



File: T&F23/0142
A2785583

24 March 2023

Hon. David Spiers
Leader of the Opposition
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Sent via email: leaderoftheopposition@parliament.sa.gov.au

Dear Mr Spiers

Freedom of Information – Regulatory Determination Applying to SA Water

I refer to your application under the *Freedom of Information Act 1991* (FOI Act), received by the Department of Treasury and Finance (DTF) on 19 January 2023.

Your application specifically requested:

'Please provide all records and documents, including but not limited to emails, text messages, diary entries, and any other forms of correspondence, that pertain to communication between the Department of Treasury and Finance and the Treasurer, as well as any correspondence that pertain to communication between the Department of Treasury and Finance and the Treasurer's Chief of Staff and/or the Minister's advisers and/or administrative staff, in relation to the proposed regulatory determination applying to SA Water for the period 1 July 2024 to 30 June 2028 [date range: 21/3/2022 – 19/1/2023].'

The purpose of this letter is to advise you of my determination.

A total of 2 documents were identified as answering the terms of your application and I have determined as follows:

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

Please refer to the attached schedule that describes each document and sets out my determination and reasons in summary form.

Documents released in part

Document 2 contains information which, if released, would disclose details concerning a deliberation or decision of Cabinet and as such is exempt from release pursuant to clause 1(1)(e) of Schedule 1 to the FOI Act.

Documents refused in full

Document 1 contains information which, if released, would disclose details concerning a deliberation or decision of Cabinet. I have therefore determined to exempt this information pursuant to clause 1(1)(e).

Exemptions

Clause 1 – Cabinet documents

(1) *A document is an exempt document – ...*

(e) if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet; ...

Please note, in compliance with Premier and Cabinet Circular PC045 - *Disclosure Logs for Non-Personal Information Released through Freedom of Information (PC045)*, DTF 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://www.dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit the website for further information.

Appeal Rights

If you are aggrieved with this determination, you have a right to apply for internal review under subsection 29(1) of the FOI Act. Pursuant to subsection 29(2), your application must:

- be in writing,
- be addressed to the principal officer, and
- be lodged at an office of DTF or emailed to freedomofinformation2@sa.gov.au within 30 days after the day on which you receive this letter or within such further time as the principal officer may allow.

If you require any further information, please phone Inthira Stocker on (08) 8429 3497.

Yours sincerely



Deanna Fleming
ACCREDITED FREEDOM OF INFORMATION OFFICER

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Schedule of Documents

T&F23/0142 - Hon David Speirs - " Please provide all records and documents, including but not limited to emails, text messages, diary entries, and any other forms of correspondence, that pertain to communication between the Department of Treasury and Finance and the Treasurer, as well as any correspondence that pertain to communication between the Department of Treasury and Finance and the Treasurer's Chief of Staff and/or the Minister's advisers and/or administrative staff, in relation to the proposed regulatory determination applying to SA Water for the period 1 July 2024 to 30 June 2028.[Date Range: 21/3/2022-19/01/2023]"

Doc. No.	Date	Description of Document	# of pages	Determination	Exemption Clause
1	29/12/2022	Minute to Treasurer - SA Water Regulatory Period 2024-28 - Capital	7	Refused in full	1(1)(e) - Contains information concerning deliberation or decision of Cabinet or Cabinet committee
2	30/12/2022	Minute to Treasurer - SA Water Regulatory Determination	5	Released in part	1(1)(e) - Contains information concerning deliberation or decision of Cabinet or Cabinet committee



MINUTES forming ENCLOSURE

File: T&F22/0829

Doc No: A2583626

To: The Treasurer

Endorsed: Tammie Pribanic, A/Under Treasurer

TMP 30/12

SA WATER REGULATORY DETERMINATION 2024

Timing: ROUTINE — For information only

Recommendations/Issues: It is recommended that you:

- note the key processes and timeframes that will inform SA Water's regulatory determination, commencing 1 July 2024 until 30 June 2028.

Noted

Hon. Stephen Mullighan MP
Treasurer

/ / 2023

Key Points:

Background

- Under the statutory framework governing the economic regulation of SA Water, the Essential Services Commission of South Australia (ESCOSA) makes economic regulatory determinations that set the maximum revenues that SA Water can earn from its water and sewerage retail service customers and the service standards it must deliver for its customers over a specified period. Historically the regulatory period has been for four years.
- The current regulatory period applies from 1 July 2020 until 30 June 2024 (RD20).
- ESCOSA is required to make a new regulatory determination that will apply to SA Water's water and sewerage retail services from 1 July 2024 (RD24). Assuming a similar period of time applies to RD24 it will cover the period to 30 June 2028.
- There are a series of regulatory instruments and processes that are required to occur prior to 1 July 2024 that will assist ESCOSA and SA Water in preparing for, and finalising, RD24. These activities give you, as Treasurer, the opportunity to direct ESCOSA's approach to regulating SA Water. They also provide the Minister for Climate,

Environment and Water (and the Government more generally) with the ability to direct SA Water's operating and investing activities.

- Relevant processes and an indicative timeframe are outlined below (a detailed timeline is also provided at Appendix A).

Upcoming processes

SA Water's regulatory business plan

- SA Water is required to submit to ESCOSA a regulatory business plan (RBP) for RD24. The RBP will provide a detailed analysis of the program of works required over the period to deliver SA Water's plan for customers.
- SA Water's RBP will also provide an indicative outline of the potential price outcomes for SA Water customers and returns to government.
- The proposed expenditures and service outcomes contained in the RBP will be reviewed by ESCOSA (including via a public consultation process). Where proposed expenditures are considered prudent and efficient, they will be included in ESCOSA's draft determination which is released for public consultation.

Clause 1(1)(e)

RD24 Pricing Order

- Section 35(4) of the *Water Industry Act 2012* (the Act), provides that the Treasurer may issue a Pricing Order to ESCOSA.
- The Pricing Order provides clarity to ESCOSA and SA Water on the principles, policies, parameters, factors, or other matters to apply in ESCOSA's regulatory determination of SA Water. Key aspects covered in the pricing order include the period of time the determination is to apply, what services the determination is to apply to, the need to apply National Water Initiative pricing principles, the application of revenue controls and how costs SA Water incurs implementing a direction by its Minister are to be funded.
- While the Act does not specify when the pricing order must be made, other than a requirement that the pricing order be made prior to ESCOSA completing its determination, it is generally issued at the start of the process. For RD24 this would be around May 2023.
- A further pricing order may be issued to vary this pricing order in response to matters raised by ESCOSA in its Draft Determination or subsequently by the government.
- The Department of Treasury and Finance has begun initial consultation with SA Water, ESCOSA and the Crown Solicitor's Office on a draft pricing order for your consideration. DTF will engage with your office early in the new year to ensure the Pricing Order includes any additional aspects you might wish to include.

Water Industry licence fees

- Water Industry licence fees recover government costs related to water industry regulation.
- Section 24(3) of the Act requires the Treasurer to set licence fees at an amount considered to be a reasonable contribution towards the government's regulatory costs after considering advice by ESCOSA.
- The fees are paid by any entity or person providing a water or sewerage "retail service" in South Australia. SA Water's fee comprises around 96 per cent of the total revenue raised from the fees. Typically, water industry licence holders recover the cost of the licence fee from customers. Given the majority of the fee is paid by SA Water, the setting of licence fees is set to align with SA Water's regulatory period.
- The Act does not specify a date by which the Treasurer is required to set licence fees, however it would be advantageous to set the fees no later than end May 2024 to allow time to inform licence holders and to publish the new fees on the Department of Treasury and Finance website prior to 1 July 2024.

Clause 1(1)(e)

Ministerial Direction

- Section 6 of the *Public Corporations Act 1993* and sections 6 and 7(2)(f) of the *South Australian Water Corporation Act 1994*, clarify that SA Water is subject to control and direction by its Minister.
- Prior to the commencement of regulatory period the Minister issues a Direction to SA Water. The Direction directs SA Water (and provides clarity to ESCOSA) on the Government's policies and non-commercial activities which SA Water is to undertake during the regulatory period. These activities currently include:
 - Emergency management services
 - Government radio network services
 - Fluoridation services
 - Purchase of renewable energy or carbon offsets for the Adelaide Desalination Plant.
 - State-wide pricing facility
 - Water planning and management charges contribution
 - Annual reimbursement of fees paid for valuation roll.

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- Typically, DTF has taken the lead in drafting the direction for the Minister's signature reflecting that the direction has financial implications that ESCOSA must include in its Final Determination (i.e., recovery of certain costs, payment of Community Service Obligations etc).
- Ideally the Direction would be issued at the commencement of the regulatory determination process to allow SA Water to take this into consideration in its RBP, however, for RD20 the Direction was not approved until May 2020.
- Subject to your endorsement, the draft direction will be forwarded to the Minister for her endorsement and signature around December 2023.
- More information on the timeline for the regulatory determination process is provided in Appendix 1.



Tricia Blight
EXECUTIVE DIRECTOR
BUDGET AND PERFORMANCE

28/11/2023

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Appendix 1

- The table below sets the estimated key dates for the regulatory determination commencing 1 July 2024.

Date	Author	Activity
May 2023	Treasurer	Pricing Order published
July 2023	SA Water	Regulatory business proposal submitted to ESCOSA
July 2023	Treasurer	Water industry licence fee process considered by Cabinet
July 2023	Treasurer	ESCOSA advice sought on costs to be recovered from water industry licence fees
October 2023	ESCOSA	Advice provided on costs to be recovered from water industry licence fees
November 2023	ESCOSA	Draft Determination released
December 2023	Treasurer	Water industry licence fees published
December 2023	Treasurer	Approve Section 6 Direction to SA Water
May 2024	ESCOSA	Final Determination released
June 2024	SA Water	Water and sewerage Prices determined
1 July 2024	-	SA Water Regulatory Determination for 2024-2028 commences