

Western Australian Auditor General's Report



Opinion on Ministerial Notification – Release of Schedule of Stumpage Rates



Report 13: 2020-21

24 February 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 –
Release of Schedule of Stumpage Rates**

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February 2021



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

OPINION ON MINISTERIAL NOTIFICATION – RELEASE OF SCHEDULE OF STUMPAGE RATES

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 Forestry, the Hon Dave Kelly MLA, not to provide Parliament with all the information used to calculate payments for sharefarmers.

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

CAROLINE SPENCER
AUDITOR GENERAL
24 February 2021

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Ministerial decision not to provide information to Parliament

Introduction

This report deals with a decision by the Minister for Forestry, the Hon Dave Kelly MLA, not to provide Parliament with all the information used to calculate payments for sharefarmers.

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. For this notice we conducted:

- a review of State government entity documents
- a review of any advice provided to the relevant Minister by entities, the State Solicitor's Office (SSO) or other legal advisers
- a review of a sample of sharefarmer payments to verify the information used for the calculations
- 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 Forestry, the Hon Dave Kelly MLA, not to provide Parliament with all the information used to calculate payments to sharefarmers was reasonable and therefore appropriate.

We found the nature of the question was very broad. The information requested includes, among other inputs, all customer and contractor rates that are used to calculate these payments. It was reasonable and appropriate for the Minister not to provide these individualised pricing rates, as each arrangement is usually deemed commercial-in-confidence, and in recognition of the large number of individual contractors and customers involved.

However, we consider the Forest Products Commission (FPC) could reasonably have provided aggregated rates directly in response to the question in Parliament. We note that on 29 May 2020 – before the question was answered by the Minister – FPC published on its website stumpage schedules which combined all the costs into a schedule of rates. This may have occurred in response to the specific question and ongoing Parliamentary interest. Since

1 July 2020, the rates have been published and used to calculate payments to sharefarmers and have regard to such factors as the distance from processing.

Background

In Parliament on 11 June 2020, the Hon Diane Evers MLC asked the Minister for Regional Development representing the Minister for Forestry, in Legislative Council Question Without Notice 586, for information about the method and all the information used for calculating payments to sharefarmers:

I refer to the minister's response to my question without notice 377 asked on 17 April:

- (1) Are there any existing sharefarmers with contracts that used these schedules for calculations of payment?
- (2) If yes to (1), how many and what method is now used for calculating these payments?
 - (a) Will the minister please table all information used for calculating these payments, such as price lists?
 - (b) If no, why not?
 - (c) If no, how can sharefarmers be sure they are being paid appropriately and in line with their contracts?
 - (d) Is the new method consistent in providing pricing to sharefarmers under s149 of the Forest Management Regulations 1993?
- (3) Were sharefarmers consulted on the changes to pricing structure payments?
 - (a) If no, why not?
 - (b) If yes, were any concerns raised about the new method?

The Minister provided most of the requested information, but declined to provide the information for 2(a), stating:

The customer and contractor rates are key components of the above calculation and are commercial-in-confidence.

The Minister notified the Auditor General of his decision not to provide this information in accordance with section 82 of the FM Act on 9 July 2020.

Key findings

The decision by the Minister not to provide the requested information about sharefarmer payments was reasonable and therefore appropriate.

The Minister properly sought advice from the FPC before responding to the request. His response to Parliament was consistent with FPC's advice.

Prior to the Minister's response to Parliament, FPC sought advice from the State Solicitor's Office (SSO). FPC told us that it had discussed the SSO's advice with the Minister's office before he responded to the question in Parliament.

FPC did not document its assessment of why customer price and contractor rates are considered commercial-in-confidence. We have recommended in previous opinions that FPC

should formalise its assessment criteria to support efficient and consistent assessments of requests for information.

In the absence of a documented assessment we identified that the nature of the information requested in 2(a) of the question was very broad, and that the key components used by FPC to calculate sharefarmer payments includes:

- prices paid to FPC by its customers
- prices FPC pays its contractors for services such as tree pruning, harvesting and haulage services
- FPC administration costs
- percentage of landowner share.

The prices are different across multiple service providers, region, product type and customers. Providing the information in the questions would require securing permission from a large number of customers and contractors, as well as collating data on crop share percentages across 780 sharefarmer agreements. Consequently, this would have created a significant administrative burden for FPC, and it is not certain that all contract counterparties would have provided permission for release of their information.

We assessed whether this information is commercial-in-confidence based on the following criteria:

Criterion 1 Is the information sufficiently secret? Is it significant?

This criterion was met. In all material respects, the information was not generally known nor ascertainable using publicly available sources at the time the Minister declined to provide it. The information is also significant as it forms the basis for sharefarmer payment calculations. We note that on 29 May 2020, FPC published a schedule of stumpage rates on its website which is now used to calculate payments to sharefarmers. All associated input costs have been combined into single rates across 3 regions (Central, Midwest and South Coast). These cover around 7 products types, haulage distance, type of terrain and timing of production (thinning or final harvest).

Criterion 2 Does an obligation of confidence exist?

This criterion was met. There is a non-disclosure provision covering data and technical information in 2 contracts we reviewed between FPC and its customers. Although this does not extend to basic contract information, the nature of the requested information (pricing schedules specific to each customer or contractor) means the provision likely applies to this information. While some of FPC's older contracts and agreements do not have a specific non-disclosure clause, more recent contracts do, and the nature of this information creates an implicit obligation of confidence.

This finding is consistent with our 2014 opinion, where we found that it was reasonable and appropriate to redact information relating to pricing, as it is usually commercially sensitive.¹

To produce all components of the requested information, FPC would need to seek permission from all of its contractors and customers which would have created a significant administrative burden for the entity.

¹ [Opinion on the Minister for Forestry's decision not to table customer contracts with Parliament - Office of the Auditor General](#)

Criteria 3 Would disclosure cause unreasonable detriment to the owner of the information or another party?

This criterion was met. The information includes breakdowns of pricing linked to individual contracts. Disclosure of the information may negatively impact FPC and third parties and, potentially, affect the operations of FPC customers or contractors. The pricing structures could reveal whether a contractor or FPC customer was making a profit or loss on the supply of specific goods or services.

Criteria 4 Would disclosure of third-party information be in the public interest?

Disclosure of the information would not be in the public interest. For third party information, this criterion relates to cases of national security, breaches of law or dangers to the public. The disclosure of information relating to pricing of forest products does not satisfy this criterion. Although there is a public interest in transparency of information, FPC has now published stumpage schedules which allow sharefarmers to ascertain how much they will receive for different types and quantities of timber. This document provides the general information that was requested, without comprising commercial-in-confidence principles and contractual obligations.

Auditor General's 2021-22 reports

Number	Title	Date tabled
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

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