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THE HONOURABLE RICHARD CHESTERMAN AO RFD QC, Commissioner

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

IN THE MATTER OF THE COMMISSIONS INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2012

QUEENSLAND HEALTH PAYROLL SYSTEM COMMISSION OF INQUIRY

BRISBANE

..DATE 23/04/2013

Continued from 22/04/13

DAY 19

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THE COMMISSION COMMENCED AT 10.04 AM

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COMMISSIONER: Mr Horton, good morning.

MR HORTON: Good morning, Mr Commissioner. The first witness today is James Dalton Brown, whom I call.

COMMISSIONER: Mr Traves, you act for Mr Brown, don't you? 10

MR TRAVES: No, not this Mr Brown, Mr Ray Brown.

MR KENT: I act for Mr Brown.

BROWN, JAMES DONALDSON affirmed:

MR HORTON: You're James Donaldson Brown. Is that correct?---Correct.

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You have prepared, I think, and signed two statements in this commission today for the inquiry. Is that correct? ---That is correct.

The first is a statement which you - I think it's undated - signed on or about 8 March 2013. It has 65 paragraphs. Is that correct?---That would be correct.

Do you have a copy of that with you today?---I do.

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Thank you. I seek to tender Mr Brown's March statement.

COMMISSIONER: Exhibit 75 is Mr Brown's first statement.

ADMITTED AND MARKED: "EXHIBIT 75A"

MR HORTON: Mr Brown, you prepared, I think, a second - - -

COMMISSIONER: I'll make that 75A, Mr Horton.

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MR HORTON: Thank you.

A second statement, Mr Brown, and you signed that on 10 April 2013 and it has 40 paragraphs. Is that correct? ---That is correct.

Thank you. I tender that.

COMMISSIONER: Exhibit 75B.

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ADMITTED AND MARKED: "EXHIBIT 75B"

MR HORTON: Mr Brown, I'll start please with the first of your two statements. Just in a general sense so we

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understand where you fit into the equation, you began in CorpTech in mid-2008?---That is correct. I believe 7 July 2008. 1

Yes. You occupied, at least initially, the role of program director in the program delivery directorate?---I believe that to be correct. Yes.

You reported to Barbara Perrott, who was then executive director of CorpTech?---That is correct. 10

Later you reported to Margaret Berenyi who takes Barbara Perrott's position?---That is correct. Yes.

You've set out that you had accountability for the Solution Design Authority and I think later on for the Change Advisory Board?---The Change Advisory Board was part of that accountability. Correct. Yes.

Yes. But you don't yourself fulfil the function of chair. Is that right? You leave David Ekert, for example, in that position?---That is correct. 20

You at least participate in some established groups. You, I think, attend the executive steering committee from time to time as adviser. Is that correct?---That is correct.

But not a member of that steering committee?---No.

Are you a member of the QHIC Project Board?---No, I'm not. I wasn't a member of the QHIC Project Board. 30

But your name is often there as attending. Is that correct?---Yes, I did attend most meetings.

Yes. When we read the QHIC Board minutes, it doesn't distinguish often between those who are present in a general capacity and those who are members of the board. Is that your understanding of those minutes?---That would be correct. 40

Yes. Anyway, when we read your name on those board minutes, you're there simply as an attendee, but not as a board member?---That is correct.

How about the project directorate? Were you a member of that?---Yes. And from the middle of 2009, around July I believe, I also chaired that project directorate.

Yes, thank you. Beneath you, anyway, in this position I think reporting to you are, at a more junior level, John Beeston, Malcolm Campbell, Chris Bird. Is that correct?---That was correct, but that only took, in effect, from March 2009. 50

How did it come about that you supervised those gentlemen? 1
---It came about as part of an internal reorganisation
within CorpTech.

Yes?---It was part of, you know, the ongoing work to refine
the Solution Design Authority. It also was as a result of
Mr Beeston leaving the organisation in March or thereabouts
of 2009.

But it must have been in your capacity as program director 10
in the pre March 2009 period, you have regular contact with
the gentleman I mentioned?---Most definitely. Mr Beeston
and I were in regular contact, we were peers, effectively,
both reporting into Ms Barbara Perrott.

So I can understand this, if communications are to be had
with IBM about performance or non-performance under the
contract, in the period before March but after mid-2008 -
before March 2009, but after mid-2008, how did those
communications occur? What are the parity steps which 20
takes place and who on behalf of CorpTech has the deeds?
---All right. The process, in a general sense, would be
that an issue may have been raised, it would be discussed
at the officer level. John and I would probably have a
discussion around that, that would probably involve Ms
Barbara Perrott. At that time, some agreed course of
action would be agreed with Ms Perrott, and then
effectively if it was a contract matter John would actually
progress that contract matter. 30

And was Mr Campbell involved in those meetings?---I have no
specific recollection but I'm sure from time to time he may
have been involved in those meetings.

Did he prepare for your consideration discussion papers,
briefing notes, memos of that kind about the contract? He
was in charge of vendor management at the time?---I have no
specific recollection of Malcolm preparing before
March 2009, any specific recommendations coming directly. 40
I would have expected them to come through John as the head
of that particular unit.

So John Beeston sat above, did he, Mr Campbell?---Yes, as I
said, John and I were peers, John had accountability, as I
understood it, for the strategic program office, which
included Mrs Bird and Campbell along with some others.

So the period mid-2008 to March 2009, what were the sorts
of contentious issues which Mr Beeston raised with you
regarding IBM's performance under the contract? Did he 50
express a view whether he thought it was satisfactory?
---No, he did express concerns regarding IBM's performance,
they were along the lines of late deliverables or quality
of deliverables. There was also some discussions around
the particular schedule, I think 22A, but John had some

concerns that he felt that IBM weren't honouring those obligations. 1

At some stage, they requested from you permission, did they, to consult an external lawyer, Mr Swinson?---In what period would that have been, please?

We're speaking, now, about the period mid-2008 to March 2009?---Right, I do recall, and this is from reviewing the files that have been at my disposal, some advice being sought from Mr Swinson regarding a specific matter regarding the incorporation of the housing payroll, schedule 22A, and perhaps one other matter, and that was within one or two weeks of my arrival at CorpTech. 10

Yes?---And that was addressed to both Ms Barbara Perrott and myself.

What was the process at the time, what was the process of consulting external lawyers? Could people like Malcolm Campbell and John Beeston do it without having approval or authority from anyone higher, or did they need to get authority?---John, as an accountable officer, Barbara would have had some degree of latitude in consulting with Mr Swinson, but I would have expected that during those consultations he would have kept Ms Perrott informed. 20

And you wouldn't have expected him to keep you informed of those things?---On occasion, but given that John had a direct reporting line to Ms Perrott he may not have sought me directly, but I would have been aware he would have been in discussions but not of the specifics. 30

I thought you said that you'd met regularly with Mr Beeston about matters of this kind in mid-2008 to March 2009?
---Yes.

Did he mention that he'd engaged Mr Swinson, for the activity you've just mentioned, to give advice about Housing and schedule 22A?---I can't recall that specific, but I'm aware that the correspondence was directed to both Ms Barbara Perrott and myself, I believe. I cannot recall whether John initiated that particular advice or whether it was as a request of Ms Perrott or myself. 40

And then further advice is received from - Mr Swinson is asked in late 2008 to undertake some further work, some advice in response to some concerns raised by Mr Campbell. Is that correct?---I have no direct knowledge of that but I believe that to be the case. 50

But these are people who you're meeting regularly with, you're meeting with their boss, Mr Beeston and you?---Yes.

You accepted that, I think?---Yes.

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And these are matters of interest to your position, aren't they, that you hold at the time as program manager?---They are but, again, I was not across specific details or the day-to-day interaction. 1

I'm not asking you about either of those things, I'm asking you whether you're aware that Mr Campbell and his team, and by that I mean Bird, Campbell, Beeston, were consulting with Mr Swinson on more than just the basis to do with Housing and schedule 22A about fundamental concerns about IBM's performance under the contract?---That would be correct. 10

There would have had approval for any ongoing - more than trivial work in which they'd engage Mr Swinson?---Yes, that would be the case.

And that approval would either had to come from you or from Ms Perrott?---No, because at that time in 2008 Mr Beeston was in charge of that unit and that would have been directed back through to Ms Perrott. 20

And you would have expected to be kept informed of the development which were occurring in terms of the advice, at least, the major advice Mr Swinson was giving in response to the concerns raised?---That would be correct.

In the course of those discussions with Mr Beeston that you've mentioned, did he present to you in any of this period, June 2008, March 2009, draft notices which he thought sent to you ought to sent to IBM as a result of the concerns he'd raised?---I have no specific recollection of a draft notice being presented to me for review by either Mr Beeston or Mr Campbell. 30

What about non-specific recollection?---I'm aware of general conversations we had around IBM performance, but, again, I do not recall receiving any advice directly for review. 40

I'm not really asking about advice, I'm really asking about a draft notice to remedy or a draft notice of breach?---I cannot recall receiving a draft notice to remedy or a draft breach notice for review.

It would be a fairly significant thing to be presented with a draft of that kind from people who reported to you in some capacity with a recommendation from them supported by concerns about IBM's performance under the contract, is that right?---It would be a significant event, yes, that would be correct. 50

So you knew Mr Swinson was being consulted about these matters and you would have been told about at least the major advice he was giving, the principal advice, from time

to time as he was giving to the CorpTech representatives?
---I was aware that Mr Swinson was being consulted on legal matters.

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Yes?---As I stated before, I was not aware that Mr Swinson was being briefed on the action regarding a breach notice or a notice to remedy.

What do you think he was being consulted about?---I thought it was around general contract matters regarding statements of work or change requests.

10

Mr Brown, that's not a basis upon which CorpTech representatives would go and ask an external lawyer at expense, at public expense, to advice about a contract when their internal people, with confidence, including Mr Bird, to advise on day-to-day or medial matters about the contract?---As I said, Mr Bird and Mr Campbell reported to Mr Beeston. Mr Beeston was the person in charge of the strategic program office, he had some degree of delegation which he were able to pursue matters. I was kept informed in my role but did not direct those matters.

20

But notices were presented to you, weren't they, and you resisted any attempt to have them issued?---I do not have a recollection, as I said before, of a notice being presented to me, all right. In the case of resisting, I think I've articulated in my statement that should have a notice have been presented to me, I would have expected some detailed evidence to support that notice. I also do not recall such detailed evidence being presented to me.

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Yes. You mentioned in your statement the sorts of things which you would have required before taking formal action and I think you say that in your first statement in paragraphs 56 and 59, the sorts of things you would look for before taking action?---Yes. They were of a general nature, what I would expect to have been tabled before me.

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Yes. Well, let's just look at some of them. 56.4, "Where necessary legal opinions." So you knew Mr Swinson's being consulted by Mr Bird and Mr Campbell, and others?---Mm'hm.

10

"Formal response from IBM on the matters raised." There had been correspondence and dealings with IBM about these matters. Is that correct?---I think there's been conversations with IBM around some of those matters. I do not recall seeing any formal correspondence between the parties on those matters.

But that's what the breach notices would do, surely? ---Yeah, but I would have expected at least some form of documentation and formal approach to IBM before we got to that breach notice. I do not recall seeing any of those documents.

20

Right. And did you normally interest yourself in the correspondence which was being conducted with IBM?---I would have if it fell into my spade of control or where, you know, I was asked for a particular opinion or view.

Do you say you're not aware of any formal response from IBM on the matters raised or it being raised with IBM in any formal way in correspondence?---I think I expressed that I don't believe I saw that information being presented to me as part of the breach process that you mentioned before.

30

No, my question was more general?---Right.

You don't recall before March 2009 seeing any formal response from IBM on matters raised with it concerning its performance under the contract?---That was in the context of the breach notice.

40

Forget the breach notice for a minute?---All right. Right. Okay.

Saying did you at any time before March 2009 see or were aware of any formal response from IBM on matters raised with it regarding its performance under the contract?---No specific recollection.

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You're not disagreeing with me but no specific recollection?---I'm not disagreeing with you. There may be correspondence but I cannot specifically recall.

Similarly, you're not disagreeing with me that a breach notice was presented to you, you're simply saying you've got no recollection?---Correct. 1

In response to some evidence that's been given, is your evidence about saying to Mr Campbell and Mr Bird:

It would be volcanic to send such a formal letter to IBM which mentions breach or asserts a serious non-performance under the contract. 10

---I think in my statement I did state that I have no recollection of that meeting or that statement being made.

Yes. So you're not disagreeing with the proposition but you've got no recollection?---No recollection. And I think I further stated that time that Mr Bird and Mr Campbell were not direct reports of myself.

Yes, you've mentioned that?---Yes. 20

Now, at this time, before March 2009, you report to Barbara Perrott directly. Is that correct?---Sorry, up until probably February 2009.

Yes. And then you report to the same position holder, which is Margaret Berenyi?---Correct.

And do you report directly to anyone else above Margaret and Barbara in the executive director position?---No. 30

What discussions did you have either of those two people before March 2009 about the matters that you said Mr Beeston discussed with you in your regular meetings about IBM's performance under the contract?---Okay. Again, there were several meetings we had both with Ms Perrott predominantly. At times, Mr Beeston - most cases, Mr Beeston was involved in those conversations if they were matters to do with the contract. Again, I have no specific recollections of conversations regarding the IBM performance but I'm aware that we did discuss IBM's performance under the contract. 40

Yes. In what sense was it discussed?---Well, it was discussed in primarily what actions might be taken, how we could better manage IBM, in relation to the go forward planning work, so there were a number of matters in which during general interaction and meetings, and formal meetings with Ms Perrott that from time to time IBM's performance was raised. 50

Was there a concern that IBM at that time wasn't performing as is ought under the contract?---Yes. That view was expressed by Mr Beeston on several occasions.

Yes. And did you hold that view?---I - yes, I believe I held that view, yes. 1

Did you communicate that view to Ms Perrott or Ms Berenyi? ---Yes, but equally that view was perhaps moderated by some of the actions that was - that had been undertaken prior to my arrival and prior to me assuming the role of responsibility for the contract management office.

Yes. What actions were they?---Well, for example, there was some conversations around schedule 22A and whether it was formed as part of the contract. I think that legal advice indicated that preparation of that matter with IBM was problematic. Equally, the Housing solution, the legal advice based from Mr Swinson also indicated that progressing that matter was problematic given that statement of work 8 didn't carry forward a range of conditions in statement of scope 1 into statement of work 8, and so therefore the matter of progressing any definitive action around IBM was clouded with a range of uncertainty. 10 20

Yes. You mentioned, I think, them as being mitigating factors, but in fact they're the opposite, aren't they? They're - - -?---Sorry, perhaps it's a poor choice of words. Not mitigating but they were factors that, in turn, would have, you know, caused people to consider quite carefully proceeding on a contractual matter with IBM without being on solid ground. 30

It's really the opposite, isn't it, that these matters that occurred, I think, in mid-2008, this advice was obtained from Mr Swinson about these matters?---Mm'hm.

In fact, raised the problem that there were serious matters, major matters contained in the contract which were not yet resolved?---Exactly, and equally I think the advice also raised concerns about how the things had been inactive at the same time regarding, for example, the translation of statement of scope 1 into statement of work 8. 40

Yes. And did this put you on notice and/or cause you concern as at mid-2008 that in fact much work had to be done in order to make absolutely clear what the respective obligations of the parties were under the contract and take advice about what the respective rights or obligations were?---I'm sorry, I missed the first part of your question.

I'll put it more simply?---Thank you. 50

The matters you've mentioned cause you in mid-2008 to think there was a dire need, a pressing need to ascertain immediately what the rights and obligations of the parties were because of the, and certainly about these important matters?---And hence the advice - yes, and hence the advice

from Swinson around the Housing matter and statement of - 1
schedule 22A. Yes.

You mentioned in your statement that, in effect, scope was a difficulty, I think, for the bit in which you were involved in the contract, ascertaining the - what the scope of the work to be done by IBM was. Is that correct? ---Scope in the general sense - - -

Yes?--- - - - was problematic, yes. 10

And you refer to a blueprint document or a government blueprint. Is that right?---Is this in relation to statement of work 8?

Yes, it is?---Right. Okay. And I believe I made a statement and this was in relation to change request 60 and 61, I believe.

Before your (indistinct)?---Yes, yes. 20

(indistinct)?---That's right. Yes. I'm trying to narrow it down.

Yes?---Yes, look, I do recall seeing a technical document that defined what was to be delivered as part of statement of work 8. I do recall that document indicating that the financial interface was out of scope.

Yes. And was that document - I can show it to you, if you want, but was that document, I think, called the QHIC scope definition?---I don't recall the name of the document. 30

I'll have it shown to you?---All right. Okay.

Volume 4, please, miss associate.

COMMISSIONER: Volume 4?

MR HORTON: Volume 4, page 63. 40

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COMMISSIONER: Page?

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MR HORTON: 63.

63, Mr Brown, is the page. Does that look like the document?---I believe I saw an excerpt of a document. Whether it was this document or not, I cannot attest that this is the exact document.

What was the document that you had recourse to when there was a question as program director to you whether something was in or outside scope of what IBM had to do?---It would have been the program documentation delivered by IBM as part of their deliverables and there would have been countless documents such as this.

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Yes?---Yes.

So when one had to assess, for example, a change request were you called upon to advise or assist with those deliberations?---The change request process went through the Change Advisory Board first.

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Yes?---So there was a process before it got to me for approval or final approval or to the executive steering committee for approval.

Yes?---The Change Advisory Board would assess a change - and again this is in the period up until March 2009 - would assess whether that change request was an additional requirement to that of the government's specification or not.

30

Yes. So when you performed that role, is what I'm asking you about, how did you know whether it was an additional requirement or not an additional requirement?---Well, in my previous statement I said the Change Advisory Board was chaired by David Ekert at that time.

I'm just asking for your consideration for a minute. Don't worry about anyone else?---Right.

40

When you turned your mind to these things as - - -?---Okay.

- - - in your capacity as involved in the Change Advisory Board?---Yes.

When you had to ask yourself whether a requirement was additional or not additional - - - ?---Yes.

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- - - what is the document you looked to, or documents you looked to, to answer that question?---I would have relied on the advice from the Change Advisory Board as to whether that was a new or additional requirement. I wouldn't have referred to the specific documents in detail in question.

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Yes?---I would have relied on the advice from the Change Advisory Board.

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But you are on the board, aren't you?---I delegated that authority to David Ekert. All right? So that board was chaired by David Ekert.

COMMISSIONER: Are you saying that you took no interest in whether - apart from looking at what the Change Advisory Board said to you, did you take no interest in whether change requests that were made were for things that were or weren't in scope?---Mr Commissioner, I did take interest in when things were in scope or not. The advice from the Change Advisory Board, which was a group of people encompassing Queensland Health, Education and Training and the Solution Design Authority and, I believe, IBM provided advice and deliberated on those matters and then provided me with advice. I did take interest, but I relied on the advice from the Change Advisory Board.

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Did you understand that there was a debate as to whether change requests were properly based or not; that there were two rival contentions. IBM were saying, "These things are out of scope, they're extra," and CorpTech were saying, "No, they're not." Did you turn your mind to how that debate should be resolved?---The answer is yes.

20

But how was it resolved?---In the end it resolved ultimately in high-level negotiations between both parties.

30

So does that mean there was no document that one could go to to say whether a thing was or wasn't in scope?---There wasn't an agreed document, although there was a difference of views, Mr Commissioner, in that there were differing views in the interpretation of those documents.

When the matter was first raised, when it became obvious that there was no agreed document by which one could settle these arguments, why wasn't one produced? Why didn't you say to people, "Go back and get a document that you both agree, CorpTech and IBM agree, sets out the scope of what you have to do?---And that is correct and the process - - -

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But that was never done, was it?---I beg your pardon?

Was that ever done?---Not that I'm aware of, commissioner. There was - - -

Why wasn't it?---Part of the reason, I believe, was that there was always going to be a difference of view between both parties as to what was to be delivered and to end up with a resolved document to precisely define those requirements was going to be problematic.

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Mr Horton?

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MR HORTON: Can I take you, Mr Brown, to, again, your first statement but this time to the matters you raised regarding user acceptance testing? Can you do that from about paragraph 49 and following?---Right.

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You say you got involved, but in the context of what you say at 39 and following about severity of defects. At the outset of this project, like there would with any program, one sets ahead of time the test criteria which is going to be followed to take the system through to completion. Is that correct?---That would be normal practice.

10

You do it for system testing, unit testing. Is that correct?---That would be correct.

You do it for user acceptance testing?---Correct.

The sequence would be always that system and unit testing precedes user acceptance testing?---Correct.

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And in this case user acceptance testing, quite usually, was done by the customer?---Correct.

So Queensland Health was responsible for performing the UAT, engaging someone to do it, and then being satisfied it was complete?---Correct.

And so that involves both - well, really, three things I want to suggest to you. One is agreeing ahead of time the way in which defects which arise will be classified. In this case it was one, two, three, four with two being major defects. Is that correct?---Correct.

30

One would also set the criteria to enter UAT and to exit UAT?---That is correct.

You do that, don't you, because you don't want to be making those decisions pragmatically at the time that you arrive at entry or arrive at exit or arrive at a defect because the tendency is in terms of program management one will make those decisions in a less than is passionate or removed way?---Correct.

40

In this case, criteria is set at a time and I think there's a master test plan. Is that your understanding?---That would be correct. Yes.

Yes. The criteria that's set for entry into UAT is severity 1 defects would be resolved and severity 2 defects would be resolved. That is no severity 1's or 2's on entry?---On entry into user acceptance testing.

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Yes?---Yes.

The same was in the beginning by the master test plan set for exit from UAT?---Correct.

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And so the purpose of that is you go into the user acceptance testing having resolved all, other than trivial, defects that you know about, ones that emerge are resolved and you exit UAT only after any new ones have emerged have been resolved?---Correct.

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So you're moving forward with a clean system towards a go live?---Correct.

And it avoids the possibility that after go live you get surprised, if you like, with very many defects which, in effect, ought to have been discovered beforehand and dealt with before the go live date?---Yes. It doesn't absolutely ensure you won't find defects, but it does minimise the impact of that. Correct.

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Yes, sure. You were involved, I think, or you were present at board meetings in which some of these things were discussed?---Correct.

20

Exit and entry criteria. You say, do you, that so far as those decisions were made by the QHIC Board you had no decision-making role to play. Is that correct?---No decision-making role, but I provided input and advice.

Yes. Excuse me a moment. Can I take you, Mr Brown, please to volume 10, page 78.

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COMMISSIONER: Did you say volume 2? 1

MR HORTON: Sorry, volume 10.

COMMISSIONER: 10.

MR HORTON: Sorry, Mr Commissioner, I should have been clearer. This is a project directorate meeting, so you're, by this time, chairing this meeting. As at August 2009, am I correct in saying the fourth phase of user acceptance testing has commenced?---That is, I believe, correct, yes. I can't recall whether it was the fourth phase, but yes. 10

And then each criteria which would apply immediately before 20 August would be those ones I spoke about, no severity 1, not severity 2?---Correct.

And the rule was, under that test criteria, if you hit a severity 3 it was permissible but you had to have a management plan for the severity 3?---Generally, I think you're correct, yes. 20

Now, in this meeting it seems the topic is raised of UAT exit criteria, and there's reference to recently altered exit criteria being circulated to ensure you're aware of the changes, and then there's this sentence, "The intent of the wording is agreed and accepted by all"?---Sorry, what page are we on?

78?---Yes? 30

The very first paragraph of the minutes themselves, just to the right-hand side of UAT exit criteria?---Right.

And it's the second sentence of that paragraph I'm asking you about, "The intent of the wording is agreed and accepted by all." Do you see that?---Yes, I do.

What was the alteration which was made to the exit criteria so far as severity 2s were concerned?---I'd have to see the document to refresh my memory, but at this point I cannot, without further research, respond, I'm afraid. 40

Let me take you to a few further documents to see if it might - - -?---Thank you.

- - - clarify this. I'll just pause for a minute?---Yes.

At this stage, the user acceptance testing conducted by Mr Cowan and others is throwing up a very large number of severity 2 defects, is that correct? Is that your recollection?---That's my recollection, yes. 50

And it seems from the documents, correct me if I'm wrong, to be a persistent problem, not something that appears to be -

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it's something that seems to be intractable?---Right. 1

Is that a fair description of what was happening?---I think it's fair to say that the user acceptance testing highlighted a number of defects, whether they were intractable or not I don't know whether they were. I mean, I would expect that during the cycle of testing that these issues would be resolved. Intractable, in my mind, means they weren't able to be resolved. 10

Well, yes, that's what I really mean, there were a very large number of - let me show you a document?---I mean, I acknowledge there was a large number of defects hence the reason for multiple cycles of UAT.

Let me take you back just to a little bit before this time, to volume 9, page 320?---Can I have the page number again, please?

COMMISSIONER: 320. 20

MR HORTON: 320. It's a briefing note with your name on it for contact, and to remind you about what the position was, at 321 there's an attached chart which shows that? ---Yes.

Severity 1 and 2, system defects which are being revealed. This, by the way, seems to be in the second phase of user acceptance testing?---Yes. 30

You say in the first line of your minute. In the first line, am I correct the red line at the top of the graph from 321 is the IBM open defects?---That would be correct, yes.

COMMISSIONER: What does that mean?

MR HORTON: They're ones which was in IBM's jurisdiction to fix?---I think a more accurate would be that they were defects that weren't identified as part of the testing that had to be fixed by IBM. 40

Just so we understand how that works, a tester runs a test, a tester will initially categorise a defect they discover as 1, 2, 3, 4, is that correct? Do you know about this? Is this your understanding?---In general terms, that's what I would expect, but not being part of the testing and testing process the exact specifics - - -

I'm just asking?---Generally, you would expect that to happen. 50

Yes, I'm asking in general terms. So the tests were categorised at the first instance - - -?---Yes.

- - - and then in this particular instance there were meetings which should be conducted after the tester had classified between Health, CorpTech and IBM to confirm or displace the decision which was made by the tester about how that defect should be classified, correct?---Whether it involved CorpTech or not, I don't believe so, I believe, yes, that would have been between Queensland Health and IBM given that Queensland Health had the accountability for running the testing. The only time that CorpTech would be involved in some of those testings - they required specific CorpTech involvement, which, in the vast majority of cases in user acceptance testing, it wouldn't.

And then Mr Atzeni, I think, is one of the people who was involved at that level in doing that. You had knowledge of that?---No. Again, I have no specific knowledge within Queensland Health of how the user acceptance testing was run.

In some way, matters might come before you, be escalated to you, if you like, for you to reclassify, which is what this document is doing. Is that correct?---No, I would not expect that from me to reclassify. I would not reclassify a particular error, I mean I had no knowledge of the impact that error may have so it would be inappropriate for me to reclassify an error, a specific error. I mean, that was within the view of Queensland Health and IBM.

And so that should in fact invariably be done by people closer to the ground, by the tester or by the team meeting?---People with specific knowledge of the test and also the business impact.

I suggest to you one step further, that if defects were being reclassified by people other than the technical people, that indicates, really, a pragmatic approach which is of the kind which you said would be admissible in testing of this kind?---Look, errors are found, the people who identified the errors would classify it. Again, I'm speaking in general terms as opposed to specifically within Queensland Health, but generally there is some robust debate around the impact and what level of severity an error is at. The matter is then settled and then the classification is agreed. So what I'm saying is that the tester's initial assessment may not be the final assessment, and they may be, I think, untoward in that reassessment.

If I can take you to dot point 2 of your memo on page 320, you say there's been a review of these defects?---Yes.

A number had to be reclassified - - -?---Yes.

- - - as severity 3 priority 0?---Yes.

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So you wrote this briefing note. Is that correct?---That would be correct, yes. 1

Do you know it was finalised, was it, and sent up to - was it Natalie McDonald who was the associate director-general at the time?---That would be correct.

And you sent it to Margaret Berenyi for endorsement?---Yes, so the process would be that I would create the briefing note, would be passed through Margaret Berenyi and then forwarded onto Ms McDonald. 10

And did she endorse this, to your knowledge?---Sorry, Ms McDonald?

No, Ms Berenyi?---Yes, it was passed onto Ms McDonald.

Help me with dot point 2 of your memo?---Yes.

"Reclassifying things from severity 2 to severity 3 priority 0," so that takes them away from being a major defect and makes them something less, correct?---That would be correct, yes. 20

And it means that it puts them in a category which wouldn't prevent exit from UAT because the severity 2 is gone? ---That is correct.

And it becomes a severity 3, and if there is a management plan or a workaround the system can proceed?---That would be correct. 30

Isn't this exactly what you've just said should not be occurring?---No, I think I said that there is robust debate around the classification of errors, and then in some instances errors may be reclassified for valid business reasons.

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And what were the reasons that you reclassified these?---I didn't reclassify these; this was the working party that was assigned to review those errors within Queensland Health and then this - - - 1

COMMISSIONER: But you must have been satisfied?---Oh, sorry.

You must have been satisfied that these reclassifications should occur. What made you satisfied?---I was satisfied by the participation of the individuals and the working group that assessed the business impact on those errors and came up with a different assessment. 10

MR HORTON: Were you a member of the working group?---No, I was not a member of the working group.

But they must have presented to you something?---They presented to the directorate and in the directorate meeting it was discussed as to - that those errors were valid to be reclassified at severity 3. 20

Yes, but on what basis were they valid?---They were based on the impact to the business and whether it fitted within the classifications 1, 2, 3 and 4.

So when you prepare this memorandum, what is the document to which you have regard in terms of ascertaining the severity of defects?---Okay. It is based on conversations and discussions at the project directorate level upon which I rely. 30

Yes. But in terms of a document though, which sets out the criteria and you agree there would be run - you agreed earlier be run for at the outset for classifying the severity of defects, which document did you have regard to when you prepare this briefing note at page 320?---Okay. I relied on the information in the graph and also discussions at the project directorate meeting. 40

Yes. Is the answer then no document?---I cannot recall specifically a document but there may have been documents tabled at the project directorate meeting for review.

Yes?---And I have no specific recollection. Doesn't mean there wasn't a document tabled.

I was a bit unspecific, though. I mean, you agree with the outset that reclassifying defects and altering criteria would be a serious matter?---It would be a significant matter but equally also stated that it could be valid. 50

Yes. But you'd only do it against the criteria which you've said at the outset?---Right, which a group of people within Queensland Health who had the specific business

knowledge and expertise along with, in this particular case, CorpTech - - - 1

Precisely?--- - - - made an assessment that it was appropriate to reclassify those errors.

But only after looking, as you would insist, wouldn't you, at the relevant criteria that had been imposed at the outset of the program?---Yes, but equally in conjunction with an assessment of the business impact, which would then be used against the criteria. 10

Well, that's what the criteria would take into account, surely?---That's true, yes.

Yes. So the criteria would take into account things like whether it was a major component or function would not work, whether testing is severely impacted, whether payroll results are incorrect?---Correct. 20

Yes. And what analysis did you do of those things before presenting for endorsement to Margaret Berenyi the briefing note at page 320?---All right. The analysis was basically active discussion at the project directorate meetings where those matters were discussed in detail and an assessment relied on the individuals that undertook that reclassification and an interrogation of those individuals at that meeting.

I think you're saying you - are you saying to me this, that you yourself did no checking back to the criteria which defined the severity of errors which might arise?---I relied on the assessment by Queensland Health that the business impact of those people errors were reclassified were a classification 3. I had no way of ascertaining or knowledge to ascertain the business impact of a particular error. I was not part of - I did not understand the Queensland Health payroll or payroll process. I did not understand the functionality. So for me to make an independent assessment on the business impact of a particular error was impossible and I had to rely on the expertise of others. 30 40

Can I take you, please, to volume 13, and to page 125, Mr Brown?---That was 125, was it?

Yes. This is a project completion report regarding UAT phase four exit. Is that correct?---Yes, that's correct.

Now, the date of this document appears to be 18 January 2010, so this is before - to put you in the picture, before Mr Cowan prepares his final test report on 27 January regarding user acceptance testing?---Right. Well, the one I've got has no date on it. 50

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COMMISSIONER: Next page, Mr Brown?---Thank you, yes. 1
Thank you.

MR HORTON: Then if you turn to the next page, 127, "the purpose is to obtain agreement from CorpTech that the criteria of LATTICE replacement solution ready for the point UAT for exit have been successfully completed"?
---Yes.

So did you see this document as part of giving or 10
considering CorpTech's agreement to those matters?---I believe I would have seen this document, yes.

So would you turn to page 129, the first dot point, in scope activities?---Yes.

No severity 1 defects and a comprehensive management plan for severity 2, 3 and 4 defects?---Mm'hm.

So that's a change from the criteria which was arrived at the outset, wasn't it, that there be no severity 1s and 2s, and 3 be (indistinct) with a management plan?---Correct. 20

That change is the one that I want to suggest to you was made in the project directorate meeting which I rated you earlier that you said you - - -?---Right.

- - - couldn't recall any of the documents. I'm not suggesting this document was before the board, of course, what I'm suggesting is the genesis of the change?---Okay. 30
To infer the project directorate acted independently, I don't think is entirely correct. That matter would have been escalated to the QHIC project board at a particular point and the QHIC project board members would have elected to either agree with the suggestion from the - or recommendations from the project directorate or not, and in this particular case I think that discussions were held that the criteria would be that there would be - and this is my recollection - that there would be no defects, severity 1 or 2, that affected pay or that if there was a 40
severity 2 defect that affected pay, there was an accepted workaround in place, and that for the other defects there would be an acceptable management plan in place. I believe the QHIC project board agreed to that criteria.

But is the recommendation you say was made, was it first by the QHIC project directorate?---Well, I think the project directorate supported that, but that was also with discussions with the project board as well, yes. 50

Yes, the recommendation is made, is it, under the project board - - -?---Yes. That would be the process.

Yes. And were you chair of the project directorate at the time that - - -?---Yes, I was chair of the project directorate.

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Yes. And how did you arrive at that decision then to -
what was the basis for changing the criteria?---The basis
for changing criteria were prior discussions with the
project board around the criteria. So that didn't
originate at that particular time; there was a range of
discussions about how the project could move forward and
the criteria by which the project could be accepted.

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It seems circular that you had discussions with the project
board so you could make recommendations to the project
board about the matters you discussed with (indistinct)?
---It was an interim process, is what I'm indicating.

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It sounds confusing?---Right.

It sounds unclear and directionless, with respect?---Right.
There were discussions at the project board around
acceptance criteria that span numbers of months.

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COMMISSIONER: But when the matter was taken from your project directorate to the QHIC Board, I take it something was reduced to writing, the recommendation was reduced to writing?---I'm sorry?

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The recommendation to reclassify the defects, or at least to move ahead accepting that there might be some severity 2 defects as long as there was a competence of management plan, that recommendation, I take it, would have been in writing?---It think would have been either in writing or reflected in the minutes of the discussions of the meeting.

10

You couldn't expect the board, could you, to make a decision of that importance without clear evidence that it was appropriate to do so. Was there clear evidence and where do we find it?---I'm sorry, Mr Commissioner.

Where do we find it? Was there something in writing?---The recommendation, it would be covered in the minutes of the respective board papers and also the board papers.

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All right?---But I'm also indicating, Mr Commissioner, that there were preceding conversations with board members and IBM regarding the criteria for - - -

That may well be so. I don't doubt you when you say that, but I'm having difficulty accepting that a decision of this magnitude could be made with nothing in writing without analysing the consequences of the changes and concluding on some evidence that they were justified. Is there no such document?

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MR HORTON: Can I take you to a document which may assist? ---Yes.

Volume 9, page 81 please, Ms Associate.

This is a QHIC Project Board meeting. It's from May 2009, Mr Brown.

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COMMISSIONER: What page?

MR HORTON: I'm going to go to page 82, but the minutes start at page 81.

You're in attendance at this board meeting. As you've said you were not a member at the time. I want to take you to the paragraph which is just below halfway down the second page of the minutes. It may be highlighted on your version, Mr Brown?---Yes. Does that paragraph start, "It was agreed by the board."

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"To disregard all current language, severities, defects, buckets," et cetera, "The issues relating to the project will now be referred to as a go live problem or resolution and is not necessary prior to go live." That is a complete

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unabashed, abandonment of the principles of setting ahead of time test criteria, is it not? "Project directorates to determine - - - "?---Yes. I'm trying to recall the - sorry. I'm just trying to recall the context in which those discussion were held. I think the context around that paragraph, if I may, was there was a range of terms being used by all parties regarding defects. I do not take - and from my recollection this was a way of eliminating those colloquial terms, of which there were many, but I don't believe the intent was to reclassify or abandon the severity 1 or 2 defects. 10

Mr Brown, on any view of that paragraph - - - ?---Yes.

- - - it says this, "Disregard all current language, criteria," criteria have gone - - - ?---Yes.

- - - to do with severities and defects, for example, "And these decisions about this may be made by the project directorate on one criteria." Is it a go live problem or not necessary prior to go live? That is a complete abandonment of the master test plan and of all the entry and exit criteria of all the severity redefinition work which has been done ahead of time. Correct?---No, I don't agree that it's an abandonment of the master test plan or criteria. I believe this was a way of simplifying the language around the multiple definitions that people had for errors. 20

Yes. By disregarding language?---Well, they're not in a contractual sense or a - this was operational activities around various people call, "We've got a bucket over here to do this particular - or solve these particular problems and bucket 3 does that and bucket 4 does that." 30

No, Mr Brown. The project directorate are to define the matters from now on and that's what happened and it was the project directorate, without reference to the project board, when it comes to redefining the criteria, which are then used by IBM to prepare its report prior to exiting from UAT4?---It is my understanding that the project directorate still used severity 1, 2 classifications as opposed to abandoning the criteria. 40

Yes. But they changed the criteria to include that this system may exit UAT4 despite the fact that it has severity 2 defects?---Yes. And I think I addressed that before saying that the board had agreed that provided there were no severity 1 or 2 defects that affected pay and there was an acceptable workaround in place - - - 50

Yes. She has that, but I'm not really interested in what other people said?---No, no.

I'm asking you about your assessment and you were chair of the project directorate?---Yes.

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And you were attend this meeting in May - - - ?---Yes. 1

- - - and did you say at this time to this board in May, there as an attendee only, "I am the chair of the project board and I will not tolerate this fundamental breach of program management principles"?---No, I did not say that.

MR KENT: I object to the question because it contains a proposition the witness has not adopted, namely, that this is the fundamental breach that my learned friend suggests. 10

COMMISSIONER: The proposition is put to him in the question. Mr Brown can answer it. Yes. I think he did, actually, but you might put the question again, Mr Horton.

MR HORTON: Yes, thank you.

Did you in response to the board saying it proposed to agree the matters in the paragraph I put to you say, "I am the chair of the project directorate and I say you should not do this because test criteria that have been set ahead of time are set for good reason and should not be altered in this arbitrary manner"?---No, I did not say that. 20

COMMISSIONER: Why didn't you?---Because I was working with the board to attempt to get an acceptable working payroll solution for Queensland Health.

But weren't the criteria designed to do that?---That is correct. 30

Then why abandon them or not insist upon them?---Well, again, I was working with the board.

MR HORTON: Could I take you back please to volume 13 for a moment - - - ?---13?

- - - just to finish off with the project completion report. I'd like to take you please to page 130, which is just next the page from where we were, Mr Brown?---I'm sorry, I didn't hear - - - 40

COMMISSIONER: Page 130.

MR HORTON: 130?---Thank you.

The first row, artefact, "No severity 1 defects and management plan comprehensive, but severity 2, 3 and 4," and the evidence is stated to be in the right-hand side, "Refer appendix A, responsibility is IBM's"?---Yes. 50

If we go to appendix A, that's page 133, Mr Brown?---Yes.

"To be provided upon endorsement by project directorate"? ---Yes.

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So you are chair of the project directorate at this time? 1
---Correct.

Did you see or endorse the comprehensive management plan?
---I believe we did.

I'm really asking you to be more specific than that. Do
you recall seeing the comprehensive management plan to
which this refers?---Yes, I do at the project directorate. 10

Yes. Was there a resolution that it be endorsed?---Yes,
that would be correct.

Then the system precedes into what, as I understand, is
called "cut over". Is that correct?---Cut over. Yes.

That is once one has exiting UAT, the next gate in a
program management sense is called "cut over". Is that
right?---Generally, yes. Yes. 20

So can I take you please in the same volume to page 185.
It's part of a document, Mr Brown, which begins at 183
which is (indistinct) approval. It's 188 I'd like to ask
you about?---I'm sorry, Mr Horton?

COMMISSIONER: Page 188?---188?

MR HORTON: Yes?---Thank you.

The last row?---The last row, "Additional amended
criteria." 30

Yes.

COMMISSIONER: Yes.

MR HORTON: "No severity 1 defects and a comprehensive
management plan for severity 2, 3 and 4 defects"?---Yes.

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Now, that's called an "additional amended criteria", is that right?---That's what it's labelled, yes. 1

And there's a management plan in progress under the heading "Comments", expected to be presented to project directorate on 21 January 2010 for endorsement?---Correct.

And that's the same plan which was endorsed, is that correct?---I believe that was correct, but at that time I believe I may have been on leave at that time that project directorate meeting was held. 10

I'm sorry, I thought you said you remember being presented with the comprehensive management plan and you remember it being resolved to endorse it. Were you not present at that meeting?---I was on leave in January, I think there was a project directorate meeting on or about 24 or 25 January.

It says "21 January 2010", which may or may not be right but that's the meeting referred to?---Yes. There was one meeting in January where I was on leave and I wasn't there. 20

You said to me earlier you remember being presented with a comprehensive management plan and remember the directorate resolving to endorse it?---Yes, I believe that to be true.

So it sounds, from that recollection, like you were present at least for that meeting. Is that correct?---I may have been, yes. 30

The management plan includes things such as workarounds, is that correct?---Yes, that's correct.

So the way it works is you look at a defect and say, "If after go live this exists," which of course is the assumption because the defect exists in late January, "it's going to persist." Is that correct? That's the idea, it will then exist into go live?---That's right, yeah, a workaround would imply that a defect has not been resolved and it would transcend the go live date. 40

And a workaround is a manual manipulation that has to be performed even after the system has done its work after go live?---Generally, it is a manual workaround but it may involve some elements of technology as well. It may use part of the existing system, a manual workaround and then back into it, yes.

But involves a human operating a computer?---In the main, yes. 50

And so those management are something you consult with those who had to actually perform the workarounds, is that right, after go live?---The workarounds were endorsed and developed within Queensland Health, I think the individual

that sort of led that was Ms Janette Jones. Janette Jones was the officer within Queensland Health that indicated whether a workaround was viable or not. 1

Just go back to page 52 of that same bundle. That's an email from Ms Jones, I'm not suggesting it's to you but I want you to just read the sentence she expresses there.

COMMISSIONER: What are we looking at?---Is this the second part of the email, is it? 10

MR HORTON: It's the first bit of the email, "Can we discuss Janette Jones." See the text below where it says - - -?---"I've left a message." Is that how it starts? Is that where I'm looking?

Yes?---Thank you. Okay, yes, I've read that.

Now, this is, just so you're aware of the date, 12 January, it seems, so it's slightly earlier than the time I've been asking you about. I want to ask you whether concerns of this kind were ever made to you, expressed to you, by Janette Jones about, first of all, the number of severity 2 defects, and, second, the practicability of the workarounds being (indistinct)?---I'm aware at the project directorate there were conversations around the number of severity 2 defects and also the workarounds. At no time - sorry, I'll re-phrase that. Janette Jones had the authority within Queensland Health to accept a workaround or not. In the end, Janette accepted that the workarounds that were proposed for go live were acceptable. 20 30

It must have involved this as part of you approving it, endorsing it for the project board directorate level, that you, yourself, had some satisfaction that the workarounds imposed would be ones which would be practicably manageable after go live?---Yes, and again I relied on Ms Jones who had the accountability within Queensland Health for the payroll function at that time to confirm whether those workarounds were viable or not. 40

Yes?---She was in the best position of any of us to determine whether those workarounds were viable or not.

Perhaps, but you did a lot of relying, Mr Brown. What did you do yourself to satisfy your own mind, in addition to what Ms Jones might have said to you, that the number and type of work around were ones which were practicable? ---Again, I restate that I relied on Ms Jones to support that those workarounds were viable and acceptable. 50

Were you finished?---Yes.

After go live, of course, the workarounds proved impracticable, didn't they?---I don't know whether that is

a global statement that all workarounds were impracticable, I think there were a range of issues after go live and some of them may have been attributed to workarounds. 1

In fact, one of the principal problems of the system post go live was the number and complexity of workarounds which had been imposed?---Yes, that was part of a range of issues that manifested.

What I want to suggest to you is in fact all the alteration of criteria, all the reassessment of defects got this system limping along to pass UAT 4, but all it did was postpone what ought to have been absolutely obvious problems to the worst possible type time for them arise, and that is post go live?---As part of the discussions at the directorate level and also the board, there was an assessment, a discussion around the number of workarounds in place. I believe at one of the project directorate meetings there was some discussion around the workarounds from the existing LATTICE system, which I believe there were in excess of 200, and I believe at the time of go live there was in the order of 50. I agree, they were just numbers, but those numbers perhaps hid the complexity of some of those workarounds, I acknowledge that. But it was the assessment of Mr Buns, I believe at that time, that the number of workarounds was an acceptable level and he saw no reason for us not to go live. 10 20

In fact, had the original master test plan criteria been adhered to in the decision made by the project directorate regarding these matters, this system would not have gone live, on any view, when it in March 2010?---That is correct. 30

Can I turn, please, to your second statement now?

COMMISSIONER: Mr Horton, before you go on, is the comprehensive management plan somewhere in the bundle?

MR HORTON: Not that we've been able to find, it must exist and we'll endeavour to locate that. We'll continue to search. I turn, now, to your second statement. This concerns, I think, the general public of the go forward which arises from SOW 4, is that correct?---Yes. 40

And the document I really want to focus on fairly briefly is your attachment 3. Now, we've taken the liberty, Mr Brown, by replacing it with an exact copy with which is an A3. I think you've given us an A4 copy?---Sorry, I thought we provided you with A3, I apologise. 50

As I understand it from your statement, this is an analysis undertaken as a result of the figures provided by IBM under the go forward SOW 4. Is that correct?---That's correct, yes.

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And some subsequent presentation, maybe as part of SOW 4 but as part of the same general thrust. And did you prepare this document, this analysis?---No. This document, this analysis was prepared by Ms Sally O'Carroll, who did a lot of the financial analysis for me around the statements of work and the go forward plans, et cetera.

1

I'm not going to go into any detail on this but presumably you asked her to bring it to existence - - -?---Yes.

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- - - and you had a purpose in doing so. Is that correct? ---Yes, I did have a purpose.

And what was the purpose?---The purpose was to try and understand where we started from as an organisation from the invitation to offer or request for offer, and then how potentially as the outcomes from statement of work were delivered, how that may have deviated from the original request for offer.

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Yes. So under the - in the top half of the page under the hearing "Commitments" - - -?---Yes.

- - - if you divide the page in half horizontally and just - - -?---Yes.

- - - look above the line - - -?---Yes.

- - - they, as I understand it, culminating in a \$40 million, 300 thousand dollar figure, and a \$50 million figure. Are the obligations which the state has under presently operative statements of work to pay IBM?---Yes. That was the - a projection of both actuals and commitment.

30

Yes. So a reasonable assessment in effect of what the state would have to pay out to IBM under the existing statements of work?---Correct.

And the first column is 31 August 2008 and the second being as at 31 October 2008?---That's correct.

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Yes. Now, below that horizontal line is, in effect, the prediction side of the equation. Is that correct?---Yes. It is my understanding that took the outputs of statement of work 4 and projected them into the spreadsheet, yes.

Yes. And so when we look under the 15 August 2008 column, which is the left of the two major columns, and we look below the horizontal line, those figures appear from a presentation, a PowerPoint presentation, I think, that IBM gave on or about 31 August 2008?---Yes. They're CorpTech's extrapolations of information provided by IBM.

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Yes. And the source for those figures is to be found in attachment 1 of your statement, attachment 1 to your statement. SOW 4, forward planning?---Yes.

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15 August 2008?---Yes.

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And I think the particular figures come from page 34 of the presentation, Mr Brown, and you'll find at the top right-hand side of the page if you've got it in portrait.

COMMISSIONER: Page what?

MR HORTON: Page 34 of attachment 1, the page number being in the top right-hand corner?---Yes. My copy's not entirely clear but I believe that's correct, yes.

10

So the additional services figure on that page are 29 million, 150, et cetera?---Yes.

Becomes the additional services - - -?---Yep.

- - - fee, divided, I think, in no precise science with no precise test between phase one and phase two?---Yeah. There was - because the figures presented by IBM didn't break them down between phase one and two, CorpTech or Sally did some form of ratioing of the figures, but the bottom line wasn't (indistinct)

20

Yes. And as I think you're saying, this analysis wasn't a precise science; it was a way of educating CorpTech about what the - where they stood and were likely to stand on an assessment?---Correct.

And then the figures under the column heading "31 October 2008" are derived from attachment 2 - - -?---Yes.

30

- - - which is a presentation of 31 October 2008?---Yes.

And then I think the page references for the figures under phase one are to be found on page 10 of that attachment priced somewhere the exact - - -?---Yes, that (indistinct) I think.

And then SOS 3, statement of scope 3 - - -?---Yes.

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- - - referred to in the October column on the last page - - -?---Oh, yes.

- - - that, as I understand it, is a figure that simply carried across because statement of scope 3 had by then been - I think IBM had asked to exclude statement of scope 3 from that part of the assessment?---Yeah. It was actually included in that for consistency for more valid comparative purposes.

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So the bottom line remains comparable but recognising the - - -?---Comparable within a reasonable degree of tolerance.

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Yes. So on that assessment, there's the total price, if you like, of 115 million under the ITO with the adjustments made, 133 million and then 181 million on the October assessment?---Correct.

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Now, as a result of these figures being presented and analysed by Sally and then presented to you, what occurred as a result? What was done with these figures and who did they go to?---Okay. These figures were part of - well, the whole output of statement of work 4 and the analysis thereafter were used to brief, ultimately, the director-general of the then Department of Housing - sorry, Public Works, to brief him on, effectively, where we were in the program and some options for how we were to move forward with IBM.

10

Yes. And what came of that consultation, to your knowledge?---Well, ultimately, if you look at the end point, the end point was that there was an agreed government position that IBM's role would be curtailed and reduced or reduced to that of delivering the Queensland Health payroll and then all other statements of work would come to their end, and then no further statements of work would be written under that contract.

20

And what was the factors, to your knowledge, that went to the making of that decision? Was your analysis a part of those factors?---Yes, the analysis that we provided, I would suggest, would be a significant component of that decision.

30

And do you know what other factors were involved in the decision made not to permit IBM to have further statements of work?---No. Primarily, from my recollection, it was really around the affordability of what was being presented for government.

Can I show you one last document then in volume 8, page 98 of volume 8. 98 and it is executive steering committee government members meeting minutes. Now, you attend, I think, as an advisor. You're there mentioned on the right-hand side of the box at the top?---That's correct.

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And the bit that I wanted to direct your attention to is the first paragraph under the heading "Business Solutions Program Cowan Way Forward"?---Mm'hm. Yes, I'm familiar with that program.

In reference, IBM instructed to proceed with delivery of the QH LATTICE interim solution only?---Correct.

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Is that, to your knowledge, the first formal record of the decision being made that IBM are to have no more statements of work under the head contract?---Correct.

Mr Commissioner, that's the evidence of Mr Brown from
counsel assisting's perspective. 1

COMMISSIONER: Yes, thank you. Mr Kent?

MR KENT: Thanks, commissioner. Can I ask if Mr Brown
could see again volume 9.

COMMISSIONER: Yes.

MR KENT: And it's document 239, page 82?---Sorry, what
page number was that? 10

82?---Thank you.

Now, I think this is the passage - and it may be
highlighted on your copy - that you were cross-examined
about, examined about by Mr Horton - - -?---Yes.

- - - a short time ago about this being an abandonment of 20
the previously established criteria in relation to the
defects. Can you just tell me, did you consider that or do
you now consider that to be an abandonment of those
criterias?---No, I do not.

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Why is that?---Because as I attempted to explain before, this was an attempt to eliminate a lot of colloquial language around the severities and how they were being classified and to introduce more precise and definitive language, but not at the expense of there being any severity 1, 2 or 3 classifications. 1

It certainly does seem a bit - - -

COMMISSIONER: But if you disregard severities, how do you then classify defects by reference to a category of severity?---I don't believe - and, for example, we weren't abandoning the severities. 10

But if you disregard the word "severity", if it doesn't appear in the lexicon, how then do you categorise a defect by reference to the non-existent word?---But I'm not suggesting we did abandon severities, Mr Commissioner.

But what is meant then by disregarding the word "severities"? That's what it says, "Disregard all severities - - -"?---I understand what it - I understand. 20

What does that mean then?---Again, my interpretation is, as I've stated before.

Sorry. I don't understand it. Can we try one more time please?---Okay. I do not believe, Mr Commissioner, that this was an abandonment of the severity 1, 2 or 3 classifications. 30

Yes, I understand you say that?---Right. I believe this was an attempt to address a lot of colloquial language around how severities were being classified internally by the project teams.

Tell me this: under this proposal, how did you determine whether a defect was of such a nature that it ought to present a - - - ?---Okay. That would have - I mean, in normal circumstances you would have seen whether it passed or not the particular test. 40

Put that to one side. We have got a new test. What's the new test?---But my proposition, Mr Commissioner, is I don't believe that the original tests were abandoned and so in all instances the severity 1, 2 and 3 classification was still used as a way of classifying those errors.

As Mr Horton established, that didn't stop the program or stop the system being accepted. They might be cause of categories 1, 2 or 3 - - - ?---Yes. 50

- - - but if it was categorised 1 or 2 - well, 2 anyway - it didn't stop the acceptance of the system, did it?---No. The - - -

If there was a workaround?---Because of the workaround or it didn't affect pay. You are correct. 1

All right. I understand that. Thank you.

MR KENT: I'll just ask you another couple of questions?
---Sure.

To this point, which seems to be, the documents dated 12 May 2009 - - - ?---Yes. 10

The criteria were that had there been a severity 1 defect present that would have stopped a go live happening. Correct?---Correct.

Did this change that?---No.

All right. There does seem to have been, as you were taken through an eventual reorganisation or reclassification of these severity of defects and you were taken to documents about that - do you remember that?---Yes. 20

I think Mr Commissioner may have asked you whether you could identify a document that was the source of advice about that. Can you recall the document?---I can recall the management plan being discussed and early drafts being tabled at the project directorate, so I would rely on that management plan.

All right. What about reclassification of severity 2 defects? Do you remember documents touching on that?---You mean the process of reclassifying the severity 2's or the classification itself? 30

Either?---All right. Okay. I do not recall seeing any documents where the - or demonstrated a process about a particular error being classified from severity 2 to severity 3. All right. I don't believe those documents were tabled at the project directorate. 40

All right?---What I do recall was the - yes, I'll leave it at that. Yes.

Did you say in your evidence earlier that there might have been oral discussions or advice on the topic?---There were - yes, that is correct. Yes.

Who would that have been likely to have come from?---Okay. Primarily that would have come from the test team via either Tony Price - would have come from Janette Jones - and/or would have come from Ms Jane Stewart. 50

What was her position?---Jane Stewart was an officer within CorpTech who had some accountabilities around the operation and support of the existing payroll system for Queensland Health.

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You don't now recall in particular precise terms who was the source of that advice or those conversations?---Not in precise terms, but look it primarily would have come from those three individuals.

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All right, thank you. Yes, nothing further. Thank you, commissioner.

COMMISSIONER: Mr Traves?

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MR TRAVES: I do have some questions. Thank you.

COMMISSIONER: Yes.

MR TRAVES: Mr Commissioner, the witness will need ultimately to see at least volumes 13, 14 and 15.

COMMISSIONER: It's probably easier, because of the cramped nature of the witness box, if people identify each time the volume - - -

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MR TRAVES: I'm happy to do that.

COMMISSIONER: - - - my associate will give it to the witness.

MR TRAVES: I'll do that. Thank you.

Mr Brown, I'm looking at paragraph 52.

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COMMISSIONER: This is the first statement?

MR TRAVES: Of your first statement where you talk there about the decision to go live and you say elsewhere - I'm sorry, you say there, indeed, that you chaired a group project directorate which reported to the QHIC Project Board?---Yes. I can remember I did chair the project directorate.

But can I suggest that to state that the role of the project directorate was to report to the board would be to understate in truth what it was doing?---Yes. Look, it wasn't just a reporting mechanism. It presented advice and options and matters for consideration and recommendations.

40

Indeed, it was the principal body to which the board looked for advice concerning the project?---That would be correct.

It was so because it comprised people themselves who had greater expertise than the members of the board?---That was the proposition. Yes.

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With ready access to experts, that is, ready access to experts to consult - members of the project directorate could readily consult experts?---Yes. I believe that would be the case.

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It comprised members, including representatives of the contracting parties who might sensibly be thought to be looking after their own contractual positions?---Correct.

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Indeed, in the case of CorpTech, it comprised members of a body which, like Queensland Health, was a government body and might be thought to be representing its interests? ---Yes.

I just wanted to take you through the chronology of the go live decision, if I may, with reference to the board minutes and some recommendations that the directorate made?---Sure. Yes.

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Could I in that respect direct your attention to the meeting of 21 January 2010 where the QHIC Board resolved to exit UAT4 and to move into technical cut over. I'll take you to the minutes, but you recall the event, I take it? ---I believe so. Yes.

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Can I take you to volume 13 of the documentation at page 257. Have you got that there?---Yes, I have the document.

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All right. Now, is that a brief for decision from the project directorate to the board members, dated 21 January 2010?---Yes.

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And is it recommended there by the directors, of which you were chair, to the board that the QHIC project board members approved that a system change freeze is put in place at 5 pm on 22 January 2010, and simulation to commence on 25 January 2010 as per the agreed project schedule?---That is correct.

10

What was the importance of that decision to the progress of the project?---That relates to cut over activities to ensure that while you transition from a development environment that you have a stable set of configurations in code that you can transport into a production environment, and so therefore you know that what you're moving into ultimately what will become a payroll system is the same as what has been tested.

20

If you look down at the bottom of the page, there's a heading there "Status"?---Yes.

Across the page, "The UAT exit criteria are on track to be provided, according to the agreed schedule"?---Yes.

Then reference at the fourth dot point to a defect and solutions management plan?---Yes.

The first dash under the dot is that, "The project directorate members own and will maintain full charge control - - -

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COMMISSIONER: Change control.

MR TRAVES: Change control, thank you, "of this management plan"?---That's correct.

What did that mean?---It means that the project directorate would oversight the progress and activities of the rectification identified in the plan, and that, you know, if there were further errors found that would be a change control process that would control the way to update and maintain that document.

40

And the use of the word "own" can I suggest was that the project directorate was accepting responsibility for the sufficiency of the defect and management plan?---Yes, and that interpretation would be used and I think that's acceptable.

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That's the correct interpretation?---Yes, it would be.

And then, "Consultation with stakeholders" at the base of the page. "Members have reviewed the current status of the

project deliverables, agree that SIM 2 should commence on 25 January," and so on?---Correct. 1

Can I then ask you to look at, please, page 175 in that volume? Again, that's a brief UAT exit from the project directorate to the board, and, on this occasion, dated 22 January 2010?---Yes.

Can you see the recommendation that, "The QHIC project board members agree to allow UAT 4 to exit with the process being managed through then defect and solution management plan," that we've just spoken about?---Correct. 10

COMMISSIONER: Is that the same document as described as the comprehensive management plan? Do you know, Mr Brown? ---I believe those terms were synonymous, yes.

MR TRAVES: Then over the page, "A delegated caucus of the project directorate members have been meeting daily to develop the plan that will continue"?---Correct. 20

And the project was endorsed by the directorate team, that is, on 21 January 2010?---Correct.

"The project directorate now holds responsibility for change, control and manage the plan"?---That's right. That's correct.

Can I then take you to the decisions of the board, relevantly? First, at page 174, you'll see they are the QHIC board meeting minutes of 22 January 2009?---Yes. 30

You'll see reference there that the board was presented with two briefing notes, and they're the briefing notes that I've just taken you to?---Yes, that's correct.

Can I take you to page 282? They are the minutes, are they not, of the - - -?---Excuse me, I haven't quite got there yet. 40

They purport to be the QHIC board meeting minutes of 27 January 2010, it should be, I think?---Yes, that's correct.

And you'll see in the last paragraph that the brief submitted to the board entitled "Confirmation of simulation 2 commencement was endorsed and approved", and that Mr Shea formally signed off the document?---Correct, yes.

So it's an adoption of your recommendation?---Of the project directorate's recommendation, yes. 50

And then 341, if you would, please, in the same volume? ---Because I believe that the brief submitted by the board at that time for that board meeting, the board was chaired by Mr Phillip Hood.

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Thank you?---So it wasn't my recommendation, it was the directorate's recommendation. 1

At page 341, meeting minutes of 29 January 2010, the QHIC board meeting. You were present, I see, at the meeting?---That's correct.

And you'll see there the board accepted the recommendation of the directorate to commence the SIM 2 gate 2 entrance - - -?---That's correct, yes. 10

- - - into business cut over?---Yes.

I wish, now, to direct you to a briefing note at page 321 of volume 13. That's a briefing note of 27 January 2010, from the QHIC project directorate to the QHIC board members?---Yes.

The subject being the confirmation of simulation 2 commencement?---Yes. 20

And the recommendation that the board note that the UAT criteria has been met and all deployment system readiness criteria have been met also?---Correct.

And that really then speaks for itself, the recommendation in pg.

And that really then speaks for itself, the recommendation in paragraphs 1, 2 and 3. The status report, two paragraphs from the bottom, "The defect management plan is being managed and controlled, as approved by the board"? ---Yes. 30

And that implies the directorate?---Yes.

Can I take you then to the brief noting at page 143 of volume 14?---I'm sorry, may I have that page number again, please? 40

Page 143, Mr Brown. Is it correct to say that's a brief for decision of 1 February 2010 from the Queensland project directorate to the QHIC board members?---Correct.

And under "Recommendation", there's a recommendation that the commencement of cut over technical phase made in the risk profile surrounding a number of criteria with amber status?---Correct.

What was the purpose of the note there, was that because it was a recommendation to proceed notwithstanding the existence of those amber status items?---That would be correct. 50

And then there's reference to a full risk profile and subsequent mitigation plan?---Yes, that's right. That should have been attached to the briefing note. 1

Can I suggest that the note suggests that, that would be prevented before 1 March 2010, that is, that plan?---I don't have that - - -

COMMISSIONER: Yes, it's the last line of that paragraph, Mr Brown. Mr Traves suggested that means it's - - -?---Oh, yes, sorry, I've got that, yes. 10

- - - was dealing on 1 March?---Yes, thank you.

MR TRAVES: Can I then take you to the minutes of the board meeting of 1 February in volume 14 at page 34. Now, you'll see there that the recommendation from the project directorate board is set out?---Correct.

That is that there be a commencement of cut over technical phase?---That's right. 20

You'll see in the last paragraph a reference there to the construction by the project directorate of a briefing note addressed to the board stating their recommendation to enter into technical cut over?---Mm'hm.

Was that prepared subsequently?---I believe it would have. It's my expectation that could have been devised. 30

All right. Could I ask you to look at page 148 of that volume?---All right. I have that.

Now, can I suggest that's a PowerPoint presentation which was presented to the board on 1 February 2010?---Yes.

Is that correct?---That is correct.

Was the directorate responsible for the compilation of the PowerPoint presentation?---Would have been - my expectation is it would have been passed through the project directorate on - it's not - hasn't got a page number. On the approver's matrix, you would see all the parties involved. 40

Can you recall who presented it?---No, I can't recall specifically who presented it.

In any event, when one goes to the second page of the document, which is on page 149 of the bundle, you'll see the meeting objective, "Approval to proceed with the QHIC technical cut over will be sought from the QHIC go/no go live approval body on the basis that," and there's a number of representations about the current or then status of the project?---Yes, correct. 50

You were given that advice. Is it the advice accepted by the board?---I'm sorry, I didn't hear that. 1

Were it the fact that the board accepted that advice, you would agree the decision of the board to proceed was reasonable, given what had been represented to?---Yes.

Indeed, if one goes to page 34 of volume 14, you'll see the decision of the board there to seek a recommendation and to enter into technical cut over?---Yes, that's correct. 10

Now, having taken those decisions to that point of time, what really then stood in the way of the final decision to go live, what next was to be done, effectively, what still was to be done? The rocket was on the launch pad, Mr Brown, what was next to be done before take off?---As I've understood, we've presented a series of documents to the project board that indicated there were a series of criteria that had been met. At the end of the day, the board had all information in front of it and it made a decision based on that advice to proceed to cut over. 20

But at this point of time for the directorate, it was, to use the phrase, all systems go?---Well, the recommendation was to proceed to a cut over, yes.

Now, can I take you then - ask you some questions about the adventure on 10 February and ask you to look at page - sorry, page 240 of volume 14?---Yes, I have that document. 30

Now, that is a document dated 10 February 2010?---Yes.

A briefing note for the board from the directorate?---Yes.

And contrary - if I could suggest to you - to a relatively positive outlook on 1 February, now there was an information to the project board that the risk categories associated with the go live approach from the directorate? ---That was a risk assessment as assessed by the project directorate at that time, yes. 40

Now, was that a document which was - which followed chronologically and was prompted by the K.J. Ross report? ---I'm sorry, may I have that proposition put to me again?

Were you prompted by the contents of the K.J. Ross report? ---I don't believe that was a direct correlation of this. My recollection of discussions, that the K.J. Ross report was not the driver of this recommendation, of this particular document being created. 50

All right. Can I take you then to page 235 in that volume?---Yes.

This is then the QHIC board meeting minutes of 10 February 2010 which you were present and you will see the first paragraph, the briefing note, QHIC project risk profile was taken at the board?---Yes. 1

It seems likely that was the document that I just took you to?---Yes.

You can see the contents were discussed at length and the board was accepting of the content. Adrian signed off on the brief to represent that it was noted. Do you see that? ---Yes. 10

And then further down about the middle of the page, the post go live management plan was tabled at the board by Mark. This plan was discussed at length and the board agreed with the recommendation of the project directorate to proceed forward with this plan. Was the essence of the discussion at that meeting the proposition, in effect, that the post go live defect management plan which the directorate was responsible was recommended by the directorate as an adequate response to the risk report which had been tabled?---It is my recollection that while some items on the risk report may have had linkages to the defect management plan, the risks identified weren't solely confined to that contained within the defect management plan. 20

Was the recommendation of the directorate to the board that the plan adequately dealt with the risks at the time? ---Yes, the recommendation was that, yes, it was. 30

Then can I take you to page 421 of volume 14. Is that a brief denoting for the board from the directorate dated 24 February 2010?---Yes.

And again, the recommendation the QHIC project directorate wishes to inform the project board of the risk categories associated with the current go live approach?---Mm'hm. 40

And then the QHIC board meeting, if I could take you to page 433, that is the board meeting of the same date, 24 February?---Yes, I have that.

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Again, can I suggest a meeting of which you were present? 1
---Yes, that's correct.

And then toward the end of the page, perhaps two-thirds of
the way down the page, "The UAT completion report and
management response was accepted and approved by the
board." Was that a UAT completion report provided by the
directorate, reference then to the management report
previously discussed?---I believe that related to the KJ
Ross report is my recollection. 10

All right, thank you. I take that on board?---Yes.

I believe that relates to the - - - ?---KJ Ross report.

All right. But it's fair to say, is it not, that on
24 February 2010 the attitude of the directorate and its
recommendation to the board remained the same as it was on
10 February 2010 that it was to proceed?---Correct. 20

Then if I could take you to page 146 of volume 15?---Can I
have the page number again please?

Yes, 146?---Thank you.

I'm really only doing this, effectively, for completion,
Mr Brown. I see you're at the meeting there on 12 March?
---Yes, that's correct.

And there were some issues concerning testing which were 30
raised?---Yes. They relate to agreed defects that were
going to be resolved post go live, hence the acronym PG1.

All right?---And that's confirming they've all been fixed
and all passed the testing.

And there's reference to the defect and solution management
plan. I don't think it's particularly material?---Yes,
there is. 40

Then the final go - no go decision date was set then for
14 March. That's at the bottom of the minutes?---Correct.

Could I take you then to volume 15 at page 166. They
appear to be the QHIC Board meeting minutes of 14 March
2010 at 7 am?---Yes.

I see the names of the project directorate members who were
present are not recorded. Do you recall whether you were
there or not?---My recollection is that was a telephone
hook-up which was - I believe I may have participated via
telephone. 50

I'll come back to that page, but can I ask you now to go to
page 213 of volume 15?---Page 213, was it?

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Page 213, thanks, Mr Brown?---Thank you.

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That's a brief for decision for the board from the project directorate dated 14 March?---Yes.

The recommendation from the directorate to the board is that the Queensland Health and Implementation of Continuity Program Board approves business go live for the LATTICE payroll replacement project?---That's correct.

10

The second dot point under background summary, "Criteria to determine the basis for business go live has been established and agreed by the Queensland Health and Implementation and Continuity Program Board"?---Yes.

And then there's a reference to the extraordinary project directorate meeting on 14 March - - - ?---Yes.

- - - to discuss the criteria?---Yes.

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Back to page 166?---166? Yes, I have that page.

Ultimately, the go live decision was made by the board acting on the recommendation of the directorate?---Correct.

Thank you, commissioner.

COMMISSIONER: Mr Ambrose?

MR KENT: Commissioner, I do apologise. There's one formal matter that I should - - -

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COMMISSIONER: Yes. By all means, ask the question.

MR KENT: Thank you.

Mr Brown, do you have with you your first statement?---Yes, I do.

If I can take you to paragraph 1?---Paragraph 1?

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On my copy, at least, it says that you joined CorpTech on 7 June 2008?---That's what I have. Yes.

Is that correct or was it July?---Sorry, yes. It was probably July. So I hadn't spotted that as an error.

I think July is the month which you nominated for Mr Horton?---Yes, yes.

50

I just wanted to know, do you want to correct that in your statement, do you?---Yes, thank you.

COMMISSIONER: Mr Brown, have you got a pen? Do you mind just striking out the June and writing in July?---Yes, thank you. Yes.

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MR KENT: Thank you, commissioner.

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COMMISSIONER: Mr Ambrose?

MR AMBROSE: No questions.

COMMISSIONER: Mr Doyle?

MR DOYLE: Yes, commissioner.

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Mr Brown, just a few things. When you were asked some questions by Mr Horton about a view which was held early that IBM had not performed, you said that some advice was obtained from Mr Swinson or, at least, you understood it had been obtained from Mr Swinson - - -?---Correct.

- - - dealing with some things?---Correct.

I want to ask you about some aspects of those?---Right.

20

I think you expressed that - am I right in recalling that after receiving that advice there was a moderation of the view that IBM was in breach. I think you used the expression, "The view was moderated by that advice"?---I think it's fair to say that it was still a firm held belief within that strategic program office that IBM were in breach, but a broader assessment taking in other factors would indicate that progressing a breach matter with IBM would be problematic, I think is the best way to describe it.

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The two things that I think you mentioned were something to do with schedule 22A?---Correct.

The issue was whether it was a contractually enforceable provision?---Correct.

The second thing was something to do with the Housing solution?---Correct.

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And the issue, without going into the detail, was the extent to which that had or hadn't been articulated within scope of work 8 as something IBM had to do?---Correct.

Thank you. Broadly speaking, you can recall that one of the things IBM had to do was the LATTICE replacement system?---That's correct.

And that was initiated by the statement of work 7, by which it was to conduct some work to define the project and then statement of work 8 to carry it into effect?---Also I think there was an 8A in there somewhere.

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There was an 8A. You're quite right?---Yes.

Am I right to recall that at least the initial aspects of that occurred before you commenced work at CorpTech?---That is correct.

1

Indeed, there were some change request which affected that which took place before you commenced at CorpTech?---That would be correct.

I assume you informed yourself of those facts that it had been done and had been - - - ?---Yes. I had the opportunity to review the files and form a view on that, even though they occurred before my arrival.

10

Good. You'll be able to help me with this: it's right to say, isn't it, that there was - just focusing on the identification of what needed to be done in the LATTICE replacement system - a degree of dependency, that is for IBM to identify what needed to be done required Queensland Health personnel to identify for it what its requirements were - what Queensland Health's requirements were?---It's my understanding that as part of the statement of works that IBM were engaged to assist with the development of Queensland Health business requirement. A requirement would be for then Queensland Health to actively participate in that process.

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Tell me if you can recall this: there was a table of accountabilities which identified who had to do what?---I don't recall the specific table, but I do recall in general terms some accountabilities being defined. Yes.

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Even if you can't recall the detail, which would identify what had - - - ?---Yes.

- - - to be done and by whom?---Yes.

Yes. All right, thank you. Can I ask you about a different question, that is, to better understand the change request process and we probably don't need to do this with respect to any particular change request, but it is right to say that either party, CorpTech or IBM could initiate a change request process?---That would be correct.

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And it would be initiated by some form of discussion, is that right?---Some form of discussion or as an outcome of meeting or a representation or a board decision. 1

Often we see in these change requests a recitation of, if you like, the history of what has led to the change request being produced?---Yes, in concise form.

I mean, it's a summary form?---Yes. 10

But if that reflects the truth that the change request documentation was generally preceded by lots of dealings between the parties about the thing which became the subject of the change request?---Yeah, I believe in the change request document there's an opportunity to recite discussions or consultation, yes.

All right. There is within your organisation a change advisory board?---That's right, and that was a contractual requirement. 20

Very good. And its function included, ultimately, receiving the detail of the change request from whomever initiated it. Yes?---May I have that again, please, I'm sorry?

Its function included being informed of the change request that was being sought?---Correct.

To inform itself as it needed to about the facts, the subject matter of the change request, and to make judgements about whether it was or was not a request that should be approved?---Correct. 30

And to make a recommendation about that?---Yes.

The composition of that advisory board, did it change over time?---Yes, it did.

Broadly, can you tell me when you were there who was on it and what their expertise or disciplines were?---Broadly, the solution design authority was represented, and as I've indicated before Mr David Ekert chaired that for a reasonable time period. That comprised members of the solution design authority who had some knowledge of both the government's requirements and also the ITO process. I believe that the strategic program office may have been represented there. Representatives from Education and Training and Queensland Health participated on a regular basis but also on a as needs basis, if the particular change request didn't warrant their attendance their specific input was not required and therefore they may not have attended. 40 50

COMMISSIONER: What was the background of people, were they lawyers, were they technicians, were they public

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servants?---It was a mixture of skills and competencies, Mr Commissioner, it varied from a public servant who had specific knowledge around payroll and payroll processes, Mr David Ekert had a technical background and so it was a combination of what I would call "business and technical people", and of course with the strategic program office, I would expect there to be some more contractual knowledge there as well.

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Thank you.

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MR DOYLE: And those people were, broadly speaking, public servants?---In the main, but there were some that were contractors, yes.

Also, IBM was represented on the - - -?---Sorry, yes.

Apart from IBM, it was government people who are public servants or contractors to the government in some form and IBM was separately represented?---Yes, IBM were represented.

20

All right. Thank you. Apart from the people who are actually on that board, I think I understood you to say, "If there was a need to obtain some greater knowledge or expertise, the board had the facility to do that"?---That's correct.

To ask questions as may be required?---Yes.

30

And you can recall it doing that in the course of your time?---Not that I can recall.

All right. Thank you. Now, I want you to go, please, to volume 5, at page 234, just to see the document that I'm asking you to look at?---I've got a document called "QHIC Test Plan".

That's the one. If you turn across to page 258?---Yes, I have that page.

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There's a table at the top which identifies various levels of severity, do you see that?---Yes.

It might be hard to read because it's in blue, but it has the word "severity" and then beneath it "1, 2, 3 and 4" with - - -?---Yes, I have it.

You've been asked some questions about the identification and then reclassification of levels of severity defects. Do you recall that?---Yes.

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Is it your recollection - I'm sorry, and someone who conducts a test will be the person who first identifies something as a defect and attributes to it a description

whether it was 1, 2, 3 or 4. Is that how it works?---If 1
we're talking generically, yes.

Generically for these purposes?---Good. Thank you.

And it is right to say that views can reasonably differ
about whether something is a defect at all as distinct from
it being something which was never within the functional
scope to be provided?---Correct. 10

And you can recall in fact that very issue was something
which IBM was urging in respect of a lot of things which
were described as "defects"?---Correct.

And it is also right to observe that people can - even
assuming it to be accepted as a defect - people can
disagree reasonably about whether it's a 1 or a 2 or a 3 or
a 4?---Correct.

And that too is something that you can recall was actively 20
the subject of argument?---Yes, I wasn't involved in the
specifics, but, yes, there were conversations around the
level of severity.

All right. Now, was there a process by which the competing
views were aired and attempt made to agree whether it was a
defect or a functional requirement which wasn't contracted?
---Yes, there was a process in place and ultimately it
ended up, depending on which time frame we're talking 30
about, either at the executive steering committee for final
deliberation, or in the case of the LATTICE or the QHEST
project, it would have ended up ultimately at the project
board or discussions with senior officers from both
Queensland Health and CorpTech at the time.

Well, can we deal with it generically, I'll come to the
specifics if we need to?---Right.

What was the starting process? I take it there would be a
representative of IBM and a representative of someone else? 40
---Again, as I indicated in my evidence, I wasn't party to
the UAT so I had no visibility into the process within
Queensland Health as to how that may have been undertaken.

Are you aware though that at least on some instances the
result of those exchanges, things which someone first
described as a defect were accepted as being in fact
something outside the functional scope you required?---I'm
aware of divergent views or views that indicated a
difference of opinion about whether things were in scope or 50
not.

Do you recall some instances where IBM, on the day, that
is, they urged something was outside of scope of the
competing position, or whoever was holding the competing

position, accepted IBM's view?---Again, I can't talk for what occurred within the testing team, but I do recall some concessions made - "concession" is the wrong word, but some discussion at the project directorate level where it was agreed that what was originally deemed a defect was in fact for further deliberation identified as a new requirement.

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COMMISSIONER: Concession may have been the right word. Can you recall any of these arguments that IBM didn't win? ---A couple, Mr Commissioner, yes.

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MR DOYLE: And can you also recall occasions where things which were identified as a severity 2 defect were, upon further consideration, identified as a severity 3 defect or, indeed, severity 4?---At the project board level, I'm only aware of one such discussion that may have been in the April time frame of 2009 where a concern was raised by Mr Doak of IBM regarding the classification of errors and his proposition at that time was that new requirements were being classified as defects or at the wrong severity.

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Yes?---I think the instructions from the project board at that time was for a working party to go away and review the errors in question. My recollection, and it would it be in the board minute summary, but I think coming back to the board, either no or only one of the defects in question were reclassified.

All right. Now, you were taken this morning by Mr Horton to a document which talks about the reclassification of severity 2 defects to severity 3. Do you recall that? I'll show it to you?---Yes, I recall that, yes.

20

Can you tell me, please, do you know what were the things which were identified as 2 but reclassified as 3?---I cannot recall the specific nature without having to refer to further documents.

Okay. Well, I won't bother you?---But I do recall that there was of a range and I can't remember the exact number, that only one was agreed to be reclassified as a severity 3, not all.

30

Thank you. Now, can I ask you about some things in your second statement? Which - more importantly, you'll need the attachments too, I think?---Oh, yes. Yes, I have those.

Thank you. I just want to start by understanding attachment 3, which is the spreadsheet?---Yes. Yes, I have that.

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And the objective of this was to present, as it turns out, three different sets of figures in order to draw some comparisons or in order to see where the project was going? ---I think more precisely it was an attempt to baseline future and projected costs around some propositions that were put to us by IBM as outcomes of statement of work 4.

All right. We'll see how we go. The middle column refers to a presentation of 15 August and you've given us that presentation as an attachment to your statement?---That's right.

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It's right to say, isn't it, that by 15 August 2008, to your knowledge, there had been a significant number of change requests which had been approved, some of which had caused additional payments to be made to IBM?---That's correct, yes.

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And a lot of them were in respect of what were accepted to be enhancements or enlargements of scope of work to be performed?---Correct.

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Is it possible by looking at this table to identify the figures which represent the contributions made to the figures in the middle column by the change requests that had come into effect by the date of contract and 15 August?---That detail is there, yes. There's full traceability for each statement of work. There is a very detailed set of supporting documentation.

I'm sure that's so, but just take an example, if you would - - -?---Right.

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- - - statement of work 13, we see that - - -?---In the middle column?

In the middle column?---Yes, yes.

Which is just under \$6 million?---Correct.

It is not identified in this document whether that is a sum payable pursuant to a change request or a sum which was payable under the contract?---That was not the purpose of this document.

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No, that was the purpose of my question, although very badly put, so that one can't, by looking at this document at least, identify the figures which are payable pursuant to change requests as distinct from figures payable ignoring change requests?---That is correct but that information is available and could have been and had been constructed, of course.

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Thank you. And the - you understand that the process under the contract was for some - at least some - best estimates to be provided for work to be done?---Initially.

Yes, and for ultimately those best estimates to be turned into fixed prices?---Correct.

Can I ask you to go to the August presentation, which was attached to your statement?---Yes, 15 August.

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Yes. Would you turn to page 11?---Yes.

You'll see at the bottom of that table, there's three columns headed "Statements of Work 20, 22 and 29"?
---Correct.

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And if we went to them, we would see, can you accept, they are the statements of work which seek to identify the fixed prices for things which were previously best estimates? ---The statements of work were a way of presenting those figures, so I wouldn't want anyone to get the impression that these statements of work were agreed. They were a proposition and they were couched in terms that provided a framework should we wish to proceed. 1

I put my question, as always, very badly. The thing which IBM had to do was to produce a statement of work which identified a fixed price for something which under the contract was a best estimate?---Yes. 10

And they did that in, I'm suggesting to you, statements of work 20, 22 and 29, which, for the moment, you can, we'll agree, was not accepted?---Yes.

But they did that. And if you went to them, I'm suggesting to you, what you'd see is they do in fact provide fixed prices for things which - - -?---Sure. 20

- - - are said to be otherwise statements of scope under the contract where best estimates were recorded. And if you look to the right of this column, you'll see that it's statements of scope 2 and 3 which are the subject of the figures which those three statements of work give fixed prices for?---Mm'hm.

And they also identify in the statements of work what IBM says to be additional services which are outside of the statements of scope?---Yes. 30

You can recall that?---As proposed by IBM.

As proposed by IBM?---Yes.

So that the presentation of this document by IBM identifies fixed prices for what was previously best estimates?---Yes. 40

And also identifies what it contends to be additional services?---Yes.

Okay. Thank you. And you attempted to - - -?---So we're back on the - - -

Back on to your schedule 3?---Okay. Thank you.

Annexure 3. You had or someone within your office has carried that information across to the middle column - - -?---Yes. 50

- - - making an allocation, which I'm not going to debate with you, about how much of that is phase one additional services and how much it is phase two additional services? ---Mm.

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Okay. Thank you. Still dealing with your attachment 3, the right-hand column deals with a later presentation by IBM?---That's right. 1

And the philosophy of the table is to endeavour to do a like for like comparison, it seems, to set out on the right-hand side figures that can be compared to the middle column?---Within broad terms.

Within broad terms?---Yes. Well, they had not the exact dollar or cent. 10

Well, I want to ask you, you'd accept, I suppose, that at least in terms of this sheet that the right-hand column does not identify those things which are sums payable only pursuant to the change requests which had been approved? ---Yes, but again I go back and say that wasn't the purpose of this document.

I understand that. But what can we see, if you look at the right-hand column, that the figure of 50 million-odd is much higher than the figure of 40 million-odd which appears in the 15 August figure?---That's right. 20

And does that suggest there have been additional change requests which have been approved between 15 August and 31 October?---That is one but not the only explanation of why the figures changed.

Okay. But one of them is that there have been additional change requests which have been - - -?---There may have been, yes. 30

- - - through an increase - - -?---Yes.

- - - in the sum payable under the contract?---Yeah. Yes.

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What's the other explanation or the other explanations? 1
---Well, they may have been - upon reflection, it very well
could reflect to change request because the first column is
meant to try and establish a baseline for current
expenditure and commitments.

Right. So it's - - - ?---Yes.

When we look at the August column, that's not just the sums 10
that have been paid, but the sums that are committed to be
paid?---Yes. What would probably be within that time frame
at that point, there would be further potential commitments
that would have fallen due perhaps in column 3. Yes.

All right. We'll go to the detail if we need to. Then
the figure which you've got as the phase one figure - - -?
---Which column please?

Sorry. In the right-hand column, the far right column? 20
---Thank you.

Comes from the 31 October attachment?---That's correct.

You know, don't you, that that attachment contemplates that
IBM is still saying it is providing additional services to
CorpTech or offering to provide additional services to
CorpTech?---That's right.

Above and beyond what it would, that is IBM, contend it was 30
obliged to provide under the contract?---That is correct.

The figure of the 96-odd includes a component for those
additional services?---Correct.

But you've not been able in the presentation of the
right-hand column, the 31 October column, identify a figure
for those additional services. Is that as we should
understand it?---Yes. That detail is not shown.

But it's known there are those things and, undoubtedly, 40
people appreciate that IBM was contending that this figure
included additional services?---That's right.

All right, thank you. Would you go to the second
attachment to your statement which is the 31 October
presentation?---Yes. I have that document.

Would you just turn to sheet 8 for the moment, please? 50
---Yes, I have that.

Can you help me with this: on the left-hand side of that 50
it's got statements of work 20, 22 and 29 and those are the
three that we talked about a while ago. You know that
within those - sorry, I'll withdraw that. Those are the
three which we talked about before - - - ?---Correct.

- - - which are included, if you like, in the 15 August figure which was presented?---I'm aware. 1

Yes, all right. Then underneath it's got at the last dot point, "RICEF account, a total of 5547"?---Yes.

Which are sort of identified. Then if you look in the right-hand column at about point 7 or point 8 of the page there's a RICEF account total of 1008 - - - ?---Yes. 10

- - - with increased figures before and after, can you tell me please your understanding of what a RICEF account is and what the differences between those figures represents? ---Well, the RICEF account is reports, interfaces, control objects. It's a methodology or a process by which ITO organisations and systems integrators can use to provide some form of basis and estimation for undertaking systems implementations.

All right?---What this is showing is it's showing an increase over that count, which is really an aggregate count so I couldn't give you the breakdown of whether it was reports, interfaces - - - 20

No, no. I understand?---Yes, yes.

An increase in that account between that which was represented in the August presentation and that represented in this presentation?---Mm. 30

That's fine. All right, thank you. I'll just show you one more thing or perhaps you can help me with this, after the 31 October presentation there were emails to which you were a party seeking further information from IBM or, at least, the question of the go forward amount was the subject of further dealings between CorpTech and IBM?---Correct.

I'll just show you this to see if this helps you? ---Thank you. 40

You should have there an email from you, Mr Brown to Bill, which is Bill Doak?---Yes, yes.

Copied to various other people you see at the top; which refers to an IBM's 4 November proposal, so it's a later one than the ones that are in this spreadsheet. If you turn over the page - the detail of which I'm not going to ask you about?---Right.

You've got a very small printed version of a spreadsheet? ---Yes. 50

I want to direct your attention to table 4 at the bottom. You'll see, "IBM estimate complete," and then it's got, "Proposal 31 October 2008," and that's the figure which

appears in that proposal which you've attached to your statement"?---Yes. 1

And underneath that it's got, "Less 4 November changes," and a figure. I'm testing your memory. Can you remember that there was a subsequent presentation by IBM which reduced the figure by \$43.75 million?---I believe there was a subsequent presentation, but I cannot recall the - - -

Figure?---- - - figure. 10

For it to be in this email, it must have been that figure? ---Yes, yes.

Can you help me with this please. Can you recall IBM's presentation being one which took out those things which you'd identified as the additional services, the beyond scope services, which had been included in its 31 October figure?---Yes. Look, the process, I'm happy to confirm, is we did ask IBM to go back and withdraw - sorry - take out of the November 4 proposal a range of activities. 20

That is to take out of their 31 October figure a range of activities which led to their 4 November figure?---Yes.

Those activities were those which had been identified as additional services?---Yes.

Thank you?---But I should also clarify that those services were essential in our mind to the effectiveness and completion of the program of work as originally envisaged. 30

It would be right to say that you would see all of the services as being essential?---Yes.

The contract provided really the decision as to whether they be undertaken or not was with CorpTech?---Yes, but what the contract didn't define or neither the ITO defined was the need for those services in the first place. 40

All right, thank you. There was, you'll recall, a process under the contract which - consequent upon IBM turning the best estimate prices into fixed prices - if the fixed figure was more than 15 per cent greater than the best estimate figure, a process for the review of the means by which that figure was arrived at?---Correct.

That was a review which could be initiated by CorpTech and reviewed by CorpTech only?---Correct. 50

And was for an independent person to be briefed to undertake an analysis of why it had changed and it is right to say that process was never engaged?---Not entirely correct. There was one time where that process was engaged, but it wasn't engaged at the front end of the process. Statement of work or change request 220 or

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thereabouts did engage an independent assessor on the price of that change request which saw a reduction, I think, in that original price from just over \$2.2 million, from recollection, down to 1.7 million.

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I'll stand corrected if that's so?---Yes

In respect of the statements of work 20, 23 and 29 that we're looking at here, the process was not one which was taken up by CorpTech?---No. That's right, because the order of magnitude and the affordability was the issue we were trying to deal with not the accuracy or thereabouts of the specifics in that particular change request. So the affordability question compared to the original invitation to offer was the issue which we were still trying to address around the effective of what was being proposed in the ITO and then what was subsequently being proposed as an outcome of statement of work 4.

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Sure. Okay. Post go live there were - did you have any involvement in - - -

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COMMISSIONER: Mr Doyle, what has happened with that email? 1

MR DOYLE: It's to be tendered, Mr Commissioner.

COMMISSIONER: All right. The email - have you seen this, Mr Horton, I'm sorry?

MR HORTON: Yes. 10

COMMISSIONER: The email of 19 2009 from Mr Brown to Mr Doak is exhibit 76.

ADMITTED AND MARKED: "EXHIBIT 76"

MR DOYLE: Were you involved post go live in identifying any defects in the system?---No, not personally. When the system was cut over it attained operational status, and that then fell as a responsibility within CorpTech to Mr Phillip Hood, ultimately, and people within Queensland Health, Ms Janette Jones and others. 20

I want to ask you of your direct knowledge. Do you then have direct knowledge of what was going wrong with the system, or is that something you'd only have from hearing it from Ms Jones or Mr Hood?---I have no direct knowledge, you know, because I wasn't involved in the day-to-day operation and maintenance. My knowledge of the defects in the system would have been as a result of reports and other advice either from Queensland Health or from within CorpTech, from Mr Hood. 30

All right. Have you got your first statement with you? ---Yes, I do.

Does it have any attachments?---I did submit three example emails with my original statement.

Do you have them?---I do. 40

Very good. Can you just look at the one which is dated 18 December 2008? Can I ask, Mr Commissioner, if you have that?

COMMISSIONER: I have some.

MR DOYLE: The first should be the one I just identified.

COMMISSIONER: 18 December, you say? 50

MR DOYLE: 18 December from you to Margaret Berenyi and copied to Mr Hood RE QHIC PD meeting outcomes.

COMMISSIONER: Yes, I have that one?---Prior to 18 December?

MR DOYLE: That's the one?---Yeah, that's the one, I have that. Thank you. 1

This is pre go live, so I'm going to come back to the post in a moment. "QHIC PD, project directorate, met this morning to discuss some things," and then you list some information in the following few paragraphs. They, I take it, were all accurate and with things reported to the project directorate at the meeting that morning?---Yes. 10

Thank you. Post go live, you were aware, weren't you, of difficulties with the use of the system as a result of problems within Queensland Health?---I'm happy to say that I was aware of the problems with the system, the exact nature of the problems be it technical process, I was not across the detail.

I see, all right, well, I won't trouble you. Thank you, I have nothing further. 20

COMMISSIONER: Mr Doyle, before you sit down, that document we were discussing earlier, the comprehensive management plan, that would have been, I assume, prepared by IBM but then given to CorpTech for approval. We don't seem to have a copy. Does IBM have one? 20

MR DOYLE: We think you may, but I'll take it under advice and look at it over lunch.

COMMISSIONER: There's no hurry, but if you can find it I'd be grateful. 30

MR DOYLE: Thank you.

COMMISSIONER: Thank you. Mr Horton?

MR HORTON: Just very briefly, Mr Brown, if I can ask you about these additional services, and I can just do that by reference to your attachment 1, page 52 of that attachment. You asked about these services, I think you indicated it was essentially in your mind for successful completion of the system that they be provided, in effect. What did IBM tell you the services included that were additional?---It was more around an increased technical presence - this is my recollection, all right - so increased technical presence, more robust support for change and change management with the agencies to be implemented, or whether the solution was going to be implemented. From an IBM perspective, taking some of the implementation accountability within each agency for the deployment of the solution, which we believed would be covered in part, we thought, through the ITO process and the contract was subsequently signed. It's fair to say that there was some difference of view of whether those services were additional or not. 40 50

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BROWN, J.D. REXN

IBM says in the first paragraph of that attachment, first line, that there are improvements, some improvements - - -? ---Yes. 1

- - - identified. Were they the ones we spoken about? ---Yes, that would be, in general terms.

IBM believed they represent ways of reducing cost. Is that how IBM described them in the presentation?---Yes, my recollection is it was more of a long term view that ultimately by doing this now would mean that the subsequent implementations in agencies would be more effective and therefore would deliver cost benefit earlier, but you still had to expend the money to get the benefit. 10

Yes?---So this was a future benefit rather than a cost saving on the services per se, as I understood it to be.

As understand it, the cost of additional services is some tens of millions, is that - - -?---I'm sorry, I didn't hear you. 20

The cost of the additional services was some tens of millions?---Yes, correct.

And what was the cost then which IBM said in the presentation that would be reduced?---They had some construct that showed benefits earlier, as I understood it, and benefits to government which would then ultimately deliver a benefit to government. 30

Yes, but more than tens of millions, is that right?---Well, that was the working proposition as I understood it.

Then the third dot point, "Our recommendation is to fill these gaps by engaging IBM." What were the gaps which IBM said needed to be filled?---I think they relate to the first dot point, the improvements. I think there was also some discussion around some of the technical capabilities within CorpTech and its ability to manage, in a technical sense, some of the things that were being implemented. 40

And were gaps different from improvements, did you think? ---I saw them to be synonymous.

Then who is recommending this? It says, "Our recommendation." Is that IBM recommending that IBM be engaged?---Yes.

Thank you very much. 50

COMMISSIONER: Yes. Mr Brown, thank you for your assistance. You're free to go.

WITNESS WITHDREW

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COMMISSIONER: Mr Flanagan?

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MR FERRETT: I call John Swinson.

SWINSON, JOHN VICTOR affirmed:

MR FLANAGAN: Would you give your full name to the inquiry, please?---John Victor Swinson.

Mr Swinson, you have already provided to the inquiry two statements, one a statement which is exhibit 28a and an addendum statement, exhibit 28b, but you also recently sworn a statement dated 19 April 2013, which is of eight pages in length?---That is correct.

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Would you look at these two documents, please, Mr Swinson?
---Thank you.

Is that the statement that you've executed?---Yes, that's correct.

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Yes, I tender that statement, Mr Commissioner.

COMMISSIONER: Yes. Mr Swinson's statement of 19 April 2013 is exhibit 77.

ADMITTED AND MARKED: "EXHIBIT 77"

THE WITNESS: There's just one typographical mistake I'd like to correct, if I may.

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COMMISSIONER: Yes, please?---Paragraph 26 on the second line, it says, "As stated on page 2 of schedule 2." It should say, "As stated on page 2 of schedule 17."

17?---17.

Thank you.

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MR FLANAGAN: May Mr Swinson have before him then, can I check on this, if you could have your most recent statement then also exhibits 28a, which is Mr Swinson's main statement?---I have my main statement.

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You have your main statement? Thank you. And volume 1, which is the contract. And the first document I'll take Mr Swinson to, miss associate, is volume 3, page 169? ---Yes.

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Mr Swinson, can I commence by taking you to paragraph 6 of your first statement. Sorry, of your most recent statement?---Yes.

And there you refer to a letter that you sent to the state which is contained in volume 3, page 169, refer to that, please?---Doesn't look like there's a page 169.

Page 169, volume 3?---Oh, yes. 169-1.

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Thank you?---So it was page 169-1, 169-2.

That's correct?---Yes.

Now, this is a letter that you sent to the Queensland Treasury legal office, is that correct, Mr Millman?---Yes, correct.

And it's dated the same day as the contract was executed by Mr Bradley and IBM on 5 December 2007. Yes?---Yes, correct.

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What caused you to write and send this letter to Mr Millman?---Mr Millman and Mr Bradley asked for a legal sign off letter to say that the contract that was being presented to them that day was appropriate for signature, and that's the purpose of this letter setting out our scope for work that we did.

Quite. And having been involved in the contract negotiations and in drafting the contract itself, including the schedules you were aware of particular risk that the Queensland government may encounter in terms of the management of the contract. Is that correct?---Yes, that is correct.

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And just for - just very briefly, can you first outline the risk in relation to the scope of the work that was to be undertaken by IBM Australia?---Yes. Some of the scope of the work had yet been fully defined and there was some parts of the contract that was still being agreed at the time it was signed, and there was a process in place to finally agree that scope and those parts had not been agreed, and that was an extremely important process to go through.

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SWINSON, J.V. XN

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In terms of ICT contracts, one can actually have a process of mapping where scope is identified over the course of six to nine months and then based on an agreed scope on then contracts. Is that correct?---Yes, that's correct. 1

But in this situation where there was an identified time pressure and it doesn't matter what the time pressure was about for present purposes, but where there was an identified time pressure, a different mechanism was used. Correct?---Yes, correct. 10

And what was that mechanism?---And so we - for work where it could be defined, there was statements of work and work where it couldn't be fully defined, there was statements of scope and the scheme of the contract was to turn statements of scope into statements of fixed work, which were more detailed project implementation plans.

All right. We might deal with this up front. In terms of the statement of scope becoming a statement of works, under the ITO process - - -?---Yes. 20

- - - the tenderers were required to give fixed price for certain statements of work that were already identified? ---Yes.

And that was identified in the ITO documentation itself? ---And in the contract.

And then subsequently in the contract. Yes?---Yes. 30

And then there were best estimates for particular scopes. Is that correct?---Correct.

And in relation to those best estimates, there were protection mechanisms within the contract itself that you ensured took place - - -?---Yes.

- - - to deal with how one went from a best estimate to a fixed price. Yes?---Yes, that is correct. 40

And that's contained, is it not, in schedule 17 to the contract?---Yes, that is correct.

As a drafter of schedule 17, can I ask you to take it up and just take us through it?---Schedule 17 is at page 63 of volume 1.

Thank you. Just before we go to it, this is the type of schedule, is it not, that is necessary where one hasn't done the extensive mapping exercise where scope is determined by contracting?---If you were going to have a fixed price contract then what you'd use, the estimate as a basis for that fixed price, yes. It would be a part of materials (indistinct). 50

All right. Can you just take us through very briefly the mechanism of schedule 17 and how it operates?---So part 1 is the background part that says, in effect, there was a tender process and at the end put forward a best estimate pricing and that there was statements of scope, so scope 1 to 5 that reflected the - matched up to that pricing. Part 2 was a process for fixing the price, so this was as part of turning the best - as part of turning the statement of scope into a statement of work. Part of that work was to come up with the price, and so part 2 says how that part of it, IBM was to do that. And, importantly, it says that the customer may accept the statement of work with the proposed price or reject it, or have discussions about it if it's not accepted or rejected.

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Can I just pause there at this very stage?---Mm'hm.

Was it the case, according to schedule 17, that if IBM Australia came up with a scope of works whereby the best estimate was converted into a fixed price, does the operation of schedule 17 mean that the Queensland government was not obliged to accept that?---Correct, yes. It would be - it says that on the top of page 64, if the customer rejects the statement of work for the fixed price, it was just specifically allow for, the customer does not have to accept what IBM puts forward.

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Quite. Go on, please?---And if - part 3 looks at if the proposed fixed price is higher than the estimate, so the price goes up, again, there's no obligation for the state to continue to do the work but IBM could try to justify why there was an increase and part 4 allows for an independent assessor to be appointed to look at it if there was a dispute, so if the state - he'd want to go forward but there was a dispute about scope or pricing, an independent assessor could look at it at this stage. So this is early on in the project. And (indistinct) to that, a CD with IBM materials was placed in escrow in my office, which in this document was called "baseline documents", and I guess that in escrow that was IBM's pricing materials, from what I understood, and how they determined the pricing so that material could be made available independently.

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Can we just stop there, then?---Certainly.

So the one on page 64, which is dealing with part 4 independent assessor, it says:

To ensure the integrity of this process, by 15 December 2007, the contractor must provide to Mallesons (indistinct) full electronic copies of all documents relevant to or used by the contractor in determining the best estimate price -

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which is the baseline documents. Now, they were provided by IBM to Mallesons, weren't they?---Correct.

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And you held them in escrow, did you not?---Correct. 1

And for all relevant periods of this contract and any contractual negotiations or management that we're looking at for the purpose of this inquiry, you had those baseline documents at Mallesons?---Yes.

Thank you. And that was in relation to each scope of work or statement of scope that IBM had given their best estimates for the purpose of the ITO?---Yes. 10

Thank you. Go on, please?---And the independent assessor had the ability to look at these materials and, in effect, go through this process and persist resolving the dispute, which was quite a complicated process which was never - - -

I don't want you to go through that entire process. I'll take you to one specific part of it?---Mm'hm.

But the mechanism whereby the process outlined at page 65 points 1 to 11 was engaged is where the proposed fixed price for a relevant statement of work constituted an increase of more than 15 per cent. Is that correct?---Yes. As in the estimate in the contract. 20

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All right. If I could ask you then just simply to take us through point 8 then, what was the purpose of that clause? ---Point 8, did you say?

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Point 8 at page 65?---I'll just read it through. Yes. This was to deal with the situation to ensure that the estimate was a true estimate so that it wasn't a situation where IBM would come in and estimate the work at \$100 and then when it comes to do the work, say, is \$100 million. It was to keep IBM honest knowing that their estimate had to be a reasonable and proper estimate.

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All right. It's called, "A deliberately or dishonestly overpriced or overprice the fixed price," one would have regard to certain criteria?---Yes.

Namely, that IBM had changed its pricing model or methodology. That's the one thing that the independent assessor would have regard to?---Yes.

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Secondly, that it increased its profit margin beyond what the profit margin identified in the best estimate was? ---Yes.

Thirdly, that it increased input costs, such as salaries, charge out rates, rent or overheads, excluding the contingency, which had already been identified in its best estimate. Yes?---Yes.

Or that the contractor ignored a significant and relevant document in the list of relevant documents, issue or fact was within the knowledge of the contractor or purposely underestimated the amount of work required?---Yes.

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Annexed to the contract were all the documents that had been provided to IBM as part of the contractual arrangements. Yes?---As part of the tender process - - -

ITO?---- - - so IBM did a due diligence in preparing their pricing and so this was to stop IBM coming and saying, "We didn't realise this fact," and that be provided to IBM. So it was to stop a claim that, "We got it wrong by accident."

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Given that scopes of work were to be translated into statements of work, was it the case that this provided - or was in the main mechanism in the contract that provided protection to the state of Queensland in relation to both increase in price and changes of the scope identified for the purposes of giving your best estimate?---This was an important mechanism going forward, but it was also an important mechanism to make sure that what IBM estimated was in fact a true and not - - -

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As the holder of these documents in escrow, that is the baseline documents, did anyone from the Queensland government, whether it be Queensland Treasury, CorpTech or

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otherwise, approach you for the purposes of having access to the baseline documents and using the very process that we find in schedule 17?---I think you're the first person to mention these documents since the contract was signed, so no-one has seen them.

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We just heard evidence just recently from James Brown that he had some memory that this process under schedule 17 was used in relation to change request 220?---This process, as far as I know, wasn't used in relation to - this process under the contract was not used. That might have been having the independent assessor do something else, but it wasn't an independent assessor under this clause as far as I'm aware.

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All right. As the solicitor who was involved in the contractual negotiations and as the solicitor who was involved in drafting the contract, does it surprise you that you were never approached to put these baseline documents to use?---If you had told me that there was no dispute about scope and the pricing was within 15 per cent of the estimate, no, I wouldn't be surprised.

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We know there were enormous disputes between the - and without putting blame one way or the other, we know for a fact there were disputes in relation to scope. We certainly know there were disputes in relation to increase in price. Was schedule 17 the very mechanism that was to be used for those disputes in relation to scope and price? ---That was an important mechanism to assist the customer. Yes.

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COMMISSIONER: Mr Flanagan, can we resume this debate at 2.30?

MR FLANAGAN: Thank you, Mr Commissioner.

THE COMMISSION ADJOURNED AT 1.04 PM

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THE COMMISSION RESUMED AT 2.31 PM

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MR FLANAGAN: Mr Swinson, prior to the luncheon adjournment we had just dealt with schedule 17 of the contract?---Yes.

May I take you then back to the letter of 5 December 2007, which is volume 3, page 169-1?---Yes.

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In relation to the last paragraph on that page you refer that risks still remained and you gave this specific advice, "Accordingly, it is extremely important to the success of this project that the agreement and relationship with IBM is properly managed," but what was it that caused you to give this specific warning?---Two reasons. One is the reason we were talking about before lunch is that scope - all the important elements still had to be defined in more detail and the prices of that scope had to be fixed; and second, this was an important contract for the state. It was a whole of government payroll contract. Although this inquiry is focusing on Queensland Health, the contract was for the whole of the state and so it was important to manage that contract. Simply because it was a prime contract model doesn't mean that you just hand over everything to the prime contractor and leave the room. You still manage the contract and still have to be careful that your rights are enforced and so it was covering off both those issues.

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Thank you. Can I then take you to paragraph 72 of your first statement?---Yes.

Here you refer to certain advice that was sought from you, which is annexed to your statement as JVS7. First of all, you describe in that paragraph the nature of the advice sought from you?---Yes.

This was the first time that your advice had been sought from CorpTech after the entering into the contract on 5 December 2007. Is that correct?---That is correct.

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On this occasion you were actually asked to advise on a number of matters. Is that correct?---Yes, that's correct.

The nature of which you describe here in this paragraph. First of all, did it surprise you that your advice was being sought as to such basic issues that concerned scope, such as the use of the Housing HR solution in the payroll? ---Yes. I guess I was surprised in two ways: (1) it could have been the case that as the project progressed when each statement of scope became a statement of work that CorpTech may have sought legal review of those documents and important contractual documents as they came along. They

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hadn't done that and now they were coming to me about six or seven months later and asking questions where it looks like things had gone off the rails a little bit, only in a slight way, but it looked like they had started to go off the rails already and so I was being asked what seemed to be relatively straightforward - about straightforward issues. For example, the status of schedule 22A, the government schedule.

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Yes. Can I take you to that. If you turn to JVS7 and, Mr Commissioner, they're not numbered, these pages, unfortunately, but if you go to the end of the document and work backwards, JVS7 is actually a memorandum of legal advice dated 24 July 2008.

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COMMISSIONER: Yes.

MR FLANAGAN: In relation to that document, can I take you first of all to page 6, which is where you deal with schedule 22A?---Yes.

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You were asked this question whether schedule 22A was a binding part of the customer contract and you go through the background there, but what you observe in (d) is, "IBM was under an obligation to consult with the customer and provide a revised governance schedule based on schedule 22A by 15 December 2007." Is that correct?---Yes, that's correct.

You had, from the documents you were briefed with at that time, seen no evidence of compliance with that requirement? ---That is correct. The government schedule 22A was almost finished by the time the contractor was signing. So it was more like dotting the i's and crossing the t's and getting final approval. Time ran out before 5 or 6 December and so it was anticipated that it would be a few more weeks' work to have that final form and fully signed off. So here we are in July when that - - -

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Quite. Just keeping in mind the warning you gave, the specific warning you gave to legal counsel for Queensland Treasury, just take it from us for present purposes, a legal warning to the Queensland government that this needed to be carefully managed, the fact that the governance schedule based on schedule 22A had not been delivered by 15 December 2007 meant, did it not, that the parties had not negotiated a governance schedule in relation to this particular contract?---It appeared that schedule 22 set out what should have happened in relation to 22A. IBM should have presented something by 15 December and then the parties negotiated and agreed it shortly after. It looked like that process hadn't taken place.

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Thank you. Can I then take you over to page 7 of the same document?---Yes.

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For this purpose, I'll put the document in front of you. 1
Can I go to volume 4, page 41.

COMMISSIONER: Page, sorry?

MR FLANAGAN: Volume 4, page 41, which is the program 42
management system?---Yes.

This is the document that you advised on and you say, "The 10
program 42 management system was included into the customer
contract by way of a signed change control document in
March 2008 as a replacement for the program charter"
---Yes.

What was the program charter?---You were reading from
where, was that?

I'm reading from your legal advice at page 7(g)?---Yes. 20
The program charter, I think, was schedule 22 - I think.
It wasn't actually called the program charter in the
schedule.

Just looking at the document in front of you in volume 4,
page 41, which is the program 42 management system, can you
tell the commission what is that document?---At a high
level, it's a document that sets out who does what from a
governance point of view for the contract.

Is it a document that identifies the scope of the project? 30
---I don't think that's what it was intended to do. It was
looking at team members and their roles and
responsibilities not the work that was to be delivered.

All right, thank you. You can put that aside then, please,
Mr Swinson?---Sorry. I'm saying that without reading the
whole document.

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Don't read it all, but read it sufficient so that you can give us an accurate description of where it fits in, in terms of the contract?---This document wasn't envisioned under the original structure of the contract, so it's doing more than one thing and it's focusing primarily on Queensland Health, from what I understood. So it's not a whole of government kind of document but focusing on the LATTICE payroll replacement issue, and I think it is trying to do more than one thing but it doesn't seem to be replacing a statement of work but it seems to be replacing the government structure and tinkering (indistinct) in some way, but it's not a kind of document that was envisioned originally under the structure of the contract.

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All right. Thank you. Can I take you, then, back to paragraph 15 of your recent statement?---Yes.

There you refer to a request made by IBM or representatives of IBM to CorpTech to have Mr Beeston removed from the project. Yes?---Yes, correct.

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You had a meeting with Ms Perrott in relation to IBM's request to have Mr Beeston removed from the project?---Yes, that's correct.

I know that you give us something of what was said by you in that meeting, but as you sit there now, doing the best you can, can you just tell us the effect of what was discussed with Ms Perrott?---Yes. As you can imagine it was discussed as to why does IBM want Mr Beeston removed, had she seen any behaviours that would warrant Mr Beeston being removed. I think she asked for my view as to what did I think of Mr Beeston because I'd seen him in a number of meetings, and my view was generally positive of Mr Beeston in the way he was behaving. Generally, I thought he was doing a good job trying to protect the state's position and the fact that IBM wanted him removed, in effect, he seemed to be annoying IBM or trying to hold IBM to the contract and IBM didn't like this. That was the impression I was getting from the situation.

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And you gave advice to Ms Perrott, as is reported in paragraph 15 of your statement?---Yes. She wasn't coming to me for legal advice, she was more trying to collect facts on what she should do in this situation so she was asking my view of what did I think of Mr Beeston, was I supporting him or do I think he should be removed.

Again - - -

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COMMISSIONER: I'm sorry, I missed the last part of your answer?---I think she was trying to find out factually did I support Mr Beeston or did I think he was a trouble maker and should be removed, and I said I think he was doing a decent job.

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MR FLANAGAN: Again, in the context of your warning to the Queensland government in your letter of 5 December 2007, did it cause you concern that as at 21 August 2008, a person who was directly concerned with contract management was being sought to be removed by IBM?---Yes. 1

May I then take you to paragraph 77 of your first statement, please?---Yes.

There you deal with further legal advice that you gave to CorpTech on 25 August 2008. Is that correct?---Correct. 10

And you have annexed a copy of that advice, JBS 8. Yes? ---Yes.

And may I take you to the recommendations you make at page 3 of that document?---Yes.

First of all, if you'd just familiarise yourself with the recommendations you made as at the relevant date, 20 August 2008. Mr Swinson, can you tell us were any of your recommendations acted on by CorpTech?---In the sense set out here, I'd say no. 20

You give advice to CorpTech that the use of a notice of breach, or the issuing of a notice of breach, can be used as a contract management tool?---Yes.

Can you explain to this inquiry how the issuing of such a notice can be used for that purpose?---Yes. It escalates and issue to make it to formally record that there's a breach, or the customer believes that there is a breach. Typically, before issuing a notice of breach we have discussions between the customer and the supplier that there's a concern, and often it's resolved in an informal way through discussions. but if it's not resolved in an informal way through discussions and relationships and there's an issue, then it's not uncommon to consider issuing a notice of breach, pointing out breach of contract which then allows the customer various legal remedies as a result of that. Whether that might be seeking damages, compensation, the ability to terminate and so on, but it normally escalates the issue and as a practical matter the supplier will then come to the table and negotiate in a more serious fashion to resolve the issue. 30 40

Thank you. And the third last paragraph of that advice or the recommendations, you say, "If the customer does not issue a notice of breach, or issues a defective or incomplete notice of breach, then the customer's position downstream, if matters do not improve, will be much worse." Could you explain what you meant by that?---Yes, if you're aware of a problem and do nothing about it then there's an issue of waiving the breach, and so later on you can't come back and raise that as an issue, you, in effect, accepted the breach. There's a risk that argument would be made. 50

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In the second-last paragraph you refer to the fact that, "Care must be taken not to be too hostile or act unreasonably as IBM may then be less willing to work to solve problems and is more likely to go into damage control mode." That advice had something of a prophetic nature about it, as we'll come to when we look at JBS 9. At the time that you gave that advice, had you had any conversations or attended any meetings with IBM representatives where such an indication was given?---No, this was just a general statement based upon my experience in IT contracting not in relation to this particular contract. It was a general piece of advice that you want to keep a good working relationship with someone you want to continue working with.

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If you get to the stage of issuing notices of breach, clearly, the relationship sours?---Not always, depending on how you do it. You could issue a notice of breach and say, "Look, we're treating this seriously but we want to try to resolve it," or you could issue the notice of breach and send the cover letter saying, "Unless it's resolved within a period of time we're going to terminate." There's different messages you can give when you issue the notice of breach. In some contracts it's not uncommon to have large numbers of notices of breach issued to preserve the customer's position, and it doesn't sour the relationship, it's a formal contractual dispute process.

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From your own knowledge, the only notice of breach that issued in this particular case was after the go live date of 14 March 2010?---Yes, it was much later than this.

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All right. But you had participated in drafting and having settled notices of breaches along the way?---Correct.

Which, to your knowledge, were never issued by the Queensland government?---Correct.

On a very basic level, can you tell us why your recommendations weren't followed? Who stopped them being followed?---The team I was working with day to day was John Beeston, Chris Bird and Malcolm Campbell, and they were people instructing me in collecting information that I needed and so, so that was my main contact. It wasn't them, I believe it was a level beyond them and I don't know where. I had a number of meetings with James Brown and he was quite negative about using mechanisms in the contract to protect the state's position.

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Did he explain to you why?---Basically, that it would sour the relationship with IBM and that it was his belief that the customer - if he had explained to me that the customer had not always acted appropriately in relation to some

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matters, and so if a dispute was escalated IBM would then raise issues that the customer had performed poorly or hadn't done what they promised under the contract. So he was concerned about allegations from IBM, and I believe that he was getting - I don't necessarily know it was his decision or someone above him that was - but I remember having discussions with James Brown about this issues and he was against enforcing the contract.

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If I then take you again for your first statement to paragraph 87 to 90. This deals with a meeting that you had on or about 29 January 2009 with a number of CorpTech personnel and some IBM representatives, including Mr Doak and Mr Ray from IBM?---Yes.

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And you had a solicitor present with you at the time from your firm Mallesons?---Yes.

Who took extensive contemporaneous notes of the meeting. Is that correct?---Correct.

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And we find the note of that meeting in JBS 9. Yes?---Yes, correct.

May I take you to JBS 9?---Yes.

Now, you were invited to attend that meeting?---Yes.

By whom?---By CorpTech.

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What was the purpose of the meeting?---To try to resolve a number of outstanding issues with IBM, including issues that spoke - and it's something that's arisen at this stage.

From your own recollection, what was the nature of the relationship between CorpTech and IBM at this time?---I would say it was a tense relationship at this stage, the state of withheld money, IBM was wanting that money to be paid, there was spits about scope, things weren't going particularly well.

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All right. Now, it's recorded there what is said by whom by reference to the initials. Is that correct?---Yes.

So J.B. is?---John Beeston.

And J.S. is yourself?---Yes.

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And B.D. is Mr Doak?---Correct.

All right. Thank you. Can I take you to page 2, then, and you deal with this in your statement. The note says 'B.D.' says this, "If moving to legal dispute, then move to that phase now. IBM stop project and focus on dispute issues"? ---Yes.

But what was said?---So that's Mr Doak saying - so at this stage early in the meeting, it was getting quite hostile and he was, in effect, saying, "If we're going to have a legal dispute here, let's do it as a legal dispute," and he would dedicate resources to resolving the legal disputes rather than working on the project.

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Now, if IBM were to - well, first of all, how did you interpret that?---It was a veiled threat that IBM would stop work if it didn't get its way. 1

COMMISSIONER: It wasn't very veiled, was it?---I'm sorry?

It wasn't very veiled, was it, if the note's accurate? ---Yeah. You could take it two ways: one is, okay, they've got limited resources and we need to devote resources to dispute rather than to doing the work, but once you say, "Look, we'll stop the project," that's more than just a veiled threat. 10

MR FLANAGAN: I'll ask you two questions. First of all, did you yourself take this threat seriously?---It's not uncommon for contractors to make similar threats such as this in these circumstances. So you take it seriously but it's a very brave contractor, and so I've had other contractors other than IBM make similar threats. It's not uncommon but it would be very uncommon for a contractor such as IBM to actually carry through with that threat. 20

There would be a reputational issue, surely?---Severe reputational risk. There would be a risk that the customer would go to court seeking a mandatory injunction immediately to stop - if it's a time critical project, and so it would be something that would be escalated within both organisations very quickly and unlikely to lead to stop work unless you actually were heading down the path of: okay, we are stopping work and just commencing litigation terminating the contract. So it would happen in that circumstance but not when both parties wanted to continue. 30

And the customer here is, of course, the state government? ---Correct.

So your conversations, if you had any, with other - with CorpTech staff who are present at this meeting, do you have any personal knowledge of how they view the words of Mr Doak?---No, but I remember discussing it afterwards with some of the participants at the meeting, saying that if they do that, IBM would be in breach of contract to do that. 40

And you state in your statement that you believe they would be in breach of contract if they were to walk off?---Yes.

Is that because of the operation of clause 2.3(k) of the contract?---Yes, 2.3(k) is one of the clauses that would be relevant. And just general anticipatory breach. 50

Yes. And also, Mr Swinson, in relation to IBM disengaging from this particular contract, there are two schedules to the contract that dealt with the disengagement process. Is that correct?---Yes, that's correct.

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43 and 45?---Yes.

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Can I ask you one question, then, about schedule 43. If you need to go to it, you can?---Yes, I'm at 43.

43 and it's at page - it commences at page 168 and if I can take you to page 169?---Yes.

COMMISSIONER: I'm sorry, where are we at?

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MR FLANAGAN: Volume 1, the contract, Mr Commissioner. Page 169?---Yes.

Which is the first page of schedule 43 to the contract which deals with disengagement. Yes?---Yes, correct.

Can you explain or assist us with this: in clause 1 of schedule 43, it says:

Subject to other provisions of this agreement, the parties acknowledge that they may disengage upon either (a) or (b) provided the contractor may not provide disengagement services under the schedule if the contractor terminates the customer contract for cause.

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---Yes.

What does that mean in this context?---So schedule 1 means the disengagement services can be requested by the customer if we get to the end of the term or if it's terminated, in effect, by the customer early, the customer can't request disengagement services if IBM terminates for breach; for example, if the customer stops paying properly, then it can assist on disengagement services to be provided.

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If IBM were issued with a notice of breach and stopped work, would that be in breach of the schedule 43 requirements and schedule 45 requirements?---If a customer required disengagement services and they refused to provide them, even though IBM was in breach, it would be another breach.

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Yes. Mr Commissioner, would you just allow me a little bit of leeway. I'm hoping not to call Mr Swinson back for the second part of this case. We will probably provide a short statement from him but if I could just ask a couple of questions that are more pertinent to settlement than contract.

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COMMISSIONER: Is that course (indistinct) anyone?

MR DOYLE: Can I reserve my opposition because I don't know what's going to be asked and what's going to be said.

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COMMISSIONER: Yes, of course, but I wouldn't have thought that the - - - 1

MR DOYLE: I presumably know what's going to be said, Mr Commissioner.

COMMISSIONER: I may be wrong about this, of course, but I would have thought that the settlement aspect of things weren't concerning your client very much. 10

MR DOYLE: Probably not but I'll reserve - - -

COMMISSIONER: Of course.

MR DOYLE: - - - my position, whatever it might be.

COMMISSIONER: Yes, of course. Yes.

MR FLANAGAN: Just in relation to the settlement, your firm, through you, gave certain advice. Is that correct? ---Yes, correct. 20

And you gave an options paper of identifying of what the options were and what the risk and advantages of those various options were?---That's correct.

One of the risks that you identify in your options paper is the risk of IBM walking off?---Yes.

And as a result of which, Health being left with an unsupported incomplete payroll replacement for LATTICE? ---Yes, correct. 30

The question that we had in our minds was: was there any historical evidence or other evidence that you had in mind in relation to that risk when you wrote your options paper? Actually, can I - I'll withdraw that and I'll rephrase it to ask you this: did the fact that Mr Doak at the meeting of January 2009, having said, "If you issue us with a notice of breach, we'll do what he suggested," did that impact on your advice to the Queensland government as to the risk of IBM walking away?---I informed the Queensland government that it would be a very unlikely risk for IBM to walk out. 40

Why do you say that?---My experience in dealing in IT contracts, my experience in dealing with IBM in other contracts. It would be very unlikely. If it got up to senior management, unless the state had actually issued a notice of termination, it would be unlikely for IBM to walk off (indistinct) 50

Thank you. Just a couple more settlement questions (indistinct) review and issued a report in relation to the conduct of this particular contract. Yes?---Yes.

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And identified a number of governance issues concerning CorpTech and Queensland Treasury?---I haven't read that report. 1

Were you ever interviewed in relation to the making of that report?---I was not.

Was legal advice ever sought from you as to the wisdom of publishing an auditor-general's report whilst there was an ongoing dispute happening between IBM and the Queensland government?---No, it was not. 10

Had that advice been sought from you, were you in a position to give it?---Yes.

What sort of advice would you have given?---You're asking me a hypothetical question after the fact.

Right, exactly?---But I would have said: great care should be taken both in compiling the report because of legal privilege issues and disclosing the report or even creating the report if there was a dispute going on, it could create evidence that was adverse, particularly if the conclusion was drawn without interviewing all the proper people and coming - so if it was a premature conclusion it could adversely impact the parties' leverage in the dispute and in future negotiations and end in a potential lawsuit. 20

In your options paper for the Queensland government in terms of negotiating a settlement with IBM, you identified that IBM could use the auditor-general's report by way of defence to any claim made by the Queensland government?---I would expect that IBM would raise that in any dispute. 30

All right, thank you. That's as far as I need to digress into the settlement, Mr Commissioner.

May I then return, if I could, to your first statement and take you to paragraph 91?---Paragraph 91? 40

Paragraph 91. It would seem after the meeting of 29 January 2009 that things didn't progress further as between the contract management section of CorpTech and IBM. Is that correct?---Yes. Correct.

You had a conversation with Mr Beeston?---Yes. There was meant to be a meeting the next day or the day after and each party - out of the meeting that we were talking to where you were referring to the notes, that's a meeting of 29 January, two parties were meant to do some work as a result of that meeting and then meet again with myself and the other people involved and I was told by Mr Beeston shortly after that that wasn't going to happen so the process that we started stopped very quickly. 50

All right. Mr Beeston tells you of a meeting between Mr Grierson, who was then the director-general of Public Works, and Mr Doak of IBM. Yes?---Yes. I was told about Mr Doak when we spoke to Mr Grierson and that a different process was going to follow. My impression was Mr Doak did not like having negotiations with lawyers for the state and he wanted to have negotiations where there were no lawyers involved from the state.

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All right?---Sorry, that was Mr Doak.

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Quite. Doing as best you can sitting there, can you tell us the effect of what was said as between yourself and Mr Beeston in relation to this meeting with Mr Doak and Mr Grierson?---He didn't tell me what happened at the meeting. He just said, "The outcome of the meeting was that we weren't going to go ahead with the plans that we had to try to resolve some of the issues through negotiation and amendment."

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Can I then take you to exhibit 32?---Exhibit 32?

Exhibit 32?---Which is?

We will bring it to you?---Okay.

It's referable to paragraph 21 of your recent statement? ---Of my recent statement?

Yes?---Yes. Yes, I have exhibit 32.

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Yes. In paragraph 21 of your statement - first of all, have you read these actual emails and - have you read this exhibit before?---No, I have not seen this exhibit before.

All right. Could you quickly just - don't quickly, but take your time, just read it through?---I read about this exhibit in the transcript.

In the transcript. Yes?---But I didn't read the exhibit.

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All right, thank you. You're sufficiently familiar with it from reading the transcript?---Of the concept that it's discussed. Yes.

All right. You'll appreciate that to summarise Mr Bloomfield of IBM came into possession of this email. The email itself shows communication between two people, Mr Porter of Accenture, and in all likelihood Mr Pedler of SAP?---Yes.

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You can assume, Mr Swinson, that both those were tenderers along with IBM in relation to the RFP process?---Yes.

And that prior to their proposals going in, which were due on 7 August 2007, they had meetings or Mr Porter had a meeting with Mr Bradley, the under-treasurer, but then he sought to ask Mr Pedler of SAP to sound out Ms Perrott as to price. Yes?---Yes. 1

Ms Perrott, as you read in the transcript, had described that as possible collusion because they were both tenderers and they both would have known the price that the government was seeking. Yes?---Yes. I'm not sure at that stage whether SAP had decided to pull out of the process or not. 10

You can take it that SAP was actually participating in the RFP process - - - ?---That's correct.

- - - and actually put in a proposal in relation to the RFP process?---Yes.

The other aspect of that is, first of all, Mr Bloomfield comes into possession of that information and then sends an email to Mr Surprenant saying, "We'll see how we can use this," or "We'll see how it's to be incorporated in the proposal or discussed in relation to the proposal"?---Yes. 20

There's a further email where the evaluation matrix, or part of the information in the evaluation matrix, after the RFP is actually leaked by an IBM - sorry, when I say leaked, I'll just use non-pejorative terms - is actually forwarded in an email to a number of IBM people which scores 76 per cent for Accenture. Yes?---Yes. 30

And there's also a further email that on its face may suggest that IBM sought to access the G drive at CorpTech for the purposes of viewing vendor proposals in response to the RFP. Yes?---Yes.

You've read the evidence of Mr Bradley and Ms Perrott where they both basically said - Mr Bradley in particular - that you would give natural justice to the tenderers to say, "Explain why you did what you did," and after deciding or listening to that he would then seek legal advice?---Yes. 40

I appreciate this is hypothetical, but we do want to know from you if Mr Bradley had said, "I have now sought explanations from all parties, I'm not satisfied with the explanations they give and I think there has been misconduct," what advice would you have given to Mr Bradley?---In this process, it would have seriously jeopardised the tender process. It would have been difficult to go ahead because the idea of a tender process is everyone has a fair and equal - there's a fair and equal playing field where everyone has an equal share and we were quite focused on that as part of the ITO process and so if it turned out that that was not the case, that would 50

jeopardise the process. It would also go to the integrity of the tenderers: if this is how they're treating this process, you would want to be careful about allowing the supplier to have access to Queensland Health payroll information, for example. So it was shown as an integrity issue there. So you would want to look at that in more detail, but it looks relatively serious. 1

Given that all this happens and all this information is produced or leaked in the court of the RFP, could it have been dealt with in such a way so that the ITO still could have been conducted as a separate exercise?---Yes. Yes, it would have been a more difficult process, but we could have tried to conduct the process where we relevelled the playing field, but it would have been a harder process to do. 10

Would one of the options have been to decide who was less culpable and go straight to contract with that entity? ---That would have been unusual. 20

Unusual?---Yes.

It was in fact you who advised CorpTech in August 2007 that they should have a competitive ITO process?---It's much better for the customer to have a competitive process.

Also as a matter of straight reality, if one was to exclude Accenture and IBM from an ITO process, they were in fact two front runners for this sort of contract, were they not?---Yes. Most likely you would have ended up with someone - you would end up with someone who knew nothing about the project and the costs would have been higher. The risks would have been higher and it would have taken longer. 30

All right, thank you. Two more topics then. One might take longer than the other. The next topic is: what is your opinion of simply incorporating the ITO itself and IBM's response to the ITO into the ICT contract?---That is not a preferable thing to do, in my view, for a number of reasons. 40

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Would you give us those reasons, please?---IBM's response to the ITO was a document at a certain point of time, I think in August, September time frame, the contract was signed in December. What was initially proposed may have been improved or changed during negotiations, the customer may have accepted some things and not others and so to put in - to attach quite a long document that's quite voluminous into the contract, you'd have to say for what purpose. If you're just saying, "Well, we're recording that this was the document, you don't need to do that because we've got a record of what it was, so you don't need to report the fact there was a tender, we recorded it by reference." If there's parts in it that are important they should be included into the contract as binding obligations explicitly so everyone knows what it should be, and that's a process we actually undertook and I remember explicitly talking with Shaurin Shah, who was, I believe, a witness here at one stage saying, "You have to go through the IBM document and make sure that anything that's important is included somewhere in the contract, in the statement of work, the statement of scope, the clause," and so on. So it wasn't my role to work out what was important from the IBM bid, it was CorpTech's role to do that, report it and make sure that was included in the contract as a binding obligation. So that, in my view, was a preferable way of doing it rather than just cutting and pasting a whole massive sales pitch document into a contract, which would make the obligations unclear going forward.

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All right. One of the problems you also identify is that after a response is given to an ITO that there are clarification sessions, there are presentations. If one was to conduct this exercise you'd also need to ensure that the clarification questions asked and the presentations made in response to those clarification questions also found their way into the contract?---That's correct. And to that, if it was something important which was a clarification which did make its way into the contract, so one of the schedules, I think it was 46, was the Workbrain scalability presentation which actually was included into the contract because it was considered to be important part, so that process did take place. I noticed Mr Campbell, who gave evidence yesterday, I read his statement and he said there was concern that we did not include listed personnel into the contract, and the decision was made to include key personnel in the key personnel clause but to let IBM resource the contract, to focus on the deliverable, the outcome and how IBM resourced it was up to them, and that's explicitly referred to in the contract. It's not for the customer to say, "We need 10 people or 100 people to do this," it's for IBM to make that decision.

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You've been given a copy of Mr Gray's report - - -?---Yes, that's correct.

- - - who is to give evidence after you?---Yes.

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And you've dealt with six particular points arising from his report?---Yes. 1

And you dealt with that in writing in your statement, have you not?---Yes, that's correct.

Rather than go through each of them, Mr Swinson, and to save time, is there anything else that you want to add in response to Mr Gray's report that's not contained in your written statement?---In my answer there's a discussion about whether liquidated damages was a good idea or not, and I could also mention there was - rather than doing liquidated damages we had the schedule 19 and that risk amount of 15 per cent where some of that risk amount related to timing of deliverables, and I thought that was a better way of doing it because a liquidated damages amount is, in effect, a cap on your liabilities, you can't recover more than the liquidated damages, where an at risk amount allowed you to recover the at risk amount plus damages as well. So we did deal with the issue of liquidated damages but not in that way. The only other point I guess I'd like to make is: we were required by state purchasing policy to use the GITC framework, which had advantages and disadvantages, but what we did in this contract, particularly in section 5 of the body of the contract, was put in additional provisions to protect the customer. In some ways you could say it was GITC on steroids, it was actually better than the difficult GITC contract because extra effort was taken to look at what else was needed over and above GITC. 10 20 30

I was going to ask you this question: under Mr Gray's suggestion, he said, "Modular 11," which is the integration product or contract could have been used instead of modular 8, which you've explained in your statement?---Yes.

Can I ask you this: in terms of the difficulties experienced in this particular situation that we're dealing with, would there been any practical differences in terms of outcome if one was using modular 11 rather than modular 8?---If we used modular 11 I don't think the payroll system would have functioned any better, and I don't think the issues about scope and pricing that were in dispute later on would have been any different. In fact, the idea was when you're turning statements of scope 1 to 5 into statements of work, you could have actually incorporated modular 11 at that stage, if needed, if that was a preferred way of doing it. We didn't exclude that, it's just at that time we didn't have a systems integration project to use it for. 40 50

Finally, as I understand your statement as you've given to this commission, and as I understand your evidence, you are of the view that there were mechanisms in the contract to protect the state of Queensland in relation to any increase

in price or, indeed, any departure from scope that had been originally identified in the ITO process?---Yes, that's correct. 1

As I understand your evidence, it's a fact that until after the go live date the state of Queensland did not make use of those mechanisms which you had built into the schedules? ---Yes, and complementing that issue, I think the state looked more pessimistically on its own position, and so, for example, they were concerned that IBM would raise this as to the state's performance. And we covered some of those issues off in the contract, such as, in second 5.13 of the contract, which said that the state didn't actually have to provide resources or assist IBM unless it was explicitly agreed in the contract or the statement of work. So IBM couldn't come back and say, "You should have provided all this assistance to us, or provided this information to us," unless IBM explicitly asked for that, and so I don't think sufficient weight was given - when people were conducting analysis later on sufficient weight was given to some of the provisions that existed but protected the customer from potentially IBM's assertions or claims. 10 20

That's the evidence of Mr Swinson.

COMMISSIONER: Thank you. Mr Kent?

MR KENT: Thank you, Mr Commissioner. Just bear with me for a moment. Mr Swinson, you gave evidence before lunch about I think they're described by you as being the "escrow documents", held up at your office, correct?---They were held escrow, yes. 30

And as I understood the effect of your evidence, resort could have been had to them to assist in really defining scope more carefully and more precisely. Is that right? ---If there was a dispute about pricing when we were dealing with turning a fixed price - best estimate into a fixed price, which often the pricing scope issue are interrelated, yes, resort could be had to them by the independent assessor at the appropriate time. 40

I see. And was that actually, when you start speaking about independent assessors, that's one of the several dispute resolution mechanisms in the contract?---Correct.

I think you had volume 1 there, didn't you?---Yes.

Can I just take you, then, a little bit back? I think they might start at about page 162 of volume 1?---Yes. 50

Is that right?---Yes.

And this topic goes for some pages, I think. Yes?---Yes.

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It begins with some motherless statements like, "Imploring everyone to act in good faith," and it mentions objectives and costs, and then 1.8 is where it starts to deal with how the disputes should be resolved, correct?---Yes. 1

One of the early provisions is that there should be a face to face meeting between representatives of each party to the contract, and that's in subparagraph (b). Correct? ---Yes. 10

Just jumping forward a little bit, I don't really want to do this out of order, but the meeting you refer to at the end of your first statement between Mr Grierson and Mr Doak could well fall into that description, I would have thought. Is that right?---Yes, it could be. It's more usual that you actually have a written notice of dispute saying, "We have this dispute," and so on and then you have a meeting to discuss the notice, and I don't think in this case we had a written notice of dispute. 20

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I accept there is a bit of informality in there?---Yes. So in retrospect, you could say, well, the parties were acting in accordance with the philosophy of that provision.

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Yes. Without having a written notice of dispute on foot at the time?---Yes. And I think, just looking at it, the idea of this clause is not to escalate it to the deputy - to the director-general so quickly. The idea is to try to resolve it. So saying you escalate it, it looks like you're throwing a tantrum rather than escalating a dispute if you go to the director-general.

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All right. Then 1.9 deals with dispute resolution before going to court?---Yes.

And deals with such things as technical issues. Correct? ---Yes.

Then there's provision in 1.10 for expert determination referred to a single expert?---Yes.

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1.11 refers to mediation and sets up some machinery for that. Correct?---Yes.

If that fails, then there's an external expert determination?---Yes. Or if both parties agree. So at any stage you could decide to respect expert determinations. So it's a relatively flexible process.

And 1.14 refers to the contractor being obliged to continue to provide services while that's going on?---That's relevant to a question I've asked previously as to whether IBM could stop work while there's a dispute, so there's - if this process is going through, the answer is no.

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Not without being in breach of a term in contracts?---Yes.

Can I take you, then, to - you were referred in your evidence so far to one of the attachments to your statement, JBS 8. Do you have that there?---That's my first statement.

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COMMISSIONER: Yes, it will be.

MR KENT: I think you were asked earlier on when you said in answer to a question that was you weren't aware of your recommendations being followed. Correct?---These recommendations on page 4 of JBS 8, yes.

Yes?---At least in the sense that they're set out here.

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Yes. And is it fair to say that some of those, at least, could have factually occurred without your being aware of them?---Yes.

In other words, for all you know, it may be that IBM's performance was reviewed by someone against the contract, the program - - -?---Of course, that could have happened without anyone - - -

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One that you know - well, you would expect to know if it had happened, subparagraph (d), the issue of the modus of material breach, that didn't happen, to your knowledge? ---Until after go live.

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Until after go live?---Yes.

But going back a moment, subparagraph (b) could have happened to an extent review of IBM's performance generally.

COMMISSIONER: Are you saying it did happen? Let's deal with facts rather than possibilities.

MR KENT: Well - - -

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COMMISSIONER: Which of these do you say did occur without Mr Swinson knowing of them?

MR KENT: The question was put to Mr Swinson - - -

COMMISSIONER: I know - - -

MR KENT: - - - that no recommendations were followed.

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COMMISSIONER: I know. But if you have information that some were followed, Mr Swinson didn't know about them - - -

MR KENT: Perhaps I'll just confine the evidence a little bit, your Honour.

COMMISSIONER: Sorry?

MR KENT: I'll attempt to confine the evidence.

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COMMISSIONER: All right.

MR KENT: Out of all of those, the one that you would have direct knowledge of and you can say didn't happen was there was no material breach issued to your knowledge?---Yes, I know that (a) did not occur because I asked Mr Brown on a number of occasions whether that had taken place and suggesting that someone do that, someone with legal training do that to determine if there's a material breach, which means looking at the contractual obligations and determining if there's a breach of the contract rather than looking at the project to determine if there's an unhappy customer, which is a different scenario.

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Did you discuss that with Mr Bird at all?---Yes. Mr Bird started to do a preliminary list at a high level, which was very similar on page 2 of this document, so page 2 which is the other issues included was a list that Mr Bird and I worked on together at a high level looking at possible avenues of investigation rather than actual material breaches, and we did identify some breaches which we believe were material at that stage. 1

And what you're saying is that the process wasn't completed to a degree of precision. Is that - - -?---We were told not to carry on with that process. 10

Right.

COMMISSIONER: Who told you not to?---It came through Mr Brown.

MR KENT: When you say "high level", just so that I understand, you're talking about some broad brush approach. Is that right?---With a broad - for example, when there's been discussion of defects, whether something is a severity 2 defect or not, there's a sort of technical analysis but also a legal analysis that goes hand in hand, and my recommendation at one stage was to go through and do it defect by defect to compare it to see whether it actually was a severity 2 or not. That may have happened at a technical level but I don't know if it happened with - it definitely didn't happen, to my knowledge, with legal involvement to determine - - - 20 30

And so - - -?---So there's a difference between a high level, "Okay, we've got lots of severity 2s," but to determine whether each one actually is a severity 2 is a next level down analysis.

I think in our present world, "high level" means non-specific.

MR KENT: That's what I was trying to get to, your Honour. Was that right?---Yes. So - - - 40

Your definition?--- - - - high level is, we've got here on page 2, at (k), replacing key personnel without permission. So that's a general impression that there's a specific example of Mr Paul Surprenant who seemed to disappear early on in the project.

And he was actually in the contract?---He was actually in the contract. So that was one example that was raised. So that's more specific. So that could have been - so there's a high level issue of people disappearing without permission in breach of contract with a more specific example or you can say, "Well, that was a breach," then the 50

next level of analysis is, "Was that a material breach." And so there's, I guess, three levels of analysis that you have to - three levels of authority.

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(indistinct)?---High - yeah, highly detailed, yes. I wouldn't say low.

All right. Just dealing finally then with the other subparagraphs on page 4?---Mm'hm.

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One is that you, in your own knowledge, you're sure didn't happen were (g) and (h), I suppose. There wasn't any renegotiation or a new typed contract, was there?---No, I don't - well, I don't think so, at least not towards the end. There was a negotiation of a termination agreement.

I'm talking about prior to go live?---Prior to go live. There's no notice of breach, notice to show cause, notice to anything prior to show - - -

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No seeking compensation, subparagraph (h)?---There is no termination of what likely compensation would have been, so - - -

Can I deal with this meeting that Mr Flanagan took you to a little while ago. It's dealt with by you in paragraphs 87 to 90 of your first statement?---Is this the 29 January - - -

Yes?---Yes.

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And the people there from CorpTech were Mr Beeston, Mr Campbell and Mr Bird, and I take it - is Lynelle Adams from CorpTech as well?---That's correct.

Mr Burns was there and he was a contractor at that stage? ---Yes. He was a contractor to Health at that stage.

And then Mr Backhouse and Ms Crisp you know from where? ---They were - Mr Backhouse was the head of legal at - I think it was called Public Works and Housing at that stage, and Ms Crisp was one of his assistant lawyers.

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And then (indistinct) from IBM?---IBM, yes.

And yourself and Ms (indistinct) from Mallesons. Correct? ---Correct.

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And the way that you described the brief account of the meeting, at least, is that Mr Campbell was obviously quite frustrated with what had been going on?---Yes.

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And that seems to have escalated a little bit and Mr Doak, as you say in paragraph 89, wanted the subject of the breach to be removed by a contract variation and you said, "The state is not going to agree with that"?---Yes.

Correct?---Yes. That was my instructions.

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And then the next bit of narrative is what you describe as the threat by Mr Doak to stop work if the state went legal and IBM would walk off the job?---Yes.

As far as you could understand this reference to going legal, was that just a generic term or did it refer to the issue in a breach notice or anything to do with lawyers or - - -?---Escalating it through a legal process when there was a dispute, mediation, arbitration, court, notices that had - - -

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Was it a sort of legal reliance on the contract, I suppose, in any way?---That's the way I read it.

Yes. Okay?---If the state tried to enforce its rights as set out in the contract then he would not be happy.

Yes. He went further. He told you IBM would walk off the job?---Yes.

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You then said to the CorpTech representatives, "They're in breach. We're not going to talk about the breach because if we do that he's going to walk out"?---I said that to everyone. I said, "Let's not talk about walking out now. We're not going to resolve anything at the meeting if we talk about walking out. It's not a good way to engage with your customer to threaten and - - -

I understand?---So we were trying to accomplish something from the meeting other than a walk out by IBM.

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So was everyone present when you said that?---Everyone was there.

Were you addressing it in particular to the CorpTech people, though?---No. I was addressing it to IBM.

You say in the statement, "I remember saying to CorpTech representatives words to that effect"?---I think I was saying it to everyone.

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In any case - - - ?---I probably said it to the CorpTech - you were asking about what happened in a complicated meeting a long time ago. I probably said to CorpTech,

"This is what I think I should say next," and got instructions on some of these issues. 1

Can you just flesh that out for me a little bit in this sense - - - ?---Yes.

- - - was the meeting entirely a meeting of everyone? Did you break up into separate groups at some stage? Did you privately seek instructions at some stages or - - - ?---I cannot remember the details, but the transcript as set out or the notes as set out in here was for the joint meeting. I don't think we broke off in that meeting, but we could have whispered in the corner or - - - 10

Sure. I understand. Where did it happen?---In my office. In my conference room.

In a conference room at Mallesons?---Yes.

All right. I'm just interested in, "He's going to walk out so let's park that issue and try and get resolution"? ---Yes. 20

You're referring there particularly to Mr Doak leaving that meeting that you're all at or are you going further and suggesting that IBM might walk out from the job?---It was walk out from the job. That was the - if you look at the actual exhibit, the notes on page 2, it says, "IBM has stopped project and focus on dispute issues," it's stopped the project, not just stopped the meeting. 30

Yes. That's how I took the note?---Yes. That was - - -

I understand. All right. As I understand your evidence on that topic, you yourself didn't take this very seriously in the sense that - - - ?---You take it seriously, but not as a likely outcome. The fact that the supplier is making that threat to the state of Queensland is a serious issue.

Sure. What you did consider was that it would be, I think you said, uncommon in these circumstances for the contractor to actually stop?---To stop work. Yes. 40

Did you yourself have any further meetings or discussions with CorpTech people other than the ones that were present here about this whole meeting and its ramifications? Did you speak ever to Mr Brown or Ms Perrott or Mr Grierson about it?---I have never spoken with Mr Grierson. I've had - - - 50

Mr Bradley or anything - - - ?---Yes. I've met with Mr Bradley, but that was up until the contract was signed - in respect to Mr Bradley after the contract was signed because I had roughly 10 to 20 meetings with Mr Brown, probably five meetings with Ms Perrott and probably two less informal meetings with Margaret Berenyi.

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Berenyi?---Berenyi.

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All right. You yourself didn't describe any of these events to anyone else other than the people who were present and obviously witnessed the concerns?---Yes. That would probably be regarded as going over someone's head to go and report to their supervisor unless I was asked to do so.

Sure. The file note of it, was that just a note for Mallesons' file?---I don't know if it was just compiled for our file or if I sent a copy also to Boyd Backhouse for his files. I can't remember. It might have been a file note that was jointly shared or it may have been sent. I can't remember that, but the records would show. Mr Backhouse was very good at taking notes. I suspect he has notes as well to - - -

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Okay. Finally, as you can take it through by counsel assisting, you've had a look at the report of Mr Gray about the contract?---Yes.

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And you've made some responses to that in your most recent statement?---Yes.

Correct?---Yes.

Going back a step from the contract, I think what you describe in your statement is that this tender process, from your perspective, leading to the contract, at least, was a particularly good one in your experience?---Everyone was working very hard on a difficult tender process to get a good result for the state and in the time frame I thought the contract we ended up with was a very good contract.

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All right?---And I still think it's a very good contract.

Nothing further. Thank you.

COMMISSIONER: Mr Traves?

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MR TRAVES: No questions.

COMMISSIONER: Mr Ambrose?

MR AMBROSE: No questions.

COMMISSIONER: Mr Doyle?

MR DOYLE: Thank you.

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Mr Swinson, can you go to your last statement please?---I hope it's my last statement. I think I have one more to come.

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The last that I've been given, Mr Swinson which is dated 19 April?---Yes. 1

At paragraph 18 where you say, "I was never instructed by the state to undertake a considered review of whether IBM was actually in breach of the contract or had made initial presentations to the state." It's obvious that's true when you said that?---Yes. It's a considered review along the lines we were just talking about in the last round of questions. Yes. 10

Very good. Would you go to your first statement, paragraph 77, to which you've been taken before which refers to the advice you gave on 25 August 2008?---Yes.

Which is JVS8?---Yes.

Which I'd like to take you to, if I may?---Yes.

Do you have that?---Yes. 20

That's the memo dated 25 August 2008?---Yes.

Could you go to the first page, which is background, you have a preliminary point in the fourth paragraph which, it is fair to say, identifies that you have not been given nor read the over 100 agreed contract variations?---That is correct.

You haven't been provided with those or notices or reports or documents that may have a bearing on the issues which you've then discussed?---Absolutely. Correct. 30

Then if you turn to the recommendations, which are at page 4?---Yes.

I just want to ask you about point number D?---Yes.

If there are material breaches by IBM certain things are recommended?---Yes. 40

Was it the case then that what you were saying is at a high level, whatever that might mean, these are things that can be done, but that you would recommend the facts be first investigated before they be done?---Yes.

Thank you. I'm going to ask you about paragraph 87 of your statement which deals with the meeting on 29 January 2009 which you've twice been asked about already?---Yes. 50

I won't stop you, though. And the file note which relates to that?---Yes. 1

There was a letter sent, do you know, inviting Mr Doak to attend that meeting?---I can't remember. Can I ask you who sent it?

Yes, it's not you. I'll show it to you, I think you've seen it before. Volume 8, please, at page 96. 10

COMMISSIONER: 96?

MR DOYLE: 96?---96.

That's what I said and I hope I'm right?---Yes.

You should have a Queensland government CorpTech letter, dated 28 January 09?---Yes.

Marked without prejudice and sent to, "Dear Bill." Do you have that?---Yes. 20

Did you see that before it went that you can recall?---I cannot recall. I most likely saw it before the meeting, whether it saw it before it was sent or after it was sent, or whether I was asked to provide input onto this, I cannot remember.

All right?---I'd have to check my file. 30

I'll see if I can help you. It was sent to Mr Doak at quarter past 5 on the evening of 28 January?---And the meeting was the next day at 9 o'clock.

9 o'clock?---Yes.

Is that consistent with your recollection of the timing of the holding of this meeting?---I know that the meeting the next day started at about 9 o'clock. I can't tell you what time the letter was sent or whether this was a formal letter that was - whether there was, you know, a phone call four days later saying, "Let's have a meeting," and this was a letter to formally record, I cannot. 40

You can put that aside. Turn, then, to the notes of that meeting, which are - - -?---The notes in my statement?

- - - JDS 9 to your first statement?---Yes.

It fairly records, does it, the various people that were there representing their respective interests?---Correct. 50

There are four lawyers representing the government side of the record?---Yes, I know where you're heading.

Tell me where I'm heading, please?---Are you asking: did IBM have a lawyer present? 1

IBM didn't have a lawyer present - - -?---Correct.

- - - and that was made plain to you at the outset?---Yes, correct.

Discussions took place on a without prejudice basis, didn't they?---Yes, and at the start of the meeting before this was recorded, I said, "Make it plain that IBM does not have a lawyer present. Does IBM still want to go to the meeting? Should they seek legal advice from their lawyer," who is, I believe, a lady, Sophie, in Sydney. "Before going ahead, does she want to join my telephone," so I had that, the kind of discussion you have from an ethical point of view so that an issue wouldn't be raised that I had a meeting with someone's client without their lawyer being present. 10

Mr Doak said he was prepared to go ahead?---Mr Doak was prepared to go ahead. 20

In the course of this meeting, I think you described Mr Campbell as becoming quite aggressive?---Upset, aggressive, yes.

I think you describe him as aggressive?---Yes.

You attributed to him being upset?---He's a very mild person, so, yes, aggressive. 30

And there was, can we put it this way, a difference of opinion being expressed as to who was at fault or the non-performance of the delivery of whatever had to be delivered?---That is correct.

The CorpTech representatives were asserting it was IBM - - -?---Yes.

- - - and IBM was asserting that it wasn't, it was in fact attributed to other people's faults?---Yes. 40

Just so that we can sort of touch on that topic, on the first page of the note about point 7 of the page, you say, "Lawyers for IBM are not here so we need to focus on project issues"?---Yes.

By which you mean as distinct from legal issues?---Yes, it was preferable to focus on project issues, yes. 50

I know this is a note, but it says, "Looking for IBM to demonstrate that it can deliver in certain things"?---Yes.

And Mr Doak is recorded as responding, "The gulf between the parties is too large," that is, the difference of

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opinion between them as to who was at fault, it was too large?--As to what should have been delivered under the contract and what was out of scope, I think that was the gulf, the difference between what he believed was required and what the state believed was required.

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I think we're probably saying the same thing?---Yes.

He was saying that the assertions that IBM hadn't been delivering and was defaulting is attributed to a mistaken view as to what IBM was obliged to do compared to what he saw IBM was obliged to do?---Yes.

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There's some discussion about that topic, it would be fair to say?---Yes.

He outlined some things about what IBM's view was, and then at about halfway down page 2 you'll see the words, "If this proposal is not acceptable there's no need to discuss any further," because his view was IBM is meeting its contractual obligations. Is that a fair summary of the tenure of what he was saying was on that occasion?---The tenure was, "It's my way or the highway."

20

But the tenure of what he was saying is, "We believe we are performing, IBM are performing its contractual obligations"?---Yes.

All right. The next dot point says that, "IBM can't accept the never ending inclusion of changes of scope," that's something that he said, or the effect that he said?---Yes.

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That IBM is working in good faith?---Yes.

And that he suggested that withholding of money was a sign of bad faith, or was at least not a sign of good faith?---Yes.

That's the tenure of it?---Yes, he said those things.

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And then we come to the passage that you've told us about in the statement, where it says, "If moving to legal disputes then move to that phase now." Your recollection is that he said - I'm asking you, please - that if CorpTech is moving to a legal dispute do it now. Is that the effect of what you recall him saying?---Yes.

And if that happened his response was as it's recorded here, as you recall it, that IBM would stop working on the project and focus on answering those complaints?---Yes.

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If you turn, please, further through the note, I'm not sure we can even go to the detail of it, but it's right to say there was thereafter discussion about points of difference between the CorpTech representatives and IBM about particular things that had to be done, the timing of how

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they're to be done and the way forward to resolve how they're to be done?---Yes. 1

In fact, that was what you had hoped to be the product of the meeting so that there could be discussion about those kinds of things?---And I think one key outcome, at least what I was looking for out of this meeting, was a process to better answer the question of what was in scope and out of scope so that there wasn't an endless argument of was something in scope or out of scope. It was a point where we said, "Okay, let's get the right people in the room and determine all these issues so that we don't continue to have disputes about scope." 10

And it's right to say, isn't it, that towards the end of the meeting Mr Doak said something to the effect he'll need to have his lawyers to look at the contract to give him advice about it?---That's correct.

In order to identify how he can demonstrate to the CorpTech the IBM view that it's performing its contract, or to identify, I suppose, that it's not?---Yes. 20

Which is what you had hoped?---And the plan was to have a working team of people from IBM who knew the scope issues, plus an IBM lawyer, a working team of CorpTech people, Health people, who knew the contract and a lawyer there to agree on the scope issues that were in dispute.

Very good. You can leave that topic now, I want to go to the instances you refer to in your second statement that concerns Mr Surprenant being a person nominated within schedule 29, but there not being permission, if you like, for him to cease to be involved. Did you investigate the facts concerning whether CorpTech was advised Mr Surprenant was going to be departing from the project?---The issue of IBM having personnel changes was raised with me, in a general sense, by a number of different people, including people from CorpTech and Education, and I said, "Well, we can't just have general allegations that IBM is reeling people around in breach of contract, we need to look into this in more detail." The person I remembered on the key person on the list, I said, "What about Mr Paul Surprenant?" I said, "Does he still work on the project," and they said, "No." I said, "Did you get notice under the contract to say that he was being replaced," and I was told by the people managing the contract that there was no such notice. 30 40

I understand. Can I ask you to expand on that?---Yes. 50

You were told, though, I take it, that CorpTech was in fact notified that Mr Surprenant would be leading the project, even if it wasn't a document in accordance with some contractual form?---I wasn't told that, no.

And it was undoubtedly the case - so this meeting that you're talking about is about this time, you say, in your statement?---Mm'hm.

1

We're talking of something that occurred around about September 2008. Was that right?---It was first raised with me in August 2008.

That'll do, that's your recollection?---Yeah. August 2008 I would say would be the first time it was raised.

10

All right. That'll do. Thank you. Now, finally, you were shown today exhibit 32, which was some emails?---Yes. Okay.

Do you recall the documents? I'll show them to you if you need to see them?---Unless you're asking me specifically about the documents.

Well, we'll see. You were asked, in effect, what you would have done had you become aware of these things or issues appear to be raised in these documents?---Mm'hm.

20

Would it be right to say that one of the first things you would need to do is to fully understand the facts?---As I said in my statement, that I would like to interview the people involved, but I was asked for advice to find out what exactly what happened before coming to any conclusion.

Right. So to interview the people to identify the core facts and underlying facts - - -?---Yes.

30

- - - or certain facts?---And I think Mr Bradley said that the people involved would be given a due process to say what they believed had happened as well, so we want to proceed that and then interview the people involved.

Okay. And that would include identifying, if information had been obtained, how it had been obtained?---Yes.

40

And can I ask you this question: were you aware of a suggestion made in late 2007 - sorry, late August 2007, of a wanted security of documents within CorpTech?---No. I'm not aware now.

I'll ask the question a little differently. There is an email or a draft, at least, of a document sent by Mr Burns and Ms Perrott which - and I'll try to put it neutrally - suggests that information which one would think should be kept within CorpTech in a secure way may not have been, including the matrix which contained analysis of the RFP process and possibly vendor proposals, whatever the information describes?---Mm'hm.

50

Is that an event about which you were informed that you can recall in 2007?---I have no memory of it but I was not

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SWINSON, J.V. XXN

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asked to give any - I can say that I wasn't asked to give formal advice in relation to it or even informal advice, but it might have been something that was mentioned to me in passing, but I have no - - -

1

Well, if there was, you can't remember the event, but if you had any involvement, it was to be informed of rather than to be consulted about. Is that as we should understand it?---Yes. The - - -

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COMMISSIONER: Mr Swinson, the email that Mr Doyle is referring to is from Mr Burns to Ms Perrott and actually says that you were asked for advice and you had suggested that a letter in a certain term be sent to, I think, all the participants in the RFP. Can you recall that?--- There's a few issues involved in the security that I can remember and I can't remember the exact timing. There was a general issue that I raised without any external involvement, saying the tender responses should be delivered to Mallesons rather than to the state because of potential security issues, and I made suggestions at that time that we set up a special network at Mallesons where Mallesons - - -

20

The letter Mr Doyle is mentioning occurred earlier in August during what we call the RFP process before the ITO was issued in September. And it said, as I mentioned, that you had been approached - you were given advice in a letter which is settled (indistinct) should be sent to the - - -? ---Yes. I can't remember the - - -

30

You can't recall that?---No, I can't remember that. If I saw the letter, that might refresh my memory.

I'm not sure we can show it to you.

MR DOYLE: It's not a letter that's been suggested was sent to you. It is - - -?---No, it's a letter that was sent to IBM and Accenture, I understand.

40

That was prepared to be sent to people?---Yes.

Others can show it to you, if they wish, but - - -?---In this issue, we did suggest that Mallesons set up a secure computer network which tracked who had access, like a due diligence cater room kind of thing, and I was told there was no funding to do that, and so that wasn't pursued.

I wanted to ask you about that. What's been adverted to so far occurred in relation to things which came at the end of the RFP process?---Yes.

50

You can assume that - - -?---Yes. What I suggested was later on in time.

Assume for my purposes that it's the end of August 2007 and that's sufficient for these purposes. Were you involved in the design, if you like, of the ITO process?---Yes. **1**

And it was a process in which there was introduced a great deal of prescription and constraint about the provision of information to the various tenderers?---The interaction between the state and the tenderers. Is that - - -

Yes. There was a - the ITO was drafted in such a way that it identified what it is CorpTech wanted to be informed about in the responses in a prescriptive way to identify precisely what it is the ITO respondents were to tell CorpTech?---Yes. There was detailed questions which required answers. **10**

Detailed questions and also the form of the schedule about pricing was prescribed?---Yes.

Also provided a raft of information, tens of thousands of pages of material?---Correct. **20**

That also provided a means by which further information could be requested?---Further question and answer.

And tell me if you can recall this, the system was one by which if a tenderer asked for more information, it had to be asked through a particular CorpTech officer?---I think Maree Blakeney. **30**

Maree Blakeney. And the regime was that the information would be provided to all of the tenderers, not just the one who asked for it?---Yes, which is a typical process.

Right. It's a typical means - it is a well designed, in your view, process to ensure the provision of information in a controlled way to the various tenderers?---To ensure that there's a level playing field.

Thank you. To ensure there's a level playing field. And there is also a process by which after the tenders were submitted, CorpTech could ask more information about them if it's sought?---Yes. So there's a two way questions from IBM to CorpTech during IBM preparing its response and then CorpTech asking questions to IBM about its response. **40**

That is, whatever CorpTech wanted to know - - -?---Yes.

- - - which may well be something excited by having read another person's tender, it could ask a particular tenderer to provide more information about that topic - - -? ---Correct. **50**

- - - if it wanted, if it thought it was material? ---Correct.

And again, the regime was that would be in a structured way by sending out requests to people to the tenderer and receiving a written response - - -?---Yes. 1

- - - to be disseminated amongst the team of valuers?
---Correct.

And that process is one which ensures that the ITO really is a separate, would you accept, ensures it is a separate well-designed standalone tender process to achieve, you hope, the best outcome for the state of Queensland?---Yes. 10

And you believed, as far as you were aware of its administration, that it was administered effectively and efficiently?---As far as I was aware it was.

Thank you.

COMMISSIONER: Mr Flanagan, any questions? Have you found that document? 20

MR FLANAGAN: I have. It's volume 33-1, page 36. I'll just show it briefly to Mr Swinson. Mr Swinson, it's - ignore the squiggling, if you would. That's the document referred to by Mr Doyle?---I don't think I've ever seen this email before, but yes.

COMMISSIONER: No, no. It describes some advice to you. Can you remember giving the advice?---No, I have no memory of that. It wasn't a formal written advice. I don't have any memory. 30

Is it possible or likely that you gave that advice and just can't recall it?---Yes. That's possible. It's possible.

MR FLANAGAN: Thank you. May I have that document back and may Mr Swinson be excused please, commissioner.

COMMISSIONER: Yes, thank you, Mr Swinson. You're excused. 40

MR FLANAGAN: I call John Gray.

COMMISSIONER: Mr Swinson, if you had given that advice would you have a file note somewhere?---If it was part of a larger meeting where something else - and that was just giving advice, yes, I might not have recalled it. I have looked through all my written advices and file notes. The commission would have a copy of everything in that regard. 50

Thank you.

WITNESS WITHDREW

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SWINSON, J.V. XXN
SWINSON, J.V. REXN

GRAY, JOHN ANTHONY sworn:

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MR FLANAGAN: Would you give your full name to the inquiry?---John Anthon Gray.

Mr Gray, have you done a report for the inquiry which is a report dated 8 April 2013?---Yes.

Would you look at this document please? Is that the report you compiled for the inquiry?---Yes, it is.

10

Are the opinions expressed there your opinions?---Yes, they are.

Are they honestly held by you?---Yes, they are.

I tender the report.

COMMISSIONER: Yes. Mr Gray's report is exhibit 78.

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ADMITTED AND MARKED: "EXHIBIT 78"

MR FLANAGAN: Mr Gray, just in relation to that report all I want to do with you in-chief is this: you've had a chance to read Mr Swinson's latest statement. Is that correct?---Yes.

Have you got a copy with you?---I don't.

If Mr Gray could be provided with Mr Swinson's recent statement, which is exhibit 77.

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Could I ask you to turn to paragraph 23 of Mr Swinson's statement?---Yes.

Mr Gray, he deals by way of reply to your report in relation to a number of items commencing at paragraph 23, which is paragraph 10.29 of your report. Yes?---Yes, I've got that.

40

Having read the comments of Mr Swinson at paragraphs 23 to 27 is there any part of the conclusion you arrive at or the summary you make at paragraph 10.29 of your report that you wish to change?---No, no. I would not change any of those conclusions.

Do you wish to comment upon the observations made by Mr Swinson at paragraphs 23 to 27?---Yes. Mr Swinson makes the point in paragraph 23 that in an ideal world the project would be fully scoped prior to contract, but the reality is that this is often not commercially possible.

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That's obviously correct to me, but that is not to say that if you can't fully scope the project prior to contract, you should include nothing in the contract as to scope and I

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GRAY, J.A. XN

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believe it may have been possible to include something in the contract as to scope, such as documents that appear to have been annexed to the ITO regarding the scope of the HR function, which I believe are in annexure 3.

1

Thank you. As it was, the process that was left here was that best estimates were given in relation to a number of scope of works by the tenderers and those best estimates were to be converted into fixed prices. Yes?---Yes.

10

A statement of work was to be created in relation to those scope of works. Yes?---Yes.

Having created those statements of work, the state of Queensland could have either accepted or rejected them. Yes?---That's correct.

To the extent that the fixed price exceeded the best estimate by 15 per cent there was a mechanism under schedule 17 of the contract, wasn't there, for dealing with it?---Yes, that's correct.

20

In those circumstances, if one assumes that one is very pressed for time to come to - one has a very short ITO process, one has a very short contract negotiation process and that there was some concern in relation to the possible failure of a payroll system in Queensland Health, what do you say as to the solution that was actually identified in this present case of leaving those scope of works to be converted into statement of works?---I think that was a prudent solution. I think that it may have been a good idea to go further and include some minimal statement of the scope and by that I mean the features and functions of the system that would be required in replacement of the LATTICE system, but if I could put it this way that including some minimum statement of scope would require that there be a document that satisfactorily served that purpose and I'm not able to give an opinion as to whether such a document existed.

30

All right. What you're suggesting is if such a document did it exist one would have to find it in the annexures to the ITO?---That maybe a logical place to look for such a document.

40

Can I then take you to paragraphs 28 to 32 of Mr Swinson's statement where he deals with your conclusion in paragraph 10.37 of your report. First of all, could we go to 10.37 where you deal with the timely performance and the actual timetables or time estates for the project?---Yes.

50

You make the point that those timetables in the contract are indicative only. Yes?---Yes.

You've read what Mr Swinson says about that in paragraphs 28 to 32 of his statement?---Yes, I have.

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Having read those paragraphs, is there any part of your opinion you wish to change in that respect?---No. I am not persuaded that Mr Swinson is correct when he says in paragraph 28 that it was entirely appropriate for the contract not to include detailed fixed timetables on the date of signing, notwithstanding the importance of timing under the contract because it seems to me to have been possible, if IBM had agreed, to at least put in date by which the LATTICE system would need to be replaced with a system that has gone live and the advantage of doing that - although it may not be absolutely guaranteed to be the date that IBM could deliver a working system, any change from that date would have to go through a process of change control where IBM would have to justify why it didn't believe that date could be achieved after the contract was signed. What impact would identifying the actual scope for that work which resulted in SOW7, 8A and 8 - what impact - would you need to do that work before you could identify an actual time line?---I can't give a simple answer to that.

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COMMISSIONER: The contract had one, didn't it?

MR FLANAGAN: For a go live date, yes, because it was delayed. Yes.

COMMISSIONER: No, no. The schedule of the contract showed the end of July 2008 was the date fixed for the replacement of the LATTICE system.

MR FLANAGAN: Yes. That was changed by statement of works, yes, but I think the point was that it was an indicative time.

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COMMISSIONER: But it was an agreed indicative time.

MR FLANAGAN: Quite. I think the point here is a simple point between indicative times and actual times.

COMMISSIONER: I thought Mr Gray's point was the party would have to agree a time frame and then if it changed, it had to justify the change because this contract specified that the LATTICE replacement was due by the end of July 2008.

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MR FLANAGAN: 2008. Yes, it did.

COMMISSIONER: So if that couldn't be achieved for good reason that could be adjusted under the change control mechanism?---That's correct.

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Thank you. Can I then take you to the next paragraph dealt with by Mr Swinson, which is paragraph 11.9, which you'll find at paragraph 33 of Mr Swinson's statement? 1

COMMISSIONER: I'm sorry, what is it?

MR FLANAGAN: Paragraph 33 of Mr Swinson's statement, and paragraph 11.9 of Mr Gray's form?---Yes, I have that.

Again, having read the comments by Mr Swinson at paragraphs 33 and 34, is there any part of your opinion you wish to change?---No, I agree with Mr Swinson that you could, in effect, achieve what module 11 would give you as a customer by dealing with its substance in the statement of work. 10

Thank you. And then paragraphs 35 to 37 of Mr Swinson's statement dealing with paragraph 11.18 of your opinion? ---Yes, I'm not sure I understood exactly what Mr Swinson was getting at there in paragraphs 35, 36 and 37. In 37, he said that's it's not correct, in his view, to say that the high level objectives have no legal effect. That's not in fact that I intended to convey in my report. 20

Quite?---I intended to convey they had some legal effect.

In any event, you've read Mr Swinson's statement that this was the particular subject of negotiation between the state of Queensland and IBM?---When you say "this was the subject of negotiation", what are you referring to, please? 30

At paragraph 35 of Mr Swinson's statement, "In negotiations I attempted to have these provisions as binding operative clauses - - -?---I beg your pardon.

- - - IBM did not agree"?---Yes, I understand that.

Then from there, may I take you to paragraphs 38 and 39 of Mr Swinson's statement?---Yes.

Mr Swinson's point, of course, is that the principles in clause 2 do not condone or allow contractual breaches, whereas in 15.27 of your report you suggested that the nature of the drafting may have led to that impression. Yes?---Yes. 40

Having read Mr Swinson's two paragraphs, do you wish to alter your opinion in that regard?---Yes, I mean, only to the extent, though, of perhaps better conveying what I meant to say there as an opinion. I'm there trying to draw some conclusions as to what appears to have happened in the course of the project with respect to delays and price increases, and I'm suggesting that rather than necessarily be effective the contract legally being that breaches would be tolerated, that there was some understanding perhaps mistaken on the part of the state that it should not stand 50

on its legal rights strictly but should be open to resolving issues.

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All right. Thank you. If I could take you, then, to paragraphs 40 to 43 of Mr Swinson's statement where he deals with your conclusion in paragraph 15.11 of your opinion?---Yes.

Again, having read Mr Swinson's response to your report, do you hold by the opinion expressed in 15.11?---Yes, I do.

10

Could you explain why, please?---Well, Mr Swinson does make the point himself that in paragraph 42 of his latest statement that under clause 16 of GITC part 2, if the customer commits a material breach the customer may issue a notice to show cause, and says, "This should not unduly limit the customer's ability to terminate the contract." I'm just trying to find where he - yes, in paragraph 40, he says:

20

The private sector IT contracts that I prepared do not include a show cause process, however, the right to terminate for material breach usually only arises after the contractor has failed to rectify the material breach within the required period.

That's exactly what I was saying, that normally in private sector contracts, and, in my experience, rarely in any significant IT projects, other than perhaps projects contracted under GITC version 5.01, normally you have a period of rectification of material breaches before there's a right to terminate it. This contract was, against that standard, unusual in that it required a show cause process.

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In that sense, there's a meeting of minds between you and Mr Swinson, it's simply Mr Swinson stuck by that process and those clauses because the state had adopted it and continued to adopt it at the time?---I understand that to be the case.

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Thank you. Can I take you, then, to the question of liquidated damages that you deal with and that Mr Swinson deals with, and, in that respect, may I take you to paragraph 32 of Mr Swinson's statement where he's dealing with paragraph 10.37 of your report?---Yes.

Having read what Mr Swinson has commented on in relation to liquidated damages, do you actually agree with him?---Yes, I do, and that would be where I would modify my report, inform now that the performance incentive scheme in schedule 17, I believe, as it was eventually negotiated after contract signing did provide for retention payments for delay. So on my review of the contract as signed, I wasn't aware that's what the parties ended up with.

50

Yes?---I would make one qualifying comment, that retention payments ultimately does nothing more than defer payment of what would otherwise be paid to IBM, whereas liquidated damages would go a step further and reduce the amount paid, and that it may not necessarily be the case if properly drafted that effectively capped the customer's claim for damages because it could simply be a pre-estimate of the loss that flows simply from delay rather than other breaches that may have coincided with the delay.

1

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But in terms of any recommendation by this commission, whilst the liquidated damages would always benefit someone in a position in the state of Queensland, there has to be agreement between the parties?---Absolutely, and liquidated damages would come with a price from the vendor.

In that respect, if one seeks to have a clause with liquidated damages you could expect that risk of liquidated damages to be reflected in either the price or other conditions of contract?---Yes.

20

Thank you. That's the evidence-in-chief of Mr Gray.

COMMISSIONER: Mr Kent?

MR KENT: Mr Gray, I presume you have your report there?
--Yes, I do.

You've helpfully summarised the beginning of the conclusions, as I read it, correct?---Yes.

30

Can I take you, firstly, to 6.5, which I immediately criticise you by saying, "I'm not sure what the pages are numbered." I think it's on the third page?---Yes.

You're advising there on how the state of Queensland should have managed the contract, and you state in subparagraph (b), "Delays of price increases in LATTICE replacement project implicate the level of government contract management might have been inadequate." Now, I think you expand on that in the body of your report and that really begins at paragraph 14, as I read it, the number of pages in?---Yes, I have that.

40

In subparagraph 14.7, dealing with that issue, you say that it would have been of critical importance to protect the interests of the state, that the state exercised certain minimal government disciplines of the LATTICE replacement project. You seem to have two categories there, the first one is the design document or other factor, and I presume by that you mean such things as change requests?---Yes, that would encompass change requests.

50

Was thoroughly reviewed and signed off by the relevant representatives before proceeding to a later stage. Right? ---Yes.

1

And then your next subparagraph is that those reviews be conducted in a timely way so there wasn't any delay at that stage. Now, is one of the aspects that you're referring to there, the feature that an early statement of work was the scoping and there seems to be an issue as to what degree that was properly concluded or certainly at what stage it was properly concluded and yet work under the contract otherwise proceeded. Is that - - -?---That's my understanding.

10

- - - one of the issues that you're referring to there? ---Yes. But more specifically, I'm referring to what was recorded in statement of work 8 and possibly 8A saying that there had been a hold up or that a design document had been delivered to the state on 24 December and then as at around 18 January no comment had been received back from the state.

20

Now, if you go over the page to 14.9, what you say is that a large number of the business requirement changes, as you put it, might be suggested of a failure by the representatives of the scope to exercise the particular governance in 14.7A that is reviewing and signing off.

Acknowledging that you don't put it any higher than those - that might be suggested and on that conclusion?---Yep.

30

An explanation could be that a statement where the state of Queensland were doing their best with the contractor that was experiencing some difficulties in performing under the contract. Is that another possibility?---I hadn't considered the possibility until you put it now but what I had in mind in putting that opinion forward was that something I say earlier in my report, there may have been a failure on the part of the state to articulate its requirements or a failure by IBM to properly gather those requirements.

40

And you couldn't, in what you were doing, come down on one side or the other of that line?---No, that's right.

All right. In paragraph 14.10, you say further that it's apparent from the documents you reviewed that the LATTICE replacement project was (indistinct) but again you put it which might be suggested in a failure to follow the government's discipline in 14.7(b), that is in timely review. Correct?---Correct.

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Then as I understand it or as I read it, 14.11 is an expansion of that context?---That's correct.

Correct?---Yes.

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GRAY, J.A. XXN

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Dealing, then, firstly with 14.11(a) and statement of work 8A, and you give a narrative there about activities between 2 and 18 January 2008, and the work not being completed, you say the causes of the delay are not apparent on the face of the document. Are you able to suggest what action should have been better taken by the state of Queensland in dealing with that eventuality when it arose? ---You're referring to the eventuality about the scoping work to be undertaken by IBM pursuant to SOW 7 was not completed - - -

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Yes?--- - - - by the time required. Well, if the state took the view that the time frames for completion of the scoping work in SOW 7 was in a mandatory time frame, the state could have put IBM on notice that the state considered that IBM was in breach. Another alternative is obviously that the state give IBM, in effect, more time to finish that work and that's what I believe was the effect of SOW 8A. There may have been expressed rights under the contract which don't come to mind immediately that the state could have exercised in the case of such a delay in completing the specification work.

20

Now, I'm not accusing you here of a (indistinct) perfection in hindsight but there is a bit of a risk of that in this exercise that you had to do, that there is a sense that - we know now, having it unfolded, and this is really particularly the one in 14.11A was very early on in the performance of a contract that was going to take at least a number of months after that. I suppose - is this a fair comment that someone attempted to manage this contract may not have had a red flag immediately raised at that very early obstacle. Is that a fair comment?---Yes, that's quite possible.

30

Is it also possible starting from that perspective that some of these things started to snowball and there was eventually a ticking point where it couldn't really be retrieved. Is that a fair characterisation as well? ---That's possible.

40

I won't keep you much longer but the rest of paragraph 14.11 deals with other similar examples that you give relating back to the contents of 14.10. Correct? ---That's correct.

And it does seem, is this part of your analysis, that problems with SOW 8 and the scoping really did have a lot of effect in how this contract unfolded from that point on?---Yes. I think somewhere I say that is one of the principle causes - appear to have been one of the principle causes of the problems.

50

All right. Thank you. Now, can I take you, then, to the very end of your report and it's paragraph 16. 16.2, 16.3 and 16.4, dealing with extra comments that you made, you

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know that a number of factors may have contributed (indistinct) business requirement. It wasn't possible just looking at the change requests to say which factors applied in the case of any particular change request?---That's correct.

1

And you're dealing there, really, with the face of what's on the change request?---That's correct.

In the next subparagraph, you deal with there are some that record the rationale, right, as being the correction of defects in the LATTICE replacement system, and that contributed to delays in pricing, for instance, and that's defects in the solution that was being attempted to be implemented by IBM?---Correct.

10

Then finally in point 4, you say that assuming the rationale report (indistinct) there's a legitimate question whether IBM ought to have insured that there are not so many business requirements (indistinct)?---Yes.

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Thank you. Those are my questions.

COMMISSIONER: Thank you. Mr Ambrose?

MR AMBROSE: No questions.

COMMISSIONER: Mr Doyle.

MR DOYLE: Thank you.

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COMMISSIONER: Can I ask you how long you'll be?

MR DOYLE: Three minutes, I hope. Could Mr Gray be shown the contract volume 1, please. If you turn, please, to page 133, which is the time line that, I think, the commissioner asked you the question about?---Yes, I have it.

And you should have a spreadsheet. Now, you've referred to this in your statement. You've obviously considered it before now?---Yes.

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And you see it's called program level time line schedule 23?---Yes.

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Could you turn back in that volume, please, to page 29?
---Page 29? Yes. 1

29. There's a clause, 1.3?---Yes.

High-level objectives?---Yes.

To which again you've had regard in your report?---Yes.

Where you record that by this clause the parties
acknowledge that the number of high level objectives
(indistinct) they are not intended to and not formed by any
contractual obligations, et cetera?---Yes. 10

And one of those is (f)?---That's correct.

To deliver a completed program of works according to
schedule 23?---Yes.

So the parties have deliberately turned their mind to the
question and agreed that it is not a binding obligation to
deliver in accordance with schedule 24?---And viewed in
isolation, clause 1.3(f) and schedule 24 would lead to that
conclusion, but viewed in the context of the contract as a
whole, schedule 24 - - - 20

MR DOYLE: 23, do you mean?---No. I'm talking now of
schedule 24.

Right?---Does to my reading indicate on balance that the
parties had agreed that the time frames in schedule 23 were
binding because in schedule 24 the delays procedure, there
are significant consequences for both parties if one of
those dates is not met. 30

Correct. All right. You concluded in your report that the
contract itself was uncertain or doesn't deal in that
certain way with the question of timeliness?---That is
correct, but what I'm intending to convey there is that it
was unnecessarily drafted in a way that didn't give the
certainty, I believe, was intended. 40

Okay. That will do. Nonetheless, you also referred in
your report to some change requests?---Yes.

Including change request 8?---Yes.

The January one which identifies indicative time lines?
---Yes. 50

And identifies times as being a current estimate?---Yes.

That, too, was one of the factors you had regard to to
identify uncertainty or lack of clarity, if I can put it
that way?---Yes. That's correct.

All right, thank you. There's only one more thing and that concerns the knowledge of the process by which change requests were effected?---Yes. 1

Tell me, did you know that there was a process by which the requests for change were to be considered by an internal CorpTech - by a board called the Change Advisory Board? ---Yes, I believe that was covered in schedule 23 or 22, one of those. 10

You'll know better than me, Mr Gray?---22, I think.

It contemplates a - to put it at a high level of generality - bringing together of people with different expertises and knowledge to evaluate the nature of request that is made and then either to approve it or not?---Yes.

I have nothing further. Thank you.

COMMISSIONER: Mr Flanagan? 20

MR FLANAGAN: May Mr Gray be excused?

COMMISSIONER: Mr Gray, thank you very much for your assistance. You're free to go.

WITNESS WITHDREW

MR FLANAGAN: 10 o'clock tomorrow morning? 30

COMMISSIONER: Yes, of course. We'll adjourn until 10.00 tomorrow.

THE COMMISSION ADJOURNED AT 4.33 PM UNTIL WEDNESDAY, 24 APRIL 2013

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