

Ombudsman Amendment Regulations 1999 (No. 1) 1999 No. 192

EXPLANATORY STATEMENT

Statutory Rules 1999 No. 192

Issued by the Authority of the Prime Minister

Ombudsman Act 1976

Ombudsman Amendment Regulations 1999 (No. 1)

Section 38 of the *Ombudsman Act 1976* (the Act) provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Section 5 of the Act directs the Ombudsman to investigate complaints against prescribed authorities. Section 3 defines "prescribed authority" with reference to subsection 3AB(1) of the Ombudsman Act, which provides that a Commonwealth-controlled company is a prescribed authority unless it is excluded by certain transitional provisions or, under the regulations, is to be taken not to be a prescribed authority.

The *Judiciary Amendment Act 1999* (the JAA) amends the *Judiciary Act 1903* to establish the Australian Government Solicitor as a statutory authority separate from the Attorney-General's Department ("the new AGS"). The Attorney-General has announced that the JAA will commence on 1 September 1999.

Cabinet has decided that entities such as the new AGS be exempt from statutory administrative law except where otherwise agreed between shareholder Ministers in individual cases. The JAA exempts the new AGS from the application of the *Freedom of Information Act 1982*, which also has the effect of excluding the AGS from the application of the Information Privacy Principles in the *Privacy Act 1988*. Additionally, decisions under the new Part VIIIIB of the Judiciary Act (which will relate to the new AGS) will be exempt from the *Administrative Decisions (Judicial Review Act 1977)*.

The purpose of the regulations is to remove the new AGS from the Commonwealth Ombudsman's jurisdiction. The Ombudsman's office has approved this change.

The amendment to the *Ombudsman Regulations* (the Regulations) will specify that the new AGS is to be taken not to be a prescribed authority. This is achieved by inserting an explicit statement in Regulation 4. The regulations also include a transitional provision preserving the Ombudsman's jurisdiction over any complaints based on matters prior to the commencement of the JAA and the creation of the new AGS.

The regulations will commence on gazettal.