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| ***This is a sample instrument of delegation only, and is to be modified and used at the discretion of each Minister.*** |

This is a pro forma instrument provided to assist GSF agencies with implementing provisions of the GSF Act. If used, please review and complete the instruments in a manner which ensures that they meet the legislative requirements and your agency’s needs

**INSTRUMENT OF DELEGATION UNDER THE**

***GOVERNMENT SECTOR FINANCE ACT 2018* (NSW)**

Pursuant to section 9.9 of the *Government Sector Finance Act 2018* (“the *GSF Act*”), *I,* ***[Minister name, title]***, hereby delegate those functions and powers that are specified in the column marked “Function” in Schedule 1 to the persons referred to in the column marked “Delegate” in Schedule 1.

A delegation of functions under this instrument:

1. authorises a delegate to subdelegate a delegated function, in accordance with the column marked “Subdelegation” in Schedule 1;
2. is subject to the conditions identified in Schedule 2;
3. withdraws and replaces any delegation of a comparable function previously made by myself or my predecessors in office under any of the following:

* *Public Finance and Audit Act 1983*;
* *Public Authorities (Financial Arrangements) Act 1987*;
* *Annual Reports (Departments) Act 1985*; or
* *Annual Reports (Statutory Bodies) Act 1984*; and

1. remains in full force and effect until withdrawn, modified or varied by me or my successors in office.

Terms used in this instrument have the same meaning as they carry in the *GSF Act*, unless otherwise indicated.

*<Signature>*

**[Minister name]**

**[Minister title]**

Date: 2018

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| ***Delete options and instruction boxes as applicable*** |

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| ***Guidance note – to be deleted***  **Persons to whom a Minister may delegate his/her functions**   * In relation to information access rights under Division 9.1 GSF Act, to:   + another Minister; or   + the Secretary of a department. * In relation to act of grace payments (including the imposition of terms and conditions for payments) under Section 5.7 GSF Act, to:   + the accountable authority for a GSF agency;   + any persons employed in or by a Public Service agency if the agency is responsible to the Minister under an administrative arrangements order made for the purposes of section 50C of the *Constitution Act 1902*, or   + any other entity (or entity of a kind) prescribed by the regulations. * In relation to other functions under the GSF Act and certain functions under other Acts and financial arrangements (see s.9.7(1)), to:   + another Minister;   + the Secretary of a Department;   + a GSF agency that is a person, for which that Minister is the responsible Minister   + the accountable authority for a GSF agency for which the Minister is the responsible Minister;   + a government officer of a GSF agency for which the Minister is the responsible Minister; or   + any other entity (or entity of a kind) prescribed by regulations. * In relation to functions with respect to a separate GSF agency (“separate GSF agency delegable functions”), to:   + the accountable authority for that agency   + a government officer of that agency   The delegates listed above may (except for information access functions and functions excluded from subdelegation by the delegate’s instrument of appointment) subdelegate their delegated functions to persons or entities as specified in section 9.9(5) of the *GSF Act*.  This guidance note is a summary only and is not intended to be a substitute for a review of the relevant sections of the *GSF Act*. |

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| ***Delete functions below as applicable.***  ***The column marked ‘Delegate’ should indicate the person to whom the ‘Function’ is to be delegated.***  ***The column marked ‘Subdelegation’ should be marked with a Y/N response to indicate whether the subdelegation of that function is allowed.***  ***If the Minister permits the delegate to subdelegate to all classes of person specific in section 9.9(5), the column should indicate “Yes – per GSF Act, 9.9(5)”. If it is intended for a function to be subdelegable to a narrower group of people than those specified under section 9.9(5), this should be indicated in the ‘column as well – for example, by indicating “Yes”, and then identifying relevant limitations. An example is provided at line item 13. Alternatively, a Minister may exclude a particular delegate’s ability to subdelegate a particular function, in which case the column should be marked “no”.***  ***Division 9.2 of the GSF Act authorises delegation of functions that arise both under that Act, and under other legislation, but this pro-forma instrument only deals with functions arising under the GSF Act. Functions arising under other legislation can be added to this instrument and the section and name of that Act should be identified in the column marked ‘Section (GSF Act, unless otherwise indicated)’.*** |

**SCHEDULE 1 – Delegations**

| **Item** | **Function** | **Delegate** | **Subdelegation** | **Section**  ***(GSF Act, unless otherwise indicated)*** |
| --- | --- | --- | --- | --- |
| **1. General delegations** | | | | |
| *Consultation matters* | | | | |
|  | Be consulted by the Treasurer about any proposed determination of a different annual reporting period for an agency for which the Minister is the responsible Minister. |  |  | Section 2.10(4) |
|  | Be consulted by the Treasurer in accordance with section 3.5 about proposed directions regarding financial distributions to be paid by a GSF agency for which the Minister is the responsible Minister. |  |  | Section 5.4(3) |
| **2. Treasurer’s directions** | | | | |
|  | Consent to the inclusion of a particular provision in a Treasurer’s direction that is limited in its application to a particular GSF agency for which the Minister is the responsible Minister. |  |  | Section 3.3(4) |
|  | Be consulted by the Treasurer (or the Treasurer’s delegate) in accordance with section 3.5 about proposed directions concerning records and other information to be kept concerning the performance of an agency for which the Minister is the responsible Minister. |  |  | Section 8.2(3) |
| **3. Expenditure and Gifts - This item will commence on 1 July 2019.** | | | | |
|  | Authorise an amount to be paid to a person as an act of grace payment (in special circumstances or circumstances of a kind prescribed by the regulations) on behalf of the State in accordance with section 5.7, and to impose terms and conditions on that payment. | This power is only delegable to:  - an accountable authority for a GSF agency, or  - any person employed in or by a Public Service agency if the agency is responsible to the Minister under an administrative arrangements order made for the purposes of section 50C of the Constitution Act 1902, or   * any other entity (or an entity of a kind) prescribed by the regulations. | *No (section 5.7(4) of the GSF Act)* | Section 5.7(1) |
| **4. Budget, Appropriations and Special Deposits Account – This item will commence on 1 July 2019.** | | | | |
|  | Nominate the responsible manager for an account in the Special Deposits Account that:   1. the Minister administers, or 2. is established under legislation that the Minister administers. |  |  | Section 4.16(2)(a) |
| **5. Cluster operations** | | | | |
|  | Make a written request to the accountable authority for a GSF agency to provide the Minister with relevant agency information about the agency if:  (a) the agency:  i. 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  ii. receives some or all of its funding from the Minister or any other GSF agency for which the Minister is the responsible Minister, or  iii. is an agency for which the Minister is the responsible Minister, and  (b) the request is for the purposes of decisions about resource allocation (whether for the agency or any other GSF agency for which the Minister is the responsible Minister). | *Only to another Minister, or the Secretary of a Department [make relevant selection(s)].* | *No (section 9.9(7)(b) of the GSF Act)* | Section 9.3 |
| **6. Reporting – This item will commence on 1 July 2019.** | | | | |
| *Financial reporting* | | | | |
|  | Exercise the right of full and free access to the accounts and records of a GSF agency for which the Minister is the responsible Minister, kept under section 7.5, subject to any law that prohibits disclosure of particular information. |  |  | Section 7.5(2) |
| **7. Financial arrangements**   |  | | --- | | ***Financial arrangement delegations should be made on an agency by agency basis.***  ***Where a GSF agency is not a legal person, the Minister may delegate the function of acting for the GSF agency under Part 6 generally, or in respect of specific functions arising under the Part. The latter may be appropriate for functions conferred on an agency under a financial arrangement approval, which are likely to be quite specific in nature. Where specific functions of the Minister under Division 6.1 are separately delegated to different people, those functions will need to be separately identified and listed as new items and current item [9] will need to be deleted.***  ***These delegations may be unnecessary in cases, as the accountable authority for the agency already has authority to act on the agency’s behalf. This will ultimately be a matter for discussion between the Minister and the accountable authority.*** | | | | | |
| *Financial arrangements on behalf of [Insert name of non-person, non-separate GSF agency for which the Minister is the responsible Minister]* | | | | |
|  | On behalf of [agency name] – exercise all functions of the agency, under Part 6 of the GSF Act, including any function conferred on [agency name] under a financial arrangement approval. |  |  | Section 6.2(1)(b) |
| *Consultation* | | | | |
|  | Be consulted by the Treasurer (or the Treasurer’s delegate) in relation to interest payable on instalments payable under section 6.32(1). |  |  | Section 6.32(2) |
| *Recommendations* | | | | |
|  | Recommend to the Treasurer that the Treasurer give a financial arrangement approval for a joint financing arrangement in relation to a GSF agency for which the Minister is the responsible Minister. |  |  | Section 6.23(3) |
|  | Recommend a funds manager approval for a GSF agency for which the Minister is the responsible Minister. |  |  | Section 6.35(3) |
| **8.a) Financial delegations – annual *Appropriation Act***   |  | | --- | | ***Financial delegations generally require detail around the purposes for which a delegate may authorise expenditure, and the ceiling up to which they may expend. Please note that financial delegation limits are inclusive of GST.***  ***For each purpose for which expenditure is authorised, the quantum and appropriate delegate should be identified. An example is provided, but it may be more appropriate to create a separate delegation instrument for financial delegations if more detail and additional line items are needed. Where subdelegation is authorised in relation to financial expenditure, the delegate will need to make a detailed instrument of subdelegation to give the relevant officers the authority to commit/incur expenditure.***  ***It may also be appropriate to add line items for the delegation of expenditure functions in respect of deemed appropriations, where relevant.*** | | | | | |
|  | *Example: Commit or incur general expenditure for the work of the Department:* |  |  | *Section 9.7(1)(b),*  *Each annual Appropriation Act* |
| *- Amounts up to $5,000,000* | *Secretary* | *Yes – per GSF Act, section 9.9(5)* |
| *- Amounts up to $500,000* | *Deputy Secretary* | *Yes – but only to government officers of the Department who are (i) employed in the senior executive service or (ii) employed as a Clerk Grade 11-12 or above* |
| *- Amounts up to $5,000* | *Clerk Grade 11-12* | *No* |
|  | *Example: Commit or incur expenditure on special projects:* |  |  | *Section 9.7(1)(b),*  *Each annual Appropriation Act* |
| *- Amounts up to $25,000,000* | *Secretary* | *Yes – per GSF Act, section 9.9(5)* |
| *- Amounts up to $5,000,000* | *Deputy Secretary* | *No* |
| **8.b) Financial delegations – *[INSERT SDA ACCOUNT OR FUND NAME]***   |  | | --- | | ***Each SDA account or fund should be identified individually. Each SDA account or fund will have a discrete set of permissible payment purposes which will need to be identified and inserted as an individual line item with a quantum and an appropriate delegate, if it is intended that the Minister delegate these functions in that level of detail. An example is provided below.***  ***Please note that financial delegation limits are inclusive of GST.***  ***If the Minister prefers to delegate the function of making payments from the SDA account or fund to a single person or a class of persons, that can be dealt with in a single line item but may require a more detailed sub-delegation instrument.*** | | | | | |
| *Financial delegations with respect to [INSERT SDA ACCOUNT OR FUND NAME]* | | | | |
|  | *Example: Payment of administrative expenses related to [insert account or fund name]:* |  |  | *Section 9.7(1)(d)*  *[insert name of relevant Act, if relevant]* |
| *- Amounts up to $5,000,000* | *Secretary* | *Yes – per GSF Act, section 9.9(5)* |
| *- Amounts up to $500,000* | *Deputy Secretary* | *Yes – per GSF Act, section 9.9(5)* |
| *- Amounts up to $5,000* | *Clerk Grade 11-12* | *No* |
| **8.c) Separate GSF agency delegable functions**   |  | | --- | | ***A ‘separate GSF agency delegable function’ is defined by section 9.7(2) of the Act, and is delegable and subdelegable to a limited class of delegates and subdelegates in accordance with sections 9.9(3) and 9.9(5).***  ***An example has been provided below for financial delegations made with respect to funds appropriated to the Minister. ‘Other delegations’ could include any of the other functions specified above (such as a consultation matter or functions relating to financial arrangements for the separate GSF agency). These can be added under the heading ‘Other delegations’ where relevant.*** | | | | | |
| *Separate GSF agency delegable functions in relation to [insert name of separate GSF agency]* | | | | |
| *Financial Delegations – annual Appropriation Act* | | | | |
|  | *Example: Commit or incur general expenditure for the work of the agency:* |  |  | *Section 9.7(1)(b),*  *Each annual Appropriation Act* |
| *- Amounts up to $5,000,000* |  |  |  |
| *- Amounts up to $500,000* |  |  |  |
| *- Amounts up to $5,000* |  |  |  |

**SCHEDULE 2 – Conditions on delegations**

***[The content of these conditions, whether they are expressed in specific or general terms, and whether they are listed in a table or not, are all policy matters for each delegating Minister. These may include conditions imposed under section 5.2 of the GSF Act]***