



**Government  
of South Australia**

TRS20D1809

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

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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 29 May 2020.

Your application seeks access to:

*"All minutes, briefings and correspondence titled 'Enterprise Bargaining – Rail Commissioner Tram Operations Enterprise Agreement 2020 - New' as described on the Objective document management system, between 14 November 2019 and 29 May 2020."*

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 12 June 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 1 document was identified as answering the terms of your application.

I grant you access in part to this document.

**Document Released in Part**

Document 1 is released in part as it contains information which, if released, would disclose details of individual businesses and the specific circumstances relating to industry assistance. I therefore determine this document exempt in part pursuant to clause 7(1)(c).

The document 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).

The document also contains summary of a discussion made in confidence between the Rail, Tram and Bus Union and Industrial Relations and Policy to reach a new agreement, and disclosure would be a breach of trust and compromise Industrial Relations and Policy ability to negotiate future enterprise agreements. I therefore determine this information exempt pursuant to clause 13(1)(b).

## **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 7 – Documents affecting business affairs concerning**

- (1) A document is an exempt document—
  - (b) if it contains matter—
    - (i) consisting of information (other than trade secrets) that has a commercial value to any agency or any other person; and
    - (ii) the disclosure of which—
      - (A) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and
      - (B) would, on balance, be contrary to the public interest; or
  - (c) if it contains matter—
    - (i) consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person; and
    - (ii) the disclosure of which—
      - (A) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and
      - (B) would, on balance, be contrary to the public interest.

### **Clause 13—Documents containing confidential material**

- (1) A document is an exempt document—
  - a) if it contains matter the disclosure of which would found an action for breach of confidence; or
  - b) if it contains matter obtained in confidence the disclosure of which—
    - (i) might reasonably be expected to prejudice the future supply of such information to the Government or to an agency; and
    - (ii) would, on balance, be contrary to the public interest.
- (2) A document that is a contract entered into by the Crown or an agency after the commencement of this subclause is not an exempt document by virtue of subclause (1) unless—
  - a) it contains matter the disclosure of which would, under a term of the contract, constitute a breach of the contract or found an action for breach of confidence; and
  - b) that term of the contract has been approved by—
    - (i) in the case of a contract entered into by the Crown—a Minister; or



- (ii) *in the case of a contract entered into by a State Government agency—the responsible Minister for the agency; or*
  - (iii) *in the case of a contract entered into by an agency that is not a State Government agency—the agency.*
- (3) *Subject to subclause (4), a Minister may, by instrument in writing, delegate the power to approve a term of a contract under subclause (2) to a specified person or to the holder of a specified office.*
- (4) *A delegation under subclause (3) may be made subject to such conditions and restrictions as the Minister thinks fit and specifies in the instrument of delegation.*
- (5) *A delegation by a Minister under subclause (3) is revocable at will, and does not derogate from the power of the Minister to act personally in any matter.*
- (6) *If a Minister or agency approves a term of a contract in accordance with subclause (2), the Minister or agency must, as soon as practicable, notify the Minister administering this Act, in writing, of that fact.*
- (7) *The Minister administering this Act must, in a report under section 54, state the number of contracts containing terms approved in accordance with subclause (2) during the period to which the report relates.*

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.

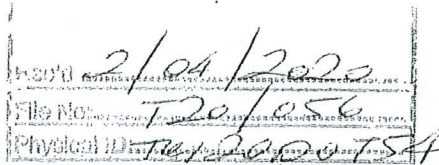
Yours sincerely

**Hon Rob Lucas MLC**  
Principal Officer

27 October 2020

RELEASE IN PART

MINUTE



Government  
of South Australia  
Department of Treasury  
and Finance

MINUTES forming ENCLOSURE

File: T&F19/3534

Doc No: TF20D03197

To: THE TREASURER

SUBJECT: ENTERPRISE BARGAINING: RAIL COMMISSIONER TRAM OPERATIONS  
ENTERPRISE AGREEMENT 2020 – NEW

Timing: Urgent

#### RECOMMENDATIONS

It is recommended that you:

1. NOTE that this Minute deals with a proposed offer for a new *Rail Commissioner Tram Operations Enterprise Agreement*, including the possibility of an electronic ballot if possible; and that the proposed letter has been developed in collaboration with the Rail Commissioner;
2. APPROVE the attached letter of offer to be provided to the RTBU for a new *Rail Commissioner Tram Operations Enterprise Agreement*.

Approved / Not approved

*Rob Lucas*  
Hon Rob Lucas MLC

2/4/2020

#### BACKGROUND

1. The Rail, Tram and Bus Union (RTBU) is the 'bargaining representative' for rail and tram employees who are members. The RTBU is the sole bargaining representative.  
[REDACTED] 1(1)(e)
2. The Rail Commissioner's objective is for Tram operations to transfer to a new service provider on 1 July 2020, and for applicable staff appointed by the Rail Commissioner to be engaged by the new service provider.  
[REDACTED] 7(1)(c)  
[REDACTED] Industrial Relations and Policy Branch, DTF (IRAP-DTF) has been advised by the Department of Planning, Transport and Infrastructure (DPTI) that the contracts to be entered into by the parties



provide that the requirements for and provisions for transferring employees will be finalised and agreed by 7 April 2020.

3.

[REDACTED]

1(1)(e)

## DISCUSSION

### *Negotiation Parameters*

[REDACTED]

1(1)(e)

7. This Minute seeks authorisation for the terms of offer in the attached proposed Letter of Offer to the RTBU.

### *Proposed Letter of Offer*

[REDACTED]

1(1)(e)

9. Tram Controllers (7 employees) who are currently covered by the *Rail Commissioner Rail Operations Enterprise Agreement 2016* have requested to be covered by a new Tram agreement. The transfer of these employees to the new Agreement will be done by way of

inclusion of an appendix containing existing term and conditions that fall within current Cabinet parameters.

10. Representatives of the Rail Commissioner have been consulted and support the proposed terms of offer.

11.



13(1)(b)

#### RECOMMENDATIONS

12. IRAP-DTF recommends that:

- I. The attached proposed letter of offer to the RTBU be approved.

A handwritten signature in black ink, appearing to read 'S. Johnson'.

Simon Johnson  
Director, Enterprise Bargaining  
INDUSTRIAL RELATIONS AND POLICY BRANCH

1/4/20.

Attached: proposed letter of offer to the RTBU

Supported / Not Supported

A handwritten signature in black ink, appearing to read 'D. Reynolds'.

David Reynolds

CHIEF EXECUTIVE

Department of Treasury and Finance

Date 2/4/20



*Enquiries to Mr Simon Johnson  
On 0466 365 133*

OFFICE OF THE CHIEF  
EXECUTIVE

50 Flinders Street  
Adelaide SA 5000

GPO Box 1533  
Adelaide SA 5001

ABN 92 366 288 135

Mr Darren Phillips  
Secretary  
Australian Rail Tram and Bus Industry Union  
South Australia and Northern Territory Branch  
GPO Box 195  
Woodville SA 5011

**CONFIDENTIAL AND WITHOUT PREJUDICE**

Dear Mr Phillips,

**RAIL COMMISSIONER ENTERPRISE BARGAINING – TRAM OPERATIONS  
TERMS OF OFFER FOR PROPOSED ENTERPRISE AGREEMENT**

Further to recent discussions, I write to provide the attached final Terms of Offer (the Offer) for a new Rail Commissioner Tram Operations Enterprise Agreement to replace the current Agreement which will nominally expire on 30 June 2020.

This final Offer takes into account the matters discussed during meetings since the commencement of negotiations between representatives of the Australian Rail, Tram and Bus Industry Union – South Australia and Northern Territory Branch (RTBU), the Rail Commissioner and the Industrial Relations and Policy Branch, Department of Treasury and Finance (DTF-IRAP).

The attached terms of Offer should be considered a complete and final offer and response to the RTBU claim in full. It is made as a total package and conditional on reaching a signed agreement that is approved by the Fair Work Commission (FWC).

The key elements of this final offer and package are:

- The term of the enterprise agreement shall be three years from 30 June 2020;
- Annual wage increases of 2% per annum to operate from the first full pay period (ffpp) on or after 1 January 2021, 1 January 2022 and 1 January 2023;



- Allowances to be increased by the same quantum and on the same operative dates (ffpp) as wage increases;
- Inclusion of a Special Leave With Pay appendix integrating *Commissioner's Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave – Section F – Special Leave With and Without Pay*;
- In addition, the following two matters will apply to a Rail Commissioner employee who: (a) is covered by the new Trams enterprise agreement; (b) accepts an offer of employment from Torrens Connect (or an associated entity) by 30 June 2020; (c) commences employment with Torrens Connect (or an associated entity); and (d) resigns from the Rail Commissioner and the South Australian Public Sector effective from not later than 30 June 2020 or such other date as is agreed by the Rail Commissioner:
  1. A one off \$15,000 (gross) incentive payment to or for the benefit of such employee, payable within 2–4 weeks of their commencement with Torrens Connect; and
  2. The inclusion by the Rail Commissioner in its contract with Torrens Connect for Torrens Connect to offer a minimum 'three-year employment period' for such employees commencing on and from the date of commencement of the new Trams enterprise agreement. In respect of each such employee, that period will be subject to the ordinary requirements applicable to an employee, namely satisfactory performance and the absence of serious misconduct, provided that during that period the employee cannot be made redundant. Note: The Rail Commissioner has secured the agreement of Torrens Connect to include that minimum 'three-year employment period' in an offer of employment.

For further discussion or clarification you can contact Mr Simon Johnson, Director Enterprise Bargaining, Industrial Relations and Policy Branch, Department of Treasury and Finance, on 0466 365 133 or [simon.johnson3@sa.gov.au](mailto:simon.johnson3@sa.gov.au).

I invite you to confirm in writing your support of an enterprise agreement giving effect to this offer being put to a ballot as soon as practicable.

Yours sincerely,

Tony Braxton-Smith  
**Rail Commissioner**

April 2020

Attachment: Terms of Offer: proposed *Rail Commissioner Tram Operations Enterprise Agreement 2020*.

## **Terms of Offer**

### **Proposed Rail Commissioner Tram Operations Enterprise Agreement 2020**

*The items in this Terms of Offer will apply to all work groups covered by the Rail Commissioner Tram Operations Enterprise Agreement unless otherwise specified, or where the proposal relates to an existing provision applicable to a specific work group. This Terms of Offer is to be read as subject to the Notes and Interpretation indicated at the end of this document.*

### **Period of Agreement**

It is proposed for the agreement to operate on and from 30 June 2020 with a nominal expiry three years from the date of operation.

It is proposed to include a renegotiation provision that discussions for a new enterprise agreement may commence no earlier than six months prior to the nominal expiry date (i.e. discussions for a new enterprise agreement may commence on or after 30 December 2022).

### **Wage Increases**

#### General Wages

General wage increases are proposed to operate on and from the first full pay period (ffpp) on or after the following dates:

- 2% on 1 January 2021;
- 2% on 1 January 2022; and
- 2% on 1 January 2023.

### **Allowances**

#### General Allowances

It is proposed to increase all general allowances on the same operative dates (ffpp), and by the same quantum, as the proposed wage increases.

#### Meal Allowance

It is proposed a meal allowance be paid where an employee works two or more hours of overtime beyond a rostered shift without notice for Tram Operators and Senior Tram Operators.

### **Incentive Payment**

#### Incentive Payment for transitioning to Torrens Connect

The following two matters will apply to a Rail Commissioner employee who: (a) is covered by the new Trams enterprise agreement; (b) accepts an offer of employment from Torrens Connect (or an associated entity) by 30 June 2020; (c) commences employment with Torrens Connect (or an associated entity); and (d) resigns from the Rail Commissioner and the South Australian Public Sector effective from not later than 30 June 2020 or such other date as is agreed by the Rail Commissioner:



- A one off \$15,000 (gross) incentive payment to or for the benefit of such employee, payable within 2–4 weeks of their commencement with Torrens Connect; and
- The inclusion by the Rail Commissioner in its contract with Torrens Connect for Torrens Connect to offer a minimum 'three-year employment period' for such employees commencing on and from the date of commencement of the new Trams enterprise agreement. In respect of each such employee, that period will be subject to the ordinary requirements applicable to an employee, namely satisfactory performance and the absence of serious misconduct, provided that during that period the employee cannot be made redundant. Note: The Rail Commissioner has secured the agreement of Torrens Connect to include that minimum 'three-year employment period' in an offer of employment.

### **Flexibility Improvements and Efficiencies**

#### Medical Assessments and Blood Tests

It is proposed that employees required to take medical assessments and blood tests may elect to do so during non-rostered time and be paid a stand-alone payment of up to 2 hours at ordinary rates.

### **Modification of Existing Conditions**

#### Paid Crib Break

It is proposed a paid crib to be provided if an employee works, without notice, two or more hours of overtime beyond a rostered shift with the crib being taken either in the second portion of the rostered shift or no later than the end of the first hour of overtime for Tram Operators and Senior Tram Operators.

#### Protective Footwear Reimbursement

It is proposed that protective footwear will not be less than \$105 or the average value of supplied footwear, whichever is greater. The average value is to be reviewed on a 6 monthly basis.

#### Penalties for Working through 2:00am and 3:59am

It is proposed a 20% penalty (for a non-continuous shift worker) or 25% penalty (for a continuous shift worker) will apply to workers who work through any of the period between 2:00am and 3:59am. The wording in the current agreement provide that these entitlements apply to employees signing on or off between 2:00am and 3:59am for Tram Operators and Senior Tram Operators.

### **Appendices**

#### Special Leave With and Without Pay Appendix

It is proposed to introduce an appendix to enable employees to continue accessing Special Leave With and Without Pay provisions of *Commissioner's Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave – Section F – Special Leave With and Without Pay* after their employment by the Rail Commissioner has ended. This will include domestic violence, special leave provisions and long service retention leave.



#### Appendix for Tram Controllers

It is proposed that an appendix be introduced into the agreement for the rollover of clauses from the *Rail Operations Enterprise Agreement 2016* which specifically apply to Tram Controllers.

#### **Other Matters**

##### Dispute Resolution Wording

It is proposed that wording will be introduced into the agreement detailing a dispute resolution process between employees and their employer.

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#### *Notes and Interpretation applicable to this Terms of Offer:*

*These Terms of Offer are provided on a without prejudice basis as a package in full and final settlement of all claims made. The Rail Commissioner reserves the right to vary, withdraw or correct any unintended aspect of this Terms of Offer. The Terms of Offer is conditional on an agreement being reached and approved by Fair Work Commission. Except where indicated, the proposals in this Terms of Offer outline the nature of each aspect of the offer on the basis that, where applicable, issues of detail or clarification will be provided in the proposed enterprise agreement or be the subject of further clarification where necessary.*

*A reference in this Terms of Offer to a payment to be made will be taken to being subject to the payment being effected within a reasonably practicable time after an enterprise agreement is approved.*