

EXPLANATORY STATEMENT

Appropriation Act (No. 2) 2021-2022

AFM Determination (No. 5 of 2021-2022)

Purpose of this Determination

The Advance to the Finance Minister (AFM) is a mechanism provided under section 12 of *Appropriation Act (No. 2) 2021-2022* (the Act). Section 12 permits the Finance Minister, by legislative instrument, to effectively amend Schedule 2 to the Act to make provision for certain urgent expenditure up to a total limit of \$3,000 million.

Section 12(1) has the effect that a determination can only be made under s 12(2) if the Finance Minister is 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 either:

- because of an erroneous omission or understatement (see s 12(1)(a)), or
- because the expenditure was unforeseen until after the last day on which it was practicable to provide for it in the Bill for the Act introduced into the House of Representatives (see s 12(1)(b)).

In relation to the present determination (*AFM Determination (No. 5 of 2021-2022)*), the Finance Minister is satisfied that there is an urgent need for the expenditure for the reason in s 12(1)(b).

The Bill for the Act was Appropriation Bill (No. 2) 2021-2022 (the Bill). The Bill was introduced into the House of Representatives on 11 May 2021. The Finance Minister is satisfied, based on information provided by the Department of Finance (Finance), that the additional expenditure was unforeseen until after the last day on which it was practicable to provide for it in the Bill before it was introduced to the House of Representatives on this date.

Additional funding is required to support decisions by the Australian Government to construct the Centres for National Resilience (CNRs) at Mickleham in Victoria, Pinkenba in Queensland and Bullsbrook in Western Australia. The CNRs are urgently required to provide dedicated additional quarantine capacity to manage higher-risk cohorts of travellers arriving during the COVID-19 pandemic (as Australia reopens to international travel) and individuals who do not have a place to isolate domestically. The CNRs are also intended to provide future contingency, including for natural disasters, health crises, or humanitarian situations.

This AFM is required to support the Commonwealth's commitments to construct the respective CNRs and hand them over to State Government operators, as agreed in separate Memoranda of Understanding with the Governments of Victoria (4 June 2021), Queensland (16 August 2021) and Western Australia (16 August 2021). Due to the timing of these commitments, the additional expenditure was unforeseen until after the last day on which it was practicable to provide for it in the Appropriation Bill (No. 2) 2021-2022, before it was introduced into the House of Representatives on 11 May 2021.

Under its contractual arrangements, the Commonwealth is obliged to reimburse the managing contractor (Multiplex) and other suppliers largely on a monthly basis, reflecting liabilities incurred in preceding periods. Multiple cost components are subject to ongoing procurement activities and approaches to market.

This AFM primarily supports funding for the completion of construction at the CNR Melbourne and construction works at the CNRs Perth and Brisbane. The Commonwealth has a reduced level of continuing procurement in the market, related largely to works in Perth and Brisbane. In the interests of continuing to ensure value for money, this Explanatory Statement does not disaggregate the value of project costs by the type of cost component. To ensure an appropriate level of transparency, the broad heads of costs are summarised below.

- Almost all trade packages have now been awarded by managing contractor Multiplex for the CNR Melbourne. Construction of the first 500 beds has been completed, with construction for the remaining 500 beds targeted for completion by the end of February 2022. Construction of

critical central buildings and facilities has been completed to support the Centre, with further works occurring throughout February and March 2022.

- This AFM also includes costs for the CNR Perth and the CNR Brisbane. A large volume of trade packages have been awarded by managing contractor Multiplex for the Perth and Brisbane sites. Orders have been placed for accommodation units, and manufacturing by modular contractors has commenced with a number of modules already delivered to site in Perth.

Consequently, the Finance Minister is able to make a determination under s 12(2) of the Act. The result of the determination is that Schedule 2 of the Act will have effect as if it were amended as specified in the determination. The total amount that the present determination makes provision for is \$200 million. This reflects costs incurred and payable since the last AFM, less cash on hand already drawn down. This funding brings total AFMs for construction of the CNRs to \$821 million to date, following AFMs in November 2021 (\$218 million) and in December 2021 (\$403 million). The initial payments for the CNRs were met from part of the balance held in the Australian Government's Property Special Account.

The effect of s 12(4) of the Act is that although the determination is a legislative instrument, it is not subject to disallowance in accordance with s 42 of the *Legislation Act 2003* (Legislation Act).

Section 12(4) of the Act also provides that the determination will not sunset in accordance with Part 4 of Chapter 3 of the Legislation Act.

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, annual Appropriation Acts do not create rights or impose any duties on an individual.

Given that the legal effect of annual Appropriation Acts is limited in this way, allocating amounts from the AFM provision in the annual Appropriation Acts does not engage or otherwise affect the human rights described in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Consultation and Impact

Finance was consulted in the preparation of this determination in accordance with s 17 of the Legislation Act.

This determination results in the amount specified in the Departmental item for Outcome 2 for Finance, as set out in Schedule 2 to the Act, being increased by \$200,000,000.

Consultations with Finance ensured that the funding provisioned by this AFM is also reflected in Appropriation Bill (No 4) 2021-22 (Bill 4) which was introduced to Parliament on 10 February 2022. This reflects a standard practice, to ensure that expected liabilities or pressures which are known of at the time of preparation of an annual appropriation bill, are included in that bill.

Due to usual processes for Senate Additional Estimates hearings, Bill 4 is not expected to be passed by the Parliament until the last week of March 2022, with funding becoming available after commencement (Royal Assent). Accordingly it is appropriate and necessary that this AFM be issued, notwithstanding that a matching amount is provisioned in a Bill that has been introduced into the Parliament.

Following usual practice Bill 4 includes an offsetting rule, to avoid duplication between appropriations. Section 12(2) of Bill 4 ensures that if an AFM is made prior to commencement of Bill 4, the total funds provisioned in Bill 4 will be reduced by the AFM amount. This AFM falls within that adjustment rule. Therefore due to this AFM, the available amount under Bill 4 is reduced by \$200 million.

The provision in Bill 4 consists of all remaining liabilities for the CNR project at the time when Bill 4 was finalised and that provision is subsumed within a figure for total equity amounts for Finance. Therefore the portion represented by the AFM is not distinctly identified in either Bill 4 or the Finance Portfolio Additional Estimates Statements.

Further payments for the CNRs, that fall due before Bill 4 becomes available, will be funded using the AFM. Subsequently after Bill 4 is enacted, final payments will be taken from that funding source.