

ACTS INTERPRETATION AMENDMENT (2025 MEASURES NO. 3)
SUBSTITUTED REFERENCE ORDER 2025

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

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 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 *Acts Interpretation Amendment (2025 Measures No. 3) Substituted Reference Order 2025* (the Order) creates substituted references to give effect to machinery of government changes under the Administrative Arrangements Order (AAO) signed 13 May 2025.

Under the 13 May 2025 AAO, Part IV of the *Crimes Act 1914* (Crimes Act) transferred from the Attorney-General to the Minister for Home Affairs. The Order ensures that the consent to prosecute powers for piracy offences in subsections 55(1) and (2) in Part IV of the Crimes Act remain solely with the Attorney-General, and are not conferred on the Minister for Home Affairs.

The Order amends the *Acts Interpretation Substituted Reference Order 2017* and does not 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.

The 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 sunset provisions of the Legislation Act (sections 10, item 1 and 12, item 1 of that Regulation).

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

Details of the Order are set out in the [Attachment](#).

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

CONSULTATION

For the purposes of determining whether a substituted reference order was required following the Administrative Arrangements Order of 13 May 2025, the Attorney-General's Department (the department) consulted all Commonwealth departments and agencies responsible for administering affected Acts and instruments under the Administrative Arrangements Order of 13 May 2025. The department consulted with the Department of Defence, Department of Employment of Workplace Relations, Department of Social Services, Department of Finance, Department of Foreign Affairs and Trade, Department of Education, Department of Veteran's Affairs, Department of Treasury, Department of Health, Department of Prime Minister and Cabinet, Department of Agriculture, Fisheries and Forestry, Department of Climate Change, Energy, the Environment and Water, Department of Home Affairs, Department of Industry, Science and Resources, Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts, the National Indigenous Australians Agency and internally within the department.

For the purposes of drafting the Order, further consultation was undertaken with the Department of Home Affairs and internally within the Attorney-General's Department as the relevant agencies that required the substitution in the Order. The Order is of a machinery nature only and has no direct or substantial indirect effect on business.

NOTES ON SECTIONS

Section 1 – Name

This section provides that the title of this order is the *Acts Interpretation Amendment (2025 Measures No. 3) 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* (the Act). Section 19B provides for the making of substituted reference orders.

Section 4 – Schedule

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

Item [1] – After section 2.9

Item 1 adds new section 2.9A after section 2.9 in Part 2 of the 2017 Order.

New section 2.9A identifies the following affected provisions: subsections 55(1) and (2) of the *Crimes Act 1914* (the Crimes Act). If the reference to the Attorney-General in these subsections could be read as a reference to another Minister in accordance with section 19 of the Act, then these references will be substituted to refer solely to the Attorney-General.

This change is necessary as, under the Administrative Arrangements Order (AAO) of 13 May 2025, Part IV of the Crimes Act transferred from the Attorney-General to the Minister for Home Affairs. Subsection 19(1) of the Act operates so that, following the commencement of the AAO, the reference to the ‘Attorney-General’ in Part IV of the Crimes Act would be read as a reference to ‘the

Minister...administering the provision'. This would confer the consent to prosecute power in subsections 55(1) and (2) of the Crimes Act on the Minister for Home Affairs instead of the Attorney-General.

The substitution will apply only if the words 'Attorney-General', which currently appear on the face of section 55 of the Crimes Act, would, apart from the substitution, be read as a reference to a Minister other than the Attorney-General because of section 19 of the Act. If the substitution applies, its effect is that those words, as they appear on the face of section 55 of the Crimes Act, will continue to refer to the Attorney-General, notwithstanding section 19 of the Act.

The substitution will ensure that the responsibility for providing consent to prosecute under subsections 55(1) and (2) for the piracy offences in Part IV of the Crimes Act remains solely with the Attorney-General, as the First Law Officer with responsibility for the Commonwealth criminal justice system.

The substitution implemented by section 2.9A takes effect on and after 13 May 2025. This is the day of the commencement of the AAO signed 13 May 2025.