



Report 15: 2022-23 | 8 March 2023

OPINION ON MINISTERIAL NOTIFICATION

Stamp Duty on the Landgate Building, Midland



**Office of the Auditor General
Western Australia**

National Relay Service TTY: 133 677
(to assist people with hearing and voice impairment)

We can deliver this report in an alternative format for those with visual impairment.

© 2023 Office of the Auditor General Western Australia.
All rights reserved. This material may be reproduced in whole or in part provided the source is acknowledged.

ISSN: 2200-1913 (print)
ISSN: 2200-1921 (online)

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

Opinion on Ministerial Notification – Stamp Duty on the Landgate Building, Midland

Report 15: 2022-23
8 March 2023

This page is intentionally left blank



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

**OPINION ON MINISTERIAL NOTIFICATION – STAMP DUTY ON THE LANDGATE
BUILDING, MIDLAND**

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 then Minister for Finance, the Hon Dr Tony Buti MLA not to provide information to Parliament about the amount and method of calculation of stamp duty on the sale of the Landgate building at 1 Midland Square, Midland.

CAROLINE SPENCER
AUDITOR GENERAL
8 March 2023

Contents

Introduction	5
What we did	5
Opinion	5
Background	6
Key findings	6
Response from the Department of Finance	7

Introduction

This report deals with a decision by the then Minister for Finance, the Hon Dr Tony Buti MLA, not to provide information to Parliament about the amount and method of calculation of stamp duty on the sale of the Landgate building at 1 Midland Square, Midland.

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 or other legal advisers
- interviews with key entity persons 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 then Minister for Finance not to provide Parliament with information about the amount and basis of calculating stamp duty on the Landgate building was not reasonable and therefore not appropriate as the information was publicly available.

The Minister properly sought advice from the Department of Finance (Department) before responding to the request but the Department's advice to the Minister not to provide the information failed to reflect that the information had been available to the public since March 2022.

The amount of stamp duty paid was publicly available for a fee of \$28.20 from the Landgate website after the sale was registered. Using this information and the publicly available sales price, it was also possible to then determine if the sale price or the market value formed the basis of the stamp duty calculation.

Background

On 22 November 2022, the Hon Neil Thomson MLC asked the Minister representing the Minister for Finance (Parliamentary Question Without Notice 1191):

I refer to the sale of the Midland Landgate building:

- (1) How much stamp duty was paid on the transaction?
- (2) Does this reflect the sale price or the market value?

On 22 November 2022, Hon Stephen Dawson MLC on behalf of the Minister for Finance, declined to provide the information requested, replying:

- (1)-(2) The amount of duty paid by the purchaser of the Midland Landgate building is information obtained by the Commissioner of State Revenue under the Duties Act 2008. However section 114(1) of the Taxation Administration Act imposes a duty of confidentiality on the commissioner from releasing information obtained under a taxation act concerning the affairs of a person.

On 6 December 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

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

The Minister properly sought advice from the Department, specifically the acting Commissioner of State Revenue, before responding to the request.

We were informed by the Department that the Commissioner had a conversation with the Minister's office on 22 November 2022, prior to the Minister responding to the question in Parliament. The verbal advice to the Minister was that the information was confidential under the *Taxation Administration Act 2003* and should not be provided. Written advice followed the conversation, dated 2 December 2022, and was consistent with the verbal advice that the Commissioner could not provide the information as it was confidential. The Minister's decision was consistent with the advice provided by the Department.

We considered the approach the Department took in providing advice and determined that it was correct in upholding the confidentiality clause in section 114 of the *Taxation Administration Act 2003* to not provide the information held by the Commissioner, and that this reflected advice in similar previous instances. However, it was not complete because the Department failed to consider and advise the Minister that the information requested was already ascertainable by the public through a report that can be purchased from Landgate.

The amount of stamp duty paid and the dutiable value were available to the public for a fee from 28 March 2022, when the sale was registered with Landgate. The public can access this information by ordering a transfer document from the Landgate website for a fee of \$28.20.

The transfer document for this sale showed:

- the stamp duty payable amount of \$975,659.50

- the dutiable value amount of \$19.063 million. This is the value used to calculate the amount of duty to be paid. This is equal to the publicly available sale price of \$17.3 million plus GST.

We have previously determined that it was reasonable and therefore appropriate for Ministers to rely on the provisions of the *Taxation Administration Act 2003* to uphold confidentiality of private parties' tax affairs. However, we noted in a similar section 82 opinion in 2015¹ that the Office of State Revenue had appropriately considered circumstances where releasing information might have been appropriate. One such circumstance was if the requested information was generally known or ascertainable. For example if a land transfer had already been registered and the stamp duty was endorsed on the transfer.

We would urge entities advising Ministers to consider other mechanisms by which requested information may already be available or in the public domain. Ministers rely on entities to provide robust advice to assist them in making decisions, including providing information to Parliament. As such, entities have an obligation and responsibility to provide complete and accurate advice that properly assesses each request for information in line with the default position of disclosure.

Response from the Department of Finance

The Commissioner of State Revenue accepts the summary of findings in respect of examining the publicly available information when preparing advice to the Minister for Finance for responding to a Parliamentary Question.

RevenueWA will prepare a procedure to address instances where confidential taxpayer information held by the Commissioner of State Revenue may be publicly available to facilitate its disclosure to the Minister for Finance for responding to a Parliamentary Question. The Commissioner acknowledges the extent of any external review may be determined by the time available to prepare ministerial advice.

Where the Commissioner provides publicly available information he will declare the information source to reflect that he has not breached the confidentiality obligations under the *Taxation Administration Act 2003*.

¹ Office of the Auditor General, [Ministerial decision to refuse to provide information about stamp duty payable on the sale of FESA House](#), OAG, Perth, 2015.

This page is intentionally left blank

Auditor General's 2022-23 reports

Number	Title	Date tabled
14	Administration of the Perth Parking Levy	16 February 2023
13	Funding of Volunteer Emergency and Fire Services	22 December 2022
12	Financial Audit Results – State Government 2021-22	22 December 2022
11	Compliance with Mining Environmental Conditions	20 December 2022
10	Regulation for Commercial Fishing	7 December 2022
9	Management of Long Stay Patients in Public Hospitals	16 November 2022
8	Forensic Audit Results 2022	16 November 2022
7	Opinion on Ministerial Notification – Tom Price Hospital Redevelopment and Meekatharra Health Centre Business Cases	2 November 2022
6	Compliance Frameworks for Anti-Money Laundering and Counter-Terrorism Financing Obligations	19 October 2022
5	Financial Audit Results – Local Government 2020-21	17 August 2022
4	Payments to Subcontractors Working on State Government Construction Projects	11 August 2022
3	Public Trustee's Administration of Trusts and Deceased Estates	10 August 2022
2	Financial Audit Results – Universities and TAFEs 2021	21 July 2022
1	Opinion on Ministerial Notification – Wooroloo Bushfire Inquiry	18 July 2022

**Office of the Auditor General
Western Australia**

7th Floor Albert Facey House
469 Wellington Street, Perth

T: 08 6557 7500
E: info@audit.wa.gov.au

www.audit.wa.gov.au



@OAG_WA



Office of the Auditor General
for Western Australia