



2004

PARLIAMENT OF TASMANIA

**AUDITOR-GENERAL
SPECIAL REPORT NO. 51**

**SPECIAL PURPOSE AND TRUST
FUNDS: DEPARTMENT OF HEALTH
AND HUMAN SERVICES**

August 2004

*Presented to both Houses of Parliament in accordance with the provisions of Section 57 of the
Financial Management and Audit Act 1990*

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24 August 2004

President
Legislative Council
HOBART

Speaker
House of Assembly
HOBART

Dear Mr President
Dear Mr Speaker

**PERFORMANCE AUDIT NO. 51
SPECIAL PURPOSE AND TRUST FUNDS:
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

This report has been prepared consequent to examinations conducted under section 44 of the *Financial Management and Audit Act 1990*, for submission to Parliament under the provisions of section 57 of the Act.

Performance audits seek to provide Parliament with assessments of the effectiveness and efficiency of public sector programs and activities, thereby identifying opportunities for improved performance.

The information provided through this approach will, I am sure, assist Parliament in better evaluating agency performance and enhance Parliamentary decision making to the benefit of all Tasmanians.

Yours sincerely



H M Blake
AUDITOR-GENERAL

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FOREWORD

The Department of Health and Human Services is responsible for the administration of four special purpose and trust (SP & T) funds. The four funds are Donations Funds, Research and Industry Funds, Legal Trust Funds and Private Patients Funds, which are mainly found in the State's public hospitals. This audit did not include management of the Private Patients Funds. The three funds that we did review comprised 289 accounts that at 31 January 2004 held \$7.4 million.

Principles of good management should ensure that these funds are kept separate from the Department's Operating Account so as to avoid confusion on how to manage revenues into and expenditures from these funds. It is essential that transactions involving SP & T accounts be in keeping with the terms and conditions determined when establishing the accounts.

A previous audit of these funds conducted in 1997/98 noted problems in their administration. Since that time the management of Hospitals has been transferred from separate Boards to the Department.

This audit showed that there has been considerable improvement in the management of the SP & T funds. However, we identified a need for greater support for staff responsible for some aspects of managing SP & T accounts, particularly those in outlying areas, and we also noted that some journal entries lacked supporting documentation and an inability to locate original documentation in some instances.

We found no evidence of SP & T funds being used inappropriately.

The Department has accepted the eight recommendations contained in this report and has agreed to progressively implement them.

H M Blake

Auditor-General

August 2004

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Executive summary

EXECUTIVE SUMMARY

INTRODUCTION

The Department of Health and Human Services (DHHS or the Department) is responsible for the administration of various special purpose and trust (SP & T) funds that mainly centre on the public hospitals. Within each of the SP & T funds there are accounts that function as cost centres for particular projects within the Department's general ledger.

Broad principles that apply to the operation of SP & T accounts are:

- They should be kept separate from the Operating Account so that they are not available for operating purposes;
- Hospitals should segregate into a separate fund all monies and transactions relating to receipts, expenditure and dealings in trust monies that have no bearing on the Department's financial position in respect to its general Operating Account;
- The Operating Account should at all times disclose the true operating and financial position of the Department; and
- Expenditure of SP & T funds must be in keeping with the terms and conditions determined when establishing the account.

OBJECTIVE

The audit's objectives were to: -

- Examine the Department's compliance with applicable legislation together with its own internal guidelines; and
- Ensure SP & T monies are being collected, held and expended correctly.

SCOPE

Our audit examined the management and control of three of the four SP & T fund types held within DHHS. The audit did not consider the Private Practice Scheme fund.

The timeframe covered by the audit related to the 2002 - 03 and 2003 - 04 financial years.

AUDIT OPINION

Classification of SP & T funds

Procedures currently in place for the creation of SP & T funds have led to improvements. We did not find evidence of duplication in donation or research and industry funds.

However, standards of documentation were unsatisfactory with respect to:

- Supporting documentation for journal entries; and
- Original documentation for some accounts.

Accountability for SP & T funds

Controls in respect of revenue and expenditure were functioning properly. However, there needs to be greater support for staff in some aspects of managing SP & T accounts, particularly those:

- In outlying areas of the Department; and
- Handling cash on behalf of residents of State-run homes without legislative sanction.

Management of SP & T funds

Management reporting and review of SP & T accounts was satisfactory. However, the extent to which fund managers acted on the reports was questionable in one respect (see the following paragraph).

Cessation of SP & T accounts

We found evidence that the Department had moved to close accounts although it appeared that more remained to be done.

MANAGEMENT RESPONSE

The Department of Health and Human Services (the Department) is committed to ensuring that all accounts within the Special Purpose and Trust (SP & T) funds are managed appropriately and meet all legislative requirements. The issues that you have raised in your report in the following sections concerning the status and operation of a number of accounts will require some time to resolve and a significant resource commitment from the Department. Whilst on the surface the issues appear straight forward, they will require thorough investigation by the Department to ensure that any action taken is appropriately justified and substantiated.

D Smith for J Ramsay

Secretary

Department of Health and Human Services

SUMMARY OF RECOMMENDATIONS

The following table reproduces the recommendations contained in the body of this report.

Rec No	Report section	Recommendation
1	1.1	There should be adequate supporting documentation on journal entries to verify the need for the adjustment.
2	1.2	The Department should review SP & T fund documentation to ensure that it is available and complete.
3	2.1	Corporate Finance should closely support staff responsible for administering SP & T accounts in outlying parts of the Department.
4	2.2	The Department should investigate amending current legislation to protect staff who have to handle cash on behalf of residents of State-run homes.
5	2.2	The Department should ensure that fee-for-service revenue is classified as operating revenue and not credited to SP & T funds.
6	4.1	The Department should review those SP & T funds with zero balances and close those whose original purpose has been fulfilled or where no more transactions are anticipated.
7	4.2	The Department should encourage trustees to ‘actively but appropriately’ fulfil terms of trusts under their control.
8	4.3	The Department should review those SP & T accounts whose original purpose no longer exists with a view to determining an ‘as near as may be’ equivalent activity.

LIST OF ACRONYMS AND ABBREVIATIONS

Department	Department of Health and Human Services
DHHS	Department of Health and Human Services
MPHC	Multi-purpose Health Centre
RHH	Royal Hobart Hospital
SDTF	Special deposits and trusts fund
SP & T	Special purpose and trust [funds / accounts]

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Introduction

INTRODUCTION

BACKGROUND

The *Public Account Act 1986* (the Act) provides the legislative framework for the Tasmanian Government's financial operations. The Public Account comprises two separate Funds, the Consolidated Fund and the Special Deposits and Trust Fund (SDTF).

The SDTF consists of a number of individual accounts designated for particular purposes. The Act gives the Treasurer authority to establish these accounts, to prescribe the purpose for which they may be used and to attach conditions to their operation.

The Department of Health and Human Services (the Department) is responsible for the administration of various special purpose and trust (SP & T) funds that mainly centre on the state's public hospitals. Within each of the SP & T funds there are accounts that function as cost centres for particular projects within the Department's general ledger. Authority to draw on SP & T monies is vested in particular individuals whose names and positions are recorded when the account is established. Collectively, these accounts are sometimes referred to as 'trust funds' although this terminology is misleading because the funds are not always in the nature of legal trusts. Actually, accounts exist in four categories:

- Donation funds;
- Research and industry funds;
- Legal trusts; and
- Private patients scheme funds.

Definitions and examples of these categories are given below.

Donations (Fund 614)

Donations may be either conditional or unconditional. A conditional donation occurs where the donor stipulates that the funds should be used either for a special purpose or in some particular manner. Funds that have been donated free of encumbrances can be used for the absolute use or benefit of the Department and are classified as unconditional donations and are paid into the operating account.

Donations are usually derived from general gifts to the hospital, grants, bequests, legacies and fundraising. Money can also be generated through a variety of fundraising activities, including:

- Raffles;
- Competitions;
- Sponsorship in connection to an event such as a fun run, telethon, or similar such event; and
- In connection to the supply of food, entertainment or other goods or services.

Some examples of donations accounts and relevant details are shown below in Table 1.

Table 1: Examples of Donations Accounts

Title	Balance	Description
Grants in aid - Novartis	\$26 826.16	For use of clients on 'Clozapine' drug: For annual camps, gym costs etc.
Unconditional donations and bequests	\$4 585.99	For general use at RHH from various unconditional donations and bequests.
King Island MPHC* Entrance Contribution	\$168 063.68	Accommodation bonds / charges deposited by clients entering the King Island *Multi-Purpose Health Centre aged care facilities.

Research and industry funds (Fund 615)

Research and industry funds include grants from third parties (such as drug companies, institutions or other interested bodies) and are used for specific research projects conducted within hospitals using the Department's resources, including staff.

To be classified as a research fund the account must relate to an authorised research project, which has been subject to appropriate internal controls and procedures, such as the Hospitals and Ambulance Service Research and Ethics Committee.

Industry funds are similar to research funds, they are received from the private sector, however, the money is not given to fund research or as a donation. This classification is used where money is received from private industry and needs to be held

separately but does not constitute a donation or research grant, e.g. the sponsorship of a program or initiative.

Some examples of research and industry accounts and relevant details are shown below in Table 2.

Table 2: Examples of Research and Industry Accounts

Title	Balance	Description
MAIB Injury and Trauma Research	\$36 553.05	Assessment and improvement of road trauma. To be spent on salaries, equipment etc..
Atorvastatin Study	\$161 092.38	Drug research
Hobart Private Hospital Franchise Fee	\$1 300 709.45	Monies received from Hobart Private Hospital to be used for teaching, education and research at the RHH.

Legal trusts (Fund 720)

Legal trusts are funds that have been bequeathed or donated either under an express trust or on the basis that they are utilised as specified by the accompanying trust deed. For money to be considered part of a legal trust the following elements must be present:

- A trustee exists;
- Trust property is identifiable;
- Trust is of a charitable nature;
- A beneficiary or specific purpose has been identified; and
- An obligation exists that the trustee deals with the trust property for the benefit of the beneficiaries, or in the manner specified by the donor.

Legal trusts generally exist where a trust deed is present or a bequest has been made under a will, however each case will depend on its own facts.

The Crown holds these funds on trust and such funds cannot be used at the discretion of the Department. Funds must be used for the purposes of the trust or benefit of beneficiaries,

and in accordance with the trust deed (if any) and any duty imposed by statute or the principles of law and equity.

If funds that are spent on purposes contrary to the terms of the trust deed or condition under which they were given, it would constitute a breach of trust or give rise to an obligation to make compensation.

Some examples of legal trusts and relevant details are shown below in Table 3.

Table 3: Examples of Legal Trust Accounts

Title	Balance	Description
James Ramsay Trust	\$10 000.00	Interest used to purchase books
Enid & Katherine Lade Memorial Library	\$4 538.11	Used to purchase books and magazines
Midlands MPHC Capital Reserve account	\$363 129.96	Retained amounts from accommodation account for use on capital works (required by the <i>Aged Care Act 1997</i>)

Private patients scheme (Fund 750)

Funds of this type are used to hold doctors' fees from private practice clinics.

At the time of our audit, these funds were the subject of a joint review by the Department, the Australian Taxation Office and PricewaterhouseCoopers.

Operation of SP & T funds

Broad principles that apply to the operation of SP & T funds are:

- They should be kept separate from the Operating Account so that they are not available for operating purposes;
- Hospitals should segregate into a separate fund all monies and transactions relating to receipts, expenditure and dealings in trust

monies that have no bearing on the Department's financial position in respect to its general Operating Account;

- The Operating Account should at all times disclose the true operating and financial position of the Department; and
- Expenditure of SP & T funds must be in keeping with the terms and conditions determined when establishing the account.

Information about account balances in the SP & T funds is shown below in Table 4. The table also details the largest individual account balance and averages in each category. In each of the funds we found accounts with zero balances.

Table 4: SP & T Account Balances

Fund	Title	No	Balance at 31 January 2004
614	Donations	149	\$2 275 237.73
<i>Largest account / Ave</i>			<i>(\$168 063.68 / \$15 270.05)</i>
615	Research	82	\$3 658 958.75
<i>Largest account / Ave</i>			<i>(\$1 300 709.45 / \$44 621.45)</i>
720	Legal trusts	58	\$1 483 315.22
<i>Largest account / Ave</i>			<i>(\$363 129.96 / \$25 574.40)</i>
	TOTAL	289	\$7 417 511.70

Previous problems with SP & T funds

On 1 July 1997 the Department of Community and Health Services (forerunner of the current DHHS) assumed control of the three former Regional Health Boards and became responsible for the assets and liabilities of those entities. Until that time, financial transactions of the Regional Health Boards had been managed outside the Public Account in accordance with the legislative framework of the time. After the Boards were subsumed into the Department, it was necessary for all financial activities to be managed and recorded through the

Public Account as required by the *Financial Management and Audit Act 1990*.

Treatment of SP & T funds that had been under the control of the Boards was subsequently found to have been poorly managed and in his report to Parliament (*Government Departments and Public Bodies 1997-1998*), the Auditor-General issued a qualified audit report in respect of the then Department of Community and Health Services. In brief, monies held in the SP & T funds were paid into the Operating Account with cash backing held just for those accounts where a written trust deed existed.

However, this interpretation was overturned by legal advice, obtained in November 1998, indicating that monies donated for a specific purpose should be regarded as trust funds and accounted for as such.

Consequently, the Department identified \$24.9m of outstanding obligations in respect of SP & T funds as at 30 June 1998. In spite of this, the Department's cash balance at that time was insufficient (by a considerable margin) to cover the amounts that should have been held in trust.

Since that time the cash backing has been restored and the Department has issued guidelines to assist in the correct operation of accounting transactions for SP & T funds.

MANDATE

Section 44(a) of the *Financial Management and Audit Act 1990* states that the Auditor-General may:

‘at any time conduct any investigation that the Auditor-General considers necessary concerning any matter relating to the accounts of the Treasurer, a Government department, or a public body or to public money, other money or money of a statutory authority or to public property or other property’.

STANDARDS APPLIED

This audit has been performed in accordance with Australian Auditing Standard AUS 806 (*Performance Auditing*), which states that the objective:

‘... is to enable the auditor to express an opinion whether, in all material respects, all or part of an entity's activities have been carried out economically, and/or efficiently and/or effectively.’

The audit has included such tests and other procedures considered necessary in the circumstances.

OBJECTIVE

The audit's objectives were to: -

- Examine DHHS's compliance with applicable legislation and with its own internal guidelines; and
- Ensure SP & T funds are being collected, held and expended correctly.

SCOPE

Our audit examined the management and control of three of the four SP & T fund types held within DHHS. Due to the reasons outlined earlier the audit did not consider the Private Practice Scheme fund.

The timeframe covered by the audit related to the 2002 - 03 and 2003 - 04 financial years.

CRITERIA

Four audit criteria were applied:

- Classification – coding of accounts, restrictions on usage, duplication of accounts;
- Accountability – proper reconciliations and controls on revenue and expenditure;
- Management – information reported about the SP & T funds; and
- Cessation – accounts finalisation.

AUDIT METHODOLOGY

The audit opinion was formed as a result of:

- Discussions with staff and management;
- Review of reports, policies and procedures; and
- Sample testing of accounts.

The sample testing involved a judgment sample of accounts across the three types of SP & T funds that we reviewed. This work concentrated on transactions in the financial years 2002 – 2003 and 2003 – 2004.

TIMING

Planning of the audit commenced early in January 2004. The field work was conducted from late January through to May. Drafting of this report was completed in July 2004.

RESOURCES

The total cost of the audit excluding report production costs was approximately \$61 000.

REVIEWS AND AUDITS IN OTHER JURISDICTIONS

In November 2002 the Auditor-General of Western Australia tabled a report titled *Management of Hospital Special Purpose Accounts*. Principal findings were:

- The Commissioner of Health (as the accountable authority for the four teaching hospitals) needed to:
 - Develop a comprehensive policy and administrative framework for the management of SP & Ts; and
 - Set a timetable for hospitals to implement these policies and frameworks. Ensure the revised arrangements put in place by the hospitals were progressively reviewed for compliance during this implementation process.
- WA hospitals needed to:
 - Ensure that policies, associated frameworks and business rules were implemented with variations only being made to suit specific or unique circumstances; and
 - Review existing financial control structures, systems and practices to ensure compliance with the requirements of the *WA Financial Administration and Audit Act 1985* and other applicable legislation governing the operation of the hospitals.

ACKNOWLEDGEMENT

In preparing this report we have occasionally drawn on legal advice from Crown Law and I thank that Office for its cooperation and assistance.

1 Classification of SP & T Funds

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

This section of the report deals with our findings, conclusions and recommendations made in relation to the previously stated audit criteria.

1 CLASSIFICATION OF SP & T FUNDS

In considering the classification of SP & T funds we sought to verify:

- **Correctness of coding of existing accounts;**
- **Original documentation regarding purpose and conditions of accounts held;**
- **Appropriate authorisation given to open new accounts; and**
- **Whether there were any duplicated accounts.**

1.1 CORRECTNESS OF CODING

A sample of 40 (13.8%) transactions was selected from the 289 accounts contained in the ledgers for the three types of SP & T funds. Testing covered the period of from 1 July 2002 to 31 March 2004.

From 2002 - 2003, 20 transactions were tested of which 10 (50%) were journal entries that had no supporting documentation. We found this to be unsatisfactory, as we were unable to determine if the expenditure or receipt was in accordance with the purpose and terms/conditions of the fund.

There was an improvement in the results during 2003 - 2004 with 2 out of 20 transactions (10%) failing the criteria. We were unable to determine if the expenditure in those two transactions was in accordance with the stated purpose of the funds. This is again an unsatisfactory result.

Recommendation 1

There should be adequate supporting documentation on journal entries to verify the need for the adjustment.

DHHS response:

‘The Department’s processing controls have been tightened in recent years to ensure all transactions are in accordance with the purpose of the accounts. This includes ensuring that journal narrations are clear and precise, that they are substantiated by supporting documentation (or if more practical, an appropriate audit trail exists to where the source documentation is held) and they are properly authorised by an officer with appropriate delegated authority.’

1.2 ORIGINAL DOCUMENTATION HELD REGARDING PURPOSE AND CONDITIONS OF ACCOUNTS

The original documentation for some funds was not available for audit perusal. It was unclear as to why this was so and it may be that a thorough investigation would bring the records to light. Consequently, we were unable to verify that funds were held in accordance with the terms and conditions of the original documentation.

Responsibility for record keeping of key records, and especially legal documents, should be addressed as a priority. Otherwise, the Department may not be aware of all its obligations or be able to completely discharge its functions in relation to these funds.

Recommendation 2

The Department should review SP & T fund documentation to ensure that it is available and complete.

DHHS response:

‘The present composition of the Department has evolved from the amalgamation and restructure of a number of Government entities and service delivery areas. As the origins of many of the SP & T accounts contained within the funds predate the Department’s current corporate structure, the originating documentation remains spread throughout the Agency. Over recent years, steps have been taken to compile a central record for the accounts in Corporate Finance by tracking down copies of relevant documentation. However, this is a cumbersome task, made even more difficult by the age of many of these accounts and lack of standardised or formal establishment documents. There is still much to do in this area and the Department will continue to actively explore all avenues to ensure SP & T account records are complete.’

1.3 APPROPRIATE APPROVAL TO OPEN NEW ACCOUNTS

The results of this test were satisfactory. All new research accounts for sums greater than \$10 000 are now approved by the Department’s Contract Review Committee.

New donations are normally credited to existing accounts where this is possible.

There is no formal process for approval of acceptance of new legal trust accounts. However, it is incumbent on the Crown to comply with the terms and conditions imposed by the trust deed.

1.4 DUPLICATION OF ACCOUNTS

No duplications were noted in respect of donation or research and industry funds. There was some evidence of duplication among legal

trust accounts, particularly for nursing education at the Royal Hobart Hospital (refer to section 4.3 below).

As explained in the introduction, legal trusts arise from bequests or wills and it is understandable that individuals' choices may coincide. However, the Department is not bound to accept such funds. Moreover, it may also be possible to negotiate altered conditions at the time of the bequest if the stated purpose no longer applied or was likely to change.

1.5 CONCLUSION

Procedures currently in place for the creation of SP & T funds have led to improvements. We did not find evidence of duplication in donation or research and industry funds.

However, standards of documentation were unsatisfactory with respect to:

- Supporting documentation for journal entries; and
- Original documentation for some accounts.

2 Accountability for SP & T Funds

2 ACCOUNTABILITY FOR SP & T FUNDS

We examined a sample of accounts to determine whether they were reconciled and if funds flowing into and out of the accounts was properly controlled.

2.1 CONTROL AND RECONCILIATION OF ACCOUNTS

Funds controlled through the Department's corporate finance office were subject to regular reconciliation.

However, reconciliation of the Royal Derwent Hospital Trust Account was unsatisfactory. There was an anomaly which related to interest not distributed some four years ago about the time of the amalgamation with the Department, and the December 2003 reconciliation was out of balance by \$14 640.60. While the Principal Finance Officer was aware that the Roy Fagan Centre operated a bank account he was not familiar with details of the reconciliation to the trust account.

It is important for effective controls to exist over these funds, particularly where there is little or no supervision. It was noted during this visit that monthly reconciliations were performed regularly and in a timely manner.

Recommendation 3

Corporate Finance should closely support staff responsible for administering SP & T accounts in outlying parts of the Department.

DHHS response:

'The Department's framework for the management of SP & T accounts is as follows.

The Corporate Finance is responsible for the implementation of processes whereby data entered into the Finance System is the highest level of accuracy and reliability achievable.

To achieve this, it is the responsibility of Corporate Finance to:

- Develop and promulgate appropriate SP & T management guidelines;
- Review SP & T transactions in accordance with relevant Department and legislative requirements; and

- Provide quarterly reports to SP & T account managers.

It is the responsibility of Divisional/Business Unit Managers to manage their SP & T accounts in accordance with Departmental and Legislative requirements.

The overall improvement in compliance is a direct result of transaction processing now being centralised in Corporate Finance.’

2.2 REVENUE PROPERLY ACCOUNTED FOR

This criterion involved confirmation that revenue transactions were properly handled and that all revenue due had been received into the accounts. Tests in relation to coding and authorisation were satisfactory.

The Department provides accommodation for people with intellectual disabilities in group homes throughout the state and at the Roy Fagan Centre in Hobart. Staff at these institutions are responsible for managing funds (e.g. pensions and savings) on behalf of residents. The Department has current guidelines that require staff to not only act in the best interests of clients but to also be able to demonstrate that they have done so.

Advice that we obtained from Crown Law suggested that staff handling cash on behalf of residents must have consent of the individual or that of his/her spouse or legal guardian.

Alternatively, there should be legislative protection. Previously, legislation¹ had provided explicit coverage for staff but there appeared to be no current equivalent to the repealed section.

Recommendation 4

The Department should investigate amending current legislation to protect staff who have to handle cash on behalf of residents of State-run homes.

¹ Section 25 *Mental Health Service Act 1973*

DHHS response:

‘The Department is aware of the issue surrounding the absence of statutory authority to manage client funds, and in particular, Disability Services clients.

The policy and procedures currently in place have derived historically from the general duty of care owed by the Department to clients in its care. It is still to be determined within the Department how this issue will be pursued.’

It was noted that some SP & T receipts appeared to be revenue as defined in the *Public Accounts Act 1986*². These examples were:

- Account 42327 (‘Radiation Oncologist Contract’) with a balance of approximately \$142 000 was for fees from private doctors referring patients to doctors at the Royal Hobart Hospital (RHH); and
- Account 42141 (‘Medical Staff Amenities Fund’) with a balance of some \$21 000 which was credited with fee revenue from the issue of death certificates.

Recommendation 5

The Department should ensure that fee-for-service revenue is classified as operating revenue and not credited to SP & T funds.

DHHS response:

‘All fee-for-service revenue must be receipted to a Departmental general revenue account in accordance with the requirements of the *Public Account Act 1986*. Corporate Finance closely monitors all transactions with regard to correct account code, authorisation and justification. Any fee-for-service receipts found to have been allocated to an SP & T account in error, is redirected to Departmental general revenue, consistent with the *Public Account Act 1986*.’

2.3

² Section 8 (5)(ea) *Public Accounts Act 1986*

EXPENDITURE PROPERLY ACCOUNTED FOR

We examined expenditure transactions to ascertain the adequacy of:

- Expenditure classification;
- Authorisation by delegate or Contract Review Committee;
- Alignment with fund conditions; and
- Asset purchases and recording.

The results of these tests were satisfactory.

Only one large asset transaction was noted in testing, a contribution of approximately \$250 000 towards the cost of a linear accelerator for the Holman Clinic at the RHH. This payment was consistent with the terms and conditions of the SP & T account.

2.4 CONCLUSION

Controls in respect of revenue and expenditure were functioning properly. However, there needs to be greater support for staff in some aspects of managing SP & T accounts, particularly those:

- In outlying areas of the Department; and
- Handling cash on behalf of residents of State-run homes without legislative sanction.

3 Management of SP & T Funds

3 MANAGEMENT OF SP & T FUNDS

We tested whether management regularly reviews reports produced for individual trust funds.

3.1 SUMMARY REPORTING OF INDIVIDUAL ACCOUNTS

To determine the extent of management oversight we reviewed summary reports produced for individual trust funds.

Each month the budget officer in charge of the SP & T funds prepares a non-discretionary Budget Report. It discloses the opening balance, receipts, expenditure and closing balance for both the period (usually a month) and year-to-date. According to the type of account, the report also contains details such as donations received, revenue posted and expended for research accounts and similar information for the legal trust accounts.

The report is forwarded to the monthly meeting of the Departmental Executive. Any overdrawn balances are also mentioned in the report.

Management reporting and review of SP & T accounts was satisfactory. However, the extent to which fund managers acted on the reports was questionable in one respect. See Recommendation 6 in section 4.1 regarding SP & T accounts with zero-balances.

4 Cessation of SP & T Accounts

4 CESSATION OF SP & T ACCOUNTS

In relation to SP & T accounts that are - or should be - closed we checked the following:

- **Closures in the previous 12 months;**
- **Stagnant or with small balances/long history; and**
- **Cy pres³ applications to close funds.**

4.1 *ACCOUNTS CLOSED IN THE LAST 12 MONTHS*

Departmental guidelines require SP & T funds with nil balances to be closed. Between June 2002 and April 2004 18 accounts had been closed because they had zero balances and no more moneys - either capital or interest receipts - were due.

However, another 18 accounts with zero-balances were identified during the audit and were queried with management, viz.:

- Fund 614 5 instances;
- Fund 615 5 instances; and
- Fund 720 8 instances.

Advice from the Department indicated that the accounts would be checked to determine their status. We were subsequently advised that where there was no expectation of further receipts and that the funds would be closed in accordance with guidelines.

Recommendation 6

The Department should review those SP & T funds with zero-balances and close those whose original purpose has been fulfilled or where no more transactions are anticipated.

4.2 *ACCOUNTS WITH SMALL BALANCES / LONG HISTORY*

We checked to see whether there were stagnant accounts and reviewed any that had small balances combined with a long history. Eleven donation accounts were noted and their details

³ Refer to section 4.3 for an explanation of this legal term.

provided to the Department for investigation and action as necessary.

During our review, evidence also came to light of a SP & T account that was under-utilised. It was the Orthopaedic Donation Account and was established to fund research in that field. In August 2002 the account had a balance of approximately \$75 000. Examination showed that the only recent expenditure was \$795.45 in February 2003. In the meantime, the combination of interest and further donations saw an increase of \$76 000 in seventeen months that resulted in a closing balance of approximately \$151 000 as at early January 2004.

Pertinent to this situation, advice from Crown Law in 1993 stated:

‘Where the Board is a trustee of funds under a charitable trust it has an obligation at law to fulfil the terms of the trust, to actively but appropriately use the trust funds to fulfil charitable purposes. ... the Board cannot keep trust monies tied up in an investment at the risk of avoiding its responsibilities as trustee.’

Subsequent advice from Crown Law confirmed that the above opinion relates to and binds the Department as it did with the former Board.

In light of the Crown Law advice, it appears that this account is not being used effectively.

Recommendation 7

The Department should encourage trustees to ‘actively but appropriately’ fulfil terms of trusts under their control.

4.3 CY PRES APPLICATIONS TO CLOSE ACCOUNTS

Where a gift is made by will or bequest it sometimes happens that the named recipient of the gift may no longer conduct the activity for which the gift is made or that the organisation itself has dissolved.

Cy pres (from French ‘as near as may be’) is the term used in the law of trusts or of wills to refer to a power that the courts have to, rather than void the document, construct or interpret the will or a trust document ‘as near as may be’ to the actual intentions of the signatory, where a literal construction would give the document impracticable or impossible effect.

Our aim was to check whether there had been any cy pres applications to close legal trust accounts. Advice from Crown

Law was that the *Variation of Trusts Act 1994* could circumvent the need for potentially costly cy pres applications. This legislation allows the Attorney-General to change the purpose of the fund where the cash balance is under \$50 000.

We found no cy pres applications had been made within the period under review. However, there were SP & T accounts whose original purpose no longer existed, e.g.

- Nurse training at the RHH; and
- Bush nursing.

It would be useful to review these, and any other similar, accounts to re-align them with contemporary organisation structures and administrative arrangements.

Recommendation 8
The Department should review those SP & T accounts whose original purpose no longer exists with a view to determining an ‘as near as may be’ equivalent activity.

DHHS response to recommendations 6 – 8:

‘The Department is committed to ensuring that all accounts within the SP & T funds are managed appropriately and meet all legislative requirements. In order to achieve this, the Department is actively reviewing SP & T account records to ensure they are complete and accurate. Associated with this task is the analysis of the ongoing need for each account to determine if there are opportunities to streamline the number of accounts under management.

Part of the scope of this review is to identify accounts that may be closed in accordance with the Department’s SP & T guidelines. This will include accounts with zero-balances that have no expectation of receiving additional funds.

Also, as part of this review, Corporate Finance will remind trustees/account managers of their responsibilities to ensure that they fulfil the terms of the trusts under their control.’

4.4 CONCLUSION

We found evidence that the Department had moved to close accounts although it appeared that more remained to be done. However, the Department pointed out that:

‘although these issues may appear straight forward, they will require thorough investigation to ensure that any action taken is appropriately justified and substantiated’.

5 Recent reports

5 RECENT REPORTS

Below is a list of performance audit reports issued by the Auditor-General since 2000. Details of all performance audit reports are available on our web site at <www.audit.tas.gov.au>. The full text of reports is available for downloading.

2000	SPECIAL REPORT NO. 31	LITERACY AND NUMERACY IN TASMANIAN GOVERNMENT SCHOOLS
2000	SPECIAL REPORT NO. 32	ASSISTANCE TO INDUSTRY
2000	SPECIAL REPORT NO. 33	FOOD SAFETY
2000	SPECIAL REPORT NO. 34	PROCUREMENT IN TASMANIAN GOVERNMENT DEPARTMENTS
2001	SPECIAL REPORT NO. 35	SOFTWARE LICENSING
2001	SPECIAL REPORT NO. 36	COLLECTION OF RECEIVABLES AND LOANS IN TASMANIAN GOVERNMENT DEPARTMENTS
2001	SPECIAL REPORT NO. 37	ARCHIVES OFFICE OF TASMANIA
2001	SPECIAL REPORT NO. 38	THE IMPLEMENTATION OF GOODS AND SERVICES TAX IN GOVERNMENT AGENCIES AND LOCAL GOVERNMENT ENTITIES
2001	SPECIAL REPORT NO. 39	BANK ACCOUNT RECONCILIATIONS
2002	SPECIAL REPORT NO. 40	ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL
2002	SPECIAL REPORT NO. 41	KEEPING SCHOOLS SAFE
2002	SPECIAL REPORT NO. 42	FOLLOW UP OF PERFORMANCE AUDITS
2002	SPECIAL REPORT NO. 43	ORAL HEALTH SERVICE: SOMETHING TO SMILE ABOUT?
2002	SPECIAL REPORT NO. 44	MANAGING COMMUNITY SERVICE ORDERS
2003	SPECIAL REPORT NO. 45	BUSINESS NAMES AND INCORPORATED ASSOCIATIONS: WHAT'S IN A NAME?
2003	SPECIAL REPORT NO. 46	LEAVE IN GOVERNMENT DEPARTMENTS
2003	SPECIAL REPORT NO. 47	PUBLIC SECTOR WEB SITES
2003	SPECIAL REPORT NO. 48	GRANTS TO THE COMMUNITY SECTOR
2003	SPECIAL REPORT NO. 49	STAFF SELECTION IN GOVERNMENT AGENCIES
2003	SPECIAL REPORT NO. 50	POLICE RESPONSE TIMES

6 Future projects

6 FUTURE PROJECTS

Details of performance and compliance audits that the Auditor-General is considering are:

PERFORMANCE AUDITS

GUN CONTROL	CURRENTLY UNDER WAY
FOLLOW UP OF PREVIOUS SPECIAL REPORTS (NO 31 – 36)	CURRENTLY UNDER WAY
PUBLIC HOUSING – WAITING LISTS AND ASSET VALUATIONS	

COMPLIANCE AUDITS

INFRASTRUCTURE FUND	CURRENTLY UNDER WAY
CREDIT CARDS	CURRENTLY UNDER WAY
FINANCIAL DELEGATIONS	
FRINGE BENEFITS TAX	