

Western Australian Auditor General's Report



Opinion on Ministerial Notification



Report 13: January 2018-19

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WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

Opinion on Ministerial Notification

Report 13
January 2018-19



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

Opinion 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 a decision by the Minister for Regional Development, the Hon Alannah MacTiernan MLC, not to provide information to Parliament about the Financial Assistance Agreement between the State and Carnegie Clean Energy in relation to the Albany Wave Energy Technology Development Project.

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

CAROLINE SPENCER
AUDITOR GENERAL
23 January 2019

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Ministerial decision not to provide information to Parliament

Introduction

This report deals with a decision by the Minister for Regional Development, the Hon Alannah MacTiernan MLC, not to provide information to Parliament about the Financial Assistance Agreement (FAA) between the State and Carnegie Clean Energy (Carnegie) in relation to the Albany Wave Energy Technology Development Project.

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 any of schedule 7 (the proposal) of the FAA, was not reasonable and therefore not appropriate. The Minister acted on the advice of her department and redacted the entire proposal. We found the majority of the proposal's content was publicly available and could have been provided to Parliament, with only commercially sensitive content redacted.

Background

On 13 June 2018, the Hon Martin Aldridge MLC, asked the Minister for Regional Development for the following information in Legislative Council Question on Notice 1407:

I refer to answer on notice No. 1069 in relation to the Wave Energy Technology project, and I ask:

- (a) was a business case for the project prepared prior to Cabinet approval;*
- (b) if not to (a), is a business case being prepared subsequent to Cabinet approval;*
- (c) will the Minister table the business case for the project; and*
- (d) will the Minister table the FAA executed between the State and Carnegie?*

On 23 August 2018, the Minister provided the following answers:

- (a) No. The State Government investment into the Wave Energy Technology Development Project was an election commitment. As it is a research and development project, the standard business case methodology is not relevant. This decision to award the grant to Carnegie followed a rigorous tender process.*
- (b) No.*
- (c) Not applicable.*
- (d) I am prepared to table the Financial Assistance Agreement (excluding Schedule 7). Schedule 7, the Proposal is a commercial agreement between the State and a private organisation which would not be appropriate to table in Parliament. I am aware of my obligations under section 82 of the Financial Management Act and will provide the notice required by that section to Parliament and to the Auditor General in accordance with the legislative requirements.*

On 29 August 2018, the Auditor General received the Minister's notification of the decision not to provide the information in accordance with section 82 of the FM Act.

Key findings

The decision by the Minister to redact all of the proposal in the FAA was not reasonable and therefore not appropriate. Most of the redacted information was publicly available when the Minister declined to provide it and those sections could have been provided to Parliament with the commercially sensitive content redacted.

The Minister properly sought advice from the Department of Primary Industries and Regional Development (Department) before responding to the request. Before advising the Minister, the Department documented an assessment against the commercial-in-confidence criteria set out in our Audit Practice Statement.

The Department's assessment found that the proposal included both commercially sensitive and publicly available information. The Department recommended the Minister provide the FAA with all of the proposal redacted, as this was commercially sensitive. The Minister followed the Department's advice.

After reviewing our draft opinion, the Minister advised us that the Department has been asked to undertake a detailed review of the proposal and identify which sections can be provided to Parliament while protecting commercially sensitive information. The Minister also raised a concern at the additional workload the s82 process places on resources.

We assessed the redacted proposal using our criteria for information that is confidential to a third party. Specifically:

Criterion 1 – the information should be sufficiently secret

This criterion was not met. We found about 70% of the information in the proposal was generally known or ascertainable using publicly available sources at the time the Minister declined to provide it. This included project information used in media releases, and business information freely available on Carnegie's website and in their annual reports. However, we did not find a copy of the entire proposal in publicly available sources.

The remainder of the proposal included commercially sensitive information about Carnegie's technical and scientific processes, as well as operational and financial details.

Criterion 2 – the confidential information must be specially identified

This criterion was met. Unlike the rest of the FAA, every page of the proposal had been marked as confidential.

Criterion 3 – disclosure would cause unreasonable detriment to the owner of the information or another party. Disclosure would not be in the public interest

This criterion was partly met. In assessing this, we weighed the public interest in releasing the information against the possible harm to the interests of government and to Carnegie.

We found that Carnegie's commercial interests and the interests of government could be adversely affected if the commercially sensitive information in the proposal were released. Suppliers may be reluctant to tender for government business if their commercially confidential information is released without consultation.

The Department could have protected these commercial interests by working with Carnegie to identify, and redact, only the commercially sensitive parts of the proposal. We found no detriment to government or Carnegie in providing the already publicly available information.

Criterion 4 – the information was provided on the understanding that it would remain confidential

This criterion was met. Carnegie submitted the proposal as part of a tender for the Albany Wave Energy Technology Development Project. The tender guide sets an expectation that the proposal would be kept confidential, although it noted some information, such as the name of the successful tender and the contract amount, may be released.

The Department advised us that on multiple occasions Carnegie was provided assurance the proposal would be kept confidential. However, the Department could not provide records of these communications, or verify when they took place.

Auditor General's Reports

Report number	Reports	Date tabled
12	Managing Disruptive Behaviour in Public Housing	20 December 2018
11	Opinions on Ministerial Notifications	20 December 2018
10	Opinions on Ministerial Notifications	18 December 2018
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

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