

**SUBMISSIONS ON BEHALF OF THE STATE OF QUEENSLAND**

**(CONTRACT AND PROJECT MANAGEMENT)**

**PERFORMANCE ISSUES**

***Question 1: Did IBM fulfil, to the standard which might reasonably have been expected of it, the scoping works it was engaged by the State in SOW7 and 8A to undertake, including agreeing in conjunction with the SDA what were the “critical Agency requirements”?***

- [1] IBM’s performance in the scoping works falls to be analysed against the terms of the Contract.
- [2] At clause 1.3 of the General Terms, the parties set out “high level objectives”. Those high level objectives were “not intended to ... form binding contractual obligations between the Parties but [were to be] used to guide behaviours in the event of inconsistency or silence in [the Contract]”. The apparent intention of the parties was to set out ideals as matters of context to be utilised in interpretation of the operative terms of the Contract.
- [3] The high level objectives included:
- (a) ensuring speedy implementation of the Shared Solution Program;
  - (b) engaging IBM “as prime contractor to manage defined work packages with the aim of implementing a whole-of-government finance and HR solution;
  - (c) to provide “a level of price certainty for those work packages for which a fixed price was offered during the ITO process and to provide a reasonable degree of price certainty around the conversion of ‘Best Estimates’ provided for other and future work packages ...”;
  - (d) to deliver a work program consistent with Schedule 23;<sup>1</sup>
  - (e) openness between the parties to avoid surprises.
- [4] More concrete guiding principles are set out in clause 2.2. They include obligations to:

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<sup>1</sup> Which contemplated the whole project for the whole of government being completed by 1 July 2011.

- (a) work together “to deliver a solution which [met] the agreed expectation of the Customer”;
- (b) give notice of an apprehension that the other party was acting on a misunderstanding or incorrect assumption;
- (c) act professionally.

[5] Clause 2.3 required particular behaviours of IBM. They included obligations to:

- (a) “combine [IBM’s] deep industry expertise, practical tools, powerful research capabilities and innovating thinking when providing the Services ...”;
- (b) refrain from “unthinkingly [following] directions of the Customer that it believes to be counterproductive without first raising this as an issue at the appropriate level”;
- (c) “provide the Customer with the benefit of the skills and expertise of [IBM], including that obtained by [IBM] in providing similar services to governments and comparable customers elsewhere in the world ...”.

[6] Those obligations make it plain that IBM’s position was as a professional advisor. It brought skills and expertise not only in building a system of the kind contemplated but also designing such a system in consultation with the customer.

[7] That latter skill was crucial. As we have said in earlier submissions, the Shared Services Initiative was failing when the decision was made to pursue the prime contractor model. Part of the crisis was the failure to achieve a workable system (and by implication a satisfactory design).<sup>2</sup> That deficit in capability must have been apparent to IBM. IBM employees like Lochlan Bloomfield and Jason Cameron knew very well the status of the Shared Services Initiative, both from working within CorpTech and from the Arena Review.

[8] Even if the need for design skills was not apparent as a matter of experience, the adoption of SOWs 7 and 8A made plain the need for advice and guidance on matters of design.

[9] Section 2.1.1 of SOW 7 stated:

...

Under this SOW, the Contractor will conduct a series of activities and provide a number of specified deliverables relating to the scoping and planning for the Lattice Replacement interim solution. These activities include:

- Defining the recommended scope;
- Developing fixed price for Design, Build and Implementation; and
- Develop a plan for Design, Build, Implementation & Support.

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<sup>2</sup> See, for example, the Arena April 2007 Review (TB1, Vol 1, page 158), the Burns May 2007 Review (TB1, Vol 1, page 250) and statement of Mr Uhlmann, paragraph [44].

- [10] The section went on to require IBM to gather and confirm information by conducting workshops and interviews, and by research into existing systems and documentation.
- [11] That information gathering exercise was significant. Importantly, it required identification of business processes, definition of functionality requirements and integration of the proposed system with other systems.<sup>3</sup>
- [12] SOW 8 also expressly contemplated design activities, adopting the plan in section 2.1.1 of SOW 7.
- [13] Apart from express references to obligations of professionalism, IBM had an implied duty to provide services under the contract with the requisite degree of skill and care. We submit that whether that duty was discharged is open to serious question.
- [14] That submission is based primarily on the apparent failure of the scoping effort, led by IBM, which failed to capture the information necessary properly to design the Lattice replacement solution.
- [15] The most obvious single effort in the scoping process was the conduct of workshops. Those were conducted between 6 and 14 December 2007 and in January and February 2008. IBM was required to submit a draft scope document by close of business 24 December 2007, according to SOW7, along with other technical deliverables<sup>4</sup>. By 21 February 2008, the QHIC Scope Definition (Version 1.0 – Final) had been produced.
- [16] The single biggest indicator that the Scope Definition was incomplete was the necessity for multiple change requests. Of those, the most telling were Change Requests 60, 61 and 184.
- [17] Significant attention has been devoted to Change Request 60. It concerned difficulties experienced with integration with Queensland Health's internal systems. The justification for Change Request 60 was set out on page 2 of the document:

**Cause of issue:** There are a number of contributing factors that have caused this issue:

- Delays relating to the definition of agreed formats in relation to PAYMAN integration
- Delays due to a determination by Queensland Health that they did not have the capacity to complete the work involved to alter PAYMAN to integrate to the new payroll environment
- Delays due to the proposal by QH that the existing integration used at the DoH be used although not a viable solution
- Delays in sourcing complete business requirements for HR<->Finance integration

- [18] The author of CR60 was Paul Hickey. The extract above was preceded by a series of status updates from QHIC meetings. The clear impression given by the document is that Queensland Health was at fault for the failure to alter PAYMAN.

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<sup>3</sup> TB2, Vol 2, page 98.

<sup>4</sup> Statement of Chris Prebble, paragraph [26].

- [19] The implicit suggestion is that Queensland Health was solely responsible for such matters as scoping of the way in which such legacy programs as PAYMAN were able to be successfully integrated with the new solution. That position can hardly be regarded as what was required under SOW 7. As we point out above, it was IBM's responsibility to identify these matters as part of the process of scope definition. One might think that the resources needed by Queensland Health (if the work was to be done by it) ought to have been made plain in the QHIC scope document.<sup>5</sup>
- [20] That position resonates with the evidence of people such as Anthony Price. As Mr Price pointed out in the course of his evidence, integration of the HR and finance systems was critical.<sup>6</sup> Some cross-examination of Mr Price on behalf of IBM seems to suggest the view that HR/Finance integration was not to be regarded as part of the basic requirements that formed the Lattice Interim Replacement Project. The State rejects that suggestion. The State adopts Mr Price's view that the interim replacement was, as a matter of basic necessity, required to be integrated with the Department's finance systems.
- [21] The QHIC scope document proposed to "provide an interim HR/Payroll solution to QH until the woG HR/Payroll solution is deployed to QH, anticipated to be in October, 2009." It is difficult to understand how it might be thought that an HR/Payroll solution fit to accommodate Queensland Health for more than a year could meet basic necessities without proper integration with the agency's finance system.
- [22] Mr Price pointed out that IBM's requirements gathering process was similarly poor after change requests 60 and 61 were settled.<sup>7</sup>
- [23] These factors make the evidence of Mr Hickey all the more curious. In his statement, Mr Hickey says he applied IBM's "Ascendant approach to project management".<sup>8</sup> The methodology was, he says, customised to the project. The first stage of it was to determine customer requirements.
- [24] Mr Hickey does not go into detail with respect to how the methodology was applied to determine customer requirements. The best he says in his statement about that process is that:<sup>9</sup>

During my interview, I was also asked some questions by the Commission about IBM's scoping of the Lattice replacement solution. I believe that IBM was diligent in undertaking that work and took the sorts of steps that would normally be undertaken in the scoping stages of a large project, including conducting workshops with Queensland Health to identify its business requirements.

- [25] That does not disclose any adherence to any particular methodology. Indeed, it suggests that all that IBM did was follow generic steps as distinct from its own idiosyncratic process.

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<sup>5</sup> TB2, Vol 4, page 63.

<sup>6</sup> Statement of Mr Price, paragraph [20].

<sup>7</sup> T21-3, I 29.

<sup>8</sup> Statement of Mr Hickey, paragraph 17.

<sup>9</sup> Statement of Mr Hickey, paragraph 72.

[26] Mr Hickey goes on to say:

In answering the questions put to me by the Commission, I said that it was IBM's responsibility to define the scope ... IBM was required to "define" the technical scope of the different elements of the solution. This is what I was referring to in my interview. In a practical sense, such work involves describing and documenting the technical details of the system to be designed and built, based on the requirements articulated by the customer ...

[27] In our view, this avoids responsibility for what SOW 7 plainly contemplated: assisting the customer to articulate its requirements.

[28] Mr Hickey goes on to talk about shared accountabilities, again with the suggestion that the blame really lies in the customer's failure to articulate rather than with the contractor's failure properly to assist the customer in that task.<sup>10</sup> He acknowledged that he was not aware of IBM workers sitting down with payroll clerks at their computers to see what was actually done, and that this would have been a worthwhile exercise.<sup>11</sup>

[29] Shared accountabilities become sole responsibilities in the statement of William Doak. At paragraph 40 of his statement, Mr Doak asserts that "QHEST was responsible for build relating to the integration of legacy software" and "IBM was responsible for other integration".

[30] In fact, the shared accountabilities tables in section 2.3 of SOW 8 showed IBM was to provide advice on the integration of legacy software. It could not have been otherwise given that the integration in question was with the product IBM was building.

[31] Mr Doak also attempted to shift blame in his oral evidence. His attitude seemed to be that it was enough to bundle up suggestions in the QHIC Scope Definition and present them for approval to QHEST. This ignores IBM's responsibility as a professional advisor. As Mr Price said, it was the responsibility of Queensland Health to provide its business requirements, but it was IBM's responsibility to elicit the information.<sup>12</sup> This process seems to have fallen short of the required standard.

[32] The QHIC Scope Definition specifically adverted to the integration of FAMMIS, the Queensland Health Finance product into the system.<sup>13</sup>

[33] Emphasis has been placed on concessions made by CorpTech to the effect that much of this integration work was "outside scope". This begs the real question: why was it outside scope? The scoping process was intended to capture all of the necessities of a working payroll system. As Mr Price indicated, integration with other systems was critical.<sup>14</sup>

[34] Such concessions really amount to a misunderstanding of the contract and, at a legal level, are irrelevant: they constitute expressions of subjective (mis)understanding of contractual

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<sup>10</sup> It may be noted that the several references to QHES status updates in CR 60 is redolent of the same approach.

<sup>11</sup> T26-78, I 50; T26-79, I 10.

<sup>12</sup> T21-39, I 40; 21-42, I 40.

<sup>13</sup> See, for example, figure 2 on page 13. The QHIC Scope Definition document is at TB2, Vol 4, page 63.

<sup>14</sup> T20-81.

terms. Those concessions cannot be allowed to obscure IBM's failure to observe its contractual obligations.

- [35] The apparent deficiencies in IBM's efforts to elicit the necessary information to properly design the system it intended to build had ramifications throughout the balance of the project. Change request 184 is the proof of that the parties were still struggling with questions of scope in 2009; indeed they continued to do so up to the execution of the Supplemental Agreement in September 2010. There was significant underestimation of the effort required to complete the interim solution. There was also significant failure to identify what work had actually to be done. These deficiencies handicapped the whole project, resulting in not just ongoing arguments between the parties but affecting the timely delivery and quality of the solution.
- [36] CR 184 makes plain the fact that underestimation of timeframes and effort required was a major difficulty. In section 5 of that document, it is observed that the impact of not proceeding with the change was that the parties would need to consider how to deal with delays under the contract.
- [37] Another major indicator of failure with respect to the scoping effort is the failure to properly settle the relevant documents including the Business Attributes Document and the Requirements Traceability Matrix. The former was an important reference which went through a number of versions as understanding of requirements developed. However when it was re – drafted by or at the instance of IBM, the State would be charged for the work involved. IBM received payment for a number of updates to the Business Attributes Document as a result of the approval of Change Request 113 for version 7.0 and Change Request 184 which included versions 3.0 to 6.0. Mr Atzeni explained how this led to a change of name for the document, and different financial responsibility for it. The latter was an important resource which did not exist at the commencement of the project, and was created apparently as something of an afterthought.
- [38] No convincing evidence has emerged that the State presented any obstacle to settlement of the Business Attributes Document in good faith. The failure to settle it as a proper summary of the business requirements before proceeding to build and implement the system was a serious failure in process which no doubt contributed to the continuing instability of the scope of the project. The Requirements Traceability Matrix seems to have been initially simply overlooked.
- [39] Another aspect of the Requirements Traceability Matrix is that it seems to have been the kind of document which, had it been produced in a timely and appropriate process, could have been resorted to for settlement of scope arguments. True it is the that State resisted this process, for the reason that it was not a contractual document (as it should not be, arriving as it did at the 11<sup>th</sup> hour at the hands of IBM, and having the potential to be unfairly used by them to belatedly and artificially confine scope); however the evidence does not speak of any attempt by IBM to do so in any event, which might be expected if scope had been truly settled, for example, by CR184.

[40] Dr Manfield gave his opinion that IBM had proposed realistic timeframes. We respectfully disagree. In evidence, he conceded that the time allowed for scoping was short.<sup>15</sup> It is open to question whether, given that insufficient time had been allowed to come to terms with what was actually required of IBM, it could ever be regarded as having properly apprehended the width of the project. That failure, with respect, makes it unlikely that other timeframes were the consequence of sufficient deliberation on sufficient evidence.

***Question 2: Were such scoping and identification of “critical Agency requirements” sufficient to make it likely that the resulting system would pay staff correctly?***

[41] It is difficult to answer this other than on a speculative basis. It may be observed that a number of factors could safely be said to have made it less likely that the QHIC project would succeed:

- (a) the failure properly to define scope;
- (b) the failure to observe realistic timeframes;
- (c) an attitude on behalf of IBM that there would be an interim solution to replace Lattice on a “like for like” basis, which failed to recognise marked differences in functionality and sophistication in the two solutions which was always apt to erect obstacles.

[42] The first two of these factors have been addressed above. We make the following comments on the third factor.

[43] Counsel Assisting examined Mr Doak on the meeting of 29 January 2009 between representatives of the State and IBM.<sup>16</sup> In the course of that evidence Mr Doak said:<sup>17</sup>

... it was a like for like replacement with a few changes, so there was some workarounds that would have been addressed that was agreed, plus there was the enterprise bargaining awards which the old Lattice couldn't do which was one of the drivers for the interim solution ...

[44] Mr Doak had earlier indicated that Queensland Health had contended that it should have a fully automated system as an interim solution, implicitly indicating that IBM's view was otherwise.<sup>18</sup>

[45] The resistance of the proposition that there should be a fully automated system carried with it the implication that the new environment would require significant resort to manual processes. Those manual processes carried with them the risk of human error, as well as the likelihood that rules would not be applied with uniformity.

[46] It is somewhat disingenuous to describe the solution as a “like for like” replacement. Even on an interim basis, it was a (10 years) newer system, and thus far more sophisticated.<sup>19</sup>

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<sup>15</sup> T30-72 and following.

<sup>16</sup> See, in particular, T25-7, l 40 and following.

<sup>17</sup> T25-8, l 5.

<sup>18</sup> T25-8, l 1.

<sup>19</sup> Statement of Jane Stewart, paras [20] to [28].

**Question 3: More generally, why did the project scope remain unstable until late into the project and what should either party have done to stabilise scope or cause the project to be reset?**

[47] The reasons for instability in scope seem now to be plain:

- (a) there was insufficient effort directed towards it in the first instance;
- (b) the insufficiency of the effort arose from the lack of realism in the timeframes;
- (c) the lack of realism in the timeframes arose from IBM telling the State what it wanted to hear in an effort to win the ITO process; and
- (d) the State was less attentive to IBM's unrealistic proposals than it should have been.

[48] The first two topics are addressed above. The third is addressed in the State's submissions after the first stage of hearings.

[49] The State accepts that it may well have been too trusting of IBM at the ITO stage. One might candidly observe that IBM's proposal should have been met with greater scepticism, given the stark contrasts with what Accenture had proposed. As we observed in the submissions on the procurement stage, there was certainly cause for IBM to question whether the timeframes it had proposed were realistic.

[50] We are conscious that this is at odds with what is said by Dr Manfield. In our view, Dr Manfield's report suffers from a significant logical flaw. He asserts that IBM's choices and conduct were generally prudent, but conceded in cross-examination that insufficient time was allowed for the scoping process on Lattice replacement<sup>20</sup> – a central project in the overall program.

[51] It is difficult to see how any design and build project can be regarded as prudently structured in circumstances where the early process of apprehending the scope of the project is afforded insufficient time and effort. Moreover, it is submitted that the failure to allow sufficient time for the scoping exercise betrayed a wider failure to apprehend the enormity of the task.

[52] The failure at an early stage properly to define scope was not seen as a barrier to commencement of design and implementation work. This has been the subject of criticism, inter alia, by Mr Campbell in his evidence.<sup>21</sup> The essence of that criticism is that scope definition should be treated as a "gate" through which the parties must pass before proceeding to the next stage.

[53] Instead, the parties chose to proceed, no doubt motivated in part by the tight timeframes which had been set and which, from the State's point of view, amounted to imperatives, due mainly to the escalating risks of Lattice. The effect of this choice was to leave the parties arguing about scope throughout the life of the project.

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<sup>20</sup> T30-72, l 25 – 50.

<sup>21</sup> See, for example, T18-17, l 10 onwards.

- [54] The difficulty arising from failure to settle scope definition at an early stage is that the parties thereafter had seriously conflicting interests. IBM's interests lay with either limiting scope or contending that newly identified difficulties were outside scope and necessitated change requests. The State's interest lay in arguing that particular issues were within scope.
- [55] IBM was in a superior position vis-à-vis that conflict. It possessed the knowledge and expertise necessary to define scope. It had conducted the workshops and was responsible for recording what was discovered in their course. The State could not afford, given the pressures upon it, to devote significant resources to disputing these matters with IBM. Moreover, it could not afford the delay which such disputes represented.
- [56] These matters suggest, it is submitted, breaches of IBM's duties as a professional advisor. Its duty was, at a very early stage, to identify the extent of the scoping process. A proper investigation would have revealed the need for much deeper investigation and analysis. IBM should have had the fortitude to raise with the State at an early stage, the need to pause to devote further effort to scoping. It did not do this.
- [57] The State accepts that, given that it had professional project managers in its employ, it had at its disposal the expertise to apprehend from a relatively early time that IBM was not behaving in a manner consistent with generally accepted project management principles, of which Ascendant was a variation. In particular, it would have been safer to insist upon agreement on scope before allowing further development to proceed. The State accepts that it could have exercised greater authority in this regard, although concerns were raised by Mr Atzeni.<sup>22</sup>
- [58] That concession being made, we would emphasise that it is one easily accepted with the benefit of hindsight. IBM's preparedness to proceed would have been a powerful sign to those responsible for the State's involvement that it was safe to proceed. That sign was given in circumstances where there was significant pressure to proceed with alacrity.

***Question 4: Did IBM take advantage of the unstable and unclear project scope for the purpose of extracting from the State, higher payments than those for which it had initially contracted for and/or extension of time to mask its own delays in designing and deploying the payroll system?***

- [59] It is respectfully submitted that this may place a more sinister complexion on IBM's conduct than is warranted. While the State is critical of IBM's conduct, it would characterise that conduct as negligent rather than fundamentally dishonest.
- [60] It is likely that, having found itself in that position of conflict, IBM was more motivated to classify defects as new requirements not within the original scope. It was likely more motivated to resist arguments that matters it had failed to apprehend were things it could not be expected to apprehend.

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<sup>22</sup> Statement of Atzeni dated 14 May 2013, paras [10] to [21], particularly para [11] and annexure B.

[61] One example of the tangible impact of such conflict is evident in the minutes of the 29 January 2009 meeting. Mr Swinson's minutes record the following exchange between Mr Burns (TB), Mr Swinson (JS) and Mr Doak (BD).<sup>23</sup>

TB: In terms of IBM's proposal to continue with the project while discussing liability for cost allocation and the finance integration in parallel – Will IBM Build Health's required cost allocation now as part of continuation?

BD: Until agree a new schedule, IBM will continue to build to old scope.

JS: Will you build cost allocation to Health's requirements?

BD: If paying to do extra work, want to discuss at QLD Government, recognition that it is not best practice and get sign off at a high level within Government;

Recommend Health does what the "rest of the world" does (ie standard SAP processes) rather than automate bad existing process;

Solution currently does cost allocation as per SAP standard processes.

[62] The minutes go on to record a debate about whether the cost allocation topic was within scope or not.

[63] The assertion that Health should change its business processes to suit SAP rather than require that the new system accommodate Health's processes is emblematic of the conflict identified above. It made sense to IBM, because that outcome suited it given the pressure to get the project to completion. It is true to say that the QHIC scope definition contemplated development of new business processes,<sup>24</sup> however, that was with a view to creating standardised processes in contemplation of the interim solution later being subsumed by the whole-of-government solution. Primarily, SOWs 7, 8 and 8A and the QHIC Scope Definition were directed towards establishing business processes and needs and developing a system which would accommodate them.

[64] Even if that were not so, by January 2009, it was not reasonable to be insisting that Queensland Health's settled business processes be abandoned in favour of adapting to the standard SAP processes. Plainly, the time for identifying those processes and the need for alteration of them was during the scoping process. The demand was an attempt significantly to change the parameters of the project.

[65] Urging late adaptation of Queensland Health's business processes to the rigours of SAP was, it is submitted, largely aimed at meeting IBM's convenience and was at odds with Queensland Health's interests.

[66] It is also to be noted that IBM was in a superior bargaining position to the State at one very basic level: IBM had very little investment in the project. It did not have any significant obligations which provided a serious financial disincentive to walking away from the contract. The failure properly to scope and design the system had led to a series of change requests

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<sup>23</sup> Statement of Swinson, annexure JVS9, pages 3 – 4.

<sup>24</sup> See for example QHIC Scope Definition, TB2, Vol 4 at page 123.

and other negotiations which left the legal rights of the parties heavily obscured so that litigation was no real option. IBM had not invested any serious capital in the project.

[67] In contrast, the State was heavily dependent on IBM. If IBM refused, without further concessions, to finish its work, the State would have been left in a crisis situation again; there would have been a real risk of a payroll disaster on a much larger scale than that which in fact occurred. Where it was called upon to agree to change requests, it was always faced with that conflict and was driven by its imperative to get the system working so as to ensure stability in its business.

[68] IBM had no similar business imperative.

**Question 12: Did IBM deliver a payroll system which met the contract description?**

[69] The work that IBM was required to do was ultimately limited to Lattice replacement. This was a function of the fact that that part of the project had been so difficult and so much more expensive than originally anticipated.

[70] In SOW 7, the goal of the project was described this way:

**2.1.1 Approach and Scope**

A. With the Lattice Replacement interim solution project, the Contractor will implement a minimal Payroll solution into Queensland Health (QH), mitigating the risk of running an unsupported Lattice application and allowing the EBA changes to be updated in the Lattice Replacement system ...

[71] A major factor in the difficult progress of the project was the lack of a sufficiently specific contract description, as distinct from what was intended to be developed during the contract process. At base, the task upon which the parties embarked was to replace Lattice before Lattice failed. More specifically, the task was to develop a system that:

- (a) ensured that people were paid properly, that is, on time, and by efficacious application of relevant industrial instruments to properly gathered data;
- (b) in pursuit of that aim, automated Queensland Health's business processes, whether previously settled or reconfigured as a precursor to build and implementation;
- (c) did those things with a view to later alignment of the system with the proposed whole-of-government system.

[72] The primary obligation – to ensure a system which worked inasmuch as people would be paid on time and accurately – was plainly not met.

[73] The best indicator of that is the necessity for the Payroll Stabilisation Project.

[74] That project, under the leadership of Michael Walsh, set about reverse engineering the scope work that had not been properly completed at the outset. It did so by compiling a list of staff complaints about failures in the system, sifting through those complaints to eliminate

trivia and repetition, and coming up with an issues log. That issues log served as a mechanism for identification of issues and monitoring them to resolution.<sup>25</sup>

[75] Mr Walsh's evidence also demonstrates that it was necessary during the course of the Payroll Stabilisation Project to make a large number of ad-hoc and interim payments due to failure of the system. Those were reduced over the life of the Payroll Stabilisation Project, but their necessity is at odds with the contention that IBM delivered a system in compliance with the contract, even though it is conceded that business process issues also contributed to this problem.<sup>26</sup>

[76] To be fair, the Payroll Stabilisation Project relied heavily on CorpTech to obtain its outcomes. In turn, CorpTech worked with IBM to achieve them. That said, the Payroll Stabilisation Project was necessary because of IBM's failure to deliver a working system.

## **WAS IBM'S PERFORMANCE UNDER THE CONTRACT DEFICIENT?**

### ***Question 5: Was IBM's performance deficient in the following respects:***

#### ***(a) in the system's failure to pass the test regime set out in Enclosure 1 to Change Requests 129, 174, 177 and 179***

[77] Change Request 129 was requested by Mr Hickey of IBM on 4 November 2008 and signed by Ms Perrott on behalf of CorpTech on 11 November 2008. Mr Doak signed it on 12 November 2008. Its title was "SOW 8 – Extension of Time". This essentially sought an extension of the go live date for the solution from November 2008 to "no later than 30 June 2009". The total price for SOW 8 was \$9,193,964.25. Fifteen percent of the fees were "at risk", the criteria for which was IBM completing all work required under the SOW 8 and successfully achieving a system go live date of 30 June 2009. It provided for payment milestones including three categories of testing and completion of the go live. The acceptance criteria for the milestones of Payroll Processing performance testing and WorkBrain functional testing were as per the enclosures to the Change Requests. These were to be followed by user acceptance testing (UAT) to be done by Queensland Health. This was to result in no outstanding test defect records of severity one or two, and lower severity testing defects to be documented with work arounds.

[78] The first two phases of testing, for which the contractor was responsible, were to be completed by 30 November 2008.

[79] Enclosure 1 to the Change Request described the payroll performance test criteria. Generally the criterion seemed to be whether or not the payroll can meet Queensland Health performance targets of:

(a) the seventh day (first Sunday) process can be completed within a window of twelve hours;

(b) the pay Monday process can be completed within a window of eight hours.

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<sup>25</sup> Statement of Michael Walsh, exhibits at page 27 and following.

<sup>26</sup> Statement of Michael Walsh, exhibits at page 163 and following.

The enclosure included end to end process steps for performance tests.

- [80] In relation to the Workbrain award interpretation test, the broad criteria seem to have been whether Workbrain produces the correct results for time and attendance; pay rules; and schedule compliance.
- [81] Importantly, Change Request 129 made it a condition precedent to the incorporation of the Change Requests into the contract that the Payroll Performance test criteria and Workbrain Award Interpretation test criteria would be accepted by the customer as having been achieved by IBM on or before 30 November 2008. Failing this, CR129 was not to be incorporated into the contract and the amendments to the contract set out in CR129 were to be ineffective and void *ab initio*.
- [82] CR129 was followed by CR174, another extension of time, signed by Ms Perrott on 28 November 2008. The condition precedent was retained, however the completion date for the testing was moved to 5 December 2008. Thus the testing date had apparently fallen behind by five days during the 17 days between the two Change Requests. This would seem to indicate a problem with the performance of the system as tested at that time.
- [83] CR177 is dated 5 December 2008 and signed off by Mr Doak on 8 December. This retained the Condition Precedent and moved the testing completion date to 11 December.
- [84] CR179 was signed by Mr Hood on 11 December. It moved the testing completion date to 23 December. The last three Change Requests all proceeded on the basis that the condition precedent from the previous Change Request had not been satisfied. By the time CR179 was executed, the total price for SOW 8 had increased to \$10,061,870.27.
- [85] Change Requests 174, 177 and 179 all establish that the test regime set out in the previous Change Requests had not been met. In relation to CR179, it also seems clear this was not met. The QHIC Steering Committee minutes of meeting at 9am on 23 December 2008<sup>27</sup> set out that end to end testing was not expected to be resolved by 9 January. The minutes continue:
- End to end testing is the greatest risk to go forward. CorpTech believe we have to stand firm on the severity one and two defects being resolved before UAT. We have a watching brief until 9 January and then look at what the delayed project will be. This is a fundamental first step before UAT begins.
- [86] Further points from those minutes include:
- (a) IBM apparently passed a Sunday but not Monday test;
  - (b) IBM had not met the conditions of the gate;
  - (c) if the condition precedent had not been met it may be the "last opportunity to walk away from IBM"; however there would be significant cost to go to other options. The fundamental point is whether the benefits of staying with IBM outweighed the costs;

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<sup>27</sup> TB2, vol 7, page 331.

- (d) it was suggested that the current Change Request lapse and a way forward be negotiated with IBM;
- (e) it was agreed to support the project directorate's recommendations to continue on with the project;
- (f) there was discussion of a breach notice if entry or exit criteria for UAT failed;
- (g) a further Change Request should be very clear contractually.

[87] It is clear that the system failed to pass the test regime set out in the various Change Requests.

[88] It does not appear to be seriously advanced by IBM that the system's failure to pass testing in that six week period was attributable to Queensland Health.

[89] The minutes of the "Extraordinary QHIC Release Steering Committee" - a slightly different membership from the Committee mentioned above - took place at 10.00 am on 23 December 2008. Mr Hickey spoke on that occasion expressing a belief that by 9 January "nearly all defects would be clear". The result seems to have been that Mr Beeston and Mr Hickey would cooperate in drafting a new Change Request "to help go forward". Mr Price set out the three fundamental things needed to go into UAT.

[90] The State's position was set out in Mr Hood's letter of 24 December 2008 to Mr Doak.<sup>28</sup>

**(b) ensuring the system passed the system and system integration tests**

[91] The system's failure to pass the system integration tests is established in a number of ways. First, there are the general delays in having the system ready to enter UAT, such as those outlined above in relation to Change Request 129 to Change Request 179. Secondly, there is the simple fact that the performance of the system after go live indicates that the system was not in truth functionally ready to go live with a reasonable level of performance. Thirdly, direct evidence was given on this topic by Mr Cowan.

[92] His evidence about this is summarised in his statement<sup>29</sup> at paragraph 20. Referring to his UAT test completion report of 27 January 2010,<sup>30</sup> Mr Cowan said:

- (a) the defects identified in UAT showed that there were symptoms of fundamental problems in the system which ought to have been revealed in earlier testing;
- (b) he recommended that there be a formal system and system integration test to give a better insight into the risk for production rollout, which was the only real way to assess the quality of the system at that stage.

Mr Cowan expanded on this somewhat in his oral evidence. He said in essence that the number of defects found was "enormous" and amplified:

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<sup>28</sup> TB2, vol 7, page 356.

<sup>29</sup> Exhibit 101.

<sup>30</sup> TB2, vol 13, page 283.

... the fact that we are seeing functional defects is the problem. When we tried to start the UAT the pay run just did not work. You're sitting there, you've got a team ready to go and you try and execute the pay run, just press a button and the thing should actually generate all of the data etc and transfer it across to WorkBrain, and it fails. That's just not a system ready for UAT, it just shouldn't happen. That's a functional and an integration issue and it should not happen.<sup>31</sup>

According to Mr Cowan, Mr Price's efforts to properly manage these issues in meetings were met with aggression from Mr Gower.<sup>32</sup> He said that 75% were true defects.<sup>33</sup>

[93] Mr Cowan was challenged on this aspect in cross-examination, but he adhered to this evidence. The April 2009 report of Mr Dymock (Ex. 102) was put to him, but it simply does not sit with his experience of what he tested. Mr Dymock has not given evidence.

[94] If Mr Cowan's evidence is accepted, a finding is open that IBM's performance was deficient in that the system should not have passed the relevant tests prior to entering UAT.

**(c) not having the system in a position to enter or exit user acceptance testing (and especially phase 4) free from severity 1 and severity 2 defects, or at least free from defects which affected the accuracy of a pay**

[95] It follows from the evidence outlined above that the system was not in a proper position to enter, or indeed exit, user acceptance testing, because it was not free from severity one and severity two defects. In relation to the entry into user acceptance testing, Mr Cowan said:

What it means is you need to have some sort of good process and good quality in the work that has been done before the user acceptance test is conducted because it assumes that all of that stuff is correct. It assumes that the business analysis, the definition of requirements, the definition of the functionality has been done and not only that, but it has been tested in your systems and systems integration test that all of that is correct and functional. Only then should you conduct a user acceptance test.<sup>34</sup>

[96] This observation is somewhat confirmed by the performance of the system post go live. Ms Stewart gave evidence of a number of problems which emerged at this stage. Referring to her statement, she gave evidence at paragraph 50(c) of Workbrain crashing and a difficulty in diagnosing whether or not data had been lost. The general performance of Workbrain deteriorated and required urgent specialist attention (paragraph 51). Integration issues started to surface (paragraph 53). She said that the most significant system issue post go live was Workbrain performance (paragraph 67). There was a problem with Multi-View Scheduler (**MVS**) Publishing (paragraph 76). There were also difficulties with integration between SAP and Workbrain (paragraph 81 to 93). There were 31 priority one defects in the first 12 months post go live (paragraph 124).

[97] Ms Stewart's evidence is of relevance to the question of the entry or exit of the system to UAT and is supportive of the evidence of Mr Cowan. She also gave direct evidence about

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<sup>31</sup> T24-7, I 25-35.

<sup>32</sup> T24-44, I 50.

<sup>33</sup> T24-62, I 45.

<sup>34</sup> T24-5, I 45-55.

the problems with the integration of Workbrain with SAP and the slowness of the Workbrain system as implemented.<sup>35</sup>

[98] Another aspect of Ms Stewart's evidence was that she was taken to the Project Execution Plan, an IBM document produced in March 2009.<sup>36</sup> She gave evidence that her expectation of the project was that it would deliver, as the plan says, a "stable, supported and supportable HR/payroll solution to Queensland Health." She said that as the defects were appearing after go live, until the defects were fixed, the system as delivered did not fit that description.<sup>37</sup>

[99] In contrast to the evidence outlined above as to the performance of IBM, IBM may well rely on, and the Commission should consider, the evidence of Ms Jones. She gave evidence that the solution, as implemented, presented a reasonable performance in the first three pay runs and indeed, it was improving during that time. By the time of the third pay run she seems to have had considered the results to be acceptable. Ms Stewart gave evidence on this topic.<sup>38</sup> Ms Stewart thought that the first pay runs were "not that bad" and from the perspective of Ms Jones' payroll area, rather than her own, they were, as she put it "experiencing more pain from other things that were not system related." She herself did see the system related problems, particularly such things as integration and performance as outlined above. It is submitted that Ms Jones' evidence should be accepted as far as it goes, but the evidence of others such as Ms Stewart and Mr Cowan may give a larger perspective, and thus a better view, of the quality of the IBM performance overall. In particular, as the system began to undertake retrospective calculations, more system defects emerged and Ms Jones did not witness this aspect of the system.

**(d) in its design and build of the WorkBrain component of the interim solution, and especially WorkBrain's integration with SAP and the extensions required to be made to WorkBrain**

[100] It emerges from the evidence of Ms Stewart that there were multiple deficiencies in the WorkBrain product that was delivered by IBM at go-live.

[101] Ms Stewart readily concedes that some of the problems that were experienced can be attributed to shortcomings in the human inputs, such as inaccuracies in data entry<sup>39</sup> as payroll staff adapted to the data entry conventions of the new system, a high number of staff pay enquiries and the late submission of forms for changes to rosters.<sup>40</sup> Such matters were the clear responsibility of Queensland Health and its payroll staff. She also candidly explained that, to some extent, teething problems with a new system were expected.<sup>41</sup>

[102] However, it is also clear that Ms Stewart and her team experienced considerable technical inadequacies that were beyond expectations, and the direct result of IBM's failure to deliver, in its design and build of the WorkBrain component of the interim solution, a product which

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<sup>35</sup> T29-111.

<sup>36</sup> TB2, vol 8, page 169, particularly at page 180.

<sup>37</sup> T30-30, l 15.

<sup>38</sup> T29-110, l 10 – T29-111, l 10.

<sup>39</sup> T29-87, l 2-6.

<sup>40</sup> Statement of Ms Stewart, paragraph 66.

<sup>41</sup> Statement of Ms Stewart, paragraph 32.

was able to meet its purpose. Indeed, Ms Stewart gave evidence that, of the 422 defect fixes that have been applied in the last two and a half years, a “large proportion” were required to enable basic functioning of the system.<sup>42</sup>

[103] The core failures Ms Stewart identified after go-live were:

- (a) coding deficiencies, such that “every layer of the WorkBrain environment ended up having some type of change applied to it to improve performance”<sup>43</sup>;
- (b) the system had challenges in coping with the complexity of concurrent employment.;
- (c) that the error messaging of the system was not operating properly, such that it would indicate information had published successfully when it had not, or indicate that it had been unsuccessful when in fact the information had been properly published.<sup>44</sup> As a result, information transfers had to be repeated, adding load to the system.<sup>45</sup> Another example is that the system should indicate that mandatory information had not been input, however, a critical issue did occur where this appeared not to have happened;<sup>46</sup>
- (d) unexpected, unexplained crashing of the system,<sup>47</sup> with time impact beyond that for which the system was “down” because of an inability of WorkBrain to diagnose whether data had been lost;
- (e) latency issues and slow operation of the MVS, as well as difficulties with viewing, updating and publishing rosters in the MVS;<sup>48</sup>
- (f) being unexpectedly locked out of WorkBrain;<sup>49</sup>
- (g) slow operation of the overnight batch processing system;<sup>50</sup>
- (h) slow operation of the entire system,<sup>51</sup> which became worse with each pay run as the volume of data in the system grew;
- (i) integration issues.<sup>52</sup> This refers to difficulties in the transfer information between SAP and WorkBrain. Because the new system was a retrospective one, changes had to be made in a time-sequential order, so that a failure of information to transfer from SAP to WorkBrain (or vice versa) as it should meant that data entries were not being

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<sup>42</sup> T29-94, I 33-60.

<sup>43</sup> T29-92, I 51-53; T29-93, I 48-49.

<sup>44</sup> Statement of Ms Stewart, paragraph 76; T29-88, I 22-31.

<sup>45</sup> Statement of Ms Stewart, paragraph 78-79.

<sup>46</sup> T29-89, I 3-16.

<sup>47</sup> Statement of Ms Stewart, paragraph 67.

<sup>48</sup> Statement of Ms Stewart, paragraph 67, 50.

<sup>49</sup> T29-96, I 48-60; T29-97, I 1-3.

<sup>50</sup> Statement of Ms Stewart, paragraph 52.

<sup>51</sup> Statement of Ms Stewart, paragraph 67.

<sup>52</sup> T29-99, I 30-32.

processed in the time sequential order that was essential to the production of accurate pays;<sup>53</sup>

- (j) that the number of error messages was becoming larger and larger every pay run;<sup>54</sup>
- (k) some errors were not generating an error notification message, and consequently they would not be the subject of investigation and correction;<sup>55</sup>
- (l) the file naming protocols of the system did not contemplate the creation of adhoc payments by different users at the same second. The system gave multiple files the same file name, and as a result, one of those files would be left unprocessed (and the staff member therefore unpaid);<sup>56</sup> and
- (m) the system did not have a suitable reconciliation tool for identifying integration issues so that they could be corrected.<sup>57</sup>

[104] Together, these issues with the design and build of WorkBrain show that IBM failed to properly perform its role and deliver a suitable interim solution. It should be noted that neither Ms Stewart nor her team expected immediate perfection: she knew from experience that some problems at go-live were a reality of the process.<sup>58</sup> Nevertheless, the volume and seriousness of the defects demonstrates the inadequacy of IBM's delivery, falling well short of an acceptable result.

[105] The very fact that many of the IBM staff who later joined the CorpTech team responsible for supporting the new system were able to write code of a sufficient quality to stabilize the system in the two and a half years since go-live,<sup>59</sup> demonstrates that the product IBM was required to deliver was not unattainable, or unreasonable. Rather, IBM imposed time pressures upon the team involved that prevented them from delivering a "well tuned program".<sup>60</sup>

[106] It is acknowledged that there is some overlap between the factors that it is submitted relate to a deficient WorkBrain product, and the role of human error in the early pay outcomes. As Ms Stewart explained, some of the incorrect pays and "no pays" were because of a backlog in material for processing by payroll staff – but that problem was exacerbated greatly by the slowness of the WorkBrain system, the disruption caused by system errors, and the effect those had on the productivity of payroll staff.<sup>61</sup> In this sense, it is submitted that the system failures made a high-workload (albeit manageable) situation become overwhelming, even though it is conceded that business process issues also contributed to this problem.

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<sup>53</sup> Statement of Ms Stewart, paragraphs 81-84; T29-100, I 1-28.

<sup>54</sup> Statement of Ms Stewart, paragraph 86.

<sup>55</sup> Statement of Ms Stewart, paragraph 89-90.

<sup>56</sup> Statement of Ms Stewart, paragraph 87; T29-101, I 30-42.

<sup>57</sup> Statement of Ms Stewart, paragraph 91.

<sup>58</sup> Statement of Ms Stewart, paragraph 32.

<sup>59</sup> T29-93, I 51-60; T29-94, I 1-5.

<sup>60</sup> T29-94, I 6-18.

<sup>61</sup> T29-91.

## THE STATE'S FAILURE TO EXTRICATE ITSELF

**Question 6: Did the State fail to avail itself of realistic opportunities it had to extricate itself from SOW8 (or the contract as a whole) namely:**

**(a) at the times referred to in 5(a), (b) and (c)**

[107] As touched on above, the QHIC Steering Committee had a difficult decision to make on 23<sup>rd</sup> December 2008. The way this was described by Mr Price in evidence was that the deadline for the passing of the gate had shifted a number of times (this is correct, over CR129-CR179); he felt they had achieved the Workbrain gate and the performance time had two aspects, the time to be run on Sunday and the time to be run Monday – IBM achieved one of those aspects and was within a couple of hours of the second one. Thus the approach was that IBM were very close to achieving the gate and that everyone had put so much effort into the project it was worth seeing if they could achieve the last couple of hours. There was a view that IBM was so close, they would achieve it in the next few weeks. He further said that from his point of view an earlier attempt had been made to persuade the Director General that Health needed to get out of the IBM contract and the relationship with CorpTech which, in his view, was effectively ignored (in both 2008 and 2009) so that his options had been cut off and they had to keep going to avoid the Lattice risk.<sup>62</sup>

[108] Given that the vital decision for the Change Requests ending in 179 took place on 23 December 2008, the frustration expressed by Mr Price at the feedback from the Director General would refer, presumably, to the briefing note which is at TB 2 volume 5, page 294. At 295, the document (the work of Price, Burns and Kalimnios) recommended that Queensland Health should separate itself from the CorpTech driven whole of Government program immediately and engage directly with contractors and examine alternatives to an IBM managed project. If a relationship with IBM were to continue, the recommendation was that Queensland Health should engage with IBM directly and negotiate a new contract. Subsequently these things did not occur, although later in 2009 the scope was narrowed.

[109] Thus Mr Price's attitude is, it is submitted, understandable. As far as he was aware a high level decision had apparently been made that the contract was not to be terminated, which, he said, limited his options (although there was discussion in the meeting of 23 December that the failure to meet the condition precedent "may be the last opportunity to walk away from IBM", so it seems to be still considered at that stage). It seems to have been felt that the benefits of staying with IBM outweighed the costs of attempting to terminate the contract and start again with an entirely new process. The risks involved are also set out in Mr Monaghan's email of the 24<sup>th</sup> December to Mr Kalimnios, at TB2 Vol 7, p360 – 2.

[110] At the directorate meeting on 22 December 2008, the matter had been discussed extensively. Mr Price said:

It was a promising result however the gate hasn't been met contractually. It needs to be decided if the project goes ahead. There needs to be a continuation of this work to finalise business processes etc before we enter UAT.<sup>63</sup>

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<sup>62</sup> See T21-12 to 21-15.

<sup>63</sup> See Exhibit 141.

Three options were considered at that meeting including accepting the gate as passed, extending the time for the gate, or rejecting IBM's efforts and closing the project. The unanimous decision was made to go forward past the gate, given the amount of work done prior and throughout the project's lifecycle and the cost of changing suppliers.

[111] Mr Kalimnios, who was involved in the previous representations to the Director General, was present at the Board meeting of 23 December, as were senior representatives of CorpTech. The minutes of the meeting record that the intention was to inform the Director General (presumably of Health) the following day.<sup>64</sup>

[112] It is submitted that the Board's decision on that occasion was not a failure to avail itself of a realistic opportunity to extricate the State from a contract. For the reasons outlined above, the decision which was made at the time was a reasonable one made in a reasonable way. It was not made lightly or in an unconsidered way. Factors included increased cost, the value of previous work which would be lost by starting again with another vendor, and inevitable further delay. This is not to say that (particularly with the benefit of hindsight) there may not have been a reasonable competing view. In the end, the Board had to make a decision based on its judgment of the circumstances and it is submitted that the circumstances were such that the decision made was a reasonable one. It is submitted that to conclude otherwise would be to pay insufficient recognition to the various factors and pressures which led to the result, and to over-value the matters which are now known (but were not necessarily predictable at the time) as to the unsatisfactory nature of the final result.

**(b) the date by which the scope project was to be delivered under SOW7 and 8A**

[113] The period for delivery of scope for SOW 7 and SOW 8A was initially 24 December 2007 for SOW 7<sup>65</sup> and 18 January 2008 for SOW 8A.<sup>66</sup> It does not seem to have been contemplated by anyone at a relevant level of authority that non-performance of this deliverable should be considered as a realistic opportunity to terminate the contract. Part of the context is that, at that stage, the contract was for the whole of Government solution, of which the Queensland Health interim payroll solution was only a part. Some evidence was given by Mr Atzeni in his most recent statement to the effect that the workshops which were conducted as part of the scoping exercise were less than ideal, and a number of issues were raised in an e-mail from Mr Fawcett to Mr Prebble of 18 December 2007.<sup>67</sup> Mr Atzeni was also somewhat critical of the QHIC Scope document in the sense that it did not contain comprehensive agency specific requirements for Queensland Health. However, there does not seem to have been any escalation of this to the stage where serious consideration was given to terminating the contract at that stage. There does not seem to be evidence on the point from, for example, Ms Perrott.

[114] It is submitted that this is not surprising, given that this event was so early in the life of the contract (even one which, at that stage, had a go live date of 30 July 2008). Further, at that stage, the contract was for the whole of Government solution, so that extracting Queensland Health from it would have required a major renegotiation.

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<sup>64</sup> TB 2, Vol 7, page 332.

<sup>65</sup> TB, Vol 2, page 108.

<sup>66</sup> TB, Vol 4, page 1.

<sup>67</sup> Statement of Atzeni, Exhibit 122, para 36.

[115] It is reasonable to say with hindsight that these matters could reasonably have been considered at that stage. However, given what was known at the time, it is not surprising, and it is not unreasonable, that withdrawal of Queensland Health from the contract at that stage was not seriously considered.

**(c) *in or about January 2009 when the decision was made that no new Statements of Work would be entered into with IBM***

[116] One of the events which occurred in January 2009 was the meeting between Ms Perrott and Mr Grierson which seems to have occurred on 21 January 2009. The relevant e-mail which attaches a briefing note is at TB2, vol 8 commencing at page 61. The Ministerial Briefing note, commencing at the foot of page 64, is as follows:

It is imperative that current Queensland Health Payroll Project be finalised as soon as practicable and at a reasonable cost. There are significant issues with the current payroll system which means that the ability to pay Queensland Health staff is at risk with each pay run under the existing system. Cancelling the project at this time is not an option.

[117] At the top of the next page, under “current position”, the note continues:

... the preferred option is to hold IBM to account and have it complete the current Queensland Health Payroll Project only, and to not have it undertake any further phase 1 program activities.

[118] This stance was repeated in the Executive Steering Committee meeting of the 29<sup>th</sup> January 2009.<sup>68</sup> Thereafter it seems to have been the approach which eventually led to the Cabinet decision in September 2009 to narrow the scope of the IBM contract to the Queensland Health Interim Payroll Solution only.

[119] The reasons for not attempting to terminate the contract at that stage appear to be set out at the foot of page 64 of the briefing note:

- (a) it was considered imperative that the current Queensland Health Payroll Project be finalised as soon as practicable and at a reasonable cost;
- (b) this was because there were significant issues with the current system and the ability to pay Queensland Health staff is at risk with each pay run;
- (c) this led to the conclusion that cancelling the project at that stage was not an option.

[120] Ms Perrott gave evidence touching on these matters at T23-78, I15 to T23-81, I41. In summary, she said:

- (a) although in late 2008 IBM's performance was nearing breach, management of the contract was within the context of the wider whole of Government solution;
- (b) Mr Grierson was of the opinion that the various escalation procedures needed to be exhausted before resorting to legal solutions because “we were at that stage 7 or 8

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<sup>68</sup> TB2, Vol 8, page 98.

months into the project and, as I said before, there had been a huge investment made by the Government already in terms of the payment to IBM and I think it was trying to get performance up before we wasted that investment, I think, was what I was referring to as the bigger picture.”<sup>69</sup>

- (c) she agreed with the suggestion that she was trying to get to a solution rather than buy into a legal fight if she could avoid it;
- (d) she explained how the Government’s approach had been to move to a triple instance model so that there would be three instances of SAP for Government, one for Queensland Health, one for the Shared Services Agency and then the Department of Education and Training;
- (e) she was sympathetic to the cause of Mr Kalimnios who was stressing the business needs of Queensland Health, but greater autonomy could not be given automatically to Queensland Health because CorpTech was the contracting party;<sup>70</sup>
- (f) in response to the question of whether consideration was given to allowing Queensland Health to take a direct contractual arrangement with IBM and remove CorpTech from its role as contract manager, she explained that arrangements were made which gave Health greater autonomy, such as the establishment of its own steering committee and project board. She continued “so we were, I guess, moving towards giving them more autonomy and I think the next step could have been cutting them free, but I’m not sure what the decisions were after I left.”<sup>71</sup>
- (g) when pressed as to whether a decision was made whether the time was right for Queensland Health to make its own arrangements she said “I can’t recall that discussion happening specifically to move to that decision at that time.”<sup>72</sup>

[121] Ms Berenyi was asked about this issue at T27-71 commencing at I26:

The Commissioner: When the decision we have been talking about was made and there wasn’t going to be a further stage, as it were and that the work that IBM was asked to do on the Queensland Health payroll, was always going to do, with respect to the payroll, did anyone in CorpTech or Queensland Health turn their minds to whether anything should be done to change the scope of the IBM contract? --- That certainly wasn’t what we did was as was said, discontinue certain scopes of work or statements of work in order to curtail to just delivery of the Queensland Health payroll. We did start to then talk with Education, Training and the Arts and also with other agencies around what has to happen to allow them to consider how they need to progress with their payroll.

[122] The opportunities which the State may have had to extricate itself from the contract are not clear, in terms of whether they were realistic or not. It is true that IBM had not met the conditions precedent imposed by the earlier change requests, which may have given rise to a right to terminate. This may have turned on contested facts. To attempt to have done so,

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<sup>69</sup> T23-78, ll 40-50.

<sup>70</sup> T23-80, ll 30-40.

<sup>71</sup> T23-81, ll 18-20.

<sup>72</sup> T23-81, l 40-42.

given the attitude of IBM as matters proceeded, would have been likely to have met with strong resistance. Such an action, if successful, still carried a risk of sudden disengagement from the project by IBM and its vital resources. A termination could have been treated as a wrongful repudiation which IBM could accept, thus putting the contract at an end and avoiding, in its eyes at least, its disengagement obligations thereunder. This may have left the State in a position of recommencing the entire process, at a stage when significant time and expense had been spent and Lattice was unsupported and risky.

[123] One objection which is advanced to answer this risk is the proposition that IBM would not suddenly exit the project leaving an incomplete and unsupported system because of the reputational damage therefrom. This is a reasonable argument, but, it is submitted, hard to properly evaluate at this distance. No IBM witness seems to have given explicit evidence on the topic. Mr Swinson said it was expressed by IBM in January 2009<sup>73</sup>. He took the threat seriously, although he did not think a walkout was likely.<sup>74</sup>

[124] These factors were considered at the time and, it is submitted, reasonable judgments were made on them. The result was to continue with IBM but with a reduced scope.

[125] Thus, it is submitted that it is unclear how realistic any opportunities were at relevant times for the State to attempt to extricate itself from the contract, and the State's choice not to attempt to do so was, it is submitted, a reasonable decision made in a reasonable way.

[126] Another alternative which has sometimes been explored is the possibility of renegotiating contractual arrangements with IBM such that a new contract was entered into between Queensland Health directly and IBM. This seems not to have been seriously considered, and the reason was that at this stage the whole of Government project was still on foot. There is no evidence as to what IBM's response to such an approach would have been.

[127] Thus, although it is recognised that in hindsight the possibility of making alternative arrangements by attempting to negotiate a different or new contract could have been considered, there is no firm basis for a conclusion that this would have improved the situation. The same work for an interim solution still remained to be done by IBM and the same difficulties in delivering the solution are likely to have been experienced. The decisions which were made, as outlined above, are submitted to have been reasonable decisions taken in a reasonable way.

## THE DECISION TO GO-LIVE

### ***Question 7: Ought the Project Directorate to have recommended that the system go-live on 14 March 2010 and ought the Project Board to have approved that go-live?***

[128] The Project Directorate's recommendation and the Project Board's approval for the system to go-live on 14 March 2010 has been criticised in respect of a number of matters, including:

- (a) reclassification of defects;
- (b) alteration of entry and exit criteria for user acceptance testing ('UAT'); and

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<sup>73</sup> Statement of 25<sup>th</sup> February 2013, Ex. Para 90

<sup>74</sup> T19-95, I35

(c) failure to properly consider the risks associated with go-live.

[129] It is submitted that the decision to recommend and approve go-live involved complicated judgements regarding commercial and practical considerations. There is room to criticise the judgement exercised with the benefit of hindsight, but at the time, the members of the Project Directorate and Project Board were conscientiously performing their roles and took steps to consider and mitigate the risks associated with go-live.

#### *The Lattice risk*

[130] The go-live decision must be viewed in the context of, among other factors, the real and imminent risk of Lattice failure. This risk, on the balance of the evidence, was not illusory or overvalued. Aside from a lack of vendor support, other issues with Lattice included an inability to configure upcoming enterprise bargaining changes and vital components reaching their end of life.<sup>75</sup>

[131] The majority of witnesses acknowledged that Lattice was failing and many said there was a serious risk of it failing catastrophically, which would have resulted in 78,000 employees not receiving any pay.<sup>76</sup>

[132] The risk of Lattice failure was a view held by the two people who had most experience with the payroll system – Phillip Hood and Janette Jones. However, it was not their view alone that led to Lattice being considered a significant risk. Rather, their views were supported by a risk analysis undertaken in 2007 by an external consultant, which identified Lattice failure as being a high risk.<sup>77</sup> The risk identified did not lessen throughout the project.<sup>78</sup>

[133] The only witness who suggested that Lattice was not such a serious risk was Mr Uhlmann. However, he did not have the same knowledge and expertise as others who were directly involved with the Lattice system so it is submitted that the evidence of the other witnesses should be preferred in relation to this issue.

[134] If go-live had been delayed further, additional work would have been required on the new system and, in some respects, the parties would have had to start again.<sup>79</sup> The next opportunity for go-live would most likely have been September or November 2010, but it was also possible that it may not have been for another 12 or 24 months.<sup>80</sup> Such a lengthy delay would have created even greater risk in relation to the Lattice system and it is reasonable for that risk to have weighed heavily on the minds of those involved in the decision to go-live. Dr Manfield did not, in the end, say that he could say whether the decision to go live was correct or not.<sup>81</sup>

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<sup>75</sup> T20-29, I 10.

<sup>76</sup> See, for example, T20-27, I 40; T21-18, I 10; T22-13, I 10; T3-52, I 10; T31-65, I 1.

<sup>77</sup> Exhibit 131.

<sup>78</sup> T31-65, I 1.

<sup>79</sup> T20-30, I 1; 21-93, I 20.

<sup>80</sup> T20-34, I 20; T21-93, I 10; Berenyi statement, Exhibit 113, at [211].

<sup>81</sup> T30-89, I 30.

*Reclassification of defects*

[135] The Master Test Plan set the criteria for classification of defects. It has been suggested that there was a lack of rigour in how those criteria were applied in instances where defects were reclassified.

[136] Documents show that the Project Board agreed at one point to 'disregard all current language' in relation to defects.<sup>82</sup> However, Ms Berenyi gave evidence about that decision and said that:

- (a) the Project Board was confronted with various different terms and definitions and wanted to understand what was required for go-live;
- (b) the Project Board did not intend to alter criteria or defect classifications; and
- (c) the agreement regarding language was simply to assist the Project Board's understanding.<sup>83</sup>

Her evidence was supported by James Brown,<sup>84</sup> and in any event, the Project Board meeting occurred on 12 May 2009 and the defect classification categories were used after that date.

[137] The Project Board later decided to downgrade some severity 2 defects to 'severity 3, priority 1'. One reason for doing so was to allow IBM to concentrate on the severity 2 defects that were considered to be a priority.<sup>85</sup> Another relevant factor was the ongoing issues with scope, which meant that disputes about classification of defects had started to cause delays.<sup>86</sup>

[138] The identification of defects and their categorisation in terms of severity was always rightly a matter for discussion between the parties and it is reasonable for different views to be taken on the proper classification of a defect.<sup>87</sup> Evidence has been given to show that discussions occurred at the Project Directorate level in relation to defect classifications and decisions occurred only for valid business reasons.<sup>88</sup>

[139] Evidence has also shown that, in principle, the revision of defect severity classifications is not wrong or inappropriate.<sup>89</sup> Mr Cowan gave evidence that he thought the bulk re-classification of defects for the purpose of achieving exit criteria was unusual.<sup>90</sup> However, he also acknowledged that the process involved discussion and debate that could reasonably lead to a change from the original classification given to a defect.

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<sup>82</sup> TB2, Vol 9, page 81.

<sup>83</sup> T27-59, I 20 onwards and Berenyi statement, Exhibit 113, at [102].

<sup>84</sup> T19-25, I 40.

<sup>85</sup> TB2, Vol 9, page 320.

<sup>86</sup> T27-105, I 20.

<sup>87</sup> T19-50, I 10 (Brown).

<sup>88</sup> T19-19, I 30 (Brown).

<sup>89</sup> Berenyi statement, Exhibit 113, at [85]; T30-73, I 20; Exhibit 123 at page 6.

<sup>90</sup> T24-33, I20.

[140] Although the defect reclassification in this case may have been motivated in part by moving the project forward, the decision to do so was not made without proper consideration. Indeed, those decisions were made only after considering each defect in detail and its likely business impact.<sup>91</sup> Therefore, although Mr Cowan refers to the 'bulk' reclassification of defects, it is submitted that the fact that more than one was reclassified at one time does not necessarily lead to the conclusion that each was not given specific consideration.

[141] Importantly, the reclassification of defects did not mean they were not given due attention at some point.<sup>92</sup>

*Alteration of UAT entry and exit criteria*

[142] The original criteria for entry and exit to UAT required there to be no severity 1 or 2 defects. However, the Project Board decided to alter the entry and exit criteria at different points so that UAT4 could:

- (a) commence notwithstanding the existence of some severity 2 defects; and
- (b) be exited on the basis that some severity 2 defects still existed, but were appropriately managed through a defect management plan.

[143] These decisions did not mean that outstanding defects would be ignored. Mr Gower acknowledged that IBM was still obliged to resolve other non-net pay related defects after UAT4 had commenced.<sup>93</sup>

[144] It was a pragmatic decision to alter UAT entry and exit criteria to prioritise defects and keep the project moving. However, the decision must be considered in light of the surrounding circumstances, including:

- (a) risks associated with Lattice;
- (b) the different causes of defects that were identified in UAT4 and the sometimes minimal affect they would have on the overall system;<sup>94</sup> and
- (c) the ongoing dispute about whether matters identified as defects were in fact defects or were new requirements.<sup>95</sup>

[145] Although the decisions involved a degree of pragmatism, care was taken to ensure an adequate defect management plan was in place to mitigate the risks of outstanding defects. Evidence has been given that it is not necessarily unusual for criteria to be altered during a project or for a defect management plan to be adopted to deal with outstanding defects.<sup>96</sup>

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<sup>91</sup> T19-21, I20; Berenyi statement, Exhibit 113, at [89].

<sup>92</sup> T27-62, I 40.

<sup>93</sup> T26-11, I 1.

<sup>94</sup> T20-13, I 10 and 20-19, I 30 (Jones).

<sup>95</sup> T26-13, I 40.

<sup>96</sup> T25-71, I 50 and Exhibit 123 at page 6.

[146] Ms Jones said there was careful deliberation about the defects included in the management plan and the practicability of each proposed workaround.<sup>97</sup> She would not have agreed to the management plan if she did not think that her team could carry out the work required.<sup>98</sup> Other matters relevant to the appropriateness of the defect management plan are:

- (a) additional resources were obtained to deal with the proposed workarounds;<sup>99</sup>
- (b) Ms Stewart confirmed that, after go-live, the defect management plan was reasonable and in hand;<sup>100</sup>
- (c) workarounds were tested before being signed off;<sup>101</sup> and
- (d) there is no clear evidence that shows that defects identified before go-live caused system issues post go-live.<sup>102</sup>

*The decision to go-live*

[147] The Project Directorate and the Project Board considered a large amount of information in the lead up to the go-live decision, including reports from QHEST, IBM, CorpTech, KJ Ross and Terry Burns. The individuals involved took appropriate steps to inform themselves about the risks associated with go-live. The recommendation and subsequent decision were not made lightly or without all available information being discussed.

[148] The KJ Ross UAT report Test Completion Report of 27 January 2010 ('KJ Ross Report') identified the risks revealed in UAT. It also noted the wider context of the project and gave two options for moving forward – delay rollout of the system or accept the risks in proceeding to go-live.

[149] Dr Manfield gave evidence that the KJ Ross Report should have figured prominently in the Project Board's risk assessment for go-live.<sup>103</sup> It is submitted that the report was given detailed consideration, as can be seen from the State's management response, and the risks identified were weighed against the risks of not proceeding to go-live.

[150] In particular, the Project Board noted that the remaining defects after UAT4 were not systematic processes but were specific and isolated to small scenario based issues that could likely be addressed with manageable workarounds.<sup>104</sup> The Project Board also considered that the risk of Lattice failing was equal or greater to the risks associated with the new system and noted that it was relying on expert assurances and advice from IBM in relation to the readiness of the system for go-live.<sup>105</sup>

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<sup>97</sup> T20-11, I 10 and T20-52, I 30.

<sup>98</sup> T20-23, I 1.

<sup>99</sup> T20-22, I 30.

<sup>100</sup> T29-99, I 20.

<sup>101</sup> TB2, Vol 15, page 156.

<sup>102</sup> T20-41, I 40.

<sup>103</sup> T30-52, I 1.

<sup>104</sup> TB2, Vol 14, page 219.

<sup>105</sup> TB2, Vol 14A, page 390.

[151] Although Mr Cowan had concerns regarding the defects identified during UAT, he agreed that he did not have the wider involvement in the project so as to appreciate the competing risks, including the risks associated with failure of the Lattice system.<sup>106</sup> Further, although Dr Manfield criticised the State's response to the issues identified in UAT4, he conceded that he was not in a position to give an opinion as to whether or not the decision to go-live was right or wrong.<sup>107</sup>

[152] Therefore, it is submitted that Mr Cowan and Mr Manfield's evidence, while relevant to the identification of risks associated with go-live, does not adequately take into account the entire context of the decision and competing factors to be weighed by the Project Board.

[153] The QHIC Final Solution Risk Assessment Report provided a strategic view of the residual risk profile of the project.<sup>108</sup> The overall conclusion was that the QHIC SAP/WorkBrain solution would provide a lower operational risk than the Lattice/ESP system, subject to a risk mitigation plan. The report was specifically considered by members of the Project Board and Project Directorate on 1 March 2010.<sup>109</sup> The Project Board considered the project risks and determined that they were manageable through the defect and solution management plan.<sup>110</sup>

[154] In addition to the reports discussed above, the information available to the Project Directorate and the Project Board at the time of the go-live decision included:

- (a) the results of the six testing regimes run in parallel with UAT4 that were critical to go-live were all green, except one that was resolved before the go-live decision;<sup>111</sup>
- (b) a briefing paper from the Project Directorate recommending go-live on that basis that all relevant criteria had been met, with the only amber item having a mitigation strategy in place;
- (c) advice that all cutover tasks had been performed satisfactorily and that the system was ready for go-live;<sup>112</sup>
- (d) the Program Assurance Position Paper presented by Mr Burns to the Project Directorate immediately before go-live on 12 March 2010 confirming that, in relation to all criteria, an acceptable position existed to proceed to go-live;<sup>113</sup> and
- (e) two simulations of pay runs were conducted before the go-live date and the outcomes were satisfactory, i.e. nothing occurred to change the Board's view about go-live.<sup>114</sup>

[155] Relevantly, Mr Doak was a member of the Board and he gave evidence that the system was ready to go-live.<sup>115</sup> IBM, as the designer and builder of the system, was in the best possible

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<sup>106</sup> T24-29, I 1; 24-41, I 1.

<sup>107</sup> T30-89, I 20.

<sup>108</sup> TB2, Vol 15, page 14.

<sup>109</sup> TB2, Vol 15, page 13.

<sup>110</sup> Berenyi statement, Exhibit 113, at [174], T29-99, I 20.

<sup>111</sup> T27-85, I 10 and Berenyi statement, Exhibit 113, at [159].

<sup>112</sup> TB2, Vol 15, page 147.

<sup>113</sup> TB2, Vol 15, page 143.

<sup>114</sup> T20-57, I 1.

position to provide advice and guidance on the risks associated with go-live. It was reasonable for the government representatives on the Board to rely on the assurances given by IBM in relation to the system.

[156] The Project Board had a teleconference at 7:00am on 14 March 2010 at which they agreed to go-live with the new system. Members of the Project Directorate were also present. The Project Board specifically noted the amber item in the risk assessment report and the planned mitigation strategy.

[157] In the face of the information available at the time and the overwhelming evidence regarding the risk of Lattice failure, the Project Board had a difficult decision to make. It had to consider the two options available and the associated risks of each.<sup>116</sup> Ultimately, the Board's decision was that the risk of delaying exceeded the risk of go-live.<sup>117</sup>

[158] Although in hindsight that may appear to have been the wrong decision, it will never be known whether a further delay would have been followed by a catastrophic failure of Lattice. If that event had transpired, then arguably the Project Directorate and the Project Board would have made the wrong decision; they certainly would have been trenchantly criticised for it. This serves to caution against indulgence in the wisdom of hindsight, as well as demonstrating that they were between two difficult choices.

## **STANDARD OF DILIGENCE SHOWN IN MANAGEMENT OF THE PROJECT AND CONTRACTUAL RELATIONSHIP**

***Question 10: Was the standard of diligence shown by Ms MacDonald, Ms Berenyi and Ms Perrott in their consideration of Change Requests and their management of the projects and contractual relationship with IBM that which ought reasonably be expected of managers in their position and having the knowledge they did of serious misgivings about the quality of the system and IBM's diligence and competence in implementing it?***

[159] The way that the issue is framed suggests that Ms McDonald and Ms Perrott possessed "serious misgivings about the quality of the system".<sup>118</sup> Whilst both gave evidence of their concerns in relation to scope, neither gave evidence of such serious misgivings about quality. Ms Perrott refers to issues in relation to integration,<sup>119</sup> but it is submitted that is as high as her evidence can be understood.

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<sup>115</sup> T25-99, I 30.

<sup>116</sup> T21-95, I 30.

<sup>117</sup> TB2, Vol 14A, page 390.

<sup>118</sup> As the issue is framed in issue 10 for submissions.

<sup>119</sup> T23-66, I 6-13; T23-67, I 10-19; in addition, the contemporaneous documents from week 13 of the ESC Minutes (30 March 2008) and of the QHIC Steering Committee (21 March 2009) show that integration problems were causing the program to report as "amber".

*Ms MacDonald*

[160] Ms MacDonald became the Associate Director of the Department of Public Works in May 2009, and reported directly to Mr Grierson. Supervision of CorpTech became one of her broad range of responsibilities.<sup>120</sup> At this stage, the Queensland Health Payroll Project was already underway, and a range of issues with the relationship between the State and IBM, and IBM's performance, had already been identified.

[161] Ms MacDonald demonstrated an appropriate amount of diligence as she entered the role. She promptly obtained background information about the project through two briefings with Mr Grierson, and another with Ms Berenyi.<sup>121</sup> These equipped Ms MacDonald to appreciate:

- (a) The results of the due diligence investigation that occurred upon CorpTech's transfer from the Queensland Treasury to the Department of Public Works;<sup>122</sup>
- (b) The strong desire from within the State Government to see the project completed;<sup>123</sup>
- (c) Difficulties arising from the lack of detail in the contract, and the consequent difficulties in measuring performance and delivery standards;<sup>124</sup> and
- (d) The strained relationship between Queensland Health staff and IBM representatives.<sup>125</sup>

[162] Once across the information necessary to perform her role, Ms MacDonald initiated weekly briefings with Mr Grierson, where she would discuss with him the issues associated with the project, and seek his advice where necessary.<sup>126</sup> She also established weekly meetings with Ms Berenyi to ensure she was kept informed of the progress of the project and any emerging issues.<sup>127</sup>

[163] Each of these actions demonstrates the accuracy of paragraph 11 of Ms MacDonald's statement:

I believe that I was much more involved in the management of CorpTech and relevant projects within Public Works than was previously the case in the department. I believe I was as active as I could be in relation to CorpTech and the Queensland Health payroll implementation, given the breadth of my responsibilities and the level of senior engagement from Queensland Health and CorpTech on the Queensland Health payroll project.

[164] Change request 184 was signed by Ms MacDonald when she had been in her role for approximately six weeks.<sup>128</sup> Still new to the role, she sought advice from CorpTech to ensure she properly understood its significance before signing.<sup>129</sup>

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<sup>120</sup> Statement of Ms MacDonald, paragraph 8.

<sup>121</sup> Statement of Ms MacDonald, paragraphs 9 and 10.

<sup>122</sup> Statement of Ms MacDonald, paragraph 9.

<sup>123</sup> Statement of Ms MacDonald, paragraph 9.

<sup>124</sup> Statement of Ms MacDonald, paragraph 10.

<sup>125</sup> Statement of Ms MacDonald, paragraph 10.

<sup>126</sup> Statement of Ms MacDonald, paragraph 12, T28-31, l 43-49.

<sup>127</sup> Statement of Ms MacDonald, paragraph 13; T28-27, l 28; T28-31, l 50-51.

<sup>128</sup> Statement of Ms MacDonald, paragraph 19.

[165] Counsel Assisting the Commission suggested to Ms MacDonald that CR184 relinquished some of the State's rights against IBM in relation to enforcing IBM's performance standards, particularly in relation to the omission of the condition precedent for testing of WorkBrain from CR184. Ms MacDonald consistently gave evidence that at no time was she informed that, or put on notice in any way, that CR184 involved such a concession of rights.<sup>130</sup> In a review of Ms MacDonald's records subsequent to providing a statement, but prior to giving oral evidence, she also did not locate any information regarding such a concession, including within the briefing notes she received contemporaneously with CR184.

[166] Ms MacDonald believes that she obtained legal advice from the Director of Legal Services in the Department of Public Works wherever it was necessary.<sup>131</sup> She met with Mr Brown to that end.<sup>132</sup>

[167] In fact, Ms MacDonald's decision to sign CR184 was made upon consideration of the factors relevant to it. Properly discharging her duties, she weighed up the need to advance the project, the concerns expressed about the risk of Lattice failing, the recent due diligence review, the desire to improve relationships between the parties and the fact that CR184 had stemmed from a longer chain of negotiations designed to resolve many of these issues.<sup>133</sup> Importantly, it was designed to "put to bed" arguments about scope.<sup>134</sup> Her decision to approve was made in consultation with Mr Grierson, and in a manner consistent with her professional practice, Ms MacDonald continued to keep her superior informed.

[168] In these circumstances, Ms MacDonald demonstrated a level of diligence that was careful, and appropriate to the gravity of the situation and the range of responsibilities she held. While her expertise was not technical, and she needed to rely on "technical people" about what was required from time to time,<sup>135</sup> it is submitted that she demonstrated care in her managerial responsibilities. This is supported by her frank acknowledgement that while she would have preferred a better outcome, she gave the matter as much managerial time as was possible, her full expertise and her best possible judgment given the information she had available at the time.<sup>136</sup>

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<sup>129</sup> Statement of Ms MacDonald, paragraph 19.

<sup>130</sup> Statement of Ms MacDonald, paragraph 18 and 19; T28-29, I 37-60.

<sup>131</sup> T28-12, T28-13.

<sup>132</sup> T28-31, I 54-60; T28-32, I 1-5.

<sup>133</sup> Statement of Ms MacDonald, paragraph 23 and 24; T28-33, I 1-5.

<sup>134</sup> T28-8, I 25-35; T28-14, I 11-17.

<sup>135</sup> T28-15, I 16-17; T28-20 I 55 – 60, T28-21, I 1-3.

<sup>136</sup> T28-37, I 28-46.

*Ms Perrott*

[169] Ms Perrott was involved in this matter until approximately February/March 2009.<sup>137</sup> Throughout late 2007, she was involved in setting up the governance mechanisms for management of the Prime Contractor model.<sup>138</sup> Importantly, she continued to monitor the effectiveness of those governance arrangements after they were implemented, and to suggest methods for their improvement.

[170] Ms Perrott was, relevantly, the person who signed CR60 and CR61.<sup>139</sup>

[171] Taken as a whole, Ms Perrott's evidence demonstrates familiarity and compliance with the governance structures of CorpTech, and diligence in the discharge of her responsibilities. She ensured she was well informed at the time she approved CR60 and 61, noting that:

- (a) She had attended several governance meetings at which the Change Requests had been discussed,<sup>140</sup> and was familiar with the development of the matters contained therein, because they had been under consideration by the parties since approximately March/April 2008;<sup>141</sup>
- (b) She knew that before a Change Request reached her for sign-off, it had been approved by the Change Advisory Board, Release Committees, Solution Steering Committee, and often the Executive Steering Committee, such that senior staff had given their endorsement to its approval;<sup>142</sup>
- (c) The heads of the SDA and SPO reported directly to Ms Perrott and she was aware that the SDA and SPO had to consider and approve each change control document before it progressed;<sup>143</sup>
- (d) She was briefed by officers that, in her experience, were competent in their roles, prior to signing the Change Requests. She knew that those briefing her were possessed of a thorough knowledge of the contract and the project, and the circumstances surrounding the proposed change;<sup>144</sup>
- (e) She checked that the QHIC Steering Committee had endorsed the signing of the Change Requests prior to her signature;<sup>145</sup> and
- (f) She received final update briefings from Mr Beeston, Mr Brown and at times representatives from Queensland Health or IBM immediately prior to signature.<sup>146</sup>

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<sup>137</sup> Statement of Ms Perrott dated 30 April 2013, paragraph 30.

<sup>138</sup> Statement of Ms Perrott dated 30 April 2013, paragraph 1.

<sup>139</sup> Statement of Ms Perrott dated 30 April 2013, paragraph 23.

<sup>140</sup> Statement of Ms Perrott dated 30 April 2013, paragraph 22.

<sup>141</sup> Statement of Ms Perrott dated 30 April 2013, paragraph 24-25.

<sup>142</sup> Statement of Ms Perrott dated 30 April 2013, paragraph 21; T23-82, I 4-27; T23-93.

<sup>143</sup> Statement of Ms Perrott dated 30 April 2013, paragraph 21; T23-82, I 4-27; T23-93.

<sup>144</sup> Statement of Ms Perrott dated 30 April 2013, paragraph 22.

<sup>145</sup> Statement of Ms Perrott dated 30 April 2013, paragraph 24.

<sup>146</sup> Statement of Ms Perrott dated 30 April 2013, paragraph 25; T23-76, I 27-51; T23-82, I 28-50.

[172] Indeed, whilst CR60 and CR61 have been the subject of some criticism for their failure to completely eliminate scope arguments, even Dr Manfield was willing to concede they were, at least partially effective attempts to “re-set” scope.<sup>147</sup> This is reflective of the careful consideration that Ms Perrott and others in the governance chain had applied to the task.

[173] It should also be noted that Ms Perrott demonstrated robustness in her role, in that she was willing to escalate the matter towards more formal action where she believed it was necessary,<sup>148</sup> and she was prepared to advocate for staff under her supervision when they were the subject of IBM criticism.<sup>149</sup> The Briefing Notes, and correspondence between Ms Perrott and Mr Doak of late 2008 to January 2009 show that Ms Perrott did not hesitate to raise performance issues with IBM, and escalate them towards resolution.

[174] Ms Perrott’s frank concessions of shared responsibility for delays also demonstrate that she was fair minded and well informed, reflecting her diligent approach to her role. She readily accepted, multiple times, that delays to the Go-Live date were as a result of both a Queensland Health delay in providing its requirements as well as IBM’s unsatisfactory performance.<sup>150</sup> Her consistency and openness with these matters means her evidence more generally can be relied upon.

[175] Ms Perrott should not be criticised for her reliance on the briefings and information provided to her by members of her team. So much is an essential feature of management itself; a leader cannot perform or check all of the tasks undertaken by the staff of an organization personally (It is submitted that suggestions to the contrary, for example in the examination of Ms McDonald, should be rejected). Indeed, her evidence, which withstood considerable cross examination, demonstrates that Ms Perrott undertook her duties with care, diligence and appropriate expertise.

[176] Management roles involve the responsibility to make judgments based on the facts known at a given time. Given the factors known to Ms Perrott and her appreciation of what she describes as the “bigger picture”<sup>151</sup>, her judgments were in our submission, reasonable and appropriate.

## **ASSESSING MR GRIERSON’S PERFORMANCE**

***Question 11: Ought Mr Grierson, in his dealings with IBM, have brought about the stabilisation of the project’s scope, the cessation of the project or a higher standard of performance from IBM, especially in its implementation of WorkBrain component of the system?***

*Stabilizing scope*

[177] It was the consistent evidence of Mr Grierson that, from the time he assumed responsibility for CorpTech in approximately July 2008, he took immediate action to familiarise himself with

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<sup>147</sup> T30-85, I 35-53.

<sup>148</sup> T23-73, I 9-11.

<sup>149</sup> T23-72, I 3-38.

<sup>150</sup> Statement of Mr Grierson dated 24 April 2013 at paragraph 28; T23-104, I 38-40; T23-98, I 33-52; T23-70, I 40-60; T23-71, I 1-15.

<sup>151</sup> T23-78 and T23-79, I 1-9.

the project.<sup>152</sup> It became apparent to Mr Grierson that scope remained in issue, and he took immediate steps to “lock it down”.<sup>153</sup>

[178] Mr Grierson believed, and was informed by his staff, that those efforts had been successful.<sup>154</sup> When it later became apparent that issues with scope remained, he again took action to try and achieve certainty in this area.<sup>155</sup>

[179] The time in which it would have been most effective time for scope to have been settled was during the initial negotiation phase for the contract. At that time, Mr Grierson had no responsibility for the activities of CorpTech, and was not involved in the process. Any failure between the parties to settle scope at the time of the original contract should not be later cast upon Mr Grierson. It is submitted that he took appropriate, prompt and persistent action to deal with an issue that should properly have been settled long before it became his task.

[180] Indeed, Mr Grierson gave evidence that he continued to act to extract better performance of the contract from IBM. That action included:

- (a) Communicating regularly with Mr Doak, to ensure that CorpTech concerns were being heard and responded to by IBM;<sup>156</sup>
- (b) Escalating concerns over performance with senior IBM representatives in Australia and in the United States;<sup>157</sup>
- (c) Reviewing and improving governance arrangements for the project;<sup>158</sup>
- (d) Insisting that IBM provide a higher level of expertise, rather than the “B Team” that Mr Grierson believed had initially been assigned to the project.<sup>159</sup> This resulted in some changes in the personnel supplied by IBM.<sup>160</sup>

[181] In doing so, Mr Grierson demonstrated an appropriate level of trust in his senior staff and their judgments, and vigorously advocated the CorpTech position to IBM. By way of example, when IBM wanted to end Mr Beeston’s involvement in the project, Mr Grierson relied on the judgment of Ms Perrott, who believed Mr Beeston was fulfilling his duties in the SPO.<sup>161</sup>

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<sup>152</sup> T29-70, I 15-19; T28-69 through to T28-71.

<sup>153</sup> T28-70; T28-73; T29-5, I 20-34; T29-22, I 40-54.

<sup>154</sup> T28-73; T29-5, I 20-34; T29-22, I 40-54.

<sup>155</sup> T28-73 through to T28-75.

<sup>156</sup> T28-74, I 4-11; T28-78 through to T28-79.

<sup>157</sup> T28-105 through to T28-107.

<sup>158</sup> T28-70 through to T28-71.

<sup>159</sup> T29-71, I 37-60, T29-72, I 1-15; T 29-73 I 11-25; T28-74, I 3-10; T28-78 through to T28-79. Also reflected in Ms Perrott’s evidence at T23-77, I 45-52.

<sup>160</sup> T29-73, I 14-21; T28-78.

<sup>161</sup> Statement of Mr Grierson dated 24 April 2013, paragraph 25; T28-90 through to T28-92.

*Relationship with Mr Doak*

[182] It was suggested in the course of questioning that Mr Doak had some influence over Mr Grierson,<sup>162</sup> and that he used it to procure the removal of Mr Price from a Health Committee, and to ensure the delivery of 'at risk' payments. It is submitted in response:

- (a) That Mr Grierson's escalation of CorpTech concerns<sup>163</sup> and refusal of IBM requests to change staffing reflect his loyalty to the work of CorpTech and to the most effective and timely delivery of the project, given the circumstances;
- (b) That Mr Grierson consistently gave evidence that he had never become involved in IBM's pursuit of 'at risk' payments,<sup>164</sup> and
- (c) The allegations in relation to the removal of Mr Price do not withstand the evidence of Mr Grierson, nor the plain structure of the public service. Mr Grierson gave evidence that he did not know Mr Price,<sup>165</sup> and that in any event, the Director-General of Public Works did not have the power to remove a person from a committee within the authority of Queensland Health;<sup>166</sup>
- (d) That the evidence has not sustained any allegation that Mr Grierson intervened for the benefit of IBM.

[183] These allegations can ultimately be sourced from the evidence of Mr Doak who, by his claim to have met every Friday with Mr Grierson,<sup>167</sup> suggested a relationship between them beyond that which was ordinary in the relationship between a vendor and a purchaser.

[184] Mr Grierson has consistently denied meeting with Mr Doak weekly.<sup>168</sup> While there was an initial plan for them to meet fortnightly, in practice those appointments were able to be kept at a frequency closer to monthly.<sup>169</sup> So much is corroborated by the diaries of Mr Grierson. Considered in total, Mr Grierson could only have met with Mr Doak approximately six to eight times in the relevant period,<sup>170</sup> and Mr Grierson recalls that those meetings were always in the presence of a colleague, not one-on-one.<sup>171</sup> Indeed, the correspondence from Mr Doak in which the meeting arrangements were established specifies that other senior Departmental officers were to be present at these meetings.<sup>172</sup>

[185] In any event, it was not unusual for regular meetings to occur between Mr Grierson and major suppliers and interest groups for the Department which he oversaw.<sup>173</sup> Similar

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<sup>162</sup> T28-87, I 13-14; T28-97, I 30-35.

<sup>163</sup> T28-97, I 14-15; T29-22, I 54-60 through to T29-23, I1; T29-94, I 14-15.

<sup>164</sup> T28-101 through to T28-102.

<sup>165</sup> T29-60, I 12-18; T28-93, I 31-60.

<sup>166</sup> T28-94.

<sup>167</sup> Statement of Mr Doak, paragraph 104.

<sup>168</sup> T28-99, I 52-60; T28-67, I 1-8. Ms MacDonald also gave evidence that the meetings were not held weekly: T28-4.

<sup>169</sup> T28-67, I 18-21; T28-81, I 20-37.

<sup>170</sup> T28-86, I 6; T28-87, I 24.

<sup>171</sup> T28-87, I 25.

<sup>172</sup> This is consistent with Mr Grierson's evidence at T28-81, I 38-60 and T28-97, I 17-20.

<sup>173</sup> T28-97, I 39-42; T28-87, I 43-60; T28-88, I 1-4.

meetings were held with other companies, for example Aurion, major builders, telecommunications and IT companies and also with interest groups such as union leaders.<sup>174</sup> That Mr Doak and Mr Grierson met did not confer any relationship beyond that which was proper and usual.

[186] The meetings held between Mr Doak and Mr Grierson should be understood as a measure of oversight that operated over and above the existing project governance requirements,<sup>175</sup> working to ensure, rather than subvert, the achievement of the project's goals.

*Ending IBM's involvement*

[187] The Commission has expressed an interest in whether Mr Grierson should have brought about the end of IBM's involvement in the project, given the poor performance it had demonstrated. Mr Reid gave evidence that in early 2009 either Mr Grierson or CorpTech as a whole were unwilling to change the contractual arrangements that were in place.<sup>176</sup>

[188] The evidence of Mr Grierson demonstrates that termination of the contract was one of a range of options he considered for delivering the project.<sup>177</sup> After considering these options Mr Grierson formed the view, reasonable in the circumstances, that the course which would best achieve the priorities established by the Government was for IBM's involvement to continue. The considerations upon which he reached that view were:

- (a) That his experience since escalating the CorpTech concerns with senior IBM people was that the company was taking action to improve the level of expertise on the project, including bringing Mr Doak on board as a Program Director;<sup>178</sup>
- (b) That it would be more expensive to engage a new prime contractor at this stage;
- (c) That the project would take longer to deliver if a new prime contractor had to be selected, terms with them negotiated and arrangements made for them to continue using the intellectual property and contractors of IBM;<sup>179</sup>
- (d) That further delay carried with it a serious risk of a Lattice failure;<sup>180</sup>
- (e) That IBM would probably resist a termination of its contract,<sup>181</sup> with litigation likely to ensue. This would result in cost and delay, without the certainty of an outcome in favour of the State of Queensland;
- (f) The pressing need to ensure stability in the Queensland Health payroll systems, and which could not be assured under Lattice.

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<sup>174</sup> T28-64, I 18-21; T28-87, I 43-60; T28-88, I 1-4.

<sup>175</sup> T28-89, I 14-20.

<sup>176</sup> T22-81, I 51-60.

<sup>177</sup> T29-12, I 13-26.

<sup>178</sup> T29-73, I 12-25.

<sup>179</sup> T29-69, I 31-47.

<sup>180</sup> T29-69, I 49-60; T29-70, I 1-9.

<sup>181</sup> T29, I 25-30.

[189] While Mr Grierson may not have endorsed a proposal made by Ms Perrott to send a breach notice in September 2008, it should be noted that he did not prevent Ms Perrott from escalating the issues in writing, in fact agreeing with her recommendation to “take more formal action”.<sup>182</sup> Indeed, a formal letter was sent as a result of this process, the logical prelude to a breach notice. He also indicated from the outset that while he did not want a “legal fight”, he was comfortable with escalating the legal tone of the matter if the relationship with IBM did not improve as a result of non-legal strategies.<sup>183</sup>

[190] While opinions may, with the benefit of hindsight, now differ on whether Mr Grierson was right to judge that it was better to keep IBM involved and encourage improved performance, that judgement was one which was reasonable at the time it was made. Mr Grierson acted promptly and persistently to resolve CorpTech’s concerns over IBM’s performance. In light of these considerations, Mr Grierson properly discharged his duties on the question of maintaining IBM’s involvement, in his efforts to stabilize scope, and in the steps he took to extract better performance from IBM by escalating concerns within IBM’s management.

David Kent  
Barrister-at-Law

Nicholas Ferrett  
Barrister-at-Law

Amanda Stoker  
Barrister-at-Law

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<sup>182</sup> T23-73, I 9-11, T28-109, I 1-25.

<sup>183</sup> Statement of Mr Grierson dated 24 April 2013, paragraph 28; T28-108, I 31-43.