

## C. CONTINGENT ASSETS AND LIABILITIES

To support improved balance sheet management, government is reporting on its contingent assets and liabilities in the Budget for the first time. Unlike more well-known 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).

The realisation of a contingent asset or liability can significantly impact the State's budget. By identifying and, where possible, quantifying these contingent assets and liabilities, government is able to better manage 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**

Contingent assets 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.

The State has no material, quantifiable contingent assets reported at 31 March 2018.

## Non-quantifiable contingent assets

Table C.1 notes the State's non-quantifiable contingent assets.

Table C.1: General government non-quantifiable contingent assets

Contingent Asset	Nature of the contingent asset
HIH Insurance	Potential proceeds relating to the liquidation of HIH Insurance.
Data Centre Reform Project	In the event the Government is obliged to make a payment to the financier, it is entitled to be reimbursed by the lessor, or holds recourse to security over the data centre and related assets.
Eastern Creek Alternative Waste Treatment Plant	The Crown Entity holds a guarantee, a contingent asset, which fully offsets the same contingent liability.
Asbestos Injury Compensation Fund	A contingent asset exists due to potential future loans the State may be required to make to the Fund through the existing lending facility.

## Contingent liabilities

Contingent liabilities are also classified as either quantifiable or non-quantifiable. Table C.2 lists the State's quantifiable contingent liabilities at 31 March 2018.

Table C.2: General government quantifiable contingent liabilities

	General Government Sector	
	2017-18 <sup>(c)</sup>	2016-17
	\$m	\$m
Department of Justice <sup>(a)</sup> (Claims in Respect of Compensation and Litigation)	492	463
Roads and Maritime Services (Land Acquisitions and Other)	974	701
Department of Education <sup>(b)</sup> (Contractual Claims, Litigation and Other)	327	0
Other Agencies	58	9
	<b>1,851</b>	<b>1,173</b>

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

(b) The Public Service Association (PSA) has filed an award hearing with the Industrial Relations Commission (IRC) seeking an increase in pay of 35 per cent for all Support Administration Staff (SAS). If awarded in full this is estimated to be \$327 million for fiscal 2017-18, or \$1.1 billion over a three year period.

(c) As of reporting date at 31 March 2018.

## 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 transactions
- other contingent liabilities.

As set out in Table C.3, the State is party to non-quantifiable contingent liabilities relating to commercial transactions. As an example, under several energy transactions government provided limited general warranties to purchasers and lessees. Government has also retained responsibility for the costs associated with remediating pre-existing contamination at several power station sites.

*Table C.3: Commercial transaction-related non-quantifiable contingent liabilities*

Transactions	Nature of the contingent liabilities
Transactions related to: <ul style="list-style-type: none"> <li>• Delta Electricity's Western Assets, Ering Energy, Vales Point Power Station, Colongra Power Station and Macquarie Generation</li> </ul>	Various contingent liabilities, including: <ul style="list-style-type: none"> <li>• Pre-completion contamination and land remediation liability</li> <li>• General Warranties</li> <li>• Coal haul road liability</li> <li>• Ash dam liability</li> <li>• Where an option is exercised under the handback deed, remediation of Vales Point and Site Land</li> <li>• Barnard River Scheme native title indemnity</li> <li>• Deed of indemnity for Directors and senior management</li> </ul>
Transactions related to facilities at Port Kembla, Port Botany and Enfield and the Port of Newcastle	<ul style="list-style-type: none"> <li>• The State has indemnified the lessees in respect of pre-existing environmental contamination.</li> </ul>
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, Ering 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	<ul style="list-style-type: none"> <li>• General Warranties</li> <li>• Deed of Indemnity</li> </ul>

The State also holds non-quantifiable contingent liabilities relating to various other matters, as set out below in Table C.4.

Table C.4: 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 Reparation Scheme	Stolen Generations survivors may seek remediation from the Stolen Generations Reparation Scheme. Due to timing, probability and uncertainty of the total numbers of claimants, reliable costs are unable to be estimated.
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.
Data Centre Reform Project	Government is party to a Tripartite Deed with respect to finance facilities provided to the lessor and has a contingent liability to the financier.
Litigation <sup>1</sup>	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.
NSW Treasury Corporation (TCorp) <sup>2</sup>	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</i> .
Asbestos Injury Compensation Fund	The State has issued a loan facility to the Asbestos Injury Compensation Fund. In October 2016, other Australian jurisdictions agreed to share the default risk.
Contracts with private sector parties	The Government has guaranteed the obligations and performance of various statutory authorities with private sector party contracts.

<sup>1</sup> Acciona, the company delivering the CBD and South East Light Rail filed a lawsuit against Transport for NSW in the NSW Supreme Court in April 2018.

<sup>2</sup> The State has a AAA credit rating, representing the extremely remote chance of default on any borrowings. For this reason, Government Entities' borrowings are not considered contingent liabilities.