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Borrowing credibility: who is an 'ombudsman'?

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When community volunteer worker "Ms Z" approached the **Commonwealth Ombudsman's** office, she was shocked, distressed and bewildered. Ms Z was convicted for fraud in 2007, after an extended period of scrutiny and investigation, for failing to declare earnings from work she had done while receiving a disability pension. Last month, Ms Z celebrated the findings of our investigation into her **complaint**, which revealed she had in fact declared her employment, but in the wrong section of a **Centrelink** claim form.

She was a victim of maladministration; her mistake compounded by a series of bureaucratic errors, poor recordkeeping, inadequate advice, and an incomplete and misleading proposal to prosecute.

Disaffected people the world over turn to ombudsmen to help them sort out problems with **government**. Often, people who seek our help are stressed, frustrated, angry, even distraught, and sometimes embittered by their dealings with **government** agencies.

They come to us because they trust us to look at their situation objectively and to find an equitable solution to the problem. The **Commonwealth Ombudsman** has been instrumental in getting to the bottom of significant high-profile matters and influencing improvements to **government** practices and decision-making, as well as routinely investigating important but lesser-known issues.

The Vivian Alvarez investigation is a case in point, as is our investigation into the Equine Influenza Business Assistance Grants.

Our investigation led to the reassessment of almost 800 grant applications and millions of dollars being paid out in extra grants. The high regard in which the general public hold ombudsmen is a plausible explanation for the frequent calls to establish new **ombudsman** positions when problems arise in an industry or area of **government** service. In the past few years, Australian media have reported proposals to create ombudsmen for sports, medicine, superannuation, youth, research, crime victims, franchising, the motor industry, gambling, strata title, online auctions, grains and funerals.

It's gratifying, in one way, that people think a new **ombudsman** is the solution, but the recent trend of describing bodies that neither conform to, nor show an understanding of, the accepted role of ombudsmen undermines and diminishes our activities and achievements.

Furthermore, it is disturbing to see the deliberate attempts of some to capitalise on the hard-earned reputation of ombudsmen by misusing the term to describe their role in work in which they may have a conflict of interest. In New Zealand, the term "**ombudsman**" is protected by law.

This is not the case here, though South Australian **government** agencies are banned from creating an "internal **ombudsman**". This threat to the integrity for which ombudsmen are renowned greatly concerns organisations that perform a legitimate **ombudsman** role.

These comprise parliamentary ombudsmen, who take **complaints** about **government** agencies; other statutory ombudsmen and commissioners, who investigate **complaints** about particular agencies or professional services, such as health; and industry-based ombudsmen, who take **complaints** from customers of companies providing particular services.

These organisations comply with standards set by the Australian and New Zealand **Ombudsman** Association. This peak body has specified six criteria it says the public are entitled to expect of any office that describes itself as an **ombudsman**: independence, jurisdiction, powers, accessibility, procedural fairness and **accountability**. Public confidence in the traditional **ombudsman** model stems from a 200-year track record in conducting independent, accessible and impartial investigations of **complaints** and, when warranted, recommending remedies for aggrieved complainants.

We rely on consultation, persuasion, cooperation, negotiation and recommendation rather than coercion or litigation to resolve **complaints**.

By using the term "**ombudsman**" too loosely and defining our work too broadly, the value of the title becomes meaningless, our credibility is put at risk, and the public may become confused about what they can expect. This is already happening, with the establishment of the office of the Fair Work **Ombudsman**.

That office performs inspectorate and enforcement functions, and is subject to ministerial directions of a general nature or to provide a specified report, with which it must comply. This confuses the role played by an **ombudsman** with that of a regulatory body, and is a marked departure from other ombudsmen.

Similarly, a COAG proposal last year to create a national legal services **ombudsman** describes it performing regulatory, disciplinary and prosecutorial functions that are not part of an **ombudsman's** role.

These functions would include "prosecuting matters involving unsatisfactory professional conduct or professional misconduct in the appropriate disciplinary tribunal", making appropriate orders in "cases of unsatisfactory professional conduct" and "providing education to the public and legal profession about ethical issues". An **ombudsman** under the direction or control of an industry or a minister is not independent; nor is an office set up within a company or **government** agency as an "internal **ombudsman**". To create an

ombudsman's office that is not independent from the activities it will investigate is to mislead the community about the nature of the organisation and its work.

A Google search for "**ombudsman**" brings up more than 1.5million results in Australia alone.

A sample of these results suggests some of these "ombudsmen" are likely to be legitimate; a few are internal positions; some are probably regulatory bodies; and others are likely to be something else entirely. It's difficult to know which of these many ombudsmen comply with the peak body's standards and, therefore, what the public can expect of them.

And that's my point. If we don't protect the integrity of the **ombudsman** "brand", we risk losing our constituents' trust and the reputation that others are so intent on "borrowing" from us.

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