

Related party disclosures

This circular explains the related party and key management personnel concept, and related party reporting requirements to be applied by all NSW public sector entities financial statements for financial years beginning on or after 1 July 2016. This Circular applies to all entities required to prepare general purpose financial statements under the *Public Finance and Audit Act 1983*, including Statutory State Owned Corporations.

Summary:

Related party relationships are a normal feature of commerce and can affect the profit or loss and financial position of an entity. Related parties may enter into transactions that unrelated parties would not. Therefore, knowledge of an entity's transactions, outstanding balances (including commitments, and relationships with related parties) may affect assessments of its operations by users of the financial statements. It is important to emphasise that AASB 124 *Related Party Disclosures* (AASB 124) is not designed to detect and report fraud.

The objective of this Circular is to set requirements in order to achieve consistency in the application of AASB 124 by all NSW public sector entities preparing general purpose financial statements. It also explains the related party concept, the application of the materiality principle and provides guidance on determining whether a related party transaction (including practical considerations) should be disclosed in the financial statements.

The Department of Premier and Cabinet (DPC) and NSW Treasury will centrally compile information about Ministerial related party transactions, with the exception of non-monetary benefits provided by agencies to Ministers. This information will then be provided to relevant agencies for disclosure in their financial statements. This Circular therefore provides guidance to agencies on collecting and disclosing information on non-Ministerial related party transactions.

This Circular requires agencies to consider qualitative and quantitative aspects in determining whether a related party transaction is material for disclosure. For practical reasons this Circular has determined certain transactions are unlikely to be material. This Circular also requires agencies to decide on the process for collecting data and any related legal considerations.

This Circular is issued for financial years beginning on or after 1 July 2016 and applies to all NSW public sector entities required to prepare general purpose financial statements under the *Public Finance and Audit Act 1983* (PFAA), including Statutory State Owned Corporations (SOCs). It is issued as a Direction in accordance with PFAA sections 9 and 45E and a specific reference to this Circular will be included in the Statement of Corporate Intent of SOCs.

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1. Introduction

Related party transactions are a normal feature of commerce. However they can affect the profit or loss, financial position, and cash flows of an entity. Related parties may transact with an entity on terms that would not be available to an unrelated party. Therefore, knowledge of an entity's transactions, outstanding balances (including commitments), and relationships with related parties may affect assessments of its operations by users of the financial statements. However it is important to emphasise that AASB 124 is not designed to detect and report fraud.

The objective of this Circular is to achieve consistency in the application of AASB 124 by NSW public sector entities. It explains the related party concept, how materiality applies to related party transactions and provides guidance on determining whether and how a related party transaction should be disclosed in the financial statements.

This Circular is issued for financial years beginning on or after 1 July 2016 and applies to all NSW public sector entities required to prepare general purpose financial statements under the PFAA including SOCs. It is issued as a Direction in accordance with PFAA sections 9 and 45E and a specific reference to this Circular will be included in the Statement of Corporate Intent of SOCs.

2. AASB 124 Related Party Disclosures

Under AASB 124 there are two types of related parties:

- key management personnel (KMP)
- other related parties.

AASB 124 contains definitions of both types of related parties and considers what constitutes a material related party transaction. The Standard also provides guidance to assess whether a person is a member of key management personnel and whether a transaction with a related party is material for disclosure.

The application of AASB 124 has been extended to not-for-profit public sector entities from 1 July 2016. To assist implementation the Standard now contains Australian implementation guidance specific to the not-for-profit public sector.

2.1 Related Party Concept

A related party is a person or entity that is related to the entity that is preparing its financial statements (referred to as the 'reporting entity' in this Circular).

AASB 124 para 9 defines where a person or entity is a related party to a reporting entity. The definitions are complex and potentially include a broad range of relationships, and should therefore be examined closely in each set of circumstances. Agencies should refer to AASB 124, but in summary the definition of related party includes:

- A person or a close family member of that person who:
 - has control, joint control or significant influence over the reporting entity,
 - is a KMP of the reporting entity, or
 - is a KMP of a parent of the reporting entity.

- An entity (government or non-government) is related to a reporting entity if it is:
 - a member of the same group (i.e. parent, subsidiary and fellow subsidiaries)
 - an associate or joint venture of the reporting entity or of a member of a group of which the reporting entity is a member
 - a fellow joint venture of the same third party
 - a fellow associate of the same third party
 - a post-employment benefit plan for the benefits of the employees of the reporting entity or an entity related to the reporting entity
 - controlled or jointly controlled by a person (or close family member of that person) who:
 - has control or joint control of the reporting entity
 - has significant influence over the reporting entity, or
 - is a KMP of the reporting entity or the parent of the reporting entity.
 - providing KMP services to the reporting entity, or to the parent of the reporting entity, or is a member of a group providing such services.

AASB 124 para 11 makes clear that entities are not related parties simply because:

- two entities have a common director or KMP
- a KMP of one entity has significant influence over the other entity
- two joint venturers share joint control of a joint venture
- one entity is economically dependent on the other entity

Also, providers of finance, public utilities, trade unions, departments and agencies of a government that do not control, jointly control or significantly influence the reporting entity are not related parties simply by virtue of their normal dealings with an entity (even though they may participate in the decision making process e.g. T-Corp as an investment manager).

2.2 Close family members

Close family members of a person are those family members who may be expected to influence, or be influenced by that person in their dealings with the entity. Unless estranged, this includes:

- that person's children and spouse or domestic partner
- children of that person's spouse or domestic partner
- dependants of that person, or that person's spouse or domestic partner (AASB 124 para 9).

Other family members (such as siblings, parents or an extended family member) of a person may be caught by the above definition if the family member has the ability to influence, or be influenced by that person. Agencies will need to apply judgement to determine whether there is evidence of sufficient influence.

To assist in making these assessments, Treasury has determined that:

- Children include step, adoptive, dependant, non-dependant, adult children and children not living at home (unless they are estranged).
- Spouse or domestic partner includes married, de facto, civil union partnerships, but excludes separated or divorced spouses or partners.

2.3 Key Management Personnel Concept

A KMP is a person who has the authority and responsibility for planning, directing and controlling the activities of the reporting entity, directly or indirectly, including any director (whether executive or otherwise) (AASB 124 para 9).

Director means a person who is a director under the *Corporations Act 2001*; and in the case of entities governed by bodies not called a board of directors, a person who, regardless of the name that is given to the position, is appointed to the position of member of the governing body, council, commission or authority (AASB 124 para Aus9.1).

Secretaries and Chief Executives of departments and statutory bodies are considered KMP of their relevant entity (see section 3.1). In most circumstances, Ministers responsible for their portfolio are likely to be a KMP of the entities within their portfolio (see section 3.2). Entities with more than one responsible Minister will need to assess the facts and circumstances to determine whether both Ministers are KMP of that entity.

Sometimes, facts and circumstances may reflect that not all persons on a decision-making/governing board are a KMP under AASB 124. There may also be advisory boards that, in substance, have decision-making authority that may make them a KMP of an entity. Therefore, it is important that agencies consider the facts and circumstances, including the terms of the relevant legislative instruments that govern the entity, when assessing whether a person is a KMP. Agencies may find instances where a person's powers are ceremonial or procedural in substance (AASB 124 para IG3) and do not give rise to a capacity to direct or control the activities.

It is recommended that agencies review Examples 1 to 6 of the Australian implementation guidance in AASB 124. These examples illustrate the application of the definition of KMP by not-for-profit public sector entities. These examples do not limit the persons who may be key management personnel of a not-for-profit public sector entity and judgement still needs to be applied.

When a person is appointed in a temporary or acting position that would normally be considered a KMP role, judgment needs to be exercised in assessing whether that person was a KMP for the duration of their appointment. In some instances the temporary or acting nature of the appointment may mean the person does not have, in substance, authority and responsibility for planning, directing and controlling the activities of the reporting entity. As a guide, Treasury requires temporary appointments to KMP positions or persons acting as KMP in their absence, to be considered as KMP for that duration if the appointment is for three or more months in the financial year. For appointments of less than three months, the assessment is a matter of judgment based on facts, such as that person's participation in key decisions made in that period.

3. Related Parties in the NSW Public Sector

The following illustrates some common examples of related parties within the NSW Government:

3.1 Department Head and Chief Executive of departments and statutory bodies

In the NSW public sector, the day to day activities of departments and statutory bodies are managed by the Department Head, Chief Executive, Board or equivalent. In these circumstances, these would be considered KMP of their respective department or statutory body as they have direct authority and responsibility to plan, direct and control the activities.

Agencies will need to assess on a case by case basis whether these department heads' authority extends to other agencies within its principal department's cluster.

3.2 A Minister responsible for agencies within his/her portfolio

AASB 124 para IG5 states that it is uncommon for a Minister to be a KMP of an entity within his/her portfolio where the entity is not controlled by the government (e.g. Universities).

In most circumstances, the Portfolio Minister is likely to be a KMP of agencies that are controlled by the NSW government within their portfolio. This is because they usually have the authority and responsibility for planning, directing and controlling, directly or indirectly, the activities of agencies within their portfolio. These arrangements will depend on the enabling legislation. Some agencies may have more than one responsible Minister. In such cases, those agencies will need to assess the facts and circumstances to determine whether one, both or neither Ministers are KMP of their agency.

3.3 Shareholding Ministers under the *State Owned Corporations Act 1989 (SOC Act)*

A Statutory SOC listed in the SOC Act Schedule 5 is required to have two shareholders with equal voting rights, holding shares on behalf of the State. The shareholders are the Treasurer and another Minister nominated by the Premier. The SOC Act gives the Shareholding Ministers the authority and responsibility to influence the Statement of Corporate Intent (SCI). The SCI is a document that sets out the strategic direction, performance targets and nature and scope of activities of SOCs. Having concluded that the State Government control SOCs, it is likely that the shareholding Ministers are KMP of SOCs.

Regardless of whether the Shareholding Ministers are KMP, at a minimum, they will be a related party of a SOC as they are KMP of the Whole of Government ('Total State Sector') in their capacity as Cabinet Members (see section 3.6).

3.4 Treasurer's capacity under the *Public Finance and Audit Act 1983 (PFAA)*

Under PFAA section 9 the Treasurer has powers to issue directions to accounting officers and officers of an authority (as defined in PFAA) with respect to the principles, practices and procedures to be observed in the administration of the financial affairs of the State. Where the Treasurer is acting in their capacity under PFAA section 9, the Treasurer is not a KMP of agencies simply because they have powers to direct accounting officers and officers of authorities on administrative matters.

However the Treasurer is considered a KMP of the Total State Sector (TSS) in their capacity as a member of the Cabinet. This would mean that the Treasurer will be a related party to all agencies within the TSS (including SOCs). This is explored further in section 3.6.

3.5 The Premier

Although the Premier has the power to allocate agency portfolios to Ministers and appoint and remove Ministers, it is the Portfolio Ministers who have the overall responsibility to make decisions in relation to their agencies under legislation. Ministers' powers arise from legislation rather than delegation from the Premier. Therefore, Ministers are considered principal decision makers over their respective portfolio (see section 3.2) and the Premier is not considered to be a KMP of agencies outside of their portfolio.

However the Premier is considered a KMP of the TSS in their capacity as a member of the Cabinet. This would mean that the Premier will be a related party to all agencies within the TSS (including SOCs). This is explored further in section 3.6.

3.6 Cabinet Members

Similar to the facts presented in AASB 124 Example 2, NSW Cabinet's role is to direct overall government policy and make decisions about State issues. NSW Cabinet as a group, comprising of all NSW Ministers (including the Treasurer and the Premier) and the Attorney General, makes decisions collectively. Having regards to NSW Cabinet's powers and structure, all members are considered to be KMP of the State (i.e. TSS). Therefore, in accordance with AASB 124 para 9(a)(iii) and supported by para BC16, Cabinet members are related parties of every State-controlled entity i.e. all NSW government agencies (including SOCs) within the TSS.

3.7 Expenditure Review Committee (ERC)

The role of the ERC is to assist the Cabinet and the Treasurer in:

- framing the fiscal strategy and the Budget for Cabinet's consideration
- driving expenditure controls within agencies and monitoring financial performance
- considering proposals with financial implications brought forward by Ministers.

ERC does not have final decision making authority, therefore its members are not considered to be a KMP of the TSS or agencies within the TSS.

4. Reporting Requirements

AASB 124 contains disclosure requirements to enable users of financial statements to form a view about the effects of related party relationships on an entity's financial position, income statement and cash flows. Key requirements and relevant reliefs are discussed below.

Determining the appropriate related party disclosures depends on the specific facts and circumstances, and requires professional judgement. It is not possible to provide an absolute 'boilerplate' template that will comply with AASB 124 in all circumstances. It is recommended that agencies review AASB 124 (including the illustrative examples) and familiarise themselves with the disclosure requirements.

4.1 KMP Compensation

Under AASB 124 para 17, entities are required to disclose KMP compensation in aggregate for each of the following categories:

- short-term employee benefits
- post-employment benefits
- other long-term benefits
- termination benefits
- share-based payment.

These categories are explained in more detail in AASB 124 para 9. Also refer to para 8 definitions in AASB 119 *Employee Benefits*.

KMP compensation includes all forms of consideration paid, payable or provided by the entity, or on behalf of the entity, in exchange for services rendered to the entity. If a person became a KMP of a reporting entity during a reporting period, no disclosure is required for any remuneration paid to that person before that person's appointment as KMP. If a person ceases to be a KMP during a reporting period, the entity is required to disclose that person's compensation for the period until cessation.

More specifically, short-term employee benefits includes monetary (such as salaries and wages) and non-monetary benefits. Examples of non-monetary benefits are private health insurance, housing, cars, and free or subsidised goods or services. Reimbursement of business related expenses is not compensation. For example, flights and travel expenses incurred to attend a business meeting. However, a benefit provided to a KMP that is personal in nature is considered compensation for AASB 124 purposes.

In most cases it should be possible to ascribe a dollar value to such benefits and agencies should make all reasonable efforts to do so. Where it is not possible to attribute a value to non-monetary short-term benefits, it is reasonable to describe such benefits qualitatively.

In case of defined benefit superannuation plans where superannuation balances / funding responsibility is not assumed by the Crown Finance Entity ("the Crown"), the defined benefit expense relating to KMP should be disclosed as part of post-employment benefits. This could be calculated as the proportion of the defined benefit obligation assigned to KMP as a percentage of the total defined benefit obligation, applied to the expense recognised for the period in accordance with AASB 119 *Employee Benefits*.

Where applicable, other long-term benefits should include long service leave, in accordance with AASB 119.

In situations where a reporting entity obtains KMP services from another entity ('management entity'), the reporting entity is not required to disclose KMP compensation paid or payable by the management entity (AASB 124 para 17A).

Instead, where a reporting entity reimburses the management entity for the KMP services provided, the reporting entity must disclose in its financial statements the name of the management entity and amounts paid/payable to the management entity for such KMP services (AASB 124 para 18A).

An example of a management entity within the NSW Public Sector is the Crown. The Crown assumes the long service leave and defined benefit superannuation balances/funding responsibility for certain General Government Sector (GGS) agencies. These agencies recognise an expense and equivalent revenue (i.e. nil impact). Therefore, for AASB 124 purposes, these agencies do not reimburse the management entity and no disclosure is required in such agencies (AASB 124 para IG8).

Another example of a management entity is NSW Legislature that pays Ministerial compensation. No disclosure is required by relevant agencies as they are not obliged to reimburse NSW Legislature (AASB 124 IG8).

4.2 Transactions and Outstanding Balances with Related Parties

A reporting entity must disclose all material transactions and outstanding balances with related parties during the reporting period. A related party transaction is defined under AASB 124 para 9 as *"a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged"*.

It is clear from the above definition that material related party transactions should be disclosed irrespective of whether a price is charged. Agencies cannot avoid disclosing a transaction on the basis that the transaction is immaterial, only because there is no price charged, or the price charged is small. Section 4.3 provides further guidance on assessing materiality.

4.2.1 Transactions and Outstanding Balances

AASB 124 para 18 sets out a list of mandatory disclosure requirements. However, exemptions apply to transactions with government-related entities (not persons). Refer to section 4.2.2 for definition of government-related entities and disclosure requirements for transactions with another government-related entity.

At a minimum, agencies must disclose the following for transactions with related party persons and non-government related entities:

- nature of the related party relationship;
- the amount of the transactions;
- the amount of outstanding balances, including commitments, and:
 - their terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement; and
 - details of any guarantees given or received;
- provisions for doubtful debts related to the amount of outstanding balances; and
- the expense recognised during the period in respect of bad and doubtful debts due from related parties.

Outstanding balances will include all amounts payable to, and receivable from, related parties at the end of the reporting period.

Commitments include:

- executory contracts (both recognised and unrecognised in the financial statements)
- recognised commitments under AASB 7 *Financial Instruments: Disclosures*, AASB 116 *Property, Plant and Equipment* and AASB 117 *Leases*
- unrecognised commitments under AASB 12 *Disclosure of Interests in Other Entities*.

The disclosures required by para 18 must be made separately for each of the following categories:

- the parent
- entities with joint control of, or significant influence over, the entity
- subsidiaries
- associates
- joint ventures in which the entity is a joint venturer
- KMP of the entity or its parent
- other related parties (AASB 124 para 19).

AASB 124 para 24 allows items of a similar nature to be disclosed in aggregate, except where separate disclosure is necessary for an understanding of the effects of related party transactions on the financial statements of the reporting entity.

4.2.2 Government-related Entities

AASB 124 para 25 exempts a government reporting entity from AASB 124 para 18 disclosure requirements (see section 4.2.1) in relation to related party transactions and outstanding balances with other entities that are controlled or jointly controlled or significantly influenced by the NSW Government.

Para 25 exemptions only apply to transactions with government-related entities rather than transactions with persons (e.g. KMP of the parent are not exempted).

For transactions and outstanding balances with government-related entities, AASB 124 para 26 requires a reporting entity to disclose:

- name of the government (i.e. NSW Government);
- nature of its relationship with the government (e.g. controlled entity of the NSW Government);
- the following information in sufficient detail to enable users of the entity's financial statements to understand the effect of transactions on its financial statements:
 - nature and amount of each individually significant transaction; and
 - for other transactions that are collectively, but not individually significant, a qualitative or quantitative indication of their extent. Types of transactions include those listed in AASB 124 para 21 (see Section 4.3).

Individually significant transactions should be a small subset, by number, of total related party transactions (AASB 124 para BC22 and IG14).

For transactions with government-related entities that are collectively, but not individually, significant, AASB 124 permits reporting entities to choose whether to describe the effect of the transactions qualitatively or quantitatively. For consistency, Treasury is requiring agencies to describe such transactions qualitatively. This approach is supported by AASB

124 para BC21 which states the intention is “*not to identify every government-related entity or to quantify in detail every transaction with such entities*”.

Example 1 of the illustrative examples in AASB 124 provides an example of disclosures where the government-related entities exemption has been applied. Caution should be exercised in considering the specific circumstances.

4.3 Materiality

AASB 124 requires management judgment in determining whether a transaction is material for disclosure in its financial statements. A transaction can be material by either size or nature.

For example, a transaction at a nominal amount (such as a peppercorn lease) may be insignificant in amount, but is likely to be material by nature (a non-citizen transaction of value) and therefore requires disclosure.

An entity should apply AASB 101 *Presentation of Financial Statements* and AASB 108 *Accounting Policies, Changes in Accounting Estimates and Errors* when assessing materiality for disclosure purposes.

Transactions that are in common with the general public in the course of delivering an entity’s public service objectives and that are entered into under the same terms and conditions as a public citizen are unlikely to require disclosure (AASB 124 para BC17 and IG11). Examples include:

- paying taxes, stamp duty, levies, fines or any other statutory charges
- receiving tax refunds or rebates
- using public services (such as public swimming pools, schools, hospitals, transport etc.)
- payments for electricity, water and other utility services
- renewing licences and registrations

Further, AASB 124 para 27 provides a list of factors that may also assist an entity in determining materiality. Due to the nature of related party transactions, more weight is given to qualitative factors of the transactions such as the closeness of the related party relationship in establishing the level of significance of the transaction.

Overall, an entity should consider, on balance, the range of factors in AASB 124 para 27, as well as any relevant factors, in determining the extent of disclosure required. In some instances, the presence of a single factor will not be sufficient to inform the entity of the level of individual or collective significance of the transaction (AASB 124 para IG13).

AASB 124 para 21 lists examples of transactions that are disclosed if they are with a related party and determined material:

- purchase or sale of goods (finished or unfinished)
- purchase or sale of property and other assets
- rendering or receiving services
- leases
- transfers of licence agreements, research and development, finance arrangements
- provision of guarantees and collateral
- commitment to do something if a particular event occurs or does not occur in the future (including executory contracts)
- settlement of liabilities on behalf of the entity or by the entity on behalf of that related party

Examples 7 and 8 in the Australian Implementation Guidance of AASB 124 provide further guidance for identifying related party transactions in the public sector.

Treasury requires arm's length transactions only in excess of \$100,000 to be collected. Such transactions should be disclosed by the relevant agency if it is concluded that they are either quantitatively or qualitatively material to the agency's financial statements.

Treasury requires non-arm's length transactions to be collected irrespective of their dollar value. Such transactions should be disclosed by the relevant agency if it is concluded that they are either quantitatively or qualitatively material to the agency's financial statements.

4.4 Other Disclosure Requirements

AASB 124 para 13 requires the following additional disclosures:

- relationships between parent and subsidiaries regardless of whether there have been transactions between them
- name of the reporting entity's parent
- name of the reporting entity's ultimate controlling party (i.e. NSW Government).

Agencies should be cautious while stating in their disclosures that related party transactions were made on terms that prevail in arm's length transactions, as such claims will need to be substantiated (AASB 124 para 23).

There is no requirement in AASB 124 to disclose information about related party transactions in one comprehensive note. The *Financial Reporting Code for General Government Sector Entities* will be updated to reflect best practice disclosure format. SOCs can use the Code as guidance.

No comparatives are required in the first year of application.

5. Practical Implementation Considerations

Ministerial transactions

In respect of related party transactions with Ministers, Treasury is planning to compile the financial report disclosures for agencies from information held/collected centrally. Designated officials from Treasury will work closely with Department of Premier and Cabinet (DPC) in this process.

The disclosure information will be disseminated to relevant agencies to form part of the disclosures in their financial statements. Treasury or DPC may need to make further enquiries of agencies to obtain the information required under AASB 124.

If an agency provides non-monetary benefits to Ministers, they should calculate the monetary value of such benefits and disclose them as 'short-term employee benefits' as part of KMP compensation disclosure in their financial statements. This information should be provided to the Treasury to facilitate disclosure of aggregated non-monetary benefits in TSS annual financial statements.

Non-Ministerial related parties

Agencies should establish appropriate systems, processes and policies to identify related parties (other than Ministers) and collect information on related party transactions. These include:

1. Processes to identify related parties, ensuring this process satisfies the information needs of the preparers of financial reports. Examples:
 - Obtaining an understanding of the agency's relationships and transactions with related parties.
 - Developing a framework that supports the identification, recording and authorisation of related party transactions.
 - Identifying, addressing and disclosing conflicts of interest.
 - Performing specific procedures over those related party transactions that require disclosure or are deemed to be a significant risk.
 - Assignment of responsibilities for identifying, recording and disclosing related party transactions.
 - Whistleblowing policies and procedures to identify conflict of interests.
 - Specific procedures in the HR function to identify potential related party relationships when interviewing and hiring permanent and contractor roles.
 - Requiring staff and major suppliers to complete annual declarations relating to conflicts of interest.
 - Establishing designated individuals or committees who must approve and/or authorise related party transactions.
 - Training and certification by all staff on their understanding and agreement to abide by the agency's related party policies.
2. Processes to collect information required for related party disclosures, including key terms and conditions. Examples:
 - Training executives and other staff likely to encounter or process related party transactions.
 - Compiling a list of related parties to be updated and reviewed at an appropriate interval
 - Steps in procurement and tendering processes to identify related party relationships.
 - Detective controls as part of the vendor and customer master data setup
 - Leveraging existing IT systems to flag related parties, establish triggers for non-routine transactions, evaluate and document arm's length pricing, generate reports for disclosure purposes etc.
3. Completion of self-declarations by KMP where this is considered as an efficient way of collecting information. This should be supplemented by:
 - Policies and procedures to ensure open and timely disclosure of KMP interests.
 - Ongoing communication of policies and setting expectations for compliance.
4. Policies and processes to ensure information is collected for persons who cease to be KMP during the reporting period, for the period they are KMP.

Self-Declaration Checklist

A sample self-declaration checklist for KMP is attached to this Circular (Attachments A to A.5). This can be tailored where necessary. The checklist has been designed to collect information from KMP about related party transactions with them, their close family members and controlled/jointly controlled entities thereof. Agencies will need to verify existing financial information and liaise with KMP to ensure all information required under AASB 124 is collected. For instance, while the checklist asks KMP to provide details of related party transactions, the agency will hold information on any outstanding balances.

Attachment A.5 to the checklist comprises a schedule of defined terms. It is important to note these defined terms have been developed for the purposes of the checklist only, and combine definitions from AASB 124 with practical expedients determined by Treasury.

For practical reasons, Treasury has determined that the following transactions are unlikely to be considered material, thus, agencies are not required to collect or disclose in respect of their KMP:

- Transactions in common with the general public (see section 4.3)
- Transactions involving estranged children or spouses/domestic partners
- Close family members who are employed by a NSW government agency unless they are employed in a 'senior position' at any time during the reporting period. 'Senior position' is a 'senior executive' (whether permanent or temporary) under the *Government Sector Employment Act 2013* (or equivalent legislation).

Other considerations:

- Collaborate with other agencies within your Group (i.e. parent, subsidiary, fellow subsidiary etc.) in identifying related party transactions. For instance a KMP of the parent is a related party to all its controlled entities.
- Collaborate with other agencies within your cluster as these are more likely to have common KMP.
- Involve your auditors early, especially when identifying KMP and related parties; and developing a robust, data collection process.
- Document areas of judgement, including decisions and rationale on:
 - whether transactions are material;
 - the extent and classifications of aggregation in disclosures; and
 - other information included in disclosures.
- Consider to what extent your agency is required, permitted or prohibited under law to collect, disseminate and report information e.g. *Government Information (Public Access) Act 2009*, *Privacy and Personal Information Protection Act 1998*, *Public Finance and Audit Act 1983* and other statutes which your agency administers. This could require:
 - consent from concerned parties for use and disclosure of information;
 - policies on security and protection from loss, misuse, unauthorised access, modification or destruction of information;
 - compliance with applicable data protection and privacy legislation requirements;
 - consideration of confidentiality arrangements that the agency enters into; and
 - legal advice to assist on any of the above
- Ensure information collected is secure and access is restricted.
- Apply judgement when determining the extent of information your agency will need from related parties to meet the objectives of AASB 124. There is little value in an entity incurring significant costs to obtain data that is not material for disclosure (AASB 124 BC17).
- Processes for monitoring and collecting related party information should not be limited to a year-end exercise. Processes should be in place and regularly monitored throughout the year.

Attachment A

Related Party Certificate Factsheet for the period 1 July 2016 to 30 June 2017

1. Why we are doing this

The Australian Accounting Standards Board recently extended the scope of Australian Accounting Standard AASB 124 *Related Party Disclosures* (AASB 124) to include not-for-profit public sector entities.

All public sector entities will be required to disclose related party transactions and outstanding balances in their annual financial statements, in the same way as for-profit public sector and private sector entities. For not-for-profit public sector entities, these requirements apply from the annual financial reporting period beginning 1 July 2016.

This will mean that every NSW public sector entity will need to disclose, in their annual financial statements, 'material' transactions and balances outstanding with:

- Key Management Personnel¹ (KMP)
- Close family members² of KMP, and
- Entities controlled/jointly controlled by KMP or their close family members.

This certificate has been developed to enable compliance with AASB 124 disclosure requirements.

2. What information will be collected?

This certificate requires each KMP to:

- provide details of relationships with close family members, and entities controlled/jointly controlled by yourself and/or your close family members; and
- answer questions aimed at:
 - (a) understanding the types of transactions:
 - each KMP and/or
 - close family members of the KMP and/or
 - entities controlled/jointly controlled by the KMP or close family membersmay have entered into with **[NAME OF THE AGENCY]** during the year.
 - (b) identifying outstanding balances at year end involving **[NAME OF THE AGENCY]** and the KMP/ their close family members/ controlled or jointly controlled entities.

You will not be required to provide information about transactions that are 'in common with the general public'. Attachment A.5 provides guidance to assist you in determining whether a transaction is in common with the general public.

If you have answered 'yes' to any of the questions in Attachment A.2, you will need to provide further details about each transaction.

This certificate will require you to declare that the information provided is accurate and complete to the best of your knowledge. It will also require you to ask your close family members about their activities with **[NAME OF THE AGENCY]**.

¹ 'Key Management Personnel' is a defined term meaning those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly.

² 'Close family members' is a defined term. For definition, please refer to Attachment A.5 of the Certificate.

Where you have disclosed information in the certificate relating to a family member, he/she will need to consent to the provision of information. To demonstrate their consent, each family member mentioned in the certificate will need to complete and sign the consent form at Attachment A.4. The form should to be returned along with the rest of the certificate.

3. Certification process

Any person who was a KMP at any time between **1 July 2016** and **30 June 2017** is to complete and return the Certificate by **[DUE DATE]**.

The certificate should be returned to **[TO BE DETERMINED]** at: [insert email and contact details].

4. How the information provided is used

Not all information provided in the certificate will be disclosed in the financial statements. This is because the accounting standards require entities to disclose only 'material' related party transactions and outstanding balances. Materiality is subject to professional judgement and goes beyond the dollar value of the transaction/balance.

Further, information provided might be incorporated into disclosures that aggregate a number of transactions, rather than disclosed separately.

The certificate requests disclosure of all known transactions with **[NAME OF THE AGENCY]** during the period covered by the certificate. If you are unsure whether a close family member or a controlled/jointly controlled entity has had transactions with **[NAME OF THE AGENCY]**, *we strongly recommend you include their details in the certificate for completeness.*

Due to the sensitive nature of collected information, a secure process will be in place to:

- review, assess and filter the information provided; and
- maintain confidentiality of the information

Attachment A.1

KMP – Certificate for 1 July 2016 to 30 June 2017

1. Close Family Members

Please provide details of all your close family members.

Please refer to Attachment A.5 for definition of 'close family member'.

Insert additional rows where applicable.

First Name	Last Name	Date of Birth	Relationship to You

2. Entities controlled/jointly controlled by yourself and/or your close family members

Please provide details of all entities controlled /jointly controlled by either yourself or your close family members.

Please refer to Attachment A.5 for definition of 'entity controlled or jointly controlled'.

Insert additional rows where applicable.

Entity Name	ABN	ACN (if applicable)	Nature of Interest

Attachment A.2

KMP – certificate for 1 July 2016 to 30 June 2017

Please complete the following table to the best of your knowledge. If you are unsure whether a close family member or a controlled/ jointly controlled entity had transactions with **[NAME OF THE AGENCY]**, we strongly recommend you include their details for completeness.

	Question	Question Response		Guidance	KMP Sign-off
		Yes	No		
	During the stated period, in respect of [NAME OF THE AGENCY]:				
1	Were any of your close family members employed in a senior position?			If you have answered 'yes', please complete Attachment A.3. Please refer to Attachment A.5 for definition of 'close family member' and 'senior position'.	
2	Did you/ a close family member/ any entity controlled/jointly controlled by you and/or a close family member have any transaction or arrangement on terms or conditions that were more favourable than those entered into at an arm's length?			If you have answered 'yes', please complete Attachment A.3. Please refer to Attachment A.5 for definition of 'entity controlled or jointly controlled'.	
3	Did you/ a close family member/ an entity controlled or jointly controlled by you and/or a close family member receive any grants, subsidies, ex-gratia payments or loans?			If you have answered 'yes', please complete Attachment A.3.	
4	Did you/ a close family member/ an entity controlled or jointly controlled by you and/or a close family member have any debts forgiven or partially forgiven?			If you have answered 'yes', please complete Attachment A.3.	
5	Did you/ a close family member/ an entity controlled or jointly controlled by you and/or a close family member provide or receive any collateral, guarantee, indemnity or commitment (including executory contract)?			If you have answered 'yes', please complete Attachment A.3. Please refer to Attachment A.5 for definition of 'guarantee' and 'executory contract'.	
6	Did you/ a close family member/ an entity controlled or jointly controlled by you and/or a close family member enter into any contractual arrangements to purchase, sell, lease or transfer assets and licenses; or to provide, purchase or transfer goods and services with a total contract value greater than \$100,000 (excl. GST)?			If you have answered 'yes', please complete Attachment A.3.	
7	Are there any outstanding balances above \$100,000 (excl. GST) brought forward from a transaction or arrangement entered into prior to 1 July 2016, between you/ a close family member/ any entity controlled/jointly controlled by you and/or a close family member and [NAME OF THE AGENCY] ?			If you have answered 'yes', please complete Attachment A.3.	

KMP SIGN-OFF AND DECLARATION: I have made inquiries of my close family members and to the best of my knowledge; the information provided in this Certificate is complete and accurate for the period 1 July 2016 to 30 June 2017. I understand this information is collected for the purpose of preparing note disclosures for inclusion in the financial statements of **[NAME OF THE AGENCY]**.

Print and Sign Name:

Position:

Date:

Attachment A.3

Transactions for 1 July 2016 to 30 June 2017

Please complete the table below for each individual transaction that has, or may have, occurred during the stated period; and outstanding balances brought forward from previous period (i.e. prior to 1 July 2016 and still outstanding). If you are unsure of a transaction we *strongly recommend* that you include them in the table for completeness. Where you are unsure please state that you are unsure. If additional space is required, please insert additional pages.

	Transaction 1	Transaction 2	Transaction 3
Type of transaction <i>Please provide details and nature of the transaction. Example of types of transactions</i> <ul style="list-style-type: none"> - Employment - Provision of goods (finished or unfinished) or services - Purchase, sale or transfer of property, other assets or licenses - Leasing arrangement - Provision of guarantee or collateral - Settlement of liabilities - Outstanding balance brought forward from prior financial period relating to transactions in a prior financial period 	e.g. Provision of cleaning services	e.g. Received personal loan in August 2016.	e.g. Employment.
Is the transaction/outstanding balance directly between <u>you</u> and the [NAME OF THE AGENCY]? Yes/No	e.g. No	e.g. Yes	e.g. No
If not, please provide details of the related party, their relationship with you, and [NAME OF THE AGENCY] involved <i>Please provide details of: person's name, entity name and ABN/ACN (if applicable), relationship with person and/or entity.</i>	e.g. <ul style="list-style-type: none"> • John Smith – spouse, • ABC Ltd – cleaning company owned by my spouse • ABN: 12 345 345 345 	e.g. N/A	e.g. My spouse is a General Manager, Operations.
Transaction Amount (relating to the stated period) excl. GST	e.g. \$100,000	e.g. Received \$20,000 loan. Paid \$1,000 of interest repayments.	e.g. General Manager salary with standard employment benefits.
Total Agreed/Contracted Amount (if it extends beyond stated period) excl. GST	e.g. \$500,000 - over 5 years.	e.g. \$20,000 one-off loan – repayable over 5 years.	e.g. Unsure.
Terms and Conditions of the Transaction <i>Please provide details of the significant terms and conditions including whether it is secured, and the nature of the consideration to be provided in settlement.</i>	e.g. <ul style="list-style-type: none"> • Won through open tender • Standard terms • Unsecured • Settlement by bank transfer 	e.g. <ul style="list-style-type: none"> • Application assessed against loan eligibility criteria (standard terms) • Variable interest rate & unsecured • Settlement by bank transfers • Option to refinance 	e.g. Recurring contract with CPI and performance-based adjustments each year.

Attachment A.4

Close Family Members - Consent Form

[To be completed by each family member whose information is disclosed in this certificate. If additional copies of the form are required, please make copies for each close family member].

I authorise [insert KMP's name] to provide personal information about me in respect of transactions between me, or entities controlled/ jointly controlled by me, and **[NAME OF THE AGENCY]**.

For the purposes of s26(2) of the *Privacy and Personal Information Protection Act 1998*, I hereby consent to **[NAME OF THE AGENCY]** collecting, using and disclosing my personal information for the purposes of meeting its financial reporting obligations.

Full Name (print):

Signature:

Date:

For your information:

If you wish to access the information provided in the certificate, or make changes to it, please contact **[NAME OF THE AGENCY]** at [insert principal location and email address].

A full copy of the *Privacy and Personal Information Protection Act 1998* can be accessed at the NSW Legislation website: <http://legislation.nsw.gov.au/>

Attachment A.5

Defined terms for the purposes of the KMP Certificate

1. **Key management personnel** (KMP) is a defined term meaning those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly.
2. **Close family members** is a defined term meaning those family members who may be expected to influence, or be influenced by, your dealings with **[NAME OF THE AGENCY]**. It includes, but is not limited to:
 - your children
 - your spouse or domestic partner
 - children of your spouse or domestic partner
 - dependants of you, and
 - dependants of your spouse or domestic partner.

'Children' include step, adoptive, dependant, non-dependant, adult children and children not living at home (unless they are estranged).

'Spouse or domestic partner' includes married, de facto, civil union partnerships, but excludes separated or divorced spouses or partners.

'Dependants' are any family members who are financially supported by you or your spouse or domestic partner and may include elderly dependants or disabled family members.

Close family members excludes siblings, parents and other extended family, unless they may be expected to influence, or be influenced by, your dealings with **[NAME OF THE AGENCY]**. This may arise where they are a dependant as defined above, living in your household or where you have shared business interests.

If you are unsure whether a person is a close family member under this definition, we strongly recommend you include their details in the Certificate for completeness.

3. An entity is **controlled or jointly controlled** typically when you and/or any close family members exercise effective control (whether singularly or combined) through the shareholding and/or voting power in the entity.

Examples of entities controlled or jointly controlled by you and/or any close family members could be:

- A company where you and/or close family members control more than 50% of the voting power
- A company where you have a 30% shareholding and your spouse has a 30% shareholding
- A company where you have a 40% shareholding and the remaining shareholding is widely dispersed
- A partnership of two people where your spouse is one of the partners
- A superannuation fund self-managed by you or your spouse (including through a corporate trustee)

Examples of entities not controlled or jointly controlled by you and/or any close family members could be:

- A company where you have a 25% shareholding and your spouse has a 5% shareholding
- A partnership of three people where your spouse is one of the partners
- A large consultancy practice with multiple partners where your son is a partner
- Blind trusts

4. **Senior position** is any person employed (permanent or temporary) as a 'senior executive' under the *Government Sector Employment Act 2013* (or equivalent legislation) anytime during the financial year.

5. **Transactions or arrangements or business dealings** exclude any transactions that are in common with and on the same terms as the general public, but may include:
- purchase or sale of goods (finished or unfinished)
 - purchase or sale of property and other assets
 - rendering or receiving services (including employment)
 - contractual arrangements including leases
 - property and other asset transfers
 - licensing arrangements and transfers
 - loans, guarantees, debt forgiveness and collateral arrangements
 - grants, subsidies and ex gratia payments
 - commitments to do something if a particular event occurs or does not occur in the future (including executory contracts)
6. **Transactions in common with the general public** are excluded from this certification. These transactions are where you and/or close family members interact with **[NAME OF THE AGENCY]** under the same terms and conditions as a public citizen in respect of transactions in the normal course of **[NAME OF THE AGENCY]** delivering its normal public service objectives. Examples of transactions common to the general public are:
- [Please list examples that are specific to your agency. Refer to the Treasury circular for common examples in NSW public sector.]**
7. A **guarantee** is a legally binding promise whereby one party assumes responsibility for the debt or performance obligation of another party should that party default in some way.
8. An **executory contract** is a contract under which neither party has performed any of its obligations nor both parties have partially performed their obligations to an equal extent.