

APPENDIX D: STATEMENT OF RISKS

OVERVIEW

Full details and explanations of fiscal risks and contingent liabilities are provided in Budget Paper No. 1, *Budget Strategy and Outlook 2003-04*. The following statement updates (where necessary) those fiscal risks and contingent liabilities that have arisen or changed since the 2003-04 Budget.

The forward estimates of revenue and expenses in the 2003-04 MYEFO incorporate assumptions and judgements based on information available at the time of publication.

DETAILS OF FISCAL RISKS AND CONTINGENT LIABILITIES

New or revised 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, that have arisen or changed since the 2003-04 Budget are listed below.

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

FISCAL RISKS — REVENUE

Specific risks

Renegotiation of withholding tax rates in certain Australian double tax treaties

Australia's double tax treaties with the Netherlands, France, Switzerland, Italy, Norway, Finland, Austria and the Republic of Korea include 'most favoured nation' clauses on rates of withholding tax. Following the commencement of the Protocol to the Australia-United States double tax treaty, the most favoured nation clause in each of these treaties requires Australia to enter into negotiations with that country with a view to providing similar withholding tax treatment to that which Australia agreed with the United States. The countries have been advised about the obligation to renegotiate and formal negotiations, starting with Norway, commenced in November 2003. Depending on the negotiated outcome, changes to these treaties could have positive as well as negative revenue effects.

CONTINGENT LIABILITIES — QUANTIFIABLE

Defence

Other guarantees

Defence carries an extensive range of guarantees and undertakings, normally of a short-term nature, relating to business, training activities and other arrangements involving contracts, agreements and other Defence activities. Indemnities issued cover potential losses or damages for which the Australian Government would be liable. As at 30 June 2003, there were 47 instances of quantifiable contingencies to the value of \$1,124 million and 32 instances that are either unquantifiable or uncapped. While these contingencies are considered remote, they have been reported in aggregate for completeness.

Employment and Workplace Relations

Special Employee Entitlements Scheme for Ansett group employees

There is an estimated contingent liability of \$59 million in relation to the Special Employee Entitlements Scheme for Ansett group employees (SEESA). This scheme was established by the Australian 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.

Finance and Administration

Australian Industry Development Corporation (AIDC)

Under the *Australian Industry Development Corporation Act 1970* certain obligations of the AIDC are guaranteed by the Australian Government. As at 30 September 2003, the AIDC's contingent liabilities, subject to the Australian Government guarantee, were approximately \$127 million in respect of guarantees and credit risk facilities.

In addition, the AIDC had outstanding Australian Government guaranteed borrowings which totalled approximately \$1.48 billion as at 30 September 2003. These borrowing obligations have been matched by the AIDC's holdings of Australian Government guaranteed securities of similar value, largely eliminating the Australian Government's guarantee exposure.

Industry, Tourism and Resources

Loan Guarantee to Australian Magnesium Corporation (AMC)

The Australian Government has provided a conditional guarantee to cover borrowings by the AMC to assist in developing a magnesium smelting facility. The maximum value of the guarantee is \$100 million, which may be called by the ANZ Banking Group between 1 July 2005 and 31 July 2012.

On 13 June 2003, following AMC's inability to secure an equity investor to cover increased costs, the Australian Government, Queensland Government, Newmont Australia Ltd and Leighton Contractors Pty Ltd signed a Heads of Agreement with AMC.

Under the Heads of Agreement, the Australian and Queensland Governments have subordinated their secured creditor positions in the event of a voluntary administration or winding-up to the extent that the Agreement enables expenditure for the continued operation of AMC. The maximum value of the guarantee, and the period during which it may be subject to call, have not changed.

Transport and Regional Services

Maritime industry reform

On 18 August 1998, the Australian Government 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 30 September 2003 have reduced to \$125.6 million from \$130.1 million as at 31 March 2003.

Treasury

Guarantees under the *Commonwealth Bank Sale Act 1995*

Under the terms of the *Commonwealth Bank Sale Act 1995*, the Australian Government 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, 32 per cent involves off-balance sheet liabilities. As at 30 June 2003, the balance of the guarantee was \$9.3 billion, a reduction of \$2.8 billion on the previous year.

The guarantee for CBOSC covers the due payments of any amount that is payable to or from the Fund, by CBOSC or by the 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 \$18.3 million as at 30 June 2003.

Reserve Bank of Australia (RBA) guarantee

This contingent liability relates to the Australian Government's guarantee of the liabilities of the RBA. It is measured as the Bank's total liabilities excluding capital, reserves and Australian Government deposits. The major component of the Reserve Bank's liabilities are notes (that is, currency) on issue. As at 7 October 2003, notes on issue totalled \$32.8 billion. In total, the guarantee for the RBA was \$48.2 billion as at 7 October 2003.

Uncalled capital subscriptions — international financial institutions

This contingent liability relates to the value of the uncalled portion of the Australian Government's shares as at 30 September 2003 in the International Bank for Reconstruction and Development (US\$2.8 billion — estimated value A\$4.1 billion), the Asian Development Bank (US\$2.4 billion — estimated value A\$3.6 billion), the European Bank for Reconstruction and Development (US\$81.7 million plus EUR77.5 million — estimated value A\$252.7 million), and the Multilateral Investment Guarantee Agency (US\$26.5 million — estimated value A\$38.9 million).

CONTINGENT LIABILITIES — UNQUANTIFIABLE

Communications, Information Technology and the Arts

NSW Councils

Waverley City Council and a number of other NSW Councils brought action in the Federal Court in July 2003 against the Australian Government and other parties. The Councils are seeking compensation for the acquisition of property and other damages in respect of telecommunications installations on, under and over land to which the Councils have title. The statement of claim does not specify the amount of compensation for damages being sought from the Australian Government and other parties.

Defence

HMAS *Melbourne* and HMAS *Voyager* damages claims

Former crew members of HMAS *Melbourne* have instituted legal proceedings against the Australian Government claiming damages for injuries allegedly caused by the HMAS *Voyager*/HMAS *Melbourne* collision on 10 February 1964. One hundred and twenty (120) claims remain current, down from one hundred and thirty (130) reported in the 2003-04 Budget. 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.

Health and Ageing

Exceptional Claims Scheme

In May 2003 the Prime Minister announced the Medical Indemnity Exceptional Claims Scheme (ECS) to assume liability for 100 per cent of any damages payable against a doctor that exceeds a specified level of cover provided by that doctor's Medical Defence Organisation (MDO) or other medical indemnity provider. These arrangements will apply to payouts related to either a single large claim or to multiple claims that in aggregate exceed the cover provided by the doctor's MDO, and will apply to claims notified under contracts-based cover since 1 January 2003.

Immigration and Multicultural and Indigenous Affairs

Immigration detention services

The contract with Group 4 Falck Global Solutions Pty Ltd (Group 4) commenced on 1 September 2003. The Australian Government has agreed to limit Group 4's exposure under the liability regime of the contract. While the general contract requires Group 4 to indemnify the Australian Government for certain claims of losses, the Australian Government has agreed to share this risk. Subject to certain conditions, Group 4 has been indemnified against claims of losses above a fixed amount to a capped amount. Where claims exceed the cap in any financial year, responsibility for the excess reverts to Group 4.

A further limitation of liability has been provided in relation to loss or damage to Australian Government property or equipment as a result of the action of detainees. Under the contract, the liability of Group 4 for detainee damage is subject to an annual limit, unless claims of losses exceed an agreed cap. The release from liability does not apply to the extent that claims in any financial year exceed the cap.

Separation of Aboriginal children from their families in the Northern Territory

A third claim against the Australian Government for (largely unspecified) damages in relation to alleged forcible and wrongful separations, which was being prepared for trial in the Federal Court, has been discontinued.

