

EXPLANATORY STATEMENT

Public Governance, Performance and Accountability Act 2013

*Public Governance, Performance and Accountability
(Section 75 Transfers) Amendment Determination 2021-2022 (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.

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 (MoG) changes.

The *Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2021-2022 (No. 8)* (the amendment determination) amends the *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2021-2022* (the principal determination) to reflect transfer of appropriations between MoG affected entities, as well as changes to outcome statement structures of transferring entities. The amendment determination does not change the total amount appropriated by the Parliament.

The principal determination modifies the 2021-22 Appropriation Acts to, among other things, increase or decrease appropriation items for affected entities to support the implementation of the new AAO.

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*.

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 has effect of amending outcome statement structures for transferring entities, i.e. those entities which have transferred some of their functions to receiving entities resulting in the loss or revision of some of the outcome statements for transferring entities.

The transferring entities in Item 1 include:

- the Department of Agriculture, Fisheries and Forestry;
- the Attorney-General's Department;
- the Department of Education;
- the Department of Industry, Science and Resources;
- the Department of Infrastructure, Regional Development, Communications and the Arts; and
- the Department of Home Affairs.

2. Item 2 of Schedule 1 to the amendment determination updates the cumulative effect of the decrease in appropriation items for transferring entities and increase in appropriation items for receiving entities as set out in replacement items 11, 12, 22 and 23 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 (\$)
11	Department of Industry, Science and Resources	Departmental item	-8,856,000.00	-24,805,918.64	-33,661,918.64

12	Department of Infrastructure, Transport, Regional Development, Communications and the Arts	Departmental item	+7,567,045.72	-309,319.19	+7,257,726.53
22	Attorney-General's Department	Departmental item	-7,321,924.66	+7,960,101.00	+638,176.34
23	Department of Climate Change, Energy, the Environment and Water	Departmental item	+928,878.94	+25,115,237.83	+26,044,116.77

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 39, 40 and 41 at the end of the table in subsection 5(2) of the principal determination.

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 (\$)
39	National Recovery and Resilience Agency	Departmental item	0.00	-17,976,184.00	-17,976,184.00
40	National Emergency Management Agency	Departmental item	0.00	+17,976,184.00	+17,976,184.00
41	Department of Home Affairs	Departmental item	0.00	-7,960,101.00	-7,960,101.00

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

4. Item 4 of Schedule 1 to the amendment determination adds new subsection 5A(3A) to the *Appropriation Act (No. 2) 2021-2022* which has effect as if Schedule 2 to the Act included an administered item for the National Emergency Management Agency. Administered item means an amount set out in Schedule 2 opposite an outcome for a non-corporate entity under the heading 'New Administered Outcomes'.

Item 4 also adds new subsection 5A(3B) to the Act which has effect as if Schedule 2 to the Act included an other departmental item for the Department of Climate Change, Energy, the Environment and Water. Other departmental item means an amount set out in Schedule 2 in relation to a non-corporate entity opposite the heading 'Equity Injections'.

5. Item 5 of Schedule 1 to the amendment determination adds items 3 to 6 at the end of the table in subsection 5A(4) of the principal determination, which has effect as if appropriation items in Schedule 2 to the *Appropriation Act (No. 2) 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 (\$)
3	National Recovery and Resilience Agency	Administered item, Outcome 1	0.00	-4,550,320.08	-4,550,320.08
4	National Emergency Management Agency	Administered item, Outcome 1	0.00	+4,550,320.08	+4,550,320.08
5	Department of Industry, Science and Resources	Other departmental item (Equity Injections)	0.00	-1,010,000.00	-1,010,000.00
6	Department of Climate Change, Energy, the Environment and Water	Other departmental item (Equity Injections)	0.00	+1,010,000.00	+1,010,000.00

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

6. Item 6 of Schedule 1 to the amendment determination updates the cumulative effect of the decrease in appropriation items for transferring entities and increase in appropriation items for receiving entities as set out in replacement items 1 and 2 of the table in subsection 6(3) of the principal determination.

Subsection 6(3) of the principal determination has effect as if appropriation items in Schedule 1 to the *Appropriation (Coronavirus Response) 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 (\$)
1	National Recovery and Resilience Agency	Administered item, Outcome 1	-600,000,000.00	-259,084,994.67	-859,084,994.67
2	National Emergency Management Agency	Administered item, Outcome 1	+600,000,000.00	+259,084,994.67	+859,084,994.67

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

7. Item 7 of Schedule 1 to the amendment determination adds items 13 and 14 at the end of the table in subsection 7(2) of the principal determination, which has effect as if appropriation items in Schedule 1 to the *Appropriation Act (No. 3) 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 (\$)
13	National Recovery and Resilience Agency	Departmental item	0.00	-5,836,000.00	-5,836,000.00
14	National Emergency Management Agency	Departmental item	0.00	+5,836,000.00	+5,836,000.00

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

8. Item 8 of Schedule 1 to the amendment determination adds new subsection 8(2A) to the *Appropriation Act (No. 4) 2021-2022* which has effect as if Schedule 2 to the Act included an other departmental item for the Attorney-General's Department.
9. Item 9 of Schedule 1 to the amendment determination adds items 3 and 4 at the end of the table in subsection 8(3) of the principal determination, which 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.

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 (\$)
3	Department of Home Affairs	Other departmental item (Equity Injections)	0.00	-41,070,579.00	-41,070,579.00
4	Attorney-General's Department	Other departmental item (Equity Injections)	0.00	+41,070,579.00	+41,070,579.00

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