



New South Wales

Public Finance and Audit Regulation 2015

under the

Public Finance and Audit Act 1983

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Public Finance and Audit Act 1983*.

GLADYS BEREJIKLIAN, MP
Treasurer

Explanatory note

The object of this Regulation is to repeal and remake, with some changes, the provisions of the *Public Finance and Audit Regulation 2010*, which would otherwise be repealed by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the persons, groups of persons, bodies or entities that are statutory bodies for the purposes of various provisions of the *Public Finance and Audit Act 1983*,
- (b) the financial reports of statutory bodies,
- (c) the certification of the financial reports of a Department by the Department Head,
- (d) the payment of accounts by public authorities,
- (e) the investments that may be made with public funds,
- (f) the payment of dividends by statutory authorities to the Consolidated Fund,
- (g) savings and formal matters.

The changes made in this Regulation include prescribing City West Housing Pty Limited and the Marine Estate Management Authority as entities that are subject to particular audits under Division 4 (Particular audit of statutory bodies, funds and accounts) of Part 3 of the *Public Finance and Audit Act 1983*, removing redundant references to entities from the list of entities subject to such audits, and updating and correcting certain of those references. The changes also include prescribing all statutory State owned corporations listed in Schedule 5 to the *State Owned Corporations Act 1989* (rather than just certain specified ones) as statutory authorities whom the Treasurer may require under section 59B of the *Public Finance and Audit Act 1983* to pay dividends to the Consolidated Fund and removing redundant references to entities from the list of such statutory authorities.

This Regulation is made under the *Public Finance and Audit Act 1983*, including sections 20 (e), 39 (1B), 41B (1) (c) (vi) and (g), 41C (1B) (b), 44 (1), 45F (1B) (b), 59B (2) and 64 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Public Finance and Audit Regulation 2015*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Public Finance and Audit Regulation 2010*, which would otherwise be repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

Department has the same meaning as it has in Division 4A of Part 3 of the Act.

statutory body has the same meaning as it has in Division 3 of Part 3 of the Act.

the Act means the *Public Finance and Audit Act 1983*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Statutory bodies

Division 1 Financial reports

Note. Section 41B (1) (a) of the Act requires a statutory body's financial report to be prepared in accordance with Australian Accounting Standards.

4 Income and expenditure and balance sheet information

- (1) For the purposes of section 41B (1) (c) (vi) and (g) of the Act, the following particulars must be shown separately in the financial report of a statutory body:
 - (a) 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,
 - (b) the total amounts paid or becoming payable to consultants engaged by the statutory body (other than the NSW Trustee and Guardian or the Senate or Council of a university) during the financial year,
 - (c) 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,
 - (d) 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.
- (2) Any such particular may be included in the financial report by way of note or otherwise.
- (3) The requirements of this clause are in addition to any other matters necessary to exhibit a true and fair view of the financial position and financial performance of the body.

5 Rounding off

If appropriate, all amounts shown in the financial report of a statutory body may be expressed by reference to the nearest \$1,000.

6 Exclusion of budget information from certain financial reports

- (1) The financial report of a statutory body submitted under section 41A of the Act to the Auditor-General for audit must not include or be accompanied by a budget of the statutory body or any budget information.
- (2) Subclause (1) does not apply to the financial report of a statutory body if the statutory body is required by or under the Act (including by a condition of an exemption granted under the Act or a direction of the Treasurer under the Act) to include a budget or budget information in that report.

7 Certification

For the purposes of section 41C (1B) (b) of the Act, the following matters are required to be included in a statement to the Auditor-General:

- (a) a statement as to whether, in the opinion of the person or persons who are to sign the statement, the financial report has been prepared in accordance with the provisions of the Act, this Regulation and the Treasurer's directions,

- (b) a statement as to whether each person who is to sign the statement is aware, as at the date on which the person signs the statement, of any circumstances that would render any particulars included in the financial report misleading or inaccurate.

8 Exemptions

- (1) The Treasurer may, on application by a statutory body made at any time, grant an exemption from any or all of the provisions of this Division, in relation to the financial report of the body for a particular financial year.
- (2) An exemption may be granted subject to such conditions as the Treasurer may determine.
- (3) An exemption ceases to apply if the Treasurer, by notice in writing, so informs the statutory body to which the exemption was granted.
- (4) Details of an exemption, and the reasons for the exemption, must be included as a separate note in the notes within the financial report for the financial year in which the exemption applies.

Division 2 Miscellaneous

9 Statutory bodies for purposes of Division 3 of Part 3 of Act

For the purposes of section 39 (1B) of the Act, each of the following persons, groups of persons, bodies or entities is declared not to be a statutory body for the purposes of Division 3 of Part 3 of the Act:

- (a) New South Wales Non-Budget Long Service Leave Pool,
- (b) New South Wales Structured Finance Activities.

10 Statutory bodies for purposes of Division 4 of Part 3 of Act

For the purposes of section 44 (1) of the Act, each of the following persons, groups of persons or bodies is prescribed as a statutory body for the purposes of Division 4 of Part 3 of the Act:

- (a) a person, group of persons or body set out in Part 1 of Schedule 1,
- (b) a person, group of persons or body having the control or management of a fund or account set out in Part 2 of Schedule 1.

Part 3 Departments

Note. Section 45E (1) (a) of the Act requires a Department's financial report to be prepared in accordance with Australian Accounting Standards.

11 Certification of financial reports

For the purposes of section 45F (1B) (b) of the Act, the following matters are required to be included in a statement made by a Department Head:

- (a) a statement as to whether, in the opinion of the Department Head, the financial report has been prepared in accordance with the provisions of the Act, this Regulation and the Treasurer's directions,
- (b) a statement as to whether the Department Head is aware, as at the date on which the Department Head signs the statement, of any circumstances that would render any particulars included in the financial report misleading or inaccurate.

12 Exemptions

- (1) The Treasurer may, on application by a Department Head made at any time, grant an exemption from any or all of the provisions of this Part, in relation to the financial report of the Department for a particular financial year.
- (2) An exemption may be granted subject to such conditions as the Treasurer may determine.
- (3) An exemption ceases to apply if the Treasurer, by notice in writing, so informs the Department Head of the Department in respect of which the exemption was granted.
- (4) Details of an exemption, and the reasons for the exemption, must be included as a separate note in the notes within the financial report for the financial year in which the exemption applies.

Part 4 Miscellaneous

13 Payment of accounts

- (1) This clause applies to a contract entered into by or on behalf of an authority for the supply of goods or services (or both) to the authority.
- (2) The Head of an authority must nominate the holder of a position within the staff establishment of the authority to be the accounts complaints officer for the authority.
- (3) An order form issued by an authority must include:
 - (a) a statement to the effect that, if a payment is not made within the time required by subclause (4), the supplier should take the matter up with the accounts complaints officer for the authority, and
 - (b) the telephone number of the accounts complaints officer, and
 - (c) a statement that, if payment is not made within the time determined by this clause, the Head of the authority:
 - (i) must, if required to do so by the Treasurer's directions, pay the supplier penalty interest of an amount or at a rate determined by the Treasurer's directions, and
 - (ii) may pay the supplier penalty interest of an amount or at a rate determined by the Treasurer's directions in other cases.
- (4) The Head of an authority must ensure that payment is made to the supplier in the circumstances, and by the time (if any), that the authority is required by the Treasurer's directions to pay such accounts.
- (5) If payment is not made to a supplier in accordance with subclause (4), the Head of the authority (or a person appointed by the Head of the authority):
 - (a) must, if required to do so by the Treasurer's directions, direct that the supplier be paid penalty interest of the amount or at the rate determined by the Treasurer's directions, and
 - (b) may direct that the supplier be paid penalty interest of the amount or at the rate determined by the Treasurer's directions in other cases.
- (6) An interest payment under this clause must be met from within the authority's approved budget.

14 Definition of "officer of an authority"

- (1) For the purpose of the definition of *officer of an authority* in section 4 (1) of the Act:
 - (a) a person who is authorised under an insurance services contract to exercise functions for the purposes of sections 12 and 13 of the Act (whether or not the person is a party to that contract) is prescribed in relation to the NSW Self Insurance Corporation, but only for the purposes of exercising those functions that the person is authorised to exercise under the contract, and
 - (b) an employee of Cubic Transportation Systems (Australia) Pty Limited (ABN 82 003 617 561) who is authorised by instrument in writing by the Secretary of the Department of Transport to exercise functions for the purposes of sections 12 and 13 of the Act is prescribed in relation to Transport for NSW, but only for the purposes of exercising those functions that the person is authorised to exercise by that instrument, and
 - (c) a statutory officer who is not a Public Service employee under the *Government Sector Employment Act 2013* but who is the head of, or exercises functions in relation to, a Public Service agency under that Act is prescribed in relation to that agency.

(2) In this clause:

insurance services contract means an agreement or arrangement entered into by the NSW Self Insurance Corporation in accordance with section 8 (1) (b) of the *NSW Self Insurance Corporation Act 2004*.

15 Prescribed investments

(1) For the purposes of section 20 (e) of the Act, the following investments are prescribed:

- (a) a promissory note made by:
 - (i) a statutory body constituted under an Act of the Commonwealth or a State, or
 - (ii) an eligible company,
- (b) a loan of money on the security of a letter of credit which is confirmed by an authorised deposit taking institution,
- (c) an advance to an authorised deposit taking institution or an eligible company secured by such legally enforceable documents or other security as the Secretary of the Treasury or an officer of the Treasury authorised by the Secretary for the purpose may approve,
- (d) futures contracts traded on the Sydney Futures Exchange Limited,
- (e) forward rate agreements that comply with the *Public Authorities (Financial Arrangements) Act 1987*,
- (f) option contracts traded on the Sydney Futures Exchange Limited,
- (g) option contracts with an authorised deposit taking institution or an eligible company or with a statutory body constituted under an Act of the Commonwealth or of a State,
- (h) securities the repayment of which is guaranteed by the Government of a State,
- (i) deposits with the New South Wales Treasury Corporation, including investments in an Hour-Glass investment facility of the Treasury Corporation (being a unit trust scheme within the meaning of the *Duties Act 1997*),
- (j) the purchase and sale before, and at, maturity of an investment prescribed by any of the preceding paragraphs.

(2) The Treasurer may:

- (a) nominate the prescribed investments, if any, in which money must be invested, and
- (b) determine the amount of money that must be invested in each prescribed investment so nominated.

(3) In this clause:

eligible company means:

- (a) a company that is accredited with a rating of between “AAA” and “AA” by Standard & Poor’s (Australia) Pty Ltd or is accredited with a rating of between “Aaa” and “Aa” by Moody’s Investors Service Pty Limited, or
- (b) a company whose liabilities are unconditionally guaranteed by a company to which paragraph (a) applies.

16 Statutory authorities to pay dividends to Consolidated Fund

For the purposes of section 59B (2) of the Act, the following statutory authorities are prescribed:

- (a) the statutory bodies specified in Schedule 2 to the Act,

- (b) the corporations specified in Schedule 5 to the *State Owned Corporations Act 1989*.

17 Repeal and savings

- (1) The *Public Finance and Audit Regulation 2010* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Public Finance and Audit Regulation 2010*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Prescribed audits

(Clause 10)

Part 1 Persons, groups of persons or bodies

Agricultural Scientific Collections Trust
AustLII Foundation Limited
Belgenny Farm Agricultural Heritage Centre Trust
The Brett Whiteley Foundation
Buroba Pty Ltd
C. B. Alexander Foundation
City West Housing Pty Limited
Cowra Japanese Garden Maintenance Foundation Limited
Cowra Japanese Garden Trust
Dumaresq-Barwon Border Rivers Commission
Eif Pty Limited
Gosford City Council, being a water supply authority listed in Schedule 3 to the *Water Management Act 2000*
The Illawarra Health and Medical Research Institute Ltd
Local health districts within the meaning of the *Health Services Act 1997*
Marine Estate Management Authority
Minister administering the *Environmental Planning and Assessment Act 1979* (a corporation)
Minister administering the *Heritage Act 1977* (a corporation)
National Art School
Networks NSW Pty Limited
NSW Businesslink Pty Limited
NSW Fire Brigades Superannuation Pty Limited
State Super Financial Services Australia Limited
Trustees of the Farrer Memorial Research Scholarship Fund
The trustees for the time being of The Art Gallery of New South Wales Foundation
Trustee of the Home Purchase Assistance Fund
Each board of management, state conservation area trust and trust board established for a state conservation area within the meaning of the *National Parks and Wildlife Act 1974*
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*
United States Studies Centre
Universities Admissions Centre (NSW & ACT) Pty Limited
Valley Commerce Pty Ltd
Wyong Council, being a water supply authority listed in Schedule 3 to the *Water Management Act 2000*

Part 2 Funds or accounts

Crown Employees (NSW Fire Brigades Firefighting Staff Death and Disability) Superannuation Fund
Energy Investment Fund
Home Building Compensation Fund

Macquarie University Professorial Superannuation Scheme

Parliamentary Contributory Superannuation Fund

State Super Allocated Pension Fund established by State Super Allocated Pension Fund Trust Deed dated 23 November 1993

State Super Fixed Term Pension Plan established by State Super Fixed Term Pension Plan Trust Deed dated 14 July 1999

State Super Personal Retirement Plan established by State Super Personal Retirement Plan Trust Deed dated 3 April 1990

State Super Investment Fund established by State Super Investment Fund—Cash Fund Constitution dated 22 November 1991, State Super Investment Fund—Capital Stable Fund Constitution dated 22 November 1991, State Super Investment Fund—Balanced Fund Constitution dated 22 November 1991 and State Super Investment Fund—Growth Fund Constitution dated 24 April 1997

The superannuation fund amalgamated under the *Superannuation Administration Act 1991* and continued to be amalgamated under the *Superannuation Administration Act 1996*

University of Sydney Professorial Superannuation System