FINANCIAL AUDIT

22 DECEMBER 2022

State Finances 2022

NEW SOUTH WALES AUDITOR-GENERAL'S REPORT

audit office
OF NEW SOUTH WALES

THE ROLE OF THE AUDITOR-GENERAL

The roles and responsibilities of the Auditor-General, and hence the Audit Office, are set out in the *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

We conduct financial or 'attest' audits of state public sector and local government entities' financial statements. We also audit the Consolidated State Financial Statements, a consolidation of all state public sector agencies' financial statements.

Financial audits are designed to add credibility to financial statements, enhancing their value to end-users. Also, the existence of such audits provides a constant stimulus to entities to ensure sound financial management.

Following a financial audit the Audit Office issues a variety of reports to entities and reports periodically to Parliament. In combination, these reports give opinions on the truth and fairness of financial statements, and comment on entity internal controls and governance, and compliance with certain laws, regulations and government directives. They may comment on financial prudence, probity and waste, and recommend operational improvements.

We also conduct performance audits. These examine whether an entity is carrying out its activities effectively and doing so economically and efficiently and in compliance with relevant laws. Audits may cover all or parts of an entity's operations, or consider particular issues across a number of entities.

As well as financial and performance audits, the Auditor-General carries out special reviews, compliance engagements and audits requested under section 27B(3) of the *Government Sector Audit Act 1983,* and section 421E of the *Local Government Act 1993*.

AUDITOR-GENERAL
NEW SOUTH WALES

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In accordance with section 52A of the *Government Sector Audit Act 1983*, I present a report titled **'State Finances 2022'.**

Ian Goodwin
Deputy Auditor-General
22 December 2022

RECONCILIATION COMMITMENT STATEMENT

The Audit Office of New South Wales pay our respect and recognise Aboriginal people as the traditional custodians of the land in NSW.

We recognise that Aboriginal people, as custodians, have a spiritual, social and cultural connection with their lands and waters, and have made and continue to make a rich, unique and lasting contribution to the State. We are committed to continue learning about Aboriginal and Torres Strait Islander peoples' history and culture.

We honour and thank the traditional owners of the land on which our office is located, the Gadigal people of the Eora nation, and the traditional owners of the lands on which our staff live and work. We pay our respects to their Elders past and present, and to the next generation of leaders.

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OF NEW SOUTH WALES

Banner image: 'Yarning Circle' by Caitlin Liddle, Audit Office Indigenous Internship Program participant used with permission.

contents

State Finances 2022

Section one

State Finances 2022

This report analyses the results of our audits of the State Finances agencies for the year ended 30 June 2022.

1. Auditor-General's introduction

Pursuant to section 52A of the *Government Sector Audit Act 1983* I am pleased to present my Auditor-General's Report on State Finances 2022.

Once again this year has presented considerable challenges for the state sector and my Office as we collectively grapple with uncertainties related to COVID-19 and the disruption of emergency events impacting New South Wales. In addition, there were many recommendations arising from last year's audit to be addressed.

While there is more to do to ensure good financial stewardship of the State, resolution of matters was helped by constructive engagement with the NSW Treasury at the most senior levels. Personally I wish to thank the Treasurer and Secretary for their commitment to instilling integrity in financial management systems and processes. The support Treasury provided for recent amendments to the *Government Sector Audit Act 1983* to provide 'follow the dollar' powers and other changes recommended by the Public Accounts Committee quadrennial review of my Office is also acknowledged.

Finally I want to thank the teams that contributed to this year's audit of the Total State Accounts for their diligence, professionalism and commitment. I am very proud of your work.

AUDITOR-GENERAL NEW SOUTH WALES

Margaret Crawford
Auditor-General for New South Wales

2. Audit result

The Independent Auditor's Report was qualified and also included an emphasis of matter

The audit opinion on the State's 2021–22 financial statements was modified. The delayed signing of the NSW Total State Sector Accounts (TSSA) by NSW Treasury was in order to resolve significant accounting issues that were material to the TSSA. The key areas requiring significant audit effort included reviewing the State's accounting for TCorp Investment Management (IM) Funds and responding to the risks related to the Catholic Metropolitan Cemeteries Trust (CMCT) denying access to its management and books and records, which is detailed in this Report.

NSW Treasury aimed to sign the TSSA by 19 October 2022. This was delayed by nearly six weeks and the TSSA audit opinion was subsequently signed on the statutory deadline imposed on the Treasurer for tabling of the TSSA in the Legislative Assembly of 30 November 2022.

The Independent Auditor’s Report was modified due to a limitation of scope on the balances consolidated in the TSSA relating to the CMCT

The opinion in the Independent Auditor’s Report was modified with a limitation of scope due to the inability to access management, books and records of a controlled entity, the CMCT.

This year, NSW Treasury, after reconsidering all facts and the perspectives of the CMCT, reconfirmed that the CMCT is a controlled entity of the State for financial reporting purposes. This means CMCT is a GSF agency under the provisions of the *Government Sector Finance Act 2018* (GSF Act). As such NSW Treasury is required by Australian Accounting Standards to consolidate the CMCT into the Total State Sector Accounts (TSSA). The value of assets and liabilities of CMCT consolidated into the TSSA is $310.3 million and $15.1 million, respectively, and the loss of CMCT consolidated into the TSSA for the year is $2.4 million.

To date, CMCT has not met its statutory obligations to prepare financial statements under the GSF Act and give them to the Auditor-General. CMCT has not submitted its financial statements to the Auditor-General for audit as required despite repeated requests and has not provided access to its books and records for the purposes of a financial audit. The Secretary of the Department of Planning and Environment wrote to CMCT to request it work with, and offer full assistance to, the Auditor-General in the exercise of her duties.

NSW Treasury has met with and considered CMCT's perspectives. NSW Treasury’s position remains that CMCT is a controlled entity of the State for financial reporting purposes. Consequently, CMCT has not met its statutory obligations as a controlled entity to submit its financial statements for audit and provide access to its books and records. Therefore, the Audit Office was unable to obtain sufficient appropriate audit evidence about the carrying amount of assets and liabilities consolidated into the Total State Sector Accounts as at 30 June 2022 and of the amount of income and expenses for the year then ended. Accordingly a modified audit opinion was issued on the NSW Government's 2021–22 consolidated financial statements.

Section 3 of this report titled 'Limitation of Scope relating to CMCT' discusses this matter in further detail.

An emphasis of matter drawing attention to uncertainty relating to the General Government Sector's investment in the Transport Asset Holding Entity (TAHE) remains

The Independent Auditor’s Report also includes an emphasis of matter, drawing attention to the significant uncertainties associated with the General Government Sector's (GGS) equity investment in TAHE. The significant uncertainty relates to key assumptions used to forecast returns from investments into TAHE in order to support the recognition of the government's funding of TAHE as an equity injection.

At the time of signing the Independent Auditor's Report, there was significant uncertainty with regards to assumptions and estimates used to forecast a return from the GGS investment into TAHE, which supports the recognition of an equity injection. There is significant uncertainty relating to:

- the 2022–23 Budget committed $5.5 billion to fund TAHE's key customers, Sydney Trains and NSW Trains (the operators), to support their payment of access and license fees agreed on 23 June 2022. However, this funding only extends out to the end of the forward estimates period in 2025–26, which falls short of the ten-year contractual periods to 2030–31 and the projected period to 2045–46 to achieve a 2.5% return from the government's equity investment. The government will need to fund the operators an additional $10.2 billion in Budget funding so that they can meet their contractual obligations to TAHE from 2026–27 to 2030–31, and a further projected funding of $50.8 billion from 2031 to 2046. This additional funding is not within the government's published Budget figures, leading to uncertainty on whether the government-funded operators can pay access and license fees beyond the forward estimates period of 2025–26
- a significant portion of the projected returns are earnt outside the ten-year contract period (terminating 30 June 2031) and there is a risk that TAHE will not be able to recontract for access and licence fees at a level that is consistent with current projections. There is also a risk that funding for TAHE's key customers will not be sufficient to fund payment of access and licence fees at a level that is consistent with current projections.

The State Finances 2021 report made recommendations regarding the significant accounting issues relating to TAHE. The State's response to these recommendations are detailed in Section 4 of this report titled ‘Investment in the Transport Asset Holding Entity’. Other significant matters related to the TSSA audit are covered in Section 8 titled ‘Key audit findings’.

Other financial reporting matters

All government agencies were granted an extra week to submit financial statements for audit

A one-week extension provided agencies across the sector with additional time to resolve key accounting issues and submit financial statements for audit by 1 August 2022.

Further extensions were approved for the following seven agencies (ten in 2020–21):

- State Insurance Regulatory Authority (3 August 2022)
- Dams Safety NSW (8 August 2022)
- Jenolan Caves Reserve Trust (8 August 2022)
- Transport for NSW (8 August 2022)
- Department of Enterprise, Investment and Trade (22 August 2022)
- Transport Asset Holding Entity (22 August 2022)
- Department of Transport (26 August 2022).

Additional extensions provided agencies with more time to complete:

- asset valuations
- valuations of actuarially assessed liabilities.

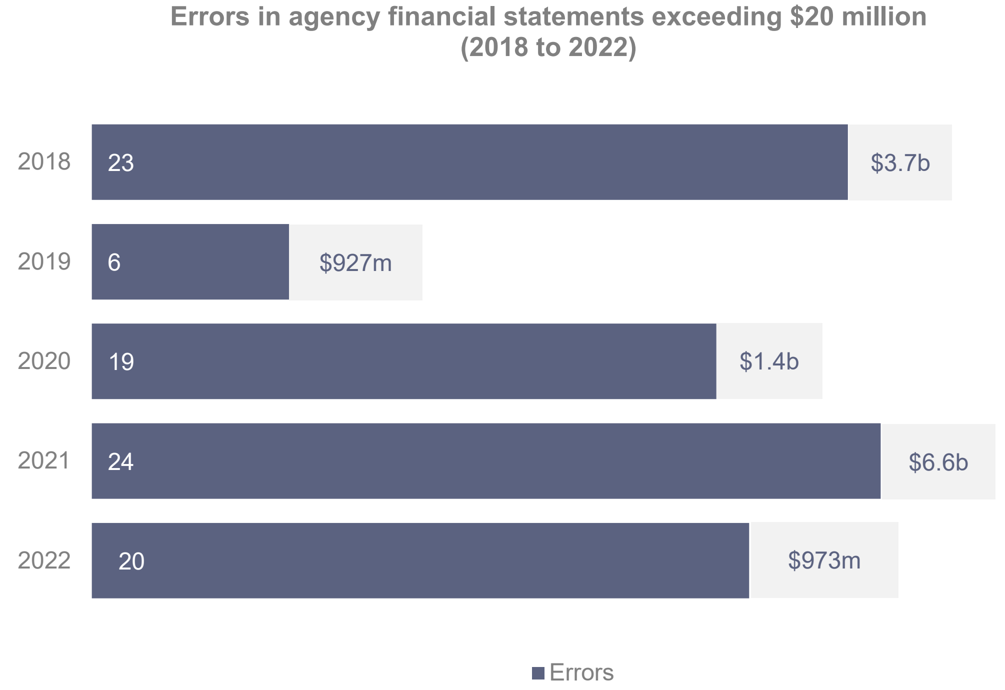
An initial draft of the TSSA was provided to audit on 15 September 2022. This version was incomplete and excluded the impact of consolidating the State's TCorp IM funds under the correct Australian Accounting Standards. An additional three versions of the draft TSSA were provided to audit progressively to update the TCorp IM fund consolidated balances. The final complete version of the TSSA was submitted on 27 October 2022 which included all adjustments relating to the TCorp IM fund consolidation. Refer to section 8.1 for more details on the material restatements relating to the consolidation of the TCorp IM funds.

In 2021–22, agency financial statements presented for audit contained 20 errors exceeding $20 million (24 in 2020–21). The total value of these errors was $973 million, a decrease from the previous year ($6.6 billion in 2020–21).

The graph below shows the number of reported errors exceeding $20 million over the past five years in agencies' financial statements presented for audit.

The errors resulted from:

- incorrect application of Australian Accounting Standards and NSW Treasury policies
- incorrect judgements and assumptions when valuing non-current physical assets and liabilities.



Status of 2021 report recommendations

Our report on State Finances for the year ended 30 June 2021 made several high-risk recommendations and one extreme risk recommendation. The table below sets out the status of action against the recommendations we made.

Recommendation	Current status
TAHE	
NSW Treasury needs to significantly improve its processes to ensure all key information is identified and shared with the Audit Office on a timely basis. This will ensure the audit has access to complete and accurate information when considering material transactions and balances of the State.	Improvements in NSW Treasury's information sharing process are still required. Critical information relating to CMCT was in the possession of NSW Treasury since late October 2021 but was not made available or discussed when reconfirming their accounting position on the State's control of CMCT this year. A further reconfirmation of the State's control over CMCT was needed by NSW Treasury to ensure this information was considered in their accounting assessment. The information sharing process will remain an extreme risk issue and NSW Treasury must ensure that its processes are improved to ensure all information relevant to the TSSA is shared with the Audit Office on a timely basis and considered when determining their accounting positions.

Recommendation	Current status
NSW Treasury needs to implement effective quality review processes over key accounting information before submitting that information to the Audit Office.	NSW Treasury demonstrated their quality review processes over internally generated information and reports from professional services firms submitted to the Audit Office. Quality issues reported in last year's State Finances report on the TAHE returns modelling such as multiple iterations, mathematical inaccuracies, errors or poor logic were not observed in 2021–22. Uncertainties relating to funding the government's investment in TAHE remain, which led to a continued emphasis of matter being raised in this year's TSSA audit opinion. The uncertainties are discussed in further detail within Section 4 of this report. Improvement is however required when preparing accounting position papers, to ensure they are submitted on a timely basis and reflect a complete and accurate understanding of the key public sector issues being considered.
NSW Treasury should: • establish a policy to determine the minimum expected rate of return on its equity injections in other public sector entities • report on the performance of its investments in other public sector entities by presenting information on how much and what type of returns the GGS is obtaining from its investments compared to its targeted return.	NSW Treasury Policy and Guidelines Paper TPG22-28 'Returns on Equity Investments' was published on 6 September 2022. This established the minimum expected return for a State Owned Corporation (SOC) that is providing additional funding via equity or a capital injection. The return must be at least equal to the long-term inflation rate target as determined by the Reserve Bank of Australia. NSW Treasury included additional information in the TSSA on the performance of its investments for each SOC. Performance information includes balances of contributed capital, dividends, tax equivalents and changes in total equity excluding contributed capital.
NSW Treasury should: • facilitate revised commercial agreements to reflect access and license fees detailed in the 18 December 2021 Heads of Agreement (HoA) • with TAHE, prepare robust projections and business plans to support returns beyond FY2031.	On 23 June 2022, TAHE signed Deeds of Variations for access and licence fee agreements with its key customers; Sydney Trains, NSW Trains and Transport for NSW. These agreements were effective from 1 July 2022. These agreements reflect the Shareholding Ministers expectations to earn a return of 2.5% on contributed equity. The total revised access and licence fees covering the financial years 2022 to 2031 for Sydney Trains and NSW Trains combined was $16,614 million. This was $520 million lower than the HoA fees of $17,134 million.

Recommendation	Current status
	In 2022, TAHE and NSW Treasury worked together on a revised model to support expected returns on investment to justify the accounting treatment of the GGS's equity investment into TAHE. Details from the TAHE returns model are included in Note 11 'Equity Investments' of the 2021–22 TSSA. There remains significant uncertainties with respect to funding assumptions used in TAHE's returns model. TAHE will require more time to demonstrate that the returns model is realistic and actual results reflect what is forecast.
Given the 18 December 2021 HoA, reliance on government funding by the NSW rail operators is most likely. It is therefore recommended that NSW Treasury liaise with the Australian Bureau of Statistics (ABS) to reconfirm the classification of NSW Trains and Sydney Trains as entities within the Public Non-Financial Corporations (PNFC) sector.	The ABS confirmed the PNFC sector classification of the NSW rail operators on 23 August 2022. Factors considered by the ABS include whether: • the entity is a separate institutional unit • the institutional unit is under government control • the institutional unit is a market or non-market producer after applying three tests: – sales to cost ratio, high proportion indicates market producer; low proportion indicates a non-market producer – government intervention – low government influence indicates market producer, strong government influence indicates non-market producer – competition – strong competition indicates a market producer, little or no competition indicates non-market producer.
Now that TAHE is operating, it is recommended that NSW Treasury liaise with the ABS to reconfirm the sector classification of TAHE.	The ABS confirmed the PNFC sector classification of TAHE on 22 July 2022.
NSW Treasury and TAHE should monitor the risk that control of TAHE assets could change in future reporting periods. TAHE must continue to demonstrate control of its assets or the current accounting presentation would need to be reconsidered.	There were no changes impacting the control of TAHE's assets in 2021–22. TAHE's operating licence was due to expire on 30 June 2023, an extension requested by TAHE was approved revising this date to 30 June 2024. NSW Treasury and TAHE will need to assess the new operating licence to determine whether there are any implications to the control of TAHE's assets. It will remain an area of audit focus in future years as the substance of the arrangements put into place need to be confirmed by observation.
NSW Treasury should consider whether there is sufficient competent oversight of its use of consultants and assess the risk of an over dependence on consultants at the cost of internal capability.	NSW Treasury updated its internal guidance when deciding to engage a consultant. The guidance emphasises approval by the NSW Treasury Secretary is required for engagements valued at over $50,000.

Recommendation	Current status
Other	
There is a high degree of estimation uncertainty regarding the impairment assessment for COVID-19 inventories (including Personal Protective Equipment). The accuracy of the underlying data with respect to best before dates requires validation through a comprehensive stocktaking approach. Key assumptions supporting the model also need to be revisited to reflect events and experience, rather than just historical data. We recommend HealthShare NSW: • review the current stocktaking methodology to incorporate validation of data, such as best before dates, which is key to the impairment model • consider recent developments and other data to help accurately predict future patterns of inventory consumption.	Improvements were observed in HealthShare NSW's impairment assessment for COVID-19 inventory. Stocktakes were performed to help validate the integrity of inventory data. This meant key inputs such as best before dates were validated before being incorporated in the 2021–22 impairment calculations. In addition to the general COVID-19 inventories impairment provision, an additional provision of $186.7 million was recognised in 2021–22 with respect to impaired Rapid Antigen Tests (RATs).
We recommend NSW Treasury: • review existing processes to capture information about services received by the State for no consideration • prepare accounting assessments on the information collected to support judgements and measurements with respect to disclosures in the financial statements of the State.	Agencies receiving Defence Assistance to the Civilian Community (DACC) in 2021–22 prepared accounting assessments to support disclosures in the financial statement. NSW Police continued to receive DACC services for no consideration in 2021–22, amounting to $27.6 million, which were not reflected in the financial statements. This was reported as a judgemental misstatement.
NSW Treasury should include more disclosure in the State's consolidated financial statements to improve reporting on the amount of equity injections invested into PNFC and Public Financial Corporations (PFC) agencies, including life to date returns received for each of these investments.	NSW Treasury included additional information in the TSSA performance of its investments for each SOC. Performance information includes balances of contributed capital, dividends, tax equivalents and changes in total equity excluding contributed capital.
NSW Treasury and the Department of Planning and Environment should ensure Crown Land Managers and Commons Trusts meet their statutory reporting obligations.	The Department of Planning and Environment (DPE) did not finalise the 2021–22 reporting exemption assessment for the 596 Category 2 Statutory Land Managers (SLMs) by the statutory reporting deadline. After the statutory reporting deadline to submit 30 June 2022 financial statements had passed, DPE assessed 551 Category 2 SLMs met the reporting exemption criteria and would therefore not be required to prepare 2021–22 financial statements. To date, none of the 45 non-exempted Category 2 SLMs have submitted their 30 June 2022 financial statements for audit.

Recommendation	Current status
	Currently there are 119 Commons Trusts in New South Wales. None of these trusts have prepared and submitted financial statements as required under the *Government Sector Finance Act 2018 (GSF Act)*. DPE needs to do more to ensure Category 2 SLMs and Commons Trusts meet their statutory reporting obligations. Reporting exemption assessments should be finalised earlier to allow sufficient time for the non-exempted SLMs to prepare and submit annual financial statements by the statutory reporting deadline. These recommendations are reported in Section 8 - 'Key audit findings'.
The NSW Government should clarify its position that the Catholic Metropolitan Cemeteries Trust (CMCT) is a controlled entity of the State.	NSW Treasury shared their initial position paper in July 2022 and concluded that the CMCT is a controlled entity of the State and therefore a GSF agency within the meaning in the GSF Act. Additional information relevant to the assessment of control of CMCT was considered which resulted in Treasury reconfirming their position in October 2022. Separate recommendations around NSW Treasury drafting timely position papers and ensuring CMCT meets its statutory obligations are included in Section 3 of this report titled 'Limitation of scope relating to CMCT'. The State has consolidated the net assets and losses of CMCT for the year within the TSSA. A limitation of scope exists on these balances as CMCT did not provide the Audit Office access to its management and books and records in order to conduct a financial audit as required by the *Government Sector Audit Act 1983*. Refer to Section 3 of this report titled 'Limitation of scope relating to CMCT'.
NSW Treasury should develop a statewide accounting policy for borrowings which ensures correct and consistent accounting treatment between agencies and sectors.	NSW Treasury has added additional guidance in NSW Treasury Policy paper TPP 21-10 'Accounting for Financial Instruments' on the practical considerations when accounting for loans/borrowings between two NSW Government agencies.
NSW Treasury should seek legislative amendments in Parliament to resolve the inconsistencies in the GSF Act and GSA Act relating to key statutory reporting timeframes.	The inconsistencies relating to key statutory timeframes have been resolved through the *Treasury Legislation Amendment (Miscellaneous) Act 2022* (Miscellaneous Act) that commenced on 1 July 2022. Section 11.2 'Amendments to key statutory timeframes in the GSF and GSA Acts' details the amendments to the GSF and GSA Acts made by the Miscellaneous Act.

Recommendation	Current status	
NSW Treasury should ensure a framework exists to monitor and provide assurance to ministers that expenditure incurred across a financial year by agencies under the relevant minister's coordination does not exceed the appropriation authority conferred by the annual Appropriation Act and the GSF Act.	To demonstrate that ministers were materially compliant with the appropriations framework, NSW Treasury required agencies to estimate expenditure incurred against the relevant ministers' appropriation limit at 30 June 2022 and 30 June 2021. This calculation is disclosed in the Summary of Compliance in the financial statements of lead departments and special offices. To address limitations in the calculation methodology above, NSW Treasury has implemented a legislative solution through the *Treasury and Energy Legislation Amendment Act 2022*. The aforementioned Act amends the GSF Act to: • deem transactions between GSF agencies as a new category of deemed appropriations from 14 November 2022 • change how ministers receive deemed appropriations, as well as the framework for ministers to delegate and monitor spending against their appropriation limits • validate cross-appropriation payments made between GSF agencies in previous years to ensure they are taken to have been made under authorised appropriations.	Fully addressed
NSW Treasury should assess how the requirement to prepare a Summary of Compliance under Australian Accounting Standards impacts relevant principal departments and agencies' financial statement disclosures.	NSW Treasury performed a review of the requirements of the appropriations framework, the requirements of Australian Accounting Standard AASB 1058 'Income of Not-for-Profit Entities' and the Summary of Compliance to ensure the disclosure requirements of this standard are satisfied.	Fully addressed
Given the continued instances of non-compliance, NSW Treasury needs to promptly improve the guidance it provides agencies to ensure that expenditure of public moneys is properly supported by authorised delegations.	NSW Treasury issued additional guidance on delegations under the GSF Act and communications on the importance of delegations and ensuring that expenditure is authorised in July 2022 and held short information sessions in August and September 2022. However instances of non-compliances were noted relating to expenditure of public moneys during the year, these are referred to in Section 11.2 'In focus'.	Fully addressed

Key — **Fully addressed** | **Partially addressed** | **Not addressed**

3. Limitation of scope relating to CMCT

NSW Treasury concluded CMCT is a controlled entity of the State

In response to our recommendation in the 'State Finances 2021' report, NSW Treasury reconfirmed that the Catholic Metropolitan Cemeteries Trust (CMCT) is a controlled entity of the State. The Audit Office accepted the position of NSW Treasury.

The reaffirmation of this position means CMCT is a GSF agency under the provisions of the *Government Sector Finance Act 2018* (GSF Act). Section 7.6 of the GSF Act places an obligation on CMCT to prepare financial statements and give them to the Auditor-General. Further, section 34 of the *Government Sector Audit Act 1983* (the GSA Act) requires the Auditor-General to furnish an audit report on these financial statements.

To date, CMCT has not met its statutory obligations to prepare financial statements under the GSF Act and give them to the Auditor-General. CMCT has not submitted their financial statements to the Auditor-General for audit despite repeated requests and has not provided access to its books and records for the purposes of a financial audit. There was extensive correspondence between the Audit Office of NSW, CMCT, NSW Treasury and the Department of Planning and Environment in 2022 regarding this matter.

Recommendation

NSW Treasury and the Department of Planning and Environment should ensure the Catholic Metropolitan Cemeteries Trust meets its statutory reporting obligations.

In addition, on 10 December 2021, the then Minister for Water, Property and Housing wrote to the Auditor-General requesting a financial and performance audit be performed pursuant to section 27B(3)(c) of the GSA Act. The audit would cover the financial affairs of CMCT, including whether funds have been used for the proper purpose. The Audit Office of New South Wales has written to CMCT on a number of occasions to request the provision of documentation and access to management in order to conduct the performance audit. CMCT has not provided the Audit Office of New South Wales access to its management, books and records for the purpose of the required performance audit.

NSW Treasury has met with and considered CMCT's perspectives. NSW Treasury's position remains that CMCT is a controlled entity of the State for financial reporting purposes. Consequently, CMCT did not meet its statutory obligations as a controlled entity to submit its financial statements for audit and provide access to its books and records.

The TSSA audit opinion included a limitation of scope

The opinion in the TSSA Independent Auditor's Report was modified with a limitation of scope due to an inability to access management and the books and records of CMCT. This limitation was appropriately disclosed in Note 1 'Statement of Significant Accounting Policies' of the TSSA. The Statement of Compliance signed by the Secretary of Treasury and the Treasurer on 29 November 2022 was also updated to acknowledge the disclosure in Note 1 regarding CMCT.

The Audit Office was unable to obtain sufficient appropriate audit evidence about the carrying amount of assets and liabilities consolidated into the Total State Sector Accounts as at 30 June 2022 and of the amount of income and expenses for the year then ended. Accordingly a modified audit opinion was issued on the NSW Government's 2021–22 consolidated financial statements.

The process of information sharing by NSW Treasury continues to require improvement

In last year's 'State Finances Report 2021' report an extreme risk management letter finding was reported for NSW Treasury to ensure it significantly improve its processes so that all relevant information is identified and shared with the Audit Office to support material transactions and balances of the State.

A number of events reconfirmed that NSW Treasury needs to continue improving its process with respect to information sharing with the Audit Office. Notably, NSW Treasury's finance team had not demonstrated that all available information (on their systems) was considered by them when assessing the State's control over CMCT.

Critical information relating to CMCT was in the possession of NSW Treasury since late October 2021 but not considered when reconfirming their accounting position on the State's control of CMCT this year. A further reconfirmation of the State's control over CMCT was needed by NSW Treasury to ensure this information was considered in their accounting assessment.

The above demonstrates that more effective consultation is required by NSW Treasury with key stakeholders to ensure all information relevant to forming an accounting position relating to the TSSA is captured. This will ensure new information is not identified late in the audit process and NSW Treasury considers all information when concluding on the accounting position of the State.

Recommendation

NSW Treasury should ensure when drafting position papers and concluding on accounting issues impacting the State, these are provided to audit on a timely basis and reflect a complete and accurate understanding of the key public sector issues being considered.

4. Investment in Transport Asset Holding Entity

Last year's report highlighted that NSW Government actions avoided a qualified opinion in 2020–21 relating to the General Government Sector's $2.4 billion cash contribution to Transport Asset Holding Entity (TAHE). These actions included the NSW Government agreeing to provide additional future funding to TAHE's key government customers Sydney Trains and NSW Trains (the operators) to support increases in access and license fees to be paid to TAHE.

The additional funding by the government was necessary to demonstrate that a reasonable expectation of a sufficient rate of return would be earned on its equity invested in TAHE. Last year, there was no government policy on what the minimum return should be on investments in other public sector entities, so the long-term inflation rate was used as a benchmark. A recommendation was made in last year's State Finances report that NSW Treasury establish a policy on the minimum expected return from its investments.

On 6 September 2022, NSW Treasury finalised its policy relating to the government's returns on equity investments. The application of this policy is limited to State Owned Corporations and similar to the Commonwealth framework for commercial businesses, which requires the expected return be at least equal to the long-term inflation rate.

The government's commitment to additional funding was conveyed last year through revised shareholder expectations being published in the 2021–22 'NSW Budget-Half yearly Review' on 16 December 2021, increasing the expected returns on equity from 1.5% to the expected long-term inflation rate of 2.5%. On 18 December 2021, Transport for NSW (TfNSW) and the operators entered into a Heads of Agreement (HoA). This formed the basis of negotiations to revise the pricing within the existing ten-year contracts and deliver upon the shareholders' expected return of 2.5% on contributed equity to be earned over the estimated weighted average remaining useful lives of TAHE's assets.

Further information on last year's audit of the government's investment in TAHE can be found in our 'State Finances 2021' report.

Ten-year commercial agreements were signed between TAHE, operators and TfNSW

Last year's State Finances report recommended that NSW Treasury facilitate revised commercial agreements to reflect the access and license fees detailed in the HoA. As these agreements were not executed by 30 June 2021, last year's audit opinion of the Total State Sector Accounts (TSSA) included an Emphasis of Matter drawing attention to the uncertainty that existed at balance date as these agreements were not finalised.

On 23 June 2022, commercial agreements were signed between TAHE, the operators and Transport for NSW through a deed of variation. The revised access and license fees for the ten-year period 2021–22 to 2030–31 was $16.6 billion, which is $520 million less than the HoA fees of $17.1 billion.

Comparison	FY22 $m	FY23 $m	FY24 $m	FY25 $m	FY26 $m	FY27 $m	FY28 $m	FY29 $m	FY30 $m	FY31 $m	Total $m
Revised commercial agreements	641.1	911.8	1,298.1	1,585	1,807.3	1,921.8	1,992	2,065.4	2,139.1	2,252.8	16,614.4
HoA	679.9	1,081.4	1,236	1,398.9	1,645.8	1,826.1	2,023.3	2,209.4	2,404.5	2,629.2	17,134.6
Difference	**(38.8)**	**(169.6)**	**62.1**	**186.1**	**161.5**	**95.7**	**(31.3)**	**(144)**	**(265.4)**	**(376.4)**	**(520.2)**

TAHE's main customers principally rely on government funding to pay access and license fees

Whilst TAHE has agreed ten-year access and license fees of $16.6 billion with its two main customers Sydney Trains and NSW Trains, these two operators significantly rely on government funding when making these payments to TAHE. At 30 June 2022, TAHE's expected return of 2.5% is contingent upon the GGS funding the operators to support their payment of access and license fees that have been agreed with TAHE for the ten-year contracted period and for non-contracted periods from 2031–32 to 2045–46.

The 2022–23 NSW Budget has allocated $5.5 billion to fund the operators, to support their payment of access and license fees. However, this funding extends to the end of the forward estimates period in 2025–26, which falls short of the ten-year contractual period to 2030–2031 and the projected period to 2045–46 to achieve the 2.5% return.

	2022–26[1] $ billion	2027–2031[2] $ billion	2032–46 $ billion	Total $ billion
Access and licence fees[3]	5.5	10.2	50.8	**66.5**

1 Represents the 2022–23 Budget year and three-year forward estimates which includes: FY2024–26.

2 Whilst excluded from the 2022–23 NSW Budget, these access and license fees are included in the ten-year commercial agreement between TAHE, operators and TfNSW.

3 Represents cumulative access and license fees for the period stated.

The government will need to fund the operators an additional $10.2 billion in budget funding to meet their contractual obligations to TAHE from 2026–27 to 2030–2031, and a further projected funding of $50.8 billion from 2032 to 2046. This is needed to ensure the government continues to demonstrate its expected return on investment of 2.5%. This additional funding is not within the government's published 2022–23 NSW Budget figures, leading to uncertainty on whether the government funded operators can pay access and licence fees beyond the forward estimate period of 2025–26.

Significant funding uncertainties remain

While the ten-year access and license fee agreements were communicated to the NSW Government's Expenditure Review Committee, it is yet to be fully provided for in the government's budget figures. As TAHE's projections are highly dependent on the operators as its key customers, it remains critical that the government continue to provide sufficient funding to the operators so they can pay for access and use of TAHE assets. This means the significant funding uncertainties reported in last year's TSSA audit opinion remain for 2021–22.

The government has estimated $37.9 billion in returns (equivalent to 2.5% on contributed equity) is to be earned from its investment in TAHE over the period from 1 July 2022 to 30 June 2046. As previously reported, TAHE derives most of its revenue from access and licence fee agreements from the operators, who in turn are both funded by grants through TfNSW from the GGS. More than 95% of these returns are estimated to be earned outside of the ten-year contract period (terminating 30 June 2031).

	2022–26[1] $ billion	2027–2031[2] $ billion	2032–46 $ billion	Total $ billion
Returns to GGS	1.8	4.7	31.5	37.9

1 Represents the 2022–23 budget year and three-year forward estimates which includes: 2023–24, 2024–25 and 2025–26.

2 Whilst excluded from the 2022–23 NSW Budget, these access and license fees are included in the ten-year commercial agreement between TAHE, operators and TfNSW.

There remains risk that:

- TAHE will not be able to re-contract for access and licence fees at a level that is consistent with current projections
- future governments' funding to TAHE's key customers will not be sufficient to fund payment of access and licence fees at a level that is consistent with current projections
- TAHE will be unable to grow its non-government revenues.

This significant funding uncertainty was also reported in last year's TSSA audit opinion and will remain for 2021–22.

In 2021–22, TAHE and NSW Treasury prepared further modelling to support the Government's intent to earn a 2.5% return inclusive of recovering the holding (revaluation) loss of $20.3 billion on its investment in TAHE

Last year's State Finances report highlighted that NSW Treasury, with TAHE, should prepare robust projections and business plans to support the expected returns forecast beyond FY2031.

This year TAHE engaged an expert to help develop a model demonstrating the government's expected returns from its investment in TAHE. The model mathematically forecasts that returns of 2.5% will be achieved by 2046 and this will include recovery of the revaluation losses of $20.3 billion relating to 2020–21.

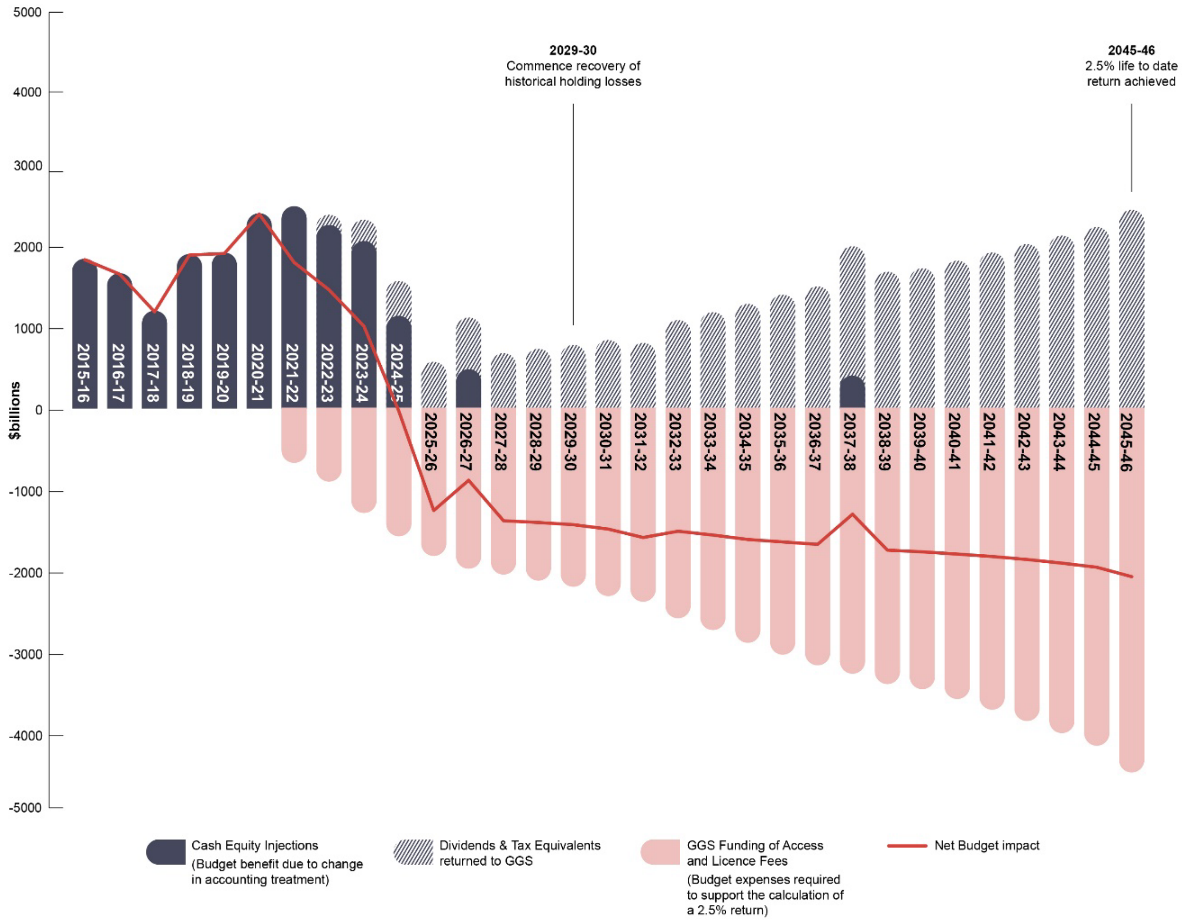
The current model includes some key assumptions:

- the main source of revenue is the access and licence fees expected from the two public rail operators (Sydney Trains and NSW Trains) contributing to more than 80% of TAHE's projected revenue. The rail operators are largely funded by the government when paying access and licence fees to TAHE.
- for the first ten years, the access and licence fees are based on the signed agreements between TAHE and the public rail operators.
- Beyond the ten-year contracted period, the model assumes existing contractual terms for access and licence fees will continue unchanged allowing for an annual rise for inflation (2.5% per annum), and increased fees to enable a 7.62% return for renewed assets.
- the capital expenditure included in the model is only the amounts approved by the Expenditure Review Committee (ERC) as part of the ten-year forecast. The model beyond ten years includes expected investment in renewed and replacement assets but excludes any forecasts relating to growth capex that is not approved by the ERC, and any related depreciation expenses for growth capex.

While management has developed a 35-year long term financial model to support the returns, we note this will need to be refined over the next few years. Furthermore, these are forecasted figures and we have not seen sufficient evidence of whether this reflects reality (that is, the achievement of dividends representing a return on equity) as it is still very early. Therefore, this will remain a high-risk matter until we have seen sufficient evidence of reality to the forecasted figures.

There is negative net impact on the budget after 2024–25 and this will grow in the future

There are some key points to highlight with this modelling and these are best conveyed with the graph below. This graph shows total cash injections made by the GGS since the government first announced the creation of TAHE as a for-profit entity in the 2015–16 NSW Budget. It also conveys the forecast returns from TAHE to the GGS and the level of funding operators will need from the GGS to pay TAHE's access and license fees over the 30-year period. These cash flows are key inputs used in the modelling which calculates a 2.5% return from TAHE inclusive of recovering the holding (revaluation) loss of $20.3 billion.



Most of the equity contributions by the GGS to TAHE are forecast to be made by FY2025. If the government continues to demonstrate a sufficient rate of return over the next three years, these transfers will not impact the budget result as they would be treated as an equity injection rather than a capital transfer expense. During this same timeframe, GGS grant funding needed to help operators pay TAHE access and license fees are their lowest and increase over the later years.

This means the funding burden of no further cash equity injections and increasing future access and license fees payable by the operators to TAHE may need to be borne by subsequent governments. This money would need to be funded by the GGS, with the risk that additional expenses to the budget result will result in later years.

The forecast returns from the government's investment in TAHE excludes income and depreciation that may occur from future capital expenditure that is yet to be considered and approved by the ERC. This means until ERC approval occurs, the modelling assumes TAHE accumulates its cash earned from the access and license fees over the years after funding investment in renewed and replacement assets.

The graph also demonstrates that TAHE only starts earning a 2.5% return from 2030. Only at this point the prior year valuation losses of $20.3 billion begin to be recovered.

Sufficient evidence that the forecast figures in the model will reflect the actual results of TAHE's operations is yet to be observed. NSW Treasury has estimated the return from its investment in TAHE to be $37.9 billion (which includes dividends, tax and undistributed profits) over the period from 1 July 2022 to 30 June 2046, assuming an annualised 2.5% growth rate in expenditure and revenue. The majority of these returns ($31.5 billion) are estimated to be generated between 2032 and 2046.

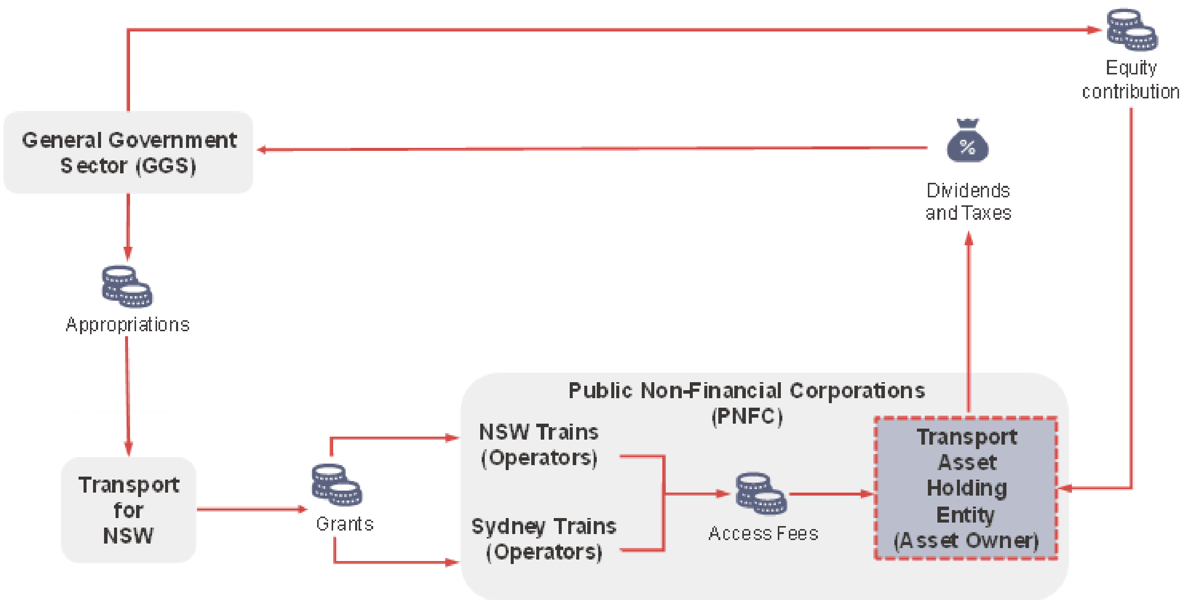
To date, TAHE has not generated a return on investment, although it did declare a dividend of $71.2 million in 2021–22. However, since TAHE did not actually make a profit in 2021–22 (loss of $412.9 million was reported) and its retained earnings were negative as well, this dividend is effectively a return *of* the government's previous investment in TAHE and not a return *on* its investment.

There is a high risk that TAHE's returns in the long-term model will not eventuate as forecast. This will remain a high-risk matter until sufficient evidence is observed of actual results over the years compared to what has been included in the forecast when assessing returns. The uncertainty has been raised as a high-risk matter in a management letter to NSW Treasury.

TAHE returns are contingent upon government funding the operators, so the circularity in flow of funds remains a concern

The returns model depends on the government continuing to fund both operators through grants from TfNSW, so that TAHE can earn access and license fees. If government funding ceases, it will be unlikely that returns of 2.5% can be achieved given the operators contribute to more than 80% of TAHE's projected revenue to 2046. The circularity in flow of funds between transport agencies in the GGS and PNFC sectors was reported in last year's State Finances report and is again shown in the diagram below.

There remains a risk that TAHE will not be able to generate a sufficient return on the NSW Government's investment without relying on increased funding to the public rail operators so they in turn can pay the higher access and licence fees. Current modelling highlights that TAHE remains largely reliant, through to 2046, on increasing fees paid by the public rail operators who remain principally reliant on GGS budget grants. What is critical to the returns model is the government continues to fund both operators through grants to TfNSW, so that TAHE can earn access and license fees. This in turn relies on an obligation for future governments to provide additional funding to public rail operators in order to preserve the treatment of government's investment in TAHE as an equity contribution.



ABS classification – TAHE and operators

Given reliance on government funding and the circularity of flow of funds for both TAHE and the operators, last year's State Finances report recommended NSW Treasury liaise with the ABS to reconfirm the PNFC sector classification of these entities.

The ABS confirmed the PNFC sector classification of the NSW rail operators on 23 August 2022. Factors considered by the ABS include whether:

- the entity is a separate institutional unit
- the institutional unit is under government control
- the institutional unit is a market or non-market producer after applying three tests:
  - sales to cost ratio – high proportion indicates market producer, low proportion indicates a non-market producer
  - government intervention – low government influence indicates market producer, strong government influence indicates non-market producer
  - competition – strong competition indicates a market producer, little or no competition indicates non-market producer.

The ABS also confirmed the PNFC sector classification of TAHE on 22 July 2022.

Valuation of TAHE assets in TAHE's accounts

TAHE continued to value its property, plant and equipment as at 30 June 2022 using a valuation approach based on its Discounted Cash Flows (DCF). Finalisation of access and licence agreements with Sydney Trains and NSW Trains prior to 30 June 2022 enabled TAHE to revise revenue (cashflow) forecasts to 2031.

The DCF model was used to determine the total fair value of Cash Generating Units (CGU) being Metropolitan Regulated Assets, Metropolitan and Regional Unregulated Assets and the Country Regional Rail Network. At 30 June 2022, the fair value of TAHE's non-current physical assets was $18.15 billion. This resulted in a revaluation increase of $54.6 million ($20.3 billion decrement in 2020–21).

Key inputs to the DCF model are the access and licence fees, which are charged to TAHE's key customers, Sydney Trains and NSW Trains, and discount rates used to present value expected cash flows.

When setting access and license fees, TAHE continues to expect a return on equity injections made to the former RailCorp from 2015–16 onwards. The assets previously granted to, or acquired by, the former RailCorp prior to 2015 are excluded when calculating access and license fees. The contracted cashflows from the licence and access fees with Sydney Trains and NSW Trains are based on the expected rate of return determined by the Shareholding ministers on the equity contributions received from 2015–16 onwards. The remaining asset base is considered to be 'gifted assets' from the government to TAHE, on the basis that the government has already paid for those assets by way of grants. TAHE continues to maintain there is no expectation from government for TAHE to generate revenue from access and licence fees from the gifted asset base. The access and licence fees set by TAHE have a significant impact on the valuation of its assets. The exclusion of the assets prior to 2015–16 when setting access and licence fees was one of the main reasons for the significant decrement of $20.3 billion in 2020–21.

The Country Regional Network continues to be valued at nil as the income it generates is far less than what it costs to operate and maintain the network. Despite TAHE being a for-profit entity, it is required to continue providing access to this network as it is required for the passenger services and freight movements to regional and interstate areas.

Control of TAHE assets

On transition of the former RailCorp to TAHE on 1 July 2020, management determined TAHE maintains accounting control of the assets held by TAHE. The Framework for the Preparation and Presentation of Financial Statements, AASB 116 'Property, Plant and Equipment' and AASB 15 'Revenue from Contracts with Customers' states that to fulfil the criteria to recognise assets, an entity must demonstrate control over them. This refers to TAHE's ability to direct the use of, and obtain substantially all of the remaining benefits from the asset. It also considers the ability to prevent other entities from directing the use of, and obtaining the benefits from an asset.

For the current year, the legal form of the arrangements established imply that TAHE has control over the assets. Collectively, in form, the legal arrangements supported TAHE's assertion over its control over the assets as at 30 June 2022. However, risks remain as TAHE is in its early stages, and the actual substance of operations will need to be observed and considered. This was included as a high-risk management letter finding for TAHE again this year.

Under the *Transport Administration Act 1988* (TAA), the functions of TAHE may only be exercised under one or more operating licences issued by the portfolio minister. The current operating licence confers terms and conditions for TAHE to carry out its functions, and imposes certain constraints on TAHE, including (but not limited to):

- railway operations not permitted
- transport services not permitted
- TAHE must not carry out maintenance of its assets.

Such operating licences are short term in nature, and the TAA allows the portfolio minister to grant one or more operating licences to TAHE and may amend, substitute, or impose or revoke conditions of the operating licence. Furthermore, the Statement of Expectations issued by the portfolio minister outlines the minister's expectations of TAHE in ensuring the government's priorities for the transport sector are met.

Given the restrictions that can be placed on the entity through the operating licence, and the ability to make further changes to the operating licence and Statement of Expectations set by the portfolio minister, there is a risk there could be limitations placed on the board of directors to operate with sufficient independence in its decision-making with respect to the operations of TAHE. Over time, this may further impact the degree of control required by TAHE to satisfy the recognition criteria over its assets. It may also fundamentally change the presentation of TAHE's financial statements.

We accepted TAHE's position on control for the current year. It will remain an area of audit focus in future years as the substance of the arrangements put into place need to be confirmed by observation

TAHE assessed that it maintains control as it has exercised authority and power over its assets during the year, as well as continuing to operate as an independent SOC.

Consistent with the prior year, we did not find evidence that, in form, the assets held by TAHE are not controlled by TAHE. However, given the constraints that can be imposed through the operating licence, there is a risk that limitations could be placed on the operations or functions of TAHE. Future limitations to the degree of control TAHE, and its board, can exercise over its functions may impact the degree of control TAHE has over its assets going forward. The current operating licence issued by the Minister for Transport effective from 1 July 2021 was expected to expire on 30 June 2023. TAHE has requested and received approval for an extension of the operating licence for one year, to 30 June 2024. The control of these assets by TAHE will be a continued area of focus, as well as the ability of TAHE to operate as an independent SOC.

Recommendation

NSW Treasury and TAHE should continue to monitor the risk that control of TAHE assets could change in future reporting periods. TAHE must continue to demonstrate control of its assets; or the current accounting presentation would need to be reconsidered.

Upcoming performance audit on TAHE

A performance audit on the establishment of Transport Asset Holding Entity (TAHE) is currently in progress. This audit will examine the effectiveness of NSW Government agencies' design and implementation of TAHE including whether the process was cohesive and transparent, whether agencies' roles and responsibilities were clear, and whether agencies effectively identified and managed certain risks. We plan to table this report by February 2023.

Performance of other investments in public sector entities

Last year's State Finances report recommended that the government enhance transparency and report on the performance of its investments in other public sector entities. This would include presenting information on how much and what type of returns the GGS is obtaining from its investments.

NSW Treasury included additional information in the TSSA on the performance of its investments for each SOC. Performance information includes balances of contributed capital, dividends, tax equivalents and changes in total equity excluding contributed capital. These new disclosures are included in Note 11 'Equity Investments' of the TSSA.

Reliance on consultants

Last year's State Finances report recommended that NSW Treasury consider whether there is sufficient competent oversight of its use of consultants and assess the risk of an overdependence on consultants at the cost of internal capability. This recommendation was raised in response to the extensive use of external consultants to advise government agencies on matters related to TAHE.

NSW Treasury updated its internal guidance to staff about engaging consultants. The updated guidance requires:

- NSW Treasury Secretary approval for consulting engagements valued at over $50,000 to enable sufficient oversight
- documentation of the rationale for engaging a consultant including consideration of the use of internal expertise
- documentation of consideration of undue reliance on any single consulting firm.

This year the State reported a decrease in consultancy fees of $6 million bringing total expenditure to $180 million.

A performance audit assessing how effectively NSW Government agencies procure and manage consultants and meet the government’s election commitment' is currently under way. This report is due to be tabled in March 2023.

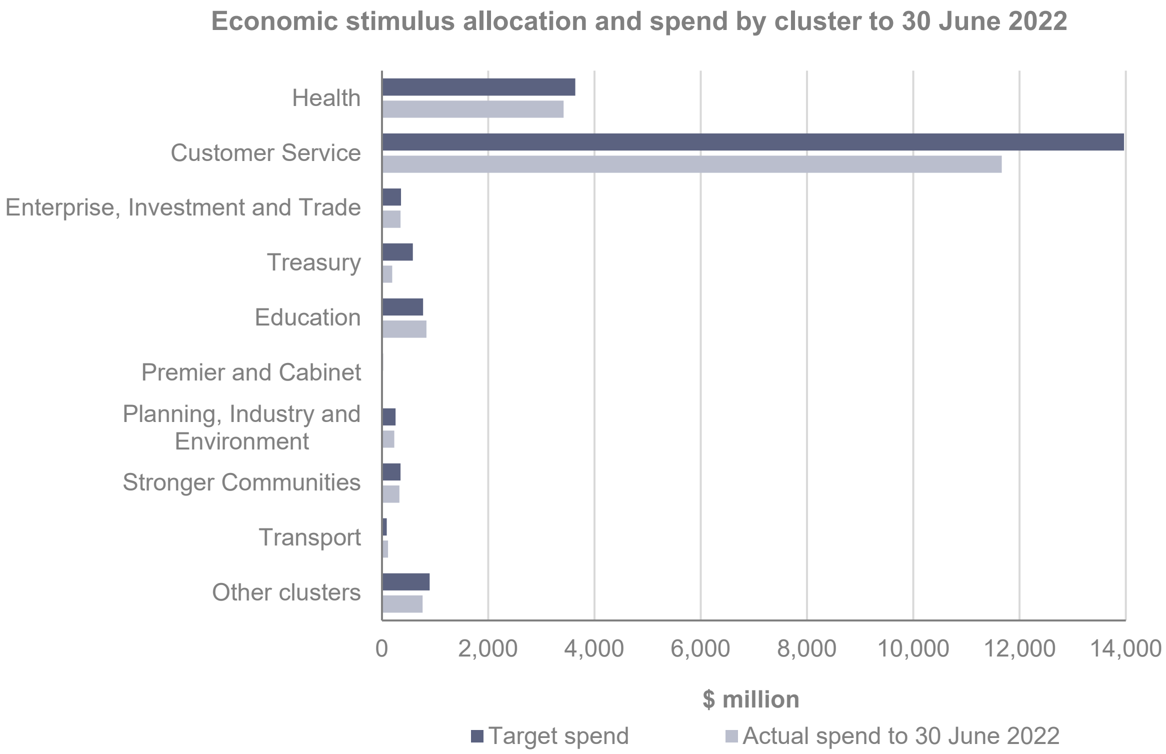
5. Response to COVID-19

The government continues to respond to the impact of the COVID-19 pandemic on New South Wales through its economic stimulus measures

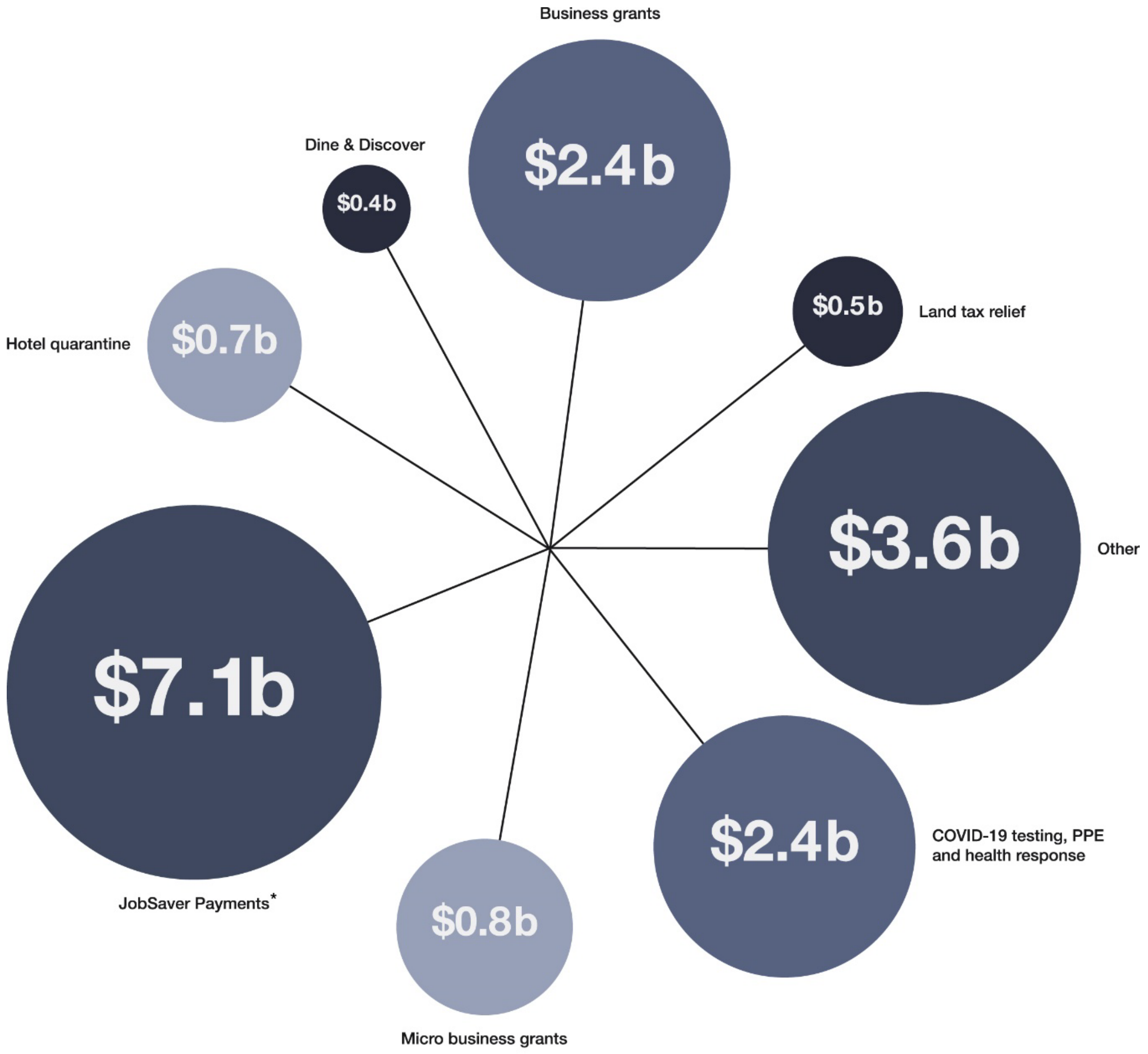
The COVID-19 pandemic continued to significantly impact the State’s finances, reducing revenue and increasing expenses especially in sectors directly responsible for responding to the COVID-19 pandemic, such as Health. In October 2021, the government announced through the 'COVID-19 Economic Recovery Strategy' an additional $2.8 billion in economic stimulus and response measures following the conclusion of the three-month lockdown due to the Delta COVID-19 outbreak. Measures included:

- $739 million in household and social support, including housing support for Aboriginal communities and survivors of domestic violence, and vouchers to thank parents for their efforts to support learning from home
- $500 million to consumers and businesses including expansion of the 'Dine & Discover' and 'Stay & Rediscover' voucher programs
- $495 million in education support addressing learning gaps for children and helping schools prepare for future learning disruptions
- $487 million in combined funding for tourism, events, sports, and recreation throughout New South Wales
- $130 million to fund mental health services for individuals whose mental health was impacted by the pandemic.

The 2021–22 financial year included $21.9 billion for pandemic response and economic stimulus measures. Of this, $17.9 billion was spent in 2021–22 while a further $1 billion of the budgeted amount from 2021–22 was carried forward into 2022–23. The graph below shows the total allocation and spend by cluster for 2022 compared to target spend.



Of the $17.9 billion spent during the year, the major components of stimulus expenditure for 2021–22 included:



*Includes a $3.3bn contribution from the Commonwealth, which co-funded the JobSaver program.

Other category includes various stimulus expenditure across the sector including:

- $441 million additional cleaning costs
- $310 million intensive learning support for NSW public schools
- $277 million in private hospital partnership payments for elective surgeries
- $202 million in support payments to the performing arts
- $192 million small business fee rebates.

A total $4 billion in economic stimulus was not spent during 2021–22

A total $4 billion in economic stimulus was not spent during 2021–22, largely due to over estimation of costings for some of the business support programs.

Over $1 billion of stimulus spend planned for 2021–22 was carried forward to next year. This carry forward related to various measures including Jobs Plus ($150 million), JobSaver ($113 million), Stay NSW ($175 million), CBD Fridays ($50 million), Dine & Discover ($30 million) and land tax relief ($32.6 million).

The $2.3 billion underspend in customer service was largely due to lower than expected demand for various COVID-19 stimulus measures provided to eligible businesses through Service NSW, including:

- $824 million underspend on COVID-19 JobSaver payments which were provided to impacted businesses to help them maintain employee headcount and save jobs once the pandemic restrictions were lifted
- $579 million underspend on the Small Business Support Program designed to provide cash flow support to businesses and mitigate the impact of the Omicron wave of COVID-19
- $429 million underspend on the Small Business Fees and Charges Rebate which provided a rebate of up to $3,000 on certain costs incurred by businesses such purchases of Rapid Antigen Tests (RAT).

The $220 million underspend in health was largely due to lower than forecast costs incurred in relation to public health activities, including:

- $170 million underspend following lower than anticipated COVID-19 response costs
- $61 million underspend on Personal Protective Equipment (PPE)
- $45 million underspend on COVID-19 testing.

The underspend in the NSW Treasury cluster was largely due to lower than forecast NSW Government contribution to the Commonwealth administered COVID-19 disaster payments scheme. The NSW Government covered the cost of COVID-19 Disaster Payments for areas that were not declared hotspots by the Commonwealth. From 14 August 2021 all of New South Wales was declared a hotspot by the Commonwealth.

The overspend in the Education cluster was largely due to additional cleaning costs for New South Wales schools and TAFE campuses which exceeded budget by $90 million.

Over $9 billion in Commonwealth grants was received in 2021–22

A National Cabinet made up of the Prime Minister, premiers and chief ministers was established in early 2020 as the COVID-19 pandemic was evolving. On 13 March 2020, the National Partnership on COVID-19 Response (the agreement) was entered into by the Commonwealth, states and territories in recognition of the anticipated additional costs that the State's health services were likely to incur in response to the COVID-19 outbreak. The agreement provided three sets of payments to states:

- An upfront advance payment payable when states committed to the agreement.
- Hospital Services Payments, which provided a 50% contribution for costs incurred by states for the diagnosis and treatment of COVID-19 cases and suspected cases.
- State Public Health Payments, which provided a 50% contribution for costs incurred by states for other COVID-19 activity to manage the outbreak.

During the year, over $9 billion was received in Commonwealth grants and contributions through the National Health Reform Agreement (NHRA) and the National Partnership Agreement (NPA) in 2021–22. Since its inception, the agreements have evolved to include additional funding streams for specific needs as they have been identified. More information on this funding and our recommendations regarding the accounting for revenues received under these agreements is on page 21 of the 'Health 2022' Auditor-General’s report.

The value of COVID-19 vaccines received from the Australian Government was not reported in the TSSA

Vaccines were provided to states free of charge. The states and territories distribute and provide the vaccines free of charge to the Australian public in a manner that they determine. On the basis that the State controls the inventory once it is distributed to it from the Commonwealth, the value of the inventory received, distributed and wasted requires recognition where a reliable measurement can be ascertained.

The value attributable to the goods received and the corresponding vaccine inventory on hand is measured at its fair value based on replacement cost. Consistent with 2020–21, the Ministry of Health could not obtain vaccination cost information from the Australian Government because of non-disclosure agreements signed by the Australian Government and the pharmaceutical companies supplying the vaccines. Obtaining the original cost data will increase the accuracy and reliability of reported financial information. More information on this issue in relation to accounting for vaccine inventories are on page 12 of the 'Health 2022' report.

A performance audit relating to the NSW COVID-19 vaccine rollout was tabled on 7 December 2022. This audit focused on NSW Health's contribution to the Australian Government led vaccine rollout in Local Health Districts, in particular the administration of two doses of vaccine to people aged 16 and over. More information on this audit is included in our NSW COVID-19 vaccine rollout report.

The response to COVID-19 was funded by $5.6 billion in grants from the Australian Government, and $12.3 billion of spending from the NSW Government

At 30 June 2022, COVID-19 stimulus funding provided by the State to cluster agencies included $5.6 billion (2021: $1.2 billion) from the Australian Government and $12.3 billion (2021: $4.8 billion) directly funded by the State.

Most in-year funding was provided via ‘Exigencies of Government’ measures under Section 4.13 of the *Government Sector Finance Act 2018* (GSF Act). This section allows for funding for urgent and unforeseen expenditures such as natural disasters. Additional funding was also provided via appropriations (including special appropriations) included in the 2021–22 State Budget.

6. Response to natural disasters

There were 14 natural disaster declarations including four severe weather events in 2021–22

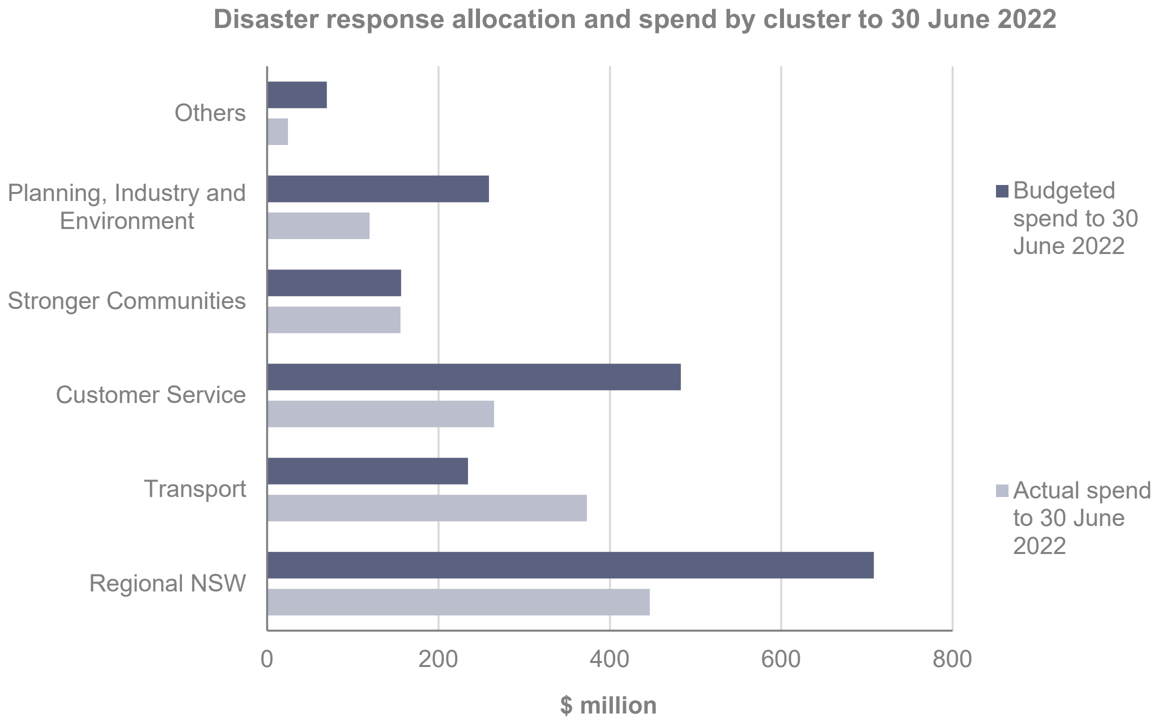
Natural disasters such as bushfires, storms, floods, and other adverse weather events can have a significant impact on the State's finances. Costs associated with natural disasters include direct response costs such as clean-up and recovery, temporary accommodation, and as well as financial assistance provided to impacted communities such as recovery and business support grants.

The NSW Government can make a natural disaster declaration allowing eligible individuals and communities from impacted Local Government Areas access to a range of special financial assistance measures.

In 2021–22, there were 14 natural disaster declarations announced comparable to 14 in the previous year. These natural disaster declarations largely related to storms and floods throughout the State. In 2021–22, there was a larger number of 'severe weather' events declared, with four in 2021–22 (nil in 2020–21).

Natural disaster expenses increased 143% to $1.4 billion in 2021–22, up from $569 million last year

Over 2021–22, the budgeted cost for declared natural disasters was $1.9 billion ($725 million in 2020–21). Actual expenditure by the State on disaster response increased by $815 million to $1.4 billion. The graph below shows the total allocation and spend by cluster for 2022 compared to their budget spend.



The bulk of natural disaster costs during 2021–22 were associated with Regional NSW incurring $447 million in actual costs compared to a budget of $708 million. The lower actual costs were largely due to:

- $123 million forecast to respond to additional instances of mice plagues across the State, however no further costs were incurred this year
- $65 million underspend on the Bushfire Local Economic Recovery funding program which was established to respond to the 2019–20 bushfires from August 2019 onwards
- $24 million underspend on temporary accommodation housing packages provided after the February 2022 floods.

The $218 million underspend in Customer Service was largely due to lower than forecast costs after the severe weather and flooding event from February 2022 onwards, including:

- $227 million underspend for lower than anticipated temporary rental accommodation support
- $53 million underspend on payments relating to the Northern Rivers business support scheme for small businesses.

The amounts above were offset by $62 million overspend on the 'Back Home' grants scheme which assists owners and tenants of properties in the most impacted Local Government Areas with urgent household repairs, replacing essential household goods, or restoring housing to a habitable condition.

The Department of Planning, Industry and Environment cluster reported lower disaster recovery costs compared to budget by $139 million. These related to clean-up assistance provided in response to the March 2021 and February 2022 severe weather, storm and flood events. In addition, council grants for the February 2022 weather event were $28 million less than forecast.

The $139 million overspend in the Transport cluster was largely due to general disaster repairs on the Greater Sydney, outer metropolitan and regional roads network as well as repairs to rail infrastructure. These amounts were not tied to any one specific disaster event.

A performance audit relating to the organisational responses to disasters and emergencies is planned to commence in 2023–24 to 2024–25. This audit may examine the effectiveness of organisations in meeting their objectives in responding to disasters.

7. General Government Sector budget result

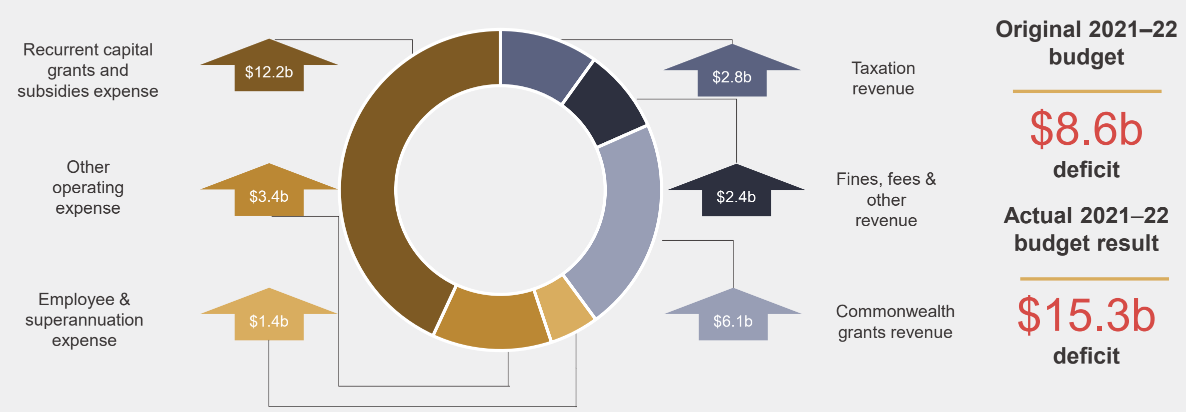
Deficit of $15.3 billion compared with a budgeted deficit of $8.6 billion

The outcomes of the government's overall activity and policies are reflected in its net operating balance (budget result). This is the difference between the cost of general government service delivery and the revenue earned to fund these sectors.

The General Government Sector, which comprises 196 entities, generally provides goods and services funded centrally by the State.

In addition to the 196 entities within the General Government Sector, a further 85 government controlled businesses are included within the consolidated Total State Sector financial statements. These businesses generally provide goods and services, such as water, electricity and financial services for which consumers pay for directly, and form part of the PNFC (31) and PFC (54) sectors.

The budget result for the 2021–22 financial year was a deficit of $15.3 billion compared to an original forecast of a budget deficit of $8.6 billion.



Figures in the arrows reflect dollar variance between actual result in 2021–22 compared to original budget for the same period. Increases in actual result compared to budget are reflected as an upward arrow.

The main driver of the change in result was driven by expenses being higher than budgeted by $16.4 billion mainly due to:

- $12.2 billion higher than budgeted recurrent capital grants and subsidies expense, mainly driven by $11.4 billion in stimulus program payments administered via the Department of Customer Services. These related to COVID-19 JobSaver payments that were co-funded by the Commonwealth, and other business grant payments that were not included in the 2021–22 Budget estimates
- $3.4 billion higher operating expenses. This primarily related to $2.1 billion higher than forecast costs by the Health sector when responding to the Delta and Omicron strains of the COVID-19 pandemic and $1.6 billion higher than budgeted claim expenses arising from increasing claim liabilities and event losses largely relating to floods. This was offset by $402 million in lower operating expenses for Transport due to the slowdown of projects due to COVID-19 construction pauses.

The higher actual budget deficit was offset by:

- $2.8 billion of higher taxation revenue, mainly due to:
  - $3.1 billion increase in stamp duties collected from property sales, from higher transaction volumes and strong property price growth in both residential and commercial markets. A continued increase in demand for second-hand motor vehicles has resulted in an increase in motor vehicle registrations
  - $474 million reduction in gambling and betting taxes because of COVID-19 restrictions and venue closures in the first half of 2021–22
- $6.1 billion in higher grants revenue was reported, mainly due to increases in:
  - Commonwealth national partnership payments being $5.9 billion higher than forecast in the 2021–22 budget, primarily due to $2.1 billion in additional COVID-19 response payments and $3.3 billion in JobSaver program payments
  - Commonwealth general purpose payments of $1.5 billion due to an increase in GST revenue as NSW's portion of the total GST pool increased from 29.2% to 30.3%
- $2.4 billion higher than budgeted revenue from fines, regulatory fees and other revenues. This increase was mostly due to mining royalties being $2.1 billion higher than the 2021–22 Budget estimates. There was a significant increase in the volume of royalties from coal mining during the year, due to a surge and sustaining of high demand for New South Wales mineral resources.

8. Key audit findings

8.1 Accounting matters

Consolidation of the TCorp IM funds

The State holds investments in Treasury Corporation Investment Managed (TCorpIM) funds to the value of $67 billion as at 30 June 2022. These funds are reported in the Public Financial Corporations (PFC) sector as they are managed by New South Wales Treasury Corporation (TCorp) in their capacity as trustee. The TCorpIM funds hold investments in certain entities where the State has determined it has control or significant influence under Australian Accounting Standards. These are known as underlying investments.

The financial statements of each TCorpIM fund do not consolidate the value of these underlying investments as, under Australian Accounting Standards they are considered an 'investment entity'. This means the funds do not need to recognise on a line-by-line basis the assets, liabilities, revenues and expenses of their underlying investments, instead the fund statements recognise the fair value of these underlying assets. AASB 10 'Consolidated Financial Statements' allows this reporting exemption only if the ultimate parent (the State) consolidates the balances in accordance with the standard. This year, the State reassessed its control over TCorpIM funds, which resulted in a prior period error reducing assets and liabilities by $6.9 billion, with no impact on net assets as at 30 June 2021.

This year, NSW Treasury also reclassified its underlying investments that are either controlled, significantly influenced or jointly controlled by the State under AASB 10. Previously these investments were all recognised as financial assets at fair value, and were not presented in the TSSA in accordance with Australian Accounting Standards. This resulted in a reclassification of $2.3 billion in financial assets held at fair value and recognition of the same amount in primarily cash, investments and property, plant and equipment assets, investment properties or other equity investments. A prior period error of $1.4 billion was also identified requiring restatement to the comparative year.

In the past the State has also applied a short-hand method approach when consolidating the IM fund balances within the TSSA. This involved recognising the balances, distributions and gains recognised in GSF agency financial statements, rather than consolidating the actual IM fund balances and eliminating inter-agency and inter-fund transactions.

This year, NSW Treasury identified material differences in the consolidation of IM funds. Differences were identified within the PFC sector when reporting dividends and interest (that impact the TSSA budget result) and mark to market movements that are holding gains (that impact TSSA other economic flows).

The correct application of AASB 10 resulted in a prior period error, with the TSSA reclassifying $1.6 billion from the TSS budget result to other economic flows.

Transfer of Sydney Football Stadium

In 2018, the Government determined Infrastructure NSW to be responsible for carrying out the Sydney Football Stadium (SFS) infrastructure project. This resulted in the vesting of the stadium land and buildings from the then Sydney Cricket and Sports Ground Trust which has since been dissolved and is now part of Venues NSW.

On 30 June 2022, the cost of capital works relating to the SFS refurbishment and the stadium land were vested from Infrastructure NSW (a GGS agency) to Venues NSW (a PNFC agency). The SFS and stadium land transfer of $826.7 million occurred under a vesting order authorised by the Minister for Infrastructure on 31 May 2022. Venues NSW paid no consideration for receipt of the stadium assets.

The transfer between the two agencies was treated as a contribution by owners (equity transfer) and was transferred at cost in accordance with Treasury Policy Paper TPP21-08 ‘Contributions by owners made to wholly-owned Public Sector Entities’. Venues NSW engaged an independent valuer to ensure the stadium was reported at fair value, resulting in the reported fair value of SFS increasing by $70.7 million to $897.4 million.

As the stadium assets were transferred from the GGS to the PNFC sector, requirements of Government Finance Statistics (GFS) need to be applied when accounting for this transfer at a sector level. GFS requires transfers to be recorded as equity unless there is no reasonable expectation of a sufficient rate of return on the investment. Given Venues NSW is a non-profit PNFC entity, there cannot be any reasonable expectation by the government of a return on this investment, in which case, the transfer is recorded as a capital transfer expense. The stadium and stadium land transfer resulted in the GGS budget result reducing by $826.7 million.

The State sold its 49% interest in WestConnex

On 29 October 2021, the State recognised a gain of $4.6 billion from the sale of its 49% retained interest in WestConnex (WCX) Group. The gain was recognised as an 'other economic flow', which does not impact the 2021–22 budget result.

The State received $10.3 billion (plus $823 million in stamp duty recognised in the budget result) in cash proceeds from the sale on 29 October 2021 which was paid into the NSW Generations (Debt Retirement) Fund (NGF) as required by *NSW Generations Funds Act 2018*. More than $7.7 billion of debt was retired during the second half of the 2021–22 financial year using funds from the NGF. This resulted in $209 million of break funding losses being recognised by the State upon settlement. The carrying value of the residual investment was $5.7 billion.

During our 2021–22 audit of the NSW Generations (Debt Retirement) fund (the DRF), the Audit Office identified an appropriation of $4.5 billion that was not paid into the DRF as required by section 4(a) of the NGF Act. Section 9(1)(a) of the NGF Act requires ‘all money appropriated by Parliament, or advanced by the Treasurer’ to be paid into the DRF.

Despite no cash being physically transferred to a separate bank account, the effect of section 16 of the *Appropriation Act 2021* and section 9(1)(a) of the NGF is to hypothecate approximately $4.5 billion of the total amount appropriated under the *Appropriation Act 2021* for the purpose of the DRF. No breach of section 9(1)(a) of the NGF Act was reported as the amounts appropriated to the DRF continued to be held for that purpose. Note 22 ‘Administered Items’ of NSW Treasury’s financial statements for the 2021–22 financial year was subsequently updated to disclose that the above amounts form part of the relevant DRF and are available for its immediate use. Refer to chapter 11.2 'In Focus - appropriations framework' for further details on this matter.

The Victim Support Scheme was unable to reliably measure the liability for unreported child sexual assault claims

In 2021–22, the Department of Communities and Justice recorded a liability for Incurred But Not Reported (IBNR) Victims Support Scheme (VSS) claims totalling $230 million ($200 million in 2020–21) related to domestic violence, sexual assault (adult), assault, robbery, homicide and other offences. However, consistent with previous years, IBNR liabilities for Child Sexual Assault (CSA) were not recorded on the basis these claims were not reliably measurable. Victim Support IBNR claims relate to acts of violence that have already occurred, but the victim has not yet come forward to lodge a claim and seek assistance from the VSS.

Issues with reliable measurement of IBNR liabilities for CSA continue, because:

- there are no time limitations for victims to access counselling, recognition payments, justice-related and other out-of-pocket expenses
- uncertainty in year-on-year claims growth rates
- uncertainty of the number of years growth will persist.

The actuary indicated the CSA IBNR liability could reasonably lie within a range of $549 million to $1.1 billion as at 30 June 2022 ($493 million to $997 million in 2020–21).

Consistent with the Department of Communities and Justice's approach in prior years, where a central estimate has not been provided by the valuer, a contingent liability has been reported in the financial statements on the basis the CSA IBNR claims provision cannot be reliably measured.

Commonwealth assistance to State emergencies not recorded

Over the last three years the State requested assistance from the Commonwealth Government to help deal with its response to natural disasters and the COVID-19 pandemic. The Commonwealth provided services to the State free of charge under Defence Assistance to the Civilian Community (DACC) agreements, including:

- bushfire response and recovery assistance to the NSW Rural Fire Service
- flood response and relief assistance to the State Emergency Services
- planning and contact tracing support to the Ministry of Health
- supporting NSW Police Force quarantine, reception and repatriation efforts at Sydney airport, hotels and borders.

Recognising the value of such services volunteered free of charge is a requirement of Australian Accounting Standards when the value of those services can be reliably measured, and the services would have been purchased if they had not been donated. It is important the State recognise the value of all assistance received so it can consider the overall financial impact of COVID-19 and natural disasters.

In last year's report we recommended NSW Treasury review existing processes to capture information about services received by the State for no consideration and prepare accounting assessments on the information collected to support judgements and measurements with respect to disclosures in the financial statements of the State.

NSW Treasury has liaised with the relevant agencies that are impacted by DACC agreements to ensure the accounting treatment is considered. These mainly include State Emergency Services, NSW Police, NSW Rural Fire Service and the Ministry of Health.

NSW Police continued to receive DACC services in 2021–22, amounting to $27.6 million, which were not reflected in the financial statements. This was reported as a judgemental misstatement.

NSW Self Insurance Corporation reports a combined underwriting loss across its ten schemes

NSW Self Insurance Corporation (SiCorp) is the State’s self-insurer. It operates ten managed fund schemes and is managed by icare. The largest scheme is the Treasury Managed fund (TMF), which provides self-insurance coverage for public sector workers' compensation and public liability claims.

In 2022–22, SiCorp reported a:

- $2 billion underwriting loss ($1.2 billion loss in 2020–21)
- $549 million net loss ($994 million net result in 2020–21)
- $318 million net asset surplus ($867 million net asset surplus as at 30 June 2021).

SiCorp’s financial statements disclose an underwriting loss and net loss, representing the combined performance of all ten schemes. The underwriting loss represents SiCorp’s performance from insurance (and insurance-like) activities, while the net loss represents the underwriting loss plus non-insurance related income and expenses including investment returns.

The 2021–22 underwriting loss was impacted by a $1.9 billion increase in outstanding claims liabilities. This increased claim liabilities to $15 billion at 30 June 2022 ($13.2 billion liability at 30 June 2021). Most of the underwriting loss and the increase in outstanding claims was within the TMF scheme.

SiCorp required $1.9 billion grant income from the State's Consolidated Fund this year (nil in 2020–21) to adjust its net assets within the Net Asset Holding Level Policy (NAHLP) target range. This was mainly due to increases in the claims liability. The NAHLP, agreed between SiCorp and NSW Treasury, requires SiCorp to maintain financial assets for certain schemes, including TMF, at between 105 and 115% of its liabilities.

The overall claims liability increased $1.9 billion mainly due to:

- $513 million increase in psychological injury claims across both the non-emergency services and emergency services sectors, as well as workers staying on benefits for longer
- increases in volume of child abuse claims, in response to a November 2021 amendment to the *Civil Liability Act 2002.* This amendment removed restrictions to civil compensation for abuse which occurred while a child was in custody. This resulted in an additional $517 million in claim liabilities
- $206 million increase in medical malpractice claims
- $209 million property damage claims as a result of adverse flood and weather events during the year.

SiCorp's Home Building Compensation Fund (HBCF), continues to report an overall net asset deficiency due to unfunded liabilities of $506 million ($534 million in 2020–21). While the net asset deficiency means that the HBCF scheme is not fully funded for all expected future payments, NSW Treasury has guaranteed to fund cash shortfalls for policies written before 1 July 2018. HBCF is not caught by the NAHLP. Funding claimed from NSW Treasury for policies written before 1 July 2018 was $27.7 million in 2021–22 ($13.5 million in 2020–21).

More commentary on the NSW Self Insurance Corporation is included in the 'Treasury 2022' NSW Auditor-General's Report to Parliament.

The General Government Sector investment in other sectors (entities) increased

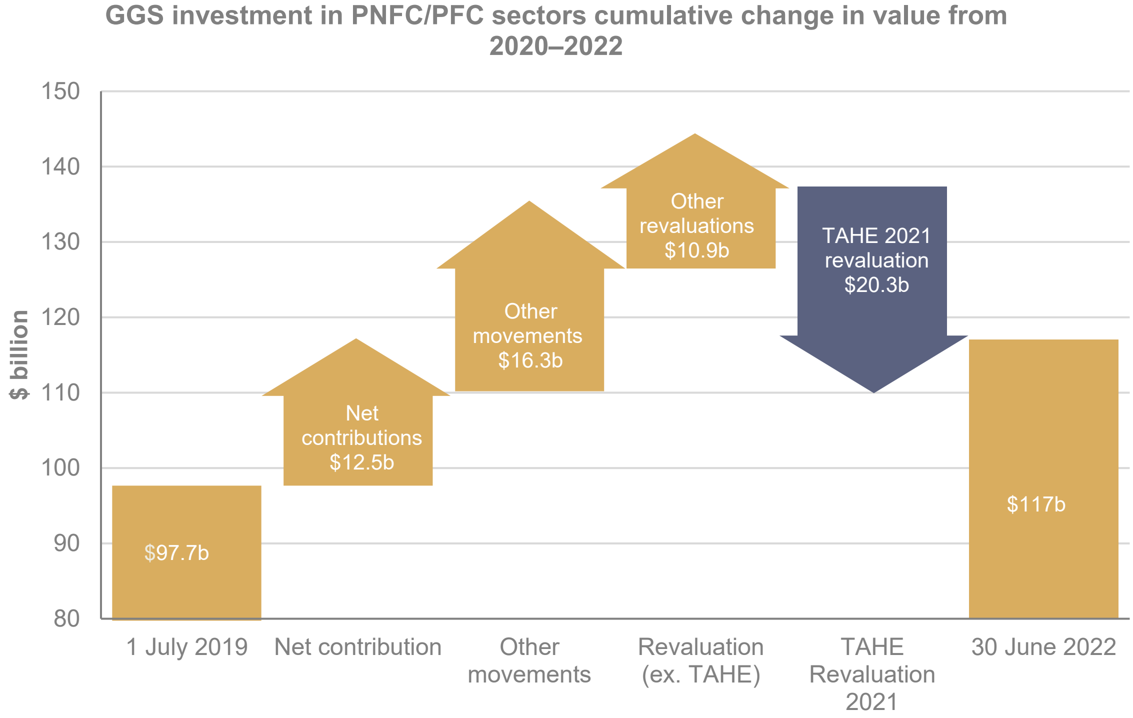
The General Government Sector (GGS) recognises all investments in Public Non-Financial Corporations (PNFC) and Public Financial Corporations (PFC) on its balance sheet. As at 30 June 2022, the GGS recognised $117 billion in investments in other public sector entities.

The GGS accounts for these interests as an equity investment, based on the net assets of those sectors, in accordance with AASB 1049 'Whole-of-Government and General Government Sector Financial Reporting'.

Movements in the carrying amount of these investments are taken through other economic flows – other comprehensive income. Because the State has designated these equity investments under AASB 9 'Financial Instruments' as Fair Value through Other Comprehensive Income (FVOCI), the gains and losses on these investments are not included in the budget result. The basis of this designation is that the State intends to hold these investments over a medium to long-term period.

A list of all entities within the GGS, PNFC and PFC sectors as well as an outline of these sectors is included in Appendix three of this report.

The movements of these investments over the past three years are summarised in the graph below:



The graph shows over a $19 billion net increase in the value of the GGS investment in the PFC and PNFC sectors over three years from 1 July 2019. The gross increase of $39.7 billion over the past three years was made up of:

- net equity contributions of $12.5 billion. This amount includes cash and non-cash equity contributions to TAHE of $11.6 billion
- other movements of $16.3 billion. This represents the movement in consolidation adjustments to change the value of loans from TCorp to agencies (measured at market value) in the PFC sector to match borrowings by agencies measured at amortised cost in the GGS
- other revaluations of $10.9 billion, primarily due to a $10.1 billion valuation uplift relating to NSW Land and Housing Corporation residential properties in 2021–22.

The increases listed above were offset from the TAHE property, plant and equipment and intangibles values written down by $20.3 billion in 2020–21 after it changed its valuation basis to reflect its transition from a not-for-profit entity to a for-profit entity.

Last year we recommended NSW Treasury include more disclosures in the State's consolidated financial statements to improve the reporting on equity injections into PFC and PNFC agencies. This year NSW Treasury included additional disclosures showing performance information on equity investments in the State Owned Corporations (SOC). This includes contributed capital and total equity for each SOC, dividends and taxes (over the past five years) and changes in total equity other than as a result of contributed capital (for example, valuation gains or losses). These new disclosures are contained in Note 11 of the State's consolidated financial statements.

Financial reporting by Category 2 Statutory Land Managers is inadequate and incomplete

Forty-five Category 2 Statutory Land Managers did not submit their 2021–22 financial statements for audit

Category 2 SLM is a type of Crown Land Manager (CLM) that is controlled by the State. It excludes Category 1 SLMs such as the metro cemeteries, Catholic Metropolitan Cemeteries Trust and Crown Holiday Parks land manager. CLMs are persons or entities appointed by the Minister to be responsible for the care, control and management of Crown reserves on behalf of the people of New South Wales.

The GSF Act requires Category 2 SLMs to prepare annual financial statements. Treasurer's Direction TD 21-03 requires these land managers to submit financial statements for audit within six weeks following the end of the annual reporting period.

During 2019–20, NSW Treasury established reporting exemption criteria for the CLMs. These criteria are outlined in Division 2, Part 3A of the Government Sector Finance Regulation 2018 (GSF Regulation). The Department of Planning and Environment did not finalise the 2021–22 reporting exemption assessment for the 596 Category 2 SLMs (excluding Wentworth Park Sporting Complex Land Manager) by the statutory reporting deadline. The Wentworth Park Sporting Complex Land Manager currently prepares and submits financial statements for audit every year.

After the statutory reporting deadline to submit 30 June 2022 financial statements had passed, the Department of Planning and Environment assessed 551 Category 2 SLMs met the reporting exemption criteria, and would therefore not be required to prepare 2021–22 financial statements. To date, none of the 45 non-exempted Category 2 SLMs have submitted their 30 June 2022 financial statements for audit.

None of the Commons Trusts have submitted their financial statements for audit

Commons Trusts are responsible for the care, control and management of commons for which the trust is established. A common is a parcel of land that has been set aside by the Governor or the Minister for specific use in a certain locality, such as grazing, camping or bushwalking. The Commons Trusts are considered to be controlled entities of the Minister who administers the Commons Management Act 1989. Commons Trusts are not CLMs.

Whilst NSW Treasury established specific reporting exemption criteria for CLMs, no such exemption criteria were established for the Commons Trusts.

Currently there are 119 Commons Trusts in New South Wales. None of these trusts have prepared and submitted financial statements as required under the GSF Act.

Recommendation (repeat issue)

NSW Treasury and the Department of Planning and Environment should ensure:

- **Category 2 SLMs and Commons Trusts meet their statutory reporting obligations**
- **Category 2 SLMs finalise their reporting exemption assessments earlier to allow sufficient time for the non-exempted SLMs to prepare and submit annual financial statements by the statutory reporting deadline.**

NSW Treasury has commenced a process to review the exemption criteria prescribed in Division 2, of Part 3 of the Government Sector Finance Regulation 2018 to ensure the criteria are effective, and that the desired outcomes are being achieved. As required by section 7.3(5) of the *Government Sector Finance Act 2018*, NSW Treasury is consulting with the Auditor-General.

Planning for access to Cabinet in Confidence documents

There has been an increase in the volume of information relevant to financial and performance audits being classified as Cabinet in Confidence (CIC), which coupled with processes to identify if material is CIC, has led to lengthy delays in getting access to information required to conduct audits.

To avoid delays in finalising agency audits and ultimately the TSSA, agencies can better plan by bringing to the auditors' attention key Cabinet records relating to audit issues in order to minimise the impact of delays.

A management letter to NSW Treasury includes a high-risk finding with regards to agencies planning for audit access to Cabinet information.

The Government Sector Audit and Other Legislation Amendment Act 2022 commenced on 28 November 2022. This Act made changes to the GSA Act and the *Local Government Act 1993*, including to:

- provide the Auditor-General with the right to obtain Cabinet information or information subject to legal professional privilege (collectively referred to as confidential information)
- prevent the disclosure of confidential information, except in limited circumstances where the Auditor-General considers that the disclosure of that information is in the public interest and necessary for the exercise of the Auditor-General’s functions
- allow the Premier to issue a certificate that the disclosure of confidential information is not in the public interest, with such a certificate to be conclusive of that fact.

Recommendation

To avoid delays in finalising agency audits and ultimately the TSSA, agencies can better plan by bringing to the auditors' attention key Cabinet records identifying references relating to accounting issues impacting the financial statements.

Statewide accounting policy for borrowings

The ‘State Finances 2021’ report recommended NSW Treasury develop an accounting policy using the key principles in the standard AASB 9 ‘Financial Instruments’ to determine a statewide policy on the recognition of borrowings. This recommendation was in response to a $1 billion correction to borrowings in the 2021 General Government Sector's balance sheet due to inconsistent accounting treatment between NSW Treasury and NSW Treasury Corporation.

NSW Treasury has updated Treasury Policy Paper TPP21-10 'Accounting for Financial Instruments' to assist agencies' compliance with AASB 9 when recognising borrowings with the NSW Treasury Corporation. The guidance encourages agencies to avoid entering transactions that crosses over financial years. Additionally, where transactions cross over different years agencies are advised to agree on the performance obligations and the timing of performance under the contract, to avoid inconsistent accounting treatment.

8.2 Correction of prior year errors

Sydney Metro – restatement of previous years' property, plant and equipment balances

Sydney Metro decreased its property, plant and equipment by $51 million to remove balances included in their assets under construction balances that were handed over to third parties in 2018–19.

Sydney Metro restated its assets under long-term construction previously recorded at cost to fair value. The impact to the balance sheet at 30 June 2021 was an increase to land and buildings of $897 million and decrease of infrastructure assets of $2.3 billion.

Department of Communities and Justice – restatement of previous year's intangibles balances

The Department of Communities and Justice restated its prior year intangible assets by $119 million when it found it had incorrectly capitalised configuration and customisation costs for its cloud computing arrangements.

NSW Treasury – restatement of previous year's accrual for hotel quarantine costs

NSW Treasury's accrual for unpaid hotel quarantine costs was overstated in 2020–21 by $39.7 million. The misstatement resulted from management placing reliance on an inaccurate report when calculating its accrual for unpaid hotel quarantine invoices. The financial statement comparatives were restated to reflect the correct amount that remained unpaid.

9. The State's revenues and expenses

Revenues increased $16.1 billion to $106.7 billion

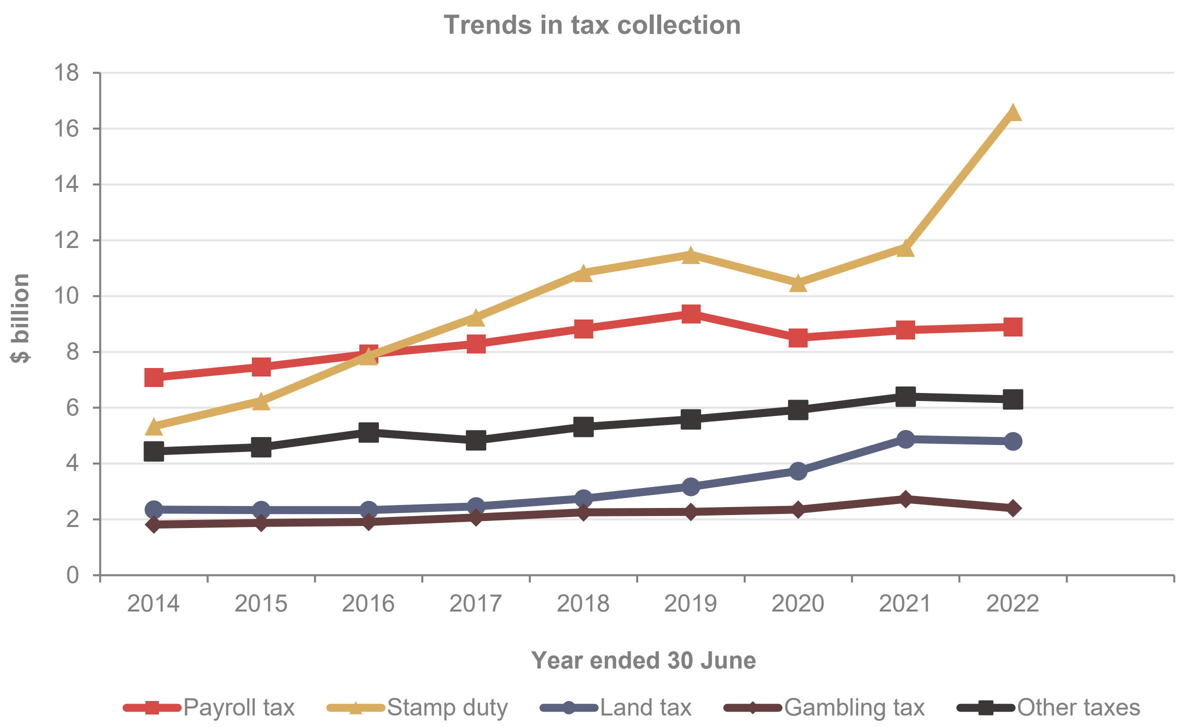
The State’s total revenues increased $16.1 billion to $106.7 billion, an increase of 17.8% compared to the previous year. Total revenue growth in 2020–21 was 5.1%. The State's increase in revenue was mostly from $9.2 billion in grants and subsidies and $4.6 billion in taxation.

Taxation revenue increased by 13.3%

Taxation revenue increased by $4.6 billion, mainly due to the net of:

- $4.9 billion higher stamp duties collected from property sales driven by growth in property transaction volumes and prices during 2021–22. This was growth was experienced across residential and commercial property markets
- $296 million lower gambling and betting taxes compared to 2020–21. Decrease was primarily attributed to the ongoing effects of COVID-19 restrictions and venue closures within the first half of 2021–22.

Stamp duties of $16.6 billion remains the largest source of taxation revenue, $7.7 billion higher than payroll tax of $8.9 billion, the second-largest source of taxation revenue.



Australian Government grants and subsidies

The State received $44.8 billion in grants and subsides, which are mainly received from the Australian Government, $9.2 billion more than in 2020–21.

Commonwealth general purpose grants were $4.4 billion higher mainly due to the increase in GST revenue. NSW's portion of the larger total GST pool in 2022 increased from 29.2% to 30.3%.

Commonwealth National Partnership Payments increased by $4.5 billion mainly attributed to:

- $1.1 billion increased payments to health services to assist with continued COVID-19 response
- $3.3 billion in reimbursement for the JobSaver program, which was co-funded by the Commonwealth.

$ 90.6b	17.8%	106.7b	Total revenue

Key revenues include:

2020–21 $	Change %	2021–22 $	
34.5b	13.3	39.1b	Taxation
35.6b	26	44.8b	Grants and subsidies
13.9b	3.5	13.4b	Sales of goods and services

Expenses increased $22.5 billion to $123 billion

The State's total expenses increased 22% compared to last year. Most of the increase was due to grants and subsidies expenses increasing by $13.1 billion and other operating costs and employee expenses increasing by $5.9 billion and $3.1 billion respectively.

Grants and subsidies increased $13.1 billion to $28.7 billion

The increase in grants and subsidies of $13.1 billion was mainly driven by COVID-19 stimulus programs including increased payments due to COVID-19 JobSaver ($7.1 billion) of which $3.3 billion was co-funded by the Commonwealth, COVID-19 Small Business Hardship Grants ($2.4 billion) and COVID-19 Micro-business Grants ($0.8 billion). Other grant and subsidies paid during 2021–22 include:

- $314 million for housing and out of home care
- $164 million for early childhood education and $46 million for skilled and employable workforce grants.

Employee expenses, including superannuation, increased $3.7 billion or 8.5% to $47.8 billion in 2021–22

Salaries and wages including recreation leave costs increased $2.1 billion to $38.4 billion ($36.3 billion in 2020–21). The largest increase of payroll expenses related to the Ministry of Health which had an increase of $1.1 billion in salary and wages caused by average wage growth of 2.04% and growth of 587 Full-Time Equivalents (FTE) compared with 2020–21. The Department of Education's salary and wages including recreation leave costs increased $390 million or four per cent mainly due to 2.04% award increases and additional FTE of 511.

In 2021–22 growth in employee remuneration and other employee-related costs was limited to 2.5%. This will increase to no more than three per cent per annum from 1 July 2022.

Other operating expenses increased 21.2% to $33.8 billion

Operating expenses increased by $5.9 billion to $33.8 billion in 2021–22 ($27.9 billion in 2020–21) due to higher operating activities as agencies continued with their response to the pandemic, particularly during the first half of 2021–22.

Supplies and other service related expenses increased by $3.5 billion, which was mainly driven by the Health sector and included:

- increase in specialised health services relating to the State's PCR testing – $546 million
- increase in outsourced patient care for all LHDs – $145 million
- additional medical and surgery supplies, particularly purchases of Personal Protective Equipment and RATs – $226 million
- increase in pharmaceutical supplies including COVID-19 vaccinations – $209 million.

Insurance claims expenses increased by $1.6 billion, mainly due to:

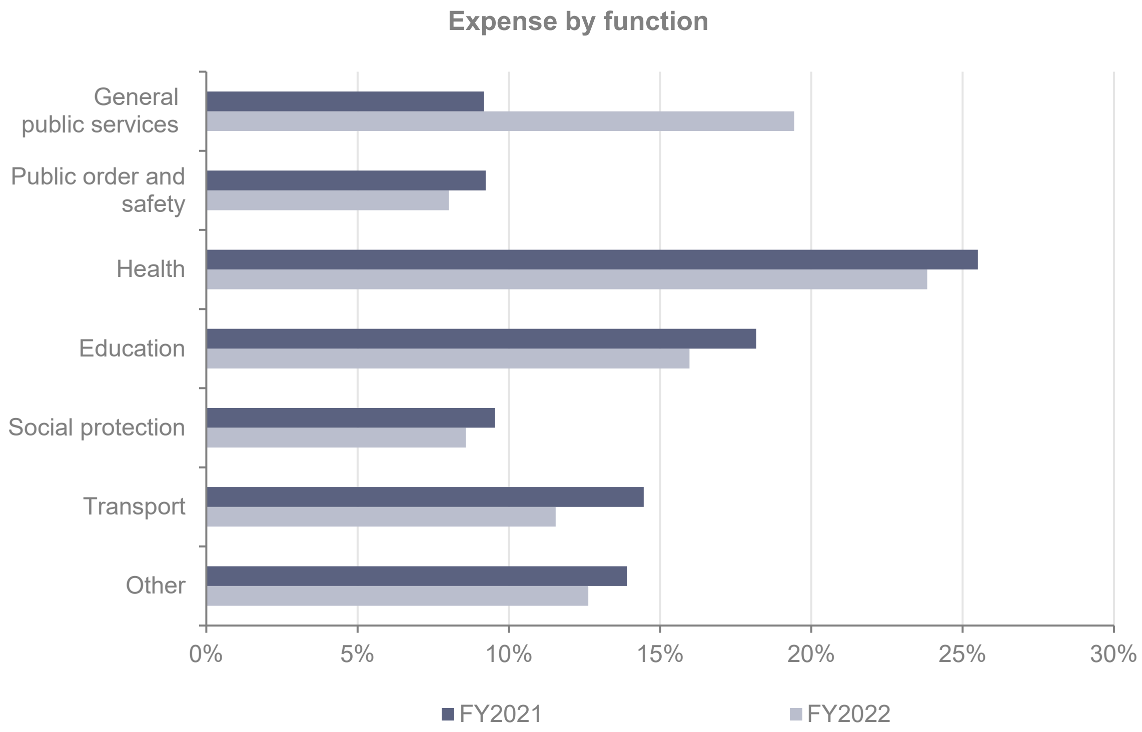
- $513 million increase in psychological injury claims across both the non-emergency services and emergency services sectors, as well as workers staying on benefits for longer
- increases in volume of child abuse claims, in response to a November 2021 amendment to the *Civil Liability Act 2002.* This amendment removed restrictions to civil compensation for abuse which occurred while a child was in custody. This resulted in an additional $517 million in claim liabilities
- $206 million increase in medical malpractice claims
- $209 million property damage claims as a result of adverse flood and weather events during the year.

Health costs remain the State's highest expense

Total expenses of the State were $123 billion ($101 billion in 2020–21). In 2021–22, Health remains the highest contributor of expenses for the State with $29.4 billion ($25.7 billion in 2020–21). Education remains the second highest contributor of expenses reporting $19.7 billion in 2020–21 ($18.4 billion in 2020–21).

The following functions report the highest expenses as a percentage of total State expenses:

- Health – 23.8% (25.5% in 2020–21)
- General Public Services – 19.4% (9.2% in 2020–21)
- Education – 16% (18.2% in 2020–21)
- Other - 12.6% (13.9% in 2020–21)
- Transport – 11.5% (14.5% in 2020–21).



General public service expenses as a percentage of total State expenses is ten per cent higher than the previous year. A $14.7 billion increase in 2021–22 is mainly due to:

- The additional payments made by the Department of Customer Services in response to COVID-19 including $7.1 billion for JobSaver, of which $3.3 billion was co-funded by the Commonwealth, and Small Business Hardship Grants and Micro-business Grant payments of $2.4 billion and $0.8 billion respectively. An additional $224 million of employee expenses was also incurred to facilitate these initiatives
- increase in insurance claims expenses of $1.6 billion mainly driven by:
  - $513 million increase in psychological injury claims across both the non-emergency services and emergency services sectors, as well as workers staying on benefits for longer
  - increases in volume of child abuse claims, in response to a November 2021 amendment to the *Civil Liability Act 2002.* This amendment removed restrictions to civil compensation for abuse which occurred while a child was in custody. This resulted in an additional $517 million in claim liabilities
  - $206 million increase in medical malpractice claims

    $209 million property damage claims as a result of adverse flood and weather events during the year.

- increase of $338 million in interest expenses mainly driven by increase in borrowings at fair value from $114.9 billion in 2020–21 to $122.2 billion in 2021–22.

Health expenses increased by $3.7 billion compared with 2020–21 due to the State's continued response to the Omicron and Delta waves of COVID-19, particularly in the first half of 2021–22. These included additional costs such as PCR testing, purchase of medical supplies including PPE and RATs, as well as increased pharmaceutical supplies such as COVID-19 vaccinations.

Education expenses increased by $1.3 billion from $18.4 billion to $19.7 billion in 2021–22 due to:

- $390 million increase in salaries and wages (including annual leave) expenses made up of a two per cent annual salary increase totalling $190 million for all teaching and corporate staff, and a 511 increase in FTE adding $110 million
- $327 million in grants and other subsidies mainly related to increases to programs in the Building Grants Assistance Scheme, before and after school care COVID-19 preschool support and Skilled and Employable workforce
- $288 million related to expenditure on COVID-19 PPE and RATs
- $160 million increase in backlog maintenance activities.

Other expenses increased by $1.6 billion compared to 2020–21. This increase was caused by policy areas related to economic affairs ($192 million), environmental protection ($275 million), housing and community amenities ($672 million) and recreation, culture and religion ($418 million). Certain agencies within these policy areas contributed to increases in grant, employee and other operating expenses. These agencies included:

- Department of Enterprise, Investment and Trade
- Office of Sport
- NSW Treasury
- Environment Protection Authority
- Place Management NSW
- Venues NSW
- Department of Planning and Environment
- Biodiversity Conservation Trust of NSW.

Key expenses include:

2020–21 $	Change %	2021–22 $	
44.1b	8.5	47.8b	Employee expenses
27.8b	21.2	33.7b	Operating costs
15.6b	83.7	28.7b	Grants and subsidies
10.3b	5.5	9.7b	Depreciation
3b	10.5	3.4b	Interest

10. The State's assets and liabilities

Assets grew by $53 billion to $571 billion

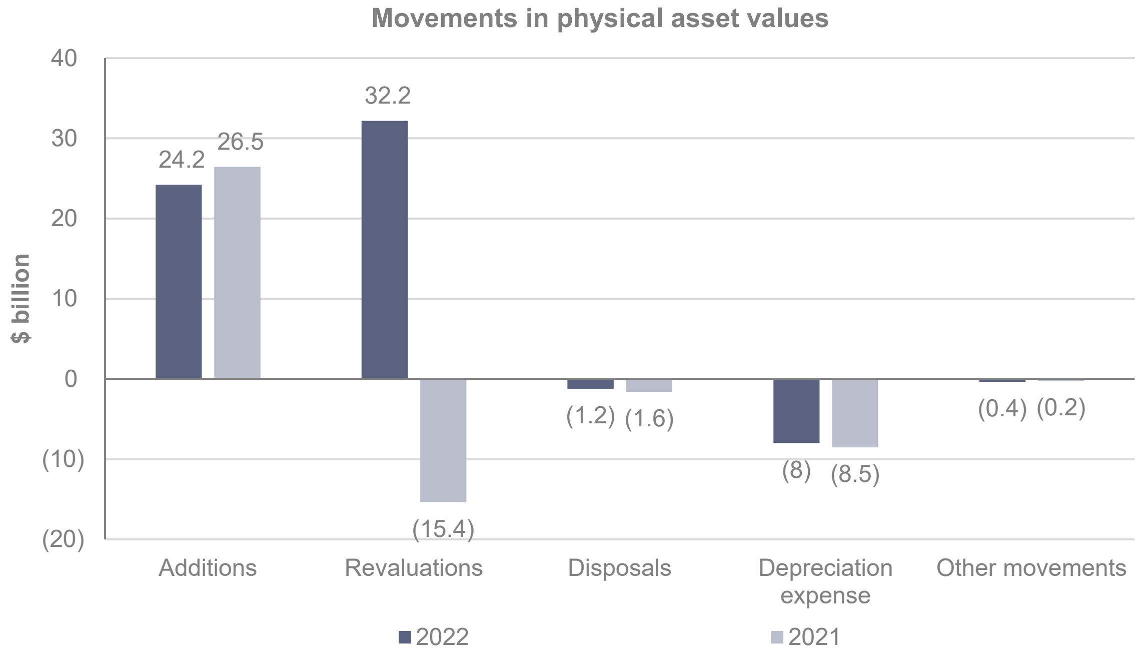
The State's assets include physical assets such as land, buildings and infrastructure, and financial assets such as cash, and other financial instruments and equity investments. The value of total assets increased by $53.2 billion or 10.3% to $571 billion. The increase was largely due to increases in the carrying value of land, buildings and infrastructure systems.

Valuing the State's physical assets

State's physical assets valued at $437 billion

The value of the State's physical assets increased by $46.8 billion to $437 billion in 2021–22 ($724 million increase in 2020–21). The State's physical assets include land and buildings ($198 billion), infrastructure systems ($221 billion), and plant and equipment ($18 billion).

The movement in physical asset values between years includes additions, disposals, depreciation and valuation adjustments. Other movements include assets reclassified to held for sale and other opening balance adjustments.



The movement in carrying value of the State's physical assets was mainly due to current year additions of $24.2 billion and net revaluation increments of $32.2 billion. The net revaluation decrement of $15.4 billion last year was largely due to a $20.1 billion write down in the carrying value of the Transport Asset Holding Entity's (TAHE) infrastructure asset values. TAHE's physical assets were revalued upwards by net $84 million this year. Further discussion on TAHE is presented in Section 4 of this report.

The top three agencies contributing to the net $32.2 billion revaluation increment includes:

- New South Wales Land and Housing Corporation – $10.1 billion driven by residential market price increases
- Department of Education – $5.4 billion increase in the fair value of its assets to reflect market indices movement in land and buildings
- Ministry of Health – $2.1 billion increase in the fair value of its assets mainly due to increases in construction price indices and property sales data.

In 2021–22, asset additions totalled $24.2 billion ($26.5 billion in 2020–21), due to the following major capital projects:

- Sydney Metro City and Southwest – $2.7 billion
- Sydney Metro West – $2.3 billion
- WestConnex Rozelle Interchange (State and Commonwealth funded) – $1.3 billion
- Sydney Metro-Western Sydney Airport (State and Commonwealth funded) – $1.1 billion
- More Trains, More Services – $0.8 billion
- Sydney Gateway – $0.7 billion.

2020–21	Change	2021–22	
$ 518b	10.3%	571b	Total assets

Key assets include:

Physical assets

2020–21 $	Change %	2021–22 $	
199.9b	10.5	220.9b	Infrastructure
173.4b	14.4	198.3b	Land and buildings

Several major capital projects were completed in 2021–22, including life to date capital expenditure on:

- Gosford Hospital redevelopment – $348 million
- Western Sydney City Deal land acquisition –$293 million
- new and upgraded schools, including:
  - schools at Meadowbank Education and Employment Precinct –$285 million
  - Alexandria Park Community School – $136 million
  - Lindfield Learning Village (Stage 2) – $91 million.

Valuing the State's financial assets

State's financial assets were valued at $112 billion

The value of financial assets increased by $4.8 billion to $112.2 billion at 30 June 2022. Over the year:

- financial assets carried at fair value increased by $3.7 billion mainly driven by increases in securities held by NSW Treasury Corporation managing liquidity positions in response to the State's increase in borrowings
- cash and cash equivalents increased $3 billion mainly due to $2.6 billion remaining cash after $7.7 billion was used to repay debt from the $10.3 billion proceeds received from the sale of the State's 49% remaining interest in WestConnex

- receivables increased $1.2 billon largely due to $675 million in taxation receivables and $322 million in other receivables compared to the prior year. The increase in taxation receivable relates to accruals for payroll tax and mining royalties for assessments received up to August 2022 pertaining to the 30 June 2022 financial year. The increase in other receivables was mainly driven by actuarially assessed insurance recoveries comprising reinsurance and recoveries from third parties held by the State's self-insurer, the NSW Self Insurance Corporation
- investments in associates (the State's interest in non-government entities) decreased by $3.9 billion largely due to the sale of the State's residual 49% interest in WestConnex to Sydney Transport Partners Consortium on 17 September 2021 which was carried at $5.7 billion prior to the sale. This was offset by increases in the states residual interest value in Ausgrid and Endeavour of $1.2 billion collectively. Refer to Section 8 'Key audit findings' for further details on the sale of the State's interest in WestConnex.

Financial assets

$ 107.4b ↑ 4.5% 112.2b Total financial assets

2020–21 $	Change %	2021–22 $	
35.9b	↓ 9.3	32.6b	Equity investments
20.9b	↑ 20	25.1b	Cash and receivables
49.7b	↑ 8	53.6b	Investments and placements

Liabilities decreased by $448 million to $284 billion

The State borrowed additional funds in response to COVID-19

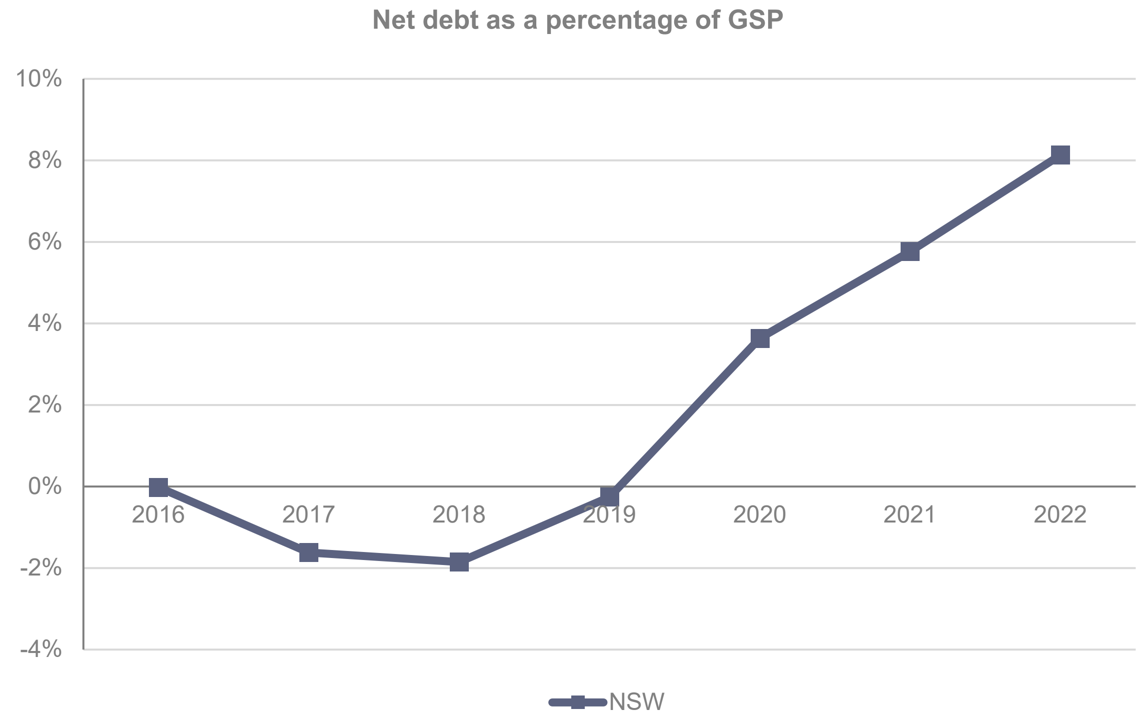
The State's total borrowings (including derivative liabilities) rose by $6.2 billion to $140.9 billion at 30 June 2022.

The value of NSW Treasury Corporation (TCorp) bonds on issue increased by $7.1 billion in fair value terms to $120.9 billion, which largely funded the State's capital expenditure and response to the COVID-19 pandemic.

TCorp bonds are traded in financial markets and are guaranteed by the NSW Government. TCorp continued issuing long-term debt throughout the year, taking advantage of the low interest rate environment, particularly during the first half of the year. TCorp also issued $8.4 billion in floating rate notes following improved demand from the financial markets for this type of debt following regulatory changes by the Australian Prudential Regulatory Authority (APRA).

The State's fiscal objective published in the 2022–23 Budget Papers is to return the Budget to surplus by 2024–25 and bring net debt down towards 14% (seven per cent in 2021–22 Budget Papers) of Gross State Product (GSP) over the medium term. The State measures net debt as the sum of deposits held, government securities, loans payable and other borrowings, less the sum of cash and deposits, advances paid and investments, loans receivable, and placements.

The chart below shows the trend in actual General Government Sector net debt to GSP for New South Wales over the past six years. The trend in New South Wales shows an increase in net debt, particularly in the past two years, which is mainly driven by additional borrowings needed to fund stimulus measures when responding to COVID-19 and natural disaster relief.



Source: NSW 2023 Budget Paper 1, Australian Bureau of Statistics (ABS).

$	284.9b	0.2% (decrease)	284.5b	Total liabilities

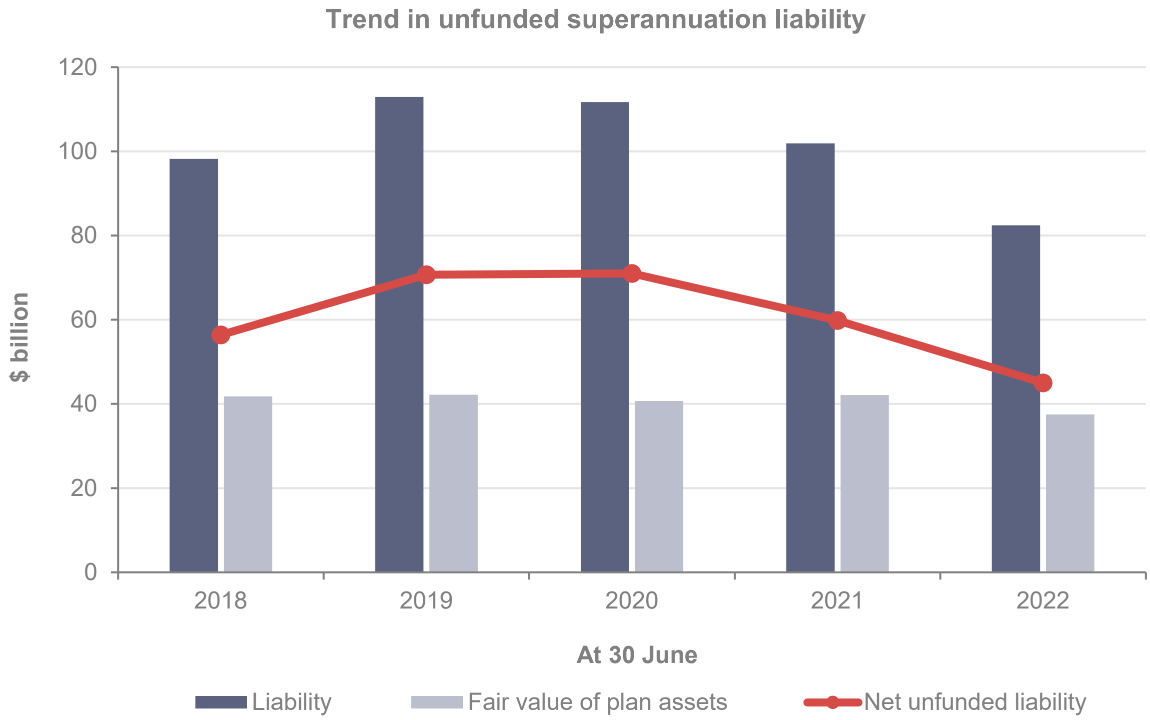
Key liabilities include:

2020–21 $	Change %	2021–22 $	
59.9b	24.8 (decrease)	45b	Unfunded superannuation
24.7b	0.6 (increase)	24.9b	Other employee benefits
134.6b	4.6 (increase)	140.9b	Borrowings (including derivative liabilities)
30b	24.9 (increase)	37.5b	Other liabilities

Nearly 25% of the State's liabilities relate to employees. These include unfunded superannuation and employee benefits, such as long service and recreation leave.

Valuing these obligations involves complex estimation techniques and significant judgements. Small changes in assumptions and other variables, such as changes to discount rates, can materially impact the valuation of liability balances in the financial statements.

The State's unfunded superannuation liability fell $14.9 billion from $59.9 billion to $45 billion at 30 June 2022. This was mainly due to changes in financial assumptions such as the discount rate used to value the unfunded superannuation liability. The discount rate based on the Commonwealth bond yield (which reflects market expectations of future cash rates) was 3.7% at 30 June 2022 (1.5% in 2020–21). A higher discount rate can reduce the superannuation liability valuation. The State's unfunded superannuation liability represents the value its obligations to past and present employees less the value of assets set aside to fund those obligations.



11. Fiscal responsibility, in focus and looking forward

11.1 Fiscal responsibility

The State maintained its triple-A credit rating with Moody's and AA+ Credit Rating by S&P Global Ratings

The object of the *Fiscal Responsibility Act 2012* is to maintain the State's AAA credit rating

The government manages New South Wales' finances in accordance with the *Fiscal Responsibility Act 2012* (the Act).

The Act establishes the framework for fiscal responsibility and the strategy to achieve a AAA credit rating and maintain service delivery to the people of New South Wales.

The legislation sets out targets and principles for financial management to achieve this. These targets are:

- general government annual expenditure growth should be lower than long-term average revenue growth
- to eliminate unfunded superannuation liabilities by 2030.

Credit ratings are a measure of how risky a borrower is (the borrower's expected willingness and capacity to repay any debt on time). Higher credit ratings may lower the cost of borrowing and assist an entity when accessing financial markets.

The State's credit ratings did not change from the previous year, with NSW maintaining its triple AAA/stable credit rating with Moody's and Fitch and a AA+/stable with S&P Global Ratings. The Budget Statement 2022–23 noted that the State was unlikely to regain a AAA rating from S&P Global Ratings until the second half of the decade and with the State required to reduce debt levels.

The table below shows the General Government Sector's (GGS) net debt and financial worth over the past five years.

	2022	2021	2020	2019	2018
Net debt[1] ($m)	55,781	37,076	22,732	(1,603)	(11,195)
Net debt as a per cent of GSP	7.8	5.8	3.6	(0.3)	(1.9)
Annual change in net debt ($m)	18,705	14,344	24,333	9,593	(1,852)
Net financial worth[2]	(30,315)	(51,298)	(30,102)	(4,710)	43,488

1 Net debt equals the sum of selected financial liabilities; deposits held, borrowings and derivatives and advances received less the sum of financial assets; cash and deposits, advances paid and investments, loans and placements.

2 Net financial worth is calculated as financial assets less liabilities. It includes unfunded superannuation liabilities and investments in other sectors, and excludes non-financial assets such as land, buildings, equipment and infrastructure.

Net debt increased by a further $18.7 billion over the past year as the State borrowed additional funds to support economic stimulus and recovery policies.

Net financial worth has improved compared to last year by $21 billion mainly due to an increase of $31.2 billion in the State's investment in other public sector entities and reduced superannuation provisions of $14 billion. These movements were partially offset by a net $16.8 billion in additional borrowings taken on by the government during the year.

Other public sector entities include agencies within the PNFC and PFC sector. Collectively these sectors reported $13.7 billion in revaluation gains, mainly relating to increases in the fair value of non-current physical asset values. More than $10 billion of this increase specifically related to revaluation increments of NSW Land and Housing Corporation's land and building values. Superannuation liabilities reduced due to a higher ten-year government bond rate at 30 June 2022 compared to last year.

The State did not achieve its fiscal target of maintaining annual expenditure growth below the long-term revenue growth rate target of 5.6%

In 2021–22, general government expenditure grew from $95.1 billion to $118.8 billion. This represents a 25% increase compared to last year (6.9% in 2020–21).

Expenditure items that contributed most to the actual growth rate include:

- grants and subsidies – 14.8%
- other operating expenses – 5.3%
- employee costs (including superannuation) – 3.8%.

Grants and subsidy expenses increased by $14.5 billion in 2021–22 ($2.8 billion in 2020–21) mainly due to COVID-19 fiscal support funded during the year including JobSaver ($7.1 billion) which was co-funded by the Commonwealth and COVID-19 business grants ($2.4 billion).

Other operating expenses increased by $5.1 billion mainly due to higher supplies and service expenses of $2.9 billion in 2021–22. This was particularly driven by the health sector when responding to the pandemic. The government's insurance claim liabilities increased by $1.1 billion to cover for additional losses relating to floods and increasing claims associated with medical indemnity and psychological claims.

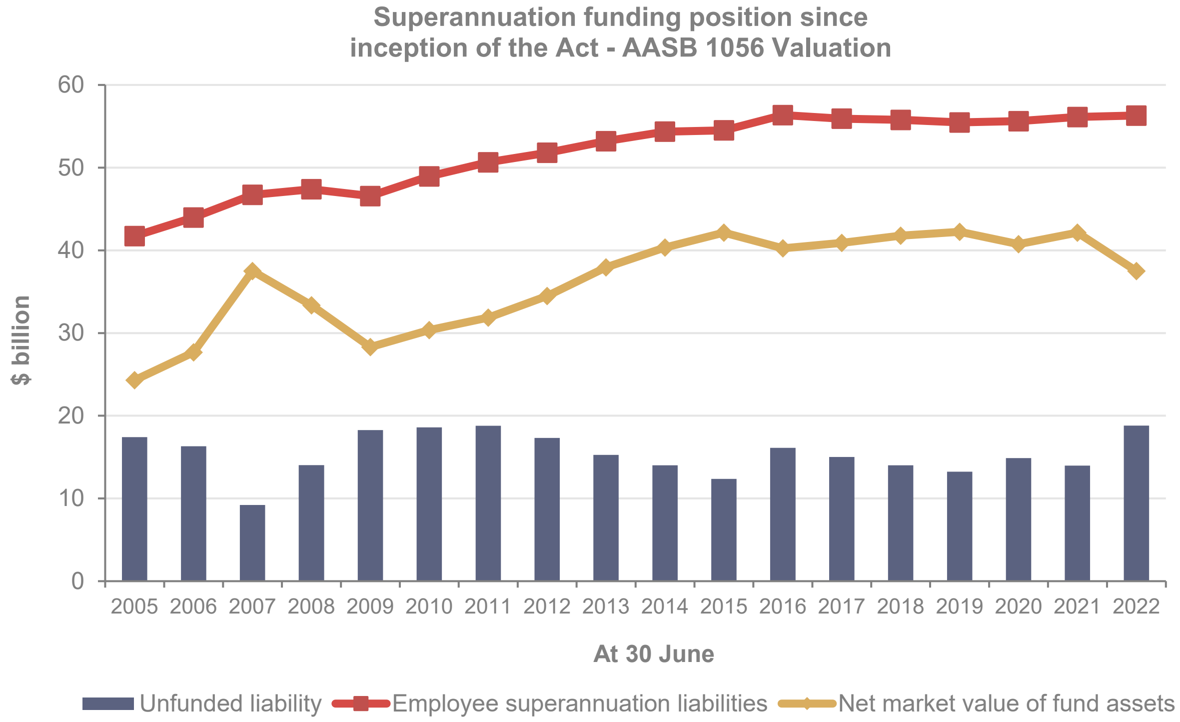
The government plans to amend the *Fiscal Responsibility Act 2012* to reflect the revised 2040 target

The Act continues to set a target to eliminate unfunded superannuation liabilities by 2030. As noted in the 2020–21 Budget, the government announced it plans to amend the Act to change the target for superannuation liabilities to be fully funded from 2030 to 2040. This was in response to the fiscal pressures COVID-19 placed on the State's finances and will provide the State with an additional ten years to eliminate unfunded superannuation and ease pressure on the level of borrowings needed to fund other policies.

To date, the Act has not been amended to reflect this revised target however the government claimed in its 2022–23 Budget that amendments will be made to the *Fiscal Responsibility Act 2012* (the Act) to reflect the revised 2040 target.

This was the government's second year where no contributions were made to its defined benefit schemes. The two-year contribution holiday was announced in the 2020–21 Budget, with funding prioritised to help respond to the fiscal pressures caused by the COVID-19 pandemic.

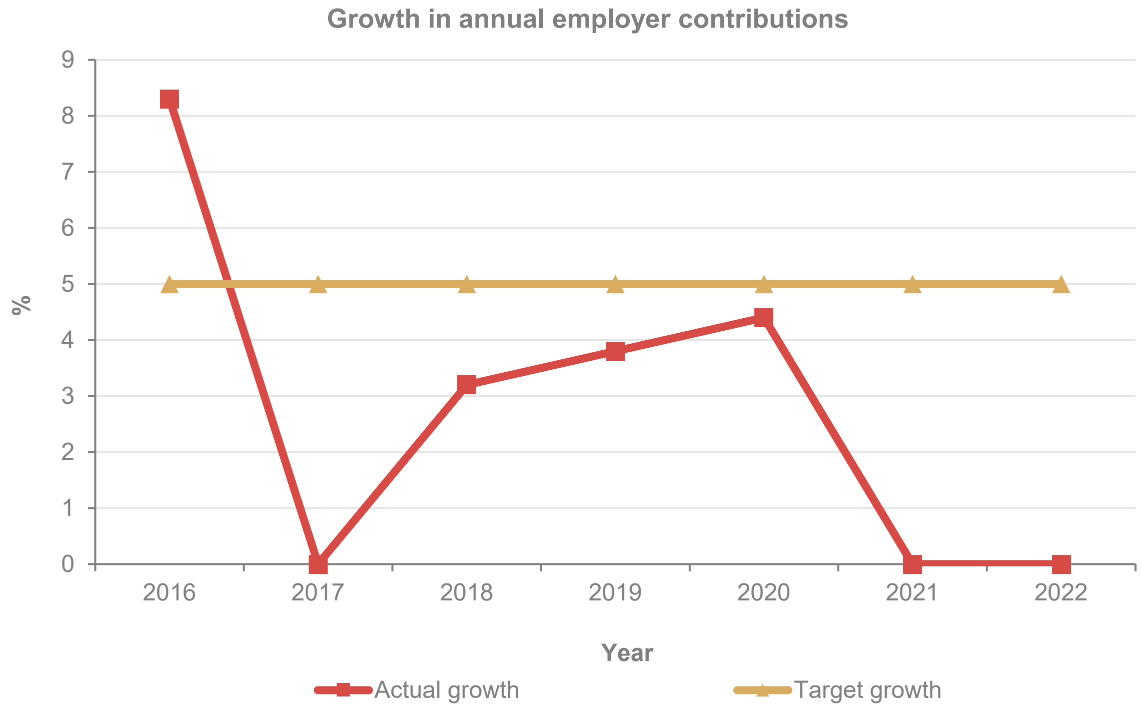
For fiscal responsibility purposes, the State uses Australian Accounting Standard AASB 1056 'Superannuation Entities'. Under this accounting standard, the State's unfunded superannuation liability was $18.8 billion at 30 June 2022 ($14 billion at 30 June 2021).



Employer contributions have not met the five per cent escalation target since 2015–16

The State's funding plan is to contribute amounts escalated by five per cent each year with the aim to fully fund the schemes by 2040.

As the State commenced its two-year employer contribution holiday in 2021, no contributions were made to fund the State's superannuation liabilities. Prior to this, when contributions were made, the State's escalation target had not been achieved since 2015–16.



The State's financial statements record an unfunded superannuation liability of $45 billion at 30 June 2022

For financial statement purposes, the State must apply Australian Accounting Standard AASB 119 'Employee Benefits' to calculate its $45 billion ($59.9 billion in 2020–21) superannuation liability. The funds themselves apply AASB 1056 'Superannuation Entities' to calculate their liabilities to fund members. The two standards use different bases to measure the liability.

AASB 119 'Employee Benefits' requires entities to discount employee liabilities (including unfunded superannuation) using the long-term Australian Government bond rate, while AASB 1056 'Superannuation Entities' discounts the liability using the long-term expected rate of return from the assets backing the liability, currently 5.3% to 7%.

The liability to fund members calculated under AASB 1056 'Superannuation Entities' is $18.8 billion ($14 billion in 2020–21). This is lower than the $45 billion liability of the State when calculated under AASB 119 'Employee Benefits'.

AASB 119 'Employee Benefits' produces a higher liability because of the current low interest rate environment and the impact this has on discount rates.

	As recorded in the State's financial statements	**Fiscal reporting and as reported in the superannuation entities' financial statements**
	AASB 119 Employee Benefits	**AASB 1056 Superannuation Entities**
Purpose	Financial statements for employer	Financial statements of the superannuation funds
State's superannuation unfunded liability ($b)	45	18.8
Discount rate (%)	3.7	5.3–7
Discount rate used	Government bond rate	Expected return on assets backing the liability (long-term earnings rate)

11.2 In focus

Amendment to key statutory timeframes in the GSF and GSA Acts

Inconsistencies in these acts related to key statutory timeframes have been resolved

Last year's 'State Finances 2021' report reported inconsistencies in the GSF Act and *Government Sector Audit Act 1983* (GSA Act) relating to key statutory timeframes and recommended that NSW Treasury seek legislative amendments in Parliament to resolve these inconsistencies.

The inconsistencies were resolved through the *Treasury Legislation Amendment (Miscellaneous) Act 2022* (Miscellaneous Act) that commenced on 1 July 2022.

The Miscellaneous Act amended the GSA Act to:

- remove redundant references to General Government Sector financial statements and align the terminology with that used in the GSF Act
- amend the timing of the transmission of the audited Consolidated State Financial Statements and audit report to the Treasurer under section 49(3) of the GSA Act from 'on or before 22 October' to 'as soon as practicable' as per section 34(3)(a) of the GSA Act
- omit section 51 of the GSA Act as the tabling of Consolidated State Financial Statements by the Treasurer is provided for in section 7.18 of the GSA Act.

The Miscellaneous Act also amended the GSF Act to insert section 7.18(1A) to make it clear that the consolidated state financial statements, commentaries and report required to accompany the statements and the Auditor-General's audit report on the statements must be tabled in the Legislative Assembly at the same time.

Appropriations framework

The GSF Act requires that money is not to be paid out of the consolidated fund except under the authority of an Act, such as the annual Appropriation Act or the GSF Act. This means a minister is only authorised to spend out of the consolidated fund the amount they have been appropriated by the relevant Acts.

An appropriation sets aside amounts of money for a particular purpose up to a particular limit. In New South Wales, appropriations are generally made through:

- the annual Appropriation Act – this is an act to appropriate out of the Consolidated Fund sums for the services of the government for the relevant financial year. These appropriations are made to the responsible ministers of principal departments, special offices and certain Special Deposits Accounts (SDAs)
- the GSF Act – this act allows the responsible minister of a GSF agency to be given an appropriation out of the Consolidated Fund, at the time the agency receives or recovers any deemed appropriation money. Deemed appropriation money is defined in section 4.7(3) of the GSF Act.

Ministers can delegate and sub-delegate appropriation expenditure functions to accountable authorities and officers of GSF agencies. Any spending by accountable authorities and officers of GSF agencies in excess of the amount appropriated to their relevant minister would be made contrary to section 4.6(1) of the GSF Act.

Appropriations can also be made to SDAs for the particular use and purpose of the SDA. Money held in an SDA:

- does not form part of the Consolidated Fund
- is for a particular purpose
- can only be applied towards that purpose.

The enabling legislation of the SDA will typically specify who administers the account, what money must be paid into it and what money can be paid out of it.

In previous years, records have not been adequately maintained to support amounts appropriated to particular Special Deposits Accounts

During the 2021–22 audit of the NSW Generations (Debt Retirement) Fund (the DRF), the Audit Office identified the appropriation of $4.5 billion to the DRF was not paid into the DRF as required by section 4(a) of the NGF Act. Section 9(1)(a) of the NGF Act requires 'all money appropriated by Parliament, or advanced by the Treasurer' to be paid into the DRF. NSW Treasury initially advised that the appropriation had not been paid into the DRF as the NSW Government suspended contributions to the DRF.

NSW Treasury subsequently confirmed that:

- the NSW Government does not have the power to suspend an appropriation made by Parliament that is required by section 9(1)(a) of the NGF to be paid into the DRF
- the effect of section 16 of the *Appropriation Act 2021* and section 9(1)(a) of the NGF is to hypothecate approximately $4.5 billion of the total amount appropriated under the *Appropriation Act 2021* for the purpose of the DRF
- there will not be a breach of section 9(1)(a) of the NGF as long as the amounts appropriated to the DRF continue to be held for that purpose even if no cash has been transferred to a separate bank account.

The Audit Office noted this may have implications for appropriations that are made to other SDAs and sought further advice from the Crown Solicitor's Office (CSO). A copy of this advice is found at Appendix Two. Potential SDAs impacted were the DRF, Digital Restart Fund and Transport for NSW Fund (collectively the relevant SDAs).

This CSO advice confirmed that in relation to the relevant SDAs:

- upon the appropriation under the *Appropriation Act 2020* and *Appropriation Act 2021* taking effect, the whole sum appropriated to the relevant SDA was taken to form part of the SDA and to have been paid out of the Consolidated Fund
- the hypothecation of those appropriated sums into the relevant SDA account occurred automatically by operation of law upon the relevant appropriation taking effect, that is, 1 July 2020 and 1 July 2021 respectively. Specifically, in relation to the Transport for NSW Fund, although the appropriation was made for the services of Transport for NSW, which was defined to include a reference to the Department of Transport, in the absence of any determination by the relevant minister apportioning the appropriation between Transport for NSW and the Department of Transport, the appropriated sum was hypothecated into the Transport for NSW Fund
- the legislative alteration of the amount of the funds attributable to the respective ledger accounts (Consolidated Fund vs the relevant SDA) did not depend on any actual movement of funds between bank accounts (including the movement of money to any bank accounts maintained in respect of the relevant SDA)
- the appropriations should be considered to have been 'applied' in full, for the purposes of section 4.8 of the GSF Act at the start of the annual reporting period in which the appropriations were made
- no subsequent action by government, short of legislative amendment would have the legal effect of reversing that hypothecation.

A responsible manager for a given SDA is a person nominated by the minister that administers that SDA or legislation under which that SDA is established. Responsible managers for SDAs are required, under section 4.16 of the GSF Act, to keep 'records and other information' concerning the operation of an SDA, including information about the amounts appropriated under any Act or law for payment into the account. To the extent this has not occurred, it should be corrected going back to the inception of the SDA account. NSW Treasury undertook an exercise to determine the full extent of amounts appropriated to the relevant SDAs that had not been identified as being available for immediate use for the purposes of the relevant SDAs. This exercise identified a cumulative amount of $11.0 billion not previously identified that had been appropriated for 2021–22 and prior years, as detailed below:

Authority	Special Deposits Account	2022 $'000	2021 $'000
NSW Generation Fund Act 2018	NSW Generations (Debt Retirement) Fund	4,582,033	84,810
Digital Restart Fund Act 2020	Digital Restart Fund	102,000	--
Transport Administration Act 1988	Transport for NSW Fund	6,341,881	5,861,293
Total funds held by SDA's		**11,025,914**	**5,946,103**

Note 22 'Administered Items' of NSW Treasury's financial statements for the 2021–22 financial year was subsequently updated to disclose that the above amounts form part of the relevant SDA and are available for the relevant SDA's immediate use. Similar disclosures have been subsequently included in the 2021–22 financial statements of the DRF, Digital Restart fund, Department of Customer Service (as the department administers the Digital Restart fund), the Department of Transport and Transport for NSW.

Recommendation

The responsible managers for the relevant SDAs should ensure:

- **amounts appropriated under any Act or law for payment into the account are appropriately recorded**
- **records and other information concerning the operation of the SDA are appropriately kept.**

NSW Treasury addressed our recommendations from last year to put a framework in place to monitor expenditure incurred from a minister's appropriation authority

In last year's 'State Finances 2021' report we noted that NSW Treasury had received advice from the CSO that payments between agencies in different administrative clusters would not meet the definition of a 'deemed appropriation' under the GSF Act by the receiving agency. This applies to money paid and received by two agencies across different administrative clusters that continue to hold the money in the Consolidated Fund. These intra-government receipts increase the amount an agency has available to spend, without there being a corresponding increase in the responsible minister's appropriated expenditure limits, thus increasing the risk an agency's expenditure could cause a minister to exceed their appropriated expenditure authority.

We also highlighted in last year's report, that we obtained a separate piece of advice from the CSO on the appropriations framework, which confirmed that an agency is not subject to its own legally appropriated expenditure limit (assuming it is not subject to any annual spending limit imposed through an instrument of delegation or a budget control authority issued by the Treasurer under section 5.1 of the GSF Act). In effect, because responsible ministers are given appropriations, these legal expenditure limits, rest in aggregate, with the principal department and agencies the minister is responsible for.

This also meant that:

- determining whether expenditure has occurred without the authority of an appropriation is complex and it is not possible for an individual agency to monitor or determine at what 'point in time' expenditure has been incurred in excess of the minister's appropriation authority
- while there are mechanisms in place to manage agencies' administrative expenditure limits set by the Budget Papers, there is no mechanism in place to ensure expenditure by agencies does not exceed a minister's appropriation authority received under the annual Appropriations Act and GSF Act.

Last year's report on State Finances recommended that NSW Treasury should ensure a framework exists to monitor and provide assurance to ministers that expenditure incurred across a financial year by agencies under the relevant minister's coordination does not exceed the appropriation authority conferred by the annual Appropriation Act and the GSF Act.

To demonstrate that ministers were materially compliant with the appropriations framework, NSW Treasury required agencies to estimate expenditure incurred against the relevant ministers' appropriation limit at 30 June 2022 and 30 June 2021. This calculation is disclosed in the Summary of Compliance in the financial statements of lead departments and special offices. The section below contains further details on the Summary of Compliance.

There are limitations associated with the above calculation methodology as:

- a progressive examination is required throughout the year to determine if a minister has remained within their appropriation limit. A point in time assessment at 30 June 2022 and 30 June 2021 does not guarantee that a minister’s appropriation limit has not been exceeded at some point throughout the year. NSW Treasury has acknowledged this limitation and the fact that current systems and processes do not facilitate such an assessment
- it is not possible to accurately determine the carry forward for deemed appropriations for each agency. This is due to the fact that a progressive examination is not performed, Consolidated Fund money is fungible, and agencies receive lapsing and non-lapsing appropriations.

To further address these limitations, NSW Treasury has implemented a legislative solution. The *Treasury and Energy Legislation Amendment Act 2022* amends section 4.7 of the GSF Act to:

- deem transactions between GSF agencies as a new category of deemed appropriations from 14 November 2022. At the time the receiving GSF agency receives or recovers the deemed appropriation money, the deemed appropriation to the lead minister is reduced by an equivalent sum to the amount received or recovered by the receiving agency
- validate cross-appropriation payments made between GSF agencies in previous years to ensure they are taken to have been made under authorised appropriations.

The aforementioned Act also changes how ministers receive deemed appropriations, as well as the framework for ministers to delegate and monitor spending against their appropriation limits. Under the changes:

- deemed appropriations are appropriated to the lead minister, rather than the responsible ministers of the GSF Agency
- deemed appropriations are taken to be for the services of the lead department for the GSF agency, except if the GSF agency is a special office in relation to which an appropriation is made under the relevant annual Appropriation Act. In this circumstance, the deemed appropriation is taken to be for the services of the special office.

Recommendation

NSW Treasury should update its guidance to agencies as a result of these legislative amendments, including guidance associated with:

- **calculation and disclosure of appropriation limits and compliance with these limits**
- **authorisation of deemed appropriation moneys.**

NSW Treasury has clarified the financial reporting requirements on appropriations for agencies

Lead departments and agencies that hold money in the Consolidated Fund are required by Australian Accounting Standard AASB 1058 'Income of Not-for-Profit Entities' and NSW Treasury Circular TC20/08 'Mandates of options and major policy decisions under Australian Accounting Standards' to prepare a Summary of Compliance in their financial statements. The Summary of Compliance intended to provide information on the amounts appropriated or authorised for an agency’s use and whether those expenditures were authorised.

In last year's 'State Finances 2021' report we noted that there remains uncertainty around how the CSO advice received by the Audit Office on the appropriations framework impacts these disclosures, as the total spending authority given by parliamentary appropriations and expenditure against these appropriations cannot generally be attributed to an individual agency. Such a scenario is not contemplated by AASB 1058. The report recommended that NSW Treasury should assess how the requirement to prepare a Summary of Compliance under Australian Accounting Standards impacts relevant lead departments' and agencies' financial statement disclosures.

NSW Treasury performed a review on the requirements of the appropriations framework and the requirements of AASB 1058 to ensure these disclosure requirements of this standard are satisfied.

Compliance with key legislation

Further to last year's reporting, two agencies have again spent moneys without an authorised delegation

The delegation to incur expenditure is an important accountability mechanism of responsible government.

Last year's 'State Finances 2021' report reported instances where government agencies spent money received from an annual appropriation and/or deemed appropriation money without an authorised delegation from the relevant minister(s), as required by sections 4.6(1) and 5.5(3) of the GSF Act. The report recommended that NSW Treasury needs to promptly improve the guidance it provides agencies to ensure that expenditure of public moneys is properly supported by authorised delegations.

To address this recommendation, in July 2022 NSW Treasury issued additional guidance on delegations under the GSF Act and communications on the importance of delegations and ensuring that expenditure is properly authorised.

This year's financial audits identified that the:

- TAFE Commission spent money received from an annual Appropriation without an authorised delegation from the relevant minister, as required by sections 4.6(1) and 5.5(3) of the GSF Act
- Rental Bond Board paid operating expenses from the Rental Bond Interest Account without an authorised delegation from the Commissioner for Fair Trading and was therefore non-compliant with section 186 of the *Residential Tenancies Act 2010* and section 5.5 of the GSF Act.

Non-compliance with the *Energy and Utilities Administration Act 1987*

The Energy Administration Account (the account) is a Special Deposits Account (SDA) established under section 35 of the *Energy and Utilities Administration Act 1987* (EUA Act). Section 35 of the EUA Act requires:

- all moneys received by the Energy Corporation of NSW (the corporation) and the Department of Planning and Environment (the department) to be paid into the account
- all amounts required to meet expenditure incurred in connection with the functions of the corporation and the department under the EUA Act or any other Act to be paid out of the account.

Effective from 1 April 2022, the Administrative Arrangement (Administrative Changes–Miscellaneous) Order (No 2) 2022, transferred persons employed in the department principally involved in the administration of legislation allocated, or providing support, to the Minister for Energy to NSW Treasury. This also meant that the Energy Administration Account was transferred from the Department to NSW Treasury on 1 April 2022. As a result, the department referred to in section 35 of the EUA Act changed from the Department to NSW Treasury from 1 April 2022.

The department and NSW Treasury did not comply with section 35 of the EUA Act as they did not pay all their moneys into or out of the account. The EUA Act does not specify which agency has control or responsibility for the account.

While there is non-compliance with the EUA Act, both the department and NSW Treasury advise that complying with the EUA Act could create non-compliance with other pieces of legislation that require the moneys of these agencies to be applied for particular purposes or to other statutory SDA. Therefore, this inconsistency requires legislative resolution.

To address the above inconsistency, NSW Treasury implemented a legislative solution. The *Treasury and Energy Legislation Amendment Act 2022* amends section 35 of the EUA Act to provide that money received by the corporation, and not the department must be paid into the Energy Administration Account. As a result of the legislative change, NSW Treasury will no longer be required to pay all of their moneys into or out of the Energy Administration Account.

Non-compliance with the *Social and Affordable Housing Fund Act 2016*

The Social and Affordable Housing Fund (the fund) is a SDA established under the *Social and Affordable Housing Fund Act 2016* (the Act). The Treasurer is responsible for the Act and the fund. Section 13 of the Act allows the Treasurer to delegate their functions under the Act to the secretary or any person employed in the NSW Treasury.

A qualified opinion was issued for the 2021–22 audit of the fund under section 12 of the Act, on whether payments made from the fund were in accordance with the Act as six payments totalling $22 million were made from the fund under section 8(1) of the Act that exceeded the Treasurer’s delegation under section 13 of that Act.

Recommendation

NSW Treasury should ensure that payments from the fund are made in accordance with the terms and conditions of the Treasurer’s delegation under section 13 of the Act.

Non-compliance with the *Electricity Retained Interest Corporations Act 2015*

The Electricity Retained Interest Corporation fund – Ausgrid (ERIC-A fund) and Electricity Retained Interest Corporation fund – Endeavour (ERIC-E fund) are Special Deposit Accounts established under section 32(1) of the *Electricity Retained Interest Corporations Act 2015* (the Act). The Act establishes a separate fund for each corporation (the corporations being, the ERIC-A and ERIC-E entities, which hold the State’s residual interest in Ausgrid and Endeavour Energy respectively). The corporation is responsible for the administration of the fund established for the corporation.

A qualified opinion was issued for the 2021–22 audit of the ERIC-A fund under section 35 of the Act, on whether payments made from the fund were in accordance with the Act as:

- two instances were identified where payments were made from the fund that did not comply with section 34(d) of the Act. The total value of these payments was $8,338
- certain payments were made out of the fund in excess of the amounts approved in the Treasurer's Standing Authorisations for 2021–22, which did not comply with section 34(d) of the Act. The total value of payments made in excess of the Treasurer's Standing Authorisations was $7,350.

A qualified opinion was issued for the 2021–22 audit of the ERIC-E fund under section 35 of the Act, on whether payments made from the fund were in accordance with the Act as certain payments were made out of the fund in excess of the amounts approved in the Treasurer's Standing Authorisations for 2021–22, which did not comply with section 34(d) of the Act. The total value of payments made from the fund in excess of the Treasurer's Standing Authorisations was $3,400.

Recommendation

NSW Treasury should ensure that payments from the fund are allowable under section 34 of the Act and in accordance with the amounts approved in the Treasurer's Standing Authorisation.

Non-compliance with the *Jobs for NSW Act 2015*

The Jobs for NSW Fund (the fund) is a Special Deposit Account established under the *Jobs for NSW Act 2015* (the Act). The minister has control and management of the fund.

During the 2020–21 audit of the fund, an instance of non-compliance was identified with the Act. The Jobs for NSW Board (the Board) is constituted by section 5(1) of the Act. The Jobs for NSW Board is separate to the Jobs for NSW Fund, which is subject to the control and management of the minister. The Board's functions under section 6 of the Act include providing advice to the minister on specific matters, preparing and recommending to the minister approval criteria for granting jobs creation incentives and calling for, assessing and making recommendations to the minister about the proposals and the approval of jobs creation incentives.

The composition of the Board was not consistent with the requirements of the Act. Section 5(2) of the Act requires the board to consist of seven members which include the Secretary of the NSW Treasury, the Secretary of the Department of Premier and Cabinet (or their nominees) and five ministerial appointments, one of which is to be appointed as Chair of the Board. When appointing a member, section 5(4) of the Act requires the minister to have regard to ensuring that the members of Jobs for NSW as a whole have demonstrated commercial acumen and knowledge of, and senior business experience in, growing jobs and improving industry competitiveness. Since 24 May 2019, the Board has only consisted of the two secretaries. The ministers have not appointed the remaining five members as required by section 5(2) of the Act.

Job creation incentives, following approval by the minister or their delegate, are paid out of the fund. No new job creation incentives were assessed by the two-member board or paid from the fund during 2020–21.

The completion of the 2020–21 audit of the fund was delayed due to the late submission of the 2020–21 financial statements and other delays.

Working accounts established in the Special Deposits Account

Guidance on establishing working accounts is required

Section 4.17 of the GSF Act sets the framework for establishing and operating a working account in the Special Deposits Account. *The Government Sector Finance Regulation 2018* (the regulation) specifies that a GSF agency may only establish and operate a working account if the agency's accountable authority applies to the Treasurer and the Treasurer gives written authority for the account to be established and operated.

Before the commencement of section 4.17 of the GSF Act on 1 July 2019, working accounts were established under section 13A of the *Public Finance and Audit Act 1983* (PF&A Act). The GSF Act included transitional provisions that specified that working accounts established under the PF&A Act were taken to be a working account established under section 4.17 of the GSF Act for a period of three years up to 30 June 2022, after which they would lapse.

Our audit identified at least three working accounts that had lapsed as a new working account had not been established under section 4.17 of the GSF Act at 30 June 2022.

After discussions with the Audit Office, NSW Treasury sought advice from the CSO on the impact of the lapsing accounts including the status of the moneys in the relevant accounts and the agency's authority to spend the money.

NSW Treasury subsequently confirmed that:

- on 1 July 2022, the money in the relevant accounts formed part of the Consolidated Fund, absent any statutory provisions that provide otherwise
- any expenditure of money made from the accounts from 1 July is expenditure of Consolidated Fund money that needs to be made in accordance with the expenditure and delegation provisions in the GSF Act
- money in the relevant accounts cannot be paid into new working accounts established under section 4.17 of the GSF Act.

To return the lapsed balances to the working accounts, NSW Treasury determined that the preferred option was to develop a retrospective regulation that extended the transitional provisions.

The Government Sector Finance Amendment (Working Accounts) Regulation 2022 retrospectively amended the transitional provisions in Schedule 1 of the GSF Act to extend the transitional provisions established under the PF&A Act to 31 December 2022. The amendment is taken to have commenced on 29 June 2022. The extension of the transitional provisions means that these working accounts did not lapse on 30 June 2022 and allows time for these accounts to transition to new accounts established under section 4.17 of the GSF Act.

While section 4.17 of the GSF Act sets the framework for establishing and operating a working account, there are no guidelines that set out when an agency may require a working account. This creates a risk that working accounts may be applied for, or established, without a valid need.

Recommendation

NSW Treasury should develop guidelines that set out when agencies may require working accounts.

Restart NSW

Restart NSW was established in 2011 to fund the State's major infrastructure projects

The Restart NSW Fund was established in 2011 to invest in new infrastructure. Projects including Sydney Metro West and Parramatta Light Rail, are primarily funded by proceeds from the government's asset recycling program. The Restart NSW Fund (the Fund) had a balance of $9.2 billion at 30 June 2022 ($12.4 billion in 2020–21).

The Fund paid $3 billion for infrastructure projects in 2021–22 ($3.8 billion in 2021–22). The largest payments were for transport projects, including $1.3 billion to Sydney Metro West ($1 billion in 2020–21) and contributed $375 million ($319 million in 2020–21) of the $2.3 billion ($2.4 billion in 2020–21) equity contribution to the Transport Asset Holding Entity (TAHE).

The funds are invested in the NSW Infrastructure Future Fund (NIFF), which is allowed under the *Restart NSW Fund Act 2011* (Restart Act). The NIFF is an investment vehicle for the Fund to help the NSW Government meet its infrastructure objectives and this fund is managed by TCorp. In 2021–22, the Fund experienced a negative net return of 5.0% which was 11.8% lower than its annual benchmark return of 6.8%. Since inception, life to date returns are also 0.7% lower than the benchmark return of 4.3%.

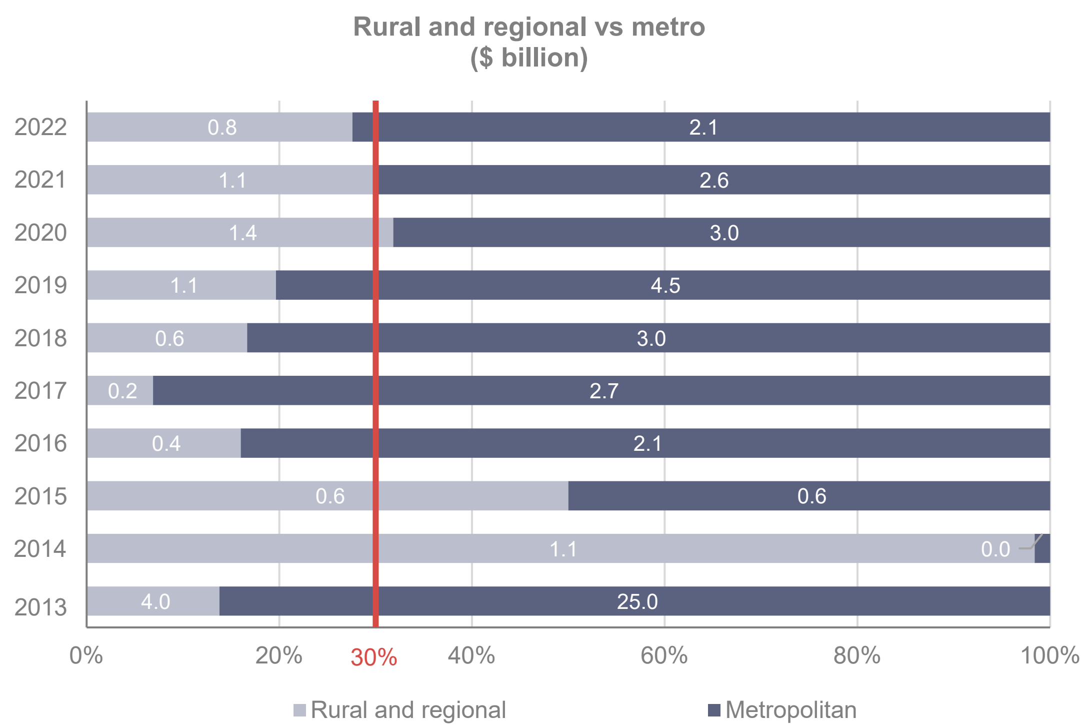
The fund received $189 million ($147 million in 2020–21) proceeds from issue of bonds

Proceeds from Waratah bonds were paid into the Fund however the fund has no obligation to repay these bonds. The liability is assumed by the State and reported as administered liabilities within NSW Treasury's financial statements.

The fund directed 27.3% of its payments towards rural and regional infrastructure projects in 2021–22, less than the 30% target

The Restart Act requires the Fund to report on the percentage of payments directed to rural and regional infrastructure projects and whether this represents at least 30% of the total payments from the fund. The Restart NSW Fund Amendment (Rural and Regional Infrastructure Funding) Bill 2020 introduced in Parliament in 2020 would amend the Restart Act by requiring at least 30% of the total payments each financial year and for the life of the Restart NSW Fund be made on infrastructure projects in rural and regional areas.

This year the Fund did not meet its target of directing at least 30% of funding towards rural and regional infrastructure projects. Since the Fund's commencement, 23.5% of total payments went towards rural and regional infrastructure projects. Current projections for the life of the Fund indicate 28% of funding will be spent on rural and regional projects, which is below the target of 30% for the life of the Fund.



Key audit matters

Key Audit Matters (KAM) are matters considered of most significance to the conduct of an audit. Australian Auditing Standard 701 'Communicating Key Audit Matters in the Independent Auditor's Report' defines KAMs as those matters considered of most significance to the audit. Whilst inclusion of KAMs is not a mandatory requirement for public sector entities, inclusion of these matters add value for users by explaining areas of audit focus, increasing transparency and giving users a better understanding of significant management judgements in the State's financial statements.

The KAM included in the Total State Sector Independent Auditor's Report focused on the following risks:

- accounting for equity contributions into the Transport Asset Holding Entity
- control of rail transport assets vested in TAHE
- fair value measurement of property, plant and equipment
- valuation of defined benefit superannuation and long service leave liabilities
- valuation of financial instruments
- accounting for the State's Investments in the TCorp Investment Management Funds
- valuation of outstanding claims liabilities
- taxation and statutory revenue.

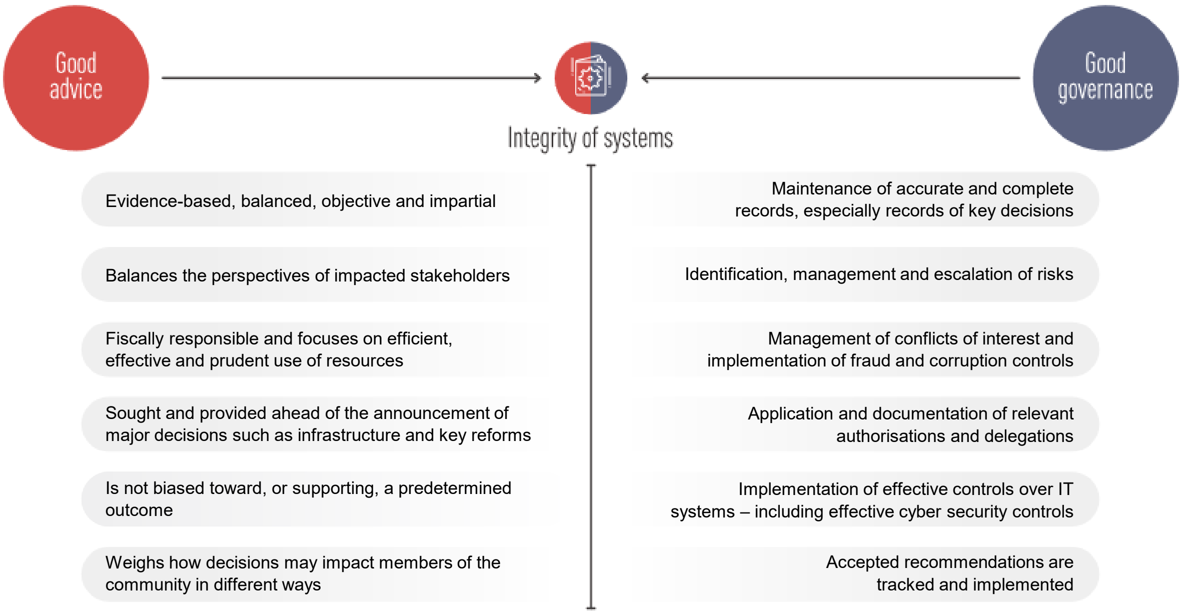
11.3 Looking forward

Audit Office's work plan for 2022–25

The Audit Office's 2022–25 work plan will focus on integrity of systems and processes and continue to examine government response to natural disaster emergencies and cyber security

Our focus on integrity

The Audit Office of New South Wales has a fundamental role in helping the Parliament hold government accountable for the use of public resources. In doing so, we examine whether government systems and processes are effective in supporting integrity, accountability and transparency. We set out below the aspects of integrity that we expect to see in these systems and processes, such as in grant program administration, major project delivery and application of controls and governance. We will assess these elements in the conduct of our financial and performance audits over the next three years.



Our focus on continued responses to emergencies in New South Wales

The COVID-19 pandemic will have a lasting impact on the people and the public sector of New South Wales. In addition, governments are continuing to assist communities in their recovery from recent weather emergencies, including significant flooding in northern New South Wales. The scale of government responses to these events has been significant and has required a wide-ranging response involving emergency response coordination, service delivery, governance and policy.

Substantial resources also continue to be directed toward these responses, and in assisting rebuilding and economic recovery. Some systems and processes have changed to reflect the need for quick responses to immediate needs. Increasing risk and complexity arising from emergencies highlights the fundamental importance of good stewardship of the public sector.

The continuing and changing risk environment presented by emergency events – now and into the future – has meant that we will maintain our focus on providing assurance on how effectively aspects of government responses have been delivered. This includes financial and governance risks arising from the scale and complexity of government responses. We will take a phased approach to ensuring that our work addresses the following elements of the emergencies and government responses:

Response

Financial and performance audits will have regard to government preparedness for emergencies as well as initial response to support people and communities impacted by natural disasters and COVID-19. We will also consider governance and oversight risks that arise from the need for quick decision-making and responsiveness.

Recovery

Financial and performance audits will have regard to the effectiveness and robustness of processes to direct resources towards recovery efforts and ensure good governance and transparency in doing so.

Impact

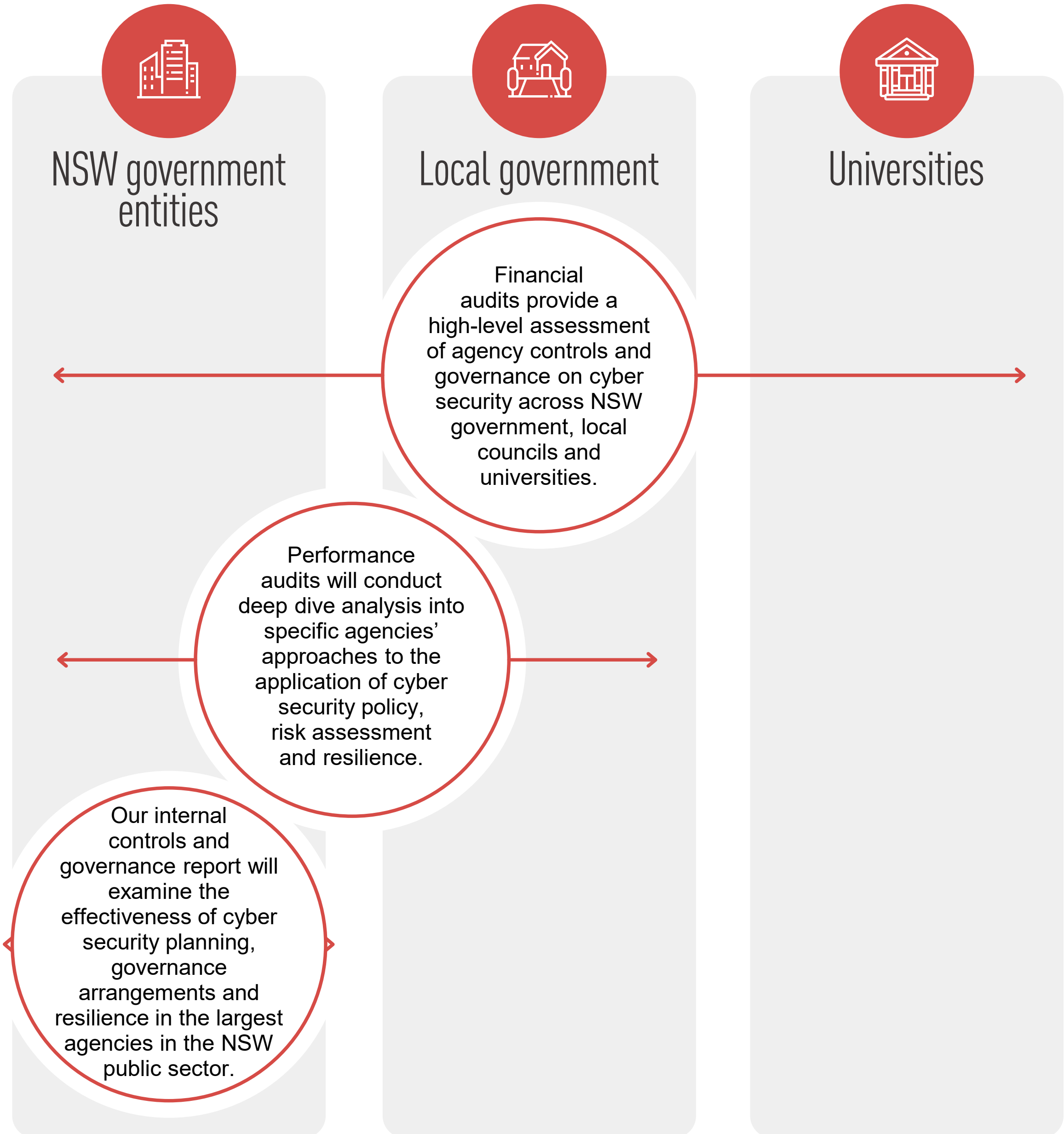
Financial and performance audits will have regard to the mid to long-term impact of government responses to emergencies such as natural disasters and COVID-19, and will look to assess whether government investment has achieved desired outcomes.

Our focus on cyber security

Cyber security and resilience continues to be an area of focus for the work of the Audit Office. The increasing global interconnectivity between computer networks has dramatically increased the risk of cyber security incidents. Such incidents can harm government service delivery and may include the theft of information, breaches of private information, denial of access to critical technology, or even the hijacking of systems for profit or malicious intent. These outcomes can harm trust in government.

More broadly, outdated and 'legacy' IT systems and capability present risks to government. Agencies need to be alert to the need to update and replace legacy systems, and regularly train and upskill staff in their use and to be cyber risk aware. To add to this, cyber security risks have been exacerbated by recent emergencies, which have resulted in greater and more diverse use of digital technology. The Audit Office's approach to auditing cyber security across state entities, local councils and universities involves:

- considering how agencies are responding to the risks associated with cyber security in our financial audits across the NSW public sector
- examining the effectiveness of cyber security planning and governance arrangements for large NSW state government agencies for our Internal controls and governance report
- conducting deep-dive performance audits of the effectiveness of specific agency activities in preparing for, responding to, and recovering from cyber security risks.



Section two

Appendices

Appendix one – Prescribed entities

Section 45 of the *Government Sector Audit Act 1983* (GSA Act) requires the Auditor-General to perform audits of the financial statements of entities, funds or accounts prescribed for the purposes of that section. Prescribed audits are generally made at the request of a Treasurer, a responsible minister, or a prescribed requestor. The Auditor-General is required to inspect and audit the financial report and the books and records relating to an entity or fund or account under the control of an entity. Section 45(3) of the GSA Act requires the Auditor-General to include a reference to any prescribed audit conducted in this report. The following were prescribed entities as at 30 June 2022.

Entity fund	Latest financial statements audited	Type of audit opinion issued
AustLII Foundation Limited	31 December 2021	Unmodified
Belgenny Farm Agricultural Heritage Centre Trust	30 June 2022	Unmodified
The Brett Whiteley Foundation	30 June 2022	Unmodified
City West Housing Pty Ltd	30 June 2022	Unmodified
Cowra Japanese Garden Maintenance Foundation Limited	31 March 2022	Unmodified
Cowra Japanese Garden Trust	31 March 2022	Unmodified
Crown Employees (NSW Fire Brigades Firefighting Staff Death and Disability) Superannuation Fund	30 June 2022	Unmodified
Eif Pty Limited	30 June 2022	Unmodified
Energy Investment Fund	30 June 2022	Unmodified
Central Coast Council Water Supply Authority (formerly Gosford City and Wyong City Council Water Supply Authorities)	30 June 2021	Modified- limitation of scope
Home Building Compensation Fund	30 June 2022	Unmodified
The funds for the time being under the management of the New South Wales Treasury Corporation, as trustee	30 June 2022	Unmodified
Macquarie University Professorial Superannuation Scheme	30 June 2022	Unmodified
National Art School	31 December 2021	Unmodified
NSW Fire Brigades Superannuation Pty Limited	30 June 2022	Unmodified
Parliamentary Contributory Superannuation Fund	30 June 2022	Unmodified
Sydney Education Broadcasting Limited	31 December 2021	Unmodified
The superannuation fund amalgamated under the *Superannuation Administration Act 1991* and continued to be amalgamated under the *Superannuation Administration*	30 June 2022	Unmodified

Entity fund	Latest financial statements audited	Type of audit opinion issued
Act 1996 (known as the SAS Trustee Corporation Pooled Fund)	30 June 2022	Unmodified
The trustees for the time being of each superannuation scheme established by a trust deed as referred to in section 127 of the *Superannuation Administration Act 1996*	30 June 2022	Unmodified
The Art Gallery of New South Wales Foundation	30 June 2022	Unmodified
Trustees of the Farrer Memorial Research Scholarship Fund	31 December 2021	Unmodified
United States Studies Centre	31 December 2021	Unmodified
Universities Admissions Centre (NSW and ACT) Pty Limited	30 June 2022	Unmodified
University of Sydney Professorial Superannuation System	31 December 2021	Unmodified

Appendix two – Legal opinions

ADVICE

Crown Solicitor's Office

ENVIRONMENT PROTECTION AUTHORITY - "ACCOUNTABLE AUTHORITY" ARRANGEMENTS

Executive summary

1. You seek my advice as to whether the Chief Executive Officer ("CEO") or Board of the Environment Protection Authority ("EPA") is the "accountable authority" for the EPA for the purposes of the *Government Sector Finance Act 2018* ("*GSF Act*") and *Government Sector Audit Act 1983* ("*GSA Act*").

2. In my view, the CEO is the "accountable authority" of the EPA for the purposes of both Acts.

Analysis

3. Section 2.7(1) of the *GSF Act* provides that each GSF agency is to have an accountable authority for the purposes of that Act. The EPA, being a statutory body representing the Crown for the purposes of the *GSF Act* (s. 5(2), *Protection of the Environment Administration Act 1991* ("*PEA Act*")) is a GSF agency (s. 2.4(1)(i), *GSF Act*).

4. Section 2.7(2)(a)-(h) identifies the accountable authority for certain specified GSF agencies. These provisions do not specify the EPA and are therefore irrelevant for present purposes.

5. Section 2.7(2)(i) and (j) of the *GSF Act* provides:

> "(2) The accountable authority for a GSF agency is-
>
> ...
>
> (i) for any other agency not covered by the preceding paragraphs that is a Public Service agency—
>
> (i) if the agency is a Department—the Secretary of the Department, or
>
> (ii) if the agency is not a Department—the head of the agency, or
>
> (j) for any other agency not covered by the preceding paragraphs that is not a Public Service agency—
>
> (i) if the agency has a governing body—the governing body, or
>
> (ii) if the agency does not have a governing body—the head of the agency."

6. Section 2.7(3) states that the regulations may declare specified persons or other entities are to be treated as the accountable authority for certain specified GSF agencies (or kinds of GSF agencies). This provision is not relevant for present purposes as there is no relevant declaration under the regulations.

7. Section 2.7(2)(i) identifies the accountable authority for certain "Public Service [agencies]". Section 1.4 of the *GSF Act* provides that "Public Service agency" has the same meaning as in the *Government Sector Employment Act 2013* ("*GSE Act*"). Section 3 of the *GSE Act* defines "Public

Prepared for: AUD018 Audit Office of NSW
Client ref: Nathan Carter
Author: Rachel Cao
Date: 5 October 2022

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Service agency" to mean a "Department", a "Public Service executive agency (being an agency related to a Department)" or a "separate Public Service agency". These are listed respectively in Pts 1, 2 and 3 of Sch. 1 of the *GSE Act* and the EPA itself is not one of the agencies listed. The EPA is therefore not a "Public Service agency". For completeness, I note (consistently with your instructions) that the Environment Protection Authority Staff Agency is a "separate Public Service agency" listed in Pt 3 Sch. 1 and therefore a "Public Service agency".

8. Accordingly, s. 2.7(2)(j) is the relevant provision to determine the "accountable authority" of the EPA. Applying that provision, it is necessary to determine whether the EPA has a "governing body". If it does, the accountable authority for the EPA will be that governing body; otherwise, the accountable authority for the EPA will be the "head of the agency". The terms "governing body" and "head of a GSF agency" as used in s. 2.7(2)(j) are defined in s. 1.4 of the *GSF Act*:

> "***governing body***, in relation to a GSF agency, means—
>
> (a) a board, council or other body comprised of individuals that are collectively responsible for managing the affairs of the agency, or
>
> (b) any other entity declared by the regulations to be the governing body for the agency,
>
> but does not include—
>
> (c) any board, council or other body with merely advisory functions, or
>
> (d) any entity (or entity of a kind) prescribed by the regulations not to be a governing body.
>
> …
>
> ***head of a GSF agency*** means—
>
> (a) for a Public Service agency—the person who is the head of the Public Service agency (within the meaning of the *Government Sector Employment Act 2013*), or
>
> (b) for any other agency—the person who is the chief executive officer (however described) of the agency or otherwise responsible for the agency's day to day management, but not its governing body (if any)."

9. The EPA has a Board (s. 15, *PEA Act*). The central issue is whether the Board is the "governing body" of the EPA, noting that no entity is prescribed by the regulations as the governing body for the EPA.

10. The Board's functions are set out in s. 16(1) of the *PEA Act* as follows:

> "(a) to determine the policies and long-term strategic plans of the [EPA], including policies and plans relating to organisational governance and risk management;
>
> (b) to oversee the effective, efficient and economical management of the [EPA];
>
> (c) to develop, and make available for public information, guidelines relating to the institution of criminal and related proceedings;
>
> (d) to determine whether the [EPA] should institute proceedings for serious environment protection offences referred to in section 17;
>
> (e) to advise the Minister on any matter relating to the protection of the environment (at the request of the Minister or on its own initiative)."

11. The abovementioned functions suggest that the Board's role can generally be characterised as involving "higher order" oversight of the EPA (for example, by setting policies and strategic plans,

per s. 16(1)(a), and maintaining general oversight of its management, per s. 16(1)(b)), although it has some specific "operational" functions (particularly with respect to approving the EPA's institution of proceedings for serious environmental protection offences, per s. 16(1)(d)).

12. By contrast, the effect of s. 14A of the *PEA Act* is that control and management of the EPA's affairs rests with the CEO, albeit subject to the policies and "other decisions" of the Board and the directions of the Minister. Section 14A provides:

> "**14A Chief Executive Officer to manage and control affairs of [the EPA]**
>
> (1) The Chief Executive Officer is to manage and control the affairs of the [EPA], subject to—
>
> (a) the policies determined by the Board and other decisions of the Board under this Act, and
>
> (b) the directions of the Minister under this Act.
>
> (2) An act, matter or thing done in the name of, or on behalf of, the [EPA] by the Chief Executive Officer is taken to have been done by the [EPA]."

13. While the Board does have the power to take some steps which bind the CEO's conduct, these are limited in their scope and effect. For the most part, they create parameters within which the CEO controls and manages the affairs of the EPA.

14. Moreover, the Board lacks a general power of control and management, including its incident of being able to act on behalf of, or in the name of, the EPA. Such incident, it may be noted, is expressly conferred on the CEO: s. 14A(2), *PEA Act*. The absence of such a power on the part of the Board, and its conferral on a different party, reinforces the view that the Board's own "oversight" function under s. 16(1)(b) of the *PEA Act* is of a more limited, supervisory character.

15. The Board is not therefore "collectively responsible" for managing the affairs of the EPA, in the sense articulated in para. (a) of the definition of "governing body" in s. 1.4 of the *GSF Act*. Management (and control) of the EPA's affairs instead rests with the CEO, by virtue of s. 14A of the *PEA Act*. Nor, as I have mentioned, is the Board prescribed as a "governing body", for the purposes of para. (b) of the definition in s. 1.4 of the *GSF Act*.

16. The EPA therefore does not have a "governing body" for the purposes of s. 2.7(2)(j), and the "accountable authority" under the *GSF Act* is accordingly the head of the EPA pursuant to s. 2.7(2)(j)(ii). The head of the EPA is, relevantly and in accordance with para. (b) of the definition of "head of a GSF agency" in s. 1.4 of the *GSF Act*, "the person who is the chief executive officer (however described) of the agency." That person is the CEO of the EPA and therefore, in my view, the CEO is the accountable authority for the EPA.

17. Finally, as s. 4 of the *GSA Act* defines "accountable authority" for a GSF agency by reference to its meaning in the *GSF Act*, the CEO is also the "accountable authority" of the EPA for the purposes of the *GSA Act*.

Michael Granziera	David Nguyen
A/Assistant Crown Solicitor	A/Principal Solicitor
for Crown Solicitor	**for Crown Solicitor**

ADVICE

Crown Solicitor's Office

ADVICE ON ANNUAL APPROPRIATIONS MADE TO SPECIAL DEPOSITS ACCOUNTS

Executive summary

1. You seek my advice on the effect of certain arrangements for payments into certain accounts in the Special Deposits Account ("SDA accounts") under certain annual *Appropriation Acts*.

2. Upon the appropriation under the *Appropriation Act 2020* in respect of the NSW Generations (Debt Retirement) Fund ("Debt Retirement Fund") taking effect, the whole of the sum duly appropriated was taken to form part of that Fund, and to have been paid out the Consolidated Fund. A similar result applies with respect to the appropriation under the *Appropriation Act 2020* in respect of the Digital Restart Fund, and to the appropriations under the *Appropriation Act 2021* in respect of the Debt Retirement Fund and Digital Restart Fund (respectively).

3. The hypothecation of those appropriated sums into the relevant SDA account occurred automatically by operation of law, upon the relevant appropriation taking effect.

4. Upon the appropriations taking effect:

   (a) the Consolidated Fund and the relevant SDA account were (respectively) "debited" and "credited" in the amounts specified in those appropriations;

   (b) that position was not altered by any banking or accounting arrangements that may (or may not) have occurred in connection with giving effect to those appropriations, and it was necessary for operational and accounting arrangements to ensure that amounts equivalent to those appropriated amounts were available for the purposes of the relevant SDA account; and

   (c) the appropriations should be considered to have been "applied" in full, for the purposes of s. 4.8 of the *Government Sector Finance Act 2018* ("*GSF Act*") at the start of the annual reporting period in which the appropriations were made.

5. The "records and other information" concerning the operation of an SDA account that the "responsible manager" is required to keep under s. 4.16 of the *GSF Act* includes information about the amounts appropriated under any Act or law for payment into the account. To the extent this has not occurred, it should be corrected going back to the inception of the relevant SDA account.

6. The conclusions above apply, *mutatis mutandis*, to appropriations under the *Appropriation Act 2020* and *Appropriation Act 2021* in respect of "Transport for NSW", except to the extent that the Minister to whom the appropriation was made determined that a portion of the sums appropriated should be applied to the services of the Department of Transport rather than the services of Transport for NSW ("TfNSW"). Only amounts allocated for the purposes of TfNSW are payable into the Transport for NSW Fund ("TfNSW Fund").

Prepared for: AUD018 Audit Office of NSW
Client ref: Nathan Carter
Author: David Nguyen / Michael Granziera *Date:* 21 October 2022

202202935 D2022/893681

Crown Solicitor's Office

Background

7. For the 2020-21 financial year, Parliament appropriated amounts from the Consolidated Fund pursuant to the *Appropriation Act 2020* as follows:

   "**5 Digital Restart Fund**

   This Act appropriates the sum of $413,000,000 to the Minister for Customer Service out of the Consolidated Fund for payment into the Digital Restart Fund established under the *Digital Restart Fund Act 2020*.

   …

   13 Transport for NSW

   (1) This Act appropriates the sum of $20,343,553,000 to the Minister for Transport and Roads out of the Consolidated Fund for the services of Transport for NSW for the year 2020–21.

   …

   (2) A reference in this section to Transport for NSW includes a reference to the Department of Transport.

   …

   16 Appropriation to Treasurer for NSW Generations Fund

   This Act appropriates the sum of $2,017,094,000 to the Treasurer out of the Consolidated Fund for payment into the NSW Generations (Debt Retirement) Fund established under the *NSW Generations Funds Act 2018*."

8. For the 2021-22 financial year, Parliament appropriated amounts from the Consolidated Fund pursuant to the *Appropriation Act 2021* as follows:

   "**5 Digital Restart Fund**

   This Act appropriates the sum of $716,000,000 to the Minister for Customer Service out of the Consolidated Fund for payment into the Digital Restart Fund established under the *Digital Restart Fund Act 2020*.

   …

   13 Transport for NSW

   (1) This Act appropriates the sum of $23,219,953,000 to the Minister for Transport and Roads out of the Consolidated Fund for the services of Transport for NSW for the year 2021–22.

   …

   (2) A reference in this section to Transport for NSW includes a reference to the Department of Transport.

   …

   16 Appropriation to Treasurer for NSW Generations Fund

   This Act appropriates the sum of $4,497,223,000 to the Treasurer out of the Consolidated Fund for payment into the NSW Generations (Debt Retirement) Fund established under the *NSW Generations Funds Act 2018*."

9. The following SDA accounts are constituted under New South Wales legislation:

   (a) the Debt Retirement Fund (by s. 4 of the *NSW Generations Funds Act 2018* ("*NGF Act*"));

   (b) the Digital Restart Fund (by s. 5 of the *Digital Restart Fund Act 2020* ("*DRF Act*")); and

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(c) the TfNSW Fund (by s. 77 of the *Transport Administration Act 1988* ("*TA Act*")).

10. Provisions of those respective Acts in turn provide for the payment into those accounts of monies periodically appropriated by Parliament. Relevantly:

(a) in the case of the Debt Retirement Fund, s. 9(1) of the *NGF Act* provides:

> "(1) The following are to be paid into the Debt Retirement Fund:
>
> (a) all money appropriated by Parliament, or advanced by the Treasurer, for payment into the Fund …"

(b) in the case of the Digital Restart Fund, s. 8(1) of the *DRF Act* provides:

> "(1) There is payable into the Fund the following—
>
> (a) all money appropriated by Parliament, or advanced by the Treasurer, for the purposes of payment into the Fund …"

(c) in the case of the TfNSW Fund, s. 78 of the *TA Act* provides:

> "(1) There shall be paid into the TfNSW Fund—
>
> (a) all money—
>
> …
>
> (ii) appropriated by Parliament for the purposes of TfNSW, …
>
> but excluding money advanced or appropriated for such non-capital expenditure as may be prescribed by the regulations, and …".

11. I note that the foregoing provisions operated in those terms at material times during the 2020-21 and 2021-22 financial years.

Analysis

12. It is convenient to make some contextualising observations concerning appropriations, the Consolidated Fund and SDA accounts at the outset:

(a) The effect of s. 39 of the *Constitution Act 1902* is that subject to contrary statutory provision, all public monies collected, received or held by a person on behalf of the State form part of the Consolidated Fund.

(b) For the purposes of s. 39, SDA accounts (recognised by s. 4.15 of the *GSF Act* are a form of contrary statutory provision, whereby monies are instead attributed to an account or fund other than the Consolidated Fund.

(c) Both the Consolidated Fund and SDA accounts are "ledger" accounts, to which money is attributed, as opposed to bank accounts. Their essential purpose (reflected in the terms of s. 4.6(1) and (2) of the *GSF Act*) is to restrict expenditure of funds attributed to them to expenditure that is authorised by Acts of Parliament (that is, through appropriations of different descriptions). Money attributed to the Consolidated Fund or an SDA account may in fact be held in multiple bank accounts.

(d) An appropriation is not a withdrawal of money from the Consolidated Fund (*Northern Suburbs General Cemetery Reserve Trust v Commonwealth* (1993) 176 CLR 555 at 581 per Brennan

J), being instead an authority conferred by Parliament on the Executive enabling it to withdraw money from the Consolidated Fund (*Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1)[1]. Similar considerations apply to legislation authorising the payment of funds from SDA accounts.

(e) The authority conferred by an appropriation is not specific to any particular amount of money forming part of the Consolidated Fund (for example, money held in a particular bank account). It is instead an authority to expend any amount of money forming part of the Consolidated Fund, for the purposes specified and up to the amount permitted.

(f) The expenditure authority conferred by an annual *Appropriation Act* ordinarily becomes available on 1 July on the year of its enactment, and lapses on 30 June of the calendar year following.[2]

(g) Mirroring this convention, the "annual reporting period" for the NSW Government under the *GSF Act* is the 12 month period commencing on 1 July each year, and unused appropriations lapse at the end of that period (subject to exceptions not presently relevant; see s. 4.8(1) of the *GSF Act*).

13. I now consider the specific questions you have raised.

Debt Retirement Fund

Question 1 – Payments into the Debt Retirement Fund by the Appropriation Acts

14. You ask whether the whole amount appropriated by Parliament to the Minister pursuant to s. 16 of the 2020 and 2021 *Appropriation Acts* for payment into the Debt Retirement Fund needed be paid into that fund pursuant to s. 9(1)(a) of the *NGF Act*.

15. The effect of s. 9(1)(a) of the *NGF Act* is that, upon the appropriations under s. 16 of each *Appropriation Act* taking effect on 1 July in 2020 and 2021 (respectively), the whole of the sums duly appropriated was taken to form part of the Debt Retirement Fund, and to have been paid out the Consolidated Fund.

16. Put in slightly different terms, the effect of each *Appropriation Act* was a legislative "debiting" of the Consolidated Fund and an equivalent "crediting" of the Debt Retirement Fund in the relevant amounts.

17. The ramifications of this arrangement – in the sense of whether there "needed" then be a payment into the Debt Retirement Fund – are conveniently addressed in answer to your Question 2.

[1] At 55 [111] per French CJ; 73 [178] per Gummow, Crennan and Bell JJ; 113 [320] per Hayne and Kiefel JJ; 210-211 [601]-[602] per Heydon J; see James Stellios, *Zines's The High Court and the Constitution* (6th ed, 2015, Federation Press) at 384-394.

[2] See, for example, the definition of "year 2022-23" in s. 3 of the *Appropriation Act 2022*, and appropriations made for that year in the substantive provisions of the Act.

Question 2(a) – "Automatic" hypothecation

18. You ask whether the amounts appropriated by Parliament were "automatically" hypothecated into the Debt Retirement Fund even if no cash was paid into the bank account in connection with the Fund.

19. Consistent with my preceding comments, the hypothecation to the Debt Retirement Fund occurred automatically upon the appropriations arising, by operation of law. That legislative alteration of the amount of the funds attributable to the respective ledger accounts (Consolidated Fund vs Debt Retirement Fund) did not depend on any actual movement of funds between bank accounts (including the movement of money to any bank accounts maintained in respect of the Debt Retirement Fund).

Question 2(b) – Point of hypothecation

20. You ask at what point monies identified in s. 16 of the respective *Appropriation Acts* were hypothecated into the Debt Retirement Fund, and whether there is any way in which that hypothecation may be made "invalid" by other actions of government.

21. For the reasons set out above, hypothecation of the respective amounts from the Consolidated Fund to the NGF occurred automatically upon the commencement of the respective *Appropriation Acts*.

22. No subsequent action by government short of legislative amendment would have the legal effect of reversing that hypothecation. It is nonetheless conceivable that government expenditure might be inconsistent with that hypothecation. That issue is (again) conveniently dealt with by the succeeding questions.

Question 2(c) – Position of Debt Retirement Fund in respect of appropriated funds

23. In light of my answers to the preceding questions, you ask whether:

    (a) the Debt Retirement Fund is legally holding the monies in another bank account, which may also be holding monies related to other ledger accounts, such as the Consolidated Fund (the bank account is shared); or

    (b) another party is holding the funds on behalf of the Debt Retirement Fund in trust or on an administered basis; or

    (c) the Debt Retirement Fund is holding a 'receivable', being an amount the Debt Retirement Fund is legally entitled to, but which has not yet been settled in cash?

24. In addressing these questions, it is important to reiterate that appropriations (such as those effected by s. 16 of the respective *Appropriation Acts*) are not specific to any particular amount of "actual" money forming part of the Consolidated Fund (for example, particular money held in a particular bank account), and are instead an authority to withdraw from a generalised pool of public funds up to the limit of the amount appropriated for that purpose.

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25. Against this background, I do not think that the situation following the respective appropriations can be described in terms of any of the alternatives advanced as part of this question.

26. Instead, the position can best be expressed as follows:

    (a) upon the appropriations taking effect, the Consolidated Fund and the Debt Retirement Fund were (respectively) "debited" and "credited" in the amounts specified in those appropriations;

    (b) subsequent operational and accounting arrangements needed to be in conformity with those arrangements – that is, by ensuring that amounts equivalent to those appropriated amounts were available for the purposes of the Debt Retirement Fund.

Question 2(d) – Time limit on payment of cash into Debt Retirement Fund bank account

27. Assuming that (i) the answer to question 2(a) is "yes", and (ii) the answer to question 2(c) is that the amount hypothecated is a receivable, you ask whether there is a time limit on when cash should be paid into the Debt Retirement Fund bank account.

28. In light of my answers to those questions, this further question does not arise.

Question 3(a) and 3(b) – Whether appropriation "applied"

29. You ask whether:

    (a) the effect of the appropriation of monies to the Debt Retirement Fund under the respective *Appropriation Acts* was that the monies were "applied" within the meaning of s. 4.8(2) of the *GSF Act 2018*; and

    (b) if not, what the implications of the appropriation lapsing are.

30. Section 4.8 of the *GSF Act* provides for the lapsing at the end of each annual reporting period of "unused" appropriations made for that annual reporting period, being appropriations that (per s. 4.8(2)) have not been "applied" by the end of the period. Bearing in mind the character and purpose of an appropriation as an authority to withdrawal funds from Consolidated Fund for a particular purpose a particular amount, it should regarded as having been "applied" when that authority is exhausted.

31. For the reasons discussed previously, the effect of s. 16 of the respective *Appropriation Acts* in conjunction with s. 9(1)(a) of the *NGF Act* was to automatically hypothecate the amount specified in those appropriations from the Consolidated Fund to the Debt Retirement Fund. As a matter of law, those provisions effected a withdraw of the entirety of the appropriated amounts from the Consolidated Fund, irrespective of the movement (or absence thereof) of cash to reflect this arrangement.

32. On this basis, the appropriations should be considered to have been applied in full at the start of the annual reporting period in respect of which they were made, for the purposes of s. 4.8(2) of the *GSF Act*. The second part of this question does not therefore arise.

Question 4(a) and (b) – Whether "unpaid" amount held as part of Debt Retirement Fund

33. You instruct me that an amount of $84.8 million was appropriated for the Debt Retirement Fund in the financial year 2020-21, but not paid into the bank account set up for the Debt Retirement Fund, nor at the time had this amount been recorded in the Debt Retirement Fund ledger account.

34. You ask whether this means that the aforementioned amount has not been held for the purposes of the Debt Retirement Fund. If that is the case, you ask whether there has been non-compliance with the relevant *Appropriation Act* or the *NGF Act*.

35. For the reasons set out above, the full amount appropriated for the purposes of the Debt Retirement Fund under s. 16 of the *Appropriation Act 2020* ($2,017,094,000) was taken, as a matter of law, to be attributable to the Debt Retirement Fund immediately upon that appropriation taking effect. That position was not altered by any banking or accounting arrangements that may (or may not) have occurred in connection with giving effect to that appropriation, albeit the $84.8 million would have to have been available for the purposes of the Debt Retirement Fund.

36. As a consequence, the second component of this question does not arise.

Question 4(c) – Recording of amount attributable to Debt Retirement Fund

37. You ask whether, if amounts appropriated in previous years have not been recorded in the Debt Retirement Fund ledger account, there is a statutory requirement (or any other requirement) imposed on the "responsible manager" for the fund to ensure these amounts are reviewed and recorded in that ledger account going back to the inception of the Debt Retirement Fund.

38. You have drawn my attention, in particular, to s. 4.16(1) of the *GSF Act*. In brief, s. 4.16(1) imposes obligations on the "responsible manager for an SDA account" to keep certain records and other information concerning the operation of the account.

39. This provision requires the responsible manager to "keep records and information concerning the operation of the account" ("SDA Account Records") that explain whether that operation "has been in accordance with the Act or other instrument establishing the account". Section 4.16(1)(a) also clarifies that the "operation of the account" includes "payments into and out of the account".

40. I have concluded that amounts appropriated by Parliament were automatically hypothecated into the Debt Retirement Fund on commencement of the respective *Appropriation Act*. This automatic hypothecation constitutes, in my view, a "payment" into the account. The full appropriated amount would need to have been recorded in the records and information of the Debt Retirement Fund as being attributed to it.

41. Section 4.16(1)(b) requires the responsible manager to keep SDA Account Records that allow for the preparation and audit of financial reports required for s. 7.8 of the *GSF Act*. Section 7.8 of the *GSF Act* requires the "responsible manager" for each SDA account to cause financial reports about the management of the account to be prepared in accordance with the Treasurer's directions.

42. Section 4.16(1)(c) requires the responsible manager to keep SDA Account Records that allow for compliance with reporting requirements of the Act or other instrument establishing the account. In the case of the Debt Retirement Fund ledger account, any relevant reporting requirements would be contained in the *NGF Act*. Section 7(2) of the *NGF Act* requires the Minister to produce an annual report containing information as the Treasurer may determine, including "details of payments into and out of [the Debt Retirement Fund]". For reasons set out at paragraph [40] above, I think failure to record amounts appropriated into the Debt Retirement Fund ledger account may also be inconsistent with s. 4.16(1)(c), to the extent that this did not allow the Minister to comply with the annual reporting requirement under s. 7(2) of the *NGF Act*.

43. To the extent the full appropriated amount has not been recorded in the records and information of the Debt Retirement Fund this should be corrected going back to the inception of the Debt Retirement fund. In this regard, I note that s. 4.16(1)(a) requires SDA Account Records to explain whether operation of the account "has been" in accordance with Act or other instrument establishing the account. To the extent the words "has been" refer to a past state of affairs, there is no limitation in s. 4.16(1)(a) as to how far back that past state of affairs extends.

Question 4(d) – Hypothetical scenario

44. You ask me to assume that:
    (a) the annual *Appropriation Act* for a given year appropriated $20 billion for the services of various agencies and payment into SDA accounts;
    (b) of this $20 million, $4.5 billion was appropriated into the Debt Retirement Fund;
    (c) during the financial year, other agencies drew upon $15.5 billion of the appropriated funds (i.e. all appropriated funds available to them), leaving $4.5 billion remaining.

45. You ask whether it is sufficient to say, in this scenario, that the $4.5 billion remaining and which was not drawn into the Debt Retirement Fund bank account remained for the purposes of the DRF.

46. Consistent with the foregoing discussion, the critical consideration is that operational and accounting arrangements result in $4.5 billion being *in fact* available for the purposes of the Debt Retirement Fund, consistent with the appropriation made for that purpose in that amount. The scenario you have outlined appears to proceed on the basis that there is in fact $4.5 billion remaining at the end of the financial year which would otherwise be considered to form part of the Consolidated Fund. In circumstances where that amount equates to the amount appropriated for the purposes of the Debt Retirement Fund, it appears to me to be open to proceed on the basis that that $4.5 billion represents money attributable to the Debt Retirement Fund.

Digital Restart Fund

Question 1 – Digital Restart Fund generally

47. You ask whether:

    (a) the whole amount appropriated to the Minister under an *Appropriations Act* for payment into the Digital Restart Fund needs to be paid into the Fund under s. 8(1)(a) of the *DRF Act*;

    (b) if so, the answers to questions 2, 3 and 4 (including sub-questions) in respect of the Debt Retirement Fund apply equally to the Digital Restart Fund.

48. There are no material differences between the arrangements under the respective *Appropriation Acts* for appropriation of money into the Debt Retirement Fund and Digital Restart Fund, on the one hand, and the statutory provisions for payment of money into the respective funds, on the other.

49. Accordingly:

    (a) the answers to questions 2, 3 and 4 in respect of the Debt Retirement Fund apply, *mutatis mundis*, to questions associated with the administration of the Digital Restart Fund.[3]

    (b) consistent with the position in respect of the Debt Retirement Fund – the amount of money appropriated for the purposes of the Digital Restart Funding is taken to form part of that fund upon appropriation, and operational and accounting arrangements would need to reflect that position.

TfNSW Fund

Question 1 – TfNSW Fund generally

50. You ask whether:

    (a) the whole amount appropriated to the Minister under an *Appropriation Act* for the services of TfNSW needs to be paid into the Fund under s. 78(1)(a)(ii) of the *TA Act*; and

    (b) if so, the answers to questions 2, 3 and 4 (including sub-questions) in respect of the Debt Retirement Fund apply equally to the TfNSW Fund.

51. In the first instance, I note that whereas the 2020 and 2021 *Appropriation Acts* appropriated funds for the services of TfNSW, the *Appropriation Act 2022* (at s. 14) appropriates funds for the Department of Transport instead. I have accordingly treated this question as applying to the position in the 2020-21 and 2021-2022 financial years.

[3] Regarding Question 4(c) in respect of the Digital Restart Fund, I note that s. 14 of the *DRF Act* requires the Minister to produce an annual report for that Fund including "details of payments into the Fund during the year to which the report relates" (s. 14(2)(a)).

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52. The effect of s. 13(2) of each of the 2020 and 2021 *Appropriation Acts* is that the reference in that section to "the services of Transport for NSW" includes a reference to the services of the Department of Transport. This reflects the position that TfNSW and the Department are separate entities with (in principle) different arrangements for expenditure. It also means that the relevant appropriation is not required to be used *solely* for the services of TfNSW.

53. In my view, the consequence of this arrangement is as follows:

    (a) It would be open to the Minister to whom the appropriation was made (or their duly authorised delegate or subdelegate) to apportion the amount appropriated between the services of TfNSW and the services of the Department.

    (b) Whilst s. 13 of each Act appropriates a sum to the Minister "for the services of" TfNSW, s. 78(1) of the *TA Act* refers to money appropriated "for the purposes of TfNSW". I doubt that there is any material difference between the two expressions for present purposes. In my view, appropriated amounts allocated by the Minister (or authorised delegate or subdelegate) for the purposes of TfNSW would be payable into the TfNSW Fund.

    (c) The remaining funds allocated by the Minister or authorised delegate "for the services of" the Department would remain part of the Consolidated Fund and could be expended by the Minister or authorised delegates or subdelegates under the Authority of that appropriation.

54. It follows that the total amounts appropriated for the services of TfNSW did not automatically form part of the TfNSW Fund upon appropriation, to the extent that the Minister (or their delegate or subdelegate) determined that a portion of the sums appropriated should be applied to the services of the Department rather than the services of TfNSW. In the absence of any apportionment, it would have been appropriate to proceed on the basis that all of the appropriated amounts formed part of the TfNSW Fund.

55. However, insofar as a monetary portion of the appropriation was hypothecated to the TfNSW Fund, the answers to questions 2, 3 and 4 in respect of the Debt Retirement Fund apply, *mutatis mundis*, to questions associated with the administration of the TfNSW Fund.[4]

Karen Smith

Karen Smith
Crown Solicitor

Michael Granziera
A/Assistant Crown Solicitor

[4] Regarding Question 4(c) in respect of the TfNSW Fund, I note that the *TA Act* does not require any report to be produced containing details of payments into that Fund.

Appendix three – TSS sectors and entities

Based on ABS classification, the New South Wales Total State Sector (TSS) include 196 entities within the General Government Sector (GGS) and 85 government-controlled businesses in the Public Finance Corporations (PFC, also known as 'Public Financing Enterprises') sector and the Public Non-Financial Corporations (PNFC, also known as 'Public Trading Enterprises') sector.

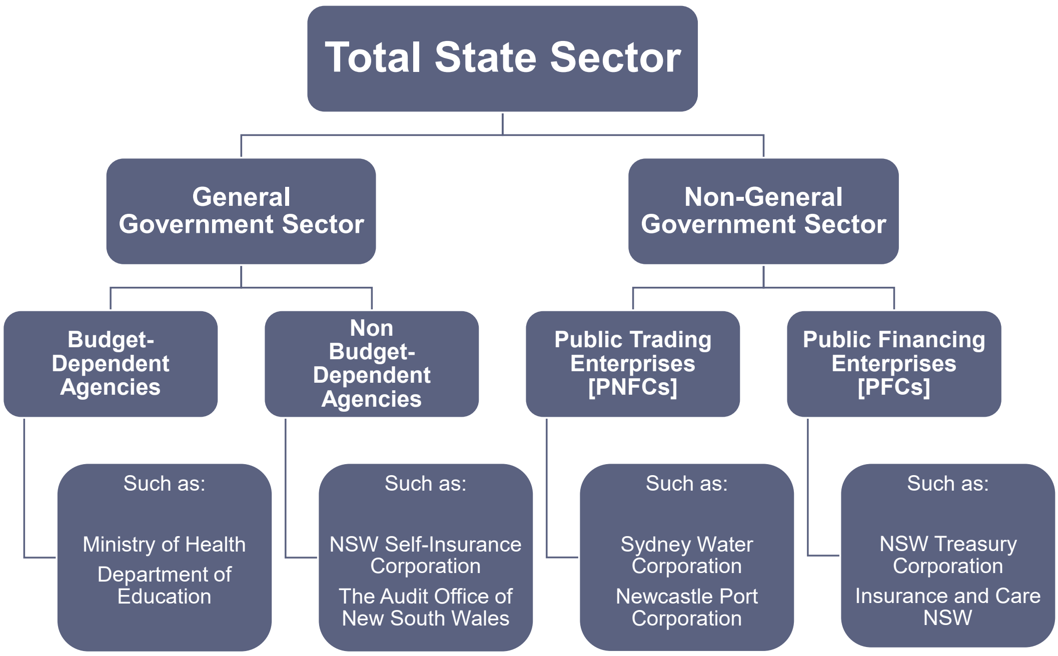
The PFC and PNFC sectors combined form the Non-General Government Sector (Non-GGS). The businesses in Non-GGS generally provide goods and services, such as water, electricity and financial services for which consumers pay for directly.

GGS entities are agencies that provide public services (such as health, education and police) or carry out policy or perform regulatory functions. General government agencies are directly or indirectly funded in the main by taxation. Some GGS agencies are budget-dependent while some other GGS agencies are not budget-dependent.

As defined by ABS, PFC entities have one or more of the following functions:

a) that of a central bank
b) the acceptance of demand, time or savings deposits
c) the authority to incur liabilities (such as insurance) and acquire financial assets in the market on their own account.

PNFC sector includes agencies where user charges represent a significant proportion of revenue and the agencies operate within a broadly commercial orientation.



Controlled entities of the State of New South Wales

General Government Sector controlled entities

- Aboriginal Housing Office
  - Dunghutti Aboriginal Elders Tribal Council Trust
- Aboriginal Languages Trust
- Alpha Distribution Ministerial Holding Corporation
- Art Gallery of New South Wales Trust
  - Art Gallery of New South Wales Trust Staff Agency
- Art Gallery of NSW Foundation
- Australian Museum Trust
  - Australian Museum Trust Staff Agency
- Belgenny Farm Agricultural Heritage Centre Trust
- Biamanga National Park Board of Management(a)
- Biodiversity Conservation Trust of New South Wales
- Border Fence Maintenance Board
- Building Insurers' Guarantee Corporation
- C.B. Alexander Foundation
- Cemeteries and Crematoria NSW
- Centennial Park and Moore Park Trust
- Chief Investigator of the Office of Transport Safety Investigations
- Combat Sports Authority of New South Wales
- Consolidated Fund
- Corporation Sole 'Minister Administering the Heritage Act,1977'
- Crown Solicitor's Office
- Dams Safety Committee
- Department of Communities and Justice
  - John Williams Memorial Charitable Trust
- Department of Customer Service
  - Safe Work NSW
- Department of Education
  - Advocate for Children and Young People
- Department of Enterprise, Investment and Trade [(b)]
- Department of Planning and Environment [(c)]
  - Water Administration Ministerial Corporation
  - Lands Administration Ministerial Corporation
- Independent Planning Commission
- Natural Resources Access Regulator
- Planning Ministerial Corporation
- Department of Premier and Cabinet
- Department of Regional NSW[(d)]
- Ministry of Health[(g)]
  - Agency for Clinical Innovation
  - Albury Base Hospital
  - Albury Wodonga Health Employment Division
  - Bureau of Health Information
  - Cancer Institute (NSW)
  - Central Coast Local Health District
  - Clinical Excellence Commission
  - Far West Local Health District
  - Graythwaite CharitableTrust
  - Health Administration Corporation
  - Health Education and Training Institute
  - Hunter New England Local Health District
  - Illawarra Shoalhaven Local Health District
  - Justice Health and Forensic Mental Health Network
  - Mid North Coast Local Health District
  - Murrumbidgee Local Health District
  - Nepean Blue Mountains Local Health District
  - Northern NSW Local Health District
  - Northern Sydney Local Health District
  - South Eastern Sydney Local Health District
  - South Western Sydney Local Health District
  - Southern NSW Local Health District
  - Sydney Local Health District
  - The Sydney Children's Hospitals Network (Randwick and Westmead) (incorporating The Royal Alexandra Hospital for Children)
  - Western NSW Local Health District
  - Western Sydney Local Health District
- Mt Grenfell Historic Site Board of Management[(a)]
- Multicultural NSW
  - Multicultural NSW Staff Agency
- Mutawintji Board of Management[(a)]
- National Art School
- Natural Resources Commission
  - Natural Resources Commission Staff Agency
- New South Wales Crime Commission
  - New South Wales Crime Commission Staff Agency
- New South Wales Electoral Commission
  - New South Wales Electoral Commission Staff Agency
- New South Wales Government Telecommunications Authority

General Government Sector controlled entities

- Department of Transport
  - Transport for NSW
  - Transport Service of New South Wales
- Destination NSW
  - Destination NSW Staff Agency(e)
- Electricity Assets Ministerial Holding Corporation
- Electricity Retained Interest Corporation (ERIC-A)
- Electricity Retained Interest Corporation (ERIC-E)
- Electricity Transmission Ministerial Holding Corporation
- Energy Corporation of New South Wales
- Environment Protection Authority
  - Environment Protection Authority Staff Agency
- Environmental Trust
- Epsilon Distribution Ministerial Holding Corporation
- Fire and Rescue NSW
- Gaagal Wanggaan (South Beach) National Park Board of Management[(a)]
- Generator Property Management Pty Ltd
- Greater Cities Commission[(f)]
- Greater Sydney Commission[(f)]
- Greyhound Welfare and Integrity Commission
  - Office of the Greyhound Welfare and Integrity Commission
- Gulaga National Park Board of Management[(a)]
- Health Care Complaints Commission
  - Health Care Complaints Commission Staff Agency
- Heritage Council of New South Wales
- Historic Houses Trust of New South Wales
  - Foundation for the Historic Houses Trust of New South Wales
  - Hamilton Rouse Hill Trust
  - Rouse Hill Hamilton Collection Pty Limited
- Home Purchase Assistance Fund
- Hunter and Central Coast Development Corporation
- Independent Commission Against Corruption
- Independent Liquor and Gaming Authority
- Independent Pricing and Regulatory Tribunal
  - Independent Pricing and Regulatory Tribunal Staff Agency
- Information and Privacy Commission
- Infrastructure NSW
- New South Wales Institute of Sport
  - Institute of Sport Staff Agency
- New South Wales Rural Assistance Authority
  - NSW Ovine Johne's Disease Transaction Based Contribution Scheme
- NSW Crown Holiday Parks Trust
- NSW Education Standards Authority
  - NSW Education Standards Authority Staff Agency
- NSW Food Authority
- NSW Health Foundation
- NSW Police Force
- NSW Self Insurance Corporation
- NSW Skills Board
- New South Wales Technical and Further Education Commission
  - TAFE Commission (Senior Executives) Staff Agency
- Northern Rivers Reconstruction Corporation
- NSW Trustee and Guardian
- Office of Aging and Disability Commissioner
- Office of the Law Enforcement Conduct Commission
- Office of the Children’s Guardian
- Office of the Director of Public Prosecutions
- Office of the Independent Planning Commission
- Office of the Independent Review Officer
- Office of the NSW Rural Fire Service
- Office of the NSW State Emergency Services
- Office of the Inspector of the Law Enforcement Conduct Commission
- Office of Sport
- Ombudsman’s Office
- Parliamentary Counsel’s Office
- Parramatta Park Trust
- Ports Assets Ministerial Holding Corporation[(h)]
  - Port of Newcastle Lessor Pty Limited[(h)]
  - Port Botany Lessor Pty Limited[(h)]
  - Port Kembla Lessor Pty Limited[(h)]
- Property NSW
- Public Service Commission
- Regional Growth NSW Development Corporation
- Rental Bond Board
- Resilience NSW
- Responsible Gambling Fund
- Royal Botanic Gardens and Domain Trust
- Service NSW

General Government Sector controlled entities	
– Infrastructure NSW Staff Agency • Investment NSW • Jobs for NSW Fund • Judicial Commission of New South Wales • Legal Aid Commission of New South Wales – Legal Aid Commission Staff Agency • Liability Management Ministerial Corporation • Library Council of New South Wales – Library Council of New South Wales Staff Agency – State Library of New South Wales Foundation • Local Land Services – Local Land Services Staff Agency • Long Service Corporation • Lord Howe Island Board • Luna Park Reserve Trust • Mental Health Commission of New South Wales – Mental Health Commission Staff Agency • Ministerial Holding Corporation	• Sporting Injuries Compensation Authority • State Insurance Regulatory Authority • State Rail Authority Residual Holding Corporation • State Archives and Records Authority of New South Wales – State Archives and Records Authority of New South Wales Staff Agency[(e)] • State Rescue Board of New South Wales • Statutory Land Managers (numerous Trust Boards managing Crown Land Reserves) • Sydney Metro • The Audit Office of New South Wales • Sydney Olympic Park Authority • Technical Education Trust Fund • The Legislature • The Treasury (referred to as NSW Treasury in this report) • Trustees of the Anzac Memorial Building • Trustees of the Museum of Applied Arts and Sciences – Trustees of the Museum of Applied Arts and Sciences Staff Agency • Water Investment Trust Fund • Western Parkland City Authority – Western Parkland City Authority Staff Agency • Western Sydney Parklands Trust • Worimi Board of Management[(a)] • Workers' Compensation (Dust Diseases) Authority

Public Financial Corporations	
• First Australian Mortgage Acceptance Corporation (FANMAC) Trusts • Insurance and Care NSW • Insurers' Guarantee Fund Investment Trust • Lifetime Care and Support Authority of New South Wales • Long Service Corporation Investment Fund • NSW Generations (Debt Retirement) Investment Trust • NSW Infrastructure Future Fund • NSW Treasury Corporation • NSW Trustee and Guardian Growth Portfolio • SAS Trustee Corporation – SAS Trustee Corporation Staff Agency • Snowy Hydro Legacy Fund Investment Trust[(i)] • Social and Affordable Housing NSW Fund Investment Trust • Superannuation Administration Corporation • TCorpIM Absolute Return Multi-Asset Class Fund • TCorpIM Alternative Risk Premia Fund • TCorpIM Australian Bond Fund • TCorpIM Australian Inflation Linked Bond Fund • TCorpIM Australian Share Fund • TCorpIM Bank Loan Fund • TCorpIM Cash Fund • TCorpIM Core Alternatives Fund • TCorpIM Defensive Alternatives Fund • TCorpIM Developed Market Equities (Hedged) Fund • TCorpIM Developed Market Equities (Sovereign Investor – Hedged) Fund • TCorpIM Developed Market Property Fund	• TCorpIM Direct Infrastructure Fund A • TCorpIM Direct Investment Fund B • TCorpIM Direct Investment Fund C • TCorpIM Direct Investment Fund D • TCorpIM Direct Investment Fund E • TCorpIM Direct Investment Fund F • TCorpIM Direct Investment Fund G • TCorpIM Direct Investment Fund K • TCorpIM Direct Investment Fund M[(j)] • TCorpIM Direct Investment Fund N[(k)] • TCorpIM Emerging Market Debt Fund • TCorpIM Emerging Market Share Fund • TCorpIM Global Credit Fund • TCorpIM High Yield Fund • TCorpIM Liquidity Cash Fund • TCorpIM Listed Property Fund • TCorpIM Long Term Growth Fund • TCorpIM Medium Term Growth Fund • TCorpIM Multi-Asset Class Fund • TCorpIM Opportunistic Fund A • TCorpIM Opportunistic Fund B • TCorpIM Opportunistic Fund C • TCorpIM Opportunistic Fund E[(l)] • TCorpIM Short Term Income Fund • TCorpIM Sustainable Development (Infrastructure) Fund[(m)] • TCorpIM Unlisted Infrastructure Fund • TCorpIM Unlisted Property Fund • Treasury Managed Fund Investment Portfolio

Public Non-Financial Corporations	
• Catholic Metropolitan Cemeteries Trust • Cobar Water Board • Essential Energy • Forestry Corporation of New South Wales • Hunter Water Corporation • Jenolan Caves Reserves Trust • Landcom • Newcastle Port Corporation • NSW Land and Housing Corporation • Northern Metropolitan Cemeteries Land Manager • NSW Trains • Place Management NSW • Rookwood General Cemeteries Reserve Land Manager • Rookwood Necropolis Land Manager	• Southern Metropolitan Cemeteries Land Manager • State Sporting Venues Authority • State Transit Authority of New South Wales • Sydney Ferries • Sydney Opera House Trust – Sydney Opera House Trust Staff Agency • Sydney Trains • Sydney Water Corporation • Teacher Housing Authority of New South Wales • Transport Asset Holding Entity of New South Wales • Venues NSW – Venues NSW Staff Agency • Waste Assets Management Corporation • Water NSW – WaterNSW Infrastructure Pty Ltd • Wentworth Park Sporting Complex Trust • Zoological Parks Board of New South Wales

a National Park Boards of Management as per *the National Parks and Wildlife Act 1974*.

b Agency was established 21 December 2021 under the Administrative Arrangements (Second Perrottet Ministry—Transitional) Order 2021.

c Agency was renamed 1 April 2022 as the Department of Planning and Environment from Department of Planning, Industry and Environment under the Administrative Arrangements (Second Perrottet Ministry—Transitional) Order 2021.

d Agency was renamed 1 April 2022 as the Department of Regional NSW from Regional NSW under the Administrative Arrangements (Second Perrottet Ministry—Transitional) Order 2021.

e Agency was established 1 April 2022 under the Administrative Arrangements (Second Perrottet Ministry—Transitional) Order 2021.

f Agency was renamed 13 April as the Greater Cities Commission from Greater Sydney Commission under the *Greater Cities Commission Act 2022* No 8.

g The special purpose service entities of the local health districts have not been listed.

h Agency to be abolished in 2022-23 and replaced by Port of Newcastle Lessor Pty Limited, Port Botany Lessor Pty Limited, and Port Kembla Lessor Pty Limited.

i Fund established 14 December 2021.

j Fund established 13 December 2021.

k Fund established 21 January 2022.

l Fund established 26 October 2021.

m Fund established 23 November 2021.

Professional people with purpose

OUR VISION

Our insights inform and challenge government to improve outcomes for citizens.

OUR PURPOSE

To help Parliament hold government accountable for its use of public resources.

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