



Treasury

Guidelines for preparing and publishing Treasurer's Directions

Government Sector Finance Act 2018

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Executive summary

This paper sets out Treasury's arrangements for developing and issuing Treasurer's Directions (**Directions**) to the NSW Government Sector (**sector**). The principles in this paper aim to develop a customer focussed process that is not onerous for the parties involved.

Directions may be issued by the Treasurer (or a Treasury delegate) under the *Government Sector Finance Act 2018* (**Act**). Directions are statutory instruments which have the force of law and must be complied with by those agencies and the people to whom they apply in the sector. Directions enable the Treasurer to, amongst other things, specify requirements that are to be adhered to for the purposes of promoting compliance with the provisions of the Act and regulations, and to address some matters which the Act leaves to the Treasurer's Directions.

Treasury views consultation with affected entities as important in the preparation of Directions. Consultation helps ensure that affected entities are appropriately informed of Directions that may affect their responsibilities and functions under the Act and increases the likelihood that a Direction will be suitable for its intended purpose and be adapted to the needs of affected entities. It is also a mandatory requirement in some situations covered by the Act.

Unless otherwise specified, words in bold and certain other terms in this paper have the meaning given to them in the Act.

Process outline



Key: Internal to Treasury
 External to Treasury

Guiding principles for issuing Directions

Directions allow the Treasurer to direct agencies and people in a timely and flexible manner. However, this benefit must be balanced with the need for Directions to be reasonable and able to be complied with. This paper sets out customer focussed best practice principles and processes to be followed by Treasury and the Sector when issuing Directions.

- **Clear scope and requirements:** The Direction should set out a summary statement, brief Direction, date of effect, who the Direction applies to (persons and agencies), along with its purpose and objectives as set out in the template (Attachment 1).
- **Developed for the customer:** Directions should be reasonable and able to be complied with. Directions provide further legislative requirements, where necessary, expanding on the Act's principles.
- **Genuine consultation is essential:** Consultation in relation to Directions must be genuine. It is set out in these guidelines that even when consultation is not required in relation to a **consultation matter**, Treasury should seek to consult the sector.
- **Implementation is part of the design:** Treasury should provide guidance to the sector, as necessary, as part of the ongoing implementation of Directions.
- **Directions should only be issued where necessary:** Directions should be issued in a consistent manner. Parties should consider whether a Direction is the appropriate policy instrument for developing the policy concept in question.

This paper is split into three parts:

Part 1 – Legislated process and minimum requirements

This part is included for reference only and is not intended to be a substitute for a review of Division 3.1 Part 3 of the Act.

Part 2 – Best practice approach for developing and issuing Directions

Part 3 – Administration of Directions

Part 1: Legislated process and minimum requirements

1.1 When can the Treasurer give a Direction?

The Treasurer may give a Direction for or with respect to:

1. principles, practices, arrangements and procedures for the purposes of promoting compliance with its provisions;
2. any matter required or permitted by the Act or any other Act to be included in the Directions; or
3. any matter prescribed by the regulations for which the Directions are authorised to make provision.

1.2 Substantive requirements

A Direction:

1. must not be inconsistent with the Act;
2. must be published on the NSW Legislation website and takes effect on the day it is published, or any later date specified in the Direction; or
3. may be amended, replaced or revoked by a further Direction.

1.3 Permitted purposes

A Direction may do any of the following:

1. apply generally or be limited in its application by reference to one or more specified circumstances, factors or exceptions;
2. authorise any matter or thing to be determined, applied or regulated by a specified person or group, or body;
3. apply, adopt or incorporate (with or without modification) any publication as in force at a particular time, or as in force from time to time; or
4. give exemptions from part or all the Direction or authorise specified entities to give such exemptions.

1.4 Consultation

Consultation is only required in certain circumstances (s 3.5 of the Act). It is Treasury policy that consultation should occur in relation to Directions except in exceptional circumstances. Different levels of external consultation may occur depending on the nature and potential impact of the proposed Direction.

1.4.1 Where consultation is required

There are certain provisions of the Act and regulations, known as **consultation provisions**, that require the Treasurer to consult before issuing a Direction in relation to **consultation matters** (s 3.5 of the Act). An example of a **consultation matter** is the making of a Direction in relation to the keeping of performance information. Where the making of a Direction involves a **consultation matter**, Treasury must give the relevant entity a written statement setting out the **consultation matter** (refer 2.2.2 below). Also, the entity must be given a reasonable opportunity to make submissions to the Treasurer concerning the matter.

1.4.2 Where consultation is not required

Where consultation is not mandatory, the Treasurer may consult with the responsible Ministers for GSF Agencies or any other persons or entities that the Treasurer considers appropriate (s 3.1(5) of the Act, in practice, Treasury will consult with the sector). In these circumstances, the consultation procedure in Part 2 of this paper may be adopted in the way seen fit.

1.5 Basic content requirements

The Act sets out the minimum content of a Direction:

3.2 Basic content for Treasurer's directions

- (1) A Treasurer's direction must include each of the following provisions:
 - (a) a provision that gives the direction a name or citation,
 - (b) a provision that indicates when the direction takes effect,
 - (c) a provision that specifies the entities (or kinds of entities) to which the direction applies,
 - (d) a provision that specifies the purposes or objects of the direction,
 - (e) a provision that specifies an end date or review date for the direction.
- (2) It is sufficient compliance with subsection (1) (b)–(e) in respect of a Treasurer's direction that amends another Treasurer's direction if the provisions are included in the amendments.
- (3) A contravention of subsection (1) does not affect the validity of any Treasurer's direction.

These provisions are in the template provided in Attachment 1.

1.6 Compliance with Directions

Directions have statutory force and must be complied with (s 3.4 of the Act). If a policy concept does not require statutory force, consider whether a different policy instrument would be more appropriate. This consideration should be taken into account at all stages of the Direction development process.

Part 2: Best practice approach for developing and issuing Directions

This part sets of the best practice approach and processes which should be followed when developing and issuing Directions.

The broad steps are:

1. Identify a Direction is the appropriate policy instrument
2. Internal drafting stage and consultation process
 - 2.1 Ownership of drafting the Direction and consultation process
 - 2.2 Initial notification
 - 2.3 Internal drafting process
3. External consultation process
 - 3.1 Manner of consultation
 - 3.2 Information only – where consultation is not practical or necessary
4. Internal review stage, final sign-off, and publication on NSW Legislation website/NSW Treasury website
 - 4.1 Internal review stage and final sign-off
 - 4.2 Publication

2.1 Identify a Direction as the appropriate policy instrument

Directions should be used when the subject matter applies to a specific group and requires statutory force. Directions should not be used if the policy concept does not require the force of law, addresses a general procedural or guidance matter, or is in respect of a matter that is not within the scope of the Act.

Before developing the draft Direction, the Treasury subject matter expert (SME) team that is considering the policy matter must engage with the Office of General Counsel (OGC) to ensure the proposed Direction is within the scope of the Act. This occurs in the early stages of the drafting process. OGC may engage the Crown Solicitor's Office (CSO) as necessary during the process (in addition to consultation with the CSO and PCO in respect of the final draft).

2.2 Internal drafting stage and consultation process

2.2.1 Ownership of drafting the Direction and consultation process

Ownership of drafting the Direction

The relevant Treasury subject matter expert (SME) team is responsible for drafting the Direction and identifying the relevant sector and internal stakeholders involved in the consultation process. Directions are issued by the Treasurer (they may be issued under *delegated authority from the Treasurer*¹) (see 2.4.1 below).

Internal consultation process

The internal consultation process involves the following:

1. Treasury SME team to confirm whether the Direction replaces or amends an existing Direction or other policy document (and consider necessary flow-on amendments to other Directions or policies).
2. If required, Treasury SME team will consult internally within Treasury (e.g. to determine whether the new Direction overrides any existing Directions or other policy documents, whether a Direction is the appropriate policy instrument, to obtain feedback).

¹ Section 9.8(2) of the Act.

2.2.2 Initial notification

Consultation Matters

In respect of **consultation matters** (where consultation is required on a matter as set out in the Act), those **consultation provisions** that refer to the matter may set out more detailed requirements in relation to notifying the sector about the development of the Direction and the necessary consultation.

Prior to commencing the external consultation process (between the Treasurer or the Treasurer's delegate, and the entity(ies) to be consulted), the process for notification should be as follows:

1. Treasury SME team notifies the relevant people (affected entities and internal stakeholders) that the Direction is being drafted, to seek early input. This includes:
 - a. writing to affected Ministers and other entities to be consulted (or their delegates); and
 - b. notifying the Legislation Working Group.

Other Matters

In all other cases, prior to commencing the external consultation process (between the Treasurer or the Treasurer's delegate, and the entity(ies) to be consulted), the process for notification should be as follows:

1. Treasury SME notifies the relevant people (affected entities and internal stakeholders) that the Direction is being drafted, to seek early input. This includes:
 - a. writing to affected Ministers (or their delegates); and
 - b. notifying the Legislation Working Group.

Then, the external consultation process set out in s 2.3 may be followed.

This initial notification is intended so all possible impacted stakeholders are aware of the development of the Direction.

2.2.3 Internal drafting process

This internal drafting process involves the following:

1. Treasury SME team drafts the Direction in the Direction's template (Attachment 1) and in accordance with the NSW Government Brand Guidelines.
2. Legislation team reviews and approves the draft Direction.
3. OGC reviews and approves the draft Direction.
4. [Executive Director] of Treasury SME team reviews and approves the draft Direction.

2.3 External consultation process

The following steps should be followed where consultation is required under a **consultation provision**, which requires consultation with a particular party or parties (**Consultation Parties**). Treasury may also follow these steps with the sector more generally even where consultation is not required, as best practice.

The external consultation process should involve:

1. Treasury engaging the **Consultation Parties** by circulating the internal draft Direction for comments. Along with the draft Direction, Treasury should provide the **Consultation Parties** with a written document setting out:
 - a. the reason for the introduction of the Direction, and its effect;
 - b. the section of the Act under which the Direction is made;
 - c. a reasonable deadline for commentary and feedback on the draft Direction; and
 - d. a proposed implementation date for the Direction.

2. The **Consultation Parties** providing comments on the draft Direction to the relevant Treasury SME team before the deadline provided by Treasury.
3. Treasury genuinely and carefully considering the **Consultation Parties** comments and addressing them before proceeding with the draft Direction (including reflecting these comments in the draft Direction, where practicable).
4. Further consultation and drafting occurring, if required.
5. Once Treasury is of the view that it has a final draft Direction, it should be provided to the sector with a note stating that it is the proposed final draft and a reasonable deadline by which the sector may provide final comments on it.

The process set out above is a guide only. For example, some Directions may require longer consultation processes or input from all agencies in the sector. Similarly, where a Direction is significantly modified as the result of feedback, further consultation will be required.

The key point to consider during an external consultation process is that consultation must be genuine in the circumstances.

2.3.1 Manner of consultation

Consultation should occur in the most efficient and effective way possible, considering all the circumstances and context of the Direction, most likely using a combination of email and verbal commentary. However, participants should also use other forms of communication if considered appropriate, e.g. meetings, workshops or other face to face meetings. More specific requirements for written notice apply under **consultation provisions** (s 3.5 of the Act).

A list of consultation matters may be placed on Treasury's website to enable sector representatives to monitor consultation matters that impact their agency or commercial entity.

2.3.2 Information only – where consultation is not practical or necessary

In some rare circumstances and where the Treasurer has a discretion under the Act to consult or not, it may not be practical to do so.

If the Treasurer is satisfied that a Direction is required on an emergency basis, or if a Direction is made in relation to purely mechanical/administrative or non-controversial matters that are not made in respect of paramount provisions of the Act, it may not be appropriate or efficient to consult with the sector. This information only approach should be followed in limited circumstances and should be considered on a case by case basis, e.g. some accounting standards matters may be purely administrative but that does not mean that all accounting standards matters should not be consulted on before being issued as a Direction.

In cases where consultation does not occur, the Relationship Lead(s) should still inform the affected entities of the existence of the Direction and whether it replaces or amends a current Direction.

2.4 Internal review stage, final sign-off, and publication on NSW Legislation website / NSW Treasury website

Following the external consultation process and any necessary redrafting of the Direction, the Treasury SME team should seek final approvals and begin the publication process.

2.4.1 Internal review stage and sign-off

The final sign-off process includes:

1. Treasury SME team to provide a final version of the Direction to the Legislation team, OGC, and the relevant [Executive Director] / [Director] for their sign-off before a reasonable deadline, in the following formats:

- a. a clean version; and
- b. a compare version, marked up against the most recent draft that the relevant party reviewed earlier in the process.

The Legislation team and/or /OGC should consult with CSO/PCO on the final draft Direction (as required).

2. Once the people listed in point 1 above have provided final approval, the Treasury SME team will provide the final draft Direction to the Treasurer (or the Treasurer's delegate) for sign-off.
3. The Treasury SME team should then take steps to enable the publication of the Direction (see 2.4.2 below). Directions will become in-force from the date they are published on the NSW Legislation website or a later date stated in the Direction. The link to the Direction may be published on the NSW Treasury website (via the Communications team).

2.4.2 Publication

NSW Legislation Website

Steps for publication on the NSW Legislation website:

1. Request for publication: Once the Direction has been completed, a request is to be emailed to notification@pco.nsw.gov.au for the Direction to be published. Certain information must be included in the request as outlined below.
2. Information to include: The email request for publication should include the following details:
 - a. Full name of the instrument
 - b. Proposed publication date
 - c. A complete and correct Word and PDF file of the instrument (as an attachment).
 - d. Confirmation that the Direction has been approved for publication i.e. scanned copy of the signed front page (signed by the Treasurer (or Treasurer's delegate) (as an attachment).

Note: An email confirmation of receipt should be received within 24 hours on weekdays. Please contact Parliamentary Counsel's Office (PCO) if you have not received confirmation within that time.

3. Deadlines for notification: For normal publication on a Friday (PCO should be given notice if a different day is required):
 - a. Request should be sent to PCO by 5.00pm on Wednesday of that week.
 - b. The instrument will then generally be published on the Friday of the same week (PCO should be given notice if a different day is required). The publication will occur as soon as the PCO has the relevant files ready. It is possible for a Direction to take effect from a future date however it may not apply retrospectively.

Note: Urgent or delayed notification can be arranged if required. Requests for special publication on other days or times should be made by telephone as soon as possible, but preferably no later than 1.00pm on the day in question (Phone: (02) 9321 3333; Email: notification@pco.nsw.gov.au).

Treasury website

Steps for publication on the Treasury website:

1. The Treasury SME team should ensure the Communications team receive the link to where the Direction is published on the NSW Legislation website, for it to be placed on the NSW Treasury website.

Treasury is to notify relevant parties in the sector that the Direction has been published on the NSW Legislation website and Treasury website and has taken effect.

Part 3: Administration of Directions

3.1 Form of Directions

Directions issued under the Act and under any other Act should be consistent in form and at a minimum should comply with the following basic requirements:

1. Must be in the specified Direction template (Attachment 1).
2. Must be in plain English.
3. Must include the basic content requirements set out in section 3.2 of the Act.
4. Must be pragmatic and must clearly set out what action needs to be taken.

3.2 Management of suite of Directions

All Directions are to be published on the NSW Legislation website and in a central location on the Treasury website. The Treasury website may also contain a list of current consultation matters.

Further information and contacts

For further information or clarification on issues raised in the discussion paper, please contact:

Legislation team, NSW Treasury

Email: Legislation@treasury.nsw.gov.au

Attachment 1: Treasurer’s Direction template

Please refer to: “Attachment 1 - Treasurer’s Direction template” on the website.