



Our Ref: 51-03855 - MSL/174/14

Ms Hannah Moore  
Committee Clerk  
Standing Committee on Estimates and Financial Operations Committee  
Legislative Council  
Parliament House  
GPO Box A11  
PERTH WA 6837

Dear Ms Moore

Thank you for your letter dated 12 May 2014 inviting the Department of Fire and Emergency Services (DFES) to provide a written submission on matters relating to the terms of reference for the Standing Committee on Estimates and Financial Operations, which resolved to commence an inquiry into the provision of information to Parliament.

Accordingly, DFES' submission is provided below:

**a) The responsibilities of Ministers and public sector staff when making decisions whether to provide Parliament with information;**

Sections 81 and 82 of the *Financial Management Act 2006* require Ministers and agencies not to enter into arrangements which would prevent or inhibit a Minister answering a parliamentary question, and require a Minister to provide reasons where a decision is taken not to provide information. With regards to section 81 of the *Financial Management Act 2006*, DFES does endeavour to ensure that any agreement executed by, or on behalf of the Department, does not in any way inhibit the provision of information to Parliament.

DFES has not previously been provided with an order requiring the production of documents or information in accordance with the *Parliamentary Privileges Act 1987*<sup>1</sup>.

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<sup>1</sup> A parliamentary committee does have further powers to order any person, including a Minister to attend and provide a document. This is outlined in Order 264 of the Standing Orders of the Legislative Assembly and sections 4 and 5 of the *Parliamentary Privileges Act 1987*. Order 266 of the Standing Orders of the Legislative Assembly provide that a Chairman may write to a member of Parliament requesting that member attend, however if the member does not attend, the committee shall not take any further action except to report the matter to the Legislative Assembly.

- b) **The adequacy of the provision of information to Parliament by agencies and government trading enterprises not subject to the *Financial Management Act 2006* and the adequacy of the legislative framework;**

DFES has no comment to make on point (b) given it must comply with the *Financial Management Act 2006*.

- c) **The circumstances when it is appropriate not to provide information to Parliament or to request that the information provided be kept confidential;**

The public sector does endeavour to be as open as possible with Parliament and the public. Generally, the main exception to this is where the disclosure of the information is not within the public interest. Whether or not disclosure is, or is not, in the public interest is a discretionary determination made on a case-by-case basis. It is understood that bases utilised to withhold documents in the public interest include those documents that would:

- *Reveal the deliberations of Cabinet or matters put to Cabinet:* documents that would fall within this category are Cabinet minutes and Cabinet submissions — the relevant public interest being that Cabinet must be able to freely debate and be fully informed of matters but remain collectively responsible for decisions;
- *Reveal the confidential high level deliberative processes of government:* documents may include (but often will not) Ministerial briefs — the relevant public interest being protected here is candour in the (and the ability to undertake) proper examination and assessment of options in advising decision-makers; and
- *Reveal information obtained confidentially by the State:* documents could include information in tenders of private companies to government.

Public interest immunity is an immunity that belongs to the executive branch of Government. Generally, the public sector would not determine whether this immunity would be claimed.

In the event that a matter arose where public interest immunity was potentially available, DFES would endeavour to refer the matter to the Minister or Cabinet.

- d) **Technical compliance with section 82 of the *Financial Management Act 2006*; and**

DFES has no comment to make on point (d) given it must comply with the *Financial Management Act 2006*.

- e) **Any other relevant matter.**

DFES has no further comment to make on point (e).

The Minister for Emergency Services has received correspondence of the same nature and I can advise that the Minister has received a copy of DFES' response herein.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Wayne Gregson', written over a horizontal line.

WAYNE GREGSON APM  
**COMMISSIONER**

12<sup>th</sup> June 2014