



Judi Jones
ANZOA Chair
Telecommunications Industry Ombudsman
+ 61 3 86008784 | info@anzoa.com.au

Ombudsmen: the leaders in independent resolution, redress and prevention of disputes

15 February 2017

Civil Justice Project Team
NSW Department of Justice
GPO Box 31
SYDNEY NSW 2001
By email: civiljustice@justice.nsw.gov.au

CIVIL JUSTICE IN NSW – CONSULTATION PAPER

I am writing on behalf of the members of the Australian and New Zealand Ombudsman Association (ANZOA), a professional association and the peak body for Ombudsmen in Australia and New Zealand.

ANZOA's comments respond to sections 3.3 and 3.4 of the *Civil Justice in NSW Consultation Paper*, which canvass the option of new Ombudsman offices to assist with consumer dispute resolution.

Ombudsman – a successful model, underpinned by clear benchmarks

The *Consultation Paper* correctly highlights the important role industry-based Ombudsman schemes play in providing independent, fair, free and effective external dispute resolution in a number of industry sectors. The Australian model of industry-based Ombudsman is now in its 28th year. Its success and longevity are in large part due to the model being firmly and publicly underpinned by the *Benchmarks for Industry-Based Customer Dispute Resolution* (the *CDR Benchmarks*)

The *CDR Benchmarks* address six fundamental Ombudsman principles — accessibility, independence, fairness, accountability, efficiency and effectiveness. Originally published in 1997, the Benchmarks document was reviewed and republished by the Australian Government in February 2015. ANZOA was pleased to support and contribute to that review. The *CDR Benchmarks* are now available in two parts from the website of The Treasury, Australia: *Principles and Purposes*¹ and *Key Practices*.² They are also linked from the home page of the ANZOA website (www.anzoa.com.au).

Ombudsman offices specialise in dispute resolution

A second consideration in establishing an Ombudsman office must be correct use of the term Ombudsman. If an office is not going to operate as a true Ombudsman, it must not be called one. The public understand an Ombudsman to be an independent office, which primarily has complaint handling, investigation and dispute resolution functions. While Ombudsman offices commonly draw on their experience to facilitate dispute resolution between the parties, and to contribute to public policy discussions and consultations, Ombudsmen are not advocates (for either industry or consumers) and they are not industry regulators.

¹ <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/benchmarks-ind-cust-dispute-reso>

² <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/key-pract-ind-cust-dis-reso>

ANZOA's guidelines for use of the term Ombudsman are set out in the association's February 2010 policy statement— *Essential criteria for describing a body as an Ombudsman* — which is attached to this submission. The policy statement, together with extensive information about the origins, philosophy and role of the Ombudsman model of dispute resolution, is also available publicly on the ANZOA website.

Going forward

In summary, should the NSW Department of Justice conclude that other sectors would benefit from the introduction of an Ombudsman model for consumer disputes, development of that office must be undertaken in the context of correct use of the term Ombudsman and the office must observe the principles and purposes of the *CDR Benchmarks*.

I am aware that the Energy & Water Ombudsman NSW, Janine Young has, over the past year, been able to contribute her knowledge and experience as an Ombudsman and an ANZOA member to the NSW Civil Justice Working Group. ANZOA supports Janine's involvement and would be pleased to further contribute its experience and expertise to any discussions about establishing new Ombudsman offices, which may arise out of this consultation process.

Please feel free to contact me on (03) 86008784 or through the ANZOA Secretariat at info@anzoa.com.au.

Yours sincerely



Judi Jones
ANZOA Chair
www.anzoa.com.au

Attach.

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.