



AUDITOR GENERAL  
FOR WESTERN AUSTRALIA

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## AUDITOR GENERAL'S REPORT

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Fourth  
Public Sector Performance Report 2007





**AUDITOR GENERAL**  
FOR WESTERN AUSTRALIA

**THE PRESIDENT**  
**LEGISLATIVE COUNCIL**

**THE SPEAKER**  
**LEGISLATIVE ASSEMBLY**

**FOURTH PUBLIC SECTOR PERFORMANCE REPORT 2007**

I submit to Parliament my fourth Public Sector Performance Report for 2007 under the provisions of sections 18(2) and 25 of the *Auditor General Act 2006*.

A handwritten signature in black ink, appearing to read 'C. Murphy'.

COLIN MURPHY  
AUDITOR GENERAL

26 September 2007

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# Auditor General's Overview

This report contains the results of our assessment of three very different aspects of government administration. However, they all, to some extent concern the management of risk. The three assessments were of:

- Management of Asbestos Related Risk by Government Agencies
- Tracking Timber Logged From South-West Native Forests
- Establishing Contractual Agreements With Private Business

Agencies are constantly making risk based decisions, both large and small. Important decisions are more likely to have the desired outcomes if they are made with the necessary understanding of the nature and consequence of the risks and the options for addressing the risk. This report shows that agencies can improve how they identify and address their risks.

This report also demonstrates the value of an increasing number of suggestions and requests received by the Office. Two of the three matters reported here arose from requests for investigation, one from a Parliamentary committee and the other from a member of the public.

My Office now receives a substantial number of suggestions, enquiries and requests for investigations each year. For many reasons, including the number of requests received, the need for independence in topic selection and coverage of the sector, it will not be possible for most of these to be investigated. Many that are investigated will not be reported to Parliament as they do not reveal matters of significance.

Nevertheless, I welcome the requests. They are an important element of our democratic system and a valuable addition to the sources of information the office uses to identify potential areas for examination.

# Management of Asbestos-Related Risks by Government Agencies

## Overview

Asbestos is a naturally occurring mineral fibre used in a large range of building products up until the mid 1980's. While asbestos was banned completely in 2003, asbestos products may be present in many buildings, particularly those built before 1990.

When asbestos products are in good condition there is little risk posed to people's health. However, if asbestos products become damaged or degraded, there is a risk if people inhale airborne asbestos fibres. Breathing in asbestos fibres can cause mesothelioma, asbestosis and lung cancer. From 1992 to 2006, 1 065 people in Western Australia (WA) had died from these diseases.

The Occupational Safety and Health Regulations 1996 (OSH Regulations) requires all persons in control of a workplace to identify the presence and location of asbestos and to assess risk. In 2004 the Minister for Housing and Works directed that all Government agencies must establish an Asbestos Register and a Management Plan by December 2005.

The actual number of government buildings containing asbestos is unknown though it is many thousands. This total includes schools, offices, fire and police stations and live-in accommodation.

The Department of Consumer and Employment Protection (DOCEP) through its WorkSafe division, has a regulatory role of this area. WorkSafe administers the *WA Occupational Safety and Health Act 1984* (WA OSH Act) and the OSH Regulations 1996 that relate specifically to asbestos management.

Our examination involved an assessment of asbestos management activities at eight agencies with large building portfolios as well as WorkSafe's oversight role.

## Key findings

- None of the eight sampled agencies had complete or up-to-date asbestos registers at the time of audit. Three of the agencies lacked any register. While the absence of an asbestos register does not mean that buildings are unsafe, without a register agencies cannot determine the extent of asbestos related health risks to staff or the broader community. Agencies are also potentially liable for fines of up to \$50 000 for not complying with the OSH Regulations. Of the two sampled agencies with the largest building portfolio:
  - Department of Education and Training had almost completed its register at the time of audit. This covered about 784 buildings including 759 schools.

## MANAGEMENT OF ASBESTOS-RELATED RISKS BY GOVERNMENT AGENCIES ... CONTINUED

- Department of Housing and Works (DHW) did not have comprehensive registers for its pre 1990 public housing stock (approximately 19 000 houses). DHW advised that it has a system containing some information and conducts inspections of all public rental properties where obvious asbestos containing materials are examined.
- None of the sampled agencies had complete or up-to-date management plans. Three agencies had no plans. Of the agencies with plans, none had timelines for action, management options and reasons for decisions as required by the regulations. This includes priorities and dates for reviewing risk assessments.
- Seven of the eight sampled agencies have undertaken asbestos removal programs in the last eleven years, five of which were major programs. However, only two of these removal programs arose from established asbestos risk profiles.

### What should be done?

- All agencies should ensure that their buildings, whether owned or leased, comply with the requirements of the OSH Regulations 1996. This includes the development of asbestos management plans, registers and adequate monitoring of people who work on or can disturb asbestos products.

### Agency responses

All agencies generally agreed with the findings and recommendations in this report. Other comments included:

- Department of Education and Training advised us they now have ‘a fully compliant asbestos register and management plan at all relevant schools’.
- DHW informed us it will enhance an existing system for use as an asbestos register, improve its communication strategy and monitoring process for its management plan and improve processes to ‘ensure 100 per cent compliance with technical licensing and insurance’ requirements for people working on asbestos products.
- Department for Planning and Infrastructure stated it will ‘include a timetable for action, including priorities and dates for reviewing risk assessments, in its management plan by April 2008’.

- Fire and Emergency Services Authority indicated that it has been actively consulting with the Department of Housing and Works and that its management plans and registers are expected to be completed within 12 months.
- Main Roads WA stated that it is following a staged approach and that it now intends to ‘...arrange preparation of a management plan for the remaining properties’.
- WA Planning Commission indicated its ‘register is to be completed by 31 December 2007 and its management plan and necessary remediation, involving minor works, by 30 September 2008’.
- Western Australian Police stated a ‘draft plan will be produced by end October 2007’.

WorkSafe stated that:

- it is ‘reviewing and changing the application process and licence conditions’ for contractors undertaking asbestos work.

## Background

Western Australian OSH Regulations 1996 require a person who, at a workplace, is an employer, the main contractor, a self-employed person or the person having control of the workplace to ensure that:

- the presence and location of asbestos at the workplace is identified
- identification and the assessment of asbestos risks at the workplace are conducted in line with the *Code of Practice for the Management and Control of Asbestos in Workplaces*. This code was adopted in the WA OSH Regulations in December 2006
- assessment of asbestos risks is undertaken by someone sufficiently competent to assess risk.

Under the WA OSH Act 1984, individual government agencies have a key responsibility as employers to ensure a safe working environment for their employees. In 2004, the Minister for Housing and Works wrote to all Ministers stating that agencies (in accordance with the legislation) are required to develop an asbestos management plan and an asbestos register by December 2005.

WorkSafe is the division of the Department of Consumer and Employment Protection (DOCEP) that administers the WA OSH Act 1984. This includes oversight of the OSH Regulations 1996 that relate specifically to asbestos management.

Approximately, 30 per cent of agencies are able to perform building maintenance including asbestos related work under their enabling legislation. The Department of Housing and Works coordinates asbestos containing materials (ACM) surveying and asbestos removal for other agencies. They do this either through private contractors or in-house personnel.

Due to new requirements of the *Code of Practice for the Management and Control of Asbestos in Workplaces*, an Asbestos Steering Committee (ASC) has been meeting regularly since March 2006. This Committee was endorsed by Cabinet in April 2007 as the peak government body to coordinate a whole of government approach to the management of asbestos in the public sector in compliance with the OSH Regulations 1996. This committee is chaired by the Department of Housing and Works and includes representatives from WorkSafe and other agencies that we examined in this audit.

## What Did We Do?

We examined compliance by eight agencies with the OSH Regulations and the 2004 direction by the Minister for Housing and Works. This included assessment and recording of risks, preparation of management plans, monitoring activities and removal programs. We also reviewed oversight activities by WorkSafe.

The eight agencies were:

- Department of Housing and Works (DHW)
- Department of Education and Training (DET)
- Department for Planning and Infrastructure (DPI)
- Fire and Emergency Services Authority (FESA)
- Main Roads Western Australia (Main Roads)
- Western Australian Police (WA Police)
- Rottnest Island Authority (RIA)
- WA Planning Commission (WAPC)

## What Did We Find

### Identifying risks

None of the eight sampled agencies were found to have complete and up to date asbestos registers at the time of our audit:

- three agencies did not have registers – FESA, WAPC and WA Police
- three agencies had registers that were partly complete – DHW, DET and DPI
- two agencies had registers that were mostly complete – Main Roads and RIA.

## MANAGEMENT OF ASBESTOS-RELATED RISKS BY GOVERNMENT AGENCIES ... CONTINUED

These results were consistent with an unaudited government wide survey conducted by the ASC in 2006 to assess progress with identifying asbestos risk. Ninety-four of the 138 surveyed agencies responded. As yet, the ASC has done no formal analysis of the results. However, our analysis of a sample of the responses found:

- 62 per cent of agencies stated that they had registers
- 37 per cent stated that they had asbestos management plans or had begun the planning process
- 29 per cent stated that they had implemented some form of asbestos removal.

Agencies are required to have current registers with risk assessments completed by competent people and covering all of their buildings to comply with the OSH Regulations and the Minister for Housing and Works' 2004 instruction.

Without a register, agencies cannot obtain a clear understanding of the extent of the problem and are unable to effectively budget if necessary for the cost of rectification. WorkSafe advised us that agencies that do not have compliant registers are potentially liable for a fine of up to \$50 000 under the OSH Regulations. However, the absence of a register does not mean that buildings are unsafe.

The first step in preparing the register is to conduct an asbestos containing materials (ACM) survey and assessment. For each site, the register should record identified ACM along with its state of repair, the date of the assessment and the names of the (competent) persons who performed the work. It should also contain a risk rating along with measures to reduce or eliminate the risk if necessary.

**Case example – Complaints by staff of one of the eight sampled agencies about the level of dust in a storage facility led to the agency engaging consultants in March 2007 to assess the asbestos risk. This agency had not undertaken any asbestos risk assessment. The consultants assessed the condition of asbestos as poor and containing exposed fibres. The building is now no longer used.**

Agency	Possible Presence of Asbestos (Buildings built before 1990) <sup>1</sup>	Compliance	Audit Comment
DHW	11 offices with 672 staff. 19 000 public houses with 36 776 tenants. 2 155 Government Regional Officers Housing (GROH).	Partial	Public housing – system without full information. Country offices – 5 buildings with no register. The GROH register was updated when we requested it for our audit.
DET	784 buildings (including 759 schools) – DET were unable to provide an estimated number of occupants.	Partial	Risk assessments have been completed for all buildings as a step to establishing registers. An improvement notice from WorkSafe required registers to be completed by 31 August 2007.
DPI	5 buildings with no register accommodate 31 staff.	Partial	Registers exist only for coastal facilities. This represents an estimated 86% of DPI's building portfolio requiring registers.
FESA	77 buildings with 1 550 occupants comprising staff and volunteers.	Nil	No register
Main Roads	243 buildings with 1 000 occupants comprising staff and the general public.	Almost complete	Register exists – one leased building with 96 staff was not included.
RIA	330 buildings with 2 900 occupants comprising staff and the general public.	Almost complete	Register exists but has not been updated since 2004 to reflect recent asbestos removal.
WA Police	134 buildings with 2 960 staff.	Nil	No register
WAPC	275 buildings with 712 occupants (including 1 shopping centre).	Nil	No register

**Table 1: Compliance by the eight sampled agencies with the requirement to have an Asbestos Register**

*None of the sampled agencies had complete registers.*

Source OAG

<sup>1</sup> The estimated numbers of buildings and occupants were provided by the agencies. We did not test the accuracy of these estimates. DHW advised us and informs those agencies using their services that asbestos products may be present in buildings built before 1990.

### Agency plans for managing the risks

None of the eight sampled agencies had complete or up-to-date management plans:

- three agencies did not have plans – FESA, WAPC and WA Police
- DET had a plan at draft stage but it lacked a timetable for action, management options and reasons for decisions
- DHW has an overall plan covering all their buildings but the plan lacks a communication strategy, timetable for action, management options and reasons for decisions
- the other three agencies had plans in various stages of development – DPI, Main Roads and RIA.

Management plans are not necessarily about identifying immediate strategies for asbestos removal. Rather, they are about ensuring a logical approach that incorporates factors such as risk levels, mitigation strategies, accommodation needs and links to budgets. The absence of suitable management plans can result in an uncoordinated and ineffective approach to addressing the risks.

An asbestos management plan should contain:

- communication strategies to ensure that all relevant people are aware of the location, type and condition of the asbestos, the risks posed and the control measures adopted
- decisions about management options (that is, to maintain the asbestos or replacement) including the reasons for these decisions
- a timetable for action, including priorities and dates for reviewing the risk assessments and monitoring arrangements
- the asbestos management plan should be clear and unambiguous. It should set out the aims of the plan, what is going to be done, when it's going to be done and how it is going to be done. There should be clear lines of responsibility, with each person involved understanding their roles and responsibilities.

Table 2 describes our assessment of the eight sampled agencies' asbestos management plans.

Agency	Management Options	Timetable for Action	Roles and Responsibilities	Communication Strategies	Overall Compliance	Other Audit Comments
DHW	×	×	✓	×	Partial	Plan was not reviewed annually.
DET	×	×	✓	✓	Partial	Draft plan prepared. DET have outlined the roles of DHW and DET in the draft plan.
DPI	×	×	✓	✓	Partial	Plan only covers coastal facilities.
FESA	×	×	×	×	Nil	No plan
Main Roads	×	×	✓	✓	Partial	Plan developed in 1999 only covers Don Aitken Centre in East Perth.
WA Police	×	×	×	×	Nil	No plan
RIA	×	×	×	✓	Not up-to-date	Plan was developed in 1993 and is outdated. RIA also had an asbestos roof removal communication plan developed in 2005.
WAPC	×	×	×	×	Nil	No plan

**Table 2: Asbestos Management Plans – Compliance with requirements**

*None of the agencies had complete or up-to-date plans.*

Source: OAG

### Action taken to eliminate or monitor the risk

Seven agencies have removed significant asbestos products from about 10 000 buildings within their asset portfolio in the last 11 years. Main Roads and RIA, undertook the work in accordance with the assessed risks to health of their overall building portfolio. The other five agencies reacted to the identification of specific and visible risk.

Very large asbestos removal programs have been undertaken by five agencies, DET, DHW, RIA, WA Police and Main Roads (refer table 3). DET has removed the asbestos roofs in 216 schools. We noted the cost of removing asbestos products from all schools, has been estimated by DHW to be one billion dollars. DHW advised that 2 237 asbestos roofs have been removed from public houses and GROH.

WA Police has removed asbestos roofs from 88 buildings. RIA has removed asbestos roofs in 250 buildings. RIA advised that it has no documented future plans for asbestos removal beyond the current roof removal program. Main Roads removed all asbestos products rated as high risk from 47 buildings in 2006. It has no current plan for further asbestos removal.

Monitoring is a requirement of the OSH Regulations and should involve actions such as periodic inspection of state of repair and oversight of demolition and maintenance work. Only DET of the eight sampled agencies has a systematic program for monitoring the condition of asbestos products and demolition and maintenance work that could disturb asbestos products. DET has engaged a competent person to:

- conduct proactive and reactive inspections of schools, though we noted that proactive inspections have not occurred since mid 2006
- instruct and monitor contractors engaged in demolition and maintenance work at the schools
- provide asbestos safety awareness training for school principals.

Of the other seven agencies, only RIA has undertaken monitoring. We noted a consultant report in 2006 where daily air testing of 91 various locations was undertaken.

Monitoring also entails ensuring that demolition and maintenance work conducted in buildings that contain asbestos products is undertaken safely. DHW coordinates this work for approximately 70 per cent of agencies as well as its own building portfolio. We found that some areas within DHW were not ensuring that persons engaged to undertake demolition and maintenance work are licensed and insured as per contractual obligations.

Agency	Key Activities	Audit Comment
DET	All asbestos roofs removed - 216 in total. Begun in 1997 and completed in 2002. Systematic monitoring program in place. Are at an advanced stage in requiring all building contractors to consult DET's asbestos register to determine risk of their activities disturbing asbestos.	Proactive visits have not taken place in the last 12 months.
DHW	2 237 asbestos roofs removed from public housing and GROH since 1994. New Living Program refurbished 7 263 properties – some degree of asbestos removal. Twice annual inspection of all public rental properties and when a property becomes vacant.	Only obvious ACM examined.
DPI	Demolished 3 boat sheds in Fremantle in 2005 and removed internal walls containing asbestos in 2006 in the Carnarvon office.	
FESA	Removed asbestos from two buildings in Belmont in 2004 and 2006 prior to building modifications being required.	
Main Roads	Removal of all asbestos in East Perth Head Office almost completed. All high risk asbestos (rated as priority 1 in registers) located in 47 buildings removed in 2006.	
RIA	Asbestos roof removal from 250 buildings begun in 2002 as part of island refurbishment program. Air monitoring in place.	
WA Police	Removed asbestos roofs from 88 buildings and encapsulated remaining two.	

**Table 3: Key asbestos removal projects and monitoring activities**

*Seven of the eight sampled agencies have undertaken asbestos removal in the last 11 years with the largest programs undertaken by DHW, DET, Main Roads, RIA and WA Police.*

Source: OAG

### Regulatory oversight by WorkSafe

WorkSafe has had only a limited input to the management of asbestos risk by agencies. Rather its focus has been on those industries where there is a day to day likelihood of serious injury or death.

WorkSafe has not undertaken a formal assessment of the risk arising from asbestos in government buildings but advised that if an assessment was done it would likely conclude that the risk was low compared to other risks. For example, it advised that statistical analysis of workers' compensation claims lodged in the last six years showed that exposure to asbestos was not among the five most common causes. However, WorkSafe advised that it is intending to use the findings from our review to target future inspections in the public sector.

Of the asbestos related activities that it undertakes we noted:

- Ministerial approval of two revised National Codes of Practice for asbestos and a specific education campaign on asbestos and demolition in the last two years
- applications from companies and individuals for a license to work with asbestos either as removalist or in demolition were being adequately assessed against all of the set criteria. However, we did sight instances of where WorkSafe failed to follow-up conditions it imposed in the granting of a license. These conditions related to the provision by the applicant of operational policies and practices for working with asbestos. WorkSafe advised that it will correct its licensing procedures to prevent recurrence
- WorkSafe advised that the WorkSafe Commission has decided to establish a new class of license to cover the removal of more than 10m<sup>2</sup> of non-friable asbestos.

# Tracking Timber Logged From South-West Native Forests

## Overview

Approximately 630 000 tonnes of log timber worth \$44 million was harvested from south-west native forests in 2006-07. The Forest Products Commission (FPC) is responsible for the harvesting and sale of this log timber. The amount of native forests that can be harvested annually has been set by the Government and documented in the State's Forest Management Plan.

FPC meets its responsibility for the harvest and sale of south-west native forest log timber through a range of contracts. Harvesting contractors fell, extract, grade, load and deliver log timber to customers in accordance with harvesting contracts.

The review arose out of a public complaint alleging that some customers were receiving log timber outside of the terms of their contracts and of failings in FPC's system for recording deliveries. The investigation looked at how FPC records and tracks south-west native forest log timber harvested by its contractors.

## Key findings

- The extent of theft of log timber is unknown. Although FPC's system for recording the delivery of log timber to customers conforms with the Forest Management Regulations 1993, it does not enable the tracking of individual harvested logs which would be required to determine theft. Its system is based on truck loads of log timber delivered to customers as recorded on Delivery Notes. FPC has assessed the likelihood of theft as moderate and considers that its system has efficiency benefits.
- FPC has a reasonable framework for compliance monitoring but the extent of monitoring is low. The Regulations require FPC to '...endeavour to ensure that...' a minimum of five per cent of delivery notes are checked for accuracy. FPC checked 4.8 per cent of delivery notes in 2006-07, though in south-west native forests only 2.6 per cent were checked. The activities are intended to provide assurance that contractual obligations are met and to dissuade the theft of log timber.

## What should be done?

FPC should develop and implement compliance programs to complement its current Delivery Note system or any future log timber tracking system.

### **Response by the Forest Products Commission**

FPC has commenced examination of the legal and business implications of measures to ensure that at least five per cent of delivery notes are checked each month.

FPC will also consider introduction of an individual log marking/tagging system for certain high value grades of native forest saw log and associated changes to the Forest Management Regulations 1993. However, unless this is supported by a market premium, such a move could only be supported by evidence that there is in fact a level of theft of such logs from FPC harvesting operations and that implementation of the system would actually prevent theft.

## Background

The Forest Products Commission was established under the *Forest Products Act 2000* as a statutory authority with commercial functions. Its functions include the harvesting and selling of products from State owned native and plantation forests and regeneration (re-planting) of native and plantation forests.

In 2006-07, FPC managed 11 harvesting contracts for south-west native log timber and 84 contracts of sale. The value of the harvesting contracts exceeded \$24 million while the revenue earned from the contracts was almost \$44 million. The harvesting and sale contracts arose through either a competitive tender or auction process or a private treaty arrangement.

In 2006-07 the FPC harvested and sold more than 30 different types of native log timber ranging from high and low grade feature saw logs to various grades of firewood, logs and other residue product.

Product Type	Quantity Supplied (t)	Gross Revenue (\$)	Average Gross Revenue (\$/t)
Feature grade sawlog (sought by furniture makers and craftsman)	7 895	795 420	100.75
Regular sawlog – first grade, second grade and bole (sought by the mills for flooring, joinery and furniture)	230 340	21 527 735	93.46
Third grade sawlog	24 580	1 594 425	64.87
Firewood and charcoal logs	83 025	4 683 330	56.41
Chiplogs	190 200	12 486 975	65.65
Mine site residue (hogged material)	49 905	158 615	3.18
Other products	42 980	2 646 090	61.56
Total	628 925	43 892 590	69.79

**Table 1: 2006-07 Sale of south-west native log timber**

Source: FPC

## What Did We Do?

We reviewed how the FPC records and tracks native log timber harvested by its contractors. We also looked at the FPC's procedures for monitoring deliveries and preventing theft and misconduct. This involved assessments of:

- FPC's system for recording its inventory of harvested forest product
- the Delivery Note (D/Note) system used to manually record the movement of all native log timber
- the Logging Operations Information System (LOIS) – used for data processing and recording
- movement of harvested log timber up to delivery to customers.

We interviewed FPC staff, reviewed documents, examined a sample of D/Note records and conducted a stock audit at the FPC's Harvey Log Yard.

## What Did We Find?

### Recording and tracking of harvested log timber

FPC does not have a system that identifies and records the number and grade of individual logs harvested from south-west native forests. Such systems provide strong stock control and are used by some other State forest agencies. However, they are more costly and considered by FPC to be unnecessary.

#### **FPC's Harvesting and Recording System**

Contractors are responsible for the felling, extraction, grading, loading and delivery of log timber. Prior to delivery, the Contractor must complete an FPC D/Note. The D/Note includes details such as the species and grade of log timber, the location of where the log timber was felled, the date of loading onto a truck and unloading at a customer's yard, the name of the contractor and the address of the customer. Loaded trucks are then weighed at approved weighbridges and the weighbridge ticket attached to the D/Note. The log timber, if feature grade, is delivered to FPC's yard at Harvey for selection and pick-up under contracts of sale or by sale at auction. Other grades of log timber are delivered to customers in accordance with contracts of sale. Upon receiving the log timber, the customer signs the D/Note to acknowledge receipt.

Although FPC does not know the number of native logs harvested, it does have an accurate system for calculating and recording the tonnage of log timber delivered to customers. The method which is based on D/Notes and the weighing of truck loads is one of four methods approved by the Regulations 1993. The four approved methods are:

1. Individual log measurement – the length and diameter of each log is measured to calculate volume.
2. Bin measurement – log timber is trimmed to fit within bins, the volume of which has been predetermined using conversion tables for different log products.
3. Weighing – deduction of the tare weight of a truck from its gross loaded weight as measured on approved weighbridges.
4. Infra red log scanner – electronically measures the length and diameter of a log and calculates the volume.

The FPC's preferred method has efficiency advantages as it enable tonnage to be calculated instantly, safely and cost effectively. However, it does not provide the FPC with the number and grade of log timber harvested or delivered. It also does not enable FPC to determine the amount of log timber stolen or cut but left on the forest landing. FPC has assessed the risk of theft as moderate but agrees that it has no way of determining the amount.

Theft could occur in a number of ways including, deliberate wrong grading and delivery of log timber by contractors, removal of log timber by contractors without a D/Note and theft of log timber by other persons. FPC believes that its contracting and D/Note systems provide reasonable protection against theft for the following reasons:

- contractors are paid on the weight and grade of logs recorded on D/Notes. This should dissuade contractors from under recording D/Note quantities
- theft involving contractors would require collusion with other parties such as customers. Contractors would be wary of the risks arising from collusion
- theft from coupes by other persons would require heavy lifting machinery and carries the risk of being observed and reported.

In respect of wastage, FPC takes heed of advice from the Department of Environment and Conservation (DEC) who take samples of forest plots during harvest and compares those measurements against individual plot predictions. DEC has estimated that wastage has been about four per cent of predicted volume in the last four years.

FPC's focus on the tonnage of log timber delivered to customers is different to that used by some other States for managing high value native log timber. New South Wales' for instance staples sequentially marked plastic tags to each harvested log so that it can be tracked from the coupe to the customer. Queensland's harvested native hardwoods are individually measured and docketed.

FPC advised that it is considering options to improve monitoring systems. These are:

- formalised marking and possible bar coding of high grade feature logs
- GPS tracking of log trucks.

### Compliance and monitoring

FPC's level of monitoring is low though it does have a reasonable framework for monitoring of log timber deliveries. FPC's framework for compliance monitoring includes:

- a requirement that D/Notes are completed before log timber is trucked from the forest
- cross checking of D/Note information by LOIS including; that customers have valid contracts, that delivered quantities do not exceeded contractual quantities and that contractors are only taking log timber from their allocated coupes
- a target under the Regulations for FPC officers to check the accuracy of a minimum of five per cent of D/Notes
- FPC Coupe Managers and Standard's Officer overseeing harvesting, grading and loading of log timber.

The key element of the compliance framework is the checking of the D/Notes. The most effective D/Note checking system would involve an FPC Compliance Officer confirming that the number of logs recorded on the D/Note (as well as other details such as species and grade) was the same as was actually on the truck. However, FPC's use of the weighing method to record log timber quantities in practice prevents a compliance officer from checking the load quantity prior to it being weighed at a weighbridge or thereafter at any location other than near a weighbridge.

Under the Forest Management Regulations, FPC must endeavour to undertake monthly checks of the accurate completion of at least five per cent of D/Notes. Across the State 4.8 per cent of all D/Notes were checked in 2006-07 (refer Table 2). However, only 2.6 per cent of D/Notes were checked for south-west native forest deliveries. FPC has not adequately explained why less checking has been done of deliveries of native log timber compared to plantation log timber.

We also found that FPC does not have a risk based strategy for when D/Notes should be checked. Our testing showed that only two per cent of native forest D/Notes were checked en-route. Nine per cent were checked at saw mills while the locations of where four per cent were checked was not disclosed. Eighty-five per cent were checked prior to leaving the forest. Checking of D/Notes prior to the truck leaving the forest is understood to be for convenience but may not be the best location for identifying theft.

FPC has advised that it will take action to meet the regulatory target and to ensure that checks are based on an assessment of risk and value.

	Total D/Notes (% Checked)	South-West Native Forest D/Notes (% Checked)
2005-06	30 204 (4.5%)	20 830 (3.4%)
2006-07	42 073 (4.8%)	19 803 (2.6%)

**Table 2: D/Notes Checked in accordance with section 49 of the Forest Management Regulations 1993**

*The FPC has not met the target of 5 per cent of D/notes checked in the last two years. Testing of D/Notes in south-west native forests has been lower than the overall average checked.*

Source OAG and FPC

FPC's Coupe Managers and its Standards Officer are meant to provide an important level of assurance and oversight of a wide range of harvesting and delivery activities. The Standards Officer in particular is intended to provide assurance regarding log timber deliveries.

FPC considers that the physical presence of the Coupe Managers at the coupes is the main contribution that they can make to ensuring appropriate practices. However, we noted that their attendance is limited as each is assigned to multiple coupes.

FPC appointed the Standards Officer in late 2006. Although this role was intended to have a compliance focus we found that only limited time was spent by this officer on compliance activities. We also found that the planned development of a programme of monitoring by January 2007 had not been completed at the time of audit. FPC has advised that the role of the Standards Officer is to be reviewed.

# Establishing Contractual Arrangements with Private Business

## Overview

Many Government agencies engage in business activities with private sector organisations for profit-making purposes, though for most it is not a normal function.

Most agencies wishing to engage in such activities must first obtain authority from their Minister in accordance with the *State Trading Concerns Act 1916*. A smaller number of agencies have authority provided by their enabling legislation.

In January 2007 the Parliamentary Standing Committee on Estimates and Financial Operations requested that we investigate such arrangements entered into by the Western Australian Sports Centre Trust (the Trust). The largest of these involved a series of five agreements to stage rock music concerts at Arena Joondalup. Nine concerts were staged between 1999 and 2006, generating a trading profit of just over three million dollars.

This report outlines the result of our review of these rock concert agreements.

## Key findings

- The Trust did not follow fundamental governance practices prior to entering into the first or subsequent agreements to stage the rock concerts. Specifically, it did not:
  - conduct and/or document due diligence checks of the other party to the agreement
  - undertake and document adequate financial and risk analysis
  - obtain legal advice in the drafting of the contracts
  - submit the draft agreements to the Board for its approval.
- The financial returns to the Trust from several of the concerts have not reflected that it has borne nearly all the risks under the agreement.
- The Trust has at no time considered whether it could obtain more favourable terms and outcome under a like arrangement with other partners. Such a step would have been prudent.

## What should be done?

All agencies when considering business agreements with the private sector should undertake appropriate governance processes so as to ensure that decisions are taken with full knowledge of the benefits, costs and risks.

## Agency response

The Board of the Trust accepts the key findings and gives assurance that all the issues identified are and will be addressed by the current Board of the Trust. Specifically:

- a new Board appointed in March 2007 has expertise in key areas such as legal, contract management and governance issues
- the new Board has taken action to ensure that there will be no failure to follow proper governance practices as outlined in the report. These include:
  - requiring all draft contracts to be brought to the Board for approval
  - requiring due diligence checks and risk analysis of potential contracts with outcomes presented to the Board
  - obtaining legal advice for all significant contracts and agreements
  - establishment of a Finance and Governance Sub Committee to review Board operations and to provide advice to the Board.

## Background

The Trust was established under the *Western Australian Sports Centre Trust Act 1986* and is accountable through a Chief Executive Officer and an eight member Board to the Minister for Sport and Recreation. It manages four major State owned sporting venues valued at some \$100 million, namely: Challenge Stadium, Arena Joondalup, the Kwinana Motorplex, and the SpeedDome. The Trust currently employs around 200 full-time, part-time and casual employees.

The rock concerts were staged at Arena Joondalup under a Letter of Agreement between an events management company (the Company) and Arena Joondalup. The Act permits the staging of the concerts by authorising the Trust to enter into partnership arrangements for the sharing of profits.

The first concert was staged in 1999 and the last in 2006. Nine concerts were staged under five different Letters of Agreement. A sixth agreement is being considered.

## What Did We Do?

The Standing Committee on Estimates and Financial Operations asked that we consider:

- how the agreement was entered into
- the appropriateness of the financial risk assumed by the Trust.

To do this we reviewed relevant Trust documents, conducted a company and a business name search through the Australian Securities and Investment Commission and the Department of Employment and Consumer Protection and interviewed key employees of the Trust. We also interviewed a past Chairman of the Trust.

## What Did We Find?

### The manner the agreement was entered into

We found a lack of evidence to show that the Trust undertook appropriate governance and due diligence procedures prior to entering into the first or subsequent agreements.

There is no record or clear corporate recollection within the Trust of how it first became associated with the Company. However, it did not result from a competitive tender process run by the Trust. It is thought that the Company's Director first approached the then Manager of Arena Joondalup with the concept in 1997. The concept was then taken to the Board at a time when it was looking at ways to make the Arena more commercially viable.

The Trust did not establish whether it could obtain more favourable arrangements from the Company's competitors prior to entering into the first or subsequent agreements. Such action would have been prudent.

We found no evidence that the Trust undertook due diligence checks of the Company and its Director though the former Board Chairman advised that he did check the Company's credentials. The Trust advised that due diligence checks were not necessary because the Company was known to be well credentialed in the concert promotion industry and the Trust was handling all financial transactions and taking the risk.

Due diligence refers to the care a reasonable person should take before entering into an agreement or a transaction with another party. In this case, the Trust should have checked and documented the experience, reputation and financial and criminal history of the Director and his Company.

The Trust obtained no legal advice in drafting the agreements. The lack of legal advice is concerning given that the agreements contained clauses of a potentially restrictive and financially harmful nature. For example, clauses contained in some or all of the agreements have:

- prevented Arena Joondalup from entering into any other event that may impact on the success of the Joondalup rock concerts
- established that all financial responsibility for the event rests with Arena Joondalup
- indemnified the Company from any and all claims relating to the event outside of the contractual arrangements within the agreement
- established the intention that at the conclusion of the Agreement the Company and Arena Joondalup would enter into another long term Agreement.

We also found no evidence that the drafts of the five Letters of Agreement were presented to the Board and that the Board approved the terms and conditions. However, the Chairman of the Board at the time of the first three agreements advised that he and the Board were very aware of the terms and conditions of the agreements.

All five agreements were signed (with the exception of the fourth which was not signed) by the then Manager of Arena Joondalup. However, given the financial implications to the Trust, it would seem more appropriate for the Chairman of the Board to have been the Trust's signatory. The recollection of the Chief Executive Officer of the Trust is that the Board granted a verbal delegation to the Manager of Arena Joondalup to enter into the agreements with the Company. Trust documents contain no record of this delegation.

### The appropriateness of the level of financial risk assumed by the Trust

As mentioned, the Trust has not considered whether it could obtain more favourable terms and outcomes with other partners. Such a step would have been prudent, particularly given that its share of the profit from several of the concerts has clearly not reflected the risks that it has borne.

The described roles and contributions of the Trust and the Company under the five agreements varied somewhat but mostly involved:

- the Trust provides Arena Joondalup as the concert venue and has sole financial responsibility for the event
- the Company negotiated the best possible fee with the performers and coordinated the production of the event
- the Trust and the Company had joint responsibility for marketing and other operational requirements.

Good practice would require the Trust to undertake appropriate levels of financial risk analysis prior to entering such arrangements. The Trust did undertake financial analysis prior to signing of the second agreement and staging the second concert and we were told that similar analysis was done prior to the staging of the other concerts.

The analysis we sighted included financial modeling to assess gross profits under various different attendance scenarios. It entailed a detailed budget covering revenue and costs from ticket sales, artist costs, bar returns and costs, merchandise returns and costs and security and set up costs.

However, the analysis did not establish the respective returns to the Trust and the Company under the different scenarios. The Trust should have used such analysis in negotiating the agreements.

The Trust advised that the basic premise of all the agreements was that it should receive approximately 60 per cent of the profits because it was taking all the risks. We found that across all nine concerts the Trust received 57 per cent of the profits. However, the Trust received only 51.5 per cent of the profits from the last five concerts staged under the fifth agreement.

Eight of the nine concerts resulted in a profit. The last concert made a loss of over \$200 000. The Company did not share the loss. It still received a six figure return that in quantum terms was almost three times what it received from the first concert in 1999.

It is difficult to determine what would have been an appropriate distribution of the profits between the Trust and the Company given the contributions of each party. Nevertheless, it does appear that the Trust did not receive an adequate and equitable share of the returns.

The respective returns are in part a reflection of the negotiation skills of the two parties. We noted that in three out of the four renegotiated Agreements the Company increased its overall share of returns. For instance, under the fifth agreement, the Company's share of profit was 94 per cent more than its share under Agreement One.

We did find that the Trust undertook post-concert evaluations and presented the reports to the Board after eight of the nine concerts. Typically, they assessed the operational arrangements including sponsorship, merchandise, bar, transport, security and first aid. They also made comparisons to results from prior concerts.

The Trust advised that it is considering a sixth agreement but that it would only proceed if it could negotiate a more equitable share of returns. The Trust also advised that it would obtain legal advice in drafting a future agreement.

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