

EXPLANATORY STATEMENT

Public Governance, Performance and Accountability Act 2013

*Public Governance, Performance and Accountability
(Section 75 Transfers) Amendment Determination 2021-2022 (No. 9)*

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.

The *Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2021-22 (No. 9)* (the amendment determination) amends the *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2021-2022* (the principal determination) to reflect the transfer of appropriations between entities affected by the 2022-23 machinery of government (MoG) changes. The amendment determination does not change the total amount appropriated by the Parliament.

On 6 February 2023, the Australian Building and Construction Commission (ABCC) was abolished following the commencement of Division 2 in Part 3 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*. The determination would transfer the unspent money previously appropriated to the ABCC to the Fair Work Ombudsman and Registered Organisations Commission Entity.

The amendment determination also gives effect to a number of annual appropriation transfers between entities affected by the MoG changes resulting from the Administrative Arrangements Order, which commenced on 1 July 2022.

The principal determination modifies the 2021-22 Appropriation Acts to, among other things, increase or decrease appropriation items for affected entities due to the 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*.

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 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 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 17, 23, 25, 35 and 36 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 (\$)
17	Department of Education	Departmental item	-172,538,323.76	-28,993,126.01	-201,531,449.77
23	Department of Climate Change, Energy, the Environment and Water	Departmental item	+26,044,116.77	+57,225,463.61	+83,269,580.38
25	Department of Employment and Workplace	Departmental item	+176,314,125.76	+28,993,126.01	+205,307,251.77

	Relations				
35	Department of Agriculture, Fisheries and Forestry	Administered item, Outcome 1	-74,508,664.34	-117,036.00	-74,625,700.34
36	Department of Climate Change, Energy, the Environment and Water	Administered item, Outcome 2	+74,508,664.34	+117,036.00	+74,625,700.34

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

- Item 2 of Schedule 1 to the amendment determination adds items 42 to 44 at the end of the table in subsection 5(2) of the principal determination and 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 (\$)
42	Department of Agriculture, Fisheries and Forestry	Departmental item	0.00	-57,225,463.61	-57,225,463.61
43	Australian Building and Construction Commission	Departmental item	0.00	-31,640,946.94	-31,640,946.94
44	Fair Work Ombudsman and Registered Organisations Commission Entity	Departmental item	0.00	+31,640,946.94	+31,640,946.94

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

- Item 3 of Schedule 1 to the amendment determination updates the cumulative effect of the increase in appropriation item for the Department of Climate Change, Energy, the Environment and Water as set out in replacement item 6 of the table in subsection 5A(4) of the principal determination.

Subsection 5A(4) of the principal determination 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 (\$)
6	Department of Climate Change,	Other departmental item (Equity	+1,010,000.00	+16,577,000.00	+17,587,000.00

	Energy, the Environment and Water	Injections)			
--	-----------------------------------	-------------	--	--	--

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 item 7 at the end of the table in subsection 5A(4) of the principal determination, which shows a corresponding decrease in appropriation item for the Department of Agriculture, Fisheries and Forestry.

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 (\$)
7	Department of Agriculture, Fisheries and Forestry	Other departmental item (Equity Injections)	0.00	-16,577,000.00	-16,577,000.00

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