



QUEENSLAND HEALTH PAYROLL SYSTEM
COMMISSION OF INQUIRY

Statement of Witness

<i>Name of Witness</i>	Malcolm John Grierson
<i>Date of Birth</i>	Known to Crown Law
<i>Address and contact details</i>	Known to Crown Law
<i>Occupation</i>	Retired
<i>Officer taking statement</i>	Mr Peter Flanagan and Ms Anastasia Nicholas
<i>Date taken</i>	24 May 2013

I, Malcolm John Grierson, of c/o Crown Law, State Law Building, 50 Ann St, Brisbane Qld 4000, state as follows:

BACKGROUND

1. My name is Malcolm John Grierson. I hold a Bachelor of Economics and a Master of Public Administration from the University of Queensland, and I am a Fellow of the Australian Computer Society. I commenced employment in the Qld Public Service in March 1962 and, other than 2 years National Service, I remained in the Queensland Public Service until retirement in July 2011.
2. I was appointed Director-General of the Department of Public Works in October 1998, and served in that role until 1 July 2011. During that time my only absences from that position were periods of leave and a period of approximately 3 months in 2007 when I occupied the position of Director-General of the Department of the Premier and Cabinet. Further details of my background and earlier involvement in the Queensland Health Payroll System project are set out in my first statement.

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3. I participated in an interview on 9 May 2013 conducted by Mr Peter Flanagan SC and Ms Anastasia Nicholas of Counsel, each assisting the Commission. Also present were Ms Rachael Murray, Mr David Kent and Ms Melinda Pugh. At the interview, I was asked to provide details of my involvement with the Queensland Health Payroll System post go-live, particularly in relation to the settlement between the State and IBM.

PRE GO-LIVE ISSUES

Travel and contact with IBM

4. In September 2008 I took a trip with the former Minister for Public Works, Mr Robert Schwarten, to the USA where we saw IBM facilities in Austin, Texas and Washington, DC. The trip was arranged by me and not at the suggestion or instigation of Mr Doak of IBM. The purpose of the trip was not to talk to senior IBM personnel to work out the problems of the Queensland Health project; it was in relation to the possibility of the Government building a new computer centre. However, we did take the opportunity to escalate our concerns about the project to senior IBM people.
5. Since I retired as Director-General of Public Works, I have not worked or been contracted, directly or indirectly, or through an agency with IBM. I have not spoken to an IBM employee for over two years.

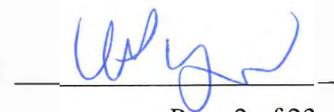
Pre Go-Live meetings and conversations

6. I have been told that there was a meeting attended by Mr Doak, Mr Swinson from Mallesons and numerous CorpTech people on 27 January 2009 in an attempt to resolve on-going disputes about scope. It has been suggested to me that:
 - (a) Mr Swinson proposed meetings to deal with the matter, but Mr Doak did not adopt that proposal and instead came to me to discuss the matters; and
 - (b) IBM expressed sentiments in relation to 'walking away' if legal action was taken.
7. I cannot recall these matters being discussed with me in January 2009. My diary records a standard meeting with Bill Doak on 30 January 2009 and another on

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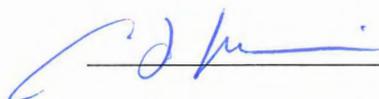
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13 February 2009. Both meetings were scheduled with my Assistant Director- General, Ms Robyn Turbit and either Ms Barbara Perrott or Ms Margaret Berenyi in attendance. I doubt that Mr Doak would have expressed these sentiments to me.

8. I have been shown a document which appears to consist of notes taken at a special meeting of the Executive Steering Committee responsible for the rollout of the Shared Services Systems across Government (**Annexure MJG-1**). This meeting was held in the boardroom of my office on 22 January 2009 and the notes show that I attended and addressed the senior SSP's from CorpTech, Health, Education and Treasury.
9. I remember that at this meeting the specifics of the change in direction from a Whole of Government rollout were discussed and supported by the senior officers from Education (Assistant Director-General Mr Stan Sieliff) and Health (Deputy Director-General Mr Michael Kaliminos). I assume that the notes of the meeting were taken by Ms Perrott.
10. In summary, my comments to the meeting covered the following main points:
 - (a) disappointment with the progress to date, and with IBM's performance;
 - (b) the need to replace LATTICE as a matter of priority;
 - (c) that TSS and Aurion upgrades were viable options for Education and the rest of Government, with the exception of Health;
 - (d) that we needed to get SAP (and perhaps Aurion) involved in the process;
 - (e) that my priority was to get the best possible value for the Government and for taxpayers in any further spending;
 - (f) that as Queensland Government Chief Information Officer, I expected an independent (that is, non-IBM) project manager to oversee the TSS upgrade.
11. The notes indicate that the meeting generally supported the way forward that was proposed. As a result, I undertook the following tasks:

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Page 3 of 23

- (a) I discussed the matter with the Director-General of Education, Ms Rachel Hunter on the morning of 27 January 2009. My diary records this meeting was scheduled for 10.00am and included the Deputy Under-Treasurer, Mr David Ford, Ms Turbit and Mr Sieliff;
- (b) I discussed the matter with the Premier on the afternoon of 27 January 2009. There is no entry in my diary corresponding with this meeting, but that is not uncommon for meetings with the Premier;
- (c) I met with Mr Peter Munro and Mr Doak to advise them of the change in direction. My diary indicates a meeting with "Bill D" at 3.00pm on 28 January 2009, which I assume is when I would have informed IBM that they would be only delivering the Health Replacement Payroll.
- (d) My diary also indicates that I met with the State Manager of SAP, Mr Tim Moylan, on 29 January 2009 to discuss SAP's involvement in the way forward, and that I met with the Managing Director of Logica, Mr Hugh Bickerstaff, on 3 February 2009 to discuss recruiting an experienced Project Manager for the TSS/Education upgrade.

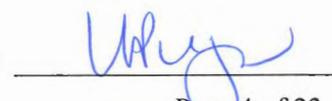
In doing so, I carried into action the intent of the meeting on 22 January 2009.

- 12. I have been asked why, when the IBM contract was 'de-scoped' in around January 2009 and the Government decided to proceed only with the LATTICE replacement, we did not get rid of IBM's involvement completely.
- 13. In my view, it was not possible to stop the project with IBM because of the risks associated with LATTICE, about which I received information from CorpTech (particularly Philip Hood and his team). As IBM were not expected to agree or cooperate with any termination of their contract with the Government (indeed, our legal advice warned that there could be a lengthy dispute), any process post-termination would have had to involve:
 - (a) selecting an new Prime Contractor;

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- (b) negotiating new terms with them;
- (c) documenting a new contract; and
- (d) transitioning the project to the new Prime Contractor;

and this process was expected to be a long one, particularly given how long it had taken to set up these structures with IBM. The new contractor would also have to negotiate terms for the use of IBM's intellectual property and for the continuation of relationships with sub-contractors. If IBM were uncooperative with any of these matters, the project would have to start again in that respect. All of these issues would have had to be addressed at a time when I was advised that the LATTICE system was at huge risk of failure. Senior CorpTech and Queensland Health staff consistently expressed their concern about the LATTICE risk.

14. Also at this time, IBM had appointed a new Project Director, Mr Doak, and were making promises of Go-Live dates occurring in the near future. I was accordingly hopeful that IBM would be able to deliver as they promised.
15. Furthermore, at this time I had also been informed by either Ms Perrott or Ms Berenyi that all scope issues had been resolved (by what I now know as Change Request 184) and regarding the new Go-Live date, to quote the correspondence to my staff from Mr Doak I mention in paragraph 45 of my first statement, "we will unequivocally have a 29 June Go-Live".
16. For all of the reasons I have set out above, I do not believe it would have been sensible to remove IBM from the project in early 2009.

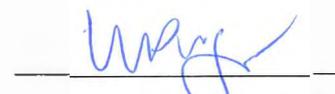
GO LIVE – MARCH 2010

17. Paragraphs 49 to 51 of my first Statement to the Inquiry cover the immediate lead up to and the actual Go-Live decision taken by the QHIC Board around 14 March 2010.
18. On 24 March 2010, I received an email from Ms Natalie MacDonald advising that Queensland Health had sent out a "Special Broadcast" email to all staff advising that the

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first pay cycle in the new payroll system had been successfully completed. It was also sent to the Minister's Office.

POST GO-LIVE ISSUES

19. The difficulties being encountered with pay post Go-Live were first brought to my attention on the afternoon of the first pay. The advice that CorpTech received from Queensland Health was that the issues related to data. That is, first that a considerable amount of data had not been put in properly, and second that the reliability of the pay had been affected by the Queensland Health business decision to implement a policy of 'no roster no pay'.
20. A couple of days later further issues arose but they also seemed to relate to data, not the system.
21. I have no further recollection of the issues experienced immediately after Go-Live, because on 29 March 2010, I left for London and spent the next four weeks there with family. That trip had been arranged for many months. Ms MacDonald was Acting Director-General over those four weeks.
22. While I was in London, I was reading news articles on the Internet and was getting phone calls, text messages and emails about the payroll system. So, I was aware that issues were occurring. However, even when I came back to Australia and was fully briefed, the issues still seemed to be mainly about data.
23. My first statement explained some of these issues, for example, issues with thousands of documents not being put into the system. In one case, Mr Philip Hood found a large percentage of the "no pays" was caused by people not having bank codes entered into the new system. My understanding was that the system generated the pay, but had nowhere to put it. That is why CorpTech and the Department of Public Works kept saying the system was working and the data was wrong.
24. This is not to say I believed that the system was perfect at this stage – far from it. My recollection of other major problems at the time included:

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- (a) workarounds were needed for aspects of the system that IBM had not delivered causing an increase in the manual input load for Queensland Health payroll staff;
- (b) the design of the payslip was complex and confusing;
- (c) data input screens were complex and confusing, causing slow input of pay cycle data;
- (d) Workbrain was a complex system, and when faced with what the Auditor-General has calculated as approximately 24,000 possible combinations of awards, allowances, etc. for an individual health employee in each pay cycle, Workbrain performed poorly, by which I mean that its operation was very slow. This issue was addressed by IBM engaging specialists from the parent company Infor and bringing them out from Canada to Brisbane to investigate and tune the system to improve performance.

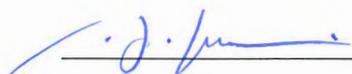
25. When the system concerns set out above were identified, Ms MacDonald and Mr Mick Reid wrote to Mr Glen Boreham, Managing Director of IBM Australia on 23 April 2010, expressing dissatisfaction with the system performance and advising that milestone payments and retentions would not be paid to IBM at that stage.

AUDITOR-GENERAL REVIEW OF PROJECT

26. During May/June 2010, the Auditor-General reviewed the project. I met with the Auditor-General regularly from the time the review was announced to discuss various aspects of the report. He would raise issues where his people had found certain information and he was going down a certain line, and I would provide comments.

27. When I read his final report it was clear that it focussed on the performance of Treasury, CorpTech and Queensland Health, rather than IBM. In paragraph 2.3 of the Auditor-General's Report, he states "While discussions have taken place with IBM, this audit did not include assessment of specific project processes and procedures undertaken within IBM".

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28. In paragraph 58 of my first statement, I say, "I believe that IBM was planning to use the Auditor-General report as part of their defence in any forthcoming legal disputes". That belief was based partly on conversations with IBM representatives and partly on commercial reality. Mr Doak made it clear that the report had not apportioned any blame to IBM, and this issue was even raised by my own officers. Further, the legal advice from Mallesons referred to the fact that the Auditor-General had not apportioned any blame to IBM and that may be detrimental to our position.

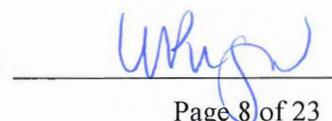
LEGAL ACTION AGAINST IBM

29. In paragraph 56 of my first statement, I refer to a public statement attributed to the Deputy Premier and Minister for Health that the Government would sue IBM for not delivering the required replacement payroll system. I believe that occurred at a press conference at Parliament House at which former Minister Schwarten and former Deputy Premier and Minister for Health, Mr Paul Lucas were interviewed. I recall that I, and perhaps Mr Reid, were also there, standing to one side.
30. One journalist asked Mr Lucas something along the lines of whether the government could or would sue IBM. I cannot remember the exact words, but the word "sue" was picked up by the media and it was reported in the Courier Mail that the Government would sue IBM if possible.
31. Following that event, Mr Doak contacted me. The tenor of the conversation was along the lines of "If you're going to sue, then obviously we will need to prepare ourselves accordingly". I am not sure whether Mr Doak was acting on his own initiative in making this statement; he may have been receiving directions from IBM Australia or IBM New York because I was aware they were concerned about the media coverage.
32. In paragraph 57 of my first statement, I said "On more than one occasion Mr Doak said that his instructions from above were that IBM were not to undertake any newly identified work on the project without written guarantee of payment for such work". I have seen an email in which Mr Doak communicates to Ms Berenyi the message that IBM will only do work if the Director-General guarantees payment.

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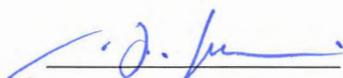
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MEETINGS WITH IBM REPRESENTATIVES

33. I have been asked about Mr Doak's evidence to the Commission that he met with me on a weekly basis during the two and a half years of the project.
34. I did not meet with Mr Doak on a weekly basis. I have now seen correspondence from Mr Doak to me dated 14 July 2008 where he states "Following our meeting last Wednesday, we have been in contact with Robyn Turbit who has confirmed that you have agreed to meet Barbara Perrott and me every fortnight" (**Annexure MJG-2**).
35. I have checked my diary, and it appears as though I had a fortnightly meeting with Mr Doak scheduled up until early 2009. There are few meetings scheduled past that date. However, quite often I would be in Canberra or somewhere else and so a meeting would be missed or, when Ms MacDonald commenced, she may have met with him in my place. I am fairly certain I met with him at best monthly, and the practice was to meet in the presence of either Ms Perrott or Ms Berenyi and Ms Turbit.
36. Mr Doak instigated the meetings when he first arrived because he thought that the biggest problem with the project to date had been stakeholder management. Through these meetings with me and other senior officers, he hoped to repair the working relationship on this project.
37. Our meetings were of the same nature as those I had with numerous other people in industry and in government. To put it in context, I met with the senior person from every major building company in Queensland on a regular basis, too, even though they may be doing no work for the Department. I also met with the senior union people on a regular basis, even if we didn't have disputes.
38. I do not think it was unreasonable for Mr Doak to seek to establish a relationship with me to repair some of the damage that had been caused to the parties' relationship during the project before he came on board.

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39. After Go-Live, I continued to meet with Mr Doak in my office, but I do not believe it was as a regularly scheduled meeting. Whenever I could, I would ensure those meetings occurred in the presence of other people.
40. The general tenor of the conversations with Mr Doak a month after Go-Live was that he was saying that the problem was not IBM; it was the data. The information I received indicated that there was, or at least could be, some truth in that view.
41. Mr Doak also made it clear that IBM had delivered a like-for-like system. He referred to how LATTICE had performed and made comments like "That was typical under LATTICE, so why is everybody getting themselves all upset about this".
42. Tensions increased when, based on legal advice from Mallesons, I approved the issue of a Notice to Remedy to IBM on 11 May 2010. IBM replied on 19 May 2010 denying any breach and referring to the development of SAP Stacks, which were needed by Queensland Health before the end of the financial year, as delaying their efforts. I briefed the Director-General of the Department of Premier and Cabinet (Mr Ken Smith), the Director-General of Queensland Health (Mr Reid, and the Auditor-General (Mr Glenn Poole) on 1 June 2010 regarding the difficulties we faced if IBM did not perform the SAP Stacks. Based on advice from Mallesons and my Director of Legal Services, the issue of the SAP Stacks was resolved by agreement between the parties.
43. Mr Doak was pushing for the ability to fix the system, resolve the defects and keep the lawyers out of the matter. I think there was an underlying concern about IBM's reputation and that is one reason why they bristled when the word "sue" came up in the media coverage of the Minister's press conference that I have described above.
44. In the course of my conversations with Mr Doak after Go-Live, I was subtly given the impression that if the contract with IBM was terminated, IBM would simply walk away. For example, Mr Doak would say something along the lines of "We've just won the Gold Coast City Council SAP payroll. We need these resources. They would love to have these resources down there."

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45. After discussions with my Director of Legal Services on 17 June 2010, I instructed him that I had to approve any further payments to IBM, and I asked him to obtain further legal advice from Crown Law and Mallesons regarding options for going forward with IBM. Mallesons had already given advice on 17 June 2010 regarding the response by IBM to our Notice to Remedy. My emails from that time indicate that I was keeping Mr Smith informed that we were seeking legal advice regarding the Government's options.
46. On 23 June 2010 we received advice from Crown Law regarding next step options. That advice also referred to, and generally agreed with, Mallesons' advice. The key message to me in the Crown Law advice was that "If the State chooses to terminate the Payroll Contract, a difficult and protracted dispute with IBM is likely, even more so if the State chooses to pursue damages or other remedies" and that the State would need to consider the next steps, balanced "against the State's operational needs". The prime "Operational Need", as expressed to me by the Premier and Minister Schwarten, was to ensure that the payroll continued to keep paying the Queensland Health employees each fortnight.

FINISHING THE PROJECT

47. I have been asked by the Commission whether I asked Mrs Jane Stewart if the expertise of IBM was needed to complete the project.
48. Mrs Stewart did not report directly to me. She reported to Mr Hood, who reported to Ms Berenyi, who reported to Ms MacDonald, who reported to me, and so we had limited contact. I do not recall ever speaking with her about this matter.
49. I was, however, briefed in these matters by Mr Hood, and I held his advice in high regard. It is my recollection that Mr Hood, Ms Berenyi, Mr James Brown and Ms MacDonald all believed that IBM's expertise (and that of their sub-contractors) was needed to stabilise the system and fix outstanding problems.
50. At this stage, I had the Auditor-General's Report, which had been accepted by the Government, and which I was obliged to take into account and implement. The first recommendation of the Report was that the payroll system must be stabilised. KPMG

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were undertaking a review of the payroll and in their report of 21 July 2010, stated that “It is imperative that any proposed change to support arrangements (for the payroll) is transitioned in a managed way so as not to negatively impact on the ability to support the Queensland Health Payroll” and “IBM are continuing to play an important role in supporting the QH HR system... The key business risk in making any change to the current arrangements is the need to ensure the continuity of this support to the QH HR system”. I note that KPMG consultants interviewed Mrs Stewart as part of their investigation.

51. I was advised by the senior officers mentioned above that in order to achieve the priority of stabilising the payroll, the expertise of at least the top seven or eight consultants that were being supplied by IBM was essential.
52. I have been shown a document that I thought I had drafted to advise the Premier on the “Risks of moving to terminate IBM immediately” (**Settlement Bundle: Document 79, volume 2, pg 389**). My recollection is that I got a phone call from the Associate Director-General of the Department of the Premier and Cabinet asking if I could list some of the risks of moving to terminate IBM immediately. I discussed the risks with Mr Smith and the document comprised my notes for that discussion. It has been suggested to me that some of the sources of information for this would have arisen from my conversations with IBM representatives. I disagree with that suggestion. I have now seen emails from 25 June 2010 which show that this document was drafted by either Ms MacDonald or senior CorpTech officers (**Annexure MJG-3**). It sets out the concerns Ms MacDonald and her senior officers had regarding a sudden departure of the IBM specialist consultants.
53. I believed that whatever arrangements were made to deal with the problems facing the system, they had to facilitate the ongoing presence of these consultants so that the pay was not interrupted. It was essential to ensure that the CorpTech team had the skills it needed to support the system before IBM left. I believed that if those consultants were required to choose between assisting the State Government and continuing their relationship with IBM, they would be much more likely to choose the latter because of IBM’s ongoing work supply. Accordingly, I believed that negotiation with IBM was

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more likely to achieve the objective of ensuring we had the necessary expertise to finish the project.

SETTLEMENT NEGOTIATIONS

54. I have been shown a Submission to the Director-General approved by me on 11 May 2010 regarding a notice to remedy breach. At page 2, the submission refers to a proposed meeting with IBM to explain the State's intention. I do not know if that meeting took place, but I probably would not have attended the meeting if it did occur.
55. I do not recall specific discussions with Mr Doak about the notice to remedy breach. However, generally throughout this period when issues arose he would say to me, or to Natalie MacDonald, that the matter would tie people up by having to sort it out, and that would waste time. Once again, he would try to get the lawyers out of the matter.
56. I have been shown Mr Backhouse's notes of a meeting on 3 June 2010 attended by him, Ms MacDonald, Mr Brown and myself. It records that we discussed the need to "hold IBM to its breach" to protect the government's rights, and that I would speak to IBM executives. I cannot recall any such meeting with IBM executives occurring, but I believe if I did have such a meeting, it would have been with Mr Doak or someone of an even more senior level.
57. I have been shown notes of a meeting I had with Mr Backhouse on the morning of 17 June 2010 and another meeting that afternoon attended by him, Ms MacDonald, Mr Brown and myself. I have referred to these notes earlier in this statement. The notes indicate that I requested legal advice from Mallesons and Crown Law, and for all future payments to IBM to be approved by me.
58. My diary records that I did not meet with IBM between 4 and 29 June 2010. I have seen emails between myself and Mr Ken Smith dated 28 June 2010 which indicate a Government proposal for the Premier to make media statements on 29 June 2010 regarding (among other things) the State issuing a "Show Cause" notice to IBM, and requiring me to meet with IBM after the media statement to explain State's position. My diary records a meeting between Ms MacDonald and myself with Mr Doak in the

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afternoon of 29 June 2010. IBM responded aggressively to the Premier's media statement.

59. I have been shown a Submission to the Director-General approved by me on 29 June 2010 that, among other things, recommends the negotiation of a settlement with IBM. The submission refers to legal advice from Crown Law and Mallesons about the State's options. All five recommendations were implemented:

- (a) Issue the "show cause" notice;
- (b) Commence "without prejudice" discussions with IBM;
- (c) Engage a professional negotiator;
- (d) Withhold payments to IBM under the contract; and
- (e) Maintain full compliance with State's obligations.

60. Aside from the legal advice we received, I have been asked what my own input was in relation to the option of a negotiated settlement. In my history of major projects, very rarely have we proceeded to litigation, even though there may be some pre-litigation steps taken. In my experience, you usually are able to sit down and come to a commercial settlement or agreement. In the situation of the Health payroll, I was aware that separation from IBM was a strongly preferred position within Government. However, I was also aware that any action we took had to be based on the fundamental operational requirement set out by the Auditor-General, the KPMG Report and most importantly, the Government, of keeping the payroll running.

61. The submission of 29 June 2010 also recommended the engagement of a commercial negotiator. I believe that idea was originally proposed by Mr Brown. Mr Simon Newcom and Mr Jeremy Charleston from Clayton Utz were engaged in this role. I do not recall meeting with Clayton Utz or providing instructions to them regarding the negotiations, but it is possible that I met with them occasionally.

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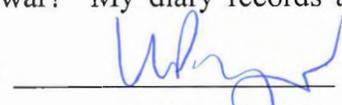


62. On 8 July 2010 I approved a Submission to the Director-General regarding issuing a letter of acknowledgement to IBM in relation to its response to the Notice to Show Cause.
63. I then had prepared a submission to Minister Schwarten, which he approved on 19 July 2010, regarding prospective significant litigation between the State and IBM. This was to comply with government policy regarding notification to the Attorney-General about significant litigation.
64. On 21 July 2010, I approved a recommendation for Mallesons to send a letter to Blake Dawson, who were acting for IBM, detailing the State's points of rebuttal to IBM's Notice of Dispute and other correspondence. The main basis of the rebuttal was that IBM, even though the system went live, had not yet achieved the system acceptance milestones. The letter was sent on 21 July 2010.
65. I do not recall meeting much with Mr Doak around this time. However, by this time I was aware that Mr Doak was to take on a role for IBM in the Middle East and I had been introduced to his replacement, Mr Killey. At this stage, Ms MacDonald would have been the person primarily meeting with Mr Doak and/or Mr Killey and Ms Berenyi, and that is why most of the emails around this time are for my information only. My emails indicate that I was keeping the Director-General of the Department of the Premier and Cabinet abreast of the action being taken.
66. At this stage, CorpTech officers were working extensive hours to ensure that the payroll continued to produce a pay for Health workers each fortnight. On numerous occasions, they had to back-out the runs and start again because of faulty data – but the pays kept coming out better and better each cycle. However, based on the advice I was getting from CorpTech, there was still a huge risk to the payroll if IBM were to immediately pull out their specialist resources.
67. In mid-July 2010, IBM issued a Notice of Dispute. I believe this was expected by Crown Law and Mallesons, and they dealt with it. At this time, Mr Doak was not pleased with the escalating legal developments and on 15 July 2010 emailed me to ask "Can we get together to sort this out or are we going to war?" My diary records a

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meeting with IBM on 23 July 2010 but by that stage, I had approved (21 July 2010) a Mallesons letter to IBM dealing with their Notice of Dispute, and the CBRC had approved Minister Schwarten's submission, discussed below.

68. On 22 July 2010 a Cabinet submission was put up by Minister Schwarten. It included a recommendation that the preferred option for moving forward was to negotiate a settlement with IBM. That recommendation would have come through me, but the submission would have been drafted by CorpTech, probably with assistance from Mr Backhouse and Ms MacDonald. It also authorised me to act as the State's delegate in the negotiations. That authority did not exclude me from engaging Clayton Utz to assist as a commercial negotiator. In fact, by 26 July 2010, Clayton Utz were involved in the formal steps of negotiating.
69. I have been shown a briefing note to the Premier dated 25 July 2010 recommending approval of the Implementation of a Government Response Plan. I have been asked if any thought was given to obtaining advice about the State's prospects of success against IBM from the Solicitor-General or a senior counsel at the private bar. I do not know if that was considered by others, but I did not consider it. I was receiving legal advice from my Director of Legal Services, Crown Law, Clayton Utz and Mallesons, and I would have expected that one of those four would have suggested that option if they thought it was necessary.
70. On 28 July 2010 I accepted a recommendation to sign a letter to Mr Bloomfield setting up the negotiation process through Clayton Utz. I was kept informed of the negotiation process, to the extent that it required my approval or oversight.
71. IBM wrote to me on 29 July 2010 with their suggestions for the negotiation process. That correspondence said "IBM considers that it is in the best interests of achieving prompt and efficient commercial resolution for the initial period of negotiation to be conducted by representatives of each party in the absence of legal representatives." I also recall a conversation with Mr Doak around this time where he suggested to me something along the lines of "Mal, this will go on forever. The lawyers are going to cost a fortune; let's get them out of this and we can sort this out". However, the State replied

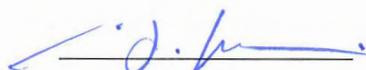
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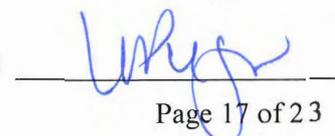
on 30 July 2010 rejecting the IBM proposal and advising that Clayton Utz and Mallesons had been appointed as our legal representatives.

72. At this point in time, IBM was trying to secure payment, but the State was saying that payment issues were tied up in the negotiations. IBM kept trying to get the financial side away from the legal negotiations. This reached a point whereby I had to countersign Ms Berenyi's approval of Scope of Works 3 (SoW3) before IBM would undertake any work. I do not recall what SoW3 related to.
73. I have been shown a draft settlement term sheet, initially drafted by Clayton Utz in late July 2010, which, under the heading "Damages", refers to IBM paying the state damages of \$12 million. I did not initially recall seeing that document. I have been shown a letter from Clayton Utz dated 4 August 2010 in which they send the settlement terms sheet to Blake Dawson. The \$12 million damages amount is not in that letter. Having now seen emails from that time, I recall that I and Ms MacDonald had been asked to comment on the original draft settlement sheet by Mr Brown. I recall asking Mr Brown where the figure of \$12m came from and I think he replied that it was just a starting figure, with no real basis. I had read that Clayton Utz in their correspondence of 26 July 2010 indicated (regarding damages) that a claim against IBM could "carry the risk of very significant damages, some of which may be outside the cap on liability, which I understand from Mallesons is approximately \$60m". My email to Mr Brown of 2 August 2010 therefore said that rather than mentioning the \$12m at this stage, "why can't we say 'IBM will pay the State compensation, the amount to cover the State's losses attributable to ...'". I assume this is what ultimately happened (**Annexure MJG-4**). I also wrote "in the notes at the start we should mention that regardless of negotiated agreement, nothing is final until approved by CBRC and (I assume) IBM Exec Management."
74. During early August 2010, most of the negotiation activity was undertaken by senior CorpTech officers acting on advice from Crown Law, Mallesons and Clayton Utz. By 13 August 2010, I had been informed that to quote an email from Ms MacDonald that I **annexe as (MJG-5)**, "the ante is being upped". I was also informed that IBM was not negotiating genuinely. I have been shown a file note of Mr Backhouse that supports this

Signature:



Witness signature:

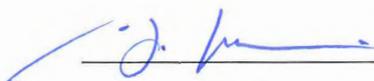


Page 17 of 23

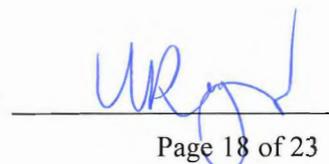
assessment, but it could have been Mr Backhouse, Ms MacDonald, Ms Berenyi or Mr Brown that informed me. The message I received was that IBM were not going to negotiate, were going to delay and that they did not want lawyers present.

75. It is important to keep in mind that my prime risk through all this was getting a fortnightly payroll out. That was the key driver, but as far as the negotiations with IBM were concerned, the documentation clearly shows we were going to do it via lawyers. All correspondence from the State to IBM at this stage was being drafted or cleared through Mallesons, and I assume Clayton Utz. All Correspondence from IBM to the State was referred to Mallesons, and I assume Clayton Utz. Crown Law were also fully involved in this activity.
76. I cannot recall receiving a personal briefing from Clayton Utz regarding status and tactics for negotiation, as suggested in Mr Backhouse's file note of 10 August 2010. I cannot recall meeting Mr Charleston at all, although I think I may have met him on an occasion when Mr Brown and Mr Backhouse brought him up to meet me.
77. I have been shown a discussion paper from Mr Brown dated 16 August 2010 which was for discussion with Ms MacDonald and me that afternoon. It outlined the current negotiated position with IBM and suggested some options for proceeding. Part of the process forward that was recommended (presumably because of IBM's reluctance to negotiate, as mentioned earlier) was for the Director-General or a delegate to meet with IBM to discuss a revised Term Sheet (still within the CBRC approved parameters). It also highlighted the short amount of time that remained if the State wanted to terminate the contract. Therefore, while there was a Cabinet submission prepared regarding negotiating a settlement, one was also prepared at that time in relation to termination. This was in preparation for the short timetable faced between Cabinet and the critical dates for the State to act under the contract.
78. I have been asked about a conversation I had with Mr Killey from IBM and have been shown emails regarding that conversation. The emails indicate that I called Mr Killey on 17 August 2010 to discuss the negotiations. Other emails indicate that Ms

Signature:



Witness signature:



MacDonald was aware of the need to contact IBM, asked if I had made contact and reminded me that morning that time was running out.

79. So, based on my understanding that IBM was not negotiating in good faith and that time was running out, I rang Mr Killey and said words to the effect of, "Look, the situation is we have got negotiators. You've got Blake Dawson and we've got Clayton Utz. They should be sorting this out. The government is getting the message that IBM do not want to do this. You are not cooperating. I want to know why and I want to know how we can get this thing sorted out".
80. The first email from Mr Killey on 18 August 2010 at 8:04am suggests that I requested a meeting outside of the agreed settlement process. As this was not what was intended, I referred Mr Killey's email immediately to my Director of Legal Services, Mr Backhouse, who helped draft my reply to Mr Killey. My email to Mr Killey at 11:14am the same day strongly states that my intention was not to change the agreed negotiation process involving legal representatives. I made it clear that process was to continue and that all I was offering was a discussion between senior executives to sort out why we had the current unsatisfactory situation regarding IBM's response to the agreed process.
81. I sent a copy of my email response to Mr Killey to Mr Backhouse and Ms MacDonald so that they were fully aware of the contact with IBM.
82. By the night of 18 August 2010, Ms MacDonald had reviewed the Clayton Utz response to the IBM response of 13 August 2010 to the Clayton Utz original proposed Terms of Settlement of 4 August 2010. Her email to me confirms that the latest Terms were still within the CBRC approved parameters for my negotiations for a settlement with IBM.
83. I had a meeting with Mr Killey on 19 August 2010. Ms MacDonald attended the meeting with me. I am preparing a separate statement to cover the events of 19 to 23 August 2010.
84. By 25 August, IBM seemed to be trying to move a few of what we believed to be the agreed positions and Ms Sarah Adam-Gedge (an IBM Executive senior to Mr Doak, Mr

Signature:



Witness signature:



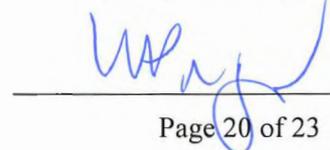
Kevin Killey and Mr Peter Munro) became more involved. She approved an extension of the existing negotiation period so that we avoided time bars.

85. By 25 August 2010 I had been emailed by Ms Berenyi regarding extra work that IBM were wanting, and listing issues for escalation by me to Ms Adam-Gedge. I had indicated to James Brown on 23 August 2010 via email that the IBM request for full release of all obligations was “not on”, but a few issues with retention payments were still being discussed (**Annexure MJG-6**).
86. The potential exit date for IBM was also being discussed. Advice I had received from CorpTech was that they would be ready to “take over” from IBM by the end of October, and so I had negotiated a 31 October 2010 exit date.
87. On 26 August 2010, a CBRC decision was made to approve the Supplemental Agreement. The decision expressly refers to concerns about the risk of IBM’s immediate departure from the project, given its continued operational support for the fortnightly pay runs. That risk was assessed on the basis that key elements of the system were still being maintained and supported by IBM, Infor or Workbrain consultants, none of which were under our control. Mr Hood and Ms Berenyi were informing us about the risks and they were in the best position to assess them.
88. There were several risks, but the main one was that IBM controlled some of the specialist SAP and Workbrain consultants. Our fear was that we would not be able to secure those specialists for ongoing support. Also, IBM had a working relationship with Infor, the company that owned and supported Workbrain. It was possible that Infor may not assist the Government if it would risk their relationship with IBM.
89. On the weekend of 28-29 August 2010 I understand that there were further discussions between CorpTech officers and IBM regarding the work to implement Concurrent Employment features and the issues regarding warranty of that code. I was not involved in these discussions.
90. During the following week CorpTech officers were still negotiating with IBM about the terms of the final settlement continuing negotiations (**Annexure MJG-7**). Finally, on

Signature:



Witness signature:



Friday 7 September 2010, I received an email from Ms MacDonald advising that IBM had agreed to the State's position and all solicitors, including Crown Law, had reviewed and settled the agreement (**Annexure MJG-8**).

91. The next step was to submit the Supplemental Agreement, as drafted by Mallesons and agreed to by Crown Law, to Ministers Lucas and Schwarten, who had been authorised by the CBRC to give final approval to any negotiated settlement. This was submitted by Mr Reid and myself to both Ministers on 7 and 8 September 2010. Unfortunately, the document was not approved by Minister Lucas for 11 days, which resulted in many emails between Ms Adam-Gedge and me, as she tried to keep IBM Headquarters informed that a Supplemental Agreement was in the pipeline.
92. On 21 September, I received Minister Lucas' approval to proceed and documents were exchanged between Mallesons and Blake Dawson.
93. The only discussion I had with any IBM executive member about the Health Payroll after the signing of the Supplemental Agreement was at lunch with Ms Adam-Gedge on 30 September 2010. She had asked to meet with me earlier, but we both agreed to defer any meeting until after the negotiations had been resolved. Her message was that IBM would complete their work, honour the Agreement and hopefully start to rebuild the damaged relationship between IBM and the Queensland Government.
94. On 20 October 2010, I advised Mr Ken Smith that IBM had completed the Concurrent Employment modules and that they had been loaded successfully into the production system. On Tuesday 2 November 2010, I informed Minister Schwarten and Mr Smith that CorpTech had just successfully run the first payroll after the exit of IBM (albeit with the assistance of the specialist contractors CorpTech had taken over from IBM), and that IBM would now be paid according to the conditions of the Agreement.
95. My diary records meetings with Mr Glen Boreham on 24 November 2010 and Ms Adam-Gedge on 22 December 2010. I do not recall anything specific about these meetings other than their desire to rebuild bridges and move on. I do not recall meeting IBM executives again prior to my retirement.

Signature:



Witness signature:



96. Final information to the CBRC regarding the State's relationship with IBM was prepared in late 2010, but due to delays over the Christmas period and then changes to Cabinet's membership, the submission advising of the final results was submitted by Minister Simon Finn in April 2011. Lodgement of this CBRC Submission marked my final involvement in the Health Payroll prior to my retirement on 1 July 2011.

SUMMARY

97. I have been asked questions regarding my role in the negotiations vis-a-vis those of legal advisors. The Premier and Minister Swarten made it very clear to me after the first CBRC Decision regarding negotiations with IBM, that I was responsible for managing these negotiations to a successful departure of IBM, but at no stage was I to risk the fortnightly payment to Queensland Health employees through the Health payroll.

98. In all legal matters, I involved and relied on my Director of Legal Services, Mr Backhouse, Crown Law, Mallesons and Clayton Utz as appropriate. For advice on all options, including Termination of the contract with IBM, and maintenance of all of the State's rights, I also relied on the legal advisors listed above.

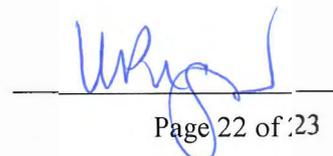
99. Clayton Utz was engaged to assist with the negotiations. In their correspondence to CorpTech dated 26 July 2010, it was stated that their process was to "keep your officers a step away from negotiations, particularly so that issues can be 'escalated'" (**Annexure MJG-9**, page 3 of that document). In an email to Ms MacDonald (and copied to Mallesons and Clayton Utz) dated 16 August 2010 and forwarded by Ms MacDonald to me that same day, Mr Brown advised that at that stage "All that really has to be determined is whether it is better for the state to hold onto the outstanding monies and use that to offset its costs in rectifying the long list of defects... I really do not see that there is a lot to negotiate" (**Annexure MJG-10**).

100. Issues were "escalated" to me to address with senior IBM executives above Mr Doak and Mr Killey. As the officer appointed by Cabinet to deliver the settlement, I did so. At no stage did I or my legal advisors stray outside the parameters set and approved by

Signature:



Witness signature:



Government. The final Supplemental Agreement, drawn up by Mallesons and Crown Law, and approved by Government, reflects this.

101. IBM exited under an Agreement approved by Government, transferred all specialist contractors to CorpTech and met all of their agreed obligations regarding defects and Concurrent Employment modules. Most importantly, the payroll ran every fortnight during the negotiation period and CorpTech and Queensland Health had a smooth transition to running the payroll. This is what I had been charged by Cabinet to deliver.

102. I was approached by the Commission of Inquiry to make this statement. I make this statement voluntarily. The contents of this statement are true and correct to the best of my knowledge. I acknowledge that any false or misleading statement could be an offence against the Commissions of Inquiry Act 1950 or contempt of the Commission.

Declaration

This written statement by me dated 24th MAY 2013 and contained in the pages numbered 1 to 23 is true and correct to the best of my knowledge and belief.

Signed at BRISBANE Signature this 24th day of MAY 20 13

Witnessed:

Name MEYNA PUGH Signature Solutoa.

MSG-1

Executive Steering Committee Special Meeting

PURPOSE: To ensure that the CorpTech business model and business solutions implementation program effectively support agency and SSP business requirements

Date:	Thursday, 22 January 2009 (11.00am - 12.30pm)
Venue:	Conference Room 7.01, Level 7a, 80 George Street, Brisbane

Participants:	Barbara Perrott - Executive Director, CorpTech (Chair) Stan Sielaff - Assistant Director-General, DETA (CAPS) Mike Burnheim - Managing Director, Shared Service Agency Peter Douglas - Senior Director, Corporate Services, Queensland Health James Brown - Program Delivery Director, CorpTech John Beeston - Director, Strategic Program Office, CorpTech Declan McNamara - Director, Shared Service Strategy & Reporting, Treasury (proxy for David Ford - Deputy Under Treasurer, Queensland Treasury)
Governance Support:	Greg Coonan - Manager Governance, Governance, Planning & Information Bronwyn Jentz - A/Senior Project Officer, Governance, Planning & Information

+ Michael Kalimnios

(D-4)

#	Item	Discussion Leader	Objective	Paper
1.0	Introduction	Chair	-	-
2.0	Update on Business Solution Progress	Chair	Discussion	-
3.0	Other Business	Chair	-	-

Next Scheduled Meeting

Date:	Thursday, 29 January 2009 (2.00pm - 3.30pm)
Venue:	Goodwill Bridge Room - Level 8 Santos House, 60 Edward Street

Stakeholder Event Record

Event Type	<input checked="" type="checkbox"/> Meeting ^{Special} <input type="checkbox"/> Phone <input type="checkbox"/> Email
Date	24/1/09
Time	11-12.30pm AM
Venue	7.01 Level 7A 80A George Street
Present	Ref: AGENDA.
Apologies	-
Purpose	SPECIAL ESC
Chair	D-G

Discussion Summary (including stakeholder concerns)

(MG) Where we are & where we're going?
Catalysts

disappointment with progress
no certainty that IBM can deliver
- - of \$ required to ~~it~~ for delivery
Budget will not be expanded - confirmed by Premier
IBM has indicated
at least \$45+ m mae
\$9-10 m (OH) =
cannot continue the way we're going
US & IBM cannot deliver what was proposed

Action Items			
No.	Description/Resolution	Closed	Responsible
		<input type="checkbox"/>	

Next Meeting

Date	Time	Location

Date:

24/1/09

Subject:

ESC Special Meeting.

OPTIONS Δ DIRECTION

Stop all work & concentrate on delivery - ^{IBM} contractual obligations

QH Payroll system in line w/ what they agreed to deliver.

(D-G) TOP PRIORITY

QH Payroll implemented

(1) a sound & robust system as originally

Lattice cannot survive in the ~~future~~ future & must be replaced.

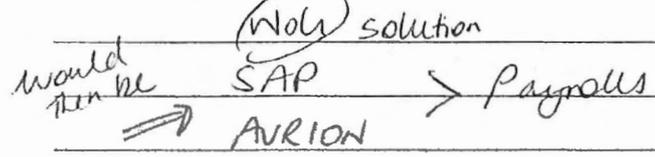
\$81.9m left to play with

Reassess the best way to spend ~~re~~ balance (\$75m?)
& deliver best value to govt. & taxpayer

left after QH gets up.

(2) QCS > look at next to 2
DES > Lattice agencies & move them to AVRION platform

would like to deliver a standard AVRION platform



would like to get someone other than IBM to complete other work:

(3) - DATA3 LOGICA, ACENTURE, SAP to introduce competitive element
Spend \$ on finance systems
- implementation of upgrades to SAP

~~AA~~
DETA

proposal to - cease SAP develop^{mt} & focus on TSS upgrade

focus on SAP? - rebuild bridges & get them actually contributing.

Mike Burnheim - implementation partner/s.

24/1/09

DETA

STAN

- indicated support for ^{TSS} upgrades
- advice required
- can re-use planning already done
- migration of TRAINING off AULION → TSS.
- costs currently being worked up - has to be something done by October
- ⊕ - requested discussion of \$ contributions

QH do not have an upgrade path
 DETA DO

in-house partner required? undetermined @ this stage.

BP Moted

D-G Project Manager will be engaged to o/see work & may or may not be ~~at~~ ^{the} coy. involved in ~~providing~~ ^{doing the} work.
 explicit ⇒ DO NOT WANT IBM
 - QULLO 'hat' → ∴ D-G still accepts overall responsibility.

QH

PETER

concerns?

BP - different contract exists w/ health than the other 2

SSA

Mike B.

- ✓ - clarity
- acknowledge that we will be operating in a multi-application environ^{mt}.
- ✓ - consolidation eg. AVRION
- upgrade paths
- still need to focus on standardisation.

fundamental solution.

- systems architectural solution^h ⇒ middleware NetWeaver
- SSA to provide w/ standardisation agenda.

Stan

- end of 'mono' solution.
- require clarity in terms of governance & budget.

Mike B.

- re-focus from 'shiny' end to Service Manag^{mt} end.

BP

concerned

- what we do to 'sure-up' & 'future proof' solution/s.
- " support 3 business

Tuesday meeting scheduled w/ Premier (D-G).
(27/1/09) (PM)

~~No on to~~ Closed discussions - no further discussion outside of room.

D-G - seek to talk to IBM (Peter Munro + Bill Doak) immediately after.

NEXT STEPS

(D-G) sit down w/ IBM
- ✓ ✓ ✓ SAP

→ Rachel Hunter (DATA)
(AM)

AVRION?

Mike B.

- contractual issues - need to be carefully negotiated

Meeting End 11:45 AM

MJG-2

Business Consulting Services

*IBM Australia Limited
ABN 79 000 024 733
IBM Centre
Level 5
348 Edward Street
Brisbane QLD 4000
Australia*

14th July 2008

Mal Grierson
Director General,
Department of Public Works
Queensland Government
80 George Street
Brisbane
QLD 4000

By e-mail: mal.grierson@publicworks.qld.gov.au

Dear Mal,

CorpTech Report: "IBM Performance issues"

Following our meeting last Wednesday, we have been in contact with Robin Turbit who has confirmed that you have agreed to meet Barbara Perrott and me every fortnight. This is a strong signal of our mutual desire to move towards more frequent and open communications which will be essential to move the delivery program to a successful conclusion and I welcome it. Thank you.

Barbara and I met last Friday and she handed me a full copy of the above Report. IBM accepts that there have been issues to date as the Report states, for both IBM and Corptech. However I agreed with Barbara that it would not be helpful for IBM to respond in kind in respect to issues affecting Corptech and the SSPs performance but that instead we would open the communication directly and work together to ensure this program stays on track.

IBM has in fact already taken many steps to address the issues outlined by this Report which I shared with Barbara and John Beeston, Program Director, SPO, Corptech. These include:

- Reviews of Governance, Reporting and Process Adherence by senior IBM specialists external to this program (ongoing)
- The appointment of me, a senior IBM Partner experienced in managing complex projects (effective 7 July 2008)
- The appointment of an experienced, dedicated Quality Assurance Manager reporting directly to me – Tom Bell (effective immediately)
- Strengthening of the Project Management Office with the replacement and addition of staff (by 1 August)
- An organisational restructure to have all Project Managers reporting directly to be (effective immediately)

- Implementation of process changes to ensure greater responsibility by the above PMs (by 1 August)
- Improved support and tools for the above PMs (by 1 August)
- Service Line Partner alignment with each PM to provide better access to IBM IP and resources and tighter project management (effective immediately)

Mal, IBM could certainly provide you with a more formal response to each of the points raised in the Report if you feel this would be helpful, otherwise Barbara and I will work closely together to address any performance issues and demonstrate to both our organisations that we can work as one team. We will prepare a concise report format for our fortnightly meeting based on progress against overall plan for time and cost, and any issues that need to be addressed.

I look forward to our first program review meeting on week of 28th July 2008.

Yours sincerely,

Bill Doak
Partner
IBM Global Business Services

cc: Barbara Perrott, Executive Director, CorpTech

LANE Anne

From: MACDONALD Natalie
Sent: Friday, 25 June 2010 3:53 PM
To: GRIERSON Mal
Subject: Document23
Attachments: Doc23.doc

re the IBM matter

Natalie

RISKS OF MOVING TO TERMINATE IBM IMMEDIATELY

1. IBM have some 30 staff currently employed on the Health Project. Some 7-8 of these have critical knowledge of the system design and configuration. A handover process between IBM and Corptech was always envisaged to take many months after system acceptance and it was during this period that transfer of technical knowledge was to occur. Terminating IBM immediately without negotiating knowledge and skills transfer would put the core operation of the health payroll system in jeopardy.
2. Key Corptech resources who are currently supporting both the change requests from Health and the core operations of the system will be stretched immediately and this will put at risk Health's systems enhancement program and slow down any changes they want implemented.
3. IBM have other SAP projects in train in SEQ and will ensure that they are able to offer the resources working on the QLD Government project higher rates to move them away from the Health project.
4. It will take some time for Corptech to be able to source additional SAP and Workbrain resources and establish direct contractual relationships with Infor, the owner of Workbrain.
5. Terminating the contract will mean forfeiting our rights to defects rectification and warranties and add an additional \$4m to the costs of supporting the system in the next 12 months. The only remedy to address the defects after termination is to pursue IBM in the courts for the costs of rectification which would be problematic.
6. Not negotiating a settlement with IBM will leave IBM free to comment on the project implementation as they see fit. In addition, IBM are delivering other significant projects for the Government including the Identify, Directory and Email Services projects.

MJG-4

LANE Anne

From: Mal GRIERSON (Works)
Sent: Monday, 2 August 2010 11:53 AM
To: MACDONALD Natalie; Brown James (CorpTech)
Cc: BACKHOUSE Boyd; Brown James (CorpTech); Berenyi Margaret (CorpTech)
Subject: RE: Negotiations with IBM

James,

Support Natalie's comments except the following :-

Damages - don't like mentioning \$12m. Why can't we say "IBM will pay the State compensation, the amount to cover the State's losses attributable to" without mentioning the amount at this stage.

Also think in the notes at the start we should mention that regardless of negotiated agreement, nothing is final until approved by CBRC and (I assume) IBM Exec Management.

Happy to discuss this afternoon.

Mal

-----Original Message-----

From: MACDONALD Natalie
Sent: Monday, 2 August 2010 11:28 AM
To: Brown James (CorpTech)
Cc: BACKHOUSE Boyd; Brown James (CorpTech); GRIERSON Mal; Berenyi Margaret (CorpTech)
Subject: RE: Negotiations with IBM

James, my comments on the term sheet are as follows:

Defects, agree

Systems issues, agree

Damages, I am concerned about this one, as we discussed Friday. I think it needs to be amended in wording and I would also prefer it to be towards the end of the term sheet, if not last. I would prefer to put all other matters first.

Subcontractors, agree

Knowledge transfer, agree

Key Personnel, agree

Tools, agree

Contract materials, agree

Other documentation, agree

Payments to IBM, agree, so we also need to mention the \$32,000?

Confidentiality, agree

Hope this assists

Natalie

-----Original Message-----

From: james.brown@corpotech.qld.gov.au [<mailto:james.brown@corpotech.qld.gov.au>]
Sent: Monday, 2 August 2010 10:29 AM
To: MACDONALD Natalie
Cc: BACKHOUSE Boyd; Brown James (CorpTech); GRIERSON Mal; Berenyi Margaret (CorpTech)
Subject: RE: Negotiations with IBM
Importance: High

Natalie,

A meeting at 5 tonight will give me enough time to incorporate all feedback into both the Term Sheet and the letter.

From: MACDONALD Natalie
Sent: Friday, 13 August 2010 4:39 PM
To: GRIERSON Mal
Subject: FW: August Release

FYI and discussion Monday, the ante is being upped

-----Original Message-----

From: Kevin Killey [mailto:kkilley@au1.ibm.com]
Sent: Friday, 13 August 2010 12:38 PM
To: Berenyi Margaret (CorpTech)
Cc: Brown James (CorpTech); MACDONALD Natalie; Hood Philip (CorpTech)
Subject: Re: August Release

hi Margaret,

Confidential and Without Prejudice

I refer to your email attached below from the 9 August 2010, my response to you and your further email on 12 August regarding the list of Severity 2 defects and priorities for the August release.

As you are aware, IBM and the State of Queensland are currently engaged in settlement negotiations. As part of those settlement negotiations the State provided IBM with a non-exhaustive list of logged Severity 2 defects on 4 August 2010. This list is in addition to the list provided by CorpTech on 12 May 2010 and the list attached to the Notice to Show Cause (Exhibit A) dated 29 June 2010. All three lists are inconsistent.

Whilst CorpTech requested to undertake a "business as usual" approach during settlement negotiations, IBM's position is that "business as usual"

means that it will continue to provide the services in accordance with the Contract. As such, IBM is working off the list of Severity 2 defects attached to the Notice to Show Cause, which was issued in accordance with clause 16.2 of Part 2 of the Contract. This list of defects was referred to IBM as a reason for CorpTech to deny acceptance of deliverables 47, 48 and 49. IBM maintains that there are no defects preventing acceptance of the deliverables as the Project Board agreed to the "QHIC Solution and Defect Management Plan" on 1 March 2010 which outlined the Acceptance Criteria for achieving acceptance of deliverable 47 and included the resolution and timeframes for deployment for pre Go Live defects. Since CorpTech is refusing to accept the deliverables on the basis of these defects, IBM is now committed to remedying those defects.

Accordingly, IBM has prioritised its resources to address the Severity 2 defects set out in the list attached to the Notice to Show Cause, and IBM's August release will address 24 of the Severity 2 defects set out in that list. If CorpTech wishes IBM to re-prioritise the order in which defects are remedied, then it is open for CorpTech to accept deliverables 47, 48 and 49, revoke its "Notice to Show Cause" and IBM will consider following the priority that CorpTech is now imposing on IBM through the Change Advisory Board.

In terms of that list, it is important to note that the list was a "point in time" list of the existing severity 2 defects as at 29 June 2010. That list did not override the obligation to deliver a solution with no severity 1 or severity 2 defects. IBM can not ignore defects arising after 29 June 2010.

As has been the case since go live, given the large number of defects, the CAB has been working with IBM to prioritise defects in order to minimise the impact of these defects on Queensland Health and the payroll runs. The State is not waiving its rights by doing so, but seeking to minimise the loss and damage arising from the defects. The prioritisation of defects by the CAB will necessarily require consideration of all sev 1 and sev 2 defects at that time (whether listed in the Notice to Show Cause or not).

On this basis, as previously indicated, the defects prioritised by the CAB meeting for August should continue to be IBM's focus until such time as negotiations are concluded or the parties agree otherwise. If IBM can fix defects more quickly please let us know.

In respect of "business as usual", the State's letter of 30 July 2010 outlines the agreed approach to business as usual during the without prejudice discussions. These terms make it clear that continuing with business as usual, and participating in discussions, would not affect the State's rights, including the State's rights arising out of the Notice to Show Cause.

I hope this clarifies IBM's focus during the discussions.

"

Kirsten Bowe | Senior Associate
Mallesons Stephen Jaques
Waterfront Place, 1 Eagle Street, Brisbane QLD 4000
T +61 7 3244 8206 | M +61 409 460 861 | F +61 7 3244 8999
kirsten.bowe@mallesons.com | www.mallesons.com

-----Original Message-----

From: james.brown@corptech.qld.gov.au
[mailto:james.brown@corptech.qld.gov.au]
Sent: Tuesday, 10 August 2010 7:20 AM
To: John.beeston@corptech.QLD.gov.au; Swinson, John; Bowe, Kirsten; Jeremy Charlston
Subject: Fw: August Release
Importance: High

John,

Please follow-up as a matter of urgency to Killey's email with Swinson et al.

I believe that in entering into the negotiation both parties have agreed to "suspend" (my words) the notice of dispute and the Show cause whilst

reserving rights. This was articulated in the letter to IBM.

I'd like to be in a position to fire off a response before noon today.

Thanks

James

James Brown
Executive Director
Strategy & Planning, CorpTech
Level 6, 61 Mary Street
T: 3721 9233 F: 3227 7752 M: [REDACTED]
Tomorrow's Queensland: strong, green, smart and fair -
<http://www.towardsQ2.qld.gov.au>

----- Forwarded by James Brown/CorpTech/QTreasury on 10/08/2010 07:15 AM

Kevin Killey
<kkilley@au1.ibm.com>

To
margaret.berenyi@corptech.qld.gov.a
09/08/2010 10:43 u

PM cc
james.brown@corptech.qld.gov.au,
philip.hood@corptech.qld.gov.au

Subject
Re: August Release

Hi Margaret,

Thank you for your reply. I believe that our understanding may differ somewhat as the matter is significantly more complex under the circumstances.

IBM agrees that a "business as usual" approach should be adopted during the negotiation period and that is the process that IBM is following. In IBM's view, "business as usual" means that IBM continues to provide the services as contracted and completes its contracted obligations.

IBM's understanding is that the State has in Exhibit A of its Notice to Show Cause of the 29 June 2010 determined those defects which IBM must remediate. IBM has therefore developed the August release which addresses 24 of these defects as per Exhibit A. IBM will then address more of these defects in the September release.

(See attached file: August release exhibit A 090810v2.xls)

MJG-6

LANE Anne

From: GRIERSON Mal
Sent: Monday, 23 August 2010 4:40 PM
To: Brown James (CorpTech); MACDONALD Natalie
Cc: Berenyi Margaret (CorpTech)
Subject: RE: Att 1a Proposed Settlement Principles v1.0 2010-08-20.doc

Noted,

James re the attached, do you mean Sarah Adam-Gedge in para 9?

Do we want to agree to pay the \$1.49 if they meet their obligations under the supplemental agreement or have they also to undertake certain transfer training, documentation, etc. which are in the contract but not mentioned in the supplemental agreement?

I agree with your points re extended support which we expect them to pay for as an initial position and full release of all obligations is not on.

Mal

-----Original Message-----

From: james.brown@corptech.qld.gov.au [mailto:james.brown@corptech.qld.gov.au]
Sent: Monday, 23 August 2010 4:04 PM
To: MACDONALD Natalie; GRIERSON Mal
Cc: Berenyi Margaret (CorpTech)
Subject: Att 1a Proposed Settlement Principles v1.0 2010-08-20.doc
Importance: High

Natalie and Mal,

Attached please find the Settlement Principles document amended as discussed.

In reflecting upon the IBM document there would appear to be two significant points of difference.

IBM has indicated that it would require the State to enter into a broader support and maintenance agreement as part of the settlement (Item 2 on IBM's list - HRBS contract). I take this to mean that the State will now need to pay for support of the Queensland Health payroll instead of relying upon 'extended support'. The State's Settlement Principles indicates that 'extended support' for the Queensland Health payroll would be at no cost (Item 6 on the State's list). During prior discussions regarding support for the Queensland Health payroll using the HRBS contract. IBM indicated a preference for a 3 year contract, at a cost of between \$225k - \$350k per month (up from \$72k per month). Should this become a sticking point to reaching agreement the State could say that it would be prepared to consider a supplemental support payment amount, but only for the duration of the supplemental agreement. The State should seek to cap the monthly amount at \$100k per month or a total capped amount of \$700k for at least the current level of extended support. We could use the balance of the system retention amount (700k) to offset this payment..

IBM is seeking a full release of all obligations at the end of the supplemental agreement. This is more that would be released if the contract ended normally. The State should not agree to this request.

From: james.brown@corptech.qld.gov.au
Sent: Friday, 3 September 2010 12:19 PM
To: Berenyi Margaret (CorpTech); MACDONALD Natalie
Cc: GRIERSON Mal
Subject: Update IBM Supplemental Agreement

Importance: High

I have just spoken to Kevin Killey.

He advised that I will receive an updated document within the next 30 mins. The drafting updates will be as discussed during yesterday's 2 pm teleconference, with some suggested wording amendments regarding the release of IBM's obligations by the State. I advised Kevin that if the IBM drafting sought to water down GITC clauses that would survive a normal contract finalisation the proposed amendments would not be acceptable to the State as this not only would be found to be unacceptable to Crown Law, it would also have implications for all IBM and other vendor GITC contracts. Kevin assured me that tis was not IBM's intent.

I will provide a further update once the documents have been received and a review has been undertaken on IBM's proposed drafting amendments,

Regards

James

James Brown
Executive Director
Strategy & Planning, CorpTech
Level 6, 61 Mary Street
T: 3721 9233 F: 3227 7752 M: [REDACTED]
Tomorrow's Queensland: strong, green, smart and fair - <http://www.towardsQ2.qld.gov.au>

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MARTINZ Pamela

MJG-8

From: GRIERSON Mal
Sent: Tuesday, 7 September 2010 11:54 AM
To: MACDONALD Natalie
Subject: RE: ibm

Currently in discussion with Margaret and Boyd.
Have spoken to Mick.

From: MACDONALD Natalie
Sent: Monday, 6 September 2010 5:16 PM
To: GRIERSON Mal
Subject: ibm

Mal, IBM agreement has been settled, reviewed by all solicitors including crown law and is now with ESU to go to you first thing in the morning. If you are happy, it'll then need to get over the Mick (from your office I guess) and through Ministers from there. In short, all agreed.

Natalie

MJG-9

CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin

Privileged & Confidential

Mr James Brown,
Executive Director Strategy & Planning,
CorpTech,
Queensland Government,
Level 6, 61 Mary Street,
BRISBANE QLD 4000

By email

26 July 2010

Our ref 12174/80108894

Dear James,

Negotiation process and strategy with IBM

Following the meeting this afternoon with John Beeston, Boyd Backhouse, John Swinson and Kirsten Bowe, I am setting out in this letter for your consideration an outline of the approach we recommend to the negotiations with IBM.

(1) Approval to negotiate

We understand that on Thursday, 22 July 10 the CBRC gave your Department approval to endeavour to negotiate an orderly transition and settlement with IBM, within a defined set of parameters.

An update is to be provided to the CBRC within six weeks.

Mallesons Stephen Jaques and Clayton Utz are retained by the State:

- Mallesons to continue to advise regarding the State's legal and contractual rights and obligations;
- Clayton Utz to advise on the negotiation process and strategy and to conduct the negotiations to a conclusion.

(2) Timing and constraints

IBM has been informed that the State wishes to explore a negotiated settlement. IBM is waiting to hear from the State regarding the intended negotiations.

CorpTech wishes negotiations to commence next Monday, 2 August.

There are other time requirements around the State's 29 June 10 Notice to Show Cause and IBM's 16 July 10 Notice of Dispute:

- IBM responded to the Notice to Show Cause through Blake Dawson on 6 July 10:
 - The State is in the position of having to properly consider the IBM response and then elect to terminate or affirm the Contract.
 - Mallesons are advising on the time by which the State must make this election.

CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin

Mr James Brown, CorpTech

26 July 2010

- The Notice of Dispute requires a first meeting this Friday, 30 July.
- Mallesons responded to Blakes on 21 July regarding the IBM response to the Notice to Show Cause and the Notice of Dispute.
- Mallesons are advising on whether and how the running of time for the State's consideration of IBM's response and the election pursuant to the Notice to Show Cause and the Notice of Dispute can be suspended, with the State's rights preserved, during negotiations.

It is important not to rush into the negotiations with IBM. It is usually not a good tactic to appear to be highly time constrained and, generally, the party to negotiations who rushes the process often ends up giving in to the other party's demands.

(3) Prenegotiation steps

It is important to achieving a successful outcome for the State that the negotiations with IBM be conducted under a disciplined and professional process. IBM is a skilled and strong negotiator and capable of exploiting what it may see as its power and influence in these forthcoming negotiations.

In preparation for the negotiations, it is important that we have a significant session(s) with you to analyse at least these topics:

- What the State needs, its desired outcomes and the State's priorities, and the likely outcome and consequences of a negotiated transition and settlement;
- What you assess as IBM's needs and your estimate of its priorities;
- What are the State's negotiating positions and assumptions;
- An assessment of IBM's negotiating positions and assumptions;
- An analysis of possible trade-offs (if they become necessary);
- Explore possible settlement zones that meet both the State's and IBM's (assumed) needs;
- The State's contingency plans and Best Alternative to a Negotiated Agreement (BATNA) if, by a certain time, an agreement is not negotiated with IBM, and the point at which the State would walk away from the negotiations;
- The KPIs that can be used to assure performance by IBM if a settlement is reached;
- A strategy aimed at limiting a release from liability that IBM is expected to require to preserve State's rights regarding unknown/latent defects in the System;
- The State's negotiation strategy, particularly in terms of what is put on the table initially with IBM, and the leverage and tactics used to induce IBM to a settlement favourable to the State.

CLAYTON UTZ

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Mr James Brown, CorpTech

26 July 2010

Your office has already done considerable work on identifying the issues for negotiation and the State's settlement zones, as reflected in the paper called "*Table 11. Proposed Contract Negotiation Parameters*". That paper is a good starting point for the further analysis of the topics outlined above.

(4) The State's negotiating leverage

It is important that we identify those rights, remedies and arguments designed to lessen IBM's confidence in its position and enhance IBM's realisation that its interests will be better served by settling with the State, rather than facing the risks of the litigation alternative:

- IBM may not be particularly fazed by simply having to address the Severity #2 Defects and assist in transition, if its perception is that those items are the scope of its exposure.
- However, we need to be able to credibly communicate to IBM that, if a settlement is not reached, it faces claims such as:
 - lack of fitness for purpose of the System and its configuration,
 - misrepresentations which induced the State to originally enter the Contract or progressively agree to variations,
 - negligence in design.
- Such claims carry the risk of very significant damages, some of which may be outside the cap on liability, which I understand from Mallesons is approximately \$60M.
- To this end, as discussed, we recommend that additional analysis be carried out into what credibly supports assertions in this regard and into the approximate quantum of potential damages that IBM would have at risk.
- I understand that Mallesons have already provided heads of potential damage. As discussed, this exercise to assess quantum can be carried out in parallel with the further development of the negotiation strategy and with assistance from Boyd Backhouse and Mallesons. It does not need to be fully definitive at this stage but does need to be sufficient to be credible in the negotiations with IBM.
- Tactically, it is also important to keep high the State's positioning of its aspirations from the negotiations. This usually helps achieve a better outcome.

(5) Engaging with IBM

As you know, there are a number of options for engaging with IBM. We think that, in all the circumstances, in the initial phase it would generally be a good strategy to keep your officers a step away from the negotiations, particularly so that issues can be "escalated", to keep discipline in communication lines and to avert pressure from IBM on officers it has dealt with in the past.

Our view is that the following negotiation process is likely to be the most effective:

- Lawyer to lawyer negotiations be held as an initial phase:

CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin

Mr James Brown, CorpTech

26 July 2010

- In these types of circumstances, the negotiation technique of both parties is usually competitive (rather than cooperative or problem solving) and lawyers are skilled in competitive negotiation techniques;
- Clayton Utz would contact Blakes, initially by phone, on the basis that:
 - We have been brought in by the State to explore whether a negotiated settlement can be reached;
 - Mallesons are continuing to act for the State in pursuing its legal and contractual rights;
- We would then send Blakes a negotiating protocol paper, with a timeline and the State's settlement proposal. The settlement proposal will put focus on the State's core priority needs;
- The protocol would require Blakes/IBM to respond, in a format provided, within the timeline, with its position on each element of the proposal and articulated reasons for its positions, and including any additional demands IBM seeks;
- This will result in an agenda and working definition of the elements of a settlement;
- We can then meet with you to analyse IBM's position and formulate and send a response to IBM;
- By this stage the differences should be narrowed, with agreement on some and identification of the harder issues;
- The next step may be a further round of negotiations "on the papers" or face to face between the lawyers.
- Alternatively, depending on circumstances, if an impasse is reached, a face to face meeting between State representatives, IBM and the respective lawyers, with a view to final bargaining may be the appropriate next step.
- Assuming a settlement is reached, a Contract Variation and/or a Settlement Deed would be drafted, negotiated and executed.
- Throughout this process we would, of course, be meeting with you to take the State's instructions and counsel you on matters arising.

(6) Contingency plans

As discussed, it is important that the State has contingency plans in place in case negotiations with IBM do not result in agreement:

- As already mentioned, you and we need to clearly understand the State's BATNA, which will be the standard against which any proposed settlement will be measured;

CLAYTON UTZ

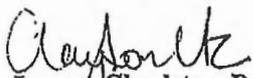
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Mr James Brown, CorpTech

26 July 2010

- A contingency plan is needed in case IBM simply walks out at some stage, without cooperating in a transition;
- A contingency plan is also needed in case the State gets to the point of electing to terminate the Contract and pursue damages.

Yours faithfully


Jeremy Charlston, Partner
+61 7 3292 7028
jcharlston@claytonutz.com
Mobile [REDACTED]

MJG-10

LANE Anne

From: Natalie MACDONALD (Works)
Sent: Monday, 16 August 2010 8:16 AM
To: Mal GRIERSON (Works)
Subject: FW: State of Queensland Term Sheet

Importance: High

Mal, IBM finally responded late Friday, you can see initial analysis below, we are meeting later today to discuss

Natalie

From: James Brown [mailto:j.d.brown@bigpond.com]
Sent: Sunday, 15 August 2010 12:39 PM
To: Berenyi Margaret (CorpTech); MACDONALD Natalie
Cc: Beeston John (CorpTech); 'John Swinson'; jcharlston@claytonutz.com; snewcomb@claytonutz.com
Subject: State of Queensland Term Sheet
Importance: High

Margaret,

I have reviewed the Term Sheet response from IBM. As to be expected IBM:

1. Requires payment of all outstanding monies
2. Will rectify an agree list of outstanding defects – but we will need to negotiate the list
3. Disputes that there is a problem with the payroll processing i.e. IBM claims that it is stable and operating effectively
4. Disputes the notices issued
5. Will effect an orderly transition of contracted resources to the State (veiled threat to allocate them elsewhere)

In effect all that IBM is offering is to complete its obligations under the contract (well almost). As such, should the State decide that IBM's proposal is reasonable, there is not much left to negotiate other than the agreed list of defects and the deed of settlement.

The crux of the issue for the State is whether the current system as designed and delivered by IBM meets the business processing requirements of both Queensland Health and CorpTech not only in the short term, but the medium term i.e. 2-4 years. If IBM's response is accepted the State will loose its right to take action against IBM for the inadequacy of the current system should it choose to do so. As previously discussed the State's position on warranty is problematic and it is doubtful that

the warranty provisions in the current contract can be relied upon to require IBM to rectify and errors. Also IBM will seek to limit the defects to be rectified to that contained in the original Notice to Remedy. This will leave a substantial number of outstanding system issue to be rectified as well as the list of additional requirements from Queensland Health.

So the choices effectively are:

1. Agree to the terms or slightly modified terms (through negotiation) proposed by IBM; or
2. Move to terminate the contract based upon the Notice to Show Cause

In either scenario CorpTech will assume the risk of maintaining the current system as well as having to rectify a list of defects and enhancement . All that really has to be determined is whether it is better for the state to hold onto the outstanding monies and use that to offset its costs in rectifying the long list of defects. Of course this would require the State to terminate the contract, with the potential for IBM to sue for wrongful termination.

I really do not see that there is a lot to negotiate. I will be fleshing out the options above (and may be some others or variants) for the meeting with the D-G on Monday.

Cheers

James