

PDR Number:
MS20-000000



Australian Government
Department of Finance

MINISTERIAL SUBMISSION

Copies to:
Secretary
Dr Helgeby
Mr Yannopoulos
Ms Carroll
Mr Graham
Ms Stace

Minister for Finance

3 April 2020

Advance to the Finance Minister – Further purchase of medical equipment to support the Australian Health Sector Emergency Response Plan for Novel Coronavirus

Timing: Urgent. Your approval will allocate \$800 million to the Department of Health (Health) to allow that entity to purchase additional masks and other emergency medical or emergency health equipment for the National Medical Stockpile (NMS).

Recommendation:

That you:

- i. **sign** the determination (Attachment A) to allocate to Health \$800 million under *Appropriation (Coronavirus Economic Response Package) Act (No.2) 2019-2020*, using an Advance to the Finance Minister (AFM);
SIGNED / PLEASE DISCUSS
- ii. **approve** the accompanying Explanatory Statement (Attachment B); and
APPROVED / NOT APPROVED / PLEASE DISCUSS
- iii. **sign** the attached letter to the Minister for Health agreeing to allocate additional amounts through an Advance to the Finance Minister (Attachment C).
SIGNED / PLEASE DISCUSS
- iv. **note** the attached media release will be issued advising of your decision to allocate this AFM (Attachment D).
SIGNED / PLEASE DISCUSS

Key Issues:

The Minister for Health has written to request a further AFM of \$800 million to purchase personal protective equipment and other emergency medical or emergency health equipment for the NMS following the activation of the Australian Health Sector Emergency Response Plan for Novel Coronavirus.

2. *Appropriation (Coronavirus Economic Response Package) Act (No.2) 2019-2020* establishes an AFM that provides an appropriation of \$1.2 Billion. This AFM provision is intended to address urgent and unforeseen funding requests for COVID-19 and related responses.

3. Previous AFM allocations were made through the AFM provisions contained within the Annual Appropriation Acts. On 4 March 2020, you approved a \$100 million AFM for the purchase **s47C, s47D, s47E** and other emergency medical or emergency health equipment. Subsequently, on 9 March 2020 you approved a further \$200 million AFM for additional purchases.

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Advance to the Finance Minister

4. The Minister's request for the AFM satisfies the criteria for an AFM. Specifically, as set out in section 12(1) of Act No. 2, there is an urgent need for expenditure that is not provided for because of unforeseen circumstances:

- (a) urgent need, because current unspent administered appropriation is insufficient to fund anticipated purchases of additional masks; and
- (b) unforeseen circumstances, because the decision to purchase additional masks was not taken until after the commencement of *Appropriation (Coronavirus Economic Response Package) Act (No.2) 2019-2020*.

5. If you approve the Minister's request, the accompanying explanatory statement will be published. 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.

Background:

7. The available balance of AFM is \$1,200 million. Should you approve the AFM request for Health, the remaining *Appropriation (Coronavirus Economic Response Package) Act (No.2) 2019-2020* AFM balance would be \$400 million.

Consultation:

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

Vickers,
Marc

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/ Mathias Cormann

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Advance to the Finance Minister Determination (No. 3 of 2019-2020)

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

That the Act have effect as if Schedule 2 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 Health	\$800,000,000

Dated: 3 April 2020

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MATHIAS HUBERT PAUL CORMANN
Minister for Finance

EXPLANATORY STATEMENT

Appropriation (Coronavirus Economic Response Package) Act (No. 2) 2019-2020

AFM Determination (No. 3 of 2019-2020)

Purpose of the Determination

The Advance to the Finance Minister (AFM) is provided under subsection 12(2) of *Appropriation (Coronavirus Economic Response Package) Act (No. 2) 2019 2020* (the Act). Section 12 provides that amounts can be allocated from the AFM, up to a limit of \$1,200 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 (Coronavirus Economic Response Package) 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 Monday 23 March 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 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 (Coronavirus Economic Response Package) 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.

A determination made under subsection 12(2) of *Appropriation (Coronavirus Economic Response Package) 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 (Coronavirus Economic Response Package) Act (No. 2) 2019 2020*, the Administered Assets and Liabilities for Health is increased by \$800,000,000.

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.

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

The Hon Greg Hunt MP
Minister for Health
Parliament House
CANBERRA ACT 2600

Dear Minister

I am writing regarding funding arrangements for the further purchase of emergency medical or emergency health equipment for the National Medical Stockpile following the activation of the Australian Health Sector Emergency Response Plan for Novel Coronavirus.

Noting the urgency of your request, I agree to \$800 million being made available through an allocation to the Department Health from the Advance to the Finance Minister provided through *Appropriation (Coronavirus Economic Response Package) Act (No.2) 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.

I have copied this letter to the Prime Minister and the Treasurer the Hon Josh Frydenberg MP.

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Mathias Cormann
Minister for Finance

3 April 2020

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s47C, s47D, s47E

s34(3)

s47C, s47D, s47E

s34(3)

s34(3)

s47C, s47D, s47E

