

## **EXPLANATORY STATEMENT**

### *Public Governance, Performance and Accountability Act 2013*

### *Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2017-2018 (No. 2) (the amendment determination)*

#### **Purpose of the determination**

The amendment determination is made under section 75 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), to adjust amounts appropriated to non-corporate Commonwealth entities, in response to amendment to the Administrative Arrangement Order (AAO) made on 10 May 2018 and 28 August 2018.

The determination modifies the Appropriation Acts to support functions transferred to the:

- Department of Home Affairs from the Attorney-General's Department:
  - in relation to the operation of the *Australian Security Intelligence Organisation Act 1979* except for section 34Z of that Act;
  - in relation to the operation of the *Intelligence Services Act 2001* insofar as it relates to the Australian Security Intelligence Organisation;
  - in relation to the operation of the *Surveillance Devices Act 2004*; and
  - in relation to the operation of the *Telecommunications (Interception and Access) Act 1979*.
- The Attorney-General's Department from the Department of Prime Minister and Cabinet:
  - in relation to the operation of the *Independent National Security Legislation Monitor Act 2010*;
  - in relation to the operation of the *Inspector-General of Intelligence and Security Act 1986*;
  - in relation to the operation of the *Ombudsman Act 1976*; and
  - in relation to the operation of the *Public Interest Disclosure Act 2013*.

The amendment determination results in no change to the total amount appropriated by Parliament.

#### **Commencement**

The amendment determination commences on the day after it is registered.

#### **Authority for the determination**

Section 75 of the 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.

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, sub-delegated this power to certain officials within the Department of Finance, including the official who made the determination.

The amendment determination amends the *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2017-2018*, which is a legislative instrument for the purposes of section 8 of the *Legislation Act 2003*.

#### **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, including an amendment determination, under section 75 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 Chapter 3, Part 1 of the *Legislation Act 2003*, the affected entities were consulted in the preparation of the amendment determination.

## Summary of Modifications

1. Item 1 of the amendment determination removes the second “and” from paragraph 5(c)(iv).
2. Item 2 adds paragraph 5(c)(v) of the Determination. The paragraph modifies the Appropriation Acts such that appropriation items and outcomes for the Australian Security Intelligence Organisation, included for the Attorney-General’s Portfolio, was instead included for the Home Affairs Portfolio.
3. Item 3 of the amendment determination repeals and substitutes paragraph 5(g) of the Determination. The item modifies the Appropriation Acts such that references in the Acts to the Employment Portfolio were references to the Jobs and Small Business Portfolio.
4. Item 4 of the amendment determination repeals and substitutes paragraph 5(i) of the Determination. This item modifies the Acts such that:
  - appropriation items and outcomes for the Department of Human Services, included for the Human Services Portfolio, were instead included for the Social Services Portfolio; and
  - appropriation items and outcomes for the following entities, included for the Prime Minister and Cabinet Portfolio were instead included for the Attorney-General’s Portfolio:
    - Office of the Commonwealth Ombudsman
    - Office of the Inspector-General of Intelligence and Security
5. Item 5 of the amendment determination repeals and substitutes items 1, 2 and 4 in the table in subsection 6(3) of the Determination. The items affect relevant appropriation items in Schedule 1 to the *Appropriation Act (No. 1) 2017-2018* in the following way:

| Item | Entity                                       | Appropriation item | Amount previously transferred by the Determination (\$) | Amount transferred by the amendment determination (\$) | Amended amount transferred by the Determination (\$) |
|------|----------------------------------------------|--------------------|---------------------------------------------------------|--------------------------------------------------------|------------------------------------------------------|
| 1    | Department of Home Affairs                   | Departmental item  | +60,142,035.00                                          | +506,400.00                                            | <b>+60,648,435.00</b>                                |
| 2    | Attorney-General’s Department                | Departmental item  | -34,724,035.00                                          | -279,400.00                                            | <b>-35,003,435.00</b>                                |
| 4    | Department of the Prime Minister and Cabinet | Departmental item  | -11,072,000.00                                          | -227,000.00                                            | <b>-11,299,000.00</b>                                |

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