

Acts Interpretation Amendment (Home Affairs) Substituted Reference Order 2024

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* (the 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 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 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 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 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*, or an office or the holder of an office.

THE ORDER

The *Acts Interpretation Amendment (Home Affairs) Substituted Reference Order 2024* (the Order) creates substituted references to give effect to the machinery of government changes under the Administrative Arrangements Order (AAO) signed on 29 July 2024.

In addition, the substituted references that the Order would create in relation to the *Administrative Decisions (Judicial Review) Act 1977* would be consistent with amendments to other legislation enacted in the *Crimes and Other Legislation Amendment (Omnibus No. 1) Act 2024* (the COLA Act), which received Royal Assent on 24 October 2024. The relevant COLA Act amendments were also intended to give effect to the allocation of ministerial responsibilities under the AAO signed on 29 July 2024.

The Order would amend the *Acts Interpretation Substituted Reference Order 2017*, 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.

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. A standing exemption from the Regulatory Impact Assessment process has been granted by the Office of Impact Analysis (OIA23-06087).

The 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 (Home Affairs) Substituted Reference Order 2024*

Section 1 – Name

This section provides that the title of this order is the *Acts Interpretation Amendment (Home Affairs) Substituted Reference Order 2024* (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. All of the provisions in the Order would have retrospective operation. Retrospectivity is provided for by subsection 19B(3) of the *Acts Interpretation Act 1901* (the Act).

Section 3 – Authority

This section provides that the Order is made under section 19B of the Act.

Section 4 – Schedules

This section provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a schedule to this instrument has effect according to its terms.

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 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 substitutions inserted by section 2.8 would take effect on and after 30 July 2024. This is the first full day after the commencement of the Administrative Arrangements Order (AAO) signed on 29 July 2024. The substitutions inserted by section 2.9 take effect on and after 25 October 2024 in line with related amendments in the *Crimes and Other Legislation Amendment (Omnibus No. 1) Act 2024* (the COLA Act) which were given Royal Assent on 24 October 2024.

Item [1] – At the end of Part 2

Item 1 adds new sections 2.8 and 2.9 at the end of Part 2 of the *Acts Interpretation Substituted Reference Order 2017* (the 2017 Order).

New section 2.8

The table in section 2.8 identifies the following affected provisions: definitions of the term ‘Home Affairs Minister’ in subsection 3(1) of *A New Tax System (Family Assistance) Act 1999*, section 6 of the *Paid Parental Leave Act 2010* and subsection 23(1) of the *Social Security Act 1991*. Each of these provisions define ‘Home Affairs Minister’ to mean ‘the Minister administering the *Australian Security Intelligence Organisation Act 1979*’ (the ASIO Act). Items 1-3 substitute the reference to ‘the Minister administering the *Australian Security Intelligence Organisation Act 1979*’ in each of the three Acts with the reference ‘Minister administering the *Migration Act 1958*’.

This change is necessary as, under the AAO of 29 July 2024, the Attorney-General administers the ASIO Act but is not responsible for the functions that are attributed to the Home Affairs Minister in each of these Acts. Consistent with the AAO of 29 July 2024, the substituted reference correctly refers these functions to the Home Affairs Minister, as the Minister who administers the *Migration Act 1958*.

The substitutions inserted by section 2.8 take effect on and after 30 July 2024. The AAO commenced on the day of its signing on 29 July 2024.

New section 2.9

The table in section 2.9 identifies the following affected provisions: the ‘Minister administering the *Australian Security Intelligence Organisation Act 1979*’ in paragraphs (daa) and (daaa) of Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act). Item 1 substitutes the reference to ‘the Minister administering the *Australian Security Intelligence Organisation Act 1979*’ in each of these paragraphs with the reference ‘Minister administering the *Security of Critical Infrastructure Act 2018*’ (the SOCI Act).

Following the AAO of 29 July 2024, the current references operate to exempt decisions of the Attorney-General under section 58A and clauses 57A and 72A of Schedule 3A of the *Telecommunications Act 1997* (the Telecommunications Act) from the operation of the ADJR Act.

The substitutions are necessary as, under the AAO of 29 July 2024 and amendments contained in the COLA Act which commenced on 25 October 2024, the Attorney-General is no longer responsible for the decisions under the Telecommunications Act that are exempt from the ADJR Act under paragraphs (daa) and (daaa) of Schedule 1 of the ADJR Act. Consistent with the AAO of 29 July 2024 and the relevant provisions of the Telecommunications Act following commencement of the COLA Act, the substituted references operate to correctly refer to the Minister for Home Affairs, as the Minister who administers the SOCI Act.

The substitutions inserted by section 2.9 take effect on and after 25 October 2024. This reflects the commencement date of the relevant COLA Act amendments to the Telecommunications Act, which were made to reflect the allocation of ministerial responsibilities in the AAO of 29 July 2024.