

# Public Finance and Audit Regulation 2005

[2005-533]



New South Wales

## Status Information

### Currency of version

Historical version for 1 September 2005 to 27 October 2005 (accessed 3 December 2024 at 7:23)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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File last modified 2 September 2005

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New South Wales

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# Public Finance and Audit Regulation 2005



New South Wales

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

MICHAEL COSTA, M.L.C., Minister for Finance

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Public Finance and Audit Regulation 2005*.

### 2 Commencement

This Regulation commences on 1 September 2005.

**Note—**

This Regulation replaces the *Public Finance and Audit (General) Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**Australian Accounting Standards** means a statement of accounting standards issued by the National Councils of the Institute of Chartered Accountants in Australia and CPA Australia.

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

**financial statements** means:

- (a) in relation to a Department, the financial statements of the Department referred to in section 45E of the Act, or
- (b) in relation to a statutory body, the financial statements of the body referred to in section 41B of the Act.

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

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

- (2) In this Regulation, any question as to whether a matter relating to financial statements is material is to be determined having regard to the Australian Accounting Standards.
- (3) Notes in the text of this Regulation do not form part of this Regulation.

## **Part 2 Departments**

### **4 Certification**

For the purposes of section 45F (1B) of the Act, the following matters are required to be included in a statement required under that subsection:

- (a) a statement as to whether, in the opinion of the Department Head, the financial statements have 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 statements misleading or inaccurate.

### **5 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 clause 4, in relation to the financial statements 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 to the financial statements for the financial year in which the exemption applies.

## **Part 3 Statutory bodies**

### **6 Accounting standards**

Except as may be provided by the Act, this Regulation and the Treasurer's directions, the financial statements of a statutory body must be prepared in accordance with the Australian Accounting Standards, as adapted and modified to enable the provisions of those standards to apply to statutory bodies.

## **7 Income and expenditure information**

- (1) For the purposes of section 41B (1) (c) (vi) and (g) of the Act, the particulars set out in Part 1 of Schedule 1 must be shown separately in the financial statements of a statutory body which include an income and expenditure statement.
- (2) Any such particular may, except in so far as Part 1 of Schedule 1 otherwise provides, be included in the financial statements 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 transactions of the body.

## **8 Balance sheet information**

- (1) For the purposes of section 41B (1) (c) (vi) and (g) of the Act, the particulars set out in Part 2 of Schedule 1 must be shown separately in the financial statements of a statutory body whose financial statements include a balance sheet.
- (2) Any such particular may, except in so far as Part 2 of Schedule 1 otherwise provides, be included in the financial statements 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 transactions of the body.

## **9 Rounding off**

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

## **10 Exclusion of budget information from certain financial statements submitted for certification**

- (1) The financial statements of a statutory body submitted under section 41A of the Act to the Auditor-General for verification and certification 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 statements of a statutory body if the statutory body is required by or under the Act (including by a condition of exemption granted under the Act or a direction of the Treasurer under the Act) to include a budget or budget information in those statements.

## **11 Certification**

For the purposes of section 41C (1B) of the Act, the following matters are required to be included in a statement required under that subsection:

- (a) a statement as to whether, in the opinion of the person or persons who are to sign the statement, the financial statements have 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 statements misleading or inaccurate.

## **12 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 Part (this clause excepted), in relation to the financial statements 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 to the financial statements for the financial year in which the exemption applies.

## **Part 4 Miscellaneous**

### **13 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) future contracts traded on the Sydney Futures Exchange Limited,
  - (e) forward rate agreements complying with the publication of the Australian Bankers' Association entitled *The Australian Dollar Forward Rate Agreements Recommended Terms and Conditions*,
  - (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 prior to, 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 Inc, or
- (b) a company whose liabilities are unconditionally guaranteed by a company to which paragraph (a) applies.

#### **14 Definitions of “authority” and “officer of an authority”**

- (1) For the purposes of the definition of **authority** in section 4 (1) of the Act, the Police Service is prescribed.
- (2) For the purposes of the definition of **officer of an authority** in section 4 (1) of the Act, a member of the Police Service is a prescribed person in relation to the Police Service.
- (3) For the purposes of the definition of **officer of an authority** in section 4 (1) of the Act, a person specified in Column 2 of the Table to this subclause is a prescribed person in relation to the authority specified opposite the person in Column 1 of the Table.

#### **Table**

**Column 1**

**Column 2**



Department of Ageing, Disability and Home Care	The President and Deputy President of the Guardianship Tribunal under the <i>Guardianship Act 1987</i>
Department of Health	An employee of an area health service specified in Schedule 1 to the <i>Health Services Act 1997</i>
Department of Health	An employee of a public hospital within the meaning of the <i>Health Services Act 1997</i>
Department of Local Government	An employee belonging to the Department of Gaming and Racing

- (4) For the purposes of the definition of **officer of an authority** in section 4 (1) of the Act, the persons holding the positions in the Central Corporate Services Unit, Department of Commerce that are specified in Part A of the Table to this subclause are prescribed as officers in relation to the authorities specified in Part B of that Table, but only for the purposes of exercising functions under sections 12 and 13 of the Act.

**Table**

**Part A**

Manager, Financial Services  
Team Leader  
Senior Budget/Finance Officer  
Senior Finance Officer  
Finance Officer  
Senior Accounts Officer  
General Manager  
Manager, Accounting Services  
Client Services Manager  
Accountant  
Treasury Reporting Supervisor  
Senior Support Officer  
Support Officer  
Accounts Payable Supervisor  
Accounts Receivable Supervisor  
Banking Supervisor  
Assistant Accountant

**Part B**

The Treasury  
The Cabinet Office  
Premier's Department  
Parliamentary Counsel's Office  
Department of Aboriginal Affairs  
Aboriginal Housing Office

Ministry for the Arts  
Heritage Office  
Department of State and Regional Development  
Independent Pricing and Regulatory Tribunal  
Minister administering the *Heritage Act 1977* (a corporation)  
Commission for Children and Young People  
Ministerial Corporation for Industry  
Small Business Development Corporation of New South Wales  
Festival Development Corporation  
Office of the Children's Guardian  
Department of Energy, Utilities and Sustainability  
Ministry for Science and Medical Research  
Natural Resources Commission

- (5) For the purposes of the definition of **officer of an authority** in section 4 (1) of the Act, a public servant employed in the Department of Housing is a prescribed person (in addition to the persons referred to in subclause (4)) in relation to the Aboriginal Housing Office, but only for the purposes of exercising functions under sections 12 and 13 of the Act.
- (6) For the purposes of the definition of **officer of an authority** in section 4 (1) of the Act, an officer of the Department of Community Services is a prescribed person in relation to the Department of Ageing, Disability and Home Care, but only for the purposes of exercising functions under sections 12 and 13 of the Act.
- (7) For the purposes of the definition of **officer of an authority** in section 4 (1) of the Act, the following are prescribed persons in relation to the State Rail Authority, but only for the purposes of exercising functions under sections 12 and 13 of the Act:
- (a) an employee of RailCorp New South Wales,
  - (b) an employee of Transport Infrastructure Development Corporation,
  - (c) a member of staff of the Ministry of Transport.
- (8) For the purposes of the definition of **officer of an authority** in section 4 (1) of the Act, the persons holding the positions in the Shared Services Group that are specified in Part A of the Table to this subclause are prescribed as officers in relation to the authorities specified in Part B of that Table, but only for the purposes of exercising functions under sections 12 and 13 of the Act.

**Table**

**Part A**

Director VSA Shared Services  
Manager VSA Finance Services  
Senior Accountant

Systems Accountant  
Accountant and Client Service Officer  
Compliance Accountant  
Accounts Supervisor  
Manager VSA HR Services  
Employee Services Manager  
HR Client Services Officer  
Learning and Development Coordinator  
Payroll Services Coordinator/System Administrator  
OHS Coordinator  
Manager VSA IT Services  
IT Contract and Client Service Manager  
IT Project and Client Service Coordinator

**Part B**

Tourism New South Wales  
Royal Botanic Gardens and Domain Trust  
Centennial Park and Moore Park Trust

(9) In subclause (8):

**Shared Services Group** means the Shared Services Group, established under the Co-operation Agreement, for the VSA Shared Services Arrangement, Version 4, dated 1 August 2002, between Tourism New South Wales, Royal Botanic Gardens and Domain Trust and the Centennial Park and Moore Park Trust.

(10) For the purposes of the definition of **officer of an authority** in section 4 (1) of the Act, an officer of NSWbusinesslink is a prescribed person in relation to the Department of Ageing, Disability and Home Care, the Department of Community Services, the Department of Housing and the Home Care Service of New South Wales, but only for the purposes of exercising functions under sections 12 and 13 of the Act.

(11) For the purposes of the definition of **officer of an authority** in section 4 (1) of the Act, a member of staff of the Department of Environment and Conservation is a prescribed person in relation to the Environment Protection Authority and the Royal Botanic Gardens and Domain Trust (in addition to the persons referred to in subclause (8)), but only for the purposes of exercising functions under sections 12 and 13 of the Act.

(12) For the purposes of the definition of **officer of an authority** in section 4 (1) of the Act, an officer of the Treasury is a prescribed person in relation to the Liability Management Ministerial Corporation and the Electricity Tariff Equalisation Ministerial Corporation, but only for the purposes of exercising functions under sections 12 and 13 of the Act.

- (13) For the purposes of the definition of **officer of an authority** in section 4 (1) of the Act, the persons holding the public offices specified in the Table to this subclause are prescribed as officers in relation to the Office of the Director of Public Prosecutions, but only for the purposes of exercising functions under sections 12 and 13 of the Act.

**Table**

Director of Public Prosecutions  
Deputy Director of Public Prosecutions  
Solicitor for Public Prosecutions  
Senior Crown Prosecutor  
Deputy Senior Crown Prosecutor  
Crown Prosecutor

- (14) For the purposes of the definition of **officer of an authority** in section 4 (1) of the Act, the persons holding the positions in the Department of Primary Industries specified in the Table to this subclause are prescribed as officers in relation to the Game Council of New South Wales, but only for the purposes of exercising functions under sections 12 and 13 of the Act:

**Table**

Director, Finance and Administration  
Director, Human Resources  
Human Resources Manager  
Finance Manager  
Administration Operations Manager  
Finance Officer, Reporting  
Accounts Payable/Accounts Receivable Manager  
Management Accounting Officer  
Business Management Accountant  
P-Card Administrator  
Assistant Finance Officer  
Budget Accountant

**15 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 determined in accordance with 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 the Head of the authority may award penalty interest if the payment is not made within the time determined in accordance with subclause (4).

(4) The Head of an authority is to ensure that:

- (a) if a contract to which this clause applies provides for the time of a payment and the contract is properly performed by the supplier—the payment is made by that time, or
- (b) if a contract to which this clause applies does not provide for the time of a payment and the contract is properly performed by the supplier—payment is made by the end of the month following the month in which an invoice or statement from the supplier is received.

(5) If a payment is not made within the time determined in accordance with subclause (4), the Head of the authority (or a person appointed by the Head of the authority) may direct that the supplier be paid interest on the amount not paid within that time, from that time until the time of payment and at a rate of up to 20% per annum, unless a greater amount is payable under the contract in respect of the default in payment.

(6) An interest payment under this clause must be met from within the authority's approved budget.

#### **16 Persons, groups, bodies, entities declared not to be statutory bodies**

For the purposes of section 39 (1B) of the Act, the following persons, groups of persons, bodies or entities are declared not to be statutory bodies 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.

#### **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:

- (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](#),

- (d) 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) NSW Insurance Ministerial Corporation,
- (m) Ambulance Service of New South Wales,
- (n) UNILINC Limited,
- (o) Office of the Minister for Public Works and Services,
- (p) Uniprojects Pty Limited,
- (q) Universities Admissions Centre (NSW & 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) Superannuation Services Company Pty Limited,

- (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) Stormwater Trust,
  - (ag) Jannali Project Joint Venture,
  - (ah) Zetland Project Joint Venture,
  - (ai) Games Information Services Pty Ltd,
  - (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.
- (2) For the purposes of section 44 (1) of the Act, the following funds or accounts are prescribed for the purposes of Division 4 of Part 3 of the Act:
- (a) ICAC Superannuation Fund,
  - (b) Public Sector Executives Superannuation Plan,
  - (c) University of Sydney Professorial Superannuation Scheme,

- (d) University of Sydney Short Term Academic and Other Special Appointments Superannuation Scheme,
  - (e) Macquarie University Professorial Superannuation Scheme,
  - (f) University of Newcastle Staff Superannuation Scheme,
  - (g) Waste Planning and Management Fund,
  - (h) First State Superannuation Fund,
  - (i) the superannuation fund amalgamated under the *Superannuation Administration Act 1991* and continued to be amalgamated under the *Superannuation Administration Act 1996*,
  - (j) State Super Personal Retirement Plan established by State Super Personal Retirement Plan Trust Deed dated 3 April 1990,
  - (k) 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,
  - (l) State Super Allocated Pension Fund established by State Super Allocated Pension Fund Trust Deed dated 23 November 1993,
  - (m) State Super Fixed Term Pension Plan established by State Super Fixed Term Pension Plan Trust Deed dated 14 July 1999,
  - (n) Energy Investment Fund,
  - (o) Crown Employees (NSW Fire Brigades Fire Fighting Staff Death and Disability) Superannuation Fund.
- (3) For the purposes of section 45 of the Act:
- (a) any trustee of the ICAC Superannuation Fund is prescribed in relation to the Trustees of that Fund, and
  - (b) any trustee of the Public Sector Executives Superannuation Plan is prescribed in relation to the Trustees of that Plan.

### **18 Particular audit of the NSW Treasury Managed Fund**

For the purposes of section 44 (1) of the Act, the NSW Treasury Managed Fund is prescribed for the purposes of Division 4 of Part 3 of the Act.



## **19 Statutory authorities liable to pay dividends to Consolidated Fund**

For the purposes of section 59B of the Act, the statutory authorities specified in Schedule 2 to the Act are prescribed.

## **20 Authorised communication concerning Powercoal**

- (1) The Auditor-General is authorised to communicate to the Treasurer and to any person authorised by the Treasurer for the purposes of this clause any matter or thing that has come to the knowledge of the Auditor-General in respect of Powercoal Pty Ltd in the exercise of the functions of the Auditor-General under the Act and the prescribed requirements.
- (2) Any such communication is authorised for the purposes of section 38 (2) (d) of the Act.

## **21 Savings provision**

Any act, matter or thing that, immediately before the repeal of the *Public Finance and Audit Regulation 2000*, had effect under that Regulation is taken to have effect under this Regulation.

## **Schedule 1 Information to be included in financial statements of statutory bodies**

(Clauses 7 and 8)

### **Part 1 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.