

Ombudsmen (Protection of Name) Amendment Bill

Government Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

The Governance and Administration Committee has examined the Ombudsmen (Protection of Name) Amendment Bill and recommends that the amendments shown below be passed. However, we have been unable to reach agreement on whether to recommend that this bill be passed.

Introduction

The Ombudsmen Act 1975 provides for the appointment of one or more Ombudsmen as Officers of Parliament and Commissioners for Investigations.

Section 28A of the Act currently provides that no one may use the name “Ombudsman” in connection with a business or a provision of service, or hold themselves out to be an Ombudsman without permission. Permission may be provided under another statute or granted by the Chief Parliamentary Ombudsman.

This bill seeks to restrict the use of the name “Ombudsman” to an Ombudsman appointed under the Ombudsmen Act 1975, or a person appointed to a position established by the Chief Ombudsman, or a public sector department or organisation approved by the Minister of Justice.

The purpose of the bill is to protect the integrity of the role of the Parliamentary Ombudsmen, and the unique place they hold in New Zealand’s constitutional arrangements.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Entities currently permitted to use the name “Ombudsman”

The bill includes savings provisions in clause 2(2) of new Schedule 1AA to be inserted in the Ombudsmen Act 1975 to allow existing arrangements to continue. This savings provision would allow the Banking Ombudsman Scheme Limited and the Insurance & Financial Services Ombudsman Scheme Incorporated to continue to use “Ombudsman” in their names, since they have previously obtained the Chief Ombudsman’s consent to do so. However, neither organisation would be able to continue to use “Ombudsman” if they changed their name in future.

We heard concerns that the wording of this clause would mean that neither entity could change its corporate structure in future, because the provision refers to them as “Limited” and “Incorporated”. We note that this was not the bill’s intent. We therefore recommend amending clause 2 of proposed new Schedule 1AA so that these two entities may change their corporate structure and continue to use the name “Banking Ombudsman” and “Insurance & Financial Services Ombudsman” respectively.

National Party view

National members of the committee are of the view that the bill is a waste of Parliament’s time. The bill simply transfers the power regarding protection of the name from the Ombudsman to the Minister.

The title of “Ombudsman” is already protected. In its Regulatory Impact Statement, the Ministry of Justice acknowledges that “the Act’s current approach to restricting the use of the name strikes a balance between the public interest in protecting the integrity and value of the office of the Parliamentary Ombudsman, and other factors such as freedom of expression”.

The ministry points out that, while the Office of the Ombudsman has indicated that there is some public confusion about its role versus those of the existing private sector entities which use the name Ombudsman, the extent to which this confusion is attributable to these private sector entities’ use of the name “Ombudsman” is not clear.

The ministry also notes that “quantitative evidence of the nature or extent of the problem with other agencies using the name “Ombudsman” is not available”.

Appendix

Committee process

The Ombudsmen (Protection of Name) Amendment Bill was referred to the committee on 8 May 2019. The closing date for submissions was 21 June 2019. We received and considered 11 submissions from interested groups and individuals. We heard oral evidence from six submitters, including the Chief Ombudsman.

We received advice from the Ministry of Justice.

Committee membership

Dr Jian Yang (Chairperson)

Ginny Andersen

Kanwaljit Singh Bakshi

Hon Jacqui Dean

Paul Eagle

Hon Peeni Henare

Jamie Strange

Lawrence Yule

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Andrew Little

Ombudsmen (Protection of Name) Amendment Bill

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Schedule	3
New Schedule 1AA inserted	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Ombudsmen (Protection of Name) Amendment Act **2019**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Ombudsmen Act 1975 (the **principal Act**).

4 New section 2A inserted (Transitional, savings, and related provisions)

After section 2, insert: 10

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

5 Section 28A replaced (Protection of name)

Replace section 28A with:

5

28A Protection of name

- (1) A person may not use the name “Ombudsman” in connection with any business, trade, or occupation or the provision of any service, whether for payment or otherwise, or hold themselves out to be an Ombudsman unless—
 - (a) the person is an Ombudsman appointed under section 3 of this Act; or 10
 - (b) the person is appointed by the Chief Ombudsman under section 11 of this Act as an officer or employee holding a position with a title that includes the word “Ombudsman”; or
 - (c) the person has been permitted by the Minister to use that name.
- (2) The Minister may only give permission under **subsection (1)(c)** to— 15
 - (a) a department named in Part 1 of Schedule 1:
 - (b) an organisation named in Part 2 of Schedule 1.
- (3) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$1,000.
- (4) In this section, **Minister** means the Minister of the Crown who, under the 20
 - authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.

6 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.

25

Schedule
New Schedule 1AA inserted

s 6

Schedule 1AA
Transitional, savings, and related provisions

5

s 2A

Part 1
Provisions relating to Ombudsmen (Protection of Name)
Amendment Act 2019

- 1 Interpretation** 10
- In this Part, **Amendment Act** means the Ombudsmen (Protection of Name) Amendment Act **2019**.
- 2 ~~Savings provision for persons currently permitted to use “Ombudsman”~~**
- (1) ~~This clause applies to the following persons:~~
- (a) ~~the Banking Ombudsman Scheme Limited; and~~ 15
- (b) ~~the Insurance & Financial Services Ombudsman Scheme Incorporated.~~
- (2) ~~The persons to whom this clause applies are entitled to continue to use “Ombudsman” in their current names as if the Amendment Act had not been enacted.~~
- 2 Savings provision for Banking Ombudsman Scheme Limited** 20
- Despite the enactment of the Amendment Act, the entity known as Banking Ombudsman Scheme Limited is entitled to continue to use “Banking Ombudsman” in—
- (a) its current name; and
- (b) any new name arising from a restructure of that entity. 25
- 2A Savings provision for Insurance & Financial Services Ombudsman Scheme Incorporated**
- Despite the enactment of the Amendment Act, the entity known as Insurance & Financial Services Ombudsman Scheme Incorporated is entitled to continue to use “Insurance & Financial Services Ombudsman” in— 30
- (a) its current name; and
- (b) any new name arising from a restructure of that entity.

- 3 Savings provision in respect of application by Financial Services Complaints Limited to use “Ombudsman”**
- (1) This clause applies if the Chief Ombudsman consents (whether before or after the commencement of the Amendment Act) to FSCL’s application under section 28A(1) of the Ombudsmen Act 1975 to use the name “Ombudsman”. 5
- (2) If this clause applies, FSCL may use “Ombudsman” in its name in accordance with the consent given by the Chief Ombudsman as if the Amendment Act had not been enacted.
- (3) In this clause, **FSCL** means Financial Services Complaints Limited, the appellant in the proceedings that were the subject of the judgment of the Court of Appeal reported in *Financial Services Complaints Limited v Chief Ombudsman* [2018] NZCA 27. 10

Legislative history

30 April 2019
8 May 2019

Introduction (Bill 133–1)
First reading and referral to Governance and Administration
Committee