

Disclaimer: This is guidance material only and does not replace reading the legislation. For further information refer to the legislation. Please check the website for updates and other information.

Government Sector Finance Agencies

At a glance

- The Government Sector Finance Bill 2018 (GSF Bill) applies to all Government Sector Finance Agencies (GSF Agencies).
- This fact sheet provides guidance on how to assess whether an entity is a GSF Agency.

What is a GSF Agency?

The GSF Bill expressly names some entities as GSF Agencies and describes kinds of entities that are also considered GSF Agencies.

Named GSF Agencies:

- the NSW Police Force (section 2.4 (1)(c))
- the NSW Treasury Corporation (section 2.4 (1)(d))
- the Law Enforcement and Conduct Commission (section 2.4(1)(e))
- the Independent Pricing and Regulatory Tribunal (section 2.4(1)(f))
- Separate GSF agencies (section 2.4 (1)(a)), which are:
 - the Audit Office (section 2.5 (1)(a))
 - the Independent Commission Against Corruption (section 2.5 (1)(b))
 - the Judicial Commission of New South Wales (section 2.5 (1)(c))
 - the New South Wales Electoral Commission (section 2.5 (1)(d))
 - the Ombudsman's Office (section 2.5 (1)(e))

Kinds of entities that are GSF Agencies:

1. [Public Service agencies](#) (section 2.4 (1)(k))
2. [State owned corporations](#) (SOCs) (section 2.4 (1)(h))
3. [Statutory bodies representing the Crown \(including a NSW Government Agency\)](#) (section 2.4 (1)(i))
4. [Entities with money held in the Special Deposits Account](#) (section 2.4 (1)(j))
5. [NSW Health entities](#) (section 2.4 (1)(b))
6. [A Council established under Part 5A of the Health Practitioner Regulation National Law \(NSW\)](#) (section 2.4 (1)(g))
7. [Controlled entities](#)
 - a. entities controlled by another GSF Agency or a combination of GSF Agencies (section 2.4 (2)(a))
 - b. entities controlled by a Minister or Ministers (section 2.4 (2)(b))
8. [Entities prescribed by the regulations](#) (section 2.4 (1)(l))

What you need to determine whether your entity is a GSF Agency

To determine whether your entity is a GSF Agency you will need to consider:

- the definition of 'GSF Agency' in section 2.4 of the GSF Bill and related concepts and the regulations,
- the legislation that establishes and/or regulates the entity, and
- whether the entity represents the State or is controlled by another entity.

Kinds of entities that are GSF Agencies

1. Public Service agencies (section 2.4(1)(k))

'Public Service agency' in the GSF Bill means a Department, Public Service executive agency or a separate Public Service agency listed in Schedule 1 to the *Government Sector Employment Act 2013 (GSE Act)*. If the entity is listed in any part of that Schedule it is a GSF Agency.

Examples: Department of Education, Art Gallery of NSW Trust Staff Agency, Information and Privacy Commission.

2. State owned corporations (SOCs) (section 2.4(1)(h))

Both company and statutory SOCs are established under the *State-Owned Corporations Act 1989*. If the entity is specified as a SOC in that Act, it is a GSF Agency.

As at July 2018 there are seven statutory SOCs: Essential Energy, Hunter Water Corporation, Landcom, Newcastle Port Corporation, Water NSW, Sydney Water Corporation, Forestry Corporation. There are no company SOCs.

3. NSW Health entities (section 2.4 (1)(b))

Section 2.3 of the GSF Bill defines NSW Health entities to include:

- Statutory health organisations within the meaning of the *Health Services Act 1997*
- Health Administration Corporation and its controlled entities
- The Cancer Institute (NSW)
- The New South Wales Health Foundation
- The Albury Base Hospital
- Any other entities prescribed by the regulations as a NSW Health entity

If the entity falls within that definition, it is a GSF Agency.

Examples: Sydney Local Health District, Sydney Children's Hospital Network.

4. Councils within the meaning of Part 5A of the *Health Practitioner Regulation National Law (NSW)* (section 2.4 (1)(g))

Part 5A of the *Health Practitioner Regulation National Law (NSW)* establishes Councils for various health professions. If a Council is listed in Division 2 of that Part, it is a GSF Agency.

Examples: Chinese Medicine Council of New South Wales, Optometry Council of New South Wales, Nursing and Midwifery Council of New South Wales.

5. Statutory bodies representing the Crown (section 2.4 (1)(i))

An entity that is a statutory body representing the Crown includes an entity described as a 'statutory body representing the Crown' or a 'NSW Government agency' in its enabling legislation (refer to section 2.4(1)(i), section 13A of the *Interpretation Act 1987* and the statutory body's enabling legislation).

If the enabling legislation does not describe the body as 'a statutory body representing the Crown' or 'a NSW Government agency', its statutory functions must be considered to determine whether it meets the legal test for a statutory body representing the Crown in any event. If you think that a body may be a statutory body representing the Crown on this basis, please consult with Treasury – further legal advice may be required.

Examples: NSW Innovation & Productivity Council, Agricultural Scientific Collections Trust, NSW Rural Assistance Authority.

6. Entities with money held in the Special Deposits Account (section 2.4 (1)(j))

If an entity has an account with money in the Special Deposits Account it is a GSF Agency, but the account itself is not a GSF Agency. This is not intended to capture individual persons who administer, control or manage the account, but captures entities that hold the money in the account within the Special Deposits Account. In many cases, entities who hold money in an account in the Special Deposits Account will be GSF agencies captured by one of the preceding categories. Section 2.4(1)(j) simply acts as a catch-all provision.

Example: Section 33 of the *Electricity Retained Interest Corporations Act 2015* states that a Corporation's Fund is established for a Corporation. Therefore, each Electricity Retained Interest Corporation is an entity with money held in the Special Deposits Account and is a GSF Agency.

7. Controlled entities (section 2.4 (2)(a) and (b))

Section 2.2 of the GSF Bill specifies when an entity will be considered a controlled entity of another entity. If an entity is controlled by a GSF Agency (or a combination of GSF Agencies), or it is controlled by a Minister (or a combination of Ministers), it is also a GSF Agency.¹

In general terms, an entity is a controlled entity of a GSF Agency if:

- another GSF Agency has the capacity to determine the outcome of decisions in relation to that entity's financial and operating policies; or
- the regulations prescribe that an entity is a controlled entity;

An entity is a controlled entity of a Minister (or a combination of Ministers), where legislation provides that the entity is subject to the direction and control of the Minister (or combination of Ministers). **Appendix A** provides further information.

Examples: Art Gallery of NSW Foundation, Sydney Motorway Corporation Pty Ltd.

8. GSF regulations (section 2.4 (1)(l))

The regulations may prescribe entities (or kinds of entities) as GSF Agencies. The regulations will be developed in consultation with the sector.

In some cases, the regulations may declare an entity which might otherwise be part of a GSF Agency to be a GSF Agency in its own right.

What are not GSF Agencies?

The GSF Bill states the following are not GSF Agencies:

- The Legislature of New South Wales
- A Minister (except for the purposes of Part 6 of the GSF Bill which provides that a Minister is to be treated as a GSF Agency for the purposes of financial services and arrangements)
- The Workers Compensation Insurance Fund
- The Workers Compensation Nominal Insurer
- Joint ventures (unless prescribed by the regulations to be a GSF Agency)

What does it mean to be a GSF Agency?

Even if an entity is considered a GSF Agency, they may not need to comply with all requirements. For example, Separate GSF Agencies do not need to comply with Treasurer's directions where the Accountable Authority considers that the requirement is not consistent with the exercise of their statutory functions.

Need more information?

If it is unclear whether an entity is a GSF Agency, in the first instance guidance should be sought from the relevant Chief Financial Officer or Legal Counsel. In all other instances, email the Legislation team at Legislation@treasury.nsw.gov.au.

¹ 'Control' for the purposes of s 2.2 is determined with reference to s 50AA of the *Corporations Act 2001* or Australian Accounting Standards. If you are unsure whether an entity may be a 'controlled entity', please consult Treasury.

Appendix A: Controlled Entities

Controlled entity definition

An entity can be a body or group of persons (whether they are incorporated or unincorporated), a partnership, joint venture, a trustee or any other legal or administrative arrangement or organisational structure.

Under the GSF Bill, an entity will be a GSF agency if:

- a) it is controlled by a GSF Agency referred to clause 2.4(1) of the GSF Bill, or a combination of such agencies, or
- b) it is controlled by a Minister or a combination of Ministers.

For the purposes of the GSF Bill, Entity A is a 'controlled entity' of Entity B', if Entity B controls Entity A in accordance with:

- a) section 50AA of the *Corporations Act 2001* (C'th), or
- b) the Australian Accounting Standards: AASB 10.

In addition, some entities can be prescribed in the regulations as controlled entities of another entity or entities.

Both section 50AA of the *Corporations Act* and AASB 10 establish tests for control, which take into account the specific attributes of and relationship between entities. The way in which these tests apply will depend on the kinds of entities involved.

What is not a controlled entity?

An entity is not a controlled entity merely because a GSF Agency or Minister has more than a 50% shareholding in that entity. Specific arrangements relevant to the company – for example, the allocation of voting rights amongst shareholders – need to be considered.

Where the status of an entity is uncertain

If it is unclear whether an entity is a controlled entity, the Treasurer may make an interim status determination which will state that the entity is or is not a controlled entity for the purposes of the GSF Bill. The interim status determination is valid for three months. Within those three months, the Treasurer can make arrange for a regulation determining whether the entity is or is not a 'controlled entity'. This will determine whether the entity will be a GSF Agency under the GSF Bill.

For more information about the making of an interim status determination or regulation, please contact Sean Osborn, Director, Financial Management and Accounting Policy.

What does it mean to be a controlled entity?

Each 'controlled entity' of (i) a body referred to in clause 2.4(1) of the GSF Bill, or (ii) a Minister or combination of Ministers, is a GSF Agency under the GSF Bill.

However, some GSF agencies will not be required to comply with all GSF Bill requirements. For example, GSF Agencies that meet certain exemption criteria prescribed in regulations will not be required to produce financial reports or annual reports.

Where the status of an entity is uncertain

If it is unclear whether an entity is a controlled entity, contact your Cluster's Chief Financial Officer or Legal Counsel in the first instance. In all other instances, email the Legislation team at legislation@treasury.nsw.gov.au.

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For more information about the making of an interim status determination or regulation, please contact, Director, Financial Management and Accounting Policy.