



## SPARK AND CANNON

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THE HONOURABLE RICHARD CHESTERMAN AO RFD QC, Commissioner

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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 30/05/2013

Continued from 29/05/13

DAY 35

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THE COMMISSION COMMENCED AT 10.38 AM

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COMMISSIONER: Thank you. Mr Bradley, good morning.

MR BRADLEY: Good morning, commissioner. My name is Bradley and I'm instructed by Maurice Blackburn solicitors and I seek leave to appear on behalf of the witness Paul Thomas Lucas.

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COMMISSIONER: Yes. I'll give you later leave.

MR BRADLEY: Thank you, commissioner.

COMMISSIONER: Yes, Mr Flanagan?

MR FLANAGAN: Yes. I call Paul Thomas Lucas.

**LUCAS, PAUL THOMAS** sworn:

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WITNESS: Good morning, commissioner.

MR FLANAGAN: Your full name is Paul Thomas Lucas?---It is.

Mr Lucas, you've provided a statement to the commission dated 23 May 2013 of 19 pages, together with annexures?---I did.

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Would you look at this document, please? Is that your statement?---That is.

You've declared in that statement that the contents are true and correct to the best of your knowledge and belief?---I have.

Thank you. I tender that statement.

COMMISSIONER: Yes. Mr Lucas' statement is exhibit 151.

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ADMITTED AND MARKED: "EXHIBIT 151"

MR FLANAGAN: Mr Lucas, you were the minister for health between 26 March 2009 and 21 February 2011. Is that correct?---Correct.

You were a member of the Cabinet Budget Review Committee during that period?---I was.

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You were also the deputy premier of Queensland?---I was.

All right, thank you. Michael Reid was your director-general of health during the relevant period you were health minister?---Yes.

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LUCAS, P.T. XN

Michael Kalimnios was the deputy director-general corporate services Queensland Health between the time you commenced as minister and 28 June 2010?---At all material times, I believe, sir. 1

Thank you. You say in your statement at paragraph 69 - and you can turn to it if you wish - that you caused inquiries to

be made about the go live decision that was made in or about March 2010, but you caused those inquiries to be made in April 2010. Is that correct?---Late March to April, that period of time. 10

What prompted you to call for this inquiry?---I don't specifically recall a particular date, but clearly there had been so many problems that why was it agreed that this payroll go live and clearly it wasn't ready to go live.

What was the result of your inquiries? What information did you receive back?---In the process, the documentation that has been produced in this inquiry and, of course, many discussions with people within my department and the DPW as well. 20

Before we discuss the go live decision itself, you commenced as health minister, as we've established, on 26 March 2009. Were you aware of a preliminary decision that had been made by the premier Ms Bligh, together with Mr Schwarten and Mr Grierson, that IBM under their contract of 5 December 2007 would not be awarded any further statements of work and that they were to complete first the Health payroll replacement solution?---I don't believe so, certainly not to my recollection. 30

All right. Do you know when that decision came to your attention?---Look, I suspect at the time probably of - you know, around the time of the CBRC decision that formalised, for want of a better word, I think, that arrangement. I did make reference to an estimates briefing note as well. I'm not sure if it's in there. 40

Quite. That's annexure 3 to your statement, I think. If I could show you the CBRC decision for 21 September 2009, it's found in volume 1, page 67. Do you know as at September 2009 who constituted the relevant committee? ---I'm just - always the premier, the deputy premier and the treasurer. I'm just not - I just can't recall who the fourth minister was at that relevant point in time. It may have been Minister Dick. It may have been Minister Hinchley. I just don't have that recollection. 50

If you turn to page 70 of that volume you'll see there's three dot points around halfway down the page. The first dot point reads, "IBM to complete the implementation of Queensland Health's payroll system only"?---Yes.

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LUCAS, P.T. XN

Do you see that?---Yes.

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Mr Lucas, at the time and in the discussion at the committee at this stage, was there any consideration given to rather than having an interim solution for the Queensland Health payroll to engage either IBM or another vendor to do a permanent solution?---My recollection of the interim solution, so-called, was really in the sense that under LATTICE Queensland Health had a payroll system that really wasn't highly automated. For example, a nurse unit manager would write out a roster and then that would go - having written it out, it would then go across to someone at payroll who would then enter it. There was all of this double handling and those sorts of things and I think it was understood that ultimately they would want to have a system that was totally automated and my recollection was that was really the nature of calling it an interim solution. I've also got to say as well that in retrospect the complexity of the system would, I think, have made it incredibly difficult to go to some super system from the very benign and forgiving way that it would LATTICE operated.

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Having been the responsible minister for health from March 2009 to September 2009, did you appreciate that Queensland Health was the most complex or one of the most complex departments in terms of payroll?---In payroll, probably not. That became very self-evident when one puts the proposition, but that became very clear later on, yes, and it is clearly by far and away the most complex of all departments full stop.

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Yes. The complexity in relation to payroll was for two reasons. First of all, there are approximately 78,000 employees, some casual, some part-time, some scheduled, some not scheduled and, indeed, there are numerous awards and we've heard evidence of the combinations and permutations for the awards. There was something like 24,000 of them. You at least knew by September 2009 that there was complexity in relation to the department for the particular solution that was being suggested?---Look, I don't think the submission particularly talks about those complexity issues. What was clear was LATTICE needed to be replaced.

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Yes?---Complexity or not, if it needs to be replaced, it needs to be replaced.

All right. Had there at this stage to your knowledge - had there been expressed to you by either Mr Grierson or, indeed, Mr Schwarten, the relevant minister for the Department of Public Works of a loss of confidence in IBM in terms of the whole of government solution?---I don't recall so, no. I don't believe so.

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LUCAS, P.T. XN

But this decision here and in the submission itself identifies that any further works by IBM for the whole of government solution for the Shared Services initiative would be put on hold until they had completed Queensland Health. Yes?---Well, yes, but this is really in the context of a budgetary issue rather than detailed performance issues. It's indicating that: look, we are in difficult financial times. This is a very complex project. We need to manage within our budget. It is not uncommon that governments give consideration to curtailing things in difficult financial times.

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Can I ask you this: to your knowledge was there any consideration of terminating IBM's services in relation to the Health payroll solution and going to market to find a different vendor?---That certainly wasn't put to me as a proposition.

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All right, thank you. If you could turn back then to the go live decision in paragraph 75 of your statement. In the last sentence of paragraph 75 you say:

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*My recollection is that I was advised that the issues were relatively minor and this certainly added to my very significant annoyance as matters transpired when it became evident that this was clearly not the case?*

---Yes.

We appreciate it's sometime ago, Mr Lucas, but can you tell the commission what was the probable source of that advice to you? Who gave you that advice?---Typically, how a minister would respond to a media inquiry is that the media would contact the minister's media adviser and say, "Look, we want to talk to him about a particular issue," because they generally want to get a meaningful answer; that they could also what you call door stop you, just ask you a question cold, but that's much harder to get the material from the department and so the adviser would contact the relevant people in the department, sometimes through the department liaison officer, sometimes directly, you would have to ask the media adviser, and then they would provide the information back to the minister and the minister would answer the question.

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Do you know who was the source of the information to you that these - - -?---No.

- - - defects were relatively minor?---In the department, you mean?

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Yes?---No.

At this stage were you meeting on a daily basis with your director-general Mr Reid?---Generally, I would see Mick most days, but, you know, not specifically see him most days, if you understand what I mean.

All right. You soon came to appreciate that - - -?---And I think he might have been overseas at that point in time.

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Quite. You may have appreciated that - when did you appreciate that the issues were not minor?---Well, essentially we got more and more complaints and issues, queries from the media, members of parliament starting to talk to us about issues, the department starting to, you

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know, say, "There are issues here," and it became a very, very significant concern. This was beyond any teething problem that one might expect with a new IT solution. It was extremely serious.

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Can you tell us what steps you took as minister?

---Obviously we ultimately appointed Michael Walsh, in consultation with the premier, to lead a project team to deal with the - if you want for a better word - as much as possible getting on track. We worked very closely with the Department of Public Works, DPW, and the Premier's Department. This was a matter of such seriousness that the Department of Premier and Cabinet were intimately involved in that as well. In particular, bearing in mind that the employee of my department - our focus was on how we're setting up mechanisms for people to call us if there are problems: why do we have hot lines in terms of if someone has got an issue with their pay. Are these the appropriate mechanisms to be able to process things quickly? Have we got enough staff devoted to processing the material? How are we going in terms of those matrix? Those are all the sorts of things that were my key interest.

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In relation to Mr Walsh's role - and it's called the Payroll Stabilisation Project to start with - it does rename itself in July 2010 into the payroll improvement project - - -?---Yes.

- - - which we'll come to, but why did you pick Mr Walsh to head that particular project?---I have a tremendous - had and still have - personal regard for Mr Walsh's professionalism. I had, through my director-general, encouraged to come to my department. I'd previously worked with him in the infrastructure department in relation to capital works planning and he was doing a very, very good at Queensland Health in terms of capital works. He was a person who could cut through the issues, get things done and he didn't have the history in the implementation in the sense of he was an honest broker and very well regarded by the premier and Ken Smith, I might add.

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You also called Mr Reid, as director-general, to be appointed chair of the project?---Look, I think that would have been by virtue of the fact that he was director-general, but that was not as significant, the director-general wanting to oversight the things, as Michael Walsh was appointed.

Mr Lucas, while we're on this topic, can you inform us why the project changed its name from the payroll stabilisation project to the payroll improvement project in July 2010?

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---I can't recall that because there should be continuous improvement all the time and I think sometimes public servants get a little bit more obsessed about names than - and so I don't have that recollection.

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LUCAS, P.T. XN

Can we take it though that when one moves from stabilisation to improvement that that would suggest the project had, at least, succeeded in stabilising the payroll solution?---No.

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Why is that?---I continued, remembering, as health minister even more so - the premier was extensive in her travellings, that's her nature, and, in particular, going to health facilities in any event, but that was my job, to get around health facilities in Queensland and people were constantly talking to me about the problems that they were having and you'd sit in front of our payroll staff and they'd show you this screen. You know, I've seen it. They would sit there and they're saying, "Right. Waiting for it to paint the screen so they could put the data in and then, "Oh, it's dropped off." So this was not something that - and I can't place it to a point in time, but we certainly were devoting resources into reducing backlog, but we actually had to reduce backlog so we could then free some people up into actually working on improving the system, so it was a real difficult situation.

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The first payroll that was run under the new system or the new solution was on 23 March 2010. When did you have sufficient confidence that the pay runs thereafter were, at least, beginning to stabilise and beginning to do what it needed to do in terms of paying people?---I don't think that I was every fully happy with the system.

All right. Was there any stage where you had some confidence that the crisis had passed, at least?---I think it is - I can't put that at a point in time because as far as I was concerned if people were not getting paid, it was a matter that was critical to them. You see, it's fine for me to sit back there - and people made this observation. It's fine for politicians to get paid. Our pay kept on happening, but when you have, you know, a wards man or a wards woman being in default on their mortgage because the pay doesn't go into their bank account, I reckon they would think it's a pretty critical incident in their life and so from my point of view, it was a significant ongoing concern and I would have been happy when we had a system that operated in the sense that everyone was happy with how it operated, that is, the system is for our staff. It is not for me. It's for them and it should suit them.

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Quite, but there's a difference, is there not, in terms of a crisis point where 3000 people don't get paid as opposed to where the payroll reaches a point where only 30 people don't get their meal allowance? There's a big difference, is there not?---Well, in those terms yes, but I don't think that we were in that situation. I'd have to have a look at the figures.

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Yes. So it might mean - - -?---But if you're requiring enormous amounts of resources to fix that then it still is an issue, isn't it?

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Yes, but my question is this: did you have any sense of when the payroll solution ceased to be in crisis?---We were continuing to devote very significant resources to it for the entirety of my time as a minister because we wanted not only to fix the backlog, but to get it right and to actually improve it for the future and because of the nature of the issues identified by the auditor-general in fact of - and by yourself and all the combinations et cetera in fact some of that will continue to happen until you have business process re-engineering, indeed, to alter that.

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All right. But in terms of that process, you had appointed Mr Walsh to oversee it?---Yes.

He was working in cooperation with the Department of Public Works and Premiers in that regard?---Yes.

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And, in particular, CorpTech?---Yes.

Thank you. Did you have at or about this time any one-on-one meetings with IBM representatives?---I do recall at one point in time - not one-on-one - a minister would never meet someone individually. It's not good practice; much like a barrister, Mr Commissioner, but I do recall a meeting that we had, I think, at Parliament House with IBM and they were very senior people, I can't remember who they were, and it was a without prejudice meeting in which, frankly, you know, they were there to say, "Look, we want you to know that we're very serious about dealing with these issues," and I said, "I want you to know that we're very concerned about these issues and we want them fixed." They're mature, well advised people and I understand as well, we weren't going to get involved in negotiations, and none took place. It wouldn't have been appropriate nor did they seek to.

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All right, thank you. Do you recall anything else about that meeting?---Not really, no. 1

Now, you and Mr Schwarten made various public statements to the media. Yes?---Yes.

And at one stage you had a joint press conference?---Yes.

But as early as April 2010, Mr Schwarten was making press statements, one of which was referred to in the material, that it was not a systems problem, rather, it was a data entry problem. You're aware of those statements being made?---I am. 10

Did you agree or disagree with that statement of Mr Schwarten's?---I think it was both.

Was that your view that - when did you hold the view that it was both?---From the first time that I had a look at it in any detail. You know, clearly - leave IBM to one side for the moment, there are issues that CorpTech ought to have attended to, there are issues that Queensland Health ought to have attended to. 20

Now, soon after going go live and soon after you identified the relevant problems, you took the steps you have described but you also visited hospitals and hubs for that purpose?---Absolutely.

You spoke to Health employees in relation to the problem? ---Mm. 30

You also spoke to those who were on the Coalface of the payroll system. Yes?---Yes.

Mr Lucas, can you just give us a general idea of first of all what you viewed as the problems arising on the Queensland Health perspective in terms of data entry and the problems that you identified being systems problems? ---Well, I'm not an expert - - - 40

We appreciate that. I'm actually asking you as the relevant minister at the time?---Okay. Well, it would seem to me if the screen doesn't allow you to enter data in promptly, that would appear to me to be a systems issue. I don't know, but I would have - but data entry issues, for example, if there is a very large backlog of them being entered or when people got concerned that they weren't being paid, they would sometimes put a second form in and so that adds to the backlog processing as well, so those are two examples of either extreme - you know, you would sit there and it was actually very instructive to sit with your payroll staff and watch them enter data. The other thing - and I think it's discussed earlier, Commissioner, is the very fact as people are getting increasingly concerned, they were calling people in payroll to help - 50

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LUCAS, P.T. XN

you know, to want to sort it out. Well, that of course - that took payroll offline to actually have - to sort it out so it became a reinforcing problem.

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Now, did Mr Walsh in his position of in effect heading the payroll stabilization project and subsequently the payroll improvement project, did he inform you of what role IBM were playing in terms of exceeding the solution?---Well, obviously they were continuing to deal with IBM in relation to its performance of the contract. Now, you know, I can't give you the detail of what they were specifically discussing, you know, defect X or Y, but they were not really matters that a minister would deal with.

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Now, at one stage, a decision was made by Mr Reid to terminate the employment of his deputy director-general, Mr Kalimnios, and also the employment of a contract of Mr Shea and to deal with Mr Price. Yes?---Yes.

Did you have discussion with Mr Reid in that regard?---Yes. I believe Mr Reid spoke to me directly about it. I understand he said he may have spoken to my chief of staff but I think he spoke directly to me about it.

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Do you recall what was said in that conversation?---That he proposed to terminate them because he wasn't happy with their performance in relation to the matter.

That was a decision that a director-general makes? ---Absolutely.

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And you have no role as minister in determining the employment or contractual arrangements between public servants and that state of Queensland?---That is correct, and I also believe that he observed the appropriate courtesy in letting me know because I certainly would have been asked about it by the media, for example, and indeed I think I was, Commissioner. He followed the appropriate courtesy in letting me know that.

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COMMISSIONER: Would the minister ever interfere in such a decision?---I beg your pardon?

Would a minister ever interfere in such a decision; that is, the director-general terminating - - -?---It is not appropriate for a minister - the minister has a choice in relation to director-general. Sometimes the director-general might discuss with the minister, you know, the relevant merits or appointing people but I've certainly never directed a director-general to sack someone.

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Or not sack someone - - -?---Or not sack someone, no.

MR FLANAGAN: Now, before we come to the cabinet budget review committee meeting for 22 July 2010 which is a document that I have shown you previously in interview? ---Yes. 1

Can I take you to volume 2 page 1-1 which is a media release and it's actually a joint media release, Mr Lucas, between yourself and the premier - - -?---I'm sorry, Mr Flanagan; what page? 10

Volume 2 page 1-1?---Yes.

And that's a media release joint statement. Yes?---Yes.

Now, this is a media release that you made jointly with the premier in response to the auditor-general's report which had been tabled in parliament on 29 June 2010. Do you recall that?---Yes.

If you look at the second dot point on the first page, it says, "Issue of show cause notice to IBM and reserve its rights to withhold final payment and seek damages." Yes? ---Yes. 20

And that was certainly an option being considered by the government at that time. Yes?---Well - absolutely.

Yes. If you turn over to page 1-2, the two last paragraphs on that page, the auditor-general's report clearly identifies failings on the part of contract provided to IBM. "We have sought Crown Law advice in relation to options for terminating the payroll contract with IBM and it is only fair that we seek to reserve our legal rights. The government has issued IBM a show cause as to why the contract should not be terminated - the premier." Yes? ---Yes. 30

And you knew that at the time, that if show cause notice had issued - - -?---On or about that time. 40

Yes. Then finally over at 1-3, if you can simply read at the bottom of the page under the heading Holding IT Advice Accountable?---Sure.

Now, Mr Lucas, you were a qualified solicitor at the time. Yes?---I am.

How long had you practiced as a solicitor prior to June 2010?---Well, I ceased practicing in 1996. 50

All right. How long had you practiced as a solicitor as at 1996?---Eight years.

Eight years, thank you. That was in private practice?---It was.

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LUCAS, P.T. XN

All right. Now, in terms of that legal practice, you also were the first law officer of the state as attorney-general, were you not?---After this event.

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After this event, all right, thank you. Now, was it your view and did it remain your view at or about June July that the state should be pursuing IBM for damages? ---Commissioner, I think I took the primary view - well, the point I started from I think is the point that I think anyone would start from in relation to that contract they had entered into regardless of whether it was this one or not. If you enter into a contract with someone that is not performing, the first thing that you will do if you believe that there is not - that you are not totally at fault, what are your legal options in relation to taking action against them, and I believe that one of the largest IT companies in the world, the state ought to be reasonably entitled to rely on it and that's why I was absolutely concerned to make sure that we considered that issue of legal action.

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Without going to the show cause notice itself, did you appreciate that one of the primary deliverables under statement of work 8 was delivering the payroll solution albeit interim by 30 April 2010?---Look, the particular date - I don't recall it but clearly, they were required to deliver a payroll solution. They were of course - they very vigorously resisted the notice to remedy defect and the notice to show cause.

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COMMISSIONER: Mr Lucas, can you remember when you met the IBM people in parliament house, I think you gave us the date somewhere in your statement, can you recall if the IBM people said to you that they had delivered a functional system and the problems such as they were were not theirs? ---Not specifically, Mr Commissioner, and we weren't going to get anywhere having an argument. I think they were more there to say - as I would frankly expect them to say and do but that we want to work cooperatively. This is important. The Queensland government's relationship is important to us and that's what we - and you know, we want to work with you rather than - they weren't there because I would have - "Let's just finish the meeting", to say, "Look, you should have done X, Y, Z, A, B and C." That wasn't the point of the meeting. It was for them, if you like, as a courtesy to indicate that they were serious about the matter.

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MR FLANAGAN: In your talking to Health employees and those working on the payroll, did you ever pick up a sense that the public generally wanted the government to hold IBM to account?---Certainly elements of the public, absolutely, yeah.

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All right. Thank you. If I can take you then to 22 July 2010 cabinet budget review committee meeting, you'll find that it at volume 2, page 226?---Yes.

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You attended the meeting?---I believe I did.

You participated in the discussion. Yes?---Absolutely.

What was suggested here in terms of options, and the preferred option was to seek to negotiate a commercial settlement with IBM, correct?---Yes.

But at the same time negotiate within certain parameters. Yes?---Yes.

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And those parameters were identified at table 1, which you'll find, Mr Lucas, on page - - -

COMMISSIONER: 239.

MR FLANAGAN: - - - 239?---Yes, thank you. Yes.

That table for the proposed contract negotiation parameters, in item 1, identified the preferred position of the state and acceptable position of the state?---Yes.

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But the preferred position was that no further payments be made to IBM in terms of retained monies, and then under item 6, legal release of obligations, your preferred position was that the state preserve its rights to sue IBM at a later date. Yes?---Yes.

There was also a qualified release as being an acceptable position, and did you understand it to mean this: if the solution ultimately failed the state of Queensland could hold IBM responsible in damages if it did fail?---Yes. Can I just add for the sake of completeness, in a number of documents included and attached to this submission though the likelihood of IBM agreeing even to a qualified release was indicated as essentially non-existent, so one needs to look at that in that context. In fact, I'm just trying to look, there's a paragraph, and I have it marked up in my own copy, Mr Flanagan - - -

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Would you please refer to it, if you're able to?---Excuse me.

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COMMISSIONER: Yes, of course?---I think it might have been paragraph 52 of the submission, Mr Flanagan. Would you like me to read it or - - -

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LUCAS, P.T. XN

MR FLANAGAN: I have it. That's in relation to the Crown Law advice?--Yes, but what I'm saying to you is, it says, "It could at least attempt." It's hardly emphatic in its terms to say, "Look, what I'm saying to you is it's fine to say that, "Here's the table with our position," the advice was not clear that we would have got away with a qualified release from them.

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But you always had the option to terminate IBM's contract at one stage, didn't you - - -?---Of course.

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- - - because a notice to show cause to terminate had been issued. Yes?---Well, yes, but whether that was a lawful termination or an unlawful determination ultimately may have consequences that we were very concerned about.

Quite. This is the difficulty we have in this commission, and there's two: in the cabinet review committee's submission, it says that the state of Queensland in settling with IBM, and if it settled with a full release, would be giving up an unquantified claim for damages? ---Yes.

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You'd appreciate as a practicing solicitor that in negotiating and determining a negotiated settlement, if you're armed with an advice from either the solicitor-general or senior counsel as to the potential quantum of damages that one is releasing, that is a relevant consideration in any settlement. Yes?---It is, but I would draw your attention to the Mallesons - - -

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Damages page?---Damages document, and in particular - I don't have the same number and I apologise - but item 5 on page 8 of the document 19 July, which, you know, almost sort of, not word for word, but just is absolutely my view as to what the issues that we would have faced with litigation, and I'm happy to go through them if you like with IBM. My whole experience with government litigation is governments charge off and then find out halfway through it that someone's made this, and it happens in roads litigation, it happens in construction litigation, that someone said something to someone, there's a variation here. Once having issued a show cause, we're on a time frame and it's all fine to say - based upon - it's not like getting the solicitor-general construing a contractual document or a point of constitutional law, go and have a look at the law books and they're all there. This would turn ultimately on who said what to whom, in what meeting when, what was reasonably within it, and that was simply a very, very complex thing that ultimately might be resolved by questions of credit. So we would have got down the track and instead of having a commission several years later we would have still been in a trial, and there are plenty of cases where that happened.

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In relation to this particular negotiation, neither you or any other member of the committee received a preliminary advice on quantum, did you?---Well, no, and I would have thought liability frankly would have been the - there's no quantum without liability.

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Can I just - - -?---Sorry?

My second question: nor did you receive an advice on prospects of success. Correct?---Sure.

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On a simply basis, however - - -?---There was enough discussion about those issues in there.

Quite. The discussion in all the Mallesons paper suggested the government was on stronger ground than IBM in relation to alleging a material breach of contract and having the right to terminate, yes?---Without the benefit of the items that I referred to in section 5 on page 8, and, frankly, having would have been the critical issues, and having an opportunity to have them in the time frame was simply not possible. We knew, through the auditor-general's report, and I've noted in the transcript quite accurately it said, "Well, that's not admissible in court," but we know from that, you know, this wasn't going to be any walk in the park to the state. There were clearly issues how the state had dealt with the matter as well as IBM.

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When you say there was no time, the notice to show cause is issued on advice from Mallesons, accepted through the proper channels, it's issued by the director-general to the state. There were clearly issues how the state had dealt with the matter as well as IBM.

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When you say there was no time, the notice to show cause is issued on advice from Mallesons, accepted through the proper channels, it's issued by the director-general on advice, that's issued on 29 June 2010. The committee does not actually sign off on settlement until 26 August 2010. What I'm suggesting is: that's plenty of time to at least obtain a preliminary advice on quantum from senior counsel, it's certainly enough time to obtain an advice on prospects of success in terms of the grounds identified in the show cause and the state's rights to terminate, wasn't it?---I don't believe that the material that we would have then had within that period of time that we would have had access to would have led to a more meaningful decision balanced against the very real risk of the system having massive issues because IBM walked away from the contract.

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Can I suggest this, and you may know this, that the contract had reached a state where it was well documented in terms of any change request by IBM, yes? You knew there were numerous change requests by IBM?---Sure.



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The main dispute in relation to scope between Queensland Health, CorpTech and IBM was resolved by change request 184 in July 2009. Did you know that?---I'm not sure specifically.

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All right. Thereafter July 2009, there were other change requests - - -?---Sure. 1

- - - which dealt with new scope, that is new issues in relation to scope - - -?---Yes.

- - - or it dealt with disputes in relation to scope, but in any event, those change requests were made and then there was another change request where the solution was going to be delivered by IBM, that is a workable payroll solution to be delivered by IBM free of defects for severity 1 and 2 or if there were severity 2 defects, for new defects to be fixed within two days or otherwise in accordance with the management plan that had been agreed between the parties. By that stage, most of the difficulties identified by the auditor-general were really dealing with history. What I'm suggesting to you is if counsel, at least senior counsel, had been briefed with the contract and those change requests and the deliverable and the notice to show cause, advice could have been given in relation to your prospects of success?---But that would not have paid one more person quicker. It would not have dealt with getting any particular adjustments to the payroll done quicker. Our absolute motivation - it's all very fine to sort of embark upon litigation and then, you know, if you think you've got prospects - and, as I said to you, the track record of governments in litigation is they always end up getting settled. We are a model litigant. We need to actually genuinely embark upon negotiations when we actually take proceedings, we do it with full disclosure and all of those sorts of issues, that what absolutely motivated us - if I thought that we could have sued IBM and not had a risk or a downside with respect to our staff then that would have been a completely different picture, but it wasn't like that. 10 20 30

Could you identify the risk you're talking about please? ---Well, KPMG indicated in their document - and it wasn't just that, you know. Mal Grierson had indicated to me, Michael Walsh had indicated it to me, and we were not prepared to put people through the terrible inconvenience because I sort of - can I say to you that in many respects, Mr Flanagan, we've got the ability to look at it now, but it would have been so much worse if what had happened is that they had walked away and it happened and you were asking me, you know, "It wasn't equivocal, was it, about whether you'd take action? IBM had disputed the issues, but nevertheless you charge in and sued them. They walked off the job and you didn't have anyone getting paid for two months." 40 50

You had received - - -?---And that is my concern.

You had received advice from Mallesons, however, hadn't you, that - - -?---Yes.

- - - under the contract of 5 December 2007, IBM had legal obligations in relation to disengagement, even after termination. Yes?---Yes. 1

What evidence did you have that IBM would not honour those contractual legal obligations in relation to disengagement if one was to terminate and reserve the state's ability to sue for what was at that time an unquantified claim for damages?---The KPMG report is very extensive in indicating what the risks are. Mr Grierson has previously indicated his view as to - and I believe stated at the time - IBM's attitude to the potential of the matter being escalated by the state at a legal level and what was paramount to us - what was paramount to us - was that we continued to pay our hardworking staff because we can talk about whether IBM were at fault. We can talk about Queensland Health or we can talk about DPW. I'll tell you one lot of people who weren't at fault and they were our staff and they were the ones who were paramount in relation to considering whose best interests that was because even if we took action and even if we were partly successful, and there is no guarantee of that, what would that have meant three years down the track when they'd been in default on their mortgage, as many have been, because the payroll system didn't operate correctly. 10 20

This is emotive language, but it comes down - - -?---Well, it is. It was very emotive for people.

Mr Lucas, it comes down to this, doesn't it, there was in fact very little, if any, investigation, true investigation, of whether or not IBM after termination would walk?---We - - - 30

IBM were never asked that question, were they?---I'm not sure what point there would have been in saying to IBM, you know, in that circumstance what would they do. Can I say this to you though: KPMG - it wasn't just the Department of Public Works saying this. Of course, they might have a view. It wasn't about Queensland Health just saying that. Of course they might have a view. It might suit them to settle matter, but there was no issue from the state's point of view and, indeed, the politics was all towards suing IBM, if you want to be as blunt as that. What motivated us was to have the best outcome for our staff and when you have the KPMG report - KPMG have got no reason to indicate their real concerns about the payroll falling over, that that was the prime motivating factor. 40

Can I take you to the KPMG report - - -?---Yes. 50

- - - which you'll find at volume - - -?---Can I use my copy if that's all right?

Yes, you may.

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COMMISSIONER: Yes, of course. 1

MR FLANAGAN: Volume 2, page 358?---Yes.

If you can look at the heading that says, "(5) moving forward." Do you see that?

MR KENT: Page 8?---Page 8? Thank you. Yes?

MR FLANAGAN: It says in the second paragraph, "CorpTech have made progress in developing a strategy to manage the transition of these key resources from IBM, thus ensuring continuity of support"?---Yes. 10

So progress had certainly been made as at 21 July 2010, which was the date of this report from KPMG?---Yes.

"We do not believe it would be prudent," so they're talking in terms of prudence, "for the government to sever its relationship with IBM until such time as it has a level of comfort that it can effectively manage the transition of the identified resources supplemented to an effective handover by key QHR documentation and status of the work programs being managed by IBM". Yes?---Yes. 20

You understood, did you not, that there were key resources of IBM in terms of their subcontractors, including other resources such as Infor. Yes?---Yes.

So that's suggesting that one should have a certain level of comfort as a matter of prudence before you sever any relationship with IBM. Yes?---What it says is that it wouldn't be prudent to sever the relationship until, yes, you can manage the transition and that was what the negotiations were directed to. 30

My point is this though: how was that risk truly assessed? That is, what investigation was identified or carried out to identify that risk?---Well, from my point of view, I'm not qualified nor competent, nor is it appropriate for a minister to personally investigate those sort of things. However, retaining someone independent, such as KPMG, examining the advice in the context of the situation as known to us - and I would point out that the front page of the KPMG report just above point 2: 40

*It is imperative that any proposed changes to support arrangements is transitioned in a managed way so not to negatively impact on the ability to support the Queensland Health payroll. IBM are - - -* 50

COMMISSIONER: Mr Lucas, where are you reading from? ---Sorry. Sorry, commissioner. It's the front page - - -

MR FLANAGAN: It's page 351, Mr Commissioner, in the second-last paragraph on the page. 1

COMMISSIONER: Thank you. That is, "It's imperative that any proposed change"?

MR FLANAGAN: Yes?---And then on page 3 of that document:

*IBM are continuing to play an important role in supporting the QH HR system, bringing expertise to design -* 10

et cetera, of the system. We knew that they were getting pretty cranky about us talking to Infor and subcontractors that were very critical - remembering we were wanting to make sure that we're paying people and at the same time work on the fixes and the patches that were forever needing to be fixed and dealt with and looked at.

That concern was expressed by IBM in the context that they still had a contract with the state of Queensland. Yes? ---Oh, yes, but also I think if it ended acrimoniously with IBM, I think it is very hard to imagine that Infor, being a worldwide partner of theirs - I think it would have been extremely difficult for Infor to continue to engage with the state. 20

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But you had received advice from Mallesons that IBM were actually obligated and did not have any basis for hindering the state of Queensland's access to Infor?---But they've clearly raised it with Mal Grierson, so this is not about - - -

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Sorry, just repeat that? What I'm suggesting to you is that IBM have never indicated in anything in writing that they would hinder the state of Queensland contracting directly with Infor for the purposes of assisting/fixing up the solution?---I don't know about writing, but Mal Grierson had indicated the issues that IBM were having with us talking to contractors. Whether that was Infor or not I can be corrected on, but my recollection is that Mal clearly made that point.

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Can I ask you to turn then to page 4 of your report - - -

COMMISSIONER: Before you do, can you tell me as best you can remember what Mr Grierson said on this topic?---We had extensive discussions at CBRC. Mr Commissioner, I don't recall specifically what he said but he certainly - - -

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No, but the effect of it, yes?---His effect was that, "If we don't settle, you know, these guys will walk away from it. You know what the consequences of that is, we need them." So that was more his point rather than I think particularly going on about, "We'll be tied up in years in litigation," that's my experience. And it is no secret, and I think minister Schwarten indicated to it, that we gave consideration to whether we would take action against IBM. But we had to make a call, and I've got to say our staff are important, paramount.

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MR FLANAGAN: Can you turn to page 4 of the report, which is at page 354 of the bundle? You'll see there there's a table set out, "Overview of IBM resourcing for the QH HR system"?---Yep.

You'll see underneath that, it says, "CorpTech need to secure or replace 22 of the 30 resources IBM currently in a revised support arrangement." Do you see that?---I might actually - sorry, I'll go to this document.

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Page 354, Mr Lucas?---Yes.

"CorpTech need to secure or replace 22 of the 30 resources IBM currently in a revised support arrangement"?---Yes.

You never spoke to any contractors, did you?---No, I wouldn't believe so.

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Not your role as minister to - - -?---No. Whether someone in a payroll centre may have been a contractor or not I wouldn't know, but I suspect these are all people located

with CorpTech so I think it's highly unlikely. I have no recollection of it and it would be extraordinary for it to happen.

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You're not the first former minister, or indeed accounting for the premier, to suggest that it would seem the political imperative was that if there was any risk in not keeping IBM onboard for a smooth transition, if there was any risk in relation the payroll being affected, whether that risk is minimum or whether that risk is great, but if there was any risk then there was no heart to terminate the services of IBM. Is that a fair statement?---I think you've got to look at it in its totality. The reason there was still major problems with the system, and indeed the ultimately solution with IBM I think had them fixing 35 defects. So those were things that were affecting our staff or our payroll staff in processing and the like, but it is not a theoretical thing to say, "We can sue them, the downside is it might have fallen over." The downside is it might have fallen over based upon what KPMG said and what others were saying to us, but more importantly the consequences for those people. If someone doesn't get paid - not everyone in the community gets paid fortnightly, and if they don't get paid there's money in the bank to take for the overdraft, we were putting people into default in mortgages. They were having to ring up their bank manager and say, "Look, I haven't got any money, I've not done anything wrong." We had people concerned about their credit rating. These were issues that were of very real significance, and I know you accuse me of getting emotive about before, but it is. It is not, "It'll just sound in damages to the state or not and whether it'll have a win or not," it was the issue that motivated us at the time was what would be the consequences for those people after action, if IBM took that action.

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Yes, but that would suggest this, that you had identified the risk in these sense: irrespective of IBM's contractual obligations after termination that IBM would act against those contractual obligations, IBM would actively hinder the access of the state of Queensland to these 22 subcontractors who were working on the system to fix it, that's the risk that you're telling us about, isn't it? ---Well, that was the risk that we were advised of.

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I want to know what evidence, if any, you had as a member of this committee to identify that risk as so paramount that you released IBM from all future claims for damages? ---The way that a cabinet or indeed ministers work is that they do not individually assess the particular legal issues, they are not sitting there as legal experts or investigators, they rely and act upon those that are employed by them to do that job. The advice that we were given, our public servants, from Mal Grierson and others and indeed from the KPMG report, and from our observations,

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you know, what I did do was get out there and talk to people who were concerned about the impact that the payroll had on them and they all went into that mix. Even if we took action, that would have sounded in damages for the state later on, that would have been a down the track thing if it went to court and if it was resolved in our favour and we had clearly had all the finger pointing that had gone on between DPW and Queensland Health let alone with themselves. Without assuming any counter claims or anything like that, and of course those counter claims were foreshadowed, then that is the proposition that you're - - -

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It's a lengthy answer, Mr Lucas, but it doesn't actually answer my question. My question was: what evidence did you have that IBM would ignore its contractual obligations after termination and that IBM would hinder - - -

MR BRADLEY: Commissioner, I have an objection to the question. I don't wish to raise it in a way that might be seen to influence the witness' evidence. If it's a concern, I'm happy for the witness to be removed while I raise the objection.

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COMMISSIONER: No, I suspect you can raise it in Mr Lucas' presence.

MR BRADLEY: The objection is that the question proceeds on an assumption that the state could lawfully terminate the contract without any allegation that the termination was unlawful and a repudiation which might be accepted by IBM releasing them from their obligations.

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COMMISSIONER: I am not sure that is right, only because I sat here for days while this topic has been discussed and we proceed on the basis there was advice given to the state it had good grounds, it was on strong grounds to terminate, but there would be dispute by IBM about it, and I expect Mr Flanagan intends that. I'm not sure the question didn't convey that anyway, but you've raised the point, Mr Flanagan perhaps to deal with it and put the question again slightly differently.

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MR BRADLEY: Thanks, Commissioner.

MR FLANAGAN: Assuming that the state of Queensland had a valid right to terminate in accordance with the notice to show cause to terminate, assume that, there was no evidence either in any submission put before cabinet that IBM would do anything other than honour its contractual obligations in relation to disengagement after termination, was there? ---It was very clear that IBM had disputed the state's ability to potentially terminate the contract, and consequences would have flowed from that.

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COMMISSIONER: Doesn't that mean this: if the contract was brought to an end properly by the termination process then IBM have the obligations of disengagement that the contract provided for. If the termination was improper, there was no grounds for it, then the termination had no effect, the contract remained on-foot and IBM was contractually bound to on its contract. So on either way, in either event, wasn't IBM bound to assist with the payroll?---Well, they could have accepted the repudiation, could they have not, Commissioner? A and frankly - - -

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Then they run the risk the state was afraid to run that if they were wrong they were in breach?---If we wrongfully terminated?

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If they said, "That's a repudiation, we're going away," and they were wrong about that, the consequences were there. Did the risk run both ways?---There is a risk in litigation and there was not an appetite for anything that put our staff at risk. Now, I think you said - - - 1

I think that might be the - - -?--- - - - does that mean that if there is a fanciful risk - I don't believe it was a fanciful risk and you talk about what investigations I did. Day after day, I spoke to people who were inconvenienced by that payroll and - - - 10

I don't think Mr Flanagan for a moment expected you to undertake these investigations personally. The question is what, if anything, was commissioned by the CBRC by way of looking into that question?---In that respect, we had Crown Law - my department wasn't commissioning - I might just make the point, DPW was because they were the contracting party with CorpTech, but there was no suggestion that we, you know, brief the solicitor-general - there certainly was. I note there the discussion in relation to quantum and liability, but frankly, you know, when I applied my mind, at least, from my point of view to that, the history of the state involved in litigation in these sorts of matters is they drag on and on and on and that they often do not settle favourably and even more importantly than that, the whole box and dice of who said this to what - you know, we had DPW and Queensland Health pointing the finger at each other, let alone them pointing the finger at IBM. So it was not clear - it's not like a motor vehicle accident where you can say, "This happened here and this happened here," and there's a very clear situation. It was not clear and the premier was not - and neither was Robert Schwarten - willing to risk our staff. 20 30

MR FLANAGAN: Can I just try to identify the risk as you understood it at the time. The KPMG report does not suggest, does it, that if there was not a prudent transition from IBM to CorpTech that the system would catastrophically fail?---No. It says that you need to have a prudent transition. That's right. 40

Indeed, the prudent transition which you have referred to is in the supplemental deed where IBM were required by 31 October 2010 to fix approximately 34 severity 2 defects. Yes?---Yes. That was part of the negotiation. Yes.

Do you know how those 35 defects were identified and chosen?---Not specifically, no. They would have been on the basis of, you know, the nature of the defects and who - - - 50

Do you know how many persons on the payroll of Queensland Health were impacted by those 35 defects?---Specifically, that's not something within my knowledge.

But you certainly knew or appreciated that those 35 defects, if it took longer to fix those 35 defects, did not impact on a catastrophic failure of the system itself?  
---I'm not sure if I follow you on that.

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Do you know whether those 35 defects that had been identified as the defects to be fixed by IBM under the supplemental deed, had they not been fixed, were they the sort of defects that would lead to the failure of the solution completely?---They would have been highly significant defects that required IBM's cooperation to fix, that would be why, but if you're asking me specifically, I'm not an IT professional. I can't tell you what the import of those individually are, but certainly one would expect that they were the significant ones that - and from my recollection, IBM disputed, of course - as you would expect them to - the notices when they were given to them, so I suspect that that was what we got in the negotiations with them.

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Is it fair to say this, Mr Lucas, that you did not know at the time that these decisions were made on 22 July 2010 and 26 August 2010 - you did not know what impact the identified 35 defects would have in relation to the number of employees at Queensland Health nor the actual impact on their pay?---We knew that there were serious ongoing problems. We knew that IBM were required to work with us to fix them. We knew that this would be a significant issue and that we had people that were skilled in relation to identifying what those defects were, to make sure that they were the ones that we thought that we specifically needed to have done with the cooperation of IBM. It is not appropriate for a minister to seek to substitute themselves as an IT expert.

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You see, some of these defects that have been identified were as simple as this: a failure in the existing system to identify recreational days off. Yes? It wasn't a question of how much one got paid. It was a failure of the system to identify recreational days off for concurrent employees. Yes? That's not a defect that would either impact on the ability of the system to function, but it would simply impact on a person's ability to identify through this system that they were entitled to an RDO?  
---Well, first of all, it might if they didn't get paid, if they're not turning up at work because it hadn't identified it and that - I would suspect that for many people that would be a significant issue for them, but of course when you negotiate the defects, one would assume that there is a hierarchy of them and if we could get IBM to agree to 400, I'm sure that that's what we would rather have done, but your negotiators go in and get the best that you can and some of them are of varying severity. Look, the issue of concurrent employees was horrific because there are many Queensland Health employees who are concurrent. That is,

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for example, they might be a physiotherapist at Royal Brisbane and Prince Charles so, you know, all of a sudden the system wouldn't let you have two jobs. We would have expected the 35 most significant ones that IBM were required to assist with, but if you didn't get paid on your day off, I reckon that's pretty important if you need that for your mortgage or school fees.

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Yes. I don't dispute for one moment that it might be important to the person who is missing out on pay for an RDO. What I'm suggesting is this though: as a matter of prudence, first of all, did you know that Clayton Utz had given some sort of estimate that the potential damages claim against IBM may have run into the hundreds of millions?---I don't believe I was aware that Clayton Utz had done that. I know that the Mallesons' indicates that they thought the damages could not exceed - putting aside trade practices issues - the value of the contract, which I thought was about 60 million, I think.

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I think the figure they used in their advice is \$88 million?---All right.

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All right? Did you know that the contractual damages capped under the contract could amount to around \$88 million, even though Mallesons said it would be unlikely to reach that level?---I recall that being - I've certainly seen that. I presume I was aware of that at the time, but I'm also aware of the potential of there to be a counterclaim.

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You see - - -?---You know, we had just come out of also the auditor-general's report giving Queensland Health and the DPW an almighty pasting, you know. We knew that the go live hadn't just been signed by IBM. It had been signed by a whole lot of our people as well, that clearly took a decision that was wrong. These were all part of the matrix that we were operating in at that point in time.

Was there any consideration that the state of Queensland did not wish, or at least the committee, the actions of CorpTech and Queensland Health to be subjected to further scrutiny in terms of litigation as opposed to the scrutiny they had already been subjected to under the auditor-general's report?---None whatsoever.

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All right, thank you. Would you agree with this proposition that the damages not having been quantified, the committee did not know, in effect, what was being given up?---If the damages were able to be quantified within that period of time, then that is something that is relevant, as is liability, as is the likely or potential consequences of it. The Queensland Health payroll is between 2010 - let's put it into perspective in relation to the size of damages that we discussed before. The Queensland Health payroll is between 210 and 250 million dollars a fortnight. It is

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huge and so it doesn't take much to have it all skewiff and the costs of recovering overpayments and the like, you know, are all very significant factors that weighed upon our mind. 1

There was no suggestion, however, in the KPMG report that the solution wouldn't function to pay most people, was there?--We were having to have a payroll system to pay people that wasn't working properly with enormous resources devoted to it. Clearly, people were being paid. They weren't being paid properly. Basically, anyone - the two big - Commissioner, the two big departments in the Queensland government are Education and Health and Education is quite different because teachers generally are on standard salary and they're the vast majority of the staff. In Queensland Health, the vast majority of staff work shifts and they change, and they're rolling shifts. They might swap with someone and then they might have - you know, we had a situation, for example, where wards men got an allowance - a 30-minute allowance of about \$2.80, \$3 a shift, 80 per cent of them got that. So they actually had to manually be entered into the system, you know, as distinct from just saying, "Listen, we'll just pay all. We'll gross up your wages from now on and we'll pay you all" - those sort of things. This was a complex system that had all these little things sitting on top of it as well as, you know, the new implementation. 10 20

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Can I put a proposition to you, Mr Lucas, to get you to comment on it?---Yes. 1

Is the substance of your evidence this: no matter how - even if you received a quantum advice from the solicitor-general to say your quantum would be huge, irrespective of whether you received an opinion from the solicitor-general saying that your prospects of success were very good, if they was any risk that a Health employee did not receive his or her correct pay, that risk was considered particularly too great to pursue IBM?---I can't answer a theoretical question like that about, you know, what the solicitor-general may or may not have had advised in relation to quantum or liability. What I can say to you is that we considered the risks of the system falling over as very real and - - - 10

Sorry, falling over?---Well, if IBM walked out - - -

Sorry, where does that come from, that if IBM walked out, the system would fall over?---Sorry, well, we wouldn't - that wouldn't - we wouldn't be able to continue to operate with the improvements. 20

Where is the evidence of that in this material?---Well, KPMG indicate the ability to continue to work - IBM to improvement.

Yes, but that's not suggesting that the system would collapse, the solution would collapse?---Well, sorry - yes, well - - - 30

I'm just trying to get - - -?---Poor choice of words.

I'm trying to get to the heart of the risk, you see, because ultimately as a matter of prudence, when one settles and gives away a right to claim damages - - -?---Sure.

- - - from a contractor, you would like to know why that risk - why that right is given away and what's on the other end of it. So assume for the present purposes there was no - there's no evidence that this system without IBM was in - about to catastrophically collapse, right. Just assume that. What was the risk then that the government did not have the appetite for?---Okay. We had the situation where a payroll go live had taken place when it shouldn't have, so that gives a view as to what level of confidence I certainly had in relation to those senior people who were involved in those decisions and what reliance you could put upon them to continue to make sure that the system, you know, was working appropriately so we needed everybody, all hands to the pump, that we had KPMG indicating their concerns, we had a Mallesons opinion that didn't just say, "Off you go, you know, you can sue them, it will all be fine." It indicated a whole lot of really significant 40 50

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issues that would need to be assessed in relation to taking  
- in relation to witnesses and evidence before you could  
assess things. We knew that IBM were vigorously disputing  
the matter and would in any event tie this up in litigation  
for years to protect their reputation as much as anything  
else. This is one of the biggest IT companies in the  
world. Those were all part of the factual matrix that  
confronted us and, you know, we have situations where  
people had enormous difficulty with their pay and that was  
a very significant concern to us. 10

If you had to put your finger on the political imperative  
that drove the settlement, what would you identify that as?

MR KENT: I object to the question because it assumes that  
a political imperative drove the settlement and that's not  
something the witness has concern over?---And it certainly  
didn't.

COMMISSIONER: You could ask, I suppose, if the witness  
has answered, I suppose. 20

MR FLANAGAN: Was there a political imperative that drove  
the settlement process?---Of course not. There was the  
imperative for people who had - people who had worked for  
us that didn't do anything wrong that expected a payroll  
system to operate effectively and done nothing wrong and  
they were the people that we were concerned about because  
they were the people that you would have to confront every  
day, helping people - helping people who were sick and ill  
and I'm sorry that, you know, we have now got the benefit  
of having a look at their position, the position of the  
contract in retrospect but that's not the luxury that you  
have there when you have got a real prospect of those  
people who come to work every day doing a great job, giving  
us a wonderful Health system and not getting paid. 30

COMMISSIONER: Mr Lucas, did politics, any part of  
politics, play any part in decision to settle?---No.  
Sorry, no, commissioner. 40

Thank you.

MR FLANAGAN: And in terms of there being it imperative,  
that was the imperative that you just identified - yes;  
that is, to ensure - - -?---The imperative was to fix it.

Yes, thank you?---Fix it for our staff.

It was the answer that I was expecting to my question,  
Mr Lucas?---Well, it wasn't a political imperative. It  
wasn't a - can I tell you the damage - - - 50

(indistinct) sorry, you go first?---Look, the damage done  
to the reputation of the government through this was

enormous and like, that was gone, finished, over in terms of that. This was about getting people paid. 1

Can I take you then to volume 3 - - -

COMMISSIONER: Just what I was going to ask you; there was obviously a degree of public anxiety about the fact that staff weren't being paid?---There was enormous public sympathy for our staff, yes. 10

I assume that that was a fact that you wanted to address as well as the need to pay staff?---Look, I was actually interested in our staffs' anxiety.

I understand that. I don't doubt that, but I assume that in some way, you wanted to relay public concerns as well? ---I think the public have a concern, a legitimate concern that the government is paying its staff but I don't think that's a political thing, Mr Commissioner, I think that is - the public have expectations of their governments to deal with matters that are before them. 20

Of course, but governments ultimately rely upon public opinion, good public opinion?---Well, yes.

The government want to be well-regarded by the people? ---Well, my experience is when you actually focus on doing the job, that's when you are well-regarded. If you focus on being well-regarded, that's when you take your eye off the board. It's a bit like the football analogy; watch the person tackling you and you dropping the ball. 30

MR FLANAGAN: Can I take you to page 150 of volume 3 then? ---Yes.

This is a file note, Mr Lucas, which I think has been brought to your attention?---Yes.

Yes, thank you. We appreciate that it's not a file note that you took and it's certainly not a file note of a conversation between you and anyone else. It's actually a conversation between Mr James Brown and Mr Jeremy Charlston - - -?---Yes. 40

- - - but we just need to ask you some questions in relation to it, if we may. The first is under item 2, it's a reference to Mr Grierson and Mr Ken Smith, the director-general of premier and cabinet. They have determined that the state has no interest to termination of the contract with IBM. The state wants IBM to finish the contract. My question is s at 19 August 2010, were you of that opinion?---Look, I can't say at that point in time. 50

This is prior to, of course, the committee's decision of 26 August?---Sure.

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But did you - - -?---But I suppose to be fair, we had at a previous meeting a CBRC determine that the preferred position was to seek to negotiate so to that extent, you know, you could look at it in that light, I suppose.

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Had you ever heard then Mr Grierson explain to the committee, because he was at the committee meeting, was he not?---CBRC?

Yes?---Look, I can't picture him there but it would have been extraordinary had he not and I'm sure he was.

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Did you hear any evidence at all that there was a lack of confidence in CorpTech to support the system without IBM? ---I don't think Mal would have said that.

No?---No. But that doesn't meant that I - but frankly, can I say to you I didn't have a lot of confidence in any of them based upon our history?

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Did you have a belief as at 19 August 2010 that IBM would sue the state of Queensland if it was to terminate its services?---I saw that as a very real prospect.

Thank you?---But I was not aware of this memo.

Quite. We're actually asking you topics on this memo - - -?---Proposition.

Yes, proposition. Can I take you over the page then to page 151?---It's the longest file note that I've ever seen in my life and obviously more detailed than - - -

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It's at point 6 that I want to take you to; that this is a political decision, the politicians are extremely nervous and driven by the fact that if IBM is removed, then there would be nobody to blame for the payroll problems outside government. Mr Lucas, was that ever a consideration that you brought to bear in your decision-making process either for 22 July 2010 or 26 August 2010?---Absolutely not and I would point out that - I don't have a problem with this, you have just been putting a proposition to me previously of the opposite.

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Yes, thank you. Mr Brown expresses the view that after Mr Grierson's meeting where settlement principles were determined with IBM, that he views this as the worst possible outcome. Do you see that?---Sorry, no.

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It's the second paragraph of item 6.

COMMISSIONER: James is James Brown?---Yes.

MR FLANAGAN: All right. Did you view the ultimate supplemental agreement as constituting a good outcome or a bad outcome for the state of Queensland?---I suspected it to be the best outcome that we could get in the circumstances bearing in mind what faced us.

10

Thank you?---And that's what you expect someone negotiating on your behalf to do.

Did you have any personal knowledge of Clayton Utz being involved or being engaged as commercial negotiators for this process?---I don't believe I did. Whether it was mentioned - it's actually really quite odd that it's not mentioned in a CBRC submission, so that would generally be how I would have been made aware of that.

20

Can I take you then to volume 3, page 302? You'll be pleased to hear, Mr Lucas, this is the last document we're taking you to. It's a document that was shown to you in the course of your interview?---Yes, I'm familiar with the document.

30

Can you tell us why you required a submission from both director-generals, that is, a submission from both Mr Grierson and your own director-general, Mr Reid, before approving the supplemental deed?---I have a very good recollection of it. The history of this, Mr Commissioner, was that all these things sort of happened out there never was there at any stage something going to the minister from the director-general saying, "This is what we need to do, this is what the problem is, this is how we recommend that you do things," and so I wasn't going to have that in relation to this. What I wanted and what I asked for was a document that they both supported, that is, they would have to both sign it and they had to agree to it, with the recommendation so there could be no issue with those recommendations to Mr Schwarten and I.

40

Did you expect Mr Reid in putting the submission to you to turn his mind to the issues identified in this document? ---Of course.

50

There's a notation, a handwritten notation, on the bottom of page 302?---Yes, in my handwriting.

That's in your handwriting?---It is.

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LUCAS, P.T. XN

Would you just translate for us?---That's something I'm not always good at. 1

I shouldn't use the word "translate", I should say, "Would you read it for us"?---Yes, I'll try my best, Mr Flanagan.

*Please include in the CBRC submission: (a) statistics on current system adjustments, numbers et cetera; (b) (1) what defects have been fixed; (2) what defects IBM will still fix; (3) what is outstanding for Queensland Health/CorpTech -* 10

and I don't know what the other is. I can't really read it.

What information were you seeking when you wrote that?---I just believed that when you do submissions for other bodies that it is appropriate that cabinet or CBRC shouldn't, you know, you can't assume knowledge that they don't possess. It's just worthwhile them updating, "This is how things are going" et cetera. 20

Can you tell us whether or not the information you were seeking was actually included in the CBRC submission?---I don't have any knowledge of that, but I will say this: there was quite regular reporting both in writing but also orally to cabinet itself, you know, being the higher source, about how we were proceeding with payroll. The premier was critically interested, always wanted to expect to be receiving that information and she considered it quite appropriately to be a matter of cabinet and important. 30

When you sign it, which is on 19 September 2010, how were things proceeding with the solution?---I can't qualify it for you at that point in time, but we were expecting improvements and, you know, improvements were happening but we were far, far, far from out of the woods yet and that's why of course if there weren't any more improvements needed we wouldn't need IBM to do the 35 things in that document that we wanted them to do. 40

Did you appreciate that even after IBM had completed those 35 defects as at 35 October 2010 that there were further severity 2 defects that CorpTech had to deal with? ---Whether they were severity 2 or not I can't specifically recall, but certainly, Commissioner, this was not, "Well that's great, it's all finished now, we've got an operational payroll, this is how we wanted the idea," well, no, I was aware we would have had to continue to do things ourselves. 50

Can you tell us how those 35 defects were identified as opposed to the other defects in the system?---No, that's a matter for expert advice.

30/5/13

LUCAS, P.T. XN

No, but did you have any knowledge of how that was done? 1  
---I suspected that Mal Grierson and CorpTech with whatever  
appropriate advice with Health et cetera would have  
identified, perhaps talking to Michael Walsh, what were the  
most significant ones. You know, it would not be  
appropriate for me to do a battle in court.

All right. That's the evidence-in-chief of Mr Lucas.

COMMISSIONER: Mr Traves? 10

MR TRAVES: I have no questions, thank you.

COMMISSIONER: Mr Plunkett?

MR PLUNKETT: I have no questions, thank you.

COMMISSIONER: Mr Haddrick?

MR HADDRICK: No questions, Mr Commissioner. 20

COMMISSIONER: Mr Ambrose?

MR AMBROSE: Mr Lucas, you were referred to the submission  
to minister Swarten and yourself at volume 3 and at  
page 302, and you've acknowledge that Queensland Health was  
not in fact a party to the contract with IBM?---Yes.

In asking Mr Reid to make a recommendation, and I suggest 30  
to you that you obviously expected him to, act upon advice  
to make that recommendation?---Yes, he wasn't an IT expert.

You didn't expect to him to have sufficient personal  
knowledge of the problems to, for example, even write the  
submission you see himself?---Well, I would doubt that  
Mal Grierson would have written it either, it would have  
been written by people for them - - -

Thank you?--- - - - based upon that advice, but I expected 40  
them to get the advice.

Thank you.

COMMISSIONER: Mr Foley.

MR FOLEY: Could you have a look, please, at the cabinet  
budget review committee decision which appears in volume 2,  
page 226?---Volume 2, 226?

Yes, the cabinet budget review committee decision of 50  
22 July 2010?---Yes.

The circulation of that document listed at the bottom  
includes the Department of Treasury, is that correct?  
---Correct.

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LUCAS, P.T. XXN

Could you inform the commission, please, as to the process of the cabinet budget review committee what happens when a minister submits a cabinet budget review committee submission? Where does it go, who considers it?---First of all, well, you need to get on the agenda for cabinet budget review committee, all cabinet as the case may be. So the minister needs some agreement, or the minister's department normally would need some agreement from central agencies that this is a matter of import to be decided at a CBRC or indeed cabinet level. The vast majority of decisions are not decided at that level, they're decided by the minister or indeed further down, or further down as the case may be. Presumably, one has central agency agreement that there is a need to bring this to the attention of the cabinet budget review committee. What would then happen is the department would prepare a draft submission, it may be that submission is based upon policy that had previously been determined by the minister, or a brief that the minister had approved saying that you support the preparation of a CBRC submission doing X, Y, Z.

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Yes?---It is then circulated to other agencies for comment, to central agencies for comment, and sometimes to another effective agency.

Yes?---With that incorporated, it will then come back to the minister and the minister of course, it's the minister's submission, so the minister has the ability to correct or add things there. Certainly, as a minister that was things that I had done, he had gone and spoken to someone, put that in there, wears this information, it is then signed, it then goes on the list, the premier approves the list to go to CBRC, it is then considered. Depending on its consequence, some done by flying minute, some are done in a full meeting, and after that of course you'd have a vote, if you don't like there's one alternative, and that's not being, you know, you resign. After that there is a decision such as that and that is circulated to relevant agencies for implementation or noting.

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So when the submission from Minister Swarten which led to this Cabinet Budget Review Committee decision of 22 July 2010 came forward, it would have been circulated to the other ministers on the Cabinet Budget Review Committee and considered by their senior departmental staff?---Yes. Sorry. As a CBRC minister, it wouldn't necessarily be that I - Health would not brief me on everything that was on CBRC because I wasn't like the treasurer. The treasurer would be briefed or the premier would be briefed on everything that goes to CBRC because they're central agencies. It might be that my department - it was a Health-related matter and it just so happened that I was on CBRC that I would get a brief, but in any event, my staff certainly would have looked at the matter and sought whatever advice or any other minister and it is circulated well in advance to that.

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Needless to say, the treasurer is a member of the Cabinet Budget Review Committee?---That's correct.

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And senior Treasury officers would as a matter of course review and examine the documents submitted to - - -?---They would - - -

Yes. Would you describe their approach to the expenditure of public money in your experience as rash?---I was going to say pusillanimous perhaps. They are very, very - they hate spending money and they are more than happy to put their two cents worth in, and I've seen Minister Swarten engage in many robust arguments with Treasury about them when they put their two cents worth in were they not to support something or like something.

30

Would you describe the approach of Treasury officials and their advice to government as profligate?---Certainly not.

Yes. When this was considered, was it considered in the budgetary context facing the government at the time?---It was considered in contemporaneous circumstances, but I've got to say that what was of greater significance to us was to get the payroll going appropriately but, of course, Treasury have commercial counsel. Treasury have ability to seek legal advice and often will - - -

40

Yes. Very well. Thank you. I want to take you to a couple of the attachments to this Cabinet Budget Review Committee decision and could I take you firstly to page 267 of that volume?---Yes.

This is an attachment to the Cabinet Budget Review Committee submission of Mr Swarten, is it not?---It is.

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This is a document that would have been read by each of the responsible ministers on that CBRC or Cabinet Budget - - -? ---I did and I expect they would.

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LUCAS, P.T. XXN

You've already told Mr Flanagan that subsequently you were the first law officer and attorney-general?---Yes. 1

Can I take you to the second paragraph of that. You see it is an advice dated 23 June 2010 from Mr James Brown, executive director of CorpTech?---Yes.

To Mr James Brown, executive director of CorpTech?---Yes.

Would it be fair to say that Crown Law has particular expertise in advising government on contractual disputes and contractual matters involved government?---This advice was from an assistant crown solicitor, so someone senior, and my understanding is the gentleman was actually - had a peculiar skill in that. 10

Yes. Very well. In paragraph 2 - - -?---A particular skill might be a better way of putting it. Sorry.

Yes. In paragraph 2, and I'll read it to you: 20

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

Do you see that? It's in the second paragraph?---Sorry. I was looking at page 2. No, sure. Okay. Yes. 30

You would expect, both as having been a minister and having been the first law officer that Crown Law would give comprehensive advice to the relevant agency of the crown? ---I've never knocked back Crown Law if it - well, first of all, it does give comprehensive advice and I don't think I've ever in my time not encouraged it to seek whatever advice, further and external advice, it saw it appropriate.

So if Crown Law had considered necessary or desirable then or later to obtain a further advice from the solicitor-general it would have recommended so, would it not?---Typically, it would. I wasn't the - and I'm really answering this not as - more as a former attorney and a minister rather than specifically with respect to this because I wasn't - it was a DPW matter. 40

Yes?---But, yes, I would have expected it would have.

And Crown Law did not advice, did it, to obtain an independent or an advice from the solicitor-general or from senior counsel with respect to quantum or with respect to prospects of success?---On the face of these documents, I'm not aware of it. No. 50

All right. Very well. Can I take you please to page 349? ---Yes.

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LUCAS, P.T. XXN

You were asked some questions by Mr Flanagan with respect to - and I'll take you to the bottom of that page, the heading Inducement and Summary?---Yes. 1

You were asked some questions by Mr Flanagan, counsel assisting, as to what evidence you were aware of at the relevant times that these decisions were made of a risk of the state dealing directly with IBM subcontractors. Do you recall that question?---Yes. 10

I'll read the first sentence:

*For completeness, I note -*

and this is the advice of Crown Law of the assistant crown solicitor dated 20 July 2010 attached to the Cabinet Budget Review Committee decision -

*for completeness, I note that even if the state does terminate the payroll contract, the risk of a claim of inducing breach of contract by IBM subcontractors remains present in the state's dealing with those subcontractors?* 20

---Yes. Correct.

Do you recall having been aware at the relevant time of that advice from Crown Law?---Yes.

It goes on to observe at the bottom of that page and going into the next page: 30

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

---Yes. 40

Did that constitute part of the body of evidence that you took into account in assessing the risk of dealing with IBM subcontractors?---It did.

Yes. Nothing further. Thank you.

COMMISSIONER: Yes, thank you. Mr Cregan, Mr Doyle?

MR CREGAN: I have no questions. Thank you. 50

COMMISSIONER: Thank you. Mr Kent?

MR KENT: Thank you, commissioner.



Mr Lucas, I think you have volume 2 in front of you. It might be - - -?---I have, yes. **1**

Can I take you to page 327.

COMMISSIONER: In volume - which one?

MR KENT: In volume 2?---Yes.

Now, you were speaking in your evidence earlier when Mr Flanagan was examining you about the Mallesons options paper or advice that you had, I think, in your papers and I'm just wanting to confirm literally that we're all on the same page?---5.1 - I won't use Minister Schwarten's language, or Mr Schwarten's language, but 5.1 sets it out like the proverbial. **10**

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That's the one that you were referring to, is the one at page 327 of the - - -?---It is, and I don't believe that - I believe that - you know, if and when that was sought to happen, the answers would be - would not have been ones that would have yielded to a satisfactory conclusion in relation to the state.

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Thank you. Now, can I take you, please, in the same volume to page 364?---Yes.

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And this may well have been something that you personally did not see, I presume?---I wouldn't normally see a premier's briefing note.

Okay?---Not to say that I haven't seen them but I wouldn't normally.

Then I'm going to take you to page 389 which is part of the attachments, I think, to that briefing note?---Yes.

20

And ask you firstly whether you have seen that in some form or another before?---Well, I have certainly seen it at least subsequent to the inquiry. I'm not sure whether I saw it at the time - whether it was attached to the Crown solicitors advice or whether it is essentially a summary of some of the oral discussion that took place. I can't say, Mr Kent.

As at late June 2010 having looked at that document, are these the kinds of risks that you and others in the government were considering?---Yes, and I might just observe - I think I mentioned this to Mr Flanagan or in response to Mr Flanagan in item 2, you know, the whole problem having people who were at the one time running the system and the other time trying to improve the system and the other trying to fix the system and, you know, it was really quite a complex thing to be able to do because you actually wanted more people saying, "Well, here's a fix," and I've got people saying, "Well, here's the workaround," so yes.

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Okay?---They are some of but not all of the issues but I don't know if I saw that document.

Thank you. Now, you were asked some questions by Mr Flanagan about what evidence you had to rely on about the potential for, to use the short form, IBM downing tools and walking away. Mr Foley has taken you to something about that?---Yes.

50

Now, I think in your answers to Mr Flanagan, you said something about - touching at least, as I understood it, on the practicality or otherwise of asking IBM their intentions in that regard. Is that something that you considered at the time?---Well, I would have thought that

any answer that they would given you would be - I'm sorted of - well, it wouldn't have been my job to ask them that, it would have been done at a professional level, not a ministerial level, but sometimes those sorts of questions, you know, you will get an answer that the lawyers tell them to write or alternatively - you know, as Dr Evatt found when he asked Minister Molotov if there were any Russian spies in Australia and he got an answer, "No."

You're saying it in a way that you personally may not have found such a response reliable?---It would have been coloured by whatever - and understandable, I'm not having a shot at IBM on this. It would have been coloured by whatever was in the commercial and legal interest house however advised at that point in time. It wouldn't have given me any comfort in any respect.

I understand. Apart from asking IBM their intentions, can you personally envisage other lines of inquiry that would gain some objective evidence that you could rely on in that regard?---In relation to IBM?

Yes. What their intentions would be about walking off or not?---Well, I - - -

I know it's a question about notice?---Look, you know, I'm not absolutely sure of what I could have done personally in relation to that.

COMMISSIONER: I don't think Mr Kent means you personally. What inquiries could you have made, or could the government have made?---I'm not sure if there's any past history with them in the Queensland government in relation to these sorts of disputes. This was a dispute like no other, Mr Kent. It was unprecedented and I think one has to look at that in the prism of how IBM would have reacted as well. They have a commercial reputation to protect.

MR KENT: Yes. Now, just finally dealing with the decisions that were taken eventually resulting in the supplemental agreement, and you have already discussed that with Mr Flanagan too, I think, you may have mentioned this tangentially to him but did you have experience in government, particularly as a minister with the state as a litigant in the litigation?---Yes.

Did that inform any decision that you took about agreeing with the supplemental agreement?---It certainly brought that to the party. Both then, Mr Commissioner, and subsequently even more so as attorney-general, you know, everyone is all sort of keen to get into suing people and they always settle, you know. All of a sudden, "Well, that was what we said then and now that is what we are saying now," and all of these witnesses have come out of the woodwork saying this and it is just - you know, I'm sure

there's many people around here that I've talked to about those sorts of things and I'm actually not someone who is keen to settle, I don't think there's a reason to do it. I think the state settles too often in matters when there is a public interest in it but I can remember one, totally unrelated to this, and I think that we had an issue with respect to sea cages into Moreton Bay and we ended up - well, you know, someone had said this, someone had said that, someone had said this, someone had said that; it all ended up settled because you could not rely on what particular - I'm not talking about (indistinct) ministers, I'm talking about public servants, you could not rely on them on a particular stream of evidence. Many public servants are not skilled or educated in relation to the commercial realities of dealing with other people, someone like IBM, it is said bread and butter, they do it every week.

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These considerations inform whatever decisions you were a part of?---It did. From my point of view it did, yes.

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Thank you. Nothing further, thank you.

COMMISSIONER: Thank you. Mr Bradley?

MR BRADLEY: No questions, Commissioner.

COMMISSIONER: Mr Flanagan?

MR FLANAGAN: May Mr Lucas be excused.

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COMMISSIONER: Mr Lucas, I'm sure you would rather forget about all of this but thank you for your assistance?---Thank you. Mr Commissioner, can I thank the commission for its courtesies; I was away on business on Monday and accommodating me within your schedule.

We were pleased to do it?---Thank you.

WITNESS WITHDREW

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MR FLANAGAN: Mr Commissioner, Ms Nicholas will tender some statements.

COMMISSIONER: Yes.

MS NICHOLAS: Mr Commissioner, just a final matter of housekeeping; there are a number of statements that need to be tendered and one transcript of interview. If it assists, I can hand them up with a copy of the document outlining the material.

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COMMISSIONER: Yes, thank you. Then I will make the transcript of Mr Sullivan's interview exhibit 152.

ADMITTED AND MARKED: "EXHIBIT 152"

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COMMISSIONER: Mr Holtz's statement, exhibit 153. 1

ADMITTED AND MARKED: "EXHIBIT 153"

COMMISSIONER: Mr Pollock's statement, 154.

ADMITTED AND MARKED: "EXHIBIT 154"

COMMISSIONER: There's a Carroll statement, 155. 10

ADMITTED AND MARKED: "EXHIBIT 155"

COMMISSIONER: Mr Backhouse's statement, exhibit 156.

ADMITTED AND MARKED: "EXHIBIT 156"

COMMISSIONER: And Ms Berenyi's statement, exhibit 157.

ADMITTED AND MARKED: "EXHIBIT 157." 20

MS NICHOLAS: Thank you. And I should say,  
Mr Commissioner, Ms Berenyi's statement also comes with  
two volumes of annexures which we are happy to - - -

COMMISSIONER: They will be part of the exhibit, yes,  
thank you. I actually don't have the note. You set a  
timetable. Did I do that?

MR KENT: They're due tomorrow. 30

COMMISSIONER: Are they? Did I set that time?

MR KENT: I think you did.

COMMISSIONER: Did I?

MR KENT: I don't think I did.

COMMISSIONER: I have forgotten. How much longer do you  
want? 40

MR KENT: Another week. The reason I do so is this:  
they're at an advanced state of preparation, but  
particularly on behalf of my client, once they're prepared  
or almost finally prepared, they have to be considered by a  
number of people. 50

COMMISSIONER: I think I understood that process. 1

MR KENT: At least one of whom is not available this week, so that's why I seek another week.

COMMISSIONER: All right. I'll give you the week. Yes.

MR KENT: Thank you, commissioner. I have a couple of housekeeping matters to raise. 10

COMMISSIONER: Yes, yes.

MR KENT: It's the intention of the state to provide another couple of, hopefully, fairly shorts bits of evidence to the commission and I can briefly describe them. One is a statement from Ms MacDonald dealing with the events of 19 August.

COMMISSIONER: Yes. I think we asked for that. Thank you. 20

MR KENT: The other one is this: the systems and practices, to some extent, in relation to procurement touching on the kind of procurement that took place here have evolved and changed somewhat in the intervening years. We're considering putting on a statement from someone that knows about such things to describe the changes in the system and how the system is now. I can't imagine that would be in any way controversial. 30

COMMISSIONER: No.

MR KENT: But it might assist you.

COMMISSIONER: Yes. I suspect it will, so thank you for that.

MR KENT: I'll just provide those to your offices and, hopefully, they can be circulated. 40

COMMISSIONER: When we get them, I'll formally mark them as exhibits and they'll go in the web site so that anyone who wants can look at them.

MR KENT: While I'm on my feet taking up your time, commissioner, I don't know whether there has been any consideration of where to from here as to whether, firstly, there will be any separate submissions for this tranche of evidence or overall final submissions. One possibility that I had discussed with Mr Flanagan is that there may be a circulation of a draft final report and that - - - 50

COMMISSIONER: No, I'm not keen on that. I'm not keen on that. What I think we will do is we'll try to get you by the end of next week - when I say you, all parties who have got leave to appear - a list of questions or issues that

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KENT, MR

seem to arise from this last week of evidence as it won't impact particular witnesses. If any wants to put submissions in, they can by reference to those issues or questions and anything else that they wish to address. 1

MR KENT: Thank you.

COMMISSIONER: We have circulated, I think, a lot of questions or issues in relation to the contract management part of the hearings. 10

MR KENT: Yes, that's right.

COMMISSIONER: And your submission will come in next week.

MR KENT: That's what's coming, yes.

COMMISSIONER: And, no doubt, Mr Doyle will put submissions in, too. 20

MR DOYLE: Our present intention is to put in one comprehensive submission in respect of the three tranches. 20

COMMISSIONER: That's all right. Do you know when you might do that?

MR DOYLE: We were rather hoping we'd get something to respond to, but we're hopeful we would have something from Mr Flanagan with some time to respond to it so that we're not two ships passing in the night. 30

COMMISSIONER: I'm not sure that IBM is at all impacted, is it, by this last week of evidence?

MR DOYLE: That's the least of our concerns, I think.

COMMISSIONER: Yes.

MR DOYLE: But once we get the second tranche submissions from Mr Flanagan, we can well advance our responses to that. 40

COMMISSIONER: I thought we had notified your solicitors that I hadn't intended - Mr Flanagan, I don't think, had intended to give submissions in advance of anyone else's in relation to contract management. The list of questions that have been circulated was meant to flag the points of interest to the commission.

MR DOYLE: It would still remain our preference to see what is the submission being urged by counsel assisting in order to deal with those, to avoid having, in effect, to put in a further submission in response. Efficiency seems, to me at least, to suggest that we should - - - 50

COMMISSIONER: I'm sorry, I can't hear you.

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MR DOYLE: The efficient course, it seems to me at least, would be to have what's being said so that we can respond to it. We're going to have to eventually. 1

COMMISSIONER: Yes, but if you would address what you want to address in relation to the topics we have identified, isn't that - - -

MR DOYLE: We can do that, but we will also want to address what is said by others about those topics, particularly Mr Flanagan. 10

COMMISSIONER: But I didn't understand from my discussion with Mr Flanagan that there will be submissions from counsel assisting in relation to the contract management or, indeed, this last segment.

MR DOYLE: If that's so then I'll deal with it myself, but if there is intended to be submissions by counsel assisting in respect of tranches 2 and 3 - - - 20

COMMISSIONER: Then, of course, you should get them.

MR DOYLE: We'd like to have them before we have to do - - -

COMMISSIONER: Yes, of course. I'll just clarify this.

MR FLANAGAN: Yes. 30

COMMISSIONER: Mr Flanagan, what - - -

MR FLANAGAN: We don't intend to give submissions in relation to the contract management case and we don't intend to give submissions in relation to the settlement. Issues have been already circulated in relation to the contract management case and in relation to settlement, as you've indicated, Mr Commissioner, provide issues by close of business next Friday. What is intended, however, and as a matter of natural justice, if there are adverse claims to be made in relation to any person on a preliminary basis in the report then those findings will be brought to the relevant person or entity's attention so that a response can be given in relation to the specific findings. 40

COMMISSIONER: All right. Is that satisfactory?

MR DOYLE: Yes, thank you. Can I ask of you when would it be of assistance? I suppose I should put it differently. When is the latest that it would be of assistance of you for us to provide those submissions? 50

COMMISSIONER: I hope - I hope - to have a draft report substantially completed by the end of June. My experience of judgment writing is that the final stage of editing and proof reading can be quite time consuming and my deadline

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is the end of July, as you all know. So I would hope to have - if I could have your submissions by the third week in June?

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MR DOYLE: Thank you. We'll do that.

COMMISSIONER: All right. Mr Doyle, can I raise a question with you. As you all know, today marks the end of the scheduled hearings, but there is a question outstanding that we have addressed to your solicitors in relation to Mr Bloomfield.

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MR DOYLE: I'm aware of the question.

COMMISSIONER: Do you intend to answer it?

MR DOYLE: Yes.

COMMISSIONER: All right.

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MR DOYLE: Whilst I'm on my feet can I mention some other things that are outstanding from our - - -

COMMISSIONER: No. Before you do if it's necessary we will summons Mr Bloomfield to answer questions publicly. I would rather not do that if the matter can be dealt with otherwise. Can it be dealt with otherwise?

MR DOYLE: I know of the topic. I don't know the detail. You've heard my instructions. We will respond to the request.

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COMMISSIONER: All right.

MR DOYLE: If the response is unsatisfactory then we'll have to do what one does.

COMMISSIONER: All right.

MR DOYLE: Can I, whilst on my feet, deal with some other things?

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COMMISSIONER: Yes.

MR DOYLE: We have promised you some further material which is either ready or will be ready today and a number of statements that we propose to offer to you on a number of topics which we hope to have ready today or tomorrow. I'll give them to Mr Flanagan and, presumably, they will make their way to you.

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COMMISSIONER: All right. He has got - - -

MR DOYLE: We would be content for the process that you have suggested to Mr Kent that they be marked as exhibits and available.

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COMMISSIONER: Put on the web site?

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MR DOYLE: Yes.

COMMISSIONER: Yes.

MR DOYLE: If the nature of them is such that they shouldn't be on the web site, for confidentially we'll nominate which parts fall into that category and we'll provide copies to everyone else.

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COMMISSIONER: All right, thank you. Mr Traves?

MR TRAVES: I'm just - - -

COMMISSIONER: Mr Kent, what did you want to say?

MR KENT: Just going over what Mr Doyle just said, I would seek a direction that the state be permitted, if necessary, to make any short submissions in response considered necessary following the IBM submissions.

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COMMISSIONER: You'll have to be quick about it.

MR KENT: But, of course, as matters presently stand, there are certainly live issues between the state and IBM. IBM having some time to respond to our - - -

COMMISSIONER: You can do that, but no later than 30 June.

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MR KENT: Thank you.

COMMISSIONER: Mr Traves?

MR TRAVES: May we have a short extension, Mr Commissioner, for the submission that's due otherwise tomorrow? Mr Kent, Mr Shea - - -

COMMISSIONER: Yes. I'll give you until the end of next week.

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MR TRAVES: Thank you.

COMMISSIONER: Anyone else? All right.

MR AMBROSE: I'm also instructed to ask for an extension of time.

COMMISSIONER: Yes. I'll do that. All right. Can I express my gratitude to all counsel for the efficient and disciplined way the questioning has been conducted and allowing me to conclude the evidence on schedule. Thank you all. Yes, adjourn please.

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THE COMMISSION ADJOURNED AT 12.07 PM

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