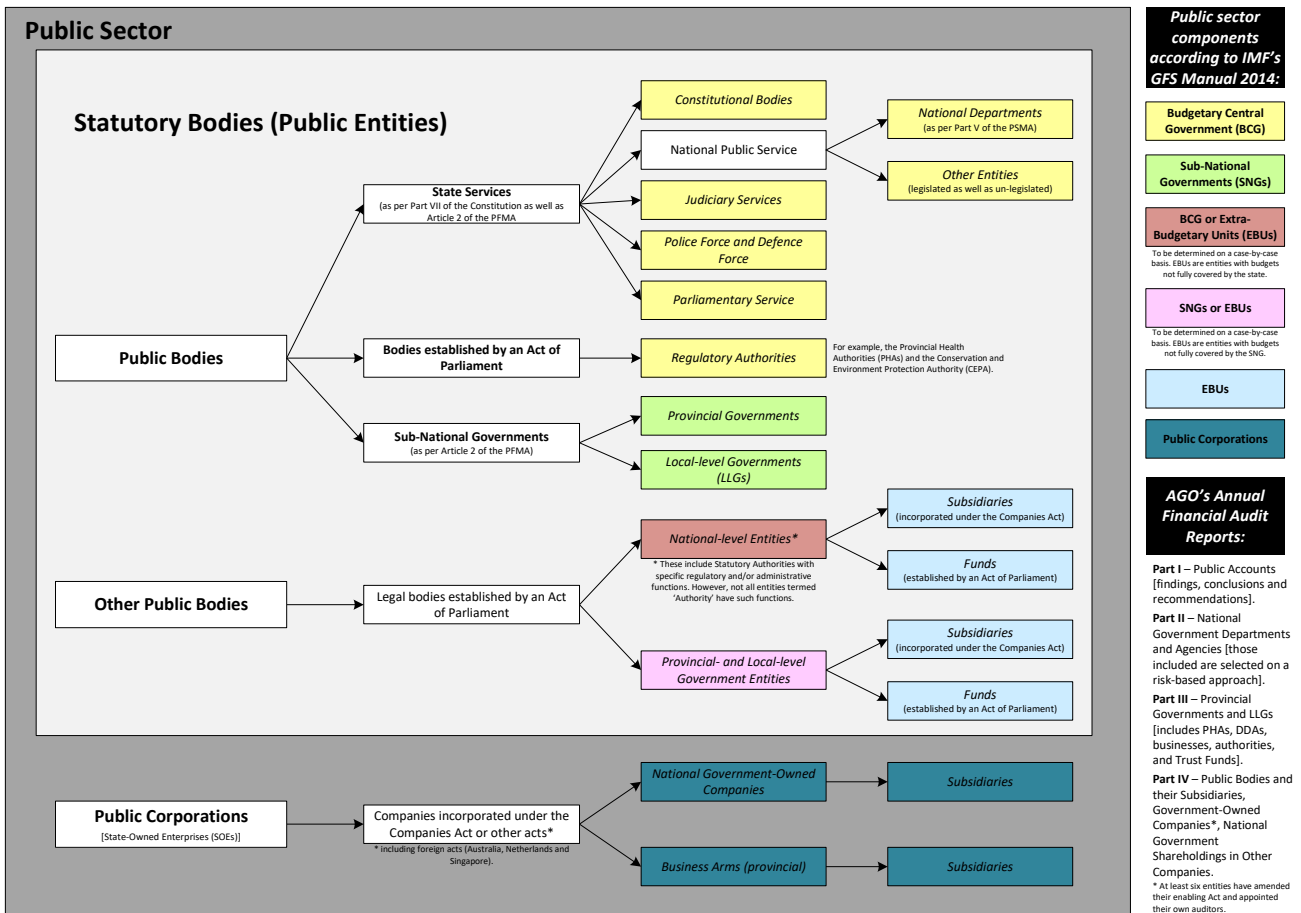


# FMM 01.9 Different types of Public Entities

## 1.1 Entity Types

The Government of PNG provides its services and functions through various entity types and government tiers (National, Provincial and Local Level Government and Constitutional Institutions) and these have different authorities, legal obligations and reporting requirements.

Regardless of the type of entity structure, it is considered an agent of the State of PNG (an agency).



Entities include departments, public services offices, statutory bodies, statutory authorities and companies (State Owned Enterprises or SOEs or 'commercial enterprises'). The Government can also enter into other Joint Venture arrangements – incorporated or unincorporated.

Generally, the powers to create an entity are the Constitution, government by the Constitution, Organic Laws, Acts of Parliament, National and Provincial Executive Councils and the *Public Services (Management) Act 1995* (PSMA).

The Constitution under Section 208A provides for the creation of regulatory Statutory Authorities as a body corporate by an Act of Parliament.

Part V of the PSMA captures the authorities for the national public service which are that Head of State, acting on advice, by notice of National Gazette, to establish, abolish or alter the name of a Department except the Department of Prime Minister and National Executive Council.

Part VII of the PSMA prescribes the creation and abolition of offices which provides powers to create of an Office with the Department head of Personnel Management and by way of National Gazette Notice.

The *Organic Law on Provincial and Local Level Government* provides for establishment of offices to support the Assembly and Provincial Executive Council. The finances of PG-LLGs also provide for income from commercial enterprises conducted by it.

District Development Authorities also have powers under Section 7 of the *District Development Authority Act 2014* to form or participate in the formation of companies and to enter into partnerships and participate in joint ventures.

Special Purpose Authorities are formally Local-level Government Special Purposes Authority established under Section 42 of the *Local-level Governments Administration Act 1997*.

## 9.1 Definition of Public Body

A public body is a defined term in the PFMA as either an agency that is part of the State Services established under Part VII of the Constitution or a PG-LLG established by Organic Law. However, this term is not limited to a Department.

The legal hierarchy is this:

- **Public body** is only:
  - an agency of the State Services (Part VII Constitution) (this can include departments, offices, commissions etc).
  - a Provincial or Local-level Government.
  - A statutory authority where it is deemed a State Service in its Act

- **Statutory body** is anything else the State sets up for governmental or official purposes, including:
  - every “regulatory statutory authority” created under s 208A of the Constitution,
  - constitutional institutions (deemed statutory bodies under PFMA s 1A(2)) ,
  - anybody created by a PG-LLG, and
  - subsidiary statutory bodies captured by PFMA s 49.
- **Government-owned company** is a company the State controls and is therefore caught under the subsidiary statutory bodies rule unless variations exist under its own Act.

**The ‘legal structure’ or how it was created is not the only factor to what can be defined as a statutory body essentially you need to consider:**

- Determine if the entity was established for governmental or official functions.
- Assess whether the entity manages, collects, or disburses public funds.
- Check if the entity operates under the legal framework established by the State or through Organic Law.

**The transfer of public money to a company or special purpose vehicle to be expended does not in itself limit the application of the PFMA.**

## **9.2 Entity Type 1 Department and State Services**

A department is a prescribed administrative arrangement under the PSMA where the entity has been declared, via National Gazette, to be a department by the Governor General.

Departments can be created, amended or abolished by a specific National Gazette Notice, but can also be done so in the Determination of Ministerial Responsibilities which is administered by the Department of Prime Minister and National Executive Council.

A department may also be a body for which an accountable officer has been appointed (under the PSMA), but these are generally termed ‘Offices’.

In PNG, Departments are funded by National Budget Appropriations. Under the Constitution, payments from the consolidated revenue fund, which National Department accounts operate within, can only be authorised under an Act (the Appropriations Act). Transfers to trust funds can only occur if specified by an appropriation to do so.

Money cannot be committed or expended except as authorised by a warrant authority within a fiscal year (Section 29 PFMA).

### 9.2.1 Parliament and Judiciary Services

The National Parliament and Judiciary are subject to the financial management framework outlined in the PFMA. These bodies, despite their constitutional independence, are included in the scope of PFM for purposes of accountability and transparency.

*“Public body’ means (a) any agency which is part of the State Services established under Part VII of the Constitution...”*

— Section 2, PFMA (Interpretation)

*“No public money shall be paid out of the Consolidated Revenue Fund except... for the purposes of government services, the services of the Parliament or the services of the Judiciary...”*

— Section 14(1)(g), PFMA

## 9.3 Entity Type 2 Offices

A public service office is an entity, or part of an entity designated to be a public services office either by executive order or, powers under the PSMA, the departmental head for Personnel Matters. Offices are generally created to assign specific powers or functions.

For the purposes of PFMA, consider if the Office is to operate and report as a department, as an office within a department (both of these are PFMA Public Body structures).

## 9.4 Entity Type 3 Statutory Body

A statutory body is a broad term under Section 2 of the PFMA to mean any body, authority or instrumentality (corporated or unincorporated) established under an Act of Parliament or by a PG-LLG and any other way that is for governmental or official purposes.

Statutory bodies generally have a primary role that they are established for, subject to varying degrees of Minister control and usually in enabling legislation. They are established for reasons such as:

- Need for some operational independence from the PNG Government;
- Independent funding arrangements not reliant on annual appropriations processes
- A need to establish a separate legal entity

As well as the PFMA, statutory bodies must comply with the requirements of their own enabling legislation. Statutory bodies may or may not have a budget agency code and can instead receive funds via a department. They may be seen as 'self-funding' but in the legal sense – this is incorrect – any revenue raised is administered public money on behalf of the State and is deemed part of the Consolidated Revenue Fund.

#### 9.4.1 Constitutional Institutions

Constitutional institutions/bodies are public entities established directly under the Constitution of Papua New Guinea, including but not limited to the Ombudsman Commission, Public Prosecutor, Public Solicitor, Auditor-General, Electoral Commission, and the Integrity of Political Parties and Candidates Commission and the NEFC. Although these offices are constitutionally established, for the purposes of financial management and accountability under the *Public Finances (Management) Act 1995*, these entities are **deemed to be Statutory Bodies**.

*"This Act binds constitutional institutions and constitutional institutions shall be deemed to be statutory bodies for the purposes of this Act."*

— Section 1A(2), PFMA

As deemed Statutory Bodies under the PFMA, constitutional office-holders are required to:

- Prepare annual performance and management plans (s.50),
- Maintain bank accounts in compliance with Section 52,
- Apply funds in accordance with Section 58,
- Maintain accounts and records (s.62),
- Submit audited financial statements and reports (s.63), and

- Comply with inspections by the Finance Minister or delegate (s.64).

## 9.5 Entity Type 4 Statutory Authority

There is sometimes confusion on the difference between a Statutory Authority and a Statutory Body, these are not the same.

A Statutory Body is a general catch-all term referring to any entity established whether by an Act of Parliament, Organic Law or under the Constitution to perform specific governmental functions.

A Statutory Authority is an entity that been granted specific regulatory or administrative functions, often with a degree of operational independence and usually under an Act of Parliament.

The main difference lies in their operational focus and autonomy as a statutory authority may have more specialised regulatory roles and greater independence compared to broader statutory bodies. However, in practice, the distinction can be minimal and context-dependent.

An example of Statutory Authority would be the National Airports Corporation or the Road Traffic Authority and even the Internal Revenue Commission.

## 9.6 Entity Type 5 Corporation Sole

A corporation sole is established under the under its own legislation and where the authority is vested in one nominated office holder as opposed to a company structure (such as a Minister or position such as Public Curator, Custodian for Trust Land, Official Trustee of PNG).

Although unusual, they are still considered Statutory Body under the PFMA.

A corporation sole should not be confused with State Owned Enterprises or other government agencies that were established under the Companies Act. For example, while Kumul Petroleum (Holdings) Limited and Kumul Minerals (Holdings) Limited were also created by legislation, their legislation stipulates that they are incorporated under the Companies Act.

## 9.7 Entity Type 6 State Owned Enterprises

State-owned enterprises (SOEs) are companies incorporated under the Companies Act 1997 in which the State, or a statutory body such as *Kumul Consolidated Holdings Ltd*, holds a controlling interest.

They operate on commercial principles and are expected to earn sufficient revenue to meet their own costs and service debt.

SOEs are not public bodies or statutory bodies for PFMA budgeting, warrant or procurement purposes. Part IV to Part VIII of the PFMA therefore do not apply to their day-to-day financial operations unless Parliament appropriates money directly to them.

They are however considered a subsidiary statutory body under Section 49 of the PFMA. Therefore, each SOE must keep proper accounts, prepare audited financial and lodge them with the Auditor-General.

If an SOE receives a budget appropriation, on-lends a sovereign loan, or manages public trust moneys, those specific funds are subject to PFMA controls.

The enabling Act for certain SOEs may impose extra obligations. For example, the Kumul Petroleum Holdings Limited Authorisation Act 2015 exempts KPHL from PFMA Parts IV–VIII but retains PFMA sections 63 and 64 for audit and reporting.

Common SOEs include Kumul Petroleum Holdings Ltd, PNG Power Ltd, Air Niugini Ltd, Water PNG Ltd and Post PNG Ltd. All are wholly owned by Kumul Consolidated Holdings Ltd and must comply with the KCH Act 2002, the Companies Act 1997 and are subsidiary statutory bodies.

The Treasurer with his investment responsibilities monitors SOE dividends and debt in the Medium Term Fiscal Strategy.

Parliamentary scrutiny occurs through the Public Accounts Committee when audited SOE accounts are tabled.

## **9.8 Responsibilities of Public Bodies under the PFMA**

### **9.8.1 Performance and Management Plans for Public Bodies**

The Finance department head may by notice in writing direct a public body shall submit to the Finance Secretary a performance and management plan.

A performance and management plan shall be submitted at such intervals and in such form as directed.

A public body that has submitted a performance and management plan shall submit to the Finance department head progress reports against their performance and management plan at such intervals and in such form as directed.

Directions pursuant to this section shall be published in the National Gazette and shall take effect on the date of publication or the date specified in the approval, whichever is the later.

### **9.8.2 Budget Appropriation Payments to Public Bodies**

Subject to this Act, such money shall be paid to a public body as is appropriated by the Parliament for the purposes of the public body.

Money paid pursuant this section shall be paid in such amounts and at such times as the Treasury Departmental Head determines.

Money paid under subsection (1), if unexpended within the financial year for the purposes for which they were appropriated, shall be returned to Consolidated Revenue Fund unless otherwise directed by the Treasurer.

For the purposes of sub-section (3), unexpended means not contracted for expenditure at the end of the financial year.

### **9.8.3 Application of Moneys by Public Bodies**

The money of a public body shall be applied only in payment or discharge of expenses, obligations and liabilities of the public body in accordance with the PFMA.

### **9.8.4 Accounts, Records, etc. of Public Bodies**

A public body shall maintain proper accounts and records over public moneys and property under its control in accordance with Section 47K of the PFMA.

### **9.8.5 Reports and Financial Statements of Public Bodies**

A public body shall prepare and furnish the Finance department head a financial statement and a performance and management report of its operations every fiscal year in accordance with the requirements of Section 47L of the PFMA. The Office of the Auditor General should be included in the distribution of Financial Statements and the performance and management reports on agencies' operations.

### **9.8.6 Powers of Inspection of the Finance Minister, etc., of a Public Body**

Under Section 47M of the PFMA, the Minister of Finance has the authority to investigate the accounts and records of any public body that fails to comply with its obligations under the PFMA.

## **9.9 Responsibilities of Statutory Bodies under the PFMA**

### **9.9.1 Subsidiary Statutory Bodies**

For the purposes of Part VIII, a body, whether corporate or unincorporated, is a subsidiary statutory body of a statutory body if that statutory body –

- has the ability, directly or indirectly, to appoint or remove directors, managers or any other management or administrative staff to that body; or
- controls, directly or indirectly, 50% or more of the voting power of that body; or
- holds 50% or more of the issued shares or share capital of the body, if any; or
- the body is a subsidiary of a body that is a subsidiary of a statutory body.

### **9.9.2 Governance and Responsibilities of a Statutory Body**

The governance structure and responsibilities of a statutory body are established in Sections 64D and 64E, respectively, of the PFMA.

### **9.9.3 Bank Accounts**

Section 52 of the PFMA describes the requirements for bank accounts for statutory bodies.

### **9.9.4 Budget Appropriation and Payments to Statutory Bodies**

Subject to the PFMA, such money shall be paid to a statutory body as is appropriated by the Parliament for the purposes of the statutory body.

Money paid pursuant this section is subject to release by warrants and cash fund certificates.

Moneys unexpended within the financial year for the purposes for which they were appropriated including any other profits or revenue, shall be returned to Consolidated Revenue Fund. However, for appropriations, unless otherwise directed by the Treasurer.

### **9.9.5 Investments by Statutory Bodies**

A statutory body may invest money and what it can be invested in is defined under Section 57.

The Finance Minister may, by notice published in the National Gazette, determine such terms and conditions as he thinks fit in respect of investments under this section.

A statutory body shall cause to be published in the National Gazette, within 30 days of the end of each quarter within a fiscal year, the full and complete details of each and every investment made or existing in that quarter by the classes of investment specified.

A notice shall contain sufficient detail to identify the nature of the investment, the amount invested, all fees and charges associated with the investment and the interest payable on the investment in that quarter.

A statutory body shall, within four months of the end of a fiscal year, pay into the Consolidated Revenue Fund all revenue and profits of the statutory body for that fiscal year that are not contractually committed for expenditure in accordance with the approved budget of the statutory body within that fiscal year.

#### **9.9.6 Loans, Borrowing and Guarantees of Statutory Bodies**

Subject to the approval in writing of the Treasurer, a statutory body may, on such terms as are agreed borrow money, including by overdraft, from any person; or borrow public money from the State; or guarantee a loan to any person.

An approval pursuant to this section shall be published in the National Gazette and shall take effect on the date of publication or the date specified in the approval, whichever is the later.

An approval pursuant to this section may be subject to such terms and conditions as the Treasurer thinks fit.

Statutory bodies and all other persons shall comply with the terms and conditions of any approval pursuant to this section.

No person shall loan money to a statutory body or receive a guarantee from a statutory body without the approval of the Treasurer pursuant to this section first being had and in accordance with the terms and conditions specified in that approval.

#### **9.9.7 Application of Money by a Statutory Body**

The money of a statutory body shall be applied only in payment or discharge of expenses, obligations and liabilities of the statutory body arising under this Act or its constituent law.

**9.9.8 Accounts, Records, etc. by Statutory Body**

Subject to Section 62 of the PFMA, a statutory body shall maintain proper accounts and records over public moneys and property under its control in accordance. Section 64C of the PFMA establishes the requirement for a statutory body to prepare a finance management manual describing their system of accounting and control and submit that manual for the review and approval of the Finance department head. If a statutory body does not prepare such a financial management manual, the Finance department head may direct them to use an otherwise specified financial management manual.

**9.9.9 Reports and Financial Statements by Statutory Body**

Every fiscal year, a statutory body shall prepare a financial statement and submit it, with a performance and management report of its operations, to the Finance department head per Section 63 of the PFMA. Subject to this section. a statutory body shall, for every fiscal year, prepare and furnish to the Finance Secretary financial statements and a performance and management report of its operations.

**9.9.10 Powers of Inspection of the Minister of Finance, etc., of a Statutory Body**

Under Section 64 of the PFMA, the Minister of Finance has the authority to investigate the accounts and records of any public body that fails to comply with its obligations under the PFMA.

<b>Further Information</b>	frcd@finance.gov.pg
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