

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Attorney-General

### *Acts Interpretation Act 1901*

*Acts Interpretation (Substituted References – Section 19B) Amendment Order 2007 (No. 2)*

*Acts Interpretation (Substituted References – Section 19BA) Amendment Order 2007 (No. 1)*

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.

Sections 19B and 19BA of the Act confer on the Governor-General power to make orders which appropriately alter all specific references contained in provisions of Acts.

Subsection 19B(1) of the Act 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) of the Act 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) 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.

Subsection 19BA(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 a change in the administration of the provision or the reference to the particular Minister is no longer appropriate.

Subsection 19BA(2) provides that the Governor-General may make an order altering a reference in a provision of an Act to a particular Department if there is a change in the administration of the provision or the reference to the particular Department is no longer appropriate.

Subsection 19BA(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 there is a

change in the administration of the provision or the reference to the particular Secretary is no longer appropriate.

On 3 December 2007 the Governor-General in Council approved an amendment to the Administrative Arrangements Order, which abolished or changed the names of a number of Departments. The titles of the respective Ministers and Secretaries of the Departments were also changed. Therefore, an order is required to be made under section 19B of the Act to reflect these changes.

The amendment to the Administrative Arrangements Order also moved responsibilities amongst Ministers without changing the title of those Ministers. Where legislation refers to a specific Minister by name, an order is required under section 19BA of the Act.

During development of the order under section 19B of the Act, a number of outdated references to Ministers, Departments and Secretaries of Departments were identified which were unrelated to the current amendment to the Administrative Arrangements Order. The Order under section 19B also addresses these references.

The purpose of the Orders is to ensure that Ministers, Departments and Secretaries of Departments can exercise all powers granted to them following the amendment of the Administrative Arrangements Order.

Details of the Orders under section 19B and section 19BA of the Act are set out in Attachment A and Attachment B respectively.

The Act specifies no conditions that need to be met before the power to make the Orders 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 and 2007.

The Order under section 19BA of the Act amends the *Acts Interpretation (Substituted References – Section 19BA) Order 2004* made in 2004.

The Orders are legislative instruments for the purposes of the *Legislative Instruments Act 2003*. The *Legislative Instruments Regulations 2004* provide that an instrument made under section 19B or section 19BA of the *Acts Interpretation Act 1901* is not subject to disallowance or sunseting.

The Orders commence on the day they are registered on the Federal Register of Legislative Instruments.

Departments affected by these changes have been consulted. Further consultation was unnecessary for these legislative instruments, as they are of a machinery nature only. The Orders have no direct, or substantial indirect, effect on business.

**ATTACHMENT A****Details of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2007 (No. 2)***

**Clause 1** provides that the Order is the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2007 (No. 2)*.

**Clause 2** provides that the Order commences on the day 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).

**Schedule 1**

The items in Schedule 1 amend the schedules to the original Order.

**Amendments to Schedule 1 to the original Order**

**Item [1]** This item substitutes a new heading for Part 8 of Schedule 1 to the original Order. The previous heading referred to the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2004 (No. 1)*. The heading has been updated to refer to substitutions made on 1 January 2004 because that instrument has commenced.

**Item [2]** This item substitutes a new heading for Part 10 of Schedule 1 to the original Order. The previous heading referred to the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2007 (No. 1)*. The heading has been updated to refer to substitutions made on 16 February 2007 because that instrument has commenced.

**Item [3]** This item inserts a new Part 11 into Schedule 1 to the original Order. Clause 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. New Part 11 of Schedule 1 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 3 of the original Order.

As shown in the table below, a reference to the Minister or Ministers listed in the second column of Part 11, in a provision listed in the fourth column, is replaced by a reference to the Minister or Ministers listed in the third column.

<b>Item</b>	<b>Existing reference</b>	<b>Substitute reference</b>	<b>Affected provisions</b>
1	Minister of State for Aboriginal Affairs	Minister for the Environment, Heritage and the Arts	provisions of the <i>Aboriginal and Torres Strait Islander Heritage Protection Regulations 1984</i>

<b>Item</b>	<b>Existing reference</b>	<b>Substitute reference</b>	<b>Affected provisions</b>
2	Minister for Aboriginal Affairs	Minister for Families, Housing, Community Services and Indigenous Affairs	provisions of: <i>Koongarra Project Area Act 1981</i> <i>Protection of Moveable Cultural Heritage Act 1986</i>
3	Minister for the Arts and Sport	Minister for the Environment, Heritage and the Arts	provisions of the <i>Migration Regulations 1994</i>
4	Minister for the Arts, Sport, the Environment, Tourism and Territories	Minister for the Environment, Heritage and the Arts	section 124ZAA of the <i>Income Tax Assessment Act 1936</i>
5	Minister for Communications, Information Technology and the Arts	Minister for Broadband, Communications and the Digital Economy	all provisions except those mentioned in item 6
6	Minister for Communications, Information Technology and the Arts	Minister for the Environment, Heritage and the Arts	provisions of the <i>Cultural Bequests Program Guidelines (No. 1) 1997</i> sections 30-230, 30-235, 30-240, 30-300, 30-305, and 30-310 of the <i>Income Tax Assessment Act 1997</i>
7	Minister for Education, Science and Training	Minister for Education; or Minister for Employment and Workplace Relations; or Minister for Employment Participation; or Minister for Social Inclusion	all provisions except those mentioned in items 8 and 9
8	Minister for Education, Science and Training	Minister for Education	sections 30-25 and 30-30 of the <i>Income Tax Assessment Act 1997</i>
9	Minister for Education, Science and Training	Minister for Innovation, Industry, Science and Research	provisions of the <i>Australian Research Council Act 2001</i>

Item	Existing reference	Substitute reference	Affected provisions
10	Minister for Employment and Workplace Relations	Minister for Education; or Minister for Employment and Workplace Relations; or Minister for Employment Participation; or Minister for Social Inclusion	all provisions
11	Minister for the Environment and Water Resources	Minister for Climate Change and Water; or Minister for the Environment, Heritage and the Arts	all provisions
12	Minister for Families, Community Services and Indigenous Affairs	Minister for Families, Housing, Community Services and Indigenous Affairs	all provisions
13	Minister for Finance and Administration	Minister for Finance and Deregulation	all provisions
14	Minister for Health	Minister for Health and Ageing	all provisions
15	Minister of State for Home Affairs	Minister for the Environment, Heritage and the Arts	provisions of the <i>Historic Shipwrecks Regulations 1978</i>
16	Minister for Industry, Technology and Commerce	Attorney-General	section 6 of the <i>Consular Privileges and Immunities Act 1972</i>  section 8 of the <i>Diplomatic Privileges and Immunities Act 1967</i>
17	Minister for Industry, Technology and Commerce	Attorney-General or Treasurer	section 12A of the <i>consular Privileges and immunities Act 1972</i>  section 14A of the <i>Diplomatic Privileges and immunities Act 1967</i>
18	Minister for Industry, Technology and Commerce	Treasurer	section 7 of the <i>Consular Privileges and Immunities Act 1972</i>  section 9 of the <i>Diplomatic Privileges and Immunities Act 1967</i>

Item	Existing reference	Substitute reference	Affected provisions
19	Minister for Industry, Tourism and Resources	Minister for Innovation, Industry, Science and Research	section 4 of the <i>Excise Act 1901</i> provisions of: <i>Customs Act 1901</i> <i>Customs Tariff Act 1995</i> <i>Industry Research and Development Act 1986</i> <i>Migration Regulations 1994</i>
20	Minister for Industry, Tourism and Resources	Minister for Resources and Energy	section 3A of the <i>Excise Tariff Act 1921</i> provisions of the <i>Customs (Prohibited Exports) Regulations 1958</i>
21	Minister for Justice	Minister for Home Affairs	regulation 19 of the <i>Financial Management and Accountability Regulations 1997</i>
22	Minister for Justice and Customs	Minister for Home Affairs	all provisions except those mentioned in item 23
23	Minister for Justice and Customs	Attorney-General; or Minister for Home Affairs	Schedule 1 of the <i>International Transfer of Prisoners Regulations 2002</i>
24	Minister for Sport, Recreation and Tourism	Minister for Home Affairs	subsection 12 (2C) of the <i>Seat of Government (Administration) Act 1910</i>
25	Minister for Transport and Regional Services	Minister for Infrastructure, Transport, Regional Development and Local Government	all provisions

#### Amendments to Schedule 2 to the original Order

**Item [4]** This item substitutes a new heading for Part 6 of Schedule 2 to the original Order. The previous heading referred to the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2007 (No. 1)*. The heading has been updated to the specific date because that instrument has commenced.

**Item [5]** This item inserts a new Part 7 into Schedule 2 to the original Order. Clause 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 in column 3, wherever such references occur in a provision mentioned in column 4. New Part 7 of Schedule 2 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 4 of the original Order.

As shown in the table below, a reference to the Department or Departments listed in the second column of Part 7, in a provision listed in the fourth column, is replaced by a reference to the Department or Departments listed in the third column.

Item	Existing reference	Substitute reference	Affected provisions
1	Department of Communications, Information Technology and the Arts	Department of Broadband, Communications and the Digital Economy	all provisions except those mentioned in item 2
2	Department of Communications, Information Technology and the Arts	Department of Environment, Water, Heritage and the Arts	provisions of the <i>Refundable Film Tax Offset Rules 2002</i> <i>Cultural Bequests Program Guidelines (No. 1) 1997</i>
3	Department of Community Services	Department of Health and Ageing	provisions of the <i>Home and Community Care Act 1985</i>
4	Department of Education, Science and Training	Department of Education, Employment and Workplace Relations	all provisions
5	Department of Employment and Workplace Relations	Department of Education, Employment and Workplace Relations	all provisions
6	Department of Employment, Education and Training	Department of Education, Employment and Workplace Relations	section 3, definition of <b><i>protected information</i></b> , of the <i>Student Assistance Act 1973</i>
7	Department of the Environment and Water Resources	Department of the Environment, Water, Heritage and the Arts	all provisions
8	Department of Families, Community Services and Indigenous Affairs	Department of Families, Housing, Community Services and Indigenous Affairs	all provisions
9	Department of Finance and Administration	Department of Finance and Deregulation	all provisions
10	Department of Foreign Affairs	Department of Foreign Affairs and Trade	all provisions
11	Department of Health	Department of Health and Ageing	all provisions
12	Department of Health, Housing, Local Government and Community Services	Department of Education, Employment and Workplace Relations	section 47 of the <i>Fringe Benefits Tax Assessment Act 1986</i>

Item	Existing reference	Substitute reference	Affected provisions
13	Department of Home Affairs and Environment	Department of Environment, Heritage and the Arts	provisions of instruments made under the <i>Removal of Prisoners (Territories) Act 1923</i> , to the extent that it relates to the Territory of Heard Island and McDonald Islands and the Australian Antarctic Territory
14	Department of Home Affairs and Environment	Attorney-General's Department	provisions of instruments made under the <i>Removal of Prisoners (Territories) Act 1923</i> , to the extent that it relates to the Northern Territory, Norfolk Island, the Territory of Cocos (Keeling) Islands, the Territory of Christmas Island, the Coral Sea Islands Territory, and the Territory of Ashmore and Cartier Islands
15	Department of Immigration and Ethnic Affairs	Department of Immigration and Citizenship	section 14Q of the <i>Taxation Administration Act 1953</i>
16	Department of Industry, Tourism and Resources	Department of Innovation, Industry, Science and Research	section 34-65 of the <i>Income Tax Assessment Act 1997</i> instruments made under the <i>Industry Research and Development Act 1986</i> provisions of: <i>Trade Practices (Industry Codes — Oilcode) Regulations 2006</i> <i>Customs Administration Act 1985</i> <i>Customs Act 1901</i>
17	Department of Industry, Tourism and Resources	Department of Resources, Energy and Tourism	section 18 of the <i>Tourism Australia (Repeal and Transitional Provisions) Act 2004</i> provisions of: <i>Energy Efficiency Opportunities Regulations 2006</i> except regulation 1.5 <i>Customs (Prohibited Imports) Regulations 1956</i>
18	Department of Primary Industries and Energy	Department of Resources, Energy and Tourism	section 18 of the <i>Petroleum Resource Rent Tax Assessment Act 1987</i>



<b>Item</b>	<b>Existing reference</b>	<b>Substitute reference</b>	<b>Affected provisions</b>
19	Department of Primary Industries and Energy	Department of Agriculture, Fisheries and Forestry	provisions of the <i>Natural Heritage Trust of Australia Act 1997</i>
20	Department of Social Security	Department of Families, Community Services and Indigenous Affairs	provisions of the <i>Immigration (Education) Regulations 1992</i>
21	Department of Transport and Regional Services	Department of Infrastructure, Transport, Regional Development and Local Government	all provisions

### Amendments to Schedule 3 to the original Order

**Item [6]** This item substitutes a new heading for Part 6 of Schedule 3 to the original Order. The previous heading referred to the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2007 (No. 1)*. The heading has been updated to the specific date because that instrument has commenced.

**Item [7]** This item inserts a new Part 7 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 7, 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 Communications, Information Technology and the Arts	Secretary of the Department of Broadband, Communications and the Digital Economy	all provisions except those mentioned in item 2
2	Secretary to the Department of Communications, Information Technology and the Arts	Secretary of the Department of Environment, Water, Heritage and the Arts	sections 30-210, 30-295, 30-300, 30-305 and 30-310 of the <i>Income Tax Assessment Act 1997</i>
3	Secretary to the Department of Community Services and Health	Secretary of the Department of Health and Ageing	section 16 of the <i>Income Tax Assessment Act 1936</i>

<b>Item</b>	<b>Existing reference</b>	<b>Substitute reference</b>	<b>Affected provisions</b>
4	Secretary to the Department of Community Services	Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs	all provisions
5	Secretary to the Department of Education, Science and Training	Secretary of the Department of Education, Employment and Workplace Relations	all provisions
6	Secretary to the Department of Education	Secretary of the Department of Education, Employment and Workplace Relations	section 16 of the <i>Income Tax Assessment Act 1936</i>
7	Secretary to the Department of Employment and Workplace Relations	Secretary of the Department of Education, Employment and Workplace Relations	all provisions
8	Secretary to the Department of Employment, Education and Training	Secretary of the Department of Education, Employment and Workplace Relations	section 16 of the <i>Income Tax Assessment Act 1936</i>
9	Secretary to the Department of the Environment and Water Resources	Secretary of the Department of the Environment, Water, Heritage and the Arts	all provisions
10	Secretary to the Department of Families, Community Services and Indigenous Affairs	Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs	all provisions
11	Secretary to the Department of Finance and Administration	Secretary of the Department of Finance and Deregulation	all provisions
12	Secretary to the Department of Health	Secretary of the Department of Health and Ageing	all provisions
13	Secretary to the Department of Home Affairs and Environment	Secretary of the Department of Environment, Heritage and the Arts	all provisions of instruments made under the <i>Removal of Prisoners (Territories) Act 1923</i> , to the extent that it relates to the Territory of Heard Island and McDonald Islands and the Australian Antarctic Territory

Item	Existing reference	Substitute reference	Affected provisions
14	Secretary to the Department of Home Affairs and Environment	Secretary of the Attorney-General's Department	all provisions of instruments made under the <i>Removal of Prisoners (Territories) Act 1923</i> , to the extent it relates to the Northern Territory, Norfolk Island, the Territory of Cocos (Keeling) Islands, the Territory of Christmas Island, the Coral Sea Islands Territory, and the Territory of Ashmore and Cartier Islands
15	Secretary to the Department of Housing and Construction	Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs; or Secretary of the Department of the Treasury	section 16 of the <i>Income Tax Assessment Act 1936</i>
16	Secretary to the Immigration Department	Secretary of the Department of Immigration and Citizenship	section 14S of the <i>Taxation Administration Act 1953</i>
17	Secretary to the Department of Immigration and Ethnic Affairs	Secretary of the Department of Immigration and Citizenship	all provisions
18	Secretary to the Department of Industry, Tourism and Resources	Secretary of the Department of Innovation, Industry, Science and Research	section 34-25 of the <i>Income Tax Assessment Act 1997</i>
19	Secretary to the Department of Primary Industries and Energy	Secretary of the Department of Agriculture, Fisheries and Forestry	section 264AA of the <i>Income Tax Assessment Act 1936</i> provisions of the <i>Natural Heritage Trust of Australia Act 1997</i>
20	Secretary to the Department of Science	Secretary of the Department of Innovation, Industry, Science and Research	section 16 of the <i>Income Tax Assessment Act 1936</i>

<b>Item</b>	<b>Existing reference</b>	<b>Substitute reference</b>	<b>Affected provisions</b>
21	Secretary to the Department of Social Security	Secretary of the Department of Education, Employment and Workplace Relations; or  Secretary of the Department of Families, Community Services and Indigenous Affairs	section 202CB and 202CE of the <i>Income Tax Assessment Act 1936</i>
22	Secretary to the Department of Social Security	Secretary of the Department of Families, Community Services and Indigenous Affairs	Section 159J of the <i>Income Tax Assessment Act 1936</i>
23	Secretary to the Department of Social Security	Secretary of the Department of Human Services	section 16 of the <i>Income Tax Assessment Act 1936</i>
24	Secretary to the Department of Trade	Secretary of the Department of Foreign Affairs and Trade	section 16 of the <i>Income Tax Assessment Act 1936</i>
25	Secretary to the Department of Transport and Regional Services	Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government	all provisions

**ATTACHMENT B****Details of the *Acts Interpretation (Substituted References – Section 19BA) Amendment Order 2007 (No. 1)***

**Section 1** provides that the Order is the *Acts Interpretation (Substituted References - Section 19BA) Order 2007 (No. 1)*

**Section 2** provides that the Order commences on the day it is registered on the Federal Register of Legislative Instruments.

**Section 3** provides that Schedule 1 amends the *Acts Interpretation (Substituted References – Section 19BA) Order 2004* (the original Order).

**Amendments to Schedule 1 to the original Order**

**Item [1]** This item substitutes a new heading for Part 1 of Schedule 1 to the original Order. The previous heading referred to the commencement of the *Acts Interpretation (Substituted References – Section 19BA) Order 2004*. The heading has been updated to the specific date because that instrument has commenced.

**Item [2]** This item inserts a new Part 2 into Schedule 1 to the original Order. Clause 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. New Part 2 of Schedule 1 sets out a new item and the relevant existing reference, substitute reference and affected provisions, for the machinery changes referred to in clause 3 of the original Order.

As shown in the table below, a reference to the Minister listed in the second column of Part 2, in a provision listed in the fourth column, is replaced by a reference to the Minister listed in the third column.

<b>Item</b>	<b>Existing reference</b>	<b>Substitute reference</b>	<b>Affected provisions</b>
1	Attorney-General	Cabinet Secretary	Subsection 68(1) and 70(1) and (2) of the <i>Privacy Act 1988</i>