

EXPLANATORY STATEMENT

Appropriation Act (No. 1) 2018-2019

AFM Determination (No. 2 of 2018-19)

Purpose of this Determination

The Advance to the Finance Minister (AFM) is provided under subsection 10(2) of *Appropriation Act (No. 1) 2018-2019* (the Act). Section 10 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 10(1)(a) and (b).

The Finance Minister is satisfied, based on information provided by the Department of Home Affairs (Home Affairs) 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 10(1)(b).

To enable Additional Estimates Bills for the 2018-19 year to be collated, audited and printed in time for the Estimates Hearings in the week beginning 18 February 2019, the Department of Finance set 28 January 2019 as the last date for entry of estimates into the Central Budget Management System. After data checking and sign off by Chief Financial Officers, the Finance Minister approved the final form of the bills on Thursday 7 February 2019, to enable printing of the bills and supporting materials over the subsequent weekend, in time for expected introduction on Tuesday 12 February 2019. The bills were introduced at 11:08am on Thursday 14 February 2019, to enable their consideration in Senate Additional Estimates hearings the following week.

On Tuesday 12 February 2019 the House of Representatives voted to agree to Senate amendments to the *Home Affairs Legislation Amendment (Miscellaneous Measures) Bill 2018* (the Bill) and the House made additional amendments to the Bill. The following day, Wednesday 13 February 2019, the Senate agreed to the Bill as amended by the House, in a division that commenced at 11:05am. This parliamentary vote, that changed the financial impact of the Home Affairs Bill, occurred just a day earlier than the introduction of the Additional Estimates Bills.

Accordingly the legislative vote that gave rise to a need for additional Home Affairs expenditure came well *after* the time when it was logistically possible to include funding in the Additional Estimates Bills before their introduction into the House of Representatives.

An explanation of the magnitude of additional expenditure is provided in this determination under the heading 'Consultation and Impact' below. The additional expenditure represents the shortfall between available appropriations and estimated expenditure for the Home Affairs portfolio.

The effect of the determination is that Schedule 1 of *Appropriation Act (No. 1) 2018-19* 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 *Appropriation Act (No. 1) 2018-2019* 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 Chapter 3, Part 1 of the *Legislation Act 2003*, Home Affairs was consulted in the preparation of this Determination.

The instrument determines that, in *Appropriation Act (No. 1) 2018-2019*, the departmental item for Outcome 1 for Home Affairs is increased by \$52.6 million.

The effect of the *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019* (the Miscellaneous Measures Act) requires the Department of Home Affairs to re-open the Christmas Island Detention Centre at short notice to deal with the management of people transferred from offshore processing centres. This determination meets the costs for reactivating the centre's facilities; appropriate medical and security escorts; welfare and medical services; additional medical equipment; garrison security; departmental staffing; legal expenses; and translator and interpreter services.

Further, the Miscellaneous Measures Act requires the Department of Home Affairs to establish an Independent Health Advice Panel (IHAP) to monitor, assess and report on the physical and mental health of transitory persons who are in regional processing countries and the standard of health services provided to them. The functions of the IHAP came into effect on 2 March 2019.

The expenditure consequences of the amendments to the Home Affairs legislation were unforeseen until after it was practicable to provide for these costs before the introduction of preceding appropriation bills. Funding for the Miscellaneous Measures Act is consequently urgent because the operative provisions commenced the day after Royal Assent, without sufficient appropriations being available. Given the late stage of the financial year, and noting existing commitments of the Department of Home Affairs, there are not sufficient available reserves to meet the costs of implementing this legislation.

Before the end of the Financial Year the Department of Home Affairs will have drawn down all existing prior year departmental operating appropriations, and all remaining funds are fully committed for operating costs for the final quarter of the year. These existing appropriations are insufficient to also meet the costs of the above requirements. As such, without an Advance to the Finance Minister, the Department will not be able to meet its financial commitments as they fall due.