

STATEMENT 8: 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 to be disclosed in a Statement of Risks in each budget and Mid-Year and Economic and Fiscal Outlook. This statement outlines general fiscal risks and specific contingent liabilities which may affect the budget balances.

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The forward estimates of revenue and expenses in the 2008-09 Budget incorporate assumptions and judgments 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.

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 and/or assets.

RISKS TO THE BUDGET — OVERVIEW

The revenue and expense estimates and projections are based on a range of economic and other parameters. If the economic outlook were to differ from that presented in the Budget, the revenue and expense estimates and projections would also change. This sensitivity of budget estimates to changes in economic assumptions is discussed in Appendix B to Statement 3.

Other fiscal risks comprise 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, fiscal impacts may be reasonably certain, but will not be included in the forward estimates because their timing or magnitude is not known. Fiscal risks can have an impact on the budget balance. Contingent liabilities and assets are a specific category of fiscal risks. Contingent liabilities and contingent assets are defined by the accounting standard AASB 137, which came into effect on 1 July 2005. Broadly, they represent possible costs or gains to the Australian Government arising from past events which will be confirmed or otherwise by the outcome of future events that are not within the Government's ability to control.

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 Australian Government general government sector.

The Australian Government's major exposure to contingent liabilities arises from legislation guaranteeing certain liabilities of Australian Government controlled financial institutions (the Reserve Bank of Australia and the Export Finance and

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Insurance Corporation). To help manage these exposures, strategies are in place which aim to ensure the underlying strength and viability of the entities, so that the guarantees are not triggered.

Another class of contingent liability is uncalled capital, which reflects a financial commitment to an institution where no promissory note is issued by the Australian Government. Uncalled capital is primarily associated with international financial institutions such as the International Bank for Reconstruction and Development, the Asian Development Bank, the European Bank for Reconstruction and Development and the Multilateral Investment Guarantee Agency. When promissory notes are issued, such as in the case of the International Monetary Fund, the amounts are recorded in the general government balance sheet, so contingent liabilities (or assets) are not shown for those amounts.

Contingent assets include claims that the Australian Government is pursuing through legal processes, where the outcome is uncertain.

Contingent liabilities, contingent assets and other fiscal risks 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 in this statement.

Information on fiscal risks takes account of Parliament's decisions and other developments until the close of parliamentary business on 30 April 2008. In general, information on contingent liabilities and assets is based on information provided by Australian Government departments and agencies and is current to 31 March 2008. However, in some cases other dates are used and are noted in the relevant section.

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

Table 1: Summary of material changes to Statement of Risks since the 2007-08 Budget and *Mid-Year Economic and Fiscal Outlook 2007-08*^(a)

CONTINGENT LIABILITIES — QUANTIFIABLE	
Defence and Defence Materiel Organisation	
Indemnities	Modified
Environment, Heritage and the Arts	
Potential claims relating to the Great Barrier Reef Marine Park Structural Adjustment Package	New
Finance and Deregulation	
Australian Industry Development Corporation	Modified
Potential claims relating to superannuation benefits	Deleted
Sale of Sydney Airports Corporation Ltd	Modified
Foreign Affairs and Trade	
Export Finance and Insurance Corporation	Modified
Immigration and Citizenship	
Immigration detention services	Modified

Table 1: Summary of material changes to Statement of Risks since the 2007-08 Budget and *Mid-Year Economic and Fiscal Outlook 2007-08*^(a) (continued)

CONTINGENT LIABILITIES — QUANTIFIABLE (continued)		
Infrastructure, Transport, Regional Development and Local Government		
Code Management Company — indemnity for the Code of Practice for the Defined Interstate Rail Network ^(b)		Modified
Treasury		
Guarantees under the Commonwealth Bank Sale Act		Modified
International financial institutions — uncalled capital subscriptions		Modified
Reserve Bank of Australia — guarantee		Modified
CONTINGENT LIABILITIES — UNQUANTIFIABLE		
Agriculture, Fisheries and Forestry		
Compensation claims arising from Equine Influenza Outbreak		Modified
Broadband, Communications and the Digital Economy		
National Broadband Network Panel of Experts — indemnities		New
Climate Change and Water		
Risk Assignment under the National Water Initiative		New
Defence		
HMAS <i>Melbourne</i> and HMAS <i>Voyager</i> damages claims		Modified
Litigation cases		Modified
Environment, Heritage and the Arts		
Art Indemnity Australia ^(b)		Modified
Finance and Deregulation		
Tuggeranong Office Park (TOP) Sinking Fund approved expenses		Deleted
Industrial Waste Commission (IWC) Cleanaway		Modified
Telstra Sale Company Ltd — indemnities		Modified
Telstra Corporation Ltd — company, directors and senior executives' indemnities		Deleted
Telstra Corporation Ltd — indemnity for unauthorised disclosure of confidential information		Deleted
Future Fund Board of Guardians — indemnity		Modified
Health and Ageing		
CSL Ltd		Modified
Indemnity relating to H5N1 vaccine		New
Innovation, Industry, Science and Research		
Australian Nuclear Science and Technology Organisation — indemnity ^(b)		Modified
Liability for damages caused by space activities ^(b)		Modified
Liability for damages caused by Kistler space activities ^(b)		Modified
Resources, Energy and Tourism		
Snowy Hydro Ltd — directors' indemnities ^(b)		Modified
Snowy Hydro Ltd — water releases ^(b)		Modified
Liability for costs incurred in a National Liquid Fuel Emergency ^(b)		Modified
Treasury		
Terrorism insurance — commercial cover		Modified

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Table 1: Summary of material changes to Statement of Risks since the 2007-08 Budget and *Mid-Year Economic and Fiscal Outlook 2007-08*^(a) (continued)

CONTINGENT ASSETS — UNQUANTIFIABLE	
Innovation, Industry, Science and Research	
Wireless Local Area Network — contingency asset	New
(a) 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 or in <i>Mid-Year Economic and Fiscal Outlook 2007-08</i> , Appendix D, with the exception of the list of specific fiscal risks, which have been replaced with a more general statement.	
(b) Risks appearing in this Statement that have changed portfolios due to Administrative Arrangements Orders.	

ECONOMIC AND OTHER PARAMETERS

Changes in economic parameters represent a risk to the expenditure and revenue estimates included in the Budget. Appendix B of Statement 3 examines the impact on revenue and expenses of altering some of the key economic assumptions underlying the budget estimates.

FISCAL RISKS

The estimates and projections of revenue are subject to a number of general risks that can affect taxation collections. These general pressures include tax avoidance, court decisions and Australian Taxation Office rulings. These pressures may result in a shift in the composition of taxation collected from the various tax bases and/or a change in the size of the tax base.

There are specific risks to revenue estimates and projections. For example, the Government has announced its intention to introduce an Emissions Trading Scheme (ETS) in 2010. When implemented, the revenue that is received from permits under this scheme will impact on budget estimates.

There are specific risks to expense estimates and projections. For example, major technological advances in medicines and medical practices may lead to changes to the Medical Benefits Schedule and the Pharmaceutical Benefits Scheme which could result in unexpected increases in expenses.

Other fiscal risks that may affect expenditure include natural disasters, emergency foreign aid and contingent liabilities and assets. Contingent liabilities and assets include indemnities, warranties and guarantees and will impact net financial worth under certain conditions.

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 contingencies to the value of \$1.8 billion. DMO carries 505 instances of contingencies (including Foreign Military Sales) that are unquantifiable and 67 contingencies that are quantifiable to the value of \$2.8 billion. While these contingencies are considered remote, they have been reported in aggregate for completeness.

Environment, Heritage and the Arts

Possible claims relating to the Great Barrier Reef Marine Park Structural Adjustment Package

The Great Barrier Reef Marine Park Structural Adjustment Package was designed to assist businesses to manage the impacts caused by the July 2004 rezoning of the Great Barrier Reef Marine Park. Applicants were able to apply for assistance under various elements of the package, but could accept funding under only one component (excluding Business Advice Assistance).

Claims have been submitted by a number of applicants that had previously accepted funding under one component of the package and are now seeking access to another component that could have resulted in a higher level of assistance.

In the event that all current claimants are found to be eligible for the higher level of assistance, the Australian Government's liability is estimated at up to \$24 million. Any further claimants could increase this liability.

Finance and Deregulation

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 31 December 2007, AIDC's contingent liabilities, subject to Australian Government guarantee, were approximately \$100 million in respect of guarantees and credit risk facilities.

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Litigation

The Department of Finance and Deregulation is involved in litigation where a counter-claim for damages has been lodged against the Australian Government. The litigation relates to the Davis Samuel Case where the Department is engaged in legal action seeking recovery of funds misappropriated during 1997-98. The counter-claim is from the parties to whom Finance believes the misappropriated funds were channelled.

The grounds for the counter-claim have never been articulated and it is counsel's advice that the counter-claim is without merit. The counter-claim, which will be vigorously defended by the Australian Government, seeks damages of \$4.3 billion although the basis for this amount is yet to be fully provided. Hearing of the Australian Government's claim, and the counter-claim, is set down to commence in the Supreme Court of the Australian Capital Territory on 10 June 2008.

Sale of Sydney Airports Corporation Ltd

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 at \$451.3 million as at 31 March 2008.

Foreign Affairs and Trade

Export Finance and Insurance Corporation

The Australian Government guarantees the due payment 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 March 2008, the Australian Government's total contingent liability was \$2.7 billion, comprising EFIC's liabilities to third parties (\$2.0 billion) and EFIC's overseas investments, insurance, contracts of insurance and guarantees (\$0.7 billion).

Immigration and Citizenship

Immigration detention services

A contract with GSL (Australia) Pty Ltd commenced on 1 September 2003 at which time the Australian Government agreed to limit GSL's exposure under the liability regime of the contract. While the general contract requires GSL to indemnify the

Australian Government for certain claims of losses, the Australian Government has agreed to share the risk. Subject to certain conditions, GSL has been indemnified by the Australian Government 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 GSL.

A further limitation of liability has been provided in the contract in relation to loss or damage to Australian Government property or equipment as a result of the actions of detainees. Under the contract, GSL's liability for detainee damage is subject to an annual limit, unless claims of losses exceed an agreed cap.

Infrastructure, Transport, Regional Development and Local Government

Code Management Company — indemnity for the Code of Practice for the Defined Interstate Rail Network

The Code Management Company (CMC) is a company owned by the Australasian Railway Association whose members include all of Australia's major rail operators and track owners and representatives from smaller companies. The Australian Government has provided an indemnity to CMC against any loss or expense that occurred prior to the transfer of ownership from the Commonwealth in relation to the correct use or application of the Code of Practice for the Defined Interstate Rail Network. The Code sets out a national approach to operational and engineering practices, including uniform standards for safe working, train operations and freight loading specifications. The indemnity is limited to an aggregate of \$50 million for a period of six years from the date of transfer of ownership and expires on 15 July 2009.

Treasury

Guarantees under the Commonwealth Bank Sale Act

Under the terms of the *Commonwealth Bank Sale Act 1995*, the Australian Government has guaranteed various superannuation and other liabilities amounting to around \$5.5 billion. Of this amount, \$1.6 billion was attributable to liabilities of the Commonwealth Bank of Australia at 31 December 2007 and \$3.9 billion was attributable to liabilities of the Commonwealth Bank Officers' Superannuation Corporation at 31 December 2007.

International financial institutions — uncalled capital subscriptions

This contingent liability relates to the value of the uncalled portion of the Australian Government's shares in the International Bank for Reconstruction and Development (US\$2.8 billion — estimated value A\$3.1 billion), the Asian Development Bank (US\$2.4 billion — estimated value A\$2.7 billion), the European Bank for Reconstruction and Development (US\$81.7 million plus €77.5 million — estimated value A\$216.9 million), and the Multilateral Investment Guarantee Agency (US\$26.5 million — estimated value A\$29.6 million).

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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. Notes on issue amount to \$42.7 billion as at 18 March 2008 and the total guarantee is \$64.9 billion.

CONTINGENT LIABILITIES — UNQUANTIFIABLE

Agriculture, Fisheries and Forestry

Compensation claims arising from Equine Influenza 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 Equine Influenza (EI). At this stage any potential liability resulting from the EI outbreak cannot be quantified.

Attorney-General's

Indemnities relating to the Air Security Officer program

The Australian Government has entered into indemnity agreements with Australian airlines that agree to allow their aircraft to fly with Air Security Officers on board. The indemnity agreements limit the Australian Government's exposure 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 program caused a loss.

Native title agreements — access to geospatial data

The Australian Government has entered into agreements with state and territory government bodies and/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.

Native title costs

The Australian Government has offered to assist the States and Territories in meeting native title compensation costs arising under the *Native Title Act 1993*. The amounts that might be paid by the Australian Government will be subject to the terms of financial assistance agreements being negotiated with the States and Territories. No agreements have been entered into to date. The Australian Government'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 Australian Government may be directly liable.

The Australian Government has also offered to assist the States and Territories with the costs of bodies performing native title functions under state 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.

Ocean surveillance

The Australian Government has entered into contractual arrangements with P&O Maritime Services for the provision of maritime charter services until June 2010 to facilitate the Australian Customs Service and the Department of Agriculture, Fisheries and Forestry armed patrols of Australia's exclusive economic zone.

The Australian Government has indemnified 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.

Broadband, Communications and the Digital Economy

National Broadband Network Panel of Experts — indemnities

The Australian Government has provided indemnities to the non-Commonwealth members of the National Broadband Network (NBN) Panel of Experts to protect them against civil claims that may arise in the course of performing their duties.

Climate Change and Water

Risk Assignment under the National Water Initiative

At the 26 March 2008 Council of Australian Governments (COAG) meeting, the Australian Government agreed to take on the States' liabilities under the National Water Initiative risk assignment arrangements for reductions in allocations of water in the Murray-Darling Basin arising from the application of new knowledge to water planning. The agreement increases the liability the Australian Government previously faced in relation to these reductions in the Murray-Darling Basin.

The Australian Government also has other liabilities under the *Water Act 2007*, which are unchanged as a result of the 26 March 2008 COAG decision.

The Australian Government's liabilities will be mitigated by investment in water efficiency measures and the purchase of water entitlements under the national water plan.

Defence

ADI Ltd — officers' and directors' indemnities

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

ASC Pty Ltd — Australian Government indemnities provided to Electric Boat Corporation under the services agreement

In early October 2002, the Department of Defence entered into a services agreement with Electric Boat Corporation (EBC) and its subsidiary Electric Boat Australia (EBA) to provide technical and commercial support to ASC Pty Ltd as it transitioned from being a producer of submarines to an agency for through-life submarine support. EBC/EBA staff commenced at ASC Pty Ltd on 14 October 2002. The initial services agreement ran for three years and the Australian Government has taken up the option to extend the agreement by a further three years. The extension has been incorporated into the Strategic Agreement for Through-Life Support of the Collins Class submarines with ASC Pty Ltd.

Under this agreement, EBC and EBA are provided with a warranty by the Australian Government and ASC Pty Ltd that the Australian Government and ASC Pty Ltd have the right to provide EBC/EBA with confidential and other information and the Australian Government provides an indemnity to EBC and EBA against claims arising from a breach of that warranty.

The Australian Government also indemnifies EBC and EBA against claims exceeding the greater of US\$1 million or profit earned by EBC under the agreement that arises from property loss or personal injury resulting from a defect in the operation or performance of a Collins Class submarine, other than caused by unlawful conduct, gross negligence or wilful misconduct of EBC or EBA.

Decontamination of Defence sites

The Department of Defence is currently undertaking a detailed large multi-year project to systematically identify and quantify known decontamination obligations across the Defence estate, in accordance with the Australian Accounting Standards. For the sites assessed to date only a minimal number require a provision to be recognised as in most cases, the conditions for legal or constructive obligations are not met.

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. Thirty-three claims remain current. Four 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. It is not known whether further claims will 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, are part-heard or are subject to an appeal, 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 includes asbestos claims and claims from injury resulting from the F-111 Deseal/Reseal programs. Claims have been received for damage caused by the use of Defence Practice Areas. At any given point, there are about 400 claims. Presently, they have an estimated value in excess of \$145 million.

Military Superannuation and Benefits Scheme — indemnity

The Military Superannuation and Benefits Scheme (MSBS) provides occupational superannuation benefits for members of the Australian Defence Force. Much of the day-to-day administration associated with the MSBS is conducted by ComSuper. Under the *Military Superannuation and Benefits Act 1991* the actions of ComSuper and its Commissioner are deemed to be those of the Military Superannuation and Benefits Board (MSB Board). Defence has indemnified the MSB Board for certain specified claims that are made in relation to acts of ComSuper and/or its Commissioner that are not recoverable elsewhere.

Environment, Heritage and the Arts

Art Indemnity Australia

Art Indemnity Australia is a program through which the Australian 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 Australian Government risk in indemnifying exhibitions is insured through Comcover. Uninsurable risk continues to be borne solely by the Australian Government.

Finance and Deregulation

Australian Reward Investment Alliance — immunity and indemnity

The *Superannuation Act 1976*, *Superannuation Act 1990* and *Superannuation Act 2005* provide for specific immunities for activities undertaken in good faith by the trustees of the Australian Reward Investment Alliance (ARIA), the Commissioner for

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Superannuation and staff, delegates of the trustee Board and members of a Reconsideration Advisory Committee, provided these activities relate to the performance of their functions.

These immunities do not prevent the trustee Board from being subject to any action, liability, claim or demand. Under the Superannuation Acts, other than in cases where the *Superannuation Industry (Supervision) Act 1993* does not so permit, any money that becomes payable by the trustee Board, in respect of such actions is to be paid out of the relevant fund. Where such payments are made, an equivalent amount is paid to the fund from the Consolidated Revenue Fund.

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.

Indemnities for the Reserve Bank of Australia and private sector banks

Under agencies' contracts for transactional banking services, the Australian Government has indemnified the Reserve Bank of Australia and contracted private sector banks. These banks are indemnified against loss and damage arising from error or fraud by the agency, or transactions made by banks with the authority of the agency.

Indemnities relating to other former asset sales, privatisations and IT outsourcing projects

Ongoing indemnities have been given in respect of a range of asset sales, privatisations and IT outsourcing projects that have been conducted by the Department of Finance and Deregulation (Finance), and the former Office of Asset Sales and Commercial Support and its predecessors. The probability of an action being made under one of these indemnities diminishes over time. Details of indemnities in respect of the other asset sales and privatisations have been provided in previous Budget and Mid-Year Economic and Fiscal Outlook papers, and previous annual reports for Finance and the Office of Asset Sales and Commercial Support.

Indemnities (including the year they were raised) are still current for: ADI Ltd (1998), Australian Airlines (1991), Australian Industry Development Corporation (1996), Australian Multimedia Enterprise (1997), Australian National Rail Commission and National Rail Corporation Ltd (1997 and 2000), Australian River Co Ltd (1999), Australian Submarine Corporation Ltd (2000), Australian Technology Group (1986), ComLand Ltd (2004), Bankstown Airport Ltd (2002), Camden Airport Ltd (2002), Commonwealth Accommodation and Catering Services (1988), Commonwealth Bank of Australia (1993 to 1996), Commonwealth Funds Management and Total Risk Management (1996 to 1997), Employment National Ltd (2003), Essendon Airport Ltd (2001), Federal Airports Corporation's Airports (1995 to 1997), Home Loans Insurance Commission Ltd (1996), Health Insurance Commission (2000), Hoxton Park Airport Ltd (2002), National Transmission Network (1999), Sydney Airports Corporation Ltd (2001), Telstra (1996 and 1999) and Wool International (1999). Finance does not currently expect any action to be taken in respect of these indemnities.

Industrial Waste Commission Cleanaway

The Australian Government is pursuing an appeal against the decision to strike out its claim for a declaration that a binding licence exists between the Commonwealth and Brambles Ltd (or Transpacific Cleanaway Ltd) in relation to the Industrial Waste Commission (IWC) site at Lucas Heights in New South Wales (NSW). If the NSW Court of Appeal finds that the licence is still in place, the parties will be better placed to determine responsibility for the contamination and remediation of the site. Negotiations with Brambles are ongoing.

Telstra Sale Company Ltd — indemnities

The Australian Government has indemnified Telstra Sale Company Ltd and its officers for all liabilities arising from the Telstra 3 offer document, the sale process or the issue of instalment receipts and the performance of its responsibilities under the Telstra 3 instalment receipt trust deed. These indemnities are subject to limitations in the case of bad faith, malice, fraud or recklessness on the part of the indemnified parties.

The Australian Government has also indemnified Telstra 3 instalment receipt holders for all losses or damages which they may suffer as a result of a breach by Telstra Sale Company Ltd as instalment receipt trustee of its obligations under the Telstra 3

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instalment receipt trust deed, except to the extent that the breach by the trustee is a result of the negligence, bad faith or wilful default of the instalment receipt holder.

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. However, similar to members of boards that operate under the *Commonwealth Authorities and Companies Act 1997* (the CAC Act), a member of the Future Fund Board is not indemnified:

- for conduct he or she engages in other than in good faith;
- in respect of any liability owed to the Board; or
- in respect of any act or omission that contravenes one of the civil penalty provisions of the *Future Fund Act 2006* (Future Fund Act).

Also similar to members of CAC Boards, a member of the Future Fund Board is not indemnified for legal costs incurred by the member in unsuccessfully defending or resisting criminal proceedings, or proceedings against a declaration that the member had breached a civil penalty provision of the Future Fund Act.

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

Foreign Affairs and Trade

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

The Australian Government has provided certain indemnities to the Export Finance and Insurance Corporation (EFIC) board members and senior management to protect against civil claims and legal expenses for unsuccessful criminal claims relating to the implementation of EFIC's alliance/divestment of its short-term export credit insurance business.

Health and Ageing

Australian Red Cross Society — indemnities

The Deed of Agreement between the Australian Red Cross Society (ARCS) and the National Blood Authority (NBA) in relation to the operation of the Australian Red Cross Blood Society (ARCBS) includes certain indemnities and a limit of liability in favour of ARCS. These cover a defined set of potential business, product and employee risks and liabilities arising from the operations of ARCBS. The indemnities and

limitation of liability only operate in the event of the expiry and non-renewal, or the earlier termination, of the Deed of Agreement, and only within a certain scope. They are also subject to appropriate limitations and conditions including in relation to mitigation, contributory fault, and the process of handling relevant claims.

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, and provides for liabilities incurred by ARCBS where other available mitigation or cover is not available. 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 Jurisdictional Blood Committee (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.

CSL Ltd

CSL Ltd is indemnified against claims made by persons who contract specified infections from specified products and against employees contracting asbestos-related injuries. CSL Ltd has unlimited cover for most events that occurred before the sale of CSL Ltd on 1 January 1994, but has more limited cover for a specified range of events that occurred during the operation of the Plasma Fractionation Agreement from 1 January 1994 to 31 December 2004. Where alternative cover was not arranged by CSL Ltd, the Australian Government may have a contingent liability. Given the open-ended nature of some of the indemnities, damages and risk cannot be quantified. No similar indemnities have been given to CSL Ltd in the new Plasma Products Agreement operating from 1 January 2005.

The Australian Government has granted certain indemnities to CSL Ltd against claims made by persons vaccinated under CSL's clinical trials for the development of a prototype pandemic influenza vaccine. It is not possible to quantify the potential fiscal risk arising from the use of this prototype vaccine in CSL's trials.

Guarantee Scheme for aged care accommodation bonds

A Guarantee Scheme has been established through the *Aged Care (Bond Security) Act 2006* and *Aged Care (Bond Security) Levy Act 2006*. Under the Guarantee Scheme, if a provider becomes insolvent or bankrupt and is unable to repay outstanding bond balances to aged care residents, the Australian Government will step in and repay the bond balances owing to each resident. In return, residents will assign their right to the

Statement 8: Statement of Risks

Australian Government to pursue the defaulting provider to recover the accommodation bond money paid out. In the event the Australian Government cannot recover the full amount from the defaulting provider, it may levy all providers holding accommodation bonds to recoup the shortfall. It is not possible to quantify the Australian Government's contingent liability in the event that the Guarantee Scheme is activated.

Indemnity relating to smallpox vaccine

On 12 December 2002, the Australian Government took possession of an initial shipment of 50,000 doses of smallpox vaccine. 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.

Medical Indemnity Exceptional Claims Scheme

In May 2003, the Australian Government announced the Medical Indemnity Exceptional Claims Scheme was 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, 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 medical indemnity insurer, and will apply to claims notified under contracts-based cover since 1 January 2003.

Indemnity relating to H5N1 vaccine

In December 2006, the Australian Government agreed to grant certain indemnities to manufacturers of H5N1 influenza vaccines to be included in the National Medical Stockpile. These vaccines, to be used in limited situations and only under threat of a pandemic, are considered prototype products which to date, have not been used more widely than in clinical trials. The Australian Government granted certain indemnities to manufacturers covering possible adverse events that could result from the use of the vaccine. It is not possible to quantify the potential fiscal risk arising from the use of H5N1 vaccine.

Immigration and Citizenship

Systems development — liability limit

The Department of Immigration and Citizenship (DIAC) has entered into a contract with IBM Australia (IBM) for the provision of systems development services for the department. The arrangement facilitates the delivery of the new departmental program Systems for People. DIAC has agreed to limit IBM's liability to an overall maximum of \$150 million for certain causes of action.

Infrastructure, Transport, Regional Development and Local Government

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 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 writ sought unspecified damages for personal injuries as a result of exposure to lead and other particles from trains carrying lead and zinc ore.

Maritime Industry Finance Company Ltd — board members' indemnity

Indemnities for Maritime Industry Finance Company Ltd board members have been provided to protect them against civil claims relating to their employment and conduct as directors.

Tripartite deeds relating to the sale of federal leased airports

Tripartite deeds apply to 12 federal leased airports (Adelaide, Alice Springs, Bankstown, Brisbane, Canberra, Coolangatta, 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.

Innovation, Industry, Science and Research

Australian Nuclear Science and Technology Organisation — indemnity

The Australian Government has indemnified the Australian Nuclear Science and Technology Organisation 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 commercial insurance covers obtained from the Comcover Insurance Pool and other insurers.

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 liable to pay compensation for damage caused to nationals of other countries by space objects launched from, or by, Australia. The Australian Government requires the responsible party for a space activity approved under the *Space Activities Act 1998* to insure against liability for damage to third parties for an amount not less than the maximum probable loss, up to a maximum of \$750 million. Under the Space Activities Act, the Australian Government also accepts liability for damage suffered by Australian nationals, to a maximum value of \$3 billion above the insured level.

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Liability for damages caused by Kistler space activities

In accordance with the United Nations Convention on International Liability for Damage Caused by Space Objects, an agreement was signed in 1998, amended in 1999, between the Department of Industry, Tourism and Resources, Kistler Woomera Pty Ltd and Spaceport Woomera Pty Ltd to support the launching of the K-1 Aerospace Vehicle and satellites into space from Australia. Under the agreement, the Australian Government provides indemnity support to a maximum of US\$1.5 billion (estimated value A\$1.9 billion), indexed for inflation above the level of insurance cover obtained under the requirements of the agreement.

Resources, Energy and Tourism

Snowy Hydro Ltd — directors' indemnities

The Australian Government has, together with the co-shareholder governments of New South Wales and Victoria, indemnified the members of the board of Snowy Hydro Ltd for liabilities arising from entering into agreements to implement corporatisation of the Snowy Mountains Hydro-Electric Scheme, and from liabilities to Snowy Hydro Ltd at corporatisation. The indemnity will apply to liabilities arising within 5 years of corporatisation, and for which a claim is notified to the Governments within 11 years of the corporatisation date of 28 June 2002.

Snowy Hydro Ltd — water releases

The Australian, New South Wales and Victorian governments have indemnified Snowy Hydro Ltd 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 20 years from 28 June 2002.

The Australian, 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.

Liability for costs incurred in a national liquid fuel emergency

The Australian Government has responsibility for the *Liquid Fuel Emergency Act 1984* (the Act) which is administered by the Minister for Resources, Energy and Tourism. In addition, State and Territory governments have entered into an inter-governmental agreement (IGA) which coordinates the use of the powers under the Act in a national liquid fuel emergency. The IGA contains three areas where the Australian Government may incur expenses in the unlikely event of a national liquid fuel emergency. These relate to the direct costs of managing a liquid fuel emergency and include the possibility for the Australian Government to reimburse the State and Territory

governments for costs arising from their response, and potential compensation to industry from Australian Government directions under the Act.

Treasury

Housing Loans Insurance Corporation — guarantee

The Australian Government sold the Housing Loans Insurance Corporation (HLIC) on 12 December 1997 and has assumed all residual contingencies. 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. The principal amount covered by the guarantee and the balances outstanding are unable to be reliably measured.

Terrorism insurance — commercial cover

The *Terrorism Insurance Act 2003* established a scheme for replacement terrorism insurance covering damage to commercial property including associated business interruption and public liability. The Australian Reinsurance Pool Corporation (ARPC) uses reinsurance premiums paid by insurers to meet its administrative expenses and to build a fund and purchase reinsurance to help meet future claims. The Commonwealth guarantees to pay any liabilities of the ARPC, but the Treasurer must declare a reduced payout rate to insureds if the Commonwealth's liability would otherwise exceed \$10 billion.

CONTINGENT ASSETS — UNQUANTIFIABLE

Wireless Local Area Network — contingency asset

The Commonwealth Scientific and Industrial Research Organisation (CSIRO) is currently involved in legal proceedings in the United States of America related to a Wireless Local Area Network (WLAN) patent which it owns and wishes to license broadly. If successful, CSIRO would earn significant revenue from royalty payments which would exceed the associated legal costs over time. At this stage, the revenue and costs are considered unquantifiable.

