APPENDIX C: STATEMENT OF RISKS

OVERVIEW

Full details of fiscal risks and contingent liabilities are provided in Budget Paper No. 1, *Budget Strategy and Outlook 2009-10*. The following statement updates (where necessary) those fiscal risks and contingent liabilities that have changed since the 2009-10 Budget.

The forward estimates of revenue and expenses in the *Mid-Year Economic and Fiscal Outlook 2009-10* (MYEFO) incorporate assumptions and judgments based on information available at the time of publication and are based on a range of economic and other forecasts and projections.

It is important to note that the MYEFO revenue forecasts have been prepared following a period of heightened financial and economic volatility. Although economic conditions in more recent times have stabilised and are expected to improve, particularly in Australia, this is not anticipated to lead to an immediate recovery in tax revenues as the effects of the economic downturn continue to weigh on tax collections. As such, there remains an increased degree of uncertainty surrounding the revenue forecasts in this MYEFO.

Specifically, it should be noted that revenue forecasting relies heavily on the historical relationships between the economy, tax bases and tax revenues. However, such relationships may continue to shift in the current climate, requiring a greater degree of caution in their use in predicting future revenues. For example, any losses incurred during the downturn can be carried forward to offset gains or profits as the economy recovers, such that tax revenue improves with some lag. However, there is little recent experience of taxpayers claiming prior year losses after a significant downturn and this may affect the robustness of current forecasts.

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 2009-10 Budget are described below and summarised in Table C1.

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

Table C1: Summary of material changes to the Statement of Risks since the 2009-10 Budget

Contingent liabilities - quantifiable	
Defence	
Indemnities and remote contingencies	Modified
Finance and Deregulation	
Australian Industry Development Corporation	Modified
Litigation	Modified
Sale of Sydney Airports Corporation Limited	Modified
Foreign Affairs and Trade	
Export Finance and Insurance Corporation	Modified
Infrastructure, Transport, Regional Development and Local Government	
Code Management Company - indemnity for the Code of Practice for the Defined Interstate Rail Network	Removed
Treasury	
Guarantees under the *Commonwealth Bank Sale Act 1995*	Modified
International financial institutions - uncalled capital subscriptions	Modified
Reserve Bank of Australia - guarantee	Modified
Standby loan facility for the Government of Indonesia	Modified
Contingent assets - quantifiable	
Treasury	
International Monetary Fund allocations of Special Drawing Rights	Removed
Contingent liabilities - unquantifiable	
Agriculture, Fisheries and Forestry	
Compensation claims arising from equine influenza outbreak	Modified
Exceptional Circumstances assistance for drought-affected farmers	Modified
Defence	
HMAS *Melbourne* and HMAS *Voyager* claims	Modified
Environment, Heritage and the Arts	
Murray-Darling Basin Reform - additional net costs	New
Murray-Darling Basin Reform - risk assignment	Modified
Finance and Deregulation	
Industrial Waste Commission (IWC) Cleanaway	Modified
Sharjade v Darwinia - breach of Heads of Agreement between the parties	Modified
Immigration and Citizenship	
Immigration detention centre services - liability limit	New
Resources, Energy and Tourism	
Gorgon liquefied natural gas and carbon dioxide storage project - long-term liability	New
Treasury	
Australian Business Investment Partnership	Removed
Car dealer financing - Australian Government guarantee of the OzCar Special Purpose Vehicle	Modified
Financial Claims Scheme	Modified
Guarantee of deposits in authorised deposit-taking institutions	Modified
Guarantee of wholesale funding of authorised deposit-taking institutions	Modified
Guarantee of state and territory borrowing	Modified
Contingent assets - unquantifiable	
Innovation, Industry, Science and Research	
Wireless Local Area Network	Modified

Risks appearing in Budget Paper No. 1, *Budget Strategy and Outlook 2009-10*, Statement 8, but not listed in the table above are substantially unchanged.

CONTINGENT LIABILITIES — QUANTIFIABLE

Defence

Indemnities and remote contingencies

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 8,108 instances of unquantifiable remote contingent liabilities and 97 instances of quantifiable remote contingent liabilities to the value of $2.1 billion. DMO carries 501 instances of contingencies (including Foreign Military Sales) that are unquantifiable and 245 contingencies that are quantifiable, to the value of $5.9 billion.

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 30 June 2009 (the latest available estimate), AIDC's contingent liabilities, subject to Australian Government guarantee, were approximately $75 million in respect of the Fairfax Paper Bond Guarantee and credit risk facilities.

Litigation

The Department of Finance and Deregulation is involved in litigation in which 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 1998. The counter-claim is from the parties to whom the department believes the misappropriated funds were channelled.

It is counsel's advice that the counter-claim is without merit. The counter-claim, which is being vigorously defended by the Government, seeks damages of $4.3 billion. Hearing of the Government's claim, and the counter-claim, concluded in the ACT Supreme Court in September 2008. A judgment is now expected to be delivered in the first half of 2010.

Sale of Sydney Airports Corporation Limited

An indemnity has been provided to Southern Cross Airports Corporation as purchaser of Sydney Airports Corporation Ltd in the event of a liability arising under Chapter 3 of the *Duties Act 1997* (NSW), 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. The Australian Government maintains that there are no grounds for the assessment. Action has been initiated in the NSW Supreme Court to overturn the assessment. The amount disputed is estimated at $506.7 million as at 31 August 2009.

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 Government. The 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 August 2009, the Government's total contingent liability was $3.2 billion, comprising EFIC's liabilities to third parties ($2.3 billion) and EFIC's overseas investments, insurance, contracts of insurance and guarantees ($0.9 billion).

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 superannuation and other liabilities amounting to around $5.2 billion. Of this amount, $1.7 billion is attributable to liabilities of the Commonwealth Bank of Australia at 30 June 2009 and $3.5 billion is attributable to liabilities of the Commonwealth Bank Officers' Superannuation Corporation at 30 June 2009.

International financial institutions — uncalled capital subscriptions

As at 15 September 2009 the Australian Government had uncalled capital subscriptions in the International Bank for Reconstruction and Development (US$2.8 billion — estimated value A$3.2 billion), the European Bank for Reconstruction and Development (US$81.7 million plus €77.5 million — estimated value A$266.3 million) and the Multilateral Investment Guarantee Agency (US$26.5 million — estimated value A$30.7 million).

The Government has also had uncalled capital subscriptions in the Asian Development Bank (ADB) since 1966. Australia will contribute additional resources to the ADB as part of its recently announced general capital increase, to assist in supporting countries in the Asia-Pacific region during the global recession and meeting the region's ongoing development needs. The paid-in component of Australia's contribution was a measure in the 2009-10 Budget. Australia will also increase its uncalled capital subscription so that it totals US$7.2 billion (estimated value A$8.3 billion), which would only be drawn down in the unlikely event that the ADB was unable to meet its financial obligations.

None of these international financial institutions has ever drawn on Australia's uncalled capital subscriptions.

Australia has made a line of credit available to the International Monetary Fund (IMF) under its New Arrangements to Borrow (NAB) since 1998. In line with G-20 Leaders' commitments, Australia will join with other countries to increase its credit line under an expanded NAB. Australia's contribution to the expanded NAB will be by way of a US$7.0 billion (estimated value A$8.1 billion) contingent loan (which includes Australia's existing US$1.2 billion commitment). This will help ensure that the IMF has the resources available to maintain stability and support recovery in the global economy. The funds would be drawn upon by the IMF only if needed and would be repaid in full with interest.

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 is notes (that is, currency) on issue. Notes on issue amount to $48.5 billion, as at 25 September 2009, and the total guarantee is $58.1 billion.

Standby loan facility for the Government of Indonesia

Australia will make up to US$1 billion (estimated value A$1.2 billion, as at 15 September 2009) available to the Government of Indonesia in the form of a standby loan facility, to be drawn down should Indonesia be unable to raise sufficient funds on global capital markets due to the impact of the global recession. Contributions to the standby loan facility will also be provided by the World Bank, the Asian Development Bank and the Government of Japan. A drawdown from the facility will be dependent on a request from the Indonesian Government and subject to certain criteria being met. Any funds provided will be repaid in full with interest.

CONTINGENT LIABILITIES — UNQUANTIFIABLE

Agriculture, Fisheries and Forestry

Compensation claims arising from equine influenza outbreak

The Australian Government may become liable for compensation should the Department of Agriculture, Fisheries and Forestry be found negligent in relation to the outbreak of equine influenza in 2007.

On 12 June 2008, the Minister for Agriculture, Fisheries and Forestry released the Equine Influenza Inquiry report. Subsequently, a significant number of organisations have indicated their intention to proceed with legal action against the Government. To date 17 claims have been received. Court proceedings have commenced for two of these. The Department of Finance and Deregulation assumed responsibility for claims under its insurance arrangements with the Department of Agriculture, Fisheries and Forestry.

Exceptional Circumstances assistance for drought-affected farmers

Exceptional Circumstances assistance is available, subject to eligibility criteria, to drought-affected farmers and agriculture-dependent small businesses, primarily by way of interest rate subsidies and income support. The estimates assume that there will be no new drought declarations but that some existing declarations will be extended until June 2011. A continuation of adverse seasonal conditions or a return to severe 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 the intensity, duration and scale of future drought conditions.

Defence

HMAS *Melbourne* and HMAS *Voyager* claims

Minimal provision has been made for the settlement of claims arising from the HMAS *Voyager*/HMAS *Melbourne* collision in 1964. With one exception, all outstanding claims have been resolved. It is not known whether further claims will be made in connection with the collision.

Environment, Heritage and the Arts

Murray-Darling Basin Reform — additional net costs

Under the 3 July 2008 *Intergovernmental Agreement on Murray-Darling Basin Reform* (Reform IGA), the Australian Government agreed that the New South Wales, Victorian, Queensland, South Australian and Australian Capital Territory governments (Basin States) will not bear additional net costs as a consequence of the reforms agreed between the parties and the implementation of the *Water Act 2007* (the Act). This undertaking ceases on 30 June 2015.

A methodology has been developed for agreement with the Basin States that enables the State and Australian governments to agree on the activities undertaken by a State that are relevant to the implementation of the reforms agreed under the Reform IGA and the implementation of the Act, and to monitor increased or decreased costs and/or revenues.

Murray-Darling Basin Reform — risk assignment

The *Water Act 2007* (the Act) provides the mechanism for defining liabilities and making payments to affected entitlement holders for the Australian Government's share of reductions in water allocations, or in the reliability of water allocations, in the Murray-Darling Basin arising from the Basin Plan prepared under the Act.

Under the 3 July 2008 *Intergovernmental Agreement on Murray-Darling Basin Reform*, the Australian Government agreed to accept responsibility for the States' shares of liabilities for such reductions that are attributable to new knowledge, under certain conditions. Amendments to the Act to include this additional liability came into force on 15 December 2008.

The Australian Government's liabilities will be mitigated by investment in water efficiency measures and the purchase of water entitlements under the Water for the Future initiatives.

Finance and Deregulation

Industrial Waste Commission Cleanaway

Following an unsuccessful appeal by the Australian Government against Brambles Holdings Limited seeking declarative relief in relation to a deed of licence between the parties for the Industrial Waste Commission Cleanaway site at Lucas Heights, New South Wales, the Government is seeking to resolve a dispute concerning remediation responsibility for the site.

Brambles has recently commenced action in the NSW Land and Environment Court under the *Protection of the Environment Operations Act 1997* (NSW). Investigations into the nature and extent of contamination, as well as remediation options, are under way with a view to mediation taking place between the Australian Government and Brambles before the end of 2009.

Sharjade v Darwinia — breach of Heads of Agreement between the parties

It was alleged that the Australian Government induced Darwinia to breach an agreement made in 2000 between Sarjade and Darwinia in relation to the sale of Commonwealth land at Turramurra NSW to Darwinia for the construction of a retirement village for ex-service personnel. The case against the Australian Government was dismissed in October 2008. However, the judge found in favour of Sharjade in relation to the first defendant, Darwinia. Sharjade has formally appealed the dismissal and findings against both parties, and its appeal submissions were lodged on 17 March 2009. A joint appeal hearing with Darwinia was held in August 2009. The court has reserved judgment and a decision is expected by the end of 2009. All parties' submissions have been filed in court.

Immigration and Citizenship

Immigration detention centre services — liability limit

The Department of Immigration and Citizenship (DIAC) has entered into a contract with Serco Pty Ltd, which commenced on 29 June 2009, to deliver immigration detention services in Australia on behalf of the Australian Government at immigration detention centres.

DIAC has agreed to limit Serco's liability to the department to a maximum of any insurance proceeds recovered by Serco and $75 million. Serco's liability is unlimited for specific events defined under the contract.

Resources, Energy and Tourism

Gorgon liquefied natural gas and carbon dioxide storage project — long-term liability

The Australian and Western Australian governments have agreed to provide an indemnity to the Gorgon Joint Venture Partners (GJV) to indemnify the GJV against independent third party claims (relating to stored carbon dioxide) under common law following closure of the carbon dioxide sequestration project, and subject to conditions equivalent to those set out in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. It is proposed that the Western Australian Government will indemnify the GJV, and that the Australian Government will indemnify the Western Australian Government for 80 per cent of any amount determined to be payable under that indemnity. The formal agreement between the Australian and Western Australian governments in relation to the indemnity is expected to be completed by the second quarter of 2010.

Treasury

Car dealer financing — Australian Government guarantee of the OzCar Special Purpose Vehicle

The Australian Government will guarantee all non AAA-rated securities issued by the OzCar Special Purpose Vehicle (SPV) to facilitate the purchase of those securities by Australia's four major domestic banks.

The guarantee will result in a call being made on the Government by the OzCar SPV Trustee if the assets underlying the guaranteed securities fail to generate sufficient income for the SPV to cover its outlays and any losses from failed car dealerships.

The overall size of the OzCar SPV is expected to be no more than $450 million. OzCar will be available to provide funding to participating financiers until 30 June 2010.

Financial Claims Scheme

The Australian Government has established a Financial Claims Scheme to provide depositors of authorised deposit-taking institutions and general insurance policyholders with timely access to their funds in the event of a financial institution failure.

On 15 October 2009, the Minister for Financial Services activated the Financial Claims Scheme Policyholder Compensation Facility for a small general insurer. The estimated claims and administrative costs are approximately $2 million. As at 30 June 2009, deposits eligible for coverage under the Financial Claims Scheme were estimated to be approximately $660 billion.

Guarantee of deposits in authorised deposit-taking institutions

The Australian Government has guaranteed eligible deposits in authorised deposit-taking institutions from 12 October 2008.

The expected liability for deposits under the guarantee scheme is remote and unquantifiable. Government expenditure would arise under the guarantee only in the unlikely event that an institution failed to meet its obligations with respect to a commitment that was subject to the guarantee and the guarantee was called upon. In such a case, the Government would likely be able to recover any such expenditure through a claim on the relevant institution. The impact on the Government's budget would depend on the extent of the institution's default and its ability to meet the Government's claim.

As at 18 September 2009, authorised deposit-taking institutions' deposits covered by this guarantee were estimated at $16.9 billion.

Guarantee of wholesale funding of authorised deposit-taking institutions

The Australian Government has guaranteed eligible wholesale funding of authorised deposit-taking institutions from 12 October 2008. The guarantee facility will be withdrawn when market conditions normalise.

The expected liability under this guarantee is remote and unquantifiable. Government expenditure would arise under the guarantee only in the unlikely event that an institution failed to meet its obligations with respect to a commitment that was subject to the guarantee and the guarantee was called upon. In such a case, the Government would likely be able to recover any such expenditure through a claim on the relevant institution. The impact on the Government's budget would depend on the extent of the institution's default and its ability to meet the Government's claim.

As at 18 September 2009, authorised deposit-taking institutions' wholesale funding covered by this guarantee was estimated at $143.9 billion.

Guarantee of state and territory borrowing

The Australian Government announced on 25 March 2009 that it will guarantee state and territory borrowing. The guarantee facility will be withdrawn when market conditions normalise.

The expected liability under this guarantee is remote and unquantifiable. Government expenditure would arise under the guarantee only in the unlikely event that a State or Territory failed to meet its obligations with respect to a commitment that was subject to the guarantee and the guarantee was called upon. In such a case, the Government would likely be able to recover any such expenditure through a claim on the relevant State or Territory at a future date. The impact on the Government's budget would depend upon the extent of the default and the State or Territory's ability to meet the Government's claim.

As at 18 September 2009, the face value of State and Territory borrowings covered by this guarantee was $62.3 billion.

CONTINGENT ASSETS — UNQUANTIFIABLE

Innovation, Industry, Science and Research

Wireless Local Area Network

The Commonwealth Scientific and Industrial Research Organisation (CSIRO) is currently involved in legal proceedings in the US and Australia related to its wireless local area network (WLAN) patent. The proceedings are additional to proceedings settled in March and April 2009 and are at various phases. If successful, CSIRO expects to receive significant revenue which would exceed associated legal costs. At this stage, the revenue and costs are considered unquantifiable.