



Hon Alannah MacTiernan MLC
Minister for Regional Development; Agriculture and Food; Ports;
Minister Assisting the Minister for State Development, Jobs and Trade

Our ref: 64-12657

Hon Alanna Clohesy MLC
Chair
Standing Committee on Estimates and Financial Operations
Parliament House
4 Harvest Terrace
PERTH WA 6000

Dear Chair

QUESTION BY HON MARTIN ALDRIDGE SUBJECT TO SECTION 82
FINANCIAL MANAGEMENT ACT 2006

In the pre-estimates questions submitted for 2019/20 Budget Estimates hearings, the Hon Martin Aldridge asked a question of the Pilbara Ports Authority in relation to the Harriet Point Agreement.

I provided a response to parts (c) to (h). However following earlier findings by the Office of the Auditor General to a similar question asked of the former Minister for Ports, Hon Rita Saffioti that it was reasonable not to provide the agreement on the basis that the information was commercially sensitive and confidential, I decided not to provide that same information sought in parts (a) and (b) of the question.

I am writing to advise you that, in accordance with Section 82 (1)(b) of *the Financial Management Act 2006*, I have provided formal notice to the Auditor General that I am unable to provide information in relation to Budget Estimates Question 1 Parts (a) and (b) asked by Hon Martin Aldridge at this time.

As required by the Financial Management Act, notice has been given to both Houses of Parliament.

Attached is a copy of the question and my notification to the Parliament for your information.

Please do not hesitate to contact me should you require any further information.

Kind regards

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

22 JUL 2019

SECTION 82 NOTICE – FINANCIAL MANAGEMENT ACT 2006

Pursuant to Section 82(1)(a) of the *Financial Management Act 2006*, I give notice to both houses that I am unable to provide information in response to parts (a) and (b) of the question asked by Hon Martin Aldridge during Legislative Council 2019-20 Budget Estimates hearings.

The information being sought was:

I refer to the Harriet Point Agreement and I ask:

- (a) Will the Minister please provide a copy of the agreement to the committee;*
- (b) If no to (a) will the Minister provide a copy of the agreement in confidence to the committee;*
- (c) What is the financial cost/benefit to the Authority in 2019/20 directly related to the agreement;*
- (d) Has the agreement been amended since its execution of August of 2008;*
- (e) If yes to (4) on what dates were amendments made;*
- (f) Who has access to the agreement;*
- (g) Who are party to the agreement; and*
- (h) In summary what does the agreement provide for?*

The information requested in (c) to (h) was provided, however I decided not to provide the information being sought in (a) and (b) on the basis that the information is commercially sensitive and confidential.

My decision is based on advice provided by the Department of Transport on a number of occasions, and the findings of the Office of the Auditor General in relation to the same question previously asked by the Member to the former Minister for Ports. The opinion of the Auditor General at that time stated that the decision by the Minister not to provide Parliament with a copy of the Harriet Point Agreement was reasonable and therefore appropriate.

The disclosure of information of the nature contained in this agreement could result in detriment to the State in the form of liability from a breach of contractual obligations as well as reputational damage.

The reasons set out above are provided in accordance with my obligations under section 82(2) of the *Financial Management Act 2006*. Notice is also being provided to the Auditor General in accordance with section 82 (1)(b) of the *Financial Management Act 2006*.



**HON ALANNAH MACTIERNAN MLC
MINISTER FOR PORTS**



Hon Alannah MacTiernan MLC
Minister for Regional Development; Agriculture and Food; Ports;
Minister Assisting the Minister for State Development, Jobs and Trade

Our ref: 64-12657

Ms Caroline Spencer
Auditor General
Office of the Auditor General
Perth BC
PO Box 8489
PERTH WA 6849

Dear Ms Spencer

SECTION 82 FINANCIAL MANAGEMENT ACT 2006

In accordance with section 82(1)(b) of the *Financial Management Act 2006*, I am writing to provide you formal notice that I am unable to provide information in relation to Budget Estimates Question 1 parts (a) and (b) asked by Hon Martin Aldridge at this time.

As required by the Financial Management Act, notice has also been given to both Houses of Parliament.

Attached is a copy of the question and my notification to the Parliament for your consideration.

Please do not hesitate to contact me should you require any further information.

Kind regards

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

26 JUN 2019

LEGISLATIVE COUNCIL STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

QUESTION PRIOR TO HEARING

Pilbara Ports Authority

Hon Martin Aldridge MLC asked:

I refer to the Harriet Point Agreement and I ask:

- (a) Will the Minister please provide a copy of the agreement to the committee;
- (b) If no to (a) will the Minister provide a copy of the agreement in confidence to the committee;
- (c) What is the financial cost/benefit to the Authority in 2019/20 directly related to the agreement;
- (d) Has the agreement been amended since its execution of August of 2008;
- (e) If yes to (4) on what dates were amendments made;
- (f) Who has access to the agreement;
- (g) Who are party to the agreement; and
- (h) In summary what does the agreement provide for?

Answer:

- (a) No.
- (b) No.
- (c) The Harriet Point Agreement provides that the parties to, provisions of, and the terms of any transaction contemplated by the document, must be treated confidentially.
- (d) Yes.
- (e) April 2010 and August 2012.
- (f) Access to the Harriet Point Agreement is restricted to authorised personnel of the parties, their respective professional advisers, and otherwise as required by law.
- (g) BHP and Pilbara Ports Authority.
- (h) The Harriet Point agreement was entered into between BHP and the State of Western Australia to facilitate the access by third parties to the Port of Port Hedland. This access was critical to the ability of non-BHP companies to establish their iron ore trade.

The Harriet Point Agreement provides the basis for the orderly development of port infrastructure within the Port of Port Hedland, to facilitate the progressive expansion of trade volumes within the constrained area of the Inner Harbour. The Agreement provides for such development to not adversely affect BHP's rights.

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