STATEMENT 11: STATEMENT OF RISKS

A range of factors may influence the actual budget outcome in future years. The *Charter of Budget Honesty Act 1998* requires these factors be disclosed in a Statement of Risks in each Budget and Mid-year Economic and Fiscal Outlook. This statement outlines the fiscal risks and the contingent liabilities which may affect the budget balances.

STATEMENT 11: STATEMENT OF RISKS

The forward estimates of revenue and expenses in the 2003-04 Budget incorporate assumptions and judgements based on the best information available at the time of publication. A range of factors may influence the actual budget outcome in future years. The disclosure of these factors in this statement increases the transparency of the fiscal projections and ensures they remain 'on-balance' estimates.

Events that could affect fiscal outcomes include:

- changes in economic and other parameters;
- matters not included in the fiscal forecasts because of uncertainty about their timing, magnitude and/or likelihood; and
- the realisation of contingent liabilities.

RISKS TO THE BUDGET

Economic and other parameters

Major short-term influences on expected revenues and expenses typically are changes in forecasts of economic and non-economic parameters. Over the long-term, differences between the economic parameter forecasts and outcomes have not created any clear bias toward understatement or overstatement of revenue, expenses or the budget balance.

Budget Statement 2 discusses the sensitivity of revenue and expense estimates to major economic parameters.

Fiscal risks

Fiscal risks are general developments or specific events that may affect the fiscal outlook. Some developments or events simply raise the possibility of some fiscal impact. In other cases, some fiscal impact may be reasonably certain, but it will not be included in the forward estimates because the timing or magnitude is not known. Fiscal risks may affect expenses and/or revenue and may be positive or negative on revenue, expenses and/or the budget balance. A general risk to the forward estimates is the possible Senate rejection or amendment of budget measures or other legislation before the Parliament. This general risk is not specifically identified elsewhere in this statement because these measures remain Government policy.

Contingent liabilities

Contingent liabilities are now defined by the accounting standard AASB 1044, which came into effect on 1 July 2002. Broadly, they represent possible costs to the

Commonwealth arising from past events that the outcome of future events will confirm. Contingent liabilities include loan guarantees, non-loan guarantees, warranties, indemnities, uncalled capital and letters of comfort. These possible costs are in addition to those recognised as liabilities in the consolidated financial statements of the Commonwealth general government sector.

The Commonwealth's major exposure to contingent liabilities arises from legislation guaranteeing certain liabilities of Commonwealth controlled financial institutions (the Reserve Bank of Australia and the Export Finance and Insurance Corporation) and the now fully privatised Commonwealth Bank of Australia.

Strategies to manage these exposures aim to ensure the underlying strength and viability of the entities, so that the guarantees are not triggered. Similar strategies may be adopted in relation to entities not subject to explicit guarantees.

Other arrangements govern the entering into, and monitoring of, contingent liabilities, such as indemnities and uncalled capital. Uncalled capital is primarily associated with international financial institutions, such as the International Bank for Reconstruction and Development, the Asian Development Bank and the European Bank for Reconstruction and Development. Arrangements for capital contributions to these institutions, including contingent liabilities, are approved by Parliament, and the Government provides annual reports on the institutions to Parliament.

Consistent with the Australian Bureau of Statistics Government Finance Statistics standards, transactions concerned with the management of international reserves and the monetary system are classified as financing transactions and do not impact on the budget balances. Accordingly, contingent liabilities (and assets) with the International Monetary Fund are not shown.

Details of fiscal risks and contingent liabilities

Fiscal risks and contingent liabilities with a possible impact on the forward estimates greater than $20 million in any one year, or $40 million over the forward estimates period, are listed below.

Information on fiscal risks takes account of Parliament's decisions and other developments until the close of parliamentary business on 30 April 2003. In general, information on contingent liabilities is based on information provided by Commonwealth departments and agencies and is current to 31 March 2003 (or later as indicated). However, in some cases, earlier dates are used and are noted in the relevant section.

Information on contingent liabilities also is provided in the annual financial statements of departments and non-budget entities.

FISCAL RISKS — REVENUE

The Government's revenue and policy measure forecasts, like all forecasts, are subject to a margin of error.

An implication of the degree of uncertainty surrounding the revenue forecasts is that, while many of the forecasts are reported to the nearest million dollars for budget accounting purposes, they should not be interpreted as implying an equivalent level of forecast precision.

The various risks influencing the accuracy of the revenue forecasts are outlined.

General risks

The forward estimates of revenue are subject to a number of general pressures that can affect revenue collections. These general pressures include tax avoidance, developments in communications technology and workplace arrangements, court decisions and ATO rulings. These pressures may result in a shift in the composition of revenue collected from the various tax bases and/or a change in the size of the tax base. The revenue forecasts include an appropriate allowance for these factors, given the data available.

Specific risks

United Kingdom Double Tax Convention

The Government is close to finalising negotiations with the United Kingdom to modernise the double tax convention between the two countries. The Government has made an allowance in the forward estimates for the likely cost of the agreement, but revisions may alter the final revenue effect of the package.

FISCAL RISKS — EXPENSES

Agriculture, Fisheries and Forestry

Exceptional Circumstances assistance for drought-affected farmers

Exceptional Circumstances assistance is available, subject to eligibility criteria, to drought-affected farmers by way of interest rate subsidies and/or income support through the Exceptional Circumstances Relief Payment. Continuation of drought conditions could result in higher than expected expenses for these forms of assistance. It is not possible to quantify the cost arising from such potential developments as this depends on intensity, duration and scale of future drought conditions.

Finance and Administration

Asset sales — Sydney Basin Airports

The forward estimates include the effect of the sale of Sydney Basin Airports. The Government announced the sale strategy on 9 April 2003. The sale is expected to be completed by end September 2003 and the level of proceeds to the Commonwealth will depend on market conditions at the time of the sale.

Asset sales — Telstra

The forward estimates include the effect of the sale of the Commonwealth's shareholding in Telstra, noting that the level of proceeds will depend, inter alia, on the prevailing levels of world equity markets at the time of the sale. The sale of the Commonwealth's remaining shareholding in Telstra is dependent on the passage of legislation through the Parliament. The Government has committed not to introduce such legislation until it is satisfied arrangements exist to deliver adequate services, in particular to rural and regional Australia.

Member choice and Commonwealth superannuation arrangements

The Government's policy for new superannuation arrangements for Commonwealth employees has been provided for in the forward estimates. These new arrangements provide for the closure of the Public Sector Superannuation Scheme (PSS) to new employees and for new employees to join a complying superannuation fund or retirement savings account (RSA) offered by their employer. The arrangements also provide for existing Commonwealth Superannuation Scheme and PSS members to choose to join another fund or RSA. Subject to the introduction of new legislation into Parliament to give effect to this policy, the estimates are now based on an assumed start date of 1 July 2004. A later start date would improve the underlying cash balance from 2004-05, compared to the existing estimates, as this would delay the time at which payments would be made to private sector superannuation funds or RSAs.

Health and Ageing

Australian Health Care Agreements

Under the 2003-08 Australian Health Care Agreements (AHCAs), the Commonwealth will contribute up to $42 billion over 2003-04 to 2007-08 to the States and Territories in support of public hospital services in Australia. An element of this funding is dependent upon terms and conditions which are to be met by the States and Territories. Should these terms and conditions not be met by any jurisdiction, Commonwealth outlays under the AHCAs may be less over the five-year period.

Immunisation funding mechanism

Future vaccine technology will result in new vaccines substituting for those already in use (for example, multivalent vaccines which combine several vaccines into one) and, as a consequence, could result in higher unit costs of vaccine within the routine schedule. Given the nature of current vaccine technology and the possible introduction of new vaccines, specific costs cannot be precisely quantified at this stage.

Major new listings — Medicare Benefits Schedule and Pharmaceutical Benefits Scheme

From time to time items are added to or removed from the Medicare Benefits Schedule and Pharmaceutical Benefits Scheme schedules following independent assessments of cost-effectiveness. Major new developments in medicines or medical procedures could result in increases in expenses that exceed the provision in the forward estimates. Similarly, significant shifts in usage patterns, which may occur for particular drugs or groups of drugs from time to time, could result in increases in expenses that exceed the provision in the forward estimates. It is not possible to quantify the fiscal risk arising from such potential developments.

Medical Indemnity Insurance — Incurred-But-Not-Reported (IBNR) scheme

In announcements on the medical indemnity package in May and October 2002, the Prime Minister indicated that the Commonwealth would assume the liability for the unfunded IBNR liabilities of Medical Defence Organisations (MDOs), with this liability to be funded by doctors who were members of the organisations as at 30 June 2000, subject to a number of conditions.

Legislation has been passed giving effect to the IBNR scheme. An estimate of the liability for United Medical Protection/Australasian Medical Insurance Limited was reported as an expense in the *2001-02 Final Budget Outcome*. The necessary data to make a similar estimate for other MDOs is, as yet, unavailable.

Transport and Regional Services

Natural Disaster Relief Arrangements

Payments are made to State and Territory Governments under specific criteria relating to costs incurred by the State and Territory Governments following natural disasters. An amount has been included in the estimates for future payments. However, the actual level of payments under this scheme will depend on the incidence and severity of natural disasters.

Treasury

International Monetary Fund (IMF) assistance to Thailand

Australia's offer to provide bilateral financing of up to $US1 billion in support of the IMF programme in Thailand was taken up in the form of a series of currency swaps between the Reserve Bank of Australia (RBA) and the Bank of Thailand. Under the swap arrangements, the RBA provided $US862 million to the Bank of Thailand in exchange for Thai Baht. From March 2001, the Bank of Thailand began repaying the swaps as scheduled. Currently, $US53.8 million of the facility remains outstanding. Repayment in full is scheduled to occur no later than July 2004. Changes to the schedule of repayments outstanding may result in the RBA dividend stream in the forward estimates being affected.

CONTINGENT LIABILITIES — QUANTIFIABLE

Agriculture, Fisheries and Forestry

Compensation claim for defective administration

The Department of Agriculture, Fisheries and Forestry Australia is considering a claim made under 'The Scheme for Compensation for Detriment Caused by Defective Administration' (CDDA). CDDA is an administrative scheme established in 1995 to enable Commonwealth agencies to compensate persons who have been adversely affected by the defective action or inaction of agencies but who have no other avenues to seek redress. The claim, for an amount of $68.1 million, relates to a decision in 1985-86 by the then Export Inspection Service to ban the export of sultana table grapes.

Attorney-General's

Indemnities relating to the Air Security Officer programme

The Commonwealth has entered into indemnity agreements with Australian airlines that agree to fly aircraft with Air Security Officers on board. The indemnity agreements limit the Commonwealth's exposure up to a maximum of $2 billion per incident. The indemnity applies to the extent that any loss is not covered by existing relevant insurance policies held by the airline and only applies where the airline(s) can prove that an action on the part of an Air Security Officer under, or in connection with, the Air Security Officer programme caused a loss.

Communications, Information Technology and the Arts

Australian Broadcasting Corporation (ABC) Loan

The Commonwealth has guaranteed a loan entered into by the ABC. This loan has been largely used to meet costs relating to the construction of premises for the ABC at Southbank in Melbourne and Ultimo in Sydney. The principal amount covered by the guarantee at 30 June 2003 is estimated to be $40 million, a decrease of $50 million since June 2002.

Education, Science and Training

Unfunded higher education superannuation liabilities

A number of universities have employees or former employees who are members of State superannuation schemes which are unfunded or partly funded. The Commonwealth provides funding to universities to cover these costs. In turn, the Commonwealth has arrangements with the State governments to recoup part of the costs from them.

The Commonwealth's share of unfunded higher education superannuation is recognised in the Department of Education, Science and Training's financial statements as an administered commitment. The estimated Commonwealth share of the total unfunded superannuation is approximately $1.9 billion.

In 2002-03, the Commonwealth commenced a review of the cost sharing arrangements with the States, with a view to simplifying arrangements for all parties. This process will draw on a detailed actuarial assessment of the total unfunded superannuation costs involved, including the shares between the Commonwealth and the States. Once the review is completed, and discussions with the States have occurred, the Government will consider recognising the liability in the Commonwealth's financial statements. The estimate of the Commonwealth's share of the liability may change depending on the outcome of the review.

Employment and Workplace Relations

Special Employee Entitlements Scheme for Ansett group employees

A contingent liability of $104 million exists in relation to the Special Employee Entitlements Scheme for Ansett group employees (SEESA). This scheme was established by the Federal Government on 9 October 2001 under section 22 of the *Air Passenger Ticket Levy (Collection) Act 2001* to provide a safety net arrangement for staff of the Ansett Group of companies who were terminated after 12 September 2001 due to their employer's insolvency. Contingent revenue also exists in relation to the SEESA.

Finance and Administration

Australian Industry Development Corporation (AIDC)

Under the *Australian Industry Development Corporation Act 1970*, certain obligations of AIDC are guaranteed by the Commonwealth. As at 31 March 2003, the AIDC's contingent liabilities, subject to Commonwealth guarantee, were approximately $127 million in respect of guarantees and credit risk facilities.

In addition, AIDC had outstanding Commonwealth guaranteed borrowings which totalled approximately $1.36 billion as at 31 March 2003. These borrowing obligations have been matched by AIDC's holdings of Commonwealth government guaranteed securities of similar value, largely eliminating the Commonwealth's guarantee exposure. These securities were purchased on-market by UBS Warburg and paid to AIDC as consideration for UBS Warburg's purchase of AIDC Limited's (a subsidiary of AIDC) financial assets. UBS Warburg manages this borrowing portfolio on behalf of AIDC. The UBS Warburg arrangement also provides a guarantee to cover any cash flow differences between the interest rate and maturity profiles of the matched borrowings and securities, together with any exchange rate movements in the borrowings. The Commonwealth's contingent exposure to these borrowings is therefore negligible and is consequently recorded as zero.

ComLand Limited

Bank borrowings by ComLand Limited are explicitly guaranteed by the Commonwealth up to a limit of $60 million, comprising $50 million for principal and $10 million for accrued interest and other costs.

Department of Finance and Administration litigation

The Department of Finance and Administration is involved in litigation where a counter-claim for damages has been lodged against the Commonwealth. The counter-claim seeks damages of $4.3 billion against the Commonwealth although the basis for this amount is yet to be fully provided.

Sale of Sydney Airports Corporation Limited

An indemnity has been provided to Southern Cross Airports Corporation as purchaser of the Sydney Airport Corporation Limited (SACL) in the event of a liability arising under Chapter 3 of the *Duties Act 1997* (NSW) by reason of the sale of shares in SACL constituting a relevant acquisition in a land rich private corporation. In the event the liability arises it is estimated to be between $221.2 million and $282.8 million.

Foreign Affairs and Trade

Export Finance and Insurance Corporation (EFIC)

The Commonwealth guarantees the due payments by EFIC of money that is, or may at any time become, payable by EFIC to any body other than the Commonwealth. The Commonwealth also has in place a $200 million callable capital facility available to EFIC on request to cover liabilities, losses and claims. As at 31 March 2003, the Commonwealth's total contingent liability was $6.8 billion, comprising EFIC's liabilities to third parties ($3.3 billion) and EFIC's contracts of insurance and guarantees ($3.5 billion). The National Interest Account accounted for $2.5 billion of these liabilities.

Industry, Tourism and Resources

Australian Magnesium Corporation (AMC)

The Commonwealth has provided a conditional guarantee to cover borrowing by AMC to assist in developing a magnesium smelting facility in Stanwell, Queensland, which will commercialise Australian-developed magnesium refining technology. The maximum value of the guarantee is $100 million, which may be called between 1 July 2005 and 31 July 2012. The loan itself is to be provided by the ANZ Banking Group.

Liability for damages caused by space activities

The Commonwealth Government requires anyone seeking approvals under the *Space Activities Act 1998* to insure up to the level of maximum probable loss (MPL), up to a maximum of $750 million each launch and each return of a space object. The

Commonwealth also accepts all liability for damage suffered by Australian nationals up to a value of $3 billion above MPL.

Transport and Regional Services

Aviation War Risk Insurance — indemnities for Australian carriers, airports and service providers

Following terrorist attacks in the United States on 11 September 2001, commercial insurance cover for acts of war and terrorism was withdrawn or significantly limited, placing global aviation operations at risk. In common with other countries, the Commonwealth has been providing temporary third party war and terrorist risk indemnity cover to air operators, airports and other aviation service providers.

With the return of insurance coverage to the aviation sector, only three parties remain indemnified under the scheme. The notional upper limit of the Government's contingent liability for these three remaining indemnities is approximately $3.3 billion, based on the difference between the amount of commercial insurance currently held by the relevant entity and the level of cover provided under its deed. The spread in activities of the parties makes it unlikely that the total liability would ever be realised but a terrorist incident could nevertheless involve claims from several of the indemnified parties.

Maritime industry reform

On 18 August 1998, the Commonwealth provided a guarantee to cover borrowings made by the Maritime Industry Finance Company Limited to finance redundancy-related payments in the stevedoring and maritime industries. Outstanding borrowings covered by the guarantee as at April 2003 were $130.1 million.

Treasury

Guarantees under the *Commonwealth Bank Sale Act 1995*

Under the terms of the *Commonwealth Bank Sale Act 1995*, the Commonwealth has guaranteed various liabilities of the Commonwealth Bank of Australia (CBA), the Commonwealth Bank Officers' Superannuation Corporation (CBOSC) and the Commonwealth Development Bank.

The guarantee for the CBA relates to both on and off-balance sheet liabilities. Of the existing contingent liability, 33 per cent involves off-balance sheet liabilities. As at 30 June 2002, the balance of the guarantee was $12.1 billion, a reduction of $1.6 billion on the previous year.

The guarantee for CBOSC covers the due payments of any amount that is payable to or from the Officers' Superannuation Fund (the Fund), by CBOSC or by CBA, in respect of a person who was a member, retired member or beneficiary of the Fund immediately before 19 July 1996. Total accrued benefits at 30 June 2002 have been valued at $3.7 billion. The outstanding value subject to the guarantee is estimated to be $3.7 billion.

As of 1 July 1996, the Commonwealth Development Bank ceased to write new business and no additional liabilities are being incurred. The existing contingent liability will gradually decline with the retirement of existing loans and exposures. The revised estimate for the balance of this guarantee was $18 million as at 30 June 2002.

Reserve Bank of Australia (RBA) guarantee

This contingent liability relates to the Commonwealth's guarantee of the liabilities of the RBA. It is measured as the Bank's total liabilities excluding capital, reserves and Commonwealth deposits. The major component of the Reserve Bank's liabilities are Notes (that is, currency) on issue. As at 2 April 2003, Notes on issue totalled $32.4 billion. In total, the guarantee for the RBA was $42.8 billion as at 2 April 2003.

Terrorism insurance — Australian Reinsurance Pool Corporation (ARPC)

On 25 October 2002, the Government announced detailed plans for a scheme for replacement terrorism insurance, to operate until the market recovers. The scheme will cover commercial property and infrastructure facilities and associated business interruption and public liability. It will commence on 1 July 2003.

The scheme will provide for a pool of funds (initially planned to accumulate to about $300 million) generated by reinsurance premiums paid to the ARPC. The pool will be supplemented by a back-up bank line of credit of $1 billion, underwritten by the Commonwealth, as well as a Commonwealth Government indemnity of $9 billion, giving aggregate cover of up to $10.3 billion when the pool is fully funded.

Under the Terrorism Insurance Bill 2002, the Commonwealth guarantees the payment of liabilities incurred by the ARPC. The Treasurer has the ability to declare a reduced payout rate to insureds if, in the absence of such a declaration, the Commonwealth's liability would exceed $10 billion. While the guarantee to the ARPC is unlimited, the pro-rata reduction will be used to limit the Commonwealth's exposure to $10 billion.

The ARPC may recoup payouts under the scheme by increasing premiums for terrorism reinsurance, and pass these funds on to the Commonwealth. However, such repayments to the Commonwealth may take some years.

Uncalled capital subscriptions — international financial institutions

The liability relates to the value of the uncalled portion of the Commonwealth's shares at 31 March 2003 in the International Bank for Reconstruction and Development (US$2.8 billion — estimated value A$4.6 billion), the Asian Development Bank (US$2.4 billion — estimated value A$4.1 billion), the European Bank for Reconstruction and Development (US$81.7 million plus EUR77.5 million — estimated value A$274.3 million), and the Multilateral Investment Guarantee Agency (US$26.5 million — estimated value A$43.8 million).

CONTINGENT LIABILITIES — UNQUANTIFIABLE

Attorney-General's

Native title costs

The Commonwealth has offered to assist the States and Territories in meeting compensation costs associated with native title. The amounts that might be paid by the Commonwealth will be subject to the terms of financial assistance agreements being negotiated with the States and Territories and liabilities arising from the 1998 amendments to the *Native Title Act 1993*. The Commonwealth's liability cannot be quantified due to uncertainty about the number and effect of compensable acts, both in the past and in the future, and the value of native title affected by those acts. Similarly, it is not possible to quantify the liability for compensable acts for which the Commonwealth may be directly liable.

The Commonwealth has also offered to assist the States and Territories with the costs of bodies performing native title functions under State and Territory legislation. The extent of this assistance will depend on the existence of such bodies, the timing of their recognition and the extent of their use.

Communications, Information Technology and the Arts

Art Indemnity Australia

The Government indemnifies cultural objects loaned to exhibitions displayed in Australian museums and galleries. The exact amounts involved will vary with the exchange rate applying at the time any claim for loss or damage to an artwork or heritage object loaned from overseas is paid, and the extent of any loss or damage. Most of the Commonwealth risk in indemnifying exhibitions is insured through Comcover. Uninsurable risk continues to be borne solely by the Commonwealth.

Defence

ADI Limited — officers' and directors' indemnities

Under the sale agreements for ADI Limited, the Commonwealth has indemnified the directors, officers and employees for claims and legal costs associated with assistance related to the sale of the Commonwealth's shares in the company. The Commonwealth has provided an indemnity to ADI Limited for uninsured losses relating to specific heads of claims.

Australian Submarine Corporation (ASC) — indemnity provided to Electric Boat Corporation (EB) under the Services Agreement

In early October 2002, the Department of Defence entered into a Services Agreement with EB and its subsidiary Electric Boat Australia (EBA) to provide technical and commercial support to ASC as it transitions from being a producer of submarines to an agency for through-life support.

EB/EBA staff commenced at ASC on 14 October 2002. The Services Agreement will run for three years with up to four annual extensions.

For the purposes of this agreement the Commonwealth and ASC provided EB and EBA a warranty that they had the right to provide EB/EBA with confidential and other information under the agreement. Under the agreement, the Commonwealth provided an indemnity to EB and EBA against claims arising from a breach of that warranty.

Under the agreement, the Commonwealth also indemnified EB and EBA against claims arising from property loss or personal injury resulting from a defect in the operation or performance of a Collins Class submarine caused by other than unlawful conduct, gross negligence or wilful misconduct of EB or EBA, and where claims exceed the greater of $2 million or profit earned by EB under the agreement.

HMAS *Melbourne* and HMAS *Voyager* damages claims

Former crewmembers of HMAS *Melbourne* have instituted legal proceedings against the Commonwealth, claiming damages for injuries allegedly caused by the HMAS *Voyager*/HMAS *Melbourne* collision on 10 February 1964. About 130 claims remain current. A number of dependency claims arising from that collision have also been foreshadowed by the dependants of deceased former members of the crew of HMAS *Voyager*. Further claims are likely to be made in connection with the collision.

Litigation cases

The Department of Defence is involved in a wide range of litigation and other claims for compensation and/or damages that may result in litigation where the matters have yet to be finalised by negotiation or, where required, litigation. Various claims, the subject of cases that have yet to be heard or are part heard, await a decision on what (if any) damages and/or costs should be paid to the claimant. The litigated and non-litigated claims include common law liability claims and claims arising from complaints to the Human Rights and Equal Opportunity Commission. The litigation also includes asbestos claims and claims from injury resulting from the F111 Deseal/Reseal programs. In total there are about 400 claims at present, with a value in excess of $160 million. There is identified potential for additional claims from known incidents of non-military asbestos exposure and the F111 Deseal/Reseal project. These claims total about 130 with a value of approximately $30 million.

Finance and Administration

Australian Industry Development Corporation (AIDC) — board members' and management indemnity

The Commonwealth has indemnified the Corporation's board members and management against civil claims relating to employment and conduct as directors and management of subsidiary companies. Liability is subject to the terms of the indemnities.

Australian Submarine Corporation (ASC) — Commonwealth shareholding

The Commonwealth has indemnified Barry AC Hilson and BACH Pty Limited in relation to liabilities arising from assistance provided to the Commonwealth during the conduct of a review of the Commonwealth's shareholding in ASC. This indemnity is ongoing.

Australian Submarine Corporation (ASC) — directors' indemnities

The Commonwealth has indemnified the members of the Board of the ASC for any claim associated with the provision of information to the Electric Boat Corporation (EB) of the United States. Certain information has been provided to the EB under a Process Agreement between it, the Commonwealth and the ASC. This indemnification has been separately extended to include any claim associated with the provision of information to EB and its subsidiary, Electric Boat Australia (EBA) under the Services Agreement between ASC, the Department of Defence, EB and EBA.

ComLand Limited — land remediation

The Commonwealth has indemnified the ComLand Group in the event that the Group incurs certain land remediation expenses where the need for such remediation was not identified when the land was transferred to ComLand.

Employment National Limited (EN) — board members' and Chief Executive Officer's indemnity

Indemnities by the Commonwealth have been provided to EN board members and the Chief Executive Officer to protect against civil claims relating to their employment and conduct as directors. These indemnities are ongoing.

Employment National Limited (EN) — letter of comfort arrangements

The Commonwealth has provided a letter of comfort to EN indicating continuing financial support for the company to ensure its solvency. The letter of comfort remains in place while the company remains wholly owned by the Commonwealth or until terminated by the Minister for Finance and Administration. EN is expected to be wound-up during 2003-04.

Health Insurance Commission (HIC)

The Commonwealth has issued indemnities to Commissioners of HIC against claims made in connection with HIC's participation in the IT Outsourcing Initiative. The indemnity applies to actions of HIC during the period of the process to outsource the HIC IT infrastructure up to the time that the HIC entered into a contract.

Indemnities for the Reserve Bank of Australia (RBA) and private sector banks

Under contractual arrangements for transactional banking services entered into by agencies covered by the *Financial Management and Accountability Act 1997*, the Commonwealth has indemnified the RBA and private sector banks against loss and damage arising out of acts or omissions by the Commonwealth, including by error, fraud, negligence or transactions made without the authority of the Commonwealth.

Sale of Australian National Railways Commission (ANRC) and National Rail Corporation (NRC) Ltd

An indemnity has been provided to all of the Commissioners of ANRC in respect of assistance in relation to the sale process. This includes the provision of information about ANRC at the request of the Commonwealth or its advisers for the purposes of the sale of the ANRC and its business units or assets.

An indemnity was issued to directors and specified officers of NRC in relation to assistance provided to Office of Asset Sales and Information Technology Outsourcing in the conduct of the scoping study. This indemnity was issued on 21 July 1997 and is a continuing one in respect of any liability that arises from the assistance provided before the expiry of the notice of completion from the Commonwealth.

On 20 October 2000, the Commonwealth entered into a Deed of Confidentiality with the New South Wales (NSW) Government in relation to the possible sale of NRC and Freight Rail Corporation (FreightCorp). Under this Deed, the Commonwealth indemnified the NSW Government and FreightCorp in relation to any damages sustained by NRC and/or FreightCorp arising as a result of a breach of the Deed by the Commonwealth.

The former shareholders of NRC (the Commonwealth and the Governments of NSW and Victoria) jointly indemnified each NRC director against claims and legal costs incurred by that director as a consequence of actions of the director that related to the sale by the former shareholders of their interests in the company. The Deed of Indemnity is dated 3 November 2000 and provides a continuing indemnity to each Director in relation to actions covered by the Deed.

Sydney Airports Corporation Limited (SACL), Bankstown, Camden and Hoxton Park Airports and Essendon Airport Limited — directors' indemnities

The Commonwealth has indemnified each member of the board of directors of SACL, Essendon Airport Limited, Bankstown Airport Limited, Camden Airport Limited and Hoxton Park Airport Limited against claims and costs incurred arising from the conduct of the directors in relation to the sale, or scoping study for the sale of these airports. Where certain company insurances or indemnities exist for the directors in relation to a claim, the Commonwealth indemnity cannot be called upon.

Tuggeranong Office Park Pty Ltd (TOP)

The Commonwealth has provided an indemnity to the TOP Trustee to meet any shortfall in the redemption of bonds due on 20 August 2008, which cannot be sourced by TOP or the Construction Development Company from the Sinking Fund.

Indemnities relating to other asset sales

Indemnities have been given in respect of a range of other asset sales. Details of these indemnities have been provided in previous Budget and Mid-year Economic and Fiscal Outlook (MYEFO) papers and Finance annual reports. For example, see pages 9-15 to 9-23 in the 2002-03 Budget Paper No. 1, and pages 177-183 of the 2001-02 Finance Annual Report.

Foreign Affairs and Trade

Export Finance and Insurance Corporation (EFIC) — board members' and senior management indemnities

The Commonwealth has provided certain indemnities to EFIC board members and senior management to protect against civil claims relating to the implementation of EFIC's alliance/divestment of its short-term export credit insurance business.

Health and Ageing

Blood and blood products liability cover

The Commonwealth has signed a memorandum of understanding (MoU) with the States, Territories and the Australian Red Cross Blood Service (ARCBS) to establish a National Managed Fund (NMF), which pools the liability risks associated with the supply of blood and blood products by the ARCBS between the Commonwealth, States and Territories. The MoU provides for the parties to contribute to the NMF taking into account potential claims payments; the level of funds in the NMF and investment earnings; and a prudential allowance for liabilities incurred but not the subject of claims. If there are insufficient funds to cover claim costs, the MoU provides for each party to contribute funds in accordance with allocation provisions prevailing at the time. Under the MoU, the blood and blood products liability cover for the ARCBS remains in force until all parties agree to terminate the arrangements from an agreed date.

Commonwealth Serum Laboratories (CSL) Limited

CSL Limited is indemnified against claims made by persons who contract specified infections from specified products and against employees contracting asbestos-related injuries. CSL Limited has unlimited cover for most events that occurred before the sale of CSL Limited on 1 January 1994, but has more limited cover for a specified range of events that might occur during the period of the current contract. Where cover has not been arranged, the Commonwealth may have a contingent liability. Given the open-ended nature of some of the indemnities, damages and risk cannot be quantified.

Indemnity relating to smallpox vaccine

On 12 December 2002, the Commonwealth took possession of an initial shipment of 50,000 doses of smallpox vaccine as part of the 2002-03 Budget measure *Incident response capability*. This vaccine, to be used only in emergency situations, was the only type available for large-scale purchase and was manufactured using older style technology. The Government granted an indemnity to the manufacturer covering possible adverse events that could result from the use of the vaccine.

The initial purchase of smallpox vaccine will be followed by another shipment of vaccine manufactured using more modern technology later in 2003. The indemnity applies only to the original shipment.

United Medical Protection (UMP)/Australasian Medical Insurance Limited (AMIL) guarantee

In the 2002-03 Budget, the Government announced that the Commonwealth would guarantee to the provisional liquidator, or to any other subsequently appointed liquidator, the obligations of UMP/AMIL to pay any amount properly payable in the period 29 April 2002 to 30 June 2002 in respect of claims made under a current or past policy and to provide coverage for claims incurred during that period. As a part of these arrangements, the Government has also entered into a Deed of Agreement with the provisional liquidator of UMP to provide a guarantee to MDU Australia Insurance Co Pty Limited, a member of the UMP group.

On 31 May 2002, the Prime Minister announced an offer to extend the Commonwealth guarantee provided to UMP/AMIL and the companies' provisional liquidator to 31 December 2002 on a claims made basis. On 23 October 2002, the Prime Minister announced a further extension to 31 December 2003.

The guarantee will apply to the extent that the provisional liquidator is unable to meet UMP/AMIL's obligations under these policies from UMP/AMIL's assets. The liabilities cannot be quantified, as a reliable estimate cannot be produced at this time.

Both extensions of the guarantee will be funded, if necessary, via a levy on doctors. At present, the provisional liquidator has not called on the Commonwealth guarantee.

Immigration and Multicultural and Indigenous Affairs

Separation of Aboriginal children from their families in the Northern Territory

Earlier laws, policies and practices in relation to the Commonwealth's administration of the Northern Territory led to the separation of certain Indigenous children from their families. There are currently over 2,000 plaintiffs with claims pending against the Commonwealth for (largely unspecified) damages in relation to alleged forcible and wrongful separations (mostly by the children of those allegedly forcibly and wrongfully removed).

Only two of these claims have so far proceeded to trial and they were dismissed by the Federal Court in August 2000. An appeal to the Full Bench of the Federal Court was also dismissed in August 2001. Special leave to appeal, sought from the High Court, was refused. A third claim is proceeding in the Federal Court.

Industry, Tourism and Resources

Liability for damages caused by space activities

Under the United Nations Convention on International Liability for Damage Caused by Space Objects, the Australian Government is fully responsible for damages caused to nationals of other countries caused by space objects launched from, or by, Australia. The Commonwealth Government requires anyone seeking approvals under the *Space Activities Act 1998* to insure up to the level of maximum probable loss (MPL), up to a maximum of $750 million each launch and each return of a space object. The Commonwealth also accepts all liability caused to foreign nationals above the insured level.

PetroTimor Court Case

PetroTimor was granted a concession for petroleum exploration in an area of the Timor Sea by Portugal in 1974. Following the Indonesian take-over of East Timor, PetroTimor ceased operations. With the subsequent Timor Gap treaty between Australia and Indonesia (and now the Timor Sea Treaty between Australia and East Timor), PetroTimor is arguing that its rights have been alienated and it is currently seeking damages against the Commonwealth and companies operating in the area.

The case was heard by the Federal Court, which ruled that it was beyond its jurisdiction. PetroTimor has now sought leave to appeal.

Snowy Hydro Limited — directors' indemnities

The Commonwealth has, together with the co-shareholder Governments of New South Wales and Victoria, indemnified the members of the Board of Snowy Hydro Limited for liabilities arising from entering into agreements to implement corporatisation of the Snowy Mountains Hydro-Electric Scheme, and from liabilities to Snowy Hydro Limited at corporatisation. The indemnity will apply to liabilities arising within five years of corporatisation, and for which a claim is notified to the Governments within eleven years of the corporatisation date of 28 June 2002.

Snowy Hydro Limited — water releases

The Commonwealth, New South Wales and Victorian Governments have indemnified Snowy Hydro Limited for liabilities arising from water releases in the Snowy River below Jindabyne Dam, where these releases are in accordance with the water licence and related regulatory arrangements agreed between the three Governments. The indemnity will apply to liabilities for which a claim is notified within twenty years from 28 June 2002.

The Commonwealth, New South Wales and Victorian Governments will provide financial support to the company, if this is necessary, to avoid the company breaching its loan covenants to fund the cost of civil works required to address a cold water pollution offence. The undertaking applies for seven years from 28 June 2002.

Transport and Regional Services

Australian Maritime Safety Authority (AMSA) — incident costs

In the normal course of operations, AMSA is responsible for the provision of funds necessary to meet the clean-up costs arising from ship-sourced marine pollution and, in all circumstances, is responsible for making appropriate efforts to recover the costs of any such incidents. The Commonwealth meets costs that cannot be recovered from such incidents.

Deep Vein Thrombosis class action

The Civil Aviation Safety Authority (CASA) and the Commonwealth have been named in a number of writs, which allege that CASA was negligent in not making air travellers aware of the risks of Deep Vein Thrombosis during long periods of immobility. The Commonwealth's exposure is limited to claims for the years 1995 to 30 June 1998, as CASA was covered by a Commonwealth Deed of Indemnity in relation to the performance of its regulatory functions. As at 17 April 2003, 108 writs had been issued against CASA which were covered by the Deed of Indemnity.

Maritime Industry Finance Company Limited (MIFCo) — board members' indemnity

Indemnities for MIFCo board members have been provided to protect against civil claims relating to employment and conduct as directors of MIFCo.

Stevedoring Industry Finance Committee (SIFC)

The SIFC faces an ongoing number of claims for asbestos related injuries to former waterside workers, and a class action against SIFC was initiated in February 2001 by Slater & Gordon. These injury claims were inherited from the Australian Stevedoring Industry Authority.

Tripartite Deeds relating to the sale of Core Regulated Airports

Tripartite Deeds apply to the 12 Core Regulated Airports (Sydney, Melbourne, Brisbane, Perth, Canberra, Coolangatta, Townsville, Adelaide, Hobart, Launceston, Darwin and Alice Springs). The Tripartite Deeds between the Commonwealth, the airport lessee company and financiers provide for limited step-in rights for the financiers in circumstances when the Airport Lease is terminated to enable the financiers to correct the circumstances that triggered such a termination event.

Treasury

Changes in value of cross currency swaps and foreign currency denominated debt

Significant net foreign exchange gains or losses could be recorded in the AAS31 operating statement if there is a significant change in the nominal exchange rate. This is because a change in the nominal exchange rate results in a change in the net principal value of cross currency swaps and foreign currency denominated debt. The direction of movement in the exchange rate will determine whether there is a net foreign exchange gain or a loss. A gain is a positive risk to the operating result, while loss is a negative risk. Net foreign exchange gains or losses do not have any direct impact on the budget balances reported under the Government Finance Statistics reporting framework.

HIH litigation

The HIH liquidator filed a claim on 11 November 2002 in the ACT Supreme Court against the Commonwealth of Australia and the Australian Prudential Regulation Authority (APRA) for damages, interest and costs. The claim is based on an alleged duty of care owed by the Insurance and Superannuation Commission (ISC) and APRA to the HIH Companies, which it allegedly breached in its regulation of the FAI Companies. As at 30 April 2003, the HIH liquidator had not served the claim on the Commonwealth or APRA.

Housing Loans Insurance Corporation (HLIC) — guarantee

The Commonwealth sold the HLIC on 12 December 1997 and has assumed all residual contingencies. The principal amount covered by the guarantee and the balances outstanding are unable to be reliably measured. The guarantee relates essentially to the HLIC's contracts of mortgage insurance and any borrowings approved by the Treasurer up to the time of sale.