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 2011-12*. The following statement updates (where necessary) those fiscal risks and contingent liabilities that have changed since the 2011-12 Budget.

The forward estimates of revenue and expenses in the *Mid-Year Economic and Fiscal Outlook 2011-12* (MYEFO) incorporate assumptions and judgements based on the best information available at the time of publication and are based on a range of economic assumptions and other forecasts and projections.

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 quantum of gains in asset prices and the timing of when those gains are realised. Resource rent taxes may vary quite significantly, particularly with commodity prices, and the level of the Australian dollar. Revenue from carbon permit sales for the flexible price period may also vary owing to changes in the world price of carbon permits.

In addition, revenue forecasting relies heavily on the observed historical relationships between the economy, tax bases and tax revenues. Such relationships may shift as economic conditions change, presenting a further risk to the estimates.

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.

DETAILS OF FISCAL RISKS AND CONTINGENT LIABILITIES

New or revised fiscal risks and contingent liabilities with a possible impact on the forward estimates greater than $20 million in any one year, or $50 million over the forward estimates period, that have arisen or changed since the 2011-12 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 2011-12 Budget[a]

Fiscal risks	
Prime Minister and Cabinet	
Whole-of-Government — 2018 Commonwealth Games to be hosted by the Gold Coast — government guarantees	Modified
Treasury	
Energy Security Council	New
Contingent liabilities — quantifiable	
Defence and Defence Materiel Organisation	
Indemnities and remote contingencies	Modified
Finance and Deregulation	
Litigation — Davis Samuel case	Modified
Sale of Sydney Airports Corporation Limited	Modified
Foreign Affairs and Trade	
Export Finance and Insurance Corporation	Modified
Immigration and Citizenship	
Education Services to Minors in Alternative Places of Detention — liability limit	New
Treasury	
Australian Taxation Office — tax disputes	Modified
Guarantees under the *Commonwealth Bank Sale Act 1995*	Modified
International Financial Institutions — uncalled capital subscriptions	Modified
International Monetary Fund	Modified
Reserve Bank of Australia — guarantee	Modified
Contingent liabilities — unquantifiable	
Attorney-General's	
Indemnities relating to the Air Security Officer program	Removed
Broadband, Communications and the Digital Economy	
NBN Co — Equity Agreement	New
NBN Co Limited — Board Members' Insolvency Indemnity	Modified
Optus Financial Guarantee	New
Telstra Financial Guarantee	New
Defence and Defence Materiel Organisation	
Indemnities and remote contingencies	Modified
Finance and Deregulation	
Australian Reward Investment Alliance — immunity and indemnity[b]	Removed
Commonwealth Superannuation Corporation — immunity and indemnity[b]	New
Future Fund Management Agency — indemnity	Modified
Infrastructure and Transport	
Airservices Australia	Removed

(a) Risks appearing in Budget Paper No. 1, *Budget Strategy and Outlook 2011-12*, Statement 8, but not listed in the table above are substantially unchanged.
(b) The *Governance of Australian Government Superannuation Schemes Act 2011* merged the Australian Reward Investment Alliance (ARIA), the Military Superannuation and Benefits Board and the Defence Force Retirement and Death Benefits Authority, to form a single trustee body with effect from 1 July 2011. See 'Commonwealth Superannuation Corporation – immunity and indemnity' in Contingent Liabilities – Unquantifiable.

Contingent liabilities — unquantifiable (continued)	
Sustainability, Environment, Water, Population and Communities	
Murray-Darling Basin Reform — risk assignment	Modified
Treasury	
Financial Claims Scheme	Modified
Guarantee of State and Territory Borrowing	Modified
Guarantee Scheme for Large Deposits and Wholesale Funding	Modified

FISCAL RISKS

Fiscal risks comprise general developments or specific events that may affect the fiscal outlook. Some developments or events raise the possibility of a 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 the timing or magnitude is not known.

Prime Minister and Cabinet

Whole-of-Government — 2018 Commonwealth Games to be hosted by the Gold Coast — government guarantees

The Australian Government supported the Gold Coast's bid to host the 2018 Commonwealth Games through the provision of guarantees in areas such as immigration, customs, work permits, taxation, security, protection of commercial rights, and communications and information technology. Costs and timing associated with implementing the guarantees are not available at this time.

Treasury

Energy Security Council

The Energy Security Council was established as part of the *Clean Energy Future* package to advise on support measures to address energy security risks. The Council will assess applications for financial assistance in the form of loans for generator owners who need to refinance their debt if finance on reasonable commercial terms is not otherwise available. The Council will also consider applications for loans or other assistance to address systemic risk to energy security in the event of financial distress on the part of an energy market participant. Factors relevant to the realisation of the risk include the circumstances of the generator owners and their ability to access finance from the commercial market.

CONTINGENT LIABILITIES — QUANTIFIABLE

Defence and Defence Materiel Organisation

Indemnities and remote contingencies

As at 30 September 2011, Defence carried 622 (up from 312) instances of quantifiable remote contingent liabilities, to the value of $5.5 billion, an increase on the $3.6 billion reported in the 2011-12 Budget. As at 30 September 2011, the Defence Materiel Organisation carried 105 contingencies that are quantifiable, to the value of $3.5 billion, a decrease on the $4.7 billion reported in the 2011-12 Budget. While these contingencies are considered remote, they have been reported in aggregate for completeness.

Finance and Deregulation

Litigation — Davis Samuel case

The Department of Finance and Deregulation (Finance) 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, 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 in early 2012.

Sale of Sydney Airports Corporation Limited

An indemnity was provided to Southern Cross Airports Corporation as the purchaser of the Sydney Airports Corporation Ltd (SACL) in the event of a liability arising under Chapter 3 of the *Duties Act 1997* (NSW) by reason of the sale of shares in SACL 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 and action has been initiated in the New South Wales Supreme Court to overturn the assessment. The amount disputed is estimated at $576.5 million as at 31 October 2011.

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 30 September 2011, the Government's total contingent liability was $3.4 billion, up from $3.0 billion at the 2011-12 Budget. The $3.4 billion contingent liability comprises EFIC's liabilities to third parties ($2.9 billion) and EFIC's overseas investment insurance, contracts of insurance and guarantees ($0.5 billion). Of the total contingent liability, $2.7 billion relates to EFIC's Commercial Account and $0.7 billion relates to the National Interest Account.

Immigration and Citizenship

Education Services to Minors in Alternative Places of Detention — liability limit

The Australian Government, through the Department of Immigration and Citizenship (DIAC) has entered into a Memorandum of Understanding (MoU) with the State of Western Australia for the provision of an education program to minors in immigration detention at Leonora Alternative Place of Detention. This MoU commenced on 28 July 2010 and was extended for the 2011 school year by way of an exchange of letters (dated 7 October 2010) between DIAC and the Western Australia Government. The Australian Government's liability to the State is limited to the amount of $20 million in aggregate.

Treasury

Australian Taxation Office — tax disputes

At any point in time, the ATO is involved in litigation relating to tax disputes. The outcome of these disputes is uncertain and will be confirmed at a future date through a court ruling or when an agreement is reached.

As at 30 June 2011, the estimated aggregate value of tax in dispute was $8.2 billion.

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 $4.5 billion as of 30 June 2011. Of this amount, $0.8 billion is attributable to liabilities of the Commonwealth Bank of Australia and $3.7 billion is attributable to liabilities of the Commonwealth Bank Officers' Superannuation Corporation.

International Financial Institutions — uncalled capital subscriptions

The Australian Government has held 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 the general capital increase agreed in 2010. The paid-in component of Australia's contribution was a measure in the 2010-11 Budget. As part of this process, Australia will increase its uncalled capital subscription so that it totals US$3.6 billion (estimated value of A$3.6 billion as at 18 November 2011).

Australia has also held uncalled capital subscriptions in the European Bank for Reconstruction and Development (EBRD) since 1991. The Government increased its uncalled capital subscription (effective 20 April 2011) to the EBRD as part of its 2010 general capital increase so that it totals EUR237.5 million (estimated value of A$320.3 million as at 18 November 2011). The financial implications of the paid-in component were reported as a measure in the 2010-11 MYEFO.

The Australian Government also held uncalled capital subscriptions in the Asian Development Bank of US$7.0 billion (estimated value of A$7.0 billion as at 18 November 2011), and the Multilateral Investment Guarantee Agency of US$26.5 million (estimated value of A$26.5 million as at 18 November 2011).

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

International Monetary Fund

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 G20 Leaders' commitments, Australia has joined with other countries to increase its credit line under an expanded NAB. When the expanded NAB came into effect on 11 March 2011, Australia's NAB credit arrangement increased from SDR801.3 million (estimated value of A$1.2 billion as at 4 October 2011) to SDR4.4 billion (estimated value of A$6.7 billion). This is a contingent loan to help ensure that the IMF has the resources available to maintain stability and support recovery in the global economy. The funds will be drawn upon by the IMF as needed to supplement the IMF's usual quota resources and will 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 amounted to $51.9 billion as at 20 October 2011, and the total guarantee was $56.7 billion, down from $58.7 billion at the 2011-12 Budget.

CONTINGENT LIABILITIES — UNQUANTIFIABLE

Broadband, Communications and the Digital Economy

NBN Co. — Equity Agreement

The Australian Government has entered into an Equity Funding Agreement with NBN Co. The Agreement formalises the Australian Government's intention to provide equity to fund the roll out of the National Broadband Network, with such funding being conditional on the annual appropriation processes. It also commits the Australian Government, in the event of a termination of the National Broadband Network roll out, to provide sufficient funds to NBN Co to meet its direct costs arising from that termination. The NBN Co Equity Agreement terminates in 2021.

NBN Co Limited — Board Members' Insolvency Indemnity

The Australian Government has provided each Director of NBN Co with an indemnity against liability as a result of the Government failing to meet its funding obligations to NBN Co. The liabilities covered by this indemnity would be the same as those covered by the NBN Co Equity Agreement, with the exception of any legal expenses incurred by individual Directors arising from this indemnity. The Directors are also indemnified in relation to claims arising out of their involvement in the negotiation and entry by NBN Co into the Financial Heads of Agreement with Telstra.

Optus Financial Guarantee

The Australian Government has provided a guarantee to Optus in respect of NBN Co's financial obligations to Optus under the NBN Co-Optus Agreement, which is subject to satisfying the conditions precedent to the Agreement. That Agreement covers the period of the NBN roll out in Optus HFC areas. As at 31 October 2011, the conditions precedent in the NBN Co-Optus Agreement had not been satisfied and the Guarantee had therefore not come into effect.

Telstra Financial Guarantee

The Australian Government has provided a guarantee to Telstra in respect of NBN Co's financial obligations to Telstra under the Definitive Agreements, which is subject to satisfying the conditions precedent to the Agreements. The Definitive Agreements are long term contracts and, in the case of the infrastructure component, involve terms of at least 35 years. The liabilities under the Definitive Agreements arise progressively during the roll out of the network as infrastructure is accessed and subscribers to Telstra's existing network are disconnected. As at 31 October 2011, the conditions precedent for the Definitive Agreements had not been satisfied and the Guarantee had therefore not come into effect. The Guarantee will terminate when NBN Co achieves specified credit ratings for a period of two continuous years and either:

- the company is fully capitalised; or
- the Communications Minister declares, under the *National Broadband Network Companies Act 2011*, that, in his or her opinion, the National Broadband Network should be treated as built and fully operational.

Defence and Defence Materiel Organisation

Indemnities and remote contingencies

As at 30 September 2011, Defence carried 9,985 instances of unquantifiable remote contingent liabilities, an increase on the 9,306 reported in the 2011-12 Budget. As at 30 September 2011, the Defence Materiel Organisation carried 565 instances of contingencies (including Foreign Military Sales) that are unquantifiable, a decrease on the 568 reported in the 2011-12 Budget. While these contingencies are considered remote, they have been reported in aggregate for completeness.

Finance and Deregulation

Commonwealth Superannuation Corporation — immunity and indemnity

The *Governance of Australian Government Superannuation Schemes Act 2011* (the Governance Act) provides for specific immunities for activities undertaken in good faith by directors and delegates of the board of the Commonwealth Superannuation Corporation (CSC), provided these activities relate to the performance of their functions. These immunities do not prevent CSC from being subject to any action, liability, claim or demand. Under the Governance Act, other than in cases where the *Superannuation Industry (Supervision) Act 1993* or regulations under that Act do not so permit, any money that becomes payable by CSC in respect of the superannuation schemes and funds for which it is responsible, is to be paid out of the relevant superannuation fund or if there is no fund, the Consolidated Revenue Fund (CRF). Amounts paid from a superannuation fund are reimbursed to the fund from the CRF.

Future Fund Management Agency — indemnity

The Australian Government has provided certain staff members of the Future Fund Management Agency with a Deed of Indemnity in circumstances where they are appointed to act as directors and officers of Future Fund Board of Guardians investee companies and/or subsidiaries. The indemnity is intended to cover liabilities in excess of the insurance policies of those entities and Agency. Agency staff members are indemnified, to the maximum extent permitted by law, in relation to all acts or omissions in connection with the performance of functions or the exercise of powers in their capacity as a director or officer of the investee companies and/or subsidiaries. However, Agency staff members are not indemnified: to the extent they are indemnified by the investee company or subsidiary or they are paid under a Directors and Officers policy of the investee company or subsidiary; to the extent that they are granted and receive financial assistance under Appendix E of the Legal Services Directions; for conduct they engage in other than in good faith; or in respect of any liability owed to the Board or the Commonwealth. Further, a staff member of the Agency is not indemnified for legal costs incurred by the member in unsuccessfully defending or resisting criminal proceedings. The indemnity is financially limited, in broad terms, to the value of the funds under management by the Future Fund Board.

Sustainability, Environment, Water, Population and Communities

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.

The Government will provide funding of $310 million per annum from 2014-15 to bridge any remaining gap between the level of water returned to the Murray-Darling Basin under existing *Water for the Future* initiatives and the level required to be returned under the final Basin Plan. The additional funding will be used to continue buying back water entitlements each year beyond 2014, subject to the availability of water for purchase from willing sellers. This funding has been included in the forward estimates.

The proposed Basin Plan is expected to be released in late November 2011 by the independent Murray-Darling Basin Authority and will be followed by a consultation phase. The final Basin Plan requires Ministerial approval and is subject to the scrutiny of both Houses of Parliament.

The total cost of this commitment is not able to be quantified until the Basin Plan has been finalised.

Treasury

Financial Claims Scheme

The Australian Government 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.

The Australian Prudential Regulation Authority (APRA) is responsible for the administration of the Financial Claims Scheme. Under the Financial Claims Scheme any payments to eligible depositors or general insurance policyholders will be made out of APRA's Financial Claims Scheme Special Account.

The Financial Claims Scheme 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. The Government confirmed in December 2010 that the Financial Claims Scheme will be a permanent feature of the Australian financial system. The Government announced in September 2011 that a new cap of $250,000 would replace the current $1 million cap from 1 February 2012.

As at 30 June 2011, deposits eligible for coverage under the Financial Claims Scheme were estimated to be approximately $780.8 billion, compared to $731.8 billion at 31 January 2011.

The Financial Claims Scheme established under the *Insurance Act 1973* provides a mechanism for making payments to eligible beneficiaries with a valid claim against a failed general insurer.

In the very unlikely event of a failure, any payments made under the Financial Claims Scheme would be recovered through the liquidation of the failed institution. In the even more unlikely event there were a shortfall, a levy would be applied to industry to recover the difference between the amount expended and the amount recovered in the liquidation. Initial amounts available to meet payments and administer the Financial

Claims Scheme, in the event of activation, are $20.1 billion per institution, under the legislation.

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 and closed 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. Australian 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 Australian 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 30 September 2011, the face value of State and Territory borrowings covered by the guarantee was $36.8 billion, down from $50.8 billion at 31 March 2011.

Guarantee Scheme for Large Deposits and Wholesale Funding

The Australian Government announced the guarantee of large 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 Australian Government announced that the Guarantee Scheme would close to new liabilities 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. Australian 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 Australian

Government's budget would depend on the extent of the institution's default and its ability to meet the Government's claim.

As at 21 October 2011, total liabilities covered by the Guarantee Scheme were estimated at $117.0 billion, down from $129.0 billion at 25 March 2011. This is made up of $3.2 billion (down from $3.9 billion) of large deposits and $113.8 billion (down from $125.1 billion) of long-term wholesale funding. All guaranteed short-term wholesale funding matured in March 2011.

As at 30 September 2011, institutions participating in the Guarantee Scheme had paid fees of $3.1 billion since its inception.