



# **Public Governance, Performance and Accountability (Finance Minister to Finance Secretary) Delegation 2021**

I, Simon Birmingham, Minister for Finance, make this Delegation under section 107 of the *Public Governance, Performance and Accountability Act 2013*.

Dated: 15 January 2021

SIMON BIRMINGHAM  
Minister for Finance

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## **Part 1 Preliminary**

### **1 Name of Delegation**

This Delegation is the *Public Governance, Performance and Accountability (Finance Minister to Finance Secretary) Delegation 2021*.

### **2 Commencement**

This Delegation commences on 1 February 2021.

This Delegation repeals and replaces the *Public Governance, Performance and Accountability (Finance Minister to Finance Secretary) Delegation 2014*.

### **3 Interpretation**

In this Delegation, words and phrases have the same meaning as in the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) unless otherwise stated below.

Where, on the commencement of this Delegation, the accountable authority for a particular non-corporate Commonwealth entity (the *first entity*) may exercise a delegated power or function in relation to a matter, and responsibility for that matter is later transferred to another Commonwealth entity (the *second entity*), then this Delegation has effect in relation to the accountable authority for the second entity, in relation to that matter, as it had effect in relation to the accountable authority for the first entity.

Note: Section 34AA of the *Acts Interpretation Act 1901* also makes it clear that delegations can apply to classes of positions or offices, including positions or offices in that class created after the Delegation is made.

## Part 2 Delegations and directions under section 107 of the Act

### 4 Delegations (section 107 of the Act)

- (1) Delegations under Schedule 1 are made under subsection 107(1) of the Act.
- (2) The delegate for the purposes of subsection 107 (1) of the Act is the person for the time being holding, occupying or performing the duties of the Finance Secretary.
- (3) The delegate is delegated **all functions and powers of the Finance Minister** under provisions of the Act and the Rules, except those that cannot be delegated under section 107:

Note: Under section 107, the Finance Minister can generally delegate their powers to an official of a non-corporate Commonwealth entity. However, the following powers cannot be delegated at all:

- subsection 57(b) (Borrowing by corporate Commonwealth entities);
- subsection 71(1) and (2) (Minister to record approval of decision to spend relevant money);
- subsection 72(1) (Minister to inform Parliament of certain events);
- section 78 (establishment of special accounts by the Finance Minister);
- section 101 (the rules) providing a general power to make subsidiary legislation; and
- part 4-1A which is about some other instruments made under the PGPA Act.

### 5 Directions (section 107 of the Act)

- (1) Directions in Schedule 1 are made under subsection 107(4) of the Act.
- (2) Each delegation in Schedule 1 is subject to the directions contained in Division 2 of the relevant Part of Schedule 1.

## **Schedule 1 Delegations under the Act**

### **Part 1 Delegation under section 53 of the Act – Banking by the Commonwealth in Australia**

#### **Division 1 Delegation**

<b>1</b>	<b>Provision of Act</b>	Section 53
<b>2</b>	<b>Summary of function or power</b>	To enter into agreements with any bank for the conduct of banking business of the Commonwealth, including opening and maintaining bank accounts
<b>3</b>	<b>Delegates</b>	Finance Secretary

Note: Subsection 53(2) states that the agreement with a bank must not provide for overdraft drawings by the Commonwealth unless it provides for each drawing to be repaid within 30 days, and it must be in accordance with any requirements prescribed by the rules.

#### **Division 2 Directions**

##### **Directions relating to resources for which the Finance Secretary is responsible**

###### **1.1 Scope of delegation**

This delegation applies in relation to bank accounts that are opened and maintained in Australia.

###### **1.2 Effective management of cash**

The delegate must ensure that any relevant agreement provides for cash to be managed in an effective manner, consistent with any written requirements issued by the Department of Finance for that purpose.

###### **1.3 Consolidation of Commonwealth cash**

Any relevant agreement must provide for processes to be in place to allow Commonwealth cash held in Australia to be consolidated each day within the Official Public Account held with the Reserve Bank of Australia.

###### **1.4 Interest**

Any interest earned on Commonwealth bank accounts must be transferred to the Official Public Account

###### **1.5 Notification of opening or closing bank accounts**

The delegate must notify the Department of Finance as soon as practicable when a new bank account is opened or an existing bank account is closed.

## **Part 2 Delegation under section 56 of the Act – Borrowing by the Commonwealth for the issue to, and use by, the Commonwealth of credit cards or credit vouchers**

### **Division 1 Delegation**

<b>1</b>	<b>Provision of Act</b>	Section 56
<b>2</b>	<b>Summary of function or power</b>	On behalf of the Commonwealth, to enter into agreements under the Act, for borrowing money, by obtaining credit by way of credit card or credit voucher
<b>3</b>	<b>Delegates</b>	Finance Secretary

Note: Subsection 56(3) provides that the agreement must require the amount borrowed to be repaid by the Commonwealth within 90 days and it must be in accordance with any requirement prescribed by the rules.

### **Division 2 Directions**

#### **Directions relating to resources for which the Finance Secretary is responsible**

##### **4.1 Only for issue and use of credit cards and credit vouchers**

The delegate is permitted to enter into agreements only for the issue to, and use by, the Commonwealth of credit cards or credit vouchers.

## **Part 3      Delegation under section 60 of the Act – Indemnities, guarantees or warranties by the Commonwealth**

### **Division 1      Delegation**

<b>1</b>	<b>Provision of Act</b>	Section 60
<b>2</b>	<b>Summary of function or power</b>	To grant an indemnity, guarantee or warranty on behalf of the Commonwealth
<b>3</b>	<b>Delegate</b>	Finance Secretary

### **Division 2      Directions**

#### **Directions relating to resources for which the Finance Secretary is responsible**

##### **3.1      Scope of delegation**

- (1) This delegation extends only to arrangements consisting of or including indemnities, guarantees or warranties, on behalf of the Commonwealth as described in clauses 6.3 to 6.5 but subject to paragraphs (2) and (3).
- (2) A delegate cannot grant to a guarantee for the payment of any amount of principal or interest due on a loan.
- (3) A delegate cannot grant to an indemnity that would expressly meet the costs of civil or criminal penalties of the indemnified party.
- (4) A delegate is delegated, the power to delegate this power of the Finance Minister under the provision of the Act.

##### **3.2      Principles**

When exercising the delegation, the delegate must consider two overarching policy principles:

- (a) that risks should be borne by the party best placed to manage them; and
- (b) benefits to the Commonwealth should outweigh the risks involved.

##### **3.3      Arrangements consisting of or including indemnities, guarantees or warranties**

- (1) The delegate may grant an indemnity, guarantee or warranty, involving a contingent liability in relation to an event, if:
  - (a) the delegate is satisfied that:
    - i. the likelihood of the event occurring is remote (less than 5% chance); and
    - ii. the most probable expenditure that would need to be made in accordance with the arrangement, if the event occurred, would not be significant (less than \$30 million).

- (2) The delegate may grant an indemnity, guarantee or warranty, involving a contingent liability in relation to an event in circumstances not coming within subclause (1) where the Finance Minister has approved the grant in writing.

**3.4 Arrangements in accordance with a decision of Cabinet, the National Security Committee of Cabinet or the Prime Minister**

Notwithstanding the above, the delegate may grant an indemnity, guarantee or warranty, if the indemnity, guarantee or warranty has been explicitly agreed in a decision of:

- (a) Cabinet; or
- (b) the National Security Committee of Cabinet (NSC) or its successor; or
- (c) the Prime Minister.

**3.5 Arrangements in accordance with a determination of the Finance Minister**

The delegate may grant an indemnity, guarantee or warranty if the exercise of the power is in accordance with a written determination of the Finance Minister.



## **Part 4      Delegation under section 63 of the Act – Waiver of amounts owing to the Commonwealth**

### **Division 1      Delegation**

<b>1</b>	<b>Provision of Act</b>	Section 63
<b>2</b>	<b>Summary of function or power</b>	To authorise the waiver of an amount owing to the Commonwealth
<b>3</b>	<b>Delegate</b>	Finance Secretary

Note: Subsection 63(2) provides that an authorisation of a waiver or modification of the terms on which an amount owing is paid to the Commonwealth must be in accordance with any requirements prescribed by the rules.

### **Division 2      Directions**

#### **4.1      Amount that can be waived**

- (1) The delegate can consider all applications for a waiver of an amount owing to the Commonwealth.
- (2) The delegate may authorise the waiver of an amount owing to the Commonwealth, for amounts up to \$100,000.

## **Part 5      Delegation under section 63 of the Act – Otherwise modify the terms and conditions of amounts owing to the Commonwealth - postponement**

### **Division 1      Delegation**

<b>1</b>	<b>Provision of Act</b>	Section 63
<b>2</b>	<b>Summary of function or power</b>	To authorise the postponement of any right of the Commonwealth to be paid an amount owing in priority to another amount owing
<b>3</b>	<b>Delegate</b>	Finance Secretary

Note: Subsection 63(2) provides that an authorisation of a waiver or modification of the terms on which an amount owing is to be paid to the Commonwealth must be in accordance with any requirements prescribed by the rules.

### **Division 2      Directions**

#### **5.1      Scope of delegation**

- (1) The delegate can consider all applications for postponement of an amount owing to the Commonwealth.
- (2) The delegate may authorise postponement of any right of the Commonwealth to be paid a debt in priority to another debt or debts, for amounts up to \$100,000.

## **Part 6 Delegation under section 63 of the Act – Otherwise modify the terms and conditions of amounts owing to the Commonwealth**

### **Division 1 Delegation**

<b>1</b>	<b>Provision of Act</b>	Section 63
<b>2</b>	<b>Summary of function or power</b>	To authorise payment by instalments, or defer the time for payment of an amount owing to the Commonwealth
<b>3</b>	<b>Delegate</b>	Finance Secretary

Note: Subsection 63(2) provides that an authorisation of a waiver or modification of the terms on which an amount owing is to be paid to the Commonwealth must be in accordance with any requirements prescribed by the rules.

### **Division 2 Directions**

#### **Directions relating to resources for which the Finance Secretary is responsible**

##### **6.1 Generally amounts owing to the Commonwealth are to be paid in full**

- (1) The delegate must have regard to the basic principle that, unless otherwise allowed by law (for example, under statute or contract), amounts owing to the Commonwealth should be paid in full immediately they become due.
- (2) In a situation where it is not possible or reasonable for an amount to be paid in full immediately and in the absence of any statutory right of the debtor to do otherwise, consideration may be given to contracting with the debtor to allow payment of the amount by instalments or in full at a deferred date.

##### **6.2 Scope of delegation**

The delegate may only authorise the modification of the terms and conditions to:

- (a) defer the time for payment of an amount owing to the Commonwealth; and
- (b) allow payment by instalments of an amount owing to the Commonwealth.

##### **6.3 Specific requirements**

- (1) The delegate must comply with the following directions.

###### *Cases of hardship*

- (2) In a situation of claimed hardship, the delegate must:
  - (a) require the debtor to provide evidence (by a statutory declaration or other means) sufficient to satisfy the delegate that it would be unreasonable to require the debtor to discharge the debt otherwise than by instalments or at a deferred date; and
  - (b) have regard to the Commonwealth's interests not being subordinate to other creditors of the same ranking.

### *Instalments*

- (3) When authorising *payment by instalments*, the delegate must impose conditions on such payment with the object of ensuring that the Commonwealth recovers the amount as soon as is reasonably practicable, having regard to the debtor's ability to repay.

### *Interest*

- (4) The delegate must:
- (a) ordinarily impose interest at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia); and
  - (b) not impose interest at a higher rate than the 90 day bank-accepted bill rate; and
  - (c) if a lesser rate of interest, or no interest, is imposed – record in writing the reasons for doing so.

*Note 1:* A reason for not imposing interest, or imposing less than the specified rate, is that, in the particular case, the imposition of interest would cause undue financial hardship.

*Note 2:* This direction does not apply to Court-awarded judgment debts, as provision for interest will usually be made in the laws of the State or Territory in which judgment was obtained.

### *Information to be given to debtor*

- (5) If the delegate decides to authorise the modification of the terms and conditions, of an amount owing to the Commonwealth:
- (a) the debtor must be informed in writing of the following matters:
    - i. the amount owing to the Commonwealth;
    - ii. the date or dates when payment is due;
    - iii. the interest rate (if any);
    - iv. any other matter the delegate considers relevant, taking into account the evidence of hardship;
    - v. the conditions of acceptance specified in subdivision 6.4; and
  - (b) the debtor must confirm, in writing, acceptance of the matters specified above.

*Note:* If the debtor does not confirm, in writing, acceptance of the conditions specified then the amounts owing to the Commonwealth should be paid in full when they become due.

## **6.4 Conditions**

The conditions of acceptance of payment of a debt by instalments or at a deferred date are as follows:

- (a) the delegate may, at any time, review and, if necessary, revise the arrangements to determine whether different conditions should be imposed, taking into account the debtor's ability to pay; and
- (b) if the debtor is an official, upon termination of employment, or other engagement, with the Commonwealth, the amount outstanding must be set off against any final moneys due; and
- (c) any default of the conditions may result in legal action being commenced to recover the amount owing; and
- (d) if legal action is commenced, the Commonwealth may seek to recover its costs from the debtor.

## **Part 7 Delegation under section 65 of the Act – Act of grace payments by the Commonwealth**

### **Division 1 Delegation**

<b>1</b>	<b>Provision of Act</b>	Section 65
<b>2</b>	<b>Summary of function or power</b>	To provide written authorisation for act of grace payments
<b>3</b>	<b>Delegate</b>	Finance Secretary

### **Division 2 Directions**

#### **7.1 Scope of delegation**

- (1) The delegate can consider all applications for act of grace payment.
- (2) The delegate may not provide written authorisation for act of grace payments for amounts in excess of \$100,000.

## Part 8 Delegation under section 66 of the Act – Gifts of relevant property

### Division 1 Delegation

1	Provision of Act	Section 66
2	Summary of function or power	To give written authorisation of a gift of relevant property being made
3	Delegates	Finance Secretary

### Division 2 Directions

#### Directions relating to resources for which the Finance Secretary is responsible

##### 8.1 No authorising the gifting of military firearms

A delegate must not authorise a gift of military firearms.

##### 8.2 Overarching Principles

- (1) When contemplating whether to authorise a gift of relevant property, a delegate must consider the overarching principles that, if appropriate to do so, the relevant property should be:
  - (a) agreed to be transferred with or without payment to another government entity within Australia (including State or Territory governments); or
  - (b) sold at market value, where it is economical to do so.
- (2) A departure from the Commonwealth's overarching principles, encompassing disposal by gift, is permitted if the relevant property in question is:
  - (a) genuinely surplus to the entity's requirements; and
  - (b) is either:
    - i. of historical or symbolic significance in relation to the proposed recipient; or
    - ii. holds other special significance for the proposed recipient, and there are compelling reasons to justify its gifting to that recipient; or
    - iii. of low value and
      - a. otherwise uneconomical to dispose of; or
      - b. the gifting supports the achievement of an Australian Government policy objective.
- (3) If a gift of relevant property is being contemplated, the delegate is to consider whether authorising in a particular case would create an onerous or undesirable precedent. If the gift would create that precedent, it must be refused.

*Example:* If it would be difficult, in equity, for the Commonwealth not to approve other requests for such gifts and which would in that way lead to significant losses of Commonwealth revenues.

- (4) For this reason, the delegate would need publicly defensible and objective grounds to justify favouring the person or organisation with the gift, ahead of other potential recipients.

### **8.3 Reasonable estimate to be obtained**

- (1) A delegate must not exercise the power under section 66 of the Act before obtaining a reasonable estimate of the market value of the relevant property proposed to be gifted.
- (2) If this is not possible, the delegate must use their discretion in assigning a notional value, and must record the basis for determining the value of the property.

## **Part 9 Delegation under section 77 of the Act – Repayments by the Commonwealth**

### **Division 1 Delegation**

<b>1</b>	<b>Provision of Act</b>	Section 77
<b>2</b>	<b>Summary of function or power</b>	To be satisfied that there is no appropriation for the repayment apart from this section
<b>3</b>	<b>Delegates</b>	Finance Secretary

### **Division 2 Directions**

**Directions relating to resources for which the Finance Secretary is responsible**

*[There are no directions]*