

**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.

## Regulations and Treasurer's Directions

### At a glance

- The Government Sector Finance Bill (GSF Bill) will be accompanied by modern, fit-for-purpose regulations and Treasurer's directions.
- Treasury is committed to ensuring agency views are considered in development of regulations and Treasurer's directions.
- Existing Treasurer's directions will have legislative force until 1 July 2019 unless the provisions to which they relate have been repealed at an earlier stage or they are inconsistent with the GSF Bill.

There are important instruments associated with the new legislation, of which members of the government sector need to be aware.

There will be new regulations. Section 10.4 of the GSF Bill enables the Governor to make regulations for or with respect to any matter required, or permitted to be prescribed, for carrying out or giving effect to the GSF Bill. Regulations and changes to them are required to be published on the NSW Legislation website.

The new legislation continues the practice of the Treasurer issuing directions, but clarifies their application. Section 3.1 of the GSF Bill provides for the Treasurer to give directions. The Treasurer's directions will provide a mechanism for the Treasurer to implement policy decisions on the principles, practices, arrangements and procedures to be followed for the purposes of promoting compliance with the Bill and regulations. Treasurer's directions will be published on the NSW legislation website and may also be published on the Treasury website.

Since they have the force of law, both regulations and Treasurer's directions must be complied with by those agencies to whom they apply.

### To whom will the Regulations and Treasurer's Directions apply?

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Regulations and Treasurer's directions can be expressed to apply to:

- all GSF Agencies, Accountable Authorities and government officers, or
- classes of GSF Agencies, Accountable Authorities or government officers.

A Treasurer's direction cannot target an individual agency, Accountable Authority or government officer. The only circumstance in which a Treasurer's direction may apply to a particular agency is when that agency's responsible Minister consents to a specific Treasurer's direction.

### What is changing and why?

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#### Regulations

The introduction of the GSF Bill will require associated new regulations. It is important to note that this legislation is principles based, and the regulations are an important instrument to give depth of meaning to many of the principles.

#### Treasurer's directions

Public sector finance professionals will be aware that previous legislation enabled the Treasurer to give directions. There are two broad types of existing directions in force:

1. Treasurer's directions in what is known as the "Gold Book" - some of which are inconsistent with the principles of the new Bill, and refer to outdated financial management practices.
  - Many of these Treasurer's directions will be repealed over time, building on a recent repeal of 80 outdated Treasurer's directions in 2016.
  - New Treasurer's directions will be issued which will be more appropriate, relevant and flexible for agencies to exercise and enable the use of professional judgment.
2. Treasury Circulars and Treasury Policy Papers - issued as Treasurer's directions under section 9 of the *Public Finance and Audit Act 1983 (PFA 1983)*, for example TC 17-07 Accounting for Superannuation and TPP 15-03 Internal Audit and Risk Management Policy.
  - These are unlikely to change in substance, although they will be updated to support the new legislation and to ensure ongoing consistency.

The new legislation has a staged commencement and the new regulations and Treasurer's directions will be drafted based on the stages of implementation. For example, the parts of the Bill that commence first including the scope, delegations and financial arrangements will be the focus of development of initial regulations and Treasurer's directions.

### **What will happen to existing Treasurer's directions?**

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Existing Treasurer's directions will have legislative force until 1 July 2019 because section 9 of the *PFA 1983* (which gives authority to existing Treasurer's directions) remains in place until 1 July 2019 under transitional provisions. This generally gives rise to the following situations:

- Broadly, the existing Treasurer's directions will continue to operate unless they are inconsistent with any requirement of other legislation for example (e.g. namely the GSF Bill).
- It is also possible that although operational, the effect of a Treasurer's direction may be negated. This could occur for example where the direction relates to another repealed Act/or section of a repealed Act. Other scenarios are possible, depending on the construction of the Treasurer's direction.

Treasury requires agencies to comply with the existing directions throughout the transition period until any new Treasurer's directions are in place.

### **How will agencies be involved in developing new regulations and Treasurer's Directions?**

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Treasury is committed to ensuring that agency views are included in the development of new regulations and Treasurer's directions.

It is likely that Treasury will share draft regulations and Treasurer's directions with representatives from the Whole of Government Legislation Working Group which includes cluster Chief Financial Officers and General Counsels. Where appropriate, consultation will extend to other affected entities and persons.

### **How will existing/new exemptions to regulations and Treasurer's Directions work?**

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In the past, some agencies have sought and received an exemption from complying with a regulation or Treasurer's direction, for example, in relation to annual reporting provisions.

The GSF Bill allows a Treasurer's direction to give an exemption from that direction (if this is stated). Also, there may be exclusions in the regulations (where appropriate).

As most exemptions relate to annually issued policies or circulars, agencies will need to continue to reapply under the GSF Bill for exemption each year.

**Tip**

As a matter of practice, for agencies seeking an exemption from a Treasurer's direction under the GSF Bill once those directions are made, the agency's Accountable Authority will need to write to the Treasury Secretary (who is the Accountable Authority for the Treasury) providing a detailed explanation of the reason for the requested exemption. The detail of how to seek an exemption will be explained in the Treasurer's Direction.

**Need more information?**

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