**EXPLANATORY STATEMENT**

*Public Governance, Performance and Accountability Act 2013*

*Public Governance, Performance and Accountability*

*(Section 75 Transfers) Determination 2022‑2023*

### 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.

Following the 2022 Federal Election, the Governor-General, acting on the advice of the Federal Executive Council, made an Administrative Arrangements Order (AAO) to commence on 1 July 2022. The new AAO available at https://www.pmc.gov.au/resource-centre/government/administrative-arrangements-order resulted in a number of machinery of government changes.

To support the implementation of these changes, the determination modifies the *Supply Act (No. 1) 2022-2023* and the *Supply Act (No. 2) 2022‑2023* (the 2022-23 Supply Acts) to:

* reflect changes in the names of portfolios and departments;
* add two new portfolios and departments;
* reflect movements of Commonwealth entities between portfolios;
* reflect changes to outcome statements for departments;
* transfer appropriations for corporate Commonwealth entities which are moving portfolios; and
* increase or decrease appropriation items for affected departments.

The determination does not change the total amount appropriated by the Parliament.

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

### Commencement

The determination commences on 1 July 2022.

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

### Summary of modifications to the 2022-23 Supply Acts

1. Subsection 5(1) of the determination has effect of amending references to portfolios and departments in the 2022-23 Supply Acts as follows:

|  |  |  |
| --- | --- | --- |
|  | **Before 1 July 2022** | **After 1 July 2022** |
| Portfolio | Agriculture, Water and the Environment | Agriculture, Fisheries and Forestry |
| Department | Department of Agriculture, Water and the Environment | Department of Agriculture, Fisheries and Forestry |
| Portfolio | Education, Skills and Employment | Education |
| Department | Department of Education, Skills and Employment | Department of Education |
| Portfolio  | Health | Health and Aged Care |
| Department | Department of Health | Department of Health and Aged Care |
| Portfolio | Industry, Science, Energy and Resources | Industry, Science and Resources |
| Department | Department of Industry, Science, Energy and Resources | Department of Industry, Science and Resources |
| Portfolio  | Infrastructure, Transport, Regional Development and Communications | Infrastructure, Transport, Regional Development, Communications and the Arts |
| Department | Department of Infrastructure, Transport, Regional Development and Communications | Department of Infrastructure, Transport, Regional Development, Communications and the Arts |

1. Subsection 5(2) of the determination has effect of moving appropriation items and outcomes for the following non-corporate and corporate Commonwealth entities between portfolios in the 2022-23 Supply Acts:

|  |  |  |
| --- | --- | --- |
| **Commonwealth entity** | **Transferring portfolio** | **Receiving portfolio** |
| Bureau of Meteorology | Agriculture, Fisheries and Forestry | Climate Change, Energy, the Environment and Water |
| Director of National Parks | Agriculture, Fisheries and Forestry | Climate Change, Energy, the Environment and Water |
| Great Barrier Reef Marine Park Authority | Agriculture, Fisheries and Forestry | Climate Change, Energy, the Environment and Water |
| Murray‑Darling Basin Authority | Agriculture, Fisheries and Forestry | Climate Change, Energy, the Environment and Water |
| Sydney Harbour Federation Trust | Agriculture, Fisheries and Forestry | Climate Change, Energy, the Environment and Water |
| Asbestos Safety and Eradication Agency | Attorney‑General’s | Employment and Workplace Relations |
| Australian Building and Construction Commission | Attorney‑General’s | Employment and Workplace Relations |
| Fair Work Commission | Attorney‑General’s | Employment and Workplace Relations |
| Fair Work Ombudsman and Registered Organisations Commission Entity | Attorney‑General’s | Employment and Workplace Relations |
| Safe Work Australia | Attorney‑General’s | Employment and Workplace Relations |
| Comcare | Attorney‑General’s | Employment and Workplace Relations |
| National Archives of Australia | Attorney‑General’s | Infrastructure, Transport, Regional Development, Communications and the Arts |
| Australian Skills Quality Authority | Education | Employment and Workplace Relations |
| Australian Criminal Intelligence Commission | Home Affairs | Attorney-General’s |
| Australian Federal Police | Home Affairs | Attorney-General’s |
| Australian Institute of Criminology | Home Affairs | Attorney-General’s |
| Australian Transaction Reports and Analysis Centre | Home Affairs | Attorney-General’s |
| Office of the Special Investigator | Home Affairs | Attorney-General’s |
| Clean Energy Regulator | Industry, Science and Resources | Climate Change, Energy, the Environment and Water |
| Climate Change Authority | Industry, Science and Resources | Climate Change, Energy, the Environment and Water |
| Australian Institute of Marine Science | Industry, Science and Resources | Climate Change, Energy, the Environment and Water |
| Australian Renewable Energy Agency | Industry, Science and Resources | Climate Change, Energy, the Environment and Water |
| Clean Energy Finance Corporation | Industry, Science and Resources | Climate Change, Energy, the Environment and Water |
| North Queensland Water Infrastructure Authority | Infrastructure, Transport, Regional Development, Communications and the Arts | Climate Change, Energy, the Environment and Water |
| Digital Transformation Agency | Prime Minister and Cabinet | Finance |
| National Recovery and Resilience Agency | Prime Minister and Cabinet | Home Affairs |
| Old Parliament House | Prime Minister and Cabinet | Infrastructure, Transport, Regional Development, Communications and the Arts |

1. Section 6 of the determination applies to the *Supply Act (No. 1) 2022‑2023* and has effect as if Schedule 1 to the Act included a departmental item for the Department of Climate Change, Energy, the Environment and Water and the Department of Employment and Workplace Relations, and the outcomes for those Departments as set out in paragraphs 6(2)(b) and (3)(b), respectively. Subsection 6(4) of the determination has effect as if appropriation items in Schedule 1 to the Act were increased or decreased in accordance with the table included in the subsection. If an appropriation item exists only because of this determination, the increase is from a nil amount.
2. Section 7 of the determination applies to the *Supply Act (No. 2) 2022‑2023* and has effect of amending references to the following Ministers in columns 3 and 4 of the table in Schedule 1 to the Act:

|  |  |
| --- | --- |
| **Previous title** | **Current title** |
| Minister for Education and Youth | Minister for Education |
| Minister for Infrastructure, Transport and Regional Development | Minister for Infrastructure, Transport, Regional Development and Local Government |

1. Subsections 7(3) and (4) have effect as if Schedule 2 to the Act included an other departmental item for the Department of Climate Change, Energy, the Environment and Water and the Department of Employment and Workplace Relations, and an administered assets and liabilities item for the Department of Climate Change, Energy, the Environment and Water. Subsection 7(5) of the determination has effect as if appropriation items in Schedule 2 to the Act were increased or decreased in accordance with the table included in the subsection. If an appropriation item exists only because of this determination, the increase is from a nil amount.