

EXPLANATORY STATEMENT

Appropriation Act (No. 1) 2017-2018

Advance to the Finance Minister Determination (No. 1 of 2017-2018)

Purpose of the Determination

This Advance to the Finance Minister (AFM) is provided under subsection 10(2) of the *Appropriation Act (No. 1) 2017-2018* (the Act). Section 10 enables the Finance Minister to issue amounts from the AFM, up to a limit of \$295 million if he is satisfied that 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 because the expenditure was unforeseen until after the last day on which it was practicable to provide for it in the Bill for this Act before that Bill was introduced into the House of Representatives.

On 8 August 2017, the Government announced that it will recommit the *Plebiscite (Same-Sex Marriage) Bill 2016* to a vote in the Senate and if the Senate does not pass the bill, proceed with a voluntary postal plebiscite for all Australians enrolled on the Commonwealth Electoral Roll conducted by the Australian Bureau of Statistics (ABS).

As the Senate has not passed the *Plebiscite (Same-Sex Marriage) Bill 2016*, funding is being made available to the ABS to undertake the voluntary postal plebiscite. The Government has also announced that the final result of the voluntary postal plebiscite is to be known no later than 15 November 2017.

These government decisions were not made until after the *Appropriation Bill (No. 1) 2017-2018* was introduced into the House of Representatives on Tuesday, 9 May 2017. These circumstances meet the requirements of section 10 of the Act regarding the expenditure being urgent because it was unforeseen.

The proposed approach being taken is supported by both Constitutional and legislative authority. Under Section 51 of the Constitution, the Commonwealth Parliament has the power to make laws in relation to census and statistics. The Commonwealth Parliament has made such laws, namely the *Census and Statistics Act 1905* and the *Australian Bureau of Statistics Act 1975*. All the current authority for the ABS and the Australian Statistician to spend appropriated funds in discharging their functions comes either from the executive power under Section 61 of the Constitution or by implication arising from those statutes that confer functions and powers upon them (the *Census and Statistics Act 1905* and the *Australian Bureau of Statistics Act 1975*). ABS departmental appropriations are insufficient for this activity.

The effect of the determination is that Schedule 1 of the *Appropriation Act (No. 1) 2017-2018* 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.

A determination made under subsection 10(2) of the *Appropriation Act (No. 1) 2017-2018* is a legislative instrument, but neither section 42 (disallowance) nor Part 4 of Chapter 3 (sunsetting) of the *Legislation 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 1 of the *Legislation Act 2003*, ABS was consulted in the preparation of this Determination.

The instrument determines that, in the *Appropriation Act (No. 1) 2017-2018*, the departmental item for the ABS is increased by \$122,000,000.