*Acts Interpretation Amendment (2025 Measures No. 1) Substituted Reference Order 2025*

# **EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General in compliance with

section 15G of the *Legislation Act 2003*

**INTRODUCTION**

The *Acts Interpretation Act 1901* (the Act) provides rules for the interpretation of all Commonwealth Acts and instruments.

Where provisions of Commonwealth Acts and instruments made under those Acts refer to a particular authority such as a Minister, a Department of State or other Australian Government Agency or a particular office or office-holder, these references may need to be altered to reflect new administrative arrangements and facilitate the continued exercise of powers and functions from the time of those administrative changes.

**SECTION 19B OF THE ACTS INTERPRETATION ACT 1901**

Section 19B of the Act provides for the making of substituted reference orders. A substituted reference order may be made to alter a reference to a specified authority if any of the following happens (as described in subsection 19B(1)):

* the authority is abolished
* the name or title of the authority is changed
* there is a change in the matters dealt with by the authority because of the effect of an Administrative Arrangements Order (AAO), or
* the reference to the authority becomes no longer appropriate for any other reason.

Substituted reference orders avoid the need to amend legislation, but do not themselves amend the statute book. Accordingly, an order must be read with the relevant legislation or instrument to determine the correct reference. A substituted reference order can operate on references to authorities that are already the subject of existing substituted reference orders. An order cannot deal with transitional issues.

Subsection 19B(2) of the Act confers the power on the Governor-General to make a substituted reference order, which has effect for all purposes on and after the day specified in the order.

The Act also provides that a substituted reference order:

* may have retrospective effect (subsection 19B(3));
* has effect according to its terms (subsection 19B(4));
* is a legislative instrument (subsection 19B(5)); and
* must not be made only because an authority is abolished, and another authority of the same type is then established with the same name (subsection 19B(6)).

Subsection 19B(7) of the Act defines ***authority*** for the purposes of section 19B as a Minister, a Department of State, any other Agency within the meaning of the *Public Service Act 1999*, or an office or the holder of an office.

**THE PROPOSED ORDER**

The *Acts Interpretation Amendment (2025 Measures No. 1) Substituted Reference Order 2025* (the proposed Order) creates substituted references to give effect to machinery of government changes under the amendment to the 13 May 2025 Administrative Arrangements Order (AAO) signed on 26 June 2025.

The proposed Order would amend the *Acts Interpretation Substituted Reference Order 2017*, rather than make a new instrument. This is consistent with all substituted reference orders made after 2017. This approach aims to improve readability and facilitate greater access to law by consolidating new substituted references in one instrument.

Details of the proposed Order are set out in the Attachment.

All Commonwealth departments responsible for administering affected Acts and instruments were consulted on the substitutions included in the proposed Order. The proposed Order is of a machinery nature only and has no direct or substantial indirect effect on business.

The Act specifies no conditions that needed to be satisfied before the power to make the proposed Order was exercised.

***LEGISLATION ACT 2003***

The proposed Order is a legislative instrument for the purposes of the Legislation Act. The *Legislation (Exemptions and Other Matters Regulation) 2015* provides that a substituted reference order made under section 19B of the Act is not subject to the disallowance or sunsetting provisions of the Legislation Act (sections 10 and 12 of that Regulation).

**COMMENCEMENT AND OPERATION**

The proposed Order would commence the day after it is registered on the Federal Register of Legislation. Further details about the date on which particular substitutions have effect are set out in the Attachment.

**ATTACHMENT**

**Details of the proposed *Acts Interpretation Amendment (2025 Measures No. 1) Substituted Reference Order 2025***

**Section 1 – Name**

This section provides that the title of this order is the *Acts Interpretation Amendment (2025 Measures No. 1) Substituted Reference Order 2025* (the Order).

**Section 2 – Commencement**

This section provides for the whole of the Order to commence on the day after it is registered on the Federal Register of Legislation.

**Section 3 – Authority**

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

**Section 4 – Schedules**

This section provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

***Acts Interpretation Substituted Reference Order 2017***

Each section in the Schedule follows the same format, specifying the date from which the substituted references to a Department or Secretary in a single Act would have effect, and then setting out those substitutions in a table. Column 1 in each table identifies the provisions where a reference requires substitution. Column 2 specifies the existing reference. Column 3 specifies the substituted reference.

**Item [1] – At the end of Part 3**

Item 1 adds new section 3.10 at the end of Part 3 of the *Acts Interpretation Act Substituted Reference Order 2017* (the 2017 Order).

The table in section 3.10 identifies the affected definition of ‘administering officer’ in section 4 of each of the following instruments:

* *Higher Education Support (Indigenous Student Assistance Grants) (Special Grants) Notifiable Instrument 2018*
* *Higher Education Support (Indigenous Student Success Program) (Rollover of Grant Amounts) Determination 2018*
* *Higher Education Support (Indigenous Student Success Program) (Rollover of Grant Amounts) Determination (No. 2) 2018*
* *Higher Education Support (Indigenous Student Success Program) (Rollover of Grant Amounts) Determination (No. 3) 2018*
* *Higher Education Support (Indigenous Student Success Program) (Rollover of Grant Amounts) Determination 2019*
* *Indigenous Student Assistance Grants Guidelines 2017*.

Items 1-6 would substitute the reference to ‘National Indigenous Australians Agency’ (NIAA) in each of the six instruments with the reference ‘Department administered by the Minister administering Part 2-2A of the Act’, with the Act being the *Higher Education Support Act 2003* (Higher Education Support Act).

This change is necessary as, under the Administrative Arrangement Order (AAO) of 26 June 2025, the NIAA is no longer responsible for the functions prescribed to the ‘administering officer’ in each of these instruments. Consistent with the AAO of 26 June 2025, the substituted references correctly refer to the administering officer as being an employee in the Department administered by the Minister administering Part 2‑2A of the Higher Education Support Act, being the Department of Education.

As the impacted provisions were already covered by an existing substitution in the 2017 Order, each item has a note directing the reader to the corresponding substitution in the table at section 3.6. The substitutions in the proposed Order operate cumulatively with the existing substitutions. This approach has been taken, rather than repealing past substitutions, so that successive substitutions appear on the face of the 2017 Order to promote its readability.

The substitutions inserted by section 2.10 take effect on and after 1 July 2025. This is due to the transferring functions needing to be exercised from this day.

**Item [2] – At the end of Part 4**

Item 2 adds new section 4.7 at the end of Part 4 of the 2017 Order.

The table in section 4.7 identifies references to the ‘Chief Executive Officer of the National Indigenous Australians Agency’ (CEO of NIAA) in each provision in the Higher Education Support Act, or of an instrument made under that Act, in so far as the provision applies in respect of grants to higher education providers for Indigenous persons. Item 1 would change those references to the CEO of NIAA to be the ‘Secretary of the Department’, being the Department of Education.

This change is necessary as, under the AAO of 26 June 2025, the CEO of NIAA is no longer responsible for the functions referred to in the Higher Education Support Act. Consistent with the AAO of 26 June 2025, the substituted references correctly refer to the Secretary of the Department administering that Act.

As the impacted provisions were already covered by an existing substitution in the 2017 Order, each item has a note directing the reader to the corresponding substitution in item 9 of the table at section 4.5. The substitutions in the proposed Order operate cumulatively with the existing substitutions. This approach has been taken, rather than repealing past substitutions, so that successive substitutions appear on the face of the 2017 Order to promote its readability.

The substitutions inserted by section 4.7 take effect on and after 1 July 2025. This is due to the transferring functions needing to be exercised from this day.