

Notice under section 82 of the *Financial Management Act 2006 (WA)*

Parliamentary Questions Without Notice no. 1301

On 19 October 2023 the Hon Dr Stephen Thomas asked the following question without notice in the Legislative Council:

"I refer to my question without notice 1273 asked yesterday, 18 October, revealing that yet another external consultant, Ashurst, is advising the government on the foreign-owned, insolvent Griffin Coal.

(1) Does the partnering arrangement include a contract or partnering contract that was awarded to Ashurst to work with the State Solicitor's Office; and if so, please table that contract?

...

(4) From 2 December 2022 to date, what is the total of payments made to Ashurst under this partnering arrangement, and what invoices has Ashurst sent to the SSO to provide the specialist legal services?"

The detail of those questions and the answers provided is set out in the attached Schedule.

I declined to provide the information sought in question (1) on the basis that the terms and conditions of the Ashurst engagement are privileged and confidential, and it is reasonable and appropriate to not provide those terms and conditions for the following reasons:

- (a) it is not common legal practice to disclose the terms and conditions of a legal brief;
- (b) the terms and conditions of a legal brief are subject to legal professional privilege; and
- (c) the terms and conditions of the legal brief may disclose the ambit, scope, and content of advice sought and obtained by the Government, and prejudice the State's commercial position when negotiating with other parties involved in the Collie coal mines.

I declined to provide the information sought in question (4) on the basis that the information is confidential and disclosure may prejudice the State's commercial position. Specifically:

- (a) information about payments made to Ashurst, may tend to disclose the scope and ambit of advice sought and obtained by Government, which may affect the State's legal and strategic position generally, and when negotiating with other stakeholders;
- (b) this matter is still ongoing, including as to the Government's intentions for the Collie coal mines and the transition to renewable energy sources and the role that Government might assume in relation to those matters; and
- (c) the information could provide a tactical advantage to parties involved in the Collie coal mines and could allow those parties to gain insight into the State's consideration of legal issues relating to this matter.

The reasons set out above are provided in accordance with my obligations section 82(2) of the *Financial Management Act 2006*. Notice is also being provided to the Auditor General in accordance with section 82(1)(b) of the *Financial Management Act 2006*.


A.G.
28/3/24

**JOHN QUIGLEY MLA
ATTORNEY GENERAL**

SCHEDULE

Question Without Notice No. 1301 asked in the Legislative Council on 19 October 2023 by Hon Dr Steve Thomas

GRIFFIN COAL — CONSULTANTS

1301. Hon Dr STEVE THOMAS to the parliamentary secretary representing the Attorney General:

I refer to my question without notice 1273 asked yesterday, 18 October, revealing that yet another external consultant, Ashurst, is advising the government on the foreign-owned, insolvent Griffin Coal.

- (1) Does the partnering arrangement include a contract or partnering contract that was awarded to Ashurst to work with the State Solicitor's Office; and if so, please table that contract?
- (2) If yes to (1), did the SSO publicly register its tender for specialist legal services in relation to Griffin and via what mechanism or format, and was it publicly advertised to allow for expressions of interest and applications from other consultants and advisers?
- (3) If no to (1), what formal legal relationship exists between the SSO and Ashurst in relation to legal advice on Griffin Coal, and please table the documentation of that relationship?
- (4) From 2 December 2022 to date, what is the total of payments made to Ashurst under this partnering arrangement, and what invoices has Ashurst sent to the SSO to provide the specialist legal services?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question.

- (1)–(4) An answer cannot be provided within the time available today. A response will be provided on the next sitting day.

GRIFFIN COAL — CONSULTANTS

Question without Notice 1301 — Supplementary Information

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [5.07 pm]: I would like to provide a response to Hon Dr Steve Thomas's question without notice 1301, asked on 19 October 2023. I seek leave to have the response incorporated into Hansard.

[Leave granted for the following material to be incorporated.]

- (1) Yes – Ashurst was retained by the State Solicitor's Office pursuant to a written legal brief. The terms of the brief are confidential subject to legal professional privilege.
- (2) No. However, the State Solicitor's Office retained Ashurst in accordance with its obligations under the *Procurement Act 2020 (WA)*.
- (3) Not applicable.
- (4) This matter is ongoing. The amount paid by the State Solicitor's Office to Ashurst for legal services provided since 2 December 2022 is confidential.


John R. A. C.
28/3/24