



QUEENSLAND HEALTH PAYROLL SYSTEM
COMMISSION OF INQUIRY

Statement of Witness

<i>Name of Witness</i>	Malcolm John Grierson
<i>Date of Birth</i>	Known to Crown Law
<i>Address and contact details</i>	Known to Crown Law
<i>Occupation</i>	Retired
<i>Officer taking statement</i>	Mr Peter Flanagan and Ms Anastasia Nicholas
<i>Date taken</i>	24 May 2013

I, **Malcolm John Grierson**, of c/o Crown Law, State Law Building, 50 Ann St, Brisbane Qld 4000, state as follows:

BACKGROUND

1. My name is Malcolm John Grierson. I was appointed Director-General of the Department of Public Works in October 1998, and served in that role until 1 July 2011. Further details of my background and earlier involvement in the Queensland Health Payroll System project are set out in my first and second statements.
2. I participated in an interview on 9 May 2013 conducted by Mr Peter Flanagan SC and Ms Anastasia Nicholas of Counsel, each assisting the Commission. Also present were Ms Rachael Murray, Mr David Kent and Ms Melinda Pugh. Subsequent to that interview, I prepared a second statement dealing with post Go-Live matters.
3. I have now been asked to provide a third statement dealing with details of my involvement with specific meetings with IBM and others on or about 19 August, 2010. I have repeated or paraphrased certain information previously stated in Statement Two to the Commission for completeness in addressing the matters of 19 August 2010.

Signature:

Witness signature:

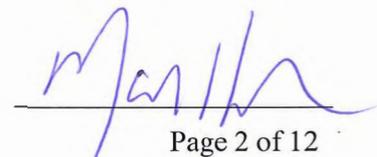
EVENTS LEADING TO MEETINGS OF 19 AUGUST 2010

4. The main item of background to the events of late August 2010 was Cabinet (CBRC) Decision No 3019 of 22 July 2010 which decided (among other things):-
- (a) To approve the option to “Negotiate a Settlement with IBM”;
 - (b) To approve the proposed contract negotiation parameters;
 - (c) To instruct that negotiations were not to exceed a period of six weeks;
 - (d) To authorise the Director-General, the Department of Public Works to act as the State’s delegate in progressing the preferred option; and
 - (e) To note that an update was to be provided within six weeks containing additional recommendations on how to finalise the contract with IBM.
5. Aside from the legal advice we received, I have been asked what my own input was in relation to the option of a negotiated settlement. In my history of major projects, very rarely have we proceeded to litigation, even though there may be some pre-litigation steps taken. In my experience, you usually are able to sit down and come to a commercial settlement or agreement. In the situation of the Health payroll, I was aware that separation from IBM was a strongly preferred position within Government (the Cabinet Decision mentioned above did require me to recommend “how to finalise the contract with IBM”). However, I was also aware that any action we took had to be based on the fundamental operational requirement set out by the Auditor-General, the KPMG Report and most importantly, the Government, of keeping the payroll running.
6. On 29 June 2010 Mr James Brown (a senior CorpTech officer) sent me a submission recommending the engagement of Clayton Utz as a commercial negotiator to assist with the negotiations with IBM. The Cabinet Decision of 22 July 2010 appointing me as the State’s delegate did not exclude me from engaging legal assistance. Mr Simon Newcom and Mr Jeremy Charleston from Clayton Utz were engaged in this role. Mallesons and Crown Law were also assisting.

Signature:



Witness signature:

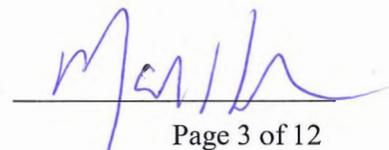


7. I do not recall meeting with Clayton Utz or providing instructions to them regarding the negotiations, but it is possible that I met with them occasionally.
8. During early August 2010, most of the negotiation activity was undertaken by senior CorpTech officers acting on advice from Crown Law, Mallesons and Clayton Utz. By 13 August 2010, I had been informed that, to quote an email from Ms MacDonald (my Deputy), "the ante is being upped". I was also informed by one or more of my senior officers, that IBM was not negotiating genuinely. I have been shown a file note of Mr Backhouse (my Director of Legal Services) that supports this assessment and suggests that the IBM "tactic" was to delay. Receiving this "IBM are delaying" message was of concern to me as Cabinet had given me a period of six weeks to complete negotiations.
9. It is important to keep in mind that my prime risk through all this was getting a fortnightly payroll out. That was the key driver, but as far as the negotiations with IBM were concerned, the documentation clearly shows it was being undertaken via lawyers. All correspondence from the State to IBM at this stage was being drafted or cleared through Mallesons, and I assume Clayton Utz. All Correspondence from IBM to the State was referred to Mallesons, and I assume Clayton Utz. Crown Law were also fully involved in this activity.
10. I cannot recall receiving a personal briefing from Clayton Utz regarding status and tactics for negotiation, as suggested in Mr Backhouse's file note of 10 August 2010. I cannot recall meeting Mr Charleston at all, although I think I may have met him on an occasion when Mr Brown and Mr Backhouse brought him up to meet me.
11. I have been shown a discussion paper from Mr Brown dated 16 August 2010 which was for discussion with Ms MacDonald and me that afternoon. It outlined the current negotiated position with IBM and suggested some options for proceeding. Part of the process forward that was recommended (presumably because of IBM's reluctance to negotiate, as mentioned earlier) was for the Director-General or a delegate to meet with IBM to discuss a revised Term Sheet (still within the CBRC approved parameters). It also highlighted the short amount of time that remained if the State wanted to terminate

Signature:



Witness signature:



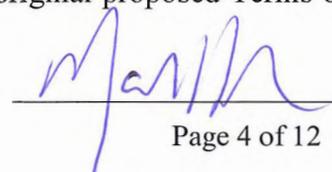
also highlighted the short amount of time that remained if the State wanted to terminate the contract. Therefore, while there was a Cabinet submission prepared regarding negotiating a settlement, one was also prepared at that time in relation to termination. This was in preparation for the short timetable faced between Cabinet and the critical dates for the State to act under the contract should Cabinet wish to do so.

12. I have been asked about a conversation I had with Mr Killey from IBM and have been shown emails regarding that conversation. The emails indicate that I called Mr Killey on 17 August 2010 to discuss the negotiations. Other emails indicate that Ms MacDonald was aware of the need to contact IBM, asked if I had made contact and reminded me that morning that time was running out.
13. So, based on my understanding that IBM was not negotiating in good faith and that time was running out, I rang Mr Killey and said words to the effect of, "Look, the situation is we have got negotiators. You've got Blake Dawson and we've got Clayton Utz. They should be sorting this out. The government is getting the message that IBM do not want to do this. You are not cooperating. I want to know why and I want to know how we can get this thing sorted out".
14. In the first email from Mr Killey on 18 August 2010 at 8:04am, he suggests that I requested a meeting outside of the agreed settlement process. As this was not what was intended, I referred Mr Killey's email immediately to my Director of Legal Services, Mr Backhouse, who helped draft my reply to Mr Killey. My email to Mr Killey at 11:14am the same day strongly states that my intention was not to change the agreed negotiation process involving legal representatives. I made it clear that process was to continue and that all I was offering was a discussion between senior executives to sort out why we had the current unsatisfactory situation regarding IBM's response to the agreed process.
15. I sent a copy of my email response to Mr Killey to Mr Backhouse and Ms MacDonald so that they were fully aware of the contact with IBM.
16. By the night of 18 August 2010, Ms MacDonald had reviewed the Clayton Utz response to the IBM response of 13 August 2010 to the Clayton Utz original proposed Terms of

Signature:



Witness signature:



Settlement of 4 August 2010. Her email to me confirms that the latest Terms were still within the CBRC approved parameters for my negotiations for a settlement with IBM.

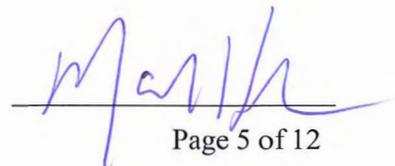
EVENTS OF 19 AUGUST 2010

17. I have now seen an email dated 10.17am on 19 August 2010 from Mr James Brown to Ms MacDonald, Ms Berenyi (Manager of Corptech) and Mr Backhouse. It suggests that I “may care to phone Jeremy Charlston from Clayton Utz to seek additional advice on the conduct of the meeting”. I don’t recall seeing this email (it wasn’t addressed to me) but Ms MacDonald may have shown it to me because I am advised that Mr Charlston recalls a phone call from me that morning along the lines mentioned above. Any advice he gave me would have been taken into account.
18. I met with Mr Killey on Thursday 19 August 2010 at 11:00am. Ms MacDonald also attended that meeting. I think that Ms Sarah Adam-Hedge (a senior IBM Executive from Sydney) was there also. I believe that my main aim at this meeting was a desire to keep the process moving. However, I believe we would have discussed the issue of settlement and tried to identify and reach agreement on a solution to any issues of concern.
19. In an email to Ms MacDonald (and copied to Mallesons and Clayton Utz) dated 16 August 2010 and forwarded by Ms MacDonald to me that same day, Mr Brown had advised that at that stage “All that really has to be determined is whether it is better for the state to hold onto the outstanding monies and use that to offset its costs in rectifying the long list of defects... I really do not see that there is a lot to negotiate”.
20. However, I was aware when I met with IBM that the Government expected IBM to fix a number of defects, transition the critical specialist consultants to CorpTech, develop and implement the “Concurrent Employment Module”, convert all documentation over to CorpTech and exit by a date to be agreed via a smooth transition. I expect that these matters would have been discussed at that meeting and agreement reached wherever possible.

Signature:



Witness signature:

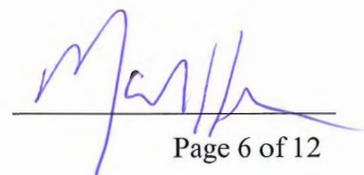


21. My diary records that at 3:00pm on Thursday 19 August 2010, I met with Mr Ken Smith (Director-General, Department of Premier and Cabinet) to update him on the status of the negotiations. I think that Ms MacDonald accompanied me to that meeting. We would have also discussed the Cabinet Decision requirement of reporting back to Cabinet within the six week period and my expectations and the mechanics of doing that. His Departmental officers were heavily involved in all matters before Cabinet.
22. At approximately 3:30pm on Thursday 19 August 2010, I had a meeting with Ms MacDonald, Ms Berenyi and Mr Brown to brief them on the current situation, including our discussions with IBM Executives and then Mr Ken Smith. I believe that Mr Charleston was supposed to attend, but did not ultimately do so. I have now seen emails from Ms MacDonald to me at 1.17pm that day in which she advises that meetings between Clayton Utz and Blakes had not occurred and therefore there was no need to include Clayton Utz in this 3.30pm meeting.
23. It is likely that the first draft of the document called the "Proposed Settlement Principles" was put together, probably by Mr James Brown, based on the latest Terms of Settlement and as a result of what was discussed at the 3.30pm meeting. I believe that at this meeting I would have explained the substance of our discussion with IBM earlier that day, asked for a Cabinet Submission to be prepared in relation to it, and asked that Mallesons be instructed to draw up a draft settlement agreement.
24. By 5.00pm that afternoon (19 August), Mr Ken Smith had informed me that he would advise the Premier next morning of the Proposed Settlement Principles which were within the CBRC approved negotiating parameters and seek instructions as to when she wanted this to be submitted to CBRC. CBRC was not scheduled to meet for a couple of weeks and Mr Smith was considering a special CBRC meeting to deal with this matter.

Signature:



Witness signature:



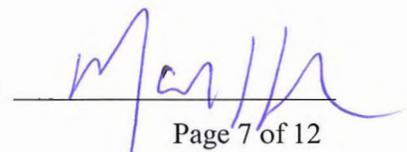
Page 6 of 12

25. I had been calling Mr Reid, (Director-General, Department of Health) and my officers had been keeping senior Health Department officers abreast of developments. By Monday 23 August, I received an email saying that Mr Michael Walsh (the Deputy Director-General, Department of Health and the officer responsible for the Health Payroll) "is very supportive of the submission and feels that it will deliver Health the flexibility they need whilst maintaining the stability of the system". These had been the original instructions of the Premier and Minister Schwarten.
26. On Wednesday 22 May 2013, I was shown a document that is supposedly a note of a telephone call made by Mr James Brown of CorpTech to Mr Jeremy Charlston of Clayton Utz on the afternoon of 19 August 2010. I have not seen this document before. Statements made in this document are false and do not accurately record what was discussed or said at any of the meetings I attended with IBM, Mr Ken Smith or Mr Brown, Ms MacDonald and Ms Berenyi on 19 August 2010.
27. Paragraphs 2, 3, 4, 5 and 6 of this document contain gross inaccuracies and false statements. Without listing errors of little importance (e.g. Ms MacDonald was the Associate Director-General not the Acting Director-General as mentioned in Paragraph 1), the following paragraphs detail the inaccuracies in this document.
28. Document Paragraph 2 – "They have determined that the State has no interest in termination of the contract with IBM. The State wants IBM to finish the contract".
29. Facts – Assuming that the "they" refers to Mr Smith, Ms MacDonald and/or me, this would not have been said to Mr Brown. Based on legal advice and the need to keep the payroll running, Cabinet had already approved a preferred position (CBRC Decision 3019 of 22 July 2010) of negotiating a settlement with IBM. Mr Brown was aware of this CBRC Decision and knew that "they" had not just determined that the State had no interest in termination. Secondly, the CBRC Decision of 22 July, clearly states that CBRC sought further recommendations on "how to finalise the contract with IBM". Mr Brown was aware that the State wanted to finalise not finish the contract with IBM. The "they" "did not tell him otherwise.

Signature:



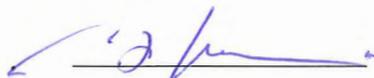
Witness signature:



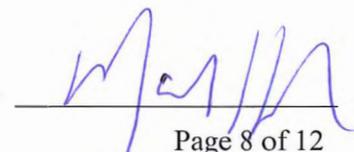
Page 7 of 12

30. Document Paragraph 2 – “There is not enough confidence in CorpTech to support the system. IBM emphasised this view to the DG.”
31. Facts – There was total confidence in CorpTech supporting the system as long as CorpTech had access to the specialist contractors employed at that time by IBM. Continued support of the system by CorpTech was the preferred position of all agencies of Government and was the basis of the CBRC Decision of 22 July. To suggest that the Government would have made a decision in July 2010 to place the Health Payroll support in the hands of a body in which “there is not enough confidence” is nonsense. IBM did not emphasise this view to me; nor did I say this to Mr Brown. IBM probably agreed with me that CorpTech needed access to the specialist contractors.
32. Document Paragraph 2 – “IMB (sic) told the DG that IBM would sue the State and those threats were taken seriously by the DG”.
33. Facts - IBM did not threaten to sue the State and I never seriously thought during these negotiations that IBM would sue the State. The meeting was amicable to my recollection and focused on moving ahead with the settlement. IBM was at that time trying to rebuild damaged relationships with the State and was hoping for further work in Government agencies. It is inconceivable that IBM would assign Ms Sarah Adam-Gedge (a very senior IBM Executive) to these negotiations and at this early meeting to negotiate a settlement, she would threaten to sue the State. I did not tell Mr Brown that IBM threatened to sue the State.
34. Document Paragraph 3 – “James/CorpTech has been instructed to do a deal with IBM around the following terms. Clayton Utz does not need to do anything.”
35. Facts – Mr Brown was instructed to have a draft settlement document drawn up – not to “do a deal”. Regarding Clayton Utz being not needed to do anything, Mr Charlston’s document says in that same paragraph, “James will draft the key principles overnight and send them to me [Clayton Utz] and Swinson to review before any additions by 10am tomorrow”. I did not tell Mr Brown to exclude Clayton Utz and obviously they weren’t excluded.

Signature:



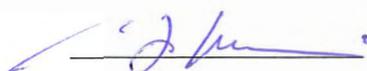
Witness signature:



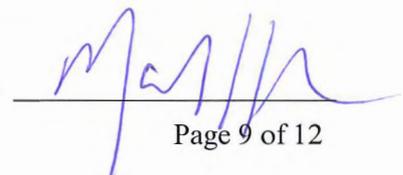
Page 8 of 12

36. Document Paragraph 4 – “The terms of the settlement are confidential.....John Beeston does not know about the terms and this cannot be discussed with him”.
37. Facts – If this is Mr Brown’s view or decision, then fine. I did not tell Mr Brown that Mr Beeston should not be told about the terms. I assumed that Mr Beeston was assisting Mr Brown in this exercise.
38. Document Paragraph 5 – “James said that there is no security for performance and IBM has a free rein”.
39. Facts – IBM didn’t have a “free rein”. The document supposedly records Mr Brown’s comments in Paragraph 4 as saying “The State will also pay \$1.85million under SoW8. However, this will be paid in tranches around IBM’s delivery of defect fixes”. IBM was to be paid on performance and clearly understood what the State expected from them. I did not tell Mr Brown that IBM had a “free rein”.
40. Document Paragraph 6 - “James said, confidentially, 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]”.
41. Facts – I did not say this to Mr Brown. The only “political” inputs into this negotiation process and my meetings of 19 August, were the parameters and time for negotiation, the authority given to me in regard to the negotiations (all covered in the CBRC Decision of 22 July) and the clear instructions from Government that the pay for the Health Employees was not to be put at risk. These were all known to Mr Brown. Secondly, it makes no sense that the Government would not want IBM removed because there would be “nobody to blame”. The CBRC Decision of 22 July on which the whole negotiation process was based, specifically approved a negotiated settlement with IBM and sought recommendations to “finalise the contract with IBM”. The Government wanted a smooth transition to an IBM exit.
42. Document paragraph 6 – “James said that his personal view is that this is the worst possible outcome. IBM played hardball and got what it wanted”.

Signature:



Witness signature:

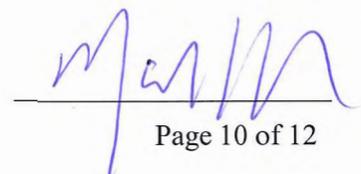


43. Facts – If this is all Mr Brown’s personal view, then fine. He at no stage expressed these views to me or to my knowledge, to my senior staff. IBM did not play hardball. IBM delivered what was required to fix agreed defects, complete the development of additional Concurrent Employment modules, transfer the required specialist contractors to CorpTech and effect a smooth transition of the system support to the Government – all whilst keeping the payroll running. IBM did not get all the money it believed it was due.
44. Document Paragraph 6 – “James said that the real issue is that the DG was concerned about himself and the Minister. There will be an election in 18 months and they are very concerned about anything being public [in the health area].”
45. Facts – I did not say this to Mr Brown and it is nonsense. I was not concerned about myself and the Minister or a forthcoming election. I was a Public Servant and had served both sides of politics for many years so I was not concerned about any election. I was not concerned about the Minister (I assume he means Minister Schwarten). The Minister’s concerns regarding any election were a matter for the Minister, not me. In any case, Minister Schwarten and I had discussed our future work plans, and retirement of both of us before the next election was expected. In regard to being very concerned about “anything being made public”, the media had been all over the Health Payroll since go-live and was expected to continue to do so.
46. In summary, this document does not accurately reflect the outcome of any of the meetings I had on 19 August 2010. If this is an accurate record of the conversation between Mr Brown and Mr Charlston, I cannot explain why Mr Brown would make these comments. Ms MacDonald, Mr Killey and Ms Adam-Hedge were with me at the IBM meeting; I believe Ms MacDonald accompanied me to the Mr Ken Smith meeting; and Ms MacDonald and Ms Berenyi were at the meeting with Mr Brown.
47. On 26 August 2010, a CBRC decision was made to approve the execution of a Supplemental Agreement. The decision expressly refers to concerns about the risk of

Signature:



Witness signature:



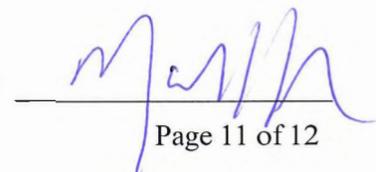
IBM's immediate departure from the project, given its continued operational support for the fortnightly pay runs.

48. On 21 September, I received Ministerial approval to proceed and documents were exchanged between Mallesons and Blake Dawson.
49. I have been asked questions regarding my role in the negotiations vis-a-vis those of legal advisors. The Premier and Minister Swatten made it very clear to me after the first CBRC Decision regarding negotiations with IBM, that I was responsible for managing these negotiations to a successful departure of IBM, but at no stage was I to risk the fortnightly payment to Queensland Health employees through the Health payroll.
50. In all legal matters, I involved and relied on my Director of Legal Services, Mr Backhouse, Crown Law, Mallesons and Clayton Utz as appropriate. For advice on all options, including termination of the contract with IBM, and maintenance of all of the State's rights, I also relied on the legal advisors listed above.
51. As issues were "escalated" to me to address with senior IBM executives, I did so. As the officer appointed by Cabinet to deliver the settlement and to complete negotiations within a six week period, I did so. At no stage did I or my legal advisors stray outside the parameters set and approved by Government. The final Supplemental Agreement, drawn up by Mallesons and Crown Law, and approved by Government, reflects this.
52. IBM exited under an Agreement approved by Government, transferred all specialist contractors to CorpTech and met all of their agreed obligations regarding defects and the Concurrent Employment module. Most importantly, the payroll ran every fortnight during the negotiation period and CorpTech and Queensland Health had a smooth transition to running the payroll. This is what I had been charged to deliver.

Signature:



Witness signature:

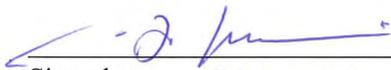


Page 11 of 12

53. 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 27th MAY 2013 and contained in the pages numbered 1 to 13 is true and correct to the best of my knowledge and belief.


Signed at BRISBANE this 27th day of MAY 20 13 Signature

Witnessed:


Name Mark Howden Signature 27 May 2013
Solicitor with a
current practising certificate