

EXPLANATORY STATEMENT

Public Governance, Performance and Accountability Act 2013

*Public Governance, Performance and Accountability
(Section 75 Transfers) Amendment Determination 2021-2022 (No. 12)*

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 2021-2022 (No. 12)* (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 the Australian Commission for Law Enforcement Integrity (ACLEI) and the National Anti-Corruption Commission (NACC). The amendment determination does not change the total amount appropriated by the Parliament.

On 1 July 2023, ACLEI ceased to exist following the repeal of the *Law Enforcement Integrity Commissioner Act 2006*. On the same day (1 July 2023), the NACC was established as a non-corporate Commonwealth entity, for the purposes of the finance law as defined by the PGPA Act, by the *National Anti-Corruption Commission Act 2022*. The amendment determination transfers unspent appropriations from ACLEI to the NACC and adds the outcome statement for the NACC.

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 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 has effect as if Schedule 1 to the *Appropriation Act (No. 1) 2021-2022* included a departmental item for the NACC and the outcome for the NACC as set out in paragraph 5(1L)(b).
2. Item 2 of Schedule 1 to the amendment determination adds items 46 and 47 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. The amendment determination does not change the total amount appropriated by the Parliament.

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 (\$)
46	Australian Commission for Law Enforcement Integrity	Departmental item	0.00	-18,458,000.00	-18,458,000.00
47	National Anti- Corruption Commission	Departmental item	0.00	+18,458,000.00	+18,458,000.00

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 has effect as if Schedule 2 to the *Appropriation Act (No. 2) 2021-2022* included an other departmental item for the NACC. Other departmental item means an amount set out in Schedule 2 in relation to a non-corporate entity opposite the heading 'Equity Injections'.
4. Item 4 of Schedule 1 to the amendment determination adds items 8 and 9 at the end of the table in subsection 5A(4) of the principal determination and 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. The amendment determination does not change the total amount appropriated by the Parliament.

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 (\$)
8	Australian Commission for Law Enforcement Integrity	Other departmental item (Equity Injections)	0.00	-521,425.43	-521,425.43
9	National Anti- Corruption Commission	Other departmental item (Equity Injections)	0.00	+521,425.43	+521,425.43

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