Notification under the
Financial Management Act 2006 section 82(1)(a)

Legislative Council - Question on Notice - Wednesday, 13 June 2018
1407. Hon Martin Aldridge to the Minister for Regional Development

In relation to the Albany Wave Energy Technology Development Project, the Hon Martin Aldridge MLC asked:

(1407)(d) Will the Minister table the FAA executed between the State and Carnegie?

I responded:

The Financial Assistance Agreement contains commercially sensitive information to a private entity, full disclosure of which would not be appropriate to table in Parliament. I have therefore tabled the FAA, with Schedule 7 redacted, as it contains the recipient’s commercial-in-confidence project proposal.

I am aware of my obligations under section 82 of the Financial Management Act and will provide any notice required by that section to Parliament and to the Auditor General in accordance with the legislative requirements.

In accordance with the Financial Management Act 2006 sections 82(1)(a) and 82(2), I notify both houses of my decision that it is reasonable and appropriate not to provide the information being sought in full, on the basis that the information contained in Schedule 7 to the FAA is commercial in confidence.

The information being sought is a contractual agreement between the State and a private organisation, which contains in its Schedules commercially sensitive information that is of commercial value to the recipient. The information contained within Schedule 7 to that agreement was obtained by the Department of Primary Industries and Regional Development (DPIRD) as part of a competitive tender process. I have been advised by DPIRD that this information is not information which is publicly known or which is capable of easily being ascertained and it contains scientific and technical processes and information about the recipient’s technology, including trade secrets. The information within this Schedule was provided to DPIRD on the understanding that it would remain confidential. This understanding is evidenced by the specific statement on each page of the Schedule document that reads ‘Confidential – Commercial in Confidence’ and has since been confirmed as such by the recipient.
The disclosure of the information of this nature would result in detriment to the State, as, should the State disclose commercially sensitive information of persons with whom it contracts, such persons and others may be discouraged from entering into contracts with the State in future.

In making this decision, I have specifically considered the public interest in accountability for the expenditure of public monies and the efficient and effective management of those monies, and the inherent public interest in the provision of information to Parliament.

I have also considered the specific harm to the recipient that disclosure might cause, being the release of key commercial information on its technology and development activities that could be accessed by competitors or other market participants. After careful consideration of all the issues, the potential prejudice that will result from the disclosure of the information in this case is of such a magnitude that the information should not be disclosed notwithstanding the competing public interests. I am of the view that disclosure of the majority of the FAA with redaction of Schedule 7 will ensure transparency and accountability as far as possible in the public interest, without causing unreasonable detriment to the recipient.

A copy of this notification is also being provided to the Auditor General in accordance with the requirements of the Financial Management Act 2006 section 82(1)(b).

HON ALANNAH MACTIERNAN MLC
MINISTER FOR REGIONAL DEVELOPMENT; AGRICULTURE AND FOOD; MINISTER ASSISTING THE MINISTER FOR STATE DEVELOPMENT, TRADE AND JOBS