**EXPLANATORY STATEMENT**

**Select Legislative Instrument No. 206, 2015**

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

*ACTS INTERPRETATION ACT 1901*

*ACTS INTERPRETATION (SUBSTITUTED REFERENCES –*

*SECTION 19BA) AMENDMENT ORDER 2015 (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 title of a Minister or Department or the transfer of legislation between portfolios under a new Administrative Arrangements Order (AAO).

Section 19BA of the Act confers on the Governor-General power to make orders which appropriately alter specific references in Acts to reflect change in responsibility for the administration of Acts.

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 and the reference to that 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 has been a change in matters dealt with by that Department but the name of that Department has not changed.

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 matters dealt with by that Department but the name of the office has not changed.

On 21 September 2015, a new Ministry was sworn in by the Governor-General and it included several new positions. The Governor-General also approved a new AAO to implement the associated administrative changes on 30 September 2015. The new arrangements include changes to the portfolio responsibilities of Departments.

The purpose of the *Acts Interpretation (Substituted References – Section 19BA) Amendment Order 2015 (No. 1)* (the Order) is to amend the *Acts Interpretation (Substituted References – Section 19BA) Order 2004* (the original Order) to reflect the new ministry and the transfer of responsibilities through the AAO made on 21 and 30 September 2015.

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.

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 19BA of the Act is not subject to the disallowance or sunset provisions of the Legislative Instruments Act.

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

All Commonwealth Departments were consulted in order to identify required substitutions. The following Departments were specifically consulted on the substitutions included in the Order for instruments administered by those Departments:

* The Attorney-General’s Department
* The Department of Communications and the Arts
* The Department of Education and Training
* The Department of the Environment
* The Department of Finance
* The Department of Immigration and Border Protection
* The Department of Industry, Innovation and Science
* The Department of the Prime Minister and Cabinet, and
* The Department of Treasury.

The Order is of a machinery nature only and has no direct or substantial indirect effect on business.

**ATTACHMENT**

**Details of the *Acts Interpretation (Substituted References – Section 19BA)******Amendment Order 2015***

**Section 1** provides that the Order is named the *Acts Interpretation (Substituted References - Section 19BA) Amendment Order 2015 (No. 1).*

**Section 2** provides that each provision of 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 section 19BA of the *Acts Interpretation Act 1901*.

**Section 4** provides that each instrument specified in a Schedule to the Order is amended or repealed as set out in the applicable item of the relevant Schedule, and any other item in a Schedule to the Order has effect according to its terms.

**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 4 of Schedule 1 to the original Order. The current heading makes reference to substitutions made on the commencement of the *Acts Interpretation (Substituted References – Section 19BA) Amendment Order 2013 (No. 2)*. The heading is updated to the specific date (16 October 2010), which is the date the instrument commenced.

**Item [2]** inserts a new Part 5 into Schedule 1 to the original Order, for substitutions made on the commencement of the Order (the day after registration). 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. Part 5 of Schedule 1 sets out each new item, the relevant existing reference, the substitute reference and the 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 18, 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 | Attorney‑General | Minister for Communications | provisions of the *Copyright Act 1968* (except subsection 183(6) of that Act) and instruments made under that Act |
| 2 | Attorney‑General of the Commonwealth | Minister for Communications | subsection 183(6) of the *Copyright Act 1968* |
| 3 | Attorney-General | Minister for Communications | subsections 9(1) and (6) of the *Public Lending Right Act 1985* |
| 4 | Treasurer | Minister for the Environment | paragraph (a) of the definition of ***r******esponsible Ministers*** in section 4 of the *Clean Energy Finance Corporation Act 2012* |

Amendments to Schedule 2 to the original Order

**Item [3]** inserts a new Part 3 into Schedule 2 to the original Order, for substitutions made on the commencement of the Order (the day after registration)*.* 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. Part 3 of Schedule 2 sets out each new item, the relevant existing reference, the substitute reference and the 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 3, in a provision listed in column 4, is replaced by a reference to the Department listed in column.

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Existing reference** | **Substitute reference** | **Affected provisions** |
| 1 | Australian Government Attorney‑General’s Department | Department of Communications and the Arts | provisions of:   1. the *Guidelines for the Classification of Films 2012*, and 2. the *Guidelines for the Classification of Computer Games 2012* |
| 2 | Commonwealth Attorney-General’s Department | Department of Communications and the Arts | the following provisions:   1. definition of ***Department*** in section 4 of the *Classification (Publications, Films and Computer Games) (Conditional Cultural Exemption Rules) Instrument 2015* 2. definition of ***Branch***in section 3 of the *Classification (Publications, Films and Computer Games) (Approval of Classification Tools) Guidelines 2014*, and 3. definition of ***Branch*** in section 4 of the *Classification (Publications, Films and Computer Games) (Global Rating Tool) Approval 2014* |
| 3 | Attorney-General’s Department | Department of Communications and the Arts | paragraph 9(1)(e) of the *Public Lending Right Act 1985* |
| 4 | Department of Industry | Department of Education and Training | definition of ***Australian Apprenticeships Access Programme*** in section 4 of the *Student Assistance (Education Institutions and Courses) Determination 2009* |
| 5 | Department of Social Services | Department of Social Services;  or  Department of Education and Training | definition of ***Department*** in section 5 of the *Family Assistance (Public Interest Certificate Guidelines) Determination 2015* |