

IN THE MATTER OF THE QUEENSLAND HEALTH PAYROLL SYSTEM COMMISSION OF INQUIRY

A COMMISSION OF INQUIRY UNDER THE COMMISSIONS OF INQUIRY ACT
1950

SUBMISSIONS OF MARGARET BERENYI

1. Ms Berenyi has provided two written statements to the Queensland Health Payroll System Commission of Inquiry (**Commission**): the first dated 8 April 2013¹ (**First Statement**), and the second dated 24 May 2013. The latter is not relevant to these submissions. Ms Berenyi was examined before the Commission on 7 May 2013.
2. These submissions respond to issues 3, 7 and 10, as identified by the Commission in its document "*Issues For Submissions: Contract and Project Management*" (**Issues**). The defined terms and abbreviations used in these submissions reflect those used in Ms Berenyi's statements.

Background

3. Ms Berenyi was appointed as the Executive Director of CorpTech on 6 February 2009 by the then Director-General of the Department of Public Works, Mr Malcolm Grierson.²
4. Mr Grierson was Ms Berenyi's direct supervisor from 6 February 2009 until May 2009.³ From May 2009, her direct supervisor was Associate Director-General, Ms Natalie McDonald,⁴ who received written briefings on the Project from Ms Berenyi, including during regular fortnightly meetings.⁵
5. Upon her appointment, Ms Berenyi received briefings by Mr Grierson,⁶ Ms Perrott,⁷ other government officers⁸ and the Contracts Team.⁹ Ms Berenyi relied on the Contracts Team in carrying out her obligations.¹⁰ Her understanding of where the Project stood shortly after 6 February 2009 is set out in paragraph 20 of her First Statement.

¹ Commission exhibit number 113.

² First Statement, paragraph 2.

³ First Statement, paragraph 11.

⁴ First Statement, paragraph 11.

⁵ First Statement, paragraph 51.

⁶ First Statement, paragraph 16.

⁷ First Statement, paragraph 14.

⁸ First Statement, paragraph 17.

⁹ First Statement, paragraph 15. See also First Statement, paragraphs 20(r), 20(s), 20(t) and 21 to 29.

¹⁰ First Statement, paragraph 15; also paragraph 236.

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6. Ms Berenyi's key responsibility whilst at CorpTech was to take action to ensure the delivery of the Project to implement a replacement of QH's LATTICE¹¹ system.¹² The Project required IBM to deliver a legislatively-compliant pay system to QH which not only paid employees correctly, but accurately dealt with employees' superannuation and leave entitlements.¹³
 7. Many of the events relevant to this Inquiry had occurred prior to Ms Berenyi's appointment.
 8. Ms Berenyi's involvement relates to the period in and after February 2009.

Issue 3: [Generally], why did the project scope remain unstable until late into the project and what should either party have done to stabilise scope or cause the project to be re-set?

9. Prior to February 2009:
 - (a) the Contract was problematic in a number of respects;¹⁴
 - (b) there had been inadequate identification by IBM and QH of QH's business requirements;¹⁵
 - (c) there had been numerous disputes regarding scope;¹⁶
 - (d) there was neither an agreed integrated project schedule¹⁷ nor an agreed traceability matrix;¹⁸
 - (e) twenty-seven change requests to the Contract had already been negotiated and agreed to by the parties, resulting in additional payments (in the order of \$3.9 million) being made to IBM;¹⁹
 - (f) the governance arrangements for the Project were not working effectively;²⁰
 - (g) legal advice had been given to CorpTech which, among other things:
 - (i) raised concerns that:

¹¹ There was a risk of failure of the LATTICE system about which QH was concerned: transcript 27-86, lines 43 – 44.

¹² First Statement, paragraph 16; transcript 27-64, lines 29 – 36.

¹³ Transcript 27-55, lines 38 – 42; 27-56, lines 22 – 51; 27-63, lines 36 – 38, 27-64, lines 1 – 18; 27-71, lines 9 – 25.

¹⁴ First Statement, paragraph 19.

¹⁵ First Statement, section 6, and paragraphs 215 and 238.

¹⁶ First Statement, paragraphs 20, 52(a) and 52(d).

¹⁷ Transcript 27-67, lines 31 – 35.

¹⁸ Transcript 27-68, lines 12 – 52; 27-69, lines 1 – 19; 27-111, lines 10 – 42; First Statement paragraph 59(c).

¹⁹ First Statement, paragraph 20(f).

²⁰ First Statement, section 4, including paragraph 30.

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- (A) there was little that could be done about IBM's 'out of scope' arguments, thereby compromising the State's ability to enforce the Contract's scope provisions;²¹
- (B) CorpTech's conduct (including silence) had arguably amounted to acceptance of unsatisfactory conduct by IBM and Project deliverables;²² and
- (ii) recommended that a commercial resolution was the best way to move forward with the Project.²³
10. Post February 2009, the following took place:
- (a) Ms Berenyi participated in negotiations between the parties in relation to matters which would ultimately become the subject of CR184;²⁴
- (b) the CR184 negotiations continued for some five months, which ensured that all parties understood the intentions of CR184, thereby reducing the likelihood that subsequent attempts would be made by the parties to "unpick" it;²⁵
- (c) the primary purpose of CR184 was to resolve the many complex and persistent problems between the State and IBM in relation to the Project, and to move the Project forward with the goal that a system be delivered which paid QH employees correctly after go-live;²⁶
- (d) CR184 was designed to provide a once-off, commercial payment to resolve all current and future disputes with IBM about scope and to secure delivery of the Project;²⁷
- (e) CR184 established the Board (as recommended by Ms Berenyi)²⁸ so as to ensure appropriate Project management,²⁹ and

²¹ First Statement, paragraph 236.

²² First Statement, paragraph 20(r); Transcript 27-66, lines 1 – 10.

²³ First Statement, paragraph 20(t).

²⁴ First Statement, section 8; Transcript 27-104, lines 38 – 41.

²⁵ Transcript 27-83, lines 39 – 51.

²⁶ Transcript 27-74 lines 51 – 56; 27-75, lines 1 – 14, 40 – 54; 27-76, lines 1 – 3; 27-80, lines 1 – 13; 27-83, lines 22 – 26; Submission dated 31 March 2009, CCMB Volume 8, pages 312 – 314; transcript 27-59, lines 45 – 51; First Statement paragraph 58 and section 8.

²⁷ First Statement, paragraph 121.

²⁸ First Statement, paragraph 132.

²⁹ CCMB Volume 9, page 131; First Statement, paragraph 121.

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- (f) an integrated Project Schedule was developed by IBM, QH, and CorpTech at a series of workshops held in about June 2009 to ensure all parties were aware of what was required to finalise the Project.³⁰
11. These steps stabilised scope disputes between the parties, and allowed the Project to progress.³¹ In particular, these steps removed previous disputes about scope; sought to eliminate future disputes about scope; implemented the commercial resolution recommended by the legal advice received; and addressed corporate governance problems.³²

Issue 7: Ought the Project Directorate to have recommended that the system go-live on 14 March 2010 and ought the Project Board to have approved that go-live?

12. It was reasonable for the Project Directorate to have recommended that the system go-live on 14 March 2010, and reasonable for the Project Board to have approved that go-live, for a number of reasons, critically:
- (a) the Solution had undergone a number of testing and verification processes, the results of which were critical to the decision to go-live, and which were all 'green', save for one 'amber' result which was, in any event, deemed to be a 'low risk' issue;³³
 - (b) whilst some defects had been reclassified by QH, in order to allow the testing of the Solution to proceed to the next gate, such reclassifications were, in Ms Berenyi's view, appropriate, having regard to the fact that the defects were still being given due attention,³⁴ and because QH was comfortable with the reclassification approach;³⁵
 - (c) the recommendations made in the SAP Report and the Management Response Report, the advice given to the Board by QHSSP, Mr Burns³⁶

³⁰ First Statement, paragraph 48; Transcript 27-67, lines 22 – 44.

³¹ In addition, attempts were made by the parties to agree to a traceability matrix, although such attempts were ultimately unsuccessful due to QH not being in a position to dedicate resources to assess and agree to the matrix by the time these attempts were made: First Statement, paragraph 64; Transcript 27-68, lines 15 – 52, 27-69, lines 1 – 6; 27-111, lines 10 – 50.

³² First Statement, paragraph 52.

³³ First Statement, section 10.1 (particularly paragraph 159) and paragraph 195; transcript 27-85, lines 14 – 31.

³⁴ Transcript 27-61, lines 18-30; Transcript 27-62, lines 28 – 53.

³⁵ Transcript 27-63, lines 1 – 9.

³⁶ First Statement, paragraphs 162, 182-183 and section 10.9.

and QHEST as to QH business readiness,³⁷ and the risks associated with pursuing option 1 in the KJ Ross Report;³⁸

- (d) other practical considerations, including:³⁹
- (i) there were only limited periods in 2010 at which it would be viable for the Solution to go-live;⁴⁰
 - (ii) the potential cost of \$1 million per month of additional delay costs which would have been shouldered by the State if QH had requested a delay;⁴¹
 - (iii) the problems associated with a loss in expertise, needed for the Solution's ongoing development, if the March 2010 delivery date was not to be met;⁴²
 - (iv) concerns that the new EB determinations by the IR Commission – which would need to be included in the LATTICE system were the go-live delayed – would be incompatible with the configurability and fragility of LATTICE;⁴³ and
 - (v) the real risk of the LATTICE system and associated transactional processing by the QHSSP failing if no replacement system was implemented at some point in near future.⁴⁴

Issue 10: Was the standard of diligence shown by Ms McDonald, Ms Berenyi and Ms Perrott in their consideration of Change Requests and their management of the projects and contractual relationship with IBM that which ought reasonably be expected of managers in their position and having the knowledge they did of serious misgivings about the quality of the system and IBM's diligence and competence in implementing it?

13. Ms Berenyi makes no submissions in relation to Ms McDonald and Ms Perrott.

³⁷ That advice did not convey to the Board the fact that the Solution was to be implemented in a significantly changed centralised payroll processing environment.

³⁸ First Statement, paragraphs 207 and 210.

³⁹ First Statement, section 10.12.

⁴⁰ First Statement, section 10.12, paragraph 211(a).

⁴¹ First Statement, paragraphs 154 and 211(b).

⁴² First Statement, paragraph 211(c).

⁴³ First Statement, paragraph 211(d).

⁴⁴ First Statement, paragraph 211(e).

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14. Having regard to her oral evidence and to the events addressed in her First Statement,⁴⁵ and to these submissions, Ms Berenyi exercised the standard of diligence which ought reasonably to have been expected of a manager in her position.

A handwritten signature in blue ink, appearing to read 'K. E. Downes', with a large, stylized flourish above the name.

K. E. Downes S.C.
Counsel for Margaret Berenyi

⁴⁵ See especially paragraphs 20 – 25, 32 – 37, 41, 42, 44, 48, 50 – 55, 57, 75, 89, 90, 95, 96, 149 – 153, 157 – 213 and paragraph 236.