

**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.**

## Delegating roles and responsibilities

### At a glance

- The roles and responsibilities that may be delegated are broader than under previous legislation.
- Generally, the Government Sector Finance (GSF) Bill allows delegated powers to be subdelegated further.
- Agencies have more flexibility to set internal processes, provided they continue to meet the objectives of the GSF Bill.
- Existing delegations stemming from previous Acts can continue to apply under the new Bill where they concern comparable functions.

Delegation arrangements have a genuine impact on the operation and efficiency of the government sector. They determine who can make key decisions.

In the GSF Bill, one of the broadest impact changes is the approach to delegations. Under the previous framework, delegation powers were limited and largely rested with Ministers. The GSF Bill introduces the concept of an 'Accountable Authority' in each agency (in most cases it is the Secretary or agency head<sup>1</sup>) and it allocates certain responsibilities to that person. The GSF Bill enables the Treasurer, Ministers and Accountable Authorities to delegate a broader range of responsibilities and powers to others than is permitted under the present legislation, as well as permitting their delegates to subdelegate.

### What are the key changes?

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The major changes being introduced are:

- **A broader range of powers and responsibilities can be delegated than previously.**
- **All agencies have an Accountable Authority with clear powers and responsibilities**, which they can delegate.
- **There is now a requirement for GSF agencies and Accountable Authorities to review their delegations** to ensure that any delegations they give are in accordance with the requirements prescribed by the regulations and contained in written directions issued by their Minister.<sup>2</sup>
- **The regulations may prescribe additional parties to whom delegations can be made**, for example, an entity that has been contracted to provide a service may be prescribed.
- The Minister can **delegate their power to request 'relevant agency information'**, but only to another Minister or the Secretary of a Department. These people **cannot subdelegate** the power further.
- **Certain delegates may subdelegate their functions.** However, subdelegation by delegates may be limited by the initial delegator.

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<sup>1</sup> Refer to s2.7 of the *GSF Bill* to determine who the Accountable Authority of your agency is.

<sup>2</sup> See ss9.10(7) and 9.11(9) of the *GSF Bill*.

## What stays the same?

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Existing practices that will continue are:

- **Contractors/consultants cannot authorise or expend money unless prescribed by regulation.** Ministers have the power to commit expenditure or authorise payments out of the consolidated fund, and they can delegate and authorise subdelegation of this power to government officers. The GSF Bill excludes contractors from the definition of 'government officer'. However, contractors and consultants will be able to receive delegation either by a) being prescribed as a government officer or b) being prescribed as an entity who can receive a delegation from a Minister or Accountable Authority, or any of their delegates.
- **The existing delegation arrangements of an agency will continue to apply under the GSF Bill where they concern comparable functions.** However, existing delegation arrangements will no longer apply if they are revoked. Agencies may update their delegation arrangements over time.
- **Those who make a delegation may impose terms and conditions on that delegation.**

## When do these changes come into effect?

The NSW Government is planning a staged implementation of the GSF Bill. Some Parts will commence from 1 December 2018, with other Parts commencing later. Part 9, which deals with delegations, commences on 1 December 2018. This means that when other Parts commence, the delegation powers associated with that Part also come into effect.

Part of Bill	Commencement
Expenditure functions	1 December 2018
Preparation of Performance Information	1 December 2018
Financial Services and Arrangements	1 December 2018
Preparation of Budget information	1 July 2019
Preparation of annual and financial reporting	1 July 2019

## Who can delegate what

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The GSF Bill enables a greater range of functions to be delegated by a greater range of people and entities than was permitted under the previous public finance legislation. Functions that are delegable under the GSF Bill include:

- Functions conferred on a person or entity for the expenditure of money
- Functions conferred under a financial arrangement
- Function conferred on a person or entity to make payments out of an SDA account or a statutory special purpose fund
- Any function under the GSF Bill (including consulting and being consulted)
- Functions relating to separate GSF agencies<sup>3</sup>.

A number of responsibilities can be delegated and then subdelegated. Depending on the function involved, the delegation or subdelegation can be made not only to senior officers, but also to anyone classified as a 'government officer'. This flexibility comes with a corresponding obligation on the part of each Accountable Authority to ensure that their agency complies with the Bill (as well as associated policies and procedures)<sup>4</sup>.

The diagrams at **Attachment A** and **Attachment B** provide a visual representation of who Ministers and Accountable Authorities can delegate to, and who their delegates can subdelegate to.<sup>5</sup>

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<sup>3</sup> See s9.7 of the *GSF Bill*.

<sup>4</sup> See s3.6 of the *GSF Bill*.

<sup>5</sup> Rules around delegations by GSF agencies that are persons is dealt with in s9.10 of the *GSF Bill*.

## Delegation powers and cluster arrangements

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The GSF Bill has relevance for the operation of clusters. Some key points to note are:

- The Minister can **delegate their power to request 'relevant agency information'**, but only to another Minister or the Secretary of a Department. Those people **cannot subdelegate** the power further.
- **A Minister may only delegate the ability to obtain information to another Minister or the Secretary of a Department or an Accountable Authority.** For clarity, a cluster CFO cannot be delegated the function of obtaining information from agencies, regardless of whether it is within or outside their cluster.
- **The Bill enables information to be obtained from a separate GSF agency<sup>6</sup>.** However, Ministers' ability to delegate these and certain other functions exercisable in respect of these agencies is more limited in scope than it is for other agencies.
- **The Treasurer can set directions detailing the type of performance information that must be kept and is to be produced/provided when a request is made for that information.** These may apply to all or a class of agencies. Directions of this kind may assist in the production and sharing of information within and across Clusters.
- **A cluster/agency may prepare their own delegation instrument(s)** using the principles set out in the GSF Bill. Treasury may provide some sample delegations instruments (e.g. for Ministers).

## Need more information?

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For more detail refer to the following in the GSF Bill:

- Division 9.2 Delegations

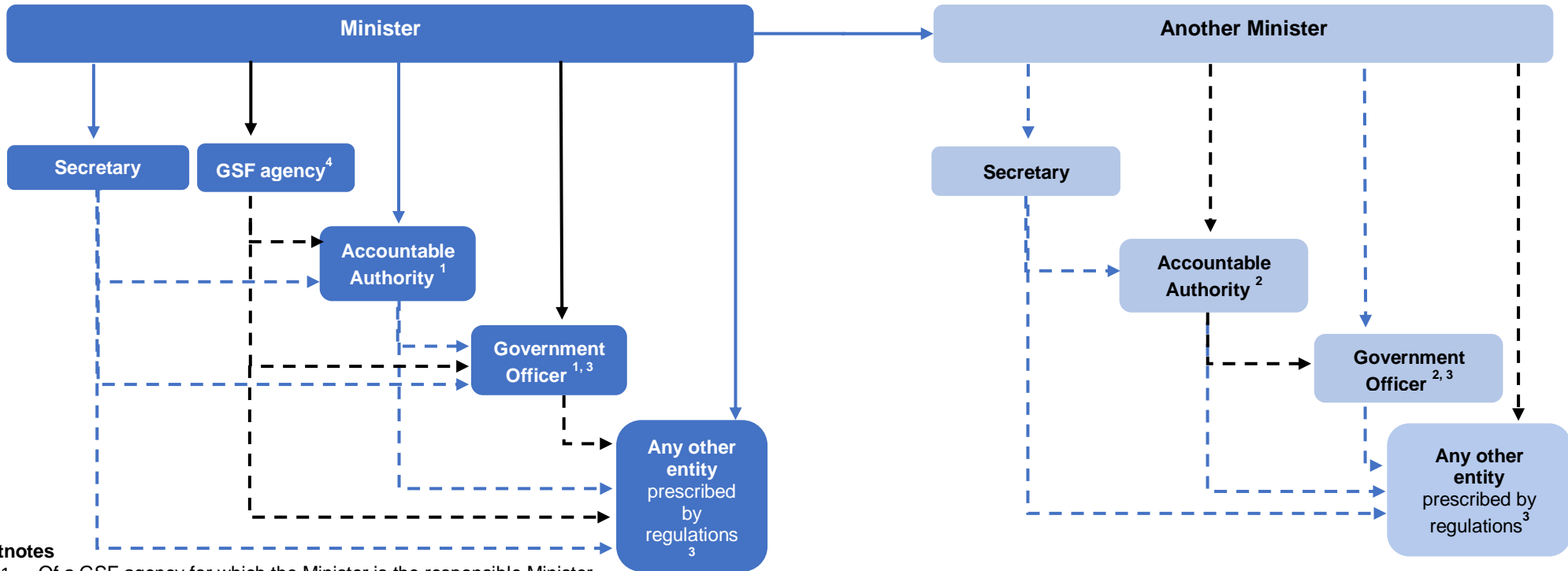
Email the Legislation team at [Legislation@treasury.nsw.gov.au](mailto:Legislation@treasury.nsw.gov.au).

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<sup>6</sup> 'Separate GSF agency' is defined in ss2.5(1) of the GSF Bill.

# Ability to delegate and subdelegate Minister's functions

# Attachment A

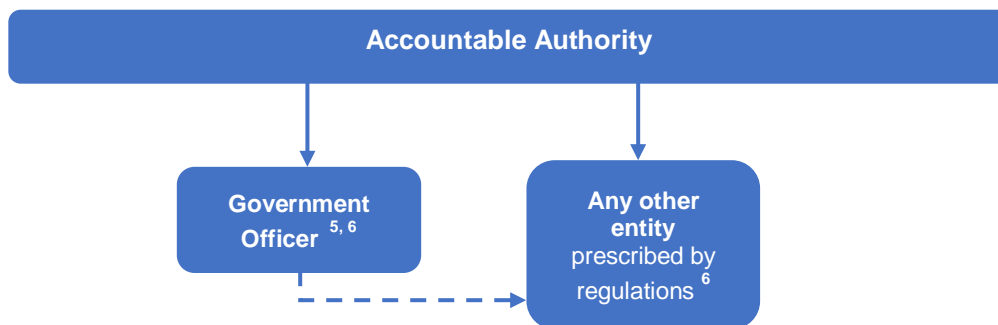


**Footnotes**

1. Of a GSF agency for which the Minister is the responsible Minister.
2. Of a GSF agency for which another Minister is responsible.
3. In addition, government officers can also subdelegate to other government officers (or government officers of a kind), and entities prescribed by the regulations can also delegate to other entities prescribed by the regulations.
4. That is a person and for which the Minister is the responsible Minister.
  - When it comes to a Minister's functions under Division 9.1 Information Sharing, these functions can be delegated but only to another Minister or a Secretary. They may not subdelegate further.
  - Special rules apply to delegations concerning *separate GSF agencies* (subsection 9.9(3) (delegations by Ministers)).
  - Subdelegates may themselves delegate in accordance with subsection 9.9(6).

**Legend**



- Ability to delegate functions
- Ability to subdelegate functions



### Footnotes

5. Of the agency. Also, for a university or its controlled entities, this is to be read as 'an employee or officer'.
6. In addition, government officers can also subdelegate to other government officers (or government officers of a kind), and entities prescribed by the regulations can also delegate to other entities prescribed by the regulations.

### Legend

-  Ability to delegate functions
-  Ability to subdelegate functions