

# ***Acts Interpretation Amendment (2020 Measures No.1) Substituted Reference Order 2020***

## **EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General in compliance with section 15G of the *Legislation Act 2003*

### **INTRODUCTION**

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

Where provisions of Commonwealth Acts and instruments made under those Acts refer to a particular authority such as a minister, a department of state, other agency or a particular office or office-holder, 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 those administrative changes.

### **SECTION 19B OF THE ACTS INTERPRETATION ACT 1901**

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 specified 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 determine 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.

The Acts Interpretation Act also provides that a substituted reference order:

- may have retrospective effect (subsection 19B(3));
- has effect according to its terms (subsection 19B(4));

- is a legislative instrument (Subsection 19B(5)); and
- 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(6)).

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 Agency within the meaning of the *Public Service Act 1999*, and office or the holder of an office.

## **THE ORDER**

The *Acts Interpretation Amendment (2020 Measures No. 1) Substituted Reference Order 2020* (Order) creates substituted references in two distinct areas.

First, the Order gives effect to the transfer of responsibilities occurring as a consequence of the Executive Order signed by the Governor-General on 5 December 2019 to establish Services Australia as an Executive Agency within the Social Services portfolio.

Secondly, the Order gives effect to the machinery of government changes and the transfer of responsibilities under the Administrative Arrangements Order (AAO) also signed by the Governor-General on 5 December 2019 which created the new Department of Agriculture, Water and the Environment. This new department consolidated the former Department of Agriculture, and environment functions from the former Department of the Environment and Energy.

The Order ensures that Secretaries of Departments of State, the Chief Executive Officer of Services Australia and Australian public service employees can exercise relevant powers granted under legislation in accordance with the responsibilities outlined in the AAO of 5 December 2019, or, in the case of Services Australia, conferred by the Executive Order.

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

All 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.

The Acts Interpretation Act specifies no conditions that needed to be satisfied before the power to make the Order was exercised.

## **LEGISLATION ACT 2003**

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 (sections 10 and 12 of that Regulation).

## **COMMENCEMENT AND OPERATION**

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

**Details of proposed *Acts Interpretation Amendment (2020 Measures No. 1) Substituted Reference Order 2020***

**Section 1 – Name**

This section provides that the title of this order is the *Acts Interpretation Amendment (2020 Measures No. 1) Substituted Reference Order 2020* (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. Some provisions in the Order have retrospective operation, which is provided for by subsection 19B(3) of the Acts Interpretation Act.

**Section 3 – Authority**

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

**Section 4 – Schedules**

This section provides that each instrument specified in a Schedule to the proposed 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* (2017 Order).

**Schedule 1 – Amendments**

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

**Item 1 at the end of Part 3**

***References to Departments in a single Act or instrument***

Item 1 adds a new section 3.7 at the end of Part 3 of the 2017 Order.

Each section in the Schedule follows the same format, specifying the date from which the substitutions have effect, and then setting out those substitutions in a table. Column 1 in each table identifies the provisions where a reference requires substitution. Column 2 specifies the existing reference. Column 3 specifies the substituted reference.

All substitutions inserted by Schedule 1 take effect on and after 1 February 2020. This is the date of commencement of both the Administrative Arrangements Order which provides for the transfer of agricultural responsibilities to the renamed Department of Agriculture, Water

and the Environment and the Executive Order establishing Services Australia as a new Executive Agency within the Social Services Portfolio.

The table in section 3.7 identifies provisions that refer to the Department administered by the Human Services Minister, the Department administered by the Minister administering specified legislation, and ‘the Department’. It changes those references to the Executive Agency named Services Australia. In the absence of the Order, these Ministerial references would be read as references to the Minister for Social Services, and the Departmental references as references to the Department of Social Services.

The table also identifies one reference to Department of Agriculture and Water Resources and changes that reference to the Department of Agriculture, Water and the Environment. In the absence of the Order, the responsible Department would not be easily identifiable.

*Table items 1-2 and 4-15*

Under the Executive Order the responsibilities of the former Services Australia Department transferred to the newly established Executive Agency named Services Australia. Therefore items 1-2 and 4-15 of the table substitute the existing reference so they are read ‘Services Australia’.

Item 1 of the table in section 3.7 substitutes the reference to ‘the Department administered by the Human Services Minister’ in the definition of **Human Services Department** in subsection 3(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Item 2 of the table in section 3.7 substitutes the reference to ‘the Department administered by the Human Services Minister’ in the definition of **Human Services Department** in section 5 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Item 4 of the table in section 3.7 substitutes the reference to ‘the Department administered by the Human Services Minister’ in the definition of **Human Services Department** in subsection 4(1) of the *Child Support (Registration and Collection) Act 1988*.

Item 5 of the table in section 3.7 substitutes the reference to ‘the Department administered by the Human Services Minister’ in the definition of **Human Services Department** in subsection 3(1) of the *Data-matching Program (Assistance and Tax) Act 1990*.

Item 6 of the table in section 3.7 substitutes the reference to ‘the Department administered by the Human Services Minister’ in the definition of **Human Services Department** in section 4 of the *Dental Benefits Act 2008*.

Item 7 of the table in section 3.7 substitutes the reference to ‘the Department administered by the Human Services Minister’ in the definition of **Human Services Department** in subsection 4(1) of the *Freedom of Information Act 1982*.

Item 8 of the table in section 3.7 substitutes the reference to ‘the Department’ in section 3 (the definition of **Departmental employee**), paragraph 7(2)(a) and subsection 7A(1) of the *Human Services (Centrelink) Act 1997*.

Item 9 of the table in section 3.7 substitutes the reference to ‘the Department’ in section 3 (the definition of **Departmental employee**), paragraph 4(2)(a), subsection 4A(1), paragraph 41C(2)(c) and paragraph 41CA(5)(b) of the *Human Services (Medicare) Act 1973*. The reference ensures Department of Health employees can continue to exercise powers and functions relating to health provider compliance as provided for in the current AAO.

Item 10 of the table in section 3.7 substitutes the reference to ‘the Department administered by the Minister administering the *Human Services (Medicare) Act 1973*’ in the definition of **Human Services Department** in section 5 of the *My Health Records Act 2012*.

Item 11 of the table in section 3.7 substitutes the reference to ‘the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*’ in the definition of **Human Services Department** in section 6 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

Item 12 of the table in section 3.7 substitutes the reference to ‘the Department administered by the Human Services Minister’ in the definition of **Human Services Department** in section 6 of the *Paid Parental Leave Act 2010*.

Item 13 of the table in section 3.7 substitutes the reference to ‘that Department’ in item 3 of the table in subsection 151A(1) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

Item 14 of the table in section 3.7 substitutes the reference to ‘the Department administered by the Human Services Minister’ in the definition of **Human Services Department** in subsection 23(1) of the *Social Security Act 1991*.

Item 15 of the table in section 3.7 substitutes the reference to ‘the Department administered by the Human Services Minister’ in the definition of **Human Services Department** in subsection 3(1) of the *Student Assistance Act 1973*.

#### *Table item 3*

Item 3 of the table in subsection 3.7 substitutes the reference to ‘Department of Agriculture and Water Resources’ in the definition of **National Plantation Inventory** in section 5 of the *Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2017*.

At the time the Determination was made, and prior to the 5 December 2019 AAO, the Department of Agriculture and Water Resources was responsible for managing the National Plantation Inventory. Following the 5 December 2019 AAO the Department of Agriculture and Water Resources was consolidated into the new Department of Agriculture, Water and

the Environment. As a result management of the National Plantation Inventory is now the responsibility of the new Department of Agriculture, Water and the Environment. Therefore this item substitutes the existing reference so it is read as the ‘Department of Agriculture, Water and the Environment’.

## **Item 2 at the end of Part 4**

### *References to Secretaries in a single Act or instrument*

Item 2 adds a new section 4.6 at the end of Part 3 of the 2017 Order.

### *Table items 1-14*

The table in section 4.6 identifies provisions that refer to the Secretary of the Department of Social Services. It changes those references to the Chief Executive Officer of the Executive Agency Services Australia. In the absence of the Order, these references would be read as references to the Secretary of the Department of Social Services.

Item 1 of the table in section 4.6 substitutes the reference to ‘Secretary of the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*’ in the definition of **Human Services Secretary** in subsection 3(1) of the *A New Tax System (Family Assistance) Act 1999*.

Item 2 of the table in section 4.6 substitutes the reference to ‘Secretary of the Human Services Department’ in paragraph 57GM(b) and paragraph 57GO(3)(b) of the *A New Tax System (Family Assistance) Act 1999*.

Item 3 of the table in section 4.6 substitutes the reference to ‘Secretary of the Human Services Department’ in subsection 3(1) (paragraph (b) of the definition of **head**), subsection 109C(2) and subsection 221(3) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Item 4 of the table in section 4.6 substitutes the reference to ‘Secretary of the Human Services Department’ in the definition of **Human Services Secretary** in subsection 4(1) of the *Child Support (Registration and Collection) Act 1988*.

Item 5 of the table in section 4.6 substitutes the reference to ‘Secretary of the Department’ in section 3 (the definition of **Secretary**) and section 8B of the *Human Services (Centrelink) Act 1997*.

Item 6 of the table in section 4.6 substitutes the reference to ‘Secretary of the Department’ in section 3 (the definition of **Secretary**) and section 7A of the *Human Services (Medicare) Act 1973*.

Item 7 of the table in section 4.6 substitutes the reference to ‘Secretary of the Human Services Department’ in paragraph 105(6)(c) of the *My Health Records Act 2012*.

Item 8 of the table in section 4.6 substitutes the reference to ‘Human Services Secretary’ in section 67 (the heading) of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

Item 9 of the table in section 4.6 substitutes the reference to ‘Secretary of the Human Services Department’ in paragraph 67(b) and paragraph 70(3)(b) of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

Item 10 of the table in section 4.6 substitutes the reference to ‘Secretary of the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*’ in the definition of **Human Services Secretary** in section 6 of the *Paid Parental Leave Act 2010*.

Item 11 of the table in section 4.6 substitutes the reference to ‘Secretary of the Human Services Department’ in paragraph 278F(b) and paragraph 278H(3)(b) of the *Paid Parental Leave Act 2010*.

Item 12 of the table in section 4.6 substitutes the reference to ‘Secretary of the Department administered by the Minister who administers the *Human Services (Centrelink) Act 1997*’ in item 3 of the table in subsection 151A(1) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

Item 13 of the table in section 4.6 substitutes the reference to ‘Secretary of the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*’ in the definition of **Human Services Secretary** in subsection 23(1) of the *Social Security Act 1991*.

Item 14 of the table in section 4.6 substitutes the reference to ‘Secretary of the Human Services Department’ in paragraph 38R(b) and paragraph 38T(3)(b) of the *Social Security Act 1991*.