

## **EXPLANATORY STATEMENT**

*Public Governance, Performance and Accountability Act 2013*

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

The *Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2023-2024 (No. 5)* (the amendment determination) amends the *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2023-2024* (the principal determination) to reflect the transfer of appropriations relating to the following machinery of government changes:

- transfer of the APS Reform Office from the Department of the Prime Minister and Cabinet to the Australian Public Service Commission, as per amendments to the Administrative Arrangements Order made on 8 June 2023;
- transfer of protective security policy and protective services at Commonwealth establishments and diplomatic and consular premises in Australia functions from the Attorney-General's Department to the Department of Home Affairs, as per amendments to the Administrative Arrangements Order made on 3 August 2023;
- transfer of identity and biometrics functions from the Department of Home Affairs to the Attorney-General's Department, as per amendments to the Administrative Arrangements Order made on 3 August 2023; and
- transfer of administrative responsibility for four deductible gift recipient (DGR) categories from other government departments to the Australian Taxation Office, following the commencement of Schedule 3 to the *Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023* on 1 January 2024.

These DGR categories include:

- the Register of Cultural Organisations previously administered by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts;
- the Register of Environmental Organisations previously administered by the Department of Climate Change, Energy, the Environment and Water;
- the Overseas Aid Gift Deductibility Scheme previously administered by the Department of Foreign Affairs and Trade; and
- the Register of Harm Prevention Charities previously administered by the Department of Social Services. The amendment determination does not include a transfer of funding for this Register as it was already transferred to the Australian Charities and Not-for-profits Commission previously.

The amendment determination is a legislative instrument for the purposes of section 8 of the *Legislation Act 2003*. It does not change the total amount appropriated by the Parliament.

The principal determination modifies the specified 2023-24 Appropriation Acts to, among other things, increase or decrease appropriation items for affected entities due to the transfer of functions between them.

The specified 2023-24 Appropriation Acts include:

- the *Appropriation Act (No. 1) 2023-2024*; and
- the *Appropriation Act (No. 2) 2023-2024*.

### **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 (7). 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**

Item 1 of Schedule 1 to the amendment determination updates the cumulative effect of the decreases in appropriation items for the Department of Climate Change, Energy, the Environment and Water and the Department of Home Affairs as set out in replacement items 4 and 8 of the table in subsection 5(3) of the principal determination.

Subsection 5(3) of the principal determination has effect as if appropriation items in Schedule 1 to the *Appropriation Act (No. 1) 2023-2024* 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 (\$)
4	Department of Climate Change, Energy, the Environment and Water	Departmental item	+588,500.00	-68,000.00	+520,500.00
8	Department of Home Affairs	Departmental item	+534,872.73	-1,704,629.62	-1,169,756.89

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 11 to 16 at the end of the table in subsection 5(3) of the principal determination and has effect as if the appropriation items in Schedule 1 to the *Appropriation Act (No. 1) 2023-2024* 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 (\$)
11	Department of Infrastructure, Transport, Regional Development, Communications and the Arts	Departmental item	0.00	-71,000.00	-71,000.00
12	Department of Foreign Affairs and Trade	Departmental item	0.00	-27,000.00	-27,000.00
13	Australian Taxation Office	Departmental item	0.00	+166,000.00	+166,000.00
14	Attorney-General's Department	Departmental item	0.00	+1,704,629.62	+1,704,629.62
15	Department of the Prime Minister and Cabinet	Departmental item	0.00	-8,020,663.00	-8,020,663.00
16	Australian Public Service Commission	Departmental item	0.00	+8,020,663.00	+8,020,663.00

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 adds items 3 and 4 at the end of the table in subsection 6(3) of the principal determination and has effect as if appropriation items in Schedule 1 to the *Appropriation Act (No. 2) 2023-2024* 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 (\$)
3	Department of Home Affairs	Departmental item	0.00	+18,536,000.00	+18,536,000.00
4	Attorney-General's Department	Departmental item	0.00	-18,536,000.00	-18,536,000.00

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