

EXPLANATORY STATEMENT

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2019-2020 (the determination)

Purpose of the determination

The 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 recent Machinery of Government changes

On 29 May 2019, the Governor-General made a new Administrative Arrangements Order (AAO) to replace the AAO made on 4 April 2019. The determination modifies the *Supply Act (No. 1) 2019-2020* and the *Supply Act (No. 2) 2019-2020* to reflect the following changes as a result of the new AAO:

- the transfer of responsibility for industrial relations from the Employment, Skills, Small and Family Business portfolio to the Attorney-General's portfolio;
- the transfer of responsibility for vocational education and training, and apprenticeships from the Education portfolio to the Employment, Skills, Small and Family Business portfolio;
- the transfer of responsibility for migrant adult education from the Education portfolio to the Home Affairs portfolio; and
- the transfer of settlement services for refugees and humanitarian migrants from the Social Services portfolio to the Home Affairs portfolio.

On 29 May 2019, the Governor-General made an order to establish the National Indigenous Australians Agency as an executive agency. The determination modifies the *Supply Act (No. 1) 2019-2020* and the *Supply Act (No. 2) 2019-2020* to reflect the transfer of responsibility for indigenous affairs from the Department of the Prime Minister and Cabinet to the National Indigenous Australians Agency.

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

Commencement

The determination commences on 1 July 2019.

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 this determination.

The determination 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 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 Chapter 3, Part 1 of the *Legislation Act 2003*, the affected entities were consulted in the preparation of the determination.

Summary of Modifications

1. Section 5 of the determination modifies the *Supply Act (No. 1) 2019-2020* and the *Supply Act (No. 2) 2019-2020* such that references to:
 - (a) the Agriculture and Water Resources Portfolio and the Department of Agriculture and Water Resources have effect as if Agriculture and Water Resources is referred to as Agriculture; and
 - (b) the Education and Training Portfolio and the Department of Education and Training have effect as if Education and Training is referred to as Education; and
 - (c) the Human Services Portfolio and the Department of Human Services have effect as if Human Services is referred to as Services Australia; and
 - (d) the Jobs and Small Business Portfolio and the Department of Jobs and Small Business have effect as if Jobs and Small Business is referred to as Employment, Skills, Small and Family Business; and
 - (e) the Infrastructure, Regional Development and Cities Portfolio and the Department of Infrastructure, Regional Development and Cities have effect as if Infrastructure, Regional Development and Cities is referred to as Infrastructure, Transport, Cities and Regional Development.
2. Paragraph 5(2)(a) of the determination modifies the *Supply Act (No. 1) 2019-2020* and the *Supply Act (No. 2) 2019-2020* such that the Australian Skills Quality Authority were included in the Employment, Small and Family Business Portfolio.
3. Paragraph 5(2)(b) of the determination modifies the *Supply Act (No. 1) 2019-2020* and the *Supply Act (No. 2) 2019-2020* such that the following entities were included in the Attorney-General's Portfolio:
 - Asbestos Safety and Eradication Agency;
 - Australian Building and Construction Commission;
 - Fair Work Commission;
 - Fair Work Ombudsman and Registered Organisations Commission Entity;
 - Safe Work Australia; and
 - Comcare.
4. Paragraph 5(2)(c) of the determination modifies the *Supply Act (No. 1) 2019-2020* and the *Supply Act (No. 2) 2019-2020* such that the Digital Transformation Agency were included in the Social Services Portfolio.
5. Paragraph 6(3)(a) and (b) has effect as if a departmental item and an administered item for the newly established National Indigenous Australians Agency were included in Schedule 1 to the *Supply Act (No. 1) 2019-2020* within the Prime Minister and Cabinet Portfolio. The text for Outcome 1 for the National Indigenous Australians Agency is the same as the text of Outcome 2 for the Department of the Prime Minister and Cabinet, and reflects the transfer of the functions and resources to the Executive Agency.
6. Paragraph 6(3)(c) has effect as if an administered item for the Attorney-General's Department were included in Schedule 1 to the *Supply Act (No. 1) 2019-2020* for a new Outcome 2, due to the transfer of industrial relation functions from the Department of Employment, Skills, Small and Family Business.
7. Paragraph 6(3)(d) has effect as if Outcome 2 for the Department of Home Affairs in Schedule 1 to the *Supply Act (No. 1) 2019-2020* was modified. This reflects the transfers of the migrant adult education function from the Department of Education and transfer of the settlement services for refugees and humanitarian migrants function from the Department of Social Services.
8. Paragraph 6(3)(e) of the determination makes modifications to the Department of Employment, Skills, Small and Family Business' existing Outcome 1 and Outcome 2 in Schedule 1 to the *Supply Act (No. 1) 2019-2020*. These modifications reflect the transfer of industrial relations functions to the Attorney-General's Department and the gaining of vocational education and training and apprenticeships functions from the Department of Education.

9. Paragraph 6(3)(f) of the determination makes a minor modification to Department of Education's existing Outcome 2 in Schedule 1 to the *Supply Act (No. 1) 2019-2020*, to reflect the transfers of vocational education and training, and apprenticeships functions to the Department of Employment, Skills, Small and Family Business.
10. Relevant appropriation items in Schedule 1 to the *Supply Act (No. 1) 2019-2020* have effect as if they were increased or decreased by subsection 6(4) in the determination. A positive amount reflects an increase in an appropriation item, and a negative amount reflects a decrease in an appropriation item.
11. Subsection 6(4) in the determination also provides that when there is an increase for an appropriation item for a gaining entity, where the appropriation item only has effect because of this determination, the increase is applied to a nil amount. For example, this situation may arise where an entity requires a new Outcome.
12. The table at subsection 6(4) of the determination affects relevant appropriation items in Schedule 1 to the *Supply Act (No. 1) 2019-2020* in the following way, which results in no change to the total amount appropriated by Parliament:

Item	Entity	Appropriation item	Amount transferred by the Determination (\$)
1	Attorney-General's Department	Departmental item	+22,910,966.00
2	Department of the Prime Minister and Cabinet	Departmental item	-67,669,000.00
3	Department of Home Affairs	Departmental item	+10,349,809.50
4	Department of Education	Departmental item	-51,721,000.00
5	Department of Employment, Skills, Small and Family Business	Departmental item	+25,748,034.00
6	National Indigenous Australians Agency	Departmental item	+ 67,669,000.00
7	Department of Social Services	Departmental item	-7,287,809.50
8	Attorney-General's Department	Administered item, Outcome 2	+10,604,000.00
9	Department of the Prime Minister and Cabinet	Administered item, Outcome 2	-528,857,000.00
10	Department of Home Affairs	Administered item, Outcome 2	+199,546,000.00
11	Department of Education	Administered item, Outcome 1	-208,333.00
12	Department of Education	Administered item, Outcome 2	-451,605,000.00
13	Department of Employment, Skills, Small and Family Business	Administered item, Outcome 1	+4,537,917.00
14	Department of Employment, Skills, Small and Family Business	Administered item, Outcome 2	+320,976,416.00
15	National Indigenous Australians Agency	Administered item, Outcome 1	+528,857,000.00

16	Department of Social Services	Administered item, Outcome 2	-83,851,000.00
17	Department of Employment, Skills, Small and Family Business	Corporate entity item, Comcare	-2,496,000.00
18	Attorney-General's Department	Corporate entity item, Comcare	+2,496,000.00

13. Paragraph 7(3)(a) has effect as if a row were included in Schedule 1 to *Supply Act (No. 2) 2019-2020* for the National Indigenous Australians Agency.
14. Further, subsection 7(3) has effect as if an other departmental item (Equity Injections) and a State, ACT, NT and local government item for the newly established National Indigenous Australians Agency were included in Schedule 1 to the *Supply Act (No. 2) 2019-2020* within the Prime Minister and Cabinet Portfolio. This reflects the transfer of the functions and resources to the newly established Executive Agency.
15. Relevant appropriation items in Schedule 2 to the *Supply Act (No. 2) 2019-2020* have effect as if they were increased or decreased by subsection 7(4) in the determination. A positive amount reflects an increase in an appropriation item, and a negative amount reflects a decrease in an appropriation item.
16. Subsection 7(4) in the determination also provides that when there is an increase for an appropriation item for a gaining entity, where the appropriation item only has effect because of this determination, the increase is applied to a nil amount. For example, this situation may arise where an entity requires a new Outcome.
17. The table at subsection 7(4) of the determination affects relevant appropriation items in Schedule 2 to the *Supply Act (No. 2) 2019-2020* in the following way, which results in no change to the total amount appropriated by Parliament:

Item	Entity	Appropriation item	Amount transferred by the Determination (\$)
1	National Indigenous Australians Agency	Other departmental item (Equity Injections)	+791,000.00
2	National Indigenous Australians Agency	State, ACT, NT and local government item, Outcome 1	+1,992,000.00
3	Department of the Prime Minister and Cabinet	Other departmental item (Equity Injections)	-791,000.00
4	Department of the Prime Minister and Cabinet	State, ACT, NT and local government item, Outcome 2	-1,992,000.00