

## **EXPLANATORY STATEMENT**

*Public Governance, Performance and Accountability Act 2013*

*Public Governance, Performance and Accountability  
(Section 75 Transfers) Determination 2023-2024*

### **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 Australian Submarine Agency (ASA) was established as an Executive Agency commencing on 1 July 2023. It has also commenced as a non-corporate Commonwealth entity for the purposes of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), on the same day. The ASA is part of the Defence portfolio.

The ASA will be responsible and accountable for the management and oversight of the safe and secure delivery of Australia's nuclear-powered submarine program including the acquisition, construction, delivery, sustainment and disposal of nuclear-powered submarines. The ASA will also be responsible for maintaining the technical governance of the nuclear-powered submarine capability.

The *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2023-2024* reflects the transfer of appropriations from the Department of Defence to the ASA and adds the outcome statement for the ASA. The determination does not change the total amount appropriated by Parliament.

The determination is a legislative instrument for the purposes of section 8 of the *Legislation Act 2003*.

### **Commencement**

The determination commences on 1 July 2023.

## Statement of compatibility with human rights

A statement of compatibility with human rights is not required for the 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 determination.

## Summary of amendments

1. Section 5 of the determination applies to the *Appropriation Act (No. 1) 2023-2024* and has effect as if Schedule 1 to the Act included a departmental item for the ASA and the outcome for that entity as set out in paragraph 5(2)(b). Subsection 5(3) of the determination has effect as if appropriation items in Schedule 1 to the Act were increased or decreased in accordance with the table included in the subsection.

| Item | Entity                      | Appropriation item | Total increase/decrease by the determination (\$) |
|------|-----------------------------|--------------------|---|
| 1    | Department of Defence       | Departmental item  | -327,334,362.00                                   |
| 2    | Australian Submarine Agency | Departmental item  | +327,334,362.00                                   |

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

2. Section 6 of the determination applies to the *Appropriation Act (No. 2) 2023-2024* and has effect as if Schedule 2 to the Act included an other departmental item for the ASA. Subsection 6(3) of the determination 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.

| Item | Entity                      | Appropriation item | Total increase/decrease by the determination (\$) |
|------|-----------------------------|--------------------|---|
| 1    | Department of Defence       | Departmental item  | -62,759,000.00                                    |
| 2    | Australian Submarine Agency | Departmental item  | +62,759,000.00                                    |

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