

GRS Resource: Covered Entities

December 2023

The *Modern Slavery Act 2018* (NSW), the *Public Works and Procurement Act 1912* (NSW) and the *Local Government Act 1993* (NSW) contain due diligence and reporting obligations for covered entities.

The covered entities can be broadly grouped into the following categories:

- government agencies
- State owned corporations
- Government Sector Finance agencies
- a council, county council or joint organisation within the meaning of the *Local Government Act 1993* (NSW).

The legislative provisions differ depending on the type of covered entity, as set out below. Entities should carefully review their relevant legislative provisions to confirm their obligations and seek legal advice if required.

Nothing in this GRS Resource constitutes legal advice.

Government agencies

Is your organisation a 'government agency' for the purposes of the *Modern Slavery Act 2018* (NSW)?

A government agency is defined in s 5 of the *Modern Slavery Act 2018* (NSW) as any of the following:

- (a) a government sector agency (within the meaning of the *Government Sector Employment Act 2013* (NSW))
- (b) a NSW Government agency
- (e) a council, county council or joint organisation within the meaning of the *Local Government Act 1993* (NSW)
- (f) any other public or local authority that is constituted by or under an Act or that exercises public functions; and
- (g) any public or local authority that is constituted by an Act of another jurisdiction that exercises public functions.

What are the modern slavery obligations of a ‘government agency’?

Government agencies have reporting and other obligations under the *Modern Slavery Act 2018* (NSW), and related legislation as follows:

- **Reasonable steps:** government agencies must take reasonable steps to ensure that goods and services procured by and for the agency are not the product of modern slavery within the meaning of the *Modern Slavery Act 2018* (NSW) (s 176(1A) of the *Public Works and Procurement Act 1912* (NSW)).
- **Comply with Procurement Board Directions or policies:** government agencies must comply with Procurement Board Directions or policies regarding modern slavery (ss 175(3)(a1) and 176(1) of the *Public Works and Procurement Act 1912* (NSW)).
- **Reporting:** since 1 July 2023, reporting obligations for entities in this category are defined either by the *Government Sector Finance Act 2018* (NSW) or by the *Local Government Act 1993* (NSW).
- **Duty of co-operation:** government agencies of the State (and persons and bodies that provide services to, or advocate for, victims of modern slavery in the State) must work in co-operation with the Commissioner in the exercise of the Commissioner’s functions.

How are ‘government agency’ activities on modern slavery overseen?

Government agency activities on modern slavery are overseen in several ways:

- **Effectiveness of policies and action:** the NSW Anti-slavery Commissioner must monitor the effectiveness of legislation and governmental policies and action in combating modern slavery (s 9(1)(f) of the *Modern Slavery Act 2018* (NSW)).
- **Effectiveness of due diligence:** the NSW Anti-slavery Commissioner must regularly consult with the Auditor-General and the NSW Procurement Board to monitor the effectiveness of due diligence procedures in place to ensure that goods and services procured by government agencies are not the product of modern slavery (s 25 of the *Modern Slavery Act 2018* (NSW)).
- **Public register:** the NSW Anti-slavery Commissioner is to keep a public register that identifies any government agency failing to comply with directions of the NSW Procurement Board under s 175 of the *Public Works and Procurement Act 1912* (NSW) concerning procurement (within the meaning of Part 11 of that Act) of goods and services that are the product of modern slavery and whether the government agency has taken steps to ensure compliance in the future (s 26(c) of the *Modern Slavery Act 2018* (NSW)).
- **Modern slavery audit:** The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct a risk-based audit of all or any particular activities of a government agency to determine whether the government agency is ensuring that goods and services procured by and for the agency are not the product of modern slavery. The Auditor-General is to give the NSW Anti-slavery Commissioner advice as to the result of any modern slavery audit and may recommend a government agency is identified in the public register kept under s 26 of the *Modern Slavery Act 2018* (NSW) (ss 38G-38H of the *Government Sector Audit Act 1983* (NSW)).

What are some examples of a ‘government agency’ for the purposes of the *Modern Slavery Act 2018* (NSW)?

The following are examples of this type of covered entity under the *Modern Slavery Act 2018* (NSW):

- **NSW Government Departments:** the Department of Transport, NSW Treasury and the Ministry of Health.
- **NSW Government executive agencies:** Fire and Rescue NSW, Destination NSW, and the Office of Sport.
- **NSW Government agencies:** the Aboriginal Housing Office, the Environment Protection Authority and the Independent Planning Commission.

Government Sector Finance agencies

Is your organisation a ‘Government Sector Finance agency’ for the purposes of the *Modern Slavery Act 2018* (NSW), or does it have obligations under related legislation?

Under s 2.4(1) of the *Government Sector Finance Act 2018* (NSW), a GSF agency is each of the following:

- (a) a separate GSF agency,
- (b) a NSW Health entity,
- (c) the NSW Police Force,
- (d) the New South Wales Treasury Corporation,
- (e) the Law Enforcement Conduct Commission,
- (f) the Independent Pricing and Regulatory Tribunal,
- (g) a Council within the meaning of Part 5A of the *Health Practitioner Regulation National Law* (NSW),
- (h) a State owned corporation,
- (i) an entity that is a statutory body representing the Crown (including an entity that is a NSW Government agency to which s 13A of the *Interpretation Act 1987* (NSW) applies),
- (j) an entity with money held in an SDA account (but the account itself is not to be treated as being a GSF agency),
- (k) any Public Service agency not already covered by a previous paragraph,
- (l) any other entity (or entity of a kind) prescribed by the regulations as an agency.

A GSF agency is also an:

- (a) entity controlled by another GSF agency or a combination of GSF agencies (s 2.4 (2)(a) of the *Government Sector Finance Act 2018* (NSW)); and
- (b) entity controlled by a Minister or combination of Ministers (s 2.4 (2)(b) of the *Government Sector Finance Act 2018* (NSW)).

Certain other organisations, including certain NSW universities, have reporting obligations through the *Government Sector Finance Act 2018* (NSW).

Many GSF agencies are also ‘government agencies’, which are addressed separately above.

What are the modern slavery obligations of a ‘Government Sector Finance agency’?

GSF agencies, and those other entities with reporting obligations under the *Government Sector Finance Act 2018* (NSW), have reporting obligations under the *Modern Slavery Act 2018* (NSW) as follows:

- **Modern slavery annual reporting information:** under s 31(1) of the *Modern Slavery Act 2018* (NSW), GSF agencies (and others with reporting obligations under the *Government Sector Finance Act 2018* (NSW)) must include the following matters in their annual reporting information:
 - **significant operational issue:** a statement of the action taken by the agency in relation to any issue raised by the Anti-slavery Commissioner during the financial year then ended concerning the operations of the agency and identified by the Commissioner as being a significant issue; and
 - **reasonable steps:** a statement of steps taken to ensure that goods and services procured by and for the agency during the financial year then ended were not the product of modern slavery within the meaning of the *Modern Slavery Act 2018* (NSW).

How are ‘Government Sector Finance agency’ activities on modern slavery overseen?

The modern slavery activities of Government Sector Finance agencies, and other entities with reporting obligations under the *Government Sector Finance Act 2018* (NSW), are overseen in several ways:

- **Effectiveness of policies and action:** the NSW Anti-slavery Commissioner must monitor the effectiveness of legislation and governmental policies and action in combating modern slavery (s 9(1)(f) of the *Modern Slavery Act 2018* (NSW)).
- **Public Register:** the NSW Anti-slavery Commissioner is entitled to include other information they think appropriate in the register they keep under s 26 of the *Modern Slavery Act 2018* (NSW). The Public Register will include a schedule of public buyers with reporting obligations under the *Modern Slavery Act 2018* (NSW) that are not conforming with the Guidance on Reasonable Steps.
- **Modern slavery audit:** Note: as some GSF agencies are also ‘government agencies’ as defined under s 38F of the *Government Sector Audit Act 1983* (NSW) and s 5 of the *Modern Slavery Act 2018* (NSW), a modern slavery audit may also apply to some entities in this category. The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct a risk-based audit of all or any particular activities of a government agency to determine whether the government agency is ensuring that goods and services procured by and for the agency are not the product of modern slavery. The Auditor-General is to give the NSW Anti-slavery Commissioner advice as to the result of any modern slavery audit and may recommend a government agency is identified in the public register kept under s 26 of the *Modern Slavery Act 2018* (NSW) (ss 38G-38H of the *Government Sector Audit Act 1983* (NSW)).

What are some examples of a ‘Government Sector Finance agency’ for the purposes of the *Modern Slavery Act 2018 (NSW)*?

The following are examples of this type of covered entity under the *Modern Slavery Act 2018 (NSW)* and related legislation:

- **separate GSF agencies:** the Audit Office, the Independent Commission Against Corruption and the New South Wales Electoral Commission
- **NSW Health entities:** Bureau of Health Information, Health Administration Corporation and the Cancer Institute (NSW)
- the NSW Police Force, New South Wales Treasury Corporation, Law Enforcement Conduct Commission, and the Independent Pricing and Regulatory Tribunal
- the Chinese Medicine Council of New South Wales and Chiropractic Council of New South Wales Council, as Councils within the meaning of Part 5A of the *Health Practitioner Regulation National Law (NSW)*
- **NSW Government Departments:** the Department of Transport, NSW Treasury and the Ministry of Health
- **NSW Government executive agencies:** Fire and Rescue NSW, Destination NSW, and the Office of Sport
- **NSW Government agencies:** the Aboriginal Housing Office, the Environment Protection Authority and the Independent Planning Commission
- **certain NSW universities:** Division 7.3 of the *Government Sector Finance Act 2018 (NSW)* requires reporting GSF agencies to prepare annual reporting information. S 7.10(2) of the *Government Sector Finance Act 2018 (NSW)* expressly extends Division 7.3 “to universities and their controlled entities (which are to be treated as reporting GSF agencies for the purposes of this Division)”.

State owned corporations

Is your organisation a ‘State owned corporation’ for the purposes of the *Modern Slavery Act 2018 (NSW)*?

There are eight State owned corporations in NSW. All State owned corporations are set up under the *State Owned Corporations Act 1989 (NSW)* and have separate enabling legislation, which is set out below.

Entity	Enabling legislation
<u>Essential Energy</u>	<u>Energy Services Corporations Act 1995 (NSW)</u>
<u>Forestry Corporation of NSW</u>	<u>Forestry Act 2012 (NSW)</u>
<u>Hunter Water</u>	<u>Hunter Water Act 1991 (NSW)</u>
<u>Landcom</u>	<u>Landcom Corporation Act 2001 (NSW)</u>
<u>Port Authority of NSW</u>	<u>Ports and Maritime Administration Act 1995 (NSW)</u>
<u>Sydney Water</u>	<u>Sydney Water Act 1994 (NSW)</u>
<u>Transport Asset Holding Entity of NSW (TAHE)</u>	<u>Transport Administration Act 1988 (NSW) Part 2 Transport Asset Holding Entity</u>
<u>Water NSW</u>	<u>Water NSW Act 2014 (NSW)</u>

What obligations does a ‘State owned corporation’ have under the *Modern Slavery Act 2018 (NSW)*?

Under the *Modern Slavery Act 2018 (NSW)*, State owned corporations must make and publish modern slavery statements under the Commonwealth *Modern Slavery Act 2018 (Cth)*.

State owned corporations have reporting obligations under the *Modern Slavery Act 2018 (NSW)* and related legislation as follows:

- **Commonwealth Act reporting obligation:** Some State owned corporations have independent obligations to publish modern slavery statements under the Commonwealth *Modern Slavery Act 2018 (Cth)* because they fall within the definition of “reporting entity” provided by s 5 of the Commonwealth *Modern Slavery Act 2018 (Cth)*.
- **Commonwealth Act voluntary reporting obligation:** If a State owned corporation does not fall within the definition of “reporting entity” under the Commonwealth *Modern Slavery Act 2018 (Cth)*, it must instead make a voluntary modern slavery statement, in accordance with s 6 of the Commonwealth *Modern Slavery Act 2018 (Cth)* (s 25A of the *Modern Slavery Act 2018 (NSW)*).
- **Publication and notification obligations:** All State owned corporations must, as soon as is practicable after giving the (federal) Minister a modern slavery statement under the Commonwealth *Modern Slavery Act 2018 (Cth)*:
 - publish a copy of the modern slavery statement on a publicly accessible website kept by the State owned corporation, and
 - give the NSW Anti-slavery Commissioner written notice that the statement has been published (s 25B of the *Modern Slavery Act 2018 (NSW)*).

- **Public register:** the NSW Anti-slavery Commissioner is to keep a public register in electronic form that identifies any State owned corporation that has failed to provide the (federal) Minister, within the meaning of the Commonwealth *Modern Slavery Act 2018* (Cth), with a modern slavery statement for a reporting period under that Act (s 26(1)(c1) of the *Modern Slavery Act 2018* (NSW)).

A council, county council or joint organisation within the meaning of the *Local Government Act 1993* (NSW)

Is your organisation a ‘council, county council or joint organisation within the meaning of the *Local Government Act 1993* (NSW)’ for the purposes of the *Modern Slavery Act 2018* (NSW)?

The terms ‘council’, ‘county council’ and ‘joint organisation’ are each defined under the *Local Government Act 1993* (NSW).

The [NSW Government Office of Local Government](#) provides a directory of councils, county councils and joint organisation within the meaning of the *Local Government Act 1993* (NSW).

What are the modern slavery obligations of a ‘council, county council or joint organisation within the meaning of the *Local Government Act 1993* (NSW)’?

Councils, county councils and joint organisations within the meaning of the *Local Government Act 1993* (NSW) have reporting and other obligations under the *Modern Slavery Act 2018* (NSW) and related legislation as follows:

- **Reasonable steps:** A council must take reasonable steps to ensure that goods and services procured by and for the council are not the product of modern slavery within the meaning of the *Modern Slavery Act 2018* (NSW) (s 438ZE of the *Local Government Act 1993* (NSW)).
- **Reporting obligation:** A council’s annual report must contain:
 - **significant operational issue:** a statement of the action taken by the council in relation to any issue raised by the Anti-slavery Commissioner during the year concerning the operations of the council and identified by the Commissioner as being a significant issue; and
 - **reasonable steps:** a statement of steps taken to ensure that goods and services procured by and for the council during the year were not the product of modern slavery within the meaning of the *Modern Slavery Act 2018* (NSW) (s 428 of the *Local Government Act 1993* (NSW)).

How are ‘council, county council or joint organisation within the meaning of the *Local Government Act 1993* (NSW)’ activities on modern slavery overseen?

These entities’ activities on modern slavery are overseen in several ways:

- **Effectiveness of policies and action:** the NSW Anti-slavery Commissioner must monitor the effectiveness of legislation and governmental policies and action in combating modern slavery (s 9(1)(f) of the *Modern Slavery Act 2018* (NSW)).

- **Public Register:** the NSW Anti-slavery Commissioner is entitled to include other information he thinks appropriate in the register he keeps under s 26 of the *Modern Slavery Act 2018* (NSW). The Public Register will include a schedule of public buyers with reporting obligations under the *Modern Slavery Act 2018* (NSW) that are not conforming with the Guidance on Reasonable Steps.
- **Modern slavery audit:** The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct a risk-based audit of all or any particular activities of a government agency to determine whether the government agency is ensuring that goods and services procured by and for the agency are not the product of modern slavery. The Auditor-General is to give the NSW Anti-slavery Commissioner advice as to the result of any modern slavery audit and may recommend a government agency is identified in the public register kept under s 26 of the *Modern Slavery Act 2018* (NSW) (ss 38G-38H of the *Government Sector Audit Act 1983* (NSW)).

What are some examples of a ‘council, county council or joint organisation within the meaning of the *Local Government Act 1993* (NSW) for the purposes of the *Modern Slavery Act 2018* (NSW)?

The following are examples of this type of covered entity:

- **Council:** Albury City Council, Armidale Regional Council and Ballina Shire Council.
- **County council:** Castlereagh-Macquarie County Council and Central Tablelands Water Council.
- **Joint organisation:** Canberra Region Joint Organisation and Central NSW Joint Organisation.

The [NSW Government Office of Local Government](#) provides a directory of councils, county councils and joint organisation within the meaning of the *Local Government Act 1993* (NSW).