

**In the matter of the *Commissions of Inquiry Order (No 2) 2012*
The Queensland Health Payroll System Commission of Inquiry**

Submissions on behalf of IBM Australia Ltd

CONTRACT MANAGEMENT AND PERFORMANCE ISSUES

24 JUNE 2013

PRELIMINARY

1. On 14 March 2010, Queensland Health implemented a new payroll and human resources system.
2. That system comprised:
 - a. software implemented by IBM Australia Ltd (**IBM**) pursuant to a contract with the State of Queensland which obliged IBM to scope, build and deliver an interim software system, with a minimal scope, for a fixed price (the **QHIC Project**); and
 - b. a series of procedures, business rules and business structures developed by Queensland Health.
3. Its implementation followed a protracted period of development during which Queensland Health was unable to commit to any fixed project scope (despite the State having signed off on a fixed scope). It is both telling and almost incredible that virtually no-one in Queensland Health read (nor in some cases even knew of) the QHIC Scope Definition document and certainly none had refreshed their memories of it before giving their evidence.
4. Immediately after the new, interim software was implemented, the internal view of those with the most experience in the administration of the Queensland Health payroll was that the interim software was a real improvement over the LATTICE system which it replaced.¹
5. However, it emerged that a significant number of Queensland Health staff were not being paid or were being paid incorrectly. An assumption has been made by some that the cause of these pay issues was the software. This assumption, and the related, simplistic proposition that because some staff were not paid properly or at all, IBM must not have delivered a functional system or must have delivered a system which

¹ See e.g. Ex 79 (Statement of Janette Jones), paragraph [44]; T20-35, lines 26-27 (Jones); T20-38, lines 1-3 (Jones); Ex 163 (Statement of Mark Dymock), paragraph [100(a)]; Annexures to Statement of Mark Dymock (Ex 163), p 371; T21-89, lines 40-51 (Kalimnios); T21-20, lines 22-28 (Kalimnios); T21-96, lines 1-11 (Kalimnios); T21-97, lines 34-37 (Kalimnios); Ex 89 (Statement of Michael Kalimnios), paragraph [59]; T32-104, lines 21-32 (Schwarten).

had defects causing incorrect pays to be calculated, is wrong:-

- a. It is wrong as a matter of logic, because it elevates the temporal *correlation* between the pay problems and the new software to a conclusion of *causation*. That is impermissible, and faulty, reasoning.
 - b. It is wrong as a matter of fact, because the overwhelming effect of the evidence has been that, where non-payments or incorrect payments were directly investigated at the time:²
 - i. They were not caused by defects (that is, coding errors) in the software built by IBM.³
 - ii. The causes were non-software issues, including a business decision to not pay staff whose rosters or variations to rosters were not submitted by a particular time, and errors in employee data migrated from the old LATTICE system.
6. On the other hand, there is no direct or reliable evidence that:
- a. any coding error by IBM was the cause of incorrect payments or non-payments to Queensland Health employees.⁴
 - b. pay inaccuracies were greater under the new software compared to the old system. The evidence suggests that the new software likely significantly improved the accuracy of pay.⁵
7. Of course, as with any large and complex software implementation, there were some bugs in the software identified before go-live and some which emerged after the software was implemented. But these were not bugs affecting the calculation of pay. It is trite to say that had the software been perfect and bug-free there would have been less pressure upon staff and this may have lessened the impact of the business process

² See e.g. T20-71, lines 46-52 (Jones); T20-72, lines 19-29 (Jones); Ex 116 (Statement of Malcolm Grierson), paragraph [54]; T29-66, line 23 to T29-67, line 22 (Grierson); T29-77, lines 6-46 (Grierson).

³ See e.g. T20-26, lines 1-29 (Jones).

⁴ See, e.g. Ex 163 (Statement of Mark Dymock), paragraphs [101]-[102]; T36-63, lines 1-20 (Dymock).

⁵ T20-37, lines 13-29 (Jones); Ex 118 (Statement of Jane Stewart), paragraphs [21], [133]; T29-109, lines 19-43 (Stewart).

issues (which were the overriding cause of the pay issues). But this is a counsel of perfection and was never contemplated by anyone with serious involvement in the implementation activities.

8. A broad range of other, general and inaccurate, criticisms have been made of IBM, both in the media and by witnesses before the Commission. Those criticisms have usually lacked any specificity and in any case have not been borne out by any evidence.⁶ The inability to provide concrete details suggests there were none, and that the criticisms were based more on perception than reality. This impressionistic and unhelpful approach is, remarkably, continued in the submissions for the State.⁷ As we have set out in previous submissions,⁸ adverse findings should not be made lightly nor on the basis of indirect proofs and indirect testimony. We have more to say about this, in the context of the State's submissions, below.
9. These submissions do not, however, attempt to deal with all of the generalised criticisms which have been made of IBM. Rather, they are directed to those aspects of the management and performance of the contract between the State and IBM entered into on 5 December 2007 (the **Contract**) identified by the Commission in the revised "*Issues for Submission*" (the **Identified Issues**) provided to IBM on 20 May 2013.⁹
10. The Commission has confirmed that the Identified Issues sufficiently identify all points which could be a potential source of criticism of IBM or its employees in connection with the Commission's investigations into the performance of the Contract.¹⁰

⁶ See e.g. Ex 68 (Statement of Malcolm Campbell), paragraph [20] compared with T18-45, line 20 to T18-46, line 30 (Campbell); Ex 122 (Statement of Damon Atzeni), paragraphs [5] and [8] compared with T31-66, line 20 to T31-69, line 28 (Atzeni); Ex 122 (Statement of Damon Atzeni), paragraph [21], compared with T31-69, line 29 to T31-70, line 38. See also, e.g. Ex 113 (Statement of Margaret Berenyi), paragraph [20(i)]; T27-67, lines 5-20 (Berenyi); T27-81 lines 1-18 (Berenyi); T23-7 lines 1 – 15 (Perrott); T21-3 lines 11-35 (Price); T21-8, lines 5-10 (Price); T21-65, lines 27-47 (Price); T21-100 line 47 to T21-101, line 4 (Kalimnios); T21-122, lines 21-23 (Kalimnios); T28-74, lines 3-10 (Grierson).

⁷ See, e.g. Submissions on behalf of State of Queensland (undated), paragraphs [14], [16], [22], [34], [35], [37], [39], [40].

⁸ Submissions on behalf of IBM Australia dated 14 June 2013, paragraphs [11]-[14].

⁹ Though the articulation of many of the issues presuppose matters which, for reasons we set out in these submissions, are not correct.

¹⁰ Letter from Queensland Health Payroll System of Inquiry to Ashurst Australia dated 20 May 2013.

11. Implicit in this indication is a rejection of the sort of generalised criticisms referred to above.¹¹ That approach is welcomed. However, the general way in which the Identified Issues have been expressed and the fact IBM has not been provided with submissions from Counsel Assisting or draft findings which identify in detail matters which may be of interest to the Commission has produced some difficulty in framing these submissions, and IBM reserves its right to provide further submissions on any matters as necessary.
12. The Identified Issues 1, 2, 3, 5, 6(a)-6(d), 8 and 13, insofar as they concern IBM, direct attention to aspects of:
- a. the scoping activities undertaken between November 2007 and February 2008 to set the scope for the QHIC Project;
 - b. the conduct of the QHIC Project between February 2008 and March 2010; and
 - c. the implementation of the new software (and business processes) on 14 March 2010.
13. A number of the Identified Issues are framed by reference to assumed failings on the part of IBM. In particular, Identified Issues 1, 2, 5 and 6 are of this kind. These assumptions are not supported by the evidence. These submissions explain the reasons for this, and why:
- a. As the independent expert retained by the Commission concluded,¹² IBM performed its work to an appropriate standard in challenging circumstances, chief among which was an inability of Queensland Health to adhere to any final articulation of their minimal requirements for an interim replacement payroll system. This inability was manifested by and recorded in the many (and ongoing) variations to the Contract which were proposed and/or agreed to by the

And we recognise that if the Commission does come to contemplate any further potential finding, adverse to IBM or its employees, which is not plain on the face of the Identified Issues, IBM will be given notice of that potential finding, and the opportunity to fully respond.

¹¹ And IBM is also grateful for the indication that it is not part of the Commission's terms of reference to make findings as to whether, in a contractual sense, particular change requests ought to have been proposed and accepted and that there is no doubt that such variations as were effected were effected lawfully and validly: T18-6, lines 40-49 (Counsel Assisting).

¹² See, e.g. Ex 123, p 2, lines 20-30; p 4, lines 3-7, 9-10; p 7, lines 11-13; p 8, lines 36-39; p 10, lines 6-16; p 12, line 1; T30-34, lines 9-21; T30-44, lines 18-37; T30-58, lines 19-23.

State.

- b. IBM appropriately conducted detailed scoping activities which:
- i. were commenced in good faith before the Contract with the State was finalised;
 - ii. were conducted over a period of time appropriate in view of the urgency of the project, its (relatively) modest goal of providing a system with the “minimal possible functionality”, and the significant existing design documentation for both the SAP and Workbrain applications which had been produced by Corptech;
 - iii. resulted in a detailed scoping document provided to the State by 24 December 2007¹³ and then with further modifications in early 2008,¹⁴ and which was signed off as accepted by the State at that time;
 - iv. were later frustrated by the emergence of a series of new or changed requirements which had a fundamental impact upon the project timeline and cost;
 - v. were ultimately made irrelevant by Queensland Health’s conduct in carrying out User Acceptance Testing without regard to the agreed requirements, but instead using that testing, at the end of the project, as its *de facto* means of finalising and communicating its true requirements, which had hitherto not been articulated.
- c. IBM built a software system of good quality to the agreed specifications, as it was bound to do under the Contract. There is no evidential basis to make the (serious) finding that the computer system would not have performed as a functional pay system in accordance with these specifications. That those specifications were ultimately abandoned by Queensland Health in User

¹³ Ex 110 (Statement of Chris Prebble), paragraph [26]; T27-7, lines 43-45 (Prebble); T27-16, lines 22-25 (Prebble); T27-49, lines 4-7 (Prebble).

¹⁴ Ex 110 (Statement of Chris Prebble), paragraph [29]; Annexures to Chris Prebble’s statement (Ex 110), p 322-323; T27-22, lines 20-28 (Prebble); T31-57, lines 24-28 (Atzeni); T31-76 lines 20 to T31-77, line 6 (Atzeni).

Acceptance Testing cannot be a basis to criticise IBM. IBM had the expertise in software development, but Queensland Health had a dedicated internal IT team and was the obvious expert on the requirements of its payroll system and the proper interpretation of the awards under which its employees were paid.

- d. The system which IBM implemented functioned well. It met the contractual description. There is no evidence of any probative value that the system contained material pay calculation defects. The absence of this evidence is telling at the end of months of the Inquiry (and the numerous investigations that preceded it). As in any large and complex software implementation, programming bugs emerged. But these issues were handled quickly and professionally.
- e. The most significant software related go-live issue – the performance of Workbrain – is substantially explicable by factors outside the control of IBM, including:
 - i. the improper use of the software and its use at a violently different level of load to that specified to IBM by Queensland Health and Corptech and tested for during development;
 - ii. issues in the core code of Workbrain only experienced under that extreme load;
 - iii. problems in the State-managed infrastructure on which the software was operating.
- f. Further, IBM's response to addressing the Workbrain performance issues, regardless of their cause, was timely and effective.
- g. The overwhelming cause of pay errors or non-payments were non-system issues specific to the business practices of Queensland Health and data migration issues.
- h. Normal post-go live maintenance and rectification activities were disturbed by a panicked response by Queensland Health's Director-General, who had no familiarity with the issues or the system, having abstained from any involvement

in it, and who moved (unfairly) to sideline, dismiss or remove those who had most familiarity and knowledge of the system, especially Ms. Janette Jones, the senior payroll manager.

SCOPE DEFINITION: ISSUES 1 – 3

14. On 24 December 2007, IBM formally submitted the QHIC Scope Definition to the State for its review.¹⁵ The Scope Definition was a contractual deliverable under Statement of Work 7. The compilation of the QHIC Scope Definition followed weeks of workshops,¹⁶ interviews of Queensland Health staff by IBM,¹⁷ a review of a range of documents by IBM,¹⁸ and an informal review of earlier drafts of the QHIC Scope Definition within Queensland Health.¹⁹
15. The QHIC Scope Definition contemplated a payroll system with “*minimal possible functionality*”.²⁰ The scoping activity was not a “*greenfield*” undertaking, it was based upon:
- a. functional designs for Workbrain which had already been compiled by Corptech and provided to IBM;²¹ and
 - b. the SAP payroll software which had already been implemented in the Department of Housing.²²
16. The focus was upon identifying the “*deltas*” (that is, differences) between the existing documentation and Queensland Health’s minimal requirements.²³
17. This approach was not only practicable given the (comparatively) modest scope of the project as an interim solution, it was *critical* given the tight timeframes to which the State desired (and IBM had agreed) to work.²⁴

¹⁵ See e.g. CMTB, Vol 4, p 17 (Statement of Work 8, section 1.3); Ex 110 (Statement of Chris Prebble), paragraph [26]; T27-7, lines 43-45 (Prebble); T27-16, lines 22-25 (Prebble); T27-49, lines 4-7 (Prebble).

¹⁶ See e.g. CMTB, Vol 4, p 87; Ex 110 (Statement of Christopher Prebble), paragraphs [10]-[33]; T31-45, line 53 to T31-48, line 31 (Atzeni); T31-66, line 20 to T31-72, line 2 (Atzeni).

¹⁷ Ex 110 (Statement of Christopher Prebble), paragraphs [10], [15]; QHIC Scope Definition v 1.0 CMTB, Vol 4, pp 66-67.

¹⁸ Ex 110 (Statement of Christopher Prebble), paragraph [20].

¹⁹ T31-76, lines 20-53 (Atzeni).

²⁰ CMTB, Vol 4, p 73.

²¹ See e.g. PTB, Vol 15, p 722; CMTB, Vol 1, p 186; Ex 135a, 135b, 135c; Ex 110 (Statement of Christopher Prebble) at paragraph [32]; T27-34 (Prebble); T36-33, lines 15-21 (Kwiatkowski); T31-81, line 24 to T31-87, line 50 (Atzeni); CMTB, Vol 4, pp 64-65.

²² E.g. CMTB, Vol 4, pp 73, 81; CMTB, Vol 4, p 39 (Pricing Assumption 4).

²³ T27-5, lines 8-16 (Prebble); T31-84, line 29 to T31-85, line 9 (Atzeni); T31-87, lines 12-50 (Atzeni).

²⁴ And see T31-69, line 29 to T31-70, line 29 (Atzeni).

18. The scoping document was compiled on this basis, reviewed closely by the State²⁵ and amended as necessary so that a final version could be approved on 21 February 2008.²⁶ It was signed off by Mr. Ekert,²⁷ the chair of the Solution Design Authority.²⁸
19. The Contract expressly incorporated the QHIC Scope Document by reference in Statement of Work 8.²⁹
20. IBM subsequently conducted its detailed design, specification, build and testing activities by reference to the agreed scope. A requirements traceability matrix (**RTM**) was created (in 2008³⁰) to identify the link between each agreed high level business process, the design and specification documents relating to it, and the test cases against which it was to be tested.³¹ The software passed IBM's system testing against this scope,³² and the test report was accepted by the State³³ after audit by an independent testing consultant.³⁴
21. Ultimately, it has emerged, quite remarkably, that despite the QHIC Scope Definition document being accepted and signed off by the State, and expressly incorporated into the Contract via Statement of Work 8:
- a. the State's representatives had no consistent view about whether there was a project scope, what it was, how it was documented and what that scope meant in either legal or practical terms;³⁵
 - b. the QHIC Scope Document, though agreed to by Queensland Health and

²⁵ See e.g. Ex 132, Ex 133; Ex 110 (Statement of Christopher Prebble); Annexures to Statement of Christopher Prebble (Ex 110), p 305.

²⁶ Ex 72, p 1.

²⁷ Compare the signature in Ex 72, p1 with the signature of Mr. Ekert on his statement to the Commission at Ex 26.

²⁸ Ex 26 (Statement of David Ekert), paragraph [45].

²⁹ CMTB, Vol 4, p 17.

³⁰ Annexures to Statement of Mark Dymock (Ex 163), p 156.

³¹ See Ex 105; Annexures to Statement of Mark Dymock (Ex 163), p 156.

³² Ex 102.

³³ Ex 102a.

³⁴ Ex 125.

³⁵ Ex 68 (Statement of Malcolm Campbell), paragraph [48]; T18-50, line 48-T18-51, line 36 (Campbell); T18-104, lines 39-46 (Bird); T20-79, lines 1-10 (Price); T21-31, line 31 to T21-33, line 30 (Price); T21-34, line 50 to T21-35, line 16 (Price) T21-42, lines 45-51 (Price); T21-70, lines 41-55 (Price); T21-71, lines 11-15 (Price); T22-28, line 47 to T22-29 line 5 (Shea); T22-34, line 50 – T22-35 line 20 (Shea); T29-113 line 4 to T29-114 line 3 (Stewart); Ex 122 (Statement of Damon Atzeni), paragraph [22].

Corptech, did not in fact reflect the system which Queensland Health wished to implement.³⁶

22. The State does not point to where it communicated with any clarity that it wished to implement a system significantly different to the one defined in the agreed QHIC Scope Document.
23. In fact, throughout the scope changes which were introduced as a result of change requests, the QHIC Scope Document³⁷ remained the contractual touchstone for the business requirements of Queensland Health to which IBM was to build the software. Even after the execution of Change Request 184,³⁸ Statement of Work 8 (as amended) continued to refer to the QHIC Scope Document as setting out the scope of services to be provided by IBM under Statement of Work 8, albeit as subsequently amended by agreement.³⁹ Indeed both the original version of Statement of Work 8 and the version varied by Change Request 184 contained an express assumption that “*Our definition of Scope and the RICEF estimates are accepted*”.⁴⁰
24. The State of course recognised internally long before Change Request 184 that the scope was shifting and more workarounds were becoming necessary because of “*underspecification by QH*”.⁴¹ Ms. Jones, who presented as a truthful and reliable witness, conceded that Queensland Health had originally underspecified its requirements in telling IBM what were its essential or minimum business requirements,⁴² and would raise Change Requests when Queensland Health developed a greater appreciation of what their requirements were.⁴³ This was an ongoing issue.⁴⁴
25. Wide-ranging changes to scope were identified incrementally – a “*slicing the salami*”⁴⁵ approach to communicating desired changes in scope – which continued all

³⁶ See e.g. Ex 122 (Statement of Damon Atzeni), paragraph [22]; T36-91, line 41 to T36-94, line 29 (Cowan).

³⁷ And the lower level documents which it contemplated and which were also agreed with and signed-off by the State.

³⁸ CMTB, Vol 9, pp 128-209.

³⁹ CMTB, Vol 4, p 174.

⁴⁰ CMTB, Vol 4, p 39; CMTB, Vol 9, p 210.

⁴¹ CMTB, Vol 7, p 363.

⁴² T20-28, lines 40-45 (Jones).

⁴³ T20-48, lines 54-56 (Jones).

⁴⁴ T20-49, lines 1-11 (Jones).

⁴⁵ T30-58, line 22 (Manfield).

the way to the end of User Acceptance Testing in 2009. It has now emerged that this testing was used (by Queensland Health) as the primary mechanism for determining and articulating the system which it actually required:⁴⁶ a completely dysfunctional and fundamentally misconceived approach to software development,⁴⁷ which was inconsistent with the agreed contractual approach and in spite of IBM's attempts to adhere to that contractual approach. Queensland Health did not wish to be tied down on scope.⁴⁸

26. Of course the State did not tell IBM not to build the software to the agreed scope, or that it should adopt some other approach⁴⁹ (and it is not clear what other approach there was). Indeed, the first unambiguous communication from the State that the QHIC Scope Document did not address Queensland Health's business requirements for the interim solution – and apparently should not have been relied upon by IBM as the basis for building the software – appears in the statement of Mr. Atzeni signed on 14 May 2013. That is, the State has waited some five and a half years after approving the QHIC Scope Definition and almost three years after the Contract came to an end, to make clear that IBM should not rely upon the QHIC Scope Document as an articulation of the scope of Queensland Health's business requirements for the interim solution.⁵⁰
27. This is truly remarkable.
28. Far from accepting any responsibility for this, the State in its submissions seeks instead to impugn IBM's scoping activities.⁵¹ There is a distinct air of unreality to this approach.
- a. The State attempts to position itself as a naïve consumer, heavily dependent upon IBM, with no bargaining power or sophistication, and clueless as to its

⁴⁶ T36-93 to T36-107 (Cowan).

⁴⁷ T36-89, lines 35-44 (Dymock); see also T31-8, lines 35-45 (Manfield). Though this approach does explain, e.g. discussion like that recorded at CMTB, Vol 9, p 82.

⁴⁸ T36-93, line 51 to T36-94, line 2 (Cowan); Ex 163 (Statement of Mark Dymock), paragraphs [20], [24].

⁴⁹ See e.g. T36-89, lines 45-49 (Dymock).

⁵⁰ Ex 122 (Statement of Damon Atzeni), paragraph [22].

⁵¹ CMTB, Vol 4, p 81.

own business processes.⁵²

- b. The State in fact had at its disposal:
- i. staff with considerable project management and IT experience;⁵³
 - ii. deep experience in the IT sector, and in the management of large projects, at the executive level through the Director-General of Public Works, Mal Grierson, and the incoming Executive Director of Corptech, Ms. Berenyi;⁵⁴
 - iii. a dedicated IT team within Queensland Health which had been preparing to receive a new software system for some time;⁵⁵
 - iv. access to independent contractors to quality assure work completed by IBM;⁵⁶
 - v. ready access to expert legal advice from a leading national law firm;⁵⁷
 - vi. departmental officers for whom this QHIC project was but one (and a small one) of a large number of contracts they were very used to negotiating and managing.⁵⁸
- c. The State executed and agreed to both the QHIC Scope Definition document and the series of lower level specification documents⁵⁹ which together defined what IBM was to build.

⁵² Submissions on behalf of State of Queensland (undated), paragraphs [66]-[67].

⁵³ See, e.g. Ex 113 (Statement of Margaret Berenyi), paragraphs [1] –[4]; Ex 68 (Statement of Malcolm Campbell), paragraphs [1]-[5]; Ex 73 (Statement of Christopher Bird), paragraphs [1]-[3]; Ex 65 (Statement of John Beeston), paragraph [1].

⁵⁴ See e.g. Ex 116 (Statement of Mal Grierson), paragraph [3]; Ex 113 (Statement of Margaret Berenyi), paragraph [4].

⁵⁵ QHEST: see T20-45, line 15 to T20-46, line 11 (Jones); T20-77, lines 34-48 (Price); T21-40, lines 25-55 (Price); T25-73, line 55 to T25-74, line 6 (Doak); T9-20, lines 15-24 (Atzeni).

⁵⁶ Such as Terry Burns, James Brown, Shaurin Shah, Brett Cowan and KJ Ross & Associates (for audits), and Infor (for audits, see e.g. CMTB, Vol 12, pp 45-64).

⁵⁷ See, e.g. Letter from John Swinson to Keith Millman on 5 December 2007 (PTB, Vol 3, p 69); see also Annexure JSV3 to Statement of John Swinson (Ex 77); Ex 28a (Statement of John Swinson), paragraph [11].

⁵⁸ Such as Malcolm Campbell, John Beeston, Christopher Bird, Margaret Berenyi and Barbara Perrott.
⁵⁹ Sign off on the QHIC Scope Definition document can be seen in Ex 72. For an example of signed off lower level specification documents, see Ex 88, Ex 100 and Ex 134.

29. Despite this, it is now suggested that IBM ought, somehow, to have gone behind the State’s communication of, and formal sign-off on the QHIC Scope Definition document.
30. It is further said by the State – but without resort to any particular evidence and at an unhelpful level of generality – that IBM’s scoping activity:
- a. “*failed to capture the information necessarily properly to design*” the software;⁶⁰
 - b. constituted a “*failure to observe its contractual obligations*”;⁶¹
 - c. involved “*deficiencies in IBM’s efforts to elicit the necessary information to properly design the system*”.⁶²
31. By these submissions the State seeks to lay blame upon IBM for Queensland Health’s inability to commit to *any* articulation of scope,⁶³ and its constant requests for change. It is said, in particular, that the need for Change Requests 60 and 61 demonstrate that IBM’s scoping of the HR/Finance integration of the software was inadequate.⁶⁴
32. These are contentions for which there is no proper basis. We address them below, together with the first, second and third of the Identified Issues,⁶⁵ namely:
- a. whether IBM performed its initial scoping activities to a reasonable standard;
 - b. whether the scoping was sufficient to make it likely that the “system” would pay staff correctly;
 - c. why scope remained unstable during the QHIC Project.
33. However, briefly:

⁶⁰ Submissions on behalf of State of Queensland (undated), paragraph [14].

⁶¹ Submissions on behalf of State of Queensland (undated), paragraph [34].

⁶² Submissions on behalf of State of Queensland (undated), paragraph [35].

⁶³ See, e.g. Exhibit 87, CMTB, Vol 6, p 95; T21-35, lines 18-53 (Price); T21-36, line 17 to T21-38, line 29 (Price); T21-38, lines 47-56 (Price); T21-58, line 54 to T21-59, line 28 (Price); T25-88, line 51 to T25-89, line 2 (Doak); T27-11, lines 47-50 (Prebble); T27-32, lines 19-32 (Prebble); T31-89, line 28 to T31-90, line 38 (Atzeni).

⁶⁴ Submissions on behalf of State of Queensland (undated), paragraphs [16]-[33].

⁶⁵ The balance of issues connected with scope concern the way in which scope changed over the course of the QHIC Project, and are addressed in the next part of these submissions.

- a. IBM conducted its scoping exercise in accordance with the Contract and allowed a reasonable amount of time for scoping given the aims and time constraints affecting the QHIC Project.
- b. Queensland Health was fully engaged by IBM in the scoping process and reviewed the scoping document produced by IBM before it was signed off by the State.
- c. Any deficiency in the scope of the project is not attributable to IBM, which documented its understanding of the required functionality and sought and obtained acceptance of that articulated scope from the State.
- d. There is in any case no evidential basis to make the (serious) finding that the system as scoped and built by IBM would not produce a functioning (albeit minimal) payroll system. That it required significant changes to meet Queensland Health's ultimate (but not initially articulated) requirements is not a reason for finding otherwise.
- e. The interim solution was scoped and developed in anticipation that a further whole-of-government release would provide additional functionality at a later date. It is not obvious that Queensland Health ever bought into this limitation on project scope.

Statement of Work 7 and the scoping task

34. The nature of the scoping activity to be undertaken by IBM is to be drawn from the Contract and the associated documents. The duties which IBM owed are informed by the context of the Contract and the other obligations it imposed.⁶⁶ The best evidence about how the scope definition process was carried out comes from those directly involved: that is, from Mr. Prebble's statement⁶⁷ and oral evidence⁶⁸ and the oral evidence of Mr. Atzeni⁶⁹ (who conceded during that evidence that his statement was wrong in significant respects).

⁶⁶ See *Astley v Austrust Ltd* (1999) 197 CLR 1, [44]-[48] (Gleeson CJ, McHugh, Gummow and Hayne JJ); see also *Dymocks Book Arcade Pty Ltd v Capral Ltd* [2013] NSWSC 343, [213] (McDougall J).

⁶⁷ Ex 110 (Statement of Chris Prebble), paragraphs [17]-[26].

⁶⁸ T27-4, lines 21-50 (Prebble); T27-18, lines 17-25 (Prebble); T27-27, lines 1-4 (Prebble); T27-34, line 5 to T27-35, line 30 (Prebble).

⁶⁹ T31-45, line 53 to T31-48, line 31 (Atzeni); T31-66, line 20 to T31-72, line 2 (Atzeni).

35. The contractual obligation to conduct a scoping exercise for the QHIC Project appears from Statement of Work 7, which was incorporated into the Contract at the time of its execution.⁷⁰
36. Statement of Work 7 contemplated that IBM would:⁷¹
- a. (in consultation with Queensland Health) define the recommended project scope;
 - b. develop a fixed price to design, build and implement software meeting the scope definition; and
 - c. develop a plan for the design, build, implementation and support of the software.
37. The second and third of these purposes must not be overlooked. The scoping exercise was not simply to identify (for the benefit of Queensland Health) what elements the system would contain. It was to enable IBM to provide a fixed price for a discrete amount of work and to build a solution to match that work. That is the nature of a fixed price contract. But as Mr. Kwiatkowski's specific and unchallenged evidence shows,⁷² while Statement of Work 8 provided a fixed price on the basis of 59 "RICEFs"⁷³ (and an express assumption that this RICEF estimate was accepted⁷⁴) Queensland Health ultimately sought and received 201 RICEFs.⁷⁵
38. Under Statement of Work 7, IBM was to define 13 key scope areas, set out on pages 3 - 4 of Statement of Work 7,⁷⁶ which included:
- a. Business Process Scope;
 - b. SAP Functional Scope; and
 - c. Workbrain Functional Scope.

⁷⁰ CMTB, Vol 1, p 36.

⁷¹ CMTB, Vol 2, p 97.

⁷² Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [56]-[61].

⁷³ Reports, Interfaces, Conversions, Enhancements and Forms.

⁷⁴ CMTB, Vol 4, p 39.

⁷⁵ Statement of Work 8 included as an express assumption that IBM's estimate of RICEF's was accepted: See e.g. CMTB, Vol 9, p 207.

⁷⁶ CMTB, Vol 2, pp 98-99.

39. Statement of Work 7 required IBM to gather and confirm information, and determine Critical Agency Requirements in this context. That was to be done via:⁷⁷
- a. workshops with Queensland Health and SDA resources;
 - b. interviews with Queensland Health resources on an ad-hoc basis;
 - c. access to existing procedural and systems documentation; and
 - d. access to legacy systems including the Department of Housing system.
40. It is therefore plain that the process of articulating and finalising scope involved joint obligations as between IBM and the State – which had to participate in discussions and provide necessary information. The accountabilities tables which appear in the QHIC Scope Document⁷⁸ and Statement of Work 8⁷⁹ reflect this obvious point.
41. The scope was to have three core features:
- a. It was to be minimal;⁸⁰
 - b. It was to be for an interim solution;⁸¹ and
 - c. It was to be based on the existing Department of Housing (**DOH**) system.⁸²
42. As to the QHIC project being minimal, Statement of Work 7 contemplated that:⁸³
- a. “[t]he Agency-specific requirements will be kept to an absolute minimum for the Lattice Replacement interim solution enough to satisfy the basic functions of paying, rostering and managing their human resources;”⁸⁴
 - b. “Only critical Reports will be planned based on the requirements gathered along with SDA immediately upon commencement of this SOW and will reflect a

⁷⁷ CMTB, Vol 2, p 98.

⁷⁸ CMTB, Vol 4, pp 75-78.

⁷⁹ CMTB, Vol 4, pp 23-24.

⁸⁰ CMTB, Vol 2, p 97 (2.1.1 Approach and Scope, part A).

⁸¹ CMTB, Vol 2, p 99 (2.1.1 Approach and Scope, part D).

⁸² CMTB, Vol 2, p 97 (2.1.1 Approach and Scope, part A), and pp 100-102 (2.1.1 Approach and Scope, part J). This would save time. As Mr. Kwiatkowski observed, “payroll is payroll” (T36-11, lines 44-55; T36-12, lines 22-25 (Kwiatkowski)).

⁸³ CMTB, Vol 2, pp 99-100.

⁸⁴ CMTB, Vol 2, p 99.

sub-set of Queensland Health's report suite."

- c. *"Forms likewise will be a sub-set of the Queensland Health Agency specific scope..."*

43. This approach finds further expression in the QHIC Scope Document:⁸⁵

2.2 Scope Development Principles

To reduce the risks associated with the delivery of the interim solution a number of principles have been used. It is of critical importance that the QHIC Project's scope is realistic, focused on the required business outcomes and achievable within the timeframes required.

The principles employed to ensure that this occurs are:

2.2.1 Minimum Scope

To provide the interim solution for QH it has been agreed that a key scope determination principle is that the minimum possible functionality that allows QH to continue HR/Payroll and Rostering operations. This principle is extended to the integration scope where interfaces will be replaced with the minimum impact possible to the existing QH integration landscape.

(emphasis added)

44. As to use of the DOH system, this was a full deployment of the Standard Offer of the Shared Services Initiative, as coded by Corptech and Accenture, into the Department of Housing. Even from first principles, such a system must, by necessity, have had all of the components to pay people: employee records, bank details, bank integration, reports generation, payslip generation, superannuation and so forth.
45. The differences, from the Health perspective, were size and complexity, plus the addition of award interpretation and rostering functionality via Workbrain, which, as we have said, was already defined in technical specifications produced by Corptech.⁸⁶
46. From a technical SAP perspective, the DOH and Health systems were not to be significantly different: payroll is payroll.⁸⁷

⁸⁵ CMTB, Vol 4, p 73.

⁸⁶ See e.g. PTB, Vol 15, p 722; CMTB, Vol 1, p 186; Ex 135a, 135b, 135c.

⁸⁷ T36-11, lines 40-50 (Kwiatkowski); T27-34 lines 41-44 (Prebble).

IBM's scoping activities

47. Mr. Prebble, who oversaw the scoping for the QHIC Project, gave detailed evidence about the steps which IBM took, many of which are set out above: see paragraphs 10 to 45 of his statement (Exhibit 110). He elaborated on aspects of the scoping activities in his oral evidence. He was a credible and reliable witness.
48. Mr. Prebble was well-qualified to oversee the scoping. At the time, he had over a decade of experience in project management, with particular expertise in large SAP projects.⁸⁸
49. As Mr. Prebble explains IBM, for its part:
- a. carried out a series of scope related workshops between about 21 November and late-December 2007;⁸⁹
 - b. undertook interviews with Queensland Health staff;⁹⁰
 - c. reviewed documentation provided by Queensland Health;⁹¹ and
 - d. produced a 141 page scope definition⁹² which defined the recommended scope for the interim solution and explicitly addressed each of the scope topics set out in Statement of Work 7.⁹³
50. The State, for its part, participated in the workshops and interviews, provided documentation, reviewed the QHIC Scope Document and signed off on it,⁹⁴ and approved Statement of Work 8 which required development of the software against

⁸⁸ Ex 110 (Statement of Christopher Prebble), paragraphs [4]-[5].

⁸⁹ Ex 110 (Statement of Christopher Prebble), paragraphs [10], [17]-[23]. See also CMTB, Vol 4, p 87; T31-68, line 27 to T31-69, line 28 (Atzeni); T20-3, line 16 to T20-4, line 38 (Jones). The dates for these workshops in State's submissions at paragraph 15 are wrong and are inconsistent with Mr. Atzeni's evidence (T31-69) and Mr. Prebble's evidence (Ex 110 (Statement of Christopher Prebble), paragraphs [19]-[22] and Annexures to Statement of Christopher Prebble, Vol 1, pp 25-42; T27-27, lines 1-4 (Prebble)).

⁹⁰ Ex 110 (Statement of Christopher Prebble), paragraphs [10], [15]; QHIC Scope Definition v 1.0, CMTB Vol 4, pp 66-67; T31-66, line 32 to T31-68, line 12 (Atzeni).

⁹¹ See e.g. T31-68, lines 15-29 (Atzeni); T27-34, lines 1-20 (Prebble); Ex 110 (Statement of Christopher Prebble), paragraph [20].

⁹² CMTB, Vol 4, pp 63-203.

⁹³ Compare CMTB, Vol 2, pp 98-99 (Statement of Work 7) and CMTB, Vol 4, p 69. Note that Workbrain functional scope and functional gap is dealt with together with SAP functional scope and functional gap at CMTB, Vol 4, pp 106-125.

⁹⁴ Ex 72, p 1; CMTB, Vol 4, p 17.

this scope.⁹⁵

51. This, and Mr. Prebble's evidence, is demonstrated to be correct by Mr. Atzeni's oral evidence. It is worth setting out that evidence at some length:⁹⁶

You know, don't you, that in fact scoping started long before the contract was signed, that is, the process of scoping the requirements for Queensland Health for the interim replacement commenced even before the contract was signed?---As in the detail that was provided to IBM?

Yes?---Yes.

But IBM started assembling information and interviewing officers of Queensland Health as early as November? ---That's correct.

And many interviews took place ahead of the workshops to which you refer?---Could you define "many"?

You tell me how many you can remember and then tell me why you don't refer to any of them in your statement?---I don't recall how many.

I'll make it easier?---Sure.

Were you involved in discussions with IBM representatives to identify Queensland Health's requirements in November 2007?---Yes.

With which IBM representatives?---I believe with Mr Cameron.

On how many occasions?---I couldn't say how many, I can't recall how many exactly.

A dozen?---Probably less, maybe 10.

With anyone else?---I believe Mr Prebble may have been there.

On the same 10 occasions or other occasions?---Probably less with Mr Prebble.

Eight?---Eight.

Anyone else?---No, I can't recall.

You're aware that other people within Queensland Health were having discussions with IBM representatives in November - - -?---Yes.

- - - to identify Queensland Health's requirements?---Yes.

...

A number of Queensland Health representatives were having discussions with IBM representatives in order to convey to them Queensland Health's requirements?---Yes.

...

You know as well, don't you, that the review of documents which was part of the scoping

⁹⁵ CMTB, Vol 4, p 17.

⁹⁶ T31-66, line 23 to T31-78, line 25 (Atzeni).

process had commenced in November?---That's correct.

I won't bother taking you through it, but a vast array of documents were provided by Queensland Health or CorpTech to IBM in relation to the identification of things relevant to the interim LATTICE replacement system?---That's correct.

And the identification of the business and functional requirements of Queensland Health?---Yes.

...

So that we should really understand that when you refer to the scoping in your statement taking place within those two weeks, what you're referring to is a subset of the scoping activities that in fact took place?---Yes. So the official workshops that were identified in the schedule of scoping meetings that were to occur, yes, they were in the middle of the schedule, yes.

Indeed, if I were to suggest to you that you have omitted a number of workshops from those that you refer to, you would accept that, wouldn't you?---Yes

...

Where do we find please an email from you or a report from you to CorpTech or Queensland Health superior officers saying that the time frames under which everyone is working are just too demanding to people?---You won't find that.

...

But an aspect of the tight time frame is that you would be under no illusion that you, Queensland Health, had to provide responses to requests for information and provide cooperation and so on quickly?---Yes.

And that if you didn't do so that would compromise the delivery in the times that had been stated in the contract? ---Yes.

...

So after – this is around 12 December, after the 12th or the 13th, you had greater confidence that whatever the initial concerns had been, IBM did have that understanding?---They had a greater understanding, yes.

...

It is, however, plain that you at some stage received and reviewed a copy of the QHIC scope document?---Yes.

...

You may well have received one on 20 December?---Possibly, yes.

Or indeed even earlier than that?---An earlier version of it?

Yes?---Yes.

Do you have a recollection of that?---I do believe I have emails of an earlier version, yes.

Right. So stepping back, the complete picture, so to speak, up to 2 January is you received an earlier version at some stage in December?---Yes.

You may or may not have received one on 20 December? ---Correct.

But the likelihood is, Mr Atzeni, you collected it, isn't it?---The likelihood I would have looked to have received it or sent someone to receive it, yes.

...

Each of which you reviewed for the purposes of discharging what you saw as your role within Queensland Health?---Correct.

...

...not only did you receive it, but it had been distributed to people within Queensland Health for its review?---Correct.

And for them to provide you with feedback to provide to IBM?---Yes.

...

But you know that quite apart from that list this QHIC scope document contemplates there will be lower levels of more detailed design, function, technical and process documents brought into existence - - -?---Yes.

- - - to better define and describe a series of activities which are identified in the QHIC scope document?---Yes.

You know that was all done, reviewed by Queensland Health and approved?---Yes.

52. Dr Manfield described the process of the identification of scope through workshops and the articulation of it in a document which was submitted to the client for its consideration as a normal kind of contractual process for agreeing scope.⁹⁷

Issues identified by the Commission

53. Against the backdrop of the matters set out above, we now address issues 1, 2 and 3.

ISSUE 1: Did IBM fulfil, to the standard which might reasonably have been expected of it, the scoping works it was engaged by the State in SOW7 and 8A to undertake, including agreeing in conjunction with the SDA what were the “critical Agency requirements”?

54. In approaching this topic, it is salutary to note that among all of the general criticisms of the scoping made in the course of the Commission hearings, only one specific complaint,⁹⁸ tied to particular facts and supported by contemporaneous documentation has been identified: Mr. Atzeni’s complaint to Mr. Prebble that the conduct of one

⁹⁷ T30-98, lines 11-18 (Manfield).

⁹⁸ The issue raised by the State in its submissions relating to HR/FI integration is seriously misconceived, is not a real issue, and is dealt with further below.

IBM employee at one scoping workshop was “*too pushy*”.⁹⁹

55. But, as the evidence shows, Mr. Prebble:
- a. addressed this matter directly the very day it was raised;¹⁰⁰
 - b. was told by Mr. Atzeni that the matter had been resolved;¹⁰¹
 - c. received no further complaint.¹⁰²
56. This issue, and the way it was handled provide the best (and most reliable) indications of:
- a. the proactive and diligent approach which Mr. Prebble, and through him IBM, plainly took to the scope definition process;
 - b. the efforts IBM made to deploy expertise to actively advise Queensland Health on matters of scope, even at the risk of seeming “*pushy*” and being rebuffed.
57. IBM conducted an appropriate and reasonable scoping exercise. The nature of that exercise has already been set out above:
- a. Following workshops and interviews, IBM provided drafts of the QHIC Scope Definition to Queensland Health at an early stage and then incorporated changes as a result of Queensland Health’s feedback.¹⁰³
 - b. IBM then provided the QHIC Scope Definition to Queensland Health in late December 2007 for approval.¹⁰⁴ This document was amended on the basis of further comments provided by Corptech and Queensland Health and was finalised on about 21 February 2008.¹⁰⁵ It was accepted by Corptech on about 25 February 2008.¹⁰⁶ The Solution Design Authority (**SDA**) accepted IBM’s definition of scope in early 2008. Mr. Ekert, the then-chair of the SDA signed

⁹⁹ T31-48, line 33 to T31-49, line 46 (Atzeni); T31-72, lines 4-7 (Atzeni).

¹⁰⁰ Ex 112, pp 1, 6.

¹⁰¹ Ex 112, p 6.

¹⁰² T31-71, lines 34 -55 (Atzeni).

¹⁰³ See footnotes 13, 14, 67, 68 and 69 above.

¹⁰⁴ CMTB, Vol 4, 64.

¹⁰⁵ CMTB, Vol 4, 64.

¹⁰⁶ Ex 110 (Statement of Christopher Prebble), paragraph [29].

off on the QHIC Scope Definition at that time.¹⁰⁷

- c. SOW 8A covered work to be performed from 2 January until 18 January 2008.¹⁰⁸ This extension was necessary because Corptech was not in a position to consider and approve the QHIC Scope Definition over the Christmas period.¹⁰⁹
- d. In gathering requirements during the scoping process, IBM was necessarily dependent on Queensland Health (in particular QHEST), which was the end user of the system and the party with the most detailed understanding of its business requirements.¹¹⁰ SOW 7 envisaged that IBM would “gather and confirm information” by engaging with Queensland Health.¹¹¹
- e. QHEST was to be responsible for sourcing requirements from within Queensland Health. This is why QHEST was responsible for “agency requirements” within the “Scope development and documentation” section of the agreed accountabilities matrix included in SOW 8.¹¹² In turn, the QHIC Scope Definition was prepared on the basis of certain assumptions, including:
 - i. “QHEST resources will be available to participate in workshops during the project and to confirm and sign-off deliverables in a timely manner”,¹¹³ and
 - ii. “QHEST Process Analyst resources assigned to the Project will have the appropriate knowledge and skills of business processes to meet the timetable for delivery”.¹¹⁴
- f. As part of the requirements gathering process, IBM also sought to ensure that relevant subject matter experts from Queensland Health were engaged in

¹⁰⁷ Ex 72, p 1.

¹⁰⁸ CMTB, Vol 4, 1.

¹⁰⁹ Ex 110 (Statement of Christopher Prebble), paragraph [34]; T27-16, lines 12-30 (Prebble).

¹¹⁰ T21-40, line 19 to T21-41, line 2 (Price).

¹¹¹ See clause 2.1.1 B at CMTB, Vol 2, p 98.

¹¹² CMTB, Vol 4, p 23.

¹¹³ CMTB, Vol 4, p 80.

¹¹⁴ CMTB, Vol 4, p 81.

discussions and workshops.¹¹⁵

- g. Under SOW 7, IBM and Corptech’s Solution Design Authority (SDA) were to jointly “*determine*” the “*critical Agency requirements*” for the interim solution.¹¹⁶ The parties understood that this would be done through the gathering of requirements and the resulting definition of project scope. In particular, IBM and Corptech considered the process documents developed for the Department of Housing and then determined additional critical requirements for Queensland Health.¹¹⁷
- h. In this context, and considered against the background knowledge of the parties at the relevant time, “*critical*” should be understood to mean those core requirements that were necessary for the purposes of the interim solution: the “*minimum possible functionality that allows QH to continue HR/Payroll and Rostering operations*”.¹¹⁸ It is ironic that the one criticism of IBM made at the time was that one of its workshop representatives was “*too pushy*”, but now the State wishes to urge IBM was not sufficiently assertive.
58. It is normal practice within the IT industry to gather requirements in the manner undertaken for the QHIC Project. Further, a vendor such as IBM is necessarily dependent upon a customer for the proper articulation of its business requirements.¹¹⁹
59. IBM’s approach to the scoping of the QHIC project was thus consistent with the normal practice of experienced IT professionals.¹²⁰
60. In addition, the timeframe allowed for scoping was reasonable in light of the following considerations:
- a. IBM had obtained some information from the State about its requirements

¹¹⁵ T27-16, lines 32-38 (Prebble); T27-18, lines 17-25 (Prebble).

¹¹⁶ SOW 7, clause 2.1.1 D; CMTB, Vol 2, p 99.

¹¹⁷ T27-10, lines 10-27 (Prebble).

¹¹⁸ QHIC Scope Definition [2.2]-[2.2.1], CMTB, Vol 4, 73.

¹¹⁹ T30-63, lines 10-51 (Manfield); T30-71, lines 18-32 (Manfield).

¹²⁰ See T30-97, lines 27-28 (Manfield); see also Ex 109 (Statement of Paul Hickey), paragraph [71]; T27-9, line 14 to T27-10, line 52 (Prebble).

- during the ITO process;¹²¹
- b. As explained above, the proposed solution was intended to be interim and would deliver only a “*minimal*” sub-set of the functionality required for the whole of government solution. For example, workshops with Queensland Health in January 2008 differentiated between functions to be included in the interim solution and those intended for the later SSSP solution (Atzeni T31-52);
 - c. IBM planned to draw upon the existing Department of Housing solution, including existing documentation and design work. As explained by Mr. Hickey, “*we were able to pick up all of their documentation and use it as a basis*”.¹²² This is consistent with the evidence of Mr. Prebble that “*[i]n terms of the complexity of what was contracted and anticipated and envisaged for the interim solution, I would say the functionality wasn’t vastly different [from the DoH solution]*”;¹²³ and
 - d. There were no particular difficulties associated with the integration of SAP and Workbrain:¹²⁴ although the timeframe was tight, both products are designed to integrate.¹²⁵
61. The scoping work was commenced by IBM in good faith in November 2007 and was completed in late December 2007.¹²⁶ Further time was then allowed in early 2008, under Statement of Work 8A, to resolve further issues.¹²⁷
62. Conducting scoping in this timeframe was achievable in the context of a minimal Lattice replacement solution. The time allowed for scoping was tight, but reasonable in all the circumstances and were consonant with State-imposed timeframes, including the limited time available to respond to the Invitation to Offer.¹²⁸ That the time allowed for scoping was reasonable in the circumstances is underscored by the

¹²¹ T30-72, lines 37-43 (Manfield).

¹²² T26-78, lines 32-33 (Hickey).

¹²³ T27-34, lines 41-45 (Prebble).

¹²⁴ See T30-38, lines 27-41 (Manfield); Ex 164 (Statement of Nickolas Kwiatkowski), paragraph [22].

¹²⁵ T30-34, lines 6-21 (Manfield). See also T26-77, lines 24-25 (Hickey): “the integration between the two was a very straight forward interface”.

¹²⁶ See cl 6.1.2 of SOW 8 at CMTB Vol 4, p 33.

¹²⁷ CMTB, Vol 4, pp 1-5; Ex 110 (Statement of Christopher Prebble), paragraph [34].

¹²⁸ T27-35, lines 24-30 (Prebble).

evidence of Mr. Atzeni: he never sought to extend the time for scoping, including the time for requirements gathering.¹²⁹

63. To the extent that Dr Manfield's Report (at page 4) suggests that two weeks was a short time frame for scoping, this comment must be read together with his later acceptance that the scoping period was in fact longer.¹³⁰ In particular, when asked whether he knew that the scoping work commenced in November 2007 before the contract was signed, Dr Manfield said "*I didn't know that, but I'm not surprised. I didn't know that explicitly, no*".¹³¹
64. The only reason which the State gives for its submission that IBM failed to take into account "*critical Agency requirements*" concerns the integration of the (new) HR software with Queensland Health's existing Finance system.¹³²
65. The submission runs contrary to:
- a. what the documents say on their face (which specifically provide for the HR-FI interfaces, but in a way Queensland Health then quickly changes its mind about);
 - b. the evidence of Ms. Perrott, who was in charge of managing the Contract at the relevant time.
66. Ms. Perrott acknowledged that:
- a. Replacement of the MAN series of applications (including PAYMAN) was not part of what IBM was to do under the scope definition document. Under the scope definition document, IBM was to develop custom integration for PAYMAN relying upon information given to it by Queensland Health.¹³³
 - b. Queensland Health was to handle the other aspects (including development, testing and implementation) of the integration of IBM's custom integration with the remainder of finance. There was delay by Queensland Health in providing

¹²⁹ T31-69, lines 41-44 (Atzeni).

¹³⁰ T30-94, line 1 to T30-96, line 51 (Manfield).

¹³¹ T30-96, lines 41-42 (Manfield).

¹³² Submissions on behalf of State of Queensland (undated), paragraphs [16], [21], [31], [33].

¹³³ T23-90, line 11 to T23-91, line 9 (Perrott).

IBM with the information it required to develop the custom integration, and real doubts emerged about whether Queensland Health could do the other aspects.¹³⁴

- c. IBM's adherence to the schedule was dependent upon the timely performance by Queensland Health, with little or no contingency.¹³⁵
 - d. The executive steering committee directed IBM to lead a process of redefining the finance integration. IBM started work on that task, which was a function of Queensland Health under the scope document, in good faith, before change requests 60 and 61 were approved.¹³⁶
 - e. IBM's performance of the finance integration work in the time contemplated was subject to an assumption that Queensland Health and Corptech would cooperate in a timely way.¹³⁷
 - f. Queensland Health were unable to provide complete business requirements to IBM.¹³⁸ Queensland Health continued to change its requirements after change requests were signed by various iterations of the business attributes document.¹³⁹ These live issues are factors which justified IBM saying the November go-live date could not be achieved.¹⁴⁰
67. Of course the QHIC Scope Definition explicitly provided, and in significant detail, for the means of integration of the new software with existing systems, including the existing finance system. These details are not hidden. They are plainly set out in the section of the QHIC Scope Definition document entitled "*Interface Scope*".¹⁴¹
68. The framework in which the integration was to be carried out is likewise set out in section 2.2.1 of the QHIC Scope Definition:¹⁴²

a key scope determination principle is... the minimum possible functionality that allows QH to continue HR/Payroll and Rostering operations. This principle is extended to

¹³⁴ T23-91, lines 1-39 (Perrott); T23-97, lines 1-5 (Perrott).

¹³⁵ T23-95, lines 31-48 (Perrott).

¹³⁶ T23-97, lines 5-22 (Perrott).

¹³⁷ T23-97, lines 35-55 (Perrott).

¹³⁸ T23-94, lines 34-40 (Perrott).

¹³⁹ T23-98, line 34 to T23-99, line 22 (Perrott).

¹⁴⁰ T23-103, lines 18-30 (Perrott).

¹⁴¹ CMTB, Vol 4, pp 126-137.

¹⁴² CMTB, Vol 4, p 73.

integration scope where interfaces will be replaced with the minimum possible impact to the existing QH integration landscape.

69. That existing integration landscape was complex.¹⁴³ It involved integration between the LATTICE HR software and the FAMMIS finance system through other software programs referred to as “PAYMAN, JMAN and XMAN” (the **MAN series applications**).
70. The QHIC Scope Definition document addressed this directly.¹⁴⁴

The following approach has been used to scope the integration components required to deliver the interim solution:

...

- *Given the complexity of the MAN Series applications, their interrelationships with multiple other applications in the HR and Finance landscape and the significant QH business and change impacts that would be associated with a removal in the required project timeframes, replacement of the MAN Series applications is not in scope for the QHIC Project. Where integration of the MAN Series applications is in scope, a custom integration component will be specified and developed.... These custom developments will be specified and developed based on existing interface detail supplied by QHEST (e.g. internal FTE Payroll Extract). QH will be responsible for the identification, development, testing and implementation and training of all changes required to the FAMMIS, DSS and the MAN Series applications as a result of the implementation of modified or introduced integration components required to implement the interim solution.*

71. The diagram on the next page of the QHIC Scope Definition document,¹⁴⁵ which appears more clearly in Exhibit 71B, shows clearly that integration between the new HR software, the MAN series applications and the FAMMIS finance software was taken into account and provided for the QHIC Scope Document. Queensland Health was to have significant responsibility for aspects of this integration. This was a logical position given that DSS, FAMMIS and the MAN series applications were particular to Queensland Health, which had experience in supporting and maintaining them. The State accepted this responsibility when it signed off the QHIC Scope Definition.
72. The State’s submissions (at paragraphs 19-21) thus demonstrate a fundamental misunderstanding of the evidence.

¹⁴³ See Ex 71A.

¹⁴⁴ See CMTB, Vol 4, pp 84, 128.

¹⁴⁵ CMTB, Vol 4, p 85.

73. Change Requests 60 and 61 did not introduce, for the first time, the integration of the HR and Finance software systems. Rather, they varied the technical means by which that integration was to be achieved. The need for that variation was brought on by an inability by Queensland Health to perform the activities they had previously agreed to undertake.¹⁴⁶
74. Change Requests 60 and 61, which were executed by the State, make this plain. Just a few examples suffice:
- a. *“Considerable delays have been experienced due to internal design issues needing to be resolved at Queensland Health”*;¹⁴⁷
 - b. *“a report... was tabled [recommending] that the PAYman approach as per original scope was in fact viable. Subsequent advice from QH is that there is not capacity within QH to make the required PAYman changes”*;¹⁴⁸
 - c. *“The [IBM] QHIC functional team have been unable to obtain complete business requirements for the interfaces between SAP and the PAYMAN & DSS applications. Current advice from Queensland Health is that the earliest this requirement will be available will be following the BRG meeting on 14/04/2008.”*¹⁴⁹
75. The matters were recorded in documents executed by the State only after careful revision and analysis.¹⁵⁰ There is no basis to go behind them.
76. The State’s submissions, to the extent they rely upon Change Requests 60 and 61 as indicating some failure by IBM, must be rejected. There is simply no rational basis to assert that Queensland Health’s inability to carry out an activity for which it had agreed to take responsibility and the reassignment of responsibility to IBM, through a formal contractual variation by which IBM was to be paid an additional sum to undertake new and extra work, demonstrates some failure by IBM.

¹⁴⁶ See Ex 109 (Statement of Paul Hickey), paragraphs [83]-[102].

¹⁴⁷ CMTB, Vol 5, p 88.

¹⁴⁸ CMTB, Vol 5, p 89.

¹⁴⁹ CMTB, Vol 5, p 91.

¹⁵⁰ T27-114, lines 29-42 (Berenyi); T23-92, line 55 to T23-93, line 42 (Perrott); T23-116, lines 25-29 (Perrott).

77. To the contrary, the work undertaken by IBM during the initial scoping phase was consistent with what was agreed in SOW 7. It was properly undertaken, and consistent with good industry practice.

ISSUE 2: Were such scoping and identification of “critical Agency requirements” sufficient to make it likely that the resulting system would pay staff correctly?

78. There is no evidence upon which a finding that the solution scoped by IBM was fundamentally incapable of paying staff properly can be made. The State, to its credit, rightly acknowledges here that a finding adverse to IBM on this issue could only be made on a “*speculative basis*”.¹⁵¹ Indeed, as we say, there is no evidence of probative value which would support any such adverse finding.
79. We add the following:
- a. The scoping exercise itself did not involve the detailed definition of pay rules – that followed later. Rather the scoping activity defined the functional scope of the processes, reports, interfaces, conversion, enhancements and forms which would comprise the system.
 - b. At any rate, more detailed specification documents were produced and accepted by the State.¹⁵² There was no evidence given by anyone, with expertise or otherwise, that these specifications were fundamentally wrong from a technical standpoint. IBM’s solution architect, Mr. Kwiatkowski has given detailed and credible evidence about the appropriateness of the system design and configuration.¹⁵³
 - c. While the evidence does suggest that the requirements articulated by Queensland Health in late 2007 and early 2008 were not, in fact, Queensland Health’s true requirements,¹⁵⁴ that does not mean (and cannot be used to

¹⁵¹ Submissions on behalf of State of Queensland (undated), paragraph [41].

¹⁵² See e.g. T31-78, lines 16 -25 (Atzeni); Ex 88; Ex 100; Ex 134.

¹⁵³ Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [7]-[19], [22]-[24], [26]-[43].

¹⁵⁴ See, e.g. Ex 110 (Statement of Chris Prebble), paragraph [16]; T27-14, line 38 to T24-15, line 36 (Prebble); T27-25, lines 18-22 (Prebble); T27-29, line 9 to T27-30, line 15 (Prebble); T27-32, lines 19-32 (Prebble); T27-39, line 50 to T27-40, line 5 (Prebble); T27-51, lines 38-45 (Prebble); T27-53, lines 15-27 (Prebble); T31-55, line 13 to T31-56, line 56 (Atzeni); T36-89, lines 35-43 (Dymock); (T36-67, lines 10-26 (Dymock); T36-94, lines 1-34 (Cowan); T1-94, line 52 to T36-95, line 10 (Cowan); T36-96, lines 8-27 (Cowan).

support the conclusion) that the system which IBM scoped was not a system capable of paying staff. The fact that the software successfully passed a detailed and audited system and system integration testing – including end-to-end testing – shows it functioned properly as a pay system.

- d. It is also inherently unlikely that software delivered by a leading IT company, which passed audited system testing, was incapable of performing the tasks for which it was designed. This is reinforced in circumstances in which no direct or concrete evidence has emerged to suggest the contrary.
 - e. While Mr. Cowan’s final report following User Acceptance Testing suggests on its face that system testing (and, by implication the system itself) may have miscarried, this conclusion cannot be sustained:
 - i. Mr. Parkinson, a testing expert, has pointed out that such a conclusion cannot be arrived at without conducting a root cause and defect leakage analysis;¹⁵⁵
 - ii. Mr. Cowan has conceded that his testing was not conducted against the signed off (and scoped) requirements (nor was he permitted to use the RTM) and that he cannot say anything of the performance of the system against the signed-off specifications.¹⁵⁶
 - f. At any rate, a software developer does not know what the correct pay is other than by reference to the business requirements that are provided to them. Further, they are (as IBM was) contractually bound to create a solution according to the requirements provided to them.¹⁵⁷
80. Moreover, the phrase “pay staff correctly” should be given some context, by reference to the existing LATTICE HR software.
81. The LATTICE system involved extensive manual adjustments to pay staff correctly. Up to 20 per cent of Queensland Health’s workforce required some form of manual

¹⁵⁵ Ex 165, p 4; T36-54, lines 39-44 (Parkinson).

¹⁵⁶ T36-94, lines 1-28 (Cowan); T36-109, line 45 (Cowan).

¹⁵⁷ T36-57, lines 14-20 (Parkinson).

adjustment for each pay period.¹⁵⁸

82. It was understood, agreed and accepted that the LATTICE replacement solution would continue to require a degree of manual adjustment.¹⁵⁹ The design documentation for the QHIC Project made this explicit.¹⁶⁰ The approach of Queensland Health in not articulating all of its requirements initially also made it inevitable, as Queensland Health itself recognised, that more manual workarounds would be needed.¹⁶¹

Project scope has been locked down since September 2008 resulting in increasing number of work arounds necessary to complete the project... Some of these workarounds are known now and result from underspecification by QH.

83. In the above circumstances, there is no basis upon which a finding, critical of IBM, can be made in respect of the ability of the scoped system to pay staff.

ISSUE 3: 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?

Summary

84. The fundamental reason that the scope remained unstable was an unwillingness on the part of Queensland Health to commit to any fixed articulation of scope, on a project which was intended to be conducted in accordance with a minimal scope and to a fixed (and tight) timeframe. Despite attempts by both IBM (through the RTM) and Corptech (through Mr. Grierson) to lock down scope, Queensland Health would not allow itself to be so constrained.¹⁶²
85. It is unrealistic to expect IBM to have, in response to this, brought about a project “re-set”. This was not a project like the one undertaken by the Mater Hospital. IBM had been contracted on a fixed cost project, which it had been told was urgent, and where the customer (through Corptech) was managing IBM aggressively against the

¹⁵⁸ Ex 79 (Statement of Janette Jones), paragraph [11].

¹⁵⁹ T26-53, lines 31-47 (Hickey); T27-101, lines 5-55 (Berenyi).

¹⁶⁰ See e.g. Ex 88, pp 9, 25, 29, 35, 38, 45, 52, 59, 64.

¹⁶¹ CMTB, Vol 7, p 363.

¹⁶² T36-68, lines 21-27 (Dymock); Ex 163 (Statement of Mark Dymock) paragraphs [20]-[26]; T36-93, line 51 to T36-94, line 2 (Cowan); T36-107, lines 5-10 (Cowan); T28-73, lines 25-50 (Grierson); T29-5, lines 20-34 (Grierson); T29-47, line 31 to T29-48, line 20 (Grierson); T29-49, line 1 to T29-50, line 12 (Grierson); Ex 103 (Statement of William Doak), paragraphs [47], [48], [69], [105]; T24-86, lines 13-20 (Doak); T24-115, lines 48-53 (Doak); T25-6, lines 38-42 and 50-54 (Doak).

Contract.¹⁶³ Indeed IBM's attempts to produce a more conciliatory approach from within Corptech were not very successful.¹⁶⁴

86. The difficulty which IBM faced was captured aptly by Dr Manfield who described the problem which plagued the project as "*a stream of new requirements and associated change requests*" that emerged after project scoping work was done.¹⁶⁵ The communication of these changes by the State to IBM took on the character of a "*salami slice approach*" to contract management:

*Queensland Health was specifically avoiding being locked into a requirements traceability matrix.*¹⁶⁶

*[E]ffectively at this stage it would lock them in to something that they didn't want to be locked in to.*¹⁶⁷

87. Consistently with this, Ms. Jones identified that Queensland Health had originally underspecified its requirements in telling IBM what were its essential or minimum business requirements,¹⁶⁸ and would raise Change Requests (*inter alia*) when Queensland Health developed a greater appreciation of what their requirements were.
88. There was, in reality, a limited amount which IBM could do in these circumstances, as Mr. Doak explained.¹⁶⁹ Dr Manfield agreed:¹⁷⁰

Each time there's a change of requirement that has flow-on effects, both as to what has to be built and to the testing of what has been built?---Yes.

Is that what you've described as the salami effect, if you like, providing pieces, a slice at a time, which has the effect of prolonging the project?---Yes.

Had the pieces all been assembled at the start and provided, it would have been done, you

¹⁶³ See e.g. T24-116, line 5 to T24-117, line 17 (Doak); T25-11, lines 15-16 (Doak); T25-17, line 1 to T25-19, line 23 (Doak); T25-47, lines 1-2 (Doak); T25-72, lines 34-35 (Doak); T25-74, lines 6-10 (Doak); T27-16, lines 40-44 (Prebble); T27-30, lines 47-55 (Prebble); T26-111, line 28 to T26-112, line 2 (Hickey); T18-86, lines 5-43 (Bird); T18-100, line 6 to T18-101, line 4 (Bird); T18-101, line 50 to T18-102, line 19 (Bird); Ex 73 (Statement of Christopher Bird), paragraphs [18]-[30]; Ex 68 (Statement of Malcolm Campbell), paragraphs [32]-[34]; Ex 65 (Statement of John Beeston) paragraph [52]; T18-22, lines 5-22 (Campbell); T18-29, lines 37-49 (Campbell); T28-101, lines 39-51 (Grierson).
¹⁶⁴ Ex 103 (Statement of William Doak), paragraphs [67], [71]; T24-116, lines 4-10 (Doak); T24-117, lines 3-8 (Doak); T25-11, lines 20-33 (Doak).
¹⁶⁵ Ex 123, paragraph 4.2.2.
¹⁶⁶ T36-93, lines 51-53 (Cowan); see also T26-39, lines 10-28 (Gower); T26-8, line 51 to T26-9, line 21 (Gower); Ex 103 (Statement of William Doak), paragraph [50].
¹⁶⁷ T24-20, line 55 to T24-21, line 1 (Cowan).
¹⁶⁸ T20-28, lines 40-45 (Jones).
¹⁶⁹ Ex 103 (Statement of William Doak), paragraph [68]; T25-59, lines 15-39 (Doak); T25-87, lines 1-8 (Doak).
¹⁷⁰ T31-2, lines 34-47 (Manfield).

think, more smoothly and more cost efficiently and quicker?---Yes.

Thank you. I think you said that in respect of the scope, if you like - I'm sorry, that a vendor will offer something which is a combination of the scope, the price and the time frame, identifying that there are risks both internal and external. Is that right?---Yes.

Ignore for the moment, at least, the risks, the other three things represent a balance, that is the narrower the scope, one would think, all things being equal, the lower the price and the quicker the time frame; the greater the scope, the higher the price and the longer the time frame?---Yes.

89. IBM had made the risks of a lack of discipline clear in the SSSP Program Charter.¹⁷¹

There is no silver bullet for managing scope. Effective scope management is the result of clearly defined processes, disciplined application, and genuine attempts to resolve issues without resorting to scope change.

There is a critical dependency on the Agencies and SSPs to participate in a genuine manner to resolve issues without requesting scope changes. The Contractor cannot control their actions, but the Contractor will work with them to address their concerns.¹⁷²

90. Had Queensland Health been genuinely concerned to define the scope of the QHIC Project, it could at any time have come forward with its (true) comprehensive requirements and drawn a line under the change request process. The fact that it never did so, including its unwillingness to agree to a RTM, points to a lack of discipline on the part of Queensland Health and an inability of the State to impose such discipline on a large agency. IBM, on the other hand, constantly strove to define, articulate and obtain sign-off on scope – both in the initial phase of the project and throughout in developing and updating the RTM.
91. The lack of discipline from the State is further evident from the fact that Corptech submitted further change requests after “Go Live”.¹⁷³
92. Plainly, in the absence of the articulation of these business requirements, nothing meaningful could be done by the vendor, IBM, to stabilise scope.
93. In fact, IBM tried (by introducing Mr. Doak) to “re-set” as we will come to. But it had no obligation to do so. Insofar as this Identified Issue suggests consideration of what IBM “should” have done, the answer is, comply with the contractual

¹⁷¹ CMTB, Vol 2, p 118.

¹⁷² CMTB, Vol 2, p 118.

¹⁷³ Ex 163 (Statement of Mark Dymock), paragraph [78].

arrangement for approval of change requests as and when identified. But, as mentioned, it was more proactive in trying to deal with Queensland Health's inability to agree and adhere to scope.

94. IBM cannot be criticised for doing its best to make its way through this difficulty:
- a. Dr Manfield recognised that it would be difficult for a vendor to propose a re-set¹⁷⁴ - a process which would inevitably involve far more time and cost than contemplated under the fixed price contract which the State had asked for and IBM had provided.
 - b. The way in which scope changes emerged was incremental and it is difficult to pinpoint precisely when (even in retrospect, but much more so at the time) a project re-set should reasonably and practicably have been proposed.
 - c. Given the existence of the change request mechanism in the contract, it was reasonable for IBM to operate on the basis that the scope of the project was essentially agreed, subject to specific variations that might be required and articulated through a change request.
 - d. Realistically, it was the State¹⁷⁵ and not IBM which was in the far better position to answer the hypothetical question posed by Dr Manfield "*do we, together, as a total theme, have a complete understanding of the requirements against delivery?*"¹⁷⁶ It was therefore the State that was in the better position to propose a re-set.
95. What IBM in fact did, and should be given credit for, was to bring onto the project Mr. Doak, a highly qualified, senior IBM partner, to attempt to meaningfully engage the State at a management level. Dr Manfield said of this:¹⁷⁷

I think that Mr Doak's approach to Mal Grierson, along those lines, would be a good thing to do and to seek to, you know - I would regard that as part of proactive account management, that is generally speaking a good thing to do.

¹⁷⁴ T31-4, lines 23-41 (Manfield).

¹⁷⁵ T31-7, lines 13-31 (Manfield).

¹⁷⁶ T31-6, lines 40-42 (Manfield).

¹⁷⁷ T31-5, lines 18-22 (Manfield).

96. Mr. Doak met regularly¹⁷⁸ with Mr. Grierson. He was plainly well across the issues. There is no reason to think he did anything other than the best that could be done in the circumstances.
97. Mr. Doak also expressed his own frustration about the way in which the Contract was proceeding, and the obstacles which IBM faced:¹⁷⁹

[T]here were two parallel processes happening here. We were getting on with the job with Queensland Health, and I'm not saying it was easy because we did have a lot of scope issues, but then we had this parallel action from not specifically CorpTech from the SPO and CorpTech in terms of these breach notices, these letters which tend to be out of step to reality.

Causes of scope instability

98. The problems affecting the QHIC Project were caused primarily by “*a stream of new requirements and associated change requests*” that emerged after project scoping work was done.¹⁸⁰ Changing scope “*was a serious issue in this project and that seriously expanding change of scope was evident through 2008*”.¹⁸¹
99. As set out above, IBM followed a proper process for requirements gathering. Yet even if IBM had failed to properly gather requirements (which is not accepted), in the early stages of the project there was ample time for Queensland Health to come forward and advance any requirements that were missed. For example, there were several versions of the BAD, including after v5.0 was determined as the baseline.¹⁸²
100. The more significant issue was that Queensland Health did not take responsibility for providing a final set of requirements. This was clear from the scoping stage, as explained by Mr. Prebble: “*The issue really, in my view, was about Queensland*

¹⁷⁸ The precise frequency does not matter.

¹⁷⁹ T24-117, lines 1-9 (Doak).

¹⁸⁰ Ex 123, paragraph 4.2.2.

¹⁸¹ T30-46, lines 41-43 (Manfield).

¹⁸² T26-103, line 3 to T26-104, line 6 (Hickey). See also, footnote 63 above; Annexures to Statement of Paul Hickey (Ex 109), Vols 4-6; T31-88, line 41 to T31-89, line 43 (Atzeni); Ex 122 (Statement of Damon Atzeni), paragraph [40]. As to changes to the BAD more generally, see, e.g. T27-11, lines 47-50 (Prebble); T27-32, lines 19-32 (Prebble); T27-8, lines 37-38 (Prebble); T27-23, lines 15-35 (Prebble); T27-27, lines 22-24 (Prebble); T27-28, lines 1-3 (Prebble); T27-29, line 9 to T27-30, line 15 (Prebble); T27-38, lines 31-54 (Prebble); T27-53, lines 15-27 (Prebble); T31-54, lines 13-46 (Atzeni); T31-88, line 12 to T31-91, line 16 (Atzeni); T21-35, lines 18-53 (Price); T21-36, line 17 to T21-38, line 29 (Price); T21-38, lines 47-56 (Price); T21-58, line 54 to T21-59, line 28 (Price); T31-89, line 28 to T31-90, line 38 (Atzeni); T25-88, line 51 to T25-89, line 2 (Doak).

*Health determining what their requirements were more than the work required to draw out that and document those requirements”.*¹⁸³ Rather, Queensland Health continued to develop its own understanding of its business and financial requirements throughout the life of the QHIC Project.¹⁸⁴

101. Queensland Health’s continued inability to draw a line under HR-FI integration is the most telling example of this. For example:

- a. as recorded in contemporaneous weekly reports, even after Change Requests 60 and 61 were agreed, Queensland Health still did not provide their full requirements to IBM for HR-FI integration;¹⁸⁵
- b. later, signed off business requirements for HR-FI integration were to be provided by Queensland Health by 22 December 2008, yet these had still not been provided on 18 January 2009.¹⁸⁶ Even after these requirements were approved in late January 2009, issues about requirements were continuing to affect the sign-off of design documents for agreed changes as at 22 February 2009.¹⁸⁷ It is remarkable that this was occurring months after the original SOW 8 date for system “go live” (September 2008).

102. Some disputes as to scope were the product of a lack of willingness to abide by the scope of what had been agreed.¹⁸⁸ Others are likely to have been caused by the failure of some State officers to properly understand and engage with the defined scope of the project at all. For example, when questioned at the hearing about her understanding of the scope of the interim solution, Ms. Stewart said:¹⁸⁹

In the course of being on the project directorate, did you look at the QHIC scope documents or any of the detail, business design, process design or functional documents to inform yourself as to what it was that was the subject of the LATTICE replacement system?---I recall looking at - I think it might have been the project implementation plan

¹⁸³ T27-25, lines 5-8 (Prebble).

¹⁸⁴ Ex 79 (Statement of Janette Jones), paragraph [5].

¹⁸⁵ T26-98, line 18 to T26-101, line 11 (Hickey); Annexures to Statement of Paul Hickey, pp 336-454.

¹⁸⁶ Ex 109 (Statement of Paul Hickey), paragraph [110].

¹⁸⁷ Ex 109 (Statement of Paul Hickey), paragraph [112].

¹⁸⁸ For example: Ex 109 (Statement of Christopher Prebble), paragraph [94], which makes the point that Mr. Vayo would often argue about scope without reference to the agreed documents.

¹⁸⁹ T29-114, lines 13-25 (Stewart). Ms. Stewart’s reference to the Project Implementation Plan (presumably the QHIC Project Execution Plan) is curious given that this document does not define the scope of the solution but rather is a document that explains how the project will be run.

at the time that said that it was to deliver a payroll solution that was supported and supportable.

Thank you for that. Did you look at the QHIC scope definition document?---I probably brushed over it early in the piece when I joined the project directorate, I can't recall any detail.

103. The disputes in relation to scope did not arise because of the lack of an RTM at the early stages. The RTM was created as a tool. It did not of itself define project scope or determine whether a reported defect was in fact a defect or a changed requirement. It was, rather, essentially an index: pointing to other documents that define scope (such as the project scope definition; business requirements and business attributes documents; and functional and technical specifications).
104. IBM tried on a number of occasions (and at different levels) to contain project scope, including through Mr. Doak's discussions with Mr. Grierson.¹⁹⁰ Dr Manfield's notion of a checkpoint necessarily requires the efforts of the customer and business end-user (here Corptech and Queensland Health respectively) to accept the defined scope as final in the absence of some exceptional circumstance.¹⁹¹
105. Mr. Gower sought to use the development of an RTM as a means to "lock down" project scope and he later requested that the RTM be agreed prior to entry into UAT 4.¹⁹² Ultimately, this could not be achieved because Queensland Health in particular refused to be tied to the existing scope documented by the RTM.¹⁹³ As stated by Dr Manfield, the State was avoiding taking a position on scope.¹⁹⁴ Thus the Project Directorate decided that the RTM would be an IBM document and that it would not reflect the agreed scope in relation to the project.¹⁹⁵

PERFORMANCE OF THE CONTRACT: ISSUES 5 AND 6

106. Issues 5 and 6 direct attention to particular aspects of IBM's performance of the Contract. Its conduct, when assessed against the Contract, was proper. To the extent that evidence has been given by Dr Manfield about general standards of vendor

¹⁹⁰ T29-56, lines 12-43 (Grierson); Ex 103 (Statement of William Doak), paragraph [67]; T24-86, lines 13-20 (Doak); T24-115, lines 48-53 (Doak).

¹⁹¹ T31-7, lines 13-31 (Manfield).

¹⁹² T26-8, line 54 to T26-9, line 11 (Gower).

¹⁹³ T26-9, lines 11-16 (Gower); T26-38 to T26-39 (Gower); T36-93, lines 51-53 (Cowan).

¹⁹⁴ T30-64, lines 5-10 (Manfield).

¹⁹⁵ CMTB, Vol 9, p 322.

behaviour, the evidence supports the conclusion that IBM acted properly throughout the course of the QHIC Project.

107. We deal with issues 5, 6(a), 6(b) and 6(c) immediately below. Because the evidence about issue 6(d) has substantial overlap with the evidence concerning the performance of the software after it was implemented, we deal with issue 6(d) separately in a later section of these submissions.

ISSUE 5: Did IBM take advantage of the unstable and unclear project scope for the purpose of extracting from the State, higher payments than those for which it had initially contracted for and/or extensions of time to mask its own delays in designing and deploying the payroll system?

108. To raise this issue is at odds with the way the Inquiry was conducted. In opening the hearings relating to Contract Management and Performance, Counsel Assisting said that:¹⁹⁶

It's beyond the scope, though, of this inquiry ... to revisit particular changes or to inquire whether in a contractual sense IBM ought to have proposed and the state ought to have accepted particular variations. That would be a very time consuming exercise, more time than this commission has, and it would potentially may be futile because there doesn't seem to be any real doubt that such variations as were effected were effected lawfully and validly.

109. Every change request is to be taken as agreed and properly so. The Contract contained rights and obligations. Those rights and obligations are varied by numerous change requests (the validity of which are not open to question). But Issue 5, in directing attention to the propriety of the change requests agreed between the parties (the mechanism for varying cost and time of the project) purports to “re-open” this conduct.
110. The type of impropriety contemplated by this issue would constitute a serious finding and once it is accepted that IBM should not be criticised “in a contractual sense” for entering into change requests, it is difficult to understand on what other basis it would be appropriate to judge the behaviour of a commercial vendor subject to aggressive contract management.
111. Moreover, there are a number of elements and assumptions embedded in the

¹⁹⁶ T18-6, lines 40-50 (Counsel Assisting).

articulation of this issue which are wrong:

- a. **First**, that the project scope was unclear. As explained above, the contractual scope was clear. It was just not adhered to by the State.
 - b. **Secondly**, that uncertainty would (or did) benefit IBM. We explain below why this is not obvious and is not borne out by the evidence.
 - c. **Thirdly**, that there is something sinister about a vendor requiring higher payments and extensions of time when its agreed scope of work is enlarged. Dr Manfield properly recognised it is normal vendor behaviour.
112. The change requests prepared by IBM (whether at its own instigation or at the request of the customer) were bona fide change requests, whether in relation to scope of the project, delay or increased costs.¹⁹⁷ This evidence was not challenged at the hearing.
113. At the hearing, Mr. Prebble stated: “*Without controlling scope, you can’t control time or quality or cost in this case, remembering this was also a fixed price contract with IBM, so there was some responsibility to IBM to control and deliver only what had been contractually agreed*”.¹⁹⁸
114. The evidence indicates that IBM was concerned to control and “*protect*” project scope.¹⁹⁹ This is confirmed by Dr Manfield, who expressed the view that “*IBM diligently defined a baseline of scope and diligently protected that baseline scope through the course of the project as a vendor must do because customers can otherwise hang you out to dry in a flash and they will and they do all the time*”.²⁰⁰
115. Far from having an incentive to take advantage of unstable and unclear scope, it is not difficult to see how scope creep would be likely to work against a vendor such as IBM under a fixed price contract. This is because the contract was essentially a services contract and costs were largely a function of the number of employees and the time worked. Uncertain scope would be likely to increase staff time and costs in circumstances where IBM could not be certain that additional expenses would be fully

¹⁹⁷ See, e.g. T26-115, lines 1-23 (Hickey).

¹⁹⁸ T27-32, lines 7-11 (Prebble).

¹⁹⁹ T27-8, lines 39-47 (Prebble); T27-31, line 31 to T27-32, line 11 (Prebble).

²⁰⁰ T30-46, lines 24-28 (Manfield).

compensated. In particular, compensation was dependent on a contested CR process and IBM could not be certain that Corptech would agree to vary the contract and pay more money. Even if it did, it would be contingent upon IBM to then locate, staff and manage appropriate resources to meet the relevant deliverables.

116. Thus, in the context of a fixed price contract, it can be seen that IBM would obtain no real benefit from uncertain scope. Rather, it would face the very real risk of additional costs, some or all of which would not be able to be recovered.
117. This analysis is supported by the conduct of the parties, especially in relation to the introduction of a RTM. IBM produced one in a further attempt to make scope clear. It provided copies to State over the course of the QHIC Project.²⁰¹ Initially, the Project Directorate agreed that the RTM should be prepared as an agreed document.²⁰² However, Queensland Health never accepted the proposed RTM and it was eventually adopted as an IBM document rather than as an agreed statement of project scope.²⁰³

ISSUE 6: IBM's performance in specific respects

118. Issue 6 directs inquiry into whether IBM's performance under the Contract was "deficient" in certain identified respects. We explain below the reasons why IBM's performance of the Contract was not deficient.

Issue 6(a) - Testing under CR 129, 174, 177, 179 (Was IBM's performance deficient in the system's failure to pass the test regime set out in Enclosure 1 to Change Requests 129, 174, 177 and 179)?

119. CR 179 (and its predecessor CRs 129, 174 and 177) incorporated two testing requirements: Payroll Performance Testing and Workbrain Award Interpretation Testing.²⁰⁴ That testing was to be done in the period September to December 2008.
120. The testing occurred at a time at which Queensland Health were requesting a significant series of changes to the SAP and Workbrain software which IBM was building. For this reason, it took longer than expected to complete the tests. IBM and

²⁰¹ Annexures to Statement of Mark Dymock (Ex 163), pp 158-160.

²⁰² Ex 106 (Statement of John Gower), paragraph [27].

²⁰³ CMTB, Vol 9, p 322.

²⁰⁴ See, e.g. CR 179 at CMTB, Vol 7, p 285.

Corptech therefore agreed to extend the time for the testing. This was done three times by signing new CRs in the same terms as CR 129: CR 174, 177 and 179.²⁰⁵ Testing was completed in December 2008.²⁰⁶ IBM dedicated a specialist tester to the task of organising and executing the Payroll Performance Testing.²⁰⁷

121. The number of changes to project scope with which IBM had to contend at the time is instructive. Between September and December 2008 there were some 24 changes:

September 2008

- a. CR73 – Concurrent Employment;²⁰⁸
- b. CR74 – Manual entry screen for rosters;²⁰⁹
- c. CR94 – Leave paid in advance;²¹⁰
- d. CR103 – IS18 Security;²¹¹
- e. CR104 – Workbrain extra security;²¹²
- f. CR113 – Variation to Business Attributes Document;²¹³
- g. CR133 – Additional leave type for secondment unpaid;²¹⁴
- h. CR135 – Leave Balance for Day in Lieu and Time Code;²¹⁵
- i. CR136 – Addition of Cascade Requirements for VMO;²¹⁶
- j. CR137 – VMO recreation leave;²¹⁷
- k. CR141 – New pay role;²¹⁸

²⁰⁵ See CMTB, Vol 7, pp 22, 189, 265, 284.

²⁰⁶ Ex 109 (Statement of Paul Hickey), paragraph [147].

²⁰⁷ Ex 109 (Statement of Paul Hickey), paragraph [145].

²⁰⁸ CMTB, Vol 6, p 32.

²⁰⁹ CMTB, Vol 6, p 43.

²¹⁰ CMTB, Vol 6, p 57.

²¹¹ CMTB, Vol 6, p 71.

²¹² CMTB, Vol 6, p 83.

²¹³ CMTB, Vol 6, p 95.

²¹⁴ CMTB, Vol 6, p 108.

²¹⁵ CMTB, Vol 6, p 120.

²¹⁶ CMTB, Vol 6, p 132.

²¹⁷ CMTB, Vol 6, p 144.

- l. CR114 – Work around – Offenders Health Service – 6 New Wage Types;²¹⁹
- m. CR138 – Work around – Visiting medical Specialist – 3 New Wage Types;²²⁰

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- n. CR99 – QHIC Takeover of XFA Accountabilities;²²¹
- o. CR148 – Additional Enterprise Structure Mapping;²²²
- p. CR153 – Part day leave;²²³
- q. CR154 – Remote Area Nurses Incentive Program;²²⁴
- r. CR155 – Roster Conflict Form;²²⁵
- s. CR157 – Nurses Meal Allowance;²²⁶
- t. CR158 – Child Support Deductions;²²⁷
- u. CR159 – Recall Offsite;²²⁸
- v. CR164 – Super no TFN Workaround;²²⁹
- w. CR169 – All purpose Allowances Wage Types;²³⁰
- x. CR175 – New SAP Wage Types for Workaround;²³¹

122. It was against this backdrop that IBM's testing had to be conducted.

218 CMTB, Vol 6, p 156.
 219 CMTB, Vol 6, p 170.
 220 CMTB, Vol 6, p 182.
 221 CMTB, Vol 7, p 69.
 222 CMTB, Vol 7, p 74.
 223 CMTB, Vol 7, p 83.
 224 CMTB, Vol 7, p 96.
 225 CMTB, Vol 7, p 107.
 226 CMTB, Vol 7, p 119.
 227 CMTB, Vol 7, p 133.
 228 CMTB, Vol 7, p 146.
 229 CMTB, Vol 7, p 159.
 230 CMTB, Vol 7, p 175.
 231 CMTB, Vol 7, p 338.

Payroll Performance Testing

123. The purpose of the Payroll Performance Testing was to demonstrate that the system could perform payroll processing within two required window periods:
- a. First Sunday: 12 hours; and
 - b. Pay Monday: 8 hours.²³²
124. These windows were adjusted to 8 and 6 hours respectively to allow for the fact that the tests would not undertake retrospective pay adjustments.²³³
125. By 19 December 2008, testing had demonstrated that the First Sunday 8-hour target could be met, however the Pay Monday 6-hour target was out by about 29 minutes.²³⁴
126. Following testing and prior to the QHIC Release Steering Committee meeting held on 23 December 2008, Queensland Health was of the view that the solution should be allowed to pass the test gate.²³⁵ Queensland Health accepted that, with more hardware and further system tuning, the system would also be able to meet the Pay Monday target.²³⁶
127. However, Queensland Health modified its position on the basis of discussions with Corptech at a QHIC Steering Committee meeting on 23 December 2008.
128. The formal Minutes of the meeting record that “*QH has a level of confidence that there is a go forward solution*”.²³⁷ Discussions between Queensland Health and Corptech then focused largely on issues of cost, including that IBM would be entitled to payment if it was deemed to have passed the tests. Following these discussions, Queensland Health appears to have changed its position and agreed that IBM had not passed the tests. IBM representatives were not present during this part of the discussion between Queensland Health and Corptech.

²³² CMTB, Vol 7, p 291.

²³³ Ex 109 (Statement of Paul Hickey), paragraph [142]; CMTB, Vol 7, pp 291-292.

²³⁴ Ex 109 (Statement of Paul Hickey), paragraph [22]; see also CMTB, Vol 7, p 332.

²³⁵ Ex 65 (Statement of John Beeston), paragraph [60]; T26-75, lines 12-20 (Hickey); T26-117, line 13 to T26-118, line 31 (Hickey); CMTB, Vol 7, 332; Ex 103 (Statement of William Doak), paragraphs [132]-[134].

²³⁶ Ex 109 (Statement of Paul Hickey) paragraph [148].

²³⁷ CMTB, Vol 7, p 332.

129. As explained by Mr. Hickey, IBM went to the 23 December 2008 meeting believing that the solution had come close enough that it would be regarded as having passed the test gate.²³⁸
130. At any rate, the Payroll Performance Testing was ultimately accepted by the State: see Ex 86, p 4 (acceptance of PPV Testing Phase Completion Report).

Workbrain Award Interpretation Testing

131. The Workbrain Award Interpretation Testing was intended to demonstrate the functional performance of Workbrain.²³⁹
132. This testing was completed by 10 December 2008 and the test results approved by Queensland Health.²⁴⁰ A summary of the test results shows that testing was successful and results were “*within acceptance criteria tolerances*”.²⁴¹
133. Corptech’s attitude was to avoid formal acceptance, despite Queensland Health’s endorsement.²⁴² The reason for non-acceptance was stated as: “*SDA notes QHEST recommendation, however IBM has not provided a deliverable for acceptance*”.²⁴³ That is to say, because the report came on QHEST letterhead, rather than IBM letterhead, it was not acceptable.

Summary

134. The evidence cannot support a finding that IBM’s performance was deficient.
135. On the other hand, Corptech’s refusal to accept the CR 179 testing results reveals petty and inappropriate conduct, highlighted especially in relation to the Workbrain Award Interpretation tests. The conduct of Corptech on this occasion suggests that it was more interested in obtaining contractual leverage over IBM than in achieving the successful completion of a complex project.

Issue 6(b) - Systems & Systems Integration Testing (Was IBM's performance deficient in

²³⁸ Ex 109 (Statement of Paul Hickey), paragraph [153].

²³⁹ See CMTB, Vol 7, p 297.

²⁴⁰ See signed acceptance sheet in the Annexures to Statement of Paul Hickey (Ex 109), Vol 3, p 1210.

²⁴¹ Annexures to Statement of Paul Hickey (Ex 109), Vol 3, p 1212.

²⁴² Ex 109 (Statement of Paul Hickey), paragraph [158]; see also the email from S Mitchell to P Hickey dated 24 December 2008 in the Annexures to Statement of Paul Hickey (Ex 109), Vol 3, p 1217.

²⁴³ Annexures to Statement of Paul Hickey, Vol 3, pp 1215-1216.

ensuring the system passed the system and system integration tests)

136. The software passed system and system integration testing.²⁴⁴ That report was accepted²⁴⁵ after independent audit.²⁴⁶
137. This really should be the end of the matter.
138. The only real source of criticism for system testing came from Mr. Cowan and the final User Acceptance Test completion report prepared by him.²⁴⁷
139. Those criticisms have turned out to be unsubstantiated:
- a. As Mr. Parkinson, an independent testing expert has explained, it is not possible to draw conclusions about system and system integration testing simply from the results of User Acceptance Testing (no matter what they are), particularly when that testing is not completed against a Requirements Traceability Matrix:²⁴⁸

There is no data that indicates what the root cause for the defects [in UAT] were. The use of the term “functional defect” is used frequently. The definition of a functional defect is purely that the system did not perform a function or operation as expected. The root cause of “function defects” can be:

1. *Incorrect coding;*
2. *Requirements errors which include missed or poorly expressed requirements;*
3. *Environment issues including configurations;*
4. *Test errors due to... incorrectly written test scripts; and*
5. *The test data is wrong.*

...

Defects are caused by errors introduced by humans and therefore a defect in and of itself is only one dimension of quality. The raw number of defects [in UAT] does not support the conclusion that the previous test phases had inadequate testing performed.

...

A lack of clear requirement specification [in UAT] will cause increased numbers of requirements specification errors and changing requirement scope, i.e. new

²⁴⁴ Ex 102.

²⁴⁵ Ex 86.

²⁴⁶ Ex 108.

²⁴⁷ See, e.g. CMTB, Vol 13, pp 283-316, in particular pp 287, 306, 307.

²⁴⁸ Ex 165, pp 3-5; see also T36-46, lines 38-53 (Parkinson); T36-54 lines, 39-44 (Parkinson).

requirements being added, can further introduce additional requirements specification errors. Based on industry studies, observations and my own experience, a situation where the requirements were not clear would contribute to higher defect numbers.

...

The development team uses the requirements to create software code that implements the condition or capability the requirement defines. If that requirement is incorrectly specified then the code written to meet the requirement will inherit the errors.

The manifestation of these requirement errors is system behaviour that isn't expected by the tester or customer. While the behaviour may not have been expected, it doesn't mean that the code written was not of sufficient quality or that the development team wrote the wrong software code. They wrote code to meet a requirement that was specified.

(emphasis added)

- b. Though Mr. Parkinson accepted that the tester at the time may have a better view of the facts,²⁴⁹ Mr. Parkinson's evidence gives independent expert weight and validation to the criticisms of the reporting which IBM (also expert and present at the time) had made of testing which Mr. Cowan supervised, but which he did not conduct himself.²⁵⁰
- c. At any rate, Mr. Cowan conceded in his evidence that the many "defects" identified in UAT could not lead to any conclusion about whether the software tested in system testing properly met the specifications to which it was designed.²⁵¹
- d. There was much other evidence to like effect.²⁵²
140. The documentary evidence also plainly shows that IBM passed System and System Integration testing.²⁵³ 40,000 test cases were run,²⁵⁴ testing the system against the

²⁴⁹ T36-44, line 32 (Parkinson).

²⁵⁰ T24-69, line 27 to T24-70, line 3 (Cowan).

²⁵¹ T36-109, line 45 (Cowan); T36-98, lines 3-7 (Cowan); T36-101, lines 39-46 (Cowan).

²⁵² See, e.g. T20-14, lines 1-23 (Jones); T20-14, line 25 to T20-15, line 18 (Jones); T20-55, lines 45-53 (Jones); Ex 163 (Statement of Mark Dymock) paragraphs [34], [37]-[39], [58(b)(i)], [63], [74]-[75]; Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [94], [129] and [234]-[248], especially paragraphs [123]-[129]; T36-19, lines 1-26 (Kwiatkowski); T31-7, lines 31-56 (Manfield); T31-9, lines 1-17 (Manfield); Ex 165, pp 4-5, 12-13; T36-46, lines 38-53 (Parkinson); T36-49, lines 7-21 (Parkinson); T36-49, lines 27-47 (Parkinson); T36-54, lines 39-44 (Parkinson); T36-55, line 30 to T36-56, line 9 (Parkinson).

²⁵³ Ex 102.

²⁵⁴ Ex 163 (Statement of Mark Dymock), paragraph [27].

agreed requirements.²⁵⁵ The System and System Integration report expressing the results of that testing became Exhibit 102. The testing is discussed at paragraphs [27] to [40] of Mr. Dymock's statement.

141. The results of the testing were audited²⁵⁶ and signed off by the State, including by a panel of 10 reviewers.²⁵⁷
142. No evidence of any probative value has emerged that the testing completed in April 2009 was deficient in any way.
143. Further changes to the software were system tested individually, and the software as a whole underwent regression testing to validate that changes had not caused other errors.
144. In light of UAT being conducted without reference to any scoping material, the criticisms of the State's own employees (together with IBM's employees) about how UAT was conducted and without direct evidence of the asserted defects being identified, it cannot possibly be safely concluded that IBM's performance of System and System Integration Testing was deficient.

Issue 6(c) - UAT: Entry and Exit (Was IBM's performance deficient in not having the system in a position to enter or exit user acceptance testing (and especially phase 4) free from severity 1 and severity 2 defects, or at least free from defects which affected the accuracy of a pay)

Summary

145. Following the completion of system testing, IBM presented for User Acceptance Testing a system tested successfully to agreed specifications which was free of severity 1 and 2 defects.²⁵⁹ Early rounds of UAT were aborted because of Queensland Health's difficulties with data, test scripts and execution plans.
146. References to "defects" after this time, and in particular during UAT4, must be

²⁵⁵ Ex 163 (Statement of Mark Dymock), paragraphs [27]-[30], [34]; Ex 102, pp 3 (section 2), 5-6 (sections 3.1.1 and 3.1.2), 16 (section 3.5); Ex 102a.

²⁵⁶ Ex 108.

²⁵⁷ Ex 102a; Ex 163 (Statement of Mark Dymock), paragraph [40].

²⁵⁹ Ex 102. The early phases of UAT are dealt with by Mr. Dymock. Early rounds of UAT were aborted because of Queensland Health's difficulties with data, test scripts and execution plans: Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [99]-[116] et seq; Ex 163 (Statement of Mark Dymock), paragraph [44].

approached with caution. The term was used loosely, in the wide sense²⁶⁰ of denoting any respect in which the software did not ultimately meet Queensland Health's (previously uncommunicated) requirements.²⁶¹ That is because UAT4 (and presumably all phases before it) was not conducted by reference to the RTM or the agreed contractual scope.²⁶² Whether, as a matter of testing practice, that was appropriate is open to debate.²⁶³ Regardless, what is not open to debate, is that where:

- a. UAT has not been conducted by reference to an RTM;
- b. no root cause or defect leakage analysis²⁶⁴ or similar undertaking was completed during or after UAT (and nor has one been undertaken by or at the request of the Commission),

IBM cannot be criticised, nor its performance labelled deficient, for presenting software which entered or exited UAT with "defects".

147. It is impossible on the evidence before the Commission to determine how many of the issues identified as severity 1 and severity 2 "defects" were due to:
 - a. a failure by Queensland Health to previously identify required functionality; or
 - b. data errors;
 - c. actual coding errors.
148. That is because none of the UAT reporting disaggregates defects into these (important) categories.
149. There were undoubtedly some coding errors in the software, as there are in all

²⁶⁰ See, e.g. T36-71, lines 19-23 (Dymock); Ex 163 (Statement of Mark Dymock), paragraphs [50], [51], [58], [59]; Ex 106 (Statement of John Gower), paragraph [34]; T26-10, lines 40-53 (Gower); T36-98, lines 5-7 (Cowan); Ex 165, p 3; T36-48, lines 14-41 (Parkinson); T20-12, line 48 to T20-13, line 13 (Jones); Ex 103 (Statement of William Doak), paragraphs [62], [72], [84(a)], [84(d)], [84(g)], [169]; T24-107, lines 13-15 (Doak); T24-108, lines 31-38 (Doak).

²⁶¹ T36-98, lines 3-7 and 18-31 (Cowan); T36-101, lines 43-46 (Cowan).

²⁶² T36-93, lines 51-52 (Cowan); T36-94, lines 4-6 (Cowan); T36-107, lines 10-13, 18, 39-44 (Cowan).

²⁶³ The evidence of Mr. Dymock and Mr. Parkinson is that it should: T36-60, lines 44-50 (Dymock); Ex 165, pp 1, 13; see also T36-44, 45 (Parkinson). Mr. Dymock provides a number of reasons why UAT should not be conducted as a form of exploratory testing: T36-71 (Dymock). Mr Cowan's evidence in this regard is confusing in that he notes the desirability of using an RTM (see T36-94, lines 30-34 (Cowan)) but then suggests that he preferred not to use one (see T36-107, lines 10-13 (Cowan)).

²⁶⁴ T36-46 (Parkinson); T36-54, lines 3-5 and lines 39-44 (Parkinson); Ex 165, pp 2, 13.

software development projects. But in the absence of any evidential basis to establish the parameters of these errors and distinguish them from the others, it would be very unfair to IBM to make a finding that its performance was deficient, particularly in view of the positive way in which the system performed during system testing. Indeed such a finding is simply not open without proper evidence pointing to the alleged errors.

UAT 4

150. Mr. Cowan identified that his UAT did not have regard to scope documents, and instead relied on testers making up their own test cases and attempting to use the system as they saw fit.²⁶⁵ Judging IBM against such an approach is wrong.
151. This approach was consistent with IBM's standing complaint that UAT saw extensive testing outside of the scope of the project, together with testers not using the RTM. Almost by definition, this will raise issues (or "defects") that are not defects, properly described: they were not a failure to provide a contractual deliverable. This acknowledgement by Mr. Cowan entirely undermines the suggestion that UAT4 defects can at all be identified as IBM coding defects or the suggestion²⁶⁶ that it can be inferred that system testing was incorrectly or deficiently performed.
152. IBM provided over 180 changes, without charge during UAT3 alone.²⁶⁷ Mr. Cowan identified Mr. Dymock as the "*voice of reason*" when it came to getting the project delivered and about scope.²⁶⁸ Mr. Dymock identified that those 180 or so items (during UAT3) were things, properly, he should have raised internally at IBM to be priced before being provided to the State, but instead, IBM simply performed extra work to ensure delivery to the State.
153. As to UAT, Ms. Jones, a witness of the State, identified that:²⁶⁹
- a. The KJ Ross Report was "*hot and controversial*".²⁷⁰

²⁶⁵ T36-107, lines 23-45 (Cowan).

²⁶⁶ CMTB, Vol 13, pp 283-316 in particular at pp 287, 306, 307.

²⁶⁷ T36-62, lines 1-21 and 37-41 (Dymock); Ex 163 (Statement of Mark Dymock), paragraph [59].

²⁶⁸ T-36-98, line 8 (Cowan).

²⁶⁹ Ex 79 (Statement of Janette Jones), paragraphs [16]-[18].

²⁷⁰ Ex 79 (Statement of Janette Jones), paragraph [16].

- b. UAT was frustrating,²⁷¹ and it was “*never clear that (the testers) understood the scenarios in which Queensland Health operated its payroll*”²⁷² nor did they “*fully understand the complexity*” of the environment;²⁷³
- c. testers would raise defects that were not defects,²⁷⁴ sometimes going “*straight to a defect*” when the issue may lie elsewhere;²⁷⁵
- d. testers would overstate the significance of asserted defects;²⁷⁶
- e. UAT would be run in the wrong environment or on the wrong version of the system;²⁷⁷
- f. UAT teams would not synchronise with payroll or other testing teams;²⁷⁸
- g. Mr. Cowan appeared to want to “*test forever*” (a charge Mr. Cowan denies), seemingly without reference to the above problems or the reality of the need to go-live or stop the system,²⁷⁹ nor to the changing environment.²⁸⁰
- h. decisions could not be based just upon numbers of defects: they all had different impacts, so needed to be individually analysed;²⁸¹
- i. “*My frustration was that we continued to rely upon UAT to backward manage a testing process that had many steps before ... By setting up an adversarial environment where it seemed like UAT was being used to check on the system test was frustrating*”;²⁸²
- j. “*HR practitioner union’s employees debate the meaning and intent of awards all the time, so writing that in a specification at the award level is problematic*

²⁷¹ Ex 79 (Statement of Janette Jones), paragraph [17].

²⁷² Ex 79 (Statement of Janette Jones), paragraph [17].

²⁷³ Ex 79 (Statement of Janette Jones), paragraph [21].

²⁷⁴ Ex 79 (Statement of Janette Jones), paragraph [18]; T20-8, lines 1-8 (Jones); T20-56, lines 25-32 (Jones).

²⁷⁵ T20-13, lines 12-14 (Jones).

²⁷⁶ Ex 79 (Statement of Janette Jones), paragraph [18].

²⁷⁷ Ex 79 (Statement of Janette Jones), paragraph [18].

²⁷⁸ Ex 79 (Statement of Janette Jones), paragraph [18].

²⁷⁹ Ex 79 (Statement of Janette Jones), paragraph [20].

²⁸⁰ Ex 79 (Statement of Janette Jones). paragraph [21].

²⁸¹ Ex 79 (Statement of Janette Jones), paragraph [21].

²⁸² T20-14, lines 9-15 (Jones).

*when you get to a pay result because it can come up with different results according to what you thought it should be”.*²⁸³ That is, defects often arose from specifications and pay-rules which could reasonably be read in different ways, but that defects were raised irrespective;²⁸⁴

- k. The conduct was adversarial, such that the view from Queensland Health was (as to IBM’s capacity to accurately write interpretive rules for award interpretation) during UAT: “*we shouldn’t really be helping them (IBM), they’re the prime contractor, they’re the deliverer, they should just deliver it to us so we shouldn’t really help them do it*”;²⁸⁵
- l. As to UAT’s identification of a number of “severity 2’s”: it was not “*not black and white*” that these were true defects;²⁸⁶
- m. that tester’s often got it wrong, possibly by falling back to their LATTICE habits.²⁸⁷

154. Ms. Jones’ view, as a member of the directorate was that using “*... black and white gates on numbers of figures that were determined prior to the system project even starting, ... was not a valid or reasonable, ...*”²⁸⁸

155. In circumstances in which testing was being conducted, not against agreed contractual specifications, but against amorphous and unarticulated customer preferences, this view has some force.

156. In the premises, there is no proper evidence to suggest that the system IBM delivered was, when tested against the scope that had been defined, materially deficient.

157. In any event, Mr. Cowan departed some several months prior to go-live, and indeed, prior to the first pay run. Gratuitous and non-specific suggestions (a hallmark of much of the evidence against IBM) as to likely difficulties are unhelpful and not a proper basis for findings. Ms. Jones, as the user of the system, in the course of oral

²⁸³ T20-14, lines 41-48 (Jones).

²⁸⁴ T20-50, lines 17-25 and 32-55 (Jones).

²⁸⁵ T20-14, line 54 to T20-15, line 1 (Jones). See also, e.g. T20-12, lines 1-12 (Jones).

²⁸⁶ T20-33, lines 47-50 (Jones).

²⁸⁷ T20-55, lines 39-60 (Jones).

²⁸⁸ T20-52, lines 45-50 (Jones).

evidence answered as follows:²⁸⁹

That there was a disconnect, if you like, between the raft of defects that had been predicted would occur and what you in fact experienced?---Yes.

That in fact what the UAT testing suggested would be a large number of defects did not materialise in your experience?---That's right.

Summary

158. For the reasons set out above, there is no sufficient evidential basis to conclude that IBM's performance was deficient in any of the respects identified in issues 6(a), 6(b) and 6(c).

ISSUE 8: OUGHT THE PROJECT DIRECTORATE TO HAVE RECOMMENDED THAT THE SYSTEM GO-LIVE?

159. The Project Directorate, on the information provided to them, made the right decision in recommending that the interim software system be put into production.

160. At the time the decision was made:

- a. The software had passed through 4 phases of UAT, and 2,386 of 2,405 (over 99%) of UAT test cases had been run successfully against the software during that testing;²⁹⁰
- b. All identified defects (to adopt the broad label used) had either been addressed by changing the software code, or by the development of a workaround, which was assessed for effort,²⁹¹ audited²⁹² and formally recorded in a Defect Management Plan;²⁹³
- c. Detailed cutover simulations had been conducted, with positive results.²⁹⁴

161. In the events which occurred, the software though affected by some bugs and defects

²⁸⁹ T20-60, lines 13-20 (Jones).

²⁹⁰ CMTB, Vol 13, p 305.

²⁹¹ See, e.g. T20-10, line 48 to T20-11, line 19 (Jones); T2-25, lines 41-51 (Jones); T20-52, lines 25-32 (Jones); T20-53, lines 23-32 (Jones).

²⁹² T20-53, lines 23-32 (Jones); T20-54, line 1 to T20-55, line 8 (Jones).

²⁹³ Ex 98.

²⁹⁴ See e.g. T20-23, lines 35-47 (Jones); T20-57, line 1 to T20-59, line 13 (Jones); CMTB, Vol 15, p 222.

(as is the universal experience in industry²⁹⁵) paid more accurately than LATTICE²⁹⁶ and was not the material cause of non-pays or incorrect pays.²⁹⁷ Indeed, many of the subsequent complaints about incorrect pay related to LATTICE and not the new system.

162. On the other hand, IBM did not have responsibility for, or any direct knowledge of, the data migration and change readiness activities being undertaken by Queensland Health. Those with responsibility for these matters indicated that these matters were all in hand, and were “green” for go-live.²⁹⁸
163. As emerged (and as is set out below), Queensland Health was not (contrary to what the directorate was told) in a state of readiness to accept the new system.

ISSUE 13: DID IBM DELIVER A PAYROLL SYSTEM WHICH MET THE CONTRACT DESCRIPTION?

164. The contractual description of the system to be supplied by IBM is set out in Statement of Work 8. At the time of go-live, that description was further defined in the QHIC Scope Document version 1.0,²⁹⁹ and in the Scope Clarification document annexed to Change Request 184.³⁰⁰
165. The Contract and IBM’s obligations under it were *not* varied informally or orally, that is to say, other than by agreed change requests:
- a. The Contract itself permitted variations only by approved change requests;³⁰¹
 - b. Ms. Berenyi accepted that the discussions leading up to the execution of Change

²⁹⁵ See, e.g. T29-99, lines 11-15 (Stewart); T29-110, lines 28-44 (Stewart); T29-115, lines 1-3 (Stewart); T30-9, lines 13-33 (Stewart); T36-15, lines 1-6 (Kwiatkowski); T36-25, lines 40-51 (Kwiatkowski); T36-27, lines 27-34 (Kwiatkowski); T36-46, lines 31-54 (Parkinson); T36-20, 21 (Kwiatkowski); T36-39, 40 (Kwiatkowski); T36-86, lines 50-56 (Dymock); T28-32, line 27-38 (Macdonald); T28-45, lines 40-44 (MacDonald); T29-35, lines 32-44 (Grierson); T27-82, lines 3-12 (Berenyi); T26-14, lines 41-50 (Gower).

²⁹⁶ T20-37, lines 13-29 (Jones); Ex 118 (Statement of Jane Stewart), paragraph [133].

²⁹⁷ See, e.g. T20-9, lines 2-4 (Jones); T20-19, lines 33-38 (Jones); T36-63, lines 1-19 (Dymock); Ex 163 (Statement of Mark Dymock) paragraphs [101], [105]; Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [152]-[198].

²⁹⁸ CMTB, Vol 15, p 143 (particularly at p 145).

²⁹⁹ CMTB, Vol 4, p 63.

³⁰⁰ CMTB, Vol 9, p 144.

³⁰¹ CMTB, Vol 1, p 57.

Request 184 were subsumed in the change request itself and did not themselves create new or effect the legal obligations between or of the parties,³⁰²

- c. In particular, the discussion during which IBM indicated it would fix all “defects” affecting pay³⁰³ was a good-faith and informal undertaking not reflected in the agreed text of Change Request 184.

166. Statement of Work 8, as amended by Change Request 184 provided that:³⁰⁴

2.1 Lattice Replacement Scope

The scope of the Lattice Replacement works stream is to design, configure, build, test, and implement the interim Lattice Replacement solution for Queensland Health.

Services relating to the on-going support of the deployment solution will be defined and costed separately within another Statement of Work.

The scope of IBM (the contractor) services and deliverables proposed under this SOW is defined within the Deliverable “QHIC Project Scope Definition – Version 1.0” and clarified in the document QHIC Scope Clarification.

...

Note that the scope of work to be delivered under this SOW (8) only includes the work that is specific to the QHIC (LATTICE Replacement) project and does not include work associated with the Standard Offer.

...

2.2.3 RICEF

We will be building and configuring an interim solution for Queensland Health that reflects their minimum requirements.

11.1 Assumptions

11.1.1 Lattice Replacement

...

2. *Queensland Health will bear the cost of and be responsible for the following activities internally. Data Cleansing, Legacy system extracts, decommissioning of hardware and applications, end user training delivery, internal communications, technical readiness (Network, Citrix, Desktop, printing etc), any additional software licensing costs, any costs associated with support of the solution or extending Lattice support.*

...

³⁰² T27-105, line 45 to T27-106, line 48 (Berenyi).

³⁰³ CMTB, Vol 9, p 37.

³⁰⁴ CMTB, Vol 9, pp 174, 177, 207.

4. *Our definition of scope and the RICEF estimates are accepted.*

167. We have already set out a number of passages from the QHIC Scope Definition document above.
168. These documents, together with the lower level specification documents which were likewise agreed, provide the “contractual description” of the system which IBM was to deliver. Probative evidence that any part of the software did not meet some identified contractual obligation has not been forthcoming.
169. As we explain in further detail below, although some defects and bugs were identified both before and after the “go-live” of the software, these are an ordinary incident of the implementation of new software systems.³⁰⁵ They do not provide a basis upon which IBM can be said to have failed to supply software that met the contractual description. This is particularly so in the context of the rejection by Queensland Health of use of the RTM.
170. No evidence has emerged that there were bugs in payrules or pay calculation coding which caused material pay errors.³⁰⁶
171. Only two witnesses for the State were able to give evidence of any specificity about defects in the software after it went live: Ms. Jones and Ms. Stewart.
172. Whilst Mr. Reid offered a list of issues,³⁰⁷ that list was provided to him by Mr. Walsh,³⁰⁸ which Mr. Reid was unable to speak to in his oral evidence, indicating that it was just a list that Mr. Walsh had provided him and he had no specific knowledge of its contents.³⁰⁹ Mr. Walsh did not venture to support the list in his own statement,

³⁰⁵ See footnote 295 above. See also, e.g. T25-71, line 48 to T25-72 line 18 (Doak); T29-86, lines 14-27 (Stewart); T29-86, lines 38-50 (Stewart); T29-99, lines 23-35 (Stewart); T29-110, lines 28-44 (Stewart); T29-111, lines 6-10 (Stewart); T29-113, lines 17-52 (Stewart); T30-9, lines 13-33 (Stewart); T30-83, lines 14-20 (Manfield); T36-17, lines 20-30 (Kwiatkowski); T28-32, lines 27-38 (Macdonald); T28-45, line 40 to T28-46, line 4 (MacDonald); T29-35, lines 32-44 (Grierson); T27-82, lines 3-12 (Berenyi).

³⁰⁶ See footnote 297 above.

³⁰⁷ Ex 90 (Statement of Michael Reid), paragraph [54].

³⁰⁸ T22-87, line 41 to T22-89, line 20 (Reid).

³⁰⁹ T23-43, lines 30-40 (Reid) (the reference to Exhibit 96 at T23-43, line 32 appears to be a transcript error that it should either be a reference to Exhibit 93 or paragraph [56] of Mr. Reid’s first statement); T23-51, lines 23-60 (Reid) (and previous examination as to its contents).

and was not made available for cross-examination.³¹⁰ In any event, every item on the list (both in Mr. Reid’s statement and Exhibit 93) has been considered and explained by either Mr. Kwiatkowski or Mr. Dymock (or both).

173. For the reasons given below, the way in which the software performed after go-live does not provide a safe basis upon which to conclude that IBM failed to deliver to its contractual obligations. The lack of specificity in this area is stark.
174. We first address the Defects Management Plan.

The Defects Management Plan

175. We have already explained above the caution which is needed when approaching the use of the word “defects” in the latter stages of the QHIC Project.
176. At any rate, the existence of a plan to manage identified defects (whatever their cause) is a normal practice,³¹¹ and does not involve a departure by IBM from its contractual obligations. Queensland Health recognised as early as late 2008 that workarounds would need to be developed by it because it had underspecified its requirements,³¹² and we might add, would be necessary in any case because of the minimal scope of the software being delivered.
177. The Defects Management Plan (**DMP**) was developed “*after careful deliberation*”³¹³ agreed by all parties at the time, despite adversarial conduct by the State.³¹⁴ In particular, the DMP (*inter alia*):
- a. identified a number of items that the parties agreed would be implemented later, in a series of Post Go-Live Code “Drops”;

³¹⁰ Mr. Walsh did however, provide a further list, which was unanalysed in hearings and cannot be properly relied upon to indicate defects for which IBM could be liable. This is particularly so, given that every single item on the list provided to Mr. Reid (Exhibit 93), which it may be inferred were the highest and best examples, was shown to be either something that was managed, something that the State had asked for and then paid IBM after its mind changed, or which otherwise did not materially affect pays.

³¹¹ T25-72, lines 1-18 (Doak); T29-98, line 48 to T29-99, line 27 (Stewart); T36-25, lines 40-51 (Kwiatkowski); T36-21, lines 14-49 (Kwiatkowski); T36-22, lines 35-44 (Kwiatkowski); T28-29, lines 49-52 (MacDonald); T26-14, line 41-50 (Gower).

³¹² CMTB, Vol 7, p 363.

³¹³ T20-11, lines 6-10 (Jones).

³¹⁴ T20-12, lines 1-12 (Jones).

- b. prioritised the work required to deliver certain features in the software, and identified the “Code Drop” date on which that work would be delivered into the running, live system. In essence, the running system would receive “updates” on certain dates. Those changes were scheduled to be made:
- i. PG1 (Part 1): at Cut-Over (that is, in or about 14 March 2010);³¹⁵
 - ii. PG1 (Part 2): Prior to the first pay (pre-23 March 2010);³¹⁶
 - iii. PG2: On or before the third pay run (pre-19 April 2010);³¹⁷
 - iv. PG3: in or about May 2013, but capable of deployment on or pre-19 April 2010;³¹⁸
 - v. PG4: in about August/September 2010, but capable of deployment by May 2010.³¹⁹
- c. identified the Work Effort required to implement the workarounds in the DMP, and the relevant workaround plan;
- d. identified that the vast majority of changes would be deployed or capable of deployment prior to the April 2010 contractual delivery date;
- e. identified items which were not necessarily in scope, as many were recognised as “solution changes”, or otherwise in dispute at the time.³²⁰
178. That is, there were a series of changes to be made, but, consistent with the window identified by the business processes of Queensland Health, the Go-Live was chosen for March.
179. There is no evidence that any item on the Defects Management Plan caused any issue after Go-Live. Rather, the evidence is to the contrary. As Ms. Jones, the person tasked with overseeing the QHSSP and the DMP explained in evidence (emphasis

³¹⁵ Ex 98, p 5.

³¹⁶ Ex 98, p 6.

³¹⁷ Ex 98, p 6.

³¹⁸ Ex 98, p 6.

³¹⁹ Ex 98, p 7.

³²⁰ Ex 98, pp 5, 8, 10, 11; Ex 118 (Statement of Jane Stewart), paragraph [31].

added):³²¹

But against the background of you having a management plan requiring of you workarounds to keep the new system on track?---I did not ever - well, that's the first time that I've even been put that as a concept that the workarounds in any way affected our ability to process the pay. I don't believe they did. They did not factor in a large way beyond go live. The management plan prescribed how they were to do it. The workaround group who met every day and wrote the workaround procedure, they were all known. There was a manual about how to do it. The team went and did it. I don't recall one conversation beyond the go live about whether the workarounds were significant or working or impacting on the pay. They were simply done.

180. Ms. Jones reinforced that answer when cross-examined by Mr. Traves QC, identifying that Ms. Jones saw no evidence that anything on the defect management plan caused problems.³²²
181. Ms. Jones further identified that the DMP identified a number of items that it could be difficult to suggest were seriously impacting pay. For example three items on the DMP were discussed in examination-in-chief:³²³

So 499-6? Yes. It's got, "No workaround possible," and it says "no"?---So that issue related to end of financial year payment summary and it was to be fixed when the end of financial year support stacks were to be implemented in June. We knew the support stacks would have to be done. We knew the system would have to have the configuration changed. No-one needed a payment summary run prior to that. That is the type of decision the project directorate made recommendations to the board regarding that that defect, although counted in the defect tally, did not materially affect the Queensland Health payroll go live. You'll see the next one has to do with DSS. That is simply the transfer of information on to the Queensland Health decision support teams system. It in no way affected the Queensland Health payroll ... Some of them - and I recall, I don't know which - but one of them affected one doctor for an allowance so that was a defect and something that affected the Queensland Health DSS system or one doctor's allowance occasionally we felt could not be measured as holding the same value as things that affected the Queensland Health payroll outcome.

Post go-live system Issues

182. In addition to the matters which were identified and dealt with in the DMP, those involved in the implementation of the new software were prepared for (and expected) hiccups and further defects to emerge once the system was put into final

³²¹ T20-25, lines 39-51 (Jones).

³²² T20-41, lines 40-50 (Jones).

³²³ T20-19, lines 33-40 (Jones).

production.³²⁴ They are an inevitable incident of any “go-live” process.³²⁵

183. We deal with those that emerged below.

184. Importantly:

- a. the defects which did emerge were not coding problems which materially affected the calculation of pay;
- b. IBM responded quickly and effectively to defects as they were raised,³²⁶ in the way a competent vendor would be expected to behave;
- c. these defects were overtaken by much more significant non-software issues, which led to a politicalised and panicked response which in turn disrupted the normal post-go live processes for addressing and remedying software bugs.

185. But we address the software issues first.

Performance

186. The most significant software issue identified by the State were two performance issues: the interface speed of Workbrain (being the screens that the payroll users would see), and the batch processing times.

Interface Performance

187. Witnesses identified a performance issue whereby some users accessing Workbrain from some sites would intermittently find the system slow.³²⁷ The screen might have

³²⁴ T25-71, line 48 to T25-72, line 18 (Doak); T29-86, lines 14-27 (Stewart); T29-86, lines 38-50 (Stewart); T29-99, lines 23-35 (Stewart); T29-110, lines 28-44 (Stewart); T29-111, lines 6-10 (Stewart); T29-113, lines 17-52 (Stewart); T30-9, lines 13-33 (Stewart); T30-83, line 14-20 (Manfield); T36-17, lines 20-30 (Kwiatkowski); T28-32, lines 27-38 (Macdonald); T28-45, line 40 to T28-46, line 4 (MacDonald); T29-35, lines 32-44 (Grierson); T27-82, lines 3-12 (Berenyi).

³²⁵ T29-99, lines 11-15 (Stewart); T29-110, lines 28-44 (Stewart); T29-115, lines 1-3 (Stewart); T30-9, lines 13-33 (Stewart); T36-15, lines 1-6 (Kwiatkowski); T36-25, lines 40-51 (Kwiatkowski); T36-27, lines 27-34 (Kwiatkowski); T36-46, lines 31-54 (Parkinson); T36-20, 21 (Kwiatkowski); T36-39, 40 (Kwiatkowski); T36-86, lines 50-56 (Dymock); T28-32, lines 27-38 (MacDonald); T28-45, lines 40-44 (MacDonald); T29-35, lines 32-44 (Grierson); T27-82, lines 3-12 (Berenyi); T26-14, line 41-50 (Gower); T25-50, lines 49-51 (Doak).

³²⁶ See e.g. T29-92, lines 41-43 (Stewart); T29-99, lines 38-42 (Stewart); T29-111, lines 11-34 (Stewart); T29-111, lines 38-42 (Stewart); T30-5, lines 19-50 (Stewart); T30-8, lines 5-46 (Stewart); T30-9, line 49 (Stewart).

³²⁷ E.g. T20-26, lines 1-30 (Jones).

frozen, or users may have needed to log out and log in again.³²⁸ This interface performance issue was because of higher than expected load. That is the system was being used differently – and more aggressively – than it had been specified to be used.

188. Mr. Grierson identified that the issue with performance was that Queensland Health had “*double*” the number of staff accessing the system as had been contracted for and planned.³²⁹
189. Ms. Stewart also identified that the “*demand on the system*” was “*unexpected*” and suggested the load related to the backlog of forms, an influx of forms, reworking for payroll enquiries and extensive use of reporting to answer staff queries were the root causes of the load.³³⁰ That is to say, the core issue related to overuse of the system. This overuse caused extreme loads.
190. A knock-on effect of the extreme loads was identified and explained by Mr. Kwiatkowski as triggering issues in the way Workbrain interacted with its Oracle database, and within the Oracle configuration.³³¹ These issues were only seen at extreme loads, and would likely not have been seen otherwise.³³²

Batch Processing

191. The delays in batch processing were tied to significantly higher data throughput than had been defined by the State. In one job, the higher levels of overnight batch processing was in the order of over 600% greater (2000 instead of 300 changes) more processing than had been said to be required by the State.³³³
192. Toward the end of June 2010, Mr. Kwiatkowski did an analysis and identified some 44,000 alterations had been made in a cycle when 8,000 had been specified and modelled by the State in their Stress & Volume testing (a 550% increase).³³⁴
193. Even at the end of June, nearly a fifth of data changes related to pre go-live data,

³²⁸ E.g. Ex 164 (Statement of Nickolas Kwiatkowski), paragraph [142].

³²⁹ Ex 116 (Statement of Mal Grierson), paragraph [53].

³³⁰ Ex 118 (Statement of Jane Stewart), paragraph [66].

³³¹ Ex 164 (Statement of Nickolas Kwiatkowski), paragraph [144].

³³² Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [145], [151].

³³³ Ex 163 (Statement of Mark Dymock), paragraph [94]; Ex 164 (Statement of Nickolas Kwiatkowski), paragraph [180].

³³⁴ Ex 164 (Statement of Nickolas Kwiatkowski), paragraph [185].

indicating that large numbers of errors from LATTICE were still being rectified at that stage.³³⁵

194. Furthermore, the State did not use the system properly, which impacted load in a number of ways. The example given by Mr. Kwiatkowski is that the State was not using calculation processing groups.³³⁶ That meant that the system, rather than being able to calculate groups of employees together (in a single calculation), was required to perform separate calculations for every employee, exponentially increasing load.

Performance - General

195. This higher load ought to have been identified by the State as the likely usage pattern (in lieu of the figures and usage patterns they identified for S&V and PPV), and the interface performance was ultimately the responsibility of Corptech to assess and verify in Stress & Volume testing.³³⁷
196. The Oracle database and its configuration (which required changes) were determined and managed by Corptech,³³⁸ as was the rest of the Application Layer/JVM infrastructure configuration that had to be adjusted after go-live.³³⁹ IBM was not contracted to perform either service, yet IBM provided Mark Rafter, an Oracle expert to assist their teams to remedy Corptech problems when they occurred.³⁴⁰
197. On top of the software changes which IBM (together with Infor and others made), Mr. Grierson,³⁴¹ identified that perhaps a 60-70% increase in hardware was required.³⁴² Hardware was the responsibility of the State.³⁴³
198. In any event, aside from these performance matters possibly impacting the efficiency of form entering,³⁴⁴ these issues did not of themselves cause pay miscalculations or

³³⁵ Ex 164 (Statement of Nickolas Kwiatkowski), paragraph [186].

³³⁶ Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [190]-[191], [194].

³³⁷ Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [150]-[151].

³³⁸ Ex 164 (Statement of Nickolas Kwiatkowski), paragraph [151].

³³⁹ Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [215]-[217].

³⁴⁰ Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [145(c)], [147].

³⁴¹ As the person who had to approve a larger CITEC budget to acquire more computer hardware: T34-81, line 33 to T34-82, line 45 (Grierson).

³⁴² Ex 116 (Statement of Mal Grierson), paragraph [53].

³⁴³ Through CITEC - see e.g. CMTB, Vol 9, pp 176, 207.

³⁴⁴ Where such efficiency was already down, due to staff becoming accustomed to the new system: T20-37, lines 1-10 (Jones).

no-pays.³⁴⁵ The impact was that QHSSP workers were occasionally delayed and had to log out and log in again from time to time.

199. All of this was resolved by late April or early May³⁴⁶ by making the system meet Queensland Health's *new* load and usage requirements.
200. In essence, the system was asked to bear a far higher load than had been specified by the State. The specification or testing by the State ought have identified this usage or identified the problem earlier. This had knock-on effects that were managed expertly and quickly by IBM.

Other software issues

201. Other software issues have been identified principally by Ms. Stewart. These are dealt with at some length in the Statements of Messrs Kwiatkowski and Dymock of IBM. Specifically:
- a. Ms. Stewart and Mr. Reid point to an MVS publishing issue where “*occasionally*” an error would be shown suggesting a roster hadn’t been published when it has been successful.³⁴⁷ A report to identify impacted employees was developed within a day (so that impacted rosters could be re-added), and the issue was finally and urgently repaired by a “*hot fix*” on 25/26 April 2010.³⁴⁸ No pay was affected.
 - b. Ms. Stewart indicated the other ‘errors’ had to be addressed. In her oral evidence, Ms. Stewart made clear that these were not *system* errors, but rather *data* issues that were raised to be addressed by payroll staff. This was not a system fault or an “integration issue” properly defined.³⁴⁹
 - c. A flow on effect from the high load was that certain batch files for processing were created at the exact time in seconds (and named by date and time). The system was urgently changed to have filenames created which extended to

³⁴⁵ Ex 164 (Statement of Nickolas Kwiatkowski), paragraph [152].

³⁴⁶ Though some hubs had issues from time to time, these could be tied to Citrix or Queensland Health Wide-Area-Network issues (T20-61, line 48 to T20-62, line 20 (Jones)).

³⁴⁷ Though Ms. Stewart ventures that the inverse also occurred.

³⁴⁸ Ex 164 (Statement of Nickolas Kwiatkowski), paragraph [281]; Ex 163 (Statement of Mark Dymock), paragraphs [88]-[90].

³⁴⁹ T30-7, lines 6-37 (Stewart); T30-19, line 46 to T30-20, line 20 (Stewart).

milliseconds, resolving the issue.³⁵⁰

d. Ms. Stewart mentions a reconciliation tool was requested, but as Mr. Kwiatkowski identifies, this was out of scope, but it was given to Corptech anyway.³⁵¹

202. Ms. Jones indicated a possible “*roster corruption*” issue on an individual scale that would impact perhaps 100 staff across the State, but for which a fix was very quickly found.³⁵²

203. Finally, in the course of evidence, Mr. Grierson suggested the concurrent employment module “*hadn’t even been started as at June, July (2010)*”. Mr. Grierson, however, indicated he didn’t have direct knowledge of the state of the concurrent employment module, and in particular, no knowledge of CR73 or its deliverables.³⁵³ Mr. Lucas also mentioned concurrent employment.³⁵⁴ However, as Mr. Atzeni identified, concurrent employment was built, active and tested to Queensland Health’s satisfaction at go-live³⁵⁵ (and it was dealt with in CR73).

Non-system issues post Go-Live

204. As we have said, and as Ms. Stewart herself identified,³⁵⁶ it was the non-system issues which emerged as the major unexpected threat to the proper operation of the new payroll system.

205. These were significant, and emerged as the predominant cause of pay difficulties. They were exacerbated by a panic which took hold shortly after the new system was implemented. The panic was exacerbated by ill-informed media and union intervention.

206. This was expressed by a number of witnesses:

a. Ms. Jones indicated that the “*vast majority*” of complaints about pay, when

³⁵⁰ Ex 163 (Statement of Mark Dymock), paragraph [91(b)].
³⁵¹ Ex 163 (Statement of Nickolas Kwiatkowski), paragraph [122].
³⁵² T20-26, line 49 to T20-27, line 2; T20-64, lines 6-21 (Jones).
³⁵³ T34-82, lines 30-48 (Grierson).
³⁵⁴ T35-29, lines 5 to 29 (Lucas).
³⁵⁵ T31-58, lines 18-41 (Atzeni).
³⁵⁶ T30-9, line 13 to T30-10, line 20 (Stewart).

investigated, were tied to forms not having been processed for one of three reasons: the employee didn't provide it, the line manager didn't provide it, the payroll officer lost it or hadn't entered it.³⁵⁷

b. Ms. Jones further identified:

- i. QHSSP were (seemingly) directed that they could not withdraw money from anyone's pay, even if it were clear that there had been an overpayment.³⁵⁸
- ii. QHSSP were directed to pay everyone who claimed a pay defect without investigation.³⁵⁹
- iii. matters were getting better, until what she described in evidence as the "*catalyst*": a well-meaning but ultimately unfortunate email by Dr. Alcorn at the Royal Brisbane Hospital that advised staff who were having pay difficulties to, in essence, seek charity.³⁶⁰ The catalyst email caused:³⁶¹
 1. "*Everybody who ever had a payroll error*";
 2. "*Everyone who had a complaint about the organization*";
 3. "*Everyone who had something due to them for the last so many years*",

to lodge complaints with QHSSP, overloading their capacity.

c. In oral evidence, Ms. Jones explained:

Well, nothing went wrong except a catalyst amplified or concentrated the payroll concerns of Queensland Health staff and really brought in a large amount of media attention and brought in a lot of concern from employees and unions into an environment that had no clear ability to manage, escalate or respond to it so that level of media inquiry, employee concern and union

³⁵⁷ T20-71, lines 20-40 (Jones).

³⁵⁸ Ex 79 (Statement of Janette Jones), paragraphs [48], [50].

³⁵⁹ T20-74, lines 30-40 (Jones).

³⁶⁰ Ex 79 (Statement of Janette Jones), paragraphs [45]-[46].

³⁶¹ Ex 79 (Statement of Janette Jones), paragraph [46].

representation was not foreseen and was not able to be managed.³⁶²

And:

You were confident that your team would have been able to ... (catch up on the backlog of forms)... in a timely way except that you were overtaken by what I will describe as the panic response and we will come - - -? ---Yes.

*Would that be fair?---That's fair.*³⁶³

- d. IBM were not told matters that would have enabled them to properly direct assistance in managing any “defect” matters as Queensland Health were concerned it could alter the State’s contractual position.³⁶⁴
- e. Payroll staff were, at one stage, directed not to answer the phone, and so were not dealing directly with queries, even though other Queensland Health staff had been directed to call payroll.³⁶⁵ It was then decided that untrained, external, call centre staff “*who didn’t know Queensland Health let alone payroll*”³⁶⁶ would take a message and pass it to the QHSSP. A payroll staff member then would call the person back, and be abused for delay.³⁶⁷ This approach “*added to the confusion, the loss of control and the inability to respond to people’s concerns*”.³⁶⁸
- f. As to payroll processes more generally (emphasis added):

If we don't have a form, we don't put it in the system and we don't pay it. All of a sudden it would appear that everybody who believed they had a payroll inquiry or complaint or missed payment from whenever, not just the new system, from years ago even - they were saying, "Well, I haven't been paid. It's never been paid. It's never been right," and so it snowballed into payroll getting completely hammered with having to respond to an extraordinary level of complaint in the absence of any data or evidence that they're allowed to process something and it was just organisational panic, "So and so said they haven't been paid. We haven't got a roster, pay them anyway."

So how to respond in such an environment was very concerning for the payroll people who are used to having an artefact duly authorised in which to process. So it was a very uncertain time for them about whether they were allowed to enter things. Hospitals started sending in, "These staff need this

³⁶² T20-24, lines 9-18 (Jones).
³⁶³ T20-69, lines 50-60 (Jones).
³⁶⁴ Ex 79 (Statement of Janette Jones), paragraph [54].
³⁶⁵ T20-27, lines 16-20 (Jones).
³⁶⁶ T20-27, lines 16-20 (Jones).
³⁶⁷ T20-27, lines 20-32 (Jones).
³⁶⁸ T20-27, lines 22-23 (Jones).

paid." It might be five shifts on an evening; not which date, nothing like that, just five shifts and the payroll staff were going, "Can we pay this?" and I'm going, "You need to be able to pay them. Try and find out what days it was. Ring somebody." So it completely went around the accepted documentary process and due authorisation. It just concentrated every single historical payroll complaint down to tools allowances from, you know, 2009 hadn't been processed. This new system didn't even relate to 2009. It only knew from a certain date in 2010. So then we had to take teams off to try and fix LATTICE payments and get them over here because there was a high level of expectation on payroll that they just fix all of that stuff from whenever, as well as put the new system in.³⁶⁹

- g. As to the environment:

... So it was not about people being paid. It turned into a social judgment or a perception of the value Queensland Health had for its staff at that point. It stopped being about payroll.³⁷⁰

- h. Queensland Health staff were told that any pay issues would be fixed in "overnight" pay runs,³⁷¹ which led to the QHSSP being flooded with forms and expectations "it was not going to meet".³⁷² As expressed in oral evidence:

We were getting, I mean, hundreds of claims for overnight payment for between \$5 and \$100, when what payroll was trying to do was to basically triage issues and respond to them. We were getting a large number of forms submitted, "I haven't got it yet so I'm putting the form in again, I haven't got it yet, I'm putting the form in again." We had triplicate forms clogging the system, nobody knew had been paid, nobody knew if it was on a payroll spreadsheet from the district, a form from the employee. If it related to last year it wasn't on the current system, so there was no visibility about whether it had been processed at all so there was no time limit put on any of this, there was an expectation placed upon payroll that they would correct things overnight and unions, in some cases, even sent this out to their members. It was just completely unmanageable and was never going to be met.³⁷³

- i. Forms would have "quality issues", perhaps legibility,³⁷⁴ or using codes that had a local meaning, such as "ML" for "Morning Late" meaning a 10am start, that would make sense in a locality, but be meaningless in a pay hub.³⁷⁵
- j. Forms would be provided late,³⁷⁶ or not provided at all,³⁷⁷ and when investigated

³⁶⁹ T20-23, lines 23 to T20-24, line 5 (Jones).

³⁷⁰ T20-25, lines 26-30 (Jones).

³⁷¹ T20-73, lines 20-30 (Jones).

³⁷² T20-73, lines 33-37 (Jones).

³⁷³ T20-36, lines 38-54 (Jones).

³⁷⁴ T20-67, lines 1-5 (Jones).

³⁷⁵ T20-66, lines 30-41 (Jones).

³⁷⁶ T20-67, lines 7-20 (Jones).

this was generally the reason for complaints about pay that were received.³⁷⁸

k. That “*hundreds to thousands*” of the pay complaints related to pre go-live periods,³⁷⁹ (consistently with the evidence of Mr. Kwiatkowski).³⁸⁰

207. In these circumstances, Queensland Health’s institutional approach to responding to payroll inquiries was “*ridiculous and not in the control of any plan*”.³⁸¹

208. Ms. Stewart highlighted that the key unexpected feature of the implementation of the new payroll system was “*the impact that non-system issues [had] on the credibility of the Go Live and employee pay outcomes*”. Ms. Stewart indicated, in particular:³⁸²

a. backlog clearing being hampered by large volumes of late LATTICE forms;

b. inaccurate rosters;

c. SSP being directed to pay staff whatever they claimed without payroll evidence;

d. media, union and political “*attention*” meant that normal issues that were expected under LATTICE were attributed to new system faults, causing a slowing down of dealing with other “*real*” issues;³⁸³

e. in most cases when “*no pay issues*” were investigated, they were usually found to be in relation to missing forms or incorrect rosters or the issues described above;³⁸⁴

f. by design, SAP would simply recalculate pays when it received changes from Workbrain, and so employees would simply see deductions without a telephone call from the payroll office (which they had become used to under LATTICE), even if the pay was accurate. This functionality had to be changed.³⁸⁵

³⁷⁷ T20-67, lines 22-23 (Jones).

³⁷⁸ T20-67, lines 36-40 (Jones).

³⁷⁹ T20-72, lines 1-10 (Jones).

³⁸⁰ Ex 164 (Statement of Nickolas Kwiatkowski), paragraph [186].

³⁸¹ T20-27, lines 30-31 (Jones).

³⁸² Ex 118 (Statement of Jane Stewart), paragraphs [60]-[61].

³⁸³ Ex 118 (Statement of Jane Stewart), paragraph [62].

³⁸⁴ Ex 118 (Statement of Jane Stewart), paragraph [103].

³⁸⁵ Ex 118 (Statement of Jane Stewart), paragraphs [15]-[19].

209. This evidence was also consistent with the evidence of Mr. Grierson who indicated:
- a. that there were data issues;³⁸⁶
 - b. that such data issues included thousands of documents (possibly rosters) being located at a hospital and not having been entered prior to go-live;³⁸⁷
 - c. in 40-50% of no-pay instances there had been no bank code or account number input for those individuals;³⁸⁸
 - d. no one indicated to Mr. Grierson at *any* time that there was *any* computer/programming code problems which miscalculated pays;³⁸⁹
 - e. CITEC needed to add 60-70% more hardware to deal with the extreme load that was underspecified by Queensland Health;³⁹⁰
 - f. there were a “*lack of screens*” – i.e. that more computer screens would have made it easier to use,³⁹¹ though there is no evidence to suggest that this was other than a desktop PC decision of the State and not of IBM.
210. Again, Mr. Schwarten indicated that the system worked,³⁹² including when he would go to Rockhampton pay hubs and be repeatedly told that it *wasn't* a systems failure,³⁹³ and gave an example of someone who called his district office to complain about not receiving long service leave, which when investigated, showed that the person was not entitled to the leave that they claimed.³⁹⁴
211. Similarly, Mr. Lucas identified data entry and backlog processing as difficulties.³⁹⁵
212. Mr. Reid identified that:

³⁸⁶ Ex 116 (Statement of Mal Grierson), paragraph [54].

³⁸⁷ Ex 116 (Statement of Mal Grierson), paragraph [54].

³⁸⁸ Ex 116 (Statement of Mal Grierson), paragraph [54], (though it may have been as low as 30%, Mr. Grierson explained in oral evidence (T29-66, line 16 to T29-67, line 22)).

³⁸⁹ T29-77, lines 29-39 (Grierson).

³⁹⁰ E.g. T29-26, lines 11-50 (Grierson). Ex 116 (Statement of Mal Grierson), paragraph [53].

³⁹¹ T29-77, lines 26-27 (Grierson).

³⁹² T32-60, lines 33-50 (Schwarten).

³⁹³ T32-64, lines 19-32 (Schwarten).

³⁹⁴ T32-64, lines 35-50 (Schwarten).

³⁹⁵ T35-10, line 9 to T31-11, line 3 (Lucas).

- a. “sheer ignorance around what the payslips meant and what was in the various components of it” was a source of “many calls”,³⁹⁶ and that educating staff would be a change management group obligation;³⁹⁷
- b. difficulties with the fax network for getting forms to payhubs;³⁹⁸
- c. difficulties with multiple-submission of forms, leading to adjustments later;³⁹⁹
- d. that there were many types of such forms (in the order of 40-60), and part of the payroll stabilisation project was to standardise the forms, after the event;⁴⁰⁰
- e. that staff would use “local” codes when communicating with payhubs⁴⁰¹ (such that a payhub would not be able to comprehend them).

213. Mr. Kwiatkowski identified the non-system issues which impacted payroll he observed or learned of through the “forum” process he took part in:⁴⁰²

- a. no roster/timesheet, no pay, impacting thousands of staff;
- b. there was a backlog of entries prior to Go-Live: some 70,000+ adjustments that required entry, again impacting thousands of staff;
- c. there were over 40 different types of timesheets / roster adjustment forms which would often be meaningless to people in pay hubs who were unfamiliar with particular local practices;
- d. there were issues with the Queensland Health managed fax network, such that forms would be not be sent, or would be unreadable, or faxed multiple times;
- e. payslips, which were designed by Corpotech, were confusing staff, or were exposing long-standing problems with individuals’ pay;
- f. there was no ticket/tracking system for payroll issues so that there was

³⁹⁶ T23-55, lines 1-6 (Reid).

³⁹⁷ T23-55, lines 19-24 (Reid).

³⁹⁸ T23-55, lines 42-43 (Reid).

³⁹⁹ T23-55, lines 45-52 (Reid).

⁴⁰⁰ T23-55, line 55 to T23-56, line 3 (Reid).

⁴⁰¹ T23-56, lines 5-11 (Reid).

⁴⁰² Ex 164 (Statement of Nickolas Kwiatkowski), paragraph [166] onwards.

consistent double and triple handling of queries, leading to inaccuracies and greater workload;

- g. incorrect data had been migrated, causing, for example, ex-employees to be paid;
- h. unresolved issues from the LATTICE system were impacting QHSSP staff meaning that they were committed to attempting to rectify data migrated from the LATTICE systems;
- i. there was incorrect usage of the system (Workbrain) for roster entry and timesheet correction.

214. Further, Mr. Dymock identified that:

- a. in the “Go Live Data Transformation Report”, there were 1,164 priority 1 and 18,624 priority 3 data migration issues, each of which “*impacts employees’ pay*”, and that 8,046 casual employees had no roster, though this was allocated as a “priority 5”, even though it meant those 8,046 casual employees would not be paid. That is to say, the State knew its data migration would lead to thousands of no-pays.⁴⁰³ Data migration was a State responsibility;
- b. there were tens of thousands of backlog items;⁴⁰⁴
- c. no severity 1 defects (which is how any system issue leading to thousands of no-pays would have been categorised) were discovered, circulated, reported or discussed post go live;⁴⁰⁵
- d. there were significant other issues related to entering roster adjustments.⁴⁰⁶

215. Before long, pandemonium set in through politicisation,⁴⁰⁷ political decision making,⁴⁰⁸ and an incapacity to meet expectations (which were set at an unattainable

⁴⁰³ Ex 163 (Statement of Mark Dymock), paragraph [99].

⁴⁰⁴ Ex 163 (Statement of Mark Dymock), paragraph [100].

⁴⁰⁵ Ex 163 (Statement of Mark Dymock), paragraph [101].

⁴⁰⁶ Ex 163 (Statement of Mark Dymock), paragraph [102].

⁴⁰⁷ Ex 79 (Statement of Janette Jones), paragraph [46].

⁴⁰⁸ Ex 79 (Statement of Janette Jones), paragraph [50].

“overnight” level).⁴⁰⁹ Control of the payroll was lost by those who knew how to make it work.

The State’s submissions

216. The State asserts that “*the primary obligation – to ensure a system which worked inasmuch as people would be paid on time and accurately – was plainly not met ... The best indicator of that is the necessity for the Payroll Stabilisation Project*”.⁴¹⁰
217. This submission is an unjustifiable gloss (adopted in the questioning of many witnesses), and appears to suggest that IBM, despite providing a system that met specifications, was to blame for not anticipating that the State would misuse and overload the system, which even then, was not the real cause of people not being paid correctly.
218. It also adopts the outsider’s perspective that because of the confluence of time and circumstance as between the new payroll system becoming active and the pay issues which arose, the fundamental problems resided in the new software. This simplistic explanation has not met with support in the evidence nor did the State attempt to make it good with evidence.
219. That the State needed to create a committee (the PSP) to think about ways of improving its business processes is hardly evidence of a computer system failure. That this Committee set about re-organising the business processes of the State in line with a KPMG report further highlights the difficulty with the State’s submissions. The State had to outsource to a private provider to understand that which was obvious to the people with day-to-day management of the payroll. In any event, the report principally identified business process changes that were required within Queensland Health. The only significant suggestions that the report indicates in relation to computer systems is that a single issue log ought be maintained,⁴¹¹ whilst noting that some defects had been reported that would need to be investigated, that performance had been improved, payroll staff ought have dual screens to perform their job, and that visual changes should be made to some screens to retain labels when plotting

⁴⁰⁹ Ex 79 (Statement of Janette Jones), paragraph [34].

⁴¹⁰ Submissions on behalf of State of Queensland (undated), paragraphs [72]-[73].

⁴¹¹ Annexures to Statement of Michael Walsh (Ex 121), p 7.

rosters.⁴¹² The exhibited “Dashboard Report” does not appear to identify systems issues, so much as business or data entry issues.⁴¹³

220. The State further relies upon Mr. Walsh, a witness, who was not available for cross-examination despite it being stated that he would be called. Moreover, his evidence (in Exhibit 93) was shown to predominantly include matters from the DMP, or items which the State had expressly asked for (or failed to ask for) and for which they agreed to pay IBM, under the guise of a separate Statement of Work (Exhibit 99), to perform.⁴¹⁴ An annexure of that witness, being an “issues log” is relied upon to suggest that the delivery of the system from IBM was at fault.
221. Yet, it is this kind of idle, disinterested avoidance of detail that IBM has had to contend with across the entirety of the project. A cursory examination of some of the items gives pause and identifies that it is, in essence, a series of questions that may need to be investigated, but that does not support a contention of failure. Relevantly, not *one* of these jobs is assigned to IBM. That employees had issues in the deployment of the new system is not seriously in doubt. Whether the reason was an in-scope, system failure, for which IBM was responsible is in doubt. The State makes no attempt to answer that question with any rigor.
222. Mr. Walsh himself identifies that the PSP dealt with business processes, payroll processes, staff support and communications as well as data issues and operational issues, alongside “*system defects*”.⁴¹⁵ He was unable to identify the cause of pay errors, but noted that, when giving detail: “*There were problems getting rosters into the system, ... In addition, there were data migration problems that arose ... and the centralisation of payroll staff meant that they did not have any local knowledge... All of these factors contributed to casuals not getting paid, as well as ‘no roster – no pay’*”.⁴¹⁶ Mr. Walsh goes on to identify the “*improvements*” he made while at the PSP and PIP, of which 7 of the 8 are business process related, and only one is directed to “*fixes and improvements*” of the system. Far from supporting the State’s point, Mr.

⁴¹² Annexures to Statement of Michael Walsh (Ex 121), p 13.

⁴¹³ Annexures to Statement of Michael Walsh (Ex 121), p 23.

⁴¹⁴ Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [270]-[293]; Ex 163 (Statement of Mark Dymock), paragraph [106].

⁴¹⁵ Ex 121 (Statement of Michael Walsh), paragraph [11].

⁴¹⁶ Ex 121 (Statement of Michael Walsh), paragraph [20].

Walsh's statement supports the contrary: the PSP was required to meet significant business process failings of the State.

223. The State further advances the contention that Mr. Walsh's statement indicates that interim payments were required "*due to the failure of the system*", yet there is no evidence to suggest that is so. At most, Mr. Walsh's statement indicates that the number of alterations and ad-hoc payments decreased over time,⁴¹⁷
224. What the evidence ultimately bears out was organisational panic, use of the computer system by improperly trained staff and a series of policies (such as "pay everyone anything they claim") which, while undoubtedly well meaning, had the ultimate impact of entering a series of payment instructions in to the system which later had to be clawed back when they were shown to be unauthorised or wrong. The system properly paid these people in line with the data that was entered into it. That the information and data entered in to the system was wrong was not of IBM's doing or within its control.

ISSUE 6D: Design & Build of Workbrain (Was IBM's performance deficient in the design and build of the Workbrain component of the interim solution, and especially Workbrain's integration with SAP and the extensions required to be made to Workbrain?)

Summary

225. The best direct technical and independent evidence of the quality of the Workbrain design and build appears in an audit undertaken by Infor, the vendor of Workbrain, in late 2009, not long before the software was put into production. Infor concluded:⁴¹⁸

Infor has reviewed the implementation for Queensland Health from Functional, Technical and Infrastructure perspectives. Overall, Infor found the solution implemented for QLD Health to be reasonable as per Infor's best practice...

From a functional perspective, the solution was generally found to be fit for purpose...

From a technical perspective, Infor conducted selective code reviews by identifying a number of key areas in the application (including pay rules) which had a high level of influence on performance outcomes. On the whole, the code artifacts reviewed were

⁴¹⁷ Ex 121 (Statement of Michael Walsh), paragraph [35].

⁴¹⁸ CMTB, Vol 12, p 49.

found to be of good quality. In particular, it was noted that the level of unit test coverage within the code artifacts was exceptionally good...

226. Against this, the evidence suggesting problems with Workbrain is less direct, less impartial and more generalised. It should not form a basis for a finding that IBM's performance was deficient.

Detailed consideration

227. Mr. Kwiatkowski indicated, the *design* of the integration was a matter for Corptech, and no criticism can be fairly levelled at IBM in respect of it, particularly as IBM had recommended a different approach.⁴¹⁹

228. The performance issues, as described above, did not relate to a poor build, or poor build quality, but rather, a system operating under extreme load. This 550-600% excess load had two resultant outcomes:

- a. Workbrain was working far outside its tolerances, so some core code updates that ought be made (which were not part of IBM's "Build") were made;
- b. the requirement for the SAP file naming change. The components were properly built for a system working within the specified load (and number of changes). The ultimate change was minor: import records with a file name specific to the second were changed to make file names extend to the millisecond. This is not a serious defect or build deficiency.

229. The intermittent MVS Publishing issue, whilst an irritation, was a basic bug that was promptly fixed in an otherwise highly complex, functioning system. It was not indicative of poor design or of deficient build. It was a minor error message that was misreporting and did not significantly affect pay.

230. In light of these matters, it cannot be said that there was a serious build deficiency with Workbrain or its components.

231. At no point was evidence given that SAP-Workbrain integration a serious difficulty after go-live or to this day. Both Mr. Hickey and Mr. Kwiatkowski identified integrating Workbrain to SAP was not particularly innovative and was rather "*straight*

⁴¹⁹ Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [34]-[36], [39]-[43].

forward'.⁴²⁰

232. As to the system itself, from those who had use of it:⁴²¹

... Are you able to compare, from your own knowledge, the numbers of people paid wrongly in the beginning of the new system after go live compared to the numbers under LATTICE?

--I can't compare numbers, we never got to the point where I was involved in any analysis of that. However, the types of issues were similar and I felt that system driven overpayments were down and payroll staff calculation error was down, because the system was a superior system to what we were used to. Given appropriate or reasonable ability go through a review process of that, I think that would have been the findings but, of course, we never did that. If somebody did, I'm not aware of it.

233. Ms. Jones identified that, subject to the performance and roster issue, the system performed as expected.⁴²² Ms. Stewart suggested the system improved over time.⁴²³

234. The State suggests that because Ms. Stewart testified that in the past few years, many changes had been made to the system to better meet the needs of Queensland Health, something was by inference, wrong at go-live.⁴²⁴ Yet, again, IBM is faced with an impenetrable and opaque assertion of it having delivered something which required amendment, but no detail which allowed the proposition to be tested. The person offering the criticism and count "brushed over" the scope documents, despite being a member of the directorate,⁴²⁵ and does not descend to detail to identify what the asserted "defects" were, let alone what requirement they related to and whether the requirement was the responsibility of IBM.

235. Absent any detail, IBM can simply indicate that it was always an interim system to meet minimal HR functions that were scoped and approved as meeting Queensland Health's needs at the time. That such further, non-specific changes were made cannot, without more, lead to a conclusion that there was any serious defect in the way the system worked or integrated its components. Ms. Stewart was in a position to give specific numbers of changes, and seemingly would therefore be in a position to

⁴²⁰ T26-77, lines 13-25 (Hickey).

⁴²¹ T20-37, lines 14-30 (Jones).

⁴²² T20-60, lines 6-10 (Jones).

⁴²³ T30-17, lines 44-49 (Stewart).

⁴²⁴ Submissions on behalf of State of Queensland (undated), paragraph [102].

⁴²⁵ T29-114, lines 21-25 (Stewart).

identify those changes. That did not happen. That the State did not give a drop of real detail undermines any possible conclusion, particularly as whenever the State has given detail, IBM has been able to properly identify, in each case, the weakness of the assertion within the contractual matrix.

236. Yet, the State asserts that Ms. Stewart's evidence indicates that there were substantial failings of the system. As to that submission:

- a. paragraphs 103 (a), (d), (e), (f), (g), (h), (i), (l) are varying restatements of “*performance issues*” or their consequences discussed above;
- b. paragraph 103(b) is unspecified assertion about “*challenges*” with concurrent employment;
- c. paragraph 103(c) relates to the MVS issue, discussed above;
- d. paragraph 103(j) overlooks that “*error messages*” in the context meant items that an operator had to review, such as missing data, not that the computer system had an error;⁴²⁶
- e. paragraph 103(m) is a complaint about not receiving an out of scope reconciliation tool, also dealt with above.

237. The State then uses these points to assert that “*IBM failed to properly perform its role and deliver a suitable interim solution*”.⁴²⁷ With respect, the claim is unfounded. The State failed to properly specify the number of users and usage of the system. The system then ran slower and as a result of the extreme load put on it, needed some other *software* performance enhancements, together with a 60-70% increase in *physical hardware*, to meet the State's load demands.

238. Far from IBM “*falling well short of an acceptable result*”, the only substantial consequence of a 550%-600% increase in load on the system was that the system ran slower than expected, and some files needed to be more granularly named (to the millisecond instead of second) to deal with the frequency of changes being entered.

⁴²⁶ T30-7, lines 30-60 (Stewart).

⁴²⁷ Submissions on behalf of State of Queensland (undated), paragraph [104].

239. The State then asserts that it was therefore time pressures that meant IBM could not deliver. The time pressures were a function of the State's failures to indicate its requirements, or to shift its requirements throughout. It was not a function of IBM's delivered system.
240. Ultimately, the State acknowledges "*human error*" as partially to blame in the early pay runs,⁴²⁸ but submits it was IBM's system that made the system overwhelming. The evidence does not bear out the conclusion. Even if the performance issues were solely because of IBM, they were incrementally improved and substantially resolved by 7 May 2010.⁴²⁹ A slow-down in entering timesheets did not cause the dysfunction and organisational panic that the witnesses spoke of.
241. The design and build of Workbrain met the requirements specified. When MVS publishing had an intermittent error, it was immediately worked-around and quickly fixed. When performance issues arose, even though they were not IBM's fault, IBM immediately assembled and deployed a team of highly trained specialists to assist.⁴³⁰ Far from suggesting that IBM did not have the skills to perform the work, external specialists were required because IBM's own staff were already committed to assisting the State with performing their own functions which were outside of IBM's remit.⁴³¹
242. There is no proper basis for a finding against IBM.

SUBMISSIONS OF OTHER PARTIES

Submissions of Berenyi

243. Ms. Berenyi lodged submissions dated 31 May 2013. Those submissions make a number of points, but, in relation to IBM, they may be dealt with in narrow compass. In general, the submissions are vague, and made without reference to the specifics of the contractual arrangements between the parties.

⁴²⁸ Submissions on behalf of State of Queensland (undated), paragraph [106].

⁴²⁹ See e.g. Ex 82.

⁴³⁰ Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [145]-[146].

⁴³¹ Ex 164 (Statement of Nickolas Kwiatkowski), paragraph [300].

244. At paragraph 6, it is asserted that IBM’s obligation was to “*deliver a legislatively-compliant pay system to QH which not only paid employees correctly, but accurately dealt with employees’ superannuation and leave entitlements*”. There is no reason to suppose the system was not capable of this. The basis for this claim is a number of transcript references to the examination of Ms. Berenyi and not to contractual documents.
245. The submissions also focus upon Ms. Berenyi’s “*motivations*”,⁴³² attempts to identify what she might think the words “*minimal*”,⁴³³ or “*interim*”,⁴³⁴ may mean, or more general statements about people getting paid.⁴³⁵ These matters are not of relevance. The contract was a fixed price obligation upon IBM to deliver a particular thing. That particular thing was identified in the scope documents which were signed off. The ongoing use of vague allegations is unhelpful and counterproductive.
246. At paragraph 9(b), Ms. Berenyi asserts that IBM and Queensland Health had inadequately identified Queensland Health’s requirements. We have dealt with this already above. Ms. Berenyi was of course not involved in the QHIC Project when scoping was carried out.
247. At paragraph 9(d), attention is given to the asserted lack of an integrated project schedule and a traceability matrix. The topic of the integrated schedule was dealt with in evidence by Mr. Hickey, as it was a complaint raised by Mr. Beeston. In essence, though each sub-program had a schedule, Mr. Beeston wanted a single schedule for the entire program, which would have taken a great deal of work. IBM ultimately provided this, though it was not required to, and routinely provided all sub-program schedules.⁴³⁶
248. At paragraphs 9(g)(A) and 9(g)(B) it is suggested that legal advice restrained actions that could deal with “*IBM’s ‘out of scope’ arguments*”,⁴³⁷ or that “*CorpTech’s conduct (including silence) had arguably amounted to acceptance of unsatisfactory*

⁴³² T27-63, lines 36-38 (Berenyi).

⁴³³ T27-63, lines 1-18 (Berenyi).

⁴³⁴ T27-71, lines 9-25 (Berenyi).

⁴³⁵ T27-55, lines 38-42 (Berenyi).

⁴³⁶ T26-67, lines 13-55 (Hickey); Ex 114.

⁴³⁷ Ex 113 (Statement of Margaret Berenyi), paragraph [236].

conduct by IBM and Project deliverables”.⁴³⁸

249. Of course these all assume some breach of contract by IBM, which has not been identified and which are based upon, apparently, only the internal State materials that Ms. Berenyi read upon joining the project.⁴³⁹ The conduct of IBM said to be unsatisfactory was that which was said in the briefing note to Mallesons. That document is of course no evidence of the truth of its contents.
250. At paragraph 10(g), Ms. Berenyi asserts that CR184 was to resolve “*all current and future disputes with IBM about scope ...*”, though goes on to use less absolute language, saying that CR184 and the other steps “*sought to eliminate future disputes about scope*”.⁴⁴⁰ Whatever the subjective intention that Ms. Berenyi may have had, the language of CR184 and the subsequent CR’s speak for themselves.
251. As a matter of contract law, and common sense, it is of course not possible to deal with the substance of all future contractual variations before they occur.

Submissions of Kalimnios, Shea and Brown

252. The submissions of Kalimnios, Shea and Brown (for convenience, the **KSB Submissions**) specifically do not deal with the “underlying cause” of difficulties with the payroll system,⁴⁴¹ and thereby do not particularly engage with issues to which IBM has an interest, save in the following respects.
253. The KSB submissions appear to suggest that the Defects Management Plan somehow impacted the project, when this was expressly disavowed by those with carriage of it.⁴⁴²
254. What the KSB submissions do note at paragraph 34(b) is that at the meeting of 24 February 2010, Ms. Du Plessis advised that “*All risks associated with QH’s business readiness were ‘fully mitigated’*”, with reference to Shea ([64]) and Berenyi ([184]). Curiously, this appears to be where the implementation of the new system most plainly failed: not in the computer system aspects, but in the business readiness of

⁴³⁸ Ex 113 (Statement of Margaret Berenyi), paragraph [20(r)]; T27-66, lines 1-10 (Berenyi).

⁴³⁹ Ex 113 (Statement of Margaret Berenyi), paragraph [20].

⁴⁴⁰ Submissions on behalf of Margaret Berenyi dated 31 May 2013, paragraph [11].

⁴⁴¹ KSB Submissions dated 11 June 2013, paragraph [4].

⁴⁴² KSB Submissions dated 11 June 2013, e.g. paragraphs [18], [20], [22], [55].

Queensland Health.

255. The KSB submissions indicate that Mr. Kalimnios was “*conscious*” that Queensland Health has received a “*poor quality product in terms of what it should have expected*”,⁴⁴³ and that theme is repeated later in the submissions.⁴⁴⁴ But, Mr. Kalimnios identified that he took the advice of others,⁴⁴⁵ particularly Mr. Price, who hadn’t read the scope documents, and nor did Mr. Kalimnios.⁴⁴⁶ There is no evidence that Mr. Kalimnios did otherwise than take advice. His was not an informed view, nor, with respect, an accurate one.
256. That Queensland Health “*expected*” something is of no moment (save to explain Mr. Kalimnios’ disappointment) given Queensland Health was never able to bring itself to align its expectations to its contractual entitlements, nor (worse still) to fully and comprehensively tell IBM what it expected.
257. The KSB submissions indicate that that Board was misled about data migration, one of the core issues that failed after go-live.⁴⁴⁷ This was not an IBM responsibility.⁴⁴⁸
258. Whilst the KSB submissions make further, vague allegations that “*the system was not being delivered*”⁴⁴⁹ or that “*IBM had failed to deliver against the Project Schedule, resulting in additional costs being incurred by Queensland Health*”,⁴⁵⁰ these points, again, reflected material that was passed third and fourth hand around Queensland Health, and was unreflective of the actual state of play at the relevant times,⁴⁵¹ and as ever, failed to take in to account any delay occasioned by (or even asked for by) Queensland Health.

⁴⁴³ KSB Submissions dated 11 June 2013, paragraph [56].

⁴⁴⁴ KSB Submissions dated 11 June 2013, paragraph [95].

⁴⁴⁵ T21-106, lines 40-60 (Kalimnios).

⁴⁴⁶ T21-106, lines 52-55 (Kalimnios); T21-22, lines 15-30 (Price); T21-31, line 31 to T21-33, line 30 (Price); T21-43, line 10 to T21-44, line 35 (Price); T21-44, line 50 to T21-45, line 19 (Price); T21-71, lines 11-15 (Price); T21-78, line 54 to T21-80, line 35 (Price).

⁴⁴⁷ KSB Submissions dated 11 June 2013, paragraph [65].

⁴⁴⁸ Ex 164 (Statement of Nickolas Kwiatkowski), paragraphs [153]-[160]; CMTB, Vol 4, pp 151-154. See also, e.g. T20-72, lines 40-55 (Jones).

⁴⁴⁹ KSB Submissions dated 11 June 2013, paragraph [93].

⁴⁵⁰ KSB Submissions dated 11 June 2013, paragraph [94].

⁴⁵¹ T21-91, lines 21-26 (Kalimnios); T21-96, lines 13-19 (Kalimnios); T21-97, lines 51-55 (Kalimnios); Ex 89 (Statement of Michael Kalimnios), paragraphs [26], [32], [45]-[48]; Ex 80 (Statement of Adrian Shea), paragraphs [23]-[24], [50], [70]; T22-3, lines 4-11 (Shea); T22-4, lines 41-52 (Shea); T22-15, lines 23-41 (Shea); T22-20, lines 3-9 (Shea); T22-25, lines 32-41 (Shea); T22-26, lines 1-9 (Shea); T21-65, line 1-29 (Price).

Submissions of Price

259. Submissions were delivered by counsel for Mr. Price dated 30 May 2013.
260. Mr. Price was the Director of QHEST, the IT arm of Queensland Health responsible for ensuring that Queensland Health could implement the whole of government ERP program,⁴⁵² including the new human resources and payroll software of which the interim software provided through the QHIC Project formed part.
261. But Mr. Price had no understanding at all of the contractual scope of the QHIC Project. He considered it a “*compressed implementation of the whole of government*” software.⁴⁵³ The following exchanges are demonstrative of this lack of understanding:⁴⁵⁴

the scoping done on the statement of work 7, for instance, if that's what you mean... was all completed before I got there so... I have no real knowledge or view of that at all.

...

Were you aware of the documents which then contained or expressed the scope which it emerged from statement of work 7?---Not really, no, there was only one document that I knew of when I arrived when QHEST was underway and that was the business attributes document.

...

Do you recall a document identified as the QHIC Scope Definition document?---Not particularly, no.

No?---I can't recall it.

All right. I will get you shown statement of work 8. It's in volume 4 at page 15, please?---Yes.

Now, does that [Statement of Work 8] look familiar to you, something that you saw back in April?---Yes. I'm sure it's something that I would have had access to, to have a look at.

So that if you read that, you would have realized that such a document [the QHIC Scope Definition] existed?---Mm'hm.

Did you look at it [the QHIC Scope Definition document]?---I don't recall. I may have.

You recall you didn't, don't you?---Correct.

You were asked about this on Friday. You recall that you didn't look at it?---No, I don't

⁴⁵² Ex 83 (Statement of Anthony Price), paragraph [7].

⁴⁵³ Ex 83 (Statement of Anthony Price), paragraph [15(d)].

⁴⁵⁴ T20-78, lines 12-19 (Price); T20-79, lines 1-6 (Price); T21-31, line 36 to T21-32, line 35 (Price).

recall – I mean, if we were talking about statement of work 7, I don't recall ever looking at that but certainly this document 8 I would have looked at.

Right?---And the project scope – again, I probably looked at. I can't recall.

All right. Have you looked at it recently?---No.

So you can't help us, please, with what it says about what is and what is not within scope of the job to be performed by IBM?---No.

So when we read your statement, we shouldn't view it as reflecting an understanding which you have refreshed your memory about by looking at the scope document in April 2008... You didn't, prior to saying your statement, look at the QHIC scope document to refresh your memory as to the comments? ---No.

(emphasis added)

262. Mr. Price's submissions principally deal with the internecine dispute between employees and agents of the State as to responsibility. Insofar as they deal with issues relating to IBM, the submissions may be dealt with in narrow compass.
- a. Mr. Price asserts there were people above and below him who were critical of "the performance of IBM", but does not go further, save to repeat generic and non-specific tropes without foundation;⁴⁵⁵
 - b. Insofar as the point about the HR-FI integration system is raised,⁴⁵⁶ that is dealt with above. In essence: it was Queensland Health's obligation to prepare the MAN series of applications. They failed in that, and had to contract to have the integration done another way.
 - c. Insofar as there is a suggestion that there was conflict between IBM and Mr. Price,⁴⁵⁷ this was unsurprising. Mr. Price would whitewash minutes of meetings,⁴⁵⁸ and would refuse to give IBM detail about the true position of change readiness within Queensland Health.⁴⁵⁹ Furthermore, the degree to which the Directorate called upon Mr. Cowan when it was chaired by Mr. Brown (of Corptech) instead of Mr. Price (of Queensland Health, and Mr. Cowan's employer) is unsurprising.

⁴⁵⁵ Submissions on behalf of Anthony Price dated 30 May 2013, paragraph [18].

⁴⁵⁶ Submissions on behalf of Anthony Price dated 30 May 2013, paragraphs [12], [16]-[17].

⁴⁵⁷ Submissions on behalf of Anthony Price dated 30 May 2013, paragraphs [46]-[47].

⁴⁵⁸ Ex 103 (Statement of William Doak), paragraph [167].

⁴⁵⁹ Ex 103 (Statement of William Doak), paragraph [200].

Staffing Numbers

263. No reliable figures for payroll staffing were given, and indeed, staffing estimates given by different witnesses fluctuated, such that it would be unsafe to rely on any particular figure, and impossible to suggest a link between staffing numbers and the system delivered by IBM.
264. For example, Ms. Jones (who oversaw the QHSSP) estimated staffing as:
- a. LATTICE relying upon “600 payroll officers” putting data in;⁴⁶⁰
 - b. in early 2008, QHSSP being understaffed with approximately 500 employees;⁴⁶¹
 - c. this was increased to 800 to allow people to be trained;⁴⁶²
 - d. there were 700 “needed” payroll people to run LATTICE;⁴⁶³
 - e. counting project staff and consultants, there were about 1000 people,⁴⁶⁴ about 800 of which were at Go-Live;⁴⁶⁵
 - f. that after (it seems, full) Shared Services was introduced, it was expected that when final systems went live, there would be a reduction in payroll staff;⁴⁶⁶
 - g. but Ms. Jones ultimately indicated she didn’t know the actual number.⁴⁶⁷
265. Mr. Atzeni indicated 400 to 500 people throughout the State were necessary to keep LATTICE running.⁴⁶⁸
266. Yet, Mr. Reid, (though indicating he wouldn’t rightly know), ball-parked staffing at 842 in 2007 at Counsel Assisting’s prompting, though later expanding to over 1000

⁴⁶⁰ Ex 79 (Statement of Janette Jones), paragraph [34].

⁴⁶¹ Ex 79 (Statement of Janette Jones), paragraphs [38]-[39].

⁴⁶² Ex 79 (Statement of Janette Jones), paragraph [41].

⁴⁶³ Ex 79 (Statement of Janette Jones), paragraph [51].

⁴⁶⁴ Ex 79 (Statement of Janette Jones), paragraph [51].

⁴⁶⁵ T20-27, lines 6-7 (Jones).

⁴⁶⁶ Ex 79 (Statement of Janette Jones), paragraph [39].

⁴⁶⁷ T20-27, line 6 (Jones).

⁴⁶⁸ T9-25, line 45 to T9-26, line 26 (Atzeni).

by the time Mr. Reid left.⁴⁶⁹

267. Mr. Shea agreed with a number of about 1000 people prior to go-live.⁴⁷⁰
268. Mr. Kalimnios agreed with suggestions that staffing expanded from 500 to 1000 people, though without identifying a time period.⁴⁷¹
269. Mr. Walsh indicated figures of 550-650 FTE, with an additional 50 or so central payroll staff, that was later increased to 900 FTE and later 1,010 staff.⁴⁷²
270. In light of such fluctuations in evidence, the staffing levels cannot be assessed with any rigor.

CONCLUSIONS

271. The suggestion that IBM delivered a deficient system is apocryphal. The major issues post go-live were Queensland Health business process and data migration related, neither of which IBM was contracted to perform.
272. There were some issues when the system went live. In the launch of any major system, some go live issues are always expected. They were managed as and when they arose. Any actual difficulty was dealt with by an immediate remedy within contractually mandated periods.
273. The only major unforeseen matter was that the system had performance difficulties. This did not lead to pay miscalculations or no-pays. Whilst it may have impacted the speed with which QHSSP staff could enter timesheets, those QHSSP staff were already flooded by “non-system” difficulties: a massive backlog of forms, the decision of no timesheet/roster no pay, the change to a hub business model, untrained hub workers with region-specific forms, directions not to touch pays and to pay everyone anything they claimed, directions not to answer phone lines for inquiries leaving staff in the dark, and so forth. In all, a politically charged environment. Then that policy changed, and the State started to claim back payments with automatic

⁴⁶⁹ T22-94, lines 21-42 (Reid).

⁴⁷⁰ T22-19, lines 31-51 (Shea).

⁴⁷¹ T21-95, line 48 to T21-96, line10 (Kalimnios).

⁴⁷² Ex 121 (Statement of Michael Walsh), paragraphs [24], [26], [27].

deductions and without notifying people. This lead to more complaints.

274. These were not computer system difficulties. These were business, change management and training failures. They were not the decisions of IBM, nor decisions to which IBM had input. They were, in fact, decisions which IBM was told to keep out of.
275. IBM performed its lawful obligations properly, competently and precisely, erring, unfailingly on the side of over-delivering on its promises, providing free functionality, acting in good faith, and assisting the State wherever it could.
276. It cannot and ought not be criticised for performing the best possible job in acrimonious and adversarial circumstances, and where the very system complained of is still in use and paying Queensland Health staff to this day.

Counsel for IBM Australia Ltd
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