**EXPLANATORY STATEMENT**

**Select Legislative Instrument 2013 No. 64**

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

*ACTS INTERPRETATION ACT 1901*

*ACTS INTERPRETATION (SUBSTITUTED REFERENCES –*

 *SECTION 19B) AMENDMENT ORDER 2013 (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.

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 for the time being. Where provisions of Acts and instruments made under Acts refer to particular Ministers, Departments or Secretaries of Departments by title, these specific references may need to be altered to reflect new administrative arrangements, such as the change in name of a Minister or Department or the transfer of legislation between portfolios under a revised Administrative Arrangements Order (AAO).

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(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 no longer any such Minister.

Subsection 19B(2) 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) 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.

On 25 March 2013, a new Ministry was sworn in by the Governor-General following the announcement by the Prime Minister of a number of changes to her Ministry, including the creation of the new position of Minister for Regional Services, Local Communities and Territories and the new position of Minister for Climate Change, Industry and Innovation. The Department of Climate Change and Energy Efficiency was abolished and amendments were made to the AAO to transfer its functions to the newly titled Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education and the existing Department of Resources, Energy and Tourism.

The purpose of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2013 (No. 1)* (the Order) is to reflect the ministerial changes announced by the Prime Minister and the transfer of responsibilities through the AAO amendments made by the Governor-General on 25 March 2013.

The Order ensures that Ministers, Departments and Secretaries of Departments can exercise all powers granted to them by legislation for which they are responsible under the AAO, by ensuring that references to Ministers, Departments and Secretaries in legislation refer to the correct Ministers, Departments and Secretaries.

The Order amends the *Acts Interpretation (Substituted References – Section 19B) Order 1997*.

Details of the Order are set out in the Attachment.

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

The Order is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The *Legislative Instruments Regulations 2004* provide that an instrument made under section 19B of the *Acts Interpretation Act 1901* is not subject to the disallowance or sunset provisions of the *Legislative Instruments Act 2003*. Accordingly a human rights statement of compatibility is not required.

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

The Order was developed in consultation with all relevant Commonwealth Departments. The Order is of a machinery nature only and has no direct or substantial indirect effect on business.

Authority: Section 19B of the
*Acts Interpretation Act 1901*

**ATTACHMENT**

**Details of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2013 (No. 1)***

**Section 1** provides that the Order is named the *Acts Interpretation (Substituted References - Section 19B) Amendment Order 2013* *(No. 1)*.

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

**Section 3** provides that the Order is made under subsections 19B(1), (2) and (3) of the *Acts Interpretation Act 1901*.

**Section 4** 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 original Order.

Amendments to Schedule 1 to the original Order

**Item [1]** substitutes a new heading for Part 15 of Schedule 1 to the original Order. The current heading makes reference to the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2013 (No. 1)*. The heading is updated to the specific date (9 February 2012), which is the date the instrument was made.

**Item [2]** inserts a new Part 16 into Schedule 1 to the original Order*.* Section 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. The new Part 16 of Schedule 1 sets out a new item, the relevant existing reference, substitute reference and affected provisions, for the machinery changes referred to in section 3 of the original Order.

As shown in the table below, a reference to the Minister listed in the column 2 of Part 15, in a provision listed in column 4, is replaced by a reference to the Minister listed in column 3.

| Item | Existing reference | Substitute reference | Affected provisions |
| --- | --- | --- | --- |
| 1 | Minister for Regional Australia, Regional Development and Local Government  | Minister for Regional Services, Local Communities and Territories | Provisions of the *Imprisonment and Custody of Offenders Ordinance 1998* (Christmas Island) |
| 2 | Minister for Industry and Innovation | Minister for Climate Change, Industry and Innovation  | Provisions of the *Migration Regulations 1994*Provisions of instruments made under the following:1. the *Customs Act 1901*;
2. the *Customs Tariff Act 1995*;
3. the *Disability Discrimination Act 1992*;
4. the *Industry Research and Development Act 1986*;
5. the *Migration Regulations 1994*
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Amendments to Schedule 2 to the original Order

**Item [3]** substitutes a new heading for Part 11 of Schedule 2 to the original Order. The current heading makes reference to substitutions made on the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2013 (No. 1)*. The heading is updated to the specific date (9 February 2012), which is the date the instrument was made.

**Item [4]** inserts a new Part 12 into Schedule 2 to the original Order*.* Section 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 mentioned in column 3, wherever such references occur in a provision mentioned in column 4. The new Part 12 of Schedule 2 sets out a new item, the relevant existing reference, substitute reference and affected provisions, for the machinery changes referred to in section 4 of the original Order.

As shown in the table below, a reference to the Department listed in column 2 of Part 12, in a provision listed in column 4, is replaced by a reference to the Department listed in column 3.

| Item | Existing reference | Substitute reference | Affected provisions |
| --- | --- | --- | --- |
| 1 | Department of Industry, Innovation, Science, Research and Tertiary Education | Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education | Provisions of the following: 1. the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011*;
2. the *Migration Regulations 1994*;
3. the *Motor Vehicle Standards Regulations 1989*

Provisions of instruments made under the following:1. the *Civil Aviation Act 1988*;
2. the *Customs Act 1901*;
3. the *Customs Administration Act 1985*;
4. the *Education Services for Overseas Students Act 2000*;
5. the *Food Standards Australia New Zealand Act 1991*;
6. the *Higher Education Support Act 2003*;
7. the *Industry Research and Development Act 1986*
 |
| 2 | Department of Climate Change and Energy Efficiency  | Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education | Provisions of the following:1. *Renewable Energy (Electricity) Regulations 2001*;
2. methodology determinations made under section 106 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*
 |

Amendments to Schedule 3 to the original Order

**Item [5]** substitutes a new heading for Part 11 of Schedule 3 to the original Order. The current heading makes reference to substitutions made on the commencement of the *Acts Interpretation (Substituted References – Section 19B) Amendment Order 2013 (No. 1)*. The heading is updated to the specific date (9 February 2012), which is the date the instrument was made.

**Item [6]** inserts a new Part 12 into Schedule 3 to the original Order*.* Section 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 mentioned in column 3, wherever such references occur in a provision mentioned in column 4. The new Part 12 of Schedule 3 sets out a new item, the relevant existing reference, substitute reference and affected provisions, for the machinery changes referred to in section 5 of the original Order.

As shown in the table below, a reference to the Secretary listed in column 2 of Part 12, in a provision listed in column 4, is replaced by a reference to the Secretary listed in column 3.

| Item | Existing reference | Substitute reference | Affected provisions |
| --- | --- | --- | --- |
| 1 | Secretary of the Department of Industry, Innovation, Science, Research and Tertiary Education | Secretary of the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education | Provisions of instruments made under the *Freedom of Information Act 1982*   |