



QUEENSLAND HEALTH PAYROLL SYSTEM
COMMISSION OF INQUIRY

Statement of Witness

<i>Name of Witness</i>	Christopher Robert Bird
<i>Date of Birth</i>	
<i>Address and contact details</i>	Known to the Commission
<i>Occupation</i>	Principal Strategic Supply Consultant – ICT Strategic Sourcing- Department of Science, Information Technology, Innovation and the Arts
<i>Officer taking statement</i>	Jonathan Horton and Elizabeth Kenny
<i>Date taken</i>	25/ 2 /2013

I, Christopher Robert **BIRD**, state as follows:

Role in Queensland Government

1. I commenced work with the Queensland Government as a permanent public servant, specifically with CorpTech in late March 2008. I remained at CorpTech until 14 July 2010.
2. My position was, initially, Contracts Manager of the Vendor Management group in the Strategic Program Office. I was under the direction of Malcolm Campbell, a Director and Mr John Beeston who headed the Strategic Program Office.
3. In about June 2009 I was given the role of Procurement Manager for CorpTech. My duties to manage the 2007 IBM contract were to be ad hoc from that point forward. John Beeston had left in March 2009 and my staff in the Vendor Management group were assigned to roles elsewhere in CorpTech. I still reported to Malcolm Campbell.
4. In June 2010, I took a position as Principal Strategic Supply Consultant in the Queensland Government Chief Technology Office (QGCTO).

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5. I remained in my role with QGCTO until I was seconded to the Queensland Government Chief Information Office to conduct the procurement element of the ICT Audit mid last year. I then took up a position as Principal Strategic Supply Consultant in the Department of Science, Information Technology, Innovation and the Arts late last year.

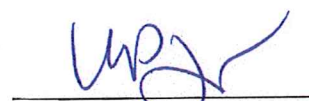
My Background

6. Before becoming a lawyer, I took a degree in public sector administration and I was seconded for a year to the National Health Service on a National Health Service management training scheme in the UK.
7. I completed my legal training in 2000 and commenced work for Linklaters (the UK law firm), out of the Hong Kong office, but seconded to the Shanghai office.
8. I had built a few systems for a law firm where I worked as a paralegal previously and accordingly in addition to legal duties I managed the IT for Linklaters China practice given they were expanding offices in Beijing and Shanghai.
9. During my time at Linklaters I also achieved Microsoft Certified Systems Engineer and Cisco Certified Network Associate vendor qualifications.
10. Whilst studying for my IT Masters at QUT in 2005 I commenced full time work as in-house counsel for an international construction company with a head office in Brisbane but with offices in Fiji, Singapore, Hong Kong and Shanghai. In addition to my legal and contract management role I also managed the company's global IT systems.

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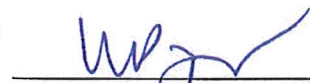
Early contract issues

11. My role was to manage the 2007 IBM Contract, which included drafting variations to it, advising senior management on contractual risks, and liaising with Crown Law, DPW Legal and Mr John Swinson from Mallesons to obtain legal advice where required.
12. I consulted with Mr Swinson on matters such as breach notices, contract variations and disputes with IBM. On some occasions, I drafted the notices or variations first, and then sent them to him to be finalised.
13. From the time I first became involved in the Contract, my first impressions were that the Contract was an agreement to agree in many circumstances requiring significant negotiation after initial contract execution.
14. In addition to new statements of work needing to be developed and agreed from the contract statements of scope, a contract schedule 22A containing critical terms relating to the Prime Contractor role and responsibilities was yet to be agreed, and the at-risk fee terms were yet to be agreed. The process of determining derogations from the GITC framework (that is, the process of identifying conflicts between special conditions and the terms of the GITC) had never been conducted. Therefore there was a risk that many of the additional provisions over and above standard GITC terms and conditions were not properly constituted.
15. As per clause 2 of GITC, those terms that are deemed to derogate are null and void unless agreed by GITC services. I wrote to GITC services on 3rd April 2008 requesting review of any derogation and received a response from GITC services on 30th June 2008 that no terms derogated.
16. On commencing at CorpTech I mainly dealt with Keith Pullen from IBM regarding contract matters and at times Steven Flint who headed IBM's Program Management Office. Keith Pullen later advised me that his role was not to manage the contract on behalf of IBM. Malcolm Campbell requested IBM to provide a position that would be

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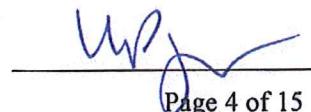
responsible for managing IBM's contractual obligations. I recall IBM's position was that they had not priced for a position to manage the contract in the ITO and a variation was executed to the Program Management Office Statement of Work 2 for an increase in price to provide an IBM Commercial Manager.

17. I recall Stuart Reid then commenced in the role as IBM's Commercial Manager around July 2008 and left around the end of 2008. Paul Ray was appointed as Commercial Manager around January 2009 and was still there when I left CorpTech in July 2010.
18. IBM was in my view in default of the contract early on. Time was of the essence for achieving contract milestones. A large number of contract deliverables were late and of poor quality given the Solution Design Authority (SDA) did not accept the deliverable without required amendments by the contract milestone date. IBM did not follow the extension of time process as specified in the Contract and therefore under the terms of the contract, the Customer was not obliged to grant an extension of time. Given the large number of late deliverables not accepted by the contract milestone date, it would therefore, in my view, not have been hard to establish a breach situation.
19. Delivering deliverables for acceptance on the contract milestone date by which IBM was contracted to achieve acceptance by, was in effect, to delay by a minimum of five days. The acceptance process prescribed in the contract gave the SDA 5 days from IBM's submission to review the deliverables and either accept or reject the deliverable. It follows that if a deliverable is delivered by IBM for acceptance on the contract milestone date for acceptance, and the next day SDA does not accept it, then IBM is in material breach. I wrote to Paul Hickey, the program director with IBM, drawing to his attention this practice and I do not recall receiving a response.
20. Malcolm Campbell told me that IBM had, in its ITO response, offered that 15 per cent of their fees be put at risk for their performance and the detail of this was to be agreed after contract execution. I recall a variation was executed around March 2008 that agreed to put at risk 5% of fees for the number of milestones achieved on time, 5% for

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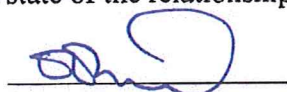
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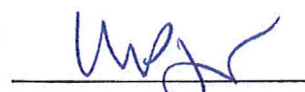
quality measured by the number of deliverables accepted on first submission and 5% for relationship as viewed by Gerard Bradley (Under Treasurer).

21. I had 2 staff members who reported to me (Ms Louise Chiconi and Ms Delwyn Beattie) who tracked all of the deliverables and compiled status records so we knew when milestones were and were not being met, and whether deliverables had been accepted by the Customer. That process involved following up with the Solution Design Authority to find whether it wished to accept particular deliverables or reject them. It was necessary to undertake this process because a failure to notify rejection within 5 days would result in deemed acceptance under the contract. I recall IBM's Program Office would request status records from Ms Chiconi and Ms Delwyn Beattie as our records were perceived to be more accurate than what they were able to achieve. My opinion was that this was a concern given the IBM Program Office was supposed to track and steer the projects for a whole of government solution.
22. I recall that IBM's conduct continued unamended and around April 2008 I went to Paul Hickey and told him that given a large number of deliverables were not accepted on time or on first delivery, a significant portion of fees were at risk and would be processed as such. I remember that he believed the acceptance process was an SDA responsibility and he told me that withholding IBM fees would not happen and it was "IBM's money". I recall we then had a discussion about the role and responsibility of the Prime Contractor for project deliverables and he challenged me to show him where it stated in the contract that IBM was the Prime Contractor. I then referred him to the front page of the contract which stated "Customer Contract between IBM Australia Ltd and State of Queensland for the appointment of a prime contractor for the Shared Service Solutions Program for the Queensland Government". I cannot recall what his response was.
23. I cannot recall the exact amount that was withheld, but I believe it was approximately 10% of \$7 million of fees at risk for time and quality performance only. The 5% of fees at risk for relationship was not processed due to the tight quarterly deadline and the fact that Mal Grierson had not yet been briefed to accept the role from Gerard Bradley of determining the state of the relationship with IBM.

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24. I raised the issue of withholding the at risk payments from IBM with Malcolm Campbell and John Beeston and it was agreed that it would be processed as such given that was what the parties had agreed in the contract.
25. After processing the fees at risk as per the contract I was told by Malcolm Campbell and John Beeston that IBM went to Mr Mal Grierson (Director-General) complaining that John Beeston was micromanaging the contract. I was told that Mal Grierson then instructed Barbara Perrott to remove John Beeston. John Beeston then told me that he asked that before that action occur, he be given the opportunity to speak with Mal Grierson. After the meeting, my understanding from what John Beeston told me was that Mal Grierson gave Barbara Perrott the task of resolving the at-risk fees issue with IBM and the option of retaining John Beeston or not. I recall that John Beeston remained employed, but not in the capacity as head of the Strategic Program Office.
26. I was not involved in the discussions with IBM and CorpTech to resolve the at risk fees. I recall that Louise Chiconi attended most of the meetings as she had detailed knowledge of the milestones and deliverables accepted.
27. Given the enormous effort in tracking and processing the At Risk fees and the disputes it caused, we later agreed with IBM to start drafting in retention payments in lieu of the at risk fees.
28. I recall a number of contract disputes occurred early on that required me to liaise with GITC Services, Boyd Backhouse and John Swinson. In June 2008 John Beeston became aware that IBM had executed a statement of work entitled "SOW10 Saba Scoping and Planning for Queensland Health" directly with Queensland Health in February 2008 without following the prescribed variation process in the contract. Therefore my view was that it did not form a part of the 2007 IBM contract. IBM disputed this stating IBM legal advice was solid without ever providing the advice. I was told by John Beeston that IBM had also commenced execution of an SOW at the

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Department of Education and Training that was not processed through the contract variation procedure.

29. I also recall an early dispute in about June 2008 where IBM had recommended we purchase their Simpro licences. Simpro is a software product used for training purposes. A variation was executed to purchase the licences and IBM then later required us to sign up to additional terms after execution that GITC deemed to derogate from GITC protections. IBM's position was that they would not release the licences until we executed new terms relating to the products warranty limitations.
30. I recall that IBM were also submitting contracted deliverables to the Customer with additional disclaimers attached which we instructed IBM to remove as the liability position for contract deliverables was already agreed in the contract. For example, when providing a report in about May 2008 entitled "SSS Technical Validation" pursuant to a statement of work, IBM included a disclaimer which, in my understanding, was inconsistent with IBM's obligations and responsibilities as prime contractor.


Delay notices

31. The document attached to this Statement and marked "A" is a document which my team prepared and which we used to educate people within the program, including IBM, about the delay procedure and the change control procedure under the contract.
32. CCD162 was a variation that was in my opinion one of the worst examples of not following the contract protections relating to delay payments. At that time, the Education Department was going through a blueprint building phase for about \$7,500,000.00 under SOW 13. I recall Malcolm Campbell telling me that the relationship between the project teams from IBM and the Education Department broke down. The project manager from IBM flew back to Sydney during the disputes and nothing appeared to happen for the several months that IBM was supposed to be undertaking work. I had some dealings on this issue with Mr Stuart Reid (the IBM commercial manager) and told him "If you want to get paid for the delay that you're

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blaming DET for, here's the process". I then gave him a copy of the document which is attached to this Statement and marked "A" and IBM later issued 2 letters of delay for the DET project and the Queensland Health project. Health and DET responded with letters disputing IBM's delay claims.

33. I recall John Beeston came down to Malcolm and I in about November 2008 and asked me to draft a change control document to pay IBM for the full fixed price for SOW13 for what became Change Request 162. I refused, saying "IBM has not followed the extension of time procedure". What was being proposed was to pay IBM the full fixed price of seven and a half million dollars when they had not delivered the full contracted blue print phase for the Department of Education and Training. It seemed quite clear to me that IBM was never going to finish the work. I drafted the variation on the condition that John Beeston email me with the instruction and appended the email to the variation. I also recall I was instructed to pay all outstanding at risk payments about the same time.
34. As matters turned out, that work was never completed. The Department of Education remained on its old system (TSS).

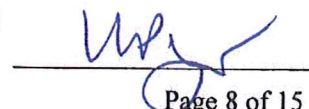
Forward Planning

35. Towards the end of 2008 a statement of work called Forward Planning was coming to an end and allowed the IBM team to start converting identified scope from best estimates to fixed price statements of work for the program moving forward. Concerns were being raised about IBM's costs blowing out when compared to IBM's best estimate provided in the ITO. The reason IBM offered was that the scope had significantly changed. As a result, Malcolm Campbell, John Beeston and I worked with a number of members of the Solution Design Authority including Lynelle Adams, Mike Robinson and Andrew Atkins in CorpTech to prepare a comparison of what the scope was in the ITO and what had supposedly changed since. We prepared a spreadsheet among other documentation which made this comparison and it indicated that the markedly increased pricing that IBM were proposing did not reflect the Customer's perceived scope increase from the ITO.

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36. This presented a major budget issue and John Beeston worked with Robyn Turbit to ensure she was comfortable with the analysis to be presented to Mr Grierson. I recall at the time that, in meetings I attended, IBM's forward planning team questioned why we could not just go back and ask for more money to continue. I am now not certain, but I think that those meetings were attended by IBM personnel including Brooke Freeman and Ann Cho.
37. I was then told by Malcolm Campbell that Mr Grierson was not happy with IBM and that all future work with IBM should cease except for Statement of Work 8 where Health would make the decision to continue or not.

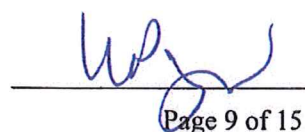
Queensland Health- Statement of Work 8

38. After IBM's delay notice for Queensland Health was sent on 8th August 2008, I met with Peter Douglas (Queensland Health) and John Beeston. Peter Douglas expressed to me a concern that IBM had not long to go until IBM was obliged to deliver the payroll system and that IBM had shown Queensland Health nothing to that date that gave them confidence in IBM delivering a working solution.
39. I advised them that they might think about including a condition precedent in the contract change documentation to the effect that IBM would have two or three months to meet an objective test that proves that the solution is viable. If IBM meet the test then they would be granted an extension of time and the project would continue.
40. I have been shown a document which is Change Request No 174. It is that document which was the one in which that condition precedent was inserted. John Swinson helped draft that condition. Under change request 174, IBM was to meet the objective test by about early December. This was delayed and eventually on about 23 December, representatives from CorpTech and Queensland Health met with Mr Kalimnios to determine if IBM had met the objective test.

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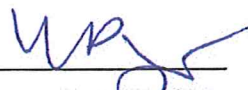

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41. After the end of December 2008, the next change request to be processed was 184. That change request (which was agreed to by the State) re-wrote history by amending past agreed scope, project execution plans and required contract deliverables and dates.
42. I was not at that meeting, but Mr Campbell and Mr Beeston told me what had happened when I returned from holidays in January. Mr Kalimnios chaired that meeting. It was clear that IBM had not met the objective test. Also in attendance were members of the project team from Queensland Health. The CorpTech representatives I believe were Phillip Hood and Bob Cramp who I was told said that IBM had not met the test. I understand that Queensland Health representatives believed IBM was nearly there and we're happy to continue. Mr Kalimnios, however, it was reported to me, was not confident in IBM's ability to deliver.
43. At that point, there was no change request to go any further. Prior to the meeting to decide on the objective test in late December, I received an email from Terry Burns around the 10th December saying, that if IBM do not meet the test and Health decide to continue with a compromised solution, then no payment should be made to IBM.
44. Representatives from Queensland Health and CorpTech including myself then went through protracted negotiations for several months up until Change Request 184 was executed, trying to negotiate with IBM what the next stage would be.
45. The next step should have been a simple extension of time. However, in the early part of 2009, Malcolm Campbell and I had a meeting with Paul Ray and John Gower of IBM to discuss the issues with identifying what was and was not a defect or a contract scope change by referring to what documents had been accepted through the contract deliverable acceptance process. On having discussions with Anthony Price from Queensland Health regarding these issues, Malcolm Campbell and I determined that the IBM Health project were working to technical and functional specifications that Queensland Health had never agreed and signed off. Further, these documents were not the documents that had gone through the contract deliverable acceptance process that was required to enable IBM to get paid under the contract. From this point forward

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IBM wanted to re-baseline the project documents referenced in the contract to avoid this breach being relied upon in the future.

46. Whilst negotiations continued for a new variation I worked in the background with Mr Swinson and Kirsten Bowe to have a breach notice ready to issue to IBM if negotiations failed.
47. About the end of March 2009 a 15 page draft breach notice was nearly ready.
48. Around the same time, Malcolm Campbell and I had a conversation with James Brown in which we told Mr Brown that the breach notice was almost ready. Mr Brown, however, said to Mr Campbell and I that, "we're not going to go down that route, there has been too much water under the bridge" and, "continue negotiating an extension of time and setting up a new change request to go forward." I asked MrBrown what we were to do with the preparation of the breach notice and he told me to cease and the Project Board had agreed to pay IBM an additional \$5million dollars.
49. Negotiations continued with little progress in gaining agreement with IBM. Finally, an instruction later came back to me to draft the extension of time variation to pay IBM a further \$4 million dollars on top of the original \$5million offered to IBM in late March 2009.
50. A lot of the critical business functionality (for example, nurses' Professional Development Entitlements, concurrent employment and so forth), was expressly written out of scope in CCD184 because IBM said it could not meet the (then planned) go live date of November 2009 if they had to achieve this functionality. But those matters were critical business requirements according to Queensland Health.
51. The changes to scope and so forth are set out in Change Request 184 "Scope Clarification".

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52. I never met with Mr Grierson about the project. I did attend some meetings which Ms Perrott also attended.

Terry Burns

53. When James Brown assumed control of the project from Mr Burns, Mr Burns went to work for Queensland Health and worked on the Queensland Health payroll project.

54. Malcolm Campbell told me that Mr Burns did not agree with the way we wanted to manage the IBM contract and believed we micro managed it.

55. In one email I have produced, John Beeston instructs me to process ambiguous Change Requests. About the same time Malcolm Campbell told me that he had heard Queensland Health was complaining that, "there's some lawyer down at CorpTech killing our project. He's refusing to sign change requests". It was correct that I was not signing them. But that was because I was unsure whether they were project changes, defects or actual contract/scope changes.

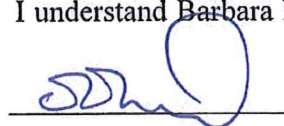
56. Around 19th September 2008, I attended a meeting with a room full of people whom I believed were from Queensland Health (which Terry Burns was chairing). He said to me, in effect "You process the change request. We're going to pay for those variations out of our own pocket". An email from John Beeston to me which I have produced tells me to process change requests, and we would later determine who is to pay for them.

Problematic changes to the contract


57. The change requests which most clearly show the problems I have spoken about are:

- a. 162 (mentioned above)
- b. 184 (also dealt with above);
- c. 60 and 61. I was told by Malcolm Campbell that John Beeston had said that 60 was brokered by Terry Burns and IBM with Barbara Perrott at the Hilton Hotel. I understand Barbara Perrott was attending a seminar and John Beeston

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had instructed Malcolm and I to ensure we viewed the variation before we walked it up to the Hilton for Barbara to sign. There existed a strict change control process that had to come through the strategic program office. The diagram referred to above and marked "A" shows what that process was. I had one of my staff ready to pick it up so that I could look at it and when they went to Paul Hickey to collect for our review he said, "No, I'm running down to get it processed". He grabbed it off the printer, ran down to the Hilton, and Barbara signed it off. Paul Hickey printed the change request off. I never saw that request before it was agreed. I believe the change control process was not followed as per the contract. Schedule 12 to the contract is very prescriptive and details requirements for initial assessments and further evaluations of the proposed change where necessary with the SDA. Note also that that change request 61 (which is related to 60 and executed at the same time) says:

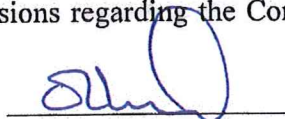
The currently proposed solution is acceptable to Queensland Health who bear the risk associated with this change from the review.

58. After 184 was agreed, the governance of the Queensland Health project changed to a project board containing representatives from Queensland Health and CorpTech. I no longer managed the contract full time and instructions for contract variations such as extensions of time and increased contract pricing came from James Brown. Generally, those instructions were given orally. Some contract variations were dealt with either by increasing the contract price or by paying IBM earlier by reducing the retention held for the last milestone. This reduced from the original \$6 million agreed under CCD184 to \$3 million by the time the system went live.


Queensland Health

59. I have been asked whether Queensland Health's voice was heard about matters to do with the contract. I recall Malcolm Campbell and I met regularly with Queensland Health representatives from August 2008 until execution of CCD 184, including regular meetings with Mr Burns (who then worked for Queensland Health). I recall after June 2009 most decisions regarding the Contract were made by the Board which was made

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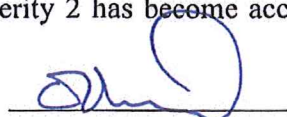


up of CorpTech and Queensland Health representatives. James Brown who was on the Project Board would instruct Malcolm Campbell on what Contract changes were required and I assumed these were decisions made by the joint CorpTech/Queensland Health Project Board.

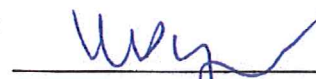
Defect severity re-definition

60. Schedule 26 of the contract defines defects severity and IBM's obligations to fix them.
61. Severity 2 defects are major ones.
62. Change Request 184 contains details about one of the last contract milestone deliverables, number 44, that required the solution to have no severity 2 defects.
63. Around late 2009 and early 2010, in the course of meetings with me, Paul Ray on behalf of IBM tried to vary the terms in the Contract so that the milestone could be accepted with severity 2 defects. The contract deliverable acceptance criteria required that there were no severity 1s and 2s, but a management plan for 3s and 4s. A lot of severity 2 defects were showing up before go-live. The criteria in the contract was never amended to allow acceptance of the system with severity 2 defects and this point was used in a breach notice issued to IBM after Go Live.
64. Malcolm Campbell told me that Bill Doak was not happy with the way KJ Ross was reporting the defects and he wanted IBM to take responsibility for the way the defect statistics were reported. He also told me that he was getting reports through (which he would show me on his laptop) that it was getting to the stage where there were so many defects that in order to meet the go live criteria, defects were either reclassified as lower defects or not counted in the go live criteria in order to be addressed at a later stage.
65. There is a go live report signed off by Adrian Shea.
66. There is also a document "QHIC Approval Board Meeting, February 1st, 2010". It shows how severity 2 has become acceptable with a comprehensive management plan

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(whereas the contract required that there were no severity 2 defects). That document shows how, with the "Amended Criteria", that part of the process was allowed to proceed (hence the green "traffic light").

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

Declaration

This written statement by me dated 5th April and contained in the pages numbered 1 to 15 is true and correct to the best of my knowledge and belief.

Signed at Brisbane this 5th day of April 2013

Witnessed:

Name Wendy Wright Signature _____