

# AUDITOR-GENERAL'S REPORT

## FINANCIAL AUDITS

### Volume Three 2010



The Legislative Assembly  
Parliament House  
Sydney NSW 2000

The Legislative Council  
Parliament House  
Sydney NSW 2000

Pursuant to section 52A of the *Public Finance and Audit Act 1983*, I present  
Volume Three of my 2010 Report.

A handwritten signature in black ink that reads 'Peter Achterstraat'.

Peter Achterstraat  
Auditor-General

Sydney  
October 2010



# Contents

<b>Significant Matters</b> .....	<b>3</b>
Audit Result .....	3
Quality and Timeliness of Financial Reporting .....	4
Financial Analysis .....	5
Major Capital Projects .....	5
Net Operating Balance - General Government Sector.....	5
Compliance with the <i>Fiscal Responsibility Act 2005</i> .....	5
Agency Amalgamations .....	6
Legal Opinions Provided by the Attorney General or Crown Solicitor .....	6
<b>Audit Result</b> .....	<b>7</b>
Introduction.....	7
The General Government Sector and Total State Sector .....	7
Audit Opinion .....	8
Other Significant Issues .....	8
<b>Quality and Timeliness of Financial Reporting</b> .....	<b>11</b>
Preparation of Financial Statements .....	11
Current status of previous recommendations.....	13
<b>Financial Analysis</b> .....	<b>15</b>
Introduction.....	15
Compliance with Accounting Standards.....	15
Revenues .....	17
Expenses.....	19
Assets .....	22
Liabilities.....	23
<b>Major Capital Projects</b> .....	<b>25</b>
<b>Net Operating Balance - General Government Sector</b> .....	<b>29</b>
Introduction.....	29
Net Operating balance - Variance to Original Budget (June 2009).....	29
NET OPERATING BALANCE - Variance to Revised Budget (June 2010).....	31
<b>Compliance with the Fiscal Responsibility Act 2005</b> .....	<b>35</b>
Long Term Measures.....	36
<b>Agency Amalgamations</b> .....	<b>39</b>
Governance Arrangements .....	39
Financial Reporting Requirements .....	40
<b>Appendix A: Legal Opinions Provided by the Attorney General or Crown Solicitor</b> .....	<b>41</b>
1. Summary of advice .....	46
2. Background .....	46
3. Advice sought .....	47

4.	<b>Advice as to question 1</b> .....	47
	Financial reports of small proprietary companies for the purposes of the PFA Act .....	47
	Financial reports of small proprietary companies for the purposes of the Corporations Act ...	48
5.	<b>Advice as to question 2 - Reporting to ASIC of contraventions of the Corporations Act</b> ...	48
	Conducting audit for purposes of PFA Act .....	48
	Conducting audit for purposes of Corporations Act .....	49
	Conducting audit where financial report not required for purposes of Corporations Act .....	49
	<b>Appendix: Relevant legislation</b> .....	50
1.	<b>Summary of supplementary advice</b> .....	64
2.	<b>Background</b> .....	64
3.	<b>Advice</b> .....	64
	<i>Effect of s.63B PFA Act</i> .....	64
	Appendix: Relevant legislation .....	68

---

# Significant Matters

---

This report includes:

- audit result for the Total State Sector Accounts
- comments on the quality and timeliness of financial reporting
- financial analysis of the General Government and Total State Sectors
- a review of major capital projects for the State
- analysis of variances to budgetary information presented to Parliament and a review of budget highlights
- analysis of compliance with the *Fiscal Responsibility Act 2005*
- comments on agency amalgamations
- legal opinions provided by the Attorney General and Crown Solicitor.

## AUDIT RESULT

The audit of the Total State Sector Accounts for the year ended 30 June 2010 resulted in a qualified Independent Auditor's Report.

### Qualification

I was unable to obtain all information required to form an opinion on the value of the Crown reserves and the infrastructure on those reserves that should be recorded in the Total State Sector Accounts.

The Treasury has advised me that its preliminary assessment of the total value of Crown reserves controlled by the New South Wales Government, but not currently recognised in the Total State Sector Accounts, is between \$3.0 billion and \$5.0 billion. However, the total value may be greater. In addition, the estimated value of infrastructure on Crown reserves is between \$4.0 billion and \$5.5 billion.

### Emphasis of Matter

I included an emphasis of matter relating to the significant uncertainty regarding an objection to a taxation assessment of \$424 million (\$259 million of duty and \$165 million of interest) recorded as revenue in 2006-07. Interest on the assessed amount increased by a further \$30.0 million during 2009-10 (\$41.0 million in 2008-09). The total amount receivable by the State as at 30 June 2010 is \$532 million.

The matter has been set down for hearing in the Supreme Court in October 2010. Until this matter is resolved, the ultimate outcome and its impact on the Net Operating Balance cannot be determined.

Other significant matters include:

### NSW Lotteries

On 31 March 2010, the State granted a 40 year lotteries operating licence and sold the shares in the NSW Lotteries Corporation and granted other concessions to Tattersall's Holding Pty Ltd. Further comment on this transaction is included in the section titled Audit Result.

### Sydney Metro Authority

Sydney Metro Authority has settled \$93.5 million of compensation claims and written off assets valued at \$176 million as a result of the decision to stop work on the Metro Network stages 1 and 2.

## Amendments to the *Public Authorities (Financial Arrangements) Act 1987* (Repeat Issue)

I recommend that the Treasurer present amendments to the *Public Authorities (Financial Arrangements) Act 1987* (PAFA Act) to Parliament at its next sitting.

In 2006, I informed The Treasury that some of the advice in *TC06/17 Consequences of New Employment Arrangements - Other Taxation, Administrative and Operational Issues* is inconsistent with the provisions in the PAFA Act. To correct this, The Treasury said they would change the PAFA Act but so far the Treasurer has not presented an amending Act to Parliament.

There have been unreasonable delays in resolving this issue and it is probable that some agencies are breaching the PAFA Act because they are relying on the incorrect advice in TC06/17.

## QUALITY AND TIMELINESS OF FINANCIAL REPORTING

I recommend the Premier and the Treasurer implement the recommendations of the Public Accounts Committee relating to the quality and the timeliness of financial reporting and ensure they have appropriate policies and processes to support the successful implementation of the recommendations.

Last year I expressed concerns about the quality and timeliness of financial reporting. While I recognise that events occur after the Budget is tabled in early June, I believe improved financial information would better inform the budget process and reduce subsequent variations and revisions. Refer to further comments under the title Net Operating Balance.

The quality and timeliness of the General Government and Total State Sector Accounts is largely dependent on:

- the quality and timeliness of financial information provided by agencies
- The Treasury's year end processes including coordination and guidance to agencies
- the competency of those preparing and providing financial information.

The Treasury will need to ensure appropriate policies and processes are in place to support the successful implementation of the Public Accounts Committee's recommendations. Implementing the recommendations will pose significant challenges for The Treasury, my Office and Government agencies, which need to be addressed urgently.

During 2009-10, The Treasury piloted a 'hard close' initiative to improve the quality and timeliness of financial reporting. Because the initiative was only partially implemented by some of the piloted agencies, it is difficult to determine how successful the initiative was. However, I firmly believe the full implementation of hard close procedures across the sector will result in improved quality and timeliness of financial reporting.

Seven (12) of the 24 largest agencies' financial statements for the year ended 30 June 2010 submitted for audit contained 24 (25) errors exceeding \$20.0 million.

## Review of Recommendations made in 2009 Reports to Parliament

During 2009, I made 157 recommendations to improve the performance of agencies consolidated in the Total State Sector Accounts. I have reviewed the current status of these items and found the majority have been actioned and/or have been partially implemented.

Unactioned items have been separately identified.

## FINANCIAL ANALYSIS

I have analysed trends in assets, liabilities, revenues and expenses. Significant transactions include:

### Crown Restructuring and Privatisation Costs

During 2009-10, the Crown Entity incurred costs of approximately \$88.3 million associated with restructuring of the Energy Sector and privatisation of NSW Lotteries and WSN Environmental Solutions. Over the past three years, the Crown has incurred a total of \$124 million restructuring the Energy Sector.

## MAJOR CAPITAL PROJECTS

The 2009-10 Budget states:

'Over the four years to 2012-13, New South Wales will undertake a record infrastructure investment program, the largest in the State's history, worth around \$62.9 billion. In 2009-10, Total State infrastructure investment is budgeted at \$18.0 billion.'

I have reviewed the status of major capital projects as set out in the Infrastructure Statement for 2009-10. Attention was focused on projects with anticipated costs exceeding \$30.0 million or more over the life of the project. I noted that most projects were on track to meet the original completion date. However, some projects have been delayed.

## NET OPERATING BALANCE - GENERAL GOVERNMENT SECTOR

Total Revenues have increased by 13.4 per cent from \$49.6 billion to \$56.3 billion. Total expenses have increased by 9.5 per cent from \$50.5 billion to \$55.3 billion.

I have analysed variations to both the original budget presented to Parliament in June 2009 and the revised budget presented as part of the 2010-11 Budget Papers in June 2010.

I reviewed the status of budget highlights identified in the 2009-10 Budget Overview. I noted most highlights have been achieved by agencies.

National Partnership payments were \$504 million above the budget estimate, which contributed significantly to the reported surplus of \$994 million. If stimulus funding of \$3.2 billion had been excluded from the Net Operating Balance, the result would have been a deficit of \$861 million. Further comment is included in the section titled Net Operating Balance - General Government Sector.

## COMPLIANCE WITH THE *FISCAL RESPONSIBILITY ACT 2005*

I recommend the Government seek amendments to the *Fiscal Responsibility Act 2005* (FR Act) so that it provides targets and priorities within the control of Government as part of the five yearly review.

The medium term targets of the FR Act have not been achieved at 30 June 2010. I understand The Treasury is currently conducting the statutory five-yearly review of the Act. A report on the outcomes will be tabled in Parliament by June 2011.

General Government Sector net financial liabilities were \$52.9 billion as at June 2010, equivalent to approximately 12.6 per cent (12.0 per cent) of Gross State Product (GSP). This is five per cent higher than the 7.5 per cent FR Act target for 30 June 2010. The long term target is six per cent or less by 30 June 2015.

At 30 June 2010, the General Government Sector net debt was 2.2 per cent (\$9.4 billion) of GSP compared to 2.0 per cent (\$8.1 billion) of GSP as at June 2009. This is 1.4 per cent above the FR Act target of 0.8 per cent of GSP.

Total State Sector unfunded superannuation liabilities were \$34.5 billion at June 2010, an increase of \$3.5 billion from June 2009. The FR Act target is to eliminate Total State Sector unfunded superannuation liabilities by 30 June 2030.

## AGENCY AMALGAMATIONS

In 2009, the Government announced a comprehensive reform of the public sector, amalgamating 160 government agencies and offices into 13 new departments. The amalgamation has resulted in 13 new clusters as opposed to 13 new departments.

### Governance Arrangements

I recommend The Treasury and Department of Premier and Cabinet clarify the intention of *TPP 09-05 Internal Audit and Risk Management Policy for the New South Wales Public Sector*. If the intention is for authorities within the same 'cluster' to use the Audit and Risk Committee of another authority, they should seek amendments to Section 11(2) of the *Public Finance and Audit Act 1983* (PF&A Act) and the TPP 09-05 to clearly authorise this.

Following the July 2009 amalgamation order, some new departments have proposed and established a single audit committee for the new department and invited other authorities within their clusters to use their audit committee. In some cases, authorities have accepted this invitation. However, some authorities share my concern as to the legality of such arrangements under the PF&A Act and TPP 09-05.

Subsequent legal advice indicates that such arrangements are not contemplated by either the PF&A Act or TPP 09-05. Further comments on these arrangements are included in the section titled Agency Amalgamations.

### Financial Reporting Requirements

I recommend that The Treasury and Department of Premier and Cabinet take a lead role in monitoring, supporting and reporting on the implementation of common financial reporting and support systems within the new departments.

During my audits of amalgamated agencies I identified:

- some agencies are yet to make significant progress on implementing common financial reporting and support systems to leverage synergies expected from the amalgamations
- additional costs associated with the amalgamations are not readily identifiable
- systems have not been put in place to capture and report cost savings associated with the initiative.

## LEGAL OPINIONS PROVIDED BY THE ATTORNEY GENERAL OR CROWN SOLICITOR

I have included all recent legal opinions obtained from the Attorney General or the Crown Solicitor under section 33 of the PF&A Act. Refer to Appendix A at the end of this volume.



---

# Audit Result

---

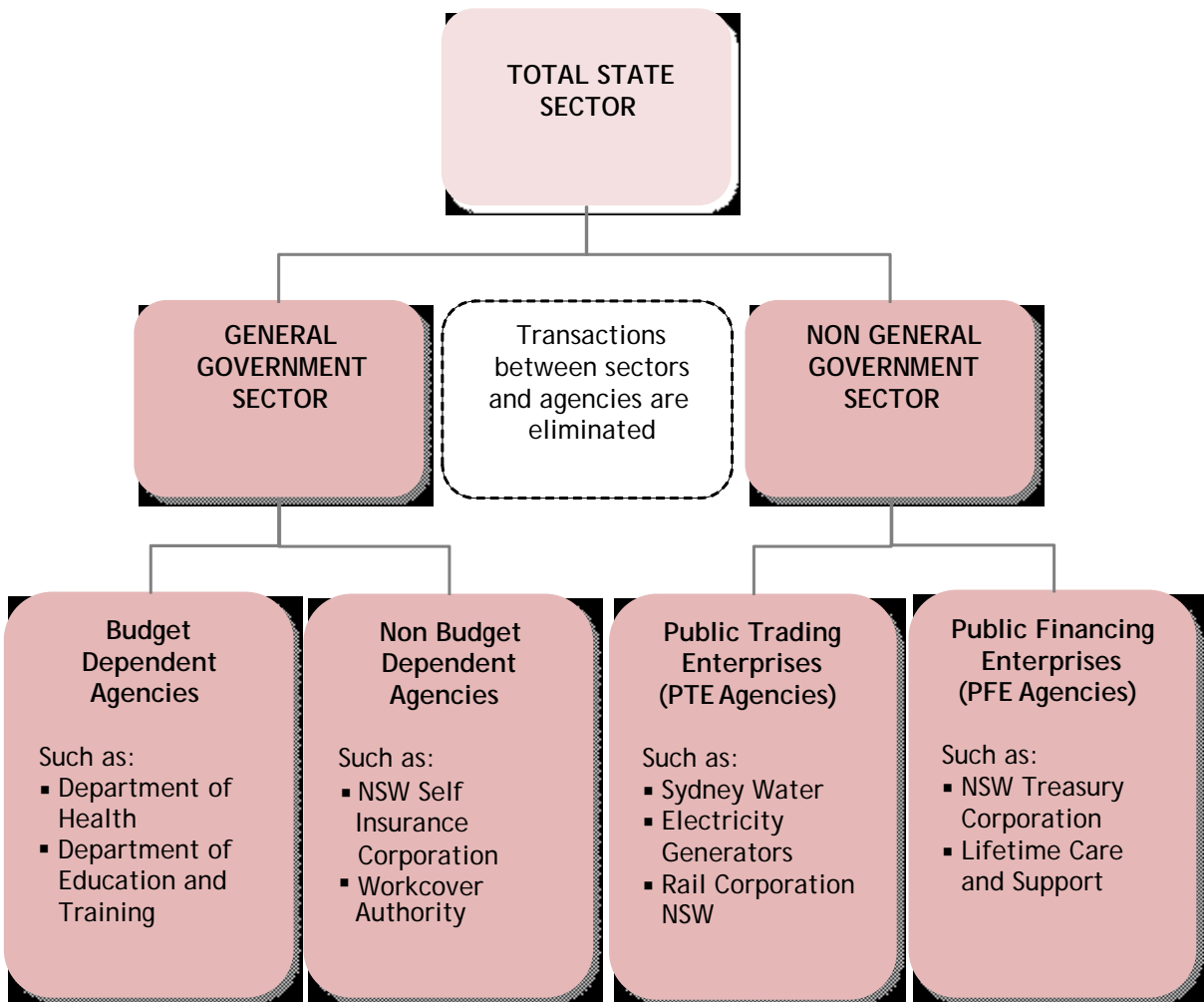
## INTRODUCTION

The *Public Finance and Audit Act 1983* requires the Treasurer to prepare and submit consolidated financial statements for the New South Wales General Government and Total State Sectors to the Auditor-General by 15 September each year.

After the financial statements have been audited, the Treasurer presents them to Parliament and the Auditor-General reports the results of his audit to Parliament by 31 October.

## THE GENERAL GOVERNMENT SECTOR AND TOTAL STATE SECTOR

The General Government and Total State Sectors are structured as shown below:



The General Government Sector comprises those entities that provide goods and services not directly paid for by consumers (i.e. largely financed from tax revenues and Commonwealth grants). The Non General Government Sector comprises Public Enterprises that have a market orientation, and provide goods and services such as transport, water and electricity, or participate in financial or other markets.

## AUDIT OPINION

I modified my opinion on the General Government and Total State Sector Accounts for the following reasons:

### Qualification

I was unable to obtain all information required to form an opinion on the value of the Crown reserves and the infrastructure on those reserves that should be recorded in the Total State Sector Accounts.

There are approximately 33,000 Crown reserves in New South Wales. The Government is in the process of identifying and valuing Crown reserves 'controlled' by the New South Wales Government that should be recognised as assets of the Government in the Total State Sector Accounts.

The Treasury has advised me that based on its preliminary assessment the total value of reserves controlled by the New South Wales Government, but not currently recognised in the Total State Sector Accounts, is between \$3.0 billion and \$5.0 billion. However, the total value may be greater, depending on the current valuation of the controlled assets. In addition, the estimated value of infrastructure on Crown reserves is between \$4.0 billion and \$5.5 billion.

The New South Wales Government will recognise the value of the assets it controls in future Total State Sector Accounts once the value can be reliably estimated.

### Emphasis of Matter

Without further qualification to the audit opinion, an emphasis of matter relating to a significant uncertainty regarding an objection to a taxation assessment has been included in my opinion on the General Government Sector's financial statements.

In 2007, the Crown Entity recognised a one-off taxation assessment of \$424 million (\$259 million of duty and \$165 million of interest), which has increased to \$532 million with additional interest. The matter has been set down for hearing in the Supreme Court in October 2010.

Until this matter is resolved, the ultimate outcome and its impact on the Net Operating Balance cannot be determined.

### Removal of Qualification for Land Under Roads

Land under roads valued at \$4.0 billion was recognised for the first time in the 2009-10 Total State Sector Accounts, removing the need to qualify my opinion concerning this matter.

## OTHER SIGNIFICANT ISSUES

Other significant issues I noted include:

### AAA Credit Rating

The State of New South Wales maintained its credit ratings of AAA from Standard and Poor's and Aaa/Stable from Moody's Investors Service.

Following the release of New South Wales' 2010-11 budget, Moody's Investors Service noted that the State's financial performance appears to have improved compared to last year's budget projections. Stronger than anticipated economic growth in Australia and in New South Wales has spurred revenues beyond what was projected last year and is the primary factor driving improved financial projections. Increases in Goods and Services backed Commonwealth grants and the State's own-source revenues, and rising property transfer duties, are bolstering the State's financial performance, as are the slightly slower pace in capital expenditures. However, the State's level of current spending is also slated to increase.

Moody's Investors Service stated that the State's efforts to bring the pace of expenditure growth below revenues through rationalising expenditures and maintaining a wage policy of 2.5 per cent will be of key importance to the State's fiscal outlook.

### NSW Lotteries

The State granted a 40 year lotteries operating licence and sold the shares in the NSW Lotteries Corporation to Tattersall's Holding Pty Ltd on 31 March 2010. Details of the transaction are as follows:

- Tattersall's Holding Pty Ltd paid the State Government \$850 million for the rights to the lotteries licence, the shares in the Corporation an offset against incremental GST changes, losses if the State fails to enforce the exclusivity of the licence and the right to issue new products without a licence fee and to allow the retention of unclaimed prizes over the 40 year licence period.

The Treasury has accounted for the transaction as:

- \$250 million was received for the 40 year licence
- \$600 million was received for the shares in the Corporation,

In my opinion, the Government should not have recognised the entire \$600 million as other gains in the current year. Instead, it should have amortised the proceeds attributable to the components, other than the shares in the Corporation, over the 40 year licence period.

- \$123 million cash, \$31.0 million investments, \$10.0 million property and liabilities of \$6.0 million for unclaimed prizes were transferred to the Crown Entity from the former Corporation prior to the transaction.

### Sydney Water Corporation - Water Filtration Plants

The Total State Sector Accounts do not include a liability of \$477 million (\$481 million) relating to water filtration plants.

Sydney Water has agreements with the owners/operators of water filtration plants for the filtration of bulk water. The agreements are for 25 years and require Sydney Water to pay the owners a fee for the service provided. At the end of the agreement, Sydney Water has the option to extend the arrangements or to acquire the filtration plants at market value.

In my opinion, these arrangements effectively transfer to Sydney Water substantially all the risks and benefits incidental to ownership of the plants. Sydney Water considers these agreements to be service agreements for the filtration of water. They consider the agreements do not meet the definition of a finance lease as the agreements do not convey the right for Sydney Water to use the assets.

### Sydney Metro Authority

As part of the New South Wales Government's February 2010 decision to stop work on the Metro Network stages 1 and 2, the Government announced it would compensate tenderers for major construction contracts for reasonable costs incurred.

Sydney Metro Authority established a review process to assess claims provided by all short listed tenderers. All claims by tenderers for major construction contracts were settled before 30 June 2010 at a total cost of \$93.5 million.

There are a further 75 claims relating to property and leasehold owners impacted by the Government's decision.

Sydney Metro Authority also wrote off assets of \$176 million during 2009-10.

### Lifetime Care and Support Scheme

There is uncertainty in the estimate of the Scheme's provision for participants' care and support services, which was \$1.0 billion at 30 June 2010 (\$610 million).

The Lifetime Care and Support Scheme provides treatment, rehabilitation and attendant care services to people severely injured in motor accidents in New South Wales, regardless of who was at fault in the accident.

There is uncertainty associated with the estimate of the provision and the related expense item because of the long term nature of the provision and limited participants' experience to date. This uncertainty will remain until sufficient participants' experience is available.

### Uncertainty regarding the effect of electricity industry reforms and carbon reduction scheme

The assessment of the carrying value of electricity generation assets is subject to unpredictable complex assumptions particularly regarding the potential impact of the New South Wales Government's proposed electricity industry reforms and any future carbon reduction scheme. The ultimate extent of the impact of the proposed reforms and the scheme cannot presently be determined and these create uncertainties regarding the fair value assessment of those assets.

### Amendments to the *Public Authorities (Financial Arrangements) Act 1987* (Repeat Issue)

I recommend that the Treasurer present amendments to the *Public Authorities (Financial Arrangements) Act 1987* (PAFA Act) to Parliament at its next sitting.

In 2006, I informed The Treasury that some of the advice in *TC06/17 Consequences of New Employment Arrangements - Other Taxation, Administrative and Operational Issues* is inconsistent with the provisions in the PAFA Act. To correct this, Treasury said they would change the PAFA Act, but so far the Treasurer has not presented an amending Act to Parliament.

There have been unreasonable delays in resolving this issue and it is probable that some agencies are breaching the PAFA Act because they are relying on the incorrect advice in TC06/17.

---

## Quality and Timeliness of Financial Reporting

---

I recommend the Premier and the Treasurer implement the recommendations of the Public Accounts Committee relating to the quality and the timeliness of financial reporting and ensure they have appropriate policies and processes to support the successful implementation of the recommendations.

The quality and timeliness of the General Government and Total State Sector Accounts is largely dependent on:

- the quality and timeliness of financial information provided by agencies
- The Treasury's year end processes including coordination and guidance to agencies
- the competency of those preparing and providing financial information.

The financial reporting process is complicated by the structure and number of reporting entities in the New South Wales public sector. The consolidated financial statements incorporate the financial results and position of 122 agencies controlled by the State with total net assets of \$151 billion.

In October 2010, the Public Accounts Committee released a report on the Quality and Timeliness of Financial Reporting. The Committee recommended:

- the Treasurer require all agencies to conduct a hard close of their accounts at 31 March from 2011
- the Treasurer propose amendments to the *Public Finance and Audit Act 1983* requiring chief financial officers to certify their financial reporting systems
- the Premier ensure that accountability for accurate and timely financial reporting is included in all chief executive officers' performance agreements
- the Treasurer develop and implement a program to bring forward the deadline for the tabling of annual reports in Parliament to three months after the end of the financial year by 2013 at the latest
- the Treasurer consider proposing amendments to prescribe minimum qualifications of chief financial officers in the *Public Finance and Audit Act 1983*.

The Treasury will need to ensure appropriate policies and processes are in place to support the successful implementation of the Public Accounts Committee's recommendations. This will pose significant challenges for The Treasury, my Office and Government agencies, which need to be addressed urgently.

The Treasury has defined 'hard close' to be the preparation of a full set of financial statements, note disclosures and work papers, including analytical review, for the nine months to March (or ten months to April).

### PREPARATION OF FINANCIAL STATEMENTS

During 2009-10, The Treasury piloted a 'hard close' initiative to improve the quality and timeliness of financial reporting. Because the initiative was only partially implemented by some of the piloted agencies, it is difficult to determine how successful the initiative was. However, I firmly believe the full implementation of hard close procedures across the sector will result in improved quality and timeliness of financial reporting.

Seven (12) of the 24 largest agencies' financial statements submitted for audit contained 24 (25) errors exceeding \$20.0 million.

	Errors \$20 - \$50 million	Errors \$50 - \$100 million	Errors \$100 million - \$1 billion	Errors greater than \$1 billion	Total Errors greater than \$20million
Largest 24 Agencies (2009-10)	11	5	6	2	24
Largest 24 Agencies (2008-09)	12	4	9	--	25

Of the 24 errors over \$20.0 million, 16 were subsequently corrected in the individual agencies' financial statements.

Significant errors included:

Agency	Amount	Nature of Error
Roads and Traffic Authority	\$4.3 billion*	Misstatement of earthwork assets
Roads and Traffic Authority	\$1.0 billion*	Spreadsheet error in roads valuation
Department of Health	\$188 million*	Misstatement in property, plant and equipment values
Crown Finance Entity	Commercial in confidence	Non-deferral and amortisation of components of NSW Lotteries transaction
Crown Finance Entity	\$147 million*	Misstatement in tax receivables

\* Corrected in individual agency financial statements

## CURRENT STATUS OF PREVIOUS RECOMMENDATIONS

During 2009, I made 157 recommendations for agencies to improve their operations. I have reviewed the current status of these recommendations and found the majority have either been actioned or partially implemented. Unactioned items at 30 June 2010 include:

Agency	Recommendation	Current Status
Hunter Water Corporation	A sound business case be prepared before any decision is made to proceed with the Tillegra Dam	Hunter Water advised that extensive studies relating to aspects of the proposal have been undertaken and are subject to a merit assessment process currently underway by the Department of Planning. The outcome of these studies and the Department of Planning's determination will constitute the business case for the projects
State Water Corporation	The Government negotiate an inter-jurisdictional agreement providing a framework for managing the interstate trade of water allocations	No inter-jurisdictional agreement has been entered into
State Transit Authority	The Independent Transport Safety and Reliability Regulator (ITSRR) liaise with the Department of Transport and Infrastructure to secure funding for annual customer service surveys of Sydney metropolitan bus services and Sydney Ferries	Transport Administration Act amendments effective 1 July 2010 have resulted in Transport NSW assuming responsibility for customer surveys, not ITSRR. State Transit Authority (STA) undertakes periodic internal customer surveys and supports the principle of regular independent feedback on performance
State Transit Authority	The New South Wales Government reconsider the appropriateness of employment arrangements for the Authority to avoid further losses of Commonwealth Government grants	Public Service Employment Arrangements are the responsibility of the Department of Premier and Cabinet and The Treasury. STA will cooperate in any reviews of these arrangements
State Transit Authority	The ITSRR conduct annual independent surveys of bus customers so changes in customer satisfaction can be monitored	Transport Administration Act amendments effective 1 July 2010 have resulted in Transport NSW assuming the responsibility for customer surveys, not ITSRR. STA undertakes periodic internal customer surveys and supports the principle of regular independent feedback on performance
Department of Health	Maintenance of the Department's assets be improved so benchmark maintenance levels are met. This should be done in conjunction with the reviews being performed on fully depreciated plant and equipment	The 2.0% benchmark is an aspirational target based on analysis undertaken in Queensland. An annual review of maintenance expenditure continues to be carried out. The 2008-09 state-wide position (all Health Services) reflects an actual maintenance expenditure level of 1.1% compared to the 2.0% benchmark which was unchanged from the previous year. Maintenance expenditure is monitored to gain a better understanding of the levels of expenditure and budget required to maintain assets at an appropriate level.

Agency	Recommendation	Current Status
Forests NSW	Forests NSW arrange a full revaluation of its land in 2009-10	Forests NSW did not perform a full revaluation on its land holdings in 2009-10. However, it adjusted land values according to land valuation indices which considered all variables to bring land to fair value. This was performed by the Valuer-General after discussions with the Audit Office. A full revaluation will be carried out by Forests NSW in 2010-11
Waste Recycling and Processing Corporation	The Corporation liaise with The Treasury to resolve the difficulties in complying with the requirements of the <i>Waste Recycling and Processing Corporation Act 2001</i> (the Act)	Requires changes to the Act which are unlikely to be made at this point given the pending sale of the Corporation
Department of Justice and Attorney General	The Department should seek additional funding from the Consolidated Fund to ensure the backlog of claims relating to victims compensation is processed in a reasonable timeframe	The Department has not made a direct request for more access to the Consolidated Fund but has instead pursued more sustainable options to fund the scheme through reducing structural costs and increasing revenue to fund compensation claims
Justice Health	Justice Health should strengthen its policies and procedures in relation to plant and equipment stock-takes	No stock-takes were carried out in 2009-10. Rolling stock takes have commenced in 2010-11 and counts at all clinics throughout the State should be completed in the 2010-11 financial year. Independent managers will oversee the stock takes
The Treasury	The Government seek amendments to the <i>Fiscal Responsibility Act 2005</i> to provide targets and priorities within the control of Government	The Treasury is currently conducting the statutory five-yearly review of the Act. A report on the outcomes will be tabled in Parliament by June 2011
Australian Museum Trust	The Museum complete its program of recording its collections on an electronic database as soon as possible	The Museum is part of a funding bid to The Treasury being prepared and coordinated by Communities NSW to allow electronic databasing of its collections. The Museum continues to electronically database new and old material as resources allow



---

# Financial Analysis

---

## INTRODUCTION

This section analyses key financial data in the General Government and Total State Sector Accounts to inform Parliament and the community of trends in the State's financial position and its performance. The Treasury has prepared the General Government and Total State Sector Accounts in accordance with the requirements of *AASB 1049 Whole of Government and General Government Sector Financial Reporting*.

## COMPLIANCE WITH ACCOUNTING STANDARDS

General principles of *AASB 1049* include:

- consolidated sector financial statements are prepared in accordance with the definition, recognition, measurement, classification, presentation and disclosure requirements of accounting standards
- where options exist in accounting standards, the option that is consistent with Government Finance Statistics (GFS) must be chosen
- where there is any conflict between Generally Accepted Accounting Principles (GAAP) and GFS, GAAP prevails. This creates a convergence difference which must be reconciled in the key fiscal aggregate reconciliations
- amended presentation requirements exist including a harmonised Statement of Comprehensive Income. The statement dissects revenues and expenses into transactions and other economic flows, as defined by the Australian Bureau of Statistics GFS Manual.

## Financial Information

## Statement of Comprehensive Income

Year ended 30 June	General Government		Total State Sector	
	2010 \$m	2009 \$m	2010 \$m	2009 \$m
<b>REVENUES</b>				
Taxation	19,129	17,855	18,028	16,940
Grants and subsidies	26,983	22,309	26,799	22,245
Sales of goods and services	4,327	4,048	17,351	16,251
Interest	316	415	1,066	1,144
Dividends and Income Tax Equivalents	2,037	1,828	--	--
Other Dividends and Distributions	285	196	285	196
Fines, Regulatory Fees and Other	3,256	3,012	3,894	3,697
<b>TOTAL REVENUES</b>	<b>56,333</b>	<b>49,663</b>	<b>67,423</b>	<b>60,473</b>
<b>EXPENSES</b>				
Employee costs	26,144	24,740	30,147	28,746
Depreciation and amortisation	2,769	2,614	5,623	5,264
Interest	1,653	1,505	3,512	3,186
Grants and subsidies	13,184	10,696	7,689	6,597
Other	11,589	10,970	16,834	16,385
<b>TOTAL EXPENSES</b>	<b>55,339</b>	<b>50,525</b>	<b>63,805</b>	<b>60,178</b>
<b>TRANSACTIONS FROM DISCONTINUING OPERATIONS</b>				
	--	--	288	402
<b>NET OPERATING BALANCE SURPLUS/(DEFICIT)</b>				
	994	(862)*	3,906	697*
<b>Other Economic Flows - Included in the Operating Result</b>				
Loss from Liabilities	(238)	(437)	(242)	(471)
Other Net Gains/(Losses)	875	(699)	(837)	(2,046)
Share of Earnings from Associates (excluding Dividends)	173	19	173	19
Dividends from Asset Sale Proceeds	--	11	--	--
Deferred Income Tax from other sectors	925	(1,021)	--	--
Other Losses	(90)	(88)	(104)	(96)
<b>OPERATING SURPLUS/(DEFICIT)</b>	<b>2,639</b>	<b>(3,077)</b>	<b>2,896</b>	<b>(1,897)</b>
<b>Other Economic Flows - Other Comprehensive Income</b>				
Revaluations	5,476	5,501	11,214	4,213
Actuarial Loss from Superannuation	(3,156)	(11,457)	(3,538)	(13,060)
Net Gain/(Loss) on Equity Investments	5,702	(1,606)	--	--
Net Gain/(Loss) on Financial Instruments	--	--	(31)	120
Other (Gain)/Loss	88	(98)	208	(113)
<b>COMPREHENSIVE RESULT - TOTAL CHANGE IN NET WORTH BEFORE TRANSACTIONS WITH OWNERS AS OWNERS</b>	<b>10,749</b>	<b>(10,737)</b>	<b>10,749</b>	<b>(10,737)</b>

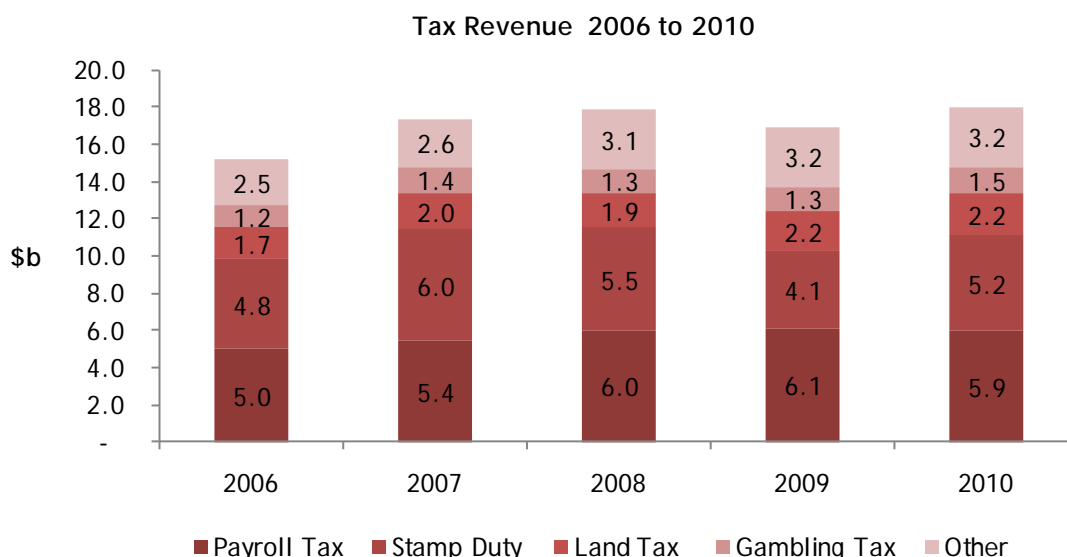
\* The 2008-09 Net Operating Balance for the General Government Sector and Total State Sector increased by \$35.0 million as a result of a correction to capital grants relating to Land Under Roads.

Unless otherwise stated, the following commentary relates to the Total State Sector.

## REVENUES

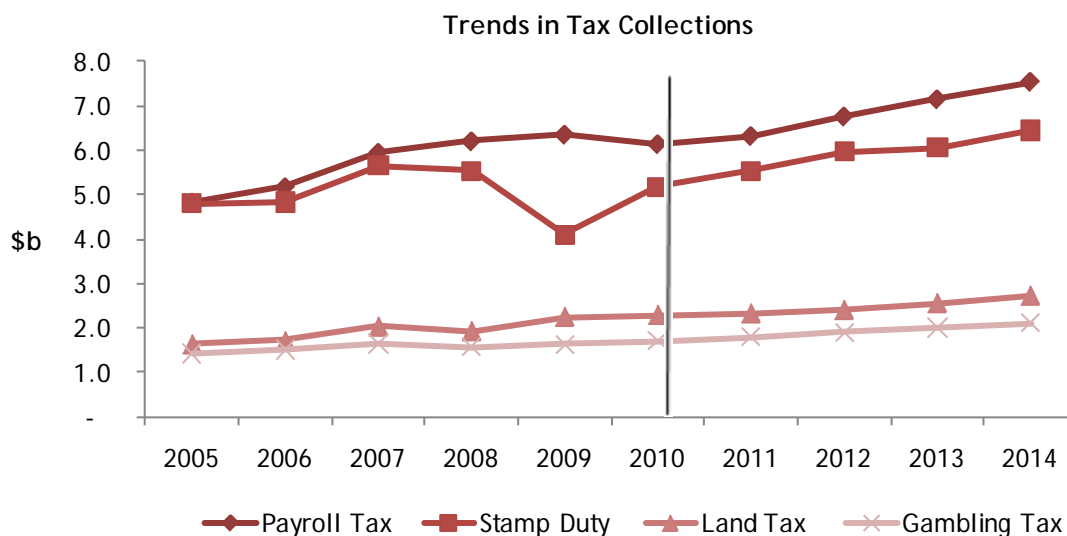
### Taxation

Total taxation revenue increased from \$15.2 billion to \$18.0 billion (18.3 per cent) over the last five years (an average of 3.7 per cent per annum).



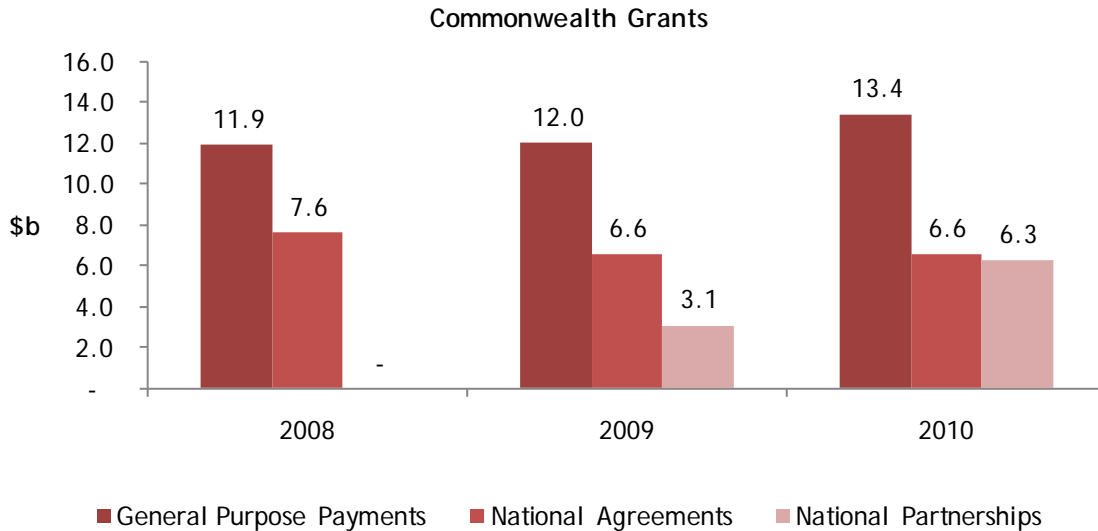
Tax revenue increased by \$1.1 billion when compared to 2008-09. Stamp duty increased by approximately \$1.1 billion (26.1 per cent) predominantly due to increase in transfer duty on residential property. Payroll tax decreased by 3.4 per cent, land tax increased by 1.4 per cent and gambling tax increased by 12.3 per cent from the prior year.

The following table details tax collected between 2005 and 2010 and The Treasury's forecasts for General Government Sector tax collections over the next 4 years.



### Commonwealth Grants

The Government received significant new grants of \$6.3 billion (\$3.1 billion) including the Australian Governments' Nation Building - Economic Stimulus Plan and National Building for the Future Plan (National Partnership Payments).



#### General Purpose Payments

Commonwealth General Purpose GST grants increased by \$1.4 billion from 2008-09. This was primarily due to a change in the estimate of the total GST pool available for distribution to the States, compared to the estimates provided in the 2009-10 Commonwealth Budget. The estimate of total GST revenue has increased by \$11.6 billion for the four years 2009-10 to 2012-13 and stems from higher forecast growth for taxable consumption as the Australian economy recovers from the global downturn.

#### National Agreements (excludes stimulus funding)

National Agreements set out the policy objectives in six key service delivery areas, covering healthcare, education, skills and workforce development, disabilities, affordable housing and national Indigenous reform. Each agreement establishes the roles and responsibilities between levels of government and sets out the high level objectives, outcomes and performance indicators, as agreed by all jurisdictions (source: 2010-11 Budget Statement).

In 2009-10, the State received the following significant National Agreement payments:

National Agreements	Amount \$'000
National Healthcare (recurrent)	3,711,041
National Schools (recurrent)	1,104,539
National Affordable Housing (recurrent)	74,537
National Affordable Housing (capital)	305,682
Home and Disability Care Program (recurrent)	308,631
National Skills and Workforce (recurrent)	438,559

**National Partnerships (includes stimulus funding)**

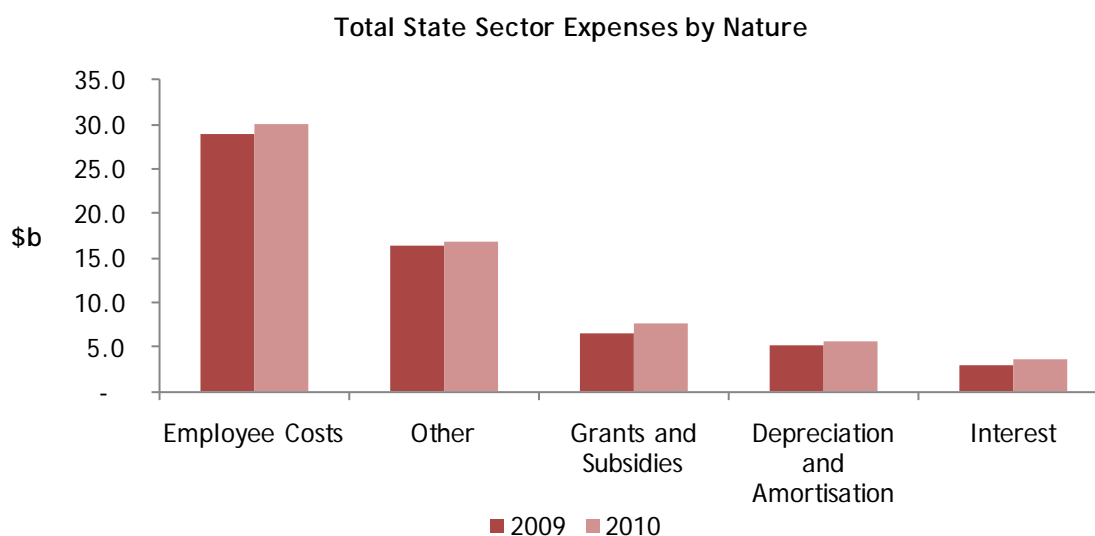
National Partnerships are time limited arrangements that focus on delivering specific outputs or projects in areas of nationally significant reform or achieving service delivery improvements. The Australian Government gives payments to support National Partnerships to help progress the reforms and/or reward jurisdictions for achieving agreed performance benchmarks (source: 2010-11 Budget Statement).

In 2009-10, the State received the following significant National Partnership Payments:

National Partnerships	Amount \$'000
Primary Schools for the 21st Century (capital)	1,623,659
Nation Building and Job Plans (capital)	1,312,647
National Land Transport (AUSLINK) (capital)	1,248,906

**EXPENSES****Total State Sector Expenses by Nature**

Total expenses increased from \$60.2 billion in 2008-09 to \$63.8 billion in 2009-10, an increase of six per cent.



### Employee Costs

Employee costs (excluding superannuation costs) increased by approximately 3.5 per cent compared to 7.5 per cent in the prior year.

The increase in 2008-09 was significantly higher than that in 2009-10 due to award increases at the Department of Education and Training and Department of Health and increased workers' compensation claims incurred by NSW Self Insurance Corporation.

Employee costs do not include increases in superannuation obligations resulting from changes to assumptions used to calculate these obligations (e.g. movements in discount rates and other economic assumptions). These costs are reported in Other Economic Flows - Other Comprehensive Income.

### Other Expenses

Other expenses increased by \$449 million to \$16.8 billion. The increase includes costs associated with privatising the Energy Sector, NSW Lotteries and WSN Environmental Solutions. It also includes the cost of compensation payments made as a result of the Government's decision to stop work on the Sydney Metro project.

Costs to 30 June	2010 \$'000	2009 \$'000	2008 \$'000	TOTAL \$'000
Compensation Payments - Sydney Metro Authority	93,500	--	--	93,500
Privatisation Costs - Energy Sector Reform	78,826	24,677	20,057	123,560
Privatisation Costs - NSW Lotteries	5,307	1,419	--	6,726
Privatisation Costs - WSN Environmental Solutions	4,140	1,379	--	5,519

I understand further costs will be incurred on all these transactions.

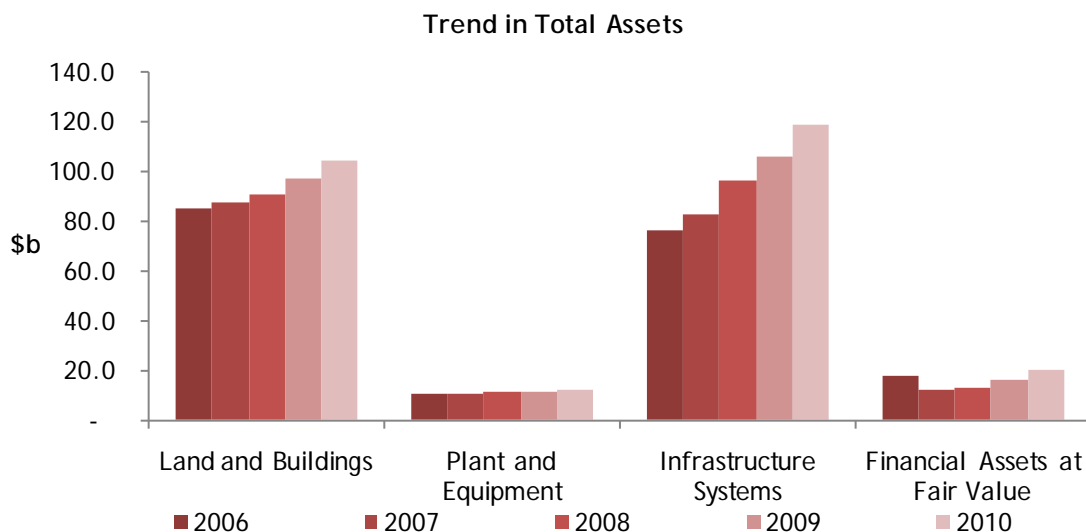
## Financial Information

## Statement of Financial Position

Year ended 30 June	General Government		Total State Sector	
	2010 \$m	2009 \$m	2010 \$m	2009 \$m
<b>ASSETS</b>				
<b>Financial Assets</b>				
Cash and Cash Equivalents	3,071	3,350	6,299	5,541
Receivables	6,176	5,556	6,775	7,197
Tax Equivalents Receivable	286	245	--	--
Financial Assets at Fair Value	6,620	5,272	19,857	15,763
Advances Paid	905	780	434	319
Deferred Tax Equivalents	5,734	4,576	--	--
Equity Investments	79,692	73,696	1,305	1,050
<b>Total Financial Assets</b>	<b>102,484</b>	<b>93,475</b>	<b>34,670</b>	<b>29,870</b>
<b>Non Financial Assets</b>				
Inventories	276	250	1,349	1,298
Forestry Stock and Other Biological Assets	7	7	669	560
Assets Classified as Held for Sale	133	115	267	173
Investment Properties	269	274	1,023	1,023
Property, Plant and Equipment	122,728	113,533	234,610	214,271
Intangibles	1,245	977	2,628	2,242
Other	1,116	1,023	1,497	1,374
<b>Total Non Financial Assets</b>	<b>125,774</b>	<b>116,179</b>	<b>242,043</b>	<b>220,941</b>
<b>TOTAL ASSETS</b>	<b>228,258</b>	<b>209,654</b>	<b>276,713</b>	<b>250,811</b>
<b>LIABILITIES</b>				
Deposits Held	76	72	206	182
Payables	3,739	3,345	6,541	6,224
Tax Equivalents Payable	19	7	--	--
Borrowing and Derivatives at Fair Value	20	21	56,866	47,777
Borrowings at Amortised Cost	19,053	16,582	2,411	2,179
Advances Received	811	835	805	835
Employee Provisions	10,910	9,888	12,944	11,911
Superannuation Provision	32,722	29,423	34,530	31,003
Deferred Tax Equivalent Provision	796	746	--	--
Other Provisions	5,717	5,501	7,326	6,642
Other	3,032	2,620	3,721	3,444
<b>TOTAL LIABILITIES</b>	<b>76,895</b>	<b>69,040</b>	<b>125,350</b>	<b>110,197</b>
<b>NET ASSETS</b>	<b>151,363</b>	<b>140,614</b>	<b>151,363</b>	<b>140,614</b>
<b>NET WORTH</b>				
Accumulated Funds	23,239	23,605	60,398	60,250
Reserves	128,124	117,009	90,965	80,364
<b>TOTAL NET WORTH</b>	<b>151,363</b>	<b>140,614</b>	<b>151,363</b>	<b>140,614</b>

**ASSETS**

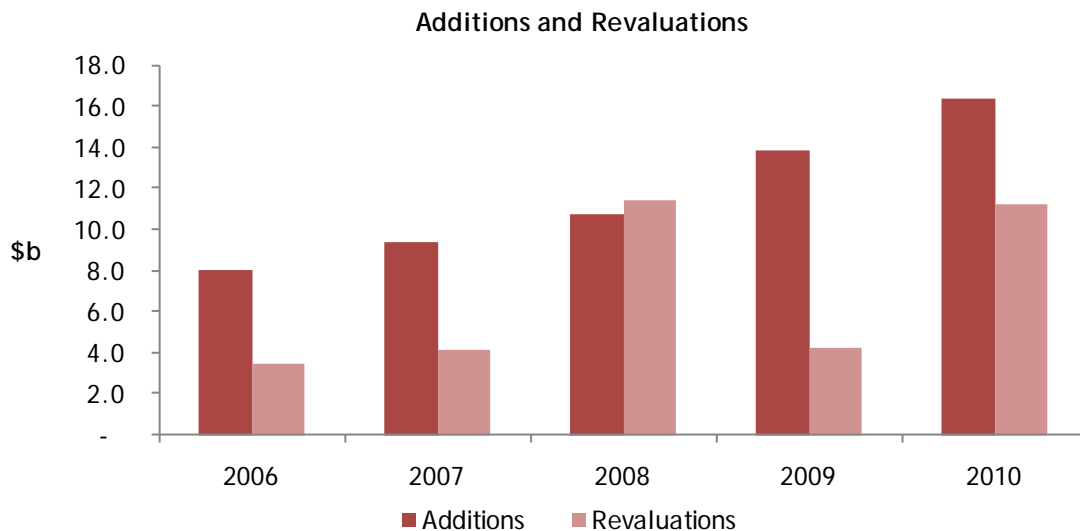
Total Assets have increased from \$206 billion in 2005-06 to \$277 billion in 2009-10, an increase of 34.5 per cent over five years.



**Property, Plant and Equipment**

Property, Plant and Equipment represents the State’s physical assets of land and buildings, plant and equipment and infrastructure systems.

These assets are used to provide or support service delivery. Over the last five years the State has invested \$58.3 billion in these assets, which on average represents an investment of \$11.7 billion per annum.



Additions to property, plant and equipment totalled \$16.4 billion during 2009-10. These were funded, in part, by National Partnership Payments of \$5.0 billion from the Australian Government.

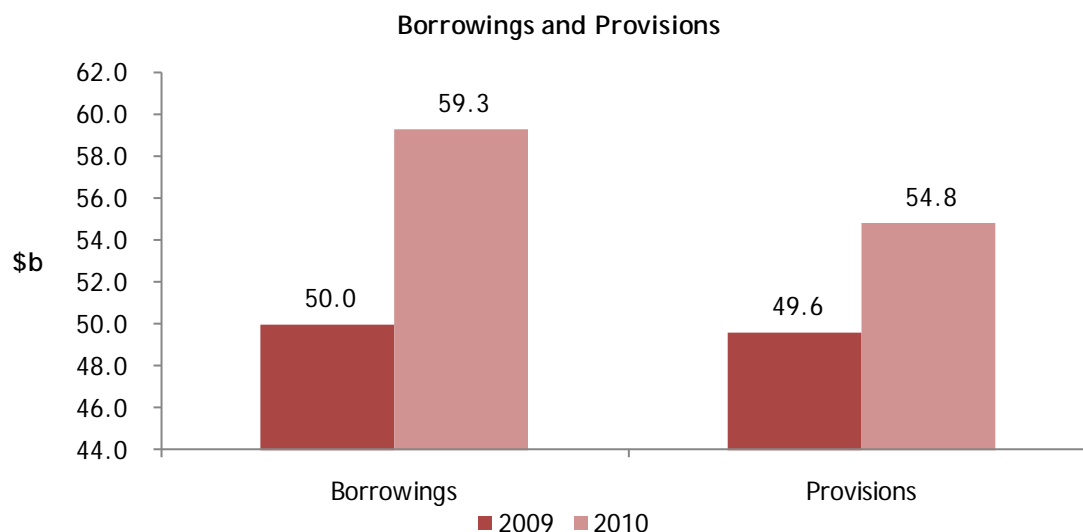


Revaluations of existing assets included:

- NSW Land and Housing Corporation's revaluation of its residential property portfolio, including residential land held for redevelopment upwards by \$2.9 billion
- Country Energy's revaluation of its electricity system assets upwards by \$1.2 billion.

## LIABILITIES

Total liabilities have increased by 13.8 per cent in the past twelve months from \$110 billion to \$125 billion. This was largely due to increased borrowings and actuarial movements in the State's Defined Benefit Superannuation obligations and increases in other provisions.



### Borrowings

Domestic and foreign borrowings increased by \$9.3 billion during 2009-10. This was primarily driven by an increase in the borrowings of New South Wales Government agencies, managed by the New South Wales Treasury Corporation (T-Corp), to fund infrastructure programs. The 2010-11 Budget Papers forecast \$62.2 billion of capital spending over the four years to June 2014. The remainder of the Australian Government's economic stimulus and nation building grants is included in the projected \$16.6 billion investment in infrastructure for 2010-11. TCorp expects its loans to clients to increase by \$18.0 billion over the four years.

### Superannuation Provisions

Included in the movement in provisions is an increase of \$3.5 billion in the unfunded superannuation liabilities of the Total State Sector. The State has the following liabilities:

Scheme	Unfunded Liability 2010 \$m	Unfunded Liability 2009 \$m
State Superannuation - Pooled Fund	33,015	29,664
Parliamentary Contributory Superannuation Scheme	269	231
Judges' Pension Scheme	660	605
Energy Industries Superannuation Scheme	586	503
<b>TOTAL</b>	<b>34,530</b>	<b>31,003</b>

Increases in unfunded superannuation liabilities are primarily due to a decrease in the discount rate from 5.59 per cent to 5.17 per cent.



---

## Major Capital Projects

---

The Government publishes its capital infrastructure plans for the current and forward estimates periods in Budget Paper 4: Infrastructure Statement. In the 2009-10 Infrastructure Statement the Treasurer announced:

‘Over the four years to 2012-13, New South Wales will undertake a record infrastructure investment program, the largest in the State’s history, worth around \$62.9 billion. In 2009-10, Total State infrastructure investment is budgeted at \$18.0 billion.’

I have reviewed the status of major capital projects as set out in the Infrastructure Statement for 2009-10. Attention was focused on projects with anticipated costs exceeding \$30.0 million or more over the life of the project. I noted that most projects were on track to meet their original completion date. However, a number of projects have experienced delays:

Agency	Project Cost and Description	Reasons for delays and/or cost overruns
Department of Environment, Climate Change and Water	\$90.3m Riverbank	Extension of the Program was approved in the River Red Gum Cabinet Minutes
NSW Police	\$74.2m Upgrade of Core Operating Policing System	There has been a major delay in the negotiation of the fixed price contract
Department of Health	\$50.7m ICT Human Resource Information System	A combination of additional work to build common integration deliverables required by other ICT programs and the complexity of testing Health awards
Department of Health	\$115m ICT Patient and Clinical Systems Phase 2	Delay was caused by Health Services’ inability to provide resources to implement the Program
Department of Health	\$67.8m Local Initiatives 2009-10	Delays were due to higher pre-tender estimates and latent conditions
Department of Justice and Attorney General	\$52.8m Silverwater Women's Correctional Centre Staged Development	Increased costs due to security measures within an operational maximum security correctional centre and escalation costs

Agency	Project Cost and Description	Reasons for delays and/or cost overruns
Department of Justice and Attorney General	\$296m 1,000 Inmate Beds	Project originally included 500 beds for Nowra, 250 beds for Cessnock and 250 beds for Lithgow. Lithgow has been cancelled following community feedback, 100 beds added to Nowra and balance to be confirmed. Planning consent also delayed the start of construction
Rail Corporation NSW	\$51.2m Passenger Initiated Egress	Delays in supplying a prototype as the contractor experienced difficulty in finalising design work. Increased fitment times reflecting increased scope and testing due to the crew override and associated functions. Greater elapsed times required for tendering and approvals to meet new RailCorp procedures. Increased Safety Integrity levels for software design. The need to ensure consistency with the PPP Waratah trains
Rail Corporation NSW	\$66.2m Oatley, Sutherland Cronulla Resignalling and Overhead Wiring	Estimated cost increases due to the following factors: Limited signalling resources being diverted to other higher priority works. Procurement delays. Scope change with upgraded and improved reliability of signal interlocking from the original plan
Rail Corporation NSW	\$1.9b Clearways	The Budget Committee of Cabinet approved the variation for time and cost following reviews which changed scheduling, configuration and scope. This has led to completion date extensions and cost and escalation increases
Rail Corporation NSW	\$268m Outer Suburban Cars - Tranche 2	Due to a contractual dispute with the manufacturer of the Outer Suburban Cars, Rail Corporation sought and entered into formal arbitration. As a result of an increase in the budget for settlement of claims, legal and project resources in regards to the legal third party and defect claims has been necessary. This has increased the estimated total cost of the project by \$11.1m
Rail Corporation NSW	\$82.3m Southern Sydney Freight Line (SSFL) - Australian Rail Track Corporation Ltd (ARTC) Interface	Rail Corporation does not have direct control of the scheduled delivery of this project as delivery of the SSFL is being undertaken by ARTC
Roads and Traffic Authority	\$140m M5 Widening, Brooks Road to Narellan Road	Wet weather and delays to project approvals held up progress

Agency	Project Cost and Description	Reasons for delays and/or cost overruns
Roads and Traffic Authority	\$100m Network management (Pinch Point Strategy)	Wet weather delays
Roads and Traffic Authority	\$71.0m Hoxton Park Road, Banks road to Cowpasture Road	Issues with utility design and cabling supply slowed early progress
Roads and Traffic Authority	\$65.0m Camden Valley Way	Wet weather held up project progress
Roads and Traffic Authority	\$56.2m Newell Highway	Issues surrounding purchase of contaminated land held up project progress
Roads and Traffic Authority	\$53.0 million Alfords Point Bridge - Northern approach	Community consultation on noise walls slowed project progress
Roads and Traffic Authority	\$41.0 million Bangor Bypass Stage 2	Delays in project planning approvals held back project progress
Roads and Traffic Authority	N/A Tarcutta Bypass	Construction progress hampered by inclement weather conditions
Roads and Traffic Authority	N/A Woomargama Bypass	Expected property acquisition did not occur as planned
Roads and Traffic Authority	N/A Bulahdelah Bypass	Delay in tender process resulting from environmental/heritage legal cases
Roads and Traffic Authority	N/A Coffs Harbour to Woolgoolga Duplication	Expected property acquisition did not occur as planned
Roads and Traffic Authority	N/A Tintenbar to Ewingsdale	Expected property acquisition did not occur as planned
Roads and Traffic Authority	N/A F3 to Branxton Freeway	Problems with utility works and access to private railway restricted project progress
Roads and Traffic Authority	\$220m Lawson Ferguson Avenue to Ridge Street	Wet weather delays in rail access slowed project progress

Agency	Project Cost and Description	Reasons for delays and/or cost overruns
Roads and Traffic Authority	\$160m Woodford to Hazelbrook, Station Street to Ferguson Avenue	Wet weather slowed progress not allowing start up of construction as planned
Roads and Traffic Authority	\$158m Oxley Highway, upgrade from Wrights Road to the Pacific Highway	Wet weather and environmental issues held up progress.

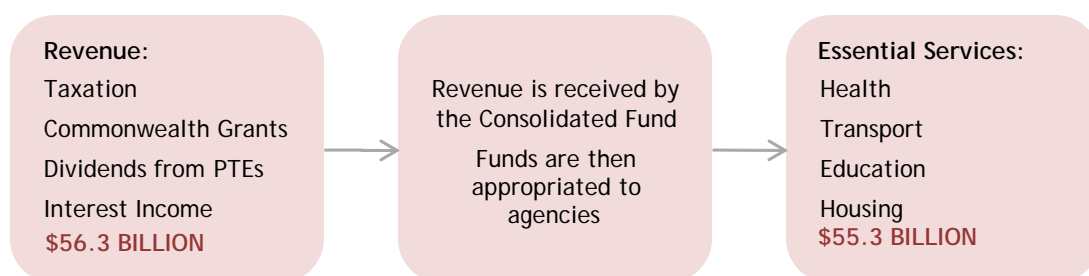
N/A - indicates that total cost and completion dates are not available as the projects are in the planning phase (Source: 2009-10 Budget Paper 4: Infrastructure Statement).

The Roads and Traffic Authority has advised that although there has been under expenditure on particular projects in the current year, overall time frames and project delivery are expected to be achieved in accordance with Budget Paper 4.

# Net Operating Balance - General Government Sector

## INTRODUCTION

The Net Operating Balance comprises transactions of the General Government Sector excluding Other Economic Flows, which include items such as valuation gains and major asset write downs.



## NET OPERATING BALANCE - VARIANCE TO ORIGINAL BUDGET (JUNE 2009)

### Financial Information

Year ended 30 June 2010	Actual \$m	Budget \$m	Difference \$m	Difference %
<b>Revenues</b>				
Taxation	19,129	18,011	1,118	6.2
Commonwealth Grants	26,340	25,038	1,302	5.2
Other Grants and Subsidies	643	639	4	0.6
Sale of Goods and Services	4,327	3,859	468	12.1
Interest	316	390	(74)	(19.0)
Dividend and Income Tax	2,037	2,013	24	1.2
Other Dividends	285	205	80	39.0
Fines, Regulatory Fees and Other	3,256	2,803	453	16.2
<b>Total Revenues</b>	<b>56,333</b>	<b>52,958</b>	<b>3,375</b>	<b>6.4</b>
<b>Expenses</b>				
Employee Related	23,073	22,724	349	1.5
Superannuation	3,071	3,028	43	1.4
Depreciation and Amortisation	2,769	2,915	(146)	(5.0)
Interest	1,653	1,531	122	8.0
Other Property	1	1	--	--
Other Operating	11,588	11,426	162	1.4
Current Grants and Subsidies	7,987	8,274	(287)	(3.5)
Capital Grants	5,197	4,049	1,148	28.4
<b>Total Expenses</b>	<b>55,339</b>	<b>53,948</b>	<b>1,391</b>	<b>2.6</b>
<b>NET OPERATING BALANCE SURPLUS/(DEFICIT)</b>	<b>994</b>	<b>(990)</b>	<b>1,984</b>	<b>(200)</b>

Total revenue exceeded budget by \$3.4 billion due to:

- Commonwealth grants increasing by \$1.3 billion due to a \$997 million increase in General Purpose Grants and \$504 million National Partnership Payments
- Taxation revenue increasing by \$1.1 billion due to increases in transfer duty on residential property
- Sales of Goods and Services increasing by \$468 million due to the reclassification of the High Cost drugs program grant of \$191 million, first time recognition of personnel services revenue by the Department of Human Services from NSW Land and Housing Corporation of \$213 million and toll revenue associated with the Sydney Harbour Tunnel following its reclassification as a finance lease of \$43.0 million
- Fines, Regulatory Fees and Other increasing by \$453 million. This was primarily due to Other revenue increasing by \$313 million as a result of the transfer of Council roads to the Roads and Traffic Authority following implementation of the NSW Road Reclassification Review.

The table below shows those agencies where actual expenses exceeded the original budget:

Agency	2010 \$m	Reason
Roads and Traffic Authority	530	<ul style="list-style-type: none"> <li>▪ transfer of roads to local councils - \$401m</li> <li>▪ recognition of expenses associated with Sydney Harbour Tunnel following its inclusion as an asset under finance lease - \$55.0m</li> <li>▪ additional road maintenance due to storm damage - \$70.0m</li> </ul>
Department of Transport and Infrastructure	438	<ul style="list-style-type: none"> <li>▪ additional grants for South West Rail Link - \$350m</li> <li>▪ higher private bus service contract payments - \$39.0m</li> <li>▪ early implementation of the Metropolitan Transport Plan - \$115m</li> </ul>
Crown Finance Entity	263	<ul style="list-style-type: none"> <li>▪ reclassification of privatisation costs to operating expenses - \$92.0m</li> <li>▪ long service leave and superannuation expenses - \$122m</li> <li>▪ HIH liability expenses - \$71.0m</li> <li>▪ Repayment of an Commonwealth Government grant of \$80.0m due to cancellation of the Sydney Metro project</li> </ul>
Department of Human Services	239	<ul style="list-style-type: none"> <li>▪ recognition for the first time of employee expenses relating to NSW Land and Housing Corporation - \$213m</li> </ul>
Land and Property Management Authority	207	<ul style="list-style-type: none"> <li>▪ grants of land to Local Councils, Crown Reserve Trusts and Aboriginal Land Claims of \$154m</li> </ul>
NSW Police	156	<ul style="list-style-type: none"> <li>▪ increase in Death and Disability expense - \$80.0m</li> <li>▪ additional funding for salary maintenance - \$50.0m</li> </ul>
NSW Self Insurance Corporation	147	<ul style="list-style-type: none"> <li>▪ higher claims payments and actuarial forecasts for outstanding liabilities for NSW Police workers' compensation</li> </ul>



Significant and consistent overruns in budgeted expenditure have occurred for:

Agency	2010 Excess over budget+ \$m	2009 Excess over budget+ \$m	2008 Excess over budget+ \$m
Crown Finance Entity	263	386	252
Roads and Traffic Authority	530	272	269
NSW Police	156	120	133
Department of Health	(43)*	674	611
Department of Education and Training	13*	178	176

\* Significant improvement in the Department of Health and Department of Education and Training budget management processes

+ Post inter-agency eliminations and other adjustments

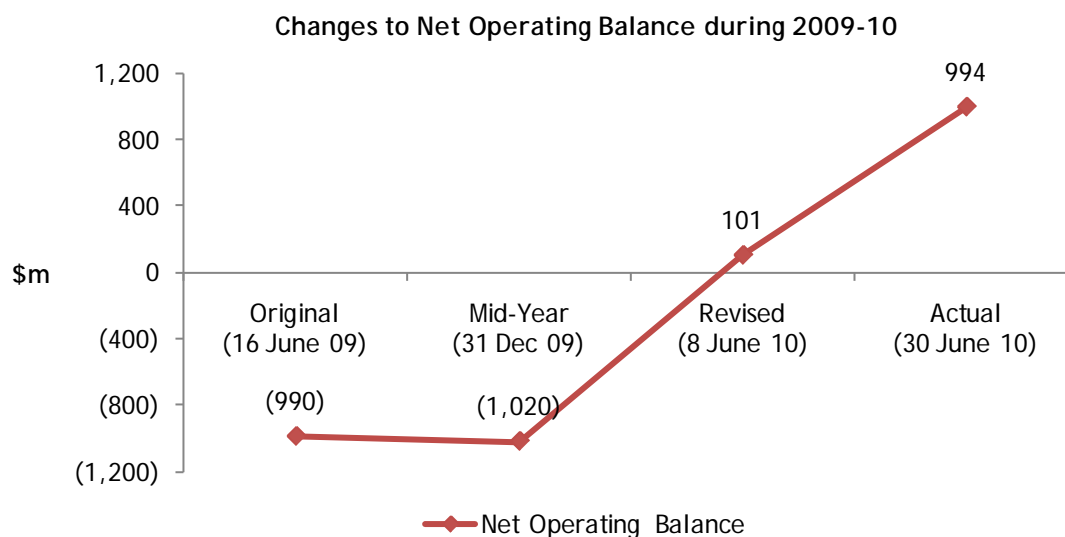
### NET OPERATING BALANCE - VARIANCE TO REVISED BUDGET (JUNE 2010)

Last year and elsewhere in this report I have expressed concerns about the quality and timeliness of financial reporting. While I recognise that events occur after the revised budget is tabled in early June, I believe improved financial information would better inform the budget process and reduce subsequent variations and revisions.

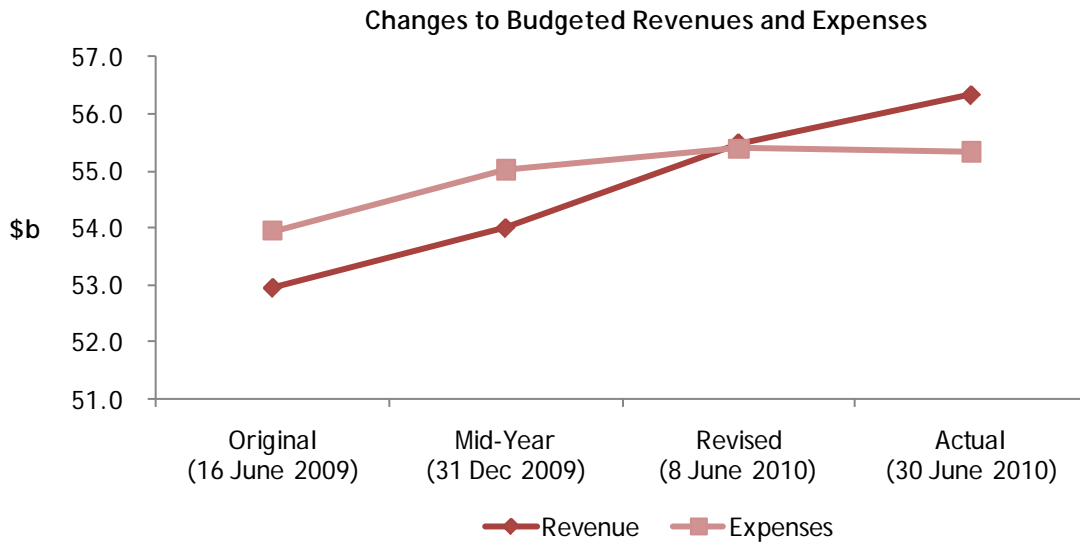
Net Operating Balance	2009-10 \$m Surplus/(Deficit)	2008-09 \$m Surplus/(Deficit)	2007-08 \$m Surplus/(Deficit)
Revised Budget	101	(1,337)	700
Actual Result	994	(897)	73
Difference	893	440	(627)

### Changes to the Budget during 2009-10

The table below demonstrates how the State's budget changed during 2009-10. The Treasury revised the Net Operating Balance for 2009-10 when the 2010-11 budget was tabled in Parliament on 8 June 2010.



Changes to the revised budget and actual revenues and expenses are analysed below:



Between 8 June and 30 June 2010 revenue increased because:

- taxation revenue increased by \$375 million, predominantly due to electricity equalisation tariffs from retailers (\$105 million), transfer duty (\$123 million) and payroll tax (\$59.0 million)
- Commonwealth grants increased by \$185 million
- sales of goods and services increased by \$114 million
- dividend and income tax equivalents increased by \$182 million.

**COMMONWEALTH GRANTS**

**National Partnerships**

The Government received significant grants of \$6.3 billion (\$3.1 billion) which included the Australian Governments’ Nation Building - Economic Stimulus Plan and National Building for the Future Plan (National Partnership Payments).

The Crown Entity, through the Consolidated Fund, receives most National Partnership Payments from the Commonwealth Government. It then appropriates these funds to the relevant agencies.

In 2009-10, the State received the following significant capital National Partnership Payments as a result of the Commonwealth Government’s Economic Stimulus Plan:

National Partnerships - Impact of Stimulus Funding	Amount \$'000
Education	1,855,000
Housing	1,327,000
<b>TOTAL</b>	<b>3,182,000</b>

**Impact of stimulus funding on the Net Operating Balance**

National Partnership Payments (primarily stimulus funding) were \$504 million above the budget estimate, which contributed significantly to the reported surplus of \$994 million.

If stimulus funding of \$3.2 billion had been excluded from the Net Operating Balance, the result would have been a deficit of \$861 million.

	Net Operating Balance	Impact of Capital Stimulus Funding	Net Operating Balance (excluding stimulus funding)
	\$m	\$m	\$m
Revenues	56,333	3,182	53,151
Expenses	55,339	1,327	54,012
<b>SURPLUS/(DEFICIT)</b>	<b>994</b>	<b>1,855</b>	<b>(861)</b>

### Unspent Commonwealth Grants

National Partnership Payments and National Agreements	Recurrent Grants \$m	Capital Grants \$m	Unappropriated at June 2010 \$m
Health	4,071	66	365
Education	2,056	2,018	185
Housing	1,270	1,630	148
Roads	59	1,249	908
Crown	399	--	--
Other	68	34	8
<b>TOTAL</b>	<b>7,923</b>	<b>4,997</b>	<b>1,614</b>

Stimulus funding can only be spent on specifically agreed items and to a specific timetable agreed with the Commonwealth or the funds must be returned.

Unspent grants have been used to reduce the Consolidated Fund's bank overdraft in accordance with the Crown's cash management practices. As a result, the State has benefited from lower finance costs. The agreements did not require the stimulus funding to be quarantined or interest earned applied to the project.

### BUDGET HIGHLIGHTS

The State's Budget papers provide details on service delivery of the General Government Sector and each of its agencies (and sector level totals for the commercial sector). They also provide Parliament and the community with details of additional funding for specific initiatives and areas where services are to be improved.

The Budget Overview details 'budget highlights' in the areas of:

- Health
- Education and Training
- Public Transport and Roads
- Police and Community Safety
- Social and Disability Services
- Environment and Natural Resources.

These highlights may be funded by way of appropriation, borrowings or met by agency generated revenues.

The majority of highlights were achieved. The following table shows those highlights that have not been achieved:

Initiative	Highlight	Reason for deferral, cancellation or delay
Sydney Metro Authority	\$581 million for the new Sydney Metro through the CBD to bring a new public transport network to Sydney	<p>On 21 February 2010, the NSW Government announced that work would stop on stages 1 and 2 of the Metro and funding redirected to other transport projects</p> <p>Sydney Metro Authority paid \$93.5m in compensation to tenderers during 2009-10 and wrote off assets valued at \$176m</p>
Housing NSW	\$293 million to commence 871 new homes and complete 1,051 homes under the Housing NSW public and community housing supply program	Delays related to planning and approval and wet weather conditions
State Transport Authority	\$207m for 180 new buses and 244 new buses for private operators	STA was 38 buses short of its target due to production problems with the bus manufacturer
Roads and Traffic Authority	\$234m for initiatives to improve safety on the NSW road network including speed zone management and education campaigns.	<p>1. Flashing Lights - Deferral of installation due to late delivery of flashing sign components</p> <p>2. Safety Cameras - 2009-10 was the first year of installation. Deferral of expenditure was due to delays in the approval, procurement and construction phases</p> <p>3. Point to Point Cameras - 2009-10 was the first year of installation. Deferral of installation program predominately due to a steel shortage</p> <p>4. Rest Area Initiatives - Withdrawal of project on Pacific Highway - New Rest Area in Nambucca Heads, Boggy Creek due to property constraint</p>

---

## Compliance with the Fiscal Responsibility Act 2005

---

I recommend the Government seek amendments to the *Fiscal Responsibility Act 2005* so that it provides targets and priorities within the control of Government as part of the five-yearly review.

The *Fiscal Responsibility Act 2005* (FR Act) sets out principles for the financial management of the State. The purpose of the FR Act is to provide the framework for the conduct of New South Wales' fiscal policy, with a view to maintaining financial results that are fiscally sustainable in the medium and long term. The Treasury has provided commentary on its compliance with these principles in the 2009-10 and 2010-11 Budget Papers.

The FR Act requires Government to manage financial risks and financial shocks in future periods without having to introduce significant and economically or socially destabilising expenditure or revenue adjustments in those future periods. What is considered consistent with fiscal sustainability will vary depending on:

- the strength and outlook for the economy
- the structure of expenditure and revenue of the budget
- the outlook for the State's credit rating
- demographic and social trends that will affect the budget, and
- the nature of financial risks faced by the Government at any given time.

The FR Act requires the Government to pursue its policy objectives in accordance with the fiscal targets detailed below.

My analysis indicates the Government may not meet the measures included in the FR Act largely because they are significantly affected by variables outside their control. For example, the value of superannuation liabilities is affected by movements in rates used to discount liabilities to present value, over which the Government has no control. This makes it difficult to attribute accountability when targets are not met, which reduces the overall effectiveness of the FR Act.

The Government should review the measures and related variables to identify and differentiate between controllable and non-controllable events that will allow a reasonable analysis and assessment of the policy decisions of Government.

The FR Act is due for a statutory five-yearly review during 2010-11, to assess whether:

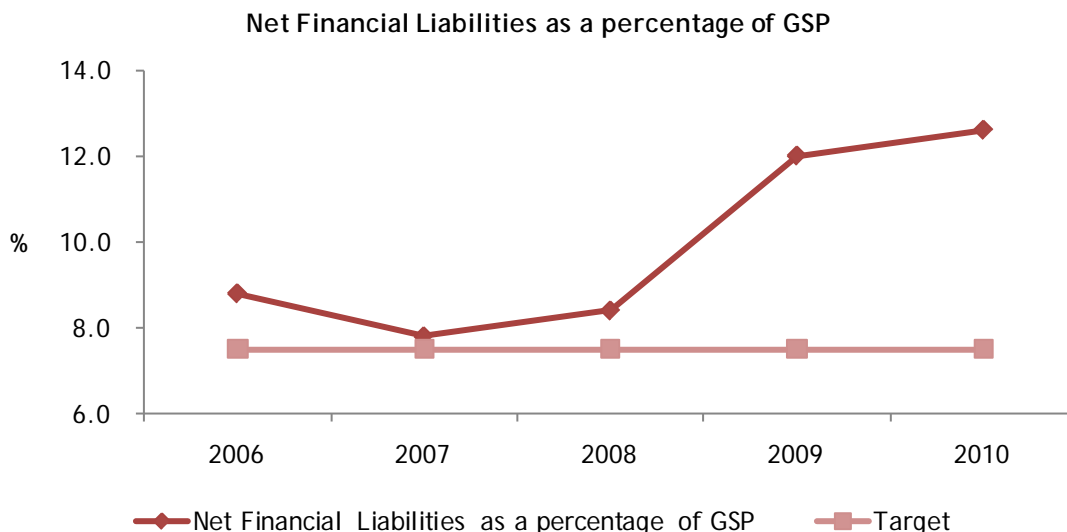
- the policy objectives of the FR Act remain valid, and
- the terms of the FR Act remain appropriate for securing those objectives.

In the 2010-11 Budget Papers, The Treasury indicated a report on the outcomes will be tabled in Parliament by June 2011.

**LONG TERM MEASURES**

**General Government Sector Net Financial Liabilities**

General Government Sector net financial liabilities were \$52.9 billion as at June 2010, equivalent to approximately 12.6 per cent (12.0 per cent) of GSP. This is 5.1 per cent higher than the 7.5 per cent FR Act target for 30 June 2010. The long term target is six per cent or less by 30 June 2015.

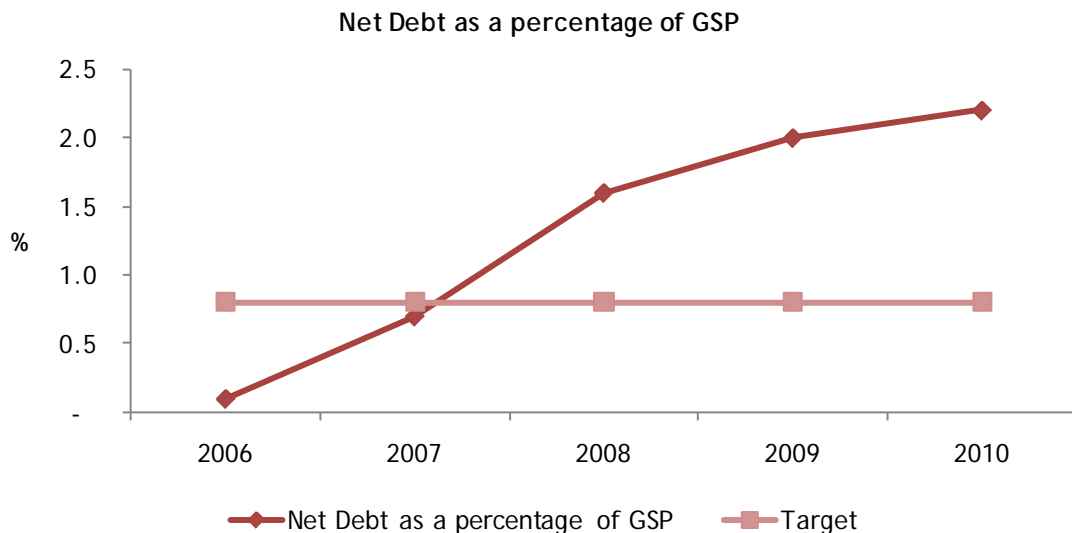


General Government Sector net financial liabilities include all liabilities of the General Government Sector less all financial assets (except for the Government’s equity in the public financing and public trading enterprise sectors).

**General Government Sector Net Debt**

At 30 June 2010, the General Government Sector underlying net debt was 2.2 per cent (\$9.4 billion) of GSP compared to 2.0 per cent (\$8.1 billion) of GSP as at June 2009. This is 1.4 per cent above the FR Act target of 0.8 per cent of GSP.

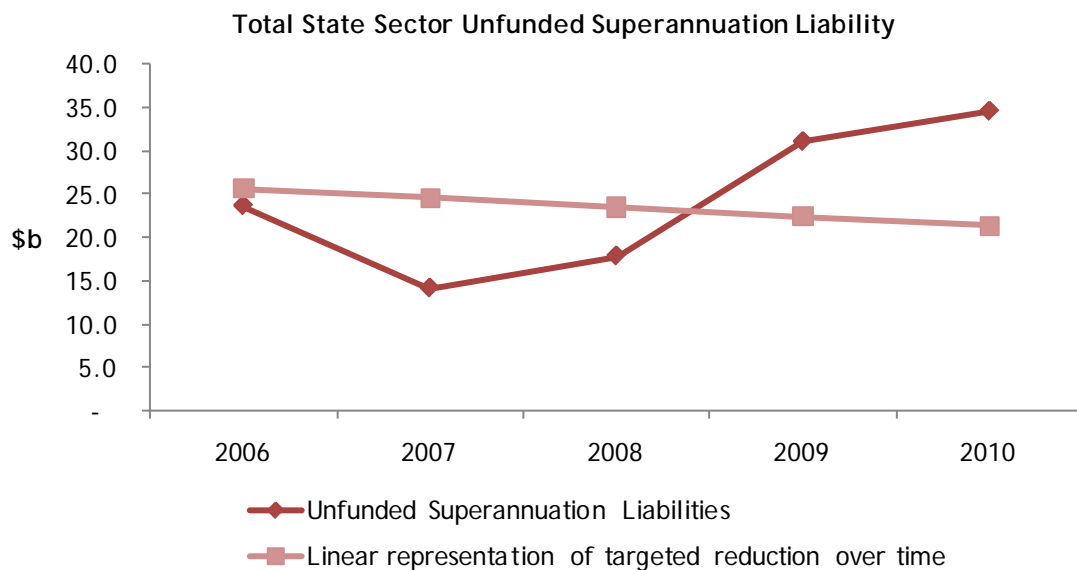
The Treasury has indicated that due to the increased capital program, General Government Sector net debt is estimated to be 2.7 per cent of GSP at 30 June 2011, but falling to 2.5 per cent of GSP by June 2014.



General Government Sector net debt is the sum of all deposits held by, advances received by and borrowings made by the General Government Sector less the sum of cash and deposits held by, advances paid and investments, loans and placements made by the General Government Sector. It excludes financial assets that are allocated to fund other liabilities through legislation or contract.

### Total State Sector Unfunded Superannuation Liability

Total State Sector unfunded superannuation liabilities were \$34.5 billion at June 2010, an increase of \$3.5 billion from June 2009. The FR Act target is to eliminate Total State Sector unfunded superannuation liabilities by 30 June 2030.



The increase in 2009-10 unfunded superannuation liabilities was primarily due to a reduction in the discount rate used by the actuary in calculating the accrued liabilities.

At the time the 2010-11 Budget was presented to Parliament, The Treasury believed the fiscal target would be met in the future:

'Employer Contributions are being assessed periodically to ensure full funding by 30 June 2030.'

While the [Global Financial Crisis] GFC has slowed progress, the downward trend is continuing. Proceeds of the Lotteries transaction and a new funding plan will ensure full funding by 2030. Total State net unfunded superannuation liabilities are estimated to be \$28.6 billion at 30 June 2010 and \$28.7 billion at 30 June 2014.'





---

## Agency Amalgamations

---

In my Volume Two 2010 Report to Parliament I raised the following concerns:

- governance arrangements are not yet fully operational
- financial reporting requirements and related processes have not been finalised by some newly formed departments
- uncertainty exists as to whether further legislative changes will occur that will impact financial reporting at 30 June 2010.

Since that time, I have surveyed agencies' compliance with The Treasury's Internal Audit and Risk Management Policy and the results of the survey will be reported in a later volume. Financial reporting by amalgamated agencies have not delayed the preparation of the Total State Sector Accounts. At the time of writing this report, the audits of the financial statements of these departments are in progress.

### GOVERNANCE ARRANGEMENTS

I recommend The Treasury and Department of Premier and Cabinet clarify the intention of *TPP 09-05 Internal Audit and Risk Management Policy for the New South Wales Public Sector*. If the intention is for authorities within the same 'cluster' to use the Audit and Risk Committee of another authority, they should seek amendments to section 11(2) of the *Public Finance and Audit Act 1983* and the TPP 09-05 to clearly authorise this.

Following the July 2009 amalgamation order, some new departments have proposed and established a single audit committee for the new department and invited other authorities within their clusters to use their audit committee. In some cases, authorities have accepted this invitation. However, some authorities share my concern as to the legality of such arrangements under the *Public Finance and Audit Act 1983* (PF&A Act) and *TPP 09-05*.

In April 2010, two authorities sought advice from the New South Wales Crown Solicitor as to whether there was an obligation for the head of an authority to establish an internal audit organisation [audit committee] under Section 11(2) of the PF&A Act.

The Crown Solicitor responded that:

'On balance, I considered the required internal audit organisation was one which must be established within the authority.'

In May 2010, further advice was sought by these authorities to clarify whether they could join or use the audit committee of the new department.

The Crown Solicitor responded that:

'Nor do I think that Section 11(2) [*PF&A Act*] and TPP 09-05 contemplate that an Audit and Risk Committee of an authority is also to be the Audit and Risk Committee for another authority, even if the latter is in the same 'cluster'.

If it is intended that an internal audit organisation required by s11(2), PF&A Act, should be composed in accordance with TPP 09-05 and should also be able to be the Audit and Risk Committee for other authorities in the same 'cluster' as the authority whose Head establishes it, s.11 of the PF&A Act and TPP 09-05 should be amended appropriately to clearly authorise this.'

## FINANCIAL REPORTING REQUIREMENTS

The amalgamation order resulted in the following financial reporting entities:

New Reporting Entity	Audit Status (at 21 October 2010)	Primarily made up of the previous:
Department of Premier and Cabinet	Independent Auditor's Report signed on 20 October	Department of Premier and Cabinet Ministry for Police Department of Local Government
Communities NSW	Independent Auditor's Report signed on 21 October	Department of Arts, Sport and Recreation Office for Children
Department of Justice and Attorney General	Independent Auditor's Report signed on 20 October	Attorney-General's Department Department of Corrective Services
Department of Human Services	Independent Auditor's Opinion signed on 20 October	Housing NSW Department of Juvenile Justice Department of Ageing, Disability and Home Care Services Department of Community Services Department of Aboriginal Affairs
Department of Industry and Investment	Independent Auditor's Opinion expected to be issued by 29 October	Department of State and Regional Development Department of Primary Industries Components of Department of Water and Energy
Department of Environment, Climate Change and Water	Independent Auditor's Opinion signed on 1 October	Department of Environment and Climate Change Components of Department of Water and Energy

Legislation was also enacted on 1 July 2010 creating Transport NSW.

I recommend The Treasury and Department of Premier and Cabinet take a lead role in monitoring, supporting and reporting on the implementation of common financial reporting and support systems within the amalgamated departments.

During my audits of amalgamated agencies I identified:

- some agencies are yet to make significant progress on implementing common financial reporting and support systems to leverage synergies expected from the amalgamations
- additional costs associated with the amalgamations are not readily identifiable
- systems have not been put in place to capture and report cost savings associated with the initiative.

---

## Appendix A: Legal Opinions Provided by the Attorney General or Crown Solicitor

---

I am required by section 52(2) of the *Public Finance and Audit Act 1983* to publish any requests for a legal opinion submitted to the Attorney General or the Crown Solicitor under section 33 of the PF&A Act. I am also required to publish their responses.

There was only one such legal opinion since my last report contained in Volume Four 2009, released on 29 October 2009. It relates to the application of Corporations Act 2001 to companies reporting under the PF&A Act. I have also included the supplementary advice from the Crown Solicitor regarding the same matter.

**Original PDF - D0929864/D0929865 - Application of the Corporations Act (Cwlth) 2001  
to companies reporting under the PF&A Act - 9 July 2009**

S Fryer  
9275 7218  
A005025

Mr. I Knight  
Crown Solicitor  
GPO Box 25  
Sydney NSW 2001

9 July 2009

Dear Mr. Knight

**Application of the Corporations Act (Cwlth) 2001  
To companies reporting under the PF&A Act**

The *Public Finance and Audit Act 1983* (the PF&A Act) requires certain companies incorporated under the *Corporations Act (Cwlth) 2001* (the Corps Act) to prepare financial reports and have them audited by the Auditor-General. I seek your advice on whether these PF&A Act requirements also create an obligation for all such companies to prepare their accounts and have them audited in accordance with the Corps Act.

Under the Corps Act, a "small" proprietary limited company is not required to prepare accounts and have them audited unless requested to do so by a shareholder direction under s.293, or by an ASIC direction under s.294 of the Corps Act.

In situations where a "small" proprietary Limited company has not received a specific written direction from the shareholders of the company, I am unsure about the application of the Corps Act to the financial report prepared and audited under the PF&A Act. I believe the Auditor-General is not required to conduct the audit in accordance with the Corps Act. Accordingly the Auditor-General is not required to report breaches of the Corps Act to ASIC under s.311 or form an opinion in accordance with s.307 of the Act. I understand that the Auditor-General's reporting obligations only arise from the provisions of the PF&A Act, and the requirements prescribed within the Australian Auditing Standards.

Section 4A of the PF&A Act provides for regulations to be made regarding the relationship with the Corporations Legislation. While such regulations would be relevant to my question, I am not aware that any exist.

We would like the opportunity to discuss this matter before you commence preparing your advice. When convenient, please call Steve Fryer (9275 7218) who is the relevant contact person in my office.

Yours sincerely

A T Whitfield

Deputy Auditor-General

CROWN SOLICITOR'S OFFICE

NEW SOUTH WALES

Facsimile

To: Anthony Whitfield  
Deputy Auditor-General  
Audit Office of NSW

Your ref: Steven Fryer  
Fax: (02) 9275 7179  
Date: 30 September 2009

From: I V Knight Crown Solicitor  
Tel: (02) 9224-5235  
Fax: (02) 9224-5244  
My ref: TB 200902052  
Email: ctownsolagd.nswgov.au

**Application of Corporations Act to companies reporting under Public Finance, and Audit Act**

Advice follows.

*Confidentiality Notice: This facsimile transmission (including any documents accompanying this facsimile transmission) may contain information which is confidential and/or privileged. Therefore if you are not the intended recipient of this facsimile transmission, any dissemination, copying or action taken in reliance on the contents of this facsimile transmission is strictly prohibited. If you have received this facsimile transmission in error, please notify the sender on the above telephone number.*

CROWN SOLICITOR'S OFFICE ABN 50132 005 54.4 • 60-70 Elizabeth Street Sydney NSW 2000 \* GPO Box 25  
Sydney 2001 • OX 19 Sydney Telephone 02 9224 5000 • Fax 02 9224 5011

CROWN SOLICITOR'S OFFICE

NEW SOUTH WALES

Your Ref:  
My Ref: 200902052  
T8 I V Knight

Tel: (02) 9224-5238  
Fax: (02) 9224-5244  
Email: crownsol@agd.nsw.gov.au

Mr. Anthony Whittleld  
Deputy Auditor General  
Audit Office of NSW  
GPO Box 12  
SYDNEY NSW 2000

By facsimile (02) 9275 7179

Attention: Steven Fryer

Dear Mr. Whitfield

Application of Corporations Act to companies reporting under Public Finance, and Audit Act

I enclose my advice in relation to the above matter.

Should you have any queries in relation to the matter, or if you require any further assistance, please do not hesitate to contact I V Knight on tel: (02) 9224-523and

Yours faithfully

Encl.

TB IV Knight  
Crown Solicitor

CROWN SOLICITOR'S OFFICE ABN 50 137 004 544 SD-70 Elizabeth Street Sydney NSW 2000 • GPO Box 25  
Sydney 2001 • DX 39 Sydney Telephone 02 9224 5000 a Fax 02 9224 501) • Email  
erownso@agd.nsw.ov.aq • www.cso.nsw.gov.au

CROWN SOLICITOR

NEW SOUTH WALES

Advice

Application of Corporations Act to companies reporting under Public Finance and Audit Act

Contents

1. Summary of advice .....	46
2. Background .....	46
3. Advice sought .....	47
4. Advice as to question .....	147
Financial reports of small proprietary companies for the purposes of the PFA Act .....	47
Financial reports of small proprietary companies for the purposes of the Corporations Act .....	48
5. Advice as to question 2 - Reporting to ASIC of contraventions of the Corporations Act .....	48
Conducting audit for purposes of PFA Act .....	48
Conducting audit for purposes of Corporations Act .....	49
Conducting audit where financial report not required for purposes of Corporations Act .....	49
Appendix: Relevant legislation .....	50

Prepared for AUD018 The Audit Office  
Date: 30 September 2009  
Client Ref: Steven Fryer  
CSO Ref: 200902052 18 Ann Fieldhouse

CROWN SOLICITOR'S OFFICE NEW SOUTH WALES

1. Summary of advice

- 1.1 At present no company is required by s.41A of the *Public Finance and Audit Act 1983* (the *PFA Act*, as a result of s.39 (1), to prepare and submit a financial report unless, as seems unlikely, its funds are held in an account in the Special Deposits Account. There may be a question as to whether s.39 (1) is intended to apply to a company and the *PFA Act* would benefit from clarification in this regard.
- 1.2 In my opinion, s.39(1A) does not have the effect of rendering a controlled entity (including a company) of a statutory body a statutory body within the meaning of s.39(1) so as to require it to prepare and submit a financial report pursuant to s.41A. The *PFA Act* would benefit from clarification in regard to the effect of s.39 (1A).
- 1.3 In my opinion, nothing in Division 4A of Part 3 of the *PFA Act* requires a controlled entity (including a company) of a Department to prepare and submit a financial report pursuant to s.45D of the *PFA Act*.
- 1.4 A small proprietary company is required to prepare a financial report for the purposes of the *Corporations Act 2001* (the *Corporations Act*) and have it audited if so requested by shareholders with 5% of the votes or directed by ASIC.
- 1.5 Assuming a small proprietary company is required to prepare and submit a financial report for the purposes of the *PFA Act*, the Auditor-General in conducting an audit in relation to that financial report would not contravene s.311 of the *Corporations Act* if he failed to report circumstances in relation to a contravention of the *Corporations Act*.
- 1.6 If the Auditor-General were to conduct an audit in relation to the financial report of a small proprietary company prepared for the purposes of the *Corporations Act*, the Auditor-General would be subject to the reporting requirements in s.311 of the *Corporations Act*. There must be some doubt as to whether it is within the functions of the Auditor-General to conduct an audit of a small proprietary company for the purposes of the *Corporations Act* and the *PFA Act* would benefit from clarification in this regard.
- 1.7 If the Auditor-General were to conduct an audit in respect of a financial report of a small proprietary company which the company was not required to prepare for the purposes of the *Corporations Act* but chose to prepare, s.311 of the *Corporations Act* would not apply but again there would be some doubt as to whether it was within the functions of the Auditor-General to conduct such an audit.

2. Background

- 2.1 In recent years a general question has arisen in the Auditor-General's Office about the auditing responsibilities of the various State Auditor-Generals in relation to audits of "small proprietary companies" (as defined in the Commonwealth *Corporations Act 2001*) and whether they ought to be audited for the purposes of that Act as well as the applicable State legislation. The various State Auditor-Generals apparently take different views as to their obligations in this regard. The NSW Auditor-General has sought some advice from ASIC, but has been advised by it to seek his own independent legal advice.
- 2.2 If there is a requirement to conduct audits under the *Corporations Act* then the financial report will need to be in a different form, covering different matters, and indicate on its face that the information has been prepared for the purposes of the *Corporations Act* as well as the *Public Finance and Audit Act 1983* (*PFA Act*).
- 2.3 In your letter of instructions you have stated that the *PFA Act* requires certain companies incorporated under the *Corporations Act* to prepare financial reports and have them audited by the Auditor-General. You seek my advice as to whether these *PFA Act* requirements also create an obligation for such companies to prepare their accounts and have them audited in accordance with the *Corporations Act*. You also state that:



"Under the *Corporations Act* a 'small' proprietary limited company is not required to prepare accounts and have them audited unless requested to do so by a shareholder direction under s.293, or by a direction under s.294 of the *Corporations Act*. In situations where a 'small' proprietary company has not received a specific written direction from the shareholders of the company, [you are] unsure about the application of the *Corporations Act* to the financial report prepared and audited under the PF&A Act. Accordingly the Auditor-General is not required to report breaches of the *Corporations Act* to ASIC under s.31 1 or form an opinion in accordance with s.307 of the Act. [You] understand that the Auditor-General's reporting obligations only arise from the provisions of the PF&A Act, and the requirements prescribed within the Australian Auditing Standards. Section 4A of the PF&A Act provides for regulations to be made regarding the relationship with the Corporations legislation. While such regulations would be relevant to my question, I am not aware that any exist."

2.4 As this matter has required some careful analysis, and in the light of further conversations between Ms Feildhouse from this office and Messrs Fry and Ramsay from your office as to the substance of the issues, I have reduced the essence of your inquiry into the two questions set out below.

3. **Advice sought**

3.1 You have asked me to advise in respect of the following issues:

1. Whether all small proprietary companies to which the auditing requirements of the *PM Act* apply are also required to have their financial reports prepared and audited under the *Corporations Act*.
2. If not, whether the Auditor-General who conducts an audit under the *PFA Act* is required to report to ASIC breaches by such companies of the *Corporations Act* under s.31 1 of that Act.
- 3.2 Please note that the text of relevant legislation is set out in the Appendix to this advice.

4. **Advice as to question 1**

**FINANCIAL REPORTS OF SMALL PROPRIETARY COMPANIES FOR THE PURPOSES OF THE PFA ACT**

- 4.1 Only if a small proprietary company is a "statutory body" within the meaning of para (a) s.39 (1) of the *PFA Act*? is it required by s.41A to prepare and submit a financial report in accordance with s.41 S which must be audited by the Auditor General pursuant to s.41C. I assume a company is unlikely to be a statutory body as a result of para (b) of s.39 (1), which requires that the funds of the person, group of persons or body be held in an account within the Special Deposits Account.)
- 4.2 So far as para (a) of s.39 (1) is concerned, no company is presently specified in Schedule 2 to the *P64 Act*. It is not clear to me whether that is the result of a policy decision or because it was thought a company was not intended to come within s.39 (1) or because it was thought the inclusion of a company would be inconsistent with the financial reporting provisions of the *Corporations Act*, There may be a question whether a company could be validly specified in Schedule 2 and I think the *P64 Act* would benefit from clarification in this regard.
- 4.3 I have previously advised that s.39 (1A) does not have the effect of rendering a controlled entity a statutory body for the purposes of s.41A: rather, its purpose is to ensure that the financial position and financial performance of the controlling statutory body in its financial report includes that of the controlled entity. If that is correct, a company is not required to prepare and submit a financial report pursuant to s.41A by reason of being a controlled entity of a statutory body. I think the *P64 Act* would benefit from clarification in regard to the effect of s.39 (1A)

- 4.4 I note that s.45 in Division 4 of Part 3 of the P64 Act provides for particular types of audits in relation to a financial report of a "statutory body" within the meaning of s.44 of the PFA Act. Section 44 provides, *inter alia*, that a reference in Division 4 of Part 3 to a "statutory body" is a reference to a person, group of persons or body prescribed for the purposes of that Division. Clause 17(1) of the *Public Finance and Audit Regulation 2005* (the *Regulation*), which is headed "Prescribed statutory bodies under Division 4 of Part 3 of the Act" prescribes a number of entities for the purposes of s.44 (1), including some companies. That might suggest that the draftsman of the regulation thought that a company could be a statutory body for the purposes of s.39 (1), if the definition of statutory body in cl.3 (1) of the *Regulation* which means a statutory body referred to in Division 3 of Part 3 applies in some way to cLI 7 so that entities prescribed for the purposes of s.44 are entities which are statutory bodies for the purposes of Division 3 of Part 3. That might also be the case if the reference to a financial report of a statutory body in s.45 is a reference to the financial report of the statutory body prepared pursuant to s.41A. Previously, a reference to a financial report of a statutory body was a reference to the financial report prepared pursuant to s.41A. However, as a result of amendments, there is now no guidance in the *PM Act* as to whether the reference to a financial report in s.45 is a reference to the financial report prepared pursuant to s.41A or to any financial report, including a financial report for the purposes of the *Corporation Act* Section 39(28) provides a reference to a financial report, in relation to a statutory body, is a reference to the financial report referred to in s.41A but that only applies to such references in Division 3 of Part 3, not Division 4 of Part 3. That might suggest the relevant amendments were intended to have the effect that a financial report in s45 was not intended to be confined to a financial report prepared pursuant to s.41A. The intended effect of these amendments is unclear as the Bill for them was presented as part of the 2008 Budget with no detailed explanation as to their intended effect. It seems to me that the scope of s.44 and the meaning of "a financial report" in s.45 would benefit from clarification as would the relationship between them and the provisions in Division 3 of Part 3.
- 4.5 A company could, presumably be a controlled entity of a Department under the Australian Accounting Standards, However, nothing in Division 4A of Part 3 of the *PF Act* appears to oblige a company which is a controlled entity of a Department to prepare and submit a financial report for the purposes of the *PFA Act*.
- 4.6 I conclude that at present no company, including a company which is a controlled entity of a statutory body or a Department appears to be obliged to prepare and submit a financial report under the *PM Act* (unless s.39(1) is intended to apply to a company and, the company's funds are held in an account within the Special Deposits Account).

#### FINANCIAL REPORTS OF SMALL PROPRIETARY COMPANIES FOR THE PURPOSES OF THE CORPORATIONS ACT

- 4.7 The *Corporations Act* only requires a small proprietary company (as relevantly defined) to prepare an annual financial report and have it audited if the shareholders with at least 5% of the votes of the company direct it to do so or ASIC directs it to do so (see ss.292(2), 293 and 294).
- 4.8 Small proprietary companies may need to prepare a financial report for the purposes of other laws e.g. income tax and I understand some small proprietary companies may choose to prepare a financial report which complies with the *Corporations Act* despite having no obligation to do so under the *Corporations Act*,

#### 5. Advice as to question 2 - Reporting to ASIC of contraventions of the Corporations Act

##### CONDUCTING AUDIT FOR PURPOSES OF PFA ACT

- 5.1 This question assumes that in some circumstances a small proprietary company could be required to prepare and submit a financial report for the purposes of the *PFA Act* and that it would be within the functions of the Auditor-General to audit that financial report.
- 5.2 In my answer to question 1, I have concluded that at present no company, including a company which is a controlled entity of a statutory body or a Department, appears to be obliged to prepare and submit a financial report for the purposes of the *PFA Act* (unless s.39 (1) is intended to apply to a company and the company's funds are held in an account in the Special Deposits Account),
- 5.3 For the purposes of this question I shall assume that there are circumstances in which a small proprietary company does prepare and submit a financial report for the purposes of the *PFA Act* and that it is within the functions of the Auditor-General under the *PM Act* to audit that financial report.

- 5.4 Section 311(1) of the *Corporations Act* provides, inter alia, that an individual auditor conducting an audit contravenes s.311(1) if the auditor is aware of circumstances that the auditor has reasonable grounds to suspect amount to a contravention of the *Corporations Act* and the contravention is a significant one or is not significant but will not be adequately dealt with by commenting on it and the auditor does not notify ASIC in writing of these circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of these circumstances. (See also s.311(3) in the case of a lead auditor.)
- 5.5 The issue for determination is whether the reference to “conducting an audit” in s.311(1) (and s.311(3)) is confined to an audit for the purposes of the *Corporations Act* or extends to an audit conducted for the purposes of a State Act such as the *PFA Act*.
- 5.6 The definition of “audit” in the Dictionary in s.9 of the *Corporations Act* provides that, unless the contrary appears, “audit” means an audit conducted for the purposes of the *Corporations Act* and includes a review of a financial report for a half-year conducted for the purposes of the *Corporations Act*. There appears to be no intention manifest that “audit” in s.311 is to apply to audits other than for the purposes of the *Corporations Act*. That being the case, the Auditor-General, in conducting an audit of a small proprietary company for the purposes of the *PFA Act* would not contravene s.311 if he failed to notify ASIC of circumstances specified therein.

#### CONDUCTING AUDIT FOR PURPOSES OF CORPORATIONS ACT

- 5.7 If the Auditor-General were to conduct an audit in relation to the financial report of a small proprietary company prepared for the purposes of the *Corporations Act* the Auditor-General would be subject to the reporting requirements in s.311 of the *Corporations Act*. Section 311 of the *Corporations Act* does not appear to recognize as a justification for not reporting circumstances specified therein the existence of a State provision such as s.38 of the *PM Act*. In any event, s.38 does not appear to purport to prohibit disclosure of circumstances of which the Auditor-General becomes aware when conducting an audit of a financial report prepared for the purposes of the *Corporations Act*. There must be some doubt as to whether it is within the functions of the Auditor-General to conduct an audit of a small proprietary company for the purposes of the *Corporations Act* notwithstanding that the Auditor-General of a State is taken to be registered as an auditor under the *Corporations Act* (see s.1281). The functions of the Auditor-General are determined by the *PFA Act* and are set out in s.27B. Those functions would not appear to include conducting an audit of a small proprietary company for the purposes of the *Corporations Act* at the request of shareholders with 5% of the vote or the direction of ASIC. It might be sought to argue that comes within the incidental function in s.27B(3)(e), on the basis that doing so in relation to such a financial report is incidental to the exercise of his function to audit a financial report of that company for the purposes of the *PFA Act*. While *doing* an audit in relation to a financial report prepared for the purposes of the *Corporations Act* may assist an audit in respect of a financial report prepared for the purposes of the *PFA Act* I do not think it can be said the former is an incident of the latter. The *PM Act* would benefit from clarification in this regard.

#### CONDUCTING AUDIT WHERE FINANCIAL REPORT NOT REQUIRED FOR PURPOSES OF CORPORATIONS ACT

- 5.8 If the Auditor-General were to conduct an audit in respect of a financial report of a small proprietary company which the company was not required to prepare for the purposes of the *Corporations Act* but chose to prepare) then *Corporations Act* would not apply as the Auditor-General would not be conducting an audit for the purposes of the *Corporations Act*. Again, there would be a question as to whether conducting such an audit is a function of the Auditor-General.

Crown Solicitor

CROWN SOLICITOR'S OFFICE NEW SOUTH WALES

Appendix: Relevant legislation

Commonwealth

*Corporations Act 2001 (CM)*

Chapter 1—Introductory

Part 1.2—interpretation

9 Dictionary

Unless the contrary intention appears:

**Audit** means an audit conducted for the purposes of this Act and includes a review of a financial report for a half-year conducted for the purposes of this Act.

**Small proprietary company** has the meaning given by subsection 45A (2).

Division 5A—Types of company

*45A Proprietary companies*

- (1) A proprietary company is a company that is registered as, or converts to<sup>1</sup> a proprietary company under this Act,

*Small proprietary company*

- (2) A proprietary company is a small proprietary company for a financial year if it satisfies at least 2 of the following paragraphs:
  - (a) the consolidated revenue for the financial year of the company and the entities it controls (if any) is less than \$25 million, or any other amount prescribed by the regulations for the purposes of this paragraph;
  - (b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than \$12.5 million, or any other amount prescribed by the regulations for the purposes of this paragraph;
  - (c) the company and the entities it controls (if any) have fewer than 50, or any other number prescribed by the regulations for the purposes of this paragraph, employees at the end of the financial year

Note: A small proprietary company generally has reduced financial reporting requirements (see subsection 292(2)).

Part 1.4 - Technical provisions about aids for readers

111J Small business guide

(1) If, because of:

(a) Regulations made Under this Act; or

(b) Instruments issued by ASIC under this Act; the small business guide as set out in Part 1 6 has become out of date, the regulations may set out modifications of the guide that would bring it up to date. The guide then is to be read as if it were so modified.

(2) The small business guide is divided into sections (numbered 1, 2, 3...) and the sections are divided into paragraphs (numbered 1.1, 1.2, 1.3...). For example, a reference in the guide to 3.1 is a reference to paragraph 3.1 of the guide.

## CROWN SOLICITORS OFFICE NEW SOUTH WALES

### Part 1.5—Small business guide

This guide summarizes the main rules in the Corporations Act (the Corporations Act 2001) that apply to proprietary companies limited by shares—the most common type of company used by small business. The guide gives a general overview of the Corporations Act as it applies to those companies and directs readers to the operative provisions in the Corporations Act,

The notes in square brackets at the end of paragraphs in the guide indicate the main provisions of the Corporations Act, the regulations made under the Corporations Act and ASIC Practice Notes that are relevant to the information in the paragraphs.

Other Commonwealth, State and Territory laws also impose obligations on proprietary companies and their operators.

### 10 Annual financial reports and audit

#### 10.1 The small/large distinction

The accounting requirements imposed on a proprietary company under the Corporations Act depend on whether the company is classified as small or large. A company's classification can change from 1 financial year to another as its circumstances change.

A company is classified as small for a financial year if it satisfies at least 2 of the following tests:

- gross operating revenue of less than \$10 million for the year
- gross assets of less than \$5 million at the end of the year
- fewer than 50 employees at the end of the year.

A company that does not satisfy at least 2 of these tests is classified as large. [Section 45A]

As the great majority of proprietary companies are small under these tests<sup>7</sup> the discussion below deals mainly with the accounting requirements for small proprietary companies. [sections 286–301]

#### 10.2 Financial records

Under the Corporations Act, all proprietary companies must keep sufficient financial records to record and explain their transactions and financial position and to allow true and fair financial statements to be prepared and audited. Financial record here means some kind of systematic record of the company's financial transactions not merely a collection of receipts, invoices, bank statements and cheque butts. Financial records may be kept on computer.

[sections 286–289)

#### 10.3 Preparing annual financial reports and director and reports

The Corporations Act requires a small proprietary company to prepare an annual financial report (an annual profit and loss statement, a balance sheet and a statement of cash flows) and a directors' report (about the company's operations, dividends paid or recommended, options issued etc.) if:

- the shareholders with at least 5% of the votes in the company direct it to do so; or
- ASIC directs it to do so.

Unless the shareholders' direction specifies otherwise, the company must prepare the annual financial report in accordance with the applicable accounting standards.

Although the Corporations Act itself may not require a small proprietary company to prepare a financial report except in the circumstances mentioned, the company may need to prepare the annual financial reports for the purposes of other laws (for example, income tax laws). Moreover, good business practice may also make it advisable for the company to prepare the financial reports so that it can monitor and better manage its financial position.

Large proprietary companies must prepare annual financial reports and a directors' report, have the financial report audited and send both reports to shareholders. They must also lodge the annual financial reports with ASIC unless exempted

## Part 2M.3—Financial reporting

### Division 1—Annual financial reports and directors' reports

#### 292 Who has to prepare annual financial reports and directors' reports?

(1) A financial report and a directors' report must be prepared for each financial year by:

- (a) all disclosing entities; and
- (b) all public companies; and
- (c) all large proprietary companies; and
- (d) all registered schemes.

Note: This Chapter only applies to disclosing entities incorporated or formed in Australia (See subsection 265(2)).

(2) A small proprietary company has to prepare the financial report and directors' report only if:

- (a) it is directed to do so under section 293 or 294; or
- (b) it was controlled by a foreign company for all or part of the year and it is not consolidated for that period in financial statements for that year lodged with ASIC by:
  - (i) a registered foreign company; or
  - (ii) a company, registered scheme or disclosing entity,

The rest of this Part does not apply to any other small proprietary company.

#### 293 Small proprietary company—shareholder direction

(1) Shareholders with at least 5% of the votes in a small proprietary company may give the company a direction to:

- (a) prepare a financial report and directors' report for a financial year; and
- (b) send them to all shareholders.

(2) The direction must be:

- (a) signed by the shareholders giving the direction; and
- (b) made no later than 12 months after the end of the financial year concerned.

(3) The direction may specify all or any of the following:

- (a) that the financial report does not have to comply with some or all of the accounting standards;
- (b) that a directors' report or a part of that report need not be prepared;
- (c) that the financial report is to be audited.

#### 294 Small proprietary company—ASIC direction

(1) ASIC may give a small proprietary company, a direction to comply with requirements of this Division and Divisions 3, 4, 5 and 6 for a financial year.

(1A) An offence based on subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(2) The direction may be general or may specify the particular requirements that the company is to comply with.

(3) The direction must specify the date by which the documents have to be prepared, sent or lodged. The date must be a reasonable one in view of the nature of the direction.

(4) The direction must:

(a) be made in writing; and

(b) specify the financial year concerned; and

(c) be made no later than 6 years after the end of that financial year.

#### 295 Contents of annual financial report

##### Basic contents

(1) The financial report for a financial year consists of:

(a) the financial statements for the year; and

(b) the notes to the financial statements; and

(c) the directors' declaration about the statements and notes.

##### Financial statements

(2) The financial statements for the year are:

(a) the financial statements in relation to the entity reported on that are required by the accounting standards; and

(b) if required by the accounting standards—the financial statements in relation to the consolidated entity that are required by the accounting standards.

##### Notes to financial statements

(3) The notes to the financial statements are:

(a) disclosures required by the regulations; and

(b) notes required by the accounting standards; and

(c) any other information necessary to give a true and fair view (see section 297)

##### Directors' declaration

(4) The directors declaration is a declaration by the directors:

(a) whether, in the directors' opinion, there are reasonable grounds to believe that the company, registered scheme or disclosing entity will be able to pay its debts as and when they become due and payable; and

(b) whether, in the directors' opinion, the financial statement and notes are in accordance with this Act, including:

- (i) section 295 (compliance with accounting standards); and
- (ii) section 297 (true and fair view); and

(d) if the company, disclosing entity or registered scheme is listed—that the directors have been given the declarations required by section 295A.

(e) Note: See paragraph 285(3)(c) for the reference to the debts of a registered scheme.

(5) The declaration must:

(a) be made in accordance with a resolution of the directors; and

(b) specify the date on which the declaration is made; and

(a) be signed by a director.

### **296 Compliance with accounting standards and regulations**

(1) The financial report for a financial year must comply with the accounting standards. However, a small proprietary company's report does not have to comply with particular accounting standards if:

(a) the report is prepared in response to a shareholder direction under section 293; and

(b) the direction specifies that the report does not have to comply with those accounting standards.

(2) The financial report must comply with any further requirements in the regulations

### **297 True and fair view**

The financial statements and notes for a financial year must give a true and fair view of:

(a) the financial position and performance of the company, registered scheme or disclosing entity; and

(b) if consolidated financial statements are required—the financial position and performance of the consolidated entity.

This section does not affect the obligation under section 296 for a financial report to comply with accounting standards.

Note: If the financial statements and notes prepared in compliance with the accounting standards would not give a true and fair view, additional information must be included in the notes to the financial statements under paragraph 295(3)(c),

## **Division 3—Audit and auditor's report**

### **307 Audit**

An auditor who conducts an audit of the financial report for a financial year or half-year must form an opinion about:

(a) whether the financial report is in accordance with this Act, including:

(1) section 296 or 304 (compliance with accounting standards); and

(ii) section 297 or 305 (true and fair view); and (aa) if the financial report includes additional information under paragraph 296(3)(c) or 303(3)(c) (information included to give true and fair view of financial position and performance)— whether the inclusion of that additional information was necessary to give the true and fair view required by section 297 or 305; and



(b) whether the auditor has been given all information, explanation and assistance. necessary for the conduct of the audit; and

(c) whether the company, registered scheme or disclosing entity has kept financial records sufficient to enable a financial report to be prepared and audited; and

(d) whether the company, registered scheme or disclosing entity has kept other records and registers as required by this Act, 311 Reporting to ASIC Contravention by individual auditor

(1) An individual auditor conducting an audit contravenes this subsection if:

(a) the auditor is aware of circumstances that:

- (i) the auditor has reasonable grounds to suspect amount to a contravention of this Act; or
- (ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce<sup>1</sup> manipulate or mislead a person involved in the conduct of the audit (see subsection (6)); or
- (iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and

(b) if subparagraph (a)(i) applies:

- (i) the contravention is a significant one; or
- (ii) the contravention is not a significant one and the auditor behaves that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors; and

(c) the auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 26 days after the auditor becomes aware of those circumstances. Contravention by audit company

(2) An audit company conducting an audit contravenes this subsection if;

(a) the lead auditor for the audit is aware of circumstances that:

- (i) the lead auditor has reasonable grounds to suspect amount to a contravention of this Act; or
- (ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce manipulate or mislead a person involved in the conduct of the audit (see subsection (6)); or
- (iii) amount to an attempt, by any person, to otherwise, interfere with the proper conduct of the audit; and

(b) if subparagraph (AXI) applies:

- (i) the contravention is a significant one; or
- (ii) the contravention is not a significant one and the lead auditor believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors; and

(c) the lead auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the lead auditor becomes aware of those circumstances  
Contravention by lead auditor

(3) A person contravenes this subsection if:

(a) the person is the lead auditor for an audit; and

(b) the person is aware of circumstances that

- (i) the person has reasonable grounds to suspect amount to a contravention of this Act; or
- (ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (6)); or
- (iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and

(c) if subparagraph (b)(i) applies:

- (i) the contravention is a significant one; or
- (ii) the contravention is not a significant one and the person believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors; and

(d) the person does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the person becomes aware of those circumstances. Significant contraventions

(4) In determining for the purposes of this section whether a contravention of this Act is a significant one, have regard to:

(a) the level of penalty provided for in relation to the contravention; and

(b) the effect that the contravention has, or may have, on:

- (i) the overall financial position of the company, registered scheme or disclosing entity; or
- (ii) the adequacy of the information available about the overall financial position of the company registered scheme or disclosing entity; and

(c) any other relevant matter.

(5) Without limiting paragraph (4Xa), a penalty provided for in relation to a contravention of a provision of Part 2M.2 or 2M.3 includes a penalty imposed on a director, because of the operation of section 344, for failing to take reasonable steps to comply with, or to secure compliance with, that provision.

Person involved in an audit

(6) In this section: person involved in the conduct of an audit means:

- (a) the auditor; or
- (b) the lead auditor for the audit; or
- (c) the review auditor for the audit or
- (d) a professional member of the audit team for the audit; or
- (e) any other person involved in the conduct of the audit

## **Division 6—Appointment, removal and fees of auditors for companies**

### **Subdivision A—Appointment of company auditors**

#### **328A Auditors consent to appointment**

(1) A company, the directors of a company or the responsible entity of a registered scheme must not appoint an individual, firm or company as auditor of the company unless that individual, firm or company:

- (a) has consented, before the appointment, to act as auditor; and
- (b) has not withdrawn that consent before the appointment is made. For the purposes of this section, a consent or the withdrawal of a consent, must be given by written notice to the company, the directors or the responsible entity of the scheme.

(2) A notice under subsection (1) given by a firm must be signed by a member of the firm who is a registered company auditor both:

- (a) in the firm name; and
- (b) in his or her own name.

(3) A notice under subsection (1) given by a company must be signed by a director or senior manager of the company both:

- (a) in the company's name; and
- (b) in his or her own name.

(4) If a company, the directors of a company or the responsible entity of a registered scheme appoints an individual, firm or company as auditor of a company in contravention of subsection (1):

- (a) the purported appointment does not have any effect; and
- (b) the company or responsible entity, and any officer of the company or responsible entity who is in default, are each guilty of an offence.

## Part 9.2

### Division 2

#### 1281 Auditor-General taken to be registered as auditor

(1) A person who holds office as, or is for the time being exercising the powers and performing the duties of:

- (a) the Auditor-General; or
- (b) the Auditor-General of a State or Territory in this jurisdiction; is taken despite any other provision of this Part, to be registered as an auditor.

### New South Wales

#### Public Finance and Audit Act '1983

### Part 3 Audit

#### Division I The Auditor-General

#### 278 The Auditor-General

(1) There is to be an Auditor-General for the State.

(2) The Auditor-General has the functions conferred or imposed on the Auditor-General by law.

(3) The Auditor-General's functions include the following:

- (a) to audit the consolidated financial statements the general government sector financial statements and any other financial reports that the Auditor-General is required or authorised to audit by law
- (b) to provide any particular audit or audit-related service to Parliament at the Joint request of both Houses of Parliament
- (c) to provide any particular audit or audit-related service to the Treasurer at the request of the Treasurer or to any other Minister at the request of that other Minister,
- (d) to report to Parliament as required or authorised by law,
- (e) to do anything that is incidental to the exercise of the Auditor-General's functions.

(7) In this section, *by law* means by or under this or any other Act or law.

#### Division 2 Audit—generally

#### 38 Secrecy

(1) The Auditor-General, an auditor and an authorised person shall preserve and aid in preserving secrecy with respect to matters and things that come to the knowledge of the Auditor-General, auditor or authorised person in the exercise of the functions of the Auditor-General auditor or authorised person under this Act and the prescribed requirements and shall not communicate to any person any such matter or thing.

(2) Nothing in subsection (1) applies to or in respect of:

- (a) the conduct of any matter necessary for the proper administration of this Act or the prescribed requirements, or
- (b) proceedings for an offence relating to public money, other money, public property or other property or for the recovery of public money other money, public property or other property, or
- (c) disciplinary proceedings brought against an officer of an authority, or
- (d) a report or communication authorised or required to be made by or under this Act or the prescribed requirements, or
- (e) a report or communication that the Treasurer authorities the Auditor-General to make to a person for the purposes of a due diligence or similar process relating to the sale of any government undertaking

### Division 3 General audit of statutory bodies

#### 39 Application and interpretation

(1) A reference in this Division to a statutory body is a reference to:

- (a) a person, group of persons or body specified in Schedule 2, and
- (b) a person, group of persons or body (not being a person<sup>1</sup> group of persons or body specified in Schedule 3) whose funds are held in an account within the Special Deposits Account.

(1A) A reference in this Division to a statutory body also includes a reference to an entity, of which the statutory body has control as defined in Australian Accounting Standards.

(1B) A reference in this Division to a statutory body does not include a reference to a person, group of persons, body or entity who or which is, by a regulation made for the purposes of this subsection, declared not to be a statutory body for the purposes of this Division.

(2B) A reference in this Division to a financial report, in relation to a statutory body, is a reference to the financial report referred to in section 41A,

(3) The provisions of this Division are in addition to any other statutory provisions relating to the financial report, books, records or audit of a statutory body but, in the event of any inconsistency between the provisions of this Division and any other such statutory provisions, the provisions of this Division shall, to the extent of the inconsistency, prevail.

(4) Nothing in this Division limits or derogates from the provisions of Division 2.41 Keeping of books and records

(1) A statutory body shall cause to be kept proper books, and records in relation to all of its operations.

(2) Without limiting the generality of subsection (1), a statutory body, being the Senate or Council of a university, shall cause to be kept proper books and records in relation to the funds of the university.

#### 4Th Preparation of financial report

(1) A statutory body (other Than the Audit Office) shall, within the period of 6 weeks after the end of each financial year of the statutory body, prepare and submit:

- (a) to the Minister and
- (b) to the Auditor-General, a financial report for the financial year then ended.

(2) The Auditor-General is, within the period of 6 weeks after the end of each financial year of the Audit Office, to prepare and submit to the auditor appointed under section 47 the Audit Office's financial report for the financial year then ended.

#### 410 Auditing etc of financial report

(1) The Auditor-General is to audit a statutory body's financial report for a financial year within 10 weeks of its receipt by the Auditor-General.

(1A) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General is, within that 10-week period to furnish an opinion;

(a) stating that the Auditor-General has audited the financial report of the statutory body for that financial year, and

(b) indicating whether the financial report complies with section 418, and

(c) setting forth any qualifications subject to which the opinion is given.

(1B) An opinion in relation to the financial report of a statutory body is not to be furnished under subsection

(1A) unless the Auditor-General has received a statement made in accordance with a resolution of the statutory body and:

(a) Stating whether, in the opinion of the person or persons by whom the statement is signed:

(i) the financial report exhibits a true and fair view of the financial position and financial performance of the statutory body, or

(ii) if the statutory body is the Senate, Council or Board of Governors of a university, the financial report exhibits a true and fair view of the financial position and financial performance of the university, and

(b) Including such matters as are prescribed by the regulations for the purposes of this subsection.

(1C) The statement referred to in subsection (1 B) is to be signed:

(a) in the case of a statutory body that has a governing body—by at least 2 members of the governing body, or

(b) in the case of a statutory body that does not have a governing body—by the chief executive officer of the statutory body or the person who exercises the functions of a chief executive officer in relation to the statutory body, or

(c) by a person prescribed by the regulations in respect of the statutory body.

(1D) For the purposes of subsection

(1C), a member of the governing body of a statutory body includes, where the statutory body is the Senate, Council or Board of Governors of a university, a member of the Senate, Council or Board of Governors.

(2) Nothing in this section prevents the alteration of a statutory body's financial report, with the approval of the Auditor-General, after its receipt by the Auditor-General and before its submission to the Minister.

(3) (Repealed)

#### 4.4 Application and interpretation

(1) A reference in this Division to a statutory body is a reference to:

(a) a person, group of persons or body prescribed for the purposes of this Division, or

(b) a person, group of persons or body having the control or management of a fund or account, being a fund or account which is prescribed for the purposes of this Division.

(2) A reference in this Division to a Minister, in relation to a statutory body, is a reference to the Minister having the administration of the Act by or under which the statutory body is appointed, constituted or regulated.

(3) Nothing in this Division limits or derogates from the provisions of Division 2

#### 45 Particular audit

(1) In accordance with the request of the Treasurer, a Minister or a person prescribed for the purposes of this section in relation to a statutory body, the Auditor-General is to inspect and audit:

(a) in the case of a statutory body to which section 44 (1) (a) applies—the financial report of the statutory body and the books and records of financial transactions of or relating to:

(i) the statutory body, and

(ii) assets of or in the custody of the body, and

(b) in the case of a statutory body to which section 44 (1) (b) applies—the financial report of the statutory body and the books and records of financial transactions of or relating to the fund or account under the control or management of the statutory body.

(2) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General shall report to the statutory body, the Minister, the Treasurer and any person prescribed for the purposes of this section in relation to the statutory body as to the result of any such inspection and audit and as to such irregularities or other matters as in the judgment of the Auditor-General or authorised person call for special notice,

(2A) The Auditor-General is to include a reference to any audit conducted under this section in the report referred to in section 52 (1).

(3) Towards defraying the costs and expenses of any such inspection and audit, the statutory body shall pay to the Auditor-General such amounts, at such times, as the Treasurer decides.

#### Division 44 General audit of Departments

##### 45A Application and interpretation

(1) A reference 1A this Division to a Department is a reference to a person, group of persons or body specified in Column I of Schedule 3,

(1A) A reference in this Division to a Department also includes a reference to an entity of which the Department (or the Minister responsible for, or an officer of, the Department) has control as defined in Australian Accounting Standards.

(1B) A reference in this Division to a Department does not include a reference to a person, group of persons, body or entity who or which is, by a regulation made for the purposes of this subsection, declared not to be a Department for the purposes of this Division.

(2) A reference in this Division to a Minister, in relation to a Department, is a reference to the Minister responsible for the Department.

(3) A reference in this Division to a Department Head, in relation to a Department, is a reference to the person holding the position specified in Column 2 of Schedule 3 opposite the name or description of the Department.

(3A) A reference in this Division to a financial report, in relation to a Department<sup>1</sup> is a reference to the financial report referred to in section 450.

(4) The provisions of this Division are in addition to any other statutory provisions relating to the financial report, books, records or audit of a Department but, in the event of any inconsistency between the provisions of this Division and any *other* such statutory provisions, the provisions of this Division shall, to the extent of the inconsistency, prevail.

(5) Nothing in this Division limits or derogates from the provisions of Division 2. Public Finance and Audit Regulation 2005

### 3 Definitions

(1) In this Regulation: **statutory** body means a statutory body referred to in Division 3 of Part 3 of the Act  
cl.17(1) Prescribed statutory bodies under Division 4 of Part 3 of the Act

(l) For the purposes of section 44(l) of the Act, the following persons, groups of persons or bodies are prescribed for the purposes of Division 4 of Part 3 of the Act:

- (a) Agricultural Scientific Collections Trust,
- (b) The trustees for the time being of The Art Gallery of New South Wales Foundation,
- (c) The trustees for the time being of each state recreation area reserved under the *National Parks and Wildlife Act 1974*,
- (ci) Dumaresq Barwon Border Rivers Commission,
- (e) C B Alexander Foundation,
- (f) Australia Day Council (New South Wales),
- (g) Area health services within the meaning of the *Health Services Act 1997*,
- (h) Trustees of the Farrer Memorial Research Scholarship Fund,
- (i) Trustee of the Home Purchase Assistance Fund, -
- (j) Minister administering the *Environmental Planning and Assessment Act 1979* (a corporation),
- (k) Minister administering the *Heritage Act 1977* (a corporation).
- (l) P43W Insurance Ministerial Corporation,
- (m) Ambulance Service of New South Wales,
- (n) UNILINC Uimited,
- (o) Office of the Minister for Public Works and Services,
- (p) Uni projects Pty Limited,
- (q) Universities Admissions Centre (NSW and ACT) Pty Limited)
- (r) Cowra Japanese Garden Maintenance Foundation Limited,
- (s) Cowra Japanese Garden Trust,
- (t) Belgenny Farm Agricultural Heritage Centre Trust,
- (u) 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*,
- (v) Bligh Park Estate Joint Venture,
- (w) Gosford City Council, being a Water Supply Authority listed in Schedule 3 to the *Water Management Act 2000*,
- (x) Wyong Council, being a Water Supply Authority listed in Schedule 3 to the *Water Management Act 2000*,
- (y) Kings Bay Five Dock Project, being the joint venture for the development of an Urban Design Project at Five Dock,
- (z) (Repealed)

(aa) Blacksmiths Project Joint Venture, being the joint venture for the development of an Urban Design Project at Blacksmiths,

- (ab) West Pennant Hills Project Joint Venture,
- (ac) Quakers Hill Project Joint Venture,
- (ad) Oatlands Project Joint Venture,
- (ae) East Fairfield Project Joint Venture,
- (af) Storniwater Trust
- (ag) Jannali Project Joint Venture,
- (ah) Zetland Project Joint Venture,
- (ai) (Repealed)
- (aj) The Australian Institute of Asian Culture and Visual Arts United,
- (ak) State Super Financial Services Ltd<sup>1</sup>
- (al) Valley Commerce Pty Ltd,
- (am) Buroba Pty Ltd,
- (an) Elsun Pty Limited,
- (ao) The Brett Whiteley Foundation,
- (ap) Coffs Harbor Technology Park Ltd,
- (aq) Eif Pty Limited,
- (ar) Little Bay Joint Venture, being the joint venture relating to property development at Little Bay between Landom and Little Bay Developments Pty Ltd,
- (as) NSW Fire Brigades Superannuation Pty Limited,
- (at) NSW Businesslink Pty Limited,
- (au) (Repealed)
- (av) Marine Parks Authority, +
- (aw) United States Studies Centre Limited.
- (ax) Cobbora Coal Unit Trust,
- (ay) CCP Holdings Pty Limited,
- (az) Cobbora Unincorporated Joint Venture.
- (ba) Cobbora Management Company Pty Limited.

Original PDF: D1032478 - CSO Crown Solicitor's Opinion - Supplementary Advice - Application of Corporations Act to companies reporting under Public Finance and Audit Act

CROWN SOLICITOR'S OFFICE  
NEW SOUTH WALES

Your Ref:  
My Ref: 200902052

**Tel:** (02) 8224-5396  
**Fax:** (02) 9224-5244  
**Email:** [crownsolagd.nsw.gov.au](mailto:crownsolagd.nsw.gov.au)

Mr. Steven Fryer  
Director Policy and Research  
Audit Office of NSW  
GPO Box 12  
SYDNEY NSW 2001

By facsimile: (02) 9285-0179

Dear Mr. Fryer

**Application of Corporations Act to companies reporting under Public Finance and Audit Act**

I enclose my supplementary advice in relation to the above matter.

Should you have any queries in relation to the matter, or if you require any further assistance, please do not hesitate to contact me on tel: (02) 9224-5238.

Yours faithfully

I V Knight  
Crown Solicitor

Encl.

CROWN SOLICITOR'S OFFICE ABN 50 132 005 544 60-70 Elizabeth Street Sydney NSW 2000 • GPO Box 25 Sydney  
2001 • DX 19 Sydney  
Telephone 02 9224 5000 • Fax 02 9224 5011 Email [crownsol@agd.nsw.gov.au](mailto:crownsol@agd.nsw.gov.au) • [wwwcso.nsw.gov.au](http://wwwcso.nsw.gov.au)



CROWN SOLICITOR  
NEW SOUTH WALES

Supplementary Advice

Application of Corporations Act to companies reporting under Public Finance and Audit Act

Contents

1.	Summary of supplementary advice .....	64
2.	Background .....	64
3.	Advice .....	64
	<i>Effect of s.63B PFA Act</i> .....	64
	Appendix: Relevant legislation .....	68

Prepared for: AUD018 The Audit Office  
Date: 23 October 2009  
Client ref: Steven Fryer  
CSO ref: 200902052 T08 Ann Fieldhouse/ I V Knight

© State of New South Wales (Crown Solicitor's Office) 200902052 Advice 2 (IVK) 02009/265268

CROWN SOLICITOR'S OFFICE  
NEW SOUTH WALES

## 1. Summary of supplementary advice

- 1.1 Section 638(3) of the *Public Finance and Audit Act 1983* (the Act) would appear to be intended to oblige a Department or statutory body to ensure that any audit required to be done in respect of a controlled entity, regardless of the source of the requirement for the audit, is done by the Auditor-General, including audits of a controlled entity which is a company under and for the purposes of the *Corporations Act 2001* (C'th) (the *Corporations Act*). Section 638(3) is not itself the source of a requirement that an audit be done.
- 1.2 Section 638(3) is an implied conferral on the Auditor-General of the function of conducting all audits in respect of controlled entities which are required.
- 1.3 If it is considered that the Act is intended to require an audit under and for the purposes of the Act of a financial report of a controlled entity of a Department or statutory body, then Divisions 3 and 4A of Part 3 of the Act should be amended to put that beyond doubt. The application of Division 4 to controlled entities could also be clarified.

## 2. Background

- 2.1 In my earlier advice I expressed doubt as to whether a company which is a controlled entity of a statutory body or a Department was required by ss. 41A and 45D of the Act to prepare a financial report for the purposes of that Act. I considered the Act obliged a statutory body or Department to include in its financial report of its financial position and performance that of its controlled entities. The financial operation and performance of its controlled entities would have to be obtained from them to enable inclusion in the financial report of the statutory body or Department.
- 2.2 My doubt as to whether the Act required controlled entities to prepare a financial report for audit under and for the purposes of the Act caused me to query whether it was a function of the office of Auditor-General under the Act to audit financial reports prepared by controlled entities which are companies. While the Auditor-General is taken to be a registered auditor for the purposes of the *Corporations Act*, and thus able, so far as the *Corporations Act* is concerned, to be an auditor for the purposes of that Act, the functions of the Auditor-General are determined by the Act.
- 2.3 For the purposes of advising on the effect of s. 311 of the *Corporations Act* I assumed in my earlier advice that controlled entities which are companies are required to prepare a financial report for audit under and for the purposes of the Act and may Inc choose to prepare financial reports that comply with the *Corporations Act* while not obliged to do so. I also assumed that it was a function of the Auditor General under the Act to audit such reports.
- 2.4 In a subsequent email on 1 October 2009, I drew attention to s. 638(3) of the Act and indicated I would provide advice as to the effect of this provision on my earlier advice.

## 3. Advice

### **EFFECT OF S.63B PFA ACT**

- 3.1 Section 638(3) of the Public Finance and Audit Act 1983 (PFA Act) provides:

"638(3) A Department or statutory body must take such steps as are appropriate to ensure that an entity referred to in section 45A(1A) or .39(1A) which is controlled by the Department or statutory body is audited by the Auditor-General."

- 3.2 Section 638(3) is not an easy provision to construe. It does not make clear whether its purpose is to require an audit of the entity by the Auditor General (and, if so, the Act under which and for the purposes of which that audit is to be done) or its purpose is to ensure that any audit of a controlled entity which is done (regardless of the source of the requirement for the audit), is done only by the Auditor General.
- 3.3 When originally inserted in 1988, s. 638 provided that a statutory body shall take such steps as are appropriate to ensure that no corporation, association or trust becomes a privately audited subsidiary organisation of the statutory body. A privately audited subsidiary organisation was defined to mean a subsidiary organisation whose auditor (being the auditor appointed in accordance with the law relating to the appointment of auditors for such organizations) is not the Auditor General. The effect of that was to ensure that a subsidiary organisation did not appoint as its auditor in accordance with the law relating to such appointment a person who was not the Auditor General. As originally enacted s. 638(3) seems to have been intended to ensure that the only auditor of subsidiary organisations was to be Auditor General. It did not address what audits were required in relation to a subsidiary organisation and under what law.
- 3.4 In the second reading speech for the *Public Finance and Audit (Amendment) Bill* 1988 which inserted s. 638, the then Premier said in the Legislative Assembly:

“Second, the Auditor-General has brought to attention two issues which affect his audit of subsidiary companies to statutory bodies. The first issue is that there is a conflict between the Public Finance and Audit Act 1983 and the Companies (New South Wales) Code. Section 35(1) of the Public Finance and Audit Act 1983 provides for the appointment of an auditor to carry out an audit on behalf of the Auditor-General. There is a doubt about the application of this provision to subsidiary companies of a statutory body. Though the Auditor-General is the auditor of the subsidiary companies, under the terms of the Public Finance and Audit Act, he is not automatically the auditor of the companies under the provisions of the Companies (New South Wales) Code. With a view to ensuring full public accountability of statutory bodies in connection with subsidiary operations, the amendment of the Act is now necessary. As a result, the bill will insert a new section 63B and an additional subsection 39 (1) (f) in the principal Act.

In the Legislative Council, the then Minister for Police and Emergency Services repeated this statement but inserted after “Code”:

“This leads to confusion, and sometimes to appointment of two auditors,”

- 3.5 It is clear from his statement that the Premier was under the impression that the Auditor-General was the auditor of subsidiary companies of a statutory body “under the terms of” the Act (but did not say in what sense he was the auditor of subsidiary companies) and that s. 63B would ensure he was also the auditor under the provisions of the then *Companies (New South Wales) Code* of subsidiary companies. The *Companies (New South Wales) Code* was an Act of this State.
- 3.6 Section 63B was substituted in its present form in 1992 by the *Public Finance and Audit (Amendment) Act 1992*.

In the Second Reading speech Mr Moore, the then Minister for Environment, stated in the Legislative Assembly:

“Occasionally subsidiary companies and other unincorporated controlled entities such as partnerships, trusts and joint ventures, are set up by departments and statutory bodies as vehicles to assist in pursuing their commercial objectives. Both the Auditor General and the Public Accounts Committee have pointed out that the problem with this trend is that public sector activities may become removed from the normal parliamentary scrutiny and the parliamentary process. Under the existing Public Finance and Audit Act all subsidiary companies and certain types of unincorporated bodies under the control of a statutory body are subject to audit by the Auditor General although a private sector auditor may be appointed, if the Treasurer so approves. However, although the form and content of the annual financial statements of these controlled entities are governed by the Act, the statements are not required to be presented to Parliament. Worse still, controlled entities formed by departments are not caught by the Act at all.

To address these problems the Treasurer in January 1991 issued a memorandum to all Ministers setting out detailed guidelines which deal with the formation, audit and reporting of controlled entities. The auditing and reporting guidelines were issued as an interim measure pending the necessary amendments to the Public Finance and Audit Act and the annual reports legislation. The amendments in the bills are principally directed at giving legislative backing to the Treasurer's guidelines. I will outline the key features of the amendments. First, all controlled entities established by departments and statutory bodies are to be defined with reference to the Corporations Law for the purpose of the Public Finance and Audit Act. Secondly, the form and content of the financial statements of all entities under the control of a department are to be in accordance with the Public Finance and Audit Act. Thirdly, the financial statements of individually controlled entities are to be included in the annual report of the parent entity. Fourthly, all controlled entities are to be subject to audit by the Auditor-General or his agent. Lastly, departments and statutory bodies are to report the creation of all entities which they control to the Auditor-General and the Treasurer." "

- 3.7 Again, Mr Moore seems to have been under the impression that "Under the existing *Public Finance and Audit Act*" all subsidiary companies and certain types of unincorporated bodies under the control of a statutory body are subject to audit by the Auditor General but did not explain in what sense they were subject to audit by the Auditor General,

- 3.8 The Explanatory Note in relation to the 1992 amendments stated:

"Controlled entities

Schedule 1(1)) amends section 39, and Schedule 1(16) substitutes section 638, to change the concept of a "subsidiary organisation" of a statutory body to bring it into line with the "controlled entity" concept in the new Corporations Law.

Schedule 1(16) also extends the new section 638 to Departments. In future, both Departments and statutory bodies will be required to report the creation of entities which they control to the Auditor-General and the Treasurer, and to take immediate steps to ensure those entities are audited by the Auditor-General. (Section 638, as substituted, does not repeat the present provisions for a 3 year period in which those steps may be taken by a statutory body.)

Schedule 1(13) amends section 45A so that Division 4A of Part 3 of the Act will require the accounts - records, financial statements and audit of any Department to cover also the entities which the Department controls. A similarly extended requirement (in Division 3 of Part 3 of the Act) presently applies only to statutory bodies."

The Corporations Law referred to in the Note and by Mr Moore was the Corporations Law of the ACT applied as law of New South Wales by the *Corporations (New South Wales) Act 1990*.

- 3.9 In relation to the intended effect of the new s. 638, the Explanatory Note is unhelpful. Schedule 1(13) was said to require the accounts, records and financial statements and audit of any Department "to cover" also the entities which the Department controls and noted that "a similar extended requirement" presently applies only to statutory bodies. The Explanatory Memorandum did not state that controlled entities of statutory bodies were presently required by the Act to be audited under and for the purposes of the Act by the Auditor-General. Nor did it state that controlled entities of Departments and statutory bodies would be required to be audited under and for the purposes of the Act; rather, accounts etc. and audits "of any Department" would "cover" controlled entities and presumably the same would apply in the case of statutory bodies to which a "similar extended requirement" applied.
- 3.10 On balance, I think that s. 638(3) is intended to require statutory bodies and Departments to ensure that all audits required in relation to a controlled entity, regardless of the source of the requirement for the audit, are done by the Auditor General, with the result an audit under and for the purposes of the *Corporations Act* of a controlled entity which is a company is to be done by the Auditor General. On that view, s. 638(3) is not itself the source of a requirement for an audit.
- 3.11 If it is correct that, as a matter of construction, s. 63B(3) requires a statutory body or Department to ensure that all audits required in relation to controlled entities, including audits of companies under and for the purposes of the *Corporations Act*, are done by the Auditor-General, that would not seem to be inconsistent with the provisions of the *Corporations Act* which provide for the appointment of auditors to conduct such audits. In so providing, s. 638(3) would seem to be an implied conferral on the Auditor-General of the function of doing all such audits including audits required by the *Corporations Act*. That overcomes any uncertainty as to whether other provisions of the Act make it a function of the Auditor General to do audits under and for the purposes of the *Corporations Act*.

- 3.12 If it is asserted that the Act is intended to require the auditing by the Auditor-General of financial reports of controlled entities of statutory bodies and Departments, and in particular a company which is not itself a statutory body within s. 39(1) of the Act, under and for the purposes of the Act, then I consider that it is desirable that the Act be amended to make that clear. In particular, s. 39(1A) in Division 3 of Part 3 should be omitted and its content placed in s. 39(1) and provision should be made for references to "Department Head" in Division 4A of Part 3 in relation to controlled entities to enable the application of that Division in respect of controlled entities. Other amendments may need to be made to those Divisions to make clear their application to controlled entities but that is a matter for the Parliamentary Counsel. The application of Division 4 to controlled entities could also be clarified. I should say that my concerns in relation to the application of Divisions 3 and 4A to controlled entities remain notwithstanding that s. 7(1)(a)(ia) of the *Annual Reports (Statutory Bodies) Act* contemplates a financial report of a controlled entity of a statutory body being prepared in accordance with Division 3 of Part 3 of the Act and the regulations; that under the regulations payments to directors of statutory bodies must be included in their financial reports; and that some companies are prescribed as statutory bodies for the purposes of Division 4.
- 3.13 It would not appear to be inconsistent with the *Corporations Act* for a State Act to provide for ensuring that a controlled entity which is a company be audited under and for the purposes of that State Act, but that is a matter the Parliamentary Counsel would consider in drafting amendments to make clear the application of Divisions 3 and 4A of Part 3 of the Act to controlled entities of Departments and statutory bodies.

Signed

I V Knight  
Crown Solicitor

**APPENDIX: RELEVANT LEGISLATION**

*Public Finance and Audit Act 1983*

Part 3

Division 3 General audit of statutory bodies

**39 Application and interpretation**

- (1) A reference in this Division to a statutory body is a reference to:
- a) a person, group of persons or body specified in Schedule 2, and
  - b) a person, group of persons or body (not being a person, group of persons or body specified in Schedule (3) whose funds are held in an account within the Special Deposits Account.
- (1A) A reference in this Division to a statutory body also includes a reference to an entity of which the statutory body has control as defined in Australian Accounting Standards.
- (1B) A reference in this Division to a statutory body does not include a reference to a person, group of persons, body or entity who or which is, by a regulation made for the purposes of this subsection, declared not to be a statutory body for the purposes of this Division.
- (2) A reference in this Division to a Minister, in relation to a statutory body, is a reference to the Minister having the administration of the Act by or under which the statutory body is appointed, constituted or regulated.
- (2A) A reference in this Division to the Auditor-General shall, where, in relation to a statutory body, not being the Audit Office or an entity referred to in subsection (1A), an Act authorizes or enables the appointment by the statutory body of an auditor other than the Auditor-General to be the sole auditor in respect of the statutory body, be read and construed as a reference to that auditor.
- (2B) A reference in this Division to a financial report, in relation to a statutory body, is a reference to the financial report referred to in section 41A.
- (3) The provisions of this Division are in addition to any other statutory provisions relating to the financial report, books, records or audit of a statutory body but, in the event of any inconsistency between the provisions of this Division and any other such statutory provisions, the provisions of this Division shall, to the extent of the inconsistency, prevail.
- (4) Nothing in this Division limits or derogates from the provisions of Division 2.

**41A Preparation of financial report**

- (1) A statutory body (other than the Audit Office) shall, Within the period of 6 weeks after the end of each financial year of the statutory body, prepare and submit
- (a) to the Minister, and
  - (b) to the Auditor-General, a financial report for the financial year then ended.
- (2) The Auditor-General is, within the period of 6 weeks after the end of each financial year of the Audit Office, to prepare and submit to the auditor appointed under section 47 the Audit Office's financial report for the financial year then ended.

#### Division 4 Particular audit of statutory bodies, funds and accounts

##### 44 Application and interpretation

- (1) A reference in this Division to a statutory body is a reference to:
  - (a) a person, group of persons or body prescribed for the purposes of this Division, or
  - (b) a person, group of persons or body having the control or management of a fund or account, being a fund or account which is prescribed for the purposes of this Division.
- (2) A reference in this Division to a Minister, in relation to a statutory body, is a reference to the Minister having the administration of the Act by or under which the statutory body is appointed, constituted or regulated.
- (3) Nothing in this Division limits or derogates from the provisions of Division 2,

##### 45 Particular audit

- (1) In accordance with the request of the Treasurer, a Minister or a person prescribed for the purposes of this section in relation to a statutory body, the Auditor-General is to inspect and audit:
  - (a) in the case of a statutory body to which section 44 (1) (a) applies--the financial report of the statutory body and the books and records of financial transactions of or relating to:
    - i. the statutory body, and
    - ii. assets of or in the custody of the body, and
  - (b) In the case of a statutory body to which section 44 (1) (b) applies--the financial report of the statutory body and the books and records of financial transactions of or relating to the fund or account under the control or management of the statutory body.

#### Division 4A General audit of Departments

##### 45A Application and interpretation

- (1) A reference in this Division to a Department is a reference to a person, group of persons or body specified in Column 1 of Schedule 3.
- (1A) A reference in this Division to a Department also includes a reference to an entity of which the Department (or the Minister responsible for, or an officer of, the Department) has control as defined in Australian Accounting Standards.
- (2)
- (3) A reference in this Division to a Department Head, in relation to a Department, is a reference to the person holding the position specified in Column 2 of Schedule 3 opposite the name or description of the Department.
- (3A) A reference in this Division to a financial report, in relation to a Department, is a reference to the financial report referred to in section 45D.
- (4) The provisions of this Division are in addition to any other statutory provisions relating to the financial report, books, records or audit of a Department but, in the event of any inconsistency between the provisions of this Division and any other such statutory provisions, the provisions of this Division shall, to the extent of the inconsistency, prevail.
- (5) Nothing in this Division limits or derogates from the provisions of Division 2.

#### 45D Preparation of financial reports

- (1) A Department Head shall, within the period of 6 weeks after the end of each financial year of the Department, prepare and submit:
  - (a) to the Minister, and
  - (b) to the Auditor-General,a financial report for the financial year then ended.

#### Part 5 Miscellaneous

##### 63B Notification of controlled entities

- (1) Within 1 month after an entity becomes an entity referred to in section 45A (1A), the appropriate Department Head must notify the Auditor-General and the Treasurer in writing of that fact.
- (2) Within 1 month after an entity becomes an entity referred to in section 39 (IA), the appropriate statutory body must notify the Auditor-General and the Treasurer in writing of that fact.
- (3) A Department or statutory body must take such steps as are appropriate to ensure that an entity referred to in section 45A (IA) or 39 (IA) which is controlled by the Department or statutory body is audited by the Auditor-General.

#### Public Finance and Audit Regulation 2005

##### Part I Preliminary

##### 3 Definitions

- (1) In this Regulation:

*Department* means a person, group of persons or body specified in Column 1 of Schedule 3 to the Act.

*Statutory body* means a statutory body referred to in Division 3 of Part 3 of the Act.

##### Part 4 Miscellaneous

##### 17 Prescribed statutory bodies under Division 4 of Part 3 of the Act .

- (1) For the purposes of section 44 (1) of the Act, the following persons, groups of persons or bodies are prescribed for the purposes of Division 4 of Part 3 of the Act:
  - (n) UNILINC Limited,
  - (p) Uniprojects Pty Limited,
  - (q) Universities Admissions Centre (NSW and ACT) Pty Limited,
  - (r) Cowra Japanese Garden Maintenance Foundation Limited,
  - (aj) The Australian Institute of Asian Culture and Visual Arts Limited,
  - (ak) State Super Financial Services Ltd,
  - (al) Valley Commerce Pty Ltd,
  - (am) Buroba Pty Ltd,
  - (an) Elsun Pty Limited,
  - (ao) The Brett Whiteley Foundation
  - (ap) Coffs Harbour Technology Park Ltd,
  - (aq) Eif Pty Limited,
  - (ar) Little Bay Joint Venture, being the joint venture relating to property development at Little Bay between Landcom and Little Bay Developments Pty Ltd,
  - (as) NSW Fire Brigades Superannuation Pty Limited,
  - (at) NSW Businesslink Pty Limited,
  - (ay) CCP Holdings Pty Limited,
  - (ba) Cobbora Management Company Pty Limited.



## Schedule I Information to be included in financial reports of statutory bodies

(Clauses 7 and 8)

### Part I Income and expenditure information

1. The amount of emoluments or other benefits paid or due and payable, directly or indirectly, to members or directors (however described) of the body, but not including amounts paid by way of salary to full-time members or directors of the body.
2. The total amounts paid or becoming payable to consultants engaged by the statutory body (other than the Public Trustee or the Senate or Council of a university) during the financial year.

### Part 2 Balance sheet information

3. The description and amount of loans, advances or money otherwise due to the body by members or directors (however described) of the body, or officers or employees of the body holding executive decision-making positions, or relatives of those members, directors, officers or employees, but not including loans, advances or money otherwise due for the purpose of carrying out official duties, such as travelling advances and the like.
4. The description and amount of loans, advances or money otherwise due to the body by a corporation, a director of which is a member or director (however described) of the body, or an officer or employee of the body holding an executive decision-making position.

## *Annual Reports (Statutory Bodies) Act 1984 No 87*

### Part 1 Preliminary

#### 3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires: *statutory body* means:
  - (a) a person, group of persons or body to which Division 3 of Part 3 of the *Public Finance and Audit Act 1983* applies, not being an entity referred to in section 39 CIA) of that Act, or
  - (b) a person, group of persons or body who or which is prescribed to be a statutory body for the purposes of this Act.

#### 4 Auditor

- (1) For the purposes of this Act and the regulations, the auditor of a statutory body is:
  - (a) except as provided by paragraphs (b) and (c)—the Auditor-General, or
  - (b) where, in relation to the statutory body (other than the Audit Office), an Act authorises or enables the appointment by the statutory body of an auditor other than the Auditor-General to be the sole auditor in respect of the statutory body—the auditor so appointed, or
  - (c) in relation to the Audit Office—the auditor appointed for the time being under section 47 of the *Public Finance and Audit Act 1983*.

### Part 2 Annual reports

#### 7 Annual reports

- (1) The annual report of a statutory body shall comprise:
  - (a) in the case of a statutory body to which paragraph (a) of the definition of *statutory body* in section 3 (1) applies:
    - i. the statutory body's financial report prepared in accordance with Division 3 of Part 3 of the *Public Finance and Audit Act 1983* and the regulations under that Act,
    - ia. the financial report so prepared of each entity referred to in section 39 (IA) of the *Public Finance and Audit Act 1983* which is controlled by the statutory body,
    - ii. the opinion of the auditor given in accordance with Division 3 of Part 3 of that Act as to any financial report referred to in subparagraph (i) or (ia),