Opinion on Ministerial Notification
OPINION ON MINISTERIAL NOTIFICATION

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 the decision by the Minister for Finance, the Hon Ben Wyatt MLA, not to provide Parliament with information about a claim against the State in relation to the Perth Children’s Hospital and rectification of outstanding issues on this project.

COLIN MURPHY
AUDITOR GENERAL
21 March 2018
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Ministerial decision not to provide information to Parliament

Introduction

This report deals with a decision by the Minister for Finance, the Hon Ben Wyatt MLA, not to provide information to Parliament about claims against the State in relation to the Perth Children’s Hospital (PCH), and outstanding rectification issues at the hospital.

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 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.
Opinion

The decision by the Minister for Finance not to provide Parliament with information about whether the State had received a claim from John Holland Pty Ltd (John Holland) in relation to the PCH was not reasonable and therefore not appropriate because this information was already publicly known.

However, the decision by the Minister not to provide Parliament with further information about John Holland’s claim, and a breakdown of outstanding issues at PCH that require rectification, was reasonable and appropriate.

Background

In Parliament on 2 November 2017, the Hon Peter Collier MLC asked the Minister representing the Minister for Finance, the Hon Stephen Dawson MLC, about John Holland’s claim against the State in relation to PCH, and rectification of outstanding issues.

Parliamentary Question Without Notice 761

I refer to the Minister for Health’s comments yesterday that John Holland has a $300 million claim against the state government in relation to Perth Children’s Hospital.

(1) Has the government received a claim from John Holland in relation to Perth Children’s Hospital?

(2) If yes to (1), what was the date it was received and what was the breakdown of the log of claims?

(3) What is the breakdown of outstanding issues requiring rectification at Perth Children’s Hospital and who has responsibility for rectification of those services?

On the 2 November 2017, the Minister representing the Minister for Finance declined to provide this information, replying:

I thank the Leader of the Opposition for some notice of the question.

(1)–(3) Resolution of contractual claims and disputes is a confidential commercial process that is the domain of the contracting parties.

On 5 December 2017, the Minister for Finance 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 decision by the Minister for Finance not to provide the information about:

1. whether the State had received a claim from John Holland was not reasonable and therefore not appropriate, as the information was already publicly known

2. the date John Holland’s claim was received and a breakdown of the log of claims was reasonable and appropriate

3. outstanding rectification issues at PCH and who has responsibility for rectification was reasonable and appropriate.

The Minister for Finance properly sought advice from the Department of Finance before responding to the request. The Department of Finance recommended that he decline to provide the information on the basis that it referred to ongoing and highly sensitive
commercial discussions regarding an issue with potential to escalate to litigation. We assessed the information using key criteria for commercial confidentiality. Specifically:

- Criterion 1 – Is the information sufficiently secret? Is it significant?
- Criterion 2 – Is it in the public interest for the information to remain confidential?

Claim from John Holland in relation to PCH

We found the decision by the Minister for Finance not to provide information about whether the State had received a claim from John Holland in relation to the PCH was not reasonable and therefore not appropriate.

At the time the Minister for Finance declined to provide the information, it was not secret that John Holland had submitted a claim for around $300 million. The Minister for Health, Hon Roger Cook MLA, referred to the claim in the Legislative Assembly on 1 November 2017.

The claim was also referred to at the Public Accounts Committee Inquiry into the Management and Oversight of the PCH Project on 18 October 2017 by a previous PCH Project Director. This information is publicly available on Parliament’s website.

Date and breakdown of John Holland’s log of claims

We found the decision by the Minister for Finance not to provide information about when the State received a claim from John Holland and the breakdown of the log of claims, was reasonable and appropriate. This information was not generally known or ascertainable using publicly available sources at the time the Minister for Finance declined to provide it.

We assessed the potential benefits and detriments of disclosing the information and found that the commercial interests of the State were likely to be best served by keeping the information confidential. Contractual matters regarding the PCH are ongoing, and disclosing details of John Holland’s claim could adversely impact the State’s legal and commercial position should the claim escalate to litigation.

Breakdown and responsibility for rectifying outstanding issues at PCH

We found the decision by the Minister for Finance not to provide information on the outstanding issues, and responsibilities for rectifying them, was reasonable and appropriate. This information was not generally known or ascertainable using publicly available sources at the time the Minister for Finance declined to provide it.

We assessed the potential benefits and detriments of disclosing the information and found the commercial interests of the State were likely to be best served by keeping the information confidential. Rectification of outstanding issues at the PCH form part of ongoing contractual claim resolution processes. Disclosure of this information could adversely impact these processes.
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