

PDR Number:
MS20-000414



Australian Government
Department of Finance

MINISTERIAL SUBMISSION

Minister for Finance

23 April 2020

Copies to:
Secretary
Dr Helgeby
Mr Yannopoulos
Ms Carroll
Mr Pelecky
Ms Schweizer

Advance to the Finance Minister – Purchase of Oil Stocks and leasing of Storage in United States Strategic Petroleum Reserve

Timing: Urgent. Your approval will allocate \$94 million to the Department of Industry, Science, Energy and Resources (Industry) to allow that entity to purchase oil stocks while the global oil price is low.

Recommendation:

That you:

- i. **sign** the determination (Attachment A1) to allocate to Industry \$2.5 million under *Appropriation Act (No.1) 2019-2020*, using an Advance to the Finance Minister (AFM);
SIGNED / PLEASE DISCUSS
- ii. **sign** the determination (Attachment A2) to allocate to Industry \$91.5 million under *Appropriation Act (No.6) 2019-2020*, using an AFM;
SIGNED / PLEASE DISCUSS
- iii. **approve** the accompanying Explanatory Statements (Attachments B1 and B2);
APPROVED / NOT APPROVED / PLEASE DISCUSS
- iv. **sign** the attached letter to the Minister for Energy and Emissions Reduction agreeing to allocate additional amounts through an Advance to the Finance Minister (Attachment C);
and
SIGNED / PLEASE DISCUSS
- v. **note** the attached media release will be issued advising of your decision to allocate this AFM (Attachment D).
NOTED / PLEASE DISCUSS

Key Issues:

The Minister for Energy and Emissions Reduction has written to request an AFM of \$94 million to purchase oil stocks and lease storage in the United States Strategic Petroleum Reserve.

2. If agreed by you, the AFM will need to be split across two Appropriation Acts to reflect the nature of the transaction:

- (a) the leasing of storage capacity (an Administered expense) will need to be funded through *Appropriation Act (No.1) 2019-2020* (\$295 million available) Attachment A1 refers; and
- (b) the purchase of oil stocks (an Administered asset) will need to be funded through *Appropriation Act (No. 6) 2019-2020* (\$24,000 million available for allocation) Attachment A2 refers.

3. Industry did not receive an appropriation through Appropriation (Coronavirus Economic Response Package) Act (No.1) or (No.2) 2019-2020. Accordingly, the AFM provisions those Acts are not available for use. Also, Appropriation (Coronavirus Economic Response Package) Act (No.2) 2019-2020 has been fully allocated and is no longer available.

4. The Minister's request satisfies the criteria for an AFM in both Acts. Specifically, as set out in section 10(1) of Appropriation (No.1) 2019-2020 and as set out in 12(1) Appropriation Act (No.6) 2019-2020, there is an urgent need for expenditure that is not provided for because of unforeseen circumstances:

- (a) urgent need, because current unspent appropriation is insufficient to fund the anticipated purchase and lease costs; and
- (b) unforeseen circumstances, because the decision to purchase and store oil stocks in 2019-20 was not taken until after the commencement of each relevant Act.
 - i. While the purchase and storage of oil stocks was provisioned for in the 2020 21 Supply Acts, the opportunity of purchasing oil in 2019-20 at greatly deflated prices has only recently arisen.

5. If you approve the Minister's request, the accompanying explanatory statements will be published. The process for allocating these AFMs will also be subject to a monthly assurance process by the Australian National Audit Office, with the outcomes of the review reported to Parliament at the end of May 2020.

- (a) The use of the AFM provision will also be reported in the Annual Report of Advances to the Finance Minister that will be tabled in Parliament following completion of the 2019-2020 financial year.

Financial Implications:

6. The Budget estimates do not assume that the AFM will be allocated, as such approving an AFM will have an impact on the Budget.

7. Minister Taylor's letter notes that the "Prime Minister provided policy authority on 22 April 2020 to use \$94 million allocated in the 2020-2021 Supply Act to purchase oil stocks and lease storage in the United States Strategic Petroleum Reserve. He also agreed to the money being spent this financial year". We will quarantine these appropriations once the Supply Acts commence in July 2020. This will reduce the Budget estimates in 2020-2021.

Consultation:

8. Internally we consulted with Budget and Financial Reporting Group.

Approved for electronic transmission

Marc Vickers
Assistant Secretary
Financial Management Branch
Financial Analysis, Reporting and Management Division
02 6215 1641 s 22

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s 22

14220-000414

Mathias Cormann



Advance to the Finance Minister Determination (No. 6 of 2019-2020)

I, Mathias Hubert Paul Cormann, Minister for Finance, being satisfied of the matters set out in subsection 10(1) of *Appropriation Act (No. 1) 2019-2020* (the Act), make the following determination under subsection 10(2) of the Act:

That the Act have effect as if Schedule 1 of the Act were amended so that the item described in Column 1 of the Table, for the Entity listed in Column 2 of the Table, were increased by the amount listed in Column 3 of the Table.


Table

	Column 1	Column 2	Column 3
Item	Appropriation Item	Entity	Amount
1	Administered item, Outcome 3	Department of Industry, Science, Energy and Resources	\$2,500,000

This determination commences immediately after it is registered.

Dated: 22 April 2020

s22

 MATHIAS HUBERT PAUL CORMANN
Minister for Finance



Advance to the Finance Minister Determination (No. 7 of 2019-2020)

I, Mathias Hubert Paul Cormann, Minister for Finance, being satisfied of the matters set out in subsection 12(1) of *Appropriation Act (No. 6) 2019-2020* (the Act), make the following determination under subsection 12(2) of the Act:

That the Act have effect as if Schedule 1 of the Act were amended so that the item described in Column 1 of the Table, for the Entity listed in Column 2 of the Table, were increased by the amount listed in Column 3 of the Table.

Table

	Column 1	Column 2	Column 3
Item	Appropriation Item	Entity	Amount
1	Administered assets and liabilities item	Department of Industry, Science, Energy and Resources	\$91,500,000

This determination commences immediately after it is registered.

Dated: 18 April 2020

s22

MATHIAS HUBERT PAUL CORMANN
Minister for Finance

EXPLANATORY STATEMENT

Appropriation Act (No. 1) 2019-2020

AFM Determination (No. 6 of 2019-2020)

Purpose of the Determination

The Advance to the Finance Minister (AFM) is provided under subsection 10(2) of *Appropriation Act (No. 1) 2019-2020* (the Act). Section 10 provides that amounts can be allocated from the AFM, up to a limit of \$295 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 Industry, Science, Energy and Resources (Industry) that the additional expenditure was unforeseen until after the last day on which it was practicable to provide for it in *Appropriation Bill (No. 5) 2019-2020* (the Bill), before it was introduced into the House of Representatives. The Bill was introduced into the House of Representatives on Wednesday 8 April 2020. 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 improving Australia's fuel security and maximising value for Australian taxpayers. Consistent with paragraph 10(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 1 of *Appropriation Act (No. 1) 2019-2020* will have effect as if it were amended as specified in the determination.

Commencement

The determination commences immediately after it is registered.

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 1 of the Appropriation Act.

A determination made under subsection 10(2) of *Appropriation Act (No. 1) 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*, Industry was consulted in the preparation of this Determination.

The instrument determines that, in *Appropriation Act (No. 1) 2019-2020*, the Administered item for Outcome 3 for Industry is increased by \$2,500,000.

This Advance is provided to enable Industry to lease storage in the United States Strategic Petroleum Reserve for purchases of oil stocks.

EXPLANATORY STATEMENT

Appropriation Act (No. 6) 2019-2020

AFM Determination (No. 7 of 2019-2020)

Purpose of the Determination

The Advance to the Finance Minister (AFM) is provided under subsection 12(2) of *Appropriation Act (No. 6) 2019-2020* (the Act). Section 12 provides that amounts can be allocated from the AFM, up to a limit of \$24,000 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 12(1)(a) and (b).

The Finance Minister is satisfied, based on information provided by the Department of Industry, Science, Energy and Resources (Industry) that the additional expenditure was unforeseen until after the last day on which it was practicable to provide for it in *Appropriation Bill (No. 6) 2019-2020* (the Bill), before it was introduced into the House of Representatives. The Bill was introduced into the House of Representatives on Wednesday 8 April 2020. 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 improving Australia's fuel security and maximising value for Australian taxpayers. 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 1 of *Appropriation Act (No. 6) 2019-2020* will have effect as if it were amended as specified in the determination.

Commencement

The determination commences immediately after it is registered.

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 1 of the Appropriation Act.

A determination made under subsection 12(2) of *Appropriation Act (No. 6) 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*, Industry was consulted in the preparation of this Determination.

The instrument determines that, in *Appropriation Act (No. 6) 2019-2020*, the Administered Assets and Liabilities item for Industry is increased by \$91,500,000.

This Advance is provided to enable Industry to purchase oil stocks.



SENATOR THE HON MATHIAS CORMANN

**Minister for Finance
Leader of the Government in the Senate**

REF: MS20-000414

The Hon Angus Taylor MP
Minister for Energy and Emissions Reduction
Parliament House
CANBERRA ACT 2600

Dear Minister

I am writing regarding your request for an allocation from the Advance to the Finance Minister (AFM) of \$94 million to purchase oil stocks and lease storage in the United States Strategic Petroleum Reserve.

Noting the urgency of your request, I agree to \$94 million being made available through an allocation to the Department Industry, Science, Energy and Resources through *Appropriation Act (No. 1) 2019-2020* and *Appropriation Act (No. 6) 2019-2020*.

My decision to support your request will be included in the *Report on Advances Provided Under the Annual Appropriation Acts for the Year Ended 30 June 2020*, which will be tabled in Parliament.

s22

Mathias Cormann
Minister for Finance

23 April 2020



**THE HON ANGUS TAYLOR MP
MINISTER FOR ENERGY AND EMISSIONS REDUCTION**

MB20-001618

Senator the Hon Mathias Cormann
Minister for Finance
Parliament House
CANBERRA ACT 2600

Dear Minister *Mathias*

I am writing to seek your authority to make funding available in 2019-20 to take immediate action to purchase oil stocks and store this oil in the United States Strategic Petroleum Reserve (SPR) while the global oil price is at historic lows.

The Prime Minister provided policy authority on 22 April 2020 to use \$94 million allocated in the Supply Bills to purchase oil stocks and lease storage in the SPR. He also agreed to the money being spent this financial year.

The Supply Bills provisioned for potential action on fuel security, but this appropriation would only be available from 1 July 2020. Therefore, I seek your agreement for a \$94 million allocation from the Advance to the Finance Minister (AFM) provisions in the annual Appropriation Acts to take advantage of the current low oil prices.

I seek your agreement to providing an AFM amount of \$91.5 million for the purchase and storage of oil against 2019-20 Appropriation Act 6. I also seek \$2.5 million from the AFM provisions in 2019-20 Appropriation Act 1 for the leasing of storage space in the SPR.

This step is urgent and was unforeseen at the time the latest appropriation bills were prepared. The significant falls in the global oil price due were not predicted, and this has created an unprecedented purchasing opportunity.

There are insufficient underspends (uncommitted appropriations) available from other programs in the Energy Outcome in 2019-20 to cover these purchase and lease costs.

Your agreement to this request will provide flexibility for Australian taxpayers to fully benefit from the unprecedented and unanticipated low oil prices. This purchase will act as a down-payment for a broader fuel security package with a domestic focus.

Yours sincerely

s22

ANGUS TAYLOR

CC: The Prime Minister, the Hon Scott Morrison MP; The Treasurer, the Hon Josh Frydenberg MP.



SENATOR THE HON. MATHIAS CORMANN
Minister for Finance
Leader of the Government in the Senate

Friday, 24 April 2020

**ADVANCES TO THE FINANCE MINISTER
IN THE WEEK ENDING FRIDAY 24 APRIL 2020**

This week I made \$94 million in additional funding available to support the Government's purchase of oil stocks and the leasing of storage capacity in the United States Strategic Petroleum Reserve by using the Advance to the Finance Minister.

One determination of \$91.5 million for purchasing oil was made from the Advance which was appropriated by the Parliament in the Appropriation Act (No. 6) 2019-2020; and ✓

A second determination of \$2.5 million for leasing storage was made from the Advance which was appropriated by the Parliament in the Appropriation Act (No. 1) 2019-2020. ✓

Both determinations were signed yesterday. ✓

The determinations were registered on the Federal Register of Legislation, together with an Explanatory Statement (these will be available on legislation.gov.au). ✓

The determinations provided \$94 million to the Department of Industry, Science, Energy and Resources to fund the procurement of oil stocks while global prices were at historic lows. ✓

[ENDS]

Media Contact

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