

Ombudsmen (Protection of Name) Amendment Bill

Government Bill

Explanatory note

General policy statement

The Ombudsmen (Protection of Name) Amendment Bill will protect the use of the name “Ombudsman” by restricting its use to—

- an Ombudsman appointed under section 3 of the Ombudsmen Act 1975; or
- a person appointed to a position established by the Chief Ombudsman under section 11 of the Ombudsmen Act 1975 (such as that of Assistant Ombudsman or Deputy Ombudsman); or
- any public sector department or organisation approved by the Minister responsible for the administration of the Ombudsmen Act 1975.

The Bill replaces section 28A of the Ombudsmen Act 1975. The amendment will uphold public confidence in, and understanding of, the role of the Parliamentary Ombudsmen by ensuring that the role is not undermined or diminished by confusion over the status of any entity using the name “Ombudsman” in New Zealand.

The Bill includes a savings provision for 2 existing private sector entities (the Banking Ombudsman Scheme Limited and the Insurance & Financial Services Ombudsman Scheme Incorporated), which currently have permission from the Chief Ombudsman to use the name “Ombudsman”. It also includes a saving provision in respect of the private sector entity Financial Services Complaints Limited (FSCL). If the application FSCL has made under the current section 28A is approved by the Chief Ombudsman, it will also be able to use the name “Ombudsman” in accordance with that permission.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about

the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=133>

Regulatory impact assessment

The Ministry of Justice produced a regulatory impact assessment on 21 November 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <http://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements/>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 states the Bill's title.

Clause 2 is the commencement clause and states that the Bill comes into force on the day after the date of Royal assent.

Clause 3 provides that the Bill amends the Ombudsmen Act 1975 (the **principal Act**).

Clause 4 inserts *new section 2A* into the principal Act to provide the operative provision for *new Schedule 1AA*, which is a standard schedule for transitional, savings, and related provisions.

Clause 5 replaces section 28A of the principal Act. Section 28A of the principal Act currently prohibits persons from using the name “Ombudsman” unless the person is appointed under the principal Act or the use is permitted under an Act or by the Chief Ombudsman. Under *new section 28A*, persons are prohibited from using the name “Ombudsman” unless they are—

- appointed under section 3 of the principal Act; or
- appointed by the Chief Ombudsman under section 11 of the principal Act as an officer or employee holding a position with a title that includes the word “Ombudsman”; or
- permitted to use that name by the Minister responsible for the administration of the principal Act.

Clause 6 inserts *new Schedule 1AA* into the principal Act. *New Schedule 1AA* is contained in *the Schedule* of the Bill and contains a savings provision that allows 2 persons to continue to use the name “Ombudsman”. These persons are—

- the Banking Ombudsman Scheme Limited, approved to use the name “Ombudsman” by the Chief Ombudsman in 1992; and

- the Insurance & Financial Services Ombudsman Scheme Incorporated, approved to use the name “Ombudsman” by the Chief Ombudsman in 1994.

New Schedule 1AA also allows Financial Services Complaints Limited to use the name “Ombudsman” should the Chief Ombudsman consent to that company’s application that has been made under existing section 28A of the principal Act, but which has not yet been determined.

Hon Andrew Little

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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:

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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 authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act. 20

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.

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Schedule
New Schedule 1AA inserted

s 6

Schedule 1AA
Transitional, savings, and related provisions

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s 2A

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

- | | | |
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| 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. | |
| 3 | Savings provision in respect of application by Financial Services Complaints Limited to use “Ombudsman” | 20 |
| (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”. | |
| (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. | 25 |
| (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 <i>Financial Services Complaints Limited v Chief Ombudsman</i> [2018] NZCA 27. | 30 |