



Public Governance, Performance and Accountability (Finance Minister to Accountable Authorities of Non-Corporate Commonwealth Entities) 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 Accountable Authorities of Non-Corporate Commonwealth Entities) 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 Accountable Authorities of Non-Corporate Commonwealth Entities) 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.

Unless otherwise stated, a reference to ***non-Finance accountable authorities of non-corporate Commonwealth entities*** means the accountable authority for each non-corporate Commonwealth entity except the Finance Secretary, and includes an accountable authority for such an entity created after this delegation is made.

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 delegates for the purposes of subsection 107(1) of the Act are the persons for the time being holding, occupying or performing the duties of the positions specified in row 3 of a table in Schedule 1.
- (3) The delegates are delegated the power, function or duty of the Finance Minister under the provision of the Act and the Rules mentioned in row 2 of Schedule 1 and Schedule 2.

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 75 (transfer of functions);
- section 78 (establishment of special accounts by the Finance Minister);
- section 85 (Commonwealth's involvement in companies);
- section 87 (establishing new corporate Commonwealth entities);
- 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 and Schedule 2 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.
- (3) Each delegation in Schedule 2 is subject to the directions contained in Division 2 of the relevant Part of Schedule 2.

Schedule 1 Delegations under the Act

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

Division 1 Delegation

1	Provision of Act	Section 53
2	Summary of function or power	To enter into agreements with any bank for the conduct of banking business of the Commonwealth, including opening and maintaining bank accounts
3	Delegates	Non-Finance accountable authorities of non-corporate Commonwealth entities

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

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.

1.6 Special accounts

The bank accounts supporting the special accounts listed in column 3 of the table in Part 5, Division 2, clause 5.1 are not required to comply with clauses 1.3 and 1.4.

1.7 Future Fund Management Agency

The accountable authority of the Future Fund Management Agency is not required to comply with clauses 1.3 and 1.4.

1.8 Australian Financial Security Authority

The accountable authority of the Australian Financial Security Authority is not required to comply with clauses 1.3 and 1.4 for bank accounts holding amounts in the custody of the Official Trustee. Only amounts in the custody of the Official Trustee can be credited to or debited from these bank accounts.

1.9 Department of the House of Representatives

The accountable authority of the Department of the House of Representatives can open a bank account that is not required to comply with clauses 1.3 and 1.4. Only amounts that support inter-Parliamentary relations activities can be credited to this account.

Part 2 Delegation under section 53 of the Act – Banking by the Commonwealth (to specified accountable authorities for banking business outside Australia)

Division 1 Delegation

1	Provision of Act	Section 53
2	Summary of function or power	To enter into agreements with any bank for the conduct of banking business of the Commonwealth, including opening and maintaining bank accounts
3	Delegates	Non-Finance accountable authorities of non-corporate Commonwealth entities listed in the table in Division 2

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

2.1 Scope of delegation

This delegation applies in relation to opening and maintaining bank accounts outside Australia.

2.2 Special directions - Limitation to specified countries

This delegation applies to the delegates mentioned in column 2 of the following table only in relation to bank accounts in the countries specified in column 3:

Item	Delegate	Country
1	Electoral Commissioner of the Australian Electoral Commission	Indonesia, Papua New Guinea, Solomon Islands, Vanuatu, East Timor
2	Commissioner of Police of the Australian Federal Police	Cyprus, Indonesia, Mauritius, Nauru, Papua New Guinea, Solomon Islands, Vanuatu
3	Accountable authority of the Australian Secret Intelligence Service	All countries
4	Accountable authority of the Australian Security Intelligence Organisation	All countries
5	Accountable authority of the Australian Trade and Investment Commission	All countries

6	Accountable authority of the Department of Agriculture, Water and the Environment	Indonesia
7	Accountable authority of the Department of Defence	All countries
8	Accountable authority of the Department of Foreign Affairs and Trade	All countries
9	Accountable authority of the Department of Social Services	Austria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Israel, Italy, Netherlands, New Zealand, Norway, People's Republic of China, Portugal, Singapore, Spain, Sweden, Turkey, United Kingdom, United States of America
10	Accountable authority of the Department of Home Affairs	All countries
11	Accountable authority of the Department of Infrastructure, Transport, Regional Development and Communications	Canada
12	Accountable authority of the Department of Veterans' Affairs	France, Papua New Guinea, Thailand, Turkey

Part 3 Delegation under section 56 of the Act – Borrowing by the Commonwealth for overdraft facilities with overseas banks

Division 1 Delegation

1	Provision of Act	Section 56
2	Summary of function or power	On behalf of the Commonwealth, to enter into agreements for borrowing of money, by obtaining an advance on overdraft with overseas banks
3	Delegates	Accountable authority for the Department of Foreign Affairs and Trade

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 requirements prescribed by the rules.

Division 2 Directions

3.1 Scope of delegation

- (1) The accountable authority for the Department of Foreign Affairs and Trade may only delegate the functions and powers contained in this delegation to an official of the Department of Foreign Affairs and Trade.
- (2) This delegation only applies in relation to overdraft facilities that are to be opened and maintained outside Australia.
- (3) The delegate must ensure that any agreements relating to the provision of overdraft facilities are for a maximum amount of \$1 million, with the sum of all agreements not totalling more than \$10 million.
- (4) The delegate must ensure that the overdraft facility is only accessed in situations where funds cannot be transferred from Australia in time for a specific payment.

3.2 Standard fees and charges etc

- (1) Where an overdraft facility is opened, in accordance with an agreement that provides for the charging of fees by the bank, the delegate must ensure that the amount incurs only the bank's standard fees and charges.
- (2) The delegate must also ensure that arrangements are put in place to debit any fees and charges to a relevant departmental appropriation.

3.3 Annual review of overdraft facilities

The delegate must, at least annually, review all the entity's overdraft facilities and be satisfied of the continuing need for those facilities with a view to maintaining the minimum number necessary.

Part 4 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

1	Provision of Act	Section 56
2	Summary of function or power	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
3	Delegates	Non-Finance accountable authorities of non-corporate Commonwealth entities

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

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 5 Delegation under section 58 of the Act – Investment by the Commonwealth

Division 1 Delegations

1	Provision of Act	Section 58
2	Summary of function or power	To invest relevant money in any authorised investment on behalf of the Commonwealth or to authorise the re-investment upon maturity of the proceeds of an authorised investment
3	Delegates	Non-Finance accountable authorities of non-corporate Commonwealth entities listed in the table in Division 2 The accountable authority of the Department of the House of Representatives

Note: Delegates must ensure that the investment of relevant money is consistent with the requirements of section 58 of the Act, including being limited to the authorised investments described in subsection 58(8) and the rules.

Division 2 Direction

5.1 Account from which amounts can be invested

A delegate mentioned in column 2 of an item in the following table is permitted to invest only amounts standing to the credit of a Special Account listed in column 3 of the item.

Item	Accountable Authority for this Entity	Special Accounts
1	Attorney-General's Department	AGS Client Funds Special Account 2015
2	Australian Securities and Investments Commission	ASIC Trust and Other Moneys Special Account 2018
3	Department of Agriculture, Water and the Environment	National Residue Survey Account
4	Department of Industry, Science, Energy and Resources	Innovation, Science and Technology - Donations, Bequests and Sponsorship Special Account 2016 Ranger Rehabilitation Special Account 2017
5	Department of Veterans' Affairs	Defence Service Homes Insurance Account Military Death Claim Compensation Special Account 2015
6	Federal Court of Australia	FCA Litigants' Fund Special Account 2017 Litigants' Fund Special Account
7	National Blood Authority	NMF Blood and Blood Products Special Account 2017
8	National Indigenous Australians Agency	Aboriginals Benefit Account

5.2 Accountable Authority of the Department of the House of Representatives

The accountable authority of the Department of the House of Representatives is permitted to invest only amounts standing to the credit of the bank account referred to in Part 1, Division 2, clause 1.9 of this delegation.

5.3 Maximum return on investment

In investing the balance of a special account, or amounts standing to the credit of the bank account referred to in clause 5.2, or authorising the re-investment of the proceeds of an investment, the delegate must take all reasonable steps to obtain the maximum return available on authorised investments, consistent with the requirements, including particular cash-flow requirements, of sound financial management of the account.

5.4 Notification to Australian Office of Financial Management for large amounts

Before making any investment or authorising any re-investment involving an amount of \$15 million or more, the delegate must provide details of the proposed investment or re-investment to the Australian Office of Financial Management.

Part 6 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	Delegates	Non-Finance accountable authorities, of non-corporate Commonwealth entities

Division 2 Directions

6.1 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 subclauses (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.

6.2 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.

6.3 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.

6.4 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.

6.5 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 7 Delegation under section 63 of the Act – Waiver of amounts owing to the Commonwealth (to the accountable authority of the Australian Securities and Investments Commission)

Division 1 Delegation

1	Provision of Act	Section 63
2	Summary of function or power	To authorise the waiver of an amount owing to the Commonwealth
3	Delegates	Accountable authority of Australian Securities and Investments Commission

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

7.1 Amount that can be waived

The delegate may authorise the waiver of an amount owing to the Commonwealth under the *Corporations Act 2001* of amounts up to \$5,000 for any one fee.

7.2 Applications for waiver to be in writing

A delegate must not consider an application for waiver of a fee unless the application is in writing. In each case, the onus is on the applicant to produce supporting evidence to substantiate the application.

7.3 Extraneous circumstances must exist

A delegate must not exercise the power under subsection 63 (1) of the Act unless satisfied that circumstances exist, outside the control of the officers of the applicant company or its representatives, which make it reasonable for the Commonwealth to do so.

7.4 Consideration of extent of cause of circumstances

In determining whether a fee should be waived in whole or part, a delegate must consider the extent to which the company's officers or its representatives contributed to the circumstances of the matter.

Specific matters which may warrant a fee being waived, in whole or part, include:

- (a) the delay in lodgement is fully or partly the fault of ASIC; or
- (b) the company's books have been seized by the Police, ASIC or other government body. The seizure must be unrelated to the company's failure to

- lodge documents. Where a company's accountant withholds books for non-payment of professional fees, a fee must not be waived; or
- (c) where late lodgement is as a result of a Court not issuing a signed copy of an Order in time; or
 - (d) records are damaged or destroyed by flood, fire, storm or other disaster allowing insufficient time for their reconstruction; or
 - (e) exceptional circumstances delayed lodgement – e.g. illness/accident prevent all responsible persons from lodging within the specified period, an accounting firm merges and notifies in bulk the resulting change of name or address under which company auditors or liquidators practice; or
 - (f) delay in lodgement is caused by a variable industrial dispute (e.g. a postal strike); or
 - (g) the document is required to be prepared or signed overseas and there is a limited period for lodgement.

Part 8 [There is no delegation under this Part]

Part 9 Delegation under section 63 of the Act – Otherwise modify the terms and conditions of amounts owing to the Commonwealth

Division 1 Delegation

1	Provision of Act	Section 63
2	Summary of function or power	To authorise payment by instalments, or defer the time for payment of an amount owing to the Commonwealth
3	Delegates	Non-Finance accountable authorities of non-corporate Commonwealth entities and the accountable authority of the Commonwealth Superannuation Corporation

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.

Note: This delegation only applies to the administrative service function of the Commonwealth Superannuation Corporation Board in so far as it acts on behalf of the Commonwealth. It is authorised by section 29C of the *Governance of Australian Government Superannuation Schemes Legislation Act 2015* and Rule 29AA of the *Public Governance, Performance and Accountability Rule 2014*

Division 2 Directions

9.1 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.

9.2 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.

9.3 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 clause 9.4; 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.

9.4 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 10 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	Non-Finance accountable authorities of non-corporate Commonwealth entities

Division 2 Directions

10.1 No authorising the gifting of military firearms

A delegate must not authorise a gift of military firearms.

10.2 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.

10.3 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 11 Delegation under section 77 of the Act – Repayments by the Commonwealth

Division 1 Delegation

1	Provision of Act	Section 77
2	Summary of function or power	To be satisfied that, there is no appropriation for the repayment apart from this section
3	Delegates	Non-Finance accountable authorities of non-corporate Commonwealth entities

Division 2 Directions

[There are no directions]

Schedule 2 Delegations under the PGPA Rule

Part 1 Delegations under section 25 of the PGPA Rule- Payment of amount owed to person at time of death

Division 1 Delegation

1	Provision of Regulations	Section 25 of the PGPA Rule
2	Summary of function or power	To authorise the payment to the person who the delegate considers should receive the payment, of an amount which, at the time of a person's death, the Commonwealth owed to the person
3	Delegates	Non-Finance accountable authority for non-corporate Commonwealth entities

Division 2 Directions

[There are no directions]