

## 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 2011-12 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 2011-12 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.

The global financial crisis led to a period of heightened financial and economic volatility which impacted significantly on the preparation of the budget revenue forecasts. Despite some improvement in economic prospects since then, a degree of uncertainty continues in global financial markets and will continue to present risks to the revenue forecasts. Moreover, 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. In 2010-11 for example, natural disasters have significantly affected the economic outlook and consequently the outlook for tax receipts. Similarly, the strong Australian dollar has also had a significant impact on tax receipts.

Revenue forecasting also relies heavily on the historical relationships between the economy, tax bases and tax revenues. Such relationships may continue to shift as economic conditions change, requiring a greater degree of caution in their use in predicting future revenues. For example, the real and financial dimensions of the recent global financial crisis have posed particular challenges in estimating both the quantum and timing of loss utilisation. Any losses incurred during the downturn can

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be carried forward to offset gains or profits as the economy recovers, such that to the extent tax revenue improves it does so with some lag.

As in previous years, the fiscal outlook is 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 Security 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 robust and conservative 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 2010-11* (MYEFO). The recent natural disasters have increased the number of Comcover claims associated with damage to Commonwealth owned property and business interruption. In addition, general revaluations of securities and deposits have led to certain risks such as the Guarantee of State and Territory Borrowings, and the Financial Claims Scheme, being modified.

Several new items have arisen since the MYEFO, including the Government's commitments to provide financial assistance for victims of overseas terrorist acts and to support the Queensland Government's bid for the 2018 Commonwealth Games.

Several risks have been removed since the MYEFO. The removal of these risks reflects the passing of specific events and decisions such as the conclusion of legal cases, and the expiry of certain agreements such as Australia's standby loan facility for the Government of Indonesia.

The contingent liability for potential damages caused by Kistler space activities has also been removed as Kistler Woomera Pty Ltd and Spaceport Woomera Pty Ltd have ceased operating after the parent company Rocketplane Kistler Inc filed for bankruptcy in the United States in June 2010.

The Commonwealth's commitment to offer assistance to drought-affected farmers under exceptional circumstances no longer represents a contingent liability due to improved conditions and the removal of regions in Eastern Australia from an exceptional circumstances declaration. While this contingent liability has been removed, the potential for the re-emergence of drought conditions in the future continues to represent a fiscal risk for the Government. In addition, adverse seasonal conditions continue to exist in Western Australia.

## **ECONOMIC AND OTHER PARAMETERS**

Changes in economic parameters represent a risk to the expenses 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 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.

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 Petroleum Resource Rent Tax and Minerals Resource Rent Tax may vary quite significantly with commodity prices, output, and the level of the Australian dollar.

There are also a number of fiscal risks that may affect the expense estimates and projections. For example, major technological advances in medicines and medical practices may lead to changes to both the Medicare Benefits Schedule and the Pharmaceutical Benefits Scheme. Such changes have in the past resulted in unexpected increases in expenses and may do so again.

The Government has proposed that a carbon price mechanism commence on 1 July 2012. The proposal involves a two-stage process starting with a fixed price period for three to five years before transitioning to an emissions trading scheme. As details of the carbon price mechanism are yet to be determined, no financial implications associated with the introduction of a carbon price have been included in the forward estimates. This is consistent with past practice. The proposal will be developed consistent with the principle that the overall package of a carbon price mechanism and associated assistance measures should be budget-neutral.

The Australian Government has established NBN Co Limited (NBN Co) to build and operate the National Broadband Network (NBN). The 2011-12 Budget includes equity

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of \$18.2 billion from 2011-12 to 2014-15, for the roll-out of the NBN, based on NBN Co's Corporate Plan 2011-2013.

On 20 June 2010, NBN Co and Telstra announced that they had entered into a Financial Heads of Agreement and that they would enter into negotiations on the Definitive Agreements (the agreements). A further announcement was made on 10 February 2011 that Telstra and NBN Co had finalised key commercial terms of the agreement and were proceeding to finalise documented agreements. In support, the Government and Telstra had reached in-principle agreement for a package of measures to facilitate the transition to the NBN. These measures include, amongst other things, the establishment of a new Government entity to assume responsibility for the provision of components of the universal service obligation.

The transactions contemplated by the non-binding Financial Heads of Agreement involving Telstra and NBN Co will involve substantial expenditure and obligations over extended timeframes. NBN Co will need continuing equity injections over time to meet these obligations as they fall due. Accordingly, the Government is considering the provision of financial support arrangements to facilitate the finalisation of the agreements. The Government has committed to providing to Telstra, in conjunction with the agreements, a guarantee for the financial obligations of NBN Co until NBN Co is fully capitalised to provide certainty to Telstra's commercial position should they agree to undertake those transactions. The Government is also examining the provision of equity funding undertakings to NBN Co and the provision of additional limited indemnities to the directors of NBN Co.

The estimates for the Department of Defence include the cost of major overseas operations of the Australian Defence Force in Afghanistan and the Middle East, Timor-Leste and the Solomon Islands for 2011-12. The forward estimates of expenses do not provide for extensions of currently approved operations beyond 2011-12. Such funding is considered on a year-by-year basis and is subject to future decisions of the Government. This is consistent with past practice.

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

## **CONTINGENT LIABILITIES AND ASSETS**

Contingent liabilities and contingent assets of the Australian Government are listed below by portfolio. 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.

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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 \$50 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 entities and is current to 31 March 2011. In some cases, other dates are used and those are noted in the relevant section.

**Table 1: Summary of material changes to contingent liabilities and contingent assets in the Statement of Risks since the 2010-11 Budget and the 2010-11 MYEFO<sup>(a)</sup>**

| <b>Contingent liabilities — quantifiable</b>                                       |          |
|--|----------|
| <b>Defence and Defence Materiel Organisation</b>                                   |          |
| Indemnities and remote contingencies   | Modified |
| <b>Finance and Deregulation</b>  |          |
| Sale of Sydney Airports Corporation Limited  | Modified |
| <b>Foreign Affairs and Trade</b>   |          |
| Export Finance and Insurance Corporation   | Modified |
| <b>Treasury</b>  |          |
| Guarantees under the <i>Commonwealth Bank Sale Act 1995</i>                        | Modified |
| International financial institutions — uncalled capital subscriptions              | Modified |
| International Monetary Fund  | Modified |
| Reserve Bank of Australia — guarantee  | Modified |
| Standby loan facility for the Government of Indonesia <sup>(b)</sup>               | Removed  |
| <b>Contingent liabilities — unquantifiable</b>                                     |          |
| <b>Agriculture, Fisheries and Forestry</b>   |          |
| Emergency animal disease response agreement and emergency plant pest response deed | New      |
| Exceptional circumstances assistance for drought-affected farmers <sup>(c)</sup>   | Removed  |
| Litigation <sup>(c)</sup>  | Removed  |
| National environmental biosecurity response agreement                              | New      |
| <b>Attorney-General's</b>  |          |
| Financial assistance for victims of overseas terrorist acts                        | New      |
| Native Title costs   | Modified |
| <b>Broadband, Communications and the Digital Economy</b>                           |          |
| Extended zones <sup>(d)</sup>  | Removed  |
| Termination of the Funding Agreement with OPEL                                     | New      |

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**Table 1: Summary of material changes to contingent liabilities and contingent assets in the Statement of Risks since the 2010-11 Budget and the 2010-11 MYEFO<sup>(a)</sup> (continued)**

| <b>Contingent liabilities — unquantifiable (continued)</b>   |          |
|--|----------|
| <b>Defence and Defence Materiel Organisation</b>   |          |
| Indemnities and remote contingencies   | Modified |
| Litigation cases   | Modified |
| <b>Finance and Deregulation</b>  |          |
| Australian Reward Investment Alliance — immunity and indemnity   | Modified |
| Comcover — insurance claims  | Modified |
| <b>Health and Ageing</b>   |          |
| Guarantee Scheme for aged care accommodation bonds   | Modified |
| <b>Immigration and Citizenship</b>   |          |
| Immigration detention services — liability limits  | Modified |
| <b>Innovation, Industry, Science and Research</b>  |          |
| Liability for damages caused by Kistler space activities <sup>(e)</sup>  | Removed  |
| <b>Prime Minister and Cabinet</b>  |          |
| National Aboriginal Islander Skills Dance College (NAISDA) — construction works  | Modified |
| Whole-of-Government — 2015 Asian Football Confederation (AFC) Asian Cup — Government Guarantees  | Modified |
| Whole-of-Government — Australia's bids for the Federation Internationale de Football Association (FIFA) World Cup in 2018 or 2022 — Government Guarantees <sup>(f)</sup> | Removed  |
| Whole-of-Government — Australian Government support for the Queensland Government bid to host the 2018 Commonwealth Games on the Gold Coast — Government Guarantees      | New      |
| <b>Sustainability, Environment, Water, Population and Communities</b>  |          |
| Murray-Darling Basin Reform — risk assignment  | Modified |
| <b>Treasury</b>  |          |
| Financial Claims Scheme  | Modified |
| Guarantee of State and Territory borrowing   | Modified |
| Guarantee scheme for Large Deposits and Wholesale Funding  | 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 2010-11*, Statement 8 or in the *Mid-Year Economic and Fiscal Outlook 2010-11*, Appendix C.

(b) The facility reached its conclusion on 31 December 2010.

(c) These items have fallen below the reporting threshold for the 2011-12 Budget.

(d) The Government has made a decision in relation to this item and it is no longer classified as a contingent liability.

(e) The relevant entity has ceased operations.

(f) Australia's bid was unsuccessful.

## CONTINGENT LIABILITIES — QUANTIFIABLE

### Defence and Defence Materiel Organisation

#### Indemnities and remote contingencies

Defence carries 312 (up from 129) instances of quantifiable remote contingent liabilities, to the value of \$3.6 billion, an increase on the \$2.9 billion reported in the MYEFO. The DMO carries 108 contingencies that are quantifiable (up from 78), to the value of \$4.7 billion, an increase on the \$4.4 billion reported in the MYEFO. While these

contingencies are considered remote, they have been reported in aggregate for completeness.

## **Education, Employment and Workplace Relations**

### **Comcare liability for additional workers' compensation payments**

Comcare has a quantifiable contingency in respect of future statutory workers' compensation claims for asbestos related diseases amounting to \$45.6 million. This contingency relates to a decision in the Federal Court, *Comcare v Etheridge* [2006] Federal Court of Australia Full Court decision number 27.

## **Finance and Deregulation**

### **Litigation**

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. Recent advice suggests judgment is expected to be delivered during 2011.

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

An indemnity was provided to the Southern Cross Airports Corporation as the purchaser of the Sydney Airports Corporation Limited 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 Limited 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 \$556.9 million as at 31 March 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 31 March 2011, the Government's total contingent liability was \$3.0 billion, up from \$2.7 billion in the MYEFO. This comprises EFIC's liabilities to third parties (\$2.5 billion) and EFIC's overseas investment insurance, contracts of insurance and guarantees (\$0.5 billion). Of the total contingent liability, \$2.3 billion is

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held on EFIC's Commercial Account and \$0.7 billion is held on the National Interest Account.

### **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 2010, the estimated aggregate value of tax in dispute was \$6.2 billion. This estimate will be updated as part of ATO's 2010-11 financial statement process.

The decisions in relation to the cases may, in some instances, set precedents creating an additional unquantifiable contingent liability.

#### **Guarantees under the *Commonwealth Bank Sale Act 1995***

Under the terms of the *Commonwealth Bank Sale Act 1995*, the Australian Government guaranteed various superannuation and other liabilities amounting to \$4.5 billion as at 31 December 2010. 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 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 general capital increase agreed during 2010. The paid-in component of the Australian Government's contribution was a measure in the 2010-11 Budget. As part of this process, the Australian Government will increase its uncalled capital subscription so that it totals US\$3.6 billion (an estimated value of A\$3.5 billion as at 30 March 2011).

Australia has also had 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 (an estimated value of A\$323.1 million as at 20 April 2011). The financial implications of the paid-in component were reported as a measure in the MYEFO.

The Australian Government also had uncalled capital subscriptions in the Asian Development Bank of SDR5.8 billion (an estimated value of A\$8.9 billion), and the Multilateral Investment Guarantee Agency of US\$26.5 million (an estimated value of A\$25.6 million) as at 30 March 2011.

None of these international financial institutions has 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 (an estimated value of A\$1.2 billion as at 30 March 2011) to SDR4.4 billion (an 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 amount to \$49.7 billion as at 21 March 2011, and the total guarantee is \$58.7 billion, up from \$58.1 billion at the MYEFO.

## **CONTINGENT LIABILITIES — UNQUANTIFIABLE**

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

#### **Compensation claims arising from equine influenza outbreak**

The Australian Government may become liable for compensation should it 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.

#### **Emergency Animal Disease Response Agreement and Emergency Plant Pest Response Deed**

The Australian, State and Territory governments and some peak agricultural industry bodies are parties to cost sharing agreements that specify how responses to emergency animal diseases and plant pest outbreaks will be funded. Under the terms of the

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agreements, the Commonwealth is typically liable for 50 per cent of total government funding to respond to a disease or plant pest outbreak and may also provide financial assistance to industry by funding its share of the response. Any funding of industry contributions would subsequently be recovered through a levy on the industry. Potential costs vary based on circumstances and are dependent on outbreaks of animal diseases or plant pests, the extent of outbreaks, frequency and location.

#### **National Environmental Biosecurity Response Agreement**

The Australian Government and each of the State and Territory governments have negotiated an agreement to manage pest or disease incursions that impact on the environment and how they should be funded. Once the agreement is endorsed by jurisdictions, the Commonwealth is typically liable for 50 per cent of the funding for any response. Potential costs vary, and are dependent on outbreaks of pests or disease, the extent of outbreaks, frequency and location. The initial commitment under the agreement is capped at \$5.0 million in aggregate (of which the Commonwealth is liable for \$2.5 million).

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

##### **Financial assistance for victims of overseas terrorist acts**

The Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Bill 2011 was introduced into Parliament on 24 March 2011. If passed, this legislation would establish a framework for the provision of financial assistance for Australians who are injured overseas as a result of terrorist acts and for close family members of Australians who are killed overseas as a result of terrorist acts. The legislation would enable the Prime Minister to declare that a relevant overseas terrorist incident is one to which the scheme applies. As acts of terrorism are unpredictable, the cost of the scheme is unquantifiable.

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

The Australian Government has entered into indemnity agreements with Australian airlines that agree to allow Air Security Officers on board their aircraft. 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, which 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. Consistent with the policy of considering this issue on a case by case basis, a National Partnership Agreement was executed in 2010 between the Commonwealth and Victoria, under which the Commonwealth will provide a contribution towards the settlement of two native title claims. No other agreements under this offer have been entered into to date.

The Australian Government will also 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 scenarios 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 and the presence of armaments on the vessel. They also 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 and the presence of 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**

### **NBN Co Limited — Board members' indemnities**

The Australian Government has indemnified the directors of NBN Co Limited in relation to claims arising out of the directors' involvement in the negotiation and entry by NBN Co into the Financial Heads of Agreement with Telstra.

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### **Termination of the funding agreement with OPEL**

Following the termination of its funding agreement with OPEL Network Pty Ltd (OPEL) under the Broadband Connect Infrastructure program, the Commonwealth made provision towards costs incurred by OPEL in producing its Implementation Plan. OPEL was wound up on 13 March 2009. The liquidators of OPEL have indicated that they consider the Australian Government to have a liability with regard to the termination of the funding agreement. As at 11 April 2011, no legal proceedings have been filed; however, liquidators have indicated that they are prepared to commence legal proceedings with respect to this issue.

### **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, 2008-2012. According to the latest projections of emissions over the Commitment Period, Australia is on track to exceed its 2008-2012 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**

#### **Indemnities and remote contingencies**

Defence carries 9,306 instances of unquantifiable remote contingent liabilities, an increase on the 8,758 reported in the MYEFO. The DMO carries 568 instances of contingencies (including Foreign Military Sales) that are unquantifiable, an increase on the 525 reported in the MYEFO. While these contingencies are considered remote, they have been reported in aggregate for completeness.

#### **ADI Limited — Officers' and Directors' indemnities**

Under the sale agreements for ADI Limited, 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 Limited 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 number of claims have also been received for damage caused by the use of a Defence Practice Area. There is also the potential for a number of claims to arise out of reviews into ADF and Defence culture.

## **Finance and Deregulation**

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

The Australian Government has provided former and two current directors of the ASC Pty Ltd (ASC) with indemnities in relation to three matters: for any claim against them as a result of complying with the ASC's obligations under the Process Agreement between the Electric Boat Corporation (EBC), the Australian Government and the ASC; for any claim against them as a result of complying with the ASC's obligations under the Service Level Agreement between the ASC, the Department of Defence, EBC and Electric Boat Australia; and for any claims and legal costs arising from the directors acting in accordance with the Board's Tasks and Responsibilities, as defined under the indemnity.

### **Australian Government domestic property**

The Australian Government's domestic property portfolio managed by the Department of Finance and Deregulation has approximately 90 properties. A small number of these have had potential remediation issues identified which are currently the subject of further investigation. None of these properties has had a provision recognised as the conditions for neither 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 his/her staff, delegates of the trustee Board, and members of the 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 superannuation 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

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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 uncertainty include those arising from the flood events in 2010-11, cyclone losses, equine influenza and claims against ASIC made by three directors and 31 Westpoint Group companies following regulatory action by ASIC in 2005.

In addition, Comcover has exposure to claims from other Australian Government agencies associated with property damage and business interruption arising from the flood events and cyclone disasters which occurred early in 2010-11.

Following from the settlement of claims associated with Pan Pharmaceuticals, Comcover is now in dispute with its reinsurers regarding the amount recoverable through reinsurance. Comcover has sought legal advice and is pursuing the amount that is considered recoverable.

#### **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 Act 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, and remediation of any contamination it may have caused to the site. It also gives an indemnity in relation to acts or omissions by the Australian Government.

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

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

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

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

## Statement 8: Statement of Risks

### **Foreign Affairs and Trade**

#### **Export Finance 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 them 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, the Australian Government, the Australian Private Hospitals Association Ltd, the Australian Health Insurance Association 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 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**

Deeds of Agreement between the Australian Red Cross Society (the Red Cross) and the National Blood Authority in relation to the operation of the Australian Red Cross Blood Service (the Blood Service) and the development of principal manufacturing sites in Sydney and Melbourne include certain indemnities and a limitation of liability in favour of the Red Cross. These cover defined sets of potential business, product and employee risks and liabilities. 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 relating to the operation of the Red Cross or the cessation of funding for the principal sites, 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 between the Australian Government, the Australian Red Cross Blood Service (the Blood Service) and the State and Territory governments which spreads the liability risks associated with the supply of blood and blood products by the Blood Service. The NMF provides for liabilities incurred by the Blood Service where other available mitigation or cover is not available. Under certain conditions, the Australian Government and the State and

Territory governments jointly provide indemnity for the Blood Service through a cost sharing arrangement for claims, both current and potential, regarding personal injury and loss or damage suffered by a recipient of certain blood products. If there are insufficient funds in the NMF to cover claim costs, the Jurisdictional Blood Committee will consider a report provided by the National Funds Manager to determine the level of additional funds required. The Australian Government's share of any additional liability is limited to 63 per cent of any agreed net cost.

### **CSL Ltd**

CSL Ltd (CSL) is indemnified against claims made by individuals who contract specified infections from specified products and against employees contracting asbestos-related injuries. CSL has unlimited cover for most events that occurred before the sale of CSL 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, the Australian Government may have a contingent liability.

The Australian Fractionation Agreement with CSL, which has operated since 1 January 2010, includes a requirement that the National Blood Authority make a defined payment to CSL, in certain circumstances only, in the event that the volume of plasma supplied annually to CSL is less than a specified amount.

### **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 repay the bond balances owing to each resident. In return, the resident's rights to pursue the defaulting provider to recover the accommodation bond money transfers 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 2010, the maximum contingent liability, in the unlikely event that all providers defaulted, was \$10.6 billion.

### **Indemnities relating to vaccines**

The Australian Government has provided an indemnity to the manufacturer of smallpox vaccine held by the Australian Government, 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 either related 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.

### **Immigration and Citizenship**

#### **Immigration detention services — liability limits**

The Department of Immigration and Citizenship (DIAC) has entered into a contract with International Health and Medical Services Pty Ltd (IHMS), which commenced on 14 January 2009, to deliver health services to people in detention in Australia on behalf of the Australian Government. Under this contract, DIAC has agreed to limit IHMS's liability to DIAC to a maximum of \$20.5 million; however, IHMS's liability is unlimited for specific events defined under the contract.

DIAC has also entered into a contract with Serco Pty Ltd (Serco), which commenced on 29 June 2009, to deliver immigration detention services in Australia on behalf of the Australian Government at immigration detention centres. Under 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 has initiated a review of these liability limits, and this is expected to be completed by the end of the 2011-12 financial year.

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 the Australian Government at immigration residential housing, immigration transit accommodation and alternative places of detention. Under 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. DIAC has initiated a review of these liability limits. This review is expected to be completed by the end of the 2011-12 financial year.

### **Infrastructure and Transport**

#### **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 meeting 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 provides supplementary funds for those 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 Limited — board members' indemnities**

Indemnities for Maritime Industry Finance Company Limited (MIFCO) board members were 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 any liability that might be incurred from the conduct of activities authorised under the *Australian Nuclear Science and Technology Organisation Act 1987*. This indemnity is in addition to commercial insurance cover obtained from the Comcover Insurance Pool and other insurers.

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### **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* (the Act) 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 Act, the Government also accepts liability for damage suffered by Australian nationals, to a maximum value of \$3.0 billion above the insured level.

### **Prime Minister and Cabinet**

#### **National Aboriginal Islander Skills Dance College (NAISDA) — construction works**

The Australian Government has provided an indemnity from 1 June 2010 to 31 December 2012 in favour of the Central Coast Regional Development Corporation (formerly the Festival Development Corporation), a New South Wales Government statutory authority and landlord of the Mt Penang Parklands in Gosford. The indemnity relates 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 \$20.0 million.

#### **Whole-of-Government — 2015 Asian Football Confederation (AFC) Asian Cup — Government Guarantees**

The Australian Government has committed to guarantees including requirements on immigration, work permits, customs, taxation, security and the protection of commercial rights, and to provide broad indemnities for the conduct of the 2015 Asian Cup. The guarantees commenced in 2011 and will conclude in 2015.

The total cost associated with the guarantees is unquantifiable at this stage.

#### **Whole-of-Government — Australian Government support for the Queensland Government bid to host the 2018 Commonwealth Games on the Gold Coast — Government Guarantees**

The Australian Government has committed to support the Queensland Government's bid for the 2018 Commonwealth Games. 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, and communications and information technology. Details of the costs associated with the guarantees are not available at this time.

If the 2018 Queensland Government's bid is successful, it is expected that some of the Commonwealth Government guarantees will commence following the announcement

of the successful host country in November 2011 and will conclude in 2018. The guarantees will not come into effect if the bid is unsuccessful.

## **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 signed in 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 and Energy. 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 responses, and potential compensation for industry arising from Australian Government directions under the Act.

### **Snowy Hydro Limited — directors' indemnities**

The Australian Government, together with the co-shareholder governments of New South Wales and Victoria, has 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

### *Statement 8: Statement of Risks*

within five years of corporatisation, and for which a claim is notified to the governments within 11 years of the corporatisation date of 28 June 2002.

#### **Snowy Hydro 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 applies to liabilities for which a claim is notified within 20 years from 28 June 2002.

### **Sustainability, Environment, Water, Population and Communities**

#### **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.

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.

The independent Murray-Darling Basin Authority will release the proposed Basin Plan later in 2011, which will be followed by a 16 week consultation process. 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 is 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 very unlikely 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 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 \$1.0 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 with the current \$1.0 million cap to be adjusted to a new appropriate post-crisis level from October 2011.

As at 31 January 2011, deposits eligible for coverage under the Financial Claims Scheme were estimated to be approximately \$731.8 billion, compared to \$721.3 billion at 31 October 2010.

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.

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.

### **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 they 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 very 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 2011, the face value of state and territory borrowings covered by the guarantee was \$50.8 billion, down from \$62.0 billion at 30 September 2010.

### **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 (the Guarantee Scheme).

On 7 February 2010, the Government announced the closure of the Guarantee Scheme from 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 \$1.0 million. Existing guaranteed wholesale funding is guaranteed to maturity. Depositors who covered their balances above \$1.0 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 very 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.

As at 25 March 2011, total liabilities covered by the Guarantee Scheme were estimated at \$129.0 billion, down from \$148.7 billion at 15 October 2010. This is made up of \$3.9 billion (down from \$6.6 billion) in large deposits and \$125.1 billion (down from

\$155.1 billion) in long-term wholesale funding. All short-term wholesale funding matured in March 2011.

**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 \$10.0 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 United States 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 unquantifiable.

