



Western Australia Auditor General's Report

Opinion on Ministerial decisions not to provide information to Parliament on the amount of funding Tourism WA provided for some events

Report 2 – February 2012





THE PRESIDENT
LEGISLATIVE COUNCIL

THE SPEAKER
LEGISLATIVE ASSEMBLY

**OPINION ON MINISTERIAL DECISIONS NOT TO PROVIDE INFORMATION TO PARLIAMENT ON THE
AMOUNT OF FUNDING TOURISM WA PROVIDED FOR SOME EVENTS**

This report has been prepared for submission to Parliament under the provisions of section 24 of the *Auditor General Act 2006*.

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

COLIN MURPHY
AUDITOR GENERAL
22 February 2012

Opinion on Ministerial decisions not to provide information to Parliament on the amount of funding Tourism WA provided for some events

Opinion

Two decisions by the Minister for Tourism not to provide information to Parliament were reasonable and appropriate.

The Minister declined to provide information on the amount of funding Tourism WA provided to the *Top Gear* Live Theatre Show in addition to nine events held in regional Western Australia. The Minister provided funding information for some other regional events as requested.

Introduction

This report deals with the decisions by Minister Hames in his role as Minister for Tourism not to provide information to Parliament regarding funding provided by Tourism WA to support a number of events:

- *Top Gear* Live Theatre Show
- Australasian Safari
- Clipper Round the World Yacht Race
- Cape to Cape
- Anaconda Adventure Race
- SunSmart Ironman WA
- Telstra Drug Aware Pro Margaret River
- Kimberley Ultramarathon
- Cable Beach Invitational
- BHP Billiton Aquatic Super Series

Section 82 of the *Financial Management Act 2006* (FM Act) provides that, if a Minister decides that it is reasonable and appropriate not to provide certain information to Parliament concerning the conduct of an agency, then within 14 days of the decision the Minister is to cause written notice of the decision to be given to both Houses of Parliament and the Auditor General.

Section 24 of the *Auditor General Act 2006* (AG Act) requires the Auditor General to report to Parliament an opinion “as to whether a decision by a Minister not to provide information to Parliament concerning any conduct or operation of an agency is reasonable and appropriate”.

What Did We Do?

Our approach included a review of publicly available information such as annual reports and budget statements for Tourism WA, other relevant agency documents and communications and interviews with key staff. Further details about our approach in arriving at these opinions are described in our Audit Practice Statement, which is published on our website at www.audit.wa.gov.au under “How We Audit”.

Background

The Minister for Tourism was asked two separate questions in the Legislative Assembly on 6 and 8 September 2011. On 6 September 2011, the Minister was asked a question which read in part, “In relation to the State funding being provided for a non-televised live show derived from *Top Gear* at the Burswood Dome...what amount of government funding is being provided by Eventscorp for this performance?”

On 8 September 2011, the Minister was asked to “itemise the events and funding amounts Tourism Western Australia is providing in the:

- i. Mid West
- ii. South West
- iii. Great Southern
- iv. Pilbara
- v. Wheatbelt
- vi. Peel
- vii. Goldfields-Esperance
- viii. Gascoyne
- ix. Kimberley?”

The Minister advised Parliament on 6 September 2011 that financial information relating to the *Top Gear* Live Theatre Show is considered commercially sensitive.

On 8 September 2011, the Minister tabled a paper, ‘Regional Events Supported Through the Regional Events Scheme 2011/12’, and provided financial information for 43 events as requested. The Minister advised that he would not be providing financial information relating to some of the regional events as they are considered commercially sensitive.

On 1 November 2011, the Minister gave written notice to the Auditor General that he was unable to provide answers to questions concerning the funding amount provided to the *Top Gear* Live Theatre Show or the funding amounts for nine regional events funded by Tourism WA.

The reasons given by the Minister in responding to the questions and in the notification to the Auditor General were, in summary:

- The information was commercially sensitive. Tourism WA competes to develop and secure events for Western Australia in the highly competitive national and international markets. The release of funding information into the public domain compromises Tourism WA's ability to successfully negotiate and develop world class events for Western Australia and would provide rival host destinations with an unfair advantage.
- Eventscorp's reputation and ability to negotiate low costs and favourable contractual terms and conditions with event holders would be compromised if this information was made public because other states or jurisdictions would then demand similar business arrangements with the event holders.

Key Findings

The decisions by the Minister not to provide some of the requested funding information were reasonable and appropriate. The reasonableness of the Minister's decisions was supported by the following findings:

- The Minister's decision was supported by documented assessment against reasonable criteria for determining commercial sensitivity and possible detriment to the State.
- The information in question can be shown to have commercial value and its disclosure could cause commercial harm to the State.
- Tourism WA uses a confidentiality clause in its funding contracts that is compliant with Section 81 of the FM Act. Funding information in these contracts is specifically identified as being commercially sensitive. While not preventing the Minister from providing funding information to Parliament, the specific identification of funding information as commercially sensitive gives weight to the existence of an obligation of confidence.

Determining whether information is commercially sensitive is not straightforward. Agencies need to carefully assess each case on its merit and document the reasons for the decision. Agencies also need to demonstrate that non-disclosure of information outweighs the inherent public interest of providing information requested by Parliament.

We were pleased to note that Tourism WA could demonstrate they had given careful consideration to the issues involved rather than simply claiming commercial sensitivity. This was a marked difference to other cases assessed by us in recent years.

Tourism WA had used adequate assessment criteria in preparing its advice to the Minister and the decision-making process was documented in email correspondence. The criteria provided useful guidance in determining whether the release of information was in the public interest. Given the likelihood that Tourism WA will be faced with similar questions in the future, we have recommended they formalise the criteria in a policy document.

We also noted that Tourism WA did not give consideration to whether there would be a point in time when the funding information could be made public. The Australian Government Solicitor in its briefing note¹ on confidential information states that obligations of confidence may come to an end in a number of ways:

- the parties could pre-agree a defined period during which the obligation of confidence is to be in operation, and this period expires
- the information comes into the public domain
- the information provided in confidence loses its 'inherently confidential' nature over time.

Agencies need to consider on a case-by-case basis when information can be released. In preparing this opinion we identified examples of timeframes that are used in other areas of government for release of confidential information. For instance:

- under the *Mining Act 1978*, mineral exploration reports are available for full public access, five years after submission to government
- the State's *Public private partnerships project disclosure policy* requires full contract documents and a project summary to be released on the Treasury website within six months of financial closure. Some information may not be disclosed, subject to Treasury approval
- when an awarded contract price is greater than \$20 000 this information must be published on Tenders WA after the successful tenderer has been notified
- release of confidential submissions to government reviews and studies at their conclusion.

We have therefore recommended to Tourism WA that they develop internal guidelines on timeframes for release of commercially sensitive information.

Tourism WA's Response

Tourism WA welcomes the findings and subsequent opinion of the Auditor General. Further, the recommendation to formalise the assessment criteria for determining commercial sensitivity of information and possible detriment to the State will be acted upon as a priority.

¹ Australian Government Solicitor – Legal Briefing Note No. 64 – <http://www.ag.gov.au/publications>.