NSW GOVERNMENT | Treasury

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Policy and Guidelines Paper

Establishing and Monitoring the Performance of NSW Government Residual Entities

NSW GOVERNMENT

Preface

Following a major asset sale or restructure, it is often the case that a number of residual assets, liabilities and functions remain with the State.

This policy and guidelines paper provides a Governance Framework covering matters that should be considered in the establishment, operation and reporting of entities created to hold these residual assets, liabilities and functions. This paper refers to such entities as residual entities.

The paper includes appendices detailing the responsibilities of the:

- Residual Entity Officer
- Transaction Project Director in relation to residual matters and Residual Entities
- Transaction Residual Entity Workstream

These appendices are presented for use by officers within NSW Treasury. They have been developed to be used both during a transaction process to establish a residual entity and in the post-transaction period to ensure that the entities' functions are performed.

This paper is substantially an operational guide to assist officers from within NSW Treasury to address issues associated with residual entities.

This paper updates and replaces TPP16-01 Establishing and Monitoring the Performance of NSW Government Residual Entities.

Paul Grimes
Secretary
NSW Treasury

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Note
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Introduction

Following a major asset sale or restructure, it is often the case that a number of residual assets, liabilities and functions may remain with the State. In many, though not necessarily in all instances, the most appropriate way to manage these situations will be to establish a specific purpose entity. This policy and guidelines paper uses the term “residual entities” to refer to such entities.

In 2015, Ernst & Young provided the Treasury Audit and Risk Committee with the Audit of the compliance and organisational responsibilities of “Tier 3 Entities[1]” (the audit report). This audit report recommended the development of a governance framework that covers the lifecycle of residual entities.

This paper responds to that audit report recommendation by providing an outline of the matters that are to be considered and determined when establishing a new residual entity.

Just as one asset transaction differs from another, the purpose and functions of each residual entity also differ. As a result it is not possible to propose a one-size-fits-all prescription for each residual entity.

This paper, however, provides a checklist of matters concerning residual assets, liabilities and functions that should be considered and determined during a transaction process, and post-transaction if a residual entity is established.

The Existing Residual Entities

The following table lists the NSW Government residual entities within the Treasury cluster, as at 1 July 2021:

Entity	Purpose
Liability Management Ministerial Corporation (LMMC)	Created in 2002 to manage the General Government Liability Management Fund, which holds financial assets to offset unfunded superannuation liabilities.
State Rail Authority Residual Holding Corporation (SRARHC)	Created on 1 July 2007 by renaming the former State Rail Authority and putting it under the Treasurer’s control. Its sole purpose is to hold some rolling stock cross-border leases that were not transferred to other agencies (such as RailCorp) as part of the restructure of the rail sector.
Electricity Assets Ministerial Holding Corporation (EAMHC)	Created to hold residual assets, rights and liabilities stemming from the 2012-15 electricity generation transactions. Key responsibilities include dust diseases liabilities, funding part of Generator Property Management’s activities and receiving monies from insurance claims.

[1] Tier 3 entities are small entities that typically are created to hold residual assets, liabilities and functions that remain with the State following a major asset sale transaction or agency restructuring.

Entity	Purpose
Ports Assets Ministerial Holding Corporation (PAMHC) and its subsidiaries: • Port Botany Lessor Pty Ltd • Port Kembla Lessor Pty Ltd • Port of Newcastle Lessor Pty Ltd	Created to perform the State's lessor role as part of the long-term leases of the ports in 2013-14. Key responsibilities include administering property matters to do with the lease (e.g. development consents, subdivisions) and environmental liabilities.
Electricity Transmission Ministerial Holding Corporation (ETMHC)	Created to hold residual assets, rights and liabilities stemming from the 2015 transaction of TransGrid. Key responsibilities include administering property matters to do with the lease.
Alpha Distribution Ministerial Holding Corporation (ADMHC)	Created to hold residual assets, rights and liabilities stemming from the 2016 transaction of Ausgrid. Key responsibilities include administering property matters to do with the lease.
Epsilon Distribution Ministerial Holding Corporation (EDMHC)	Created to hold residual assets, rights and liabilities stemming from the 2017 transaction of Endeavour Energy. Key responsibilities include administering property matters to do with the lease.
Electricity Retained Interest Corporation – Ausgrid (ERIC-A)	Established to hold the NSW Government's retained interest in the Ausgrid network infrastructure assets for and on behalf of the State.
Electricity Retained Interest Corporation – Endeavour Energy (ERIC-E)	Established to hold the NSW Government's 49.6 per cent retained interest in the Endeavour Energy network infrastructure assets for and on behalf of the State.
Roads Retained Interest Pty Ltd (RRIPL)	Established to hold the NSW Government's 49 per cent retained interest in the WestConnex project for and on behalf of the State.
Ministerial Holding Corporation (MHC)	Landlord for the lease of Sydney Desalination Plant and hold the NSW Government's 50 per cent stake in the Hunter Valley Training Corporation.
Generator Property Management Pty Ltd	Transaction company established to deal with the decommissioning, demolition and rehabilitation of closed power station sites.

The NSW Treasury website includes a listing of the residual entities (https://www.treasury.nsw.gov.au/information-public-entities/government-businesses/post-transaction-management).

Establishing a Residual Entity

Residual entities are typically established by transaction specific enabling legislation. For asset sale transactions, enabling legislation is usually developed prior to the transaction through a specific workstream led by the Treasury General Counsel's Office.

Residual entities can also be established without legislation, e.g. by establishing a Corporations Act company. This will be the case for transactions which proceed without transaction specific enabling legislation.

The Project Director of the transaction must consider and, where appropriate, establish a transaction residual issues workstream to focus on the management of residual issues including the establishment of any new residual entities (a Transaction Residual Entity Workstream).

If the Project Director determines that such a workstream is not required, the reasons for this determination must be clearly documented, as must the Project Director's proposed alternative mechanisms for considering and responding to residual issues for the transaction.

In establishing a residual entity, careful consideration needs to be given to several matters, including:

- Legal and policy issues
- Resourcing arrangements
- Funding arrangements
- Financial reporting
- Handover reporting
- Operation of the residual entity, including risk management, the residual entity's functions and the appointment of a Residual Entity Officer.

Just as the purpose and functions of each residual entity differ, so too will the approaches to each of the above issues. For instance, the approach taken when establishing a commercial, operational entity is likely to vary from that taken in establishing a passive, non-commercial entity.

Legal and Policy Issues

Many of the important decisions relating to a residual entity's functions and administration will be determined during the planning phases of a transaction. If a residual entity is going to be established by transaction specific enabling legislation, these decisions will be determined during the process of developing the enabling legislation.

Typical considerations are listed below. The list is not meant to be exhaustive.

The Transaction Residual Entity Workstream should:

- consider and determine the residual entity's **objectives**, **functions and powers**. The enabling legislation for transaction-related residual entities tends to include a fairly standard set of functions including:
    - holding assets and liabilities transferred to the residual entity or acquired by it
    - carrying on business activities related to residual entity assets and liabilities
    - other transaction-related functions that may be prescribed by regulation.
- consider the **market** in which it operates and determine whether the residual entity is to be a commercial agency.

- consider the need for any entity-specific powers, such as compulsory acquisition powers.
- consider and determine whether the residual entity is to be **commercial**/for-profit **or non-commercial**/not-for-profit.
- consider and determine associated **reporting and monitoring** arrangements which will apply under Treasury's policies (including if a commercial entity will be subject to aspects of the Commercial Policy Framework).
- consider and determine the **corporate structure** of the residual entity. Two main options are a Ministerial corporation or a Corporations Act company. In respect of the company option, the Transaction Residual Entity Workstream should consider and determine issues such as Directors' duties and liabilities, indemnities, the number and identity of the directors, public officer and company secretary, and ASIC reporting requirements. Where public sector employees are appointed as Directors, issues around personal liability of Directors should be addressed.
- consider and determine the residual entity's **corporate governance** arrangements, including whether the residual entity will:
    - be under the direction and control of a Minister (with the direction power set out in either enabling legislation or the company constitution)
    - have a Board (governing or advisory)
    - have a Chief Executive Officer
    - have a delegation from the Minister to the Treasury (inside or outside of the legislation) to manage the residual entity's affairs
    - have employees (via secondment, engagement of contractors or employment of its own staff), and whether the provisions of the *Government Sector Employment Act 2013* (GSE Act) apply.
- consider and determine whether the residual entity is to be explicitly **guaranteed** by Government or whether the Government is to provide a letter of comfort (or similar arrangement) to the residual entity and/or its directors.
- consider and determine the point at which **reporting** obligations under the *Government Sector Finance Act 2018* (GSF Act) are triggered. The audit report recommends that Legal Counsel should review whether the constituent documents (enabling legislation or company constitution) can include a clause which provides that reporting obligations under the GSF Act are not activated until the financial year in which the residual entity begins to hold assets, rights and/or liabilities.
- consider and determine whether the residual entity needs a **special deposits account**. The potential need for a special deposits account would depend upon the extent to which the residual entity has substantive financial affairs that are best managed outside of the Consolidated Fund.
- consider and determine whether the constituent documents (enabling legislation or company constitution) should include an **abolition clause** if, for example, it is known that the residual entity is to have a finite life.
- consider and determine whether the residual entity requires the authority to enter into **financial arrangements** under the GSF Act.

- consider and determine whether the residual entity needs to:
    - prepare **financial statements** and, if so, who is to sign them
    - be audited by the Auditor-General
    - publish an Annual Report.
- consider and determine whether the residual entity will be a GSF agency subject to the provisions of the GSF Act (see Reporting section). In addition, if the residual entity is a GSF agency, the Treasurer must be notified within one month of the entity becoming a GSF agency (see Treasury's web page on becoming a GSF agency <https://www.treasury.nsw.gov.au/budget-financial-management/reform/government-sector-finance-act-2018/becoming-gsf-agency>).
- consider and determine the application of **Government accounting** considerations to the residual entity, particularly whether it is considered an immaterial agency for reporting purposes and whether it is to be consolidated into the State's accounts and, if so, into which sector (General Government, Public Non-Financial Corporations or Public Financial Corporations). As a general rule, the accounting treatment reflects the level of Government control over the residual entity. For example, if a Minister has control of the residual entity, then it would be consolidated into the State's accounts. Typically, a residual entity will be classified in the General Government Sector as there is no 'market' for its function/activities.

The Project Director of the Transaction, in consultation with the General Counsel and other parties as appropriate, is responsible for ensuring that the above matters are determined.

Consultation

It is important that the Project Director ensures that considerations relating to accounting, reporting and compliance with the GSF Act be dealt with in consultation with the respective areas in Treasury's Finance and Operations Group (FOG).

For example:

- The Total State Financial Reporting team in FOG is to be advised promptly when a new residual entity is to be established to arrange for classification by self-determination (or a formal classification from the Australian Bureau of Statistics for complex, controversial classifications), and
- Treasury Finance in FOG when the new residual entity is required to prepare financial accounts.

The Project Director should also consult the Commercial Assets Division on application of the Commercial Policy Framework, corporate governance and board appointments, where appropriate.

Resourcing Arrangements

When establishing new residual entities, resourcing arrangements must be considered.

Every residual entity should have an officer who has management and operational responsibility for ensuring that the residual entity's functions are carried out appropriately. . If this officer is within Treasury, then they will generally sit within the Commercial Assets Division.

Typically, residual entities do not have their own staff and are resourced by Treasury staff, or other public sector officers, as part of their day-to-day duties. It is important to clarify as early as possible the issue of who is responsible for each residual entity, within Treasury or other Government agency.

Where residual entities are created as a result of asset sale transactions, the Project Director must work with the Commercial Assets division to establish processes to ensure that residual functions are carried out by an appropriate person. For a transition period of up to 6 months post-transaction, a senior officer or person from the Transaction team should retain oversight of residual matters, including residual entities. The transition period will include bedding down new processes and procedures regarding the governance, operation and reporting for any new residual entities.

Following the transition period and when residual transaction matters are operating on a 'business-as-usual' basis, the nominated officer responsible for the residual entity on an ongoing basis will assume responsibility (see Operation section below).

In some instances, it may be appropriate to invite the involvement of staff from other areas of Government with specific skills such as property management, risk management or contamination management expertise. If this approach is adopted, the nature of the administrative/commercial arrangement between Treasury and the other area(s) of Government need to be considered. Potential arrangements include:

- Service level agreements
- Management agreements
- A protocol or Memorandum of Understanding
- Inter-agency fee-for-service payments
- Inter-agency cost reimbursement.

The Project Director working with the Commercial Assets Division is responsible for establishing resourcing arrangements for the residual functions, in consultation with and with assistance from other parts of Treasury, as appropriate.

Funding Arrangements

Costs associated with residual tasks may include staffing, contractors, legal costs and adviser fees. Potential funding arrangements to cover such costs include:

- absorbing costs within existing Departmental budgets
- seeking Budget supplementation
- authorised deductions from the transaction proceeds, or
- funding from the transaction Budget.

A distinction may potentially be drawn between residual tasks specifically related to the Transaction (e.g. one-off tasks that the State undertakes to perform post completion, staff costs associated with the proposed transitional period), and business-as-usual tasks that will be ongoing in nature, which will require an ongoing funding source.

The Project Director is responsible for establishing funding arrangements for the residual functions, in consultation with and with assistance from the Commercial Assets Division and other parts of Treasury, as appropriate.

Financial Reporting

The establishment of a residual entity should consider whether financial accounts for the residual entity need to be prepared on an ongoing basis.

Generally, a residual entity will need to prepare financial accounts if it is a GSF agency as defined in the GSF Act. Further information on GSF agencies can be found on the NSW Treasury website (https://www.treasury.nsw.gov.au/index.php/budget-financial-management/reform/government-sector-finance-act-2018).

The Project Director is responsible for ensuring that:

- the issue of whether financial accounts are needed is considered in the residual entity's establishment phase
- an explicit decision is made up-front
- the reasons for the decision are clearly documented.

It is also necessary to consider who will sign off the accounts for the residual entity. For Corporations Act companies, it is the directors' responsibility to sign the accounts. For Ministerial corporations, the "accountable authority" is the appropriate signatory, as per section 7.6(4) of the GSF Act. This is the person who exercises the functions of the CEO and is the Secretary of the Treasury for most of the existing residual entities, by virtue of a delegation from the Treasurer.

The Project Director is responsible for ensuring that the issue of who has responsibility to sign off the financial accounts is considered in the residual entity's establishment phase. This can be done by:

- putting in place a delegation (either as part of the enabling legislation or outside of it)
- formally appointing someone as CEO or Director, or
- otherwise clarifying who holds the position of the "accountable authority" in respect of the residual entity.

Preparation of financial accounts

Treasury Finance is responsible for accounting and financial reporting for residual entities, including preparing the financial statements.

The Residual Entity Officer is responsible for guiding and instructing Treasury Finance, as appropriate. The content of the financial accounts will be determined with reference to the handover report(s), insofar as it relates to matters such as accounting, disclosure of contingent liabilities and valuation of residual assets and liabilities (see section on Handover Reporting).

Audit of financial accounts

The *Government Sector Audit Act 1983* requires the Auditor-General to audit a Department's financial accounts. If a residual entity is a reporting GSF agency for the purposes of the GSF Act, the Auditor-General must audit its accounts.

Treasury Finance is responsible for ensuring that the Auditor-General audits the residual entity's accounts, as appropriate.

Publication of financial accounts

Publication of the financial accounts is another issue which should be considered when a residual entity is established. If a residual entity is a reporting GSF agency under the GSF Act, it must prepare and publish annual reports.

However, while not all residual entities are required to publish annual reports, their financial statements are published in the *Crown Related Entities' Annual Report* for reasons of transparency and information sharing.

The Project Director is responsible for ensuring that, at the establishment phase, consideration is given to whether a residual entity should publish an Annual Report and arrangements made as appropriate.

Contingent Assets and Liabilities

It is important that contingent assets or liabilities are adequately identified and reported in the residual entity's accounts and the Total State Sector accounts, as appropriate.

Each year, Treasury Finance issues a request for advice as to what should be reported in the State accounts in this regard. It is the responsibility of the Residual Entity Officer (transitional or ongoing) to respond to Treasury Finance, as required.

Handover Reporting

For major asset transactions, the Project Director is responsible for ensuring that formal handover documentation is prepared at the conclusion of the transaction.

The Project Director is also responsible for defining to whom and when the handover is to take place. In many instances, it may be appropriate for the Transaction team to retain responsibility for monitoring the residual entity's management for a transition period of up to 6 months post-transaction.

Typically, the handover reports are prepared by the Transaction team and/or the relevant advisers to the transaction, such as accounting/tax, legal and environmental advisers.

The handover reports should cover matters such as:

- Changes resulting from the transaction
- The accounting implications of the transaction for relevant reporting entities, plus the impacts at the General Government and Total State Sector levels
- Legal structure
- Funds flow at completion
- Classification of new entities
- Governance and ownership arrangements for the residual entity
- Obligations, contingencies, liabilities/assets arising from the transaction documents
- Risks
- Regulatory frameworks and ongoing relationships (intra-government and with the new private sector party)
- Roles and responsibilities of State agencies post-transaction
- Summaries of key transaction documents.

Responsibilities of the Transaction Project Director are outlined in **Appendix 2**.

Operation

The Residual Entity Officer is the Treasury officer with management and operational responsibility for the residual entity and is responsible for ensuring that the residual entity's functions are carried out appropriately. In practice, the Residual Entity Officer is likely to be a Treasury official but there is no requirement that this is the case.

The role of the Residual Entity Officer should initially reside within the Transaction team with specific transaction experience during the transitional period. The operational management and responsibility for the residual entity can be handed over to a permanent Residual Entity Officer in another agency, Treasury Finance or the Post Transactions Management Unit within the Commercial Assets Division depending on the level of activities of the residual entities after the transitional period and handover is complete.

The role of the Residual Entity Officer is outlined in **Appendix 1**.

Risk Management

The Residual Entity Officer's primary objective is to ensure that residual risks to the State are appropriately monitored, managed and acted upon.

The risks that need to be managed will be set out in the handover reports prepared as part of the transaction.

At a high level, the risk management task involves:

- **Ensuring positive obligations on the State are being discharged**.
  Transactions can result in the State or a government agency giving contractual undertakings to a private sector party that it will undertake certain tasks within a defined period of time. In some instances, it will be a matter for the Residual Entity Officer to initiate and drive the necessary workstream. In others, it will be more a matter for the Residual Entity Officer to ensure that an agency is performing its obligations.

- **Oversight and management of the financial performance of the entity**.
  Residual entities sometimes hold significant assets and liabilities (e.g. dust diseases liabilities and offsetting assets). The Residual Entity Officer is responsible for ensuring, in consultation with FOG, that a risk management strategy and appropriate risk management controls are in place and are followed.

- **Monitoring of emergent or unknown risks**.
  Following a transaction, the State may have rights or obligations that manifest only in response to events that were unforeseen at the time of the transaction. For example:
  - indemnities that apply if liabilities arise in respect of pre-existing contamination
  - step-in or other rights/obligations that may apply in circumstances such as force majeure, insolvency or lessee non-performance.

  The Residual Entity Officer is responsible for monitoring these risks to the extent possible.

Appendix 1: Responsibilities of the Residual Entity Officer

The Residual Entity Officer's primary objective is to ensure that residual risks to the State are appropriately monitored, managed and acted upon.

The Residual Entity Officer is responsible for all or many of the following tasks:

- Ensuring that the positive obligations on the State are being discharged.
- Ensuring, in consultation with FOG, that a risk management strategy and appropriate risk management controls are in place.
- Monitoring emergent or unknown risks to the extent possible.
- Ensuring that the residual entity's functions are carried out appropriately. While the Residual Entity Officer is not expected to be expert in all matters in respect of the residual entity, they are responsible for ensuring that the issues are adequately addressed, including by seeking specialist input as required.
- Ensuring that the residual entity's functions are carried out appropriately. Day-to-day tasks associated with that responsibility are likely to include:
    - Performing the State's and/or residual entity's post transaction functions such as lessor consents, exercising compulsory acquisition powers as needed, processing changes to the leased area or the lease itself as appropriate (such as surrender and re-grant to provide for new tenants), assisting with the management of native title claims
    - Management of the relationship with the private sector operator, including ensuring that it complies with its obligations, such as insurance requirements and the preparation of environmental management plans
    - Managing claims under indemnities, e.g., dust disease or contamination liabilities
    - Exercising step-in rights and requiring/reviewing force majeure cure plans, if needed
    - Responding to requests for information, assisting with 'bedding down' new operational arrangements between the successful bidder and Government agencies, and clarifying parties' post-transaction responsibilities
    - State Budget reporting/oversight and other Treasury analyst-type functions, with assistance from Treasury Finance as appropriate
    - Guiding and instructing Treasury Finance, as appropriate, as it prepares the residual entity's financial accounts
    - Ensuring a response to Treasury Finance's annual request for advice on contingent assets and liabilities and what should be reported in the State accounts
    - Corporate governance functions including, for example, performing roles such as company director, public officer, company secretary and CEO, as appropriate, or ensuring that those roles are filled
    - Keeping the Treasury Executive appropriately informed of any matters of relevance.
    - Provide information and assistance to FOG to:
        - ensure that the Auditor-General audits the RE's accounts, as appropriate
        - ensure regulatory compliance (e.g. ASIC returns, Audit Office requirements)
        - help prepare statutory accounts and submission of Prime data for Total State Sector Accounts and State Budget.

The Residual Entity Officer is not expected to be an expert on all the above matters in respect of the residual entity. However, they are responsible for ensuring that these issues are adequately addressed, including by seeking specialist input as required.

Appendix 2: Responsibilities of the Transaction Project Director in relation to Residual Matters and Entities

The Transaction Project Director must ensure that **processes are established to ensure that** all residual issues in a transaction are appropriately dealt with, and is responsible for the following tasks:

- Considering and, where appropriate, establishing a Transaction Residual Entity Workstream to focus on residual issues including the establishment of any new residual entities (a Transaction Residual Entity Workstream).
    - If the Project Director determines that such a workstream is not required, the reasons for this determination must be clearly documented as must the Project Director's proposed alternative mechanisms for considering residual issues for the transaction.
- Ensuring that the matters considered by the Transaction Residual Entity Workstream are determined (see Appendix 3).
- Ensuring that considerations relating to accounting and the GSF Act be dealt with in consultation with FOG.
- Ensuring that the Total State Financial Reporting team in FOG is advised promptly when a new residual entity is to be established to arrange for classification by self-determination (or a formal classification from the Australian Bureau of Statistics for complex, controversial classifications).
- Ensuring that Treasury Finance in FOG is advised promptly when a new residual entity is to be established particularly if they are required to prepare the financial accounts and Prime data submissions.
- Consider the degree of consultation appropriate with other parts of Treasury, including Commercial Assets Division, as well as with the Auditor General.
- Ensuring that residual functions are carried out by an appropriate person. A senior person from the transaction team should retain responsibility for residual matters, including residual entities, for a transition period of up to 6 months post-transaction before handing over to the permanent Residual Entity Officer.
- Establishing resourcing arrangements for the residual functions, in consultation with and with assistance from the Commercial Assets Division and other parts of Treasury, as appropriate.
- Establishing funding arrangements for the residual functions, in consultation with the Commercial Assets Division and with assistance from other parts of Treasury, as appropriate.
- Ensuring that:
    - the issue of whether financial accounts are needed is considered in the residual entity's establishment phase
    - an explicit decision is made up-front, and
    - the reasons for the decision are clearly documented.
- Ensuring that the issue of who is to sign off the financial accounts is considered in the residual entity's establishment phase, and for ensuring that an explicit decision on who is to sign off the accounts is made up-front and the reasons for the decision are clearly documented.
- Ensuring that formal handover documentation is prepared at the conclusion of each major asset transaction.
- Defining to whom and when the handover is to take place.
- Ensuring that, at the establishment phase, consideration is given to whether a residual entity should publish an Annual Report and arrangements made as appropriate.

Appendix 3: Responsibilities of the Transaction Residual Entity Workstream

The purpose of the Transaction Residual Entity Workstream is to consider residual issues during **the planning and execution of** a major asset transaction.

The Transaction Residual Entity Workstream should consider and determine:

- the residual entity's functions and powers, including any entity-specific powers, such as compulsory acquisition powers
- whether the residual entity is to be commercial/for-profit or non-commercial/not-for-profit
- what reporting and monitoring arrangements should apply (e.g. whether the Commercial Policy Framework should apply)
- whether the residual entity will:
  - be under the direction and control of a Minister
  - have a Board (governing or advisory)
  - have a CEO
  - have a delegation from the Minister to the Treasury (inside or outside of the legislation) to manage the residual entity's affairs
  - have employees seconded to it and, if so, from where.
- the residual entity's corporate structure. Two main options are Ministerial corporation or Corporations Act company. In respect of the company option, the Transaction Residual Entity Workstream should consider and determine issues such as: Directors duties and liabilities, indemnities, the number and identity of the directors, public officer and company secretary, and ASIC reporting requirements.
- governing documents e.g. constitution, board charter, code of ethics.
- whether the residual entity is to be explicitly guaranteed by Government or whether the Government is to provide a letter of comfort (or similar arrangement) to the residual entity and/or its directors.
- the points at which reporting obligations under the GSF Act are triggered.
- whether the residual entity needs a special deposits account.
- whether the enabling legislation should include an abolition clause (if it is to have a finite life).
- whether the residual entity needs the power to enter into financial arrangements under the GSF Act
- whether the residual entity needs to:
  - prepare financial statements and, if so, who is to sign them
  - be audited by the Auditor-General
  - publish an Annual Report
- whether the residual entity should be prescribed under the GSF Act as a GSF agency.
- the application of Government accounting considerations to the residual entity, particularly whether it is to be consolidated into the State's accounts and, if so, into which sector.
- employment arrangements and whether the GSE Act applies
- application of the *State Records Act 1998*

- whether the residual entity will be subject to the *Government Information (Public Access) Act 2009*.

It is important for the Transaction Residual Entity Workstream to consult with other parts of Treasury (such as FOG and the Commercial Assets Division) in considering these issues.

Acronyms used in this document

ADMHC	Alpha Distribution Ministerial Holding Corporation
CEO	Chief Executive Officer
CFO	Chief Financial Officer
EAMHC	Electricity Assets Ministerial Holding Corporation
EDMHC	Epsilon Distribution Ministerial Holding Corporation
ERIC-A	Electricity Retained Interest Corporation – Ausgrid
ERIC-E	Electricity Retained Interest Corporation – Endeavour
ETMHC	Electricity Transmission Ministerial Holding Corporation
FOG	Finance and Operations Group
GSE Act	Government Sector Employment Act 2013
GSF Act	Government Sector Finance Act 2018
GPM	Generator Property Management Pty Ltd
LMMC	Liability Management Ministerial Corporation
PFA Act	Public Finance and Audit Act 1983
MHC	Ministerial Holding Corporation
PAMHC	Ports Assets Ministerial Holding Corporation
RRIPL	Roads Retained Interest Pty Ltd
SRARHC	State Rail Authority Residual Holding Corporation

Further information and contacts

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