve that program, so we can  
ignore those defects?---No, but the - Mr Flanagan's point  
earlier, commissioner, was that we had moved from  
stabilisation to improvement. During the stabilisation  
exercise, Michael Walsh, who ran it, corrected a lot of  
those data problems, so he had dual screens put out in  
every hospital so that people could see the roster and the  
awards.

What point are you making now?---Well, the point I'm making  
is that the process involved IBM all the way through this.  
Every fortnightly cycle of pay processing, IBM consultants  
and contractors were there making sure it ran properly, and  
if it didn't, fixing it and putting it back in. Sometimes  
the errors may have been data created, the data may have  
somehow sent Workbrain into a spin and the Infor  
consultants may have had to sort that out. Sometimes there  
might have been errors that were recorded where the data  
did not - and I think mentioned before - have bank codes,  
so other people would then have to, like Janette Jones'  
people, would have to put that data in and then have to go  
back and try and run that cycle, those processes again, so  
there were whole ranges of issues, including the one I  
mentioned before to Mr Flanagan, the concurrent employment  
module was not even there, it hadn't even been developed,  
so there were all sorts of problems where Nurse Brown had  
worked in oncology in this hospital then gone across to the  
theatre here, and her pays were being all mixed up and in  
error.

Did you ever assess for yourself or gain information as to  
the 35 defects that were required to be fixed by IBM  
pursuant to the supplemental agreement?---No.

Did you ever work out how many people were impacted by  
those 35 defects?---Did I personally?

Did you ever know?---On individual defects, no. The only  
statistics I received on a fortnightly basis were the  
numbers that were having problems and were ringing in with  
issues and problems.

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In terms of the nature of the defects, did you know what impact, if any, it had on people's pay? For example, some of the defects were in relation to modules that concerned accrual of RDOs, recreational days off?---Well, no, I didn't, but - - -

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But see, can I say - - -?---No, let me finish the answer to this question because you've put your finger on a very important thing. The fact is that some of them did not affect the pay in the sense of the employee had \$453 there. One of the early requests we got from Minister Swarten was that there is an employee in the Rockhampton Hospital who wasn't paid for his leave; his leave was somehow not - was not in the system or hadn't been calculated properly in the system. Philip Hood and his people dived into that issue and it wasn't a pay calculation defect; it was to do with a person really not being entitled to certain leave that he or she thought they were entitled to, but the bottom line was that was an individual in a hospital who believed - I think it was a he - believed that he had been hard done by, by this new payroll system and was complaining to Minister Swarten, to the media, to anybody who would listen to him. So the defect didn't have to necessarily address just the pay. People were upset about long service leave accruals, about their rec leave, about all sorts of things. It wasn't just the pay.

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But isn't it important in terms of the commercial negotiation to identify in terms of risk the number of people who were affected and how they are affected in relation to the transition that needs to take place - - -? ---Well - - -

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Can I just finish the question?---Sorry.

And the wider interest of the state of Queensland and the people of Queensland in releasing IBM from a potential claim of many millions of dollars?---CBRC were presented on 22 July with some options. The government of the day made a decision which said, "You are to pursue a negotiated settlement with IBM." The aim of that negotiated settlement was to transition key resources across to CorpTech as well as a lot of other provisions about money owed and so forth. They had an option to terminate and start litigation in relation to what chances they had. The premier and that CBRC group looked at the advice they had from Mallesons, Crown Law, and KPMG, and other advice they had, and made a decision to commence to try to negotiate a settlement.

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Yes, but they never released or never envisaged in terms of these parameters that the right to terminate could never be exercised, nor did they envisage that IBM would ultimately be left with a full release, did they?---The - - -

No, can you just answer that? That's a fairly yes and no question, isn't it?---Well, it's not really a yes or no question. 1

Well, the parameters in table 1 of the 22 July decision did not permit a full release of IBM, did it?---No. The parameters of 22 July did not say, "And keep the payroll running at no risk," which was clearly the instructions of that CBRC meeting. So the parameters were guidelines for me to commence the negotiations and they were the guidelines that were given to Clayton Utz to commence the negotiations. At no stage during these negotiations there was Clayton Utz or anybody else could anything be settled - I know we talk about the settlement principles. The only person or persons who could settle and agree on this was CBRC and they were referred back on 26 August and then later on Minister Schwarten and Lucas. 10

Yes, but by that stage you had already reached an agreement in principle, had you not, in settlement principles whereby IBM would be released?---The agreements that I reached on 19 August came after I had received emails from James Brown, who was dealing with Clayton Utz, saying, and it's in my statement, saying all that's - "There is very little left to negotiate. All that needs to be sorted out is how much money we can keep and whether we can use it to offset some of the CorpTech work." Words to that effect. At no stage - and there are emails, I'm very happy for you to see them, there are emails where from the moment of the 19th onwards, I said to James Brown and he was saying to Clayton Utz, to the best of my knowledge, that, "We have to protect the state's rights as best we can," but on 19 August there was certainly a belief that to get to this transition, a smooth transition, we may have had to forego some rights, if that's where you're heading. 20 30

Can I have a short break, please?

Yes, of course. Let me know when you're ready, Mr Flanagan. 40

MR FLANAGAN: Thank you.

THE COMMISSION ADJOURNED AT 11.47 AM

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THE COMMISSION RESUMED AT 11.57 AM

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MR FLANAGAN: Mr Grierson, on 29 June 2010, you authorised or approved the issuing of a notice to show cause to IBM, which was a step in relation to possible termination of the contract. Yes?---Yes. I'm not sure of the date but, yes, I know it's about that time, yeah.

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All right. Now, according to a statement tendered by Mr Killey of IBM, he believes that he met with you and Mr Doak on or about 5 July 2010. Do you recall such a meeting?---No, but if it's in my diary, then - - -

It's not recorded in your diary?---Then I doubt that it happened.

There is a record of 14 July for a meeting with IBM, however. Can I put this to you: can I suggest that he actually did meet with you in around early July 2010 where they discussed the show cause letter with you of 29 June 2010. Do you recall that?---I don't, but please go on.

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All right. Do you recall that you said to him words to the effect that, "You were not authorised to negotiate a settlement on behalf of the state of Queensland," and that would have been the true fact at the time, would it?---I don't recall it but that would have been a true fact.

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And that, "Things have to run their course at the ministerial level before it would be possible to start talking about a settlement"?---As I said, I don't even recall the meeting, but that also would be an accurate description of what needed to happen.

And, "Ministers would need to be briefed as to the situation before Mr Grierson," that is you, "would be allowed to do anything"?---Again, that would be an accurate statement. I don't remember saying it, but - - -

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All right. Now, you knew soon after or on or about the same date, 29 June 2010, that the premier and the deputy premier had conducted a joint press statement or released a joint press statement - - -?---Yes.

- - - where it was envisaged that they had taken action in terms of issuing a show cause notice whereby they had an option of terminating IBM's contract?---Yes.

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And indeed, statements of that press statement, which I won't take you to, by the premier and deputy premier, that they would look to IBM in terms of possible action?---Yes. I remember the media release.

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At or about the same time, the auditor-general tabled in parliament his report on or about 29 June 2010?---Yes. 1

Part of the joint press release by the premier and deputy premier was in relation to that report and the government's response to it. Yes?---Yes, I'll take your word for that, yes.

Mr Grierson, can you just inform us, briefly if you could - - -?---Yeah. 10

- - - of what impact the auditor-general's report had on the course of settlement negotiations with IBM, in your own mind?---The auditor-general's very first recommendation was that the Health payroll system must be stabilised, or words to that effect, and I think that influenced, as well as other things, like KPMG and other information, I think that probably influenced the premier's and the minister's, and CBRC's decision to maintain the stability of the payroll. I'm aware that it has no legal standing, but it was still a fact that the auditor-general had recommended stabilisation and the government had accepted that all recommendations of the auditor-general's report would be implemented. 20

All right. Thank you. Now, were you aware at all times that any negotiated outcome with IBM would be the subject of public scrutiny?---Well, I guess the - I was aware that the media were sort of all over this, the payroll, so anything could happen in the payroll, they were looking for stories in the payroll, so I guess that what the government did in relation to IBM would have been reported in the press. 30

You're also aware that it could have been subject to the scrutiny of the auditor-general himself?---Obviously, yes. The auditor-general's report actually says that he will review - come back and do a further review of the payroll later that year.

All right. Did you at any stage have any appreciation of what sort of quantum of damages the state could seek against IBM?---Personally, no. The only time quantum was mentioned was when the first term of settlement sheet, I think, were being drafted by Clayton Utz, and it was shown to Ms MacDonald and myself to comment on, the figure of \$12 million was mentioned in the very first line or first condition. I had read the Clayton Utz letter to me or to - yeah, to me, I think it was, which said that Mallesons said there was a cap of 60 million on possible claims, so I went back to James Brown and said, "Where did this 12 million come from?" And he said, "Oh, we talked about it and - but, you know, there's no real basis." And I think his words were, "And it doesn't include Health. It's some CorpTech figures, but it doesn't include Health costs, either." So it was - and my reaction was, "Well, why would 40 50

you say 12 and limit yourself to 12 if Mallesons have said it could be 60?" So I asked him to remove the 12 and - or suggested they remove the 12 and just say the - to leave it, that the damages could cover the state's costs at that point in time.

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All right. Did you appreciate though that even though you didn't have an advice on quantum, that is the actual quantum of possible damages, even a preliminary advice, that the possible damages against IBM could run in, if the state was to be successful, could run into the tens if not hundreds of millions of dollars?---I think the advice from Crown Law was that there was - if litigation was commenced, then there was a chance of success, but Crown Law also said there was also a very strong probability of a counterclaim from IBM and I'm aware that those opinions were tabled in that CBRC meeting of 22 July and considered by all ministers around the table before making the decision.

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COMMISSIONER: What did you understand IBM could counterclaim for, apart form moneys due under the contract? ---Well, I was just going on Crown Law's advice. I'm not a lawyer, commissioner, but my understanding was that if we terminated IBM, saying they hadn't delivered, IBM would counterclaim, saying, "No, hang on. We delivered what we originally set out to deliver, which is a like-for-like system, but you, Health Department, have made so many changes and have asked us to do different things, therefore it is unreasonable for you to terminate us." That was my belief.

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That's another way of saying that the state might have lost its action, it might have been unable to prove that it had grounds for termination. My question was about the counterclaim. All it could claim, surely, was the moneys that at that stage the state was withholding under the contract?---You would have to - I have to say - - -

Pardon me for saying it this way but the evidence I've heard so far suggests that senior officers of the government were going around in a state of terror because IBM said it might sue. Did anyone ever think of sitting down rationally with the lawyers and saying, "What are the risks? What are our prospects of success? And, if we win, how much is the claim worth"?---Well, the first part of your question was that we had Mallesons and Crown Law giving advice to - - -

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They were never asked advice on that point?---On the last point?

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Well, the two points. "How strong is our claim? What's it worth?" Fundamental questions, I would have thought, for things you had to know if you were going to settle intelligently, and no-one ever seems to have asked the



lawyers to answer those questions. Why is that?---Well, with respect, commissioner, I believe that the first question was asked and that's why Mallesons came back and Crown Law came back and said there are - if you take - "There are prospects of suing IBM. However, if you take it on, these are the risks. We cannot guarantee you to be successful. We believe that they would mount a strong defence." I can't equate all their words but that was certainly discussed with lawyers and lawyers gave that opinion. As a public servant, I take your point about senior public servants, commissioner but, you know, Crown Law is the body that gives the government advice on these things.

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Mr Grierson, I say it again, I say it again, I've sat here for months, I've looked at thousands of documents, neither Mallesons nor Crown Law, nor any other lawyer was asked to give a full advice on the prospects of success the government would had if it sued IBM, nor was any lawyer asked to give a considered opinion on the value of the claim. Certainly there are options papered from Mallesons, certainly there are indications from that firm and Crown Law about possibilities, but they were never asked to give a considered opinion on those two vital questions; can you tell me why that is so?---No, I can't. All I can say is that the premier and the ministers at CBRC believed that the advice they received from Mallesons and Crown Law was giving them an opinion on the success or otherwise of litigation.

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Mallesons - - -?---Nobody asked - sorry.

You finish, please?---Nobody, I agree with you, and I think the premier stated this in her evidence, at no stage am I aware of anybody asking senior counsel or other legal firm about the quantum because I think by that stage my suspicion is that the premier was more interested in the payroll, but that's - maybe somebody did ask. I don't know.

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When you say that, are you saying that we should understand the premier's attitude to be that no matter what it cost the state of Queensland, no matter how valuable the rights given up were, that all that mattered was making sure as many people as possible got paid as accurately as possible?---Well, the conversations I had with the premier or I heard the premier speaking in CBRC were along those lines that - and I think that her evidence to this commission supports that, that she - her top priority was to get the Health employees paid. She did not seek to know the quantum. I believe that her whole focus and that of all of the ministers, certainly my minister, Schwarten, was: we are not going to get into litigation with IBM if it puts at risk any payroll to the Health Department employees.

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All right. So then the critical question becomes, "Can we pay Queensland Health employees as well as they're being paid now without IBM?" What assessment was made of that question?---The assessment was made of that question by the people who were running the system by me.

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That's a very vague answer. What do you mean in particular? Is there a document which analyses the risks both sides, the risk of getting rid of IBM or not getting rid of IBM?---Well, the cabinet submission lists the pros and cons of both options, commissioner, but if you're asking about the risks of losing the resources from IBM, the risks were every cycle of running of the payroll, those people were needed and were there for all hours of the morning - - -

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We've been through that. Tell me this: if the contract had been terminated, as some of your people wanted, IBM had obligations under it after termination to keep the system working?---Legal obligations.

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Yes, legal. Of course legal obligations?---Yes, sorry; yes.

But did you seriously think that IBM would risk damaging its reputation by refusing to honour its contractual obligations?---My - well, obviously the - how do I answer this. Everybody was telling us - when I say "everybody", I - let me start again. Whether it's KPMG, the auditor-general, the Crown Law, all the people running the payroll, everyone was saying they were critical, that's the first point, they were critical. IBM, as soon as the word "sue" had been mentioned, attributable to Minister Lucas, went into defence mode, in my words, but they went legalistic. In my statement, there's an email from Bill Doak saying, "Are we going to sort this out or are we going to war?" They were quite upset about the word "sue" or the thought of litigation. They were under, I believe, pretty serious pressure from their headquarters in New York that IBM's representation worldwide, not just in Brisbane to Queensland, but worldwide, was being damaged severely by all of the media that was covering this Health payroll issue.

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Well, that has got to strengthen your bargaining hand, not weaken it?---Well, it strengthened our bargaining hand to the extent that when IBM exited, they were to exit on a smooth transition, give us all of the things we needed so that CorpTech could run the payroll successfully, and they did all those things, so that - and my statement also reports this, that from that time they would enter a major rebuilding - bridge rebuilding exercise with the Queensland Government with meetings with the - I had more IBM VIPs than I could believe were contacting me, the premier was getting contacted, so they were trying to restore their image.

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But all those factors tend to suggest that IBM would not in fact have broken its contract if the state had terminated that IBM would have honoured its obligations to provide the service of disengagement?---Well, not the IBM people I was talking to, commissioner. It was - - -

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Are you telling me that there were IBM executives you spoke to who said, "If the state terminates the contract, we will break our contract and not provide the services again"? ---No. What I'm saying to you is that I have emails from Bill Doak saying, "Are we going to sort this out or are we going to war?" Now, I don't think he said that flippantly; I think he was clearly under pressure from IBM headquarters to really - you know, if there's going to be litigation, they were in the trenches, and - - -

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You would expect that, of course you would expect that, but - - -?---Well - sorry.

- - - once you're in the trenches fighting a legal war, people tend to comply with legal obligations. IBM had legal obligations if the state terminated to provide service of disengagement. What basis did you have for thinking a company of IBM's reputation would not honour its contract?---The basis we had was the fact that IBM went very negative with us as soon as the show cause was issued. They wouldn't, for example, cooperate with any change request. I mean, I think I had to countersign one change request because they would not accept Ms Berenyi's signature anymore. They made continual - put continual pressure on payments. The whole tone of the relationship changed with the show cause. It wasn't until the government made the decision on 22 July that instead as an alternative to litigation or termination and then litigation, that the government made the decision of trying to reach a settlement, a negotiated settlement with IBM for a smooth transition for IBM to exit. It was only at that point that, I guess, they started to - I won't say "cooperate", but some of the tension was removed.

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MR FLANAGAN: Mr Commissioner, for your own information in relation to the nature of the possible counterclaim, it's actually identified by IBM's position and reasons in response to the first term sheet, and if I can take you to volume 3, and Mr Grierson would you look at this also, volume 3 at page 89, and this is IBM's response to their solicitors Blake Dawson, given on 13 August 2010, and it's in relation to item 3 damages. So the counterclaim is for additional cost above and beyond any cost identified in change request and, secondly, reputational damage, of course which would be damages in relation to commercial reputational damage in the market place.

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COMMISSIONER: Defamation.

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MR FLANAGAN: Yes. Which, of course, would have had, as we both appreciate, its own problems at that time. 1

COMMISSIONER: Indeed. Yes.

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MR FLANAGAN: Mr Grierson, can I take you to volume 2, page 417? 1

COMMISSIONER: 417? Mr Flanagan, what page?

MR FLANAGAN: 417, yes. Mr Grierson, it would seem there's a consistency in your conduct throughout the process that if Mr Brown and Mr Beeston required you to approve, for example, the issuing of a notice to remedy breach or the issuing of a notice to show cause or indeed the engagement of Clayton Utz for negotiation or commercial negotiation, you approved each of those steps, did you not?---Yes, I would probably have required them, as it says here, for Natalie MacDonald to have endorsed that. 10

At each stage of this, you acted on the advice of your officers in approving these submissions made to you?---Yes.

Here we see that you approve on 28 July 2010 this recommendation, namely, that Clayton Utz had recommended a particular planned approach to the negotiations to ensure the state achieved an optimum outcome that can pass scrutiny in terms of probity and public interest test. Yes?---Am I looking at the letter or the - - - 20

No, you're looking at page 2 of the document, page 418, second paragraph?---Yes.

I think you expressed before that you were going to use the word "want" and you changed that word to something else, but you didn't particularly see a need for Clayton Utz to be involved in this process?---It wasn't that I see a need, I did not initiate Clayton Utz coming in, I assumed that Mallesons would handle this for us, but when Mr Brown suggested that Clayton Utz would be better then I accepted that. 30

All right. Did Mr Brown ever express to you a concern that he had, which he's expressed to this commission, that he knew of your previous dealings with Mr Doak, and what he was trying to protect the state of Queensland from at least was a negotiated process that did not involve lawyers, that is, a negotiated process simply between yourself and Mr Doak?---No, he never mentioned that to me that I can recall, and I didn't have a relationship with Mr Doak that should have caused Mr Brown that concern either. 40

I'm talking about the relationship, I'm actually talking about something more fundamental, and the concern is this: that Mr Doak was a more experienced, and shall I say savvy, commercial negotiator than yourself, and I say that with respect?---I accept your respect. Well, the first place is: I wouldn't think James Brown would know what my background was in negotiation, that's the first thing. 50

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The second thing is that from 1980 I had been negotiating with computer companies or major builders on behalf of the state of Queensland, so there's 30-odd years so James probably did not even know about. To be perfectly honest, I don't know what Bill Doak's background is in negotiation either so how James Brown could make that assessment is beyond me.

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All right. In any event, you had approved Clayton Utz's protocols and what then happened was an exchange of correspondence between Blakes and Clayton Utz where protocols were agreed?---Yes.

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You recall that Mr Doak, in responding to your letters, sent out really on advice from Clayton Utz but he responded by saying, "Look, we don't think we need lawyers, in the first instance there should be meetings between top level executives of the Department of Public Works," namely yourself, "and IBM representatives without lawyers being present." Yes?---He'd been saying that for 12 months.

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And you were aware that IBM wished to have negotiations directly with you. Yes?---Well, I didn't know it was necessary with me, but, yes, certainly. Bill Doak, Mr Doak, had certainly made suggestions along the lines of, "We don't need the lawyers."

But Mr Brown and indeed Mr Backhouse was emphasising to you, and through Mr Charlston's process from Clayton Utz, that lawyers should be present for these negotiations? ---Well, at that stage there were no negotiations planned. The issue of negotiation was in the hands of the lawyers of Clayton Utz, I wasn't talking to IBM.

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You were aware, weren't you, that after the protocols had been put in place Clayton Utz, on instructions from your department, sent the first term sheets to Blakes. Yes?---I think there's a term sheet of 4 August or something like that.

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Correct?---Yes.

Blakes, on behalf of IBM, took some time to respond to the first term sheets and they responded on or about 13 or 14 August?---I accept, yep.

Was it brought to you attention that there were concerns by Mr Brown and Mr Backhouse in relation to IBM's delay in responding to the first term sheets?---I was informed, I think, by Mr Backhouse and I think there was a file note that indicated a meeting with me where he suggested that IBM were not negotiating genuinely, I think was the word he used. I think that it had been suggested to him by Mr Beeston that this may be an IBM tactic to delay until such time as they could meet with the director-general, something like that.

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Can I show you that document? It's in volume 3, at page 68?---Page 68.

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Page 68?---Sorry, volume 3.

Is it the file note you're referring to?---I think there are two but certainly that is one that I have seen. I don't think I saw that at the time, it was just reported to me.

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All right, but in any event, do you recall it was brought to your attention that IBM would persist in trying to deal with you directly an exclude the lawyers from such negotiations?---Well, I'm not sure of the word "persist", but certainly at that stage they were saying that IBM were not negotiating genuinely and that they may be trying to see me. Is that a yes?

That's a "Yes", I suspect?---Okay.

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Yes, thank you. Did you appreciate that there were certain time limitations in relation to these negotiations. Yes? ---Yes, there were two time limitations, there was the formal termination and I had a six week CBRC imposed time limit as well.

Which took you to around 2 September 2010 to report back to the CBRC?---Yes, but you don't - you can't report back to CBRC at 24 hours notice, so CBRC 26 July I think was the target or thereabouts to get CBRC.

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In terms of instructions to Clayton Utz, the period of negotiation that had been presented to Clayton Utz through Mr Brown was 2 August to 20 August. Yes?---I didn't know that but I've since heard that or seen that.

You also were aware of general advice from Mallesons in relation to the possibility of waiving the right to terminate IBM services in respect to the notice to show cause that had issued on 29 June 2010?---Sorry, you'll have to say that again.

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You also were aware of general advice from Mallesons in relation to time running - - -?---Yes.

- - - or the effect of time on terminating after 29 June 2009 notice to show cause?---I'm not sure where the advice came from, but certainly I think on the 18th received an email from my associate director-general, Ms MacDonald, saying, "Time is running out, have you contacted IBM yet," and I assume that referred to the advice maybe she'd read from Mallesons or the CBRC. I'm not sure which time she was talking to, or both she may have been referring to.

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All right. Thank you. Can I then take you to a discussion paper that was presented to you on or about 16 August 2010, and for that purpose we can either look at it in the volumes, which we'll do, I think, rather than Mr Charlston's annexures, and you'll find it in volume 3 at or about page 97. Now, do you recall that after Blakes had sent IBM's response to the term sheet, that a meeting occurred between yourself, Ms MacDonald, Mr Brown, and Ms Berenyi, and Mr Charlston?---I don't specifically recall the meeting, but if it's in my diary and the email here says that they were going to meet with me, then - the email is not addressed to me, so - I'm not even copied in on it, so I assume that - I don't know. I may have been at the meeting. It may have been just with Ms MacDonald. I don't recall.

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All right. Can you just assume for the present purposes that you were present at the meeting and this discussion paper was put to you and presented to you by Mr Brown? ---Well, I don't recall that, but if you wish to assume that.

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Were you advised at least by this stage that having identified the terms that IBM were responding to through their letter of 14 August 2010 that the probability of settling with IBM was considered to be low?---Sorry, the possibility of settling with IBM within the time frames that we had?

No, in terms of the terms that IBM had responded. They said, "We won't pay any damages, we want full releases"? ---Oh, yes, certainly.

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That is, they were coming back with parameters that were beyond those parameters identified in the 22 July cabinet review committee decision. Yes?---I think their response at the 13th was not acceptable to the state.

All right. And so there was a high possibility at that stage there would not be a negotiated outcome. Yes? ---Well, I don't know, Clayton Utz went back with a statement, another term sheet on the 18th of that month and I think they explained IBM, to Blakes, that this was not acceptable, this is what - and so I don't know how successful or otherwise it was heading.

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But in any event, it was considered that it was appropriate for you with Mr Charlston present to meet with IBM representatives to say how disappointed you were with the process. Yes?---Well, I never intended to meet with IBM, with Mr Charlston to discuss how disappointed I was. I didn't - I think that my intention was to - let me go back. I had received those briefings from the director of legal and from James Brown saying that they - and John Beeston, saing that they were not negotiating properly. I knew

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I was running out of time. I spoke to my associate director-general who agreed that we should contact IBM, and my intention was to get some senior IBM people in, particularly someone senior to Doak and Killey, and basically say, "Look, you know, what's going on here? Why are you people not negotiating genuinely? You know what we're after. Why is it that this is not happening?" And basically try and see if there were issues that needed to be resolved as far as the process was concerned.

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All right. Can I take you to page 112 of the same volume? This is an email from Mr Killey to other IBM representatives, including Ms Adam-Gedge on 17 August 2010 at 4.31 pm, and it refers to a telephone conversation he had with you at 3 pm that day. So this is the day after you had been briefed with the discussion paper from Mr Brown. Can you just read what he records there and do you agree that is a reasonably accurate record of the conversation you had with Mr Killey on 17 August 2010? ---Well, I can't recall the conversation I had with Mr Killey on the 17th, but if you want me to go through it - - -

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Yes?--- - - - I may have said, "Where's Bill Doak," because he had been appointed to the middle east. I may have said, "We have received their response," and I was concerned, "I need to talk to somebody senior," which is what I just commented on previously. I may have said that IBM's response was unacceptable and not conducive to reaching settlement. I don't remember the 180 defects and they only repaired or fixed 24, but if that's the information I've received from James Brown, Beeston and Backhouse, then I may have said that. If Lucas got hold of this, the lawyers would be on to it and they would go legal. I think at this stage there was no doubt that Minister Lucas was very upset with IBM and I think that he would want to - I think he got his own legal opinion in fact about some of the issues regarding show cause, but you would need to confirm that with him. "I need to get the result by Monday." Monday must have been a meaningful day to getting something back to CBRC, cabinet budget committee, and if he can't, "Then it's out of my hands with Anna," I presume that means the premier. If I said that, and I can't recall it, but if I did, I think what I was saying was I had got instructions from the premier to go back within six weeks, so if I can't meet that deadline, then - - -

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The contract will be terminated?---No. Well, sorry, no, not the contract will be terminated. What I was saying is that I don't know what the - it was out of my hands, then. The cabinet budget committee would need to consider other alternatives which may be continue with the negotiations, it may be to terminate the contract, it may to go out with another press release. I don't - I don't presume to know

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what the CBRC would do. All I know is that I had a six-week time table to go back, and if I didn't meet that CBRC might make different decisions.

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But you certainly knew if the negotiations were not successful in the time that had been allotted to you, that Mr Lucas, at least, was very much of the view that the state should sue IBM?--Well, Mr Lucas had been, I believe, saying, "sue" since March that year, so I think that he may have been of that view. You will need to address that with him.

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All right?--But Mr Lucas was a member of the cabinet budget committee and the budget committee took that decision on 22 July not to terminate.

Thank you. And if you could turn then to page 113, Mr Killey then sent you an email suggesting that your phone call may have indicated a departure from protocols established by Clayton Utz. Yes?--Yes.

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And you brought this email to the attention of Mr Brown, did you not, and Mr Backhouse?--Well, I don't remember bringing to the attention of Mr Brown, but I can assure you that when I saw that, I immediately phoned Mr Backhouse and said, "Come on up here." He came to my office, I showed him this, and I believe that he - well, I know that he drafted or helped draft the reply to that email because that was not the intent of my conversation. Now, whether he involved Mr Brown, I really don't remember.

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All right. In any event, you, through the assistance of Mr Backhouse, replied to Mr Killey and that reply is at page 114. Yes?--Yes.

Thank you. In any event, a meeting was planned for you to meet with IBM on or about 19 August - - -?--Yes.

- - - 2010?--Yes.

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Now, if we could go to your diary then, the diary extracts which is the second part of exhibit 117, please. My first question is this: before you met with IBM, did you speak to Mr Ken Smith from the premier's department?---I don't recall. Is there an entry in here? You mean with a meeting with him? I don't recall a meeting with him.

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If you look at the entry for 19 August itself you'll see that there's a number of entries, the first is from 10.00 to 1.00 there's a meeting with Kevin Killey. Do you see that?---19 August?

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Yes, 19 August 2010, 11 o'clock to 1 o'clock?---Yes.

Can I suggest to you Mr Killey did not attend that meeting, rather it was Mr Doak and Mr Sarah Adam-Gedge?---Yes, in my statement I said I thought it was Mr Killey and I thought Ms Sarah Adam-Gedge was there. If you're telling me that Bill Doak turned up instead of Kevin Killey, then Ms MacDonald may be able to confirm that, she was at the meeting. The diary says Kevin Killey, and I guess that's why I assume it was Kevin Killey.

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All right. It would seem that meeting went for two and a half hours. Yes?---Well, I don't know. Somebody said it did, but I didn't.

Can I just ask this: this diary records what your appointments were to be for 19 August 2010. Yes?---Yes.

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So a decision was made to allot two hours to this meeting with IBM. Yes?---Yes.

Whose decision was it to allot two hours to this meeting? ---I've got no idea.

It is a substantial amount of time for a director-general to allot to any particular thing, isn't it?---Not particularly, it depends what was being discussed.

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That's my point?---That's your point.

What was your intention to discuss at this meeting as at 17 August 2010?---As I thought I just covered, I'd received this advice that they were not genuinely negotiating, that things were not proceeding. I was running out of time, I'd received an email from Mr Brown saying that, "Look, there's not much left to negotiate anyhow, all that's left to talk about is whether we keep some of the money." At this stage my intention was to meet with IBM and say, "Look, you know we're negotiating a settlement, we have got time constraints here, I have time constraints with the cabinet of Queensland, we have a legal time constraint. What are you fellows on about? What's the problem here? What's your agenda? What's happening here?"

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Yes?---But I did know at the time, and my statement records this, that there were a range of things that if we were going to get a smooth transition that the premier had insisted on there were a range of things that I had to make sure that IBM understood that I wanted. I wanted the defects fixed, I wanted a transition of all the consultants, and not just the transition, I wanted them to facilitate Infour and those other coming across, I wanted them to do the concurrent employment module, as Mr Lucas was demanding and had mentioned in the CBRC meeting, they had to deliver that. They had to complete a lot of documentation such that CorpTech could exit, and so those are the sorts of things that I thought may come up in the meeting, and presumably most of them did.

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Tell me this: prior to you attending this meeting, did you have any conversation with Mr Ken Smith where he made it clear to you that the state had no stomach or no intention of terminating IBM's services?---No, not that I can recall. Let me answer that differently. I can't recall if I spoke to Ken Smith, but certainly I had no instructions from Ken Smith about the state not terminating. My talking to IBM was based on what I just explained to you, my only instructions were the instructions in CBRC and from the premier and my minister regarding keeping the payroll running.

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2 o'clock to 3 o'clock, there's a 2 pm Natalie MacDonald catch up, but she was with you at this meeting with IBM, was she not?---Yes.

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Then a 3.00 to 3.30 meeting with Ken Smith and Mal Grierson. Now, was that a telephone conversation with Mr Smith or was that a meeting?---No, it wouldn't be here if it was a telephone conversation.

All right?---That means that I went over to see Ken Smith in his office and I believe that Natalie MacDonald went with me, and the reason I say that is because I received an email back from Ken Smith later that afternoon to confirm some of the things we discussed and he copied it to Ms MacDonald. He would not normally copy to Ms MacDonald if she hadn't been in the conversation.

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And it was from there that you arrived at what was called "settlement principles" from the meeting with IBM. Yes? ---Well, I think I reported to Ken Smith that I had met with IBM, that I believed that they were prepared - I think I probably told him that the meeting was amicable, because it was, that I believed IBM wanted to transition out. Doak was going to the middle east and there were other reasons they wanted to transition out, I think it was costing them a lot of money, and that I believed that if we wished to go down the path, "we" being the government, of a settlement that I believed that IBM were conducive to a settlement of some sort.

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29/5/13

GRIERSON, M.J. XN

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Prior to you attending the meeting with IBM, you recall from 16 August discussion paper that the suggestion had been made that Mr Charlston should attend at that meeting?  
---Yes.

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It would seem that Mr Charlston received a phone call from your personal assistant, Cathy, not to attend. Why was that decision made?---As I said before, I don't recall making that decision, but let's assume I did, because it was either myself or Ms MacDonald that would have instigated that. As I said, I wanted to talk to IBM about matters such as, "Why are you not cooperating, what's going on, what's your agenda here?" I did not believe that we needed Clayton Utz there because - and the other things is I couldn't have Clayton Utz there, James Brown would probably want to be there, Boyd Backhouse would probably be there, Crown Law should probably be there, Blake Dawson would probably have to be there, so all of a sudden my meeting with IBM would have been about 10 people and that's not what I had proposed to discuss with IBM that I believed was their performance.

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Can I ask you to turn to volume 3, page 133? You knew before this meeting with IBM that the state had sent what was being described in correspondence from Clayton Utz as a "compromised position by the state, in effect, its final negotiating position". Yes?---You're talking about the 18th term sheet boils back to them.

Yes?---I knew that there was a sheet, yes.

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First of all, did Ms MacDonald bring this email from Mr Brown to your attention?---I don't recall, but I certainly - this is at 10.17 am, just before the meeting. I doubt that she brought this down, but she may have, I won't dispute that, but certainly she did - well, she must have said to me, "I should ring Jeremy Charlston to let him know that you're meeting with IBM and see if he has any advice regarding the meeting."

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All right. Over the page you'll see he says at the last sentence, "It would be important that a file note recording the key points discussed is prepared and forwarded to Margaret for filing"?---As I said, I don't recall seeing that email.

Was there a file note made of the meeting either by Ms MacDonald or by you in relation to the meeting with IBM? ---It wasn't by me. Ms MacDonald, I believe, took notes because my plan was to debrief both Ken Smith and the CorpTech team of Brown, Beeston and Backhouse about what had happened. They all knew the meeting was going on.

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All right. If you then turn to page 139, you actually do call Mr Charlston. Just by reference to Mr Charlston's file note, Mr Grierson, are you able to recall what was discussed in this fairly short telephone conversation? ---Well, I think - that probably sums it up. I can't recall the specific words but certainly I would have said to him, "I'm meeting with IBM. I'm concerned about the progress to date. I don't believe that they're cooperating. I am charged by the CBRC to bring these negotiations forward within six weeks. I'm meeting with IBM to find out what is the problem." "Other business", I'm not sure what that means, "other business". Is that - oh, if he means other business that I wish to discuss with IBM, I don't know what that means. Certainly disappointed to date. I may have, I'm guessing, but the other business may have been something about - look, I don't expect IBM to be too hostile because I know that they are certainly hoping to do other business with the Queensland - I don't know. I really don't know what "other business" means.

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When you went into this meeting on 19 August with IBM, was it any part of your intention to come out of that meeting with basically agreed settlement principles?---No, because I didn't know what IBM were going to say when we entered that meeting.

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Quite. We come to it, then. I know it's a meeting that goes on for around two and a half hours?---We don't know if it did, actually.

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We don't have a file note of it - - -?---No.

- - - but can you tell us now your best recollection of what was said and what was discussed, and then I'll come to Mr Brown and Mr Charlston's file note in relation to what they say was discussed?---Okay. Well, I think that the - well, that telephone conversation with Mr Charlston, his advice to me was, "Start off this without prejudice," and so - I didn't need him to tell me that, but fine, and so I went through those processes - that process. My recollection is that I started off by saying, as I have said with you, "Look, we went through a process here where we got Clayton Utz, you fellows got Blake Dawson, and they were supposed to do this negotiation. It is not working in the sense that we've got about two or three days left for me to get back to CBRC, we've got a time bar with the option that we have with other things." May not have even told them that, but I certainly - they knew that I had a six week requirement to get back to the CBRC. "What is the problem?" And they would have gone on about, I'm sure - I can't recall the details but how, you know, this isn't - this wasn't right because we - Health had made change. I guess there was a regurgitation of why things - why they had to objectively show cause and they believe that they were being hard done by and all the rest of it. I think

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the end result, and my memory is a bit hazy about detail, but I think we got to a point where I said, "Well, look, what is it that is" - you know, "What are the issues here? Because I'm telling you - I'll tell you what it is that the government of Queensland expect from IBM", and among other things I went through, there were - and I've been through that list before with you - there are defects, there's transition of your specialist facilitating the transition of your specialist consultants, there is the documentation, there's the concurrent employment module; in other words, basically everything that was required for the continued successful, as it was, running of the payroll, which was the prime mission that the premier and the CBRC had given me, the things that IBM needed to do to contribute to that were the things that I was seeking from them. I don't recall rights, for example, being discussed at all.

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Did you discuss a full release for IBM if they were able to - - -?---No.

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- - - complete the defects by 31 October 2010?---No, and my emails for the next three or four days after that to Mr Brown certainly talked about maintaining the state's rights as best we could, as best we could. I do admit that there was a possibility based on the original cabinet budget committee decision, there was no termination that other things may happen, but, no, I don't recall discussing the state's rights other than we have rights and we intended to maintain them, and that's reflected in my emails to James Brown, the next day, the day after that and the day after that.

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Was it discussed that the state would not proceed with termination based on the existing show cause notice?---No.

That is, the notice issued on 29 June?---No. I have no authority to make that offer at all. I mean, the - I made it very clear to them that CBRC and CBRC alone would consider the information provided back to it after the six week period, and then they would make it - CBRC would make a decision as to where the government would proceed from that point.

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Do you have any other further independent recollection of what was discussed at this meeting?---I think there was the issue of how soon Bill Doak could depart the scene and go to the middle east. Was I happy that Mr Killey was fulfilling the role properly, those sorts of those - some of those sort of housekeeping discussions. I think Ms Adam-Gedge, I think that she indicated very much her role in this exercise and how she had the authority - I think she was number 2 in Australia at the time in IBM, so IBM was serious by putting one of their top people in to talk to me.

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Can I just take you to volume 3, page 193. These are proposed settlement principles that found their way as an annexure to the 26 August 2010 submission to the committee, but it would seem that it was always contemplated in terms of the settlement principles that upon the execution of a supplemental agreement, that IBM would withdraw its notice of dispute and the state would withdraw its notices, namely the notice to remedy the breach and the notice to show cause?--Well, I'm not a lawyer, so I'm not sure - - -

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No, but these are the principles that were discussed between - without lawyers, between you and Ms MacDonald, and Mr Doak - - -?--No. That - this is a document that was not prepared by Ms MacDonald or myself. I suggest to you, Mr Flanagan, that this was prepared, probably, by James Brown and they were probably his words. It certainly doesn't look like my words about "withdrawing contract notice" and "withdrawing notice on successful execution of supplement" - that sounds very legalistic to me.

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Can I suggest this: if someone was there from IBM, if I was there from IBM and there was a notice of show cause upon which the state could terminate the services and therefore suffer the reputational damage, one key point in negotiations with you that one would insist on is that notice be dealt with one way or the other in the negotiation. Now, was it dealt with in your negotiation with Mr Doak?--My answer to you is I do not believe that those issues were talked about, I do not recall those issues being discussed, and my emails, as I said, of the next two or three days to Mr Brown reflect that I assume that the lawyers would get back together now based on the principles, all this A to Z, or whatever it was, 1 to 10, and negotiate from there. I expected a position - and was also asked to prepare a draft cabinet submission to go back to CBRC as I was instructed to do so within the six weeks, and I believe in that cabinet submission there was still the option for the CBRC to terminate.

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Now, can I bring you to then your conversation with your own officers, so you have a conversation then with Mr Ken Smith - - -?---Yes.

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- - - and you have a meeting with him for half an hour. I'll ask you about that conversation first, if I may. What was discussed there and what was said?---From memory, I think that his main interest was: were we going to be able to report back to CBRC in the time frame set down; did it appear that IBM were prepared to move forward on a smooth transition to CorpTech, both of which I said, "Yes, I believe we can get back to CBRC," and I think his email later that day reflects that he would talk to the premier about the logistics of doing that. We also discussed the key thing that minister Lucas had been on about, concurrent employment, and I'm sure I reassured him that, "Yes, concurrent employment would have to be covered by IBM." As far as releases are concerned, I don't recall discussing releases with him but I may have said:

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*Look, if we don't terminate then the option for us to sue IBM later on down the path is very limited. We will try to retain whatever rights that the state has but I'm not sure that we're going to be able to meet the premier's requirement of keeping IBM to a smooth transition, keeping the payroll running and all of those things and retain the right to sue IBM.*

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Now, why do I say that, because I think you asked the premier a question a couple of days ago about on 23 August was she aware that the state's rights maybe were in jeopardy if she didn't terminate and that all you were going to get were 35 defects fixed, and she said, "Yes." My only conclusion from that is that maybe Mr Smith and I discussed the possibility that if we didn't terminate we could lose some state's rights and that maybe he briefed her on that, but certainly I didn't brief her on that point. That's just an assumption, I don't really know, that's the best recollection.

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Did you say to Mr Smith that you had actually reached a settlement with IBM?---No, and I wouldn't have said that, Mr Flanagan. I'll say it again. As a senior public servant who's been a director-general for 13 years, I can assure you - and having worked with Premier Beattie for three months - I know my rights and my authorities and I had no authority to settle anything. What I did was to negotiate as per the cabinet instructions and come back to cabinet and say, "Here's where we are, here are the options, we need further guidance from CBRC in a decision as to how to proceed." He understood that and he, as I said, I think he said he would talk to the premier that night about the logistics of what the CBRC meeting held.

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All right. Can I ask you this then, and I'll touch upon the Charlston file note at this instance. It records Mr Brown telling Mr Charlston, "They," meaning you and Mr Ken Smith, "have determined the state has no interest in termination of the contract with IBM." Was that a matter that you had discussed with Mr Smith?---No.

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In terms of the risk - - -?---Can I just say that I'm not sure that "they", let's assume it meant Ken Smith and I, but both Ken Smith and I knew the cabinet budget committee had made the decision to try and negotiate a settlement. As public servants, we were following the government's decision.

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It says, "The state wants IBM to finish the contract"? ---No, that's rubbish.

But the settlement principles that were identified was in fact IBM finishing the contract?---I didn't discuss that with Ken Smith, my discussions with Ken Smith were along the lines of getting the concurrent employment, getting the defects fixed, keeping the payroll running. I've seen the statement that you're referring to, the file note of the telephone conversation, I just can't explain it and I don't know whether Mr Charlston's got it wrong or Mr Brown's got it wrong, but I can assure you there are comments made in that file note which are just not accurate.

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Can we go back then to the sequence of events, and perhaps we'd like to take up the next conversation after lunch, but it will be the conversation you have with Ms MacDonald present with Ms Berenyi, Mr Brown and others? Yes?---Fine.

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Thank you.

COMMISSIONER: Yes, we'll adjourn now until half past 2.

THE COMMISSION ADJOURNED AT 1.02 PM UNTIL 2.32 PM

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MR FLANAGAN: Thank you, Mr Commissioner. Mr Grierson, before lunch we dealt with the conversation between yourself and Mr Ken Smith on 19 August?---Yes.

After your meeting with Mr Ken Smith, you then had a meeting with your own offices, including in the presence of Ms MacDonald but only Mr Brown and Ms Berenyi. Yes?---Yes.

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Was there anyone else present?---Not that I can recall. I think that's - they're the only names in the diary. Mr Backhouse may have been there but I don't recall. Certainly those four were there.

Can I just ask you a question about your diary. Is your diary completed prior to the appointments or is it completed after the appointments?---No, it's completed prior to the appointment but it is a best guesstimate by my secretary about how long meetings may go or not go.

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That guesstimate is based on information you provided to her?---Yeah. Well, she would ask me - in the case of this meeting - I mean, as I said, I don't think it went two and a half hours, I don't even think it went two hours, but she may have said, "Look" - my normal meeting is an hour, that was a normal period. She may have said, "Should I allow more time?" And I may have said, "Yes, you better," and so she just put two hours.

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Now, going back then to your conversation with your own officers, Mr Brown and Ms Berenyi, what was said?---Well, I can't recall the exact words but basically I reported to them on what had happened that morning. I mean, Ms MacDonald was there as well and I presume that she had some notes because in the file note that Mr Charlston took supposedly after a conversation with Mr Brown, he lists items, so I presume Mr Brown got some of those from that meeting, but things like the defects had to be fixed, IBM had agreed that they would fix defects, that they would agree that - I can recall that there was a discussion about, "Well, we'll only pay the 1.85 based on a pro rata basis. You fix the defects." I think that was at that meeting. The issue about concurrent employment, again, I'm sure got a guernsey, that was - that IBM clearly understood from our discussions that the government insisted that be undertaken, be developed. There was, I think, discussions about the - something that wasn't in Mr Charlston's notes. I thought there was discussions about the 1.4 million that they claimed - retention moneys they owed. I thought we had discussed that we would only pay half that and that the state would retain the other half, but that may have been a later discussion. I know that I said to them, "Right, from

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here on," next steps, basically, "Mr Brown, talk to Mallesons and get them to come up with some sort of legal settlement sort of next step papers," or whatever that was. I wanted a draft cabinet submission to go back and that was as a result of my meeting with Mr Smith that we had to go back to CBRC to tell them where we were and to seek their guidelines for the next step. They're the sort of things - oh, we obviously discussed where Mr Doak would go, could leave for the middle east, Dubai, wherever it was, and that how Mr Killey would take over and how that was going to be affected, those sorts of things.

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Did you ever say to them at this meeting, and in particular to Mr Brown, that IBM had emphasised in the course of the negotiations with you on the 19th that CorpTech did not have the skills or there was insufficient confidence in CorpTech to support the system?---No. I've covered this in my statement, going through each of the points that Mr Charlston has concluded in his file note. I think the 22 July cabinet decision, the CBRC decision was that the premier and CBRC wanted IBM to exit and they wanted CorpTech to have transition to them, all of those resources, and take over. It just doesn't make sense that I would agree to or said to Mr Brown that there's no confidence in CorpTech. The premier's adamancy, her insistence on keeping the payroll running does not make sense that she had no confidence in CorpTech in doing so.

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Quite. What's being suggested is in fact that if IBM in negotiating with you, that is Mr Doak for the other IBM representative, said words to this effect, that, "You can't have confidence in CorpTech fixing these defects; you can only have confidence in IBM to fix these defects"?---No, I don't believe they said that.

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But that's not an unusual thing to have said in the course of negotiations, is it not?---I don't care if it's unusual or not; they didn't say that. What may have been discussed was the need for IBM to transition, and I may have raised it, transition those experts over to CorpTech such that they were able to have the Workbrain experience and expertise, and those sorts of things, but I just - I don't know where that's come from.

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Was there any talk with you and Mr Doak and the other IBM representative about CorpTech not being able to support the system without IBM subcontractors and without Infor? ---Well, I can't recall, but as I said just before, the - I think that there was a general understanding that those people were the people who were supporting. CorpTech was not supporting Workbrain. There were specialist consultants supporting Workbrain. They were there at nighttime when the payroll was running, it wasn't - I mean, CorpTech were there but there were specialists doing that sort of work, so there was no doubt that it was generally

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known by Health, by CorpTech, by me, by IBM that those specialist consultants were involved. 1

Now, you recall I brought to your attention before the 13 August term sheet response from IBM's lawyers, Blake Dawson?---Yes.

And you also recall that I brought to your attention the specific response to the state's damages claim against IBM where IBM said, "We have incurred further cost in relation to fixing defects and delay, and we've also suffered reputational damage." Yes?---You showed me that, yes. 10

And the emphasis there was that IBM would sue in that regard if a damages claim was made by the state of Queensland against it. Yes?---I'm not sure what the implications of that settlement sheet were. I didn't see the word "sue" there.

All right. Can I suggest to you that at the meeting that you had with Mr Doak, that he made it clear that if you were to terminate or if the state of Queensland was to terminate the contract with IBM, that IBM would sue the state, they would counterclaim?---That's just not - that is not true. My statement says what I believe. 20

All right. You know there was a risk of - and you've been told there was a risk of IBM counterclaiming that had been in a number of documents provided to you including - - -? ---Yes. 30

- - - Mallesons' advice. Yes?---Yes.

You also knew that there was a risk of IBM disputing whether or not they were in material breach of the contract. Yes?---Yes.

In terms of negotiation, it's not a bad negotiating tool to say, "Well, if you sue us, we're going to sue you." Yes? ---I don't know. 40

Is it the fact that you don't have a recollection of that being said - - -?---No.

- - - by Mr Doak or you deny it being said?---No, I deny it being said, and the reason I deny it being said was because, as I have said in my statement, I believe that the meeting was amicable. IBM had assigned their number 2 in Australia, Ms Adam-Gedge, to come up, and my reading of the situation was that IBM were wanting to make peace, they wanted to - - - 50

COMMISSIONER: On their terms or yours?---Pardon?

On their terms or yours?---Well, I think that they were hoping to do it on their terms and we were hoping to do it on our terms, but the point was, Mr Commissioner, that I believe it was an amicable meeting. Now, to think that they would have sent up number 2 in Australia, a senior person who would come into the meeting and say, "We're going to sue you," is just - I mean, it just didn't happen.

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MR FLANAGAN: Did you have a belief that IBM would sue the state of Queensland if Queensland terminated its contract? ---No, I did not.

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So the risk that had been identified in the Mallesons options papers and the risk, had it been identified in the 22 July cabinet review committee submission, which identified that as a risk, you didn't accept that was a risk?---No. I accept that there was always a risk once it went into the litigation path, that as Crown Law and Mallesons said, I thought you were referring to at that meeting did I have a belief that IBM were going to sue me or sue the state. At that meeting, I did not believe the tone of the meeting, the way it proceeded, I did not believe that there was - there was certainly no suggestion or threat of suing the state.

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Now, what's significant in terms of this file note, however, is that Mr Charlston and Mr Brown at least agree on this: that the settlement principles conveyed by Mr Brown to Mr Charlston are accurately recorded in this file note, and that was the very task that you gave to Mr Brown, wasn't it, for him to draft up the settlement principles and to ensure that Mallesons sent a letter to IBM's solicitors outlining those settlement principles. Yes?---He was to get Mallesons to draw up a document which set out some of the things that had been agreed, like the defects and those sorts of things, and to plan the next steps, I guess.

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All right. But the second item there in paragraph 4B, as one of the keys principles, is that all notices by IBM and the state are to be removed from the table. What I'm suggesting to you, Mr Grierson, is that accurately records what was agreed between you and Mr Doak, namely, that all notices would be withdrawn and as a result of which the state would lose its immediate right to terminate?---Well, you can suggest that, I'm telling you it's not right, and later emails from me to Mr Brown, later documents prepared by Mr Brown do not reflect that.

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This is reinforced by the next principle in C, and this is requiring Mr Brown to get it so fundamentally wrong and Mr Charlston to get it so fundamentally wrong in recording it, but it says here, "A line is ruled under the disputes." That would suggest the withdrawal of notices, would it not? ---Mr Flanagan, I'm telling you that I don't know where this document came from.

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COMMISSIONER: We know where it came from. Mr Brown spoke to Mr Charlston within hours of speaking to you, and this is what Mr Charlston says is his note of what was said? ---Yes, but it's Mr Charlston's note of what he thinks Mr Brown - - -

No, it's not what he thinks Mr Brown said, it's what he made a note of what was said at the time. Why wouldn't I, as a fact finder - why wouldn't I accept that the best record of what was said is that which was recorded at the time?---Well, you may, commissioner, but I'm suggesting to you in my evidence under oath says that there are a lot of things in this document that are not right, they're incorrect. If you'll accept some of them and not accept the others, I just don't know how you do that, but that's my interpretation. There are a lot of statements in this document which are false, and I'm saying - - -

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Which ones are false? Sorry, Mr Flanagan. I'm sorry, I've taken over.

MR FLANAGAN: No, actually please do.

COMMISSIONER: Yes. Which ones are false, Mr Grierson?  
---F, on page 2. "There is no security for IBM's  
performance except that IBM specified." It clearly says,  
and the one above, that there is going to be some security  
for performance in the sense that IBM will only be paid  
based on their defect correction.

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MR FLANAGAN: Can I take it from that, that you're  
agreeing in F that it was an agreed principle between you  
and the IBM representatives as of 19 August there will be  
no damages clause?---No, you can't. What you can take it  
from me is that when the issue of defects was discussed  
with me, I said, "Well, we're not paying you that 1.85  
unless the defects are fixed, and to ensure that they are  
fixed we will pay you on a pro rata basis. So if you only  
fix half the defects you only get half of the 1.85 million,  
because obviously somebody else is going to have to fix  
them." So that's what that was about.

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A damages clause, isn't that a reference to the entire  
conversation that had been taking place on these term  
sheets, namely, that the state of Queensland initially  
was going to seek liquidated damages in an amount of  
\$12 million, which you said, "Well, there could be more so  
take the \$12 million out, so we're going to seek liquidated  
damages from IBM." What I'm suggesting, Mr Grierson, very  
succinctly to you, I hope, is that at this meeting with  
Mr Doak and the other IBM representatives you agreed with  
them that the state would no longer seek damages from IBM?  
---Well, I'm answering you succinctly, Mr Flanagan, and say  
that is not correct. For me to say to Mr Brown, "There  
will be no damages clause," they're not words I would use.

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It's a fact, is it not, that as the supplemental agreement  
was signed and executed there was in fact no damages claim  
made against IBM?---I think that's correct, yes.

And the negotiated outcome between IBM and the state of  
Queensland meant that the state of Queensland released IBM  
entirely from any future claim for damages?---There were  
some rights retained but I think the decision had been  
taken back on 22 June that the government wanted to have a  
smooth transition of IBM exit the Health payroll, and that  
the premier had made a decision that she was not going down  
the long legal path, and I think her evidence stated that.  
Would you like me to go on with these things or - - -

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You're referring not to 22 June, you're referring to  
22 July, are you not?---That's correct.

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In relation to that 22 July decision, there were parameters  
for the negotiation which included the state as a preferred  
position seeking damages from IBM. Yes?---Seeking, yes.

Yes, quite, thank you. And what I'm putting to you as a  
result of your negotiations and your face-to-face meeting

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with Mr Doak and the other IBM representative, the state  
ceased to seek damages from IBM?---Yes, I know you're  
saying that and I'm telling you that is not right.

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Why isn't it right? What are we missing here that would  
suggest that it's not right?---What your missing,  
Mr Flanagan, is that you weren't at the meeting and you're  
suggesting that things happened that just didn't happen,  
that's what you're missing.

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No, what I'm suggesting is that there is a relatively  
contemporaneous note between two people, Mr Brown and  
Mr Charlston. They agree that this note accurately records  
the principles that you conveyed to Mr Brown as a result of  
that meeting. He thinks he probably got it in writing or  
there were notes taken by Ms MacDonald which were conveyed  
to him which he took and then conveyed to Mr Charlston.  
There is no dispute between them, Mr Grierson, that those  
notes accurately record the principles. Now, I'm putting  
it to you that as a principle you agreed with IBM on that  
occasion that there would be no damages clause?---And I'm  
telling you for the third time, Mr Flanagan, that is not  
correct.

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Do you want to still go through and identify - - -

COMMISSIONER: I suppose I should, yes. What else was  
false about this account? We got to 4F, what else?  
---Item K. Will I continue, Mr Commissioner?

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Yes, please?---Item K says, "John Beeston does not know  
about the terms and this can't be discussed with him." I  
certainly didn't tell Mr Brown that, and in fact if you  
look at the next memo from Mr Brown he actually says he  
gets Mr Beeston to help him draft the document, so that  
makes no sense. Item M says, "These terms are the  
culmination of the negotiation process." That's not  
correct.

Why isn't it?---Because we have to go back to CBRC for  
instructions about the next step.

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You had the authorisation for the settlement, but this,  
in its terms, it says, "This is what has been agreed  
between Mr Grierson and Mr Doak, obviously it requires to  
be finalised, CBRC approval"?---Commissioner, it wasn't the  
culmination of the negotiation process, and as all the  
document that follows this date shows there were extensive  
negotiations going on between Mr Brown, Ms Berenyi,  
Mr Doak, Mr Killey about specifics of defects, specifics  
about concurrent employment, specifics about how things  
would be identified as defects as opposed to - this wasn't  
culmination, this was just setting the scene.

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Tell me this then: as a result of those further negotiations, in what respects did the state's position improve?---The state's position improved in the sense that IBM - if we go back to my original instruction - - -

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No, just answer my question, please?---Well, my original instructions were to have a smooth exit of IBM. The state's position improved in that we got a smooth transition of IBM out of the Health payroll. My instructions were to get the defects done, the defects were done. My instructions were to get concurrent employment, we got concurrent employment. My instructions were to get all of those consultants facilitated by IBM across to CorpTech, we got them facilitated across to CorpTech. Some of them were for - are still there in CorpTech, some of those consultants. So the state's position was improved in that the premier of Queensland wanted the payroll to have no risk and to be guaranteed to be delivered by CorpTech. Not just for 31 October but for the next X years, that's how the state's position was improved. We got that smooth transition, the payroll was taken over by CorpTech, all those things were delivered by IBM successfully and the payroll improved from that point on.

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MR FLANAGAN: But Mr Commissioner's point, though, is those basic matters of what you've just described were agreed in the settlement principles as outlined in 4A to 4M on Mr Charlston's file note, weren't they? That is, IBM were going to fix the defects, there was going to be a transition, there was going to be an orderly transition with documents being provided by IBM and whatever, so the question is - - -?---Well - - -

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- - - beyond those principles, apart from the details, how did the state's position improve?---Well - - -

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I'll just put it more clearly - - -?---No, let me answer it - - -

Yes, please?--- - - - because I don't know why we're going around this circle, Mr Flanagan. You can enlighten me. The senior government body in the state is the cabinet budget committee. The senior person is the premier. As a director-general, I work for the premier. The premier gave clear instructions, the CBRC made clear decisions. I had no confusion about what was my priority. The state's position was improved in that the premier of Queensland and the CBRC achieved what they set out to, and that is payroll was stabilised, the payroll kept going, and from that point on IBM were out of the equation and the employees of Queensland Health got their pay improved every pay. Now, that was the - the priorities were with the premier, she has told this commission that, Mr Schwarten told this commission that, I'm telling that commission that. That's just the fact.

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COMMISSIONER: All right. We understand that. Mr Grierson, is 5 false?---Pardon?

I'm going back to Mr Charlston's file note?---Oh, yes.

Is paragraph 5 false?---Yes. I mean, "James said there was no security performance, that IBM was free reign." Well, again, obviously up above they don't have a free reign, they don't deliver the defects, they don't get paid. 1

6 - - -?---Number 6 - - -

I know about 6?---6 is rubbish.

Forget about that. We'll come back to it, but we'll say it's false?---I didn't instruct him not to respond to Blakes at all. 10

July?---No, that's rubbish.

That's rubbish? All right?---Well, I didn't instruct him - - -

Is 8 - - -?--- - - - - to forward - to respond to Blakes at all. 20

Is 8 false?---I mean, James may have said to Mr Charlston, "Don't respond to Blakes," but I didn't tell him to say that.

No, I understand that. All right?---"CBR was considering the proposal on Monday."

That's not rubbish?---No. That is correct. I had spoken to Ken Hope that afternoon - Ken Smith that afternoon - - - 30

MR FLANAGAN: Ken Smith?--- - - - and Ken Smith had said that he would talk to the premier that night and, if possible, they would schedule a CBRC meeting directly after cabinet on the Monday afternoon.

COMMISSIONER: All right?---"James will talk to Mallesons" - - -

9?--- - - - well, he was told to - - - 40

That's right?---That's right.

10, 11 no doubt are right now?---I don't remember saying that I would provide a paper to Bill Doak but I'm going to argue about that.

All right. Let's come back to 6. I know what you say about it, I know what Mr Brown says about it, I know what Mr Charlston says about it, but just tell me this: assuming, just as a hypothesis, that Mr Brown said the things that Mr Charlston recalls him as having said - - -? ---Yes. 50

- - - can you tell me where he might have got the information, apart from you?---Well, he may have made it up.

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He might have. All right. It may be fiction. Is that the best explanation you've got?---Well, the fact that it is - the first sentence, first paragraph is just illogical, it makes no sense, I can't, I cannot imagine that he said that because he says the politicians' extreme nerves and due to the fact that if IBM is removed, the blame, well - - -

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Let's take - - -?--- - - - the premier's instruction was to remove IBM.

Let's take - - -?---We wanted IBM gone.

Let's take it phrase by phrase. The politician, I assume - by which I assume he assumes Mr Swarten and Ms Bligh are extremely nervous. Were they nervous?---They were nervous to the extent that, as I reported to you earlier, that the payroll had become, for them, very much a personal people issue. So they were nervous that if this payroll, if it crashed, it would be a front page story.

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I understand that?---And not only front page story, they had to face the people in the hospitals that they had made promises to.

And, it seems, had to face the people in 18 months time in a different - - -?---Well, that's a different thing.

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Yes, different context. Anyway, you can recast the second part of the next phrase. "If IBM is removed, there will be no-one to blame." So if IBM remains fixing the system and it's not fixed, you can blame someone. Is that accurate? ---No.

No? All right?---The CBRC decision of 22 July clearly said they were not going to go down - they wanted IBM out of the payroll equation.

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You've just told us you were desperate to keep them in to fix it?---No, I wasn't. I wanted them out as soon as possible.

All right?---Jane Stewart wanted them out as soon as possible, but we could only get them out under a smooth transition where those specialist consultants were transferred over to CorpTech, and Minister Lucas was adamant that they were going to fix the concurrent employment module or develop it, and there was certain defects where we believe that IBM were best positioned because I understood the design aspects of the areas of the defects - where the defects were - that their consultants would be best placed to fix it. These may

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not have been specialist consultants; these were other IBM employees and there was a feeling that they were best placed to fix those defects and therefore rather than CorpTech try and take them on, they should.

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We can omit the next passage. That's just Mr Brown's personal view. Coming to the third one - - -?---Yes.

- - - Mr Brown said, "The real issue is the DG" - that's you - - -?---Yes.

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- - - was concerned about himself and the minister"?---Yes.

Were you concerned about either you or Mr Schwarten?---No.

Not at all? All right?---Well, commissioner, the first thing is: I'm a public servant of 40-odd years, 40 - too many years - 48 years. I was. I'm of a belief - I served with premiers from all political sides. I am not concerned about elections; elections come and elections go, they don't worry me. As far as - so I wasn't worried about an election. The second thing is, Mr Schwarten, I can assure you, having worked with him for 13 years, he can look after himself, I don't need to worry about him come election. The third thing is that we had already discussed over that period, Mr Schwarten and myself, about retirement. I was 65 years old and I was ready to look for a retirement period, so I didn't care whether there was an election, what the results of the election were, when it was. I planned to retire before the next election anyhow. So why I would be concerned about it - and then the next statement, which is - I have to say, is ridiculous, that, "They are concerned about anything being made public." I mean - - -

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If there had been a stoush between IBM and the state, the writs had been issued and the counterclaims have been issued and IBM was very publicly complaining that the reason they got things wrong, if they got things wrong at all, was that Queensland Health made a botch of things, would that have helped to go into election prospects? ---You're asking personal opinion.

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Yes, I am?---Yeah. I honestly believe, commissioner, there had been so much damage to the Queensland Government's image over this Health payroll, I don't think that anything else could have caused more damage. I think that the media had absolutely taken the government to task. I mean, you saw all the stories of poor Nurse Brown that didn't have - all those. And I think that's why, at that stage, the premier and the ministers were past worrying about the damage to their image; they were worried about getting people paid. I genuinely believe that. Leave politics out of it. I genuinely believe that the premier, the Minister Schwarten and Minister Lucas, they were genuinely

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concerned about people suffering - I mean, I know that  
Minister Swarten talked about somebody hanging  
themselves. I mean, they were really worried about these  
people.

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I don't doubt that, it was an awful time for all concerned, 1  
I have no doubt about that. The question is whether a  
sense of panic paralysed the government into making a  
profligate decision?---I don't think "panic" is the word,  
commissioner, but there is no doubt that the premier and  
those ministers made decisions based upon keeping that  
payroll coming out every fortnight, and I think the premier  
expressed that to you when you asked her about, "Did it  
matter what sort of damages you could get," and I think her 10  
answer was, "No, it didn't, I was more concerned about the  
people of Queensland, the Health payroll people." I just  
think that's where they were going, I don't think "panic"  
is the right word, I just think they had made a decision  
probably before July. But certainly in July they made a  
formal decision, "We are going to keep this payroll  
running," and they wanted a negotiated settlement for IBM  
to exit. The premier quoted all of the legal opinions  
she'd seen and the chances of litigation, she considered  
all those things, but I was there in the room and I can 20  
assure you that she was very genuinely concerned about the  
people in the Health payroll. 20

Thank you.

MR FLANAGAN: Not to amuse you, Mr Commissioner, but that  
completes the evidence-in-chief of Mr Grierson.

COMMISSIONER: All right. Thank you. Mr Plunkett?

MR PLUNKETT: I have no questions, thank you, 30  
Mr Commissioner.

COMMISSIONER: Mr Haddrick?

MR HADDRICK: No questions, Mr Commissioner.

COMMISSIONER: Mr Ambrose?

MR AMBROSE: We have no questions. 40

COMMISSIONER: Mr Foley?

MR FOLEY: Yes, thank you, Mr Commissioner. Mr Grierson,  
you were asked some questions by Mr Flanagan about possible  
concerns on the part of Mr James Brown regarding your  
capacity to negotiate relative to the capacity to negotiate  
on the part of Mr Doak of IBM. Do you recall?---Yes.

In answering that, you said that you had been negotiating 50  
in respect of contracts affecting the Queensland government  
for some 30 years?---That's correct.

Can you give us, briefly, an outline of your experience  
in negotiation of contracts on behalf of the state of  
Queensland?---Well, it's not just contracts, Mr Foley, I

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was the head of CITEC, the government's computer centre, all during the 80s so I was effectively the government's chief IT person then. And we did all of the purchasing of computers and software on behalf of the government, so I certainly was the lead in negotiating I guess contracts with computer companies, all of them, where mainly (indistinct) the centre at that time, so I was involved in all those negotiations for software and hardware. When it came to my role from the 90s when I became the deputy director-general and the director-general of Public Works, every major building involved disputes and negotiation. This one did, I mean the builder here fell over so there was negotiation of disputes with not only builders but major subcontractor firms, unions, subcontractor associations and so forth, so, yes, I've had extensive experience over a long time.

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Yes, very well?---Did that answer your question, I'm sorry?

Yes, thank you. You were asked questions with respect to the file note from Clayton Utz, Mr Charlston, with respect to in particular a paragraph concerning the motivation of yourself and minister Schwarten?---Oh, yes.

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You've answered that. May I direct you then to this question: Was there anything in what you said or did to Mr Brown which from your point of view could give rise to the observations made there with respect to minister Schwarten?---None whatsoever. I'm sure that you know Mr Schwarten having seen him here, he is not the shrinking violet and election is not something that he is concerned about. Mr Schwarten - - -

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COMMISSIONER: Well, he didn't contest that one, did he? ---Pardon?

He didn't contest that one, did he?---No, and he never intended to. Mr Commissioner, I think later in that was six seats?

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MR FOLEY: There was seven, I think?---Seven? Okay. Well, Rockhampton is one of them, so he had probably the biggest margin, electoral margin, in the state. It was not the biggest, close to the biggest, so I cannot imagine why anybody would think that he would be worried about an election if he wished to contest it.

COMMISSIONER: Unless he thought the back bench was an attractive place to be?---Well, that's probably true.

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MR FOLEY: You were asked some questions by Mr Flanagan in respect to any evidence you had to suggest the risk of dealing with IBM subcontractors. Do you recall that? ---Yes.

May I take you, please, to volume 2, page 226 of the documents?---Yes. 1

You see there the cabinet budget review committee decision of 22 July 2010?---Yes.

That document, having been prepared initially by Mr Brown, would have come up to you in due course for consideration before submission to - - -?---Yes. 10

- - - minister Schwarten?---Exactly.

And you would have read this document?---My word.

Attached to this document were a number of attachments, including the Crown Law advice to government, is that correct?---I can't recall now, yeah, but I'm pretty sure there was a whole range of attachments dealing with legal advice, that being one of them, yes. 20

Let me take you then to page 248 of that bundle - - -? ---Yes.

- - - which sets out those lists of attachments?---Yes.

They include the Crown Law advice of 23 June?---They do.

They include the attachment 10, the Mallesons options paper?---Yes, correct. 30

Attachment 11 the Mallesons options paper?---Yes.

Attachment 12, a further Mallesons option paper. Attachment 13, the Crown Law advice - - -?---Yes.

- - - of 20 July. Option 14, KPMG risk assessment? ---That's correct.

You would have read those at the time?---Yes, I would have gone through those. I can't quote them verbatim to you but certainly a cabinet submission requires a director-general to make sure that he's read these things, yes. 40

Can I take you to page 267, please? You will see there the advice from Crown Law dated 23 June 2010?---Yes.

This is an advice to Mr James Brown, who was an officer within the department for which you were the director-general?---That's correct. 50

I'll take you to page 267?---Yes, I'm here.

All right. In the second paragraph, this was Crown Law's reply to the request for advice:

*I understand that you have requested Crown Law to advise on the situation presently existing between the state and IBM and the courses of action open to the state to bring the matter to a satisfactory conclusion.*

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---Yes.

Do you recall Mr Brown having sought such advice?---Well, as part of the preparation for the submission we were seeking advice at all times from Crown Law. I don't remember him actually ringing Crown Law or writing Crown Law, but certainly Crown Law were advising us at all stages and we certainly asked Crown Law to keep us advised of options.

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And it was part and parcel of the business of Crown Law, was it not, to provide advice to you as one of the agencies of the crown?---It was essential.

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Needless to say, from your experience, Crown Law are people with expertise in dealing with contractual disputes involving the government of Queensland?---If Crown Law say do it, most director-generals would tend to do it.

All right. And you would expect from them comprehensive advice, would you not?---Yes.

So that if there were matters about courses of action open to the state to bring the matter to a satisfactory conclusion, as your department had requested them to do, then you would have expected them to recommend such courses of action?---Yes.

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Yes, very well. Can I take you, please, to page 349 of that volume. If you go two pages before page 347, you will see there's Crown Law advice dated 20 July 2010?---Yes.

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Again, this is an attachment to the cabinet budget review committee - - -?---Yes. 1

- - - submission. Can I take you to the bottom of page 349 to the paragraph headed "Inducement and Summary"?---Yes.

All right. Now, you were asked by Mr Flanagan about any evidence that you may have had with respect to risk of dealing with IBM subcontractors in the lead up to this cabinet budget review committee decision. I'll read the first sentence to you for completeness: 10

*I note that even if the state does terminate the payroll contract, the risk for the claim of inducing breach of contract by IBM subcontractors remains present in the state's dealings with those subcontractors.*

---Yes.

That was information that you had plainly in the lead-up to the making of that?---We were aware of that, yes. 20

Towards the bottom of the page after it goes on to discuss these matters, it says - the advice from Crown Law to your department says:

*The state might be seen as interfering with the relationship with IBM and a subcontractor if it seeks to directly engage a subcontractor to do work that will detract from the subcontractor's capacity to carry out its obligations to IBM.* 30

---Yes. I think that's - when IBM said, "Stop talking to those subcontractors," I think that's the sort of information that prompted us to do what we're told.

Yes. Nothing further, thank you.

COMMISSIONER: Yes, thank you. Mr Kent. 40

MR KENT: Thank you, commissioner. Just briefly, Mr Grierson, you were asked by Mr Flanagan about your perception of the risks in terminating the contract on more than one occasion, I think. I'll just ask you to have a look at volume 2; that's the volume you just had.

COMMISSIONER: What page?

MR KENT: Firstly at page 364, just to identify the document. This is the premier's briefing note of 25 July. Right?---Yes. 50

COMMISSIONER: June, in fact.

MR KENT: Yes, June in fact. That's correct. Just go forward to page 389?---389. Yes. 1

I think you may have had some input into that document?  
---Yes. I think in my original statement, I say that we had been asked by the associate director-general of Premier's Department to comment on risk that we saw - I thought that I drafted that but I've since seen emails to the effect that Ms MacDonald drafted that and gave it to me, and I used that as a discussion paper with Ken Smith. 10

Anyway, that's how you saw the risks at the time, was it?  
---That summarises, I think, the risks. Well, obviously it does because that's what we told the premiers.

Now, you were also cross-examined about - sorry, cross-examined about these interactions with IBM, Mr Doak on 19 August?---Yes.

And whether a full release had been discussed on that occasion. Do you have your statements there with you? 20  
---Yes.

Now, I think it's the first one of your statements?---Yes.

Dated 24 May and containing 23 pages. Is that the correct one?---Yes.

That has attachments, including MJG6, which is page 14 of the attachments?---No, I don't have that, sorry. 30

I think one is on its way to you, Mr Grierson?---Thank you. Now, where am I looking, sorry?

The attachment is page 4?---Yes.

And it's headed MJG6?---Yes.

This would appear, it seems, to be an email exchange? 40  
---Yes.

Originally from Mr Brown to Ms MacDonald and yourself at 4.04 pm on 23 August attaching a settlement principles document and hearing some commentary. Correct?---Yes.

If you look down towards the bottom of the page at the second and third-last line, he seems to say this:

*IBM is seeking a full release of all obligations at the end of the supplemental agreement. This is more than what would be released or that would be released if the contract ended normally. The state should not agree with this request.* 50

---Yes.

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Just up to your response at the top of the page?---Yep. 1

The last line and a half of your response?---Yes.

You seem to say there, is this correct, "Full release of all obligations is not on"?---That's correct.

Is that consistent with the way, as far as you had perceived it, that you had been dealing with IBM for that period?---That is correct and I think this is one of the emails that I mentioned before to the commissioner that as at three or four days, five days after 19 August, there are several emails where Mr Brown communicated himself with Ms MacDonald and has got involved in the emails, and my understanding was that we were still debating this business of full release and I certainly believe it was not on. 10

COMMISSIONER: Who put it on?

MR KENT: Perhaps anticipating there. 20

COMMISSIONER: No, well he (indistinct)?---I don't know.

MR KENT: Commissioner, my first question was going to be: it eventually was signed up on 22 September, I think. Is that consistent with your memory, the supplemental agreement?---It was finally signed - yes. Minister Lucas, I think, signed on the 21st. I think it was signed the next day, I can't be sure, but it's stated, yes. 30

As Mr Commissioner just asked you, somewhere in that interim, presumably this did get on to the bargaining table and it was agreed on. Do you remember how?---Well, I don't think it - I'm pretty sure it wasn't me because I didn't get involved in any more bargaining or negotiating with IBM that I'm aware of, but certainly the - I think that once the decision had been taken by CBRC that they were not going down the termination path, I think there was an understanding, I think the premier reflected this in her evidence, there was an understanding that they were not going to start going to litigation. 40

COMMISSIONER: So what IBM asked for IBM got?---Well - - -

MR KENT: Perhaps on that point, at least?---Look, maybe, yes. But, see - can I just enlarge a little bit, commissioner, on - - -

COMMISSIONER: Yes, of course?---Okay. I mean, there was this issue of warranty - - - 50

Can you just tell me - answer as you want to, please, but you might at the end of your answer tell me this: can you think of anything IBM asked for it didn't get?---Well, it certainly didn't get some moneys that it wanted.

It did. It paid it - - -?---No, but it didn't get all the moneys it wanted. We kept back half of the retention moneys. Financially, it came out of it very poorly. It wanted to stay until 31 March, I wanted them out faster than that and I got them out on 31 October.

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You drove a hard bargain, you're saying?---No, I'm not saying that, commissioner, but what I'm saying is that I delivered what I believed the premier wanted.

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That may be right, and you tell us what she wanted. Go on? ---Just talking about warranties, for example, if you buy a piece of software from Dick Smith or something you have warranties, you've got a records management system, you have warranties. Once we had gone down the path, the government had made the decision to negotiate to get those contractors over, as soon as they start touching code in a system like a Health payroll, you've just got to change one full stop in 400,000 lines of code you've got a real battle trying to claim warranty, because as I think others have told you, commissioner, you change one little piece here you have no idea what impact that could be elsewhere in the system. It was clear to us that trying to hold IBM to warranty was never going to occur once we took over their consultants and CorpTech started playing with the code. Once we started amending the code the only area I could claim warranty, and I did, was the concurrent employment module where I said, "I want that as a self contained module," and it was. It was put into the system, the discussions I had with IBM or I told somebody at CorpTech to have with IBM - I think I did - it had to run successfully for at least two full pays as concurrent employment otherwise they wouldn't get paid for it, so that's the only warranty that I could impose upon IBM. Once we started touching the other code it was like changing your car, once you put foreign parts in you're gone, so warranty was a very difficult issue once we took over.

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MR KENT: All right. I have no further questions, thank you.

COMMISSIONER: Mr Mumford?

MR MUMFORD: Thank you, commissioner. Mr Grierson, do you have in front of you the file note from Mr Charlston, which is in volume 3 of page - - -?---I have it. Yes, I have it here; yes.

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I only want to ask you a couple of brief questions?---Yes.

MR CREGAN: I'm sorry, I apologise, commissioner. Commissioner, it might be before Mr Mumford.

COMMISSIONER: Yes, I'm sorry, it's my fault. Yes, Mr Cregan, please go. Tell me, are you going to take up the challenge and explore the topic of whether IBM wouldn't have honoured its obligations in the event the state had sought to terminate the contract?

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MR CREGAN: I wasn't proposing to deal with that with this witness.

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COMMISSIONER: You weren't going to? All right. 1

MR CREGAN: Mr Grierson, can I ask you to take up your second witness statement, please?---My statement?

Yes?---Yes.

At paragraph 24?---Yes.

And it goes over between pages 6 and 7?---Yes. 10

I just want to check something. You have no personal knowledge of specific workarounds, their rationales or the work effort required for those things you set out in paragraph A there?---Ask that again, sorry?

You have no personal knowledge of the specific workarounds, their rationale or their work effort required in paragraph A?---I have some understanding of the rationale for the workarounds. 20

The specific workarounds themselves?---Well, I knew some of the workarounds but in general, no. In general, the workarounds were at a technical level between CorpTech and Health and IBM.

And those were set out in the defects management plan? ---That's right.

And they'd been assessed by Queensland Health and others? 30 ---Exactly.

As for paragraph B, the design of the pay slip, it's not something that you'd become involved in to work out who did the design of the pay slip or where that came from?---Well, I hoped that IBM, if they were implementing a system, would make sure that the pay slip was not complex and confusing. I didn't say that this was IBM's fault, I just said the system was not perfect to the state and I was aware, because I saw some pay slips, that they were very complex and confusing. 40

I understand. In terms of actually coming up with the technical agreement on who would have designed the pay slip, that wasn't something that you'd become involved in and have personal knowledge of?---No.

Similarly, on the same point would relate to point C as to design of the screens and those sorts of things, that's not something you helped out, where the specification - - -? 50 ---If you're asking did I know whether IBM did this or somebody else, no, all I'm saying is that the date inputs were complex and confusing.

All right. Similarly, the technical details at D, those aren't matters you become involved in?---Sorry, are you moving onto D? 1

To D?---To D? Well, I knew about D because I also controlled CITEC and CITEC was where all the computers were that ran the system, and I had to authorise CITEC to buy some more processing power, more computers, because of the slowness of some of these things. Now, I'm not arguing who caused the slowness but I certainly know that we had to increase our processing power. 10

One last thing I want to ask you about. You spoke before about the concurrent employment module?---Yes.

In fact, I think you use the words "it hadn't even been started" when you were speaking to Mr Flanagan earlier? ---Yes. It hadn't come onto the agenda to be implemented in the induction system. Somebody may have been writing code back there, but there was a schedule where something would come forward and then be scheduled to be introduced into the production system. My understanding was it had not come to that point where it was ready to go in the production system, and that's the one module where we actually sought the third party independent advice as to the cost, and ernst any - actually, the cost of that module for us and with the independent third party that IBM and CorpTech had agreed upon for that cost. 20

What I want to suggest to you, actually, is that there may be aspects that were ultimately dealt with in the supplemental agreement, but the concurrent employment was part of the Department of Housing baseline and was actually dealt with under CR 73?---Department of Housing? 30

It was in the Department of Housing baseline and was actually dealt with and brought into scope in CR 73?---All I know is in the CBRC meeting, Mr Lucas made a point that he was extremely disappointed that was not in the Health payroll system and it needed to be, and I think the premier made that same point a couple of days ago here. 40

All right?---I don't know, I'm not familiar with what was in Housing.

Do you know if it was brought in, in CR 73? Is that something that - - -?---I don't know what CR 73 is.

All right, fair enough. Nothing further, thank you, commissioner. 50

COMMISSIONER: Thank you. Mr Mumford, now it's your turn.

MR MUMFORD: If I could ask you to, again, look at Mr Charlston's file note?---Yes.

In response to a question from Mr Commissioner, you told us that the state's position had improved because since the time of 19 August there had in fact been a smooth transition of IBM out of the system, the defects were fixed, you delivered the concurrent employment module and the relevant consultants to assist CorpTech had in fact been transitioned?---By 31 October?

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Yes?---Yes.

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Those last two points, that is, dealing with the concurrent employment module and the transition of the consultants, are they anywhere in the key principles listed in Mr Charlston's - - -?---In this thing here?

- - - file note? Yes, from A to M?---No, they're not.

No?---I didn't notice that, I'm afraid. No, they're not.

Yes, thank you.

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COMMISSIONER: Mr Grierson, I'm sorry, can I take up a point with you? It is a topic we discussed when you were here last, but it is just something I want to question you about briefly, I hope. Have you got your first statement there, that is, the first of the present statements, the one of 24 May?---Yes, 24 May. Yes.

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Would you please read to yourself paragraph 13? This is the topic we discussed last time, but I just want to ask you something about it?---That is LATTICE, yes.

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I promise I won't go over old ground?---Yes.

What I want to know is this: I see what you say there but at the time the decision was made not to go ahead with the whole of government roll-out - - -?---Yes.

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- - - but to keep IBM in to replace the Health payroll, up to that point in time the understanding had been and the agreement had been, and statement of work 8, I think, was to provide an interim replacement and there wasn't going to be an interim position because there would be no final solution in terms of the whole of government roll out, so that what IBM was being asked to do was to write an interim solution without an end in sight, so to speak. Bearing that in mind, you mentioned - you list the considerations that led you to think that IBM had been kept in the contract, but was thought given to the fact that it was time to take a fresh look at the Queensland Health payroll replacement, not just on the interim basis but on a longer term basis?---Can I go back to your first point, commissioner?

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Yes?---I don't think that the first point is quite right. There was an intention to do an interim solution but I don't think the government would ever have just left an interim solution in Health department. The plan was always to add modules to improve the Health payroll.

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I understand that?---Yeah.

That was to happen when the final roll out occurred to take the - - -?---And that may - yes.

That wasn't going to happen, you see, so was any thought given to the fact that the interim solution had to be in some way improved or expanded?---No. I think that the aim of the exercise was to replace LATTICE and the - and I guess there was always in the back of our minds that having done that, we would then need to somehow, whether it was part of a whole of government revisited roll out or a special task to be undertaken just for Health, which is more likely would have been the solution, to upgrade that payroll. But the - I guess at that point in time, the - to replace IBM would have been a major exercise which would have taken years, put us back years.

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But why is that? Given that statement of work 8 was the interim solution and you didn't want anymore an interim solution, you wanted a more final one or a longer term one, why couldn't you have negotiated IBM out of it?---Because we've had to find a replacement for IBM. It wasn't

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negotiating IBM out, it was filing a replacement to develop a replacement system for LATTICE. 1

But you wouldn't need a prime contractor for that, would you? You just have to get a replacement payroll system? ---Well, there is no replacement payroll system for the Health department.

Well, there is one?---You cannot buy an off the shelf replacement system that handles 24,000 possible - - - 10

No, you're right, no, you couldn't buy it off the shelf and no doubt, you're right, you would have had to work out the design and - - -?---Go right back to scoping the thing as it should have been done in the first place, all of that, go to tender, call tenders, select a tenderer, whether it's a private contractor or whatever form of vehicle you use, then they would have either had to try and get hold of the intellectual property from IBM, which I can assure you they wouldn't have got, or they would have had to start all over themselves again themselves, but the length of that process we believed was extremely risky with the LATTICE system as it was. At the same time, we had this new project director on board, Doak, and they were making us promises, and I think I say it in here, that they were saying it's unequivocal you will have - we will go live on 29 June. Now, some of us may not have believed that 100 per cent but there certainly was a degree of confidence at that stage that maybe they could go live, that things were improving and that IBM would. The alternative to dump IBM then and go down the second path, the first thing is they mightn't have gone peacefully, there would have been - I mean, we've had to recently dump - because they weren't doing any other work - - - 20 30

I'm not suggesting you dumped them but you negotiated their exit from the contract which really had changed quite dramatically in the scope?---Yes, but by changing it to concentrate on Health, they still had the belief that if they implemented Health satisfactorily, they could then resume the whole of government roll out, and there was several emails in my evidence which indicate where they wanted to talk about during the latter period of 09, talk about, "Can we now start talking about the roll out?" And I think my emails back were pretty blunt, saying, "You get Health fixed before we talk about anything and get Health running," and that was my focus, to get Health up and running. I think you asked me a question last time about the problems with this whole thing and there's certainly, I believe, that one of the things that put us behind the eight ball was the fact that LATTICE had been left there too long. 40 50

You said that, I'm sure?---Yes. And that coloured a lot of the decisions that went through this whole exercise.

I see the (indistinct) sure that's right?---Yeah, and I was going to add something else. 1

Add it, by all means?---Well, I think that the other thing that - I think that all through this process - let me start again. Directors-general get involve in negotiating with ministers down from Canberra and all sorts of things with major projects, there's all sorts of problems on your plate all the time. I think that one of the lessons from this exercise is that people tend to lose focus or lose respect for some of the basic things like a payroll. I mean, I can assure you, I never even looked at my pay slip every fortnight, it just happened, but if it stopped coming, all of a sudden it was half what I thought it would be, I started getting involved, and I think that a lot of people lose respect when you're talking about online graphic latest technology systems like you've got here, I think people tend to lose respect for the fact that the basics, like a payroll, have still got to be seriously looked after, and I think that's a lesson for everybody, certainly in the government, that I think would have missed in this exercise. 10 20

I understand what you're saying, thank you.

MR KENT: Commissioner, could I ask a question - - -?

COMMISSIONER: Yes, of course.

MR KENT: - - - and propel the interchange that just took place? In response to one of the commissioner's question a moment ago, you said that in terms of negotiating IBM out as at January 2009, one of the problems would be negotiating taking over the intellectual property - - -? ---Yes. 30

- - - that had been developed by them in the year or so - - -?---Plus, yes.

- - - that they'd been working on it by that time?---Yes. 40

Do you have experience in that kind of thing, that is, attending to negotiate getting intellectual property off IT providers?---No, because I don't know of any example where an IT would hand over their intellectual property to another IT company. I mean, that is just a commercial reality.

In making that statement, are you relying on your experience and interaction with these companies over the years?---I've been around long enough in the IT industry to know that nobody hands over their intellectual property in the IT industry just as a freebie. 50

Unless it's negotiated?---People can buy it or negotiate partnerships or negotiate use of it and all those sorts of things, but nobody hands it over.

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Yes, thank you, commissioner.

COMMISSIONER: Mr Flanagan.

MR FLANAGAN: May Mr Grierson be excused?

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COMMISSIONER: Mr Grierson, it's been a difficult time for you, I know, but we appreciate your assistance? ---Thank you, commissioner.

WITNESS WITHDREW

MR FLANAGAN: The next witness is not available until 10 am tomorrow morning.

COMMISSIONER: All right. We'll adjourn then until 10.00 tomorrow.

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THE COMMISSION ADJOURNED AT 3.40 PM UNTIL THURSDAY, 30 MAY 2013

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