

EXPLANATORY STATEMENT

Appropriation Act (No. 1) 2019-2020

AFM Determination (No. 6 of 2019-2020)

Purpose of the Determination

The Advance to the Finance Minister (AFM) is provided under subsection 10(2) of *Appropriation Act (No. 1) 2019-2020* (the Act). Section 10 provides that amounts can be allocated 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 Industry, Science, Energy and Resources (Industry) that the additional expenditure was unforeseen until after the last day on which it was practicable to provide for it in *Appropriation Bill (No. 5) 2019-2020* (the Bill), before it was introduced into the House of Representatives. The Bill was introduced into the House of Representatives on Wednesday 8 April 2020. An explanation of the additional expenditure is provided in this determination under the heading 'Consultation and Impact' below.

The Commonwealth Government agreed that this appropriation is essential to improving Australia's fuel security and maximising value for Australian taxpayers. Consistent with paragraph 10(1)(b) of the Act funding is urgent because the timing for the expenditure was unforeseen when it was last possible to include funding in appropriation legislation before the end of the financial year.

The effect of the determination is that Schedule 1 of *Appropriation Act (No. 1) 2019-2020* will have effect as if it were amended as specified in the determination.

Commencement

The determination commences immediately after it is registered.

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 relevant 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) 2019-2020* 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

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*, Industry was consulted in the preparation of this Determination.

The instrument determines that, in *Appropriation Act (No. 1) 2019-2020*, the Administered item for Outcome 3 for Industry is increased by \$2,500,000.

This Advance is provided to enable Industry to lease storage in the United States Strategic Petroleum Reserve for purchases of oil stocks.