



From the President

26 May 2014

Manager
Small Business Ombudsman and Procurement Unit
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: small.business@treasury.gov.au

Dear Sir/Madam

RE: Small Business and Family Enterprise Ombudsman

I write in support of the submission made by the Australian and New Zealand Ombudsman Association specifically on the proposal to use the title "Ombudsman" for the new body - The Small Business and Family Enterprise Ombudsman. I do so as President of the International Ombudsman Institute.

In New Zealand, where I am also the Chief Ombudsman, the status of the title "Ombudsman" has been recognised as having a value that needs statutory protection. That protection was given to avoid misuse, public confusion and the likely damage to the standing of the office that may ensue.

Internationally, public perception of an Ombudsman as being part of the constitutional checks and balances on the executive has been eroded by increasing public confusion about an Ombudsman's role where the title has been given to a variety of bodies which have the narrow function of a private or public sector consumer dispute resolution service.

As a consequence Ombudsman associations around the world are concerned about any further proliferation in the use of the title. The International Ombudsman Institute expresses the standard for membership as:

"...The IOI and its members recognize the following principles as the expression of an International Ombudsman Standard and require observance of them by any ombudsman institution:

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- a) it should be provided for by a Country, State, Regional or Local Constitution and/or an Act of a Legislature, or by international treaty,
- b) its role should be to seek to protect any person or body of persons against maladministration, violation of rights, unfairness, abuse, corruption, or any injustice caused by a public authority, or official acting or appearing to act in a public capacity, or officials of a body providing devolved, partially or fully privatized public services or services outsourced from a government entity, and which could also function as an alternative dispute resolution mechanism,
- c) it should operate in a climate of confidentiality and impartiality to the extent its governing legislation mandates, but should otherwise encourage free and frank exchanges designed to promote open government,
- d) it should not receive any direction from any public authority which would compromise its independence and should perform its functions independently of any public authority over which jurisdiction is held,
- e) it should have the necessary powers and means to investigate complaints by any person or body of persons who considers that an act done or omitted, or any decision, advice or recommendation made by any public authority within its jurisdiction has resulted in the kind of action specified in paragraph 2 (b),
- f) it should have the power to make recommendations in order to remedy or prevent any of the conduct described in paragraph 2 (b) and, where appropriate, to propose administrative or legislative reforms for better governance,
- g) it should be held accountable by reporting publicly to a Legislature, or other elected body, and by the publication of an annual or other periodic report,
- h) its incumbent or incumbents should be elected or appointed by a Legislature or other elected body, or with its approval for a defined period of time in accordance with the relevant legislation or Constitution,
- i) its incumbent or incumbents should only be dismissed by a Legislature or other elected body or with its approval for cause as provided by the relevant legislation or Constitution, and
- j) it should have adequate funding to fulfil its functions.”

It is clear that the role has a constitutional importance and that it must be independent and even handed in its judicative functions. It is not and cannot be an advocate for either side in a dispute.

The Australian and New Zealand Ombudsman Association (ANZOA) which includes many members of the International Ombudsman Institute, has said in its submission on the use of

the title Ombudsman being attached to a new organisation – The Small Business and Family Enterprise Ombudsman that:

“ANZOA supports consumers having access to a range of dispute resolution mechanisms that are appropriate to the consumer context. However, it is crucial that Ombudsman offices are differentiated from other complaint handling and dispute resolution mechanisms.

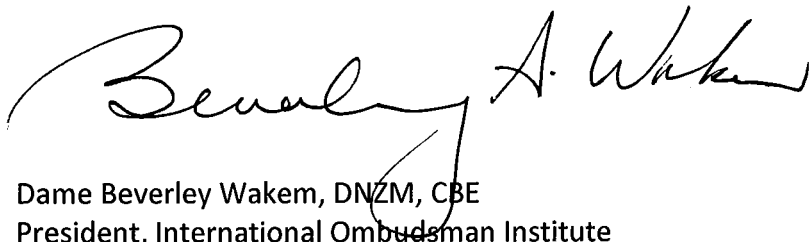
Ombudsman is a particular model of alternative dispute resolution and one that has proven itself adaptable to a variety of roles and settings. With a history going back over 200 years, the Ombudsman model is well-known for independence from all parties in dispute and impartial review and investigation.

In 2010, ANZOA called for stronger controls on use of the term Ombudsman. It supported that call with a policy statement setting out six essential criteria, which the public are entitled to expect of anybody that is described as an Ombudsman — independence, jurisdiction, powers, accessibility, procedural fairness and accountability.

These *Essential criteria for describing a body as an Ombudsman* are published in full on ANZOA's website: www.anzoa.com.au.”

ANZOA's view is that a body should not be described as an Ombudsman unless it complies with these 6 essential criteria. I firmly agree with that and support their submission in its entirety.

Yours sincerely,



Dame Beverley Wakem, DNZM, CBE
President, International Ombudsman Institute

cc Bonnie Denness
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