

EXPLANATORY STATEMENT

Supply Act (No. 2) 2020-2021

AFM Determination (No. 4 of 2020-2021)

Purpose of this Determination

The Advance to the Finance Minister (AFM) is provided under subsection 12(2) of *Supply Act (No. 2) 2020-2021* (the Act). Section 12 provides that amounts can be allocated from the AFM, up to a limit of \$24,000 million. This AFM provision is reduced by the value of AFMs issued under *Appropriation Act (No. 6) 2019-2020*. As one allocation was made from *Appropriation Act (No. 6) 2019-2020* for \$91.5 million and one allocation was made from *Supply Act (No. 2) 2020-2021* for \$250.0 million, the amount available for allocation from *Supply Act (No. 2) 2020-2021* is \$23,658.5 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 2 of the Act, for one of the reasons specified in paragraphs 12(1)(a) and (b).

The Finance Minister is satisfied, based on information provided by the Department of Health (Health) that the additional expenditure was unforeseen until after the last day on which it was practicable to provide for it in *Supply Bill (No. 2) 2020-2021* (the Bill), before it was introduced into the House of Representatives. The Bill was introduced into the House of Representatives on Monday, 23 March 2020. An explanation of the additional expenditure is provided in this determination under the heading 'Consultation and Impact' below.

Consistent with paragraph 12(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 2 of *Supply Act (No. 2) 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 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 12(2) of *Supply Act (No. 2) 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

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

The instrument determines that, in *Supply Act (No. 2) 2020-2021*, the Administered Assets and Liabilities for Health is increased by \$384,060,000.

This Advance is provided to enable Health to fund the procurement of personal protective equipment and other essential medical supplies and equipment for the National Medical Stockpile to address the unforeseen scale of the COVID-19 spread across the globe.