

APPENDIX D: STATEMENT OF RISKS

OVERVIEW

Full details of fiscal risks and contingent liabilities are provided in Budget Paper No. 1, *Budget Strategy and Outlook 2007-08*. The following statement updates (where necessary) those fiscal risks and contingent liabilities that have changed since the 2007-08 Budget.

The forward estimates of revenue and expenses in the *Mid-Year Economic and Fiscal Outlook 2007-08* 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 year, or \$40 million over the forward estimates period, that have arisen or changed since the 2007-08 Budget are described below and summarised in Table D1.

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

Table D1: Summary of material changes to Statement of Risks since the 2007-08 Budget

Contingent liabilities — quantifiable	
Defence and Defence Materiel Organisation	
Indemnities	Modified
Finance and Administration	
Potential claims relating to superannuation benefits	Modified
Sale of Sydney Airports Corporation Limited	Modified
Future Fund Board of Guardians — Indemnity	New
Foreign Affairs and Trade	
Export Finance and Insurance Corporation (EFIC)	Modified
Treasury	
Reserve Bank of Australia — Guarantee	Modified
Agriculture, Fisheries and Forestry	
Compensation claims arising from Equine Influenza (EI) Outbreak	New
Defence	
HMAS Melbourne and HMAS Voyager damages claims	Modified

Table D1: Summary of material changes to Statement of Risks since the 2007-08 Budget (continued)

Contingent liabilities — unquantifiable	
Finance and Administration	
ASC Pty Ltd (ASC) — Directors' Indemnity	New
Telstra 3 BPAY Biller Agreement — Indemnities	New
Tuggeranong Office Park (TOP) Sinking Fund approved expenses	New
Transport and Regional Services	
Assumed residual liabilities of the Australian National Railways Commission	Modified
Tripartite deeds relating to the sale of federal leased airports	Modified
Risks appearing in this Statement but not listed in the table above are substantially unchanged since disclosed in Budget Paper No. 1, <i>Budget Strategy and Outlook 2007-08</i> , Statement 11.	

FISCAL RISKS

There have been no significant changes to the revenue or expense risks disclosed in 2007-08 Budget Paper No. 1, *Budget Strategy and Outlook 2007-08*.

CONTINGENT LIABILITIES — QUANTIFIABLE

Defence and Defence Materiel Organisation

Indemnities

The Department of Defence (Defence) and the Defence Materiel Organisation (DMO) carry an extensive range of indemnities and undertakings, normally of a short-term nature, relating to business, training activities and other activities involving contracts, agreements and other Defence and DMO arrangements. Indemnities issued cover potential losses or damages for which the Australian Government would be liable.

Defence carries 410 instances of contingencies that are unquantifiable and remote and 44 instances of quantifiable and remote contingencies to the value of \$1.8 billion. As at 30 June 2007 the DMO carries two instances of contingencies that are unquantifiable and 231 contingencies that are quantifiable, to the value of \$2.6 billion, and is planning to issue an indemnity to the value of \$320 million (relating to an individual major capital acquisition project which is currently commercial-in-confidence). While these contingencies are considered remote, they have been reported in aggregate for completeness.

Finance and Administration

Potential claims relating to superannuation benefits

On 20 April 2007, the High Court rejected the Commonwealth of Australia's appeal on a claim for negligent misstatement relating to superannuation benefits for a former employee of the Department of the Interior. Based on initial estimates, potential

liabilities arising from this decision are quantified at \$296 million. However, there is uncertainty around this estimate in relation to both the number of claims and the size of potential damage payouts (because no claims have yet been determined).

Sale of Sydney Airports Corporation Limited

An indemnity has been provided to Southern Cross Airports Corporation as purchaser of the Sydney Airports Corporation Ltd in the event of a liability arising under Chapter 3 of the *Duties Act 1997* (New South Wales) by reason of the sale of shares in Sydney Airports Corporation Ltd constituting a relevant acquisition in a land-rich private corporation.

The New South Wales Office of State Revenue issued a notice of assessment on 17 November 2006, which the Australian Government disputes to be a valid assessment. In the event the liability is sustained it is estimated to be valued at between \$401.5 million and \$441.9 million.

Future Fund Board of Guardians — indemnity

The Australian Government has provided the members of the Future Fund Board of Guardians (the Future Fund Board) with an indemnity, to cover liabilities in excess of the Board's insurance policies.

Members of the Future Fund Board are indemnified, to the maximum extent permitted by law, in relation to all official actions. Similar to indemnities that are provided to members of Boards that operate under the *Commonwealth Authorities and Companies Act 1997*, the indemnity does not cover a Board member for conduct that he or she engages in other than in good faith, and in respect of certain other liabilities and costs incurred.

The indemnity is financially limited, in broad terms, to the value of the Future Fund.

Foreign Affairs and Trade

Export Finance and Insurance Corporation (EFIC)

The Australian Government guarantees the due payment by the 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 facility available to EFIC on request to cover liabilities, losses and claims. As at 31 August 2007, the Australian Government's total contingent liability was \$2.8 billion, comprising EFIC's liabilities to third parties (\$2.1 billion) and EFIC's overseas investments insurance, contracts of insurance and guarantees (\$0.7 billion).

Treasury

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

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excluding capital, reserve and Australian Government deposits. The major component of the Bank's liabilities are notes (that is, currency) on issue. Notes on issue amount to \$40.3 billion as at 30 June 2007 and the total guarantee is \$59.9 billion.

CONTINGENT LIABILITIES — UNQUANTIFIABLE

Agriculture, Fisheries and Forestry

Compensation claims arising from Equine Influenza (EI) Outbreak

The Australian Government may become liable for compensation actions should the Department of Agriculture, Fisheries and Forestry be found negligent in relation to the recent outbreak of EI. At this stage any potential liability resulting from the EI outbreak cannot be quantified. An independent inquiry is being conducted into the entry and spread of EI in Australia.

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. As at 24 September 2007 fifty three claims remain current and nine of the current claims are statute barred under applicable state laws. In those cases, the plaintiffs will require an extension of time prior to progressing their claims for damages. Further claims are likely to be made in connection with the collision.

Finance and Administration

ASC Pty Ltd (ASC) — Directors' indemnities

The Australian Government has indemnified the ASC Directors for any claim made against them as a result of complying with ASC's obligations under the Process Agreement between the Electric Boat Corporation (EBC), the Australian Government and ASC.

The Australian Government has indemnified Board members of the ASC for any claim against them as a result of complying with ASC's obligations under the Service Agreement between ASC, the Department of Defence, EBC and Electric Boat Australia.

The Australian Government has indemnified Board members of ASC for any claim and legal costs arising from the result of the Directors' acting in accordance with the Board's Tasks and Responsibilities, as defined under the indemnity.

Telstra 3 BPAY Biller Agreement — indemnities

The Australian Government has entered into a mutual indemnity arrangement under a BPAY Biller Agreement with the Commonwealth Bank of Australia (CBA) to facilitate

the use of BPAY for the Telstra 3 retail application settlement. The Australian Government has issued an indemnity in the CBA's favour against any harm or losses that the CBA may suffer as a result of any negligence, misrepresentation, fraud or misuse of BPAY marks committed by the Australian Government in respect of its obligations under the Agreement, including as a result of any claims. Likewise, the CBA has provided the Australian Government with a reciprocal indemnity.

Tuggeranong Office Park (TOP) Sinking Fund approved expenses

As part of the current work on the TOP completion strategy, the Department of Finance and Administration has received revised advice that under the Commonwealth Conditional Indemnity relating to the TOP sinking fund a potential tax liability and sale costs may become payable. The extent of this liability will not be known until the completion process is further advanced.

Transport and Regional Services

Assumed residual liabilities of the Australian National Railways Commission

The Australian Government under Schedule 3 of the *Australian National Railways Commission Sale Act 1997* assumed the residual liabilities of the Australian National Railways Commission. A writ of summons was filed in the High Court of Australia on 20 August 2004 by a single plaintiff and a statement of claim on behalf of 24 other plaintiffs was filed in the District Court of South Australia on 22 September 2005. The High Court and District Court proceedings were consolidated into a joint action involving 25 plaintiffs by the District Court at a directions hearing on 5 June 2007. The plaintiffs' consolidated statement of claim seeks unspecified damages for personal injuries as a result of exposure to lead and other particles from trains carrying lead and zinc ore at Broken Hill, which were operated by the Australian National Railways Commission between 1983 and 1998.

Tripartite deeds relating to the sale of federal leased airports

Tripartite deeds apply to 12 federal leased airports (Adelaide, Alice Springs, Bankstown, Brisbane, Canberra, Gold Coast, Darwin, Launceston, Melbourne, Perth, Sydney and Townsville). The tripartite deeds between the Australian Government, 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. These contingent liabilities are considered to be unquantifiable and remote.

