Section 82 Notice – Financial Management Act 2006
Legislative Council Question without Notice 543

Pursuant to section 82 of the Financial Management Act 2006, I give notice to both houses that an answer to part (1)(d) of Legislative Council Question Without Notice 543 (previously C566) was not provided.

Notice is also being provided to the Auditor General, as required under section 82 of the Financial Management Act 2006.

A copy of the question is enclosed for your information (Attachment 1) and the specific part that I am unable to answer is highlighted below.

Council 543 – Hon Jim Chown to the Minister representing the Minister for Tourism:

1) Can the Minister provide a breakdown of visitor numbers and State Government costs, including but not limited to marketing and actual subsidies provided per traveller, with respect to each of the listed tourism campaigns from their respective start dates to today –

(d) the subsidised Qantas airline flights to Broome announced last month.

With respect to the request for information about State Government costs including marketing and subsidies, I am not prepared to provide these details as the co-operative marketing and incentive funding provided by the State Government for the Qantas Broome Discounted Fares Program has been assessed by Tourism Western Australia (Tourism WA) as being confidential and commercially sensitive.

A copy of Tourism WA’s Policy and Guidelines for the Release of Event Sponsorship and/or other Commercial Information, which has been used to determine this recommendation, is attached (Attachment 2).

In making this decision I have considered the public interest, and while the public has a general right of access to information held by government agencies, this right has to be balanced against the need to protect the financial and commercial affairs of the State.

The information requested has not been provided for the following reasons:

The release of cooperative marketing funding information would significantly impact Tourism WA’s business, professional, commercial and financial affairs, as well as those of associated third parties, such as campaign partners, in relation to their negotiations with other States/Territories where marketing activities are undertaken in multiple jurisdictions.

All Australian States and Territories are competing with each other for visitors. A key component of any tourism marketing strategy is cooperative marketing where a State Tourism Organisation (STO) will jointly fund a campaign with a travel partner such as an airline or travel agent.

There are a limited number of suitable travel partners that STOs can work with as they need to be active in the source markets and have the ability to reach the target audience. These travel partners work with a range of STOs and National Tourism Organisations, and they select which STOs they want to partner with based on a return on investment.
Releasing the amount that Tourism WA invests in specific campaigns would make information publically available, which would enable other States or Territories to offer more favourable investments to induce the travel partners to work with them instead. This could mean that Tourism WA would need to invest an increased amount to retain the partnership or miss out altogether.

Releasing the amount that Tourism WA invests in specific campaigns would enable other States or Territories to offer more favourable investments to persuade travel partners to work with them instead. This could result in Tourism WA having to invest a larger amount to retain the cooperative marketing partnership or miss out altogether.

Tourism WA conducts cooperative campaigns with competing travel partners such as airlines, wholesalers and online travel agents. Releasing the amount that Tourism WA invests in specific campaigns could jeopardise future negotiations with those partners if they know what Tourism WA invests with their competitors.

The travel industry is highly competitive and organisations view information about their financial arrangements with partners as commercially sensitive. Every cooperative campaign will have contributions from partners, either cash or in-kind. Releasing the amount that Tourism WA is investing in a campaign would provide information that would be of competitive advantage to its competitors in negotiations. Knowing that this information can be released would make travel partners reluctant to enter into cooperative campaigns with Tourism WA.

Note: By mutual agreement Tourism WA may release large scale funding amounts that covers a range of activities over an extended time period, but not specific campaign amounts.

In addition, if the trial of the Qantas Broome Discounted Fares Program is successful in stimulating leisure travel, Tourism WA would look at other opportunities to work with airlines, including Qantas, Virgin and Regional Express, all of which operate within WA on other routes. If financial information about the Qantas Broome program was released, this would impact Tourism WA’s ability to negotiate with other airlines on other regional routes and secure the best possible deal for taxpayers.

Tourism WA has a number of contracts with Qantas across a range of aviation routes, both domestic and international. Contract negotiations are confidential in nature as both Qantas and Tourism WA operate in competitive environments: Qantas against other airlines, and Tourism WA against other State/Territory Tourism Organisations in terms of attracting airline capacity. Releasing the financial details of the Broome Qantas Discounted Fares Program would impact the State Government’s ability to negotiate with Qantas (and other airlines) in the future. It is acknowledged that any negotiations with Qantas on other regional routes would be undertaken with the airline having full knowledge of the Broome financial structure.

In summary, information pertaining to the amount invested by Tourism WA in individual campaigns has a commercial value and its disclosure could cause commercial harm to the State and its campaign partners. Disclosing the amount of Tourism WA’s investment could provide a competitive advantage to other States and potential campaign partners.

The Government takes its responsibility to grow visitor numbers by implementing a range of marketing initiatives, including cooperative marketing campaigns, very seriously. A key strategy is to safeguard information that may jeopardise the State’s business relationships, reputation and ability to negotiate successfully with campaign partners if made public.
Should you have any queries relating to this matter, please contact Tourism WA A/Managing Director, Mr David Lowe, by email to david.lowe@westernaustralia.com or by telephone on 9262 1705.

Yours sincerely

[Signature]

HON BILL JOHNSTON MLA
A/MINISTER FOR TOURISM

Attachments

- 9 JUL 2018
TOURISM -MARKETING CAMPAIGNS AND SUBSIDIES

543. Hon JIM CHOWN to the minister representing the Minister for Tourism:

(1) Can the minister provide a breakdown of visitor numbers and state government costs, including, but not limited to, marketing and actual subsidies provided per traveller with respect to each of the listed tourism campaigns from their respective start dates to today —

(a) the Rottnest Island admission fee exemption for children travelling between 3 April and up to today's date, 28 June;

(b) the Rottnest Island "Rotto from Day to Dusk" campaign, which offered discounted afternoon island admission during summer;

(c) the subsidised Rex airline flights to Monkey Mia and Carnarvon announced this week;

(d) the subsidised Qantas airline flights to Broome announced last month; and

(e) the subsidised Aviair airline flights to Kununurra, Halls Creek and Balgo announced last week?

(2) If the campaign is yet to formally begin, can the minister please provide the expected forecast cost of the actual subsidy per traveller and associated marketing costs?

(3) Which organisation are each of the respective subsidies being paid to?

(4) Which budget line item is used to fund the subsidies?

Hon ALANNAH MacTIERNAN replied:
I thank the member for the question. The following information has been provided to me by the Minister for Tourism.

(1) (a) Kids free island admission is running from 3 April to 20 September 2018, excluding school holidays. From April to 26 June 2018 inclusive, 2 269 children have travelled by ferry to Rottnest Island with no admission fee charged. The normal admission fee for a child visiting for the day is $6.50. No subsidy was provided to any organisation and no marketing costs were incurred.

(b) Rottnest Island "Rotto from Day to Dusk" admission discounts are half-price island admissions when arriving on the island after midday during January and February 2018. From 1 January to 28 February 2018, 7 414 people travelled with a discount admission fee of $9 for adults and free for children under "Rotto from Day to Dusk". The normal admission fee for a day visitor to the island is $18 for an adult and $6.50 for a child. No subsidy was provided to any organisation. Marketing costs incurred were $380.
(c) The member is asked to refer this part of the question to the Minister for Transport.

(d) A breakdown of visitor numbers is not available until completion of the campaign, which runs a full year for travel from 17 August 2018 to 16 August 2019.

The Perth–Broome initiative is a trial and for commercial reasons, including not compromising future initiatives that may be explored on other routes with other airlines, the details are confidential. Its disclosure could cause commercial harm to the state and, more specifically, adversely impact on future negotiations with other airlines to reduce airfares within regional Western Australia. Accordingly, I will notify the Auditor General's office and both houses of Parliament that part of this question will not be answered as per section 82 of the Financial Management Act.

(e) The member is asked to refer this part of the question to the Minister for Transport.

(2)–(3) It is difficult to provide a complete answer given that it requires advice from a range of agencies and departments within portfolios held by a number of ministers. If the member would like to be more specific, I will endeavour to answer the question.
1. Purpose

This policy and guidelines document has been developed primarily to assist in providing advice to the Minister for Tourism in responding to parliamentary questions or other parliamentary proceedings that may involve the potential release of event sponsorship information and/or other commercial information (i.e. financial, contractual and/or other information acquired as part of either an event sponsorship process or other business activity).

This document may also be useful in guiding the preparation of advice to the Minister for Tourism in any situation (including the above) where it may be considered “reasonable and appropriate” not to provide information to Parliament.

2. Background

Tourism Western Australia (Tourism WA), as a Western Australian Public Sector entity, operates within a governance and accountability framework established under both legislation and policy. The agency’s accountability depends on the availability of information about how the activities of the agency have been conducted.

Section 82 of the Financial Management Act 2006 (FM Act) provides that, if a Minister decides that it is reasonable and appropriate not to provide certain information to Parliament concerning the conduct or operation of an agency, then within 14 days of the decision the Minister is to cause written notice of the decision to be given to both Houses of Parliament and the Auditor General.

Section 24 of the Auditor General Act 2006 (AG Act) requires the Auditor General to report to Parliament an opinion “as to whether a decision by a Minister to not provide the information to Parliament concerning any conduct or operation of an agency is reasonable and appropriate”.

Note: Whilst the Freedom of Information Act 1992 may provide a valuable reference point in considering whether information should be withheld in answer to a request in Parliament, it is a separate process to that of responding to a request in Parliament.

When are section 82 notices not required?

A notice under section 82 of the FM Act is unlikely to be required in the following circumstances:

- the Minister has advised that information will be provided at a later date and there is reasonable justification for the delay
- an answer has been provided in a previous question
- the information is already publicly available
- the requested information does not concern the conduct or operation of an agency as required by the FM Act

Note: Section 82 of the Financial Management Act 2006 is not restricted to parliamentary questions on notice but to any parliamentary proceeding.
3. **Policy Statement**

Advice provided by the agency on the release (or not) of event sponsorship and/or other commercial information shall in all cases involve:

A. An assessment of the confidentiality of the commercial information (including contractual requirements in relation to confidentiality);

B. An assessment against reasonable criteria for determining the commercial sensitivity of the information and possible detriment to the State and/or other parties; and

C. Documentation of the above assessments.

Other considerations may include the:

i. Resources required to collect the information;

ii. Information being protected by legal professional privilege; and/or

iii. Information being protected by public interest immunity.

4. **Guidelines**

Contact Tourism WA's Ministerial Liaison Unit prior to commencing any assessment action for additional assistance, including a copy of additional guidance documents and templates.

A. **Assessing the confidentiality of the information**

   (including any contractual requirements in relation to confidentiality)

For the purposes of this policy, for commercial information to be considered as confidential, it must satisfy all of the following criteria:

i. The information to be protected must be specifically identified.

ii. The information must be 'commercially sensitive'. (Refer guideline 4B Assessing Commercial Sensitivity of the information and possible detriment to the State and/or other parties.)

iii. Disclosure would cause unreasonable detriment to the owner of the information or another party.

iv. The information was provided under an understanding that it would remain confidential. (This requires consideration of the circumstances in which the information was provided and whether there was a mutual, express or implied understanding that confidentiality would be maintained.)

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2 Refer also to the 17 September 2015 Statement in the Upper House of Parliament by the Hon Barry House MLC, President of the Legislative Council regarding the FOI Act. HPRM Reference: E15/16738 (file GOV/0460)

3 Note: Section 81 of of the Financial Management Act 2006 requires that no contractual or other arrangement is to be entered into that would prevent or inhibit the provision of information by the Minister to Parliament concerning any conduct or operation of the agency.
B Assessing commercial sensitivity of the information and possible detriment to the State and/or other parties

i. Is the information generally known or ascertainable?

ii. Has the information already been disclosed by another party (e.g. by another government entity) and/or another process (e.g. a freedom of information request, annual reporting, media statement, response to other parliamentary questions or a parliamentary committee, etc)?

iii. Is the information a trade secret or other business information that has commercial value and its disclosure could reasonably be expected to destroy or diminish that value?

Some potential considerations:

(a) Would the release of financial, contractual or other information compromise Tourism WA’s (the State Government’s) ability to successfully attract, develop and/or retain an event or other business activity for Western Australia?

For example
- Could it provide another city or State with an unfair advantage?
- Could it lead to substantially increased costs should another city or State seek to attract the event or business activity?
- Is the event or business activity sufficiently ‘mobile’ that it could be secured or hosted in another city or State?

(b) Would the release of financial, contractual or other information compromise Tourism WA’s (the State Government’s) future ability to successfully negotiate favourable terms and conditions for an event or other business activity?

For example:
- If future event holders or other companies knew the information is not being treated as commercially sensitive, would they be more reluctant to negotiate favourable terms and conditions with Tourism WA (the State Government) because other cities or states may demand the benefit of the same business arrangements.

C Documentation of the Assessment(s)

The Ministerial Liaison Unit has a template to guide the documentation of the agency’s assessment and subsequent advice to the Minister for Tourism, given a thorough evaluation against relevant criteria is required (i.e. it is not sufficient for example to simply state the requested information is commercial in confidence).

Wherever possible, the draft assessment should be referred to either the Executive Director or the Commercial Contracts Manager within the Corporate & Business Services division for internal review, prior to finalising the assessment. This process step should also be reflected in the documented assessment, where applicable.
In instances involving a Question Without Notice, if the advice to the Minister for Tourism is not to provide information to Parliament, a conscious and deliberate consideration of the matter is still required to have occurred in preparing this advice. However, whilst written documentation of the deliberative process is required in all cases, due to the time constraints in responding to a Question Without Notice, this documentation step may need to occur after the advice has been provided to the Minister for Tourism.

**Other considerations**

Contact Tourism WA’s Executive Director Corporate & Business Services for additional assistance if one or more of the following may be relevant to providing advice to the Minister for Tourism on whether or not to provide information to Parliament:

i. The resources required to collect the information would be manifestly unreasonable;

ii. The information is protected by legal professional privilege; and/or

iii. The information is protected by public interest immunity (e.g. Cabinet Documents).

**5. Impact of Time**

Related to the above is the question of time: *At what point in time does the information no longer have commercial sensitivity and, as such, no longer needs to be held in confidence?* The setting of a specific timeframe has not been deemed appropriate and therefore each case needs to be assessed on its own merits or context (i.e. parallels to other current events/business activity, potential for that or a similar event/business activity to return or recur in the near future, etc).

**6. Auditor General Reports for Referencing**

- **22/2016 | 13 October 2016**
  Annual cost of 16 sponsorship agreements to Parliament.

- **21/2015 | 8 October 2015**
  Funding provided to attract a 2018 FIFA World Cup Socceroos’ Qualifying Match to Perth.

- **12/2015 | 12 June 2015**
  Sale of public land (FESA House).

- **17/2014 | 25 September 2014**
  Feasibility for International Cricket (Cricket Test Matches) and Analysis of the Experience Extraordinary campaign.

- **3/2014 | 18 March 2014**
  Funding for some Tourism WA sponsored events.

- **9/2012 | 28 June 2012**
  Funding for the Perth International Arts Festival.

- **2/2012 | 22 February 2012**
  Funding for some Tourism WA sponsored events.

- **2/2011 | 23 March 2011**
  Information on the theatre production of The Graduate.
7. **Additional Information**
   - Audit Practice Statement, Office of the Auditor General (WA), www.audit.wa.gov.au
   - Various media articles including *Victoria vows to fight for every major event "worth taking"* (June 2015) refer HPRM reference: STM/0509

8. **Legislative Base/Related Policies**
   - *Financial Management Act 2006*
   - *Auditor General Act 2006*

9. **Forms & Templates**
   Refer Tourism WA's Ministerial Liaison Unit

10. **Version Control**

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<td>New policy. First version</td>
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