

**Disclaimer: This document is designed as guidance only and does not replace reading the legislation. For further information please refer to the legislation and please check the website for updates.**

## Minister: Roles and Responsibilities

### At a glance

This fact sheet aims to clarify the new powers and responsibilities of Ministers under the proposed legislation. The key changes include enabling a Minister to:

- Delegate and subdelegate a broader range of responsibilities to a wider group of people.
- Have access (and can delegate this access) to more information that better informs decisions.
- Facilitate more effective management of clusters.

### What's the role of Ministers generally under the GSF Bill?

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All Ministers have responsibilities and powers in relation to financial management under the GSF Bill, including:

- access to relevant agency information<sup>1</sup>,
- power to set terms and conditions on delegations to expend from an appropriation,
- a power to authorise, and delegate, act of grace payments in certain circumstances,
- delegating certain functions, in the manner, and to the extent they see fit.

Ministers may also be conferred with powers to enter into and manage borrowings, investments, derivatives, joint financing arrangements and joint ventures.

### What is the role of Clusters under the GSF Bill?

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While the GSF Bill does not legislate for clusters, it provides mechanisms to help facilitate more effective financial management of the cluster by the cluster Ministers, and their cluster Secretaries. The GSF Bill enables the cluster Ministers to delegate various powers relating to financial management of cluster agencies to the Secretary of a Department.

### What is the role of the responsible Minister under the GSF Bill?

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The default position is that the responsible Minister in relation to a GSF agency, for the purposes of the GSF Bill, is:

- For a NSW Health entity – the Minister administering the *Health Services Act 1997*;
- For a Public Service agency that is not a NSW Health entity - the Minister to whom the agency is responsible<sup>2</sup>
- For a statutory State owned corporation – the voting shareholders of the corporation;
- For any other GSF agency – the Minister who administers the constituent Act of the GSF agency.

This notwithstanding, the Premier may nominate a person other than the responsible Minister to exercise some or all of the responsible Minister's functions under the Act.

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<sup>1</sup> Section 9.1 explains what relevant agency information is.

<sup>2</sup> Section 50C (Ministers to whom Public Service agencies responsible) of the Constitution Act 1902 enables the Governor to make an administrative arrangements order that specifies the Minister to whom a Public Service Agency is responsible.

## Delegations

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### Enabling Subdelegation

Previously Ministers did not have the power under the *Public Finance and Audit Act 1983 (PFAA 1983)* to subdelegate the authorisation of expenditure from the consolidated fund. This meant that Ministers had to personally change an agency's delegation arrangements, regardless of how detailed the amendment. The new GSF Bill provides a clear power for Ministers to delegate and authorise subdelegation of expenditure functions. This gives Ministers the flexibility to delegate to Secretaries and Accountable Authorities, or directly to other government officers, as much control over expenditure functions as they consider appropriate.

In addition, the GSF Bill provides a clear power for Ministers to delegate their ability to make act of grace payments (also known as ex gratia payments). This power does not impact on Ministers' existing non-statutory power to make ex-gratia payments - instead, it complements that power by allowing delegation and any conditions which attach to each delegation.

### Empowering Clusters

The delegation and subdelegation structure will enable the cluster Ministers to appropriately empower the cluster Secretaries regarding the financial management of the cluster.

A Minister may delegate any of the Minister's delegable functions, including expenditure functions, to:

- another Minister;
- 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 an 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.

### Sharing of financial and non-financial information

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The GSF Bill will empower Ministers 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 any other GSF agency for which the Minister is the **responsible Minister**); or
- The agency receives any of its funding from the Minister (or any other GSF agency for which the Minister is the responsible Minister).

Under the legislation, requests for relevant agency information can be:

- made for the purposes of decisions about resource allocation; and
- for financial and nonfinancial information.

This power can also be delegated to the Secretary of a Department (although the Secretary cannot subdelegate the power). Ministers currently have access to the information of some agencies on a non-statutory basis. The new statutory power, and ability to delegate that power, covers all cluster agencies, and facilitates the more efficient management of information sharing by providing a high level 'circuit breaker' that can be utilised by cluster Secretaries if information is withheld.

### Expenditure functions

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In relation to expenditure, the GSF Bill contains provisions relating to appropriations. These provisions only reinforce existing convention, and are consistent with the appropriations legislation.

## Terms and conditions on appropriations expenditure functions

The GSF Bill restates a Minister's existing power to impose terms and conditions on a delegation (and subdelegation) that authorises expenditure. These conditions may include limits on 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, of the delegation).

## Deemed appropriations

The GSF Bill introduces a mechanism that provides legal authority for agencies to spend certain 'own source' receipts, addressing the current lack of clarity around the legal authority agencies have to spend own source receipts.

Under the GSF Bill, the regulations can list certain types of receipts as deemed appropriation money. The **responsible Minister** for a GSF agency receives an automatic appropriation, for the purposes of the GSF agency, in relation to deemed appropriation money at the time that it is received or recovered by the GSF agency. The types of receipts that may be considered deemed appropriation money are still being determined by Treasury in consultation with the sector.

## Reporting

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The financial and annual reporting obligations of Ministers remain largely unchanged under the GSF Bill. Ministers will still be required to table financial statements and annual reports in Parliament. There is a new provision introduced under the GSF Bill that entitles the responsible Minister (or a person they authorise) to full and free access to the accounts and records of the GSF agency required for financial and annual reporting.

## Financial Services and Arrangements

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A Minister will continue to require appropriate authorisation from the Treasurer to borrow, enter into derivative arrangements or enter into joint venture or joint financing arrangements. Ministers will continue to have the power to do all things necessary or convenient to be done in connection with entering into or managing these arrangements.

In order to invest money under their control, Ministers will require an appropriate authorisation from the Treasurer, or will need to be permitted to do so by regulations made under the new Bill.

## Consultation

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A Minister will be consulted in relation to a Treasurer's direction if it is required under section 3.5(1) of the GSF Bill (e.g. in relation to a Treasurer's direction on Performance information). This power may be delegated in accordance with section 9.7(1)(a).

## Need more information?

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Email the Legislation team at [Legislation@treasury.nsw.gov.au](mailto:Legislation@treasury.nsw.gov.au).

Please also refer to the attached checklist for detail on relevant sections of the Act.

## Attachment A – Checklist of Sections in the GSF Bill

The tables below are provided as a reference to the Bill regarding a Minister's roles and responsibilities, and the additional roles and responsibilities of the responsible Minister under the new legislation. Items denoted with \* are new powers.

<b>Minister</b>			
<b>Role in Act</b>	<b>Bill Reference</b>	<b>Delegable</b>	
<b>Commencing 1 December 2018</b>			
The Minister may be consulted on:			Y
• proposed annual reporting period for the GSF agency	3.1(5), 3.3(4)		Y
• certain Treasurer's directions	8.2(3)		Y
Treasurer's directions do not apply to the Minister	3.3(1)(a)		N/A
Delegations:			
• delegable functions	9.7		N/A
• may receive delegations and subdelegate	9.8		
• may delegate and regulate subdelegation	9.9		
May request relevant agency information from the Accountable Authority of a GSF agency for which they provide funding to (directly or indirectly) or from a GSF agency for which it is the responsible Minister.	9.3		Y
<b>Commencing 1 July 2019</b>			
May authorise act of grace payments (also referred to as ex gratia payments)	5.7		Y
<b>Responsible Minister</b>			
<b>Role in Act</b>	<b>Bill Reference</b>	<b>Delegable</b>	
<b>Commencing 1 December 2018</b>			
May be consulted on directions to an agency for which he or she is the responsible Minister regarding payment of money under a guarantee	6.32		Y
Entitled to full and free access to financial and performance information	7.5(2)		Y
Must be consulted on;			
• a proposed change to the annual reporting period for an agency for which he or she is responsible	2.10 (4)		Y
<b>Commencing 1 July 2019</b>			
*Authority to expend deemed appropriations	4.7		Y
Must be consulted on;			
• directions regarding payment of Financial distribution	5.4(3)		Y
Table financial report and audit report	7.6		Y
Must receive, and table in parliament, the annual reporting information	7.12		