



Queensland Health Payroll System Commission of Inquiry

.....

REPORT

31 July 2013

The Honourable Richard N Chesterman AO RFD QC



31 July 2013

The Honourable Campbell Newman MP
Premier of Queensland
PO Box 15185
CITY EAST QLD 4002

Dear Premier

As required by the terms of Orders-in-Council of 13 December 2012 and 18 April 2013 I have made a full and careful inquiry into the implementation of the Queensland Health Payroll System, and present the Report of the Commission of Inquiry.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R. Chesterman'.

The Hon Richard Chesterman AO RFD QC
Commissioner
Queensland Health Payroll System Commission of Inquiry



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TABLE OF PROVISIONS

Page

Short title 1

Commencement 1

Appointment of Commission 1

Commission to report 1

Application of Act 1

Conduct of Inquiry 1

Short title

1. This Order in Council may be cited as the *Commissions Of Inquiry Order (No. 2) 2012*.

Commencement

2. This Order in Council commences on 1 February 2013.

Appointment of Commission

3. UNDER the provisions of the *Commissions of Inquiry Act 1950* the Governor in Council hereby appoints the Honourable Richard Chesterman AO RFD QC from 1 February 2013, to make full and careful inquiry, in an open and independent manner, into the implementation of the Queensland Health payroll system with respect to the following matters, and having regard to previous reviews of the Queensland Health payroll system implementation, including the KPMG implementation review and the Auditor-General of Queensland's report titled *Information systems governance and control, including the Queensland Health Implementation of Continuity Project (2010)*:

- a. the adequacy and integrity of the procurement, contract management, project management, governance and implementation process;
- b. whether any laws, contractual provisions, codes of conduct or other government standards may have been breached during the procurement and/or implementation process and who may be accountable;
- c. the contractual arrangements between the State of Queensland and IBM Australia Ltd and why and to what extent the contract price for the Queensland Health payroll system increased over time;

d. any recommended changes to existing procurement, contract and project management (including governance) policies, processes, standards and contractual arrangements for major Queensland government information and communication technology projects initiated in the future to ensure the delivery of high quality and cost effective products and systems; and

e. any other matter relevant to this review.

Commission to report

4. AND directs that the Commissioner make full and faithful report and recommendations on the aforesaid subject matter of inquiry, and transmit the same to the Honourable the Premier by 30 April 2013.

Application of Act

5. THE provisions of the *Commissions of Inquiry Act 1950* shall be applicable for the purposes of this inquiry except for section 19C – Authority to use listening devices.

Conduct of Inquiry

6. THE Commissioner may hold public and private hearings in such a manner and in such locations as may be necessary and convenient.

ENDNOTES

1. Made by the Governor in Council on 13 December 2012.
2. Notified in the Gazette on 14 December 2012.
3. Not required to be laid before the Legislative Assembly.
4. The administering agency is the Department of Justice and Attorney-General



Commissioner

The Honourable Richard N Chesterman AO RFD QC was admitted to practice as a barrister in 1968, and appointed Queen's Counsel in December 1983.

He worked in private practice as a barrister for over 27 years, during which time he practised in all areas of litigation. He specialised in commercial work and he was widely briefed in areas including banking and finance, insurance, and building and construction.

Mr Chesterman was also retained as Senior Counsel assisting a Royal Commission of Inquiry in Tasmania, and appeared in three other major public inquiries, including one as chairman.

He was appointed a Justice of the Supreme Court of Queensland in March 1998, and he served as a Judge of the Commercial List of the Supreme Court from 2002 to 2008. He was appointed to the Court of Appeal on 8 December 2008. In 2011 he was made an Officer of the Order of Australia for distinguished service to the judiciary. He retired in April 2012.

On 13 December 2012, by Commission of Inquiry Order (No. 2) 2012, Executive Council appointed Mr Chesterman to make a full and careful inquiry, in an open and independent manner, into the implementation of the Queensland Health payroll system.

Table of Contents

Introduction	9
1. Procurement	15
1. Introduction	15
2. Reviews of the SS Initiative	16
Findings of April Review	19
Mr Burns' May Review	20
Mr Bradley and Mr Burns	25
Findings of Burns' May Review	26
Mr Burns and Mr Bloomfield	27
Mr Burns and Mr Bond	33
Mr Burns' New Engagement	34
3. Request for Information (RFI)	36
4. Request for Proposal (RFP)	37
Why a Prime Contractor?	38
Responses to RFP	40
Mr Atzeni's Preference for IBM	41
Contact Between Mr Burns and IBM during the RFP	43
Access to Confidential Information	45
IBM's Conduct during the RFP	46
Email of Cheryl Jensen	51
Email of Joseph Sullivan	53
Mr Bloomfield's Bonus	56
5. Invitation to Tender (ITO)	57
LATTICE	60
Mr Burns' Role in the Evaluation	61
Evaluation of ITO	62
Workbrain	62
The Evaluation Changes	65
Suitability of Workbrain	71
No Probity Advisor	74
No Conflicts Register	75
Price	76
Evaluation Process was not Administered Properly	82
Selection of Prime Contractor	82
Execution of Contract	84
6. Procurement: Conclusions	85

2. Contract and Project Management	90
1. Introduction	90
2. Overview	92
Urgency and Scoping	92
Governance and Major Players	94
Implementation of the Project	96
Cost and Time.....	97
The Management Processes	98
3. The Contract	99
4. Scoping	100
What was Required	100
Mr Atzeni.....	104
Human Resources/Finance Integration	105
Change 184	107
Findings	112
5. The Deficient System and the Opportunities to Redress it	113
User Acceptance Testing.....	114
Mr Kwiatkowski.....	120
Mr Dymock.....	121
Mr Cowan.....	123
System and System Integration Testing.....	123
Payroll Performance Testing	128
The Rescoping.....	132
Mr Price’s Memorandum of 6 July 2009	139
6. The Decision to Go Live	143
Submissions	150
Findings and Conclusion.....	151
Consequences for Staff of the Go Live Decision	151
7. System Inadequacies	154
Introduction.....	154
Problems Identified in UAT	155
The First Three Pay Runs.....	155
Payroll Stabilisation and Improvement	159
Other Factors Contributing to the Pay Problems	159
IBM’s Submissions	161
A Deficient System.....	162
3. Settlement	170
1. Introduction	170
2. Preliminary Observations	171
3. The Supplemental Agreement	171
The Delay Notice.....	173
Notice to Remedy	175
The Options Available to the State.....	178
The KPMG Advice.....	183
Negotiation is the Preferred Option	185
Grierson Meets with IBM.....	186

4. Factors that Influenced the Decision	194
The Auditor-General's Report	195
Threat by IBM to Sue	197
Assessment of Risks	199
The Unsupported System Fear	200
No Risk too Small	201
Investigation was Lacking	203
No Risk of Catastrophic Collapse if IBM's Services were to be Terminated	204
5. Mr Reid	206
6. Mr Grierson	208
7. Conclusions	210
4. Summary	213
5. Recommendations	217
1. Introduction	217
2. Lessons to be Learned	217
3. Project Management for Future Projects	220
4. Future of the Queensland Health Payroll System	220
5. Principles of Project Management	221
Appendices	225
Appendix 1	
Establishment and Operations	226
Appendix 2	
QH Payroll System Timeline	230
Appendix 3	
Opening Remarks	232
Appendix 4	
Copy of Public Notice	244
Appendix 5	
Acknowledgements	245
Appendix 6	
Inquiry Staff	246
Appendix 7	
Legal Representatives	247
Appendix 8	
Exhibits List	248
Appendix 9	
Report Glossary	258



Introduction

- 1.1** In 2002 the then Queensland Government established the “Shared Services Initiative” (SS Initiative, or the Initiative), the purpose of which was to amalgamate and rationalise government services across a number of departments and agencies. The Initiative was based on the Shared Services Model, an organisational approach which had been embraced by large corporations in the United States of America in the 1980s and had apparently been applied to the public sector with some success¹.
- 1.2** The Initiative promised to deliver high quality and cost effective corporate functions across the whole-of-government. It was considered by the Service Delivery and Performance Commission to be “the largest organisational reform undertaken within the State Government”². Arena Organisational Consultants (Arena) in its Strategic Review of the Initiative described it as “one of the most significant projects of its type undertaken in the southern hemisphere”³.
- 1.3** The Initiative was intended to produce a higher standard of corporate service functions at a lower cost to government in providing them. A centralised agency was to take on services such as collecting monies and paying debts, purchasing goods and services, recording those financial transactions and managing and paying public servants from individual departments and agencies covered by the SS Initiative. By centralising the workforce the number of employees engaged in those activities could be reduced or redeployed, and by developing and implementing a uniform set of business rules a common set of computer technology and programs could be deployed for all the agencies and departments thereby reducing acquisition and licensing costs, bringing about simplification in systems and applications.

¹ Exhibit 4, Volume 1, Item 1.2, at page 56.
² Exhibit 4, Volume 1, Item 1.2, at page 45.
³ Exhibit 4, Volume 1, Item 1, at page 3.

- 1.4 Such, at least, was the theory, which was not unique to Queensland. It was essayed in other States at about the same time. In June 2011 the Economic Regulation Authority of Western Australia brought down its fifth and final report into “... the Benefits and Costs Associated with the Provision of Shared Corporate Services in the public sector”. The report noted the Western Australian Initiative had incurred costs of \$401M “and achieved minimal benefit in terms of savings ...” It concluded that⁴:

The history of shared corporate services projects in the public sector in Australia shows that it is a complex process with uncertain and distant returns. While there is some evidence of successes in the corporate sector, there has not been one fully successful implementation in the public sector of any Australian jurisdiction.

- 1.5 It recommended the dismantling of the Shared Services experiment in Western Australia. With the benefit of that State’s experience the Economic Regulation Authority explained⁵:

[A]ttempting to service multiple agencies with differing needs by using a single system is very costly, fraught with challenges, and potentially unachievable. Servicing agencies with a system that is modified to meet all needs results in a system that is expensive, costly to maintain and prone to error, while the alternative of servicing agencies with a standardised product results in large integration costs being imposed on agencies.

- 1.6 A history of unsuccessful attempts to improve the efficiency and economy of government services is likely to make dreary reading except, possibly, for students of public administration, but the failure of the Queensland Health Payroll System to deliver accurately calculated fortnightly remuneration to its employees can only be explained in the context of the attempt by the State of Queensland (the State) to provide uniform payroll systems in all departments and agencies. The attempt by the State to implement those uniform services was abandoned in January 2009. The design and implementation of a new payroll system for Queensland Health (QH) was the only remnant of the SS Initiative. Its failure, attended by enormous cost, damage to government and impact on workforce, may be the most spectacular example of all the unsuccessful attempts to impose a uniform solution on a highly complicated and individualised agency.

- 1.7 I will endeavour to make the history as brief as is consistent with providing a sufficient background to understand the reasons for the failure.

2. History of SS Initiative

- 2.1 The SS Initiative formally commenced on 1 July 2003 with the establishment of four Shared Services providers and CorpTech which was a technology centre located within Queensland Treasury. In August 2005 the Shared Services Solutions Program (SSS Program) was established and required CorpTech to design and build a whole-of-government human resources and finance solution with a capital budget of \$125M⁶. Between then and November 2005, CorpTech undertook the evaluation of products and programs best suited to deliver human resource and payroll services for the SS Initiative. Relevantly for the functions of payroll and rostering, the products chosen were SAP ECC 5 and Workbrain; and for time and attendance/rostering Workbrain was chosen. IBM Australia Ltd (IBM), which held the relevant Workbrain licences contracted with the State of Queensland to allow the use of Workbrain and to assist with the delivery of the Workbrain products⁷.

Its failure, attended by enormous cost, damage to government and impact on workforce, may be the most spectacular example of all the unsuccessful attempts to impose a uniform solution on a highly complicated and individualised agency.

- 2.2 CorpTech became the technology service provider for the whole-of-government. Its first Executive Director was Mr Geoffrey Waite. CorpTech had two roles. One was to provide specialist information and communication technology advice and services in the areas of financial transactions and human resources for all government departments. The other was to design and implement financial transaction and payroll systems as part of the SS Initiative.

⁴ Economic Regulation Authority, Inquiry into the Benefits and Costs Associated with the Provision of Shared Corporate Services in the Public Sector Final Report (10 June 2011), at page xiii, Economic Regulation Authority Western Australia <<http://www.erawa.com.au>>.

⁵ Economic Regulation Authority, Inquiry into the Benefits and Costs Associated with the Provision of Shared Corporate Services in the Public Sector Final Report (10 June 2011), at page xiii, Economic Regulation Authority Western Australia <<http://www.erawa.com.au>>.

⁶ Exhibit 2, at page 41.

⁷ Exhibit 4, Volume 1A, Item 1A, at pages 1-267.

- 2.3** QH was included within the ambit of the SS Initiative. In March of 2006 QH had transferred responsibility for the maintenance of human resource software and hardware to CorpTech. At this time the provision of a new computerised payroll system for its employees was thought to be urgent because the existing system, known as LATTICE, was nearing the end of its useful life. The supplier and licensor of the system had declared it would not service or update it after 30 June 2008⁸ and a new enterprise bargain under negotiation between QH and its employees would add to the complexities of payroll calculation which LATTICE could not accommodate.
- 2.4** CorpTech made little progress. It engaged a large number of contractors on a “time and materials” basis to assist with its design and implementation of the solutions. Principally it dealt with Accenture Australia Holdings Pty Ltd (Accenture) with respect to human resource and payroll programs and Logica CMG Pty Ltd (Logica) for the delivery of finance solutions. There were smaller numbers of contractors from SAP Australia Pty Ltd (SAP) and a smaller number still from IBM. There were, as well, many contractors from independent firms providing specialist services. These engagements were costly and not always efficient. Logica did succeed in deploying finance solutions to about 12 agencies. Payroll proved more difficult and only one department, Housing, was brought on line. Its payroll solution was not a complete success.
- 2.5** Towards the end of 2006, the SS Initiative was the subject of a review by the Service Delivery and Performance Commission, which reported in March 2007 (the Keliher Report). The Keliher Report found that the roll out of systems was significantly behind schedule and that an analysis of future costing and pricing for the Initiative was required. It concluded that organisational change was necessary.
- 2.6** In response the then Under-Treasurer, Mr Gerard Bradley, commissioned a review to identify potential courses of action. That review was delivered on 18 April 2007. Mr Terence (Terry) Burns, who became someone of particular interest to the Inquiry, was involved in the review, and a subsequent one.
- 2.7** What emerged was the possibility of devolving responsibility for the design and implementation of the SS Initiative to a single contractor. This notion was called the “Prime Contractor Model”.
- 2.8** The procurement process to find a Prime Contractor occurred in three stages. Differing terminology was applied to each of the stages but for ease of comprehension and consistency they were designated:
- a. The Request For Information (RFI);
 - b. The Request For Proposal (RFP); and
 - c. The Invitation To Offer (ITO).
- 2.9** The RFI took the form of an undated letter from Ms Maree Blakeney of CorpTech sent on or about 2 July 2007 to ten companies who had provided various services to CorpTech in connection with the SS Initiative. Responses were to be sent electronically to Mr Burns by 12 July 2007.
- 2.10** Only four of the companies responded to the RFI. Subsequently the RFP was delivered in the form of an email sent by Mr Burns on 25 July 2007 to IBM, Logica, Accenture and SAP, they being the respondents to the RFI. The responses differed significantly in content and comprehensiveness. IBM and Accenture at least appeared to have very different ideas on the likely outcome of the RFP process. Accenture, according to Mr Marcus Salouk, thought it would lead to the awarding of a contract. Mr Lochlan Bloomfield of IBM believed that the process was inadequate for that purpose and that there would be a third stage, as there was.
- 2.11** The ITO was a much more detailed invitation. It was issued on 12 September 2007. Responses were received from IBM, Accenture and Logica. SAP made the decision to “graciously withdraw from the Prime Contractor selection process”⁹.
- 2.12** IBM was the successful tenderer and on 5 December 2007 it and the State of Queensland executed a contract for the provision of Shared Services to nominated departments. The replacement of QH Payroll remained a priority. It was to be the first system delivered. 31 July 2008 was fixed by the contract for that goal.

8 Exhibit 11, Annexure B.

9 Exhibit 49, Annexure E.

- 2.13** The change of strategy was unsuccessful. By October 2008 IBM had not achieved any of the contracted performance criteria; but it had been paid about \$32M of the contract price of \$98M; and it forecast that to complete what it had contracted to undertake would cost the State of Queensland \$181M¹⁰. Accordingly the Shared Services Solution across the whole-of-government was abandoned and IBM's contract was reduced in scope to providing a new payroll system for QH.
- 2.14** On 14 March 2010 after ten aborted attempts to deliver the new payroll system, it "went live". It was a catastrophic failure as all Queenslanders know. The system did not perform adequately with terrible consequences for the employees of QH and equally serious financial consequences for the State. After many months of anguished activity during which employees of QH endured hardship and uncertainty, a functioning payroll system was developed, but it is very costly. It required about 1,000 employees to process data in order to deliver fortnightly pays¹¹. It is estimated that it will cost about \$1.2B over the next eight years¹².
- 2.15** The replacement of the QH payroll system must take a place in the front rank of failures in public administration in this country. It may be the worst.

The system did not perform adequately with terrible consequences for the employees of QH and equally serious financial consequences for the State. After many months of anguished activity during which employees of Queensland Health endured hardship and uncertainty, a functioning payroll system was developed, but it is very costly. It required about 1,000 employees to process data in order to deliver fortnightly pays¹¹. It is estimated that it will cost about \$1.2B over the next eight years¹².

3. Commission of Inquiry

- 3.1** On 13 December 2012, by Commission of Inquiry Order (No. 2) 2012, Executive Council appointed a Commission of Inquiry to make a:

... full and careful inquiry, in an open and independent manner, into the implementation of the Queensland Health payroll system ...

Notification of the Order appeared in the Queensland Government Gazette on 14 December 2012¹³.

The appointment, which took effect from 1 February 2013, and was to expire on 30 April 2013, required me to inquire into the implementation, with respect to:

- a. *the adequacy and integrity of the procurement, contract management, project management, governance and implementation process;*
 - b. *whether any laws, contractual provisions, codes of conduct or other government standards may have been breached during the procurement and/or implementation process and who may be accountable;*
 - c. *the contractual arrangements between the State of Queensland and IBM Australia Ltd and why and to what extent the contract price for the Queensland Health payroll system increased over time;*
 - d. *any recommended changes to existing procurement, contract and project management (including governance) policies, processes, standards and contractual arrangements for major Queensland government information and communication technology projects initiated in the future to ensure the delivery of high quality and cost effective products and systems; and*
 - e. *any other matter relevant to this review.*
- 3.2** The three months allowed by the Order in Council proved inadequate. By Order in Council of 18 April 2013 the time for the Commission to complete its inquiry and report was extended to 31 July 2013¹⁴. Even the extended term posed considerable challenges for the Commission and its staff and great credit is due to all who contributed to completing such a large and complex task within what was, in the circumstances, a short time.

¹⁰ Exhibit 75B, Attachment 3.

¹¹ Exhibit 1, at page 2.

¹² Exhibit 1, at page 2.

¹³ Queensland Government Gazette, No 101, 14 December 2012, at page 543.

¹⁴ Queensland, Government Gazette, Commission of Inquiry Amendment Order (No. 3) 2013, No. 87, 19 April 2013, at page 532.

- 3.3** The names of Commission staff, to whom I record my gratitude, appear in Appendix 6.
- 3.4** I express my particular appreciation to the Counsel appointed to assist my Inquiry, Mr Peter Flanagan QC, Mr Jonathan Horton and Ms Anastasia Nicholas. The thoroughness of the Inquiry and the efficiency of its conduct were the product of their forensic skill, industry and dedication to the task they undertook. I also acknowledge Mr David Mackie, the Secretary (Executive Director) of the Commission whose management of the substantial Commission staff and organisational ability were instrumental in the rapid assembly of staff, premises and resources, which allowed the Inquiry to begin work without delay.

The replacement of the QH payroll system must take a place in the front rank of failures in public administration in this country. It may be the worst.

- 3.5** Because the time allowed to inquire and report was tightly limited a great deal of documentary information had to be obtained urgently so it could be read and analysed for relevance and to identify lines of inquiry which should be pursued. I delivered many Requirements to produce documents and to provide information to government departments and agencies including the Crown Law office. I was obliged to allow short periods of time for responding. Similar demands were made upon IBM and its solicitors, Ashurst Australia. The need to respond comprehensively and rapidly imposed considerable burdens on all those organisations. A reorganisation of departments, the archiving of material electronically and physically and changes to computer programs meant that the search for documents was arduous and challenging. I wish to record my appreciation to the officers and employees who were obliged to work long hours under pressure to comply with the Requirements and, in particular, to the responsible officers in the departments who oversaw and took responsibility for the task. Because their efforts were so valuable to the work of the Commission I have identified them in Appendix 5 to this report.
- 3.6** I particularly acknowledge the assistance and cooperation of IBM in the conduct of the Commission's inquiry. Four of its employees who were important witnesses presently work and live outside Queensland. I could, with some effort and expense, have compelled the attendance of witnesses from other States or Territories of Australia but not from overseas. IBM brought, at its expense, Mr William (Bill) Doak from Dubai, Mr Paul Hickey and Mr Nickolas Kwiatkowski from Canberra and Mr John Gower from Melbourne. I record my appreciation for that assistance and for the cooperation of their solicitors, Ashurst Australia, in producing many documents and a great deal of information which I requested.
- 3.7** I express my gratitude to Mr Salouk, formerly of Accenture, for his assistance. Early in its investigation, Mr Salouk provided the Commission with a chronology and framework of the tender process and an early understanding of procurement issues relevant to the Inquiry's terms of reference. I am grateful for his time and effort.
- 3.8** The Terms of Reference naturally called for an examination of the events which preceded and resulted in the selection of IBM as the Prime Contractor for the delivery of Shared Services across Government; the performance by the State and IBM of the contract with particular reference to the very substantial increases in contract price and the failure to deliver a functioning payroll system; and circumstances in which the State came to compromise any claim it may have had against IBM for its failure to deliver what the contract promised, thus giving up any prospect of recovering its losses.
- 3.9** The Order in Council appointing the Commission of Inquiry obliged me to have regard to previous reviews of the failed implementation of the payroll system. Two were mentioned particularly, the Auditor-General's Report "Information Systems Governance and Control, including the Queensland Health Implementation of Continuity Project 2010"¹⁵ to the Parliament of Queensland and a review by KPMG into the implementation of the payroll system¹⁶.

15 Exhibit 2.

16 Exhibit 1.

- 3.10** No previous review dealt with the first or third of the topics identified earlier. No one has previously looked at the tender process or the reasons for the abandonment of rights against IBM. There has been some prior examination of IBM's performance of the contract but of these only the Auditor-General's Report covered some of the ground investigated by this Commission. The other reviews undertaken by KPMG, Price Waterhouse Coopers¹⁷ and Ernst and Young¹⁸ looked at how to improve the delivery of payroll after the catastrophe of March 2010 and what implications there were from it for the concept of whole-of-government Shared Services. None undertook a forensic examination of the performance of the contract by IBM and the State.
- 3.11** As the mid 20th century proverb has it, "Success has many fathers but failure is an orphan". The truth of the proverb was convincingly demonstrated in the statements and oral testimony given to the Commission. Witnesses sought to reduce the importance of the roles they had played in the replacement of the payroll system, or pointed to others who were more closely involved. Many witnesses claimed to have no memory of important events which they observed or in which they took part. Many answers were evasive and some were dishonest. All of this was to be expected but the evasions, failures of recollections and mendacities increased the difficulty of the Commission's task in obtaining a clear understanding of the reasons for the failure of the payroll replacement implementation. A particular feature was the fact that no one was prepared to assume responsibility for the failure (Mr Michael Kalimnios of QH being an honourable exception). Even more remarkable was the fact that some witnesses involved in the delivery of the payroll system proclaimed it a success.
- 3.12** Not every aspect of the payroll system replacement has been the subject of thorough scrutiny. I have concentrated attention on the features which appear to have the most relevance to the Terms of Reference and which will provide an adequate explanation of why the replacement was unsuccessful. I have also looked at what lessons might be learned from previous mistakes so that this unhappy history need not be repeated. The parts left unexamined would, if investigated, require a further Commission of greater length and therefore expense without, in my estimation, any commensurate benefit.
- 3.13** A budget of \$5M was allocated for the Inquiry. I was throughout anxious to adhere to the budget, being conscious of the fact that it was public money being spent to investigate the implementation of a payroll system which has cost, and is expected to cost, the taxpayer very substantially in excess of what was contracted for. It was important to spend as little further money as possible. It was partly for that reason that I did not pursue investigations which appeared of peripheral significance to an understanding of what went wrong, or those where the time and cost of doing so would not have had proportional value.
- 3.14** Having determined within about a month of the Commission's commencement that it could not be concluded by 30 April 2013, I requested the extension to 31 July 2013 and developed a timetable for gathering information and conducting public hearings that would allow me to complete each aspect of the Inquiry in order according to an allocated time. Adherence to the timetable called for discipline and commitment. It required a great deal of hard work by Counsel Assisting, Commission staff and the legal representatives of persons given leave to appear. I record my appreciation to those representatives for their efficiency and cooperation in the conduct of the hearings. A list of persons given leave to appear, and their legal representation, is set out in Appendix 7.
- 3.15** I have been able to complete the report in the time allowed and within its budget. Though I should not, perhaps, say so, the Commission has been run efficiently and economically. The credit for that should be shared by all associated with it.
- 3.16** Commissions of Inquiry are important public institutions. They are rare and each is unique. Those two features mean that each Inquiry, when established, must begin afresh in planning and organising its investigation. Each learns valuable lessons in how to conduct an efficient Inquiry and encounters mistakes which should not be repeated. I attach as Appendix 1 a description of how this Inquiry was conducted in the hope that it may be of some assistance to those engaged in future similar endeavours.
- 3.17** I am satisfied that the Commission has been able to comply with the direction of the Executive Council and can report accurately and fairly as to the origins and cause of the failure of the replacement of the Queensland Health Payroll System.

¹⁷ Price Waterhouse Coopers, Shared Services Review, Review of Model for Queensland Government, September 2010 <http://www.health.qld.gov.au/qhpi/Docs/e_y_report_23nov.pdf?bcsi_scan_a1c99feec31f2dec-0&bcsi_scan_filename=e_y_report_23nov.pdf>.

¹⁸ Exhibit 63, Volume 15, at pages 357-398.



1.

Procurement

15

1. Introduction

- 1.1** In submissions delivered on its behalf, IBM complained that the three stages of the procurement process which I have identified in paragraph 2.8 (Introduction) were “a working assumption ... adopted, uncritically ...”, and wrongly¹. IBM contends that the procurement process only commenced on 16 August 2007 when the State decided to appoint a Prime Contractor and subsequently issued the ITO for that purpose. The events preceding 16 August 2007 were described as “informal”, “casual”, and “loose”², forming part of a “separate anterior process” to procurement, being reviews of the SS Initiative by Mr Burns and others³. An inquiry into these reviews and the “anterior process” was argued to be outside the Commission’s Terms of Reference save to the extent that they may fall within (e), “any other matter relevant ... ”⁴.
- 1.2** The reason for the submission is readily apparent. The Inquiry uncovered several instances of serious misconduct by IBM’s employees during the RFP and evidence of Mr Burns’ distinct partiality for IBM in the course of his reviews. If the submission were accepted the report would omit a rehearsal of this evidence and would not comment on its significance. The submission is, in any event, wrong. The process of procurement began with the RFP on 25 July 2007 which, though slipshod and abbreviated, and probably undertaken without proper authority, was nevertheless the first formal step in calling tenders for a Prime Contractor. What happened in the RFP was therefore a part of the procurement of IBM as Prime Contractor.
- 1.3** There is more force in the contention that Mr Burns’ reviews were prior in time and distinct in kind from the procurement, but his intervention in the evaluation of responses to the ITO (undeniably part of procurement) can only be understood by reference to the evidence of how he conducted his May review. For that reason alone the “anterior processes” are relevant and necessary to the proper discharge of the Commission’s responsibilities to investigate and report.

¹ Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), para 17.

² Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), para 18(a).

³ Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), para 19.

⁴ Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), para 23.

- 1.4** The obligation to investigate the adequacy and integrity of the procurement of IBM as Prime Contractor was given early impetus because of remarks made anonymously on public radio that the awarding of the contract to IBM was tainted by collusion⁵. The allegation was made by a woman identified only by a pseudonym, “Margaret”, who claimed to have been employed “with that project very early on”. She said that IBM and CorpTech had colluded to sign a contract which allowed IBM to “make further money ... by adding to their business later”. Other tenderers were disadvantaged by reason of the fact that CorpTech, with consultants, gave IBM information “very useful to their bid” which was withheld from the others. Margaret claimed also that senior public servants failed to discharge their responsibilities conscientiously and did not attend to what was occurring.
- 1.5** The informant expressed a willingness to co-operate with the Commission of Inquiry, if one were established.
- 1.6** Shortly after the Commission was appointed, Counsel Assisting wrote to the Australian Broadcasting Corporation, on one of whose programs “Margaret” had appeared, and requested that she be contacted and asked to approach Commission staff. She did not respond to the invitation and did not contact the Commission which was, nevertheless, able to identify her, and interview her.
- 1.7** Ms Colleen Margaret Papadopoulos had no basis in fact for making the serious allegations she did⁶. She worked at the relevant time as an officer of QH, not CorpTech, and was not in a position to observe the machinations she described. She had no worthwhile information to assist the Commission.
- 1.8** Nevertheless the Inquiry into the tender process did reveal serious deficiencies in it and serious dereliction of duty by those charged with the responsibility of spending the State’s money effectively.

2. Reviews of the SS Initiative

- 2.1** In March 2007 the Service Delivery and Performance Commission (the SDPC) reported (the Keliher Report) on the progress of the SS Initiative. Among many recommendations it suggested a review of⁷:
- ... the priorities and timing of the business solution roll-out ... by 30 June 2007 on ... the risks to Government, including the need to expedite a payroll solution for Queensland Health ... [and] the projected costs of the roll-out ...*
- 2.2** The review undertaken by the SDPC revealed that many senior public servants involved in the Initiative had reservations about it. At the same time the first major implementation of a payroll system was delivered in the Department of Housing. The work had been undertaken by Accenture and had taken considerably longer than anticipated to complete the project. When it was put into operation the performance was unsatisfactory. It was slow and inaccurate in parts.
- 2.3** Mr Waite reported to the Under-Treasurer, Mr Bradley. He recalled being told by Mr Waite that those in CorpTech responsible for the implementation had lost confidence in its ability to continue with the implementation⁸. Mr Waite has a different recollection. He acknowledges that there was “a view ... gathering momentum that the [CorpTech] model ... did not work”⁹. That opinion was advanced by representatives of individual departments and agencies who wanted to control their own IT services. Mr Waite thought that CorpTech was in fact delivering effective uniform services though behind schedule and over budget¹⁰. The services that had been delivered were, with one exception, for financial transactions and records. Human resources and payroll system delivery had proved much more difficult.
- 2.4** No doubt prompted by the Keliher Report, Mr Bradley decided to determine what CorpTech’s next step in the implementation of its program should be. He was influenced in that decision by the indifferent success of the payroll implementation at the Department of Housing. Accordingly he sought the assistance of Mr Gary Uhlmann from Arena to provide “a high level review to identify potential courses of action” which CorpTech might undertake to revise the Initiative¹¹.

⁵ The recording of the interview with ‘Margaret’ was transcribed on behalf of the Commission of Inquiry.

⁶ Exhibit 60.

⁷ Exhibit 4, Volume 1, Item 1.2, at page 50.

⁸ Exhibit 54A, para 14.

⁹ Exhibit 166, para 14.

¹⁰ Exhibit 166, para 13.

¹¹ Exhibit 54A, para 14.

- 2.5 Mr Uhlmann was well known to CorpTech and to Mr Bradley. He had had extensive experience in IT and delivering computerised business systems to government and private enterprise. He had held senior roles in the Department of Transport and in 1997 established his own consulting company (Arena) which had been engaged by CorpTech to provide a variety of services in connection with the delivery of Shared Services and a review of the process¹².
- 2.6 The “high level review” became known as the “April Snapshot” review¹³. It was conducted over five days by Mr Uhlmann, Mr Keith Goddard, Mr David Ekert (of Information Professionals) and Mr Burns. Mr Mark Nicholls, Managing Director of Information Professionals, was peripherally involved.
- 2.7 The review commenced on 9 April 2007 with an initial meeting attended by Mr Uhlmann, Mr Goddard, Mr Ekert, Mr Nicholls and Mr Burns¹⁴. Mr Nicholls introduced Mr Burns and left shortly afterwards. In relation to that first meeting with Mr Burns, Mr Goddard said¹⁵:
- ... I thought it was an interesting decision to involve a total outsider. On the positive side, that would bring untainted and fresh views. On the negative side, he would have much foundation knowledge to absorb. Over the first six weeks, he established himself as ‘thought leader’ and injected an amount of humour to the forum.*
- 2.8 Mr Nicholls was also a consultant contracting services to government. He has qualifications and extensive experience in telecommunications and information technology. In 2005 he formed his own company, Information Professionals, pursuant to which he provided his consulting services¹⁶. He was not as well known to senior managers of CorpTech as Mr Uhlmann, and for that reason on several occasions provided services in conjunction with Arena and Mr Uhlmann¹⁷.
- 2.9 Mr Nicholls’ primary interest was in Change Management and Communications. In collaboration with Arena, Mr Nicholls’ company approached CorpTech for a contract to provide “Change and Communications” services¹⁸. Although the bid was initiated and managed by Mr Nicholls, it proceeded under the name of Mr Uhlmann’s company Arena which was better known to senior managers of CorpTech than Information Professionals. The initial goodwill between Mr Nicholls and Mr Uhlmann dissipated in confusion and conflict over the precise terms of their collaboration and the distribution of the price paid by CorpTech for their contracted services. The detail is irrelevant but the disagreements have engendered a degree of dislike between the two men. It coloured but did not distort their evidence.

... the Inquiry into the tender process did reveal serious deficiencies in it and serious dereliction of duty by those charged with the responsibility of spending the State’s money effectively.

- 2.10 Mr Goddard was a project management consultant who contracted through his own company trading as Informatics¹⁹. He had a long standing business relationship with Queensland Treasury and had managed numerous projects for the department. He had been involved in the Initiative from November 2005 as a Project Management Advisor, and had conducted reviews of the Department of Justice and Attorney-General finance implementation project and the HR Payroll pilot project²⁰. He had also prepared an analysis of the Initiative’s 50 planned projects²¹. Mr Goddard had been insistent that the existing projections around delivery timeframes and costs were inaccurate²². Mr Goddard had previously worked closely with Mr Waite and Mr Darrin Bond²³, and with Mr Philip Hood²⁴, all CorpTech public servants.

12 Exhibit 21, paras 1-6.

13 Exhibit 4, Volume 1, Item 1.3, at pages 158-181.

14 Exhibit 27, para 28.

15 Exhibit 27, para 31.

16 Exhibit 24, para 1.

17 Exhibit 24, para 17.

18 Exhibit 24, paras 14-16.

19 Exhibit 27, para 3.

20 Exhibit 27, paras 17-18.

21 Exhibit 27, para 19.

22 Exhibit 27, paras 20, 23.

23 Exhibit 27, para 13.

24 Exhibit 27, para 25.

- 2.11** Mr Ekert was a Certified Practising Accountant with a Master of Business Administration²⁵. Mr Nicholls, through Information Professionals, secured Mr Ekert's engagement with CorpTech as a strategist and planner in December 2005. His role at CorpTech involved developing project plans for the Business Transformation Area where he reported to the Program Director of CorpTech, Ms Jan Dalton²⁶. In early 2006 he was appointed, as a contractor, to the role of Assistant Program Director in CorpTech²⁷. His sphere of expertise was in strategy development and planning. Mr Ekert was asked to join the review team by Mr Nicholls²⁸. Mr Ekert had previously worked with Mr Waite, Mr Bond, Mr Hood and other CorpTech staff.
- 2.12** Mr Burns was born in Zambia in 1943. After graduating from the University of Natal he joined IBM in Cape Town as a trainee systems engineer²⁹. He was employed by the company for 13 years, leaving IBM in 1980³⁰, where, according to his CV he "twice won the International Top Ten marketing award"³¹. He was Manager for the Cape Province for three years, a position he described as "one of the top roles there"³². He was, he said, involved with IBM in "some of the biggest" projects in South Africa³³. He was also successful in winning for IBM "a massive opportunity" to computerise the operations of a stevedoring company³⁴.
- 2.13** After leaving IBM Mr Burns worked, for about 12 years, in his own businesses. He was then a consultant in project and contract management. In 1998 he emigrated to New Zealand where he found work for about a year as a "Programme Manager" for the delivery of "a significant new service delivery model for Air New Zealand's major Trans Tasman routes"³⁵. He then moved to the United Kingdom where he worked for three years, until 2003. His employment there was again developing and delivering the implementation of automated business processes in large organisations. In 2003 he returned to New Zealand where he worked for Fonterra which he described as "New Zealand's largest enterprise with a turnover of \$12 billion and ... the world's largest exporter of dairy products exporting ... 24% by value of all New Zealand exports"³⁶.
- 2.14** According to Mr Burns' CV, he "directed a Global Business Transformation programme involving ... all the international regional operating companies of Fonterra ...", and directed "a large team of ... personnel including ... IBM ... and others"³⁷. He then worked for almost 18 months, until September 2006, as the head of technology sales business unit for a large travel agency³⁸. He came to Australia for the first time in January 2007³⁹. His destination was Brisbane where one of his children was living.
- 2.15** Upon his arrival he approached several recruitment companies seeking employment. A few weeks later he received an approach from Mr Nicholls.
- 2.16** Although Mr Waite was personally antipathetic to the review of CorpTech's performance in the SS Initiative, he approached both Mr Uhlmann and Mr Nicholls with a request that they undertake it⁴⁰. No doubt he did so to give effect to Mr Bradley's concerns.
- 2.17** Mr Waite, Mr Bradley and Mr Uhlmann all contend that Arena was engaged by CorpTech to conduct the "April Snapshot" review⁴¹. Mr Nicholls asserted that he and Mr Uhlmann were jointly approached by Mr Waite⁴². The difference of testimony is unimportant but underscores the point that CorpTech appears to have been remarkably casual in its engagement of consultants and lax in recording the contracts it made with them and the terms of engagement. There appears to be no documented contract between Arena (Information Professionals) and CorpTech for the review. It is, however, clear that Mr Uhlmann (for Arena) led the review, and that Mr Nicholls' participation was minor.
- 2.18** How Mr Burns came to be engaged is also unclear though there is no doubt he involved himself substantially in the review and imposed himself favourably on Mr Uhlmann and, initially, Mr Nicholls.

25 Exhibit 26, para 2.

26 Exhibit 26, para 5.

27 T7-87, L18-23 (David Ekert); Exhibit 26, para 8.

28 Exhibit 26, para 9.

29 Exhibit 46, para 3; Exhibit 4, Volume 2, Item 2.1, at page 1.

30 Exhibit 4, Volume 2, Item 3.1, at page 13; T13-59, L10-12 (Terry Burns); Exhibit 46, para 4.

31 Exhibit 4, Volume 2, Item 3.1, at page 13.

32 Exhibit 46, para 5.

33 Exhibit 46, para 8.

34 Exhibit 46, para 9.

35 Exhibit 4, Volume 2, Item 2.1, at page 4.

36 Exhibit 4, Volume 2, Item 2.1, at page 2.

37 Exhibit 4, Volume 2, Item 2.1, at page 2.

38 Exhibit 4, Volume 2, Item 2.1, at page 2.

39 Exhibit 46, para 47.

40 Exhibit 24, para 32; Exhibit 21, para 34.

41 Exhibit 166, para 18; Exhibit 54A, para 16; Exhibit 21, para 34.

42 Exhibit 24, para 32.

2.19 At this time, coincidentally, Mr Nicholls' Human Resource Manager read Mr Burns' CV, no doubt as a consequence of his endeavours to introduce himself to IT Management Consultants. Mr Nicholls discussed with Mr Burns "his experience, his background, his suitability for different clients", and introduced him to Ms Dalton⁴³. Mr Nicholls decided to engage Mr Burns to assist with the review because Information Professionals was, at the time, "heavily committed on other clients"⁴⁴. Mr Nicholls was obviously impressed by Mr Burns. CVs are documents not normally noted for the modesty of their contents, and Mr Burns described an uninterrupted series of engagements of major projects for very substantial internationally known companies ending always in success. Personally Mr Burns was confident and assertive in demeanour. He gave the impression of competence, experience and extensive knowledge of large, complicated initiatives introduced into substantial existing business structures. He was a stranger to self-doubt.

... there was inadequate program management and that the very concept of uniform Shared Services was being assailed by the departments and agencies, identified as recipients, who wanted customised particularised services unique to their department, thereby increasing the complexity and cost of the program and diminishing its utility as a cost saving whole-of-government approach⁵³.

2.20 I think the likelihood is that although Arena was contracted to perform the review, Mr Waite spoke also to Mr Nicholls, understanding that their two companies conjointly had provided services to CorpTech and that both Mr Nicholls and Mr Uhlmann were to be involved in the review. Mr Nicholls had other engagements but did not want to forgo the business opportunity. He therefore proposed Mr Burns though he says that he advised Mr Waite that "we would need to supervise and work closely" with Mr Burns⁴⁵. The precaution was sensible given that all that was known about Mr Burns was his CV.

2.21 There was also a disagreement about the basis of Mr Burns' remuneration. Mr Uhlmann contended that Mr Burns would take part in the review without remuneration and would come "free of cost" to Arena⁴⁶. Mr Nicholls contended that Information Professionals paid Mr Burns a daily rate and invoiced Arena that rate with a small margin which Mr Nicholls described as uneconomic⁴⁷. The agreement between Arena and Information Professionals is not documented. There is a draft contract dated 10 April 2007 between Information Professionals and Mr Burns to provide "consulting services" which are further described only by the words "Strategic Analyst"⁴⁸. The draft does however provide for a daily payment to Mr Burns of \$1,100.

2.22 I expect Mr Nicholls' recollection of the financial arrangements is more accurate than Mr Uhlmann's. Mr Nicholls would not, I think, easily be mistaken on questions of income and costs.

Findings of April Review

2.23 The results of the five-day survey were presented to CorpTech by Mr Uhlmann in a PowerPoint presentation on 18 April 2007⁴⁹. The "overall conclusions" presented to the Under-Treasurer included⁵⁰:

- *Queensland Health [Payroll] should not be brought forward*
- *Refocus on DETA and other agencies*
- *Program timeframe will not be met ...*
- *Program budget will be exceeded (+ \$90m to \$135m)*
- *Program business case/benefits reducing*
- *Program governance is not delivering required outcomes ...*
- *Scope of Standard Offer is increasing*
- *PMO [Project Management Office] is not effective*
- ...
- *Inaction now will result in program failure.*

43 Exhibit 24, para 33.

44 Exhibit 24, para 34.

45 Exhibit 24, para 34.

46 Exhibit 21, paras 35, 39.

47 Exhibit 24, paras 43-44.

48 Exhibit 24, Annexure A.

49 Exhibit 4, Volume 1, Item 1.3, at pages 158-181.

50 Exhibit 4, Volume 1, Item 1.3, at pages 161-162.

- 2.24** The presentation amplified some points. Mr Uhlmann advised that the current rate of expenditure by CorpTech on the program was \$15,400 per person per month and that there were at the time 481 persons involved in the project⁵¹. Mr Uhlmann thought that if the program ran over time by 12 months the extra cost would be \$90M and if it ran over time by 18 months the additional cost would be \$135M⁵².
- 2.25** Other problems which Mr Uhlmann identified were that there was inadequate program management and that the very concept of uniform Shared Services was being assailed by the departments and agencies, identified as recipients, who wanted customised particularised services unique to their department, thereby increasing the complexity and cost of the program and diminishing its utility as a cost saving whole-of-government approach⁵³. Negotiations between CorpTech and the agencies were delaying the design and therefore implementation of the program.
- 2.26** Sounding a note of alarm Mr Uhlmann advised that the program had reached a point of “critical vulnerability”, citing in support facts that⁵⁴:
- *DETA want to secede from the SSS*
 - *Agencies losing faith in SSS ability to deliver*
 - *Early implementers expectations reduced*
 - *Agency ... rhetoric and engagement not fully consistent*
 - *Cost estimates are increasing*
 - *Time estimates are extending*
 - *Resource turnover is hampering*
 - *SSS trying to appease all*
- 2.27** Mr Uhlmann expressed the opinion that actions taken in the short term would determine whether the project failed or succeeded and that “inaction will result in program failure”⁵⁵.
- 2.28** Of some interest to the Inquiry were Mr Uhlmann’s recommendations that the replacement of QH Payroll should not be brought forward in time and that instead CorpTech should take steps to maintain the existing payroll system into the future⁵⁶. Another recommendation of significance was that CorpTech should appoint an Operational Program Director to take over all control of the project to give it a discipline and focus it had lacked⁵⁷.
- 2.29** Mr Uhlmann noted that the program would fail unless firm remedial actions were taken. His key recommendation was that an Operational Program Director be appointed urgently⁵⁸. The recommendation was accepted. Mr Burns was appointed to the role.
- 2.30** Mr Uhlmann’s findings were of obvious concern to Mr Bradley. The review had been conducted as an overview and a more detailed examination and analysis were required. Mr Uhlmann suggested Mr Burns would be suitable to undertake that more detailed examination and analysis⁵⁹.

Mr Burns’ May Review

- 2.31** Following the presentation there were discussions between Mr Waite, Ms Barbara Perrott (of CorpTech), Mr Bond and others, including Mr Uhlmann, Mr Burns and Mr Nicholls, about the need for a more detailed review in response to Arena’s overview⁶⁰. Mr Nicholls attended a meeting with Mr Waite at which the appointment of a consultant to undertake the more detailed review was discussed⁶¹. Mr Uhlmann was unable to attend⁶². He had anticipated that his company, Arena, would be re-engaged but the contract went instead to Information Professionals whose principal, Mr Nicholls, was present at the meeting. Mr Nicholls claims that Mr Waite was indifferent to the identity of the consultant and was content to nominate Mr Nicholls’ company⁶³. Mr Uhlmann believes Mr Nicholls unfairly took advantage of his absence to secure

51 Exhibit 4, Volume 1, Item 1.3, at page 165.

52 Exhibit 4, Volume 1, Item 1.3, at page 165.

53 Exhibit 4, Volume 1, Item 1.3, at pages 165-167.

54 Exhibit 4, Volume 1, Item 1.3, at page 171.

55 Exhibit 4, Volume 1, Item 1.3, at page 171.

56 Exhibit 4, Volume 1, Item 1.3, at pages 172, 176-177.

57 Exhibit 4, Volume 1, Item 1.3, at pages 180-181.

58 Exhibit 4, Volume 1, Item 1.3, at page 172.

59 T6-18, L35-36 (Gary Uhlmann); Exhibit 21, para 47.

60 T7-14, L30-34 (Mark Nicholls).

61 T7-14, L49-56 to T7-15, L1-14 (Mark Nicholls).

62 T6-19, L51-55 (Gary Uhlmann).

63 Exhibit 24, para 47; T7-14, L48-56 to T7-15, L1-4 (Mark Nicholls).

for his company what should have been Arena's business⁶⁴. The episode further soured relationships between Mr Uhlmann and Mr Nicholls but little turns on the quarrel because Arena, had it secured the contract, would have engaged Mr Burns to perform it, as did Information Professionals.

2.32 Ms Perrott's recollection of the engagement is that she and Mr Waite to whom she reported at the time met with Mr Nicholls, Mr Uhlmann and Mr Burns after Mr Uhlmann's presentation of his "snapshot" review⁶⁵. She thought that she and Mr Waite jointly decided at the conclusion of the meeting to engage Mr Burns to conduct the further review which had been recommended⁶⁶. This introduction to Mr Burns also served as the interview for his appointment to undertake the review⁶⁷. She admitted she did not know Mr Burns prior to this meeting and did not know how long he had been known to either Mr Nicholls or Mr Uhlmann⁶⁸. She did not check, or cause to be checked, Mr Burns' references. She did not ask Mr Nicholls if his company had checked Mr Burns' references. She assumed that it happened⁶⁹. She believed that Mr Burns had been engaged *via* Arena⁷⁰, but she was wrong about this, as I have pointed out. Mr Burns' engagement did not give him any authority to bind the State to any contract or arrangement, nor was he given any delegated powers to make decisions on behalf of the State.

2.33 Having secured the contract and engaged Mr Burns to perform the May review, Mr Nicholls proposed a modest increase to Mr Burns' daily fee. Mr Burns thought it insufficient, and told Mr Nicholls that he would require a much more substantial fee for any future engagement. Mr Nicholls thought Mr Burns showed "both ignorance and arrogance" in promoting his own worth and insisting upon increased remuneration before he had even commenced the engagement and had not turned his mind to his employer's (CorpTech's) interest⁷¹. Mr Burns at the time had been in Australia but a few months and his knowledge of CorpTech and the SS Initiative was limited to his five days' involvement in the "snapshot" review.

2.34 Mr Nicholls had a recollection that he telephoned Mr Waite to warn him that Mr Burns' personal ambition might influence the results of his review and that future negotiations on commercial terms would probably be tinged by greed⁷².

2.35 Information Professionals invoiced CorpTech and was paid by it for Mr Burns' time for the five weeks he was engaged on the review⁷³. It in turn paid Mr Burns for the first four weeks of his activity but not for the fifth because of the dispute between him and Mr Nicholls which will shortly be related⁷⁴.

2.36 Following a meeting between Mr Nicholls, Mr Burns, Mr Waite, Ms Perrott, Ms Dalton and Mr Bond on 23 April 2007, Mr Nicholls and Mr Burns drafted Terms of Reference for the review which Mr Nicholls sent to the others by email of 24 April 2007⁷⁵. On 27 April 2007 a communiqué, signed by Ms Perrott and Mr Waite, was issued to CorpTech staff announcing Mr Burns had been appointed to conduct a review as to implementation replanning of the SSS (the SS Initiative). The communiqué set out the terms of reference of that review (the May Review) as follows⁷⁶:

To address the range of implementation issues and factors, the SSI Policy and Program Office, in conjunction, with CorpTech/SSS has engaged an experienced, independent Project Director to:

- *replan the overall delivery timeline of the program from now until the completion of implementation;*
- *recommend appropriate strategies to accelerate the delivery of the SSS Program; and*
- *recommend structural, process and productivity improvements in the Program.*

2.37 Queensland Government (Treasury) and Information Professionals contracted in writing for the performance of the May Review⁷⁷. Both parties signed rather late: Mr Nicholls on 18 May and Mr Waite on 21 May 2007. By clause 3.1 Information Professionals was to provide "[s]ervices through its Key Personnel". Schedule 2 identified the contractor's Key Personnel as Mr Burns. Schedule 1 described the services at some length. A steering group consisting of Mr Waite and Ms Perrott had been established as "the

64 T6-19, L50-55 to T6-20, L1-15 (Gary Uhlmann).

65 Exhibit 53B, para 2; T16-61, L42-55 to T16-62, L1-8 (Barbara Perrott).

66 T16-62, L2-5 (Barbara Perrott).

67 T16-62, L7-9 (Barbara Perrott).

68 T16-62, L14-23 (Barbara Perrott).

69 T16-68, L5-29 (Barbara Perrott).

70 Exhibit 53B, para 2.

71 Exhibit 24, paras 50-51.

72 Exhibit 24, para 52.

73 Exhibit 4, Volume 32, Item 29.3.1, at page 15.

74 T7-27, L40-46 (Mark Nicholls).

75 Exhibit 4, Volume 32, Item 29.7.2, at pages 30-31.

76 Exhibit 4, Volume 32, Item 29.7.3, at pages 32-34.

77 Exhibit 140.

sponsoring body” for the review, and Mr Burns had been appointed Interim Project Director to “manage this assignment”, the objectives of which were “three main focus areas”⁷⁸:

- *Re-planning the overall delivery timelines of the programme ...*
- *Recommend and institute appropriate delivery accelerator strategies ...*
- *Recommend and institute productivity improvements in the structure and processes of the programme.*

Information Professionals was to be paid \$2,250 for each day of the review.

- 2.38** The Commission was unable to find any executed agreement between Information Professionals and Mr Burns. Mr Nicholls produced an unsigned copy of a deed, exceedingly brief in its terms, recording an extension of the previous contract between his company and Mr Burns⁷⁹. It records that Mr Burns was to be paid a daily rate of \$1,500 for the period 23 April to 31 May 2007. Mr Nicholls also produced copies of invoices delivered to his company from Cavendish Risk Management, which was Mr Burns’ company and the vehicle by which he offered his services to CorpTech and others⁸⁰.
- 2.39** The May review commenced with a meeting called by Mr David Ford, the Deputy Under-Treasurer, on 30 April “to discuss CorpTech issues”⁸¹.
- 2.40** Those attending were Mr Ford, Mr Waite, Ms Perrott, Mr Burns, Mr Bloomfield of IBM, Mr Robert Pedler of SAP and Mr Simon Porter of Accenture⁸². Its purpose was to brief those contractors on the upcoming May review to be conducted by Mr Burns, and introduce him to them⁸³.
- 2.41** Mr Bloomfield, who reported on the meeting in an email of 1 May 2007, said that Mr Burns was appointed to determine the new CorpTech implementation schedule, suggest a new organisational structure for CorpTech “which does more to leverage its key implementation partners”, and identify “accelerators” to help improve delivery⁸⁴. Mr Bloomfield concluded: “Mr Burns was responsible to conduct a review which was really to challenge how things were being done previously and to try and set about a new course of action.”⁸⁵
- 2.42** Mr Burns described the meeting as an opportunity to “meet and greet” the contractors who were involved in the SS Initiative roll out⁸⁶. He said he expected to contact vendors and encourage them to provide him with information so to assist him to discover means to deliver the Initiative more quickly and cost effectively⁸⁷.
- 2.43** Mr Bradley said he would not have asked Mr Burns to suggest a new organisational structure⁸⁸. Such an intimation would not have been made at the meeting. In fact Mr Burns did make such a recommendation: it is likely he told Mr Bloomfield he had that idea when the two men had spoken after the meeting.
- 2.44** In order to conduct his review, Mr Burns established 14 Focus Teams which were representative of the major areas of the SS Initiative. The members of the teams were chosen because of their knowledge of the Initiative, its frustrations, aims and achievements⁸⁹. They were asked to describe the status of the Initiative as it applied to their area of responsibility and their anticipation of what was likely to occur, and at what pace. From his consultation with the “coordinators” who led each team, Mr Burns obtained “a consensus view from the program team itself on the revised Implementation Schedule, Primary Recommendations, Risks and Issues”⁹⁰. Mr Burns, as an “external expert” added his own “Structural and Process Recommendations”⁹¹.
- 2.45** Despite being Mr Burns’ head contractor, Mr Nicholls had difficulty in obtaining information from Mr Burns about his review. He noted he was “somewhat secretive” about his work and “very reluctant to share information”⁹². Mr Nicholls observed him to be indifferent to detail and to prefer the broad view⁹³. The rift

78 Exhibit 140, at page 24.

79 Exhibit 24, Annexure A, at page 16.

80 Exhibit 24, Annexure D; Exhibit 4, Volume 32, Item 29.4, at pages 17-19.

81 Exhibit 4, Volume 27, Item 25.4, at page 226.

82 Exhibit 35, para 43.

83 T16-66, L4-14 (Barbara Perrott).

84 Exhibit 4, Volume 27, Item 25.4, at page 228.

85 T12-97, L50-54 (Lochlan Bloomfield).

86 T13-74, L43-50; T14-4, L18 (Terry Burns).

87 T14-83, L23-51 (Terry Burns).

88 T17-69, L48-55 to T17-70, L1-4 (Gerard Bradley).

89 T13-76, L29-46 (Terry Burns); Exhibit 4, Volume 1, Item 1.4, at page 186.

90 Exhibit 4, Volume 1, Item 1.4, at page 186.

91 Exhibit 4, Volume 1, Item 1.4, at page 186.

92 T7-19, L25-26 (Mark Nicholls); Exhibit 25, para 55.

93 Exhibit 24, para 55.

between the two men came when Mr Nicholls took a long planned holiday to Hawaii in the last two weeks of May 2007. The review was due on 31 May. Mr Nicholls had intended to remain in communication with Mr Burns by telephone and email during his absence. He telephoned Mr Burns from Hawaii and asked for a copy of the draft report and to be informed of its progress⁹⁴. Mr Burns told him that he had no authority to reveal the draft and that he had been instructed by Mr Bradley, the Under-Treasurer, not to inform anyone of the contents of the report without express permission. Mr Nicholls was understandably astonished, given that the review had been committed to Information Professionals which had subcontracted it to Mr Burns⁹⁵.

- 2.46** Mr Burns confirms that he was asked by Mr Nicholls for a copy of his report and he refused to give it because it was “confidential” and he was “obliged to supply it to [his] client ... CorpTech”⁹⁶. The evidence in fact supports Mr Nicholls’ account that Mr Burns was to undertake the May review under contract to Information Professionals and that he had no direct contract with CorpTech.

*Mr Nicholls noted the oddity that someone virtually unknown, in the country only a few months and with only six weeks’ experience of CorpTech and the vastly complicated SS Initiative should have become the principal adviser to the Under-Treasurer on the future of the Initiative*¹¹⁶.

- 2.47** Mr Burns’ account of things is that having participated in the “snapshot” review, Mr Uhlmann asked him if he was interested in performing a more detailed analysis of the Initiative. He quickly accepted but said he contracted the work through Arena⁹⁷. This is not borne out by the pattern of invoicing and Mr Uhlmann offers no support for the existence of that arrangement. Mr Burns’ assertion that “Arena had the brief from the Under-Treasurer to find somebody to do this review process”⁹⁸ is, I think, an attempt by Mr Burns to refute Mr Nicholls’ criticisms of his conduct. Mr Uhlmann indicated that he had thought Arena would win the engagement and was disappointed with Mr Nicholls for taking it for Information Professionals. Mr Burns claims that he spoke to Mr Bradley prior to being engaged and that Mr Bradley expressed confidence in his ability to “unravel” the problems with CorpTech and they parted on the basis that Mr Burns would have direct access to Mr Bradley during his conduct of the Review⁹⁹. Mr Burns claims he insisted upon that accessibility in order to have sufficient authority to make the review effectively. According to Mr Burns, Mr Bradley was “very happy” because “he wanted a fast-track report and he used to ask me to come and see him frequently”¹⁰⁰.

- 2.48** As mentioned earlier Mr Bradley engaged Mr Burns for the May review shortly after Mr Uhlmann had presented the results of his “April Snapshot” review. According to Mr Bradley he met separately with Mr Burns, to test his suitability for the appointment¹⁰¹. Mr Bradley asked Mr Burns whether he “thought that the same knowledge and experience could be of assistance to [CorpTech] in getting [its] project back on track”¹⁰². Mr Burns answered affirmatively, and requested that he have the right to speak to Mr Bradley directly, during his review, without reporting through an intermediary, on the basis that he would have to be critical of CorpTech staff¹⁰³. Mr Bradley agreed to meet him weekly¹⁰⁴. Mr Burns formally reported to Mr Bradley through Ms Perrott and Mr Ford. Ms Perrott remained unaware that Mr Burns was communicating directly with Mr Bradley, bypassing her¹⁰⁵. There is no doubt that Mr Burns took advantage of his ready access to the Under-Treasurer. He told Mr Bond, assertively it seems, that he had “a direct line” to Mr Bradley¹⁰⁶. Mr Goddard, who shared an office with Mr Burns, observed that he met or spoke to Mr Bradley regularly¹⁰⁷.

94 Exhibit 24, para 57.

95 Exhibit 24, para 57.

96 Exhibit 46, para 84.

97 Exhibit 46, paras 61-63.

98 Exhibit 46, para 61.

99 Exhibit 46, para 64.

100 Exhibit 46, para 66.

101 T17-63, L49-50 to T17-64, L1-24 (Gerard Bradley).

102 T17-64, L17-19 (Gerard Bradley).

103 T17-66, L35-48 (Gerard Bradley); T13-78, L52-55 to T13-79, L1-4 (Terry Burns).

104 T17-66, L39 (Gerard Bradley).

105 T16-77, L12-19 (Barbara Perrott).

106 T2-58, L4-5 (Darrin Bond).

107 T8-24, L17-24 (Keith Goddard).

- 2.49** It is clear that Mr Burns had used the opportunity of his May review to good effect, establishing a close and cordial relationship with the Under-Treasurer and effectively replacing Information Professionals as the reviewer. On his return to Brisbane, Mr Nicholls spoke to Mr Burns, Mr Waite and Ms Perrott¹⁰⁸. Both Mr Waite and Ms Perrott were unaware that Mr Burns had been instructed not to discuss his work with his employer. Mr Nicholls thought Ms Perrott showed little interest in Mr Burns over-extending his role or his disregard of his contractual arrangements with Information Professionals¹⁰⁹.
- 2.50** Mr Burns delivered his May review¹¹⁰ at the end of May¹¹¹ or very early in June 2007¹¹². No copy was ever given to Information Professionals¹¹³. Mr Nicholls and Mr Burns met on 20 June 2007¹¹⁴. Mr Burns confirmed that he had made a new agreement with Queensland Treasury and rejected the notion that he had any contractual obligations to Information Professionals. For that reason Mr Nicholls withheld Mr Burns' payment for the fifth week of his Review, as already noted¹¹⁵. Mr Nicholls noted the oddity that someone virtually unknown, in the country only a few months and with only six weeks' experience of CorpTech and the vastly complicated SS Initiative should have become the principal adviser to the Under-Treasurer on the future of the Initiative¹¹⁶. Mr Nicholls was concerned at the unprofessional manner in which Mr Burns had discharged his contract with Information Professionals and his evident interest in self-promotion and financial advantage. Accordingly he wrote to the Deputy Under-Treasurer, Mr Ford, on 27 September 2007¹¹⁷:

On utilising Terry in the assignment we performed for Geoff Waite, it was our expectation that we would be supervising his work, and as a result make an informed assessment of him as a professional. As we recruited Terry Burns off the street, after his relocation to Brisbane, he had not previously worked for us, nor do I believe in Brisbane. Given our Program and Project Management credentials we are more than capable of providing a sound assessment of his capabilities.

... [O]ur planned supervision was not able to occur, and as a result we were not provided with any opportunity to properly supervise or review his work, or assess his capabilities. This matter has previously been discussed with both Geoff Waite and Barbara Perrott.

As such, the purpose of this letter is to advise you of your need to ensure that you make your own enquiries as you see fit to independently satisfy yourself of Terry Burns' suitability for any current or future roles. Please do not rely upon any implied recommendation or endorsement due to his prior engagement by Information Professionals.

- 2.51** The letter was directed to Ms Perrott for a response¹¹⁸. Mr Ford spoke to Mr Nicholls but ultimately the complaint was disregarded by Ms Perrott¹¹⁹. She explained that she thought that events had superseded the subject matter of the complaint. The report had been delivered in its final form, and acted upon. Moreover she thought that Mr Nicholls could have made little contribution to a draft of Mr Burns' report¹²⁰.
- 2.52** Her reaction missed the point of the complaint. It was not that Mr Nicholls had been deprived of an opportunity to contribute to the contents of the report but that Mr Burns had disregarded his contractual relationship, acted outside the scope of his engagement and acted as a man without constraint. The same characteristics were later noted by Ms Perrott. Mr Nicholls' letter should have warned her that Mr Burns needed close supervision, but was unlikely to respond well to it.
- 2.53** A written reply came two months later, on 23 November 2007 by which time CorpTech had undergone the process of the RFP, the ITO, and was in the last stages of negotiating a contract with IBM for it to deliver the Shared Services Solution for the Queensland Government. Mr Ford wrote¹²¹:

I have noted the contents of your letter and fully acknowledge your role and appreciate the importance that Information Professionals places on sound supervision and assessment of practitioners. The practices and standards outlined in your letter also align with CorpTech's requirements regarding the engagement of contractors and professional staff.

108 Exhibit 24, para 59.

109 Exhibit 24, para 61.

110 Exhibit 4, Volume 1, Item 1.4, at pages 182-400.

111 T16-72, L38-39 (Barbara Perrott).

112 Exhibit 4, Volume 28, Item 25.11, at page 380.

113 Exhibit 24, para 63.

114 Exhibit 24, para 74.

115 Exhibit 24, paras 73-74.

116 Exhibit 24, para 70.

117 Exhibit 4, Volume 32, Item 29.5.3, at page 22.

118 T16-73, L27-34 (Barbara Perrott).

119 T16-73, L30-46 (Barbara Perrott).

120 T16-70, L2-3 (Barbara Perrott).

121 Exhibit 4, Volume 32, Item 29.5.4, at page 23.

- 2.54** Mr Burns delivered his Review in either late May or very early June 2007 in a meeting with Mr Bradley, Mr Waite and Ms Perrott. He was critical of CorpTech's performance under the leadership of Mr Waite.
- 2.55** Mr Bradley had allowed Mr Burns to speak to Mr Waite before the meeting¹²². Ms Perrott said that she and Mr Waite were given advance notice of what Mr Burns was going to raise with Mr Bradley, so the information was not "new" to Mr Waite¹²³. Mr Burns told Mr Waite that his report was going to recommend a different kind of skill set for the head of the program¹²⁴. He acknowledged that he told Mr Bradley that Mr Waite was not qualified to lead the Initiative¹²⁵. He did not know what Mr Waite's qualifications were¹²⁶.
- 2.56** Mr Bradley found the May review presentation to be "confronting"¹²⁷ in that Mr Burns declared the implementation process unsustainable¹²⁸. The recommendations were rightly seen by Mr Waite to be a criticism of him¹²⁹. He had difficulty accepting what was said in the report. Mr Bradley describes Mr Waite as being upset. He left the meeting¹³⁰. Mr Bond said Mr Waite found what Mr Burns had to say "quite offensive and walked out of the meeting"¹³¹. "He left that day and took some leave and never returned"¹³². Mr Waite had been the Executive Director of CorpTech from the time of its establishment on 1 July 2003 to 30 June 2007¹³³. He had no further involvement with the Queensland Health Payroll system from 1 July 2007 nor did he have any subsequent dealings with Ms Perrott¹³⁴.
- 2.57** Ms Perrott assumed Mr Waite's role, initially in an acting capacity. She was appointed Executive Director CorpTech on 1 July 2007 and continued in that role until March 2009, reporting to Mr Bradley and then to Mr Malcolm Grierson from 1 July 2008 when CorpTech and the SSS Program were transferred to the Department of Public Works¹³⁵.

Mr Bradley and Mr Burns

- 2.58** As part of being engaged to conduct the May 2007 review Mr Burns was required to present a subset of his CV and be interviewed by Mr Bradley. That interview took place in the second half of April 2007¹³⁶. No one else was present. Mr Burns and Mr Bradley have varying recollections of what occurred. According to Mr Burns, Mr Bradley said that he wanted Mr Burns to conduct the review personally. He told Mr Burns that he was the "right person" to conduct the review¹³⁷. Mr Burns replied that he wanted a "very short line of communication" to Mr Bradley¹³⁸. He recalled saying¹³⁹:

Well, then the preferable way for me to act is I want to be able to report regularly to you. I want to be able to get to you quickly because if I go down there and I say, 'That there is a very senior person there that is not actually doing the job', I need to be able to come to you in confidence and say, 'There is an issue that you need to deal with, in my opinion.'

- 2.59** Mr Bradley recalled speaking to Mr Burns about his experience in rescuing significant projects and informing Mr Burns that CorpTech were unsure of the way forward. He wanted some fresh insight into how CorpTech's roll out of the SS Initiative could be put "back on track"¹⁴⁰. Mr Bradley accepted that he granted Mr Burns the direct communication he sought. Mr Bradley was to receive regular, about weekly, reports directly from Mr Burns¹⁴¹.
- 2.60** Mr Bradley knew that in conducting his review Mr Burns would need to address the capacity of CorpTech senior management. He requested Mr Burns to share his views about senior management with him personally¹⁴², and no one else.

122 T13-82, L11-13 (Terry Burns).

123 T16-72, L51-54 (Barbara Perrott).

124 T13-82, L7-16 (Terry Burns).

125 T13-81, L14-16; T13-82, L18-20 (Terry Burns).

126 T13-80, L52-53 (Terry Burns).

127 T17-84, L26 (Gerard Bradley).

128 T17-84, L29 (Gerard Bradley).

129 T16-73, L1-2 (Barbara Perrott).

130 T17-84, L33-36 (Gerard Bradley).

131 T2-38, L53-54 (Darrin Bond).

132 T2-38, L53 (Darrin Bond).

133 Exhibit 166, para 1.

134 Exhibit 166, para 4.

135 Exhibit 53A, paras 14-15.

136 Exhibit 46, para 63.

137 Exhibit 46, para 64.

138 Exhibit 46, para 64.

139 Exhibit 46, para 65.

140 T17-64, L10-14 (Gerard Bradley).

141 T17-66, L35-43 (Gerard Bradley).

142 T17-67, L10-21 (Gerard Bradley).

- 2.61** Mr Bradley was not aware that Mr Burns informed CorpTech staff, including Mr Bond, that he had a direct line of communication to Mr Bradley¹⁴³. Nor did Mr Bradley know that Mr Burns, together with Mr Goddard, had in or about June 2007 forcefully advised Mr Bond not to have any further meetings with Mr Bradley¹⁴⁴.
- 2.62** As matters developed however, Mr Bradley knew that there were tensions between senior CorpTech staff including Mr Waite and Mr Bond on the one hand, and Mr Burns on the other¹⁴⁵. Mr Bradley recalled meeting with Mr Bond in June 2007 when Mr Bond expressed his discomfort with the way Mr Burns was going about his work¹⁴⁶. In spite of Mr Bond's misgivings, Mr Bradley instructed him to work with Mr Burns and to assist him in his replanning project at that time¹⁴⁷.
- 2.63** When asked whether he saw anything wrong in empowering Mr Burns, Mr Bradley responded¹⁴⁸:
- ... I wasn't seeking to empower Mr Burns in preference to any existing person within CorpTech. Indeed, he worked within the structures that I set up at that time in terms of having a steering committee overseeing his work, whether he created a different perception or not, I am not sure. The role that we appointed to after the May report was a reasonably focused role, had a – it didn't oversight large staffing resources or anything of that nature, or overlap with a particular role of any other person within CorpTech. It was focussed on doing a strategic piece of work around how we could develop a forward program beyond the current implementations. I think in retrospect allowing him then to get to play more active roles through the tender process, in retrospect we perhaps should have done something differently there, but at the time he was a resource who appeared to have the relevant skills.*
- 2.64** As previously observed, the SS Initiative had been established as early as 2002. There is no doubt that at the time of his meeting with Mr Burns in April 2007, Mr Bradley knew that the Initiative had stalled. Mr Bradley was seeking a solution to the problems highlighted in the April Snapshot review. However in empowering Mr Burns as he did, Mr Bradley should have anticipated conflict between senior CorpTech staff and Mr Burns. Mr Bradley knew that Mr Burns had recently arrived in Australia and had not previously been engaged by the State. He must have appreciated that Mr Burns was a stranger to the functionings of the State Government. In spite of his denial, Mr Bradley had clearly lost faith in senior CorpTech management to achieve the SS Initiative. He was willing to empower Mr Burns, an outsider, in an attempt to reset the Initiative.

Findings of Burns' May Review

- 2.65** The report sounded a note of alarm. The "overall status of the program as at May 2007" was said to be "untenable"¹⁴⁹. Mr Burns declared that¹⁵⁰:
- ... [T]he Program will not deliver the currently defined functional solution within the current budgeted costs and within the current projected timeline. ... The current budget of \$316 million will run out in June 2008 at the current monthly cost burn rate unless drastic cost reduction strategies are employed and will then still require further significant additional funding.*
- 2.66** Under "Urgent Action Needed" it was said¹⁵¹:
- The remedial or close down actions need to be undertaken as a matter of extreme urgency in order to limit further financial losses.*
- 2.67** One of the remedial actions recommended was a further review¹⁵²:
- ... [T]o re-examine all the base assumptions ... and define a revised Functional and Technical Solution model and restated business case. **This should be completed within three months. [Emphasis in the original]***
- 2.68** This further review was described as Phase III of the process of re-examining delivery of the SS Initiative. (Phase I was Mr Uhlmann's "April Snapshot" review; Mr Burns' own May Review was Phase II.)

143 T17-67, L35-43 (Gerard Bradley).

144 T17-68, L5 (Gerard Bradley).

145 T17-68, L15 (Gerard Bradley).

146 T17-52, L1-15 (Gerard Bradley).

147 T17-52, L23-25 (Gerard Bradley).

148 T17-85, L13-29 (Gerard Bradley).

149 Exhibit 4, Volume 1, Item 1.4, at page 188.

150 Exhibit 4, Volume 1, Item 1.4, at page 188.

151 Exhibit 4, Volume 1, Item 1.4, at page 188.

152 Exhibit 4, Volume 1, Item 1.4, at page 190.

- 2.69** Mr Burns made ten major recommendations. One was the commissioning of the Phase III review. Others were the establishment of “a highly empowered Design Authority which will generate a restated Functional and Technical Solution design ... on behalf of the ... Program Executive Board”¹⁵³; and “a highly empowered PMO [Program Management Office] to provide the disciplined processes ... to meet the implementation timeline”¹⁵⁴, and as part of “a new Organisational Structure” a Program Delivery Director “with full accountability for the whole end to end program implementation”¹⁵⁵. Mr Burns recommended that this Director sit at the apex of the organisation immediately below the governing Board of Directors-General (CEO Governing Board). The position was said to be necessary “to inject the required level of very experienced program management expertise ... fundamental to recovering the viability of the Program”¹⁵⁶.
- 2.70** The report contained no reference to a Prime Contractor and did not recommend that the structure of the SS Initiative, by which CorpTech designed and delivered the services, be altered in favour of an external contractor which would take over those roles.
- 2.71** Ms Perrott later appointed Mr Burns as Program Delivery Director¹⁵⁷, the powerful position he had recommended be created¹⁵⁸. He was also given responsibility for establishing the Solution Design Authority (SDA)¹⁵⁹.

Mr Burns and Mr Bloomfield

- 2.72** Mr Burns’ conduct during his May review, and his interaction with Mr Bloomfield of IBM, became a subject of particular interest to the Inquiry. Mr Bloomfield was at relevant times Public Sector Lead of Queensland IBM Global Business Services, seeking work for IBM from the State and local governments. He had worked for Accenture until February 2007. He first met Mr Burns at the 30 April meeting. The next day Mr Bloomfield sent an email to Mr Burns’ private email address, saying it had been “[g]ood to meet” the previous afternoon¹⁶⁰. Mr Burns on 2 May asked Mr Bloomfield to send emails to his CorpTech email address and requested a meeting as soon as possible¹⁶¹. They met that same day, 2 May 2007.
- 2.73** What was said at the meeting gave rise to the question whether Mr Burns held a bias in favour of IBM which later influenced the choice of Prime Contractor. The best account of what occurred appears in Mr Bloomfield’s contemporaneous record, written in private and before the matter became controversial.
- 2.74** Mr Bloomfield had two meetings on 2 May: one with Mr Burns and Ms Diann McMillan, an executive officer at CorpTech¹⁶², and another with Mr Burns alone. At 9:24 pm Mr Bloomfield emailed Mr Colin Powell, Partner and Asia Pacific Financial Management Leader of IBM Global Business Services, marked “URGENT”¹⁶³:

Col,

...

Things are moving fast on this one. Subsequent to my email yesterday afternoon, I met with Terry Burns twice today – once on the record and once off. He is expecting big things from IBM on this one – ‘innovative and expansive thinking’. This is based on his experience with what IBM was able to achieve at Fonterra ... Terry was very impressed with what we were able to do over there and is encouraging us to really push the boundaries on this – it will be very well received by him.

Terry is almost at a stage that he is coaching us, and is already ‘strongly recommending’ the position we should take in some areas. To give some further context, Terry admitted today with a grin that he was once a ‘long time IBMer’. He has stated that ‘IBM is grossly under-represented on this engagement’ and that what the CorpTech program needs is a ‘significant increase of involvement by IBM’.

Terry has asked us to put together a proposed approach, schedule, resource plan and cost model for the CorpTech program. Once again, encouraging us that there are ‘no holy cows’ and as an example he suggested that we shouldn’t discount those components of the program that currently have Accenture involvement.

153 Exhibit 4, Volume 1, Item 1.4, at page 193.

154 Exhibit 4, Volume 1, Item 1.4, at page 193.

155 Exhibit 4, Volume 1, Item 1.4, at page 194.

156 Exhibit 4, Volume 1, Item 1.4, at page 208.

157 The evidence of Ms Perrott (T16-76, L47-50) and Mr Burns (T13-82, L49-51) suggests Mr Burns was appointed Program Review Director. It is evident that Mr Burns did ultimately become the Program Delivery Director – Exhibit 4, Volume 2, Item 3.7, at pages 87-115.

158 T16-76, L43-50 (Barbara Perrott); Exhibit 4, Volume 1, Item 1.4, at page 194.

159 T16-77, L1-5 (Barbara Perrott).

160 Exhibit 4, Volume 27, Item 25.4, at page 227.

161 Exhibit 4, Volume 27, Item 25.5, at page 229.

162 Exhibit 4, Volume 27, Item 25.5, at page 233.

163 Exhibit 4, Volume 27, Item 25.5, at page 230.

... I am keen to get the right support to seize on a small window of opportunity to reposition IBM. I fully appreciate that we need to all agree on what our new position is, however in my view we need to put our best foot forward in the first instance, to then give us the luxury of choosing how/where we want to be involved. If this window closes and we do not impress Terry and Qld Treasury, we will have no option but to continue in our sub-optimal role ...

- 2.75** Mr Bloomfield sensibly acknowledged that what was said at the meetings was significant and caused him to email Mr Powell, who was not his direct supervisor¹⁶⁴.
- 2.76** Mr Bloomfield said he could not distinguish between what was said at the meeting “on the record” and the meeting “off the record”¹⁶⁵. Again he sensibly conceded that it is unlikely that Mr Burns made the comment about being an “IBMer” in front of Ms McMillan¹⁶⁶. He agreed Mr Burns gave him real encouragement to have IBM “step up to the mark” and conduct the SS Initiative¹⁶⁷.
- 2.77** It was no doubt entirely appropriate for Mr Burns to speak to officers of the companies engaged in the SS Initiative to elicit ideas for improving delivery and to test any ideas of his own for practicability. He spoke to employees of Accenture, though not, it seems, of SAP or of Logica (who was not invited to the 30 April meeting). A large part of the 30 April meeting called by Mr Ford was to prepare the companies’ personnel for such an approach. What, however, is extraordinary about Mr Burns’ discussions with Mr Bloomfield, as described in his email, is his declared partiality in favour of IBM.
- 2.78** Ms Perrott, who was at the 30 April 2007 meeting, testified that nothing was said there about increased involvement by IBM in the SS Initiative¹⁶⁸. Ms Perrott was not aware that Mr Burns had spoken to Mr Bloomfield in the terms recorded in the email. That type of communication was not part of Mr Burns’ brief¹⁶⁹. He was not engaged to give the impression to a vendor that it was being coached¹⁷⁰. While Ms Perrott said there may have been scope to make the process as competitive as possible at the program rebuild stage, for the purposes of the review, that was not Mr Burns’ role¹⁷¹. Ms Perrott also stated that at this stage she did not contemplate that Mr Burns would have a continuing role at CorpTech¹⁷².
- 2.79** Mr Goddard worked with Mr Burns in conducting the review, though in a subordinate role. The two men shared an office. Mr Goddard was effectively Mr Burns’ lieutenant and secretary. He was described as the “detail man”¹⁷³ while Mr Burns preferred generalities and overviews; in the argot of the public service, “high level analysis”. Mr Goddard prepared a schedule for the conduct of the May review. By reference to it he informed the Commission that it was “only ... in the June period”¹⁷⁴ that Mr Burns and he commenced speaking in earnest to the external contractors, such as Accenture and Logica, to gain an understanding of what contributions they could make to the program delivery. The early part of the review was focused on “risk assessment” for which Mr Burns “ran a lot of workshops”. According to their own prepared schedule they were not then “to do any sort of external organisation liaison”¹⁷⁵.

The report contained no reference to a Prime Contractor and did not recommend that the structure of the SS Initiative, by which CorpTech designed and delivered the services, be altered in favour of an external contractor which would take over those roles.

- 2.80** Mr Nicholls, whose company was contracted to perform the review and who had helped prepare the Terms of Reference for it, expressed the opinion that the discussion of the type described by Mr Bloomfield was not within the scope of Mr Burns’ review¹⁷⁶. Mr Nicholls, too, made the point that two days into the review Mr Burns “would not have been in a position to even know what the problem was at that stage”¹⁷⁷.

¹⁶⁴ T11-79, L27-36; T11-83, L20-24 (Lochlan Bloomfield).

¹⁶⁵ Exhibit 35, para 46(d)(i); T11-83, L10-13; T11-81, L16-17 (Lochlan Bloomfield).

¹⁶⁶ T11-81, L44-55 to T11-82, L1-7 (Lochlan Bloomfield).

¹⁶⁷ T11-80, L36-38 (Lochlan Bloomfield).

¹⁶⁸ T16-89, L3 (Barbara Perrott).

¹⁶⁹ T16-89, L16-22 (Barbara Perrott).

¹⁷⁰ T16-89, L43-45 (Barbara Perrott).

¹⁷¹ T16-90, L3-8 (Barbara Perrott).

¹⁷² T16-90, L10-20 (Barbara Perrott).

¹⁷³ Exhibit 27, para 88.

¹⁷⁴ T7-112, L6-8 (Keith Goddard).

¹⁷⁵ T7-112, L38-46 (Keith Goddard).

¹⁷⁶ T7-26, L24-27 (Mark Nicholls).

¹⁷⁷ T7-25, L19-22 (Mark Nicholls).

- 2.81** All Mr Burns knew about CorpTech and the difficulties it was encountering in its delivery of the SS Initiative he had learned from his involvement in Mr Uhlmann’s five-day April review. That had been conducted at a “high level”; in other words an impressionistic overview of what was a very substantial and complicated program involving the work of dozens of separate contracting companies, hundreds of employees from both the private and public sectors and the design, building and implementation of intricate and sophisticated software programs. Mr Burns was a novice in an area where others had laboured for years and possessed substantial knowledge.
- 2.82** The other point to note is that his conversations with Mr Bloomfield came at the beginning of his review, and before he had had a chance to learn much. Nevertheless he admitted to being a “long time IBMer” and volunteered that he had been very impressed with the work done by that company in New Zealand, and that he would favourably receive any proposal by IBM for its involvement in the SS Initiative. Mr Bloomfield perceived Mr Burns to be “almost ... coaching” IBM as to what it should propose. Mr Burns expressed the opinion that IBM was “grossly under-represented” in the program. He volunteered the gratuitous advice that it needed “a significant increase of involvement by IBM”¹⁷⁸.

Mr Burns’ conduct during his May review, and his interaction with Mr Bloomfield of IBM, became a subject of particular interest to the Inquiry.

- 2.83** Mr Burns said that he met “extremely regularly” with employees of Accenture and SAP who worked “down the passage” from his office and he had frequent informal discussions with them¹⁷⁹. He justified his contact with IBM personnel on the basis that he could not have that interaction with them because “they weren’t present”. For that reason he “had to set up meetings”¹⁸⁰.
- 2.84** IBM’s submissions identify passages in the evidence (though not always accurately)¹⁸¹ which record Mr Burns’ meetings with representatives of the various suppliers, Accenture, SAP, Logica and IBM, generally in the period May to July 2007¹⁸². Many of these meetings were said to be informal and some occurred over coffee. It is submitted that in this context Mr Burns’ engagement with Mr Bloomfield was unremarkable¹⁸³.
- 2.85** The submissions did not come to grips with the content of Mr Burns’ first conversation with Mr Bloomfield as recorded in the latter’s email. The meeting may have been unexceptionable. What properly attracted attention was Mr Burns’ gratuitous expression of support for IBM and the intimation that it should have a substantial role in the SS Initiative. Inappropriate at any time in a conversation between a government representative and would-be supplier, Mr Burns’ endorsement of IBM before he had begun his review finds no parallel in any interchange with Accenture, Logica, SAP or anyone else.
- 2.86** Both Mr Burns and Mr Bloomfield sought in their evidence to diminish the obvious significance of their conversation as recorded in the email. Mr Bloomfield claimed that “coaching” as the word is used by IBM staff does not have its ordinary meaning, but denotes someone who is “involved in the project and is really focussed on bringing the best out of everyone to get them to the starting line to ensure a competitive contest that provides the best outcome for the client”¹⁸⁴. A coach is a “motivator”. The difficulty with this explanation, which appears born of desperation, is that there was on 2 May 2007 no contest and no competition. Mr Burns was, or ought to have been, involved in gathering information for assessment and analysis. That would no doubt include seeking ideas and suggestions, but there was no “starting line” because no track had been surveyed or laid out. Mr Burns cannot have had any idea of what the contest was two days into his review. A more substantial objection to Mr Bloomfield’s explanation is that Mr Burns sought to motivate only IBM. He did not have a similar conversation with any of CorpTech’s other IT suppliers.
- 2.87** Mr Burns likewise denied that he was coaching. He said he wanted the suppliers to take “decisive marketing action” and that the project needed a “sharp incisive approach”¹⁸⁵. The same comments apply. No other supplier was spoken to in such terms and Mr Burns cannot have known what the project needed on 2 May 2007, and could not have told then what the competition was.

¹⁷⁸ Exhibit 4, Volume 27, Item 25.5, at page 230.

¹⁷⁹ T13-94, L33-43 (Terry Burns).

¹⁸⁰ T13-94, L44-50 (Terry Burns).

¹⁸¹ It was e.g. submitted that Mr Pedler recalled Mr Burns “strongly recommended a position that SAP should take”: Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), para 119(d). T15-17, L42 (Terry Burns) demonstrates the opposite. Mr Pedler said (T15-70, L19-25) he “absolutely (did) not” have a communication of the type described in Mr Bloomfield’s 2 May email and SAP was never given the impression that it was “that kind of trusted future organisation”. The answer relied upon in IBM’s submissions ignored the qualification Mr Pedler immediately imposed on his answer.

¹⁸² Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), paras 105-107.

¹⁸³ Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), paras 103-111.

¹⁸⁴ Exhibit 35, para 46(d)(iv).

¹⁸⁵ T13-97, L14-18 (Terry Burns).

- 2.88** Mr Bloomfield explained that the position which Mr Burns “strongly recommended” that IBM should take was to “continue to push to take more responsibility in the (Initiative)”¹⁸⁶. Even if that is so, it shows Mr Burns expressing an opinion to one supplier that it should be more involved in the program implementation before he knew whether that was objectively so or not. Mr Burns claimed that he wanted a greater involvement by IBM to introduce a competitive environment¹⁸⁷. This breaks down as an explanation at the point when he did not encourage Accenture, Logica or SAP to be competitive. Even if Mr Burns was seeking to foster competition it was indiscreet to the point of impropriety to tell one supplier that it was “grossly under-represented” on the program. Mr Burns denied making such a statement but his denial cannot be accepted¹⁸⁸.
- 2.89** The contemporaneous record is the best evidence of what was said. It shows that Mr Burns acted entirely inappropriately. It was no doubt proper to encourage IBM to propose new and, indeed, innovative proposals to improve CorpTech’s program delivery. Mr Burns may well have been justified in thinking that IBM would be a likely source of creative thinking. What was inappropriate, and grossly so, was to say to a prospective contractor with the government that it was under-represented on the project which needed a greater involvement by it, and that he would favour a proposal from IBM. Those remarks exhibit exuberant indiscretion, bad judgment and a partiality which should have disqualified him from any objective assessment of competing proposals if IBM were one of the competitors.
- 2.90** Neither Mr Bloomfield nor IBM can be criticised for participating in the conversation with Mr Burns. Mr Burns sought out Mr Bloomfield to make the disclosures and to express his opinions about IBM. Mr Bloomfield does claim that he thought that Mr Burns would have similar conversations with other suppliers¹⁸⁹ but that is disingenuous. He cannot have thought that Mr Burns would tell the others of his fondness for IBM, and Mr Burns could not say to the others that he was a long time adherent of Accenture, SAP or Logica. Mr Bloomfield must have realised that IBM had been singled out for favouritism. That, as I say, is no basis for criticising him or IBM, but he must have realised that IBM was being given a business opportunity denied to the other suppliers.
- 2.91** What makes Mr Burns’ partiality more egregious is that at the early stage of his review at which he displayed it he cannot have had any sensible idea of how the program delivery might be improved, or how IBM might improve it.
- 2.92** It is noteworthy that Mr Burns was not similarly encouraging to the other major contractors involved with CorpTech. Mr Porter of Accenture had no conversation in which Mr Burns displayed partiality for his company or revealed his predilection for IBM¹⁹⁰. No representative of any of the other companies to whom Mr Burns spoke had a conversation “off the record”¹⁹¹.
- 2.93** The conversations between Mr Burns and Mr Bloomfield differed in character and frequency from the meetings Mr Burns had with representatives from Accenture. There were no meetings of this kind at this time with Logica or SAP¹⁹². There was a degree of cordiality and encouragement in Mr Burns’ dealings with IBM which were not present when he met with the others.
- 2.94** The relationship between Mr Bloomfield and Mr Burns as revealed in Mr Bloomfield’s email of 2 May 2007 was markedly different from that between Mr Pedler of SAP and Mr Burns. Asked to comment upon the email Mr Pedler could say “absolutely” that the nature of the communications he had with Mr Burns were very different. SAP was “never provided (an) impression that we were that kind of trusted future organisation”¹⁹³. Mr Pedler “never had that kind of closeness with Mr Burns”, who did not indicate to Mr Pedler that the CorpTech program needed a significant increase in SAP’s involvement¹⁹⁴. Nor did he reveal that he held such views about IBM. Asked to comment upon Mr Bloomfield’s email of 28 June 2007, which revealed further meetings between him and Mr Burns, he commented that his relationship, and that of SAP, with Mr Burns was not at a “level that we ... shared anything like” the communications that passed between Mr Bloomfield and Mr Burns¹⁹⁵. Mr Pedler had no recollection that Mr Burns ever “coached” SAP as to how it might become more involved in the delivery of the SS Initiative; or recommended the position that SAP should take in the implementation of the SS Initiative¹⁹⁶.

186 Exhibit 35, para 46(d)(v).

187 T13-98, L9-13 (Terry Burns).

188 T14-7, L17-35 (Terry Burns).

189 T12-101, L5-6 (Lochlan Bloomfield).

190 T16-17, L44-49 (Simon Porter).

191 T16-17, L24-33 (Simon Porter); T15-103, L52-55 (Robert Pedler); T1-108, L42-44 (Marcus Salouk); T2-14, L1-18 (Michael Duke).

192 Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), para 107.

193 T15-70, L21-25 (Robert Pedler).

194 T15-70, L21-25 (Robert Pedler).

195 T15-72, L35-36 (Robert Pedler).

196 T15-71, L10-17 (Robert Pedler).

The evidence shows that Mr Burns entertained a distinct preference for IBM in the course of his May review.

2.95 Similarly Mr Porter was adamant that he had never had a meeting with Mr Burns “off the record”¹⁹⁷. Such a conversation would, he said, have been “quite memorable”¹⁹⁸. It would have involved the communication of information that was not available to other contractors or potential participants in the SS Initiative. Mr Burns did not reveal to Mr Porter his conviction that IBM should be more closely involved in the program implementation¹⁹⁹.

2.96 Another indication that Mr Burns was improperly “coaching” IBM and was not seeking helpful suggestions from it is that IBM had played a small part in the SS Initiative. Accenture and Logica were the substantial participants. IBM provided personnel (quaintly called “resources”), small in number, to provide technical expertise on the software it had licensed to the State. IBM’s local managers were not in a position to offer Mr Burns “innovative” or “expansive” thinking without first themselves learning more about the SSS Program. This is a point made in an email from Mr Bloomfield to Mr Burns of 8 May²⁰⁰:

Terry,

We are progressing our thinking around your request and involving our shared services experts

As I explained previously, IBM’s involvement in the SSS Program to date has been relatively small and as such our detailed knowledge of CorpTech’s current approach is low. As a result, there are a number of items we would like ... to help shape ... our thinking ... These include: ...

2.97 Mr Burns replied that he would “get back ... soon on these requests”²⁰¹. True to his word Mr Burns replied with some information on the same day. On 10 May he received a reply from Mr Bloomfield asking for a meeting.

2.98 On 15 May 2007, Mr Bloomfield again emailed Mr Burns²⁰²:

Terry,

In our discussion on Friday you asked for an indication from IBM of the aspects of the Shared Services Program that we would be prepared to assist CorpTech.

In principle, IBM would be happy to consider our involvement in all aspects ... – across both HR and Finance. This would obviously be dependent on establishing the relevant arrangements between Queensland Treasury and IBM. ... [A]s you mentioned ... current contractual arrangements ... may make involvement in certain areas prohibitive. In this case, our involvement may need to be limited to a management position above other providers – where IBM ... has management control to drive these providers better than has been achieved by the CorpTech management team to date.

In particular, we would be prepared to take on the PMO role, as well as key roles in the Implementation Rollout Team to better drive agency engagement and acceptance. Another area that has been handled poorly in the past, that IBM could add significant value would be in the Change Management Team.

I think it would be good to catch-up tomorrow one-on-one for a coffee to discuss our latest thinking.

2.99 Mr Burns’ immediate reply noted that IBM had no ideas, innovative or otherwise, to improve program delivery, but he held out the hope of work in other areas. He emailed Mr Bloomfield²⁰³:

I understand then that you do not have any significant new strategies to offer in the main solution area of design and build or implementation roll out at this time.

I should point out that we have no contractual inhibitor at this time that would prevent us using another vendor in any of those key areas to whom we would assign discreet (sic) work packages.

You (sic) other areas of interest are noted ... for possible future engagement.

I will contact you in due course.

197 T16-17, L32, L35-42 (Simon Porter).

198 T16-17, L27-33 (Simon Porter).

199 T16-17, L48-53 (Simon Porter); T14-8, L14-20 (Terry Burns).

200 Exhibit 4, Volume 27, Item 25.5, at page 249.

201 Exhibit 4, Volume 27, Item 25.5, at page 250.

202 Exhibit 4, Volume 27, Item 25.6, at page 262.

203 Exhibit 4, Volume 27, Item 25.6, at page 263.

- 2.100** The obvious import of this exchange is that Mr Bloomfield had understood from his conversations with Mr Burns that because of the existing contracts between CorpTech and Accenture, and CorpTech and Logica, it would be difficult for IBM to take over their role in program delivery but offered IBM the role of Program Manager or Change Manager; and that Mr Burns acknowledged IBM's inability or reluctance to become involved in the parts then being performed by Accenture and Logica but held out the promise that their contracts would not prevent "us" (the choice of pronoun indicating Burns' self-identification with CorpTech) contracting with another company in discrete parts of what Accenture and Logica were contracted to do. Mr Burns "noted" Mr Bloomfield's interest, on behalf of IBM, in the PMO and change management.
- 2.101** Mr Bloomfield replied immediately to explain that his email had meant to indicate "a high-level view of where IBM would be interested and capable of assisting CorpTech", and that his intention was to "follow ... up with a more detailed document"²⁰⁴. The next day, 16 May 2007, Mr Burns emailed his thanks for the intimation and said that he was "looking to enter final negotiations with vendor/partners by mid next week"²⁰⁵.
- 2.102** It is difficult to know why Mr Burns would have made that last statement. It was either a deliberate misrepresentation or the manifestation of a complete misunderstanding by him of his role in conducting the May review, which was to do no more than investigate the causes of CorpTech's failures and to suggest remedies. Neither Ms Perrott nor Mr Bradley contemplated that as part of his review contracts would be made, or negotiated²⁰⁶. Certainly Mr Burns had not been authorised to conduct such negotiations. Mr Burns' assertion is a further example of the exaggeration of the power he assumed and expressed on behalf of CorpTech.
- 2.103** The last meeting relevant to this topic is recorded in another of Mr Bloomfield's emails sent internally to colleagues at IBM. It was sent on 21 May 2007 and records a meeting with Mr Burns that afternoon. Mr Bloomfield wrote²⁰⁷:
- He is trying to finalise his report, however was able to counsel me on what he needs to see from us. He has already received proposals from Accenture and SAP. ... I walked through at a high level the areas we could be involved. He needs us to flesh out our proposed areas of involvement as much as possible. This includes ... :*
- *Where does IBM want to play (e.g. PMO, HRBS, Finance, IR and agencies);*
 - *He needs detail regarding exactly what role we could take in each area;*
 - *Be clear to him that we are happy to work in an environment with mixed Accenture and IBM involvement*
 - ...
 - *Don't forget the agencies ...*
- NOTE: He doesn't need costings at this stage. He just needs to work out where IBM will fit and justify our involvement in these pieces.*
- 2.104** There is no reason not to accept Mr Bloomfield's account of his conversation with Mr Burns as other than accurate. It is noteworthy that Mr Burns is not recorded as asking for ideas or advice about improvements to the SS Initiative. The conversation occurred at the conclusion of Mr Burns' review, and at the time he was writing his report. The investigations of problems and analysis of answers had been undertaken. He had "proposals from Accenture and SAP". What he wanted was justification for recommending IBM to Ms Perrott and Mr Bradley. This is the only reasonable conclusion from what was said. Mr Burns "needs (IBM) to flesh out our proposed areas of involvement". He asked to be told where IBM wanted "to play". IBM was urged not to "forget the agencies". He wanted the information from IBM "to justify (its) involvement"²⁰⁸.
- 2.105** It must be remembered that Mr Burns did not recommend the appointment of a Prime Contractor in his report and certainly did not identify any company as preferred for that role. It remains the point that he encouraged IBM to bid for a greater role in the SS Initiative and supported its effort. There is no evidence he did the same for any other company. The evidence shows that Mr Burns entertained a distinct preference for IBM in the course of his May review.
- 2.106** There was one more meeting which is evidenced in an email Mr Bloomfield sent internally on 3 June 2007²⁰⁹. It recorded a meeting with Mr Burns "late on Friday afternoon". That morning Mr Burns had presented his report to the Steering Committee, Mr Bradley, Mr Waite and Ms Perrott. Mr Bloomfield wrote²¹⁰:

204 Exhibit 4, Volume 27, Item 25.6, at page 265.

205 Exhibit 4, Volume 27, Item 25.6, at page 267.

206 T16-92, L15-17 (Barbara Perrott); T17-74, L25-30 (Gerard Bradley).

207 Exhibit 4, Volume 27, Item 25.7, at page 270.

208 Exhibit 4, Volume 27, Item 25.7, at page 270.

209 Exhibit 4, Volume 27, Item 25.11, at page 380.

210 Exhibit 4, Volume 28, Item 25.11, at page 380.

The Steering Committee agreed to proceed with discussions with IBM regarding the PMO. In the first instance, this would involve us getting back to them with a proposal (i.e. exactly what we intend to do and for how much). Terry said that Qld Treasury still needs to consider what others in the market may offer, including SMS (the incumbent, who CorpTech is not happy with) To this end, Terry strongly encouraged us to be competitive on our pricing.

Terry is looking for PMO “with bite”. ...

Gerard Bradley is now considering the remainder of Terry’s recommendations. In parallel, Terry (and a small number of others) would like to meet with IBM to better understand ... all items of our offer. Terry was clear that nothing in our proposal is currently off the table.

- 2.107** The terms of the email strongly suggest that Mr Burns and Mr Bloomfield had between them agreed that the best opportunity to involve IBM in CorpTech was to have it take over the PMO which, it will be remembered, Mr Burns had recommended be given an enhanced and more powerful role in the program delivery.

Although nothing went to IBM as a result of Mr Burns’ encouragement during his May review, it would be naïve to think that his partiality for it did not continue.

- 2.108** IBM did submit a comprehensive proposal to CorpTech that it take over the role of PMO²¹¹. The detail of the application and attendant correspondence is irrelevant to the Inquiry. The application was unsuccessful.
- 2.109** Although nothing went to IBM as a result of Mr Burns’ encouragement during his May review, it would be naïve to think that his partiality for it did not continue.

Mr Burns and Mr Bond

- 2.110** There is another example of Mr Burns’ conduct in the course of his May review which should be noted. In 2007 Mr Bond was a public servant of about 16 years’ experience²¹². He was a program director of Business Solutions, employed at CorpTech, reporting directly to Mr Waite²¹³. He was responsible for designing, building and implementing the SS Initiative²¹⁴. He was in charge of a team consisting of four or five hundred people deployed on the Initiative²¹⁵. He knew Mr Bradley, Mr Waite’s superior, and enjoyed a cordial working relationship with him.
- 2.111** Ms Perrott had earlier told Mr Bond he was to provide Mr Burns with whatever information he requested²¹⁶. He found Mr Burns “very assertive in his approach”²¹⁷. Mr Bond thought it unwise to entrust such an important review to one individual who had no extensive knowledge of the SS Initiative or its history, and ask him to “suddenly ... [provide] fairly detailed recommendation[s] about where we should go”²¹⁸.
- 2.112** In May or June 2007, about the time Mr Burns’ review was coming to an end or had just ended, he, together with Mr Goddard, went into Mr Bond’s office, closed the door and in a “fairly aggressive” manner told him he was “not permitted to go and see (Mr Bradley) anymore”²¹⁹. Mr Bond protested that Mr Bradley had extended him the courtesy of seeing him whenever he thought it necessary. He told Mr Burns that he had an obligation to inform the Under-Treasurer about matters of importance to the SS Initiative. Mr Goddard and Mr Burns were, however, “insistent that” he did not go to Mr Bradley²²⁰.
- 2.113** Mr Bond reported the incident to Ms Perrott²²¹. According to Mr Bond, Ms Perrott supported Mr Burns. She said “you know Terry is fairly aggressive ... just put up with it ... it’s going to be for the good of government”²²². Ms Perrott then suggested that Mr Bond should consider his future with CorpTech and look for a position elsewhere because the SS Initiative had not performed well²²³.

211 Exhibit 4, Volume 28, Item 25.14, at pages 405-423.

212 T2-58, L37-38 (Darrin Bond).

213 Exhibit 8, para 4; T2-38, L6-7 (Darrin Bond).

214 Exhibit 8, para 7.

215 T2-38, L16-18 (Darrin Bond).

216 T2-57, L31-34 (Darrin Bond).

217 T2-57, L39-40 (Darrin Bond).

218 T2-57, L45-50 (Darrin Bond).

219 T2-58, L18-30 (Darrin Bond).

220 T2-58, L27 (Darrin Bond).

221 T2-59, L22-25 (Darrin Bond).

222 T2-59, L27-33 (Darrin Bond).

223 T2-59, L36-42 (Darrin Bond).

- 2.114** Mr Goddard has no recollection of the conversation²²⁴. Mr Burns was inclined to doubt it occurred. I have no such doubt. Ms Perrott confirmed that Mr Bond complained to her about it²²⁵. Ms Perrott's recollection of her response is that she encouraged Mr Bond to speak to Mr Bradley because he had been committed to CorpTech's delivery of the program and the government made a decision to "go in a different direction"²²⁶. She doubted that she told Mr Bond to look for a position outside CorpTech in that conversation, although she acknowledged she may have had a conversation to that effect with Mr Bond at some stage²²⁷. She also claims that she spoke sternly to Mr Burns about his misbehaviour²²⁸. I think she is mistaken on all three points. Mr Bond's version of events is the accurate one. The government had not at the time Mr Burns spoke to Mr Bond made a decision to engage a Prime Contractor for the delivery of the program. Mr Burns denies that Ms Perrott ever cautioned him about his manner of dealing with public servants²²⁹ and given the obvious differences in their personalities, I doubt Ms Perrott would have made the attempt. Mr Bond had a clear reason to remember the event.
- 2.115** The episode is significant in several respects. It shows the extent to which Mr Burns felt confident in his position in CorpTech and felt able to intimidate relatively senior public servants. The warning to Mr Bond to stay away from the Under-Treasurer came at about the time Mr Burns had concluded his May review and was about to present its criticisms of CorpTech and his recommendations for new positions (to which he was appointed) to Mr Bradley. Mr Bond knew more about the SS Initiative than anyone else. He had led it for some years and was deeply committed to it. Mr Burns' overreaching was no doubt an attempt by him to prevent his conclusions and recommendations being challenged by the man best positioned to do so.
- 2.116** Ms Perrott agreed that Mr Burns' insistence that Mr Bond not speak to the Under-Treasurer was serious misbehaviour and "indicative of Mr Burns not understanding the workings of government and the hierarchy within government"²³⁰. He attempted to interrupt the ordinary lines of communication between public servants, and did so for the purposes of advancing his self-interest. The matter should have been reported by Ms Perrott to Mr Bradley and should have coloured his reception of Mr Burns' report. Instead I am satisfied Ms Perrott did nothing other than advise Mr Bond to placate Mr Burns, and to consider leaving CorpTech. Mr Burns was left unchallenged and uncontrolled. Ms Perrott's weakness in dealing with Mr Burns had serious consequences.

Mr Burns' New Engagement

- 2.117** Mr Uhlmann obviously remained on good terms with Mr Burns. He signed a document dated 30 May 2007 entitled "Policy and Program Office Consultancy for the Shared Services Initiative" in which he offered Arena's assistance with "a new body of work required to realign the project within the agreed timing and resource constraints"²³¹. The "new body of work" was Mr Burns' proposed "Phase III" further review. Mr Uhlmann's proposal noted that "the final presentation of findings and recommendations" from Mr Burns' May review were "due for completion this week", and that the review relied "heavily on Terry's knowledge, experience and IP"²³². The success of the new body of work which Mr Burns' review showed to be required could be, Mr Uhlmann said, "seriously impacted if the knowledge and understanding provided by Terry was not available"²³³. He went on²³⁴:

Terry has received another job offer with a major international organisation at a significantly increased rate and is due to fly to Sydney on Monday the 4th June to sign the contracts but has agreed to undertake this assignment with PPO should a decision be made and a contract signed this week.

There is therefore some time urgency to this proposal.

- 2.118** Mr Uhlmann then proposed a new consultancy "to lead a review of the currently defined standard offering and the current proposed solution for all agencies and to verify the current solution direction ..."²³⁵. Mr Burns was proposed as the nominated consultant for the role. It was said that he was "only prepared to contract through ... [Arena] for this assignment with PPO"²³⁶.

224 T8-26, L54-56 to T8-27, L1-35 (Keith Goddard).

225 T16-77, L53-54 (Barbara Perrott).

226 T16-78, L1-17 (Barbara Perrott).

227 T16-80, L22-34; T16-81, L30-40 (Barbara Perrott); Exhibit 53B, para 8.

228 T16-81, L30-45 (Barbara Perrott).

229 T13-85, L32-38 (Terry Burns).

230 T16-81, L20-24 (Barbara Perrott).

231 Exhibit 4, Volume 2, Item 3.1, at page 3.

232 Exhibit 4, Volume 2, Item 3.1, at page 3.

233 Exhibit 4, Volume 2, Item 3.1, at page 3.

234 Exhibit 4, Volume 2, Item 3.1, at page 3.

235 Exhibit 4, Volume 2, Item 3.1, at page 3.

236 Exhibit 4, Volume 2, Item 3.1, at page 3.

2.119 This document calls for comment. Although signed by Mr Uhlmann it must have been written by Mr Burns. The author of the proposal knew that Mr Burns' May review, which had not been delivered, would recommend a further review. Mr Uhlmann did not know that²³⁷. Although he acknowledged that he had signed the document Mr Uhlmann was genuinely surprised by its terms when shown it in evidence. He had no knowledge of the other "job offer with a major international organisation at a significantly increased rate" in Sydney which his letter said Mr Burns had been offered²³⁸. That was information Mr Burns gave him. I am satisfied there was no such offer. Mr Burns was most unconvincing in answering questions about it. He had no corroborating details²³⁹. It is, I think, the case that Mr Burns recommended the further review intending to undertake the role himself. He wrote his own encomium disguised as a proposal from Arena, and had Mr Uhlmann sign it.

2.120 Fortune is said to favour the bold. Certainly Mr Burns' effrontery was quickly rewarded.

2.121 Given the terms of his self-promotion and Mr Uhlmann's endorsement thereof, it is not a surprise that Queensland Treasury on 15 June 2007 executed an agreement with Arena by which it was to²⁴⁰:

- *Develop an overarching Implementation Plan for the recommendation of a series of recent replanning activities around the standard offering roll-outs.*
- *Review the recommendations for improvement and develop detailed improvement strategies relating to the implementation approach, scope, timelines and costs for the remaining implementations of the HR and Finance Business Solutions.*
- *Verify the overall delivery timeline of the program.*
- *Institute appropriate strategies to accelerate the delivery of the program.*
- *Institute productivity improvements in the structure and processes of the program.*

The contract was for an initial term of three months which the State could extend for a further 12 months²⁴¹. The services were to be performed by Mr Burns²⁴².

2.122 Important events occurred during the term of this contract, but before rehearsing them it is convenient to conclude the account of Mr Burns' successive contracts with the State.

2.123 On 17 September 2007, Mr Burns, for himself and not on behalf of Arena, proposed that²⁴³:

... Terry's contract be extended from the 1st September until the 21st December to undertake the following activities:

- *Complete Phase III of the Program Rebuild project and provide expert independent advice to the Executive during the transition phase.*
- *Negotiate final contracts with Prime Contractor vendor and help establish effective ongoing contract management arrangements.*
- *Complete the establishment of the Solution Design Authority covering the mission statement, roles, processes and resourcing requirements.*
- *Complete establishment of the Strategic Program Management Office covering the mission statement, roles, processes and resourcing requirements.*
- *Establish the strategic business needs of all agencies across the sector and plan their inclusion in the overall schedule Phase I and Phase II of the new program.*

2.124 The proposal then recited that Mr Burns had obtained Arena's consent to terminate its contract with the intent that he would "contract directly through his own organisation for this assignment with PPO"²⁴⁴. On 26 September 2007, Ms Perrott on behalf of the State executed a contract, also signed by Mr Burns on that date, appointing Mr Burns as the "Key Personnel" to fulfil the role of Project Director, SSI Program Rebuild, to undertake the same services specified in the earlier contract²⁴⁵. The term of that contract was extended to 14 March 2008²⁴⁶.

237 T6-21, L54-56 to T6-22, L1-22 (Gary Uhlmann).

238 T6-23, L13-23 (Gary Uhlmann).

239 T14-8, L39-53 to T14-9, L1-9 (Terry Burns).

240 Exhibit 4, Volume 2, Item 3.2, Schedule 1, at page 37.

241 Exhibit 4, Volume 2, Item 3.2, Clause 2 and Schedule 2, at pages 19, 38.

242 Exhibit 4, Volume 2, Item 3.2, Clause 4.1 and Schedule 2, at pages 20, 38.

243 Exhibit 4, Volume 2, Item 3.3, at page 52.

244 Exhibit 4, Volume 2, Item 3.3, at page 53.

245 Exhibit 4, Volume 2, Item 3.4, Clause 4.1, at pages 59, 60; Schedules 1-2, at pages 79, 80.

246 Exhibit 4, Volume 2, Item 3.6, at page 85.

2.125 On 27 February 2008, Ms Perrott approved the appointment of Mr Burns (for the new role of Program Delivery Director, commencing 15 March 2008)²⁴⁷, accepting the recommendation that the offer of the position be made only to Cavendish Risk Management, and not to call for wider applications for the role because of “urgency and specialist nature of the work”²⁴⁸. Ms Perrott noted that Mr Burns had “previously filled the role of Project Director, SSI Program Rebuild” and that there were “currently no available Public Sector Personnel with the specialist skills to undertake” the role of Program Delivery Director²⁴⁹. It was, she said, “critical that a continuity of approach be maintained ... and therefore it is proposed to re-engage Mr Burns.”²⁵⁰.

*As a result of receiving Mr Uhlmann’s April Snapshot review and Mr Burns’ fuller May review, Mr Bradley formed the opinion that a profound change to the manner in which CorpTech was going about implementing the SS Initiative was needed*²⁵⁵.

2.126 On 7 March 2008, Cavendish Risk Management responded to a Request For Offer²⁵¹ from Queensland Treasury to fulfil the role of Program Delivery Director for the SS Initiative by nominating Mr Burns²⁵². He was accepted and on 27 March 2008 Ms Perrott and Mr Burns, on behalf of Cavendish Risk Management, executed another agreement which was to continue until the services specified in Schedule 1 of the Agreement had been performed in accordance with the Agreement²⁵³. The services were to act as Program Delivery Director and²⁵⁴:

- *Provide detailed stakeholder management support and responsibility for overseeing management of the Program and the Prime Contractor’s performance and delivery of outcomes under the contract with the Prime Contractor;*
- *Provision of leadership and advice for the Program including oversight of the activities of the Solution Design Authority (SDA) and the Strategic Program Office (SPO) in the execution of the program of work;*
- *Ensuring the Prime Contractor provides periodic Program progress and other reports as agreed in the Prime Vendor Contract; and*
- *Participation in the delivery status review, providing a summary view of program status in assisting the SPO in connection with the preparation of materials for such reviews as agreed in the Prime Vendor contract.*

3. Request for Information (RFI)

3.1 As a result of receiving Mr Uhlmann’s April Snapshot review and Mr Burns’ fuller May review, Mr Bradley formed the opinion that a profound change to the manner in which CorpTech was going about implementing the SS Initiative was needed²⁵⁵. Mr Burns told him that he had a “fundamental concern”²⁵⁶ that CorpTech’s mode of delivery was not viable and that the program should be significantly reduced in scope with stringent new acceleration and governance processes put in place while further replanning of the overall Initiative was undertaken.

3.2 A consequence of Mr Bradley’s conviction that reappraisal was necessary was the calling of a meeting on 2 July 2007 by Mr Ford²⁵⁷. An invitation was extended to IBM, SAP, Accenture, Logica and SMS Management and Technology²⁵⁸. The purpose of the meeting was to announce Mr Burns’ Phase III review and to indicate that ideas would be sought to assist with the replanning²⁵⁹. There followed shortly after the RFI which took the form of undated letters sent on or about 6 July by Ms Blakeney to ten companies²⁶⁰, known within CorpTech as “External Service Providers” which had provided various services in connection with the delivery of the SS Initiative. Ms Blakeney’s letter borrowed heavily from the recommendations in Mr Burns’ May review, and invited “from our ESPs innovative ideas and scenarios on managing the design and

247 Exhibit 4, Volume 2, Item 3.11.6, at pages 169-170.

248 Exhibit 4, Volume 2, Item 3.11.6, at page 170.

249 Exhibit 4, Volume 2, Item 3.11.6, at page 169.

250 Exhibit 4, Volume 2, Item 3.11.6, at page 169.

251 Exhibit 4, Volume 2, Item 3.5, at page 82.

252 Exhibit 4, Volume 2, Item 3.6, at pages 83-86.

253 Exhibit 4, Volume 2, Item 3.7, at pages 87-115.

254 Exhibit 4, Volume 2, Item 3.7, at page 112.

255 Exhibit 54A, para 58.

256 Exhibit 54A, para 57.

257 T17-69, L15-19 (Gerard Bradley).

258 For example see Exhibit 4, Volume 28, Item 25.17, at page 429.

259 Exhibit 4, Volume 28, Item 25.18, at pages 431-447.

260 Only ten letters were produced to the Commission, although it is possible it went to further vendors.

implementation process within the SSS program”. The recipients of the letter were invited “to provide high level information” on how the Initiative might be delivered faster and cheaper²⁶¹. The letters were sent to²⁶²:

- a. Arena;
- b. Accenture;
- c. Ascend Business Solutions Pty Ltd;
- d. BearingPoint Australia Pty Ltd;
- e. IBM;
- f. Impart Corporation Pty Ltd;
- g. Logica;
- h. Pendragon System Consultants;
- i. SAP; and
- j. KPMG²⁶³.

- 3.3** Responses were to be sent electronically to Mr Burns by 12 July 2007. Those who responded were to be given “an opportunity to present your proposals to the evaluation team on Friday 13 July 2007”²⁶⁴. Only four companies replied. They were Accenture, IBM, Logica and SAP.

There followed shortly after the RFI which took the form of undated letters sent on or about 6 July by Ms Blakeney to ten companies, known within CorpTech as “External Service Providers” which had provided various services in connection with the delivery of the SS Initiative.

4. Request for Proposal (RFP)

- 4.1** The next step was the RFP which was sent to the four companies which had responded to the RFI. The RFP was contained in emails sent by Mr Burns on 25 July 2007 in these terms²⁶⁵:

The key information that we are looking for in the form of a firm proposal is:

1. *Is your firm prepared to enter into a prime contractor role across the whole program*
2. *What discreet (sic) work packages would you recommend to be outsourced to supplier partners going forward and which of these packages would your firm be bidding on?*
3. *Following on from your conceptual approach presented recently – could you now provide cost ranges and timescale ranges to complete the scope as defined in your approach. We understand that these are price ranges only but we are anxious to use these costings and timescales to determine who we move forward with into detailed negotiations on any of the identified engagement options.*
4. *The preferred commercial model that you would recommend.*
5. *How you would propose dealing specifically with our needs on legacy application support and upgrade strategies.*
6. *The process that we wish to follow from here onwards is to collate these proposals from all interested suppliers by the 7 August 2007 and we suggest that you may wish to make a presentation to the senior management group before this date.*
7. *It is our intention to begin the detailed processes leading to further engagements by the 15 August 2007.*
8. *Please liaise with Trish Brabyn and Diann McMillan in regard to booking meeting dates and times.*

Each of IBM, Accenture, Logica and SAP responded on the due date, 7 August 2007.

²⁶¹ Exhibit 4, Volume 6, Item 6, at pages 2, 4, 6, 8, 10, 12, 14, 16, 18, 19-2; which borrowed from presentation Exhibit 4, Volume 28, Item 25.18, at page 445.

²⁶² Exhibit 4, Volume 6, Items 6.1.1 to 6.1.9, at pages 1-18.

²⁶³ Exhibit 4, Volume 6, Item 6.1.10, at pages 19-1-19-2.

²⁶⁴ Exhibit 4, Volume 6, Items 6.1.1 to 6.1.9, at pages 2, 4, 6, 8, 10, 12, 14, 16, 18, 19-2.

²⁶⁵ Exhibit 4, Volume 6, Item 6.3.4, at page 41; Exhibit 4, Volume 28, Item 25.5, at page 548.

- 4.2 Mr Burns gave evidence that he drafted the RFP email and circulated it for review and approval by Ms Perrott²⁶⁶ and Ms Blakeney before sending it to the vendors. Ms Perrott confirmed that she approved the email before it was sent²⁶⁷.

The next step was the RFP which was sent to the four companies which had responded to the RFI. The RFP was contained in emails sent by Mr Burns on 25 July 2007.

Why a Prime Contractor?

- 4.3 There is no clear evidence of when or why the Prime Contractor model for the SS Initiative first appeared. Mr Salouk's evidence was that Accenture raised the notion of a Prime Systems Integrator, essentially a Prime Contractor, in early 2007²⁶⁸. Ms Perrott did not recall Accenture's proposal²⁶⁹, but given her recent arrival at CorpTech, this is not surprising. Mr Bradley similarly did not recall Accenture's ideas at this time²⁷⁰. Ms Perrott recalled that the first time a Prime Contractor model was mentioned was at the meeting to which Mr Burns delivered his recommendations from the May review, attended by her, Mr Bradley and Mr Waite²⁷¹. At this meeting, Ms Perrott recalls, the Prime Contractor model was a potential alternative to the original model²⁷² raised by Mr Burns²⁷³, though Mr Burns and Mr Bradley do not recall the notion being raised at this meeting²⁷⁴. Mr Bradley's recollection is that the Prime Contractor model was raised by Mr Burns during a regular update meeting²⁷⁵. Mr Burns did not clearly recall the time he decided upon the Prime Contractor model, but remembered that he had received proposals from various vendors including Accenture regarding structure²⁷⁶, noting that a "partnership model" was the likely starting point for discussing such a notion²⁷⁷. The written report contains no mention of a Prime Contractor.

- 4.4 Mr Bradley submitted a Briefing Paper dated 16 August 2007 to the CEO Governing Board, which had ultimate responsibility for and control of the SS Initiative²⁷⁸. The Briefing paper laid out "key issues", the first of which was "conceptual model for program delivery", with respect to which it said²⁷⁹:

A new program delivery model is needed to deliver the business solutions within an acceptable timeframe and budget. ... If approved, this model will be implemented by mid-September. Key characteristics include:

a. Tighter control of scope through the establishment of a Solution Design Authority.

...

c. Redefinition of supplier partner arrangements.

With respect to (a) the paper recommended "that an empowered Solution Design Authority be introduced, with the charter to contain ... scope ... [and] ... to respond to subsequent scope issues quickly ..."²⁸⁰.

With respect to (c) the paper said²⁸¹:

'In the past the role of Prime Contractor has been undertaken by CorpTech, with the support of a series of Implementation Partners (Accenture for HR/Payroll, IBM for HR Extended Functionality, SAP for specialist product advice, and Logica for Finance).

...'

As part of ... [Mr Burns' Phase III review] two solution modelling processes have been utilised to identify a preferred solution ... :

- **Internal CorpTech scenario planning ...**

266 T14-48, L1-4 (Terry Burns).

267 T17-26, L37-39 (Barbara Perrott).

268 T1-19, L42-45 (Marcus Salouk); Exhibit 5, paras 20-26.

269 T16-63, L21-26 (Barbara Perrott).

270 T17-66, L15-20 (Gerard Bradley).

271 T16-62, L30-33 (Barbara Perrott).

272 T16-62, L48-50 (Barbara Perrott).

273 T16-63, L16-20 (Barbara Perrott).

274 T13-90, L31-33 (Terry Burns).

275 T17-79, L46-53 (Gerard Bradley).

276 T13-90, L40-46 (Terry Burns).

277 T13-91, L36-38 (Terry Burns).

278 Exhibit 4, Volume 9, Item 7.5, at pages 6-18.

279 Exhibit 4, Volume 9, Item 7.5, at page 7.

280 Exhibit 4, Volume 9, Item 7.5, at page 8.

281 Exhibit 4, Volume 9, Item 7.5, at page 8.

- **Externally managed implementation:** a Request For Proposal ... to four of the implementation partners has been undertaken, seeking to confirm their commitment, capacity and capability to continue with the program, and in doing so, identify a better and/or preferred vendor engagement and solution model. The RFP closed on 7 August 2007.

4.5 The Briefing paper went on²⁸²:

An analysis of these options has confirmed the view that by engaging the supplier partners potentially through a 'Prime Contractor' model ... the program can achieve significantly reduced costs and an accelerated ... timeline.

4.6 The CEO Governing Board met on 16 August 2007, the same day as the recommendation, and formally adopted the new model²⁸³. This was three weeks after the RFP had been issued calling for offers to take on the role of Prime Contractor and after four replies had come in.

4.7 There is a discernible difference between the terms of the RFP sent out and Mr Bradley's description of it. The RFP asked whether the four addressees were prepared to take on the role of Prime Contractor, displacing CorpTech, "across the whole program"; to indicate "cost ranges and timescale ranges"; and to describe their "preferred commercial model"²⁸⁴. Mr Bradley informed the CEO Governing Board that the RFP asked the four companies to confirm their existing commitment to continue with the program and to identify a better "vendor engagement and solution model", which might or might not have been the Prime Contractor model²⁸⁵.

4.8 The substantial discrepancy shows a degree of misunderstanding or mismanagement. The RFP itself had deficiencies, as will be discussed, but it asked for offers to become the Prime Contractor and put the recipients to the effort and expense of responding, as they did comprehensively, before the CEO Governing Board had resolved to adopt that model.

4.9 Mr Bradley's Briefing paper refers to an analysis of the responses to the RFP which confirmed the view that a Prime Contractor would reduce costs and delay. The conclusion is curious. The indicated "cost ranges" submitted in response to the RFP by the two companies which quoted for the whole of the work were in excess of \$150M. CorpTech's remaining budget for the implementation of the whole-of-government solution was about \$110M. More curious is the fact that there does not appear to have been any serious analysis of what was the best available "vendor engagement and solution model". The only model considered in the RFP was the Prime Contractor one. There is no evidence of any considered thought having been given to whether that model was the best one. Despite a thorough investigation of government records there is no evidence that the analysis Mr Bradley describes was conducted. The RFP was not directed to receiving options for analysis. It was predicated upon a decision having been made to appoint a Prime Contractor. The decision appears to have emerged in conversations between Mr Burns, Ms Perrott and Mr Bradley, and was accepted by them without question.

4.10 The decision to move to the Prime Contractor model must have been made between 12 July 2007, when responses to the RFI were due, and 25 July when the RFP issued. There is, as I have said, no evidence recording the making of the decision or the reasons for it. Either Ms Perrott or Mr Bradley must have sanctioned it and the Briefing paper of 16 August was presumably designed to seek authority for what had already been put in place.

4.11 There is evidence of haste and a lack of premeditation in the change to the new model. Mr John Swinson, a partner of King & Wood Mallesons (then Mallesons Stephen Jaques), was contacted by Mr Keith Millman of the Treasury Legal Services Unit on 26 July 2007, the day after the RFP went out. Mr Millman advised Mr Swinson by email that Treasury wanted advice "on the proposal to engage a 'Prime Contractor'"²⁸⁶. Mr Swinson met Mr Millman on 27 July and was asked whether the State could appoint a Prime Contractor and if the existing contracts with Accenture and Logica precluded that course²⁸⁷. In a well ordered process the State's legal right to appoint a Prime Contractor would have been ascertained before it called for tenders for such a contract.

282 Exhibit 4, Volume 9, Item 7.5, at page 9.

283 Exhibit 4, Volume 37, Item 39.23, at pages 38-48.

284 Exhibit 4, Volume 6, Item 6.3.4, at page 41.

285 Exhibit 4, Volume 9, Item 7.5, at page 8.

286 Exhibit 4, Volume 9, Item 8.3, at page 5-6.

287 Exhibit 4, Volume 9, Item 8.4, at pages 7-8.

Responses to RFP

- 4.12** The RFP took the form of the one brief email from Mr Burns to the vendors dated 25 July 2007²⁸⁸.
- 4.13** The brevity of the RFP resulted in a certain amount of confusion amongst vendors. Mr Bloomfield gave evidence that he did not believe that the email of 25 July 2007 was an RFP, the outcome of which would be the selection of a Prime Contractor²⁸⁹. Accenture had similar concerns which it expressed to Ms Perrott on a number of occasions²⁹⁰. Mr Michael Duke of Logica gave evidence that he considered it was unusual for an RFP to be issued by an email of that nature²⁹¹. Ms Blakeney, who was listed as the Procurement Advisor in the ITO Evaluation Report, agreed that this was not the sort of RFP one would expect for a significant ICT contract as it was lacking in detail, technical requirements and conditions of tender²⁹².
- 4.14** Nevertheless, the vendors expended significant time and resources in responding to Mr Burns' request contained in the email of 25 July 2007.
- 4.15** Logica submitted a detailed response although only for the Finance requirements of the SS Initiative²⁹³. Its estimated cost range for the work it undertook to perform was between \$84.7M and \$116.8M²⁹⁴. IBM's response was briefer²⁹⁵. It estimated its cost of providing the whole of the work required to deliver the Initiative at between \$155M and \$190M²⁹⁶. SAP also responded but did not give a fixed price²⁹⁷. It proposed a variety of pricing models for different components of the work. Its overall, indicative, estimate of cost was between \$93M and \$123M²⁹⁸. Accenture, which put in a detailed response²⁹⁹, gave an estimated price for the whole of the SS Initiative of \$176M³⁰⁰.
- 4.16** Despite the extreme brevity of the RFP, the four companies which responded to it did so in considerable detail giving comprehensive proposals for the delivery, as Prime Contractor, of the SS Initiative. The process was intended by CorpTech's officers to result in the awarding of a contract. Detailed planning was undertaken for the evaluation of the responses and their gradation according to predetermined criteria. Teams of public servants and consultants were assembled for that endeavour.
- 4.17** Mr Salouk who led the Accenture bid was particularly concerned that the RFP end in the offer of a contract. He sought and obtained an assurance to that effect from Ms Perrott and Mr Bradley³⁰¹. Accenture and Logica by reason of their earlier involvement in the delivery of human resources and finance solutions respectively were best placed to understand what was required by CorpTech and to frame their responses accordingly. IBM had had little involvement in the SS Initiative and was therefore at a comparative disadvantage. Mr Salouk's concern was that if the RFP were only a "dress rehearsal" for a later more formal tender process, Accenture would lose its advantage and the content of its proposal might become known to competitors³⁰².

The brevity of the RFP resulted in a certain amount of confusion amongst vendors.

- 4.18** Notwithstanding the assurances given to Accenture, and CorpTech's own initial intention to proceed from the RFP to contract, it received legal advice that the process undertaken was inadequate for the basis of awarding a contract. On 7 and 8 August 2007, Ms Blakeney emailed the four proposals to Mr Swinson who had been retained to give legal advice, as required from time to time, to CorpTech³⁰³. Mr Swinson reviewed the proposals, though not in detail³⁰⁴, prior to a meeting on 9 August with Ms Perrott, Mr Burns and Ms Joanne Bugden,

288 Exhibit 4, Volume 6, Item 6.3.4, at page 41; Exhibit 4, Volume 28, Item 25.5, at page 548.

289 Exhibit 35, paras 93-94.

290 Exhibit 5, paras 35-41.

291 T2-17, L50-51 (Michael Duke).

292 T4-75, L50-51 (Maree Blakeney).

293 Exhibit 4, Volume 7, Item 6.6.1 at page 820-897; Exhibit 4, Volume 8, Item 6.6.2 at pages 898-1040.

294 Exhibit 4, Volume 8, Item 6.6.2, at page 909.

295 Exhibit 4, Volume 8, Item 6.7.1, at pages 1041-1072; Exhibit 4, Volume 8, Item 6.7.2, at pages 1073-1164.

296 Exhibit 4, Volume 8, Item 6.7.1, at page 1066.

297 Exhibit 4, Volume 6, Items 6.4.1-6.4.5, at pages 354-441; Exhibit 4, Volume 7, Items 6.4.6-6.4.9, at pages 442-547.

298 Exhibit 4, Volume 7, Item 6.4.9, pages 537-543.

299 Exhibit 4, Volume 7, Items 6.5.1-6.5.3, at pages 548-819.

300 Exhibit 4, Volume 7, Item 6.5.3, at page 747.

301 Exhibit 5, paras 35-41.

302 Exhibit 5, para 38.

303 Exhibit 4, Volume 36, Item 38.1.9, at page 58; Exhibit 28A, para 19.

304 Exhibit 28A, para 20.

the Director of Finance Business Administration Contracts in CorpTech³⁰⁵. Mr Swinson advised that a formal tender process was necessary and that the four proposals were “varied, vague on key elements and had many carve outs” and could not “be treated as offers” capable of acceptance by the State³⁰⁶. He also advised that potential bidders must be given enough time to put together a considered and careful response.

4.19 His advice was accepted and CorpTech moved to the preparation and delivery of the ITO.

Despite the extreme brevity of the RFP, the four companies which responded to it did so in considerable detail giving comprehensive proposals for the delivery, as Prime Contractor, of the SS Initiative.

4.20 On 20 August 2007 Ms Perrott wrote to the participants in the RFP³⁰⁷:

Thank you for the information you provided as part of the selection process for services to support the ... Shared Services Initiative.

We have reviewed the responses submitted in the RFI process.

Our feedback to you is that Accenture's and IBM's responses were the most highly rated.

We are now entering a formal process to select a “prime contractor”. It is anticipated that a RFO will be released to you this week or shortly thereafter. It is intended that RFO will be a tailored, short form request that focuses on the key technical and business issues. ... There will be a tight timeframe in which to respond.

We will provide more information to you shortly. Please contact Terry Burns ... if you have further questions.

The letter reveals the inconsistency in terminology. The “RFO” is what I have designated “ITO” and the “RFI” was the RFP.

4.21 Despite the RFP not resulting in a contract, events which occurred in the course of the evaluation of the proposals have a distinct relevance to that part of the Inquiry's Terms of Reference which required examination of the procurement process between the State and IBM.

Mr Atzeni's Preference for IBM

4.22 Mr Atzeni, an employee of QH, who was a member of one of the Evaluation Panels established as part of the ITO, met with Mr Jason Cameron of IBM throughout 2007³⁰⁸. Mr Atzeni was first employed by QH in 1996, initially as a Clinical Nurse Consultant, and later as a Client Representative at CorpTech for QH as part of Queensland Health Enterprise Solution Transition (QHEST) between 2005 and 2007. Part of Mr Atzeni's responsibilities as a Client Representative included mapping out QH's business requirements for the SS Initiative³⁰⁹. His role was to ensure that the QH business and IT processes would be ready to receive the whole-of-government payroll and rostering solution from CorpTech.

4.23 Mr Atzeni had a personal preference for IBM to assist with the QH payroll roll out, rather than Accenture³¹⁰. This, Mr Atzeni stated, was based on his concerns about the flawed Department of Housing roll out which Accenture had conducted³¹¹. His exposure to Accenture while working at CorpTech as the Client Representative for QH persuaded him that Accenture would probably not deliver a new payroll system to QH in time to meet that department's need to replace the LATTICE system³¹². He was clearly concerned that after mid-2008 LATTICE may not work, with horrendous consequences for the QH Payroll³¹³.

305 Exhibit 4, Volume 36, Item 38.1.11, at page 61.

306 Exhibit 28A, Annexure JVS1.

307 Exhibit 4, Volume 28, Item 25.29, at page 689 (IBM). The executed letters to the other vendors are not in the possession of the Commission. However draft letters in the same terms were produced: see Exhibit 4, Volume 6, Item 6.3.20, at pages 147-150.

308 Exhibit 29, paras 24-41.

309 T9-18, L2-3 (Damon Atzeni).

310 T9-50, L30-33 (Damon Atzeni).

311 Exhibit 29, para 13.

312 Exhibit 29, para 14.

313 Exhibit 29, para 15; T9-21, L3-11 (Damon Atzeni).

- 4.24** It is interesting that those more closely connected with the delivery of the QH Payroll, Mr Atzeni and Mr Hood³¹⁴, were particularly concerned at the lack of vendor support for the system and the prospect that it might fail in operation. Those more removed from the department, Mr Uhlmann and Mr Goddard, were more relaxed and thought that vendor support could be bought at a price or that CorpTech's own technicians could be trained for the support role³¹⁵.
- 4.25** Mr Atzeni conceded that he had a close proximity to IBM in 2007 which may have led to a perception that he should have reconsidered sitting on the Evaluation Panel of the ITO. This, however, did not occur to him at the time of the tender evaluations³¹⁶.
- 4.26** Mr Atzeni's main point of contact with IBM during the RFP was Mr Cameron, an IBM employee engaged to work within CorpTech during the time Accenture was prime subcontractor between early 2005 and mid-2007³¹⁷. Mr Cameron spent some time working within QH from early 2007, providing advice to QHEST at the request of Mr Atzeni³¹⁸. Mr Atzeni and Mr Cameron would also, on occasion, meet for coffee during this period and were friends on Facebook³¹⁹.
- 4.27** Relevantly, the Commission heard the following exchange of information occurred between Mr Atzeni and Mr Cameron:
- a. On 8 March 2007 Mr Atzeni emailed Mr Cameron (and others) under the subject "Health Workbrain requirements" a document called "SSS must provide by the 31 March.doc"³²⁰.
 - b. On 16 March 2007 Mr Cameron sent Mr Atzeni, and his supervisor Mr Nigel Hey, a document called "QH Development Estimates"³²¹. It provided an estimate of costings for QH to implement its own alternatives to the Shared Services Solution.
 - c. On 30 April 2007 Mr Atzeni emailed Mr Cameron a "Workforce Edge" document³²², which was the strategic analysis of the rostering transition prepared for QHEST³²³. The body of Mr Atzeni's email stated "For eyes only" which can be understood to mean that he intended the email be for Mr Cameron's eyes only³²⁴.
 - d. On 24 June 2007 Mr Cameron emailed Mr Atzeni, Mr Hey and Mr Bloomfield attempting to coordinate a meeting time³²⁵.
 - e. On 25 July 2007 Mr Cameron emailed Mr Atzeni approximately one hour after the RFP was issued to IBM, requesting the implementation roll out plan template provided by CorpTech and requesting a meeting with him and Mr Dougal Ferguson, the awards specialist at QH³²⁶.
 - f. On 25 July 2007 Mr Atzeni emailed Mr Cameron, providing him with the requested roll out plan and requesting a further meeting³²⁷.
 - g. On 30 July 2007 Mr Cameron emailed Mr Atzeni a link to the SSI review³²⁸.
 - h. On 8 August 2007 Mr Cameron emailed Mr Atzeni detailing how IBM's presentation at CorpTech had gone³²⁹.
 - i. On 13 August 2007 Mr Cameron emailed Mr Hey and Mr Atzeni seeking the opportunity to share IBM's CorpTech presentation with them³³⁰.
 - j. On 28 August 2007 Mr Cameron emailed Mr Atzeni the DETA (Department of Education Training and Arts) requirements, stating "Happy reading"³³¹. Mr Atzeni then sent them on to Mr Hey on 30 August 2007 stating "Unofficially got these from IBM who go (sic) them for their planning³³².

314 T3-33, L7-18; T3-34, L33-46; T3-52, L7-27 (Philip Hood); T9-21, L20-25 (Damon Atzeni).

315 T6-12, L41-56 (Gary Uhlmann); T8-30, L13-55; T8-43, L17-26 (Keith Goddard).

316 Exhibit 29, para 45; T9-73, L1-10; T9-86, L1-3 (Damon Atzeni).

317 Exhibit 29, para 21; Exhibit 31, paras 4(a), 15.

318 Exhibit 31, para 16.

319 Exhibit 29, para 21; Exhibit 31, para 43; T9-65, L7-55 to T9-66, L1-42; T9-67, L31-34 (Damon Atzeni).

320 Exhibit 4, Volume 3, Item 4.10, at page 10.

321 Exhibit 4, Volume 3, Item 4.16, at pages 69-70.

322 Exhibit 4, Volume 3, Item 4.49, at page 169.

323 Exhibit 4, Volume 3, Item 4.44, at pages 124-164.

324 T9-51, L20-32 (Damon Atzeni).

325 Exhibit 4, Volume 3, Item 4.70, at pages 420-422.

326 Exhibit 4, Volume 4, Item 4.86, at page 557.

327 Exhibit 4, Volume 4, Item 4.87, at page 558.

328 Exhibit 4, Volume 4, Item 4.90, at page 564; T9-85, L1-38 (Damon Atzeni).

329 Exhibit 4, Volume 4, Item 4.93, at page 569.

330 Exhibit 4, Volume 4, Item 4.94, at page 571.

331 Exhibit 29, Annexure DAA-37.

332 Exhibit 29, Annexure DAA-36.

Despite the RFP not resulting in a contract, events which occurred in the course of the evaluation of the proposals have a distinct relevance to that part of the Inquiry's Terms of Reference which required examination of the procurement of the contract between the State and IBM.

- 4.28** Mr Atzeni, through these interactions with Mr Cameron, offered considerable assistance in IBM growing its role in the SS Initiative. On at least one occasion, he gave Mr Cameron information confidential to government³³³. Mr Cameron said that all of the documents provided by Mr Atzeni were freely available to any person working on the whole-of-government program and were not required to be treated as confidential³³⁴. If that were so one wonders why Mr Cameron asked for them, or why Mr Atzeni bothered to send them. Mr Atzeni met with IBM staff very shortly after the RFP was issued to give it information relevant to its bid without which IBM would have been at a disadvantage.
- 4.29** Mr Atzeni cannot be accepted when he gave evidence that he did not know why he was asked by Mr Cameron to attend a meeting with Mr Ferguson³³⁵. If he was not told of the reason for the meeting he would have asked. When he realised some time later that the RFP process had commenced and put two and two together, he would have remonstrated with Mr Cameron or told his superior, Mr Hey. There is no evidence he did either³³⁶. There is also a coincidence of time and circumstance in that the RFP email was sent out by Mr Burns to IBM on 25 July 2007 and approximately one hour later, Mr Cameron was requesting documents from Mr Atzeni and arranging a meeting with him and Mr Ferguson the next day to discuss awards.
- 4.30** Further, Mr Atzeni should not have participated in the ITO. He may not have had a conflict of interest, but he had a personal and actual bias in favour of IBM and against Accenture. Mr Atzeni readily acknowledged that he should have reconsidered his position on the Evaluation Panel³³⁷. Mr Atzeni gave evidence that he made a disclosure about his history of working with IBM at the commencement of the evaluation, but, through no fault of his own, the relevant forms could not be produced by the State³³⁸. He was a minor player in the evaluation process and it is unlikely that his individual preference influenced the choice of Prime Contractor, but nevertheless he did not bring and could not have brought a fair, objective mind to the evaluation process.
- 4.31** Although he had some reason to doubt Accenture's capacity to perform the contract, he had no reason to believe that IBM would do any better.

Contact Between Mr Burns and IBM during the RFP

- 4.32** The main criticism of Mr Burns in the course of the Inquiry relates to suggestions of partiality on his part to IBM's interests. That partiality manifested itself in private encouragement of IBM by Mr Burns during the RFP process. At the very least, Mr Burns did not appreciate the special obligations of government agencies in procurement processes to act fairly, and to treat all tenderers equally.
- 4.33** Mr Burns' discussions and meetings with IBM representatives in contemplation of the RFP tender process were inappropriate. Best practice in procurement requires that all competitors receive the same information. That approach aids transparency as well as promoting effective competition. Effective competition in turn ensures the best chance of obtaining value for money.
- 4.34** Critically, Mr Burns invited IBM for a "dry run" or rehearsal of its key RFP proposal presentation to be made to CorpTech. This was not an opportunity afforded to any other vendor³³⁹.

333 Exhibit 4, Volume 3, Item 4.44, at pages 124-164.

334 Exhibit 31, para 51.

335 T9-64, L29-56; T9-67, L10-29 (Damon Atzeni).

336 T9-86, L31-54 to T9-87, L1-6 (Damon Atzeni).

337 Exhibit 29, para 45; T9-73, L1-10; T9-86, L1-3 (Damon Atzeni).

338 Exhibit 29, paras 42-43; T9-71, L48-55 to T9-72, L1-5 (Damon Atzeni).

339 T14-39, L8-12 (Terry Burns).

4.35 On 27 July 2007 Mr Bloomfield sent the following email to Messrs Cameron, Paul Surprenant and Christopher Prebble of IBM³⁴⁰:

I just got off a call with Terry. A few points:

He has invited us to have a dry run before our presentation again. He said this would be particularly important for us to test our presentation of our financial position;

He suggested that we request a meeting with Gerard Bradley and the steering committee, as a separate exercise to our presentation of our proposal. He clarified for me (which Trish has been unable to do so far) that the 6 August meeting (still to be confirmed) will be to the same mob and it may be smart for us to get some messages directly to the steering committee 'unfiltered' ...

4.36 Mr Burns' RFP email to the vendors set out the requirements that CorpTech was looking for in a proposal. Relevantly, the email offered the parties a meeting with representatives of the State, stating "we suggest that you may wish to make a presentation to the senior management group before this date"³⁴¹.

4.37 The IBM "dry run" took place on Friday, 3 August 2007 with Mr Burns and Mr Goddard at IBM's offices³⁴².

The main criticism of Mr Burns in the course of the Inquiry relates to suggestions of partiality on his part to IBM's interests. That partiality manifested itself in private encouragement of IBM by Mr Burns during the RFP process.

4.38 Mr Burns gave evidence that he had meetings with the vendors at which they could sound out ideas with him, as the short timeframe meant that assisting the vendors to provide useful responses to the RFP was necessary³⁴³. Mr Bloomfield gave evidence that the "dry run" meeting was consistent with the invitation contained in Mr Burns' RFP email³⁴⁴. However that cannot be accepted. I find by inference that the purpose of this meeting was to give IBM a rehearsal of the final presentation it was scheduled to give CorpTech on Monday, 6 August 2007.

4.39 Mr Bloomfield and Mr Burns could not recall the detail of what was discussed at that meeting³⁴⁵. Mr Goddard could not recall attending the meeting at all³⁴⁶. Nevertheless, it is of note that neither Mr Burns nor Mr Goddard could be properly characterised as being senior management of CorpTech (who Mr Bloomfield himself identified as being people such as Ms Perrott, Mr Ford and decision-makers such as Mr Hood³⁴⁷). Mr Bloomfield conceded in evidence that this was not a presentation to the senior management group referred to in Mr Burns' RFP email³⁴⁸. It was a presentation to two independent contractors to the State³⁴⁹.

4.40 One does not find in the RFP email an invitation to any other tenderer to do a "dry run" presentation before Mr Burns and Mr Goddard. That was an invitation extended to IBM only. There was no similar attention given to other bidders. IBM knowingly obtained a private advantage over its competitors by being given a "dry run" of a key proposal. Nothing in the meeting said by Mr Burns to IBM was hindered by the presence of a CorpTech or Queensland Treasury representative. No government official was present at that meeting.

4.41 The other RFP vendors also sought and received anterior meetings with CorpTech representatives prior to their final RFP presentations. However, IBM alone received the benefit of a meeting with only Mr Burns and possibly Mr Goddard to review and refine its presentation. Further, there is a distinct difference between the nature of IBM's "dry run" meeting on 3 August and any meeting its competitors had with CorpTech representatives.

340 Exhibit 4, Volume 33, Item 35.34, at page 467.

341 Exhibit 4, Volume 6, Item 6.3.4, at page 41; Exhibit 4, Volume 28, Item 25.25, at page 548.

342 IBM representatives were Lochlan Bloomfield, Brooke Freeman, Christopher Prebble, Jason Cameron, Keith Pullen, Paul Surprenant and Sara Simpson; Exhibit 4, Volume 34, Item 35.47-35.48, at pages 592-594A.

343 T14-38, L13-38 (Terry Burns).

344 Exhibit 35, para 86.

345 Exhibit 35, para 85; T14-38, L17-18; T14-39, L1-4 (Terry Burns).

346 T8-2, L28-50 (Keith Goddard).

347 T12-22, L1-4 (Lochlan Bloomfield).

348 T12-22, L24 (Lochlan Bloomfield).

349 T12-22, L26-30 (Lochlan Bloomfield).

- 4.42** This meeting must also be viewed in the context of the general partiality exhibited by Mr Burns to IBM's interests. There was a marked disparity in the ease of access to meetings and information of this kind given by Mr Burns to IBM, when compared with the other tenderers. Mr Duke (of Logica)³⁵⁰, Mr Salouk³⁵¹, Ms Janine Griffiths (of Accenture)³⁵², Mr Porter (of Accenture)³⁵³ and Mr Pedler (of SAP)³⁵⁴ all said they never received treatment of this kind from Mr Burns. The Commission interviewed and took statements from Mr Salouk³⁵⁵, Mr Porter³⁵⁶ and Ms Griffiths³⁵⁷, Mr Pedler³⁵⁸ and Mr Duke³⁵⁹. Each (other than Ms Griffiths) was made available for oral examination. Their evidence speaks for itself: none of these witnesses had any "dry run" or "off the record" meetings, at no stage did Mr Burns coach or almost coach them and Mr Burns never strongly recommended to them the approach they ought to adopt in their proposals, and he never imparted to them the generally encouraging remarks he made to Mr Bloomfield.
- 4.43** Evidence was presented to the Commission that Accenture similarly had an objective during the RFP to "test ideas" with CorpTech management. Accenture provided an explanation of its proposal to CorpTech on 2 August 2007³⁶⁰. However, that meeting can be clearly differentiated from the IBM "dry run": it was between senior Accenture representatives and senior CorpTech and Queensland Treasury representatives, including the Under-Treasurer, Mr Bradley, the Deputy Under-Treasurer, Mr Ford, Ms Perrott as well as Mr Burns, Mr Goddard, Ms Bugden and Ms Blakeney³⁶¹. Mr Porter gave evidence that this was a formal meeting, of short duration³⁶².
- 4.44** Mr Duke and Mr Roland Baier of Logica had the benefit of meeting with Mr Burns on or about 5 July 2007 to discuss the SS Initiative³⁶³. Likewise, Mr Duke also requested an additional meeting to gain more information about the RFP process with only Mr Burns and Ms Perrott on 31 July 2007, to which Mr Burns replied with a list of the meetings Logica had already had with CorpTech and resisted the suggestion of a more intimate meeting³⁶⁴. Logica executives met with Mr Burns regarding its proposal on 1 August 2007, but Ms Perrott and Ms Blakeney, the "Legal and Procurement" team lead for the ITO evaluation, were also present at this meeting³⁶⁵.

The issue for consideration was whether IBM in the course of the RFP received or misused confidential information belonging to the State or Accenture, its main competitor in the bid process, which gave it a competitive advantage.

Access to Confidential Information

- 4.45** Mr Salouk, who led Accenture's bid team, gave evidence that very early in the procurement process he expressed concern to Mr Bradley and Ms Perrott on a number of occasions that Accenture's confidential information relating to its bid was being leaked to IBM³⁶⁶. He recalls receiving repeated assurances that CorpTech intended to "buy off", or contract from, the RFP process and Accenture structured its bid accordingly³⁶⁷. When CorpTech proceeded to a subsequent ITO, Mr Salouk's concerns remained that Accenture's RFP information had been reflected in the ITO and that IBM "caught up very quickly" between the two processes³⁶⁸. Mr Salouk, however, was not able to point to any specific example of misuse of Accenture's information in the limited time and materials he had available to him³⁶⁹.

350 Exhibit 7, paras 21-30.

351 Exhibit 5, paras 69-77.

352 Exhibit 59, para 19.

353 Exhibit 51A, paras 9-19.

354 Exhibit 49, paras 20-26.

355 Exhibit 5.

356 Exhibit 51A; Exhibit 51B.

357 Exhibit 59.

358 Exhibit 49.

359 Exhibit 7.

360 Exhibit 4, Volume 26, Item 24.64, at page 1169-1170; Exhibit 51B, paras 2-3.

361 Exhibit 4, Volume 26, Item 24.64, at page 1169-1170; Exhibit 51B, paras 2-3.

362 Exhibit 51B, para 4.

363 T2-12, L24-56 to T2-13, L1-19 (Michael Duke).

364 Exhibit 4, Volume 32, Item 31.1, at pages 1-4.

365 Exhibit 4, Volume 32, Item 31.1, at page 2.

366 Exhibit 5, paras 35-41.

367 T1-58, L43-46 to T1-59, L1-3 (Marcus Salouk); Exhibit 5, paras 36, 40-42, 83.

368 Exhibit 5, paras 59-61, 113.

369 T1-66, L1-7 (Marcus Salouk); Exhibit 5, para 132.

4.46 The evidence did, however, raise questions about the security of government systems during the procurement process. During the RFP, IBM, probably Mr Bloomfield³⁷⁰, contacted Mr Burns to inform him that a staff member at a government agency mentioned that they had access to an “evaluation matrix” which listed the strengths and weaknesses of the respective RFP responses³⁷¹. The document was inadvertently stored on an unsecured section of the Local Area Network (LAN). Mr Burns emailed Ms Perrott on 31 August 2007 about this security breach, stating that he had received advice from Mr Swinson that the four vendors should be formally notified of this lapse³⁷². However, the Commission located no evidence that the vendors ever received such notification. This appears to be another oversight by Ms Perrott on an important point.

IBM’s Conduct during the RFP

4.47 IBM’s conduct during the RFP came under examination in the hearings. The issue for consideration was whether IBM in the course of the RFP received or misused confidential information belonging to the State or Accenture, its main competitor in the bid process, which gave it a competitive advantage.

4.48 IBM solicited and received information during the RFP to which the other three tenderers did not have access. This placed IBM at a distinct advantage over its competitors. IBM solicited information from Mr Damon Atzeni, an employee of QH. IBM’s bid team received a “dry run” or rehearsal from Mr Burns for a key bid presentation, which was an opportunity not afforded to the other tenderers. IBM improperly searched CorpTech information systems, specifically the LAN, for information regarding the vendor proposals and the evaluation of those proposals. IBM also received and used information that Accenture would offer, as part of its ITO response, a “Not-to-Exceed” price.

4.49 That this conduct took place prior to the official commencement of the ITO has no significance. The information was, in the competitive commercial environment, self-evidently confidential, and valuable to IBM. IBM acquired information in circumstances which prohibited its use by IBM, and attempted to obtain confidential information from CorpTech which it should not have.

4.50 IBM’s *Business Conduct Guidelines* (Guidelines) applied to the IBM executives and employees (including Mr Bloomfield, Mr Joseph Sullivan, Mr Surprenant, Mr Cameron and Ms Cheryl Jensen [nee Bennett]) at the time of the 2007 procurement process. They describe information which should not be used in a bidding process.

4.51 Relevantly, the Guidelines state³⁷³:

Dear IBMer,

... (These Guidelines are) not just about compliance with the law and general standards of ethics. By establishing these guidelines and giving them the weight of a governing document, we are acknowledging that our choices and actions help define IBM for others. We are ensuring that our relationships--with clients, investors, colleagues and the communities in which we live and work--are built on trust.

In other words, the Business Conduct Guidelines are a tangible example of our values and expressions of each IBMer’s personal responsibility to uphold them.

I hardly find it necessary to remind IBMers to “act ethically.” I know you feel as strongly as I that anyone doing otherwise does not belong at IBM ...

The Guidelines that applied to the public sector³⁷⁴ relevantly provided³⁷⁵:

*2.2.1 Obtaining and Using Information*³⁷⁶

We operate in a highly competitive environment. Winning or losing a contract often depends on the amount of accurate information we obtain for use in a proposal. An important part of an employee’s job may be to get that information. However, you must ensure that we are legitimately entitled to the information you gather or receive.

You may not obtain oral or written information, including government planning and budgetary documents, which has not been released to the general public and which is subject to restrictions

370 Exhibit 35, paras 110-111.

371 Exhibit 4, Volume 33, Item 33.9, at page 36.

372 Exhibit 4, Volume 33, Item 33.9, at page 36.

373 Exhibit 84, at page 1.

374 Letter from Ashurst Australia to F. Copley, QHPSCI, regarding Requirement 15 to produce documents, dated 17 April 2013.

375 Exhibit 85, at pages 5, 7.

376 Exhibit 85, at page 5.

regarding its use unless you have obtained prior written approval of the official with government authority. Similarly, when engaged in a government bid, you may not obtain or seek to obtain information regarding our competitors' bids or the Government Client's decision process which is confidential to the Government Client or any third party. These requirements also apply to information obtained by third parties such as consultants, subcontractors, team members and others.

If you are uncertain about the status of information, it is your responsibility to resolve any questions before obtaining the information. If you have already received it, resolve any issues with Contracts and Negotiations or Legal prior to copying, using or distributing the information ...

2.4. Working with Third Parties³⁷⁷

2.4.1 Subcontractors and Suppliers

... In particular, do not accept, use, or distribute any information from subcontractors and suppliers without proper authorization. If you learn of any improprieties in our dealings with our subcontractors and suppliers, you must report them to IBM management.

- 4.52** Further, Mr Bloomfield, who led IBM's bid, by 2007 had expertise in public sector work and significant experience in government procurement. Prior to joining IBM, he had many years' experience in bidding for public sector contracts during his time at Accenture³⁷⁸. He was well versed in government procurement processes, including the requirements of the State Purchasing Policy, which required ethical, honest and fair behaviour³⁷⁹. IBM provided him with training in ethics and honesty, as it did to all of its employees engaged to work within CorpTech³⁸⁰.
- 4.53** The methods of obtaining and using information relevant to the preparation of IBM's bid raised questions as to the probity of its employees in the procurement process. Exhibit 32 contained a series of emails produced by IBM which became a focus of the Commission hearings.
- 4.54** In a covering letter from IBM's solicitors of 18 March 2013 it was represented that IBM produced these emails voluntarily in a corporate desire to act with complete candour, and to assist the Commission, and that they were not required under any Requirement issued to IBM³⁸¹. These emails were, however, caught by Requirement 3 issued to IBM on 20 February 2013 and should have been produced in response to that request.
- 4.55** The Requirement relevantly demanded that IBM produce "any documents relating to the Request for Proposal ... and/or Request for Information ... regarding the appointment of a Prime Contractor ...". To remove the doubt, which IBM's solicitors expressed, the Commission's Official Solicitor wrote on 28 February 2013 that "... [T]he materials sought ... relate to the process prior to the ITO ...". It is difficult to understand how IBM could not have realised that the emails "voluntarily" supplied fell within the description of documents relating to the RFP, the procurement process which preceded the ITO.
- 4.56** On 3 August 2007 Mr Bloomfield sent Mr Surprenant of IBM the following email³⁸²:

Paul,

Following is an email sent from Simon Porter to a mutual friend in the industry, who knows Barbara Perrott. It gives us some insight into Accenture's thinking.

We can speak on Sunday about how we allow for this in our presentation.

Please keep this to yourself.

Cheers

Lochlan

We had a session today with Bradley, Ford, Perrott ... and a few others. From Accenture it was myself, Salouk and Doug Snedden (Australia MD).

Be interested in any feedback you can get with respect to that session. Also interested in what meetings IBM are having with those guys. Have they been in front of Gerard?

It is clear that Gerard wants to know our number ASAP. We said we can give a fixed price for the next release, but would need to "Transition in" over an up to 6 month period, in which time we will be able to fully cost and FP the whole deal.

377 Exhibit 85, at page 7.

378 Exhibit 35, para 4.

379 Exhibit 4, Volume 23, Item 23.3, at page 43.

380 Exhibit 40; T12-61, L29-54 (Lochlan Bloomfield).

381 Exhibit 32.

382 Exhibit 32, at page 3.

Next Tuesday we will present a “Not-to-Exceed” (NTE) budget figure. This is a figure we think is a reasonable estimation of the total program and something we will work with them on to scope and manage the program within this number. This is a total Program Cost, ie. internal and external costs. They say they have about \$100m left. They know that is not enough, but we want to know how much more can they bare (sic). Perhaps you could test her on her expectations for an NTE and if she is not forthcoming with information then try some ranges and assess her comfort... eg. do they expect + or - \$200m? If above ... how much ... if below ... how much.

One of our concerns is that a competitor will offer them a “silver-bullet” for a ridiculously cheap price ... ie. within the remaining budget. Make sure she has significant doubts that that can be achieved ... it can't. Anyone who offers one is not credible.

You can also let her know “through your experience with industry” that everyone is sick of their indecisiveness and will start walking away. They need to be decisive and not water down a decision ie select an SI and don't go half baked with a couple of vendors for an interim stage.

Our presentation and proposal are due on 7 August, so feedback straight after your meeting will be much appreciated. Depending on how good it is, there could be a Grange based Cha Cha before retirement.

Cheers

Simon

Either at the time he sent the email to Mr Surprenant or at the time he provided the email to IBM's solicitors for production to the Commission, Mr Bloomfield obliterated the address field of the copy of Mr Porter's email that came to him so that from what was produced to the Commission it was impossible to identify the addressee or addressees to whom Mr Porter wrote, and the person who forwarded the email to Mr Bloomfield.

- 4.57** Messrs Bloomfield and Surprenant were engaged in preparing IBM's response at the time. Mr Porter was a senior executive at Accenture. He was involved with Mr Salouk and Mr Snedden in preparing Accenture's response to the RFP. His email was forwarded to Mr Bloomfield who sent it to Mr Surprenant with the comment which appears at the beginning of the forwarded email.

The methods of obtaining and using information relevant to the preparation of IBM's bid raised questions as to the probity of its employees in the procurement process.

- 4.58** The Commission, despite issuing Requirements to provide documents and information to IBM, SAP and Accenture, was unable to obtain a copy of the original email sent by Mr Porter, or the email which was subsequently forwarded on to Mr Bloomfield. It seems extraordinary that three major international IT companies, with their resources and expertise, were unable to produce any record of the original emails from their archives or server back-up.
- 4.59** On the evidence before the Commission, it is almost certain Mr Porter's email was sent to Mr Pedler of SAP. Mr Porter was reluctant to name Mr Pedler publicly and even initially, when interviewed by Commission staff. However when pressed he gave it as his recollection that it was Mr Pedler to whom he sent the email.
- 4.60** Mr Porter addressed the email in a statement given to the Commission. He stated³⁸³:
- I cannot be sure who leaked this email to Lochlan Bloomfield and I am disgusted and appalled that it has been circulated around IBM. It shows a total of integrity (sic) from IBM and the sender ... considering the context of the message the only parties outside of Accenture that I consider it likely for me to have sent this email are our proposed sub-contractors within our RFP.*
- 4.61** In sending the email, Mr Porter displayed a serious lapse of judgment. He disclosed Accenture's pricing strategy and gave an indication of its price to SAP, a competitor in the RFP. This is information I expect a sensible IT company would prefer to keep to itself when engaged in a competitive tender. From CorpTech's point of view the email could be read as seeking to achieve “a united front” between two competitors on the important question of price, thus lessening competition. Mr Porter explained that he did not consider that SAP was a serious contender in the RFP, that it would never have won, and that if Accenture won it would have engaged with SAP as a partner in the design and implementation of the SAP part of the solution³⁸⁴.

³⁸³ Exhibit 51A, para 20.

³⁸⁴ Exhibit 51B, paras 6-7; T16-13, L1-28 (Simon Porter).

That view is one Mr Pedler definitely did not share³⁸⁵. SAP was, he said, serious in its bid and he at least was annoyed that its credentials for the Prime Contractor role were not taken as seriously as the others³⁸⁶.

- 4.62** Ms Perrott expressed the opinion that (assuming the email was sent to Mr Pedler) it indicated a level of collusion between the two companies³⁸⁷. This misstates the position. There is no evidence at all of collusion. There is no evidence that Mr Pedler acted in any respect in response to Mr Porter's email³⁸⁸, or even discussed its content with him, before or after it was sent. Mr Porter did not seek to have Mr Pedler provide CorpTech with other than SAP's genuine bid (perhaps because he thought it would not make one) and the message he wished Mr Pedler to reinforce was Accenture's genuine (and as it turned out realistic) opinion that the SS Initiative would cost close to \$200M to deliver. There is, as well, the request that Mr Pedler pass on to Mr Porter what Ms Perrott had said about price, but acting responsibly Ms Perrott would not have told Mr Pedler anything she did not also tell the other bidders.
- 4.63** Mr Pedler could not recall receiving the email, but said it was likely it came to him as the correspondence "resonated" as being typical of the communications they would exchange³⁸⁹. Mr Pedler was questioned about whether he forwarded the email on to Mr Bloomfield which he denied³⁹⁰. Mr Pedler is a witness who should be accepted as honest.
- 4.64** The relevance of the email to the Inquiry was that it suggested that Mr Bloomfield had improperly used confidential information. To investigate that point it was relevant to discover who sent it to Mr Bloomfield. He would not say³⁹¹. He was examined on the point twice: once *in camera* at the Commission's offices³⁹² and a second time when he was examined publicly in the course of hearings. On both times he swore on oath that he could not remember who forwarded him the email³⁹³.
- 4.65** Despite being questioned at some length on these two occasions, Mr Bloomfield persisted with that answer. I am satisfied that it was not honest. It may be accepted that Mr Bloomfield might have no recollection of commonplace events years ago, and that he would forget the detail of day-to-day dealings, but it is impossible to accept that he would not have remembered who sent him Mr Porter's email. It was a seminal document, which he described as being from "a mutual friend in the industry"³⁹⁴. It was information which would have been of moment to him, and material to a large bid he hoped to secure for IBM. He said as much to Mr Surprenant. Mr Porter had little difficulty in recalling to whom he sent the email³⁹⁵.
- 4.66** Mr Bloomfield was a senior executive at Accenture for many years prior to joining IBM³⁹⁶. He dealt with the email in his statement. He said he did not "directly recall" from whom he got it, but "it appeared to him" that Mr Porter may have sent his email "to one of a number of people with whom (Mr Bloomfield) may have worked at Accenture ..."³⁹⁷. Mr Bloomfield went to the trouble of editing the email, making it impossible to identify the "mutual friend", someone he wanted to protect (thereby no doubt protecting himself)³⁹⁸. He cannot have forgotten who among his friends deserved that protection. He identified in his statement that the sender of the email was, probably, someone with whom he had worked at Accenture³⁹⁹. When questioned *in camera* Mr Bloomfield, while denying he could recall the sender's identity, helpfully offered to provide a list of names of people who might have sent it. The list expanded over the time he was in the Commission's offices and eventually included 14 people, not one of whom was in the category of persons with whom he had worked at Accenture⁴⁰⁰. Mr Bloomfield, in my judgment, provided a list of people none of whom, to his knowledge, sent him the email.
- 4.67** As I say I do not believe he does not remember who sent it to him. It was, despite his denials, an important document to him and to IBM⁴⁰¹. He treated it as such. The Guidelines forbade the use of information not legitimately obtained. He did not get Mr Porter's email legitimately. If he had he would not have told Mr Surprenant to keep it to himself. Mr Bloomfield did not deal with it as his employer's Guidelines required.

385 T15-65, L21-26 (Robert Pedler).

386 T15-126, L1-19 (Robert Pedler).

387 T16-107, L5-18 (Barbara Perrott).

388 T15-93, L29-42 (Robert Pedler).

389 T15-76, L3-5 (Robert Pedler).

390 T15-76, L24-25 (Robert Pedler).

391 Exhibit 37, at pages 3, 7, 8; Exhibit 35, para 97; T12-40, L32-55 to T12-41, L1-2 (Lochlan Bloomfield).

392 Exhibit 37, at page 4.

393 T12-40, L37-55 (Lochlan Bloomfield).

394 Exhibit 32, at page 3.

395 T16-12, L1-4 (Simon Porter).

396 Exhibit 35, para 4.

397 Exhibit 35, para 97.

398 Exhibit 32, at page 3.

399 Exhibit 35, para 97.

400 Exhibit 37, at page 10.

401 Exhibit 32, at page 3.

He used it for his and IBM's benefit. He said he thought Mr Porter's behaviour in sending the email, and suggesting the conduct described in it, was "shocking" and, he accepted, he ought to have brought Mr Porter's misbehaviour to CorpTech's attention⁴⁰². That would have been "the proper thing" to do⁴⁰³. He did not do it.⁴⁰⁴

- 4.68** Given these features of the email Mr Bloomfield's repeated assertions that he could not remember who gave him such important information must be rejected. Despite extensive inquiries the Commission has been unable to determine who it was. It was not Mr Pedler. All that can be said is that to reveal the identity would cause Mr Bloomfield such embarrassment that he was prepared to lie to conceal it.
- 4.69** Mr Bloomfield's evidence was that he first learned of Accenture's "Not-to-Exceed" budget upon receiving this email⁴⁰⁵. He also learnt through this communication that Accenture proposed a six-month transition time on the project⁴⁰⁶. Ultimately, IBM's proposed price and transition time was almost exactly half that proposed by Accenture in its ITO bid⁴⁰⁷.
- 4.70** Mr Bloomfield's receipt of the email was not widely published. He did not raise the concern with his superiors, despite knowing that IBM's Guidelines required him to do so. Instead, he forwarded it to his subordinate on the bid team, asking him to "please keep this to yourself"⁴⁰⁸. Accenture's information had been obtained illegitimately. Its use by Mr Bloomfield was in breach of IBM's Guidelines. Mr Cameron gave evidence that he considered the receipt of this information to be inappropriate and it should have been referred to senior management⁴⁰⁹. Mr Cameron conceded that the information in that email should not have been used, as it was confidential information which he expected had been improperly obtained⁴¹⁰. Mr Bloomfield himself admitted that he should not have used the information from Mr Porter's email⁴¹¹. His employer "had an expectation" of him that he would not use it, because it was a "competitor's private information"⁴¹². He conceded that it was "wrong" of him to send the email to Mr Surprenant and that he should have reported Mr Porter's conduct to CorpTech⁴¹³.
- 4.71** Mr Bloomfield used the information in the email to prepare his presentation to the Complex Deal Meeting held within IBM on 20 August 2007⁴¹⁴. He was the author of this presentation. It cites a budget of \$108M for the project, which is information Mr Bloomfield accepted was provided to him by Mr Burns⁴¹⁵. It also identifies a risk as being "CorpTech may look for total "Not-to-Exceed" cap as part of Prime Contractor agreement with IBM responsible for delivering within capped budget"⁴¹⁶. Mr Bloomfield accepted that the only source of the information that Accenture was going to offer a "Not-to-Exceed" price was through Mr Porter's email⁴¹⁷. He also accepted that he used this information in a direct way, in the subsequent Complex Deal Meeting presentation⁴¹⁸. Mr Bloomfield asserted implausibly that he did not know the information was confidential because he did not know to whom else Mr Porter had sent the email⁴¹⁹. That assertion was only immune from scrutiny because Mr Bloomfield chose not to reveal how he got the email. The information was, on its face, of a kind likely to be confidential to a tenderer. Mr Bloomfield's earlier evidence, conceding it was wrong to use the information and his admonition to Mr Surprenant to keep the email to himself, are ample proof that Mr Bloomfield knew the information to be confidential and valuable.
- 4.72** The information contained in Mr Porter's email must have at least raised the apprehension at IBM that the bid they intended to put forward was unrealistic, both as to price and timeframes. It must certainly have given Mr Bloomfield pause. As history demonstrates, IBM's final price was nowhere near sufficient and its aggressive timeframes were wholly inadequate. Mr Bloomfield subsequently acknowledged in his letter of July 2009 that normally this type of project would be one of three to five years' duration⁴²⁰.

402 T12-42, L39-54 to T12-43, L1-55 (Lochlan Bloomfield).

403 T13-14, L37-39 (Lochlan Bloomfield).

404 T13-14, L37-51 (Lochlan Bloomfield).

405 T12-48, L44 (Lochlan Bloomfield).

406 Exhibit 32, at pages 2, 3.

407 T12-49, L11-26 (Lochlan Bloomfield).

408 Exhibit 32, at page 3.

409 T11-32, L6-12; T11-33, L32-34; T11-37, L10 (Jason Cameron).

410 T11-37, L1-13 (Jason Cameron).

411 T12-56, L49-56 (Lochlan Bloomfield).

412 T13-17, L54-56 (Lochlan Bloomfield).

413 T13-17, L50-56 to T13-18, L1-20 (Lochlan Bloomfield).

414 Exhibit 34; T12-56, L1-47; T13-16, L20-23 (Lochlan Bloomfield).

415 Exhibit 4, Volume 33, Item 35.33, at page 424.

416 Exhibit 34, at page 14.

417 T12-55, L50-54 (Lochlan Bloomfield).

418 T12-56, L1-47; T13-16, L20-23 (Lochlan Bloomfield).

419 T12-56, L35-44 (Lochlan Bloomfield).

420 Exhibit 63, Volume 9, at page 285.

- 4.73** Mr Bradley stated that had he known about the circulation of Mr Porter’s email he would have given careful thought to how CorpTech needed to design its ITO process to ensure more appropriate conduct from the tenderers⁴²¹. He would have sought strong undertakings from the tenderers and questioned whether certain individuals should have been allowed to continue in the process on the basis of whether they were ethically appropriate for the role⁴²². Mr Bradley pointed to Accenture’s response when it discovered that one of its contractors obtained unauthorised access to CorpTech’s confidential costing information after the conclusion of the ITO, which he then offered to Accenture⁴²³. Accenture immediately brought the issue to the attention of CorpTech and the contractor’s engagement was terminated immediately⁴²⁴. This proper response when given unsolicited confidential information shows what IBM should have done. Mr Bradley stated that he would have expected similar strong action by IBM in relation to Mr Porter’s email⁴²⁵.
- 4.74** Both Ms Perrott and Mr Bradley gave evidence that, had they known about IBM’s conduct in seeking and receiving confidential information to which it was not entitled, they would have considered excluding IBM from the ITO, and they would have taken advice on the issue⁴²⁶. Mr Swinson said that his advice, if asked, would have been that the tender process had been “seriously jeopardised”⁴²⁷.
- 4.75** Mr Bloomfield sought to diminish the significance of his use of the information by saying it made no difference to what was eventually presented to CorpTech⁴²⁸. Even if that assertion was true, it misses the point. The information was used for the purpose of developing a competitive strategy and to give IBM an advantage in structuring the pricing of its bid. It was used so as to be prepared for the fact that the question of a “Not-to-Exceed” price might arise.
- 4.76** IBM’s submissions contain an interesting and informative discussion on the law of confidential information. The conclusion advanced was that Mr Porter’s email⁴²⁹:

- a. *whilst possibly commercial, is not properly characterized as confidential in nature;*
- b. *was not communicated in the circumstance of confidence;*
- c. *cannot be confidential given the immorality of concealing what is, at a minimum, unconscionable conduct, and possibly more;*
- d. *IBM made no use of it that would excite a claim in equity.*

Mr Bloomfield cannot be criticised for being the recipient of an email he did not invite, and for taking a commercial view and action about its contents. He was under no obligation to do anything else.

It is, of course, true that Mr Bloomfield cannot be criticised for receiving an email, unless he solicited it. There is no evidence he did, but because he would not reveal who sent it to him the point could not be investigated. The submission that he cannot be criticised for taking a commercial view about the use of the contents cannot be reconciled with Mr Bloomfield’s evidence, elicited by Senior Counsel for IBM when examining Mr Bloomfield, that his use of the information was wrong, should not have occurred and was not what IBM expected of him⁴³⁰. Whether the information lost confidentiality by reason of its transmission to Mr Bloomfield depends upon who sent it and in what circumstances. Mr Bloomfield’s determination not to tell the truth about that makes it impossible to accept the submission that the information was not confidential. His admission that he should not have used it suggests it was.

Email of Cheryl Jensen

- 4.77** On 22 August 2007, Ms Jensen sent an email to nine IBM employees, including Mr Bloomfield. Ms Jensen, a Client Executive at IBM, said in the email that she received “intel” from CorpTech which she “thought [she] should channel” back to the IBM bid team for discussion⁴³¹. Ms Jensen suggested in evidence that by “intel” she meant information, rather than intelligence but that evidence cannot be sensibly accepted⁴³².

421 T17-89, L34-56 (Gerard Bradley).

422 T17-89, L47-56 to T17-90, L1-6 (Gerard Bradley).

423 T17-108, L9-56 (Gerard Bradley).

424 Exhibit 4, Volume 6, Item 6.3.33, at pages 250-251; T17-89, L56 to T17-90, L1-3 (Gerard Bradley).

425 T17-90, L1-6 (Gerard Bradley).

426 T16-104, L26-33; T16-107, L20-23 (Barbara Perrott); T17-86, L39 (Gerard Bradley).

427 T19-84, L40-50 (John Swinson).

428 T13-13, L1-56 to T13-14, L1-21 (Lochlan Bloomfield).

429 Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), paras 205-206.

430 T13-17, L54-56 to T13-18, L1-20 (Lochlan Bloomfield).

431 Exhibit 32, at page 4.

432 T15-42, L1-9 (Cheryl Jensen).

- 4.78** Ms Jensen's email records facts whose source can only be information confidential to the State:
- Accenture is sitting at scoring of 76%⁴³³;
 - IBM was perceived to want to off-shore more than Accenture which is why they have a higher rating at this time⁴³⁴;
 - Logica was not considered by CorpTech to be bidding at the time⁴³⁵.
- 4.79** In sending this email, Ms Jensen acted in breach of IBM's Guidelines⁴³⁶ (which she was aware of and had received training in), in that she accepted that the information in her email was not publicly available at the time. It was information she thought to be of worth to IBM and her distribution of it was aimed at giving IBM a competitive edge⁴³⁷. Ms Jensen believed that sending the email potentially gave IBM a tactical advantage in putting together its bid, and helped it avoid any surprises in the bid process. It allowed IBM to anticipate the moves of competitors and decrease IBM's response time to any queries from CorpTech⁴³⁸.
- 4.80** Ms Jensen could not recall the source of the intelligence contained in her email. She said that the information in her email was mere "gossip or innuendo"⁴³⁹. It was, at the time, information which she obviously considered to be of great importance – sufficient to prompt her to send it to nine IBM employees⁴⁴⁰ (some of whom she did not know), including very senior executives. If the information was publicly available or was idle gossip, one cannot easily understand why Ms Jensen would have had cause to send her email. She did not treat it as mere gossip. The information is, in part at least, precise data.
- 4.81** The information that Accenture was sitting at scoring of 76% and that IBM were perceived to want to off-shore more than Accenture appears⁴⁴¹, verbatim, in a CorpTech evaluation spreadsheet which appraised the respective strengths and weaknesses of the vendors' bids. This was a document which should have been confidential to CorpTech at the time.
- 4.82** Ms Jensen's observation that Logica was not considered by CorpTech to be bidding at the time is significant. Logica, of course, did prepare and submit a bid in the tender. However, on 24 August 2007 Ms Blakeney emailed Mr Duke of Logica seeking his confirmation that Logica had decided to withdraw from the competitive bid⁴⁴². Mr Duke responded the same day, expressing surprise and confirming that Logica were still very much in the bid process and asking who suggested to CorpTech that the company was withdrawing⁴⁴³. IBM knew of CorpTech's misapprehension regarding its competitor's bid two days before Logica did, and presumably during a time when Logica were expending significant time and resources in preparing a bid it was evidently unlikely to win.
- 4.83** Mr Bloomfield told the Commission that Ms Jensen sat next to him, desk-by-desk, in IBM's open plan office⁴⁴⁴. Mr Bloomfield also gave evidence that he considered Ms Jensen's conduct in sending the email to be inappropriate⁴⁴⁵ and that he believed Ms Jensen was reprimanded by her supervisor for sending the email, following a discussion between him and Mr Rob Pagura (of IBM, to whom Ms Jensen reported)⁴⁴⁶. Ms Jensen, however, had no recollection of that. Being professionally disciplined, had she been⁴⁴⁷, is not something she would have forgotten.
- 4.84** Mr Bloomfield, in his statement⁴⁴⁸, said Ms Jensen's email "indicated that information had been fed through from CorpTech suggesting how the presentations provided by suppliers had been marked It seems ... consistent with the kind of scuttlebutt ... common amongst large departments I believe that this is when I began to have a heightened concern that documents were being leaked out of CorpTech". There is an inconsistency in the statement. The contents of Ms Jensen's email cannot have been both "scuttlebutt" *and* information "leaked from CorpTech" which gave Mr Bloomfield "heightened concern" about a lack of security in CorpTech.

433 Exhibit 4, Volume 6, Item 6.3.18, at page 135.

434 Exhibit 4, Volume 6, Item 6.3.19, at pages 141-142.

435 Exhibit 4, Volume 10, Item 11.21, at page 205.

436 Exhibit 85, at page 5.

437 T15-43, L23-56 (Cheryl Jensen).

438 T15-44, L1-11 (Cheryl Jensen).

439 T15-49, L48-56 to T15-50, L1-8 (Cheryl Jensen).

440 Exhibit 32A.

441 Exhibit 4, Volume 6, Item 6.3.19, at pages 136-142.

442 Exhibit 4, Volume 10, Item 11.21, at pages 204-206.

443 Exhibit 4, Volume 10, Item 11.21, at pages 204-206.

444 T12-65, L16-20 (Lochlan Bloomfield).

445 T12-65, L30-42; T12-66, L8-11 (Lochlan Bloomfield).

446 T12-65, L38 (Lochlan Bloomfield).

447 T15-49, L7 (Cheryl Jensen).

448 Exhibit 35, paras 104-106.

- 4.85** As mentioned, Ms Jensen did not treat the information she received (from whatever source) as worthless gossip but as information of potential value to IBM. Mr Bloomfield's evidence that he thought the email to have been sent inappropriately and that Ms Jensen had been reprimanded for sending it suggests that he thought the information came from CorpTech and should not have been divulged. Mr Bradley thought the information was probably CorpTech's, and confidential to it⁴⁴⁹.
- 4.86** There is no evidence that the information was, in fact, of any value to IBM, or was used by it in the ITO response. There is evidence from Mr Bloomfield that the information was not helpful and was not used⁴⁵⁰.
- 4.87** The relevance of Ms Jensen's email is that it shows she was prepared to pass on to colleagues information IBM should not have had because she thought it might assist IBM's bid.

Email of Joseph Sullivan

- 4.88** On 29 August 2007 Mr Sullivan of IBM sent an email to Messrs Bloomfield and Cameron which stated⁴⁵¹:
- As I told Jason this morning I have been unable to locate any of the vendor proposals on the G drive. One of the government guys who told me he had looked through them all said that they have all been removed along with quite a few other directories that were with them. So looks like we were just a little bit too late.*
- 4.89** The G drive was a public-access file in the CorpTech information systems network (or LAN) on which the vendor RFP proposals and scoring matrixes were stored for a period of time inadvertently. The confidential proposals should have been saved on a secure-access drive, but were stored on the G drive in error. The G drive was a common repository accessible to anyone with a CorpTech log-on.
- 4.90** Mr Cameron⁴⁵², Mr Sullivan⁴⁵³ and a number of IBM contractors were given CorpTech email addresses, log-in accounts and access to the G drive during the time they were engaged to work at CorpTech. Mr Bloomfield denied instructing Mr Sullivan to conduct a search of the G drive⁴⁵⁴. Mr Sullivan stated that looking for the proposals would probably have been done on his own initiative, and not at anyone's direction⁴⁵⁵. Mr Sullivan denied accessing IBM's proposal or that of any other vendor and the email corroborates his denial⁴⁵⁶.
- 4.91** Mr Sullivan currently resides in the United Kingdom and was not available to give evidence at the hearings⁴⁵⁷. Commission staff made enquiries about Mr Sullivan's whereabouts with the solicitors for IBM and issued a request for Mr Sullivan's contact details, but were informed that he no longer worked for IBM in Australia. Commission staff located Mr Sullivan in London, where he is an employee of IBM United Kingdom. The Commission conducted a telephone interview⁴⁵⁸ with him about the matters raised in his email and Mr Sullivan also provided a statement to the Commission.

The proper response to a fear that the proposals were freely available on the G drive was to bring the concern immediately to the attention of CorpTech. That was not done.

- 4.92** Mr Sullivan could not identify the "government guy" he referred to in his email but volunteered the names of two CorpTech employees, Brendan Pollock and Nathan Hulse, with whom he had most contact⁴⁵⁹. Both Mr Hulse and Mr Pollock had no recollection of the events or the conversation with Mr Sullivan⁴⁶⁰. Mr Hulse was not working within CorpTech at the relevant time and had no access to the CorpTech G drive⁴⁶¹.

449 T17-86, L20-22 (Gerard Bradley).

450 T13-22, L22-47 (Lochlan Bloomfield).

451 Exhibit 32, at page 5.

452 Exhibit 31, paras 7-13; for example Exhibit 4, Volume 13, Item 13.1 at page 1.

453 Exhibit 152, at page 7, L13-27.

454 T12-76, L1-20 (Lochlan Bloomfield).

455 Exhibit 159, para 13.

456 Exhibit 159, para 13.

457 Exhibit 159, para 1.

458 Exhibit 152.

459 Exhibit 152, at page 4, L17-26.

460 Exhibit 153, para 8; Exhibit 154, paras 9-10.

461 Exhibit 153, paras 3-4.

- 4.93** Mr Sullivan stated that “[g]iven the competitive nature of the project and therefore the confidential nature of the proposals, access by Accenture staff to the proposals made to CorpTech by IBM ... would have been of concern” to him⁴⁶². Mr Sullivan also stated that “[t]he use of WorkBrain software for non-rostering agencies was considered to be a significant point of differentiation for IBM’s proposal at the time. If this had leaked to Accenture it would have been a real concern (to him) and IBM”⁴⁶³. It was this concern, he told the Commission, which prompted him to search the G drive and notify Mr Bloomfield of the matter⁴⁶⁴.
- 4.94** I cannot accept that evidence. The evidence, and that reasoning, do not withstand scrutiny.
- 4.95** Mr Sullivan was engaged on a full time basis at CorpTech as part of a “workforce management team”⁴⁶⁵, led by Ms Mary-Anne McCarthy of Accenture, which included CorpTech employees. Mr Sullivan played no part in the preparation of IBM’s RFP bid, which was prepared internally at the IBM office⁴⁶⁶. It is unclear how Mr Sullivan would have had an appreciation of the sensitivity of the Workbrain suggestion when he had not worked on the RFP, nor begun work on the ITO⁴⁶⁷.
- 4.96** Mr Sullivan accepted that the proposals were confidential and that they certainly should not have been stored on the CorpTech G drive⁴⁶⁸. He knew that he should not have had access to them. He never reported his unsuccessful G drive search to anyone at CorpTech or his team lead, Ms McCarthy of Accenture⁴⁶⁹, even though she presumably would have had an interest in the potential breach of the confidentiality of Accenture’s proposal. Accenture, by contrast, notified CorpTech on 23 August 2007 that its bid documentation was accessible on the LAN to a range of contractors and employees and followed up this concern with subsequent messages and a letter to Ms Perrott on 22 October 2007⁴⁷⁰.
- 4.97** Mr Bloomfield gave evidence that, to the best of his recollection, in late August 2007 Mr Pullen, another IBM employee working at CorpTech, expressed a concern to him that Accenture had had access to IBM’s presentation to CorpTech and that those presentations were available to all staff at CorpTech on the LAN⁴⁷¹. Mr Pullen, however, had no recollection of having a conversation with Mr Bloomfield where he expressed that concern⁴⁷². Further, Mr Pullen stated he had no access to the CorpTech computer network at the time and had no direct contact with people who were working as part of the HRBS project⁴⁷³. For that reason, Mr Pullen said he was never in a position to have knowledge of the G drive issue to be able to report it to Mr Bloomfield⁴⁷⁴.
- 4.98** Regardless, Mr Bloomfield’s evidence suggests that he was aware of the G drive issue well before Mr Sullivan sent his email. I find by inference that if Mr Bloomfield did not instigate Mr Sullivan’s actions in searching the G drive, he certainly had knowledge of them.
- 4.99** The evidence establishes that on 30 August 2007 Mr Bloomfield notified CorpTech that the “strengths and weaknesses matrix” of the RFP evaluation was available on the LAN⁴⁷⁵. He knew that, having received Ms Jensen’s email on 22 August. It is not clear why he waited over a week before informing CorpTech⁴⁷⁶. By the time he did inform CorpTech IBM had had the benefit of Ms Jensen’s “intelligence” and Mr Sullivan had established that the RFP responses were no longer available on the G drive.
- 4.100** Mr Cameron, when questioned about Mr Sullivan’s email, agreed that the statement “so (it) looks like we were just a little bit too late” suggested that Mr Sullivan had unsuccessfully searched for all of the vendor proposals from the RFP on the G drive⁴⁷⁷.
- 4.101** I am drawn to the same logical conclusion. The critical phrase in the email is “... [W]e were just a little bit too late”. The phrase is inconsistent with Mr Sullivan’s avowed explanation for searching the G drive. It expresses

462 Exhibit 159, para 10.

463 Exhibit 159, para 11.

464 Exhibit 159, para 12.

465 Exhibit 159, para 2.

466 Exhibit 152, at page 9, L35-37.

467 Exhibit 152, at page 16, L1-13.

468 Exhibit 152, at page 13, L37-50.

469 Exhibit 152, at page 15, L21-51.

470 Exhibit 4, Volume 26, Item 24.63, at page 1158.

471 Exhibit 35, para 107; T12-71, L1-23 (Lochlan Bloomfield).

472 Exhibit 50, para 8; T15-82, L34-35 (Keith Pullen).

473 Exhibit 50, paras 9, 11.

474 T15-82, L43-51; T15-84, L18-20 (Keith Pullen).

475 Exhibit 4, Volume 33, Item 33.9, at page 36.

476 T12-78, L23-54 to T12-79, L1-9 (Lochlan Bloomfield).

477 T11-27, L39-41 (Jason Cameron).

regret, not relief that IBM's proposal was safe from prying eyes. The only reason for regret can have been Mr Sullivan's failure to access the other proposals. Mr Sullivan had no plausible answer when asked why he used the phrase, if what he was doing was ensuring the security of IBM's information⁴⁷⁸. The proper response to a fear that the proposals were freely available on the G drive was to bring the concern immediately to the attention of CorpTech. That was not done. Instead Mr Sullivan improperly searched the CorpTech G drive in an attempt to obtain confidential vendor *proposals*. The plural "proposals" is used in Mr Sullivan's email, so the proposal cannot only be that of IBM. This was serious misbehaviour. Mr Cameron and Mr Bloomfield should have identified it as such, and Mr Sullivan should have been reprimanded accordingly. That did not occur.

- 4.102** The evidence concerning the three emails is disturbing. It shows that Mr Bloomfield, who led IBM's bid, acted in breach of his employer's Business Conduct Guidelines⁴⁷⁹; misused a competitor's confidential information⁴⁸⁰, observed without objection a colleague's distribution of information "leaked" from CorpTech; and endeavoured to gain unauthorised and unlawful access to its competitor's information from CorpTech's database. Mr Bloomfield's use of Mr Porter's email was admitted by him to be improper. The honourable response to Ms Jensen's email would have been to inform CorpTech immediately that its confidential information was widely accessible and to have Ms Jensen cautioned or reprimanded about her dissemination of the information. Mr Bloomfield did not respond in that way. The most serious episode is that in which Mr Sullivan sought to obtain access to Accenture's and Logica's responses. Mr Bloomfield, if he did not instigate the attempted access of the G drive, should have been appalled that the attempt was made. The only reaction expressed by any IBM employee was regret at the failure. Mr Sullivan should have been reprimanded if not dismissed. No action was taken against him. It is noteworthy that Mr Sullivan directed his email to Mr Bloomfield (among others) who was leading the IBM bid.
- 4.103** It is rightly submitted that a finding of dishonesty against Mr Bloomfield should not be made except on clear evidence because of the likely consequences to him and his career were such a conclusion expressed in a proceeding of this kind⁴⁸¹. It is argued that he would not have lied because to do so would have jeopardised his career should that adverse finding be made⁴⁸². Findings of dishonesty should only be made when necessary and on evidence sufficient for such a serious finding. I am nevertheless convinced that Mr Bloomfield was not honest in his testimony. I have dealt with his evidence about Mr Porter's email and need not repeat it. Likewise I am satisfied that Mr Bloomfield was not truthful when he said he believed Ms Jensen was reprimanded for her misbehaviour in broadcasting to IBM employees the CorpTech information given to her. He should have at least notified CorpTech immediately of the security lapse. His explanation that Mr Pullen's forebodings were an explanation for Mr Sullivan's exploration of the G drive for the RFP responses appears to be an invention.
- 4.104** Mr Bloomfield resorted to falsehood in an attempt to conceal the serious misbehaviour he (and others) committed on behalf of IBM in an attempt to position it favourably for the ITO. There was such a departure from the integrity required by a participant in the procurement process as to provide substantial grounds for excluding IBM from it, had the information been available to CorpTech. The misuse of a competitor's information and the attempt to gain unlawful access to similar information in CorpTech's possession was sufficiently serious to justify the expulsion.
- 4.105** Ms Perrott's evidence on the point was that had she known about Mr Bloomfield's use of Mr Porter's email and Mr Sullivan's attempts to read IBM's competitors' proposals on the G drive, she would have consulted with Mr Bradley, sought legal advice and spoken with the providers⁴⁸³. She would have considered excluding IBM from the ITO process⁴⁸⁴. Mr Bradley thought it likely that the information contained in Ms Jensen's email had come from the evaluation matrix information confidential to CorpTech and IBM's possession of it would have caused him to ask "whether we should consider them as appropriate people to progress to the [ITO]"⁴⁸⁵. He would have viewed IBM's possession of the information "very seriously" and may have excluded it from the ITO process but not without giving it the opportunity to explain and provide reassurances about future good behaviour⁴⁸⁶. Likewise he thought Mr Bloomfield's use of Mr Porter's email "a serious concern" which, had he known about it, would have caused him to ask IBM "quite seriously about their capacity to continue in the

478 Exhibit 152, at page 16, L15-34.

479 Exhibit 84, at page 11.

480 Using the term generally rather than in its strict legal sense, in deference to IBM's submissions.

481 Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), para 13.

482 Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), para 201.

483 T16-104, L18-43 (Barbara Perrott).

484 T16-105, L24-48 (Barbara Perrott).

485 T17-86, L14-51 (Gerard Bradley).

486 T17-86, L53-55 to T17-87, L1-7 (Gerard Bradley).

process⁴⁸⁷. Mr Bradley⁴⁸⁸ and Ms Perrott⁴⁸⁹ would have taken advice from Mr Swinson. Mr Swinson's evidence was that excluding IBM from the tender process would have been "a serious matter for all concerned"⁴⁹⁰ a step that would not have been taken without investigation and interrogation of IBM about the facts and any explanation it had of its employees' conduct. Mr Swinson expressed the opinion that Mr Bloomfield's use of the Porter email, Ms Jensen's dissemination of apparently confidential CorpTech information and Mr Sullivan's attempt to read competitors' proposals on the CorpTech G drive had "seriously jeopardised the tender process. It would have been difficult to go ahead because the idea of a tender process is ... there's a fair and equal playing field where everyone has an equal share so if it turned out that that was not the case that would jeopardise the process. It would also go to the integrity of the tenderers ... you would want to look at that in more detail but it looks relatively serious"⁴⁹¹.

- 4.106** IBM objects to a finding that the misconduct of its employees should have led to its exclusion from the ITO process. It argues that because no witness (Mr Bradley, Ms Perrott and Mr Swinson) said IBM should have been excluded the finding should not be made and, in addition, the evidence cannot reasonably support that conclusion. I do not accept IBM's arguments as to the facts. I have set out what I find them to be.
- 4.107** It is said as well that the ITO was a wholly separate process from the RFP and events in the former process should be disregarded. I have already explained why that proposition cannot be accepted.

There was such a departure from the integrity required by a participant in the procurement process as to provide substantial grounds for excluding IBM from it, had the information been available to CorpTech. The misuse of a competitor's information and the attempt to gain unlawful access to similar information in CorpTech's possession was sufficiently serious to justify the expulsion.

- 4.108** By reason of the Commission's thorough investigation of the facts (which were not known at the time to Mr Bradley or Ms Perrott or Mr Swinson) I am in a better position to express an opinion on the point than were those witnesses. Moreover I have had the benefit of hearing evidence from the IBM employees whose misconduct gave rise to the "serious concerns". Those explanations do not allay the serious concerns. Mr Sullivan did not attempt to access the G drive for the reasons he gave but to access competitors' proposals. Mr Bloomfield understood that. Mr Bloomfield misused Accenture's information. It is not the point that some of the information was in the end not useful to IBM. One thing Mr Porter's email did tell Mr Bloomfield was that Accenture was contemplating an RFP price of about \$200M. Mr Bloomfield's protests that the information in Mr Porter's email was of no use and was not confidential cannot stand against the fact that he used it (defensively) in preparing for a presentation to CorpTech.
- 4.109** The result is that conduct by some of IBM's employees provided substantial grounds for excluding it from the tender process and the response of those employees in denying wrong-doing, and misdescribing their conduct, provides no basis for not acting on those concerns.

Mr Bloomfield's Bonus

- 4.110** In the course of the inquiry, the Commission was given unverified information that Mr Bloomfield received, as a result of the awarding of the tender to IBM, a significant monetary bonus. On 26 April 2013 the Commission wrote to Ashurst, the solicitors acting for IBM, asking whether the information received about Mr Bloomfield's remuneration was correct⁴⁹².
- 4.111** On 12 May 2013 Ashurst responded in the following terms⁴⁹³:

We are instructed that Mr Bloomfield did not receive a pay rise or bonus because of the awarding of the tender to IBM.

487 T17-88, L40-46 (Gerard Bradley).

488 T17-87, L4-7 (Gerard Bradley).

489 T16-104, L32-33; T16-105, L10-22 (Barbara Perrott).

490 Exhibit 77, para 21.

491 T19-84, L49-55 to T19-85, L1-8 (John Swinson).

492 Letter from F. Copley, QHPSCI, to Ashurst Australia, regarding Mr Bloomfield, dated 26 April 2013.

493 Letter from Ashurst Australia to F. Copley, QHPSCI, regarding Mr Bloomfield, dated 12 May 2013.

- 4.112** To put the matter beyond doubt, on 13 May 2013⁴⁹⁴ the Commission asked that Ashurst make enquiries of Mr Bloomfield and IBM as to whether Mr Bloomfield was given any bonus for the financial year 2007/2008, and the details of that bonus.
- 4.113** The Commission, despite making repeated follow-up requests, did not receive a response to this question until 5 June 2013. By letter of that date, solicitors for IBM stated that as a result of further enquiries, they had become aware that their initial response of 12 May 2013 “may (have been) potentially misleading”. Mr Bloomfield did, in fact, receive two payments in addition to his base salary in 2007/2008⁴⁹⁵:
- a. The first was a profit sharing payment of 17.8% of Mr Bloomfield’s base salary, being \$55,000 paid in June 2008; and
 - b. The second payment was made as a result of winning a Service Eminence Award, in the amount of \$12,000. The Service Eminence Award was granted because of Mr Bloomfield’s contribution to the whole-of-government proposal.
- 4.114** This performance incentive payment to Mr Bloomfield has some significance. It speaks to the fact that winning the whole-of-government contract was a coup for IBM, and for Mr Bloomfield.
- 4.115** Mr Bloomfield commenced his employment at IBM on 18 February 2007. Prior to that, he was employed by Accenture from 1991 to 2007⁴⁹⁶. At the beginning of his time at IBM, Mr Bloomfield’s focus was to identify and develop new business opportunities in the public sector, because IBM Queensland was seeking to increase its share of public sector work. His role had a sales focus. Accenture, Mr Bloomfield’s former employer, was firmly embedded in CorpTech in 2007. Mr Bloomfield freely admits that he believed IBM was unlikely to displace either Accenture or Logica as large contractors in CorpTech⁴⁹⁷. He thought IBM was possibly being “strung along” in the bid process, such as Accenture’s stronghold within CorpTech⁴⁹⁸.
- 4.116** One can imagine, then, the significance of Mr Bloomfield leading the winning bid for the Prime Contractor role so soon after his engagement at IBM. This was one of the largest government ICT Contracts in the State’s history, and it was awarded to a company that was generally not considered to be a front-runner in the race. The reward indicates the importance to Mr Bloomfield of IBM winning the bid.

5. Invitation to Tender (ITO)

- 5.1** Following on Mr Swinson’s advice on 9 August 2007⁴⁹⁹, a decision was made to proceed to a formal tender process. It was to be a closed tender with invitations offered to the four companies which had responded to the RFP and maintained interest in becoming the Prime Contractor⁵⁰⁰. Prior to issuing the invitations, SAP, by email dated 26 August 2007, “graciously” withdrew from the process⁵⁰¹.
- 5.2** There was a sense of urgency about the drafting and issue of the ITO. Mr Swinson was told on 16 August 2007⁵⁰², the day the CEO Governing Board resolved to appoint a Prime Contractor, of the decision⁵⁰³. The next day Mr Burns emailed him to ask whether it was possible to amend one of the existing contracts with CorpTech’s suppliers to change it into the Prime Contractor⁵⁰⁴. Mr Swinson said it was not but got from the email a sense of urgency about the appointment⁵⁰⁵. He said that “many people” informed him that there was “a pressing urgency” about the appointment⁵⁰⁶. Mr Burns, Mr Goddard and Mr Bradley were all imbued with that sense of urgency⁵⁰⁷. The reason for it, as explained by Mr Swinson, was that “money was being spent and it ... might have been spent heading in the wrong direction, so the new direction was needed. It would be better to stop spending that money and start spending it heading in the right direction ... ”⁵⁰⁸.

494 Letter from F. Copley, QHPSCI, to Ashurst Australia, regarding Mr Bloomfield, dated 13 May 2013.

495 Letter from Ashurst Australia to D. Mackie, QHPSCI, regarding Mr Bloomfield, dated 5 June 2013.

496 Exhibit 35, paras 4, 5.

497 Exhibit 35, para 18.

498 T12-14, L26-27 (Lochlan Bloomfield).

499 Exhibit 28A, para 21.

500 Exhibit 4, Volume 12, Item 12, at page 5 (Section 1.1).

501 Exhibit 49, Annexure E.

502 Exhibit 4, Volume 36, Item 38.1.13, at page 63.

503 Exhibit 4, Volume 37, Item 39.23, at pages 38-48.

504 Exhibit 4, Volume 36, Item 38.1.21, at page 120.

505 T8-75, L29-30 (John Swinson).

506 T8-75, L41 (John Swinson).

507 T8-75, L43-50 (John Swinson).

508 T8-75, L54-55 to T8-76, L1-4 (John Swinson).

5.3 The sense of urgency was made manifest in the very short time allowed by the ITO for responses. The ITO itself was very substantial. Attached to it were many more documents provided in electronic form which contained many thousands of pages of technical information⁵⁰⁹. It was issued on 12 September 2007 and responses were due on 1 October 2007, a period of just under three weeks which, at the request of one or more of the tenderers, was extended by a week to 8 October 2007⁵¹⁰. This was a very short time to receive considered responses to such a comprehensive and complicated ITO. Mr Goddard had thought the process should take upwards of nine months⁵¹¹. Ms Blakeney thought the timeframe was far too compressed to achieve well considered proposals and to allow for their evaluation⁵¹². Mr Hood⁵¹³, Mr Swinson⁵¹⁴ and even Ms Perrott thought it was too short⁵¹⁵.

5.4 The ITO was drafted by a number of public servants and contractors⁵¹⁶. Mr Goddard played a substantial role as did Mr Hood, Mr Bond and Mr Ekert. The template for it was provided to them by Ms Blakeney.

5.5 The ITO invited⁵¹⁷:

... offers for the supply of certain professional services relating to the Shared Services Solutions Program of work. This Invitation to Offer is not open to the public and has been issued to three potential offerors, who have been selected based upon their current knowledge of the Shared Service Solutions project. It is intended that this Invitation to Offer process be conducted in a fair and streamlined fashion.

5.6 Offerors were encouraged to seek clarification on any part of the ITO. Questions were to be directed “only ... to the Contact Officer listed ...”⁵¹⁸, Ms Blakeney. The offerors were requested⁵¹⁹:

... to provide fixed price quotes for some items of work and best estimates for other items of work. The exact scope of and a final fixed price for the other items of work will be determined and agreed in accordance with the processes set out in the Contract.

5.7 Relevant provisions of the ITO were:

*1.6.2 The Way Forward*⁵²⁰

On 16 August 2007, the Shared Service CEO Governing Board agreed to a range of improvements to the SSS Program to implement standard finance and human resource business solutions across Queensland Government agencies.

The planned improvements include:

- *significantly accelerating the implementation timeline and reducing costs by engaging a Prime Contractor to manage defined work packages on a fixed-price basis;*

...

- *mitigating risks associated with supporting legacy systems by giving priority to Queensland Health, the Department of Emergency Services (DES), Queensland Corrective Services (QCS) and the Department of Education, Training and the Arts (DETA) in the business solution implementation schedule ...*

...

*2.6 Multiple Statements of Work*⁵²¹

The initial statement of work to be awarded as part of the ITO is contained [in] ... the following line items. These are defined further at ... Section 3 ... below.

- *Line Item 1A – Transitioning*
- *Line Item 1B – Program Delivery Management*
- *Line Item 1C – Shadow Management*
- *Line Item 1D – Forward Planning*
- *Line Item 1E – Priority Core Development (including awards)*
- *Line Item 1F – Release and Production Support*

⁵⁰⁹ Exhibit 4, Volume 12, Item 12, Part G (Attachments in electronic form); Exhibit 4, Volume 32, Item 32.1, Part G.

⁵¹⁰ Exhibit 4, Volume 29, Item 25.38, at page 791.

⁵¹¹ Exhibit 27, para 48 (f)(ii).

⁵¹² T4-79, L38-50 (Maree Blakeney); Exhibit 17, paras 25-27.

⁵¹³ T3-57, L17-20 (Philip Hood); Exhibit 11, para 32.

⁵¹⁴ T8-92, L29-30 (John Swinson).

⁵¹⁵ Ms Perrott described a need to “hasten quickly”. She may have meant to say “hasten slowly”, but the description she actually gave was the appropriate one: T17-16, L1-6 (Barbara Perrott).

⁵¹⁶ See, for example, Exhibit 11, para 30.

⁵¹⁷ Exhibit 4, Volume 12, Item 12, at page 5.

⁵¹⁸ Exhibit 4, Volume 12, Item 12, at page 6.

⁵¹⁹ Exhibit 4, Volume 12, Item 12, at page 7.

⁵²⁰ Exhibit 4, Volume 12, Item 12, at page 16.

⁵²¹ Exhibit 4, Volume 12, Item 12, at pages 23-24.

The awarding of subsequent statements of work will be dependent on the outcome and successful completion of the initial statement of work. The line items for subsequent statements of work are listed below and they are described at Part D ... Section 4 ...

- *Line Item 1G – Release 6.0 – Priority HR Implementations*
- *Line Item 1H – Release 7.0 – Priority Finance/OSF Implementations*
- *Line Item 2A – Remaining Implementations*
- *Line Item 2B – Legacy Solution Upgrades*

3. INITIAL STATEMENT OF WORK

3.1 The Statement of Work is composed of a number of ... Line Items. ... [e]ach work stream will require a separate fixed price.

This section 3.1 Statement of Work includes the following line items:

- *Line Item 1A ...*
- *Line Item 1B ...*
- *Line Item 1C ...*
- *Line Item 1D ...*
- *Line Item 1E ...*
- *Line Item 1F ...*

... 4. FUTURE STATEMENTS OF WORK⁵²²

4.1 The Future Statements of Work are comprised of a number of ... Line Items. ... [e]ach work stream will require separate price estimates.

...

4.1.1 Line Item 1G – Release 6.0 – Priority HR Implementations

The highest priority activity is the replacement of the legacy HR systems that utilise the Lattice Human Resource Information System (Lattice) In replacing these solutions, the strategy is to replace the legacy systems through a full or partial implementation of the shared services HR business solution. The impacted agencies are Queensland Health

... It is desirable to implement these agencies in a rapid time frame, to reduce legacy and business risk and cost. While the most critical risk is in relation to Lattice Support for Health, DES and QCS there are also critical timeframes for DETA. ...

- 5.8** The Program Review Steering Group met on 12 September 2007 to decide who should comprise the Evaluation Panels for the responses to the ITO⁵²³. It had also to decide the criteria and the weightings and assessment methodology to be applied by the members of the Panels. One of the services Mr Burns was to provide pursuant to his extended contract of 26 September 2007 was to negotiate final contracts with “Prime Contractor vendor”⁵²⁴.

The ITO ... was issued on 12 September 2007 and responses were due on 1 October 2007, a period of just under three weeks which, at the request of one or more of the tenderers, was extended by a week to 8 October 2007⁵¹⁰.

- 5.9** On or around 13 September 2007, the Senior Executive Group appointed members to the Evaluation Panels each of which was to consider a separate part of the responses⁵²⁵. The Panels were:
- Functional and Business
 - Technology
 - Operations and Support
 - Resourcing and Transitions
 - Governance
 - Implementation Roll Out
 - Benefits
 - Procurement and Legal
 - Cost

⁵²² Exhibit 4, Volume 12, Item 12.1, at page 28.

⁵²³ Exhibit 4, Volume 37, Item 39.14, at page 28.

⁵²⁴ Exhibit 4, Volume 2, Item 3.3, at page 52 (Proposal by Mr Burns, 17 September 2007); Exhibit 4, Volume 2, Item 3.4, at page 79 (contract executed).

⁵²⁵ Exhibit 4, Volume 39, Item 40.8 and Item 40.9, at pages 12-15.

LATTICE

- 5.10** Queensland Health had operated a LATTICE payroll system which was implemented between 1996 and 2002⁵²⁶. ESP was used as the rostering system⁵²⁷. The vendor of the LATTICE package was Talent2 which licensed it to the State. By about 2005 the LATTICE package was becoming obsolete and Talent2 appears to have given QH advance warning that its system would become unsupported⁵²⁸, which is to say Talent2 would not provide technicians to repair breakdowns or malfunctions and the system could not be upgraded to allow it to process additional award complexities introduced as a result of changes to industrial legislation or enterprise bargains.
- 5.11** Talent2 recommended replacing LATTICE with its new system, Talent2 HRIS (ALESCO)⁵²⁹ but by 2005 the State had decided upon Workbrain and SAP as the appropriate products for the whole-of-government HR and Payroll Solutions so that it was not possible for QH to accept Talent2's suggestion.

In March 2007 the Keliher Report expressed concern that LATTICE would not have Talent2 support after mid year 2008, and suggested that the timetable for the its replacement in the SS Initiative be accelerated.

- 5.12** CorpTech's last published schedule of its proposed implementation of the SS Initiative showed QH's payroll being replaced over 2 years and 4 months, from March 2008 to July 2010. By early 2007 senior officials in QH were expressing alarm that LATTICE would be unable to deliver a payroll service to its employees⁵³⁰. On 26 February 2007 the then Director-General of QH wrote to Mr Bradley⁵³¹:

... Queensland Health faces ... significant risks in relation to the [government Human Resources Solution Implementation]. The most significant ... centres on ... LATTICE ... [which] will be withdrawn from vendor support in June 2008. ... It is totally unacceptable to maintain the system in an unsupported environment post June 2008 as ... risk of system failure, and therefore an inability to pay Queensland Health staff ... would be extremely high.

- 5.13** It was Mr Hood's opinion that vendor support for LATTICE was critical because Talent2 had the most thorough knowledge of the product and best understood how to maintain it in operation⁵³². Mr Hood on behalf of the State attempted to negotiate an extended period of support from Talent2 but was unsuccessful⁵³³. IBM was able to obtain an extension of three months continued support from Talent2, to 30 September 2008, only⁵³⁴. To address the risk that the system might fail CorpTech established a project, PJ-30 (post June 30), which was essentially a team of CorpTech technicians and former Talent2 employees who undertook the role of supporting LATTICE's operation⁵³⁵.
- 5.14** In March 2007 the Keliher Report expressed concern that LATTICE would not have Talent2 support after mid year 2008, and suggested that the timetable for the its replacement in the SS Initiative be accelerated⁵³⁶. Mr Uhlmann disagreed, as has been recounted, in his April Snapshot Review⁵³⁷. He regarded accelerating the implementation of the LATTICE replacement as an "extreme" risk and that the other risk, that LATTICE might fail, should be reduced by establishing support for LATTICE from a source other than Talent2⁵³⁸. Mr Uhlmann was sceptical that Talent2's refusal to extend support was its last word on the subject. It was, he thought, a question of price. As well he pointed out that there were contractors "in the marketplace" with the skills necessary to support LATTICE⁵³⁹.
- 5.15** Mr Hood informed the Commission that PJ-30 "successfully established the technical capability within CorpTech ... to support the LATTICE development environment"⁵⁴⁰. It continued to function until Go Live

526 Exhibit 1, at page 11.

527 Exhibit 1, at page 11.

528 Exhibit 11, Annexures B and E.

529 Exhibit 11, Annexure B.

530 Exhibit 29, Annexure DAA-1.

531 Exhibit 29, Annexure DAA-2.

532 T3-33, L1-18 (Philip Hood).

533 Exhibit 11, paras 9-10; Annexures D and E.

534 Exhibit 11, para 42.

535 Exhibit 11, para 55.

536 Exhibit 4, Volume 1, Item 1.2, at pages 35-157.

537 Exhibit 4, Volume 1, Item 1.3, at page 161.

538 Exhibit 4, Volume 1, Item 1.3, at page 177.

539 T6-12, L38-60 (Gary Uhlmann).

540 Exhibit 66, para 29.

in March 2010. However the fear that it might fail informed the decision, expressed in the ITO and the contract between IBM and the State, to replace LATTICE urgently on an interim basis, i.e. pending the whole-of-government SS Initiative implementation.

Mr Burns' Role in the Evaluation

5.16 Each Panel had its own designated leader. Ms Perrott chaired the Evaluation Panels. Mr Burns was appointed Project Lead Advisor and was supported in that role by Mr Goddard and Mr Shaurin Shah. Although Ms Perrott was nominally in control of the evaluation process it was in fact run and controlled by Mr Burns. Mr Burns' appointment as Project Lead Advisor was questionable leading as it did to his assuming *de facto* control of the process of selecting the Prime Contractor. By the initial date for receipt of responses, 1 October 2007, Mr Ford had received Mr Nicholls' letter drawing attention to Mr Burns' disregard of contractual restraints, Mr Bond had complained about his interference in seeking to control his communications with the Under-Treasurer, Ms Perrott herself had noticed that Mr Burns was not "someone who was strong on detail"⁵⁴¹ and she understood, or should have, that he had benefited personally from his recommendations, and self-interest was the apparent motive. As well as that, nothing in Mr Burns' CV showed that he had any experience of or understanding of the processes of government procurement. She had come to think that he would not be offered a permanent role in the SDA or CorpTech⁵⁴². Despite these indications of disqualification for the role, Ms Perrott appointed him. She claimed to have put controls around him in that he was to report to her daily and to her senior management team weekly or fortnightly, as well as periodically to the Steering Committee⁵⁴³.

5.17 It is apparent from the accounts of those involved in the evaluation that Ms Perrott was largely absent and that Mr Burns was ubiquitous. Ms Perrott's account of her controls over Mr Burns are, I am satisfied, a product of *ex post facto* wishful thinking.

5.18 The public servants in CorpTech who were appointed to the Evaluation Panels were well aware that Mr Waite had left his very senior role as a direct result of Mr Burns' criticisms of his performance made directly to the Under-Treasurer, and that Mr Burns maintained his personal contact with Mr Bradley. Ms Perrott accepted the truth of that proposition, and agreed with the depiction of Mr Burns as an "empowered contractor" working in and influencing the public service but not being part of it⁵⁴⁴. Ms Perrott claims she was concerned about Mr Burns' "style and ... the way he presented himself", by which I take it to mean his manner of dealing with public servants and the power he assumed over them⁵⁴⁵. She said she talked to him about her concerns "on several occasions"⁵⁴⁶. I doubt Ms Perrott's recollection. In my assessment she lacked the force of personality to confront Mr Burns. In any event Mr Burns' "style" did not change.

5.19 All witnesses agreed that Mr Burns was not to take part in the evaluation process. He agreed that it would have been inappropriate for him, a non-public servant, to take part in the evaluation⁵⁴⁷. Ms Perrott said, rightly, that was not his role. She described him as a facilitator and an organiser or administrator⁵⁴⁸. His role, she thought, was to distribute materials to the members of the Panels, arrange meetings and ensure that Panel leaders collected and collated their members' scores and handed them to Ms Blakeney. Mr Burns described his role as⁵⁴⁹:

... to ensure that ... the teams were properly staffed, that all the people nominated were there, that the process operated correctly, that everyone understood the evaluation criteria for the basis of the scoring, that they understood how the process would run ... also ... it included how queries and questions would be handled and ... relayed back to vendors.

5.20 Mr Hood was the Deputy Executive Director of CorpTech⁵⁵⁰. He was the Panel leader for "Operations and Support"⁵⁵¹. He described Mr Burns as leading the ITO process⁵⁵². Ms Colleen Orange, who was appointed on short notice to lead the Cost Panel, described Mr Burns as leading the procurement process⁵⁵³. Ms Rose

541 T16-79, L44-45 (Barbara Perrott).

542 T16-79, L29-40 (Barbara Perrott).

543 T16-70, L23-46 (Barbara Perrott).

544 T16-79, L14-17 (Barbara Perrott).

545 T16-79, L19-24 (Barbara Perrott).

546 T16-79, L22 (Barbara Perrott).

547 T14-67, L25-35 (Terry Burns).

548 T17-10, L30-50 (Barbara Perrott).

549 T14-56, L46-53 (Terry Burns).

550 Exhibit 11, para 5.

551 Exhibit 4, Volume 22, Item 19, at page 6.

552 T3-35, L7 (Philip Hood).

553 T3-75, L1-2 (Colleen Orange).

di Carlo, a member of the Cost Panel, thought likewise⁵⁵⁴. Ms Orange said that it was Mr Burns who had Mr Shah put on her Panel⁵⁵⁵. Ms Blakeney said that the RFP and ITO processes were “driven” by Mr Burns⁵⁵⁶. Ms Bugden, who was replaced by Ms Orange as Cost Panel leader, explained that if Mr Burns “asked you to undertake a certain function, ... that function would be undertaken”⁵⁵⁷. Mr Swinson agreed that Mr Burns could be properly described as the “Project Lead Advisor”, whose role “entailed liaising closely with the people involved in the evaluation and conducting the scoring ... having insight into their reason and process along the way before finalization (sic) ... and providing such advice as they required”⁵⁵⁸.

Evaluation of ITO

- 5.21** The ITO closed at 10am on 8 October 2007⁵⁵⁹. Accenture, IBM and Logica responded in time. The responses from IBM and Accenture addressed the criteria set out in the ITO. Logica’s bid was non-conforming⁵⁶⁰. It bid only for finance solutions and not human resources.
- 5.22** Provision was made for the Evaluation Panels to address clarification questions to the vendors⁵⁶¹.
- 5.23** The ITO evaluation criteria were divided into categories. Each Panel assessed the three vendors. To assist three templates were created: strengths and weaknesses, risks and issues, an evaluation report and of particular relevance, scoring⁵⁶².
- 5.24** The last was designed to capture the individual team members’ scores for each category, which were then to be moderated by the Panel leaders⁵⁶³. Each Panel was to recommend a vendor and provide commentary justifying its choice⁵⁶⁴.
- 5.25** At the end of four prescribed stages, each Panel’s report was to be collated into a final Report, signed by the leaders⁵⁶⁵. Ms Perrott, as Panel Chair, was to review the Evaluation Report and submit it to the Steering Group for approval⁵⁶⁶.
- 5.26** The evaluation documents were stored in a directory⁵⁶⁷ to which Mr Burns (and Mr Goddard) had access.

Workbrain

- 5.27** Workbrain figures prominently in the assessment of IBM’s offer and it will be helpful if something is said about it and its proposed use by IBM.

IBM proposed to utilise Workbrain to perform the whole of the awards interpretation function and for non-rostering as well as rostering agencies . This was a novel approach: it was “innovative”⁵⁷⁵.

- 5.28** Workbrain is a program, or series of programs, for workforce management, owned and licensed by a Canadian company, Infor⁵⁶⁸. It has particular application for the organisation and deployment of employees on rosters, to record “time and attendance” and to calculate the monetary value of the time worked according to the entitlements given to employees by industrial awards and enterprise bargains. These functions are part of awards interpretation but do not comprise the whole of that function.

554 T4-25, L30-31 (Rose di Carlo).

555 T3-81, L36-38 (Colleen Orange).

556 T4-77, L50-51 (Maree Blakeney).

557 T6-58, L1-7 (Joanne Bugden).

558 T8-87, L1-11 (John Swinson).

559 The ITO originally prescribed that responses were due on 1 October 2007 by 10am: see Exhibit 4, Volume 12, Item 12, at pages 5-6. This was extended to 8 October 2007 by 10am: see Exhibit 4, Volume 29, Item 25.38, at pages 791-792.

560 Exhibit 4, Volume 22, Item 19, at page 12.

561 Exhibit 4, Volume 12, Item 12, page 6 (clause 7.81).

562 Exhibit 4, Volume 22, Item 19, at page 3.

563 Exhibit 4, Volume 22, Item 19, at page 4.

564 Exhibit 4, Volume 22, Item 19, at page 3.

565 Exhibit 4, Volume 22, Item 19, at page 4.

566 Exhibit 4, Volume 22, Item 19, at page 5.

567 Exhibit 4, Volume 22, Item 19, at page 7.

568 Workbrain was assigned from Workbrain Pty Ltd (ABN 72 108 973 002) to Infor Global Solutions (ANZ) Pty Ltd (ABN 25 003 538 314) on or around 31 May 2009.

- 5.29** Workbrain was selected as part of the procurement process for the SS Initiative in about 2005. A consortium led by IBM was successful in having its primary products, Workbrain, Recruit ASP and SABA chosen⁵⁶⁹. The choice was made because those products offered a large and robust payroll solution with other products considered “best-of-breed”⁵⁷⁰. Workbrain was selected as the rostering solution so as to configure a number of time and attendance rules to allow immediate rectification of time violations. It was not chosen for time sheeting, cost dissection, cost allocation or full award interpretation⁵⁷¹. Awards are complex and include many features, such as financial, taxation, superannuation, progression as well as time and attendance. Time and attendance deals with the hours an employee is required to work and includes things such as start time, duration of day, number of hours worked before a break, rest periods and days to work⁵⁷². While complex it is only one aspect of the total award. The initial design in CorpTech’s implementation was to put the key time and attendance award rules into Workbrain and all other rules into SAP⁵⁷³.
- 5.30** Only a few government departments were what was called “rostering agencies”. They were QH, Queensland Corrective Services, Queensland Emergency Services and Queensland Police Service. Of these QH was by far the largest. All other departments were non-rostering which means, in effect, that their employees ordinarily worked 9 to 5 and did not usually work on weekends or public holidays. The payroll calculation for these employees was considerably less complicated than for those agencies whose employees worked at night, on a weekend or public holidays.
- 5.31** IBM proposed to utilise Workbrain to perform the whole of the awards interpretation function and for non-rostering as well as rostering agencies⁵⁷⁴. This was a novel approach: it was “innovative”⁵⁷⁵.
- 5.32** A statement prepared by Mr Kwiatkowski, a solution architect employed by IBM since 1998, delivered to the Commission on or about 5 June 2013⁵⁷⁶, described Workbrain as having “an award engine within its Time and Attendance Module” which supports business processes⁵⁷⁷. He explained⁵⁷⁸:

The number of awards isn’t the issue ... it is the complexity of the pay rules that support a given award. An organisation needs some form of award interpreter to understand the time data and then to create ... leave accruals and payment types based upon that time data. ... Workbrain is a self-contained product. Development and extension of Workbrain can ... be done independently of ... development within SAP Workbrain development predominantly requires technical skills in the languages ... “Java” and “XML”. ... SAP development ... requires use of the specialised ‘ABAP’ programming language ... Java and XML ... are common ... so getting skilled resources is easier, and less expensive. ... The development of pay rules in Workbrain is XML based and may be developed in a ... tool called the Workbrain Toolkit ... used to design and configure all the time related components of awards, Enterprise Bargaining Agreements ... and business pay rules. This is generally more efficient than developing such rules in ABAP. Once created, these pay rules ... form a common repository of business rules ... [which] could then be configured across multiple awards and calculation groups to address the complexity of the business requirements. ... [A] single pay rule would be used by multiple awards and therefore only needs to be written by a developer once.

- 5.33** Mr Bloomfield said in his statement⁵⁷⁹:

... IBM proposed using Workbrain for Awards interpretation. Workbrain was already due to be part of the Shared Service Solution (sic) for rostering, and CorpTech had already purchased a licence for the product in or about 2003. It was, and is, considered an ideal product for rostering and award interpretation. ... I was aware that Accenture had attempted to write award interpretation in to SAP by programming each award in the SAP programming language, ABAP. This is a particularly expensive and time-consuming process I was aware of them having used this approach in the Department of Housing implementation, which was, I understood ... , the reason why it was delayed and over budget. The idea of hard-coding a further 160+ awards ... seemed like a massive and unnecessary technical undertaking ... which would ... introduce a number of errors ... complicate SAP upgrades and so forth. It seemed unnecessary, particularly when the Workbrain software was available and CorpTech had already spent money on it.

569 Exhibit 171, at page 1; Exhibit 4, Volume 1A, Item 1A, at pages 1-267.

570 Exhibit 171, at page 1; see also Exhibit 4, Volume 14, Item 15, at page 70.

571 Exhibit 171, at page 1.

572 Exhibit 171, at page 2.

573 Exhibit 171, at page 2.

574 Exhibit 4, Volume 14, Item 15, at page 73.

575 Exhibit 4, Volume 14, Item 15, at page 378.

576 Exhibit 164, para 1.

577 Exhibit 164, para 14.

578 Exhibit 164, paras 14-19.

579 Exhibit 35, paras 158, 161.

5.34 IBM's response to the ITO said about its proposed use of Workbrain⁵⁸⁰:

IBM's award implementation solution will use Workbrain 'Awards Engine' as the core system for building time related components of awards for all Agencies. SAP HR Payroll will be used for payroll processing and as the single source of truth for the HR/Payroll data. Workbrain will extend this SAP foundation to deliver award interpretation in a significantly more cost effective manner. Whilst our proposed approach is to leverage Workbrain for all agencies (both rostering and non rostering) IBM acknowledges that some non rostering agencies may be concerned or confused by this approach. ...

It is worth noting that many other organisations have successfully [implemented] a similar best of breed approach for award interpretation including Qantas, Bunnings and Woolworths.

...

SAP HR Payroll. *SAP HR Payroll functionality will be used for payroll processing. Workbrain interpreted time related allowances, overtime, penalties and other elements will be interfaced into SAP. SAP CATS functionality will be used for non-rostering Agencies for capturing attendance data.*

Some of the information processed in SAP Payroll:

- *Fixed allowances ...*
- *Superannuation;*
- *Deductions;*
- *Taxation;*
- *Payroll reporting;*
- *Payroll processing; and*
- *Separation processing.*

Workbrain Awards Engine

Workbrain will be used to configure all time related award conditions and business related pay rules.

The benefits of using the Workbrain Awards Engine are as follows:

- *Workbrain has a specialised module dedicated to the delivery of time related award conditions;*
- *Building awards in Workbrain is highly cost effective and efficient compared to designing similar requirements in SAP;*
- *The Workbrain rules engine is very efficient for running these award related rules as it involves configuration not customisation;*
- *Workbrain integrates very well with SAP/other payroll applications for importing employee/team related data and exporting out payroll related data;*
- *The pay rules are easy to build and maintain using the Workbrain Toolkit;*
- *Workbrain pay rules are highly flexible and are designed with various configurable parameters to address complex business requirements;*
- *In Workbrain application pay rules are highly parameterised (configurable) to offer the highest flexibility against any EBA changes and any HR policy changes;*
- *The pay rules and pay rule conditions in Workbrain are reusable across multiple awards and Agencies (Refer Figure 39.2 below);*
- *The Workbrain Toolkit enables automation of any pay rules to meet complex award and Agency related requirements;*
- *Number of core and solution centre pay rules has been delivered with Workbrain application; and*
- *Workbrain application interprets time related components in real time, for rostering agencies, and is user accessible as soon as the start and stop time has been entered and timesheet submitted. This gives the line manager access to interpreted information along with start and stop time before approval.*

...

The original SSS design for award interpretation in non rostering Agencies occurs entirely within SAP, with no involvement from the Workbrain application. IBM proposes to change this design to utilise the Workbrain application as an 'awards engine', where the time component and leave accrual component of awards will be processed within Workbrain and SAP Award processing will be disabled. The collection of time and schedule data will continue to occur within SAP, as will leave absence processing, and payroll processing.

5.35 Mr Bloomfield explained in evidence that it was the use of Workbrain to interpret awards and compute the value of time worked in accordance with award conditions for payroll calculation in non-rostering agencies that was “innovative” in the IBM proposal and offered a more efficient and therefore faster and cheaper implementation of the HR part of the program⁵⁸¹. The alternative, coding the award conditions into SAP, was complicated, slow and expensive⁵⁸². Mr Atzeni concurred in thinking that it was the use of Workbrain for non-rostering agencies that offered the promise of a faster, more efficient implementation⁵⁸³. Mr Bond on the other hand explained that the novelty lay in using Workbrain to perform the whole awards interpretation function and not just time and attendance⁵⁸⁴. I have more faith in Mr Bond’s opinion than the others; it appears to be supported by IBM’s own document. The IBM response made this claim for its proposal⁵⁸⁵:

IBM has based our proposed solution on what could be considered the existing baseline solution architecture. The one notable exception to this is the Workbrain application whose use has been expanded to include awards interpretation.

...

The benefits of implementing all awards in Workbrain rather than splitting between SAP and Workbrain include:

- *Economies of scale through developing only one set of rules ... utilised across all Agencies ...*
- *Implementing all awards in Workbrain provides a single system of record for their configuration, therefore providing significant efficiencies ...*
- *The Workbrain rule and leave accrual engine is extremely efficient ... providing considerable time savings*
- *...*
- *The system architecture of the Workbrain rule engine is designed to allow simple and efficient integration with custom components. ...*
- *Changes to award agreements can be made quickly and easily via the pay rule editor ...*
- *Configuration of pay rules in Workbrain is simple relative to SAP ...*

It is clear that IBM was proposing a new use of Workbrain. For that reason it identified as “reference sites” organisations whom it said were using Workbrain in the manner it proposed, and could verify its usefulness.

5.36 On this topic the IBM response said⁵⁸⁶:

Rostering agency reference site – Woolworths

Woolworths piloted Workbrain for their Supermarkets division in 2006 and broadened the scope to include 2850 stores across Australia and NZ in late 2006 (200,000+ employees). ...

Non-rostering agency reference site – Pacific National

5.37 Mr Bond led the Functional and Business and Technology Evaluation Panels. It was their role to determine the validity of the claims IBM made for Workbrain. The proposed use was untried unless, as IBM claimed, the reference sites had indeed used it as IBM proposed to, and had done so successfully.

The Evaluation Changes

5.38 Mr Bond, in his first statement, said⁵⁸⁷:

When the evaluation process was underway, it became clear that IBM was not winning the components of the tender I was evaluating, Accenture was. This was perhaps two-thirds of the way through as we were starting to look at scores and bring them together.

...

Mr Burns said he did not believe that we were considering all aspects and he pointed out a number of other dimensions that we should consider. ... He said that we were not giving a fair hearing for all companies that had tendered. He recommended we revisit our scoring. We did this and IBM became the successful tenderer for the components I was scoring.

...

581 T12-5, L10-14; T12-91, L9-32; (Lochlan Bloomfield).

582 Exhibit 35, para 161.

583 T31-97, L17-28 (Damon Atzeni).

584 Exhibit 171, at pages 1-2.

585 Exhibit 4, Volume 14, Item 15, at pages 61, 83.

586 Exhibit 4, Volume 14, Item 15, at pages 84-85.

587 Exhibit 8, paras 13-18, 22.

The view Mr Burns expressed was that we had not fairly looked at all aspects of all offers. There were some dimensions he asked us to consider. I cannot precisely recall exactly which they were. I believe they were things such as human resource capability, experience and such things. He said that we should go back and reread the submissions and re-evaluate based on having taken these points into consideration. Mr Burns said “I think you need to consider these particular dimensions”. He was not specific about a particular vendor. He was broad in his description of what he wanted. He pointed out that perhaps we could take a different view or a different angle. The view he communicated was that in looking at criteria we were looking at it from the wrong angle, and we should look at it from a different perspective.

...

As a result of Mr Burns’ statements ... my team reassessed and modified the scoring allocated to Accenture and IBM. The effect of this was that Accenture ceased to be the primary choice of the evaluation components I led. Had it not been for the talk from Mr Burns, Accenture would have led those evaluation components, rather than IBM. ... I believe the statements by Terry Burns ... was said to all the leads of the subteams...

5.39 Mr Bond said in evidence⁵⁸⁸:

[W]e then submitted those scores to a central coordination type body ... following that ... a meeting that was held. It might have been sometime after but we’re only talking hours or maybe a day. Terry called a meeting and stated that he felt we weren’t being fair within the evaluation ... we weren’t considering new options ... The effect of what was said was that we hadn’t really considered all capabilities within the offers and we need to go back and reassess based on the advice that he was giving us.

5.40 Mr Burns recommended the scoring be “revisited”. When asked whether Mr Burns was correct to say that the capabilities of all the offers had not fully been considered, Mr Bond responded “I wouldn’t have thought so”⁵⁸⁹.

5.41 Mr Burns did not mention any vendor specifically, but it was a “two-horse race” at this time between IBM and Accenture⁵⁹⁰.

5.42 Mr Bond’s Panels did reassess their scoring and the difference in value between IBM and Accenture closed significantly⁵⁹¹. One Panel had previously commented that IBM’s proposal of including awards in Workbrain was “high risk”⁵⁹². The assessment changed and IBM was ranked more highly than Accenture by reason of its innovative idea. Mr Bond recalled Mr Burns addressing the meeting and urging the value of invention. He said⁵⁹³:

... Just because you don’t fully understand how it’s going to work doesn’t mean that it’s not possible.

5.43 Other witnesses corroborate Mr Bond’s account of the meeting. Mr Goddard, in his statement, recounts “one unusual event”, which led to rescoring and “brought about a change in ranking of supplier position – IBM became front runner – overtaking Accenture”⁵⁹⁴. Mr Goddard said that one of the Panels had used a different basis for evaluation from that used by others⁵⁹⁵. The difference related to whether the responses were to be judged by the ability of the offer to deliver the fixed price components of the work, or the fixed price and estimated price components for future work. Mr Goddard’s description of which approach favoured Accenture and which favoured IBM was confusing and in part contradictory, but he was adamant that there was a meeting to determine which approach was appropriate which led to an alteration in assessment methodology which in turn led to the change in ranking⁵⁹⁶.

5.44 Mr Mander was a member of the Functional and Business Panel led by Mr Bond⁵⁹⁷. Mr Mander also provides some corroboration. He links the change to a presentation given by IBM, probably on 17 October 2007 as part of the iterative clarification process by which the Panels asked questions of the offerors and were given answers in documentary form or by way of presentations⁵⁹⁸. The 17 October clarification session was a presentation⁵⁹⁹. It gave further detail as to how and whether awards interpretation would occur in Workbrain. The presentation consisted of several diagrams displaying the flow and processing of data from SAP to Workbrain and vice

588 T2-62, L27-54 (Darrin Bond).

589 T2-63, L15-16 (Darrin Bond).

590 T2-64, L38-39 (Darrin Bond).

591 T2-64, L47-48 (Darrin Bond).

592 T2-66, L37-39 (Darrin Bond); Exhibit 4, Volume 19, Item 18.7.3, at page 329.

593 T2-71, L14-15 (Darrin Bond).

594 Exhibit 27, paras 83, 87.

595 T8-14, L1-10 (Kevin Goddard).

596 Exhibit 27, paras 83-86; T8-14, L1-56 to T8-15, L1-7 (Keith Goddard).

597 Exhibit 25, paras 30-31.

598 Exhibit 4, Volume 30, Item 25.44, at pages 1453-1463; Exhibit 25, paras 70-77.

599 Exhibit 4, Volume 30, Item 25.45, at pages 1496-1505.

versa⁶⁰⁰, a table detailing what award items would be processed in Workbrain and those that would be processed in SAP⁶⁰¹, and finally two diagrams of award processing rules⁶⁰². The documentary presentation was very general and would have needed substantial oral clarification from IBM staff to be persuasive.

- 5.45** Mr Mander's recollection of the point which Mr Burns urged as the basis for reassessment was the use of Workbrain as the "awards engine", to have the whole of the awards interpretation function undertaken in one program, which was, in Mr Mander's description, a "game changer"⁶⁰³. He thought it a notion which, if successful, would have accelerated the implementation of payrolls across government departments⁶⁰⁴. IBM's spokesman presented a convincing theoretical exposition of Workbrain's capacity to perform the function⁶⁰⁵.
- 5.46** The evaluation scoring sheets support the evidence of a change.
- 5.47** Originally the Technology Panel had Accenture at an average score of 3.25 and IBM at 3.0⁶⁰⁶. This first version of the evaluation sheet described the IBM proposal with regards to integration as "higher risk", whereas the Accenture solution "reduced complexity"⁶⁰⁷. Though Accenture's proposal required more effort and change to the Shared Services infrastructure in their model and IBM used an "established proven arrangement"⁶⁰⁸, this evaluation recommended Accenture.
- 5.48** A subsequent sheet had the IBM average score increase to 3.17 and Accenture's reduce to 3.03⁶⁰⁹. The commentary accompanying the analysis reflected the change. The description of the IBM integration proposal no longer included the description as "higher risk", but noted that the Workbrain strategy might be viable⁶¹⁰. The schedule proposed by IBM was praised for being potentially quicker and aggressive, though the work required for agency detail may be underestimated. Accenture's proposal now needed to be verified for functionality, the recruitment solution was highly questionable; the "reduced" complexity was removed from the Accenture integration analysis. This second evaluation sheet still recommended Accenture⁶¹¹.
- 5.49** The final Technology evaluation sheet⁶¹² maintained the scoring and comments from the previous version. The Evaluation Panel now recommended that IBM be considered Prime Contractor⁶¹³. Three versions of the written report of the Technology team were provided to the Commission⁶¹⁴. The first version of the report listed 12 strengths for IBM and 13 for Accenture⁶¹⁵; the second 13 strengths for IBM and 15 for Accenture⁶¹⁶; the final 12 strengths for both IBM and Accenture⁶¹⁷. As for weaknesses: the first listed three for IBM and eight for Accenture⁶¹⁸; the second seven for IBM and nine for Accenture⁶¹⁹; the final report recorded three for IBM and eight for Accenture⁶²⁰. Notably the strengths regarding Accenture's identification of concurrent employment issues and a desire to take full responsibility for most of the activities for the project appeared in the second draft but disappeared in the final report⁶²¹. IBM's weaknesses remained the same in the first and final versions, but those listed in the second version were more damning than the final version, noting a lack of sufficient detail, that the solution required further evaluation to show that it works, that IBM would take no responsibility for application integration and that IBM underestimated the level and complexity of the QH solution⁶²². The single change for Accenture was the addition in the second version (and subsequent removal in the final version) of the weakness regarding the lack of nomination for Technology Architect⁶²³.

600 Exhibit 4, Volume 30, Item 25.45, at pages 1498-1499.

601 Exhibit 4, Volume 30, Item 25.45, at page 1500.

602 Exhibit 4, Volume 30, Item 25.45, at pages 1502-1503.

603 Exhibit 25, paras 76-77.

604 T7-56, L1-7 (Robert Mander).

605 T7-55, L51-52 (Robert Mander).

606 Exhibit 4, Volume 19, Item 18.4.8, at pages 129-130.

607 Exhibit 4, Volume 19, Item 18.4.8, at page 130.

608 Exhibit 4, Volume 19, Item 18.4.8, at page 130.

609 Exhibit 4, Volume 19, Item 18.4.7, at pages 127-128.

610 Exhibit 4, Volume 19, Item 18.4.7, at page 128.

611 Exhibit 4, Volume 19, Item 18.4.7, at pages 127-128.

612 Exhibit 4, Volume 19, Item 18.4.4, at pages 108-109.

613 Exhibit 4, Volume 19, Item 18.4.4, at page 109.

614 Exhibit 4, Volume 19, Item 18.4.10, at pages 132-141 (first version), Item 18.4.6, at pages 116-126 (second version), Item 18.4.1, at pages 91-103 (final version).

615 Exhibit 4, Volume 19, Item 18.4.10, at pages 133-135.

616 Exhibit 4, Volume 19, Item 18.4.6, at pages 117-119.

617 Exhibit 4, Volume 19, Item 18.4.1, at pages 93-95.

618 Exhibit 4, Volume 19, Item 18.4.10, at pages 136-137.

619 Exhibit 4, Volume 19, Item 18.4.6, at pages 120-121.

620 Exhibit 4, Volume 19, Item 18.4.1, at pages 96-97.

621 Exhibit 4, Volume 19, Item 18.4.6, at page 118.

622 Exhibit 4, Volume 19, Item 18.4.6, at page 120.

623 Exhibit 4, Volume 19, Item 18.4.6, at page 121.

- 5.50** The Functional and Business team’s scoring followed a similar pattern. In the first version of the evaluation sheet IBM’s average score was 2.63 and Accenture’s is 3.16⁶²⁴. The evaluation of sub-category one for scope and functionality described Accenture as having “strong methodologies around scope management and approach to scope delivery” and having a “strong understanding of the program”; though the Panel appeared to be concerned that Accenture may limit scope, and therefore reduce functionality⁶²⁵, and that there was no mitigation for the LATTICE system risk⁶²⁶. IBM’s approach was “potentially very high risk” and there was little detail on how the Workbrain approach to awards would work⁶²⁷. The second and third sub-categories, Process and Operation, and Schedule and Timelines, described Accenture’s proposals as “strong”, whereas IBM’s plans were “risky and unclear”.
- 5.51** Subsequently the scores became 3.05 for Accenture and 3.15 for IBM⁶²⁸. Both were described as having strong methodologies for scope management and delivery and an understanding of the need for solution standardisation across government departments⁶²⁹, while the concern regarding scope limitation now existed for both⁶³⁰. IBM replaced Accenture as having a “strong understanding of the program”⁶³¹. Concerns were raised about the functionality of the SABA and RecruitASP functions proposed by Accenture⁶³². The Workbrain proposal by IBM was portrayed as being suitable and likely to generate savings. There was still concern that the reference sites did not reflect the size of the Initiative. The process and operations sub-category listed both vendors as having strong methodologies, with a number of options for training and change, though IBM was criticised for lack of clarity regarding support. IBM’s proposal for LATTICE replacement was praised. No recommendation was made⁶³³.
- 5.52** The reports from the Functional and Business Panel were similar⁶³⁴. The first listed 17 strengths for Accenture, reduced to 11 in the final report, while IBM was described as having nine strengths in the first report, which increased to 12 in the final report. The weaknesses for Accenture in the first report number 27, which increased to 28. IBM’s weaknesses number 16 in the first report, decreasing to 15 in the second. Most notably, Accenture was extensively criticised for assumptions that require further investigation – this criticism appears in weaknesses list of both reports⁶³⁵. IBM’s weaknesses were less vehemently stated – this is shown especially for the weaknesses regarding the use of Workbrain for awards interpretation⁶³⁶. The first version of the report expressed concern about “lack of detail and clarity of how this will work, particularly for non-time based rules ... real-time integration to SAP and processing of retrospective changes ... exclusion of leave takings ... is also a concern. There is also concern regarding how ESS will work in SAP and/or Workbrain using this approach”. The criticism manifestly dwindled in the final report to “... concerns over the approach for using Workbrain as the awards engine. These include future dated leave requests, the use of CATS and the complexity of the integration”. The differences are good evidence of the effect the “game changer” presentation had on this team.
- 5.53** The Governance Panel was headed by Mr Michael Lewis. Its first scoring sheet listed Accenture’s average score as 4.20 and IBM’s score as 3.20⁶³⁷. There were no comments on this document. On the second scoring sheet IBM increased to 3.93 and Accenture’s score dropped to 3.90⁶³⁸. The recommendations commented on this version of the sheet were complimentary to Accenture but did not mention any reason for the increase in score of IBM. The third scoring sheet⁶³⁹ maintained the same scores, but the recommendation was almost entirely about IBM. Accenture was criticised for wanting to place more of its staff into “strategic, management and execution levels, and project management” which would be more costly – an aspect that was previously praised for adding “strength to the governance model”. IBM’s proposal for LATTICE replacement was commended twice, and provides an “overall” better response to the ITO.
- 5.54** The versions of the Governance Panel’s written reports held by the Commission have no differences of note⁶⁴⁰.

624 Exhibit 4, Volume 19, Item 18.7.3, at pages 328-329.

625 Exhibit 4, Volume 19, Item 18.7.3, at page 328.

626 Exhibit 4, Volume 19, Item 18.7.3, at page 329.

627 Exhibit 4, Volume 19, Item 18.7.3, at page 329.

628 Exhibit 4, Volume 19, Item 18.7.2, at pages 326-327.

629 Exhibit 4, Volume 19, Item 18.7.2, at page 326.

630 Exhibit 4, Volume 19, Item 18.7.2, at page 327.

631 Exhibit 4, Volume 19, Item 18.7.2, at page 326.

632 Exhibit 4, Volume 19, Item 18.7.2, at page 327.

633 Exhibit 4, Volume 19, Item 18.7.2, at page 327.

634 Exhibit 4, Volume 19, Item 18.7.5 at pages 331-343 (first version); Item 18.7.1, at pages 312-325 (final version).

635 Exhibit 4, Volume 19, Item 18.7.5, at page 337; Item 18.7.1, at page 317-318.

636 Exhibit 4, Volume 19, Item 18.7.5, at page 335 (first version); Item 18.7.1, at page 316 (final version).

637 Exhibit 4, Volume 20, Item 18.8.5, at page 564.

638 Exhibit 4, Volume 20, Item 18.8.3, at page 562.

639 Exhibit 4, Volume 20, Item 18.8.1, at page 551.

640 Exhibit 4, Volume 20, Item 18.8.2, at pages 552-561 (first version), Item 18.8.1, at pages 540-551 (final version).

- 5.55** Mr Hood headed the Operations and Support Evaluation Panel. This Panel's scoring did not change from the original scoring of Accenture 3.48 and IBM 3.32⁶⁴¹, but the comments by the Panel changed from the first to the second sheet. Accenture was recommended on the first sheet because of their "strong understanding of the design build" and implementation of the SS Initiative⁶⁴². The second praised IBM for the Workbrain proposal's simplification of ongoing support and maintenance of awards⁶⁴³. The speed of IBM's proposed implementation was perceived to mitigate against the LATTICE risk. Accenture's proposal did not provide the same risk mitigation. Accenture was recommended on the first scoring sheet⁶⁴⁴. In the second sheet the recommendation was modified to state that though Accenture scored higher, the Panel did not think that the scoring difference was significant, and recommended both as suitable for Prime Contractor⁶⁴⁵.
- 5.56** The Commission was provided with three versions of the final report for the Operations and Support Panel⁶⁴⁶. Accenture was given eight strengths in the first and second versions, but six in the final one – strengths regarding rostering for Corrective Services and Treasury migration were removed. IBM had four strengths in the first and five in the second. A strength regarding the "[u]se of Workbrain to build awards leverages configuration options within the application which facilitates rapid build and testing" was added. The final report listed five strengths for IBM, including the previously added Workbrain strength. The weaknesses for Accenture followed a similar structure to the reports of other teams: four in the first, five in the second, where a weakness about the lack of LATTICE support was added, and six in the last, where the lack of LATTICE support continued, in addition to an item regarding the need for CorpTech to perform LATTICE support until a final solution was provided. Interestingly, this last weakness regarding CorpTech appeared in the weakness list for both IBM and Accenture in the final report.
- 5.57** Mr Hood was completely, and unconvincingly, unable to explain why his Panel altered its recommendation to favour IBM. In his statement provided to the Commission, he responded to a question whether Mr Burns had convened a meeting of Panel leaders at which he urged them to reconsider their evaluation. He stated⁶⁴⁷:
- I do not recollect such a meeting, although, if such a meeting occurred, I would likely have been in attendance.*
- 5.58** When pressed in evidence he accepted there could have been a meeting, which he attended, where "teams were asked to go back and review their process"⁶⁴⁸. He maintained he had no recollection of Mr Burns making the statement. When asked if anyone put pressure on him, and the other leaders, to change recommendations he said⁶⁴⁹:
- Not as such. ... I believe that we were advised to review the process.*
- 5.59** He said he had "no direct recollection" of Mr Burns stating "that all teams were to go back" though he had a recollection that his team "did review the process of its scoring"⁶⁵⁰. He asserted that he had resisted any untoward pressure by pointing to the fact that his team scores did not change⁶⁵¹. When asked why the recommendation had changed he had no intelligible answer and sought refuge in a claim that the changes were immaterial alterations to the wording of the recommendations. He evaded admitting that the changes to language were changes to meaning⁶⁵². He did ultimately, and grudgingly, accept that his team⁶⁵³:
- [C]ame to a view which it expressed, the scoring favoured Accenture and Accenture should have the bid. After the meeting the scoring didn't change but (the) assessment of scoring did.*
- 5.60** Mr Hood's unsatisfactory testimony and his misleading statement that he had no recollection of the meeting, and his attempts to gainsay the clear import of the evidence that some urging at the meeting led to the reassessment, all point to the conclusion that he was embarrassed by his acquiescence in the importunity. There is sufficient evidence to remove any doubt that Mr Burns called the meeting, urged the reassessment and succeeded in obtaining it. Mr Hood's embarrassment and evasions are a tacit admission that the scoring changed by reason of an intervention which should not have occurred.

641 Exhibit 4, Volume 19, Item 18.2.2, at page 41.

642 Exhibit 4, Volume 19, Item 18.2.2, at page 41.

643 Exhibit 4, Volume 19, Item 18.2.1, at page 40.

644 Exhibit 4, Volume 19, Item 18.2.2, at page 41.

645 Exhibit 4, Volume 19, Item 18.2.1, at page 40.

646 Exhibit 4, Volume 19, Item 18.2.5, at pages 47-52 (first version); Item 18.2.6, at pages 53-60 (second version); Item 18.2.1, at pages 23-40 (final version).

647 Exhibit 11, para 69.

648 T3-46, L1-8 (Philip Hood).

649 T3-45, L47-48 (Philip Hood).

650 T3-46, L1-8 (Philip Hood).

651 T3-45, L27-35 (Philip Hood).

652 T3-47, L1-30 (Philip Hood).

653 T3-47, L26-29 (Philip Hood).

- 5.61** Mr Lewis, who led the Governance Panel, was an even more unsatisfactory witness. He, too, denied any recollection of the “rescoring” meeting⁶⁵⁴, though he accepted that his Panel scores changed to prefer IBM⁶⁵⁵. He was evasive with respect to the simplest proposition, such as whether his Panel even read the ITO responses prior to scoring them⁶⁵⁶. He had no explanation for the increase in IBM’s score⁶⁵⁷. When confronted with the fact that his Panel had actually decreased Accenture’s score, he was equally bereft of explanation⁶⁵⁸. Mr Lewis, I regret to find, was not candid about his Panel’s rescoring and the reasons for it.
- 5.62** It is, I think, the fact that the pressure Mr Burns put on the Panel leaders, though effective, was improper and affected the integrity of the procurement process. It is for that reason that Mr Hood and Mr Lewis were evasive. They are, I conclude, deeply embarrassed that they permitted themselves to be manipulated and to acquiesce in the distortion of the procurement. The embarrassment is no doubt increased by the magnitude of the subsequent failure of the project for which they recommended IBM.
- 5.63** Mr Burns denied interfering in the evaluation of the responses⁶⁵⁹. He was adamant that that was not part of his role and that he did not do it. He did, however, admit that he addressed “all the teams together”⁶⁶⁰ at a time when “they were getting towards the end of their process, as we were beginning to start to form up and they felt they’d [had] proper responses to their queries from the vendors”⁶⁶¹. His best recollection of what he said was this⁶⁶²:
- Is the process working? Are you comfortable you’re understanding it? Have you given all proper consideration to all aspects? ... Have you had adequate responses from the vendors? Are you satisfied with the special questions that (you were) asked? ... Are you okay with the reference checking? ... Are you comfortable you can score correctly?*
- 5.64** Given Mr Burns’ role as facilitator and leader of the ITO it is a fair inference that there would have been no such meeting unless Mr Burns had called it. The other point to note is that an address in the terms he recounts would not have led to a general re-evaluation or rescoring so as to change the relative rankings of the two offerors. There is no doubt that that happened. It seems likely, therefore, that something more than Mr Burns remembers was said.
- 5.65** Mr Burns was equally dismissive of the notion that he could have influenced the independent judgment of a substantial number of public servants, many of whom were quite senior and many of whom had had extensive experience with the Initiative and procurements. As he put it⁶⁶³:
- If I had said anything that they considered as impropriety, I’m convinced there would have been rapid movement to the door, to go and raise it with people, particularly with the probity officer.*
- 5.66** IBM’s submissions make an allied point, that in evaluating the ITO responses the State had access to experienced public servants who were IT specialists, qualified accountants as well as external contractors knowledgeable in IT contracts to advise, and to serve on the Panels⁶⁶⁴. Those persons were required to, and no doubt did, review and score each of the responses by reference to the information contained in them as well as answers given to particular questions and clarifications presented by the tenderers. The number and composition of the Panels was meant to ensure that no individual had a controlling vote in the outcome and that differing views would be accommodated and moderated to produce a consensus.
- 5.67** Mr Burns’ point is a good one, but there are three answers to it. The first, one of detail, is that there was no Probity Officer⁶⁶⁵. There should have been but the appointment was never made. The second answer is that Mr Bond did complain⁶⁶⁶. The third is that Mr Burns was a man of particularly forceful personality. Ms Perrott describes him, accurately I am sure, as being “forceful” and “difficult to control”⁶⁶⁷. He had also, as I have mentioned, been instrumental in having Mr Waite leave CorpTech. His familiarity with Mr Bradley was also well known, as I have mentioned. These factors would have discouraged dissent from Mr Burns’ admonitions.

654 T4-60, L1-56 to T4-61, L1-33 (Michael Lewis).

655 T4-50, L27-28 (Michael Lewis).

656 T4-46, L30-52 (Michael Lewis).

657 T4-53, L10-34 to T4-54, L1-37 (Michael Lewis).

658 T4-50, L3-54 to T4-54, L1-53 (Michael Lewis).

659 T14-74, L15-23 (Terry Burns).

660 T14-71, L44-49 (Terry Burns).

661 T14-72, L34-38 (Terry Burns).

662 T14-72, L23-31 (Terry Burns).

663 T14-75, L37-41 (Terry Burns).

664 Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), para 59.

665 This matter is examined in greater detail later in this report.

666 Exhibit 8, para 23.

667 Exhibit 53C, para 6.

- 5.68** The substance of IBM’s point, also good on its face, is diminished by what actually happened. Mr Burns was able to influence the Panel leaders and to affect the outcome of the evaluation. That it occurred is a serious criticism of the public servants engaged in the evaluation, but there is no doubt about the fact.
- 5.69** Mr Bond was alarmed by Mr Burns’ intervention. It was clearly improper. He should have had no part to play in the evaluation of the responses or their scoring in accordance with the predetermined criteria. It was certainly not his role to influence the scoring in favour of one offeror. In a contest between two bidders to say that one is being treated unfairly and that the scores which favour the other should be reassessed can only have one consequence. Mr Bond took his concerns to Ms Perrott. He was again rebuffed. According to Mr Bond⁶⁶⁸:
- Her response to me was that I had had my opportunity and that Terry Burns was now leading the initiative. ... One of my main concerns was that someone who was not a public servant was leading the actual evaluation and ... I felt that was inappropriate.*
- 5.70** In oral testimony Mr Bond said he told Ms Perrott he “was concerned with the way that the evaluation was going that Terry was leading”⁶⁶⁹. He explained that Mr Burns had instructed Panel members to rescore but he (Mr Bond) may not have “referred to the actual meeting”⁶⁷⁰.
- 5.71** Ms Perrott’s response to Mr Bond was that he “should support Terry, let him get on with trying to find a new way to deliver the solutions and should be as supportive as possible”⁶⁷¹.
- 5.72** Ms Perrott had no specific recollection of being told by Mr Bond of Mr Burns’ intervention⁶⁷². She does recall a conversation in which she discussed his future at CorpTech but does not link it to his unease about Mr Burns’ interference⁶⁷³.
- 5.73** I accept Mr Bond’s evidence. Apart from my assessment of his credibility much of what he says has circumstantial corroboration. It is clear that Mr Bond’s express concern to Ms Perrott was not limited to the fact that Mr Burns, who was not a public servant, was leading the ITO process. He had a particular concern, properly entertained, that Mr Burns was inappropriately interfering in the assessment. Given the facts as mentioned earlier it is not likely that any of the public servants to whom Mr Burns spoke would have challenged him. Ms Perrott’s response to Mr Bond reinforces that conclusion. Despite her saying that she tightly controlled Mr Burns and cautioned him about his excesses, when given direct evidence of his misbehaviour which had the immediate potential of distorting the evaluation process, she did nothing and told Mr Bond that he should support Mr Burns.
- 5.74** Mr Bond’s approach to Ms Perrott is significant. Mr Bond knew at once that the pressure put on the Panel members was improper and was likely to affect the integrity of the tender process.
- 5.75** It is, I think, a fair inference that Mr Burns urged the Panel leaders at the meeting he called to give IBM credit for the potential its proposal had for a faster and therefore cheaper implementation of payroll solution. Following the meeting the references to the risk in each of the proposals was ameliorated and IBM led the scoring.

Suitability of Workbrain

- 5.76** I have previously described IBM’s innovative use of Workbrain, and the need for verification that the proposal was practicable. The Evaluation Panels led by Mr Bond and Mr Hood were aware of IBM’s novel approach. Because it was untried it was rated as risky and Accenture’s more conventional approach was preferred. This assessment was made with knowledge that IBM had supplied reference sites for its proposed use of Workbrain. Again the best account comes from Mr Bond. He said⁶⁷⁴:

... IBM changed the design as to how the awards would be interpreted. The initial design placed the awards engine in SAP; while WorkBrain was intended to process rosters and send that information into SAP. But IBM changed that technical design to do award interpretation in WorkBrain. In my opinion this was a problem, because complex award interpretation was to now be undertaken in an application that was not designed for such work. SAP is a strong, robust HR solution. It is built for large scale purposes

668 Exhibit 8, para 23.

669 T2-64, L11-12 (Darrin Bond).

670 T2-64, L14-16 (Darrin Bond).

671 T2-64, L18-21 (Darrin Bond).

672 T17-4, L1-21 to T17-6, L1-16 (Barbara Perrott).

673 Exhibit 53B, para 8.

674 Exhibit 8, para 40.

and it is built for complex award interpretation. [IBM's] model ... created a greater reliance upon there being good interfaces between SAP and WorkBrain.

- 5.77** Following Mr Burns' urging the scores and/or commentary changed, as I have described. Mr Bond and Mr Mander⁶⁷⁵ both accepted that there was sense in considering, or reconsidering, the IBM proposal because, if it were effectual, it would be beneficial to the SS Initiative. Once more Mr Bond put it well⁶⁷⁶:

The IBM offer would have shown a schedule that was much more aggressive than the Accenture one, and therefore if that innovation ... was able to be delivered then it would be a great outcome for the initiative. ... [B]ecause my team was somewhat uncomfortable, we asked for certain guarantees ... that this would work.

- 5.78** The risk, of course, remained. If innovation were to be rewarded, elementary prudence required that proof that it actually worked was important, if not vital. The proof offered by IBM, and accepted by CorpTech, was to contact the reference sites and obtain from them an account of how Workbrain performed in practice as an awards interpreter. Approaches were accordingly made to the users identified by IBM.

- 5.79** On 9 October 2007, a Clarification Request was issued by CorpTech to IBM. It contained a number of questions one of which was⁶⁷⁷:

We have been unable to gather information from Woolworths. Please provide an alternative reference site ... [s]pecifically around the use of Workbrain for award interpretation.

- 5.80** Woolworths had declined to answer CorpTech's questions on the basis that its payroll system was commercially confidential⁶⁷⁸. IBM's response on 11 October 2007 proposed instead Bunnings Warehouse, at an address in Victoria, and Pacific National Pty Ltd (Pacific National) as "reference sites where schedule and time data are imported into Workbrain from external systems and awards are interpreted and applied in Workbrain"⁶⁷⁹.

- 5.81** In answer to a further question⁶⁸⁰:

How do you propose that CorpTech gains an acceptable level of confidence in the proposed Workbrain awards solution given the inadequate reference response from Woolworths?

- 5.82** IBM responded⁶⁸¹:

Workbrain's Time and Attendance workforce solution has been implemented in many large organisations in North America, Europe and Australia to accurately calculate gross payroll and comply with complex regulations. In Australia this include[s] ... Bunnings Warehouse, Pacific United (sic) and Woolworths.

- 5.83** On 15 October 2007, Mr Bloomfield replied specifically to Ms Blakeney's question of 9 October to inform her that the Project Director for Workforce Management at Bunnings Warehouse would answer CorpTech's question about the use of Workbrain, and also identified Mr Craig Smith of Pacific National who had "now left Pacific National and is working at Woolworths on their Workbrain implementation"⁶⁸². Pacific National was also unhelpful. Its workforce of 2,900 was too small to be of relevance to QH's much larger and more complex one⁶⁸³. Bunnings did not support IBM's use of Workbrain because it did not have it interface with SAP⁶⁸⁴. Ms Blakeney asked for a further reference site and in an email of 17 October 2007 Mr Bloomfield suggested the Deputy Secretary of the Department of Immigration and Multicultural Affairs⁶⁸⁵.

- 5.84** There was no evidence that any reference site offered the promised support. IBM proffered a promotional pamphlet from Infor about Workbrain and some research publications⁶⁸⁶, the most important of which was by Gartner, a well regarded source, which compared a number of workforce management IT solutions used by retailers⁶⁸⁷. It gave Workbrain a rating of "strong positive" in that context⁶⁸⁸. IBM also sent some "Workbrain performance test results conducted by the IBM Customer Benchmark Centre"⁶⁸⁹. These were of limited use.

675 T7-55, L29-56 to T7-56, L1-16 (Robert Mander).

676 T2-71, L16-22 (Darrin Bond).

677 Exhibit 4, Volume 30, Item 25.43, at page 1197 (Question 16).

678 Exhibit 124, at page 27.

679 Exhibit 4, Volume 15, Item 15, at page 788.

680 Exhibit 4, Volume 30, Item 25.43, at page 1198 (Question 19).

681 Exhibit 4, Volume 15, Item 15, at page 791.

682 Exhibit 4, Volume 30, Item 25.42, at page 1194.

683 Exhibit 124, at page 63.

684 Exhibit 124, at pages 8, 43.

685 Exhibit 4, Volume 30, Item 25.46, at page 1507.

686 Exhibit 4, Volume 30, Item 25.43, at pages 1440-1452; Exhibit 4, Volume 30, Item 25.44, at pages 1455-1463.

687 Exhibit 4, Volume 30, Item 25.44, at pages 1457-1463.

688 Exhibit 4, Volume 30, Item 25.44, at pages 1462-1463.

689 Exhibit 4, Volume 30, Item 25.43, at pages 1439-1452.

5.85 Mr Bond's evidence on this was⁶⁹⁰:

There wasn't enough advice given by [the first two reference sites] and ... one other [reference]. There was not enough assurance that this was going to be a possible solution for us. ... They did provide more references ... the referees described ... having award interpretation within Workbrain, but not with integrating ... back to SAP. In one case, one of the referees was unwilling to provide too much detail because they felt it was their commercial advantage.

5.86 Mr Goddard sat in on the Evaluation Panel to which Mr Bond recounted his interrogation of the reference sites. He said⁶⁹¹:

I recall ... something like Australia Post or Qantas ... may have been ... looking to actually integrate Workbrain and SAP [but] ... they hadn't actually got to the point of integrating and using it. My recollection is that there was no thought by those organisations for actually using ... Workbrain as the awards engine. ... [I]nternationally I believe they came back and there was ... some organisation ... more advanced ... but again I am pretty confident ... they hadn't contemplated using Workbrain in that additional awards engine capability. So it basically came back inconclusive as to whether it could be done or ... couldn't be done, so basically (things were) left in a position of ... it's a risk from a technical perspective, a significant risk.

5.87 Dr Manfield explained that benchmarking by research, though useful, does not give the necessary confidence that a system will work in practice. He said⁶⁹²:

It's not conclusive simply because in real life, applications have so many variables that you can't say because it achieves a certain benchmarking threshold in the lab, it's going to achieve the same number of users or an equivalent benchmarking threshold in the field, you can't say that, but the existence of those benchmarks from the manufacturer are a confidence raising data point in terms of assessing the prudence of proposing the proposal of the solution.

...

Can I summarise your evidence in this way: you have said what the aspects of the reference site which are confidence raising and which support the conclusion you reach? There seem to be five aspects which are the areas of, let's just say reservation for a minute about the reference sites, one was that one or more of them had used only a subset of the functionality of Workbrain that was to be used in the interim solution. That's one aspect you've mentioned. The second aspect you've mentioned is there wasn't a site which used the relevant functionality for above 30,000 employees. Is that correct?---That's right.

Next you mentioned that none, from what you had been able to see, integrated Workbrain with SAP?---Yes.

Fourth, from what you saw, and only from what you saw, you couldn't see that any had been implemented into a system of award complexity equivalent to Queensland Health?---That's right.

And, lastly, I think you mentioned the Woolies one was under build. Does that sum up the five reservations which one might reasonably have about the reference sites, albeit arriving at the conclusions you do?---That nicely sums up the risk equation.

5.88 According to Mr Bond the risk was to be addressed by including a requirement of "proof ... of how this would work", in the contract⁶⁹³.

5.89 This was clearly unsatisfactory from the State's point of view. It had initially assessed the IBM proposal to be risky, even "high risk", because of the lack of evidence that Workbrain could in practice perform according to theory. As a result, I find, of Mr Burns' urging, the innovation was rescored and given an enhanced value subject to the qualification that references to its works and practice be provided by IBM. The references given were unsatisfactory.

5.90 The evidence of the interrogation of the companies provided as a reference is sparse, indeed fragmentary, but it is sufficiently clear from the evidence of Mr Bond and Mr Goddard that no satisfactory responses were obtained. I am reinforced in that conclusion by the fact that IBM did not provide any information to the Commission contrary to what the fragments suggest.

690 T2-74, L41-45; T2-75, L55 to T2-76, L1; T2-76, L9-13 (Darrin Bond).

691 T8-9, L25-46 (Keith Goddard).

692 T30-36, L1-9; T30-36, L26-50 (Dr David Manfield).

693 T2-76, L45-52 (Darrin Bond).

5.91 Another point arises for consideration. No witness from IBM explained why or on what basis IBM thought that the reference sites supplied were appropriate. The obvious inferences are that IBM did not trouble to ascertain for itself whether the sites were appropriate in providing them to CorpTech; or knew that the references were not using Workbrain as it proposed and hoped the State would not inquire too closely.

5.92 Mr Bond explained why, despite having got unsatisfactory responses, CorpTech moved to accept the IBM proposal and deal with the risk by way of contractual warranty. He said⁶⁹⁴:

[T]here was pressure placed upon the team to have the evaluation done quickly and ... move into contract negotiations, and there was advice that this could be addressed post contract ... to ensure that IBM did have the capability to perform this.

He identified the source of the pressure as Mr Burns and Ms Perrott.

5.93 The Mater Hospital, whose Chief Information Officer, Mr Malcolm Thatcher, helped the Commission on a point which will be discussed subsequently, also provided the Commission with the Hospital's assessment of the appropriate solution for its rostering, award interpretation, and time and attendance functions undertaken when implementing its new payroll system. It made a detailed comparison of two solutions, one of which was Workbrain. It did not choose Workbrain, noting that⁶⁹⁵:

There are some significant functional issues, some unresolvable, that would make management of labour process and service to our employees less optimal. The key areas of weakness for this solution are its inability to have more than one roster attached to an employee (example: Oncall Rotation and Labour allocations built independently, however running concurrently), inability to perform roster swaps and copy rosters. Even though these may appear minor deficiencies the impact these elements have on the business is quite substantial, in particular with the medical staff.

5.94 The report also noted⁶⁹⁶:

Four areas of non-compliance identified for the Workbrain product could have significant impact on the business in terms of useability and non-delivery of efficiencies associated with roster development These non-compliant areas included:

- *... The ability to have more than one rotation attached to an employee for the same period with different rotation patterns ...*
- *... The ability to consider employee breaks between Rosters ...*
- *... The ability to swap rosters between employees whilst roster is active ...*
- *... The ability to swap copy rosters between employees whilst roster is active ... [emphasis added]*

No Probity Advisor

5.95 CorpTech had a "Significant Purchase Plan" as part of its "SSS Program Sourcing Strategy"⁶⁹⁷. It regulated such processes as the ITO. It contained a section 4, "Procurement and Risk Management" part of which provided⁶⁹⁸:

4.3 Probity

An independent probity auditor will be engaged to monitor, advise and report on the probity of the procurement processes.

The omission to appoint a Probity Advisor was a serious one.

5.96 The Evaluation Report for the selection of the Prime Contract identified the "Evaluation Panel Advisors and scoring team members"⁶⁹⁹. According to the table there were two Probity Advisors, Mr David Stone, in-house Legal Counsel to Treasury who was described as "Procurement and Probity Advisor"; and Mr Swinson who was described as "Legal Review and Probity Advisor"⁷⁰⁰. Both deny ever having been appointed as a Probity Advisor.

694 T2-77, L7-12 (Darrin Bond).

695 Mater Misericordiae Health Services Brisbane Ltd, Electronic Rostering/T&A/Award Interpreter – Business Case (10 November 2007) at page 8.

696 Mater Misericordiae Health Services Brisbane Ltd, Electronic Rostering/T&A/Award Interpreter – Business Case (10 November 2007) at page 9.

697 Exhibit 4, Volume 22, Item 22, at pages 1-30.

698 Exhibit 4, Volume 22, Item 22, at page 17.

699 Exhibit 4, Volume 22, Item 19, at page 5.

700 Exhibit 4, Volume 22, Item 19, at page 5.

- 5.97** Mr Stone said that he was not on the Evaluation Panel and did not know why his name was included in the table. He said⁷⁰¹:

My involvement was peripheral in ... that, being in-house counsel, people sometimes ask you questions and you try ... to answer them. I recall being invited to various meetings regarding the evaluation process but I did not attend most of them. I gave some advice on a probity issue in relation to the evaluation process, but I did not have a standing or overarching role as probity advisor or auditor.

The role of a probity advisor is quite a significant one. It would involve having a particular file, developing a protocol, keeping a register and attending the evaluation meetings. I was never asked to assume such a role.

- 5.98** Mr Swinson said⁷⁰²:

My attention has been drawn ... to the Evaluation Report ... which mentions my role as “Legal Review and Probity Advisor”. It is incorrect to describe me as probity advisor. I was never retained by the State to be probity advisor on the project nor ever asked to do so. I was not aware of who was probity advisor. ... My role is best summarised in a signoff letter that I gave ... about the time that the final draft of the contract was prepared. ... I am not aware of anyone else on the tender evaluation panel who could properly be classed as an external probity adviser. As far as I am aware, there was not an external probity auditor for this tender.

- 5.99** Mr Swinson’s letter described his and Mallesons’ role in these terms⁷⁰³:

We have acted as legal adviser to the State in connection with this (ITO) process. ... As legal advisers, we have reviewed and commented on the tender process and negotiation strategy. We have also taken a leading role in the negotiation process and in drafting relevant contractual provisions and schedules. ... We have not provided any financial, audit, tax or technical advice to the State in connection with the Agreement.

- 5.100** Mr Swinson gave evidence that he did give advice to the State from time to time when asked about probity questions, but he was not appointed to be a proactive advisor ensuring that the procurement process retained its integrity. He said⁷⁰⁴:

I wasn’t probity advisor; I was a legal advisor on probity issues but not a probity advisor in the sense that some people might understand ...

and that he was consulted on probity issues which arose, attended a meeting at which probity arrangements were put in place, but that was the limit of his role in relation to probity⁷⁰⁵.

- 5.101** The omission to appoint a Probity Advisor was a serious one. The oversight might at first instance have been Ms Blakeney’s but Ms Perrott was the person in charge of the ITO⁷⁰⁶ and the evaluation of responses. She should have noticed the lack of the external Probity Advisor and appointed one. The advisor would have been someone to whom Mr Bond could turn for support when Ms Perrott refused to act. The presence of a Probity Advisor may well have deterred Mr Burns from his improper intervention.

No Conflicts Register

Another oversight in the ITO and its evaluation was the lack of a Conflicts Register.

- 5.102** Another oversight in the ITO and its evaluation was the lack of a Conflicts Register. There was no statutory requirement that there be a Conflicts Register. The legislation, applicable at the time, was the *Financial Administration and Audit Act 1977 (Qld)* which authorised the Treasurer to make Financial Management Standards and Policies. One such policy was the State Purchasing Policy⁷⁰⁷. It did not itself prescribe how conflicts of interest were to be dealt with but one of its subsidiary “Better Purchasing Guides”, “associated” with the Policy did⁷⁰⁸. It was the Ethics, Probity and Accountability in Procurement Guide which was

701 Exhibit 61, paras 18-19.

702 Exhibit 28A, paras 30-31.

703 Exhibit 4, Volume 11, Item 11.55, at pages 781-782.

704 T8-87, L29-32 (John Swinson).

705 T8-87, L37-44 (John Swinson).

706 Exhibit 4, Volume 22, Item 19, at page 13.

707 Exhibit 4, Volume 23, Item 23.3, at pages 17-52.

708 Exhibit 4, Volume 23, Item 23.4 at pages 53-82.

jointly authored by the Director-General, Department of Public Works and the Chairman of the Crime and Misconduct Commission. It helpfully identified and defined “three types of conflict of interest”⁷⁰⁹, discussed them and noted the “several management strategies available”⁷¹⁰ to determine the existence of such conflict and to remove or neutralise them. One such strategy was a Register “where details of the conflict of interest are declared ...”. Ms Blakeney had compiled a Conflicts Register for the RFP and had those involved in the evaluation (or most of them) sign a statement declaring whether he or she had any conflict⁷¹¹. Mr Burns indicated “none” in the sheet he signed and returned to Ms Blakeney⁷¹².

The lack of the Conflicts Register... is another indication that the ITO process was lax and some of those in charge of it were inattentive to their responsibilities.

5.103 Despite extensive searches undertaken by and on behalf of the Commission, no evidence was found that a Conflicts Register had been compiled for the ITO. There was no evidence of any other management strategy undertaken to identify and deal with conflicts. Given that the Register had been utilised for the earlier process and no other approach was adopted, a suitable Register should also have been compiled for the ITO. The omission may be thought immaterial given that the ITO was a continuation of the procurement process, but it was in form, a new process, more formal in nature and more comprehensive. The existing register should have been updated, or a new one made.

5.104 It may be thought that Mr Burns would have returned the same reply to the new Register as he did to the first, that he did not consider that his behaviour during his May review gave rise to any conflict of interest which needed declaring. Mr Swinson, whose opinion I accept, thought that:

- a. Mr Burns’ early employment by IBM in South Africa was irrelevant and did not need to be disclosed⁷¹³;
- b. his more recent involvement with IBM and Fonterra in New Zealand was something that should have been disclosed⁷¹⁴.

It certainly seems to have been a factor in Mr Burns’ desire to involve IBM in the SS Initiative.

5.105 It is not, I think, clear that Mr Burns’ conflict arising from (b) should have disqualified him from the ITO. What the evidence does establish is that he displayed a distinct and persistent preference for IBM, and a desire to assist it in its endeavours to obtain work from the State of Queensland, which should have disqualified him. It is not likely he would have disclosed his bias even if Ms Blakeney had proffered him the appropriate form. The lack of the Conflicts Register probably has little significance for that reason, but it is another indication that the ITO process was lax and some of those in charge of it were inattentive to their responsibilities.

Price

5.106 This topic is important to a consideration of the adequacy and integrity of procurement.

5.107 The tender closed on 8 October 2007. On 12 October 2007 Mr Bloomfield emailed IBM’s Executive Summary of its response to Ms Blakeney⁷¹⁵. It identified the price of \$98M, but only in a footnote⁷¹⁶. That sum did not appear in the detail of the response. The summary stated “Our Agency-centric strategy will help you cost-effectively achieve these goals through maximised uptake of the solution”. “Cost-effectively” has a footnote reference: “Note that IBM’s price for Phase 1 and 2 is \$98 million (excluding expenses)”⁷¹⁷.

5.108 After IBM entered into the contract there was a marked increase in its ITO price estimates brought about by Change Requests and an increase in the estimates for completion of the Initiative as a whole. The extent to which price increased, and why, is addressed in detail in Part 2 of the Report.

709 Exhibit 4, Volume 23, Item 23.4 at page 64.

710 Exhibit 4, Volume 23, Item 23.4 at page 65.

711 Exhibit 4, Volume 9, Items 9.1-9.28, at pages 1-28.

712 Exhibit 4, Volume 9, Item 9.19, at page 19.

713 T8-84, L1-56 (John Swinson).

714 T8-100, L8-39 (John Swinson).

715 Exhibit 4, Volume 29, Item 25.40, at pages 1164-1178.

716 Exhibit 4, Volume 29, Item 25.40, at page 1166.

717 Exhibit 4, Volume 29, Item 25.40, at page 1166.

- 5.109** IBM's bid was, by far, the lowest price of all the vendors. IBM's RFP pricing range was \$156 to \$190M⁷¹⁸. Its ITO pricing, however, was far less; approximately \$98M⁷¹⁹. Accenture, by contrast, bid a figure of approximately \$175M at the RFP stage and \$176M at the ITO stage⁷²⁰. Logica submitted a proposal for the finance components only on the Initiative. It did not offer to provide HR solutions. Its price in response to the RFP was approximately \$116M⁷²¹ and in response to the ITO was \$118M to \$120M⁷²².
- 5.110** The State evaluated the ITO responses against the background that its remaining budget for the Initiative was about \$108M⁷²³. IBM knew, having been told by Mr Burns, that the remaining budget for the SS Initiative project was in that order⁷²⁴. (The other vendors also knew the amount of its remaining budget.)
- 5.111** During the procurement process, Mr Salouk informed Ms Perrott and Mr Bradley that the State ought not accept a price within the budget, because it was inadequate to complete the project to the government's specifications⁷²⁵. IBM was aware, too, that Accenture held this view and thought it important, Mr Bloomfield having received Mr Porter's email on 3 August 2007. Mr Bloomfield's email of 3 August 2007, which contained Mr Porter's email relating to price, revealed the following matters⁷²⁶:
- a. the government had a budget of approximately \$100M which it knew was insufficient to get the work done;
 - b. as a bidding strategy, Accenture intended to offer a "Not-to-Exceed" figure so as to give the comfort that comes with greater price certainty;
 - c. a likely "Not-to-Exceed" range was + or - \$200M;
 - d. Accenture assessed there to be a real risk that relevant government officials may be persuaded by a bid within the remaining budget;
 - e. Accenture believed such a bid to lack credibility because it was impossible to deliver the required services for that price;
 - f. Accenture anticipated the need for a six month transition period.
- 5.112** Those matters must have caused IBM to assess whether the price it intended to put forward was realistic. It is implausible to assert that the information it had received about the State's budget, and about Accenture's approach to price, did not have some effect on its subsequent bid. On 17 September 2007, after the ITO had been delivered to IBM, Accenture and Logica, representatives of those companies were asked to attend an "industry briefing" on what CorpTech expected from the ITO⁷²⁷. It was represented by Ms Perrott, Mr Goddard and Mr Burns. Mr Salouk who attended on behalf of Accenture was asked whether CorpTech had said at the meeting that their pricing "had to have regard to the remaining budget"⁷²⁸. He replied "No, definitely not". He was asked if Mr Burns had suggested to him that Accenture needed to have regard to pricing its response to fit within that budget. He answered⁷²⁹:
- No, he definitely didn't. ... I'm confident of that because Accenture ... probably would not have bid had that been the case ... [b]ecause we knew that we could not deliver the program for the remaining budget. So it would have been pointless to invest another million dollars in ... preparation (for) a proposal ... knowing that you're not going to be considered.*
- 5.113** Accenture's assessment of the situation must have made IBM doubt that its ITO price was realistic. History, as I have said, shows that the figure to have been unachievable.
- 5.114** Mr Burns had at an earlier stage urged IBM to be competitive in its pricing⁷³⁰. Although budget was always going to be a key consideration in winning a bid for government work, and Accenture and Logica knew in general terms what the remaining budget was, it is not clear that they received that same direct encouragement from Mr Burns. He, with his direct line to Mr Bradley, was likely to know, and be able to pass on, whether CorpTech could accept an offer which exceeded the existing budget.

718 Exhibit 4, Volume 8, Item 6.7.2, at page 1132.

719 T12-32, L14 (Lochlan Bloomfield); Exhibit 35, para 147.

720 Exhibit 4, Volume 18, Item 17, at page 656.

721 Exhibit 4, Volume 8, Item 6.6.2 at page 984.

722 T2-23, L40 (Michael Duke).

723 Exhibit 4, Volume 1, Item 1.4, at page 200.

724 Exhibit 35, para 62; Exhibit 4, Volume 28, Item 25.28, at page 662.

725 T1-37 L31-56 to T1-38, L10 (Marcus Salouk).

726 Exhibit 32, at page 3.

727 Exhibit 4, Volume 29, Item 25.34, at page 730.

728 T1-57, L20-24 (Marcus Salouk).

729 T1-57, L28-36 (Marcus Salouk).

730 T11-113, L38-43 (Lochlan Bloomfield); T12-100, L14 (Lochlan Bloomfield); T14-7, L45 (Terry Burns); T14-19, L4 (Terry Burns).

- 5.115** It must have been apparent to IBM during the procurement process that, at least to some extent, its estimates of price and timeframes would have to be taken at face value by the State. Of course, proper processes should have been employed to scrutinise responses, but IBM was much better placed to estimate the cost and timeframes of the solution it was proposing. That better position was informed not least by the specialised skill and knowledge that IBM had and which, as it knew, CorpTech lacked.
- 5.116** The State, had it taken proper care for its own interests, ought to have known of the possibility that IBM's pricing was unrealistically low. There was a wide variation between the pricing in IBM's RFP and ITO responses, despite those estimates being provided only a few months apart. Contrasted against this, however, is the Accenture pricing structure which was largely consistent between RFP and ITO stages⁷³¹. So was Logica's. Its price for only the finance component was substantially higher than IBM's price for the whole solution.
- 5.117** IBM's evidence was that the startling difference of \$90M (taking its highest estimate) between its RFP and ITO pricing was explained by the fact that its knowledge of the scope of the project increased when the ITO and its many volumes of annexures was released to the market. However, any increase in knowledge is an increase which Accenture and Logica too ought to have enjoyed, as respondents, like IBM, to the ITO. Why, the question remains, did IBM consider that new information to so radically change its pricing and neither Logica nor Accenture take that view?
- 5.118** Ms Brooke Freeman, an IBM Business Development Executive who played a role in the preparation of IBM's bid price, gave a statement to the Commission which addressed this question. Ms Freeman said that the decrease from IBM's RFP price estimates was a result of reviewing more than 1300 documents provided with the ITO⁷³². The ITO pricing, she claimed, reflected a removal of duplication of effort and revised staffing costs, and reviewed risk ratings and profit margins for the project⁷³³. Ms Freeman also said that IBM's RFP and ITO pricing estimates were calculated in different ways and on two different bases⁷³⁴. Travel expenses in the latter bid were significantly reduced.
- 5.119** Ms Freeman's explanation for the lower ITO price, was⁷³⁵:
- a. *IBM is disinclined to put forward its ... most competitive price at a preliminary stage where there is no guarantee that the information will not become available to competitors.*
 - b. *Clients ... react badly to a final price which is significantly higher than a preliminary ... estimate. Accordingly, IBM ... adopts generous assumptions in a preliminary pricing estimate which increase that estimate.*
 - c. *More information ... is usually available at the time a final bid price is prepared ...*
 - d. *... [M]ore aggressive profit margins can be adopted.*
- 5.120** The explanation is implausible.
- 5.121** For the first point to be convincing there needed to be proof that IBM expected, or at least feared, that the price estimate submitted by the respondents to the RFP would become available to competitors. I am not aware of any such evidence. CorpTech's officials endeavoured to keep all of the responses confidential. IBM's attempt to gain access to its competitors' responses was unsuccessful. A greater difficulty for accepting the explanation is that the approach involves IBM giving a misleading price to the offeror, who is expected to read it and regard it seriously, in order to confuse competitors, who are not expected to read it.

The State, had it taken proper care for its own interests, ought to have known of the possibility that IBM's pricing was unrealistically low. There was a wide variation between the pricing in IBM's RFP and ITO responses, despite those estimates being provided only a few months apart.

731 T1-69, L9-12 (Marcus Salouk); Exhibit 5, para 67.

732 Exhibit 57, para 24(b).

733 Exhibit 57, para 14.

734 Exhibit 57, para 21.

735 Exhibit 57, para 16.

- 5.122** The second point describes IBM’s approach to tendering for very substantial government contracts as one in which it overstates its price by huge amounts (in this case between \$60M and \$90M in round terms) to allow it to propose a realistic price later. Such an approach must surely run the risk, from IBM’s side, of pricing itself out of the competition and depriving itself of the opportunity to tender competitively in a later round. It imposes on the State the risk that if the price were accepted it would be overcharged by that same amount. The strategy put an enormous premium on Mr Bloomfield’s assessment that the RFP would not result in the State awarding a contract, and that there would be a second round. He was right, as it turned out, but the State had initially intended to contract from the RFP and only Mr Swinson’s advice dissuaded it from that course.
- 5.123** I cannot accept Ms Freeman’s explanation for the drop in price. I accept that her points (c) and (d) may be, in general, explanations for a difference in price.

The clearest point to emerge from this aspect of the evidence is that there were serious shortcomings in the State’s scrutiny and assessment of price during its evaluation of the ITO responses.

- 5.124** Ms Freeman also provided the Commission with a table setting out “the approximate difference between IBM’s ITO response price and how much higher that price would have been if the ... approach adopted in the (RFP) was adopted in (the ITO)”. The figures are said to be “illustrative only, and ... necessarily approximate”⁷³⁶. Significantly the comparison undertaken by Ms Freeman was only between the ITO figure of \$98M and the lowest figure in the range proposed in the RFP, \$156M. The difference is explained by four items. There is a saving, already mentioned, of travel expenses of \$25M⁷³⁷. A lower gross profit margin reduced the price by \$14.5M⁷³⁸; a reallocation of the source of personnel from IBM to design and build the solutions saved a further \$10M and the charge out rates for some resources was reduced saving another \$3.8M⁷³⁹. These savings together amount to \$53.3M. The comparison leaves unexplained the remaining difference of about \$40M if one takes as the starting point the highest figure in IBM’s RFP range.
- 5.125** The discrepancy was also put to Mr Bloomfield. It was, in fact, agitated several times during his examination. I had struggled to understand IBM’s explanation for the decrease in price which appeared to me significant in its implication. I asked Mr Bloomfield directly for an intelligible answer. He eventually gave a considered response after an overnight adjournment. There were, he said, three reasons for the reduction:
- a. IBM if successful would take over the implementation of the SS Initiative partly performed by others. During the ITO process and the ability it gave respondents to seek information from CorpTech, IBM gained a better understanding of what was left to be done to achieve the Initiative and could adjust its estimate of work and the price of that work accordingly.
 - b. As part of the same process of gathering information IBM had gained a comprehensive understanding of the content of Industrial Awards, so could better assess what work was required to accommodate the complexities.
 - c. It gained a better understanding of the complexities of concurrent employment – “how the government would handle employees ... employed by a particular department but ... seconded into another ... [D] depending on how that was defined ... it would make a difference as to whether ... it applied to a vast number of ... employees or a smaller number”⁷⁴⁰.
- 5.126** In fairness to Mr Bloomfield it should be recorded that at an earlier stage in his evidence, he did refer to a decrease in profit margin as affecting the later price. His answer which I have just outlined was, however, his last and best answer.

- 5.127** Mr Bloomfield advanced a different reason in his statement. There he said⁷⁴¹:

... I am able to identify, by way of example, several aspects of the ITO Response by IBM which may go some way to explaining its bid price.

First, IBM’s response was to conduct extensive forward planning to enable the ... solution to be designed

736 Exhibit 57, para 22.

737 Exhibit 35, para 154.

738 Exhibit 57, Annexures at page 337.

739 Exhibit 57, Annexures at page 338, 339.

740 T13-36, L33-55 to T13-47, L1-20 (Lochlan Bloomfield).

741 Exhibit 35, para 150-155.

so as to capture as many of the requirements of departments and agencies at the outset rather than ... as individual additional solutions in each ... agency. This ... represents ... a ... cost effective way of proceeding.

Secondly, the IBM approach was to use Workbrain for Awards interpretation which would have meant considerably less programming effort ... than using SAP ... and ... allow for less complex and less time consuming implementation.

Thirdly, IBM proposed a single instance of SAP ... (and) an optimised ... model ...

Fourthly ... travel costs and other expenses were not included ...

Fifthly, IBM priced ... services ... with low profit margins and low mark-ups ...

5.128 Mr Bloomfield had two different versions of explanation for the variation in price. Ms Freeman had a third. There is some overlap but not enough to dispel the suspicion that IBM had no definitive explanation for the difference in price.

5.129 I am not confident that any of the various answers satisfactorily explain the very great reduction in price. The removal of travel expenses does seem to have occurred (though IBM was not absorbing that cost: it was passing it on to CorpTech) and profit margins may have been reduced, but the differences in explanation and Mr Bloomfield's hesitancy in claiming that the causes described in his statement were the effective ones make me sceptical that IBM's bid was a genuine estimate of the real cost of designing and implementing the balance of the SS Initiative.

5.130 IBM's submission appears to advance another explanation for its lower price, that its response, provided with the pricing spreadsheets, included "a detailed set of assumptions" which included⁷⁴²:

a. For awards and rostering:

i. that appropriately skilled client resources ... from applicable agencies will be available to advise the awards team ...

ii. that CorpTech would be responsible for compiling awards, acts and requirements ... using the awards templates provided by IBM ...

...

c. For Legacy Solution Upgrades:

i. that the scope of work required to reach Queensland Health's minimum requirements for an interim solution are within the range or allowed for in IBM's build estimates ... presented in the form of RICEF category and complexity ...

iii. that the existing (Department of Housing) Payroll solution included the functionality expected to deliver the minimum Queensland Health requirement.

5.131 Then it is pointed out that several of these assumptions were invalidated by subsequent events⁷⁴³. The argument appears to be that IBM's price was lower because it was offering a simpler solution for the SS Initiative, more straightforward and less complicated (and less useful) than the other responses, the delivery of which required a greater effort by CorpTech (no doubt at its cost) to assist with the design and requirements for the solution.

5.132 The argument is plausible but I note it was not one put forward by Mr Bloomfield or Ms Freeman. To the extent the submission is factually correct the evaluation of the responses by CorpTech's officials should have revealed that the lower price was buying a smaller product so that the price comparisons had to do more than contrast overall figures. There is nothing in the final Evaluation Report to suggest that point was understood.

5.133 The points I have discussed give rise to a suspicion that the price of \$98M advanced by IBM was not realistic and that the SS Initiative described in the ITO documents could not have been delivered for it. The factors, though significant, are too general in their nature to allow a conclusion that IBM's price was not a genuine estimate, but was put forward to secure the contract by substantially underbidding its competitors. An examination sufficient to come to a conclusion, one way or the other, would take weeks, if not months, and involve a detailed investigation of facts now lost or forgotten and with the prospect that no conclusive answer could be arrived at. The task was properly undertaken.

⁷⁴² Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), para 76.

⁷⁴³ Submissions on behalf of IBM Australia Ltd, dated 14 June 2013 (Procurement), para 77.

- 5.134** The clearest point to emerge from this aspect of the evidence is that there were serious shortcomings in the State's scrutiny and assessment of price during its evaluation of the ITO responses.
- 5.135** Ms Bugden, who holds a Masters degree in Financial Management and is a Certified Practising Accountant (CPA)⁷⁴⁴, was responsible for assessing price for the RFP⁷⁴⁵. She left CorpTech and was unable to take part in the ITO price assessment. She was replaced by Ms Orange, who is also a CPA and commenced work at CorpTech on 17 September 2007⁷⁴⁶, two days after the ITO issued. Ms Orange did not anticipate playing a role in the ITO evaluation when she joined CorpTech⁷⁴⁷. Ms Bugden, however, gave formal notification that she would be unable to lead the pricing evaluation for the ITO on 8 October 2007, the day the ITO closed⁷⁴⁸.
- 5.136** Ms Orange received little to no briefing about the appraisal requirements from Ms Bugden, Ms Perrott or anyone else⁷⁴⁹. She had never before been involved in a government ITO or procurement process⁷⁵⁰. Ms Orange was not provided with a copy of the RFP bids of IBM, Logica or Accenture⁷⁵¹. No one informed her of the range of pricing that those three entities had provided in the previous stage of the procurement process or gave her an explanation of the RFP price estimates⁷⁵². She did not therefore know that Logica and Accenture had been consistent in estimating price between RFP and ITO but that IBM's price had reduced by tens of millions of dollars.
- 5.137** This was a serious dereliction of duty on the part of Ms Perrott who ought to have ensured that Ms Orange received adequate briefing and support to make an informed assessment of price. It was irresponsible for Ms Perrott not to ensure that Ms Orange was provided with the requisite information to conduct her assessment. Ms Orange was unfairly and unexpectedly burdened with a critical issue in the evaluation process. She clearly struggled in the role for reasons beyond her control.
- 5.138** The pricing schedules in IBM's response were difficult to comprehend. They were presented in a form which made ascertaining the price for particular items of work designated in the ITO the subject of further computation. It was Mr Shah's role to perform the calculations from information found elsewhere in the response, and from questioning IBM⁷⁵³. Mr Bloomfield in evidence helpfully produced a schedule which explicitly set out IBM's costings which reconciled readily to the footnoted price of \$98M⁷⁵⁴. He explained that the schedule had not been given with the response (which would have made Ms Orange's task much easier) because the ITO had not asked for pricing to be displayed in that way and because the short time allowed for the response did not allow for it⁷⁵⁵. The last answer does not explain why the schedule, or an equivalent, could not have been given to CorpTech at or about the time it sent the Executive Summary.

The State seemed to have treated price as the determining factor in the assessment of the ITO bids which meant that it was always going to be particularly attracted to the lowest price offered.

- 5.139** Ms Bugden's statements indicate the sorts of questions that an experienced cost evaluator might have asked by way of clarification from IBM in an attempt to come to grips with the price differential between Accenture's response and IBM's, and between IBM's two prices. Ms Orange did not have the requisite experience to identify the questions, and was working under a considerable pressure of time⁷⁵⁶. She is not to be criticised on either count.
- 5.140** The determination of price was a key question of great complexity which demanded close attention by Ms Perrott. Continuity of pricing evaluators would have greatly assisted the scrutiny of IBM's significant price reduction. If Ms Perrott could not find a suitably qualified and experienced replacement for Ms Bugden, she should have taken on the role herself.

744 Exhibit 14, para 1.

745 Exhibit 22.

746 Exhibit 13, para 4.

747 Exhibit 13, para 6.

748 Exhibit 14, Annexure A.

749 T3-73, L2 (Colleen Orange); T17-7, L17 (Barbara Perrott).

750 T3-73, L9-10 (Colleen Orange).

751 T3-73, L15-18 (Colleen Orange).

752 T3-73, L20-21 (Colleen Orange).

753 T3-77, L7-14 (Colleen Orange); Exhibit 4, Volume 22, Item 19, at page 6.

754 Exhibit 42.

755 T13-43, L49-55 to T13-44, L1-3 (Lochlan Bloomfield).

756 Exhibit 14B, paras 5-14.

- 5.141** Ms di Carlo was another member of the price Evaluation Panel for the ITO, said to be appointed to the role by the Under-Treasurer, Mr Bradley⁷⁵⁷, due to her early involvement in the SS Initiative business case. Ms di Carlo was probably the author of Annexure D to the final Evaluation Report⁷⁵⁸ which deals with the issue of price. The Annexure states “The IBM Offer represents both the least cost, and most cost-effective option” but it is hard to identify a basis for that assessment⁷⁵⁹. No one who the Commission interviewed or from whom it took evidence was willing to take responsibility for the assessments contained in Annexure D, or to explain how the estimates in that document were arrived at.
- 5.142** Mr Shah was the final member of the price Evaluation Panel but had no formal accounting, financial or IT qualifications. Mr Shah is qualified as a Mechanical Engineer⁷⁶⁰. Mr Shah had a close working relationship with Mr Burns and was described in evidence as being “Mr Burns’ lieutenant”⁷⁶¹.
- 5.143** The Commission sought to explore with the individuals said to have had some involvement with the evaluation of the pricing component of the ITO responses and the preparation of Appendix D to the Evaluation Report what was the reasoning behind the assessment that the IBM proposal was the “least cost”. No witness was prepared to take responsibility for having drafted Appendix D. That can only mean that what might have been regarded by the State as the most important element of the ITO responses was something to which inadequate attention was given and little true scrutiny applied.
- 5.144** The State seemed to have treated price as the determining factor in the assessment of the ITO bids which meant that it was always going to be particularly attracted to the lowest price offered.
- 5.145** The events to which I have alluded, and which occurred after the contract was entered into, were the culmination of the price which IBM proposed and which the State too lightly and uncritically accepted. Those matters are dealt with later in my Report, but I have mentioned them briefly here so that it is understood how the problems identified contributed to the State later (in early 2009) losing confidence in IBM, and which ultimately led to a decision to limit IBM’s work under the contract to the Interim Solution. One particular feature of those later developments was that the price which IBM estimated in late October 2008 to complete the Program was almost exactly the same as Accenture had put forward in its ITO response, and was within the range of prices IBM had given in the RFP.

Evaluation Process was not Administered Properly

- 5.146** Another indication of the lack of oversight is that not all Panel members were kept involved for the entire evaluation process. Mr Atzeni left after three days, on about 12 October 2007⁷⁶². Mr Mander went back to his department and although present for the 17 October presentation by IBM, did not take part in his Panel’s final deliberations⁷⁶³. The Panel reports were not signed by the members until November and in some cases were not signed at all. The processes of probity and administration appear to have been outsourced to Mr Burns whose primary interest was in securing IBM’s appointment.

Selection of Prime Contractor

- 5.147** The Evaluation Report for the Prime Contractor for the SSS Program was finalised on 23 October 2007⁷⁶⁴. It recommended that⁷⁶⁵:
- *[A]pproval [be given] to enter into ... negotiation with the highest ranked Offeror – IBM Australia Pty Ltd ;*
 - *endorsement of the Offer from IBM ..., subject to successful ... negotiations and Contracting approval ...*
- 5.148** Ms Perrott signed the recommendation as Chair of the Evaluation Panel on 23 October 2007 and the leaders of each Panel also signed on that day or the succeeding two days⁷⁶⁶.
- 5.149** The three offers had been evaluated according to predetermined criteria and the weightings given to each criterion. The Evaluation Report explained⁷⁶⁷:

757 T17-7, L55-56 (Barbara Perrott); T17-82, L29-37 (Gerard Bradley).

758 T4-27, L1-15 (Rose di Carlo); Exhibit 15, para 78.

759 Exhibit 4, Volume 22, Item 19, at page 27.

760 Exhibit 18, para 1.

761 T7-46, L16-26 (Robert Mander).

762 T9-78, L21-35 (Damon Atzeni).

763 T7-63, L36-41 (Robert Mander).

764 Exhibit 4, Volume 22, Item 19, at pages 1-31.

765 Exhibit 4, Volume 22, Item 19, at page 13.

766 Exhibit 4, Volume 22, Item 19, at page 13.

767 Exhibit 4, Volume 22, Item 19, at pages 8-9.

4.2 Cost Analysis

An analysis of the cost was undertaken for the life of the project.

A cost benefit analysis was performed by taking the total expected costs and apply (sic) this to the total expected benefit (overall weighted score) of each Offer in order to select the overall value for money solution.

The cost benefit ratio is determined by the following formular (sic):

$$\text{Cost Benefit} = \frac{\text{Weighted Score}}{\text{Total cost}}$$

Total cost

The higher the result, the better value for money.

4.3 Weighted Score outcome

Detailed below is a summary of the scoring against each criterion for each Offeror. Refer to Appendix A for detailed scoring per category and sub-category.

LogicaCMG – Overall weighted Score per criteria						IBM – Overall weighted Score per criteria						Accenture – Overall weighted Score per criteria					
C1	C2	C3	C4	C5		C1	C2	C3	C4	C5		C1	C2	C3	C4	C5	
0.33	0.67	0.25	0.24	0.27		0.60	1.34	0.43	0.48	0.53		0.60	1.31	0.41	0.47	0.52	
Grand Total			1.77*			Grand Total			3.38			Grand Total			3.31		
Score out of 5						Score out of 5						Score out of 5					

*LogicaCMG did not meet the minimal requirements and was not assessed using the Cost Benefit Analysis ratio.

4.4 Cost Benefit Analysis

IBM provides a greater cost benefit than the second ranked offer Accenture.

Vendor Cost to complete Phase I		Cost Benefit	
IBM	\$78.5M	IBM	0.043
Accenture	\$123M	Accenture	0.027

5.150 The Evaluation Report noted that⁷⁶⁸:

Upon completion on (sic) the evaluation and scoring, the highest ranked Offeror will be invited to participate in post offer negotiations to settle any issues the Evaluation Panel has identified as areas for improvement or further negotiation ...

5.151 A summary of the Evaluation Report contained the following⁷⁶⁹:

6.1 The offer from IBM ... meets the requirements as detailed in the [ITO] and provides the Best Value for Money to the Shared Services Solution Program.

Key strengths of the IBM proposal are:

- an early mitigation strategy for LATTICE payroll users, but specifically replacing the LATTICE payroll application for Queensland Health by August 2008;
- ...
- an aggressive schedule of work that appears realistic based on the proposed innovation solution for undertaking award interpretation...
- ...
- a value for money proposal that is within the funding allocation for Phase 1 of the Program Rebuild Strategy as approved by the CEO Governing Board on 16 August 2007.
- ...

⁷⁶⁸ Exhibit 4, Volume 22, Item 19, at page 10.

⁷⁶⁹ Exhibit 4, Volume 22, Item 19, at pages 10-12.

6.2 The offer from Accenture ... meets the requirements as detailed in the [ITO] and has ranked second in the evaluation process.

...

- Accenture provide (sic) an offer that exceeds the funding allocation for Phase 1 of the Program rebuild Strategy as approved by the CEO governing Board on 18 August 2007.

6.3 The offer from LogicaCMG failed to provide an overall satisfactory score for the total program requirements as outlined in the ITO. Logica offered a solution for the Finance Sub-program only, based on current methodologies ...

Logica provided an offer that, for the Finance Sub-Program component alone, exceeds the funding allocation.

5.152 Appendix D to the Evaluation Report contained a “Summary of Financial Issues”. It read⁷⁷⁰:

The IBM Offer represents both the least cost, and most cost-effective option. On the non-cost dimensions ... IBM scored marginally higher than Accenture. Both IBM and Accenture offers demonstrate key strengths. The IBM offer better articulated a mitigation strategy for Queensland Health’s Lattice system, providing an early replacement by the end of August 2008. ...

The major differentiation between IBM and Accenture was cost. IBM prices were generally less expensive.

...

Funding Limits \$153M remains as the pool of “central” funds that is available to fund the remainder of the systems development and roll out ... Known in-house expenditure for which a central funding allocation is required is outlined below:

		\$153M
SPO and SDA structures (for 3 years)	\$12.8M	
Infrastructure provisioning	\$13.7M	
CITEC service fees	\$6.0M	
Accommodation and other	\$18.8M	
Contingency	\$30.6M	\$81.9M
Available for Prime Contractor payment		\$71.1M

[citations omitted]

5.153 There then follows an analysis of “IBM deliverables that can be funded from available funding sources”⁷⁷¹.

5.154 No such analysis was undertaken with respect to Accenture’s bid.

5.155 The content of Appendix D strongly suggests that IBM’s offer found particular favour with the Evaluation Panel because the proposed price fell within the remaining budgeted funds for the SS Initiative. Accenture’s price was about \$90M more than IBM’s and would, to be accepted, have required Cabinet approval for a substantial increase in the funds available for the Initiative. Logica’s price, for financial solutions only, exceeded the amount available to CorpTech to complete the whole program.

Execution of Contract

5.156 IBM was the successful tenderer and on 5 December 2007 it and the State of Queensland executed a contract for the provision of Shared Services to nominated departments⁷⁷². The replacement of QH Payroll remained a priority. It was to be the first system delivered. 31 July 2008 was fixed by the contract for that goal⁷⁷³.

770 Exhibit 4, Volume 22, Item 19, at pages 27-28.

771 Exhibit 4, Volume 22, Item 19, at pages 28-29.

772 Exhibit 63, Volume 1, at pages 1-188.

773 Exhibit 63, Volume 2, at page 231.

6. Procurement: Conclusions

- 6.1 The requirement to make an inquiry into the implementation of the QH Payroll System, with particular respect to the adequacy and integrity of the procurement of the System, necessarily involved an investigation of the process (and circumstances surrounding it) by which IBM was chosen to become the Prime Contractor to design, build and install the payroll system. The submissions made on behalf of IBM contain a slight criticism that the focus of the evidence in this aspect of the Inquiry was upon IBM and not the other tenderers. One can understand that IBM and its employees should have found the scrutiny uncomfortable and, perhaps, wished others to share the experience. The criticism misunderstands the charge committed to the Commission. It was to inquire into *IBM's* implementation of the system, and the adequacy and integrity of the State's procurement of *IBM* which meant that the interaction between it and the State's officers was the proper focus of attention.
- 6.2 The first point for comment is the actual decision to appoint a Prime Contractor to take over responsibility for the implementation of the SS Initiative. It is an appropriate starting point for a discussion of the events which ultimately led to the failure of the payroll system. Without the decision to change the model of delivery there would not have been a Prime Contractor, and no procurement process.
- 6.3 I have already noted the obscure provenance of the decision to move to a Prime Contractor, and the absence of evidence that the decision followed any discussion or analysis of the comparative advantages and disadvantages of replacing CorpTech by a Prime Contractor.

The haste with which the appointment was made is as remarkable as the lack of consideration preceding the decision to appoint the Prime Contractor.

- 6.4 The decision to appoint a Prime Contractor to take over and coordinate the SS Initiative may not have been a bad one. No doubt powerful arguments in support of it could have been made. Accenture had promoted the idea in the years prior to 2007. Whether that approach was to be adopted should have been the result of careful discussion and analysis.
- 6.5 There were contrary views. Mr Goddard's was that a Prime Contractor would not in the end provide a lower price than CorpTech's own implementation, but would increase the risk to government in losing control of its own program⁷⁷⁴. Mr Uhlmann had a similar view. He said⁷⁷⁵:
- You could have brought someone in to ... to bring all the project disciplines into play, get all the right people with the right sort of expertise supporting around the PMO ... get that applied to your current partners and then drive that and hold them accountable If ... the prime contractor's role is ... to replace all of that ... I would not have support (sic) that ... [because] ... it's about who can best accelerate the packages of work ... and ... whoever has got the background knowledge and the skills and expertise on the ground, you want to leverage that ... you would not get rid of that sort of knowledge and background expertise*
- 6.6 Such evidence as there is suggests that Mr Burns thought of the idea some time after he concluded his May review and communicated the idea orally to Mr Bradley. He made no written recommendation, and there is no evidence of any analysis or consideration of the merits of the notion committed to paper. The decision to change models of delivery was made prior to 25 July 2007 when the RFP was sent out. Approval for the substantial change in model was not sought until 16 August 2007. The memorandum seeking approval did not present a case for the change and did not accurately describe CorpTech's proposal contained in Mr Burns' 25 July email, which sought offers to take on the Prime Contractor role. It did not seek contributions to a debate whether a Prime Contractor should be appointed.
- 6.7 It was not inevitable that the appointment of a Prime Contractor would fail to deliver what CorpTech hoped from it. History has shown that the decision to transfer responsibility for the SS Initiative to a private enterprise contractor was unsuccessful, but there were several reasons for that. Had there been a mature discussion about the proposal, those directing the State's decisions might have gained a realisation that a Prime Contractor was not a panacea for the ills of the SS Initiative and that the work of the Prime Contractor required oversight. That realisation, acted upon, might have changed the course of events.

774 Exhibit 27, para 50; T7-105, L33-51 (Keith Goddard).

775 T6-27, L48-56 to T6-28, L1-10 (Gary Uhlmann).

- 6.8** What is clear, and should have been obvious at the time, is that the appointment of a Prime Contractor did not absolve the State from its responsibilities for insisting that the Prime Contractor deliver what the contract required and for ensuring that the SS Initiative was implemented effectively and within the contract price. That is to say the State could not, having appointed a Prime Contractor, sit back and await the delivery of a complete and completely functional SS Initiative. It had to monitor the performance of the contract and intervene, as the contract permitted, where appropriate. As Part 2 of the Report reveals, it did not do so.

It is significant that a year later, in October 2008, IBM proposed a price for the completion of the SS Initiative which was close to Accenture's and almost twice what it had offered in the ITO.

- 6.9** The haste with which the appointment was made is as remarkable as the lack of consideration preceding the decision to appoint the Prime Contractor. If one looks over the series of reviews which commenced with the Kelihier Report in March 2007, one sees anxiety about the progress and cost of the SS Initiative turning to alarm which then overcame rational decision making. The issue of the RFP before the CEO Governing Board had authorised the appointment of a Prime Contractor is the clearest example. The terms of the RFP itself indicate haste and a disregard for detail. It is extraordinary that such a succinct communication should have been thought a sufficient basis for procuring a multi-million dollar contract. There is no doubt that was Ms Perrott's and Mr Bradley's intention. The ITO itself was so condensed in time as to make it all but inevitable that important questions of detail and principle would be overlooked or compromised.
- 6.10** The likely explanation lies in human psychology. I expect that Mr Burns' proposal that CorpTech's problems be transferred to a Prime Contractor who would assume all responsibility for the delivery of the SS Initiative for the amount of the remaining budget was accepted with relief. Mr Burns appeared competent, experienced and knowledgeable. Ms Perrott and Mr Bradley accepted his suggestion and avoided looking to see whether it contained blemishes. From their point of view CorpTech's problems became the Prime Contractor's, and Mr Burns was not to be hindered in the transmission of responsibility. It is difficult to see what else can explain Ms Perrott's rejection of Mr Bond's complaints and her neglect in inquiring into the discrepancy in price, next to be discussed.
- 6.11** The evidence establishes that Mr Burns entertained a distinct partiality for IBM and, indeed, displayed a bias in its favour from the time he was appointed to conduct the May review. It was evident until the making of the contract between IBM and the State of Queensland on 5 December 2007. The bias is shown in his early conversations with Mr Bloomfield, his encouragement to IBM, his "coaching", and providing it with information he did not give to Logica, Accenture and SAP. It is most evident in his intervention in the ITO evaluation at a time when the Panels thought Accenture's bid superior.
- 6.12** The obvious question is: what was Mr Burns' motive? He of course denied any partiality or misbehaviour so his testimony shed no light on the topic. It would be naïve not to consider the motive was self-interest of some kind. There is no evidence that IBM induced Mr Burns' partiality, or provided any consideration for it. The investigative powers of a State Commission of Inquiry are necessarily limited, but within the limit of those powers and the extent to which their use was justified by the evidence, the Inquiry found nothing to suggest any form of corruption.
- 6.13** That being plainly said, as it should be, it would be equally naïve not to consider that Mr Bloomfield, and his colleagues at IBM, knew that Mr Burns was behaving extraordinarily for a man charged with the responsibility of investigating a very substantial government IT program and guiding the procurement process for a contractor to take it over. Mr Bloomfield's emails to his superiors indicate that he understood that a valuable business opportunity was being offered to IBM which it should do its utmost to exploit. He cannot have thought the same favouritism was extended to his competitors.
- 6.14** It is likely, as I say, that Mr Burns hoped in some way for a personal benefit from his generosity to IBM. He certainly looked for advancement from the State and used his appointments to obtain it. It may be that, having secured that advantage, he had no further need to ingratiate himself with IBM.
- 6.15** The question of motive finds no answer in the information available to the Commission.

- 6.16** Mr Burns' bias should have precluded him from taking any part at all in the procurement processes defined by the RFP and the ITO. Had his role been limited, as it was meant to be, to administrator and facilitator of the evaluation process, his bias may not have had much consequence. As it was, Ms Perrott's neglect of her responsibilities and in particular her obligation personally to oversee the evaluation process, and Mr Bradley's empowerment of Mr Burns, gave him a free hand to influence the selection of the Prime Contractor. Although Ms Perrott nominally led the process, Mr Burns was its *de facto* leader. His capacity to influence events was increased by the haste and unnecessary sense of urgency which overlay the procurement and the blurred lines of responsibility under which Mr Burns was allowed to operate.
- 6.17** His intervention in the evaluation has been described at length. It was grossly improper. It is disappointing that of all the senior public servants who observed it, only Mr Bond took up the matter with the Executive Director of CorpTech, and extraordinary that Ms Perrott should not investigate it thoroughly. That intervention and the changed scoring flawed the process and tended to distort the result.
- 6.18** That failure is the fault of the State and its officers and is not something for which IBM can be criticised.
- 6.19** There must, however, be a question over the price advanced by IBM. The evidence is not sufficient to give a definite answer but there is substantial suspicion that the price was fixed, not by reference to IBM's genuine assessment of what the implementation would cost, but by reference to the money remaining to Mr Bradley for the SS Initiative, and Mr Burns' understanding that Mr Bradley would react unfavourably to a price much in excess of that budget.
- 6.20** The price offered by IBM was probably the critical factor in its selection as Prime Contractor. Mr Burns' success in having the evaluations rescored, while significant and unseemly, may not itself have been sufficient to move the balance in IBM's favour. The final scores remained close and both IBM's and Accenture's proposals were assessed as satisfactory. What made the difference was IBM's substantially lower price. It is apparent from Appendix D to the final Evaluation Report that the price differential overwhelmed other considerations.
- 6.21** The evidence rehearsed shows that the State should have been deeply sceptical that IBM's price was genuine and that the SS Initiative could be delivered for that price. Its price was about half Accenture's and substantially lower than Logica's which bid for part only of the Initiative. The price was also substantially lower than its own price bid for the RFP and the prices proposed by three of its competitors in that process.
- 6.22** IBM's explanations for the reduction were unconvincing. To the extent that explanations were advanced which may have validity, no witness from IBM affirmatively ascribed the reduction to them. Mr Bloomfield and Ms Freeman differed in their accounts of what caused the drop in price and Mr Bloomfield vacillated between explanations.

Indeed the whole ITO process was marked by extreme haste and a sense of urgency which was unnecessary and led to most unfortunate results.

- 6.23** It is significant that a year later, in October 2008, IBM proposed a price for the completion of the SS Initiative which was close to Accenture's and almost twice what it had offered in the ITO. IBM witnesses explained this phenomenon by saying that, in the intervening year, agencies and departments had increased their requirements so that the implementation would have been of a larger and more complex solution. That was a frequent refrain, and appears self-serving, though to ascertain definitively the extent to which a rise in price was justified by the government's demands for a more elaborate solution would require substantial further investigation without promise of certainty in results, and for no sufficient purpose.
- 6.24** The evidence supports the conclusion that IBM's price should have been the subject of full and careful scrutiny by Ms Perrott and the Cost Evaluation Panel with particular reference to the discrepancy between it and its earlier price, and between it and competitors' prices. There was no such scrutiny. Ms Orange was unaware of the discrepancy and no one bothered to tell her of it. Ms Perrott, who was aware of it, failed to understand its significance, or disregarded it.

- 6.25** The evidence gives rise to a suspicion that IBM offered a price to win the tender which did not genuinely express its estimation of the true costs involved. I cannot make a definitive finding to that effect but the evidence suggests that is a distinct possibility. What is clear is that the discrepancy should have been investigated by CorpTech.
- 6.26** Both Ms Perrott and Mr Bradley had been warned by Mr Salouk that the SS Initiative could not be implemented for the money remaining in the State's budget for it. They might legitimately have thought that Mr Salouk and Accenture had a self-interest in promoting the notion that a larger sum would have to be paid to the successful tenderer. Nevertheless there was corroboration for Mr Salouk's assertion in the prices advanced (except for IBM's ITO bid). CorpTech's own experience with the SS Initiative was that it had proved more difficult, had taken longer, and had cost more than budgeted for. Mr Salouk's assertion was not therefore on its face implausible. The corroboration offered by the other prices should have led them to wonder whether IBM's bid was realistic.
- 6.27** Mr Burns' intervention in the ITO evaluation requires another comment. Improper as it was, it would not have led to IBM becoming the highest ranked bidder had the Evaluation Panel leaders acted in accordance with their own logic. IBM's proposed use of Workbrain, though offering accelerated roll out and reduced cost, was risky because it was untried. That was the view of the Panel members. Mr Burns urged the rewarding of innovation and his argument was accepted but with the qualification that the reference sites had to provide proof that the proposal worked in practice. That proof was not forthcoming. Logically, then, the situation should have reverted to the original. There should have been a third appraisal resulting in the reinstatement of the Accenture bid as the better one because it was less risky. But rationality and sense gave way to haste and muddle, and the State committed itself to an untried solution.

It is equally impossible to know what the result of appointing a Prime Contractor other than IBM would have been. The only finding possible is that IBM should not have been appointed.

- 6.28** Indeed the whole ITO process was marked by extreme haste and a sense of urgency which was unnecessary and led to most unfortunate results. I have described some aspects of confusion caused by the haste.
- 6.29** It has been urged on IBM's behalf that there is nothing of itself unusual in scores and assessments changing during an evaluation. The point must be conceded. The process was one of continuing evaluation made by reference to additional information being provided by all bidders in response to questions posed by CorpTech and expansions and clarifications given with respect to their bids. Mr Burns' involvement on the occasion described fell outside this pattern. He told the Panel leaders, in effect, that they were to change their scores and their approach to the two bids. The Panel members had at the time the additional information and clarifications that had been provided. It was up to them to assess as they thought best. Instead they were importuned to take a particular view.
- 6.30** It is clear from the confusing and contradictory alterations in the scoring and the commentaries that whatever it was that led to the change was not a process of rational assessment of additional information.
- 6.31** Mr Bloomfield (and some of his colleagues at IBM) disregarded IBM's ethical Guidelines and the obligation not to use the State's confidential information. Mr Sullivan, with Mr Bloomfield's knowledge if not his encouragement, sought access to Accenture's and Logica's RFP responses and expressed regret that they were "a few days late". Ms Jensen, or someone close to her, had access to the confidential RFP responses in CorpTech's database and sought to exploit it for IBM's benefit. This conduct shows such disregard for the responsibilities of a tenderer, and a readiness to take advantage of the State's lapse in security, as to make it untrustworthy. IBM's disqualification from the ITO would have been an appropriate course for CorpTech to take. There can be no criticism of CorpTech's officials on this count. IBM's misbehaviour was obviously kept hidden.
- 6.32** Much the same comments apply in relation to Mr Bloomfield's use of Mr Porter's email.
- 6.33** By his own admission Mr Bloomfield's use of that email was improper. He should, he admitted, have told Ms Perrott about it. IBM's own Guidelines prohibited his use of it. He did use it and as far as the evidence goes none of his IBM colleagues expressed the slightest concern for the disregard of their own ethical rules.

- 6.34** With the benefit of hindsight, and relying upon information revealed in the course of the Inquiry, some of which was not known to CorpTech, it is clear that IBM should not have been appointed Prime Contractor. There are three reasons for the conclusion. The first is the ethical transgressions of its employees arising out of the use of Accenture's information, the dissemination of CorpTech's information and the attempt to read its competitors' proposals. As discussed such conduct constitutes substantial grounds for excluding IBM from the ITO in response to which IBM had no satisfactory answer. The second is that its price was not subjected to the careful scrutiny necessary to satisfy CorpTech that accepting the price would give it the solution it required. The third is that Mr Burns' intervention in the evaluation process distorted and seriously flawed the selection of the Prime Contractor.
- 6.35** Something must be said about Mr Atzeni. His misdemeanours are minor in the scheme of things but cannot avoid criticism. Mr Atzeni's close working relationship with Mr Cameron, while itself innocuous, ought to have been disclosed and ought to have made him question whether it was appropriate for him to participate in the evaluation. More significantly he should have realised that his personal preference for IBM over Accenture disqualified him on the basis that he would be unlikely to assess the bids impartially and objectively. Mr Atzeni's bias in favour of IBM had its origin in his honestly held belief that Accenture had not performed well in rolling out the Department of Housing solution. Evidence before the Commission would certainly support the reasonableness of that opinion. Mr Atzeni, however, had no basis for thinking that IBM would inevitably do better. His role as evaluator was to assess the proposals objectively, without preconception, and Mr Atzeni came to the task believing that Accenture would not perform well.
- 6.36** Mr Atzeni's lack of judgment would have made no difference to the selection of IBM as Prime Contractor.
- 6.37** It is impossible to know what would have happened had IBM been excluded from the ITO. Accenture may have been appointed by default, or the process may have been recommenced with invitations being extended to SAP and Logica, perhaps for part only of the implementation. Alternatively the prices submitted by Accenture and Logica being greatly in excess of the available budget may have persuaded the government to give up the idea of appointing a Prime Contractor.
- 6.38** It is equally impossible to know what the result of appointing a Prime Contractor other than IBM would have been. The only finding possible is that IBM should not have been appointed.



2. Contract and Project Management

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1. Introduction

- 1.1 The Terms of Reference relevant to this part of the Inquiry are those that direct me to inquire why and to what extent the price for the Queensland Health Payroll system increased; inquire as to the adequacy of the contract, project management, governance and implementation processes; and identify any laws or contractual provisions that were breached and who might be accountable. Each of these topics was pursued in the oral examinations, which in turn were informed by statements of those (and some additional) witnesses and some 15 volumes of documents which had been identified by the Commission (the Bundle). Most of those documents were obtained by the Commission pursuant to requests made under the *Commissions of Inquiry Act*. In addition, documents were tendered as exhibits and others added to the Bundle.
- 1.2 Twenty nine witnesses gave statements and were examined over some 15 hearing days¹. Statements of a further six witnesses were tendered². Three of the witnesses were experts: Mr John Gray, a solicitor with experience in negotiating and drafting agreements of the kind that existed between the State and IBM; Dr David Manfield, who had qualifications and experience in designing and implementing large and complex information technology systems; and Mr Shane Parkinson, a software tester. Mr Gray and Dr Manfield were retained as experts by the Commission. Mr Parkinson was engaged by IBM. His report was not provided to the Commission until after the conclusion of the hearings allocated to this issue. His report was not, therefore, made available to Mr Brett Cowan (the witness upon whose evidence that report had the most direct bearing) before his oral evidence was given. The very late delivery of Mr Parkinson's report and of statements of IBM employees Mr Mark Dymock and Mr Kwiatkowski necessitated the resumption of public hearings on 18 June 2013 and for Mr Cowan to be recalled.
- 1.3 Experts aside, the witnesses can be divided into five categories: those from CorpTech who had dealings with IBM and were involved in the system implementation; those from QH who had some responsibility for the system which was to be delivered or for the scoping of the work to be undertaken; six witnesses who were current or former IBM employees; the Directors-General of the Health and Public Works Departments; and those with technical knowledge of the system and the problems which it evidenced in the implementation, being Mr Cowan, the testing professional who conducted the User Acceptance Testing (UAT) on the system and Ms Jane Stewart, who was responsible for the support and maintenance of the system immediately after Go Live to the time she gave evidence.

¹ Hearings took place on 22 to 24 April, 29 April to 3 May, 6 to 7 May, 13 to 16 May and 18 June 2013.

² Exhibits 64, 65, 66, 67, 120 and 121.

- 1.4** The “Queensland Health Payroll system” is, in the context of the contract, the computer system and associated services to be delivered under what was known as Statement of Work 8 (SOW 8). That system (the system) was (initially at least) an interim measure. It was referred to in evidence also as the “Interim Solution” and the “Project”. I too adopt these terms below.
- 1.5** The reasons why the price increased and the inadequacies in the project management processes are largely the same. For that reason, I have found it convenient to deal with them together. I have not identified any laws or contractual provisions that were breached. As will appear below, the parties, fully informed and each capable of protecting their own interests, agreed to such variations to the contract as were necessary to authorise or ratify the departures from the contract which occurred. The process by which they did so was through documents known as “Contract Change Documents” and “Change Requests”. I refer to them simply as “Changes”. The problems with the Project come down, in large part, to multiple failures by multiple people to discharge their responsibilities properly.
- 1.6** In particular, the problems might be summarised as follows:
- a. the scoping of the system (ie its definition) was seriously deficient and remained highly unstable for the duration of the Project. That being so, and although the problem was firmly known to each party, no effective measures were taken to rectify the problem or to reset the Project;
 - b. the State, who would ultimately bear the risk of a dysfunctional payroll system, gave up several important opportunities to restore the Project to a stable footing and to ensure that the system of which it would ultimately take delivery was functional. Dr Manfield characterised the approach of both parties as being “Plan A or die”;
 - c. the decision to Go Live miscarried, both because it ought to have been obvious to those with responsibility for making that decision that the system would not be functional and because the decision to Go Live involved no proper and measured assessment of the true risks involved in doing so;
 - d. the system, when it went live, failed to function in a way in which any payroll system, even one which was interim and to have minimal functionality only, ought to have done.
- 1.7** Each of these problems was caused to a significant degree by the situation of real or perceived urgency in which the State had placed itself by having left the decision to replace LATTICE until that system was showing signs of failure.
- 1.8** The story of the Project’s conception through to its implementation is one of bad decisions: a failure of State employees in particular properly and diligently to discharge their responsibilities; IBM as a commercially motivated vendor doing little to rectify or make up for the State’s shortcomings; the State lacking in discipline in expending very large amounts of taxpayers’ funds; and, in general, an almost total reluctance by both parties to face what had become obvious at a relatively early stage of the Project, that the system which the State had commissioned and which IBM was to deliver would be seriously deficient and not operate as any payroll system ought, namely to pay staff on time and to do so accurately. That, for both parties, ought to have caused them to take measures to avoid the inevitability of a seriously flawed system. The implementation of it brings discredit to them both: the State for its imprudent and uncontrolled expenditure of taxpayer funds and its failure to ensure public servants were paid and paid accurately; and IBM because it is in part responsible for a system which, on any measure (whether it be cost, customer management or simply its having implemented a system for a large customer which did not operate as it ought), was a failure.
- 1.9** Dr Manfield characterised these problems as a “death spiral”³. In doing so, he said that one does not need the benefit of hindsight to have known that the Project was in distress. He summarised the problems as being an ITO process which was unrealistic in timeframe, a lack of any proactive State response to the clear and obvious difficulty of establishing an agreed baseline scope, an abbreviated testing phase through which the system was allowed to progress despite clear signs of failure and a decision to Go Live with a not-ready system which lacked an objective risk assessment⁴.
- 1.10** Before considering these issues in more detail, I make some introductory remarks.

³ Exhibit 123, at page 9, L30.

⁴ Exhibit 123.

The problems with the Project come down, in large part, to multiple failures by multiple people to discharge their responsibilities properly.

2. Overview

Urgency and Scoping

- 2.1 IBM's ITO response had offered to provide the State with a system which would replace, on a like for like basis, the LATTICE payroll system then operating in QH. That solution was to be undertaken in priority to others under the Program, and to be of an "interim" nature only. The Interim Solution was to have minimal functionality⁵. The reason for the system having these two limitations was that there was a risk LATTICE would fail: a replacement for LATTICE was needed quickly. The risk of failure was considered so imminent that there was no time to design and build a full replacement. The trade-off for doing so was that there be an Interim Solution with less than full functionality, but which could, because of these economies, be implemented more quickly than a full replacement.
- 2.2 The contract required IBM, after having completed the Interim Solution, to undertake some roll outs in other agencies, and later to return to QH to complete what was described only as the "remainder" of the work on that particular system⁶.
- 2.3 It was not spelled out in the contract just what was the dividing line between an Interim Solution with minimal functionality and a more complete one. There were, nevertheless, mechanisms under the contract for that to be ascertained as part of the early scoping of the system which was to be undertaken, including by IBM identifying, in conjunction with QH, that agency's "critical requirements"⁷.
- 2.4 The occasion for an Interim Solution was a consequence of the State having, by the time the procurement process was initiated, permitted the LATTICE system to reach a state of real or perceived atrophy. It ought to have been replaced earlier. As will be seen, the unsatisfactory state of LATTICE became the overwhelming factor in deciding to Go Live, a situation which the State had brought about by failing to make arrangements earlier for its replacement or for the more certain and reliable support and maintenance of it.
- 2.5 Were it not for the real or perceived declining state of LATTICE, there would have been no need for the solution to have been an interim one, and no occasion to have chosen QH, perhaps the most complex State agency, as the one into which IBM was first to deliver a system under the contract. It would have been preferable, putting the condition of LATTICE to one side, for IBM to have first delivered systems in simpler and smaller agencies than QH as a way of easing both IBM and the State into the difficult undertaking upon which they were embarking. To do so would have given both parties an opportunity, without the complexity and pressure which attended the roll out of a solution (of any kind) within QH, to have experienced and dealt with problems and unexpected issues which inevitably arise and to do so in a calmer and far less difficult environment.
- 2.6 From the outset, the circumstances of urgency infected the Interim Solution. The time within which IBM was to scope the project was in the order of one month. It had, in Statement of Work 7 (SOW 7), some two weeks within which to do so (although IBM seems to have made a start on the work before the contract was signed)⁸. That period was extended by a further two weeks under Statement of Work 8A (SOW 8A)⁹.
- 2.7 The situation of urgency was not solely the State's doing. IBM bid a more aggressive timeframe than Accenture for the QH system, something which the State embraced given its view of the need for LATTICE to be replaced as soon as possible.

5 Exhibit 63, Volume 4, at page 2.

6 Exhibit 63, Volume 1, at page 133.

7 Exhibit 63, Volume 2, at page 99.

8 Exhibit 63, Volume 2, at pages 96-108.

9 Exhibit 63, Volume 4, at pages 1-5.

- 2.8 Scoping the Interim Solution posed special challenges. It was necessary to decide what part of the system would not be implemented at this stage, and be deferred until the “remainder” stage, what was meant by “minimal functionality” and what were QH’s “critical Agency requirements”. SOW 7 said “[IBM] in conjunction with the SDA [Solution Design Authority] will determine the critical Agency requirements”¹⁰.
- 2.9 The Solution Design Authority (SDA) was a body of which Mr Burns was the head at this early stage¹¹. Mr James Brown later replaced him in this position¹². The SDA had the function of defining and maintaining solution scope, architecture and design for the Program under each Statement of Work¹³. It failed, as will be seen, almost entirely in its role because scope was, at least from the State’s point of view, never properly defined.
- 2.10 It was essential, given the short time available, and the fact that the system was to be one which paid staff in an accurate and automated way, that careful attention be given to ascertaining what requirements QH needed the system to satisfy, albeit recognising that it was not to be the final system and had to be implemented in about nine months.
- 2.11 Having allowed such a short time within which to scope the Interim Solution, the parties owed it to each other, and to themselves, diligently to attend to their respective tasks (as allocated in SOW 7): the State to communicate so many of QH’s business requirements, and IBM to ensure that, relying upon its experience and expertise, such requirements as were communicated appeared to be sufficient to result in a system which was reasonably likely to pay staff, and to do so accurately. IBM, in its submissions, contends that it was dependent upon the State, as the end user of the system, in gathering requirements during the scoping process¹⁴. That, however, while perhaps an accurate statement of what actually occurred, puts IBM’s obligations too narrowly. IBM was to ascertain critical Agency requirements in *conjunction* with the SDA, suggesting a more equal responsibility in scoping. Moreover, IBM brought to that activity the experience of having scoped large projects in the past, something which its submissions ignore.

Were it not for the real or perceived declining state of LATTICE, there would have been no need for the solution to have been an interim one, and no occasion to have chosen QH, perhaps the most complex State agency, as the one into which IBM was first to deliver a system under the contract.

- 2.12 IBM’s response to the ITO made clear its understanding of the importance of accurately and promptly defining scope. In its 11 October 2007 clarification IBM answered the question “what do (IBM) see (as) the key risks in rolling out the interim Health HR solution by September 2008 ... ? Will the interim solution and Queensland Health agree a Scope of Work that will be achievable in the timeframe available?” in these terms¹⁵:

IBM has had previous and positive discussions with Queensland Health regarding the additional functionality that must be deployed ... to reach the level of minimum functionality required to operate. Initial scope confirmation activities will confirm if the required level of functionality is achievable in the timeframe Scope will require careful and rigorous management. It is important that Queensland Health works closely with the interim project team to manage expectations around scope.

Scoping could have been performed more thoroughly. A good (perhaps the best) method of ascertaining the scope of the system required to deliver accurate and timely pays was to observe what the operators of the LATTICE system actually did each fortnight. That would have meant IBM personnel “sitting down with a payroll clerk at the computer ... seeing how they actually did their job”¹⁶. Both Mr Hickey¹⁷ and Mr Prebble¹⁸ accepted this would have been “a step in a full requirement of scoping”. It was not done apparently because it would have taken “an enormous amount of time” and the time allowed for scoping was “tight” and “compressed”. Mr Hickey “assumed that (QH) ... would have had that information”¹⁹.

10 Exhibit 63, Volume 2, at page 99.

11 Exhibit 65, para 12.

12 Exhibit 75A, para 5.

13 Exhibit 63, Volume 1, at page 108; Exhibit 63, Volume 4, at page 242.

14 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 57(d).

15 Exhibit 4, Volume 15, para 783.

16 T26-78, L51-53 (Paul Hickey).

17 T26-78, L50-L53 to T26-79, L1-L8 (Paul Hickey).

18 T27-35, L8-30 (Christopher Prebble).

19 T26-79, L1-4 (Paul Hickey).

- 2.13** There was less than adequate fulfilment of the State's scoping responsibilities in particular. QH was passive, perhaps lazy, in the identification and communication of its business requirements, with the result that it did not communicate to IBM all the requirements necessary to produce a functional (albeit minimal and interim) payroll system. IBM, despite making genuine attempts to elicit QH's business requirements, was under pressure to commence designing and building the system. It knew, sometime after the scoping exercise was finished, that aspects of it were incomplete or not settled. It learned later (if it did not know before) that the system would not, without considerable changes to it, pay staff and pay them correctly.
- 2.14** Despite this, and instead of the State insisting that these matters be resolved before proceeding, and checking to see that the scope IBM had produced was complete and satisfactory to deliver a functioning payroll system, the State accepted IBM's scope documents, incomplete, qualified and unsatisfactory as they were, the effect of which was to commit itself to a Project doomed, if not reset and corrected, to failure. IBM knew at that stage that the scope of the Project would need to be changed and extended: it contemplated as much in SOW 8, which was the definition (at the most general level) of the system.
- 2.15** It was in IBM's short-term commercial interest to behave in this way. It was working under almost impossible time constraints, and it had told the State that formal variations to scope might be required. The State accepted those arrangements.
- 2.16** With the scope of the Project in this wholly unsatisfactory state, the parties embarked on the roll out.

QH was passive, perhaps lazy, in the identification and communication of its business requirements, with the result that it did not communicate to IBM all the requirements necessary to produce a functional (albeit minimal and interim) payroll system.

Governance and Major Players

- 2.17** A governance structure was put in place. The principal bodies for this purpose included the SDA which, as I have said, had responsibility for, among other things, defining and maintaining solution scope, architecture and design. It later merged with the Strategic Program Office (SPO) to become the Program Delivery Office (PDO) within CorpTech²⁰.
- 2.18** The Queensland Health Enterprise Solution Transition (QHEST) was the information technology program management office within QH created to manage a number of projects within QH, including the Queensland Health Implementation of Continuity (QHIC) project (another name, it would seem, for the Interim Solution). Mr Hey was the Program Director until April 2008 when the QHEST Management Team was replaced and Mr Anthony (Tony) Price was appointed Director²¹. The primary function of QHEST, as the QH project management office, was to report on the Project to the Project Board²².
- 2.19** An Executive Steering Committee (ESC) (or Group) existed from the outset. Its responsibilities included approving solution strategy, schedule and changes and managing key issues and risks²³. The Government members of it were the Executive Director of CorpTech (Ms Perrott and later Ms Margaret Berenyi), representatives from QH, the Shared Service Agency and, initially at least, a representative from the Department of Education, Training and the Arts (DETA). Mr James Brown was advisor to that Board, and it was common for there to be invited guests, being, in effect, managers in areas of Government with an interest in the decisions under consideration. There were occasions when the ESC met with Government members only²⁴. IBM, too, had representatives on the ESC²⁵. They included, later in the Project, Mr Doak, IBM's program manager.
- 2.20** Another body which made critical decisions was the Release Steering Committee. It was accountable to the ESC and the Executive Director of CorpTech. The Release Steering Committee was responsible for providing advice to the Release Steering Committee Chair on the business, resource and change readiness

²⁰ Exhibit 63, Volume 7, at pages 19 and 41.

²¹ Exhibit 18, para 26; Exhibit 29, paras 8-9; Exhibit 58, paras 4-8; Exhibit 83, paras 8-9; see Exhibit 63, Volume 5, at pages 296-1 - 296-32.

²² Exhibit 89, paras 32-33.

²³ Exhibit 63, Volume 1, at pages 98-99.

²⁴ See for example, Exhibit 63, Volume 6, at pages 12, 168; Exhibit 63, Volume 8, at pages 98, 126, 156; Exhibit 63, Volume 9, at pages 8, 53; Exhibit 63, Volume 11, at page 228.

²⁵ Exhibit 63, Volume 4, at page 286; Exhibit 63, Volume 5, at page 37; Exhibit 63, Volume 6, at page 263; Exhibit 63, Volume 7, at pages 14, 324.

for the Interim Solution. This included reviewing and approving project deliverables by IBM²⁶. The Release Steering Committee made decisions on the project exiting UAT and its compliance with Go/No Go gates. The QH members of the Committee met separately on occasion. As at 10 December 2008, the QH members of it included Mr Peter Douglas, Mr Price, Mr Russ Wilde, Mr Burns, Ms Brigid Bourke, Mr Paul Monaghan, Ms Janette Jones, Mr Adrian Shea, Ms Sylvia Chapman, Ms Amanda Doughty, Mr Kalimnios and Mr Hood²⁷. The QHIC Release Steering Committee also met regularly as a whole. As at 23 December 2008, it comprised the members of the QH Release Steering Committee, together with Mr Doak and Mr Hickey from IBM, and Mr James Brown and Mr John Beeston from CorpTech²⁸.

- 2.21** The governance structure was far from clear. There were very many bodies and very many people involved in decision-making about the Project. The Auditor-General observed that some alterations to the governance structures which had been approved by the ESC on 19 June 2008²⁹:

... were complicated and ... ineffective in establishing a shared understanding of stakeholder expectations in relation to the quality of project deliverables.

- 2.22** On 1 July 2008, CorpTech was transferred from Queensland Treasury to the Department of Public Works. The effect of this change was to make the Minister for Public Works (Mr Robert Schwarten) and the Director-General of that Department (Mr Grierson) ultimately responsible for the Program and the Project.

- 2.23** In August 2008, the QH Audit and Operational Review Unit reviewed the governance of the Project and concluded³⁰:

Significant improvement to project governance, project planning and monitoring, project reporting, organisation change management and project communication is required to ensure that the QHIC Project delivers its expected outcomes and scope by October 2008.

- 2.24** The governance structure was again revised in June 2009³¹. A “Project Board” was established at the peak of that structure; it had met for the first time on 2 April 2009³². It was chaired by Mr Kalimnios, QH’s Deputy Director-General of Corporate Services. Mr Shea, Executive Director of Corporate Services, was the Deputy Chair. Other members included Mr Doak and Mr Gower of IBM, Ms Berenyi as Executive Director of CorpTech, Mr James Brown and later Mr Ray Brown, the Chief Information Officer of QH³³.

- 2.25** Beneath that body was the Project Directorate. Its responsibilities included overseeing the management of the Program and IBM’s performance and delivery under the contract³⁴. The Project Directorate was initially chaired by Mr Burns as the Program Delivery Director (PDD)³⁵, but Mr Price and Mr James Brown, for most of the relevant time, held that position. The PDD reported to the Executive Director of the Corporate Services Reform Office, initially, Ms Perrott. Other members of the Project Directorate were staff of CorpTech (including Ms Doughty, Mr Pierre Pienaar, Ms Stewart, Mr Malcolm Campbell, Mr Hood), of QH (including Mr Price, Ms Jones and Ms Naomi du Plessis), and of IBM (including Mr Hickey, then Mr Gower, Mr Doak and Mr Dymock). It became a responsibility of the Project Directorate to recommend to the Project Board whether to Go Live.

- 2.26** The Auditor-General noted a lack of evidence about many features of governance bodies, including documented and approved terms of reference and found as follows³⁶:

[I]t was not clear which Accountable Officer had responsibility for the overall governance and successful completion of the whole project.

- 2.27** The Auditor-General’s conclusions about the lack of clarity in the governance structure and in the understanding of those who were involved in it are ones at which I too have arrived. There seemed to have been an unhealthy willingness to establish bureaucratic bodies to govern the Project, and to have meetings, but at the expense of people turning their minds independently and in a disciplined way to the responsibilities each of them had. Dr Manfield, who has considerable experience and qualifications in this

26 Exhibit 63, Volume 5, at pages 59, 60.

27 Exhibit 63, Volume 7, at pages 280-283.

28 Exhibit 63, Volume 7, at pages 334-335.

29 Exhibit 2, at page 18.

30 Exhibit 63, Volume 5, at page 296-2.

31 Exhibit 63, Volume 9, at page 104; Exhibit 2, at page 19.

32 Exhibit 63, Volume 9, at pages 1-4.

33 Exhibit 63, Volume 9, at page 104.

34 Exhibit 63, Volume 1, at page 97.

35 Exhibit 63, Volume 1, at page 2.

36 Exhibit 2, at page 20.

field, expressed the view, which I would adopt, that³⁷:

There was plenty of active oversight of the program. However, successful governance is not just about having processes, but about how governance processes and tools are used to get the result.

2.28 Those processes and tools were, it will be seen below, used poorly.

Implementation of the Project

2.29 Within about six months from its start, problems with the Project's scoping emerged. A dispute arose about how the system was to integrate with the existing (legacy) finance system within QH. IBM claimed it had been delayed in its work. The State decided that further workshops were needed (to be facilitated by IBM) to ascertain what ought to be done and paid IBM \$1.88M as a result of the delay which IBM claimed. It was the first in a large number of very costly variations to the contract.

2.30 Numerous other variations to the contract followed. Many of the Changes effecting those variations offered as their basis that business requirements had been "missed". No adequate inquiry appears to have been conducted as to the cause of that having occurred. The State, having been less than diligent in its participation in the scoping exercise, seemed content to agree to these variations and to pay IBM to make them. That there were missed requirements is evidence of deficiencies in the scoping exercise.

2.31 Variations to the contract continued up until the system went live. They number in the order of 220. Some were proposed by IBM, some by the State. It is not always of significance which party initiated each change. In some cases, Changes were the culmination of negotiation or discussion, such as Change 184 which the parties had agreed well before that variation had been initiated, in a formal sense, by the State.

2.32 The detail of all the Changes could not be pursued in evidence, and nor would it have been productive to do so. In each case, the parties willingly agreed them. The relevance of them to the Terms of Reference is the effect they had on price, on the time it took for the system to be completed and delivered, and what they reveal about the adequacy of the scoping of the system and whether the system was likely to function as a payroll system ought when it went live.

2.33 The system cost, in terms of payments to IBM alone, over four times more than the contract price. It took three times longer to deliver than originally scheduled. When it went live it was seriously deficient, causing very many QH staff not to be paid, or to be paid inaccurately. Neither party could have been under any misunderstanding that this was the inevitable result. It was obvious well before Go Live that the Project had been inadequately scoped. Testing (especially UAT) revealed thousands of defects, a large percentage of which concerned functional aspects of the system. A competent and experienced tester (Mr Cowan) did precisely what his role called for in advising the customer (as the party deciding whether to accept the system) of these very major problems. Despite these warnings (ones which Dr Manfield said were the clearest sign he had seen of a system in distress) the State decided to Go Live³⁸.

2.34 That decision miscarried. It was in no sense a measured assessment of the risks involved in doing so. The prevailing view was that LATTICE was at imminent risk of failure and that there was a real possibility, perhaps a likelihood, that it would fail to pay any staff at all, and that if it failed it might be irrecoverable. That view, unsupported by any assessment which I would consider to be sufficiently measured and analytical, overwhelmed other important considerations such as the inevitability, as Mr Cowan had warned, that the system would experience considerable functional difficulties.

2.35 Had the parties simply adhered to the controls which they had in place at the commencement of the Project, the system would never have progressed to the point at which serious compromises had to be made to Go Live. The system had reached that stage only because of conscious decisions made by the parties to "lower the bar" as Dr Manfield said³⁹ by changing the criteria by which it would be permitted to proceed to the next stage and by decisions to downgrade the Severity of defects which had been identified. Being aware of the major functional issues, and having removed them as a basis for preventing the system progressing towards Go Live, the parties prepared a "Solution and Defect Management Plan" (Defect Management Plan). This plan proposed to deal with such defects as were then known by, among other mechanisms, what was known as a "workaround", namely a manual intervention, or by simply deferring the fixing of the problem until after Go Live. This was folly, but it was

37 Exhibit 123, at page 8, L33-37.

38 T30-51, L34-39 (Dr David Manfield).

39 Exhibit 123, at page 10, L28-30.

made worse by the fact that, on no view could the parties have thought that all the major functional defects had been identified. Mr Cowan had made absolutely clear that it was likely that further major defects existed, which it was not the role or function of the type of testing he was conducting to discover⁴⁰.

- 2.36** It was always inevitable, therefore, that without the Project being reset, these decisions would lead to a system which was seriously functionally deficient. Despite that, no real practical alternative was put in place. Although CorpTech had, very sensibly, resourced itself to maintain LATTICE, that option was either considered not feasible or was not sufficiently investigated. There appears to have been inadequate consideration given to the option of upgrading the LATTICE system or coming to some arrangement with its vendor (Talent2) to maintain support until some other alternative could be found.

The system cost, in terms of payments to IBM alone, over four times more than the contract price. It took three times longer to deliver than originally scheduled. When it went live it was seriously deficient, causing very many QH staff not to be paid, or to be paid inaccurately. Neither party could have been under any misunderstanding that this was the inevitable result.

- 2.37** The Project is a story of many woeful failures by many people on many occasions. From the outset it was flawed. There was never any serious attempt to rectify these flaws and the problems it produced were compounded by a series of decisions which ensured that the system would be costly, late and seriously functionally deficient. Despite these issues, which were obvious, there were few dissenting voices and no senior manager who took any sufficient steps to put the Project on a proper footing.
- 2.38** It remains to say something by way of introduction about the cost of the system and the time it took to implement it.

Cost and Time

- 2.39** The contract price for the system was \$6,194,932.98⁴¹. It increased ultimately by a factor of more than four: to \$25.7M. Within the wider program, there were increases also. As I indicated above when discussing the issue of price in the “Procurement” component of this report, by 31 October 2008, estimates which IBM had provided under SOW 4 “Go Forward”, when combined with the amounts the State had paid or committed to pay to IBM, suggested that the cost to the State of completing the Program would be in the order of \$181M. This was almost double the price which IBM had estimated in its ITO response and, perhaps not entirely accidentally, as I have shown above, about the same as Accenture had put forward in its response.
- 2.40** Just as the price increased sharply, so too did the time within which the Project was to be delivered. IBM originally stated the interim LATTICE Replacement solution would be in place by 31 July 2008 (Go Live date)⁴². SOW 8 initially indicated the Interim Solution would be deployed by late September 2008⁴³. A revised schedule was proposed and accepted by the QHIC Steering Committee on 3 June 2008, which altered the Go Live date to 18 November 2008 and this was recorded in Change 60⁴⁴. IBM supplied a Notice of Delay to CorpTech on 8 August 2008, indicating the Go Live date would not be achieved until March or April 2009⁴⁵. IBM’s “Proposal for the delivery of the QHIC project”, under cover of their letter to CorpTech dated 23 February 2009, proposed Go Live date of 29 June 2009⁴⁶. Change 129 stated the parties had been working together to achieve a Go Live date no later than 30 June 2009⁴⁷. Change 184 then noted the parties were working together to deliver a Go Live date of 6 November 2009⁴⁸. Change 200 deferred the Go Live date to 20 November 2009⁴⁹. Change 201 altered the schedule to 24 November 2009 as the commencement of Go Live, with completion of business cutover at 4 December 2009 and the acceptance of the replacement solution at 14 January 2010⁵⁰. Change 202 then noted the parties were working towards a

⁴⁰ Exhibit 63, Volume 13, at page 306.

⁴¹ Exhibit 63, Volume 5, at page 95-26. For discussion of contract price, see Exhibit 78, paras 10.38-10.48.

⁴² Exhibit 63, Volume 2, at page 231.

⁴³ Exhibit 63, Volume 4, at pages 17, 35.

⁴⁴ Exhibit 63, Volume 5, at page 92.

⁴⁵ Exhibit 63, Volume 5, at page 231. The current Go Live date recorded in this letter was 17 November 2008.

⁴⁶ Exhibit 63, Volume 8, at page 151.

⁴⁷ Exhibit 63, Volume 7, at page 23.

⁴⁸ Exhibit 63, Volume 9, at page 129.

⁴⁹ Exhibit 63, Volume 10, at page 146.

⁵⁰ Exhibit 63, Volume 11, at pages 132, 133.

revised Go Live date of 22 March 2010⁵¹. After those nine changes, the Project Board approved Business Go Live on 14 March 2010⁵² with the first pay day of 24 March 2010⁵³.

- 2.41** There are two main reasons why the price increased to the extent it did. They are related.
- 2.42** *First*, the system was unsatisfactorily scoped: the State was less than diligent in advising its business requirements to IBM and negligent in accepting the highly qualified, incomplete and uncertain scope that IBM presented. This produced the need for a series of expansions and changes to scope, but most of which ought to have been included from the outset if the system were to be one which paid staff and did so accurately. The State agreed to these changes in scope, and to pay IBM in respect of them. The parties' attempt to resolve once and for all the uncertainties and extent of the scope in mid-2009 cost the State \$9M and yet was unsuccessful in achieving its objective. There was never, at any time before Go Live, an effective resolution between the parties of this problem.
- 2.43** IBM submitted that it is unrealistic to think that it could have brought about a Project reset in response to the unstable scope⁵⁴. IBM did make an attempt to have scope locked down, by urging the State to stop making changes to it. But to do so was pointless without there having been any assessment (which it seems there never was) whether, even if the scope were locked down, the system would function as a payroll system ought.
- 2.44** *Second*, it became clear in the course of the implementation that the system, as scoped, would not result in its being a functional system. Once the State realised this (something which ought always to have been clear) it dealt with functional defects in an ad hoc manner (ie as they evidenced themselves). The State paid IBM to perform work which was directed to see that the system would be functional, something which the original Project scope ought to have included. IBM submitted that a software developer does not know what correct pay is other than by reference to business requirements as provided to it by the customer. It said that IBM's contractual obligation here was to build the solution according to the business requirements which had been supplied to it by the State⁵⁵. These submissions, however, understate IBM's role and responsibilities. IBM was more than a software developer. It was a prime contractor, and one which had held itself out in its ITO response as having experience with systems of this kind. It was both designing and building the system. These factors show IBM to have had an obligation to be more than merely a passive recipient of the customer's instructions.

The Management Processes

Both parties ignored all the warning signs of a project in serious distress. Rather than reset the Project or take decisive steps to put it on a stable course, they altered or lowered the thresholds which had been put in place to protect against the very thing which eventuated: a system of poor quality which was not ready to Go Live.

- 2.45** The Terms of Reference directed me also to the adequacy of contract, governance, implementation and project management processes. They were seriously inadequate.
- 2.46** The system was inadequately scoped and neither party took any effective measures to stabilise it. Both parties ignored all the warning signs of a project in serious distress. Rather than reset the Project or take decisive steps to put it on a stable course, they altered or lowered the thresholds which had been put in place to protect against the very thing which eventuated: a system of poor quality which was not ready to Go Live. Doing so meant that the system, when it went live, would not be functional and constituted a clear breach of the most fundamental principles of project management. Poor decisions were made, Dr Manfield said, under the intense pressure of the time imperative⁵⁶. I would agree, and add only that the pressure of time was something which the parties had imposed upon themselves, and it was therefore something which it was within the control of the State, in particular, to deal with, including, as I have said, by investigating

51 Exhibit 63, Volume 12, at page 73.

52 Exhibit 63, Volume 15, at page 67.

53 Exhibit 63, Volume 15, at page 209.

54 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 85.

55 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 79(f).

56 Exhibit 123, at page 12, L38.

alternatives to upgrade LATTICE or maintain its support while hard decisions were made about the system then still under construction.

- 2.47** The Project was, from the outset, one which was conducted in an atmosphere of urgency, and which, in large part, had been of the State's creation in its failure at some earlier time to commence gathering its business requirements, making any necessary changes to its internal processes and deciding what measures it would take to either upgrade or replace the LATTICE system. When the Project was commenced, the timeframes within which the various stages of it were to be undertaken were hopelessly short, including for scoping. The Project was managed, contrary to the requirements of well-established project management methodology, by undertaking a number of tasks at the same time (including different forms of testing). There was a lack of rigour in this approach. It meant that the Project was not required to pass various checkpoints before proceeding. Where checkpoints did exist, their purpose was circumvented by changing the criteria required to meet them or by their being ignored altogether.
- 2.48** The State had several opportunities to take action to either remove itself from the Project or to redress the deficiencies and restore it to a course which would have resulted in a functioning payroll system. It surrendered those opportunities.
- 2.49** The resulting system performed precisely as all the cogent warnings had suggested: slowly and unreliably.

3. The Contract

- 3.1** IBM and the State entered into a contract on 5 December 2007 for the appointment of IBM as prime contractor for "the Shared Services Solutions Program for the Queensland Government"⁵⁷. It was signed by Mr Bradley, the Under-Treasurer, on behalf of the State and by Mr Peter Munro as authorised representative for IBM⁵⁸.
- 3.2** The contract was a "GITC" Version 5 Agreement. The Government Information Technology Conditions (GITC) arrangement was one initiated in about 1991 to provide standard contractual terms and conditions for use in the acquisition of information and communication technology products and/or services. They are, in effect, terms and conditions drafted in consultation with the industry, the variations to which are commonly pre-agreed between a potential supplier and the State. IBM had agreed with the State a deed of variation to the standard GITC conditions (dated 28 July 2005) which applied to orders placed by the State with it in the future including for the system⁵⁹.
- 3.3** The contract itself comprised these standard terms (as varied) and some additional "General Terms" drafted by Mallesons Stephen Jaques Lawyers (now King & Wood Mallesons). They contained, in addition to what were described as "guiding behaviour principles"⁶⁰, miscellaneous provisions which included terms of particular concern or application to the parties, including about Workbrain⁶¹ and the acceptance procedure for deliverables under the contract⁶².
- 3.4** The contract comprised also a series of schedules which were referred to and incorporated by clause 4.1 of the General Terms.
- 3.5** Mr Gray, a solicitor and partner of HWL Ebsworth with some experience in negotiation, drafting and advising on information technology contracts, was asked by the Commission to consider whether the contractual arrangements were adequate, whether the scope of work was sufficiently identified and defined in the contract and whether the contract was typical for large IT design implementation programs⁶³. His view was that the contract, although typical of public sector IT contracts, lacked an emphasis on the State's required outcomes⁶⁴. "[D]iligent attention by the State" was required, given the nature of the contract, to the governance and contract management of the Project⁶⁵. This was indeed its effect. IBM was both the prime contractor and project manager.

57 Exhibit 63, Volume 1, at page 1.

58 Exhibit 63, Volume 1, at page 42.

59 Exhibit 63, Volume 3, at pages 1-9.

60 Exhibit 63, Volume 1, Clause 2, at pages 30-34.

61 Exhibit 63, Volume 1, Clause 5.3, at page 37.

62 Exhibit 63, Volume 1, Clause 6, at page 40.

63 Exhibit 78, Annexure 1.

64 Exhibit 78, para 6.2(a).

65 Exhibit 78, para 6.5(a).

But it was the State, ultimately, whose responsibility it was to ensure its staff were paid and paid accurately, and the State which faced what risk there was of LATTICE failing. For these reasons if no other, the State had the responsibility diligently to ensure that IBM adhered to its obligations under the contract and to ensure that the system which was to be delivered was likely to be functional.

- 3.6** The services to be provided by IBM were defined in the Schedule 1 “General Order”. It defined the “services” to be provided as “ICT contracting Services as specified in each SOW contained in the [attached] DVD ... ”⁶⁶. In accordance with Schedule 17, that definition said, each SOS may become a SOW⁶⁷.
- 3.7** The term “service” in the contract’s standard terms (clause 1) was defined to mean the information communication technology service to be provided by the contractor (IBM) to the Customer (the State) under the Customer contract⁶⁸. There seems nowhere to have been an express statement that IBM was to deliver the services⁶⁹, however that is a term which would be necessarily implied in order to give business efficacy to the contract.
- 3.8** The DVD to which reference has been made contains six Statements of Work (SOW) and three Statements of Scope (SOS). The SOWs which for present purposes are relevant are:
- SOW 4 “Forward Planning”, under which IBM was to, among other things, review and achieve standardised business processes for the HR [Human Resources], Fi [Finance] and OSF [Other SAP Functionality] solutions through sector engagement, to “baseline” the definition and scope of the standard offer and to fix the price of the delivery for all future work streams for the Program⁷⁰;
 - SOW 5 was for the “Priority Core HR & Finance and Development”. This SOW was for the core build for the HR and finance solutions which was directed, in large part it would seem, to the overall program rather than specifically to the Project⁷¹; and
 - SOW 7 “LATTICE Replacement Interim Solution Scoping and Planning”. This is the SOW under which the Interim Solution was to be scoped (later extended by SOW 8A)⁷².
- 3.9** The three SOSs which were annexed to the contract at the time it was signed were:
- Statement of Scope 1* – This concerned only the Interim Solution and was superseded by SOW 8⁷³;
 - Statement of Scope 2* – “Phase 1 - Priority Implementations” which included a roll out of a Human Resources system in the DETA and the remainder of the work on QH’s HR system⁷⁴;
 - Statement of Scope 3* – “Phase 2 Implementations” which provided for the remaining Queensland government agencies⁷⁵.
- 3.10** The SOSs created, in themselves, no binding obligation. The express expectation, however, was that they would be converted as the Program progressed into SOWs.

4. Scoping

What was Required

- 4.1** IBM was, under SOW 7, to determine the scope for the Interim Solution. It was to do so by 24 December 2007⁷⁶. But it could not have done so alone. It required the State, at the very least, to make known its business requirements, being the detail of what the system was required to do. It also required QH to cooperate in agreeing what were, in the context of the system being an interim one, its “critical requirements”, and in doing so to keep them to a minimum.
- 4.2** SOW 7 said, as I noted above, IBM, in conjunction with the SDA, was to agree the “critical Agency requirements”⁷⁷.

66 Exhibit 63, Volume 1, at pages 45-46.

67 Exhibit 63, Volume 1, at page 46.

68 Exhibit 63, Volume 1, at page 201.

69 Exhibit 78, para 9.17.

70 Exhibit 63, Volume 2, at page 41.

71 Exhibit 63, Volume 2, at page 62.

72 Exhibit 63, Volume 2, at pages 96-108.

73 Exhibit 63, Volume 2, at pages 228-252.

74 Exhibit 63, Volume 2, at pages 253-283.

75 Exhibit 63, Volume 2, at pages 284-311.

76 Exhibit 63, Volume 2, at pages 107-108.

77 Exhibit 6, Volume 2, at page 99.

These arrangements necessitated IBM and the State agreeing what the scope was to include. ... the State was left with the need to agree these matters with IBM, something which, if it ever did, it did more by default and neglect than with considered thought.

- 4.3** The time within which scoping was to occur was extended by two weeks, by SOW 8A, to 18 January 2008, as was the amount payable to IBM for doing so. SOW 8A was introduced into the contract on 21 January 2008 by Change 2⁷⁸. IBM was paid a total of \$910,355 under SOW 7 and SOW 8A⁷⁹.
- 4.4** The “deliverable”, under SOW 7 and 8A was SOW 8, the scope for the “Replacement, LATTICE Design, Implement and Deploy” (that being the Interim Solution)⁸⁰.
- 4.5** SOW 8 was produced on 18 January 2008⁸¹. It was incorporated into the contract by Change 5, which was signed by IBM on 18 January 2008 and by the State (Ms Perrott) on 22 January 2008⁸². Ms Perrott had by then taken over the role of Executive Director of CorpTech, so it fell to her to manage the project and contractual relationship with IBM and to authorise any contract variations.
- 4.6** SOW 8 also contained a list of assumptions. Dr Manfield explained that it is by doing so that contractors customarily convey the limits of the work they are to undertake and the bases upon which their commitment to fulfil the work has been based⁸³. IBM’s assumptions included⁸⁴:
- Our [IBM’s] definition of scope and the RICEF [Reports, Interfaces, Conversions, Enhancements, Forms] estimates are accepted.*
- Queensland Health can provide the required internal resources as required and detailed in our [IBM’s] high level project plan.*
- Queensland Health can provide the required skills and experience sets as detailed in our [IBM’s] high level project plan.*
- That PJ30 is the contingency in the event of a substantive failure of this project to deliver within the timeframes defined by this SOW(8).*
- 4.7** PJ30 was the State’s plan to maintain LATTICE in the event that the Interim Solution either failed or was not completed by 30 June 2008. It included drawing upon specialists within CorpTech (supervised by Mr Hood) who had knowledge of LATTICE and who could and did, to a basic level at least, maintain it⁸⁵.
- 4.8** Mr Gray expressed opinions about the risks which arose from the contract with respect to the solution scope, which he identified as the attributes of the work product to be delivered by IBM under the contract. He expressed the view that the extent to which the solution scope was set out in the contract was “very limited”⁸⁶. The correctness of that view is evident from the fact that much of what SOS 1 said about scope had been extracted from IBM’s ITO response, something which SOS 1 made no attempt to conceal⁸⁷. Apart from the broad and general statements which SOS 1 contained, there was no description of the scope of the Interim Solution. The shortcomings in the Contract are not ones which are properly attributed to the lawyers who drafted it, but to the State’s overwhelming desire to implement the SSP with urgency.
- 4.9** Such scoping as there was to be for the Interim Solution was to be undertaken under SOW 7. The State had an opportunity to decide whether to accept that scope. SOW 7 provided, relevantly⁸⁸:
- Scope Requirements*
- In determining the scope for the interim solution, the contractor in conjunction with the SDA will determine the critical Agency requirements for Queensland Health for interim solution. The 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.*

78 Exhibit 63, Volume 4, at pages 7-9.

79 Exhibit 63, Volume 2, at page 107; Exhibit 63, Volume 4, at page 4.

80 Exhibit 63, Volume 4, at page 2.

81 Exhibit 63, Volume 4, at pages 15-40.

82 Exhibit 63, Volume 4, at page 14.

83 T30-71, L3-10 (Dr David Manfield); T30-61, L30-41 (Dr David Manfield).

84 Exhibit 63, Volume 4, at pages 39-40.

85 Exhibit 66, paras 21-32.

86 Exhibit 78, para 10.7.

87 Exhibit 63, Volume 2, at page 231; Exhibit 78, para 10.10.

88 Exhibit 63, Volume 2, at page 99.

The LATTICE Replacement interim solution that the contractor has proposed should be viewed as part of the WoG implementation program and for Queensland Health part of a phased implementation of the final solution. The contractor will prioritise activities to ensure that this key piece of work executed will be leveraged and will not be duplicated unless necessary. Using this approach the contractor will ensure that the work delivered is a sub-set of what is required for WoG rollout to Queensland Health in later releases wherever possible and practical.

- 4.10** These arrangements necessitated IBM and the State agreeing what the scope was to include. Mr Gray considered that it would have been preferable either for the State to have retained a “casting vote” (or for the SDA’s preferences on scope disputes to prevail) or for the minimum solution scope to have been defined⁸⁹. Instead, the State was left with the need to agree these matters with IBM, something which, if it ever did, it did more by default and neglect than with considered thought.
- 4.11** SOW 8, Mr Gray noted, defined scope less specifically than SOS 1, something he considered both unusual and concerning⁹⁰. I did not find SOW 8 to be an informative document on communicating the scope of the system. It seemed to me to be a document which did little more than repeat the earlier more general statements which had been made by IBM in its ITO response. SOS 1 contained IBM’s proposal (again repeated from IBM’s ITO) that the “existing Queensland Health LATTICE HR/Payroll system [be] replaced by a solution based on the SSS DOH Solution” and that it be completed and the Interim Solution be in place by the end of July 2008 (based on an assumption the Project could commence about the first week in November 2007)⁹¹. The use of the system deployed in the DOH (Department of Housing) was one which IBM proposed to “leverage” as a “well understood and manageable baseline to build the [interim] solution upon”⁹².

The decision to use the Housing solution as a basis for the Interim Solution was just one of a number of poor decisions motivated by a perceived need to rush the delivery of a replacement for the LATTICE system.

- 4.12** The Department of Housing system contributed little if anything to the Interim Solution, something which ought to have been obvious to both parties. Housing was not an agency which had rostering⁹³. It did not use Workbrain⁹⁴. That Department was a much smaller agency than QH and one whose arrangements and affairs, on any view, were far less complex. No part of the Department of Housing solution had involved using Workbrain as an awards interpreter, something IBM had promoted as not only an innovative feature of the Interim Solution, but also one which, as I have mentioned, caused the Evaluation Panel to prefer IBM’s bid over that of Accenture.
- 4.13** Mr Kwiatkowski from IBM, who gave evidence at the end of the public hearings, sought to explain the changes in scope which occurred and the increases in price which accompanied those changes by saying that a basic code review or quality check would have identified that the Department of Housing solution was seriously deficient⁹⁵. He did not know of IBM having undertaken any such basic review before agreeing to use it as the starting point for the Interim Solution⁹⁶. But nothing so elaborate was necessary to know that the Housing solution offered little if any assistance given the radically different, less complex and much simpler environment for which it had been designed and in which it had been implemented. I do not accept IBM’s submission on this point that, from a SAP perspective, the Housing and QH systems were not significantly different: that “payroll is payroll”⁹⁷. This seems to have been offered by IBM as a reason why it was not imprudent for IBM to have relied upon the Housing solution in the way it did. On any view, the awards within QH were far more complex: Housing had only a very few applicable awards (“calc groups” was the language used); but QH had some 221 such groups⁹⁸. Moreover, to look at the two systems from a SAP perspective ignores the fact that the QH system was also to have Workbrain as a major component of it.

89 Exhibit 78, para 10.27.

90 Exhibit 78, para 10.35(b).

91 Exhibit 63, Volume 2, at page 231.

92 Exhibit 63, Volume 2, at page 233.

93 T28-3, L9-10 (Natalie MacDonald); T27-6, L6-8 (Christopher Prebble); T36-11, L31-32 (Nickolas Kwiatkowski).

94 T27-6, L11-12 (Christopher Prebble); T28-3, L12-13, (Natalie MacDonald); T36-11, L34 (Nickolas Kwiatkowski).

95 Exhibit 164, paras 50-51.

96 T36-11, L25 (Nickolas Kwiatkowski).

97 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 46.

98 T26-66, L5-7 (Paul Hickey); Exhibit 103, at Annexure 66.

- 4.14** Although I found much of what Mr Atzeni said to be unreliable his opinion on the differences between QH and Department of Housing payrolls was persuasive. He said⁹⁹ “Housing and Health (were) very different agencies in terms of scale ... complexity of awards ... rostering requirements and different softwares ... “. As well as that, he pointed out that Workbrain had never previously been implemented (as an awards interpreter) and the integration with Workbrain and SAP had been identified by IBM as “innovative”¹⁰⁰. The awards interpretation “had to be rebuilt (from Department of Housing) so that Workbrain had precedence ... and SAP picked out the tabs on the ... payroll ... “. Another point of difference was that there had been significant flaws in the Department of Housing payroll implementation and any similar flaw “would be exponentially greater” in QH in terms of their consequences¹⁰¹.
- 4.15** IBM’s submission oversimplifies the assessment which was to be made between the Housing and QH systems. Such differences as there were between the two systems, IBM submitted, were already defined by CorpTech in technical specifications that CorpTech had produced¹⁰². Even if that were so, it is difficult to see what material benefit the Housing solution might have provided given the differences I have identified, and the need to apply such specifications (untested as they must have been) as CorpTech had fashioned. In any event, what IBM now submits is at odds with its confident assertion in SOS 1, quoted above, that the Housing solution was a well understood and manageable baseline upon which to build the Interim Solution. IBM lacked both a good understanding of the Housing solution and its (limited) utility as a baseline for the Interim Solution.
- 4.16** Mr Gray noted that SOS 1 had recorded an assumption by IBM that the Housing solution included the functionality expected to deliver the “minimum [Queensland Health] Requirements”, but that nothing in the contract shows that to have been checked or validated¹⁰³. IBM never seems properly to have checked or validated it, something which, as I have said, required little effort to achieve. IBM’s submissions confirmed that its approach had been to depend upon the customer (as end user) to communicate its requirements¹⁰⁴, for it to “document” scope and obtain the State’s acceptance of that articulation of it¹⁰⁵.
- 4.17** Leaving aside these factors which rendered the Housing solution of little, if any, assistance in designing and building the Interim Solution, the parties recognised the need to rectify problems which had been identified in that system. Part of the exercise which IBM was to undertake pursuant to SOW 7 was to address issues which it had identified in the HR/Payroll solution which had been implemented in the Department of Housing. IBM was to re-engineer that solution to resolve a number of issues and plan a number of rectifications in the scope of the Interim Solution¹⁰⁶.
- 4.18** The decision to use the Housing solution as a basis for the Interim Solution was just one of a number of poor decisions motivated by a perceived need to rush the delivery of a replacement for the LATTICE system.
- 4.19** The scoping exercise also included IBM producing a scope definition document which was more detailed than SOW 8. On 24 December 2007, IBM provided to the SDA the “QHIC Project Scope Definition-Version 0.12” (QHIC Scope Definition)¹⁰⁷. But SOW 8 notes that, as at 8 January 2008, IBM had not received comment from the customer regarding it and that SOW 8 had been based on that version of the QHIC Scope Definition¹⁰⁸.
- 4.20** A meeting took place on 17 January 2008 attended by representatives of IBM, QH, QHEST and the SDA¹⁰⁹. As a result, version 1 of the QHIC Scope Definition was produced¹¹⁰. That version of the document was accepted with minor revision by the State on or about 25 February 2008¹¹¹. IBM, however, qualified its position with respect to it. SOW 8 contained this rider¹¹²:

99 T31-50, L1-50 (Damon Atzeni).

100 T31-50, L1-5 (Damon Atzeni).

101 T31-50, L19-22 (Damon Atzeni).

102 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 45.

103 Exhibit 78, paras 10.12-10.13.

104 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 57(d).

105 Submissions on behalf of IBM Australia Ltd, 24 June 2013 (Contract), paras 33(b), 33(c).

106 Exhibit 63, Volume 2, at page 100-102.

107 Exhibit 63, Volume 4, at page 17.

108 Exhibit 63, Volume 4, at page 17.

109 Exhibit 63, Volume 4, at page 16, 64.

110 Exhibit 63, Volume 4, at pages 63-203.

111 Exhibit 72 (it is not clear from the signature who made the acceptance on behalf of the State.) IBM submits it was accepted by Mr David Ekert, Chair of the SDA, as the signature on the document reflects the signature of Mr Ekert’s statement (Exhibit 26): see Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 18.

112 Exhibit 63, Volume 4, at page 16.

1.2 Open Issues

It was agreed at the “QHIC Scope Definition” deliverable review meeting held on the 17th of January, 2008 that a number of open issues remained unresolved as this point of time and that when resolved may result in a change to the scope of the work required under this SOW (8) and that this, at the discretion of the Contractor, may necessitate a change to this SOW (8) under the agreed change control process.

- 4.21** The reference to “open issues” was to a list of “issues” in section 5 of the QHIC Scope Definition¹¹³. Those issues included that of “concurrent employment” being something in respect of which it was said the “[f]unctionality in the SO [Standard Offer] is still under review for WoG requirements ...”¹¹⁴. Of finance integration, it was said¹¹⁵:

A number of FAMMIS Finance related issues have been raised with the QHIC Project Team and there has not been sufficient time available to evaluate the impact of this request. At this point, the Finance Integration scope remains as described by this document.

- 4.22** IBM, both through the parts of SOW 8 to which I have referred and in the QHIC Scope Definition itself, made clear to the State that it had reserved its position to insist upon changes to the Project scope occurring by way of formal variations to the contract and, it could be safely inferred, upon being paid more to effect those scope changes.
- 4.23** The scoping activities were, as I have said, to be achieved within an impossible timeframe. For them to have had any chance of succeeding, it was necessary for the State actively to involve itself and, in particular, by communicating to IBM QH’s business requirements and checking the scope which IBM produced to see, with IBM’s assistance as an experienced contractor, that the defined scope was likely to result in the delivery of a payroll system which was functional.

Mr Atzeni

- 4.24** Mr Atzeni, as “Human Resources Business Integration Manager”, had responsibility for identifying QH’s business requirements and ensuring that its interests were protected in identifying what it was that the Interim Solution would deliver in a functional sense. He was empowered to assemble the required teams and to make decisions about functional requirements¹¹⁶. Mr Atzeni had also been involved in the evaluation of the ITO responses, so was no stranger to the kinds of business requirements which a contractor might need to know.
- 4.25** Mr Atzeni, in his oral evidence, agreed that too little time was allowed for the scoping exercise¹¹⁷. Despite this, he made no complaint at the time about the timeframes being too demanding¹¹⁸. The tight timeframe was exacerbated by the fact that scoping for the whole-of-government roll out was being conducted at the same time as for the Interim Solution, meaning that both IBM and the State were required to focus on more than one large and difficult undertaking at the same time¹¹⁹.
- 4.26** Mr Atzeni accepted knowing at the time that QH had to provide responses to requests for information and provide cooperation quickly and that a failure to do so would compromise the timely delivery of those things which the contract required¹²⁰. Despite this, neither Mr Atzeni nor anyone else ensured in writing that those people attending the workshops had a proper understanding of what it was they ought to seek to achieve at them¹²¹. The participants, it seems, had not done much more than ascertain that the Interim Solution ought to be functional¹²².
- 4.27** IBM, on the other hand, had very clear ideas as to the functional requirements being minimal and expressed that view to the workshop participants¹²³. This was a source of friction between the IBM participants on the one hand and the State participants on the other¹²⁴.

113 Exhibit 63, Volume 4, at page 83-85.

114 Exhibit 63, Volume 4, at page 83.

115 Exhibit 63, Volume 4, at page 84.

116 Exhibit 122, paras 2, 4.

117 T31-69, L30-39 (Damon Atzeni).

118 T31-69, L41-44 (Damon Atzeni).

119 T31-70, L44-50 (Damon Atzeni).

120 T31-70, L31-39 (Damon Atzeni).

121 T31-71, L36-49 (Damon Atzeni).

122 T31-71, L41-49 (Damon Atzeni).

123 T31-72, L9-17 (Damon Atzeni).

124 T31-72, L19-20 (Damon Atzeni).

- 4.28** Mr Atzeni did express the view in an email at the time that he did not have “much confidence that [the IBM representatives] understand the needs and risks of QH”¹²⁵. It was his role, however, to ensure that they did¹²⁶. He had responsibility to see that IBM had an adequate understanding of the needs and risks of QH, or, at the very least, to correct any erroneous view which IBM held in that regard¹²⁷.
- 4.29** It became apparent in the oral examination of Mr Atzeni that he had been provided with documents by IBM in early January 2008 which made clear the basis upon which IBM was scoping the Interim Solution, and inviting feedback from QH¹²⁸. Mr Atzeni, in his statement¹²⁹, was less than candid in revealing his involvement in these matters, including materially, as to the knowledge he had of certain documents being in IBM’s possession and upon which it relied in scoping the Project¹³⁰.
- 4.30** Mr Atzeni was sent, for example, the Business Attributes Document (referred to in evidence as the “BAD”). The BAD was considered to be a baseline of QH’s configurations requirements¹³¹. He knew that IBM would rely on it, and did nothing to advise IBM that it should not do so¹³². He did not ensure that all the relevant information to be used in awards interpretation was identified to IBM, and when there were later changes (ones which ought to have been communicated earlier) he complained that he was sick of paying IBM for the changes, but in circumstances in which, he agreed, only one Change (No 113) had done so¹³³.

... it was necessary for the State actively to involve itself and, in particular, by communicating to IBM QH’s business requirements and checking the scope which IBM produced to see, with IBM’s assistance as an experienced contractor, that the defined scope was likely to result in the delivery of a payroll system which was functional.

- 4.31** Mr Atzeni was not the only representative of the State who had responsibility for ensuring that business requirements were communicated fully and accurately to IBM. He did have, however, as his own statement made clear, a role of facilitating communication between IBM and the subject matter experts to define specific agency requirements. He was also the point of contact for IBM to organise meetings and workshops with the necessary subject matter experts to define the interim solution scope and specific business requirements¹³⁴. Although sole responsibility may not rest with Mr Atzeni for the scoping inadequacies, the roles he occupied and with which he was entrusted, leave him with very significant responsibility for those shortcomings.
- 4.32** I have been brief in my treatment of these matters, because Mr Atzeni accepted the facts I have set out above in his oral examination. Mr Atzeni was negligent in discharging his responsibilities of ensuring the business requirements of QH had been communicated to IBM such as would result in a functional payroll system, and to correct any material erroneous view which IBM held about those matters. This was a serious shortcoming, and one which was a major - perhaps the most major - material contribution to increased cost of the system to the State, and to the problems concerning scope which plagued the system until it went live.
- 4.33** The very different understandings which the parties had of the scope, the extent it remained between them the subject of dispute, and the costliness to the State of its position are demonstrated in particular by two series of Changes to the contract. Both were explored in oral evidence.

Human Resources/Finance Integration

- 4.34** The first series of Changes is that which concerned “HR Fi Integration”, being the means by which the new (Human Resources) solution would interact and work with the existing (or “legacy”) (finance) system.

¹²⁵ Exhibit 122, Annexure B.

¹²⁶ T31-73, L8 (Damon Atzeni).

¹²⁷ T31-73, L10-30 (Damon Atzeni).

¹²⁸ T31-77, L13-28 (Damon Atzeni); Exhibit 133.

¹²⁹ Exhibit 122.

¹³⁰ And, as IBM submits, Mr Atzeni conceded in his oral evidence that his statement was wrong in significant respects: see submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 34.

¹³¹ T31-54, L1-11 (Damon Atzeni); T31-89, L5-7 (Damon Atzeni).

¹³² T31-89, L13-16 (Damon Atzeni).

¹³³ T31-92, L11-48 (Damon Atzeni); Exhibit 63, Volume 6, at pages 95-107.

¹³⁴ Exhibit 122, para 2.

- 4.35** SOW 8 allocated “accountability” for the detailed design of the “Integration (Legacy & Other)” to the IBM Solution Architect, with QHEST to “advise” and for the “Build” of the “Integration – Legacy” to the QHEST Test Manager, with IBM to “advise”¹³⁵. The QHIC Scope Definition maintained those accountabilities for detailed design (with QH now added as being to “advise”). For Build, Integration – Legacy, the accountabilities remained the same as in SOW 8¹³⁶.
- 4.36** The QHIC scope definition dealt specifically with this, both in the manner set out above and as follows¹³⁷:
- The following approach has been used to scope the integration components required to deliver the interim solution:*
- ...
- Given the complexity with 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 with a MAN Series application is in scope, a custom integration component will be specified and developed. These interfaces are specified in Section 6.5.2 below. These custom developments will be specified and delivered based on existing interface detail supplied by QHEST (e.g Internal FTE Payroll Extract). QH will be responsible for the identification, development, testing, 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.*
- 4.37** This passage does not, on its face, make entirely clear whether and to what extent the State would be responsible for building or instituting (ie doing other than identifying, developing, testing, implementing and training) that part of the system.
- 4.38** There were other documents that, like the QHIC Scope Definition, were deliverables under SOW 8¹³⁸. They too contained descriptions of the system which was to be delivered. Although not perhaps directly contradictory with the QHIC Scope Definition, those other documents did nothing to clarify whose responsibility it was to make sure the new HR solution integrated properly and functionally with the finance system.
- 4.39** The Project Execution Plan (also a Project deliverable¹³⁹), despite allocating accountabilities in the same way as SOW 8 and the QHIC Scope Definition¹⁴⁰, stated that the Interim Solution would¹⁴¹:
- [I]ntegrate the Interim HR/Payroll solution with key existing Queensland Health enterprise architecture: FAMMIS (financial management).*
- 4.40** A later version of what appears to be the same plan, under the heading “Solution Scope”, states that the Interim Solution will¹⁴²:
- ... migrate the data required to operate the solution*
- *based on the Workbrain application suite deliver:*
 - *an integrated rostering solution*
 - *an integrated awards interpretation “engine”*
 - *an integrated Leave management solution*
- Integrate the interim HR/Payroll solution with key existing Queensland Health enterprise architecture:*
- *FAMMIS (Financial Management)*
 - *DSS (Decision Support system)*
 - *Others as specified in the QHIC Project Scope Definition ...*
- 4.41** This issue produced several changes to the scope of the Project. In mid-2008, the State paid IBM \$1.88M for a “schedule delay” arising from what the Change Request document seems at pains to make clear were “customer based issues”, said to have affected IBM’s ability to deliver to the original schedule and causing a 6.5 week delay in the Go Live. These matters were the subject of Change 60¹⁴³.

135 Exhibit 63, Volume 4, at pages 23-24.

136 Exhibit 63, Volume 4, at page 77.

137 Exhibit 63, Volume 4, at page 128.

138 See for example, Exhibit 63, Volume 4, at page 26.

139 Exhibit 63, Volume 4, at page 26; Exhibit 63, Volume 5, at page 95-13.

140 Exhibit 63, Volume 4, at pages 214-215.

141 Exhibit 63, Volume 4, at page 219.

142 Exhibit 63, Volume 8, at pages 180-181.

143 Exhibit 63, Volume 5, at pages 88-95.

4.42 Change 61¹⁴⁴ effected an amendment to SOW 8, but one which is said to reflect “the agreed scope for the implementation of this revised approach”. The changes proposed (if they be changes)¹⁴⁵ included, most materially, IBM “facilitat[ing] HR<->Finance integration workshops”, preparing minutes of those workshops and building SAP HR/Payroll components including technical specifications¹⁴⁶.

4.43 QH took responsibility for attendance at those workshops and designing, building and unit testing of legacy development. The Change Request document also stated¹⁴⁷:

The currently proposed solution is acceptable to Queensland Health who bears the risk associated with this change from the original solution, and that approval to proceed will be provided by 11/7/2008.

4.44 It seems unlikely that, even if such workshops took place and minutes were generated, that much more was done. HR/Finance integration remained, for some twelve months afterwards, if not a subject of debate between the State and IBM (something which Mr Doak accepted¹⁴⁸), a matter which had come to no satisfactory ending, such that each party would know with clarity what were their respective obligations and how the integration would be effected. IBM submitted, and I agree, that it is “remarkable” that issues about requirements relating to integration were continuing to affect sign-off of design documents as late as February 2009, especially in circumstances in which the original SOW 8 Go Live date was September 2008¹⁴⁹. It was, in fact, wholly unacceptable that the Project was in this state of uncertainty on so fundamental a matter so late into its implementation.

4.45 The issue remained unresolved. Soon after Change 61, and on 8 August 2008, IBM advised the State that “HR finance design continues to be debated which is preventing completion of application development”¹⁵⁰.

4.46 Integration was one of the issues with which the later Change 184¹⁵¹ sought to deal. That Change was executed on 30 June 2009¹⁵². One of its expressed functions was to “clarify” the project scope by the “QHIC Scope Clarification” which was annexed to it¹⁵³. It included within the scope of the integration, Staff Movements and End of Month Accruals (including casual employee requirements)¹⁵⁴. Functional and technical designs were to be provided for these. But the Scope Clarification expressly excluded other matters, including Nurses PDE (concurrent employment)¹⁵⁵. The State paid IBM \$9M in connection with this Change¹⁵⁶. It is impossible to know, even from the negotiations which preceded it, what portion of that amount might have been attributable to the clarification of the integration issue. The Change seems to have been the result of commercial negotiations and not any rigorous or detailed analysis by either party of the extent to which previously defined obligations were being departed from. The mere fact that the negotiations were conducted on such a basis shows just how uncertain as between the parties the scope of the Project had become and the necessity of resolving the dispute. I say something later of the flawed process by which Change 184 was arrived at, and the valuable rights of the State which it gave away, without any proper consideration being given to them.

4.47 It took, therefore, some 12 months from the start of the Project for this aspect of scope to reach any form of stability.

Change 184

4.48 I have already said something of Change 184. This was, like other Changes (including 60 and 61) what Dr Manfield described as a “cleansing” change¹⁵⁷ which, he said, showed an intention by the parties to clarify once and for all the instability which up until those points had existed¹⁵⁸.

144 Exhibit 63, Volume 5, at page 96.

145 Said to be in SOW 8 v 1.4 which should, it seems, be read as a reference to v 1.2.

146 Exhibit 63, Volume 5, at page 96.

147 Exhibit 63, Volume 5, at page 97.

148 T24-102, L33-38 (Bill Doak); T25-26, L27-42 (Bill Doak); T25-77, L13-16 (Bill Doak).

149 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 101(b).

150 Exhibit 63, Volume 5, at page 230.

151 Exhibit 63, Volume 9, at page 128-209.

152 Exhibit 63, Volume 9, at page 141.

153 Exhibit 63, Volume 9, at pages 130, 140; Exhibit 63, Volume 9, at page 144-157.

154 Exhibit 63, Volume 9, at page 148.

155 Exhibit 63, Volume 9, at page 148.

156 Exhibit 63, Volume 9, at page 125.

157 T30-81, L42-43 (Dr David Manfield); T30-85, L32-34 (Dr David Manfield).

158 T30-80, L9-42 to T30-81, L1-51 (Dr David Manfield).

- 4.49** Change 184 was preceded by a series of Changes directed at having IBM prove that the system it was to implement functioned properly. The fact that this was necessary shows a high level of dissatisfaction or suspicion by the customer that the work IBM was undertaking might not achieve what the State required of it. I consider these Changes below when dealing with the issue of Payroll Performance Testing.
- 4.50** There were considerable negotiations in the lead-up to Change 184. They were initiated when, on 8 August 2008, IBM issued a Delay Notice to the State¹⁵⁹. The reasons IBM offered for the delay were, in addition to the debates about HR-Fi design mentioned above: differing expectations of the role and responsibilities by IBM and client stakeholders; IBM test tool and process issues having prevented the achievement of a very aggressive test schedule; and additional technical testing requirements having been requested by the client as of 6 August 2008. The State's response, dated 2 September 2008, was, in effect, that there was no failure by it to which the delay was attributable¹⁶⁰.
- 4.51** These exchanges led to discussions between the State and IBM in November 2008 and the agreement of the parties to Change 129¹⁶¹. Mr Christopher Bird (CorpTech's contract manager) said that QH had raised concerns with him to the effect that IBM had done nothing to give QH confidence that IBM would deliver a working solution¹⁶². Of that, Mr Beeston (a contractor, but engaged by CorpTech as, ultimately, Director of the SPO) said IBM proposed conducting a "demonstration test" to show that it could run the payroll within the payroll window¹⁶³. Mr Bird drafted, with the assistance of Mr Swinson from Mallesons, a condition precedent to be incorporated in contract change documentation seeking to require IBM to meet objective test criteria to prove that the Solution was in fact viable¹⁶⁴.
- 4.52** Change 129 contained a "condition precedent", being that if the testing regime prescribed in Enclosures 1 and 2 of it were not passed, the incorporation of that Change into the contract was to be without legal effect and all contract amendments were to be ineffective and void *ab initio*¹⁶⁵. IBM would, if the tests were not passed, find itself in default under the contract.
- 4.53** Enclosure 1 concerned Payroll Performance Testing (aimed at knowing, in effect, how long it took to produce the pay using the system). Enclosure 2 was directed to the awards interpretation function of Workbrain. Change 129 set 30 November 2008 as the time by which these tests were to be passed¹⁶⁶. Several subsequent Changes extended the time within which IBM had to satisfy the State that those tests had been passed: Change 174¹⁶⁷ extended the time until 5 December 2008; Change 177¹⁶⁸ extended the time by a further 6 days; and Change 179¹⁶⁹ extended the time to 23 December 2008.
- 4.54** It was at this point, with the Payroll Performance Testing not having been passed (a matter I deal with below) that negotiations about and, ultimately, the agreement to, Change 184 commenced.
- 4.55** On 21 January 2009, the State wrote to IBM saying that it was of the view that successful integration was the responsibility of IBM¹⁷⁰. It invited IBM to make a proposal to address any variations that IBM proposed to the parties' obligations and referred to initial without prejudice discussions which were then being coordinated¹⁷¹. By letter of 23 February 2009, IBM advised that it had been working with CorpTech and QH to clarify the scope required to deliver the Interim Solution in two releases and that IBM had provided a definition of the scope in them¹⁷². The State's response to that letter on 2 March 2009¹⁷³ recorded IBM's acceptance that Staff Transfers, End of Month Accruals, Balance Sheet and Nurses PDE (Concurrent Employment) were within the scope of the contract. The State proposed paying IBM \$2M as "an additional performance payment" upon the State's formal acceptance of the Interim Solution¹⁷⁴. As part of these arrangements, IBM had asked that there be no more changes to the scope of the Interim Solution¹⁷⁵. To that, the State responded¹⁷⁶:

159 Exhibit 63, Volume 5, at pages 230-231.

160 Exhibit 63, Volume 6, at pages 4-6.

161 Exhibit 63, Volume 6, at page 22.

162 Exhibit 73, para 38.

163 Exhibit 65, para 57.

164 Exhibit 73, paras 39-40.

165 Exhibit 63, Volume 7, at page 22.

166 Exhibit 63, Volume 7, at page 27.

167 Exhibit 63, Volume 7, at pages 190, 194.

168 Exhibit 63, Volume 7, at pages 266, 270.

169 Exhibit 63, Volume 7, at pages 285, 289.

170 Exhibit 63, Volume 8, at pages 56-57.

171 Exhibit 63, Volume 8, at page 56.

172 Exhibit 63, Volume 8, at page 147.

173 Exhibit 63, Volume 8, at pages 161-165.

174 Exhibit 63, Volume 8, at page 162.

175 Exhibit 63, Volume 8, at page 163.

176 Exhibit 63, Volume 8, at page 163.

The solution scope is as set out in SOW8 and approved CRs. Note that existing CRs raised to address defects are NOT considered variations to scope. [emphasis in original].

- 4.56** IBM, in response, acknowledged a continuing disagreement in relation to scope¹⁷⁷. Its detailed response to the State's proposal¹⁷⁸ was to assert that the cost to complete the delivery of the Project would be \$3M, with the State to pay an additional \$6M on accepting IBM's proposal¹⁷⁹. IBM attached to its letter a document "QHIC Scope Definition Changes for Version 2", which was said to describe the changes to the scope of the Project¹⁸⁰.
- 4.57** Mr Grierson, Director-General of the Department of Public Works, gave evidence that during this period he had become frustrated with the "finger pointing" by IBM, QH and CorpTech in respect of scope¹⁸¹. In response to an email on 18 February 2009 from Ms Berenyi (by this time Executive Director of CorpTech, having replaced Ms Perrott) to Mr Doak requesting that IBM provide a commercial proposal containing pricing for the outstanding scope for the LATTICE Replacement, Mr Grierson directed Ms Berenyi to "continue to seek a 'fair and equitable' outcome" stating that he was "not interested in IBM coming forward with a \$\$ wishlist"¹⁸². His view was that if there was additional work which QH had not requested it was "only fair" to pay IBM for it; whereas if it was work that should have been provided for in scoped work orders, he would not have paid for it again¹⁸³.
- 4.58** The State, by letter dated 31 March 2009¹⁸⁴ agreed to pay some \$10M to IBM¹⁸⁵. The Change itself was authorised by the Associate Director-General of the Department of Public Works, Ms Natalie MacDonald on 30 June 2009¹⁸⁶. It had been recommended earlier by Ms Berenyi to the Acting Director-General, Mr Max Smith. He approved the new arrangement on 31 March 2009¹⁸⁷.
- 4.59** A meeting took place on 9 June 2009 between IBM and the State. It was proposed to offer IBM an additional \$9M subject to approval as consideration for an extension of project to be completed by November 2009 (it is not clear why the State thought itself obliged to provide consideration for this, when it was a delay), compensation for IBM developing additional functionality and for the engagement of additional IBM resources to meet the required timeframe¹⁸⁸. The State's agreement to the arrangement was communicated to IBM by letter dated 25 June 2009¹⁸⁹. IBM was quick to accept. It did so that same day¹⁹⁰.
- 4.60** Change 184 was executed a few days later¹⁹¹. It, and the negotiations which preceded it, were predicated upon the Project being completed and going live on 6 November 2009 and upon the system (pursuant to the clarified scope) being one that was functional, albeit that there might be workarounds¹⁹²:
- The proposed revised Change Request (CR184) will give rise to the following contract amendments, with all other obligations remaining unchanged:*
- ...
- 3. Agree that formal acceptance of the Solution includes the provision that all go-live requirements, including the correction of outstanding issues that prevent Queensland Health employees being paid correctly within the agreed processing window, has been achieved. Any work-arounds or issues that have been agreed to remain unresolved prior to go-live will be agreed subject to a comprehensive management plan being presented for their satisfactory resolution.*
- 4.61** Ms MacDonald said that it had been her understanding of this Change, and her intention in authorising it, that it would put to rest all the uncertainties about scope¹⁹³. It did not, and she accepted that¹⁹⁴. Her understanding of it was that it would ensure that the resulting system would be functional¹⁹⁵. But she

177 Exhibit 63, Volume 8, at pages 166-168.

178 Exhibit 63, Volume 8, at pages 170-173.

179 Exhibit 63, Volume 8, at page 170; see Exhibit 63, Volume 8, at page 246 for composition of \$6M payment.

180 Exhibit 63, Volume 8, at page 171; Exhibit 63, Volume 8, at page 249.

181 Exhibit 116, paras 39-40; T28-75, L18-24 (Malcolm Grierson).

182 Exhibit 63, Volume 8, at page 133.

183 Exhibit 116, para 39.

184 Exhibit 63, Volume 8, at page 320.

185 Exhibit 63, Volume 8, at page 321.

186 Exhibit 63, Volume 9, at page 141.

187 Exhibit 63, Volume 8, at page 314.

188 Exhibit 63, Volume 9, at page 115.

189 Exhibit 63, Volume 9, at pages 125-126.

190 Exhibit 63, Volume 9, at page 127.

191 Exhibit 63, Volume 9, at page 141.

192 Exhibit 63, Volume 9, at pages 125-126.

193 T28-8, L28-31 (Natalie MacDonald); T28-15, L29-32 (Natalie MacDonald); T28-34, L25-26 (Natalie MacDonald).

194 T28-22, L27-31 (Natalie MacDonald).

195 T28-6, L32-33 (Natalie MacDonald).

accepted that nowhere in the Change document was that made a requirement¹⁹⁶. Ms MacDonald did not trouble to familiarise herself with even the most basic documentation which informed the decision to enter into Change 184. She said she merely relied on what other more junior officers provided to her¹⁹⁷. She had no knowledge of the Changes which preceded 184, including the series of Changes which commenced with 129 and by which IBM had agreed to the “condition precedent”¹⁹⁸. It was a miscarriage of responsibility for Ms MacDonald not to have satisfied herself, at the very least, about these matters, and, more importantly, about the details of the Change she was asked to authorise, and which involved the payment of a very large sum of public money to IBM (well in excess of the original contract price) and that it would achieve the objects she thought it was designed to.

4.62 Change 184 did not resolve the uncertainties in scope and nor did it result in a Go Live on 6 November 2009. It failed to achieve the objects which were the bases upon which Ms MacDonald authorised it.

4.63 Change 184 was followed by at least 6 further Changes. Some were for additions to scope which arose because of legislative changes (Changes 210¹⁹⁹ and 220²⁰⁰ costing \$1.795M). Some were because of events which occurred after November 2009 (such as to accommodate new enterprise bargaining arrangements, see Changes 204²⁰¹, 206²⁰² which cost \$1,581,200 in total). Changes of these kinds were mostly known to the State at the time it entered into Change 184, but were postponed because the system was to have gone live before the need arose to make these adjustments.

4.64 Some Changes were for matters which were clearly ones which ought to have been resolved as part of the attempt to clarify scope:

- a. Change 202²⁰³ (costing \$1.85M) postponed the Go Live date from November 2009 to March 2010, perhaps, it seems, because the State had decided that going live close to Christmas time was undesirable²⁰⁴. Why the State could not have made that decision before Change 184 was entered into is unclear. If, as Mr Atzeni said²⁰⁵, it was undesirable to Go Live so close to Christmas, that would seem to be something which ought always to have been known and to have been factored into the negotiations about Change 184;
- b. Change 208 (which did not require any additional payment by the State), followed IBM issuing a delay notice, advising that it could not achieve provision of the complete Deployable Solution by the scheduled date of 18 December 2009²⁰⁶. The delay notice states the cause to be that one aspect of the criteria could not be achieved, namely no Severity 2 defects²⁰⁷. The notice went on to say that “[t]his has been caused by non resolution of defects by third parties, disagreement on the classification of items in QC [Quality Centre], timeframes for retesting, etc.” Change 208 “reviewed and amended” (both euphemisms for “relaxed”) deliverables and key milestones²⁰⁸. One clear example is the relaxation of the requirement that there be no Severity 2 defects when the system exited UAT, it being permissible from that time forward for such defects to be the subject of a “comprehensive management plan”²⁰⁹.

4.65 The volatility in the Project scope was highly unsatisfactory. It was a major contributor to the sharp increase in the price. It caused the quality of the system to be compromised. It produced great difficulty for IBM having to build and test a system which was in a state of flux.

4.66 The problems which were experienced with scope, which existed from the outset of the Project to the time it went live, were both avoidable and a not uncommon problem in Projects of this kind. IBM relied upon there having been completeness in the communication to it of QH business requirements. The State, on the other hand (principally Mr Atzeni), seems to have thought that IBM, having agreed to deliver a payroll solution, would be obliged to deliver one that paid staff and did so accurately, even if all QH’s requirements had not been communicated and found their way into the various scoping documents. This was folly on the part of those within the State who took that view.

196 T28-18, L21-44 (Natalie MacDonald).

197 T28-8, L15-19 (Natalie MacDonald); T28-20, L14-17 (Natalie MacDonald).

198 T28-20, L5-10 (Natalie MacDonald).

199 Exhibit 63, Volume 15, at pages 241-246.

200 Exhibit 113, para 155(f), Annexure 16.

201 Exhibit 63, Volume 12, at pages 135-139.

202 Exhibit 63, Volume 12, at pages 221-227.

203 Exhibit 63, Volume 12, at pages 72-98.

204 Exhibit 63, Volume 11, at page 229.

205 T31-57, L38-55 to T31-58, L1-14 (Damon Atzeni).

206 Exhibit 63, Volume 12, at pages 228-257.

207 Exhibit 63, Volume 12, at page 210.

208 Exhibit 63, Volume 12, at page 229.

209 Exhibit 63, Volume 12, at page 243.

- 4.67** The State had clear notice, as I show below, that its tenacious adherence to that view would, ultimately, be productive of great problems for it rather than IBM because it was the customer to whom the system would be delivered and which had the responsibility of paying staff.
- 4.68** Despite having had some considerable responsibility for scoping the Project (and been paid almost \$1M for doing so) and knowing that there existed a difference in view with the State as to how the Project was to be defined, IBM was content for scope to remain vague and to deal with that lack of clarity by relying upon and encouraging the State to vary the contract and its scope and to charge the State for those changes. IBM chose to leave scope uncertain and to “protect”²¹⁰ it because it suited its short-term commercial interests to do so.

IBM, commercially motivated as it was, had communicated the points beyond which further agreement would be required to be reached (and implying the need to pay more money). These points were not ones which would have resulted in a functional payroll system, and that is a matter which reflects poorly on IBM. But it had been sufficiently clear in stating these limitations. The State, however, ignored those statements and proceeded as if, whether it assisted or not, IBM would be both capable of delivering, and would be obliged to deliver, a functional payroll system.

- 4.69** IBM sought to set scope by preparing a Requirements Traceability Matrix (RTM)²¹¹. It is a document which defines each function to be implemented and the tests to cover those functions²¹². It also contains the business requirements which form the basis of the system as taken from the scope documents. Mr Campbell gave a good account of an RTM. He said²¹³:

... (each business) requirement ... has to be delivered. In normal project management practice each requirement is ... followed by a functional design which is the interpretation of the business requirement into a ... system requirement. The functional specification is then converted into a technical specification ... that the ... programmer uses to program the code to deliver that particular business requirement, and then the last part of that is there's a user acceptance test. In project management methodology there's a technique called 'requirements tractability matrix' which traces each requirement ... agreed by the customer all the way through functional design, technical design, user acceptance testing ... the particular business requirement has been delivered.

Mr Parkinson, the software testing expert engaged by IBM, defined the RTM as “a way of enabling you to track how much is changing and what [are] the priorities in which you need to test to achieve a certain level of coverage against the risk profile you're willing to accept”²¹⁴. A project of the size and complexity of the QH payroll system ought to have had an agreed clear RTM²¹⁵, and from the outset²¹⁶. Mr Campbell also explained that IBM used a project methodology, specific to it, called “Ascendant”. He described it²¹⁷:

The first phase of all ... methodologies, and ... ascendant ... in particular is that there is time set aside to undertake what is commonly called the business preparation phase ... a series of interactions with the customer so that the ... the vendor would understand completely what the requirements were, they would document those requirements by way of a business requirement and ... the customer would ... sign off that scope document which represents the business needs of the customer at that point in time.

- 4.70** IBM did not completely follow its Ascendant methodology. It was adapted, as Mr Prebble²¹⁸ explained:

Some of the detailed requirements gathering that would have been relevant in a greenfield implementation wasn't undertaken as there was a base which was the Department of Housing payroll system that we were building on, so the process was more around identifying the deltas between that system and Queensland Health's requirements as they explained them.

I understand “deltas” to be differences in code or data outputs.

210 T27-31, L51-56 to T27-32, L1-11 (Christopher Prebble).

211 Exhibit 105.

212 T24-20, L44-45 (Brett Cowan).

213 T18-17, L50-55 to T18-18, L1-L10 (Malcolm Campbell).

214 T36-55, L38-42 (Shane Parkinson).

215 T18-39, L2-15 (Malcolm Campbell); T24-20, L39-41 (Brett Cowan); T26-7, L9-14 (John Gower), T30-54, L31-34 (Dr David Manfield).

216 T24-21, L1-5 (Brett Cowan).

217 T18-17, L37-45 (Malcolm Campbell).

218 T27-5, L9-15 (Christopher Prebble).

- 4.71** But the RTM here was never agreed. The document was controversial²¹⁹. During the debates between IBM, CorpTech and QH over whether defects discovered in UAT were functional defects or missed business requirements, Mr Campbell asked to see the RTM as a means of settling the dispute. Mr Gower said that none existed but, Mr Campbell said, “to his credit ... he [Mr Gower] did endeavour to retrofit some type of traceability matrix to make that discussion between IBM and QH more productive, but it was really after the event”²²⁰.
- 4.72** QH said that it was not a representation of the full business requirements²²¹. IBM urged the State to accept it. In the Quality Assurance Position Papers of July 2009, the Steering Committee Members were told, “IBM continues to push for a requirements traceability matrix and they wish to make it entry criterion for UAT as a means of forcing QH to sign acceptance of the document that they produce”²²². Even the name of that document, IBM said, could not be agreed. There was some suggestion that, in July 2009, that IBM had renamed the document the Test Requirements Matrix²²³. Mr Doak says the document was so controversial that it came to be called (by him at least) “The Apple”²²⁴.
- 4.73** There are reasons why the State was reluctant to accept IBM’s RTM. As I point out below in the context of UAT, there was a realisation by both parties in mid-2009 that the system which would have resulted from the scope documents as formally submitted and agreed would not have functioned properly, in the sense of not paying staff or not paying them correctly²²⁵. I point to mid-2009 as the relevant date because that is the time by which IBM accepted responsibility for fixing defects which affected pay; something quite different from the way in which the scope documents defined the system. Had the State accepted IBM’s RTM, it would also have been accepting the incomplete scope which had earlier been set by reference to the seriously deficient communication of QH’s business requirements. That, while perhaps not consistent with where the State stood given its acceptance of the deliverables defining scope²²⁶, was explicable on more practical grounds.

Findings

- 4.74** The scope of the system was inadequately defined. Had the system as originally scoped been delivered, it would have failed entirely to function as any payroll system might reasonably be expected to function. That fact was known to IBM who, through the assumptions it enumerated in SOW 8 and the “issues” it listed in the QHIC Scope Definition, notified the State that changes to scope were likely to be required. Some of the State representatives, however, considered that the scope documents were to some extent beside the point because of IBM’s promise to deliver a payroll system that was “stable, supported and supportable”²²⁷.
- 4.75** The submissions on behalf of the State accept that “it would have been safer to insist upon agreement on scope before allowing further development to proceed” and that the State “could have exercised greater authority in this regard.” Despite this, it was submitted that “IBM’s preparedness to proceed would have been a powerful sign to those responsible for the State’s involvement that it was safe to proceed”²²⁸.

What is uncommon here is that, despite the problem being a known area of risk, the parties, both experienced in supplying and purchasing large IT systems respectively, were content to proceed notwithstanding they both had very different views as to scope. They thus ignored an area of risk which was known to them and one which they ought to have done more to resolve.

- 4.76** For the State representatives to take such a view was unjustified and grossly negligent. IBM, commercially motivated as it was, had communicated the points beyond which further agreement would be required to be reached (and implying the need to pay more money). These points were not ones which would have resulted in a functional payroll system, and that is a matter which reflects poorly on IBM. But it had been sufficiently clear in stating these limitations. The State, however, ignored those statements and

219 T25-4, L43-45 (Bill Doak); T26-7, L24-31 (John Gower).

220 T18-77, L45-49 (Malcolm Campbell).

221 Exhibit 63, Volume 9, at page 322.

222 Exhibit 63, Volume 9, at page 274.

223 Exhibit 63, Volume 9, at page 274.

224 T25-4, L53 (Bill Doak).

225 T24-108, L28-L36 (Bill Doak).

226 SOW 8 Exhibit 63, Volume 4, at pages 15-40; the QHIC Scope Definition Exhibit 63, Volume 4, at pages 63-203; Exhibit 72; the Project Execution Plan Exhibit 63, Volume 4, at pages 204-227.

227 T30-28, L36-38 (Jane Stewart); was taken to the Project Execution Plan which stated “Essentially a risk mitigation project, the interim solution will provide a stable, supported and supportable HR/Payroll solution to [QH]. Exhibit 63, Volume 4, at page 210; Exhibit 63, Volume 8, at page 180.

228 Submissions on behalf of the State of Queensland, undated (Contract), paras 57-58.

proceeded as if, whether it assisted or not, IBM would be both capable of delivering, and would be obliged to deliver, a functional payroll system. Both of those assumptions were wrong. They are based, I think, on a fundamental misconception that, by appointing a prime contractor, the State had no responsibility to ensure the system was designed and built properly.

- 4.77** The genesis of many of these problems was the rushed scoping exercise. A total of about one month was allowed for this to occur. That, on any view, was too short. Mr Thatcher, Chief Information Officer of Mater Misericordiae Health Services, explained that in a recent successful HR roll out which he oversaw not only did the scoping exercise take three years, it was accompanied by considerable focus and discipline in deciding the “target state” that the organisation wished to achieve²²⁹. Here, the parties had not only to arrive at a scope, but in the process of doing so had to make hard judgments about what was and was not to be required as part of a system which was to be both interim and have minimal functionality.
- 4.78** IBM characterised the problems with the Project’s scope as being a failure by the State to adhere to the agreed scope, and not any failure by IBM to define and obtain agreement upon it²³⁰. To do so gives an overly narrow construction to IBM’s obligations. Scope had not, at least so far as the open issues were concerned, been agreed. It also leaves out of account IBM’s role as both Prime Contractor and Project Manager, and the very real interest it ought to have shown in ensuring that the Project scope would result in a payroll system which operated as any such system ought; to pay staff and do so accurately.
- 4.79** Scope, having had this very unsatisfactory beginning, remained ill-defined, volatile and unclear. Neither party took any effective measures to define and stabilise scope at any time during the Project. IBM seemed content to have defined scope in a way which it must have known could not result in a functional payroll system and to rely, whenever challenged, on the text of the QHIC Scope Definition. Its task was to gather requirements. It did so incompletely, relying on its obligation to do so stopping short of being responsible for eliciting such requirements from its customer. The State, on the other hand, was recalcitrant in adopting a less than diligent approach to ascertaining and communicating its business requirements to IBM. It regarded IBM as responsible for eliciting requirements from it, and considered instead IBM’s obligation to deliver the project to be for a “stable, supported and supportable” system²³¹. In short, the State assumed it had contracted for, and would get, a system which paid staff accurately, perhaps with some manual intervention, but, largely, to do so in an automated way. IBM considered its obligation, subject to some matters set out below, to be to deliver the system which would follow (and no matter what it looked like as a result) from a strict application of the QHIC Scope Definition.
- 4.80** Uncertainties as to scope are not uncommon problems in IT contracts. What is uncommon here is that, despite the problem being a known area of risk, the parties, both experienced in supplying and purchasing large IT systems respectively, were content to proceed notwithstanding they both had very different views as to scope. They thus ignored an area of risk which was known to them and one which they ought to have done more to resolve.

5. The Deficient System and the Opportunities to Redress it

- 5.1** I have mentioned above that both parties knew before completion of the Project that the system would, without some major reconsideration of it, fail to pay staff, or do so in a seriously inaccurate way. Neither party followed basic project management principles by insisting that the Project be reset or by taking other effective measures to rectify problems which remained with the system until after Go Live.
- 5.2** The State relied upon assertions from IBM that it would correct all defects which affected the correctness of a pay, ignored clear warnings before Go Live that the system, once implemented, would in all likelihood cause pays to be incorrect, and that defects existed which had not then been identified but which were likely to be major.
- 5.3** The State decided to Go Live with the system having chosen to manage such defects, postpone others and to ignore those defects not yet identified. It did so because, partly through its own fault and partly through that of IBM, the system had taken so long to implement that it was left with no choice but to Go Live with a system of poor quality because of the real possibility that the ageing LATTICE system would fail.

229 T31-18, L31-56 to T31-19, L1-13 (Malcolm Thatcher); Exhibit 129, para 4.

230 Submissions on behalf of IBM Australia Ltd, 7 July 2013, paras 264, 330.

231 T30-28, L36-38 (Jane Stewart).

- 5.4** These conclusions emerged from the consideration of the matters set out below, each of which was the subject of written and oral evidence and the subject of written submissions from those parties who had been given leave to appear.
- 5.5** IBM conceded there were “bugs” after Go Live in the computer system which it had designed and built²³². It submitted, however, that there is no direct or reliable evidence that the cause of any problems which were experienced in staff being paid and being paid accurately were the result of “coding” (ie programming) errors (accepting, as it must, that liability for such problems must lie with IBM)²³³. It submits that there is “overwhelming evidence” that the causes of the failure accurately to pay staff were “non-system” issues²³⁴. I reject those submissions so far as they suggest that it was non-system issues only which caused the problems with the system paying staff. The evidence of Mr Cowan and Ms Stewart in particular, being evidence which I would accept for the reasons I give below, is that the system which IBM had designed and built itself contributed materially to the failure of staff to be paid and to be paid accurately after Go Live. This is not to suggest that there were not other “non-system” problems, but that the system issues were a material contributor to the system’s post-Go Live problems.
- 5.6** There were several points in the Project which ought to have been a warning to both parties of serious deficiencies in the system. Those points were ones which the State gave up opportunities, if not to bring SOW 8 to an end, to reset the scope of the Project and ensure the system would function as a payroll system ought. My main focus is on the State for present purposes because it was the customer, and the party with the pressing self-interest in seeing that the system which it received and paid for did the job it was required to, namely paying staff.
- 5.7** The points upon which I focus for present purposes are:
- the system’s entry into and exit from UAT (and especially Phase 4 of it) (UAT4);
 - systems and systems integration testing;
 - the decision by the State, in or about January 2009, not to enter into any new Statements of Work with IBM under the contract;
 - upon the system failing the payroll performance testing for which Changes 129, 174, 177 and 179 provided.

User Acceptance Testing

- 5.8** There were four phases of UAT. QH engaged KJ Ross and Associates, a software verification and validation consulting firm, to conduct that testing. The purpose of it was as Mr Cowan (the KJ Ross test manager) said in his 27 January 2010 report (“Final UAT Report”)²³⁵:
- User Acceptance Testing is designed to be a significant element of the acceptance and handover of a built system to the end users and business owners. It is not designed to provide complete coverage of functionality, nor can it give a comprehensive indication of the risk involved with deploying a system. It should, as a side effect, give a good insight into the quality of system Requirements and the quality of system & Integration Testing which happened in a prior phase of the project.*
- 5.9** Phase 1 of UAT commenced in January 2009²³⁶. Phase 2 commenced on 27 January 2009. Its start was delayed because some testing was still being executed. That phase ran until 9 April 2009, despite being scheduled to finish in mid-February. The finance functionality had not, at that stage, been built, so a separate UAT was required for those components²³⁷.
- 5.10** The third phase of UAT began on 6 May 2009 and were planned to run until 26 June 2009. It ran in fact until 17 August 2009. At that point it was stopped. 691 major (Severity 2) defects were identified in that Phase, and 1003 defects in all²³⁸.
- 5.11** The fourth and last phase of UAT commenced 3 September 2009 and was planned to run until 5 October 2009. Again, a large number of defects were identified: some 805 major defects, 14 “showstoppers” and 1007 in all²³⁹.

²³² Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 7.

²³³ Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 6.

²³⁴ Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 13(g).

²³⁵ Exhibit 63, Volume 13, at page 288.

²³⁶ Exhibit 63, Volume 13, at page 289.

²³⁷ Exhibit 63, Volume 13, at page 289.

²³⁸ Exhibit 63, Volume 13, at page 289.

²³⁹ Exhibit 63, Volume 13, at page 290.

5.12 In the four phases of UAT, 2,422 defects were in total identified²⁴⁰. Although IBM urged that sheer numbers of this kind are irrelevant and misleading and one should focus instead on the nature of the defects, those contentions can be disposed of²⁴¹. As Mr Cowan explained, sheer numbers can indeed be as reliable an indication of system problems of a significant kind, particularly when one is speaking of the orders of magnitude as is the case here. Mr Cowan said, for example, in his oral evidence, that 75 per cent of the defects were “true defects”²⁴² and that he had concerns with the large number of defects²⁴³. Dr Manfield agreed. In his report²⁴⁴ he said, in effect, that the number of defects was an issue, even leaving aside how they were to be treated.

5.13 The identification of these defects was not, in any event, done without regard to their nature and severity. The Master Test Plan²⁴⁵ and UAT test plans²⁴⁶ had stated criteria by which defects were to be categorised²⁴⁷:

Severity	Description
1 - Showstopper	<ul style="list-style-type: none"> The entire application, component or function will not work, and no bypass is available. Testing cannot proceed. Major impact to testing schedule. A Severity 1 defect must be addressed as a matter of the highest priority.
2 – Major	<ul style="list-style-type: none"> Major component or function will not work. Testing is severely impacted, but can proceed. Payroll results are incorrect – e.g. a Payrule in Workbrain is incorrect. Major impact to testing schedule. A Severity 2 defect must be addressed as a high priority.
3 – Minor	<ul style="list-style-type: none"> A minor portion of the application, component or function will not work, but a workaround is available. Testing is impacted, but can proceed. Minor impact to testing schedule. A Severity 4 (sic) defect should be addressed prior to release or have a remediation action plan.
4 - Cosmetic	<ul style="list-style-type: none"> Cosmetic or minimal impact. Spelling or format error on internal report – no material impact on client. Inconsistency of formatting. Alignment of fields on a page. Cosmetic or minimal impact. A Severity 4 defect should be fixed when practicable. No impact to Test Schedule.

5.14 Those criteria, for Severity 2 defects, were later elaborated upon²⁴⁸. Moreover, many Severity 2 defects were dealt with on an ad hoc basis and on one occasion at least, IBM was paid specifically to correct them (Change 194²⁴⁹). Many defects were downgraded from Severity 2 to Severity 3²⁵⁰. There were several levels at which such defects were classified and reclassified by agreement between the parties, including the daily defect meetings in the later stages of UAT4.

5.15 On any view, the results of UAT showed the system to be suffering very serious problems. Mr Cowan said in his Final UAT Report that the State had two options available to it²⁵¹:

- Delay the rollout of the system into production until a full System and Integration Test is conducted. ... The risk inherent in this option is the appetite of the government for delay, but the risk of system issues in production would be greatly reduced.*

240 Exhibit 63, Volume 13, at page 305.

241 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 139.

242 T24-62, L45-47 (Brett Cowan).

243 T24-64, L4-21 (Brett Cowan).

244 Exhibit 123, at page 6, L26-27.

245 Exhibit 63, Volume 8, at page 291-43.

246 Exhibit 63, Volume 5, at page 258.

247 Criteria from Master Test Plan, Exhibit 63, Volume 8, at page 291-43 (emphasis original).

248 Exhibit 81.

249 Exhibit 63, Volume 9, at pages 84-88.

250 See, as examples, Exhibit 63, Volume 9, at page 320.

251 Exhibit 63, Volume 13, at page 287.

2. *Accept the risk that the functional scenarios not touched by the UAT will not perform as expected and that the defects discovered will need to be fixed in Production. The risk inherent in this option is that the defects discovered may be so many and/or so complex that they cannot be appropriately managed in a timely manner in production. With the state of the system as revealed by UAT, we can only say that there will be many issues in production, but not give any indication of how large that number will be, nor their impact on the productive system. A true System and Integration Test would be able to give a better insight into this risk (as per option 1).*
- 5.16 Dr Manfield said of Mr Cowan's Final UAT Report²⁵²:
- I haven't seen such an unequivocal sign of distress in a project.*
- 5.17 This was an opinion on which Dr Manfield was not challenged by any party in the oral examination of him.
- 5.18 There could have been no clearer warning of the functional deficiencies in the system and the real risk of there being defects beyond the very large number which Mr Cowan had to that date detected. Had there been any doubt up until this point, Mr Cowan's Final UAT Report put the matter beyond doubt. One does not need to have any technical knowledge to take from that report a very clear warning that, if the system proceeded to Go Live in its then state, there was a real likelihood, indeed perhaps an inevitability, that it would contain defects of a functional kind.
- 5.19 UAT was a QHEST deliverable²⁵³. Criteria were set for the system entering and exiting UAT. This, the Commission heard, is standard project management practice, the purpose being that the criteria are set in advance so that decisions as to whether the system ought to proceed to the next stage or "gate" are not made pragmatically and in response to pressing demands.
- 5.20 A memorandum written by Ms Jones early in the Project explained the importance of these criteria²⁵⁴. She said testing arrangements of this kind were to provide assurance that²⁵⁵:
- [I]mplementation issues which may arise can be managed and assurance can be demonstrated at each testing gate that the system implementation outcome will provide continuity of payroll services ...*
- and
- Queensland Health provides senior managers and unions with the assurance that the new systems will not be commissioned into production without testing assurance that payment outcomes meet minimum integrity measures and that future payments will be produced and correct to a reasonable level **similar to, or improved on, current outcomes of the legacy HR systems.** [emphasis added]*
- 5.21 I have emphasised some words in the preceding quote because they show an expectation or assumption that the system would be no less automated or functional than the system which it was to replace. That is inherent in the concept of a "replacement" solution. IBM, in its submissions, sought to equate the LATTICE system to the Interim Solution by pointing to need in the former to make manual adjustments and effect workarounds²⁵⁶. The obstacle which such a submission faces is that nowhere in the scoping documents is this made clear. And the evidence suggests to the contrary: it was only in the period immediately preceding Go Live that the parties prepared the Defect Management Plan whose purpose it was to record the manual adjustments and workarounds (among other things). Pragmatism - not scope definition - motivated its preparation.
- 5.22 Two documents were produced which defined the testing regime and the thresholds to be met. The first was the Master Test Plan. Developing a test strategy was an accountability of IBM under SOW 8 as initially cast²⁵⁷. It became a deliverable of IBM under SOW 8 version 1.2 (attached to Change 60)²⁵⁸. QHEST had responsibility for "UAT strategy and approach"²⁵⁹.
- 5.23 The Master Test Plan stated that there would be UAT Entry (and Exit) Criteria defined in the QHEST Test Plan LATTICE and ESP Replacement Solution UAT²⁶⁰.

252 T30-51, L34-39 (Dr David Manfield).

253 Exhibit 63, Volume 5, at page 95-13.

254 Exhibit 63, Volume 4, at page 275-1.

255 Exhibit 63, Volume 4, at page 275-1.

256 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), paras 81 and 82.

257 Exhibit 63, Volume 4, at page 24.

258 Exhibit 63, Volume 5, at page 95-13.

259 Exhibit 63, Volume 5, at page 95-16.

260 Exhibit 63, Volume 8, at pages 291-35, 291-36.

5.24 The QHEST Test Plan prescribed those criteria to be, for entry²⁶¹:

All Severity 1 and Severity 2 defects resolved from Unit and System Testing.

5.25 The exit criteria were²⁶²:

All Severity 1 and Severity 2 defects from UAT or concurrently executed test phases have been resolved.

There could have been no clearer warning of the functional deficiencies in the system and the real risk of there being defects beyond the very large number which Mr Cowan had to that date detected. Had there been any doubt up until this point, Mr Cowan's Final UAT Report put the matter beyond doubt.

5.26 The entry criteria were not met. When the system entered UAT3 in May 2009, it had numerous Severity 2 defects²⁶³. It is simply wrong for IBM to submit that it presented for UAT a system free of Severity 2 defects²⁶⁴. Whether those “problems” were defects in the sense of being functional problems which were within scope for IBM to fix is for present purposes beside the point. The fact is that the system proceeded through this “gate” without these defects first being resolved or there being agreement about the way in which such problems with the system were to be treated in the future as between the parties. It is another example of the parties failing to take effective measures to rectify obvious problems which had emerged, and permitting, notwithstanding that, the system to proceed to the next stage of its implementation. When the system entered UAT4 in September 2009²⁶⁵, again the entry criteria were not met. The Project Directorate agreed to permit the system to enter UAT4 with it having 11 Severity 2 defects outstanding²⁶⁶. A review of the Project undertaken by SAP in September 2009 concluded that there were serious concerns with quality, stability and operational readiness of the solution and that that situation had been caused “primarily” by factors which included²⁶⁷:

Entry into UAT did not technically satisfy UAT entry criteria – concessions were made (such as downgrading Severity 1 issues to Severity 3 – P0 & P1) to facilitate progression into UAT4.

5.27 As Mr Cowan observed in his Final UAT Report²⁶⁸:

The entry and exit criteria were defined prior to starting UAT4. Through the process of execution of UAT4, the exit criteria were amended based on agreement within the Project Board (minutes can be sourced as required).

5.28 Just as the entry criteria were ignored or their thresholds lowered, so too were the exit criteria.

5.29 Until 24 December 2009, the UAT exit criteria were as the Master Test Plan had prescribed. Change 208 both effected a change to those criteria (by lowering them) and deeming the system to have passed. The new criteria which replaced the requirement that there be no Severity 1 or Severity 2 defects were²⁶⁹:

No Severity 1 defects and a comprehensive management plan for Severity 2, 3 and 4 defects.

5.30 Without such an alteration, the system could not have exited UAT4 while it displayed Severity 2 defects. Many Severity 2 defects remained. As recorded above, Mr Cowan noted in his Final UAT Report some 26 known Severity 1 and 2 defects then existed²⁷⁰.

5.31 The parties made decisions which permitted the system to enter and exit UAT in spite of the criteria which they had imposed at the outset with the intention they be adhered to. They did so also by downgrading the severity by which defects had been classified. One example of this was evidenced by a “Briefing” which Mr James Brown and Ms Berenyi sent to Ms MacDonald on or about 27 July 2009²⁷¹. In it, they said:

261 Exhibit 63, Volume 5, at page 247.

262 Exhibit 63, Volume 5, at page 247.

263 Exhibit 63, Volume 9, at pages 61-63.

264 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 145.

265 Exhibit 63, Volume 13, at page 290.

266 Exhibit 63, Volume 10, at page 79.

267 Exhibit 63, Volume 10, at page 241.

268 Exhibit 63, Volume 13, at page 294.

269 Exhibit 63, Volume 12, at page 243.

270 Exhibit 63, Volume 13, at page 304.

271 Exhibit 63, Volume 9, at page 320.

- *The project is currently within the second phase of User Acceptance Testing Phase with a key milestone scheduled for 31 July 2009: Entry into User Acceptance Testing (End to End). The agreed condition for milestone to be met is that there are no Severity 1 or Severity 2 errors or as determined by the Project Board*
- *Queensland Health, IBM and CorpTech have reviewed the Severity 2 defects and have agreed that a number be reclassified to Severity 3, Priority 0 classification. This will allow IBM to concentrate on the priority Severity 2 defects for UAT, and then to have the Severity 3 Priority 0 defects rectified as an exit criteria for UAT.*

5.32 The memorandum records no justification for downgrading these defects, beyond asserting that there has been agreement that the reclassification can occur, and in the context of UAT. Nor could Mr James Brown provide any convincing justification for his having recommended this course when asked about it in his oral examination²⁷²:

Counsel Assisting: And what were the reasons that you reclassified these?

Answer: I didn't reclassify these; this was the working party that was assigned to review those errors within Queensland Health and then this - - -

Commissioner: But you must have been satisfied?

Answer: Oh, sorry.

Commissioner: You must have been satisfied that these reclassifications should occur. What made you satisfied?

Mr Brown: I was satisfied by the participation of the individuals and the working group that assessed the business impact on those errors and came up with a different assessment.

5.33 Mr James Brown ought to have interested himself in the important act of reclassifying these defects, an act which bore directly upon the extent to which the system would be likely to be functional after Go Live and which concerned a protection put in place to ensure that the system did not proceed without meeting pre-set standards.

5.34 The disregard which both parties exhibited towards the thresholds which they themselves had established is shown most clearly by the minutes of a meeting of the QHIC Project Board on 12 May 2009, which records as follows²⁷³:

It was agreed by the Board to disregard all current language – eg severities, defects, buckets, etc. Issues relating to the project will now be referred to as a Go-Live problem or resolution is not necessary prior to Go-Live. The Project Directorate are to define what at this stage is a Go-Live problem and what is not. Michael stated that the Project Directorate should be informing the Board what the requirements for go live are.

5.35 Mr James Brown, when asked about these matters, said that this was a way of “simplifying the language around the multiple definitions that people had for errors”²⁷⁴. I reject that evidence. If the desire were to correct looseness in language which had occurred, then it would have been a simple task to direct those people to the Master Test Plan which set out the criteria by which to classify defects and stated the entry and exit criteria for the various test stages. This, however, was not done and it was because, as other witnesses accepted, of the pragmatic approach which was being adopted²⁷⁵. Mr Gower’s description of what happened was that²⁷⁶:

... [G]iven the ongoing discussions about defects, requirements etc the Board said “let’s just focus on what is required and what is necessary ... to avoid ... the difficulty of ... things which had proved intractable as between the parties”.

5.36 Dr Manfield stated it to be generally acceptable within project methodology to change the Severity rating of a defect provided it is well documented and considered by the Project Board²⁷⁷. He considered downgrading a defect in combination with an alternative resolution, such as a workaround, to be, generally speaking, acceptable, but did note that “in the end there is still a defect which has to be fixed”²⁷⁸. There is good reason why, he said,

272 T19-20, L1-13 (James Brown).

273 Exhibit 63, Volume 9, at page 82.

274 T19-25, L26-28 (James Brown).

275 T21-89, L12-15 (Michael Kalimnios); T24-108, L33-34 (Bill Doak); T24-112, L54-56 (Bill Doak); T27-59, L26-40 (Margaret Berenyi); T27-61, L24-36 (Margaret Berenyi); T20-21, L1-17 (Janette Jones).

276 T26-15, L46-55 to T26-16, L10-12 (John Gower).

277 Exhibit 123, at page 11, L16-20.

278 Exhibit 123, at page 6, L23-24; T30-73, L14-53 (Dr David Manfield).

Severity criteria are defined up front, and that “any change is a signal for caution”²⁷⁹, but that, in a project of this size, it was a cause of “great concern”²⁸⁰. The evidence of Mr Cowan was consistent with Dr Manfield’s opinions²⁸¹.

- 5.37** Dr Manfield was critical in his report of the “wholesale treatment of entry and exit conditions”²⁸² and of the State’s decision to “lower the bar for testing”²⁸³. His criticisms are well-directed. Had these decisions not been taken, the system would never have been allowed to proceed to Go Live in its seriously deficient state.
- 5.38** These matters need not be explored in greater detail. Most of the relevant witnesses accepted that they had either acted pragmatically about these matters²⁸⁴ or had made decisions about them in order to meet the schedule of the Project²⁸⁵.
- 5.39** IBM sought to discredit Mr Cowan’s Final UAT Report and the oral evidence which he gave. Two statements of IBM staff (Mr Kwiatkowski²⁸⁶ and Mr Dymock²⁸⁷) and a report of an expert tester, Mr Parkinson²⁸⁸, were provided to the Commission on 4 June 2013, after public hearings had finished. They were delivered at this late stage despite Mr Cowan’s statement having been served on IBM some 7 weeks earlier, on 16 April 2013²⁸⁹ and him having given oral evidence on 2 May 2013. No explanation was offered by IBM for this delay. Mr Parkinson was only instructed to prepare a report on 17 May 2013²⁹⁰. Mr Kwiatkowski had been asked to give a statement in March, but he did not finalise it until shortly before 4 June 2013²⁹¹. He was not asked, however, before June, to finalise it²⁹². Mr Dymock was only asked to prepare a statement in early to mid-May²⁹³. If IBM had wanted to challenge Mr Cowan’s evidence, there was opportunity to do so when he gave evidence in May. The delay was unexplained.

The parties made decisions which permitted the system to enter and exit UAT in spite of the criteria which they had imposed at the outset with the intention they be adhered to. They did so also by downgrading the severity by which defects had been classified.

- 5.40** Having received this further material, it became necessary for the Commission to resume public hearings to permit the examination of Messrs Parkinson, Kwiatkowski and Dymock and to give Mr Cowan an opportunity respond to it. Hearings resumed for one day on 18 June 2013 to permit this to occur.
- 5.41** I set out below some of the main challenges sought to be made to Mr Cowan’s evidence and the reasons why I found those challenges to be of no material effect upon his professionalism, his thoroughness, the analysis he undertook and supervised as part of Phase 4 of UAT and the opinions he expressed in his Final UAT Report.
- 5.42** Mr Parkinson, like Mr Cowan, was an expert in the field of testing. He too had experience working in large organisations with a reliance upon information technology, including, most recently, as Head of Testing for News Limited²⁹⁴. He had no involvement whatsoever in the system. IBM had provided him with very limited documentation: he had seen, relevantly, the Final UAT Report, the evidence of Mr Cowan (written and oral), the report of Dr Manfield and a transcript of his oral evidence²⁹⁵. He had not been provided with Mr Cowan’s daily or weekly summaries of UAT results²⁹⁶, or the other reports which Mr Cowan had written²⁹⁷. He accepted that it was “unhelpful” to offer the view he did on the basis that there may be documents that testers brought into existence which would explain this but for him not to have them²⁹⁸. The views he expressed were ones which resulted

279 Exhibit 123, at page 6, 21-23.

280 T30-50, L39-42 (Dr David Manfield).

281 T24-11, L30-56 (Brett Cowan); T24-33, L19-55 to T24-34, L1-3 (Brett Cowan).

282 Exhibit 123, at page 11, L18-20.

283 Exhibit 123, at page 10, L28.

284 T21-89, L12-15 (Michael Kalimnios); T24-108, L33-34; T24-112, L54-56 (Bill Doak); T26-15, L46-55 (John Gower); T27-59 L26-40 (Margaret Berenyi); T27-61, L24-36 (Margaret Berenyi); T20-21, L1 to 15 (Janette Jones).

285 T20-92, L20-22 (Mr Price); T28-30, L34-42 (Natalie MacDonald).

286 Exhibit 164.

287 Exhibit 163.

288 Exhibit 165.

289 Exhibit 168.

290 Exhibit 165, at pages 21-25.

291 T36-7, L10-20 (Nickolas Kwiatkowski).

292 T36-7, L17-18 (Nickolas Kwiatkowski).

293 T36-63, L30-31 (Mark Dymock).

294 T36-41, L14-20 (Shane Parkinson).

295 Exhibit 165, at page 1.

296 T36-43, L52-53 (Shane Parkinson).

297 T36-43, L47-49 (Shane Parkinson).

298 T36-48, L48-51 (Shane Parkinson).

from the theoretical questions asked of him, and so he responded by saying how, from a theoretical perspective testing ought to be approached. He said²⁹⁹:

... the questions that were posed to me, they were posed to me from a theory perspective in terms of how you would approach testing around some of those issues those questions presented, and so I answered those questions based on that presentation of those questions.

- 5.43** Except to the limited extent Mr Parkinson's evidence is useful to understand the theoretical standards to which UAT might aspire, I did not find his evidence to be of assistance. His lack of any detailed knowledge of the system and, more importantly, the task which Mr Cowan actually undertook, meant that he was unable to say whether the analysis Mr Cowan had done, the testing which he supervised or the views Mr Cowan expressed in his Final UAT Report were reasonable and reliable. Mr Parkinson, quite correctly, accepted this in saying that he would not substitute his view, given the limited information available to him and the fact that tester (here, Mr Cowan) was more immersed in the nuances of the testing regime, for that of Mr Cowan³⁰⁰. No part of Mr Parkinson's evidence offers any basis to criticise any of Mr Cowan's views or the testing regime over which he presided.

Mr Kwiatkowski

- 5.44** Mr Kwiatkowski joined IBM straight after completing his university training. His involvement with the Interim Solution was having "worked... [on] aspects of [it]" from about June 2008 until after Go Live³⁰¹. But he was not full time on the Interim Solution. He worked also on the SSP³⁰² and, as he explained in his oral evidence, he started "rolling off" the Project in February 2010³⁰³. He returned full time for limited periods: including in March/April to oversee, as he described it, some of the "performance management [issues with] the Workbrain application" and again in June to conduct a stabilisation performance review³⁰⁴.
- 5.45** In his statement, Mr Kwiatkowski accepted there had been "integration issues" in the system, but which he characterised as minor³⁰⁵. He said that the State had choices as to the integration method which was to be adopted. IBM recommended a message-based system but the State chose to stay with the one it was then using (known as comma separated variables (CSV))³⁰⁶. He sought in his statement to characterise this choice as something which showed the State had "responsibility" for integration method, despite the identification of potential difficulties by IBM³⁰⁷. The point leads nowhere. He accepted in his oral evidence that it was open to the State to continue to use its method of comma separated variables, that IBM had never told the State it ought not use it, and that it was, in effect, a matter of choice which was open to it³⁰⁸. It did not seem to me to be any answer to there having existed integration problems, or a basis to say that they were the fault of the State. Nowhere in his statement or in his oral evidence did he say so.
- 5.46** Mr Kwiatkowski had some involvement with UAT, but not, it seems, any close involvement. His involvement was not close enough, for example, to have been provided with a copy of the Final UAT Report³⁰⁹. He did not have responsibility, he accepted, for anything which that report threw up at that time³¹⁰. He had some responsibility for some of the UAT criteria, responsibility for involvement in the outcomes of UAT, he said, but that was more technical and not really the outcome of the UAT testing itself³¹¹. His evidence too, therefore, is of limited value given his lack of involvement in the work which Mr Cowan undertook at the time. For that reason, I need mention only briefly the criticisms he makes of the Final UAT Report, having seen it, as he told the Commission when he gave oral evidence, for the first time only "recently"³¹².
- 5.47** He said that problems were experienced in the test data used in UAT, that defects had been identified which were "false defects", that there was a lack of detailed scripts and that the UAT test planning was deficient³¹³. He said that Mr Cowan had focused too narrowly on the number of defects and paid no or insufficient regard to the context in which those defects arose or how the business would use the solution³¹⁴. None of these assertions is any basis to impugn the Final UAT Report or the work which Mr Cowan undertook before preparing it.

299 T36-44, L10-15 (Shane Parkinson).

300 T36-54, L50-56 to T36-55, L1-2 (Shane Parkinson).

301 Exhibit 164, para 1.

302 Exhibit 164, para 1.

303 T36-6, L35-38 (Nickolas Kwiatkowski).

304 T36-6, L45-50 (Nickolas Kwiatkowski).

305 Exhibit 164, para 25.

306 T36-9, L22-38 (Nickolas Kwiatkowski); note in Exhibit 164, paras 32 and 33 CSV is defined as "Comma Separated Value".

307 Exhibit 164, para 43.

308 T36-9, L31-56 to T36-10, L1-14 (Nickolas Kwiatkowski).

309 T36-23, L40-50 (Nickolas Kwiatkowski).

310 T36-23, L44-45 (Nickolas Kwiatkowski).

311 T36-23, L47-57 (Nickolas Kwiatkowski).

312 T36-23, L35-40 (Nickolas Kwiatkowski).

313 Exhibit 164, paras 99-114.

314 Exhibit 164, para 127.

5.48 Mr Cowan took into account the false and duplicate defects: he readily accepted that such defects had been identified³¹⁵. He thought that there were more than a trivial number – in the order of 20 per cent³¹⁶. He thus factored into his assessment that just under a quarter of the defects were ones which ought not to be treated as such. As to test scripts, and the detail and accuracy of them, Mr Cowan explained that subject matter experts assisted in the preparation and running of them³¹⁷. This accorded with Mr Parkinson’s theoretical statement of the testing process. He agreed that such people are an “extra way” in which scripts can be verified for their accuracy from a business point of view³¹⁸. He went on to say³¹⁹:

So to be quite honest, business SMEs are better used to verify the business rules, which in your case... [is] the award, ... and it’s those business rules that need to be validated.

5.49 Mr Kwiatkowski’s limited involvement in UAT is no doubt a reason why he was not aware of these matters when he gave his evidence. His criticisms, so far as they can be regarded as such rather than merely as his own observations about the documents, having been provided only recently with the Final UAT Report, are, I find, uninformed by both the theory of which Mr Parkinson gave evidence and the actual work undertaken by Mr Cowan in his execution of UAT.

Mr Dymock

5.50 Mr Dymock too dealt with the topic of UAT in his statement³²⁰. He pointed out that there was a range of possible explanations for the defects which Mr Cowan had identified, one of which was that the defects were true or valid, and the others being that they were incorrectly raised, by reason of incorrect data, duplicate defects, and items that, in truth, were new requirements³²¹. At no stage did Mr Dymock suggest, either in his oral evidence or in his statement, that all or most of the defects which Mr Cowan had identified in his Final UAT Report were not valid ones. He said that about 24 per cent of the Severity 2 defects identified during all rounds of UAT were duplicates, “no defects” or were not reproducible³²². This was about the same as Mr Cowan’s own estimate of the defects which were within this category, as I have mentioned above.

5.51 Mr Dymock’s criticism of the Final UAT Report (to the very limited extent he was critical) was that it contained insufficient interpretation of tests results, particularly from a business standpoint³²³. It is true that the Final UAT Report does not descend into the minute detail of analysing the nature of each defect or seek to explain the significance of each. Much of that detail, however, can be found in the daily and weekly summaries which Mr Cowan prepared and to which Mr Dymock made no more than passing references. But in no way is it a legitimate criticism in my view to say of the Final UAT report that it lacks sufficient detail. That report was one which Dr Manfield had no difficulty in understanding to be a clear sign of a system in distress. I arrived at the same view, even before having had the advantage of Dr Manfield’s opinion. The report was intended for a wide audience (including the members of the Project Directorate and Project Board). It was important that it remain readable, and that its central points not be lost in minute detail. If further explanation were required, Mr Cowan could have been asked to give it. In any event, as Mr Cowan pointed out, the number and nature of the defects he identified to some extent displaced the need for detail because there were, in his opinion, no shades of grey in this case³²⁴.

5.52 What also became clear in Mr Dymock’s evidence in particular is the nature of the task which Mr Cowan undertook. His was not an exercise which used as its basis the requirements which, in a formal sense, comprised the scope of the Project. IBM had, by this time, brought into existence an RTM, as I have mentioned above. But it was never agreed by QH as being exhaustive of all the requirements which it needed in order for the system to meet its needs. Although conducting UAT without there being an agreed RTM may have been unusual, I have set out above the reasons why QH was no doubt reluctant to accept that RTM, being principally that by mid-2009 IBM itself, through Mr Doak, had implicitly at least accepted the system, were it to Go Live on the basis of the formal scope documents, would result in more than negligible defects in pays³²⁵. That, to some extent, superseded the requirements earlier communicated because they were, necessarily, incomplete.

315 T36-98, L20-30 to T36-99, L1-9 (Brett Cowan).

316 T36-98, L24-26 (Brett Cowan).

317 T36-94, L52-56 to T36-95, L10-22 (Brett Cowan).

318 T36-56, L1-18 (Shane Parkinson).

319 T36-56, L4-9 (Shane Parkinson).

320 Exhibit 163, paras 43-73.

321 Exhibit 163, para 58.

322 Exhibit 163, para 59.

323 Exhibit 163, para 61(b).

324 T36-97, L10-19 (Brett Cowan).

325 T24-108, L28-L36 (Bill Doak).

- 5.53** It is understandable, then, that Mr Cowan was instructed by QH not to use IBM's RTM³²⁶. He accepted, quite properly in my view, that a UAT tester would ordinarily have an RTM by which, once a problem with the system was identified, to trace it back to a requirement. But the purpose of this exercise is more to know how the problem has come about than to explain whether the problem is serious or not. If the UAT tester, assisted by subject matter experts, has run a particular pay scenario which has shown the system to have produced a wrong result on pay, it is no comfort to the customer to know that one or more of the requirements which inform that calculation have been missed when the requirements were communicated, or that the requirement has been wrongly coded (ie recorded in computer programme language). The immediate problem for the customer is that, were the system to Go Live at that point, a staff member will be paid inaccurately.
- 5.54** The approach of Mr Cowan was to test the system to see if it was functional, namely, to ascertain whether the pay scenarios which he ran resulted in pays and ones which were accurate. As his Final UAT Report shows, in UAT4 at least (being the only stage in which he was concerned), there were very many cases in which those test scenarios failed to produce a pay or an accurate pay.
- 5.55** Mr Dymock explained that IBM agreed, but without accepting formal contractual responsibility for doing so, to fix such defects as emerged in UAT4 as affecting net pay³²⁷. "Many" of these problems, Mr Dymock accepted, were ones which required what he described as a "code change", namely a change to the programming used in the system: between, in his view, half and 75 per cent³²⁸. IBM in its submissions, implicitly at least, accepts that it is responsible for any such errors.
- 5.56** Upon these defects being identified and assigned to IBM, and fixed by it, IBM would update the RTM³²⁹. The result was an RTM which was being altered on the run.

It follows that even with Mr Cowan's testing in UAT, and even with IBM's rectification of such defects as identified in UAT, it was likely that the system contained further defects which had not been identified and which would affect pay.

- 5.57** These facts, however, confirm Mr Cowan's approach to have been competently conducted and properly based. He was engaged to advise the customer³³⁰. He knew the RTM had not been agreed and had been asked by the customer to disregard it. The purpose of UAT, all the relevant witnesses accepted, was to ascertain whether, from a business process point of view, the system was ready to Go Live. Mr Cowan, by focusing, then, on actual pay scenarios, was properly discharging his responsibilities to the customer. Had he not done so, and merely proceeded from the outset on the basis of IBM's RTM, fewer (perhaps far fewer) of the defects affecting pay would ever have been identified, and the RTM would never have been updated to incorporate them. The system would, if that had been the case, have possessed even more problems which affected pay than was the case. Moreover, the customer would not have received the warning it did of the likely problems with the system's functionality. Had he directed testing only to the requirements earlier identified, and accepting as I do that they were incomplete, UAT would never have run scenarios outside those requirements. The most, in these circumstances, which UAT would have identified were deficiencies in the coding of previously communicated requirements.
- 5.58** There was one further problem, however, which Mr Cowan's approach identified in the system and in the requirements as had by that time been communicated to IBM. UAT, Mr Dymock accepted, tested only a sample of the system³³¹. That meant that, given the problems which Mr Cowan had discovered in the parts of the system which were tested in UAT, it was reasonable to assume defects existed in parts not tested, and defects, which, like those actually detected, affected pay.
- 5.59** It follows that even with Mr Cowan's testing in UAT, and even with IBM's rectification of such defects as identified in UAT, it was likely that the system contained further defects which had not been identified and which would affect pay. This is, in effect, what Mr Cowan said in his Final UAT Report. It is a proposition with which Mr Dymock agreed in his oral evidence³³².

326 T36-93, L51-55 (Brett Cowan).

327 T36-64, L21-24 (Mark Dymock).

328 T36-70, L40-46 (Mark Dymock).

329 T36-80, L29-33 (Mark Dymock).

330 Something which Mr Dymock accepted: T36-78, L30 (Mark Dymock).

331 T36-64, L47-57 to T36-65, L1-12 (Mark Dymock).

332 T36-79, L22-30 (Mark Dymock).

5.60 These factors lead me to conclude, contrary to IBM's submissions, that had Mr Cowan conducted UAT by reference only to IBM's RTM as it stood at the outset of that form of testing, very many defects in the system would not have been identified which were likely to affect the pays the system produced. Moreover, it is very likely that the system, after the completion of UAT, contained further such problems which had not to that date been discovered, but which also affected the pays the system later produced.

Mr Cowan

5.61 Mr Cowan conducted the exercise he was retained to carry out competently and professionally. Moreover, his approach to that task stands as a rare example in this Project of a cogent warning provided to the parties of problems which clearly existed, but which both parties had to some extent been reluctant to accept and to resolve. Had the warnings he gave in his Final UAT Report been heeded, then the system ought not to have gone live when it did and many of the problems experienced by the system would have been avoided.

5.62 There is one aspect of IBM's submissions with which it is convenient to deal at this point. IBM insists upon the use of the term "defect" to denote only a failure to meet a requirement communicated by the customer and within the scope of the solution³³³. The term, however, was also used in the course of the system implementation to refer to a shortcoming in the system, regardless of whether it arose from a previously communicated requirement of the customer. This, IBM correctly submitted, is evident in particular in Mr Cowan's use of that term in the course of UAT4³³⁴.

5.63 There are at least three reasons, however, why the caution which IBM urges is misplaced. First, as I have elsewhere recorded, and as the IBM witness Mr Dymock in particular accepted, daily meetings took place at which IBM was represented during the later stages of UAT4 in which such "issues" as arose were assigned to the party assessed as being responsible for it. Those issues were referred to as "defects". This occurred, Mr Dymock explained, notwithstanding that not all of those issues were ones which IBM considered itself contractually bound to correct³³⁵. Secondly, also as elsewhere detailed, by mid-2009, IBM (through Mr Doak) was accepting responsibility for fixing such "defects" (Mr Doak's word) as affected pay (or net pay)³³⁶. This was done without reference to requirements and whether there had been some failure of the customer to articulate them. Thirdly, Mr Cowan's identification of problems was informed by subject matter experts who tested the system by reference to actual pay scenarios. Defects which that process identified were, leaving aside false and duplicate defects (which Mr Cowan accepted arose), defects in the sense that the problem needed to be fixed in order for the system to pay staff accurately.

System and System Integration Testing

5.64 SOW 8 provided for a test phase for the Project which included system testing³³⁷. System testing and system integration testing were an IBM deliverable³³⁸.

5.65 The purpose of system testing was to verify that the individual solution components functioned individually as well as together to form the Workbrain/SAP HR Payroll Solution proposed by IBM³³⁹.

5.66 The QHIC Scope Definition identified that a core component of system testing would be to validate the Workbrain configurations to ensure that awards and rostering were performing as per business requirements³⁴⁰. The QHIC Scope Definition stated that there were 300 defined business rules for QH and that³⁴¹:

The system test approach will be to build a matrix that tests each Business rule against its assigned Calculation Group. For example, the Daily Overtime Rule (351506) is configured for part time and casual Visiting Medical Officers so this combination will need to be tested.

After the individual combinations are tested, combinations of scenarios will be tested where, for example a Nurse has an RDO, some Overtime, is on-call etc. Rostering is also managed in Workbrain for this release.

333 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 146.

334 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), para 146.

335 T36-46, L12-19 (Mark Dymock).

336 T24-108, L28-L36 (Bill Doak).

337 Exhibit 63, Volume 5, at page 95-24, para 7.1.5 (SOW 8, Version 1.2).

338 Exhibit 63, Volume 5, at pages 95-16-95-18, Deliverables 12 and 12A (SOW 8 Version 1.2); Exhibit 63, Volume 4, at page 77, para 2.5.6.

339 Exhibit 63, Volume 8, at page 291-15; Exhibit 63, Volume 4, at page 170.

340 Exhibit 63, Volume 4, at page 172.

341 Exhibit 63, Volume 4, at page 172.

- 5.67** The purpose of system integration testing is to verify “the integration of all applications, including interfaces internal and external to the organisation, with their hardware, software and infrastructure components in a production-like environment”³⁴². Its focus was the transfer of data between the systems, SAP and Workbrain, and how successfully that data was sent and received³⁴³.
- 5.68** The QHIC Scope Definition identified that the existing interfaces from the Department of Housing pilot would be utilised for the Project and where possible test cases from the HRBS would be utilised³⁴⁴. New interfaces required for QHIC Project were identified, which included an interface from SAP to Workbrain and Workbrain to SAP.
- 5.69** The Master Test Plan prescribed the nature of the system and integration testing to be undertaken, along with the entry and exit criteria for each test stream. The exit criteria were³⁴⁵:
- 100% of High Priority test cases executed or exceptions signed off by QHEST.*
1. All Severity 1 and 2 defects resolved.
 2. All Severity 3 & 4 defects outstanding have documented workarounds (agreed with QHEST and QHIC Project Team), and an agreement reached on when they will be corrected.
 3. All deliverables are completed and approved
 4. Business Stakeholders agree that any outstanding defects do not impact the production release.
- 5.70** It was a requirement also that a system test completion or interim system test summary report be produced as a requirement for exiting system testing³⁴⁶.
- 5.71** QH engaged KJ Ross & Associates (KJ Ross) to provide an assurance of the test phases and to recommend any improvements to ensure that all testing verified the production readiness of the new solution³⁴⁷.
- 5.72** On 9 December 2008, KJ Ross conducted an audit and found that system testing was incomplete and system test exit criteria had not been met. That firm reported a high number of outstanding Severity 1 and 2 defects; 90 test cases had not been executed, making it likely that further defects would be discovered³⁴⁸.
- 5.73** The audit concluded that, based on the current trend, it was unlikely that “system testing will meet 100% Severity 1 and Severity 2 defect removal within the available four week window”³⁴⁹. It recommended reviewing the schedule for UAT and other dependent activities including Go Live and “that compromises on either quality or schedule were inevitable at this stage”³⁵⁰. The audit further recommended moving out of scope any further functional changes and freeing development resources to focus on defect resolution³⁵¹.
- 5.74** On 17 March 2009, KJ Ross conducted a further audit focusing on the issues found in the UAT execution conducted in January 2009 and reviewing the readiness of the system to recommence UAT³⁵². The audit concluded³⁵³:
- [T]here is insufficient evidence from the vendor of successful and adequate completion of System Testing and System Integration Testing. The low level of trust in the system is forcing excessive coverage of System Testing and System Integration test cases within the UAT phase, which impacts the schedule and distracts from the focus on validating the end-to-end business process.*
- 5.75** On 24 April 2009, KJ Ross conducted an audit of the System Test and System Integration Test (SIT) Completion Report to be delivered by IBM³⁵⁴. The audit expressed concern that many business requirements listed on the RTM were shown to have no test cases listed or that test cases were not linked to business requirements³⁵⁵. The audit recommended that an “urgent reconciliation should be conducted” noting

342 Exhibit 63, Volume 4, at page 170.

343 Exhibit 102, paras 1.2, 3.1.2.

344 Exhibit 63, Volume 4, at page 173.

345 Exhibit 63, Volume 8, at page 291-36.

346 Exhibit 63, Volume 5, at page 95-16-95-17; Exhibit 63, Volume 8, at page 291-35.

347 Exhibit 63, Volume 8, at page 278.

348 Exhibit 63, Volume 8, at page 278.

349 Exhibit 63, Volume 8, at page 278.

350 Exhibit 63, Volume 8, at page 279.

351 Exhibit 63, Volume 8, at page 279.

352 Exhibit 63, Volume 8, at page 275-284.

353 Exhibit 63, Volume 8, at page 284.

354 Exhibit 108. It is unclear whether this document is the final audit, but KJ Ross provided this document to the Commission in response to a request to provide the “Audit of draft QHIC System Test and SIT completion report content (24 April 2009)”.

355 Exhibit 108, at page 2, ID13.

that “there is an unacceptable risk that some requirements may have had no testing” and this “should be considered an unacceptable outcome for test exit”³⁵⁶.

- 5.76** On or about 1 May 2009, the State accepted the System Test and SIT Completion Report stating that the State “believed that IBM have been able to demonstrate satisfactory links between execution results and the Requirement Traceability Matrix and believe that on evidence provided that test execution has matched the requirements matrix”³⁵⁷. This must have been false because it seems clear, as I have earlier explained, that the RTM which IBM was using had never been accepted by the State as a full and accurate record of QH’s business requirements³⁵⁸.
- 5.77** On 5 May 2009, IBM delivered the final System Test and SIT Completion Report³⁵⁹. On 17 December 2009, IBM delivered the Project Completion Report (A-G) Test Phase Completion Report (3.15), produced for the purpose of verifying that IBM had executed the required test streams³⁶⁰. The Test Phase Completion Report documented that the System Test and SIT Completion Report accepted on 1 May 2009 was evidence of the completion of those respective test streams.
- 5.78** Mr Cowan’s Final UAT Report, as I have mentioned, identified that there had been a “significant and unplanned burden of requirements clarification and defect discovery and resolution placed onto UAT”³⁶¹. Both of the options he identified as being open to the State referred to likely inadequacies with system testing³⁶².
- 5.79** This report ought to have alerted the State to the real possibility that the system and system integration tests had not been conducted properly and thoroughly.
- 5.80** A “Management Response” was prepared by QHEST to the Final UAT Report. It included also comments from IBM³⁶³. On the topic of the quality of system testing, IBM asserted³⁶⁴:
- [T]he UAT Test Completion Report questions the quality of system testing simply by referencing the number of UAT defects found. There is no other evidence for this assertion and no context around the UAT defect numbers.*
- 5.81** IBM considered that raw defect numbers to not provide “sufficient context for decision making, risk assessments or any conclusions about systems testing”³⁶⁵ and is recorded as having said that the system test and SIT strategy and coverage have been reviewed externally numerous times during the course of the project, including the “Test Completion Report (which was audited by KJ Ross)” and³⁶⁶:
- At no stage before, during or after system test and SIT, was the strategy and effectiveness of these activities questioned. All testing was performed against a clear Requirements Traceability Matrix (RTM) and this coverage was confirmed by KJ Ross during their own audit.*
- 5.82** There is no evidence before the Commission that KJ Ross ever approved or signed off on the System Test and SIT Completion Report³⁶⁷. Furthermore, there is no evidence that KJ Ross performed any further audits on system and SIT testing after 24 April 2009, a year before the system went live and well before it could be thought, by any reasonable participant, to have been in a state capable of being tested in such a way that the results would be informative of how the system (as ultimately was to be delivered) would be likely to operate.
- 5.83** Requests were issued by the Commission to IBM compelling the production of the final instances of the system testing and system integration testing for the period October 2009 to 14 December 2010³⁶⁸. Other than the reports identified above, IBM produced no documents evidencing that further system testing or system integration testing was conducted after 5 May 2009³⁶⁹.

356 Exhibit 108, at pages 2-3.

357 Exhibit 102A.

358 T26-16, L10-28 (John Gower); T26-20, L43-44 (John Gower); T26-57, L49-52 (Paul Hickey); T24-56, L1-21 (Brett Cowan); T25-6, L17-54 (Bill Doak); Exhibit 63, Volume 9, at page 322.

359 Exhibit 102.

360 Exhibit 86.

361 Exhibit 63, Volume 13, at page 287.

362 Exhibit 63, Volume 13, at page 287.

363 Exhibit 63, Volume 14, at pages 384-391.

364 Exhibit 63, Volume 14, at page 384.

365 Exhibit 63, Volume 14, at page 384.

366 Exhibit 63, Volume 14, at page 385.

367 Bill Doak accepted in his oral evidence that the KJ Ross Report of 17 March 2009 and the Final UAT Report do not constitute an approval by KJ Ross of system Testing: T25-108, L44 – 49 (Bill Doak); T25-109, L1-3 (Bill Doak).

368 Exhibit 126.

369 Exhibit 126, at page 8.

5.84 Mr Cowan's evidence was that UAT should only be conducted when system and system integration testing has been completed³⁷⁰. UAT is not, he said, a test that is designed to find defects³⁷¹. The number of functional defects he identified in UAT in this case was evidence that this was "not a system ready for UAT"³⁷² and gave rise to an "enormous risk" on Go Live³⁷³. He said, and I accept, that³⁷⁴:

UAT is all about confidence, it's about instilling confidence in the end user of the system that the thing is going to work, and that the precursors to the UAT 4 as well as the 227 defects according in these stats, which I don't see other ones, but let's say the 227 functional defects is discovered and they're sev 2 defects that are found in there are why it should have highlighted a complete lack of confidence in the functionality of the system.

5.85 In particular, Mr Cowan raised concerns about the length of time between the commencement of UAT in 2008 and its conclusion, as well as the amount of "code churn" that occurred during that period³⁷⁵:

[T]he amount of coding that's being changed as a result of all of that testing and all of those defects brings an enormous amount of risk. In my current role, when I see that someone has gone and made changes to code, for a week I insist on re-system testing because that's what system testing does, it finds out these things for you that you have actually truly delivered the functionality you expect. To have a year go past where you haven't re-executed a comprehensive system test on a system like this was astounding.

5.86 Mr Cowan advised that further system and system integration testing ought to have been conducted to test the functionality of the solution. At every stage, he was advised by Mr Gower of IBM that "[s]ystem testing has been signed off. We will not go back to that"³⁷⁶.

5.87 Mr Doak³⁷⁷, Mr Gower³⁷⁸ and Mr Hickey³⁷⁹ rejected the assertion that the evidence of functional defects discovered in UAT were evidence that system and system integration testing were not properly executed.

5.88 IBM sought to revisit the issue of the adequacy of system and system integration testing in the late statements of Messrs Kwiatkowski and Dymock and in the oral evidence at the public hearings which resumed on 18 June 2013. Mr Dymock, IBM's testing manager with responsibility for that form of testing, referred in his statement to the fact that the State had accepted the completion report for these forms of testing³⁸⁰. There is no dispute about that. His oral evidence, however, confirmed that a "full" system and systems integration test was undertaken in the early part of 2009³⁸¹. It is that testing which KJ Ross audited. But there were changes to the scope of the Project in, for example, June 2009 (by Change 184 for example). Further changes were made as defects were identified in UAT and assigned to, or accepted by, IBM. The making of these changes, while not usual in Mr Dymock's opinion³⁸², nevertheless necessitated, he said, system and system integration testing to be revisited³⁸³. That was not done in this case by reconducting a full system and system integration test, but by testing those parts of the system which changed, as well as those parts expected to have been affected by the changes³⁸⁴. But doing so relies upon an accurate identification of those parts of the system that might be affected by the changes, which involves some risk in having done so³⁸⁵. KJ Ross never audited, Mr Dymock accepted, this additional system and systems integration testing³⁸⁶. The problem here, if there was a problem, is likely to have arisen from:

- a. IBM not having been sufficiently accurate in its assessment of the parts of the system which were affected by the changes occurring in UAT and as a result of the changes to the Project scope. There were very many such changes and it therefore seems to me to be a very likely area from which this problem might have stemmed. Mr Cowan's concern was that he had "absolutely no faith that the number of these multiplier effects of all the different risks that you buy into when you make a change wouldn't have meant that there were significant risks left in the system"³⁸⁷;

370 Exhibit 101, para 15; T24-5, L51-56 (Brett Cowan).

371 Exhibit 101, para 15.

372 T24-7, L36 (Brett Cowan).

373 T24-14, L44 (Brett Cowan).

374 T24-66, L44-52 (Brett Cowan).

375 T24-31, L4-13 (Brett Cowan).

376 T24-14, L46-51 (Brett Cowan).

377 T25-63, L52-56 to T25-64, L1-12 (Bill Doak).

378 T26-41, L1-16 (John Gower).

379 T26-114, L15-26 (Paul Hickey).

380 Exhibit 163, para 40.

381 T36-82, L1-23 (Mark Dymock).

382 T36-80, L55-56 to T36-81, L1-2 (Mark Dymock).

383 T36-81, L4-26 (Mark Dymock).

384 T36-81, L20 (Mark Dymock).

385 T36-81, L23-26 (Mark Dymock); T36-82, L25-31 (Mark Dymock); T36-102, L40-50 (Brett Cowan).

386 T36-83, L3-5 (Mark Dymock).

387 T36-102, L49-53 (Brett Cowan).

- b. the fact that Mr Cowan's UAT testing was, as it quite properly ought to have been, conducted on a sample only of the system. It was likely that the kind and number of defects he identified in the sample existed also in the parts of the system which were not tested. It follows, and Mr Dymock in effect accepted, that undetected problems would not have been the subject of this subsequent and targeted form of system and system integration testing³⁸⁸.

The evidence suggests a real possibility that, despite the State's acceptance of the System Test and SIT Completion Report, system and/or system integration testing were either not completed to the threshold required by the Master Test Plan, or the changes made to the system after early 2009 were not subjected to further such testing as they ought to have been.

- 5.89** IBM submitted that the software having passed system and system integration testing, and that report having been accepted after independent audit, it should be the end of the matter³⁸⁹. Were the matter as simple as IBM would have it, I might have accepted that submission. IBM, however, has failed to face up to the unexplained absence of documentation showing system and system integration testing after the changes to the Project which occurred after March/April 2009, the strength of Mr Cowan's evidence as to the likely inadequacy of system and system integration testing and the limited assistance which Mr Parkinson's evidence offers (he having had no involvement whatsoever in the Project). IBM's assertions that the "results of the testing were audited" and that "further changes to the software were system tested individually"³⁹⁰ leave unanswered the absence of any audit showing the system to have passed system and system integration testing and what were the results of the individual testing and why there is no audit of those aspects of it.
- 5.90** It is likely, and I put it no higher than that, that system and/or system integration testing had not been properly performed, or performed on the system in the state in which it ultimately went live. Dr Manfield's evidence supports this conclusion. Initially, he considered it "puzzling" that the system issues identified in the 9 December 2008 and 17 March 2009 KJ Ross audits were rectified by 5 May 2009 as documented by the System Test and SIT Completion Report in light of the evidence of Mr Cowan and the Final UAT Report³⁹¹. The assumption he made was that these system issues had been rectified by the time the System Test and SIT Completion Report was delivered and that the report was an accurate representation of the test results³⁹². Most importantly for present purposes, he did not consider the System Test and SIT Completion Report to be inconsistent with the findings of the Final UAT Report or Mr Cowan's evidence on the point. He held concerns as to the scope of the system and system integration testing performed by IBM. He considered it likely that the scope of the testing had been uncertain³⁹³.
- 5.91** The evidence suggests a real possibility that, despite the State's acceptance of the System Test and SIT Completion Report, system and/or system integration testing were either not completed to the threshold required by the Master Test Plan, or the changes made to the system after early 2009 were not subjected to further such testing as they ought to have been.
- 5.92** It is beyond doubt, however, that changes to the scope of the Project prejudiced proper testing, which was a product, once again, of a rushed approach.
- 5.93** The evidence of Mr Cowan suggests that the system was not sufficiently tested to verify that the individual solution components functioned individually as well as together, given the functional defects which appeared in UAT. IBM's contention that these defects were not a product of the quality of system or system integration testing performed by it is rejected. I found Mr Cowan to be a precise and honest witness. He was logical and clear in his explanation of these matters and his evidence had the advantage of being of a person with some independence from both IBM and the State.
- 5.94** The problems experienced after Go Live offer further evidence that functional problems existed in the system, which system and system integration testing ought to have revealed.

388 T36-84, L8-50 (Mark Dymock).

389 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), paras 136, 137.

390 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), paras 141-143.

391 T30-54, L16 (Dr David Manfield).

392 T30-56, L15-17 (Dr David Manfield).

393 T30-56, L13-32 (Dr David Manfield).

Payroll Performance Testing

- 5.95** It was a requirement of the QHIC Scope Definition that payroll performance testing be conducted in the test focus areas for that form of testing, although it was not an acceptance criterion in its own right³⁹⁴. A “Memorandum of Understanding” between IBM and QH dated 18 September 2008 set as a Go/No Go gate the point in the target schedule when both the Award Interpretation Checkpoint and the Payroll Performance Validation Checkpoint were completed. That Memorandum left to be defined “[c]lear and objective performance criteria” for this gate as the “sole basis on which ... [the parties would] decide whether to continue the project or stop work”³⁹⁵.
- 5.96** The ESC (Government Members), on 9 October 2008, noted an extension to what was described as the “performance validation checkpoint”³⁹⁶. Mr Doak is recorded as noting that acceptance criteria must also be met at this time, and IBM must demonstrate payroll performance validation and Workbrain performance in terms of handling awards³⁹⁷.

Had the State invoked the condition precedent, it could have used that event to seek to reset the Project and improved considerably its negotiating position with IBM. It was a grave error of the State not to have invoked the condition precedent. IBM would not have hesitated, had it been in the State’s position, to make full use of the default.

- 5.97** Change 129 (executed on 12 November 2008) introduced Payroll Performance Testing (in Enclosure 1) as a condition precedent to the incorporation of that Change into the contract³⁹⁸. The completion of payroll processing performance testing also became a payment milestone³⁹⁹.
- 5.98** The objective of Payroll Performance Test Criteria was to establish what the current performance of the solution was at the time, and to assess whether the system could meet the QH performance targets of⁴⁰⁰:
- the 7th day (First Sunday) process completed within a window of 12 hours.*
 - the Pay Monday process completed within a window of 8 hours.*
- 5.99** The Performance Validation test was scheduled to be completed on 31 October 2008. The tests sought to measure the adequacy of the current performance of the Solution to ensure that the Daily and Final batch runs (for payroll) would be completed within given timeframes: specifically the Monday following the last scheduled interface from Workbrain⁴⁰¹.
- 5.100** The “overall acceptance” of the payroll performance criteria was a matter for the State, based upon either⁴⁰²:
- current performance meets the performance targets for the production system altered to make an allowance for the exclusion of retrospective pay adjustments which are:*
 - The 7th day (First Sunday) process can be completed within a window of 8 hours.*
 - The Pay Monday process can be completed within window of 6 hours;*
- or*
- an agreed Performance Improvement Plan based on changes identified to address performance bottlenecks found during the measurement of the performance of the current solution. This plan to be implemented to allow performance to be tested and proven by end of November 2008.*
- 5.101** The test was to be conducted on an estimated 70,000 employee migration population for one pay period, with an average of 1,000,000 employee wage type calculations generated per pay run, with system resources running at not greater than 80% capacity⁴⁰³.

394 Exhibit 63, Volume 4, at page 175.

395 Exhibit 63, Volume 6, at page 30.

396 Exhibit 63, Volume 6, at page 266.

397 Exhibit 63, Volume 6, at page 266.

398 Exhibit 63, Volume 7, at pages 29-34.

399 Exhibit 63, Volume 7, at page 26.

400 Exhibit 63, Volume 7, at page 29.

401 Exhibit 63, Volume 7, at page 29.

402 Exhibit 63, Volume 7, at page 30.

403 Exhibit 63, Volume 7, at page 30.

- 5.102** Changes 174, 177 and 179 reasserted and maintained these requirements, including their status as a “condition precedent”⁴⁰⁴.
- 5.103** IBM did not satisfy the Payroll Performance test requirements. Mr Hickey⁴⁰⁵ and Mr Doak⁴⁰⁶ accepted that. The Payroll Performance Go / No Go test results of 28 November 2008 show that the elapsed time was 10 hours, 39 minutes and 52 seconds⁴⁰⁷. That test was run on 59,193 employees and 757,675 records⁴⁰⁸. This, however, was a slight improvement from the test results of 2 November 2008 (11 hours and 58 minutes)⁴⁰⁹.
- 5.104** At the QHIC (QH only) Release Steering Committee meeting on 10 December 2008, it was agreed that Performance Testing had passed “half” of the gate⁴¹⁰. By then, the Pay Sunday test was down to 8 hours 34 minutes, and although it may not have been the 8 hours that was “hoped for”, it was “enough to work with”. Pay Monday remained a problem. It had taken over 10 hours. The threshold was reduced to 6 hours. It was noted that the excess of hours for Pay Sunday had been brought down significantly. IBM was also expected to ask for an extension of 2 weeks to correct Pay Monday, pushing the Go Live date to 4 May 2009⁴¹¹.
- 5.105** At the Executive Steering Committee Meeting on 18 December 2008, Mr Doak reported that Payroll Performance Validation testing had processed 750,000 records in under 8 hours using 7 Central Processing Units⁴¹². He proposed splitting the pay run to Saturday followed by a “skinnier” pay run Monday to pick up variations. This was considered by the Committee to be a new proposal and one which required further consideration⁴¹³.
- 5.106** The QHIC (QH only) Release Steering Committee, on 23 December 2008, recommended⁴¹⁴:
- QH allow IBM through the gate. They passed Pay Sunday but not Monday ... CorpTech has a view that IBM have not met the gate but they have introduced an action plan. Their advice would be the gate should lapse and CorpTech work with IBM on a go forward ... There is confidence in Workbrain and enough information to get the time of Pay Monday down.*
- 5.107** The State, despite these events, accepted the PPV Testing Phase Completion Report⁴¹⁵.
- 5.108** The State, it can be seen, abandoned what the Payroll Performance Testing had required of IBM. IBM had not passed the “Pay Monday” component of that test. That being so, the proper and diligent course was to invoke the condition precedent, with the consequence that IBM would be in immediate breach of the contract. Doing so was not only something which the State was entitled to do, but it was the obvious and sensible thing to do.
- 5.109** IBM’s submissions on this issue were to the effect that, although the system did not pass this test, there were comments by some State officials to the effect that this might not be of significance⁴¹⁶, but it did not suggest that the system had ever passed the test.
- 5.110** IBM had agreed to the test regime. There was good reason for the State to insist upon its satisfaction. Pay runs, after all, ought to be completed reasonably expeditiously. The State had, no doubt, set the times which the test imposed by reference to those it thought necessary. Had the State invoked the condition precedent, it could have used that event to seek to reset the Project and improved considerably its negotiating position with IBM. It was a grave error of the State not to have invoked the condition precedent. IBM would not have hesitated, had it been in the State’s position, to make full use of the default. IBM, in its approach to Changes, made clear from the outset that it would insist on its strict contractual rights. The State declined, inexplicably in my view, to engage on the same basis.

.....
404 Change Request 174, Exhibit 63, Volume 7, at page 190; Change Request 177, Exhibit 63, Volume 7, at page 266; Change Request 179, Exhibit 63, Volume 7, at page 285.

405 Exhibit 109, paras 150, 157, 158; T26-72, L9-10 (Paul Hickey).

406 Exhibit 103, paras 133, 136 (Bill Doak).

407 Exhibit 63, Volume 7, at page 207.

408 Exhibit 63, Volume 7, at page 207.

409 Exhibit 63, Volume 7, at page 209.

410 Exhibit 63, Volume 7, at page 280.

411 Exhibit 63, Volume 7, at page 280.

412 Exhibit 63, Volume 7, at page 325.

413 Exhibit 63, Volume 7, at page 325.

414 Exhibit 63, Volume 7, at page 332.

415 Exhibit 86, at page 4.

416 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), paras 126-129.

- 5.111** Responsibility for the failure of the State to invoke the condition precedent lies with the members of the QHIC (QH only) Release Steering Committee⁴¹⁷.
- 5.112** An understanding of the State's sacrifice of its rights in this respect is completed by a summary of the events which occurred between the QHIC (QH only) Release Steering Committee meeting in late 2008 and the agreement between the parties of Change 184.
- 5.113** As I mentioned earlier when considering the issue of Project scope, in mid-2009, the State and IBM agreed, in Change 184, to "clarify" the scope of the Project. Between December 2008 and March 2009, serious attempts were made by, principally, Mr Bird (a CorpTech contract manager) and Mr Campbell to take formal action against IBM for what they suggested, having obtained advice from Mr Swinson, was a series of breaches of the contract by IBM.
- 5.114** Mr Bird had concerns about the timeliness and quality of IBM's contract deliverables. On 8 July 2008, Mr Beeston as Program Director, SPO, signed a briefing note to the Director-General which Ms Perrott endorsed. It recommended that CorpTech should⁴¹⁸:

1. *[E]scalate to IBM's senior management concerns about its performance ...*
4. *[R]equest and require IBM to appoint an external partner to conduct a formal quality review of the overall program ...*

On 8 August 2008, IBM delivered a Notice of Delay for the Go Live scheduled date of 17 November 2008 and gave an indicative date of March/April 2009 instead⁴¹⁹. In response Mr Campbell and others spoke to Ms Perrott about their concerns with IBM's performance. She instructed them to contact Mr Swinson for advice on what options the State had as to the contract⁴²⁰. On 25 August 2008, Ms Perrott emailed Mr Grierson to brief him on recent events. She said⁴²¹:

Mal, while I fundamentally believe that we have to make this work, I believe that we are nearing the point where we need to take more formal action with IBM. While Bill Doak has been a refreshing change to the project, the content of the letters has a tone of absolving them from any responsibility and making light of the fact that IBM's performance to date has been less than impressive.

On 25 August 2008, Mr Swinson advised Ms Perrott⁴²²:

IBM ... is unlikely to take matters seriously ... unless a Notice of Breach is issued. Although this is a serious step, it is not unusual ... in circumstances such as this. This also increases the customer's leverage in any further discussions If the customer does not issue a Notice of Breach ... then the customer's position downstream (if matters do not improve) will be much worse. It is always best to raise issues in a timely and appropriate manner.

He recommended a review of IBM's performance against the contract to determine whether there were "genuine alternatives to having IBM complete the project", and the issue of a Notice of Breach if the review established there had been material breaches of contract by IBM. A decision whether to terminate the contract could then be made⁴²³.

Mr Bird asked Mr Swinson to draft a letter, to be sent by Ms Perrott to Mr Doak, to assert *inter alia* that IBM was in material breach of contract for failing to meet the Go Live date of 18 November 2008⁴²⁴.

- 5.115** The draft notice of breach was shown to Mr James Brown for his review. He told Mr Campbell, Mr Bird and Mr Beeston that the government did not wish to engage in a long legal battle with IBM, and the breach notice was "volcanic"⁴²⁵. He said that the Notice of Breach would not be sent. Mr James Brown could not recall whether he made these remarks, but he stopped short of denying that he made them⁴²⁶.

417 Members present at the QHIC (QH only) Release Steering Committee meeting on 23 December 2008 were Mr Peter Douglas, Mr Tony Price, Mr Russ Wilde, Mr Terry Burns, Ms Brigid Bourke, Mr Paul Monaghan, Ms Janette Jones, Ms Sylvia Chapman, Ms Amanda Doughty, Mr Michael Kalimnios, Mr Philip Hood, Mr James Brown and Mr John Beeston: see Exhibit 63, Volume 7, at page 331.

418 Exhibit 63, Volume 5, at page 108.

419 Exhibit 63, Volume 5, at page 230.

420 Exhibit 68, paras 51, 52; Exhibit 28A, para 77.

421 Exhibit 63, Volume 5, at page 287.

422 Exhibit 28A, Annexure 8.

423 Exhibit 28A, Annexure 8.

424 Exhibit 68, para 57.

425 T18-32, L12-39 (Malcolm Campbell); Exhibit 68, para 58.

426 T19-9, L1-18 (James Brown).

- 5.116** Mr Brown may have been expressing his own opinion, or he may have been told, or sensed, that Mr Grierson was opposed to the State relying upon its contractual rights with IBM. Ms Perrott advised the Executive Steering Committee meeting of 11 September 2008 that Mr Grierson did “not agree” with Mallesons’ advice that a breach notice should be served on IBM⁴²⁷. Mr Grierson, according to Ms Perrott, had requested “that alternative strategies be considered”. Ms Perrott observed⁴²⁸ that Mr Grierson intended to raise his concerns about IBM’s performance with its senior managers when he met them on a planned trip to America. Mr Grierson said in evidence⁴²⁹ that in about September 2008 he “didn’t want a breach notice ... to drop into a legal mode at that stage”; he wanted to “make sure scope (was) locked down” and then see “how IBM performed”. He told Ms Perrott of his preference for that approach.
- 5.117** In January 2009, Mr Beeston drafted a briefing note for the Director-General. Its purpose was to brief Mr Grierson on “developments and the current status of the ... Lattice replacement project ...” and was said to be “relevant to informing the Director-General’s impending discussions with IBM and ... directions he may give to CorpTech regarding its management of the ... Contract or ... negotiations scheduled with IBM”⁴³⁰. The briefing note was critical of IBM and its performance of the contract. It noted a risk that CorpTech’s “failure ... to formally notify IBM that it is in breach ... may give rise to the rebuttal that the customer has accepted the delay and that time is no longer of the essence”⁴³¹. Mr Beeston did not sign the draft. In the ordinary course of events it would have gone to Mr Brown for endorsement, then to Ms Berenyi and on to Ms MacDonald as Associate Director-General before making its way to Mr Grierson. Mr Brown did not endorse it. He said he had no recollection of the note but denies preventing the note progressing along the public service path.
- 5.118** In any event Mr Backhouse, Mr Bird and Mr Campbell met on 14 January 2009 to consider what, if any, steps should be taken concerning the contract and IBM’s performance of it⁴³². Mr Swinson had advised that CorpTech “should formalise its position by issuing Breach Notices to IBM in relation to ... ongoing delays”. That opinion was endorsed by those at the meeting and in March 2009, Mr Bird asked Mr Swinson to assist with drafting a formal Notice⁴³³. Mr Swinson provided a draft on 23 March 2009.

By early January 2009, the State had lost confidence in IBM and realised that the cost of completing the Shared Services Initiative would be far greater than IBM had originally estimated.

- 5.119** In the meantime on 29 January 2009, the parties met in Mr Swinson’s offices to discuss the status of the contract⁴³⁴. The State’s representatives were Mr Beeston, Mr Campbell and Mr Bird from CorpTech, Mr Burns from QH, Mr Backhouse from the Department of Public Works and Mr Doak and Mr Paul Ray from IBM. Mr Swinson and a solicitor, Ms Bowe, also attended. Mr Swinson’s recollection was that Mr Campbell was quite aggressive towards IBM and accused it of a breach of contract in missing the Go Live date⁴³⁵. Mr Doak proposed a contract variation to set a new date. Mr Swinson took CorpTech’s side saying that the State wished “to hold IBM to the contract”. Mr Swinson also remembered Mr Doak threatening to stop work if the State commenced legal proceedings; IBM “would walk off the job”⁴³⁶. According to Ms Bowe’s note of the meeting, Mr Doak said⁴³⁷:

*If moving to ‘legal dispute’ then move to that phase now:
IBM stop project and focus on dispute issues.*

- 5.120** When questioned on the point Mr Doak said that what he said, and intended, was that if the State were to move to issue a Notice of Breach, IBM would contest the validity of the Notice on the basis that it was not in breach of contract⁴³⁸. The project had been delayed by events not of IBM’s making. If the State commenced a legal dispute IBM would redeploy resources from the project to compiling evidence to support its case.

427 Exhibit 63, Volume 6, at page 13.

428 Exhibit 53D, para 12; Exhibit 63, Volume 6, at page 12.

429 T28-108, L36-43 (Malcolm Grierson).

430 Exhibit 63, Volume 8, at page 25.

431 Exhibit 63, Volume 8, at page 27.

432 Exhibit 63, Volume 8, at page 35-1.

433 Exhibit 28A, para 79.

434 Exhibit 28A, Annexure JVS9.

435 Exhibit 28A, para 87.

436 Exhibit 28A, para 90.

437 Exhibit 28A, Annexure JVS9.

438 T24-116, L18-34 (Bill Doak).

Mr Swinson thought, and advised CorpTech, that it was unlikely that IBM would in fact “walk off the job”. Mr Doak’s evidence appears to be that it would not, but that the project might be further delayed by the need to respond to any Notice of Breach.

5.121 In March 2009, Mr Swinson sent Mr Bird a further draft Notice of Breach and a draft of a briefing note for Mr Bird to give Mr Brown in support of the Notice of Breach. Mr Bird and Mr Campbell advised Mr Brown that the Breach Notice would soon be ready for issue. Mr Brown, however, told them that the government was “not going to go down that route, there has been too much water under the bridge”. They were told instead to “continue negotiating an extension of time and ... a new Change Request ...”⁴³⁹. At a different level CorpTech was negotiating with IBM for what became Change 184. Mr Brown (and those senior to him) preferred that course to disputation. Mr Campbell concluded that his superiors in CorpTech wished to avoid conflict with IBM and accordingly his ability to enforce the terms and conditions of the contract was weakened. The approach taken on behalf of the State to its negotiations with IBM may be seen in Ms Berenyi’s evidence. She had said in her statement⁴⁴⁰ that she considered the original estimate “in the order of \$6M” for the payroll replacement “a gross underestimate”. She was asked if that assessment influenced her consideration of Change 184 with its additional payment to IBM of \$9M. She said⁴⁴¹:

Absolutely. ... Mal Grierson ... understood that this was a complex project and ... IBM ... was working to deliver a solution ... certainly Bill Doak ... left nobody ... misunderstanding that IBM believed this project was costing them money and ... we had to look at how we dealt with this going forward and ... resolved the delivery of the system in a timeframe ... reasonable to meet the requirements of Queensland Health. ... We had to keep working with IBM and ... we wanted a working relationship that would actually develop ... an end result.

5.122 Having given up its right to invoke the condition precedent, the State adopted the same loose approach to Change 184. That Change, as Mr Bird said, “rewrites history”⁴⁴², in the sense that it attempted to set the scope for the LATTICE replacement in mid-2009 when scope should have been set and agreed early in 2008. The real problem with it was, as I have found, that those who negotiated and agreed it did not give it sufficient time or thought, and failed to give any proper attention to whether it would indeed achieve the ends they required of it, principally, a functional payroll system. It did not achieve its objective.

The Rescoping

5.123 By early January 2009, the State had lost confidence in IBM and realised that the cost of completing the Shared Services Initiative would be far greater than IBM had originally estimated. These factors led to a decision, on about 27 January 2009, to restrict IBM’s involvement, at least until the Interim Solution was completed, to that Project only.

5.124 This issue is of interest because it raises the question why, if the State had such a dim view of IBM’s performance on the Interim Solution, it would continue to permit IBM to carry out work on it, bearing in mind that QH was a large and complex agency which posed particular challenges in any system implementation.

5.125 The decision to “rescope” the contract in this manner was the culmination of events in 2008, a summary of which is set out below.

5.126 IBM’s ITO response had recommended a two phase approach to the implementation of the whole-of-government Shared Services Initiative⁴⁴³. The Interim Solution was to be undertaken first, along with preliminary work in DETA (as part of the Phase 1 roll out).

5.127 On 8 July 2008, CorpTech identified “performance issues” with IBM including⁴⁴⁴:

- a. *weakness of its PDO (Program Delivery Office) to develop and enforce systematic, program-wide standards for methodologies, quality, reporting, management of streams and co-ordination of inter-stream dependencies;*
- b. *an inconsistent quality of its deliverables;*
- c. *an inability to meet many of the contracted delivery dates; and*
- d. *a focus on its internal financial needs at the expense of timely or quality deliverables.*

⁴³⁹ Exhibit 73, para 48.

⁴⁴⁰ Exhibit 113, para 214.

⁴⁴¹ T27-80, L4-13 to T27-81, L1-10 (Margaret Berenyi).

⁴⁴² T18-88, L19-21 (Christopher Bird).

⁴⁴³ Exhibit 4, Volume 14, Item 15, at page 34.

⁴⁴⁴ Exhibit 63, Volume 5, at page 101.

5.128 CorpTech recommended escalation of these issues to IBM’s senior management and requested an external partner to perform quality reviews of the overall program⁴⁴⁵.

5.129 By letter dated 15 August 2008, Mr Kalimnios of QH advised CorpTech that the whole-of-government engagement of IBM should be questioned given the current delay of QHIC and DETA and the “QH position is that we have limited confidence in IBM’s ability to deliver on the QHIC Project”⁴⁴⁶.

5.130 On 19 August 2008 (and at the request of QH), Mallesons advised that CorpTech should determine whether there were genuine alternatives to having IBM complete the project; and determine whether or not to terminate, in whole or in part, the contract for material breach by IBM⁴⁴⁷.

5.131 After this advice was given, Ms Perrott told Mr Grierson on 25 August 2008 that⁴⁴⁸:

All other HR releases be put on hold until these releases [DETA design and build and QH LATTICE replacement] are substantially completed. This would mean that the WoG HR scope would be built as part of the DETA project and the WorkBrain scope would be built as part of the QH project.

5.132 On 29 August 2008, a briefing note written by Mr Burns and cleared by Mr Price and Mr Kalimnios was submitted to Mr Michael Reid⁴⁴⁹. It noted that:

... There is an immediate need to replace the payroll solution, CorpTech or ... IBM have so far neither been able to deliver any workable solution to the payroll nor other ageing QH systems.

and recommended⁴⁵⁰:

QH separate itself from the CorpTech driven WOG program immediately and engage directly with contract companies in order to evaluate alternatives expeditiously.

QH should examine alternatives to an IBM managed project.

If QH decides to continue the relationship with IBM it is recommended that QH engages with IBM directly and negotiates new contractual terms and conditions.

5.133 Mr Kalimnios met Mr Reid, who had been Director-General for only about two months, on 3 September 2008 to discuss the briefing note. It was a “significant meeting” at which they discussed “some ... dramatic recommendations”⁴⁵¹. Mr Kalimnios raised the matter when he did because it was a “critical time in the project”⁴⁵²: IBM had delivered its Delay Notice; QH had concerns about the progress of the replacement and there was “an opportunity to look at whether the project could be managed in a different way”⁴⁵³. Mr Kalimnios explained to Mr Reid the background to the note and his reasons for recommending the action it proposed. Mr Reid thought it appropriate to discuss the proposed actions with the Director-General of Public Works⁴⁵⁴. That meeting occurred a few days later. The result of that meeting was unsatisfactory from Mr Kalimnios’ point of view. Mr Grierson was “unpersuaded” that QH should or could detach itself from the SS Initiative⁴⁵⁵. Mr Grierson’s advice to his fellow Director-General and Mr Kalimnios was they should “get on and make it work with both CorpTech and IBM”⁴⁵⁶. The existing contractual arrangements would not change.

5.134 Mr Reid thought that the briefing note addressed complex issues which he did not fully understand having recently become Director-General⁴⁵⁷. He could not act upon the recommendations because the contract was with CorpTech, not QH, and because the work was the subject of a whole-of-government program⁴⁵⁸. For that reason they met with Mr Grierson. Two points were discussed⁴⁵⁹. The first was QH’s fears that LATTICE would fail, was unsupported and the replacement system was late. The second was whether the contract with IBM could be terminated and the proposals recommended in Mr Burns’ briefing note be implemented. Mr Grierson made it plain that QH could not be separated from the SS Initiative and was “not going it

445 Exhibit 63, Volume 5, at page 108.

446 Exhibit 63, Volume 5, at page 275.

447 Exhibit 63, Volume 5, at page 283.

448 Exhibit 63, Volume 5, at page 288.

449 Exhibit 65, Volume 5, at page 294.

450 Exhibit 63, Volume 5, at page 295.

451 T21-115, L21-39 (Michael Kalimnios).

452 T21-114, L21-34 (Michael Kalimnios).

453 T21-114, L36-42 (Michael Kalimnios).

454 T21-115, L35-39 (Michael Kalimnios).

455 T21-100, L12-17 (Michael Kalimnios).

456 T21-100, L12-17 (Michael Kalimnios).

457 Exhibit 90, para 16.

458 Exhibit 90, para 16.

459 T22-55, L1-14 (Michael Reid).

alone⁴⁶⁰. Mr Reid understood the result of the meeting to be that CorpTech would better respond to QH's concerns about lack of progress with the replacement and would endeavour to resolve the difficulties in the project with IBM⁴⁶¹.

5.135 Mr Grierson's recollection of the meeting is that he pointed out the SS Initiative was government policy, that the LATTICE replacement was part of the SS Initiative and that he, Director-General of Public Works, could not tell a fellow Director-General what he could or could not do⁴⁶². If QH wished to detach itself from the Initiative it was a matter for Cabinet and must be raised there by the Minister for Health.

5.136 There is no clear evidence that Mr Reid or Mr Grierson spoke about the briefing note's recommendations with their respective ministers. Mr Grierson's account of the discussions with Mr Reid and Mr Kalimnios are likely to be correct. Without a change of policy at Cabinet level the SS Initiative was to be implemented, and the LATTICE replacement was part of it.

One of the material reasons for the rescoping decision was the prices which IBM had presented under SOW 4 "Go Forward" as the likely fixed sum for completing the program as a whole.

5.137 On 18 September 2008, Mr Kalimnios sent a memorandum to Ms Perrott affirming QH's desire to pursue its own instance of Workbrain and SAP HR which would be converged with the whole-of-government solution at a suitable time in the future⁴⁶³. The memorandum expressed the view that "possessing a degree of autonomy over the decisions required to meet tight timeframes is paramount"⁴⁶⁴. Ms Perrott responded on 7 October 2008 indicating her support for "a separate instance subject to funding constraints"⁴⁶⁵.

5.138 On 29 September 2008, Mr Kalimnios approved a second briefing note to Mr Reid⁴⁶⁶. Its purpose was to advise his Director-General of developments relating to the whole-of-government SAP system's implementation. It recommended that certain "information be noted", including:

- *The contracted date for Queensland Health's payroll system replacement is 17 November 2008. IBM has advised its inability to meet this date.*
- *IBM has sought an extension of time to build the payroll solution and is proposing a new go live date (still to be agreed) between March and June 2009.*
- *Queensland Health's position is to progress under an "own instance" model for HR and payroll. This position has been discussed with the Executive Director of CorpTech who was seeking assurance that the approach would ensure as much reuse of design as possible for the whole-of-government. These assurances have been given.*
- *This approach is more acceptable to Queensland Health as it allows a degree of autonomy over decisions which directly affect business outcomes.*

Mr Kalimnios considered the briefing note to be substantially the same as Mr Burns' earlier note in that it recommended that QH take a greater control of the interim solution⁴⁶⁷. It was written on the basis that QH had "been given a clear direction" from Mr Grierson that it was to remain part of the SS Initiative⁴⁶⁸.

5.139 Mr Reid thought that the second briefing note was a "moderation" of the more distinct recommendation made a month before⁴⁶⁹. He discussed the second note with Mr Kalimnios who expressed concerns about delays to the replacement and his general dissatisfaction with IBM's performance⁴⁷⁰. He did advise, however, that problems were being progressively resolved. Mr Reid thought that the project was not one with respect to which he "could make a useful contribution other than support the people who were there to do the job"⁴⁷¹. It was not a matter which he would consider briefing the Minister for Health on in any detail.

460 L22-55, L25-27 (Michael Reid).

461 T23-18, L20-25 (Michael Reid).

462 T28-94, L21-40 (Malcolm Grierson).

463 Exhibit 63, Volume 6, at pages 26-29.

464 Exhibit 63, Volume 6, at page 26.

465 Exhibit 63, Volume 6, at page 259.

466 Exhibit 63, Volume 6, at page 195.

467 Exhibit 89, para 27.

468 T21-116, L17-22 (Michael Kalimnios).

469 Exhibit 90, para 21.

470 Exhibit 90, para 26.

471 T22-58, L19-22 (Michael Reid).

- 5.140** One of the material reasons⁴⁷² for the rescoping decision was the prices which IBM had presented under SOW 4 “Go Forward” as the likely fixed sum for completing the program as a whole. The sequence of events was the subject of evidence from Mr James Brown. I touched upon this topic in considering the procurement process in Part 1 of the report. It is necessary, however, to revisit those events, as I foreshadowed I would, because of their particular relevance in the present context.
- 5.141** IBM made two presentations to the State (CorpTech) on about 15 August 2008⁴⁷³ and again on 31 October 2008⁴⁷⁴. Both presentations were said to be the results of IBM’s work under SOW 4. Ms Sally O’Carroll (Management Accountant, Shared Services, QSS) analysed the figures which had been provided by IBM. She had some familiarity with the cost of the Program because it was she who was responsible for the internal accounting of the payments made by the State to IBM.
- 5.142** Ms O’Carroll compiled a spreadsheet which was Attachment 3 to Mr James Brown’s second statement⁴⁷⁵. That document set out the commitments which the State then had to make payments to IBM. In some instances, the amounts had already been paid, in others work had been contracted for and would attract the obligation to pay for it upon fulfilment by IBM of the relevant payment milestone.
- 5.143** Ms O’Carroll also added to the spreadsheet the figures presented by IBM in the Go Forward strategy. This was done for both the August and October 2008 assessments. She also included, for the purposes of comparison, the figures which IBM had stated in its ITO Response for the various components of the program.
- 5.144** Mr James Brown had some involvement (but not decision-making power) in the appraisal of the Program after receipt of the Go Forward assessments. He received Ms O’Carroll’s figures and used them to brief Mr Grierson on “where we were in the program and some options for how we were to move forward with IBM”⁴⁷⁶.
- 5.145** The figures showed, in summary, that on the August 2008 Go Forward assessments, it was likely to cost the State \$133,029,749 to complete the Program⁴⁷⁷. The 31 October 2008 figures (making some assumptions in order to maintain comparability) totalled \$181,134,136⁴⁷⁸. This figure, the spreadsheet clearly showed, was almost twice the amount estimated by IBM in its ITO Response, and which had been one of the most important reasons for it winning the bid. This revised figure approximated quite closely the price which Accenture had estimated in its ITO Response for the Program as a whole⁴⁷⁹. But from the State’s point of view, the importance seems to have been that the estimated fixed price far exceeded the budgeted funds which remained to complete the Program. It seems clear that the decision had been made that no further funds would be applied to the roll out of the Shared Services Solution⁴⁸⁰.
- 5.146** At the QHIC (QH only) Release Steering Committee meeting on 10 December 2008, Mr Kalimnios and Mr Reid advised that Mr Grierson had told them (and QH) to stay with IBM and CorpTech⁴⁸¹. The decision to “opt” out of the whole-of-government solution could only be made by Mr Grierson or Mr Bradley. It was considered that it would be difficult to convince another vendor that the current solution was workable⁴⁸².
- 5.147** In January 2009, CorpTech recommended to Mr Swarten that the preferred option was to hold IBM to account, have it complete the Interim Solution only, and not have it undertake any further Phase I program activities⁴⁸³. It was proposed that the balance of the funds which had been put aside for the whole-of-government program be used to move two other departments to existing stable systems and consolidate legacy systems. It was proposed that IBM be excluded from that work.
- 5.148** On 27 January 2009, the then Premier, Ms Anna Bligh, Mr Swarten and Mr Grierson met to discuss IBM⁴⁸⁴. Ms Bligh accepted that no final decision could be made by herself, the Minister and the Director-General about the whole-of-government arrangement with IBM at that meeting, as it was a decision that would

472 Exhibit 75B, para 7.

473 Exhibit 75b, Attachment 1.

474 Exhibit 75b, Attachment 2.

475 Exhibit 75b, Attachment 3.

476 T19-33, L13-15 (James Brown).

477 Exhibit 75B, Attachment 3.

478 Exhibit 75B, Attachment 3.

479 Exhibit 4, Volume 18, Item 17, at page 656.

480 T32-11, L1-10 (Anna Bligh); T29-17, L22-30 (Malcolm Grierson); T19-33, L32-36 (James Brown).

481 Exhibit 63, Volume 7, at pages 280-283.

482 Exhibit 63, Volume 7, at page 281.

483 Exhibit 63, Volume 8, at page 65.

484 T32-9, L2-4 (Anna Bligh).

require a Cabinet Budget Review Committee (CBRC) decision⁴⁸⁵. She also accepted that the preliminary decision made on that day meant that no further SOWs would be entered into with IBM until IBM had completed the Interim Solution⁴⁸⁶.

5.149 On 29 January 2009, the Executive Steering Committee was advised by Ms Perrott⁴⁸⁷ that the Premier, Mr Schwarten and Mr Grierson had met to discuss the proposed way forward. Mr Grierson had by then met with Mr Tony [Peter] Munro and Mr Doak from IBM, and “instructed IBM to proceed with the delivery of the QH LATTICE Interim Solution only. There may be some consideration of further engagement after this has been completed”.

5.150 In one sense, there were reasons to treat SOW 8 and the Interim Solution differently from the wider program: the replacement of LATTICE was, from the outset, considered to be necessary owing to its real or perceived state of atrophy⁴⁸⁸ and the work was already under way and partially completed⁴⁸⁹.

5.151 It is questionable, however, to what extent these features justified IBM being permitted to continue with the Interim Solution. The Interim Solution was, by January 2009, well behind schedule. There is no reason to believe that the delays which it had experienced to that time would not continue. QH was the most complex of the agencies, so the parties were faced with a greater range of problems than would have been the case in a smaller agency and one without the complexity for which rostering in part was responsible.

5.152 While there existed reasons to continue with the Interim Solution, the reasons which presented themselves to the State by late January 2009 were in my view overwhelming justifications to “reset” the Interim Solution or abandon it entirely. If the State could not unilaterally terminate the contract it could have negotiated an exit from it.

5.153 In a briefing to Mr Grierson on about 25 February 2009, Mr James Brown and Ms Berenyi noted that, due to budget constraints and difficulties with the prime contractor, the Government had approved IBM to continue to be engaged for the Interim Solution⁴⁹⁰.

5.154 On 21 September 2009, a CBRC paper was put forward proposing that IBM continue as the systems integrator for the Interim Solution only⁴⁹¹. It was said that to make the most effective use of available funds, and given the current fiscal climate, a revised implementation approach had been developed by CorpTech in consultation with the three shared service providers and Queensland Treasury. Key components of the revised approach included⁴⁹²:

- a. IBM would complete the implementation of QH’s payroll system only;
- b. in the interim, the DETA would remain on its existing human resources and payroll system;
- c. existing agencies would be migrated and consolidated to a smaller number of supported human resources and finance systems.

5.155 It would seem that no thought, or at the very least inadequate thought, was given to revisiting IBM’s involvement, the relationship between QH and IBM, or the terms of the contract, given that IBM had produced, to that date, parts only of the Interim Solution. Mr Reid could not recall this being done at the time but thought it something which “Mr Kalimnios and others” would have done⁴⁹³.

5.156 Mr Grierson accepted knowing that both DETA, QH and “everybody” had lost faith in IBM⁴⁹⁴ and hearing of this since April 2008⁴⁹⁵. When asked about what he did in response, he said he took the best steps he could to improve the relationship between IBM and the government agencies by⁴⁹⁶:

... getting in a senior person in IBM, by changing governance structures, by ensuring that we were across what was happening and hopefully locking the scope down.

485 T32-9, L6-11 (Anna Bligh).

486 T32-9, L13-21 (Anna Bligh).

487 Exhibit 63, Volume 8, at page 98.

488 T29-38, L22-34 (Malcolm Grierson).

489 T32-92, L7-55 (Robert Schwarten).

490 Exhibit 63, Volume 8, at page 153.

491 Exhibit 63, Volume 10, at pages 310-325, at specifically 317.

492 Exhibit 63, Volume 10, at page 316.

493 T22-70, L38-56 (Michael Reid).

494 T29-16, L23-27 (Malcolm Grierson).

495 T29-13, L30-31 (Malcolm Grierson).

496 T29-13, L33-36 (Malcolm Grierson).

5.157 He drew a distinction between the Interim Solution and the roll out in DETA⁴⁹⁷. Education, he considered, had an alternative. He seems not to have considered the DETA payroll system as being in urgent need of replacement. But there was not, in his mind, that option for QH given that, to use his words “LATTICE was not a sustainable payroll for the Health department”⁴⁹⁸.

5.158 Mr Grierson was initially able to recall little of what was said at the 27 January 2009 meeting with Mr Schwarten and Ms Bligh. He said, when pressed, that what is likely to have occurred is that Ms Bligh would have been presented with the situation and that⁴⁹⁹:

Where we wanted to go was not going to be achieved, which was a whole of government roll-out of all of these wonderful Shared Services systems ... just wasn't working and ... my belief was I didn't need to tell the premier that, she knew that from her own experience as treasurer, and that right now the biggest risk was this LATTICE system running Health payroll and the way to get that ... was to get IBM to focus totally on that and get it delivered. And one way was, of course, to take Education out ...

5.159 He was also able to recall that⁵⁰⁰:

I explained to them that ... the government had made a decision that we were going to put Education on hold. We weren't saying Education wasn't ever going to go there but Education was going to be put on hold because we wanted Health delivered. That was the focus, that was the prime driver so we were going to put Education on hold. I think there was also the consideration – sorry ... I do recall that there was also the consideration about the dollars that were left in the project budget and there was concern about the Education exercise would also be chewing up the funds that were left in the Shared Services budget, and the premier was concerned about that. But I explained to them that it was going to be put on hold and we now expected IBM to get all their best resources on board, focused on Health and deliver Health.

5.160 Mr Grierson's desire was to maintain a good working relationship between the State and IBM and by that means to impress upon IBM the need to take all the steps it could to deliver the Interim Solution⁵⁰¹.

5.161 There were very serious deficiencies in Mr Grierson's approach. He was the most senior public servant with responsibility for the Project. He had been made aware of serious concerns by government agencies with the system and IBM's performance. He knew of IBM's contentions that QH had been lazy and incomplete in the communication of its business requirements⁵⁰² and that scope would need to be locked down if the Interim Solution were to be delivered and were to function as QH required it to. He prevented steps being taken which might have put matters on a more formal footing and instead assumed for himself the role of relationship manager. He believed he could manage the contract by escalating issues to senior management within IBM⁵⁰³. He met with IBM representatives in the USA on 19 September 2008⁵⁰⁴. Mr Schwarten, Mr Bloomfield and Mr Pagura, Regional Australia and New Zealand Executive Public Sector, IBM, were in attendance⁵⁰⁵. The purpose of the meeting was to discuss the possibility of the government building a new computer centre. Mr Grierson stated that he took the opportunity at this meeting to ventilate the concerns held about the Project to senior IBM people⁵⁰⁶.

5.162 Mr Grierson had first met with Mr Doak shortly after he became Program Director in July 2008⁵⁰⁷. Mr Grierson recalled expressing his disappointment that IBM had put its “B” team on the project whereas I would have expected the IBM I had known in the past to have had an ‘A’ team on a project such as this.”⁵⁰⁸. He recalled that Mr Doak more or less agreed, stating that he was now here and that the A team was on the Project⁵⁰⁹. Mr Doak requested Mr Grierson meet with him regularly in relation to the progress of the Project. Mr Grierson's understanding of the purpose of these meetings was that Mr Doak was keen to keep him “informed of what he and IBM were doing to instil in me confidence that they did have an A team on there and they were achieving what they should be achieving”⁵¹⁰. Meetings between Mr Grierson, Ms Robyn Turbit,

497 T29-13, L39-45 (Malcolm Grierson).

498 T29-13, L39-45 (Malcolm Grierson).

499 T29-16, L41-51 (Malcolm Grierson).

500 T29-17, L16-30 (Malcolm Grierson).

501 T29-13, L30-45 (Malcolm Grierson).

502 T28-86, L13-18 (Malcolm Grierson).

503 T28-72, L1-17 (Malcolm Grierson).

504 Exhibit 136, Volume 1, at pages 61-62.

505 T28-108, L45-54 (Malcolm Grierson); Exhibit 149A, para 4.

506 Exhibit 149A, para 4.

507 Exhibit 116, para 24.

508 Exhibit 116, para 24.

509 T28-78, L22-29 (Malcolm Grierson).

510 T28-79, L21-34 (Malcolm Grierson).

Ms Perrott and Mr Doak were scheduled fortnightly⁵¹¹. Mr Grierson said that these meetings probably occurred monthly and ceased in February 2009⁵¹². Outside of these scheduled meetings, Mr Grierson did not recall meeting with Mr Doak on his own⁵¹³, and denied Mr Doak's evidence that these meetings occurred weekly⁵¹⁴.

5.163 When questioned by Counsel Assisting, Mr Flanagan QC, as to whether he should have taken more direct leadership and responsibility in resolving the recurring issues that arose with the contract, Mr Grierson said⁵¹⁵:

When I had CorpTech join my department, and I've heard the concerns about IBM ... I had IBM put in a better team and better management to control the contract, control their part of the contract. I changed my management in CorpTech in December 2008 I put Margaret Berenyi, I put her in, who had good IT experience, James Brown, who had experience with IBM and SAP in New South Wales, I moved Barbara Perrott back to the Shared Services. ... I escalated with everyone I could to IBM the people involved, the concerns. I had a situation where IBM assigned a senior partner, Peter Munro, to deal personally with me as I had concerns. We went - we looked at the overall program, we discussed with the Premier the fact that we believe we should concentrate on Health because of the LATTICE situation, so I got that raised to that level. We took education out of the equation so IBM could focus on the LATTICE replacement. We went through and tried to freeze scope on so many times ... I'm not sure what else you expected me to do.

5.164 The real problem with this approach was that Mr Grierson, while not deficient in confidence, appears to have been no match for IBM's negotiators. Although he might have had considerable experience as a senior public servant, he lacked the toughness and shrewdness of the IBM negotiators. His urgings to them seem to have been naïve. His constant attempts for them to "get their best resources" on board rather missed the point. He failed to understand that the problem was not so much IBM resourcing as the highly unsatisfactory scoping of the Interim Solution and the constant changes which QH was making to it in an *ad hoc* fashion, yet without increasing the certainty that the resultant system would be functional. And he was ineffective too in instilling some discipline in the senior management of QH. Mr Grierson, being the most senior public servant with responsibility for the Program, fell well short of what he ought to have done. He ought, at the very least, to have sought to reset the Project in the sense in which Dr Manfield used that term and, if he lacked the authority to achieve that, to recommend that strongly to his own Minister and to the Premier as the proper course.

5.165 Mr Grierson, as others, failed to bring to the Project the skill and authority which his position demanded. He is, in this respect, partly to blame for the price increasing and to the extent it did and for the resultant system being seriously flawed from a functional point of view.

5.166 Ms Bligh was asked about the decision to rescope the contract. She recalled it being discussed at the 27 January 2009 meeting that IBM's involvement would be limited to the Interim Solution and that that decision was based upon concerns about both timing of delivery and cost of delivery⁵¹⁶.

5.167 The only option with which Ms Bligh was presented was the one which was selected: namely that IBM remain working on the Interim Solution. When asked why this was the case, Mr Schwarten said that Mr Grierson had advised him that IBM had the capacity to "do the job" and that⁵¹⁷:

[W]e weren't left with a lot of options I would have thought at that stage to go and get somebody else to carry out this job.

5.168 This failed to come to grips with the real problem, one which it was for these senior people to identify and resolve. The problem may not so much have been IBM's capacity to complete the Interim Solution but the more fundamental problems which existed with the inadequate scoping which had been undertaken, the persistent lack of clarity in scope, the constant changes to it and the need to ensure that the system would be functional when it went live.

5.169 Yet this was the only option which Mr Schwarten discussed with Mr Grierson⁵¹⁸. Mr Grierson knew by this time that the problems were not limited to IBM's capacity to complete the Interim Solution. Seen in this way, the obvious decision was not to displace IBM from the Interim Solution because, as Mr Schwarten said,

511 See Exhibit 117.

512 T28-75 L1-4 (Malcolm Grierson); T28-82, L10-19 (Malcolm Grierson).

513 T28-81, L52-54 (Malcolm Grierson).

514 Exhibit 103, paras 104-105; T28-82, L30-31 (Malcolm Grierson).

515 T29-24, L4-25 (Malcolm Grierson).

516 T32-10, L34-55 (Anna Bligh).

517 T32-57, L11-25 (Robert Schwarten).

518 T32-58, L1-25 (Robert Schwarten).

it was not, by January 2009 at least, practicable to move in an alternative contractor to IBM⁵¹⁹. Mr Grierson had a similar view⁵²⁰. The difference was, so far as Mr Grierson is concerned, that he was better placed to be more fully informed about the real problems which were actually being experienced and therefore better placed to know – and to advise upon – ways in which these problems could be resolved.

The real problem with this approach was that Mr Grierson, while not deficient in confidence, appears to have been no match for IBM's negotiators.

5.170 Another major oversight of the rescoping was the consequences of it for the Interim Solution. If IBM were to be precluded from undertaking further works under the contract, what was to become of the “remainder” portion of it? There seems never to have been any consideration given to this question, one which it was essential to address, lest the Interim Solution be left, as indeed it was, in a partially completed state and with functionality excluded from it. The question was put to Mr Kalimnios, Mr Reid, Ms Berenyi, Mr Grierson and Mr Schwarten and, indeed, Ms Bligh. Their answers were uniform. None of them gave any thought to what the decision to limit the work of the prime contractor to replacing the QH payroll system meant for the design and functionality of the system which was no longer to be “interim”⁵²¹.

Mr Price's Memorandum of 6 July 2009

5.171 There is one other matter which I must consider before leaving the general topic of the opportunities which the State had, and gave up, to reset the Project and the warnings it had of the inevitability that, if the system proceeded to Go Live in the state in which it then was, it would be likely to be functionally deficient. Into this second category falls a memorandum written by Mr Price (as Director of QHEST) with the assistance of others who were junior to him. I will refer to this memorandum as “the Price Memorandum”.

5.172 The Price Memorandum was dated 6 July 2009 and took the form of a brief for noting to Mr Paul Lucas, the Deputy Premier and Minister for Health. It recommended that the Minister⁵²²:

[N]ote issues in relation to the IBM contract with CorpTech and that both CorpTech and Queensland Health are working to obtain a solution to the issues.

5.173 The Price Memorandum outlined some of the history of the Project and identified these three reasons for its “failure”⁵²³:

- *Lack of recognised project management methodology had resulted in failure to manage development of solution requirements through design and build process.*
- *Lack of adequate skill and resources provided by IBM.*
- *Critical features of governance to ensure Queensland Health business needs were met.*

5.174 Mr Price highlighted a number of further factors, including⁵²⁴:

- a. IBM having been in breach of the contract since August 2008 and CorpTech having been made aware of this situation and failing to exercise its rights against IBM;
- b. the tripartite arrangement between IBM, CorpTech and QH having weakened the governance of the Project;
- c. there having been significant delay in delivering the Solution, resulting in increased project costs;
- d. inadequate contract management having resulted in the fixed price contract evolving into a time and materials engagement;
- e. IBM having failed to apply a project methodology consistently throughout the Project, resulting in a number of critical failures that have impacted the delivery of the Project, including:
 - IBM failing to take Project accountability and produce a robust end to end Project schedule mapping all the inter Project dependencies between themselves, CorpTech and QH;
 - The Project schedule having underestimated the time and resources required to complete activities and there being insufficient allowance for Project contingencies;

519 T32-92, L7-55 (Robert Schwarten).

520 T34-85, L12-52; T29-16, L1-8 (Malcolm Grierson).

521 T21-113, L16-38 (Michael Kalimnios); T22-70, L41-56 (Michael Reid); T27-70, L26 (Margaret Berenyi); T29-20, L37-51 (Malcolm Grierson); T32-58, L27-41 (Robert Schwarten); T32-12, L31-56 to T32-13, L1-20 (Anna Bligh).

522 Exhibit 63, Volume 9, at page 240.

523 Exhibit 63, Volume 9, at page 241.

524 Exhibit 63, Volume 9, at pages 240-250.

- The Project schedule continually having been revised with the result that testing activities were compressed and impacting on the quality of testing performed.
- f. IBM not having instituted any formal internal quality assurance;
- g. the process followed by IBM to identify QH's business requirements having been inadequate. It was said that a failure to identify business requirements had severely impacted the quality of the solution with a large number of deficiencies being identified during UAT and a high number of manual business workarounds being put in place.
- h. deficiencies in identifying business requirements having meant that there were ongoing debates on Project scope and deliverables. As a result, Mr Price said, QH had agreed to "de-scope" a number of deliverables, such as the HR/Finance integration requirements in order to meet a Go Live date in August 2009;
- i. the quality of the Solution design not being high and there being a risk that both IBM and CorpTech may be willing to compromise Solution quality in order to achieve a Go Live date, resulting in an unacceptable risk profile for QH.

5.175 Mr Price was instructed to prepare the memorandum by Mr Shea or Mr Kalimnios due to the significant issues being experienced with IBM and the implementation of the Project⁵²⁵. On or around 6 July 2009, Mr Kalimnios said that he received the Price Memorandum and considered it reflected the facts as he understood them at the time and his concerns with the implementation of the project⁵²⁶. Mr Shea also gave evidence that the Price Memorandum generally reflected his view of the Project at the time⁵²⁷.

5.176 Mr Price signed the memorandum and sent it to Mr Shea. It required clearance by both Mr Kalimnios and Mr Shea and the endorsement and signature of Mr Reid before it could be sent to the Minister⁵²⁸.

5.177 Mr Kalimnios, when asked what he had hoped the memorandum might achieve for the implementation of the Project, said⁵²⁹:

Answer: [S]ort of the last throw of the dice in terms of the project still had issues. We still had problems in our perspective from the relationship between us, IBM and CorpTech and how that was operating. The system wasn't being delivered. We thought it would be more effective if we were to take direct control of that and perhaps look at doing things differently. So it was really just to try and sort of identify where we're at, what we're trying to - what our challenges, issues were and perhaps trying to get a discussion at a senior level about how we might move forward with that.

...

Question: But what did you hope the ministers would do?

Answer: Basically, make some decisions about whether we continue with IBM and whether we stop the contract and, indeed, reform the contract as a Queensland Health contract with us as the contractor and the client.

Question: So in a sense to renegotiate the contract with IBM and Queensland Health?

Answer: Yes. ...

Question: Or bring the contract to an end ...?

Answer: Correct.

5.178 Despite the concerns he held about the Project, Mr Kalimnios said that he did not provide the Price Memorandum to Mr Reid nor to Mr Grierson⁵³⁰. He gave the following reasons for not having done so⁵³¹:

I decided not to send the brief to Mr Reid because, after consultation with Mr Shea, to the best of my recollection, I thought that given the impact of the issues raised, and our desire to maintain and support the whole of government position, it was more appropriate to address these issues directly with Mr Reid, and for him to discuss these concerns directly with Mr Grierson with the objective of achieving a joint Queensland Health and CorpTech position, before escalating the issue formally to Ministerial level.

5.179 Mr Shea's evidence was that he regarded the Price Memorandum as being too long and emotive in

525 Exhibit 80, para 29; Exhibit 89, para 35.

526 Exhibit 89, para 35.

527 T22-27, L5-12 (Adrian Shea).

528 Exhibit 63, Volume 9, at page 250.

529 T21-100, L47-L56 to T21-101, L1-L25 (Michael Kalimnios).

530 Exhibit 89, para 37.

531 Exhibit 89, para 37; T21-86, L49-54 (Michael Kalimnios).

expression to be a suitable ministerial briefing note⁵³². Mr Kalimnios had decided that it was more appropriate to give an oral briefing due to the complexity of the issues.

5.180 Counsel for Mr Kalimnios submitted that he ought not be criticised for not sending the memorandum to Mr Reid⁵³³. That decision was, it was said, reasonable. Mr Kalimnios did raise the substance of the issues with Mr Reid in meetings. What was communicated of the memorandum's contents is the subject of a dispute between Mr Kalimnios and Mr Reid. It does not appear that Mr Shea was in attendance at those meetings.

5.181 Mr Kalimnios' evidence was that, shortly after 6 July 2009, he met with Mr Reid and discussed the contents of the Price Memorandum. He did not recall whether Mr Shea was present⁵³⁴. He did not, however, give Mr Reid a copy of the document⁵³⁵. Mr Kalimnios said that he used the Price Memorandum as a "checklist of issues to address"⁵³⁶. In a supplementary statement, Mr Kalimnios set out the matters from the memorandum which he believed he had brought to Mr Reid's notice in the meeting⁵³⁷. It is clear from that evidence that Mr Kalimnios did not descend into the detail in the Price Memorandum, but addressed matters in broad terms. Mr Kalimnios stated that he made it clear to Mr Reid that⁵³⁸:

[T]he quality of the solution build was not high and that unless all the defects are identified and rectified prior to "Go-Live", there was a risk that the payroll calculations may be incorrect, resulting in either under or over payments to employees.

5.182 He recalled that Mr Reid said⁵³⁹ "the issues were fairly significant and we agreed that we should then perhaps meet again with the Director-General of Public Works to address what we might do in moving that forward". Mr Reid, however, said that he first became aware of the memorandum only in March or April 2010 when it was identified as relevant to a Freedom of Information request⁵⁴⁰. He recalled that some of the issues in the Price Memorandum had been raised with him, but did not recall Mr Kalimnios having that document in his hand or him discussing the detail of the issues it raised in one single meeting shortly after 6 July 2009⁵⁴¹. Mr Reid claimed he only became aware of issues in the Price Memorandum through the regular meetings which he had attended with Mr Kalimnios and in which he was provided "high level" information on the following⁵⁴²:

- a. LATTICE was an unsupported and ageing payroll system;
- b. the QHIC Project was over time and budget and that costs had escalated;
- c. QH was concerned about the control of project deliverables resting with CorpTech;
- d. the Interim Solution was the pilot for the whole-of-government solution for Workbrain and SAP;
- e. there had been a failure by IBM to deliver on time and budget;
- f. the relationship between IBM, CorpTech and QH had not been strong;
- g. a failure of the implemented solution to deliver a payroll solution would probably result in media attention; and
- h. CorpTech and IBM were members of the Project Directorate and Board which provides governance for the QHIC Project.

5.183 Senior Counsel Assisting the Commission asked Mr Reid, in the course of his oral evidence, to mark on a copy of the Price Memorandum those matters which were not raised with him by Mr Kalimnios⁵⁴³. This exercise suggested that Mr Reid recalled that the issues were discussed in broad terms and that Mr Kalimnios had not discussed the detail of the memorandum. Despite this, Mr Reid said that, throughout the course of 2009, he was "progressively reassured that the sources of Queensland Health's dissatisfaction ... were being rectified on an ongoing basis such that there was an increasing level of comfort that they would be resolved to Queensland Health's satisfaction"⁵⁴⁴.

532 T22-11, L10-28 (Adrian Shea); T22-27, L15-21 (Adrian Shea).

533 Submissions on behalf of Mr Kalimnios, Mr Shea and Mr Ray Brown, dated 11 June 2013 (Contract), para 92.

534 T21-87, L1 (Michael Kalimnios).

535 T21-87, L12-13 (Michael Kalimnios).

536 T21-88, L1-5 (Michael Kalimnios).

537 Exhibit 145. See also Submissions on behalf of Mr Kalimnios, Mr Shea and Mr Brown, dated 11 June 2013 (Contract), para 94.

538 Exhibit 145, para 22.

539 T21-88, L7-12 (Michael Kalimnios).

540 Exhibit 90, para 34.

541 T22-64, L13-22 (Michael Reid).

542 Exhibit 90, para 34.

543 Exhibit 91.

544 Exhibit 90, para 34.

5.184 Shortly after, Mr Kalimnios said he met Mr Grierson and Mr Reid and discussed broadly the contents of the Price Memorandum⁵⁴⁵. Mr Reid did not consider that the Price Memorandum, or his discussion with Mr Kalimnios about it, was the reason for meeting Mr Grierson. His evidence of the meeting was⁵⁴⁶:

Answer: The meeting with Mr Grierson, from recollection, was much more around the concerns of the delay with IBM and the need to rectify that, as distinct from the earlier meeting in 2008 with Mr Grierson, which was more around, "Could we cop out of the contract?"

Question: Can I just ask, what did you hope to achieve from this meeting with Mr Grierson, the second meeting?

Answer: My recollection is that there was still a number of concerns that Michael was expressing to me, Commissioner, about the delays to go live and functionality of LATTICE and he was trying to achieve, I understand, an arrangement whereby we could – now, I don't know where he drew the distinction, but he could gee up CorpTech and IBM to be more responsive to the requirements of Health in getting the system live.

The Price Memorandum was a clear attempt by Mr Price to collate and bring to the attention of the Minister the many problems which he had been informed were facing the system.

5.185 Mr Kalimnios thought that the second meeting was a repetition of the first one, a year before⁵⁴⁷. Senior Counsel for Mr Reid submitted⁵⁴⁸ that the memorandum was not a recital of current issues, but was, at most, a lengthy history of the matter and all of its problems through time as understood by Mr Price and his team. He also submitted that a number of the concerns expressed were historical, not current and did not evidence a need for urgent attention and therefore there was no reason for the contents to be discussed by Mr Kalimnios and Mr Shea in one meeting. Mr Reid's recollection of events has, it was submitted, "overwhelming support"⁵⁴⁹:

- a. Mr Reid's evidence that no major issues were raised with him which warranted the involvement of the Minister was supported by QH Position Papers which were distributed to the Project Board. These showed some concern for contract management and governance in the period 15 July 2009 to 18 August 2009, which coincided with the memorandum; however after this time these matters reported "green"⁵⁵⁰;
- b. if the issues raised in the Price Memorandum did in fact exist as at July 2009, one would have expected to see evidence of them at QHIC Board level where these matters ought properly to have been addressed⁵⁵¹;
- c. Mr Kalimnios did not want the matters raised in the Price Memorandum to be brought to the attention of Mr Lucas. By July 2009, Mr Kalimnios was aware that Mr Lucas was conscious of the issues the project was experiencing as Mr Price had briefed Mr Lucas on substantially similar issues for Estimates in June 2009⁵⁵²;
- d. in a meeting between Mr Kalimnios and Ms Berenyi on 17 August 2009, there was no record of complaint about management or governance issues or about IBM providing inadequate resources or skills⁵⁵³.

5.186 The Price Memorandum was a clear attempt by Mr Price to collate and bring to the attention of the Minister the many problems which he had been informed were facing the system. That is not to say that all the matters he identified were in fact problems or had been sufficiently evidenced or proved to him. But what the Price Memorandum did correctly identify, in my view, was that there existed a divide between QH's requirements and the system which IBM was designing and building, with the consequence that the solution quality was poor, something which, viewed from the perspective of the customer, was necessarily a focus on the likelihood that the system would function properly as a payroll system ought.

5.187 These were, in the end, concerns. They were ones which both Mr Shea and Mr Kalimnios held. If that were so, and I accept it to be the case, Mr Kalimnios and Mr Shea ought to have ensured the Price Memorandum, perhaps in a more focused and precise form, be sent up to Mr Reid and, ultimately, Mr Lucas. (Mr Shea reported to Mr Kalimnios and could not directly inform or influence Mr Reid.). Had that occurred, it would

545 Exhibit 89, para 38; T21-120, L25 (Michael Kalimnios).

546 T22-65, L33-48 (Michael Reid).

547 T21-120, L26-27 (Michael Kalimnios).

548 Submissions on behalf of Mr Michael Reid, dated 4 June 2013 (Contract), para 25.

549 Submissions on behalf of Mr Michael Reid, dated 4 June 2013 (Contract), para 15.

550 Submissions on behalf of Mr Reid, dated 4 June 2013 (Contract), para 19.

551 Submissions on behalf of Mr Reid, dated 4 June 2013 (Contract), para 22.

552 Exhibit 151, Annexure PTL-3.

553 Exhibit 63, Volume 10, at page 44-45.

have resolved entirely the controversy which now exists between Mr Kalimnios and Mr Reid as to what was said in oral briefings. Both Mr Kalimnios and Mr Shea, as I say elsewhere in this Report, suffered the consequence of their failure by the termination of their contracts.

- 5.188** It is impossible to know whether Mr Reid was ever told the detail of the matters raised in the Price Memorandum. But it is unnecessary to do so for present purposes. Mr Reid accepts that, at about the time that memorandum was prepared, he was aware through conversations he had with Mr Kalimnios that Mr Kalimnios believed there were serious problems with the quality of the product being delivered⁵⁵⁴. That in my view was sufficient to draw to his notice what I consider to be the most material point which Mr Price sought to make, a point which stated accurately the principal problem then facing the system and the problem of greatest concern to a Director-General, given its likely effect on the pay of his staff.
- 5.189** Having had that knowledge, whether in the formality of a brief or not, Mr Reid ought to have taken steps – some steps – to ascertain the validity of the claim, or cause it to be further investigated by others.
- 5.190** IBM criticised Mr Price in its written submissions⁵⁵⁵. None of what is there submitted affects the findings I have made about the Price Memorandum he prepared or the attention it ought to have received.

6. The Decision to Go Live

- 6.1** The Interim Solution went live on 14 March 2010. The decision to do so was made by the Project Board. It was a decision which was recommended by the Project Directorate.
- 6.2** There were, preceding those decisions, unambiguous warnings that the system possessed serious functional deficiencies, something which, as will be seen later, was confirmed when the system went live and failed to pay a large number of staff and inaccurately paid an even larger number.
- 6.3** These decisions, because of these warnings, and because of the grave problems with the system after Go Live, demand consideration as part of ascertaining the adequacy of the contract, project management, governance and implementation processes.
- 6.4** The lead up to Go Live commenced on or about 22 January 2010, with the Project Board deciding that the system, despite not having passed the pre-set criteria, ought to exit UAT4. Ms Jones summed up the misguided but strong feeling which she felt given the number and nature of the problems which were then emerging in UAT4⁵⁵⁶:
- Answer: [K] Ross] were ... as with all test teams, to raise a defect. I would not agree that it was their responsibility to identify defects, quantify them or any such thing. We had a defect management group and a working group that did that.*
- ...
- Question: But it was his [Brett Cowan's] job, wasn't it, to test and notify, and he did it on a daily basis, those defects which he found as a result of doing his job?*
- Answer: I can't comment on what his job was. He certainly did not report to me and I did not engage him so I don't know what brief he was given regarding his job, but UAT is about running agreed test case scenarios across it and reporting unexpected results or test case failures. I don't know that I can agree that it was his job or the purpose of UAT to find, identify or quantify defects.*
- 6.5** The decision to permit the system to exit UAT4 required, in order to be effective, having regard to the Project documentation, a Change to the contract. This was effected, as explained above, by Change 208. That Change both deemed the system have passed UAT and changed the exit criteria so that the existence of Severity 2 defects would not be an impediment to it doing so, provided there was a comprehensive management plan for them.
- 6.6** Once the system exited UAT, the system reached the stage of “cutover” in which IBM became responsible for transitioning the data from LATTICE to the Interim Solution.

554 T23-31, L1-7 (Michael Reid).

555 Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), paras 259-262.

556 T20-12, L14-44 (Janette Jones).

- 6.7** Cutover occurred shortly after 1 February 2010. That was the day on which the Project Directorate convened an “Extraordinary Meeting”, reviewed the “relevant criteria” and sent to the Project Board a recommendation that cutover – technical phase commence⁵⁵⁷. That recommendation was made by the Chair of the Project Directorate (then Mr Shea) and cleared by Mr Price, as the Director of QHEST.
- 6.8** The criteria relevant to a decision whether to proceed with technical cutover are contained in what were described as “traffic light” or “dashboard” reports⁵⁵⁸, in which the criteria are listed and alongside each, a status is attributed by a coloured disc which is green, amber or orange. Some of the items had an “amber” status.
- 6.9** The Project Board, when it also met on 1 February 2010, noted the recommendation from the Project Directorate to proceed to cutover – technical phase and that a “full risk profile and subsequent mitigation plan will be presented to the board for approval prior to Gate 2 on 01/03/2010”⁵⁵⁹. The Board minutes record that it “accepted the current risks and ... approved entrance into Technical Cutover”.
- 6.10** At this time, there existed a real concern that the Defect Management Plan which had been developed would prove impracticable. Against the criteria for “Additional Amended Criteria Via Deliverable 44”, it was said⁵⁶⁰:
- Process for the management of defects, (as detailed in the Defect and Solution Management plan), has been endorsed by the PD [Project Directorate]. Final update of the Defect and Solution Management Plan to be approved by Cutover Go/No Go Gate 2, 1st March 2010). Change control will be managed by the PD.*
- Note: Risk that the workload required to address defects in the Management Plan may not be achievable in the available window.*
- 6.11** The passage I have emphasised shows there to have existed (despite the “green” status allocated to this issue) a real concern that matters which were, in effect, being deferred off into the Defect Management Plan, and simply putting off to after Go Live, were matters which ought to have been dealt with beforehand, and that those matters were of such a kind and number that it might prove impracticable to effect them all.
- 6.12** Ms Jones had expressed “great” concerns of a similar kind in an email of 12 January 2010 where she stated she did not anticipate there being so many items on the Defect Management Plan before UAT had finished, stressed the need to agree that “each one of these are low impact or managed by an acceptable work around” and expressed disagreement with items being listed on the Defect Management Plan before UAT and previous commitments had been attempted to be met⁵⁶¹. These observations suggest that the Defect Management Plan was being treated more as a convenient dumping ground than by reference to any measured assessment of what could, realistically speaking, be dealt with after Go Live.
- 6.13** Ms Jones expanded upon the views that she had held at the time in her oral evidence⁵⁶²:
- The management plan was not about everybody can put a defect on it and we’ll just work out how to deal with it. The management plan was to be developed after careful deliberation on what could not be fixed and whether it could be accommodated beyond go live. The circulation of this defect management plan concerned me because it literally had a lot of defects on it. Some of them had not been analysed. Some had not been discussed with IBM for our discussions about defect versus change and certainly the project directorate had not had an opportunity to understand magnitude, impact, scale and volume of those ones. It just got circulated to a large group, is my recollection.*
- My concern was that the UAT team was now circulating a defect management plan which they had no responsibility over and were not asked to, in my understanding. The project directorate had asked IBM to come up with a defect solution management plan. Once I had raised this with Pine and the project manager on her return, it was deemed that we needed to have much more control about this because, in effect, we now had two defect management plan terms being circulated. Considering that Queensland Health was the one that would have to execute and be affected by the majority of the workarounds, I wanted to make sure that the Queensland Health members of the board understood completely what was on that plan. So it was just now very unhelpful that we had two defect management plans being circulated and considering the level of goodwill within the project at that point, this was a very unhelpful event.*

557 Exhibit 63, Volume 14, at page 143.

558 Exhibit 63, Volume 14, at page 152.

559 Exhibit 63, Volume 14, at page 33.

560 Exhibit 63, Volume 14, at page 155.

561 Exhibit 63, Volume 13, at page 52.

562 T20-11, L7-37 (Janette Jones).

- 6.14 Having proceeded through Gate 1, the system proceeded through Gate 2 “Business Cutover” and then, finally, Gate 3 (Simulation 2) in mid-February 2010⁵⁶³.
- 6.15 At this point, the system was proceeding towards Go Live with only the final decision to be made whether that ought to occur. There are, for the purposes of assessing the decision to Go Live, two critical documents. The first is the “Management Response” dated 19 February 2010 to Mr Cowan’s Final UAT Report⁵⁶⁴, the other is a “QHIC Final Solution Risk Assessment Report” (“Risk Assessment Report”) by Mr Burns and Mr Shah of 1 March 2010⁵⁶⁵.
- 6.16 The Management Response, to which I have referred earlier, gave QH’s and IBM’s responses to the matters Mr Cowan had identified in his Final UAT Report⁵⁶⁶. The Project Directorate assessed the options presented by the Final UAT Report and concluded the risk of delay presented an equal or greater risk than the decision to Go Live⁵⁶⁷:
- The Project Directorate agrees that there is a residual risk to continue into Production with the number of severity two open defects. However Option 1 presents an equal or greater risk within the legacy system environment to delay the Go Live, such as the contingency support nature for Lattice, limited priority 1 support for ESP and the need for additional infrastructure and technical sizing that would have to be undertaken if the project was delayed. There is limited configuration opportunity in Lattice with an increased number of workarounds into the future.*
- 6.17 The Risk Assessment Report recommended⁵⁶⁸:
- [T]hat Queensland Health enter the production cut over process in order to proceed to Go-Live, provided all the critical milestones within this process are successfully executed according to the planned schedule and that the risk mitigation plan for the key residual risks is actioned successfully.*
- But there is a residual risk that the cumulative effective of high levels of defects occurring in each successive pay run, which by their nature create a further impact on the next pay run, could lead to an unsustainable operational condition.*
- 6.18 These recommendations were based in part on the following assertions made about the current LATTICE/ESP system⁵⁶⁹:
- *There is a significant cost and effort required to manage the inherent error rate in the current payroll system due to the significant number of manual processes involved in preparing the input data.*
 - *The software in this system is no longer supported and there is **an extreme risk of system failure** occurring in the future.*
 - *The costs to Queensland Health of providing a measure of skilled support for this technology is high.*
 - *The complexity of the awards required by the Queensland Health payroll system are extremely difficult to build into the current system.*
 - *Some awards are too complex to be included in the system and require on going manual processes to implement. In fact some of the new complex EBA’s cannot be built in the system.*
 - *There are a significant number of detailed technical risks relating to the current software systems which have been considered but not detailed in this report. [emphasis added]*
- 6.19 The risks which Mr Burns and Mr Shah identified are, for the most part, the same as those outlined in the QHEST Risk Assessment of LATTICE which had been undertaken some two and a half years earlier, in September 2007⁵⁷⁰.
- 6.20 Despite the conclusion that the system built by IBM would have a lower operational risk than the existing LATTICE system, the Risk Assessment Report indicated that there were risk indicators around the quality of the solution that would be delivered. The Risk Assessment Report advised that these issues would have to be managed by QH and CorpTech and early plans should be made for future improvements in quality and functionality⁵⁷¹.

563 Exhibit 63, Volume 14, at page 319.

564 Exhibit 63, Volume 14, at pages 380-391.

565 Exhibit 63, Volume 15, at pages 14-26.

566 Exhibit 63, Volume 14, at pages 380-391.

567 Exhibit 63, Volume 14, page 390.

568 Exhibit 63, Volume 15, at page 19; Note the final version of the Report was distributed after the 1 March 2010 QHIC Pre-Board Meeting. The handwritten annotation on the copy of the Report at Exhibit 63, Volume 15, at page 14 indicates the final version was dated 3 March 2010.

569 Exhibit 63, Volume 15, at page 16.

570 Exhibit 131.

571 Exhibit 63, Volume 15, at page 17.

- 6.21** The Risk Assessment Report conveyed a sense of urgency in the decision to Go Live. In addition to the operational and solution quality risk profiles, that Report stated that QH “is faced with the need to assess the new solution risks as acceptable or to face the potentially worse option of deferring the new solution yet again”⁵⁷². In assessing QH’s strategic business decision, the Risk Assessment Report considered that QH executive management would have to base their decision on the following factors⁵⁷³:
1. *There is a complex tripartite contractual arrangement with the prime contractor and CorpTech. There would be significant contractual and commercial challenges if the project does not go live now.*
 2. *The project staff from all parties who have been working on this project are fatigued and any attempt to delay and restart the project phases at this stage will be detrimental to staff morale and cause a loss of key skills and knowledge.*
 3. *Rebuilding the project team again would be time consuming and expensive.*
 4. *The financial cost and the time and morale impact on staff of developing the new solution to this stage has been extremely high for Queensland Health. The business is now faced with a situation of project exhaustion across the organisation.*
- 6.22** These views echo the complaints which Mr Burns had made in his briefing note of 29 August 2008⁵⁷⁴ and there was an obvious desire for QH to be released from the arrangements with which it had been discontented for so long, even if that meant having the system Go Live when it was unsafe to do so.
- 6.23** The Risk Assessment Report alluded to Mr Cowan’s Final UAT Report.
- 6.24** The minutes of the Project Pre-Board Meeting on 1 March, which comprised its QH members only, recorded the following⁵⁷⁵:
- The group agreed that all of the current project risks are manageable and nothing is preventing Go Live at this stage.*
- The Project Directorate recommends that the defects can be managed through the defect and solution management plan.*
- 6.25** On 12 March 2010, Mr Burns presented a Program Assurance Position Paper to the Project Board which confirmed that all critical milestones for Go Live were in an acceptable position⁵⁷⁶. Ms Berenyi recalled that participants at this meeting were asked to express their views of the readiness of the system to Go Live. She could recall no dissenting views having been expressed⁵⁷⁷.
- 6.26** On 14 March 2010, the Project Directorate presented a brief for decision to the Project Board which stated⁵⁷⁸:
- The QHIC Project Directorate recommends to the Project Board that predefined criteria have been met and that the business may go live with SAP and Workbrain.*
- 6.27** The Project Directorate identified that one issue was assessed as reporting “amber” however an appropriate mitigation strategy was in place allowing the system to proceed to Go Live⁵⁷⁹. Ms Berenyi said that the advice provided to the Project Board by the Project Directorate was that this was a low risk and the Board accepted this risk⁵⁸⁰.
- 6.28** At 6.00am on 14 March 2010, the Project Directorate met and reviewed the criteria for Go Live⁵⁸¹. At 7.00am on 14 March 2010, the Project Board convened by telephone and decided, on the recommendation of the Project Directorate⁵⁸², that the system would Go Live as all planned cutover activities had been completed ahead of schedule⁵⁸³. The minutes of the meeting record Mr Shea, Mr Doak, Ms Berenyi, Mr Ray Brown and members of the Project Directorate as being present. Mr Kalimnios was not present at the meeting⁵⁸⁴.

572 Exhibit 63, Volume 15, at page 18.

573 Exhibit 63, Volume 15, at pages 18-19.

574 Exhibit 63, Volume 5, at pages 294-296.

575 Exhibit 63, Volume 15, at page 13.

576 Exhibit 63, Volume 15, at page 143.

577 Exhibit 113, para 197.

578 Exhibit 63, Volume 15, at page 168-169.

579 Exhibit 63, Volume 15, at page 168.

580 Exhibit 113, paras 159, 195.

581 Exhibit 113, para 198.

582 Exhibit 63, Volume 15, at page 166; Exhibit 80, para 69.

583 Exhibit 63, Volume 15, at page 166.

584 Exhibit 63, Volume 15, at page 166.

6.29 It was not evident from the documents to what extent the decision to Go Live was properly and carefully considered and competing risks were calmly assessed. Of particular importance is Mr Cowan's clear warning in his Final UAT Report that the system was in distress.

6.30 It became apparent in the oral evidence that the Project Directorate and the Project Board considered the risk that LATTICE might fail to be the primary, if not the only, factor in the decision to Go Live. As well those making the decisions had succumbed to a sense of inevitability that they had to go on with the project. The belief that LATTICE would fail at any moment with catastrophic results gave rise to resignation that, come what may, the Interim Solution had to be accepted and put into operation. Mr Kalimnios considered the risk of LATTICE failing to have been unacceptable⁵⁸⁵. He expressed the view that there were many factors that were considered in recommending the system Go Live⁵⁸⁶, however the primary one was the risk of LATTICE failing⁵⁸⁷:

[W]e ... got to the point where, in my view, there was very little option, and particularly, and I need to keep re-emphasising this with our view of what the potential option was with continuing with LATTICE, which, from our perspective was an extremely high risk option. So in that context, we really, as I say, in my view, had little option.

But to proceed?---Correct, yes. [emphasis added]

6.31 Mr Price held a similar view⁵⁸⁸:

To the best of my recollection, the Project Directorate had the view that the go-live decision was based on that risk vs. risk assessment. By this time, Queensland Health has been corralled and pushed down this track and had two choices - either stick on Lattice and risk that 70,000 people not be paid if Lattice failed or accept the risk that had been identified by KJ Ross & Associates and others, and Go-Live.

Mr Price admitted⁵⁸⁹ that there was:

... Undoubtedly a compromised situation occurring as pressure mounted around schedules, costs, the ever present threat of LATTICE collapsing and ... so our options had been cut off, we were virtually told to make the best we can of this thing so that put us in a situation where compromise was the only way to go ...

He identified the imperative for having to accept a compromised project was that on two occasions, in 2008 and in 2009, he (and others) had told the Director-General "that we needed to get out ... from the IBM contract and (the) relationship with CorpTech ... but that was effectively ignored⁵⁹⁰". The reference was to Mr Burns' memorandum of August 2008 and Mr Price's own memorandum of July 2009.

Mr Price said in his statement⁵⁹¹ that by March 2010 "we had reached a point where we could not say 'no' any more. ... We did not have a basis upon which we could say 'no' to going live by reference to the established criteria because either (they) had been met or ... any associated risk had been mitigated."

The persons to whom Mr Price was referring when he said this were members of the Project Board and the Project Directorate who "had the same view around the LATTICE risk and the situation we were in"⁵⁹².

6.32 The sense of being inexorably committed to the Interim Solution reached as high as the Associate Director-General. Ms MacDonald said⁵⁹³ that the State could not have acted upon the failure to meet UAT exit criteria as a basis for bringing the project to an end. That was not "an option ... off the back of the fear that people had that LATTICE would not continue". She said, on the same topic⁵⁹⁴, by reference to the review of the SS Initiative and the decision in January 2009 to restrict the prime contractor to delivering the QH payroll system:

... If you were going to pull out of IBM, that would have been the point at which you'd (do) it Once we got to that point it was so far in that you had to actually keep going almost because you didn't have time to rebuild something else.

585 Exhibit 89, paras 54, 55.

586 T21-90, L1-18 (Michael Kalimnios); T21-93, L14-32 (Michael Kalimnios).

587 T21-95, L33-43 (Michael Kalimnios).

588 Exhibit 83, para 96.

589 T21-15, L1-15 (Anthony Price).

590 T21-15, L6-10 (Anthony Price).

591 Exhibit 83, para 100.

592 T21-18, L21-35 (Anthony Price).

593 T28-23, L5-10 (Natalie MacDonald).

594 T28-43, L45-55 (Natalie MacDonald).

Ms MacDonald conceded that the State's capacity to resist changes to the contract requested by IBM was small because "there was certainly a desire to see this project completed" and "the history of the project, the political dimension ... really did make it much more likely that Change Requests would be acceded to rather than opposed in a public way"⁵⁹⁵. Ms MacDonald believed that IBM was aware of the State's commitment to the project with its consequential incapacity to refuse Change Requests⁵⁹⁶. The "political dimension" was the need to avoid public criticism arising from the way in which the project had been managed by CorpTech.

- 6.33** Ms Jones considered the fact that LATTICE remained unsupported was a significant risk and no person could guarantee the system would continue to perform. As to whether Ms Jones would have recommended the system Go Live if someone had been able to demonstrate LATTICE could be reasonably relied upon for six months, she said⁵⁹⁷:

I had considered, "Could LATTICE go six more months?" and obviously I felt that it could have. Worst case scenario, just hope it didn't happen so six months, possibly. The problem as we progress was that I have no confidence – we were talking about six months. By this point, more EBs were coming, the stacks were there. The annual leave central scheme had come, Queensland Health reporting at a financial level was coming. There were restructures within Queensland Health again, so my view was you weren't talking six months, you were talking six, 12 or 24. My real view was that you would have to start against and I don't mean from an empty box, I mean from where you were, we would have to start again and do two years ...

- 6.34** When cross examined, Ms Jones gave the following evidence⁵⁹⁸:

Question: You understood of the system, could someone meaningfully guarantee to you that LATTICE or the old system, I should say, would continue performing for another six months?

Answer: No. The assessment of the LATTICE risk was robust within government. The CorpTech support team under Phillip Hood did a fantastic job to provide the mitigation to LATTICE being unsupported but at the end of the day, it was unsupported. Best efforts of government were not going to cut it when it came to, "What would you do if you couldn't pay people?" and no-one could answer that, and the risk sat within government and as you can see by the payroll Go Live, no matter whose – no matter leads to a payroll issue, it will be payroll that is the focus and the blame or the perceived fault body, so Queensland Health not being able to pay its employees, completely unacceptable and possible, so wherever it's possible, it's unacceptable. We had people coming into payroll saying, "Are you sure that's true?" and we had consultants reviewing it, we had risk analysis' being undertaken. This was not my personal view, this was the view of people who took the time to understand what this Queensland Health payroll system was like and how it was functioning, where it's fail points were and whether we had any room for mitigation left. [errors in original]

- 6.35** In his statement, Mr Hood was asked to consider what issues he believed would have arisen with supporting LATTICE for a 3, 6 and 12 month period following Go Live⁵⁹⁹. He said⁶⁰⁰:

... By necessity, CorpTech would have continued to support the Queensland Health instance of LATTICE had the new solution not gone live in March 2010. There would have been no option but to continue that support as LATTICE would have remained as the Queensland Health payroll solution.

My primary concern regarding continued operation of the Queensland Health payroll solution would have remained – that CorpTech was operating a very complex and non-vendor supported payroll solution. While CorpTech had significant capability to support LATTICE, it did not build the system and did not have the same level of experience as the vendor. There was always a risk that a problem might arise that would significantly impact LATTICE and that CorpTech might not be able to resolve the issue. Depending on the type of issue, the impact could have impacted the employees of the agencies using LATTICE.

CorpTech has with Queensland Health's agreement implemented a minimal change policy whereby only critical changes could be made to the Queensland Health LATTICE solution. The rationale for this was that the more changes that were introduced to the solution the greater the risk to the stability of the solution.

...

595 T28-41, L50-L54 to T28-42, L1-L10 (Natalie MacDonald).

596 T28-41, L52-54 (Natalie MacDonald).

597 T20-30, L7-19 (Janette Jones).

598 T20-38, L34-56 (Janette Jones).

599 Exhibit 66, para 33.

600 Exhibit 66, paras 34-37.

The longer LATTICE was supported after the cessation of vendor support, the more difficult it would become to support, and the greater the risk to those agencies being paid from the LATTICE solutions.

- 6.36** Mr Shea (Chair of the Project Board), accepted that the decision to Go Live was the responsibility of the Project Board⁶⁰¹. He described in detail the meeting between the Project Board on 14 March 2010 at which members of the Project Directorate were also in attendance⁶⁰²:

We did have a joint meeting between the directorate and the board and we went around every person in the room to confirm that they were happy to go live. There were no dissenting views, there were obviously – people had views that it was a potential risk or there were risks associated which we had the risk document and the mitigation strategies but there was no dissenting view of the directorate that we should not go live to my memory. Going over the whole room, we asked each individual person.

- 6.37** Members of the Project Board were anxious to make it clear that they relied heavily upon the briefing notes and reports from the Project Directorate. Mr Shea, for example, said⁶⁰³:

Not only did the QHIC Project Directorate comprise those with greater technical expertise and access to experts than the QHIC Project Board, it also comprised representatives of the contracting parties who, one might reasonably expect, would hold each other to adequate performance and who were best placed to assess the status of the project.

- 6.38** Mr Shea stated he did not have any reservations at the time the decision was made to Go Live as he believed the system was ready⁶⁰⁴. He too saw a need to “push on” due to what he saw as the imminent risk of LATTICE failing. This was a “significant reason” why the Project Board made the decision to Go Live⁶⁰⁵. When questioned, Mr Shea stated he based his belief that LATTICE was at risk of failing on telephone calls he had received from Ms Jones, early briefings he had been given and information he had received from members of the Project Directorate⁶⁰⁶. As to the risk assessment undertaken by the Project Board itself, Mr Shea echoed the statements of Mr Kalimnios, in saying⁶⁰⁷:

*[W]hile at the time of the decision to ‘Go Live’ it was recognised that risks existed, the QHIC Project Board believed and had been advised that the risks could be adequately managed. Moreover, because of the position the project had developed to, the doubts around the reliability of LATTICE and the absence of any alternative course to that point, **while the QHIC Project Board could always have decided not to ‘Go Live’ there was very little option for it but to do so.** [emphasis added]*

- 6.39** Ms Berenyi, another member of the Project Board, also stated she was confident the system was ready to Go Live⁶⁰⁸. She based her assessment on the discussions which had taken place at previous Board meetings, Mr Burns’ views as Quality Assurance Advisor and the views of key CorpTech staff, namely Mr Hood, Mr James Brown and Ms Stewart⁶⁰⁹.

- 6.40** In addition to those factors, Ms Berenyi identified a number of practical factors which she took into account when participating in the Go Live decision⁶¹⁰:

*there were only limited periods in 2010 at which it would be viable for the Solution to go-live;
the potential cost of \$1 million per month of additional delay costs which would have been shouldered by the State if QH had requested a delay;
the problems associated with a loss in expertise, needed for the Solution’s ongoing development, if the March 2010 delivery date was not met;
concerns that the new EB [Enterprise Bargaining] determinations by the IR Commission – which would need to be included in the LATTICE system were the go-live date delayed – would be incompatible with the configurability and fragility of LATTICE; and
the real risk of the LATTICE system and associated transactional processing by the QHSSP failing if no replacement system was implemented at some point in near future. [emphasis added]*

601 Exhibit 80, para 70.

602 T22-12, L3-12 (Adrian Shea).

603 Exhibit 80, para 70.

604 T22-12, L14-23 (Adrian Shea).

605 T22-13, L28-30 (Adrian Shea); T22-14, L15-21 (Adrian Shea); T22-20, L20-23 (Adrian Shea); Exhibit 80, para 67.

606 T22-13, L10-55 (Adrian Shea); T22-17, L21-25 (Adrian Shea).

607 Exhibit 80, para 70; T22-14, L30-37 (Adrian Shea).

608 Exhibit 113, para 201.

609 Exhibit 113, para 201.

610 Submissions on behalf of Ms Margaret Berenyi, dated 31 May 2013 (Contract), para 12(d); Exhibit 113, para 211.

Submissions

6.41 Counsel for the State submitted that the Go Live decision ought to be viewed in the context of, among other factors, “the real and imminent risk of LATTICE failure”⁶¹¹. The State submitted this risk, on the balance of the evidence, was not overstated, “[a]side from a lack of vendor support, other issues with LATTICE included an inability to configure upcoming enterprise bargaining changes and vital components reaching their end of life”. It was submitted that the majority of witnesses acknowledged that LATTICE was failing and many said there was a serious risk of it failing catastrophically which would have resulted in 78,000 employees not being paid⁶¹². The risk of LATTICE failing, it was said, was not on balance “illusory or overvalued”⁶¹³:

The risk of LATTICE failure was a view held by the two people who had most experience with the payroll system – Philip Hood and Janette Jones. However, it was not in their view alone that led to LATTICE being considered a significant risk. Rather, their views were supported by a risk analysis undertaken in 2007 by an external consultant [Exhibit 131], which identified the LATTICE failure as being a high risk. The risk did not lessen throughout the project.

The only witness who suggested that LATTICE was not such a serious risk was Mr Uhlmann. However, he did not have the same knowledge and expertise as others who were directly involved with the LATTICE system so it is submitted that the evidence of the other witnesses should be preferred in relation to this issue.

6.42 I reject this submission. Even if the risk of LATTICE failing was a high risk, it did not displace the need to take into account, and calmly to assess, other factors such as the warnings which Mr Cowan had issued. Moreover, there ought to have been, and there was not, earlier and more serious consideration given to what alternatives existed to upgrade or provide continuing support for LATTICE if the decision to Go Live were postponed.

6.43 Counsel on behalf of Ms Berenyi submitted that it was reasonable for the Project Directorate to have recommended the decision to Go Live and for the Project Board to have approved that recommendation⁶¹⁴. That decision, even taken in isolation from all that had preceded it, was one which fundamentally miscarried. For some considerable period beforehand, decisions had been made by both the Project Board and the Project Directorate which had, as I have said, meant that the system when it went live would be sure to contain a number of functional deficiencies. When Mr Cowan’s Final UAT Report confirmed what must by then have been obvious anyway, that the system still possessed these problems, a Management Response was issued with the obvious desire to neutralise it and explain away its conclusions.

6.44 The result was that, by mid-March 2010, the system, needing to be supported by a very large number of workarounds and other devices, and possessing a large number of functional deficiencies, some known and others yet to emerge, was in a highly unsatisfactory state. Despite that being obvious, the system had taken so long to implement that the condition of LATTICE became a growing concern, to the point by mid-March, it seems, of near hysteria. These problems were exacerbated by extreme fatigue of many involved on the Project⁶¹⁵. There had been a long period of very long days and under very difficult circumstances. I discerned a strong sense of utter helplessness and an overwhelming desire of these individuals for release from these pressing matters. The release, however, could have come in the form of resetting the Project, and making alternative arrangements for the ongoing support and maintenance of LATTICE rather than proceeding relentlessly towards Go Live. The characterisation by Dr Manfield of that attitude was “Plan A or die”⁶¹⁶. That expression sums up very accurately in my view the mindset of both parties at this time and for some considerable time beforehand.

Even if the risk of LATTICE failing was a high risk, it did not displace the need to take into account, and calmly to assess, other factors such as the warnings which Mr Cowan had issued.

6.45 Despite the reasoning of the Project Directorate and the Project Board for the decision to Go Live, there appears to have been an absence of a true risk assessment surrounding the solution quality and the “residual risk” in the system. This was an opinion which Dr Manfield expressed⁶¹⁷:

611 Submissions on behalf of the State of Queensland, undated (Contract), para 130.

612 Submissions on behalf of the State of Queensland, undated (Contract), para 131.

613 Submissions on behalf of the State of Queensland, undated (Contract), paras 130–133.

614 Submissions on behalf of Ms Margaret Berenyi, dated 31 May 2013 (Contract), para 12.

615 Exhibit 63, Volume 15, at page 18.

616 T30-49, L18 (Dr David Manfield); T30-58, L29 (Dr David Manfield).

617 Exhibit 123, at page 11, L22-46.

The State's risk assessments previous to the go-live were unsatisfactory and reflect more a desire to go-live than to assess actual risk. The risk assessment by the State focussed on Severity 1 and 2, defects and on establishing work-arounds in mitigation, as established by the defects management plan. This is reasonable behaviour for this aspect of risk management. However, there was a crucial absence in the consideration of residual risk, so that an objective view of residual risk, post mitigation, was not available. Issues include:

- UAT is not designed to detect all defects; there was no consideration of such risks.
- The number of software fixes done in response to defects left a residual risk of consequential defects left undiscovered.
- The sheer number of work-around mitigations was an operational risk and there was no consideration of residual risk.
- An initial project decision was made not to perform a full parallel payroll test against LATTICE ... In the light of the number of defects and work-arounds, initial assumptions were not revisited.

All unconsidered risks by definition became risks accepted by the State. [emphasis added]

Findings and Conclusion

Any rational assessment would have deferred the Go Live, with some very determined effort to reset the Project and make some alternative arrangements for the ongoing support of LATTICE.

- 6.46 The decision to Go Live miscarried. What was regarded as an imminent failure of LATTICE overshadowed any measured and analytical assessment and weighing of the relevant factors. By the time the Project Directorate and the Project Board met to consider whether to Go Live, the members of those bodies had made up their minds that the only option was to proceed.
- 6.47 To do so was to abrogate their responsibility to have proper regard to all options and to consider whether, in all the circumstances, the best option was to proceed. The Project Board, as the superior body, must bear primary responsibility for the decision which was made. It may have acted on advice, and been entitled to do so, but that did not excuse its members from turning their own minds and making their own enquiries as to the bases upon which this important decision was to be made.
- 6.48 The decision to Go Live ought not to have been made when it was. Any rational assessment would have deferred the Go Live, with some very determined effort to reset the Project and make some alternative arrangements for the ongoing support of LATTICE if, indeed, more support than Mr Hood's team was capable of providing was required.
- 6.49 I would agree with the view which Dr Manfield expressed to the effect that it was reasonable to expect, as required by Prince 2 project management methodology, that the Project Directorate "not only describe the issues but describe options for the Board to consider"⁶¹⁸. There is no evidence that the Project Directorate engaged in this analysis and presented in a considered way the options available to the Project Board. As a result, when the Project Board came to make the decision to Go Live, the Board too felt that there was "very little option for it" but to Go Live. Despite the general recognition of the residual risk in the system in the Management Response to the Final UAT Report and the Risk Assessment Report, this risk was not adequately assessed, such that the recommendation of the Project Directorate and decision of Project Board to Go Live miscarried.

Consequences for Staff of the Go Live Decision

- 6.50 Shortly after the completion of the third pay run, and upon the problems with the system having manifested themselves, Mr Reid caused the contracts of Mr Kalimnios and Mr Shea to be terminated.
- 6.51 He did so after forming the view that the decision to Go Live had been "clearly erroneous and had been made without sufficient rigour"⁶¹⁹, and Mr Kalimnios and Mr Shea were directly involved in it. This decision,

618 T30-90, L31-35 (Dr David Manfield).

619 Exhibit 90, para 49.

he stated, was based on the information available to him, including the fundamental errors and problems that manifested post-Go Live and the findings of the Auditor-General's Report⁶²⁰. Mr Reid considered it appropriate to terminate the contracts of Mr Kalimnios and Mr Shea as they were senior executives with the day-to-day knowledge of the replacement system and because "it ought to have been readily apparent from any review or assessment of the replacement payroll system undertaken prior to its implementation that it was not ready to 'go live' when it did"⁶²¹. Mr Kalimnios and Mr Shea had not identified and advised him of the significant risk involved in going Live⁶²². He considered they and Mr Price had not adequately discharged their duties as they "failed to identify these problems/errors and take steps to ensure they were rectified prior to the implementation of the payroll system"⁶²³.

- 6.52** The contracts of Mr Kalimnios and Mr Shea could be terminated without reasons having to be given. They were contracted employees and thus liable to be terminated on this basis⁶²⁴. The letters which were sent to Mr Kalimnios and Mr Shea, consistent with this position, offered no reasons for their termination⁶²⁵. But both men made clear in their evidence, and Mr Reid confirmed, that the reasons were indeed their role in the Go Live decision⁶²⁶.
- 6.53** Mr Reid would also have dismissed Mr Price had he been able to, under the *Public Service Act 2008* (Qld)⁶²⁷. But Mr Price was not a contracted employee. Mr Reid considered it appropriate to transfer Mr Price to a position in which he would have no ongoing involvement in the replacement payroll system⁶²⁸. Mr Reid stated his decision was based on Mr Price's responsibility for advising the QHIC Project Board in respect of the replacement payroll system prior to Go Live⁶²⁹. He did so notwithstanding that, at the time he made that decision, he was aware of the Price Memorandum, but, strangely, its existence and his knowledge of it had no impact on his decision⁶³⁰.
- 6.54** Mr Reid considered that he took responsibility for the issues which arose post-Go Live as it was a part of his duties as Director-General to ensure employees of QH were paid⁶³¹. Although nominally accepting responsibility his acceptance was little more than lip service. He did not accept fault for the problems post-Go Live, saying that he relied on the assurances he had received from the Project Board⁶³². When pressed in cross examination by Mr Traves QC representing Mr Kalimnios, Mr Shea and Mr Ray Brown, Mr Reid said⁶³³:
- I accept the fault that I was not more vigorous in trying to find out what were the issues which would occur in going live. I took the assurance of the board that the system was ready to go live, and the belief that the board members who said there would not be detrimental consequences to Queensland Health staff from doing that.*
- 6.55** Mr Reid formed the view that less serious action should be taken against Mr Ray Brown as he had only been appointed to the Project Board in October 2009⁶³⁴. He had been invited to attend Board meetings as and when he could, to discharge the limited role of ensuring that QH staff could access the payroll application, which he did. As a result Mr Ray Brown was issued with a written warning⁶³⁵. In addition, Mr Reid directed Ms Jones be transferred to another position⁶³⁶.

Errors, omissions and lassitude were plentiful. Public servants from Director-General down all failed to act in the best interests of the public.

- 6.56** The initiative which Mr Reid showed in terminating the contracts of Mr Kalimnios and Mr Shea, in transferring

620 Exhibit 90, paras 42-49, 56-58; T22-85, L20-40 (Michael Reid).

621 Exhibit 90, paras 49, 58.

622 T23-32, L50 (Michael Reid).

623 Exhibit 90, para 58.

624 Exhibit 90, para 50.

625 T22-85, L48-55 (Michael Reid); Exhibit 80, para 71.

626 T22-22, L8-10 (Adrian Shea); Exhibit 80, para 71; T21-121, L46-48 (Michael Kalimnios); Exhibit 89, para 65; T22-113, L48-55 to T22-114, L1-L2 (Michael Reid).

627 T22-86, L4-7 (Michael Reid); Exhibit 90, para 52.

628 Exhibit 90, para 52.

629 Exhibit 90, para 52.

630 Exhibit 90, para 53.

631 T22-114, L19-21 (Michael Reid).

632 T22-115, L19-23 (Michael Reid).

633 T22-115, L9-23 (Michael Reid).

634 Exhibit 90, para 54.

635 Exhibit 90, para 54.

636 T21-112, L35-55 (Michael Kalimnios); T22-85, L40-55 (Michael Reid).

Ms Jones and Mr Price and in officially warning Mr Ray Brown, is to be contrasted with his inaction in responding to the concerns repeatedly raised with him about the Interim Solution and, in particular, the issues raised in respect of IBM's performance and whether QH ought to extricate itself from the contract. Mr Reid accepted that a number of the matters raised with him by Mr Kalimnios in August 2008 were identified by the Auditor-General as reasons for the poor implementation of the system⁶³⁷. Despite being aware of these concerns, Mr Reid did not interest himself in the risks associated with the decision to Go Live, relying instead on the assessment by the Project Board. He ought to have been more involved and active in trying to understand and deal with the issues to which his attention was drawn, and, in particular, those which might affected the accuracy and timeliness of the pays to be made to his staff after Go Live.

6.57 These events show that Mr Reid acted only when it was in his self-interest to do so. He was prompt and decisive in punishing staff for their roles. But he was not hard on himself, despite giving lip service in his oral evidence to accepting responsibility for the problems. He, in truth, took no responsibility and suffered no consequence for the failings I have identified.

6.58 After the Auditor-General's Report was published, Mr Grierson received a letter from the Department of Premier and Cabinet asking what steps he would take in respect of those CorpTech employees who had been involved in the decision to Go Live⁶³⁸. On receipt of it, Mr Grierson spoke with Ms MacDonald and Ms Berenyi and asked each of them to explain why the decision had been made to Go Live⁶³⁹. He concluded⁶⁴⁰:

So I looked at the documents, I looked at what she [Ms Berenyi] presented to me, I looked at the information that she had received as a board member and my conclusion was: if I'd have been a board member presented with information that said, "Hey, this area is responsible for data conversion and this area says it's done," and the quality advisor to the Health department, Terry Burns is saying, "Yes, it is done, it is green, ready to go live," I would have probably said, "That's fair enough, I would have gone live too."

6.59 Counsel for Mr Kalimnios, Mr Shea and Mr Ray Brown submitted that the Project Board was misled as to the state of readiness of the system and that Mr Grierson extended to Ms Berenyi a degree of empathy which Mr Reid was not prepared to extend to Mr Kalimnios and Mr Shea⁶⁴¹. It was submitted that⁶⁴²:

Whilst there were still general concerns within the ... Board that there were risks around "going live" it was felt that appropriate mitigation strategies had been implemented and its current project risks were manageable. The imminent failure of LATTICE was also a significant driver to "going live". ... Mr Kalimnios ... was conscious that [QH] had received a poor quality product The position the Board found itself in was the consequence of many of the issues he identified in 2008. The circumstances were not ideal but from the Board's perspective there were limited options. The ... Board took the decision to go live believing it to be the best decision in all of the circumstances. The Board acted on reports and recommendations from QHEST, IBM, CorpTech ... KJ Ross & Associates and from independent contractors Mr ... Burns and Mr ... Shah.

It should be apparent from what I have written that I do not accept the thrust of the submissions. I accept that Mr Kalimnios and Mr Shea must have felt themselves to be in an impossible position. The concerns they expressed in 2008 and in 2009 had not been acted on. The Director-General had been less than energetic in coming to grips with the problems they had brought to his attention. It is possible to feel considerable sympathy for Mr Kalimnios, not only because he alone has accepted responsibility for what went wrong with the payroll implementation. Over the course of 12 months he endeavoured to bring what he understood to be the problems and signs of difficulty with the project to Mr Reid's attention. He succeeded to the extent of having Mr Reid meet with Mr Grierson on two occasions but at that level there was no interest in taking decisive action. Mr Kalimnios was under pressure from those around him and below him to proceed with the LATTICE replacement and by the intimation of those above him that they would not themselves take control. He succumbed to the pressure. But leadership was required and the "signs of distress" should have been acted on. The Price Memorandum was meant to bring the risk of the replacement solution failing forcefully to the attention of Mr Reid and the Minister. Mr Kalimnios did not proceed with it. He had had "second thoughts" about giving the Memorandum to Mr Reid, and thought it was probably too late to extricate QH from the project because "we were locked in to processing with the current solution ..." ⁶⁴³. He should have briefed Mr Reid with the memorandum, amended if necessary.

637 T23-23, L1-11 to T23-24, L1-53 (Michael Reid); see Submissions on behalf of Michael Kalimnios, Adrian Shea and Ray Brown, dated 11 June 2013 (Contract), para 110.

638 T29-26, L10-15 (Malcolm Grierson).

639 T29-26, L17-25 (Malcolm Grierson).

640 T29-26, L41-50 (Malcolm Grierson).

641 Submissions on behalf of Michael Kalimnios, Adrian Shea and Ray Brown, dated 11 June 2013 (Contract), para 65.

642 Submissions on behalf of Michael Kalimnios, Adrian Shea and Ray Brown, dated 11 June 2013 (Contract), paras 41, 56, 57.

643 T21-101, L10; T21-101, L30-40 (Michael Kalimnios).

- 6.60** There was a marked difference in the way that Ms Berenyi was treated. She too was involved in the Go Live decision and had, as Executive Director of CorpTech, more direct contact with IBM than did the QH senior managers. The difference in the treatment she received, as compared with Mr Kalimnios and Mr Shea, would seem to be explained by Mr Grierson's more robust character, which was more resistant to criticism and felt less threatened (because of his robust attitude) by the decisions made by staff who reported to him than was Mr Reid. As well Mr Grierson had the support and confidence of his Minister. There is, as well, a point of distinction. Ms Berenyi had not prevented, as had Mr Kalimnios and Mr Shea, the Price Memorandum from progressing through the ordinary channels. There was a legitimate reason, therefore, why Ms Berenyi might have been treated more favourably than Mr Kalimnios and Mr Shea.
- 6.61** In the circumstances it is not possible to characterise Mr Kalimnios' and Mr Shea's terminations as unjustified, or to conclude that Ms Berenyi was treated with undue leniency. Mr Kalimnios and Mr Shea cannot be regarded as the only public servants responsible for the series of bad decisions which led ultimately to the decision to Go Live in March 2010. Errors, omissions and lassitude were plentiful. Public servants from Director-General down all failed to act in the best interests of the public. That only two were held accountable may be in a sense unfair, but looking at the particular cases their terminations were not unjustified. They do not become so because others could also have been justifiably disciplined or dismissed.

7. System Inadequacies

Introduction

- 7.1** When the system went live, very many QH staff were not, for some considerable period, paid at all, or were under- or overpaid. IBM could never have been in any doubt that, despite the system being an interim one with minimal functionality, it was required to pay staff and to pay them accurately, even though the system might require some manual adjustment to the pay roster and pay calculations. IBM had as good as acknowledged that when, during the course of the implementation, it agreed to fix all defects which affected pay (or net pay)⁶⁴⁴. And Mr Gower accepted too, when questioned about the "issues" with the system that affected net pay, that⁶⁴⁵:

it was never my intent to deliver a solution that anyone would deem to be ... suboptimal ...

- 7.2** Mr Gower accepted on several occasions in his oral evidence that the system had, immediately before it went live, problems that affected net pay⁶⁴⁶. His evidence in particular made clear that the approach which IBM had taken was not to turn its mind to what it would take to build a payroll system (albeit interim and minimal) which paid people, but to rely wholly on what QH communicated to it as to its requirements⁶⁴⁷:

Question: You're saying if Queensland Health hasn't told you of a requirement, the fact that it nevertheless exists in reality in an award is beside the point, Queensland Health needs to communicate the detail of the award to you as a requirement?

Answer: That's correct.

Question: So that if something existed in an award but wasn't communicated to you by Queensland Health, the system wouldn't take what the award set into account?

Answer: That's correct, nobody's aware of that.

Question: The requirements is the way you're saying that it comes to IBM's attention what it needs to do?

Answer: Correct, yes.

- 7.3** The problems which caused staff not to be paid, or to be paid inaccurately, were of three kinds: external influences; what were described in evidence as business processes; and systems defects⁶⁴⁸. The Terms of Reference direct my attention to the "system", which I take to mean the computer system. The causes in the first two categories are ones which are not, strictly speaking "system" defects, but they nevertheless combined with system defects to cause pay failures and the inaccuracies in pay.
- 7.4** Although the problems which were experienced operated in combination, it is possible to identify the system problems which contributed in a material sense to the pay problems. This is achieved by looking to the defects which UAT had identified before Go Live (a matter with which I have already dealt), the

⁶⁴⁴ See, for example, T36-62, L16-21 (Mark Dymock).

⁶⁴⁵ T26-13, L15-20 (John Gower).

⁶⁴⁶ See, for example, T26-14, L18-17 (John Gower). He said, in doing so, that many of these arose from what he said were "new requirements".

⁶⁴⁷ T26-17, L5-18 (John Gower).

⁶⁴⁸ See, for example, generally Exhibit 79 and Exhibit 118.

problems which were experienced immediately after Go Live, the steps which needed to be taken to rectify those (and other) problems and certain of the events in the lead up to the State's settlement with IBM in September 2010 which included IBM agreeing to fix a number of defects in the system.

Problems Identified in UAT

7.5 I have already considered UAT and Mr Cowan's execution of it. I would add only a brief reminder that Mr Cowan's Final UAT Report made it clear that the system had serious functional deficiencies⁶⁴⁹. In addition to the remarks in his Report, he noted that, during UAT⁶⁵⁰:

... [R]ecommendations were made to the Project Board around the risks implicit in continuing the UAT execution with the system in the state it was

and that:

The approach to UAT within the QHIC project has been very unusual with respect to normal business practice. Best practice dictates that on discovery of significant defects within the UAT, the system should be returned to the system developer as unacceptable.

7.6 Mr Cowan concluded that what he called the "residual risk in the system"⁶⁵¹ was that a significant number of functional defects remained in it⁶⁵². He noted that only 60 per cent of the production scenarios had been exercised during UAT and if functional defects had been identified in that portion, the untested 40 per cent was also likely to contain as yet unidentified defects⁶⁵³. It was entirely to be expected, therefore, that after Go Live the system would show up a number, and possibly a very large number, of defects which had not previously been identified and which prevented its proper functioning, in the sense it would not pay staff or not do so accurately.

7.7 And that is precisely what occurred.

The First Three Pay Runs

7.8 The evidence of what occurred immediately after Go Live was, principally, from Ms Jones, Director of Payroll and Establishment in the QH Shared Services Provider and Ms Stewart, Senior Director, Payroll Portfolio, CorpTech. Ms Stewart had a longer involvement than Ms Jones with the system after Go Live (Mr Reid transferred Ms Jones from payroll involvement on 18 May 2010⁶⁵⁴), whereas Ms Stewart remains involved to the present day. Ms Stewart's involvement and expertise was of a more technical kind. She worked in CorpTech so had an exposure to and knowledge of technical problems, which, she said, Ms Jones would not⁶⁵⁵. Moreover, Ms Jones was, in effect, removed from her position as I mentioned earlier, something which coloured her evidence.

Another of the key issues which Ms Stewart experienced during the first pay run was that it took much longer than planned to send employee information from SAP to Workbrain. The problem seemed to be with the importing process into Workbrain rather than its export from SAP.

7.9 I found Ms Stewart's evidence about the problems which were experienced in the system and its related processes to be more informative and reliable than that of Ms Jones. Ms Stewart's knowledge of the relevant events was more balanced and she was able better to recall (and explain) the technical and other difficulties which were experienced in the period after Go Live. She had the advantage also of having had a close involvement with the system for a longer period post-Go Live than Ms Jones, and in particular by seeing and being involved in how the deficiencies with it and related processes were resolved. Ms Stewart had helped to prepare the three post-Go Live updates of 19 March (Updates 1 and 2) and 9 April 2010 (Update 3)⁶⁵⁶ and

649 Exhibit 63, Volume 13, at page 287.

650 Exhibit 63, Volume 13, at page 287.

651 Exhibit 63, Volume 13, at page 306.

652 Exhibit 63, Volume 13, at page 305.

653 Exhibit 63, Volume 13, at page 306.

654 Exhibit 79, para 59.

655 T29-81, L17 (Jane Stewart); T29-110, L15-17; T29-110, L42-44 (Jane Stewart).

656 Exhibit 118, para 47.

knew which issues persisted beyond the first three pay runs⁶⁵⁷. This gave her an insight into the nature of the problems, their seriousness and the work which was required to correct them which Ms Jones did not have. This makes her in my view a far superior witness to Ms Jones, and a witness whose evidence is supported by that of Mr Michael Walsh, Executive Program Director, Payroll Stabilisation Project, and by Mr Cowan.

- 7.10** Ms Stewart also gave evidence that CorpTech experienced problems which were not seen by QH⁶⁵⁸.
- 7.11** For these reasons, I would prefer Ms Stewart's evidence to that of Ms Jones to the extent there is any conflict. As I show below, there does not seem to be any real conflict because Ms Jones accepted in her oral examination that there were issues after Go Live of which she would have no knowledge and were within CorpTech's responsibility⁶⁵⁹.
- 7.12** Ms Stewart gave a detailed account of what occurred in the period after Go Live⁶⁶⁰. I have relied on it below in explaining the events which took place and the problems which were experienced by those with the responsibility of ensuring the system functioned as best it could in the circumstances.
- 7.13** The first pay run commenced at noon on Sunday 21 March 2010. The pay was delivered on Wednesday 24 March 2010⁶⁶¹. Ms Stewart considered that pay to have been a success⁶⁶². But, as she pointed out, it involved no element of "retrospective processing"⁶⁶³ (ie dealing with changes to such things as roster and staff position changes in prior pay periods⁶⁶⁴). Some 151 "incidents" were logged with the CorpTech service desk⁶⁶⁵. In the first pay run, performance and latency issues with the "Multi View Scheduler" (MVS) in Workbrain were experienced⁶⁶⁶. The MVS is used to maintain changes to rosters after they have been loaded in Workbrain. This caused Workbrain to crash for a short time, and this had a flow-on material effect for a longer period⁶⁶⁷.
- 7.14** Another of the key issues which Ms Stewart experienced during the first pay run was that it took much longer than planned to send employee information from SAP to Workbrain⁶⁶⁸. The problem seemed to be with the importing process into Workbrain rather than its export from SAP. In any event, it meant that pay reports which would ordinarily be finished out of hours were still processing in the morning and in turn causing the performance of SAP to be affected⁶⁶⁹.
- 7.15** The second pay run commenced on Sunday, 4 April 2010⁶⁷⁰. It was less successful than the first. This was the first time that retrospective processing occurred⁶⁷¹. During this pay run, Ms Stewart observed the performance issue with the MVS getting worse, the general performance of Workbrain deteriorating and requiring "urgent specialist attention"⁶⁷². That attention, she said, did not appear to be available on the ground. CorpTech requested IBM to seek assistance of that kind on an urgent basis⁶⁷³, because there was no confidence that "IBM was ... able to work through the issues in terms of getting resolution quick enough"⁶⁷⁴.
- 7.16** The second pay run saw overnight batch process timings slow, due to the number of records being processed and the fact that retrospective processing had commenced. Although this issue did not directly impact pay, it created delays in processing and payroll staff productivity⁶⁷⁵.
- 7.17** The second pay run revealed two main integration problems between SAP and Workbrain. The interface programs between Workbrain and SAP were designed to produce error reports⁶⁷⁶. The volume of the integration errors increased faster than anticipated. The errors had to be addressed before the next

657 T29-96, L33-36 (Jane Stewart).

658 T29-110, L16-17 (Jane Stewart).

659 T20-76, L30-39 (Janette Jones).

660 See Exhibit 118, paras 47-101 and her evidence generally T29-81, L40-56 to T29-102, L1-47 (Jane Stewart).

661 Exhibit 118, para 48.

662 Exhibit 118, para 50.

663 Exhibit 118, para 49.

664 Exhibit 118, paras 14-18.

665 Exhibit 118, para 50.

666 Exhibit 118, para 50(a).

667 Exhibit 118, para 50(c).

668 Exhibit 118, para 50(b).

669 Exhibit 118, para 50(b).

670 Exhibit 118, para 54.

671 Exhibit 118, para 53.

672 Exhibit 118, para 51.

673 Exhibit 118, para 51.

674 T29-84, L34-35 (Jane Stewart).

675 Exhibit 118, para 52.

676 T29-86, L15-16 (Jane Stewart).

integration load occurred, otherwise the data would be with loaded out of order, causing synchronisation problems⁶⁷⁷. Integration issues were dealt with by CorpTech and IBM and workarounds and emergent fixes were applied to mitigate impacts upon pay⁶⁷⁸.

- 7.18** The post-Go Live updates of 19 March and 9 April 2010⁶⁷⁹, which concern the first and second pay runs respectively, identify three major system defects, being the same defects as Ms Stewart identified in her evidence:
- the Workbrain MVS;
 - overnight processing overruns;
 - system unavailability and Workbrain to SAP integration issues, including causing Workbrain to crash.
- 7.19** Ms Stewart elaborated on each of these in her oral evidence.
- 7.20** She described the Workbrain latency and performance issues as “delays within the screen” and gave as an example that when a user was in a screen and they hit a particular button or tried to do something, there was a delay before they could see that take effect⁶⁸⁰. Entering data took longer to process than had been projected by IBM testing due to heavier than anticipated processing loads each day and inaccurate testing scenarios⁶⁸¹. This had a flow-on effect of delaying the overnight interim pay run process so that it would still be running in the morning⁶⁸². That in turn had an impact, as I have said, on the performance of SAP. The Workbrain crash (Ms Stewart could not recall why it did so⁶⁸³), created problems for longer than that short period. Ms Stewart said that as a consequence of the crash, “transactions that were being processed but had not been committed at the time may have been lost ... Workbrain could not diagnose whether or not data had in fact been lost ...”⁶⁸⁴.

The fact that IBM had to resort to assistance of this kind, despite it having designed and built the system, and despite it having engaged Workbrain specialists in the course of doing so, is damning.

157

- 7.21** The second issue (slow overnight processing runs) was caused by the heavy demand placed on the “offcycle process”⁶⁸⁵. Users were creating files at exactly the same time. This was a problem as SAP used a unique time code identifier to process the files, but files created at precisely the same second were given the same time code. This meant only one file with that time code would be processed, and the others were left unprocessed and were not picked up in the offcycle process⁶⁸⁶. The offcycle process was one which permitted staff to be paid immediately on an ad hoc basis (ie without waiting until the next scheduled pay cycle) because, for example, of a need to correct an error in their previous pay⁶⁸⁷. That problem did not end there. Once the time stamp naming issue was resolved, the Workbrain file had incorrect data in it, and no error message was being produced when that file was transferred to SAP⁶⁸⁸.
- 7.22** These issues were of grave concern to CorpTech. Ms Stewart said that some at least of these matters were raised with IBM before Go Live and that IBM had assured CorpTech that errors of this kind would not occur⁶⁸⁹.
- 7.23** All of the issues which occurred during the first two pay runs continued into the third pay run⁶⁹⁰. It commenced on 18 April 2010 and had been delayed by three hours (to 3pm) to allow for as many errors to be corrected as possible⁶⁹¹.

677 For example: if the user intended to add, then delete then add data, and the load was out of order, the data could be added, added and then deleted which would produce a different result, T29-86, L16-25 (Jane Stewart).

678 Exhibit 118, para 53.

679 Exhibit 63, Volume 15, at pages 233, 240-1, 288.

680 T29-82, L37-40 (Jane Stewart).

681 T29-83, L3-17 (Jane Stewart).

682 Exhibit 118, para 50b.

683 T29-83, L37-43 (Jane Stewart).

684 Exhibit 118, para 50c.

685 Exhibit 118, paras 87, 88.

686 Exhibit 118, para 87; T29-101, L15-42 (Jane Stewart).

687 T29-101, L45-48 (Jane Stewart).

688 Exhibit 118, para 89; T29-102, L4-11 (Jane Stewart).

689 Exhibit 118, para 90.

690 Exhibit 118, para 55.

691 Exhibit 118, para 58.

- 7.24** The error correction processing for the QH Shared Services Provider took much longer than expected⁶⁹². “Quite large” errors were detected coming out of the pay run and the Shared Service Provider was requiring longer to go through the error correction process than had been anticipated⁶⁹³. The errors were generated from uncontrolled or insufficient data entry through human error, and from the content of data giving rise to other problems with the pay run⁶⁹⁴. Concurrent employment presented “challenges”, Ms Stewart said, as to how data was captured, something which also produced error messages⁶⁹⁵.
- 7.25** The third pay run revealed a new problem in Workbrain. It was described by Ms Stewart as a problem transferring information from the MVS to the timesheet, which in turn caused inaccurate data to be exported to SAP for payment⁶⁹⁶. The problem arose because of inaccurate error messaging when the rosters were published from MVS to the timesheet. The error message was not always correct. It would often say that the timesheet had published successfully when it had not, or say it was not successful when in fact it was. This could result in no timesheet information for those employees to be sent to SAP with an impact on payments⁶⁹⁷. Ms Stewart summarised the issue as follows⁶⁹⁸:
- ... [U]sers were left unsure about whether they were successful or not. Often it was successful, but because it said it wasn't they would then feel the need to submit again, and again, and again, which added load to the system.*
- 7.26** Ms Jones too observed the same problem⁶⁹⁹. She said rosters were corrupted when they were to be published into the rostering software ready for export into SAP. She said that the publication suggested it had been successfully published, but in effect it had not been treated by the software in a way that enabled it to be exported out. This issue was not rectified, to her knowledge, until the third pay period⁷⁰⁰.
- 7.27** During the third pay run a “critical issue” was experienced which prevented CorpTech (initially) from completing the pay run⁷⁰¹. Ms Stewart said⁷⁰²:
- ... There was an error coming up that would suggest that there was data missing from what would be considered a mandatory requirement. We couldn't work out how that could possibly have occurred, how you could create such a record without that mandatory information being loaded. It was preventing us from moving forward with the pay run, it was critical information to do with an employee's pay that SAP required that information filled in. It wasn't a case of just going in and filling it in, it was locked into the back end of the system where we couldn't access it and we weren't able to move on with the pay run.”*
- 7.28** Ms Stewart and Mr Hood engaged two CorpTech SAP experts to complete the pay run. Had they not done so, Ms Stewart said staff would not have been paid⁷⁰³.
- 7.29** It took time for the problems with the system to manifest themselves. As I have explained, retrospective processing did not commence until the second pay run. It may have been that staff took a pay or two to realise that their pay was inaccurate, or they were patient about pay irregularities, being aware that the system was new, no doubt thinking that whatever the problems with pay were that they would be corrected in due course. Whatever the reasons, I accept Ms Stewart's evidence, because she was in the position to know, “there was a large number of issues that were surfacing that were not visible at the time of go live”⁷⁰⁴, and that “it was probably other issues surfacing on top of the defect management plan that started to complicate the situation”⁷⁰⁵. There is no doubt on the evidence that the Defect Management Plan could never have been a complete record of the defects which existed at Go Live⁷⁰⁶. Mr Cowan had warned it to be likely that defects additional to those he had identified during UAT existed, given that this was not the function or purpose of UAT⁷⁰⁷.

692 Exhibit 118, para 55.

693 T29-86, L40-50 (Jane Stewart).

694 T29-87, L23-42 (Jane Stewart).

695 T29-87, L44-47 to T29-88, L2-4 (Jane Stewart).

696 Exhibit 118, para 56.

697 Exhibit 118, paras 76, 77.

698 T29-88, L28-31 (Jane Stewart).

699 T20-63, L39-44 (Janette Jones).

700 T20-64, L1-9 (Janette Jones).

701 Exhibit 188, para 58.

702 T29-89, L6-16 (Jane Stewart)

703 Exhibit 118, para 58.

704 T29-99, L13-15 (Jane Stewart).

705 T29-99, L25-27 (Jane Stewart).

706 See, for example, T20-11, L11-36 (Janette Jones).

707 Exhibit 63, Volume 13, at pages 305-306.

- 7.30** Integration quickly became a heavy workload for CorpTech to manage. New defects started to surface, the Workbrain time and attendance data was not arriving in SAP or Workbrain was compiling incorrect data to send to SAP. These issues eventually required two full time staff in CorpTech working to manage the integration of Workbrain⁷⁰⁸.
- 7.31** Workbrain continued to be problematic in the months following Go Live, and a range of system and infrastructure changes were applied to address its performance. IBM engaged Infor specialists from Canada to help with the changes⁷⁰⁹. The fact that IBM had to resort to assistance of this kind, despite it having designed and built the system, and despite it having engaged Workbrain specialists in the course of doing so, is damning. Had the problems with Workbrain been of a kind which might be encountered as part of teething problems in any system, the designer and builder, a large and sophisticated company such as IBM, would have been able to fix the problems itself.
- 7.32** The problems which I have set out above are ones which did not end with the completion of the third pay run. They persisted until about November 2011, which is the time at which CorpTech assumed responsibility for support of the system. It is not until then that Ms Stewart considered the system to have stabilised⁷¹⁰. It is to the period between completion of the third pay run and the time when CorpTech assumed control of the system that I now briefly turn.

Payroll Stabilisation and Improvement

- 7.33** The problems with the system post-Go Live led the State to establish, on about 19 April 2010, the Payroll Stabilisation Project of which a senior official, Mr Walsh, was appointed Executive Program Director⁷¹¹. The work undertaken by that body included⁷¹²:
- a. developing workflow and business requirements for current and future pay strategies, and, overseeing support arrangements for district staff and processes;
 - b. processing pay cycles, finalising adjustments for previous pays, and, finalising adjustments for LATTICE;
 - c. resolving data issues and system defects and managing system issue logs including categorisation and prioritisation.
- 7.34** The stabilisation project was brought to an end in July 2010, and the “Payroll Improvement Program” instituted⁷¹³. By then, an issues register had been created to capture problems with the system and associated payroll processes. As at 25 May 2010, there were some 2,800 issues with about 1,800 completed and 1,000 remaining active⁷¹⁴.
- 7.35** The evidence which Mr Walsh included in his statement about the reasons for the problems after Go Live were consistent with those which Ms Stewart had identified⁷¹⁵.
- 7.36** In Mr Walsh’s time as head of the Payroll Stabilisation Project and the later Improvement Program, the number of payroll staff increased from 650 full time employees to some 900⁷¹⁶. The extra staff were needed to complete more transactions within each fortnightly pay cycle. The KPMG Review of the Queensland Health Payroll system dated 31 May 2012 identified there were 1,010 payroll staff, as at 31 May 2012⁷¹⁷.

Other Factors Contributing to the Pay Problems

- 7.37** I have attempted to confine my survey of the matters above, so far as possible, to the problems which were experienced in the system itself immediately after Go Live. Each of the relevant witnesses, however, made clear that those problems were a consequence also of other factors, some external and some arising from the business processes which QH had in place or implemented at or about the time of Go Live.
- 7.38** There is no doubt that that is so. Those factors are not, however, the focus of this Inquiry, but I say something of them below so that the extent of them might be understood.

708 T29-100, L41-44 (Jane Stewart); T36-28, L1-34.

709 Exhibit 118, para 108.

710 T29-103, L21-24 (Jane Stewart).

711 Exhibit 121, para 4.

712 Exhibit 121, para 11.

713 Exhibit 121, para 13.

714 Exhibit 121, para 16.

715 Exhibit 121, para 25; Exhibit 118, paras 63-102.

716 Exhibit 121, paras 24, 26.

717 Exhibit 1, at page 2.

- 7.39** *First*, the Business Reference Group within QH decided to centralise the processing of rosters⁷¹⁸. The effect of it was to withdraw from individual hospitals control of the payroll and to centralise it in hubs in major regional areas and in Brisbane. The effect was that payroll officers, who might previously have been familiar with particular workers' rosters or working arrangements, now lacked any such connection. Central processing brought perhaps other benefits, but it also removed this customary arrangement⁷¹⁹.
- 7.40** *Second*, a direction was given by QH management⁷²⁰ to QH staff to raise any payroll questions directly with payroll staff. Although some backlog of late forms, and forms unprocessed due to the downtime required for cutover from the legacy system was expected⁷²¹, the direction was said to have meant that payroll staff were inundated with requests, some of which were said to pre-date the Go Live of the new system and referred to errors carried over from the legacy system⁷²².
- 7.41** The situation was exacerbated by, said Ms Jones, promises made by senior executives to the effect that pay inaccuracies would be corrected in 24 hours⁷²³. It was not clear on the evidence whether this promise or one similar to it was ever made. There was some suggestion that the guarantee was to correct within that timeframe inaccuracies which were 10 per cent or greater of the employee's net pay with all other inaccuracies to be dealt with on prioritised basis⁷²⁴. Some employees lodged an amendment request and, after not hearing back from payroll staff within 24 hours, relodged the same request, resulting in unnecessary duplication⁷²⁵.
- 7.42** The unexpectedly high number of payroll inquiries meant that payroll staff were distracted from their ordinary duties because they had been directed to answer telephone enquiries. The task of answering telephone inquiries was then outsourced to temporary contract staff⁷²⁶. Ms Jones described the situation as follows⁷²⁷:
- We now had people trying to contact payroll, contacting somebody who didn't even work in Queensland Health and didn't know Queensland Health let alone payroll taking a message, telling the payroll officer, who, by this time is still trying to deal with other matters, and having to ring them back and them getting abused because it took so long, or they couldn't answer.*
- 7.43** *Third*, there was also instituted what was called the "no roster no pay" rule. Ms Jones said that QH had decided that "if you didn't have a roster you would not be paid"⁷²⁸. This was said to have come from senior people within QH⁷²⁹. It meant that *ad hoc* and cyclical rosters needed to be submitted by unit managers to the payroll hub⁷³⁰. This process was a fraught one. In some cases, there was no roster in proper form: some were illegible; some payroll staff did not understand codes used by unit managers⁷³¹; and some rosters and variations were not submitted⁷³². Ms Jones considered these issues to make up the majority of the complaints she addressed in the post-Go Live period⁷³³.
- 7.44** The new rule was said to have been instituted to coincide with Go Live⁷³⁴. It was said by Ms Jones (and others) to be a new business requirement and was, as mentioned, responsible for most of the difficulties and explained why many staff went unpaid. The consequence that omitted rosters, or those entered late, would lead to no pay was said to have been accommodated under the LATTICE/ESP system which generated a "default" roster for employees who had been paid in previous fortnights but for whom no roster had been entered in the fortnight for which pay was being calculated⁷³⁵. The default roster may not have been entirely accurate with respect to hours and allowances worked in a particular period but it represented the employee's basic entitlements which would be paid. Adjustments, where necessary, were made in subsequent fortnights.

718 Exhibit 122, Annexure E.

719 Exhibit 1, at page 4.

720 T20-27, L7-31; T20-70, L11-16 (Janette Jones).

721 Exhibit 118, para 61.

722 T20-36, L7-54 (Janette Jones).

723 T20-36, L20-21 (Janette Jones).

724 T20-36, L29-31 (Janette Jones).

725 T20-36, L40-50 (Janette Jones).

726 T20-27, L20-22 (Janette Jones).

727 T20-27, L23-34 (Janette Jones).

728 T20-26, L24-29 (Janette Jones).

729 T20-65, L1-16 (Janette Jones).

730 T20-66, L1-4 (Janette Jones).

731 For example the notation "ML" (Morning Late) would be entered on the roster by the unit manager which implied a "10am start" and the payroll office would not understand the notation: T20-66, L36-41 (Janette Jones).

732 T20-66, L31-41 to T20-67, L1-16 (Janette Jones).

733 T20-71, L36-37 (Janette Jones).

734 T20-65, L47-49 (Janette Jones).

735 T20-65, L30-45 (Janette Jones).

The new rule was said to mean what it said, so that employees whose rosters were missed went entirely unpaid⁷³⁶.

Mr Brendan Pollock's statement makes it clear that the "no roster no pay" rule was not new and existed when LATTICE was in use⁷³⁷. The replacement system had been designed to operate similarly. Mr Pollock said⁷³⁸:

If a roster had not been entered for an employee ... on a cyclic roster ... time and attendance records are created automatically ... for payment without any manual intervention other than ... adjustments to the ... roster

If a roster had not been entered for non-cyclic employees then ... they would be paid an exception pay based on their contracted hours.

There were processes in Workbrain to pick up if there was no roster or an employee's roster did not match their contracted hours. A report was able to be run on demand however they would have required the new line managers' input to validate (hours) ... worked. Timeframes would have made this task challenging.

The problem which arose acutely (under both systems) concerned casual employees who by the nature of their employment worked irregularly and might or might not work in a particular fortnight, and had no basic roster which could be used as a basis for calculating pay. Casual employees did not submit rosters but Attendance Variation and Allowance Claims (AVAC). If such a claim was not entered into the system the employee would go unpaid.

The "no roster no pay" rule is a distraction.

- 7.45** Ms Stewart too was asked about the process and procedures which, although separate from a strict definition of "system", contributed to the problems experienced after Go Live⁷³⁹. She identified business processes in addition to those which Ms Jones had identified that contributed to the issues with the first three pays, being the large volume of late LATTICE form submissions and the direction given to SSP to pay staff what they believed they were owed without payroll evidence⁷⁴⁰. But she made clear, and was asked directly about this when examined, that there existed problems – independent of the business processes and associated complications – with the computer system itself⁷⁴¹.
- 7.46** The external factor which was suggested in evidence as having had a material effect on the payroll section's capacity to pay staff was that an email was sent by a manager from Royal Brisbane Hospital to the effect that if staff had not been paid properly, they ought to seek charity or consider doing so. Ms Jones was the only witness who considered this to have been a factor⁷⁴². From that point, she said, and combined with the media scrutiny of it, organisational control was lost and her section became the target of every complaint, no matter how trivial, how old and how wrong⁷⁴³.
- 7.47** Each of these matters no doubt affected in some way the process as a whole of paying staff and paying them accurately. They seem to be matters, however, which, had the system itself been well designed and built (by which I mean able to pay staff and pay them accurately), may not have arisen or were likely to have been manageable.

IBM's Submissions

- 7.48** IBM sought to deflect any suggestion that the very considerable problems which were experienced when the system went live were ones which, to use IBM's terminology, concerned "coding" or "software"⁷⁴⁴. I am not certain that it is possible to confine so narrowly those parts of the system for which IBM was responsible, but that issue need not be resolved because, as I have shown, both Ms Stewart and Mr Cowan gave direct evidence, and evidence which I accept, of there being coding errors in the software.

But it remains that there were problems also with the computer system itself, problems which concerned the way in which it had been designed and/or built and ones which, business processes aside, caused staff not to be paid or to be paid inaccurately.

736 T20-67, L7-20 (Janette Jones).

737 Exhibit 169, para 45; see para 7.61 of this Part.

738 Exhibit 169, paras 46-49.

739 See, for example, T29-96, L45-46 (Jane Stewart); T29-90, L39-44 (Jane Stewart).

740 Exhibit 118, para 61.

741 T29-96, L41-46 (Jane Stewart).

742 Exhibit 79, paras 45-46; T20-25, L6-29 (Janette Jones).

743 Exhibit 79, para 46.

744 See, for example, Submissions on behalf of IBM Australia Ltd, dated 24 June 2013 (Contract), paras 5(b)(i), 6(a) and 13(c).

A Deficient System

- 7.49** It is clear that many of the problems which were experienced after Go Live and which affected pay involved Workbrain. Ms Stewart identified Workbrain's performance as the most significant system issue post-Go Live⁷⁴⁵. This exhibited itself in slowness of the MVS, difficulties viewing, updating and publishing rosters in the MVS, individual users being unexpectedly locked out of Workbrain, and general slowness across the Workbrain application⁷⁴⁶.
- 7.50** Part of the problem was its sheer slowness in processing rosters. Payroll staff, as a result, Ms Jones explained, simply did not have enough time to add all the data in to the roster environment to get the rosters published⁷⁴⁷. The problem may have been caused by a number of users in the same area using the system at the same time, thereby creating too much of a load on the system so that it would lock them out or freeze. Operators had to exit the system and re-enter it⁷⁴⁸. The problem was something with which any system, whether interim and minimal or not, ought to have been capable of dealing. Ms Jones estimated that about 100 payroll staff across the state at any given time were affected by this problem⁷⁴⁹.
- 7.51** Ms Stewart provided to the Commission a list of the problems which the system experienced after Go Live. She gave a detailed statement about those matters, about which she was examined⁷⁵⁰. Tellingly, she said that, over the two and half year period since Go Live, 422 defect fixes, 180 enhancements and 172 maintenance updates have been effected⁷⁵¹. When asked about whether all the defect fixes were ones which she considered necessary in order to bring the system to a position where it was functional, she replied that they were to fix⁷⁵²:
- ... something that's not functioning as you would expect it to function.*
- 7.52** She also noted that CorpTech would not be able⁷⁵³:
- to produce the pay run today ... with the way some of those programs were written in the first place. We just wouldn't have enough time to complete the pay run.*
- 7.53** Mr Doak, in his evidence, acknowledged few material deficiencies in the computer system after Go Live. Those he did recognise, he portrayed as temporary or minor. This position, in the face of so much evidence to the contrary, did him no credit. He sought to portray the post-Go Live problems as ones which arose from the business processes within CorpTech and QH. He sought to dismiss the problems of the kind of which Ms Stewart gave evidence. He said, for example, of the slowness of Workbrain, that it was "minimal" and that it had⁷⁵⁴:
- [N]othing to do with this business as usual, fine tuning, tweaking, performance enhancement work that we were doing on the computer system. It had everything to do with the fact that people never had to put in a roster before all of a sudden had to put a roster in and overloaded the Shared Services provider, not the fact that we were tweaking the computer system.*
- 7.54** The MVS produced inaccurate error messages. It would advise the publication process had been successful when it had failed or advised the process had failed when it had been successful. The inaccurate messages occurred, seemingly, at random, so users were not certain when the error message was correct or false. This in turn caused problems with users attempting to resubmit data⁷⁵⁵. The unpublished roster report was developed to address this issue. Mr Walsh identified problems with data entry and error messages in the MVS as main post-Go Live issues⁷⁵⁶.
- 7.55** The Workbrain issues were serious enough to warrant the appointment of a Problem Manager by IBM to work with CorpTech to diagnose the issues⁷⁵⁷. They were serious enough to cause IBM to engage Workbrain experts from Canada, first to work remotely, and then for at least one of them to travel to Brisbane to attend personally⁷⁵⁸. The evidence which IBM provided late to the Commission, being the statements

745 Exhibit 118, para 67.

746 Exhibit 118, para 67.

747 T20-26, L9-12 (Janette Jones).

748 T20-26, L32-39 (Janette Jones).

749 T20-27, L1-2 (Janette Jones).

750 Exhibit 118; Exhibit 170.

751 Exhibit 118, para 121.

752 T29-94, L47-49 (Jane Stewart).

753 T29-97, L27-31 (Jane Stewart).

754 T25-50, L43-48 (Bill Doak).

755 Exhibit 118, paras 76-80.

756 Exhibit 121, para 25.

757 Exhibit 118, para 69.

758 T29-97, L39-47 (Jane Stewart).

of Mr Kwiatkowski⁷⁵⁹ and Mr Dymock⁷⁶⁰, addressed the issues which the system experienced after Go Live. Their evidence was inconsistent with that of Mr Doak. They did not suggest that all of the problems experienced after Go Live were a consequence of non-system problems.

- 7.56** Mr Kwiatkowski, for example, said there existed “unexpected performance issues” with the system following the first pay run⁷⁶¹. He described these as including there being “hung” sessions with Workbrain, requiring users to have to log in again. He said that this issue resulted in IBM “Critical Situation Process” being initiated. That involved bringing in a specialist to assess the situation, consulting with stakeholders and managing the situation to resolution⁷⁶².
- 7.57** In addition to the critical situation management process, Mr Kwiatkowski referred to the need to obtain assistance from Infor, leading to what he (euphemistically) described as “optimisations to the core Workbrain product”⁷⁶³.
- 7.58** Mr Kwiatkowski also said IBM engaged a database engineer who worked with CorpTech to analyse problems, identify root causes and define the actions to resolve the issues being seen in production⁷⁶⁴. IBM also, he said, engaged a “specialist Performance Architect” to assist⁷⁶⁵.
- 7.59** Mr Kwiatkowski sought also to catalogue what I have described as the business process problems which confronted the system on Go Live⁷⁶⁶. They, as I have said, are accepted by Ms Jones and Ms Stewart to have contributed to the problems which were experienced after Go Live. But it remains that there were problems also with the computer system itself, problems which concerned the way in which it had been designed and/or built and ones which, business processes aside, caused staff not to be paid or to be paid inaccurately.
- 7.60** The IBM witnesses have, necessarily, incomplete knowledge of exactly what was required to bring the system to a state of reasonable functionality. Ms Stewart, who had responsibility for doing so, said that it took some considerable time to achieve that, and that process to have involved many changes to it and much work. She spoke, for example, of the need to rewrite “code”, that is the programming within the system after IBM had left the Project. She used, to achieve that, staff who had worked for IBM on the Project and who were quite capable of writing good code, code which more efficiently achieved its intended purpose than that which had been written under IBM’s supervision⁷⁶⁷.
- 7.61** In order to better understand the problems experienced with the system at Go Live and subsequently I requested information from Mr Pollock and Ms Stewart. They responded to the requirements to provide information by furnishing statements on 17 June 2013 and 2 July 2013. The statements were made exhibits, 169 and 170 respectively, and posted on the Commission’s website on 3 July 2013. Commission staff notified all persons who had been given leave to appear that the statements had been made exhibits and were available on the Commission’s website. No one requested Mr Pollock or Ms Stewart be made available for cross-examination or sought to controvert the accuracy of the information each provided.
- 7.62** Mr Pollock commenced working on the SS Initiative as an Implementation Analyst in July 2006. In November 2006 he became a member of the Workbrain sub-team in the Initiative as a senior business analyst and has remained in that role to the present time. He was at Go Live “embedded in the IBM team as a customer supplied resource”. He has acquired an extensive level of understanding and knowledge of how Workbrain worked and how it integrates with other products.
- 7.63** Mr Pollock provided two graphical representations of “All Workbrain and interface between SAP and Workbrain defects at Go Live”⁷⁶⁸. The graph “Reference 1” “summarises modules for the purpose of providing information to the Commission but does not completely reflect actual modules”⁷⁶⁹. The graph in “Reference 2” shows the same grouping of a number of defects arranged by severity⁷⁷⁰.

759 Exhibit 164.

760 Exhibit 163.

761 Exhibit 164, para 142.

762 Exhibit 164, para 143.

763 Exhibit 164, para 145(b).

764 Exhibit 164, para 145(c).

765 Exhibit 164, para 145(d).

766 Exhibit 164, para 166.

767 T29-93, L48-L54 to T29-94, L1-L17 (Jane Stewart).

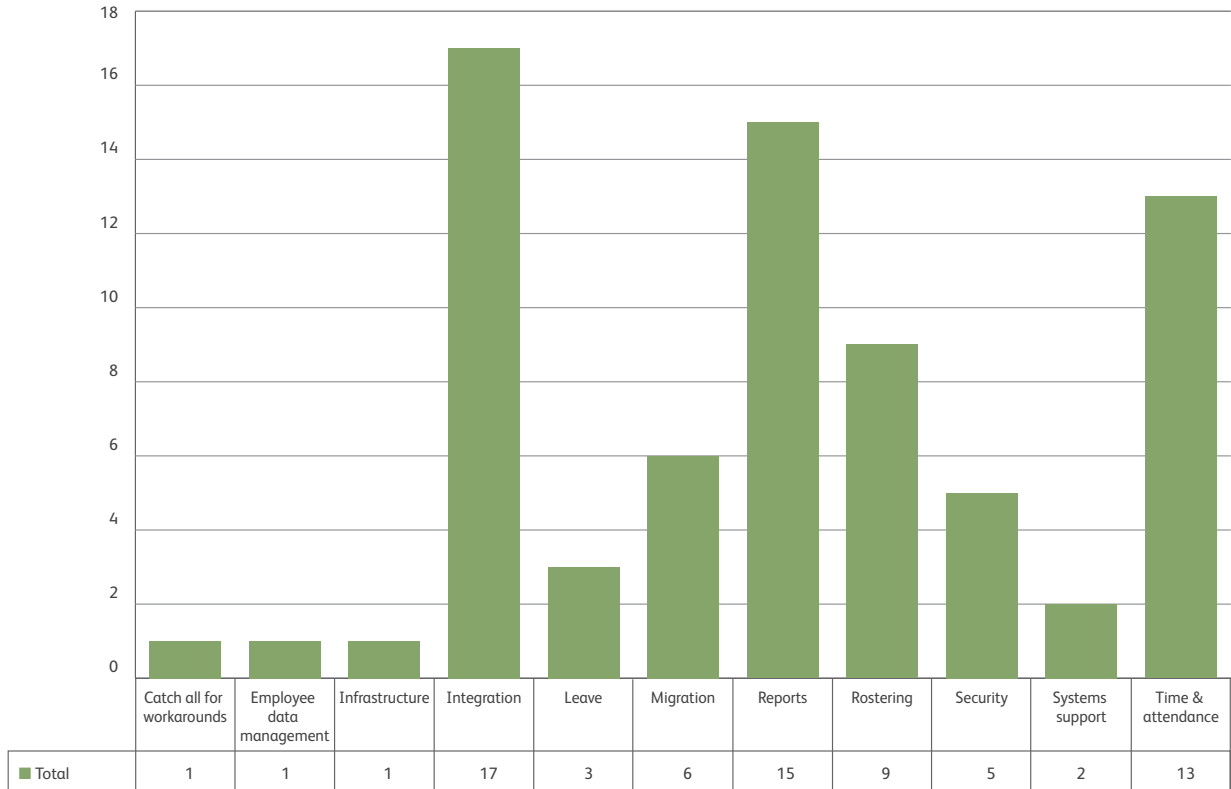
768 Exhibit 169, Annexure A.

769 Exhibit 169, paras 8, 9.

770 Exhibit 169, para 11.

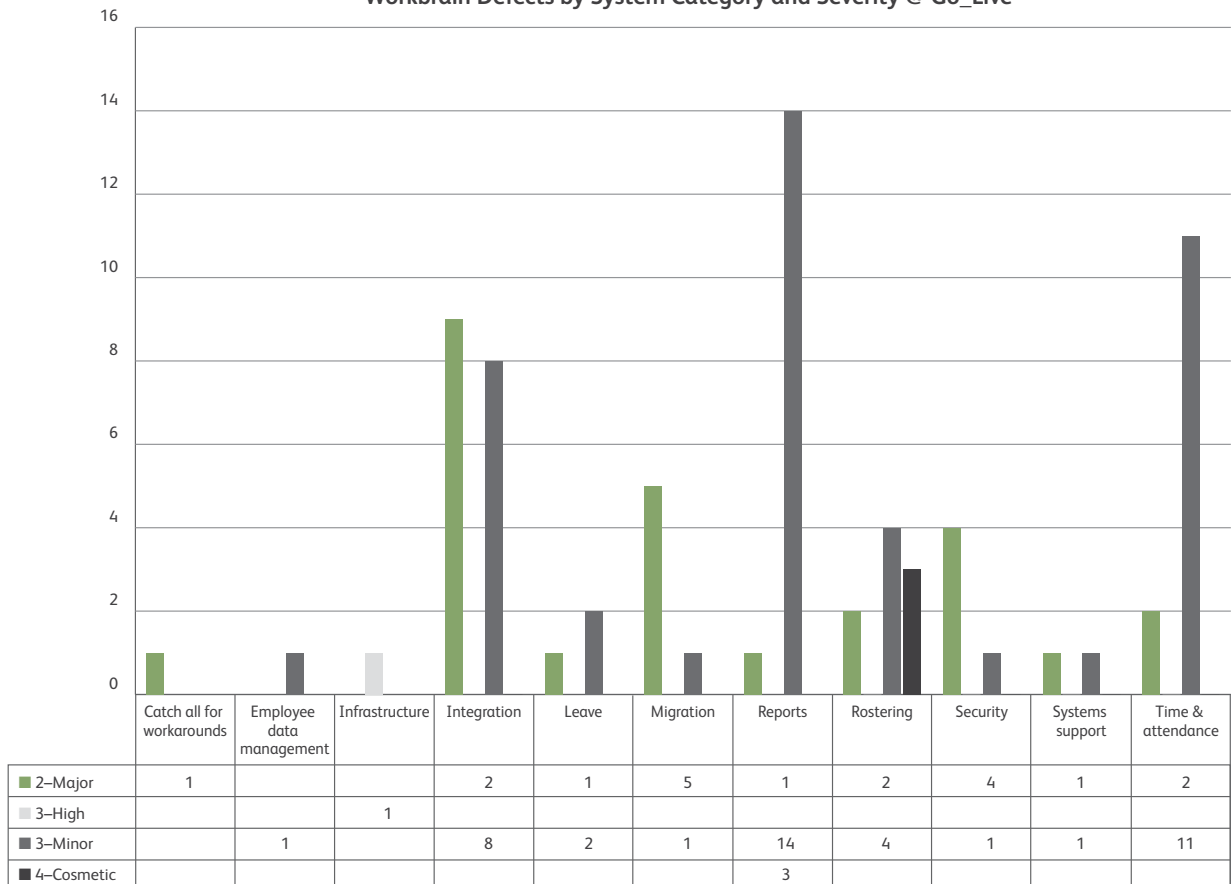
Reference: 1

Workbrain Defects by System Category @ Go_Live



Reference: 2

Workbrain Defects by System Category and Severity @ Go_Live



7.64 In Mr Pollock’s terminology, a module is a screen, or multiple screens within the software of “like type processes”⁷⁷¹. They enable the system users to view it. All screens relating to employee management constitute one module as do all screens relating to rostering.

The graph in Reference 1 depicts all defects at Go Live sourced from the Defects and Solution Management Plan⁷⁷². Mr Pollock provided the following descriptions of the categories of defects depicted in the graphs. “Catch all for work-arounds” refers to the time recorded for work done to perform a manual workaround necessary because of defects in the system⁷⁷³. “Employee Data Management” refers to the specific attributes of employees which can be managed in Workbrain⁷⁷⁴. Typically, employee information is kept and processed within SAP but some employee attributes are managed in Workbrain. Defects in Employee Data Management may affect pay if the system does not properly recognise some attribute. Defects in “Infrastructure Management” may affect the usability of the system but are unlikely to affect pay⁷⁷⁵. “Integration” obviously refers to the interfaces between SAP and Workbrain⁷⁷⁶. Defects in this category may affect pay. The graphs include all defects in Workbrain whether they initiated from SAP or Workbrain. Defects in the “Leave” category may affect pay to the extent that leave is relevant to pay, “[f]or example if leave was not accruing correctly then an employee may not be paid appropriately for sick leave”⁷⁷⁷. Defects relating to data migration could affect pay⁷⁷⁸. The data within the Workbrain application resides within an Oracle database. The data sets to load to Workbrain were prepared by a joint IBM/QH team. The data was the combination of new data and data from LATTICE. The system provides about 30 reports to support employee management such as rosters and details of leave. Defects in the category of reports have no effect on pay⁷⁷⁹. “Rostering” defects affect the system’s usability and may affect pay but typically do not⁷⁸⁰. The category refers to such things as the creation of baseline rosters, entering rosters and the management and publication of rosters. “Security” as a category is a reference to user access to functions within the system⁷⁸¹. Defects of this type do not typically affect pay. “Systems Support” as the name suggests refers to procedures which relate to supporting the system but not the system itself⁷⁸². An example is the documentation of information. Such defects do not typically affect pay. “Time and Attendance” defects may, however, affect pay⁷⁸³. According to Mr Pollock there were two major defects in this category at Go Live which did affect pay but he was unable to supply any details.

7.65 Ms Stewart’s response to the requirement that she provide information dealt with the number and type of system issues encountered since Go Live and a similar description of the system issues which remain outstanding as at July 2013. Ms Stewart provided two tables⁷⁸⁴. The first is of the 456 “system issues that have been fixed ... as at 1 July 2013”. These “system issues” did not relate to “new or changed business requirements” in Ms Stewart’s opinion. The table is:

Category	No.	Brief Description
Deductions	3	A dollar amount withheld from an employees pay to allow Qld Health to pay a vendor directly on behalf of them. Eg: Medibank Private. [Error in original] Issues in this category may relate to the incorrect setup of the deduction whereby the withheld amount may be calculated or disbursed wrongly or there could simply be a display issue with the description of a deduction.
Manage Employee	19	The process of keeping employees’ data accurate such as their position details, terms of employment, pay classification etc Issues in this category may relate to user difficulties with the process to perform updates to the data or may result in the data not being updated correctly. This may or may not impact pay depending on the scenario.

771 Exhibit 169, para 7.
 772 Exhibit 169, para 8.
 773 Exhibit 169, paras 14-16.
 774 Exhibit 169, paras 17-21.
 775 Exhibit 169, paras 22-23.
 776 Exhibit 169, paras 24-27.
 777 Exhibit 169, para 29.
 778 Exhibit 169, paras 30-32.
 779 Exhibit 169, para 34.
 780 Exhibit 169, para 35.
 781 Exhibit 169, paras 39-40.
 782 Exhibit 169, paras 41-42.
 783 Exhibit 169, paras 43-44.
 784 Exhibit 170.

Category	No.	Brief Description
Finance	30	Ensuring that the dollar cost of an employee and is translated in accounting terms for financial statements, reporting etc. Issues in this category may relate to incorrect translation and posting of the dollar amounts and associated cost centres into the finance system. There would be no impact on the employee's pay but would impact financial management and reporting.
Infrastructure	10	Relating to Information technology hardware or network. Issues in this category may relate to the reliability of the system being available or it's performance. [Error in original]
Integration/Interfaces	88	The ability for different systems to exchange information or extract and import data. Examples include imports and exports between SAP and Workbrain, QSuper interface, EFT interface, ATO interface, Finance interface, payslip interface Issues in the category may relate to the accuracy of the content of the data in the files or the success of the transfer of the file itself.
Leave	25	Relates to employee leave entitlement business rules, the management of leave balances and the application and payment of leave. Issues in this category may relate to the accuracy of leave balances, the usability of the leave function or display issues
Loans	3	Management of money advanced to an employee or overpaid to an employee. Issues in this category may relate to the accuracy of the loan calculation due to incorrect calculation logic or impact the loan reporting function or display of loan information
Organisational Management	1	The area that deals with the organisational structure, reporting structure, positions and jobs but not the employees who work within it. Issues in the category may relate to the user's ability to accurately update the organisational structure information but would not impact payment.
Pay rules/Time and Attendance	65	The logic used to calculate award entitlements for employees based on their hours worked. Issues in this category would relate to the accuracy of pay calculations for specific scenarios based on a combination of award conditions with a particular worked shift scenario.
Pay run Process	10	The processing mechanism that enables payroll calculation for a fortnightly period to be done efficiently and in a risk free manner. Issues in this category may relate to the efficiency of the pay run process, the time to perform the pay run process and the amount of error and recovery needed to complete the pay run.
Payslips	16	Reporting to an employee of their earnings and deductions for a fortnight. This information is delivered by mail or available to the employee electronically. Issues in this category may relate to an employee's ability to easily understand their payslip and the accuracy of the information displayed.
Performance	13	To be able to improve the speed of the system. Issues in this category would likely impact how quickly a user could process their work or how quickly system batch jobs can be completed.
Reporting	54	Ability to report on employee, rostering and payroll information that is stored in the systems. Issues in this category may relate to poorly displayed data or missing or inaccurately displayed data in a report

Category	No.	Brief Description
Rostering	23	Creation of baseline rosters and entering rosters in Workbrain. Issues in this category may relate to difficulties with the process to enter the rosters or publish the rosters or the accuracy of the data displayed
Security	16	The ability to restrict different users to access different parts of the application based on their job requirements. Issues in this category may relate to certain user security profiles not providing the correct security access to the data. This could be either too much information or not enough information.
Superannuation	18	The calculation, management and reporting of both employee and employer superannuation contributions. Issues in this category may relate to the incorrect calculation of employee super contributions thereby impacting the employee's pay or the incorrect calculation of employer super contributions thereby impacting the contribution the employer is making to super for an employee. There could also be issues with the reporting of the information to QSuper.
Systems Support	16	The ability to support and maintain the system. Issues in this category may relate to the ability to support the system in accordance with service level obligations or ensure the integrity of the system and be able to recover from system failures.
Taxation	19	Taxation related including PAYG withholding or Payroll Tax. Issues in this category may relate to the accuracy of taxation calculations which may impact an employee's pay.
Terminations	9	The process of finalising an employee's accounts/pay when they leave the organisation. Issues in this category may relate to the accuracy of the termination payment calculation, difficulties with the termination process or display issues.
Wage types	16	Codes held in the SAP system that are assigned values of calculated amounts which are used to calculate the final pay result. Issues in this category could relate to incorrect values held against the wage types or incorrect logic of how to apply the wage type to the calculation. This could likely lead to issues with the accuracy of the pay calculation.
Uncategorised / Other	2	Fixes that did not align themselves to standard categories

7.66 With respect to issues still outstanding Ms Stewart described two types, those not related to the absence of detailed business requirements and those which were dependent on, or arose from, missing business requirements. There were as at 1 July 2013, 265 of the first type. Ms Stewart provided a table of these also. It should be noted that some issues may be duplicated but all low priority or cosmetic defects have been excluded. The table is:

Category	No.	Brief Description
Deductions	3	A dollar amount withheld from an employee's pay to allow Qld Health to pay a vendor directly on behalf of them. Eg: Medibank Private. Issues in this category may relate to the incorrect setup of the deduction whereby the withheld amount may be calculated or disbursed wrongly or there could simply be a display issue with the description of a deduction.
Manage Employee	39	The process of keeping employees' data accurate such as their position details, terms of employment, pay classification etc. Issues in this category may relate to user difficulties with the process to perform updates to the data or may result in the data not being updated correctly. This may or may not impact pay depending on the scenario.

Category	No.	Brief Description
Finance	16	Ensuring that the dollar cost of an employee is translated in accounting terms for financial statements, reporting etc. Issues in this category may relate to incorrect translation and posting of the dollar amounts and associated cost centres into the finance system. There would be no impact on the employee's pay but would impact financial management and reporting.
Integration/Interfaces	4	The ability for different systems to exchange information or extract and import data. Examples include imports and exports between SAP and Workbrain, QSuper interface, EFT interface, ATO interface, Finance interface, payslip interface. Issues in the category may relate to the accuracy of the content of the data in the files or the success of the transfer of the file itself.
Leave	24	Relates to employee leave entitlement business rules, the management of leave balances and the application and payment of leave. Issues in this category may relate to the accuracy of leave balances, the usability of the leave function or display issues.
Loans	6	Management of money advanced to an employee or overpaid to an employee. Issues in this category may relate to the accuracy of the loan calculation due to incorrect calculation logic or impact the loan reporting function or display of loan information.
Organisational Management	8	The area that deals with the organisational structure, reporting structure, positions and jobs but not the employees who work within it. Issues in the category may relate to the user's ability to accurately update the organisational structure information but would not impact payment.
Pay rules/Time and Attendance	19	The logic used to calculate award entitlements for employees based on their hours worked. Issues in this category would relate to the accuracy of pay calculations for specific scenarios based on a combination of award conditions with a particular worked shift scenario.
Pay run Process	6	The processing mechanism that enables payroll calculation for a fortnightly period to be done efficiently and in a risk free manner. Issues in this category may relate to the efficiency of the pay run process, the time to perform the pay run process and the amount of error and recovery needed to complete the pay run.
Payslips	11	Reporting to an employee of their earnings and deductions for a fortnight. This information is delivered by mail or available to the employee electronically. Issues in this category may relate to an employee's ability to easily understand their payslip and the accuracy of the information displayed.
Performance	1	To be able to improve the speed of the system. Issues in this category would likely impact how quickly a user could process their work or how quickly system batch jobs can be completed.
Reporting	33	Ability to report on employee, rostering and payroll information that is stored in the systems. Issues in this category may relate to poorly displayed data or missing or inaccurately displayed data in a report.
Rostering	22	Creation of baseline rosters and entering rosters in Workbrain. Issues in this category may relate to difficulties with the process to enter the rosters or publish the rosters or the accuracy of the data displayed.

Category	No.	Brief Description
Security	4	The ability to restrict different users to access different parts of the application based on their job requirements. Issues in this category may relate to certain user security profiles not providing the correct security access to the data. This could be either too much information or not enough information.
Superannuation	20	The calculation, management and reporting of both employee and employer superannuation contributions. Issues in this category may relate to the incorrect calculation of employee super contributions thereby impacting the employee's pay or the incorrect calculation of employer super contributions thereby impacting the contribution the employer is making to super for an employee. There could also be issues with the reporting of the information to QSuper.
Systems Support	2	The ability to support and maintain the system. Issues in this category may relate to the ability to support the system in accordance with service level obligations or ensure the integrity of the system and be able to recover from system failures.
Taxation	4	Taxation related including PAYG withholding or Payroll Tax. Issues in this category may relate to the accuracy of taxation calculations which may impact an employee's pay.
Terminations	16	The process of finalising an employees accounts/pay when they leave the organisation. [Error in original] Issues in this category may relate to the accuracy of the termination payment calculation, difficulties with the termination process or display issues.
Wage types	8	Codes held in the SAP system that are assigned values of calculated amounts which are used to calculate the final pay result. Issues in this category could relate to incorrect values held against the wage types or incorrect logic of how to apply the wage type to the calculation. This could likely lead to issues with the accuracy of the pay calculation.
Uncategorised / Other	19	Further detailed analysis is required before these issues can be accurately categorised.

- 7.67** I find that the system, when it went live, and for some considerable period afterwards, had serious functional deficiencies. Mr Burns and Mr Shah had warned of this as being a real possibility in the Risk Assessment Report. Mr Cowan's Final UAT Report had identified it as likely and perhaps inevitable. It must have been obvious, by the time the decision was made to Go Live, that the system, given these warnings, and the problems with scope which had never properly been resolved, would experience those kinds of problems. The Final UAT Report had made clear also that there were likely to exist in the system functional deficiencies which UAT had not discovered, having (quite properly) tested only part of the system.
- 7.68** It could come as no surprise then that the Defect Management Plan, impracticable anyway on its own, was by no means an exhaustive list of the problems which the system possessed when it went live.
- 7.69** The findings I have made are supported by the problems which I have summarised which were experienced on and after Go Live, the work which was required to correct those problems (which both IBM and CorpTech undertook) and the admissions made by IBM in the course of the settlement negotiations with the State with which I deal in the following section of this Report.

... the system, when it went live, and for some considerable period afterwards, had serious functional deficiencies.



3.

Settlement

1. Introduction

- 1.1 The Terms of Reference (Clause 3(c)) required me to inquire “with respect to the contractual arrangements between the State of Queensland and IBM Australia Limited”.
- 1.2 On 22 September 2010, the State and IBM entered into a Supplemental Agreement¹ (“the Agreement”) by which they settled the disputes which then existed between them. The agreement was signed by Mr Grierson on behalf of the State and by Mr Kevin Killey on behalf of IBM. It varied the contract and relieved IBM of its obligations to provide deliverables to the State pursuant to SOW 8. The Supplemental Agreement forms part of the contractual arrangements between the State and IBM.
- 1.3 In the week commencing 27 May 2013 the Commission conducted public hearings into the reasons why the State settled with IBM on the terms agreed in the Supplemental Agreement.
- 1.4 In the course of those hearings, four volumes of documents constituting the Settlement Bundle were tendered together with approximately 16 statements. The principal witnesses who testified on this issue were Ms Anna Bligh, Mr Paul Lucas and the Hon Robert Swarten, Mr Grierson, the former Director-General of the Department of Public Works and Mr Reid, the former Director-General of the Department of Health. They all fully cooperated with the Commission.
- 1.5 The Supplemental Agreement brought to an end the negotiations to resolve the dispute that had arisen as early as 23 April 2010. On that day Ms MacDonald, Acting Director-General, Department of Public Works, and Mr Reid, Director-General of QH wrote to the Managing Director of IBM²:

The purpose of this letter is to advise of the Government’s acute dissatisfaction with the recently implemented [QH] Workbrain/SAP Payroll system as delivered by IBM. ... [N]ot one of the three pay runs processed since 14 March 2010 has achieved acceptable payroll delivery outcomes [There] are significant issues with the Workbrain rostering system and its usability by [QH] staff that need to be urgently addressed. These issues significantly limit the ability of staff to enter all the required payroll adjustment details within acceptable processing timeframes and cannot be dismissed as merely lack of training or unfamiliarity with the new system. ... It is acknowledged that personnel from IBM, [QH], CorpTech and Infor have been working closely together to identify improvements and undertake actions to mitigate ... the current performance ... issues. It is also acknowledged that IBM has provided additional expert resources ... to resolve the usability and performance issues. The Queensland Government expects this collaboration ... to continue

Until these issues are resolved to the Government’s satisfaction milestone payments for system acceptance and any retentions will not be made.

1 Exhibit 136, Volume 3, at page 351.

2 Exhibit 136, Volume 1, at page 87.

- 1.6 On 28 April 2010 IBM sent a Delay Notification under the contract³. The relevant delay was to Deliverable 47 – Handover Completion Report. Deliverable 47 required acceptance by QH that the payroll had been completed for three final pay runs with no Severity 1 or Severity 2 defects by 30 April 2010. The Notification advised that “acceptance criteria will not be achieved within the current project schedule” and that that delay would “cause a delay to other dependant deliverables including Project Acceptance”.

... the ... Supplemental Agreement ... varied the contract and relieved IBM of its obligations to provide deliverables to the State pursuant to SOW 8.

- 1.7 The effect of the Delay Notification, if valid, was to postpone the date for acceptance of the new payroll system by QH and prevent IBM from being in breach of contract in not providing Deliverable 47 on time.

2. Preliminary Observations

- 2.1 Relevant terms and conditions of the Supplemental Agreement appear under the heading “3. The Supplemental Agreement” of this Part of the Report. The starting point for any consideration of the Agreement is that it is binding on the State. The Agreement was entered into by two commercially sophisticated entities, both independently advised. The Agreement required IBM to carry out certain works by 31 October 2010. The works were completed. As a result, IBM obtained the benefit of the full releases from liability contained in clause 5.1. There are now no means by which the State may seek damages from IBM for breach of contract.
- 2.2 Accordingly my focus was on whether the decision to enter into the Supplemental Agreement was in the best interests of the State. That is, was it improvident for the State to settle on the terms it did?
- 2.3 One should approach any examination of such an issue with caution. The decisions to negotiate a settlement with IBM and to execute the Supplemental Agreement were made by the Cabinet Budget Review Committee (CBRC) on 22 July 2010⁴ and 26 August 2010⁵. Its members were the then Premier, the Deputy Premier, the Treasurer and for the purposes of these two decisions, Mr Schwarten, Minister for Public Works.
- 2.4 In order to inform the decision of 22 July 2010 (No. 3019) the CBRC was given a lengthy submission (No. 3962) with some 14 attachments, including three advices from Mallesons, one from Crown Law and a KPMG Risk Assessment. The decision made on 26 August 2010 (No. 3040) was also supported by a detailed submission (No. 3979) with further attachments.
- 2.5 That these decisions were made by the CBRC demonstrates the importance with which the State regarded them. In making such decisions, ministers are entitled to have regard to a wide range of factors when determining what is in the best interest of the public. The State’s legal rights as against IBM were only one consideration which the State could take into account. It was, however, an important consideration.

3. The Supplemental Agreement

- 3.1 In the time IBM and the State negotiated, there were approximately 94 significant defects with the system that required rectification⁶. As part of the Supplemental Agreement IBM agreed to rectify 35 ‘priority’ items on or before 31 October 2010, and to implement QH’s requirements for concurrent employment⁷. IBM also agreed to undertake rectification work for any Severity 1 defects which arose in the system before 31 October 2010 in accordance with Schedule 26 of the contract⁸.
- 3.2 IBM also agreed (subject to certain terms and conditions) to rectify any new Severity 2 defects which arose in the system from 31 August 2010 to 31 October 2010 in accordance with an agreed timetable⁹. The work in relation to concurrent employment functionality was agreed as new work, for which IBM was therefore entitled to charge¹⁰.

3 Amending a Delay Notification, dated 27 April 2010 – Exhibit 157, Annexure 7.

4 Exhibit 136, Volume 2, at page 226.

5 Exhibit 136, Volume 3, at page 178.

6 Exhibit 136, Volume 4, at page 8, para 12.

7 Exhibit 136, Volume 3, clause 3.3(a), at pages 353 and 367.

8 Exhibit 136, Volume 3, clause 3.3(b), at page 353.

9 Exhibit 136, Volume 3, clause 3.3(c), at page 353.

10 Exhibit 136, Volume 3, clause 3.4(g), at page 356.

- 3.3** By clause 3.7 IBM agreed to extend support for the system, until 31 October 2010, at no additional cost, to assist QH to make accurate payments to its staff. Clause 3.9 outlined how IBM would cooperate with the State. It included agreeing a transition plan by 1 October 2010 to facilitate an orderly transition from IBM to the State, in accordance with the plan, of those IBM personnel who were sub-contractors in a two week period from 31 October 2010. Clause 3.9 also required IBM to cooperate with the State in providing, by 31 October 2010, all existing functional and technical specifications, configuration documents, PDRs [Process Design Reports] and training documents updated to reflect the system as built by IBM to 31 October 2010.
- 3.4** The State agreed (by clause 3.12) to withdraw the notices which it had earlier issued: the Notice to Remedy of 21 May 2010 and the Notice to Show Cause dated 29 June 2010. IBM too withdrew its Notice of Dispute dated 16 July 2010.
- 3.5** Clauses 5.1 and 5.2 contained releases by both the State and IBM on the completion of the work required to be undertaken by IBM. Relevantly the State agreed¹¹:

5.1 Release by State

a. ...

b. If:

i. on 31 October 2010, there are:

- A. no Severity Level 1 defects which the State notified to IBM before 29 October 2010 ... , and
B. no unremedied material breaches of this agreement by IBM in respect of which the State has given IBM a written notice; and

ii. there are:

- A. no Severity Level 1 defects which occurred on 29, 30 or 31 October ... which have not been rectified within 7 days, and
B. no unremedied material breaches of this agreement by IBM in respect of which the State has given IBM a written notice,

then the State releases the IBM Parties from all Claims (“State Release”) and agrees that the IBM Parties may plead this agreement to bar any Claim and the State agrees that it will not sue those parties in any jurisdiction in respect of the Claims and agrees that such covenant will not be terminated (“State Covenant”).

- c. The State agrees that if the State Release or the State Covenant are breached monetary damages would not be an adequate remedy and it will consent ... to the entry of a permanent injunction enjoining it from breaching the covenants not to sue.
- d. If the State makes a claim against an IBM party which is the subject of the State Covenant or State Release, then the State fully indemnifies each IBM Party against any liability ... incurred by the IBM Party as a result of that claim.
- e. Each party acknowledges that (except as specifically set out in this agreement) it:
- i. enters into this agreement freely and voluntarily based upon its own information, legal advice and investigation;
- ii. does not execute this agreement as a result of or in reliance on any promise, representation, advice, statement or information of any kind given or offered to it by or on behalf of the other party, whether in answer to any inquiry or not; and
- iii. enters into this agreement with the intention of settling on a final basis, according to the provisions of this agreement, all claims in respect of the Contract and any other disputes which now exist, or may exist or have ever existed between the State and any IBM Party, in any way related to the Contract notwithstanding that any party may become aware of or come into possession of new information with respect to the Contract.

- 3.6** The agreement defined “Claim” very widely to mean¹²:
- ... [A]ny action, claim, proceeding, allegation, suit, arbitration, complaint, cost, debt due (including proof of debts), entitlement (with actual or contingent), demand, determination, inquiry, judgment, verdict or otherwise, whether such matters arise at common law, in equity, pursuant to statute, pursuant to contract, in tort, or otherwise that the State had, has or might have had against an IBM party in respect of IBM’s obligations and acts or omissions prior to 1 September 2010 ...*
- i. to deliver the Deliverables on time ...*
 - ii. to ensure that Deliverables did not incorporate Defects ...*
 - iii. resulting in any Severity Level 2 to 4 ... Defects ... whether known or not at the date of this Agreement ...*
 - iv. to remedy Defects in accordance with the Contract.*
- 3.7** The parties entered into the Supplemental Agreement, without admission of liability¹³. The Supplemental Agreement contained a confidentiality clause¹⁴.
- 3.8** A CBRC Decision of 2 June 2011 noted that, as at 1 November 2010, IBM had fulfilled its obligations under the Supplemental Agreement and had been authorised to raise invoices for payment in accordance with the Supplemental Agreement¹⁵. Thereafter, CorpTech assumed responsibility for the running, support and maintenance of the system. Support agreements were thereafter executed by the State with Infor, Presence of IT and a number of individual contractors¹⁶.
- 3.9** The CBRC Decision of June 2011 also noted¹⁷:
- Following IBM’s exit on 31 October 2010, there are still a number of system issues and enhancements to be addressed. Manual work-around procedures are in place for these issues. Rectification of these items will be progressed by CorpTech and will be scheduled as part of the prioritisation and release planning process undertaken jointly by CorpTech and [QH].*
- 3.10** By clause 6 of the Supplemental Agreement, upon the releases under clause 5 coming into effect, the “LATTICE SOWs” terminated with effect from 31 October 2010 without either party having any liability to the other¹⁸. The combined effect of clauses 5.1 and 6 was that, upon IBM carrying out the works required by 31 October 2010, it was released from any future claims for damages and any remaining warranty obligations for the system. This meant that any ongoing responsibility for new or unresolved Severity 1 or Severity 2 defects rested with the State. It also meant that the State would be responsible if the system were to fail.
- 3.11** The Supplemental Agreement was the culmination of negotiations conducted between 2 August 2010 and 22 September 2010. The State and IBM were represented throughout by experienced commercial solicitors. There does not appear to be any basis for impugning it. It binds the State and all claims in respect of the contract which existed, or might have existed, have been compromised and have dissolved.

The Delay Notice

- 3.12** On 27 April 2010 IBM sent a Delay Notification to CorpTech¹⁹. The delay notified was for Project deliverables under SOW 8 including Milestone 47. That Milestone required the delivery and acceptance of the Interim Solution by 30 April 2010.
- 3.13** The Delay Notification did not identify the cause for its failure to deliver Milestone 47 and said only:
- The Customer has requested that IBM implement the latest SAP support stacks as part of SOW8. To integrate this implementation ... the parties are working towards an agreed schedule which will see new Deliverables introduced and the ... Acceptance date changed.*
- By email of 28 April 2010²⁰ sent to IBM (Mr Paul Ray), Mr Campbell (CorpTech) rejected the reason IBM had advanced for delay in its Notification of that day:

¹² Exhibit 136, Volume 3, clause 7.3(a), at page 362.

¹³ Exhibit 136, Volume 3, clause 3.11, at page 358.

¹⁴ Exhibit 136, Volume 3, clause 4, at page 358.

¹⁵ Exhibit 136, Volume 4, at page 4, para 4.

¹⁶ Exhibit 136, Volume 4, at page 9, para 22.

¹⁷ Exhibit 136, Volume 4, at page 8, para 14.

¹⁸ Exhibit 136, Volume 3, at page 361.

¹⁹ Exhibit 157, at Annexure 7.

²⁰ Exhibit 157, at Annexure 7.

The cause outlined ... is not valid It is the Customer's current and unvaried position that they expect an acceptable solution to be delivered and ready for acceptance on 30 April 2010. If IBM believe they will not be able to achieve the criteria for that Milestone, the Delay Notice should reflect the reasons why this cannot be achieved Unless and until a valid change control document has been executed ... IBM should not assume that the obligation has or will be changed.

Later on 28 April 2010, IBM served amended Delay Notice No.7²¹. It sought to clarify IBM's reasons for the delay, but said only²²:

The acceptance criteria will not be achieved within the current project schedule. Delays with these deliverables will cause a delay to other dependant Deliverables including Project Acceptance.

- 3.14** The next day, 29 April 2010, Mr Brown of CorpTech emailed Malleasons seeking legal advice²³:
- whether the State had a legal obligation to make payment to IBM on 30 April 2010 under the contract; and
 - on the State's legal position in relation to the alleged breaches of the contract by IBM, and in particular, the fitness for purpose of the system actually provided.

- 3.15** On 30 April 2010 Malleasons wrote to CorpTech advising that the State would not be in breach of the contract if it did not pay IBM on 30 April 2010²⁴. The advice was given on the basis that:
- Change 210 stated that invoices would not be raised by IBM until a Milestone was achieved;
 - a Milestone was not achieved unless or until the relevant acceptance criteria were met;
 - IBM had failed to meet the acceptance criteria for Milestone 47 by the completion date;
 - acceptance criteria for Milestone 47 required three successful pay runs with no outstanding Severity 1 or Severity 2 defects and a management plan for Severity 3 defects; and
 - CorpTech had advised Malleasons on 29 April 2010 that the Daily Log of 28 April 2010 revealed a large number of unresolved Severity 2 defects that had been logged on 11 March 2010.

- 3.16** Malleasons provided a separate advice on 30 April 2010 in relation to the State's legal position concerning alleged breaches of the contract by IBM²⁵:

... [I]t is highly likely that the Contractor is in material breach of contract. However, further investigation is required in relation to some of the issues discussed below.

- 3.17** Malleasons also advised that IBM was likely to be in material breach if it did not meet Milestone 47 by close of business on 30 April 2010, referring to Schedule 26 of the contract²⁶ which required IBM to resolve each Severity 2 problem within two days²⁷. A review of the Daily Log showed that IBM did not appear to be meeting that obligation. A number of Severity 2 defects had gone unresolved for more than two days. Malleasons thought that this failure was likely to constitute a material breach under clause 16.2.1(c) of Part 2 of GITC version 5 (the General Terms)²⁸.

- 3.18** On 5 May 2010, Mr Brown received another advice²⁹. This concerned the consequences of IBM not meeting Milestone 47 on 30 April 2010 and what procedure the State might follow to enforce its rights. Malleasons repeated their previous advice that, on 30 April 2010, IBM was likely to be in material breach of the contract for not meeting Milestone 47 and not resolving outstanding Severity 2 defects.

The submission emphasised the importance of the State preserving its rights under the contract should it decide in the future to seek redress from IBM.

- 3.19** Malleasons had been asked to consider whether the State should issue a Notice to Show Cause why it should not terminate the contract, as clause 16.6 permitted. The purpose of such a Notice was to allow the State to end the contract if the answer was unsatisfactory. Malleasons, however, noted that the State did not wish

21 Exhibit 157, at Annexure 7.

22 Exhibit 157, at Annexure 7.

23 Exhibit 157, para 26.

24 Exhibit 157, para 27; Exhibit 157, Annexure 8.

25 Exhibit 136, Volume 1, at page 88.

26 Exhibit 63, Volume 1, at page 140.

27 Exhibit 63, Volume 1, at page 143.

28 Exhibit 63, Volume 1, at page 233.

29 Exhibit 136, Volume 1, at page 93.

to terminate the contract, but rather, wanted IBM to remedy defects, continue to provide warranty support and do additional work on the payroll system. In light of this, Mallesons recommended that the State issue a Notice to Remedy rather than a Notice to Show Cause³⁰.

3.20 Mallesons set out some of the State's rights which followed from the material breach of contract. These included³¹:

- a. its entitlement to withhold payments pursuant to clause 16.4 of the contract;
- b. the contract required IBM to remedy the breach at its own cost; and
- c. the State was entitled to claim damages from IBM for the loss it had suffered as a result of the material breach.

Any claim for damages would include: the State's internal costs in mitigating the breach or dealing with consequences that arose due to the breach; labour and overtime cost involved in correcting errors in pay due to the breach; costs undertaken by the State to repair the software; losses due to incorrect payments made, which could not be recovered; and other losses suffered by the State naturally arising out of the breach³². The advice emphasised the importance of the State maintaining appropriate records.

3.21 The advice also emphasised that, pursuant to clause 2.5 of the General Terms of the contract, IBM had acknowledged that the provision of the Services in question was "mission critical" for the State, and that failure to provide the Services correctly might result in a severe adverse economic impact on the State and its employees. This, it was said, put a higher onus on IBM, thereby giving the State a larger damages claim. The contract imposed a limit on the amount of IBM's liability equal to the contract value. Mallesons advised that further work was needed to determine the exact amount of the contractual cap, but noted that the initial contract value was \$88M³³.

3.22 On 11 May 2010, Ms Berenyi endorsed a submission prepared by Mr Brown for Mr Grierson's consideration³⁴. It noted that Milestone 47 had not been achieved by 30 April 2010 due to a number of system defects, and that the Project Board had approved Go Live of the system with Severity 2 defects on the basis that a management plan for their rectification was in place. Following Go Live, additional Severity 2 defects were identified in the system, not all of which IBM had been able to resolve within two days in accordance with its obligations under Schedule 26 of the contract.

3.23 The submission concluded that, based on the number and complexity of the identified Severity 2 defects, a firm date for system acceptance could not be determined as at 11 May 2010 and to do so would require significant input from IBM. IBM had been asked to implement the year-end SAP Support Stacks to comply with new legislation. This was to be a separate piece of work under the existing contract, with respect to which IBM had sought the State's agreement to Change 211 seeking an extension of time of five months for the work. IBM had proposed that it would resolve any outstanding Severity 2 defects within this five month period. The submission noted that this was unsatisfactory because the State would lose its right to seek compensation from IBM for the burden of manual workarounds undertaken by QH for the five month period. The submission emphasised the importance of the State preserving its rights under the contract should it decide in the future to seek redress from IBM.

Notice to Remedy

3.24 Ms MacDonald and Mr Grierson endorsed the recommendation to issue a Notice to Remedy on 11 May 2010³⁵. On 12 May 2010, Ms Berenyi wrote to IBM, for the attention of Mr Bloomfield³⁶:

Enclosed is a Notice to Remedy issued in accordance with sub-clause 16.3 of Part 2 of the GITC Framework ...

This Notice to Remedy should not be read as a complete list of breaches or material breaches of the Customer Contract by the Contractor, and does not limit or waive any other rights of the Customer including in relation to these or other breaches. The Customer is investigating such issues, and may issue further notices shortly.

³⁰ Exhibit 136, Volume 1, at page 95.

³¹ Exhibit 136, Volume 1, at pages 95-96.

³² Exhibit 136, Volume 1, at page 96.

³³ Exhibit 136, Volume 1, at page 96.

³⁴ Exhibit 157, para 35; Exhibit 136, Volume 1, at page 99.

³⁵ Exhibit 136, Volume 1, at page 101.

³⁶ Exhibit 136, Volume 1, at page 108.

The Customer believes that the Contractor is in material breach of contract, pursuant to sub-clauses 16.2.1(a), 16.2.1(b)(i) and 16.2.1(c) of Part 2 of the GITC Framework. However, the Customer is giving the Contractor the opportunity to remedy the breaches in the attached Notice before deciding what further action may be appropriate. In doing so, the Customer is not waiving its rights to allege that the breaches ... are material breaches

...

The Customer notes that the Contractor submitted a Delay Notification ... on 30 April 2010 a few hours prior to a number of Milestone Due Dates.

Under Schedule 24 ... the Contractor must promptly notify the Customer upon anticipating that a delay may occur in achieving Milestones ... Schedule 24 sets out the procedure which the Contractor must follow in respect of such notification. Under this process the Contractor must provide certain information in relation to a delay or where there is anticipated to be a delay or the probability of a delay occurring.

As set out in the Notice to Remedy, the Contractor has failed to meet a critical Milestone ... and failed to deliver several Deliverables by the required date of 30 April 2010. While the Contractor has provided (the delay notification) ... the Contractor has failed to follow the specific process in Schedule 24, in that (it) has not provided additional information required by that Schedule (such as intended courses of action to minimise the delay). The Contractor failed to issue a step 1 notice with such delay. In addition the Contractor has failed to issue any step 1 or step 2 delay notices for other Deliverables that are delayed.

In short, the Contractor has failed to promptly notify the Customer where it anticipated a delay ... In addition (it) does not adequately explain the reason and cause for the delay.

The Contractor has failed to comply with its obligations under Schedule 24 This is a breach of contract. The Customer reserves all its rights in this regard.

The Customer does not grant an extension of time as requested by (the delay notification).

3.25 The Notice which was also dated 12 May 2010³⁷ identified four breaches:

- a. delay in delivering and deploying the Solution;
- b. failure to provide other Deliverables on time;
- c. failure to meet Deliverable (Milestone) 47; and
- d. failure to resolve the defects within the Target Problem Resolution Timeframes.

Mallesons advised the State not to accept IBM's "without prejudice" proposal, and to hold IBM to the contract.

3.26 Mr Bloomfield replied on 19 May 2010³⁸:

IBM denies that it is in breach of the Contract as alleged in the letter and Notice or otherwise.

Generally, IBM notes that in relation to every aspect of the project, IBM and the Customer have conducted detailed discussions and resolved issues on an ongoing basis through authorized representatives ... Each of the matters raised has already been resolved by agreement between the parties, or was in the process of resolution before the letter and Notice were sent.

Further, as a general point, IBM's position is that the majority of the issues experienced ... are due to problems with the Customer's data and/or payroll processing. The small number of ... defect claims made by the Customer is one factor demonstrating this

...

There are significant omissions and inaccuracies in the Notice.

This is particularly the case in relation to the period from January 2009 to the signing of CR104 in June 2009.

...

The Customer is well aware that it is not possible for IBM to present a solution for acceptance, with all deliverables agreed, within 7 days³⁸ and IBM rejects any suggestion that it is obliged to do so

³⁷ Exhibit 136, Volume 1, at page 110.

³⁸ Exhibit 136, Volume 1, at pages 116-117.

3.27 Mr Doak replied as well. His letter (also dated 19 May 2010) was marked “without prejudice”. He wrote³⁹:

Dear Margaret ...

I refer to Lochlan Bloomfield’s letter of today’s date in response to your letter of 12 May and the enclosed Notice to Remedy.

IBM provides the following proposal for consideration ... to facilitate an outcome that IBM considers in the best interest of all parties concerned, that is, the successful provision of the LATTICE Replacement by IBM including all Deliverables in a timeframe which is mutually acceptable.

To this end IBM proposes the following:

Project Acceptance for SOW8, ie the provision of all existing contracted Deliverables ... on or before 30 September 2010.

More specifically ...

Deliverable 47 Handover Completion Report.

Acceptance Criteria amended as follows:

No Severity 1 defects.

All Severity 2 defects which are IBM’s responsibility as at 12 May 2010, as detailed in Appendix A will be resolved on or before 30 September 2010 in accordance with a release plan agreed between the parties.

All other Severity 2 defects subsequently identified will be resolved in accordance with the Warranty provisions of Schedule 26 ...

Deliverable 48 Project Completion and Deliverable 49 Project Acceptance.

Acceptance criteria remain unchanged. Acceptance date is agreed on or before 30 September 2010.

This proposal is presented on a without prejudice basis and without any admission of liability by IBM, in the interests of fully resolving the outstanding issues between the parties It is confidential, and conditional on the Customer’s withdrawal of the allegations made in the letter of 12 May 2010 and withdrawal of the Notice to Remedy.

IBM requires a response ... by 21 May 2010

3.28 Mr Brown asked Mallesons for advice. This came by email of 20 May 2010⁴⁰. Mallesons’ opinion was that the open letter appeared to concede that IBM was in material breach of contract and that the focus in the letter on the period from January 2009 to June 2009 was irrelevant because the events referred to in the letter preceded Change 184 and because that Change was agreed on a no-liability basis. The breaches relied on in the Notice to Remedy occurred in 2010.

3.29 Mallesons advised the State not to accept IBM’s “without prejudice” proposal, and to hold IBM to the contract. By doing so, it was said, the State would be able to require IBM to remedy the defects and reserve the right to claim compensation if it did not, or if the State wished to claim its losses.

3.30 In order to seek a resolution of the issues in the Notice to Remedy, on 27 May 2010 the State requested a detailed work schedule from IBM outlining how Severity 2, 3 and 4 defects would be dealt with and sought a committed timeframe for resolution by IBM. The State’s letter of 27 May 2010⁴¹ denied the assertions made in IBM’s correspondence and advised that IBM’s response to the Notice to Remedy “did not meet the State’s expectations”. Mr Doak’s proposal was given the following response:

The State holds IBM to the Contract and does not agree to amend it as an appropriate way to deal with IBM’s breaches. In addition, the State does not agree to amend the Contract by way of an extension of time as a means to allow IBM to rectify the outstanding defects. Accordingly, all contract obligations remain.

3.31 On 1 June 2010, IBM replied by a “without prejudice” letter from Mr Bloomfield (signed by Mr Doak on his behalf) to Ms Berenyi⁴²:

IBM does not agree that the number of outstanding defects are either significant in number or are taking significant time to resolve. IBM’s position remains that a working rostering and payroll solution has been delivered to the State.

39 Exhibit 136, Volume 1, at page 119.

40 Exhibit 136, Volume 1, at page 126.

41 Exhibit 157, Annexure 11.

42 Exhibit 157, Annexure 12.

The Options Available to the State

3.32 In early June 2010, Mallesons provided the first of a number of papers describing the various options available to the State⁴³. It identified the respects in which IBM had failed to rectify the breaches outlined in the Notice to Remedy within the seven days allowed. Whilst IBM had denied that it was in breach of the contract, it had provided no supporting evidence for the denial. Mallesons therefore advised that the State was entitled to issue a Notice to Show Cause why the contract should not be terminated, but drew attention to a key risk to the State if it were to terminate⁴⁴:

... [I]t would need to find a third party to rectify the defects in order to be able to continue using the System. The cost of this third party would be recoverable from IBM, but there may be delay and further difficulties involved with engaging a third party at this late stage.

3.33 On 17 June 2010, Mallesons provided a further Options Paper⁴⁵ which addressed these possibilities:

1. issuing a Show Cause Notice and terminating the contract;
2. suspending the contract;
3. negotiating a settlement with IBM; and
4. continuing with the contract.

3.34 In relation to the third of these, negotiating a settlement, the paper identified that the key disadvantage was that IBM was likely to require the State to waive all of its existing rights and remedies as a condition of any agreement. This was identified as a risk both in respect of the then known issues and costs, and any future issues not then known. In relation to option 3 it concluded⁴⁶:

Ultimately, the State is in a strong position contractually. Conversely, IBM is in a weak position. Agreeing to a settlement runs the risk that the State will give up significant existing legal rights against IBM. The State can always reconsider the negotiated settlement option at any point in the future (ie after the Notice to Show Cause, or even after a Notice of Termination). However, by pursuing this option now, it may become more difficult for the State to exercise other rights (such as the right to termination) if negotiations are unsuccessful.

3.35 On 23 June 2010, Mr Brown received advice from Mr Michael Boughey at Crown Law⁴⁷. He said that in the event of termination the State had rights under Schedule 43 (Disengagement)⁴⁸ of the contract. That Schedule had anticipated the drafting of a Disengagement Plan by IBM within six months of the commencement date of the contract, unless agreed otherwise by the parties, and updating of the plan throughout the term of the contract. Crown Law noted that no Disengagement Plan had been drawn up, no doubt another oversight by these contracting parties. The State did however have rights under Schedule 43 upon termination. These included:

- a. IBM providing reasonable termination or expiration assistance requested by the Customer (Clause 3);
- b. IBM, if requested by the Customer (including until a Disengagement Plan was agreed), being obliged to provide the services provided by IBM to the State under the contract immediately prior to the date of termination, at the same service levels that applied before the date of termination of the contract, for up to six months (clauses 8 and 9); and
- c. IBM being obliged to endeavour to assign sub-contracts or otherwise enable the State to have access to services being provided by sub-contractors or other third parties (clauses 13 – 16).

3.36 Mr Boughey noted⁴⁹ that Schedule 43 explicitly provided that IBM use all reasonable commercial endeavours to make available to the State any third party services being utilised by IBM in the performance of the services (clause 16). The Schedule also required IBM to endeavour to assign to the State relevant contracts with “assignable key sub-contractors” or to ensure that the State can obtain contracts with these sub-contractors “on the same terms and conditions in all material respects” (clause 15).

3.37 On 28 June 2010, Mallesons provided an updated Options Paper⁵⁰.

43 Exhibit 136, Volume 1, at page 129.

44 Exhibit 136, Volume 1, at page 131.

45 Exhibit 136, Volume 1, at page 133.

46 Exhibit 136, Volume 1, at page 138.

47 Exhibit 136, Volume 1, at page 180.

48 Exhibit 63, Volume 1, at page 168.

49 Exhibit 136, Volume 1, at pages 185-186.

50 Exhibit 136, Volume 1, at page 196.

3.38 On 29 June 2010, Mr Grierson approved a recommendation which had come to him from Ms Berenyi with the endorsement of Ms MacDonald⁵¹. The material in support of the recommendation noted the legal advice received from Crown Law and Mallesons which set out the four options available to the State:

- Option 1: termination of the contract
- Option 2: suspension of the contract
- Option 3: negotiation of a settlement with IBM
- Option 4: continue with the contract.

The recommendation was:

... That the Director-General approve the following actions:

- 1. Sign and serve IBM with the Notice to Show Cause ... to be accompanied by the covering letter prepared by Mallesons ...*
- 2. Upon delivery of the Notice ... initiate “without prejudice” discussions with IBM aimed at negotiating terms of a final settlement to the contract.*
- 3. Engage the services of a professional commercial negotiator to advise and lead these negotiations.*
- 4. Continue to withhold all payments due to IBM under the contract ... until it remedies ... the breaches set out in the Notice to Remedy or as otherwise agreed in the terms of any settlement.*
- 5. Ensure that the State otherwise maintains full compliance with its obligations under the contract, including full and thorough consideration of IBM’s response(s), if any, to the Notice to Show Cause.*

In ... negotiating a settlement ... the key disadvantage was that IBM was likely to require the State to waive all of its existing rights and remedies as a condition of any agreement.

3.39 This submission recommended Option 3⁵²:

... as the most practical and timely way for the parties to reach a mutually agreeable arrangement to separate. Such negotiations can occur immediately but Mallesons advises that these can equally occur after either a Notice to Show Cause is issued or after any subsequent Notice of Termination. Mallesons also notes that there are potential benefits to the State’s negotiation position from conducting these after a Notice to Show Cause is served on IBM. If a Notice to Show Cause is delivered, the State will be in a position to immediately proceed to termination of the contract if negotiations are unsuccessful. If a Notice to Show Cause has not been issued, the State will not be in a position to immediately terminate the contract.

3.40 Mr Grierson endorsed these recommendations on 29 June 2010. That same day, 29 June 2010, the State issued a Notice to Show Cause to IBM⁵³. The Premier and Minister for Health issued a Joint Press Statement which relevantly stated⁵⁴:

The Auditor-General’s report clearly identifies failings on the part of contracted provider, IBM.

“We have sought Crown Law advice in relation to options for terminating the payroll Contract with IBM and it’s only fair that we seek to reserve our legal rights. The government has issued IBM a Show Cause Notice as to why the contract should not be terminated” said the Premier.

...

The Queensland Government will today issue to IBM a “Notice to Show Cause” why its contract should not be terminated for breach of duty of care and breach of contract.

IBM was engaged by the Queensland Government to choose appropriate payroll software for [QH], to act as project manager for the payroll implementation, and to design, develop and implement the technology. However, the system has experienced numerous problems since commencement. System development has not led to a suitable product being delivered at the time of implementation.

3.41 The Notice was sent under cover of a letter, also dated 29 June 2010, from Mr Grierson to Mr Bloomfield. Mr Grierson wrote⁵⁵:

⁵¹ Exhibit 136, Volume 1, at page 207.

⁵² Exhibit 136, Volume 1, at page 207.

⁵³ Exhibit 136, Volume 1, at page 246.

⁵⁴ Exhibit 136, Volume 2, at pages 1-2 to 1-3.

⁵⁵ Exhibit 136, Volume 1, at page 246.

Enclosed is a Notice to Show Cause, issued in accordance with sub-clause 16.6 of Part 2 of the GITC framework ... The Notice ... is issued following a failure by the Contractor to remedy breaches of the Customer Contract pursuant to the Notice to Remedy issued ... on 12 May 2010. Notwithstanding that it had no obligation to give the Contractor more time to remedy the identified breaches, the Customer requested a rectification plan from the Contractor by its letter of 27 May 2010. The Contractor failed to submit a rectification plan and failed to commit to remedy the breaches ... [T]here are a large number of Severity 2 defects in the Solution. These have not been rectified in a timely manner ... [A]dditional Severity 2 defects have arisen since the Notice to Remedy was issued. As a result, the customer has serious concerns regarding the stability of the Solution ... The customer holds major reservations that the Solution can be updated to reflect business as usual changes to the [QH] awards, as well as future legislative and regulatory requirements.

The Customer entered into the Customer Contract on the basis that the Contractor would deliver a payroll system that offered at least reasonable levels of performance, usability and reliability, coupled with Services that would provide effective management and resolution of defects. That the Solution and Services do not meet these reasonable requirements indicates a fundamental failure of the Contractor to deliver a Solution in accordance with the Customer Contract.

It is for these reasons that I feel I have been left with no option but to issue this Notice to Show Cause ...

3.42 The Notice itself identified that it had been given pursuant to clause 16.6 of Part 2 of the GITC framework and called upon IBM to show cause in writing within seven days “why the Customer should not terminate the Customer Contract”⁵⁶. It listed and described five breaches of the contract justifying the Notice of termination if IBM did not give a satisfactory explanation (“show cause”) of the breaches alleged against it. The breaches were:

1. failure to remedy breach amounting to material breach;
2. delay in delivering and deploying the solution;
3. failure to provide deliverables 41 (knowledge transfer completion of report); 47 (handover completion report); 48 (project management completion report) and 49 (project acceptance certificate);
4. failure to meet Milestone 47 – acceptance of LATTICE replacement solution;
5. failure to resolve defects within the target problem solution timeframes.

3.43 On 1 July 2010, Mallesons recommended that the State prepare for IBM’s response to the Notice to Show Cause. One particular recommendation was that counsel be retained to resist a claim for an injunction or other relief IBM might bring in response to the Notice to Show Cause⁵⁷. In early July 2010, Mr Brown moved to engage Clayton Utz for the purposes of assisting the State with settlement negotiations in accordance with recommendation 3 of the submissions of 28 June 2010⁵⁸.

3.44 IBM through its solicitors, Blake Dawson, responded to the Notice to Show Cause by letter dated 6 July 2010⁵⁹. As to IBM’s failure to deliver Milestone 47, the letter stated⁶⁰:

While the Contractor acknowledges that the LATTICE Replacement Solution Milestone Completion Date was initially agreed as 30 April 2010 pursuant to CR208, the Contractor issued a valid Delay Notice 007 on 27 April 2010 and an amended version on 30 April 2010 when it became evident this date would not be met, due to the acts and omissions of the Customer:

- a. *limited assistance from the Customer in providing adequate and timely input and direction;*
- b. *delays in providing the necessary approvals and consents;*
- c. *lack of clarity in relation to scope and business requirements; and*
- d. *significant changes in scope and business requirements, as demonstrated by CR184.*

3.45 In answer to the Notice the solicitors wrote⁶¹:

We also note that given the number of errors and omissions in the Notice to Show Cause it would be improper for the State to rely on that Notice to terminate the Contract. Furthermore, the State has stated that the Notice to Show Cause should not be read as a complete list of material breaches of the Contract by IBM and does not limit the rights of the State. The State cannot legitimately expect IBM to respond

⁵⁶ Exhibit 136, Volume 1, at page 234.

⁵⁷ Exhibit 136, Volume 2, at page 1.

⁵⁸ Exhibit 136, Volume 2, at page 2.

⁵⁹ Exhibit 136, Volume 2, at page 3.

⁶⁰ Exhibit 136, Volume 2, at pages 9-10.

⁶¹ Exhibit 136, Volume 2, at page 4.

to unspecified alleged material breaches. IBM puts the State on notice that IBM is treating the matters under the Notice to Show Cause to which it has been requested (but is not obliged) to respond as being the complete list of matters to which IBM has been requested by the State to demonstrate “reasonable cause” why the State should not exercise its purported right of termination.

In addition to the response provided with this letter, IBM requires the State to consider the June 2010 Report to Parliament No. 7 for 2010 Information Systems Governance and Control, including the Queensland Health Implementation of Continuity Project by the Auditor-General of Queensland. Of particular relevance are the findings by the Auditor-General relating to the following matters which demonstrate the difficulties which have arisen with this implementation were caused by the State:

- a. inability of the State to articulate its business requirements throughout the project;
- b. the process for user acceptance testing;
- c. the training of State staff; and
- d. the effectiveness of the State’s project governance.

With regard to the last item, IBM notes that at all times IBM acted within the State’s governance structures and while IBM concurs with the Auditor-General’s findings concerning the inadequacy of these structures, IBM is not responsible for those structures or the consequences which flow from them.

- 3.46** At the time of the Joint Press Statement, the Minister for Health, Mr Lucas, had said in answer to a question that the State might sue IBM⁶². Shortly afterwards, Mr Doak contacted Mr Grierson and requested a meeting⁶³. It occurred on 5 July 2010. Ms MacDonald was probably present. IBM was represented by Mr Doak and Mr Killey who shortly before had become Program Director for the QH payroll system replacement. The meeting was instigated by Mr Doak, to introduce Mr Killey to Mr Grierson and to conduct preliminary discussions with a view to the commencement of negotiations following the delivery of the Show Cause Notice⁶⁴. This, of course, was the strategy Mr Grierson had endorsed six days earlier. Mr Grierson said he was not authorised to negotiate a settlement and that “things had to run their course at the ministerial level” before negotiations for a settlement could commence⁶⁵. Mr Doak told Mr Grierson that IBM wanted to continue its “contractual relationship” with the State and to honour its warranty obligations in relation to the new payroll system. He emphasised that IBM wanted a commercial resolution to be achieved privately and hoped the parties would not blame each other publicly⁶⁶. Mr Grierson said that decisions on how to deal with the dispute were being made by the Premier and Mr Lucas⁶⁷.

Crown Law also reviewed the Option Papers and on 20 July 2010 emphasised that consideration should be given to putting a monetary value on the possible damages claim.

- 3.47** On 12 July 2010, Mr William Backhouse, Executive Director Legal Services in the Department of Public Works, wrote to Mr Jeremy Charlston of Clayton Utz to engage him to negotiate the terms of any settlement between the State and IBM⁶⁸. Mr Backhouse noted that Mr Brown would work with Clayton Utz to develop and, as appropriate, execute a negotiation strategy to bring the matter to a satisfactory conclusion. The commendable notion that an experienced solicitor be engaged to participate in, and indeed to conduct, the negotiations on behalf of the State with IBM was Mr Brown’s. He explained that his intention was⁶⁹:

... [T]o ensure that the State was adequately represented. ... [T]he State had every opportunity, had the best team it could muster to actually front up and stare IBM eye to eye across the table during the negotiations ... I believe that Mr Doak (was) a skilled and experienced negotiator ... expert in that area ... where government and myself ... would be lucky to undertake a negotiation of this size and scope once or twice in your career ... [M]y motivation was to ... present a solid negotiation with IBM, that we brought expertise and skills on board to ensure that we could best advantage the State during those negotiations.

62 Exhibit 149A, para 30.

63 Exhibit 149A, para 31.

64 Exhibit 149A, para 65; Exhibit 146, para 10.

65 T34-38, L26-29; T34-38, L31-35 (Malcolm Grierson); Exhibit 146, para 12.

66 Exhibit 146, para 13.

67 Exhibit 146, para 14.

68 Exhibit 136, Volume 2, at page 66.

69 T33-87, L42-56 to T33-88, L1-L20 (James Brown).

- 3.48** On 14 July 2010, Malleons again gave advice to Mr Brown as to whether the State was entitled to terminate the contract. The conclusion was⁷⁰:

In our opinion, based on the information known to us, the Contractor has failed to show reasonable cause why the Customer should not terminate the Contract. Therefore, the Customer is entitled to terminate the Contract.

- 3.49** On 14 July 2010, Mr Backhouse, Mr Brown and Mr Beeston met with Mr Swinson and Ms Bowe (of Malleons) and Mr Dunphy and Mr Charlston (of Clayton Utz)⁷¹ to discuss the “legal position”. According to Mr Backhouse’s note the meeting was told that there were 30 to 40 Severity 2 defects in the system (down from 167) but this number was itself sufficient to justify terminating the contract for breach. It was also said that there was a likelihood that any negotiated resolution between the State and IBM would be the subject of scrutiny by the Auditor-General and others. Mr Dunphy made a specific recommendation that any decision by the Director-General to pursue or compromise a claim for damages by the State should address the quantum of the claim and the prospects of success. This would require the identification of heads of damages by Malleons and a review of the details of possible claims.

- 3.50** On 17 July 2010, Malleons advised Mr Brown on the State’s rights to access contractors and materials in the event that it terminated the contract⁷². Paragraph 1.4 of this advice gave the following summary:

The State has strong rights in relation to intellectual property and the access to sub-contractors. However, as a practical matter the State should ensure that it has copies of everything it needs from IBM (in terms of software and documentation) and that third parties are prepared to engage directly with the State and provide the particular individuals identified as critical.

In terms of other assistance, the State has the right to Disengagement Services but will need to request a disengagement plan to get services over and above what is already provided in the contract (eg in relation to IP). IBM can charge for Disengagement Services.

- 3.51** The advice⁷³ considered the provisions of Schedule 43 and concluded that it gave the State “strong arguments” that IBM had to assist in “either assigning or procuring a replacement contract for the State with each of Infor and Presence of IT”. The advice noted the possibility that the sub-contractors had agreed with IBM not to engage directly with the State. Further, if the State did not terminate the contract, but sought to engage personnel currently used by IBM in the contract, the State may risk a claim that it was inducing a breach of contract by the sub-contractor of its obligations to IBM⁷⁴. Malleons concluded⁷⁵:

If the State terminates the Payroll Contract we see no reason why the State cannot enter into an agreement directly with the third party contracts (sic) if they are agreeable to that. If the State does not terminate the Payroll Contract, some care will be required if the State wishes to engage specific individuals currently used by IBM in the provision of the Services.

- 3.52** On 19 July 2010, Malleons provided a further version of the Options Paper of 17 June 2010. Irrespective of which option the State chose, Malleons recommended that it do one of the following as a matter of priority⁷⁶:
- a. determine whether the work currently being done by IBM in relation to the payroll system could be done by others (for example, the State or other third party suppliers);
 - b. discuss the degree to which IBM’s existing obligations (particularly in relation to the SAP work) were being undertaken or supplemented by the work of CorpTech employees and what further resources might be required to enable CorpTech to manage the system until a solution could be put in place;
 - c. approach Infor to determine the likelihood that it could take over the Workbrain aspects of the payroll operations from IBM in the event that the payroll contract were terminated;
 - d. approach Presence of IT to determine the likelihood that it could provide identified resources to assist with ongoing support of the payroll system in the event that the payroll contract were terminated;
 - e. put together and brief a negotiating team in anticipation of the State wishing to negotiate with IBM.

70 Exhibit 136, Volume 2, at page 85.

71 Exhibit 136, Volume 2, at page 98.

72 Exhibit 136, Volume 2, at page 149.

73 Exhibit 136, Volume 2, at page 151.

74 Exhibit 136, Volume 2, at page 154.

75 Exhibit 136, Volume 2, at page 155.

76 Exhibit 136, Volume 2, at pages 166-167.

- 3.53** On 19 July 2010, Mallesons delivered separately a Damages Options Paper which identified possible claims for damages against IBM for breach of contract, negligence and misleading and deceptive conduct in contravention of the Trade Practices Act (s52). The paper did not quantify damages, observing⁷⁷:

This is a preliminary high level paper, as we have not had access to all necessary personnel or documents in the time allowed, and a full investigation into damages would require a thorough forensic analysis and take several months.

- 3.54** The paper recommended as the next steps in determining the possible quantum of damages⁷⁸:

More work needs to be done to determine the likely value of any claim against IBM and the prospects of success of each claim. We believe that it is worth doing such work, as (based on the information that we have) it is not unlikely that the State has a significant claim for damages against IBM.

To prepare an advice as to prospects, all relevant documents, emails, reports and contractual amendments need to be reviewed. In addition, relevant witnesses should be interviewed and statements taken.

Once details of the claims against IBM have been determined, the value of the loss suffered as a result should be calculated.

The State should take care when negotiating any settlement with IBM that it fully understands the actual existing and potential future claims against IBM, and the likely quantum of such claims.

Paragraph 5.2 of the advice sounded the usual caution that all litigation comes with cost and risk⁷⁹.

- 3.55** Mr Backhouse analysed the Options and Damages Papers. In an email of 20 July 2010⁸⁰, he recommended that the State undertake the suggested analysis of its damages and their amount before adopting a negotiation position. He expressed the opinion that the Auditor-General's report and other such reports would not be admissible in evidence to support a defence against the State that poor practices had caused its losses, because these reports were opinions and consisted of hearsay. His opinion was correct on this point.

- 3.56** Crown Law also reviewed the Option Papers and on 20 July 2010 emphasised that consideration should be given to putting a monetary value on the possible damages claim. It warned that even if the State were to terminate the contract there would remain the risk that IBM would claim the State had advised its sub-contractors to break their contracts with it⁸¹, that is bring or threaten a suit for inducing breach of contract.

The KPMG Advice

Mr Schwarten signed a submission to the CBRC on 21 July 2010. He recommended a negotiated settlement with IBM rather than litigation

- 3.57** Mr Ken Smith, Director-General, Department of Premier and Cabinet, requested KPMG to comment on the business risk of the strategy outlined in the Submission to be put to CBRC for its meeting of 22 July 2010, as those risks related to the continued delivery of the work program within QH. To compile the report, KPMG met with Mr Grierson, Ms MacDonald, Ms Berenyi, Mr Brown, Mr Hood and Ms Stewart. KPMG reported on 21 July 2010⁸² that in the event that IBM was removed and refused to support the system, CorpTech needed to obtain the services of 8 "critical resources"⁸³ from the 30 resources IBM had on the project. A further 14 resources⁸⁴ were said to be highly desirable and would, if not secured, need to be replaced⁸⁵. Relevantly, the KPMG report stated:

It is imperative that any proposed change to support arrangements is transitioned in a managed way so as to not to negatively impact on the ability to support the [QH] payroll⁸⁶.

...

⁷⁷ Exhibit 136, Volume 2, at page 185.

⁷⁸ Exhibit 136, Volume 2, at page 185.

⁷⁹ Exhibit 136, Volume 2, at page 191.

⁸⁰ Exhibit 136, Volume 2, at page 192.

⁸¹ Exhibit 136, Volume 2, at page 196.

⁸² Exhibit 136, Volume 2, at page 351.

⁸³ These 8 resources are comprised of 5 critical resources to be retained and 3 resources to be recruited from the market, as per Table 1 – Exhibit 136, Volume 2, at page 354.

⁸⁴ These 14 resources are comprised of 4 resources desirable for retention, otherwise recruited, and 10 Infor resources to be contracted directly, as per Table 1 – Exhibit 136, Volume 2, at page 354.

⁸⁵ Exhibit 136, Volume 2, at pages 354-355.

⁸⁶ Exhibit 136, Volume 2, at page 351.

The transition strategy outlined in the DPW submission recommends negotiating with IBM to effect the transition. Should this not be successful the submission recommends termination after one month. As continuity of resourcing is critical sufficient time needs to be provided to allow CorpTech to secure the identified resources. This may take longer than one month and consideration also needs to be given to the timeframe required to hand over relevant documentation and to properly transition responsibilities from IBM to CorpTech⁸⁷.

...

CorpTech have made progress in developing a strategy to manage the transition of these key resources from IBM thus ensuring continuity of support. We do not believe it would be prudent for the Government to sever its relationship with IBM until such time as it had a level of comfort that it can effectively manage the transition of the identified resources supplemented by an effective handover of key QH HR documentation and status of the work program being managed by IBM⁸⁸.

- 3.58** Mr Schwarten signed a submission to the CBRC on 21 July 2010. He recommended a negotiated settlement with IBM rather than litigation⁸⁹:

An orderly transition out of the contract allows the State the best opportunity to put in place alternative support arrangements to ensure that the [QH] rostering and payroll solution is not exposed to unnecessary risk. The consequence of taking this course of action means the State giving up an undefined set of potential legal claims against IBM which in the case of a damages claim cannot be fully quantified at this time. This needs to be balanced against the option of litigation where IBM has access to all project documentation and the Auditor-General's report to Parliament No.7 of 2010, which it will use to vigorously mount a legal defence.

- 3.59** The submission referred to the KPMG report of 21 July 2010. Paragraph 22⁹⁰ noted that from a business continuity perspective, the State [was] still reliant on two IBM sub-contractor organisations and a number of individual contractors which had detailed technical knowledge of the system design and interfaces. The submission stated that while IBM was contractually bound to support the system, it was using the two sub-contractors to fulfil that obligation. IBM's agreement with the sub-contractors was to expire at the end of August 2010. It was thought that a period of one to three months would be required for CorpTech to secure sufficient resources and expertise to support the QH Solution if IBM's involvement in the system ceased. The submission, however, noted that IBM, through its global relationship with Infor, was likely to exert significant pressure for Infor not to contract directly with the State. There was, however, no evidence to support this assertion. Paragraph 36⁹¹ stated that the most important outcome was to ensure that the system continue to deliver payroll services to QH. Paragraph 54 stated⁹²:

Mallesons ... advises ... that the State is in a strong position contractually, whereas, conversely, IBM is in a weak position. Agreeing to a settlement runs the risk that the State will give up significant existing legal rights without receiving anything valuable in return. This legal view does not take into full consideration the primary goal of maintaining the continuity of payroll services to [QH]. Mallesons ... also advises that it is likely that, should the State terminate the contract, IBM would 'walk off the job' exposing the State to significant risk. Crown Law also advises ... that it is almost inevitable that IBM will bring counter-claims against the State for breach of contract and unpaid fees if the State begins proceedings against IBM.

On 22 July 2010, the CBRC approved the preferred option of negotiating a settlement with IBM⁹⁵. Mr Grierson was authorised to act as the State's delegate in the negotiations which were to conclude within six weeks.

- 3.60** Ms MacDonald⁹³ had prepared a list of the risks of terminating the contract with IBM immediately⁹⁴. She gave it to Mr Grierson who in turn gave it to Mr Smith. The risks were:
- an immediate termination might jeopardise the transfer of technical knowledge from IBM's employees and contractors to CorpTech;

87 Exhibit 136, Volume 2, at page 357.

88 Exhibit 136, Volume 2, at page 358.

89 Exhibit 136, Volume 2, at page 228.

90 Exhibit 136, Volume 2, at page 233.

91 Exhibit 136, Volume 2, at page 235.

92 Exhibit 136, Volume 2, at page 238.

93 Exhibit 149A, at Annexure MJG 4.

94 Exhibit 136, Volume 2, at page 389.

- IBM had other projects in South-East Queensland involving SAP and could re-deploy their resources to those projects denying them to the payroll system;
- termination would mean forfeiting the State’s rights to have defects rectified and would void IBM’s warranties;
- not negotiating with IBM would leave it free “to comment on the project implementation as they see fit”;
- IBM would probably counterclaim against the State;
- IBM was delivering “other significant technology projects” for the State and a protracted legal dispute might harm the relationship and impact on the delivery of those projects.

Ms MacDonald’s list was included in the attachments to the submission. Some, at least, of the risks appear to be based on no more than conjecture. One was a misreading of the contract between the State and IBM.

- 3.61** On 22 July 2010, the CBRC approved the preferred option of negotiating a settlement with IBM⁹⁵. Mr Grierson was authorised to act as the State’s delegate in the negotiations which were to conclude within six weeks. He was to report back within that time and make recommendations on how to finalise the contract with IBM. The CBRC also approved “contract negotiation parameters” which appeared as Table 1 in the CBRC submission⁹⁶. Terms of Settlement were designated “preferred” and “acceptable” positions. Item 6 showed the State’s preferred position to be that there be no release given to IBM for any damages claims for past or future losses suffered by the State. The acceptable position was that there be a qualified release, for example, retaining rights in case the system had to be abandoned due to inability to overcome defects. Item 4 stated the State’s preferred position to be that all outstanding Severity 2 defects up to 31 July 2010 be fixed. An acceptable position to the State was that the defects in the Notice to Show Cause be rectified.

Negotiation is the Preferred Option

IBM, through Mr Doak, sought to avoid negotiations between lawyers.

- 3.62** By letter dated 26 July 2010 to Mr Brown, Clayton Utz outlined its proposed negotiation process and strategy⁹⁷, and advised that negotiations, in the initial phase at least, should be “lawyer to lawyer”⁹⁸. The process was to involve exchanging Settlement Term Sheets on which the parties would record the basis upon which each would settle.
- 3.63** Between 28 July 2010 and 3 August 2010, the basis and protocols under which the settlement negotiations would be conducted were agreed with IBM through a series of letters exchanged between Mr Grierson and representatives of IBM⁹⁹.
- 3.64** IBM, through Mr Doak, sought to avoid negotiations between lawyers. He wrote to Mr Grierson on 29 July 2010¹⁰⁰.
IBM considers that it is in the best interest of achieving prompt and efficient commercial resolution for the initial period of negotiation to be conducted by representatives of each party in the absence of legal representatives.
- 3.65** Mr Doak’s proposal was contrary to Mr Brown’s strategy for the negotiations. In a submission to Mr Grierson on 30 July 2010, Ms Berenyi and Ms MacDonald advised him that “IBM’s letter of 29 July 2010, if accepted, fundamentally erodes the State’s ability to control the negotiations”¹⁰¹, and recommended that Mr Grierson’s reply should insist upon adherence to the process agreed between their respective lawyers. Mr Grierson accepted the advice and wrote accordingly¹⁰².
- 3.66** By letter dated 4 August 2010, Clayton Utz sent to the solicitors for IBM, Blake Dawson, the first Settlement Terms Sheet¹⁰³. An earlier draft Settlement Terms Sheet had not been sent to Blake Dawson¹⁰⁴. Under Item 3 of that draft, the State was to seek damages from IBM in the amount of \$12M which constituted a

95 Exhibit 136, Volume 2, at page 226.

96 Exhibit 136, Volume 2, at pages 239-240.

97 Exhibit 136, Volume 2, at page 402.

98 Exhibit 136, Volume 2, at page 404.

99 Exhibit 136, Volume 2, at page 419; Exhibit 136, Volume 2, at page 452; Exhibit 136, Volume 2, at page 477; Exhibit 136, Volume 3, at page 1; Exhibit 136, Volume 3, at page 15; Exhibit 147, Annexure G; Exhibit 147, para 10.

100 Exhibit 136, Volume 2, at pages 452-453.

101 Exhibit 136, Volume 2, page 455.

102 Exhibit 136, Volume 2, at pages 477-478.

103 Exhibit 136, Volume 3, at page 27.

104 Exhibit 136, Volume 3, at page 19.

preliminary and limited assessment of the losses which the State had incurred. These included additional technical staff required to support the QH Rostering and Payroll Solution caused by the inadequacies in the underlying design of the systems and the cost of overtime required to support the payroll cycle. The draft Terms Sheet noted that the claim for compensation did not reflect the full loss and damage suffered by the State. Therefore, if negotiations were not successful, the State reserved the right to pursue IBM for the full scope of its contractual and legal rights¹⁰⁵.

- 3.67** This claim for \$12M was not contained in the 4 August 2010 Settlement Terms Sheet sent to Blake Dawson. Mr Grierson explained the omission¹⁰⁶. He knew that there was a cap on contractual damages of approximately \$60M. He asked Mr Brown how the \$12M figure was calculated. He was informed that it represented the cost of additional CorpTech resources and did not include any QH resources. Mr Grierson was of the view that a claim for compensation should not be so limited given that he believed the contractual damages were capped at \$60M. Mr Grierson therefore asked for any reference to the \$12M to be deleted.
- 3.68** After the Settlement Term Sheet had been sent to Blake Dawson on 4 August 2010, there followed a series of emails and letters between Clayton Utz and Blake Dawson¹⁰⁷.
- 3.69** Negotiations were unproductive. Mr Backhouse wrote of a telephone conversation he had with Mr Beeston on 10 August 2010¹⁰⁸:

Clayton Utz report IBM not showing signs of genuinely negotiating. I said their tactic might be to stonewall the lawyers and wait until they get an audience with the DG before putting their real position. They may try to exclude or minimise the department's use of lawyers ... I said the State may have to consider taking a tough line with IBM in order to preserve its negotiating position.

- 3.70** Mr Beeston was to recommend to Mr Brown, with Mr Backhouse's support, that Mallesons be instructed to prepare a Notice of Termination and associated documents in case they were needed. Clayton Utz was to be asked to brief Mr Grierson personally on the status and tactics for negotiation.
- 3.71** On Friday, 13 August 2010, Ms MacDonald, Ms Berenyi, Mr Brown and Mr Backhouse met Mr Charlston to discuss the status of the negotiations¹⁰⁹. IBM had not provided a substantive response to the Settlement Terms Sheet sent on 4 August 2010, which suggested that negotiations would be difficult to conclude successfully by Friday, 20 August 2010. There was a concern that the State's termination rights should be preserved. A meeting with Mr Grierson at 1pm on Monday, 16 August 2010 was scheduled at which the various options were to be discussed.
- 3.72** On 13 August 2010, Blake Dawson provided IBM's substantive response to the Settlement Terms Sheet¹¹⁰. In relation to Item 3 "Damages"¹¹¹, IBM maintained that it had not breached the contract, had no liability to the State and the State was not entitled to recover any loss or damages from IBM. It would not pay compensation to the State and alleged that it had incurred significant cost as a result of the State's actions. IBM also alleged that it had suffered significant damage to its reputation through the State's actions and public statements criticising IBM and its personnel. If settlement negotiations were not successful, IBM said, it reserved the right to recover from the State all of its loss and damage. Under Item 12¹¹², IBM made it clear that as part of any settlement, it required a full release from the State from all current or future liability, actions, claims and demands whether known or unknown which the State had, or may have at any time in the future, against IBM arising from or in connection with the contract and the dispute.

Grierson Meets with IBM

- 3.73** On 16 August 2010, Ms MacDonald, Ms Berenyi, Mr Backhouse, Mr Brown and Mr Charlston met Mr Grierson. A discussion paper was distributed by Mr Brown¹¹³, of which Mr Grierson had no specific recollection¹¹⁴. That paper records Mr Brown's assessment that agreement was highly unlikely within a reasonable timeframe given IBM's delays and the significant difference in the parties' respective positions. It was noted that any significant delay in reaching agreement past 20 August 2010 further eroded the

105 Exhibit 136, Volume 3, at page 21.

106 T34-39, L40-55 to T34-40, L1-5 (Malcolm Grierson).

107 Exhibit 147, para 11.

108 Exhibit 136, Volume 3, at page 68.

109 Exhibit 147, para 12.

110 Exhibit 136, Volume 3, at page 85.

111 Exhibit 136, Volume 3, at page 89.

112 Exhibit 136, Volume 3, at page 94.

113 Exhibit 147, Annexure R.

114 T34-48, L1-21 (Malcolm Grierson).

State's option to terminate the contract for default based on the Notice to Show Cause which had been issued. The discussion paper included these observations¹¹⁵:

Any significant delay on reaching agreement past 20 August 2010 further erodes the State's option to terminate ...

IBM is aware of the timing issue ... and its response may be a tactic to seek to neutralise the notice, thereby limiting the State's options.

Time is IBM's strongest negotiation lever, whilst termination of the contract for default is the State's.

3.74 Two options were discussed¹¹⁶. The first was the immediate termination of the contract. The explicit assumption underlying this option was that "IBM will not substantially alter its response to the State's requirements contained in its Terms Sheet". The probability of that was described as "high". It was noted that IBM was seeking a full release upon settlement of the contract not only for itself, but for its sub-contractors as well as full payment of all outstanding monies. Accordingly, if the release were given, any claim for damages by the State would be waived. The discussion paper stated that only 23 of the 72 previously agreed Severity 2 defects scheduled for rectification in August 2010 would be delivered by IBM. These defects only represented a subset of the 182 Severity 2 defects identified since Go Live on 14 March 2010. The IBM proposal suggested finalisation and termination of the contract by agreement by 31 August 2010. The discussion paper noted that this left insufficient time for an orderly transition and took away the State's rights to disengagement under Schedule 43 of the contract. Should the State terminate it was said to be probable that IBM would seek to negotiate rather than litigate. The CBRC had not approved termination so such approval would be required before the contract could be terminated.

3.75 The second option¹¹⁷ was that the State meet IBM with a view to seeking a more favourable negotiated settlement by Friday, 27 August 2010. The assumption underlying this option was that IBM would respond favourably to the State's revised offer and negotiate acceptable terms within two weeks. The probability of that was described as "low". It was noted, however, that a drawn out negotiation process would reduce the grounds upon which the State could terminate. A factor in favour of the State however was the potential reputational damage to IBM if the contract were terminated for default. It was noted that this may have far-reaching consequences for IBM's business in Australia.

3.76 It was decided that Mr Grierson or his delegate would meet with IBM on Wednesday, 18 August 2010 following development of an adjusted Terms Sheet within the parameters set by the CBRC. It was also agreed that Clayton Utz, as negotiation advisers, were to be present. Mr Grierson or his delegate was to table the adjusted State position and give IBM 24 hours to respond¹¹⁸.

3.77 Mr Grierson explained the reason for meeting with IBM as follows¹¹⁹:

I was running out of time. I spoke to my Associate Director-General who agreed that we should contact IBM, and my intention was to get some senior IBM people in, particularly someone senior to Doak and Killey, and basically say 'look, you know, what's going on here? Why are you people not negotiating genuinely? You know what we're after. Why is it that this is not happening?' And basically try and see if there were issues that needed to be resolved as far as the process was concerned.

Mr Grierson chose the second option despite considered advice that:

- a. there was only a "low" probability that IBM would agree to terms acceptable to the State; and
- b. the passing of time strengthened IBM's position and weakened the State's; and
- c. the State's best bargaining advantage was termination or the imminent threat of it.

Instead Mr Grierson chose to meet IBM and to bluster. That tactic had been consistently unsuccessful when he met IBM during CorpTech's management of the contract.

3.78 On 17 August 2010, Mr Grierson telephoned Mr Killey. Mr Killey recorded what was said in an internal email he sent about an hour and a half afterwards¹²⁰. With one irrelevant exception, Mr Grierson accepted that Mr Killey's email accurately recorded the telephone conversation¹²¹. The effect of it as recorded in Mr Killey's email was:

115 Exhibit 147, Annexure R.

116 Exhibit 147, Annexure R.

117 Exhibit 147, Annexure R, at page 2.

118 Exhibit 147, Annexure R, at page 3.

119 T34-49, L1-9 (Malcolm Grierson).

120 Exhibit 136, Volume 3, at page 112.

121 T34-49, L11-54 to T34-50, L1-11 (Malcolm Grierson).

Mal G: Where is Bill Doak, is he in the country and still engaged.

KK: I responded that Bill is engaged and that Bill and I are both working through the current situation.

Mal G: He said he received our response and is very concerned and needs to talk to someone senior in IBM.

KK: I asked him why.

MG: He stated that IBM's response was unacceptable and not conducive to reaching a settlement, eg we acknowledge that there are some 180 defects but are only prepared to fix 24 and this is a disgrace. He said if Lucas got hold of this the lawyers would be onto it and they'd go legal.

KK: I stating we have been frustrated by the process of trading letters and would have preferred to get around the table to talk.

MG: He needs to get this resolved by Monday at the latest and if he cant (sic) then after that it is out of his hands, with Anna.

KK: I asked him when he thinks this meeting needs to happen.

MG: ASAP, tomorrow, and he said he has a few slots and due to its importance is prepared to move things around and named some times (11ish, 2ish and 4ish).

MG: He asked me to get back to him ASAP.

KK: I thanked him for the call and said I would be in touch shortly.

Mr Killey added his commentary on Mr Grierson's proposal¹²²:

I will schedule a call to discuss our next step first thing tomorrow ... Personally I think we should only meet Mal on Thursday, ie we don't need to appear too eager.

The second option was that the State meet IBM with a view to seeking a more favourable negotiated settlement by Friday, 27 August 2010.

3.79 On 18 August 2010, Mr Killey emailed Mr Grierson¹²³:

Thank you for your call yesterday afternoon.

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

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

Mr Killey's pointed comment that Mr Grierson's request for a meeting was "an expedient change from the State's settlement process" alarmed Mr Brown. The letter was brought to his attention and "caused (him) to provide advice ... to the Director-General that (he) needed to respond in the most strong terms ... that the process hadn't changed"¹²⁴. Mr Brown urged Mr Backhouse "to give legal advice to Mr Grierson as to how to respond ... "¹²⁵. Mr Grierson said that he sought urgent advice from Mr Backhouse to assist in drafting a response¹²⁶ but I think it more likely that it was Mr Brown and Mr Backhouse who urged the response Mr Grierson actually made. He wrote¹²⁷:

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

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

19 August 2010 was fixed as the date for the meeting¹²⁸.

¹²² Exhibit 136, Volume 3, at page 112.

¹²³ Exhibit 136, Volume 3, at page 113.

¹²⁴ T33-101, L39-42 (James Brown).

¹²⁵ T33-101, L44-46 (James Brown).

¹²⁶ T34-50, L25-30 (Malcolm Grierson); Exhibit 149B, para 14.

¹²⁷ Exhibit 136, Volume 3, at page 114.

¹²⁸ Exhibit 136, Volume 3, at page 141.

- 3.80** Also on 18 August 2010, Clayton Utz drafted the State’s reply to IBM’s response to the Settlement Terms Sheet¹²⁹. This constituted the State’s final offer to IBM¹³⁰. Item 1 required IBM to rectify all Severity 2 defects, existing as at 4 August 2010, by 31 August 2010. A list of defects was identified and attached. There were 76, down from 96. As to damages, the State proposed to settle the claim by retaining most of the outstanding payments to IBM. The State was prepared to release IBM from liability for an agreed list of obligations relating to problems (including, in particular, rectifying outstanding defects). Such a release would be contingent on due implementation by IBM of the settlement terms¹³¹.
- 3.81** Mr Brown had grave fears that if Mr Grierson met Mr Doak (and/or Mr Killey) without the State’s lawyers he would be outwitted. He gave evidence that the reason he sought to have Mr Charlston present was that “if he had a face to face meeting with Mr Doak he would be out-negotiated” because he had “witnessed Mr Doak out-manoeuvre and out-negotiate Mr Grierson in the course of the management of the contract ...”¹³².
- 3.82** Mr Brown’s discussion paper of 16 August 2010 had suggested that Mr Charlston should attend any meeting between Mr Grierson and IBM. Mr Grierson decided his attendance was not necessary. His personal assistant telephoned Mr Charlston to tell him that he was not to attend¹³³. Mr Grierson did not recall excluding Mr Charlston, but said that if he had made that decision, it would have been because he did not believe that he needed Clayton Utz present for the purpose of discussing IBM’s performance¹³⁴.
- 3.83** On 19 August 2010, Mr Brown emailed Ms MacDonald suggesting that before she and Mr Grierson met the IBM representatives they might wish to phone Mr Charlston for advice on the conduct of the meeting¹³⁵. Mr Brown emphasised that the discussions with IBM were to be conducted on a “without prejudice” basis and within the protocol agreed between the State and IBM for the conduct of negotiations. He further emphasised that the State’s purpose in meeting with IBM was not to discuss the current contract negotiation process, but to better understand IBM’s intentions. Mr Brown strongly advised that the contract not be discussed as this might compromise the State’s legal and negotiating position, particularly in relation to preservation of the State’s legal rights arising from IBM’s material breaches of the contract. Mr Brown also suggested that a file note recording the key points discussed at the meeting be prepared and sent to Ms Berenyi¹³⁶.
- 3.84** Mr Grierson did ring Mr Charlston who recalled that he said he was about to meet with “senior people from IBM” to discuss the status of negotiations and “other business”¹³⁷. Mr Grierson said that he intended to tell IBM that he was disappointed with progress to date. Mr Charlston advised Mr Grierson to say at the outset that the discussions were “without prejudice” and were for the purpose of better understanding IBM’s intentions in relation to the payroll dispute and other contracts that it had with the State.
- 3.85** Mr Grierson met with Mr Doak and Ms Adam-Gedge from IBM on 19 August 2010. Mr Grierson’s diary for 19 August 2010 shows two hours were set aside for the meeting¹³⁸. Ms MacDonald attended¹³⁹.
- 3.86** Mr Grierson, despite believing that his purpose was to get a better understanding of IBM’s intentions, went further and settled the dispute, at least in principle. He did so by conceding the points his subordinates had hoped to retain for the benefit of the State. The lack of a file note makes it difficult to know with any precision what was said. Both Mr Grierson and Ms MacDonald had imperfect recollections¹⁴⁰. Ms MacDonald must have made notes of the specific points of agreement because, as it will appear, she was able to pass them on to Mr Brown¹⁴¹. Mr Grierson said he was aware that the government expected IBM to fix a number of defects, transfer the critical specialist consultants to CorpTech, develop and implement the “concurrent employment module”, convert all documentation to CorpTech and leave by a date to be agreed¹⁴². He believed that these matters were discussed at the meeting and agreement reached on them wherever possible¹⁴³. The agreement he made went beyond these points.

129 Exhibit 136, Volume 3, at page 119.

130 Exhibit 136, Volume 3, at pages 135-136, 138.

131 Exhibit 136, Volume 3, at pages 126-127.

132 T33-104, L1-10 (James Brown).

133 Exhibit 136, Volume 3, at page 144.

134 T34-53, L6-21 (Malcolm Grierson).

135 Exhibit 136, Volume 3, at page 133.

136 Exhibit 136, Volume 3, at page 134.

137 Exhibit 147, para 20.

138 Exhibit 117, part 2.

139 Exhibit 149B, para 18; Exhibit 167, para 9.

140 Exhibit 167, para 4; T34-55, L1 (Malcolm Grierson).

141 Exhibit 167, para 8.

142 Exhibit 149B, para 20.

143 Exhibit 149B, paras 18-20.

- 3.87** Ms MacDonald's recollection was that Mr Grierson led the discussions. He sought to achieve an IBM exit which minimised disruption to payroll¹⁴⁴. She recalled that the IBM representatives emphasised their desire to continue supporting the system but brought with them a copy of the Auditor-General's Report and pointed to its criticisms of the State. Ms MacDonald said that she and Mr Grierson had a copy of the Settlement Terms Sheet dated 18 August 2010. She made notes on the Settlement Terms Sheet and in all probability gave her copy of that document to Ms Berenyi and Mr Brown, with whom she and Mr Grierson met after Mr Doak and Ms Adam-Gedge left¹⁴⁵.
- 3.88** Immediately after the meeting, but before speaking to Ms Berenyi and Mr Brown, Mr Grierson went to see Mr Ken Smith¹⁴⁶. Ms MacDonald went with him. Mr Grierson said that he would have spoken to Mr Smith to advise him on what had been agreed and to comply with the CBRC requirement that he report on the progress of negotiations¹⁴⁷.
- 3.89** The only contemporaneous record of what occurred at the meeting is the file note made by Mr Charlston of his conversation with Mr Brown¹⁴⁸. Both Mr Grierson¹⁴⁹ and Mr Brown disputed its accuracy, but I have no doubt that it correctly records what Mr Brown told Mr Charlston just after his meeting with Mr Grierson and Ms MacDonald. Mr Brown was not at the meeting with IBM but he was briefed about what transpired by Mr Grierson and Ms MacDonald, and he spoke to Mr Charlston soon afterwards. There is no dispute that paragraph 4 of Mr Charlston's file note accurately records the points of detail agreed at the meeting¹⁵⁰.
- 3.90** Because the meeting between Mr Grierson, Ms MacDonald and IBM representatives on 19 August 2010 constituted a clear departure from the negotiation process established by Clayton Utz, it is necessary to set out Mr Charlston's file note in full¹⁵¹:

James Brown rang JCC at 5.30 pm.

1. *He said he had just come back from a meeting with the Director-General (Mal Grierson) and the Acting Director-General (Natalie MacDonald).*

This follows the 2½ hour meeting that the DG and ADG had with IBM from 11am today.

They instructed him on the outcome of the meeting and on what he is to do as a result.

2. *The DG spoke to Ken Smith (Premiers) following the meeting with IBM.*

They have determined that the State has no interest in termination of the contract with IBM. The State wants IBM to finish the contract.

There is not enough confidence in Corptech (sic) to support the system. IBM emphasised this view to the DG.

IBM told the DG that IBM would sue the State and those threats were taken seriously by the DG.

3. *James/Corptech(sic) has been instructed to do a deal with IBM around the following terms. Clayton Utz does not need to do anything.*

By 11.00 am tomorrow James is to provide Natalie with a draft terms sheet setting out what he has been told are the key principles discussed with IBM. The DG is to provide the key principles to Doak at IBM and IBM is to confirm them by cob tomorrow.

James will draft the key principles over night and send them to me and Swinson to review for any additions by 10am tomorrow.

4. *The key principles are as follows:*

- A. *IBM to fix the list of defects at IBM's cost. There are currently 180 defects. There is no time limit specified for the fixes. If IBM takes until March 2011 then so be it.*
- B. *All notices by IBM and the State are to be removed from the table.*
- C. *A line is ruled under the disputes. JCC said that from the State's perspective this is better positioned as electing to affirm the Contract.*
- D. *The State will pay IBM \$1.7 million under SOW50.*
- E. *The State will also pay \$1.85 million under SOW8. However, this will be paid in tranches around IBM's delivery of defect fixes.*

¹⁴⁴ Exhibit 167, para 7.

¹⁴⁵ Exhibit 167, para 8.

¹⁴⁶ T34-52, L37-43 (Malcolm Grierson).

¹⁴⁷ T34-57, L6-29 (Malcolm Grierson).

¹⁴⁸ Exhibit 136, Volume 3, at page 150.

¹⁴⁹ T34-58, L1-27 (Malcolm Grierson); Exhibit 149B, paras 26-46.

¹⁵⁰ Exhibit 142b, para 11.

¹⁵¹ Exhibit 136, Volume 3, at pages 150-152.

- F. *There will be no damages clause. There is no security for IBM's performance, except that IBM is to specify how many fixes it can perform per month.*
- G. *Corptech(sic) will prioritise the defects to be fixed.*
- H. *It is agreed that IBM can perform new work. This will be costed separately. An independent third party is to cost and verify all new work. New work will be under new Statements of Work. The third party will do independent assessments of IBM's effort and cost.*
- I. *IBM will provide extended support at IBM's cost until the defects are fixed.*
- J. *There will be obligations on IBM regarding transition and skills transfer to Corptech (sic) by the time IBM completes the fixes of defects and transitions to Corptech (sic).*
- K. *The terms of settlement are confidential. They cannot be discussed with anyone except James Brown and Margaret Berenyi. John Beeston does not know about the terms and this cannot be discussed with him.*
- L. *The Cabinet Sub-Committee (CBRC) is to approve the revised position.*
- M. *These settlement terms are to be positioned as the culmination of a negotiation process.*
5. *I queried what will happen if IBM does not perform. James said that there is no security for performance and IBM has a free rein.*
6. *James said, confidentially, that this is a political decision. The politicians are extremely nervous and driven by the fact that if IBM is removed then there would be nobody to blame for the payroll problems [outside Government].*
James said his personal view is that this is the worst possible outcome. IBM played hardball and got what it wanted.
James said that the real issue is that the DG was concerned about himself and the Minister. There will be an election in 18 months and they are very concerned about anything being public [in the health area].
7. *James instructed me not to respond to Blakes at all.*
8. *CBRC will consider the proposal on Monday. James has to prepare the submission to CBRC tomorrow.*
9. *James will talk to Mallesons about drafting the contract variation to implement the terms. They are best placed to do this.*
10. *By 11.00 am tomorrow James has to have the paper to Natalie MacDonald.*
11. *James will send it to me and Mallesons for review and see if there is anything additional to be added.*
12. *The DG will provide the paper to Bill Doak at IBM and have him affirm the principals (sic) by close of business tomorrow.*

JCC

3.91 Mr Charlston made handwritten notes as Mr Brown spoke¹⁵². The next morning he dictated and had the note typed in the terms set out in the preceding paragraph¹⁵³. The points listed in paragraph 4 must have been taken by Mr Brown from the notes Ms MacDonald made at the meeting. Mr Grierson could not, of course, controvert Mr Charlston's record of what was said between him and Mr Brown, a conversation to which Mr Grierson was not a party. Mr Grierson could, and did, dispute the veracity of Mr Brown's account of what happened at the meeting¹⁵⁴. Given the general vagueness of Mr Grierson's recollection of the meeting and other aspects of his recollection which cause me to doubt it, I consider that what Mr Brown said to Mr Charlston (faithfully recorded by him) is the best evidence of what happened. To the extent that Mr Brown and Mr Grierson controverted the accuracy of Mr Charlston's note, the controversy concerned other paragraphs, particularly 6. Mr Brown, I consider, disputed the record of the conversation for fear it might suggest he was indiscreet. I have no criticism of Mr Brown for speaking as he did. It was a private conversation between a relatively senior public servant and solicitors engaged to represent the State.

3.92 Several points call for comment. Firstly paragraph 2 of the note records that Mr Grierson (and Mr Smith) "determined that the State has no interest" in terminating the contract. That appears something Mr Grierson had decided at the meeting. Termination was the State's strongest negotiating point. The decision whether or not to terminate had been anxiously debated in the previous weeks. Mr Grierson pre-empted the decision.

152 T33-50, L1 (Jeremy Charlston).

153 T33-50, L11-18 (Jeremy Charlston).

154 T34-58, L23-27 (Malcolm Grierson).

He denies doing so¹⁵⁵ but it is the only conclusion from the statement that all notices are “removed from the table”, and a “line is ruled” under the disputes. Having capitulated on that point it seems Mr Grierson went immediately after the meeting to Mr Smith to gain his compliance.

- 3.93** The second comment concerns the statement that there was not enough confidence in CorpTech to support the payroll system. IBM emphasised that point¹⁵⁶. It was a view contrary to Ms Stewart’s informed opinion. It no doubt suited IBM to assert that the State needed IBM to support the system, thereby restricting the State’s options in dealing with IBM. A prudent negotiator may have thought the assertion worth testing. Subsequent justifications for the State settling as it did relied heavily on IBM’s claim¹⁵⁷.
- 3.94** Thirdly, the contents of paragraph 6 do not record something said at the meeting but were Mr Brown’s assessment of the situation, based on what Mr Grierson and Ms MacDonald had told him. Mr Brown’s observations came from his personal knowledge of events and what Mr Grierson actually said after the meeting. The points of importance are that the decision to settle was “political” and was made because the “politicians (were) extremely nervous”. Mr Grierson agreed that at the time the politicians (the Premier and the Ministers for Health and Public Works) were in fact nervous about the malfunction of the payroll system and the adverse publicity it was generating. The assessment that Mr Grierson in settling “was concerned about himself and the Minister” has the semblance of verisimilitude. As Part 2 of this report shows, Mr Grierson bore much responsibility for the failure of the payroll project. Acrimonious litigation in which the failings of the Department of Public Works were made public would have been an unpleasant prospect.
- 3.95** The CBRC decision of 22 July 2010 set out the State’s negotiation parameters¹⁵⁸. These parameters permitted a limited release of liability, retention of \$1.49M and correction of the 85 defects listed in the Notice to Show Cause.

The Supplemental Agreement was executed on 22 September 2010.

- 3.96** The Settlement Terms Sheet of 4 August 2010 set out the State’s preferred position¹⁵⁹. A number of concessions were then made in response to IBM’s Terms Sheet of 13 August 2010. These concessions did not substantially deviate from the CBRC parameters. The Settlement Terms Sheet of 18 August 2010 did not permit a full release¹⁶⁰ or payment of the retention amount¹⁶¹ and set a minimum of 76 defects for resolution by IBM¹⁶².
- 3.97** The settlement principles negotiated by Mr Grierson on 19 August 2010 fell outside the parameters set by the CBRC in that IBM was effectively released in full.
- 3.98** The issues of the retention payment and the defects to be rectified were not addressed in these principles. Mr Grierson gave evidence that he thought agreement had been reached in the 19 August 2010 meeting that half the retention amount was to be paid to IBM, although he concedes that this may have been decided at a later point¹⁶³. In any case the terms of the Supplemental Agreement fall outside the CBRC parameters in relation to these further issues. The Supplemental Agreement permits the payment of half of the retention amount by clause 3.4 (e)¹⁶⁴ and requires only 35 defects to be rectified in clause 3.2(a)¹⁶⁵.
- 3.99** After 19 August 2010, settlement negotiations continued in accordance with the principles agreed. The negotiation period was extended from 20 August to 31 August 2010¹⁶⁶.

155 T34-58, L1-16 (Malcolm Grierson).

156 T33-107, L44-45 (James Brown).

157 Exhibit 136, Volume 3, at page 185, para 17.

158 Exhibit 136, Volume 2, at page 239.

159 Exhibit 136, Volume 3, at page 27.

160 Exhibit 136, Volume 3, at page 126.

161 Exhibit 136, Volume 3, at page 122.

162 Exhibit 136, Volume 3, at page 119.

163 T34-59, L51-55 (Malcolm Grierson).

164 Exhibit 136, Volume 3, at page 355.

165 Exhibit 136, Volume 3, at page 353.

166 Exhibit 136, Volume 3, at pages 165, 168.

3.100 CBRC met on 26 August 2010. It considered a submission dated 23 August 2010 signed by Mr Schwarten but written by Mr Brown¹⁶⁷. Mr Schwarten submitted¹⁶⁸:

There are two options available to the State ... : the first being continuation of the contract under the revised terms of the supplemental agreement, and the second being formal termination of the contract and following termination, either do nothing, negotiate and/or litigate.

Mr Schwarten wrote, further¹⁶⁹:

While the State has grounds for termination based on material breach by IBM, there are risks in pursuing termination and possible litigation arising from the substantial cost of litigation and uncertainty as to how court may ultimately view the evidence in the matter. It is also considered that the risks to the payroll system of keeping IBM working are lower than the applicable risks if the State were to terminate the contract and seek to maintain the system with alternative suppliers.

For these reasons, termination of the contract is not the preferred option.

The body of the submission described the matter as “urgent” and said “a decision on how to finalise the contract with IBM is required”¹⁷⁰. The submission opposed termination for a number of reasons¹⁷¹:

10. *From a business continuity perspective, the State is still reliant on two key IBM sub-contractor organisations (Presence of IT and Infor) and a number of individual contractors who have detailed technical knowledge of the system design and interfaces. It is understood that IBM’s agreement with its sub-contractors will commence to expire from the end of August 2010.*
11. *Negotiations with IBM’s key subcontractor organisations indicate that they would be prepared to provide support directly to CorpTech should the State elect to action a termination notice. However, during the negotiations with IBM, it indicated that it wished the State to cease all negotiations with its subcontractors as this is seen by them to be undermining the current contract. The preference is that an orderly transition occur from IBM and this will take between two to three months. An immediate termination of the contract, without an effective transition, would put the [QH] payroll at risk.*
12. *The Department of the Premier and Cabinet requested KPMG to review the business risks relating to the ongoing support and work program for the [QH] rostering and payroll solution. The KPMG report states ‘It is imperative that any proposed change to support arrangements is transitioned in a managed way so as not to negatively impact on the ability to support the [QH] payroll.*

The proposed settlement principles appeared as attachment 1(a)¹⁷².

3.101 Paragraph 14 of the submission referred to Mallesons’ earlier advice that it would be unusual for IBM to commence legal proceedings for wrongful termination, and to Crown Law’s advice that IBM would almost certainly bring a counterclaim if the State were to commence legal proceedings. The submission stated there was “the distinct possibility that if IBM’s counterclaim was successful, the outcome of any litigation could be payment in favour of IBM”¹⁷³. Another concern the submission identified was the risk of an immediate departure of IBM from the Project¹⁷⁴.

3.102 The CBRC decided to approve the execution of a Supplemental Agreement to the contract to formalise transitional arrangements between the State and IBM; to authorise Mr Grierson, as the State’s delegate, to progress the preferred option of settling with IBM; and to authorise the Minister for Health and the Minister for Public Works to agree on the final terms of the Supplemental Agreement¹⁷⁵.

3.103 CBRC met between 1:30 pm and 2:00 pm on 26 August 2010. By 2:20 pm a draft Supplemental Agreement had been prepared by Mr Beeston and sent for comment to Mallesons, Mr Boughey at Crown Law and Mr Brown¹⁷⁶.

3.104 The submission to CBRC did not mention Mr Grierson’s meeting with Mr Doak and Ms Adam-Gedge, and did not draw attention to the fact that Mr Grierson had at the meeting effectively given up the State’s rights to act on the Notice to Show Cause: nor that he and Mr Smith had agreed that the State “had no interest” in terminating the contract.

167 Exhibit 136, Volume 3, at page 178.

168 Exhibit 136, Volume 3, at page 180.

169 Exhibit 136, Volume 3, at page 181.

170 Exhibit 136, Volume 3, at page 184, para 8.

171 Exhibit 136, Volume 3, at page 184.

172 Exhibit 136, Volume 3, at page 191.

173 Exhibit 136, Volume 3, at page 185.

174 Exhibit 136, Volume 3, at page 187.

175 Exhibit 136, Volume 3, at page 178.

176 Exhibit 136, Volume 3, at page 169.

- 3.105** Mr Grierson and Mr Reid signed a submission addressed to their respective ministers, Mr Swarten and Mr Lucas, on 8 September 2010 seeking approval from CBRC for Mr Grierson to execute a Supplemental Agreement on behalf of the State to finalise a contract between it and IBM¹⁷⁷. The submission noted that negotiations had reached the point where there was agreement in principle between the State and IBM on how to finalise the contract, and that the proposed agreement accorded with the principles approved by the CBRC on 22 July 2010¹⁷⁸; that IBM was required to rectify a list of 35 defects for no additional payment and the delivery of concurrent employment functionality for an agreed amount to be independently assessed by Ernst and Young, but not to exceed \$191,650¹⁷⁹. IBM was to exit by 31 October 2010. It was noted that there were still a significant number of system issues and enhancements which needed to be addressed. Rectification of these items was to be progressed over time by CorpTech¹⁸⁰.
- 3.106** Mr Swarten and Mr Lucas approved the recommendation on or about 19 September 2010¹⁸¹. The Supplemental Agreement was executed on 22 September 2010¹⁸².

4. Factors that Influenced the Decision

- 4.1** The recital of fact just undertaken and the context in which the events described took place raise for consideration a number of matters which require further and more specific consideration. The first is the Report of the Auditor-General tabled in Parliament on 29 June 2010 which was critical of the way in which the State had handled the Project¹⁸³. The second is IBM's trenchant and repeated threats to sue the State. The third is the notable absence of any legal opinion on the State's contractual position. The fourth is the way in which the risk assessment miscarried because senior officials drew a connection (which was speculative) between litigating with IBM and the system failing because IBM might refuse all further assistance. These are the factors which underlay the CBRC decision to accept the terms of the Supplemental Agreement.

A Commission of Inquiry should examine the motivations of ministers of the Crown, elected to represent the State and to act in its interests, only when necessary, and with caution. A decision whether elected representatives have acted in the best interests of the State, or have been influenced by self-interest, are matters best left to the judgment of the electorate.

- 4.2** Ms Bligh, Mr Lucas, Mr Swarten and Mr Grierson all gave evidence that the decision to settle was not a political one and that the preferred 'political' outcome was that litigation be commenced against IBM and a finding of fault made against them. Ms Bligh was of the view that commencing litigation would have placed the government in a stronger position politically¹⁸⁴:

I believe that that would have served the government's political interests better because we would have been seen to be pursuing this big global company and giving them a bit of stick, if you like, but as I said - so ultimately I feel that I took a decision that was not necessarily in my own or the government's political interest, but was in the interests of the system of improving it and getting it fixed as quickly as possible.

...

As I outlined, if we had been seeking somebody to blame the most explicit demonstration of that would have been to take legal action against IBM, far from removing them from them ... far from exonerating them. If we had terminated the contract and pursued legal action, you know, vigorously and publicly, that would have if you like been a very explicit demonstration that we were blaming IBM¹⁸⁵.

- 4.3** Mr Swarten also denied any political imperative in the decision to settle¹⁸⁶:

[T]he easiest political route of it would have been to say, "IBM is to blame here. Nobody is sitting around this table to blame for it. Let's see whether we can scapegoat them, go out and flog them to death and we'll all look nice guys". I mean, the reality is that we chose not to do that because there was a risk.

177 Exhibit 136, Volume 3, at pages 299-302.

178 Exhibit 136, Volume 3, at page 299.

179 Exhibit 136, Volume 3, at page 300.

180 Exhibit 136, Volume 3, at page 301.

181 Exhibit 136, Volume 3, at pages 299-302.

182 Exhibit 136, Volume 3, at page 349.

183 Exhibit 2.

184 T32-38, L26-33 (Anna Bligh).

185 T32-39, L42-51 (Anna Bligh).

186 T32-82, L16-22 (Robert Swarten).

Once the go-live decision was made and defects were identified in the payroll system, there was a growing amount of public concern and complaint, as well as pressure in Parliament to have the issues with the system rectified¹⁸⁷.

The Government was also under a significant amount of public pressure at the time of the settlement in relation to the failure of the payroll system. The failure of the system dominated talkback radio, media reports, union officials were decrying the government and doctors and nurses were not getting paid. Keeping IBM on to finish the task was, in my opinion, critical to the resolution of these issues¹⁸⁸.

- 4.4** Mr Lucas' evidence was to similar effect. He acknowledged that some members of the public wanted the government to hold IBM to account¹⁸⁹ but, he said, his motivation was to obtain the best outcome for QH staff. When questioned about the political imperative to settle, he responded¹⁹⁰:

There was the imperative for people who had – people who had worked for us that didn't do anything wrong that expected a payroll system to operate effectively and done nothing wrong and they were the people that we were concerned about because they were the people that you would have to confront every day, helping people – helping people who were sick and ill and I'm sorry that, you know, we have now got the benefit of having a look at their position, the position of the contract in retrospect but that's not the luxury that you have there when you have got a real prospect of those people who come to work every day doing a great job, giving us a wonderful Health system and not getting paid.

- 4.5** Mr Grierson, when questioned on the issue, pointed out that the Premier had in her electorate one of the biggest hospitals in Queensland, the Princess Alexandra, but considered the primary focus of Ms Bligh, Mr Schwarten and Mr Lucas was to alleviate any personal suffering caused to QH staff by not being paid¹⁹¹. They were not driven by any political imperative¹⁹²:

They were nervous to the extent that, as I reported to you earlier, that the payroll had become, for them, very much a personal people issue. So they were nervous that if this payroll, if it crashed, it would be a front page story ... [a]nd not only front page story, they had to face the people in the hospitals that they had made promises to.

...

[T]he premier and the ministers were past worrying about the damage to their image; they were worried about getting people paid. I genuinely believe that. Leave politics out of it. I genuinely believe that the premier, the Minister Schwarten and Minister Lucas, they were genuinely concerned about people suffering – I mean, I know that Minister Schwarten talked about somebody hanging themselves. I mean, they were really worried about these people¹⁹³.

- 4.6** A Commission of Inquiry should examine the motivations of ministers of the Crown, elected to represent the State and to act in its interests, only when necessary, and with caution. A decision whether elected representatives have acted in the best interests of the State, or have been influenced by self-interest, are matters best left to the judgment of the electorate. I record the evidence solemnly given by the former Premier, the Minister for Health and Minister for Public Works that each believed the decision to settle with IBM was not made for political gain. The purpose of this Part of the Report is to set out factors which, on an objective assessment of what was known at the time, should have determined how to deal with the dispute with IBM.

The Auditor-General's Report

- 4.7** The Auditor-General¹⁹⁴ was particularly critical of the Project governance and the instability in its scope. His Report was, as such reports must necessarily be, a critique of the State's actions rather than on those of IBM, it being a private and commercial entity beyond the scope of the *Auditor-General Act 2009* (Qld).

- 4.8** The Report was tabled some three months after Go Live, one month after the State issued its Notice to Remedy and on the day the State issued the Notice to Show Cause. The apparent change in the State's approach to dealing with IBM after 29 June 2010 suggests that it regarded the Auditor-General's Report as reducing its chances of success in a dispute with IBM over the contract.

187 Exhibit 138A, para 40.

188 Exhibit 138A, para 43.

189 T35-14, L1-5 (Paul Lucas).

190 T35-31, L24-36 (Paul Lucas).

191 T34-32, L27-46 (Malcolm Grierson).

192 T34-69, L19-27 (Malcolm Grierson).

193 T34-70, L50-55 to T34-71, L1-4 (Malcolm Grierson).

194 Exhibit 2.

Each of the senior officials who gave evidence on this issue held the view that the Auditor-General's Report would be, and could be, relied upon by IBM and that it materially, adversely affected the State's position. That view was wrong.

4.9 Each of the senior officials who gave evidence on this issue held the view that the Auditor-General's Report would be, and could be, relied upon by IBM and that it materially, adversely affected the State's position. That view was wrong. The Report was inadmissible in legal proceedings to prove the truth of its conclusions. In any litigation concerning the rights of the parties under the contract, the Court would be obliged to come to a decision on the facts placed before it without regard to the opinions expressed by the Auditor-General¹⁹⁵. That is not to criticise the Report or the Auditor-General's careful work in any way. Nor is it to say it was of no assistance to IBM in negotiations with the State. The advantage it offered was to alert IBM to lines of inquiry and arguments that might be available to it. But in the end the Report was irrelevant to the legal dispute over the contract.

4.10 Ms Bligh could not recall advice that the Report was not likely to be admissible against the State¹⁹⁶. Nor did Mr Brown¹⁹⁷. Mr Lucas, on the other hand, seemed to know the Report was not admissible¹⁹⁸, but he thought it nevertheless had some effect: "this wasn't going to be any walk in the park to the State" was the effect in his mind of that Report¹⁹⁹. He went on to say²⁰⁰:

... we had just come out of also the Auditor-General's Report giving [QH] and the DPW an almighty pasting, you know. We knew that the go live hadn't just been signed by IBM. It had been signed by a whole lot of our people as well, that clearly took a decision that was wrong. These were all part of the matrix that we were operating in at that point in time.

4.11 That was the effect of Ms Bligh's oral evidence²⁰¹. Mr Grierson too thought the Report, and the State's acceptance of its recommendations, had a detrimental effect on the State's position in negotiations with IBM. He said:

The Auditor-General's very first recommendation was that the Health payroll system must be stabilised, or words to that effect, and I think that influenced, as well as other things, like KPMG and other information, I think that probably influenced the premier's and the minister's, and CBRC's decision to maintain the stability of the payroll. I'm aware that it has no legal standing, but it was still a fact that the Auditor-General had recommended stabilisation and the government had accepted that all recommendations of the Auditor-General's Report would be implemented²⁰².

4.12 Whether or not the Auditor-General's Report was admissible, the nature of its criticisms and the State's acceptance of them do not seem capable of having any material bearing on the substance of the contractual dispute between IBM and the State.

4.13 There is no doubt that IBM wanted to rely on the Report in its dealings with the State²⁰³. It foreshadowed, in its response to the Settlement Terms Sheet, defending any action by the State by reference to the State's shortcomings in the scoping and governance of the Project. IBM's said²⁰⁴:

The State's statements contain significant inaccuracies and are not consistent with the findings of Auditor-General As a consequence, IBM is assessing the impact of the State's actions and statements in relation to its business. If the settlement negotiations are not successful, IBM reserves the right to recover from the State all loss and damage it has suffered.

195 *Hollington v Hewthorn* [1943] KB 587 at 602 (CA); discussed in Cross on Evidence, 8th Australian Edition at [5180 et seq].

196 T32-23, L44-53 (Anna Bligh).

197 T33-91, L18-28 (James Brown).

198 T35-16, L23-24 (Paul Lucas).

199 T35-16, L24-26 (Paul Lucas).

200 T35-28, L32-38 (Paul Lucas).

201 T32-44, L6-16 (Anna Bligh).

202 T34-39, L9-23 (Malcolm Grierson).

203 T32-48, L18-45 (Anna Bligh); Exhibit 167, para 7.

204 Exhibit 136, Volume 3, at page 90.

- 4.14 Mr Backhouse realised the point. He advised Mr Brown on 20 July 2010 (referring to the Mallesons Damages Options Paper)²⁰⁵:

*I would like to make one point of clarification. On the final page 5.1 last dot point notes as a risk ‘Recent reports relating to the payroll system issues (independent party reports and internal reports) may make statements that impact litigation prospects.’ **In my opinion those reports will not be receivable in evidence to support any claim against the State that it had poor practices. That is because they are the opinions of the writer and are almost certainly hearsay. The only exception would be a technical report that provides an opinion of an expert who is qualified in the particular field.** On the other hand it is accepted that those reports may embolden IBM to follow up on the reports with a view to securing evidence supporting their case. [emphasis added]*

- 4.15 Mr Backhouse’s summary was correct. There was an even more fundamental objection to the proposition that the Report undermined the State’s legal position with respect to IBM’s performance of the contract. It is that the Report did not deal with the point at all. It was (rightly) concerned with how the State’s agencies and officers had protected the State, or exposed it to loss in their dealings, on behalf of the State, with IBM. The Report focused on events prior to the making of the contract and on the confusion between CorpTech and QH in dealing with disputes about scope. It drew attention to deficient governance. What it did not do (appropriately) was to comment on whether IBM had performed what the contract required, both as to time and quality. Mr Swinson had given advice that IBM was in material breach of the contract²⁰⁶. The Report did not controvert that. The Report could do no more than give IBM an irrelevant talking point in negotiations. Reliance on the Report was a bluff. It should not have taken much wit or fortitude to call the bluff.

- 4.16 The material supplied to CBRC for its consideration included references to the Auditor-General’s Report²⁰⁷. It was said that the option of a negotiated settlement with IBM needed to be balanced against litigation in which IBM had access to all project documentation and the Auditor-General’s Report, which IBM would use “to mount a vigorous defence”²⁰⁸. The Report was one of the principal factors in the decision to settle²⁰⁹:

These factors, combined with the general contractual uncertainty around the scope of the contract due to dealings with IBM after the contract was signed and the lack of significant criticism of IBM by the Auditor-General in his Report to Parliament No. 7 for 2010, mean that any action contemplated by the State will need to be carefully considered.

and:

... the Auditor-General’s Report to Parliament No. 7 for 2010 provides significant detail on shortcomings in the State’s governance and management of the project which would no doubt be sought to be relied upon by IBM by way of defence²¹⁰.

- 4.17 The Auditor-General’s Report was given far too much weight by the State. Properly analysed, it had peripheral relevance to an assessment of the parties’ contractual rights and duties.

Threat by IBM to Sue

- 4.18 IBM clearly stated its intention to vigorously prosecute its rights and entitlements. Ms MacDonald recalls IBM being “extremely assertive” in its approach²¹¹. It did so in response to suggestions, some in the Notice to Remedy, that the State would pursue what it considered to be its rights. With the positions cast in this way, it became necessary for the State to scrutinise the nature of IBM’s claim and to make some realistic and considered assessment of its bases and prospects should the matter proceed to litigation.

- 4.19 The clearest articulation of IBM’s position was in its response to the Settlement Terms Sheet of 13 August 2010²¹²:

IBM has also suffered significant damage to its reputation through the State’s actions and statements to the public criticising IBM and its personnel. ... (The State’s) statements contain significant inaccuracies and are not consistent with the findings of the Auditor-General As a consequence, IBM is assessing the impact of the State’s actions and statements in relation to its business. If the settlement negotiations are not successful, IBM reserves the right to recover from the State all loss and damage it has suffered.

205 Exhibit 136, Volume 2, at page 192.

206 Exhibit 136, Volume 1, at page 88.

207 Exhibit 136, Volume 2, at page 235, 241.

208 Exhibit 136, Volume 2, at page 228.

209 Exhibit 136, Volume 2, at page 235.

210 Exhibit 136, Volume 2, at page 241.

211 Exhibit 167, para 16a.

212 Exhibit 136, Volume 3, at page 90.

- 4.20** The two bases for the threat were:
- that IBM had incurred significant costs, including additional resourcing to address defects which had been improperly classified, and costs associated with overtime and additional staff;
 - reputational damage (to IBM as a corporation and perhaps some of its employees it would seem).
Ms MacDonald recalled IBM advising it was considering suing the State for comments made in the media²¹³.
- 4.21** IBM's threat to sue, at least as articulated by it, should not have been accepted uncritically. A Commission of Inquiry is not, ordinarily at least, an appropriate means of determining legal rights and cannot, of course, make valid pronouncements about those rights. In considering what importance should have been attached to IBM's threat of legal action against the State I can do no more than indicate what appear to be points of difficulty with it that should have been obvious to those negotiating on behalf of the State.
- 4.22** IBM had made clear that it would deal with changes to scope and requirements by varying the contract. It did so. I have set out in Part 2 of this Report changes which were made to the contract and to the scope of the Project by formal variations to the contract. Many of these changes involved the State paying IBM for what was, impliedly at least, an acceptance by it that the need for the variation arose because of some oversight on the part of the State in communicating its business requirements to IBM.
- 4.23** Once that process was adopted and once the State made the payments required under those Changes, it is difficult to see what "significant costs" IBM could have incurred for which it had not already been compensated. There may have been some area for argument when it came to, for example, IBM agreeing to fix all defects which affected pay or net pay, but any claim IBM had to the costs of additional resourcing to address defects which had been improperly classified, or costs associated with overtime and additional staff, was not self-evidently meritorious.

IBM's threat to sue, at least as articulated by it, should not have been accepted uncritically.

- 4.24** The second of the bases IBM identified is puzzling. IBM itself had no claim to reputational damage. Section 9 of the *Defamation Act 2005* (Qld) provided then (as it does now) that no corporation has a cause of action in defamation in relation to the publication of defamatory matter about it unless it was, at the relevant time, a corporation with no more than 10 employees and was not a "related" corporation. IBM was clearly not such a corporation.
- 4.25** IBM's personnel may have had a right of action in defamation, but IBM did not point to any publication which had identified particular personnel in a manner which might be considered to give rise to an actionable defamation. Even had that occurred, defences of justification²¹⁴ and qualified privilege²¹⁵ may have been available.
- 4.26** Any threat to sue had to be considered coolly and analytically. A role of legal advisors (and senior officials) is to quell irrational or emotional responses to aggression by giving expert advice and applying to the threat the judgment which experience and intelligence allows. There appears to have been a distinct lack of such advice and of cool judgment. This is evident particularly in a submission to the CBRC²¹⁶:
- ... it is likely that IBM would vigorously defend any damages litigation brought by the State and would no doubt allege by way of defence that the State's contractual requirements were inadequate.*
- It would have been an answer to this claim to have pointed to the Changes which the parties had agreed, by which the contractual requirements had been identified as adequate.
- 4.27** The CBRC submission went on to say²¹⁷:
- IBM may also bring counter-claims against the State including suing for unlawful termination.*
- This is the same threat as the one to bring an action for damages. The difference is procedural only. A counterclaim faced the same obstacle, that IBM had been paid a very large amount (far more than the initial

213 Exhibit 167, para 16a.

214 *Defamation Act 2005* (Qld) s 25.

215 *Defamation Act 2005* (Qld) s 30.

216 Exhibit 136, Volume 2, at page 228.

217 Exhibit 136, Volume 2, at page 228.

contract price) to undertake the work. The damages to which IBM might have been entitled if the State were found to have unlawfully terminated the Contract had to exceed the amounts then unpaid under the contract to IBM before the counterclaim could cause a net loss to the State.

- 4.28** Mr Boughey from Crown Law had observed, surely correctly, that IBM's allegations were of a kind typically raised defensively in disputes from information technology contracts and that IBM's responses were limited to generic allegations and did not address the specific issues in the Notice to Remedy in any useful way²¹⁸. The lack of detail, he said, made it difficult for the State to investigate and assess the allegations. I would add that a lack of precision in IBM's articulation of its responses ought to have given the State some confidence that IBM's position was not as strong as IBM's confident and assertive approach suggested. Mr Boughey acknowledged this in part, saying that a failure by IBM to provide particulars of its claim might also be used to support the conclusion that IBM had failed to show reasonable cause²¹⁹.

Assessment of Risks

- 4.29** The decision whether the State ought to settle its dispute with IBM called for, as I have said, a calm and considered analysis, informed by appropriate advice. Ordinarily, a matter of this kind, although large and factually complex (but not unusually so), would warrant an opinion from Senior Counsel. They are specialists in litigation and advising on all aspects of litigation.
- 4.30** The State enjoyed the additional benefit of having the Solicitor-General to advise and appear as necessary on matters of sufficient importance to warrant his attention. This was one such matter. His advice was not asked for.
- 4.31** Had an opinion from the Solicitor-General or Senior Counsel been obtained, it would have provided a means by which the State could make an informed choice between the options which Mallesons had presented. More importantly, it could put into perspective the claims which IBM was making and give an understanding of the prospects of success which IBM's claims might have. Such an opinion could have extended to the likely quantum of any adverse judgment and the possible value of the State's entitlements against IBM which could be weighed against the contentions IBM advanced.
- 4.32** Mallesons suggested to the State on 1 July 2010 that it consider briefing counsel²²⁰, and indicated that it could recommend suitable counsel for the purpose. The suggestion was never acted upon. The State put itself at a considerable disadvantage in not obtaining appropriate legal advice. Such advice would have better informed the State about the strengths (and weaknesses) of the points asserted by IBM in the negotiations. It could have allayed the State's fears about the deleterious effect of the Auditor-General's Report and the value of any counterclaim IBM might have brought. The advice could also have told the State something of the strength of its case to recover damages for a breach of contract against IBM and the value of that claim. Any such advice would have been qualified. Not all the facts were known and no unequivocal opinion could have been expressed. Nevertheless the State was in possession of sufficient facts which it could have marshalled and presented to counsel as the basis of an opinion, which would have given Ms MacDonald and Mr Grierson a better basis for decision-making than they had.

[obtaining] an opinion from the Solicitor-General or Senior Counsel ... would have provided a means by which the State could make an informed choice between the options ... presented [and] ... put into perspective the claims which IBM was making and [given] ... an understanding of the prospects of success which IBM's claims might have.

- 4.33** Submissions delivered by counsel for the State of Queensland accept that it would have been prudent to obtain such advice but assert that it was obtained from Mr Swinson who had "an impressive and relevant resume", and whose opinion was as valuable as the Solicitor-General's or Senior Counsel's²²¹. Mr Swinson's opinion on the point would, of course, have been a great benefit to the State in assessing what it was giving up when it released IBM from all claims. The submission however misunderstands the evidence. Mr Swinson did not give that advice. He was not asked to. He advised the State on the options available to it. His recommendation that advice of the kind I have described be obtained was not accepted.

218 Exhibit 136, Volume 1, at page 187.

219 Exhibit 136, Volume 1, at page 188.

220 Exhibit 136, Volume 2, at page 1.

221 Submissions on behalf of the State of Queensland, undated (Settlement), para 37.

4.34 Counsel for the State further submitted that there is no reason to think that Senior Counsel could have given better advice than Mr Swinson. The State submitted:

Put shortly, obtaining advice from Senior Counsel could not have provided any advantage over that provided by the advice already obtained. It is possible that Senior Counsel might have weighed more heavily in favour of termination, but the State, having had the benefit of Mr Swinson's strong caution on pursuing a compromise, chose to pursue that course in any event because, as material people judged, other considerations outweighed the ability to legally enforce the contract²²².

I do not accept this submission. It is based on premises I do not accept. Whether the opinion of the Solicitor-General or Senior Counsel should have been obtained has nothing at all to do with the experience or competence of the solicitors advising the State. Senior Counsel are specialists in litigation and are best placed to advise on prospects of success and quantum. The timeframes for the provision of an opinion were not unusually short. The Notice to Remedy Breach was issued on 12 May 2010 and the Notice to Show Cause on 29 June 2010. Given that the contract could have been terminated at any time before 23 August 2010, there was sufficient time to obtain Senior Counsel's opinion. The first suggestion that Counsel be engaged was made on 1 July 2010²²³. As well, the State has submitted that an assessment of prospects of success would have involved an inquiry into:

- a. *the conduct of the scoping process;*
- b. *the circumstances surrounding each change request;*
- c. *whether each change request represented value for money;*
- d. *the justification by IBM for each change request and whether there had been any misleading and deceptive conduct in obtaining the change request;*
- e. *the extent to which change requests were genuine in the sense of requesting some change to what would have been required for a working Lattice replacement in any event²²⁴.*

An opinion as to prospects did not require these matters to be investigated. The Changes had been accepted by the State and constituted agreed variations to the contract. The breaches relied on by the State in issuing the Show Cause Notice were IBM's failure to deliver Milestone 47 on 30 April 2010, and not remedying Severity 2 defects within two days.

The Unsupported System Fear

4.35 The Department of Premier and Cabinet requested KPMG to review the business risk relating to the ongoing support and work program for the QH rostering and payroll solution. Obtaining the report was part of the strategy outlined in the CBRC Submission of 22 July 2010.

4.36 On 21 July 2010 KPMG provided its report. It identified that CorpTech needed to secure or replace 22 of the 30 resources IBM had on the project in order to set up a revised support arrangement²²⁵. The relevant extracts from this report are quoted in paragraph 3.57 (Settlement).

4.37 This report was cited by those advising CBRC as suggesting that if the contract with IBM were terminated the payroll system would collapse. Mr Schwarten in particular thought this to be the case. He said²²⁶:

I believed that removing IBM and its experienced contractors from the project presented a real risk and a risk that was not worth taking. The advice I received from Mr Grierson and KPMG in July 2010 was that there was an unsustainable risk in going down the path of litigation with IBM and the entire payroll system was in danger of collapsing. Based on this advice, I believed the State to be reliant on IBM to finish the implementation.

4.38 The report does not support that proposition. KPMG's view was that CorpTech had to retain eight "critical" resources, and should retain or replace a further 14, out of the 30 resources that IBM had in place. No Part of the Report suggests that the State ought not terminate the services of IBM for that reason. All that the report said was that before the State terminated, prudent steps were needed to ensure a smooth transition.

4.39 Significantly Ms Stewart, the person in CorpTech most familiar with the operation of the system, and with responsibility for it, believed that it was not necessary for IBM to stay on. She stated that CorpTech would

²²² Submissions on behalf of the State of Queensland, undated (Settlement), para 38, para 55.

²²³ Exhibit 136, Volume 2, at page 1.

²²⁴ Submissions on behalf of the State of Queensland, undated (Settlement), para 52.

²²⁵ Exhibit 136, Volume 2, at page 354-355.

²²⁶ Exhibit 138A, para 42.

be in a better position if IBM left²²⁷. Ms Stewart came to that opinion very soon after Go Live²²⁸. As far as one can tell from the material the Commission has obtained Ms Stewart's opinion was either not sought or was disregarded. Either event would suggest a carelessness in those whose responsibility it was to protect the State's interests, for which purpose IBM's assertion that it was indispensable should have been tested.

- 4.40** The advice which was provided (especially that of KPMG) was misunderstood and misused. There was a failure to appreciate that for IBM to have "walked off the job" upon termination would have exposed IBM to great risk. It was not entitled, as the Crown advice pointed out, to respond to a Notice to Show Cause by ceasing all work²²⁹.
- 4.41** Submissions made by counsel for the State of Queensland emphasise the risk that IBM might "walk and leave the State ... to obtain a new contractor ..."²³⁰. They describe that as a "real risk" against which had to be balanced the rights the State would release to secure IBM's continuation. Was there any substantial risk that IBM would not honour its termination obligations? About that there was no evidence. Much was said at the time about that risk by those writing memoranda, but no one made any attempt to ascertain facts which might indicate its magnitude. It would, no doubt, have been awkward asking IBM's representatives what they would do in the event of termination. Given its (successful) tactic of obduracy in its dealings with the State the question would probably not have been answered helpfully. The risk that had to be assessed was whether a huge global information and technology company, anxious to protect its reputation, and obviously concerned about damage to that reputation caused by termination, would exacerbate the damage by a rejection of its contractual obligations, thus establishing its unreliability as a contracting party. There was a risk that if IBM was not in material breach of contract, then a purported termination could be regarded by it as a repudiation of the contract which, if accepted, would discharge IBM from all obligations, including those on termination. Given the state of the payroll system at the Milestone date, and Mr Swinson's advice²³¹, that risk appeared small.
- 4.42** Interestingly the topic of IBM's attitude to its termination obligations should the State have acted on its Notices was not addressed by IBM personnel who gave evidence, or by counsel who appeared for IBM at the hearings. I do not suggest that there was any onus on IBM to address the topic. I merely record that no evidence was provided to the Commission on the point by those best able to give it, and counsel for the State, who now relies upon the point so heavily, did not explore it with any witness from IBM.

The real problem with such an approach is that it attributes to one factor such a great importance so as to trump all others.

No Risk too Small

- 4.43** The senior officials who gave evidence concerning the settlement said that commencing Court action against IBM would have put the system at risk. This seems to have been the dominant, and perhaps the only, consideration in their decision to settle. Ms Bligh, for example, said that her "primary concern" was ensuring that QH staff continued to get paid and the system actually worked²³². This approach equated litigation with threatening the stability of the system.
- 4.44** The real problem with such an approach is that it attributes to one factor such a great importance so as to trump all others. Moreover, that risk, properly understood, was small, for the reasons I have recorded.
- 4.45** Ms Bligh said, when asked whether she was ever presented with any evidence that if terminated, IBM would abandon the system, responded²³³:

I relied on the advice that was provided to me by Mallesons, by Crown Law and by KPMG. That there was a risk of that and I had to make a calculation about whether that was a risk that the State could afford to take. I took the view that anything that would further jeopardise the stabilization (sic) of the payroll system was a risk that was not in the public interest and would have been unconscionable for me to have knowingly entered in that risk.

227 T29-104, L33-35 (Jane Stewart).

228 T29-104, L46-49 (Jane Stewart).

229 Exhibit 136, Volume 1, at page 185.

230 Submissions on behalf of the State of Queensland, undated (Settlement), para 28.

231 Exhibit 136, Volume 1, at page 88.

232 T32-16, L45-48 (Anna Bligh).

233 T32-30, L28-38 (Anna Bligh).

4.46 She appeared to link any decision to litigate with a threat to the system, for example:

... that is in the best interests of those people who are the victims, if you like, of the payroll problems, that we needed to prioritise the practical consequences over some of the legal considerations²³⁴.

[M]y highest priority in relation to the payroll system was to get it fixed as soon as possible²³⁵.

I felt it was unthinkable to knowingly take an action that would put rectification at risk or, at least, cause further delay, and further pain for [QH] employees²³⁶.

4.47 I asked Ms Bligh if, regardless of how valuable the State's rights were, she would have taken the same course. Her response was²³⁷:

If I had the same advice about the risk that this could significantly delay or perhaps see a serious breakdown between the technical support, IBM, and related sub-contractors that would have put the system at further risk, yes, I believe I would have made the same decision.

4.48 Similarly, when I asked Ms Bligh whether the sense of urgency to fix the payroll overrode every other consideration, she said:

Not blindly. You know, the legal rights of the State were not something that were waived lightly or without – you know, a deal of regret as I have indicated but I felt we had really two very difficult options and we had to weigh up which one of those options was in the public interest and which was in the best interests of those people who were suffering as a result of the payroll, and it's fair to say that we had a sense of urgency about this. The first payroll had started to malfunction, if you like, in March. We're now, you know, some three or four months down the track. It's a very long time for people to have problems with their bank because their mortgage payments aren't being taken out – they're not able to pay for groceries – you know, these were very traumatic events, these were not new inconveniences to people²³⁸.

The assessment proceeded on the basis that the options were inconsistent. The belief was that the State could sue IBM or it could have the payroll fixed; but it could not do both.

4.49 Mr Schwarten considered it his responsibility as Minister to make sure employees were paid²³⁹. But again his approach was to consider the option of suing to be irreconcilable with fixing the system, something for which there was no cogent basis.

4.50 Mr Grierson's evidence was the clearest on this issue. He identified the consideration which overrode all others, and consigned them to irrelevance²⁴⁰:

The premier's advice to me at that CBRC meeting time was no risk was to be permitted as far as keeping that payroll running, so she wasn't interested in, "Well, maybe IBM will do this or maybe they won't." If there was a risk, her instructions, not advice, her instructions were: you are not to have any risks for the payroll going out to these Health employees.

4.51 Mr Grierson attended the CBRC meeting. He heard the discussions which took place. It was clear to him that the Premier's priority "right through this whole exercise, was that payroll had to keep running and at no stage was there to be any risk of it not paying people"²⁴¹. Again he linked terminating IBM with a risk to the system, by agreeing with a suggestion made to him that if there was any risk at all the system would fail if the contract were terminated, then that was too much risk²⁴²:

I believe that [the Premier's] whole focus and that of all of the ministers, certainly my minister, Schwarten, was: we are not going to get into litigation with IBM if it puts at risk any payroll to the Health Department employees.

The Premier and Minister Schwarten made it very clear to me after the first CBRC Decision regarding negotiations with IBM, that I was responsible for managing these negotiations to a successful departure of IBM, but at no stage was I to risk the fortnightly payment to [QH] employees through the Health payroll²⁴³.

234 T32-34, L55 to T32-35, L1-3 (Anna Bligh).

235 Exhibit 137, para 68(g).

236 Exhibit 137, para 68(i).

237 T32-37, L43-51 (Anna Bligh).

238 T32-44, L42-55 to T32-45, L1-2 (Anna Bligh).

239 T32-69, L14-18 (Robert Schwarten).

240 T34-31, L47-53 (Malcolm Grierson).

241 T34-32, L7-16 (Malcolm Grierson).

242 T34-41, L51-55 (Malcolm Grierson).

243 Exhibit 149B, para 49.

4.52 He said as well:

This was advice or instructions given to you by the premier?---I was - well, that's what the premier said. To you?---Yes²⁴⁴.

[I]f there was any risk at all, then one should not terminate?---Well, my instructions were to negotiate to hopefully arrive at a settlement as per the cabinet instructions within six weeks. The overriding parameter - you've mentioned the list of parameters. Nowhere in those list of parameters does it mention, "And make sure you keep the payroll running," but that was the overriding parameter with all of this exercise²⁴⁵.

The parameters of 22 July did not say, "And keep the payroll running at no risk" which was clearly the instructions of that CBRC meeting²⁴⁶.

The belief was that the State could sue IBM or it could have the payroll fixed; but it could not do both.

Investigation was Lacking

4.53 The Supplemental Agreement required IBM to rectify 35 defects in the system²⁴⁷, listed in schedules 1(a) - 2(a) of the Agreement. IBM was required to test and deliver to UAT the rectifications in two tranches: 18 defects by 9 September 2010; and a further 17 defects by 27 September 2010²⁴⁸. This was to allow the State to conduct stress and volume and UAT and to accept the rectifications by 31 October 2010. IBM completed the rectification of these defects by 31 October 2010²⁴⁹.

4.54 The initial negotiation parameters set on 22 July 2010 by CBRC envisaged that IBM would rectify the 85 defects listed in the Notice to Show Cause, or preferably all Severity 2 defects arising before 31 July 2010²⁵⁰. The State's preferred position in its Settlement Terms Sheet of 4 August 2010 listed 96 defects²⁵¹. The State's amended Terms Sheet dated 18 August 2010 explicitly conceded a reduction of the number of items IBM were to rectify from 96 to 76²⁵².

4.55 The Proposed Settlement Principles annexed to the CBRC submission of 26 August 2010 listed 67 items as well as concurrent employment functionality²⁵³, but also conceded that a number of these defects may have already been rectified by IBM. A footnote to attachment 1(a) stated²⁵⁴:

The item list has been produced as at 18 August 2010. It is acknowledged that IBM may have rectified some of the items on the list since it was produced. Under these circumstances IBM is to advise which items have been resolved.

4.56 There is evidence that IBM only disputed one item on the list of 67 defects²⁵⁵. IBM said that was not, in fact, a defect and was not under IBM's control. It concerned the slow operation of the system²⁵⁶.

4.57 The submission to Mr Lucas and Mr Schwarten recommending the execution of the Supplemental Agreement was given to them on 7 September 2010. It noted that IBM was to rectify only 35 priority defects²⁵⁷. Crucially, the submission also said:

Following IBM's exit on 31 October 2010, there still will be a significant number of system issues and enhancements needing to be addressed. Rectification of these items will have to be progressed over time by CorpTech and cannot be scheduled until the prioritisation and release planning process between CorpTech and [QH] has been undertaken and agreed²⁵⁸.

244 T34-32, L1-5 (Malcolm Grierson).

245 T34-34, L24-31 (Malcolm Grierson).

246 T34-37, L6-9 (Malcolm Grierson).

247 Exhibit 136, Volume 3, at page 353.

248 As per Schedule 1, attachments 1.2.1a to 1.2.1d, Exhibit 136, Volume 4, at pages 42 to 45.

249 Exhibit 136, Volume 4, at page 8.

250 Exhibit 136, Volume 2, at page 239.

251 Exhibit 136, Volume 3, at page 29; Exhibit 147, Annexure H.

252 Exhibit 136, Volume 3, at page 119.

253 Exhibit 136, Volume 3, at page 194.

254 Exhibit 136, Volume 3, at page 191.

255 Exhibit 136, Volume 3, at page 171.

256 Item 66 refers to Defect 924728, and is described as 'In the agreed pay run model, the interim pay run must completed by 6:00am the following morning. This includes payroll being available for processing and the availability of all pay run reports. This is not occurring.' Exhibit 163, Volume 3, at page 205.

257 Exhibit 136, Volume 3, at page 300.

258 Exhibit 136, Volume 3, at page 301.

- 4.58** There is no evidence that the 31 defects not disputed by IBM were rectified between 26 August 2010 and 7 September 2010. The concession that there would still be a significant number of issues in the system following the rectification of the 35 priority items indicates that there would be defects that IBM would not address. This is supported by CBRC Decision 3231 which noted (at paragraph 12) that at the time the Supplemental Agreement was negotiated, there were 94 significant defects in the system that required rectification²⁵⁹.
- 4.59** CorpTech were to “prioritise the defects to be fixed”²⁶⁰. These became the 35 listed in the schedules²⁶¹. No evidence was given that any person involved in negotiating the Supplemental Agreement considered how many of the 35 defects affected the pay of QH employees, how many employees’ pays were affected by these defects and how severe that effect might be. Those who gave evidence directly on this point include Messrs Walsh²⁶², Reid²⁶³, Brown²⁶⁴, Grierson²⁶⁵ and Lucas²⁶⁶.
- 4.60** An analysis of the 35 defects suggests that a number of them could not directly have affected pay. For example, defect 849505 is listed as “Payslip save as a PDF”, meaning that the system did not have the functionality to save an employee’s payslip in PDF format²⁶⁷.
- 4.61** The point of this discussion is that if the imperative were to protect employees’ remuneration, and that overrode all other considerations, one would expect to see an analysis of how the system would function after the 35 defects were rectified and that those defects were the ones responsible or largely responsible for the errors in pay. There was no evidence that that analysis or assessment was undertaken. According to the evidence just reviewed the State was obliged to settle to maintain the operation of the payroll system, but there was no assurance given that fixing the 35 defects would produce that result.

No Risk of Catastrophic Collapse if IBM’s Services were to be Terminated

- 4.62** The genesis of the fear that IBM would abandon the Project if the contract were terminated may be something said at the 29 January 2009 meeting between Mr Swinson and representatives of CorpTech and IBM, including Mr Doak and Mr Paul Ray, at which Mr Doak said that if IBM were to become involved in a legal dispute with the State, it would stop work on the Project and focus on the dispute²⁶⁸.
- 4.63** Mr Swinson said it was his experience that a contractor might make such threats, but that it would be unusual for them to carry out the threat²⁶⁹. His view was that there was a risk to IBM’s reputation if it did. Clause 2.3(k) of the contract provided “The Contractor must not improperly threaten to terminate the Customer Contract or remove resources to gain leverage (or threaten to do so)”²⁷⁰.
- 4.64** It seems unlikely that an international IT company such as IBM, for whom the State was one of its largest customers in Queensland, would run the reputational risk of ignoring its contractual obligations. The State also had received advice from Mallesons that IBM did not have any basis for hindering the State’s access to Infor consultants and IBM sub-contractors²⁷¹.
- 4.65** There was no evidence that the system would collapse if IBM left it. Mr Walsh had been appointed to lead a team to stabilise the system. The QH Payroll Stabilisation Project subsequently evolved into the QH Payroll Improvement Program in July 2010²⁷², which generally supports the fact that the system had ceased to be in crisis by that point in time.
- 4.66** Nevertheless, Mr Grierson stated that he was advised by his officers (including Mr Hood, Ms Berenyi, Mr Brown and Ms MacDonald) that IBM’s expertise, and that of their sub-contractors, was needed to stabilise the payroll system and fix outstanding defects²⁷³. Mr Grierson held the view that at least seven or

259 Exhibit 136, Volume 4, at page 8.

260 Exhibit 136, Volume 3, at page 151.

261 Exhibit 118, para 46.

262 Exhibit 162, para 13.

263 T33-17, L1-7 (Michael Reid).

264 T34-15, L21-31 (James Brown).

265 T34-35, L49-55 to T34-36, L1-15 (Malcolm Grierson).

266 T35-26, L48-55 to T35-27, L1-34 (Paul Lucas).

267 Exhibit 163, Volume 3, at page 371.

268 Exhibit 28A, Annexure JVS9; T19-79, L2-12 (John Swinson).

269 T19-79, L14-21 (John Swinson).

270 Exhibit 63, Volume 1, at page 33.

271 See para 5.40 above.

272 Exhibit 121, para 13; Exhibit 157, Annexure 5.

273 Exhibit 149A, para 49.

eight consultants supplied by IBM to CorpTech were essential to the continued support of the payroll project in 2010²⁷⁴. This is reflected in a document titled “Risks of Moving to Terminate IBM Immediately”²⁷⁵ which was prepared for the purpose of advising the Premier.

4.67 Consequently, Mr Grierson believed that it was essential to ensure that the CorpTech team had the skills it needed to support the system before the contract with IBM was terminated²⁷⁶. He understood that if those consultants had to choose between assisting the State and continuing their relationship with IBM, they would choose the latter because of IBM’s continuing work supply²⁷⁷. Accordingly, Mr Grierson believed that negotiation with IBM was more likely to achieve the objective of ensuring CorpTech had the necessary skills to finish the Project²⁷⁸.

4.68 There is nothing in the KPMG risk analysis to suggest that the system was at risk of critical failure if IBM was removed in mid-2010. The KPMG report counselled prudence in transitioning resources but did not say that the system would cease to function if IBM were removed²⁷⁹. The Report advised the State to take appropriate steps to maintain the function of the system before severing its relationship with IBM. It did not suggest that if there were not a prudent transition from IBM to CorpTech the system would fail catastrophically. The Report stated²⁸⁰:

CorpTech have made progress in developing a strategy to manage the transition of these key resources from IBM thus ensuring continuity of support.

4.69 Mr Schwarten’s evidence suggests that he misunderstood the substance of the KPMG advice:

The primary reason for keeping [IBM] on, in my mind, was that there was no alternative. There was no alternative to keeping IBM on, as far as I was concerned. Everything that I ever read, every bit of advice that I ever gained from any person of any credit or merit said to me, “Do not, whatever you do, take IBM out of it,” and I believe KPMG made that statement as well. The statement was consistently made to me that if you took IBM out of the game, the chances of the thing falling over - if they took their personnel out of the game, the chances of that whole thing falling over were indeed something to be considered²⁸¹.

...

KPMG said it; that whatever you do basically to distil it down, don’t break away from IBM. They’ve got a lot of skin in the game. They’ve got a lot of expertise in the game and I’ll say it again, nobody ever said to me, “It is safe to take IBM out of the picture.” No-one has ever suggested that to me. No-one has ever said to me, you know, “IBM is not worth two bob. They’re not value adding anything into the process. You can take them away and you will have all your defects, all your problems solved.” No-one ever said that to me. What they did say to me was, “You are going to have a problem if you take IBM out of it”²⁸².

4.70 Mr Lucas, when asked about the issue, also pointed to the KPMG report as evidence that IBM would not honour its contractual obligations in relation to disengagement if the State was to terminate and reserve its rights to sue for damages²⁸³. Mr Lucas recalled discussing the issue with Mr Grierson²⁸⁴:

I don’t recall specifically what (Mr Grierson) said ... but the effect of it ... was that, “If we don’t settle, you know, these guys (IBM) will walk away from it. You know what the consequences of that is, we need them”.

4.71 There was very little investigation whether or not IBM would walk off the job upon termination or whether the system was at risk of collapse if that were to occur. Although a critical issue, Mr Lucas was not certain that any representative of the State ever directly questioned IBM on the point²⁸⁵. If the contract were terminated, IBM had obligations in respect to disengagement. There was no evidence that IBM would not honour its contractual obligations.

274 Exhibit 149A, para 51.

275 Exhibit 136, Volume 2, at page 389.

276 Exhibit 149A, para 53.

277 Exhibit 149A, para 53.

278 Exhibit 149A, para 53.

279 Exhibit 136, Volume 2, at page 357.

280 Exhibit 136, Volume 2, at page 358.

281 T32-66, L7-18 (Robert Schwarten).

282 T32-68, L4-15 (Robert Schwarten).

283 T35-19, L9-10 (Paul Lucas).

284 T35-22, L21-27 (Paul Lucas).

285 T35-19, L35-37 (Paul Lucas).

5. Mr Reid

- 5.1 Mr Reid, the Director-General of QH, played a very limited role in the decision to enter into the Supplemental Agreement. He left matters to Mr Walsh²⁸⁶ who, in his role as Executive Director of the Payroll Improvement Program, was consulted in relation to CBRC submission Nos. 3962 and No. 3979. He was provided with copies of the submissions for review and gave oral and written advice²⁸⁷. According to Mr Walsh, QH was consulted about the potential termination of the contract and its impact on QH. Mr Walsh advised²⁸⁸:

Given the high risk that securing contractors to undertake the work directly through CorpTech would be very difficult should the contract be terminated, the lower risk option to progress with the supplemental contract is preferred.

- 5.2 Mr Walsh described his advice as being consistent with the KPMG risk assessment²⁸⁹. Whilst it may be accepted that if the contract were not terminated, there was a lower risk that the contractors would not support the system, there was no investigation into the extent of that risk, and no proper consideration of the prospect that IBM would not honour its termination obligations. The point has already been discussed.

- 5.3 Mr Lucas recognised that entering into the Supplemental Agreement was a significant step. He therefore sought assurances not only from Mr Grierson, but also from Mr Reid, that it was appropriate for the State to take it. As Mr Lucas explained²⁹⁰:

I was particular in wanting such a document signed by Messrs Grierson and Reid to come to me and Minister Schwarten as it made clear what actions had taken place in terms of negotiation, and what was recommended to ministers and CBRC.

It was for this reason that Mr Lucas required his Director-General to consider whether the State should settle on the proposed terms.

- 5.4 Mr Lucas expanded on his requirements in oral evidence²⁹¹:

Can you tell us why you required a submission from both Director-Generals, that is, a submission from both Mr Grierson and your own Director-General Mr Reid, before approving the supplemental deed?---I have a very good recollection of it. The history of this, Mr Commissioner, was that all these things sort of happened out there, never was there at any stage something going to the minister from the director-general saying, "This is what we need to do, this is what the problem is, this is how we recommend that you do things," and so I was wasn't going to have that in relation to this. What I wanted and what I asked for was a document that they both supported, that is, they would have to both sign it and they had to agree to it, with the recommendation so there could be no issue with those recommendations to Mr Schwarten and I.

Mr Lucas expected Mr Reid to give careful thought to the issues identified in the submission²⁹².

- 5.5 The submission²⁹³ noted that the Supplemental Agreement required IBM to rectify 35 defects by 31 October 2010 together with the delivery of concurrent employment functionality for which IBM would be paid an additional amount. The submission also referred to the fact that the Agreement would release IBM from those obligations that would normally be released should the contract with IBM be finalised in a normal manner²⁹⁴. In addition, from 31 October 2010, the Agreement released IBM from any remaining warranty obligations for the system. In effect, the State was foregoing any future right to claim damages from IBM. The State also agreed to pay IBM half of the retention amount of \$1.49M²⁹⁵.

- 5.6 The nature of these matters required Mr Reid to make a judgement whether to recommend the Agreement. Mr Reid's consideration of the important questions raised in the joint submission to his Minister and Mr Schwarten was perfunctory²⁹⁶.

286 T33-10, L48-50 (Michael Reid).

287 Exhibit 162, paras 3-4.

288 Exhibit 162, para 10.

289 Exhibit 162, para 11.

290 Exhibit 151, para 106.

291 T35-34, L32-46 (Paul Lucas).

292 T35-34, L48-50 (Paul Lucas).

293 Exhibit 136, Volume 3, at page 299.

294 Exhibit 136, Volume 3, at page 301.

295 Exhibit 136, Volume 3, at page 300.

296 T33-10, L44-46 (Michael Reid).

5.7 The submission contained the following paragraph²⁹⁷:

The high-level nature of the State's original system requirements, the uncertainty of its original tender requirements and the fact that IBM's response was not appended to the Contract, has meant that the State has not been able to successfully refute IBM's assertion on scope. Scope has been a significant topic of contractual debate in the areas of system enhancements and warranties, the practical outcome being that the warranties and the contract are not able to be enforced by the State.

5.8 These broad assertions do not find support in the various legal advices that had been provided to the State by Mallesons and Crown Law. Further, they ignored the various changes that reset scope, in particular, Changes 60, 61 and 184. To the extent that the submission suggested that these assertions constituted a proper basis upon which IBM should have been released from any claim for future damages, they were inaccurate.

5.9 The submission was signed by Mr Reid on 8 September 2010. He recalls receiving it that day, or the day before²⁹⁸. He assumed that the submission had been prepared by the Department of Public Works because it was on Department of Public Works' letterhead and that Department had been responsible for negotiating the terms of the settlement²⁹⁹. Mr Reid, in considering the submission, identified his role as follows³⁰⁰:

*Because CBRC Decision 2 required [QH's] responsible Minister to also agree to the final terms of any settlement agreement with IBM, it was necessary for me to **formally endorse** a recommendation to Minister Lucas in respect of that course of action. Normally, I would receive advice on the substance of any submissions prior to approving them, though I do not recall whether I received verbal or written advice on this occasion. [Emphasis added]*

5.10 It is clear from Mr Lucas' evidence that he was seeking more than formal endorsement³⁰¹. Mr Reid agreed that Mr Lucas looked to him to assure him that, in respect of the interests of QH, the State should enter into the Supplemental Agreement³⁰². Mr Reid thought that as he obtained advice from Mr Walsh that it was satisfactory for him to sign off on the submission³⁰³. Mr Reid did not recall taking any other steps to satisfy himself that it was in the interests of the State to enter into the Supplemental Agreement³⁰⁴. In this respect, Mr Reid gave the following evidence³⁰⁵:

Did you yourself as Director-General of Health before signing this document weigh up what the benefits were to the State of Queensland as opposed to what the benefits were to IBM?---On reflection, I suspect I didn't, Mr Flanagan. I more weighed up whether the issues that were identified to be rectified would be rectified within the process and that other steps wouldn't be taken which would compromise it.

...

Did you ever turn your mind to the fact that the project was now out of crisis, or at least the [QH] solution was out of crisis, that defects were being identified and corrected, that CorpTech was certainly, to your knowledge, having a greater involvement, were they not in the correction of defects?---Yes³⁰⁶.

...

[D]id you turn your mind at all to the fact that this system is no longer in crisis and the State seems to be giving up a lot for the correction of 35 defects by 31 October 2012? Yes?---I don't believe I did turn my mind to that³⁰⁷.

5.11 Mr Reid, having read the submission, appreciated that the State was surrendering important legal rights³⁰⁸. He also appreciated that IBM would be released from all further liability and from its warranties under the contract³⁰⁹. Mr Reid knew that if the system were to fail in the future, the State would have no redress against IBM³¹⁰. Mr Reid was, however, confident that no new serious defects would be found within the next six months in relation to the Interim Solution³¹¹.

297 Exhibit 136, Volume 3, at page 301.

298 Exhibit 143, para 15.

299 Exhibit 143, para 15.

300 Exhibit 143, para 16.

301 T35-34, L48-50 (Paul Lucas); Exhibit 151, para 106.

302 T33-15, L38-41 (Michael Reid); T33-19, L1-7 (Michael Reid).

303 T33-15, L20-25 (Michael Reid).

304 T33-15, L42-48 (Michael Reid).

305 T33-16, L18-25 (Michael Reid).

306 T33-16, L27-32 (Michael Reid).

307 T33-16, L42-26 (Michael Reid).

308 T33-16, L8-16 (Michael Reid).

309 T33-16, L11-13 (Michael Reid).

310 T33-16, L15-16 (Michael Reid).

311 T33-21, L8-11 (Michael Reid).

- 5.12** Mr Reid's lack of industry in considering whether it was in the State's interest to enter into the Supplemental Agreement is to be contrasted with his reaction to the Go Live Decision which led to him terminating the contracts of Mr Kalimnios and Mr Shea. The following exchanges in evidence offer an insight into his views on the matter³¹²:

... [T]he board, effectively, acted upon the recommendation of the project directorate, did it not?---It did. I put it to you it was entitled to do that?---Yes, it was.

So that being the case, why did you dismiss Mr Kalimnios and Mr Shea and describe the decision to go live by the Board as clearly erroneous?---Because it was my view that the Board had the determination, the delegated authority, to go live. Whilst they might have received advice that things were ready to go live, I don't believe that that was a sufficient reason for them to make that call and I would still hold that and I think that would relate to any delegated authority of any person who holds that of making that decision in any other area as well.

- 5.13** It was submitted on behalf of Mr Reid that³¹³:

It is appropriate that the Director-General give advice to his Minister but it is not expected that the Director-General acquire the personal knowledge rather than to seek advice and act upon it.

The submission judges Mr Reid more leniently than he judged his subordinates. By the standard he applied to them Mr Reid should have satisfied himself about the merits of settling before advising CBRC to take that course; and he could have expected unpleasant consequences to follow his failure.

6. Mr Grierson

- 6.1** Before meeting IBM representatives on 19 August 2010, Mr Grierson, as Director-General of Public Works, had consistently accepted and acted upon the advice of his departmental officers including Ms Berenyi and Mr Brown. Mr Grierson endorsed the recommendation to issue a Notice to Remedy on 11 May 2010³¹⁴ and the recommendation to issue a Notice to Show Cause to IBM on 29 June 2010³¹⁵. He accepted and approved the negotiation protocols established by Clayton Utz which rejected Mr Doak's suggestion that Mr Grierson and he should meet without lawyers³¹⁶. Mr Grierson's endorsement of the negotiation protocols occurred in circumstances where he had been appointed by the CBRC on 22 July 2010 to act as the State's delegate to achieve a negotiated settlement with IBM.
- 6.2** In agreeing to meet the IBM representatives on 19 August 2010, Mr Grierson did not necessarily depart from the established settlement protocols. He accepted that when he went into the meeting of 19 August 2010 with IBM, it was no part of his intention to come out with agreed settlement principles³¹⁷.
- 6.3** Mr Brown's evidence was significant because he played a central role in drafting the CBRC submissions of 22 July 2010 and 26 August 2010. He led the departmental team established in or about July 2010 by Mr Grierson to assist with the settlement negotiations with IBM³¹⁸. Mr Brown was responsible for seeking and obtaining the relevant advices from Mallesons and Crown Law, and for engaging Clayton Utz. He was well placed for the purposes of assessing the outcome of any negotiated settlement with IBM. I have earlier set out the reasons which led him to suggest involving Clayton Utz.
- 6.4** Mr Brown's understanding was that until Mr Grierson's meeting with the IBM representatives on 19 August 2010, there had been no departure from the protocols established by Clayton Utz³¹⁹. He was aware that Mr Charlston who was supposed to attend that meeting was no longer required³²⁰. He emailed Ms MacDonald to encourage her to telephone Mr Charlston and obtain advice in relation to how to conduct the meeting so as to preserve the State's interest³²¹. Mr Brown's concern was that Mr Grierson, in any face to face negotiations with Mr Doak, would be out-negotiated. He believed that would happen because he had witnessed Mr Doak out-manoeuvre and out-negotiate Mr Grierson on other occasions³²². He had put the protocol in place to avoid that risk³²³.

³¹² T22-113, L42-55 to T22-114, L1-2 (Michael Reid).

³¹³ Submissions of behalf of Mr Reid, dated 11 June 2013 (Settlement), para 11.2.

³¹⁴ Exhibit 136, Volume 1, at pages 99-101.

³¹⁵ Exhibit 136, Volume 1, at page 205-208.

³¹⁶ Exhibit 136, Volume 2, at page 417.

³¹⁷ T34-54, L21-25 (Malcolm Grierson).

³¹⁸ T33-89, L37-55 to T33-90, L1-3 (James Brown).

³¹⁹ T33-102, L1-11 (James Brown).

³²⁰ T33-103, L15-18 (James Brown).

³²¹ T33-103, L29-32 (James Brown).

³²² T33-103, L49-55 to T33-104, L1-11 (James Brown).

³²³ T33-103, L54-56 to T33-104, L1-6 (James Brown).

6.5 Mr Brown accepted that he told Mr Charlston that in his view, the outcome achieved by Mr Grierson at the meeting with IBM representatives on 19 August 2010 was “the worst possible outcome”³²⁴. This was because the State had foregone its right to terminate the contract on the basis of the Notice to Show Cause. Mr Brown believed that terminating the contract was the State’s best option³²⁵. He stated that because the right to terminate the contract had been waived as a result of Mr Grierson’s meeting, the State had missed an opportunity to seek damages from IBM³²⁶. Mr Brown explained why he thought it was a bad outcome³²⁷:

... the outcome was that we had an opportunity that was very well laid out leaving quite a constructed path to lead to a point where the State could make a decision. We could have terminated the contract, we would have entered into negotiations with IBM probably to settle and we would have reserved ... the potential was there to seek damages from IBM. I stress potential because that’s a future event, but I think we would have been on a stronger footing to deal with IBM if the contract had been terminated.”

Mr Brown was of the opinion that Mr Doak had yet again out-manoeuvred or out-negotiated Mr Grierson³²⁸.

Even though Mr Grierson claimed to have had extensive experience in the negotiation of contracts on behalf of the State, Mr Brown was surely right that Mr Grierson was out-negotiated by Mr Doak.

6.6 An analysis of the settlement principles agreed on 19 August 2010 confirms Mr Brown’s view that this was not a good outcome for the State. Even though the settlement principles did not specifically deal with a full release for IBM, they had that effect because it was agreed that all Notices by IBM and the State were to be removed “from the table” so the State could not terminate the contract on the basis of the material breaches identified in the Notice to Show Cause. It was arguable that IBM was in material breach for failure to deliver Milestone 47, and for failing to rectify Severity 2 defects within two days. If the State were to later seek to terminate the contract, it would have to issue a fresh Notice to Show Cause and identify different material breaches. As well, the settlement principles tentatively agreed to by Mr Grierson³²⁹ contemplated a final settlement of all claims, including future claims. This may be gleaned from³³⁰:

A line is ruled under the disputes ...

There will be no damages clause ...

It is agreed that IBM can perform new work ...

The settlement terms are to be positioned as the culmination of a negotiation process.

6.7 Prior to meeting with the IBM representatives on 19 August 2010, Mr Grierson knew that Ms MacDonald had reviewed the latest Settlement Terms Sheet. She had confirmed that these terms were still within the CBRC approved parameters for his negotiation for a settlement with IBM³³¹. As noted by Mr Brown however, the settlement principles agreed by Mr Grierson with IBM on 19 August 2010 departed from the Settlement Terms Sheet of 18 August 2010³³². Even though Mr Grierson emphasised the tentative nature of the settlement principles agreed with IBM at the meeting, I am in no doubt that Mr Grierson knew that a deal in principle had been struck. This is clear from his subsequent meeting with Ms Berenyi and Mr Brown. Mr Grierson states that at this meeting, he would have explained the substance of his discussion with IBM earlier that day, asked for a Cabinet submission to be prepared in relation to it, and asked that Mallesons be instructed to draw up a draft settlement agreement³³³. Mr Grierson would not have given instructions to prepare a CBRC submission had he not believed that a deal had been struck requiring final approval by the CBRC.

6.8 According to Mr Grierson, by 5pm on 19 August 2010, Mr Smith had informed him that he would advise the Premier the next morning of the proposed settlement principles³³⁴.

324 T33-109, L53-56 to T33-110, L1-4 (James Brown).

325 T33-104, L53-55 to T33-105, L1-5 (James Brown).

326 T33-110, L1-4 (James Brown).

327 T33-110, L15-25 (James Brown).

328 T33-111, L1-2 (James Brown).

329 I use the word tentatively because both the IBM representatives and Mr Grierson did not have the actual authority to conclude any agreement.

330 Exhibit 136, Volume 3, at page 151.

331 Exhibit 149B, para 16.

332 T33-106, L1-2 (James Brown).

333 Exhibit 149B, para 23.

334 Exhibit 149B, para 24.

6.9 The settlement principles, as reached on 19 August 2010, fell outside the parameters earlier set by CBRC but the fact is ultimately inconsequential, as the Supplemental Agreement was approved by the CBRC³³⁵. The CBRC was not bound by its own parameters and was able to make decisions in the interests of the State taking into account a wide variety of considerations. However, paragraph 20 of the CBRC submission recommending the acceptance of the Supplemental Agreement noted that “A comparison of the terms proposed for the supplemental contract against [CBRC] Decision No. 3019 demonstrates that the State’s offer substantially aligns with that approval”³³⁶. This statement substantially disregards the discrepancies between the parameters set by the CBRC on 22 July 2010 and the Supplemental Agreement.

6.10 Mr Grierson said he believed that the position of the State had improved as a result of his meeting with IBM³³⁷:

So the State’s position was improved in that the Premier of Queensland wanted the payroll to have no risk and to be guaranteed to be delivered by CorpTech. Not just for 31 October but for the next X years, that’s how the State’s position was improved. We got that smooth transition, the payroll was taken over by CorpTech, all those things were delivered by IBM successfully and the payroll improved from that point on.

6.11 Mr Grierson continued³³⁸:

The Premier gave clear instructions, the CBRC made clear decisions. I had no confusion about what was my priority. The State’s position was improved in that the Premier of Queensland and the CBRC achieved what they set out to, and that is payroll was stabilised, the payroll kept going, and from that point on IBM were out of the equation and the employees of [QH] got their pay improved every pay.

6.12 The State’s position did not improve as a result of Mr Grierson’s meeting with IBM representatives on 19 August 2010. Even though Mr Grierson claimed to have had extensive experience in the negotiation of contracts on behalf of the State³³⁹, Mr Brown was surely right that Mr Grierson was out-negotiated by Mr Doak. There can be no doubt that in spite of the best efforts of Mr Brown and Mr Charlston, Mr Grierson departed from the negotiation protocols established by Clayton Utz. It had not been Mr Grierson’s intention, nor the intention of any of those who advised him, that the meeting of 19 August 2010 was to be for any other purpose but to ascertain why IBM had delayed the negotiations. It was certainly not intended that this meeting would result in agreed settlement principles.

6.13 The CBRC decision of 22 July 2010 required the following³⁴⁰:

To note that an update will be provided within six weeks containing additional recommendations on how to finalise the Contract with IBM.

There was no imperative arising from this decision that a concluded agreement had to be reached with IBM within six weeks.

7. Conclusions

The decision to settle was taken without any proper analysis or examination of the factors identified in the submissions to the CBRC as risks, the avoidance of which motivated the settlement.

7.1 The State of Queensland paid IBM \$25.7M for the QH replacement payroll system. The original contract price was \$6.195M³⁴¹. The system malfunctioned on delivery. After some months it was got to a point of stability at which QH employees were paid accurately and on time. As at 31 May 2012 the number of payroll employees needed to conduct fortnightly pays was 1,010³⁴². They performed over 200,000 manual processes on an average of 92,000 forms processed each fortnight. The system required significant modification: 2,500 customisations and more than 130 manual workarounds³⁴³. The number of payroll staff

335 Exhibit 136, Volume 3, at page 178.

336 Exhibit 136, Volume 3, at page 185.

337 T34-67, L11-18 (Malcolm Grierson).

338 T34-67, L39-46 (Malcolm Grierson).

339 T34-72, L53-55 to T34-73, L1-16 (Malcolm Grierson).

340 Exhibit 136, Volume 2, at page 226.

341 Exhibit 63, Volume 5, at page 95-26.

342 Exhibit 1, at page 2.

343 Exhibit 1, at page 2.

has now reduced to 841 (May 2013)³⁴⁴. The cost of operating the system has been estimated by KPMG to be \$416.6M for the three years to 30 June 2012 and a further \$836.9M for the five years ending 30 June 2017, a total of \$1,253.5M³⁴⁵.

- 7.2** The State was advised by its solicitors that IBM was in material breach of contract by reason of late and deficient delivery of the payroll system. The solicitors further advised that the State could, pursuant to the terms of the contract, terminate it and prosecute an action for damages which could be as much as the value of the contract price for delivering the SS Initiative.
- 7.3** The State preferred to reach a negotiated agreement with IBM rather than commencing legal proceedings. That preference cannot be criticised: it was reasonable subject to being able to reach acceptable terms with IBM.
- 7.4** The State's solicitors, and a number of its qualified public servants, advised that the State's negotiating position would be strengthened by terminating the contract. There was no impediment to negotiating an agreement with IBM after termination.
- 7.5** On 19 August 2010, the Director-General of the Department of Public Works agreed with representatives from IBM that the State would not act upon the Notice to Show Cause it had issued, would not terminate the contract and would not pursue a claim for damages. Mr Grierson negotiated a settlement outside the protocols for negotiation which had been set in order to protect the State's rights. Thereafter, on 22 September 2010, the CBRC agreed to release IBM from all claims arising out of the delivery of the deficient payroll system, pay out monies it had withheld under the contract and in return obtain the rectification of some only of the outstanding defects in the system.
- 7.6** The decision to settle was taken without any proper analysis or examination of the factors identified in the submissions to the CBRC as risks, the avoidance of which motivated the settlement. In particular, advice, repeated several times, that an opinion be obtained about the value of the State's rights against IBM was never acted on, and the State released those rights without ever having obtained an assessment of their value. They were potentially worth tens of millions of dollars.
- 7.7** The settlement was driven by assumptions that without IBM's presence there was a substantial risk that the payroll system would fail utterly and that if the State insisted upon its contractual right to terminate, IBM would disregard its disengagement obligations and refuse to assist with the remediation and/or improvement of the system. The first assumption was wrong as inquiries of Ms Stewart and her team would have shown. The second assumption (which became irrelevant if the first assumption was invalid) was never tested and appears on its face unlikely.
- 7.8** The State's response to the delivery of a malfunctioning payroll system was timid. Its attempts to recover any recompense for the delivery of a malfunctioning payroll system were ineffectual. The information and advice available at the time were enough to indicate that the settlement should not have been agreed. The responsibility rests principally upon Mr Grierson who at the meeting of 16 August 2010 chose the option that gave the State the least chance of obtaining satisfaction from IBM and gave IBM the best chance of securing a release from liability. That bad decision was compounded by Mr Grierson's capitulation in the negotiations on 19 August 2010.
- 7.9** To a lesser extent, but still substantially, Mr Reid was also responsible. He was charged specifically by his Minister with the task of satisfying himself that the settlement was in the best interests of the State. He did not examine any of the assumptions on which the recommendation was based but gave it his endorsement, knowing it would be relied on by his Minister.
- 7.10** The members of the CBRC, Ms Bligh, Mr Lucas and Mr Schwarten, cannot fairly be blamed for the settlement, which may have been improvident. They were entitled to act upon the advice of the two most senior public servants in the departments affected: Public Works and Health. Mr Lucas in particular was entitled to rely upon Mr Reid's recommendation which he thought was the result of proper consideration. The members of CBRC could have inquired to test the validity of the advice but were entitled to act upon the advice received.

344 Information provided to the Commission by Mr Hood in answer to a requirement to provide information.

345 Exhibit 1, at page 2.

- 7.11** Submissions delivered on behalf of Ms Bligh and Mr Lucas argued that I should not find that the terms of the Supplemental Agreement were improvident. Ms Bligh submitted that it is beyond the competence of a Commission of Inquiry to express such an opinion. The submission is unsupported by argument or authority and I do not understand the basis for it. Ms Bligh, as well, submitted that in the context of the subject matter of this Inquiry “improvident” is a word “opaque and replete with considerable ambiguity and obfuscation”³⁴⁶. The meaning of the word is perfectly clear. The opinion (if expressed) that the settlement was improvident would convey that its terms were, from the State’s point of view, wasteful and made without proper thought.
- 7.12** A point of more substance in the submissions is that the decision to settle was made by CBRC in the exercise of “public interest judgments at the highest level ... in properly providing for the future of the State’s affairs and resources which (went) far beyond ... the Health payroll implementation ... ”³⁴⁷; and that a finding of improvidence would involve the Commission substituting its own view for “a discretionary value judgment of elected representatives made by reference to undefined factual matters, including likely community reaction, involving a wide range of policy considerations of which some may be seen as bearing upon ... the political fortunes of the government. ... The providence or otherwise of the decision is one among a number of competing considerations in weighing the public interest”³⁴⁸. The concession that a factor in CBRC’s decision to settle was the political fortune of the government is contrary to the evidence given by Ms Bligh that the decision was made without reference to what might benefit the government at the time.
- 7.13** It was submitted on behalf of Mr Lucas that the inquiry into the Supplemental Agreement, and the circumstances in which it came to be made, were not within the Terms of Reference and should not be at the subject of any findings. I explained earlier in this Part of the Report why the State settlement with IBM is within the terms of reference.
- 7.14** The submissions on behalf of Mr Lucas also make the point that in settling, those representing the State were not engaged “in purely legal decision making”³⁴⁹, but were making “a decision in the course of public administration, in the public interest, in which legal rights and remedies were a significant, but far from the only, consideration”³⁵⁰.
- I have already noted, and agreed with, that proposition.
- 7.15** Mr Lucas argued that the evidence presented to the Commission with respect to the settlement did not permit a finding of what the State might have recovered in legal proceedings, or what it might have lost, or what better terms it might have got from IBM. The submission is right but misses the point. The evidence which the Commission examined, and which has been analysed and discussed in this Part of the Report, suggests that the State came to the settlement with IBM, in which it achieved the rectification of some only of outstanding defects and released IBM from all claims for recompense, without knowing the value of what it released and without any, or any exact, examination of the factors on which it relied to justify that course of action.
- 7.16** In deference to the former Premier and Deputy Premier who complained that a Commissioner of Inquiry should not express an opinion on the prudence of government decision-making (at the highest level) I refrain from expressing an opinion whether the settlement was improvident. Those who read the Report, and have an interest in good government, can judge for themselves.

346 Submissions on behalf of Ms Anna Bligh, dated 5 July 2013 (Draft Findings), para 14.

347 Submissions on behalf of Ms Anna Bligh, dated 5 July 2013 (Draft Findings), para 16.

348 Submissions on behalf of Ms Anna Bligh, dated 5 July 2013 (Draft Findings), paras 27, 34.

349 Submissions on behalf of Mr Paul Lucas, dated 5 July 2013 (Draft Findings), para 42.

350 Submissions on behalf of Mr Paul Lucas, dated 5 July 2013 (Draft Findings), para 42.



4.

Summary

213

- 1.1** At the end of Parts 1 and 3 of the Report there is a section entitled “Conclusions”. Those sections set out a summary of the facts salient to those Parts, and the deductions to which the facts give rise. Part 2 of the Report commences with an “Overview” which serves the same function. Those sections together contain an adequate summary of the matters recorded and discussed in the Report.
- 1.2** In this Part I do no more than offer a succinct synopsis of the whole Report. Reading the synopsis is not, and is not intended to be, a substitute for reading the Report. Reading it without reference to any other Part of the Report will not provide a comprehensive understanding of the inquiries undertaken by the Commission.
- 1.3** The SS Initiative was meant to achieve the efficient and effective use of information technology across all government departments and agencies by centralising and standardising administrative systems such as accounting, human resource management and payroll. Adopted in 2002 it proved more difficult and costly to implement than the theory which underlay the Initiative suggested.
- 1.4** QH was the largest single department of government with the most complex workforce arrangements. About 80,000 staff (the numbers varied over time) were employed under two different Acts of Parliament, were covered by 12 different industrial awards and were affected by six different industrial agreements. These together created more than 200 separate allowances and as many as 24,000 different combinations of pay. Of all departments it was the most difficult for which to design a payroll system.
- 1.5** In 2005 the State resolved on the choice of software to provide workforce management and payroll solutions for the SS Initiative. Relevantly the programs/products were SAP and Workbrain.

- 1.6** A new entity, CorpTech, was set up to design, build and implement standardised solutions for the Initiative. By early 2007 there were signs that the SS Initiative had stalled. Progress was slow and costly and the remaining budget appeared inadequate to complete the implementation.
- 1.7** Throughout 2007 a series of reviews into the delivery of standardised solutions appeared to confirm CorpTech's failure to deliver the SS Initiative on time and on budget. One of the reviews was conducted by Mr Burns who was appointed for that purpose by the Under-Treasurer to whom Mr Burns had been recommended. Mr Burns had a relevant and impressive CV. He was, however, unknown to anyone in government, new to the country, to CorpTech and the SS Initiative.
- 1.8** Subsequent to the conduct of his review Mr Burns advised the Under-Treasurer and the Executive Director of CorpTech that the implementation of the SS Initiative should be entrusted to a private contractor, an IT provider, who would take over responsibility for designing, building and implementing the standardised accounting and human resource management (including payroll) of the SS Initiative (the Prime Contractor).
- 1.9** The recommendation was accepted. There was no evidence that it was given any serious thought, analysis or consideration. It appears to have been seized upon as an answer to CorpTech's technical and budgetary difficulties. The process of selecting a Prime Contractor commenced before the relevant government authority was asked to approve the change in the mode of delivering the SS Initiative.
- 1.10** Mr Burns who had gained the confidence of the Under-Treasurer became the *de facto* leader of the procurement processes to identify and appoint a suitable Prime Contractor. The Executive Director of CorpTech should have led and overseen the process but let Mr Burns take control.
- 1.11** Three companies tendered for selection, Accenture, IBM and Logica. Accenture and Logica had been substantially involved in the SS Initiative. Logica had successfully designed and implemented accounting packages to 12 agencies. Accenture was engaged to implement HR and payroll solutions and had delivered those to the Department of Housing. IBM's involvement in the SS Initiative had been relatively minor.
- 1.12** Of the funds allocated to CorpTech for the Initiative about \$108M remained. Logica's bid was non-conforming. It sought to deliver only the finance/accounting component of the SS Initiative for a price of \$120M. Accenture's price for delivering the whole SS Initiative was \$175M. IBM's price was \$98M.
- 1.13** The attempt to procure a Prime Contractor was conducted in two stages, the first of which occurred between 25 July and 7 August 2007. In the course of that stage employees of IBM obtained and misused a competitor's information, sought to use some information confidential to CorpTech and attempted to gain access to its competitors' bids which (by mistake) had been put on a CorpTech G drive.
- 1.14** This conduct provided substantial and sufficient grounds for excluding IBM from the procurement process. CorpTech was unaware of the events.
- 1.15** The process of deciding to appoint a Prime Contractor, issuing invitations to interested contractors, selecting the contractor and negotiating the contract all occurred in an atmosphere of haste and urgency which was unnecessary and led to poor decisions.
- 1.16** Mr Burns in the course of his review displayed a marked and indiscreet partiality for IBM. In the process of evaluating the relative merits of the three tenders he intervened, as a result of which the assessment changed to favour IBM's bid.
- 1.17** The principal factor in the choice of IBM was its price. Whether IBM could deliver the SS Initiative for its offered price, and the variation between its offer and Accenture's, and between those prices and the prices each had offered in stage 1 of the procurement process, were never thoroughly examined by those advising the selection.
- 1.18** The replacement of QH's payroll system was given priority in the contract between the State of Queensland and IBM which was signed on 5 December 2007. The contract contemplated that the replacement would occur by the end of July 2008. Quick action was thought necessary because the existing payroll system, LATTICE, was obsolescent, unable to process many of the pay calculations without manual intervention, and was unsupported by the supplier.

- 1.19** Under the contract the replacement of the LATTICE payroll system was to be “interim” with minimal functionality until the payroll component of the Initiative was delivered to all (or most) departments and agencies, at which time the interim solution for QH would become a complete one. This approach was adopted because of the real or perceived urgency to replace LATTICE.
- 1.20** In October 2008 IBM advised the State that it had revised its estimate of the cost of implementing the Initiative. It had increased to about \$180M. In January 2009 the State resolved not to proceed with the Initiative but to have IBM continue only with the design and implementation of the payroll system to replace LATTICE. No thought was given to what, if any, changes to the design of the system were necessary because it would no longer be an interim system.
- 1.21** The time allowed by the contract for scoping the interim replacement was very short. The model assumed as the basis for scope was taken from the Department of Housing. It was inadequate because of the substantial differences in workforce size and complexity between the departments. The misunderstanding between IBM and the State as to what scope was required for the interim replacement was never satisfactorily understood, addressed or resolved.
- 1.22** The State did not adequately communicate to IBM the business requirements for the workforce of QH which would permit IBM to design a payroll system which accommodated the number and complexity of pay rules. IBM did not actively elicit information about those requirements which would have allowed it to design such a system. The result was ongoing disputes about scope which resulted in changes to the contract, increases in price, and delays to the implementation date.
- 1.23** The system cost, in terms of payments to IBM alone, more than four times the contract price. It took three times longer to deliver than originally scheduled. When it went Live it was seriously deficient, causing very many QH staff not to be paid, or to be paid inaccurately. The problems with and deficiencies in the system were obvious well before it went Live in March 2010.
- 1.24** Attempts by officers in CorpTech to invoke rights given to the State under the contract were thwarted by more senior officials who preferred to negotiate with IBM and exhort it to greater effort. Opportunities which the contract gave the State, or which it obtained by way of variations to the contract, to extricate itself, or reset the scope of the contract, were let go or ignored. Standards which had been preset to ensure that the system when delivered would function adequately were lessened or avoided so as to permit implementation.
- 1.25** The risk of doing so was clear and was made explicit by KJ Ross and Associates Pty Ltd, engaged to conduct User Acceptance Testing. If the parties adhered to the controls which they had in place when the project commenced, the system would never have progressed to the point at which a decision had to be made whether or not to Go Live. The system was allowed to reach that stage by conscious decisions at earlier stages to “lower the bar” and alter criteria to permit it to proceed to subsequent stages.
- 1.26** The imperative for this approach was the perceived risk that LATTICE would fail leaving QH with no means of paying its staff. No proper examination of the perception was undertaken to ascertain the real extent of the risk. No alternatives to the replacement of LATTICE had been considered.
- 1.27** The urgency which marked the selection of a Prime Contractor also marred the delivery of the replacement payroll system. The project was, from the outset, conducted in an atmosphere of urgency, largely because the State had failed at an earlier time to commence gathering its business requirements, or to make any timely decision on how to replace LATTICE. The project was then managed contrary to established project management methodology by undertaking a number of tasks at the same time (including different forms of testing). The consequence was that the project was not required to pass various check points before proceeding. Where check points did exist they were circumvented by changing the criteria to allow the system to pass.
- 1.28** When the system went Live it contained very many deficiencies. Some were business processes and some were systems defects. The two types of deficiencies interacted and compounded the effect of the other. A very considerable effort had to be made by IBM and by CorpTech to catalogue the defects, establish the cause and create a fix or workaround. The result is a system which functions but with a substantially increased payroll workforce and consequent cost to government.

- 1.29** The State was advised by its solicitors that IBM was in material breach of contract by reason of the late delivery of the payroll system and the defects in it. They also advised that the State could terminate the contract and prosecute an action for damages which might be worth as much as \$88M.
- 1.30** The State preferred to reach a negotiated settlement with IBM rather than commencing legal proceedings. Advice was given that the State's negotiating position would be strengthened if it terminated the contract.
- 1.31** The State did not terminate the contract. In September 2010 it agreed to release IBM from all claims arising out of the delivery of the payroll system and pay monies it had withheld under the contract in return for IBM's promise (which it performed) to rectify some 35 defects. The rectification of those defects did not give the State a fully functioning and automated payroll system.
- 1.32** The decision to settle was taken without any proper analysis or examination of the risks which the State was advised should be avoided by settling; or of the value of the right to claim damages from IBM which it gave up.
- 1.33** The settlement was driven by the assumption that unless the State settled on the described terms there was a substantial risk that the payroll system would fail. On the evidence available to the State the assumption was wrong.
- 1.34** The settlement is binding upon the State which cannot now recover anything from IBM.
- 1.35** I have, as required by the Orders in Council of 13 December 2012 and 18 April 2013, made a full and careful inquiry into the implementation of the QH payroll system. I have, in Parts 1 and 2, reported on the adequacy and integrity of the procurement, contract management, project management, governance and implementation process of the replacement system. I have in Parts 2 and 3 reported on the contractual arrangements between the State of Queensland and IBM, and explained why and to what extent the contract price increased, and who may be accountable.
- 1.36** Part 5 of the Report makes recommendations for project management of future large ICT contracts, and the new replacement of the QH payroll system. There is nothing new or surprising in the recommendations. My inquiry has not shown any deficiencies in the then or present procurement policies or project management standards. What the inquiry has revealed is a depressing account of failure by many public servants engaged in the SS Initiative and the payroll replacement to adhere to established good practice. I did not discern a need to write new rules. If existing policies and standards are adhered to the failures I have described should not recur.



5.

Recommendations

1. Introduction

- 1.1 The Terms of Reference (clause 3(d)) direct me to make recommendations to existing procurement, contract, project management (including governance) policies, processes, standards and contractual arrangements for major Queensland Government information and technology projects initiated in the future to ensure the delivery of high quality and cost effective products and systems.
- 1.2 I make four recommendations. They fall into three categories. The first is the need to draw, from the failures of the QH payroll replacement, and this Report, lessons to be applied to similar projects in the future. The second concerns measures which ought to be taken to ensure that those lessons are applied as part of the management of future projects. The third concerns the QH payroll system which will again need to be replaced relatively soon.
- 1.3 I make no recommendation about the State's procurement policies. No witness and no evidence suggested that the policies were not adequate, or were a cause of the failures I have had to investigate.

2. Lessons to be Learned

- 2.1 This Project serves as an example of serious failure, both because of the sharp increase in the price paid and the waste of public sector resources dedicated to achieving the system Go Live, some two and a half years later than contracted for. That cost continued afterwards, and continues in the need for its stabilisation and maintenance.
- 2.2 Added to this was the distress and inconvenience caused to QH staff, many of whom could not afford the financial consequences of a dysfunctional payroll system.
- 2.3 I have identified two principal causes of the inadequacies which led to the increase in contract price, the serious shortcomings in contract and project management, and in the State's decision to settle with IBM. Those causes were: unwarranted urgency and a lack of diligence on the part of State officials. That lack of diligence manifested itself in the poor decisions which those officials made in scoping the Interim Solution; in their governance of the Project; and in failing to hold IBM to account to deliver a functional payroll system.

- 2.4 These problems are not ones which should be thought to be unique or unlikely to arise again. The particular circumstances of this failure may not recur, but the problems are systemic to government and to the natural commercial self-interest of vendors. They are commonly experienced in projects of this kind, the Commission was told by Dr Manfield.
- 2.5 One way in which future projects might ensure high quality and cost effectiveness in products and systems to be delivered is that the conclusions set out in this Report be given close attention before such projects are initiated, and during their implementation. This accords with one of the major principles of project management: that lessons be learned from experience, including bad experience, and that when starting a project, previous or similar projects should be reviewed to ascertain what lessons might be applied.
- 2.6 I would add that it is imperative that, in conducting such a review, public officials put to one side their natural defensiveness and understandable embarrassment and face up to the very serious failings which caused this Project to miscarry.
- 2.7 The unnecessary sense of urgency to which I have referred influenced the procurement, contract and project management phases of the Project. The sense of urgency was created by the real or perceived risk that the legacy payroll system, LATTICE, would fail and as a result be unable to pay QH staff. The cause of this was the State having failed to plan for the upgrade of LATTICE in a timely manner. The State was on notice from at least May 2004 that LATTICE would not be supported by its vendor after 30 June 2008. The State failed to plan for that reality and did not adopt an effective succession or contingency plan for its replacement.
- 2.8 By contrast the approach taken to the implementation of the LATTICE system was a measured one with the implementation being staged and undertaken over 6 years.
- 2.9 The fear of LATTICE failing infected decision-making throughout the Project. Decisions were made to press on regardless of other considerations which ought to have had a bearing on the direction of the Project.
- 2.10 The Queensland Government's ICT Audit of 2012 was released after this Inquiry was established. It surveyed the state of Government ICT infrastructure with a view to identifying the condition and performance of the current state government's ICT portfolio. This audit should serve as a reference point for identifying those systems which might require upgrade or replacement in the future.
- 2.11 The ICT Audit identified that over 40 per cent of all significant systems, with a combined replacement cost of \$407M¹, are past due for replacement, or due within the next two years. Significant systems have a high total cost of ownership and underpin services which are considered critical. 14 such systems are currently past their end of life and have a replacement cost of \$170M². More than half of all systems due for replacement now or in the next two years "have no formal evidence of planning related to their upgrade or replacement"³.
- 2.12 In order to reduce the prospect of future replacement projects being affected by the same unnecessary urgency, I would recommend:

Recommendation 1

There be forward planning for all legacy systems.

The State should, to the extent its 2012 ICT Audit has not already done so, undertake risk assessments, contingency and succession planning for such systems to ensure they do not present the same level of risk and urgency that LATTICE was thought to present, and that decisions concerning them are not made in haste.

- 2.13 I have noted other shortcomings associated with the Project. No previous analysis and no lessons learned from the earlier implementation of the LATTICE payroll system was made available to the project team:

1 Queensland Government ICT Audit 2012, Significant and high risk systems, p.16.
 2 Queensland Government ICT Audit 2012, Significant and high risk systems, p.26.
 3 Queensland Government ICT Audit 2012, Significant and high risk systems, p.17.

“not a memo, email, contract, risk profile,” Mr Neil Glentworth told the Inquiry. The scoping of the Interim Solution was grossly inadequate. QH was passive, perhaps lazy, in the identification and communication of its business requirements, with the result that it did not communicate all the requirements necessary to produce a functional payroll system. It should be recognised that there may be a commercial self-interest in external contractors leaving scope uncertain.

- 2.14** As the Auditor-General noted in his Report, it was not clear which Accountable Officer had responsibility for the overall governance and successful completion of the Project. This failure can be attributed to a number of factors:
- a. CorpTech having the contractual relationship with the contractor despite the Project being delivered to QH which had the direct and primary interest;
 - b. the very many people on a large number of Committees and Boards across CorpTech and QH charged with the responsibility for managing the project. As Dr Manfield noted “there was plenty of active oversight of the program however successful governance is not just about having processes, but about how governance processes and tools are used to get the result”⁴. The terms of reference of these bodies, as noted by the Auditor-General, were unclear. Responsibility was spread too widely. There was no single point of accountability;
 - c. there was a dearth of expertise and continuity of membership on these bodies which affected the skills applied over the life of the Project;
 - d. the tendency of these governance bodies to act pragmatically and “push on” resulted in the compromise of Go/No Go gates and the reclassification of established criteria put in place to ensure a functional system was delivered.
- 2.15** This approach compromised the quality of the Interim Solution, and increased the time and cost to deliver it. It was imperative, given this was a payroll system, that quality remained paramount.
- 2.16** Finally, this Project has provided strong evidence that the State, try as it might, cannot outsource risk. The desire to outsource to the private sector requires the government actively and competently to manage projects and contractors, and apply the necessary skill and expertise to ensure the effective delivery of large projects. The State cannot be passive in its oversight of projects in which large amounts of taxpayers’ money are at risk or the welfare of State employees may be affected.

Recommendation 2

Before the initiation by the Queensland Government of major ICT projects, specific attention be given to what lessons may be learned from this Project for the particular project under consideration.

- 2.17** Making a recommendation of this kind might have been sufficient if it were thought that the lessons of this Project could be translated and adapted as each major project presents itself and that the effort in doing so will be sustained and disciplined. That is unlikely to be so. The problems from which this Project suffered were known to be ones not uncommon in large government projects of this kind. The neglect of them in this case is cause to think it is likely the lessons will again be ignored.
- 2.18** The need to ensure the lessons of this Project are learned is heightened by the Queensland Government policy foreshadowing a disposition to outsource “contestable” public sector activities. Doing so will render more important the adequacy of procurement processes and the management of projects and contracts. Policies and procedures, plans, boards and steering committees are no substitute for good decision-making by competent, experienced and diligent public servants. The State might have the benefit of a tight contract, but the advantage of that is useless if its terms are not properly understood, applied and enforced. These tasks must be accomplished with a fine understanding of the tactics which self-interested commercial vendors are likely to attempt and the motivations for them doing so.

⁴ Exhibit 123, at page 8, L30-39.

3. Project Management for Future Projects

- 3.1 To lessen the difficulty of applying the lessons to the particular features of future projects and in order to ensure that there exists continuity of knowledge about them, I make the following recommendation:

Recommendation 3

The Queensland Government apply an appropriate structure to oversee large ICT projects. The particular form of that structure is a matter for the Government, but it ought to ensure that the relevant individuals have skills in project management and the power to make inquiries and to report to senior public officials.

- 3.2 What I have in mind is the appointment of a project manager, or project managers, to each large ICT procurement and/or implementation. It is a matter for government to determine whether each Department which might be involved in such activities have its own manager, or managers; or whether there be a group of project managers available for secondment; or whether such persons should be recruited from private industry (or other governments) for each project. What is essential is that the project managers be qualified, experienced and competent in the science of project management and be employed specifically to perform that role with respect to each large ICT project. Appointing persons as project managers to fulfil the role if they do not have the qualifications, experience or competence required would be unfair to them and deleterious to the project.
- 3.3 Whatever form of project management structure is adopted, it ought to possess the following attributes:
1. the appointed persons have skills and experience in the management of major projects and contracts and in dealing with large and sophisticated international IT contractors;
 2. they be vested with the authority to probe and report upon the planning and implementation of major IT projects commissioned by Government;
 3. they have the ability to report to very senior public officials on the results of their inquiries, and to make recommendations, especially if deficiencies in project or contract management are detected;
 4. there be continuity in the appointment so that there may be accumulated a body of knowledge derived from lessons to be learned, the risks to government in projects of this kind, and of the areas of weakness in the State's participation in them.
- 3.4 Such a body ought not be an additional layer of governance in major projects. If it were to become so, its effectiveness will be lost. Nor ought it involve great expense. The whole purpose of it is to focus on the efficient and effective delivery of major projects and to be targeted in its activities. It should essentially have an assurance function⁵.

4. Future of the Queensland Health Payroll System

- 4.1 The current QH payroll system will require an upgrade in about a year and replacement within 5 years. Mr Malcolm Thatcher, Chief Information Officer for Mater Misericordiae Health Services in Brisbane, provided the Commission with evidence of a successful replacement of its payroll system. Mater Health has about 7500 employees (about a tenth of the establishment of QH) but has almost as much complexity and scope for variation in its pay rules as QH. A comparative table appears in the attachment Mr Thatcher's statement (Ex 129) to the Commission. The Mater Health payroll system replacement offers an example of an outstandingly successful ICT project, local and recent. Mr Thatcher and his staff have offered to assist QH in an understanding of how a payroll system replacement should be planned and executed. Although the offer is a matter for QH and the State, I recommend it be accepted. In the course of evidence from QH employees I detected a degree of resistance to Mater Health's involvement in any future replacement of the QH payroll. The opposition was expressed by those who were prominent in QH's failure to plan adequately for the last replacement.

⁵ See, for example, the Major Projects Authority in the United Kingdom, the aim of which is to turn around the UK Civil Service's record of delivering projects by working with departments to ensure fitness and quality throughout the project lifecycle.

- 4.2 Mater Health employs seven payroll staff, a ratio of 1:1000 employees. The ratio in QH is about 1:100. It is the employment cost of the 800 or so payroll employees which explains the high cost of operating the QH payroll.
- 4.3 The replacement of the Mater Health payroll from the inception of planning to successful implementation took about 4 years. Given that QH is a larger organisation, has hospital and health services spread throughout the State and has in the past shown some resistance to change, planning for the replacement should begin in earnest now, if it has not already.

Recommendation 4

That planning for the replacement of the QH payroll system begin immediately and that assistance from Mater Misericordiae Health Services be requested with a view to undertaking detailed planning for the replacement, and for the selection of a new system and the mode of its implementation.

5. Principles of Project Management

- 5.1 The following principles underpin best practice in project management and are contained in the PRINCE2 project methodology⁶.

Principle 1 - A project must have continued business justification.

1. A requirement for a project is that:
 - a. there exist justifiable reason to start it;
 - b. that justification ought to remain valid throughout the life of the project;
 - c. that justification be documented, approved and distributed to all stakeholders.
2. This justification is to be included within the project business case, which provides the business reasons why a project should be undertaken, based on the estimated costs against the anticipated benefits to be gained and offset by any associated risks.
3. A project ought to be inextricably linked to its business justification, and that justification ought to govern decision-making processes to ensure that the project remains aligned to the business objectives and benefits sought to be achieved.
4. A poor project business case may result in projects being undertaken where there are few benefits to be realised or projects that have poor alignment with corporate strategy.
5. Even projects that are mandatory (for example, to comply with new legislation or reform) require justification of the particular option selected to achieve the object, given that there are often several delivery approaches available, each with its own benefits, risks and costs.
6. The business justification for a project may change. Even if that is the case, the project and evolving justification must remain consistent. The justification must be maintained and updated throughout the life of the project with current information on costs, risks and benefits.
7. If, for whatever reason, the project can no longer be justified, the project ought to be stopped. Doing so in such circumstances ought to be seen as a positive step as it frees funds and resources for other, more worthwhile, projects.

Principle 2 - Learn from experience

8. Projects involve a temporary organisation for a limited period of time for a specific business purpose. Each project is unique in some way: a new product, a new team or a new customer. The unique nature of each project presents challenges in that a temporary team might lack experience in planning for and undertaking a project of the kind in which they are involved. There are three ways in which such teams might improve the competence of their governance of the project:
 - a. when starting a project, previous similar projects should be reviewed to see if lessons learned could be applied. If the project is a “first” for the people within the agency, then it is even more important to learn from others;

⁶ Managing Successful Projects with PRINCE2 (2009). The Stationery Office, London.

- b. as the project progresses, the members of the team should continue to learn. Lessons should be included in all reports and reviews. The goal is to seek opportunities for applying improvements during the life of the project;
 - c. as the project closes, the members of the team ought to pass on lessons. Unless lessons bring about change, they are only lessons identified (and not learned).
9. A project/program management office that has been established to provide specialist expertise across programs and projects may be able to assist in reviewing and passing on lessons.

Principle 3 - A project has defined and agreed roles and responsibilities within an organisation's structure that engages the business, user and supplier stakeholder interests.

10. Projects involve people. No amount of good planning or control will help if the wrong people are involved, if the right people are not involved, or if people involved do not know what is expected of them or what to expect of others.
11. A project is typically cross-functional, involving people from across functions within an agency, may involve more than one agency, and may involve a mixture of people working full time on the project with others who are dividing their time between the project and other duties. Each party will have different priorities, objectives and interests for being involved in the project.
12. To be successful, a project must have an explicit project management team structure consisting of defined and agreed roles and responsibilities for the people involved in the project and a means for effective communication between them. All projects have the following three primary stakeholders:
- a. business sponsors, who endorse the objectives and ensure that the business investment provides value for money;
 - b. users, who, after the project is completed, will use the products to enable them to gain the intended benefits;
 - c. suppliers (internal or external), who provide the resources and expertise required by the project.
13. All three stakeholder interests need to be represented effectively in the project management team. If the project costs outweigh the benefits, the project will be perceived as a failure. Equally, if the project deliverables do not meet the users' or operational needs, or cannot feasibly be delivered by the suppliers, the project will be unsuccessful.

Principle 4 - A project is planned, monitored and controlled on a stage-by-stage basis.

14. Management stages provide senior management with control points at major intervals throughout the project. At the end of each stage, the project's status should be assessed, the project business case and plans reviewed to ensure that the project remains viable, and a decision made as to whether to proceed.
15. Separating the project into a number of stages enables the level of senior management control over projects to be varied according to the business priority, risk and complexity involved. Shorter stages offer more control, while longer stages reduce the burden on senior management.
16. The Queensland Government Project Management Methodology allows effective planning by:
- a. dividing a project into a number of management stages
 - b. having a high-level project plan and a detailed stage plan (for the current stage)
 - c. planning, delegating, monitoring and controlling the project on a stage-by-stage basis.
17. The Methodology requires there to be a minimum of two management stages: one initiation stage and one or more further management stages.

Principle 5 - A project has defined tolerances for each project objective to establish limits of delegated authority.

18. The Queensland Government Project Management Methodology enables appropriate governance by defining separate responsibilities for directing, managing and delivering the project and clearly defining accountability at each level. Accountability is established by:
- a. delegating authority from one management level to the next by setting tolerances against six objectives for the respective level of the plan:
 - i. **Time:** Plus or minus an amount of time on the target completion dates;

- ii. **Cost:** Plus or minus an amount of the planned budget;
 - iii. **Quality:** Plus or minus degrees off a quality target (e.g. a product that weights a target 300g, with an allowed -5 to +1 grams tolerance);
 - iv. **Scope:** Permissible variation of the plan's products (e.g. mandatory requirements plus or minus desirable requirements);
 - v. **Risk:** Limits on the plan's aggregated risks (e.g. cost of aggregated threats to remain less than 10% of the plan's budget) or limits on any individual threat (e.g. a threat to operational service);
 - vi. **Benefit:** Plus or minus degrees off an improvement goal (e.g. 30-40% cost reduction).
- b. setting up controls so that if those tolerances are forecast to be exceeded, they are immediately referred up to the next management layer for a decision on how to proceed;
 - c. putting an assurance mechanism in place so that each management layer can be confident that such controls are effective;
 - d. the implementation of "management by exception" provides for very efficient use of senior management time as it reduces senior managers' time burden without removing their control by ensuring decisions are made at the right level in the agency.

Principle 6 - A project focuses on the definition and delivery of products, in particular their quality requirements.

- 19. A successful project is output-oriented not activity-oriented. An output-oriented project is one that agrees and defines the project's products prior to undertaking the activities required to produce them. The set of agreed products defines the scope of a project and provides the basis for planning and control.
- 20. The purpose of a project is to fulfil stakeholder expectations in accordance with the business justification, and to do this there must be a common understanding of the products required and the quality expectations for them. The purpose of a project can be interpreted in many different ways unless there is an explicit understanding of the products to be produced and the criteria against which they will be individually approved.
- 21. A project uses product description/s to provide such clarity by defining each product's purpose, composition, derivation, format, quality criteria and quality method. They provide the means to determine effort estimates, resource requirements, dependencies and activity schedules.
- 22. The "product focus" supports almost every aspect of the methodology: planning, responsibilities, status reporting, quality, change control, scope, configuration management, product acceptance and risk management.
- 23. Without a product focus, projects are exposed to several major risks such as acceptance disputes, rework, uncontrolled change ("scope creep"), user dissatisfaction and underestimation of acceptance activities.

Principle 7 - The Queensland Government Project Management Methodology must be tailored to suit the project's environment, scale, complexity, importance, capability and risk.

- 24. The value of the Methodology is that it can be applied to projects of all types and scales, because it has been designed so that it can be tailored to suit a project's specific needs. If the Methodology is not tailored, it is unlikely that the project management effort and approach are appropriate for the needs of the project.
- 25. The purpose of tailoring is to:
 - a. ensure the project management method relates to the project's environment (e.g. aligning the method to the business processes that may govern and support the project, such as human resources, finance and procurement);
 - b. ensure that project controls are based on the project's scale, complexity, importance, capability and risk (e.g. the reporting and reviewing frequency and formality).
- 26. The Queensland Government Project Management Methodology can be poorly implemented when users pick and choose elements of it. The Methodology is not a series of isolated silos whereby any element can be omitted with no effect on the others. It is a web of interlinking elements: themes are used in processes; activities are undertaken to bring themes to life; and individuals fulfilling project roles create management products. If an element is omitted, effective project management of the project is at risk.

27. Tailoring requires the project manager and the project board to make an active decision of how the Methodology will be applied. When tailoring the Methodology, it is important to remember that it is information that is required (not necessarily documents) and decisions (not necessarily meetings).
28. Every project has a lifecycle, consisting of several standard phases:
- a. initiation;
 - b. planning;
 - c. execution;
 - d. monitoring and control;
 - e. project closure;
 - f. post-mortem learnings (lessons learned)
29. Efficiency of project execution does not necessarily result simply because the project manager is competent: many organisational maturity factors and other contingencies influence the outcome of a project. It is possible to have a “competent” project manager working within an “immature” organisation, which could result in an unsuccessful project. Key decision-makers need to recognise the impact that project management has on their budgets.
30. Tight schedules generally prevent many agencies from finding the time to dedicate to appropriate project management expansion and capability improvement. Instead, too often, staff are required to attempt to manage critical projects and/or programs with limited or improperly trained staff and within drastically reduced lead times.
31. To ensure that projects generate maximum value for the organisation, senior executives should link every project management decision, from the choosing of projects to the way teams will measure outcomes, to the strategic goals of the organisation. Additionally, senior executives need to invest time, money and expertise into developing project management skills and strategies, measure project outcomes and align project and program methods with the long-term strategic objectives.

Appendices

Appendix 1

Establishment and Operations

Pre-commencement

1. As my appointment as Commissioner with its attendant statutory powers did not take effect until 1 February 2013, Counsel Assisting and I used the month of January 2013 to read and become familiar with the considerable material available on the public record relating to the Queensland Health payroll system implementation. At the same time the Secretary (Executive Director) was undertaking staff recruitment and establishing the Commission's premises, website, IT and telecommunications infrastructure and its governance and procedural frameworks which would underpin the Commission's operations.
2. During this time we determined, as best we could with the information then available, a schedule of work which identified the main areas of inquiry and what supporting tasks were appropriate, who would undertake them, and what time would be required to gather and analyse documents, identify and interview witnesses, put together statements and briefs for Counsel, prepare the Courtroom for the live streaming of hearings, collate the information in a way consistent with record management practices and produce an informative and satisfactory report for the Queensland public.
3. The schedule also assisted in identifying the mix of skills and expertise required of staff as well as establishing clear deadlines and resource allocations so that the Inquiry would fulfil its accountabilities on time and within budget.
4. A public notice advising of the Inquiry's establishment and its terms of reference appeared in *The Courier-Mail* and *The Australian* newspapers on Australia Day, 26 January 2013. The notice as shown in Appendix 4, advised the manner in which relevant parties could seek leave to appear and invited persons with information relevant to the Inquiry to contact the Commission.
5. In the week prior to the Inquiry's official commencement most Commission staff were relocated to the Commission's headquarters at 154 Melbourne Street, South Brisbane.
6. From the official commencement date of 1 February 2013, the Commission of Inquiry was operational with a full complement of staff, organised with respect to the agreed approach and schedule of work, and relatively well informed as to the organisations, persons and material that were likely to be relevant to the Inquiry's investigations and examinations.

Hearings

7. It was always important to conduct the hearings in an orderly, courteous and transparent manner, in which all parties and witnesses were afforded fairness and given reasonable access to information as well as a right of response to issues raised.
8. Hearings were conducted in Court 34, Level 4 of the Brisbane Magistrates Court at 363 George Street, Brisbane.
9. On 1 February 2013, the first day of the Inquiry's operations, I convened a directions hearing to formally announce the commencement of the Inquiry; to decide applications for leave to appear by those who had a particular interest in the Inquiry; and to invite information from members of the public.
10. In my opening remarks, I deliberately acknowledged that beyond the financial and operational costs that resulted from the issue-plagued project, there was a very human one. The failures associated with this endeavour caused significant anxiety and hardship for many people. For this reason, it was appropriate that the Inquiry was transparent and accessible to the public at all times. Hearings were open to the public, with live streaming of all sittings provided via the Commission's website at <http://www.healthpayrollinquiry.qld.gov.au/>
11. The Inquiry held six sessions of hearings into the three main areas of inquiry that emerged as being important to the Terms of Reference. A total of 36 public hearing days were held, over which time 60 witnesses were examined. The dates on which public hearings were held are shown in the table overleaf.

Hearings	Dates	No. of Days
1st Hearing – Tender	11-22 March 2013	10
2nd Hearing – Tender (continued)	8-16 April 2013	7
3rd Hearing – Contract	22 April – 7 May 2013	10
4th Hearing – Contract (continued)	13-16 May 2013	4
5th Hearing – Settlement	27-30 May 2013	4
6th Hearing – Contract (continued)	18 June 2013	1
Total No. of Hearing Days		36

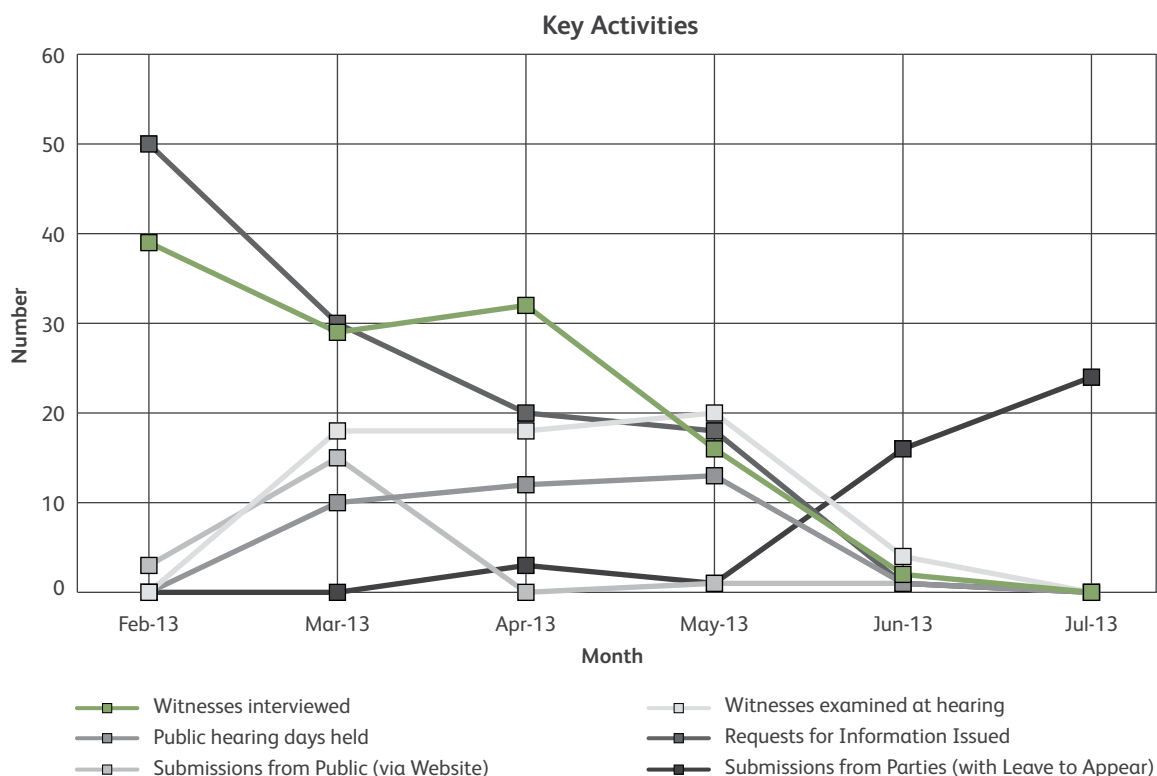
12. The sixth session (one day) was scheduled as a result of the Commission receiving post-hearing submissions and determining that the examination of four witnesses was warranted.

Inquiry Staff

13. When it commenced (1 February 2013), the Commission had a total full time equivalent staffing complement of 15 lawyers (including my position as Commissioner and three Counsel Assisting) and 14 secretariat staff. The names and positions of Commission staff are listed at Appendix 6 of the report.
14. By its nature, a Commission of Inquiry requires diverse skills and expertise which created a unique working environment. The Commission's staff came from many fields including management, law, investigation, information technology, accounting, record keeping and administration.
15. Preserving the integrity of the Commission was paramount. All staff were subject to criminal history checks by Queensland Police Service. In addition all staff were required to declare any possible conflict of interest on commencement and throughout their tenure with the engagement.
16. Staff were also required to undertake an induction which clearly articulated the work ethic, conduct and professionalism that was required and expected of all persons who worked for the Inquiry.
17. In line with the importance I placed on effectively managing the resources afforded to the Inquiry, our staffing numbers were reduced where practicable over the duration of the Inquiry. The full complement of staff in February 2013 reduced to 14 by the time the Inquiry entered into its last month of operation in July 2013.
18. As I mentioned in the Report, to complete the Inquiry within six months in such a way as to accord with the direction to investigate thoroughly and report on the subject matter of the Terms of Reference was challenging. It required focused attention on what was relevant, dedication to the task in hand and disciplined adherence to our own timetable. The fulfilment of Executive Council's appointment on time and below budget is an achievement which all Commission staff contributed to, and can feel proud of.

Statistics

19. Statistics are a poor indication of the skill and effort actually applied to a task which is necessarily performed out of public sight. However for interest's sake I have included the following (numerical) account of some key activities undertaken during the Inquiry:
 - 118 witnesses interviewed;
 - 119 summons/requests for information issued, involving approximately 348 specific items of request;
 - six sessions of public hearings involving 36 public hearing days;
 - 60 witnesses examined at hearing;
 - 44 submissions considered from parties with leave to appear; and
 - 20 submissions considered from the general public via the website.
20. When this information is converted to a visual representation as in the table overleaf, it shows quite accurately the Commission's operational experience over the duration of the Inquiry.



21. The period from February 2013 to April 2013 was the Inquiry's most demanding. This was when the greatest quantum of documents was gathered, witnesses were summonsed and examined, and the hearings into the procurement process were held.
22. Whilst the workload undertaken by the Commission was substantial throughout, there was naturally a decrease in some activities over the latter months of the Inquiry. Most relevant evidence was already in the Commission's possession by that stage, examinations to date had brought to light many of the key issues, and the Inquiry could subsequently apply an even tighter and more focused approach to its further investigations.
23. The writing and production of the report began when the Inquiry's hearings concluded in early June 2013. The evidence had to be analysed and reviewed, submissions read and checked against the evidence, drafts prepared and checked, possible findings notified to parties and responses read and considered. Commission staff had been substantially reduced so the workload on those who remained was substantial. The pressure was considerable and the hours were long. Its compilation is a tribute to all who helped write and produce it.

External Engagements

24. The Commission engaged two consultants and contracted seven organisations to provide expert advice and professional services respectively. All of these engagements were performed in accordance with the State Government procurement policy:

Entity	Purpose
Mr John Gray <i>HWL Ebsworth Lawyers</i>	Expert advice on contract management
Dr David Manfield <i>vPerformance Pty Ltd</i>	Expert advice on systems integration and project management
Ms Sandra Clayton	Editorial services for the Inquiry's report
Law in Order	Photocopying services as well as logistical support to transport files between the Commission's premises and the Magistrates Court Building during hearing days
LitSupport	Photocopying services
Spark & Cannon	Transcription services in relation to in-house interviews of witnesses and for public hearings

Entity	Purpose
Mariart	Design and layout services for the Inquiry's report
Allclear	Printing of the Inquiry's report
Management Options Pty Ltd	Probity Advice

Special Mentions

25. It is impossible to personally thank all the people who have in some way assisted the Inquiry undertake its work, however I have done my best to be as thorough as possible in my acknowledgements at Appendix 5 of this report. Nevertheless, there were certain people whose assistance extended beyond what could have been reasonably expected and I feel it only right that I express my gratitude in this section of the report. In this regard, my sincere appreciation extends to:

- The Honourable Jarrod Bleijie, Attorney-General and Minister for Justice for his support for the Inquiry's extension to 31 July 2013;
- Mr John Sosso, Director-General of the Department of Justice and Attorney-General for his support and assistance as the head of the administering agency for the Inquiry;
- His Honour Brendan Butler AM QC, Chief Magistrate for allowing the Commission to use his Court to conduct the Inquiry's public hearings;
- Ms Leanne Mahoney and Mr Scott Howden of Queensland Courts who most ably supported the Commission in the provision of the courtroom facilities and technologies required during the Inquiry's public hearings;
- Ms Sue Behncken and Ms Michele Elliston from the Department of Science Information Technology Innovation and the Arts who afforded the Commission their expert advice on particular issues relevant to the Inquiry;
- Ms Lynn Moon who assisted in the establishment of the Inquiry's record keeping arrangements;
- Spark & Cannon - Ms Sam Fagan and Mr Anton Goodchild who so efficiently managed the production of transcripts for the Inquiry, particularly Mr Goodchild who diligently and patiently attended 36 days of public hearings to oversee this daily activity;
- Law in Order - Mr Trevor Learoyd and Mr Simon La Rossa who managed the Inquiry's substantial photocopying requirements with often short notice and even shorter deadlines. Messrs Thomas Stevenson, Denny Dao, Geoff Knight, Michael McClennahan, Nick Bobir, Aodhan Trusselle for their tireless efforts and the courteous manner in which they transported the numerous files to and from hearings each day;
- The chief executive officers and relevant supervisors of those government agencies who approved the release of their staff to work for the Commission of Inquiry. These agencies include the Department of Justice and Attorney-General, Crown Law, Office of the Director of Public Prosecutions, Legal Aid Queensland, Queensland Police Service, Department of Science Information Technology Innovation and the Arts and the Australian Bureau of Statistics.

Records Management

26. Commissions of Inquiry by their very nature are short-lived in duration, usually singular and specific in purpose and ultimately remembered only by the report left behind. The records an Inquiry generates are therefore a unique collection of documents relevant to a particular time and event and it is vital that they are diligently and carefully stored.

27. The irregularity of the establishment of Commissions of Inquiry also makes it difficult for the knowledge and experience gained by one Inquiry to be transferred to the next. The records of this Inquiry contain documents such as our schedule of work that identifies in significant detail the operational actions and activities that were undertaken from the establishment to the conclusion of this Inquiry. It is my hope that this information may prove useful to future Commissions of Inquiry.

28. This Inquiry's records have been managed in accordance with the Queensland State Archives' (QSA) retention and disposal schedule (QDAN 676) pursuant specifically to Commissions of Inquiry. At the cessation of the Inquiry, all permanent records were accepted by QSA whilst those of a temporary nature were transitioned to the custodianship of the Department of Justice and Attorney-General (Queensland). Restricted Access Periods (RAPS) apply to these records.

29. Persons wishing to make application to access those records should contact that Department for further information: Department of Justice and Attorney-General GPO Box 149 Brisbane QLD 4001 email: mailbox@justice.qld.gov.au website: <http://www.justice.qld.gov.au/>

Appendix 2

QH Payroll System Timeline

2002

Queensland Government establishes the Shared Services Initiative ("SS Initiative")

2007

March

Service Delivery and Performance Commission delivers a Report reviewing the SS Initiative (the Keliher Report)

18 April

Mr Gary Uhlmann of Arena Consulting presents "Snapshot" review of the SS Initiative

May/June

Mr Burns delivers SS Initiative Replanning Report to CorpTech

2 July

Request for Information ("RFI") on delivery of SS Initiative issued. Accenture, IBM, Logica and SAP respond

2008

18 January

SOW 8 produced by IBM and introduced into the Contract.

Go Live date delayed to September 2008

18 June

Change 60 pays IBM \$1.88 million for a schedule delay citing "customer based issues"

Go Live date delayed to 18 November 2008

1 July

CorpTech transfers from Queensland Treasury to the Department of Public Work

230

2009

January 2009

User Acceptance Testing ("UAT") Phase 1 commences

27 January

Meeting between Ms Anna Bligh, Mr Robert Schwarten and Mr Malcolm Grierson informally resolves that no further SOWs would be entered into with IBM

30 June

Change 184 executed to clarify the project scope. IBM paid an addition \$9 million dollars for this Change. Go Live date delayed until 6 November 2009

2010

14 March

The Project Board, on the recommendation of the Project Directorate, decides that the system will Go Live

29 June

The State issues a Notice to Show Cause to IBM

22 September

The State and IBM enter into a Supplemental Agreement

1 November

CorpTech takes delivery of the System

25 July

Request for Proposal issued by Mr Burns to Accenture, IBM, Logica and SAP for further information based on RFI responses

16 August

CEO Governing Board decides to appoint a Prime Contractor for the delivery of the SS Initiative

12 September

Invitation to Offer ("ITO") issued to Accenture, IBM and Logica

5 December

GITC Contract signed between the State of Queensland and IBM for the Prime Contractor for *"the Shared Services Solutions Program for the Queensland Government"*

Go Live date for Interim Solution anticipated to be July 2008

30 June

LATTICE is no longer supported by the Vendor
CorpTech assumes support of LATTICE under the project "PJ30"

11 November

Change 129 executed prescribing certain testing as a condition precedent. Testing was required to be passed by 30 November 2008

28 November – 12 December

Changes 174, 177 and 179 extend time for compliance with condition precedent to 23 December 2008

31 August

Change 200 defers Go Live date to 20 November 2009

12 November

Change 202 noted parties working towards Go Live date of 22 March 2010

24 December

Change 208 executed which altered criteria to allow system to exit from UAT4

Appendix 3

Opening Remarks

Friday 1 February 2013 Directions Hearing

Opening Remarks of the Commissioner

I have been appointed by the Governor in Council to make a full, careful and independent inquiry into the implementation of the Queensland Health Payroll System which occurred in March 2010.

My inquiry is to have regard to previous reviews. There have been many but the only ones of direct relevance are the Auditor General's Report No. 7 of 2010 to Parliament, and two reviews by KPMG in May 2010, into the viability of the system and the difficulties of implementation.

I have been directed to inquire particularly into:

- a. the procurement, management and governance of the implementation;
- b. whether the procurement and implementation broke any laws, contractual provisions, codes of conduct or other government standards; and
- c. the reasons why the price fixed by the contract between the State of Queensland and IBM Australia Limited increased substantially.

I have also been asked to make recommendations to improve the policies, processes and standards applicable to major Queensland Government information and technology projects, to ensure that in the future high quality and cost effective products and systems are delivered.

The factual background to the inquiry is notorious. The contract price negotiated for the design and implementation of the new payroll system was agreed at \$6.19 million but by the time the system was put into operation the amount paid to IBM had exceeded \$37 million. The Government's own costs, incurred on its side of the implementation, were a further \$64 million.

In May 2012 KPMG provided another review. It noted that the costs incurred in operating the system to that date had exceeded \$400 million. The estimated costs of making the system function for the next five years is another \$836 million. The system which was meant to be efficient, economical and largely automated required more than 1,000 payroll employees to perform about 200,000 manual operations and to process 92,000 forms every fortnight.

The human cost of implementation was also high. The system ignored many employees who went unpaid or underpaid. A number were made temporarily destitute, unable to afford the basic necessities of life. Some who were overpaid were falsely accused of fraud. It was, for all affected, a time of great anxiety and hardship. The inquiry is to determine why such large amounts of money have been lost to the public, whether anything might be recovered; and why such distress was inflicted on the Queensland Health workforce.

To assist me in my inquiry the Crown has appointed Mr Peter Flanagan QC, Mr Jonathan Horton and Ms Anastasia Nicholas of Counsel.

The process of interviewing witnesses, and collecting and analysing documents, has begun, but the task is large. The Commission will not be in a position to commence public hearings for several weeks.

The purpose of today's hearing is to announce the commencement of the Commission and to decide applications for leave to appear by those who have a particular interest in the inquiry.

I invite, and indeed urge, any persons who have information or evidence relevant to the Commission's Terms of Reference, and who have not contacted Commission staff already, to do so. In the first instance contact should be made with the Executive Director, Mr David Mackie.

Any such person who does contact the Commission will be treated with tact and respect, and afforded complete confidentiality. They will have the full protection given to witnesses by the Commissions of Inquiry Act.

The public, parties and the press will be given adequate notice of the date when the Commission will begin public hearings.

Opening Remarks of Counsel Assisting Mr Peter Flanagan QC

Mr Commissioner, this inquiry concerns a contract which the State of Queensland entered into with IBM Australia Limited on 5 December 2007.

That contract was for the provision by IBM of 'ICT' services, which were to be further defined in a Scope of Works.

The contract was awarded following a 'closed' tender process to which three companies submitted responses. The successful tenderer was IBM.

After some 're-scoping' of the contract in September 2009, the services which IBM was required to provide were predominantly focused on Queensland Health's payroll system. That involved replacing a system with Queensland Health, known as 'LATTICE'. That system is said to have required replacement because its supplier would no longer support it.

The nature and scope of the contract means that there is some relevant history, including as to the selection of the software and the implementation of a similar system in the Department of Housing. Also relevant is the involvement of government agencies other than Queensland Health, and in particular CorpTech, a special commercialised business unit established in 2003 initially with Treasury and ultimately within the Department of Public Works.

In March 2010, the new Queensland Health payroll system 'went live', after a number of deferrals. Delivery of the system was very delayed. Problems became apparent immediately. A very large number of staff were not paid at all, and many were over- or under-paid.

The system continues to prove costly and labour intensive to operate.

Mr Commissioner, you have already referred to the Terms of Reference. They expressly require you to have regard to previous reviews of the Queensland Health Payroll System Implementation. Those reviews include the KPMG Implementation Review dated 31 May 2012 and the Auditor General of Queensland's report titled '*Information Systems Governance and Control, including the Queensland Health Implementation of Continuity Project (2010)*' dated June 2010.

There are other reviews that will be tendered in due course. Since the announcement of the Inquiry in December 2012, and prior to the formal commencement of the Order in Council, namely 1 February 2013, steps have been taken to establish the Inquiry. These steps include not only the necessary administrative arrangements, but preparatory work in terms of identifying relevant witnesses, and categories of documents which will be necessary for the conduct of the Inquiry.

Given the Terms of Reference, may we make it clear that Counsel Assisting are aware that there have been previous reviews and we are familiar with them.

Preparatory work has been undertaken in identifying, on a preliminary basis only, the primary issues which the Inquiry might investigate. These issues, which I will shortly outline, demonstrate that the Inquiry does not seek to repeat the work of the various reviews, but will go deeper with its additional powers and direct its efforts to shedding light on key decisions that were made in relation to the tendering process, implementation of the contract, changes to its scope, the decision to Go Live made in March 2010, and the decision to compromise any potential action against IBM by the State of Queensland.

This analysis will be conducted with a view to establishing, as chronologically as possible, the underlying facts which led to these decisions. This issues-based approach will also have regard to whether laws, contractual provisions, codes of conduct or other government standards may have been breached during the procurement and/or the implementation process and identifying who, if anyone, is accountable for these breaches.

Ultimately, a chronological approach to the underlying facts which led to the relevant decisions will be examined for the purposes of this Commission making recommendations about changes to existing procurement contract and project management policies, processes and standards and contractual arrangements for major Queensland Government information and communications technology projects.

Whilst this approach may be suggestive of a rather arid review of facts, we wish to note that the failure of the system after the Go Live date had real and ongoing human consequences for many staff of Queensland Health. The impact that the failure of the system had on individuals is not a part of this Inquiry, but we wish to acknowledge that the failure had this effect and its reality.

Might I outline now the main questions which, at this early stage, seem to be ones which warrant particular attention as part of the present Inquiry.

1. Was the tender process fair and proper?
2. As to contract management and implementation:
 - a. Was it right to select the software that was used?
 - b. Were the governance arrangements for the project adequate and clear?
 - c. What did IBM know about what was required, from the tender, from its previous involvement with Government, and from its own investigations and inquiries as part of this particular project?
 - d. How and why did the Contract change in scope and was the scope clearly stated?
 - e. Why was the decision made to Go Live when it was? The decision to Go Live, and in particular what testing was done beforehand and whether the decision to do so was one which ought to have been made, and who was involved in making that decision?
 - f. In a more general sense, how did all parties perform their obligations under the contract?
3. Generally, the State's settlement with IBM.

Finally, we are aware of earlier reports published by the ABC and *The Courier-Mail* in which persons have indicated they have knowledge of irregularities and problems which affected the tender process and the contract implementation. We have written to both the ABC and to *The Courier-Mail* inviting those media organisations to draw to the attention of those informants, the establishment of this Commission and to invite those persons to make contact with Commission staff.

We would encourage any such persons to make contact with Counsel Assisting to give any information or documents they might have about matters within the Terms of Reference.

Contact with the Commission and with Counsel Assisting can be made by using the details on the Commission website:

www.healthpayrollinquiry.qld.gov.au

or in person with Mr David Mackie, the Secretary to the Inquiry on 3109 1734.

Monday 11 March 2013

Hearings on Procurement Process

Opening Remarks of Counsel Assisting Mr Peter Flanagan QC

Introductory

Mr Commissioner, this first two weeks of evidence will look at the adequacy and integrity of the procurement process. This issue was not within the scope of the Auditor-General's Review nor any other review.

The Commission will be calling 23 witnesses to give oral evidence and will tender the written statements of a further six witnesses.

The tender process was the subject of anonymous allegations of collusion made on ABC radio on 2 November 2012. These allegations were made by a person referred to by the interviewer as "*Margaret*". The Commission has identified and interviewed the person who participated in the ABC radio interview. A statement has been taken from this person and will be tendered in evidence. Suffice to say that upon investigation, the person who made these allegations was not employed at Queensland Health until after the tender process had concluded. Accordingly, no direct evidence of any alleged collusion in the tender process was provided by this witness.

Since the commencement of this Inquiry on 1 February 2013, the Commission over the past month has received and reviewed an enormous number of documents provided pursuant to requests directed to the State, IBM and other parties. The Commission has conducted numerous interviews with witnesses and potential witnesses and has informed itself about matters concerning the tendering process as well as State practices and procedures in that regard.

Over that month, certain lines of inquiry emerged and issues of apparent importance to the tender process were identified.

The Commission has distilled, as best it could in the time available, the most relevant documents in respect to the tender process. This has resulted in a 32 volume bundle of documents which I tender.

Although this may appear to be a large bundle, it is only a very small portion of the even larger number of documents which were produced to the Commission. There are however key documents relevant to the tender process which, despite numerous requests, have not as yet been located by the State. These include the tender directory and conflict of interest declarations for the ITO process.

I propose, Mr Commissioner, in these remarks this morning to give a brief overview of the issues which the lines of inquiry exposed and which will be the subject of the evidence to be led in the next two weeks.

The tender issue

Generally speaking, the tender issue involves:

1. the events which led to it including an initial Request for Proposal;
2. the issue of the Tender Invitation itself (known as the ITO – Invitation to Offer) which occurred on 12 September 2007;
3. the way in which the responses of the 3 companies that responded to the tender invitation were analysed (and IBM selected as the party with whom the State would contract);
4. the people involved in those events and making the relevant decisions and whether each fulfilled his or her obligations.

There will emerge questions as to whether certain senior officials discharged their obligations and, in particular, the extent to which those officials ought to have relied upon an outsider – to the extent they did – to advise upon or decide the course the State ought to take.

It will be informative we hope, Mr Commissioner, for us to set out a little more about these points so as to give an overview of what we expect the evidence to be and the themes to be.

These are the themes which we have identified from having analysed the documents and interviewed numerous witnesses.

Until early 2007, the State was pursuing what it called the ‘Shared Services Initiative’ by itself rolling out computer system upgrades for Government departments. One of the agencies responsible was within Queensland Treasury was known as “CorpTech”.

The model which the State adopted in its roll out was to engage contractors to assist it. Under this model, the State remained the project manager and had prime responsibility for the Initiative – CorpTech was, in effect, the prime contractor of the State for the work it was gradually undertaking.

The Shared Services Initiative, however, was not entirely smooth. There had been a significant slippage in its roll out and its initial budget was rapidly being expended.

The State commissioned several reviews of that Initiative.

Queensland Treasury wanted a new approach and commissioned various outsiders to help it decide what to do to speed up the delivery and to slow the rate of spending.

The Service Delivery and Performance Commission prepared a report on the Shared Service Initiative in March 2007. That report made a number of recommendations about changes which ought to be made to the Initiative. Many of them recommended that the Under-Treasurer cause certain tasks to be undertaken directed, in a general sense, to seeing if the Initiative could be better and more cost-effectively organised.

The Under-Treasurer was at that stage Mr Gerard Bradley.

He commissioned, in April 2007, a high level review of the Initiative. That review was conducted over about 5 days by Mr Gary Uhlmann, Mr Mark Nicholls, Mr Terry Burns and Mr Keith Goddard.

Mr Burns had only recently arrived in Brisbane and this was the first work he had ever done for the Queensland government – indeed the first work he had ever done in Queensland or Australia. He was, apart from having come well-recommended (but from people who could not have known him more than a few weeks and who themselves were contractors), unknown to people within CorpTech. He came, however, with an impressive CV,

having worked in senior roles and importantly for present purposes in IBM in South Africa (as its “top man” for 3 years as he said to us) and have run - and saved - several very large projects in the UK and New Zealand.

The 18 April 2007 report or presentation became known as the “Phase I” report.

This was the first of four reviews.

The subsequent reviews were undertaken by Mr Burns alone. The reliance placed upon Mr Burns - for such an important matter – is a particular issue which is of interest and which will be pursued in the oral evidence. We know that within a very short time, he had what he described as a “short line” to Mr Bradley, the Under-Treasurer.

Mr Burns undertook a review in May 2007 – the Shared Services Replanning Report.

That report (also known as the “Phase II” report) gave a pessimistic view of the Shared Services Initiative as presently being implemented. It would be late and over budget it was said. Mr Burns recommended that the State appoint a Program Delivery Director and a “highly empowered program management office to provide the disciplined process which the Program Delivery Director would rely on” .

At this time, there does not seem to be any suggestion - on the documents at least - that the State would change course and appoint a prime contractor to assume the role it has previously had for the Initiative. But that advice must have been given and acted upon before late July 2007, as will be seen presently.

It is a matter of interest that Mr Burns came to occupy some of the positions which he had recommended be established and which he recommended to be “highly empowered” ones.

Even at the early stage of the Phase II review, and well before the State had decided to change the model for delivery of the Shared Services Initiative, Mr Burns was having discussions with IBM about its possible involvement in the Initiative. It will be a line of inquiry to ascertain the nature and extent of those communications, whether they were authorised and whether they gave IBM an unfair advantage in the tender process which was to follow.

At some stage – we are not entirely sure when precisely - Mr Burns suggested to the State that it move to a prime contractor model, ie engage a major company to not just deliver the Initiative, but project-manage it.

These events coincided with the then head of CorpTech (a Mr Geoff Waite) leaving his job. He was replaced by Ms Barbara Perrott, who up until then had been working on other aspects of the Initiative.

Mr Terry Burns had never before done work for the Queensland Government. He had never before worked in Queensland. He came well-recommended by one contractor who was known to CorpTech.

There were successive reviews. One is dated 15 September 2007 (and known as the “Phase III” report). It too was a report of Mr Burns. It recommended the establishment of a ‘Solution Design Authority’ which would identify and own the restated solution model. There was also a “Phase IV” report.

The issue of a prime contractor model had been considered – perhaps as part of the “restated solution model”. In late July 2007, CorpTech sought the advice of Mr John Swinson from Mallesons as to whether, given the existing contractual arrangements which the State had in place with various “vendors”, it was legally even possible for the State to move to appoint a prime contractor.

Advice of that kind was sought on 26 July 2007. Mr Swinson was asked to consider the matter overnight. The next day, he conferred with Treasury legal officials and advised that there was no impediment to the State moving to a prime contractor model.

This was the legal advice. The advice about the desirability of that move seems to have come from Mr Burns in his various reviews or reports.

A Request for Proposal (RFP) was issued in about July 2007. It was issued to some 11 external service providers (including IBM, Accenture and Logica). Only four companies responded to the RFP, namely, IBM, Accenture, Logica and SAP.

There was an evaluation of the RFP responses. It has been unclear on the material we have seen just how extensive or rigorous it was. The participants in it (which included Terry Burns) signed a conflict of interest declaration. Despite having worked at IBM including, as he told us for 3 years as its “top man” in the Cape Province in South Africa, and having worked since with IBM in New Zealand as part of a large project, Mr Burns declared “None” on his conflict of interest declaration.

After the RFP, there was some attempt made to regularise the process. Advice was obtained from John Swinson of Mallesons and Treasury legal officer Mr David Stone. In one meeting with Treasury legal officials, Mr Burns told the meeting he had already had “RFO discussions” with two vendors.

Treasury had become involved, it seems, after Ms Maree Blakeney, who seems to have had an important role in the RFP process and the tender process which followed it, raised concerns that Mr Burns had been out talking to potential vendors. The evidence will show that Mr Burns had a number of one on one meetings leading up to this RFP process with Mr Bloomfield of IBM.

It has not yet appeared clearly which of the RFP respondents was preferred, and whether there were any attempts to contract with one of them at that stage rather than proceed to the ITO stage. Some documents do demonstrate that after the RFP process, Accenture was rated first followed by IBM. This was certainly the belief of Mr Marcus Salouk who was leading the Accenture proposal.

It was later decided to issue an Invitation to Offer (ITO). That took place on 12 September 2007. It was a “closed tender”, and was issued only to IBM, to Accenture and to Logica. SAP had withdrawn from the process.

The ITO invited responses from a “Shared Services Solution Prime Contractor”. The scope of the response was wide. The prime contractor was to ‘plan, resource, coordinate and manage the overall Shared Services Solution program’.

Each of the 3 invitees submitted responses. Logica was regarded as non-compliant because its tender did not respond to all of the relevant services which were required.

Before turning to the evaluation phase, can we pause, Mr Commissioner, to make some observations?

First, the process up until this point was conducted in an atmosphere of urgency. We have inquired about the causes of it. It would seem that there was a concern that, because the Shared Services Initiative to date had been expensive and was delayed, there was a need to proceed with urgency to a new model.

We see the urgency manifest in asking Mr Swinson to advise overnight. We see it in discussions taking place before it has even been decided to engage a prime contractor. We see it in the engagement of an outsider charged with “accelerating” the solution and we see it in an abbreviated timetable for the drafting of the ITO and for the submission of responses to it (less than 4 weeks).

Secondly, we see a change from the early review to the later review. At first, it is recommended that the roll out in Queensland Health be one at a later stage. By the Phase III report, Queensland Health is one of the first (or perhaps the first agency in which there is to be a roll out) using the Prime Contractor Model. It was known that Queensland Health was a complex agency from a payroll point of view.

So it is unclear why a decision was made to bring it forward. One reason may have been a belief (as was the case) that the vendor of the payroll system then in place at Health – LATTICE – would soon cease its support of it, meaning that the need for the new system became more important. You will hear evidence, however, Mr Commissioner, that it is far from clear that this is the case both because CorpTech, though Mr Darrin Bond, had acquired people who were capable of maintaining LATTICE and CorpTech had acquired the necessary codes to permit it to do that. Moreover, there is some evidence to suggest that the LATTICE vendor (Talent2) would have, if paid to do so, continued its support. We know of course that LATTICE stayed in place at Queensland Health until the Go Live date for the SAP payroll system in March 2010.

We have had, Mr Commissioner, some difficulty in understanding why there was such urgency and we will inquire whether and to what extent it was justified to adopt such an approach and cut the corners which an urgent approach seemed to justify. Whether that was warranted in such a large and important project is one of the issues which we will submit requires some attention.

Thirdly, the move to a Prime Contractor Model involved that company providing the ‘project management’ component. By that we mean, preparing the schedule, the specification and program and project management documentation. One of your terms of reference, Mr Commissioner directs to you inquire whether project management practices were breached. You will hear evidence of the extent to which IBM met its obligations in the next block of hearings which concern the contract, and parties’ performance under it and the State’s management of it.

ITO Evaluation

We indicated earlier saying something of the ITO Evaluation.

An evaluation panel was established. It comprised as “Project Lead Advisor”, Mr Terry Burns. Again, we see his name prominent in the process.

The panel was divided into sub-teams, with various leaders, including Mr Darrin Bond (Functional and Business and Technology), Philip Hood (Operations and Support) and Colleen Orange (Pricing).

The time allowed for the evaluation was short. Responses were received on 8 October and the Evaluation report was signed by the Chair (Ms Perrott) on 25 October.

You will hear evidence, Mr Commissioner, of what this process entailed. Sub-teams met according to topic to which they had been assigned. They also met as a group. The team with responsibility for pricing was kept quarantined from the others, the idea being that the other aspects of the evaluation not be tainted by questions of price.

Price takes on a special relevance, so I will turn to it specifically in a moment.

Evidence has emerged that, about two thirds the way through the evaluation process, Accenture was ahead. Mr Burns at this time met with sub-team leaders and urged them to reconsider their assessments. Mr Darrin Bond’s evidence, for example, is that this occurred and that, as a result, and feeling uncomfortable about it, he revisited the provisional scoring he had adopted. The result was that, at a time when it looked as though Accenture was in front, IBM took the lead on the provisional scoring.

Not all team leads have this recollection. There are others, however, who do have a recollection similar to that of Mr Bond.

What is interesting, however, is that the documents which the Commission obtained showing the draft scoring, does show IBM on any many issues not to have been ahead in the initial evaluation. One important example of the change in the assessment of IBM’s tender response is that more “strengths” are listed for IBM and, in particular, IBM’s response is described as being “innovative”, a word which resonates with the discussions which Mr Burns apparently had with Mr Bloomfield of IBM in about early May 2007, about IBM’s response needing to be innovative.

The reference to the IBM proposal being “innovative” seems to be to it using a programme called “Workbrain” as the awards engine, ie putting the details of the awards (which are complicated) in Workbrain rather than SAP, the other and more proven program which was being used. This issue too is of interest, but it primarily arises when it comes to considering IBM’s performance under the Contract. The question remains, however, at this point, whether this was “innovative” of IBM or simply unsafe or overly risky.

We said we would say something of the evaluation of price. The assessment of the pricing component was that IBM’s proposal was the “least cost”. We have had some difficulty understanding how that assessment could have been made. Not only is the pricing in the various tender responses difficult to follow, the various proposals are difficult to compare, especially with the certainty which the pricing assessment seems to assert.

There is another complication. IBM’s pricing was, in large part, on a “best estimate” basis. So when the pricing was to be compared, it is difficult at present to see how the comparison was on a like for like basis.

Might we add, Mr Commissioner, that we pursued this issue with some focus. But we have not yet been able to ascertain, despite having interviewed all of the relevant price evaluation witnesses, not only precisely how that assessment was arrived at, but whose view it represents. This is an issue which will require some further attention in the public hearings, being one of the most important reasons why IBM was selected over other tenderers, the assessment on the other criteria being, for all present material purposes, relatively close as between IBM and Accenture. It is also an issue of public interest because it involves the expenditure of public funds and is part of the point to which one of the terms of reference is directed [paragraph c]: namely how the contract price increased over time.

Ultimately, IBM won the tender. It was selected as the party with whom the State would enter into negotiations for a contract.

As we know, that contract was executed on 5 December 2007. It was for the provision of services directed to the - now revamped – Shared Services Initiative.

Monday 22 April 2013

Hearings on Contract and Project Management

Opening Remarks of Counsel Assisting Mr Jonathan Horton

This block of hearings concerns two primary issues, both of which arise in the period after the tender was awarded to IBM. Those two issues are:

1. why and to what extent the price for the Queensland Health Payroll System increased over time;
2. the adequacy and integrity of the contract management, project management, governance and implementation process.

The Contract was executed on 5 December 2007. It was signed by Mr Gerard Bradley, the Under-Treasurer on behalf of the State of Queensland and by IBM Australia. It had attached to it, three Statements of Scope - they were the documents which provided the overall strategy or direction for the program, namely, being:

1. SOS1 - Lattice Replacement Design, Implement and Deploy. (This became the Queensland Health Interim Solution);
2. SOS2 - Phase 1 Priority Implementations;
3. SOS3 - Phase 2 Implementations.

In Schedule 23 of the Contract, you will see:

1. that Statement of Scope 1 was for the "Lattice Replacement Minimal Payroll Solution - Health" (shown in the blue box);
2. that "Phase 1" is the green boxes cascading down about half way down the page;
3. that "Phase 2" is the boxes at the bottom half of the page which cascade down and which are in green.

It can be seen that Queensland Health had been, by this time, brought forward, after which Phase 1 would be implemented. The fifth sub-stage of Phase 1 was the completion of the remaining work in QH. After that, Phase 2 (SOS 3) implementations were to take place. The only project taking place at the same time under this Contract was the early stages of the roll out in the Department of Education. You will hear today, both in my opening and from some of the witnesses, about the success or otherwise of the early stages of that project.

The Contract also had attached to it, when it was executed, six Statements of Work. The difference between Statements of Work and Statements of Scope are that the Statements of Work are contractual documents which specify a fixed price for IBM undertaking certain components of work under the Statements of Scope we have just mentioned. The Statements of Work which were entered into at the time of Contract were:

1. Transitioning;
2. Program management;
3. Shadow management;
4. Forward planning;
5. Priority Core, HR and Finance Development;
6. Lattice Replacement Interim Solution Scoping and Planning.

Two of these SOWs are of particular importance.

Under SOW 4, IBM provided a revised estimate of what it would cost to complete the program (Phases 1 and 2) and which contributed, you will hear, to a decision by the State not to permit any further Statements of Work to be entered into with IBM once those estimates clearly well exceeded the "best estimates" IBM had put forward in its ITO response.

SOW7 is also of importance. It was under this document that IBM was to "*conduct a series of activities and provide a number of specified deliverables relating to the scoping and planning for the Lattice Replacement Interim Solution*", including defining the recommended scope, developing fixed price for design, build and implementation and develop a plan for design, build, implementation and support.

There was no SOW6 agreed at the time of Contract. It is not relevant for present purposes.

Statements of Work therefore fulfilled two purposes:

1. to define with greater particularity and certainty what it was that IBM was to do under the Contract;
2. as a way of IBM converting the “best estimate” it had given in Statements of Scope to a fixed price.
Schedules 15-21 of the Contract are those which relate to pricing. Schedule 17 sets out the basis for turning best estimates into fixed price.

At the time of Contract, IBM was to scope the Queensland Health Payroll interim solution under SOW7. The price of that SOW was some \$475,875. Very soon afterwards however, the scoping exercise was extended under SOW8A. That document simply extended the time which IBM had to undertake the scoping exercise and the payment of an additional \$297,930. It was introduced into the Contract by Change Request 2 in late December 2007. That becomes relevant because one of the principal issues which seems to have been a contributor to the increase in the price was a lack of definition, it seems, in the scoping exercise which had been undertaken or, at least, a lack of certainty about it.

One of the deliverables in Statements of Work 7 was the scope of the system itself. That document is SOW8. It was introduced into the Contract by Change Request 5. IBM also delivered a QHIC Project Scope Definition - Version 0.12. It was one of the deliverables under SOW 8. This was the basis upon which the Health Project was to proceed. The price set for the project under the interim solution was over \$6 million, but as, Mr Commissioner, you will soon hear that extended well in excess of \$20 million.

I pause here, Mr Commissioner, to draw your attention to some important terminology in the Terms of Reference. Reference is made to project management. In a general sense, project management includes both program and project management. Program management relates to more overarching objectives or strategy, whereas project management is a particular undertaking, often within a wider program. The “program” here is the Shared Services Initiative as given expression in the Contract as a whole, namely Statements of Scope 1, 2 and 3, whereas the “project” is the Queensland Health Interim Solution.

Evidence will be led towards the end of the block of hearings about project management with a view to assisting you to make any recommended changes to existing policies, processes and standards to ensure the delivery of high quality and cost effective products and systems in the future.

The Go Live originally scheduled under SOW8, was late September 2008. IBM had said, however in the Contract that the Go Live would take place on 31 July 2008.

IBM went about its work to ascertain and define scope by, among other things, discussions with QH, review of existing process and systems documentation including QH’s list of agency specific requirements and conducting a series of scope validation workshops with QH and others. There is a real question whether it was ever completed, and if so, completed as a reasonably diligent and sophisticated contractor in IBM’s position ought to have done. IBM was responsible for doing that work.

There were in the order of 9 further Go Live dates. The index to the Bundle records them and their source. There were in the meantime, very many variations to the Contract and to SOW 8 to allow not only for the delays in Go Live but also for what was suggested by IBM to be (and apparently accepted by the State) changes - additions and extensions - to what IBM had originally been asked to do.

One real question however, becomes whether these dealings and changes were ones which ought to have been avoided had proper contract and project management taken place. It is beyond the scope of this Inquiry to revisit particular changes or inquire into whether, in a contractual sense, IBM ought to have proposed and the State ought to have accepted that particular variation. That would be, Mr Commissioner, a very large exercise which would consume more time than has been allowed. It would also potentially anyway, be futile because no doubt the contractual variations were validly effected.

Whether IBM or the State is to blame for these, the unavoidable facts are that this is a project which went well over time, involved far greater expense than had been fixed from the outset and consumed the time of very many public servants and involved, in addition to the Contract price itself, the expenditure of a very large amount of public money on something which ought to have been much more efficiently planned and implemented.

It is well known of course that this system went live on 14 March 2010. In the lead-up to that date, the system underwent User Acceptance Testing conducted by a firm named K J Ross. The head tester was Mr Brett Cowan. He tested the system for some nine months and repeatedly and clearly identified a very large number of major defects in the system. He will say that to identify such a large number of defects repeatedly showed that there was some basic problem with the system’s functionality, problems which

ought to have been identified and resolved well before User Acceptance Testing took place and something which showed, at the most fundamental level, that this system had major underlying problems. He prepared a report to that effect on 27 January 2010.

One does not have to have technical expertise to know from that report that the system was likely to have major problems on Go Live.

Two particular features of User Acceptance Testing will be pursued in oral evidence.

1. the first is the decisions which were made to water down the criteria by which this system entered UAT and exited it;
2. the second is the downgrading of defects (especially Severity 2) which were identified such as to allow the system to pass even those watered down criteria. This evidence is important because it tends to suggest that checks which had been put in place to avoid the very thing that occurred, were circumvented deliberately and in a way which could only have been done knowing that this short-term view was only delaying what was, if not inevitable, highly likely. Defects, you will hear, ought to be downgraded only on proper, considered bases and certainly not on wholesale or pragmatic ones.

Before the ultimate Go Live decision was made, Mr Terry Burns undertook a risk assessment. It informed the Project Directorate (a recommending body for Go Live) and also the Project Board (the approving body for Go Live). That portrays the risk of failure of the Lattice system to be “extreme”. It also identifies a risk that the system will not function entirely properly upon Go Live. The oral evidence will cover the factors which went to the Go Live decision, and in particular, whether the risks were accurately understood, appreciated and investigated.

One particular fact which will become clear, is that there was a belief - perhaps rising as high as hysteria - that the LATTICE system was at risk of imminent failure, that each successive pay run might result in no QH worker being paid.

That view, apart from never apparently having been properly investigated and understood in any focused, calm and applied manner on the documents the Commission has, may be wrong. The Commission has heard evidence of a team within CorpTech set up to maintain LATTICE in light of its vendor no longer supporting the product. The fact also remains that Queensland Corrective Services for example, continues to use LATTICE up to this very day. Now QH is of course a more complex organisation, but one line of inquiry which will be pursued in oral evidence, is whether it was accurate to assess this risk as one of “imminent” failure. Any good risk assessment requires a proper assessment and weighing of the risks.

It will be suggested ultimately that the risk of the LATTICE failure was overstated and the risk of the system failure, the new system failure, was understated and that the risk assessment fundamentally miscarried.

So I return, Mr Commissioner, to the issues I identified at the outset:

1. how and why the price increased over time;
2. management of the Contract and the project.

As to price for the QH system, it rose from \$6.9million to, ultimately, \$25.7million. That was in the context of an increase also in the estimated price to complete the program as a whole. You will recall, Mr Commissioner, that IBM quoted in the order of \$98million for the entire program in the Tender. But we know from Mr James Brown’s second statement (Attachment 3), that by the time the “go forward” strategy was complete, IBM was estimating some \$133million as at August 2008 and some \$181million as at 31 October 2008 - a massive increase on what had originally been represented to the State as being a likely cost of the program.

This, along with other factors, caused the State to lose faith in IBM.

On 29 January 2009, the Executive Steering Committee met and decided that IBM’s work was now to be limited to Queensland Health only. This was preceded by three factors:

1. the “go forward” assessment which manifestly increased the original IBM assessment of the likely price;
2. the experience which the State had had with IBM in its implementation of the interim solution within Queensland Health;
3. the roll out (or attempted roll-out) of a Human Resources solution in the Department of Education by IBM which, the bare facts suggest, failed.

After the January 2009 Executive Steering Committee meeting, a brief was sent to the then Premier, Ms Bligh, a meeting occurred with Ms Bligh in about July 2009. It would appear that the then Premier made a decision also that IBM ought not to be engaged to undertake new work under the Contract through any new Statements of Work. The former Premier will be called to give evidence, but because her evidence is relevant also to the settlement which the State reached with IBM and in order to avoid unnecessary disruption, we propose to call the former Premier in the next block of hearings about settlement, but also covering issues relevant to the down-scoping decision.

These steps culminated in a CBRC decision on 21 September 2009, by which it was resolved, in effect, that IBM not undertake any other work under the Contract, but would continue with the Health Payroll system implementation.

There remains of course the question, Mr Commissioner, why, if IBM was thought not to be trusted to undertake further work for State of Queensland agencies, it was nevertheless permitted to continue with work which had been shown to be unsatisfactory in Queensland Health, a complex organisation which called for, if anything, greater diligence and application than did the other agencies.

Because of the depth of documents and the long period over which the system was implemented, it is foreshadowed that the evidence in this block of hearings will concentrate on the following issues:

1. the obvious lack of clarity in the scoping of the Contract, beginning with IBM's representations about what it knew had to be done, its knowledge of QH, its knowledge of Workbrain, through to the major changes to scope in Change Request 60 and 61 and then between Change Requests 129-184. Both Change Request 60 and Change Request 184 resulted in changes to the scope of the Contract and questions arise why this was necessary. In the case of Change Request 184, an additional payment was made of \$9million which was more than the original Contract price.
2. why, when User Acceptance Testing (UAT) was being conducted and numerous major defects were known, that did not act as a warning to those involved and why, instead of heeding that warning, criteria were changed and defects were downgraded but which seemed only to delay the inevitable and contribute to problems experienced after Go Live;
3. the Go Live decision - why it was made, by whom it was made and the factors which informed it. In particular, the accuracy of the assessment of risk beforehand will be considered. You will hear of great fatigue in the project for Go Live, long hours and the culmination, an expert will say, of these things was a death spiral in the project: fatigue, lack of definition and a lack of rigour.
4. the fourth issue is IBM's competence in implementing the system. The Commission has had assistance from a Dr David Manfield, an expert in these matters who will express the view that IBM's implementation of the system was less than diligent;
5. the extent to which the State diligently applied itself to managing the Contract and managing its vendor, IBM. The Commission has had assistance from an expert in IT contracts, Mr John Gray. He has expressed the view in his report that the Contract, although perhaps not by any means ideal or even consistent in some respects with good practice at the time, exposed the State to a particular risk, namely in the lack of scope definition and called for it to apply some considerable diligence to managing its vendor. What appears to have occurred, Mr Commissioner, is that, having abandoned the internal management model, and moved to the prime contractor model, the State overlooked the fact that the same deficiencies which may have existed under the internal management model, would only arise again in its management of a prime contractor. In short, the outsourcing of the management of the program and project did not mean that the State could be tardy in its insistence upon:
 - a. proper scoping;
 - b. communication to the prime contractor of its business requirements and processes what it required of the system; and
 - c. to its vendor – IBM - compliance with its contractual commitments.

It is expected that there will be called to give evidence some 23 witnesses. They fall into these groups:

1. CorpTech workers (who refer to the difficulties in dealing with IBM and in the implementation generally at the practical level);

2. Mr Swinson, from Mallesons who did some of the work with a view to taking formal action against IBM under the Contract. He was ultimately told to down tools. Mr John Gray, an IT contract expert will also give evidence - as an expert - to the effect that the Contract called for the State to apply particular diligence in managing IBM;
3. workers in QH and in the payroll section who will also speak of the difficulties experienced from their side of the implementation;
4. the then Director-General of Health (Mr Reid) will give evidence to the effect that he made attempts with CorpTech to extricate QH from the whole-of-government / IBM arrangement but had no success and resigned himself in effect to QH remaining as part of the whole-of-government solution;
5. we will then call the IBM program and project directors for the relevant period: Mr Doak, Mr Hickey and Mr Gower;
6. they will be followed by senior staff within CorpTech and Public Works, including the then Director-General, Mr Grierson;
7. we will then call Dr David Manfield (a technical expert);
8. Mr Malcolm Thatcher will be called to give evidence from the Mater Hospital. The Mater made an unsolicited submission to the Inquiry. That information is of interest because it provides some insight into how an implementation in the health sector can be effected and the characteristics of a successful one;
9. the former Premier Ms Bligh will also be called. But because, as we have said, her evidence is relevant also to the settlement issue, Ms Bligh will give her evidence in the course of the next block of hearings - about her knowledge of the contract issues (mainly the down-scoping and negotiations which the former Premier conducted with IBM) and about the factors which informed the State's decision to settle its dispute with IBM.

Appendix 4

Copy of Public Notice

Advertisement

Public notice

Queensland Health Payroll System Commission of Inquiry

The Queensland Government has commissioned the Hon Richard Chesterman AO RFD QC to conduct an inquiry into the implementation of the Queensland Health Payroll System under the *Commissions of Inquiry Act 1950 (Qld)*.

The Commission's establishment takes effect on and from 1 February 2013 and a report is to be made to the Premier by 30 April 2013.

The Commission's Terms of Reference are available at www.healthpayrollinquiry.qld.gov.au

Any person having information on matters within the Terms of Reference are invited to contact the Secretary to the Commission.

Parties intending to seek leave to appear should notify their intention to do so in writing to the Commission. The Commissioner will hear any such applications and hear opening submissions on 1 February 2013.

For further information, contact:

Mr David Mackie
Secretary, Queensland Health Payroll System
Commission of Inquiry
GPO Box 13674 George Street QLD 4003
Tel: 1300 887 081
info@healthpayrollinquiry.qld.gov.au

Authorised by the Queensland Government, George Street, Brisbane.

Appendix 5

Acknowledgements

The Inquiry wishes to thank the following people for their assistance.

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Queensland Audit Office

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IS Director
Queensland Audit Office

Ms Melinda Pugh
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Appendix 6

Inquiry Staff

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Hon Richard N Chesterman AO RFD QC

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Mr Peter Flanagan QC

Mr Jonathan Horton

Ms Anastasia Nicholas

Secretary (Executive Director)

Mr David Mackie

Official Solicitor (Director)

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Mr Sean O'Connor

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Ms Emma McGrath

Senior Legal Officers

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Ms Alice Molomby

Ms Lauren Coman

Legal Officers

Ms Wylie Nunn

Ms Amanda Hickey

Mr James Grehan

Mr Toby Corsbie

Paralegal

Ms Caitlin Morgan

Associate / Legal Officer

Ms Amy Tuite

Investigations Officer

Mr Tony Cross

Queensland Police Liaison Officer

Mr Mark D'Hage

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Ms Jodie Weatherall

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Ms Caroline Muller

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Ms Carmel-Lee Skinner

Administration Officers

Mr Brandon Naidoo

Ms Jessica Lamers

Ms Lisajane Messenger

Ms Deborah Hide

Mr Joshua Densley (work experience)

Editor

Ms Sandra Clayton

Appendix 7

Legal Representatives

Persons Given Leave to Appear	Legal Representatives
The State of Queensland	Mr MacSporran QC, Mr Kent, Mr Ferrett, Ms Stoker instructed by Crown Law
IBM Australia Ltd	Mr Doyle QC, Mr Cregan, Mr Pintos-Lopez, Mr Webster instructed by Ashurst Australia
Ms Anna Bligh	Mr Plunkett instructed by Maurice Blackburn
Ms Margaret Berenyi	Mr Pomeranke; Ms Downes QC instructed by Allens Linklaters
Mr James Brown	Mr Haddrick instructed by Fisher Dore Lawyers
Mr Ray Brown, Mr Michael Kalimnios, and Mr Adrian Shea	Mr Traves QC instructed by Minter Ellison
Mr Brett Cowan	Mr Ashton instructed by Small Myers Hughes
Mr Malcolm Grierson	Mr Mumford instructed by Howden Saggars
Mr Paul Lucas	Mr Bradley instructed by Maurice Blackburn
Mr Anthony Price	Mr Sullivan QC instructed by Cooper Grace Ward
Mr Michael Reid	Mr Ambrose QC instructed by Corrs Chambers Westgarth
The Hon Robert Swarten	The Hon M Foley instructed by Cranston McEachern
Mr John Swinson	Mr Devlin QC instructed by King & Wood Mallesons

Appendix 8

Exhibits List

Exhibits Tendered at Hearings of the Queensland Health Payroll System Commission Of Inquiry

Exhibit Number	Description
1	KPMG, <i>Queensland Health: Review of the Queensland Health Payroll System</i> , dated 31 May 2012
2	Auditor-General of Queensland, Report to Parliament No.7 for 2010, " <i>Information systems governance and control, including the Queensland Health Implementation of Continuity Project</i> ", Finance and Compliance Audits, dated June 2010
3	Submissions on behalf of the State of Queensland dated 1 February 2013
4	40 Volumes of documents relevant to tender hearings identified and compiled by the Queensland Health Payroll System Commission of Inquiry
5	Statement of Marcus Salouk signed 5 March 2013
6	Letter Ashurst Australia to Fran Copley (QHPSCI) dated 11 March 2013 regarding Queensland Health Payroll Commission of Inquiry – Requirement to Produce Documents
7	Statement of Michael Duke signed 7 March 2013
8	Statement of Darrin Bond (undated)
9	CorpTech, <i>SSS Directions Paper</i> , dated June 2006
10	Program 42, <i>Workbrain Scalability Assessment Test Plan</i> , Version 1.1 Final, dated 2 May 2008
11	Statement of Philip Hood signed 4 March 2013
12	Replacement page for Exhibit 4, Volume 19, Page 40, <i>Evaluation Criteria, Team Operations and Support</i> , Version 1.3 dated 4 October 2007
13	Statement of Colleen Orange signed 8 March 2013
14a	Statement of Joanne Bugden signed 6 March 2013
14B	Statement of Joanne Bugden signed 15 March 2013
15	Statement of Rose diCarlo signed 8 March 2013
16	Statement of Michael Lewis signed 7 March 2013
17	Statement of Maree Blakeney (undated)
18	Statement of Shaurin Shah signed 6 March 2013
19	Accenture, <i>Accenture Cost Breakup Matrix Spreadsheet</i> (undated)

Exhibit Number	Description
20	<p>Bundle of Emails:</p> <ol style="list-style-type: none"> 1. Email Paul Surprenant (IBM) to Diann McMillan (CorpTech), cc: Lochlan Bloomfield (IBM), Keith Goddard (CorpTech), Terry Burns (CorpTech) Subject: CorpTech. IBM Request for Information Sent: 23/07/2007 at 04:10PM Attachment: Request for Information Log 2. Email Shaurin Shah (CorpTech) to Paul Surprenant (IBM), cc: Lochlan Bloomfield (IBM), Trish Brabyn (CorpTech), Diann McMillan (CorpTech) Subject: Training Related Information Sent: 24/08/2007 at 03:05PM 3. Email Paul Surprenant (IBM) to Shaurin Shah (CorpTech) cc: Diann McMillan (CorpTech), Keith Goddard (CorpTech), Lochlan Bloomfield (IBM), Terry Burns (CorpTech), Trish Brabyn (CorpTech) Subject: Re: Training Related Information Sent: 24/08/2007 at 04:11PM 4. Email Shaurin Shah (CorpTech) to Lochlan Bloomfield (IBM) Subject: Meeting Offer Pre RFO Sent: 24/08/2007 at 04:54PM 5. Email Lochlan Bloomfield (IBM) to Shaurin Shah (CorpTech), bcc: Paul Surprenant (IBM), Jason Cameron (IBM), Chris Prebble (IBM), Brooke Freeman (IBM), Sara Simpson (IBM) Subject: Re: Meeting Offer Pre RFO Sent: 24/08/2007 at 05:56PM 6. Email Shaurin Shah (CorpTech) to Lochlan Bloomfield Subject: Re: Meeting Offer Pre RFO Sent: 27/08/2007 at 12:55PM
21	Statement of Gary Uhlmann signed 7 March 2013
22	Email Barbara Perrott (CorpTech) to Joanne Bugden (CorpTech), cc: Terry Burns (CorpTech) Subject: Re: Info provided to David (Document link: Joanne Bugden) Sent: 08/08/2007 at 12:14PM Attachment: High level financial analysis – 8 August 2007.doc
23	CorpTech, <i>Annexure 6 to the Invitation to Offer (Program Schedule vo.16)</i> dated 9 September 2007
24	Statement of Mark Nicholls signed 8 March 2013
25	Statement of Robert Mander signed 11 March 2013
26	Statement of David Ekert (undated)
27	Statement of Keith Goddard signed 5 March 2013
28A	Statement of John Swinson signed 13 March 2013
28B	Statement of John Swinson signed 19 March 2013
29	Statement of Damon Atzeni signed 1 March 2013
30A	Email Brett Tetlow (SAP) to Damon Atzeni (QH) Subject: The inside call is Accenture won the prime! Sent: 15/10/2007 at 08:36AM
30B	Email Damon Atzeni (QH) to Cathy Sparks Subject: Fwd: The inside call is Accenture won the prime! Sent: 15/10/2007 at 08:36AM Attachment: The inside call is Accenture won the prime!
31	Statement of Jason Cameron signed 18 March 2013

Exhibit Number	Description
32	Letter Ashurst Australia to Fran Copley (QHPSCI) dated 18 March 2013 Attachments: 1. Email Lochlan Bloomfield (IBM) To: None Subject: Fw: Did u speak with Barb this week? Sent: 03/08/2007 at 09:39PM 2. Email Lochlan Bloomfield (IBM) to Paul Surprenant (IBM) Subject: *Confidential: Accenture Intelligence Sent: 03/08/2007 at 09:45PM 3. Email Cheryl Bennett (IBM) to Lochlan Bloomfield (IBM), Rob Pagura (IBM) cc: Brooke Freeman (IBM), Chris Prebble (IBM), Cliff Bailey (IBM), Kate Hillman (IBM) Subject: Corptech Update... Sent: 22/08/2007 at 03:57PM 4. Email Joseph Sullivan (IBM) to Lochlan Bloomfield (IBM) cc: Jason Cameron (IBM) Subject: RFO Sent: 29/08/2007 at 04:00PM 5. Email Lochlan Bloomfield (IBM) to Joseph Sullivan (IBM) Subject: Re: RFO Sent: 30/08/2007 at 07:21AM
32A	Email 3 from Exhibit 32 (in full) - Email Cheryl Bennett (IBM) to Lochlan Bloomfield (IBM), Rob Pagura (IBM) cc: Brooke Freeman (IBM), Chris Prebble (IBM), Cliff Bailey (IBM), Kate Hillman (IBM), Keith Pullen (IBM), Sara Simpson (IBM), Jason Cameron (IBM) Subject: Corptech Update... Sent: 22/08/2007 at 03:57PM
33	Email Peter Munro (IBM) to Lochlan Bloomfield (IBM) Subject: Re: Workbain Development – B&P Request Sent: 11/05/2007 at 10:57PM
34	IBM, <i>Presentation: Complex Deal Meeting</i> , dated 20 August 2007
35	Statement of Lochlan Bloomfield signed 18 March 2013
36	Email Lochlan Bloomfield (IBM) to Peter Munro (IBM) Subject: CorpTech Pricing Sent: 03/08/2007 at 05:24PM
37	Transcript of Proceedings, dated 26 March 2013, Interviewers: Mr Jonathan Horton, Ms Anastasia Nicholas, Mr James Grehan, Ms Lauren Coman, Mr Ian Innes, Mr Stewart Webster, Interviewee: Mr Lochlan Bloomfield
38	Email Paul Surprenant (IBM) to Katherine Jade (IBM), Sunda Lakshminarayanan (IBM), Ujjwal Kumar (IBM) cc: Lochlan Bloomfield Subject: Fw: CorpTech Update – and then there were two... Sent: 21/08/2007 at 04:43PM
39	Calendar entry from calendar of Lochlan Bloomfield Appointment Subject: Terry Burns Starts: 22/08/2007 at 09:30AM Ends: 22/08/2007 at 10:30AM
40	Email Bob Weber (IBM) to IBM staff Subject: IBM Business Conduct Guidelines Education and Certification Sent: 22/08/2007 at 10:08AM
41	Bundle of emails: 1. Email Michael Duke (Logica) to Lochlan Bloomfield (IBM), Simon Porter (Accenture), Megan Janke (SAP), Chris Peck (SAP) Cathy Ford (AIIA) Subject: LogicaCMG and the Solution Restatement Sent: 09/07/2007 at 06:39PM 2. Email Michael Duke (Logica) to Simon Porter (Accenture), Lochlan Bloomfield (IBM), Megan Janke (SAP), Chris Peck (SAP) Subject: RE: LogicaCMG and the Solution Restatement Sent: 10/07/2007 at 10:43AM 3. Email Chris Peck (SAP) to Michael Duke (Logica), Simon Porter (Accenture), Lochlan Bloomfield (IBM), Megan Janke (SAP) Subject: RE: LogicaCMG and the Solution Restatement Sent: 11/07/2007 at 08:59AM
42	<i>ITO Pricing Schedule Spreadsheet</i> prepared by Lochlan Bloomfield (undated)
43	Queensland Health, <i>Datasheet awards example – Overtime Rules</i> (undated)

Exhibit Number	Description
44	Email Brooke Freeman (IBM) to Paul John (IBM) cc: Justyn Sturrock (IBM), Katherine Jude (IBM), Lochlan Bloomfield (IBM), Paul Surprenant (IBM) Subject: Re: CorpTech. Pricing v0.4.ppt Sent: 06/08/2007 at 07:10AM
45	Spreadsheets attached to Exhibit 44: 1. Pricing Corp Tech v11.xls 2. Pricing WoG v3.xls
46	Statement of Terence Burns signed 8 March 2013
47	Statement of Cheryl Jensen (née Bennett) signed 12 April 2013
48	Transcript of Interview dated 2 April 2013, Interviewers: Mr Toby Causby (sic Corsbie), Ms Anastasia Nicholas, Interviewee: Ms Cheryl Jensen
49	Statement of Robert Pedler signed 10 April 2013
50	Statement of Keith Pullen signed 10 April 2013
51A	Statement of Simon Porter signed 28 March 2013
51B	Statement of Simon Porter signed 11 April 2013
52	Shared Services Initiative, <i>SSS Program Rebuild Project Indicative program schedule</i> (undated)
53A	Statement of Barbara Perrott (née Kulpa) signed 22 February 2013
53B	Statement of Barbara Perrott (née Kulpa) signed 6 March 2013
53C	Statement of Barbara Perrott (née Kulpa) signed 14 March 2013
53D	Statement of Barbara Perrott (née Kulpa) signed 30 April 2013
54A	Statement of Gerard Bradley signed 1 March 2013
54B	Statement of Gerard Bradley signed 5 March 2013
55	Statement of Malcolm Campbell signed 15 March 2013
56	Statement of Jan Dalton signed 8 March 2013
57	Statement of Brooke Freeman signed 15 April 2013
58	Statement of Nigel Hey signed 27 February 2013
58A	Statement of Nigel Hey signed 25 March 2013
59	Statement of Janine Griffiths signed 28 March 2013
60	Statement of Colleen Papadopoulos signed 13 March 2013
61	Statement of David Stone signed 7 March 2013
62	Statement of Craig Vayo signed 8 March 2013
63	15 Volumes of documents relevant to contract and project management hearings identified and compiled by the Queensland Health Payroll System Commission of Inquiry
64	Statement of Robyn Turbit signed 28 February 2013
65	Statement of John Beeston signed 8 March 2013
66	Statement of Philip Hood signed 19 April 2013

Exhibit Number	Description
67	Statement of Jacek Klatt signed 16 April 2013
68	Statement of Malcolm Campbell signed 12 April 2013
69	Email Christopher Bird (CorpTech) to James Brown (CorpTech) cc: Malcolm Campbell (CorpTech) Subject: Fw: Scope Definition Document Actions from Meeting held 14/04/09 Sent: 21/04/2009 at 02:55PM
70	Malcolm Campbell, <i>LATTICE Replacement Implementation Project Discussion Paper: Defect Resolution Process</i> (undated)
71A	Programme 42, <i>QHEST Dataflow Landscape: Figure 4 – ‘As Is’ Landscape</i> (undated)
71B	Programme 42, <i>QHEST Dataflow Landscape: Figure 5 – ‘To Be’ Landscape</i> (undated)
72	Shared Services Initiative, <i>Deliverable Control Sheet: Scope definition for LATTICE Replacement interim solution</i> , dated 25 February 2008
73	Statement of Christopher Bird signed 5 April 2013
74	Draft Schedule 17 Notice to Remedy from the State of Queensland to IBM Australia Ltd, unsigned, dated March 2009
75A	Statement of James Brown (undated)
75B	Statement of James Brown signed 10 April 2013
76	Email James Brown (CorpTech) to Bill Doak (IBM) cc: Robyn Turbit (CorpTech), Philip Hood (CorpTech), John Beeston (CorpTech), Sally O’Carroll (CorpTech) Subject: Contract Comparison for IBM Sent: 19/12/2008 at 07:32AM Attachment: Contract Comparison for IBM.xls
77	Statement of John Swinson signed 19 April 2013
78	John Gray, <i>Expert Report for Queensland Health Payroll System Commission of Inquiry</i> , dated 8 April 2013
79	Statement of Janette Jones signed 28 February 2013
80	Statement of Adrian Shea signed 11 April 2013
81	Email Shaurin Shah (QH) to Brian Cox (CorpTech), Brian Frederick (CorpTech), Jane Stewart (CorpTech), John Gower (CorpTech), Mark Dymock (CorpTech), Nick Kwiatkowski (CorpTech), Amanda Doughty, Brett Cowan, Pierra Pienaar, Terry Burns, Anthony Price, Janette Jones Subject: Re: UAT entry and exit Sent: 11/08/2009 at 08:19AM Attachments: QHIC UAT e2e Entry Criteria v1.1_Final.doc, QHIC UAT e2e Exit Criteria_1.1.doc, Defect Classification Guidelines_ver 1.0.doc
82	Email Janette Jones (QH) to Philip Hood (CorpTech), Michael Kalimnios (QH) Subject: Fwd: Workbrain Performance Check Sent: 07/05/2010 at 03:03PM
83	Statement of Anthony Price signed 29 March 2013
84	Letter Ashurst Australia to Fran Copley (QHPSCI) dated 17 April 2013 re Queensland Health Payroll Commission of Inquiry – Requirement to produce documents <i>Attachment: IBM, Business Conduct Guidelines, December 2006</i>
85	IBM, <i>Government Client Guidelines – Global</i> dated December 2004 (attached to Exhibit 84 letter)
86	CorpTech, <i>Work Product Acceptance Sheet: SOW 8 – 3.15 (a-g) Test Phase Completion Report</i> dated 17 December 2009

Exhibit Number	Description
87	Documents relating to Business Attributes Document: <ol style="list-style-type: none"> 1. Queensland Health Enterprise Solutions Transition, <i>BRG Decisions</i>, dated 31 March 2008 2. Queensland Health Enterprise Solutions Transition, <i>BRG Decisions</i>, dated 28 April 2008 3. Email Cathie Franks to Carissa Hagenbach, Merran Hased, Natalie Morrison, Robert Rule, Theresa Hodges cc: Emma Bailey, Russ Wilde Subject: Re: Fwd: Emailing: Bad covering Sent: 16/05/2008 at 03:04PM (with handwritten annotations by Theresa Hodges) 4. Queensland Health Enterprise Solutions Transition, <i>Business Attributes Document Version 5.01 (BAD V5.01)</i>, dated May 2008 5. Queensland Health Enterprise Solutions Transition, <i>Business Attributes Document Version 6.0 (BAD V6.0)</i> (undated)
88	Program 42, Process Design Report: 2.3.1 Process and Reconcile Payroll Version 3.0, last executed 17 July 2008
89	Statement of Michael Kalimnios signed 12 April 2013
90	Statement of Michael Reid signed 24 April 2013
91	Brief for Noting to Deputy Premier and Minister for Health from Director QHEST Subject: Interim Payroll Replacement – QHIC, marked and highlighted by Mr Michael Reid to show the matters that were not discussed with him by Mr Michael Kalimnios in a meeting shortly after 6 July 2009
92	Email Michael Reid, Director-General (QH) to All QH Staff Subject: Updated Payroll Assistance QHEPS Site Sent: 18/05/2010
93	Memorandum prepared by Payroll Stabilisation Project, <i>QH payroll system problems identified after Go Live</i> (undated)
94	Payroll Stabilisation Project, <i>Deputy Premier Briefing (Presentation)</i> dated 23 May 2010
95	Bundle of Minutes of Payroll Steering Committee: <ol style="list-style-type: none"> 1. Payroll Stabilisation Project – Payroll Steering Committee, Draft Minutes of Meeting, dated 1 June 2010 at 4:00PM to 5:30PM 2. Payroll Stabilisation Project – Payroll Steering Committee, Draft Minutes of Meeting, dated 7 June 2010 at 4:00PM to 5:30PM
96	Bundle of Dashboard Reports: <ol style="list-style-type: none"> 1. Payroll Stabilisation Project, Dashboard Report, for the period 17 May to 26 May 2010 2. Payroll Stabilisation Project, Dashboard Report, for the period 27 May to 31 May 2010 3. Payroll Stabilisation Project, Dashboard Report, for the period 1 June to 7 June 2010 4. Payroll Stabilisation Project, Dashboard Report, for the period 8 June to 15 June 2010 5. Payroll Stabilisation Project, Dashboard Report, for the period 15 June to 21 June 2010
97	Email Michael Kalimnios (QH) to Mick Reid (QH) Subject: Re: Successful Go Live of the New Payroll and Rostering Systems Sent: 25/03/2010 at 07:43AM
98	CorpTech, <i>QHIC Solution and Defect Management Plan Version: 1.1</i> dated 12 March 2010
99	IBM to CorpTech, <i>Statement of Work No 3 for Project: Minor Enhancements to QHHR – ECC System</i> , date revised 7 July 2010
100	CorpTech, <i>Deliverable Acceptance Sheet: SOW 8 – Workbrain Manual Entry Screen Functional Specification</i> , dated 3 November 2008
101	Statement of (Alan) Brett Cowan signed 16 April 2013
102	CorpTech, <i>QHIC System Test and SIT Completion Report</i> , dated 27 April 2009
102A	CorpTech, <i>Deliverable Acceptance Sheet: SOW 8 – System Test Completion report (draft at 27/4/09)</i> , dated 27 March 2009

Exhibit Number	Description
103	Statement of William Doak signed 29 April 2013
104	Bundle of Emails regarding UAT Status Reports: <ol style="list-style-type: none"> 1. Email Bill Doak (IBM) to Brett Cowan cc: to various IBM, CorpTech and Queensland Health staff Subject: Re: UAT Status Report 20/05/09 Sent: 22/05/2009 at 10:12AM Attachments: 20090520_UAT Board Status Report V0.1-BC.doc 2. Email Bill Doak (IBM) to Brett Cowan cc: to various IBM, CorpTech and Queensland Health staff Subject: Re: UAT Status Report 26/05/09 Sent: 27/05/2009 at 06:34PM 3. Email Bill Doak (IBM) to Brett Cowan cc: to various IBM, CorpTech and Queensland Health staff Subject: Re: UAT Status Report 12/06/09 Sent: 16/06/2009 at 10:52AM 4. Email Bill Doak (IBM) to Brett Cowan, Mark Dymock cc: to various IBM, CorpTech and Queensland Health staff Subject: Re: Status Report for UAT on 17/06 Sent: 19/06/2009 at 07:21AM 5. Email Bill Doak to Brett Cowan cc: to various IBM, CorpTech, Queensland Health and KJ Ross staff Subject: Re: UAT4 Status Report Sent: 03/09/2009 at 05:55PM 6. Email Bill Doak (IBM) to Brett Cowan cc: to various IBM, CorpTech, Queensland Health and KJ Ross staff Subject: Re: UAT4 status report for 6/11 Sent: 07/11/2009 at 03:22PM Attachment: 20091106_UAT Board Status Report V0 1-BC.doc
105	IBM, <i>Requirements Traceability and Verification Matrix</i> (undated)
106	Statement of John Gower signed 2 May 2013
107	Program 42, <i>Workbrain Scalability Assessment Test Completion Report Version 2.0</i> , last executed 25 August 2008
108	KJ Ross and Associates, Draft Audit Findings for the period 22 April 2009 to 29 September 2009
109	Statement of Paul Hickey signed 29 April 2013
110	Statement of Christopher Prebble signed 1 May 2013
111	Email Damon Atzeni to Chris Prebble (CorpTech) Subject: Re: Workbrain access Sent: 12/12/2007 at 10:18AM
112	Bundle of Emails Chris Prebble and Damon Atzeni: <ol style="list-style-type: none"> 1. Email Chris Prebble (CorpTech) to Damon Atzeni (QH) Subject: Re: Workbrain access Sent: 12/12/2007 at 11:23AM 2. Email Damon Atzeni (QH) to Chris Prebble (CorpTech) Subject: Re: Workbrain access Sent: 12/12/2007 at 01:22PM
113	Statement of Margaret Berenyi signed 8 April 2013
114	Email John Gower (CorpTech) to Adrian Shea (QH), Anthony Price (QH), Bill Doak (IBM), Janelle Meulenber (CorpTech), Margaret Berenyi (CorpTech), Michael Kalimnios (QH), James Brown (CorpTech) Subject: Integrated QHIC Project Schedule Sent: 15/04/2009 at 06:37PM
115	Statement of Natalie MacDonald signed 16 April 2013
116	Statement of Malcolm Grierson signed 24 April 2013
117	Calendar entries of Malcolm Grierson for the period 1 August to 31 October 2008
118	Statement of Jane Stewart signed 9 May 2013
119	Email Paula Dann to Info Health Payroll Inquiry Subject: Incorrect reference – Margaret Berenyi Statement page 33 of 55 Sent: 09/05/2013 at 01:12PM
120	Statement of Raymond Brown signed 12 April 2013

Exhibit Number	Description
121	Statement of Michael Walsh signed 9 May 2013
122	Statement of Damon Atzeni signed 14 May 2013
123	Dr David Manfield, <i>Report to Queensland Health Payroll System Commission of Inquiry</i> , dated 30 April 2013
124	Bundle of emails between IBM, Infor and CorpTech regarding customer reference sites
125	Email Jack van der Zwan (QH) to Mark Dymock (CorpTech) Subject: Re: UPDATE: Deliverable Acceptance Sheet – System Test Completion Reportv1 Sent: 11/05/2009 at 01:02PM
126	Bundle of correspondence regarding Request 16 to produce documents: <ol style="list-style-type: none"> 1. Letter Fran Copley (QHPSCI) to Ashurst Australia c/- Ian Innes dated 15 April 2013 enclosing Request 16 to produce documents 2. Letter Ashurst Australia to Fran Copley (QHPSCI) dated 19 April 2013 regarding response to Request 16 to produce documents
127	Bundle of correspondence regarding Request 17 to produce documents: <ol style="list-style-type: none"> 1. Email Fran Copley (QHPSCI) to Ian Innes (Ashurst) cc: Bri Bell (Ashurst), Wylie Nunn (QHPSCI), Amy Tuite (QHPSCI) Subject: QHPSCI Request 17 IBM Sent: 29/04/2013 at 09:24AM Attachment: Request 17 to produce documents 2. Letter Ashurst Australia to Fran Copley (QHPSCI) dated 2 May 2012 regarding response to Request 17 to produce documents
128	Bundle of Documents: <ol style="list-style-type: none"> 1. IBM, <i>Corptech</i> – List of Sub-Contractors (undated) 2. IBM, <i>List of Deliverables</i> (undated) 3. Program 42, <i>Final Status Report: Workbrain Rostering Build Requirements – Final Status Report, Version 1.0</i> dated 23 September 2008
129	Statement of Malcolm Thatcher signed 29 April 2013
130	Bundle of emails: <ol style="list-style-type: none"> 1. Email Cathy Sparks to Brad Mammimo, Dougal Ferguson, Lynette Land, Roslyn Ricoine, Ross Wood Cc: Damon Atzeni Subject: Changes to CTD Sent: 17/10/2008 at 01:35PM 2. Email Amanda Doughty to Cathy Sparks Cc: Damon Atzeni Subject: Re: Change Request Problems – BAD/CTD Sent: 15/10/2008 at 03:06PM 3. Email Cathy Sparks to Brad Mammimo, Damon Atzeni, Dougal Ferguson, Lynette Land, Ross Wood cc: Amanda Doughty Subject: BAD update problems Sent: 14/07/2008 at 01:16PM
131	QHEST, <i>Payroll Systems Risk Assessment Risk Mitigation Report</i> , dated 22 September 2007
132	Email Damon Atzeni (QH) to Chris Prebble (CorpTech), Nigel Hey (QH), Ron Fawcett (QH) Subject: Re: Scope draft will be with you before 5PM Sent: 20/12/2007 at 07:55AM
133	Email Damon Atzeni to Chris Prebble (CorpTech) Subject: Fwd: Scope Definition review (Vers 0.12) Sent: 04/01/2008 at 04:32PM Attachment: Feedback on QHIC Project team.doc
134	Program 42, <i>Configuration Document: H2R 2.2.2 CONF Time Codes and Hour Type Configuration</i> , last executed 15 October 2008
135A	CorpTech, <i>Functional Specification (Enhancement) H2R 2.2.1 E-1207 Entitlement Ratios</i> , dated 23 May 2007
135B	CorpTech, <i>Functional Specification (Enhancement) H2R 2.2.2 E-1236 Custom Pay Rule – Fatigue Rule</i> , dated 1 May 2007
135C	CorpTech, <i>Functional Specification (Interface) H2R I-1332 Workbrain & SAP Interface Error Management</i> , dated 31 July 2007
136	4 Volumes of documents relevant to settlement hearings identified and compiled by the Queensland Health Payroll System Commission of Inquiry

Exhibit Number	Description
137	Statement of Anna Bligh dated 15 May 2013
138A	Statement of Robert Schwarten signed 20 May 2013
138B	Statement of Robert Schwarten (undated)
139	Record of Proceedings, <i>Queensland Parliament, First Session of the Fifty-Third Parliament</i> dated 25 March 2010, page 1145
140	Queensland Government (Treasury), <i>Agreement for the Provision of Services Project Director Schedule 9 re-plan</i> , dated 18 May 2007
141	QHEST, <i>Project Directorate Meeting Minutes</i> , dated 22 December 2008 at 2:00PM
142A	Statement of James Brown signed 21 May 2013
142B	Statement of James Brown signed 26 May 2013
143	Statement of Michael Reid signed 23 May 2013
144	Statement of Michael Reid signed 16 May 2013
145	Statement of Michael Kalimnios signed 13 May 2013
146	Statement of Kevin Killey signed 27 May 2013
147	Statement of Jeremy Charlston (undated)
148	File Note written by Jeremy Charlston dated 18 August 2010 at 3:30PM
149A	Statement of Malcolm Grierson signed 24 May 2013
149B	Statement of Malcolm Grierson signed 27 May 2013
150	Email Ken Smith (Premiers) to Mal Grierson Subject: Re: CBRC Sent: 23/08/2010 at 08:29AM
151	Statement of Paul Lucas signed 23 May 2013
152	Transcript of Interview, dated 22 May 2013, Interviewers: Commissioner Chesterman, Ms A Nicholas, Mr Q Cregan, Mr T Corsbie, Mr I Innes, Interviewee: Mr J Sullivan via audiolink
153	Statement of Nathan Hulse signed 27 May 2013
154	Statement of Brendan Pollock signed 28 May 2013
155	Statement of Sally O'Carroll signed 16 May 2013
156	Statement of William Backhouse signed 15 May 2013
157	Statement of Margaret Berenyi signed 24 May 2013
158	Statement of Brooke Freeman signed 29 May 2013
159	Statement of Joseph Sullivan signed 29 May 2013
160	Statement of Ian Raymond signed 29 May 2013
161	Statement of Sleiman Saleeba signed 29 May 2013
162	Statement of Michael Walsh signed 31 May 2013
163	Statement of Mark Dymock signed 4 June 2013
164	Statement of Nickolas Kwiatkowski signed 4 June 2013

Exhibit Number	Description
165	Shane Parkinson, <i>Report on matters before Queensland Health Payroll System Commission of Inquiry</i> (undated)
166	Statement of Geoffrey Waite signed 28 February 2013
167	Statement of Natalie MacDonald signed 31 May 2013
168	<p>Bundle of correspondence:</p> <ol style="list-style-type: none"> 1. Email Fran Copley (QHPSCI) to Melinda Pugh (Crown Law), Ian Innes (Ashurst), Penelope Eden (Minter Ellison), Julie Cameron (Corrs Chambers Westgarth) Cc: Michelle Bozier (Crown Law), Brianna Bell (Ashurst) Subject: COWAN Brett Statement signed Sent: 16/04/2013 at 04:35PM Attachment: Statement of Brett Cowan 16 April 2013 2. Letter Fran Copley (QHPSCI) to Ian Innes (Ashurst) enclosing briefing materials of Dr David Manfield dated 17 April 2013 3. Letter Fran Copley (QHPSCI) to Ian Innes (Ashurst) enclosing briefing materials of Dr David Manfield dated 26 April 2013 4. Email Fran Copley (QHPSCI) to Melinda Pugh (Crown Law), Ian Innes (Ashurst), Tracey Harrip (Allens Linklaters), Kate Betts (Cooper Grace Ward), Julie Cameron (Corrs Chambers Westgarth) and Penelope Eden (Minter Ellison) Subject: Report of Dr David Manfield dated 30 April Sent: 30/04/2013 4.22PM Attachment: Report of Dr David Manfield 30 April 2013 5. Email Fran Copley (QHPSCI) to Melinda Pugh (Crown Law), Ian Innes (Ashurst), Tracey Harrip (Allens Linklaters), Kate Betts (Cooper Grace Ward), Julie Cameron (Corrs Chambers Westgarth) and Penelope Eden (Minter Ellison) Subject: Report of David Manfield Sent: 30/04/2013 5.01PM Attachment: Report of Dr David Manfield 30 April 2013
169	Statement of Brendan Pollock signed 17 June 2013
170	Response of Jane Stewart to a request for information by the Queensland Health Payroll System Commission of Inquiry dated 2 July 2013
171	Response of Darrin Bond to a request for information from the Commission dated 24 June 2013

Appendix 9

Report Glossary

Term	Explanation
Associate Director-General (ADG)	A senior government officer reporting to a Deputy Director-General.
Assurance	All the systematic actions necessary to provide confidence that the target (system, process, organisation, program, project, outcome, benefit, capability, product output, deliverable) is appropriate. Appropriateness might be defined subjectively or objectively in different circumstances. The implication is that assurance will have a level of independence from that which is being assured.
Attendance variation and allowance claim form (AVAC)	A payroll form used by staff to advise payroll of changes to their roster, including shift changes, overtime, unplanned leave, additional ordinary hours and costing overrides.
Business Advisory Group (BAG)	Responsible for providing independent assessment and advice regarding the potential impact and risks of system changes, the prioritisation of system implementation activities and the identification of communication and training requirements. It consisted of representatives from PIP, QHEST, Human Resources Coordination (formerly People and Culture Strategic Services) and QSS (formerly CorpTech).
Change Advisory Board (CAB)	CorpTech body responsible for reviewing and recommending changes to the Scope of the QHIC project.
Cabinet Budget Review Committee (CBRC)	A government body comprising the Premier, Deputy Premier, Treasurer and a rotating senior Minister responsible for making intermittent budgetary decisions.
Centre for Information Technology and Communications (CITEC)	A government body within the Department of Public Works responsible for maintaining hardware and operating environments in government applications.
Concurrent Employment	An employee with multiple positions that are held at the same time, with different employment conditions or entitlements for each position.
Corporate Solutions Program (CSP)	The CorpTech managed program to implement a whole-of-government finance and HR system.
CorpTech	The provider of the corporate applications and infrastructure services for the Shared Services Initiative, later merged with the Shared Services Agency on 1 July 2011 to form Queensland Shared Services.
Department of Education Training and the Arts (DETA)	Queensland Government Department responsible for Education Training and the Arts.
Department of Housing (DoH)	Queensland Government Department responsible for Housing.
Department of Premier and Cabinet (DPC)	Queensland Government Department responsible for assisting the Premier and Cabinet.
Department of Public Works (DPW)	Queensland Government Department responsible for constructing and maintaining public facilities.

Term	Explanation
Department of Science, Information Technology, Information and the Arts (DSITIA)	Queensland Government Department responsible for Science, Information Technology, Information and the Arts.
Deputy Director-General (DDG)	A senior government officer reporting to a Director-General.
Director-General (DG)	The senior government officer of a department, reporting to a Minister.
Environment for Scheduling Personnel (ESP)	The rostering system used by Queensland Health from 1996 to 7 March 2010 in conjunction with LATTICE.
Employee Overpayments Program (EOP)	Established in February 2011 to recover outstanding salary and interim cash payments and identify business and system improvements to minimise overpayment growth.
Employee Self Service (ESS)	A web based capability for staff to monitor and maintain their own records (such as leave requests, name and address changes, viewing payslips etc) 24 hours a day, 7 days a week.
Ethical Services Unit (ESU)	Queensland Health's central point for receiving, assessing and where necessary investigating allegations of official misconduct.
Finance and Materials Management Information System (FAMMIS)	An integrated system that consolidates a range of business processing and reporting functions and implements accrual accounting across Queensland Health.
Full Time Equivalent (FTE)	A unit of measurement for staffing equating to one full time staff member.
Human Resources (HR)	The responsibilities within a workplace for employment and management of employees.
Identity, Directory and Email Services Program (IDES)	A CITEC managed program to deliver whole-of-government email, identity management and authentication services
Information and Communications Technology (ICT)	The field of unified Communications and Information Technology.
Information Technology (IT)	The use of technology to assist with information storage, processing and management.
Invitation to Offer (ITO)	Process used to obtain bids for clearly defined and specific requirements.
LATTICE	The payroll system used by Queensland Health from 1996 to 7 March 2010.
Machinery of Government (MoG)	A change to the structure of government departmental responsibilities.
Manager Self Service (MSS)	A web based capability for supervisors to manage and access information relating to their staff, including approving staff leave, position changes etc.
Payroll Improvement Program (PIP)	Established in July 2010 to build on the work of Payroll Stabilisation Project and guide the implementation of the new payroll operating model.
Payroll Portfolio Program (PFP)	Initiated in November 2011 to deliver on the recommendations contained in the Ernst & Young report.
Payroll Release Program (PRP)	Established to continue and extend the work of QHIC and expanded the services being delivered by undertaking a range of business as usual or service management activities.
Payroll Stabilisation Project (PSP)	Established on 19 April 2010 to identify and implement strategies to stabilise the new payroll system.

Term	Explanation
Person ID (PID)	The unique eight digit number that is assigned to an employee to identify them in the new payroll and rostering systems (SAP and Workbrain).
Personnel Assignment Numbers (PAN)	Eight digit number that represents each position to which an employee is assigned. Concurrent employees have multiple PANs.
Program	A temporary flexible organisation structure created to coordinate, direct and oversee the implementation of a set of related projects and activities in order to deliver outcomes and benefits related to the organisation's strategic objectives. A program is likely to have a life that spans several years.
Program Delivery Office (PDO)	CorpTech body responsible for program oversight .
Program Management Office (PMO)	A group or department within a business, agency or enterprise that defines and maintains standards for project management within the organisation.
Projects in a Controlled Environment (PRINCE2)	Project management methodology.
Project	A temporary organisation that is created for the purpose of delivering one or more business products, according to an agreed Business Case.
Queensland Audit Office (QAO)	Independent office of the Queensland Auditor-General.
Queensland Health (QH)	Government Department responsible for the provision of health services.
Queensland Corrective Services (QCS)	Government body responsible for community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.
Queensland Health Enterprise Solutions Team (QHEST)	Queensland Health body responsible for managing the Queensland Health aspects of the QHIC project.
Queensland Health Human Resources (QHHR)	Queensland Health body responsible for Human Resources.
Queensland Health Implementation of Continuity Project (QHIC)	The project to provide an interim HR/Finance solution to Queensland Health as part of the whole-of-government Shared Services Initiative.
Queensland Health Shared Services Partner (QHSSP)	Government body responsible for the delivery of HR services to Queensland Health.
Queensland Shared Services (QSS)	Established in 2003 as the whole-of-government shared service provider for finance, procurement, human resources management, facilities management and mail support.
Roster Adjustment Form (RAF)	A form submitted by staff for changes to shifts during LATTICE.
Request for Information (RFI)	Process used to request information from suppliers in order to shortlist potential suppliers before seeking offers.
Request for Offer (RFO)	Process used to obtain bids for clearly defined and specific requirements.
SAP	A company providing commercial enterprise software. Can also refer to the software suite provided by SAP.
Service Delivery and Performance Commission (SDPC)	The Service Delivery and Performance Commission was established under the <i>Service Delivery and Performance Commission Act 2005</i> (Qld) (now repealed) for the purpose of assisting the State to efficiently deliver government services.
Shared Services Initiative (SSI)	Established in 2003 as the whole-of-government approach to corporate service delivery.
Shared Services Solution (SSS)	The software package to implement the SSI.

Term	Explanation
Solution Design Authority (SDA)	CorpTech body responsible for reviewing and authorising changes to the design of the whole-of-government SSI
Strategic Program Office (SPO)	CorpTech body responsible for strategic oversight of the SSI.
The Solution Series (TSS)	A software package used for Finance /HR by DETA.
User Acceptance Testing (UAT)	Testing of a software package in regards to the user experience of the system as designed and built.
Workbrain	Workforce management software utilised by Queensland Health.

