

C. CONTINGENT ASSETS AND LIABILITIES

Contingent assets and liabilities are possible assets and obligations that arise from past events and their existence will only be confirmed by the occurrence or non-occurrence of uncertain future events that are not wholly within the control of the Government. In the case of contingent liabilities, the obligation may also be a present obligation that is not recognised because the amount of the obligation cannot be measured with sufficient reliability. Contingent assets and liabilities are defined in accounting standard AASB 137 *Provisions, Contingent Liabilities and Contingent Assets*.

If a contingent asset or liability becomes sufficiently likely or quantifiable, 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 risks and opportunities.

Contingent assets

Contingent assets are classified as either:

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

Table C.1 lists the general government's quantifiable contingent assets as at 30 September 2020.

Table C.1: General government quantifiable contingent assets

	General Government Sector	
	2020-21 ^(c)	2019-20 ^(d)
	\$m	\$m
Transport for NSW (Transport for NSW initiated claims)	4	0
Aboriginal Housing Office ^(a)	5	5
Planning Ministerial Corporation ^(b) (Land acquisitions)	167	185
Other Agencies	20	0
	196	190

(a) As part of the Housing Aboriginal Communities Program, there were 15 properties that the Aboriginal Housing Office does not have definitive control over. As a result, they will not be recognised until such time as full control is established.

(b) As of 30 September 2020, the Planning Ministerial Corporation had made offers to purchase properties totalling \$167 million. These 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.

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

(d) As at reporting date of 30 June 2020.

Non-quantifiable contingent assets

Table C.2 lists the general government'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 Entity holds a guarantee, a contingent asset, which fully offsets the same contingent liability. The contingent asset arises 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.
Business interruption insurance claims	The State has submitted a business interruption insurance claim for financial losses during the Commonwealth and State Government restriction on cruise ships due to COVID-19. An interim insurance recovery payment has been received but further losses are unknown at this stage due to the length of the ban which would require further payments.

Contingent liabilities

Contingent liabilities are also classified as either quantifiable or non-quantifiable. Table C.3 lists the general government's quantifiable contingent liabilities as at 30 September 2020.

Table C.3: General government quantifiable contingent liabilities

	General Government Sector	
	2020-21 ^(f)	2019-20 ^(g)
	\$m	\$m
Department of Communities and Justice ^(a) (Claims in Respect of Compensation and Others)	670	566
Transport for NSW ^{(b)(c)} (Land acquisitions, contractual disputes)	1,435	1,435
Service NSW ^(d) (Litigation)	7	0
Roads Retained Interest Pty Ltd ^(e) (Equity Commitment Deed)	604	655
Other Agencies	202	220
	2,918	2,877

- (a) The Victims' Support Scheme (VSS) was created on 3 June 2013 through legislation known as the *Victims' Rights and Support Act 2013*. The amount attributable under the VSS could reasonably lie within the range of \$314 million to \$536 million.
- (b) Transport for NSW has several contractual disputes with an estimated contingent liability of \$399 million and an estimated \$1,036 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.
- (c) Please note that Roads and Maritime Services was abolished on 1 December 2019 by the *Transport Administration Amendment (RMS Dissolution) Act 2019*. On abolition, the assets, rights and liabilities (including contingent liabilities) were transferred to Transport for NSW.
- (d) In April 2020, Service NSW alerted police and authorities to a cyber-attack that has potentially compromised customer information. Investigations into this matter are still ongoing however, Service NSW is expected to incur legal and investigation costs of approximately \$7 million.
- (e) The Roads Retained Interest Pty Ltd is a party to the Equity Commitment Deed with the WestConnex Group. There is currently no present obligation to contribute to equity. Depending on the extent of the borrowings, and the future construction profile of the WestConnex Group, a call may be made on the Corporation for an equity contribution.
- (f) As at reporting date of 30 September 2020.
- (g) As at reporting date of 30 June 2020.

Non-quantifiable contingent liabilities

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

- commercial transaction
- other contingent liabilities.

As set out in Table C.4, the general government 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 retained responsibility for the costs associated with remediating pre-existing contamination at several power station sites. The 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 an option is exercised 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 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> .
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 of soil and water sample tests of 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 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. There are significant risks to the Centre if the dam wall breaks. 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	The control of Allianz Stadium was handed to the State for the development of a new stadium. 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 development. The financial impacts related to this can not be estimated at this point of time.
NSW Treasury Corporation (TCorp) ¹	TCorp has made undertakings on behalf of other government authorities for their performance under contracts with third parties, which are recoverable from the government authority participants.
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)	A targeted review designed to identify and remediate, if necessary, instances of under payment of weekly compensation benefits as a result of issues with the calculation of PIAWE benefits is being considered. It is currently not possible to put an estimate on these 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 on all loans to local governments.

¹ The State has a triple-A credit rating, representing an extremely remote chance of default on any borrowings. For this reason, Government Entities' borrowings are not considered contingent liabilities.

Contingent liabilities	Nature of the contingent liabilities
Other government guarantees	The State has provided government guarantees to give financial support and facilitate certain services. These constitute contingent liabilities.
Bushfires	Bushfires across national parks have resulted in extensive property damages, which are being assessed and will require make safe, rectification and replacement works over the next few years. The potential impact in property values cannot be estimated at this point of time.
University Guarantee Scheme	The State established a scheme to guarantee commercial loans from financial institutions to NSW Universities to assist with the impacts of COVID-19. The Government is currently processing applications from NSW Universities and will begin to recognise the contingent liabilities once the guarantees have been issued. The total contingent liability possible under the program is \$750 million.