



**Government
of South Australia**

TRS19D1081

Hon Stephen Mullighan MP
Member for Lee
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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 8 May 2019.

Your application seeks access to:

“All minutes, briefings and correspondence titled ‘Class Ruling relating to South Australian Taxi Industry Assistance Package’ as described on the Objective document management system, between 12 July 2018 and 8 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 4 documents were identified as answering the terms of your application, by which access is granted in accordance with the table below.

Document 1	Briefing by DTF to my Office titled “ <i>Class ruling relating to the South Australian Taxi Industry Assistance Package</i> ”	Released in Part
Document 2	Letter from former Treasurer to the Taxi Council SA CEO	Refused in Full
Document 3	ATO Draft Class Ruling	Refused in Full
Document 4	Fact sheet for Western Australian Taxi transition Assistance Package Payments – tax implications	Refused in Full

Determination

Document 1

Document 1 is a briefing prepared by DTF for my consideration in relation to a Class Ruling for the South Australian Taxi Industry Assistance Package.

This briefing contains advice by DTF, where they sought advice from Ernst and Young (EY) relating to the tax treatment of payments and whether they could be considered as *ex gratia* or capital related payments. This briefing provides advice on the opinion of Commonwealth Commissioner of Taxation relating to the tax treatment of such payments.

As this briefing provides commentary relating to the function of an intergovernmental agency, namely, the Commonwealth Commissioner of Taxation, it could be prejudicial to the function of an agency in my portfolio to release advice on the views of an intergovernmental agency, as it is reasonable expectation that it could diminish relations between the two agencies in the future. For this reason I have partially released the document pursuant to clause 5(1)(a)(i)(b).

This document provides me with recommendations which I have determined to provide to you. For the same reasons in determining exemption under clause 5, it is not in the public interest to disclose the information redacted in this briefing as it would inhibit frankness and candour in future communications. 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.

This briefing was provided to me on the basis that it would be both forthright and candid. If this briefing was to be disclosed, such advice and commentary could 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.

I have therefore also determined that this document ought to be partially released pursuant to clause 9.

Document 2

Document 2 is an attachment to document 1. It is a letter dated 22 December 2017, from the former Treasurer to Mr Fourtounis, the Chief Executive Officer of the Taxi Council of South Australia. I have determined not to release this correspondence as you were listed as having also being sent a carbon copy of this letter at the time of its issue.

Document 3

Document 3, which is also an attachment to document 1, is a draft Class Ruling of the ATO relating to assessment of payments under the Government of South Australia's taxi industry package for income tax purposes.

Providing a draft Class Ruling belonging to an intergovernmental agency is not in the public interest in this instance as it could be reasonably expected that it may cause confusion on particular tax treatments for income tax. Releasing this document could be detrimental to the working relationship of such intergovernmental agencies in the future as it may lead to reluctance for agencies of other governments to provide information of such nature in consultation about its decision making. For this reason, I determine this document exempt pursuant to clause 5(1)(a)(i)(ii)(b).

Document 4

Document 4, which is also an attachment to document 1, is an ATO fact sheet that provides information about tax obligations relating to the Western Australian Tax Transition Assistance Package. I have determined not to release this document due to it already being publicly available.

Exemptions

5—Documents affecting inter-governmental or local governmental relations

- (1) A document is an exempt document if it contains matter—
 - (a) the disclosure of which—
 - (i) could reasonably be expected to cause damage to intergovernmental relations; or
 - (ii) would divulge information from a confidential intergovernmental communication; and
 - (b) the disclosure of which would, on balance, be contrary to the public interest.

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.
- (2) A document is not an exempt document by virtue of this clause if it merely consists of—
 - (a) matter that appears in an agency's policy document; or
 - (b) factual or statistical material.

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

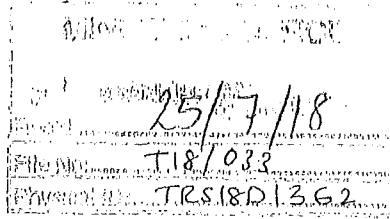
A handwritten signature in blue ink, appearing to read "Rob Lucas".

Hon Rob Lucas MLC
Principal Officer

26 October 2020

RELEASE IN PART

MINUTE



MINUTES forming ENCLOSURE

File T&F17/0224

Doc No A895213

To: The Treasurer

CLASS RULING RELATING TO THE SOUTH AUSTRALIAN TAXI INDUSTRY ASSISTANCE PACKAGE

Timing: ROUTINE

Recommendations/Issues: It is recommended that you:

- approve that the Australian Taxation Office (ATO) issues a fact sheet (rather than a class ruling) summarising the income tax consequences of the taxi industry assistance payments.
- approve Treasury and Finance formally advising the Taxi Council SA that the ATO has rejected EY's arguments for the most favourable taxation treatment.

Approved/Not-Approved

Hon Rob Lucas MLC
Treasurer

28/7/18

Key Points:

- Following the review and reforms to the Taxi and Chauffeur Industry in South Australia, the South Australian Government has delivered assistance packages to taxi licence holders to help offset any impacts of the new regulatory framework.
- The assistance package was paid in the 2017-18 financial year and consisted of a lump sum payment of \$30,000 (per licence) to taxi licence holders and \$50 weekly payments to eligible lessees for the remainder of their lease for a maximum of 11 months.
- In August 2017, Taxi Council SA requested the then Treasurer to seek a class ruling from the Australian Taxation Office (ATO). [REDACTED]

clause 9(1)





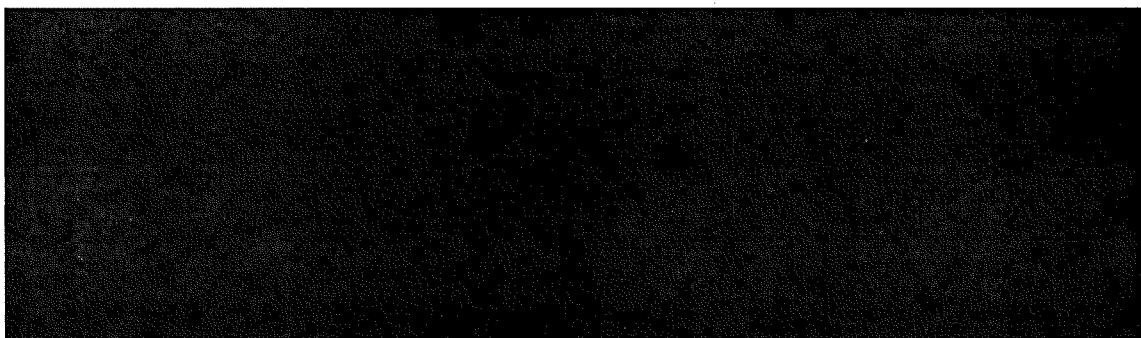
- A copy of a letter from the former Treasurer to the Taxi Council SA dated 22 December 2017 is attached for your information. (AH 1)
- Treasury and Finance obtained advice from Ernst and Young (EY) in relation to the tax treatment of the payments and whether they could be considered as ex-gratia or capital related payments. EY concluded the following:
 - the payments in question are highly unlikely to be treated as ex-gratia payments.

clause 9(1)



- the argument that the lump sum payment was from the licence holder's perspective a capital receipt is not strong and it is unlikely that the payments would be treated as such.

clause 9(1)



clause 9(1)

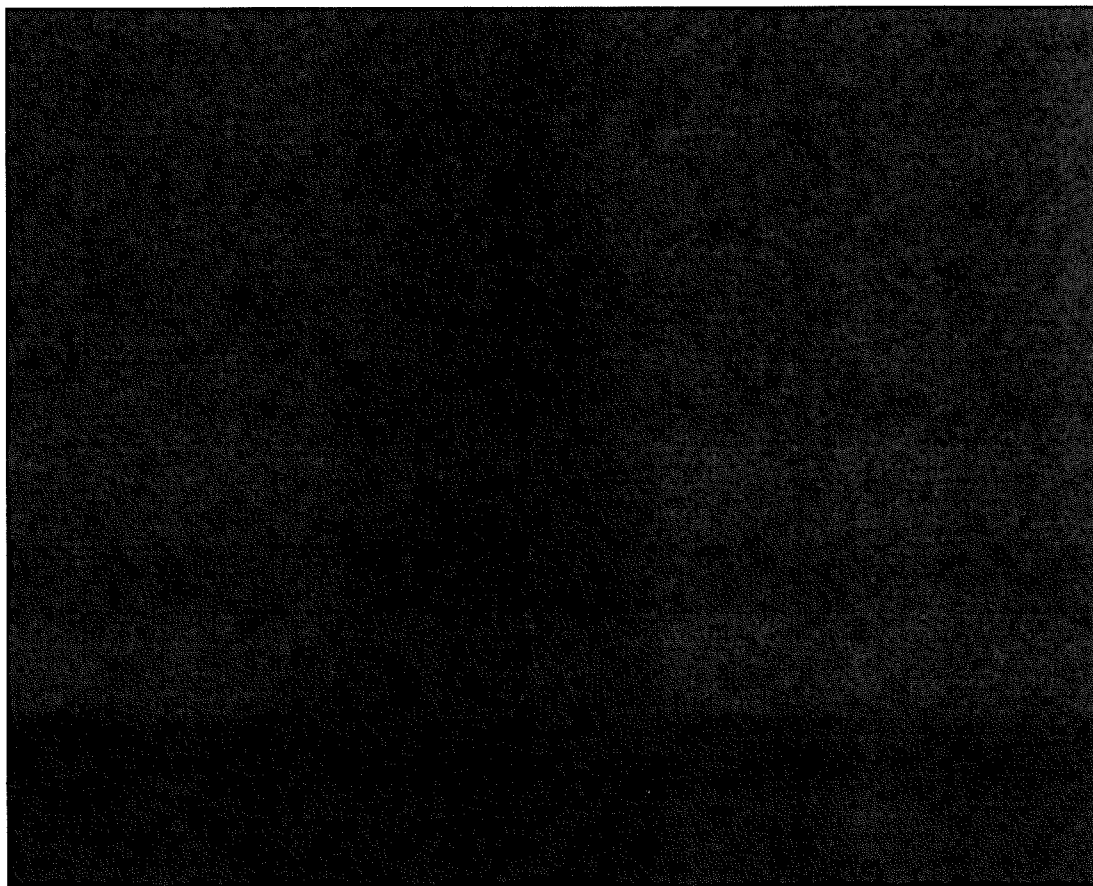


- During the last few months, the ATO has also issued several fact sheets outlining the tax treatment of the taxi industry payments made in other states. The fact sheets are short and briefly summarise the tax treatment of the payments (Appendix 2 – Western (AH 2) (AH 3))

¹ Taxation Ruling TR 2006/3 *Income tax: government payments to industry to assist entities (including individuals) to continue, commence or cease business*

Australia example). In the majority of cases, the same ATO conclusion applies to other states.

clause 9(1)



Kevin Cantley

Kevin Cantley
EXECUTIVE DIRECTOR, ACCOUNTING SERVICES

24 July 2018

Att 1 : Letter from the former Treasurer to the Taxi Council SA dated 22 December 2017

Att 2: ATO Draft class ruling

Att 3: ATO fact sheet discussing WA taxi Industry assistance payments

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