

EXPLANATORY STATEMENT

Public Governance, Performance and Accountability Act 2013

*Public Governance, Performance and Accountability
(Section 75 Transfers) Amendment Determination 2022-2023 (No. 1)*

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.

On 1 July 2022, the Minister for Emergency Management, Senator the Hon Murray Watt, announced the Government's intention to recommend to the Governor-General the creation of a single emergency management, resilience and recovery agency, which will subsume the functions of the National Recovery and Resilience Agency and Emergency Management Australia (part of the Department of Home Affairs).

On 18 August 2022, the Governor-General made the *Order to Establish the National Emergency Management Agency as an Executive Agency* to commence on 1 September 2022. The National Emergency Management Agency was also listed in Schedule 1 to the *Public Governance, Performance and Accountability Rule 2014*, making it a non-corporate Commonwealth entity for the purposes of the PGPA Act.

The *Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2022-2023 (No. 1)* (the amendment determination) amends the *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2022-2023* (the determination) to reflect the transfer of the recovery and resilience functions from the National Recovery and Resilience Agency and the situational awareness, emergency preparedness, crisis management and response functions from Emergency Management Australia to the National Emergency Management Agency. 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 immediately after this instrument is registered.

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 Department of Home Affairs and the National Recovery and Resilience Agency were consulted.

Summary of amendments

1. Item 1 of Schedule 1 to the amendment determination inserts subsection 6(3A) in the determination which has effect as if Schedule 1 to the *Supply Act (No. 1) 2022-2023* included a departmental item for the National Emergency Management Australia and the outcome for that Agency as set out in paragraph 6(3A)(b).
2. Item 2 of Schedule 1 to the amendment determination updates cumulative effect of the decrease in appropriation items for the Department of Home Affairs (following transfer of appropriation items to the National Emergency Management Australia) as set out in items 8 and 24 of the table in subsection 6(4) of the determination.

Subsection 6(4) of the determination has effect as if appropriation items in Schedule 1 to the *Supply Act (No. 1) 2022-2023* were increased or decreased in accordance with the table included in the subsection. If an appropriation item exists only because of the determination, the increase is from a nil amount.

Item	Entity	Appropriation item	Previous increase/ decrease by the determination (\$)	Current increase/ decrease by the amendment determination (\$)	Total increase/ decrease by the determination (\$)
8	Department of Home Affairs	Departmental item	-5,656,000.00	-4,326,772.00	-9,982,772.00
24	Department of Home Affairs	Administered item, Outcome 1	-8,937,000.00	-5,443,897.00	-14,380,897.00

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

3. Item 3 of Schedule 1 to the amendment determination adds items 44 to 47 to the table in subsection 6(4) of the determination, which show decreases in appropriation items for the National Recovery and Resilience Agency and increases in appropriation items for the National Emergency Management Australia (following transfer of appropriation items from the former agency to the latter agency).

Item	Entity	Appropriation item	Previous increase/ decrease by the determination (\$)	Current increase/ decrease by the amendment determination (\$)	Total increase/ decrease by the determination (\$)
44	National Recovery and Resilience Agency	Departmental item	0.00	-52,005,000.00	-52,005,000.00

45	National Emergency Management Agency	Departmental item	0.00	+56,331,772.00	+56,331,772.00
46	National Recovery and Resilience Agency	Administered item, Outcome 1	0.00	-110,000,000.00	-110,000,000.00
47	National Emergency Management Agency	Administered item, Outcome 1	0.00	+115,443,897.00	+115,443,897.00

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

- Item 4 of Schedule 1 to the amendment determination inserts subsection 7(4A) in the determination which has effect as if Schedule 2 to the *Supply Act (No. 2) 2022-2023* included an other departmental item for the National Emergency Management Australia.
- Item 5 of Schedule 1 to the amendment determination updates cumulative effect of the decrease in appropriation item for the Department of Home Affairs (following transfer of appropriation items to the National Emergency Management Australia) as set out in item 6 of the table in subsection 7(5) of the determination.

Subsection 7(5) of the determination has effect as if appropriation items in Schedule 2 to the *Supply Act (No. 2) 2022-2023* were increased or decreased in accordance with the table included in the subsection. If an appropriation item exists only because of the determination, the increase is from a nil amount.

Item	Entity	Appropriation item	Previous increase/decrease by the determination (\$)	Current increase/decrease by the amendment determination (\$)	Total increase/decrease by the determination (\$)
8	Department of Home Affairs	Other departmental item (Equity Injections)	-2,190,000.00	-1,035,333.00	-3,225,333.00

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 Schedule 1 to the amendment determination adds item 17 to the table in subsection 7(5) of the determination, which shows a corresponding increase in appropriation item for the National Emergency Management Australia.

Item	Entity	Appropriation item	Previous increase/decrease by the determination (\$)	Current increase/decrease by the amendment determination (\$)	Total increase/decrease by the determination (\$)
17	National Emergency Management Agency	Other departmental item (Equity Injections)	0.00	+1,035,333.00	+1,035,333.00

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