

In the matter of the *Commissions of Inquiry Act 1950*

And in the matter of the *Commissions of Inquiry Order (No 2) 2012*

And in the matter of an application for leave to appear by the State of Queensland

Submissions on behalf of the State of Queensland

Relevant principles

[1] Section 17 of the *Commissions of Inquiry Act 1950* (“the Act”) provides:

A commission, in the exercise of any of its functions or powers, shall not be bound by the rules or practice of any court or tribunal as to procedure or evidence, but may conduct its proceedings and inform itself on any matter in such manner as it thinks proper; and, without limiting in any way the operation of this section, the commission may refer any technical matter to an expert and may accept the expert’s report as evidence.

[2] The very wide ambit of that section, read literally, is moderated by the requirement that (in the absence of any obvious, contrary, legislative intention) Commissions such as this one conduct themselves with due regard for procedural fairness.¹

[3] The duty arises because “the power involved is one which may “destroy, defeat or prejudice a person’s rights, interests or legitimate expectations”.²

[4] Rights and interests extend to reputation, including business and commercial reputation.³ Obviously, contractual and other legal rights would come within that ambit as well.

The terms of reference

[5] The Commission’s terms of reference include investigation of:

¹ *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564.

² *Ibid* at 576, citing *Annetts v McCann* (1990) 170 CLR 596 at 598.

³ *Ibid* at 578.

- (a) the adequacy and integrity of the procurement, contract management, project management, governance and implementation process;
 - (b) whether there have been any breaches of laws, contractual provisions, codes or standards; and
 - (c) the contractual arrangements between the State of Queensland and IBM Australia Ltd.
- [6] The terms of reference also call for commentary on and recommendations as to the future of the State's procurement, project management and contract management processes.

The State's rights and interests

- [7] The central contractual documents in this case are:
- (a) the written agreement dated 5 December 2007 appointing IBM as prime contractor for delivery of the payroll system;
 - (b) the document entitled "Supplemental Agreement" dated 22 September 2010.
- [8] The State (as distinct from any separate subordinate legal entity) was a party to each of those agreements. To the extent that the Commission may make findings with respect to breaches of contract or other laws or codes, the potential to affect the State's rights and interests is clear.
- [9] Similarly, drawing conclusions on the State's processes and how they should be amended is likely to affect the State's interests both at a reputational level and at the tangible level of the cost of any suggested changes.
- [10] In that connection, it is important to note that the State has considerable experience at its disposal with respect to corporate and public sector governance. The resources of the State would be available to the Commission. Given that the State will likely be called upon to implement the Commission's recommendations, it is respectfully submitted that the perspective of those who will be called upon to carry out that implementation will be useful.

Address for correspondence

- [11] G R Cooper
Crown Solicitor
11th Floor, State Law Building
50 Ann Street
BRISBANE QLD 4000

A MacSporran SC

D Kent

N Ferrett

Counsel for the State of Queensland

1 February 2013