

EXPLANATORY STATEMENT

Public Governance, Performance and Accountability Act 2013

*Public Governance, Performance and Accountability
(Section 75 Transfers) Amendment Determination 2021-2022 (No. 7)*

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.

The *Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2021-2022 (No. 7)* (the amendment determination) amends the *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2021-2022* (the principal determination) to support the implementation of these changes. The principal determination modifies the 2021-22 Appropriation Acts to, among other things, increase or decrease appropriation items for affected entities due to transfer of functions between them.

The 2021-22 Appropriation Acts include:

- the *Appropriation Act (No. 1) 2021-2022*;
- the *Appropriation Act (No. 2) 2021-2022*;
- the *Appropriation (Coronavirus Response) Act (No. 1) 2021-2022*;
- the *Appropriation (Coronavirus Response) Act (No. 2) 2021-2022*;
- the *Appropriation Act (No. 3) 2021-2022*; and
- the *Appropriation Act (No. 4) 2021-2022*.

In addition, the amendment determination modifies the 2021-22 Appropriation Acts to reflect changes in the names of portfolios and departments; add new portfolios and entities; and reflect movements of Commonwealth entities between portfolios as a result of machinery of government changes.

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 it is registered on the Federal Register of Legislation.

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 amends the definition of ***Appropriation Act*** in section 4 of the principal determination by adding the following Acts:
 - the *Appropriation Act (No. 3) 2021-2022*; and
 - the *Appropriation Act (No. 4) 2021-2022*.
2. Item 2 of Schedule 1 to the amendment determination adds new section 4A to the principal determination which modifies all 2021-22 Appropriation Acts listed in section 4. Subsection 4A(1) has the effect of amending references to portfolios and departments in the Acts as follows:

	Before amendments	After amendments
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,	Department of Infrastructure, Transport,

	Regional Development and Communications	Regional Development, Communications and the Arts
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Subsection 4A(2) has effect of moving appropriation items and outcomes for the following non-corporate and corporate Commonwealth entities between portfolios in the 2021-22 Appropriation 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

3. Item 3 of Schedule 1 to the amendment determination adds new subsections (1B), (1C) and (1D) to section 5 of the principal determination, which modifies the *Appropriation Act (No. 1) 2021-2022*. New subsections 5(1B), (1C) and (1D) have effect as if Schedule 1 to the Act included a departmental item for the Department of Climate Change, Energy, the Environment and Water; the Department of Employment and Workplace Relations; and the National Emergency Management Agency. Item 3 also includes outcomes for these entities as set out in paragraphs 5(1B)(b), (1C)(b) and (1D)(b) respectively.
4. Item 4 of Schedule 1 to the amendment determination updates cumulative effect of the decrease in appropriation items for transferring entities and increase in appropriation items for receiving entities as set out in items 6, 12 and 17 of the table in subsection 5(2) of the principal determination.

Subsection 5(2) of the principal determination has effect as if appropriation items in Schedule 1 to the *Appropriation Act (No. 1) 2021-2022* were increased or decreased in accordance with the table included in the subsection. If an appropriation item exists only because of the principal determination, the increase is from a nil amount.

Item	Entity	Appropriation item	Previous increase/ decrease by the principal determination (\$)	Current increase/ decrease by the amendment determination (\$)	Total increase/ decrease by the principal determination (\$)
6	Department of Finance	Departmental item	577,260.74	2,595,000.00	3,172,260.74
12	Department of Infrastructure, Transport, Regional Development, Communications and the Arts	Departmental item	8,856,000.00	-1,288,954.28	7,567,045.72
17	Department of Education	Departmental item	-3,906,198.00	-168,632,125.76	-172,538,323.76

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

5. Item 5 of Schedule 1 to the amendment determination adds items 22 to 38 to the table in subsection 5(2) of the principal determination.
6. Item 6 of Schedule 1 to the amendment determination replaces references to the Department of Health with references to the Department of Health and Aged Care in the table in subsection 5(2) of the principal determination.
7. Item 7 of Schedule 1 to the amendment determination replaces references to the Department of Industry, Science, Energy and Resources with references to the Department of Industry, Science and Resources in the table in subsection 5(2) of the principal determination.
8. Item 8 of Schedule 1 to the amendment determination replaces references to the Department of Infrastructure, Transport, Regional Development and Communications with references to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts in the table in subsection 5(2) of the principal determination.
9. Item 9 of Schedule 1 to the amendment determination replaces references to the Department of Agriculture, Water and the Environment with references to the Department of Agriculture, Fisheries and Forestry in the table in subsection 5(2) of the principal determination.
10. Item 10 of Schedule 1 to the amendment determination adds new section 5A to the principal determination, which modifies the *Appropriation Act (No. 2) 2021-2022*. Subsection 5A(2) has effect of amending references to the following Ministers in columns 3 and 4 of the table in Schedule 1 to the Act:

Before amendments	After amendments
Minister for Education and Youth	Minister for Education
Minister for Infrastructure, Transport and Regional Development	Minister for Infrastructure, Transport, Regional Development and Local Government

Subsection 5A(3) has effect as if Schedule 2 to the Act included an other departmental item (equity injections) for the Department of Employment and Workplace Relations.

Subsection 5A(4) 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 the principal determination, the increase is from a nil amount.

11. Item 11 of Schedule 1 to the amendment determination repeals subsection 6(2) of the principal determination, which had effect as if Schedule 1 to the *Appropriation (Coronavirus Response) Act (No. 1) 2021-2022* included a departmental item for the National Emergency Management Australia and the outcome for that Agency. Retaining this subsection would cause duplication with the effect of new subsection 5(1D), which applies to all 2021-22 Appropriation Acts.

12. Item 12 of Schedule 1 to the amendment determination adds new sections 7 and 8 to the principal determination. New section 7 modifies the *Appropriation Act (No. 3) 2021-2022* and has effect as if appropriation items in Schedule 1 to the Act were increased or decreased in accordance with the table included in subsection 7(2). If an appropriation item exists only because of the principal determination, the increase is from a nil amount.

New section 8 modifies the *Appropriation Act (No. 4) 2021-2022* and has effect as if Schedule 2 to the Act included an administered assets and liabilities item for the Department of Climate Change, Energy, the Environment and Water. Subsection 8(2) 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 the principal determination, the increase is from a nil amount.