

Western Australian Auditor General's Report



Opinion on Ministerial Notification



Report 25: November 2016

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WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

Opinion on Ministerial Notification



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

OPINION ON MINISTERIAL NOTIFICATION

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

It provides my opinion on the reasonableness and appropriateness of a decision by the Minister for Regional Development, the Hon Terry Redman MLA not to provide information to Parliament about the Bunbury Waterfront Project business case.

I wish to acknowledge the cooperation of the staff at the Department of Regional Development.

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

COLIN MURPHY
AUDITOR GENERAL
9 November 2016

Contents

Ministerial decision not to provide information to Parliament	4
Introduction	4
What did we do?	4
Opinion.....	5
Background.....	5
Key findings.....	5
Response from the Department of Regional Development	6

Ministerial decision not to provide information to Parliament

Introduction

This report deals with a decision by the Minister for Regional Development, the Hon Terry Redman MLA not to provide information to Parliament about the Bunbury Waterfront Project business case.

Section 82 of the *Financial Management Act 2006* (FM Act) requires a Minister who decides that it is reasonable and appropriate not to provide certain information to Parliament, to give written notice of the decision to both Houses of Parliament and the Auditor General within 14 days of the decision.

Section 24 of the *Auditor General Act 2006* (AG Act) requires the Auditor General to provide an opinion to Parliament as to whether the Minister's decision was reasonable and appropriate.

What did we do?

The Audit Practice Statement on our website (www.audit.wa.gov.au) sets out the process we follow to arrive at our section 82 opinions, including:

- a review of agency documents
- a review of any advice provided to the relevant Minister by agencies, the State Solicitor's Office (SSO) or other legal advisers
- interviews with key agency persons including discussions about our draft findings and the Auditor General's opinion.

Our procedures are designed to provide sufficient appropriate evidence to support an independent view to Parliament on the reasonableness and appropriateness of the Minister's decision.

We have not performed an audit, however our procedures follow the key principles in the Australian Auditing and Assurance Standards.

Opinion

The decision by the Minister for Regional Development not to provide Parliament with the Bunbury Waterfront Project business case was reasonable and appropriate.

Background

On 16 June 2016, during the Standing Committee on Estimates and Financial Operations 2016-17 Budget Estimates Hearings, Hon Adele Farina MLC asked the Minister for Regional Development for the following information about the Bunbury Waterfront Project:

Supplementary Information No. F15

1. (Bunbury Waterfront Project) Will you table the business case?

On 8 July 2016, the Minister declined to give this information, replying:

No. The business case formed part of the submission to Cabinet for funding of the project and as such is Cabinet in Confidence.

On 18 August 2016, the Auditor General received the Minister's notification of his decision not to provide the requested information in accordance with section 82 of the FM Act.

Key findings

The decision by the Minister not to provide the requested information was reasonable and appropriate.

The Minister properly sought advice from the Department of Regional Development (DRD). DRD advised the Minister to not provide the business case as it was prepared and submitted to Cabinet for funding consideration under the Royalties for Regions program.

DRD has developed its *Release of Information Requested by Parliament Guideline* (guideline) to guide staff in advising the Minister on requests for information by Parliament. The guideline provides definitions for Cabinet- and commercial-in-confidence information as well as legal professional privilege, and includes a requirement for DRD to document its assessments of information. The guideline is in use by staff, but not formally approved. We recommend that DRD finalise and approve the guideline.

DRD did not document its assessment of the business case against its guideline. We met with DRD staff who indicated that because the business case was prepared for Cabinet consideration, it was Cabinet-in-confidence and no further assessment was required.

However, we reviewed DRD's advice to the Minister against further considerations (see below). An explanation of how we derived these considerations is included in the Auditor General's report 18 of 2016, *Opinions on Ministerial Notifications*¹:

- Was the information created for the purpose of informing Cabinet or being discussed in Cabinet? Does it include policy options or recommendations prepared for submission to Cabinet?
- Does the information contain material that would reveal the deliberation and decisions of Cabinet?
- Is part or all of the information publicly available, or readily available within the agency?

1 <https://audit.wa.gov.au/reports-and-publications/reports/opinions-on-ministerial-notifications-2/>

- Did the Minister consider providing any sections of the information that would not reveal deliberations and decisions of Cabinet?

We found that, in line with DRD standard process for seeking approval for Royalties for Regions project funding, the business case was prepared for, and submitted to Cabinet. When we reviewed the business case, we found that it contained both options and recommendations for project funding, release of which could reveal Cabinet deliberations and decisions.

While the business case contains a small proportion of information that is publicly available, its primary purpose was for Cabinet consideration. In our view release of the document could reveal Cabinet deliberations and decisions and DRD appropriately advised the Minister that it should remain confidential.

We also noted that at the same hearing the Minister provided responses to a number of other questions related to the final approved Bunbury Waterfront Project. The responses included the project's Financial Assistance Agreement, which provided details such as a project description, deliverables, timeframes and budget.

Response from the Department of Regional Development

The Department of Regional Development:

- accepts the report findings.
- agrees to finalise and approve the guideline developed to assist staff in advising the Minister on the release of information requested by Parliament. This will also include reference to the Auditor General's Report 18 of 2016, Opinions on Ministerial Notifications, published in August 2016.

Auditor General's Reports

Report number	Reports	Date tabled
24	Audit Results Report – Annual 2015-16 Financial Audits	9 November 2016
23	Western Australian Waste Strategy: Rethinking Waste	19 October 2016
22	Opinion on Ministerial Notification	13 October 2016
21	Opinion on Ministerial Notification	6 October 2016
20	Ord-East Kimberley Development	7 September 2016
19	Information and Communication Technology (ICT) in Education	17 August 2016
18	Opinions on Ministerial Notifications	11 August 2016
17	Financial and Performance Information in Annual Reports	21 July 2016
16	Grant Administration	7 July 2016
15	Management of Feedback from Public Trustee Represented Persons	30 June 2016
14	Management of Marine Parks and Reserves	30 June 2016
13	Maintaining the State Road Network – Follow-on Audit	29 June 2016
12	Regulation of Builders and Building Surveyors	22 June 2016
11	Information Systems Audit Report	22 June 2016
10	Opinions on Ministerial Notification	8 June 2016
9	Payment of Construction Subcontractors – Perth Children's Hospital	8 June 2016
8	Delivering Services Online	25 May 2016
7	Fitting and Maintaining Safety Devices in Public Housing – Follow-up	11 May 2016
6	Audit of Payroll and other Expenditure using Data Analytic Procedures	10 May 2016
5	Audit Results Report – Annual 2015 Financial Audits – Universities and state training providers – Other audits completed since 1 November 2015; and Opinion on Ministerial Notification	10 May 2016
4	Land Asset Sales Program	6 April 2016
3	Management of Government Concessions	16 March 2016
2	Consumable Stock Management in Hospitals	24 February 2016
1	Supplementary report Health Department's Procurement and Management of its Centralised Computing Services Contract	8 June 2016 17 February 2016

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