

EXPLANATORY STATEMENT

Public Governance, Performance and Accountability Act 2013

*Public Governance, Performance and Accountability
(Section 75 Transfers) Amendment Determination 2022-2023 (No. 14)*

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. 14) (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 National Mental Health Commission to the Department of Health and Aged Care; and
- from the Administrative Appeals Tribunal to the Administrative Review Tribunal.

As part of the 2024-25 Budget, the Government announced that the functions and funding of the National Mental Health Commission will be transferred to the Department of Health and Aged Care while considering the most appropriate longer term arrangements.

As part of the 2023-24 Budget, the Government announced an institutional reform to Australia's system of federal administrative review which involves the establishment of the new Administrative Review Tribunal in place of the Administrative Appeals Tribunal. The amendment determination enables the first transfer of appropriations between the affected entities.

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 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 specified 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*.

Commencement

The amendment determination commences on 14 October 2024.

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

1. Item 1 of Schedule 1 to the amendment determination adds items 58 and 59 at the end of the table in subsection 6(4) of the principal determination to reflect the decrease in appropriation item for the National Mental Health Commission and the increase in appropriation item for the Department of Health and Aged Care.

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. 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 (\$)
58	National Mental Health Commission	Departmental item	0.00	-6,859.00	-6,859.00
59	Department of Health and Aged Care	Departmental item	0.00	+6,859.00	+6,859.00

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

2. Item 2 of Schedule 1 to the amendment determination adds items 18 and 19 at the end of the table in subsection 7(5) of the principal determination to reflect the decrease in appropriation item for the National Mental Health Commission and the increase in appropriation item for the Department of Health and Aged Care.

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. 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 (\$)
18	National Mental Health Commission	Other departmental item (Equity Injections)	0.00	-21,000.00	-21,000.00
19	Department of Health and Aged Care	Other departmental item (Equity Injections)	0.00	+21,000.00	+21,000.00

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 adds items 15 to 18 at the end of the table in subsection 8(2) of the principal determination to reflect the decrease in appropriation items for the National Mental Health Commission and the increase in appropriation items for the Department of Health and Aged Care.

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. 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 (\$)
15	National Mental Health Commission	Administered item, Outcome 1	0.00	-1,989,572.93	-1,989,572.93
16	Department of Health and Aged Care	Administered item, Outcome 1	0.00	+1,989,572.93	+1,989,572.93
17	National Mental Health Commission	Departmental item	0.00	-259,000.00	-259,000.00
18	Department of Health and Aged Care	Departmental item	0.00	+259,000.00	+259,000.00

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 to the amendment determination adds items 3 and 4 at the end of the table in subsection 9(2) of the principal determination to reflect the decrease in appropriation item for the National Mental Health Commission and the increase in appropriation item for the Department of Health and Aged Care.

Subsection 9(2) of the principal determination has effect as if appropriation items in Schedule 2 to the *Supply Act (No. 4) 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. 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	National Mental Health Commission	Other departmental item (Equity Injections)	0.00	-29,000.00	-29,000.00
4	Department of Health and Aged Care	Other departmental item (Equity Injections)	0.00	+29,000.00	+29,000.00

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 inserts subsection 10(2A) in the principal determination which has effect as if Schedule 1 to the *Appropriation Act (No. 1) 2022-2023* included a departmental item for the Administrative Review Tribunal and the outcome for that entity as set out in paragraph 10(2A)(b).
6. Item 6 of Schedule 1 to the amendment determination adds items 15 and 16 at the end of the table in subsection 10(3) of the principal determination to reflect the decrease in appropriation item for the Administrative Appeals Tribunal and the increase in appropriation item for the Administrative Review Tribunal.

Subsection 10(3) of the principal determination 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 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 (\$)
15	Administrative Appeals Tribunal	Departmental item	0.00	-2,543,885.00	-2,543,885.00
16	Administrative Review Tribunal	Departmental item	0.00	+2,543,885.00	+2,543,885.00

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