

# What's in a name? Use of the term 'Ombudsman'

## Presentation by Prof. John McMillan, Commonwealth Ombudsman, to the Australian and New Zealand Ombudsman Association, Melbourne, 22 April 2008

In 1994 the Access to Justice Advisory Committee prepared a major report on the Australian justice system. The Committee devoted a chapter to administrative law and the ombudsman, recommending as follows:

Care should be taken in the naming of complaints bodies and, in particular, the use of the term 'ombudsman'. This term has come to be associated with accessible, independent and impartial review. If the word is used to describe systems that do not meet these basic criteria, there is a danger that the term will lose credibility. If used loosely, the term 'ombudsman' could mislead the public, rather than protect them. The government standards should prohibit use of the term, unless the body meets specified criteria of the kind to which we have referred<sup>1</sup>.

Three questions arise. What has happened since that proposal was made in 1994? Does use of the term 'ombudsman' remain a matter of concern? If so, is government control and prohibition the answer?

## Developments since 1994 - proposals for control

The proposal of the Access to Justice Advisory Committee was taken up, in at least four ways.

First, in the same year the Commonwealth Ombudsman and the Banking Ombudsman published a draft code, defined as 'minimum criteria to ensure the independence, accountability and effectiveness of ombudsmen'. There were five criteria, spelt out over 21 separate principles. The five criteria, to which I shall return later, are:

- independence
- jurisdiction
- powers
- accountability
- accessibility

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<sup>1</sup> Access to Justice Advisory Committee, *Access to Justice: An Action Plan* (1994) at 315. The Committee was appointed by the Australian Government.

The code was endorsed in 1997 by the parliamentary ombudsman offices<sup>2</sup> that are members of the Australasian Pacific Ombudsman Region of the International Ombudsman Association. Beyond that, the code seems not to have gained wider circulation or publication<sup>3</sup>.

Secondly, in 1997 the Commonwealth Minister for Customs and Consumer Affairs published a set of 'Benchmarks for Industry-Based Customer Dispute Resolution Schemes'<sup>4</sup>. The Benchmarks were built around six criteria, of which the first three are the same as those in the Ombudsman list:

- accessibility
- independence
- accountability
- fairness
- efficiency
- effectiveness

The Benchmarks are applied by the Australian Securities and Investment Commission in accrediting industry complaint schemes. The Benchmarks are also reasonably well known and used as a best practice guide by complaint handling bodies.

Thirdly, the South Australian *Ombudsman Act 1972* was amended in 2002 to prohibit government agencies from using the term 'ombudsman' to describe a process or procedure by which the agency investigates and resolves complaints against itself<sup>5</sup>. In effect, government agencies are prohibited from taking executive action to create an 'internal ombudsman'.

Fourthly, a light touch accreditation scheme has emerged through the membership criteria administered by the Australian New Zealand Ombudsman Association<sup>6</sup>. ANZOA is rigorous in deciding which organisations are eligible to join as full members. ANZOA applies the six industry benchmarks noted above, supplemented by a further eight pages of ANZOA guidance and explanation on how those benchmarks apply to ombudsman schemes.

## **Developments since 1994 - unsystematic use of 'ombudsman'**

Has the problem been solved? The short answer is no. Since 1994 there has been a proliferation in use of the term ombudsman.

- Many local councils and universities have created an internal ombudsman, sometimes called by that name. Examples are the Sutherland Shire Council, Warringah Shire

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<sup>2</sup> The terms 'parliamentary' and 'industry' ombudsman are an accustomed way of differentiating between ombudsman offices created by Parliament to receive complaints against government agencies, and ombudsman schemes that receive complaints against private sector bodies such as banks, telecommunications providers and gas and electricity utilities. The industry ombudsmen are usually incorporated under the Corporations Law, at times in response to legislation providing that a company will not be licensed to provide services to the public unless it is a member of the applicable industry ombudsman scheme.

<sup>3</sup> The draft code was published in (1994) 39/40 *Admin Review* 60-61.

<sup>4</sup> The Benchmarks are available at [www.treasury.gov.au](http://www.treasury.gov.au), under Consumer Policy.

<sup>5</sup> *Ombudsman Act 1972* (SA) s 32.

<sup>6</sup> [www.anzoa.com.au](http://www.anzoa.com.au)

Council, Wollongong Shire Council, University of New England, and University of Technology Sydney. The ombudsman designate is often a staff member of the organisation - sometimes with other part-time duties in the organisation - who reports to other senior officers in the organisation.

- Some companies - such as Westpac, Synergy and AAMI - have likewise created an internal ombudsman.
- There are ombudsmen created by industry bodies, such as the Produce and Grocery Industry Ombudsman. The function of that particular office is not to resolve complaints from the public but to mediate industry disputes over the supply of produce to markets and retailers. There is a \$50 application fee to engage the services of the Ombudsman.
- There are government ombudsmen that do not follow traditional principles: an example is the Private Health Insurance Ombudsman, established by statute, but who is appointed by the Minister for Health, can be dismissed by the Minister for misbehaviour, and can be directed by the Minister to investigate and report to the Minister<sup>7</sup>.
- Almost every month in the media the government is called on to create a new specialised ombudsman office. Over the last few years I have counted at least thirty such proposals, including a sports ombudsman, medical ombudsman, aged care ombudsman, superannuation ombudsman, student ombudsman, youth ombudsman, research ombudsman, crimes victim ombudsman, franchising ombudsman, arts ombudsman, motor industry ombudsman, airport ombudsman, sports doping ombudsman, gambling ombudsman - and to add colour to the list - strata title ombudsman, online auction ombudsman, grains ombudsman, drinking ombudsman (the line starts behind me), and funeral ombudsman (the line starts next door).

In one sense it is a pleasing development that there are now so many offices described as ombudsman. The term 'ombudsman' has become a mark of public respect, associated with fair and independent resolution of grievances. In a short period the ombudsman model has become a popular and fast growing method of dispute resolution.

## Should we be concerned?

Why, then, should we be concerned? Self evidently the length of the list of bodies that are or wish to be called ombudsman is not a problem. The problem has more to do with unconstrained and unsystematic use of the term.

Let me give two examples of the danger. One was a private members bill that was introduced into the Australian Parliament in 2006 to create an Airport Development and Aviation Noise Ombudsman<sup>8</sup>. Apart from the title Ombudsman, I could see little that corresponded with established use of the term ombudsman:

- the Ombudsman was to be appointed by the Minister for Aviation
- there were no criteria for removal from office
- the Ombudsman's function was defined in the Bill as being 'a point of liaison between the Minister and the public' on airport development and aircraft noise, and to advise the Minister on the likely impact of airport development

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<sup>7</sup> *Private Health Insurance Act 2007* (Cth) ss 253-1, 253-35, 241-50.

<sup>8</sup> Airport Development and Aviation Noise Ombudsman Bill 2006.

- the Ombudsman did not have any coercive powers, or any legal protections
- if perchance the Ombudsman received a complaint from a member of the public, it was to be referred to the Commonwealth Ombudsman for investigation!

That of course was a private members bill, and does not necessarily reflect any wider thinking. It is nevertheless a pointer to a wider misunderstanding and theoretical fuzziness.

My second example concerns the Australia Government decision in 2007 to create a new ombudsman office, the Workplace Ombudsman<sup>9</sup>. It was created from an existing office, the Office of Workplace Services. In part this was a re-badging exercise, but it was also the creation of a new and distinctive office that departs in some respects from traditional ombudsman models.

- My office has jurisdiction to receive complaints against the Workplace Ombudsman (as indeed we do in reasonably large numbers<sup>10</sup>). I think it odd in principle that one ombudsman should have jurisdiction to receive complaints against another. Arguably this reflects a failure to think through the nature of the new office.
- The Workplace Ombudsman can investigate complaints, but in the public eye has been portrayed more as a body that enforces employee protection laws, with power to prosecute employers that are in breach of those laws, and to instigate legal proceedings to recover workplace entitlements. The Workplace Ombudsman is more an enforcement than an investigation agency, as captured in the Workplace Ombudsman's forthright warning to employers that he 'will not hesitate to ... prosecute'<sup>11</sup>.
- There has been an uncommon degree of media interest in the work of the Workplace Ombudsman, that has embroiled it in political controversy and with unions: there have been headlines such as 'unions target workplace ombudsman'; the office was criticised by former ACTU Secretary Greg Combet of being 'politically motivated', and by the current ACTU Secretary for only investigating complaints raised in the media; and it was then defended by Minister Joe Hockey, alleging that criticism of the Ombudsman was 'part of a wider scare campaign on industrial relations' by unions<sup>12</sup>. Unusually for an Ombudsman's office, it was accompanied by journalists during workplace inspections.
- There has been a confusing portrayal in the media of the Workplace Ombudsman's independence. On the one hand, the office has been lauded for its activity and fearless stance; on the other, one newspaper reported that the Minister for Workplace Relations had ordered the Ombudsman to start an immediate investigation of a particular industrial problem<sup>13</sup>.
- There has also been confusion between the Workplace Ombudsman and the Commonwealth Ombudsman. Newspaper reports sometimes state that my office is

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<sup>9</sup> *Workplace Relations Act 1996* (Cth) Part 5A.

<sup>10</sup> 665 complaints were received in the 2007-08 reporting period, many of which were out-of-jurisdiction complaints meant for the Workplace Ombudsman: Commonwealth Ombudsman, *Annual Report 2007 - 08* at p 149.

<sup>11</sup> 'Warning rushed on AWAs', ABC News online, 2 Dec 2007. The Workplace Ombudsman was reported to have spent \$7.6M on external legal providers in 2008 - 08: *PSNews* online 2 Sept 2008.

<sup>12</sup> M Skulley, 'Unions target Workplace Ombudsman', AAP News 21 Aug 2007; M Bachelard, 'Workplace Ombudsman proves his mettle and leaves critics flummoxed', *The Age*, 17 Sept 2007.

<sup>13</sup> M Bachelard, 'Government WorkChoices campaign in tatters over ad', *The Age*, 7 Aug 2007.

undertaking an industrial investigation with a view to prosecution<sup>14</sup>, and there has been a surge in out-of-jurisdiction complaints to my office that were meant for the Workplace Ombudsman.

- Legislation introduced into the Australian Parliament in November 2008 - the Fair Work Bill 2008 - will replace the Workplace Ombudsman with a new office of Fair Work Ombudsman. The functions of the Fair Work Ombudsman include some typical ombudsman functions (investigating complaints about breach of industrial laws, and monitoring compliance with the legislation), as well as less typical functions (promoting harmonious and cooperative workplace relations, commencing legal proceedings for enforcing the legislation, and issuing compliance notices to employers) (cl 682, 701). There is a marked departure from the classic ombudsman model in two provisions that authorise the Minister to give written directions of a general nature to the Fair Work Ombudsman, and to direct the Ombudsman to provide a specified report relating to the Ombudsman's functions (cl 684, 685). The Fair Work Ombudsman must comply with both kinds of direction.

How do we take stock of those trends? Firstly, let me emphasise that I make no criticism of the work undertaken by other complaint handling, dispute resolution, or investigation bodies. I admire the energy and activity of the Workplace Ombudsman and acknowledge the necessary role it plays. An endless variety of different bodies has been created in and outside government to protect the public interest, which is undeniably a good development.

Calling a body an ombudsman, or calling it by some other name, does not mean that it is better or worse at what it does than a body with a different title. For example, depending on which jurisdiction you are in, a complaint against police would be made to an ombudsman, a law enforcement ombudsman, a police complaints authority, a crime and corruption commissioner, a crime and misconduct commissioner, or an integrity commissioner.

On one view, therefore, labels do not matter. Call a body what you will - a commissioner, an inspector-general, a complaint authority, or an ombudsman. Nomenclature, this argument runs, is unimportant: we should look instead at defining criteria for complaint investigation and to benchmark performance.

There is force in that view, as illustrated by the recent growth in complaint handling and oversight mechanisms throughout the public and private sector. If the institution and the name 'ombudsman' has been a catalyst in that change, well and good.

Yet I think an issue does remain. The challenge laid down by the Access to Justice Advisory Committee in 1994 to control the use of the term ombudsman is still relevant, and the challenge has not been addressed. Something will be gained by defining and safeguarding the term ombudsman. Equally, something will be lost by not doing so.

## Something to be gained

***Stimulus to good practice in complaint handling and oversight:*** The term ombudsman has become popular, as the Access to Justice Committee observed, because it has become

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<sup>14</sup> Eg, 'Migrant exploitation claims investigated', The Age 20 Jan 2008; E Duff, 'Diplomats head bush to hear abuse claims', *Sydney Morning Herald*, 20 Jan 2008; A Symonds, 'Check on skilled migrants' *AAP News* online, 24 Jan 2008.

associated with independent, accessible, impartial review. In both government and industry we now have a system of complaint-handling bodies across the country that are accessible to the public, that go about their work in an independent manner, and that produce outcomes that are respected for their fairness and impartiality.

***Public awareness of the right to complain:*** Public awareness surveys conducted by my office confirm that the right to complain has become deeply embedded in community thinking. When asked an unprompted question about what they would do when faced with a particular problem, 75% of respondents in one survey said 'I will complain'. When asked 'where?', close to 60% said 'to a parliamentarian or an ombudsman'. It is significant that the community knows they have a right to complain about government to an independent body, and not to face obstruction or reprisal for exercising that fundamental human right.

***Guidance in our own work:*** There are roughly 700 people employed in ombudsman offices across the country, handling in excess of 400,000 complaints from the public each year. The integrity of that work depends on the large number of ombudsman offices and staff having a clear understanding of how they should go about their work. It is easier to ensure consistency and professionalism in ombudsman work if there is a clear model to work from, and a set of agreed principles. In my own office, an agreed understanding of our ombudsman role is the major benchmark we use to guide and evaluate our work in handling tens of thousands of diverse and different approaches and complaints each year.

## **Something to be lost**

***Public confusion:*** 'Ombudsman' is a brand name that has gained traction. Like any valuable brand name, it will only retain value if there are controls on how it is used. Public confusion about what to expect when you approach an ombudsman's office will undermine its value. We work hard, for example, to convey the subtle message that we are forceful in pursuing legitimate complaints but do not act as advocates for complainants. Equally, it is part of our role to explain at times why a government or business agency acted reasonably, but we are not their spokesperson. The office relies principally upon persuasion, cooperation and recommendation, rather than upon coercion, litigation or aggression. Those are subtle messages that become harder to convey if the terrain is populated by offices, called ombudsman offices, that play more of an advocacy or combat role.

***Public deception:*** When someone approaches an ombudsman office believing it to be independent and impartial, that trust must not be misplaced. We strive to reassure the public that it is safe to complain and that we have no conflicting agenda. This is especially important in inviting whistleblower allegations, anonymous complaints and the supply of confidential personal information. The concept of an 'internal ombudsman' is flatly inconsistent with that promise. There is a great danger that the misuse of the term ombudsman will deceive people who call on the ombudsman for help. This can also hamper the work of a body that is wrongly described as an ombudsman, if people approach it with an erroneous expectation as to the assistance they will receive.

***Ill considered change:*** Every ombudsman office is created by some other body, such as a parliament or industry members. It is always open to the creator to alter the constitution and functions of the ombudsman, possibly in a way that damages its integrity as an ombudsman institution. It will be easier to prevent damage occurring if there are minimum standards that

must be met before an office can rightly be called an ombudsman office. Safeguarding the concept of an ombudsman is a protection against inappropriate changes being made to individual offices.

## Defining a code of ombudsman principles

How do we go about safeguarding the ombudsman brand name? There are two steps in the answer: defining a code of ombudsman principles, and designing a procedure for applying those principles.

National and international codes for defining the term ombudsman already exist<sup>15</sup>. There is much common ground in those codes, with some difference in content, structure and presentation.

The growing laxity that I referred to earlier in the use of the term ombudsman would suggest that the existing codes have not gained the recognition or influence hoped for. Fresh thinking is needed. Two criticisms can be made of the existing codes.

First, many of them are too long, with too much detail, and they are a mixture of minimum criteria, best practice aspirations, and indistinct and qualified statements. For example, the Commonwealth/Banking Ombudsman draft code to which I referred contains over 21 principles, including statements such as ‘desirably the jurisdiction should give 100% industry coverage’, and ‘the Ombudsman should be provided with sufficient funding’. A code framed in those terms can be read but not applied.

The industry benchmarks applied by ANZOA include ‘efficiency’ and ‘effectiveness’, alongside ‘independence’ and ‘impartiality’. All are relevant to ombudsman schemes, but they are measured differently. It is possible using objective criteria to reach a defensible view on whether a particular office is independent: an office is not independent unless the office holder is appointed for a fixed term, can only be removed in limited circumstances, and is not subject to political or industry direction. ‘Efficiency’ and ‘effectiveness’ cannot be measured as objectively: they are goals more than conditions.

Secondly, the code of ombudsman principles must adjust to established practice and take account of recent and beneficial growth in the ombudsman institution. This is a shortcoming in the code applied by the International Ombudsman Institute, which still does not admit industry ombudsmen to membership. In Australia there are a large number of equally effective industry and parliamentary ombudsman offices; and some parliamentary ombudsmen also discharge an industry ombudsman function<sup>16</sup>. The range of ombudsman functions has also grown beyond the traditional focus on complaint handling and systemic reviews, and includes compliance auditing, inspections, legislation reviews, and training and

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<sup>15</sup> Eg, clause 6 of the By-Laws of the International Ombudsman Institute, available at [www.law.ualberta.ca](http://www.law.ualberta.ca).

<sup>16</sup> Eg, the Commonwealth Ombudsman is also the Postal Industry Ombudsman, which has jurisdiction over Australia Post and private postal operators that join the scheme; the Tasmanian and Western Australian Ombudsman both discharge an energy ombudsman function.

publications<sup>17</sup>. The definition of ombudsman will necessarily focus on the complaint investigation role, but should not exclude or be incompatible with other roles.

These points can be summarised by saying that a helpful and workable definition of the term ‘ombudsman’ must be relatively brief, and not too detailed or prescriptive; the definition should contain objective criteria, and not aspirations or objectives; and the definition should neither be too narrow nor try to cover every base.

- **Independence:** The office of ombudsman must be established in a way that makes it independent of the agencies being investigated; the person appointed as ombudsman must be appointed for a fixed term, and removable only for misconduct or incapacity according to a clearly defined process; the ombudsman must not be subject to direction; the ombudsman must not be viewed as an advocate for a special interest group; and the ombudsman must have an unconditional right to make public reports and statements on the findings of investigations undertaken by the office.
- **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 of bodies falling within the ombudsman’s jurisdiction; and, subject to judicial oversight, the ombudsman should rule on whether a matter falls within jurisdiction.
- **Powers:** The ombudsman must be able to investigate the fairness of the administrative actions relevant to a complaint; there must be an obligation on those within the ombudsman’s jurisdiction to respond to an ombudsman question; the ombudsman must have power to inspect the records of a body relevant to a complaint; and the ombudsman must have the authority at the conclusion of an investigation to prepare a report that is provided to the complainant, containing the ombudsman’s findings and recommendations.
- **Accessibility:** There must be no charge for approaching the ombudsman; a person must be able to approach the ombudsman directly; it must be for the ombudsman to decide whether to investigate a complaint; and complaints must be investigated in private, unless there is a 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 three fundamental requirements of procedural fairness: the complainant, the agency and any person directly or indirectly criticised by the ombudsman in a report must be given an opportunity to be heard 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; and reasons must be given by the ombudsman in support of any findings or recommendations.
- **Accountability:** The ombudsman must be required to publish an annual report on the work of the office; and the ombudsman must be responsible - if a parliamentary ombudsman, to the Parliament; and if an industry ombudsman, to an independent board comprising industry and client representatives.

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<sup>17</sup> See J McMillan, ‘The Expanding Ombudsman Role. What Fits? What Doesn’t?’, available at [www.ombudsman.gov.au](http://www.ombudsman.gov.au) in ‘Speeches and Papers - 2008’.



Those essential criteria can be supplemented by best practice guidelines. An ombudsman office should aspire to be efficient and effective and to stimulate systemic improvements in the area of the ombudsman's jurisdiction. Best practice guidelines can be developed either by an individual ombudsman office to steer and enhance its work, or by a body such as ANZOA to stimulate best practice among members.

There is scope in guidelines for dealing with issues that are desirable yet contentious and not fundamental to the definition. For example, contentious issues are sometimes excluded from the jurisdiction of particular ombudsman offices, even though similar issues fall within the jurisdiction of other offices. An example is that parliamentary ombudsman can generally investigate penalties imposed by agencies, either individually or as a policy issue, while some industry ombudsman cannot investigate penalties that are imposed on customers for late payment of an account, provided the penalty is imposed according to approved rules. This is an appropriate topic on which generic guidelines could state that an ombudsman's jurisdiction should not be restricted so as to exclude complaint issues that can cause great adversity to members of the public.

## Designing a procedure for applying the definition

The next step is to decide how or by whom the criteria for using the term ombudsman should be applied. There are four options to be considered.

**Legislation:** New Zealand provides the chief example of this option being adopted. The *Ombudsman Act 1975* s 28A provides that the term ombudsman is not to be used to describe a scheme unless the Chief Ombudsman has given written consent. To date, an approval has only been granted twice, to the Banking Ombudsman and the Insurance and Savings Ombudsman. The Chief Ombudsman has published a policy statement that contains limited guidance on when approval will be granted, mixed with observations on the justification for the restriction<sup>18</sup>.

As noted above, there is a partial legislative prohibition in South Australia that restricts the use of the term ombudsman by government agencies. The Access to Justice Advisory Committee also expressed support, but without elaboration, for government prohibiting the use of the term unless prescribed standards were met.

The legislative prohibition option is not a desirable route, at least in Australia. There are now so many parliamentary and industry ombudsman offices that have strong public recognition and acceptance that it would be invidious to impose a scheme at this point in time. Nor would it be a practicable option, given that Australia is a federation with nine legislatures. It is doubtful that the Australian Parliament would have the constitutional authority to legislate a national scheme that could not be circumvented (for example, by ombudsman units that were not incorporated)<sup>19</sup>. Even if all nine legislatures agreed on a common accreditation scheme, there would be objection in principle to the legislatures dictating the use of a term that is now common in the English language.

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<sup>18</sup> Notice by the Chief Ombudsman Concerning Restrictions on the Use of the Name 'Ombudsman', February 2002 (republished in New Zealand Ombudsmen Annual Report 2001/02).

<sup>19</sup> An example of how the Australian Parliament could establish a partial scheme, relying on the *Corporations Act 2001* ss 147 and 601DC, is to prohibit a company from using the name ombudsman without the Minister's consent.

A 'light touch' legislative option is for the Australian Parliament to amend the *Ombudsman Act 1976* (Cth) to provide that the Commonwealth Ombudsman, in association with other Australian ombudsman, can publish guidelines on the use of the term ombudsman. The main issue here is whether other ombudsman offices would choose to participate in a scheme that had the imprimatur of the Commonwealth Ombudsman, albeit a national scheme promoted by the Australian Parliament.

The most that need be said at this stage is that it is an option for the Government and Parliament to consider if a new Ombudsman Act is enacted, as proposed by the Commonwealth Ombudsman. An issue that would arise in that process is whether that particular office should now be renamed the Australian Ombudsman, in line with the changed and now entrenched practice in government of describing agencies as Australian Government agencies rather than Commonwealth Government agencies.

**Guidelines/code:** A more promising option is to develop a code or guidelines that are adopted by parliamentary and industry ombudsman offices in Australia. If all or most ombudsman offices publicly endorsed the code, this would impose a powerful pressure on the appropriate use of the term. Individual offices would be in a stronger position in to discourage government agencies or industry bodies in their arena from using the term inappropriately.

The publication of an agreed code would also provide a helpful point of reference for researchers, policy analysts and the media.

**ANZOA accreditation/validation:** ANZOA is currently the only body in Australia that seeks to control the use of the term. This is done by deciding whether an ombudsman scheme will be admitted to full membership of ANZOA.

There is, admittedly, an inherent limitation in this method of protection, since not all ombudsman offices in Australia have chosen to join ANZOA. The number of members has nevertheless grown, and has expanded from the foundation membership of industry ombudsmen to include parliamentary ombudsman offices in both Australia and New Zealand. It is probable that ANZOA membership accreditation will become more influential over time, especially if done by applying a code that has been jointly adopted by existing ombudsman offices.

A similar membership accreditation process administered by the British and Irish Ombudsman Association (BIOA) has been influential in those countries. There are currently 28 voting members of BIOA, and 40 associate members<sup>20</sup>. The BIOA executive is rigorous in deciding whether to admit an applicant to voting membership (four members admitted only to associate membership use the term 'ombudsman' in their title). It is said that BIOA accreditation, especially as a voting member, is treated as a desirable goal by members.

Demonstrating Ombudsman best practice: In a crowded market, the standard setter is the body that excels above others. Arguments for limiting the use of the term ombudsman will fall on barren ground unless those ombudsman offices that can legitimately use the term exemplify the principles they seek to guard. By doing so they make it that harder for other bodies to misappropriate the term. It will become apparent to observers why some offices are called ombudsman offices, and others should not use that term.

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<sup>20</sup> See [www.bioa.org.uk](http://www.bioa.org.uk)

For example, if true ombudsman offices (if I can use that term) display their independence in the public eye, by fearless and professional investigation and public reporting, it will be immediately apparent why the term 'internal ombudsman' is an oxymoron. Equally, it is through objectivity and even handedness in the way that complaints are handled that ombudsman offices can best portray that it is not part of the ombudsman model to be an advocate or spokesperson for either side to a dispute.

## **Conclusion**

I end this paper by once again stressing the need for context when approaching this issue. Gone are the days when the world of oversight could be divided between bodies that wore the blessed name of ombudsman, and the rest of the world. There is now a large, professional and growing framework of external agencies that undertake complaint handling, administrative investigation and government and industry oversight. All are guided by national and international standards on complaint handling and investigation.

Throughout this recent period of rapid development in complaint handling, the term 'ombudsman' has played a pivotal and influential role in driving best practice. It is a role worth highlighting, and a role worth safeguarding.