

EXPLANATORY STATEMENT

Minute No. _____ of 2017 – Attorney General

Subject - *Acts Interpretation Act 1901*

Acts Interpretation Substituted Reference Order 2017

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

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 a secretary of a department of state, 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 administrative changes.

Section 19B of the Acts Interpretation Act provides for the making of substituted reference orders. A substituted reference order may be made to alter a reference to a particular 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 obtain 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) 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.

Subsection 19B(3) provides that a substituted reference order may have retrospective effect.

Subsection 19B(4) provides that a substituted reference order has effect according to its terms.

Subsection 19B(5) provides that a substituted reference order is a legislative instrument.

Subsection 19B(6) provides that a substituted reference order 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(7) defines authority for the purposes of section 19B as a minister, a department of state, any other Public Service Act agency, an office or the holder of an office.

The powers conferred on the Governor-General by section 19B of the Acts Interpretation Act may also be exercised by virtue of paragraph 13(1)(a) of the *Legislation Act 2003* (Legislation Act) and paragraph 46(1)(a) of the Acts Interpretation Act to alter references to authorities contained in legislative and other instruments made under Acts. Section 13 of the Legislation Act governs the construction of legislative instruments and notifiable instruments (within the meaning of that Act). Section 46 of the Acts Interpretation Act is concerned with instruments that are not legislative instruments, notifiable instruments or rules of court.

The purpose of the Acts Interpretation Substituted Reference Order 2017 (the Order) is to reflect the administrative changes following the 2 July 2016 federal election, including the swearing in of a new ministry on 19 July 2016 and the transfer of responsibilities through the AAO made on 19 July 2016. The Order ensures that ministers, Australian public service employees and secretaries of departments of state, can exercise all powers granted to them by legislation.

To provide an improved framework for substituted reference orders in the future, where possible the substituted reference identifies the relevant authority by reference to an Act or subject matter. This is in line with the Office of Parliamentary Counsel's 3 May 2016 Drafting Direction 2.2 on the use of various expressions in draft legislation. Over time this form of drafting is expected to reduce the need to further alter references dealt with by a substituted reference order.

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

All Commonwealth departments were consulted in order to identify required substitutions and were then specifically consulted on the substitutions included in the Order.

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

The Acts Interpretation 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 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.

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

Details of the *Acts Interpretation Substituted Reference Order 2017*

Part 1 – Preliminary

Section 1.1 Name

This section provides that the title of this order is the *Acts Interpretation Substituted Reference Order 2017* (the Order).

Section 1.2 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 1.3 Authority

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

Section 1.4 Simplified outline of this instrument

This section sets out an outline of the instrument. The outline explains that the Order affects certain provisions of an Act, as well as instruments made under an Act, that reference authorities, including Ministers, Departments and Secretaries of Departments. Where the order affects a provision, the order comes into effect on a specific day.

This section provides a sign post for the reader to locate the existing reference of an item. Items in the table may have been affected by items of other tables in the Order or another substituted reference order currently in force. The *Acts Interpretation (Substituted References – Section 19B) Order 1997* and the *Acts Interpretation (substituted References – Section 19BA) Order 2004*, continue to have effect under item 5 of Schedule 2 to the *Acts and Instruments (Framework Reform) Act 2015*.

Where a modification is made to an Act or instrument or by another item in a substituted reference order, the later of the amendments take precedence.

Section 1.5 Definitions

This section includes definitions for the purpose of the Order.

‘Authority’ has the same meaning as in section 19B of the Acts Interpretation Act. Subsection 19B(7) defines ‘authority’ as meaning a minister, a department of state, any other Public Service Act agency within the meaning of the *Public Service Act 1999*, an office or the holder of an office.

‘Provision’ refers to a section or subsection of an Act or an instrument under an Act.

Part 2 – References to Ministers

Section 2.1 References to Ministers

This section provides how Part 2 of the Order has effect. Each provision mentioned in column 1 of an item of a table in Part 2 that refers to a Minister mentioned in column 2 of that item is read as the reference set out in column 3 of that item. The substitution has effect on and after the day mentioned in the heading of the table. This may be a date in the past as subsection 19B(3) of the Acts Interpretation Act provides that a substituted reference order may have retrospective effect.

Section 2.2 Substitutions made on 1 July 2014

This section sets out in a table, for reader clarity, references to Ministers that are necessary to be updated.

References to a single Act or Instrument

Subsection 2.2 provides that the table sets out references to Ministers that affect a single Act or instrument when substituted.

The substitution takes effect on and after 1 July 2014. This date reflects the most recent date from which substitutions were required. The heading to the table provides the date from which the substitution takes effect.

Column 1 in the table refers to provisions where a reference requires substitution. Column 2 specifies the existing reference. Column 3 specifies the substituted reference.

Item 1 of the table under subsection 2.2 substitutes a reference to the Minister administering the *Commonwealth Authorities and Companies Act 1997* in the *Clean Energy Finance Corporation Act 2012*, section 4 definition of Finance Minister. The existing reference is contained in the affected provision. The *Commonwealth Authorities and Companies Act 1997* was repealed on 1 July 2014 and replaced by the *Public Governance, Performance and Accountability Act 2013*. The item substitutes the existing reference so it is read as the Minister administering the *Public Governance, Performance and Accountability Act 2013* to reflect the correct Minister responsible.

Section 2.3 Substitutions made on 19 July 2016

Subsection 2.3(1) provides that the table sets out references to Ministers that affect multiple Acts or instruments when substituted.

References to multiple Act or Instruments

The substitutions take effect on and after 19 July 2016. This date reflects the most recent date from which substitutions were required. The heading to the table also provides the date from which the substitution takes effect.

Column 1 in the table refers to provisions where a reference requires substitution. Column 2 specifies the existing reference. Column 3 specifies the substituted reference.

Item 1 of the table under subsection 2.2(1) substitutes existing references in all provisions of Acts and instruments made under Acts that refer to the Minister for Revenue and Assistant Treasurer so the reference is read as Minister for Revenue and Financial Services. This ministerial title was newly created by the 19 July 2016 Ministry List.

Subsection 2.3(2) provides that the table sets out references to Ministers that affect provisions in a single Act or instrument when substituted.

References to a single Act or Instrument

The substitutions take effect on and after 19 July 2016. This date reflects the most recent date from which substitutions were required. The heading to the table also provides the date from which the substitutions take effect.

Item 1 of the table under subsection 2.3(2) substitutes a reference to the Minister for the Environment in the *Clean Energy Finance Corporation Act 2012*, section 4, paragraph (a) which defines responsible Ministers for the purposes of the *Clean Energy Finance Corporation Act*. The existing reference is contained in Schedule 1, Part 5, item 4 of the *Acts Interpretation (Substituted References—Section 19BA) Order 2004*. The reference requires altering following a change in Ministerial title in the 19 July 2016 Ministry List. The item substitutes the existing reference so it is read as the Minister administering the *Clean Energy Finance Corporation Act 2012* to reflect the correct Minister responsible.

Item 2 of the table under subsection 2.3(2) substitutes references to the Minister for Resources and Energy in subregulation 9(1), subregulation 13G(3), paragraph 13H(4)(b) and (c), Schedule 7 (heading) and subparagraph 1(g)(ii) of Schedule 7 in the *Customs (Prohibited Exports) Regulations 1958* that relate to the export of radioactive waste. The existing reference is contained in Schedule 1, Part 11, item 20 of the *Acts Interpretation (Substituted References—Section 19B) Order 1997*. The reference requires altering following a change in Ministerial title in the 19 July 2016 Ministry List. The item substitutes the existing reference so it is read as the Minister administering the *National Radioactive Waste Management Act 2012* to reflect the correct Minister responsible.

Item 3 of the table under subsection 2.3(2) substitutes a reference to the Minister for Resources and Energy in the subregulation 9AA(1) of the *Customs (Prohibited Exports) Regulations 1958* that relates to the export of rough diamonds. The existing reference is contained in Schedule 1, Part 11, item 20 of the *Acts Interpretation (Substituted References—Section 19B) Order 1997*. The reference requires altering following a change in Ministerial title in the 19 July 2016 Ministry List. The item substitutes the existing reference so it is read as the Minister administering the *Offshore Minerals Act 1994* to reflect the correct Minister responsible.

Item 4 of the table under subsection 2.3(2) substitutes a reference to the Minister for the Environment in Schedule 3, item 3 of the *Customs (Prohibited Imports) Regulations 1956*. The existing reference is contained in Schedule 1, Part 18, item 8 of the *Acts Interpretation (Substituted References—Section 19B) Order 1997*. The reference requires altering following a change in Ministerial title in the 19 July 2016 Ministry List. The item substitutes the existing reference so it is read as the Minister administering the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* to reflect the correct Minister responsible.

Part 3 – References to Departments

Section 3.1 References to Departments

This section provides how Part 3 of the Order is to have effect. Each provision mentioned in column 1 of an item of a table in Part 3 that refers to a Department mentioned in column 2 of that item is read as the reference set out in column 3 of that item. The substitutions have effect on and after the day mentioned in the heading to that table. This may be a date in the past as subsection 19B(3) of the Acts Interpretation Act provides that a substituted reference order may have retrospective effect.

Section 3.2 Substitutions made on 30 September 2015

This section sets out in a table, for reader clarity, references to Departments that are necessary to be updated.

References to Departments in a single Act or Instrument

Subsection 3.2 provides that the table sets out references to Departments that affect provisions in a single Act or instrument when substituted.

The substitution takes effect on and after 30 September 2015. This date reflects the most recent date from which substitutions were required. The heading to the table also provides the date from which the substitution takes effect.

Column 1 in the table refers to provisions where a reference requires substitution. Column 2 specifies the existing reference. Column 3 specifies the substituted reference.

Item 1 of the table under subsection 3.2 substitutes a reference to the Department of the Environment in item 146 of the table in Part 1 of Schedule 2 of the *Australian Border Force (Secrecy and Disclosure) Rule 2015*, which lists Commonwealth bodies. The existing reference is contained in the affected provision. The reference requires altering following a change in Department title in the 30 September 2015 Administrative Arrangements Order (AAO). The item substitutes the existing reference so it is read as the Department administered by the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* to reflect the correct Department.

Item 2 of the table under subsection 3.2 substitutes a reference to the Department of the Environment in item 3 of Schedule 3 of the *Customs (Prohibited Imports) Regulations 1956*, relating to the importation of restricted goods. The existing reference is contained in Schedule 2, Part 14, item 4 of the *Acts Interpretation (Substituted References — Section 19B) Order 1997*. The reference requires altering following a change in Department in the 30 September 2015 AAO. The item substitutes the existing reference so it is read as the Department administered by the Minister administering the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

Section 3.3 Substitutions made on 19 July 2016

Subsection 3.3 provides that the table sets out references to Departments that affect provisions in a single Act or instrument when substituted.

References to Departments in a single Act or Instrument

The substitution takes effect on and after 19 July 2016. This date reflects the most recent date from which substitutions were required. The heading to the table also provides the date from which the substitution takes effect.

Column 1 in the table refers to provisions where a reference requires substitution. Column 2 specifies the existing reference. Column 3 specifies the substituted reference.

Item 1 of the table under subsection 3.3 substitutes a reference to the Department of Industry, Innovation and Science in subregulation 9AA(1) (definition of authorised person) in the *Customs (Prohibited Exports) Regulations 1958*, which relates to the exportation of rough diamonds. The existing reference is contained in Part 11, Item 6 of the *Acts Interpretation (Substituted References—Section 19B) Order 1997*. To ensure consistency in references for this instrument, the item substitutes the existing reference so it is read as the Department administered by the Minister referred to in subregulation 9AA(1) of the *Customs (Prohibited Exports) Regulations 1958*. The Minister referred to in subregulation 9AA(1) is updated by item 4 of the table under subsection 2.2(2) to be the Minister administering the *Offshore Minerals Act 1994*.

Item 2 of the table under subsection 3.3 substitutes a reference to the Department of Industry, Tourism and Resources in the paragraph 9AA(8)(b) in the *Customs (Prohibited Exports) Regulations 1958*. The reference is as per the affected provision. While 9AA(1) of the *Customs (Prohibited Exports) Regulations 1958* has frequently been affected by a substituted reference order, subsection 9AA(8) has not been concurrently updated. The reference requires altering so that it is correct when read with section 9AA(1) of the *Customs (Prohibited Exports) Regulations 1958*. The item substitutes the existing reference so it is read as the Department administered by the Minister referred to in subregulation 9AA(1) of the *Customs (Prohibited Exports) Regulations 1958*. The Minister referred to in subregulation 9AA(1) is updated by item 3 of the table under subsection 2.3(2) to be the Minister administering the *Offshore Minerals Act 1994*.

Part 4 – References to Secretaries

Section 4.1 References to Secretaries

This section provides how Part 4 of the Order is to have effect. Each provision mentioned in column 1 of an item of a table in Part 4 that refers to a Secretary mentioned in column 2 of that item, is read as the reference set out in column 3 of that item. The substitution has effect on and after the day mentioned in the heading to that table. This may be a date in the past as subsection 19B(3) of the Acts Interpretation Act provides that a substituted reference order may have retrospective effect.

Section 4.2 Substitutions made on 12 December 2013

This section sets out in a table, for reader clarity, references to Secretaries that are necessary to be updated.

References to a single Act or Instrument

Subsection 4.2 provides that the table sets out references to Secretaries that affect provisions in a single Act or instrument when substituted.

The substitution takes effect on and after 12 December 2013. This date reflects the most recent date from which substitutions were required. The heading to the table also provides the date from which the substitution takes effect.

Column 1 in the table refers to provisions where a reference requires substitution. Column 2 specifies the existing reference. Column 3 specifies the substituted reference.

Item 1 of the table under subsection 4.2 substitutes a reference to the Secretary of the Department in subitem 9.3 in Part 1 of Schedule 6 of the *Customs (Prohibited Imports) Regulations 1956*, which refers to granting of import permission for firearms. The *Customs (Prohibited Imports) Regulations 1956* are administered by the Department of Immigration and Border Protection, and the existing reference refers to the Secretary of that Department. Prior to the 12 December 2013 AAO the *Customs (Prohibited Imports) Regulations 1956* were administered by the Attorney-General's Department. The Attorney-General's Department continues to be responsible for the application process for granting of import permission for firearms under subitem 9.3 in Part 1 of Schedule 6 of the *Customs (Prohibited Imports) Regulations 1956*. The item substitutes the existing reference so it is read as the Secretary of the Attorney-General's Department. The item commences on the day that the Order commences to ensure that a previous approval of the application form given by the Secretary of the Department of Immigration and Border Protection is unaffected.