



TRS19D1346

Hon Stephen Mullighan MP
Member for Lee
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Treasurer

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A handwritten signature in blue ink, appearing to read 'Stephen'.

Dear Mr Mullighan

APPLICATION UNDER THE *FREEDOM OF INFORMATION ACT 1991*

I refer to your application made under the *Freedom of Information Act 1991* (FOI Act), dated 21 May 2019.

Your application seeks access to:

“All minutes, briefings and correspondence titled ‘Rail Commissioner and SA Water – Commonwealth Industrial Regulation’ as described on the Objective document management system, between 12 July 2018 and 21 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 1 document was identified as answering the terms of your application.

I grant you access in part to 1 document; a copy of which is enclosed.

Document 1 is a briefing which was prepared by the Industrial Relations and Policy Branch (IRAP) DTF, for my information.

IRAP provides advocacy, representation, negotiation and advisory services at a whole of Government level and to public sector agencies on matters relating to industrial relations, enterprise bargaining provisions and negotiations, industrial disputes and litigation, and related matters. This includes employment arrangements within agencies and the public sector in general.

The briefing contains information about the regulation of public sector employment in South Australia under Commonwealth industrial legislation. This information was sought for the purpose of considering options available to the Government in relation to industrial regulation.

These briefings are provided to me on the basis that they are both forthright and candid. If these briefings were to be disclosed, such advice and commentary would not be provided in a candid and forthright manner. I therefore determine this information exempt pursuant to clause 9(1)(a)(i) and (ii) to the FOI 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 *Freedom of Information Act 1991*.

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

7 January 2020

MINUTE

5/10/2018
T18/076
TR518D1951



Government
of South Australia
Department of Treasury
and Finance

MINUTES forming ENCLOSURE

File: DPC18/1326PT001

Doc No: DPC18D01922

TO: THE TREASURER

CC: CHIEF EXECUTIVE, DEPARTMENT OF TREASURY AND FINANCE

SUBJECT: RAIL COMMISSIONER AND SA WATER – COMMONWEALTH INDUSTRIAL
REGULATION

TIMING: ROUTINE

Recommendation:

That you note the information in this Minute concerning industrial regulation of employment at the Rail Commissioner and SA Water.

Noted

Hon Rob Lucas MLC
Treasurer

13/10/18

1. The following information is provided in response to a question by the Treasurer about the history of Commonwealth industrial regulation at the Rail Commissioner and SA Water.

Rail Commissioner

2. Commonwealth regulation of employment in railways within South Australia appears to have originated at the time when the Commonwealth acquired certain railway operations from the State of South Australia. That was in 1975, pursuant to the *Railways (Transfer Agreement) Act 1975 (SA)*.

3.

4. In 2009, South Australia referred certain workplace relations powers to the Commonwealth for the purposes of section 51(27) of the Constitution. The effect of that referral was



to bring trading and financial corporations, and other private sector entities and employers that did not fall within the scope of that Constitutional head of power (eg, non-corporate businesses and employers), within the scope of Commonwealth industrial regulation, as "national system employers".

5. In connection with the referral of powers, there was an amendment to the definition of "national system employer" under the *Fair Work Act 2009* (Cth) ("the Commonwealth Act"). Section 14(2) of the Commonwealth Act now provides, in effect, that a particular employer cannot be a national system employer if it is established for a public purpose under a law of a State or Territory and the employer is both specifically declared under a law of the State not to be a national system employer and there is an applicable endorsement by the Commonwealth Minister. However, section 14(6) provides an exception to that rule in relation to an employer that provides services for the supply, distribution or release of water or that operates a rail service (among other things).
6. Sections 14(2) and 14(6) of the Commonwealth Act keep the Rail Commissioner within the scope of Commonwealth industrial regulation (i.e. excluded from the State industrial jurisdiction).

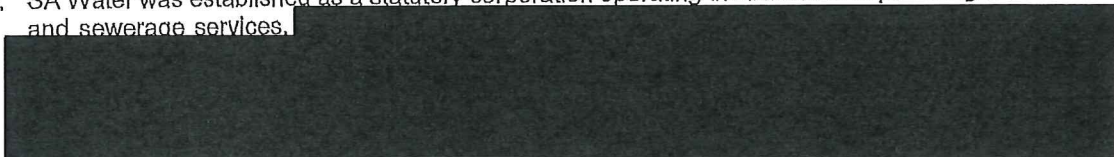
SA Water

7. There has been a history of enterprise bargaining at SA Water under Commonwealth legislation since about the mid-1990s.

8.



9. SA Water was established as a statutory corporation operating the business of providing water and sewerage services.



10. The practice of SA Water being subject to Commonwealth regulation has continued.

11. Sections 14(2) and 14(6) of the Commonwealth Act operate to keep SA Water within the scope of Commonwealth regulation (i.e. excluded from the State industrial jurisdiction).

Handwritten signature of Tom Kidman with the date 5/10/12 written below it.

Tom Kidman
DIRECTOR, INDUSTRIAL RELATIONS
INDUSTRIAL RELATIONS AND POLICY
BRANCH

Handwritten signature of Elbert Brooks.

Elbert Brooks
EXECUTIVE DIRECTOR
INDUSTRIAL RELATIONS AND POLICY
BRANCH

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