APPENDIX D: STATEMENT OF RISKS

OVERVIEW

Full details and explanations of fiscal risks and contingent liabilities are provided in Statement 11 of Budget Paper No. 1, *Budget Strategy and Outlook 2004-05*. The following statement updates, where necessary, those fiscal risks and contingent liabilities that have arisen or changed since the 2004-05 Budget.

The forward estimates of revenue and expenses in the *Mid-Year Economic and Fiscal Outlook 2004-05* (MYEFO) incorporate assumptions and judgments 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 2004-05 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

There have been no significant changes to the revenue risks disclosed at page 11-4 of Budget Paper No. 1.

FISCAL RISKS — EXPENSES

Finance and Administration

Asset sales — Telstra

The forward estimates include the effect of the sale of the Australian Government'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 sale and that the timing of the sale could be adjusted if market levels are considered unlikely to provide an appropriate return to taxpayers. The sale is conditional on the Government being satisfied that arrangements are in place to deliver adequate telecommunications services, particularly in rural and regional Australia. The sale is also dependent on the passage of legislation through the Parliament.

Transport and Regional Services

Airservices Australia

On 31 August 2004, the Minister for Transport and Regional Services, pursuant to section 16 of the *Airservices Act 1995* (the Act), gave a direction to Airservices Australia (AA), which requires AA to provide an operating control tower and approach radar control services in certain volumes of airspace. Section 16(4) of the Act provides that AA may seek reimbursement from the Australian Government for any financial detriment it suffers as a result of complying with a direction. At this time, the quantum or nature of any financial detriment is uncertain, as is the nature of any consequent fiscal risk to the Budget.

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 September 2004 there are 79 instances of contingencies that are unquantifiable, and 80 instances of quantifiable contingencies to the value of $2,312 million. While these contingencies are considered remote, they have been reported in aggregate for completeness.

Finance and Administration

Australian Industry Development Corporation

Under the *Australian Industry Development Corporation Act 1970* certain obligations of the Australian Industry Development Corporation (AIDC) are guaranteed by the Australian Government. As at 30 June 2004, AIDC's contingent liabilities, subject to Australian Government guarantee, were approximately $126 million in respect of guarantees and credit risk facilities.

In addition, AIDC had outstanding Australian Government guaranteed borrowings which totalled approximately $994 million as at the most current valuation of 30 June 2004. These borrowing obligations have been matched by AIDC's holdings of Australian Government guaranteed securities of similar value, largely eliminating the Australian Government'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 AG, the international parent company that has taken over from UBS Warburg, manages this borrowing portfolio on behalf of AIDC. The UBS AG 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 Australian Government's contingent exposure to these borrowings is therefore negligible and is consequently recorded as zero.

Foreign Affairs and Trade

Export Finance and Insurance Corporation

The Australian Government guarantees the due payments by the Export Finance and Insurance Corporation (EFIC) of money that is, or may at any time become, payable by EFIC to any body other than the Australian Government. The Australian Government also has in place a $200 million callable capital facility available to EFIC on request to cover liabilities, losses and claims. As at 31 October 2004, the Australian Government's total contingent liability was $3.5 billion, comprising EFIC's liabilities to third parties ($3 billion) and EFIC's contracts of insurance and guarantees ($561 million). The National Interest Account accounted for $1.9 billion of these liabilities.

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 September 2004, the balance of the guarantee was $9.3 billion, an increase of $221 million from 31 December 2003. This increase reflects exchange rate movements, as a proportion of the liability is denominated in foreign currency.

The guarantee for CBOSC covers the due payments of any amount that is payable to or from the CBA Officers' Superannuation Fund (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 2004 have been valued at $3.5 billion. The outstanding value subject to the guarantee is estimated to be $3.5 billion.

As of 1 July 1996, the Commonwealth Development Bank ceased to write new business and no additional liabilities are being incurred. The contingent liability has now been extinguished with the retirement of all loans and exposures. As at 31 December 2003 the balance of the guarantee had been $18.3 million.

Reserve Bank of Australia guarantee

This contingent liability relates to the Australian Government's guarantee of the liabilities of the Reserve Bank of Australia. It is measured as the Bank's total liabilities excluding capital, reserves and Australian Government deposits. The major component of the Bank's liabilities are notes (that is, currency) on issue. As at 24 November 2004, notes on issue totalled $35.3 billion. In total, the guarantee was $43.8 billion as at 24 November 2004.

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 2004 in the International Bank for Reconstruction and Development (US$2.8 billion — estimated value A$3.9 billion), the Asian Development Bank (US$2.4 billion — estimated value A$3.4 billion), the European Bank for Reconstruction and Development (US$82 million plus EUR78 million — estimated value A$248.1 million), and the Multilateral Investment Guarantee Agency (US$26.5 million — estimated value A$37 million).

CONTINGENT LIABILITIES — UNQUANTIFIABLE

Attorney-General's

Native Title Agreements — Access to geospatial data

The Australian Government has entered into agreements with state and territory government bodies or their agents to access their geospatial data. The data is essential to support the National Native Title Tribunal in achieving its outcome. Under these agreements, the Australian Government provides indemnities against third party claims arising from errors in the data. The Australian Government's liability cannot be quantified due to uncertainty about the likelihood, number or value of claims.

Southern Ocean surveillance

The Australian Government has entered into new contractual arrangements with P&O Maritime Services for the provision of maritime charter services until June 2006 to facilitate the Australian Customs Service and the Department of Agriculture, Fisheries and Forestry armed patrols of Australia's exclusive economic zone in the Southern Ocean.

In relation to these patrols the Australian Government will indemnify P&O Maritime Services against certain claims arising from the discharge of firearms or munitions, or where a steaming party is deployed to crew a seized vessel back to an Australian port.

Education Science and Training

Australian Nuclear Science and Technology Organisation — delays in the commissioning of Replacement Research Reactor

Commissioning of the Replacement Research Reactor is scheduled to commence in late 2005, moving to full power and then production around mid 2006. The present reactor is scheduled to cease operations in 2006. Any delays in commissioning the replacement reactor could reduce Australian Nuclear Science and Technology Organisation's (ANSTO) capacity to maintain nuclear medicine, other commercial products and research facilities. ANSTO maintains a comprehensive register of risks associated with this project as a means of mitigating risks as they arise.

The Australian Government has indemnified ANSTO and its officers from liability that might be incurred from the conduct of activities authorised under the *Australian Nuclear Science and Technology Organisation Act 1987*. This indemnity is additional to the commercial insurance covers obtained from the Comcover Insurance Pool and other insurers.

Finance and Administration

ComLand Limited — site contamination

Footscray Land Limited is indemnified until 31 December 2019 in respect of certain contamination claims exceeding $7.5 million in aggregate at its Edgewater (Maribyrnong) site. St Marys Land Limited is indemnified until 31 December 2024 in respect of certain contamination claims and costs exceeding $25.0 million in aggregate at its St Marys (western Sydney) site.

Indemnities relating to other asset sales

Indemnities have been given in respect of a range of other asset sales and related shareholder issues. The probability of these risks is considered to be low. Details of these indemnities have been provided in previous Budget and Mid-Year Economic and Fiscal Outlook papers and Department of Finance and Administration annual reports. For example, see pages 11-5 to 11-14 in the 2004-05 Budget Paper No. 1, and pages 220-222 of the 2003-04 Department of Finance and Administration Annual Report.

Members of Parliament Staff Employee Entitlements

Following a decision in July 2004 by the NSW Chief Magistrate, the Department of Finance and Administration has an unquantifiable contingent liability relating to Members of Parliament Staff employed under *The Members of Parliament Staff Act 1984* in relation to payment in lieu of notice and payment in lieu of long service leave, where such an entitlement exists. The Department is reviewing the impact of legal advice on individual circumstances.

Health and Ageing

Blood and blood products liability cover

A National Managed Fund (NMF) has been established which pools the liability risks associated with the supply of blood and blood products by the Australian Red Cross Blood Service (ARCBS) between the Australian Government, the ARCBS and the states and territories. The NMF is covered by a Memorandum of Understanding (MoU) between the Australian Government, states and territories and the ARCBS. This will be amended to incorporate the operations of the Jurisdictional Blood Committee (JBC) and the National Blood Authority. 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 yet the subject of claims. If there are insufficient funds to cover claim costs, the JBC considers a report provided by the National Funds Manager to determine the level of funds required. Each party must contribute funds, as determined by JBC, 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.

Medical Indemnity Exceptional Claims Scheme

In May 2003 the Prime Minister announced the Medical Indemnity Exceptional Claims Scheme 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 indemnity insurer (MII), currently $20 million. 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 MII, and will apply to claims notified under contracts-based cover since 1 January 2003.

Immigration and Multicultural and Indigenous Affairs

Claim of unlawful detention on Nauru

On 16 December 2003, 325 plaintiffs claiming to be detained on Nauru commenced an action in the Supreme Court of Victoria. The claim alleges that the plaintiffs have been detained at the request of, or by agents of, the Australian Government, and that the detention amounts to false imprisonment. The plaintiffs seek a declaration that they have been falsely imprisoned by the Australian Government, an injunction to restrain the Australian Government or its agents from continuing to detain the plaintiffs, and damages. The case has not yet been listed for hearing.