

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 Economic and Fiscal Outlook. This statement outlines general fiscal risks and specific contingent liabilities that may affect the Budget balances.

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The forward estimates of revenue and expenses in the 2010-11 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 or likelihood; and
- the realisation of contingent liabilities or assets.

RISKS TO THE BUDGET — OVERVIEW

The revenue and expense estimates and projections published in the 2010-11 Budget Papers 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. The sensitivity of Budget estimates to changes in economic assumptions is discussed in Appendix A of Statement 3.

It is important to note that the Budget revenue forecasts have been prepared following a period of heightened financial and economic volatility. Although the economy has improved over the last year or so, an associated increase in revenues is not expected, for the most part, until 2010-11 and the latter years of the forward estimates, as the effects of the earlier economic downturn continue to weigh on tax collections.

To the extent that unanticipated changes in economic circumstances occur, their impact will flow through to revenue forecasts. The current uncertainty in global financial markets means that the risks to the fiscal outlook remain elevated.

Specifically, it should be noted that revenue forecasting relies heavily on the historical relationships between the economy, tax bases and tax revenues. 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.

As in previous years, the fiscal outlook is also subject to a number of contingent liabilities. A large number of these contingent liabilities reflect indemnities, including those relating to the Department of Defence, the Defence Materiel Organisation, Air

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Services Officers, the Future Fund Board of Guardians and the Reserve Bank. The Government has also issued a number of guarantees, such as those relating to guarantee schemes for the banking and financial sector, payments by the Export Finance and Insurance Corporation and the superannuation liabilities of the Commonwealth Bank prior to its sale to the private sector.

Other significant contingent liabilities relate to uncalled capital subscriptions and credit facilities to international financial institutions and legal cases concerning the Australian Government. The Government continues to have strategies in place to reduce its potential exposure to these contingent liabilities.

There have been several changes to both the quantifiable and unquantifiable risks since the *Mid-Year Economic and Fiscal Outlook 2009-10* (MYEFO). These include an increase in Australia's uncalled capital in the International Bank for Reconstruction and Development, the Asian Development Bank and the European Bank for Reconstruction and Development. The remote risks around the Government Guarantee Schemes for Large Deposits and Wholesale Funding and state and territory borrowing have been reduced by the closure of these schemes. None of these international financial institutions have ever drawn on Australia's uncalled capital subscriptions.

Several new items have also been included since MYEFO, such as the Government's indemnities relating to the Maralinga Rehabilitation Project (1995-2000). Australia's bids for the Federation Internationale de Football Association (FIFA) World Cup in 2018 or 2022 and the 2015 Asian Football Confederation (AFC) Cup have also been included as the Australian Government has made commitments that would need to be met in the event that these bids were successful.

Since MYEFO, several risks have been removed. These largely reflect the conclusion of a number of legal cases involving the Commonwealth, such as Medicare Australia's case against Thelma Pty Ltd and Sharjade's appeal against the Commonwealth.

Table 1: Summary of material changes to Statement of Risks since the 2009-10 Budget and *Mid-Year Economic and Fiscal Outlook 2009-10*^(a)

Contingent liabilities — quantifiable	
Defence and Defence Material Organisation	
Indemnities and remote contingencies	Modified
Finance and Deregulation	
Sale of Sydney Airports Corporation Limited	Modified
Foreign Affairs and Trade	
Export Finance and Insurance Corporation	Modified
Immigration and Citizenship	
Immigration detention services	Deleted
Treasury	
Financial Claims Scheme	New
Guarantees under the <i>Commonwealth Bank Sale Act 1995</i>	Modified
International financial institutions	Modified
Reserve Bank of Australia — guarantee	Modified
Standby loan facility for the Government of Indonesia	Modified
Contingent liabilities — unquantifiable	
Agriculture, Fisheries and Forestry	
Compensation claims arising from equine influenza outbreak	Modified
Attorney General's	
Native Title costs	Modified
Southern Ocean Maritime Patrol and Response Program	Modified
Broadband, Communications and the Digital Economy	
Extended Zones	New
National Broadband Network Request for Proposals process — panel of experts and strategic adviser indemnities	Deleted
New company to roll out and operate the National Broadband Network — interim board members' indemnity	Deleted
Climate Change and Energy Efficiency	
Kyoto Protocol — emissions target	Modified
Defence and Defence Materiel Organisation	
ASC Pty Ltd — Australian Government indemnities provided to Electric Boat Corporation under the services agreement	Deleted
Decontamination of Defence sites	Modified
HMAS <i>Melbourne</i> and HMAS <i>Voyager</i> claims	Deleted
Litigation cases	Modified
Military Superannuation and Benefits Scheme — indemnity	Deleted
Environment, Water, Heritage and the Arts	
Art Indemnity Australia	Deleted
National Aboriginal Islander Skills Dance Association (NAISDA) — construction works	New
Risk assignment under the National Water Initiative	Deleted
Finance and Deregulation	
Comcover — Insurance Claims	New
Indemnities relating to other former asset sales, privatisations and IT outsourcing projects	Modified
Industrial Waste Commission (IWC) Cleanaway	Deleted
Pan Pharmaceuticals	Deleted
<i>Sharjade v Darwinia</i> — breach of Heads of Agreement between the parties	Deleted

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Table 1: Summary of material changes to Statement of Risks since the 2009-10 Budget and *Mid-Year Economic and Fiscal Outlook 2009-10*^(a) (continued)

Contingent liabilities — unquantifiable (continued)	
Health and Ageing	
Australian Medical Association	New
CSL Ltd	Modified
Guarantee scheme for aged care accommodation bonds	Modified
Indemnities relating to vaccines (b)	New
Indemnity relating to H5N1 vaccine	Deleted
Indemnity relating to smallpox vaccine	Deleted
Whole of Government — Australia's bid for the 2015 Asian Football Confederation (AFC) Cup — Government Guarantees	New
Whole of Government — Australia's bids for the Federation Internationale de Football Association (FIFA) World Cup in 2018 or 2022 — Government Guarantees	New
Human Services	
Medicare Australia	Deleted
Immigration and Citizenship	
Immigration detention services — liability limit	Modified
Systems development — liability limit	Deleted
Infrastructure, Transport, Regional Development and Local Government	
Assumed residual liabilities of the Australian National Railways Commission	Deleted
Innovation, Industry, Science and Research	
Liability for damages caused by Kistler space activities	Modified
Liability for damages caused by space activities	Modified
Resources, Energy and Tourism	
British atomic test site Maralinga	New
Snowy Hydro Ltd — water releases	Modified
Treasury	
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	Deleted
Guarantee of state and territory borrowing	Modified
Guarantee of wholesale funding of authorised deposit-taking institutions	Deleted
Guarantee Scheme for Large Deposits and Wholesale Funding(c)	New
Contingent assets — unquantifiable	
Innovation, Industry, Science and Research	
Wireless Local Area Network	Modified

(a) Risks appearing in this Statement but not listed in the table above are substantially unchanged since disclosed in Budget Paper No. 1, *Budget Strategy and Outlook 2009-10*, Statement 8 or in *Mid-Year Economic and Fiscal Outlook 2009-10*, Appendix C.

(b) This risk combines two risks that were listed separately in previous reporting periods — the indemnity relating to the H5N1 vaccine, and the indemnity relating to the smallpox vaccine.

(c) This risk combines the Guarantee of deposits in authorised deposit-taking institutions and the Guarantee of wholesale funding of authorised deposit-taking institutions.

ECONOMIC AND OTHER PARAMETERS

Changes in economic parameters represent a risk to the expenditure and revenue estimates included in the Budget. As noted earlier, the uncertainty currently surrounding the global economic outlook implies that the degree of risk to the fiscal outlook remains elevated. Appendix A of Statement 3 examines the impact on revenue and expenses of altering some of the key economic assumptions underlying the Budget estimates.

FISCAL RISKS

Fiscal risks comprise general developments or specific events that may affect the fiscal outlook. Some developments or events raise the possibility of some fiscal impact. In other cases, the likelihood of a fiscal impact may be reasonably certain, but will not be included in the forward estimates because their timing or magnitude is not known.

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.

Major taxes such as company and personal tax fluctuate significantly with economic activity. Capital gains tax is particularly volatile and is affected by both the level of gains in asset markets and the timing of when those gains are realised. The existing Petroleum Resource Rent Tax and the recently announced Resource Super Profits Tax will vary with commodity prices and output.

There are also 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 have in the past resulted in unexpected increases in expenses and may do so again.

Another fiscal risk is the Government's commitment to the introduction of a Carbon Pollution Reduction Scheme (CPRS). The Government will not introduce a CPRS until after the end of the current commitment period of the Kyoto Protocol and only when there is greater clarity on the actions of other major economies, including the United States, China and India.

This means that the Government will not move to legislate a CPRS before the end of 2012 and will only do so after this time if there is sufficient international action.

The financial impact of a future CPRS will depend on the timing of its commencement. As the timing is uncertain, no financial implications of the scheme have been included in the forward estimates.

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The commitment to proceed with the CPRS is entirely consistent with the Government's commitment to its fiscal strategy, as the CPRS is the least cost means of delivering on the bipartisan emissions reduction commitment.

Another specific fiscal risk is Australia's contribution to the IMF quota. A member's shareholding in the International Monetary Fund (IMF) is determined by its allocated quota which broadly reflects its weight in the global economy. As at 30 March 2010, Australia's IMF quota was SDR 3.2 billion – estimated value A\$5.4 billion.

The IMF is currently undertaking its 14th General Review of Quotas, covering both the size and distribution of its quota resources. In response to a call by G-20 Leaders in April 2009, the timetable for completion of this review has been brought forward by two years, to January 2011. Australia's IMF quota is expected to increase as a result of the review, although the amount is unquantifiable at this time. Consent by Australia to an increase in its quota will require parliamentary approval.

A quota increase is considered a financing transaction for Australia and would have no direct budget impact. However, there could be an increase in the public sector borrowing requirement at the time of payment of around a quarter of the amount of the quota increase – the component that is paid in Special Drawing Rights or in currencies of other members acceptable to the Fund. The balance would be covered through the issue of promissory notes in domestic currency.

The Australian Government has established NBN Co to build and operate the National Broadband Network (NBN). The implementation study confirms NBN can be built for less than \$43 billion, and recommends no private equity before privatisation, to preserve policy flexibility.

The Government has made appropriate provision in the Budget for the roll out of NBN, subject to a final response to the study.

The Government, in considering its final response to the study, and NBN Co in further developing its operational plans for roll out, may require changes to the size and timing of equity injections.

Importantly, the study indicates the Government can expect to generate a rate of return on its equity investment sufficient to cover its cost of funds.

Other fiscal risks that may affect expenditure include natural disasters, emergency foreign aid and contingent liabilities and contingent assets.

Information on fiscal risks takes account of Parliament's decisions and other developments until the close of parliamentary business on 30 April 2010.

CONTINGENT LIABILITIES AND ASSETS

Contingent liabilities and contingent assets for the Australian Government are listed below. These contingent liabilities and assets are a specific category of fiscal risks. Broadly, they represent possible costs or gains to the Australian Government arising from past events or decisions which will be confirmed or otherwise by the outcome of future events that are not within the Government's 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.

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 contingent liabilities and contingent assets is also provided in the annual financial statements of departments and non-Budget entities.

In general, information on contingent liabilities and assets is based on information provided by Australian Government departments and agencies and is current to 5 April 2010. In some cases other dates are used and are noted in the relevant section.

CONTINGENT LIABILITIES — QUANTIFIABLE

Defence and Defence Materiel Organisation

Indemnities and remote contingencies

Defence carries 8,381 instances of unquantifiable remote contingent liabilities and 116 instances of quantifiable remote contingent liabilities, to the value of \$2.9 billion, increasing from \$2.1 billion at MYEFO. The Defence Materiel Organisation carries 468 instances of contingencies (including Foreign Military Sales) that are unquantifiable and 190 contingencies that are quantifiable, to the value of \$5.9 billion. This figure has remained steady since MYEFO. While these contingencies are considered remote, they have been reported in aggregate for completeness.

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), the AIDC's contingent liabilities, subject to Australian Government guarantee, were

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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 Finance is engaged in legal action seeking recovery of funds misappropriated during 1998. The counter-claim is from the parties to whom Finance 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. Judgment is now expected to be delivered by the end of 2010.

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* (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 \$524.5 million as at 5 April 2010.

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 March 2010, the Government's total contingent liability was \$2.3 billion, down from \$3.2 billion at MYEFO. This comprises EFIC's liabilities to third parties (\$1.8 billion) and EFIC's overseas investment insurance, contracts of insurance and guarantees (\$0.5 billion).

Treasury

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 for that insurer are approximately \$2.5 million.

See also the related unquantifiable contingent liability titled *Financial Claims Scheme*.

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 \$4.5 billion as of 31 December 2009. Of this amount, \$0.9 billion is attributable to liabilities of the Commonwealth Bank of Australia and \$3.6 billion is attributable to liabilities of the Commonwealth Bank Officers' Superannuation Corporation.

International financial institutions

Australia has had uncalled capital subscriptions in the International Bank for Reconstruction and Development (IBRD) since 1947. The Government will contribute additional resources to the IBRD as part of its recently announced general capital increase. G-20 Leaders have committed to ensure that the IBRD and other multilateral development banks have sufficient resources to address key development challenges and fulfil their development mandate. The paid-in component of Australia's contribution is a measure in the 2010-11 Budget. Australia will also increase its uncalled capital subscription so that it totals US\$3.6 billion (estimated value A\$3.9 billion).

Also, at 30 March 2010 the Australian Government had uncalled capital subscriptions in the Asian Development Bank of SDR5.8 billion (estimated value A\$9.6 billion), in the Multilateral Investment Guarantee Agency of US\$26.5 million (estimated value A\$28.8 million), and the European Bank for Reconstruction and Development (EBRD) (US\$81.7 million plus €77.5 million – estimated value A\$202.7 million).

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\$7.6 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 to supplement the IMF's usual quota resources, and would be repaid in full with interest.

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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, the Bank's distribution to the Commonwealth and Australian Government deposits. The major component of the Bank's liabilities is notes (that is, currency) on issue. Notes on issue amount to \$49.2 billion, as at 24 March 2010, and the total guarantee is \$57.9 billion, down marginally from \$58.1 billion at MYEFO.

Standby loan facility for the Government of Indonesia

Australia has made up to US\$1 billion (estimated value A\$1.1 billion, as at 30 March 2010) 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 financial crisis. The facility was announced in December 2008 and will continue to be available until the end of 2010. 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. As at 30 March 2010 Indonesia has not requested any drawdown on the facility. Contributions to the standby loan facility have also been provided by the World Bank, the Asian Development Bank and the Government of Japan.

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 18 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.

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 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 land tenure 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 previously offered to assist the States and Territories in meeting certain Native Title costs pursuant to the *Native Title Act 1993* (the NTA), including compensation costs. No agreements under this offer have been entered into to date.

Separately, the Australian Government will be liable for any compensation found to be payable under the NTA in respect of compensable acts for which the Commonwealth is responsible.

The Australian Government's liability in both cases cannot be quantified due to uncertainty about the number and effect of compensable acts and the value of Native Title affected by those acts.

Northern Patrol and Response — Ashmore Guardian and Triton

The Australian Government has entered into contractual arrangements with Gardline Australia Pty Ltd for the provision of two vessels to strengthen enforcement activities in Australia's northern waters and to patrol and respond to incursions in the Ashmore Reef National Nature Reserve and the Cartier Island Marine Reserve. The contracts with Gardline Australia contain unquantifiable indemnities relating to the use or other operations of armaments or the presence of the armaments on the vessel. They also

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contain unquantifiable indemnities relating to damage to any property or injury to any person caused by the apprehended or escorted persons or their vessels.

Southern Ocean Maritime Patrol and Response Program

The Australian Government has entered into a contract to provide a Civil Charter Vessel to conduct patrols in the Southern Ocean and northern waters to undertake law enforcement activities in relation to illegal, unregulated and unreported fishing as well as people smuggling activities. This agreement will remain in force until 30 June 2014. The Australian Government's contract contains unquantifiable indemnities relating to the use or other operations of armaments and ammunition or the presence of the armaments and ammunition on the vessel. It also contains unquantifiable indemnities relating to damage to any property or injury to any person caused by the apprehended or escorted persons or their vessels.

Broadband, Communications and the Digital Economy

Extended Zones

The *Telecommunications (Consumer Protection and Service Standards) Act 1999* requires the Minister to ensure customers in the Extended Zones have access to untimed local calls. The Extended Zones are geographical areas outside Telstra's standard local call charging zones where customers did not have access to untimed local calls prior to 1991. They are predominantly located in rural and remote Australia. The Australian Government's arrangements with Telstra to ensure the provision of these services are due to expire on 31 May 2011. Telstra and the Australian Government are holding discussions on the appropriate arrangements for the provision of untimed local calls in Extended Zones from the expiry of the current agreement and during the transition to the National Broadband Network.

Climate Change and Energy Efficiency

Kyoto Protocol — emissions target

As a party to the Kyoto Protocol, Australia is required to meet its target level for emissions over the first Commitment Period, 2008-12. According to the latest projections of emissions over the Commitment Period, Australia is on track to more than meet its 2008-12 target. Estimates of the likely net balance and value of these permits will be determined closer to the end of the entire Commitment Period.

Defence and Defence Materiel Organisation

ADI Limited — 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.

Decontamination of Defence sites

Defence has made financial provision for the possible costs involved in restoring, decontaminating and decommissioning Defence sites in Australia where a legal or constructive obligation has arisen. The potential costs of these liabilities are unquantifiable.

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 are not able to be finalised by use of negotiation. The litigation includes common law liability claims, including for injury alleged to have resulted from the F-111 Deseal/Reseal programmes. A claim has also been received for damage caused by the use of a Defence Practice Area.

Environment, Water, 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 Governments of New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory (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.

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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.

National Aboriginal Islander Skills Dance Association (NAISDA) — construction works

The Australian Government has provided an indemnity from 1 June 2010 to 30 November 2012 in favour of the Festival Development Corporation, a New South Wales Government statutory authority and landlord of the Mt Penang Parklands, Gosford. The indemnity is in relation to construction works being carried out by the Australian Government on behalf of NAISDA Dance College at Mt Penang Parklands. The maximum potential liability is \$20 million.

Finance and Deregulation

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 Government has indemnified board members of 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 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. Fourteen people in total have been indemnified by these indemnities, including two current and twelve former directors.

Australian Government domestic property

The Australian Government domestic property portfolio managed by the Department of Finance and Deregulation has approximately 100 properties. A small number of these have had potential remediation issues identified which are currently the subject of further investigation. To date none of these properties has had a provision recognised as neither the conditions for legal nor constructive obligations have been met, nor is a reliable estimate of the obligation currently possible.

Australian Reward Investment Alliance — immunity and indemnity

The *Superannuation Act 1976*, the *Superannuation Act 1990* and the *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 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.

Comcover — insurance claims

Comcover provides general insurance services and promotes risk management across the Australian Government. Comcover provides for outstanding claims based on current information as disclosed in Comcover's financial statements. The nature of some claims means there is significant uncertainty around these estimates. Current claims that hold a high degree of risk include Pan Pharmaceuticals, equine influenza and Westpoint.

Future Fund Board of Guardians — indemnity

The Australian Government has provided the members of the Future Fund Board of Guardians with a Deed of Indemnity. The indemnity is intended to cover liabilities in excess of the Future Fund 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*. 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 has breached a civil penalty provision of the Future Fund Act. The indemnity is financially limited, in broad terms, to the value of the funds under management by the Future Fund Board.

Googong Dam

On 4 September 2008, a 150-year lease for Googong Dam was signed between the Australian Government and the Australian Capital Territory Government. The Australian Government is liable to pay just terms compensation if the terms of the lease are breached by introducing new legislation or changing the *Canberra Water Supply (Googong Dam) Act 1974* in a way that impacts on the rights of the Australian Capital Territory. The lease includes a requirement for the Australian Government to undertake rectification of easements or any defects in title in relation to Googong Dam. It also gives an indemnity in relation to acts or omissions by the Australian Government. The Australian Government is also responsible for remediation of any contamination it may have caused to the site.

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

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sector banks. These banks are indemnified against loss and damage arising from error or fraud by the agency, or transactions made by the bank 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, 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 Pty Ltd (2000), ComLand Ltd (2004), Bankstown Airport Limited (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 Limited (2002), National Transmission Network (1999), Sydney Airports Corporation Ltd (2001), Telstra (1996, 1999 and 2006), and Wool International (1999). Apart from instances noted elsewhere Finance does not currently expect any other action to be taken in respect of these indemnities.

Superannuation

On 20 April 2007, the High Court of Australia found against the Australian Government on a claim for negligent misstatement relating to superannuation benefits for a former employee of the Department of the Interior. There is potential for more claims to arise from other former temporary employees who upon their retirement can demonstrate negligent misstatement over their eligibility to join an Australian Government superannuation scheme. The Department of Finance and Deregulation has assumed responsibility for the claims under its insurance arrangements with the relevant agencies or their predecessors.

Foreign Affairs and Trade

Export Finance and Insurance Corporation — board member and senior management indemnities

The Australian Government has provided certain indemnities to 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 Medical Association

An agreement is held between the Australian Medical Association (AMA), the Australian Government, the Australian Private Hospitals Association Ltd (APHA), the Australian Health Insurance Association (AHIA) and Beyond Blue Ltd for participation in and support of the Private Mental Health Alliance and for the collection and analysis of a national minimum data set from private, hospital-based psychiatric services. Each party to the agreement has agreed to indemnify each other in respect of any loss, liability, cost, claim or expense, misuse of confidential information or identified information, or breach of the *Privacy Act 1988*. Each party's liability to indemnify the other parties will be reduced proportionally to the extent that any unlawful or negligent act or omission of the other parties or their employees or agents contributed to the loss or damage. The indemnity survives the expiration or termination of the agreement.

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 Service (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 the 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, the States and Territories, and the ARCBS. It provides for liabilities incurred by the 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 the JBC, in accordance with allocation provisions prevailing at the time.

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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 individuals 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.

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, the residents' rights to pursue the defaulting provider to recover the accommodation bond money transfer to the Government. In the event the 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. On 30 June 2009, the maximum contingent liability, in the unlikely event that all providers defaulted, was \$9.1 billion.

Indemnities relating to vaccines

The Australian Government has provided indemnity to the manufacturer of smallpox vaccine held in the National Medical Stockpile, covering possible adverse events that could result from the use of the vaccine in an emergency situation. Further, under certain conditions, certain indemnities have been provided to particular manufacturers of pandemic and pre-pandemic influenza vaccines for the supply or future supply of influenza vaccines (including H1N1 and H5N1).

Medical Indemnity Exceptional Claims Scheme

In May 2003, the Australian Government announced that 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 would apply to payouts related either to a single large claim or to multiple claims that in aggregate exceed the cover provided by the doctor's medical indemnity insurer, and would apply to claims notified under contracts-based cover since 1 January 2003.

Whole of Government — Australia's bid for the 2015 Asian Football Confederation (AFC) Cup — Government Guarantees

The Australian Government has committed to support Australia's Bid for the 2015 Asian Football Confederation (AFC) Cup. For the bid to be compliant, the Australian Government must provide guarantees which will come into effect if the bid is won. These guarantees include requirements on immigration, work permits, customs, taxation, security and protection of commercial rights, and provide broad indemnities.

Agencies will continue to work together on risk mitigation strategies to minimise the risks associated with each guarantee.

If the Bid is successful, it is expected that some of the Government Guarantees will commence in 2010 and conclude in 2015. The guarantees will not come into effect if the bid is unsuccessful.

Whole of Government — Australia's bids for the Federation Internationale de Football Association (FIFA) World Cup in 2018 or 2022 — Government Guarantees

The Australian Government has committed to support Australia's Bid for the 2018 or 2022 Federation de Football Association (FIFA) World Cup. For the bid to be compliant, the Australian Government must provide guarantees which will come into effect if the bid is won. These guarantees include requirements on immigration, customs, work permits, taxation, security, protection of commercial rights, banking and foreign exchange operations, communications and information technology, and legal issues and indemnification.

Agencies will continue to work together on risk mitigation strategies to manage the risks associated with each guarantee.

If the 2018 World Cup Bid is successful, it is expected that some of the Government guarantees will commence in 2010, and conclude up to two years after the tournament. The guarantees will not come into effect if the bid is unsuccessful.

Immigration and Citizenship

Immigration detention 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. In this contract, DIAC has agreed to limit Serco's liability to DIAC 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.

DIAC also entered into a separate contract with Serco, which commenced on 11 December 2009, to deliver immigration detention services in Australia on behalf of

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the Australian Government at immigration residential housing, immigration transit accommodation and alternative places of detention. In this contract, DIAC has agreed to limit Serco's liability to DIAC to a maximum of any insurance proceeds recovered by Serco and \$17 million. Serco's liability is unlimited for specific events defined under the contract.

Infrastructure, Transport, Regional Development and Local Government

Airservices Australia

On 31 August 2004, the then Minister for Transport and Regional Services, pursuant to section 16 of the *Airservices Act 1995* (the Act), gave a direction to Airservices Australia to provide an operating control tower and approach radar control services in certain volumes of airspace. Sub-Section 16(4) of the Act provides that Airservices Australia 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.

Australian Maritime Safety Authority incident costs

In the normal course of operations, the Australian Maritime Safety Authority is responsible for the provision of funds necessary to meet the clean-up costs arising from ship-sourced marine pollution and, in all circumstances, is responsible for making appropriate efforts to recover the costs of any such incidents. The Australian Government meets costs that cannot be recovered from such incidents. It is not possible to estimate the amounts of any eventual payments that may be required in relation to these incident costs.

Maritime Industry Finance Company Ltd — board members' indemnity

Indemnities for Maritime Industry Finance Company Limited (MIFCO) board members have been provided to protect them against civil claims relating to their employment and conduct as directors. MIFCO was placed into voluntary liquidation on November 2006 and was deregistered on 24 April 2008. The indemnity is not time limited and continues even though the company has been liquidated. Until the indemnity agreements are varied or brought to an end, they will remain as contingent and unquantifiable liabilities.

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 (ALC) and financiers amend the airport (head) leases to provide for limited step-in-rights for financiers in circumstances where the Commonwealth terminates the head lease to enable the financiers to correct the circumstances that triggered such a termination event. The tripartite deeds may

require the Commonwealth to pay the ALC and financiers compensation as a result of its termination of the (head) lease. The Commonwealth's 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 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 and 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 K1 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\$2.2 billion), above the level of insurance cover obtained under the requirements of the agreement.

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 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 indexed for inflation. Under the Space Activities Act, the Government also accepts liability for damage suffered by Australian nationals, to a maximum value of \$3.0 billion above the insured level.

Resources, Energy and Tourism

British atomic test site at Maralinga

The Australian Government is responsible for 14 unlimited indemnities relating to the Maralinga Rehabilitation Project (1995-2000). In November 2009 the Australian Government agreed to the handback of the former nuclear test sites at Maralinga to the Maralinga Tjarutja people. Under the terms of the handback, the Australian Government has indemnified the Maralinga Tjarutja people and the South Australian Government in respect of claims arising from test site contamination.

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 2011.

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, the 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 of the Australian Government reimbursing the State and Territory governments for costs arising from their response, and potential compensation for industry arising from Australian Government directions under the Act.

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 Limited for liabilities arising from entering into agreements to implement corporatisation of the Snowy Mountains Hydro Electric Scheme, and from liabilities to Snowy Hydro Limited at corporatisation. The indemnity applies to liabilities arising within five years of corporatisation, and for which a claim is notified to the Governments within eleven 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.

Treasury

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

The Australian Government is guaranteeing 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 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 currently around \$170 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 unlikely event of a financial institution failure.

The Early Access Facility for Depositors established under the *Banking Act 1959* provides a mechanism for making payments to depositors under the Government's guarantee of deposits in authorised deposit-taking institutions.

The Government announced that, from 12 October 2008, deposits up to \$1 million at eligible authorised deposit-taking institutions would be eligible for coverage under the Financial Claims Scheme. This \$1 million cap will continue until at least October 2011, when it will be reviewed.

As at 31 March 2010, deposits eligible for coverage under the Financial Claims Scheme were estimated to be approximately \$670 billion.

The Policyholder Compensation Facility established under the *Insurance Act 1973* provides a mechanism for making payments to eligible beneficiaries with a valid claim against a failed general insurer. Amounts available to meet payments and administer this facility, in the event of activation, are capped initially at \$20.1 billion under the legislation.

The expected liability under the Policyholder Compensation Facility is remote and unquantifiable. With the exception of the declaration of the Policyholder Compensation Facility in respect of a small insurer on 15 October 2009 noted in the quantifiable contingent liabilities, the likelihood of a collapse that requires the activation of the scheme is low and the payments made under the scheme would be likely to be recovered through the liquidation of the failed institution. If there were a

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shortfall, a levy would be applied to industry to recover the difference between the amount expended and the amount recovered in the liquidation.

See also the related quantifiable contingent liability titled *Financial Claims Scheme*.

Guarantee of State and Territory Borrowing

The Australian Government announced on 25 March 2009 that a voluntary, temporary guarantee would be put in place over state and territory borrowing. The Guarantee of State and Territory Borrowing commenced on 24 July 2009.

The guarantee will close to new issuance of guaranteed liabilities on 31 December 2010. Securities covered by the guarantee will continue to be guaranteed until these securities either mature or are bought back and extinguished by the issuer.

The expected liability under the 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 31 March 2010, the face value of state and territory borrowings covered by the guarantee was \$72.6 billion.

Guarantee Scheme for Large Deposits and Wholesale Funding

The Australian Government announced the guarantee of eligible deposits and wholesale funding for authorised deposit-taking institutions from 12 October 2008 under the Guarantee Scheme for Large Deposits and Wholesale Funding.

On 7 February 2010, the Government announced the closure of the Guarantee Scheme on 31 March 2010. Since 31 March 2010, Australian authorised deposit-taking institutions have been prohibited from issuing any new guaranteed wholesale funding or accepting new guaranteed deposits above \$1 million. Existing guaranteed wholesale funding is guaranteed to maturity. Depositors who covered their balances above \$1 million under the Guarantee Scheme can have those funds covered to maturity for term deposits up to five years, or until October 2015 for at call deposits.

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 5 April 2010, total liabilities covered by the Guarantee Scheme were estimated at \$169.6 billion, including \$14.1 billion of large deposits and \$155.5 billion of wholesale funding.

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 contingent liability relates 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 Australian Government guarantees to pay any liabilities of the ARPC, but the Treasurer must declare a reduced payout rate to insured entities if the Government's liability would otherwise exceed \$10 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 related to a wireless local area network (WLAN) patent which CSIRO owns and wishes to license broadly. The proceedings are additional to proceedings settled by agreement in 2009 and are at various phases. If successful, CSIRO expects to receive significant revenue which would exceed the associated legal costs. At this stage, the revenue and costs are considered unquantifiable.

