

EXPLANATORY STATEMENT

Supply Act (No. 1) 2020-2021

AFM Determination (No. 6 of 2020-2021)

Purpose of this Determination

The Advance to the Finance Minister (AFM) is provided under subsection 10(2) of *Supply Act (No. 1) 2020-2021* (the Act). Section 10 provides that amounts can be allocated from the AFM, up to a limit of \$16,000 million. This AFM provision is reduced by the value of AFMs issued under *Appropriation Act (No. 5) 2019-2020*. No allocations were made from *Appropriation Act (No. 5) 2019-2020*. Three allocations have been made from the Act totalling \$1,110.568 million. The amount available for allocation from the Act is \$14,889.432 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 Social Services (Social Services) that the expenditure was insufficiently provided for in the Act because of erroneous omission or understatement (paragraph 10(1)(a)).

The Act provided appropriations for an amount broadly equivalent to seven twelfths of the estimated 2020-21 annual appropriations, including Social Services' administered item for Outcome 2 ('Contribute to stronger and more resilient individuals, families and communities by providing targeted services and initiatives').

However, the Act also provided greater appropriations for certain entities which were expected to have disproportionately high expenditure early in the financial year including to support the COVID-19 response. Due to the urgency with which the *Supply Bill (No. 1) 2020-2021* was prepared, it was not initially identified that programs funded by Social Services under Outcome 2 would require a higher appropriation for the first half of the financial year. In part, this need arose due to the timing of grant payments to be made under programs falling within that Outcome, which must be paid in early December 2020 (the majority by 1 December 2020). It has since been identified that the seven twelfths appropriation will not be sufficient for Social Services to administer the programs for the relevant period.

Consistent with subsection 10(1) of the Act, the need for expenditure is urgent as payments will need to be made under Outcome 2 grant programs by 1 December 2020.

Further explanation of the additional expenditure is provided in this determination under the heading 'Consultation and Impact' below.

The result of the determination is that Schedule 1 of *Supply Act (No. 1) 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 each annual Appropriation Act and any Supply Act. It enables the Finance Minister to facilitate urgent and unforeseen expenditure that was not within the contemplation of Parliament when the relevant Act was passed, and was therefore not provided for in Schedule 1 of the relevant Act.

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

The 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*, Social Services was consulted in the preparation of this determination.

The instrument determines that, in *Supply Act (No. 1) 2020-2021*, the administered item for Outcome 2 for Social Services is increased by \$159,713,242.

This Advance is provided to enable Social Services to fund payments to not-for-profit organisations in early December 2020 in accordance with grant agreements.