

EXPLANATORY STATEMENT

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2013-2014 (No. 4) (the amendment determination)

Purpose of the determination

The amendment determination is made under section 75 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) to further amend *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2013-2014*, dated 24 September 2014 (primary determination), and amended by:

- *Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2013-2014 (No. 1)*, dated 30 January 2015;
- *Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2013-2014 (No. 2)*, dated 27 March 2015; and
- *Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2013-2014 (No. 3)*, dated 5 November 2015,

to adjust amounts appropriated to non-corporate Commonwealth entities relating to the smaller government agenda.

The amendment determination modifies the 2013-2014 Appropriation Acts to support functions transferring:

- from the Attorney-General's Department to the Department of Communications and the Arts (previously known as the Department of Communications), in relation to censorship, copyright, and cultural affairs, including movable cultural heritage and support for the arts; and
- from the integration of the Australian Customs and Border Protection Service into the Department of Immigration and Border Protection (formerly known as the Department of Immigration and Citizenship), when the *Customs and Other Legislation Amendment (Australian Border Force) Act 2015* abolished the Australian Customs and Border Protection Service on 1 July 2015.

The determination results in no change to the total amount appropriated by the Parliament.

Commencement

The amendment determination commences on 13 November 2015.

Authority for the determination

Section 75 of the PGPA Act enables the Finance Minister to determine that one or more Schedules to one or more Appropriation Acts are modified in a specified way in relation to the transfer of a function from one non-corporate Commonwealth entity to another.

Under section 107 of the PGPA Act, the Finance Minister has delegated the power to make determinations under section 75 to the Secretary of the Department of Finance. Under section 109 of the PGPA Act, the Secretary has, in turn, sub-delegated this power to certain officials within the Department of Finance, including the official who made the determination.

The amendment determination is a legislative instrument for the purposes of section 5 of the *Legislative Instruments Act 2003*. The amendment determination amends *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2013-2014*, which is a legislative instrument for the purposes of section 5 of the *Legislative Instruments Act 2003*.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is not required for the amendment determination. Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires a Statement of Compatibility with Human Rights for all legislative instruments subject to disallowance under section 42 of the *Legislative Instruments Act 2003*. A determination, including an amendment determination, under section 75 of the PGPA Act is exempt from disallowance under subsection 75(7) of the PGPA Act. As such, a Statement of Compatibility with Human Rights is not required.

Consultation

Consistent with Part 3 of the *Legislative Instruments Act 2003*, the affected entities were consulted in the preparation of the amendment determination.

Summary of Amendments

1. Item 1 of the amendment determination repeals and substitutes section 5 of the primary determination so that *Appropriation Act (No. 1) 2013-2014* has effect as if the following outcome was included in Schedule 1 for the Department of Communications and the Arts:

Outcome 2

Participation in, and access to, Australia's arts and culture through developing and supporting cultural expression

2. Item 1 includes a paragraph in section 5 clarifying that when there is an increase for an appropriation item for a gaining entity, where the appropriation item only has effect because of the determination, the increase is applied to a nil amount. For example, this situation may arise where an entity gains an outcome, such as in subsection 5(2).

3. The tables in the amendment determination provide an aggregate of appropriation items for each affected entity, rather than the individual items. While the tables in the amendment determination are stated in the \$thousands (\$'000), the tables below set out the individual transfer amounts in dollars and cents and the resulting aggregate amount for each appropriation item listed. A positive amount reflects an increase in an appropriation item, and a negative amount reflects a decrease in an appropriation item.

4. Item 1 of the amendment determination also modifies and adds specified items to the table in section 5 of the primary determination. The items in the table affect relevant appropriation items in Schedule 1 to the *Appropriation Act (No. 1) 2013-2014* in the following way, which result in no change to the total amount appropriated by Parliament.

Item	Entity	Appropriation item	Primary Determination (\$)	Transfer Increase (+) / decrease (-) (\$)	Amendment Determination (\$)
9	Department of Communications and the Arts	Departmental item	+1,315,000.00	+7,228,964.00	+8,543,964.00
10	Attorney-General's Department	Departmental item	-1,315,000.00	-7,228,964.00	-8,543,964.00
11	Department of Communications and the Arts	Administered item, Outcome 2	0.00	+4,523.38	+4,523.38
12	Attorney-General's Department	Administered item, Outcome 2	0.00	-4,523.38	-4,523.38
13	Department of Immigration and Border Protection	Departmental item	0.00	+188,693.57	+188,693.57
14	Australian Customs and Border Protection Service	Departmental item	0.00	-188,693.57	-188,693.57

5. Item 2 of the amendment determination adds a paragraph at the end of section 6 of the primary determination stating that references in each of the 2013-14 Appropriation Acts to the Department of Immigration and Citizenship have effect as if they refer to the Department of Immigration and Border Protection.

6. Item 3 of the amendment determination adds items in section 7 of the primary determination. The items in the table affect relevant appropriation items in Schedule 2 to the *Appropriation Act (No. 2) 2013-2014* in the following way, which results in no change to the total amount appropriated by Parliament.

Item	Entity	Appropriation item	Primary Determination (\$)	Transfer Increase (+) / decrease (-) (\$)	Amendment Determination (\$)
3	Department of Immigration and Border Protection	Other departmental item (Equity Injections)	0.00	+3,315,000.00	+3,315,000.00
4	Australian Customs and Border Protection Service	Other departmental item (Equity Injections)	0.00	-3,315,000.00	-3,315,000.00