

EXPLANATORY STATEMENT

Appropriation Act (No. 1) 2012-2013

Advance to the Finance Minister Determination (No. 5 of 2012-2013)

Purpose of this Determination

The Advance to the Finance Minister (AFM) is provided under subsection 13(2) of *Appropriation Act (No. 1) 2012-2013* (the Act). Section 13 provides that amounts can be issued from the AFM, up to a limit of \$295 million. The Finance Minister must, however, be satisfied there is an urgent need for expenditure, in the current year, that is not provided for, or is insufficiently provided for, in Schedule 1 of the Act, for one of the reasons specified in paragraphs 13(1)(a) and (b).

The Finance Minister is satisfied, based on information provided by the Department of Regional Australia, Local Government, Arts and Sport (DRALGAS), that the additional expenditure was unforeseen until after the last day on which it was practicable to provide for it in the Bill for the Act, before the Bill was introduced into the House of Representatives: paragraph 13(1)(b). An explanation of the additional expenditure is provided in this determination under the heading 'Consultation and Impact' below.

The effect of the determination is that Schedule 1 of *Appropriation Act (No. 1) 2012-2013* will have effect as if it were amended as specified in the determination.

Advances to the Finance Minister generally

The section providing for the AFM is contained in the annual Appropriation Acts. It enables the Finance Minister to facilitate urgent and unforeseen expenditure that was not within the contemplation of Parliament when the Appropriation Act was passed, and was therefore not provided for in Schedule 1 of the Appropriation Act.

The background to the instrument was provided by DRALGAS in their application forms for funding from the AFM. DRALGAS have advised that the expenditure was unforeseen as the decisions were taken after the last day on which it was practicable to provide for expenditure for it in either *Appropriation Bill (No. 1) 2012-2013* (introduced into the House of Representatives on Tuesday, 8 May 2012) or *Appropriation Bill (No. 3) 2012-2013* (introduced into the House of Representatives on Thursday, 7 February 2013).

A determination made under subsection 13(2) of *Appropriation Act (No. 1) 2012-2013* is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the determination.

Statement of Compatibility with Human Rights

The annual Appropriation Acts perform an important constitutional function, by authorising the withdrawal of money from the Consolidated Revenue Fund for the broad purposes identified in the annual Appropriation Acts.

However, as the High Court has emphasised, beyond this, the annual Appropriation Acts do not create rights and nor do they, importantly, impose any duties.

Given that the legal effect of annual Appropriation Acts is limited in this way, the increase of amounts in the annual Appropriation Acts through an AFM is not seen as engaging, or otherwise affecting, the rights or freedoms relevant to the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Consultation and Impact

Consistent with Part 3 of the *Legislative Instruments Act 2003*, DRALGAS was consulted in the preparation of this Determination.

The instrument determines that, in *Appropriation Act (No. 1) 2012-2013*, the administered item for Outcome 4 for DRALGAS is increased by \$4,632,500.

The administered item for Outcome 4 can be applied for the purpose of contributing to achieving the Outcome, namely: Improved opportunities for community participation in sport and recreation, and excellence in high-performance athletes, including through investment in sport infrastructure and events, research and international cooperation.

The additional amount for Outcome 4 is specifically provided to enable DRALGAS to make payments to service providers to improve opportunities for community participation in sport and recreation.