

GOVERNMENT RESPONSE TO LEGISLATIVE COUNCIL STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS REPORT 62 *PROVISION OF INFORMATION TO THE PARLIAMENT*

Recommendation 1

The Committee recommends that the Attorney General update the State Solicitor's Office 2011 *Guideline to Ministers withholding information or documents when asked a parliamentary question*, to provide for definitions of 'commercial-in-confidence' and 'commercially sensitive'. (See also recommendations 6 and 9)

Supported

The State Solicitor's Office will update the *Guideline to Ministers withholding information or documents when asked a parliamentary question* generally, including incorporating the current version of the Auditor General's *Audit Practice Statement* and providing working definitions of 'commercial-in-confidence' and 'commercially sensitive'.

Recommendation 2

The Committee recommends that the Premier develop a Ministerial Office Memorandum advising Ministers that their claim for commercial-in-confidence or commercial sensitivity as a reason to withhold requested information from the Parliament or its committees should be supported by providing the Parliament or a committee with evidence of why it is not in the public interest to disclose the information, including the following:

- that disclosure of the information would be likely to result in substantial harmful effects
- a list of the harmful effects
- why the effects are viewed by the Minister to be substantial
- an explanation of the causal relationship between disclosure and such harmful effects.

Not Supported

A separate ministerial office memorandum is not supported, however Ministers will be guided by the updated State Solicitor's Office - *Guideline to Ministers withholding information or documents when asked a parliamentary question* and make decisions in relation to the disclosure of information on a case by case basis in the context of their portfolio responsibilities.

In addition, section 82(2) of the *Financial Management Act 2006* already requires the Minister to provide reasons for the decision not to disclose information in the notice provided to Parliament under section 82(1)(a) of that Act.

Recommendation 3

The Committee recommends that Ministers include the information in recommendation 2 in a section 82, *Financial Management Act 2006* notice.

Not supported

Refer to Recommendation 2.

Recommendation 4

The Committee recommends that the Premier develop a Ministerial Office Memorandum containing guiding principles for Ministers when deciding if requested information is 'commercial-in-confidence' or 'commercially sensitive.'

Not Supported

Refer to Recommendation 2.

Recommendation 5

The Committee recommends that the Premier amend the Cabinet handbook to clearly distinguish documents that reveal Cabinet deliberations from other documents that do not reveal deliberations.

Not Supported

It is not possible to provide an exhaustive list of information or documents that may or may not inform or reveal Cabinet deliberations, discussions or decisions or those of other executive bodies. It is not possible to simply restrict this to information, data or documents that appear in a Cabinet submission or attachments, agenda or other meeting related documents.

Cabinet deliberations, discussions and decisions are informed by a variety of data, information and documents at different stages of the Cabinet process that occur outside of individual meetings. Some material may be contained in a final Cabinet submission while others are retained for use by the Minister during discussions or are used to develop positions that may be accepted, rejected or simply discussed by Ministers in Cabinet or other Executive bodies.

Legal precedent demonstrates that claims for public interest immunity on the grounds of Cabinet consideration require an individual assessment of the data, information or documents in question and a blanket exemption or inclusion is not workable.

Recommendation 6

The Committee recommends that the Attorney General in updating the State Solicitor's Office *2011 Guideline to Ministers withholding information or documents when asked a parliamentary question*, compile a list of documents clearly distinguishing Cabinet documents that reveal deliberations from those that do not reveal deliberations for the guidance of Ministers claiming Cabinet-in-confidence as a reason for not providing information to the Parliament or its committees. (See also recommendations 1 and 9).

Not Supported

Refer to Recommendation 5.

Recommendation 7

The Committee recommends that the Premier develop a Ministerial Office Memorandum advising Ministers to provide requested core State agreements; bespoke agreements; and government trading enterprise agreements to the Parliament or its committees with a request they be given the appropriate safe custody in each particular circumstance.

Not supported

A separate Ministerial Office memorandum is not supported. Decisions on the provision of such information remain at the discretion of individual Ministers and are taken on a case by case basis in the context of their portfolio responsibilities.

Recommendation 8

The Committee recommends that the Premier, as part of induction, provide new Ministers with formal education, training and mentoring about their responsibilities under sections 81 and 82 of the *Financial Management Act 2006*.

Supported

All newly appointed Ministers and Parliamentary Secretaries receive a briefing by the Cabinet Secretary in relation to their obligations and responsibilities. The implications of sections 81 and 82 of the *Financial Management Act 2006* will be brought to their attention as part of this process.

Chiefs of Staff will also be made more aware of these provisions and be reminded of the Public Sector Commissioner's Circular 2010-03 *Policy for Public Sector Witnesses Appearing Before Parliamentary Committees* and the updated State Solicitor's Office - *Guideline to Ministers withholding information or documents when asked a parliamentary question*.

Recommendation 9

The Committee recommends that when the 2011 *Guideline to Ministers withholding information or documents when asked a parliamentary question* is reviewed and updated, the State Solicitor's Office distribute it to all Ministers as well as their heads of departments and agencies. (See also recommendations 1 and 6).

Supported

The updated *Guideline to Ministers withholding information or documents when asked a parliamentary question* will be distributed to all Ministers and all heads of departments and agencies.

Recommendation 10

The Committee recommends the Treasurer amend section 24 of the *Auditor General Act 2006* to expressly allow the Auditor General to provide an opinion in all circumstances where the Minister decides not to provide certain information to the Parliament or its committees whether or not a section 82, *Financial Management Act 2006* notice is tabled in the Parliament.

Not supported

The provisions of the *Financial Management Act 2006* already provide suitable arrangements to deal with a Minister's decision not to provide certain information to the Parliament.

Recommendation 11

The Committee recommends that the Procedure and Privileges Committee inquire into amending Standing Orders of the Legislative Council to provide for *Auditor General Opinions on Ministerial Notifications* under section 24(2)(c) of the *Auditor General Act 2006* to be considered under Standing Order 15(3).

This is a matter for the Legislative Council.

Recommendation 12

The Committee recommends the Treasurer propose the making of a regulation pursuant to section 84 of the *Financial Management Act 2006* prescribing that the Auditor General may provide a written reminder to a Minister after the 14 day notice period has lapsed for advising the decision not to provide certain information to the Parliament.

Not supported

The preferred approach is to include this information in the induction material referred to in Recommendation 8.

Recommendation 13

The Committee recommends that the Treasurer amend section 82 of the *Financial Management Act 2006* so as to provide a new subsection (3) which states:

(3) A notice given to the Auditor General under subsection (1)(b) is to include –

*(a) the Minister's reasons for making the decision that is the subject of the notice;
and*

(b) the information concerning the conduct or operation of an agency that the Minister has not provided to Parliament.

Not supported

Refer to Recommendation 2.