**EXPLANATORY STATEMENT**

*Appropriation Act (No. 1) 2020‑2021*

*AFM Determination (No. 7 of 2020‑2021)*

### Purpose of this Determination

The Advance to the Finance Minister (AFM) is provided under subsection 10(2) of *Appropriation Act (No. 1) 2020‑2021* (the Act). Section 10 provides that amounts can be allocated from the AFM, up to a limit of $4,000 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 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 Infrastructure, Transport, Regional Development and Communications (Infrastructure) that the additional expenditure was unforeseen until after the last day on which it was practicable to provide for it in *Appropriation Bill (No. 1) 2020‑2021* (Bill 1), before it was introduced into the House of Representatives (paragraph 10(1)(b)). Bill 1was introduced into the House of Representatives on Tuesday, 6 October 2020.

The Australian Government has agreed that this additional expenditure is necessary to provide urgent support to the aviation sector during the next stages of recovery from the COVID-19 pandemic. Continuing aviation support announced in December 2020, including a further extension to the Domestic Aviation Network Support program, and the Tourism and Aviation Stimulation Package announced in March 2021, could not have been foreseen to be included in Bill 1.

Although funding for the aviation support announced in December 2020 has been subsequently included in *Appropriation Bill (No. 3) 2020‑2021* (Bill 3), the need for additional expenditure is urgent as payments are required to be made before appropriations will be available from Bill 3,once enacted.

To the extent that payments for aviation support are met using this Advance to the Finance Minister, offsetting amounts will be withheld from Bill 3 by the Department of Finance after that legislation commences.

The result of the determination is that Schedule 1 of *Appropriation Act (No. 1) 2020‑2021* will have effect as if it were amended as specified in the determination.

### Advances to the Finance Minister generally

Sections providing for the AFM is contained in each of the annual Appropriation Acts. They enable 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 relevant Act.

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

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*, Infrastructure was consulted in the preparation of this determination.

The instrument determines that, in *Appropriation Act (No. 1) 2020‑2021,* the administered item for Outcome 2 for Infrastructure is increased by $475,816,000.