

Issues List for Settlement Submissions Relevant to Ms Anna Bligh

1 Was it provident for the State of Queensland (“the State”) to enter into the Supplemental Deed dated 22 September 2010?

- 1.1 The Queensland Health Payroll System Commission of Inquiry¹ (the Inquiry) in its “third segment” examined the “the State’s settlement with IBM”² by looking at four decisions of the Cabinet Budget Review Committee (CBRC).³
- 1.2 Relevantly, the decisions by the CBRC under review by the Inquiry dealt with prospective outcomes where assessments were made ex ante, that is, in advance.
- 1.3 In reviewing such decisions, having the benefit of hindsight, the question of whether it was *provident* for the State to enter into the Supplemental Deed dated 22 September 2010, ought be judged in light of the nature of the decision-maker and the decision itself, using the information (and the inherent uncertainties) when the decision was made.⁴
- 1.2 The decisions were made for and on behalf of the State of Queensland by the Executive Government composed of elected representatives having the confidence of the Parliament.
- 1.3 The Executive Government of the State of Queensland has all the powers, and the legal capacity, of an individual: s. 51 of the *Constitution*. The State may carry out commercial activities: s. 53 of the *Constitution*. A Minister may carry out commercial activities for the State: s. 54 of the *Constitution*. A Minister may delegate a power of the State to an appropriately qualified officer of the State [who] may sub-delegate the delegated power to another appropriately qualified officer of the State: s. 55.

¹ *Queensland Government Gazette*, General, 14 December 2012, Vol 231, No. 104 at page 543. Relevantly, the Terms of Reference for the Inquiry are to inquire: “into the implementation of the Queensland Health payroll system with respect to: (a)... contract management, project management, governance and implementation process;(c) the contractual arrangements between the State of Queensland and IBM Australia Ltd;(e) any other matter relevant to this review.”

² http://www.healthpayrollinquiry.qld.gov.au/__data/assets/pdf_file/0006/175119/Peter-Flanagan-directions-hearing-remarks.pdf.

³ 21 September 2009 (Decision No 2794) 22 July 2010 to (Decision No 3019); 26 August 2010 (Decision No 3040); and 2 June 2011 (Decision No 3231)

⁴ adopting by analogy the approach of the Courts when reviewing decisions of trustees: Donald, Scott *Prudence under Pressure* [2009] UNSWLRS 10 at page 10; “It is very easy to be wise after the event; but in order to exercise a fair judgment with regard to conduct of trustees at a particular time, we must place ourselves in the position they occupied at that time, and determine for ourselves what, having regard to the opinion prevalent at that time, would have been considered the prudent course for them to have adopted.”: *Re Chapman* [1896] 2 Ch 763 at 777-8, per Lopes J; The courts are loath to review the exercise of a trustee’s discretion absent evidence of some improper motive: per Northrop J in *Clerical Administrative and Related Employees Superannuation Pty Ltd v Bishop, Wilkinson, Thohey and Wall* (1997) 76 IR 139; *Wilkinson v CARE* [1998] FCA 51; *Attorney-General (Cth) v Breckler* [1999] HCA 28; (1999) 197 CLR 83 at [7] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ) [7] and [58] (Kirby J). The Courts have declined to intervene simply because they may hypothetically have come to a different view from that reached by the trustee: *Maciejewski v Telstra Super Pty Ltd* [1999] NSWSC 341; *Re Beloved Wilkes Charity* (1851) 3 Mac & G 440; 42 ER 330 per Lord Truro LC. In determining whether a person had reasonable grounds for expressing an opinion or making a prediction as to a future matter, it is necessary to judge the matter as at the date of the representation: *Lyndel Nominees Pty Ltd v Mobil Oil Australia Ltd* (1997) 37 IPR 599 at 625; *Sykes v Reserve Bank of Australia* (1998) 88 FCR 511 at 513, *City of Botany Council* [2001] NSWCA 94 at [83].

- 1.4 The Cabinet consists of the Premier and other Ministers: s. 42(1) of the *Constitution of Queensland 2001 (the Constitution)*.⁵
- 1.5 The Cabinet is collectively responsible to the Parliament: s. 42(2) of the *Constitution*.
- 1.6 Parliament, in accordance with principles of democracy, derives its authority from the people⁶, through elections regulated in an open and transparent way⁷ by secret ballot.⁸
- 1.7 Queensland is a liberal democracy,⁹ “in which members of Parliament decide the laws under which we shall live and cabinet ministers hold positions of great power in regard to the execution of those laws [where] a cabinet minister is under an onerous responsibility to hold his office and discharge his function without fear or favour to anyone.”¹⁰
- 1.8 “Cabinet Committees underpin the operation of normal Cabinet by providing a suitable forum, with Cabinet stature, to deliberate on more complex issues requiring dedicated and longer term attention by stakeholder Ministers.”¹¹
- 1.9 The CBRC is a committee of the Cabinet composed of the Premier, the Deputy Premier, the Treasurer (if the Deputy Premier is not also the Treasurer), and an additional Minister (or Ministers on a rotating basis).¹²
- 1.10 The CBRC is a core Standing Committee that has a primary role of considering matters with financial or budgetary implications for the government. Initiatives or proposals that cannot be funded from existing appropriations must be directed to CBRC in the first instance for consideration. At the direction of the Premier or

⁵ Cabinet in Queensland is recognized by formal enactment in the Queensland *Constitution* in addition to the rules of convention and practice: Enright, C, *Judicial review of Executive Action*, Branxton Press, Sydney 1985 at par 17.

⁶ As set out in the preamble to the *Constitution*: “The people of Queensland, free and equal citizens of Australia...adopt the principle of the sovereignty of the people, under the rule of law, and the system of representative and responsible government, prescribed by this Constitution...[built] a society based on democracy, freedom and peace.” “The lines of accountability of the whole administration run from the lowliest official up through the minister to the cabinet, the parliament and ultimately, and only by that circuitous route, to the elector”: Parker R. S. (1978) *The Public Service Inquiries and Responsible Government*, 349-53 cited in Rhodes R. A. W. and Wanna J. (2009) *Bringing the Politics Back in: Public value in Westminster Parliamentary Government. Public Administration* 87: 161-183; Rhodes R. A. W., Wanna J. and Weller P. M. (2009) *Comparing Westminster, Oxford: Oxford University Press*. The “parliamentary system”, is a “close union, the nearly complete fusion of the executive and legislative powers”: Walter Bagehot, *The English Constitution, 1867*, London, Chapman & Hall; Edited by: Paul Smith, University of Southampton, 2001; Bogdanor, Vernon. *The Monarchy and the Constitution*. 1997: OUP. p. 41; R A W Rhodes. John Wanna, Patrick Weller, *Comparing Westminster*, Oxford, 2009, ISBN: 9780199695584, page 5

⁷ *McLindon & Anor v Electoral Commission of Queensland* [2012] QSC 44

⁸ *Tanti v Electoral Commission of Queensland & Anor* [1995] QSC 208; *Caltabiano v Electoral Commission of Queensland & Anor (No 3)* [2009] QSC 186

⁹ *State of Queensland v. Allen* [2011] QCA 311 at [19] referring to *Electrolux Home Products Pty Ltd v Australian Workers' Union* [2004] HCA 40; (2004) 221 CLR 309 at 329 [21]

¹⁰ *R v. Nuttall* [2010] QCA 64 Chief Justice, Holmes and Fraser JJA at [50] referring to *R v Jackson & Hakim* (1988) 33 A Crim R 413.

¹¹ See *Cabinet Handbook* par 3.1 [http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/cabinet handbook/committees/cabinet-committees.aspx](http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/cabinet%20handbook/committees/cabinet-committees.aspx)

¹² Exhibit 137, par 2

Cabinet, CBRC may also consider other issues that require dedicated or longer-term scrutiny or otherwise might best be considered in the Committee environment.¹³

- 1.11 CBRC is the only body charged with the authority to make resource allocation decisions on behalf of Government.¹⁴
- 1.12 As a general supervisory body, CBRC in conjunction with the Cabinet, reviews and determines macro fiscal strategy for the State, reviews and approves the services and service standards to be delivered by departments, the funds to be provided for services, administered items and equity adjustments, the capital program and its funding sources for each department and the budgeted financial statements for each department, considers variations to departments' funding allocations throughout the year.¹⁵
- 1.13 The CBRC meets fortnightly, sometimes weekly, dealing with budgetary issues that arose between budgets, where circumstances had changed.¹⁶
- 1.14 The CBRC has an agenda comprising consultation¹⁷ with many government agencies together with external advice from suitably qualified experts. The preparation of submissions to the CBRC follows a careful and comprehensive process involving many public servants at a very high level.¹⁸
- 1.15 While briefing information is sought on all submissions at both first lodgment and at final lodgment stages similar to Cabinet submissions, the CBRC process differs from Cabinet in that briefing information on final submissions is sought prior to the Premier's determination on how submissions will be handled, and their priority relative to other CBRC business. Briefing information is integral to this process.¹⁹
- 1.16 The Cabinet Handbook provides as follows:

“3.2.1 Financial information to be agreed by the Treasury Department

¹³ *Cabinet Handbook*, par 3.1.1; 3.2, page 17, <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/cabinet-handbook/committees/review-committee.aspx>;

¹⁴ <http://www.treasury.qld.gov.au/office/knowledge/docs/financial-management-framework/budget/index.shtml>; Money in the consolidated fund or its equivalent does not become available to be paid away by the executive government except under and in accordance with the authority of legislation validly appropriating it for purposes approved by Parliament: *Jessup v Queensland Housing Commission* [2001] QCA 312 at [17] per McPherson JA referring to *Auckland Harbour Board v The King* [1924] AC 318; *Brown v West* (1990) 169 CLR 195, 205-209; *Financial Accountability Act 2009* (Q); *Financial Administration and Audit Act 1977*(Q); *Financial and Performance Management Standard 2009*; *Financial and Performance Management Standard 2009*

¹⁵ Queensland Treasury and Trade April 2012 *Overview of Queensland's Financial Accountability Framework* at 23; <http://www.treasury.qld.gov.au/office/knowledge/docs/overview-qld-financial-accountability-framework/overview-qld-financial-accountability-framework.pdf>

¹⁶ it 137, par 41

¹⁷ “Consultation is a fundamental and mandatory part of the development of all Cabinet submissions. It enables Ministers to receive sound, comprehensive and coordinated policy advice. Departments initiating a Cabinet submission must ensure that they consider the interests of other departments and relevant external stakeholders.”: See *Cabinet Handbook* at 6.0: <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/cabinet-handbook/consultation.aspx>

¹⁸ *Cabinet Handbook* at 5; 5.3.11; 5.4; 5.5: <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/cabinet-handbook/submissions.aspx>

¹⁹ *Cabinet Handbook*, par 3.1.2 on page 16 <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/assets/cabinet-handbook.pdf>

Given the pre-eminent role of CBRC in considering financial matters at whole of government level, it is essential that financial information supporting the Committee's deliberations is comprehensive and reliable. The provision of unreliable or incomplete financial information will significantly impact on CBRC's ability to make appropriate and informed decisions on proposals. Consequently it is essential that the Treasury Department's expertise is sought on financial information within submissions to give CBRC a high degree of confidence in the primary information underlying its decisions. In drafting CBRC submissions involving financial considerations, originating agencies must consult closely with the Treasury Department and agree on costing information in the submission. Where the submission arises or follows on from earlier CBRC consideration, and costing information has been amended since the original submission, it must also be agreed with the Treasury Department and a comprehensive explanation on the changes given within the submission. CBRC will not consider the proposal if the prior agreement of the Treasury Department to financial information has not been received and reflected in a proposed submission."²⁰

- 1.17 The four decisions of the CBRC under review by the Inquiry were supported by comprehensive high quality advice prepared at the highest policy levels by senior public servants from relevant Departments, including Treasury²¹, and the Department of the Premier and Cabinet.²² The advice to the CBRC included external experts in both law and risk management. There is nothing in the briefing material that lead Treasury to express concern about the courses open to be adopted, let alone there was view expressed by Treasury that the settlement option was profligate or reckless.²³
- 1.18 The CBRC decision dated 22 July 2010 properly set out the options open for prudent decision-making,²⁴ which were supported by legal advice from Crown Law Advice, a private law firm Malleson Stephen Jaques, together with a KPMG Risk Assessment. Also the CBRC decision dated 26 August 2010 set out the options open to the State.²⁵
- 1.19 The CBRC was dealing with matters of complexity²⁶ and pressing urgency²⁷, during difficult economic circumstances (global financial crisis²⁸), where there was a need

²⁰ *Cabinet Handbook*, par 3.1.2 on page 18 <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/cabinet-handbook/committees/review-committee.aspx>

²¹ Treasurer also makes standards about the policies and principles to be observed in financial and performance management: s. 57 of the *Financial Accountability Act 2009* (Q). The Treasurer must prepare a charter of social and fiscal responsibility for the State to state the broad social and fiscal objectives of the Government and establish a framework for assessing the Government's performance in achieving the objectives including there must be prudent management of risk: s. 6A; 6B; 6C of the *Financial Administration and Audit Act 1997* (Q). Accountable officers must establish and maintain suitable systems of internal control and risk management: s. 36. To this end there exists *A Guide to Risk Management*, July 2011

²² Exhibit 137 par 54

²³ Transcript, 35-36

²⁴ Decision 3019; Submission 3962; par 44-55; Table 1; pars 57-70; pars 71-77; pars 78-88

²⁵ Decision 3040; Submission 3979; pars 16-25; pars 26-32

²⁶ Exhibit 137, par 48(c); 48(g); 68(j)

²⁷ Exhibit 137, par 52(b); par 58(2); 58(b)

²⁸ Exhibit par 46(a); Transcript 32-12; 32-13

to prevent any further costs increases²⁹, with the highest priority being to fix the payroll as soon as possible³⁰. The health payroll was critical,³¹ not merely to come within budget,³² but more importantly to ensure health workers were properly paid, not for their sake alone, but because the lives and health of hospital patients and public health generally may otherwise be at risk.³³

- 1.20 While the public and the affected Queensland Health employees had an interest in obtaining vindication through successfully concluded litigation, all of the legal advices expressed concerns as to prospects of success, which embraced broader public interest considerations.³⁴
- 1.21 The material before the CBRC included legal advice from an Assistant Crown Solicitor and from a leading law firm, as well as other materials³⁵ indicated that the State had a less than certain chance of succeeding in legal action against IBM.³⁶ This was supported by the risk assessment of KPMG.³⁷
- 1.22 The practical considerations,³⁸ concerned IBM having key and senior staff deeply embedded in the design the construction and fixing the system³⁹, where litigation would have damaged the working relationship⁴⁰, presenting obstacles to the rectification process, potentially for months.⁴¹
- 1.23 The settlement also saw a number of benefits to the State, both financial (for example, waiving of payments) and practical (for example, defects were remedied).
- 1.24 According to the technical advice, the payroll system was at an increasingly high risk of collapsing⁴² requiring the making of a prudent practical decision other than litigation.⁴³
- 1.25 Experience informs that the outcome of much litigation is unpredictable⁴⁴ and the outcome of almost all litigation is uncertain.⁴⁵
- 1.26 To have done otherwise than to have entered into the Deed would be to have enmeshed the State in complex litigation of uncertain outcome.⁴⁶

²⁹ Exhibit 137, par 52(b)

³⁰ Exhibit par 68(g)

³¹ Exhibit Par 48(c); par 48(d)

³² Exhibit 137, par 48(a)(i)

³³ Transcript 32-38

³⁴ Exhibit par 68(c); Transcript 32-38

³⁵ Exhibit par 62

³⁶ Exhibit par 68(c)

³⁷ Exhibit par 68(d)

³⁸ Exhibit par 68(d)

³⁹ Exhibit par 68(f)(i)

⁴⁰ Exhibit par 68(f)(ii); 68(k)

⁴¹ Exhibit par 68(k)

⁴² Exhibit par 48(c)(ii)

⁴³ Exhibit 137, par 52

⁴⁴ *Australian Competition and Consumer Commission v CG Berbatis Holdings Pty Ltd* [2003] HCA 18 at [178], per Callinan J; 214 CLR 51; 197 ALR 153; 77 ALJR 926

⁴⁵ *Seafood Imports Pty Ltd v ANL Singapore Pte Ltd (No 3)* [2010] FCA 992 per Ryan J at 24, referring to Byrne J in *Premier Building & Consulting Pty Ltd v Spotless Group Ltd (No 13)* [2007] VSC 516 at [13]

⁴⁶ involving a process criticised by law reformers as “slow, uncertain, error-prone, expensive, stressed judges, judges ignorant of clients’ lives and businesses, tactical gamesmanship by lawyers, client loss of control,

- 1.27 To find that another decision of the CBRC was preferable (such as to embark upon litigation) would be to merely conclude that reasonable minds reasonably differ which cannot be a finding that the CBRC decision to enter into the deed was improvident.⁴⁷
- 1.28 It is not open to make an adverse provident finding against the State because in the absence of a successful litigation outcome, to submit that the settlement was not provident requires a hypothetical analysis and would be a matter of pure speculation unsupported by any evidence.⁴⁸
- 1.29 Plainly, the State exercised appropriate judgement by properly providing for the future of the State's affairs and resources evincing a most careful, conscientious and prudent management.

2 Before doing so, ought the State to have obtained an Opinion from either the Solicitor-General or Senior Counsel?

- 2.1 On the two occasions⁴⁹ when the Assistant Crown Solicitor gave considered advice to the CBRC, there was no suggestion, advice or recommendation by the Crown Solicitor, to obtain an opinion from the Solicitor-General or Senior Counsel.⁵⁰ The Crown Solicitor has particular expertise in advising government on contractual disputes and contractual matters involved government⁵¹ and is the solicitor who briefs the Solicitor-General.
- 2.2 None of the two external legal consultants and the risk analyst advised that Solicitor-General or Senior Counsel advice should be obtained, or was necessary. Nor did any of the senior public servant Departments consider this to be the subject of advice to the CBRC. In particular Treasury, who were able to obtain and present their own legal advice, did not advocate such a course.⁵²
- 2.3 Such a proposition has not been put to the senior public servants and external consultants.
- 2.4 It is not unusual for government to take the advice of Crown Law without necessarily seeking further from the Solicitor-General. If the litigation option were pursued then such advice would have been sought.⁵³
- 2.5 In any event the evidence of Ms Bligh was that, on advice, determining the quantum of damages in a complex project would take many months and that as Premier she

translation of conflict into narrow legal and monetised categories, repetitive adjournments, process by attrition": Australian Law Reform Commission, *Managing Justice – A Review of the Federal Civil Justice System* Report No. 89; 1999 pp 69-97

⁴⁷ *Minister for Immigration v Eshetu* (1999) 197 CLR 61 per Gummow J at [136] referring to *Buck v Bavone* (1976) 135 CLR 110 per Gibbs J at 118-119

⁴⁸ A factual conclusion will be invalid in circumstances in which it is not reasonably open on the basis of probative evidence or there is no evidence or other material to justify the making of the decision": *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, per Mason CJ at 355-60

⁴⁹ 23 June 2010; 20 July 2010

⁵⁰ Transcript, 32-19; 35-39

⁵¹ Transcript, 32-19; 35-39

⁵² Transcript, 32-19; 35-36; 35-36.

⁵³ Transcript 32-44

was very conscious this was not only a legal decision, but there was also an obligation to consider what the practical consequences for the people who were affected and were suffering as a result of the payroll system defects.⁵⁴

- 3 Was there any (or any adequate) evidence that there existed a real risk that if the State terminated the 5 December 2007 Contract with IBM (“the Contract”), that IBM would:**
- a) not honour its post-termination obligations under the Contract;**
 - b) immediately cease providing services under the Contract (including remedying Severity 2 defects);**
 - c) hinder the State seeking to contract with existing IBM sub-contractors including Infor and Presence of IT?**

3.1 The Premier, Deputy Premier, Treasury and the Attorney-general can only act on the information and advice put before them. A decision-maker is permitted to delegate a function to its staff or another and then choose to adopt the report submitted to it.⁵⁵ It goes without saying that the CBRC was entitled to rely upon assistance from various advisors as it could only do so on that basis and to exercise a collective judgement as it saw fit.⁵⁶

3.2 The CBRC, with any administrative body “does not follow a procedure similar to that of a court.”⁵⁷ Plainly, the CBRC is not bound by any rules of evidence. As administrative decision-makers the CBRC was entitled to assess the stated risks of losing continuing IBM relationship on the material before them.⁵⁸ Malleons was of the view that continuing with the payroll contract with agreed changes had the benefit of IBM being more likely to comply with warranty obligations and changes managed in a mutually agreed way.⁵⁹ KPMG was of the view that the critical business risk was the ability to continue to support the QH program in assessing the fortnightly QH payroll...[where] the recourses currently provided by IBM are a key component in ensuring this continuity of support...we do not believe it would be prudent for the Government to sever its relationship with IBM.”⁶⁰

3.3 The question of “any (or any adequate) evidence that there existed a real risk” is a now a matter of public record. There was material sufficient to properly form a judgement and act on. The Crown Law advice warned of “the risk of a claim of inducing breach of contract by IBM’s subcontractors”.⁶¹ During negotiations IBM indicated that it wished the State to cease all negotiations with its subcontractors as this is seen by them to be undermining the contract.⁶² The IBM response to the Notice to Show Cause took a legal stance. It was a matter of concern that in the event of termination of the contract, IBM may have been relieved of contractual

⁵⁴ Transcript, 32- 19; 32-20; 32-24

⁵⁵ *Jeffs v NZ Dairy Production and Marketing Board* [1967] 1 AC 551 (PC)

⁵⁶ *O’Reilly v State Bank of Victoria* (1983) 153 CLR 1; *Carltona Ltd v Commissioner of Works* [1943] 2 All ER 560

⁵⁷ *R v Gaming Board for Great Britain; Ex parte Benaim* [1970] 2 QB 417

⁵⁸ Malleons, Options Paper, Attachment 11, par 1.4; 2.4; 3.3; 4.2; 4.3; 6.2; 6.3; 7.2

⁵⁹ par 7.2 on page 11

⁶⁰ KPMG Risk Analysis, Attachment 14, par 5 on page 8.

⁶¹ par 4.3(d); 4.4; attached to the CBRC submissions of 22 July and 26 August 2010;

⁶² Cabinet-in-confidence submission, par 11

obligations and the state would have been on much less solid ground if the contractual obligations no longer existed.

3.4 On any basis it is reasonable to conclude that upon the commencement of legal proceedings the working relationship would be damaged.⁶³

3.5 In evidence Ms Bligh stated as follows:

“My experience generally is that once people start to take legal action against each other, goodwill is one of the things that evaporates pretty quickly, so I had a concern that even if they didn’t walk off, that the level of goodwill, openness and frankness that was necessary between operational technicians to explicitly look at what was causing a particular defect in order to then be able to fix it would be something very difficult to manage. In making that assessment, I not only relied on the legal advice but of course we had the response by IBM to the show cause notice and the subsequent decision by IBM to issue a notice of dispute. The tone of that response and the decision to issue a notice of dispute I think leads reasonably to the conclusion that IBM, with all of the resources that it can muster globally, would mount a very significant legal defence and possibly even a counterclaim.”⁶⁴

3.6 On all of the material there can be no question it was reasonably open for the CBRC to conclude that these were real risks that could not be discounted, let alone discarded which had to be, and were, properly taken into account.

- 4 In settling with IBM, did the State give too much emphasis to the following:**
- a) the criticisms in the Auditor-General’s Report tabled 29 June 2010 of the conduct of the State and difficulties with the changing project scope as outlined in that Report;**
 - b) an assertion that IBM would sue the State if it terminated the Contract;**
 - c) that CorpTech’s involvement in remedying defects and in carrying out enhancements to the Interim Solution, might void the warranties contained in the Contract; and**
 - d) the risks of litigation.**

4.1 The State accepted the report of the Auditor-General in full and gave appropriate emphasis to it because it was correct course to take. Auditor-General’s report was a vigorous review which had been tabled and discussed in Parliament.⁶⁵

4.2 The submissions set out above deal with the matters in (a), (b), (c), and (d) of this question.

- 5 Was the primary consideration in settling with IBM that if terminating the Contract created any risk that any staff member would not be paid or not be correctly paid, then such a risk was too great?**

5.1 The record of the decision sets out a multiplicity of complex and urgent considerations that were taken into account.

⁶³ Transcript 32-31 to 37

⁶⁴ Transcript 32-31

⁶⁵ Transcript 33-48

- 5.2 Ms Bligh in evidence was quite emphatic: “I felt it was unthinkable to knowingly take an action that would put rectification at risk or at least cause further delay, and further pain for Queensland Health employees.”⁶⁶
- 5.3 In evidence Ms Bligh stated that she relied on the advice that was provided by Mallesons, by Crown Law and by KPMG, upon which she had to make a calculation about the risk that the state could afford to take. Ms Bligh stated: “I took the view that anything that would further jeopardise the stabilization of the payroll system was a risk that was not in the public interest and would have been unconscionable for me to have knowingly entered in that risk.”⁶⁷
- 5.4 As Ms Bligh stated in her evidence the CBRC was faced with “two very difficult options and we had to weigh up which one of those options was in the public interest and which was in the best interests of those people who were suffering as a result of the payroll.”⁶⁸
- 5.5 The decision was informed by multiple factors combining a number of risks - ie, the possibility of IBM withdrawing from the task, the possibility that IBM would dispute the defects, the various risks being the evidence of the Auditor-General's Report, that the State may not succeed in litigation, the cost and time involved in an expensive, protracted legal dispute, the advice that such commercial disputes usually end up being settled after significant legal costs to both parties, and the tone and content of IBM's response to the Notice to Show Cause and IBM's Notice of Dispute indicated the State may be exposed to a counterclaim for which it might prove liable.

6 Question 6 to 14

- 6.1 Questions 6 to 14 concern detailed operational matters of assessments made below the level of the CBRC.
- 6.2 As to the “35 defects IBM was required to remedy” referred to in Questions 6, 7 and 8 Ms Bligh dealt with this issue on pages 32-34 to 32-36 of the Transcript.
- 6.3 While Ms Bligh was not a party to the negotiations and could only rely on the legal and strategic advice presented the CBRC gave effect to the practical considerations above legal considerations.
- 6.4 Ms Bligh made the decision sincerely believing it was the right thing to do.⁶⁹ Health employees had gone without pay for five to seven weeks having problems with their mortgages and unable to pay their groceries.⁷⁰ The general public were genuinely concerned that nurses and hospital staff were paid properly paid.⁷¹

⁶⁶ par 68(1)

⁶⁷ Transcript 32-30

⁶⁸ Transcript 32-44

⁶⁹ Transcript 32-36 to 32-37

⁷⁰ Transcript 32-37; Transcript 32-44

⁷¹ Transcript 32-38

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