

EXPLANATORY STATEMENT

Public Governance, Performance and Accountability Act 2013

*Public Governance, Performance and Accountability
(Section 75 Transfers) Amendment Determination 2022-2023 (No. 5)*

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 2022-23 (No. 5)* (the amendment determination) amends the *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2022-2023* (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.

The amendment determination implements the final transfer of annual appropriations from the Department of Social Services (DSS) to the Domestic, Family and Sexual Violence Commission (DFSVC Commission), which commenced as a new non-corporate Commonwealth entity on 1 November 2022. The Commission was initially established as an Executive Agency on 1 July 2022 and was part of DSS for the purposes of the PGPA Act.

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.

Finally, the amendment determination 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 2022-23 Appropriation Acts to, among other things, increase or decrease appropriation items for affected entities due to the transfer of functions between them.

The 2022-23 Appropriation Acts include:

- the *Supply Act (No. 1) 2022-2023*;
- the *Supply Act (No. 2) 2022-2023*;
- the *Supply Act (No. 3) 2022-2023*;
- the *Supply Act (No. 4) 2022-2023*;
- the *Appropriation Act (No. 1) 2022-2023*; and
- the *Appropriation Act (No. 2) 2022-2023*.

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 amends the definition of *Appropriation Act* in section 4 of the principal determination by adding the following Acts:
 - the *Supply Act (No. 3) 2022-2023*;
 - the *Supply Act (No. 4) 2022-2023*;
 - the *Appropriation Act (No. 1) 2022-2023*; and
 - the *Appropriation Act (No. 2) 2022-2023*.
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 53 and 54 of the table in subsection 6(4) of the principal determination.

Subsection 6(4) of the principal 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 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 (\$)
53	Department of Social Services	Departmental item	-2,486,350.00	-36,913.00	-2,523,263.00
54	Domestic, Family and Sexual Violence Commission	Departmental item	+2,486,350.00	+36,913.00	+2,523,263.00

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 55 and 56 at the end of the table in subsection 6(4) of the principal determination and 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 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 (\$)
55	Australian Building and Construction Commission	Departmental item	0.00	-14,559,622.38	-14,559,622.38
56	Fair Work Ombudsman and Registered Organisations Commission Entity	Departmental item	0.00	+14,559,622.38	+14,559,622.38

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 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 3 of the table in subsection 7(5) of the principal determination.

Subsection 7(5) of the principal 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 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	Department of Agriculture, Fisheries and	Other departmental item (Equity Injections)	-11,540,000.00	-456,000.00	-11,996,000.00

	Forestry				
3	Department of Climate Change, Energy, the Environment and Water	Other departmental item (Equity Injections)	+11,540,000.00	+456,000.00	+11,996,000.00

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

- Item 5 of Schedule 1 to the amendment determination adds new sections 8 to 10 to the principal determination.

New section 8 modifies the *Supply Act (No. 3) 2022-2023* and has effect as if Schedule 1 to the Act were increased or decreased in accordance with the table included in subsection 8(2). 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 principal determination (\$)	Current increase/ decrease by the amendment determination (\$)	Total increase/ decrease by the principal determination (\$)
1	Australian Building and Construction Commission	Departmental item	0.00	-20,343,000.00	-20,343,000.00
2	Fair Work Ombudsman and Registered Organisations Commission Entity	Departmental item	0.00	+20,343,000.00	+20,343,000.00
3	Department of Foreign Affairs and Trade	Administered item, Outcome 1	0.00	-10,583,000.00	-10,583,000.00
4	Department of Employment and Workplace Relations	Administered item, Outcome 1	0.00	+10,583,000.00	+10,583,000.00

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

New section 9 modifies the *Supply Act (No. 4) 2022-2023* and has effect as if Schedule 2 to the Act were increased or decreased in accordance with the table included in subsection 9(2). 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 principal determination (\$)	Current increase/ decrease by the amendment determination (\$)	Total increase/ decrease by the principal determination (\$)
1	Department of Agriculture, Fisheries and	Other departmental item (Equity Injections)	0.00	-438,000.00	-438,000.00

	Forestry				
2	Department of Climate Change, Energy, the Environment and Water	Other departmental item (Equity Injections)	0.00	+438,000.00	+438,000.00

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

New section 10 modifies the *Appropriation Act (No. 1) 2022-2023* and has effect as if Schedule 1 to the Act included a departmental item for the DFSV Commission and the outcome for that Commission as set out in paragraph 10(2)(b). Subsection 10(3) has effect as if appropriation items in Schedule 1 to the *Appropriation 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 principal determination (\$)	Current increase/ decrease by the amendment determination (\$)	Total increase/ decrease by the principal determination (\$)
1	Department of Social Services	Departmental item	0.00	-1,000,000.00	-1,000,000.00
2	Domestic, Family and Sexual Violence Commission	Departmental item	0.00	+1,000,000.00	+1,000,000.00

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