



**Government  
of South Australia**

TRS20D2639

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 6 August 2020.

Your application seeks access to:

*"All minutes, briefings and correspondence titled 'Adelaide Rail Transformation Program – Incentive Payment and Employment Guarantee Period – Tram Contract' 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 1 document was identified as answering the terms of your application.

I grant you access in part to one document; a copy of which is enclosed.

**Documents Released in Part**

The document sought is a briefing which was prepared by the Industrial Relations and Policy Branch of the Department of Treasury and Finance relating to the Adelaide Rail Transformation Program. Information has been redacted where it contains information relating to enterprise bargaining negotiations with relevant unions.

It is released in part as the briefing was 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 redacted content of this 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 such documents by way of an FOI application may inhibit the provision of full and open opinions and recommendations on such matters in the future.

This briefing was provided to me on the basis that it is both, forthright and candid. If disclosed, such advice may not be provided in a candid and forthright manner.

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 balance, it is my submission that the information redacted in Document 1 should not be released for the reasons outlined above, pursuant to clause 9 of the Act.

## **Exemptions**

### **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*

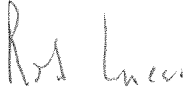
(b) *the disclosure of which would, on balance, be contrary to the public interest.*

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.

If you require any further information, please contact Vicky Cathro on 8226 9769.

Yours sincerely



**Hon Rob Lucas MLC**  
*Principal Officer*

25 February 2021

Att.

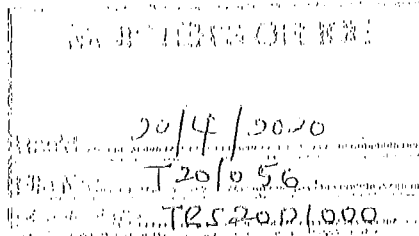
## Schedule of Documents

TRS20D2639 - Adelaide Rail Transformation Program - Incentive Payment and Employment Guarantee Period - Tram Contract

Doc. No.	Date	Description of Document	# of pages	Determination Recommendation	Exemption Clause	Reason
1	17/04/2020	Letter to Treasurer from Director, Enterprise Bargaining, Industrial Relations and Policy Branch	3	Released in part	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	

**RELEASE IN PART**

MINUTE



Government  
of South Australia  
Department of Treasury  
and Finance

MINUTES forming ENCLOSURE

File: T&F20/3173  
Doc No: TF20D03232

To: THE TREASURER

**SUBJECT: ADELAIDE RAIL TRANSFORMATION PROGRAM – INCENTIVE PAYMENT  
AND EMPLOYMENT GUARANTEE PERIOD – TRAM CONTRACT**

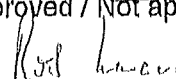
Timing: Urgent

### RECOMMENDATIONS

It is recommended that you:

1. NOTE that this Minute deals with a proposed offer for Tram Maintenance Employees transitioning to the new operator for Tram Services to receive a one off \$15,000 (gross) Incentive payment and a three year employment guarantee period;
2. APPROVE the proposed offer for Tram Maintenance Employees transitioning to the new tram operator.

Approved / Not approved

  
Hon Rob Lucas MLC

21 / 04 / 2020

### BACKGROUND

1. On 6 April 2020, a letter of offer was provided to the Rail, Tram and Bus Union (RTBU) for the proposed *Rail Commissioner Tram Operations Enterprise Agreement 2020*. The letter of offer included:
  - 1.1. A \$15,000 (gross) one off payment to an employee who accepts an offer of employment from the new operator and resigns from employment with the Rail Commissioner and the SA public sector; and
  - 1.2. An offer of employment by the new operator to a Tram employee will include an offer of a minimum 'three-year employment period' with the new operator.
2. The aforementioned incentive payment and three year employment period is being sought for 15 Tram Maintenance employees of the Rail Commissioner who are covered by the *Rail Commissioner Maintenance Employees Enterprise Agreement 2019*, and whom the Rail Commissioner would wish to transition to the new tram operator.

DISCUSSION

3. In September 2019, a combined union proposal was put forward to the Rail Commissioner from the RTBU, the Communications, Electrical and Plumbing Union (CEPU), Australia's Workers Union (AWU) and the Public Service Association (PSA). The proposal sought a number of protections for employees in-scope to transition to new operators. An incentive payment and employment guarantee period has been the most frequently requested.
4. Feedback received from employees and unions throughout consultation for the Adelaide Rail Transformation Program is that employees may elect not to transfer to a new operator if an incentive payment and employment guarantee is not offered.
5. On 10 March 2020, Torrens Connect, a joint venture between Torrens Transit, UGL Rail Services and John Holland were announced as the new tram operator to commence in early July 2020.
6. On 6 April 2020, the Rail Commissioner met with the RTBU, CEPU, AWU and PSA to discuss continuing consultation arrangements for employees impacted by the tram contract award and the key issues relating to incentive payments and the employment period were raised again.
7. The CEPU, AWU and PSA have raised concerns to the Rail Commissioner that their members are likely to not transfer if they do not receive an incentive payment and employment guarantee which reflects the offer given to RTBU members in enterprise bargaining.
8. This Minute seeks authorisation to provide to Tram Maintenance Employees in-scope for tram transition the same two key elements that were approved for Tram Operators and Tram Controllers:
  - 8.1. A \$15,000 (gross) one off payment to employees who an offer of employment from the new operator and resigns from employment with the Rail Commissioner and the SA public sector; and
  - 8.2. An offer of employment by the new operator to employees will include an offer of a minimum 'three-year employment period' with the new tram operator.

[Redacted]

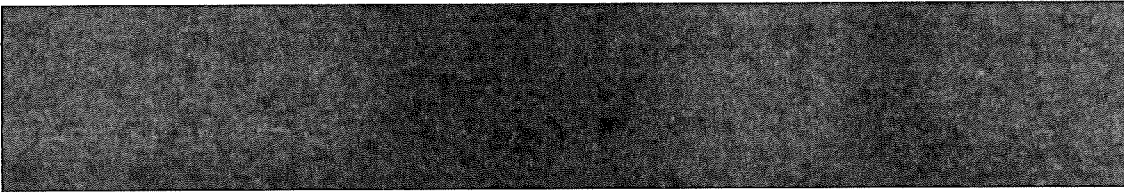
9.

[Redacted]

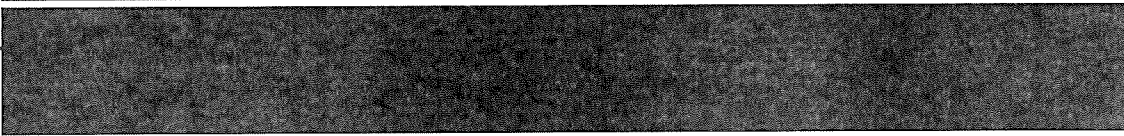
clause 9(1)

clause 9(1)

9.3



9.4



**Rail Commissioner**

10. IRAP-DTF and representatives of the Rail Commissioner have worked collaboratively in the preparation of this briefing. IRAP-DTF is advised by the Rail Commissioner that the Minister for Transport, Infrastructure and Local Government supports the recommendations.

**RECOMMENDATIONS**


11. It is recommended IRAP-DTF recommends that the proposed package is approved for Rail Commissioner Maintenance employees transitioning to the new tram operator (excluding Tram Operations employees and salaried employees);

- A \$15,000 (gross) one off payment to employees who an offer of employment from the new operator and resigns from employment with the Rail Commissioner and the SA public sector; and
- An offer of employment by the new operator to employees will include an offer of a minimum 'three-year employment period' with the new tram operator.

**Simon Johnson**  
Director, Enterprise Bargaining  
INDUSTRIAL RELATIONS AND POLICY BRANCH

17/4/20

Supported / Not Supported



David Reynolds  
**CHIEF EXECUTIVE**  
Department of Treasury and Finance  
Date...18.4.20...