

## *Acts Interpretation Amendment Substituted Reference Order 2022*

### **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, or other Australian Government 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 Substituted Reference Order 2022* (Order) creates substituted references to give effect to the machinery of government changes and the transfer of responsibilities under the Administrative Arrangements Order (AAO) signed by the Governor-General on 23 June 2022. The proposed Order would amend the *Acts Interpretation Substituted Reference Order 2017* (2017 Order), rather than make a new instrument. This is consistent with all substituted reference orders made post-2017. This approach aims to improve readability and facilitate greater access to law by consolidating new substituted references in one instrument.

The proposed Order also creates substituted references to give effect to the transfer of responsibilities occurring as a consequence of the Executive Order signed by the Governor-General on 18 August 2022 to establish the National Emergency Management Agency as an Executive Agency (Executive Order).

The Order ensures that Ministers, Secretaries of Departments of State and Australian Public Service employees can exercise relevant powers granted under legislation in accordance with the responsibilities outlined in the AAO of 23 June 2022 and the Executive Order of 18 August 2022.

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. Substituted Reference Orders have a standing exemption from the regulatory impact assessment requirements set out by the Office of Best Practice Regulation (OBPR). The OBPR reference for this standing exemption is ID 13423.

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. Further details about the date on which particular substitutions have effect are set out in the Attachment.

**Details of the *Acts Interpretation Amendment Substituted Reference Order 2022***

**Section 1 – Name**

This section provides that the title of this order is the *Acts Interpretation Amendment Substituted Reference Order 2022* (Order).

**Section 2 – Commencement**

This section provides for the whole of the proposed Order to commence on the day after it is registered on the Federal Register of Legislation. The majority of provisions in the proposed Order have retrospective operation, aside from three provisions noted below. Retrospectivity is provided for by subsection 19B(3) of the *Acts Interpretation Act 1901*.

**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 proposed Order is amended 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***

Each section in the Schedule follows the same format, specifying the date from which the substitutions would 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.

The majority of substitutions inserted by Schedule 1, aside from some substitutions in Item 1 and the substitutions in Item 2 noted below, take effect on and after 1 July 2022. This is the date of commencement of the Administrative Arrangements Order (AAO) made on 23 June 2022.

## **Item 1 - At the end of Part 2**

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

Item 1 adds new sections 2.6 and 2.7 at the end of Part 2 of the 2017 Order.

The table in section 2.6 identifies provisions that refer to particular existing references to Ministers and changes those references to reflect changes in responsibilities, and Departmental and Ministerial titles, that arose as a result of the AAO made on 23 June 2022. These substitutions have effect on or after 1 July 2022.

The table in section 2.7 identifies provisions that refer to particular existing references to the ‘AFP Minister’ in the *Telecommunications Act 1997* and changes those references to reflect changes in responsibilities, and Departmental and Ministerial titles, that arose as a result of the AAO made on 23 June 2022 and the Executive Order made on 18 August 2022. These substitutions have effect on or after 1 September 2022, as this is the date of establishment of the National Emergency Management Agency under the Executive Order of 18 August 2022.

In the absence of the Order, the responsible Minister named in each affected provision would not be easily identifiable, or would be otherwise incorrect.

### *Business Names Registration (Availability of Names) Determination 2015, item 204 of the table in Part 2 of Schedule 2*

Item 1 of the table in section 2.6 substitutes the reference to the ‘Minister for Tertiary Education, Skills, Jobs and Workplace Relations’ in item 204 of the table in Part 2 of Schedule 2 of the *Business Names Registration (Availability of Names) Determination 2015*, with the reference ‘Minister administering the *Tertiary Education Quality and Standards Agency Act 2011*’. This change is necessary because the ‘Minister for Tertiary Education, Skills, Jobs and Workplace Relations’ is not a current Ministerial title and these functions are now split between the Minister for Education and the Minister for Employment and Workplace Relations. Consistent with the AAO of 23 June 2022, the substituted reference will be read as referring to the Minister for Education.

### *Disability (Access to Premises — Buildings) Standards 2010, subsection 6.1(1)*

Item 2 of the table in section 2.6 substitutes the reference to the ‘Minister for Innovation, Industry, Science and Research’ in subsection 6.1(1) of the *Disability (Access to Premises — Buildings) Standards 2010* with the reference ‘Minister administering the *Industry Research and Development Act 1986*’. This change is necessary because the ‘Minister for Innovation, Industry, Science and Research’ is not a current Ministerial title. Consistent with the AAO of 23 June 2022, the substituted reference will be read as referring to the Minister for Industry and Science.

Disability Standards for Accessible Public Transport 2002, subsection 34.1(1)

Item 3 of the table in section 2.6 substitutes the reference to the ‘Minister for Transport and Regional Services’ in subsection 34.1(1) of the *Disability Standards for Accessible Public Transport 2002* with the reference ‘Minister administering the *National Land Transport Act 2014*’. This change is necessary because the ‘Minister for Transport and Regional Services’ is not a current Ministerial title. Consistent with the AAO of 23 June 2022, the substituted reference will be read as referring to the Minister for Infrastructure, Transport, Regional Development and Local Government.

Disability Standards for Education 2005, section 11.1

Item 4 of the table in section 2.6 substitutes the reference to the ‘Minister for Education and Training’ in section 11.1 of the *Disability Standards for Education 2005* with the reference ‘Minister for Education’. This change is necessary because the ‘Minister for Education and Training’ is not a current Ministerial title and these functions have been split between the Minister for Education and Minister for Employment and Workplace Relations. The substituted reference is consistent with current Ministerial titles and responsibilities as identified in the AAO of 23 June 2022.

Telecommunications Act 1997, subsections 275B(2), 275B(5), 275D(2), paragraph 295Y(b), subsections 295ZB(1) and (2), and subsection 295ZD(1)

Item 1 of the table in section 2.7 substitutes references to the ‘AFP Minister’ in subsections 275B(2), 275B(5), 275D(2), paragraph 295Y(b), subsections 295ZB(1) and (2), and subsection 295ZD(1) of the *Telecommunications Act 1997* with the reference ‘Minister for Emergency Management’. This change is necessary because the ‘AFP Minister’ will be read as the ‘Attorney-General’ following the Administrative Arrangements Order of 23 June 2023. However, the Attorney-General is not responsible for the Commonwealth Emergency Management functions that are provided for under these provisions. The substituted reference is consistent with current Ministerial titles and responsibilities as identified in the AAO of 23 June 2022 and reflect the establishment of the National Emergency Management Agency under the Executive Order of 18 August 2022.

**Item 2 - At the end of Part 3**

*References to Departments in a single Act or instrument*

Item 2 adds new sections 3.8 and 3.9 at the end of Part 3 of the 2017 Order. All substitutions in the table in section 3.8 have effect on and after 1 July 2022. The item in the table in section 3.9 has prospective effect on and after 1 October 2022.

The tables in section 3.8 and 3.9 identify provisions that refer to Departments in a single Act or Instrument and changes those references to reflect changes in Departmental responsibilities and titles that arose as a result of the AAO made on June 23 2022.

In the absence of the Order, the responsible Department named in each affected provision would not be easily identifiable, or would otherwise be incorrect.

*Classification (Publications, Films and Computer Games) (Conditional Cultural Exemption Rules) Instrument 2015, section 4 (definition of **Department**)*

Item 1 of the table in section 3.8 substitutes the reference to the ‘Commonwealth Attorney-General’s Department’ in the definition of **Department** in section 4 of the *Classification (Publications, Films and Computer Games) (Conditional Cultural Exemption Rules) Instrument 2015* with the reference ‘Department administered by the Minister administering Division 2 of Part 1A of the *Classification (Publications, Films and Computer Games) Act 1995*’. This change clarifies which Department is currently responsible for classification matters. Consistent with the AAO of 23 June 2022, the substituted reference will be read as the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

*Family Law Regulations 1984, paragraph 12CB(a)*

Item 2 of the table in section 3.8 substitutes the reference to the ‘Department of Jobs and Small Business’ in paragraph 12CB(a) of the *Family Law Regulations 1984* with the ‘Department of Employment and Workplace Relations’. This change is necessary because the ‘Department of Jobs and Small Business’ is not a current Department. The substituted reference is consistent with current Departmental names and responsibilities as identified in the AAO of 23 June 2022.

*Family Law Regulations 1984, paragraph 12CB(c)*

Item 3 of the table in section 3.8 substitutes the reference to the ‘Department of Health’ in paragraph 12CB(c) of the *Family Law Regulations 1984* with the ‘Department of Health and Aged Care’. This change is necessary because the ‘Department of Health’ is not a current Department. The substituted reference is consistent with current Departmental names and responsibilities as identified in the AAO of 23 June 2022.

*Family Law Regulations 1984, paragraph 12CB(h)*

Item 4 of the table in section 3.8 substitutes the reference to the ‘Department of Education and Training’ in paragraph 12CB(h) of the *Family Law Regulations 1984* with the ‘Department of Education’. This change is necessary because the ‘Department of Education and Training’ is not a current Department. The substituted reference is consistent with current Departmental names and responsibilities as identified in the AAO of 23 June 2022.

*Criminal Code Act 1995, paragraph 474.12(2)(d)*

Item 1 of the table in section 3.9 substitutes the reference to the ‘Department administered by the AFP Minister’ in paragraph 474.17(2)(d) of the *Criminal Code Act 1995* with the ‘Department of Home Affairs’. Prior to the Order, paragraph 474.17(2)(d) referred to ‘an APS employee in the Department administered by the AFP Minister acting as a

National Security Hotline call taker’. Following the AAO of 23 June 2022, the ‘AFP Minister’ was read as the Attorney-General and therefore the reference in paragraph 474.12(2)(d) was read as referring to the Attorney-General’s Department. This change is necessary because National Security Hotline call takers are not employed by the Attorney-General’s Department, but rather, the Department of Home Affairs. This substitution has prospective effect on and after 1 October 2022, as it relates to an offence provision.

### **Item 3 - At the end of the instrument**

#### *References to offices or holders of offices in a single Act or instrument*

Item 3 inserts a new Part 5 at the end of the 2017 Order with new sections 5.1 and 5.2. All substitutions in the table in section 5.2 have prospective effect on and after 1 October 2022.

Section 5.1 specifies that the table in section 5.2 operates to substitute references to a particular office or office holder in a provision mentioned in the table, with a reference to another authority, or authorities, on or after the date mentioned in the heading of the table. In this case, the relevant date is 1 October 2022.

The table in 5.2 identifies provisions that refer to offices, or holders of offices, in a single Act or Instrument and changes those references to reflect the establishment of the National Emergency Management Agency as an Executive Agency under the Executive Order made on 18 August 2022.

In the absence of the Order, the responsible office or office-holder named in each affected provision would not be easily identifiable, or would otherwise be incorrect.

#### *Space (Launches and Returns) (General) Rules 2019, paragraph 120(5)(e)*

Item 1 of the table in section 5.2 substitutes the reference to the ‘Director-General of Emergency Management Australia’ in paragraph 120(5)(e) of the *Space (Launches and Returns) (General) Rules 2019* with the ‘Coordinator-General of the National Emergency Management Agency’. This change is consistent with the Executive Order made on 18 August 2022.

#### *Telecommunications (Data for emergency warning systems) Instrument 2020, item 1 of the table in section 6, column headed “position”, paragraph (b)*

Item 2 of the table in section 5.2 substitutes the reference to the ‘Director-General, Emergency Management Australia’ in item 1 of the table in section 6, column headed “position”, paragraph (b) of the *Telecommunications (Data for emergency warning systems) Instrument 2020* with the ‘Coordinator-General of the National Emergency Management Agency’. This change is consistent with the Executive Order made on 18 August 2022.