

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Attorney-General

### *Acts Interpretation Act 1901*

#### *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2008 (No. 2)*

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

The Administrative Arrangements Order sets out the legislation to be administered by each Minister and his or her Department. 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 under the Administrative Arrangements Order. Where provisions of Acts and instruments made under Acts refer to particular Ministers, Departments or Secretaries of Departments by name, these specific references may need to be altered to reflect the changes which result from the making of a new Administrative Arrangements Order.

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(3) of the Act 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.

The primary purpose of the Order is to make consequential amendments to Orders made recently under section 19B, following the remaking of the Administrative Arrangements Order in December 2007.

The Department of Innovation, Industry, Science and Research has identified a legislative function allocated to the Secretary of that Department under the Administrative Arrangements Order made in December 2007 that is not reflected in the current section 19B Order:

- that function is set out in subsection 73A(6) of the *Income Tax Assessment Act 1936* which provides that the Secretary to the Department of Employment, Education and Training may approve ‘an approved research institute’;
- following the recent revisions to the Administrative Arrangements Order, this provision should refer to the Secretary of the Department of Innovation, Industry, Science and Research.

The purpose of the Order is to ensure that the Secretary of the Department of Innovation, Industry, Science and Research can exercise the power to approve a research institute under subsection 73A(6) of the *Income Tax Assessment Act 1936* allocated to him or her under the current Administrative Arrangements Order.

The Order also makes one other minor administrative amendment.

Details of the Order under section 19B of the Act are set out in Attachment A.

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

The Order under section 19B of the Act amends the *Acts Interpretation (Substituted References – Section 19B) Order 1997* made in 1997, and amended in 1997, 1998, 1999, 2001, 2002, 2004, 2006, 2007 and 2008.

The Order is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. However the *Legislative Instruments Regulations 2004* provide that an instrument made under section 19B of the *Acts Interpretation Act 1901* is not subject to disallowance or sun-setting.

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

Departments affected by the Order have been consulted. Further consultation was unnecessary for this legislative instrument as it is of a machinery nature only. The Order has no direct or substantial indirect effect on business.

**ATTACHMENT A****Details of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2008 (No. 2)***

**Clause 1** provides that the Order is the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2008 (No. 2)*.

**Clause 2** provides that the Order commences on the day after it is registered. This means registration on the Federal Register of Legislative Instruments established under the *Legislative Instruments Act 2003*.

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

**Amendments to the original Order**

**Item [1]** This item substitutes a new heading for Part 8 of Schedule 2 to the original Order. The previous heading referred to the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2008 (No. 1)*. The heading has been updated to the specific date because that instrument has commenced.

**Item [2]** This item inserts a new Part 8 into Schedule 3 to the original Order. Clause 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 in column 3, wherever such references occur in a provision mentioned in column 4. New Part 7 of Schedule 3 sets out a number of new items and the relevant existing reference, substitute reference and affected provisions, for the machinery changes referred to in clause 5 of the original Order.

As shown in the table below, a reference to the Secretary listed in the second column of Part 8, in a provision listed in the fourth column, is replaced by a reference to the Secretary listed in the third column.

<b>Item</b>	<b>Existing reference</b>	<b>Substitute reference</b>	<b>Affected provisions</b>
1	Secretary to the Department of Employment, Education and Training	Secretary of the Department of Innovation, Industry, Science and Research	Subsection 73A(6) of the <i>Income Tax Assessment Act 1936</i>