

EXPLANATORY STATEMENT

Appropriation Act (No. 1) 2020-2021

AFM Determination (No. 8 of 2020-2021)

Purpose of this Determination

The Advance to the Finance Minister (AFM) is provided under subsection 10(2) of *Appropriation Act (No. 1) 2020-2021* (the Act). Section 10 provides that amounts can be allocated from the AFM, up to a limit of \$4,000 million. One allocation of \$475.816 million has been made from the Act. Upon the commencement of *Appropriation Act (No. 3) 2020-2021* the provision under the Act has been reset to \$4,000 million for the remainder of 2020-21. Therefore, the amount available for allocation from the Act is \$4,000 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 *Appropriation Bill (No. 3) 2020-2021* (Bill 3), before it was introduced into the House of Representatives (paragraph 10(1)(b)). Bill 3 was introduced into the House of Representatives on Thursday, 18 February 2021. The Australian Government agreed to this funding subsequently in the 2021-22 Budget process and the decision was published in Budget Paper 2 at page 70.

The Australian Government has agreed that this additional expenditure is necessary to provide urgent support to Airservices Australia during the next stages of recovery from the COVID-19 pandemic. The downturn in commercially funded aviation activity has significantly reduced the revenue base for Airservices.

Essential aviation services provided by Airservices, to ensure the safe and efficient management of Australia's skies and the provision of aviation rescue fire fighting services at Australia's busiest airports, cannot be adjusted in line with these changes to revenue. The one-off funding will accordingly ensure continued support for the major Australian airports for critical air navigation, air traffic control, and aviation fire and rescue services.

Payment up-front provides certainty for operations and planning, including for reserves to support cashflow and management of supplier costs. The Budget measure reflects transfer the funds in the 2020-21 year and an AFM is the appropriate available means to provide the funding on this up-front basis.

This form of temporary grant support is consistent with previous decisions during the COVID-19 pandemic to provide revenue-substitution amounts to Airservices in the form of grants.

The result of the determination is that Schedule 1 of *Appropriation Act (No. 1) 2020-2021* will have effect as if it were amended as specified in the determination.

Advances to the Finance Minister generally

Sections providing for the AFM is contained in each of the annual Appropriation Acts. They enable 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 relevant Act.

A determination made under subsection 10(2) of *Appropriation 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

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 *Appropriation Act (No. 1) 2020-2021*, the administered item for Outcome 2 for Infrastructure is increased by \$550,000,000.