

Western Australian Auditor General's Report



Opinion on Ministerial Notification



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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*.

This report deals with a decision by the Minister for Racing and Gaming, Hon Paul Papalia MLA, not to provide Parliament with:

- all documents relating to Racing and Wagering Western Australia's (RWWA) participation in the Australian Competition and Consumer Commission process regarding the proposed Tabcorp and Tatts merger
- information Tabcorp provided to RWWA to allay concerns that the removal of one bidder (Tatts) may reduce competition for the potential privatisation of the WA TAB wagering licence.

I wish to acknowledge the staff at the Department of Local Government, Sport and Cultural Industries.

COLIN MURPHY
AUDITOR GENERAL
21 December 2017

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Ministerial decision not to provide information to Parliament

Introduction

This report deals with a decision by the Minister for Racing and Gaming, the Hon Paul Papalia MLA, not to provide Parliament with:

- all documents relating to Racing and Wagering Western Australia's (RWWA) participation in the Australian Competition and Consumer Commission (ACCC) process regarding the proposed Tabcorp and Tatts merger
- information Tabcorp provided to RWWA to allay concerns that the removal of one bidder (Tatts) may reduce competition for the potential privatisation of the WA TAB wagering licence.

Section 82 of the *Financial Management Act 2006* (the 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 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 Racing and Gaming not to provide Parliament with the requested information was reasonable and appropriate.

Background

In Parliament on 5 September 2017, the Hon Colin Holt MLC asked the Minister representing the Minister for Racing and Gaming questions about the proposed merger of Tabcorp and Tatts. Legislative Council Question on Notice 92 asked the Minister the following:

I refer to Racing and Wagering Western Australia's (RWWA) submission to the Australian Competition Tribunal (ACT), tabled by the Minister yesterday, and I ask:

- (a) was the submission to the ACT dated 7 March 2017 endorsed by the board of RWWA;*
- (b) the submission states "RWWA also participated in the Australian Competition and Consumer Commission process" on the merger:
 - (i) will the Minister table all documents relating to the RWWA participation in the Australian Competition and Consumer Commission process; and*
 - (ii) if not to (b)(i), why not;**
- (c) what specific information did Tabcorp provide to RWWA to allay concerns that the removal of one bidder (Tatts) from any potential future privatisation process may reduce competition for the potential acquisition of the WA TAB wagering licence;*
- (d) in relation to (c), will the Minister table the information; and*
- (e) if no to (d) why not?*

On 5 September 2017, the Hon Alannah MacTiernan MLC provided the following response on behalf of the Minister:

- (a) Yes.*
- (b) (i) No.
 - (ii) This information is considered commercially sensitive and highly confidential.**
- (c) Tabcorp provided Racing and Wagering Western Australia with a commitment that it would enable access to pari-mutuel pools beyond 2024.*
- (d) No.*
- (e) This information is considered commercially sensitive and highly confidential.*

On 15 September 2017, we were notified of the Minister's decision not to provide the information requested in (b) and (d) 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 and followed advice from the Department of Local Government, Sport and Cultural Industries (Department) when responding to the request. The Department

in turn sought advice from RWWA, the State Government authority responsible for the WA TAB, before advising the Minister.

The Department recommended the Minister not provide the information as it was commercially sensitive and highly confidential.

We assessed the information using our criteria for commercial sensitivity of agency information. Specifically:

Criterion 1 – Is the information sufficiently secret? Is it significant?

The information met our first criterion as the information was not generally known or ascertainable at the time the Minister declined to provide the information. In particular:

- documents relating to RWWA's participation in the ACCC process contain information that is inherently confidential and commercially valuable. They express the views of RWWA's Board regarding the proposed merger between Tabcorp and Tatts, and RWWA's strategies to remain competitive in the Australian wagering industry. We found that the information was not generally known or ascertainable and was provided to the ACCC on the written understanding that the information was to remain confidential.
- information Tabcorp provided to RWWA, to enable access to pari-mutuel pools beyond 2024, was contained in an amendment to a commercial contract between RWWA and Tabcorp. The information was not generally known or ascertainable by using publicly available sources.

Criterion 2 – Is it in the public interest for the information to remain confidential?

The information met our second criterion. We assessed the potential benefits and detriments of disclosure and found the commercial interests of the State were likely to be best served by keeping the information confidential. In particular:

- disclosure of documents relating to RWWA's participation in the ACCC process could adversely impact the State's commercial interests. RWWA operates the WA TAB in a highly competitive and commercial environment and the information outlines RWWA's competitive strategies.
- release of the amendment to the commercial contract between RWWA and Tabcorp would breach the contract's confidentiality disclosure clause. This could lead to a loss of access to pari-mutuel pools which is a sizeable part of WA TAB's business and could significantly impact the state's financial interest. The ACT has also agreed that the contract should be confidential.

RWWA assessed whether it was in the public interest for the information to remain confidential before advising the Minister, but did not fully document this assessment. We have reminded the agency that it is good practice to document its assessments.

Auditor General's reports

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23	Planning and Management of Bus Services	29 November 2017
22	Minimising Drugs and Alcohol in Prisons	8 November 2017
21	Audit Results Report – Annual 2016-17 Financial Audits	7 November 2017
20	Financial Controls – Focus Area Audits 2016-17	7 November 2017
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17	Management of Pastoral Lands in Western Australia	11 October 2017
16	Rich and Rare: Conservation of Threatened Species Follow-up Audit	6 September 2017
15	Opinion on Ministerial Notification	6 September 2017
14	Non-Clinical Services at Fiona Stanley Hospital	16 August 2017
13	Audit of Journal Entries and Property, Plant and Equipment Using Data Analytic Procedures	19 July 2017
12	Information Systems Audit Report	29 June 2017
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10	Timely Payment of Suppliers	21 June 2017
9	Opinion on Ministerial Notification	8 June 2017
8	Management of Medical Equipment	25 May 2017
7	Audit Results Report – Annual 2016 Financial Audits – Universities and TAFEs – Other audits completed since 1 November 2016	11 May 2017
6	Opinions on Ministerial Notifications	13 April 2017
5	Accuracy of WA Health's Activity Based Funding Data	11 April 2017
4	Controls Over Purchasing Cards	11 April 2017
3	Tender Processes and Contract Extensions	11 April 2017
2	Opinion on Ministerial Notification	6 April 2017
1	Opinion on Ministerial Notification	30 March 2017

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