

Western Australian Auditor General's Report



Opinions on Ministerial Notifications – Tax and Funding Information Relating to Racing and Wagering Western Australia



Report 15: 2020-21
26 February 2021

**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

**Opinions on Ministerial Notifications – Tax
and Funding Information Relating to Racing
and Wagering Western Australia**

Report 15: 2020-21
February 2021



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

**OPINIONS ON MINISTERIAL NOTIFICATIONS – TAX AND FUNDING INFORMATION
RELATING TO RACING AND WAGERING WESTERN AUSTRALIA**

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

It deals with 2 decisions by the Minister for Racing and Gaming, the Hon Paul Papalia MLA, not to provide information to Parliament about:

- how much point-of-consumption tax was paid by Racing and Wagering Western Australia (RWVA) to other jurisdictions for 2019-20
- a breakdown of the budget projections of funding sources for the distribution of \$182.3 million to the racing industry in 2020-21, and a breakdown of the sources of funding distributed to the industry in 2019-20.

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

CAROLINE SPENCER
AUDITOR GENERAL
26 February 2021

Contents

- Ministerial decisions not to provide information to Parliament 2
 - Introduction 2
 - What we did 2
- Ministerial decision not to answer how much point-of-consumption tax was paid by RWWA to other jurisdictions for 2019-20..... 3
 - Opinion..... 3
 - Background..... 3
 - Key findings..... 3
- Ministerial decision not to provide information about the breakdown of sources of funding distributed to the racing industry by RWWA in 2019-20 and 2020-21 4
 - Opinion..... 4
 - Background..... 4
 - Key findings..... 5
- Response from Minister Papalia..... 7
 - Further OAG comment..... 7

Ministerial decisions not to provide information to Parliament

Introduction

This report deals with 2 decisions by the Minister for Racing and Gaming, the Hon Paul Papalia MLA, not to provide information to Parliament. The decisions were made about:

- how much point-of-consumption tax was paid by Racing and Wagering Western Australia (RWWA) to other jurisdictions for 2019-20
- a breakdown of the budget projections of funding sources for the distribution of \$182.3 million to the racing industry in 2020-21, and a breakdown of the sources of funding distributed to the industry in 2019-20.

Section 82 of the *Financial Management Act 2006* (the 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 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.

Ministerial decision not to answer how much point-of-consumption tax was paid by RWWA to other jurisdictions for 2019-20

Opinion

The decision by the Minister for Racing and Gaming, the Hon Paul Papalia MLA, not to provide Parliament with information about how much point-of-consumption tax was paid by RWWA to other jurisdictions for 2019-20 was not reasonable and therefore not appropriate.

This is because the type of information was not commercially sensitive, as demonstrated by its previous publication, and the requested data's later presentation in *RWWA's 2019-20 Annual Report*.

Background

In Parliament on 10 September 2020, the Hon Colin Holt MLC asked the Minister for Racing and Gaming, for the following information about point-of-consumption tax paid by RWWA. The question, in part (2) of Legislative Council Question Without Notice 899, was:

- (2) How much point-of-consumption tax was paid to other jurisdictions by RWWA for 2019-20?

On 10 September 2020, the Minister responded as follows:

- (2) This information cannot be disclosed. By disclosing the WA portion of point-of-consumption tax payments, it will be apparent what percentage of WA TAB revenue is generated by WA customers and also the WA TAB market share of WA customers. As the TAB operates in a highly competitive and commercial environment, this information is confidential and commercially sensitive.

On 23 September 2020, the Minister notified the Auditor General of his decision not to provide the requested information in accordance with section 82 of the FM Act.

Key findings

The Minister properly sought advice from RWWA before responding to the request. RWWA recommended the Minister not provide the information as it was commercially sensitive and highly confidential.

However, the decision by the Minister not to provide the requested information was not reasonable and appropriate as the information did not, in our view, meet established criteria for commercial-in-confidence.

Specifically, it did not meet our first criterion for commercially sensitive information: Is the information sufficiently secret? Is it significant?

Although the information was not publicly available when the Minister declined to provide it, it was disclosed in *RWWA's 2019-20 Annual Report*, which was tabled in Parliament around a month after the question was asked. The same information for 2018-19 had been published in *RWWA's 2018-19 Annual Report*. At the time the question was answered, it was reasonable to assume that the information for 2019-20 would be made publicly available. Consequently, the information cannot be considered inherently confidential.

We did not assess the information against the remaining criteria for commercial-in-confidence information as the first criterion was not met.

The Minister has acknowledged that the information is now publicly available and has informed us that he will provide the information to the Member at his request.

Ministerial decision not to provide information about the breakdown of sources of funding distributed to the racing industry by RWWA in 2019-20 and 2020-21

Opinion

The decision by the Minister for Racing and Gaming, the Hon Paul Papalia MLA, not to provide budget projections of race field fees and point-of-consumption tax to be distributed to the racing industry in 2020-21 was not reasonable and therefore not appropriate. This is because earlier projections were later published in the *WA State Budget Papers 2020-21*.

An opinion was not required about the Minister's further decision not to provide information on the amounts distributed to the racing industry from each of WA TAB profits, cash reserves and other activities for 2019-20 and 2020-21. This information does not exist and so there could be no refusal to provide the information.

Background

In Parliament on 15 September 2020, the Hon Colin Holt MLC asked the Minister for Racing and Gaming, in Legislative Council Question Without Notice 922, for information about sources of funding distributed to the racing industry by RWWA:

(1) a breakdown of the budget projections of funding sources for the distribution of \$182.3 million to the racing industry in 2020-21 and (2) a breakdown of the sources of funding distributed to the industry in 2019-20 from:

- WA TAB profits
- race field fees
- the point-of-consumption tax
- cash reserves
- other activities.

The Minister did not provide budget projections of race field fees and point-of-consumption tax to be distributed to the racing industry for 2020-21. The Minister also did not provide the amount distributed in 2019-20 and projected for 2020-21, from WA TAB profits, cash reserves and other activities to the racing industry. Specifically, on 15 September 2020, the Minister responded as follows:

- (1) Apart from race field fees and point-of-consumption tax, the level of detail requested by the member is not publicly reported, as detailing previous budget allocations or projected budget allocations that fund the distributions to the level of detail requested would disclose competitive and commercially sensitive information about the WA TAB, which operates in a

highly competitive environment, and therefore would potentially compromise the WA TAB's competitive position.

- (2) As race field fees and point-of-consumption tax are provided in RWWA's annual report, which will be tabled in Parliament this year, I can advise that the total industry funding for 2019-20 was \$162 million. Noting that the figures are from the unaudited year and are subject to change, the amount is made up of \$25 million in point-of-consumption tax receipts and \$93 million in race field receipts, along with additional funding from a combination of profits made by WA TAB and other funding sources.

On 29 September 2020, the Minister notified the Auditor General of his decision not to provide parts of the requested information in accordance with section 82 of the FM Act.

Key findings

The Minister properly sought advice from RWWA, the State Government authority responsible for the WA TAB, before responding to the request. RWWA recommended the Minister not provide the information as it was confidential and commercially sensitive due to the competitive commercial environment of the WA TAB.

Budget projections of race-field fees and point-of-consumption tax paid to the racing industry for 2020-21

The decision by the Minister not to provide the budget projections for race field fees and point-of-consumption tax to be distributed to the racing industry for 2020-21 was not reasonable and therefore not appropriate.

We assessed the information against our first criterion for commercial-in-confidence information: Is the information sufficiently secret? Is it significant?

The criterion was not met because earlier budget projections were in the *WA State Budget Papers 2020-21*, which were published less than a month after the question was asked. Similar information for 2020-21 had also been published in the *WA State Budget Papers 2019-20*, which were public at the time the question was asked. Consequently, the information cannot be considered inherently confidential.

We did not assess the information against the remaining criteria for commercial-in-confidence information because the first criterion was not met.

Amount distributed to the racing industry from WA TAB profits, cash reserves and other activities in 2019-20

An opinion is not required on the Minister's further decision not to provide the amount distributed in 2019-20, and projected for 2020-21, from WA TAB profits, cash reserves and other activities to the racing industry because RWWA does not have this information.

Funding distributed to the racing industry is made up of race field fees and point-of-consumption tax, with the balance sourced from WA TAB profits, cash reserves and other activities.

RWWA can separately identify race field fees and point-of-consumption tax because it is required to do so by legislation. But WA TAB profits, RWWA's cash reserves and revenues from other activities are held in RWWA's consolidated account and are not separately identified. As such, RWWA cannot identify the amounts distributed to the racing industry from these individual sources as requested by the Member.

RWWA advised the Minister not to provide the information because it was commercial-in-confidence, not because the information did not exist. As a result, it was not clear from the advice to the Minister that the information did not exist. We have reminded RWWA that it is better practice to provide advice to Ministers that accurately explains why the information cannot be provided.

Response from Minister Papalia

LCQWN 899

As indicated, there was a misinterpretation of what the Honourable, Colin Holt MLC, was asking for in part 2 of the question. It was assumed the Honourable Member was asking for the breakdown of point of consumption tax paid by individual jurisdiction for 2019-20, which prompted the response of commercial sensitivity. I am happy to provide the information to the Member directly at his request.

LCQWN 922

I acknowledge the opinion indicates that my decision not to provide budget projections of race field fees and point-of-consumption tax to be distributed to the racing industry in 2020-21 was not reasonable and therefore not appropriate, because earlier projections were publicly available in the *WA State Budget Papers 2020-21*.

However, I do not believe that the distributions part 1 of the question specifically relates to are part of the State Budget Papers. The funding sources that supply the distributions are from RWWA's board-approved budget. This is a confidential document which is not circulated outside of RWWA and information on specific components of distribution funding is not made publicly available.

The numbers in the *State Budget Papers 2020-21* were provided at a different point in time from when RWWA's budget was prepared, during which time the projections changed materially.

In making my decision I considered if providing the information requested by the Member would divulge RWWA's internal budget process as RWWA derives income, through the WA TAB, which is a highly competitive market. It is highly unusual for any business operating in a commercial environment to disclose a breakdown of its budget projections and RWWA considers the information highly sensitive.

I also considered and balanced the inherent public interest in providing the information requested by Parliament with the need to protect the financial and commercial affairs of the State.

Further OAG comment

We note that the figures in the *WA State Budget Papers 2020-21* are not the specific figures requested by the Member. This is because the figures in the *State Budget Papers 2020-21* were estimated before the budget for the \$182.3 million distribution, to which the Member's question relates, was prepared. The figures changed during the intervening period. However, we do not consider the information in the State Budget (an estimate of the amounts to be distributed from race field fees and point-of-consumption tax) to be inherently different from the information that was requested (an estimate of the amounts distributed from race field fees and point-of-consumption tax).

Auditor General's 2021-22 reports

Number	Title	Date tabled
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
2	Opinion on Ministerial Notification – Agriculture Digital Connectivity Report	30 July 2020
1	Working with Children Checks – Managing Compliance	15 July 2020

**Office of the Auditor General
Western Australia**

7th Floor Albert Facey House
469 Wellington Street, Perth

Perth BC, PO Box 8489
PERTH WA 6849

T: 08 6557 7500
F: 08 6557 7600
E: info@audit.wa.gov.au
W: www.audit.wa.gov.au

 [@OAG_WA](https://twitter.com/OAG_WA)

 Office of the Auditor General for
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