



**Government  
of South Australia**

TRS19D1202

Hon Stephen Mullighan MP  
Member for Lee  
Unit 1, 62 Semaphore Road  
SEMAPHORE SA 5019

**Treasurer**  
Level 8  
State Administration Centre  
200 Victoria Square  
Adelaide SA 5000  
GPO Box 2264  
Adelaide SA 5001  
DX 56203 Victoria Square  
Tel 08 8226 1866  
treasurer.dtf@sa.gov.au

[lee@parliament.sa.gov.au](mailto:lee@parliament.sa.gov.au)

*Stephen*  
Dear Mr Mullighan

**APPLICATION UNDER THE FREEDOM OF INFORMATION ACT 1991**

I refer to your application made under the *Freedom of Information Act 1991* (FOI Act), dated 10 May 2019.

Your application seeks access to:

*"All minutes, briefings and correspondence titled 'Review of Prescribed Public Authorities under the State Procurement Act 2004' as described on the Objective document management system, between 12 July 2018 and 10 May 2019."*

The legislative prescribed timeframe to determine this application has expired and is now deemed to have refused you access to all documents relevant to your application. I refer to my letter dated 26 May 2019 where I sought additional time to make my determination.

The purpose of this letter is to advise you of my determination. An extensive search was conducted within this office. A total of 1 document was identified as answering the terms of your application.

I grant you access in part to 1 document, a copy of which is enclosed.

**Document Released in Part**

Document 1 is a briefing which was prepared by DTF in relation to the review of prescribed public authorities under the *State Procurement Act 2004*. The briefing has been redacted as it contains information relating to Cabinet and legal advice. I therefore determine this exempt, pursuant to clauses 1(1)(c) and 10(1) to the FOI Act.

## Exemptions

### **Clause 1 – Cabinet Documents**

- (1) A document is an exempt document—
- (a) if it is a document that has been specifically prepared for submission to Cabinet (whether or not it has been so submitted); or
  - (b) if it is a preliminary draft of a document referred to in paragraph (a); or
  - (c) if it is a document that is a copy of or part of, or contains an extract from, a document referred to in paragraph (a) or (b).

### **Clause 10 – Documents subject to legal professional privilege**

- (1) A document is an exempt document if it contain matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.

Please note, in compliance with Premier and Cabinet Circular PC045 - *Disclosure Logs for Non-Personal Information Released through Freedom of Information* (PC045), the Department of Treasury and Finance is now required to publish a log of all non-personal information released under the *Freedom of Information Act 1991*.

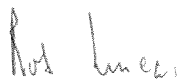
In accordance with this Circular, any non-personal information determined for release as part of this application, may be published on the DTF website. A copy of PC045 can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit the website for further information.

As I am determining this application as Principal Officer, Section 29(6) of the Act does not provide for an internal review. If you are dissatisfied with my determination you are entitled to exercise your rights of external review with the Ombudsman.

Alternatively, you can apply to the South Australian Civil and Administrative Tribunal. If you wish to seek a review, Section 39(3) of the Act states you must do so within 30 calendar days of receiving the determination.

If you require any further information, please contact Vicky Cathro on 8226 9769.

Yours sincerely



**Hon Rob Lucas MLC**  
*Principal Officer*

20 September 2019

MINUTE

16/12/2018  
T18/040  
TR518D2535



Government  
of South Australia  
Department of Treasury  
and Finance

MINUTES forming ENCLOSURE

File DPC18/1535  
Doc No DPC18D01389

To The Treasurer

REVIEW OF PRESCRIBED PUBLIC AUTHORITIES UNDER THE STATE  
PROCUREMENT ACT 2004

Timing: ROUTINE for approval

Recommendations/Issues:

- Note the activities undertaken regarding the Government's election commitment to "review the status of prescribed public authorities to ensure authorities currently operating outside government procurement rules are brought into line with other public sector agencies".
- Note the synergies between this review of prescribed public authorities and the current inquiry into Government procurement being undertaken by the South Australian Productivity Commission (SAPC).

Noted

- Request that the terms of reference for the SAPC's inquiry be expanded to include a review of prescribed public authorities.

Endorsed/Not Endorsed

- Should it not be considered appropriate to expand the SAPC's terms of reference, approve that a briefing be prepared to the responsible Minister for each prescribed public authority, outlining the authority's response to the review and requesting the Minister's views on continuation of the prescribed status.

Also note - need to expand TOR  
to include construction as well

Approved/Not Approved

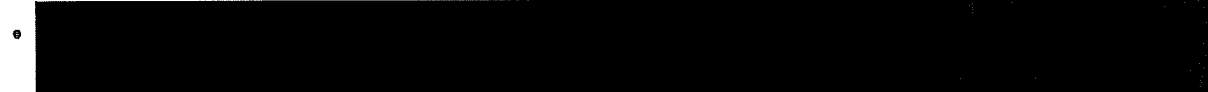
Rob Lucas

Hon Rob Lucas MLC  
Treasurer


16/12/2018

**Key Points:**

- Government Services within the Department of Treasury and Finance has responsibility for overseeing the following election commitment: "Review the status of prescribed public authorities to ensure authorities currently operating outside government procurement rules are brought into line with other public sector agencies".
- The following prescribed public authorities are currently listed in the *State Procurement Regulations 2005*:
  - Adelaide Venue Management Corporation;
  - Architectural Practice Board of South Australia;
  - Construction Industry Training Board;
  - Health Services Charitable Gifts Board;
  - Legal Profession Conduct Commissioner;
  - Local Government Finance Authority of South Australia;
  - Motor Accident Commission (to be dissolved July 2019);
  - Return to Work Corporation of South Australia;
  - South Australian Forestry Corporation;
  - South Australian Housing Trust;
  - South Australian Water Corporation;
  - Superannuation Funds Management Corporation of South Australia; and
  - Urban Renewal Authority.



- In June 2018, the (former) Chief Procurement Officer wrote to each prescribed public authority, advising of the review, and seeking the following information:
  - An understanding of the nature of each entity's operations, including commercial basis (where relevant);
  - The structure of each entity's procurement function, governance frameworks and mechanisms in place to support the intent/objectives of the *State Procurement Act 2004* (the Act);
  - Any significant issues relating to the entity's procurement function in the past five years, including Auditor-General's findings, other investigations or significant supplier complaints, and a brief description of the outcome;
  - Any commercial or other disadvantage of requiring compliance with the Act; and
  - Whether the entity considers it appropriate to remain a prescribed public authority for the purpose the Act.
- Since the time of that correspondence, the Riverbank Authority has been abolished (and removed from the Regulations), and an announcement has been made that the Motor Accident Commission will be abolished (effective July 2019).
- Responses were received from all prescribed public authorities. Not surprisingly, each authority has requested to continue its prescribed status under the *State Procurement Regulations 2005*.

- While justification varied between the public authorities, some of the common reasons provided include:
  - The commercial nature of operations, where additional administrative and approval requirements may hinder commercial opportunities;
  - Small public authorities need to manage finance and operations with minimal overhead structure and as such additional resources would be required and costs incurred; and
  - Public authorities are subject to ongoing audits by the Auditor-General, and have effective governance mechanisms in place that provide equivalent procurement outcomes to those stipulated in the Act.
- None of the responses received indicated any significant issues or audit findings relating to their respective procurement functions over the past five years.
- To further inform the assessment of the responses provided by public authorities, the opinion of the State Procurement Board (SPB) was sought. In its deliberations the Board noted that:
  - These bodies range from large procuring entities down to small public authorities with low levels of procurement activity;
  - Whilst the larger authorities have their own Board in place to provide oversight of major procurement transactions, this is not substantially different from Government departments who have procurement governance committees in place with similar functions;
  - For small entities, the Board's policies have been streamlined in recent years to simplify lower value procurement processes; and
  - The reasons provided by the public authorities for retaining their prescribed status were not compelling.
- In considering the above points, and the advice received from the Crown Solicitor's Office,  

- As you would be aware, the SAPC has recently commenced an inquiry into the efficiency and effectiveness of Government procurement processes and practices. The SAPC's current terms of reference limit the scope to public authorities subject to the Act, however there may be the opportunity to expand these terms of reference to include review of prescribed public authorities.
- Given the nature of the SAPC's review, there are potential benefits in considering the status of prescribed public authorities as part of its enquiry, rather than pursuing the proposed policy change separately (i.e. it enables this decision to be considered in the context of a likely broader range of recommendations). Commissioner Butlin has himself raised this issue in discussions and advised that he would welcome the broadening of his terms of reference to include consideration of the future status of prescribed public authorities, if the Government wished to do so.
- Should it not be considered viable to expand the SAPC's inquiry, it is proposed that a briefing be prepared to the Minister responsible for each prescribed public authority, outlining the authority's response to the review requesting the Minister's views on continuation of the prescribed status.



David Reynolds  
CHIEF EXECUTIVE

7 December 2018

Contact Officer:	Mark Carey
Telephone:	0402 749 507
Email address:	<a href="mailto:mark.carey@sa.gov.au">mark.carey@sa.gov.au</a>