

EXPLANATORY STATEMENT

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2014-2015 (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 amend *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2014-2015*, dated 30 January 2015 (the primary determination), to adjust amounts appropriated to non-corporate Commonwealth entities, in response to the Administrative Arrangements Order (AAO) made on 30 September 2015.

The amendment determination modifies *Appropriation Act (No. 1) 2014-2015* and *Appropriation Act (No. 2) 2014-2015* to support functions transferring from the Department of the Environment to the Department of Agriculture and Water Resources, in relation to water policy and resources.

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

Commencement

The amendment determination commences on 1 November 2015.

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 is a legislative instrument for the purposes of section 5 of the *Legislative Instruments Act 2003*. The amendment determination amends *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2014-2015*, which is a legislative instrument for the purposes of section 5 of the *Legislative Instruments 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 *Legislative Instruments 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 Part 3 of the *Legislative Instruments Act 2003*, the affected entities were consulted in the preparation of the amendment determination.

Summary of Modifications

1. In accordance with the AAO made on 30 September 2015, items 1 and 5 of the amendment determination modifies paragraphs 5(2)(b) and 6(2)(b) of the primary determination respectively so that references to Portfolio names in *Appropriation Act (No. 1) 2014-2015* and *Appropriation Act (No. 2) 2014-2015* have effect as if:
 - a. Industry is referred to as Industry, Innovation and Science; and
 - b. Agriculture is referred to as Agriculture and Water Resources.
2. Also, references to Department names in *Appropriation Act (No. 1) 2014-2015* and *Appropriation Act (No. 2) 2014-2015* have effect as if:
 - a. the Department of Industry and Science is referred to as the Department of Industry, Innovation and Science; and

- b. the Department of Agriculture is referred to as the Department of Agriculture and Water Resources.

3. Items 2 and 8 of the amendment determination adds paragraphs 5(3)(b) and 6(4)(b) to the primary determination respectively so that *Appropriation Act (No. 1) 2014-2015* and *Appropriation Act (No. 2) 2014-2015* have effect as if the following Outcome 3 was included for the Department of Agriculture and Water Resources:

Improve the health of rivers and freshwater ecosystems and water use efficiency through implementing water reforms, and ensuring enhanced sustainability, efficiency and productivity in the management and use of water resources

4. The text for Outcome 3 for the Department of Agriculture and Water Resources is the same as the text of Outcome 4 for the Department of the Environment, and reflects the transfer of the water policy and resources function to the Department of Agriculture and Water Resources. Replicating the text of the relevant Outcome for the gaining entity ensures that the purposes in which Parliament appropriated for the transferred function remains unchanged.

5. Item 3 of the amendment determination modifies subsection 5(4) and adds a paragraph clarifying that when there is an increase for an appropriation item for a gaining entity, where the appropriation item only has effect because of the determination, the increase is applied to a nil amount. For example, this situation may arise where an entity gains an Outcome, such as in subsection 5(3).

6. Item 4 modifies relevant appropriation items in Schedule 1 to the *Appropriation Act (No. 1) 2014-2015* to have effect as if they were increased or decreased by subsection 5(4) in the amendment determination, which results in no change to the total amount appropriated by Parliament. A positive amount reflects an increase in an appropriation item, and a negative amount reflects a decrease in an appropriation item.

7. While the table in the amendment determination is stated in the \$thousands (\$'000), the table below sets out the individual transfer amounts in dollars and cents for each affected appropriation item:

Entity affected	Item affected	Transfer to (\$)	Transfer from (\$)
Department of Agriculture and Water Resources	Administered item, Outcome 3	+25,851,817.57	
Department of the Environment	Administered item, Outcome 4		-25,851,817.57
Department of Agriculture and Water Resources	Departmental item	+4,614,000.00	
Department of the Environment	Departmental item		-4,614,000.00
		+30,465,817.57	-30,465,817.57

8. Item 6 of the amendment determination modifies subsection 6(3) and adds a paragraph clarifying that when there is an increase for an appropriation item for a gaining entity, where the appropriation item only has effect because of the determination, the increase is applied to a nil amount. For example, this situation may arise where an entity gains an Outcome, such as in subsection 6(4).

9. Item 7 modifies relevant appropriation items in Schedule 2 to the *Appropriation Act (No. 2) 2014-2015* to have effect as if they were increased or decreased by subsection 6(3) in the amendment determination, which results in no change to the total amount appropriated by Parliament. A positive amount reflects an increase in an appropriation item, and a negative amount reflects a decrease in an appropriation item.

10. While the table in the amendment determination is stated in the \$thousands (\$'000), the table below sets out the individual transfer amounts in dollars and cents for each affected appropriation item:

Entity affected	Item affected	Transfer to (\$)	Transfer from (\$)
Department of Agriculture and Water Resources	State, ACT, NT and local government item, Outcome 3	+5,500,000.00	
Department of the Environment	State, ACT, NT and local government item, Outcome 4		-5,500,000.00
Department of Agriculture and Water Resources	Administered assets and liabilities item	+37,780,329.55	
Department of the Environment	Administered assets and liabilities item		-37,780,329.55
		+43,280,329.55	-43,280,329.55

11. Item 8 of the amendment determination also adds paragraph 6(4)(a) to the primary determination to reflect the transfer of the water policy and resources function from the Department of the Environment to the Department of Agriculture and Water Resources, by repealing the fourth row of Schedule 1 to the *Appropriation Act (No. 2) 2014-2015*, and substitutes it with the following:

Column 1	Column 2	Column 3	Column 4
Entity	Outcome	Minister determining conditions	Minister determining payments
Department of Agriculture and Water Resources	Improve the health of rivers and freshwater ecosystems and water use efficiency through implementing water reforms, and ensuring enhanced sustainability, efficiency and productivity in the management and use of water resources	Minister for Agriculture and Water Resources	Minister for Agriculture and Water Resources

12. This will provide for the Minister for Agriculture and Water Resources to determine payments to states, territories and local governments, and any terms and conditions, relating to the transferred function of water policy and resources. This is to ensure that the amount transferred continues to be used for the purposes appropriated by Parliament.