

EXPLANATORY STATEMENT

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

ACTS INTERPRETATION ACT 1901

ACTS INTERPRETATION (SUBSTITUTED REFERENCES – SECTION 19B) AMENDMENT ORDER 2012 (NO.1)

The *Acts Interpretation Act 1901* (the Act) provides rules for the interpretation of all Commonwealth Acts and addresses matters such as interpreting references to Ministers, Departments or Secretaries of Departments.

A general reference to a Minister, Department or Secretary in a provision of an Act or instrument made under an Act means the Minister, Department or Secretary of the Department administering the legislation for the time being. Where provisions of Acts and instruments made under Acts refer to particular Ministers, Departments or Secretaries of Departments by title, these specific references may need to be altered to reflect new administrative arrangements, such as the change in name of a Minister or Department or the transfer of legislation between portfolios under a revised Administrative Arrangements Order (AAO).

Section 19B of the Act confers on the Governor-General power to make orders which appropriately alter all specific references contained in provisions of Acts.

Subsection 19B(1) provides that the Governor-General may make an order altering a reference in a provision of an Act to a particular Minister if there is no longer any such Minister.

Subsection 19B(2) provides that the Governor-General may make an order altering a reference in a provision of an Act to a particular Department if that Department has been abolished or the name of the Department has been changed.

Subsection 19B(3) provides that the Governor-General may make an order altering a reference in a provision of an Act to a particular Secretary of a Department if that office of Secretary has been abolished or the name of that office has been changed.

On 12 December 2011, the Prime Minister announced a number of changes to her Ministry, including the change of a number of existing Minister's titles and creation of the new Minister for Manufacturing, Minister for Emergency Management and Minister for Disability Reform. She also changed the names of two Commonwealth Departments. The new Ministry was sworn by the Governor-General on 14 December 2011.

The purpose of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2012 (No. 1)* (the Order) is to reflect the Ministry changes announced by the Prime Minister on 12 December 2011 and the corresponding transfer of responsibilities arising from the AAO made by the Governor-General on 14 December 2011. This transfer predominantly relates to the two Departments whose names were changed to reflect new portfolio responsibilities – the new Department of Industry, Innovation, Science, Research and Tertiary Education and the new Department of Regional Australia, Local Government, Arts and Sport.

The Order ensures that Ministers, Departments and Secretaries of Departments can exercise all powers granted to them by legislation for which they are responsible under the AAO.

During development of the Order, a number of outdated references to Ministers, Departments and Secretaries of Departments were identified which were unrelated to the recent amendments to the AAO. The Order also corrects these references.

The Order amends the *Acts Interpretation (Substituted References – Section 19B) Order 1997*.

Details of the Order are set out in the Attachment.

The Act specifies no conditions that need to be met before the power to make the Order may be exercised.

The Order is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The *Legislative Instruments Regulations 2004* provide that an instrument made under section 19B of the *Acts Interpretation Act 1901* is not subject to the disallowance or sunseting. Accordingly a human rights statement of compatibility is not required.

The Order commences on the day after it is registered on the Federal Register of Legislative Instruments.

The Order was developed in consultation with all Commonwealth Departments. The Order is of a machinery nature only and has no direct or substantial indirect effect on business.

Authority: Section 19B of the
Acts Interpretation Act 1901

ATTACHMENT**Details of the Acts Interpretation (Substituted References – Section 19B) Amendment Order 2012 (No. 1)**

Section 1 provides that the Order is named the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2012 (No. 1)*.

Section 2 provides that the Order commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 provides that Schedule 1 amends the *Acts Interpretation (Substituted References – Section 19B) Order 1997* (the original Order).

Schedule 1

The items in Schedule 1 amend the original Order.

Amendments to Schedule 1 to the original Order

Item [1] substitutes a new heading for Part 14 of Schedule 1 to the original Order. The current heading makes reference to the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2011 (No. 1)*. The heading is updated to the specific date (15 September 2011) because that instrument has commenced.

Item [2] inserts a new Part 15 into Schedule 1 to the original Order. Section 3 of the original Order provides for each item in a Part of Schedule 1 to substitute references to the Minister (or Ministers) mentioned in column 2 for references to the Minister (or Ministers) mentioned in column 3, wherever such references occur in a provision mentioned in column 4. The new Part 15 of Schedule 1 sets out a new item, the relevant existing reference, substitute reference and affected provisions, for the machinery changes referred to in section 3 of the original Order.

As shown in the table below, a reference to the Minister listed in the column 2 of Part 15, in a provision listed in column 4, is replaced by a reference to the Minister listed in column 3.

Item	Existing reference	Substitute reference	Affected provisions
1	Minister for Education; or Minister for Employment and Workplace Relations; or Minister for Employment Participation; or Minister for Social Inclusion	Minister for School Education, Early Childhood and Youth; or Minister for Employment and Workplace Relations	all provisions, except for the provisions mentioned in item 2

Item	Existing reference	Substitute reference	Affected provisions
2	Minister for Education; or Minister for Employment and Workplace Relations; or Minister for Employment Participation; or Minister for Social Inclusion	Minister for Tertiary Education, Skills, Science and Research	provisions of Part 4 of Schedule 6 to the <i>Corporations Regulations 2001</i>
3	Minister for Families, Housing, Community Services and Indigenous Affairs	Minister for Families, Community Services and Indigenous Affairs	provisions of: <i>Koongara Project Area Act 1981</i> ; and <i>Protection of Movable Cultural Heritage Act 1986</i>
4	Minister for Health and Ageing	Minister for Health	all provisions
5	Minister for Innovation, Industry, Science and Research	Minister for Tertiary Education, Skills, Science and Research	provisions of: <i>Australian Research Council Act 2001</i> and instruments made under that Act; and instruments made under the <i>Higher Education Support Act 2003</i>
6	Minister for Innovation, Industry, Science and Research	Minister for Industry and Innovation	provisions of: <i>Migration Regulations 1994</i> ; and instruments made under the <i>Customs Act 1901</i> , the <i>Customs Tariff Act 1995</i> , the <i>Disability Discrimination Act 1992</i> and the <i>Industry Research and Development Act 1986</i>

Item	Existing reference	Substitute reference	Affected provisions
7	Minister for Regional Services, Territories and Local Government	Minister for Regional Australia, Regional Development and Local Government	provisions of the <i>Imprisonment and Custody of Offenders Ordinance 1998</i>
8	Minister for Tertiary Education, Skills, Jobs and Workplace Relations; or Minister for School Education, Early Childhood and Youth; or Minister for Social Inclusion	Minister for School Education, Early Childhood and Youth	section 11.1 of the <i>Disability Standards for Education 2005</i>
9	Minister for Tertiary Education, Skills, Jobs and Workplace Relations; or Minister for School Education, Early Childhood and Youth	Minister for Employment and Workplace Relations; or Minister for Industry and Innovation; or Minister for Tertiary Education, Skills, Science and Research	provisions of the <i>Migration Regulations 1994</i> and instruments made under those Regulations

Amendments to Schedule 2 to the original Order

Item [3] inserts a new Part 11 into Schedule 2 to the original Order. Section 4 of the original Order provides for each item in a Part of Schedule 2 to substitute references to the Department mentioned in column 2 for references to the Department mentioned in column 3, wherever such references occur in a provision mentioned in column 4. The new Part 11 of Schedule 2 sets out a new item, the relevant existing reference, substitute reference and affected provisions, for the machinery changes referred to in section 4 of the original Order.

As shown in the table below, a reference to the Department listed in column 2 of Part 11, in a provision listed in column 4, is replaced by a reference to the Department listed in column 3.

Item	Existing reference	Substitute reference	Affected provisions
1	Department of Education, Employment and Workplace Relations	Department of Industry, Innovation, Science, Research and Tertiary Education	provisions of instruments made under: <i>Higher Education Support Act 2003</i> ; and <i>Education Services for Overseas Students Act 2000</i>
2	Department of Education, Employment and Workplace Relations	Department of Education, Employment and Workplace Relations; or Department of Industry, Innovation, Science, Research and Tertiary Education	provisions of the <i>Migration Regulations 1994</i>
3	Department of Immigration and Ethnic Affairs	Department of Immigration and Citizenship	all provisions

Item	Existing reference	Substitute reference	Affected provisions
4	Department of Innovation, Industry, Science and Research	Department of Industry, Innovation, Science, Research and Tertiary Education	<p>section 34-65 of the <i>Income Tax Assessment Act 1997</i>; and</p> <p>provisions of:</p> <p><i>ASIC Market Integrity Rules (Competition in Exchange Markets) 2011</i>; and</p> <p><i>Financial Management and Accountability (Establishment of Special Account for Department of Innovation, Industry, Science and Research) Determination 2011/09</i>; and</p> <p>instruments made under the <i>Civil Aviation Act 1988</i>, the <i>Customs Act 1901</i>, the <i>Customs Administration Act 1985</i>, the <i>Higher Education Support Act 2003</i> and the <i>Industry Research and Development Act 1986</i></p>
5	Department of Industry, Tourism and Resources	Department of Industry, Innovation, Science, Research and Tertiary Education	<p>provisions of:</p> <p><i>Motor Vehicle Standards Regulations 1989</i>; and</p> <p>instruments made under the <i>Australian Crime Commission Act 2002</i>, the <i>Food Standards Australia New Zealand Act 1991</i> and the <i>Privacy Act 1988</i></p>
6	Department of Industry, Tourism and Resources	Department of Resources, Energy and Tourism	subregulation 9AA (1) of the <i>Customs (Prohibited Exports) Regulations 1958</i>
7	Department of Regional Australia, Regional Development and Local Government	Department of Regional Australia, Local Government, Arts and Sport	provisions of the <i>Dairy Produce Act 1986</i>

Amendments to Schedule 3 to the original Order

Item [4] inserts a new Part 11 into Schedule 3 to the original Order. Item 1 of this Section 5 of the original Order provides for each item in a Part of Schedule 3 to substitute references to the Secretary mentioned in column 2 for references to the Secretary mentioned in column 3, wherever such references occur in a provision mentioned in column 4. The new Part 11 of Schedule 3 sets out a new item, the relevant existing reference, substitute reference and affected provisions, for the machinery changes referred to in section 5 of the original Order.

As shown in the table below, a reference to the Secretary listed in column 2 of Part 11, in a provision listed in column 4, is replaced by a reference to the Secretary listed in column 3.

Item	Existing reference	Substitute reference	Affected provisions
1	Secretary of the Attorney-General's Department	Secretary of the Department of Regional Australia, Local Government, Arts and Sport	provisions of the <i>Removal of Prisoners (Territories) Regulations</i> , other than provisions mentioned in item 2
2	Secretary of the Attorney-General's Department	Secretary of the Attorney-General's Department	provisions of the <i>Removal of Prisoners (Territories) Regulations</i> , in relation to their application to the release of a prisoner who has been removed from the Northern Territory
3	Secretary to the Department of Education, Employment and Workplace Relations	Secretary of the Department of Industry, Innovation, Science, Research and Tertiary Education	provisions of Schedule 2 to the <i>Freedom of Information (Miscellaneous Provisions) Regulations 1982</i>
4	Secretary to the Department of Home Affairs	Secretary of the Department of Regional Australia, Local Government, Arts and Sport	provisions of the <i>Application of Laws Ordinance 1973</i>
5	Secretary of the Department of Innovation, Industry, Science and Research	Secretary of the Department of Industry, Innovation, Science, Research and Tertiary Education	section 34-25 of the <i>Income Tax Assessment Act 1997</i> ; and provisions of instruments made under the <i>Freedom of Information Act 1982</i>