

Government Sector Finance Act 2018 Fact Sheet

GSF agencies

Thursday, 20 June 2024

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

At a glance

- The *Government Sector Finance Act 2018* (GSF Act) applies to all GSF agencies.
- This fact sheet provides guidance on how to determine whether an entity is a GSF agency.

What is a GSF agency?

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

“Entity” is defined in section 2.1 of GSF Act as:

- a person,
- a body or group of persons (whether incorporated or unincorporated),
- a partnership or joint venture,
- the trustee (or, if there is more than one trustee, the trustees together) of a trust,
- any other legal, administrative or fiduciary arrangement or other organisational structure capable of deploying resources to achieve objectives.

Note, Schedule 4 of the *Interpretation Act 1987* defines person to include an individual, a corporation and a body corporate or politic.

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 (sections 2.4(1)(a)):
 - 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:

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

Kinds of entities that are GSF agencies

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

‘Public Service agency’ is defined in the GSF Act as having the same meaning of ‘Public service agency’ in section 3 of the Government Sector Employment Act 2013 (GSE Act):

- a Department, or
- a Public Service executive agency (being an agency related to a Department), or
- a separate Public Service agency (listed in Schedule 1 of the GSE Act).

Examples of public service agencies: Ministry of Health, Department of Education and Parliamentary Counsel’s Office.

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

Both company and statutory SOC are established under the State Owned Corporations Act 1989 (SOC Act).

If the entity is specified as a SOC in that Act, it is a GSF agency (all current statutory SOC are listed in Schedule 5 of the SOC Act).

3. NSW Health entities (section 2.4(1)(b) and section 2.3)

‘NSW Health entities’ is defined in section 2.3 of the GSF Act 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
- Other entities prescribed by the GSF Regulation¹ as a NSW Health entity.

Examples of NSW Health entities: Sydney Local Health District, Sydney Children’s Hospital Network.

4. Councils within the meaning of Part 5A of the Health Practitioner Regulation National (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 of councils: Chiropractic Council of New South Wales and Dental 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’, the statutory functions of the entity 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 your entity’s legal team in the first instance and seek further legal advice if required from the Crown Solicitor’s Office.

Examples of statutory bodies representing the Crown: Agricultural Scientific Collections Trust, NSW Education Standard 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 (SDA) 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 SDA. In many cases, entities who hold money in an account in the SDA will be GSF agencies captured by one of the preceding categories. Section 2.4(1)(j) simply acts as a catch-all provision.

Example of an entity with money held in the SDA: Energy Corporation of NSW.

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

‘Controlled entities’ is defined in section 2.2 of the GSF Act which specifies when an entity will be considered a controlled entity of another entity.

Control for the purposes of section 2.2 is determined with reference to section 50AA of the *Corporations Act 2001* (Corporations Act) or the Australian Accounting Standards.

An entity that is controlled by a GSF agency (or a combination of GSF agencies) or is controlled by a Minister (or a combination of Ministers), is a GSF agency.

¹ GSF Regulation – the current version of the regulation under the GSF Act as published on the [NSW Legislation website](#). Note: the *Government Sector Finance Regulation 2018* is to be repealed and remade as the *Government Sector Finance Regulation 2024* during 2024 prior to its automatic repeal.

8. Prescribed GSF agencies (section 2.4(1)(l))

The GSF Regulation may prescribe entities (or kinds of entities) as GSF agencies. In some cases, the regulation may declare an entity which might otherwise be part of a GSF agency to be a GSF agency in its own right.

What you need to determine whether your entity is a GSF agency and who is the accountable authority

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

- the definition of GSF agency under section 2.4 of the GSF Act and related provisions under the GSF Regulation;
- the legislation that establishes and/or regulates the entity; and
- whether the entity represents the State or is controlled by another entity.

To determine who is the accountable authority for the GSF agency you will need to consider:

- the definition of accountable authority for a GSF agency under section 2.7 of the GSF Act and related provisions under the GSF Regulation;
- the legislation that establishes and/or regulates the entity.

Entities are required to self-assess whether they are a GSF agency and who is the accountable authority for that GSF agency. This assessment is done by the entity's legal team in consultation with the entity's Chief Financial Officer. Where there are further legal questions, the entity could consult with the Crown Solicitor's Office. If the entity requires more information about whether an entity is a controlled entity under the Australian Accounting Standards, contact Accounting Policy team, NSW Treasury at accpol@treasury.nsw.gov.au.

You may also reach out to NSW Treasury for general information on types of GSF agencies and information you may need to consider via legislation@treasury.nsw.gov.au.

Notification of new GSF agencies

Once an entity determines that they are GSF agency, the accountable authority for that GSF agency must under section 2.8 of the GSF Act:

- give written notice to the Treasurer within one month after the entity becomes a GSF agency, and
- give written notice to the Auditor-General within one month after the entity becomes a GSF agency and ensure that appropriate steps are taken to have the GSF agency audited by the Auditor-General.

The accountable authority may give notice to the Treasurer either by writing to the Secretary of the Treasury or via the NSW Treasury website at [Notification of a GSF Agency Status](#).

Notification under section 2.8 of the GSF Act does not apply in relation to the establishment, abolition, change of name or transfer of a:

- Public Service agency (or part of a Public Service agency) that results from an administrative arrangements order under [section 50D of the Constitution Act 1902](#), or
- GSF agency by a provision of an Act.

Responsibilities of GSF agencies

Even if an entity is a GSF agency it may not need to comply with all GSF Act 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 their statutory functions.

Examples of entities that are not GSF agencies

The GSF Act explicitly states that the following entities are not GSF agencies:

- the Legislature of New South Wales (section 2.4(4)(a))
 - a Minister (except for the purposes of Part 6 of the GSF Act which provides that a Minister is to be treated as a GSF agency for the purposes of financial service and arrangements) (section 2.4(4)(b) and section 2.4(5))
 - the Workers Compensation Insurance Fund (section 2.4(4)(c))
 - the Workers Compensation Nominal Insurer (section 2.4(4)(d))
 - joint ventures (unless prescribed by the regulations to be a GSF agency) (section 2.4(3)).
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Need more information?

Email the Financial Management Legislation team at Legislation@treasury.nsw.gov.au