



**Government
of South Australia**

TRS19D1924

Hon Stephen Mullighan MP
Member for Lee
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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 26 July 2019.

Your application seeks access to:

"All minutes, briefings and correspondence titled 'Motor Accident Commission Transition Costs' as described on the Objective document management system, between 12 July 2018 and 9 May 2019"

The purpose of this letter is to advise you of my determination. An extensive search was conducted within this office. One 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.

Released in part

Document 1 is a briefing prepared by the then Motor Accident Commission in relation to Motor Accident Commission transition costs. Advice provided by the Crown Solicitor's Office is contained in the briefing and as an attachment. I therefore determine both exempt pursuant to clause 10(1) to the FOI Act.

Exemptions

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*.

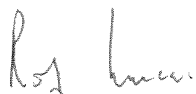
In accordance with this Circular, any non-personal information determined for release as part of this application, may be published on the DTF website. A copy of PC045 can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit 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 (08) 8226 9769.

Yours sincerely



Hon Rob Lucas MLC
Principal Officer

22 August 2019

TO: The Treasurer

SUBJECT: MOTOR ACCIDENT COMMISSION TRANSITION COSTS

Recommendation

It is recommended that you:


- Note Crown Solicitor's Office advice outlining the mechanism for transferring funds out of the MAC Fund into the Road Safety Fund for the purpose of satisfying MAC road safety employee leave entitlements (attached);
- Approve the transfer of funds from the MAC Fund to the Road Safety Fund for the purpose of satisfying MAC road safety employee leave entitlements and transition costs; and
- Sign the attached Direction pursuant to sections 5(3) and 26(2) of the MAC Act.

Noted/Approved:

/ /2018

Key Points

- From 1 July 2016 MAC ceased its role as the sole approved CTP insurer under Part 4 of the *Motor Vehicles Act 1959* and instead continued with the function of carrying on any residual business arising from its operations as the sole approved insurer. It also continued with its road safety activities. In April 2017, the business and administrative functions pertaining to MAC's residual CTP Insurance business were delegated to the Department of Treasury and Finance (DTF).
- Following on from that delegation of MAC's CTP activities, MAC's 2017-18 Budget was split into two divisions, Road Safety and CTP.
- From an external reporting perspective, MAC remains a single entity, as reflected on MAC's balance sheet and consistent with the *Motor Accident Commission Act 1992* (MAC Act). However, to reflect its two distinct and separate functions (Road Safety and CTP), a separate Road Safety bank account was created.
- MAC now operates the following two separate bank accounts:
 - a) the MAC Fund (existing account) – funding is received from MAC investments held in Funds SA in the form of redemptions. The MAC Fund may only be applied in specific circumstances, including 'in payments made for the purposes of the compulsory third party insurance business' and 'in making payments that the Treasurer requires to be made from the Fund' under the Act; and
 - b) the Road Safety Fund (new account) – funding is received monthly in arrears from the CTP Regulator.

- At the time of the creation of the Road Safety Fund, there existed a significant liability for annual and long service leave (over \$500,000) for road safety employees. Although the liability for road safety employees had been calculated and notionally allocated against the road safety portion of MAC's balance sheet, funds for the value accrued were never transferred from the MAC Fund to the Road Safety Fund.
- Following the Government's announcement of its intention to transfer MAC's road safety activities to other South Australian Government agencies, there is an increased risk of employees leaving earlier than the expiry of their appointed terms and crystallising MAC's obligation to pay those employees their accrued leave entitlements.
- This has the potential to create cost pressures in the Road Safety Fund should road safety employees leave MAC's employment, with insufficient funds to pay out leave entitlements.
- MAC has sought Crown Solicitor's Office (CSO) advice in relation to the proposal to transfer funds out of the MAC Fund into the Road Safety Fund to cover employee leave entitlements.
- CSO advice is attached to this Minute. 

- As there are leave liabilities not relating to CTP Insurance (and therefore not covered by option a) above), it is recommended that you provide a direction in respect to the entirety of the amounts to be paid from the MAC Fund for the satisfaction of employee entitlements. This option is also preferred as it will treat the amounts to be paid out of the MAC Fund as a cohesive whole.
- It is proposed that any paid leave utilised by road safety staff employees should be allocated against the combined balance sheet provision and reimbursed by the MAC Fund.
- Following the Government's announcement of its intention to transfer MAC's road safety activities to other South Australian Government agencies, transition costs may be incurred that cannot be funded from MAC's existing 2018-19 road safety budget without materially affecting its expenditure on road safety communications and engagement. Transition costs include, but are not limited to, the physical relocation of staff and the office to new agencies, acceleration of records archival and disposal of older MAC communication material, and temporary accommodation/staffing costs should some services be required into July 2019. It is proposed that funds be transferred from the MAC Fund to the Road Safety Fund for the payment of these transition costs.
- As it is difficult to forecast the value of the transition that may need to be accessed from the MAC Fund, it is proposed that any payments from the MAC Fund to the Road Safety Fund are subject to the approval of the Chief Executive of the Department of Treasury and Finance. This is intended to provide an additional level of governance and scrutiny over those transition costs.

- As at 30 June 2018, the MAC Fund audited Financial Statements showed a surplus of \$142.755 million. That surplus is sufficient to fund the leave liabilities and transition costs without materially affecting MAC's sufficient level of solvency or returns to Government.
- A draft Direction pursuant to sections 5(3) and 26(2) of the MAC Act to transfer funds from the MAC Fund to the Road Safety Fund is attached for your review and approval. If approved, this will need to be sent to MAC.
- Representatives from DTF (Budget Branch) and CSO have reviewed the draft Minute and Direction and suggested changes incorporated.



TRUDY MINETT
Chief Executive Officer

Motor Accident Commission

21 December 2018

Motor Accident Commission Act 1992
DIRECTION PURSUANT TO SECTIONS 5(3) and 26(2)

WHEREAS —

- A. The *Motor Accident Commission Act 1992 (Act)* establishes the Motor Accident Commission (Commission) as a body corporate (section 4 of the Act).
- B. Pursuant to section 5(3) of the Act, the Board of the Commission (Board) is subject to direction by the Minister.
- C. From 1 July 2016 the Commission ceased its role as the sole approved Compulsory Third Party (CTP) insurer under Part 4 of the *Motor Vehicles Act 1959*. The Commission continued to carry on any residual business arising from its operations as the sole approved insurer, alongside its road safety activities (section 14(1) of the Act).
- D. While the Commission remains one entity, in order to reflect its two distinct functions, the Commission's budget was split into a CTP division and a Road Safety division and a separate Road Safety account was created, consistent with the Charter provided to the Commission which came into effect on 1 July 2016.
- E. The Commission now operates two separate bank accounts - the MAC Fund and the Road Safety Fund.
- F. Upon the creation of the Road Safety Fund, liability for road safety employee annual leave and long service leave entitlements (Road Safety Leave Entitlements) were calculated and notionally allocated against the road safety portion of the Commission's accounts. However, funds to the value of the accrued leave entitlements were not transferred from the MAC Fund to the Road Safety Fund.
- G. Following the Government's announcement of its intention to transfer MAC's road safety activities to other South Australian Government agencies, transition costs (Transition Costs) may be incurred that cannot be funded from the Commission's existing 2018-19 road safety budget without materially affecting its expenditure on road safety programs.
- H. It is intended that funds be transferred from the MAC Fund into the Road Safety Fund to satisfy MAC's Road Safety Leave Entitlements and Transition Costs.
- I. The proportion of the Road Safety Leave Entitlements and Transition Costs referable to MAC's residual CTP insurance business may be paid from the MAC Fund to the Road Safety Fund pursuant to section 25(5)(a) of the Act.
- J. The remainder of the Road Safety Leave Entitlements and Transition Costs may be paid out of the surplus of the MAC Fund pursuant to section 26, if the Treasurer requires those payments to be made.
- K. The audited accounts of the Commission disclose a surplus which exceeds the quantum of the Road Safety Leave Entitlements and Transition Costs and the payment of those amounts from the MAC Fund to the Road Safety Fund will not impact on the sufficient level of solvency of the MAC Fund.

I, **ROBERT IVAN LUCAS**, in my capacity as Treasurer being the Minister to whom the Act is committed:

DIRECT the Commission as follows:

Direction:

I direct and require that the Commission make payment(s) to the Road Safety Fund for the satisfaction of the Road Safety Leave Entitlements and Transition Costs from the surplus of the MAC Fund in accordance with sections 25(5)(a), 25(5)(d) and 26(2) of the Act in the amount(s) and on such date(s) as approved by the Chief Executive of the Department of Treasury and Finance.

DATED this day of 2018

[Signature block]