

Inquiry into the integrity, efficacy and value for money of NSW Government grant programs

Supplementary Questions – Hearing 16 October 2020

1. What is the appropriate approval for expenditure from consolidated revenue?

Under section 4.6(1) of the *Government Sector Finance Act 2018* (GSF Act) money cannot be paid out of the Consolidated Fund except under the authority of an Act. The sources of authority include:

- an Appropriation Act which appropriates sums of money out of the Consolidated Fund to Ministers for the services of their department(s)
- the GSF Act which appropriates to Ministers deemed appropriations money (i.e own source revenue) received or recovered by an agency
- other Acts which may authorise the payment of money that is within the Consolidated Fund.

Section 5.5(1) of the GSF Act states that an Accountable Authority for an agency (i.e the Head of the agency) is responsible for ensuring that expenditure of money for the agency is “authorised”. Expenditure of money is authorised if it is done:

- in accordance with a delegation or subdelegation from a person with power regarding the expenditure of the money; (section 9.7 of the GSF Act)
- under the authority of the GSF Act; or
- under the authority of any other law.

The GSF Act does not obligate a Minister to delegate or subdelegate the power to expend money out of the Consolidated Fund.

Expenditure of money out of the Consolidated Fund (appropriation expenditure function) is a delegable function under section 9.7 of the *GSF Act*. *With the exception of 'separate GSF agencies'¹, a Minister can delegate or subdelegate an appropriation expenditure function in accordance with section 9.9 of the GSF Act to:*

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

A Minister's ability to *delegate or subdelegate an appropriation expenditure function for a 'separate GSF agency'* in accordance with section 9.9 of the GSF Act is limited to:

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

If permitted by the Minister's delegation instrument, delegates can subdelegate an expenditure appropriation function to the subdelegates listed in section 9.9(5) of the GSF Act.

A Minister who delegates or subdelegates an expenditure appropriation function may impose terms and conditions on the expenditure under section 5.2 of the GSF Act. This could include limits on the amount that the delegate may spend, or the purposes for which the delegate is permitted to expend money. The delegate or subdelegate is authorised to expend money but only in accordance with any terms and conditions set by the Minister.

An agency is therefore authorised to spend money out of the Consolidated Fund if:

¹ As defined in section 2.5 of the GSF Act

- the agency has a delegation or subdelegation from a person with the power to expend money (i.e the Minister or any of the parties the Minister has delegated this function to)
- another Act provides the agency with the authority to spend the money.

In order for an agency to have the legal authority to spend money from the Consolidated Fund, it must have an appropriate delegation instrument in place (or is otherwise authorised under the GSF Act or any other law).

2. Are there any exceptions to this process?

Generally no, there should not be any exceptions to the above process.

If an agency enters into a shared service arrangement with a provider that requires the provider to make payments to a third party, then there should be an additional authorisation to spend Consolidated Fund monies. For example, if Department A received an appropriation to administer a program which is paid to third parties by Agency B, then there should be an authorisation:

- for Department A to pay monies to Agency B
- for Agency B to pay the funds to third parties.

3. Is it appropriate for departmental heads other than Treasury to expend funds from consolidated revenue?

Whether it is appropriate for Accountable Authorities to expend money from the Consolidated Fund will depend on the delegation instruments in place.

An Accountable Authority can expend money from the Consolidated Fund if they have a delegation or subdelegation from a Minister or another delegate under section 9.9 of the GSF Act.

Questions on Notice

The Hon. COURTNEY HOUSSOS: Ms Crawford, the Committee has received in previous hearings some testimony about the most significant amount of money that was transferred in the second tied grant round, which is the one we are most concerned about. I am not going to put the specifics to you. I do not think that is fair and obviously I do not want to prejudice any future investigations. I ask some general questions about the allocation of funding and if funding is coming either from a grants program that has been clearly approved in the way that it should, or whether it is coming from the Treasury, from the consolidated fund or the managed fund. Can you talk through what would be the appropriate approvals if it were not coming from the money that had been disbursed to the grants fund, but instead was coming from Treasury? Would that require sign-off from the Treasurer?

Ms CRAWFORD: I am not sure I could comment really without knowing real life circumstances. I do not know that I can make a general response to that unless, Mr Stanton? No. Ms Migotto?

Ms MIGOTTO: No. As we have talked about, there are specific legislative requirements for funds like Restart NSW. I think there are a different set of arrangements around things that come out of consolidated funding. We would happily take that on notice and provide what information we can.

The Hon. COURTNEY HOUSSOS: I might reframe it and put it on notice for you. The question I am really asking is if it is coming from the consolidated fund then there is a different approval process than if it is coming from a grants fund. Is that correct?

Ms CRAWFORD: Yes.

Mr STANTON: Yes.

The question I am really asking is if it is coming from the consolidated fund then there is a different approval process than if it is coming from a grants fund. Is that correct?

Refer to detailed responses provided to the supplementary questions.

The ACTING CHAIR: *Turning back to the State Records Act, since you have raised this a couple of times, I want to confirm that the State Records Act applies to ministerial offices.*

Ms MIGOTTO: *It does, yes.*

The ACTING CHAIR: *In fact there is a higher threshold for the Premier's office over other ministerial offices, when one looks to the things that might be required for the State Archives.*

Ms CRAWFORD: *That has not come to our attention in the conduct of an audit.*

The ACTING CHAIR: *I might put it to you and ask you to take it on notice. It appears that briefing notes or papers maintained in the Premier's office are required to be retained in the State Archives, whereas briefing notes or papers of other Ministers are rarely required to be retained in the State Archives if they are of broader significance, separate to having to keep them for administrative or audit purposes, which applies strictly to both situations.*

Ms CRAWFORD: *What would you like for us to do?*

The ACTING CHAIR: *I am interested if you have any views about that, on notice, the limitations of that application or how broad it is.*

Ms CRAWFORD: *We may take that on notice, look at the requirements and reflect as to how they may or may not have impacted either past work that we have done or possible future work.*

Response:

Under Section 36 (2) of the *Public Finance and Audit Act 1983*, audited entities are required to provide the Auditor-General with any information that is necessary to the conduct of the Audit Office's functions. In the context of a performance audit, this may include briefs and other documentary evidence of key approvals and decisions relating to the audit subject matter. Where records of decisions and approvals have not been made or kept or are otherwise not provided as requested, this may limit the Audit Office's ability to confirm that established policy, guidance, or legislation has been adhered to. The Auditor-General would ordinarily seek to address any gaps in documentation during the conduct of the audit but if this is not possible, may comment in the published audit report where documentation gaps have limited accountability and transparency.