

# Insurance & Savings Ombudsman's Conference

## The Role and Functions of the New Zealand Ombudsmen under the Ombudsmen Act

Beverley Wakem, Ombudsman

Hyatt Hotel, Auckland

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# *The Ombudsmen*

- ♦ office first established in 1962, the Ombudsmen are officers of Parliament and they are appointed by the Governor General on the recommendation of the whole of Parliament
- ♦ Ombudsmen are independent from the political processes of government – report to Parliament through the Officers of Parliament Select Committee

# ***The Ombudsmen's Functions fall into Three Main Areas***

- ◆ **Maladministration** – Ombudsmen Act (**OA**)
- ◆ **Freedom of Information** – Official Information Act (**OIA**) and Local Government Official Information and Meetings Act (**LGOIMA**)
- ◆ **Whistle blowing** – Protected Disclosures Act (**PDA**)

# *Ombudsmen Act*

- ◆ The office of the Ombudsmen investigates complaints about the administrative acts and decisions of central and local government agencies
- ◆ act or decision must affect a person or persons in their personal capacity
- ◆ Ombudsman's function is to investigate and determine whether the act or decision was contrary to law, unreasonable, unjust, mistaken or wrong
- ◆ wide range of agencies are subject to our jurisdiction, including:
  - ◆ central government agencies such as ACC, Work and Income, CYFS, IRD
  - ◆ local government organisations
  - ◆ public health organisations
  - ◆ educational institutions – universities, school boards of trustees
  - ◆ Crown entities

# *Ombudsmen Act*

- ◆ Ombudsmen also have responsibility for prison complaints and, in particular, review serious events in prisons
- ◆ Ombudsmen cannot investigate decisions made by Ministers of the Crown (but may investigate advice given to a Minister by an agency subject to the Act)
- ◆ Ombudsmen cannot investigate decisions of the Police or court decisions

# ***Ombudsmen Act***

- ◆ section 13 of the Act establishes certain limits on the otherwise sweeping jurisdiction of an Ombudsman
- ◆ not authorised to investigate acts or decisions for which there is a statutory right of appeal to a Court or Tribunal unless there are special circumstances that make it unreasonable to resort to the right of appeal
- ◆ for example, Ombudsmen cannot investigate a refusal by Work and Income to provide a benefit, as there is a right of review and then appeal from this decision
- ◆ however, an Ombudsman can look at concerns with the way Work and Income is processing an application – e.g. delays, failure to respond, providing incorrect advice.

# Ombudsmen Act

- ◆ an Ombudsman's investigation is also a *“remedy of last resort”*
- ◆ complainants are expected first to exhaust normal avenues of complaint - an Ombudsman will not usually commence an investigation until a complainant has raised their concerns with the agency
- ◆ an Ombudsman also has a discretion to decline to investigate a complaint if the complainant has known about it for more than 12 months
- ◆ it is therefore important that complainants do not delay in putting their complaints to an Ombudsman

# *Ombudsmen Act*

- ◆ as I have said - Ombudsmen are not advocates for complainants or agencies – independent and impartial
- ◆ investigation process is non-adversarial and is largely conducted “on the papers” but informal, early triage through enquiry with the agency can “unglue the process”.
- ◆ The Ombudsman has wide powers of enquiry – full powers of a Commission of Enquiry and can require the production of evidence (s.19) and take evidence on oath.
- ◆ Ombudsmen rely on their powers of persuasion to try and resolve complaints during the investigation process, if possible

# *Ombudsmen Act*

- ◆ however, if, following an investigation, a complaint is sustained, an Ombudsman may make a recommendation to remedy the complaint
- government agencies generally accept Ombudsman recommendations on their merits although they do not have the force of law
- ◆ this places a premium on quality and fairness of Ombudsmen investigation processes
- ◆ The investigation is not limited to whether the decision was lawful

# *Ombudsmen Act*

- ◆ asks was an agency's conduct reasonable in all the circumstances
- ◆ does not second-guess expert decisions eg technical or professional expertise
- ◆ due process is often the issue
- ◆ where a recommendation is not accepted, an Ombudsman may report the matter to the Prime Minister and thereafter to Parliament
- ◆ Ombudsmen involvement is often a catalyst for organisational improvement including improved complaint handling

# Ombudsmen Act

- ◆ most OA investigations are complaint driven; under section 13(3) an Ombudsman can however initiate an *own motion* investigation
- ◆ the Prime Minister with the Chief Ombudsman's agreement can request an investigation; a Select Committee can ask an Ombudsman to consider any petition in front of Committee
- ◆ these latter provisions are not widely used

# ***How complaints are processed***

1. Complaint received and acknowledged
2. Ombudsman decides if complaint can be investigated (if no investigation, complainant advised of alternative remedies)
3. Notice of investigation sent to complainant and organisation
4. Report received from organisation
5. Complaint may be resolved during investigation
6. Provisional view formed by Ombudsman
7. Affected party invited to comment on Ombudsman's provisional view
8. Final view formed and both parties advised

# *Summary*

## Ombudsmen

- ◆ rely on the confidence of the wider public
- ◆ work very hard to develop and maintain this confidence
- ◆ don't expect agreement with all decisions
- ◆ hope people will see we are fair and our processes robust

# ***Conclusion***

- Ombudsmen try to be:
  - Transparent and neutral
  - Approachable
  - Seen as independent of Government or political influence
  - Consistent and prompt in decision making

# ***Resources / Public Education***

- ◆ Free- phone number: 0800 802 602
- ◆ Clinics
- ◆ Website: [www.ombudsmen.govt.nz](http://www.ombudsmen.govt.nz)
- ◆ Annual Reports
- ◆ Compendia of Casenotes
- ◆ Ombudsmen Quarterly Review
- ◆ Practice Guidelines