

The Auditor-General  
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Performance Audit

# **Management of Commonwealth Guarantees, Warranties, Indemnities and Letters of Comfort**

Australian National Audit Office

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of Australia 2003

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Canberra ACT  
30 January 2003

Dear Mr President  
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit across agencies in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present this report of this audit and the accompanying brochure. The report is titled *Management of Commonwealth Guarantees, Warranties, Indemnities and Letters of Comfort*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely



P. J. Barrett  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

## AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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# Abbreviations/Glossary

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AEC	Australian Electoral Commission
AFFA	Department of Agriculture, Fisheries and Forestry— Australia
AFP	Australian Federal Police
AG's	Attorney-General's Department
AIDC	Australian Industry Development Corporation
AN	Australian National Railways Commission
ANAO	Australian National Audit Office
AOFM	Australian Office of Financial Management
APSC	Australian Public Service Commission
ARPANSA	Australian Radiation Protection and Nuclear Safety Agency
ASC	Australian Submarine Corporation
ATO	Australian Taxation Office
ATSIC	Aboriginal and Torres Strait Islander Commission
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CBA	Commonwealth Bank of Australia
CEIs	Chief Executive's Instructions
CFM	Commonwealth Funds Management
CIS	Commonwealth Indemnity Scheme
CRS	Commonwealth Rehabilitation Service (now CRS Australia)
CSS	Commonwealth Superannuation Scheme
DAS	Former Department of Administrative Services
DEH	Department of Environment and Heritage (Environment Australia)
DEST	Department of Education, Science and Training
DEWR	Department of Employment and Workplace Relations
DFAT	Department of Foreign Affairs and Trade
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs

DITR	Department of Industry, Tourism and Resources
DOCITA	Department of Communications, Information Technology and the Arts
Defence	Department of Defence
DOHA	Department of Health and Ageing
DOTARS	Department of Transport and Regional Services
DVA	Department of Veterans' Affairs
EFIC	Export Finance and Insurance Corporation
FAC	Former Federal Airports Corporation
FACS	Department of Family and Community Services
Finance	Department of Finance and Administration
FMA Act	<i>Financial Management and Accountability Act 1997</i>
GBE	Government Business Enterprise
HLIC	Housing Loans Insurance Corporation
HORSCFIPA	Former House of Representatives Standing Committee on Financial Institutions and Public Administration
JCPA	Former Joint Committee of Public Accounts
JCPAA	Joint Committee of Public Accounts and Audit
MAB/MIAC	Management Advisory Board and its Management Improvement Advisory Committee
NDPB	Non-Departmental Public Bodies (in the United Kingdom)
NNTT	National Native Title Tribunal
PM&C	Department of the Prime Minister and Cabinet
PSS	Public Sector Superannuation Scheme
ScreenSound	National Film and Sound Archives (ScreenSound Australia)
SMA	Statutory Marketing Authority
Treasury	Department of the Treasury
UK	United Kingdom





# **Summary and Recommendations**



# Summary

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## Background

1. Guarantees<sup>1</sup>, warranties,<sup>2</sup> indemnities<sup>3</sup> and letters of comfort<sup>4</sup> represent types of contingent liabilities that may give rise to actual liabilities by the occurrence or non-occurrence of one or more possible future events. These types of instruments perform an effective role in facilitating the operations of government, much as they do the commercial operations of the private sector. However, they can carry with them risks and obligations which may be called on in the future. They are not necessarily costless and need to be managed carefully. Equally, it is important that the exposures they represent are adequately monitored over the life of the instruments.
2. Australian National Audit Office (ANAO) Audit Report No.6 1996–97, *Commonwealth Guarantees, Indemnities and Letters of Comfort*, concluded that, overall, there needed to be a marked improvement in most departments' management and administrative practices with regard to off-balance sheet risk. There was also a need for greater public accountability at both the entity and whole-of-government levels through better reporting of these potential liabilities. Report No.6 contained 16 recommendations which were accepted by the departments involved.
3. A subsequent audit in 1998, ANAO Audit Report No.47 1997–98, *Management of Commonwealth Guarantees, Indemnities and Letters of Comfort*, concluded that there had been an overall improvement in the number of entities implementing registers for their guarantees and indemnities. As well, the (then) recent changes in the Commonwealth's financial management arrangements had created a framework which placed greater emphasis on the visibility and effective management of these instruments. Report No.47 made six recommendations to improve departments' and agencies' management processes which were accepted by the entities involved.

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<sup>1</sup> A guarantee is a promise whereby one party promises to be responsible for the debt of, or performance obligations of, another party should that party default in some way.

<sup>2</sup> A warranty is a promise whereby a vendor provides certain assurances to the purchaser, for example, that an item sold is the vendor's to sell, is fit for use, and that for a specified period defective parts will be replaced or otherwise rectified.

<sup>3</sup> An indemnity is a promise whereby a party undertakes to accept the risk of loss or damage another party may suffer.

<sup>4</sup> A letter of comfort is essentially an instrument that is used to facilitate an action or transaction but is constructed with the intention of not giving rise to a legal obligation.

4. Guarantees, warranties,<sup>5</sup> indemnities and letters of comfort give rise to contingent liabilities as a result of the exercising of statutory responsibilities, such as the Treasurer's power to guarantee borrowings. Ministers also have the power under the Constitution to issue guarantees, warranties, indemnities and letters of comfort. Nevertheless, Parliament is not bound to provide funds to satisfy such obligations unless there is an existing standing appropriation. The framework for issuing and reporting these types of instruments is comprised of two major components, namely:

- an institutional regime which includes: relevant Constitutional and legislative provisions; the Department of Finance and Administration's Finance Circular No. 1997/06 *Potential Liabilities and Losses*; departmental and agency risk management plans; and Chief Executive's Instructions (CEIs); and
- a disclosure regime which includes: the *Charter of Budget Honesty Act 1998*; Budget Statement of Financial Risks; and annual reporting by departments and agencies.

5. By way of comparison, the United Kingdom Government has a particularly comprehensive reporting system covering its government-issued contingent liabilities. In that jurisdiction, Government policy is that legislation authorising statutory liabilities should detail reporting arrangements for notifying Parliament of any guarantees or indemnities given. In the cases where an Act does not outline reporting arrangements, and the exposure could exceed £100 000 (A\$270 270), the requirement is that a statement should be laid before both Houses of Parliament immediately after a guarantee or indemnity is provided. In Australia, the accountability requirements operate through annual budget papers and departmental or agency annual reports.

## **Audit approach**

6. Guarantees, indemnities and letters of comfort, which do not explicitly involve the Commonwealth in a legal obligation, were not within the scope of the two previous audits. They are again not covered in this audit because they do not directly constitute legal contingent liabilities of the Commonwealth. Excluded from this audit were other contingencies, such as uncalled capital subscriptions for multilateral financial institutions and instruments issued by Statutory Marketing Authorities and Government Business Enterprises, that did not explicitly involve the Commonwealth in a legal obligation.

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<sup>5</sup> Warranties were not included in the scope of the two previous audits undertaken by ANAO on this subject.

7. Initial data for the audit was assembled by way of a questionnaire to undertake a census of all explicit Commonwealth guarantees, warranties,<sup>6</sup> indemnities and letters of comfort on issue by 17 departments and 30 agencies. The census data was then used as a guide to gather detailed information from selected departments and agencies by way of interviews, file review and exchange of correspondence. Fieldwork was conducted between April and October 2002.

8. This report also assesses action to date in relation to the recommendations from ANAO Audit Report No.47 1997–98. The objectives of the audit were to assess, with respect to guarantees, warranties, indemnities and letters of comfort: the extent of improvement in agencies' management and monitoring of the Commonwealth's exposure to these instruments; changes in the size and nature of the Commonwealth's reported exposure since 30 June 1997; and the approach of agencies to effective risk management and control of Commonwealth exposures to these instruments.

## Audit conclusions

9. ANAO concluded that, overall, there has been a continuing improvement since the 1998 audit in most departments' and agencies' management and administrative practices associated with these types of contingent liabilities. There has also been improved public accountability by departments and agencies through better reporting. However, there remains scope for further improvement in a number of departments and agencies, particularly in the areas of recording relevant information, application of effective risk management, and control of exposures.

10. Total quantifiable exposures reported to ANAO in the current audit amounted to at least \$114.9 billion, representing almost a halving of exposures since 30 June 1997. The breakdown by category of instruments as at 30 June 2002 comprised: loan guarantees of \$5.9 billion; non-loan guarantees of \$69.2 billion; indemnities of \$39.7 billion; and letters of comfort of \$110 million. The composition of contingent liabilities has changed markedly with non-loan guarantees falling by two-thirds since 1997, and indemnities rising some thirteen-fold from \$3.1 billion in 1997 to \$39.7 billion in 2002. The largest increases were in the Transport and Regional Services Portfolio (\$27.2 billion) and the Attorney-General's Portfolio (\$6.0 billion) for indemnities associated with war risk cover following the events of 11 September 2001.

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<sup>6</sup> Reported quantifiable warranties were negligible totalling \$0.64 million and hence have received minimal coverage in the audit.

11. Indemnities of \$4.5 billion covering space vehicle launches were also issued within the Industry, Technology and Resources Portfolio.<sup>7</sup> Further increases in the level of indemnities relating to post 11 September 2001 events can also be expected. For example, in October 2002, the Government announced plans for a scheme for replacement terrorism insurance, to commence from 1 July 2003. That scheme includes provision for a pool of \$300 million sourced from premiums, supplemented by a back-up bank guarantee line of credit of \$1 billion underwritten by the Commonwealth Government and a Commonwealth Government indemnity of \$9 billion.<sup>8</sup>

12. The current audit revealed that there had been a significant improvement in the number of departments reporting the introduction of structured risk management since the 1998 audit. Over three-quarters of responding departments and agencies reported that they now have a corporate risk management plan in place for their entity. However, of those that did, only four entities reported that there was an explicit link between their corporate risk management plan and the management of their guarantees, warranties, indemnities and letters of comfort. Where substantial potential liabilities are involved, ANAO considers that departments and agencies need to specifically address management of their guarantees, warranties, indemnities and letters of comfort in their risk management plans.

13. The issues of contract vetting, authorisation, subrogation, time limits, financial limits and termination clauses are addressed in Finance Circular 1997/06 *Potential Liabilities and Losses* circulated to all departments and agencies in April 1997. Although responding entities indicated to ANAO that there was a high degree of awareness of the existence of this Finance Circular, there have not been high levels of compliance with the guidelines contained in it, especially in relation to capping liabilities and incorporating termination clauses and time limits. ANAO considers that this situation has the potential to expose the Commonwealth to unnecessary risk and warrants further action by issuing entities to raise awareness of the importance of sound procedures in the preparation and management of these instruments (see Chapter 3).

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<sup>7</sup> The Commonwealth Government requires anyone seeking approvals under then *Space Activities Act 1998* to insure up to the level of Maximum Probable Loss (MPL), up to a value of \$750 million per launch or return of a space object. The Commonwealth also accepts all liability for damage suffered by Australian nationals up to the value of \$3 billion above MPL. Under the United Nations Convention on International Liability for Damages Caused by Space Objects, the Commonwealth also accepts all liability caused to foreign nationals above the insured level for damage caused by space objects launched from, or by, Australia.

<sup>8</sup> Treasurer's Press Release on Terrorism Insurance, No.64, 25 October 2002.

## Key findings

### Commonwealth exposures

14. The Commonwealth's gross exposure arising from these instruments, as reported to ANAO by departments and agencies, was \$214.6 billion as at 30 June 1997 and \$114.9 billion as at 30 June 2002, a reduction of some \$100 billion over five years. Changes in the value of the total exposure can be expected as old agreements lapse over time and new ones are issued. There were also some variations because departments changed the category and/or value of instruments previously reported. However, the most significant factors in the large difference in the aggregate reported figures for those years relate to the changing value and reporting of the guarantees for the Commonwealth Bank of Australia (CBA), and the reporting of liabilities associated with the Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS).

15. Notwithstanding the magnitude of the Commonwealth's overall exposure to guarantees, indemnities and letters of comfort, during the 1998 audit there were only two reported payouts as a result of such instruments, which were made in relation to two Department of Defence indemnities. However, since that audit, both the number and value of reported payouts have significantly increased. Ten departments and agencies reported total payments of some \$235 million since 1 July 1998 involving at least 45 separate indemnities. About half of this reported aggregate was paid by the Treasury in relation to the HIH Claims Support Program (\$73 million)<sup>9</sup> and Housing Loans Insurance Corporation (\$61.4 million). Net payments of around \$66 million were also made within the Foreign Affairs and Trade Portfolio in relation to the Commonwealth's liability to pay the Export Finance and Insurance Corporation (EFIC) for National Interest Account losses. Some departments and agencies had difficulty compiling their data on payouts in connection with the guarantees, warranties, indemnities and letters of comfort issued by them. Consequently, ANAO cannot provide reasonable assurance that the amounts reported in the census comprise a complete list of payments arising from these instruments.

16. The relative infrequency of calls on departments and agencies to make payments pursuant to these instruments may be seen as indicative of a low

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<sup>9</sup> In addition to these payments, the Treasury 2001-02 financial statements record estimates based on independent actuarial assessments of \$496.35 million and \$500.80 million respectively in relation to the Commonwealth's liabilities for the HIH Claims Support Scheme and a component of the Commonwealth's assistance package for United Medical Protection Limited and Australasian Medical Insurance Limited (the UMP/AMIL Group) and other Medical Defence Organisations. As explained in Notes 1.32 and 1.33 to the financial statements, there is inherent uncertainty regarding these estimates of the Commonwealth liabilities and the Commonwealth will continue to assess them in future years.

level of risk associated with their issue. However, the sheer size of some of the individual exposures, and the Commonwealth's aggregate exposure, means that one set of adverse circumstances in relation to any one of a number of high value instruments could result in a considerable payout by the Commonwealth. This possibility alone warrants vigilance in the management of these instruments. In relation to such risks, the framework in place includes existing Finance guidance, the identification of contingent risks in the Budget papers as required by the Charter of Budget Honesty Act, updates of the disclosures for the Mid-Year Economic and Fiscal Outlook, and enhanced risk management education by Comcover.

## Risk management and control

17. Comcover, the Commonwealth insurable risk managed fund, commenced operations on 1 July 1998, replacing the previous Commonwealth policy of non-insurance for public sector entities to manage risks. Comcover currently covers more than 180 Commonwealth entities for insurable risks (except workers compensation, which is covered by Comcare). In the current audit, about half of the departments and one-quarter of the agencies which responded to the ANAO questionnaire advised that at least some of their potential liabilities from such instruments were covered by insurance. Of the aggregate \$39.7 billion of reported quantified indemnities, based on the information provided by departments and agencies, ANAO calculated that some \$400 million, or one per cent, was covered by insurance. In total, there were over 930 reported insured indemnities,<sup>10</sup> largely covering property, motor vehicle and other commercially insurable risks, and directors' indemnities.

18. The current audit revealed that there has been progressive improvement in record-keeping in relation to the guarantees, indemnities and letters of comfort issued by portfolio departments. However, agencies have further scope for improvement. ANAO Audit Report No.6 1996–97 noted that the majority of portfolio departments which reported having guarantees, indemnities and letters of comfort on issue, did not have them recorded in a formal register. ANAO Audit Report No.47 1997–98 reported some improvement in that regard, with two-thirds of departments with these instruments reporting that they had a register. In the current audit, this had improved to nearly 90 per cent of departments with one or more of these instruments on issue reporting that they maintained a register. In comparison, just over half the agencies (covered for the first time in this audit) with one or more of these instruments on issue reported that they did not maintain a register.

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<sup>10</sup> This figure includes both quantified and unquantified reported exposures.



19. In reviewing their records in order to respond to the ANAO survey, some departments and agencies uncovered instruments that should have been reported in the previous audits. During the current audit, ANAO found that many departments and agencies had out of date registers or continued inaccuracies in their reported exposures, ranging from omissions of instruments to inclusion of items that, upon further investigation, were found not to be valid guarantees, warranties or indemnities issued by the Commonwealth.

20. Most departments and agencies have adopted contract registers as an adjunct to a main, or central, document registry system for the management of the Commonwealth's guarantees, indemnities and letters of comfort. Only four departments and seven agencies reported that they did not maintain a contract register, while some entities indicated that their contract registers only covered contracts exceeding \$100 000. Moreover, only around one-quarter of the departments and agencies with contract registers that had issued these instruments reported that their contract system was linked to the recording of these instruments.

21. There continues to be a need for departments and agencies to improve their overall document security arrangements to ensure that they have effective administrative control of their guarantees, warranties, indemnities and letters of comfort. Sound management practice would indicate that entities should ensure that staff are aware of the need to provide appropriate safe custody arrangements for these instruments.

## Improvement opportunities

22. Adequate guidance, including better practice principles, has been made available to departments and agencies regarding the disclosure and reporting of the guarantees, indemnities and letters of comfort issued by the Commonwealth. In addition to issuing Finance Circular 1997/06, the Department of Finance and Administration (Finance) has enhanced the awareness of departments and agencies regarding the management of guarantees, indemnities and letters of comfort through the promulgation in June 1997 of revised financial statement guidelines that included improved guidelines for the reporting of contingencies. This was complemented by the review of the Commonwealth's policy of non-insurance completed by Finance in September 1997, which led to the introduction of Comcover. Finance also advised ANAO that it is currently reviewing all Finance Circulars with the intention of updating and re-issuing those for which a continuing need is identified.

23. ANAO has made three recommendations aimed at improving departments' and agencies' management practices associated with

Commonwealth guarantees, warranties, indemnities and letters of comfort, (for those agencies not already doing so) covering the:

- recording, safe custody and access arrangements for documents associated with these instruments;
- linking of corporate risk management planning with strategies for the management of contingent liabilities; and
- inclusion of control mechanisms such as time limits, termination clauses, subrogation clauses and financial limits on liability in these instruments.

24. All three recommendations were agreed by departments and agencies covered.

# Recommendations

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Set out below are the ANAO's recommendations aimed at improving the overall management of Commonwealth guarantees, warranties, indemnities and letters of comfort. The recommendations closely follow those made by ANAO in the two previous audits on this subject. Report paragraph references and abbreviated departmental and agency responses are also included. More detailed responses are shown in the body of the report.

## **Recommendation No.1 Para 3.24**

ANAO *recommends* that those departments and agencies with guarantees, warranties, indemnities and letters of comfort (which have not already done so):

- a) maintain an appropriate register of these instruments;
- b) consider the implementation of a contract register system, which among other benefits would be an aid to effective records management of these instruments; and
- c) review their physical security measures with a view to establishing appropriate safe custody and access arrangements for the documents associated with these instruments.

**Agreed:** AFFA, AG's, DOCITA, Defence, DEST, DEWR, DEH, DFAT, FACS, Finance, DOHA, DIMIA, DITR, DOTARS, Treasury, DVA, AEC, AFP, AOFM, APSC, ARPANSA, ATO, ATSIC, Centrelink, NNTT and ScreenSound.

## **Recommendation No.2 Para 3.47**

ANAO *recommends* that, in developing corporate risk management strategies, those departments and agencies with substantial guarantees, warranties, indemnities and letters of comfort that have not already done so, ensure that an explicit link is established between the entity's corporate risk management plan and its strategies for the management of these instruments.

**Agreed:** AFFA, AG's, DOCITA, Defence, DEST, DEWR, DEH, DFAT, FACS, Finance, DOHA, DIMIA, DITR, DOTARS, Treasury, DVA, AEC, AFP, AOFM, APSC, ARPANSA, ATO, ATSIC, Centrelink, NNTT and ScreenSound.

**Recommendation  
No.3  
Para 3.58**

ANAO *recommends* that, where appropriate and commercially practical, those departments and agencies that have not already done so, review their procedures to ensure that time limits, termination clauses, subrogation clauses, and financial limits on liability are incorporated into guarantees, warranties, indemnities and letters of comfort they issue.

**Agreed:** AFFA, AG's, DOCITA, Defence, DEST, DEWR, DEH, DFAT, FACS, Finance, DOHA, DIMIA, DITR, DOTARS, Treasury, DVA, AEC, AFP, AOFM, APSC, ARPANSA, ATO, ATSIC, Centrelink, NNTT and ScreenSound.

# **Audit Findings and Conclusions**



# 1. Introduction

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*The chapter outlines the background and approach of the audit. By way of comparison, it also examines the United Kingdom approach to the management and accountability requirements of departments and agencies involved in issuing contingent liabilities.*

## Background

**1.1** Guarantees, warranties, indemnities and letters of comfort represent types of contingent liabilities<sup>11</sup> that may give rise to actual liabilities by the occurrence or non-occurrence of one or more possible future events. These types of instruments perform an effective role in facilitating the operations of government, much as they do the commercial operations of the private sector. However, they can carry with them risks and obligations which may be called on in the future. They are not necessarily costless and need to be managed carefully. Equally, it is important that the exposures they represent are adequately monitored over the life of the instruments. The Commonwealth's gross exposure arising from these instruments, as reported to the ANAO by departments and agencies, was \$214.6 billion as at 30 June 1997 and \$114.9 billion as at 30 June 2002, a reduction of some \$100 billion over five years.

**1.2** ANAO Audit Report No.6 1996–97, *Commonwealth Guarantees, Indemnities and Letters of Comfort*, concluded that, overall, there needed to be a marked improvement in most departments' management and administrative practices with regard to off-balance sheet risk. There was also a need for greater public accountability at both the entity and whole-of-government levels through better reporting of these potential liabilities. The report contained 16 recommendations which were accepted by the departments involved.

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<sup>11</sup> These contingent liabilities are obligations which are binding on an entity (usually under contract) which are not recognised as liabilities in its Statement of Financial Position (Balance Sheet) unless and until it becomes more rather than less likely that the entity will be required to settle the liability. Under paragraph 16.1 of Australian Accounting Standard AASB 1044 *Provisions, Contingent Liabilities and Contingent Assets*, a 'contingent liability' means:

- a) a possible liability that arises from past events the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity (for example, in litigation, it may be disputed whether certain past events have occurred or whether those past events resulted in a present obligation); or
- b) a liability that is not recognised because:
  - i. it is not probable that a future sacrifice of economic benefits will be required; or
  - ii. the amount of the liability cannot be measured reliably.

The contingent liabilities dealt with in the current audit generally fall within part b(i) of the definition. Disclosure of these contingent liabilities in the Notes to financial statements is not required under this Standard where the probability of settlement is remote (paragraph 14.7(a)). However, the Minister for Finance requires Commonwealth bodies to disclose even remote contingencies.

**1.3** Two Parliamentary Committees inquired into ANAO Audit Report No.6 1996–97, the then Joint Committee of Public Accounts (JCPA) and the then House of Representatives Standing Committee on Financial Institutions and Public Administration (HORSCFIPA). The JCPA's Report 350, *Review of Auditor-General's Reports 1996–97*, was tabled in February 1997 and contained two major recommendations concerning the management of guarantees, indemnities and letters of comfort. In September 1997, the HORSCFIPA tabled its *Report of the Inquiry into ANAO Audit Report No.6 1996–97 on Commonwealth Guarantees, Indemnities and Letters of Comfort*. That Committee made 12 recommendations which canvassed a wide range of measures to improve administrative and risk management procedures in connection with these instruments. The recommendations made by the JCPA and the HORSCFIPA are set out in Appendix 1.

**1.4** The 1996 audit set out to capture all explicit guarantees, indemnities and letters of comfort provided by the Commonwealth under legislation, deeds, contracts and correspondence as at 30 June 1995. Excluded from the audit were other instruments such as those issued by Statutory Marketing Authorities (SMAs) and Government Business Enterprises (GBEs) that did not explicitly involve the Commonwealth in a legal obligation, indemnification of Commonwealth employees (for example, the indemnification of Commonwealth officers serving on statutory authority boards) and uncalled capital subscriptions for multilateral financial institutions. The audit found that departments and agencies did not have an adequate awareness of the management requirements for guarantees, indemnities and letters of comfort and that few entities met the then Finance Direction 21/3 requirement of establishing and maintaining an accurate register for these instruments.<sup>12</sup> As a result, ANAO was not confident that the contingent liabilities reported in the census of guarantees, indemnities and letters of comfort was a complete list of the Commonwealth's exposure to these instruments.

**1.5** ANAO Audit Report No.47 1997–98, *Management of Commonwealth Guarantees, Indemnities and Letters of Comfort*,<sup>13</sup> concluded that there had been an overall improvement in the number of entities implementing registers for their guarantees and indemnities. As well, the (then) recent changes in the Commonwealth's financial management arrangements had created a framework which places greater emphasis on the visibility and effective management of these instruments. The audit report made six recommendations to improve entities' management processes, including that they:

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<sup>12</sup> The guidance on recording guarantees, indemnities and letters of comfort in a central register is now contained in the Department of Finance and Administration's Model Chief Executive Instructions.

<sup>13</sup> In November 1999, the JCPAA released its Report 370 *Review of Auditor-General's Reports 1997–98 Fourth Quarter. Defence life cycle costing and Commonwealth guarantees, indemnities and letters of comfort*.



- maintain an adequate and accessible register of these instruments;
- implement a contract register system, which among other benefits would be an aid to effective records management of their guarantees, indemnities and letters of comfort;
- review their physical security measures with a view to establishing appropriate safe custody arrangements for the documents associated with these instruments;
- explicitly link the entity's corporate risk management plan and their strategies for the management of these instruments;
- establish procedures to ensure effective review and evaluation of their financial exposures as a result of contingencies; and
- where appropriate and commercially practical, entities ensure that time limits, termination clauses, subrogation clauses, and financial limits on liability are incorporated into guarantees, indemnities and letters of comfort they issue.

**1.6** Many instruments reported to ANAO in the current and previous audits had no dollar value attributed to them. In almost all cases, these instruments were either indemnities or letters of comfort. It is a simple matter to aggregate the maximum exposure represented by loan guarantees and non-loan guarantees, since these usually relate to specified sums for loans or other financial obligations. It is similarly straightforward to make the same calculation where instruments include a cap on the maximum liability accepted under the instrument.

**1.7** Generally, the majority of indemnities and letters of comfort reported to ANAO in the current and previous audits did not have caps on liability. These instruments have the potential to commit the Commonwealth to significant outlays, as was the case with payments made under indemnification arrangements for the blood supply system, which saw related outlays by the Commonwealth of some \$28.6 million between 1989 and 1995.<sup>14</sup> Another example can be found in the Commonwealth indemnity to the Australian Submarine Corporation where 46 claims were made by December 1996 (23 of these were denied).<sup>15</sup> Accordingly, the aggregate figures reported in the current and previous audits do not include the instruments with no dollar value ascribed to them. A full list of reported guarantees, warranties, indemnities and letters of comfort existing at 30 June 1996, 1997 and 2002, respectively is included at Appendix 2.<sup>16</sup>

<sup>14</sup> ANAO Audit Report No.6 1996–97, p. 5.

<sup>15</sup> ANAO Audit Report No.34 1997–98, *New Submarine Project*, p. 33.

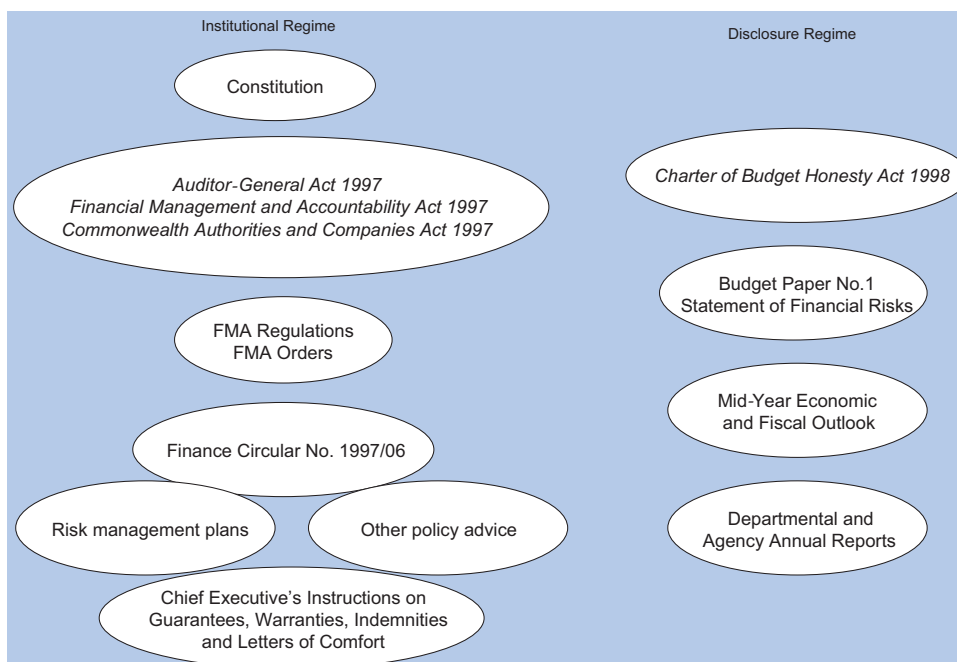
<sup>16</sup> The instruments which have been reported as having no specified dollar value are nearly all either indemnities or letters of comfort and range from indemnification of the Department of Defence's new submarine project and the Civil Aviation Safety Authority's air safety functions to letters of comfort provided for the Qantas Trade Sale.

1.8 These types of instruments give rise to contingent liabilities as a result of the exercising of statutory responsibilities, such as the Treasurer's power to guarantee borrowings. Ministers also have the power under the Constitution to issue guarantees, warranties, indemnities and letters of comfort. Nevertheless, Parliament is not bound to provide funds to satisfy such obligations unless there is an existing standing appropriation. An outline of the legislative, policy and reporting framework that currently affects Commonwealth guarantees, warranties, indemnities and letters of comfort is set out in Figure 1.1. The framework for issuing and reporting these types of instruments is comprised of two major components, namely:

- an institutional regime which includes: relevant Constitutional and legislative provisions; Finance Circular No. 1997/06; departmental and agency risk management plans; and Chief Executive's Instructions (CEIs); and
- a disclosure regime which includes: the *Charter of Budget Honesty Act 1998*; Budget Statement of Financial Risks; and annual reporting by departments and agencies.

1.9 Until 31 December 1997, section 70B of the *Audit Act 1901* prohibited the issuing of a loan guarantee by or on behalf of the Commonwealth unless expressly authorised by an Act. The prohibition of the giving of loan guarantees in the absence of legislative authorisation does not remain under the *Financial Management and Accountability Act 1997* (FMA Act). Under Regulation 14 of the FMA Regulations, persons (including Ministers or Chief Executives) must not give a loan guarantee on behalf of the Commonwealth unless a proposal to spend public money for the guarantee has been approved under Regulation 9, and, if necessary, in accordance with Regulation 10, and the giving of the guarantee has been authorised by the Finance Minister, or another person authorised by the Finance Minister for the purpose.

**Figure 1.1**  
**Legislative, policy and reporting framework**



Source: ANAO

## United Kingdom accountability model<sup>17</sup>

**1.10** The United Kingdom (UK) Government has a particularly comprehensive reporting system covering its government-issued contingent liabilities. In that jurisdiction, government policy is that legislation authorising statutory liabilities should detail reporting arrangements for notifying Parliament of any guarantees or indemnities given. In the cases where an Act does not outline reporting arrangements, and the exposure could exceed £100 000 (A\$270 270),<sup>18</sup> the requirement is that a statement should be laid before both Houses of Parliament immediately after a guarantee or indemnity is provided. In Australia, the accountability requirements operate through annual budget papers and departmental or agency annual reports.

**1.11** The UK reporting procedures, where a reportable non-statutory liability could exceed £100 000, is that the department concerned must obtain Treasury approval before laying a Minute before the House of Commons. The Minute is

<sup>17</sup> This section draws on information contained in the UK Government Accounting Manual 2000, H.M. Treasury, Section 26 accessed via website at <[www.government-accounting.gov.uk](http://www.government-accounting.gov.uk)>.

<sup>18</sup> Based on AUD of 0.37 GBP at average June 2002 exchange rates.

required to describe the amount and duration of the guarantee or indemnity and the body or bodies involved, and any other relevant information. Where the potential liability cannot be accurately quantified an estimate is required to be given. The department must also send copies of the Minute to both the Public Accounts Committee and the relevant departmental Select Committee.

**1.12** The guarantee or indemnity is not given until 14 days after the Minute has been laid before the UK House of Commons. Every effort is made to ensure that the full waiting period falls while Parliament is in session. Where, in cases of special urgency, a guarantee or indemnity has to be given before 14 days have expired, the reasons for the urgency are required to be explained in the Minute. If a Member of Parliament objects by letter, Parliamentary Question or Early Day Motion, the guarantee or indemnity is normally not given until the letter or question has been answered.

**1.13** Where a department considers that a contingent liability raises issues of commercial confidentiality or of national security, or where public knowledge of a guarantee could prompt claims from third parties, the UK Treasury may agree to the department reporting the matter in confidence by writing to the Chair of the Public Accounts Committee.

**1.14** The UK Government Accounting Manual outlines the management and accountability requirements of departments and agencies involved in issuing contingent liabilities, under which entities are responsible for:

- carrying out a risk appraisal before contingent or actual liabilities are accepted, including those which arise in the normal course of departmental business;
- following the appropriate procedures for reporting liabilities to Parliament, where applicable;
- making adequate arrangements for controlling and monitoring existing liabilities;
- obtaining specific statutory powers where there is a continuing policy requirement to accept particular types of liability;
- ensuring that adequate arrangements exist for the appraisal, assessment, reporting to Parliament (where applicable) and review of liabilities (including those arising through letters of comfort) of any Non-Departmental Public Bodies (NDPB)<sup>19</sup> which they sponsor;

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<sup>19</sup> In the UK a NDPB is a body that has a role in the process of government, but is not a government department or part of one. NDPBs accordingly operate at arm's length from government Ministers.

- ensuring they are consulted by the bodies they sponsor before new or renewed guarantees or letters of comfort in relation to borrowings above a specified limit are issued; and
- ensuring that they account for contingent liabilities and provisions in accordance with the guidance provided by Treasury.

## Audit approach

**1.15** Guarantees, indemnities and letters of comfort, which do not explicitly involve the Commonwealth in a legal obligation, were not within the scope of the two previous audits and are again not covered in this audit because they do not directly constitute legal contingent liabilities of the Commonwealth. Excluded from the audit were other contingencies such as uncalled capital subscriptions for multilateral financial institutions and instruments issued by Statutory Marketing Authorities and Government Business Enterprises that did not explicitly involve the Commonwealth in a legal obligation.

**1.16** This audit commenced with the development of a questionnaire<sup>20</sup> that included a census of all explicit Commonwealth guarantees, warranties, indemnities and letters of comfort on issue. Initial data for the audit was assembled by way of a census of 17 portfolio departments.<sup>21</sup> The census data was then used as a guide to gather detailed information from selected departments and agencies<sup>22</sup> by way of interviews, file review and exchange of correspondence. Fieldwork was conducted between April and October 2002.

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<sup>20</sup> A similar questionnaire was circulated during the 1996 and 1998 audits.

<sup>21</sup> Department of Agriculture, Fisheries and Forestry—Australia, Attorney-General's Department, Department of Communications, Information Technology and the Arts, Department of Defence, Department of Education, Science and Training, Department of Employment and Workplace Relations, Department of Environment and Heritage, Department of Family and Community Services, Department of Finance and Administration, Department of Foreign Affairs and Trade, Department of Health and Ageing, Department of Immigration and Multicultural and Indigenous Affairs, Department of Industry, Tourism and Resources, Department of Prime Minister and Cabinet, Department of Transport and Regional Services, Department of the Treasury and Department of Veterans Affairs.

<sup>22</sup> Thirty agencies that were provided with copies of the questionnaire by their respective portfolio departments also responded. These agencies were: Administrative Appeals Tribunal, Australian Agency for International Development (AusAID), Australian Bureau of Statistics, Australian Competition and Consumer Commission, Australian Electoral Commission, Australian Federal Police, Australian Institute of Police Management, Australian Office of Financial Management, Australian Public Service Commission, Australian Radiation Protection and Nuclear Safety Agency, Australian Safeguards and Non-Proliferation Office, Australian Taxation Office, Australian War Memorial, Family Court of Australia, AUSTRAC, Centrelink, Child Support Agency, Commonwealth Director of Public Prosecutions, Commonwealth Ombudsman, Crimtrac, Federal Court of Australia, Inspector-General Intelligence and Security, National Native Title Tribunal, National Science and Technology Centre, Office of the Governor-General, Office of Parliamentary Counsel, Office of National Assessments, Office of Supervising Scientist, Productivity Commission and ScreenSound. The Export Finance and Insurance Corporation (EFIC) also returned a completed questionnaire.

**1.17** This report assesses action to date in relation to the recommendations from ANAO Audit Report No.47 1997–98. The objectives of the audit were to assess, with respect to guarantees, warranties, indemnities and letters of comfort:

- the extent of improvement in departments' and agencies' management and monitoring of the Commonwealth's exposure to these instruments;
- changes in the size and nature of the Commonwealth's reported exposure since 30 June 1997; and
- the approach of departments and agencies to effective risk management and control of Commonwealth exposures to these instruments.

**1.18** ANAO developed criteria which addressed the adequacy of departments' and agencies' management of guarantees, warranties, indemnities and letters of comfort in relation to the size and nature of the Commonwealth's exposure; the nature of entities' administrative management, reporting and monitoring of the instruments; action taken by entities in regard to the two previous audits; the Parliamentary Committees' recommendations; and entities' approaches to risk management.

**1.19** The cost of the audit to the ANAO was approximately \$170 000. The audit was conducted in accordance with the ANAO auditing standards.

## 2. Commonwealth Exposure

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*This chapter discusses the size and nature of the Commonwealth exposure to guarantees, warranties, indemnities and letters of comfort.*

### Size of the Commonwealth exposure

**2.1** ANAO Audit Report No.6 1996–97 reported that Commonwealth exposures, as a result of the issue of explicit guarantees, indemnities and letters of comfort, amounted to at least \$222 billion, comprising contingent loan guarantees of \$13 billion; non-loan guarantees of \$206.8 billion (including \$43.4 billion for the Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) guarantees); indemnities of \$1.7 billion and letters of comfort of \$180 million.

**2.2** As with ANAO's two previous audits, the major data collection exercise for the current audit was a departmental survey, which included a census of explicit Commonwealth guarantees, warranties, indemnities and letters of comfort.<sup>23</sup> Carried out in 2002,<sup>24</sup> the census requested data from portfolio departments relating to the same subset of Commonwealth contingent liabilities as examined by the previous audits in order to determine the nature and amount of these instruments on issue. This provided a basis for comparison with the results of the previous audits. ANAO sought to identify from this data any trends in the nature and size of the Commonwealth's exposure and also any improvements to the entities' recording and management of these instruments. It was not practical for ANAO to verify all figures returned in the census although, where ANAO was aware of different figures to those reported to it, clarification was sought from the relevant entity.

**2.3** Total quantifiable exposures reported to ANAO in the current audit amounted to at least \$114.9 billion, representing almost a halving of exposures since 30 June 1997. The composition of contingent liabilities has changed markedly with non-loan guarantees falling by nearly two-thirds since 1997 and indemnities rising some thirteen-fold from \$3.1 billion to \$39.7 billion in 2002. The breakdown by category of instruments as at 30 June 2002 comprised:

- loan guarantees of some \$5.9 billion;
- non-loan guarantees of \$69.2 billion;

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<sup>23</sup> Details of Commonwealth warranties were sought for the first time in the current audit census. Thirty agencies that were provided with copies of the questionnaire by their respective portfolio departments also responded.

<sup>24</sup> Updates were also sought from departments and agencies to ascertain the position as at 30 June 2002.

- indemnities of \$39.7 billion; and
- letters of comfort of \$110 million.

2.4 Notwithstanding the magnitude of the Commonwealth's overall exposure to guarantees, indemnities and letters of comfort, during the 1998 audit there were only two reported payouts as a result of such instruments, which were made in relation to two Department of Defence indemnities. The first of these was a payment of \$9.3 million pursuant to indemnities associated with the sale of shares in Aerospace Technologies of Australia (ASTA). The second payment of \$1.5 million was made against indemnities associated with the New Submarine Project Prime Contract.<sup>25</sup> However, since the last audit, both the number and value of reported payouts have significantly increased. Eight portfolio departments reported that they had paid out some \$235 million since 1 July 1998 involving at least 45 separate indemnities (see Appendix 3). About half of this reported aggregate was paid by the Department of the Treasury (Treasury) in relation to the HIH Claims Support Program (\$73 million) and Housing Loans Insurance Corporation (\$61.4 million). Net payments of around \$66 million were also made under the Foreign Affairs and Trade Portfolio in relation to the Commonwealth's liability to pay the Export Finance and Insurance Corporation (EFIC) for National Interest Account losses.<sup>26</sup> Some departments and agencies had difficulty compiling their data on payouts in connection with the guarantees, warranties, indemnities and letters of comfort issued by them. Consequently, ANAO cannot provide reasonable assurance that the amounts reported in the census comprise a complete list of payments arising from these instruments.

2.5 There is an increasing trend developing in the number and value of payouts made per annum (see Figure 2.1). In comparison to the size of the Commonwealth's aggregate exposure to guarantees, warranties, indemnities and letters of comfort, most of the payouts reported to ANAO relate to relatively small sums. The relative infrequency of calls on departments and agencies to make payments pursuant to these instruments may be seen in most instances as indicative of a low level of risk associated with their issue. However, the size of some of the individual exposures, and the Commonwealth's aggregate exposure, means that one set of adverse circumstances in relation to any one of a number of high value instruments could result in a considerable payout by the Commonwealth. This possibility alone warrants vigilance in the management of these instruments.

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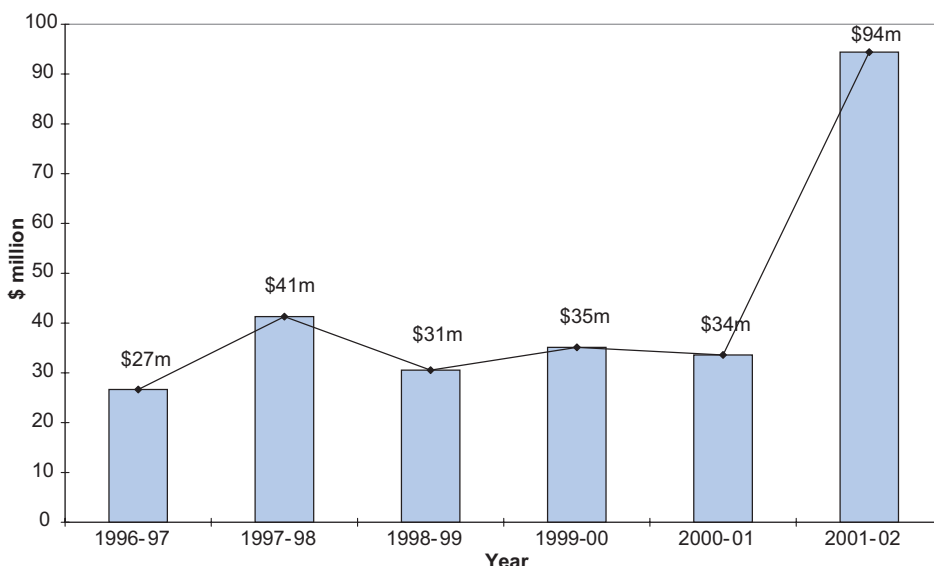
<sup>25</sup> The payouts were in relation to two separate berthing incidents in November 1994 and June 1995.

<sup>26</sup> This figure excludes payouts of \$17.4 million in 1996–97 that were reported for the first time in the current audit.



**Figure 2.1**

**Aggregate reported payouts in respect of Commonwealth guarantees, warranties, indemnities and letters of comfort for years ended 30 June 1997 to 2002**



Source: ANAO analysis based on departments' and agencies' 2002 survey returns.

## Change in exposure levels

2.6 The total quantifiable exposure reported as at 30 June 2002 of \$114.9 billion was some \$100 billion less than the figure of \$214.6 billion reported for 30 June 1997. Changes in the value of the total exposure can be expected as old agreements lapse over time and new ones are issued. There were also some variations because entities changed the category and/or value of instruments previously reported. However, the most significant explanation for the large difference in the aggregate figures as at 30 June 1995, 1996 and 2002, occurs because of the changing value and reporting of the guarantees for the Commonwealth Bank of Australia (CBA)<sup>27</sup> and the reporting of the Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) liabilities.<sup>28</sup>

<sup>27</sup> In relation to the Commonwealth Bank of Australia, the Commonwealth Bank of Australia Officers' Superannuation Fund and the Commonwealth Development Bank, the Commonwealth Government guarantees all monies that are, or may at any time become, payable to a person other than the Commonwealth. Such guarantees will be progressively phased out following the government sell-down on 19 July 1996.

<sup>28</sup> The Department of Finance and Administration (Finance) did not report the CSS and PSS guarantees in the 1997 survey. The obligations involved are now recognised as liabilities in Finance's annual financial statement. Accordingly, the 30 June 1995 base line figure has been reduced by \$43.4 billion. In this circumstance, it is more accurate to compare the 30 June 1997 survey aggregate of \$214.6 billion to an amended 30 June 1995 survey aggregate of \$178.6 billion.

2.7 The value reported by Treasury for the CBA guarantee rose from \$91.3 billion, as at 30 June 1995, to \$324.2 billion, as at 30 June 1996, because of the inclusion in the 1996 figure of the off-balance sheet exposure of the Bank. Following the sale of the final tranche of CBA in July 1996, the legislative guarantee of the CBA changed, reflecting the completion of the Bank's transition to full private sector ownership. By 30 June 1997, the amount outstanding under the guarantee had reduced to \$104 billion, and the Commonwealth aggregate exposure was also, accordingly, significantly reduced. The CBA guarantee was \$12.1 billion as at 30 June 2002. It will continue to reduce in the next few years, tapering off to a point where the guarantee is expected to reduce to approximately \$1.7 billion by the year 2006–07.

2.8 A comparison between the 30 June 1996, 1997 and 2002 aggregate values of exposure by instruments and portfolio department is set out in Figure 2.2. In ANAO Audit Report No.6 1996–97, the overwhelming proportion of exposures by value occurred in the Department of the Treasury (Treasury) and the Department of Finance and Administration (Finance). However, as the CSS and PSS guarantees are now reported as liabilities in Finance's financial statements,<sup>29</sup> Treasury now accounts for some 56 per cent of the total exposure (see Figure 2.3). Within that total, the Reserve Bank of Australia's guarantee of \$48.7 billion now comprises the largest component (up from \$41.2 billion at 30 June 1997).<sup>30</sup>

2.9 The 2002 figures for total non-loan guarantees are also not directly comparable with earlier years, due to a change in the reporting basis for the Housing Loans Insurance Corporation guarantees, under which the reported value decreased from \$44.5 billion in 1997 to \$19 million in 2002.<sup>31</sup>

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<sup>29</sup> Since 30 June 1997 the obligations involved have been recognised as liabilities in Finance's budgeted and annual financial statements.

<sup>30</sup> In relation to the Reserve Bank of Australia, the Commonwealth guarantees all monies that are, or may at any time become, payable to a person other than the Commonwealth.

<sup>31</sup> The 1996 and 1997 figures reflect the total value of insured loans, whereas the 2002 value is the estimated net liability based on an actuarial review.

**Figure 2.2****Comparison of portfolio departments' guarantees, indemnities and letters of comfort as at 30 June 1996, 1997 and 2002**

<b>Portfolio departments</b>	<b>1996 \$m</b>	<b>1997 \$m</b>	<b>2002 \$m</b>
<b>Loan Guarantees</b>			
Agriculture Fisheries and Forestry – Australia	1 100.0	705.0	
Communications Information Technology and the Arts	683.1	624.2	90.0
Defence	343.5	246.0	
Education Science and Training	829.6	996.9	0.5
Employment and Workplace Relations			350.0
Finance and Administration	3 234.3	3 115.5	1 560.0
Foreign Affairs and Trade	2 973.0	3 038.0	3 498.0
Immigration and Multicultural and Indigenous Affairs	0.6	0.7	
Industry Tourism and Resources	139.1	108.4	100.0
Transport and Regional Services	1 325.7	1 250.7	300.0
<b>Sub-total</b>	<b>10 628.9</b>	<b>10 085.4</b>	<b>5 898.5</b>
<b>Non-Loan Guarantees</b>			
Communications Information Technology and the Arts	1 036.0	1 060.2	379.9
Finance and Administration	809.5	1 144.0	158.4*
Foreign Affairs and Trade	4 138.0	4 238.4	4 056.4
Health and Ageing		uv	63.6*
Immigration and Multicultural and Indigenous Affairs			1.0
Treasury	396 227.5	194 994.2	64 500.6
<b>Sub-total</b>	<b>402 211.0</b>	<b>201 436.8</b>	<b>69 159.9</b>
<b>Warranties</b>			
Communications Information Technology and the Arts			0.6*
Finance and Administration			uv
Treasury			uv
<b>Sub-total</b>			<b>0.6</b>

*Table continued next page*

Portfolio departments	1996 \$m	1997 \$m	2002 \$m
<b>Indemnities</b>			
Agriculture Fisheries and Forestry – Australia	1 077.4*	1 871.4*	uv
Attorney-General's	uv	uv	6 012.2*
Communications Information Technology and the Arts	862.5	59.7	305.0*
Defence	185.1*	1 049.9*	972.6*
Education Science and Training	uv	uv	uv
Employment and Workplace Relations			0.5*
Environment and Heritage	1.5	1.5	uv
Family and Community Services	uv	uv	44.0*
Finance and Administration	uv	54.8*	482.9*
Foreign Affairs and Trade			uv
Health and Ageing	uv	uv	2.5*
Immigration and Multicultural and Indigenous Affairs	0.0	4.3	101.3
Industry Tourism and Resources	uv	uv	4 500.0*
Prime Minister and Cabinet			uv
Transport and Regional Services	uv	uv	27 235.6*
Treasury			1.5*
Veteran's Affairs	14.9	21.6	42.6*
<b>Sub-total</b>	<b>2 141.4</b>	<b>3 063.3</b>	<b>39 700.8</b>
<b>Letters of Comfort</b>			
Finance and Administration	uv	uv	54.0*
Foreign Affairs and Trade			uv
Health and Ageing			1.4*
Industry Tourism and Resources			uv
Transport and Regional Services	uv		5.0
Treasury			50.0*
<b>Sub-total</b>	<b>uv</b>	<b>uv</b>	<b>110.4</b>
<b>Total</b>	<b>414 981.3</b>	<b>214 585.4</b>	<b>114 870.2</b>

uv Unspecified value instruments reported.

\* Specified value and unspecified value instruments reported.

Source: ANAO analysis based on entities' 1995, 1997 and 2002 survey returns.

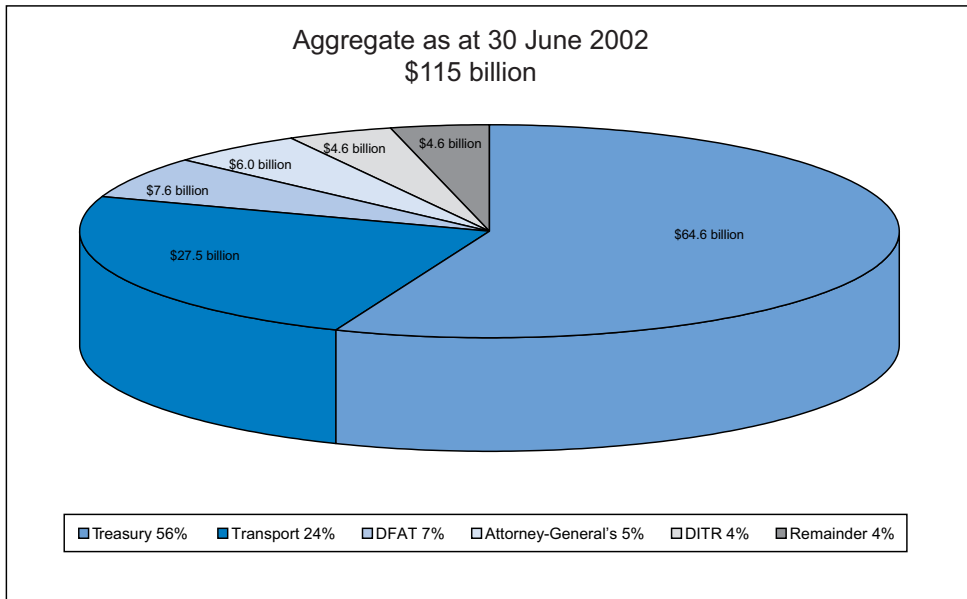
**2.10** The number of reported loan guarantees fell from 66 at 30 June 1997 to 11 at 30 June 2002. Although the number of non-loan guarantees fell slightly (from 24 to 22), there was an almost five-fold increase in the number of indemnities reported (from 271 to 1272) and the number of reported letters of comfort increased three-fold but from a very small base (from 3 to 11).

**2.11** Over this period, the value of reported loan guarantees fell by 42 per cent (from \$10.1 billion to \$5.9 billion), non-loan guarantees fell by two-thirds (from \$201.4 billion to \$69.2 billion), largely due to the reduction in the CBA guarantees, while the total value of reported indemnities increased thirteen-fold (from

\$3.1 billion to \$39.7 billion). The largest increases were in the Transport and Regional Services Portfolio (\$27.2 billion) and Attorney-General's Portfolio (\$6.0 billion) for indemnities associated with war risk cover following the events of 11 September 2001. Indemnities of \$4.5 billion covering space vehicle launches were also issued within the Industry, Tourism and Resources Portfolio.

**Figure 2.3**

**Reported 2002 value of guarantees, warranties, indemnities and letters of comfort by Portfolio**



Source: ANAO analysis based on departments' and agencies' 2002 survey returns.

**2.12** Further increases in the level of indemnities for post 11 September 2001 events can also be expected. For example, in October 2002, the Government announced plans for a scheme for replacement terrorism insurance, to commence from 1 July 2003, which includes provision for:

- a \$300 million pool of funds, funded by premiums;
- supplementation of the pool by a back-up bank guarantee line of credit of \$1 billion, underwritten by the Commonwealth Government; and
- additional supplementation under a Commonwealth Government indemnity of \$9 billion.<sup>32</sup>

The Scheme will cover commercial property and infrastructure facilities, including associated business interruption and public liability.

<sup>32</sup> Treasurer's Press Release on Terrorism Insurance, No.64, 25 October 2002.

## Better practice

**2.13** In response to ANAO Audit Report No.6 1996–97, Finance in consultation with the Attorney-General’s Department and ANAO, issued Finance Circular 1997/06 *Potential Liabilities and Losses* to replace the previous guidelines. This document, which was distributed to all Commonwealth departments and agencies in April 1997, is not limited to consideration of indemnities but also includes advice on guarantees and letters of comfort. Finance also attached to Finance Circular 1997/06 the *Better Practice Principles* that were included in ANAO Audit Report No.6 1997/06.

**2.14** Finance Circular 1997/06 includes advice for departments and agencies regarding:

- definitions of the instruments and their uses;
- the types of risks covered by indemnities and guarantees;
- the importance of the instruments in the context of risk management;
- the basis of authority for issuing guarantees and indemnities;
- the difference between issuing these instruments and spending public money;
- the importance of seeking appropriate authority for contracts which contain indemnities as well as spending proposals;
- the means of protecting the Commonwealth’s interests;
- the need to seek legal advice on relevant instruments;
- the need to record all contingent liabilities in agency registers; and
- the need to monitor, report and review all contingent liabilities.

**2.15** Finance Circular 1997/06 was issued prior to the commencement on 1 January 1998 of revised Commonwealth financial management arrangements established under the new legislative package comprised of the Auditor-General Act, the FMA Act and the *Commonwealth Authorities and Companies Act 1997* (CAC Act). Finance ensured that the guidance included in the circular was drafted to accommodate the changing legislative framework.

**2.16** Under the present arrangements, the detailed guidance on financial management to an entity’s officers is contained in the Chief Executive’s Instructions (CEIs) issued by the entity’s Chief Executive under FMA Regulation 6. To assist entities in developing their own CEIs, Finance issued to all departments and agencies model CEIs. Chapter 8 of these model instructions addresses (among other things) risk management, Commonwealth insurance and the management of indemnities. Most responding entities report that they

have put their own CEIs in place. ANAO examined a sample of departments' and agencies' CEIs, all of which made reference, either directly or indirectly, to the management of contingent liabilities.

**2.17** Finance has enhanced entities' awareness regarding guarantees, indemnities and letters of comfort through the promulgation in June 1997 of revised financial statement guidelines (as amended annually) that included improved guidelines for the reporting of contingencies. This was complemented by the review of the Commonwealth's policy of non-insurance completed by Finance in September 1997, which led to the introduction of Comcover.<sup>33</sup>

**2.18** ANAO notes that the change in the Commonwealth's policy on insurance occurred after Finance Circular 1997/06 was issued, with Comcover commencing operation on 1 July 1998. Finance also advised ANAO that it is currently reviewing all Finance Circulars with the intention of updating and re-issuing those for which a continuing need is identified. Finance Circular 1997/06 is included in the circulars flagged for re-issue. Other aspects of better practices identified during the current and previous audits are discussed in the next chapter.

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<sup>33</sup> Comcover is the vehicle for introducing the Government's whole-of-government insurance policy.

## 3. Management Framework

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*This chapter discusses the financial governance framework for guarantees, warranties, indemnities and letters of comfort, including departments' and agencies' record keeping performance; risk control measures; and accountability issues.*

### Background

**3.1** ANAO Audit Report No.6 1996–97 noted that, despite there being a requirement under the then Finance Directions for departments to maintain accurate records of their guarantees and contingent liabilities and report them annually to Finance, there were significant deficiencies in departments' and agencies' practice. Furthermore, the disclosure and reporting requirements that applied to these instruments required judgements as to which instruments were presented in portfolio departments' annual reports and in the Minister for Finance's Aggregate Financial Statements.<sup>34</sup> These reporting arrangements resulted in only partial presentation of information regarding off-balance sheet liabilities.

**3.2** ANAO recommended that Finance, in consultation with departments and agencies, review the disclosure and reporting requirements of Commonwealth guarantees, indemnities and letters of comfort with the aim of ensuring their transparency and appropriate monitoring procedures and examine options for improved accountability practices which embodied comprehensive recording of material instruments.<sup>35</sup>

**3.3** There has been significant progress in implementing these recommendations. Finance Circular 1997/06 addresses the substance of the recommendations and provides guidance on such things as record keeping, the need to appropriately monitor instruments and the reporting of these instruments in entities' annual financial statements. In addition, revised Financial Statement Guidelines issued by the Finance Minister under the Audit Act in June 1997 (as amended annually) provided improved guidance regarding the contingent liabilities to be included in a 'Schedule of Contingencies' and how they were to be presented. Departments and agencies were required to report all material contingencies in one of two ways in their financial statements. If the potential for loss was not remote, then entities were to include the contingent liability in the separate schedule of contingencies within their financial statements. If the probability that a loss will eventuate from a material contingent liability was remote, then entities were to report them in a separate note to their financial statements.

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<sup>34</sup> Now superseded by Commonwealth Consolidated Financial Statements.

<sup>35</sup> *op. cit.*, ANAO Audit Report No.6, Recommendation No.3, p. 28 and Recommendation No.13, p. 51.



3.4 Orders issued by the Finance Minister since the introduction of the FMA Act continued to require the improved disclosures introduced in 1997. However, from 2001–02, there was no requirement under the Finance Minister’s Orders to include a schedule of administered contingencies and commitments.<sup>36</sup> Finance advised that it is currently consulting with stakeholders on options to enhance the disclosure of administered contingencies and commitments for agency and entity financial statements for the year ending 30 June 2003.

3.5 The Budget Papers include a Statement of Risks<sup>37</sup> that provides a consolidated list of the Commonwealth’s major<sup>38</sup> quantifiable and unquantifiable contingent liabilities, and the Government’s strategies for managing its guarantees. The instruments listed in this statement of risks that existed as at the 30 June 2002 are included in Appendix 2. The strategies for managing these exposures are aimed at ensuring the underlying strength and viability of the entities with respect to which guarantees have been provided so that the guarantees are not triggered. Similar strategies apply to entities not subject to explicit guarantees. Other arrangements are in place governing the entering into, and monitoring of, certain types of contingent liabilities and uncalled capital.<sup>39</sup> In addition, the Treasurer and the Minister for Finance and Administration now jointly issue an annual *Mid-Year Economic and Fiscal Outlook* which provides updated information intended to allow an assessment of the Government’s fiscal performance against its fiscal strategy and an updated Statement of Risk.

3.6 In addition, in February 1998, the consolidated financial statements of the Commonwealth Government for 1996–97 were finalised. These were the first accrual based ‘whole-of-government’ statements to be audited and tabled in the Parliament. In line with the introduction of a schedule of contingencies for departments’ and agencies’ financial statements, the consolidated financial statements also include such a schedule, including for 2001–02.

3.7 The information provided in this audit report differs from that presented in these other sources of information on the Commonwealth’s contingent liabilities. The audit sought to collect data on all explicit Commonwealth guarantees, indemnities and letters of comfort on issue as at 30 June 2002, regardless of the likelihood of having to make a payment. Accordingly, while the subset of instruments examined by the audits are included in the subsets of

<sup>36</sup> ANAO’s *AMODEL Agency Illustrative Financial Statements for the Year Ended 30 June 2002* continued to illustrate the fuller disclosures in the interests of better practice (see p. 29). Administered contingencies and commitments for 2001–02 were captured and reported at the government level in the *Consolidated Financial Statements*, Budget Paper No. 1 and the *Mid-Year Economic and Fiscal Outlook*.

<sup>37</sup> Budget Paper No.1 *Budget Strategy and Outlook 2002–03*, Statement 9: *Risks to the Budget*, pp. 9-1–9-23.

<sup>38</sup> Major in this case refers to fiscal risks and contingent liabilities with a possible impact greater than \$20 million in any one year, or greater than \$40 million over three years.

<sup>39</sup> Source: op. cit., *Budget Strategy and Outlook 2002–03*, p. 9-4.

contingencies examined by these reporting mechanisms, many of the instruments reported in the audit do not meet the criteria for inclusion in them because the risks they represent are too small and/or are regarded as not quantifiable.

## Documentation

**3.8** ANAO Audit Report No.6 1996–97 reported significant deficiencies in departments’ compliance with Finance guidelines and directions which ANAO considered impaired departments’ capacity to manage and monitor the risks associated with exposure to guarantees, indemnities and letters of comfort. The report recommended that all relevant entities review their records to ensure that they had a complete register of all Commonwealth guarantees, indemnities and letters of comfort on issue within their portfolio.<sup>40</sup> The report also recommended the establishment of contract registers<sup>41</sup> and improvements in physical security measures<sup>42</sup> for safe keeping of documents associated with these instruments in order to enhance departments’ and agencies’ records management of their contingent liabilities.

**3.9** Following the repeal of the *Audit Act 1901* and its subordinate legislation, it is no longer mandatory for entities to have registers for guarantees and contingent liabilities.<sup>43</sup> Notwithstanding this, the Finance model CEIs and Finance Circular 1997/06 strongly encourage their use. In the case of Finance Circular 1997/06, this advice is on the basis that prudence and efficient management clearly dictates the need to maintain such registers in order to provide the information for the purposes of audit and financial reporting.

**3.10** The current audit revealed that there has been progressive improvement in record-keeping by portfolio departments. However, agencies have further scope for improvement. ANAO Audit Report No.6 1996–97 noted that the majority of portfolio departments, which reported having guarantees, indemnities and letters of comfort, did not have them recorded in a formal register. The characteristics of a sound document register include the effective capture and recording of information; compliance with legislative and policy requirements; appropriate security classification of documents; accessibility; and secure storage. ANAO Audit Report No.47 1997–98 noted some improvement, with two-thirds of departments with these instruments reporting having a register. In the current audit, this had improved to nearly 90 per cent of departments with one or more of these instruments reporting that they

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<sup>40</sup> op. cit., ANAO Audit Report No.6, Recommendation No.1, p. 11.

<sup>41</sup> ibid, Recommendation No.8, p. 41.

<sup>42</sup> ibid, Recommendation No.9, p. 43.

<sup>43</sup> Previously pursuant to Section 23C and 23D of Finance Directions.

maintained a register.<sup>44</sup> In comparison, just over half the agencies (covered for the first time in this audit) with one or more of these instruments reported that they did not maintain a register.<sup>45</sup>

**3.11** In reviewing their records in order to respond to the ANAO survey, some departments and agencies uncovered instruments that should have been reported in the previous audits. During the current audit, ANAO found that many entities had out of date registers or continued inaccuracies in their reported exposures, ranging from omissions of instruments to inclusion of items that, upon further investigation, were found not to be valid guarantees, warranties or indemnities issued by the Commonwealth.

## Contracts register

**3.12** ANAO Audit Report No.6 1996–97 noted that entities would be assisted in enhancing their capture of off-balance sheet exposures if they maintained contract registers which were regularly monitored and included details of any guarantees, indemnities or letters of comfort attaching to agreements. Accordingly, ANAO recommended that entities consider introducing such contract registers.<sup>46</sup>

**3.13** In responding to the 1998 ANAO audit survey, only a small minority of departments reported having a contract register, with only the then Department of Transport and Regional Development claiming that there was a link between its contract register and its register for contingent liabilities. Many departments reported to ANAO that they consider that contract registers are not necessarily an efficient adjunct to a main or central register in the context of managing these instruments. The Department of Defence advised ANAO that with over 50 000 contracts awarded annually it considered that a contracts register was not a practical arrangement in this context, and to a degree, that it would duplicate information already on the register for guarantees, indemnities and letters of comfort.<sup>47</sup> Notwithstanding this view, the Department of Defence also advised ANAO that:

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<sup>44</sup> The Department of Prime Minister and Cabinet reported that it did not have any current guarantees, warranties, indemnities or letters of comfort.

<sup>45</sup> The current audit was the first time that individual agencies provided this information. In previous audits, data was collected only from the portfolio departments.

<sup>46</sup> *op. cit.*, ANAO Audit Report No.6, Recommendation No.8, p. 41.

<sup>47</sup> Defence agreed in principle with the recommendation in the original report. However, the Department was concerned that with over 50 000 contracts per annum with a value greater than \$2000, the identification of every contract containing indemnities or guarantees would impose an inappropriate resource burden on Defence. However, Defence was prepared to consider establishing a register applying to contracts over \$5 million, which would reduce the number to some 120 contracts and still capture a significant part of the total value. Source: ANAO Audit Report No.6, 1996–97 *Commonwealth Guarantees, Indemnities and Letters of Comfort*, p. 42.

Program Coordinators have been advised on the necessity to record such instruments in contracts. [The] preferred option is to record only those where the potential liability is above a threshold value, ... [and] instead of maintaining this information as a subset of the contract register, it would be administratively more appropriate to record the indemnities or guarantees attached to contracts within the indemnities register.

**3.14** The problems associated with maintaining both a register for guarantees, indemnities and letters of comfort, and a contracts register, are addressed in Finance Circular 1997/06, which advises that it is for managers of departments and agencies to judge the scope and form of contract registers best suited to their respective entity's circumstances, consistent with meeting their responsibilities for the effective, efficient and ethical use of public money.<sup>48</sup>

**3.15** The Joint Committee of Public Accounts and Audit recommended in its Report 379 that: '... all [departments and] agencies must establish and maintain an effective contract register.'<sup>49</sup> The Government agreed in principle to this recommendation, emphasising that the responsibility for determining how to manage contracts within an entity rests with the Chief Executive and that it is up to individual entities to implement procedures for the management of their contracts that best suit their individual and special needs.<sup>50</sup>

**3.16** The Senate Order on departmental and agency contracts of 20 June 2001 requires that a list of entity contracts exceeding \$100 000 in value be placed on the entity's website.<sup>51</sup> Most entities have adopted contract registers as an adjunct to a main, or central, document registry system for the management of the Commonwealth's guarantees, indemnities and letters of comfort. Only four portfolio departments and seven agencies reported that they did not maintain a contract register,<sup>52</sup> while some entities (such as Attorney-General's Department) indicated that their contract registers only covered contracts exceeding \$100 000. Moreover, only around one-quarter of the departments and agencies with contract registers that had issued Commonwealth guarantees, warranties,

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<sup>48</sup> Section 4 of *The Commonwealth Procurement Guidelines* requires that an agency agreement or Commonwealth contract valued at \$2000 or more must be notified in the *Gazette* within six weeks of entering into the agreement. ANAO considers that this requirement would be a useful point of reference for capturing contingent liabilities associated with such agreements or contracts.

<sup>49</sup> Recommendation 3 of the 379<sup>th</sup> Report of the JCPAA: *Contract Management in the Australian Public Service*.

<sup>50</sup> Government Response to JCPAA Report 379, tabled in the Parliament on 14 May 2002.

<sup>51</sup> See Audit Report No.33 2001–02 *Senate Order of 20 June 2001 (February 2002)* and Audit Report No.8 2002–03 *The Senate Order for Department and Agency Contracts (September 2002)*.

<sup>52</sup> However, one department (Agriculture, Fisheries and Forestry–Australia) indicated that a contract register was being implemented. The Department of Health and Ageing also advised that it implemented a contract register from 1 July 2002. Those agencies reporting that they did not maintain a contract register also reported that they did not have any current guarantees, warranties, indemnities or letters of comfort.

indemnities and letters of comfort reported that their contract system was linked to the recording of these instruments.

## Document security

**3.17** ANAO Audit Report No.6 1996–97 reported instances where the loss, destruction or misplacing of financial documentation placed the Commonwealth at a disadvantage. In addition, many of the instruments considered in the report were found to have ongoing importance, for example, some indemnities required retention for evidentiary reasons in case of possible claims and/or future litigation long after the period of indemnification had lapsed.<sup>53</sup> ANAO recognises that over-classification is administratively inefficient and should be avoided. Nevertheless, the audit found that, on balance, entities' security practice at the time in relation to these instruments tended to be on the side of too little, rather than too much, effective control. ANAO recommended that entities review their physical security measures with a view to establishing appropriate safe custody arrangements for the documents associated with Commonwealth guarantees, indemnities and letters of comfort.<sup>54</sup>

**3.18** The current audit found that document security arrangements had not improved since the two previous audits, with most entities continuing to store their guarantees, indemnities and letters of comfort under routine arrangements. The need for special physical security for material exposures (outside normal document security requirements for a given classification) was undertaken by only a small number of entities.

**3.19** In some circumstances, if an instrument is misplaced or lost the Commonwealth will face a higher level of risk, if not actual loss, as was the case in some instances identified in the 1996 audit. For example, in one case some years ago, an agency was not aware of an instrument which had been issued to a party and when the instrument was produced in the course of an asset sale, the Commonwealth was obliged to make a substantial payment to extinguish that party's rights.<sup>55</sup> In another example, a party was indemnified against unauthorised presentation of these instruments when it was discovered that the agency concerned had misplaced them.<sup>56</sup>

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<sup>53</sup> Where an indemnity is used in place of insurance for public liability or other loss or damage, it is necessary to retain the indemnity at least until the relevant statute of limitations has lapsed.

<sup>54</sup> op. cit., ANAO Audit Report No.6, Recommendation No.9, para 5, p. 43.

<sup>55</sup> op. cit., ANAO Audit Report No.47, para 3.22. See also ANAO Audit Report No.10 1995–96, *Sale of the Moomba to Sydney Gas Pipeline*.

<sup>56</sup> op. cit., ANAO Audit Report No.6, para 5.13, p. 42.

**3.20** ANAO considers that transactions which may be extant for considerable periods of time;<sup>57</sup> that expose the Commonwealth to risks having the potential to result in significant outlays if called upon; or which may be needed for evidentiary purposes in future litigation, should be accorded special attention to ensure their continued visibility and accessibility. The characteristics of a sound document security system to secure this important documentation include that it:

- fits into the context of the overall records management strategy;
- accounts for the long term and/or indefinite nature of some of the obligations;
- embodies the characteristics of a sound document register; and
- considers the use of special security storage, such as the Commonwealth Security System provided by the Attorney-General's Department for valuable, long term or otherwise significant instruments.

**3.21** ANAO identified in the 1998 audit an example of sound practice, which exemplifies the characteristics outlined above, in the (now) Department of Communications, Information Technology and the Arts' document security system for the indemnities that it issues to facilitate, among other things, high value art exhibitions. The Department's indemnities are stored either in safe custody with the Attorney-General's Department; with its own legal contracts branch; or in a Receiver of Public Monies safe in the Department, depending on the level of security required. Such arrangements are a practical example that sound document security systems need not involve onerous administrative arrangements and (as is customary) can vary according to the relative importance of the documents concerned.

**3.22** An advantage of centralised storage of documents is that they are readily accessible—some entities had difficulty during the current audit in producing selected documents for ANAO inspection. The Department of Transport and Regional Services stores the originals of all documents in the Department's register of guarantees, warranties, indemnities and letters of comfort, which is secured in a Class B container in a locked office. In many cases, the Department's Legal Office also certifies copies of these documents for everyday use and as a precaution in case the original document is lost. The Department of Employment and Workplace Relations also stores its documents centrally, in its Corporate Legal, Parliament and Audit Services Group.<sup>58</sup>

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<sup>57</sup> For example, during the current audit it was discovered that there were about 130 indemnities issued between 1954 and 1983 under the *Explosives Act (1952)* and the *Explosives Act (1961)*, of which it was estimated that about 60 were still valid in 1987. During 2002, the Department of Transport and Regional Services commenced a review of these indemnities to determine which ones, if any, are still valid.

<sup>58</sup> Environment Australia also advised ANAO that a new CEI for records management is being written.

**3.23** There continues to be a need for departments and agencies to improve their overall document security arrangements to ensure that they have effective administrative control of their guarantees, warranties, indemnities and letters of comfort. Sound management practice would indicate that entities should ensure that staff are aware of the need to provide appropriate safe custody arrangements for these instruments.

## Recommendation No.1

**3.24** ANAO *recommends* that those departments and agencies with guarantees, warranties, indemnities and letters of comfort (which have not already done so):

- a) maintain an appropriate register of these instruments;
- b) if not already in place, consider the implementation of a contract register system, which among other benefits would be an aid to effective records management of these instruments; and
- c) review their physical security measures with a view to establishing appropriate safe custody and access arrangements for the documents associated with these instruments.

**3.25** Agencies responded to the recommendation as follows:

- *Agreed:* AFFA, AG's, DOCITA, Defence, DEST, DEWR, DEH, DFAT, FACS, Finance, DOHA, DIMIA, DITR, DOTARS, Treasury, DVA, AEC, AFP, AOOFM, APSC, ARPANSA, ATO, ATSIC, Centrelink, NNTT and ScreenSound.

**3.26** Specific comments by agencies are set out below:

- **AG's response:** Agreed. Part (b). The Department maintains a register of contracts of \$100 000 and over and will review this to consider linking it to the recording of guarantees, warranties, indemnities and letters of comfort.
- **DOCITA response:** Agreed. Part (a). The Department currently maintains an appropriate register, and will regularly review the detail and currency of information held in this register. Part (b). The Department will consider the use of a contract register system in conjunction with or in lieu of the existing register. Part (c). The Department currently ensures that all documentation and instruments are stored in a safe with access limited to the minimum number of officials that is practical.
- **Defence response:** Agreed. Defence currently maintains an indemnity register to record information relating to indemnities provided. The register is maintained within the Chief Finance Officer's (CFO) Accounting



Policy and Practices Branch (APP). In relation to the contracts register Defence and in particular Defence Materiel Organisation (DMO) is in the process of implementing a corporate register of contracts. The current CEIs require Delegates to maintain the required documentation. APP Branch maintains copies of all indemnities.

- **DEST response:** Agreed. Part (a). The Department's Legal and Business Assurance Branch already maintains a Register of Loans, Guarantees, Indemnities and Letters of Comfort (the Instruments Register). Part (b). The Department's view is that it is not necessary to have a contract register system in addition to the Instruments Register, for the reasons set out below:
  - the Department has only a small number of these instruments;
  - the Department has a specialist and separate legal area in the Legal and Business Assurance Branch, managed by the Department's Chief Lawyer. The Department's CEIs require that any document containing a guarantee, warranty or indemnity must be approved by the Chief Lawyer. Staff are also instructed that the drafting of any letter of comfort must be referred to the Chief Lawyer. This ensures that these instruments are executed only in very limited circumstances, where there are sound commercial or policy reasons for doing so; and
  - as the Instruments Register is maintained by the Department's Legal and Business Assurance Branch, the requirement for approval by the Chief Lawyer also ensures that any new instruments are entered on the Instruments Register.

Part (c). The Department has already implemented measures to ensure that these instruments are kept physically secure. The Department's CEIs currently provide that the responsibility for the secure storage of the original documents lies with the relevant Executive Managers. The original documents are stored by the line areas in a secured locked cabinet. Copies of the documents are also kept by the Chief Lawyer, together with the Instruments Register. The Department proposes to alter these arrangements, and require that the original documents be stored centrally in the Legal and Business Assurance Branch. The Department's CEIs will be amended accordingly.

- **DEWR response:** Agreed. Parts (a) and (b). The Department has developed and implemented a computerised Contracts and Indemnity Register (CIR). Details of all Commonwealth guarantees, warranties, indemnities and letters of comfort are recorded on the CIR. Part (c). All instruments are held in a secure environment within the corporate Legal



and Risk Branch. Document security was recently reviewed and enhanced as part of a whole of department security review.

- **DEH response:** Agreed. The Department is currently finalising the review of its CEIs and all of the ANAO recommendations [except for Recommendation 1 Parts (b) and (c)] are reflected in the CEI on Contingent Liabilities. The Department will examine the implications of these parts of the recommendation further.
- **Finance response:** Agreed. Finance issued Finance Circular 1997/06 *Potential Liabilities and Losses* to all departments and agencies in April 1997. This guidance provided advice regarding disclosure and reporting of contingent liabilities. Specifically, on the need to maintain registers of all instruments, to consider the introduction of a contract register, and to ensure relevant document security procedures are in place. Finance intends issuing revised guidance on the use and management of contingent liabilities in 2003, which will reinforce the need for agencies to comply with requirements.
- **DIMIA response:** Agreed. The Department will modify its contract register and procedures in order to allow the collection and recording of information on these instruments. It will also provide guidance to staff on appropriate physical security arrangements for storage of these instruments.
- **DVA response:** Agreed. Parts (a) and (b). DVA already complies with these parts of the recommendation, having established the Contracts and Indemnities Register On-Line (CaIRO) as part of its response to the 1997–98 audit. Guarantees and indemnities are required to be registered in CaIRO, which is also capable of registering warranties and letters of comfort. Part (c). DVA already complies with this part of the recommendation. The Department’s Records Management Policy identifies these instruments as corporate records. As such, the handling of these instruments must comply with the Policy. The Policy describes appropriate security, custody and access arrangements for all corporate records.
- **AEC response:** Agreed. Currently this agency does not have guarantees, warranties, indemnities and letters of comfort, and therefore does not maintain a register of these instruments. Consideration would be given to instigating such a register if this situation changes. A contracts register is maintained and contractual documents are secured in locked containers.
- **AFP response:** Agreed. The AFP generally accepts and complies with these requirements. Parts (a) and (b). The AFP maintains separate contract and indemnity registers. It intends to link these registers in the near future.

Part (c). Contracts and instruments containing indemnities are normally secured in accordance with the requirements of the AFP's Protective Security Manual.

- **Centrelink response:** Agreed. Parts (a) and (b). Centrelink has modified its existing contracts register to record indemnities contained in contracts and is considering a supplementary register to record the remaining types of instruments. Part (c). Centrelink maintains original copies of all contracts, including those containing indemnities, and has implemented a policy requiring all contracts to be stored in B Class containers. Centrelink intends examining its approach to centralised storage of the remaining instruments.
- **NNTT response:** Agreed. The Tribunal will extend its current contract register to include details of these instruments and will include any instruments in the Tribunal's security cabinet for contracts.

## Risk management

3.27 The 1996 audit sought to determine the extent of risk management that was applied to Commonwealth guarantees, indemnities and letters of comfort. The audit found that there were shortcomings in the overall planning and coordination of risk management strategies by central agencies and that the risk controls applied by entities was generally inadequate, thus exposing the Commonwealth to unnecessary risk as a result of issuing these instruments.

3.28 The deficiencies identified in ANAO Audit Report No.6 1996–97 in the overall management of guarantees, indemnities and letters of comfort were partly due to a lack of central coordination and the absence of an explicit overarching strategy to manage the Commonwealth's overall risk. Accordingly, the report recommended that Finance prepare an explicit strategy to manage the Commonwealth's overall risk associated with guarantees, indemnities and letters of comfort.<sup>59</sup>

3.29 Finance has to date not produced an explicit strategy regarding the management of guarantees, indemnities and letters of comfort, but has fulfilled the intent of this recommendation in other ways. For example, higher standards in the management and control of contingent liabilities have been encouraged via the release of Finance Circular No. 1997/06. Finance has also increased reporting requirements and drawn together aggregate data on the Commonwealth's risk exposures via the Statement of Risks and annual financial statements. Further, the Government has introduced a legislative basis for transparent reporting via the *Charter of Budget Honesty Act 1998*.

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<sup>59</sup> op. cit., ANAO Audit Report No.6, Recommendation No.12, p. 47.

**3.30** The Finance model CEIs released in April 1997 address the broad issues of managing risk (implicit under section 44(1) of the FMA Act) and also include a section on the Commonwealth's then current policy in regard to insurance and indemnities.<sup>60</sup> Samples of entities' CEIs were examined during the current audit and most were found to make either direct or indirect reference to risk management.

### **Risk pricing and risk transfer**

**3.31** ANAO Audit Report No.6 1996–97 discussed options for dealing with Commonwealth risk exposures from guarantees, indemnities and letters of comfort within a commercial framework of risk management and control. The options canvassed included risk transfer through privatisation; risk prevention strategies (such as contract vetting); risk pricing; and outsourcing of risk.

**3.32** From 1909 until mid-1998, the Commonwealth maintained a general policy of self-insurance, which limited the incentive for entities to actively consider the benefits and cost of risk retention versus risk transfer options. The lack of any risk pricing mechanism for the various risks facing entities provided reduced incentives and disciplines for entities to actively manage their risks.

**3.33** In contrast, ANAO Audit Report No.6 1996–97 noted that some state governments have adopted a more commercially oriented approach to the management of broad risk exposures that governments usually face. For example, the New South Wales and Victorian Governments have introduced systematic risk management programs that incorporate the management of contingent liabilities. This is achieved through the operation of managed insurance fund arrangements. The Victorian Government Managed Insurance Fund operates to cover a range of eventualities from relatively low-level risks (retained as self insurance in the form of a normal deductible or excess) to catastrophic low frequency events that are covered by commercial reinsurance.

**3.34** Undertaken in 1997, the Review of the Commonwealth's Non-Insurance Policy examined risk pricing and transference options that might be available to departments and agencies to replace the Commonwealth's existing non-insurance policy.<sup>61</sup> In this circumstance, the review was not limited to canvassing the scope for risk pricing and transference with respect to guarantees, indemnities and letters of comfort but rather considered the Commonwealth's risks in their totality in order to identify:

- the range of risks that would be covered by the replacement Commonwealth policy;

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<sup>60</sup> Finance Model Chief Executive Instructions, Chapter 8, December 1997.

<sup>61</sup> Final Report of the Steering Committee of the Non-Insurance Review, *Terms of Reference for the Review of the Commonwealth's Non-Insurance Policy*, Attachment A.

- the potential efficiency gains from any new arrangement, having regard to any additional administrative and other costs not incurred under the non-insurance policy; and
- benefits in terms of incentives, resource allocation and measurement, that is, allocation of costs to outputs.

**3.35** Comcover, the Commonwealth insurable risk managed fund, commenced operations on 1 July 1998, replacing the previous Commonwealth policy, operating since 1909, of non-insurance for public sector entities to manage risks. Comcover currently covers more than 180 Commonwealth entities for insurable risks (except workers compensation, which is covered by Comcare). Comcover acts as a managed insurance fund, collecting contributions from entities, making payments and accumulating reserves to meet potential future losses.

**3.36** As part of the census for the current audit, entities were therefore requested to indicate the extent to which their reported guarantees, warranties, indemnities and letters of comfort were offset by insurance cover. About half the departments and one-quarter of the responding agencies advised that at least some of their potential liabilities from such instruments were covered by insurance. Of the aggregate \$39.7 billion of reported quantified indemnities, based on the information provided by departments and agencies, ANAO calculated that some \$400 million, or one per cent, was covered by insurance. In total, there were over 930 reported insured indemnities,<sup>62</sup> largely covering property, motor vehicle and other commercially insurable risks, and directors' indemnities. Comcover, as part of its risk management services, provides advice to Commonwealth agencies on how to effectively manage risks and assists in achieving a substantial change in risk management culture via education programs and regular risk assessments. Many quantifiable contingent liabilities are uninsurable by nature. Agencies need to have regard to those risks that are insurable risks in accordance with Comcover's policy terms and conditions.

**3.37** In the current survey, only eight entities<sup>63</sup> reported that they had been involved in, or undertaken, a program concerning awareness of risk management of off-balance sheet exposures.

## **Entity risk management planning**

**3.38** Sound risk planning is fundamental to the effective management of exposures as a result of the issue of guarantees, warranties, indemnities and letters of comfort. ANAO considers that a sound risk management system would

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<sup>62</sup> This figure includes both quantified and unquantified reported exposures.

<sup>63</sup> Comprising four portfolio departments and four agencies.

be one that could clearly demonstrate links between the overall corporate risk management strategy and the risk management applied to the management of these instruments.

**3.39** ANAO considers that it is important that instruments are monitored and reviewed on a periodic basis to ensure that circumstances have not changed in a material way as to expose the Commonwealth to greater risk. ANAO Audit Report No.6 1996–97 reported that less than half of the instruments had been subject to some form of periodic review. The audit found that these instruments were not always reviewed and/or evaluated as part of normal entity practice. Accordingly, the audit recommended that entities establish well-documented procedures to ensure the effective review and evaluation of their financial exposures as a result of Commonwealth guarantees, indemnities and letters of comfort.<sup>64</sup>

**3.40** Finance Circular 1997/06 also advises entities that indemnities and guarantees need to be reviewed periodically to ensure they are still the most appropriate means of achieving the benefits they were intended to deliver. ANAO found that, of the entities that reported having guarantees, indemnities and/or letters of comfort in response to the ANAO survey for the 1998 audit, only two claimed they had procedures in place to ensure that such periodic review and evaluation occurs. However, this had increased to about half of the entities in the current survey. While this indicates some improvement, the Commonwealth may nevertheless be exposed to risk if entities do not institute adequate review and evaluation arrangements. ANAO considers review and evaluation is an important management practice that is linked directly to sound risk management and that it should be routine practice in the management of these Commonwealth exposures, at the very least for accountability purposes. As well, such practices provide a greater level of assurance to the various stakeholders at a justifiable cost.

**3.41** ANAO Audit Report No.6 1996–97 also reported that portfolio departments' risk management practices in regard to guarantees, indemnities and letters of comfort were not generally part of a comprehensive corporate risk strategy. Of the departments that reported having these instruments in 1995,<sup>65</sup> only a small minority reported having a corporate risk strategy, and fewer still claimed there was a link between this strategy and the management of contingent liabilities. Many of the risk management strategies reported in 1996 audit were in fact fraud control plans, which had a narrower focus than the broad strategies referred to here. ANAO Audit Report No.6 1996–97 recommended that, where applicable, entities develop a risk management plan for the management of

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<sup>64</sup> op. cit., ANAO Audit Report No.6, Recommendation No.11, p. 45 and ANAO Audit Report No.47, Recommendation No.5, p. 33.

<sup>65</sup> The census for ANAO Audit Report No.6 1996–97 was undertaken in late 1995.

off-balance sheet liabilities; and, that there be an explicit link between the risk management plan for off-balance sheet liabilities and their corporate risk management plan<sup>66</sup> to ensure effective and consistent management of Commonwealth guarantees, indemnities and letters of comfort.<sup>67</sup>

**3.42** The importance of linking an entity's risk management plan with the management of guarantees, indemnities and letters of comfort is discussed in Finance Circular 1997/06 in the context of the broader issues of risk management in relation to these instruments. The Finance Circular advises that:

It is essential that risks associated with contingent liabilities be examined together with other risks faced by an agency. In terms of their impact on program outcomes, risks which involve contingent liabilities cannot be assessed in isolation from strategies to manage other risks ... which depending on their success, may reduce or exacerbate potential losses related to indemnities or guarantees.<sup>68</sup>

**3.43** The importance of sound risk management strategies is also addressed in Finance's model CEIs.<sup>69</sup> A sample of entities' CEIs examined during field work for this audit revealed that, apart from indirect reference to Finance Circular 1997/06 and the MAB/MIAC guidelines for managing risk, few entities' CEIs dealt with the issue of risk management of contingent liabilities in any detail.

**3.44** The 1998 audit entity census revealed that the introduction of formal risk management in regard to contingent liabilities had not advanced significantly since the 1996 audit. Of the entities that reported having these instruments, a small minority also reported that they had a corporate risk management plan and only one department reported that there was an explicit link between this plan and the management of its guarantees, indemnities and letters of comfort. However, the 1998 audit also revealed that more entities were in the process of developing their corporate risk management plans.

**3.45** The current audit revealed there had been a significant improvement in entities reporting the introduction of structured risk management since the 1998 audit. Over three-quarters of responding departments and agencies reported that they now have a corporate risk management plan in place for their entity. However, of those that did, only four entities reported that there was an explicit link between their corporate risk management plan and the management of their guarantees, warranties, indemnities and letters of comfort.

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<sup>66</sup> There is no mandatory requirement for agencies to have either corporate risk management plans or risk management plans for the management of their off-balance sheet liabilities. However, sound management practice incorporates appropriate risk management planning.

<sup>67</sup> *op. cit.*, ANAO Audit Report No.6, Recommendation No.4, p. 32.

<sup>68</sup> Finance Circular 1997/06, *Potential Liabilities and Losses*, p. 4.

<sup>69</sup> Finance Model Chief Executive Instructions, Chapter 8, December 1997.

**3.46** Where substantial potential liabilities are involved, ANAO considers that entities need to link their overall risk management strategy to the management of their guarantees, warranties, indemnities and letters of comfort. ANAO considers that there is now sufficient guidance available to entities on the elements of good risk management practice, and the benefits to be derived from its implementation, to expect that such arrangements would be the norm.

## Recommendation No.2

**3.47** ANAO *recommends* that, in developing corporate risk management strategies, those departments and agencies with substantial guarantees, warranties, indemnities and letters of comfort that have not already done so, ensure that an explicit link is established between the entity's corporate risk management plan and its strategies for the management of these instruments.

**3.48** Agencies responded to the recommendation as follows:

- *Agreed:* AFFA, AG's, DOCITA, Defence, DEST, DEWR, DEH, DFAT, FACS, Finance, DOHA, DIMIA, DITR, DOTARS, Treasury, DVA, AEC, AFP, AOFM, APSC, ARPANSA, ATO, ATSIC, Centrelink, NNTT and ScreenSound.

**3.49** Specific comments by agencies are set out below:

- **DOCITA response:** Agreed. The Department will ensure that the strategies for the recording and management of guarantees, warranties, indemnities and letters of comfort are reflected in the entity's corporate risk management plan.
- **Defence response:** Agreed. When indemnities are issued consultation occurs with Accounting Policy and Practices Branch, the Defence Legal Office and the Claims Management Office. The consultation ensures the legal obligations of all parties are protected and the corporate risk is managed appropriately.
- **DEST response:** Agreed. The Department has a relatively small number of such instruments, almost all of which have emanated from three specific programs. The level of exposure has previously not been significant enough to warrant inclusion in the Department's Corporate Level Risk Management Plan. Rather, these risks were dealt with in the specific program area risk assessments. However, as the Department now administers the Science function, it has assumed responsibility for a number of more significant indemnities relating to nuclear science programs. The Department is reviewing its Corporate Level Risk Management Plan in 2003, and will address the management of those



contingent liabilities as part of that Plan. The Department also intends to include an instruction in the relevant sections of the CEIs that, in addition to obtaining the approval of the Chief Lawyer, program areas which hold such instruments must consider those exposures when preparing the risk assessment for that particular program.

- **DEWR response:** Agreed. The Department's Practical Guide to Commonwealth Guarantees, Indemnities and Letters of Comfort makes specific reference to risk management and provides comprehensive advice on the principles, policies, responsibilities and rules of entering into and issuing these instruments. The guide also strongly recommends that staff read this document in conjunction with Finance Circular 1997/06 to ensure consistency of actions.
- **Finance response:** Agreed. Finance Circular 1997/06 advises that agencies should examine the risks associated with contingent liabilities in conjunction with other risks affecting the agency, and in the context of the overall risk management plan. Finance proposes to reinforce this point to agencies in revised guidance to be released in 2003.
- **DOHA response:** Agreed. The Department is currently reforming its corporate governance, including introduction of an integrated business planning process to better link business plans with financial and risk management plans. This integration of planning will contribute to linking risk management to the management of guarantees, warranties, indemnities and letters of comfort. Additionally, guidelines for risk management are being revised to take into account improvements in the risk management process and to ensure they are consistent with ANAO published Better Practice Guides. An explicit link to the management of these instruments will be incorporated.
- **DIMIA response:** Agreed. The Department will review its existing guidance material to emphasise the fact that a precondition to a decision to enter into these arrangements is the completion of a risk assessment that is consistent with the corporate risk management framework and includes strategies for management of risks associated with these instruments.
- **DOTARS response:** Agreed. This recommendation deals with the linking of corporate risk management planning with strategies for the management of contingent liabilities. The Department agrees with the recommendation, but observes that it is difficult to develop the explicit links sought. In this regard we note that only four entities have implemented such a system since the recommendation was first made in



the 1998 audit report. We observe that there is a significant difference in focus between the risk management strategies for discrete programs, or individual transactions, and the overall corporate risk management plan, which looks at the broad, overarching risks that an organisation faces. We consider that the recommendation would be easier to implement if either the recommendation included some specific guidance on linkage or if Finance were tasked with developing such guidance material.

- **DVA response:** Agreed. DVA's CEI on the management of guarantees, indemnities and letters of comfort is currently being revised. This CEI will provide guidance on managing the risks associated with these instruments, consistent with DVA's risk management policy. The DVA risk management policy prescribes the use of a systematic approach to risk management, consistent with the broad framework set out in the Australian/New Zealand Standard for Risk Management (AS/NZS 4360: 1999).
- **AEC response:** Agreed. Linkages to be established between the AEC's Risk Management Plan and its strategies for the management of guarantees, warranties, indemnities and letters of comfort upon the existence of such instruments.
- **AFP response:** Agreed. The AFP generally accepts and complies with these requirements. In its normal business dealings, the AFP does not have substantial guarantees, warranties, indemnities and letters of comfort. The AFP has strict controls to limit those who enter into one of these undertakings, that is, only the Commissioner, Deputy Commissioner and Chief Operating Officer have this authority. Prior to issuing a guarantee, warranty, indemnity or letter of comfort the AFP requires both advice from AFP Legal and the completion of a risk assessment. The AFP proposes to review these arrangements and the need for linkages with its Corporate Risk Management Plan during the review of the latter, which is planned during 2003.
- **Centrelink response:** Agreed. Centrelink has implemented a formal risk management framework and it underpins the business planning process within the organisation. Centrelink considers that further guidance on what constitutes substantial guarantees, warranties, etc. is required to provide consistency across the Commonwealth.
- **NNTT response:** Agreed. The Tribunal will include the review of instruments in the Tribunal's current Risk Management Plan.

## Entity risk controls

3.50 ANAO Audit Report No.6 1996–97 reported that the Commonwealth may be exposed to unnecessary risk because entities regularly issued instruments without setting financial limits, inserting termination clauses and/or imposing time limits. The audit recommended that, where appropriate and commercially practical, entities ensure that these things were stipulated when issuing Commonwealth guarantees, indemnities and letters of comfort.<sup>70</sup>

3.51 In addition, ANAO considered that entities should include subrogation<sup>71</sup> clauses in indemnities as a means of managing and controlling the Commonwealth’s financial exposure.<sup>72</sup> Contract vetting was another measure recommended in ANAO Audit Report No.6 1996–97 as a means of reducing the Commonwealth’s exposure to risk.<sup>73</sup> An additional improvement to entities’ risk control measures recommended by ANAO was that entities review their authorisation arrangements, particularly those relating to officers’ authorisation to bind the Commonwealth to contractual arrangements pertaining to the issue of Commonwealth indemnities.<sup>74</sup>

3.52 In response to these four recommendations, Finance included in Finance Circular 1997/06 explicit guidance to entities on the use of subrogation clauses; contract vetting; the importance of time limits; termination clauses and financial limits; and authorisation arrangements. In addition, some entities now have explicit references to these risk controls in their CEIs with the Department of Industry Tourism and Resources providing an example of sound practice.

3.53 In regard to each specific element of the recommendations ANAO found the following:

- **Subrogation.** Of the entities that reported having indemnities, only six entities<sup>75</sup> indicated that they had instructions regarding the use of subrogation clauses in the preparation of these instruments.
- **Time limits, financial limits and termination clauses.** Of the entities that reported having guarantees, warranties, indemnities, and/or letters of comfort, only nine entities<sup>76</sup> reported that they have formal instructions

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<sup>70</sup> op. cit., ANAO Audit Report No.6, Recommendation No.6, p. 36.

<sup>71</sup> Subrogation is a concept and practice which arises in insurance law and involves the right of an insurer to assume the position of the insured in a claim made against the insured, or to assume the legal rights of the insured against third parties.

<sup>72</sup> op. cit., ANAO Audit Report No.6, Recommendation No.5, pp. 34–35.

<sup>73</sup> ibid, Recommendation No.14, p. 54.

<sup>74</sup> ibid, Recommendation No.7, p. 38.

<sup>75</sup> Comprising three departments and three agencies.

<sup>76</sup> Comprising five departments and four agencies.

for the preparation of these instruments regarding the use of time limits, financial limits and termination clauses. On the face of it, this is deterioration from the position reported in ANAO Audit Report No.47 1997–98, when about half the entities with these instruments reported they had such instructions.

- **Authorisation arrangements.** Of the entities that reported having indemnities, most also reported having formal authorisation instructions to officers pertaining to the issue of Commonwealth indemnities. For example, the Department of Defence's CEIs specify by position, those officers authorised by the Chief Executive Officer to bind the Commonwealth through indemnification, and include, where practical, financial limits on this authorisation.
- **Contract vetting.** Of the entities that reported having these instruments, most also reported having a process of contract vetting in regard to written commercial arrangements to minimise the exposure of the Commonwealth to risk. However, the methods varied considerably between entities. ANAO considers that the characteristics of a sound contract vetting system include sound contract drafting for routine instruments; effective capture of agreements which need extra scrutiny; authoritative scrutiny of agreements; and effective correction of any deficiencies identified. The Department of Industry, Tourism and Resources has a contract vetting process which embodies these characteristics (see Figure 3.1).<sup>77</sup>

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<sup>77</sup> DIMIA advised its experience is that if staff have ready access to appropriate advice and are encouraged to obtain that advice, risks can be managed. The Department has a centralised contract advice unit. Staff can obtain assistance, including legal advice from this unit or from members of the Department's external legal advice panel.

### Figure 3.1

#### Contract Vetting in the Department of Industry, Tourism and Resources

Examples of good practice include the following:

- The legal service section has the task of vetting all departmental grants and contracts, including amendments, with a value of \$2000 or more. The vetting process requires contracting officers to confirm that the necessary approval has been obtained.
- The legal services section has lawyers with experience in Commonwealth contracting. Where necessary, the section obtains specialist legal advice from law firms. Advice provided by the section is recorded and filed. A record of advice from law firms is also kept.
- The legal services section maintains a database of the Department's contracts and a registry containing the Department's originals of its grants and contracts. The section seeks to ensure that all departmental grants and contracts are properly executed before the original documents are stored in its registry.

Source: ANAO analysis of information provided by the Department of Industry, Tourism and Resources.

**3.54** In the course of the current audit an examination was made of a sample of indemnities raised since the 1998 audit. ANAO found that control measures relating to subrogation clauses; time limits, financial limits and termination clauses; authorisation arrangements; and contract vetting generally were followed, where practical. ANAO considers that application of appropriate risk control measures is an administrative matter that, if carried out diligently, would contribute significantly to protecting the Commonwealth's interests.

**3.55** The issues of contract vetting, authorisation, subrogation, time limits, financial limits and termination clauses are addressed in the Department of Finance and Administration Finance Circular 1997/06 circulated to all departments and agencies in April 1997. Although responding entities indicated to ANAO that there was a high degree of awareness of the existence of this Finance Circular, there have not been high levels of compliance with the guidelines contained in it. ANAO considers that this situation has the potential to expose the Commonwealth to unnecessary risk and warrants further action by issuing entities to raise awareness of the importance of sound procedures in the preparation of these instruments.

**3.56** Finance has enhanced agency awareness of contingent liabilities via the release of Finance Circular 1997/06 *Potential Liabilities and Losses*. Finance has advised ANAO that it will provide further assistance to agencies via revised guidance on the use and management of these instruments. These guidelines will reinforce the importance of sound risk management strategies and raise awareness regarding the use of such instruments more broadly.

3.57 The AFP commented to ANAO on two issues associated with indemnities, namely the authority to issue and agencies indemnification of other Commonwealth agencies:

- Authority to issue indemnities: The AFP considers the issue of authority to issue indemnities should be reviewed given the introduction of the FMA Act and Comcover arrangements. As Chief Executives are primarily responsible for managing the risks of their agency, it would be consistent with this responsibility if Chief Executives were authorised to issue indemnities and liabilities that arise in the normal course of business and are required to be given in the course of normal commercial business dealings (such as property leases). Clearly, indemnities and liabilities that fall outside these categories and that present a risk of significant loss to the agency and Commonwealth should still require Ministerial authorisation. This may be a matter to be explored in greater detail once Finance reviews Finance Circular 1997/06.
- Commonwealth agencies indemnification from other Commonwealth agencies: The AFP has experienced an ongoing problem of Commonwealth agencies seeking indemnities from other Commonwealth agencies. Finance Circular 1997/06 advises indemnities cannot be issued by one Commonwealth agency to another, as legally, the same entity (that is, the Commonwealth) cannot indemnify itself. However, from the AFP's experience, agencies wish to have their indemnity-type risks covered by other agencies, particularly in relation to commercial transactions. For example, Finance requires agencies to indemnify them under property and leasing arrangements. This issue should be reviewed with a view to a more detailed 'whole-of-Commonwealth' position being developed so that agencies do not devote unnecessary time and resources to negotiating issues amongst themselves.

## Recommendation No.3

3.58 ANAO *recommends* that, where appropriate and commercially practical, those departments and agencies that have not already done so, review their procedures to ensure that time limits, termination clauses, subrogation clauses, and financial limits on liability are incorporated into guarantees, warranties, indemnities and letters of comfort they issue.

3.59 Agencies responded to the recommendation as follows:

- *Agreed*: AFFA, AG's, DOCITA, Defence, DEWR, DEH, DFAT, FACS, Finance, DOHA, DIMIA, DITR, DOTARS, Treasury, DVA, AEC, AFP, AOFM, APSC, ARPANSA, ATO, ATSIC, Centrelink, NNTT and ScreenSound.

3.60 Specific comments by agencies are set out below:

- **AG's response:** Agreed that, wherever practical and appropriate, the Department should ensure the use of time limits, termination clauses, subrogation clauses and financial limits on liability. The Department's CEIs contain instructions on these matters and advises employees to seek legal advice on the form and content of the indemnity. The Secretary has been authorised by the Attorney-General to issue indemnities.
- **DOCITA response:** Agreed. The Department's existing procedures, contained within the CEIs, currently prescribes these requirements. These procedures will be updated, where required, to include further guidance on the inclusion and incorporation of time limits, termination clauses, subrogation clauses and financial limits on liability.
- **Defence response:** Agreed. The current CEI makes it mandatory for all indemnities issued in Defence to contain clauses that contain these elements. Therefore Defence's current policy complies with the ANAO recommendation.
- **Defence general comment:** Work is being undertaken to ensure the whole of Defence is aware of the rights and obligations in relation to indemnities. It is planned to release a revised CEI in January 2003, which will clarify a number of issues staff have with indemnities at present. The majority of problems experienced are in relation to whom is responsible for the various components of the process.
- **DEST response:** Agreed. The Department already has such procedures in place. The Department's CEIs require that any such instruments be approved by the Chief Lawyer. The Chief Lawyer is responsible for considering the terms and all legal issues in relation to any such instrument, and can ensure that such clauses are included and drafted as appropriate for the particular instrument and subject matter. A statement to this effect is included in the CEIs.
- **DEWR response:** Agreed. Procedures are continually being reviewed and updated by the Department's Legal and Risk Branch to incorporate any variation of clauses into the guarantees, warranties, indemnities and letters of comfort. As the current practice of the Department is to store these legal instruments in a central registry within the Legal and Risk Branch, it will be proposed that templates of these instruments should be made available through the registry for the utilisation by staff. This will allow the Corporate Legal Team to maintain strict controls and consistency in the formatting, issuing and updating of these instruments. Currently it is the responsibility of the 'Issuing Officer' of individual areas to contact their Legal Advisors and investigate further.

- **Finance response:** Agreed. Finance fully supports the need for a review by agencies in this regard. Finance Circular 1997/06 provides that agencies should ensure that time limits, termination clauses, subrogation clauses and financial limits are incorporated into contingent liability instruments. The Circular further raises the issue of periodic review of such instruments to ensure they remain the most appropriate means of achieving the particular benefits they were intended to deliver.
- **DIMIA response:** Agreed. The Department will review its existing guidance material to ensure that departmental policy on the use of subrogation clauses, time limits, termination clauses and financial limits is consistent with guidance contained in the ANAO report.
- **DVA response:** Agreed. DVA's CEI on the management of guarantees, indemnities and letters of comfort is currently being revised. This CEI will outline policy and procedures to address these issues.
- **AEC response:** Agreed. Time limits, termination clauses, subrogation clauses and financial limits to be incorporated into guarantees, warranties, indemnities and letters of comfort if and when they are issued.
- **AFP response:** Agreed. The AFP generally agrees and accepts this recommendation. The Commissioner's Financial Instruction (CFI) 8.3 requires time limits, termination clauses, subrogation clauses and financial limits to be incorporated into indemnities. The AFP has found it difficult to incorporate these provisions from a commercial perspective for the following reasons:
  - a) Standard Form Contracts The AFP has found it commercially impractical to insert subrogation and financial limit clauses into standard form contractual indemnities sought in respect of normal commercial business dealings. By way of example, major vehicle leasing companies (e.g. Leaseplan) usually require customers (including the Commonwealth) to indemnify them against all risks under standard leasing contracts. The AFP's experience is that companies such as Leaseplan will generally not amend their standard form documents as a matter of policy. In these circumstances there is little option but to issue the indemnity in stated terms. Any attempt by the AFP to negotiate an indemnity with a large corporation results in considerable delay and potential exposure to the risks of not having the service delivered. This is particularly difficult where the head office of the company is based overseas (e.g. Reuters head office is based in London). Significantly, these standard form contractual indemnities are normally covered by Comcover and risks to the Commonwealth are usually low.



- b) Assessing Financial Risks The AFP has found it difficult to impose financial limits where indemnification is required against all risks under contract or lease e.g. in connection with standard building leases. These leases generally require the tenant to indemnify the lessor against liability arising from damage/destruction of property or personal injury in connection with the lease. As damages for personal injury are difficult to estimate, landlords are reluctant to agree upon capping maximum liability.
- c) Extent of Comcover Policy Coverage The audit report deals with the issue of indemnities insured by Comcover (see para 3.35). Under the terms of the current Comcover Policy Terms and Conditions, indemnities are dealt with under the heading of 'General Exclusion' as follows: 'Excluded Events We will not pay for ...liability arising out of any indemnity unless the indemnity is contained in a contract or the liability would have arisen in the absence of such indemnity.' The AFP has previously discussed the implications of this exclusion with Comcover. Comcover has stated in general terms that as the operation of the exclusion can only be properly determined once a claim is made (i.e. the application of a specific contractual indemnity to a specific event), it is difficult to foreshadow with any certainty whether an AFP issued indemnity is covered or not. For this reason, the extent to which an indemnity will be covered by Comcover is not entirely clear until the event arises.
- **Centrelink response:** Agreed. Centrelink notes that in relation to indemnities in contracts, effective ongoing contract management is also necessary.
  - **NNTT response:** Agreed. The Tribunal will review its procedures in accordance with this recommendation.
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Canberra ACT  
30 January 2003

P. J. Barrett  
Auditor-General



# Appendices



## Appendix 1

### Parliamentary Committees' Recommendations

#### **Joint Committee on Public Accounts Inquiry: Report 350 Review of Auditor-General's Reports 1996–97 (February 1997)**

*Recommendation No.1:* In preparing the Finance Minute to this report, the Department of Finance should seek up-to-date statements from all agencies with guarantees, indemnities and letters of comfort within their portfolios, on the steps they have taken to address each relevant recommendation in Audit Report No.6 1996–97.

*Recommendation No.2:* Full statements of off-balance sheet contingent liabilities associated with guarantees, indemnities and letters of comfort should be a mandatory inclusion in annual financial statements of departments except where disclosure may adversely affect the Commonwealth's interests.

The Department of Finance Minute (response to the Committee's report) was issued by the Minister for Finance on 9 December 1997.

#### **House of Representatives Standing Committee on Financial Institutions and Public Administration Report of the Inquiry into ANAO Audit Report No.6 1996–97 on Commonwealth Guarantees, Indemnities and Letters of Comfort (September 1997)**

*Recommendation No.1:* That the power of Commonwealth statutory authorities to accept liabilities, including contingent liabilities, be regularly reviewed by portfolio departments, in consultation with the ANAO and Finance, to ensure that the Commonwealth's interests are protected.

*Recommendation No.2:* That agencies be required to follow the recommendations of the ANAO and Finance concerning the formal authorisation of officers to issue indemnities on behalf of a Minister. Each agency should also be required to provide a copy of its register of authorised officers to Finance on a regular basis.

*Recommendation No.3:* That agency heads be required to take account of their responsibility with regard to management of the Commonwealth's contingent liabilities. Subject to ultimate Ministerial responsibility and accountability to the Parliament, it is the responsibility of agency heads to ensure the agency complies with guidelines and other instructions concerning contingent liabilities.

*Recommendation No.4:* That agencies take account of the direction to include a limit where possible. Agencies should always attempt to measure the potential financial cost as part of risk assessment either internally or with external assistance, and should keep a record of that assessment. Where a limit is not included, agencies should record the reason for that arrangement as part of the risk assessment.

**Recommendation No.5:** That the Department of Finance in consultation with the ANAO issue a 'better administrative practice' document to provide agencies with more direct assistance on how to introduce and maintain a central register of contingent liabilities.

**Recommendation No.6:** That agencies consider introducing contract registers, in particular with a view to addressing concerns about the increased emphasis on outsourcing Commonwealth functions. In the absence of a register, agencies should ensure that contingent liabilities in contracts, if any, are recorded separately on a Register of Guarantees, Indemnities and Letters of Comfort.

**Recommendation No.7:** That Defence review its existing contracts and its contract management practices to ensure that its central record keeping and finance areas are fully informed of all contingent liabilities contained in contracts.

**Recommendation No.8:** That agencies which report contingent liabilities to the public or to Ministers, review those values, in consultation with the ANAO where relevant, to ensure that they calculate the values correctly.

**Recommendation No.9:** That the Department of Finance, in consultation with the ANAO, takes all steps necessary to ensure that whole-of-government risk reporting in the Statement of Risks provides an accurate description of the Commonwealth's exposure.

**Recommendation No.10:** That Finance, in its review of the Commonwealth policy of self insurance, take account of the need for expertise in managing risk and the cost to departments of providing such expertise in-house or externally.

**Recommendation No.11:** That the review of the governing legislation for Export Finance and Insurance Corporation under the Commonwealth's Legislation Review Schedule include consideration of the appropriate prudential regulation arrangements for Export Finance and Insurance Corporation where commercial risks are covered.

**Recommendation No.12:** That the ANAO review the management of the Commonwealth's contingent liabilities, and agency compliance with the guidelines on issuing indemnities, guarantees and letters of comfort, in two year's time.

The Government response to the Committee's report was tabled on 26 May 1998.

**Joint Committee on Public Accounts and Audit Inquiry: Report 370 Review of Auditor-General's Reports 1997-98, Commonwealth Guarantees, Indemnities and Letters of Comfort (November 1999)**

**Recommendation No.1:** The Committee recommends that the ANAO monitor the outcomes of the managed fund policy.

The Auditor-General accepted this recommendation.

## Appendix 2

### Guarantees, Warranties, Indemnities and Letters of Comfort as at 30 June 1996, 1997 and 2002

LOAN GUARANTEES	1996 value (\$m)	1997 value (\$m)	2002 value (\$m)
<b>AGRICULTURE FISHERIES and FORESTRY— AUSTRALIA</b>			
Australian Wheat Board	5.00	5.00	
Queensland Fish Management Authority	11.61	9.00	
Wool International	1 083.43	691.00	
<b>Total</b>	<b>1 100.04</b>	<b>705.00</b>	
<b>DEPARTMENT OF COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS</b>			
ABC Yen 3 billion term loan	35.30	35.90	40.00
ABC \$53 million domestic bond	53.00	53.00	
ABC eurobond issue	100.00	100.00	
ABC Inscribed Stock			50.00
SBS building loan	39.00	39.00	
Telstra loan	455.80	396.29	
<b>Total</b>	<b>683.10</b>	<b>624.19</b>	<b>90.00</b>
<b>DEPARTMENT OF DEFENCE</b>			
Bank Guarantee—Malaysia (Health Care)	0.00*		
Defence Housing Authority	343.50	246.00	
<b>Total</b>	<b>343.50</b>	<b>246.00</b>	
<b>DEPARTMENT OF EDUCATION SCIENCE AND TRAINING</b>			
Schools			
—Canterbury Christian School	0.07	0.05	
—Glenaeon School	0.04	0.01	
—International Grammar School	0.50	0.50	
—Macarthur Region Anglican School	0.01		
—Radford College	0.46	0.31	
—Radford College	1.25	1.02	
—Redlands College	0.50	0.47	
—St Paul's Grammar School	0.43	0.38	
—Southside Montessori School	0.04	0.03	
Austudy/Abstudy Supplement	826.30	994.10	
Commonwealth Bank—Health Industry Training <sup>a</sup>			0.18
Commonwealth Bank—Link Employment and Training Inc <sup>a</sup>			0.18
Commonwealth Bank—TORGAS Inc <sup>a</sup>			0.18
<b>Total</b>	<b>829.60</b>	<b>996.87</b>	<b>0.54</b>
<b>DEPARTMENT OF EMPLOYMENT AND WORKPLACE RELATIONS</b>			
SEES Ltd —Ansett employees entitlements			350.00
<b>Total</b>			<b>350.00</b>
<b>DEPARTMENT OF FINANCE AND ADMINISTRATION</b>			
AIDC <sup>b</sup>	3 234.34	3 115.53	1 500.00
ComLand Limited			60.00
<b>Total</b>	<b>3 234.34</b>	<b>3 115.53</b>	<b>1 560.00</b>
<b>DEPARTMENT OF FOREIGN AFFAIRS AND TRADE</b>			
EFIC	2 973.00	3 038.00	3 498.00
<b>Total</b>	<b>2 973.00</b>	<b>3 038.00</b>	<b>3 498.00</b>
<b>DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS</b>			
ATSIC guarantees provided under Sec.19(1) of the <i>ATSIC Act 1989</i>	0.55	0.68	
<b>Total</b>	<b>0.55</b>	<b>0.68</b>	

continued next page

<b>LOAN GUARANTEES</b>	<b>1996 value (\$m)</b>	<b>1997 value (\$m)</b>	<b>2002 value (\$m)</b>
<b>DEPARTMENT OF INDUSTRY TOURISM AND RESOURCES</b>			
Australian Magnesium Corporation			100.00
Snowy Mountains Hydro-Electric Authority	139.14	108.39	
<b>Total</b>	<b>139.14</b>	<b>108.39</b>	<b>100.00</b>
<b>DEPARTMENT OF TRANSPORT AND REGIONAL SERVICES</b>			
Air Services Australia medium term Bank Loan ( <i>Civil Aviation Act 1988</i> )	5.63	1.88	
ANL Ltd (finance and lease facilities)	192.16	279.58	
ANL Ltd promissory note	45.00	45.00	
Northern Territory Government	237.13	197.83	
MIFCO Borrowings			300.00
<b>Sub total</b>	<b>479.92</b>	<b>524.29</b>	<b>300.00</b>
<i>Air Services Australia Act 1995</i> —Promissory Notes	153.60		
<b>Sub total</b>	<b>153.60</b>		
<i>Australian National Railways Commission Act 1983</i> — Promissory Notes	153.82	172.10	
Australian National Railways Commission Eurobond	100.00	100.00	
Australian National Railways Commission Eurobond 3	50.00	50.00	
Australian National Railways Commission Inscribed Stock	2.37		
Australian National Railways Commission Inscribed Stock	77.30	77.30	
Australian National Railways Commission Reverse Dual Samurai	69.00	70.41	
Australian National Railways Commission Yen Zero Coupon	90.64	93.49	
Australian National Railways Commission Yen Zero Coupon	91.94	98.48	
Australian National Railways Commission Zero Coupon Bond	57.08	64.64	
<b>Sub total</b>	<b>692.15</b>	<b>726.42</b>	
<b>Total</b>	<b>1 325.67</b>	<b>1 250.71</b>	<b>300.00</b>
<b>Grand Total</b>	<b>10 628.94</b>	<b>10 085.37</b>	<b>5 898.54</b>

Notes:

a) Group Training Company

b) Currently \$1500 million and offset by holdings in Commonwealth Government Securities and hedging instruments fully guaranteed by Warburg Dillon Read (formerly UBS Australia Ltd).

\* Values less than \$5000 have been rounded down to zero.

Source: ANAO analysis based on entities' 1995, 1997 and 2002 survey returns.

<b>NON-LOAN GUARANTEES</b>	<b>1996 value (\$m)</b>	<b>1997 value (\$m)</b>	<b>2002 value (\$m)</b>
<b>DEPARTMENT OF COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS</b>			
Arts on Tour—Bell Shakespeare		0.03	
Australian Capital Territory Government Canberra Theatre	0.01		
Australian Chamber Orchestra		0.07	
Canberra Youth Theatre		0.02	
CAST		0.03	
Country Arts Western Australia	0.10		
Dance North	0.01		
Jazz Co-ordination Association	0.00*		
Made to Move		0.03	
Outback Arts	0.00*	0.00*	
South Australian Country Arts Trust		0.02	
State Lyric Opera		0.01	
State of South Australia Adelaide Festival	0.04		
State Opera of South Australia	0.22		
Telecom Superannuation Pty Ltd	1 036.00	1 060.00	
Theatre North		0.02	
Theatre Royal Management Board	0.04		
Adelaide Festival Centre Trust (Made to Move)			0.01
Arts on Tour NSW (Made to Move)			0.01
Circus Australia			0.05
Co-Opera			0.04
Salamanca Arts Centre			0.01
Tasmanian Regional Arts			0.00*
The Australian Ballet			0.14
Art Indemnity Australia Program <sup>a#</sup>			379.61
<b>Total</b>	<b>1 036.42</b>	<b>1 060.22</b>	<b>379.87</b>
<b>DEPARTMENT OF FINANCE AND ADMINISTRATION</b>			
Department of Defence	0.11	0.11	
Department of Defence—Removals Australia		0.02	
Business Services Trust Account for Asset Services	0.94	0.73	
Department of Primary Industries & Energy (Australian Construction Services)	3.00	3.00	
Antarctica —FUGRO fuel subsidy			0.06
Australian Industry Development Corporation—guarantees and credit risk facilities	805.49	1 140.13	126.00
Australian River Company Limited—Financing guarantee <sup>b</sup>			32.38
<b>Total</b>	<b>809.54</b>	<b>1 143.99</b>	<b>158.44</b>
<b>DEPARTMENT OF FOREIGN AFFAIRS AND TRADE</b>			
Austrade	208.96	145.36	83.40
EFIC	3 929.00	4 093.00	3 973.00
<b>Total</b>	<b>4 137.96</b>	<b>4 238.36</b>	<b>4 056.40</b>
<b>DEPARTMENT OF HEALTH AND AGEING</b>			
Supplementation of UK resident's nursing home services		unspecified	
CSL Ltd—fractionation agreement	unspecified	unspecified	63.57
<b>Total</b>			<b>63.57</b>
<b>DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS</b>			
AMEP—Property leases (2)			0.97
<b>Total</b>			<b>0.97</b>
<b>DEPARTMENT OF TRANSPORT AND REGIONAL SERVICES</b>			
Tripartite Deed for sale of 12 Core Regulated Airports <sup>c</sup>			unlimited
<b>DEPARTMENT OF THE TREASURY</b>			
Commonwealth Bank of Australia (CBA Act 1959)	324 221.55	104 174.00	12 073.00
Commonwealth Bank Officers Superannuation Corporation (CBA Act 1959) <sup>d</sup>	3 695.57	4 017.00	3 655.80

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<b>NON-LOAN GUARANTEES</b>	<b>1996 value (\$m)</b>	<b>1997 value (\$m)</b>	<b>2002 value (\$m)</b>
Commonwealth Development Bank	1 793.20	1 102.00	18.30
<i>Housing Loans Insurance Corporation Act 1965<sup>d</sup></i>	39 892.00	44 505.00	19.04
<i>Papua New Guinea Loans Guarantee Act 1975</i>	9.83	6.13	5.47
<i>Reserve Bank of Australia Act</i>	26 615.34	41 190.05	48 729.00
<b>Total</b>	<b>396 227.49</b>	<b>194 994.18</b>	<b>64 500.61</b>
<b>Grand Total</b>	<b>402 211.41</b>	<b>201 436.76</b>	<b>69 159.86</b>

Notes:

- a. In 1996 and 1997 this was called the Commonwealth Indemnity Scheme – see listing under Indemnities.
  - b. Balance as at 30 November 2001.
  - c. Sydney, Melbourne, Brisbane, Perth, Canberra, Coolangatta, Townsville, Adelaide, Hobart, Launceston, Darwin and Alice Springs.
  - d. Balance at 30 June 2001.
  - e. 30 June 2002 figure is an estimate of net liability based on an actuarial review. The total value of insured loans as at this date was not available. The 2002 figure therefore is not directly comparable with the figures shown for earlier years.
- # The Department advised that this guarantee is covered by insurance.  
\* Values less than \$5000 have been rounded down to zero.  
Source: ANAO analysis based on entities' 1995, 1997 and 2002 survey returns.

<b>WARRANTIES</b>	<b>1996 value (\$m)</b>	<b>1997 value (\$m)</b>	<b>2002 value (\$m)</b>
<b>DEPARTMENT OF COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS</b>			
CiTR Pty Ltd—GITC3—facilities compliance warranty <sup>#</sup>			unlimited
John Wiley & Sons Australia—Style Manual warranty <sup>#</sup>			unlimited
NSTC—Australian Cotton Exhibition Centre warranty <sup>#</sup>			0.64
ScreenSound Australia—numerous warranties <sup>#</sup>			unlimited
<b>Total</b>			<b>0.64</b>
<b>DEPARTMENT OF FINANCE AND ADMINISTRATION</b>			
ASTA Sale—Prior to closing date warranties	unspecified	unspecified	
Sale of ARCO—Bulk Trades Division sale—warranties for Corporate action, assets, River Torrens and River Yarra			unlimited
Sale of ARCO—Portside United Pty Ltd sale —minor warranties			unspecified
Sale of National Transmission Network—National Transmission Company Pty Ltd (NTC)—Commonwealth's title and power to sell the shares in NTC			unspecified
<b>DEPARTMENT OF THE TREASURY</b>			
<b>Australian Bureau of Statistics</b>			
As a general rule the ABS does not warrant data provided to clients. However, for special data services where a contract exists between the ABS and the client, warranties are sometimes provided on the data provided. <sup>#</sup>			unlimited
<b>Grand Total</b>			<b>0.64</b>

Notes:

- # The Department/agency advised that this warranty is covered by insurance.  
Source: ANAO analysis based on entities' 1995, 1997 and 2002 survey returns.



INDEMNITIES	1996 value (\$m)	1997 value (\$m)	2002 value (\$m)
<b>AGRICULTURE FISHERIES AND FORESTRY— AUSTRALIA</b>			
Australian Wheat Board	1 063.50	1 857.50	
Australian Wheat Board— <i>Wheat Marketing Act 1989</i>	unspecified	unspecified	
Geosafe Australia	13.94	13.94	
Commonwealth/State MoU—NT AQIS <sup>#</sup>			unlimited
Commonwealth/State MoU—Tasmania AQIS <sup>#</sup>			unlimited
Commonwealth/State MoU—WA AQIS <sup>#</sup>			unlimited
Corporate Contracts involving indemnities (7) <sup>#</sup>			unlimited
Lease Agreements with indemnity clauses (98) <sup>#</sup>			unlimited
<b>Total</b>	<b>1 077.44</b>	<b>1 871.44</b>	
<b>ATTORNEY-GENERAL'S DEPARTMENT</b>			
Ansett—Air Security Officer Program (per event)			2 000.00
Commonwealth Bank of Australia—credit cards and merchant facilities <sup>#</sup>			unspecified
Elaw—IT and communications support services for HIH Royal Commission			2.05
Elaw—IT and communications support services for Royal Commission into Building and Construction Industry			2.81
Indemnities for two staff members			unlimited
Macquarie Bank Ltd—IT equipment lease <sup>#</sup>			unlimited
Qantas Airways Ltd—Air Security Officer Program (per event)			2 000.00
Reserve Bank of Australia—banking services			unspecified
Secretary HIH Royal Commission			unlimited
Secretary Royal Commission into Building and Construction Industry			unlimited
Virgin Blue—Air Security Officer Program (per event)			2 000.00
<b>Administrative Appeals Tribunal</b>			
Westpac Banking Corporation—banking services			unlimited
<b>AFP</b>			
Australia Post—Parcel Post Services <sup>#</sup>			unspecified
Ergon Energy Pty Ltd—provision of information to AFP <sup>#</sup>			unspecified
Leases of base sites for communications (13 in 1997, 8 in 2002) <sup>#</sup>	unspecified	unspecified	unspecified
Leases of premises (32 in 1996, 29 in 1997 and 35 in 2002) <sup>#</sup>	unspecified	unspecified	unspecified
Reserve Bank of Australia—Banking Services <sup>#</sup>			1.00
Reuters Australia—on-line information retrieval services <sup>#</sup>			unspecified
Telstra—Telecommunications services <sup>#</sup>			unspecified
Vehicle Fleet (DASFLEET, now Leaseplan) <sup>#</sup>	unspecified	unspecified	unspecified
<b>AUSTRAC</b>			
Westpac Compass Pilot Contract	unspecified	unspecified	
Sun Microsystems Australia Pty Ltd <sup>#</sup>			1.83
<b>Commonwealth Director of Public Prosecutions</b>			
Commonwealth Bank of Australia—IT Lease Facility <sup>#</sup>			2.40
<b>Family Court of Australia</b>			
Absolute Computing Pty Ltd (2 separate indemnities) <sup>#</sup>			unlimited
Commonwealth Bank of Australia <sup>#</sup>			unlimited
CSI Holdings Pty Ltd (CITEC) <sup>#</sup>			unlimited
Forsythes Human Resources <sup>#</sup>			unlimited
Initial Healthcare <sup>#</sup>			unlimited
Optimus Prime Pty Ltd <sup>#</sup>			unlimited
Spherion Outsourcing Solutions Pty Ltd <sup>#</sup>			unlimited
Spherion Recruitment Solutions Pty Ltd (5) <sup>#</sup>			unlimited
Stratagem Computer Contractors Pty Ltd <sup>#</sup>			unlimited
Wizard Information Services Pty Ltd (3) <sup>#</sup>			unlimited
<b>Federal Court of Australia</b>			
Commonwealth Bank of Australia—IT equipment lease			1.50
<b>Insolvency and Trustee Services Australia</b>			
Bankruptcy Act Section 305 trustees' indemnities			0.65

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<b>INDEMNITIES</b>	<b>1996 value (\$m)</b>	<b>1997 value (\$m)</b>	<b>2002 value (\$m)</b>
<b>National Native Title Tribunal</b>			
AUSLIG/GEOIMAGE			unlimited
Great Barrier Reef Marine Park Authority			unlimited
Northern Territory of Australia			unlimited
QLD Department of Natural Resources and Mines			unlimited
CALM			unlimited
<b>Total</b>			<b>6 012.24</b>
<b>DEPARTMENT OF COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS</b>			
Commonwealth Indemnity Scheme (CIS) <sup>a</sup>	787.47	59.71	
ACTEWAGL—electricity supply			unlimited
Chubb Security Services—security guarding			unlimited
CiTR Pty Ltd—GITC3 <sup>#</sup>			unlimited
CiTR Pty Ltd—GITC4 <sup>#</sup>			unlimited
HRM salary sacrifice personal indemnities			unlimited
NSTC—Sustainable Energy Development Agency <sup>#</sup>			5.00
Optus Communications Promissory Notes	75.00		300.00
Property leases (6)			unlimited
Adelaide Infoshop <sup>#</sup>			unlimited
Brisbane Infoshop <sup>#</sup>			unlimited
Hobart Infoshop <sup>#</sup>			unlimited
Melbourne Infoshop <sup>#</sup>			unlimited
Parramatta Infoshop <sup>#</sup>			unlimited
Sydney Infoshop <sup>#</sup>			unlimited
Townsville Infoshop <sup>#</sup>			unlimited
<b>Total</b>	<b>862.47</b>	<b>59.71</b>	<b>305.00</b>
<b>DEPARTMENT OF DEFENCE</b>			
ADI Land	20.00		
Ambulance Service training (2 separate indemnities)	10.00		
Callan Constructions	0.01		
Concord Hospital	5.00		
Darwin Private Hospital	5.00		
Defence Housing Authority	5.00		
Department of Interior	unlimited		
Department of Lands (2 separate indemnities)	unlimited		
Department of Primary Industries	5.00		
Department of Primary Industries (3 separate indemnities)	unlimited		
Direct Engineering Services	0.01		
Elms Control Systems	0.00*		
ESSO Australia—Sea Survival	5.00		
Housing Land Department (3 separate indemnities)	unlimited		
Indonesian Air Show	5.00		
Katherine Local Housing Dept (2 separate indemnities)	unlimited		
Liverpool Hospital	5.00		
Loan of paintings	0.04		
M. Maher—Drainage Easement	unlimited		
Mid City Resources Pty Ltd	0.01		
Mornington Shire Council	unlimited		
Northern Territory Corporation (3 separate indemnities)	unlimited		
NRMA Careflight	5.00		
NSW Ambulance (2 separate indemnities)	10.00		
NSW Fire Brigades	5.00		
NT Department of Health	5.00		
O'Donnell Griffin	0.00*		
OA Link Computers	0.07		
Pacific Bay Ltd	5.00		
Peter Morgan—Training	unlimited		
Pine Rivers RSL	unlimited		
Port of Brisbane Authority	unlimited		

INDEMNITIES	1996 value (\$m)	1997 value (\$m)	2002 value (\$m)
QLD Ambulance Service (3 separate indemnities)	15.00		
QLD Government	unlimited		
Queensland Air Museum	unlimited		
St. John Ambulance	5.00		
Street Signage	5.00		
Submarine Escape and Rescue	20.00		
Submarine Prime Contract	unlimited		
Sydney Water	5.00		
Telecasters NQ	5.00		
Thistle Island Management Inc	unlimited		
Townsville General Hospital (5 separate indemnities)	25.00		
Townsville Water Supply Board	5.00		
Various Training activities (56 separate indemnities)	unlimited		
WA Police	unlimited		
Wagga Hospital	5.00		
Electro Optical Systems for HMA Ships—Termination for convenience		13.08	
Individual Training—Work Experience (Ambulance Service of NSW) (2 separate indemnities)		10.00	
Individual Training—Work Experience (Careflight Ltd)		5.00	
Individual Training—Work Experience (Greater Murray Health Service)		5.00	
Individual Training—Work Experience (Liverpool Health Service)		5.00	
Individual Training—Work Experience (Queensland Ambulance Service) (2 separate indemnities)		10.00	
Individual Training—Work Experience (Townsville District Health Service) (4 separate indemnities)		20.00	
Individual Training—Work Experience (Wagga Wagga Day Surgery Pty Ltd)		5.00	
Lost Cheque		1.80	
Ordnance Support and Training Centre Contract (C218434)		5.00	
Recruiting Display at Townsville Showgrounds		5.00	
SASR Activity (Beverly Shire)		5.00	
Sea King LOTE—Limitations of Commonwealth total cumulative liability		56.00	
Supply of ANZAC Ships and related supplies (C218318)—shored Based Builder Risk		400.00	
Supply of ANZAC Ships and related supplies (C218318)—Wrap Up Comprehensive General Liability		100.00	
Supply of CWI transmitters (ANZACSPD) (C218443)—Damage to supplies prior to delivery		5.00	
Supply of CWI transmitters (ANZACSPD) (C218443)—Termination for convenience		5.00	
Training—CEO		1.00	
Training—L.E. Hedges		1.00	
Training—Whian Whian Forest (2 separate indemnities)		2.00	
Loss or damage caused by RAN vessels in or entering Port:			
–Albany Port Authority <sup>#</sup>		10.00	10.00
–Bernie Port Authority <sup>#</sup>		10.00	10.00
–Bunbury Port Authority <sup>#</sup>		10.00	10.00
–Bundaberg Port Authority <sup>#</sup>		10.00	10.00
–Cairns Port Authority <sup>#</sup>		10.00	10.00
–Dampier Port Authority <sup>#</sup>		10.00	10.00
–Darwin Port Authority <sup>#</sup>		10.00	10.00
–Esperance Port Authority <sup>#</sup>		10.00	10.00
–Fremantle Port Authority <sup>#</sup>		10.00	10.00
–Geelong Port Pty Ltd <sup>#</sup>		10.00	10.00
–Geraldton Port Authority <sup>#</sup>		10.00	10.00
–Gladstone Port Authority <sup>#</sup>		10.00	10.00
–Mackay Port Authority <sup>#</sup>		10.00	10.00

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INDEMNITIES	1996 value (\$m)	1997 value (\$m)	2002 value (\$m)
–Marine Board Flinders <sup>#</sup>		10.00	10.00
–Marine Board of Hobart <sup>#</sup>		10.00	10.00
–Marine Board of King Island <sup>#</sup>		10.00	10.00
–Melbourne Port Corporation <sup>#</sup>		10.00	10.00
–Newcastle Port Corporation <sup>#</sup>		10.00	10.00
–Port Hedland Port Authority <sup>#</sup>		10.00	10.00
–Port Kembla Port Corporation <sup>#</sup>		10.00	10.00
–Port of Barrow Island <sup>#</sup>		10.00	10.00
–Port of Brisbane Corporation <sup>#</sup>		10.00	10.00
–Port of Broome <sup>#</sup>		10.00	10.00
–Port of Carnarvon <sup>#</sup>		10.00	10.00
–Port of Derby <sup>#</sup>		10.00	10.00
–Port of Devonport <sup>#</sup>		10.00	10.00
–Port of Launceston Authority <sup>#</sup>		10.00	10.00
–Port of Onslow <sup>#</sup>		10.00	10.00
–Port of Perth <sup>#</sup>		10.00	10.00
–Port of Portland Pty Ltd <sup>#</sup>		10.00	10.00
–Port of Varanus Island <sup>#</sup>		10.00	10.00
–Port of Walcott <sup>#</sup>		10.00	10.00
–Port of Wyndham <sup>#</sup>		10.00	10.00
–Ports of Eden and Yamba <sup>#</sup>		10.00	10.00
–Rockhampton Port Authority <sup>#</sup>		10.00	10.00
–South Australian Ports Authority <sup>#</sup>		10.00	10.00
–Sydney Ports Corporation <sup>#</sup>		10.00	10.00
–Townsville Port Authority <sup>#</sup>		10.00	10.00
–Victoria Channels Authority <sup>#</sup>		10.00	10.00
13 BDE Admin Support Battalion		unlimited	
Aerospace Technologies of Australia Limited—Claims against ASTA in respect of Nomad Aircraft		unlimited	unlimited
Agreement between Thistle Island Management Association Incorporated and Commonwealth of Australia		unlimited	
ANZAC Ship Maintenance Planning System Lead Contract (C218427)		unlimited	
Area Support—Fire Services in Townsville		unlimited	
Boeing Australia Limited—sale of shares in ASTA: Clause 7.1 containing 6 aspects		unlimited	unlimited
Deed of Indemnity cited by Commonwealth between AA and another party		unlimited	
Defence use in support of contingencies and civil airline assets (2 separate indemnities)		unlimited	
Design, Develop, Test and Install Shallow Acoustic Underwater Range (SAUR) Contract C225075, Clause 19.6		unlimited	
Exercise Dundee		unlimited	
Helicopter Safety Training		unlimited	
JP7 (Kalkara) Acquisition—Exceptions to contractors responsibility to indemnify the Commonwealth		unlimited	
JP7 (Kalkara) Acquisition—Termination for convenience		unlimited	
JP7 (Kalkara) Operations—Termination for convenience		unlimited	
Lease of Avalon Airport		unlimited	
Maintenance of the Australian Underwater Ranges Activity (AURA) Contract (C225031, Clause 21.1)		unlimited	
Maintenance of the Australian Underwater Ranges Activity (AURA) Contract (C225031, Clause 20.4)		unlimited	
Memorandum of Agreement between AA and Commonwealth on responsibility for the exchange of surveillance radar data (contract No. C96/76)		unlimited	
New Submarine Project (NSP) Prime Contract (C218269, Clause 6A.5)		unlimited	
NSP Prime Contract (C218269, Clause 37.2)		unlimited	
NSP Prime Contract (C218269, Clause 40.3.1, Annex MM, Annex SS)		unlimited	

INDEMNITIES	1996 value (\$m)	1997 value (\$m)	2002 value (\$m)
NSP Prime Contract (C218269, Clause 40.3.3)		unlimited	
NSP Prime Contract (C218269, Clause 64.6)		unlimited	
NSP Prime Contract (C218269, Clause 64.8(g))		unlimited	
NSP Prime Contract (C218269, Clause 67A.3)		unlimited	
NSP Contract C225031—Termination for Convenience		unlimited	
NSP Contract C225046—Termination for Convenience		unlimited	
NSP Contract C225049—Termination for Convenience		unlimited	
NSP Contract C225060—Termination for Convenience		unlimited	
NSP Contract C225075—Termination for Convenience		unlimited	
NSP Contract C225078—Termination for Convenience		unlimited	
NSP Contract C225081—Termination for Convenience		unlimited	
NSP Contract C225086—Termination for Convenience		unlimited	
NSP Contract C225087—Termination for Convenience		unlimited	
Provision of drinking water to Army base at Oakey		unlimited	
Sea King LOTE—Exceptions to contractors responsibilities to indemnify the Commonwealth		unlimited	
Sea King LOTE—Reciprocal indemnity against infringement of IP rights		unlimited	
Sea King LOTE—Termination for convenience		unlimited	
Supply of 10 5in MK45 Mod 2 Gun Mounts and associated goods and services (C218360)		unlimited	
Supply of a Submarine Escape and Rescue Service (SERS) Contract (C225049, Clause 16A.1)		unlimited	
Supply of ANZAC Ships and related supplies (C218318)—Commonwealth lease for premises		unlimited	
Supply of ANZAC Ships and related supplies (C218318)—Damage by Commonwealth following contract termination due to default		unlimited	
Supply of ANZAC Ships and related supplies (C218318)—Infringement of IP rights		unlimited	
Supply of ANZAC Ships and related supplies (C218318)—Infringement of IP rights by third party which cannot be recovered by third party		unlimited	
Supply of support vessel for Collins sea trials in WA (C225081, Clause 14.2.5)		unlimited	
ADI Limited—Clause 2.1 Commonwealth indemnity to ADI against all its activities (except contamination) involving the Maribyrnong and Footscray properties			unlimited
ADI Limited—Clause 2.1 Commonwealth indemnity to ADI against all its activities (except contamination) involving the St Marys site			unlimited
ADI Limited—Clause 2.2 contamination at the Maribyrnong and Footscray properties			unlimited
ADI Limited—Clause 2.2 Commonwealth indemnity for claims relating to contamination at St Marys site			unlimited
ADI Limited—Clause 3.1 uninsured losses and claims arising from certain events (HMAS Westralia fire and M262A Grenade Incident)			unlimited
ADI Limited—Clause 4 losses which arise from insurance failure from ADI Contracts			unlimited
ADI Limited—Clause 5 claims by certain employees relating to any CSS liability			unlimited
ADI Limited—Clause 7 liability to BAH Pty Ltd for any claim with respect to circumstances			15.00
ADI Limited—Clause 9.2 claims against an insurer of ADI or other persons or in defence of any relevant claim			unlimited
ADI Limited—Personal injury or damage to property caused by products manufactured or produced by ADI and its predecessors and loss or damage to any Australian defence vessel berthed or under repair/refit at an ADI facility		unlimited	unlimited
ADI Limited—Clause 13.3 breach of Commonwealth obligations under Land Licences prior to Assignment date			unlimited

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<b>INDEMNITIES</b>	<b>1996 value (\$m)</b>	<b>1997 value (\$m)</b>	<b>2002 value (\$m)</b>
ADI Limited Clause 3.2—INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS			unlimited
ADI Limited Clause 3.3—INFRINGEMENT OF IP RIGHTS FOR IP TRANSFERRED OR LICENSED TO ADI BY THE COMMONWEALTH			unlimited
ADI Limited Clause 3.4—INFRINGEMENT OF PREVIOUSLY COMMONWEALTH OWNED IP RETURNED TO THE COMMONWEALTH AND IP RELATING TO MULWALA			unlimited
ADI Limited Clause 4.4—WORK UNDERTAKEN BY GOVERNMENT FACTORIES PRIOR TO 3 MAY 1989		unlimited	unlimited
Avalon Airport Geelong Pty Limited—WILFUL ACTS, OMISSIONS OR NEGLIGENCE OF THE COMMONWEALTH AS LESSOR OR OWNER		unlimited	unlimited
British Aerospace Flight Training Australia Pty Ltd—PILOT TRAINING TAMWORTH			unlimited
Canberra International Airport—USE BY COMMONWEALTH			500.00
Contractors' use of Commonwealth vehicles (93) <sup>#</sup>			unlimited
Eringoarrh Pty Ltd – RAAF 4WD training on private property			10.00
Footscray Land Limited—Clause 3.1 Commonwealth to meet costs arising from contamination			unlimited
Footscray Land Limited—Clause 5.6 contamination on the Landfill site on the Footscray property			2.60
IBM—CINDI Messaging System			unlimited
IBM—Lotus Notes Support			unlimited
Inquiry Pty Ltd—use of unapproved software			50.00
St Marys Land Limited—Clause 3.1—Commonwealth to meet costs arising from contamination			unlimited
Sydney Catchment Authority—Woronora dam			unlimited
Transfield Thomson-CSF Investments Pty Ltd—Clause 21.2 loss of profit in the event of termination of Mulwala Agreement			5.00
<b>Total</b>	<b>185.14</b>	<b>1 049.88</b>	<b>972.60</b>
<b>DEPARTMENT OF EDUCATION SCIENCE AND TRAINING</b>			
Air Services Australia—Chaton Ridge	unspecified	unspecified	
Air Services Australia—Mt Edith	unspecified	unspecified	
Air Services Australia—Mt Majura	unspecified	unspecified	
Air Services Australia—Mt McAlister	unspecified	unspecified	
International College of English	unspecified	unspecified	
State Forests—Shooters Hill	unspecified	unspecified	
University of Technology Sydney	unspecified	unspecified	
Telstra—enquiry handling services <sup>#</sup>			unlimited
Workcover Corporation of South Australia			unlimited
Australian Nuclear Science and Technology Organisation			unlimited
Contractors engaged in Maralinga Rehabilitation Project			unlimited
The Chief Scientist			unlimited
<b>DEPARTMENT OF EMPLOYMENT AND WORKPLACE RELATIONS</b>			
Code of Practice (Attorney-General)			0.36
Lytton/Carson			0.13
Reserve Bank of Australia—Transactional Banking			unlimited
<b>Total</b>			<b>0.49</b>
<b>DEPARTMENT OF THE ENVIRONMENT AND HERITAGE</b>			
Service contract indemnities (Bureau of Meteorology)	1.5	1.5	
Winding up of Clean Hunter Centre Ltd—jointly owned by Department and NSW Government			unlimited
<b>Total</b>	<b>1.5</b>	<b>1.5</b>	
<b>DEPARTMENT OF FAMILY AND COMMUNITY SERVICES</b>			
Centrelink Board of Management and officers <sup>#</sup>			unlimited
Centrelink consultancies and general goods and services <sup>#</sup>			unlimited
Centrelink contractors <sup>#</sup>			unlimited

INDEMNITIES	1996 value (\$m)	1997 value (\$m)	2002 value (\$m)
Centrelink property leases (494) <sup>#</sup>			unlimited
Property Leases (9) <sup>#</sup>			unlimited
Reserve Bank of Australia—Transactional Banking <sup>#</sup>			unlimited
Various contracts for services <sup>#</sup>			unlimited
Various organisations against legal action by clients of CRS Australia under the Work Training Scheme	unlimited	unlimited	44.00
Child Support Agency contractors (82 senior case officers)			unlimited
<b>Total</b>			<b>44.00</b>
<b>DEPARTMENT OF FINANCE AND ADMINISTRATION</b>			
ACT Residential Mortgages—Excess Credits	unspecified	unspecified	
ACT Residential Mortgages—Variable Rates	unspecified	unspecified	
Agreement for the Sale of shares in SMEC	unspecified	unspecified	
AIDC Ltd—directors' and nominated officers' indemnities <sup>#</sup>	unspecified	unspecified	unspecified
Asset Purchase—Australian Pipeline Ltd	unspecified	unspecified	
ASTA Sale—Protection for the costs of asbestos, pollutants or other contaminants	unspecified	unspecified	
ASTA Sale—Protection from liability arising from Research and Development claims	unspecified	unspecified	
ASTA Sale—Protection from liability under <i>Income Tax Assessment Act 1936</i>	unspecified	unspecified	
Australian Airlines litigation costs	unspecified	unspecified	unspecified
Australian Airlines Ltd—CS First Boston	unspecified	unspecified	unspecified
Australian Airlines Ltd—due diligence	unspecified	unspecified	unspecified
Australian Multimedia Enterprise (AME) Sale—directors and officers indemnities			unspecified
Australian National and National Rail Commissioners—provision of information	unspecified	unspecified	unspecified
Australian River Company Limited (ARCO—formerly ANL Limited)—board members' and management indemnity <sup>#</sup>	unspecified	unspecified	unspecified
Australian Submarine Corporation—directors' indemnity			unspecified
Australian Submarine Corporation—Barry AC Hilson and BACH Pty Limited—review of the Commonwealth's shareholding			unspecified
Avalon Airport Sale—Foxerco contamination issues	unspecified	unspecified	
Avalon Airport Sale—Foxerco tax liability	unspecified	unspecified	
Avalon Airport Sale—various issues covered	unspecified	unspecified	
British Airways PLC—share values	unspecified	unspecified	
Catering Service—Conduct before sale	unspecified	unspecified	unspecified
Catering Service—Directors loss of Office	unspecified	unspecified	unspecified
Catering Service—Settlement Balance Sheet	unspecified	unspecified	unspecified
Catering Service—Superannuation Entitlements	unspecified	unspecified	unspecified
Catering Service—Taxation Liability	unspecified	unspecified	unspecified
CFM and TRM directors and officers—against all actions	unspecified	unspecified	unspecified
Citibank—London	unspecified		
Combank II—Directors of Hogan Marketing Service and Directors of Achcove Pty Ltd	unspecified	unspecified	unspecified
Commonwealth Bank—losses and liabilities suffered from future exercise of powers under the CFM Act	unspecified	unspecified	
Commonwealth Bank—stamp duty payments	unspecified	unspecified	
Commonwealth Bank—syndicate members USA documentation	unspecified	unspecified	unspecified
Commonwealth Bank directors and certain officers—civil liability	unspecified	unspecified	unspecified
Commonwealth Banking Services Agreement	unspecified	unspecified	unspecified
Compensation Deed—The Pipeline Authority, Paceno Pty Ltd and the Australian Gas Light Company	unspecified	unspecified	
CSL Float—protection for litigation costs Arthur Andersen	unspecified	unspecified	
CSL Float—protection for litigation costs Potter Warburg & Price Waterhouse	unspecified	unspecified	

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INDEMNITIES	1996 value (\$m)	1997 value (\$m)	2002 value (\$m)
CSL Limited—claims by persons contracting specified infections and employees contracting asbestos-related injuries	unspecified	unspecified	
CSL Sale—Breach of confidentiality	unspecified	unspecified	
CSS Contributions plus interest—issued 1 July 1976	unspecified	unspecified	
Employment National Ltd—board members' indemnities			unspecified
Essendon Airport Limited (EAL)—Privatisation Process Members' indemnities			unspecified
FAC—board members indemnities	unspecified	unspecified	unspecified
FAC Sale—ABN Amro legal costs	unspecified	unspecified	unspecified
FAC Sale—BZW legal costs	unspecified	unspecified	unspecified
FAC sale—Ernst & Young legal costs	unspecified	unspecified	unspecified
FAC Sale—Mallesons Stephen Jaques –confidentiality agreement	unspecified	unspecified	unspecified
FAC Sale—liabilities and obligations to indemnified FAC employees	unspecified	unspecified	unspecified
GasInvest—49 per cent Trade Sale Purchase Agreement	unspecified	unspecified	
Health Insurance Commission – Commissioners' indemnities			unspecified
HLIC Sale—GE Capital for pre and post sale superannuation entitlements; breach of warranties, pre-closing liabilities, breach of Agreement; pre-sale insurance contracts; and pre-sale tax liabilities			108.00
HLIC Sale—Sir Laurence Street, losses and liability sustained	unspecified	unspecified	unspecified
Housing Loans Insurance Corporation—directors' indemnities			unspecified
Nations Bank of USA	unspecified		
NRC Share Sale			unspecified
Privatisation of Wool International—Members' indemnities			unspecified
PSS Contributions plus interest—issued 1 July 1990	unspecified	unspecified	
Qantas PSO—Debt Assumption Agreement	unspecified	unspecified	
Qantas PSO—Mk1 Joint Lead Managers	unspecified	unspecified	
Qantas PSO—Mk2 Hogan Marketing Services	unspecified	unspecified	
Qantas PSO—Withholding Tax Indemnity	unspecified	unspecified	
Qantas PSO—Mk1 Financial Adviser	unspecified	unspecified	
Qantas Trade Sale—C of A Performance	unspecified	unspecified	
Qantas Trade Sale—Tax Liability	unspecified	unspecified	
Reserve Bank of Australia, Drawing Account	unspecified	unspecified	unspecified
Sale of ARCO—Bulk Trades Division			0.31
Sale of ARCO—Bulk Trades Division sale—River Yarra Tax treatment, Fenwick Shipping and Dominion Salt contracts			unlimited
Sale of ARCO—Liner Shipping Division sale			10.00
Sale of ARCO—Liner Shipping Division sale –redundancies			2.60
Sale of ARCO—Quality Container Management (QCM) sale—pre-sale tax liabilities and workers compensation claims			1.03
Sale of ARCO—Trans United Pty Ltd sale			0.90
Sale of ARCO major lease facilities—partly offset by a corporate guarantee from the purchaser.			various
Sale of National Transmission Network—National Transmission Company Pty Ltd (NTC) directors and officers			unspecified
Sale of Sydney Airport Corporation Limited (SACL) —Members' indemnities			unspecified
Sale of Sydney Airport Corporation Limited (SACL)—Southern Cross Airports Corporation—NSW Duties Act 1977			282.8
Separate Airlines Sales—Financial Adviser ABN AMRO	unspecified	unspecified	unspecified
Software Licence and production of Commonwealth Managers Toolbox	unspecified	unspecified	
St Marys Land Ltd (Comland)			unlimited
Telstra Sale 1st Tranche—directors and officers	unspecified	unspecified	unspecified
Telstra Sale 2nd Tranche—directors and officers, Telstra Instalment Receipt Trustee Limited, international underwriters, Global Coordinators and Perpetual Registries Limited indemnities			unspecified



<b>INDEMNITIES</b>	<b>1996 value (\$m)</b>	<b>1997 value (\$m)</b>	<b>2002 value (\$m)</b>
Tinbury Ltd deed—SMEC	unspecified	unspecified	
Toronto Dominion Bank of Canada	unspecified		
Transigo		unspecified	
Tuggeranong Office Park—Australian Estate Management	unspecified	54.78	77.30
Uranium Stockpile sale—clean-up costs	unspecified	unspecified	
<b>Total</b>		<b>54.78</b>	<b>482.94</b>
<b>DEPARTMENT OF FOREIGN AFFAIRS AND TRADE</b>			
EFIC Board members and officers			unlimited
<b>DEPARTMENT OF HEALTH AND AGEING</b>			
CSL Ltd Indemnity Agreement—against pre-sale events	unspecified	unspecified	unspecified
CSL Ltd—diagnostic products agreement	unspecified	unspecified	unspecified
CSL Ltd—plasma fractionation agreement	unspecified	unspecified	unspecified
Australian Red Cross Blood Service—exchange of Letters re blood and blood products (now National Managed Fund)	unspecified	unspecified	unspecified
Deloitte Pty Ltd—Home & Community Care National Data Repository			2.50
Australian Human Pituitary Hormone Program—review of scientific information			unspecified
Property leases—(39)—many with multiple indemnities			unlimited
Trust Company of Australia—TGA property lease			unspecified
<b>Total</b>			<b>2.50</b>
<b>DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS</b>			
CPS System Pty Ltd		4.33	
<b>C3CMO</b>			
Cluster 3 Contract with CSC Australia Pty Ltd—\$100 million less recovered damages			100.00
Cluster 3 Contract with Optus Networks Pty Ltd			1.20
Com Tech Integration Services Pty Ltd			0.14
<b>Total</b>		<b>4.33</b>	<b>101.34</b>
<b>DEPARTMENT OF INDUSTRY, TOURISM AND RESOURCES</b>			
Australian Technology Group	unspecified	unspecified	unspecified
Bloomberg Contract	unlimited	unlimited	unlimited
Booze Allen Hamilton—only for claims above \$100 million			unlimited
Hyshot Program—University of Queensland scramjet engine			unlimited
Kistler Woomera—satellites launched by K-1 Aerospace vehicle			1 500.00
Licensed Space Launches			3 000.00
Non-Government representatives on ABCB			unlimited
Sydney Water			unlimited
<b>Total</b>			<b>4 500.00</b>
<b>DEPARTMENT OF PRIME MINISTER AND CABINET</b>			
APSC			
Praxa Ltd—software support <sup>#</sup>			unspecified
Leases of premises—Adelaide, Brisbane, Melbourne, Canberra, Perth and Sydney <sup>#</sup>			unspecified
Westpac—banking services <sup>#</sup>			unspecified
<b>DEPARTMENT OF TRANSPORT AND REGIONAL SERVICES</b>			
Civil Aviation Safety Authority—Air Safety Functions	unspecified	unspecified	unlimited
Civil Aviation Safety Authority—Insurance (under <i>Civil Aviation Act 1959</i> )		unspecified	
Civil Aviation Safety Authority—Carriers Liability Act			unlimited
State of Western Australia—Service Delivery Agreements (28 agencies)	unspecified	unspecified	unlimited

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INDEMNITIES	1996 value (\$m)	1997 value (\$m)	2002 value (\$m)
Adelaide Airport Ltd—Extended coverage for aviation liabilities US\$50 million per aircraft for each incident			88.53
Administrators of Hazelton Airlines—War, Hi-Jacking and Other Perils Indemnity per aircraft for each incident			180.00
Administrators of the Ansett Group—War, Hi-Jacking and Other Perils Indemnity \$US1 billion per aircraft each incident			1 770.54
Airports Development Group—Extended coverage for aviation liabilities			1 000.00
Airservices Australia—War, Hi-Jacking and Other Perils Indemnity \$US1.85 billion per aircraft for each incident			3 275.50
Ansett worldwide—Extended coverage for aviation liabilities			500.00
Asian Express Airlines—War, Hi-Jacking and Other Perils Indemnity per aircraft for each incident			950.00
Australia Pacific Airports Corporation Ltd—Extended coverage for aviation liabilities			1 500.00
Australian Airports (Townsville) Ltd—War Risk Cover			400.00
Australian National Rail Sales—TASRAIL Pty Ltd—Sales contract indemnity			unlimited
Australian National Sales—PAX Rail Pty Ltd—Sales contract indemnity			unlimited
Australian National Sales—SA Rail Pty Ltd—Sales contract indemnity			unlimited
Australian Transport Safety Bureau and Monash University National Centre for Coronial Information			unlimited
Brisbane Airports Corporation—Extended coverage for aviation liabilities			1 500.00
Cairns Port Authority—Extended coverage for aviation liabilities			1 000.00
Cairns Port Authority—War Risk Cover			900.00
Capital Airport Group—War Risk Cover			1 000.00
Chubb Security Australia—War Risk Cover £400 million per aircraft for each incident			1 081.08
<i>Explosives Act 1952 and Explosives Act 1961</i> —numerous indemnities <sup>b</sup>			unlimited
Gold Coast/Coolangatta Airport (Serco)—War Risk Cover			900.00
Group 4 Securitas Pty Ltd—War Risk Cover			200.00
Hobart International Airport—War Risk Cover			400.00
Independent Air Freighters WA—War Risk Cover			316.00
Menzies—Extended coverage for aviation liabilities \$US650 million per aircraft for each incident			1 150.85
MIFCO—Directors indemnity			unlimited
National Code of Practice for Railways—Industry Advisory Committee Members			unlimited
National Jet Service—War, Hi-Jacking and Other Perils Indemnity \$US250 million per aircraft for each incident			442.63
National Rail Corporation—Directors indemnity (Liability is shared with other shareholders)			unlimited
Port of Devonport—War Risk Cover			200.00
QANTAS Airways Ltd—War, Hi-Jacking and Other Perils Indemnity \$US1.85 billion per aircraft for each incident			3 275.50
SIFC Directors (4 separate indemnities)			unlimited
Skywest Airlines Pty Ltd—War Risk Cover US\$350 million			619.69
Sydney Airports Corporation—Extended coverage for aviation liabilities			2 000.00
Sydney Airports Corporation Ltd—War Risk Cover			200.00
TNO Automotive—use of MADYMO software			unlimited
Transworld—Extended coverage for aviation liabilities \$US250 million per aircraft for each incident			442.63
Virgin Blue Airlines—War Risk Cover US\$250 million			442.63
Westralia Airports Corporation—Extended coverage for aviation liabilities			1 500.00
<b>Total</b>			<b>27 235.58</b>

<b>INDEMNITIES</b>	<b>1996 value (\$m)</b>	<b>1997 value (\$m)</b>	<b>2002 value (\$m)</b>
<b>DEPARTMENT OF THE TREASURY</b>			
HIH Claims Support Ltd (HCSL)—directors' and officers' indemnity			unlimited
HIH Claims Support Trust—Trustees' indemnity			unlimited
<b>AOFM</b>			
UK Loan—13.5% £100m Jul 82–2010 (A\$270.27m)			unspecified
UK Loan—11.375% £100m Oct 83–2015 (A\$270.27m)			unspecified
UK Loan—9.5% £100m Aug 85–2012 (A\$270.27m)			unspecified
US Loan—9.6125% \$300m US Jan 86–2006 (A\$531.16m)			unspecified
US Loan—8.375% \$150m US Mar 87–2017 (A\$265.58m)			unspecified
US Loan—6.375% \$200m US Nov 93–2003 (A\$354.11m)			unspecified
A\$120m Zero Coupon Bonds Jan 90–2002			unspecified
A\$100m 7% bonds Feb 94–2004			unspecified
Reserve Bank of Australia—banking services			unspecified
Corporate Express—IT hardware			unspecified
Reuters—provision of market data			unspecified
<b>ATO<sup>c</sup></b>			
Various parties			1.47
<b>Sub total</b>			<b>1.47</b>
<b>Total</b>			<b>1.47</b>
<b>DEPARTMENT OF VETERANS' AFFAIRS</b>			
Defence Service Homes Insurance Scheme	14.88	21.64	41.22
Service Tasmania Agency's site agreement			unlimited
Hospital Services Agreement VIC Dept of Human Services			unlimited
Hospital Services Agreement SA Repat Hospital Daw Park			unlimited
Hospital Services Agreement WA Health Department			unlimited
Hospital Services Agreement WA Ramsey Health Care			unlimited
ACT Dept Health and Community Care Business Services Bureau			unlimited
Hospital Services Agreement NSW Dept of Health			unlimited
Australian War Memorial			
–Archives NZ <sup>#</sup>			0.03
–Art Gallery of South Australia <sup>#</sup>			0.09
–Canadian House of Commons <sup>#</sup>			0.17
–Canadian War Museum <sup>#</sup>			0.98
–Hood Museum USA <sup>#</sup>			0.07
–Kroch Library USA <sup>#</sup>			0.03
–Repair, restoration or replacement value of loaned exhibits (94 indemnities since 1 July 1997) <sup>#</sup>			unlimited
<b>Total</b>	<b>14.88</b>	<b>21.64</b>	<b>42.59</b>
<b>Grand Total</b>	<b>2 141.42</b>	<b>3 053.28</b>	<b>39 700.75</b>

Notes:

- a) This is now called the Art Indemnity Australia Program – see listing under Non-Loan Guarantees.
- b) Responsibility for Explosives Act indemnities was transferred to the Department of Defence from 1 July 2002.
- c) ATO indemnities issued from 1 November 2001 only – data on indemnities issued before this date were not available.

# The Department advised that this indemnity is covered by insurance.

\* Values less than \$5000 have been rounded down to zero.

Currencies have been converted at rates current at 30 June 2002, that is, USD 56.48c, UKP 37.00p and NZD \$1.1574.

Source: ANAO analysis based on entities' 1995, 1997 and 2002 survey returns.

<b>LETTERS OF COMFORT</b>	<b>1996 value (\$m)</b>	<b>1997 value (\$m)</b>	<b>2002 value (\$m)</b>
<b>DEPARTMENT OF FINANCE AND ADMINISTRATION</b>			
Australian National Line Credit Rating	unspecified	unspecified	
Federal Airports Corporation—Standard and Poors	unspecified	unspecified	
Qantas Trade Sale—Loan Facility	unspecified	unspecified	
Employment National Ltd—Equity support			54.00
Employment National Ltd—Financial support during restructuring			unspecified
<b>Total</b>			<b>54.00</b>
<b>DEPARTMENT OF FOREIGN AFFAIRS AND TRADE</b>			
AusAID—various contractors			unspecified
<b>DEPARTMENT OF HEALTH AND AGEING</b>			
Barbara Walker Centre for Pain Management and Research			1.00
Monash Institute of Health Services Research—Australasian Cochrane Centre			unspecified
Health Issues Centre—National Resource Centre for Consumer Participation in Health			0.36
<b>Total</b>			<b>1.36</b>
<b>DEPARTMENT OF INDUSTRY TOURISM AND RESOURCES</b>			
R&D Tax Concession Syndicates 2000–01			unspecified
<b>DEPARTMENT OF TRANSPORT AND REGIONAL SERVICES</b>			
Federal Airports Corporation	unspecified		
Bindaree Beef—LOC securing ICF loan facility			5.00
<b>Total</b>			<b>5.00</b>
<b>DEPARTMENT OF THE TREASURY<sup>a</sup></b>			
United Medical Protection Ltd (UMP) and Australasian Medical Insurance Ltd (AMIL)—events to 30 June 2002			Combined limit of 50.00
David Lombe (provisional liquidator of the companies UMP and AMIL)—events to 30 June 2002			
UMP, AMIL and David Lombe (provisional liquidator) –events to 30 July 2002 to do with new business			unlimited
<b>Total</b>			<b>50.00</b>
<b>Grand Total</b>			<b>110.36</b>

Source: ANAO analysis based on entities' 1995, 1997 and 2002 survey returns

Note

- a) On 30 July 2002, these three Treasury letters of comfort were superseded by a deed of indemnity to 31 December 2002 between the Commonwealth and UMP, AMIL and David Lombe (provisional liquidator).

## Appendix 3

### Payouts in respect of Guarantees, Warranties and Indemnities for years ended 30 June 1997 to 2002 by Portfolio Department

Portfolio Department	1997 value (\$m)	1998 value (\$m)	1999 value (\$m)	2000 value (\$m)	2001 value (\$m)	2002 value (\$m)	TOTAL (\$m)
Attorney-General's Department		1.41	1.00	0.46	0.54	0.39	3.80
Department of Communications Information Technology and the Arts		0.27	0.29	0.43	0.15	0.08	1.22
Department of Defence	9.27	3.45	0.16	12.15	2.59	3.58	31.20
Department of Employment and Workplace Relations				0.14	0.15	0.14	0.43
Department of Foreign Affairs and Trade	17.40	24.70	4.60	8.00	20.50	8.10	83.30
Department of Health and Ageing		1.03	2.87	0.51	0.86	1.26	6.53
Department of Transport and Regional Services		0.02	0.04	0.03			0.09
Department of the Treasury		10.41	21.59	13.38	8.81	80.85	135.04
<b>Total</b>	<b>26.67</b>	<b>41.29</b>	<b>30.55</b>	<b>35.10</b>	<b>33.60</b>	<b>94.40</b>	<b>261.61</b>

Source: ANAO analysis based on entities' 2002 survey returns.

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