

## STATEMENT 11: 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 be disclosed in a Statement of Risks in each Budget and Mid-Year Economic and Fiscal Outlook. This statement outlines the fiscal risks and the contingent liabilities which may affect the budget balances.

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## **STATEMENT 11: STATEMENT OF RISKS**

The forward estimates of revenue and expenses in the 2005-06 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 and ensures they remain 'on-balance' estimates.

Events that could affect fiscal outcomes include:

- changes in economic and other parameters;
- matters not included in the fiscal forecasts because of uncertainty about their timing, magnitude and/or likelihood; and
- the realisation of contingent liabilities.

### **RISKS TO THE BUDGET**

#### **Economic and other parameters**

The revenue and expense estimates and projections are based on a range of economic and other parameters. If the economic outlook was to differ from that presented in Statement 3, the revenue and expense estimates and projections would also change. Statement 3 discusses risks to the economic forecasts. Statement 2 discusses the sensitivity of revenue and expense estimates to changes in the major economic parameters.

#### **Fiscal risks**

Fiscal risks are general developments or specific events that may affect the fiscal outlook. Some developments or events simply raise the possibility of some fiscal impact. In other cases, some fiscal impact may be reasonably certain, but it will not be included in the forward estimates because the timing or magnitude is not known. Fiscal risks may affect expenses and/or revenue and may be positive or negative on revenue, expenses and/or the budget balance.

### **Contingent liabilities**

Contingent liabilities are defined by the accounting standard AASB 1044, which came into effect on 1 July 2002. Broadly, they represent possible costs to the Australian Government arising from past events that the outcome of future events will confirm. Contingent liabilities include loan guarantees, non-loan guarantees, warranties, indemnities, uncalled capital and letters of comfort. These possible costs are in addition to those recognised as liabilities in the consolidated financial statements of the Australian Government general government sector.

The Australian Government's major exposure to contingent liabilities arises from legislation guaranteeing certain liabilities of Australian Government controlled financial institutions (the Reserve Bank of Australia and the Export Finance and Insurance Corporation) and the now fully privatised Commonwealth Bank of Australia.

Strategies to manage these exposures aim to ensure the underlying strength and viability of the entities, so that the guarantees are not triggered. Similar strategies may be adopted in relation to entities not subject to explicit guarantees.

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

### **Details of fiscal risks and contingent liabilities**

Fiscal risks and contingent liabilities 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 below.

Information on fiscal risks takes account of Parliament's decisions and other developments until the close of parliamentary business on 30 April 2005. In general, information on contingent liabilities is based on information provided by Australian Government departments and agencies and is current to 31 March 2005 (or later as indicated). However, in some cases, earlier dates are used and are noted in the relevant section.

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

**Table 1: Summary of changes to Statement of Risks since 2004-05 Budget and Mid-Year Economic and Fiscal Outlook**

| <b>Specific risks — revenue</b>  | <b>Status</b> |
|--|---------------|
| Renegotiation of withholding tax rates in certain Australian double tax treaties                                     | Modified      |
| <b>Fiscal risks — expenses</b>   |               |
| <b>Agriculture, Fisheries and Forestry</b>   |               |
| Exceptional Circumstances assistance for drought affected farmers  | Modified      |
| <b>Contingent liabilities — quantifiable</b>   |               |
| <b>Defence</b>   |               |
| Guarantees   | Modified      |
| <b>Employment and Workplace Relations</b>  |               |
| Special Employee Entitlements Scheme for Ansett group employees  | Deleted       |
| <b>Finance and Administration</b>  |               |
| Australian Industry Development Corporation  | Modified      |
| ComLand Limited  | Deleted       |
| <b>Foreign Affairs and Trade</b>   |               |
| Export Finance and Insurance Corporation   | Modified      |
| <b>Industry, Tourism and Resources</b>   |               |
| Timor Sea Designated Authority — litigation  | New           |
| <b>Transport and Regional Services</b>   |               |
| Maritime industry reform   | Modified      |
| <b>Treasury</b>  |               |
| Guarantees under the <i>Commonwealth Bank Sale Act 1995</i>  | Modified      |
| Reserve Bank of Australia — guarantee  | Modified      |
| Uncalled capital subscriptions — international financial institutions  | Modified      |
| <b>Various</b>   |               |
| Asbestos related disease claims  | Deleted       |
| <b>Contingent liabilities — unquantifiable</b>   |               |
| <b>Attorney-General's</b>  |               |
| Southern Ocean surveillance  | Modified      |
| <b>Communications, Information Technology and the Arts</b>   |               |
| New South Wales Councils   | Deleted       |
| <b>Defence</b>   |               |
| Military Superannuation and Benefits Scheme — indemnity  | New           |
| <b>Education, Science and Training</b>   |               |
| Australian Nuclear Science and Technology Organisation — delays in the commissioning of Replacement Research Reactor | Deleted       |
| Australian Nuclear Science and Technology Organisation — indemnity   | New           |

**Table 1: Summary of changes to Statement of Risks since 2004-05 Budget and Mid-Year Economic and Fiscal Outlook (continued)**

| <b>Contingent liabilities — unquantifiable (continued)</b>   |          |
|--|----------|
| <b>Finance and Administration</b>  |          |
| Australian Technology Group — directors' indemnities   | New      |
| ComLand Limited — directors' indemnities   | Modified |
| ComLand Limited — land remediation   | Deleted  |
| ComLand Limited — site contamination   | New      |
| Health Insurance Commission  | Deleted  |
| Members of Parliament Staff Employee Entitlements  | Deleted  |
| Potential claims relating to superannuation benefits   | New      |
| Sydney Airports Corporation Limited, Bankstown, Camden and Hoxton Park Airports — directors' indemnities | Modified |
| Tuggeranong Office Park Pty Ltd  | Deleted  |
| Tuggeranong Office Park Pty Ltd — shareholder indemnity  | New      |
| Indemnities relating to other former asset sales, privatisations and IT outsourcing projects             | Modified |
| <b>Health and Ageing</b>   |          |
| CSL Limited  | Modified |
| <b>Industry, Tourism and Resources</b>   |          |
| Litigation   | New      |
| <b>Transport and Regional Services</b>   |          |
| Deep vein thrombosis action  | Modified |
| Tripartite deeds relating to the sale of Federal leased airports   | Modified |
| <b>Treasury</b>  |          |
| Terrorism insurance — commercial cover   | Modified |

Note: 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 2004-05*, Statement 11 or in *Mid-Year Economic and Fiscal Outlook 2004-05*, Appendix D.

## **FISCAL RISKS — REVENUE**

The Government's revenue and policy measure forecasts, like all forecasts, are subject to a margin of error.

Over the past 20 years, the errors associated with the forecasts of cash receipts have not been significantly different from zero and there has been no bias towards either understatement or overstatement. Over this period, the average error was 0.6 per cent, with the errors varying around this average by 2.7 percentage points. There are not enough data to assess the forecasting performance for accrual revenue.

However, in recent years revenue has grown more strongly than forecast. The revenue forecasting methodology has been adjusted from this Budget to align the revenue forecasts and projections more closely to recent experience (see Box 1, Statement 5).

#### *Part 4: Financial Reporting Standards and Financial Statements*

While many of the forecasts are reported to the nearest million dollars for budget accounting purposes, they should not be interpreted as implying an equivalent level of forecast precision.

The general and specific risks influencing the accuracy of the revenue forecasts are outlined below.

#### **General risks**

The estimates and projections of revenue are subject to a number of general pressures that can affect taxation collections. These general pressures include tax avoidance, developments in communications technology and workplace arrangements, 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. The revenue forecasts include an appropriate allowance for these factors, given the data available.

#### **Specific risks**

##### **Renegotiation of withholding tax rates in certain Australian double tax treaties**

The Australian Government is renegotiating its double tax treaties with several countries. Depending on the negotiated outcomes, changes to these treaties could have positive or negative revenue effects.

#### **FISCAL RISKS — EXPENSES**

##### **Agriculture, Fisheries and Forestry**

###### **Exceptional Circumstances assistance for drought-affected farmers**

Exceptional Circumstances assistance is available, subject to eligibility criteria, to drought-affected farmers by way of interest rate subsidies and/or income support. The forward estimates assume that there will be neither new drought declarations nor extensions of existing declarations. 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 intensity, duration and scale of future drought conditions.

##### **Finance and Administration**

###### **Asset sales — Telstra**

The forward estimates include the effect of the sale of the Australian Government's shareholding in Telstra, noting that the level of proceeds will depend, inter alia, on the prevailing levels of world equity markets at the time of sale and that the timing of the sale could be adjusted if market levels are considered unlikely to provide an

appropriate return to taxpayers. The sale is conditional on the Government being satisfied that arrangements are in place to deliver adequate telecommunications services, particularly in rural and regional Australia. The sale is also dependent on the passage of legislation through the Parliament.

## **Health and Ageing**

### **Medicare Benefits Schedule and Pharmaceutical Benefits Scheme**

From time to time items are added to or removed from the Medicare Benefits Schedule and Pharmaceutical Benefits Scheme schedules, so major new developments in medicines or medical procedures could result in increases in expenses that exceed the provision in the forward estimates. Similarly, significant shifts in Pharmaceutical Benefits Scheme usage patterns and/or doctors' charging patterns for Medicare Benefits Schedule services could result in increases in expenses that exceed the provision in the forward estimates. It is not possible to quantify the fiscal risk arising from such potential developments.

### **Immunisation funding mechanism**

Future vaccine technology will result in new vaccines substituting for those already in use (for example, multivalent vaccines which combine several vaccines into one) and, as a consequence, could result in higher unit costs of vaccine within the routine schedule of vaccinations. Potential costs cannot be precisely quantified at this stage.

## **Transport and Regional Services**

### **Airservices Australia**

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

## **CONTINGENT LIABILITIES — QUANTIFIABLE**

### **Attorney-General's**

#### **Indemnities relating to the Air Security Officer programme**

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

## **Defence**

### **Guarantees**

Defence carries an extensive range of guarantees and undertakings, normally of a short-term nature, relating to business, training activities and other arrangements involving contracts, agreements and other Defence activities. Indemnities issued cover potential losses or damages for which the Australian Government would be liable.

There are 130 instances of contingencies that are unquantifiable, and 188 instances of quantifiable contingencies to the value of \$4.8 billion. While these contingencies are considered remote, they have been reported in aggregate for completeness.

## **Finance and Administration**

### **Australian Industry Development Corporation**

Under the *Australian Industry Development Corporation Act 1970* certain obligations of the Australian Industry Development Corporation (AIDC) are guaranteed by the Australian Government. As at 31 December 2004, AIDC's contingent liabilities, subject to Australian Government guarantee, were approximately \$126 million in respect of guarantees and credit risk facilities.

In addition, AIDC had outstanding Australian Government guaranteed borrowings which totalled approximately \$537 million as at the most current valuation of 31 December 2004. These borrowing obligations have been matched by AIDC's holdings of Australian Government guaranteed securities of similar value, largely eliminating the Australian Government's guarantee exposure. These securities were purchased on-market by UBS Warburg and paid to AIDC as consideration for UBS Warburg's purchase of AIDC Limited's (a subsidiary of AIDC) financial assets. UBS AG, the international parent company that has taken over from UBS Warburg, manages this borrowing portfolio on behalf of AIDC. The UBS AG arrangement also provides a guarantee to cover any cash flow differences between the interest rate and maturity profiles of the matched borrowings and securities, together with any exchange rate movements in the borrowings. The Australian Government's contingent exposure to these borrowings is therefore negligible and is consequently recorded as zero.

### **Litigation**

The Department of Finance and Administration is involved in litigation where a counter-claim for damages has been lodged against the Australian Government. The counter-claim, which will be vigorously defended by the Australian Government,



seeks damages of \$4.3 billion although the basis for this amount is yet to be fully provided.

### **Sale of Sydney Airports Corporation Limited**

An indemnity has been provided to Southern Cross Airports Corporation as purchaser of the Sydney Airports Corporation Limited in the event of a liability arising under Chapter 3 of the *Duties Act 1997* (New South Wales) by reason of the sale of shares in Sydney Airports Corporation Limited constituting a relevant acquisition in a land-rich private corporation. In the event the liability arises it is estimated to be between \$221.2 million and \$282.8 million.

## **Foreign Affairs and Trade**

### **Export Finance and Insurance Corporation**

The Australian Government guarantees the due payments by the Export Finance and Insurance Corporation (EFIC) of money that is, or may at any time become, payable by EFIC to any body other than the Australian Government. The Australian Government also has in place a \$200 million callable capital facility available to EFIC on request to cover liabilities, losses and claims. The Australian Government's total contingent liability is \$3.5 billion, comprising EFIC's liabilities to third parties (\$2.9 billion) and EFIC's overseas investments insurance, contracts of insurance and guarantees (\$546 million).

## **Immigration and Multicultural and Indigenous Affairs**

### **Immigration detention services**

The contract with GSL (Australia) Pty Ltd (previously Group 4 Falck Global Solutions Pty Ltd) commenced on 1 September 2003. The Australian Government has agreed to limit GSL's exposure under the liability regime of the contract. While the general contract requires GSL to indemnify the Australian Government for certain claims of losses, the Australian Government has agreed to share the risk. Subject to certain conditions, GSL has been indemnified against claims of losses above a fixed amount to a capped amount. Where claims exceed the cap in any financial year, responsibility for the excess reverts to GSL.

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

## **Industry, Tourism and Resources**

### **Timor Sea Designated Authority — litigation**

PetroTimor, a subsidiary of the Portuguese registered company Oceanic Exploration, was granted a concession for petroleum exploration in an area of the Timor Sea by

Portugal in 1974. Following Indonesia's annexation of East Timor, PetroTimor ceased operations. With the subsequent Timor Gap Treaty between Australia and Indonesia (and now the Timor Sea Treaty between Australia and Timor-Leste), Oceanic Exploration is arguing that its rights have been alienated and it is currently seeking damages against the Timor Sea Designated Authority up to US\$30 billion (the Australian Government share of which could be up to US\$3 billion) through the United States Court for the District of Columbia.

## **Transport and Regional Services**

### **Maritime industry reform**

On 18 August 1998, the Australian Government provided a guarantee to cover borrowings made by the Maritime Industry Finance Company Limited to finance redundancy-related payments in the stevedoring and maritime industries. Outstanding borrowings covered by the guarantee are \$107.1 million.

## **Treasury**

### **Guarantees under the *Commonwealth Bank Sale Act***

Under the terms of the *Commonwealth Bank Sale Act 1995*, the Australian Government has guaranteed various superannuation and other liabilities amounting to around \$12.8 billion. Of this amount, \$9.3 billion was attributable to liabilities of the Commonwealth Bank of Australia at 30 September 2004 and \$3.5 billion was attributable to liabilities of the Commonwealth Bank Officers' Superannuation Corporation at 30 June 2004.

### **Reserve Bank of Australia — guarantee**

This contingent liability relates to the Australian Government's guarantee of the liabilities of the Reserve Bank of Australia. It is measured as the Bank's total liabilities excluding capital, reserves and Australian Government deposits. The major component of the Bank's liabilities are notes (that is, currency) on issue. Currently, notes on issue amount to \$36.1 billion and the total guarantee is \$43.8 billion.

### **International financial institutions — uncalled capital subscriptions**

This contingent liability relates to the value of the uncalled portion of the Australian Government's shares in the International Bank for Reconstruction and Development (US\$2.8 billion — estimated value A\$3.6 billion), the Asian Development Bank (US\$2.4 billion — estimated value A\$3.2 billion), the European Bank for Reconstruction and Development (US\$81.7 million plus €77.5 million — estimated value A\$235.6 million), and the Multilateral Investment Guarantee Agency (US\$26.5 million — estimated value A\$34.3 million).

## **CONTINGENT LIABILITIES — UNQUANTIFIABLE**

### **Attorney-General's**

#### **Native title agreements — access to geospatial data**

The Australian Government has entered into agreements with state and territory government bodies and/or their agents to access their geospatial data. The data is essential to support the National Native Title Tribunal in achieving its outcome. Under these agreements, the Australian Government provides indemnities against third party claims arising from errors in the data.

#### **Native title costs**

The Australian Government has offered to assist the states in meeting compensation costs associated with native title. The amounts that might be paid by the Australian Government will be subject to the terms of financial assistance agreements being negotiated with the states, and liabilities arising from the 1998 amendments to the *Native Title Act 1993*. The Australian Government's liability cannot be quantified due to uncertainty about the number and effect of compensable acts, both in the past and in the future, and the value of native title affected by those acts. Similarly, it is not possible to quantify the liability for compensable acts for which the Australian Government may be directly liable.

The Australian Government has also offered to assist the states with the costs of bodies performing native title functions under state legislation. The extent of this assistance will depend on the existence of such bodies, the timing of their recognition and the extent of their use.

#### **Southern Ocean surveillance**

The Australian Government has entered into contractual arrangements with P&O Maritime Services for the provision of maritime charter services until June 2006 to facilitate the Australian Customs Service and the Department of Agriculture, Fisheries and Forestry armed patrols of Australia's exclusive economic zone in the Southern Ocean.

The Australian Government will indemnify P&O Maritime Services against certain claims arising from the discharge of firearms or munitions, or where a steaming party is deployed to crew a seized vessel back to an Australian port. Whether those indemnity arrangements are maintained once the measure *Southern Ocean surveillance – continuation* is in place will depend on the outcome of contractual negotiations for the continued provision of maritime charter services.

## **Communications, Information Technology and the Arts**

### **Art Indemnity Australia**

Art Indemnity Australia is a programme through which the Australian Government indemnifies cultural objects loaned to exhibitions displayed in Australian museums and galleries. The exact amounts involved will vary with the exchange rate applying at the time any claim for loss or damage to an artwork or heritage object loaned from overseas is paid, and the extent of any loss or damage. Most of the Australian Government risk in indemnifying exhibitions is insured through Comcover. Uninsurable risk continues to be borne solely by the Australian Government.

## **Defence**

### **ADI Limited — officers and directors' indemnities**

Under the sale agreements for ADI Limited, the Australian Government had indemnified 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 Limited for uninsured losses relating to specific heads of claims.

### **ASC Pty Ltd — Australian Government indemnities provided to Electric Boat Corporation under the Services Agreement**

In early October 2002 the Department of Defence entered into a Services Agreement with Electric Boat Corporation (EB) and its subsidiary Electric Boat Australia (EBA) to provide technical and commercial support to ASC Pty Ltd as it transitioned from being a producer of submarines to an agency for through-life support. EB/EBA staff commenced at ASC Pty Ltd on 14 October 2002. The Services Agreement will run for three years with up to four annual extensions.

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

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

### **HMAS *Melbourne* and HMAS *Voyager* damages claims**

Former crew members of HMAS *Melbourne* have instituted legal proceedings against the Australian Government claiming damages for injuries allegedly caused by the HMAS *Voyager*/HMAS *Melbourne* collision on 10 February 1964. One hundred and twenty seven claims remain current. Eighty six of the current claims are statute barred

under applicable state laws. In those cases, the plaintiffs will require an extension of time prior to progressing their claims for damages. A number of dependency claims arising from that collision have also been foreshadowed by the dependants of deceased former members of the crew of HMAS *Voyager*. Further claims are likely to be made in connection with the collision.

### **Litigation cases**

The Department of Defence is involved in a wide range of litigation and other claims for compensation and/or damages that may result in litigation where the matters have yet to be finalised by negotiation or, where required, litigation. Various claims, the subject of cases that have yet to be heard, are part heard or are subject to an appeal, await a decision on what (if any) damages and/or costs should be paid to the claimant. The litigated and non-litigated claims include common law liability claims and claims arising from complaints to the Human Rights and Equal Opportunity Commission. The litigation includes asbestos claims and claims from injury resulting from the F-111 Deseal/Reseal programmes. Claims have been received for damage caused by the use of Defence Practice Areas and from the presence of unexploded World War II ordnance. In total there are about 400 claims at present, with a value in excess of \$145 million. There is identified potential for claims within the above from known incidents of non-military asbestos exposure and the F-111 Deseal/Reseal project of some 130 claims with a value of some \$30 million.

### **Military Superannuation and Benefits Scheme — indemnity**

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

### **Education Science and Training**

#### **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 the commercial insurance covers obtained from the Comcover Insurance Pool and other insurers.

## **Finance and Administration**

### **Australian Industry Development Corporation — board members' and management indemnity**

The Australian Government has indemnified the Corporation's board members and management against civil claims relating to employment and conduct as directors and management of subsidiary companies. Liability is subject to the terms of the indemnities.

### **ASC Pty Ltd — Australian Government shareholding**

The Australian Government has indemnified Barry AC Hilson and BACH Pty Ltd in relation to liabilities arising from assistance provided to the Australian Government during the conduct of a review of the Australian Government's shareholding in ASC Pty Ltd. This indemnity is ongoing.

### **ASC Pty Ltd — directors' indemnities**

The Australian Government has indemnified the members of the board of ASC Pty Ltd for any claims and all legal costs arising from the result of the directors acting in accordance with the board's tasks and responsibilities as defined under the indemnity.

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; and under the Services Agreement between ASC, the Australian Government, EBC and Electric Boat Australia.

### **Australian Technology Group — directors' indemnities**

The Australian Government has indemnified Australian Government officials appointed as directors of the Australian Technology Group for liabilities relating to any action taken in their capacity as a director of the company. This includes any reasonable legal costs and expenses incurred by a director even after they have ceased to be a director.

### **ComLand Limited — directors' indemnities**

Ongoing indemnities have been provided to former directors of ComLand Ltd, the former General Manager of ComLand Ltd and to DBYB Pty Ltd, against liabilities incurred in respect of assistance provided to the Australian Government during the ComLand scoping study and subsequent sale process.

### **ComLand Limited — site contamination**

Footscray Land Limited is indemnified until 31 December 2019 in respect of certain contamination claims exceeding \$7.5 million in aggregate at its Edgewater (Maribyrnong) site. St Marys Land Limited is indemnified until 31 December 2024 in

respect of certain contamination claims and costs exceeding \$25 million in aggregate at its St Marys (western Sydney) site.

**Employment National Limited — board members' and Chief Executive Officer's indemnity**

Indemnities by the Australian Government have been provided to Employment National Limited board members and the Chief Executive Officer to protect against civil claims relating to their employment and conduct as directors. These indemnities are ongoing.

**Indemnities for the Reserve Bank of Australia and private sector banks**

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

**Potential claims relating to superannuation benefits**

On 4 March 2005, the Supreme Court of the Australian Capital Territory found against the Commonwealth of Australia on a claim for negligence and breach of contract relating to superannuation benefits for a former employee of the Department of the Interior. This is considered to be a test case for several hundred named potential plaintiffs. In addition there is potential for more claims to arise from other former employees. An appeal against the decision of the ACT Supreme Court was lodged in March 2005.

**Sydney Airports Corporation Limited, Bankstown, Camden and Hoxton Park Airports — directors' indemnities**

The Australian Government has indemnified each member of the board of directors of Sydney Airports Corporation Limited, Bankstown Airport Limited, Camden Airport Limited, and Hoxton Park Airport Limited against claims and costs incurred arising from the conduct of the directors in relation to the sale, or scoping study for the sale, of these airports. Where certain company insurances or indemnities exist for the directors in relation to a claim, the Australian Government indemnity cannot be called upon.

**Tuggeranong Office Park Pty Ltd — shareholder indemnity**

As part of the arrangements for Tuggeranong Office Park, the Australian Government can acquire the shares of the Tuggeranong Office Park Pty Ltd for \$100 subject to certain conditions. In its capacity as purchaser of the shares, the Australian Government has indemnified each Shareholder for all 'losses, liabilities, costs, expenses and damages' incurred by virtue of their shareholding. If a capital gains tax liability were to accrue to the Shareholders, the Australian Government may be required to reimburse the Shareholders. The Department of Finance and Administration will be seeking advice from the Australian Tax Office on this issue.

### **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 Administration (Finance), and the former Office of Asset Sales and Commercial Support and its predecessors. The probability of an action being made under one of these indemnities diminishes over time. Details of indemnities in respect of the other asset sales and privatisations have been provided in previous Budget and Mid-Year Economic and Fiscal Outlook papers, and previous annual reports for Finance and the Office of Asset Sales and Commercial Support.

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

### **Foreign Affairs and Trade**

#### **Export Finance and Insurance Corporation — board members' 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**

#### **Blood and blood products liability cover**

A National Managed Fund (NMF) has been established which pools the liability risks associated with the supply of blood and blood products by the Australian Red Cross Blood Service (ARCBS) between the Australian Government, the ARCBS and the states and territories. The NMF is covered by a Memorandum of Understanding (MoU) between the Australian Government, states and territories, and the ARCBS. This will be amended to incorporate the operations of the Jurisdictional Blood Committee (JBC) and the National Blood Authority. 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 JBC considers a report provided by the National Funds Manager to determine the level of funds required. Each party must contribute funds, as determined by JBC, in accordance with allocation provisions prevailing at the time. Under the MoU, the blood and blood products liability cover for the ARCBS remains in force until all parties agree to terminate the arrangements from an agreed date.

### **CSL Limited**

CSL Limited is indemnified against claims made by persons who contract specified infections from specified products and against employees contracting asbestos-related injuries. CSL Limited has unlimited cover for most events that occurred before the sale of CSL Limited 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 Limited, the Australian Government may have a contingent liability. Given the open-ended nature of some of the indemnities, damages and risk cannot be quantified. No similar indemnities have been given to CSL Limited in the new Plasma Products Agreement operating from 1 January 2005.

### **Medical Indemnity Exceptional Claims Scheme**

In May 2003 the Prime Minister announced the Medical Indemnity Exceptional Claims Scheme to assume liability for 100 per cent of any damages payable against a doctor that exceeds a specified level of cover provided by that doctor's medical indemnity insurer, currently \$20 million. These arrangements will apply to payouts related to either a single large claim or to multiple claims that in aggregate exceed the cover provided by the doctor's medical indemnity insurer, and will apply to claims notified under contracts-based cover since 1 January 2003.

### **Indemnity relating to smallpox vaccine**

On 12 December 2002, the Australian Government took possession of an initial shipment of 50,000 doses of smallpox vaccine. This vaccine, to be used only in emergency situations, was the only type available for large-scale purchase and was manufactured using older style technology. The Government granted an indemnity to the manufacturer covering possible adverse events that could result from the use of the vaccine.

## **Immigration and Multicultural and Indigenous Affairs**

### **Separation of Aboriginal children from their families in the Northern Territory**

Earlier laws, policies and practices in relation to the Australian Government's administration of the Northern Territory led to the separation of certain Indigenous children from their families. There are currently over 2,000 plaintiffs with claims pending against the Australian Government for (unspecified) damages in relation to alleged forcible and wrongful separations (mostly by the children of those allegedly

forcibly and wrongfully removed). Two claims have proceeded to trial. Both were unsuccessful.

#### **Claim of unlawful detention on Nauru**

On 16 December 2003, 325 plaintiffs claiming to be detained on Nauru commenced an action in the Supreme Court of Victoria. The claim alleges that the plaintiffs have been detained at the request of, or by agents of, the Australian Government, and that the detention amounts to false imprisonment. The plaintiffs seek a declaration that they have been falsely imprisoned by the Australian Government, an injunction to restrain the Australian Government or its agents from continuing to detain the plaintiffs, and damages. The case has not yet been listed for hearing.

### **Industry, Tourism, and Resources**

#### **Liability for damages caused by space activities**

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

#### **Litigation**

The Department of Industry, Tourism and Resources is involved in litigation concerning the Textile, Clothing and Footwear (TCF) Strategic Investment Programme (SIP). The TCF SIP is an entitlement-based programme that provides grants to support eligible capital investment and product innovation by TCF firms. The litigation relates to disputed claims of eligibility under the TCF SIP. There are potential risks associated with flow-on claims and the risk cannot yet be accurately quantified.

#### **Snowy Hydro Limited — 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 will apply 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 Limited — water releases**

The Australian, New South Wales and Victorian Governments have indemnified Snowy Hydro Limited for liabilities arising from water releases in the Snowy River below Jindabyne Dam, where these releases are in accordance with the water licence and related regulatory arrangements agreed between the three Governments. The indemnity will apply to liabilities for which a claim is notified within 20 years from 28 June 2002.

The Australian, New South Wales and Victorian Governments will provide financial support to the company, if this is necessary, to avoid the company breaching its loan covenants to fund the cost of civil works required to address a cold water pollution offence. The undertaking applies for seven years from 28 June 2002.

### **Transport and Regional Services**

#### **Deep vein thrombosis action**

The Civil Aviation Safety Authority (CASA) has been named in a number of writs, which allege that CASA was negligent in not making air travellers aware of the risks of deep vein thrombosis during long periods of immobility. There have been 484 writs issued against CASA, spanning 1995 to 2002. The Australian Government's exposure is limited to claims for the years 1995 to 5 July 1998, as CASA was covered by a Commonwealth Deed of Indemnity in relation to the performance of its regulatory functions. Ninety-nine writs have been issued against CASA which are covered by the Deed of Indemnity. The remaining writs are covered by CASA's commercial insurance.

A test case (*Povey v Qantas and British Airways and CASA*) is currently before the High Court on appeal from the Victorian Supreme Court. However, until the High Court proceedings have been finalised, it is not possible to determine what (if any) liability CASA may have in relation to deep vein thrombosis.

#### **Maritime Industry Finance Company Limited — board members' indemnity**

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

#### **Tripartite deeds relating to the sale of Federal leased airports**

Tripartite deeds apply to 12 Federal leased airports (Adelaide, Alice Springs, Bankstown, Brisbane, Canberra, Coolangatta, Darwin, Launceston, Melbourne, Perth, Sydney and Townsville). The tripartite deeds between the Australian Government, the airport lessee company and financiers provide for limited step-in rights for the financiers in circumstances when the airport lease is terminated to enable the financiers to correct the circumstances that triggered such a termination event.

## **Treasury**

### **Housing Loans Insurance Corporation — guarantee**

The Australian Government sold the Housing Loans Insurance Corporation (HLIC) on 12 December 1997 and has assumed all residual contingencies. The principal amount covered by the guarantee and the balances outstanding are unable to be reliably measured. The guarantee relates essentially to the HLIC's contracts of mortgage insurance and any borrowings approved by the Treasurer up to the time of sale.

### **Terrorism insurance — commercial cover**

The *Terrorism Insurance Act 2003* (the Act) established a scheme for replacement terrorism insurance covering damage to commercial property including associated business interruption and public liability. The scheme plans to accumulate approximately \$300 million from reinsurance premiums paid to the Australian Reinsurance Pool Corporation (ARPC) to help meet administrative expenses and future claims. The Commonwealth guarantees to pay any liabilities of the ARPC, but the Treasurer must declare a reduced payout rate to insureds if the Commonwealth's liability would otherwise exceed \$10 billion.