

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 227

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

ACTS INTERPRETATION ACT 1901

Acts Interpretation (Miscellaneous Amendments) Instrument 2011 (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.

Section 51 of the Act confers on the Governor-General power to make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 249(1) of the *Copyright Act 1968* (the Copyright Act) provides the Governor-General with power to make regulations prescribing all matters that are required or permitted by the Copyright Act to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to the Copyright Act.

Section 197 of the *Evidence Act 1995* (the Evidence Act) provides the Governor-General with power to make regulations, not inconsistent with the Evidence Act, prescribing matters required or permitted by the Evidence Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Evidence Act.

Subsection 125(1) of the *Family Law Act 1975* (the Family Law Act) provides the Governor-General with power to make regulations, not inconsistent with the Family Law Act, prescribing all matters required or permitted by the Family Law Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Family Law Act.

Section 85 of the *International War Crimes Tribunals Act 1995* (the International War Crimes Tribunals Act) provides the Governor-General with power to make regulations, not inconsistent with the International War Crimes Tribunals Act, prescribing matters required or permitted by the International War Crimes Tribunals Act, or necessary or convenient to be prescribed for carrying out or giving effect to the International War Crimes Tribunals Act.

The purpose of the Instrument is to make consequential amendments to subordinate legislation within the Attorney-General's portfolio responsibility, to reflect the changes made by the *Acts Interpretation Amendment Act 2011* (the AIAA).

The AIAA contains a number of amendments that modernise and improve the language and structure of the Act. It relocates and introduces a number of definitions for commonly used terms.

The Instrument updates cross references to the Act to take into account these changes. The Instrument also removes cross references to the Act that are obsolete, as a result of the changes made by the AIAA and other Acts.

The Instrument amends the following instruments:

- *Acts Interpretation (Registered Relationships) Regulations 2008*
- *Acts Interpretation (Substituted References – Section 19BA) Order 2004*
- *Copyright Regulations 1969*
- *Evidence Regulations 1995*
- *Family Law (Superannuation) Regulations 2001*, and
- *International War Crimes Tribunals Regulations*.

Details of the Instrument are set out in the Attachment.

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

The Instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Instrument commences on 27 December 2011.

The Instrument was developed in consultation with the relevant policy areas of the Attorney-General's Department. The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required as the amendments are machinery in nature.

Authority: Section 51 of the *Acts Interpretation Act 1901*

Details of the *Acts Interpretation (Miscellaneous Amendments) Instrument 2011 (No. 1)*

Clause 1 provides that the Instrument be named the *Acts Interpretation (Miscellaneous Amendments) Instrument 2011 (No. 1)*.

Clause 2 provides that the Instrument commences on 27 December 2011.

Clause 3 provides that Part 1 of Schedule 1 amends the *Acts Interpretation (Registered Relationships) Regulations 2008*.

Clause 4 provides that Part 2 of Schedule 1 amends the *Acts Interpretation (Substituted References – Section 19BA) Order 2004*.

Clause 5 provides that Part 3 of Schedule 1 amends the *Copyright Regulations 1969*.

Clause 6 provides that Part 4 of Schedule 1 amends the *Evidence Regulations 1995*.

Clause 7 provides that Part 5 of Schedule 1 amends the *Family Law (Superannuation) Regulations 2001*.

Clause 8 provides that Part 6 of Schedule 1 amends the *International War Crimes Tribunals Regulations*.

Schedule – Amendments**Part 1, *Acts Interpretation (Registered Relationships) Regulations 2008*****Item [1] – Regulation 3**

Regulation 3 of the *Acts Interpretation (Registered Relationships) Regulations 2008* refers to section 22B of the Act. This section was repealed by the AIAA and moved to the new Part 2 – Definitions of the Act, as section 2E. This item updates the cross reference to refer to section 2E of the Act.

Part 2, *Acts Interpretation (Substituted References – Section 19BA) Order 2004***Item [2] – Regulation 1, note**

The note at clause 1 of the *Acts Interpretation (Substituted References – Section 19BA) Order 2004* provides that the Order commences on the day on which it is made. Subsections 19BA(1), (2) and (3) of the Act requires the Order to specify the day a provision making reference to a Minister, Department or Secretary has effect as a substituted reference. This is done in sections 3, 4 and 5 of the Order, so the note at section 1 of the Order is unnecessary. This item omits the note at section 1 of the Order.

Part 3, *Copyright Regulations 1969***Item [3] – Subregulation 3(4)**

Subregulation 3(4) of the *Copyright Regulations 1969* refers to an outdated version of section 46 of the Act, when it provided for the construction of rules, regulations and by-laws of both a legislative and non-legislative character. That version of section 46 of the Act was

repealed and replaced with the new sections 46, 46AA and 46B by the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003*. The new provisions apply only to non-legislative instruments and resolutions. Section 13 of the *Legislative Instruments Act 2003* (LIA) was enacted to replace the previous version of section 46 and provides for the construction of all legislative instruments, including the Copyright Regulations. However, the reference in subregulation 3(4) was not amended at that time. This item updates the cross reference to refer to subsection 13(1) of the LIA.

Part 4, Evidence Regulations 1995

Item [4] – Subregulation 3(2), note

The note at subregulation 3(2) of the *Evidence Regulations 1995* refers to section 25C of the Act, which was amended by the AIAA to omit the words ‘unless contrary intention appears’. This item updates the note to omit these words.

The note also refers to an outdated version of subsection 46(1) of the Act, when it provided for the construction of rules, regulations and by-laws of both a legislative and non-legislative character. That version of section 46 of the Act was repealed and replaced with the new sections 46, 46AA and 46B by the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003*. The new provisions apply only to non-legislative instruments and resolutions. Section 13 of the *Legislative Instruments Act 2003* (LIA) was enacted to replace the previous version of section 46 and provides for the construction of all legislative instruments, including the Evidence Regulations. However, the reference in subregulation 3(2) was not amended at the time. This item removes the reference to subsection 46(1) as it is no longer necessary.

Part 5, Family Law (Superannuation) Regulations 2001

Item [5] – Subregulation 30(2)

Subregulation 30(2) of the *Family Law (Superannuation) Regulations 2001* provides that an approval made by the Minister is a disallowable instrument for the purposes of section 46A of the Act. That version of section 46A of the Act was repealed and replaced with the new sections 46, 46AA and 46B by the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003*. The new provisions apply only to non-legislative instruments and resolutions. As approvals made under subregulation 30(2) are registered on the Federal Register of Legislative Instruments, they are deemed to be legislative instruments by section 5(3) of the LIA. This item updates the cross reference to provide that an approval made by the Minister is a legislative instrument.

Item [6] – Subregulation 38(3)

Subregulation 38(3) of the *Family Law (Superannuation) Regulations 2001* provides that an approval made by the Minister is a disallowable instrument for the purposes of section 46A of the Act. That version of section 46A of the Act was repealed and replaced with the new sections 46, 46AA and 46B by the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003*. The new provisions apply only to non-legislative instruments and resolutions. As approvals made under subregulation 38(3) are registered on the Federal Register of Legislative Instruments, they are deemed to be legislative instruments by section 5(3) of the LIA. This item updates the cross reference to provide that an approval made by the Minister is a legislative instrument.

Item [7] – Subregulation 43A(2)

Subregulation 43A(2) of the *Family Law (Superannuation) Regulations 2001* provides that an approval made by the Minister is a disallowable instrument for the purposes of section 46A of the Act. That version of section 46A of the Act was repealed and replaced with the new sections 46, 46AA and 46B by the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003*. The new provisions apply only to non-legislative instruments and resolutions. As approvals made under subregulation 43A(2) are registered on the Federal Register of Legislative Instruments, they are deemed to be legislative instruments by section 5(3) of the LIA. This item updates the cross reference to provide that an approval made by the Minister is a legislative instrument.

Item [8] – Subregulation 63(6C)

Subregulation 63(6C) of the *Family Law (Superannuation) Regulations 2001* provides that a determination made by the Minister under subregulation 63(6A) or (6B) of those Regulations is a disallowable instrument for the purposes of section 46A of the Act. That version of section 46A of the Act was repealed and replaced with the new sections 46, 46AA and 46B by the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003*. The new provisions apply only to non-legislative instruments and resolutions. As determinations made under subregulations 63(6A) or (6B) are registered on the Federal Register of Legislative Instruments, they are deemed to be legislative instruments by section 5(3) of the LIA. This item updates the cross reference to provide that an approval made by the Minister is a legislative instrument.

Item [9] – Subregulation 64(8)

Subregulation 64(8) of the *Family Law (Superannuation) Regulations 2001* provides that a determination made by the Minister under subregulation 64(7), (7A) or (7B) of those Regulations is a disallowable instrument for the purposes of section 46A of the Act. That version of section 46A of the Act was repealed and replaced with the new sections 46, 46AA and 46B by the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003*. The new provisions apply only to non-legislative instruments and resolutions. As determinations made under subregulations 64(7), (7A) or (7B) are registered on the Federal Register of Legislative Instruments, they are deemed to be legislative instruments by section 5(3) of the LIA. This item updates the cross reference to provide that an approval made by the Minister is a legislative instrument.

Item [10] – Regulation 68B, note

The note at regulation 68B of the *Family Law (Superannuation) Regulations 2001* refers to the definition of ‘document’ in section 25 of the Act. This section was repealed by the AIAA and moved to the new Part 2 – Definitions, at section 2B. This item updates the cross reference to refer to section 2B of the Act.

Part 6, *International War Crimes Tribunals Regulations***Item [11] – Regulation 1**

This item amends regulation 1 of the *International War Crimes Tribunals Regulations* to include the year of the Regulations in its title.

Item [12] – Subregulation 3(2), note

The note at subregulation 3(2) of the *International War Crimes Tribunals Regulations* refers to section 25C of the Act, which was amended by the AIAA to omit the words ‘unless contrary intention appears’. This item updates the note to omit these words.

The note also refers to an outdated version of subsection 46(1) of the Act, when it provided for the construction of rules, regulations and by-laws of both a legislative and non-legislative character. That version of section 46 of the Act was repealed and replaced with the new sections 46, 46AA and 46B by the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003*. The new provisions apply only to non-legislative instruments and resolutions. Section 13 of the LIA was enacted to replace the previous version of section 46 and provides for the construction of all legislative instruments, including the International War Crimes Tribunals Regulations. This item removes the reference to subsection 46(1) as it is no longer necessary.

Item [13] – Regulation 9, note

The note at regulation 9 of the *International War Crimes Tribunals Regulations* refers to the definition of ‘oath’ under subsection 27(b) of the Act. Section 27 was repealed by the AIAA and moved to the new Part 2 – Definitions, at section 2B. This item updates the cross reference to refer to section 2B of the Act.