

C. CONTINGENT ASSETS AND LIABILITIES

To support its underlying practice of strong financial management, the NSW Government monitors and reports on its contingent assets and liabilities. Unlike recognised assets and liabilities, 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 State's contingent liabilities, an equal but offsetting contingent asset may also exist.

If a contingent asset or liability becomes likely to materialise, then the asset or liability would be recognised on the balance sheet and cease to be considered contingent. The recognition of a contingent asset or liability on the State's balance sheet could have a significant impact on the State's finances. By identifying and, where possible, quantifying these contingent assets and liabilities, the Government can better manage its risks and opportunities.

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

Accounting standard AASB 137 *Provisions, Contingent Liabilities and Contingent Assets* 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 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 reasonably estimated, or
- non-quantifiable, where their financial value cannot be reasonably determined.

This Appendix provides analysis on both categories.

C.1 Contingent assets

Table C.1 lists the general government sector's quantifiable contingent assets as at 30 April 2021.

Table C.1: General government quantifiable contingent assets

	General Government Sector	
	2020-21 ^(c)	2021-22 ^(d)
	\$m	\$m
Planning Ministerial Corporation ^(a) (Land acquisitions)	167	120
Other Agencies	28	5,079 ^(b)
	196	5,199

- (a) In the 2020-21 Budget, the Planning Ministerial Corporation was included in the 'Other Agencies' category. These land acquisition offers 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.
- (b) The 2021-22 Budget will be the first Budget year that the general government sector's performance bonds and other instruments of assurance have been materially reported. These contingent assets will only be recognised if a contingent liability related to them is also recognised.
- (c) As at reporting date of 30 September 2020.
- (d) As at reporting date of 30 April 2021.

Table C.2 lists the general government sector's non-quantifiable contingent assets.

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 holds a guarantee, a contingent asset, which fully offsets the same contingent liability. The contingent asset will be recognised when the guarantee has been executed.
HIH Insurance	Potential proceeds relating to the liquidation of HIH Insurance.
Leases and subleases	Potential assets related to leases. In the case that a lease terminates, there is potential for a re-possession of assets subjected to leases and certain subleases.
COVID-19 claims	The State has been subjected to business interruption insurance claims for financial losses during the COVID-19 pandemic. The State is expecting to receive further payments, however, is not able to reliably estimate the amount of any future insurance recovery payments.
Insurance claims	The 2019-20 bushfires and floods across the State resulted in extensive property damages which require rectification and replacement works. The State is entitled to claims to undertake these works.
Litigation claims	The State is undertaking various legal action. The type and amount of compensation will be dependent on the outcome of the legal processes.
Transaction related to Vales Point Power Station	Where land is returned to the State by the exercise of an option under the hand-back deed by the counterparty.

C.2 Contingent liabilities

Table C.3 lists the general government's quantifiable contingent liabilities as at 30 April 2021.

Table C.3: General government quantifiable contingent liabilities

	General Government Sector	
	2020-21 ^(h)	2021-22 ⁽ⁱ⁾
	\$m	\$m
Department of Communities and Justice ^(a) (Claims in Respect of Compensation and Others)	670	933
Department of Customer Service ^(b)	13	13
Department of Planning, Industry and Environment ^(c)	0	100
Planning Ministerial Corporation ^(d) (Land acquisitions)	167	120
Roads Retained Interest Pty Ltd ^(e) (Equity Commitment Deed)	604	0
Transport for NSW ^(f) (Land acquisitions, contractual disputes)	1,435	828
Other Agencies	42	25
	2,931^(g)	2,019

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

(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. This has been amended to reflect updated information in the 2020-21 Budget figures.

(c) The Department of Planning, Industry 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.

(d) In the 2020-21 Budget, the Planning Ministerial Corporation was included in the 'Other Agencies' category. These land acquisition offers 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.

(e) No contingent liability for Roads Retained Interest Pty Ltd is reported in 2021-22, as all commitments have been recognised in Budget forecasts.

(f) Transport for NSW has several contractual disputes with an estimated contingent liability of \$568 million and an estimated \$259 million contingent liabilities due to a number of compulsory property acquisition matters currently under litigation where claims differ from the Valuer General's determined amount.

(g) The 2020-21 Budget reporting year has been amended to reflect updated information provided to the State.

(h) As at reporting date of 30 September 2020.

(i) As at reporting date of 30 April 2021.

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

- commercial transactions, and
- other contingent liabilities.

As set out in Table C.4, the general government sector has non-quantifiable contingent liabilities relating to commercial transactions. As an 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 reported 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 and Macquarie Generation	<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 • Deed of Indemnity for directors and senior management.
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.
Sale of Pacific Power International	The State must compensate the trustee of the Energy Industry Superannuation Scheme funds for a shortfall of assets in the reserves of the fund related to the transfer of defined benefit scheme membership to Aurecon.
Transactions related to Sydney Ferries, Eraring and Delta West Power Stations	The State bears the risk of the 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 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> .
Contaminated land	A number of Crown land sites 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 (PFOS) and perfluorooctanoic acid (PFOA) 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.
Litigation	State agencies and corporations are subject to various claims and litigation in the normal course of operations. The quantum of these claims cannot accurately be determined.
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.
StateFleet interest rate exposure	The Government's motor vehicles are financed by an internal arrangement managed by StateFleet and funded by TCorp. The facility is funded through a portfolio of debt.
Myuna Bay Sport and Recreation Centre	Myuna Bay Sport and Recreation Centre was closed due to safety concerns relating to the nearby Eraring Ash Dam. The financial impact relating to continued operating costs incurred while a new facility is built are still to be quantified and agreed on.
Allianz Stadium disclosures	Allianz Stadium is being redeveloped by the State. As such, events that were held at Allianz have been relocated to other venues in NSW. The State entered into contractual commitments for costs related to the redevelopment. The financial impacts related to this cannot be estimated at this point of time.
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> .
Underpayments related to Pre-Injury Average Weekly Earnings (PIAWE) for injured workers covered under the Treasury Managed Fund (TMF)	A targeted review designed to identify and remediate, if necessary, instances of under payment of weekly compensation benefits to government workers as a result of issues with the calculation of PIAWE benefits is underway, with some recipients already having their payments made. It is currently not possible to put an estimate on the remaining claims.
Contracts with private sector parties	The State has guaranteed the obligations and performance of various statutory authorities with private sector party contracts.
Guarantee on local government loans	The State provides TCorp with a guarantee for its loans to local governments.
Other government guarantees	The State has provided government guarantees to give financial support and facilitate certain services. These constitute contingent liabilities.