# Ombudsman Amendment (Prescribed Authorities) Regulation 2015

# EXPLANATORY STATEMENT

**Select Legislative Instrument No. 105, 2015**

Issued under the Authority of the Parliamentary Secretary to the Prime Minister
in compliance with section 26 of the *Legislative Instruments Act 2003*

## OUTLINE

The *Ombudsman Act 1976* (the Act) established the Office of the Commonwealth Ombudsman as a Statutory Agency to investigate complaints, review administrative action and inspect and report on statutory compliance in relation to Australian Government entities and prescribed private sector organisations.

Section 38 of 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 and, in particular, prescribing matters in connexion with fees and expenses of witnesses appearing before the Ombudsman.

Sections 3(1)(a)(iii) and 3(1)(c)(ii) of the Act, under the definition of ‘prescribed authority’, allow Governor-General to prescribe in the regulations bodies and persons that are not taken to be prescribed authorities for the purposes of the Act. Section 3(5A) of the Act allows the Governor-General to prescribe in the regulations that action taken by an officer of a Department, in the furtherance of the duties of an office prescribed in regulations not to be a prescribed authority, is deemed not to be action taken by that Department for the purposes of the Act.

The *Ombudsman Regulations 1977* (the Principal Regulations) prescribe bodies and persons that are not taken to be prescribed authorities for the purposes of the Act.

The Regulation amends the Principal Regulations so that the actions taken by the Australian Government Solicitor (AGS) and officers of the Attorney‑General’s Department in furtherance of the duties of the AGS remain exempt from the jurisdiction of the Commonwealth Ombudsman following the consolidation of the AGS into the Attorney‑General’s Department as a result of the *Judiciary Amendment Act 2015*. The amendments retain the Ombudsman’s public interest disclosure functions in relation to the AGS. The Regulation also repeals subregulation 4(2) of the Principal Regulations, which is no longer relevant because Medibank Private is no longer a Commonwealth-controlled company.

The Regulation:

* removes the reference to the AGS as a body that is not taken to be a prescribed authority for the purposes of the Act;
* removes the reference to the Chief Executive Officer of the AGS as a person who is not taken to be a prescribed authority for the purposes of the Act;
* prescribes the AGS as a person that is not taken to be a prescribed authority for the purposes of the Act; and
* prescribes that action taken by the AGS or any other officer of the Attorney-General’s Department in furtherance of the duties of the AGS is deemed not to be action taken by the Attorney-General’s Department for the purposes of the Act, except in relation to the Ombudsman’s public interest disclosure functions.

Details of the Regulations are set out in Attachment A.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the later of 1 July 2015 and the day Schedules 1 to 3 to the *Judiciary Amendment Act 2015* commence.

## PROCESS BEFORE REGULATION WAS MADE

### Regulatory impact analysis

The Office of Best Practice Regulation (OBPR) has been consulted and has advised that a regulatory impact statement is not required.

### Statement of compatibility with human rights obligations

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The purpose of the Regulations is to amend the Principal Regulations to preserve AGS’s exemption from the Commonwealth Ombudsman’s jurisdiction after AGS is consolidated into the Attorney-General’s Department.

This Legislative Instrument does not engage any of the applicable rights or freedoms.

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

### Consultation before making

Under section 17 of the *Legislative Instruments Act 2003*, consultation must occur before legislative instruments are made, unless it is unnecessary or inappropriate to do so as set out in section 18 of the *Legislative Instruments Act 2003*. All relevant agencies have been consulted. The Regulation does not significantly alter existing arrangements and, therefore, consultation is unnecessary under section 18 of the *Legislative Instruments Act 2003*.

##  ATTACHMENT A

**Details of the *Ombudsman Amendment (Prescribed Authorities) Regulation 2015***

Regulation 1 – Name

This section provides that the title of the Regulations is the *Ombudsman Amendment (Prescribed Authorities) Regulation 2015*.

Regulation 2 – Commencement

This section provides for the Regulations to commence on the later of 1 July 2015 and the day Schedules 1 to 3 of the *Judiciary Amendment Act 2015* commence.

Regulation 3 – Authority

This section provides that the instrument is made under the *Ombudsman Act 1976*.

Regulation 4 - Amendment of *Ombudsman Regulations 1977*

This section provides that the *Ombudsman Regulations 1977* (the Principal Regulations) are amended or repealed as set out in the Schedule.

Schedule – Amendments

**Item [1] – Subregulation 4(1)**

This item omits “(1)” in the existing subregulation 4(1) of the Principal Regulations.

**Item [2] – Subregulation 4(2)**

Existing subregulation 4(2) of the Principal Regulations provides that the nominated company for Part 2 of the *Health Insurance Commission (Reform and Separation of Functions) Act 1997* is to be taken not to be a prescribed authority for paragraph 3AB(1)(b) of the Act. This item repeals subregulation 4(2).

**Item [3] – After regulation 6**

This item inserts a new regulation 6A after regulation 6 in the Principal Regulations.

Subregulation 6A(1) provides that, for the purposes of subsection 3(5A) of the Act, action taken by the Australian Government Solicitor or any other officer of the Attorney-General’s Department in furtherance of the duties of the Australian Government Solicitor is deemed not to be action taken by the Attorney-General’s Department. Subregulation 6A(2) provides that subregulation 6A(1) does not apply to action that is disclosable conduct to which subsection 5A(1) of the Act applies.

**Item [4] – Schedule 1**

Existing Schedule 1 of the Principal Regulations provides that the Australian Government Solicitor is a body that is not to be taken to be a prescribed authority for the purposes of the Act. This item omits the reference to the Australian Government Solicitor.

**Item [5] – Schedule 3**

Existing Schedule 3 of the Principal Regulations provides that the Chief Executive Officer of the Australian Government Solicitor is a person who is not to be taken to be a prescribed authority for the purposes of the Act. This item inserts the reference to the Australian Government Solicitor.

**Item [6] – Schedule 3**

Existing Schedule 3 of the Principal Regulations provides that the Chief Executive Officer of the Australian Government Solicitor is a person who is not to be taken to be a prescribed authority for the purposes of the Act. This item omits the reference to the Chief Executive Officer of the Australian Government Solicitor.