

## **EXPLANATORY STATEMENT**

*Public Governance, Performance and Accountability Act 2013*

*Public Governance, Performance and Accountability (Section 75 Transfers)*

*Amendment Determination 2020-2021 (No. 8)*

### **Purpose of the determination**

Section 75 of the *Public Governance, Performance and Accountability Act 2013* (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. The power in section 75 recognises that the Executive Government will from time to time choose to reorganise the administration and delivery of its functions with commensurate transfers of resources, including appropriations, between entities.

Subsection 75(7) of the PGPA Act provides that a determination made under subsection (2) is a legislative instrument, but that section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination. The Explanatory Memorandum for the Public Governance, Performance and Accountability Bill 2013 provides (at paragraph 370) that determinations made under section 75 are exempt from disallowance as the changes effected by determinations made under section 75 are in the nature of administrative changes only, relating to the Executive Government's decisions about the allocation of functions to particular entities.

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, subdelegated this power to certain officials within the Department of Finance.

As a result of amendments to the Administrative Arrangements Order made on 28 June 2021, the all-hazards relief, recovery and mitigation policy and financial assistance including payments to the States and Territories and the Australian Government Disaster Recovery Payment have transferred from the Department of Home Affairs to the National Recovery and Resilience Agency.

The *Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2020-2021 (No. 8)* (the amendment determination) amends the *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2020-2021* (the determination) to reflect this transfer. The amendment determination does not change the total amount appropriated by the Parliament.

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

### **Commencement**

The amendment determination commences on the day after registration.

### **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 made under subsection 75(2) 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 section 17 of the *Legislation Act 2003*, the affected entities were consulted in the preparation of the amendment determination.

## Summary of amendments

1. Item 1 of Schedule 1 to the amendment determination adds new section 10 at the end of the determination. Section 10 modifies the *Appropriation Act (No. 4) 2020-2021* as if an administered assets and liabilities item for the National Recovery and Resilience Agency were included in Schedule 1 to the Act. Table items 1 and 2 in subsection 10(3) show increases and decreases in appropriation items which affect the Department of Home Affairs and the National Recovery and Resilience Agency as follows:

Item	Entity	Appropriation item	Increase (+)/ decrease (-) (\$)
1	Department of Home Affairs	Administered assets and liabilities item	-5,143,609.00
2	National Recovery and Resilience Agency	Administered assets and liabilities item	+5,143,609.00

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