

Disclaimer: This is guidance material only and does not replace reading the legislation. For further information refer to the legislation. Please check the website for updates and other information.

Empowering Cluster Secretaries and Cluster management

At a glance

- **Clusters will not be legislated** as a part of the new Government Sector Finance (GSF) legislation.
- The proposed new legislation **empowers the management of Clusters through delegations, information access and conditionality** on Cluster distribution of ConFund resources.
- Although the GSF legislation could not address all the challenges with the current Cluster model, **other mechanisms exist or will be introduced to support Clusters.**

The GSF legislation empowers the Cluster Minister and, via delegation, the Cluster Secretary

The new financial management legislation will allow a Cluster Minister to better match the powers of his or her Cluster Secretary with the Minister's expectations of the Secretary's role in the Cluster. Under the GSF legislation a Cluster Minister will be able to:

- access relevant agency financial and non-financial information; and
- set terms and conditions on spending under an appropriation, for those agencies with authority to spend under an appropriation to that Cluster Minister.

However, the strongest enabler the GSF legislation introduces for Clusters is the Cluster Minister's ability to delegate various powers relating to financial management of Cluster agencies to a Secretary of a Department. Effectively this allows the Cluster Minister to delegate elements of managing a Cluster to the Cluster Secretary.

There are some important limiters to these powers. Access to information can only be requested for the purposes of decisions about resource allocation, and only covers relevant information as defined by the legislation. It is not an unfettered information request power and cannot be used generally to seek operational information. The details of the above powers are described further in the APPENDIX below.

Next steps - how to use the GSF legislation to empower the Cluster Secretary

Cluster Ministers and Secretaries need to discuss the Cluster Minister's expectations of the Cluster Secretary's role in managing the Cluster and the powers they need to meet those expectations.

The extent to which the GSF legislation supports the operation of a Cluster will be at the discretion of the Cluster Minister. That is, the relevant Minister must formalise a delegation to the Cluster Secretary, and may limit subdelegation of the relevant powers.

Treasury may provide guidance and a template delegation instrument to help Secretaries guide this discussion.

There are still some challenges for the effective operations of Clusters

Although the GSF legislation provides levers to significantly improve the operation of Clusters, some challenges will still exist that have not been addressed. These include:

- The information that can be accessed under the provisions of the GSF legislation will not include information that an agency is otherwise prohibited from disclosing by another law.
- A Minister cannot delegate the authority to expend money from an appropriation for the services of 'separate GSF Agencies' (i.e. ICAC, the Ombudsman, the Audit Office, the NSW Electoral Commission and the Judicial Commission) via the Secretary - this must be delegated directly to the agency – and separate GSF Agencies will also not be required to comply with Treasurer's directions and requirements and Minister's requests for information where they believe it is not consistent with the exercise of their functions.

NSW Treasury is also working to support Clusters in other ways

- Treasury will align **processes** with Premier's expectation of Cluster Ministers
Treasury's processes and relationship management model can facilitate a Cluster approach to Cabinet proposals and submissions by engaging directly with Clusters as a coordinating entity (rather than individual Agencies as is currently the case).
- Optimised **PRIME** to support the Clusters Leads role as coordinator
Prime optimisation will enhance existing workflows to better support the Cluster as the coordinating entity, for example, improving reporting to allows Clusters to run Cluster/Outcome Reports based on available data.
- Continue to design and implement **Outcomes Budgeting Policy** around Clusters
A new Controls Framework will support Outcomes Budgeting. This Framework will be designed to allow Clusters to embed discipline across Agencies and manage budget movements to align with the Outcomes budget.

Need more information?

Email the Legislation team at Legislation@treasury.nsw.gov.au.

Please also refer to the Appendix for more details on the powers of Cluster Ministers and Secretaries.

APPENDIX

Detailed explanation of legislated levers to support Clusters

- **Access to relevant information of agencies spending under a Ministers' authority**

The GSF legislation will empower Ministers, and Secretaries of Departments (as delegates of the Minister) to request 'relevant agency information' from any agency if:

- the Minister is the responsible Minister for the GSF agency, or
- the agency has authority to pay out of the consolidated fund from appropriations made to the Minister; or
- the agency receives any of its funding from the Minister.

This will allow Secretaries (via delegation from a Minister) greater access to financial and non-financial information of Cluster Agencies.

- **Conditions on Con-Fund Resources for Effective Cluster Management**

The GSF formalises a Minister's existing power to put conditions on a delegation (and subdelegations) to spend, so as to limit the amounts and purposes for which expenditure may be committed or incurred, or payments made or authorised, under an appropriation to that Minister. The delegate or subdelegate can carry out the expenditure function, but only in accordance with the terms and conditions (i.e. the delegate cannot act outside of or vary the terms and conditions).

- **Delegation of Authority can better match expectations placed on a Cluster Secretary**

The Cluster Minister can use the delegations and subdelegations enabled by the new GSF Bill to better match the unique role of a Secretary as Cluster lead with the powers they have in relation to agencies within the Cluster.

A Minister may delegate any of the Minister's delegable functions, including expenditure functions, to another Minister or the Secretary of a Department or the Accountable Authority or government officer for a GSF agency for which the Minister is the responsible Minister.

In turn, a Secretary of a Department can subdelegate that function to an Accountable Authority of another agency (for which the Minister is the responsible Minister) or a government officer of their own agency. In contrast, an Accountable Authority other than a Secretary can only subdelegate to a government officer within their own GSF Agency.