

EXPLANATORY STATEMENT

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2021-2022 (No. 3) (the amendment determination)

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 amendment determination gives effect to the power in section 75, which 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.

Section 75(7) of the PGPA Act provides that a determination made under section 75(2) is a legislative instrument, but that section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Importantly, the Parliament by passing section 75(7) of the PGPA Act provided that these determinations would be exempt from disallowance. The Explanatory Memorandum for the Public Governance, Performance and Accountability Bill 2013 provided (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, sub-delegated this power to certain officials within the Department of Finance, including the official who made this amendment determination.

The amendment determination is a legislative instrument for the purposes of section 8 of the *Legislation Act 2003*.

On 28 October 2021, the Prime Minister agreed to transfer the Murray-Darling Basin Aboriginal Water Entitlements Program from the Department of Agriculture, Water and the Environment to the National Indigenous Australians Agency.

The amendment determination amends the *Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2021-2022* (the Determination) to reflect this transfer. The amendment determination does not change the total amount appropriated by the Parliament.

Commencement

The amendment determination commences on the day after registration.

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 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 section 17 of the *Legislation Act 2003*, the affected entities were consulted in the preparation of the amendment determination.

Summary of Modifications

- Item 1 of the amendment determination adds items 15 and 16 in the table in subsection 5(2) of the Determination. The items affect the relevant appropriation items in Schedule 1 to the *Appropriation Act (No. 1) 2021-2022* 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 (\$)
15	Department of Agriculture, Water and the Environment	Administered item, Outcome 5	0.00	-40,000,000.00	-40,000,000.00
16	National Indigenous Australians Agency	Administered item, Outcome 1	0.00	+40,000,000.00	+40,000,000.00

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