	Paper No.: <b>5412T14 26B</b>	
	Date: <b>31/10/12</b>	
	Member: <b>Mr. Palaszczuk</b>	
<input checked="" type="checkbox"/> Tabled	<input checked="" type="checkbox"/> Tabled, by leave	
<input type="checkbox"/> Incorporated, by leave	<input type="checkbox"/> Remainder incorporated, by leave	
Clerk at the Table: <b>[Signature]</b>		



Access Request  
CBRC Dec No. 3040  
Copy No. 128 26/08/2010  
Leader of the Opposition  
Official Copy - 30/10/2012

CONFIDENTIAL

CABINET BUDGET REVIEW COMMITTEE

DECISION

Brisbane, 26 August 2010

Decision No.: 3040, (Submission No.: 3979)

TITLE: Government Information Technology Contract (GITC) Contract Q11  
between the State of Queensland and IBM Australia Ltd

COMMITTEE decided:

1. To note the current status of the negotiations with IBM Australia Ltd (IBM) and that there is a strong desire by both parties for a supplemental agreement to be implemented.
2. To approve the execution of a supplemental agreement to the GITC contract Q11 to formalise transitional arrangements between the State of Queensland and IBM.
3. To note that the State will seek to protect all of its legal rights whilst the supplemental agreement is negotiated and executed.
4. To note that, in executing the supplemental agreement, the State's right to terminate the contract with IBM for material breach based upon the current Notice to Show Cause will be withdrawn and that payment of all or part of the remaining contract monies will be tied to IBM's performance.
5. To note that all payments will be tied to delivery of the supplemental agreement.
6. To authorise the Director-General, Department of Public Works to act as the State's delegate in progressing the preferred option.
7. To authorise the Deputy Premier and Minister for Health and the Minister for Public Works and Information and Communication Technology to agree on the final terms of the supplemental agreement.
8. To note the Minister for Public Works and Information and Communication Technology will discuss with the Premier and Minister for the Arts and the Deputy Premier and Minister for Health any proposed public announcements on any settlement reached with IBM.



CERTIFIED TRUE COPY

**Decision No.: 3040**

**CIRCULATION:**

Implementation Responsibility

Department of Health and copy to the Deputy Premier and  
Minister for Health

Department of Public Works and copy to the Minister

Departmental Records

Department of the Premier and Cabinet

Treasury Department

Department of Justice and Attorney-General

Perusal and Return

All other Committee Members



Acting Cabinet Secretary



CERTIFIED TRUE COPY



Access Request  
CBRC Sub Att No. 3979  
Copy No. 128 26/08/2010  
Leader of the Opposition  
Official Copy - 30/10/2012

**SECURITY CLASSIFICATION "C"****SUBMISSION TO CABINET BUDGET REVIEW COMMITTEE****POLICY SUBMISSION****TITLE**

Government Information Technology Contract (GITC) Q11 between the State of Queensland and IBM Australia Ltd.

**MINISTER**

Minister for Public Works and Information and Communication Technology.

**OBJECTIVE/S**

To seek Cabinet Budget Review Committee approval to execute a supplemental agreement to finalise the GITC Contract Q11 between the State of Queensland and IBM Australia Ltd.

**SUMMARY**

On 22 July 2010, the Cabinet Budget Review Committee (Decision No. 3019) approved entering into discussions with IBM with a view to seeking mutually acceptable terms to finalise the contract for the delivery of the Queensland Health rostering and payroll solution.

Negotiations have now reached the point where further CBRC guidance is required. There have been high level discussions between IBM and the Director-General, Department of Public Works, on the process for finalising the contract through a supplemental agreement. These discussions are consistent with the Cabinet Budget Review Committee Decision No. 3019.

IBM has expressed a strong desire to continue with the contract, rectifying defects and addressing Queensland Health's enhancement requirements until the expiry of the warranty period (31 March 2011). IBM's position is that this will allow it to recover its commercial reputation from damage suffered on this project to date. However, an earlier exit prior to 31 March 2011 would be the State's aim.

The State remains concerned about the risk of an immediate departure by IBM from the project, given IBM's continued operational support for the fortnightly pay runs.

Should the State wish to terminate the contract on the basis of the Notice to Show Cause issued on 29 June 2010, it has until close of business on 23 August to exercise this option under the contract.

**OPTIONS**

There are two options available to the State at this point in time: 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.

Under the first option, the State would give up its right to terminate the contract for material breach under the Notice to Show Cause issued on 29 June 2010. IBM would also give up its rights to progress the Notice of Dispute issued on 16 July 2010. Payment of all or part of the remaining contract monies would be tied to the successful delivery of agreed defects and functional deficiencies, as well as completion of all obligations under the contract. The State could, should circumstances warrant, consider termination of the contract. This would require the State to issue a new Notice to Remedy and Notice to Show Cause for other breaches before it could consider terminating the contract.

Under the second option, the State would terminate the contract and preserve its rights to damages and retain \$3.34 million (excluding GST) in retained monies as an offset against the additional costs it has incurred, or would incur, in supporting and operating the system. Following termination, the State would then seek a negotiated settlement.

Should the State terminate the contract and elect to seek damages from IBM, it may bring counter-claims against the State including suing for unlawful termination.

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 costs of litigation and uncertainty as to how a 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. Mallesons Stephen Jaques advises that a decision be made on the contract with IBM as soon as possible to avoid prolonging uncertainty. Further, the State's right to terminate the contract under the current Notice to Show Cause will likely be lost if not exercised by Monday 23 August 2010.

## **RESULTS OF CONSULTATION**

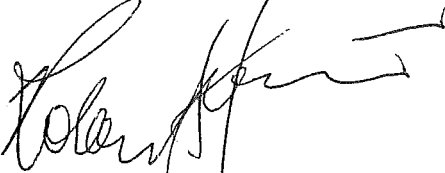
**Is there agreement? YES. See paragraph 35 of the Body of the Submissions.**

## **RECOMMENDATIONS**

It is recommended that the Cabinet Budget Review Committee:

1. note the current status of the negotiations with IBM Australia Ltd and that there is a strong desire by both parties for a supplemental agreement to be implemented;
2. approve the execution of a supplemental agreement to the GITC contract Q11 to formalise transitional arrangements between the State and IBM;
3. note that, the State will seek to protect all of its legal rights whilst the supplemental agreement is negotiated and executed.
4. note that, in executing the supplemental agreement, the State's right to terminate the contract with IBM Australia Ltd for material breach based upon the current Notice to Show Cause will be withdrawn and that payment of all or part of the remaining contract monies will be tied to IBM's performance;

5. note that all payments will be tied to delivery of the supplemental agreement; and
6. authorise the Director-General, Department of Public Works to act as the State's delegate in progressing the preferred option.



**Robert Swarten**  
**Minister for Public Works and**  
**Information and Communication Technology**

23 / 8 / 2010

---

**BODY OF SUBMISSION**

---

**OBJECTIVES**

1. To seek Cabinet Budget Review Committee approval to execute a supplemental agreement to finalise the GITC Contract Q11 between the State of Queensland and IBM Australia Ltd.

**BACKGROUND****Context**

2. The State of Queensland entered into a Government Information Technology Contract (GITC) version 5 contract (Q11) with IBM Australia Ltd (IBM) on 5 December 2007 to deliver, in part, a replacement for the LATTICE payroll system in Queensland Health and to develop and implement various computer systems on a whole-of-Government basis.
3. A replacement for the Queensland Health LATTICE system was implemented on 14 March 2010. The contract milestone for System Acceptance was set for 30 April 2010 and was conditional on the execution of three pay runs and all outstanding severity 1 and severity 2 defects being rectified, and other requirements being satisfied.
4. As at 13 August 2010, 11 fortnightly pay runs under the Queensland Health rostering and payroll technology system have been processed. However, many of the defects identified in the system have not been fixed, and as a result, the fortnightly pay runs have only been completed with the technical support of IBM, its sub-contractors and CorpTech.
5. On 28 July 2010, following Cabinet Budget Review Committee approval (Decision No. 3019 of 22 July 2010), the State proposed entering into negotiations to finalise the contract with IBM. Following high level discussions between IBM and the State, it is the State's view that a supplemental agreement would be the most suitable way to finalise arrangements with IBM and transition responsibility for the system to the State, while maintaining the stability of the fortnightly pay runs. The State's preferred position is outlined in **Attachment 1 (a)**. This position is in accordance with Cabinet Budget Review Committee Decision No. 3019.
6. IBM has indicated support for the State's preferred method of finalising the contract in lieu of termination and associated damage to its reputation.

**Previous Consideration by Cabinet**

7. This matter has been previously considered by the Cabinet Budget Review Committee on 22 July 2010 (Decision No.3019).

---

**URGENCY**

8. This matter is urgent. A decision on how to finalise the contract with IBM is required. The State's current right to terminate the contract for material default will lapse with the passing of time. Advice from Mallesons Stephen Jaques (refer to **Attachment 2**) states that if the State proposes to terminate the contract for default, it would be advisable to do so on or before 23 August 2010.

**ISSUES**

There are several key issues that need to be considered.

**System Support**

9. The Queensland Health rostering and payroll system requires technical support and manual intervention to run each pay as a result of the way the interface between the Workbrain rostering product and the SAP payroll product has been designed.
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 Queensland Health 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 Queensland Health 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 Queensland Health payroll."*

**Legal advice**

13. Mallesons Stephen Jaques previously advised (refer to **Attachment 3**) that the State should carefully consider its options in respect of the contract. It also advised that further undue delay would erode the State's rights and limit the State's options. The right to terminate under the current Notice to Show Cause will likely be lost after 23 August 2010.

14. Mallesons Stephen Jaques previously advised (refer to **Attachment 3**) that it would be unusual for IBM to commence legal proceedings for wrongful termination in these circumstances. Crown Law has previously advised (refer to **Attachments 4a & 4b**) that while it may be unusual for IBM to commence legal proceedings for wrongful termination, it would almost certainly bring a counter claim if the State commences legal proceedings first. There is the distinct possibility that if IBM's counter claim was successful, the outcome of any litigation could be a payment in favour of IBM.

### **OPTIONS**

15. There are only two options that the State can realistically pursue with IBM: the first being to continue with the current contract under supplemental terms and conditions, the second being a formal termination of the contract and following termination, either, do nothing, negotiate and/or litigate.

#### **Option 1 - Continue with the contract under supplemental terms and conditions – preferred option**

16. Under this option, IBM would be required to rectify a list of identified defects and functional deficiencies in the system for no additional contract payment. Payment of all or part of the remaining contract monies would be tied to the delivery of the identified defects and functional deficiencies.
17. The State's preferred position is for IBM to continue to provide extended support for no additional contract monies to ensure the successful completion of the Queensland Health payroll each fortnight. This support should stay in place for the duration of the supplemental contract period or until it is demonstrated that CorpTech can support, without assistance, the Queensland Health Payroll, or an alternate support model is implemented. However, given the importance of the Queensland Health payroll, some additional monies may need to be paid to provide this essential support.
18. In executing the supplemental agreement, the State would give up its right to terminate the contract for material breach under the Notice to Show Cause issued on 29 June 2010. IBM would also give up its rights to progress the Notice of Dispute issued on 16 July 2010.
19. The State could, should circumstances warrant, consider a future termination of the contract. This would require the State to issue a new Notice to Remedy and a Notice to Show Cause for other breaches before it could consider terminating the contract with IBM Australia Ltd.
20. A comparison of the terms proposed for the supplemental contract against Cabinet Budget Review Committee Decision No. 3019 demonstrates that the State's offer substantially aligns with that approval (refer to **Attachment 5**).



Benefits

21. IBM would remedy a significant number of outstanding defects and functional deficiencies with the Queensland Health rostering and payroll solution and provide an orderly transition of support to CorpTech.

Risks and disadvantages

22. IBM's delivery performance over the life of the current contract has been variable. The tying of remaining outstanding payments to delivery will provide a significant commercial incentive for IBM to perform.
23. Competing priorities within Queensland Health may impact on IBM's ability to deliver. Queensland Health has a number of enhancements to the system to progress the implementation of its revised shared services business model. These enhancements will need to be prioritised with the defects so that there is one agreed work program for IBM administered by CorpTech on behalf of the State.
24. The State would need to accept that there would be an additional payment for enhancements and that during the transition period, these enhancements will be undertaken by IBM or CorpTech under IBM's quality assurance process. All enhancements would need to be funded by Queensland Health.
25. If IBM fails to perform and subsequently breaches, it would be necessary to issue a new Notice to Remedy and Notice to Show Cause following the process under the contract. The period between identification of the breaches and termination would be several weeks.

**Option 2 - Termination of the contract for default**

26. Under this option, the State would terminate the contract and preserve its rights to damages and retain \$3.34 million (excluding GST) in retained monies as an offset against the additional costs it has incurred in supporting and operating the system. It is proposed to pay IBM \$1.70 million (excluding GST) for new work commissioned by CorpTech after the Queensland Health rostering and payroll solution was implemented.

Benefits

27. Termination would give the State a clear break from IBM and enable the State to pursue other alternatives for remediation of the Queensland Health rostering and payroll solution.
28. If the State terminates the contract it could retain all outstanding monies due for milestones under the contract, and seek to offset these amounts against a claim for damages for material breaches of contract should a claim be pursued or use the funds to implement system rectifications. Payment of \$1.70 million for new work commissioned should be made.

Risks and disadvantages

29. Mallesons Stephen Jaques also advises that it is likely that, should the State terminate the contract, IBM could "walk off the job" despite contractual obligations not to do so, exposing the State to significant risk. This risk could be mitigated by contracting directly with IBM's key sub-contractors in the event that the contract with IBM is terminated, however it is a high-risk strategy that could jeopardise the Queensland Health payroll.
30. IBM, through its global relationship with Infor, is likely to exert significant pressure for Infor not to enter into a direct relationship with the State. Should this be the case, the State would need to secure an alternate provider (if at all possible) as a matter of urgency.
31. IBM may sue the State for damages citing breaches of contract by the State and/or wrongful termination of contract and seek to recover outstanding contract monies. IBM has affirmed during high level executive discussions that it would seek to recover all outstanding monies, should the State elect to exercise this option.
32. Crown Law advises that if the State elected to litigate following contract termination, it is almost inevitable that IBM would bring a counter claim for wrongful termination.

**CONSULTATION**

- **Community**

33. Nil

- **Government**

34. Consultation on this submission was undertaken with the Department of the Premier and Cabinet, Queensland Health and Queensland Treasury.

**RESULTS OF CONSULTATION**

35. All parties have noted the issues presented in this paper and support the recommendations.

**RURAL/REGIONAL IMPACT STATEMENT**

36. A Rural/Regional Impact Statement is not applicable.

**EMPLOYMENT AND SKILLS DEVELOPMENT IMPACT STATEMENT**

37. An Employment and Skills Development Impact Statement is not applicable.

**CLIMATE CHANGE IMPACT STATEMENT**

38. A Climate Change Impact Statement is not applicable.

---

## **FINANCIAL CONSIDERATIONS**

39. There are no additional costs in requiring IBM to perform the current contract as modified by the proposed supplemental agreement. Payment of all or part of the remaining contract monies would be tied to successful delivery of agreed defects and functional deficiencies, as well as completion of all obligations under the contract. The State's preferred position is for IBM to continue to provide extended support for no additional contract monies. However, given the importance of the Queensland Health payroll, some additional monies may need to be paid to provide this essential support. Queensland Health will need to fund any additional support requirements.
40. The cost of enhancements for the Queensland Health rostering and payroll solution required to support its revised shared services business model and other business enhancements will need to be funded by Queensland Health.

## **IMPLEMENTATION**

41. Subject to Cabinet Budget Review Committee approval, the Director General, Department of Public Works will be the State's authorised representative to progress the implementation of the approved option.

## **PUBLIC PRESENTATION**

42. Any public presentation on this matter will be at the discretion of the Premier and Minister for the Arts.

## CONSULTATION ADDENDUM

DEPARTMENT	OFFICER	DATE
Department of Premier and Cabinet	David Hourigan Justin Murphy	20 August 2010
Queensland Health	Terry Mehan Michael Walsh	20 August 2010
Queensland Treasury	John O'Connell Catherine Baldwin Drew Ellem	20 August 2010
Crown Law	Michael Boughey	19 August 2010

[illegible]

## Proposed Settlement Principles

---

It is proposed to enter into a supplemental agreement to the existing contract with IBM Australia Ltd based upon the list of agreed principals. The supplemental agreement will run until 31 March 2011 or a mutually agreed earlier date.

1. Pay IBM outstanding monies amounting to \$1.70 million (excluding GST) for work performed under Statement of Work 50. Payment to be made upon execution of the supplemental agreement.
2. IBM to rectify the attached list of items<sup>1</sup> (which will be prioritised by CorpTech) for no additional contract payment under Statement of Work 8. It is understood that:
  - a. CorpTech will prioritise and determine the order of item rectification.
  - b. IBM will advise the number of items that it can deliver per month following the prioritisation by CorpTech.
  - c. New or additional work assigned to IBM to that on the item list may reduce its capacity to deliver the required items. In this eventuality IBM will provide a revised schedule of item implementation taking into consideration the new or additional work whenever it is asked to do new or additional work, for approval by CorpTech. The State will pay IBM on a pro rata unit basis (not on complexity or effort) for each item delivered and implemented against the \$1.85 million (excluding GST) System Acceptance payment amount under Statement of Work 8. The amount of \$1.85 million (excluding GST) will not be exceeded.
  - d. Defects arising from the implementation of the attached item list will be fixed at IBM's cost. Implemented contract warranty provisions will apply for each item.
  - e. Additional agreed defects found after 20 August 2010 that are not on the attached list will be rectified at IBM cost in accordance with the priorities established by CorpTech.
3. IBM will be afforded the opportunity to undertake new work.
  - a. CorpTech will determine the assignment of new work and be the primary contact with Queensland Health. CorpTech will determine IBM's engagement, if any, with Queensland Health as required. For the supplemental contract period, the customer for IBM is CorpTech.
  - b. New work undertaken by IBM is to be scoped and costed using the carded rates under the contract.
  - c. A new Statement of Work will be developed for items of new work.
  - d. Existing contract warranty provisions will apply for all new work undertaken by IBM except where it implements year-end stacks and or Notes delivered by SAP.
  - e. Costing and delivery timeframes for new work to be undertaken by IBM will be assessed by an independent third party. The duration of the independent assessment will need to be factored into IBM's proposed release schedule. Cost of the independent assessments will be borne by the State.

---

<sup>1</sup> The item list has been produced as at 18 August 2010. It is acknowledged that IBM may have rectified some of the items on this list since it was produced. Under these circumstances IBM is to advise which items have been resolved.

4. IBM will define a quality process and undertake a review of all items developed by CorpTech or its agents before implementation to ensure that the item(s) conforms to IBM's quality standards and contract requirements.
  - a. IBM will provide CorpTech with its quality standards. The standards will also include documentation and technical standards.
  - b. Contract warranty provisions for items developed by CorpTech or its agents will not apply.
  - c. IBM will be paid to undertake quality review on items developed by CorpTech or its agents. Carded rates under the contract will apply. IBM to provide an upfront fixed cost for each assessment.
  - d. IBM will carry out a quality review of existing work undertaken by CorpTech or its agents.
5. IBM Program Manager will participate in a weekly operational progress review meeting with the General Manager, CorpTech. Unresolved matters will be escalated to the Associate Director-General, Public Works, and Ms Sarah Adam-Gedge, IBM.
6. IBM will continue to provide "extended support" for no additional contract monies to ensure the successful completion of the Queensland Health payroll each fortnight for the duration of the supplemental contract period or until it is demonstrated that CorpTech can support, without assistance, the Queensland Health payroll, or an alternate support model is implemented.
7. IBM to agree to participate in discussions to explore options for it to provide a full support and maintenance service under a new GITC contract for the Queensland Health payroll.
  - a. The proposed full support and maintenance contract proposal will be subject to independent review to ensure market competitiveness.
  - b. The contract will only be executed subject to Executive Government approval.
  - c. The contract does not diminish IBM's obligations to provide extended support at its own cost during the supplemental contract period.
8. IBM will not reassign any personnel under its control without consent. Requests for reassignment of personnel will not be unreasonably withheld.
9. The supplemental agreement will run until 31 March 2011. Should the complete list of items not be implemented before 31 March 2011, for whatever reason, the pro rated balance of the \$1.85 million (excluding GST) will be retained by the State.
10. The system retention amount of \$1.49 million (excluding GST) under Statement of Work 8 will be considered for payment to IBM under the following circumstances:
  - a. where IBM has fully completed its obligations under the supplemental agreement, the State will pay the full amount retained, ie, \$1.49 million (excluding GST);
  - b. where IBM partially completes its obligations, for whatever reason, at the time of expiration of the supplemental agreement, the amount retained will not be paid.
11. The supplementary agreement will be entered into without admission by either party and without waiver of any existing rights, and is made pursuant to the dispute resolution process of the existing contract.

In consideration of the above principles and should IBM agree to withdraw its current contract notices, the State will also agree to withdraw its notices upon successful execution of the supplemental agreement provided that the supplemental agreement is executed no later than close of business 27 August 2010. IBM is also to confirm that existing contract warranty provisions have not been voided.



## ITEM LIST

Line No	SIMS	Links to Other SIM #	Status	Status of Second Call	Short Description
1	1522		Open		ALCS: RDO Leave taken wage type is not consistent with the Rec Leave Taken Wage types .
2	1967		Open		ALCS - Payroll Log PIA leave is entered in WB as date range. The leave when interfaced to SAP was arbitrarily assigned to date, including saturday and sunday. In addition, the hours rate displayed on the log is also wrong.
3	2149		Open		Interface - SAP to WB Interface control Listing report does not display 'Control Totals' for interface runs outbound from SAP.  This information is required in order to verify/reconcile that Transactions sent from SAP have been executed successfully in the target applications.
4	2205		Open		Errors with SAP to Workbrain daily interfaces (employees, Cost Objects, Jobs, Team, Dept) Import Log Report: First, the import log does not contain enough record detail to identify which record failed. (ie: Need adequate information to diagnose error). For example, if an employee record fails when processing that interface there is no employee id on the report which will hinder any error corrections that would need to be made. The second issue with the import log is the lack of flexibility to only export those records that failed. (ie: Exception based reporting). Records that error are hidden amongst all the records that have been applied successfully. This can create a performance issue when exporting to PDF. Is there a limitation to the number of records that can be exported into a PDF file? Third, how do we extract the data in a usable format to provide to our customers/? Export Log Report: This report has one of the same issues as the Import Log Report as in the lack of parameter choices when exporting to PDF. There is concern that the amount of data that would be exported in the current design (all records processed would be exported) would cause an issue with PDF and not c ALCS Accrual: Retro PIA leave cancellation was subtracted from current period ALCS accrual incorrectly
5	2332		Open		PIA cancellation affects ALCS accrual
6	2423		Open		RFCa-3269 (SAP) FI: SAP - ALCS WB & SAP are evaluating different periods to be EOM periods Relates to QC 2423 (PG3) Workbrain and SAP are evaluating different period to be End of Month Period (EOM Period) In Workbrain, Posting Date will always be Pay Period End Date + 3 (The value '3' is stored as Posting Date Offset). In SAP, Posting Date will be Pay Period + 3 and in some exception case, the Posting Date might be adjusted manually in SAP to change the EOM Period. The following solution was agreed during the meeting on 28/01 with Mavalda, Helder, S.Bosch and Gert: 1. Create a custom table in Workbrain to store exception pay periods, where the Posting Date does not equal to [Pay Period End Date + Posting Date Offset]. 2. Create a maintenance form so that user can manually maintain the exception pay periods. 3. For each pay period, WB will check the posting date of the next pay period. One of the following scenarios may occur: a. If the posting date of the next pay period is not in the custom table, then the posting date will be the next pay period's end date + Posting Date Offset (which is currently configured as 3). Derive the posting month of the next pay period from this calculated date.
7	2430		Open		IDoc validations for job / job group on the employee data extract Validating the job or job group being sent on the employee data extract appeared as an error when running ZQH_BD21.
8	2462		Open		RFC-a3261 Pay rules - Recall guarantee hours not being correctly paid VMOs not being paid their recall guarantee at the correct rate.  Please Note: Only the defect component of this change will be completed by IBM for 25 August Release

9	2501	Open	<p>RFCa-3275 (WB) APFI: SAP - ALCS LVA adjustment occurring every period for employees with multiple super funds. LVA for Super occurs every pay period for grandfathered State Super plans Employees with grandfathered Superannuation plans have 2 active employer super records that cause calculation errors in the ALCS function. The LVA adjustment for Super (0ABB or 0ABC) is being produced each pay period when it shouldn't</p> <p>The LVA calculations add to the levy the Queensland Health is required to pay for ALCS. With the calculation being performed every period the ALCS levy is being substantially over remitted by the full value of the super on-cost each period.</p>
10	2551	Open	<p>ALCS RL Paid Loading as Projected Penalties Employees who took RL and got paid loading as projected penalties, payroll calculates the difference in the Loading accrued (paid to Qsuper) and the Loading paid (claim from Qsuper). This amount 0*Z* is not added to the ALCS leave taken wage type 0*F*. This problem does not affect the employee's pay nor the claim sent to Qsuper.</p>
11	839262	Open	The salary sacrifice defined benefits screen shot attached does not appear to have the employers contribution but the normal defined benefits does.
12	843596	Open	<p>Error with FICO Posting Documents The Queensland Health FICO Posting documents created on Wednesday 23/03/2010 started cancelling. It was determined that this is because they are only running at a split of 10 so were filling up a table. The fix determined was to run the update job in 40 splits the same as the simulation documents.</p>
13	845089	Open	<p>Employee Number default Employee number does not default to 999999 when running payslips. Message when executing some payslip print jobs. 1. The ZPY_QH_PAYSLIP screen does not default the employee number to 999999 and leaves the field blank. Not sure if this is an issue if users forget to populate the employee number field and therefore execute payslips for ALL employees in SAP? 2. We also get this message appearing when executing some payslip print jobs - it does not occur all the time and does not prevent us from printing.</p>
14	848595	Open	employee 041519. 1Q01Adv Rural Med Sup is paying less than in Lattice (ADSRMS - \$4.1975/hr), SMOROPP - Opt A Non Spec Area 3 is a 45% calculation on total fortnightly salary, clinical managers Allow 5, and Adv Rural Med Sup. In Lattice this was \$3,246.08, but in SAP it is \$3094.97 and overtime and recall for this employee should attract 45% allowance. In Lattice this was 779 - No Spec O/T, 723 opt A no spec OTE. All over this employee is approximately \$1000 underpaid. Could you please check the mapping and config in SAP for these wage types. Please advise the action needed to correct all affected employees.
15	849587	Open	It appears Samuel Martin (00049560) is not being paid his casual loading on his NOCEC allowance. He is short paid this fortnight and has analysed each amount received, there is a shortfall. On further investigation the discrepancy seems to be no casual loading on his NOCEC allowance on his ordinary hours and the overtime. Please investigate and advise.
16	850520	Open	<p>RFC-a3215 QHHR Change Description of Loan Type 9005 Change Description of Loan Type 9005 from Departmental Fine to Loan-Other Activate an existing Loan Type 9005 which is not used, rename it and ensures it posts correctly to FI/CO, including balance sheet movements. This allows it to be used to record Loans -Other</p>

17	853588		Open		<p>RFC-a3426 ALCS Accrual: Workbrain has passed an LB entry to SAP that does not match the employees LB history. Employee#165727 - A retro entry for 09.03.2010 was passed in period 21.2009 for 254.885 hours. The employee has no such override or balance in Workbrainx</p> <p>"Workbrain has passed an LB entry to SAP that does not match the employees LB history.</p> <p>Employee#165727 - A retro entry for 09.03.2010 was passed in period 21.2009 for 254.885 hours. The employee has no such override or balance in Workbrain to warrant this value to be passed to SAP</p> <p>Impact:</p> <p>The leave balance between Workbrain and SAP do not match. The employees leave balance and ALCS accrual has been over inflated in SAP.</p> <p>Correction:</p> <p>The value needs to be reversed out of SAP without affecting the Workbrain balance.</p>
18	853769	853834	Open	Open	<p>ALCS - Temp to Casual Balance Payout</p> <p>When Temp to causal balance payout performed then in the next period the employee still receives an accrual then the payout hours are counted in the gross up accrual calculation for leave loading causing a large accrual value to be calculated.</p> <p>Eg employees 203755</p>
19	853806		Open		<p>ALCS Life to Date Leave Balance</p> <p>When the employee had a pay rate change, ALCS will re-value the life to date leave balance and generate the differential via wage type 0*B*.</p> <p>However, when the employee also took leave before the pay rate change, the leave taken hours were not reduced from the valued balance causing diff calc to be overstated, i.e. over remittance.</p> <p>Attachment:</p> <p>Employee 148277 in pp21 where the ALCS Cumulative report shows differences in the ALCS Closing Balance and the Calculated Closing Balance</p> <p>Impact:</p> <p>Reconciliation variance to FAMMIS</p>
20	853834	853769	Open	Open	<p>ALCS - Temp to Casual Balance Payout</p> <p>When Temp to causal balance payout performed then in the next period the employee still receives an accrual then the payout hours are counted in the gross up accrual calculation for leave loading causing a large accrual value to be calculated.</p> <p>Eg employees 203755</p>
21	855791		Open		<p>RFC-a3195 QHHR Payroll Export Resend Tool</p> <p>Work Detail Adjustment in Workbrain do not reconcile with records currently hold in SAP. This is due to the followings:</p> <ul style="list-style-type: none"> <li>- more than one user could perform a transaction to an employee's timesheet producing duplicate work detail adjustments (root cause has been resolved in production)</li> <li>- off cycle files were being overwritten due to the volume of files being produced per seconds (root cause has been resolved)</li> <li>- There are records in SAP for employee dates that do not contain records in Workbrain.</li> </ul> <p>The proposed solution is to resend current timesheet data to SAP to re-baseline employee's records.</p> <p>Create a Payroll Export Resend Workflow that can resend the Workbrain absence and attendance data (adjustments) for one or more employee work dates to SAP. Data to be sent must be before current Pay Group Adjust Date.</p> <p>The absence and attendance data sent effectively rebaselines those employee dates in SAP.</p>
22	858463		Open		<p>Employee 162253 has a RemServ deduction of 63.72 in period 21.2009 (22.03.2010 - 04.04.2010) - can someone please at this. As I understand it - the RemServ deduction cannot be more than 50% of the taxable gross for employees (except SMO). Employee has a specified amount of \$325 RemServ deduction with a taxable gross of 2523.66. System should be able to deduct the full amount of RemServ of \$325. Instead it is deducting 63.72 whic is 50% of the salary adjustment amount of 127.44.</p>

23	860446	Open	The payroll reconciliation errored due to - QSuper interface not producing an error if a person is active during the payroll period and has payroll results but no infotype 0220 (Superannuation). There needs to be a check to determine if some employee groups (eg board members) could legitimately have no super fund.		
24	861514	Open	RFC-a3498 Loan repayment is wrongly being deducted multiple times when the repayment schedule is added in retro in infotype 45. Summary: Loan repayment is wrongly being deducted multiple times when the repayment schedule is added in retro in infotype 45. Loan repayment calculated incorrectly when: 1) Loan entered retrospectively and 2) There is a retro on retro in a subsequent pay period. Change arrears processing settings for loan wage types		
25	862448	Open	The employees listed in the attached were recorded as rejected for Time Evaluation in the Final Job Chain 3 processed on Monday night. These employees were assessed by CorpTech and determined to be okay to proceed as they had already been successfully processed. These employees continue to report each night as rejected for Time Evaluation and we are unable to resolve these errors. We need CorpTech to review these employee's records to determine why they continue to report each night and can only be processed by forcing the Time Evaluation (and then still error when processed through the Job Chain		
26	862899	915868	Closed	Open	Period 20's FICO sim jobs took around 100 minutes to complete. For period 21 improvements around the number of splits and XI changes were implemented which reduced the duration to around 40 minutes. However, in Period 22 the timings were between 105 and 150 minutes. Current timing from the period 23 interim run to date was 25 minutes. It is acknowledged that there would have been greater data volumes in periods 20 & 22, however the increase in duration appears disproportionate particularly since the number of splits was increased between these periods. Regardless, the performance in these periods is not acceptable. There seems to be a difference of opinion amongst SMEs on whether XI is used for FICO sims - O&PB's understanding is that RFCs are made to FAMMIS during sims.
27	863193	Open	RFC-a3191 QHHR Invalid infotype 0509 records can be saved Invalid infotype 0509 records can be saved in SAP causing payroll errors which can only be repaired by deleting the offending entry in debug mode. These are occurring in each pay and cause major issues the later they occur. Data corruption occurred in production leading to having to use firefighter access to perform a se16 delete of a corrupt record. If this happens again on a final payrun the completion of the run would be delayed until a technical resource is available to delete the record.		
28	863888	Open	RFC-a3186 The SAP to WB Employee Master data Interface is sending records to Workbrain that are being rejected because of missing information. This information is due to missing information in the Employee Master data itself. The interface already has the facility to perform checks on the data being sent, but in this case the specific scenario for the missing component of the Default Labour Allocation is not being checked. The code change will enhance the validation routine so that the invalid data will be rejected and a message will be included in the Hourly Change Pointer Error report that is currently sent to the HR SWOT team. Enhance Change Pointer validation routine to detect missing component in the Default Labour Allocation fields. If there are issues with the change then the transport can be backed out easily.		
29	864229	Open	ALCS Error when posting ALCS in FAMMIS Transition wage type 9A09 has not been flagged for posting line item text.		
30	864783	Open	RFCa-3177 (SAP) Change to ALCS code to recognise Rate increases due to indirect evaluation. Changes to be made to the ALCS logic to ensure that additional WT /004, which is calculated in payroll, is checked for EBA increases should be used in the ALCS logic to recognise that there is a pay rate increase. ALCS revaluation will be performed to post the correct values. Only FI/CO postings will be impacted by this change..		

31	864979	906297	Open	Open	<p>RFC-a3434 ALCS Accrual: Incorrect accrual calculation due to data/interface timings</p> <p>Employee 173073 (example) There are incorrect accrual calculations being performed as a result of data being interaced from WB outside of the prescribed time frames. This employee has a LB entry IT2013 for period 21.2009 being loaded in p22.2009. ALCS calculation were incorrect due to the data being loaded out of sequence.</p> <p>EOM reversal entry not loaded into IT2013 via LB interface process Period 27.2009</p> <p>There are a large quantity of employees that have a separation record for 01.07.2010. Therefore the EOM reversal entry hasn't been loaded. If the contract end date gets extended the reversal will be missing giving them additional accrual. If they do get terminated they will be missing the reversal and the employee will be overpaid by the value of the EOM entry when their leave balance entitlement is paid out.</p> <p>Additional problem that also stems from the temps with the future dated separate actions. When this date is hit the LB doesn't load for the pay period, in most cases the separation action is removed and the employee extended. SWOT must then reprocess the file and entry now loads but wit</p>
32	866950		Open		<p>We need to look at a way to address this. If it is all custom code for the import of data could we look at additional logic when the file is rerun to look at RFC-a3179 Additional Interim for Attendance and Absense.</p> <p>An additional Workbrain data extract to be run - the request is for Attendance and Absence data (including retro data) to be exported from Workbrain and imported into SAP before the commencement of the scheduled daily payroll processing activities.</p> <p>This request is to assist SSP in managing known claims which are present in the lead up to Pay Monday.</p> <p>The aim is that the additional attendance and absence data (including retro data), at a minimum, would be extracted on this Saturday before the daily job chain is run, to pick up any changes which have occurred since the last interim run.</p> <p>We have identified the minimum data requirements we believe necessary to assist us in being proactive in managing claims leading up to the final pay run.</p> <p>The intention is also to review this process with regards to introducing this as a regular activity each 2nd Saturday leading up to Pay Monday, this though will be reviewed following the completion of the next pay run.</p> <p>Description: To accommodate this change within Workbrain the following will be required:</p> <ul style="list-style-type: none"> <li>- Creation of new 2 day payroll group calendar up to the end of the year</li> </ul> <p>RFC-a3387 QHHR Leave Loading Reversal - Balance Payout</p> <p>Reversal of Balance Payouts for Lve Loading 14% Payout reversal is paying incorrectly.</p> <p>When processing the reversal of the Balance Payout it is overriding the IT0015 record inseat of adding IT0015 reversal record. Table - T512Z is incorrect for VVage Type 7R73</p> <p>Update Table T512Z to allow multiple entries for the following wage types: 7R72 to 7R79 7Z14 &amp; 7Z17</p> <p>Currently flagged as "once", should be flagged as "sev.times". RDO and Rec Leave appear to be paying correctly as these are flagged to "sev.times".</p> <p>Business Reason</p> <p>Original wage type deleted when adjustment wage type is created. This leads to underpayment of employees.</p> <p>Impact if not implemented:</p> <p>Employees not being paid correctly where employee payout reversals on leave loading required.</p>
33	868030		Open		<p>RFC-a3387 QHHR Leave Loading Reversal - Balance Payout</p> <p>Reversal of Balance Payouts for Lve Loading 14% Payout reversal is paying incorrectly.</p> <p>When processing the reversal of the Balance Payout it is overriding the IT0015 record inseat of adding IT0015 reversal record. Table - T512Z is incorrect for VVage Type 7R73</p> <p>Update Table T512Z to allow multiple entries for the following wage types: 7R72 to 7R79 7Z14 &amp; 7Z17</p> <p>Currently flagged as "once", should be flagged as "sev.times". RDO and Rec Leave appear to be paying correctly as these are flagged to "sev.times".</p> <p>Business Reason</p> <p>Original wage type deleted when adjustment wage type is created. This leads to underpayment of employees.</p> <p>Impact if not implemented:</p> <p>Employees not being paid correctly where employee payout reversals on leave loading required.</p>
34	869318		Open		<p>Future Dated Terminations - When a termination is done for a future date then all time sheet dates up to that point are marked as being sent to SAP. This issue is about what to do if a change is required for any of those future days and how to get the update to SAP.</p>
35	869419		Open		<p>LWOP Leave Request Fault - A scenario exists in retro where an action form the Leave Request form correctly adds data to the work_detail_adjust_table (TimeSheet) but then incorrectly rolls it out and re-adds it. The impact to this is the add items gets loaded to SAP twice.</p> <p>Note: This has only been identified for LWOP Leave.</p>

36	870171	Open	<p>RFC-a3558 An export of master data changes is made from SAP to Workbrain every evening. Depending on the number of Idoc to process this may result in a single or multiple files being produced for the various message types.</p> <p>These files are imported into WB dependant on the date time stamp concatenated into the file name. It appears that the idocs in these files are not in chronological order. This has the potential to cause employee master data between SAP and WB to become out of synch. This is particularly of concern when the same employee may have had multiple changes made in SAP over the course of a day; which resulted in multiple Idocs. These may or not be imported into WB in the correct order. The attached spreadsheet has an example.</p>
37	871978	Open	<p>ALCS EOM reversal entries that were correctly calculated in period 21.2009 have in some instances been reversed in period 22.2009 for period 21.2009 when payroll retro'd for the employee. These entries should not have altered on retro as master data has not changed.</p> <p>Example employees 48140, 66561, 70636, 163367</p> <p>Impact:</p> <p>The ALCS levy will be over remitted as the EOM entry is not reversed in the first pay period of the next month.</p>
38	872010	Open	<p>Discrepancy in RMO and SMO on call rates configured.</p> <p>It has been identified that there may be a discrepancy in the RMO and SMO on call rates configured.</p> <p>Could you please review the on call wage rates configured to ensure they align to the RMO/SMO agreement clause included below regarding on call and also the applicable IRM attached which also includes the provision of standby.</p>
39	872025	Open	<p>Wage type 6Z38 (Relieve in Charge and Special Duty 50%) is not paying correctly for casuals. Rather than paying the hourly amount of \$0.701 cents, based on the current value of \$10.65, the full casual hourly rate is being paid. The reason for this is that rule ZA15 has not been set up correctly for employee sub group grouping 4, which is casuals. The following wage types are missing from this rule: 6Z38 Relieve in charge special duty (50%) 6Z39 Relieve in Charge special duty (75%) 6Z40 Relieve in Charge special duty (150%) 6Z44 Relieve in Charge Special Duty (200%) 6Z45 Relieve in Charge Special Duty (250%) 6Z46 Relieve in Charge Special Duty (300%) 6Z47 Relieve in Charge Special Duty (400%). This issue was raised because a casual employee (207436) was paid w/t 6Z38 for an 8 hour shift, and was paid 8 hours full casual rate rather than 8 hours of the Special Duty allowance. This problem will continue to occur for casual employees in receipt of these allowances until the rule is modified. The rule in question is ZA15. For employee subgroup grouping 3, all of these wage types are included in the rule, but for employee sub group grouping 4, the above mentioned wage types are not included. The rule needs to be updated to include these 7 wage types.</p>
40	873200	Open	<p>T0011 Adhoc Payments are being created with a 'Payment Method' set to "P" Cheque (see also 878576 another user exit required to Infotype 0011) This will require a program change to Infotype 11 using a "user exit" to create a system validation - error message "P is an invalid option".</p> <p>WORKAROUND.</p> <p>When Creating an Adhoc (Off Cycle) in Transaction code PA30, the only "Payment Method" that should be entered is "T Payroll Transfer".</p> <p>An instructions document has been created to address this and the Create an Adhoc (Off Cycle) Payment and Adhoc (Off Cycle) Payments - Overview WI have been updated to reflect these changes</p> <p>To report on the incorrect data, Run an SE16 query on IT0011 for any employee with 'Payment Method' set to 'C' Cheque</p>
41	873232	Open	<p>Absence and attendance records are becoming out of sync between WorkBrain and SAP for a number of reasons.</p> <p>WORKAROUND</p> <p>Documented in "Absence and attendances data sync.doc"</p> <p>Individual defect/s to be rectified in WorkBrain.</p> <p>WorkBrain functional team to develop a process to identify all employees effected by the defect.</p> <p>Long term data reconciliation process to be developed. Short term is available, but does not identify all impacted employees.</p> <p>Long term data re-sync process to be developed. Short term is available.</p>

42	873680	Open	<p>RFC-a3258 Payroll Exceptions Report ZPY_QH_PAYROLL_EXP - Payroll Exceptions Report Current output only provides an employee's PAN - Personnel Assignment Number. With concurrent employment, analysis of errors reported needs to include all of an employee's assignments. This makes it very difficult when utilising report output for identifying issues and disbursing for error correction.</p> <p>An employee's Personnel Identification Number needs to be included on the report. The "Whole of Government" standard Offer Payroll Exceptions Report does not include the Person ID in the report, and this is now requested so Concurrent Employment will be reported more accurately</p>
43	876911	Open	<p>RFC-a3293 The Predicted Termination date stored in SAP (infotype 0019 Subtype 11) should flow through to WB in the Employee Detail Export. Please see attached example as a case where the deletion of a Predicted Term date has not flowed through to WB correctly.</p> <p>Also in some cases, the creation of a Predicted separation date does not display in the Employee Detail File to WB.</p>
44	878611	Open	<p>RFC-a3234 Data Migration default shifts conflicting with shift pattern The problem is where if an employee is on a shift pattern, has had schedule details imported in the cutover which are 'Applied', does not have an OFF shift on that day then they have days with the potential to be paid incorrectly. There are two main ways that the employee is not paid correctly: a) Has Leave If an employee is on a shift pattern, has had schedule details imported in the cutover, does not have an OFF shift on that day, then a leave request is applied, they may be underpaid by 30 mins for that day. It seems like there is a problem when the Leave Request Form processes the APPLIED 'Schedule Details' that have come from the cutover and the employee is also on a shift pattern and there is no OFF shift override to cancel out the shift pattern, it deducts 30 minutes from the employees payment. Query attached that Ranald has supplied that contains 19378 number of records affecting 1070 number of employees for leave records have the potential to have a problem (up to July 2010). Please note as time goes on some of these records may have been resolved and some others may be B) Normal Working Day. If an employee is on a shift pattern, has had schedule details imported in the cutover that are 'APPLIED', does not have an OFF shift on that day, the Bank disbursements on Payslip Payslip doesn't get the required information for some CE employees. Employee 79539 has different account numbers which belong to the same bank. Instead of getting 2 lines meta data provides only one line with the total.</p>
45	878832	Open	<p>Display of Adhoc Payments on Payslip Code Change to fix the defect that caused data to not appear in the bank disbursements box on the payslip. SAP Smartform display issues when multiple disbursements to the same bank same bsb. 4ZAD doesn't appear anymore. The Off Cycle payments displayed in the payslip form (both printed &amp; online) caused confusion when trying to reconcile the payslip against payments made to the employee bank account. An interim measure was put in place using payslip messages but this should be replaced with a better longerterm solution. It has been requested that the offcycle payments made to included in the payments section of the payslip so the payslip can then be reconciled better. Incorporate additional information into the payslip interface and also the online payslip form to show offcycle bank payments.</p>
46	878944	Open	
47	879489	Open	<p>ADHOC DISBURSEMENT NOTIFICATION ON PAYSリップ We are aware and understand that adhoc pay disbursements now appears only as a message of the nett figure banked (from pay period 24). The net amount no longer shows as a disbursement on the payslip. However, it has been noted that if a re-printed payslip for a period prior to this change occurring, the bank disbursement does not display. Was this intended to occur. The adhoc disbursement amount can be seen in IT0011.</p>

48	880635	Open	<p>Payslip Printing Issue</p> <p>The 3rd party pay advice is incorrect for the following 2 examples. It should be noted the on-line version is not affected by this problem.</p> <p>Example 1: Example 1: 190470 Bell</p> <p>NP Special leave 20.04.2010 0.50 units for and Amount of \$19.21</p> <p>NP Special Leave 29.04.2010 Amount of \$32.01</p> <p>In both cases the displayed Value is a repeat of the value directly above it and a reprinted payslip reports correctly.</p> <p>Example 2: 190450 Donnelly</p> <p>Original payslip showed: OCA-HBEA -Adjustment Value of \$246.03.</p> <p>The reprinted payslip displays this value as \$0.00</p>
49	895597	Open	<p>RFC-a3484 Modifications to the Workbrain Workflow Runner are required to improve the processing speed of the workflows that are generated within Workbrain.</p> <p>These changes will require a technical solution by the Workbrain Technical team. A summary of the main changes (as advised by Ryan Bennett):</p> <ul style="list-style-type: none"> <li>- A custom implementation of the WorkflowRunner and updates to the Workbrain Job Scheduler configuration. NOTE: This solution would utilise three of the four remaining redundant job scheduler pairs - Affinity17, Affinity18 and Affinity19.</li> <li>- Updates to the PauseNode.</li> <li>- Updates to the Leave Request Workflow</li> </ul> <p>The main aim of these changes from a functional point of view is to ensure that the functionality of the Leave Requests, RLF, Off Cycle payroll exports and the employment agency form do not change but the workflows for these are executed quicker than what they currently are.</p> <p>Impacts: Currently the system workflows run slowly. As they run slow and the number of workflows build up in the queue it eventually reaches a tipping point that causes the application server to go down.</p> <p>INCIDENT</p> <p>Description: I submitted a few leave requests forms this morning, starting at approximately 11am and they have yet to be processed. They are in the :</p>
50	896264	Open	<p>ALCS - Temp to Casual Position Issue</p> <p>The current process for moving an employee from Temp to Casual position has a few problems. The E2E process needs to be reworked to resolve the following issues:</p> <ol style="list-style-type: none"> <li>1. When the Temp2Casual movement occurs in mid pay period, the accrual earned (on Temp position) is sent to SAP as IT2013 with end of pay period date. Impact: accrual is not processed by ALCS as the employee is now casual.</li> <li>2. If the leave does not get paid out, which is a more common scenario due to delay in paperwork, the remaining leave liability is dropped from payroll processing and ALCS report as the employee is now casual. Impact: Understatement of leave value and ALCS reconciliation problem. As pp25 (23/05/2010) there are approx 1800 casual with \$1.6mil that is not reported in ALCS.</li> <li>3. When the Casual comes back as Temp, ALCS fails to calculate value adjustment to reflect the pay rate changes.</li> <li>4. When Temp2Casual movement is done in retro, Workbrain fails to send the negative leave adjustment for the accrual earned when holding Temp position</li> </ol> <p>Employee 140513 with an Absence (7Z12) for the period 09/04/2010 to 23/04/10.</p> <p>On the 13/5 WB sent over add for 9/4/10 for 7Z12 4hrs with hash key that ends with #927.</p> <p>On the 19/5 WB sends an off cycle at 11.15 for a delete of the 9/4/10 with a hash key that ends with #927.</p> <p>Also on the 19/5 WB sends another off cycle at 11.19 of 1 self reversing record and an Add for 7Z12 with the same hash key.</p> <p>When all of these records were processed through CATS database at 12.00 nothing was added or deleted for the employee relating to 7Z12 on the 9/4/10. It did however create a record in PTEX2000 with the same hash key as the record that is within IT2001 and therefore could not be added at that point. From this point every time the post_time_data job is run it will try and add this record into the infotype but cannot as the record already exist.</p> <p>As part of the regular reconciliation process corptech identified that the 7Z12 on 9/4/10 existed in SAP and not WB so corptech creates a delete to remove this record. This was processed on the 21/5 at 15:00 and removed the record from IT 2001. As a record was sitting in PTEX2000 with a status of new it was process into the InfoType and has the cancelled status against it. The end result of this means the record cannot be remove thr</p>
51	897394	Open	



52	897972	Open		<p>RFC-a3409 Update WB Employee Interface to correct Termination Override Start Dates</p> <p>Description: An update is required for the WB Employee Interface to ensure that where an Start date for an Termination Override is prior to the Hands Off Date, the date must be re-set to equal the Hands Off Date.</p> <p>This is a defect that was originally identified prior to go-live - attached is a summary from Mantis:</p> <p>2009-12-18 Mantis Summary for rec 2587: Override effective date for terminations needs to be adjusted.</p> <p>Description Ovr effective date for terminations currently gets set as employees hire date. This needs to be amended with the following logic:</p> <p>* Effective Date of the Termination Override to the later of the Hire Date or Hands Off Date + 1 Day.</p> <p>Additional Information Changes to</p> <p>com.workbrain.corptech.app.ta.db.EmployeeTerminationHandler</p> <p>com.workbrain.corptech.app.bo.ejb.actions.OffCyclePayrollExportAction</p> <p>This change is required to allow the QHSSP to update these Termination Overrides if required.</p>
53	902692	Open		<p>RFC-a3477 Payroll Export Adjustment Query Oracle Hint</p> <p>Release 1.7.3 introduced two Oracle Hints in an attempt to speed up interim and final Pay/Leave export processors. The adjustment hint had a negative impact on Off Cycle processing due to it locking Oracle into using an index that was expensive for the Offcycle Payroll Export adjustment query. This impacted the Workflow Runner to the point where it halted and all Workflows queued for a number of hours.</p> <p>The hint has been disabled in production.</p> <p>The following hint should ensure that both the Interim/Final Pays can be speeded up while not affecting Offcycle Payroll Export processors.</p> <p>/database/Oracle/hints/PayrollExport.adjustment = /*+ CURSOR_SHARING_EXACT parallel(VIEW_PAYEXP_ADJUSTMENT, 8) */</p>
54	902694	Open		<p>RFC-a3439 Start of Day Tasks</p> <p>The daily Start of Day Tasks have been disabled since the 17/03/2009 due to concerns over their effect on the performance of the production system.</p> <p>To minimise their effect on performance the tasks will be run once a fortnight to populate timesheets a period 250 days out. The tasks will run on the first tuesday of the pay period starting at 12:05 AM.</p> <p>With the change to SLAVE_THREAD_COUNT paramater released with 1.7.3, it is expected that the tasks will complete prior to system open at 6:00 AM.</p> <p>Create fortnightly task to populate timesheets</p>
55	906297	864979	Open	<p>Open</p> <p>RFC-a3531 Employee becomes inactive at end of month.</p> <p>Problem occurs when employee becomes inactive at end of month. The end of month accrual and reversal are passed at the same time for consecutive dates. The problem is the reversal is not accepted in SAP as the employee is inactive. This leads to a number of issues.</p> <p>When repeat transfer is run to transfer records from interface table ZPTEX2013 compare the effective date with the current pay period and insert reason code 02 as appropriate. This will fix the problem for temp employees who are extended.</p> <p>Need to explore options regarding if the employee is not extended past this date. The EOM accrual either needs to be ignored or the reversal put in during an active period.</p> <p>SAP Technical notes: - The program logic may be able to detect a combination of the employee being inactive on the data of the "reversal" record being generated. The program can then skip posting the EOM accrual. However, this assumes that if the employment terms are then extended, Workbrain will need to resend the EOM accrual information so that it can be reprocessed.</p>

56	908611	Open	<p>RDO employee who has no roster pattern triggered 6Z73 (RDO Top Up) instead of 9ZEP (Exception Pay). Impacts from this are:</p> <ul style="list-style-type: none"> <li>- 6Z73 is not posted as salary. It draws down from RDO bank so the wage type would be classified as RDO expense. So QH is understating salary expense and overstating RDO expense.</li> <li>- This is inconsistent with non-RDO employee without roster pattern. These employees would be paid via 9ZEP which is treated as Salary.</li> </ul>
57	910664	Open	<p>RFC-a3515 QHHR SAP OSS Message number 563830 - Incorrect Tax Calculations for retro pay periods. OSS Note for Tax Report Employee Tax in period 01 2010 is not being calculated correctly. The employees affected have arrears earnings (for a pay period from the prior financial year) and have multiple personnel assignments.(Concurrently employed personnel). Please see attached examples. A Tax Report has been put created as a short term work around (through calls 910563, 912698 &amp; 914443). This call is related to the long term fix provided from SAP notes. Report required to allow correction of tax deductions.</p>
58	911675	Open	<p>Payslip File Versions (Online &amp; Vendor) are different. This defect is that the Payslip online version (printed by the SSP) is different than the copy sent to the third party vendor. There are multiple areas where it is different. A full analysis of both versions will need to be completed and then workshop with the business to agree to the final version. Some work is currently being done for Payslip enhancements - the fix on this defect is not to undo any new enhancement work. Relates to 878832, 881798, 880635, 876468 &amp; 891135</p>
59	912726	Open	<p>RFC-a3517 Performance enhancement to the Leave Request Workflow: * The Leave request Workflow needs to be modified to move the Pause node from the first node after the InsertLeaveReqPendingAction to only be invoked by LwoplmpAction and the StdLeaveImpAction. * Modify the Leave request Workflow to 'Not submit immediately'. The Leave Request workflow puts the leave into 'Pause' mode directly after the user submits the leave. Initially this was done to put the leave into batch (ie run from the batch schedulers) mode and to guard against the processing leave when the hands off date has been set(payroll export). The Leave request workflow is also geared to Submit Immediately, which means execute on the application server and not from the Workbrain job scheduler. Move the Pause node as per the QHEST recommendation to be invoked after either the LwoplmpAction and the StdLeaveImpAction. This will require node connectors to re-routed. Alter the Leave Request Workflow property "Submit Immediately" to be unchecked. This will mean that the workflow will be immediately queued to be processed and not paused for 1 minute.</p>
60	915268	Open	<p>Employee Interface - SARAS record truncated. The employee import record for 00165771 (Nicole Wallis) failed to process in the Workbrain Employee Import load on 14/7. The error message resulting was "Malformed SARAS field number 91. Expected &lt;StartDate&gt;~&lt;EndDate&gt;~&lt;Saras Object Id&gt;~&lt;Action&gt;~" Investigation has identified that there were 3 entries for this SARAS record - the first 2 were fine but the third entry had the action field truncated, causing the upload to fail.</p>

61	915304	Open		<p>Wage types need to be configured for accumulation in technical wage type /185 to enable payroll tax to be calculated on employer super contribution:</p> <p>5B20 ESAC Employer Cont.</p> <p>5B40 ESDB Employer Cont.</p> <p>5B50 ESSS Employer Cont.</p> <p>5B65 QSAA Employer Contributio</p> <p>5B70 QSAC Employer Cont.</p> <p>5B75 QSAP Employer Cont. SGC</p> <p>5B76 QSAP ER Cont. SGC No TFN</p> <p>5B80 QSDB Employer Cont.</p> <p>5B90 QSSP Employer Cont.</p>
62	915868	862899	Open	Closed <p>Period 20's FICO sim jobs took around 100 minutes to complete.</p> <p>For period 21 improvements around the number of splits and XI changes were implemented which reduced the duration to around 40 minutes. However, in Period 22 the timings were between 105 and 150 minutes.</p> <p>Current timing from the period 23 interim run to date was 25 minutes.</p> <p>It is acknowledged that there would have been greater data volumes in periods 20 &amp; 22, however the increase in duration appears disproportionate particularly since the number of splits was increased between these periods. Regardless, the performance in these periods is not acceptable. There seems to be a difference of opinion amongst SMEs on whether XI is used for FICO sims - O&amp;PB's understanding is that RFCs are made to FAMMIS during sims.</p>
63	916783	Open		<p>Workbrain Websphere Patching</p> <p>Background</p> <p>After Workbrain system went live, we have frequently experienced backend Oracle database locking contention. This contention problem occurs when database sessions originated from a Workbrain application server (JVM) becoming idle and blocking other active database sessions. If idle database session is not killed in a timely manner, JVMs would have hung threads, connections timeout, or crashed in worst case. Users would have experienced system slowness or kicked out.</p> <p>Root cause analysis has identified the main causes of database locking contention were:</p> <ol style="list-style-type: none"> <li>1. Application memory leak – This defect was fixed by Infor in release 1.7.2. After applying the release, database locking contention has been significantly reduced.</li> <li>2. Our current version of Websphere (6.1.0.13) has defects and leaks database connections when something abnormal happened to its JVM – This can be fixed by applying latest fixpack 31.</li> </ol> <p>Current Workaround</p> <p>The current workaround solution is to kill those idle sessions by an automated DB script. This solution is not effective and not good practice, but has been used merely to maintain system performance and prevent system instability.</p> <p>Proposed Action</p> <p>Re: Employee Interface - Records failed to import</p> <p>A record which failed to load in the employee import process identified the following defect with the Employee interface:-</p> <p>Currently SAP checks the record has a first name last name when there is a corresponding "Movement" action - at IDoc creation &amp; IDoc processing time if the interface detects action '01' specifically then the program gets the employee name from the database. This may not occur for a Rehire though.</p> <p>The re-hire logic section of the interface specification indicates that the name should be sent through:-</p> <p>"All other information (pay group, calc group etc) will come across from SAP as for a new employee so should be populated with appropriate values rather than the '0' they were allocated when terminated."</p> <p>According to the SAP team, the name does not appear to be sent through.</p> <p>A full history of the records through which this issue arose is included with this email.</p>
64	917456	Open		

65	919411	Open	<p>RFC-a3548 Payroll Exception and Distribution Reports</p> <p>The Payroll Exception Report is currently taking a long time to run. Initial investigations have identified a number of defects that can be fixed that will make the report run much quicker - this will have a positive impact on the overall payroll processing effort.</p> <p>A new version of the report should initially be generated with the defects fixed, so that it can be run in parallel with the current version to gauge the actual improvements realised and also provide quick roll-back option if the report does not work as expected.</p>
66	924728	Open	<p>In the agreed payrun model, the Interim Pay Run must complete by 6:00am the following morning.</p> <p>This includes payroll being available for processing and the availability of the all payrun reports. This is not occurring.</p>
67	929375	Open	<p>Errors occurring during the overnight Employee Import to Workbrain</p> <p>Time out errors:-</p> <p>890710 - com.workbrain.util.NestedRuntimeException: java.sql.SQLException: Current thread has not committed in more than [900] seconds and may incur unwanted blocking locks.</p> <p>Please refactor code to commit more frequently, while executing SELECT * FROM EMP_SCHD_DTL</p> <p>890714 - com.workbrain.util.NestedRuntimeException: java.sql.SQLException: Current thread has not committed in more than [900] seconds and may incur unwanted blocking locks.</p> <p>Please refactor code to commit more frequently, while executing SELECT /*+INDEX(EMPLOYEE_S</p> <p>907246 - com.workbrain.util.NestedRuntimeException: java.sql.SQLException: Current thread has not committed in more than [900] seconds and may incur unwanted blocking locks.</p> <p>Please refactor code to commit more frequently, while executing SELECT * FROM EMP_DEF_LAB</p> <p>Deadlocks:-</p> <p>898056 - com.workbrain.util.NestedRuntimeException: java.sql.SQLException: ORA-00060: deadlock detected while waiting for resource while executing UPDATE EMPLOYEE_BALANCE_LOG SET EBLOG_MESSAGE = EBLOG_MESSAGE WHERE EBLOG_ID IN (?,?,?,?,?,?,?,?,?,?)</p>

# MALLESON'S STEPHEN JAQUES

**Legal Advice - Subject to legal professional privilege**

**Confidential**

Mr John Beeston  
A/G Director Strategic Procurement  
CorpTech  
Level 3 Santos House  
60 Edward Street  
BRISBANE QLD 4000  
[John.Beeston@corptech.qld.gov.au](mailto:John.Beeston@corptech.qld.gov.au)

16 August 2010

**Copy to**

Mr Boyd Backhouse  
Executive Director  
Department of Public Works  
Level 6A  
80 George Street  
BRISBANE QLD 4000  
[Boyd.Backhouse@publicworks.qld.gov.au](mailto:Boyd.Backhouse@publicworks.qld.gov.au)

Dear John

**GITC Customer Contract between IBM Australia and State of Queensland for the appointment of a prime contractor for the Shared Services Solutions Program for the Queensland Government dated 5 December 2007 ("the Contract") including SoW 8 Lattice Replacement Project: Impact of 20 August 2010 Date**

## **1 Summary**

You have asked for our legal opinion regarding:

- (a) how the State's right to terminate is affected by the passing of the 20 August 2010 target for completion of negotiations; and
- (b) how promptly after 20 August 2010 the State should terminate in order to reduce the probability of a successful challenge to its right to terminate.

In summary, we are of the view that if the State decides to terminate the Contract after the conclusion of negotiations on 20 August 2010, it should do so immediately.

As previously advised there is a risk that the State has already waived its right to terminate if it wishes to rely upon the Notice to Show Cause dated 29 June 2010. We discuss below the implications of the State proceeding to terminate in light of this risk and the availability of alternatives.

**Solicitors**

Level 30 Waterfront Place 1 Eagle Street Brisbane QLD 4000 Australia  
DX 311 Brisbane ABN 55 001 462 299 [bris@mallesons.com](mailto:bris@mallesons.com) [www.mallesons.com](http://www.mallesons.com)

T +61 7 3244 8000  
F +61 7 3244 8999

## **2 The State's right to terminate**

As previously advised, we are of the view that the State had a right to terminate upon or soon after receiving IBM's response to the Notice to Show Cause issued by the State on 29 June 2010 and forming the view that the response did not demonstrate reasonable cause why the Contract should not be terminated.

The nature of the right to terminate for breach is such that a party must elect between continuing performance of the Contract and termination. We have discussed this issue in more detail in previous correspondence. However, in short, a party loses the right to terminate where it elects to affirm the contract. An election to affirm a contract is inferred from unequivocal words or conduct that are consistent only with the continued existence of the contract.

As a result, there is a risk that the State had already waived its right to terminate on the basis of that notice before communicating with IBM regarding negotiations. The State's delay in entering into negotiations after receipt of IBM's response to the Notice to Show Cause, while continuing with day to day operations, may well amount to an election to affirm the Contract. Whether this is the case will depend on all of the circumstances and communications and representations made by the State, both a senior level and at the project level.

On the other hand, there are factors supporting the continued existence of the State's right to terminate. In particular, we note that in its letters to IBM dated 28 July 2010 and 30 July 2010, the State made it clear that it was reserving its right to terminate until the conclusion of the period for negotiations (although it never received the requested written acknowledgment from IBM that it would not dispute the State's right to terminate). As previously advised, even an express disclaimer cannot preserve the right to terminate in the face of conduct inconsistent with the exercise of that right. Nonetheless, this strong reservation of rights does assist the State's position.

Ultimately, waiver is a real risk, and IBM is likely to raise this as an issue if the State terminates.

---

## **3 Impact of the 20 August 2010 deadline**

In the State's letters of 28 July 2010 and 30 July 2010, the State set a 3 week negotiation period ending on 20 August 2010. In these letters the State strongly reserves its rights (including rights to terminate) during this period of negotiations. On this basis, in our view, in order to minimise adding further weight to an argument that the State has waived its right to terminate, the State will need to make an immediate decision regarding the exercise of its rights.

In our view, a delay of anything other than a minimal and immaterial period on the part of the State in making the decision to terminate will, in the current circumstances, be likely to result in the State losing its right to terminate based on the current notice to show cause. We would recommend that if the State decides to terminate, it do so on Friday, 20 August 2010 or Monday, 23 August 2010 at the latest.

We understand that negotiations have not yet begun in earnest, with IBM delaying in providing a response to the State. On this basis, it may be that the State wishes to extend the period of

negotiations. However, we caution that the more extensions of time that are granted, the greater the delay in the exercise of the State's rights and the greater the likelihood that the State will be viewed as having affirmed the Contract. Any extension should be agreed by both parties, with IBM expressly acknowledging that the State's right to terminate is not affected by the extension.

#### **4 What if the State has affirmed the Contract but proceeds to terminate in any event?**

If the State proceeds to terminate, and the State is considered to have affirmed the Contract, its purported termination would be considered unlawful. This amounts to repudiation of the Contract.

In the face of an unjustified termination on the part of the State as a result of its earlier affirmation of the Contract (if any), IBM may accept the repudiation and terminate the Contract and/or sue for damages for loss arising out of that wrongful termination.

In our view, IBM is unlikely to sue the State for damages for wrongful termination. In any event, it is difficult to see what loss IBM would suffer arising solely out of a wrongful termination by the State (as opposed to amounts it claims are already due and owing under the Contract). This may minimise the risk involved in proceeding to terminate even though the State is uncertain about its right to do so.

It does not follow from the fact that the State may have lost the right to terminate that it has also lost the right to sue in respect of the breach on which that right to terminate was based. The State can sue for, or claim, damages for material breach at any time and even if the Contract is not terminated. The State should, however, be wary of waiving the breaches by representing to IBM that the State will not seek to enforce its rights in respect of those breaches. While we are not aware of what representations may have already been made to IBM in this respect, it appears to us from the written correspondence that the State has consistently indicated that it considers IBM to have breached the Contract in a variety of ways. In these circumstances, we are of the view that waiver of such breaches is unlikely to have occurred.

#### **5 Alternatives to termination**

##### **5.1 Issuing a further Notice to Remedy or Notice to Show Cause**

In the event that the State considers the risk of unlawful termination to be too great to proceed, it is open to the State to re-commence the termination process by issuing a new Notice to Remedy followed by a Notice to Show Cause, or, if it considers IBM to be in material breach, to issue just the Notice to Show Cause.

If the State has waived its rights of termination in respect of IBM's response to the Notice to Show Cause dated 29 June 2010 it can no longer rely on that Notice to Show Cause as grounds for terminating the Contract. The State may have also waived its right to terminate based on the breaches outlined in the Notice to Remedy.

In the time available, we have not investigated this issue in any real depth. However, we are of the view that there are likely to be breaches additional to those noted in the original Notice to Show Cause on which the State would be able to rely in a new Notice to Remedy and/or Notice to Show Cause.

# MALLESONS STEPHEN JAQUES

CorpTech

16 August 2010

---

## 5.2 Obtaining relief without exercising the right to terminate

The second alternative is that the State leave the Contract on foot. From the information we have received, it appears to be unlikely that the State would wish to continue working with IBM in the event that negotiations are unsuccessful. IBM also appears to want its obligations under the Contract to come to an end.

However, as stated above, the Contract does not require the State to terminate in order to obtain relief from IBM. The Contract makes it clear that the right to terminate by issuing a Notice of Termination does not limit any right of action or remedy that has otherwise accrued to the State. The State would be able to sue and obtain damages from IBM irrespective of whether it has exercised its rights of termination under the Contract (subject to the discussion regarding waiver of breaches above).

Exercising its contractual rights of termination provides the State with the specific contractual remedies outlined in clause 16.7.3 of Part 2 of GITC to which we have previously referred. These rights, and damages arising out of termination, will be available to the State on termination.

Please do not hesitate to contact me if you have any queries regarding this advice.

Yours sincerely

John Swinson  
Partner  
Direct line +61 7 3244 8050  
Email [john.swinson@mallesons.com](mailto:john.swinson@mallesons.com)



## Options Paper

Confidential communication - for the purposes of legal advice

---

### 1 Overview

#### 1.1 Background

On 12 May 2010 the State issued a Notice to Remedy to IBM under the GITC Customer Contract between the State and IBM Australia for delivery of the Shared Services Solution Program (**Payroll Contract**). The Notice to Remedy outlined a number of breaches relating to IBM's failure to deliver the contracted payroll solution that meets the contractual acceptance criteria by the specified milestone date, and IBM's subsequent failure to remedy defects within contracted periods.

In its letter of 19 May 2010, IBM denies that it is in breach but has provided no substantive response to the breaches outlined in the Notice to Remedy.

In separate "without prejudice" letters, IBM has proposed contract variations to extend the time for its performance under the Payroll Contract, and to reduce the acceptance criteria.

In order to seek 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 actioned and seeking a committed timeframe for resolution by IBM. The State sought a response within ten days. The State only received a "without prejudice" response to this letter (as outlined above). The State did not receive an open response to this letter.

#### 1.2 Instructions

You have asked us to consider:

- the State's options for dealing with IBM under the Payroll Contract; and
- the impact and interrelation between disengagement under the Payroll Contract and:
  - the SAP Notes work currently being undertaken by IBM; and
  - the HR Business Solution Software and Services Agreement between IBM and the State (**HRBS Contract**).

We have considered each of these issues separately below.

#### 1.3 Options for dealing with the Payroll Contract

We have considered the following options for the Payroll Contract:

1. Termination of the Payroll Contract;
2. Suspension of the Payroll Contract;
3. Negotiation of a settlement with IBM; and
4. Continuing with the Payroll Contract.

We outline these options below. The State will need to consider the benefits and associated risks of each option to determine its preferred option.

#### **1.4 Interrelation with SAP Notes and HRBS**

In short, it appears that the State has strong rights under the Payroll Contract, the HRBS Contract and in respect of the SAP Notes issue. The State may pursue any of the above 3 options without significantly affecting the HRBS Contract and resolution of the SAP Notes issue. The main risk in respect of the interrelation between the issues is in relation to the likely deterioration of the relationship with IBM.

---

## **2 Option 1: Notice to Show Cause and terminate the Payroll Contract**

### **2.1 Description**

IBM has failed to rectify the breaches outlined in the Notice to Remedy issued by the State within the requisite 7 day period. While IBM denies that it is in breach of the Payroll Contract, its arguments are vague and IBM has provided no supporting evidence for this claim. Further, the fact remains that the State is using a payroll system that is still experiencing a large number of defects which are yet to be resolved.

Under the Payroll Contract, the State has the right to issue a Notice to Show Cause if the Contractor fails to remedy a breach contained in a Notice to Remedy within the timeframe specified in that notice. The State has the right to issue a Notice to Show Cause in those circumstances, irrespective of whether the original breach was material or not.

If IBM does not show cause why the State should not terminate, the State will have the right to issue a Notice of Termination under the Payroll Contract (clause 16.7.1(a) of Part 2 of GITC).

It should be noted that the State *has no obligation to issue a Notice of Termination following the issue of a Notice to Show Cause*. It is an option exercisable at the State's discretion. If the State elects not to terminate, it can still seek to enforce its rights against IBM or seek to negotiate a settlement. However the State may need to issue a further breach notice if it later elects to terminate. The State should be clear on its strategy and communications in these circumstances to be sure it does not waive rights it wishes to preserve.

### **2.2 Rights on termination**

If the State issued a Notice of Termination, termination would take effect from the date specified in the notice.

GITC specifically provides for certain additional rights to accrue to the State (without limiting existing rights or remedies) in the event of termination pursuant to this process. In particular, the State may:

- (a) obtain from any other source a reasonably similar alternative to the Deliverable suitable to the Customer (IBM being liable for any extra expense incurred (cl 16.7.3(a)));

- (b) recover the amount of any loss or damage suffered as a result of the termination from IBM (cl 16.7.3.(c)); and
- (c) set off loss or damage arising from or in connection with the termination from any money due to IBM (cl 16.7.3.(d)).

## 2.3 Benefits

- The State can reserve its rights in relation to current breaches of the Payroll Contract by IBM. This would enable the State to claim damages now, or at a later date once the full costs of remediating the payroll system are known.
- Termination would give the State a clear “break” from IBM in respect of the Payroll Contract and enable the State to pursue other alternatives for remediation of the Payroll Solution.
- The process of issuing IBM with a Notice to Show Cause, does not require the State to terminate the Payroll Contract. If the State has issued a Notice to Show Cause and then:
  - the State discovers additional facts, or no longer wishes to terminate; or
  - IBM presents persuasive evidence in its response to the Notice to Show Cause,

the State may reconsider its options. At this stage, the State could elect to pursue termination in any event, negotiate a settlement or consider other options then available.

- The process requires IBM to seriously consider the issues raised by the State, and notifies IBM that the State is serious about enforcing its rights.
- There are certain rights that clearly accrue under the Payroll Contract and at law on termination of the Payroll Contract.

## 2.4 Risks and disadvantages

- If the State does terminate the Payroll Contract, and it is later discovered that the breaches in the Notice to Remedy were not in fact breaches (as claimed by IBM), the State may face a claim for wrongful termination. The State should ensure that the breaches listed in that Notice to Remedy are accurate and are in fact breaches of the Payroll Contract.

It should be noted, that this risk only arises on termination. On this basis, the State could issue a Notice to Show Cause, and in parallel, undertake a more detailed analysis of the underlying breaches.

- A key risk to the State of terminating the Payroll Contract is that it would need to find a third party to rectify the defects in the payroll system. While the costs of engaging a third party would likely be recoverable from IBM, there may be delays and further difficulties involved in engaging a third party at this late stage. This risk may be mitigated (but not entirely removed) by seeking to engage an existing subcontractor (such as Workbrain) where possible.

In this respect, clause 9 of Part 1 GITC allows the Contractor to supply products and services through 'Approved Parties'. Schedule 40 of the Customer Contract provides a list of those Approved Parties, including INFOR (Workbrain Pty Ltd). There is nothing in the Payroll Contract that expressly provides the State with a right to have the agreement between IBM and an Approved Party assigned to it, or for it to step into the shoes of IBM in respect of its Approved Parties, in the event of termination. However, there is nothing in the Payroll Contract to prevent it from doing so. While the terms of the agreement between IBM and its Approved Party might influence that Approved Party's capacity to undertake work directly for the State, it would be unusual for a contractor such as INFOR to agree to such a restriction.

- IBM does not have a right to stop work on issue of a Notice to Show Cause. However, the State should be prepared for IBM to cease co-operating with the State where IBM has no contractual obligation to do so.

## **2.5 Impact on SAP and HRBS**

If the State issues a Notice to Show Cause, we would expect IBM to stop work on any "at risk" work such as the SAP notes work. However, termination of the Payroll Contract will not affect the legal rights of the parties in terms of resolution of the cost of the SAP Notes work undertaken to date (as outlined below).

In respect of the HRBS Contract, while the contracts are interrelated, they are not directly linked. As a result, the HRBS Contract will remain on foot, notwithstanding termination of the Payroll Contract. We consider the HRBS Contract in more detail below.

---

## **3 Option 2: Suspension**

### **3.1 Description**

Part 2 of the GITC provides for two kinds of suspension:

- (a) suspension of the Contract for material breach for a period nominated in a Notice of Suspension (cl 16.5); and
- (b) suspension of payment to the Contractor for breach of the Contract, for the duration of that breach (cl 16.4).

Under clause 16.2 of GITC, a failure to remedy breaches in accordance with a notice to remedy amounts, in and of itself, to a material breach. On this basis, the State would have the right to suspend the Payroll Contract under clause 16.5 of GITC. Further, the State would be entitled to withhold any outstanding payments (which it has in fact done) to IBM while it remains in breach of the Contract.

### **3.2 Benefits**

- There are clear benefits of withholding payments, and we understand that the State has withheld payments under the Payroll Contract.

- Suspension of a contract has the advantage over termination that the contract remains on foot and the suspension can be lifted.

### **3.3 Risks and disadvantages**

- Suspension of the Payroll Contract does not achieve substantive disengagement with IBM as the Payroll Contract remains in place.
- The State would not gain the benefit of additional and specific contractual rights and remedies that would arise if the Payroll Contract were terminated (cl 16.7.3 noted above).
- Suspension would likely release IBM of its obligations to continue to support the system, without a clear ability of the State to engage a third party to remediate the system.
- The State may weaken its position in respect of breaches by IBM. For example, by not terminating, the State may need to give IBM a further opportunity to remedy before a right of termination arises again. This may well be productive of further delay.
- In terms of getting the payroll system rectified, the same risks arise as for termination in relation to the difficulties in engaging third parties.
- As with termination, there may be some risk involved if suspension is based on breaches which are later discredited, although the risk on suspension is of a lesser degree than that arising on termination.

### **3.4 Impact on SAP and HRBS**

If the State suspends the Payroll Contract we would also expect IBM to stop work on any “at risk” work such as the SAP Notes work. Once again, suspension of the Payroll Contract will not affect the legal rights of the parties in terms of resolution of the SAP Notes work undertaken to date. Clearly this work can only be added as a variation to the Payroll Contract if that contract has not been terminated, although this issue can be dealt with in other ways.

Suspension of the Payroll Contract will have no legal impact on the HRBS Contract, as outlined below.

---

## **4 Option 3: Negotiate a settlement with IBM**

### **4.1 Description**

The State could negotiate a settlement with IBM. This is a broad ranging option that could be instigated at any stage, to cover whatever scope the State (and ultimately IBM) considered appropriate. For the purposes of this paper, we have described the benefits and risks of negotiating a settlement with IBM at this stage (ie prior to issuing a Notice to Show Cause).

We have assumed that IBM would require, as part of any negotiated settlement, a release from future obligations and any past alleged breaches. We would expect this to be IBM’s key objective in negotiating a settlement. Further, we have assumed that the State would seek to resolve the SAP Notes issue and agree a way forward for the HRBS Contract as part of any negotiated settlement.

## **4.2 Benefits**

- The benefit of a settlement is that it allows the State to bring the Contract to an end on terms to be agreed, providing closure but with some flexibility in respect of how issues are managed. A negotiated settlement also gives the State the opportunity to resolve all outstanding issues at the same time.
- A negotiated settlement is the approach under which the State has the best chance of achieving a co-operative handover from IBM.

## **4.3 Risks and disadvantages**

- The key disadvantage of a negotiated settlement at this stage is that IBM is likely to require the State to waive all of its existing rights and remedies as a condition of any agreement. This is a risk both in respect of current known issues and costs, but also in respect of future issues that may not yet be known. For example, the State may agree to release IBM and obtain the services of a third party to remediate outstanding issues with the payroll system. If the third party then indicates that a) it will cost \$40 million to fix, or b) that the System is fundamentally flawed and should be replaced, the State will be put to great expense to obtain what was contracted for with IBM, and for which IBM was paid, without having any right of recourse against IBM.
- By pursuing a negotiated settlement at this stage, it would be difficult for the State to reserve its right to terminate in the event that a negotiated settlement cannot be reached.
- During the period of any negotiations the State is effectively “in limbo”. Does it require IBM to continue working on the issues or does it engage a third party? If IBM continues to work on the system, IBM could delay negotiations as a tactic to buy more time to remediate.
- During negotiations, the Payroll Contract will remain on foot. In these circumstances the State will need to be vigilant in monitoring requests for variations, additional SOWs and so on as part of the ongoing management of the relationship.

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.

## **4.4 Impact on SAP Notes and HRBS**

One benefit of a negotiated settlement is that the State can resolve all outstanding issues with IBM.

However, we would not say that IBM has a stronger position or a strong case in respect of either SAP Notes or HRBS. On this basis there is not clear benefit of “trading off” these claims as part of a negotiated settlement.

---

## **5 Option 4: Continue with Payroll Contract**

### **5.1 Description**

The State could continue with the Payroll Contract and seek to require IBM to remedy the defects in the payroll system. This could be achieved by serving a notice on IBM requiring IBM to rectify defects within a specified period (which could be the period proposed by IBM or such shorter period as is considered reasonable by the State).

In considering this option we have assumed that the State would seek to preserve its rights to the extent possible, and set a timeframe for IBM to rectify all outstanding defects. In this way, if IBM then failed to achieve that deadline, the State could reconsider options 1 to 3 above.

### **5.2 Benefits**

- The State keeps IBM “on the hook” for rectifying existing defects. Arguably, IBM should know the payroll system the best and should be in the best position to rectify defects.
- The State will get the benefit of the warranties under the Payroll Contract (although IBM has indicated that it will require considerable additional support fees to continue to support the Payroll System notwithstanding these warranties).
- The relationship with IBM is essentially maintained because this option effectively grants IBM further time to perform its obligations under the Payroll Contract.

### **5.3 Risks and disadvantages**

- A key risk of this approach is that IBM fails to meet the deadline, and the State consequently finds itself in the same position as at present in 3 months’ time (or such other timeframe as is imposed).
- IBM is likely to continue to seek additional money to that agreed, whether directly or indirectly by way of contract variations, scope creep and other means. It may be difficult, in a practical sense, to avoid paying these extra fees if the State has agreed to provide IBM with additional time to perform and actually wants the defects rectified. This may result in the State paying more than it already has, with no certainty of a successful outcome.
- If IBM does rectify outstanding Severity 2 issues, the State may be in a position where it has to accept the payroll system notwithstanding lengthy delays. In this circumstance, the State will be required to pay the final milestone payments to IBM. It may be possible to claim damages against IBM, in which case the State could set these damages off against these final milestone payments.
- The State would effectively be waiving its right to terminate based on IBM’s existing breaches. The State may be able to establish other grounds of termination, including if IBM fails to achieve the new timeline set by the State. However, if IBM meets that timeline, but the

State is otherwise dissatisfied, it may be more difficult to establish a right for the State to terminate for breach at that later time.

#### **5.4 Impact on SAP Notes and HRBS**

Maintaining the status quo will not impact on the SAP Notes issue or the HRBS Contract.

---

## **6 SAP Notes work**

### **6.1 Background**

IBM has been undertaking SAP Notes update work in relation to the Payroll System on an “at risk basis”.

After attempting to tie this issue to the breach of contract issue, IBM has now agreed to price this work separately. IBM’s quote of \$3.8 Million is substantially higher than anticipated by the State (or previously requested by IBM), and more than the State considers reasonable. The State has engaged Ernst and Young to assess the value represented by the work performed and the price to be paid for it.

At this stage there is no agreement with IBM in respect of this work.

### **6.2 Rights in respect of SAP work**

Under the Payroll Contract, IBM is not required to perform, and the State is not required to pay, for work outside the scope of the Payroll Contract until a change control document has been agreed in writing by the parties (Clause 1.6 of Sch 12 Change Control). As there is no written agreement between the parties, IBM has no contractual claim for payment for this work. This work is “at risk” for IBM and the State has no contractual obligation to pay IBM for it. The converse of this is that IBM can cease performing this work at any time without the State having any recourse against IBM.

In the absence of written agreement, IBM may still seek to claim payment for this work under common law principles of quantum meruit. A claim for payment under this principle would be calculated based on the reasonable value of the work performed by IBM (and possibly agreed rates set out in the contract) and ~~not on amounts claimed by IBM which cannot be substantiated.~~ On this basis, IBM would not be entitled to the \$3.8 million, but only an amount that represents reasonable value for the work actually performed.

While IBM may have a claim for payment on this basis, it is not in a particularly strong position. IBM would need to go to court to demonstrate its claim and substantiate any claim for payment for the work performed. A further risk to IBM is that the State could seek to have any amount due to IBM set off against a counterclaim for damages for breach of the Payroll Contract.

### **6.3 Impact of Payroll Contract**

While related to the Payroll System, this issue is a separate issue that can be dealt with on its own merits.

In some respects it will be easier to resolve this issue by agreeing to add it under the Payroll Contract once a price has been agreed, which may not be possible if the Payroll Contract has been terminated. However, this issue can still be



resolved by agreement of the parties even following termination of the Payroll Contract. It could, for instance, be dealt with through a deed of settlement agreed after termination. In reality, IBM has an incentive to agree an amount for the SAP Notes work, because absent agreement it must go to court to make a claim for payment.

---

## **7 HRBS**

### **7.1 Background**

The HRBS Contract was signed in 2005 for IBM to supply certain components of the HR Business Solution together with services, support and maintenance.

While the HRBS Contract is inextricably linked to the Payroll Contract from a practical perspective, they are separate stand alone contracts. Termination of one of these contracts does not automatically trigger termination of the other, and the HRBS Contract was designed to cover broader circumstances than a single implementation (like the Payroll System).

### **7.2 Interrelationship with the Payroll Contract - Licences**

However, there is a certain degree of overlap between the HRBS and the Contract, particularly in relation to the licensing of software. Schedule 1, C1.13 of the Payroll Contract notes that some of the Products to be used pursuant to its terms are licensed under the HRBS Contract.

Module Order 3 (MO3) of the HRBS Contract provides the terms and conditions for certain licensed software to be used. Pursuant to MO3, the State is granted a non-exclusive, non-transferrable licence to use the Licensed Software for the Licence Period (cl 4.1 MO3). The Licence Period is perpetual and IBM only has rights to terminate the licence in the event of a breach of the licence terms. On this basis, the Workbrain licence will survive termination of the Payroll Contract or the HRBS Contract (unless there are particular circumstances of breach of licence).

### **7.3 Interrelationship with the Payroll Contract - Direct access to Approved Parties**

In the event that the HRBS Contract remains on foot (independently of any action taken in respect of the Payroll Contract), it should also be noted that the position in respect of subcontractors is different to that under the Payroll Contract.

The HRBS Contract provides in Schedule C1, C120(14) that the relationship between the State and IBM is non-exclusive and that the State has the right to purchase ICT Contracting Services and training directly from relevant Approved Parties. The Approved Parties are listed in Schedule C1, C138 and include Workbrain Pty Ltd.

### **7.4 Summary**

The HRBS could remain on foot regardless of such termination and the State would be able to purchase services direct from subcontractors if it so desired. The State could equally determine the HRBS Contract in accordance with the procedures for doing so without impacting the State's ability to use the licensed software or engage the Approved Parties to provide services to the State directly.



**Crown Law**

Our ref: CP6/ADM001/2210/BMI  
Contact: Michael Boughey  
Direct ph: 07 3239 6107  
Direct fax: 07 3239 6386

Department of  
Justice and Attorney-General

20 July 2010

Mr James Brown  
Executive Director  
CorpTech  
GPO Box 5078  
BRISBANE QLD 4001

By email only

Dear Mr Brown

**The State of Queensland and IBM Australia Ltd – Contractual Issues  
Review of Mallesons Options Papers issued 19 July 2010**

On 19 July 2010, I received copies of the following Options Papers from Mallesons Stephen Jaques:

- A. IBM Payroll System Contract
- B. Damages
- C. Access to contractors and materials upon termination for orderly disengagement and handover

As you know, Options Paper A (IBM Payroll System Contract) is an updated version of a general advice that I have seen and reviewed before. Options Papers B and C are new advices on specific issues.

I have reviewed the advices in the time available prior to sending this letter and generally agree with them, based on my knowledge of the issues involved and noting that Mallesons has necessarily had access to a more extensive range of information and documents in the course of preparing its advices.

Some comments on specific issues are set out below. Paragraph references correspond with the numbering used in Mallesons' advices and defined terms are consistent with the terms used in those advices.

State Law Building  
50 Ann Street Brisbane  
GPO Box 5221 Brisbane  
Queensland 4001 Australia  
DX 40121 Brisbane Uptown  
Telephone 07 3239 6703  
Facsimile 07 3239 0407  
ABN 13 846 673 994

I note that some of the matters raised in my advice dated 23 June remain relevant in a supplementary manner. If you would like a consolidated advice, please let me know.

**A. Options Paper: IBM Payroll System Contract**

**Option 3: Negotiate a settlement with IBM**

**4.3 Risks and disadvantages**

As discussed by Mallesons, if a negotiated outcome is sought it is likely that IBM would require the State to waive all of its existing rights and remedies as a condition of any agreement.

If the Payroll Contract is settled by negotiation, retaining all of the State's rights is unlikely to be achievable. However, the possibility that the State could at least attempt to negotiate a release that is qualified in some way should not be discounted without further consideration. The State could, for example, endeavour to negotiate a release reserving the State's rights in case the system does prove to be fundamentally flawed and unworkable. Defining the scope of the failure in relation to which the State reserves its rights would require consideration of the possible causes of failure on a technical level, as IBM's counter argument will be that once the Payroll Contract is terminated, responsibility for any failure or defects whatsoever will be outside of the control of IBM. Ideally, this would be a failure that, if it does eventuate, can be attributed to IBM's conduct prior to termination of the Payroll Contract and could not have been adequately remedied by IBM or any other party.

I do not know enough about the technical issues involved in this matter to assess whether such an exercise is feasible or worth pursuing. However, for the purposes of negotiations, the State might consider whether there is any middle ground between attempting to reserve all of the State's rights and forfeiting them.

**Option 5: Continue with Payroll Contract on the current terms**

**6.2 Benefits**

An additional benefit (possibly too obvious for specific mention) is that negotiations towards concluding the Payroll Contract may be continued while the Contract continues on its current terms, without the pressure involved in terminating and enforcing IBM's obligations to provide Disengagement Services. It may or may not be seen as a disadvantage that the State will be required to follow the dispute resolution procedure set out in Schedule 42 while the Payroll Contract remains on foot.

**B. Options Paper: Damages**

**Counterclaims by IBM:**

It is almost inevitable that IBM will bring counterclaims against the State for breach of contract and unpaid fees if the State begins proceedings against IBM. Success by IBM in

relation to some of these claims may not necessarily be inconsistent with success by the State in its own claims. If such counterclaims were successful, the amounts claimed would be set off against any amounts successfully claimed by the State. The possibility remains that the outcome of any litigation would be a payment in favour of IBM. Care should be taken to detect and investigate any claims that IBM may make, particularly as foreshadowed in correspondence between the parties.

The possibility of IBM making claims for wrongful termination if the State terminates the Payroll Contract has been considered elsewhere, including in Options Paper A and my advice dated 23 June 2010. As concluded in Options Paper A at paragraph 2.4 (second bullet point), it may be unusual for IBM to commence legal proceedings for wrongful termination. However, if the State commences legal proceedings first then IBM will almost certainly bring a counterclaim.

**Assessment of value of damages:**

I query whether any consideration been given to when it would be appropriate to begin, at least tentatively, assessing possible damages in terms of dollars?

**C. Options Paper: Access to contractors and materials upon termination for orderly disengagement and handover**

**4.3(a) Non-solicitation**

While not necessarily inconsistent with Mallesons' interpretation that the non-solicitation clause 10.1.1 of GITC Part 2 does not apply to subcontractors themselves, I note for completeness that there are several other places in GITC where "personnel" is clearly intended to apply at least to *employees* of subcontractors.

Examples include clause 1.1 (under definition of "Specified Personnel", presumably employees of Approved Parties could be Specified Personnel; clause 5.5.1(d) (access by authorised personnel to Personal Information); clause 8.4.5 (safe place and system of work for any personnel made available by the other Party); clause 10.2.3 (removal of personnel when required by the Customer); and clause 12.3.1 (ensure that all personnel on Customer's Site comply with Customer's reasonable requirements).

This conclusion is in any case consistent with Mallesons' summary in 4.4 that "care will be required if the State wishes to engage specific individuals".

**4.3(d) Inducement and 4.4 Summary**

For completeness, I note that even if the State does terminate the Payroll Contract, the risk of a claim of inducing breach of contract by IBM's subcontractors remains present in the State's dealings with those subcontractors. While (as noted in paragraph 4.3(b)) it is unlikely that the subcontractors have agreed not to engage directly with the State in their subcontractor agreements, the subcontractors' contracts with IBM will not necessarily terminate on termination of the Payroll Contract and IBM may continue to have rights under those contracts to require subcontractors to engage in work as directed by IBM. The State might be seen as interfering with the relationship between IBM and a subcontractor if it

The State of Queensland and IBM Australia Ltd – Contractual Issues

seeks to directly engage a subcontractor to do work that would detract from the subcontractor's capacity to carry out its obligations to IBM.

Please let me know if you would like to discuss any aspect of this advice further.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M. Boughey'.

Michael Boughey  
Assistant Crown Solicitor  
for Crown Solicitor

cc. Boyd Backhouse



Our ref: CP6/ADM001/2210/BMI  
Contact: Michael Boughey  
Direct ph: 07 3239 6107  
Direct fax: 07 3239 6386

Department of  
Justice and Attorney-General

23 June 2010

Mr James Brown  
Executive Director  
CorpTech  
GPO Box 5078  
BRISBANE QLD 4001

By email only

Dear Mr Brown

**The State of Queensland and IBM Australia Ltd – Contractual Issues**

I refer to our recent discussions concerning the GITC Customer Contract between the State of Queensland (“**the State**”) and IBM Australia Ltd (“**IBM**”) for the appointment of a prime contractor for the Shared Service Solutions Program for the Queensland Government (“**the Payroll Contract**”) and related issues.

I understand that you have requested Crown Law to advise on the situation presently existing between the State and IBM and the courses of action open to the State to bring the matter to a satisfactory conclusion.

You have provided me with a copy of an Options Paper prepared by Mallesons Stephen Jaques (“**Mallesons**”), dated 17 June 2010, to consider in the course of providing my advice.

I generally agree with Mallesons’ advice. My advice therefore concentrates on considering alternative possibilities, exploring some issues in more detail or raising issues and concerns not covered in the Options Paper.

My advice largely adopts the structure, numbering and terminology used in Mallesons’ Options Paper. Other capitalized words correspond to their definitions in the Payroll Contract.

My involvement with this matter commenced on 17 June 2010, so the time available to me to investigate the circumstances and prepare this advice has been limited. If you would like me to expand on any of the issues raised in this advice or to address any additional issues, please let me know.

State Law Building  
50 Ann Street Brisbane  
GPO Box 5221 Brisbane  
Queensland 4001 Australia  
DX 40121 Brisbane Uptown  
Telephone 07 3239 6703  
Facsimile 07 3239 0407  
ABN 13 846 673 994

## **Briefing materials**

Mallesons supplied a brief of documents to me on 18 June 2010 and additional documents on 21 June 2010. Christopher Bird and John Beeston from CorpTech also provided documents or correspondence. **Attached** to this advice is a complete list of the documents relied on in preparing this advice.

## **Summary**

- The advices provided by Mallesons and Crown Law consider a range of advantages, disadvantages, risks and implications arising from termination, suspension, negotiation or continuation of the Payroll Contract.
- The State will ultimately need to decide whether or not to terminate the contract based on an assessment of these issues against the State's operational needs.
- If the State chooses to terminate the Payroll Contract, a difficult and protracted dispute with IBM is likely, even more so if the State chooses to pursue damages or other remedies. Regardless of the merits or otherwise of IBM's case, IBM will almost certainly invest considerable resources in resisting such action in an endeavour to protect its financial position and, possibly, its reputation. This may include counterclaims against the State.
- If for operational reasons and lack of confidence in IBM the State decides that it is preferable to terminate arrangements with IBM and seek a third party to complete the project, despite the delays, additional expenses and risk of litigation this will involve, then the present circumstances provide an opportunity for the State to do so with a reasonable level of confidence.
- Alternatively, it remains open to the State to continue with the Payroll Contract and negotiate necessary variations to the contract. This will inevitably involve extension of timeframes for completion of work by IBM and possibly increased costs.
- Issuing a Notice to Show Cause to IBM is a necessary step towards termination of the Payroll Contract, but it does not oblige the State to issue a Notice of Termination. The State, of course, is obliged properly to consider any response submitted by IBM to the Notice to Show Cause. As discussed in section 2.4(a) of the advice below, the State can use the Notice to Show Cause process and period as an opportunity to increase pressure on IBM, require that IBM give details of its alleged counterclaims, and carry out any further investigations necessary prior to making a final decision to terminate.

## **1. Overview and background**

### **1.1 Background**

As my involvement with the Payroll Contract commenced relatively recently, I have set out a more detailed account of the background to the matter here, to provide an opportunity for the State to provide clarification if my understanding is incorrect in any way.

- (a) In November 2005, the State (acting through CorpTech) entered into a GITC contract with IBM (the “**HRBS Contract**”), for Licensed Software (GITC Module 3), Maintenance Services (Module 5) and ICT Contracting Services (Module Order 8).
- (b) In December 2007, the State entered into the Payroll Contract with IBM for ICT Contracting Services (Module 8).
- (c) The Payroll Contract provided for a number of Statements of Work (“SOW”) to be agreed and performed by IBM. The SOW of most concern at present is SOW 8 – Lattice Replacement Design, Implement, and Deploy, version 1.2. The scope of SOW 8 is to “design, configure and build, test and implement the interim Lattice Replacement solution for Queensland Health”, to “provide an interim HR/Payroll solution to [Queensland Health]” (“**the Payroll Solution**”) until a whole-of-Government solution is deployed to Queensland Health. SOW 8 followed SOW 7, under which IBM performed services for interim solution scoping and planning.
- (d) Under the original version of SOW 8, the go-live date for the Payroll Solution was to be 30 August 2008. Pursuant to a series of Notices of Delay and Change Requests, the price for the Payroll Solution increased substantially and the Payroll Solution did not go-live until earlier this year. The date for acceptance of the Payroll Solution (Deliverable 47 in 4.1 of the “Deliverables subject to Acceptance including Acceptance Criteria & Process”) was ultimately varied to 30 April 2010 (by Change Request no. CR208).
- (e) The Acceptance Criteria for Deliverable 47 are:
  - Acceptance that Queensland Health’s payroll has been completed for three final payruns;
  - No Severity 1 or Severity 2 Defects; and
  - Management Plan for Severity 3 and Severity 4 Defects.

None of these criteria have been met to the State’s satisfaction and the State has not agreed to provide any extension of time for completion of Deliverable 47.
- (f) On the afternoon of 30 April 2010, IBM submitted a Notice of Delay to the State under Schedule 24 of the Payroll Contract. I agree with Mallesons’ conclusions in its letter dated 5 May 2010 that the notice was ineffective due to failure to meet the requirements of Schedule 24.
- (g) The State has therefore not made the following remaining payments to IBM:
  - Acceptance of Lattice Replacement Solution: \$1,850,000.00
  - Retention (to be paid 90 days after Acceptance): \$1,437,722.00



- (h) The State has also suspended reimbursement of travel expenses pursuant to its general rights to suspend payments under the Payroll Contract where IBM has missed a milestone or is in breach (GITC Part 2, clauses 13.6 and 16.4.1).
- (i) On 11 May 2010, the State issued a Notice to Remedy to IBM identifying several breaches, including:
- Failure to achieve Acceptance by 30 April 2010, time being of the essence of the Payroll Contract;
  - Failure to meet the date for delivery of Deliverable 47;
  - Failure to provide other Deliverables on time, including certain reports and certificates; and
  - Failure to resolve Defects within the Target Problem Resolutions Timeframes, including a large number of Severity 2 defects within the required two-day period (the severity level for these defects being expressly acknowledged by both parties).

The Notice to Remedy required rectification of these breaches within seven days of the date of the notice. IBM did not rectify any of the breaches within this period.

- (j) On 19 May 2010, IBM responded to the Notice to Remedy with two letters:
- An “open” letter denying that IBM is in breach of the Contract and asserting that the parties have already reached agreement on the matters raised, the majority of issues are due to the State’s systems, there are omissions and inaccuracies in the Notice, the State has waived its rights under the contract, and the State has made representations on which IBM has relied in relation to the time for delivery; and
  - A “without prejudice” letter proposing alteration of the date for delivery to 30 September 2010, and resolution of all existing Severity 2 defects by the same date.
- (k) The State denies the assertions in IBM’s open letter and is not willing to accept the proposal in the “without prejudice” letter.
- (l) On 27 May 2010, the State sent a letter to IBM denying the assertions made in IBM’s correspondence and advising that IBM’s response to the Notice to Remedy “did not meet the State’s expectations”. The letter requested that IBM provide, within 10 Business Days of the date of the letter, “a detailed work schedule that sets out when each Severity 2, Severity 3 and Severity 4 defects will be actioned, worked on and fixed”. The letter also included a Statement of Work and a Change Request to cover the SAP Support Stack Implementation services currently being undertaken by IBM without an agreed contract.
- (m) On 1 June 2010, IBM responded by letter to the State’s letter dated 27 May 2010. The proposals made by IBM in its 1 June letter (including a Change Request CR 218 providing for, among other things, extension of the time for delivery of Deliverable

47 to 20 October 2010) did not satisfy the State's request for a "detailed work schedule". IBM also rejected the proposed Statement of Work and Change Request concerning the SAP Support Stack Implementation services.

## **1.2 Instructions**

As stated above, I understand that you have requested Crown Law to advise on the situation presently existing between the State and IBM and the courses of action open to the State to bring the matter to a satisfactory conclusion, and in doing so to consider an Options Paper prepared by Mallesons, dated 17 June 2010.

## **1.3 Options for dealing with the Payroll Contract**

Mallesons considered the following options for dealing with the Payroll Contract:

1. Termination of the Payroll Contract;
2. Suspension of the Payroll Contract;
3. Negotiation of a settlement with IBM; and
4. Continuing with the Payroll Contract.

## **1.4 Interrelation with SAP Notes and HRBS**

You requested Mallesons to advise on the implications of pursuing the above options for the HRBS Contract and the SAP Support Stack Implementation services. I generally agree with Mallesons' conclusions in relation to these issues and in the interests of avoiding duplication and saving time in preparation of this advice, I have not addressed these issues further.

## **2. Option 1: Notice to Show Cause and terminate the Payroll Contract**

### **2.1 Description**

Based on IBM's failure to comply with the State's Notice to Remedy, the State may issue a Notice to Show Cause to IBM, providing at least seven days for IBM to show cause, in writing, why the State should not terminate the Payroll Contract (GITC Part 2, clause 16.6.1).

If IBM fails to show reasonable cause within the time specified, the State may terminate the contract by providing a Notice of Termination. Termination will be effective immediately upon the date specified in the Notice of Termination (clause 16.7).

### **2.2 Rights on Termination**

As noted in Mallesons' Options Paper, the rights accruing to the State in the event of termination include:

- (a) obtaining from another source a reasonably similar alternative to the Deliverable, with IBM being liable for any extra expense incurred (clause 16.7.3(a));
- (b) recovering from IBM the amount of any loss or damage suffered by the State as a result of the termination (clause 16.7.3(c)); and
- (c) setting off any loss or damage arising from or in connection with the termination from any money due, or which may become due to the Contractor, under any other contract between the Customer and the Contractor.

In addition, the State has rights under Schedule 43 (Disengagement). Schedule 43 anticipates the drafting of a Disengagement Plan by IBM within six months of the commencement date of the Payroll Contract, unless agreed otherwise by the parties (clause 5), and updating of the plan throughout the term of the contract. I am instructed that no Disengagement Plan was created in relation to the Payroll Contract. However, the State still has certain rights under Schedule 43 upon termination of the contract, including:

- (d) IBM must provide reasonable termination or expiration assistance requested by the Customer (clause 3);
- (e) IBM must, if requested by the Customer (including until the Disengagement Plan is agreed), 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
- (f) IBM must endeavour to assign subcontracts or otherwise enable the State to have access to services being provided by subcontractors or other third parties (clauses 13-16).

Although the interpretation and application of some of the clauses in Schedule 43 in the absence of an agreed Disengagement Plan would require care, the fact that clause 8 refers to the provision of post-termination services “until the Disengagement Plan is agreed” indicates that the State could still require the services and even that a Disengagement Plan could be agreed after termination.

I understand from our discussion on 22 June that the State is, for practical reasons, likely to require some form of disengagement services from IBM if the Payroll Contract is terminated, rather than requiring it to immediately “down tools”. In this case, the State should consider either utilising Schedule 43 or reaching an agreement with IBM that expressly replaces and excludes the operation of Schedule 43 to avoid inconsistency.

An essential aspect of the State’s choice whether or not to avail itself of Schedule 43 (or acquire disengagement services on another basis) will be the additional amounts that may be charged by IBM for these services. Clauses 14 and 15 provide mechanisms for determining these charges, and clause 16 obliges IBM to provide an estimate of charges for disengagement services to the State, within seven days of a request from the Customer prior to termination. If the State is able to determine the scope of the disengagement services required, it should consider providing IBM with a notice seeking such an estimate prior to terminating the Payroll Contract.

Importantly, Schedule 43 explicitly provides for IBM to 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 requires IBM to endeavour to assign to the State relevant contracts with “assignable key subcontractors” or to ensure that the State can obtain contracts with these subcontractors “on the same terms and conditions in all material respects” (clause 15). The Payroll Contract does not provide any additional assistance in interpreting the term “assignable key subcontractors”.

Clauses 15 and 16 do not apply to subsidiaries of IBM (clause 13).

### **2.3 Benefits**

As noted in Mallesons’ Options Paper, the benefits of terminating the Payroll Contract include:

- (a) the ability of the State to reserve its rights in relation to current breaches of the Payroll Contract by IBM;
- (b) providing a clear “break” from IBM, enabling the State to pursue other alternatives for remediation of the Payroll Solution;
- (c) notification to IBM that the State is serious about enforcing its rights; and
- (d) accrual of certain rights under the Payroll Contract and at law following termination.

Mallesons also notes that the State is not obliged to terminate the Payroll Contract following the issue of a Notice to Show Cause. The State will have the opportunity to consider additional facts that come to light and any persuasive evidence presented by IBM in response to the Notice to Show Cause, and may decide not to terminate in favour of another option such as negotiation of a settlement. This is considered further in 2.4 (Risks and disadvantages) below.

### **2.4 Risks and disadvantages**

As noted in Mallesons’ Options Paper, the risks and disadvantages arising from termination include:

- (a) The possibility of a claim for wrongful termination;
- (b) The need to find a third party to rectify the defects in the payroll system, with consequential delays and difficulties; and
- (c) The fact that while IBM does not have a right to stop work on issue of a Notice to Show Cause, the State should be prepared for IBM to cease co-operating with the State where IBM has no contractual obligation to do so.

I consider each of these issues further below, as well as the following additional issues:

- (d) The State itself should be able to show that it is “ready, willing and able” to perform the Payroll Contract;
  - (e) There is a risk that IBM will challenge the Notice to Remedy on the basis that the State forfeited its right to terminate under the Notice to Remedy in its letter dated 27 May 2010; and
  - (f) There is a risk that IBM will challenge the Notice to Remedy on the basis that the seven day notice period was inadequate.
- (a) *The possibility of a claim for wrongful termination*

Mallesons recommend that the State ensure that the breaches listed in the Notice to Remedy are accurate and are in fact breaches. They note that the State could issue a Notice to Show Cause, and in parallel, undertake a more detailed analysis of the breaches.

As discussed on 22 June 2010, at this point in time the State is reasonably confident that the issues raised in IBM’s response to the Notice to Remedy are not sustainable, and that IBM remains in breach of the Payroll Contract. I am instructed that the State has no reason to doubt any of the grounds set out in the Notice to Remedy, despite any assertions made by IBM, and the State’s position in relation to some of the grounds relied on in the Notice to Remedy appears particularly sound – such as IBM’s failure to resolve various outstanding defects within the Target Problem Resolution Timeframes, where the defects have been clearly identified in daily issues logs and IBM has confirmed their Severity Level (including, on a “without prejudice” basis, in Change Request CR218 proposed by IBM in its letter dated 1 June 2010).

However, it is prudent to take any opportunity available to further test IBM’s case. To this end, I recommend that the State make an attempt, most likely in conjunction with issuing of the Notice to Show Cause, to elicit more detail from IBM in relation to the claims made in its open letter of 19 May 2010. Those claims included the following:

“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 authorised representatives of the parties. 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 in relation to the system are due to problems with the Customer’s data and/or payroll processing.”

Other parts of the letter allege that the State has “waived its contractual rights” or made representations “on which IBM has relied in relation to the time for delivery”.

As you are aware, these types of allegations are typically raised defensively in disputes over information technology contracts and have been used successfully in cases such as *GEC Marconi Systems Pty Limited v BHP Information Technology Pty Limited* [2003] FCA 50. IBM has chosen to limit its response to these types of generic allegations rather than addressing the specific issues raised in the Notice to Remedy in any usefully detailed way.

The lack of detail makes it difficult for the State to investigate and assess the allegations, although John Beeston has conducted a review as set out in his email to me dated 22 June 2010.

Obtaining further information from IBM as to its reasons for denying that it has breached the contract will assist the State in ensuring that it is comfortable with its decision to terminate. It may also enable identification of any grounds of termination over which doubt exists and that should therefore be omitted from the Notice of Termination. A failure by IBM to provide information might also be used to support the conclusion that IBM has failed to show reasonable cause.

- (b) *The need to find a third party to rectify the defects in the payroll system, with consequential delays and difficulties.*

Mallesons note that there is nothing in the Payroll Contract that expressly provides the State with a right to have the agreement between IBM and an Approved Party assigned to it in the event of termination. It is possible, however, that the rights of the State under clauses 15 and 16 of Schedule 43 (Disengagement) discussed in section 2.2 (Rights on Termination) of this letter above go some way to providing such rights, with the proviso that care must be taken in interpreting those provisions and controlling costs that may be charged by IBM.

- (c) *While IBM does not have a right to stop work on issue of a Notice to Show Cause, the State should be prepared for IBM to cease co-operating with the State where IBM has no contractual obligation to do so.*

As discussed in section 2.2 (Rights on Termination) of this letter above, the State does have certain rights under Schedule 43 (Disengagement) to require IBM to continue to provide services even after termination. Exercising these rights, however, needs to be handled carefully and if such services are required the exercise of defining those services should commence now if termination is likely.

- (d) *The State itself should be able to show that it is “ready, willing and able” to perform the Payroll Contract.*

When terminating a contract, the terminating party should be able to demonstrate that it is ready, willing and able to perform its own obligations under the contract. I am instructed that the State is able to make this claim and that there are no outstanding requests from IBM for performance of the State’s obligations. The State should continue to take care to maintain this position, even after delivery of a Notice to Show Cause.

We have recently discussed issues in relation to payments to IBM for travel, and that the State is exercising its rights to withhold payments under the Payroll Contract, ie. when the Contractor has failed to perform a Milestone (clause 13.6) or if the Contractor is in breach (clause 16.4.1). If the State has not already done so, I recommend that it formally notify IBM that the State is exercising those rights. The Payroll Contract does not require notice to be given, but the notice could reduce the possibility of IBM alleging that the State is in breach of the contract. If it is clear that IBM already understands the contractual basis for the State withholding the payments, then this issue may be discounted.

- (e) *Risk that IBM will challenge the Notice to Remedy on the basis that the State forfeited its right to terminate under the Notice to Remedy in its letter dated 27 May 2010.*

The State followed the Notice to Remedy with a letter dated 27 May 2010 stating that:

“In order to move this matter forward the State intends to set a further Acceptance Test Period for Contract Deliverables 47, 48 and 49. It also requires that IBM provide, within 10 Business Days of the date of this letter, a detailed work schedule that sets out when each Severity 2, Severity 3 and Severity 4 defect will be actioned, worked on and fixed; the resourcing to be provided by IBM; and IBM’s commitment to meet that timetable.”

The letter also stated that “the State has not waived any of its rights ... and requires IBM to perform the Contract in accordance with its terms.” Nevertheless, in order to minimize any opportunity for IBM to claim that the letter waived or superseded the Notice to Remedy, I recommend that the State consider sending a further letter to IBM (or incorporating in other correspondence to IBM) statements to the following effect:

- (i) noting IBM’s failure to provide the work schedule as requested; and
- (ii) expressly confirming that the Notice to Remedy continues to apply.

The letter should not suggest that (ii) is in any way a consequence of (i).

The issue should be considered further if IBM alleges in its response to the Notice to Show Cause that the State forfeited its right to terminate in its letter dated 27 May 2010.

- (f) *Risk that IBM will challenge the Notice to Remedy on the basis that the seven day notice period was inadequate.*

It is possible that IBM will claim that the Notice to Remedy is invalid because the period specified in the Notice to Remedy was inadequate. In doing so, it may endeavour to rely on provisions such as clause 2.2(c) of the General Terms of the Payroll Contract:

“The Parties will at all times act reasonably, fairly and in good faith in exercising rights and performing obligations, including but not limited to providing approvals and consents”

Although clause 16.3.1(b) of GITC Part 2 indicates that the notice period must be “at least seven (7) days”, it does not exclude the possibility that a good faith obligation such as clause 2.2(c) might require a longer notice period.

In the State’s favour are the limitations on the application of clause 2.2 in clause 2.1, and the fact that time is of the essence in relation to IBM’s obligations.

However, as with (e) above, the issue should at least be considered further if IBM alleges in its response to the Notice to Show Cause that the State breached a duty of good faith or reasonableness in setting the notice period.

## **2.5 Impact on SAP and HRBS**

As noted above, I generally agree with Mallesons' conclusions in relation to these issues and for the most part I have not addressed these issues further.

In relation to the HRBS Contract, I note that termination of the Payroll Contract technically entitles the State to set off any loss or damage against any money due to IBM under any other contract with IBM (clause 16.7.3(d)).

## **3. Option 2: Suspension**

### **3.1 Description**

Based on IBM's material breach or failure to comply with the State's Notice to Remedy, the State may issue a Notice of Suspension to IBM, suspending the Payroll Contract in whole or in part from the date specified in the Notice for a nominated period (GITC Part 2, clause 16.5.1).

During the suspension period, IBM must comply with any reasonable directions given by the State in relation to the performance of the Customer Contract (clause 16.5.2).

### **3.2 Benefits**

As noted in Mallesons' Options Paper, the benefits of suspension include:

- (a) The right to withhold payments; and
- (b) The fact that the contract remains on foot and the suspension can be lifted.

As recently discussed in relation to payments to IBM for travel and noted by Mallesons, a right to withhold payments can also be exercised by a Customer when the Contractor has failed to perform a Milestone (clause 13.6) or if the Contractor is in breach (clause 16.4.1).

Additional advantages include:

- (c) The parties can engage in negotiations during the suspension period without immediate day-to-day issues having the same impact as if the contract was continuing;
- (d) The State would not continue to incur ongoing expenses that IBM may claim (again, such as reimbursement for travel); and
- (e) The State could choose to suspend the Customer Contract "in part".

The final issue may be particularly relevant. While the GITC documents do not provide any guidance as to the meaning of "in part", the option could potentially permit the State to keep certain obligations, such as support services, active. Care would need to be taken in drafting the Notice of Suspension to properly define the scope of the parts of the contract being suspended and the parts being maintained.



### 3.3 Risks and disadvantages

I do not propose to add anything in relation to the risks and disadvantages noted in Mallesons' Options Paper, other than that in relation to difficulties in engaging third parties:

- During a suspension period, the State would not have the benefit of the rights in relation to engaging subcontractors and third parties under clauses 15 and 16 of Schedule 43 (Disengagement) discussed in section 2.2 (Rights on Termination) of this letter above); and
- Care would need to be taken in engaging external parties to provide services during the period of suspension to avoid conflict with aspects of the Payroll Contract, such as obligations to protect IBM's Confidential Information.

### 4. Option 3: Negotiate a settlement with IBM

Mallesons have comprehensively dealt with this option and I do not propose revisiting the advice provided in the Options Paper.

However, I note that there are mechanisms in the Customer Contract that may be relevant to negotiation of a settlement, as well as to Option 4 – Continue with the Payroll Contract:

#### (a) *Schedule 42 – Dispute Resolution*

Schedule 42 of the Payroll Contract includes a set of dispute resolution clauses replacing the standard provisions in clause 14 of GITC Part 2. Schedule 42 is considerably more complex than clause 14 and includes processes for expert determination by a single expert (clause 1.9), mediation (clause 1.11, including a provision that enables the mediator to refer the dispute to expert determination – clause 1.11(c)), and expert determination by a panel of three experts.

The State could refer issues in dispute with IBM to dispute resolution in accordance with these processes. The time that the processes are likely to take probably make this option unattractive.

I do not believe that Schedule 42 has the effect of obliging the State to utilize the dispute resolution clauses (if activated by IBM or otherwise), rather than terminating the Payroll Contract or instituting legal proceedings, despite some indications to the contrary. As a general principle, dispute resolution clauses need to be explicitly worded to take away rights that the parties would otherwise have and Schedule 42 seems unlikely to preclude termination<sup>1</sup>. Neither Schedule 42 or clause 14 of GITC Part 2 survive termination of the contract. The State could therefore terminate the Payroll Contract and institute legal proceedings without being required to follow the processes in Schedule 42.

However, in some cases dispute resolution clauses may be used as a delaying tactic. There is a risk that IBM could endeavour to refer one or more of the issues between the parties to dispute resolution under Schedule 42 if the Payroll Contract is not terminated. The State

---

<sup>1</sup> Eg. *Ericsson AB v EADS Defence & Security Systems Ltd* [2009] EWHC 2598 (TCC)

would then need to consider its rights to terminate based on the circumstances current at that point in time if it wished to be sure of avoiding the dispute resolution process.

*(b) Audit and Technical Verification*

Two other mechanisms are available to the Customer under the Payroll Contract that would conceivably assist in conducting negotiations, but their suitability to the present circumstances may be limited and, as with the dispute resolution process, the time they are likely to take may preclude their usefulness. They may be more likely worth considering, if at all, if the State chooses to continue with the Payroll Contract:

- General Terms, Clause 8 – Audit

The Customer may request an audit of “the Contractor and any subcontractors in respect of any obligations they have under this Customer Contract”. The clause does not suggest that the audit is limited to financial issues. Following an audit, the Customer may require the Contractor to remedy non-compliance.

- Schedule 39 – Technical Verification

The Customer “may nominate an Independent Assessor to conduct a service and performance review of the operation of the Deliverables against the Project, Implementation and Payment Plan, the applicable SOW or against any Service Levels.”

**5. Option 4: Continue with Payroll Contract**

Mallesons have comprehensively dealt with this option and I do not propose revisiting their advice, other than to note the availability of the mechanisms considered in relation to Option 3 above:

- Dispute resolution (Schedule 42) – including the possibility that IBM could inconvenience the State by initiating dispute resolution processes;
- Audit (General Terms, Clause 8); and
- Technical Verification (Schedule 39).

**6. SAP Notes work**

I do not have anything to add to the advice provided by Mallesons in relation to this issue.

**7. HRBS**

I do not have anything to add to the advice provided by Mallesons in relation to this issue, other than that termination of the Payroll Contract technically entitles the State to set off any loss or damage against any money due to IBM under any other contract with IBM (clause 16.7.3(d)).

Please let me know if you would like to discuss any aspect of this advice further.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M Boughey'.

Michael Boughey  
Assistant Crown Solicitor  
for Crown Solicitor

encl

cc. Boyd Backhouse

### Proposed Contract Negotiation Parameters

Item		Acceptable Position	Preferred Position	Supplemental Agreement
1. Payment of remaining milestone payments		Pay \$1.85 million	No Payment to be made	Pay \$1.85 million
The State retains \$3.34 million in outstanding milestone payments. Retention of these funds could in part offset the additional support costs being borne by the State		Retain retention payment of \$1.49 million		Retention payment of \$1.49 million to be paid upon successful completion of all obligations under the contract.
2. Payment for legislative compliance work		Pay \$1.7 million	Pay \$1.7 million	Pay \$1.7 million
IBM undertook work at the request of the State to implement SAP system changes to ensure that year end payment summaries for Queensland Health staff were legislatively compliant. IBM costed this work at \$1.7 million. The cost for CorpTech to undertake the same work was estimated at \$1.4 million.				
3. Warranty		Relinquish Warranty	Relinquish Warranty	Retain Warranty
The system delivered by IBM is covered for defects for a period of 3 months for each occurrence from first use, with a maximum period of 13 months after go-live. Pursuing a defect warranty claim against IBM will be problematic due to the high-level nature of the State's system requirements and the uncertainty of its original tender requirements				
4. Outstanding Defects		Defects in the State's Notice to Show Cause of 29 June 2010 to be rectified	All outstanding severity 2 defects up to 31 July 2010 to be fixed	Items listed in the State's Items to be Rectified List 18 August 2010
Agreeing a list of outstanding defects with IBM will be problematic due to the high level nature of the State's system requirements and the uncertainty of its original tender requirements. There is a list of defects as detailed in the State's Notice to Show Cause to IBM dated 29 June 2010. The list of defects has been disputed by IBM.				
5. System Acceptance		System Not Accepted	System Not Accepted	System Accepted upon completion with all obligations under the
Although contractually related to payments, publicly the system is seen not to be				

Item	Acceptable Position	Preferred Position	Supplemental Agreement
working. Accepting the System contractually will not pass a public interest test and would release IBM from its contractual obligations, effectively ending the contract.			contract.
<b>6. Legal Release of Obligations</b>  IBM will undoubtedly insist on a full legal release in respect of any its past actions as part of any transition out negotiated settlement. This may include releasing IBM from any damages claims for past and potential future losses suffered by the State.	Qualified release, for example retaining rights in case system must be abandoned due to inability to overcome defects	No release	Standard rights of the State survive finalisation of the contract. This allows the State to take legal action should circumstances requires where the system is found not to be fit for purpose.
<b>7. Public Statement</b>  Any Deed of Settlement to remain confidential with no public statements on the settlement be made by either party.	Agreed Public Statement	No Public Statement	No Public Statement
<b>8. Support</b>  There is a support contract in place under which the State can receive system maintenance and support services from IBM. This contract has been in operation for a number of years and provides licences and third-level support for the following products: SABA, RecruitASP, and Workbrain. This contract is known as the HRBS contract. A disengagement strategy for this contract will be progressed as a separate matter.	HRBS contract remains "on-foot"	HRBS contract remains "on-foot"	HRBS contract remains "on-foot"
<b>9. Negotiation timeframe</b>  There is a risk that negotiations with IBM may become protracted, thereby diminishing the State's rights to further courses of action.	Six weeks, with an update to Cabinet Budget Review Committee	Six weeks, with an update to Cabinet Budget Review Committee	Supplemental agreement to be executed by 27 August 2010 (five weeks from Decision 3019.

