

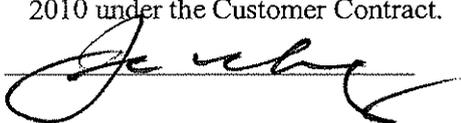
# Queensland Health Payroll System Commission of Inquiry

## Statement of Jeremy Charles Charlston

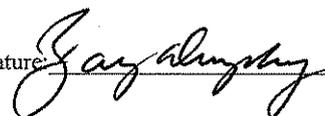
I, Jeremy Charles Charlston, of Clayton Utz, Lawyers, 71 Eagle Street, Brisbane, in the State of Queensland state:

1. I have received from the Commissioner of the Queensland Health Payroll System Commission of Inquiry (**Commission**), a Requirement pursuant to Section 5(1)(d) of the Commissions of Inquiry Act 1950 requiring me to produce to the Commission a statement regarding my involvement in the settlement negotiations between the State of Queensland and IBM Australia Limited that occurred between 2 July 2010 and 22 September 2010, including all conversations between myself and Mr Mal Grierson, (former) Director General, Department of Public Works.
2. At the relevant time in 2010 I was a Partner in the firm Clayton Utz Lawyers of 71 Eagle Street Brisbane. I retired as a Partner of Clayton Utz on 30 June 2011 and I am now a Consultant to the firm. I was a Partner with Clayton Utz (and its predecessor firms) between 1 July 1973 and 30 June 2011.
3. By letter dated 12 July 2010, Mr Boyd Backhouse, Executive Director, Legal Services, Department of Public Works (**Mr Backhouse**), confirmed the engagement of Clayton Utz. The specific focus of the engagement of Clayton Utz was "*...particularly to assist in negotiating the terms of any settlement between the parties, should the State proceed with this option. The scope of work may vary depending on what strategy is adopted by the State to resolve this matter...*". **Annexure A** to this statement is a copy of an email and letter received by me from Mr Backhouse.
4. Clayton Utz provided legal advice to the State acting through CorpTech, (which was part of the Department of Public Works), in respect of the development of a negotiation strategy and negotiation process that was designed to progress the settlement negotiations between the State and IBM Australia Ltd ("**IBM**") in respect of all claims and disputes that had arisen regarding the Queensland Health payroll implementation pursuant to the Customer Contract dated 5 December 2007 made between the State of Queensland and IBM (**Customer Contract**). Of relevance, the State had issued to IBM a Notice to Show Cause dated 29 June 2010 under the Customer Contract and IBM had then responded by letter dated 6 July 2010 from its lawyers, Blake Dawson (now Ashurst). IBM subsequently issued a Notice of Dispute dated 16 July 2010 under the Customer Contract.

Signature:



Witness signature:



5. The engagement and work of Clayton Utz took place during the period between early July and late August 2010.
6. The relevant instructions to Clayton Utz were primarily provided by Mr James Brown (**Mr Brown**), Executive Director, Strategy and Planning, of CorpTech and Mr John Beeston (**Mr Beeston**), A/G Director Strategic Procurement, of CorpTech.
7. Clayton Utz was instructed that the law firm Mallesons Stephen Jaques (now King & Wood Mallesons) were the appointed external legal advisors to the State in negotiating the Customer Contract with IBM and that Mallesons Stephen Jaques would continue to provide external legal and contractual advice to the State (through CorpTech) in respect of the implementation of the project and the management, from a legal point of view, of the various claims and disputes that had arisen with IBM. Crown Law had also been engaged to provide legal advice on some of these issues.
8. Essentially Clayton Utz was engaged to only help with the development of a negotiation strategy and process and to then help with the conduct of the negotiations, with a view to the State and IBM then negotiating a satisfactory settlement of the various disputes that had arisen between those parties.
9. On Monday, 26 July 2010 Clayton Utz was instructed that, on Thursday 22 July 2010, the Cabinet Budget Review Committee (**CBRC**) had resolved to adopt the five recommendations made in a Submission to the CBRC by the Honourable the Minister for Public Works and Information and Communication Technology, Mr Robert Swarten MP. We were briefed with a copy of this Submission. The five recommendations that were adopted by the CBRC were that CBRC:
  1. notes the current contract status for the Queensland Health rostering and payroll solution;
  2. approves the preferred option: "Negotiate a settlement with IBM"; negotiations not to exceed a period of six weeks;
  3. approves the proposed contract negotiation parameters presented at Table 1 in the body of the submission, subject to approval of the preferred option;
  4. authorises the Director-General, Department of Public Works to act as the State's delegate in progressing the preferred option; and

Signature:



Witness signature:



5. notes that an update will be provided within six weeks containing additional recommendations on how to finalise the contract with IBM.

We were instructed that the negotiation parameters in Table 1 referred to in recommendation 3 were the boundaries within which a settlement with IBM had been authorised by CBRC to be pursued.

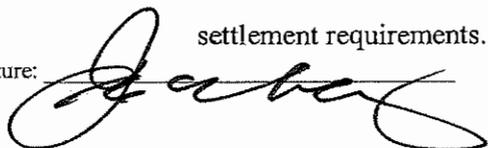
10. Between 28 July 2010 and 3 August 2010, the basis and protocols under which the settlement negotiations would be conducted were agreed with IBM through a series of letters exchanged between Mr Mal Grierson, Director-General, Department of Public Works (**Mr Grierson**) and representatives of IBM, being:

- (a) Letter dated Wednesday 28 July 2010 from Mr Grierson to Mr Lochlan Bloomfield, Engagement Director, IBM (**Mr Bloomfield**) (**Annexure B**);
- (b) Letter dated Thursday 29 July 2010 to Mr Grierson from Mr Bill Doak, Program Director, IBM (**Mr Doak**) (**Annexure C**);
- (c) Letter dated Friday 30 July 2010 from Mr Grierson to Mr Bloomfield (**Annexure D**);
- (d) Letter dated Sunday 1 August 2010 to Mr Grierson from Mr Doak (**Annexure E**);
- (e) Letter dated Monday 2 August 2010 from Mr Grierson to Mr Bloomfield (**Annexure F**);
- (f) Letter dated Tuesday 3 August 2010 to Mr Grierson from Mr Doak (**Annexure G**).

11. Once the negotiation process was agreed and established between the State and IBM, the following confidential and without prejudice written communications occurred between Clayton Utz and Blake Dawson (who were the lawyers acting for IBM) between Wednesday 4 August 2010 and Friday 13 August 2010:

- (a) Letter dated Wednesday 4 August 2010 from Clayton Utz to Blake Dawson sent by me by email at 4.48pm on that day to Mr Tim Brookes, Partner, Blake Dawson (**Mr Brookes**) (**Annexure H**). The letter enclosed a Settlement Terms Sheet which set out the State's requirements for a settlement with IBM, explained its reasons and proposed a telephone conference between the lawyers to discuss the Settlement Terms Sheet. The Settlement Terms Sheet was in a format that would enable IBM to articulate in the document its position and reasons in response to the State's settlement requirements.

Signature:

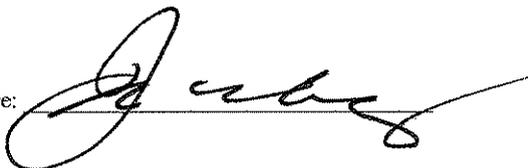


Witness signature:

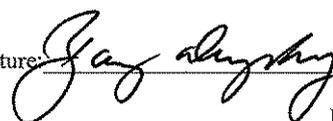


- (b) Email received by me at 8.48pm on Wednesday 4 August 2010 from Mr Brookes of Blake Dawson regarding the arrangements for the proposed telephone conference (**Annexure I**).
- (c) Email sent at 5.52am by me on Thursday 5 August 2010 to Mr Brookes of Blake Dawson regarding the arrangements for the proposed telephone conference (**Annexure J**).
- (d) Letter dated Friday 6 August 2010 from Clayton Utz to Blake Dawson sent by me by email at 4.55pm on that day to Mr Brookes (**Annexure K**). This letter followed the proposed telephone conference, which had been held on 5 August 2010 and the letter also dealt with a number of points arising from the telephone conference.
- (e) Letter dated Friday 6 August 2010 to Clayton Utz from Blake Dawson received by me by email at 6.15pm that day from Mr Martin Williams, Senior Associate, Blake Dawson (**Mr Williams**) (**Annexure L**). This letter set out IBM's preliminary response to the Settlement Terms Sheet, and expressed IBM's concern that the Settlement Terms Sheet did "not appear to be a genuine attempt at compromise". This letter also stated that a more detailed response on behalf of IBM would be provided early in the following week.
- (f) Letter dated Monday 9 August 2010 from Clayton Utz to Blake Dawson sent to Mr Brookes by email at 9.51am that day (**Annexure M**). This letter requested that the matters raised in the Blake Dawson letter of 6 August 2010 (Annexure L to my statement) be incorporated into IBM's response in the Settlement Terms Sheet, to the extent that IBM saw these as being helpful and relevant to furthering the settlement negotiations.
- (g) Email sent by me at 5.39pm on Tuesday 10 August 2010 to Mr Brookes and Mr Williams (**Annexure N**). This email followed a telephone conversation that I had with Mr Williams that afternoon when I enquired about the status of IBM's response to the Settlement Terms Sheet. I noted Mr Williams' indication that Blake Dawson did not now expect to send a considered response from IBM on the Settlement Terms Sheet until the following Thursday, 12 August 2010. The email also confirmed the concern that I had expressed to Mr Williams during the telephone call regarding the timing issues, since the arrangement between IBM and the State was to endeavour, by Friday 20 August 2010, to negotiate a settlement.

Signature:

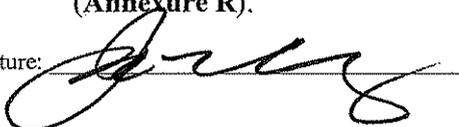


Witness signature:

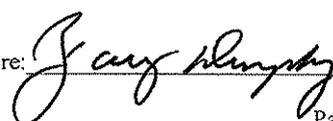


- (h) Email received by me at 10.01pm from Mr Brookes on Tuesday 10 August 2010 in response to my earlier email (Annexure N to my statement) that day (**Annexure O**);
- (i) Letter dated Friday 13 August 2010 from Clayton Utz to Blake Dawson sent by me by email at 3.56pm to Mr Brookes (**Annexure P**). This letter followed an attempt by me to contact Mr Brookes or Mr Williams by telephone, to enquire as to why IBM had not yet responded to the Settlement Terms Sheet submitted on Wednesday, 4 August. The letter queried whether the State was wasting its time in seeking a settlement with IBM and expressed the view that, if IBM's comprehensive response was not provided by 5pm on Sunday, 15 August 2010, that IBM and the State would not be likely to be able to reach an acceptable settlement by Friday 20 August and then the formal processes would take over.
- (j) Letter dated Friday, 13 August 2010 to Clayton Utz from Blake Dawson received by me by email at 5.17pm that day from Mr Williams (**Annexure Q**). This letter enclosed the Settlement Terms Sheet containing IBM's response to the Settlement Terms Sheet sent by Clayton Utz to Blake Dawson on 4 August 2010 (Annexure H to my statement) and repeated IBM's concern that the State's Settlement Terms Sheet did "not appear to be a genuine attempt at compromise".
12. On Friday 13 August 2010 at 1.15pm a meeting was held with Ms Natalie MacDonald, Associate Director-General, Department of Public Works, (**Ms MacDonald**), at her office. This meeting was also attended by Ms Margaret Berinyi, General Manager, CorpTech, (**Ms Berinyi**), Mr Brown, Mr Backhouse and myself. The purpose of the meeting was to discuss the status of the negotiations with IBM. At the time of this meeting IBM had not provided a substantive response to the Settlement Terms Sheet submitted through Blake Dawson on Wednesday 4 August 2010 (IBM's response was provided later that day (Annexure Q), after the letter from Clayton Utz to Blake Dawson sent at 3.56pm (Annexure P)). There was a concern that IBM's lack of response suggested that negotiations would be difficult to successfully conclude by Friday 20 August 2010. There was also a concern about preservation of the State's termination rights. A meeting with Mr Grierson at 1.00pm on Monday 16 August 2010 was to be held to discuss the options.
13. On Monday, 16 August 2010 a meeting was held with Mr Grierson at his office. This meeting was attended by Ms MacDonald, Ms Berinyi, Mr Backhouse, Mr Brown and myself. Mr Grierson was briefed on the status of the negotiations with IBM and on the options for proceeding. A "Discussion Paper" was distributed at the meeting by Mr Brown (**Annexure R**).

Signature:



Witness signature:



At the end of the meeting, Mr Grierson indicated that he was inclined to meet directly with someone high up in IBM to have discussions and that he would consider the situation, and then decide how to proceed.

14. On Wednesday, 18 August 2010 at 9.15am I was informed by Mr Brown that he understood that Mr Grierson had made contact by telephone on Tuesday 17 August 2010 with a representative of IBM, being Mr Kevin Killey, Partner, GBS, IBM Australia (**Mr Killey**). Mr Brown emailed to me copy of an email string on 18 August 2010 between Mr Grierson and Mr Killey (**Annexure S**).

Mr Killey's email to Mr Grierson at 8.04am on Wednesday 18 August 2010 stated:

*"Thank you for your call yesterday afternoon.*

*"In the call you indicated a desire to discuss and negotiate the current matter at hand with regard to the Queensland Health Payroll System. The State imposed a specific process for resolution through legal representatives as per your letter of 30 July with which IBM is currently complying. The request for this meeting seems to be an expedient change from the States' settlement process. IBM is prepared to meet at your request.*

*"We therefore propose that the first meeting occur this week. Please can you advise a suitable time after 10am on Thursday."*

Mr Grierson's email in reply to Mr Killey at 11.14am on Wednesday 18 August 2010 stated:

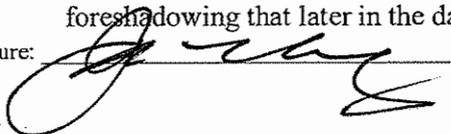
*"My call yesterday was not intended to change the agreed negotiation process involving legal representatives and this process should continue.*

*"However, I did express my disappointment in the response by IBM to the agreed process to date and therefore, what I was suggesting was that outside that process, there may be value in discussions between myself and a senior IBM executive this week. This offer still stands."*

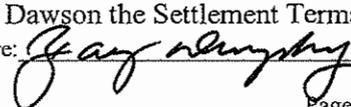
15. As a result of those communications on Wednesday 18 August 2010 between Mr Grierson and Mr Killey, I was instructed by Mr Brown that Mr Grierson was concerned that he did not want to be seen to be deviating from the negotiation process and that Mr Grierson's instructions were to push very hard the negotiations through Blake Dawson to Friday 20 August 2010.

16. At 12.01pm on Wednesday 18 August 2010 I sent an email to Mr Brookes and Mr Williams foreshadowing that later in the day I expected to send Blake Dawson the Settlement Terms

Signature:



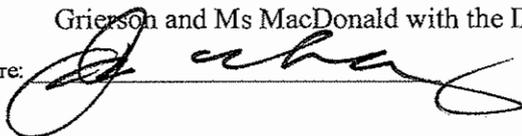
Witness signature:



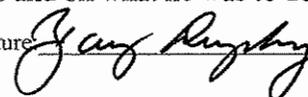
Sheet with the State's reply and I proposed a teleconference the following morning to discuss any unresolved issues (**Annexure T**).

17. At 5.42pm on Wednesday 18 August 2010 I sent an email to Mr Brookes and Mr Williams attaching the Settlement Terms Sheet (**Annexure U**) containing the State's reply to IBM's response (as received on Friday, 13 August 2010) and seeking confirmation of the teleconference proposed for the following morning. I had prepared this version of the Settlement Terms Sheet on instructions from Mr Brown, who informed me that its release to Blake Dawson had been approved by Mr Grierson and Ms MacDonald.
18. At 9.52am on Thursday 19 August 2010 I sent a letter dated that day from Clayton Utz to Blake Dawson by email to Mr Brookes and Mr Williams (**Annexure V**). The letter noted that I was waiting to hear from Blake Dawson regarding the time for the teleconference proposed for that morning, that the State's revised settlement proposal in reply to IBM's position represented a significant movement by the State from its preferred settlement terms, and that IBM should not rely on the prospect of further concessions from the State or on any extension of the negotiating period.
19. I then received a telephone call from Mr Brown and I was advised that a meeting was to occur at 11.00am that morning, Thursday 19 August 2010, between Mr Grierson and Ms MacDonald with Mr Doak and "his boss". Mr Brown emailed to me a draft running sheet for the meeting and I marked-up some suggested changes and then returned the document to Mr Brown by email at 10.13am (**Annexure W**).
20. I then received a telephone call from Mr Grierson at 11.00am that morning, Thursday 19 August 2010. Mr Grierson indicated to me that he was about to meet with senior people from IBM to have a chat about the status of the negotiation process and other business. Mr Grierson said that he would indicate to IBM that he was disappointed with progress to date. I advised Mr Grierson to indicate to IBM at the outset that the discussions were "without prejudice", and were for the purpose of better understanding IBM's broad intent in relation to the current dispute and other contracts that were on foot with the State.
21. At 11.18am that morning, Thursday 19 August 2010, I received an email from Mr Williams advising that he and Mr Brookes would be available any time after 5pm that day for a teleconference (**Annexure X**).
22. At 5.30pm that afternoon, Thursday 19 August 2010, I received a telephone call from Mr Brown. He advised me that he had been instructed on the outcome of the meeting between Mr Grierson and Ms MacDonald with the IBM representatives and on what he was to do as a

Signature:



Witness signature



result. Mr Brown said that he was told that Mr Grierson had spoken with Mr Ken Smith, Director-General of Premiers Department and they had determined that the State had no interest in terminating the Customer Contract with IBM and that the State wanted IBM to finish the Customer Contract. Mr Brown said that CorpTech was instructed to make a deal with IBM around a set of settlement principles and that Clayton Utz did not need to do anything further. Mr Brown was to draft the set of settlement principles and that CBRC would then consider a submission on the settlement proposal on Monday, 23 August 2010.

23. At 9.38pm on Thursday 19 August 2010 Mr Brown sent to Mr John Swinson of Mallesons Stephen Jaques and myself a document entitled "Proposed Settlement Principles". Mr Brown asked for a mark-up of this document by 10am the next day of anything that should be added. At 10.08am Friday 20 August 2010 I sent to Mr Brown an email with my mark-up of the "Proposed Settlement Principles" (**Annexure Y**).
24. At 5.54pm on Friday 20 August 2010 I received a letter dated that day from Blake Dawson to Clayton Utz by email from Mr Williams (**Annexure Z**). The letter noted that the negotiation period expired that day and that the parties had not reached agreement. The letter further noted that IBM and the State had been having separate commercial discussions and that IBM believed it was in both parties' interests to extend the settlement negotiation period.
25. After Friday, 20 August 2010, Clayton Utz provided no further advice in relation to the negotiation or documenting of any settlement made between the State and IBM.

Signature:



Witness signature:



**ANNEXURES TO STATEMENT OF JEREMY CHARLES CHARLSTON  
ON 20 MAY 2013**

<b>ANNEXURE</b>	<b>DESCRIPTION</b>
<b>A</b>	Letter of engagement dated 12 July 2010 from Mr Boyd Backhouse to Clayton Utz
<b>B</b>	Letter dated 28 July 2010 from Mr Grierson to Mr Bloomfield
<b>C</b>	Letter dated 29 July 2010 to Mr Grierson from Mr Doak
<b>D</b>	Letter dated 30 July 2010 from Mr Grierson to Mr Bloomfield
<b>E</b>	Letter dated 1 August 2010 to Mr Grierson from Mr Doak
<b>F</b>	Letter dated 2 August 2010 from Mr Grierson to Mr Bloomfield
<b>G</b>	Letter dated 3 August 2010 to Mr Grierson from Mr Doak
<b>H</b>	Letter dated 4 August 2010 from Clayton Utz to Blake Dawson
<b>I</b>	Email received on 4 August 2010 by Mr Charlston from Mr Brookes
<b>J</b>	Email sent on 5 August 2010 by Mr Charlston to Mr Brookes
<b>K</b>	Letter dated 6 August 2010 from Clayton Utz to Blake Dawson
<b>L</b>	Letter dated 6 August 2010 to Clayton Utz from Blake Dawson
<b>M</b>	Letter dated 9 August 2010 from Clayton Utz to Blake Dawson
<b>N</b>	Email sent on 10 August 2010 by Mr Charlston to Mr Brookes and Mr Williams
<b>O</b>	Email received on 10 August 2010 by Mr Charlston from Mr Brookes
<b>P</b>	Letter dated 13 August 2010 from Clayton Utz to Blake Dawson
<b>Q</b>	Letter dated 13 August 2010 to Clayton Utz from Blake Dawson
<b>R</b>	"Discussion Paper" tabled at the meeting held on 16 August 2010 with Mr Grierson
<b>S</b>	Email string on 18 August 2010 between Mr Grierson and Mr Killey
<b>T</b>	Email on 18 August 2010 from Mr Charlston to Mr Brookes and Mr Williams
<b>U</b>	Email on 18 August 2010 from Mr Charlston to Mr Brookes and Mr Williams attaching Settlement Terms Sheet
<b>V</b>	Letter dated 19 August 2010 from Clayton Utz to Blake Dawson
<b>W</b>	Email on 19 August 2010 from Mr Charlston to Mr Brown with mark-up of suggested changes to draft running sheet for meeting between Mr Grierson and Ms MacDonald with Mr Doak and "his boss"
<b>X</b>	Email on 19 August 2010 to Mr Charlston from Mr Williams
<b>Y</b>	Email on 20 August 2010 from Mr Charlston to Mr Brown with mark-up of "Proposed Settlement Principles"
<b>Z</b>	Letter dated 20 August 2010 from Blake Dawson to Clayton Utz

Signature: 

Witness signature: 