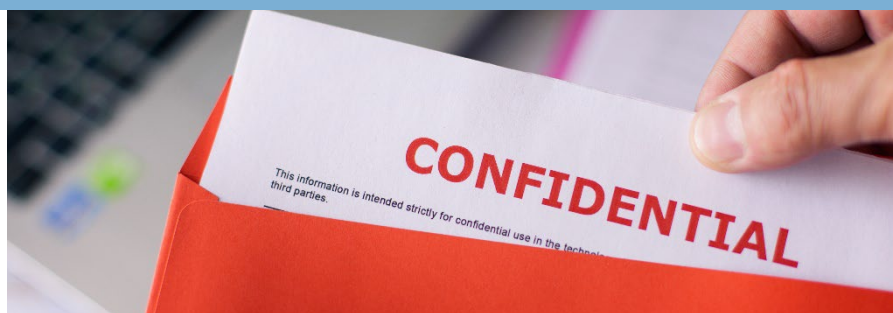


Western Australian Auditor General's Report



Opinion on Ministerial Notification – DPIRD Capability Review



Report 24: 2020-21

18 May 2021

**Office of the Auditor General
Western Australia**

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ISSN: 2200-1913 (print)
ISSN: 2200-1921 (online)

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 – DPIRD Capability Review



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

OPINION ON MINISTERIAL NOTIFICATION – DPIRD CAPABILITY REVIEW

This report has been prepared for submission to Parliament under the provisions of section 24 of the *Auditor General Act 2006*.

It deals with a decision by the Minister for Regional Development and Agriculture and Food, the Hon Alannah MacTiernan MLC, not to provide Parliament with a full version of the *Department of Primary Industries and Regional Development's Capability Review: Phase 1* report.

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

CAROLINE SPENCER
AUDITOR GENERAL
18 May 2021

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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 and Agriculture and Food, the Hon Alannah MacTiernan MLC, not to provide Parliament with a full version of the *Department of Primary Industries and Regional Development's Capability Review: Phase 1* report.

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* 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 or other legal advisers
- interviews with key entity persons and discussions with Ministerial staff 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 and Agriculture and Food, the Hon Alannah MacTiernan MLC not to provide Parliament with a full version of the *Department of Primary Industries and Regional Development's Capability Review: Phase 1* final report was reasonable and therefore appropriate.

Background

In Parliament on 15 August 2019, Hon Martin Aldridge MLC asked the Minister for Regional Development and Agriculture and Food, in Legislative Council Question on Notice 2390 to table the *Department of Primary Industries and Regional Development's Capability Review: Phase 1* final report. The question was:

I refer to the 'Report on Consultants Engaged by Government' report for the six months ended 31 December 2018 and I ask:

- (a) *Please table the 'Provision of DPIRD capability review, develop capability review and evaluation plan, strategic logic and public value assessment,*

functional analysis and final report' commissioned by the Department of Primary Industries and Regional Development and undertaken by the Nous Group?

On 24 September 2019 the Minister responded as follows:

The capability review formed part of a submission to the Expenditure Review Committee and is considered Cabinet-in-confidence. The document remains under active consideration by the Department as it continues to deliver organisational change.

On 8 April 2020, the Auditor General received the Minister's notification in accordance with section 82 of the FM Act of the decision to provide a redacted version of the requested report.

Key findings

The decision by the Minister not to provide a full version of the report was reasonable and therefore appropriate.

The Department of Primary Industries and Regional Development (DPIRD) advised us, and the Minister's office confirmed, that the Minister properly sought advice from DPIRD before responding to the request. However, DPIRD declined to provide us with the advice on the basis it was covered by legal professional privilege. In developing the advice, the Department sought legal guidance from both its in-house legal team and the State Solicitor's Office.

Although we were not provided with DPIRD's advice, we obtained and reviewed the original, complete report.

In assessing the redacted information, we followed the approach set out in previous opinions on Ministerial notifications dealing with Cabinet confidentiality.¹

Our analysis of the redacted information found the primary purpose of the information was to inform Cabinet. As part of the 2018-19 Budget, Government approved DPIRD to undertake the capability review to report to the Expenditure Review Committee. The report formed part of a Cabinet submission.

While some of the information in the report may be publicly available, the context in which it was provided informed, and could reveal, the deliberations and decisions of Cabinet and therefore should remain confidential.

However, we identified a few instances where information was not consistently redacted across all sections of the report, and a small portion of redacted information was likely redacted in error and could have been made public. When redacting information public entities should take care to ensure the necessity of any and all redactions. The default position should be one of disclosure.

This is the first notification we have received where a Minister has tabled a redacted document in relation to Cabinet-in-confidence information. We commend the Minister for providing information to Parliament while upholding Cabinet confidentiality.

¹ Office of the Auditor General for Western Australia. [Opinions on Ministerial Notifications, Report No 18 \(2016\)](#), p. 5 & p.19

Response from the Department of Primary Industries and Regional Development

The Department agrees with the Auditor General's opinion that the Minister's decision was reasonable and appropriate in all of the circumstances. The Department are always cognisant of the importance of providing information to Parliament where it is appropriate to do so, and this instance was no exception. Although the Office of Auditor General has indicated support for the approach taken in the present case, it must be reiterated that the information that was provided to Parliament in this instance was provided because on the specific circumstances of the matter it was possible to do so without compromising cabinet confidentiality.

Auditor General's 2021-22 reports

Number	Title	Date tabled
23	Local Government General Computer Controls	12 May 2021
22	Opinion on Ministerial Notification – Hospital Facilities Services	6 May 2021
21	Regulation and Support of the Local Government Sector	30 April 2021
20	Opinions on Ministerial Notifications – Policing Information	28 April 2021
19	Opinion on Ministerial Notification – Bennett Brook Disability Justice Centre	8 April 2021
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

Number	Title	Date tabled
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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