

Western Australian Auditor General's Report



Opinion on Ministerial Notification



Report 24: 2019-20

16 June 2020

**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



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

OPINION ON MINISTERIAL NOTIFICATION

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 Minister for Lands, the Hon Ben Wyatt MLA, not to provide certain information to Parliament about the Landgate Partial Commercialisation transaction.

A handwritten signature in black ink, appearing to read 'C Spencer'.

CAROLINE SPENCER
AUDITOR GENERAL
16 June 2020

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Ministerial decision not to provide information to Parliament

Introduction

This report deals with a decision by the Minister for Lands, the Hon Ben Wyatt MLA, not to provide certain information to Parliament about the Landgate Partial Commercialisation transaction.

Section 24 of the *Auditor General Act 2006* requires the Auditor General to provide an opinion to Parliament as to whether a decision by a Minister not to provide information to Parliament concerning any conduct or operations of an agency is reasonable and appropriate.

The following opinion is provided on the basis of the Minister having expressed an intent not to provide certain information to Parliament in his letter to the Auditor General dated 13 November 2019.

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 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 or other legal advisers
- interviews with key entity 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 Lands, the Hon Ben Wyatt MLA, to redact information from the Landgate Partial Commercialisation transaction document provided to Parliament was reasonable and therefore appropriate.

Background

In Parliament on 19 September 2019, the Hon Peter Collier MLC asked the Minister representing the Minister for Lands and Treasurer for the following information about the Landgate Partial Commercialisation:

I refer to the government's decision to privatise Landgate services.

- (1) Will the Treasurer table the contract?
- (2) If not, why not?

The Minister responded:

I thank the Leader of the Opposition for some notice of the question. The following answer is provided on behalf of the Treasurer.

(1)–(2) The government will table a summary of details regarding key terms of the transaction documents to demonstrate the benefits and protections for the state. In the meantime, the Treasurer is happy to answer any specific questions that members might have regarding the transaction documents.

In Parliament on 26 November 2019, the Hon Dean Nalder MLA, asked the Minister for Lands:

(1) Why has the Government refused to table the Landgate sale contract?

The Minister responded:

(1) The Government is working with Landgate on the appropriate process to be able to table the transaction documents with Land Services WA in Parliament in due course, which will include the relevant sections regarding privacy.

On 13 November 2019, the Minister wrote to the Auditor General stating his intention to table the Landgate Partial Commercialisation transaction documents in Parliament with commercially sensitive information deleted. Section 68(2)(b) of the *Land Information Authority Act 2006 (WA)*, requires an opinion from the Auditor General stating that the information deleted is commercially sensitive.

On 12 May 2020, the Auditor General provided the section 68(2)(b) *Land Information Authority Act 2006 (WA)* opinion to the Minister. The Minister tabled the Landgate Partial Commercialisation transaction documents in Parliament on 27 May 2020, accompanied by the audit opinion. A copy of the opinion is included in Appendix 1.

Key findings

The decision by the Minister to provide Parliament redacted information about the Landgate Partial Commercialisation transaction was reasonable and therefore appropriate.

The Minister properly sought advice from the Board of the Western Australian Land Information Authority (Landgate) before responding to the request. Landgate recommended the Minister provide the information with commercially sensitive information redacted.

We assessed the redacted information against criteria for commercial sensitivity:

- Is the redacted information secret?
- Does the redacted information have commercial value?
- Is there potential detriment to the State or a third party if the redacted information is made public?
- Is the implicit public interest in making government information publicly available outweighed by the commercial sensitivity of the redacted information?

In all material respects, the information redacted in the Landgate Partial Commercialisation transaction documents was not generally known nor easily ascertainable using public sources.

In all material respects, the redacted information has commercial value to the Landgate Partial Commercialisation transaction or to Landgate itself. This includes breakdowns of minimum performance levels, timings and liabilities unique to the transaction, and information about Landgate's IT arrangements and systems.

In our view, release of the commercially sensitive information could cause harm to the commercial interests of both government and the service provider. For example, by potentially introducing risks to the security of Landgate's IT systems. In assessing this, we weighed the public interest in releasing the redacted information against the possible harm to the interests of government or the service provider. We found that reasonable grounds exist for keeping the redacted information confidential.

In our view, the Minister's decision to provide redacted transaction information is consistent with the public interest of protecting and reducing the risk of damage to the financial and commercial affairs of the State.

Appendix 1



Auditor General

INDEPENDENT AUDITOR'S REPORT

To the Minister for Lands

WESTERN AUSTRALIAN LAND INFORMATION AUTHORITY

Report on the commercial sensitivity of information

Opinion

I have undertaken a reasonable assurance engagement to evaluate the information in the attached 'Landgate Partial Commercialisation' transaction documents marked for deletion prior to making the documents public. I have assessed the deleted information against the following criteria for commercially sensitive information:

- The information is secret
- The information has commercial value
- There is potential detriment to the State or a 3rd party if the information is made public
- The implicit public interest in making government information publicly available is outweighed by the commercial sensitivity of the information.

In my opinion, in all material respects, the information identified for deletion is commercially sensitive.

The Board's responsibility

The Board of the Western Australian Land Information Authority is responsible for identifying matters within the documents that are commercially sensitive, and at the place in the documents where the matter is deleted, detailing reasons for the deletion in accordance with sections 68(1) and 68(2)(a) of the *Land Information Authority Act 2006*.

Auditor General's responsibility

Pursuant to section 68(2)(b) of the *Land Information Authority Act 2006*, I am required to provide an opinion on whether, in all material respects, the information deleted in the documents is commercially sensitive.

I conducted my engagement in accordance with the Standard on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* issued by the Australian Auditing and Assurance Standards Board. That standard requires that I comply with relevant ethical requirements relating to assurance engagements.

This assurance engagement involved evaluating the identified information against the criteria set out in this report for assessing commercial sensitivity. The evaluation against these criteria is necessarily subjective and ultimately depends on my judgement. However, my evaluation was informed by discussions with staff from the Western Australian Land Information Authority and the Department of Treasury.

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

My independence and quality control

I have complied with the independence requirements of the *Auditor General Act 2006* and the relevant ethical requirements relating to assurance engagements. In accordance with ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements*, the Office of the Auditor General maintains a comprehensive system of quality control including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

Inherent limitations

Because of the inherent limitations of an assurance engagement, together with the subjectivity and judgement involved in identifying commercially sensitive information in the 'Landgate Partial Commercialisation' transaction documents, it is possible that not all deleted information is commercially sensitive.

Restricted use

This report has been prepared for use by the intended users for the purpose of expressing an opinion that, in all material respects, the information identified in footnotes is commercially sensitive in accordance with the above criteria. I disclaim any responsibility for any reliance on this report to any person other than the intended users, or for any purpose other than for which it was prepared.



CAROLINE SPENCER
AUDITOR GENERAL
FOR WESTERN AUSTRALIA
Perth, Western Australia
12 May 2020

Auditor General's reports

Report number	2019-20 reports	Date tabled
23	Opinion on Ministerial Notification	29 May 2020
22	Regulation of Asbestos Removal	21 May 2020
21	Audit Results Report – Annual 2019 Financial Audits	12 May 2020
20	Local Government Contract Extensions and Variations and Ministerial Notice Not Required	4 May 2020
19	Control of Monies Held for Specific Purposes	30 April 2020
18	Information Systems Audit Report 2020 – State Government Entities	6 April 2020
17	Controls Over Purchasing Cards	27 March 2020
16	Audit Results Report – Annual 2018-19 Financial Audit of Local Government Entities	11 March 2020
15	Opinion on Ministerial Notification	28 February 2020
14	Opinion on Ministerial Notification	31 January 2020
13	Fee-setting by the Department of Primary Industries and Regional Development and Western Australia Police Force	4 December 2019
12	Audit Results Report – Annual 2018-19 Financial Audits of State Government Entities	14 November 2019
11	Opinion on Ministerial Notification	30 October 2019
10	Working with Children Checks – Follow-up	23 October 2019
9	An Analysis of the Department of Health's Data Relating to State-Managed Adult Mental Health Services from 2013 to 2017	9 October 2019
8	Opinions on Ministerial Notifications	8 October 2019
7	Opinion on Ministerial Notification	26 September 2019
6	Opinions on Ministerial Notifications	18 September 2019
5	Fraud Prevention in Local Government	15 August 2019
4	Access to State-Managed Adult Mental Health Services	14 August 2019
3	Delivering Western Australia's Ambulance Services – Follow-up Audit	31 July 2019

Report number	2019-20 reports	Date tabled
2	Opinion on Ministerial Notification	26 July 2019
1	Opinions on Ministerial Notifications	19 July 2019

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