

# Western Australian Auditor General's Report



## Opinion on Ministerial Notification – AWU Funding Agreement



Report 23: 2021-22

28 June 2022

## Office of the Auditor General Western Australia

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***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

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### **Opinion on Ministerial Notification – AWU Funding Agreement**

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**THE PRESIDENT  
LEGISLATIVE COUNCIL**

**THE SPEAKER  
LEGISLATIVE ASSEMBLY**

**OPINION ON MINISTERIAL NOTIFICATION – AWU FUNDING AGREEMENT**

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 information to Parliament about the terms upon which \$200,000 was awarded to the Australian Workers Union.

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

CAROLINE SPENCER  
AUDITOR GENERAL  
28 June 2022

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# Introduction

This report deals with a decision by the Minister for Forestry, the Hon Dave Kelly MLA, not to provide information to Parliament about the terms upon which \$200,000 was awarded to the Australian Workers Union (AWU), specifically the contract and any other document outlining the terms upon which \$200,000 was awarded to the AWU, and a related acquittal report.

Section 82 of the *Financial Management Act 2006* 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](http://www.audit.wa.gov.au)) sets out the process we follow to arrive at our section 82 opinions, including:

- 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
- interviews with key entity and Ministerial staff 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

We determined that an opinion was not required in relation to the Minister for Forestry's decision not to provide Parliament with an acquittal report in relation to the \$200,000 funding agreement with the AWU. This is because the information did not exist. At the time of the parliamentary question on 22 March 2022 and the time of answering the question on 5 April 2022, the AWU had not provided an acquittal report to the Department of Jobs, Tourism, Science and Innovation (JTSI). The acquittal of the \$200,000 is not due until the end of the project in January 2024. An interim annual report including information on expenditure is due in November 2022.

The decision by the Minister for Forestry not to provide Parliament with information about the terms upon which \$200,000 was awarded to the AWU was not reasonable and therefore not appropriate. The Minister's decision did not meet any of the standard criteria we use to assess claims that information is commercial-in-confidence. Key information about the terms of the funding agreement were already publicly known and there was no specific commercially sensitive information identified. Although JTSI considered that the agreement was commercial-in-confidence, there was no documented obligation of confidence between the parties.

## Background

In Parliament on 22 March 2022, the Hon James Hayward MLC asked the Minister for Forestry for the following information about the Minister's decision to transfer \$200,000 of taxpayer funds to the AWU (Question without Notice 202):

- (1) *Is there a requirement for the AWU to provide an acquittal report outlining exactly where and how the \$200 000 of taxpayer money has been spent, including how many non-union members were supported?*
- (2) *If no to (1), why not; if yes, will the minister table the report?*
- (3) *Is the minister concerned there may be a perception that the AWU may be compromised in its ability to independently advocate for forestry workers in negotiations with the government, when the government has funded the AWU to do so?*
- (4) *In the interests of assuring Western Australian taxpayers that the payment to the AWU was appropriate, will the minister table the contract and any other documents outlining the terms upon which the \$200 000 was awarded to the AWU; and, if not, why not?*

On 5 April 2022 the Minister for Forestry declined to give information in response to parts 2 and 4, replying:

- (1) Yes.
- (2) No.
- (3) No.

*Since the announcement of the worker programs, there has been strong cross-sector support for these worker programs; including from the Forest Industry Federation of WA [FIFWA], local governments and broader industry.*

- (4) *No, the Funding Agreement is Commercial in Confidence.*

On 6 April 2022, the Minister notified the Auditor General of his decision not to provide the requested information in accordance with section 82 of the *Financial Management Act 2006*.

## Key findings

### Acquittal report for \$200,000 funding agreement

We determined that an opinion was not required regarding the Minister for Forestry's decision not to provide Parliament with an acquittal report in relation to the funding agreement with the AWU as requested in part 2 of the parliamentary question, because the information did not exist. No portion of the funding had been acquitted by AWU at the time of the parliamentary question, which was 3 months after the start of the funding agreement. The acquittal of the \$200,000 is not due until the end of the project in January 2024, with an interim acquittal or annual report due in November 2022.

### The contract and any other documents outlining the terms upon which the \$200,000 was awarded to the AWU

The decision by the Minister not to provide information about the terms upon which \$200,000 was awarded to the AWU, as requested in part 4 of the parliamentary question, was not reasonable and therefore not appropriate.

The Minister properly sought advice from JTSI before responding to the request, including the option to table a redacted version of the agreement. JTSI considered that agreement was commercial-in-confidence and recommended the Minister decline to provide it.

JTSI sought advice from the SSO. The SSO advised verbally that JTSI could propose a draft response that the Minister declined to provide the information sought on the basis that this type of agreement would typically be treated as commercial-in-confidence.

The advice and decision not to provide the information to Parliament failed to recognise that commercially sensitive information had not been specifically identified, key details contained in the funding agreement (including the value, the recipient, the purpose, the payment schedule and a number of key acquittal requirements) were already publicly known, the information in the funding agreement was not commercially sensitive and there was no documented obligation of confidence.

We consider the approach JTSI took was not reasonable. JTSI did not provide the Minister with an analysis of issues relevant to assessing whether the information was commercial-in-confidence.

We have previously found that for tourism related information, JTSI has a *Policy and Guidelines - Release of Event Sponsorship Information and/or other Commercial Information* which provides suitable criteria for assessing if information is commercially sensitive. We recommend that JTSI adapt this policy as required for use by all business areas of the Department, with a default position of disclosure unless clearly contrary to the State's interests.

## **Response from the Department of Jobs, Tourism, Science and Innovation**

JTSI recognises the importance of a policy and guidelines to assess if information is commercially sensitive, for application across all business areas of the Department, and has commenced this work.

## Auditor General's 2021-22 reports

Number	Title	Date tabled
22	Information Systems Audit Report 2022 – Local Government Entities	28 June 2022
21	Delivering School Psychology Services	23 June 2022
20	Fraud Risk Management - Better Practice Guide	22 June 2022
19	Forensic Audit – Construction Training Fund	22 June 2022
18	Opinion on Ministerial Notification – FPC Sawmill Volumes	20 June 2022
17	2022 Transparency Report Major Projects	17 June 2022
16	Staff Rostering in Corrective Services	18 May 2022
15	COVID-19 Contact Tracing System – Application Audit	18 May 2022
14	Audit Results Report – Annual 2020-21 Financial Audits of State Government Entities Part 2: COVID-19 Impact	9 May 2022
13	Information Systems Audit Report 2022 – State Government Entities	31 March 2022
12	Viable Cycling in the Perth Area	9 December 2021
11	Forensic Audit Report – Establishment Phase	8 December 2021
10	Audit Results Report – Annual 2020-21 Financial Audits of State Government Entities	24 November 2021
9	Cyber Security in Local Government	24 November 2021
8	WA's COVID-19 Vaccine Roll-out	18 November 2021
7	Water Corporation: Management of Water Pipes – Follow-Up	17 November 2021
6	Roll-out of State COVID-19 Stimulus Initiatives: July 2020 – March 2021	20 October 2021
5	Local Government COVID-19 Financial Hardship Support	15 October 2021
4	Public Building Maintenance	24 August 2021
3	Staff Exit Controls	5 August 2021
2	SafeWA – Application Audit	2 August 2021
1	Opinion on Ministerial Notification – FPC Arbitration Outcome	29 July 2021

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