

EXPLANATORY STATEMENT

Supply Act (No. 1) 2020-2021

AFM Determination (No. 5 of 2020-2021)

Purpose of this Determination

The Advance to the Finance Minister (AFM) is provided under subsection 10(2) of *Supply Act (No. 1) 2020-2021* (the Act). Section 10 provides that amounts can be allocated from the AFM, up to a limit of \$16,000 million. This AFM provision is reduced by the value of AFMs issued under *Appropriation Act (No. 5) 2019-2020*. No allocations were made from *Appropriation Act (No. 5) 2019-2020*. Two allocations have been made from *Supply Act (No. 1) 2020-2021* totalling \$1,038.834 million. The amount available for allocation from *Supply Act (No. 1) 2020-2021* was \$14,961.166 million prior to making this Determination. 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 Infrastructure, Transport, Regional Development and Communications (Infrastructure) that the additional expenditure was unforeseen until after the last day on which it was practicable to provide for it in *Supply Bill (No. 1) 2020-2021* (the Bill), before it was introduced into the House of Representatives (paragraph 10(1)(b)). The Bill was introduced into the House of Representatives on Monday, 23 March 2020.

The Australian Government has agreed that this additional expenditure is essential to support the domestic airline industry during the COVID-19 pandemic. The need for additional expenditure is urgent as payments need to be made before appropriations will be available from *Appropriation Bill (No. 1) 2020-2021* once enacted.

Further explanation of the additional expenditure is provided in this determination under the heading 'Consultation and Impact' below.

The result of the determination is that Schedule 1 of *Supply Act (No. 1) 2020-2021* 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 each annual Appropriation Act and any Supply Act. It enables the Finance Minister to facilitate urgent and unforeseen expenditure that was not within the contemplation of Parliament when the relevant Act was passed, and was therefore not provided for in Schedule 1 of the relevant Act.

A determination made under subsection 10(2) of *Supply Act (No. 1) 2020-2021* 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*, Infrastructure was consulted in the preparation of this Determination.

The instrument determines that, in *Supply Act (No. 1) 2020-2021*, the administered item for Outcome 2 for Infrastructure is increased by \$71,734,000.

This Advance is provided to enable Infrastructure to fund payments under the Domestic Aviation Network Support program to maintain connectivity on major domestic air routes.