



**Government  
of South Australia**

TRS19D1099

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)

  
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 9 May 2019.

Your application seeks access to:

*“All minutes, briefings and correspondence titled ‘Uninsured Building Indemnity Insurance Losses’ as described on the Objective document management system, between 12 July 2018 and 9 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 prepared by the South Australian Government Financing Authority (SAFA) for my information, about uninsured building indemnity insurance losses. In addition to the briefing there were two attachments.

I grant you access in part to the briefing, as it contains information of a personal nature which if released, would be an unreasonable disclosure of personal affairs.

In addition, the second attachment referenced in the briefing, relates to correspondence from a member of the general public, which I have determined to exempt in full, pursuant to clause 6 to the FOI Act.

## Exemptions

### Clause 6 – Documents affecting personal affairs

- (1) *A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person.*

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*

22 August 2019

**RELEASE IN PART**

## DTF:Treasurer

---

**From:** Whiteley, Vanessa (DTF)  
**Sent:** Friday, January 18, 2019 12:48 PM  
**To:** DTF:Treasurer  
**Cc:** Lardner, Helen (DTF); Cantley, Kevin (DTF); Graf, Judy (DTF)  
**Subject:** A980775 - Minute to Treasurer RE Uninsured Building Indemnity Insurance Losses  
**Attachments:** A980775 - Minute to Treasurer RE Uninsured Building Indemnity Insurance ....pdf  
**Categories:** Naveena

Good afternoon,

Please find attached a scanned copy of the Minute + attachments regarding the above matter for your consideration, which has been supported by the OCE (as per new process).

Kind regards,

**Vanessa Whiteley**  
Administration Assistant  
Office of the Chief Executive

State Administration Centre, Level 8, 200 Victoria Square ADELAIDE SA 5000  
t 822 64216 | e [vanessa.whiteley2@sa.gov.au](mailto:vanessa.whiteley2@sa.gov.au) | w [treasury.sa.gov.au](http://treasury.sa.gov.au)



**Government of South Australia**  
Department of Treasury  
and Finance



**Committed to workplace flexibility**

Information contained in this e-mail message may be confidential and may also be the subject of legal professional privilege or public interest immunity. If you are not the intended recipient, any use, disclosure or copying of this document is unauthorised.

MINUTE

18/1/19

File No. ....

Physical ID: .....



Government  
of South Australia  
Department of Treasury  
and Finance

MINUTES forming ENCLOSURE

File SAF13/0162

Doc No A980775

To The Treasurer

UNINSURED BUILDING INDEMNITY INSURANCE LOSSES

Timing: ROUTINE — a decision is sought by 31/01/2019

Recommendations/Issues: It is recommended that you:

- note in 2016 and 2017 the previous Treasurer agreed to settle a number of uninsured losses incurred by consumers impacted by the insolvency of their builder;
- note in recent months, SAFA has been approached on two separate occasions by consumers seeking either advice regarding an uninsured loss or consideration of settlement of uninsured losses arising from the insolvency of a builder;
- note in both instances a Private Certifier or Council should have sighted a building indemnity insurance (BI) certificate prior to building approval being granted, the failure of which has also been the subject of a recent meeting between SAFA and representatives of the Housing Industry Association and Rosedale Homes;
- [REDACTED]
- [REDACTED]
- note SAFA is currently working on a number of strategies to mitigate uninsured losses, including seeking to collaborate with other key industry stakeholders to reduce the risk.

Noted & Approved / Not-Approved

Hon Rob Lucas MLC  
Treasurer

25/1/19



Background:

- In 2016 and 2017 the previous Treasurer agreed to settle a number of uninsured losses incurred by consumers impacted by the insolvency of their builder.
- The majority of these losses arose in 2016 as a result of the insolvency of the Home Australia Group and its South Australian entity, Homestead Homes (Homestead).
- In this instance, the previous Treasurer made a discretionary decision to refund in full the out of pocket expenses of Homestead customers who did not have building indemnity insurance (BII) in place at the time the builder became insolvent, as they were in the very early stages of the building process.
- The previous Treasurer also approved two other settlements to uninsured homeowners, arising from the insolvency of [REDACTED] who had been the victim of fraud by their builder and were suffering severe financial hardship.

Key Points:

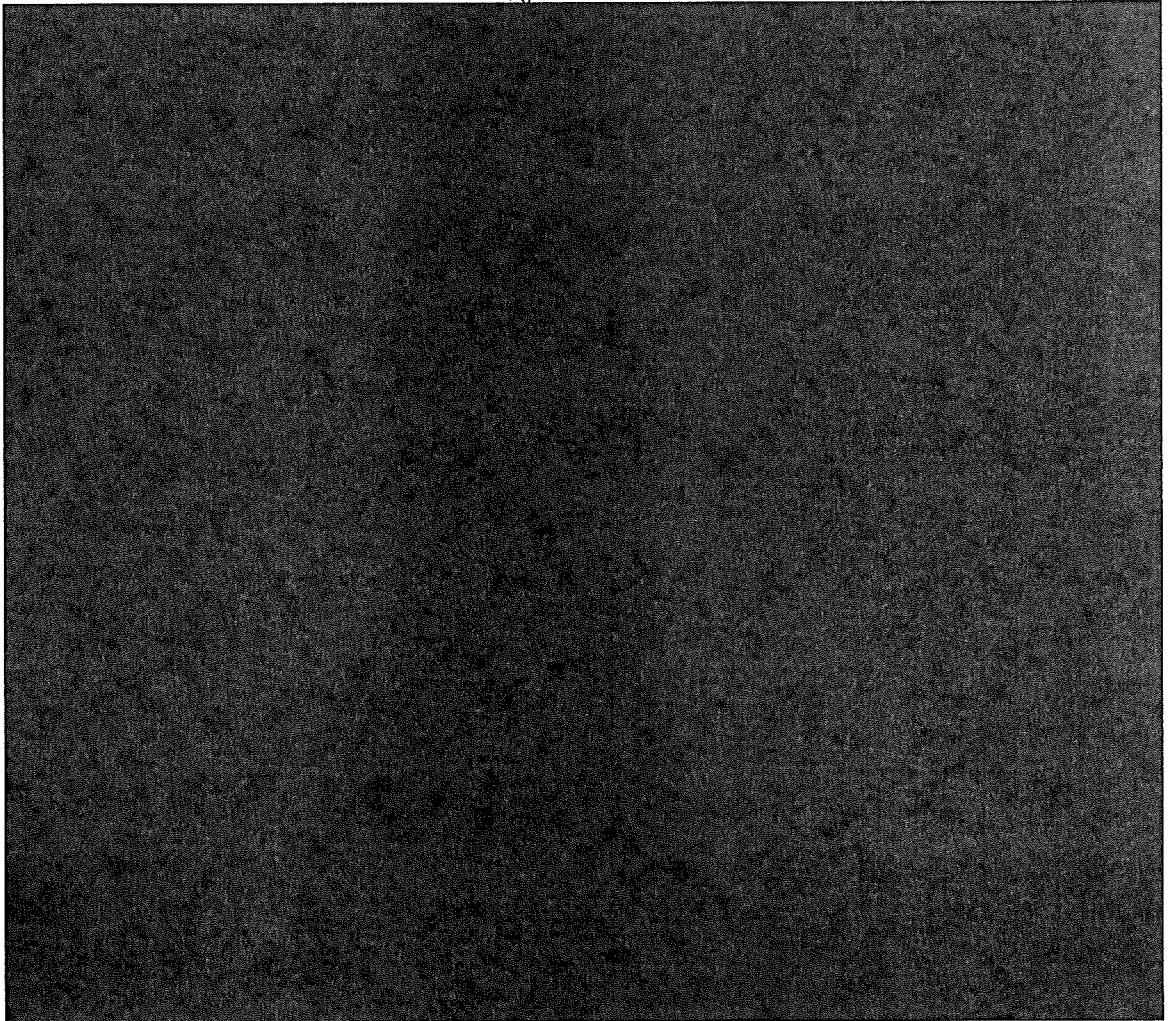
- In recent months, SAFA has been approached on two separate occasions by consumers seeking either advice regarding an uninsured loss or consideration of settlement of uninsured losses arising from the insolvency of a builder.
- In both instances, in accordance with the *Development Act 1993 and Development Regulations 2008* (Development Act), a BII policy should have been in place as a building contract was entered into prior to development approval or building rules consent being granted. The certificate of insurance should have been sighted by either a Private Certifier or Council as part of the process of granting the relevant approval.
- A summary of the process for obtaining a certificate of insurance, obtaining approval from the relevant authority to build and commencing building work is attached. The summary also details the roles and responsibilities of the parties involved in the processes.
- In short, in accordance with the Development Act, it is the responsibility of the building owner to ensure the BII certificate is provided to the relevant authority, either a Private Certifier or Council. However, also in accordance with the same legislation, the relevant authority should be sighting the certificate as part of their approval processes.

[REDACTED]

- In light of the discretionary payments to uninsured homeowners approved by the previous Treasurer, the Commissioner for Consumer and Business Services has asked that SAFA deal with [REDACTED] claim.

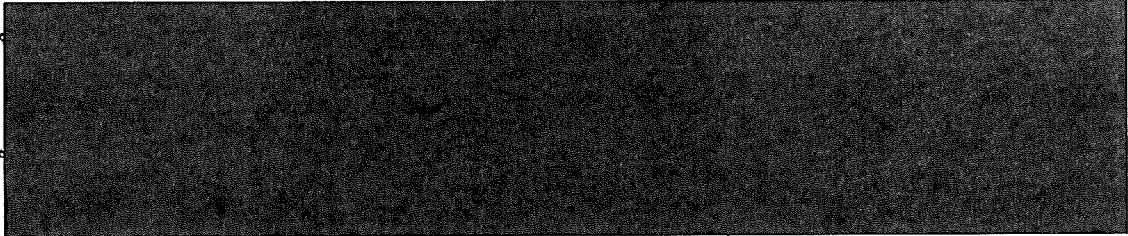
[REDACTED]

- SAFA has advised [REDACTED] that the discretionary decision of the previous Treasurer is not binding on the current government.



- Furthermore, in November 2018, representatives of the Housing Industry Association and Rosedale Homes approached SAFA asking for a meeting to be arranged with:
  - Consumer and Business Services, the agency responsible for the *Building Works Contractors Act 1995 (SA) and Regulations*, under which BII is a statutory requirement;
  - the Planning Division of the Department for Planning, Transport and Infrastructure, which is responsible for the Development Act; and
  - representatives from Local Government.
- The purpose of the meeting was to discuss solutions to the failure of Councils and Private Certifiers to adequately check that BII is in place prior to building approval or the commencement of building works.
- Consumer and Business Services attended the meeting, but the Planning Division declined the invitation. SAFA had a subsequent discussion with the Office of the Minister for Local Government, which also declined involvement in the matter.

- SAFA considers there is a real risk for both State and Local Governments in not taking action on this issue and that more needs to be done to mitigate the risk of the existing consumer protections failing and uninsured losses occurring.



- SAFA will also write to Consumer and Business Services, the Planning Division of DPTI and other industry Stakeholders, such as the HIA and the Master Builders Association, seeking collaboration on development of further strategies to mitigate uninsured losses.

*Kevin Cantley*

Kevin Cantley  
GENERAL MANAGER, SAFA

18 January 2019

Contact Officer:	Jenny White
Telephone:	72274
Email address:	Jenny.white@sa.gov.au

**Supported / Not Supported**

*David Reynolds*

**David Reynolds**  
**CHIEF EXECUTIVE**  
Department of Treasury and Finance  
Date...18/1/19



ATTACHMENTS

- Summary of the process for purchasing BII and obtaining development approval
- Correspondence relating to [REDACTED] ex gratia claim

### Summary of the process for purchasing BII and obtaining development approval

- In accordance with the *Building Work Contractors Act SA 1995 and Regulations*, the builder is required to take out a BII policy, in favour of the building owner, for all domestic construction works with a value of \$12,000 or greater and which require development approval.
- Also in accordance with the *Building Work Contractors Act SA 1995 and Regulations*, the BII policy must be in place before the works commence.
- The builder must purchase the BII policy through their insurance broker. Approximately six weeks after the application for the cover is made, the policy documentation and certificate of insurance will be issued directly to the homeowner. The six week period allows for amendments to contract value or cancellation of the insurance to be processed.
- In accordance with the *Development Act 1993 SA and Development Regulations 2008* it is the building owner's responsibility to lodge the BII certificate with the relevant authority, being either a Private Certifier or Council. In practice, it is usually the builder that undertakes this task on the building owner's behalf.
- Where a building contract has been entered into before an application for building rules consent is made, the authority assessing and approving the application (Private Certifier or Council) must check BII is in place before building rules consent is granted.
- Where a building contract has not been entered into at the time of the application, the application can be approved without the BII certificate.
- In these circumstances the BII certificate has to be provided to the relevant Council, with the notification of intent to commence building work. This notification must be lodged with Council at least one day before building work commences. Again, it is the building owner's responsibility to ensure Council receives a copy of the certificate of insurance. However, Council should always be following up on its receipt.
- BII doesn't need to be in place when a deposit is paid, only the earlier of when applying for building rules consent or before work commences.

