



Public Governance, Performance and Accountability (Finance Minister to Finance Secretary) Amendment Delegation 2024 (No. 1)

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

Dated:

Katy Gallagher
Minister for Finance

Preliminary

1 Name of Delegation

This Delegation is the *Public Governance, Performance and Accountability (Finance Minister to Finance Secretary) Amendment Delegation 2024 (No. 1)*.

2 Commencement

This Amendment Delegation commences on the date of signature.

3 Amendment of the *Public Governance, Performance and Accountability (Finance Minister to Accountable Authorities of Non-Corporate Commonwealth Entities) Delegation 2022*.

Schedule 1 amends the *Public Governance, Performance and Accountability (Finance Minister to Finance Secretary) Delegation 2022* that was made on 17 July 2022.

Schedule 1 Amendment to the *Public Governance, Performance and Accountability (Finance Minister to Finance Secretary) Delegation 2022*

[1] **Schedule 1, Part 3**– *Delegation under section 60 of the Act – Indemnities, guarantees or warranties by the Commonwealth*

Delete Schedule 1, Part 3 and substitute the below:

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

Division 1 Delegation

1	Provision of Act	Section 60
2	Summary of function or power	To grant an indemnity, guarantee or warranty on behalf of the Commonwealth
3	Delegate	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 3.3 to 3.6 but subject to paragraphs (2) and (3).
- (2) A delegate cannot grant a guarantee for the payment of any amount of principal or interest due on a loan.
- (3) A delegate cannot grant 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:
 - i. the delegate is satisfied that:
 - a. the likelihood of the event occurring is remote (less than 5% chance); and
 - b. 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.

3.6 Approval of legal assistance under Appendix E of the *Legal Services Directions 2017*

- (1) The delegate may grant an indemnity where legal assistance provided under Appendix E of the *Legal Services Directions 2017* requires the granting of an indemnity. The delegate must be satisfied before granting the indemnity that:
 - (a) the criteria for legal assistance under Appendix E of the *Legal Services Directions 2017* are met; and
 - (b) any relevant conditions for the legal assistance, involving the granting of an indemnity, under Appendix E of the *Legal Services Directions 2017* are met.
- (2) When exercising the delegation for this purpose, the delegate is not subject to the Directions in this Delegation at:
 - (a) Direction 3.1(3) (despite Direction 3.1(1)), and
 - (b) Direction 3.2(a) and (b), and
 - (c) Direction 3.3(1) and (2).

Note regarding Direction 3.6: The *Legal Services Directions 2017* are the directions issued by the Attorney-General under the *Judiciary Act 1903*. The types of legal assistance that may require indemnification include fines or penalties, or damages and legal costs, imposed or awarded against the employee.