

C. CONTINGENT ASSETS AND LIABILITIES

The NSW Government monitors and reports on its contingent assets and liabilities to assess the potential impact on the State's financial position. Unlike assets and liabilities that are recognised on the general government balance sheet, contingent assets and liabilities are uncertain and depend on a particular event occurring before being realised (see Box C.1 for technical definitions of contingent assets and liabilities). For a number of the general government's contingent liabilities, an equal and offsetting contingent asset may also exist.

If, at some point, a contingent asset or liability meets the criteria for balance sheet recognition, the asset or liability will be recorded on the balance sheet and will cease to be considered contingent. The recognition of a contingent asset or liability on the State's balance sheet may have a significant impact on the State's finances. By identifying and, where possible, quantifying these contingent assets and liabilities, the NSW Government can take proactive measures to effectively manage its risks and financial obligations before they materialise.

Box C.1: Accounting definition of contingent assets and liabilities

Accounting standard AASB 137 Provisions, Contingent Liabilities and Contingent Assets (AASB 137) defines:

A contingent asset as:

- a *possible asset* that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or *more uncertain future events not wholly within the control of the entity*. A contingent asset is only disclosed if an inflow of economic benefits is probable.

A contingent liability as:

- a *possible obligation* that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more *uncertain future events not wholly within the control of the entity* or
- a *present obligation* that arises from past events but is not recognised because:
 - it is *not probable* that an outflow of resources embodying economic benefits will be required to settle the obligation or
 - the amount of the obligation *cannot be measured* with sufficient reliability.

Contingent assets and liabilities are classified as either:

- quantifiable, where their financial value is known or can be reliably estimated or
- non-quantifiable, where their financial value cannot be reliably determined.

This Appendix provides analysis on both categories.

C.1 Contingent assets

In accordance with AASB 137, the general government's contingent assets are disclosed when their realisation is deemed probable. This means the uncertain future event which they are contingent upon is more likely than not to occur. A contingent asset will be recognised as an asset on the balance sheet if it either materialises or becomes virtually certain to result in an inflow of economic benefits.

Table C.1 lists the general government sector's quantifiable contingent assets as at 30 June 2023 (and for comparison, 30 April 2022).

Table C.1: General government quantifiable contingent assets

As at:	General Government Sector	
	30 April 2022 \$m	30 June 2023 \$m
Aboriginal Housing Office ^(a)	2	0
Industry, Skills and Regional Development ^(b)	0	0
Service NSW ^(c)	0	103
	2	103

(a) As part of the Housing Aboriginal Communities Program, there were properties the Aboriginal Housing Office did not have definitive control over. They have since been recognised, as full control has been established.

(b) A contingent asset with an estimated value of \$231 million was disclosed in the 2022-23 Budget Paper No.1 due to a reporting error. In recognition of this error and there being no new contingent assets to report, values of \$0 have been stated as at 30 April 2022 and 30 June 2023.

(c) Service NSW is seeking the recovery of funds relating to various COVID support measures that were paid out through fraud or error with an estimated value of \$93 million and pending bank recalls undergoing further investigations estimated at \$10 million.

Table C.2 lists the general government sector's non-quantifiable contingent assets as at 30 June 2023.

Table C.2: General government non-quantifiable contingent assets

Contingent Asset	Nature of the contingent asset
Eastern Creek Alternative Waste Treatment Plant	The Crown in right of the State of New South Wales is the beneficiary of a guarantee, which fully offsets the corresponding contingent liability. The contingent asset will be recognised if the guarantee is executed.
HIH Insurance Recoveries	Potential proceeds from the liquidation of HIH Insurance.
Land Acquisition Reimbursements	The State will seek reimbursement of various land acquisition costs through the Special Infrastructure Contribution levy and development contributions. The funds will take several years to raise.
Insurance claims	The State has submitted various insurance claims due to losses that have occurred. This includes claims related to the COVID pandemic, damage to physical assets caused by bushfires and floods, and workers' compensation.
Litigation claims	The State has commenced various legal actions in the normal course of business. The type and amount of compensation is dependent on the outcome of the legal processes.
Smart and Skilled payments	Potential Smart and Skilled payments arising from historical data submissions.
Sale of Macquarie Generation	Various recovery receivables, claims and proceedings were transferred to the State during the electricity generator sale.
Sale of Vales Point Power Station	Land would be returned to the State by the exercise of an option under the hand-back deed by the counterparty.
Transactions related to Port Botany, Enfield, Port Kembla and Port of Newcastle	<p>Long-term leases of land and fixtures which give rise to the following contingent assets:</p> <ul style="list-style-type: none"> • If the leases are terminated, the State will regain possession of the port's land and chattels. • The State holds a bank guarantee from the lessee to cover any environmental liabilities and obligations that the lessee breaches and fails to remedy, thereby offsetting the State's contingent liability.
Unspent Grant Monies	The State may be entitled to receive refunds of unspent grant monies from grantees. These refunds may occur in circumstances such as withdrawals from grant programs by grantees or where grantees are unable to achieve milestones within acceptable timeframes.

C.2 Contingent liabilities

Table C.3 lists the general government sector's quantifiable contingent liabilities as at 30 June 2023 (and for comparison, 30 April 2022).

Table C.3: General government quantifiable contingent liabilities

As at:	General Government Sector	
	30 April 2022 \$m	30 June 2023 \$m
Department of Communities and Justice ^(a) (Claims in respect of compensation and others)	1,177	1,225
Department of Customer Service ^{(b)(c)}	9	3
Department of Planning and Environment ^(d)	100	100
Office of the Independent Review Officer ^(e)	134	135
Planning Ministerial Corporation ^(f) (Land acquisitions)	177	64
Transport for NSW ^(g) (Land acquisitions, contractual disputes)	1,582	859
Other Agencies	0	0
	3,179	2,387

(a) The Victims' Support Scheme was created on 3 June 2013 through the *Victims' Rights and Support Act 2013*.

Additionally, various claims totaling \$56.1 million have also been made against the Department, which, if successful, would be met from the NSW Treasury Managed Fund (TMF) and Solvency Fund.

(b) The Torrens Assurance Fund is a statutory compensation scheme designed to compensate people who, through no fault of their own, suffer loss or damage as a result of the operation of the *Real Property Act 1900 (RPA)* operated by the Department of Customer Service.

(c) NSW Fair Trading has commenced a number of prosecutions and civil administration matters. If the claims fail, the Department of Customer Service may be ordered to pay costs not covered by the TMF.

(d) The Department of Planning and Environment has provided support for the obligations of a third party where it may be called upon to settle a debt obligation in the future. This may occur if the borrower is not able to service its debt.

(e) Independent Legal Assistance and Review Service grants are managed and administered by the Office of Independent Review Officer. It allows Approved Lawyers to apply for funding to provide injured eligible workers with legal advice about, and assistance to pursue, workers' compensation rights and entitlements. These contingent liabilities have been estimated using a demand and expenditure forecasting model. Please note this contingent liability existed at 30 April 2022, but was not reported. The estimated amount for the previous reporting period has been provided for comparison.

(f) Land acquisition offers which are dependent on the actions of the landowners to either accept or reject the Corporation's offer. Offers to purchase made by the Corporation lapse if the landowner does not accept the offer.

(g) Transport for NSW has several contractual disputes with an estimated contingent liability of \$35 million and an estimated \$825 million of contingent liabilities. This is due to a number of compulsory property acquisition matters currently under litigation, where claims differ from the Valuer General's determined amount.

The State faces a range of potential obligations that are non-quantifiable, which have been broadly grouped into the following categories:

- commercial transactions
- other contingent liabilities.

As set out in Table C.4, the general government sector has non-quantifiable contingent liabilities relating to commercial transactions. For example, under several energy transactions, the Government provided limited general warranties to purchasers and lessees. The Government has also provided indemnities for the costs associated with remediating pre-existing contamination at several power station sites where required by an Environmental Authority.

The annual *Report on State Finances* contains other non-quantifiable contingent liabilities that may not be disclosed in the budget.

Table C.4: Commercial transaction-related non-quantifiable contingent liabilities

Transactions	Nature of the contingent liabilities
Transactions related to Delta Electricity's Western Assets, Eraring Energy, Vales Point Power Station, Colongra Power Station, Macquarie Generation and Green State Power	<p>Various contingent liabilities, including:</p> <ul style="list-style-type: none"> • pre-completion contamination and land remediation liability • general warranties • coal haul road liability • ash dam liability • where the land is returned to the State by the exercise of an option under the hand-back deed, remediation of Vales Point and Site Land • Barnard River Scheme native title indemnity • Deeds of Indemnity for directors and senior management • formal dispute resolution proceedings.
Transactions related to facilities at Port Kembla, Port Botany, Enfield and the Port of Newcastle	The State has indemnified the lessees in respect of pre-existing environmental contamination. The State is also liable to pay limited compensation to financiers if the leases are terminated for any reason.
Transactions related to Sydney Ferries, Eraring and Delta West Power Stations	The State bears the risk of employer's superannuation guarantee contributions being insufficient to fund the defined employee benefits for certain ex-public sector employees. Indemnities have also been provided to the private sector employer in respect of certain losses suffered.
Transactions related to the lease of TransGrid, Ausgrid and Endeavour Energy	General warranties and Deed of Indemnity.

The general government sector also has non-quantifiable contingent liabilities relating to various other matters, as set out below in Table C.5.

Table C.5: *Other non-quantifiable contingent liabilities*

Contingent liabilities	Nature of the contingent liabilities
Native Title	Contingent liabilities in respect to Native Title, under both the <i>Native Title Act 1993 (Cth)</i> and the <i>Native Title (New South Wales) Act 1994</i> .
Aboriginal Land claims	Assets in the form of reserved Crown land may be reduced in value from applications made under the <i>Aboriginal Land Rights Act 1983 (NSW)</i> .
Stolen Generations Reparations Scheme	The Stolen Generations Reparations Scheme provides ex-gratia payments to living Stolen Generations survivors who were removed by, committed to, or otherwise came into the care of the New South Wales Aborigines Protection or Welfare Boards (under the <i>Aborigines Protection Act 1909 (NSW)</i> , up until the Act was repealed on 2 June 1969).
Contaminated land, buildings and infrastructure	A number of Crown land sites, buildings and infrastructure in the State have been assessed as being potentially contaminated and needing remediation. Most are subject to preliminary site investigations or clean up works which might not incur a financial liability.
Other contaminated land	The State has been made aware that soil and water sample tests have potentially elevated readings of perfluorooctane sulfonate and perfluorooctanoic acid at a number of State-owned land sites. The State is insured for any remediation work that may be required. The final remediation costs of the impacted properties remain uncertain.
Other land remediation and rehabilitation works	State agencies and corporations may be obligated to pay for remediation costs associated with the divestment of surplus land, derelict mines, and landfill sites.
Legal claims and litigation	State agencies and corporations are subject to various claims and litigation in the normal course of operations. The quantum of these claims and any associated legal costs and costs orders that may be incurred cannot accurately be determined.
Refunds related to NSW surcharge purchaser duty and surcharge land tax	It has been determined that NSW surcharge provisions are inconsistent with international tax treaties entered into by the Australian Government with certain nations. Refunds may be available to persons from, and entities affiliated with, one of the nations concerned who paid surcharge purchaser duty or surcharge land tax on or after 1 January 2021. The amount of these refunds cannot be reliably determined until the identities of customers who are potentially eligible for refunds are known.
Guarantees, indemnities and warranties	Obligations arising from guarantees, indemnities or warranties provided by the State. These contingent liabilities may become liabilities if the guaranteed event occurs.
Natural Disasters	The State is assessing damages to physical assets caused by bushfires and floods. The full extent of this cannot be estimated at this point of time.
Unclaimed money – Consolidated Fund	The State treats the receipt of unclaimed money to the Consolidated Fund as income. However, claims can be legally lodged to recoup owed moneys for several years after the money is paid into the Fund.
Luna Park Reserve Trust	The State may be liable to reimburse the lessee for the maintenance costs of heritage and infrastructure. The amount involved cannot be accurately determined as the reimbursement is subject to collection of future heritage and infrastructure operating lease income from the lessee.

Contingent liabilities	Nature of the contingent liabilities
Land Acquisition	Claims have been made against the State for compensation for land acquired under the <i>Land Acquisition (Just Terms Compensation) Act 1991 (NSW)</i> .
Contracts with private sector parties	The Crown has guaranteed the obligations and performance of various regulatory and statutory authorities with private sector contracts.
Guarantee on local government loans	The Crown provides NSW Treasury Corporation with an indemnity for its loans to local governments.
Other government guarantees	The Crown has provided government guarantees to give financial support and facilitate certain services.
