**EXPLANATORY STATEMENT**

*Public Governance, Performance and Accountability Act 2013*

*Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2017‑2018 (No. 9)* (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 Machinery of Government changes.

On 29 May 2019, the Governor-General made a new Administrative Arrangements Order (AAO) to replace the AAO made on 4 April 2019. The amendment determination modifies the Appropriation Acts to reflect the following changes as a result of the 29 May 2019 AAO:

* + the transfer of responsibility for industrial relations from the Employment, Skills, Small and Family Business portfolio to the Attorney‑General’s portfolio; and
	+ the transfer of settlement services for refugees and humanitarian migrants from the Social Services portfolio to the Home Affairs portfolio.

On 29 May 2019, the Governor-General made an order to establish the National Indigenous Australians Agency as an Executive Agency. The amendment determination modifies the Appropriation Acts to reflect the transfer of responsibility for indigenous affairs from the Department of the Prime Minister and Cabinet to the National Indigenous Australians Agency.

On 5 December 2019, the Governor-General made a new AAO to replace the AAO made on 29 May 2019. The new AAO commenced on 1 February 2020. The amendment determination modifies the Appropriation Acts to reflect the following changes as a result of the new AAO:

* + the transfer of responsibility for agriculture from the abolished Agriculture portfolio to the renamed Agriculture, Water and the Environment portfolio;
	+ the transfer of responsibility for communications and arts from the abolished Communications and the Arts portfolio to the renamed Infrastructure, Transport, Regional Development and Communications portfolio;
	+ the transfer of responsibility for employment and skills from the abolished Employment, Skills, Small and Family Business portfolio to the renamed Education, Skills and Employment portfolio;
	+ the transfer of responsibility for small business from the abolished Employment, Skills, Small and Family Business portfolio to the renamed Industry, Science, Energy and Resources portfolio; and
	+ the transfer of responsibility for energy from the renamed Agriculture, Water and the Environment portfolio to the renamed Industry, Science, Energy and Resources portfolio.

On 5 December 2019, the Governor-General made an order to establish Services Australia as an Executive Agency. The amendment determination modifies the Appropriation Acts to reflect the transfer of responsibility for the delivery of services and payments to the community from the abolished Services Australia (Department of State) to Services Australia (Executive Agency).

In December 2019, the Government agreed to consolidate all deregulation functions in the Department of the Prime Minister and Cabinet. The amendment determination modifies the Appropriation Acts to reflect the transfer of responsibility for the deregulation agenda from the Department of Employment, Skills, Small and Family Business to the Department of the Prime Minister and Cabinet.

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

**Commencement**

The amendment determination commences on the day after registration.

**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* (the Determination), 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 repeals and substitutes section 5 in its entirety to modify the Appropriation Acts such that references to portfolios and Departments are amended in the following ways:

### Paragraph 5(1)(a) modifies the Appropriation Acts such that references in the Acts to the Immigration and Border Protection Portfolio were references to the Home Affairs Portfolio; and

### Paragraph 5(1)(b) modifies the Appropriation Acts such that references in the Acts to the Department of Immigration and Border Protection were references to the Department of Home Affairs; and

### Paragraph 5(1)(c) modifies the Appropriation Acts such that references in the Acts to the Agriculture and Water Resources Portfolio were references to the Agriculture Portfolio; and

### Paragraph 5(1)(d) modifies the Appropriation Acts such that references in the Acts to the Department of Agriculture and Water Resources were references to the Department of Agriculture; and

### Paragraph 5(1)(e) modifies the Appropriation Acts such that references in the Acts to the Environment and Energy Portfolio were references to the Agriculture, Water and the Environment Portfolio; and

### Paragraph 5(1)(f) modifies the Appropriation Acts such that references in the Acts to the Department of the Environment and Energy were references to the Department of Agriculture, Water and the Environment; and

### Paragraph 5(1)(g) modifies the Appropriation Acts such that references in the Acts to the Industry, Innovation and Science or Jobs and Innovation Portfolios were references to the Industry, Science, Energy and Resources Portfolio; and

### Paragraph 5(1)(h) modifies the Appropriation Acts such that references in the Acts to the Department of Industry, Innovation and Science were references to the Department of Industry, Science, Energy and Resources; and

### Paragraph 5(1)(i) modifies the Appropriation Acts such that references in the Acts to Employment or to Jobs and Small Business Portfolios were references to the Employment, Skills, Small and Family Business Portfolio; and

### Paragraph 5(1)(j) modifies the Appropriation Acts such that references in the Acts to the Department of Employment or to the Department of Jobs and Small Business were references to the Department of Employment, Skills, Small and Family Business; and

### Paragraph 5(1)(k) modifies the Appropriation Acts such that references in the Acts to the Infrastructure and Regional Development Portfolio or to the Infrastructure, Regional Development and Cities Portfolio were references to the Infrastructure, Transport, Regional Development and Communications Portfolio; and

### Paragraph 5(1)(l) modifies the Appropriation Acts such that references in the Acts to the Department of the Infrastructure and Regional Development or to the Department of Infrastructure, Regional Development and Cities Portfolio were references to the Department of Infrastructure, Transport, Regional Development and Communications; and

### Paragraph 5(1)(m) modifies the Appropriation Acts such references in the Acts to the Department of Human Services were references to Services Australia; and

### Paragraph 5(1)(n) modifies the Appropriation Acts such that appropriation items and outcomes for Services Australia, included for the Human Services Portfolio, were instead included for the Social Services Portfolio; and

### Paragraph 5(1)(o) modifies the Appropriation Acts appropriation items and outcomes for the following entities, included for the Attorney-General’s Portfolio, were instead included for the Home Affairs Portfolio:

### Australian Criminal Intelligence Commission;

### Australian Federal Police;

### Australian Institute of Criminology;

### Australian Transaction Reports and Analysis Centre;

### Australian Security Intelligence Organisation; and

### Paragraph 5(1)(p) modifies the Appropriation Acts appropriation items and outcomes for the following entities, included for the Prime Minister and Cabinet Portfolio, were instead included for the Attorney-General’s Portfolio:

### Office of the Commonwealth Ombudsman;

### Office of the Inspector-General of Intelligence and Security; and

### Paragraph 5(1)(q) modifies the Appropriation Acts appropriation items items and outcomes for the Workplace Gender Equality Agency, included for the Education and Training Portfolio, were instead included for the Prime Minister and Cabinet Portfolio; and

### Paragraph 5(1)(r) modifies the Appropriation Acts such that items and outcomes for the Infrastructure and Project Financing Agency, included for the Prime Minister and Cabinet Portfolio, were instead included for the Infrastructure, Transport, Regional Development and Communications Portfolio; and

### Paragraph 5(1)(s) modifies the Appropriation Acts such that corporate entity items and outcomes for the Australian Institute for Aboriginal and Torres Strait Islander Studies, included in the Jobs and Innovation Portfolio, were instead included for the Prime Minister and Cabinet Portfolio.

### Item 2 of the amendment determination has the effect of amending Outcome 2 for the Department of Home Affairs, due to the transfer of settlement services for refugees and humanitarian migrants from the Social Services portfolio to the Home Affairs portfolio.

### Item 3 of the amendment determination adds paragraphs 6(2)(i) to 6(2)(r) to the Determination.

### Paragraphs 6(2)(i) and 6(2)(j) have the effect as if a departmental item and an administered item for the National Indigenous Australians Agency were included in Schedule 1 to *Appropriation Act (No. 1) 2017-2018* within the Prime Minister and Cabinet Portfolio. The text for Outcome 1 for the National Indigenous Australians Agency is the same as the text of Outcome 2 for the Department of the Prime Minister and Cabinet, and reflects the transfer of the functions and resources to the Executive Agency.

### Paragraph 6(2)(k) refers to the modification to Outcome 2 of the Department of Agriculture, Water and the Environment which reflects a renumbering of Outcome 3 of the former Department of the Environment and Energy to become Outcome 2 of the Department of Agriculture, Water and the Environment.

### The modification to Outcome 3 and Outcome 4 reflect the transfer of agriculture functions under Outcome 1 and Outcome 2 from the abolished Department of Agriculture to the Department of Agriculture, Water and the Environment. The text of Outcome 3 and Outcome 4 are the same as the text of Outcome 1 and Outcome 2 respectively, of the abolished Department of Agriculture.

### Paragraph 6(2)(l) has effect as if an administered item for the Department of Agriculture, Water and the Environment were included in Schedule 1 to *Appropriation Act (No. 1) 2017-2018*, for a new Outcome 5, due to the transfer of agriculture functions from the abolished Department of Agriculture. The text of Outcome 5 is the same as the text of Outcome 3 of the abolished Department of Agriculture.

### Paragraphs 6(2)(m) and 6(2)(n) have effect as if a departmental item and an administered item for the Services Australia established as an Executive Agency, were included in Schedule 1 to *Appropriation Act (No. 1) 2017-2018* within the Social Services Portfolio. The text for Outcome 1 for Services Australia is similar to the text of Outcome 1 of the abolished Services Australia, the Department of State, but has been slightly amended to reflect the functions listed in the order to establish Services Australia, the Executive Agency. This reflects the transfer of functions and resources to the newly established Executive Agency.

### Paragraph 6(2)(o) and 6(2)(p) have the effect as if an administered item for the Department of Infrastructure, Transport, Regional Development and Communications were included in Schedule 1 to *Appropriation Act (No. 1) 2017-2018*, for a new Outcome 5 and Outcome 6 , due to the transfer of functions from the abolished Department of Communications and the Arts.

### Paragraph 6(2)(q) modifies the Appropriation Acts to have the effect as if an administered item for the Department of Industry, Science, Energy and Resources were included in Schedule 1 to *Appropriation Act (No. 1) 2017-2018*, for a new Outcome 2 due to the transfer of functions from the abolished Department of Environment and Energy.

### Paragraph 6(2)(r) modifies the Appropriation Acts to have the effect as if an administered item for the Department of Industry, Science, Energy and Resources were included in Schedule 1 to *Appropriation Act (No. 1) 2017-2018*, for a new Outcome 4 due to the transfer of functions from the abolished Department of Employment and Small and Family Business.

### Item 4 repeals and substitutes items 16 and 17 to the table at Subsection 6(3) of the Determination. The items affect the relevant appropriation items in Schedule 1 to *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 amounts transferred by the Determination ($) |
| 16 | Department of Agriculture | Administered item, Outcome 3 | -3,000,000.00 | -81,437,878.01 | -84,437,878.01 |
| 17 | Department of Employment, Skills, Small and Family Business | Administered item, Outcome 2 | +9,222,000.00 | -4,932,000.00 | +4,290,000.00 |

### Note: a positive amounts reflects an increase in an appropriations item and a negative amounts reflects a decrease in an appropriation item.

### Item 5 adds items 29 to 46 to the table at subsection 6(3) of the Determination. The items affect the relevant appropriation items in Schedule 1 to *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 amounts transferred by the Determination ($) |
| 29 | Department of the Prime Minister and Cabinet | Administered item, Outcome 2 | 0.00 | -26,099.43 | -26,099.43 |
| 30 | National Indigenous Australians Agency | Administered item, Outcome 1 | 0.00 | +26,099.43 | +26,099.43 |
| 31 | Department of Social Services | Administered item, Outcome 2 | 0.00 | -29,021,434.62 | -29,021,434.62 |
| 32 | Department of Home Affairs | Administered item, Outcome 2 | 0.00 | +29,021,434.62 | +29,021,434.62 |
| 33 | Department of Agriculture | Administered item, Outcome 1 | 0.00 | -7,275,231.94 | -7,275,231.94 |
| 34 | Department of Agriculture, Water and the Environment | Administered item, Outcome 3 | 0.00 | +7,275,231.94 | +7,275,231.94 |
| 35 | Department of Agriculture | Administered item, Outcome 2 | 0.00 | -1,183,643.78 | -1,183,643.78 |
| 36 | Department of Agriculture, Water and the Environment | Administered item, Outcome 4 | 0.00 | +1,183,643.78 | +1,183,643.78 |
| 37 | Department of Agriculture, Water and the Environment | Administered item, Outcome 5 | 0.00 | +81,437,878.01 | +81,437,878.01 |
| 38 | Services Australia (Department of State) | Administered item, Outcome 1 | 0.00 | -1,497,623.52 | -1,497,623.52 |
| 39 | Services Australia (Executive Agency) | Administered item, Outcome 1 | 0.00 | +1,497,623.52 | +1,497,623.52 |
| 40 | Department of Communications and the Arts | Administered item, Outcome 1 | 0.00 | -25,648,596.21 | -25,648,596.21 |
| 41 | Department of Infrastructure, Transport, Regional Development and Communications | Administered item, Outcome 5 | 0.00 | +25,648,596.21 | +25,648,596.21 |
| 42 | Department of Communications and the Arts | Administered item, Outcome 2 | 0.00 | -2,582,795.16 | -2,582,795.16 |
| 43 | Department of Infrastructure, Transport, Regional Development and Communications | Administered item, Outcome 6 | 0.00 | +2,582,795.16 | +2,582,795.16 |
| 44 | Department of Industry, Science, Energy and Resources | Administered item, Outcome 4 | 0.00 | +4,932,000.00 | +4,932,000.00 |
| 45 | Department of Agriculture, Water and the Environment | Administered item, Outcome 2 (Of the former Department of the Environment and Energy) | 0.00 | -409,140.28 | -409,140.28 |
| 46 | Department of Industry, Science, Energy and Resources | Administered item, Outcome 2 | 0.00 | +409,140.28 | +409,140.28 |

### Note: a positive amounts reflects an increase in an appropriations item and a negative amounts reflects a decrease in an appropriation item.

### Item 6 of the amendment determination modifies Schedule 2 to *Appropriation Act (No. 2) 2017-2018* as if to include an item for administered assets and liabilities for the Department of Agriculture, Water and the Environment.

### Item 7 of the amendment determination repeals and substitutes the following table item.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Item | Entity | Appropriation Item | Amount previously transferred by the Determination ($) | Amount transferred by the amendment determination ($) | Amended amounts transferred by the Determination ($) |
| 6 | Department of Agriculture | Administered Assets and Liabilities item | -50,000,000.00 | -310,490,750.12 | **-360,490,750.12** |

### Note: a positive amounts reflects an increase in an appropriations item and a negative amounts reflects a decrease in an appropriation item.

### Item 8 of the amendment determination adds the following table item.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Item | Entity | Appropriation Item | Amount previously transferred by the Determination ($) | Amount transferred by the amendment determination ($) | Amended amounts transferred by the Determination ($) |
| 7 | Department of Agriculture, Water and the Environment | Administered Assets and Liabilities item | 0.00 | +310,490,750.12 | **+310,490,750.12** |

### Note: a positive amounts reflects an increase in an appropriations item and a negative amounts reflects a decrease in an appropriation item.

### Item 9 repeals and substitutes section 8 of the Determination. Section 8 modifies Schedule 1 to *Appropriation Act (No. 3) 2017-2018.*

### Paragraph 8(2)(a)amends Schedule 1 to amend Outcome 2 for the Department of Home Affairs to reflect the transfer of functions relating to services for refugees and humanitarian migrants from the Social Services portfolio to the Home Affairs portfolio.

### Paragraph 8(2)(b) refers to the modification to Outcome 2 of the Department of Agriculture, Water and the Environment which reflects a renumbering of Outcome 3 of the former Department of the Environment and Energy to become Outcome 2 of the Department of Agriculture, Water and the Environment.

### The modification to Outcome 3 and Outcome 4 reflect the transfer of agriculture functions under Outcome 1 and Outcome 2 from the abolished Department of Agriculture to the Department of Agriculture, Water and the Environment. The text of Outcome 3 and Outcome 4 are the same as the text of Outcome 1 and Outcome 2 respectively, of the abolished Department of Agriculture.

### Paragraph 8(2)(c) has effect as if an administered item for the Department of Agriculture, Water and the Environment were included in Schedule 1 to *Appropriation Act (No. 3) 2017-2018*, for a new Outcome 5, due to the transfer of agriculture functions from the abolished Department of Agriculture. The text of Outcome 5 is the same as the text of Outcome 3 of the abolished Department of Agriculture.

### Paragraph 8(2)(d) has effect as if an administered item for the Attorney-General’s Department were included in Schedule 1 to *Appropriation Act (No. 3) 2017-2018* for a new Outcome 2, due to the transfer of responsibility for industrial relations from the Employment, Skills, Small and Family Business portfolio to the Attorney‑General’s portfolio.

### Paragraph 8(2)(e) and 8(2)(f) have the effect as if an administered item for the Department of Infrastructure, Transport, Regional Development and Communications were included in Schedule 1 to *Appropriation Act (No. 3) 2017-2018*, for a new Outcome 5 and Outcome 6 , due to the transfer of functions from the abolished Department of Communications and the Arts.

### The table at Subsection 8(3) of the Determination affects the relevant appropriation items in Schedule 1 to *Appropriation Act (No. 3) 2017-2018* in the following way.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Item | Entity | Appropriation Item | Amount previously transferred by the Determination ($) | Amount transferred by the amendment determination ($) | Amended amounts transferred by the Determination ($) |
| 1 | Department of Home Affairs | Administered item, Outcome 1 | +2,507,000.00 | 0.00 | **+2,507,000.00** |
| 2 | Attorney-General’s Department | Administered item, Outcome 1 | -2,507,000.00 | 0.00 | **-2,507,000.00** |
| 3 | Department of Social Services | Administered item, Outcome 2 | 0.00 | -11,827,000.00 | **-11,827,000.00** |
| 4 | Department of Home Affairs | Administered item, Outcome 2 | 0.00 | +11,827,000.00 | **+11,827,000.00** |
| 5 | Department of Agriculture | Administered item, Outcome 1 | 0.00 | -1,486,000.78 | **-1,486,000.78** |
| 6 | Department of Agriculture, Water and the Environment | Administered item, Outcome 3 | 0.00 | +1,486,000.78 | **+1,486,000.78** |
| 7 | Department of Agriculture | Administered item, Outcome 2 | 0.00 | -653,289.94 | **-653,289.94** |
| 8 | Department of Agriculture, Water and the Environment | Administered item, Outcome 4 | 0.00 | +653,289.94 | **+653,289.94** |
| 9 | Department of Agriculture | Administered item, Outcome 3 | 0.00 | -38,559,000.00 | **-38,559,000.00** |
| 10 | Department of Agriculture, Water and the Environment | Administered item, Outcome 5 | 0.00 | +38,559,000.00 | **+38,559,000.00** |
| 11 | Department of Employment, Skills, Small and Family Business | Administered item, Outcome 2 | 0.00 | -680,429.69 | **-680,429.69** |
| 12 | Attorney-General's Department | Administered item, Outcome 2 | 0.00 | +680,429.69 | **+680,429.69** |
| 13 | Department of Communications and the Arts | Administered item, Outcome 1 | 0.00 | -2,025,000.00 | **-2,025,000.00** |
| 14 | Department of Infrastructure, Transport, Regional Development and Communications | Administered item, Outcome 5 | 0.00 | 2,025,000.00 | **2,025,000.00** |
| 15 | Department of Communications and the Arts | Administered item, Outcome 2 | 0.00 | -16,000.00 | **-16,000.00** |
| 16 | Department of Infrastructure, Transport, Regional Development and Communications | Administered item, Outcome 6 | 0.00 | +16,000.00 | **+16,000.00** |

### Note: a positive amounts reflects an increase in an appropriations item and a negative amounts reflects a decrease in an appropriation item.

### Item 10 adds section 10 to the Determination. Section 10 modifies *Appropriation Act (No. 5) 2017-2018.*

### Paragraph 10(2)(a) has the effect to modify Outcome 4 for the Department of Agriculture, Water and the Environment as shown in the amendment determination to reflect the transfer of agriculture functions under Outcome 2 from the abolished Department of Agriculture to the Department of Agriculture, Water and the Environment. The text of Outcome 4 is the same as the text of Outcome 2 respectively of the abolished Department of Agriculture.

### The table at Subsection 10(3) of the Determination affects the relevant appropriation items in Schedule 1 to *Appropriation Act (No. 5) 2017-2018* in the following way.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Item | Entity | Appropriation Item | Amount previously transferred by the Determination ($) | Amount transferred by the amendment determination ($) | Amended amounts transferred by the Determination ($) |
| 1 | Department of Agriculture | Administered item, Outcome 2 | 0.00 | -50,000.00 | **-50,000.00** |
| 2 | Department of Agriculture, Water and the Environment | Administered item, Outcome 4 | 0.00 | +50,000.00 | **+50,000.00** |

### Note: a positive amounts reflects an increase in an appropriations item and a negative amounts reflects a decrease in an appropriation item.