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Rural and Regional Affairs and Transport References Committee  
c/- Mr Stephen Palethorpe  
Committee Secretary, Senate Standing Committees on Rural and Regional Affairs and Transport  
PO Box 6100 Parliament House  
CANBERRA ACT 2600  
By email: [rrat.sen@aph.gov.au](mailto:rrat.sen@aph.gov.au)

Dear Mr Palethorpe

### **Proposal for a grains 'ombudsman'**

I am writing on behalf of the Australian and New Zealand Ombudsman Association (ANZOA) to comment on recommendations in the Rural and Regional Affairs and Transport References Committee's April 2012 final report, *Operational issues in export grain networks*.

ANZOA is a professional association and the peak body for Ombudsmen in Australia and New Zealand. We are writing to you because ANZOA's Members are concerned about some comments in the report, the recommendation at 8.27, and the additional recommendation 3 proposed by Senator Nick Xenophon in his *Against the Grain* additional comments to the report, which confuse the role of an Ombudsman with that of a Regulator.

#### *Why a name is important*

Where problems arise in an industry or an area of government services, the call for an Ombudsman commonly follows. This is a testament to the high level of public respect for the independence, integrity and impartiality of Ombudsman offices. That said, ANZOA has for some time been concerned about inappropriate use of the term Ombudsman to describe bodies that do not conform to—or show an understanding of—the accepted Ombudsman model and its over 200 years of history.

Where consumer complaints are not able to be resolved through the internal processes of a company or agency, consumers should have access to an effective and independent external dispute resolution mechanism, such as an Ombudsman office. It is important that members of the public are not confused about what to expect when they approach an Ombudsman. It is also important that the term is not used in a way which distorts the appropriate character of an Ombudsman office.

For example, the Banking Industry Ombudsman cited in the report—now the Financial Ombudsman Service—resolves complaints between consumers (including small businesses) and their banks or other financial service providers. It does not have a role in resolving complaints between industry participants, for example between banks or other providers of financial services.

### *An Ombudsman is not a Regulator*

The distinction between an Ombudsman and a Regulator is very important. 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 an Ombudsman with those of a Regulator or the Government.

While an Ombudsman may exercise recommendatory or determinative powers leading to regulatory change—and Ombudsman reports may be drawn upon by other bodies undertaking regulatory, disciplinary and prosecutorial functions—an Ombudsman is not a Regulator. While Ombudsmen usually have strong links to any relevant Regulator, the roles of the Ombudsman and the Regulator are distinctly separate.

### *Essential criteria for calling a body an Ombudsman*

In early 2010, concerned at growing misuse of the term Ombudsman, ANZOA issued a policy statement, which sets out six Essential Criteria for describing a body as an Ombudsman. These criteria, which address independence, jurisdiction, powers, accessibility, procedural fairness and accountability, were distributed widely, including to the heads of all Commonwealth and State government departments. The policy statement is Attachment 1 to this letter.

The ANZOA Executive Committee would welcome the opportunity to discuss ANZOA's position on use of the term Ombudsman with you and/or representatives of the Rural and Regional Affairs and Transport References Committee. Please feel free to contact me on (02) 8218 5204 or through the ANZOA Secretariat at [info@anzoa.com.au](mailto:info@anzoa.com.au).

Yours sincerely



**Clare Petre**  
**ANZOA Chair**  
**For the Members of the Australian and New Zealand Ombudsman Association (ANZOA)**



Registered Association Number A0044196B

## **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 prejudice.
- 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.