



**Government
of South Australia**

TRS20D2632

Hon Stephen Mullighan MP
Member for Lee
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SEMAPHORE SA 5019

Treasurer
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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* (the Act), dated 6 August 2020.

Your application seeks access to:

“All minutes, briefings and correspondence titled ‘SA Water – Section 6 Direction and Supplementary Pricing Order’ 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 now 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 4 documents were identified as answering the terms of your application.

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

Documents Released in Part

Documents 1 and 3

Documents Refused in Full

Documents 2 and 4

Documents Released in Part

Documents 1 and 3 are both released in part as disclosure of these documents would divulge information concerning a deliberation of Cabinet. I therefore determine this information exempt pursuant to clause 1(1)(e) to the Act.

Documents Refused in Full

Document 2 is the Pricing Order for the regulatory period from 1 July 2020 to 30 June 2024. I advise the final signed Pricing Order is publicly available on the Department of Treasury and Finance website.

Document 4 is a Direction to the South Australian Water Corporation. This document is refused in full as the total funding for Tea Tree Gully Council (TTG) is commercial in confidence. Secondly, this was not the final version as the funding for TTG was subsequently amended, which if disclosed, would be misleading to the public. I therefore determine this information exempt pursuant to clause 7(1)(b).

I advise the final Direction was published in the Government Gazette on the 11 June 2020 and is publicly available.

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; or*

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*

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 Ms Vicky Cathro, Ministerial Liaison Officer, by telephone on 8226 9769 or by email to vicky.cathro@sa.gov.au.

Yours sincerely



Hon Rob Lucas MLC
Principal Officer

16 December 2020

Att.

Schedule of Documents

TRS20D2632 - SA Water - Section 6 Direction and Supplementary Pricing Order

Doc. No.	Date	Description of Document	# of pages	Determination Recommendation	Exemption Clause	Reason
1	4/05/2020	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	
2		Attachment 1 to Document 1	2	Refused in full		publicly available
3	5/05/2020	Minute to Minister for Environment and Water from Treasurer	3	Released in part	1(1)(e) - Contains information concerning deliberation or decision of Cabinet or Cabinet committee	
4		Attachment to Document 3	8	Refused in full	7(1)(b)(i)(ii)(A)(B) - Contains information of commercial value which disclosure would diminish or destroy & contrary to public interest	

RELEASE IN PART

MINUTE

5/05/2020
72/017
Treasurer



Government
of South Australia
Department of Treasury
and Finance

MINUTES forming ENCLOSURE

File T&F18/0800

Doc No A963420

To The Treasurer

SA WATER – SECTION 6 DIRECTION AND SUPPLEMENTARY PRICING ORDER

Timing: URGENT: Treasurer and Minister approval by 7 May and execution on 28 May 2020

Recommendations/Issues: It is recommended that you:

- approve the attached Section 6 Direction for the upcoming SA Water regulatory determination, which needs to be finalised by 7 May 2020 so that it can be provided to ESCOSA in final draft form;
- forward the draft Direction to the Minister for Environment and Water for his consideration;
- approve the attached Pricing Order, which needs to be finalised by 7 May 2020 so that it can be provided to ESCOSA in final draft form. The Pricing Order will give effect to the Government's proposed reduction to the water regulated asset base and to ensure that ESCOSA does not include an annual reset mechanism in its Final Determination;
- [REDACTED]
- note that it is proposed that you sign the Pricing Order, and the Minister sign the Direction, on 28 May 2020 to enable the Instruments to be released on or after ESCOSA's Final Determination; and
- note DTF will provide ESCOSA with a final (but unexecuted) copy of your Pricing Order and the Minister's Direction on 8 May 2020 to enable ESCOSA to finalise inputs to its Final Determination.

Approved/Not-Approved

Hon Rob Lucas MLC
Treasurer

5/5/2020

Key Points:



Cabinet

Next steps

- The Minister for Environment and Water is required to Issue the Section 6 Direction. Once issued, the Minister is required to publish the Direction in the Government Gazette within 14 days of it being issued.
- You are required to Issue the Pricing Order. Once issued you are required to publish the Pricing Order in the Government Gazette and DTF website within a reasonable time after signing.
- To enable these Instruments to be released at the same time as ESCOSA's Final Determination it is proposed that you and the Minister sign the Instruments on 28 May 2020.
- ESCOSA is scheduled to finalise financial aspects of its Final Determination on 8 May 2020. The Pricing Order and Direction have financial implications that ESCOSA must include in its Final Determination.
- To enable ESCOSA to meet its timeframes, DTF will provide ESCOSA with embargoed copies of the final (but unexecuted) instruments on 8 May 2020.



Tammie Pribanic
EXECUTIVE DIRECTOR
BUDGET AND PERFORMANCE

Contact Officer:	Adam Pamula
Telephone:	0411 668 666
Email address:	adam.pamula@sa.gov.au

4 May 2020



Government of South Australia

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MINUTES forming ENCLOSURE to: Physical Id: TRS20D1287

TO: HON DAVID SPEIRS MP
MINISTER FOR ENVIRONMENT AND WATER

RE: SECTION 6 DIRECTION FOR THE SA WATER REGULATORY DETERMINATION PERIOD 1 JULY 2020 TO 30 JUNE 2024 (RD20)

Please find attached for your consideration and signature the proposed Direction to SA Water, under section 6 of the *Public Corporations Act 1993* (the Act).

Note that to meet the Essential Services Commission of South Australia's (ESCOSA) timeframes the Department of Treasury and Finance (DTF) will provide ESCOSA with an unexecuted, but final copy of your Direction on 8 May 2020. Accordingly, substantive elements of the Direction cannot change after that date.

To ensure that the Direction can be released around the same time that ESCOSA releases its Final Determination I recommend that you issue the Direction on 28 May 2020. Once issued, you are required to publish the Direction in the Government Gazette within 14 days of it being issued.


Background

On 28 October 2018, I issued a Pricing Order that outlined the principles and other matters that ESCOSA must have regard to when preparing its Determination for SA Water's drinking water and sewerage services for the regulatory period 1 July 2020 to 30 June 2024:

Clauses 5.7 and 5.8 of the Pricing Order provide that the determination must allow for SA Water to recover the cost of assets, externalities (including water planning and management charges) and other non-commercial activities that SA Water is required to provide (less any relevant contributions to such costs) which are attributable to a direction issued under section 6 of the Act.

The proposed Direction has been drafted by DTF with assistance from the Crown Solicitor's Office and in consultation with SA Water, ESCOSA and the Department for Environment and Water. It is usual practice for DTF to take the lead role in preparing the proposed Direction due to its relevance to the economic regulation of SA Water.

Including these items in your Direction will enable ESCOSA to factor SA Water costs to undertake these activities into its revenue determination for SA Water.



Hon Rob Lucas MLC
Treasurer

5 May 2020

Att