



**Government
of South Australia**

TRS20D2610

Hon Stephen Mullighan MP
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Treasurer

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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* (the Act), dated 5 August 2020.

Your application seeks access to:

"All minutes, briefings and correspondence titled 'Payments from Contingency Provisions' as described on the Objective document management system, between 9 April and 5 August 2020."

The prescribed legislative timeframe to determine this application has expired and is deemed as refused access to documents relevant to your application. I refer to my letter dated 18 August 2020 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 2 documents were identified as answering the terms of your application.

I grant you access in part to 2 documents; copies of which are enclosed.

Documents Released in Part

Documents 1 and 2 are released in part as both contain 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).

I advise both Documents 1 and 2 were prepared internally and contains advice and recommendations which were considered for the purpose of decision making relating to the functions of Government. On balance, it is not in the public interest to disclose the content of these documents as it is important for the Government to receive frank and comprehensive advice and opinions, including the expression of views which may be contentious. The prospect that unknown third parties may obtain access to those documents by way of an FOI application may inhibit the provision of full and open opinions and recommendations on such matters in the future.

These documents are provided to me on the basis that they are both forthright and candid. If disclosed, such advice and commentary would not be provided in a candid and forthright manner. Disclosure may also lead to confusion and unnecessary debate resulting from the disclosure of possibilities that are being considered.

Whilst there is a strong public interest in government accountability and transparency, there is the competing public interest to ensure that full and frank advice can occur in confidence. It is necessary that I'm appropriately informed and updated on these matters.

It is my submission that disclosure would, on balance, be contrary to public interest. This is because a Minister of the Crown, as one of the highest offices of a Government, should be able to communicate sensitive matters without subsequent promulgation of opinion and advice deliberated in pre-decisional communications. Disclosure would inhibit frankness and candour in future pre-decisional communications at the highest level of Government and lead to confusion and unnecessary debate resulting from disclosure of possibilities considered. This is the longstanding legal position and there is no reason to depart from that in this matter.

On the balance, it is my submission that the information redacted in Documents 1 and 2 should not be released for the reasons outlined above, pursuant to clause 9 of the 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).*
 - (e) *if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet; or*
 - (f) *if it is a briefing paper specifically prepared for the use of a Minister in relation to a matter submitted, or proposed to be submitted to Cabinet.*

Clause 9 — Internal Working Documents

- (1) *a document is an exempt document if it contains matter—*
- (a) *that relates to—*
 - (i) *any opinion, advice or recommendation that has been obtained, prepared or recorded; or*
 - (ii) *any consultation or deliberation that has taken place, in the course of, or for the purpose of, the decision-making functions of the Government, a Minister or an agency; and*
 - (b) *the disclosure of which would, on balance, be contrary to the public interest.*

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 Act.

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

21 November 2020

Att.

Schedule of Documents

TRS20D2610 - Payments from Contingency Provisions

Doc. No.	Date	Description of Document	# of pages	Determination Recommendation	Exemption Clause	Reason
1	19/06/2020	Briefing to Treasurer from Executive Director, Budget and Performance, DTF	2	Released in part	1(1)(e) - Contains information concerning deliberation or decision of Cabinet or Cabinet committee	
					9(1)(a)(i) - Contains matter relating to opinion, advice or recommendation prepared for decision-making of the Government, a Minister or an agency & contrary to public interest	
2		Attachment 1 to Document 1	1	Released in part	1(1)(e) - Contains information concerning deliberation or decision of Cabinet or Cabinet committee	

RELEASE IN PART

MINUTES forming ENCLOSURE to

19/6/2020
T20/014
TR52002024

File T&F19/1412
Doc No A1467249

To The Treasurer

PAYMENTS FROM CONTINGENCY PROVISIONS

Timing: URGENT – A decision is required before 26 June 2020 to enable payments to be made before 30 June.

Recommendations/Issues: It is recommended that you:

- Approve the payment of:

- [REDACTED] in 2019-20 from the line titled "Grants, subsidies and transfers: Contingency provisions — supplies and services"; and
- [REDACTED] in 2019-20 from the line titled "Grants, subsidies and transfers: Contingency provisions — investing contingencies"

clause 1(1)(e)

in the Treasury and Finance Administered Items Account to the agencies and for the purposes listed in Attachment 1.

- Note that there is no further budget impact associated with the above approvals.

Approved/Not-Approved

Rob Lucas

Hon Rob Lucas MLC
Treasurer

20 June 2020

Key Points:

- Since the 2019-20 Mid-Year Budget Review (MYBR) a number of decisions have been made by Cabinet together with decision recommended in the Interim Budget Cabinet Submission

[REDACTED]

clause 1(1)(e)

- Your approval is required for payments (current budget year only) to be made from central contingency provisions to individual agencies. Attachment 1 outlines the required payments.
- A summary of the payments is shown below.

2020-21 Interim Budget measures and impacting data adjustments

Planning, Transport and Infrastructure — Land Services Commercialisation (\$1.949 million)

- Additional expenditure authority for costs associated with delays in placing/separating unassigned staff as well as the higher than anticipated transition of seconded staff back to DPTI.

SAFECOM — South Australian Disaster Resilience Grants (\$1.316 million)

- Additional expenditure authority for the state's contribution to costs associated with the implementation of high priority state initiatives and to improve community preparedness and resilience to disasters.

Environment and Water — Coorong, Lower Lakes and Murray Mouth Recovery Project (\$990,000)

- Additional expenditure authority for the State's contribution towards the Coorong, Lower Lakes and Murray Mouth Recovery Project Stage 2 – Healthy Coorong Healthy Basin Program in accordance with the Commonwealth's Deed of Variation executed on 21 January 2020.

Planning, Transport and Infrastructure — Granite Island Causeway Refurbishment (\$600,000)

- clause 1(1)(e) - Additional expenditure authority in 2019-20 towards the cost of the Granite Island Causeway
clause 9(1) Refurbishment.

[Redacted]

Cabinet approvals

Education — South Australian School and Preschool Education Staff Enterprise Agreement 2020 (\$5.579 million)

- Additional expenditure authority for costs associated with a wage increase for South Australian School and Preschool Education Staff (not met through Gonski resources) operational from the first full pay period on or after 1 October 2018 as approved by the South Australian Employment Tribunal on 7 April 2020. The payment in 2019-20 includes a back pay component.

[Redacted]

- Cabinet approved

clause 1(1)(e)

[Redacted]

- Cabinet approved

[Redacted]

Tammie Pribanic
EXECUTIVE DIRECTOR
BUDGET AND PERFORMANCE

19 June 2020

Contact Officer: David Elliott
Telephone: 8429 0693

ATTACHMENT 1

Payments to agencies In 2019-20

Purpose	Agency	2019-20 \$'000
Payments from the line titled "Grants, subsidies and transfers: Contingency provisions - supplies & services"		
River Murray Futures	Environment and Water	894
River Murray Futures	Environment and Water	96
Land Services - SVO staff separation - additional cost risk	Planning, Transport and Infrastructure	131
Land Services - SVO staff separation - additional cost risk	Planning, Transport and Infrastructure	326
Land Services - LTO staff separation - additional cost risk	Planning, Transport and Infrastructure	322
Land Services - LTO staff separation - additional cost risk	Planning, Transport and Infrastructure	1 170
Natural Disaster Resilience - State Component	SAFECOM	1 316
SA School and Preschool Education Staff Enterprise Agreement 2020	Education	5 579
Total payment from Supplies & Services		
Payments from the line titled "Grants, subsidies and transfers: Contingency provisions - Investing contingencies"		
Granite Island Causeway Refurbishment	Planning, Transport and Infrastructure	600
Total payment from Investing Contingencies		
TOTAL PAYMENT		

clause 1(1)(e)