**EXPLANATORY STATEMENT**

*Public Governance, Performance and Accountability Act 2013*

*Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2017‑2018 (No. 3)* (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 adjust amounts appropriated to non-corporate Commonwealth entities, in response to the commencement on 1 July 2018 of the *Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018*.

### The amendment determination modifies the Appropriation Acts to support functions transferred to the Australian Signals Directorate from the Attorney‑General’s Department, to consolidate responsibility for a variety of cyber security-related functions in the Australian Signals Directorate as an independent statutory agency. This included responsibilities for the functions previously performed by CERT Australia (the national computer emergency response team) within the Attorney‑General’s Department.

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

### Commencement

The amendment 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 the determination.

The amendment determination amends the *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2017‑2018*, which 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 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 *Legislation Act 2003.* A determination, including an amendment determination, under section 75 of the PGPA Act is exempt from disallowance under subsection 75(7) of thePGPA 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 amendment determination.

### Summary of Modifications

### Item 1 of the amendment determination modifies the definition of *Appropriation Act*, in section 4 of the Determination, to include all 2017‑2018 Appropriation Acts to date.

### Item 2 of the amendment determination removes the word “and” from subparagraph 5(i)(i).

### Item 3 of the amendment determination adds paragraphs 6(2)(c) and 6(2)(d) to subsection 6(2) of the Determination.

### Paragraph 6(2)(c) has effect as if a departmental item for the Australian Signals Directorate were included in Schedule 1 to the *Appropriation Act (No. 1) 2017‑2018* within the Defence Portfolio. Due to the establishment of the Australian Signals Directorate and the transfer of functions from the Attorney‑General’s Department, this amendment determination has effect as if the Australian Signals Directorate were included in the *Appropriation Act (No. 1) 2017‑2018.*

### Subsection 6(3) of the amendment determination then establishes that this departmental item for the Australian Signals Directorate, which has effect because of this amendment determination, commences as a nil amount.

### Paragraph 6(2)(d) has effect as if the following outcome were included in Schedule 1 to *Appropriation Act (No. 1) 2017‑2018* for the Australian Signals Directorate:

**Outcome 1**

Defend Australia from global threats and advance our national interests through the provision of foreign signals intelligence, cyber security and offensive cyber operations, as directed by Government

### Item 4 of the amendment determination repeals and substitutes item 2 in the table in subsection 6(3) of the Determination. The item affects the relevant appropriation item in Schedule 1 to the *Appropriation Act (No. 1) 2017‑2018* in the following way:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item** | **Entity** | **Appropriation item** | **Amount previously transferred by the Determination ($)** | **Amount transferred by the amendment determination** **($)** | **Amended amount transferred by the Determination ($)** |
| 2 | Attorney-General’s Department  | Departmental item | -35,003,435.00 | -5,517,552.00 | **-40,520,987.00** |

Note: A positive amount reflects an increase in an appropriation item and a negative amount reflects a decrease in an appropriation item.

### Item 5 of the amendment determination adds item 24 to the table in subsection 6(3) of the Determination. The item affects the relevant appropriation item in Schedule 1 to the *Appropriation Act (No. 1) 2017‑2018* in the following way:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item** | **Entity** | **Appropriation item** | **Amount previously transferred by the Determination ($)** | **Amount transferred by the amendment determination** **($)** | **Amended amount transferred by the Determination ($)** |
| 24 | Australian Signals Directorate | Departmental item | 0.00 | +5,517,552.00 | **+5,517,552.00** |

Note: A positive amount reflects an increase in an appropriation item and a negative amount reflects a decrease in an appropriation item.

### Item 6 of the amendment determination adds section 9 to the Determination, which applies to appropriation items in Schedule 2 to the *Appropriation Act (No. 4) 2017‑2018*.

### Paragraph 9(2)(a) has effect as if an other departmental item for the Australian Signals Directorate were included in Schedule 2 to the *Appropriation Act (No. 4) 2017‑2018* within the Defence Portfolio. Due to the establishment of the Australian Signals Directorate and the transfer of functions from the Attorney‑General’s Department, this amendment determination has effect as if the Australian Signals Directorate were included in the *Appropriation Act (No. 4) 2017‑2018.*

### Subsection 9(3) of the amendment determination then establishes that this other departmental item for the Australian Signals Directorate, which has effect because of this amendment determination, commences as a nil amount.

### The table at subsection 9(3) affects relevant appropriation items in Schedule 2 to the *Appropriation Act (No. 4) 2017‑2018* in the following way:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item** | **Entity** | **Appropriation item** | **Amount previously transferred by the Determination ($)** | **Amount transferred by the amendment determination** **($)** | **Amended amount transferred by the Determination ($)** |
| 1 | Attorney‑General’s Department | Other departmental item (Equity Injections) | 0.00 | -2,531,000.00 | **-2,531,000.00** |
| 2 | Australian Signals Directorate | Other departmental item (Equity Injections) | 0.00 | +2,531,000.00 | **+2,531,000.00** |

Note: A positive amount reflects an increase in an appropriation item and a negative amount reflects a decrease in an appropriation item.