

EXPLANATORY STATEMENT

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2018-2019 (the determination)

Purpose of the determination

The determination is made under section 75 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), to adjust amounts appropriated to non-corporate Commonwealth entities, in response to amendments made to the Administrative Arrangements Order (AAO) on 10 May 2018 and on 28 August 2018.

The determination modifies the Appropriation Acts to support functions transferred to the:

- Department of Home Affairs from the Attorney-General's Department:
 - in relation to the operation of the *Australian Security Intelligence Organisation Act 1979* except for section 34Z of that Act;
 - in relation to the operation of the *Intelligence Services Act 2001* insofar as it relates to the Australian Security Intelligence Organisation;
 - in relation to the operation of the *Surveillance Devices Act 2004*; and
 - in relation to the operation of the *Telecommunications (Interception and Access) Act 1979*.
- The Attorney-General's Department from the Department of Prime Minister and Cabinet:
 - in relation to the operation of the *Independent National Security Legislation Monitor Act 2010*;
 - in relation to the operation of the *Inspector-General of Intelligence and Security Act 1986*;
 - in relation to the operation of the *Ombudsman Act 1976*; and
 - in relation to the operation of the *Public Interest Disclosure Act 2013*.

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

Commencement

The determination commences on the day after it is registered.

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 this determination.

The determination is a legislative instrument for the purposes of section 8 of the *Legislation Act 2003*.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is not required for the 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 *Legislation Act 2003*. A 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 Chapter 3, Part 1 of the *Legislation Act 2003*, the affected entities were consulted in the preparation of the determination.

Summary of Modifications

1. Paragraph 5(a) of the determination modifies the Appropriation Acts such that the Department of Human Services was included in the Social Services Portfolio.
2. Further, paragraph 5(b) of the determination modifies the Appropriation Acts such that the following entities were included in an Industry, Innovation and Science Portfolio:
 - Department of Industry, Innovation and Science;
 - Australian Institute of Marine Science;
 - Australian Nuclear Science and Technology Organisation;
 - Commonwealth Scientific and Industrial Research Organisation;
 - Northern Australia Infrastructure Facility;
 - Geoscience Australia; and
 - IP Australia.
3. Additionally, paragraph 5(c) of the determination modifies the Appropriation Acts such that the following entities were included in a Jobs and Small Business Portfolio:
 - Department of Jobs and Small Business;
 - Comcare;
 - Asbestos Safety and Eradication Agency;
 - Australian Building and Construction Commission;
 - Fair Work Commission;
 - Fair Work Ombudsman and Registered Organisations Commission Entity; and
 - Safe Work Australia.
4. Further, paragraph 5(d) of the determination modifies the Appropriation Acts such that the Australian Security Intelligence Organisation was included in the Home Affairs Portfolio.
5. Further, paragraph 5(e) of the determination modifies the Appropriation Acts such that the following entities were included in the Attorney-General's Portfolio:
 - Office of the Commonwealth Ombudsmen; and
 - Office of the Inspector-General of Intelligence Services.
6. Relevant appropriation items in Schedule 1 to the *Appropriation Act (No. 1) 2018-2019* have effect as if they were increased or decreased by subsection 6(2) in the determination. A positive amount reflects an increase in an appropriation item, and a negative amount reflects a decrease in an appropriation item.
7. Subsection 6(2) in the determination also provides that when there is an increase for an appropriation item for a gaining entity, where the appropriation item only has effect because of this determination, the increase is applied to a nil amount. For example, this situation may arise where an entity requires a new Outcome.
8. The table at subsection 6(2) of the determination affects relevant appropriation items in Schedule 1 to the *Appropriation Act (No. 1) 2018-2019* in the following way, which results in no change to the total amount appropriated by Parliament. While the table in the determination is stated in the thousands (\$'000), the table below sets out the individual transfer amounts in dollars and cents for each appropriation item listed.

Item	Entity	Appropriation item	Amount transferred by the Determination (\$)
1	Attorney-General's Department	Departmental item	-2,204,579.00
2	Department of the Prime Minister and Cabinet	Departmental item	-1,274,000.00
3	Department of Home Affairs	Departmental item	+3,478,579.00