

Western Australian Auditor General's Report



Opinion on Ministerial Notification – FPC Sawmill Volumes



Report 18: 2021-22

20 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.

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Sawmill Volumes**

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**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

OPINION ON MINISTERIAL NOTIFICATION – FPC SAWMILL VOLUMES

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 volume of timber in cubic metres or metric tonnes the Forest Products Commission has identified for each sawmill as their 2022 supply volume.

A handwritten signature in black ink, appearing to read 'Caroline Spencer'.

CAROLINE SPENCER
AUDITOR GENERAL
20 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 volume of timber in cubic metres or metric tonnes the Forest Products Commission (FPC) has identified for each sawmill as their 2022 supply volume.

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) 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 staff in the entity and the Minister's office 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 Forestry not to provide Parliament with information about the volume of timber in cubic metres or metric tonnes that the FPC had identified for each sawmill as their 2022 supply volume was reasonable and therefore appropriate.

While the Minister provided Parliament with approximate annual intakes as listed in sawmill contracts, he withheld information on the detailed and specific supply volumes for each sawmill. These volumes are determined by the FPC by November for the forthcoming calendar year and provided individually to each sawmill. We found the current 2022 supply volumes meet the requirements of being commercial-in-confidence.

Background

In Parliament on 22 February 2022, the Hon Dr Steve Thomas MLC asked the Minister representing the Minister for Forestry, in Legislative Council Question Without Notice 84, for the following information about 2022 sawmill supply volumes:

I refer to the minister's answer to question without notice 1177, asked in December, which identified that 12 timber mills received letters at 2022 timber contract levels, and to question without notice 25, asked on Thursday, 17 June 2022, which avoided

answering in detail. Again I ask about those 12 sawmills with current Forest Product Commission contracts.

- 1) What is the current contracted annual volume by species and growth for each sawmill in cubic metres or metric tonnes?
- 2) What is the volume of timber in cubic metres or metric tonnes the FPC has identified for each sawmill as a 2022 block supply volume, as stated in the FPC supply letters identified in question without notice 1177?
- 3) If the minister cannot these specific amounts, why not?

On 15 March 2022, the Minister for Forestry provided a response stating that information regarding individual customer volumes is commercial-in-confidence. On 5 April 2022, an updated response was provided answering part 1 of the question while the answer to parts 2 and 3 remained the same.

On 6 April 2022, the Minister notified the Auditor General of the decision not to provide the requested information to parts 2 and 3 in accordance with section 82 of the *Financial Management Act 2006*.

Key findings

The decision by the Minister not to provide the requested information was reasonable and therefore appropriate.

The Minister properly sought advice from the FPC before responding to the request and the FPC recommended that the Minister decline to provide it. The FPC provided a draft response to the Minister stating the requested information was commercial-in-confidence and as such could not be provided. The Minister's response in Parliament reflected the FPC's advice.

The FPC sought advice from the SSO which agreed that the information requested was commercial-in-confidence.

We assessed if the information requested was commercial-in-confidence using the following criteria:

Is the information sufficiently secret? Is it significant?

Yes, this criterion was met. We found no evidence that the 2022 supply volumes are available publicly or ascertainable at the time the Minister declined to provide them. We also could not derive them from publicly available information. The 2022 supply volumes are of commercial value to the sawmills and form the basis of payment calculations.

Does an obligation of confidence exist?

This criterion was met. There is a non-disclosure provision covering data and technical information in each of the contracts for the 12 sawmills mentioned in the question.

To provide the requested information the FPC would need to seek written approval from each contract holder. This would have created a significant administrative burden for the entity.

Would disclosure cause unreasonable detriment to the owner of the information or another party?

This criterion was met. The requested information applies to native timber sawmills impacted by the State Government's decision to end native forest logging from 2024. As part of the

transition plan, sawmills will have access to a financial support package which includes an Industry Restructure Payment. The 2022 supply volumes will be used to determine the payment amount. Maintaining confidentiality of the requested information is justified as it could prejudice current or future negotiations of these payment amounts.

Is it in the public interest for the information to remain confidential?

This criterion was met. The requested information has the potential to compromise the proper functioning of the FPC in its role of commercial custodian for the State's forestry assets. It also meets the requirements of matter exempt from disclosure under Schedule 1 of the *Freedom of Information Act 1992*.

The Minister's answer to part 1 of the question provides information on annual contract volumes which gives general transparency without comprising contractual obligations and commercial-in-confidence principles.

We consider the approach FPC took was reasonable. Legal advice was sought from the SSO before advising the Minister, however this advice and supporting information did not provide the Minister with the basis as to why the information requested was commercial-in-confidence.

We wish to reiterate our advice from previous opinions that entities formalise assessment criteria that supports an efficient and consistent response to requests for information. The FPC has been subject to several requests regarding the release of confidential information however is yet to demonstrate a formalised method of documenting its assessment and response.

Response from the Forest Products Commission

The FPC recognises that many of its operations are of public interest. However, in this instance, the FPC was of the view that providing the requested information to Parliament risked undermining the position of the FPC, the State and a number of stakeholders engaging in the forestry industry at a particularly sensitive time. The FPC is aware of its responsibilities to both stakeholders and the wider public and will continue to advise the Minister for Forestry on that basis.

Auditor General's 2021-22 reports

Number	Title	Date tabled
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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