



Report 16: 2022-23 | 22 March 2023

OPINIONS ON MINISTERIAL NOTIFICATIONS

# Triennial Reports for Griffin Coal and Premier Coal



**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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**Opinions on Ministerial Notifications –  
Triennial Reports for Griffin Coal  
and Premier Coal**

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THE PRESIDENT  
LEGISLATIVE COUNCIL

THE SPEAKER  
LEGISLATIVE ASSEMBLY

### OPINIONS ON MINISTERIAL NOTIFICATIONS – TRIENNIAL REPORTS FOR GRIFFIN COAL AND PREMIER COAL

This report has been prepared for submission to Parliament under the provisions of section 24 of the *Auditor General Act 2006*.

It deals with two decisions by the Minister for State Development, Jobs and Trade, the Hon Roger Cook MLA, not to provide Parliament with information requested in Legislative Council Questions on Notice:

- 1012 – the most recent triennial report produced by Griffin Coal Mining Company (Griffin Coal) under Clause 11(2) of the *Collie Coal (Griffin) Agreement Act 1979*
- 1013 – the most recent triennial report produced by Premier Coal under Clause 11(2) of the *Collie Coal (Western Collieries) Agreement Act 1979*.

CAROLINE SPENCER  
AUDITOR GENERAL  
22 March 2023

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# Ministerial decisions not to provide information to Parliament

## Introduction

This report deals with two decisions by the Minister for State Development, Jobs and Trade, the Hon Roger Cook MLA, not to provide Parliament with information requested in Legislative Council Questions on Notice:

- 1012 – the most recent triennial report produced by Griffin Coal Mining Company (Griffin Coal) under Clause 11(2) of the *Collie Coal (Griffin) Agreement Act 1979*
- 1013 – the most recent triennial report produced by Premier Coal under Clause 11(2) of the *Collie Coal (Western Collieries) Agreement Act 1979*.

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 ([audit.wa.gov.au](http://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.

# Ministerial decisions not to provide Griffin Coal and Premier Coal's most recent triennial reports

## Opinions

The decisions by the Minister for State Development, Jobs and Trade, the Hon Roger Cook MLA, not to provide Parliament with the most recent triennial reports produced by Griffin Coal and Premier Coal were reasonable and therefore appropriate.

## Background

In Parliament on 15 November 2022, the Hon Dr Bradley Pettitt MLC, asked Hon Alannah MacTiernan MLC as the Minister representing the Minister for State Development, Jobs and Trade, to provide a copy of the most recent Griffin Coal and Premier Coal triennial reports. The requests were made in two Parliamentary questions:

Legislative Council Question on Notice 1012 asked:

I refer to the annual and triennial reports required to be produced by Griffin Coal under Clause 11(2) of the Collie Coal (Griffin) Agreement, and, I ask:

- (a) will the Minister please table the most recent triennial report;
- (b) if no to (a), why not;
- (c) could the Minister please advise which section of the Department reviews these reports and the environmental and mining rehabilitation expertise present in the section; and
- (d) could the Minister please advise any dates on which further information has been requested from the company as provided for in Clause 11(3)?

Legislative Council Question on Notice 1013 asked:

I refer to the annual and triennial reports required to be produced by Premier Coal under Clause 11(2) of the *Collie Coal (Western Collieries) Agreement Act 1979*, and, I ask:

- (a) will the Minister please table the most recent triennial report;
- (b) if no to (a), why not;
- (c) could the Minister please advise which section of the Department reviews these reports and the environmental and mining rehabilitation expertise present in the section; and
- (d) could the Minister please advise any dates on which further information has been requested from the company as provided for in Clause 11(3)?

On 15 November 2022, the representing Minister declined to provide the information requested in part (a) of Questions on Notice 1012 and 1013, explaining the reports contained commercially sensitive information. The full responses are provided in Appendix 1 and 2.

On 1 December 2022, the Minister notified the Auditor General and both Houses of Parliament of their decision not to provide the requested information in accordance with section 82 of the *Financial Management Act 2006*.



## Key findings

The decisions by the Minister not to provide the requested information were reasonable and therefore appropriate.

The Minister properly sought advice from the Department of Jobs, Tourism, Science and Innovation (the Department) before responding to the requests. The Department recommended the Minister decline to provide the triennial reports, as they were commercially sensitive. The Department concluded that disclosing the information could be detrimental to Griffin Coal and Premier Coal, as well as the State's ability to negotiate future agreements.

The Department's recommendations were based on an assessment against its *Release of Event Sponsorship Information and/or other Commercial Information Policy and Guidelines*.

We reviewed the triennial reports and the Department's assessment and found:

- there was no express obligation of confidentiality. Instead, the Department told us it operated under an assumed understanding of confidentiality, the basis for which was not appropriately explained in its assessment.
- the contents of the reports were not generally available. We only found small amounts of information such as the purpose of the reports and photos of the mine sites in public sources.
- most of the reports' contents could be reasonably considered to have commercial value for the companies. This included studies commissioned by the companies and future development plans.
- the Department considered redacting commercially sensitive information in the reports but determined this would require excessive resources. From our observation of the complexity of the reports, we agree it would require significant effort.

Although we have found previously the Department's *Release of Event Sponsorship Information and/or other Commercial Information Policy and Guidelines* generally provide suitable criteria for assessing if information is commercially sensitive,<sup>1</sup> it does not provide sufficient guidance when express obligations of confidence do not exist. The Department also did not demonstrate sufficient scepticism and independent assessment of the potential harms to Griffin Coal and Premier Coal.

It is important that State government entities establish clear, documented understandings of confidentiality with third parties. These must meet the public accountability obligations for high levels of transparency and not unreasonably prevent information from being disclosed in Parliament.

The Department should as a matter of priority, document and communicate confidentiality understandings with the companies and appropriately limit internal access to the triennial reports. It should also require all parties to State Agreements to specifically identify commercially sensitive information within any documents they provide.

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<sup>1</sup> Office of the Auditor General, *Opinion on Ministerial Notification* – Report 15: 2019-20, OAG, Perth, 2020.

## Response from the Department of Jobs, Tourism, Science and Innovation (JTSI)

JTSI acknowledges the work of the Auditor General in examining the decisions of the Minister for State Development, Jobs and Trade, the Hon Roger Cook MLA, not to provide the Triennial Reports produced by Griffin Coal and Premier Coal and is pleased with the finding that the Minister's decisions were reasonable and therefore appropriate.

JTSI recognises the importance of our *Release of Event Sponsorship Information and/or other Commercial Information Policy and Guidelines* to assess if information is commercially sensitive and welcomes the suggested process improvement opportunities provided in the OAG's report.

## Appendix 1: Legislative Council Question on Notice 1012

In Parliament on 15 November 2022, the Hon Dr Bradley Pettitt MLC, asked Hon Alannah MacTiernan MLC as the Minister representing the Minister for State Development, Jobs and Trade, Legislative Council Question on Notice 1012:

I refer to the annual and triennial reports required to be produced by Griffin Coal under Clause 11(2) of the *Collie Coal (Griffin) Agreement*, and, I ask:

- (a) will the Minister please table the most recent triennial report;
- (b) if no to (a), why not;
- (c) could the Minister please advise which section of the Department reviews these reports and the environmental and mining rehabilitation expertise present in the section; and
- (d) could the Minister please advise any dates on which further information has been requested from the company as provided for in Clause 11(3)?

On 15 November 2022, the representing Minister replied:

The Department of Jobs, Tourism, Science and Innovation advises:

- (a) No.
- (b) The Triennial Report is submitted by Griffin Coal to the Minister to satisfy Griffin Coals obligations under Clause 11(2) of the *Collie Coal (Griffin) Agreement Act 1979*. It is submitted with an expectation that the information will be treated as commercially sensitive by the State, as it contains valuable commercial information. Disclosure of this would reveal information about the commercial affairs of the company and could adversely affect those affairs and prejudice the future supply of information to the Department of Jobs, Tourism, Science and Innovation (JTSI) by Griffin Coal. Accordingly it is not appropriate to table the report. I will notify the Auditor General's office and both houses of Parliament that this part of the question will not be answered as per Section 82 of the *Financial Management Act 2006*.
- (c) JTSI is responsible for the administration of State Agreements. JTSI refers these reports to the Collie Coal Mines and Environment Committee which includes subject matter experts from the Department of Water and Environmental Regulation, the Department of Biodiversity, Conservation and Attractions and the Department of Mines, Industry Regulation and Safety to review and provide feedback to the JTSI. The consolidated feedback is provided to Griffin Coal for consideration and incorporation into its next report.
- (d) No further requests for information has been requested by the Minister in accordance with Clause 11(3).

## Appendix 2: Legislative Council Question on Notice 1013

In Parliament on 15 November 2022, Hon Dr Bradley Pettitt, MLC asked Hon Alannah MacTiernan MLC the Minister representing the Minister for State Development, Jobs and Trade Legislative Council Question on Notice 1013:

I refer to the annual and triennial reports required to be produced by Premier Coal under Clause 11(2) of the *Collie Coal (Western Collieries) Agreement Act 1979*, and I ask:

- (a) will the Minister please table the most recent triennial report;
- (b) if no to (a), why not;
- (c) could the Minister please advise which section of the Department reviews these reports and the environmental and mining rehabilitation expertise present in the section; and
- (d) could the Minister please advise any dates on which further information has been requested from the company as provided for in Clause 11(3)?

On 15 November 2022, the representing Minister replied:

The Department of Jobs, Tourism, Science and Innovation advises:

- (a) No.
- (b) The Triennial Report is submitted by Premier Coal to the Minister to satisfy Premier Coal's obligations under Clause 11(2) of the *Collie Coal (Western Collieries) Agreement Act 1979*. It is submitted with an expectation that the information will be treated as commercially sensitive by the State, as it contains valuable commercial information. Disclosure of this would reveal information about the commercial affairs of the company and could adversely affect those affairs and prejudice the future supply of information to the Department of Jobs, Tourism, Science and Innovation (JTSI) by Griffin Coal. Accordingly it is not appropriate to table the report. I will notify the Auditor General's office and both houses of Parliament that this part of the question will not be answered as per Section 82 of the *Financial Management Act 2006*.
- (c) JTSI is responsible for the administration of State Agreements. JTSI refers these reports to the Collie Coal Mines and Environment Committee which includes subject matter experts from the Department of Water and Environmental Regulation, the Department of Biodiversity, Conservation and Attractions and the Department of Mines, Industry Regulation and Safety to review and provide feedback to the JTSI. The consolidated feedback is provided to Griffin Coal for consideration and incorporation into its next report.
- (d) No further requests for information has been requested by the Minister in accordance with Clause 11(3).

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## Auditor General's 2022-23 reports

Number	Title	Date tabled
15	Opinion on Ministerial Notification – Stamp Duty on the Landgate Building, Midland	8 March 2023
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

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