

Western Australian Auditor General's Report



Opinion on Ministerial Notification – Bennett Brook Disability Justice Centre



Report 19: 2020-21

8 April 2021

**Office of the Auditor General
Western Australia**

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The Office of the Auditor General acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders both past and present.

WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

**Opinion on Ministerial Notification – Bennett
Brook Disability Justice Centre**

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**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

OPINION ON MINISTERIAL NOTIFICATION – BENNETT BROOK DISABILITY JUSTICE CENTRE

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 then Minister for Disability Services, the Hon Stephen Dawson MLC, not to provide information to Parliament about the offences each resident at the Bennett Brook Disability Justice Centre is alleged to have committed.

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SANDRA LABUSCHAGNE
ACTING AUDITOR GENERAL
8 April 2021

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Ministerial decision not to provide information to Parliament

Introduction

This report deals with a decision by the then Minister for Disability Services, the Hon Stephen Dawson MLC, not to provide information to Parliament about the offences each resident at the Bennett Brook Disability Justice Centre is alleged to have committed.

Section 82 of the *Financial Management Act 2006* 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* requires the Auditor General to provide an opinion to Parliament as to whether the Minister's decision was reasonable and appropriate.

What we did

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

In forming this opinion, we also obtained independent legal advice from the Australian Government Solicitor.

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 then Minister for Disability Services, the Hon Stephen Dawson MLC, not to provide Parliament with information about offences each resident of the Bennett Brook Disability Justice Centre is alleged to have committed was reasonable and therefore appropriate.

The information requested is confidential information under the *Declared Places (Mentally Impaired Accused) Act 2015* (the Act).

Background

In Parliament on 13 August 2019, the Hon Michael Mischin MLC, asked the Minister for information about the Bennett Brook Disability Justice Centre (Legislative Council Question on Notice 2381). Part (a) of the question requested the following information:

I refer to Bennett Brook Disability Centre and ask:

- (a) *how many residents does the centre hold and, for each resident, what offences is each alleged to have committed[.]*

On 17 September 2019, the Minister provided responses to the other parts to the questions. In response to part (a), the Minister replied:

- (a) *Currently, the Bennett Brook Disability Justice Centre (the Centre) holds three residents. The Centre has held a total of five residents. However, I will not be commenting on the circumstances of individual residents, including the offences with which they were charged. Having regard to the confidentiality regime created under the Declared Places (Mentally Impaired Accused) Act 2015, in particular section 59, it is clear that Parliament's intent was to maintain confidentiality in information regarding residents. As a consequence, I will not be providing details regarding the offences with which the residents have been charged, and will notify the Auditor General accordingly.*

On 2 October 2019, the Minister notified the Auditor General of the decision not to provide the requested information in accordance with section 82 of the *Financial Management Act 2006*. In addition to his explanation to Parliament, the Minister also noted that he balanced the public interest in access to information against the need to protect the privacy and dignity of individuals receiving services from the State.

Key findings

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

The Minister properly sought advice from the Department of Communities (Department) before responding to the request. The Department provided a draft response to the Minister stating the requested information was confidential under section 59 of the Act and as such could not be provided. The Minister's response in Parliament reflected the Department's advice.

The Department sought advice from the SSO. We requested to see the advice, but the SSO declined our request on the basis the information is subject to legal professional privilege. However, we were able to obtain other sufficient and appropriate evidence to form an opinion.

Section 59(1) of the Act prevents disclosure of information relating to residents of a declared place. There are a number of exceptions to this under section 59(2). In particular, section 59(2)(h) allows residents' personal information to be released with the consent of the person or their guardian.

In forming this opinion, we reviewed the Act and sought legal advice from the Australian Government Solicitor to help determine whether the Act precluded the Minister from releasing the information and whether any exceptions apply.

The Australian Government Solicitor provided advice that:

- Section 59 is likely to prevent the Minister from disclosing the offences that each resident is alleged to have committed.
- The exceptions in section 59(2) would generally not apply. Section 59(2)(h) could apply if the information was 'personal information'. The charges against the residents are likely to constitute personal information if the residents could reasonably be identified from the charges. If this is the case, then consent from residents or their guardians could allow disclosure under section 59(2)(h).

Given the general prohibition on the release of information and the lack of any clear exceptions, we agree that the Minister's decision not to provide the information about residents of the Bennett Brook Disability Justice Centre is consistent with legislation and, accordingly, reasonable and appropriate. We note that the exception under section 59(2)(h) would more likely apply to circumstances where information needed to be disclosed to assist residents to receive health or other support services.

While we found the Minister's decision to be reasonable and appropriate, the Department needs to improve the quality of its advice when it recommends withholding information from Parliament.

The Department's advice to the Minister was not comprehensive. It only provided a draft response to the question but did not document or provide its assessment of the information against the Act. In addition, there was no evidence to suggest that the Department assessed whether the exceptions in section 59(2) applied.

Better practice would be for the Department to provide the Minister's office with supporting documentation that demonstrates what assessments it undertook in forming its recommendation.

Response from the Department of Communities

The Department notes these findings and is pleased the decision by the then Minister for Disability Services not to provide Parliament with information about offences each resident of the Bennett Brook Disability Justice Centre is alleged to have committed, was considered reasonable and therefore appropriate.

While the public interest in access to information was balanced against the need to protect the privacy and dignity of individuals receiving services from the State, the information requested is confidential information under the *Declared Places (Mentally Impaired Accused) Act 2015*.

The Department notes the Auditor General's comments about the quality of its advice and will ensure this is considered when briefing Ministers in the future.

Auditor General's 2021-22 reports

Number	Title	Date tabled
18	Regulation of Consumer Food Safety by the Department of Health	1 April 2021
17	Department of Communities' Administration of Family and Domestic Violence Support Services	11 March 2021
16	Application Controls Audits 2021	8 March 2021
15	Opinions on Ministerial Notifications – Tax and Funding Information Relating to Racing and Wagering Western Australia	26 February 2021
14	Opinion on Ministerial Notification – Hotel Perth Campaign Reports	24 February 2021
13	Opinion on Ministerial Notification – Release of Schedule of Stumpage Rates	24 February 2021
12	Grants Administration	28 January 2021
11	COVID-19 Relief Fund	21 December 2020
10	COVID-19: Status of WA Public Testing Systems	9 December 2020
9	Western Australian Registry System – Application Controls Audit	26 November 2020
8	Regulating Minor Pollutants	26 November 2020
7	Audit Results Report – Annual 2019-20 Financial Audits of State Government Entities	11 November 2020
6	Transparency Report: Major Projects	29 October 2020
5	Transparency Report: Current Status of WA Health's COVID-19 Response Preparedness	24 September 2020
4	Managing the Impact of Plant and Animal Pests: Follow-up	31 August 2020
3	Waste Management – Service Delivery	20 August 2020
2	Opinion on Ministerial Notification – Agriculture Digital Connectivity Report	30 July 2020
1	Working with Children Checks – Managing Compliance	15 July 2020

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