

## **EXPLANATORY STATEMENT**

### *Acts Interpretation Act 1901*

#### *Acts Interpretation Amendment (Home Affairs) 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) of the Acts Interpretation 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.

Subsection 19B(3) of the Acts Interpretation Act provides that a substituted reference order may have retrospective effect.

Subsection 19B(4) of the Acts Interpretation Act provides that a substituted reference order has effect according to its terms.

Subsection 19B(5) of the Acts Interpretation Act provides that a substituted reference order is a legislative instrument.

Subsection 19B(6) of the Acts Interpretation Act 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) of the Acts Interpretation Act 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 Amendment (Home Affairs) Substituted Reference Order 2017* (the Order) is to give effect to Machinery of Government changes announced by the Prime Minister on 18 July 2017, and the transfer of responsibilities to the Home Affairs portfolio as a consequence of amendments to the Administrative Arrangements Order (AAO). The Order ensures that ministers, Australian public service employees and secretaries of departments of state can exercise relevant powers granted to them by legislation in accordance with the responsibilities outlined in the AAO. The *Acts Interpretation Amendment (Home Affairs) Substituted Reference Order 2017* amends the *Acts Interpretation Substituted Reference Order 2017*.

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.

Commonwealth departments responsible for administering affected Acts and instruments were 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.

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

The Act specifies no conditions that need to be satisfied 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 Acts Interpretation 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 Acts Interpretation Amendment (Home Affairs) Substituted Reference Order 2017**

**Section 1 – Name**

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

**Section 4 – Schedules**

This section provides that each instrument specified in a Schedule to the Order is amended or repealed as set out in the applicable item in the Schedule. The Order includes one Schedule, which amends the *Acts Interpretation Substituted Reference Order 2017*.

**Schedule 1 – Amendments**

***Acts Interpretation Substituted Reference Order 2017***

**Item 1 – Section 1.5 Definitions**

This item inserts a new definition in section 1.5 of Part 1 of the *Acts Interpretation Substituted Reference Order 2017*.

‘Home Affairs transition day’ means the day after the commencement of the amendments to the Administrative Arrangements Order which transfer the administration of the *Australian Federal Police Act 1979* from the Attorney-General to the Minister for Home Affairs.

**Item 2 – Section 2.4 Substitutions made the Home Affairs transition day**

This item includes a new section 2.4 at the end of Part 2 of the *Acts Interpretation Substituted Reference Order 2017*. The section sets out in a table, for reader clarity, references to Ministers that are necessary to be updated. 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.

***References to multiple Acts or Instruments***

Subsection 2.4(1) provides that the table sets out references to Ministers that affect multiple Acts or instruments when substituted.

The heading to the table provides that the substitution takes effect on the Home Affairs transition day.

Item 1 of the table under subsection 2.4(1) substitutes existing references in all provisions of Acts and instruments made under Acts that refer to the Minister for Immigration and Border Protection so the reference is read as the Minister for Home Affairs. This reflects amendments to the AAO.

#### *References to a single Act or Instrument*

Subsection 2.4(2) provides that the table sets out references to Ministers that affect provisions in a single Act or instrument when substituted.

The heading to the table provides that the substitution takes effect on the Home Affairs transition day.

Item 1 of the table under subsection 2.4(2) substitutes two references to the Attorney-General in the *Administrative Decisions (Judicial Review) Act 1997*, in paragraphs (daa) and (daaa) of Schedule 1. Paragraph (daa) refers to decisions of the Attorney-General under section 58A and subsection 581(3) of the *Telecommunications Act 1997*, which relate to the powers of the Attorney-General to give directions regarding the granting of a carrier licence or the continued use or supply of carriage services in circumstances that may be prejudicial to security. Paragraph (daaa) refers to directions of the Attorney-General under clauses 57A and 72A of Schedule 3A of the *Telecommunications Act 1997*, which relate to the grant to carriers of protection zone and non-protection zone installation permits for submarine cables that would be prejudicial to security. Inclusion in Schedule 1 means that all of these decisions are currently exempt from judicial review under the *Administrative Decisions (Judicial Review) Act 1997*. Responsibility for national security transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer.

Item 2 of the table under subsection 2.4(2) substitutes existing references to the Attorney-General in Division 7 of Part 3 of *A New Tax System (Family Assistance) Act 1999*. These provisions relate to security notices that are given by the Attorney-General to the Minister responsible for family assistance payments when a visa has been cancelled or a passport is cancelled or refused on security grounds. Responsibility for national security transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer.

Item 3 of the table under subsection 2.4(2) substitutes existing references to the Attorney-General in section 5 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as the reference to that authority would, apart from this item, be read as a reference to another Minister in accordance with section 19 of the Acts Interpretation Act. Responsibility for administration of this Act transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes a reference to the Attorney-General to ensure that the reference to the Attorney-General as the Minister responsible for the Attorney-General's Department is retained in the section 5 definition. This is to preserve references to the Attorney-General's Department as a designated agency for the purposes of the Act.

Item 4 of the table under subsection 2.4(2) substitutes the existing reference to the Attorney-General in section 6A of the *Australian Citizenship Act 2007*. Subsection 6A(1) provides that the Attorney-General may by legislative instrument determine that certain offences are national security offences. Responsibility for national security transferred to the

Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer.

Item 5 of the table under subsection 2.4(2) substitutes existing references to the Attorney-General of the Commonwealth in subsections 12(1), 12(1A) and section 16 of the *Australian Crime Commission Act 2002*, as the reference to that authority would, apart from this item, be read as a reference to another Minister in accordance with section 19 of the Acts Interpretation Act. Responsibility for administration of this Act transferred to the Minister for Home Affairs following amendments to the AAO. This reference to the Attorney-General for the Commonwealth relates to the Attorney-General's First Law Officer role. The item substitutes a reference to the Attorney-General of the Commonwealth to ensure that this reference is preserved.

Item 6 of the table under subsection 2.4(2) substitutes existing references to the Minister in sections 44, 47B, 49P and 51 of the *Australian Federal Police Act 1979* with references to the Attorney-General. These provisions allow for orders to be made about superannuation where an AFP staff member is alleged to have committed or is convicted of a corruption-related offence. Responsibility for administration of this Act transferred to the Minister for Home Affairs following amendments to the AAO. These references to the Minister relate to the Attorney-General's responsibility for sentencing. The item substitutes a reference to the Attorney-General to ensure that these powers are exercised by the Attorney-General.

Item 7 of the table under subsection 2.4(2) substitutes existing references to the Minister in sections 3ZZAE, 3ZZAF, 15GG and 15LD of the *Crimes Act 1914* with references to the Attorney-General. These provisions relate to the declaration of judges and nomination of Administrative Appeal Tribunal members as issuing officers for various warrants. Section 15LD provides for a report to be tabled annually relating to assumed identities. Responsibility for the administration of Parts 1AAA, 1AB and 1AC of this Act transferred to the Minister for Home Affairs following amendments to the AAO. These references to the Minister relate to the exercise of powers closely related to the Attorney-General's First Law Officer role. The item substitutes a reference to the Attorney-General to ensure that these powers are exercised by the Attorney-General.

Item 8 of the table under subsection 2.4(2) substitutes existing references to the Minister in section 9A of the *Crimes Act 1914*. This provision relates to directions given to the Official Trustee by the Attorney-General in dealing with forfeited articles. The Attorney-General will retain responsibility for administering Part 1A of the *Crimes Act 1914* but responsibility for the *Proceeds of Crime Act 1987* (including responsibility for dealing with forfeited articles) transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes a reference to the Minister for Home Affairs to reflect that transfer.

Item 9 of the table under subsection 2.4(2) substitutes existing references to the Attorney-General in Part 1D of the *Crimes Act 1914*, as the reference to that authority would, apart from this item, be read as a reference to another Minister in accordance with section 19 of the Acts Interpretation Act. Responsibility for administration of Part 1D of this Act transferred to the Minister for Home Affairs following amendments to the AAO. References to the Minister in this Part relate to requests for mutual assistance, for which the Attorney-General will have responsibility. The item substitutes a reference to the Attorney-General to ensure that these powers are exercised by the Attorney-General.

Item 10 of the table under subsection 2.4(2) substitutes existing references to the Attorney-General in sections 37, 41 and 48 of the *Crimes (Aviation) Act 1991*, as the reference to that authority would, apart from this item, be read as a reference to another Minister in accordance with section 19 of the Acts Interpretation Act. Responsibility for administration of this Act transferred to the Minister for Home Affairs following amendments to the AAO. References to the Attorney-General in this Part relate to certification of records of evidence and notification of change of venue for proceedings. The item substitutes a reference to the Attorney-General to ensure that these powers in sections 37, 41 and 48 continue to be exercised by the Attorney-General. The substitution for sections 37, 41 and 48 of that Act does not affect the reference to the Attorney-General's Department in paragraph 3(c). Section 19A of the Acts Interpretation Act has the effect that the reference in that paragraph is read as a reference to the Department of Home Affairs.

Item 11 of the table under subsection 2.4(2) substitutes existing references to the Minister in various provisions of the *Criminal Code Act 1995*. Responsibility for policy on matters covered by Division 72 of Chapter 4 (Subdivision B – Plastic Explosives), Part 5.5 (Foreign Incursions and Recruitment), Part 9.1 (Serious Drug Offences), Part 10.5 (Postal Services) and Part 10.6 (Telecommunication Services) of this Act transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes a reference to the Minister for Home Affairs to ensure that powers in section 72.28, 72.36(a), subsection 117.1(2), section 119.8, Part 9.1, paragraphs 471.18(2)(d), 471.21(2)(d), 474.21(2)(d) and 474.24(2)(d) of the *Criminal Code Act 1995* are exercised by the Minister for Home Affairs in line with these responsibilities.

Item 12 of the table under subsection 2.4(2) substitutes the existing reference to the Attorney-General in subsection 19(2) of the *Criminology Research Act 1971* for a reference to the Minister administering the Act. Subsection 19(2) gives the Attorney-General power to grant leave of absence on such terms and conditions as the Minister determines. Responsibility for administration of this Act transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the reference to the Attorney-General in subsection 19(2) so it is read as the Minister administering the *Criminology Research Act 1971* to reflect the correct Minister responsible. This substitution assumes that all other references to the Attorney-General and the Minister will be read as the Minister responsible for the *Criminology Research Act 1971* as the reference to that authority would be affected by section 19 of the Acts Interpretation Act.

Item 13 of the table under subsection 2.4(2) substitutes existing references to the Attorney-General in subsection 208DA(4) of the *Customs Act 1901*, as the reference to that authority would, apart from this item, be read as a reference to another Minister in accordance with section 19 of the Acts Interpretation Act. Subsection 208DA(4) gives power to the Attorney-General to make a direction about the disposal of narcotic-related goods that have been seized under a seizure warrant. This power has always been exercised by the Attorney-General since the provision was first included in the *Customs Act 1901* by the *Proceeds of Crime Legislation Amendment Act 1991*. Responsibility for administration of the *Proceeds of Crime Act 1987* transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer.

Item 14 of the table under subsection 2.4(2) substitutes a reference to the Attorney-General in regulation 3 of the *Customs (Prohibited Exports) Regulations 1958*. The provision relates to

the export of objectionable goods such as films and computer games that may have been refused classification in Australia. Responsibility for the administration of the *Classification (Publications, Films and Computer Games) Act 1995* transferred from the Attorney-General to the Minister for Communications and the Arts following the AAO dated 9 July 2015, as amended on 21 September 2015. The item substitutes the existing reference to the Attorney-General so it is read as the Minister administering Part 2 of the *Classification (Publications, Films and Computer Games) Act 1995* to reflect the Minister responsible.

Item 15 of the table under subsection 2.4(2) substitutes a reference to the Attorney-General in regulation 4A of the *Customs (Prohibited Imports) Regulations 1956*. The provision relates to the import of objectionable goods such as films and computer games that may have been refused classification in Australia. Responsibility for the administration of the *Classification (Publications, Films and Computer Games) Act 1995* transferred from the Attorney-General to the Minister for Communications and the Arts following the AAO dated 9 July 2015, as amended on 21 September 2015. The item substitutes the existing reference to the Attorney-General so it is read as the Minister administering Part 2 of the *Classification (Publications, Films and Computer Games) Act 1995* to reflect the Minister responsible.

Item 16 of the table under subsection 2.4(2) substitutes a reference to the Attorney-General in regulation 4AA and Schedule 6 of the *Customs (Prohibited Imports) Regulations 1956*. These provisions relate to permissions for the importation of plastic explosives, firearms and related equipment. Responsibility for law enforcement policy and operations transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer.

Item 17 of the table under subsection 2.4(2) substitutes references to the Attorney-General in sections 143 to 147 (inclusive) and 162 of the *Migration Act 1958*. These provisions relate to the power to give and to cancel criminal justice stay certificates that allow for the temporary presence in Australia of non-citizens for specified criminal justice purposes. Responsibility for law enforcement policy and operations and immigration transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer.

Item 18 of the table under subsection 2.4(2) substitutes a reference to the Attorney-General in regulation 1.03, regulation 2.07AK and clause 060.511 of Schedule 2 of the *Migration Regulations 1994*. These provisions relate to the issue of assistance notices and certificates to non-citizens who are required in Australia to assist in the administration of criminal justice in relation to human trafficking and slavery-like practices. Responsibility for law enforcement policy and operations and immigration transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer.

Item 19 of the table under subsection 2.4(2) substitutes a reference to the Attorney-General in subsections 604(5) and 610(4) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. These provisions relate to the Attorney-General's power to make directions about goods which are the subject of forfeiture orders under this Act in respect of aircraft, vessels and other equipment used in the commission of an offence. Responsibility for law enforcement policy and operations transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer.

Item 20 of the table under subsection 2.4(2) substitutes a reference to the Attorney-General in Division 5 of Part 6-1 of the *Paid Parental Leave Act 2010*. These provisions relate to security notices that are given by the Attorney-General to the Minister responsible for family assistance payments when a visa has been cancelled or a passport is cancelled or refused on security grounds. Responsibility for national security transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer.

Item 21 of the table under subsection 2.4(2) substitutes a reference to the Minister in paragraph 297(c) of the *Proceeds of Crime Act 2002*. The provision relates to payments from the Confiscated Assets Account to satisfy the Commonwealth's obligations in respect of foreign forfeiture or pecuniary orders or orders registered under the *International War Crimes Tribunals Act 1995*. Responsibility for the *Proceeds of Crime Act 2002* transferred to the Minister for Home Affairs following amendments to the AAO. The Attorney-General will retain responsibility for international crime cooperation and the *International War Crimes Tribunals Act 1995*. The item substitutes a reference to the Attorney-General to ensure that these powers continue to be exercised by the Attorney-General.

Item 22 of the table under subsection 2.4(2) substitutes a reference to the Attorney-General or the Minister for Justice in the Schedule of the *Safety, Rehabilitation and Compensation (Definition of Employee) Notice 2009 (1)*. The Notice has the effect that members of emergency response teams, appointed under authority of the Attorney-General or the Minister for Justice, who are operating at the direction of Emergency Management Australia (EMA) in response to emergencies and their aftermath, are employed by EMA for the purposes of subsection 5(6) of the *Safety, Rehabilitation and Compensation Act 1988*. Responsibility for Commonwealth emergency management transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer. The substitution does not apply to the extent the notice is in force for the purposes of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

Item 23 of the table under subsection 2.4(2) substitutes a reference to the Attorney-General for the Commonwealth in subsection 100(4) of the *Service and Execution of Process Act 1992*. This provision provides that the Attorney-General for the Commonwealth may make an application for a suppression order where national security would be prejudiced as referred to in paragraph 96(3)(f). Responsibility for national security transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer.

Item 24 of the table under subsection 2.4(2) substitutes a reference to the Attorney-General in Part 1.3B of the *Social Security Act 1991*. These provisions relate to security notices that are given by the Attorney-General to the Minister responsible for family assistance payments when a visa has been cancelled or a passport is cancelled or refused on security grounds. Responsibility for national security transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer.

Item 25 of the table under subsection 2.4(2) substitutes a reference to the Attorney-General in sections 58A and 581 and clauses 57A and 72A of Schedule 3A of the *Telecommunications Act 1997*. These provisions relate to powers of the Attorney-General to



give directions regarding: (a) the grant of a carrier licence or the continued use or supply of carriage services; or (b) the grant of protection zone and non-protection zone installation permits for submarine cables to carriers in circumstances that may be prejudicial to security. Responsibility for national security transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer.

Item 26 of the table under subsection 2.4(2) substitutes a reference to the Minister administering the *Administrative Decisions (Judicial Review) Act 1977* in sections 275B, 275D, 295Y, 295ZB and 295ZD of the *Telecommunications Act 1997*. These provisions relate to the Minister's power to make legislative instruments regarding emergency management. Responsibility for emergency management transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the existing reference to the Minister administering the *Administrative Decisions (Judicial Review) Act 1977* so it is read as the Minister for Home Affairs to reflect that transfer.

Item 27 of the table under subsection 2.4(2) substitutes a reference to the Attorney-General in subsection 6(1) of the *Terrorism Insurance Act 2003* to a reference to the Minister for Home Affairs. This provision relates to the requirement that the Attorney-General be consulted by the Minister responsible for the administration of the *Terrorism Insurance Act 2003* before making a declaration that an act or acts constitute a terrorist incident. Responsibility for national security transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Minister for Home Affairs to reflect that transfer.

### **Item 3 – Section 3.4 Substitutions made on the Home Affairs transition day**

This item includes a new section 3.4 at the end of Part 3 of the *Acts Interpretation Substituted Reference Order 2017*. The section sets out in a table, for reader clarity, references to Departments that are necessary to be updated. 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.

#### *References to multiple Acts or Instruments*

Subsection 3.4(1) provides that the table sets out references to Departments that affect multiple Acts or instruments when substituted.

The heading to the table provides that the substitution takes effect on the Home Affairs transition day.

Item 1 of the table under subsection 3.4(1) substitutes existing references in all provisions of Acts and instruments made under Acts that refer to the Department of Immigration and Border Protection so the reference is read as the Department of Home Affairs. This reflects amendments to the AAO.

#### *References in a single Act or Instrument*

Subsection 3.4(2) provides that the table sets out references to Departments that affect provisions in a single Act or instrument when substituted.

The heading to the table provides that the substitution takes effect on the Home Affairs transition day.

Item 1 of the table under section 3.4(2) substitutes a reference to the Attorney-General's Department in paragraph 9A(a) and Schedule 1A of the *Australian Crime Commission Regulations 2002* as the reference to that authority would, apart from this item, be read as a reference to another Minister in accordance with section 19 of the Acts Interpretation Act. These provisions prescribe bodies that can receive national policing information. Responsibility for the *Australian Crime Commission Regulations 2002* transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Attorney-General's Department to ensure that the Department continues to be prescribed for this purpose.

Item 2 of the table under section 3.4(2) substitutes a reference to the Department in paragraphs 72.28(1)(a) and (b) of the *Criminal Code Act 1995*. These provisions provide for delegation of the Minister's powers in relation to plastic explosives to the Secretary or Senior Executive Service employees of the Department. Responsibility for national security and law enforcement policy and operations transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Department of Home Affairs to reflect that transfer.

Item 3 of the table under section 3.4(2) substitutes a reference to the Attorney-General's Department in paragraph 474.17(2)(d) of the *Criminal Code Act 1995*. This provision provides that it is an offence to use a carriage service to harass an employee of the Attorney-General's Department acting as a National Hotline call taker. Responsibility for this service transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Department of Home Affairs to reflect that transfer.

Item 4 of the table under section 3.4(2) substitutes a reference to the Attorney-General's Department in subsection 208DA(1) of the *Customs Act 1901* (definition of prescribed officer), as the reference to that authority would, apart from this item, be read as a reference to another Minister in accordance with section 19 of the Acts Interpretation Act. The Attorney-General may authorise a Senior Executive Service employee of the Attorney-General's Department to make a direction about the disposal of narcotic-related goods that have been seized under a seizure warrant. Responsibility for administration of the *Proceeds of Crime Act 1987* transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Department of Home Affairs to reflect that transfer.

Item 5 of the table under section 3.4(2) substitutes a reference to the Attorney-General's Department in subregulation 4AA(7) of the *Customs (Prohibited Imports) Regulations 1956* (definition of authorised person). This provision relates to the authorisation of a Senior Executive Service employee of the Attorney-General's Department to give permission for the importation of plastic explosives in accordance with regulation 4AA. Responsibility for law enforcement policy and operations transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Department of Home Affairs to reflect that transfer.

Item 6 of the table under section 3.4(2) substitutes a reference to the Attorney-General's Department in regulation 1.03 (definition of assistance notice) and clause 060.511 of Schedule 2 of the *Migration Regulations 1994*. These provisions relate to the

issue of assistance notices by Senior Executive Service employees of the Attorney-General's Department to non-citizens who are required in Australia to assist in the administration of criminal justice in relation to human trafficking and slavery-like practices. Responsibility for law enforcement policy and operations transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Department of Home Affairs to reflect that transfer.

Item 7 of the table under section 3.4(2) substitutes a reference to the Attorney-General's Department in the Schedule of the *Safety, Rehabilitation and Compensation (Definition of Employee) Notice 2009 (1)*. The Notice has the effect that members of emergency response teams, appointed under authority of the Attorney-General or the Minister for Justice, who are operating at the direction of EMA in response to emergencies and their aftermath, are employed by EMA, a division of the Attorney-General's Department, for the purposes of subsection 5(6) of the *Safety, Rehabilitation and Compensation Act 1988*. Responsibility for Commonwealth emergency management transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Department of Home Affairs to reflect that transfer. The substitution does not apply to the extent the notice is in force for the purposes of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

Item 8 of the table under section 3.4(2) substitutes a reference to the Attorney-General's Department in subclause 89(1) of Schedule 3A of the *Telecommunications Act 1997*. This provision provides for the delegation of the Attorney-General's power to give directions about the grant of protection zone and non-protection zone installation permits for submarine cables to carriers in circumstances that may be prejudicial to security. Responsibility for national security transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Department of Home Affairs to reflect that transfer.

Item 9 of the table under section 3.4(2) substitutes a reference to the Commonwealth Attorney-General's Department in the definition of Director-General, Emergency Management Australia, described as part of the Commonwealth Attorney-General's Department, in the *Telecommunications (Data for emergency warning systems) Instrument 2016*. Responsibility for Commonwealth emergency management transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Department of Home Affairs to reflect that transfer.

#### **Item 4 – Section 4.2 (heading)**

The heading of Section 4.2 is repealed and the new heading is 'Substitutions made on 6 May 2017'.

#### **Item 5 – Section 4.2**

The substitutions in the table commence on 6 May 2017 rather than on the day this instrument commences.

#### **Item 6 – Section 4.2 (table heading)**

The heading of the table is repealed and the new heading is 'Substitutions made on 6 May 2017 – references to Secretaries in a single Act or Instrument'.

## Item 7 – At the end of Part 4

This item includes a new section 4.3 at the end of Part 4 of the *Acts Interpretation Substituted Reference Order 2017*. The section sets out in a table, for reader clarity, references to Secretaries that are necessary to be updated. 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.

### *References to multiple Acts or Instruments*

Subsection 4.3(1) provides that the table sets out references to Secretaries that affect multiple Acts or instruments when substituted.

The heading to the table provides that the substitution takes effect on the Home Affairs transition day.

Item 1 of the table under subsection 4.3(1) substitutes existing references in all provisions of Acts and instruments made under Acts that refer to the Secretary of the Department of Immigration and Border Protection so the reference is read as the Secretary of the Department of Home Affairs. This reflects amendments to the AAO.

### *References to a single Act or Instrument*

Subsection 4.3(2) provides that the table sets out references to Secretaries that affect provisions in a single Act or instrument when substituted.

The heading to the table also provides the date from which the substitution takes effect, which is on the Home Affairs transition day.

Item 1 of the table under section 4.3(2) substitutes a reference to the Attorney-General's Secretary in subsection 57GJ(4) of *A New Tax System (Family Assistance) Act 1999*. This provision requires the Attorney-General's Secretary to seek the advice of the Human Services Secretary on the likely effect on an individual's dependants of a loss of family assistance if a security notice is given. The advice must be given to the Attorney-General as a consideration in giving a security notice. Responsibility for national security transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Secretary of the Department of Home Affairs to reflect that transfer.

Item 2 of the table under section 4.3(2) substitutes a reference to the Attorney-General's Secretary in subitem 9.3 in Part 1 of Schedule 6 to the *Customs (Prohibited Imports) Regulations 1956*, which refers to granting of import permission for firearms. The *Customs (Prohibited Imports) Regulations 1956* have been administered by the Department of Immigration and Border Protection since the AAO made on 12 December 2013. The Attorney-General's Department continued to be responsible for the application process for granting of import permission for firearms under subitem 9.3 in Part 1 of Schedule 6 to the *Customs (Prohibited Imports) Regulations 1956*. Responsibility for law enforcement policy and operations transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Secretary of the Department of Home Affairs to reflect that transfer.

Item 3 of the table under section 4.3(2) substitutes a reference to the Secretary of the Attorney-General's Department in paragraph 143(1)(a) of the *Migration Act 1958* for a reference to the Secretary of the Department of Home Affairs. This provision allows the Attorney-General to delegate to the Secretary of the Attorney-General's Department, the power to give and to cancel criminal justice stay certificates that allow for the temporary presence in Australia of non-citizens for specified criminal justice purposes. Responsibility for law enforcement policy and operations and immigration transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Secretary of the Department of Home Affairs to reflect that transfer.

Item 4 of the table under section 4.3(2) substitutes a reference to the Secretary of the Attorney-General's Department in regulation 1.03, the definition of *assistance notice* and in clause 060.511 of Schedule 2 of the *Migration Regulations 1994*. These provisions relate to the issue of assistance notices by the Secretary of the Attorney-General's Department to non-citizens who are required in Australia to assist in the administration of criminal justice in relation to human trafficking and slavery-like practices. Responsibility for law enforcement policy and operations and immigration transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Secretary of Department of Home Affairs to reflect that transfer.

Item 5 of the table under section 4.3(2) substitutes a reference to the Attorney-General's Secretary in subsection 278C(3) of the *Paid Parental Leave Act 2010*. This provision requires the Attorney-General's Secretary to seek the advice of the Human Services Secretary on the likely effect on an individual's dependants of a loss of family assistance if a security notice is given. The advice must be given to the Attorney-General as a consideration in giving a security notice. Responsibility for national security transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Secretary of Department of Home Affairs to reflect that transfer.

Item 6 of the table under section 4.3(2) substitutes a reference to the Attorney-General's Secretary in subsection 38N(3) of the *Social Security Act 1991*. This provision requires the Attorney-General's Secretary to seek the advice of the Human Services Secretary on the likely effect on an individual's dependants of a loss of family assistance if a security notice is given. The advice must be given to the Attorney-General as a consideration in giving a security notice. Responsibility for national security transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Secretary of Department of Home Affairs to reflect that transfer.

Item 7 of the table under section 4.3(2) substitutes a reference to the Secretary of the Attorney-General's Department in clauses 55A, 57, 58, 70, 71, 73 and 89 of Schedule 3A of the *Telecommunications Act 1997*. These provisions provide for consultation between the Australian Communications and Media Authority and the Secretary of the Attorney-General's Department about the grant of protection zone and non-protection zone permits for carriers to install submarine cables. This consultation facilitates the consideration by the Attorney-General of the need for a direction that the permit be refused in circumstances where the grant of a permit may be prejudicial to security. Responsibility for national security transferred to the Minister for Home Affairs following amendments to the AAO. The item substitutes the Secretary of Department of Home Affairs to reflect that transfer.

