

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance

Public Governance, Performance and Accountability Act 2013

PGPA Act (Aboriginal Water Entitlements Special Account) Determination 2025

Purpose of this determination

This determination is made under subsection 78(1) of the *Public Governance, Performance and Accountability Act 2013* (**PGPA Act**) to establish the *Aboriginal Water Entitlements Special Account 2025* (**the special account**) for the Department of Climate Change, Energy, the Environment and Water (**the Department**).

The special account is being established to enable the Department to retain, hold, collect and expend non-taxation revenue in relation to the management of water entitlements for the benefit of First Nations people, including, but not limited to the purchase, usage, management, trade, transfer, lease, gift, disposal, and sale of water entitlements for the benefit of First Nations communities in the Murray-Darling Basin. The Department may hold, collect and expend amounts in relation to the costs of these activities, including but not limited to engaging third parties, legal fees, registration fees, broker or water trading agent fees and other costs incurred by the Commonwealth in relation to managing water entitlements for the benefit of First Nations communities in the Murray-Darling Basin. This does not include departmental staff costs.

The balance of the special account may be reduced without making a real or notional payment, which would have the effect of reducing the available appropriation for the purposes of the special account. The Department may also repay amounts held in the special account where required or permitted to do so.

The special account will support the delivery of the Aboriginal Water Entitlements Program (**AWEP**) arrangements as part of a broader effort to strengthen the *Water Amendment (Restoring Our Rivers) Act 2023* and to provide greater recognition of First Nations Peoples' values and uses of water.

The Murray–Darling Basin AWEP is a \$100 million initiative to help address First Nations people owning less than 0.2 per cent of surface water entitlements. The AWEP supports various aspects of First Nations peoples' well-being, including cultural, social, economic, spiritual, and environmental needs.

This special account supports the reinvestment and purchase of additional AWEP water holdings for the benefit of First Nations communities in the Murray-Darling Basin, until water entitlements can be transferred to an enduring water holding model, which is being co-designed with First Nations people.

Legislative authority for government spending on the Murray-Darling Basin AWEP to support the purchase and management of water entitlements in the Murray-Darling Basin for the benefit of First Nations communities in the Murray-Darling Basin is established by table item 601 in Part 4 of Schedule 1AB of the *Financial Framework (Supplementary Powers) Regulations 1997*.

The operating context of special accounts

A special account may be established by a determination made by the Minister for Finance (under section 78 of the PGPA Act) or by an Act (see section 80 of the PGPA Act).

A special account is an appropriation mechanism that sets aside amounts within the Consolidated Revenue Fund (**CRF**) for spending for specified purposes. The purposes of a special account are set out in the establishing determination or Act.

In accordance with section 81 of the Constitution, all revenues or moneys raised or received by the Commonwealth Executive Government form one CRF. Section 83 of the Constitution provides that such money may not be drawn from the Treasury except under an appropriation made by law.

- A special account enables revenues or moneys raised or received to be set aside for the purposes of that special account.
- Expenditure for the purposes of a special account is supported by an appropriation in the PGPA Act: subsection 78(4) for a special account established by a determination or subsection 80(1) for a special account established by an Act.

Special account determinations

Special account determinations are legislative instruments for the purposes of the *Legislation Act 2003*. Special account determinations may be varied or revoked by a subsequent determination being made in accordance with subsection 78(3) of the PGPA Act.

In accordance with subsection 79(3) of the PGPA Act, the Finance Minister must table a copy of such determinations in each House of the Parliament. Subsection 79(4) of the PGPA Act provides that special account determinations are subject to disallowance by either House of the Parliament.

The disallowance period starts on the day a special account determination is tabled in the House and ends on the fifth sitting day of the House after the determination was tabled in that House.

If neither House passes a resolution to disallow a special account determination, under subsection 79(5) it commences on the day immediately after the last day on which it could have been disallowed, or on a later day if specified in the determination. This determination specifies that it will commence on the day immediately after the last day on which it could have been disallowed. The Secretary of the Department will be the accountable authority responsible for the special account on commencement of this determination.

Human Rights

A Statement of Compatibility with Human Rights is not required for this 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*. While determinations made under subsections 78(1) of the PGPA Act are subject to disallowance under section 79 of the PGPA Act, subsection 79(2) provides that they are not subject to disallowance under section 42 of the *Legislation Act 2003*. As such, a Statement of Compatibility with Human Rights is not required.

Consultation

The Department of Climate Change, Energy, the Environment and Water (DCCEEW) was consulted in the preparation of this determination.