

18 May 2010

Peak body seeks a halt to misuse of the term Ombudsman

The Australian and New Zealand Ombudsman Association (ANZOA)—the peak body for Ombudsmen in Australia and New Zealand—is calling for stronger controls on the use of the term Ombudsman.

ANZOA is supporting its call with a policy statement, setting out six essential criteria—addressing independence, jurisdiction, powers, accessibility, procedural fairness and accountability—which it says the public are entitled to expect of any office described as an Ombudsman.

In releasing ANZOA's 'Essential Criteria' policy statement, ANZOA Chair, Fiona McLeod, said, "Where problems arise in an industry or an area of government services, the call for an 'ombudsman' commonly follows. In itself, this is not a problem—indeed it is a testament to the high level of public respect for the independence, integrity and impartiality of Ombudsman offices.

"ANZOA's concern lies with the increasing inappropriate use of the term 'ombudsman' to describe bodies that do not conform to—nor show an understanding of—the accepted Ombudsman model and its 200 year history.

"The term Ombudsman is understood by the public as signifying an independent office, which primarily has a complaint handling and investigation function.

"Using the term 'ombudsman' to describe an office with regulatory, disciplinary and/or prosecutorial functions confuses the role of Ombudsman with that of a regulatory body. This criticism applies to the Fair Work 'ombudsman', the recently proposed Supermarket 'ombudsman', and the proposed National Legal Services 'ombudsman', announced last week, which applies the term Ombudsman to a broad range of functions that have, until now, been performed by State legal services commissioners.

"The concept of Ombudsman is being stretched and the confidence of the Australian public in the role and independence of the Ombudsman institution is at risk of being undermined and diminished.

"An 'ombudsman' office under the direction or control of an industry or a government minister is not independent. An office set up within a company or government agency as an 'internal ombudsman' is not independent.

"In New Zealand, the term Ombudsman is protected by legislation. This is not the case in Australia.

"No Australian organisation should misuse the term. We urge anyone considering an 'ombudsman' proposal—Commonwealth, State or Local Government, Regulator, Industry, University or other Non Government body—to consult with ANZOA early in the process, to ensure the proposed office meets the necessary criteria for use of the term."

The ANZOA Policy Statement setting out Essential Criteria the public should rightly expect of any office calling itself an Ombudsman accompanies this release.

Media enquiries:

Fiona McLeod, ANZOA Chair: 0412 920 078 Email: info@anzoa.com.au

ANZOA is the peak body for Ombudsmen in Australia and New Zealand
Further information on ANZOA at: www.anzoa.com.au

Essential criteria for describing a body as an Ombudsman

Policy statement endorsed by the Members of the Australian and New Zealand Ombudsman Association (ANZOA)

The institution of Ombudsman has proven itself adaptable to a variety of roles and settings.

In Australia and New Zealand today, there are several types of Ombudsman offices:

- Parliamentary Ombudsmen who take complaints from citizens and constituents about government agencies
- Other statutory Ombudsmen/Commissioners who investigate complaints about particular agencies or professional services—such as health
- Industry-based Ombudsmen who take complaints from customers of companies providing particular services—such as telecommunications, banking, insurance, investments, energy, water and public transport.

The development and popularity of the Ombudsman institution has come about for one reason—the office is renowned for independent, accessible and impartial review and investigation. In increasing numbers, the public turns to Ombudsman offices for assistance and support.

It is important, therefore, that members of the public are not confused about what to expect when they approach an Ombudsman's office—public trust must not be undermined.

Many of those who approach an Ombudsman feel vulnerable, wish to do so in confidence or make serious allegations or whistleblower complaints.

Public respect for the independence, integrity and impartiality of Ombudsman offices is at risk if bodies that do not conform to the accepted model are inappropriately described as an Ombudsman office.

It is a contradiction in terms, for example, to describe a body as an 'internal ombudsman' or to apply the description to a body that is subject to the direction of a government minister or industry body.

The Australian and New Zealand Ombudsman Association (ANZOA) is concerned to ensure appropriate use of the term Ombudsman. Our view is that a body should not be described as an Ombudsman unless it complies with six essential criteria addressing independence, jurisdiction, powers, accessibility, procedural fairness and accountability.

Independence

- The office of Ombudsman must be established—either by legislation or as an incorporated or accredited body—so that it is independent of the organisations being investigated.
- The person appointed as Ombudsman must be appointed for a fixed term—removable only for misconduct or incapacity according to a clearly defined process.
- The Ombudsman must not be subject to direction.
- The Ombudsman must be able to select his or her own staff.
- The Ombudsman must not be—or be able to be perceived as—an advocate for a special interest group, agency or company.
- The Ombudsman must have an unconditional right to make public reports and statements on the findings of investigations undertaken by the office and on issues giving rise to complaints.
- The Ombudsman's office must operate on a not-for-profit basis.

Jurisdiction

- The jurisdiction of the Ombudsman should be clearly defined in legislation or in the document establishing the office.
- The jurisdiction should extend generally to the administrative actions or services of organisations falling within the Ombudsman's jurisdiction.
- The Ombudsman should decide whether a matter falls within jurisdiction—subject only to the contrary ruling of a court.

Powers

- The Ombudsman must be able to investigate whether an organisation within jurisdiction has acted fairly and reasonably in taking or failing to take administrative action or in providing or failing to provide a service.
- In addition to investigating individual complaints, the Ombudsman must have the right to deal with systemic issues or commence an own motion investigation.
- There must be an obligation on organisations within the Ombudsman's jurisdiction to respond to an Ombudsman question or request.
- The Ombudsman must have power to obtain information or to inspect the records of an organisation relevant to a complaint.
- The Ombudsman must have the discretion to choose the procedure for dealing with a complaint, including use of conciliation and other dispute resolution processes.

Accessibility

- A person must be able to approach the Ombudsman's office directly.
- It must be for the Ombudsman to decide whether to investigate a complaint.
- There must be no charge to a complainant for the Ombudsman's investigation of a complaint.
- Complaints are generally investigated in private, unless there is reasonable justification for details of the investigation to be reported publicly by the Ombudsman—for example, in an annual report or on other public interest grounds.

Procedural fairness

The procedures that govern the investigation work of the Ombudsman must embody a commitment to fundamental requirements of procedural fairness:

- The complainant, the organisation complained about and any person directly adversely affected by an Ombudsman's decision or recommendation—or criticised by the Ombudsman in a report—must be given an opportunity to respond before the investigation is concluded.
- The actions of the Ombudsman and staff must not give rise to a reasonable apprehension of partiality, bias or prejudgment.
- The Ombudsman must provide reasons for any decision, finding or recommendation to both the complainant and the organisation which is the subject of the complaint.

Accountability

- The Ombudsman must be required to publish an annual report on the work of the office.
- The Ombudsman must be responsible—if a Parliamentary Ombudsman, to the Parliament; if an Industry-based Ombudsman, to an independent board of industry and consumer representatives.



**The peak body for Ombudsmen
in Australia and New Zealand**