

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

Government Officer: Roles and Responsibilities

At a glance

- A government officer is an employee of a GSF Agency, the head of a GSF Agency, a statutory officer who exercises functions in relation to a Public Service agency or anyone else prescribed to be a government officer in the regulations (for example, this *could* include certain classes of contractors).
- The requirements of a government officer are not materially different from those that apply to public servants under the existing legislative framework, but will now extend to all government officers under the GSF Act.
- The delegation provisions within the GSF Act enable the Minister, Treasurer, and Accountable Authority to delegate and subdelegate a broader set of functions, which can impact government officers.
- The GSF Act also includes three guiding values: accountability, integrity, and transparency.

Who is a government officer?

A **government officer** is a person who is:

- an employee of a GSF agency (including an employee seconded to another GSF agency),
- the head of a GSF agency,
- generally, a statutory officer who exercises 'head of agency' functions in relation to a Public Service agency (refer Schedule 1 of the *Government Sector Employment (GSE) Act 2013*, or who are been delegated functions in respect of a Public Service agency under sections 27 or 32 of the *GSE Act 2013*) (s 2.9).

Who is not a government officer?

The GSF Act specifies that the following are **not government officers**:

- A Governor, Lieutenant-Governor or Administrator of the State
- A Minister, member of the Executive Council or a Parliamentary Secretary
- A member of the Legislative Council or Legislative Assembly
- A judicial officer within the meaning of the *Judicial Officers Act 1986* (including staff of the Judicial Commission of NSW employed under that Act)
- An officer or employee of either House of Parliament or under the control of the President or Speaker (or both)
- A person employed under the *Members of Parliament Staff Act 2013*
- A member of the governing body of a GSF Agency (for example, a member of a Board where the Board is the Accountable Authority of a GSF agency) who is not employed by the Agency or any other GSF agency
- A volunteer, consultant or contractor of a GSF agency (unless prescribed)
- A person working for a GSF agency by way of secondment but who is not employed by a GSF agency
- Any other person prescribed by the regulations not to be a **government officer**

Roles and Responsibilities

The requirements placed on a **government officer** in the GSF Act are not materially different from those that apply to public servants under the existing legislative framework. The GSF Act builds on these requirements, and extends them to *all* government officers, including those not covered by existing public sector legislation – for example, employees of State owned corporations.

A **government officer** should be guided by the values and principles in the GSF Act (clause 3.7):

- **Accountability:** take reasonable care so that use of government resources and related money is efficient, effective and prudent.
- **Integrity:** place public interest over private interest and not use their position or information improperly.
- **Transparency:** ensure that any real or perceived conflicts of interest are effectively avoided, managed and disclosed.

A **government officer** may perform functions, such as authorising expenditure on behalf of the State, as a delegate. Under the GSF Act, a broad range of functions may be delegated, or subdelegated, to government officers by (amongst others) the responsible Minister and the Accountable Authority for the relevant GSF Agency.

Treasurer's directions may also confer administrative functions on **government officers**.

What a government officer cannot do under the GSF Act

A **government officer** does not have authority to spend government money unless he or she holds a delegation or subdelegation that authorises the expenditure. It is incumbent on the government officer to ensure that the expenditure of money for the State or a GSF agency is undertaken in a way that is "authorised", within the meaning of clause 5.5 of the GSF Act.

A **government officer** cannot make a gift of government property unless:

- the property was acquired for use as a gift,
- the gift has been authorised by the Treasurer in writing,
- the gift is made in accordance with Treasurer's directions, or
- the gift was authorised by or under any law.¹

A government officer can be liable for loss

A **government officer** is a 'person handling government resources' under the GSF Act, and the civil recovery provisions apply to them. A **government officer**:

- Incurs a debt to the Crown if they contravene provisions around the gifting of government property and where the contravention was the result of dishonesty, misconduct, or a deliberate or serious disregard of reasonable standards of care.
- Incurs a debt to the Crown if a loss of government resources or related money has occurred, and the person caused or contributed to the loss by misconduct, or a deliberate or serious disregard of reasonable standards of care.²

A debt incurred is recoverable by the Treasurer,³ but proceedings can only be commenced with the concurrence of the Attorney General (or his/her delegate).

For further information on the civil recovery provisions, refer to Part 9 Division 9.4 of the GSF Act.

Need more information?

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

- Division 2.3 and Division 3.3 Government officers
- "Delegating roles and responsibilities" fact sheet
- the attached checklist for detail on the relevant clauses of the Act.

Email the Legislation team at Legislation@treasury.nsw.gov.au

Attachment A – Relevant references in the GSF Act

¹ s.5.6.

² Including by way of deficiency, destruction, or damage.

³ Unless it is waived (s.9.18(4)).

The table below references the roles and responsibilities of a **government officer** under the GSF Act.

Responsibility	Act Reference
Must comply with Treasurer's directions	section 3.4
Should take reasonable care so that the officer's use of government resources or related money is efficient, effective and prudent (<i>Accountability</i>)	section 3.7
Should: <ul style="list-style-type: none"> (a) place the public interest over private interest, and (b) should not use the officer's position (or information acquired in exercise of the functions of that position) improperly for financial or personal gain (<i>Integrity</i>) 	section 3.7
Should: <ul style="list-style-type: none"> (a) ensure that any real or perceived conflicts of interest are avoided or effectively managed, and (b) disclose to the appropriate entity, as soon as possible, any direct or indirect material conflict of interest of the officer that relates to the affairs of the GSF Agency (<i>Transparency</i>) 	section 3.7
Must ensure that expenditure of money for the State or GSF Agency is in a way that is "authorised". Expenditure will be "authorised" where it is done (i) in accordance with a valid delegation or subdelegation, or (ii) authorised by any other law.	section 5.5 Div 9.2
Cannot make a gift of government property unless: the property was acquired for use as a gift; the gift has been authorised by the Treasurer in writing; the gift is made in accordance with Treasurer's directions; or the gift was authorised by or under any law.	section 5.6
May have delegable functions delegated to them, by the Treasurer, a Minister, the Secretary of a Department, GSF agencies, Accountable Authorities or other government officers. (See also the "Delegating roles and responsibilities" fact sheet)	sections 9.8, 9.9, 9.10, 9.11