

EXPLANATORY STATEMENT

Select Legislative Instrument No. 236, 2013

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

ACTS INTERPRETATION ACT 1901

*ACTS INTERPRETATION (SUBSTITUTED REFERENCES –
SECTION 19B) AMENDMENT ORDER 2013 (No. 2)*

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 title of a Minister or Department or the transfer of legislation between portfolios under a new 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 18 September 2013, a new Ministry was sworn in by the Governor-General, which included several new positions. The Governor-General also approved a new AAO to implement the associated administrative changes. The new arrangements include the following:

- appointment of new positions of Ministers for Agriculture, Communication, the Environment, Finance, Health, Immigration and Border Protection, Industry, Infrastructure and Regional Development, and Social Services;
- abolition of the Department of Regional Australia, Local Government, Arts and Sport, the Department of Education, Employment and Workplace Relations, and the Department of Resources, Energy and Tourism;
- establishment of the Department of Education and the Department of Employment;

- renaming of the remaining Departments; and
- changes to the responsibilities of Departments.

The purpose of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2013 (No. 2)* (the Order) is to amend the *Acts Interpretation (Substituted References – Section 19B) Order 1997* (the original Order) to reflect the new ministry and the transfer of responsibilities through the new AAO made on 18 September 2013 and further minor amendments on 3 October 2013.

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, by ensuring that references to Ministers, Departments and Secretaries in legislation refer to the correct Ministers, Departments and Secretaries.

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 Act is not subject to the disallowance or sunset provisions of the *Legislative Instruments Act 2003*. 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, except for Schedule 1 which contains amendments which are taken to have commenced on 18 September 2013. The provisions in Schedule 1 apply retrospectively to facilitate the continued exercise of powers and functions from the time of the administrative changes. In particular, the retrospective application avoids doubt as to whether payments could have continued to be made in the period between the date of the changes to the relevant administrative arrangements and the date on which this Order has otherwise taken effect (the day after registration).

Ordinarily, subsection 12(2) of the *Legislative Instruments Act 2003* would apply to provisions which are taken to have commenced on a date before their registration. Subsection 12(2) provides that a legislative instrument has no effect if, apart from the operation of that subsection, it would take effect before the date it is registered and would, as a result, disadvantage or impose liabilities on a person (other than the Commonwealth or an authority of the Commonwealth). Under subsection 12(3), this does not apply where there is a 'contrary provision for commencement of the instrument in the enabling legislation'. Subsections 19B(1), (2) and (3) of the Act provide that a provision for which a substituted reference order has been made for the title of a Minister, Department or Secretary shall have effect accordingly for all purposes 'on and after the day specified in the order (which may be a day before the order is made)'. Subsections 19B(1), (2) and (3) of the Act are 'contrary provisions' for the purposes of subsection 12(3) of the *Legislative Instruments Act 2003*. Accordingly, subsection 12(2) of the *Legislative Instruments Act 2003* does not apply to the Order.

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

Details of the Acts Interpretation (Substituted References – Section 19B) Amendment Order 2013 (No. 2)

Section 1 provides that the Order is named the *Acts Interpretation (Substituted References - Section 19B) Amendment Order 2013 (No. 2)*.

Section 2 provides that Sections 1 to 4 and Schedule 2 to the Order commence on the day after it is registered on the Federal Register of Legislative Instruments, and Schedule 1 to the Order is taken to have commenced on 18 September 2013.

Section 3 provides that the Order is made under section 19B of the *Acts Interpretation Act 1901*.

Section 4 provides that each instrument specified in a Schedule to the Order is amended or repealed as set out in the applicable item of the relevant Schedule, and any other item in a Schedule to the Order has effect according to its terms.

Schedule 1

The items in Schedule 1 amend the original Order.

Amendments to Schedule 1 to the original Order

Item [1] inserts a new Part 17 into Schedule 1 to the original Order, for substitutions made on 18 September 2013, which is the date the substitutions take effect. 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. Part 17 of Schedule 1 sets out each new item, the relevant existing reference, the substitute reference and the 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 17, 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 Housing and Homelessness	Minister for Social Services	Schedule 1 to the <i>Appropriation Act (No. 2) 2013-2014</i>
2	Minister for Infrastructure and Transport	Minister for Infrastructure and Regional Development	Schedule 1 to the <i>Appropriation Act (No. 2) 2013-2014</i>
3	Minister for Sustainability, Environment, Water, Population and Communities	Minister for the Environment	Schedule 1 to the <i>Appropriation Act (No. 2) 2013-2014</i>

Amendments to Schedule 2 to the original Order

Item [2] inserts a new Part 13 into Schedule 2 to the original Order, for substitutions made on 18 September 2013, which is the date the substitutions take effect. 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. Part 13 of Schedule 2 sets out each new item, the relevant existing reference, the substitute reference and the 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 13, 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 Broadband, Communications and the Digital Economy	Department of Communications	Provisions of the <i>Appropriation Act (No. 1) 2013-2014</i> and the <i>Appropriation Act (No. 2) 2013-2014</i> , except those that are the subject of a determination under section 32 of the <i>Financial Management and Accountability Act 1997</i>
2	Department of Education, Employment and Workplace Relations	Department of Employment	Payment to Comcare in Schedule 1 to the <i>Appropriation Act (No. 1) 2013-2014</i>
3	Department of Families, Housing, Community Services and Indigenous Affairs	Department of the Prime Minister and Cabinet	Payments to Aboriginal Hostels Limited, Indigenous Business Australia, Indigenous Land Corporation and Torres Strait Regional Authority in Schedule 1 to the <i>Appropriation Act (No. 1) 2013-2014</i> and Schedule 2 to the <i>Appropriation Act (No. 2) 2013-2014</i>
4	Department of Families, Housing, Community Services and Indigenous Affairs	Department of Social Services	Provisions of the <i>Appropriation Act (No. 1) 2013-2014</i> and the <i>Appropriation Act (No. 2) 2013-2014</i> , except: a) the provisions that are the subject of a determination under section 32 of the <i>Financial</i>

Item	Existing reference	Substitute reference	Affected provisions
			<i>Management and Accountability Act 1997</i> ; and (b) the provisions mentioned in item 3
5	Department of Health and Ageing	Department of Health	Provisions of the <i>Appropriation Act (No. 1) 2013-2014</i> and the <i>Appropriation Act (No. 2) 2013-2014</i> , except those that are the subject of a determination under section 32 of the <i>Financial Management and Accountability Act 1997</i>
6	Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education	Department of the Prime Minister and Cabinet	Payments to Australian Institute of Aboriginal and Torres Strait Islander Studies in Schedule 1 to the <i>Appropriation Act (No. 1) 2013-2014</i> and Schedule 2 to the <i>Appropriation Act (No. 2) 2013-2014</i>
7	Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education	Department of Industry	Provisions of the <i>Appropriation Act (No. 1) 2013-2014</i> and the <i>Appropriation Act (No. 2) 2013-2014</i> , except: (a) the provisions that are the subject of a determination under section 32 of the <i>Financial Management and Accountability Act 1997</i> ; and (b) the provisions mentioned in item 6
8	Department of Infrastructure and Transport	Department of Infrastructure and Regional Development	Provisions of the <i>Appropriation Act (No. 1) 2013-2014</i> and the <i>Appropriation Act (No. 2) 2013-2014</i> , except those that are the subject of a determination under

Item	Existing reference	Substitute reference	Affected provisions
			section 32 of the <i>Financial Management and Accountability Act 1997</i>
9	Department of Regional Australia, Local Government, Arts and Sport	Department of Health	Payment to Australian Sports Commission in Schedule 1 to the <i>Appropriation Act (No. 1) 2013-2014</i>
10	Department of Regional Australia, Local Government, Arts and Sport	Attorney-General's Department	Payments to Australia Council, Australian Film, Television and Radio School, Australian National Maritime Museum, National Film and Sound Archive, National Gallery of Australia, National Library of Australia, National Museum of Australia, National Portrait Gallery of Australia and Screen Australia in Schedule 1 to the <i>Appropriation Act (No. 1) 2013-2014</i> and Schedule 2 to the <i>Appropriation Act (No. 2) 2013-2014</i>
11	Department of Resources, Energy and Tourism	Department of Foreign Affairs and Trade	Payment to Tourism Australia in Schedule 1 to the <i>Appropriation Act (No. 1) 2013-2014</i>
12	Department of Agriculture, Fisheries and Forestry	Department of Agriculture	Provisions of the <i>Appropriation Act (No. 1) 2013-2014</i> and the <i>Appropriation Act (No. 2) 2013-2014</i> , except those that are the subject of a determination under section 32 of the <i>Financial Management and Accountability Act 1997</i>
13	Department of Finance and Deregulation	Department of Finance	Provisions of the <i>Appropriation Act (No. 1) 2013-2014</i> and the <i>Appropriation Act (No. 2) 2013-2014</i>

Item	Existing reference	Substitute reference	Affected provisions
			<i>2013-2014</i> , except those that are the subject of a determination under section 32 of the <i>Financial Management and Accountability Act 1997</i>
14	Department of Immigration and Citizenship	Department of Immigration and Border Protection	Provisions of the <i>Appropriation Act (No. 1) 2013-2014</i> and the <i>Appropriation Act (No. 2) 2013-2014</i> , except those that are the subject of a determination under section 32 of the <i>Financial Management and Accountability Act 1997</i>
15	Department of Sustainability, Environment, Water, Population and Communities	Department of the Environment	Provisions of the <i>Appropriation Act (No. 1) 2013-2014</i> and the <i>Appropriation Act (No. 2) 2013-2014</i> , except those that are the subject of a determination under section 32 of the <i>Financial Management and Accountability Act 1997</i>

Amendments to Schedule 3 to the original Order

Item [3] inserts a new Part 13 into Schedule 3 to the original Order, for substitutions made on 18 September 2013, which is the date the substitutions take effect. 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. Part 13 of Schedule 3 sets out each new item, the relevant existing reference, the substitute reference and the 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 13, 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	Health Secretary; or Secretary of the Health Department	Secretary of the Department of Social Services	Provisions of the <i>Human Services (Medicare) Regulations 1975</i>

Schedule 2

The items in Schedule 2 amend the original Order.

Amendments to Schedule 1 to the original Order

Item [1] substitutes a new heading for Part 16 of Schedule 1 to the original Order. The current heading makes reference to substitutions made on the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2013 (No. 1)*. The heading is updated to the specific date (27 April 2013), which is the date the instrument was made.

Item [2] substitutes a new heading within the table in Part 16 of Schedule 1 to the original Order. The current heading makes reference to substitutions made on the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2013 (No. 1)*. The heading is updated to the specific date (27 April 2013), which is the date the instrument was made.

Item [3] inserts a new Part 18 into Schedule 1 to the original Order, for substitutions made on the commencement of the Order (the day after registration). 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. Part 18 of Schedule 1 sets out each new item, the relevant existing reference, the substitute reference and the 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 18, 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 Climate Change and Energy Efficiency	Minister for Industry	Subregulation 4VA(1) of the <i>Customs (Prohibited Imports) Regulations 1956</i>
2	Minister for Tertiary Education, Skills, Science and Research	Minister for Education	Provisions of Part 4 of Schedule 6 to the <i>Corporations Regulations 2001</i>
3	Minister for Employment and Workplace Relations; or Minister for Climate Change, Industry and Innovation; or Minister for Tertiary Education, Skills, Science and Research	Minister for Employment; or Minister for Industry; or Minister for Education	Provisions of the <i>Migration Regulations 1994</i> and instruments made under those Regulations

Item	Existing reference	Substitute reference	Affected provisions
4	Minister for Climate Change, Industry and Innovation	Minister for Industry	Section 6.1 of the <i>Disability (Access to Premises - Buildings) Standards 2010</i> Provisions of instruments made under the <i>Customs Act 1901</i> and the <i>Customs Tariff Act 1995</i>
5	Minister for Home Affairs	Minister for Justice	All provisions, except the provision mentioned in item 6
6	Attorney-General or Minister for Home Affairs	Minister for Immigration and Border Protection	Subregulation 3(1) of the <i>Taipei Economic and Cultural Office (Privileges and Immunities) Regulations 1998</i>
7	Minister for Agriculture, Fisheries and Forestry	Minister for Agriculture	Regulations 4K and 5I of the <i>Customs (Prohibited Imports) Regulations 1956</i> Regulations 4A and 5 of the <i>Customs (Prohibited Exports) Regulations 1958</i>
8	Minister for Sustainability, Environment, Water, Population and Communities	Minister for the Environment	Item 3 of Schedule 3 to the <i>Customs (Prohibited Imports) Regulations 1956</i>
9	Minister for Infrastructure and Transport	Minister for Infrastructure and Regional Development	Section 34.1 of the <i>Disability Standards for Accessible Public Transport 2002</i>
10	Minister for Tertiary Education, Skills, Jobs and Workplace Relations	Minister for Employment	Subregulation 7B(1) of the <i>Financial Management and Accountability Regulations 1997</i>
11	Minister for School Education, Early Childhood and Youth	Minister for Education	Section 11.1 of the <i>Disability Standards for Education 2005</i>

Amendments to Schedule 2 to the original Order

Item [4] substitutes a new heading for Part 12 of Schedule 2 to the original Order. The current heading makes reference to substitutions made on the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2013 (No. 1)*. The heading is updated to the specific date (27 April 2013), which is the date the instrument was made.

Item [5] substitutes a new heading within the table in Part 12 of Schedule 2 to the original Order. The current heading makes reference to substitutions made on the

commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2013 (No. 1)*. The heading is updated to the specific date (27 April 2013), which is the date the instrument was made.

Item [6] inserts a new Part 14 into Schedule 2 to the original Order, for substitutions made on the commencement of the Order (the day after registration). 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. Part 14 of Schedule 2 sets out each new item, the relevant existing reference, the substitute reference and the 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 14, 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 Education	Provisions of the <i>Migration Regulations 1994</i>
2	Department of Agriculture, Fisheries and Forestry	Department of Agriculture	Regulations 4K and 5I of the <i>Customs (Prohibited Imports) Regulations 1956</i> Regulation 4A of the <i>Customs (Prohibited Exports) Regulations 1958</i>
3	Department of Health and Ageing	Department of Health; or Department of Social Services	Paragraph 6A.6.1 of the <i>Treatment Principles</i> Paragraph 6A.6.1 of the <i>MRCA Treatment Principles</i>
4	Department of Sustainability, Environment, Water, Population and Communities	Department of the Environment	Subregulations 4.05(3) and 5.02(3) of the <i>Airports (Environment Protection) Regulations 1997</i> Item 3 of Schedule 3 to the <i>Customs (Prohibited Imports) Regulations 1956</i>
5	Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education	Department of the Environment	Methodology determinations made under section 106 of the <i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>

Item	Existing reference	Substitute reference	Affected provisions
6	Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education	Department of Industry	Provisions of the following: (a) the <i>ASIC Market Integrity Rules (Competition in Exchange Markets) 2011</i> ; (b) the <i>Motor Vehicle Standards Regulations 1989</i> ; (c) the <i>Customs Administration Regulations 2000</i> Provisions of instruments made under the <i>Food Standards Australia New Zealand Act 1991</i> and the <i>Migration Regulations 1994</i>
7	Department of Resources, Energy and Tourism	Department of Industry	Subregulation 9AA(1) of the <i>Customs (Prohibited Exports) Regulations 1958</i> and regulation 4MA of the <i>Customs (Prohibited Imports) Regulations 1956</i>
8	Department of Education, Employment and Workplace Relations	Department of Industry	Provisions of the <i>Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)</i>

Amendments to Schedule 3 to the original Order

Item [7] substitutes a new heading for Part 12 of Schedule 3 to the original Order. The current heading makes reference to substitutions made on the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2013 (No. 1)*. The heading is updated to the specific date (27 April 2013), which is the date the instrument was made.

Item [8] substitutes a new heading within the table in Part 12 of Schedule 3 to the original Order. The current heading makes reference to substitutions made on the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2013 (No. 1)*. The heading is updated to the specific date (27 April 2013), which is the date the instrument was made.

Item [9] inserts a new Part 14 into Schedule 3 to the original Order, for substitutions made on the commencement of the Order (the day after registration). 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. Part 14 of Schedule 3 sets out each

new item, the relevant existing reference, the substitute reference and the 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 14, 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 Department of Families, Housing, Community Services and Indigenous Affairs	Secretary of the Department of Social Services	Provisions of Schedule 2 to the <i>Migration Regulations 1994</i>
2	Secretary	Secretary of the Department of Social Services	Subsection 42(1) of the <i>Health and Other Services (Compensation) Act 1995</i>
3	Secretary of the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education	Secretary of the Department of Industry	Provisions of instruments made under the <i>Freedom of Information Act 1982</i>