



New South Wales

# Government Sector Finance Act 2018 No 55

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New South Wales

# **Government Sector Finance Act 2018 No 55**

Act No 55, 2018

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An Act to establish a framework for government sector financial and resource management in New South Wales; and for other purposes. [Assented to 24 October 2018]

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### Division 1.1 Introduction

#### 1.1 Name of Act

This Act is the *Government Sector Finance Act 2018*.

#### 1.2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Section 10.4 (Regulations) and Schedule 1 commence on the date of assent to this Act.

#### 1.3 Objects of Act

The objects of this Act are as follows:

- (a) to promote and support sound financial management, budgeting, performance, financial risk management, transparency and accountability in the government sector and by GSF agencies and government officers,
- (b) to facilitate the effective devolution of roles and responsibilities in connection with financial management to support efficient and effective government,
- (c) to require the efficient, effective and economical use and management of government resources and related money in accordance with the principles of sound financial management,
- (d) to promote appropriate stewardship of government resources and related money,
- (e) to facilitate cooperation and collaboration within and between GSF agencies for the purpose of achieving common objectives and whole of Government objectives,
- (f) to facilitate the keeping and sharing of performance information in the government sector for the purposes of decisions about resource allocation.

### Division 1.2 Interpretation generally

#### 1.4 General definitions

In this Act:

***accountable authority***:

- (a) for a GSF agency—see section 2.7, or
- (b) for a university or its controlled entities (including ones that are to be treated as GSF agencies or reporting GSF agencies for the purposes of provisions of this Act)—means the governing body of the university (that is, its Senate, Council or Board).

***annual Appropriation Act*** means an Act with the object of appropriating sums of revenue or moneys for the ordinary annual services of the Government (as referred to in section 5A of the *Constitution Act 1902*).

***annual GSF financial statements*** for a reporting GSF agency—see section 7.6.

***annual reporting information*** for a reporting GSF agency—see section 7.11.



***annual reporting period:***

- (a) for a GSF agency—see section 2.10, or
- (b) for the NSW Government—see section 2.11.

***arrangement*** for the purposes of Part 6—see section 6.5.

***assets*** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

***Audit Office*** means the Audit Office of New South Wales established by the *Government Sector Audit Act 1983*.

***audit report***, in relation to a statement or report, means an audit report for the statement or report prepared by the Auditor-General under section 34 of the *Government Sector Audit Act 1983*.

***Auditor-General*** means the Auditor-General referred to in section 27B of the *Government Sector Audit Act 1983*.

***Australian Accounting Standards*** means the standards issued by the Australian Accounting Standards Board, as in force from time to time.

***authorised*** in relation to financial arrangement for a GSF agency—see section 6.22.

***banking account***—see section 6.4.

***banking account structuring***—see section 6.4.

***banking information*** of a GSF agency—see section 6.4.

***banking service***—see section 6.4.

***borrowing***—see section 6.8.

***Budget control authority*** means a Budget control authority issued under section 5.1.

***Budget Papers***—see section 4.1.

***company State owned corporation*** means a company State owned corporation within the meaning of the *State Owned Corporations Act 1989*.

***conduct*** includes an omission.

***Consolidated Fund*** means the fund formed as referred to in section 39 of the *Constitution Act 1902*.

***Consolidated State Financial Statements***—see section 7.17.

***constituent Act***, in relation to a GSF agency or other entity, means the Act by or under which the agency or entity is appointed or constituted.

***contractor*** means:

- (a) a person engaged under a contract for services (but not a contract of service) to perform or provide services for or on behalf of a GSF agency, or
- (b) a person who is provided by a person referred to in paragraph (a) (including as a subcontractor) to perform the contracted services for or on behalf of a GSF agency.

***controlled entity***—see section 2.2.

***Corporations legislation*** means the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies.

***delegable function***—see section 9.7.

***Department*** means a Department within the meaning of the *Government Sector Employment Act 2013*.

***derivative arrangement***—see section 6.10.

***enter*** into a financial arrangement or other arrangement includes participating in the arrangement.

**entity**—see section 2.1.

**expenditure of money** includes:

- (a) the commitment of money for expenditure, and
- (b) the incurring of expenditure, and
- (c) the making of payments.

**financial arrangement**—see section 6.7.

**financial arrangement approval**—see section 6.23.

**financial service**—see section 6.6.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**funds manager approval**—see section 6.35.

**General Government Sector** means New South Wales agencies or activities listed or described as part of the General Government Sector by the Australian Bureau of Statistics (which are listed or described in accordance with international statistics conventions).

**general law** means the common law and equity, including the common law concerning the content and exercise of Executive or prerogative powers, privileges or other rights of the Crown.

**governing body**, in relation to a GSF agency, means:

- (a) a board, council or other body comprised of individuals that are collectively responsible for managing the affairs of the agency, or
- (b) any other entity declared by the regulations to be the governing body for the agency,

but does not include:

- (c) any board, council or other body with merely advisory functions, or
- (d) any entity (or entity of a kind) prescribed by the regulations not to be a governing body.

**government money** means:

- (a) any public money (including any securities and revenues, loans and other moneys whatsoever) collected, received or held by any person for or on behalf of the State (as referred to in section 39 (1) of the *Constitution Act 1902*), and
- (b) any territorial, casual and other revenues of the Crown (including all royalties), from whatever source arising, within New South Wales, and as to the disposal of which the Crown may otherwise be entitled absolutely, conditionally or in any other way (as referred to in section 39 (2) of the *Constitution Act 1902*), and
- (c) any money that, under any Act, is directed or authorised to be paid to, or is expressed to form part of, the Consolidated Fund or the Special Deposits Account (including money in working accounts in the Special Deposits Account), and
- (d) any money (or money of a kind) prescribed by the regulations as government money,

but does not include anything prescribed by the regulations not to be government money.

**government officer**—see section 2.9.

**Note.** Section 2.9 also defines when a government officer is a **government officer of a GSF agency**.

**government property** means all property held by, for or on behalf of the State or a GSF agency (whether or not it is held on trust) except:

- (a) government money or related money, or
- (b) property held on trust for the benefit of an entity other than a GSF agency.

**government resources** means government money and government property.

**GSF agency**—see section 2.4.

**head of a GSF agency** means:

- (a) for a Public Service agency—the person who is the head of the Public Service agency (within the meaning of the *Government Sector Employment Act 2013*), or
- (b) for any other agency—the person who is the chief executive officer (however described) of the agency or otherwise responsible for the agency’s day to day management, but not its governing body (if any).

**investment**—see section 6.9.

**joint financing arrangement**—see section 6.11.

**joint venture**—see section 6.12.

**joint venture arrangement**—see section 6.12.

**kind**, in relation to an entity, matter or thing, includes a class of entity, matter or thing.

**law** means legislation or the general law.

**legislation** includes Acts, statutory rules and environmental planning instruments.

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**misconduct**, in relation to a government officer to whom the *Government Sector Employment Act 2013* applies, includes (but is not limited to) misconduct for the purposes of that Act.

**New South Wales Treasury Corporation** means the New South Wales Treasury Corporation constituted by the *Treasury Corporation Act 1983*.

**NSW Health entity**—see section 2.3.

**paramount provision** of this Act—see section 1.8.

**person handling government resources** means each of the following:

- (a) a government officer,
- (b) a person exercising functions as an accountable authority for a GSF agency,
- (c) a person exercising functions as a delegate or subdelegate in connection with the use, management or disposal of government resources or related money,
- (d) a person providing services to a GSF agency in connection with the use, management or disposal of government resources or related money (including as a contractor, consultant or volunteer),
- (e) any other person (or person of a kind) prescribed by the regulations exercising functions in connection with the use, management or disposal of government resources or related money,

but does not include a Minister.

**prescribed reporting exemption criteria**—see section 7.3.

**principal entity** in relation to a joint financing arrangement—see section 6.11.

**property** means property of all kinds, whether real or personal and whether tangible or intangible and, in particular, includes choses in action.

**Public Service agency** has the same meaning as in the *Government Sector Employment Act 2013*.

**related money** means:

- (a) any money, except government money, held by the Treasurer or another Minister or a GSF agency or government officer in the course of their official functions, including money that is held on trust for another entity or for a purpose, and
- (b) any money (or money of a kind), except government money, prescribed by the regulations as related money,

but does not include anything prescribed by the regulations not to be related money.

**relevant agency information** about a GSF agency—see section 9.1.

**reporting GSF agency**—see section 7.3.

**responsible manager** for an SDA account—see section 4.16.

**responsible Minister:**

- (a) for a GSF agency—see section 2.6, and
- (b) for a university or its controlled entities (including ones that are to be treated as GSF agencies or reporting GSF agencies for the purposes of provisions of this Act)—means the Minister administering the constituent Act for its governing body (that is, its Senate, Council or Board).

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

**SDA account** means an account in the Special Deposits Account.

**secondary entity** in relation to a joint financing arrangement—see section 6.11.

**separate GSF agency**—see section 2.5.

**separate GSF agency delegable function** of a Minister in relation to a separate GSF agency—see section 9.7.

**Special Deposits Account**—see section 4.15.

**State owned corporation** means a company State owned corporation or a statutory State owned corporation.

**statutory special purpose fund** means a fund established by or under an Act (except an SDA account) that limits the use of money in that fund to specified purposes.

**statutory State owned corporation** means a statutory State owned corporation within the meaning of the *State Owned Corporations Act 1989*.

**Treasurer's directions** means any directions given by the Treasurer under Division 3.1.

**trust** means a trust at general law.

**trust money** means money that is held in trust.

**university** means a university established or continued by an Act of New South Wales.

**Workers Compensation Insurance Fund** means the Workers Compensation Insurance Fund established under the *Workers Compensation Act 1987* (including the assets and liabilities of that Fund).

**Workers Compensation Nominal Insurer** means the Workers Compensation Nominal Insurer referred to in section 154A of the *Workers Compensation Act 1987*.

**working day** means any day that is not a Saturday, Sunday or public holiday.

**Note.** The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

## 1.5 Notes

Notes included in this Act do not form part of this Act.

## Division 1.3 Application of Act

### 1.6 Act binds Crown

This Act binds the Crown.

### 1.7 Extraterritorial operation of Act

- (1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the activities of Ministers, GSF agencies, accountable authorities for GSF agencies and government officers whether occurring in or outside the territorial limits of the State.
- (2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to those activities even if the rules of private international law (whether under general law or legislation) would require the application of a law other than this Act instead of the provisions of this Act.
- (3) In this section:  
*activities* include conduct and transactions.

## Division 1.4 Relationship of Act with other laws

### 1.8 Relationship with other legislation generally

- (1) This Act, the regulations and the Treasurer's directions are not intended to limit or exclude the operation of any other legislation (whenever enacted or made), except as provided by this section.
- (2) A paramount provision of this Act is to be interpreted as prevailing over the provisions of other legislation (whenever enacted or made) to the extent of any inconsistency unless another Act expressly provides for the legislation generally, or those provisions specifically, to have effect despite this Act generally or the paramount provision.
- (3) Each of the following is a *paramount provision* of this Act:
  - (a) section 5.3 (Payment of tax-equivalents to Treasurer),
  - (b) section 5.4 (Payment of financial distributions to Treasurer),
  - (c) Part 6 (Financial services and arrangements),
  - (d) Part 7 (Reporting), subject to sections 7.1, 7.4 and 7.10.
- (4) When a paramount provision of this Act prevails over the provisions of other legislation, a person or other entity to whom the paramount provision applies must comply with the paramount provision (including any regulations made for the purposes of that provision) even if it may result in a contravention of the other legislation.
- (5) However, subsection (4) does not apply if compliance by a person or other entity with a paramount provision of this Act would result in that person or other entity committing an offence against other legislation.
- (6) To avoid doubt, a contravention of other legislation resulting from compliance with a paramount provision of this Act (or regulations made for the purposes of that provision) as required by subsection (4) does not:

- (a) subject any person or other entity involved in the contravention to any civil liability, or
  - (b) invalidate any arrangement, transaction or conduct that was entered into or done in compliance with the paramount provision (or the regulations for the purposes of that provision).
- (7) This section and each paramount provision of this Act are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth generally.

**Note.** Section 5G of the *Corporations Act 2001* of the Commonwealth enables a State to displace the operation of provisions of the Corporations legislation in favour of provisions of State laws that are declared under State law to be Corporations legislation displacement provisions for the purposes of that section.

- (8) In this section:  
**arrangement** has the same meaning as in Part 6.

### 1.9 Exclusion or displacement of Corporations legislation

- (1) The regulations may declare any matter referred to in, or arising under or in connection with, this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
- (a) the whole of the Corporations legislation, or
  - (b) a specified provision of that legislation, or
  - (c) that legislation other than a specified provision, or
  - (d) that legislation otherwise than to a specified extent.

**Note.** Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation, the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (2) The regulations may declare any provision of this Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth (either generally or specifically in relation to a provision of the Corporations legislation).

**Note.** Section 5G of the *Corporations Act 2001* of the Commonwealth enables a State to displace the operation of provisions of the Corporations legislation in favour of provisions of State laws that are declared under State law to be Corporations legislation displacement provisions for the purposes of that section.

- (3) Subsections (1) and (2) do not apply in relation to any provisions or other matters that are already declared by another provision of this Act to be excluded matters or Corporations legislation displacement provisions for the purposes of section 5F or 5G of the *Corporations Act 2001* of the Commonwealth.

**Note.** Section 1.8 declares a paramount provision of this Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth generally.

- (4) In this section:  
**matter** includes conduct, body, person or thing.

## Part 2 Key concepts

### Division 2.1 Entities generally

#### 2.1 Entities

- (1) Each of the following is an *entity*:
  - (a) a person,
  - (b) a body or group of persons (whether incorporated or unincorporated),
  - (c) a partnership or joint venture,
  - (d) the trustee (or, if there is more than one trustee, the trustees together) of a trust,
  - (e) any other legal, administrative or fiduciary arrangement or other organisational structure capable of deploying resources to achieve objectives.

**Note.** Section 21 (1) of the *Interpretation Act 1987* defines **person** to include an individual, a corporation and a body corporate or politic.
- (2) To avoid doubt, entities are not limited to those that are formed or located in the State.

#### 2.2 Controlled entities

- (1) An entity is a *controlled entity* of another entity or a combination of other entities if:
  - (a) the entity is:
    - (i) an entity that is controlled by the other entity or combination of entities (with control being determined in accordance with section 50AA of the *Corporations Act 2001* of the Commonwealth), or
    - (ii) an entity that is controlled by the other entity or combination of entities (with control being determined in accordance with the Australian Accounting Standards), or
  - (b) the entity is an entity (or an entity of a kind) prescribed by the regulations as a controlled entity.
- (2) If the Treasurer considers that it is unclear whether an entity is controlled by another entity or a combination of entities for the purposes of subsection (1) (a) (i) or (ii), the Treasurer may make an interim written determination (an *interim status determination*) that the entity is to be treated, or not to be treated, as being a controlled entity of the other entity or combination of entities for the purposes of this Act until regulations are made declaring the entity's status.
- (3) An interim status determination:
  - (a) takes effect on the day it is published on the Treasury's website or any later day specified in the determination, and
  - (b) ceases to have effect when the earliest of the following occurs:
    - (i) the expiry of the period of 3 months after the determination takes effect,
    - (ii) the revocation of the determination,
    - (iii) a regulation made for the purposes of subsection (6) takes effect declaring the entity's status.
- (4) An interim status determination may be revoked by the Treasurer before it ceases to have effect by a further written notice published on the Treasury's website.
- (5) An entity to which an interim status determination relates is to be treated, or not to be treated, as being a controlled entity of the other entity or combination of entities for the purposes of this Act in accordance with the determination while it remains in effect.

- (6) Without limiting subsection (1) (b), the regulations may declare that for the purposes of this Act an entity to which an interim status determination relates is, or is not, a controlled entity of another entity or combination of entities specified in the determination.

### 2.3 NSW Health entities

- (1) Each of the following is a **NSW Health entity**:
- (a) a statutory health organisation within the meaning of the *Health Services Act 1997*,
  - (b) the Health Administration Corporation incorporated by the *Health Administration Act 1982* and each of its controlled entities,
  - (c) the Cancer Institute (NSW) constituted by the *Cancer Institute (NSW) Act 2003*,
  - (d) the New South Wales Health Foundation constituted by the *Health Administration Act 1982*,
  - (e) the Albury Base Hospital (being a public hospital controlled by the Crown as referred to in section 15 (d) of the *Health Services Act 1997*),
  - (f) any other entity (or entity of a kind) prescribed by the regulations as a NSW Health entity.
- (2) However, a **NSW Health entity** does not include any entity (or entity of a kind) prescribed by the regulations not to be a NSW Health entity.
- (3) The Minister is not to recommend the making of a regulation for the purposes of subsection (1) (f) or (2) unless the Minister certifies that the Minister administering the *Health Services Act 1997* has concurred in the making of the regulation.
- (4) To avoid doubt, the exclusion of an entity (or entity of a kind) by a regulation made for the purposes of subsection (2) does not result in the entity (or entity of the kind) ceasing to be a GSF agency if it otherwise falls within the definition of **GSF agency** in section 2.4.

## Division 2.2 GSF agencies and related concepts

### 2.4 GSF agencies

- (1) Each of the following is a **GSF agency**:
- (a) a separate GSF agency,
  - (b) a NSW Health entity,
  - (c) the NSW Police Force,
  - (d) the New South Wales Treasury Corporation,
  - (e) the Law Enforcement Conduct Commission,
  - (f) the Independent Pricing and Regulatory Tribunal,
  - (g) a Council within the meaning of Part 5A of the *Health Practitioner Regulation National Law (NSW)*,
  - (h) a State owned corporation,
  - (i) an entity that is a statutory body representing the Crown (including an entity that is a NSW Government agency to which section 13A of the *Interpretation Act 1987* applies),
  - (j) an entity with money held in an SDA account (but the account itself is not to be treated as being a GSF agency),



- (k) any Public Service agency not already covered by a previous paragraph,
  - (l) any other entity (or entity of a kind) prescribed by the regulations as a GSF agency.
- (2) Each of the following entities (except if they are individuals) is also a GSF agency if it is not already an entity of a kind referred to in subsection (1):
- (a) an entity that is a controlled entity of another entity (or a combination of other entities) referred in subsection (1),
  - (b) an entity that is a controlled entity of a Minister or a combination of Ministers.
- (3) To avoid doubt, an entity that is a joint venture is not a GSF agency unless it is prescribed by the regulations for the purposes of subsection (1) (l) to be a GSF agency.
- (4) However, a **GSF agency** does not include:
- (a) the Legislature of New South Wales, or
  - (b) a Minister (except to the extent to which Part 6 provides for a Minister to be treated as a GSF agency), or
  - (c) the Workers Compensation Insurance Fund, or
  - (d) the Workers Compensation Nominal Insurer.
- (5) Despite subsections (1) and (2), the regulations may declare that a specified entity (or specified part of an entity) is, or is not, to be treated as a GSF agency that is distinct from another specified GSF agency for the purposes of Part 6.

## 2.5 Separate GSF agency

- (1) Each of the following is a **separate GSF agency**:
- (a) the Audit Office,
  - (b) the Independent Commission Against Corruption,
  - (c) the Judicial Commission of New South Wales,
  - (d) the New South Wales Electoral Commission,
  - (e) the Ombudsman's Office,
  - (f) any other entity (or an entity of a kind) prescribed by the regulations as a separate GSF agency.
- (2) Despite any other provision of this Act, a separate GSF agency (and the accountable authority for the agency and its government officers) are each not required to comply with a relevant Treasurer's requirement or Minister's information requirement if the accountable authority considers that the requirement is not consistent with the exercise of the statutory functions of the agency.
- (3) A **relevant Treasurer's requirement** is:
- (a) a provision of the Treasurer's directions that a separate GSF agency (or the accountable authority for the agency or its government officers) would be required to comply with but for this section, or
  - (b) any other direction, request or other requirement given or made by the Treasurer under this Act that a separate GSF agency (or the accountable authority for the agency or its government officers) would be required to comply with but for this section.
- (4) A **Minister's information requirement** is any direction, request or other requirement given or made by a Minister under this Act for the provision of information about a separate GSF agency that the agency (or the accountable authority for the agency or its government officers) would be required to comply with but for this section.

- (5) The accountable authority for a separate GSF agency must ensure that a written document (a ***non-compliance reasons statement***) stating the reasons for any non-compliance with a relevant Treasurer's requirement or Minister's information requirement is:
  - (a) given to the Treasurer or other Minister who gave or made the requirement as soon as practicable after it is decided not to comply, and
  - (b) included in the annual reporting information for the separate GSF agency for the annual reporting period during which the non-compliance occurred or reported in any other way prescribed by the regulations.
- (6) Without limiting subsection (5) (b), the regulations may make provision for or with respect to the tabling of non-compliance reasons statements in Parliament (including by providing for the application of section 9.12 to the tabling).

## 2.6 Responsible Minister for GSF agencies

- (1) The ***responsible Minister***, in relation to a GSF agency (whether or not a reporting GSF agency), is:
  - (a) for a NSW Health entity—the Minister administering the *Health Services Act 1997*, or
  - (b) for a Public Service agency that is not a NSW Health entity—the Minister to whom the agency is responsible, or
  - (c) for a statutory State owned corporation—the voting shareholders of the corporation under the *State Owned Corporations Act 1989*, or
  - (d) for any other GSF agency—the Minister who administers the constituent Act for the agency.

**Note.** Section 50C of the *Constitution Act 1902* enables the Governor to make administrative arrangements orders that specify the Minister to whom a Public Service agency is responsible. Administrative arrangements orders can be accessed on the NSW legislation website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).
- (2) Despite subsection (1), the Premier may, by notice published in the Gazette, authorise a Minister or other person to exercise some or all of the functions of the responsible Minister for a GSF agency instead of that Minister.
- (3) A Minister or other person authorised to exercise the functions of the responsible Minister for a GSF agency is to be treated as being the responsible Minister for the agency for the purposes of this Act in relation to the functions that are authorised.
- (4) To avoid doubt, if the person authorised is not a Minister, the person has the same powers under this Act to delegate the Ministerial functions that the person is authorised to exercise as a Minister would have.

## 2.7 Accountable authorities for GSF agencies

- (1) Each GSF agency is to have an accountable authority for the purposes of this Act.
- (2) The ***accountable authority*** for a GSF agency is:
  - (a) for the Audit Office—the Auditor-General, or
  - (b) for the Independent Commission Against Corruption—the Chief Executive Officer of the Commission, or
  - (c) for the Ombudsman's Office—the Ombudsman, or
  - (d) for the NSW Police Force—the Commissioner of Police, or
  - (e) for a NSW Health entity—the Secretary of the Ministry of Health, or
  - (f) for the Judicial Commission of New South Wales—the Chief Executive of the Commission, or

- (g) for the Law Enforcement Conduct Commission—the Chief Executive Officer of the Commission, or
  - (h) for the Independent Pricing and Regulatory Tribunal—the Chairperson of the Tribunal, or
  - (i) for any other agency not covered by the preceding paragraphs that is a Public Service agency:
    - (i) if the agency is a Department—the Secretary of the Department, or
    - (ii) if the agency is not a Department—the head of the agency, or
  - (j) for any other agency not covered by the preceding paragraphs that is not a Public Service agency:
    - (i) if the agency has a governing body—the governing body, or
    - (ii) if the agency does not have a governing body—the head of the agency.
- (3) Despite subsection (2) (i) and (j), the regulations may, for the purpose of avoiding doubt, declare that specified persons or other entities are to be treated as being the accountable authorities for specified GSF agencies (or kinds of GSF agencies) covered by those paragraphs.

## 2.8 Treasurer and Auditor-General to be notified of new GSF agencies

- (1) The accountable authority for an entity that becomes a GSF agency must:
  - (a) give written notice to the Treasurer of that fact within one month after the entity becomes a GSF agency, and
  - (b) give written notice to the Auditor-General of that fact within one month after the entity becomes a GSF agency and ensure that appropriate steps are taken to have the GSF agency audited by the Auditor-General.
- (2) Subsection (1) (a) does not apply in relation to:
  - (a) the establishment, abolition, change of name or transfer of a Public Service agency (or part of a Public Service agency) that results from an administrative arrangements order under section 50D of the *Constitution Act 1902*, or
  - (b) the establishment, abolition, change of name or transfer of a GSF agency by a provision of an Act.

## Division 2.3 Government officers

### 2.9 Government officers

- (1) Each of the following is a **government officer**:
  - (a) a person who is the head of a GSF agency,
  - (b) a person employed in or by a GSF agency,
  - (c) a person who is a statutory officer and not a Public Service employee under the *Government Sector Employment Act 2013*, but who is the head of, or exercises functions in relation to, a Public Service agency,
  - (d) a person working for a GSF agency by way of secondment from another GSF agency,
  - (e) any other person (or person of a kind) prescribed by the regulations as a government officer.

**Note.** Section 59 of the *Government Sector Employment Act 2013* provides that a reference in another Act to an officer or employee of a statutory body or statutory officer is to be read as including a reference:

- (a) to a Public Service employee who is employed to enable the statutory body or statutory officer to exercise functions, and
  - (b) to any other person whose services the statutory body or statutory officer makes use of (whether by way of secondment or otherwise).
- (2) However, a **government officer** does not include any of the following:
- (a) the Governor, Lieutenant-Governor or Administrator of the State,
  - (b) a Minister, a member of the Executive Council or a Parliamentary Secretary,
  - (c) a member of the Legislative Council or the Legislative Assembly,
  - (d) a judicial officer within the meaning of the *Judicial Officers Act 1986* (including a registrar when performing judicial functions),
  - (e) a person who is a member of the staff of the Judicial Commission of New South Wales employed under the *Judicial Officers Act 1986*,
  - (f) an officer or employee of either House of Parliament or any officer or employee under the separate control of the President or Speaker, or under their joint control,
  - (g) a person employed under the *Members of Parliament Staff Act 2013*,
  - (h) a person who is a member of the governing body of a GSF agency but not employed in or by the agency or any other GSF agency,
  - (i) a person exercising functions for or on behalf of a GSF agency as a volunteer, consultant or contractor (except a person of the kind and to the extent specified by the regulations),
  - (j) a person employed by an entity that is not a GSF agency who is working for a GSF agency by way of secondment,
  - (k) any other person (or person of a kind) prescribed by the regulations not to be a government officer.
- (3) A government officer is a **government officer of a GSF agency** if the officer:
- (a) has any of the relationships referred to in subsection (1) (a)–(d) with the agency, or
  - (b) is an officer (or officer of a kind) prescribed by the regulations as a government officer of the agency.

## Division 2.4 Annual reporting periods

### 2.10 Annual reporting periods for GSF agencies

- (1) Subject to any determination of the Treasurer under this section, the **annual reporting period** for a GSF agency is:
- (a) the period of 12 months commencing on 1 July in any year, or
  - (b) if a different period is specified as the agency's financial year by its constituent Act—that specified period.
- (2) The Treasurer may, by written notice given to the accountable authority for a GSF agency, determine a different annual reporting period for the GSF agency than that referred to in subsection (1) to facilitate:
- (a) reporting for the first annual reporting period for a new GSF agency, or
  - (b) reporting for the final annual reporting period for a GSF agency or former GSF agency, or
  - (c) synchronisation with the annual reporting periods of other GSF agencies for the purposes of consolidated reporting.

- (3) The determination may:
  - (a) specify any of the following periods:
    - (i) 12 months or less,
    - (ii) more than 12 months (but not more than 18 months), or
  - (b) specify a period for all provisions (or specified provisions) of this Act.
- (4) Before making a determination for the purposes of subsection (2), the Treasurer must consult both the Auditor-General and the responsible Minister for a GSF agency in accordance with section 3.5 about any proposed determination.

#### **2.11 Annual reporting period for NSW Government**

The *annual reporting period* for the NSW Government is the period of 12 months commencing on 1 July in any year.

## Part 3 Roles and responsibilities

### Division 3.1 Treasurer

#### 3.1 Giving of Treasurer's directions

- (1) The Treasurer may give written directions (called *Treasurer's directions*) for or with respect to each of the following:
  - (a) the principles, practices, arrangements and procedures to be applied or followed by GSF agencies, government officers and accountable authorities for GSF agencies for the purposes of promoting compliance with the provisions of this Act and the regulations,
  - (b) any matter that is, by or under this Act or any other Act, required or permitted to be included in the Treasurer's directions,
  - (c) any matter of a kind prescribed by the regulations for which the Treasurer's directions are authorised to make provision.

**Note.** Section 9.8 allows the Treasurer to delegate any functions concerning the giving of Treasurer's directions, but only to the accountable authority for the Treasury or certain other senior government officers of the Treasury.

- (2) A Treasurer's direction:
  - (a) cannot be inconsistent with this Act, and
  - (b) must be published on the NSW legislation website and may also be published on the Treasury's website or in any other way the Treasurer considers appropriate, and
  - (c) takes effect on the day it is published on the NSW legislation website or any later day specified in the direction, and
  - (d) may be amended, replaced or revoked by a further Treasurer's direction.
- (3) A Treasurer's direction may do any of following (or any combination of the following):
  - (a) apply generally or be limited in its application by reference to one or more specified circumstances, factors or exceptions,
  - (b) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person, group of persons or body,
  - (c) apply, adopt or incorporate (whether with or without modification) any publication as in force at a particular time or as in force from time to time,
  - (d) give exemptions from the direction (whether from all of the direction or specified provisions of the direction) or authorise specified entities to give those exemptions.
- (4) To avoid doubt, a Treasurer's direction concerning reporting requirements for a particular annual reporting period (whether for a GSF agency or for the NSW Government) may be given even if that period has already commenced or has ended.
- (5) Except to the extent required by this Act or the regulations, the Treasurer may (but need not) consult with responsible Ministers for GSF agencies or any other persons or entities that the Treasurer considers appropriate before giving Treasurer's directions or amending, replacing or revoking them.

#### 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.

### 3.3 Application of Treasurer’s directions

- (1) Subject to subsection (2), the Treasurer’s directions do not apply to any of the following:
- (a) a Minister (even if the Minister falls within a GSF agency of a kind to which the directions otherwise apply),
  - (b) a university or any of its controlled entities,
  - (c) any GSF agency, government officer or accountable authority for a GSF agency (or a GSF agency, government officer or accountable authority of a kind) prescribed by the regulations.
- (2) Subsection (1) does not prevent the application of Treasurer’s directions to:
- (a) a Minister for the purposes of provisions of Part 6 that are applicable to Ministers, or
  - (b) a university or any of its controlled entities for the purposes of provisions of Divisions 7.2 and 7.3 that are applicable to universities and their controlled entities.
- Note.** Section 6.1 provides that, for purposes of Part 6, each Minister (except the Treasurer) is to be treated as both a GSF agency and the accountable authority for the agency. Similarly, sections 7.4 and 7.10 provide that, for the purposes of Divisions 7.2 and 7.3 respectively, a university and its controlled entities are to be treated as GSF agencies.
- (3) To avoid doubt, the Treasurer’s directions can apply to a Minister’s delegate even though they do not apply to the Minister because of subsection (1) (a).
- (4) A provision of the Treasurer’s directions may be limited in its application to a particular GSF agency, but only if the provision is included with the consent of the responsible Minister for the agency.
- (5) However, a provision of the Treasurer’s directions cannot be limited in its application to a particular government officer or accountable authority for a GSF agency.
- (6) Subsections (4) and (5) do not prevent the giving of Treasurer’s directions to kinds of GSF agencies, government officers or accountable authorities for GSF agencies unless the kind consists of a single agency, officer or authority.

### 3.4 Duty to comply with Treasurer’s directions

A person or other entity to whom a provision of the Treasurer’s directions applies must comply with the provision.

**Note.** Section 2.5 authorises a separate GSF agency not to comply with a requirement of the Treasurer’s directions if the accountable authority for the agency considers the requirement not to be consistent with the agency’s statutory functions.

### **3.5 Consultation about certain proposed regulations, directions and determinations**

- (1) This section applies if a provision of this Act or the regulations (the *consultation provision*) requires the Treasurer to consult a specified entity in accordance with this section about a matter (a *consultation matter*) that is proposed to be included in the regulations or in directions or determinations of the Treasurer.
- (2) The Treasurer must consult each entity specified by the consultation provision as an entity that must be consulted about a consultation matter before recommending the making of regulations, or giving directions or making determinations, that include the matter.
- (3) A consultation with an entity happens for the purposes of this section if:
  - (a) the entity is given a written statement setting out, or explaining the effect of, the consultation matter, and
  - (b) the entity is given a reasonable opportunity to make submissions to the Treasurer concerning the consultation matter before its inclusion in regulations, directions or determinations.
- (4) A contravention of a consultation provision or this section does not affect the validity of any regulation, direction or determination.

## **Division 3.2 Accountable authorities**

### **3.6 Policies and procedures for financial management of GSF agencies**

- (1) The accountable authority for a GSF agency is:
  - (a) to develop, maintain and make available financial management policies and procedures, and
  - (b) to establish, maintain and keep under review each of the following:
    - (i) effective systems for risk management, internal control and assurance (including by means of internal audits) that are appropriate systems for the agency,
    - (ii) arrangements for protecting the integrity of financial and performance information,
    - (iii) arrangements for ensuring that there is compliance with this Act, and
  - (c) to ensure that the agency complies with those policies and procedures.
- (2) The regulations and Treasurer's directions may make provision for or with respect to:
  - (a) financial management policies and procedures for the purposes of subsection (1) (a), and
  - (b) systems and arrangements for the purposes of subsection (1) (b).
- (3) This section does not prevent a GSF agency from developing, establishing or maintaining additional policies, procedures or systems to those required by or under this section provided that they are not inconsistent with those that are required.

## **Division 3.3 Government officers**

### **3.7 Values and associated principles to guide government officers**

- (1) A government officer of a GSF agency should be guided by the following values and associated principles when exercising functions in connection with financial management (including under this Act):



<b>Value</b>	<b>Associated principles</b>
<b>Accountability</b>	The government officer should take reasonable care so that the officer's use of government resources or related money is efficient, effective and prudent
<b>Integrity</b>	The government officer should: (a) place the public interest over private interest, and (b) should not use the officer's position (or information acquired in the exercise of the functions of that position) improperly for financial or personal gain
<b>Transparency</b>	The government officer should: (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

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- (2) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

## Part 4 Budget, appropriations and Special Deposits Account

### Division 4.1 Budget

#### 4.1 Budget Papers

- (1) The *Budget Papers* are the Budget Papers of the Government tabled in Parliament in connection with Bills for annual Appropriation Acts.
- (2) The Treasurer is responsible for the preparation and presentation of the Budget Papers.
- (3) Unless an annual Appropriation Act provides differently, the Budget Papers tabled in Parliament in connection with the Bill for the Act:
  - (a) do not form part of the Act, and
  - (b) do not affect the application of any amount appropriated by the Act.

#### 4.2 Core content of Budget Papers

- (1) The Budget Papers are to be presented on a basis that covers the General Government Sector.
- (2) The budget aggregates relating to the General Government Sector are to be for a 6-year period comprising the annual reporting period for the NSW Government to which the Budget relates, the 2 prior years and the 3 forward years and include the following financial statements:
  - (a) a statement of financial position for the General Government Sector,
  - (b) an operating statement for the General Government Sector,
  - (c) a cash flow statement for the General Government Sector.
- (3) The budget aggregates are to be:
  - (a) prepared in a way that is consistent with the Australian Accounting Standards for the annual reporting period for the NSW Government to which the Budget relates for the General Government Sector, and
  - (b) presented in a format that is consistent with the Australian Accounting Standards.
- (4) It is not necessary for the Budget Papers to be presented so as to include notes within the meaning of the Australian Accounting Standards.

#### 4.3 Additional content of Budget Papers

- (1) The Budget Papers are also to include the following:
  - (a) a Budget policy statement that includes the following:
    - (i) the matters required to be included in the Budget Papers by section 8 of the *Fiscal Responsibility Act 2012*,
    - (ii) 4-year forecasts or projections (being for the annual reporting period for the NSW Government to which the Budget relates and 3 forward years) of all major economic and financial variables,
  - (b) revised estimates for the year before the annual reporting period for the NSW Government to which the Budget relates, and an explanation of any significant variations in major aggregates from the Budget estimates for that period, for the General Government Sector,
  - (c) a statement of the expenditure, savings and revenue measures that may have a material impact on the forward estimates for the General Government Sector,

- (d) a statement of the risks that may have a material effect on the forward estimates for the General Government Sector,
  - (e) a statement of the contingent assets and liabilities for the General Government Sector,
  - (f) information in the form determined by the Treasurer about the performance and activities of GSF agencies.
- (2) The Budget Papers may include any other matters determined by the Treasurer.

#### **4.4 When Budget is to be presented to Parliament**

- (1) The Treasurer is to cause the Budget Papers for the annual reporting period for the NSW Government to which the Budget relates to be tabled in the Legislative Assembly before the end of the previous annual reporting period.
- (2) However, the Budget Papers may be tabled in the Legislative Assembly:
- (a) if the Legislative Assembly is not sitting in the last 2 months of the previous annual reporting period for the NSW Government—as soon as possible within the annual reporting period for the NSW Government to which the Budget relates, or
  - (b) if there is a State election in the previous annual reporting period for the NSW Government—as soon as possible within the annual reporting period for the NSW Government to which the Budget relates (but not later than the end of September in that period).

#### **4.5 Provision of budget information by GSF agencies**

- (1) The accountable authority for a GSF agency must, in accordance with directions by the Treasurer, prepare information for use in Budget preparations concerning the agency and its controlled entities for the times and in the manner directed.
- (2) Any directions under this section may be contained in the Treasurer’s directions or in a separate written document given to the GSF agency concerned.

### **Division 4.2 Appropriations**

#### **4.6 Money to be paid out of Consolidated Fund or Special Deposits Account only if authorised**

- (1) Money must not be paid out of the Consolidated Fund except under the authority of an Act.  
**Note.** See also Part 5 of the *Constitution Act 1902*, which requires certain kinds of government money to form one Consolidated Fund.
- (2) Money must not be paid out of an SDA account except for the purposes of the account and under the authority that may be applicable to the constitution of the account.
- (3) To avoid doubt:
- (a) money is not paid out of the Consolidated Fund merely because:
    - (i) the money is deposited in a banking account of the State or a GSF agency if the deposited money continues to be held by, for or on behalf of the State, or
    - (ii) the money is used to purchase securities if the securities continue to be held by, for or on behalf of the State (regardless of whether the value of those securities increases or decreases after their purchase), and

- (b) money is not paid out of an SDA account merely because:
  - (i) the money is deposited in a banking account of the State or a GSF agency if the deposited money continues to be held for use for the purposes of that account, or
  - (ii) the money is used to purchase securities if the securities continue to be held for use for the purposes of that account (regardless of whether the value of those securities increases or decreases after their purchase).
- (4) In this section:  
*securities* has the same meaning as in section 39 of the *Constitution Act 1902*.

#### **4.7 Deemed appropriations of certain money received by GSF agencies**

- (1) The responsible Minister for a GSF agency is taken to have been given an appropriation out of the Consolidated Fund under the authority of this section, at the time the agency receives or recovers any deemed appropriation money, for an amount equivalent to the money that is received or recovered by the agency.
- (2) An appropriation under this section is taken to have been given only for the services of the GSF agency that receives or recovers the deemed appropriation money.
- (3) ***Deemed appropriation money*** is government money that a GSF agency receives or recovers (including from the Commonwealth or another entity) of a kind prescribed by the regulations that:
  - (a) forms part of the Consolidated Fund, and
  - (b) is not appropriated under the authority of an Act.
- (4) Without limiting subsections (3) and (6) (a), the regulations may:
  - (a) prescribe deemed appropriation money to include government money that was received or recovered before the commencement of this section, and
  - (b) specify when (and the purposes for which) an appropriation is taken to have been given for the purposes of this section in respect of deemed appropriation money.
- (5) However, the regulations cannot prescribe deemed appropriation money to include:
  - (a) any money from taxes or fines that a GSF agency receives or recovers for the benefit of the State generally (as opposed to the benefit of that particular agency), or
  - (b) any money payable as a royalty for the mining, extraction or capture of a natural resource, or
  - (c) any money from a general purpose Commonwealth grant received by a GSF agency.
- (6) An appropriation under this section is:
  - (a) subject to any terms or conditions that may be prescribed by the regulations, and
  - (b) taken to be for the annual reporting period for the NSW Government in which it is taken to be given.

#### **4.8 Unused appropriations for annual reporting period**

- (1) Every unused appropriation for an annual reporting period for the NSW Government lapses and ceases to have effect for any purpose at the end of that period, except as provided by this section.

- (2) An **unused appropriation** for an annual reporting period for the NSW Government is that part of an appropriation out of the Consolidated Fund (including under section 4.7) that has not been applied by the end of the period.
- (3) An unused appropriation under section 4.7 for an annual reporting period for the NSW Government does not lapse at the end of the period unless the regulations provide differently.

#### **4.9 Appropriations affected by transfer of functions between GSF agencies**

- (1) An appropriation made by an annual Appropriation Act for an annual reporting period for the NSW Government for a service, function or program does not lapse merely because the responsibility for the service, function or program is transferred from one GSF agency to another during that period.
- (2) The appropriation may be applied, in accordance with any determination that may be made by the Treasurer in the same annual reporting period for the NSW Government, for or towards the transferred service, function or program.
- (3) A determination may extend to the application of the appropriation before the determination is made and operates to validate that application.
- (4) The Treasurer must cause details of any appropriation to which a determination relates to be included in the Budget Papers for the next annual reporting year for the NSW Government.

#### **4.10 Payments authorised on lapse of appropriation**

- (1) This section applies if an annual Appropriation Act for an annual reporting period for the NSW Government is not enacted before the period commences.
- (2) The Treasurer may, subject to this section, authorise the payment of sums out of the Consolidated Fund to meet the requirements of the annual reporting period.
- (3) The Treasurer's authorisation under this section ends on the earliest of the following occurring:
  - (a) the first 3 months of the annual reporting period ending,
  - (b) the enactment of an annual Appropriation Act for the annual reporting period.
- (4) Payments that are authorised to be made under this section must not:
  - (a) exceed, in total, an amount equivalent to one quarter of the amount appropriated under the annual Appropriation Act for the previous annual reporting period (adjusted for changes in consumer prices as provided by the regulations), and
  - (b) if estimates of expenditure for the current annual reporting period have been presented to Parliament and the rate of expenditure in those estimates is lower than the rate of expenditure authorised in the annual Appropriation Act for the previous reporting period—exceed those lower rates.

#### **4.11 Variations of annual appropriations for Commonwealth grants**

- (1) This section applies if the Commonwealth does any of the following in an annual reporting period for the NSW Government:
  - (a) provides for the making of a specific purpose payment not included in the Budget Papers of the State for that period,
  - (b) provides for an increase in the amount of a specific purpose payment in excess of the amount included in the Budget Papers of the State for that period,
  - (c) does not provide the whole of the amount of a specific purpose payment as included in the Budget Papers of the State for that period.

- (2) If the Treasurer is satisfied that a matter referred to in subsection (1) has occurred during an annual reporting period for the NSW Government, the Treasurer may issue a certificate that certifies that the matter has occurred and the amount involved.
- (3) If the Treasurer issues a certificate under this section for an annual reporting period:
  - (a) for a new specific purpose payment that has been certified—an appropriation for the purpose of the payment is taken to have been made under the authority of this section for that period, and
  - (b) for a decreased or increased specific purpose payment that has been certified—the appropriation for the purposes of the payment is taken to have been decreased or increased accordingly under the authority of this section for that period.
- (4) The Treasurer must cause details of any certificates issued under this section to be included in the Budget Papers for the next annual reporting year for the NSW Government.

#### **4.12 Details of payments made from State contingencies appropriation to Treasurer**

- (1) This section applies if a sum is appropriated to the Treasurer by an annual Appropriation Act for State contingencies (the *Treasurer's State contingencies appropriation*) for a particular annual reporting period for the NSW Government.
- (2) The Treasurer must cause details of the payments of sums from the Treasurer's State contingencies appropriation to be included in the Budget Papers for the next annual reporting year for the NSW Government.

#### **4.13 Payments out of Consolidated Fund for exigencies of Government**

- (1) This section applies if the annual Appropriation Act for an annual reporting period for the NSW Government has already been enacted.
- (2) The Treasurer may, with the approval of the Governor, determine that additional money is to be paid out of the Consolidated Fund during the annual reporting period for the NSW Government in anticipation of appropriation by Parliament if it is required to meet any exigencies of Government during the current annual reporting period for the NSW Government.
- (3) Any money determined under subsection (2) for an exigency must be no more than is necessary in the public interest to fund expenditure to meet the exigency.
- (4) The Treasurer must cause details of the payments of money paid under this section to be included in the Budget Papers for the next annual reporting year for the NSW Government.

#### **4.14 Payment of certain unclaimed money into Consolidated Fund**

- (1) Unless the regulations or Treasurer's directions provide differently, applicable related money must be paid to the Treasurer to the credit of the Consolidated Fund if the account in which the money is held has not been operated on for at least 3 months.
- (2) An account for the purposes of subsection (1) may include:
  - (a) money whose owner is not identifiable, and
  - (b) money owned jointly or severally by 2 or more entities.
- (3) The Treasurer may repay to an entity any money paid to the Treasurer under this section if:
  - (a) the Treasurer is satisfied that the entity is the owner of the money, and

- (b) the claim is made in accordance with any requirements of the Treasurer's directions concerning the making of claims (including in respect of a period within which claims are to be made).
- (4) The Treasurer is taken to have been given an appropriation out of the Consolidated Fund under the authority of this section for an amount equivalent to an amount that the Treasurer decides to repay under subsection (3).
- (5) Section 4 (Operation on account) of the *Unclaimed Money Act 1995* applies for the purpose of this section in the same way as it applies for the purposes of that Act.
- (6) In this section:
  - account** includes a record of money held on account of another entity.
  - applicable related money** means money that a GSF agency (or a government officer of a GSF agency) holds on account for an entity other than another GSF agency, but does not include money that the GSF agency holds on account if it is:
    - (a) unclaimed money to which the *Unclaimed Money Act 1995* applies, or
    - (b) money in respect of which provision is made by or under the constituent Act for the GSF agency for the regulation, payment or appropriation of unclaimed money.
  - owner** of money means the person who is entitled to the money (or the person who would be so entitled except for the operation of the *Limitation Act 1969*), and includes the person's executors, administrators and assigns and the lawful attorney or agent in the State of the person, executor, administrator or assign.

## **Division 4.3 Special Deposits Account**

### **4.15 Special Deposits Account**

- (1) There is to continue to be a Special Deposits Account.
- (2) The Special Deposits Account is to consist of:
  - (a) all accounts of money that the Treasurer is, under statutory authority, required to hold otherwise than for or on account of the Consolidated Fund, and
  - (b) all accounts of money that are directed or authorised to be paid to the Special Deposits Account by or under legislation.

### **4.16 Keeping of information concerning SDA accounts**

- (1) The responsible manager for an SDA account must keep records and other information concerning the operation of the account that:
  - (a) explain whether the operation of the account (including payments into and out of the account) has been in accordance with the Act or other instrument establishing the account, and
  - (b) allow for the preparation and audit of financial reports required for section 7.8, and
  - (c) allow for compliance with reporting requirements of the Act or other instrument establishing the account.

**Note.** Section 7.8 also requires the responsible manager for an SDA account to cause financial reports for the account about the management of the account (called **SDA account financial reports**) to be prepared in accordance with the Treasurer's directions.
- (2) The **responsible manager** for an SDA account is:
  - (a) a person nominated from time to time by the Minister who administers the account or the legislation under which the account is established, or

- (b) if paragraph (a) does not apply—any person that the Treasurer has directed in writing to exercise the functions of the responsible manager of the account under this Act.
- (3) The Treasurer’s directions may make provision for or with respect to the kinds of reports or other information to be kept for the purposes of subsection (1).

#### 4.17 Working accounts

- (1) A GSF agency may, in the circumstances permitted by the regulations, establish and operate a working account in the Special Deposits Account in respect of working account money received by the agency.
- (2) **Working account money** received by a GSF agency is any money received by the GSF agency from a source of a kind prescribed by the regulations, but does not include:
  - (a) money provided to the GSF agency from an appropriation under an annual Appropriation Act, or
  - (b) money of a kind referred to in section 4.7 (5).
- (3) A GSF agency (if the agency is a person) or the accountable authority for a GSF agency (if the agency is not a person) is authorised to operate a working account of the agency (including by paying money into or out of the account and investing money in the account in accordance with the regulations).
- (4) The regulations may make provision for or with respect to the following:
  - (a) the establishment and dissolution of working accounts,
  - (b) the operation of working accounts (including the purposes for which money in working accounts may be paid into or out of accounts and the use of investment returns on the money),
  - (c) the payment into the Consolidated Fund of money in working accounts or former working accounts (including working accounts or former working accounts originally established under section 13A of the *Public Finance and Audit Act 1983* before its repeal),
  - (d) without limiting paragraph (a), (b) or (c), enabling the Treasurer to exercise functions in connection with the establishment, dissolution and operation of working accounts (including by providing authorisations or giving directions for these purposes).



## Part 5 Expenditure and gifts

### Division 5.1 Expenditure

#### 5.1 Budget control authorities

- (1) The Treasurer may issue Budget control authorities to regulate expenditure of money by GSF agencies that are part of the General Government Sector.
- (2) A Budget control authority may be:
  - (a) a standing authority regulating expenditures of money in general terms, or
  - (b) limited as to the period during which it may operate to regulate expenditures of money, or
  - (c) limited as to the nature of the transactions in respect of which expenditures of money may occur, or
  - (d) limited to a particular transaction or series of transactions, or
  - (e) contained in the Treasurer's directions or in a separate written document given to the GSF agencies concerned.
- (3) Without limiting subsections (1) and (2), a Budget control authority may include provisions that:
  - (a) set limits or caps on expenditures of money (whether by reference to amounts, percentages, ratios, growth factors or any other measures), and
  - (b) require additional authorisations for particular expenditures of money, and
  - (c) regulate expenditures of money using cash accounting methodology or accrual accounting methodology (or both).

#### 5.2 Delegation of Minister's appropriation expenditure functions may limit amount and purposes of expenditure

- (1) This section applies in relation to a delegable function of a Minister (an ***appropriation expenditure function***) regarding the expenditure of money out of the Consolidated Fund under the authority of an appropriation provided by an annual Appropriation Act, this Act or any other Act.
- (2) A Minister who delegates an appropriation expenditure function under Division 9.2 may impose terms and conditions on the delegation and also on any subdelegation so as to limit the amounts and purposes for which expenditures of money are permitted under the delegation or a subdelegation.
- (3) The Minister must ensure that the terms and conditions imposed are not inconsistent with the purposes for which the appropriation was given.
- (4) To avoid doubt, the delegate or subdelegate is authorised to make expenditures of money, but only in accordance with the terms and conditions (if any) that the Minister has imposed.
- (5) This section does not limit any other kinds of terms or conditions that can be imposed on the delegation or subdelegation of appropriation expenditure functions under Division 9.2 (including under section 49 of the *Interpretation Act 1987* in its application to delegations or subdelegations under Division 9.2).

#### 5.3 Payment of tax-equivalents to Treasurer

- (1) The Treasurer may:
  - (a) direct a GSF agency (or part of a GSF agency) to pay amounts to the Treasurer under a relevant tax-equivalent regime (or to cease to make a payment), or

- (b) grant an exemption to a GSF agency (or part of a GSF agency) from payment of any amount under this section in respect of any period.
- (2) An amount that a GSF agency is required to pay to the Treasurer under this section is a **tax-equivalent**.
- (3) A direction may:
  - (a) make provision for the assessment of the amount payable as a tax-equivalent (including the appointment or selection of assessors and the manner of assessment and the entry into agreements concerning payments of tax-equivalents), and
  - (b) specify the timing and manner for payments, and
  - (c) impose any other terms and conditions (including concerning the preparation and provision of accounting or other statements) that the Treasurer considers should be imposed, and
  - (d) be contained in the Treasurer's directions or in a separate written direction given to the GSF agency concerned.
- (4) A GSF agency to which a direction applies must comply with the direction.
- (5) In this section:  
**relevant tax-equivalent regime** means arrangements for income tax-equivalent payments (whether for the purposes of New South Wales or any national scheme) of a kind prescribed by the regulations.

**Note.** This section is a paramount provision of this Act. Section 1.8 requires a person or other entity to whom a paramount provision applies to comply with the provision (including any regulations made for the purposes of that provision) even if it may result in a non-criminal contravention of other legislation. It also provides that compliance does not result in any civil liability and displaces the operation of the *Corporations Act 2001* of the Commonwealth to enable compliance.

#### 5.4 Payment of financial distributions to Treasurer

- (1) The Treasurer may direct a GSF agency (or part of a GSF agency) to pay financial distributions to the Treasurer.
- (2) A direction may:
  - (a) specify the amount of financial distributions to be paid (or specify a methodology for determining amounts to be paid), and
  - (b) specify the timing and manner for payments, and
  - (c) impose any other terms and conditions (including concerning the preparation and provision of accounting or other statements) that the Treasurer considers should be imposed, and
  - (d) be contained in the Treasurer's directions or in a separate written direction given to the GSF agency concerned.
- (3) The Treasurer must consult both the accountable authority and responsible Minister for the GSF agency in accordance with section 3.5 about proposed directions to be given to the agency under this section.
- (4) A GSF agency to which a direction applies must comply with the direction.
- (5) The Treasurer must, within 30 days after giving a direction to a GSF agency or part of a GSF agency, publish a notice in the Gazette setting out the amount of the financial distributions to be paid.

**Note.** See also section 20S of the *State Owned Corporations Act 1989* in relation to statutory State owned corporations.

(6) In this section:

**financial distribution**, in relation to a GSF agency, means an amount calculated by reference to the value of the assets, revenue or other resources (or some portions of the assets, revenue or other resources) of the agency.

**Note.** This section is a paramount provision of this Act. Section 1.8 requires a person or other entity to whom a paramount provision applies to comply with the provision (including any regulations made for the purposes of that provision) even if it may result in a non-criminal contravention of other legislation. It also provides that compliance does not result in any civil liability and displaces the operation of the *Corporations Act 2001* of the Commonwealth to enable compliance.

#### **5.5 Expenditure by accountable authorities and government officers must be authorised**

- (1) The accountable authority for a GSF agency is responsible for ensuring that expenditure of money for the agency is in a way that is authorised.
- (2) A government officer must ensure that the officer's expenditure of money for the State or a GSF agency is in a way that is authorised.
- (3) Expenditure of money is in a way that is authorised if it is done:
  - (a) in accordance with a delegation or subdelegation from a person with power regarding the expenditure of the money, or
  - (b) under the authority of this Act or any other law.

**Note.** Expenditure functions are delegable functions. See section 9.7.

### **Division 5.2 Gifts and act of grace payments**

#### **5.6 Gifts of government property**

- (1) A person handling government resources cannot make a gift of government property unless:
  - (a) the property was acquired or produced to use as a gift, or
  - (b) the gift has been authorised by the Treasurer in writing, or
  - (c) the gift is made in accordance with the Treasurer's directions, or
  - (d) the gift was authorised by or under any law.
- (2) In this section:

**gift** includes any disposition of property of a kind prescribed by the regulations for no or inadequate consideration, but does not include any disposition of property of a kind excluded by the regulations.

#### **5.7 Act of grace payments**

- (1) A Minister may, if satisfied that there are special circumstances or circumstances of a kind prescribed by the regulations, authorise an amount to be paid to a person on behalf of the State (an **act of grace payment**) under this section even though the payment is not:
  - (a) otherwise authorised by or under law, or
  - (b) required to meet an obligation.
- (2) An act of grace payment is subject to any terms and conditions that the Minister may decide to impose.
- (3) If a term or condition of an act of grace payment is contravened by the recipient of the payment, the payment may be recovered from the recipient by the Crown in a court of competent jurisdiction as a debt due to the Crown.

- (4) A Minister may delegate the function of making act of grace payments (including in relation to the imposition of terms and conditions for payments) only to:
  - (a) an accountable authority for a GSF agency, or
  - (b) 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
  - (c) any other entity (or an entity of a kind) prescribed by the regulations.
- (5) Act of grace payments are to be made using money that is otherwise lawfully available.
- (6) This section does not limit any power, privilege or right conferred on a Minister or any other person by another law to make payments as an act of grace (whether or not for or on behalf of the Crown or the State).

## Part 6 Financial services and arrangements

### Division 6.1 Introduction

#### 6.1 Application of Part

- (1) For the purposes of this Part, each Minister (except the Treasurer) is to be treated as both a GSF agency and the accountable authority for the agency.
- (2) To avoid doubt, an accountable authority for a GSF agency or government officer cannot do anything for or on behalf of a GSF agency that would contravene this Part if it were done directly by the agency.
- (3) A provision of the Treasurer's directions given, or of regulations made, for the purposes of any provisions of this Part that applies to GSF agencies generally is not to be read as applying to the New South Wales Treasury Corporation unless those directions or regulations provide for it expressly.
- (4) The Treasurer must consult the New South Wales Treasury Corporation in accordance with section 3.5 about any proposed provisions in the Treasurer's directions or regulations that will expressly apply to it for the purposes of this Part.
- (5) The provisions of this Part apply despite any powers, privileges or other rights under the general law of the Crown, Ministers or other entities acting for or on behalf of the Crown.

**Note.** This Part is a paramount provision of this Act. Section 1.8 requires a person or other entity to whom a paramount provision applies to comply with the provision (including any regulations made for the purposes of that provision) even if it may result in a non-criminal contravention of other legislation. It also provides that compliance does not result in any civil liability and displaces the operation of the *Corporations Act 2001* of the Commonwealth to enable compliance.

#### 6.2 Exercise of functions for GSF agencies that are not persons

- (1) Any function that is expressed to be conferred on a GSF agency by or under this Part may, if the agency is not a person, be exercised for or on behalf of the agency by:
  - (a) for an agency that is a separate GSF agency—the accountable authority for the agency, or
  - (b) for an agency that is not a separate GSF agency—the responsible Minister or the accountable authority for the agency, or
  - (c) any other person (or person of a kind) prescribed by the regulations.

**Note.** Section 21 (1) of the *Interpretation Act 1987* defines **person** to include an individual, a corporation and a body corporate or politic. Only GSF agencies that are not individuals, corporations or bodies corporate or politic are covered by this section.

- (2) This section does not:
  - (a) affect any other way in which the GSF agency may lawfully exercise the function, or
  - (b) authorise or permit the responsible Minister for a GSF agency to manage the affairs of the agency to the extent that the agency is not already subject to the direction and control of the Minister.

#### 6.3 Authorisation to invest in government issued investments

- (1) A trustee for a trust may (unless expressly forbidden by the trust instrument, if any, for the trust) invest trust money in government issued investments.
- (2) A **government issued investment** is any form of investment, borrowing or derivative arrangement issued or provided by or on behalf of the State or a GSF agency under the authority of this Part.

- (3) An investment by the trustee may be made whether the money is at the time in a state of investment or not.
- (4) An investment by the trustee is taken to be an investment of trust funds made in accordance with the *Trustee Act 1925*.
- (5) A GSF agency (or the accountable authority for a GSF agency or a government officer) is not competent to receive notice of an express, implied or constructive trust affecting any government issued investment or a coupon attached to it.
- (6) A company, a council within the meaning of the *Local Government Act 1993* or any other body corporate constituted by an Act may invest its money in government issued investments.

## Division 6.2 Key concepts

### 6.4 Concepts relating to banking

- (1) A **banking service** is:
  - (a) a service of a kind provided as part of carrying on a banking business (as defined in the *Banking Act 1959* of the Commonwealth), or
  - (b) a service involving depositing, crediting or storing money or its value of a kind prescribed by the regulations as a banking service.
- (2) A **banking account** is:
  - (a) an account (including a sub-account) for depositing, crediting or storing money or its value with an authorised deposit-taking institution or with any other entity providing banking services, or
  - (b) any other account (including a sub-account) or facility for depositing, crediting or storing money or its value (including in accounts or sub-accounts provided under a State financial service agreement) of a kind prescribed by the regulations as a banking account.
- (3) **Banking account structuring** means consolidating, grouping, setting off or any other kind of structuring of banking accounts.
- (4) The **banking information** of a GSF agency is:
  - (a) any information about banking services the agency receives (including information about the agency's banking accounts), and
  - (b) any statements or reports about banking services the agency receives.

### 6.5 Arrangement

For the purposes of this Part, an **arrangement** is a contract, agreement, understanding, scheme or other arrangement (whether formal or informal).

### 6.6 Financial services

- (1) Each of the following is a **financial service**:
  - (a) a banking service (including services concerning banking accounts),
  - (b) a service concerning a financial arrangement,
  - (c) a service concerning the receipt, holding, payment or transmission of money,
  - (d) a service concerning financial management or advice,
  - (e) a service concerning the provision of, or access to, hardware or software for purposes of making or receiving payments,

- (f) a service, or the provision of a good, that is incidental or related to a service referred to in any of the preceding paragraphs (including, for example, data collection, data analytics, software or any other information technology service or good),
  - (g) any service or provision of a good (or service or provision of a good of a kind) prescribed by the regulations as a financial service.
- (2) However, a **financial service** does not include any service or provision of a good (or service or provision of a good of a kind) prescribed by the regulations not to be a financial service.

### 6.7 Financial arrangements

- (1) A **financial arrangement** is an arrangement (whether entered into or occurring in or outside of Australia) with respect to any of the following:
- (a) a borrowing,
  - (b) an investment,
  - (c) a derivative arrangement,
  - (d) a joint financing arrangement,
  - (e) a joint venture arrangement,
  - (f) any other arrangement (or arrangement of a kind) prescribed by the regulations as a financial arrangement.
- (2) However, a **financial arrangement** does not include any arrangement (or arrangement of a kind) prescribed by the regulations not to be a financial arrangement.

### 6.8 Borrowings

- (1) A **borrowing** is receiving money, property or other value with an obligation to repay (regardless of whether or not the repayment is of the same kind or same amount as what is received). It includes (without limitation) each of the following:
- (a) the issue of debentures, bonds or stock by any means or by discounted securities, promissory notes or any other security (not including equity shares),
  - (b) the raising of money as consideration for an entity's assumption of any liability,
  - (c) the entering into of any other arrangement (or arrangement of a kind) prescribed by the regulations as a borrowing.
- (2) However, a **borrowing** does not include any arrangement (or arrangement of a kind) prescribed by the regulations not to be a borrowing.

### 6.9 Investments

- (1) An **investment** is:
- (a) using money, property or other assets primarily for the purpose or with the expectation of producing income, interest, profit, capital growth or any other financial benefit, or
  - (b) the entering into of any other arrangement (or arrangement of a kind) prescribed by the regulations as an investment.
- (2) However, an **investment** does not include any arrangement (or arrangement of a kind) prescribed by the regulations not to be an investment.

### 6.10 Derivative arrangements

- (1) A *derivative arrangement* is:
  - (a) an arrangement that provides for a return or other value (including risk management) ultimately to be determined, derived from or varied by reference, whether wholly or partly, to the current or future amount or value of something else (for example, a rate, index, price, commodity, currency or security), or
  - (b) any other arrangement (or arrangement of a kind) prescribed by the regulations as a derivative arrangement.
- (2) However, a *derivative arrangement* does not include any arrangement (or arrangement of a kind) prescribed by the regulations not to be a derivative arrangement.

### 6.11 Joint financing arrangements

- (1) A *joint financing arrangement* is any one of the following arrangements entered into by one entity (the *principal entity*) with another entity (the *secondary entity*), for the purpose of the exercise of the principal entity's functions and in respect of infrastructure or other capital assets:
  - (a) an arrangement under which the secondary entity acquires assets (including by lease or purchase) from the principal entity, a third party or a combination of the two, and uses them for the exercise of a function of the principal entity,
  - (b) an arrangement under which the secondary entity constructs assets and uses them for the exercise of a function of the principal entity,
  - (c) an arrangement described in paragraph (a) or (b), coupled with a transfer or reversion of the assets to the principal entity,
  - (d) any other arrangement (or arrangement of a kind) prescribed by the regulations as a joint financing arrangement.
- (2) However, a *joint financing arrangement* does not include any arrangement (or arrangement of a kind) prescribed by the regulations not to be a joint financing arrangement.

### 6.12 Joint venture arrangements and joint ventures

- (1) A *joint venture arrangement* is an arrangement for or with respect to carrying on a joint venture.
- (2) A *joint venture* is any of the following carried on for the purpose of generating an outcome, output or benefit for its participants:
  - (a) a common understanding carried on jointly by two or more entities, whether or not in partnership,
  - (b) a common understanding carried on by a body corporate formed by two or more entities for the purpose of enabling those entities to carry on that common understanding jointly by means of their joint control, or by means of their ownership of shares in the capital, of that body corporate,
  - (c) any other common understanding (or common understanding of a kind) prescribed by the regulations as a joint venture.
- (3) A common understanding may be regarded as carried on jointly for the purposes of subsection (2) even though some or all of the participants:
  - (a) carry on different aspects of the understanding, or
  - (b) receive different outcomes, outputs or benefits under the understanding.



- (4) However:
- (a) a *joint venture arrangement* does not include any arrangement (or arrangement of a kind) prescribed by the regulations not to be a joint venture arrangement, and
  - (b) a *joint venture* does not include any common understanding (or common understanding of a kind) prescribed by the regulations not to be a joint venture.

### 6.13 Appropriate prudential protections

The regulations may make provision for or with respect to what does or does not constitute appropriate prudential protections in relation to an entity for the purposes of a provision of this Part that uses that expression (including by specifying criteria that the Treasurer may or must take into account in determining whether there are or are not appropriate prudential protections).

## Division 6.3 Financial services

### 6.14 Treasurer may enter State financial service agreements

(1) **Entering State financial service agreements**

The Treasurer may, on behalf of the State, enter one or more agreements (*State financial service agreements*) with one or more entities to provide financial services for the State or GSF agencies (or both).

- (2) The Treasurer may enter State financial service agreements on the terms and conditions that the Treasurer considers appropriate.
- (3) To avoid doubt, the Treasurer may enter a State financial service agreement:
- (a) as the principal for the benefit of one or more GSF agencies, or
  - (b) on behalf of one or more GSF agencies.
- (4) **Examples of provisions that may be included in State financial service agreements**

Without limiting subsections (1)–(3), a State financial service agreement may include provisions for or with respect to any of the following:

- (a) limiting the provision of banking services for the State or GSF agencies to one or more entities,
- (b) regulating or arranging for the use of banking services for the State or GSF agencies,
- (c) banking account structuring involving banking accounts or money of the State or GSF agencies including:
  - (i) providing for a master banking account for the State with sub-accounts for GSF agencies and other entities, and
  - (ii) the giving of guarantees and indemnities in connection with bank account structuring,
- (d) interest payments in respect of banking accounts continued, established or operated under the State financial service agreement or money held in those accounts (including interest payments payable by reference to bank account structuring),
- (e) enabling the Treasurer to open or close banking accounts on behalf of the State or GSF agencies (or conduct banking account structuring involving those accounts),
- (f) enabling entities that are not GSF agencies (including the Workers Compensation Nominal Insurer), with the Treasurer's agreement, to have

access to all or some of the financial services to be provided under the State financial service agreement.

**Note.** See also section 6.18 (Treasurer may operate banking accounts).

(5) **Parties to State financial service agreements covering banking services**

However, the Treasurer must not enter a State financial service agreement that covers banking services unless it is with:

- (a) an entity that is an authorised deposit-taking institution, or
- (b) an entity that the Treasurer is satisfied is subject to or has appropriate prudential protections.

**Note.** Section 6.13 enables the regulations to make provision for or with respect to what does or does not constitute appropriate prudential protections.

(6) **State financial agreements bind GSF agencies**

Anything that the Treasurer agrees to in a State financial service agreement, or does under the agreement, for or on behalf of GSF agencies (including in respect of banking account structuring involving their banking accounts) has the same effect in law as if it had been agreed to or done by those agencies.

- (7) However, any liability (except for fees and charges) resulting from anything done by the Treasurer for or on behalf of a GSF agency to which subsection (6) applies is the liability of the Treasurer and not that of the agency.

(8) **Application of State financial service agreements to SDA accounts and statutory special purpose funds**

The following provisions apply in respect of any money held in an SDA account or statutory special purpose fund:

- (a) the money may be held in banking accounts provided under a State financial service agreement and treated as money of the State or a GSF agency for the purposes of banking account structuring under the agreement,
- (b) the Treasurer is taken to be authorised to include the money in banking accounts provided under a State financial service agreement and banking account structuring under the agreement,
- (c) the deposit of the money in a banking account provided under a State financial service agreement is taken to be an investment of the money even if the use of the money does not directly generate interest for payment into the SDA account or statutory special purpose fund,
- (d) if the money is included in banking account structuring under a State financial service agreement, the Treasurer is authorised to make any interest payments that the Treasurer considers appropriate into the SDA account or statutory special purpose fund,
- (e) the inclusion of the money in banking account structuring under a State financial service agreement does not prevent the entity responsible for administering the SDA account or statutory special purpose fund from making payments into or out of the account or fund in accordance with the purposes for which it is established or constituted.

- (9) The Treasurer may use interest payable by reference to banking account structuring under a State financial service agreement, or money forming part of the Consolidated Fund if that interest is insufficient, for the purpose of making payments authorised by subsection (8) (d).

- (10) The Treasurer is taken to have been given an appropriation out of the Consolidated Fund under the authority of this section, at the time a payment is made under

subsection (9), for an amount equivalent to the amount of the payment if money forming part of the Consolidated Fund is used for the payment.

- (11) Subsections (8)–(10) have effect despite anything to the contrary in another provision of this Act or the Act by or under which an SDA account or statutory special purpose fund is established or constituted. In particular, anything done under the authority of those subsections is taken to be for a permitted purpose.

(12) **Application of State financial agreements to entities that are not GSF agencies**

The Treasurer may enter into agreements with entities that are not GSF agencies (including the Workers Compensation Nominal Insurer), on the terms and conditions that the Treasurer considers appropriate, concerning access by them to all or some of the financial services provided under a State financial service agreement.

**6.15 Treasurer's directions may include directions concerning use of financial services**

- (1) The Treasurer's directions may include directions concerning the use by GSF agencies of banking services (whether or not provided under a State financial service agreement) and any other financial services provided under a State financial service agreement.
- (2) Without limiting subsection (1), the Treasurer's directions may require:
- (a) GSF agencies or government officers to use a particular banking or other financial service provided under a State financial service agreement, and
  - (b) interest payable on banking accounts of GSF agencies (or interest payable by reference to banking account structuring under a State financial service agreement) to be paid to the Treasurer or to any other entity nominated by the Treasurer.
- (3) Despite subsection (2) (b), if legislation apart from this Act expressly requires interest payable on banking accounts of a GSF agency to be paid into an SDA account or statutory special purpose fund, the Treasurer is to ensure that sufficient provision is made for the interest (or an amount in lieu of the interest) to be paid into that SDA account or fund within 5 working days of receipt of the interest by the Treasury or entity because of directions made for the purposes of that paragraph.
- (4) The Treasurer may use interest payable by reference to banking account structuring under a State financial service agreement, or money forming part of the Consolidated Fund if that interest is insufficient, for the purpose of making payments in lieu of interest under subsection (3).
- (5) The Treasurer is taken to have been given an appropriation out of the Consolidated Fund under the authority of this section, at the time a payment is made under subsection (3), for an amount equivalent to the amount of the payment if money forming part of the Consolidated Fund is used for the payment.
- (6) The Treasurer's directions may also require, authorise or permit a GSF agency holding trust money to use a particular banking service or other financial service provided under a State financial service agreement in respect of the trust money unless it is expressly forbidden by the trust instrument, if any, for the trust.
- (7) The provisions of section 6.3 apply to trust money held by a GSF agency in accordance with the Treasurer's directions in the same way as they apply to the investment of trust money by trustees in government issued investments.
- (8) The accountable authority for a GSF agency is responsible for ensuring that the agency complies with any Treasurer's directions given for the purposes of this section.

- (9) Subject to the Treasurer's directions, a GSF agency may enter (and is authorised by this section to enter) into agreements and other arrangements with a provider of financial services under a State financial service agreement concerning the provision of a financial service to the agency under the State financial service agreement.
- (10) Nothing in this section (except subsection (6)) limits the power of the Treasurer to give Treasurer's directions.

#### **6.16 Treasurer may access certain information of GSF agencies about financial services**

The Treasurer, or a person nominated by the Treasurer, is authorised to access (or require access to) any information of the GSF agency (including banking information) concerning the agency's use of the financial services provided under a State financial service agreement.

#### **6.17 Guarantees and indemnities concerning money in banking accounts under State financial service agreement**

- (1) The Treasurer may, on behalf of the State, guarantee to the holder of a banking account the repayment of money in the account if:
  - (a) the banking account is continued, established or operated under a State financial service agreement, and
  - (b) the holder:
    - (i) has been directed under this Division to use the account, or
    - (ii) uses the account with the Treasurer's approval even though the holder is not required to do so.
- (2) The Treasurer may, on behalf of the State or GSF agencies, give guarantees and indemnities in connection with banking account structuring under a State financial service agreement.
- (3) Anything done by the Treasurer under subsection (2) in relation to a banking account has the same effect in law as if it had been done by the holder of the account.

#### **6.18 Treasurer may operate banking accounts**

- (1) The Treasurer is authorised, on behalf of a GSF agency, to open or close banking accounts of the agency or conduct banking account structuring involving those accounts.
- (2) The Treasurer is also authorised to open, close or operate banking accounts of the State or conduct banking account structuring involving those accounts.
- (3) The Treasurer must consult the accountable authority for a GSF agency before closing any of its banking accounts.
- (4) Anything done by the Treasurer under this section in relation to a banking account has the same effect in law as if it had been done by the holder of the account.
- (5) This section does not:
  - (a) limit or prevent the accountable authority for a GSF agency from opening, closing or operating banking accounts as provided by section 6.19, or
  - (b) authorise the Treasurer to spend the money in the banking account or to use it for a purpose that the agency is not authorised by law to spend or use it on.

### 6.19 Accountable authority may operate banking accounts

The accountable authority for a GSF agency may, in accordance with any requirements of the Treasurer's directions, open, close or operate banking accounts of the agency (whether provided under a State financial service agreement or otherwise).

### 6.20 GSF agencies to give written consent for access to banking accounts

- (1) The Treasurer may require a GSF agency that holds a banking account to give the Treasurer, or a person nominated by the Treasurer, written consent for any of the following if the entity with which the account is held requests the consent:
  - (a) to access banking information of the GSF agency,
  - (b) for an account provided under a State financial service agreement—to open or close the account or conduct banking account structuring involving the account.
- (2) The accountable authority for the GSF agency must comply with a requirement under subsection (1).
- (3) This section does not authorise the Treasurer to request consent to spend the money in the account or use it for a purpose that the agency is not authorised by law to spend or use it on.

## Division 6.4 Financial arrangements

### 6.21 Treasurer may enter financial arrangements for State and GSF agencies

- (1) The Treasurer may enter into financial arrangements for or on behalf of:
  - (a) the State, or
  - (b) one or more GSF agencies (including those without power to enter the arrangements directly).
- (2) Without limiting subsection (1), the Treasurer may do any of the following (whether or not under a financial arrangement or other arrangement):
  - (a) repay debts of the State or GSF agencies,
  - (b) loan money to GSF agencies,
  - (c) invest money forming part of the Consolidated Fund or held in an SDA account or statutory special purpose fund (including by depositing that money in one or more banking accounts) if a GSF agency is not authorised to invest the money.

**Note.** Section 6.14 (8)–(11) also authorise the Treasurer to include any money held in an SDA account or statutory special purpose fund in banking account structuring under a State financial service agreement. The depositing of the money in the banking account structuring is taken to be an investment of the money for the purposes of this Act even if the use of the money does not directly generate interest for payment into the SDA account or statutory special purpose fund.

- (3) The Treasurer may enter a financial arrangement or other arrangements under this section on any terms and conditions that the Treasurer considers appropriate.
- (4) To avoid doubt, the Treasurer's power to enter financial arrangements or other arrangements under this section for loaning money to GSF agencies extends to providing loans in the future if and when required.
- (5) If the Treasurer repays debts of the State or GSF agencies under this section, the Treasurer is taken to have been given an appropriation out of the Consolidated Fund under the authority of this section at the time the debts are paid for the amount of the debts paid.

- (6) This section does not:
- (a) authorise the Treasurer to enter into financial arrangements in respect of money forming part of the Consolidated Fund, or held in an SDA account or statutory special purpose fund, if a GSF agency is authorised to enter into financial arrangements of the same kind in respect of that money (whether under this Part or another law), or
  - (b) except as authorised by section 6.14 (8)–(11)—authorise the Treasurer to spend or pay out money held in an SDA account or statutory special purpose fund for a purpose that is not authorised under the authority that is applicable to the constitution of the account or fund, or
  - (c) limit the powers of the Treasurer under Division 6.3.

**Note.** Section 4.6 (3) extends to money forming part of the Consolidated Fund or held in an SDA account deposited or invested under the authority of this section.

## 6.22 Financial arrangements for GSF agencies

### (1) When financial arrangements can be entered

A GSF agency is permitted to enter into a financial arrangement for the agency only if:

- (a) the arrangement for the agency is authorised, and
- (b) the terms and conditions of the authorisation are complied with.

### (2) A financial arrangement for a GSF agency is *authorised* if:

- (a) a provision of this Act, the regulations or the Treasurer's directions requires or permits the arrangement (or the kind of arrangement), or
- (b) the arrangement (or the kind of arrangement) is required or permitted under a financial arrangement approval.

### (3) Persons who can enter financial arrangements for GSF agency

Without limiting section 6.2, the accountable authority for a GSF agency may enter into a financial arrangement for or on behalf of the agency that the agency is authorised to enter into and has all of the functions of the agency for that purpose (including under subsection (5)).

### (4) The New South Wales Treasury Corporation may enter into derivative arrangements for or on behalf of a GSF agency as provided by section 6.25 and has all of the functions of the agency for that purpose (including under subsection (5)).

### (5) Powers to enter financial arrangements

To avoid doubt, a GSF agency may do all things that are necessary or convenient to be done in connection with entering into authorised financial arrangements for the agency, including (without limitation) doing the following:

- (a) entering into any contract, agreement or other transaction,
- (b) incurring any obligations under a contract, agreement or other transaction,
- (c) making any payment (including in advance) under a contract, agreement or other transaction,
- (d) providing or making any covenants or promises (including absolute and unconditional ones),
- (e) using a controlled entity of the GSF agency to do things the GSF agency can do under this Act,

- (f) in addition, for a joint financing arrangement:
    - (i) delegating any function of the GSF agency to a participant in the arrangement, and
    - (ii) agreeing to the exercise of any function of the GSF agency by a participant in the arrangement, and
    - (iii) agreeing not to exercise any function of the GSF agency to the extent that an agreement for its exercise by a participant in the arrangement is in force,
  - (g) exercising any other functions specified in a financial arrangement approval.
- (6) **Exercise of powers under joint financing arrangements by parties that are not GSF agencies**
- Despite the provisions of any other law, a party to a joint financing arrangement that is not a GSF agency may exercise any function of the GSF agency (in accordance with the joint financing arrangement and in accordance with any financial arrangement approval for the arrangement) as if the party were a GSF agency.
- (7) **Protection for parties that are not GSF agencies**
- An entity that is a party to a financial arrangement for a GSF agency is not bound to inquire into the application of anything provided under the arrangement and is not responsible for any non-application or misapplication of anything provided.
- (8) **Role of accountable authority for agency**
- The accountable authority for a GSF agency:
- (a) is responsible for administering the financial arrangements for the agency (including those entered into by the Treasurer for or on behalf of the agency), and
  - (b) must keep records, in accordance with any requirements of the Treasurer's directions, in respect of the financial arrangements for the agency (including any financial arrangement approvals for them).
- (9) **Relationship with other laws**
- This section does not:
- (a) authorise or permit a financial arrangement to be entered into for a GSF agency if other legislation expressly prohibits the agency from entering into that arrangement (or arrangements of that kind), or
  - (b) limit any power of the Treasurer to enter financial arrangements for or on behalf of a GSF agency.

### 6.23 Financial arrangement approvals

- (1) The Treasurer may give written approval (a *financial arrangement approval*) for a GSF agency to enter into a financial arrangement.
- (2) The Treasurer may give a financial arrangement approval on the Treasurer's own initiative or on an application.
- (3) However, the Treasurer may give a financial arrangement approval for a joint financing arrangement only on the recommendation of the responsible Minister for the GSF agency concerned.
- (4) A financial arrangement approval:
  - (a) may do any one or more of the following:
    - (i) apply to a specified financial arrangement or arrangements of a specified kind,

- (ii) apply generally or be limited in its application by reference to one or more specified circumstances, factors or exceptions,
  - (iii) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, and
- (b) is subject to any terms and conditions specified in the approval.
- (5) A financial arrangement approval given for a joint financing arrangement that is (or forms part of) a joint venture arrangement also operates as an approval for the joint venture arrangement unless the approval provides differently.
- (6) A financial arrangement approval given to a GSF agency that is a principal entity in relation to a joint financing arrangement also operates as an approval in relation to any GSF agencies that are secondary entities in relation to the arrangement.
- (7) The Treasurer may, by a written notice, revoke or vary a financial arrangement approval.
- (8) However, the revocation or variation of a financial arrangement approval:
  - (a) applies only from the time it takes effect, and
  - (b) does not affect the validity of any arrangement entered into before the revocation or variation takes effect.
- (9) A written notice revoking or varying a financial arrangement approval may contain provisions of a savings or transitional nature consequent on the revocation or variation of the approval.
- (10) A financial arrangement approval for a financial arrangement for a GSF agency is conclusive evidence that anything done by the agency in accordance with the approval is authorised by this Act.
- (11) An application for the exercise of a function under this section is to be made in accordance with any requirements specified in the Treasurer's directions (including any requirements concerning who can apply and the circumstances when an application can be made).

#### **6.24 Borrowings to be obtained from New South Wales Treasury Corporation**

- (1) Despite any other provisions of this Act, borrowings for GSF agencies must be obtained from the New South Wales Treasury Corporation except if:
  - (a) the New South Wales Treasury Corporation does not provide borrowings of the kind concerned, or
  - (b) the borrowings are obtained by the New South Wales Treasury Corporation or the Treasurer (including when they are obtained for or on behalf of the State or GSF agencies), or
  - (c) the borrowings are obtained in accordance with an approval given under this section.
- (2) To avoid doubt, the New South Wales Treasury Corporation is permitted, without the need for a further financial arrangements approval or other authorisation, to obtain borrowings for a GSF agency that the agency is authorised to obtain.
- (3) The Treasurer may give written approval for borrowings of a specified kind to be obtained from specified entities.
- (4) The Treasurer may, by a written notice, revoke or vary an approval for a borrowing.



### **6.25 Derivative arrangements by New South Wales Treasury Corporation**

- (1) The New South Wales Treasury Corporation is permitted:
  - (a) to enter into derivative arrangements for or on behalf of the State for the purpose of managing the State's financial risks, and
  - (b) to enter into a derivative arrangement for or on behalf of a GSF agency if the arrangement is authorised, and
  - (c) to enter into derivative arrangements for or on behalf of a GSF agency for the purposes of managing the funds, balance sheets or financial risks of the agency.

**Note.** This section operates to authorise these kinds of derivative arrangements without the need for a financial arrangement approval. See section 6.22 (2) (a).

- (2) The Treasurer's directions and the regulations may make provision for or with respect to the kinds of derivative arrangements that the New South Wales Treasury Corporation is permitted to enter into under the authority of this section.

## **Division 6.5 Guarantees for financial arrangements**

### **6.26 Mandatory statutory guarantee of certain borrowings repayments**

- (1) The State guarantees the repayment of borrowings (including interest and other charges relating to them) of a GSF agency when due if they were obtained under the authority of a financial arrangement approval.
- (2) The guarantee extends to borrowings obtained from the New South Wales Treasury Corporation.
- (3) Unless obtained from the New South Wales Treasury Corporation, the guarantee does not extend to borrowings obtained for a State owned corporation except to the extent that the board of the corporation and its voting shareholders agree in writing in accordance with section 16 or 20U of the *State Owned Corporations Act 1989*.
- (4) The guarantee does not apply in relation to:
  - (a) any borrowings of GSF agencies that are GSF agencies because of the operation of section 2.4 (2) (which relates to controlled entities) except to the extent that the regulations provide for the guarantee to apply, or
  - (b) any borrowings or GSF agencies (or borrowings or GSF agencies of a kind) prescribed by the regulations.

### **6.27 Discretionary guarantees**

- (1) The State may guarantee the due performance by a GSF agency of any obligations incurred by the agency as a result of or in connection with the agency entering into any financial arrangement (whenever entered) as authorised by this Act.
- (2) The form of the performance guarantee (including its terms and conditions) are to be determined by the Treasurer. Without limitation, the Treasurer may determine different forms for different guarantees.
- (3) The Treasurer may act on behalf of the State for the purposes of giving a guarantee under this section and the Treasurer (or a person appointed by the Treasurer) may execute any relevant document relating to the guarantee.
- (4) The regulations may make provision for or with respect to the kinds of guarantees that may, or may not, be given under this section.

**6.28 Statutory charge on income or revenue for payments under certain financial arrangements**

- (1) Payments or repayments that are due under a borrowing or derivative arrangement for a GSF agency (including interest and other charges due under the borrowing or derivative arrangement) operate as charges on the income and revenue of the agency regardless of its source.
- (2) However, a charge imposed by this section on the income and revenue of a GSF agency does not operate to prevent the agency from dealing, in the ordinary course of the exercise of its functions, with its income and revenue free of the charge.

**6.29 Guarantee fees for certain guaranteed payments**

- (1) The Treasurer's directions may make provision for or with respect to fees (*guarantee fees*) payable by GSF agencies for guarantees provided by or under this Act in respect of their obligations under financial arrangements.
- (2) A GSF agency must pay any guarantee fees that the agency is liable to pay in accordance with the Treasurer's directions.
- (3) Any guarantee fee payment made under this section is to be paid or repaid to the Treasurer to the credit of the Consolidated Fund.

**6.30 Priorities of obligations under certain financial arrangements and guarantees**

- (1) All obligations of a GSF agency to make payments or repayments under a borrowing or derivative arrangement for the agency if the repayment or payment is secured on the income and revenue of the agency (whether or not under this Act) rank equally without preference by reason of priority of date or for any other reason.
- (2) All obligations of the State under a guarantee under this Act rank equally without preference with all other outstanding obligations of the State.

**6.31 Payments by Government for certain financial arrangements if GSF agency prevented**

- (1) The State may, in relation to any borrowing or derivative arrangement for a GSF agency, agree to make a payment under the borrowing or derivative arrangement even though the agency may be prevented from doing so by law.
- (2) The Treasurer may act on behalf of the State for the purposes of entering an agreement under this section and the Treasurer (or a person appointed by the Treasurer) may execute any relevant document relating to the agreement.

**6.32 Recovery of money paid under guarantee**

- (1) If a GSF agency receives an amount under a guarantee provided by or under this Part, the agency is liable to repay that amount to the Treasurer to the credit of the Consolidated Fund.
- (2) The amount is payable in a lump sum or in instalments, at the time or times, and with the interest, as determined by the Treasurer after consultation with the responsible Minister for the agency.

**6.33 Appropriations for liabilities under Division**

Any liability of the Treasurer or the State under this Division, or arising out of any action taken under this Division, is to be discharged out of the Consolidated Fund without any further appropriation than this section.

## Division 6.6 Funds managers

### 6.34 New South Wales Treasury Corporation may act as and engage funds manager

- (1) The New South Wales Treasury Corporation may act as a funds manager for GSF agencies in relation to financial arrangements they enter under this Part.
- (2) The New South Wales Treasury Corporation may also engage other entities to be funds managers in relation to the management of its own financial arrangements or those of GSF agencies for which the Corporation is the funds manager.

### 6.35 Funds managers for GSF agencies

- (1) A GSF agency that wishes to engage a funds manager in relation to the management of some or all of its financial arrangements must engage the New South Wales Treasury Corporation to do so except if the Treasurer gives written approval under this section for another entity to act as the funds manager.
- (2) The Treasurer may give written approval (a *funds manager approval*) for a GSF agency to engage an entity other than the New South Wales Treasury Corporation to act as a funds manager in relation to the management of some or all of its financial arrangements.
- (3) A funds manager approval may be given only on the recommendation of the responsible Minister for the GSF agency.
- (4) A funds manager approval is subject to any terms and conditions:
  - (a) specified in the approval or the Treasurer's directions, or
  - (b) prescribed by the regulations.
- (5) A funds manager approval may be revoked or varied by the Treasurer by a written notice given to the GSF agency.

### 6.36 Functions of funds managers

- (1) A GSF agency that is engaged to act as a funds manager under this Division has (and is authorised to exercise) the functions of a funds manager under this Division despite any other law.

**Note.** The functions of a fund manager conferred by this section are delegable functions under Division 9.2.
- (2) A funds manager that a GSF agency has engaged under this Division may do any of the following on behalf of the GSF agency:
  - (a) invest (subject to the Treasurer's directions, the regulations and the terms and conditions of a funds manager approval) money held by the GSF agency under management in any investment in which the funds manager is authorised to invest its own money or other money,
  - (b) exercise any functions in relation to the management of the financial arrangements of the GSF agency that the funds manager manages as may be required or permitted by or under the Treasurer's directions or the regulations in accordance with those directions or regulations.
- (3) Without limiting section 6.35 (4) or subsection (2), the Treasurer's directions and regulations may make provision for or with respect to:
  - (a) terms and conditions for funds manager approvals, and
  - (b) kinds of investments that can or cannot be made by funds managers who are engaged to manage investments of GSF agencies, and
  - (c) entities (or kinds of entities) in respect of which funds manager approvals can or cannot be given.

**6.37 Effect of Division on New South Wales Treasury Corporation**

Nothing in this Division limits any services the New South Wales Treasury Corporation is permitted to provide under any other Act to entities.

## Part 7 Reporting

### Division 7.1 Interpretation

#### 7.1 Application and objects of Part

- (1) The provisions of this Part apply in addition to, and without limiting, any other reporting requirements that an entity may have under other legislation (including legislation of the Commonwealth).
- (2) The objects of this Part are:
  - (a) to promote transparency and accountability with respect to the reporting of certain financial and other information concerning the State, GSF agencies and reporting GSF agencies, and
  - (b) to facilitate the use of that information by its users (whether within or outside the government sector) to make informed decisions.
- (3) The following modifications have effect in relation to this Part in its application to the Audit Office as a GSF agency:
  - (a) the financial statements or reports prepared for the Audit Office under this Part that require auditing are to be given to and audited by the auditor appointed under section 47 of the *Government Sector Audit Act 1983* in accordance with section 48 of that Act instead of being given to and audited by the Auditor-General,
  - (b) the Auditor General (and not a Minister) is to cause any document relating to the Audit Office that is permitted or required to be tabled in Parliament under this Part to be presented to the Clerks of both Houses of Parliament and section 9.12 is taken to apply to the presented document regardless of whether or not the House concerned is sitting.

**Note.** This Part (subject to subsection (1) and sections 7.4 and 7.10) is a paramount provision of this Act. Section 1.8 requires a person or other entity to whom a paramount provision applies to comply with the provision (including any regulations made for the purposes of that provision) even if it may result in a non-criminal contravention of other legislation. It also provides that compliance does not result in any civil liability and displaces the operation of the *Corporations Act 2001* of the Commonwealth to enable compliance.

#### 7.2 Definitions

In this Part:

**accountable authority** for a former reporting GSF agency means:

- (a) for an entity that has not also ceased to be a GSF agency—the accountable authority for the GSF agency, or
- (b) for an entity that has also ceased to be a GSF agency:
  - (i) if the entity has not become part of another GSF agency—the accountable authority for the GSF agency immediately before it ceased to be a GSF agency, or
  - (ii) if the entity has become part of another GSF agency—the accountable authority for that other GSF agency, or
  - (iii) any other entity given a written direction by the Treasurer to exercise the functions of the accountable authority for the entity.

**former reporting GSF agency** means a GSF agency that has ceased to be a reporting GSF agency (whether because it has been abolished or dissolved or for any other reason).

### 7.3 Reporting GSF agencies and prescribed reporting exemption criteria

- (1) A *reporting GSF agency* is any GSF agency.
- (2) However, a reporting GSF agency does not include any GSF agency of a kind prescribed by the regulations not to be a reporting GSF agency.
- (3) The Treasurer is not to recommend the making of a regulation for the purposes of subsection (2) unless the Treasurer certifies that the Treasurer has had regard to the prescribed reporting exemption criteria in determining whether a GSF agency (or GSF agency of a kind) to which the regulation relates should be excluded from the definition of *reporting GSF agency*.
- (4) The *prescribed reporting exemption criteria* are criteria prescribed by the regulations for use in determining:
  - (a) whether kinds of GSF agencies should be excluded from the definition of *reporting GSF agency*, or
  - (b) whether kinds of former reporting GSF agencies should be exempted from preparing final annual GSF financial statements for the purposes of section 7.7, or
  - (c) whether kinds of former reporting GSF agencies should be exempted from preparing final annual reporting information for the purposes of section 7.14, or
  - (d) whether kinds of SDA accounts should be exempted from the operation of section 7.8.
- (5) The Treasurer must consult the Auditor-General in accordance with section 3.5 about any proposed provisions in the regulations or Treasurer's directions for the purposes of this section.

## Division 7.2 Financial reporting

### 7.4 Application of Division

- (1) This Division extends to universities and their controlled entities (which are to be treated as both GSF agencies and reporting GSF agencies for the purposes of this Division).

**Note.** Section 9.11 enables the delegation of functions conferred or imposed on the accountable authority for a university and its controlled entities as well as by accountable authorities for GSF agencies.
- (2) Financial statements and reports under this Division of 2 or more agencies may be consolidated in a way that conforms with the Australian Accounting Standards concerning the preparation and presentation of financial statements and reports by entities like those agencies.

### 7.5 Accounts and records of GSF agencies

- (1) The accountable authority for a GSF agency must ensure that accounts and records are kept for the agency that:
  - (a) properly record and explain the agency's transactions, cash flows, financial position and financial performance, and
  - (b) allow for the preparation and audit of financial statements or financial reports.

**Note.** See also section 7.9 on special purpose financial reports.
- (2) The Treasurer and the responsible Minister for the GSF agency (or a person authorised by either of them) are entitled to full and free access to the accounts and records kept under this section, subject to any law that prohibits disclosure of particular information.

## 7.6 Annual GSF financial statements

- (1) The accountable authority for a reporting GSF agency must:
  - (a) cause financial statements (*annual GSF financial statements*) to be prepared for the annual reporting period for the agency, and
  - (b) give those statements after they are prepared to the Auditor-General for auditing.

**Note.** See also section 7.9 on special purpose financial reports.

- (2) Annual GSF financial statements must be prepared and given to the Auditor-General within the period specified by the Treasurer's directions following the end of the annual reporting period concerned to enable the Auditor-General to audit them.

**Note.** Section 34 of the *Government Sector Audit Act 1983* provides for the preparation of audit reports by the Auditor-General for the purposes of this Act.

- (3) The annual GSF financial statements must be:
  - (a) prepared in accordance with the Australian Accounting Standards and any other requirements specified by this Act, the regulations or the Treasurer's directions, and
  - (b) present fairly the agency's financial position, financial performance and cash flows.
- (4) The annual GSF financial statements must include a statement by the accountable authority as to whether the statements comply with subsection (3).
- (5) A copy of both the annual GSF financial statements and the audit report for them must be:
  - (a) for a reporting GSF agency that is required under Division 7.3 to prepare annual reporting information for the period concerned—included in the annual reporting information tabled in Parliament for that period, or
  - (b) for any other reporting GSF agency:
    - (i) tabled by the responsible Minister for the agency in each House of Parliament as soon as practicable (but no later than within 5 months or any other period prescribed by the regulations) after the audit report is provided by the Auditor-General, and
    - (ii) made publicly available by the accountable authority for the agency after it is tabled in the form or forms required by the regulations or the Treasurer's directions.
- (6) The Treasurer must consult the Auditor-General in accordance with section 3.5 about any proposed provisions in the regulations or Treasurer's directions for the purposes of this section.

**Note.** Nothing in this section prevents GSF agencies from providing draft annual GSF financial statements to the Auditor-General before providing the final statements.

## 7.7 Final annual GSF financial statements for former reporting GSF agencies

- (1) The accountable authority for a former reporting GSF agency must cause annual GSF financial statements (*final annual GSF financial statements*) to be prepared for:
  - (a) the part of the annual reporting period of the agency before it ceased to be a reporting GSF agency, and
  - (b) if annual GSF financial statements have not been prepared for any previous annual reporting period of the agency—that previous period.
- (2) Except as directed by the Treasurer (and subject to subsection (3)), final annual GSF financial statements must be prepared, given, audited and published in the same way

as would have been required if the former reporting GSF agency had not ceased to be a reporting GSF agency.

- (3) A copy of final annual GSF financial statements and the audit report for them must be:
  - (a) for a former reporting GSF agency that is required under Division 7.3 to prepare annual reporting information for the period concerned—included in the annual reporting information tabled in Parliament for that period, or
  - (b) for any other former reporting GSF agency—tabled by the responsible Minister for the agency in each House of Parliament after the audit report is provided by the Auditor-General.
- (4) Without limiting subsection (2), the Treasurer may give directions as to the following:
  - (a) exempting a former reporting GSF agency (or former reporting GSF agencies of a kind) from preparing final annual GSF financial statements,
  - (b) modifying requirements for the preparation, giving or auditing of final annual GSF financial statements.
- (5) The Treasurer is to have regard to the prescribed reporting exemption criteria in determining whether to give a direction that a former reporting GSF agency should be exempted from preparing final annual GSF financial statements.
- (6) The Treasurer must consult the Auditor-General in accordance with section 3.5 about proposed directions for the purposes of this section (whether for inclusion in the Treasurer's directions or a separate written direction) that exempt any former reporting GSF agency from preparing final annual GSF financial statements.
- (7) A direction under this section may be contained in the Treasurer's directions or in a separate written direction given to the accountable authority concerned.

## 7.8 Financial reports concerning SDA accounts

- (1) The responsible manager for each SDA account must:
  - (a) cause financial reports (*SDA account financial reports*) about the management of the account to be prepared in accordance with the Treasurer's directions, and
  - (b) give those reports, within the period required by the Treasurer's directions after they are prepared, to the Auditor-General for an audit or audit-related services.

**Note.** Section 4.16 also requires the responsible manager for an SDA account (who is defined in that section) to keep certain records and other information concerning the operation of the account.

Section 34 of the *Government Sector Audit Act 1983* provides for the preparation of audit reports by the Auditor-General for the purposes of this Act.

- (2) Without limiting subsection (1), the Treasurer's directions:
  - (a) are to provide for the form and content of SDA account financial reports for any SDA accounts, and
  - (b) may exempt an SDA account (or SDA accounts of a kind) from the operation of this section.
- (3) The Treasurer is to have regard to the prescribed reporting exemption criteria in determining whether to give a direction that an SDA account (or SDA accounts of a kind) should be exempted from the operation of this section.



- (4) SDA account financial reports (including any report of the Auditor-General on them) may be included in the annual reporting information for a GSF agency if the responsible manager for the SDA account is a government officer of the agency.
- (5) If SDA account financial reports are not included in the annual reporting information for a GSF agency, the administering Minister for the account to which the reports relate is to cause them (along with any report of the Auditor-General on them) to be tabled in each House of Parliament as soon as practicable (but no later than within 5 months or any other period prescribed by the regulations) after the end of the period to which the reports relate.
- (6) In this section:  
*administering Minister*, in relation to an SDA account, means the Minister who administers the account or the legislation under which the account is established or constituted.

### 7.9 Special purpose financial reports

- (1) The Treasurer may direct an accountable authority for a GSF agency to prepare special purpose financial reports for the agency.
- (2) Without limiting subsection (1), the Treasurer may give a written direction to an accountable authority for a GSF agency to prepare a special purpose financial report in addition to a report required by another provision of this Division.
- (3) An accountable authority for a GSF agency to whom a direction is given must prepare the special purpose financial report in accordance with any Treasurer's directions concerning reports of the kind concerned.
- (4) Without limiting subsection (3), the Treasurer's directions may make provision for or with respect to the form and content of special purpose financial reports.
- (5) The Treasurer may request (but not require) the Auditor General to perform audit or audit-related functions concerning special purpose financial reports.

## Division 7.3 Annual reporting information for reporting GSF agencies

### 7.10 Application of Division

#### (1) Application to certain entities

This Division applies in relation to reporting GSF agencies.

- (2) This Division also extends to universities and their controlled entities (which are to be treated as reporting GSF agencies for the purposes of this Division).

**Note.** Section 9.11 enables the delegation of functions conferred or imposed on the accountable authority for a university and its controlled entities as well as by accountable authorities for GSF agencies.

- (3) However, this Division does not apply in relation to reporting GSF agencies to the extent that the application of the Division to them is excluded by or under the regulations or the Treasurer's directions.

#### (4) Relationship with other legislation

Without limiting section 7.1 (1), this Part does not prevent:

- (a) annual reporting information of 2 or more reporting GSF agencies being combined in the annual reporting information for one of them if required or permitted by other legislation, or
- (b) the modification by other legislation of a requirement under this Division to give annual reporting information to the responsible Minister for a reporting

GSF agency (for example, by requiring the information to be given directly to Parliament instead of the Minister), or

- (c) the inclusion of additional information in the annual reporting information for a GSF agency if required or permitted by other legislation, or
- (d) the preparation of annual reporting information for an entity other than a reporting GSF agency if required or permitted by other legislation.

(5) **Combined information**

If the regulations or other legislation or the Treasurer's directions require or permit annual reporting information of 2 or more reporting GSF agencies to be combined in the annual reporting information for one of them (the *lead agency*), it is sufficient compliance with this Division if:

- (a) only the combined information is prepared for each of the agencies, and
- (b) the combined information is given only to the responsible Minister for the lead agency even if the responsible Minister for any of the other agencies is different.

**Note.** Section 7.11 (2) enables the regulations or the Treasurer's directions to make provision for or with respect to the preparation, content and presentation of annual reporting information (including when annual reporting information of 2 or more reporting GSF agencies is combined).

### 7.11 Annual reporting information

- (1) The *annual reporting information* for a reporting GSF agency is the following information about the GSF agency's activities during an annual reporting period for the agency:
  - (a) annual GSF financial statements,
  - (b) the audit report concerning the annual GSF financial statements,
  - (c) information concerning the performance of the GSF agency of a kind prescribed by the regulations or specified by the Treasurer's directions,
  - (d) information that is required or permitted to be included in the annual reporting information for the GSF agency by other legislation,
  - (e) any other information of a kind prescribed by the regulations or specified by the Treasurer's directions.
- (2) The regulations and the Treasurer's directions may make provision for or with respect to the following:
  - (a) the preparation, content and presentation of annual reporting information (including when annual reporting information of 2 or more reporting GSF agencies is combined),
  - (b) the distribution and cost to the public of annual reporting information,
  - (c) without limiting paragraphs (a) and (b)—the preparation, content, presentation and distribution of annual reporting information of former reporting GSF agencies,
  - (d) the presentation of information that is required or permitted to be included by other legislation in annual reporting information.

### 7.12 Preparation of annual reporting information

- (1) The accountable authority for a reporting GSF agency is to ensure that the annual reporting information for the agency is prepared within the period specified by the Treasurer's directions after the end of the annual reporting period for the agency.

- (2) The annual reporting information must be:
  - (a) prepared and presented in the form required by this Act, the regulations or the Treasurer's directions, and
  - (b) given to the responsible Minister for the reporting GSF agency within the period agreed or directed by the Minister so as to enable it to be tabled in Parliament.
- (3) The accountable authority is to ensure that the annual reporting information is made publicly available as soon as practicable (but no later than within 5 months or any other period prescribed by the regulations) after it is tabled in the form or forms required by the regulations or the Treasurer's directions.

#### **7.13 Responsible Minister to cause annual reporting information to be tabled**

The responsible Minister for a reporting GSF agency is to cause the annual reporting information for the agency to be tabled in each House of Parliament as soon as practicable (but no later than within 5 months or any other period prescribed by the regulations) after the end of the annual reporting period for the agency.

#### **7.14 Final annual reporting information for former reporting GSF agencies**

- (1) The accountable authority for a former reporting GSF agency is to ensure the annual reporting information for the agency (the *final annual reporting information*) is prepared within the period specified by the Treasurer's directions after the end of the agency's annual reporting period for the part of the annual reporting period of the agency before it ceased to be a reporting GSF agency.
- (2) Except as directed by the Treasurer, final annual reporting information must be prepared, given, tabled and published in the same way required if the former reporting GSF agency had not ceased to be a reporting GSF agency.
- (3) Without limiting subsection (2), the Treasurer may give directions as to the following:
  - (a) exempting a former reporting GSF agency from preparing final annual reporting information,
  - (b) modifying requirements for the preparation or giving of final annual reporting information.
- (4) The Treasurer is to have regard to the prescribed reporting exemption criteria in determining whether to give a direction that a former reporting GSF agency should be exempted from preparing final annual reporting information.
- (5) A direction under this section may be contained in the Treasurer's directions or in a separate written direction given to the accountable authority concerned.

### **Division 7.4 Consolidated government sector reporting**

#### **7.15 Monthly statements**

- (1) The Treasurer is to release publicly a statement for the General Government Sector (a *monthly statement*) for each month of an annual reporting period for the NSW Government.
- (2) A monthly statement is to contain the primary financial statements for the General Government Sector.
- (3) The Treasurer may include any other matters in a monthly statement that the Treasurer may determine.

- (4) A monthly statement is to be released by the end of the month following the month to which the statement relates.
- (5) However, the Treasurer may decide to delay the release of a monthly statement if the month ends at or near the time when any of the following is required:
  - (a) the presentation of the Budget,
  - (b) the release of a half-yearly review,
  - (c) the presentation of Consolidated State Financial Statements.
- (6) Unless the Treasurer determines differently, a monthly statement is to be presented in a way that is consistent and allows comparison with the preceding Budget.
- (7) In this section:  
*primary financial statements* for the General Government Sector means:
  - (a) a statement of the financial position of the sector, and
  - (b) an operating statement for the sector, and
  - (c) a cash flow statement for the sector.

#### **7.16 Half-yearly reviews**

- (1) The Treasurer is to release publicly a statement (the *half-yearly review*) by 31 December in each year.
- (2) However, if there is a State election in the year immediately following that 31 December, the Treasurer may decide to delay the release of the half-yearly review to no later than 10 February of that year.
- (3) The half-yearly review is to contain:
  - (a) revised projections from the original Budget for the current annual reporting period for the NSW Government and an explanation of any significant variation in those revised projections from the original Budget projections, and
  - (b) revised forward estimates, for major aggregates, over 3 years and an explanation of any significant variation in those revised projections from the original Budget forward estimates, and
  - (c) the latest economic projections for the current annual reporting period for the NSW Government and an explanation of any significant variation from the original budget time projections contained in the Budget Papers.
- (4) Unless the Treasurer determines differently, a half-yearly review is to be presented in a way that is consistent and allows comparison with the preceding Budget.
- (5) If the Treasurer makes a determination under subsection (4), the Treasurer is to cause the reasons for the determination to be included in the half-yearly review to which the determination relates.

#### **7.17 Consolidated State Financial Statements**

- (1) After the end of each annual reporting period for the NSW Government, the Treasurer is to prepare both of the following (the *Consolidated State Financial Statements*):
  - (a) consolidated Total State Sector financial statements for the State as at 30 June in that annual reporting period,
  - (b) consolidated financial statements for the General Government Sector as at 30 June in that annual reporting period.

- (2) The Consolidated State Financial Statements are to be prepared and given to the Auditor-General by the date or dates agreed by the Treasurer and the Auditor-General to enable the Auditor-General to audit the statements.  
**Note.** Section 34 of the *Government Sector Audit Act 1983* provides for the preparation of audit reports by the Auditor-General for the purposes of this Act.
- (3) The Consolidated State Financial Statements must:
  - (a) be prepared in accordance with the Australian Accounting Standards, and
  - (b) present fairly the financial position, financial performance and cash flows for the Total State Sector or General Government Sector (as the case requires).
- (4) The Consolidated State Financial Statements must include a statement by the Treasurer as to whether the statements comply with subsection (3).
- (5) The Consolidated State Financial Statements may be presented in a single report, in the form or manner that the Treasurer may determine.
- (6) The Consolidated State Financial Statements must be accompanied by:
  - (a) commentaries on the statements, and
  - (b) a report on the Government's financial performance against the object, targets and principles provided by the *Fiscal Responsibility Act 2012*.
- (7) The Treasurer may include in or with any of the Consolidated State Financial Statements any reports or other information that the Treasurer may determine.

#### **7.18 Tabling of Consolidated State Financial Statements**

- (1) The Treasurer is to cause copies of each of the following to be tabled in the Legislative Assembly as soon as practicable or within any period prescribed by the regulations (but no later than within 5 months) after the end of the annual reporting period concerned for the State:
  - (a) the Consolidated State Financial Statements,
  - (b) the commentaries and report required to accompany the statements,
  - (c) the audit report of the Auditor-General for the statements.
- (2) If the Treasurer cannot comply with subsection (1) within the required period, the Treasurer is to inform the Legislative Assembly of that fact before the period ends and state the reasons why the Treasurer cannot comply.

## **Part 8 Performance information of GSF agencies**

### **8.1 Application of Part**

- (1) This Part applies in relation to GSF agencies.
- (2) However, this Part does not apply in relation to GSF agencies to the extent that the application of the Part to them is excluded by or under the regulations.

### **8.2 Performance information of GSF agencies**

- (1) The accountable authority for a GSF agency is to ensure that records and other information are kept that properly explain the performance of the agency.
- (2) The Treasurer's directions may make provision for or with respect to records and other information that are to be kept concerning the performance of GSF agencies so as to enable resource allocation decisions to be made by or for the Government.
- (3) The Treasurer must consult the responsible Minister for a GSF agency in accordance with section 3.5 about proposed directions affecting the agency concerning records and other information to be kept concerning the performance of the agency.
- (4) In this section:  
*performance* of a GSF agency includes:
  - (a) the way the agency performs in administering or providing any programs for which the agency is responsible, and
  - (b) indicators about the way the agency performs its work (including in relation to any programs the agency administers or provides).

## **Part 9 Administration**

### **Division 9.1 Information sharing**

#### **9.1 Relevant agency information**

*Relevant agency information* about a GSF agency is information concerning any of the following:

- (a) the banking information of the agency,
- (b) the cash flows of the agency,
- (c) the assets, rights and liabilities of the agency,
- (d) the sources and application of the agency's funding,
- (e) financial arrangements entered into by or on behalf of the agency,
- (f) information for use in preparing the Budget,
- (g) annual reporting information about the agency required under Division 7.3,
- (h) records or other information required to be kept under Part 8 concerning the agency's performance,
- (i) any other information of a kind prescribed by the regulations.

#### **9.2 Treasurer may request certain information about GSF agencies**

The Treasurer may make a written request to the accountable authority for a GSF agency to provide the Treasurer with relevant agency information about the agency for the purposes of decisions about resource allocation to be made by or for the Government.

#### **9.3 Minister may request relevant agency information about funded GSF agencies**

A Minister may 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).

#### **9.4 Content of requests**

- (1) A request under this Division may require relevant agency information to be provided in a particular way or within a particular period (or both).
- (2) A request under this Division may require:
  - (a) existing relevant agency information to be provided, or
  - (b) if the relevant agency information does not yet exist, the information to be prepared and then provided.
- (3) A request under this Division may be revoked or varied by a written notice.

### 9.5 Compliance with requests

- (1) The accountable authority for a GSF agency to whom a request is made under this Division must comply with the request, except as provided by this section.
- (2) The accountable authority for a GSF agency does not need to comply with a request under this Division to provide information if the disclosure of the information is prohibited by any other legislation.
- (3) An accountable authority for a GSF agency who considers that a request does not need to be complied with because the disclosure of the information is prohibited by other legislation must provide the Treasurer or other Minister who made the request with a written notice of the reasons for not complying.

### 9.6 Division does not limit information sharing

This Division does not limit the powers or other functions of the Treasurer, any other Minister or GSF agencies to obtain or share relevant agency information about GSF agencies under other provisions of this Act or under any other law.

## Division 9.2 Delegations

**Note.** Section 49 of the *Interpretation Act 1987* contains general provisions relating to the delegation of functions. In particular, it requires delegations to be in writing and enables them to be wholly or partly revoked. It also enables delegations to be made subject to conditions or limited in other ways.

### 9.7 Delegable functions

- (1) Each of the following is a *delegable function*:
  - (a) a function that is conferred or imposed on a person or other entity by or under this Act (including in respect of consultations),
  - (b) a function that is conferred or imposed on a person or other entity by or under this Act or any other legislation (including an annual Appropriation Act) regarding the expenditure of money (including out of the Consolidated Fund),
  - (c) a function of a person or other entity under a financial arrangement to which the person or other entity is a party (regardless of how it is conferred or imposed),
  - (d) a function that is conferred or imposed on a person or other entity by or under this Act or any other legislation to make payments for a use or purpose from an SDA account or statutory special purpose fund.

**Note.** For example, the authority given to a Minister by an annual Appropriation Act to expend money forming part of the Consolidated Fund is a delegable function covered by paragraph (b). Section 5.2 enables a Minister to impose terms and conditions on the delegation or subdelegation of that function and requires the delegate or subdelegate to exercise the function in accordance with those terms and conditions.

- (2) A *separate GSF agency delegable function* of a Minister in relation to a separate GSF agency is each of the following kinds of delegable functions of the Minister:
  - (a) a function that is conferred or imposed on the Minister by or under this Act or any other legislation (including an annual Appropriation Act) regarding the expenditure of money (including out of the Consolidated Fund) for or in respect of the services of the agency,
  - (b) any other function conferred or imposed on the Minister by or under this Act that is exercisable in respect of the agency.

**Note.** For example, paragraph (a) covers both appropriations given to a Minister for the services of a specific separate GSF agency or appropriations given for the services of a cluster or other grouping of agencies to which a separate GSF agency belongs.



- (3) However, each of the following are not *delegable functions*:
- (a) a function under another provision of this Act if a provision of this Act apart from this Division makes express provision for the persons or other entities to whom the function can be delegated,
  - (b) a power of delegation or subdelegation conferred by this Division,
  - (c) any other function of a kind prescribed by the regulations.

## 9.8 Delegations by Treasurer of certain functions

### (1) General delegation power

The Treasurer may delegate any of the Treasurer's delegable functions (except functions concerning the giving of Treasurer's directions or functions under Division 9.1) to:

- (a) another Minister, or
- (b) the accountable authority for the Treasury, or
- (c) a government officer (or a government officer of a kind) of the Treasury, or
- (d) any other entity (or an entity of a kind) prescribed by the regulations.

### (2) Delegations concerning Treasurer's directions

The Treasurer may delegate any of the Treasurer's delegable functions concerning the giving of Treasurer's directions to:

- (a) the accountable authority for the Treasury, or
- (b) a Treasury senior executive (or a Treasury senior executive of a kind).

### (3) Delegations concerning functions under Division 9.1

The Treasurer may delegate any of the Treasurer's delegable functions under Division 9.1 to:

- (a) another Minister, or
- (b) the accountable authority for the Treasury.

### (4) Subdelegations

A delegate of the Treasurer may subdelegate a delegated function as follows to a permitted subdelegate for the kind of delegate concerned:

	<b>Kind of delegate</b>	<b>Permitted subdelegates</b>
1	Other Minister	Person (or a person of a kind) authorised by the Treasurer in the Minister's instrument of appointment as a delegate
2	Delegate authorised by the Treasurer in the delegate's instrument of appointment as a delegate to subdelegate a function concerning the giving of Treasurer's directions and the function concerns the giving of those directions	Treasury senior executive (or a Treasury senior executive of a kind)
3	Accountable authority for the Treasury	Any of the following: <ul style="list-style-type: none"><li>(a) a government officer (or a government officer of a kind) of the Treasury,</li><li>(b) any other entity (or an entity of a kind) prescribed by the regulations</li></ul>

	<b>Kind of delegate</b>	<b>Permitted subdelegates</b>
4	Government officer of the Treasury	Any of the following: <ul style="list-style-type: none"> <li>(a) another government officer (or another government officer of a kind) of the Treasury,</li> <li>(b) any other entity (or an entity of a kind) prescribed by the regulations</li> </ul>
5	Entity (or an entity of a kind) prescribed for the purposes of subsection (1) (d)	Entity (or an entity of a kind) prescribed by the regulations as an entity to which the delegate can subdelegate

- (5) A subdelegate may subdelegate a Treasurer’s delegable function in the same way as a delegate may subdelegate the function under subsection (4).
- (6) Despite subsections (4) and (5), the following Treasurer’s delegable functions cannot be subdelegated:
- (a) a function excluded from subdelegation by the delegate’s or subdelegate’s instrument of appointment as a delegate or subdelegate,
  - (b) a function concerning the giving of Treasurer’s directions unless authorised by the Treasurer in the delegate’s instrument of appointment as a delegate,
  - (c) a function of the Treasurer under Division 9.1.

(7) **Definitions**

In this section:

***Treasurer’s delegable function*** means:

- (a) any function that is conferred or imposed on the Treasurer by or under this Act (including in respect of consultations), or
- (b) any function of the Treasurer under a financial arrangement to which the Treasurer or the State is a party (regardless of how it is conferred or imposed), but does not include:
- (c) any function that is conferred or imposed on the Treasurer by or under this Act or any other legislation (including an annual Appropriation Act) regarding the expenditure of money (including out of the Consolidated Fund), or
- (d) any function that is conferred or imposed on the Treasurer by or under this Act or any other legislation to make payments for a use or purpose from an SDA account or statutory special purpose fund, or
- (e) any function of the Treasurer that is a separate GSF agency delegable function in relation to a separate GSF agency.

***Treasury senior executive*** means a government officer of the Treasury who is a Public Service senior executive (within the meaning of the *Government Sector Employment Act 2013*).

**9.9 Delegations by Ministers**

(1) **Application of section**

This section applies in relation to all Ministers (including the Treasurer), but does not apply in respect of the delegation of any of the Treasurer’s delegable functions to which section 9.8 applies.

(2) **General delegation power**

A Minister may delegate any of the Minister's delegable functions (except separate GSF agency delegable functions or functions under Division 9.1) to:

- (a) another Minister, or
- (b) the accountable authority for a GSF agency for which the Minister is the responsible Minister, or
- (c) a government officer (or a government officer of a kind) of a GSF agency for which the Minister is the responsible Minister, or
- (d) the Secretary of a Department, or
- (e) a GSF agency for which the Minister is the responsible Minister that is a person, or
- (f) any other entity (or an entity of a kind) prescribed by the regulations.

(3) **Delegations concerning separate GSF agency delegable functions**

A Minister may delegate any of the Minister's separate GSF agency delegable functions in relation to a separate GSF agency to:

- (a) the accountable authority for the agency, or
- (b) a government officer (or a government officer of a kind) of the agency.

(4) **Delegations concerning functions under Division 9.1**

A Minister may delegate any of the Minister's functions under Division 9.1 to:

- (a) another Minister, or
- (b) the Secretary of a Department.

(5) **Subdelegations**

A delegate of a Minister may subdelegate a delegated function as follows to a permitted subdelegate for the kind of delegate concerned:

<b>Kind of delegate</b>	<b>Permitted subdelegates</b>
1 Other Minister	Any of the following: <ul style="list-style-type: none"> <li>(a) an accountable authority for a GSF agency for which that other Minister is the responsible Minister,</li> <li>(b) the Secretary of a Department,</li> <li>(c) a government officer (or a government officer of a kind) of a GSF agency for which that other Minister is the responsible Minister,</li> <li>(d) any other entity (or an entity of a kind) prescribed by the regulations as an entity to which the delegate can subdelegate</li> </ul>

	<b>Kind of delegate</b>	<b>Permitted subdelegates</b>
2	Secretary of a Department	<p>Any of the following:</p> <ul style="list-style-type: none"> <li>(a) the accountable authority for a GSF agency for which the Minister giving the delegation is the responsible Minister,</li> <li>(b) a government officer (or a government officer of a kind) of a GSF agency for which the Minister giving the delegation is the responsible Minister,</li> <li>(c) any other entity (or an entity of a kind) prescribed by the regulations as an entity to which the delegate can subdelegate</li> </ul>
3	Accountable authority for a separate GSF agency and the function is a separate GSF agency delegable function in relation to the agency	<p>Any of the following:</p> <ul style="list-style-type: none"> <li>(a) a government officer (or a government officer of a kind) of the agency,</li> <li>(b) any other entity (or an entity of a kind) prescribed by the regulations as an entity to which the delegate can subdelegate</li> </ul>
4	Accountable authority for a GSF agency that is not a separate GSF agency for which the Minister is the responsible Minister	<p>Any of the following:</p> <ul style="list-style-type: none"> <li>(a) a government officer (or a government officer of a kind) of the agency,</li> <li>(b) any other entity (or an entity of a kind) prescribed by the regulations as an entity to which the delegate can subdelegate</li> </ul>
5	GSF agency	<p>Any of the following:</p> <ul style="list-style-type: none"> <li>(a) an accountable authority for the agency,</li> <li>(b) a government officer of the agency,</li> <li>(c) any other entity (or an entity of a kind) prescribed by the regulations as an entity to which the delegate can subdelegate</li> </ul>
6	Government officer of a GSF agency (including of a separate GSF agency)	<p>Any of the following:</p> <ul style="list-style-type: none"> <li>(a) another government officer (or another government officer of a kind) of the agency,</li> <li>(b) any other entity (or an entity of a kind) prescribed by the regulations as an entity to which the delegate can subdelegate</li> </ul>
7	Entity (or an entity of a kind) prescribed for the purposes of subsection (2) (f)	Entity (or an entity of a kind) prescribed by the regulations as an entity to which the delegate can subdelegate

- (6) A subdelegate may subdelegate a Minister’s delegable function in the same way as a delegate may subdelegate the function under subsection (5).
- (7) Despite subsections (5) and (6), the following delegable functions of a Minister cannot be subdelegated:
  - (a) a function excluded from subdelegation by the delegate’s or subdelegate’s instrument of appointment as a delegate or subdelegate,
  - (b) a function of the Minister under Division 9.1.

**9.10 Delegations by GSF agencies that are persons**

- (1) A GSF agency that is a person may delegate any delegable function of the agency (except an excluded function) to:
  - (a) the accountable authority for the agency, or
  - (b) a government officer (or a government officer of a kind) of the agency, or
  - (c) any other entity (or an entity of a kind) prescribed by the regulations.
- (2) An *excluded function* is:
  - (a) any function of a kind prescribed by the regulations as an excluded function, or
  - (b) for a GSF agency that is not a separate GSF agency—any other kind of function that the responsible Minister for the agency has directed in writing cannot be delegated.
- (3) A delegate of a GSF agency that is a person may subdelegate a delegated function as follows to a permitted subdelegate for the kind of delegate concerned:

	<b>Kind of delegate</b>	<b>Permitted subdelegates</b>
1	Accountable authority for the agency	Any of the following: <ul style="list-style-type: none"> <li>(a) a government officer (or a government officer of a kind) of the agency,</li> <li>(b) any other entity (or an entity of a kind) prescribed by the regulations</li> </ul>
2	Government officer of the agency	Any of the following: <ul style="list-style-type: none"> <li>(a) another government officer (or another government officer of a kind) of the agency,</li> <li>(b) any other entity (or an entity of a kind) prescribed by the regulations</li> </ul>
3	Entity (or an entity of a kind) prescribed for the purposes of subsection (1) (c)	Entity (or an entity of a kind) prescribed by the regulations as an entity to which the delegate can subdelegate

- (4) A subdelegate may subdelegate a delegable function of a GSF agency that is a person in the same way as a delegate may subdelegate the function under subsection (3).
- (5) Despite subsections (3) and (4), the following delegable functions of a GSF agency cannot be subdelegated:
  - (a) a function excluded from subdelegation by the delegate’s or subdelegate’s instrument of appointment as a delegate or subdelegate,
  - (b) a function that the responsible Minister for the agency has directed in writing cannot be subdelegated.

- (6) Subject to regulations made for the purposes of subsection (2) (a), the responsible Minister for a GSF agency may give written directions to the accountable authority for the agency concerning:
- (a) the kinds of persons to whom the authority can or cannot delegate functions under this section, and
  - (b) the kinds of functions that are excluded from delegation or subdelegation under this section and
  - (c) the review of delegations and subdelegations given under this section.
- Note.** Section 2.5 authorises a separate GSF agency not to comply with certain Treasurer's requirements or Ministerial information requirements if the accountable authority for the agency considers the requirements not to be consistent with the agency's statutory functions.
- (7) The GSF agency must review any delegations and subdelegations given under this section in respect of its delegable functions in accordance with any requirements specified by the regulations or directions under subsection (6).

### 9.11 Delegations by accountable authorities

- (1) An accountable authority for a GSF agency may delegate any of the accountable authority's delegable functions (except an excluded function) to:
- (a) a government officer (or a government officer of a kind) of the agency, or
  - (b) any other entity (or an entity of a kind) prescribed by the regulations.
- (2) An accountable authority for a university or its controlled entities may delegate any of the accountable authority's delegable functions (except an excluded function) to:
- (a) an employee or officer (or an employee or officer of a kind) of the university or its controlled entities, or
  - (b) any other entity (or an entity of a kind) prescribed by the regulations.
- (3) An *excluded function* is:
- (a) for the accountable authority for a GSF agency:
    - (i) any function of a kind prescribed by the regulations as an excluded function, or
    - (ii) if the agency is not a separate GSF agency—any other kind of function that the responsible Minister for the agency has directed in writing cannot be delegated, and
  - (b) for the accountable authority for a university or its controlled entities—any function of a kind prescribed by the regulations as an excluded function.
- (4) A delegate of the accountable authority for a GSF agency may subdelegate a delegated function as follows to a permitted subdelegate for the kind of delegate concerned:

	<b>Kind of delegate</b>	<b>Permitted subdelegates</b>
1	Government officer of the agency	Any of the following: <ul style="list-style-type: none"> <li>(a) another government officer (or another government officer of a kind) of the agency,</li> <li>(b) any other entity (or an entity of a kind) prescribed by the regulations</li> </ul>
2	Entity (or an entity of a kind) prescribed for the purposes of subsection (1) (b)	Entity (or an entity of a kind) prescribed by the regulations as an entity to which the delegate can subdelegate

- (5) A delegate of the accountable authority for a university or its controlled entities may subdelegate any function delegated by the accountable authority except a function excluded from subdelegation by the delegate's instrument of appointment as a delegate.
- (6) A subdelegate may subdelegate a delegable function of an accountable authority in the same way as a delegate may subdelegate the function under subsection (4) or (5).
- (7) Despite subsections (4), (5) and (6), the following delegable functions of an accountable authority of a GSF agency or a university or its controlled entities cannot be subdelegated:
  - (a) a function excluded from subdelegation by the delegate's or subdelegate's instrument of appointment as a delegate or subdelegate,
  - (b) for the accountable authority for a GSF agency—a function that the responsible Minister for the agency has directed in writing cannot be subdelegated.
- (8) Subject to regulations made for the purposes of subsection (3) (a) (i), the responsible Minister for a GSF agency may give written directions to the accountable authority for the agency concerning:
  - (a) the kinds of persons to whom the authority can or cannot delegate functions under this section, and
  - (b) the kinds of functions that are excluded from delegation or subdelegation under this section, and
  - (c) the review of delegations and subdelegations given under this section.

**Note.** Section 2.5 authorises a separate GSF agency not to comply with certain Treasurer's requirements or Ministerial information requirements if the accountable authority for the agency considers the requirements not to be consistent with the agency's statutory functions.
- (9) The accountable authority for a GSF agency or a university or its controlled entities must review any delegations and subdelegations given under this section in respect of the authority's delegable functions in accordance with any requirements specified by the regulations or directions under subsection (8).

## **Division 9.3 Documents**

### **9.12 Tabling of documents in Parliament when it is not sitting**

- (1) A document that is permitted or required to be tabled in a House of Parliament by or under this Act may be presented to the Clerk of a House of Parliament if the House is not sitting when it is sought to be tabled.
- (2) A document presented under subsection (1):
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if so printed, is taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the copy of the report by the Clerk.

### 9.13 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
  - (e) by email to an email address specified by the person for the service of documents of that kind,
  - (f) by any other method authorised by the regulations for the service of documents of that kind.
- (2) The regulations may make provision for or with respect to the service of documents that are authorised or required by this Act or the regulations to be served on entities that are not persons.
- (3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.
- (4) In this section, *serve* includes give or send.

### 9.14 Language of records

- (1) Any records that an entity is required or permitted to keep for the purposes of this Act must be kept in writing in the English language or in a manner that enables them to be readily accessible and readily converted into writing in the English language.
- (2) If records are not kept in writing in the English language, the entity must, if required to convert the records into writing in the English language by a person entitled to examine and access the records concerned, comply with the requirement within a reasonable time.

## Division 9.4 Civil recovery

### 9.15 Debt for unauthorised gifts of government property

A person handling government resources incurs a debt to the Crown if:

- (a) the person contravenes section 5.6 (Gifts of government property), and
- (b) the person's contravention was the result of:
  - (i) dishonesty by the person, or
  - (ii) misconduct by the person, or
  - (iii) a deliberate or serious disregard by the person of reasonable standards of care.

### 9.16 Debt for loss of resources because of misconduct by persons handling government resources

A person handling government resources incurs a debt to the Crown if:

- (a) a loss of government resources or related money has occurred (including by way of deficiency, destruction or damage), and



- (b) the person caused or contributed to the loss by:
  - (i) misconduct, or
  - (ii) a deliberate or serious disregard of reasonable standards of care.

#### **9.17 Amount of debt**

- (1) The amount of debt that a person handling government resources is liable to pay in respect of debt incurred under this Division is so much of the loss of government resources or related money concerned as the court considers just and equitable having regard to:
  - (a) the person's share of the responsibility for the loss, and
  - (b) the amount or value of the loss.
- (2) The *amount or value of the loss* is:
  - (a) for the loss of government money or related money—the amount of the loss, or
  - (b) for the loss of government property—the value of the property or the costs of repairing it (whichever is less).
- (3) To avoid doubt, a gift of government property to which section 9.15 applies is to be treated as a loss of government property for the purposes of this section.

#### **9.18 Recovery and writing off of debt**

- (1) A debt incurred by a person handling government resources under this Division is recoverable by the Treasurer in a court of competent jurisdiction, but only if the proceedings are commenced with the concurrence of the Attorney General.
- (2) However, the Treasurer cannot recover amounts from the same person for debts incurred under more than one section of this Division for the same loss.
- (3) The debt remains recoverable even if the person who incurs it ceases to be a person handling government resources.
- (4) The Treasurer may waive (whether wholly or partly) a debt incurred by a person handling government resources under this Division.
- (5) A waived debt ceases to be recoverable, but only to the extent to which it is waived.
- (6) The Treasurer may delegate a function of the Treasurer under this section only to:
  - (a) another Minister, or
  - (b) the Secretary of a Department, or
  - (c) any other accountable authority for a GSF agency.
- (7) The Attorney General may delegate the function of giving concurrence under subsection (1) only to:
  - (a) the Solicitor General, or
  - (b) the Secretary of the Department of Justice.
- (8) This Division does not limit any rights of recovery available to the Crown or a GSF agency apart from this Division. However, the Crown or GSF agency cannot recover from the same person handling government resources both under this Division and apart from this Division for the same loss.

#### **9.19 Relationship of Division with Government Sector Employment Act 2013**

This Division does not limit any action that can be taken in respect of the conduct of employees or other persons under the *Government Sector Employment Act 2013*.

## Part 10 Miscellaneous

### 10.1 Status of Workers Compensation Insurance Fund

The Workers Compensation Insurance Fund is not:

- (a) a controlled entity of the Government of New South Wales for the purposes of the preparation of the Consolidated State Financial Statements, or
- (b) part of the General Government Sector for the purposes of this Act or the *Fiscal Responsibility Act 2012*.

### 10.2 Exemption from duty under Duties Act 1997

- (1) Unless the Treasurer directs differently in a particular case, a GSF agency is not liable to pay a duty under the *Duties Act 1997* in respect of anything done by the agency for the purposes of this Act.
- (2) The Treasurer may direct in writing that any other specified entity is not liable to pay a duty under the *Duties Act 1997* in respect of anything done for the purposes of this Act and the direction has effect accordingly.

### 10.3 Reference of matters to Public Accounts Committee

- (1) The Treasurer may refer to the Public Accounts Committee any matter relating to the financial report of a relevant reporting entity for examination and report to the Treasurer.
- (2) The Treasurer must refer to the Public Accounts Committee any of the following proposals (except a proposal made by the Committee) for examination and report to the Treasurer:
  - (a) a proposal to amend any of the provisions of Division 7.1 or 7.2 or any provisions of the *Government Sector Audit Act 1983* concerning general audits,
  - (b) a proposal to make a regulation relating to the financial report of a relevant reporting entity.
- (3) Nothing in subsection (2) requires the Treasurer to refer a proposal to the Public Accounts Committee if, at the time the Treasurer formulates or receives the proposal:
  - (a) no members have been appointed to the Committee, or
  - (b) the members of the Committee have ceased to hold office.
- (4) Nothing in this section prevents the Public Accounts Committee, after the Committee has reported to the Treasurer, from reporting to the Legislative Assembly on any matter referred to it by the Treasurer under this section.
- (5) The provisions of section 57 (4) of the *Government Sector Audit Act 1983* apply in respect of a report under subsection (4) in the same way as those provisions apply in respect of a report under section 57 (1) of that Act.
- (6) In this section:

**Public Accounts Committee** means the Public Accounts Committee for the time being constituted in accordance with Part 4 of the *Government Sector Audit Act 1983*.

**relevant reporting entity** means:

  - (a) a GSF agency, or
  - (b) any other auditable entity within the meaning of the *Government Sector Audit Act 1983*.

#### 10.4 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
  - (a) consultation requirements before the giving of Treasurer's directions,
  - (b) the shortening of the period or time for compliance with a provision of this Act despite the provision.
- (3) A regulation for a definition may apply generally or be limited to specified provisions of this Act in which the defined word or expression is used.
- (4) A regulation for a definition may, for the purpose of avoiding doubt, include or exclude an entity, matter or other thing (or entity, matter or other thing of a kind) from the definition even if it is unclear whether the definition already covers it.
- (5) The regulations may apply, adopt or incorporate (whether with or without modification) any publication as in force at a particular time or as in force from time to time.
- (6) Section 5 of the *Subordinate Legislation Act 1989* does not apply to the first principal statutory rule that is made under this Act.
- (7) In this section:  
**regulation for a definition** means a regulation made for the purposes of a provision of this Act that defines a word or expression if the regulation includes or excludes anything from the defined word or expression.

## Schedule 1 Savings, transitional and other provisions

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act or any Act that amends this Act  
*Government Sector Finance Legislation (Repeal and Amendment) Act 2018*
- (2) Any such provision:
  - (a) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date, and
  - (b) has effect despite anything to the contrary in this Schedule.
- (3) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

[Second reading speech made in—  
Legislative Assembly on 24 May 2018  
Legislative Council on 6 June 2018]