

EXPLANATORY STATEMENT

Appropriation Act (No. 2) 2019-2020

AFM Determination (No. 5 of 2019-2020)

Purpose of the Determination

The Advance to the Finance Minister (AFM) is provided under subsection 12(2) of *Appropriation Act (No. 2) 2019-2020* (the Act). Section 12 provides that amounts can be allocated from the AFM, up to a limit of \$380 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 *Appropriation Act (No. 2) 2019-2020* (the Bill), before it was introduced into the House of Representatives. The Bill was introduced into the House of Representatives on 25 July 2019. An explanation of the additional expenditure is provided in this determination under the heading 'Consultation and Impact' below.

The Commonwealth Government agreed that this appropriation is essential to the Australian Health Sector Emergency Response Plan for Novel Coronavirus. 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 *Appropriation Act (No. 2) 2019-2020* 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 2 of the Appropriation Act.

Royal Assent to *Appropriation Act (No. 4) 2019-2020* on 26 March 2020 had the effect of resetting the AFM available through *Appropriation Act (No. 2) 2019-2020* to its original balance of \$380 million. Accordingly, the Determination reflects the AFM appropriated in *Appropriation Act (No. 2) 2019-2020*.

A determination made under subsection 12(2) of *Appropriation Act (No. 2) 2019-2020* 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*, Health was consulted in the preparation of this Determination.

The instrument determines that, in *Appropriation Act (No. 2) 2019-2020*, the Administered Assets and Liabilities for Health is increased by \$380,000,000.

This Advance is provided to enable Health to fund the further procurement of masks and other emergency medical or emergency health equipment to address the unforeseen scale of the COVID-19 spread across the globe and possible shortages due to global demand and domestic manufacturing capability.