

Explanatory Statement

Section 13 Appropriation Act (No. 1) 2011-2012

Advance to the Finance Minister

The instrument to which this explanatory statement relates

This explanatory statement relates to an instrument (the instrument) entitled “*Advance to the Finance Minister – Section 13 of Appropriation Act (No. 1) 2011-2012*”, dated 22 March 2012 and numbered 3 of 2011-2012.

The legislative authority under which the instrument is made

The Advance to the Finance Minister (AFM) is a provision 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 Appropriation Act was passed and is therefore not provided for in Schedule 1 of the Appropriation Act.

The Advance to the Finance Minister is provided under section 13 of *Appropriation Act (No. 1) 2011-2012*. The discretionary power is exercisable upon the Finance Minister’s satisfaction of the matters specified in section 13. This section provides that amounts can be issued from the Advance to the Finance Minister, up to a limit of \$295 million, 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 that Act. The qualifying circumstances on the discretion of the Finance Minister to issue additional amounts under this provision are contained in subsections 13(1) of that Act. The application from the Department of Education, Employment and Workplace Relations (DEEWR) has satisfied the Finance Minister that the additional expenditure was not provided for due to unforeseen circumstances.

Exercise of the power via the issue of a determination has effect as if Schedule 1 of *Appropriation Act (No. 1) 2011-2012* were amended to make provision for the additional expenditure specified in the determination.

Purpose of the instrument

The instrument determines that the Administered Item for Outcome 5 for DEEWR in *Appropriation Act (No. 1) 2011-2012* be increased by \$14,327,392.10. The additional amount is provided to enable DEEWR to meet an increased number of General Employee Entitlements and Redundancy Scheme payments.

Human Rights Impact Statement

This Instrument is exempt from disallowance under subsection 44(2) of the *Legislative Instruments Act 2003*. As such, a statement of compatibility prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required in this Explanatory Statement.

Background

The background to the instrument is provided in the application made by DEEWR for funding from the Advance to the Finance Minister, reproduced below.

APPLICATION FOR ADVANCE TO THE FINANCE MINISTER 2011-2012

Agency: Department of Education, Employment and Workplace Relations

Appropriation: *Appropriation Act (No. 1) 2011-12*

Description: General Employee Entitlements and Redundancy Scheme (GEERS)

Administered Annual Appropriation

Outcome: **Outcome 5:** Safer, fairer and more productive workplaces for employers and employees by promoting and supporting the adoption of fair and flexible workplace arrangements and safer working arrangements.

Source of Available Appropriations	2011-12	2010-11	All other years
	\$	\$	\$
Appropriation Act (No. 1)	112,854,000.00		
Advance to the Finance Minister (AFM)	33,242,205.00		
– Appropriation Act (No. 1)			
TOTAL APPROPRIATIONS AVAILABLE	146,096,205.00		
TOTAL AMOUNT SPENT	139,233,770.60		
TOTAL UNSPENT APPROPRIATIONS	6,862,434.45		

Appropriation Required: \$21,189,826.55

Appropriations Available: \$ 6,862,434.45

Amount required from AFM: \$ 14,327,392.10

AFM Category:

This request is unforeseen and is in accordance with *Appropriation Act (No. 1) 2011-12*, Part 3, section 13 (1)(b).

Explanation of requirements from AFM:

GEERS is a safety net scheme to assist employees who have lost their employment due to the liquidation or bankruptcy of their employer and who are owed certain employee entitlements.

GEERS is a demand-driven scheme, and predicting future expenditure is difficult. GEERS anticipated payments for March 2012 are expected to affect 2875 employees and 275 businesses. Based on current trends and the recent insolvency of large employers the current GEERS appropriation of \$102.313 million plus the AFM dated 11 January 2012 of \$33.242 million will be exhausted in March 2012. GEERS is expected to need up to an additional \$14.327 million to meet its commitments to 31 March 2012.

Expenditure under GEERS cannot be definitively predicted because it is affected by a wide range of variables, including:

- the number of companies placed into liquidation;
- the number of claimants for GEERS assistance;
- the industrial instruments that determine the terms and conditions of the claimants' employment; and
- eligible entitlements outstanding at the time of the insolvency.

As part of the 2011-12 Portfolio Additional Estimates process, GEERS estimates have been increased by \$97 million for 2011-2012 (the increase will be included for *Appropriation Bill (No. 3) 2011-2012*). However, the passage of the Bill is not likely to occur until late March-early April 2012. At the current rate of expenditure, the existing appropriation for GEERS will be exhausted by mid March. An Advance from the Finance Minister is required to provide funding for the program pending the passage of *Appropriation Bill (No. 3) 2011-2012*. Any amount provided and used under an Advance to the Finance Minister will reduce the equivalent appropriation amount when *Appropriation Bill (No. 3) 2011-2012* commences.

Urgent:

Due to a number of large employers entering insolvency since *Appropriation Act (No. 1) 2011-2012* received Royal Assent, an appropriation of \$102 million for 2011-2012 is expected to be insufficient to meet the sustained increased demand for GEERS assistance for the remainder of this financial year.

In the event that the program has insufficient funds to make payments under GEERS in 2011-12, this would result in the untenable position of eligible GEERS claimants having their assistance delayed at a time of personal and financial hardship, following their redundancy from an insolvent employer. Such an outcome would also result in reduced public confidence in the Government's administration of GEERS.

There are insufficient funds within the outcome that can be used to cover expenditure for the GEERS program. It is anticipated that all uncommitted funds within Outcome 5 will be exhausted by the third week of March. There are only a small number of programs within Outcome 5, all with small levels of appropriations that can only assist with this pressure for a short period of time. It should be noted that GEERS is the single largest program within Outcome 5. It is therefore critical that funds of \$14.327 million be provided to the program within the next two weeks.

Unforeseen:

As stated above, the GEERS program is a demand driven program available to employees in any industry where the employer enters liquidation or bankruptcy. Given the volatility of the overall

economy and the range of industries and employers that might enter insolvency, it is difficult to predict the likely expenditure for the program in any given year with any certainty.

The requirement for an AFM for the period mid March to 30 March was not foreseen during January, when the original AFM was approved. The revised estimate for March 2012 is based on information that was not available when the initial AFM was submitted. In particular, the average amount per claim has increased and the number of decisions expected to be made is greater than anticipated.

Forecast to 30 June 2012:

Based on current trends and the recent insolvency of several large businesses, current projection of the actual expenditure that will be required under GEERS in 2011-12 is expected to be consistent with the amount published in PAES of \$199 million for the year.

Signed By Chief Finance Officer

NAME: (block capitals please)	CRAIG STOREN
SIGNATURE:	
DATE:	14 March 2012