

Western Australian Auditor General's Report



Opinions on Ministerial Notifications



Report 10: December 2018-19

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WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

Opinions on Ministerial Notifications



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

OPINIONS ON MINISTERIAL NOTIFICATION

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

This report deals with decisions by the Premier and 2 Ministers not to provide information to Parliament on agency targets for the Voluntary Targeted Separation Scheme (VTSS). It includes:

- one decision by the Premier, the Hon Mark McGowan MLA, about the Department of the Premier and Cabinet's target
- one decision by the Minister for Regional Development; Agriculture and Food, the Hon Alannah MacTiernan MLC, about the Department of Primary Industries and Regional Development's target
- one decision by the Minister for Police, the Hon Michelle Roberts MLA, about the Western Australia Police Force's target for full time equivalent (FTE) reduction to meet the forward estimates expectation.

A handwritten signature in black ink, appearing to read "Caroline Spencer".

CAROLINE SPENCER
AUDITOR GENERAL
18 December 2018

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Ministerial decisions not to provide information to Parliament

Introduction

This report deals with decisions by the Premier and 2 Ministers not to provide information to Parliament on agency targets for the Voluntary Targeted Separation Scheme (VTSS). It includes:

- one decision by the Premier, the Hon Mark McGowan MLA, about the Department of the Premier and Cabinet's target
- one decision by the Minister for Regional Development; Agriculture and Food, the Hon Alannah MacTiernan MLC, about the Department of Primary Industries and Regional Development's target
- one decision by the Minister for Police, the Hon Michelle Roberts MLA, about the Western Australia Police Force's (WA Police) target for FTE reduction to meet the forward estimates expectation.

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.

As the reasons given by the Premier and 2 Ministers were that the information could not be provided for reasons of Cabinet confidentiality, we followed the approach laid out in previous *Opinions on Ministerial Notifications* dealing with Cabinet confidentiality, the core principle of which is to protect information that would reveal deliberations and decisions of Cabinet. We assessed the requested information against the following Cabinet confidentiality considerations:

- Is part or all of the information publicly available?
- Does the information contain material that would reveal the deliberations and decisions of Cabinet?

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

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

Opinions

The decision by the Premier not to provide information to Parliament about the Department of the Premier and Cabinet's target for completion of the VTSS was reasonable and therefore appropriate.

The decision by the Minister for Regional Development; Agriculture and Food not to provide information to Parliament about the Department of Primary Industries and Regional Development's target for completion of the VTSS was reasonable and therefore appropriate.

The decision by the Minister for Police not to provide information to Parliament about the WA Police's target for FTE reduction to meet the forward estimates expectation was reasonable and therefore appropriate.

Background

Before the 2018-19 Standing Committee on Estimates and Financial Operations Budget Estimates hearings in June 2018, the Premier and Ministers were asked questions about agency targets for the VTSS. The decision by the Premier and Ministers was that the information sought was Cabinet-in-confidence and they therefore could not provide it to Parliament. The questions and responses are included in Appendix 1.

The Auditor General received notices from the Premier and Ministers on 9 and 17 July and 12 September 2018, advising of their decisions not to provide the requested information in accordance with section 82 of the FM Act.

Key findings

The decisions by the Premier and 2 Ministers to withhold agency VTSS targets from Parliament were reasonable and therefore appropriate.

The Premier and Ministers sought advice from their agencies before responding to the request:

- The Department of the Premier and Cabinet recommended the Premier decline to provide the information as it formed part of deliberations of the Expenditure Review Committee and was considered Cabinet-in-confidence.
- The Department of Primary Industries and Regional Development recommended the Minister decline to provide the information. In advising the Minister, the Department relied on advice from the Premier's Office that agency targets were Cabinet-in-confidence.
- WA Police recommended the Minister decline to provide the information as the information was considered Cabinet-in-confidence. In advising the Minister, WA Police relied on a letter from the Treasurer received in October 2017 regarding Cabinet's decision about VTSS agency targets.

We assessed the requested information against our Cabinet confidentiality considerations and found:

- agency VTSS targets were not generally known or ascertainable from publicly available information. The VTSS was announced as part of the Government's Budget repair measures in the 2017-18 Budget. It targeted 3,000 separations at public sector agencies. However, individual agency targets were not made public.
- agency VTSS targets would reveal the deliberations and decisions of Cabinet. The scheme was still being implemented and subject to future Cabinet deliberations and decisions at the time the Premier and Ministers declined to provide the information to Parliament. Individual agency targets were approved by Cabinet in October 2017 and, in doing so, Cabinet requested progress updates during implementation of the scheme. An update was provided to Cabinet in January 2018, and in February 2018 Cabinet approved an extension to the closing date for the scheme from 31 March 2018 to 30 June 2018.
- agency VTSS targets were prepared by the Treasurer to inform Cabinet deliberations and decisions. We reviewed the Cabinet documents and found they did include agency targets for Cabinet approval, as well as options and recommendations for the implementation of the VTSS.
- the information would lack meaning if provided to Parliament with those parts that reveal deliberations and decisions of Cabinet redacted. We note the Minister for Police did consider providing information that would not reveal deliberations and decisions of Cabinet.

In our view, the decision by the Premier and 2 Ministers not to disclose the information is consistent with the public interest of upholding the principle of Cabinet confidentiality.

Appendix 1: Ministerial questions and responses

Question to the Premier

The Hon Colin de Grussa MLC asked the Premier for the following information:

1. *I refer to budget paper 2 volume 1 page 58, 'Spending Changes' table, line item 'Voluntary Targeted Separation Scheme':*
 - (a) *how many Department of Premier and Cabinet staff have taken redundancy, by head count and FTE;*
 - (b) *will the Minister provide a list of each position that has been made redundant to date and the location of that position; and*
 - (c) *what is the Department of Premier and Cabinet's target for completion of the VTSS?*

On 5 June 2018, the Premier provided an answer to parts (a) and (b). However, the Premier declined to provide the information to (c), replying:

- (c) *Agency targets are Cabinet-in-Confidence and were provided as a guide to assist agencies and Ministers with implementation of the scheme. While the reductions will vary between agencies depending on factors like Machinery of Government (MoG) changes, the size and role of individual agencies and other impacts, all agencies are expected to contribute in order to meet the overall reduction target of 3,000 employees.*

Question to the Minister for Regional Development; Agriculture and Food

The Hon Colin de Grussa MLC asked the Minister for Regional Development; Agriculture and Food for the following information:

17. *I refer to budget paper 2 volume 1 page 189, 'Spending Changes' table, line item 'Voluntary Targeted Separation Scheme':*
 - (a) *how many Department of Primary industries and Regional development staff have taken redundancy, by head count and FTE;*
 - (b) *will the Minister provide a list of each position that has been made redundant to date and the location of that position; and*
 - (c) *what is the Department of Primary Industries and Regional Development's target for completion of the VTSS?*

On 6 June 2018, the Minister provided an answer to parts (a) and (b). However, the Minister declined to provide the information to (c), replying:

- (c) *Agency targets are Cabinet-in-Confidence. The overall Public Sector target is 3000.*

Question to the Minister for Police

The Hon Martin Aldridge MLC asked the Minister for Police for the following information:

3. *I refer to budget paper 2 volume 2 page 332, 'Spending Changes' table, line item 'Voluntary Targeted Separation Scheme':*
 - (a) *how many staff have taken advantage of the scheme, by head count and FTE;*

- (b) *please provide a list of each position that has been made redundant to date, the location of that position, and if that position remains vacant;*
- (c) *what is the Police Force target for FTE reduction in order to meet the forward estimates expectation; and*
- (d) *what are the focus areas for the Police Force for FTE reduction to meet VTSS targets?*

On 13 June 2018, the Minister provided an answer to parts (a-d). However, the Minister declined to provide the information to (c), replying:

(a-d) The Voluntary Targeted Separation Scheme (VTSS) referred to is a Budget repair tool which also assists in promoting workforce renewal. Agency targets are Cabinet-in-confidence and were provided as a guide to with implementation of the scheme.

The WA Police Force advise that 78 public service FTE have participated in the VTSS, comprising of 86 public service positions. Ten positions are from regional locations, and 76 from metropolitan Perth. None of these positions are sworn police. The composition of public service staff at various location is subject to determination by the Commissioner of Police who periodically reviews and adjusts allocations.

Auditor General's Reports

Report number	2018-19 reports	Date tabled
9	Treatment Services for People with Methamphetamine Dependence	18 December 2018
8	Opinions on Ministerial Notifications	10 December 2018
7	Audit Results Report – Annual 2017-18 Financial Audits of State Government Entities	8 November 2018
6	Opinion on Ministerial Notification	31 October 2018
5	Local Government Procurement	11 October 2018
4	Opinions on Ministerial Notifications	30 August 2018
3	Implementation of the GovNext-ICT Program	30 August 2018
2	Young People Leaving Care	22 August 2018
1	Information Systems Audit Report 2018	21 August 2018
Report number	2018 reports	Date tabled
13	Management of Crown Land Site Contamination	27 June 2018
12	Timely Payment of Suppliers	13 June 2018
11	WA Schools Public Private Partnership Project	13 June 2018
10	Opinions on Ministerial Notifications	24 May 2018
9	Management of the State Art Collection	17 May 2018
8	Management of Salinity	16 May 2018
7	Controls Over Corporate Credit Cards	8 May 2018
6	Audit Results Report – Annual 2017 Financial Audits and Management of Contract Extensions and Variations	8 May 2018
5	Confiscation of the Proceeds of Crime	3 May 2018
4	Opinions on Ministerial Notifications	11 April 2018
3	Opinion on Ministerial Notification	21 March 2018
2	Agency Gift Registers	15 March 2018
1	Opinions on Ministerial Notifications	22 February 2018

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