Opinions on Ministerial Notifications
OPINIONS ON MINISTERIAL NOTIFICATIONS

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 2 decisions by the Minister for Racing and Gaming, the Hon Paul Papalia MLA, not to provide Parliament with information about annual wagering turnover and annual digital platform turnover figures for the WA TAB.

I wish to acknowledge the staff at the Department of Local Government, Sport and Cultural Industries.

This report also includes my determination that a ministerial notice received from the Hon Stephen Dawson MLC under section 82 of the Financial Management Act 2006, was not required.

COLIN MURPHY
AUDITOR GENERAL
14 December 2017
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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 Parliament with information about:

- annual wagering turnover figures for the WA TAB for the financial years 2012-13 to 2016-17
- annual turnover figures for the WA TAB digital platform for the financial years 2011-12 to 2015-16.

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 (AG Act) requires the Auditor General to provide an opinion to Parliament as to whether the Minister’s decision was reasonable and appropriate.

What did we do?
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 agency documents
- a review of any advice provided to the relevant Minister by agencies, the State Solicitor’s Office (SSO) or other legal advisers
- interviews with key agency 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 provide information about WA TAB’s wagering turnover figures

Opinion

The decision by the Minister for Racing and Gaming not to provide the information requested by Parliament was not reasonable and therefore not appropriate, as most of the information was already publicly available.

Background

In Parliament on 15 August 2017, the Hon Colin Holt MLC asked the Minister representing the Minister for Racing and Gaming for WA TAB wagering turnover and profit figures:

For the following financial years, please provide the wagering turnover and the wagering profit figures for the WA TAB: 2012-13; 2013-14; 2014-15; 2015-16; and, 2016-17.

On 15 August 2017, the Hon Alannah MacTiernan MLC responded on behalf of the Minister:

I thank the honourable member for some notice of this question. The Minister for Racing and Gaming has provided the following information.

The WA TAB wagering profits for the years listed from 2012 to 2016 are available in Racing and Wagering Western Australia’s annual reports, which are publicly available. The 2016-17 wagering profit figures will be available in the Racing and Wagering Western Australia annual report, which will be tabled in Parliament in September.

In respect of the wagering turnover figures for the aforementioned financial years, I understand that these figures are not released for public consumption because they are commercially sensitive to the industry and can potentially provide competitors with a valuable advantage in the financial analysis of market share. Therefore, on that basis, the Minister will not be providing these figures.

On 1 September 2017, we were notified of the Minister’s decision not to provide the requested information in accordance with section 82 of the FM Act.

Key findings

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

The Minister properly sought advice from the Department of Local Government, Sport and Cultural Industries (Department) before responding to the request. The Minister followed the Department’s advice.

The Department recommended the Minister not provide the information as it was commercially sensitive and could provide competitors with a valuable advantage in determining market share. The Department sought advice from Racing and Wagering Western Australia (RWWA), the State Government authority responsible for the WA TAB, before advising the Minister.
We assessed the information using our criteria for commercial sensitivity. Specifically:

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

We found the 2012-13 to 2015-16 information did not meet our first criterion as it was already generally known or ascertainable at the time the Minister declined to provide the information. The information can be estimated from RWWA’s tabled annual reports. In particular, in the audited financial statements.

The 2016-17 information met our first criterion. The information was not known as RWWA had not tabled its 2016-17 Annual Report and the information was not generally ascertainable from other public sources at the time the Minister declined to provide the information.

We determined that the Minister’s decision not to provide the information on the grounds of commercial sensitivity was not reasonable and therefore not appropriate, as information for 4 of the 5 years could be estimated based on audited financial statements.

**Criterion 2 – Is it in the public interest for the information to remain confidential?**

The 2016-17 information met our second criterion. We considered the potential benefits and detriments of disclosure and found the public interest was likely to be best served by keeping the information confidential until tabling of RWWA’s 2016-17 Annual Report.

RWWA assessed whether it was in the public interest for the information to remain confidential before advising the Minister, but did not document this assessment. RWWA advised us that the information is treated as commercially sensitive until its Annual Report is tabled in Parliament, as wagering turnover information is valuable to competitors wanting to analyse market share.
Ministerial decision not to provide information about WA TAB’s digital platform turnover figures

Opinion
The decision by the Minister for Racing and Gaming not to provide Parliament with information was reasonable and appropriate.

The information requested was the annual turnover figures for the WA TAB digital platform for the years 2011-12 to 2015-16.

Background
In Parliament on 23 August 2017, the Hon Colin Holt MLC asked the Parliamentary Secretary representing the Minister for Regional Development:

My question without notice of which some notice has been given is to the Minister for Regional Development representing the Minister for Racing and Gaming.

Please provide turnover figures for the WA TAB digital platform for the years 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.

On 23 August 2017, the Hon Darren West MLC responded on behalf of the Minister:

I am advised that the turnover figures for the WA TAB digital platform for 2011-12, 2012-13, 2013-14, 2014-15 and 2015-2016 financial years are not released for public consumption as they are commercially sensitive to the industry and can potentially provide competitors with a valuable advantage in financial analysis of market share. Therefore, on that basis I will not be providing these figures.

On 1 September 2017, we were notified of the Minister’s decision not to provide the requested information in accordance with section 82 of the FM Act.

Key findings
The decision by the Minister not to provide the requested information was reasonable and appropriate.

The Minister properly sought advice from the Department of Local Government, Sport and Cultural Industries (Department) before responding to the request. The Minister followed the Department’s advice.

The Department recommended the Minister not provide the information as it was commercially sensitive and could provide competitors with a valuable advantage in determining market share. The Department sought advice from Racing and Wagering Western Australia (RWWA), the State Government authority responsible for the WA TAB, before advising the Minister.

We assessed the information using our criteria for commercial sensitivity. Specifically:

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

We found the information met our first criterion as the information was not generally known or ascertainable at the time the Minister declined to provide the information. Publicly available information could not be used to determine the annual digital platform turnover figures.
**Criterion 2 – Is it in the public interest for the information to remain confidential?**

The information met our second criterion. We assessed the potential benefits and detriments of disclosure and found the commercial interest of the State was likely to be best served by keeping the information confidential. RWWA operates the WA TAB in a highly competitive and commercial environment. Disclosure of digital platform turnover figures could have compromised the State’s commercial interests by providing competitors with valuable financial information to increase their competitiveness at the expense of RWWA.

RWWA assessed whether it was in the public interest for the information to remain confidential before advising the Minister, but did not document this assessment. We have reminded the agency that it is good practice to document its assessments.
Ministerial notice not required

On 3 November 2017, we received notice from the Hon Stephen Dawson MLC under section 82 of the Financial Management Act 2006 in relation to Legislative Council Question on Notice 333(e).

We determined that a notice was not required in this instance, as the Minister had not declined to provide the requested information.

On 5 September 2017, the Hon Robin Chapple MLC requested the commissioning report for the Yara Pilbara Nitrate’s Technical Ammonium Nitrate plant on the Burrup Peninsula.

Minister Dawson responded that the commissioning report would be made available by the Department of Water and Environmental Regulation once it had assessed it for any potentially confidential and commercially sensitive information that may need to be redacted.

Our Audit Practice Statement outlines the circumstances when a notice is unlikely to be required. These include when a Minister has advised that information will be provided at a later date and there is reasonable justification for the delay.
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