

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Appropriation Act (No. 1) 2021-2022

Advance to the Finance Minister Determination (No. 6 of 2021-2022)

Purpose of this determination

The Advance to the Finance Minister (AFM) is a mechanism provided under section 10 of the *Appropriation Act (No. 1) 2021-2022* (the Act). Section 10 permits the Finance Minister, by legislative instrument (determination), to effectively amend Schedule 1 to the Act to make provision for certain urgent expenditure up to a total limit of \$2,000 million.

Subsection 10(1) of the Act has the effect that a determination can only be made under subsection 10(2) if the Finance Minister 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 either:

- because of an erroneous omission or understatement (paragraph 10(1)(a)); or
- because the expenditure was unforeseen until after the last day on which it was practicable to provide for it in the Bill for the Act before that Bill was introduced into the House of Representatives (paragraph 10(1)(b)).

In relation to this determination (*Advance to the Finance Minister Determination (No. 6 of 2021-2022)*), the Finance Minister is satisfied that there is an urgent need for expenditure for the reason set out in paragraph 10(1)(b).

The Bill for the Act was the Appropriation Bill (No. 1) 2021-2022 (the Bill). The Bill was introduced into the House of Representatives on 11 May 2021. The Finance Minister is satisfied, based on information provided by the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC), that the expenditure was unforeseen until after the last day on which it was practicable to provide for it in the Bill before it was introduced into the House of Representatives on this date.

Further, the Appropriation Bill (No. 3) 2021-2022 was introduced into the House of Representatives on 10 February 2022. As the decision to provide funding to upgrade NBN Co Limited's (NBN Co) fixed wireless and satellite networks was taken after this date and there were no further Appropriation Bills in 2021-22, it was not possible to include this funding in a set of 2021-22 Appropriation Bills.

As part of the *Better Connectivity for Rural and Regional Australia Plan*, the Government made an election commitment to provide \$480 million in grant funding towards an upgrade of NBN Co's fixed wireless and satellite networks in 2021-22. This upgrade will significantly improve broadband services for premises in regional, rural and remote Australia and in peri-urban areas. DITRDC has insufficient funding available to meet this grant commitment in 2021-22 and requires an AFM to supplement available funds.

Upfront funding is necessary for the upgrade given NBN Co's existing financial commitments and will allow NBN Co to commence work in mid-2022 and complete the upgrade by the end of 2024. NBN Co will require significant new types of additional equipment to undertake the upgrade with the timeframe of expected upgrade completion requiring the company to commence activity as soon as possible. Delaying the provision of funding risks delays in the overall delivery of the project, currently scheduled for completion by 31 December 2024, as detailed design work will not commence until NBN Co has certainty over grant funding.

DITRDC has uncommitted Outcome 5 administered funding of \$245 million available to apply towards the grant to NBN Co. This determination increases the Outcome 5 administered appropriation item for DITRDC by \$235 million in 2021-22, which will enable payment of the full grant of \$480 million to NBN Co before 30 June 2022, in line with the Government's election commitment.

The Finance Minister has made this determination under subsection 10(2) of the Act. The result of the determination is that Schedule 1 of the Act will have effect as if it were amended as specified in the determination. The total amount that this determination makes provision for is \$235 million.

The effect of subsection 10(4) of the Act is that although the determination is a legislative instrument, it is not subject to section 42 (disallowance) or Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003*.

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, annual Appropriation Acts do not create rights or impose any duties on an individual.

Given that the legal effect of annual Appropriation Acts is limited in this way, an increase to amounts in annual Appropriation Acts through the AFM mechanism does not engage or otherwise affect the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with DITRDC.