

## **EXPLANATORY STATEMENT**

*Public Governance, Performance and Accountability Act 2013*

*Public Governance, Performance and Accountability  
(Section 75 Transfers) Amendment Determination 2022-2023 (No. 6)*

### **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 2022-2023 (No. 6)* (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 from the Fair Work Ombudsman and Registered Organisations Commission (FWOROC) Entity to the Office of the Fair Work Ombudsman (Office of the FWO). The amendment determination does not change the total amount appropriated by the Parliament.

On 6 March 2023, the FWOROC Entity ceases to exist following the repeal of clause 10A of Schedule 1 to the *Public Governance, Performance and Accountability Rule 2014*. On the same day (6 March 2023), the Office of the FWO commences as a non-corporate Commonwealth entity, for the purposes of the finance law as defined by the PGPA Act, as a consequence of amendments made by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* to the *Fair Work Act 2009*. The amendment determination would transfer the first tranche of unspent appropriations from the FWOROC Entity to the Office of the FWO and add the outcome statement for the Office of the FWO.

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 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 as if Schedule 1 of the *Supply Act (No. 1) 2022-2023* included a departmental item for the Office of the FWO and the outcome for that entity as set out in paragraph 6(3I)(b).
2. Item 2 of Schedule 1 to the amendment determination updates the cumulative effect of the decrease in appropriation item for the FWOROC Entity as set out in replacement item 56 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 (\$)
56	Fair Work Ombudsman and Registered Organisations Commission Entity	Departmental item	+14,559,622.38	-2,911,000.00	+11,648,622.38

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 item 57 at the end of the table in subsection 6(4) of the principal determination and has effect as if the appropriation item in Schedule 1 to the *Supply Act (No. 1) 2022-2023* were increased 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 (\$)
57	Office of the Fair Work Ombudsman	Departmental item	0.00	+2,911,000.00	+2,911,000.00

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 of the amendment determination updates the cumulative effect of the decrease in appropriation item for the FWOROC Entity as set out in replacement item 2 of the table in subsection 8(2) of the principal determination.

Subsection 8(2) of the principal determination has effect as if appropriation items in Schedule 1 to the *Supply Act (No. 3) 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 (\$)
2	Fair Work Ombudsman and Registered Organisations Commission Entity	Departmental item	+20,343,000.00	-46,267,500.00	-25,924,500.00

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 item 5 at the end of the table in subsection 8(2) of the principal determination and has effect as if the appropriation item in Schedule 1 to the *Supply Act (No. 3) 2022-2023* were increased 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 (\$)
5	Office of the Fair Work Ombudsman	Departmental item	0.00	+46,267,500.00	+46,267,500.00

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 repeals subsection 10(2) of the principal determination because a departmental item and an outcome for the Domestic, Family and Sexual Violence Commission for the purposes of modifying the 2022-23 Appropriation Acts have already been established by subsection 6(3H) of the principal determination. Therefore, subsection 10(2) of the principal determination is redundant.
7. Item 7 of Schedule 1 to the amendment determination adds items 3 and 4 at the end of the table in subsection 10(3) of the principal determination and has effect as if the appropriation item 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 principal determination, the increase is from a nil amount.

<b>Item</b>	<b>Entity</b>	<b>Appropriation item</b>	<b>Previous increase/ decrease by the principal determination (\$)</b>	<b>Current increase/ decrease by the amendment determination (\$)</b>	<b>Total increase/ decrease by the principal determination (\$)</b>
3	Fair Work Ombudsman and Registered Organisations Commission Entity	Departmental item	0.00	-13,819,000.00	-13,819,000.00
4	Office of the Fair Work Ombudsman	Departmental item	0.00	+13,819,000.00	+13,819,000.00

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