Western Australia

Government Trading Enterprises Act 2023

Government Trading Enterprises Regulations 2023

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Western Australia

Government Trading Enterprises Regulations 2023

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Government Trading Enterprises Regulations 2023

Part 1 — Preliminary

1. Citation

These regulations are the *Government Trading Enterprises Regulations 2023*.

2. Commencement

These regulations come into operation on the day on which the *Government Trading Enterprises Act 2023* section 160 comes into operation.

Part 2 — Financial administration and audit

Division 1 — Preliminary

3. Terms used

(1) In this Part —

chief financial officer function has the meaning given in regulation 4.

(2) In this Part —

(a) a term used has the same meaning it has in the Corporations Act Part 1.2; and

(b) for the purposes of paragraph (a), a reference in that Part to a company is to be read as a reference to a GTE.

4. Chief financial officer function

(1) A person performs a ***chief financial officer function*** in relation to a GTE if that person is the person who is —

(a) primarily responsible for financial matters in relation to the GTE; and

(b) directly responsible for those matters to either —

(i) the directors; or

(ii) the chief executive officer.

(2) If there is no one person who performs a chief financial officer function in relation to the GTE under subregulation (1), a person performs a ***chief financial officer function*** in relation to the GTE if the person is one of a number of people who together are —

(a) primarily responsible for financial matters in relation to the GTE; and

(b) directly responsible for those matters to either —

(i) the directors; or

(ii) the chief executive officer.

Division 2 — Financial records

5. Physical format

(1) If financial records are kept in electronic form, they must be convertible into hard copy.

(2) If a person who is entitled to inspect financial records kept by a GTE requests a hard copy of the records, the GTE must make the hard copy available to the person within a reasonable time.

6. Place where records kept

(1) A GTE may decide where to keep financial records.

(2) If financial records about particular matters are kept outside Australia, the GTE must —

(a) keep sufficient written information about those matters in Australia to enable true and fair financial statements to be prepared; and

(b) give the Treasurer written notice of the place where the information is kept.

(3) The Portfolio Minister may direct a GTE to produce specified financial records that are kept outside Australia.

(4) The direction must —

(a) be in writing; and

(b) specify a place in Australia where the records must be produced (the place must be reasonable in the circumstances); and

(c) specify a day (at least 14 days after the direction is given) by which the records must be produced.

7. Director access

(1) A director of a GTE has a right of access to the financial records of the GTE at all reasonable times.

(2) On application by a director, the Supreme Court may authorise a person to inspect the financial records on the director's behalf.

(3) A person authorised to inspect records may make copies of the records unless the Supreme Court orders otherwise.

(4) The Supreme Court may make any other orders it considers appropriate, including either or both of the following —

(a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection;

(b) an order limiting the right of a person who inspects the records to make copies in accordance with subregulation (3).

Division 3 — Financial reporting

Subdivision 1 — Annual financial reports and directors' reports

8. Contents of annual financial report

(1) The financial report of a GTE for a financial year consists of —

(a) the financial statements of the GTE for the year; and

(b) the notes to the financial statements; and

(c) the directors' declaration about the statements and notes.

(2) The financial statements for the year are as follows —

(a) unless paragraph (b) applies —

(i) a statement of comprehensive income for the year in relation to the GTE; and

(ii) a statement of financial position as at the end of the year in relation to the GTE; and

(iii) a statement of cash flows for the year in relation to the GTE;

(b) if the accounting standards require the GTE to prepare financial statements in relation to a subsidiary on a consolidated basis —

(i) a statement of comprehensive income for the year in relation to the consolidated entity; and

(ii) a statement of financial position as at the end of the year in relation to the consolidated entity; and

(iii) a statement of cash flows for the year in relation to the consolidated entity;

(c) any other information required by the Treasurer's GTE instructions.

(3) The notes to the financial statements referred to in subregulation (1)(b) are —

(a) notes required by the accounting standards; and

(b) any other information necessary to give a true and fair view; and

(c) any other information required by the Treasurer's GTE instructions.

(4) The directors' declaration referred to in subregulation (1)(c) is a declaration by the directors —

(a) that the financial statements, and the notes referred to in subregulation (3)(a), comply with the accounting standards; and

(b) that the financial statements and notes give a true and fair view; and

(c) whether, in the directors' opinion, there are reasonable grounds to believe that the GTE will be able to pay its debts as and when they become due and payable; and

(d) whether, in the directors' opinion, the financial statements and notes are in accordance with the Act and this Part, including —

(i) section 144(2) of the Act (compliance with accounting standards); and

(ii) regulation 10 (true and fair view);

and

(e) that the directors have been given the declarations required by regulation 9.

(5) The directors' declaration referred to in subregulation (1)(c) must —

(a) be made in accordance with a resolution of the directors; and

(b) specify the date on which the declaration is made; and

(c) be signed by at least 2 directors.

9. Declaration in relation to GTE's financial statements by chief executive officer and chief financial officer

(1) A directors' declaration under regulation 8(4) may be made only after a declaration has been given to the directors under subregulation (2) by —

(a) the chief executive officer; and

(b) each person who performs, in relation to the GTE, a chief financial officer function.

(2) The declaration is a declaration as to whether, in the person's opinion —

(a) the financial records of the GTE for the financial year have been properly maintained; and

(b) the financial statements and notes for the financial year comply with the accounting standards; and

(c) the financial statements and notes for the financial year give a true and fair view.

(3) The declaration must —

(a) be in writing; and

(b) specify the date on which the declaration is made; and

(c) specify the capacity in which the person is making the declaration; and

(d) be signed by the person making the declaration.

(4) A chief executive officer who performs a chief financial officer function may make a single declaration in both capacities.

(5) Nothing in this regulation derogates from the responsibility that a director has for ensuring that financial statements comply with the Act.

10. True and fair view

(1) The financial statements and notes in respect of a GTE for a financial year must give a true and fair view of —

(a) the financial position and performance of the GTE; and

(b) if consolidated financial statements are required under regulation 8(2)(b) — the financial position and performance of the consolidated entity.

(2) This regulation does not affect the obligation under section 144(2) of the Act for a financial report to comply with accounting standards.

11. Annual directors' report

(1) A GTE must prepare a directors' report for each financial year.

(2) The report must include —

(a) the general information required by regulation 12; and

(b) the specific information required by regulation 13.

(3) The report must —

(a) be made in accordance with a resolution of the directors; and

(b) specify the date on which the report is made; and

(c) be signed by at least 2 directors.

12. Annual directors' report — general information

(1) The directors' report in respect of a GTE for a financial year must —

(a) contain a review of operations of the GTE during the year and the results of those operations; and

(b) give details of any significant changes in the GTE's state of affairs during the year; and

(c) state the GTE's principal activities during the year and any significant changes in the nature of those activities during the year; and

(d) give details of any matter or circumstance that has arisen since the end of the year that —

(i) has, since the end of the year, significantly affected the GTE's operations, the results of those operations or the GTE's state of affairs; or

(ii) might, in future financial years, significantly affect the matters referred to in subparagraph (i);

and

(e) refer to likely developments in the GTE's operations in future financial years and the expected results of those operations; and

(f) if the GTE's operations are subject to any particular and significant environmental regulation under a law of the State or of the Commonwealth or of another State or a Territory — give details of the GTE's performance in relation to that environmental regulation.

(2) If consolidated financial statements are required under regulation 8(2)(b), the report must be in respect of the consolidated entity.

(3) The report in respect of a GTE may omit material that would otherwise be included under subregulation (1)(e) if it is likely to result in unreasonable prejudice to —

(a) the GTE; or

(b) if consolidated financial statements are required under regulation 8(2)(b) — the consolidated entity or any entity (including the GTE concerned) that is part of the consolidated entity.

(4) If material is omitted from the report, the report must state so.

13. Annual directors' report — specific information

(1) The directors' report for a financial year must include details of —

(a) dividends or distributions paid during the year; and

(b) dividends or distributions recommended or declared for payment, but not paid, during the year; and

(c) the name of each person who has been a director of the GTE at any time during or since the end of the year and the period for which they were a director; and

(d) the name of each person who has been, at any time during the year —

(i) the chief executive officer of the GTE; or

(ii) an executive officer of the GTE;

and

(e) the name of each person who has performed a chief financial officer function in relation to the GTE at any time during the year; and

(f) the name of each person (an ***auditor***) who —

(i) was a partner in an audit firm or a director of an audit company that conducted an audit of the GTE during the year; and

(ii) was such a partner or director at a time when the firm or company (as applicable) audited the GTE;

and

(g) indemnities given and insurance premiums paid during or since the end of the year for a person who has been —

(i) an officer of the GTE; or

(ii) an auditor in relation to the GTE.

(2) The report must include details of —

(a) each director's qualifications, experience and special responsibilities; and

(b) the number of meetings of the board held during the year and each director's attendance at those meetings; and

(c) the number of meetings of each board committee held during the year and each director's attendance at those meetings.

14. Annual directors' report — indemnities and insurances

(1) Subregulation (2) applies if —

(a) during or since the financial year to which an annual directors' report relates, the GTE concerned has indemnified against a liability a person who is or has been a director of the GTE or of a related body corporate; and

(b) but for section 66(4) or (5) of the Act, section 66(3) of the Act would have prohibited the GTE from indemnifying the person against that liability.

(2) The report must set out —

(a) the person's name; and

(b) the nature of the liability; and

(c) how much the GTE paid, and what else the GTE did, by way of indemnifying the person against the liability.

(3) Subregulation (4) applies if —

(a) during or since the financial year to which an annual directors' report relates, the GTE concerned has made a relevant agreement (as defined in the Corporations Act section 9) for indemnifying against a liability a person who is or has been a director of the GTE or of a related body corporate; and

(b) but for section 66(4) or (5) of the Act, section 66(3) of the Act would have prohibited the GTE from indemnifying the person against that liability.

(4) The report must set out particulars of the relevant agreement, including —

(a) the person's name; and

(b) the nature of the liability; and

(c) how much the relevant agreement provides for the GTE to pay, and what else it provides for the GTE to do, by way of indemnifying the person against the liability.

(5) Subregulation (6) applies if, during or since the financial year to which an annual directors' report relates, the GTE concerned has paid, or agreed to pay, a premium in respect of a contract insuring against a liability (other than one for legal costs) a person who is or has been a director of the GTE or of a related body corporate.

(6) The report must —

(a) name the person and state that the GTE has paid, or agreed to pay, a premium in respect of a contract insuring the person against a liability; and

(b) set out, except so far as prohibited by the contract itself, the nature of the liability and the amount of the premium.

15. Annual directors' report — other specific information

The directors' report in respect of a GTE for a financial year must include —

(a) discussion of board policy for determining the nature and amount of remuneration of directors and executive officers of the GTE; and

(b) discussion of the relationship between such policy and the GTE's performance; and

(c) details of the nature and amount of each element of the remuneration of each director and each of the 5 executive officers of the GTE receiving the highest remuneration.

Subdivision 2 — Interim report

16. Period for and contents of interim report

(1) For the purposes of section 146(1) of the Act, the period within a financial year for which a GTE must prepare an interim report is 1 July to 31 December.

(2) The interim report must include, for the GTE and each of its subsidiaries —

(a) an operational report; and

(b) a statement of financial performance; and

(c) a statement of achievement of key performance indicators for the period; and

(d) any information required to be included in the report by the GTE's annual performance statement under section 75(5)(b) of the Act.

Subdivision 3 — Audit and auditor's report

17. Audit opinion

The Auditor General, in conducting an audit of a financial report in relation to a GTE for the purposes of section 145 of the Act, must form an opinion about the following —

(a) whether the financial report satisfies the requirements of the Act and this Part, including —

(i) section 144(2) of the Act (compliance with accounting standards); and

(ii) regulation 10 (true and fair view);

(b) whether the Auditor General has been given all information, explanation and assistance necessary for the conduct of the audit;

(c) whether the GTE has kept financial records sufficient to enable a financial report to be prepared and audited;

(d) whether the GTE has kept other records and registers as required by this Part.

18. Auditor General's report on annual financial report

(1) The Auditor General must report to the Portfolio Minister on whether the Auditor General is of the opinion that a financial report in relation to a GTE is in accordance with the Act and this Part, including —

(a) section 144(2) of the Act (compliance with accounting standards); and

(b) regulation 10 (true and fair view).

(2) If the Auditor General is not of that opinion, the Auditor General's report must state why.

(3) If the Auditor General is of the opinion that the financial report does not comply with an accounting standard, the Auditor General's report must —

(a) to the extent that it is practicable to do so, quantify the effect that non-compliance has on the financial report; and

(b) if it is not practicable to quantify the effect fully, state why.

(4) The Auditor General's report must describe —

(a) any defect or irregularity in the financial report; and

(b) any deficiency, failure or shortcoming in respect of the matters referred to in regulation 17.

(5) The report must specify the date on which it is made.

(6) The Auditor General must give a copy of the report to the directors of the GTE concerned as soon as practicable after it has been given to the Portfolio Minister.

Subdivision 4 — Special provisions about consolidated financial statements

19. Directors and officers of subsidiary to give information

If a GTE is required under regulation 8(2)(b) to prepare consolidated financial statements, a director or officer of a subsidiary of the GTE must give the GTE all information requested that is necessary to prepare the consolidated financial statements and the notes to those statements.

20. Auditor General's power to obtain information from subsidiary

(1) If the financial report of a GTE includes consolidated financial statements, the Auditor General —

(a) has a right of access at all reasonable times to the records of any subsidiary of the GTE; and

(b) may require any officer of the subsidiary to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.

(2) The information, explanations or other assistance required under subregulation (1)(b) must be given at the expense of the GTE.

21. Subsidiary to assist Auditor General

If a GTE is required under regulation 8(2)(b) to prepare a financial report that includes consolidated financial statements, an officer or auditor of a subsidiary of the GTE must —

(a) allow the Auditor General access to the subsidiary's records; and

(b) give the Auditor General any information, explanation or assistance required under regulation 20.

22. Application of Subdivision to subsidiary that has ceased to be controlled

Regulations 19, 20 and 21 apply to the preparation or audit of a financial report that covers a subsidiary of a GTE even if the subsidiary is no longer controlled by the GTE when the GTE's financial report is being prepared or audited.

Subdivision 5 — Financial years of GTEs and subsidiaries

23. Financial years

(1) The financial year of a GTE is the 12-month period ending on 30 June.

(2) If a GTE is required under regulation 8(2)(b) to prepare consolidated financial statements, it must do whatever is necessary to ensure that the financial years of its subsidiaries are synchronised with its own financial years.

(3) The GTE must achieve the synchronisation referred to in subregulation (2) by the end of the period of 12 months after the situation that calls for consolidation arises.

Division 4 — Accounting standards

24. Accounting standards

(1) An accounting standard applies to —

(a) periods ending after the commencement of the standard; or

(b) periods ending, or starting, on or after a later date specified in the standard.

(2) A GTE may elect to apply the accounting standard to an earlier period unless the standard states otherwise.

(3) An election under subregulation (2) must be made in writing by the directors of the GTE.

25. Equity accounting

This Part (and, in particular, the provisions on consolidation of financial statements) does not prevent accounting standards from incorporating equity accounting principles.

26. Interpretation of accounting standards

In interpreting an accounting standard —

(a) unless the contrary intention appears, expressions used in the standard have the same meaning as they have in the Corporations Act Chapter 2M; and

(b) the provisions of the Corporations Act Part 1.2 apply as if the standard's provisions were provisions of that Chapter.

27. Evidence of text of accounting standard

(1) This regulation applies to —

(a) a document that purports to be published by or on behalf of the AASB or the AUASB and to set out the text of —

(i) a specified standard as in force at a specified time under the Corporations Act section 334 or 336; or

(ii) a specified provision of a standard of that kind;

and

(b) a copy of a document referred to in paragraph (a).

(2) In the absence of evidence to the contrary, a document to which this regulation applies is proof in proceedings under this Act that —

(a) the specified standard was in force at that time under the Corporations Act section 334 or 336; and

(b) the text set out in the document is the text of the standard referred to in subregulation (1)(a)(i) or the provision referred to in subregulation (1)(a)(ii).

Division 5 — Exemptions and modifications

28. Treasurer's power to make specific exemption orders

(1) The Treasurer may, on an application made in relation to a GTE, make an order in writing relieving any of the following from all or specified requirements of Divisions 2 and 3 —

(a) the GTE's directors;

(b) the GTE;

(c) the Auditor General.

(2) The order may —

(a) be expressed to be subject to conditions; and

(b) be indefinite or limited to a specified period.

(3) The application must be —

(a) authorised by a resolution of the directors; and

(b) in writing and signed by a director; and

(c) given to the Treasurer.

(4) The Treasurer must give the GTE concerned written notice of the making, revocation or suspension of the order.

(5) If the Treasurer makes an order under subregulation (1), the Treasurer must cause the text of the order to be laid before each House of Parliament within 14 sitting days of the House after the order is made.

29. Criteria for specific exemption orders and class orders

To make an order under regulation 28(1), the Treasurer must be satisfied that complying with the relevant requirements of Divisions 2 and 3 would —

(a) make the financial report or other reports misleading; or

(b) be inappropriate in the circumstances; or

(c) impose unreasonable burdens.

30. Extension of time

(1) This regulation applies if any provision of this Part requires any act or thing to be done by a person other than the Auditor General —

(a) by a certain date; or

(b) within a specified period.

(2) The Portfolio Minister may, on application by the person, extend the date or period for the doing of the act or thing to a date or period that the Portfolio Minister thinks appropriate.

(3) If the Portfolio Minister grants an extension of time under subregulation (2), the provisions of regulation 28(5) apply, with all necessary changes, to the instrument by which the extension

is granted as if it were an order for the purposes of that subregulation.

Division 6 — Miscellaneous

31. Annual financial reporting

The annual report of a GTE must contain the following documents —

(a) the financial report for the year;

(b) the directors' report for the year;

(c) the Auditor General's report on the financial report;

(d) a copy of any order of the Treasurer under regulation 28.

32. Powers and duties of Auditor General

(1) Subregulation (2) applies if the Auditor General, in the course of the performance of duties as auditor of a GTE and its subsidiaries (if any), is satisfied that —

(a) there has been a contravention of any provision of this Part; and

(b) the circumstances are such that, in the Auditor General's opinion, the matter has not been or will not be adequately dealt with by —

(i) comment in the Auditor General's report on the financial statements; or

(ii) bringing the matter to the notice of the GTE's board.

(2) The Auditor General must, without delay, report the matter to the Portfolio Minister in writing.

(3) The *Auditor General Act 2006* sections 14, 16 to 18, 24 to 37, 45 and 46 apply to the GTE as if it were a statutory authority named in the *Financial Management Act 2006* Schedule 1.

32A. End date for former financial administration and audit provisions

For the purposes of section 176(2) of the Act, the end of 29 February 2024 is prescribed.

[Regulation 32A inserted: SL 2024/17 r. 4.]

Part 3 — Other matters

33. Details of membership of GTE's board

(1) For the purposes of section 12(3) of the Act, the details of the membership of a GTE's board are, in relation to each member —

(a) the member's name; and

(b) the member's position; and

(c) the date on which the member was appointed to the board under section 13(1) of the Act for the current term of office; and

(d) if the member has been reappointed — the date on which the member was first appointed to the board under section 13(1) of the Act; and

(e) the date on which the member's current term of office will expire; and

(f) details of the member's relevant skills, qualifications and experience.

(2) The GTE must ensure that the details referred to in subregulation (1) are —

(a) published on a website of the GTE; and

(b) included in the GTE's annual report.

34. Details of appointment of member to GTE's board

(1) For the purposes of section 13(5) of the Act, the details of an appointment to a GTE's board are —

(a) the member's name; and

(b) the member's position; and

(c) the date on which the member was appointed to the board under section 13(1) of the Act for the current term of office; and

(d) if the member has been reappointed — the date on which the member was first appointed to the board under section 13(1) of the Act; and

(e) the date on which the member's current term of office will expire; and

(f) details of the member's relevant skills, qualifications and experience.

(2) The Portfolio Minister must ensure that the details referred to in subregulation (1) are —

(a) published on a website maintained by or on behalf of the GTE; and

(b) included in the GTE's annual report.

35. Hedging transactions

For the purposes of section 137(2) of the Act, any of the following is a prescribed transaction —

(a) a forward transaction;

(b) a futures transaction;

(c) an option transaction;

(d) a spot transaction;

(e) a swap transaction;

(f) an agreement or arrangement to effect a combination of —

(i) 2 or more of the transactions listed in paragraphs (a) to (e); or

(ii) 1 of the transactions listed in paragraphs (a) to (e) and 1 or more of the transactions permitted under section 132 of the Act.

36. Registers

(1) For the purposes of section 132(3) of the Act, the registers are —

(a) a borrowing register; and

(b) a financial accommodation register.

(2) The borrowing register must include the following particulars in respect of each borrowing —

(a) the amount being borrowed;

(b) the date on which the amount is borrowed;

(c) the name of the lender;

(d) reference to borrowing approval and documents;

(e) the dates instalments are due;

(f) details of repayments, including the proportions that are repayment of the principal and payment of interest.

(3) The financial accommodation register must include the following particulars in respect of each financial accommodation —

(a) the legislative authority for the Western Australian Treasury Corporation, Treasurer or other person (as applicable) to grant the financial accommodation;

(b) the name of the person granting the financial accommodation;

(c) the terms and conditions of the financial accommodation;

(d) the date on which the financial accommodation is granted;

(e) if the amount of the liability is known — that amount;

(f) if the amount of the liability is unknown — a considered and reliable estimate of the amount of the liability;

(g) the circumstance under which the financial accommodation may be invoked;

(h) the date on which the financial accommodation will expire;

(i) the form of security associated with the financial accommodation;

(j) the purpose of the financial accommodation.

37. Periodicity of external review of board performance

For the purposes of section 25(2)(a) of the Act, the GTE's performance must be externally reviewed once every 3 years.

38. Threshold for significant transactions

For the purposes of section 100(1) of the Act, the amount is the lesser of —

(a) 5% of the written down value of the consolidated fixed assets and investments of the GTE, as appearing in its last audited accounts; and

(b) $25 million.

Part 4 — Other regulations amended

Division 1 — *Electricity Corporations (Electricity Generation and Retail Corporation) Regulations 2013* amended

39. Regulations amended

This Division amends the *Electricity Corporations (Electricity Generation and Retail Corporation) Regulations 2013*.

40. Regulation 7 deleted

Delete regulation 7.

Division 2 — *Western Australian Land Authority Regulations 1999* amended

41. Regulations amended

This Division amends the *Western Australian Land Authority Regulations 1999*.

42. Part 3A deleted

Delete Part 3A.

Notes

This is a compilation of the *Government Trading Enterprises Regulations 2023* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Citation	Published	Commencement
Government Trading Enterprises Regulations 2023	SL 2023/100 30 Jun 2023	1 Jul 2023 (see r. 2)
Government Trading Enterprises Amendment Regulations 2024	SL 2024/17 21 Feb 2024	r. 1 and 2: 21 Feb 2024 (see r. 2(a)); Regulations other than r. 1 and 2: 22 Feb 2024 (see r. 2(b))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Subsidiary legislation as made* on the WA Legislation website.

Citation	Published	Commencement
Government Trading Enterprises Amendment (External Reporting Australia) Regulations 2026 r. 3 and 4	SL 2026/238 25 Nov 2026	1 Dec 2026 (see r. 2(b))

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
auditor	13(1)
chief financial officer function	3(1), 4(1) and (2)

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