



QUEENSLAND HEALTH PAYROLL SYSTEM
COMMISSION OF INQUIRY

Statement of Witness

<i>Name of Witness</i>	William Boyd Backhouse
<i>Date of Birth</i>	[REDACTED]
<i>Address and contact details</i>	Level 6, 80 George Street, Brisbane
<i>Occupation</i>	Executive Director, Legal Services
<i>Officer taking statement</i>	Mr Peter Flanagan and Ms Anastasia Nicholas
<i>Date taken</i>	9 May 2013

I, William Boyd Backhouse of c/o Level 6, 80 George Street, Brisbane, Qld 4000, state as follows:

1. I am the Executive Director, Legal Services at the Department of Housing and Public Works. I have been in that role since 17 April 2009 and I have served in various capacities as a legal officer in the Department since 1994.
2. I participated in an interview on 9 May 2013 conducted by Mr Peter Flanagan SC and Ms Anastasia Nicholas of Counsel Assisting the Commission. Also present were Ms Rachael Murray, Mr David Kent and Ms Melinda Pugh.
3. At the interview, I was asked to provide details of my involvement with the settlement negotiations with IBM about the Queensland Health Payroll System after go-live.
4. My involvement in the matter was to provide legal advice and manage provision of legal advice by external legal advisers (Mallesons, Crown Law and Clayton Utz) to the Department in responding to the alleged breach of contract by IBM.
5. This included reviewing and providing legal review to senior Departmental officers (mostly in consultation with Crown Law) on legal advices from Mallesons in relation to alleged breaches of contract by IBM and the options available to the State to resolve its

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dispute with IBM, including action under the contract to issue a notice to show cause and possible action to terminate the contract for breach or settle the dispute on terms satisfactory to the State.

6. When consideration was being given by the Department to entering into settlement negotiations with IBM, the Department decided to brief Clayton Utz as a commercial negotiator. The negotiations were led by Mr Jeremy Charlston. Due to its knowledge of the payroll contract Mallesons remained as the primary legal adviser, with review by Crown Law and me.
7. On 4 August 2010, I was copied into an email from Jeremy Charlston to Tim Brookes of Blake Dawson, enclosing a settlement terms sheet for consideration and response on behalf of IBM.
8. I have been shown a file note of mine dated 10 August 2010 that records a conversation I had with Mr John Beeston, CorpTech. Mr Beeston told me that Clayton Utz had reported that IBM may not have been genuinely negotiating. I suggested the State may have to consider taking a tough line with IBM in order to preserve its negotiating position. Mr Beeston advised he would suggest to Mr James Brown, CorpTech that Mallesons be instructed to prepare a notice of termination, in case it was needed and that Clayton Utz brief the Director-General personally on status and tactics for negotiation. I supported these proposals.
9. On 13 August 2010 I attended a meeting with Mr Mal Grierson, Director-General, Natalie MacDonald, Messrs Brown and Beeston of CorpTech and Mr Jeremy Charlston. I did not make a file note of this meeting, but I consider it likely the meeting discussed the present state of the dispute and the negotiations with IBM.
10. On Monday 16 August 2010 my calendar records that I attended a meeting at 1 pm involving Mr Grierson, Ms MacDonald, Ms Berenyi and Mr Brown with the topic being "Update on IBM Contract negotiations". It is possible that Mr Charlston also attended that meeting. I have not made a file note of that meeting.

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11. On Wednesday 18 August 2010 I received an email from Mr Grierson forwarding an email from Mr Killey of IBM, and requesting that I meet with Mr Grierson. At 11 am I met with Mr Grierson and assisted him to draft a reply to the email from Mr Killey. My understanding was the email was intended to convey that a meeting between Mr Grierson and Mr Killey may assist progress of the negotiations, but would not replace the current process.
12. At this time CorpTech was progressing preparation of a submission to the Cabinet Budget Review Committee seeking approval to terminate the contract with IBM, should negotiations not progress or not lead to an agreement acceptable to the State. I provided comments on drafts of this submission.
13. On 19 August 2010, James Brown copied me into an email he sent to Natalie MacDonald referring to a proposed meeting between Ms MacDonald, Mr Grierson and IBM and making recommendations on how the meeting should be conducted so as to preserve the State's legal rights. I am not aware of any particular negotiations or discussions between IBM and Mr Grierson in the lead up to the supplemental agreement.
14. I was not personally involved in any direct settlement negotiations with IBM, post go-live. I did however, review versions of the draft settlement terms sheet and I reviewed and provided comment on a number of versions of the draft settlement agreement. The drafts of the settlement agreement were prepared by Mallesons and reviewed by Crown Law and me. My review was principally in relation to the legal aspects of the draft settlement agreement so as to protect the interests of the State. I was not asked to provide advice on the commercial terms of settlement.
15. I was asked by the Commission what investigations were conducted to identify the risk of IBM not continuing to support the payroll system after go-live if it walked away or the contract was terminated.
16. I recall that the issue of IBM no longer supporting the payroll system was considered and advice obtained from Mallesons about engaging the subcontractors used by IBM directly. Mallesons' advice (dated 19 July 2010) was that the State had strong rights in

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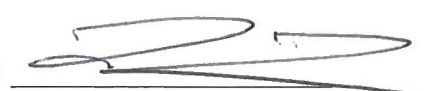
relation to the use of the intellectual property necessary for the Lattice replacement solution and access to subcontractors to undertake work in relation to the solution. Mallesons advised as a practical matter, that the State should ensure it had copies of everything it needed (in terms of software and documentation) and that third parties were prepared to engage directly with the State in a way that is acceptable to the State.

17. I do not recall any communications between IBM and Mr Grierson, or others within the Department of Public Works, where it was indicated by IBM that it did not want the government interfering with existing subcontractors while they were trying to perform their contracted services.
18. I have been asked by the Commission how I personally rated the risk of the system being left unsupported if the contract with IBM was terminated or IBM walked away. I did not have the technical knowledge or sufficient visibility of the project to be able to form a reasoned and informed view of that risk. That being said, I do recall that we were trying to prepare for all the possible outcomes, from a legal perspective, including the possibility of suing IBM.
19. I do not recall whether we considered requesting advice from the Solicitor-General or senior counsel at the private bar about the State's prospects of success in suing IBM. We had obtained advice from Mallesons and from Crown Law and, although I cannot recall any specific discussion about briefing counsel, I would have been aware at the time that option was available.
20. In any event, Mallesons' advice (in the options paper dated 17 June 2010 and updated as at 19 July 2010), following receipt of IBM's response to the State's notice to show cause, was that IBM had not shown cause as to why the payroll contract should not be terminated and that the State was therefore entitled to terminate the contract if the State so desired.

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Declaration

This written statement by me dated 15 May 2013 and contained in the pages numbered
1 to 5 is true and correct to the best of my knowledge and belief.

[Signature] Signature
Signed at Brisbane this 15th day of May 2013

Witnessed:

[Signature] Signature
Name Lily Chiang 15th May 2013

Signature: _____

Witness signature: _____